

IN THE MATTER OF GRAND JURY
CALLED FOR _____ GRAND JURY TERM
OF THE DISTRICT COURT IN AND FOR
_____ COUNTY,
NEBRASKA.

Case No. _____

**GRAND JURY CHARGE
(IN CUSTODY DEATH)**

Ladies and gentlemen of the grand jury it is now my responsibility to explain to you the nature of grand jury proceedings and your responsibility as grand jurors.

1. As you have been told, my name is Judge _____, and I am one of the district judges for the ____ Judicial District. Also in court at this time is _____, clerk of the district court for _____ County, Nebraska; _____, county attorney for _____ County, Nebraska; _____, special prosecutor; _____ chief deputy for _____ County, Nebraska; _____, support clerk; the bailiffs for the district court, _____ and _____; and the district court reporter, _____ Except for witnesses, no other persons will be present during your investigation or deliberations.

2. Nebraska law requires that the district court call or convene a grand jury when the court receives a certification from the county coroner which states that an individual has died while being apprehended by or while in the custody of law enforcement officers or detention personnel. The purpose of the grand jury is to investigate the death and determine whether formal charges should be made against any person for having committed a crime in connection with that death. When appropriate a grand jury may also make findings or recommendations which suggest that policies or procedures involved with the death be changed or that new policies or procedures be instituted.

3. During these proceedings you as grand jurors will in fact be acting as investigators of possible criminal conduct and you will also be acting as judges in determining whether there exists adequate evidence to charge individuals with criminal conduct. While exercising this authority and power over your fellow citizens you must accept certain limitations and responsibilities for your own conduct. During periods of recess or adjournment from your session as grand jurors you must be discreet in your associations, social or otherwise, and avoid anyone attempting to influence your judgment in the matters that are pending or may come before the grand jury. You must conduct yourself at all times in a conscientious and prudent manner and avoid behaviors which could cause disrespect for yourself or disrespect towards the grand jury as a whole.

4. Your only duty as grand jurors in these proceedings is to investigate the death of _____ and to make formal accusations against those persons, if any, you believe committed a crime in connection with this death. You are therefore to consider the following:

- (a) The cause of death of _____; and
- (b) Whether there was any criminal conduct by any individual that caused or contributed to the death.

5. Previously you took an oath to serve as a grand juror. That oath provided by statute may contain certain words or phrases that are unfamiliar to you. I am going to take this opportunity to briefly define some of the terms. A “presentment” means to make a formal written charge that an individual has committed a criminal act. The written document containing the charge is called an “indictment” or “a true bill”. In this indictment you may charge one or more named persons with having committed conduct which by law is defined and made punishable as a crime or crimes.

6. The work of the grand jury is conducted in secrecy and you have taken an oath which in part requires that you keep secret the work and discussions of the grand jury. You must not discuss your investigation, deliberations or votes with anyone unless specifically instructed to do so by a judge of this court. The requirement that grand jury proceedings be conducted in secret is based upon three-policy considerations. First, it is feared that if criminals knew that a grand jury was investigating their crime, the criminals might attempt to obstruct justice by intimidating witnesses or they might flee the jurisdiction of the court. Secondly,

secrecy protects those who appear as witnesses from possible intimidation or threats. Finally, secrecy protects innocent persons whose names or behaviors might come before the grand jury. A great injustice can occur and irreparable injury can be caused to the reputation of a citizen if it becomes known that the individual was discussed by the grand jury but adequate evidence was not present for indictment. Such a disclosure can cause a stigma to attach to the name and reputation of an individual which would be difficult, if not impossible, to erase.

7. Your obligation of secrecy requires that you not repeat, discuss or disclose the nature, content or result of your investigation and deliberation. You may not disclose that an indictment has been found against any person until that person is in custody, is released under bail, or until the indictment is filed and the case docketed officially in the office of the clerk of this court. You may not disclose or testify in court as to how you or any other member of the grand jury voted on any questions presented to you, or what opinions were expressed by yourself or any other juror in your deliberations or investigation. For this reason only members of the grand jury are permitted to be in the room when you are deliberating or voting on any matter.

8. The prosecutor will be present at all times during the investigatory stage of your service. It is the duty of the prosecutor to provide you with information relative to the issues that are being considered. You may also obtain legal advice from the prosecutor and you may wish to have the prosecutor interrogate witnesses for you. It is the duty of the prosecutor to issue subpoenas and other writs of process to insure that witnesses are brought before the grand jury and other evidence is produced. The prosecutor also is required to draw up bills of indictment as directed by you. The prosecutor may not be present during your deliberations or at such times as votes are taken.

As indicated above, the duties of the prosecutor are to assist you in your investigation. As such the grand jury also has the authority to require the clerk of the district court to issue subpoenas to produce witnesses to testify or produce documents and other evidence. Each member of the grand jury may also interrogate or ask questions of witnesses. Each witness that appears before the grand jury is required to complete in writing an oath or affirmation administered by the clerk of the district court that the witness will truly testify in response to all lawful inquiries made by and before the grand jury. The witness must present the written oath to your foreperson before testifying.

If a witness should refuse to answer any question, that refusal shall be communicated in writing to me. The communication shall include the question refused to be answered, together with the excuse, if any, given by the witness for refusing to answer. The Court will then determine whether the witness is required to answer and will immediately inform you of that decision. If the Court determines that the witness must answer the question, but the witness persists in refusing, then the Court shall deal with the witness in other proceedings as are necessary and proper.

9. If you believe that a witness before you is not being truthful you may consider indicting that witness for perjury. However, you may not return an indictment for perjury unless at least two other witnesses to the same fact present evidence with established probable cause to believe that the testimony of the witness is untrue and perjured.

10. As a grand juror you are required to evaluate the credibility, that is the believability, of the witnesses who come before you. You must dispassionately weigh and carefully scrutinize the testimony. It is proper for you to consider hearsay testimony in reaching your conclusions or in determining whether or not a "true bill" should be presented against any person. It is not your function to determine finally the guilt or innocence of an accused. It is your duty to determine from the evidence presented whether or not you believe a crime was committed in _____ County and whether there is probable cause for you to believe a particular person committed that crime. If you are convinced that the evidence establishes probable cause to believe that a particular individual committed a crime, then, in that event, it is your duty to present such person by indictment, that is formally charge the individual.

11. To return an indictment or a true bill at least twelve members of the grand jury must by affirmative vote indicate that based upon the evidence presented there is probable cause to issue the indictment. If twelve or more grand jurors concur in the finding of an indictment, then the foreperson will endorse on the indictment the words "a true bill," subscribe his or her name to the indictment and present the indictment to the court. Thereafter the indictment will be filed in the office of the clerk of the court and properly docketed for trial as provided by law. Your decision not to indict, for whatever reason, would result in "no true bill" of indictment being filed.

12. A certified court reporter will be present at all grand jury sessions. All proceedings and the testimony of all witnesses from commencement to adjournment of the grand jury will be recorded. The reporter's notes and transcripts which are prepared will be preserved, however they will be sealed and filed with the court. These notes and transcripts cannot be released or destroyed except by prior court approval. The grand jury should not disclose opinions or cast votes while the court reporter is present.

13. During these proceedings the bailiffs, _____ and _____, will be available and at your service. Among his/her duties is to guard the door of the room wherein you are deliberating, announce the appearance of witnesses, assist you in communicating with persons outside of your court proceedings, and perform such other duties as you may require of him/her. You should keep the bailiff informed in advance of times the grand jury plans to be in session.

14. During grand jury sessions you will be allowed the use of the district courtroom and the jury room. You are at liberty to fix your own hours for session. I would suggest, however, that your sessions be held during traditional work hours, Monday through Friday from 9:00 a.m. until 5:00 p.m., with such recess at noon as you determine appropriate. You should not work on Sundays or holidays. You may adjourn for several days or parts of days if necessary for the proper performance of your duties. Each juror must attend all sessions of the grand jury and only a judge of this court may authorize an absence.

15. The law requires that sixteen persons constitute this grand jury. Three alternate grand jurors have also been selected. Alternate grand jurors will sit with the grand jury throughout its session but may not take part in the voting or deliberations of the grand jury unless one or more of the regular grand jurors are absent. The alternate grand jurors will fill vacancies in the order of their selection and only for such time as the regular grand jurors whose places they fill are absent. The alternate grand jurors are bound by the same oath of secrecy as members of the grand jury. The three alternate grand jurors are as follows:

- a. _____
- b. _____
- c. _____

16. As you were previously told _____ has been appointed by the court to serve as the foreperson of this grand jury. The foreperson will call to order and preside over all grand jury sessions. Your communication with the court, the clerk of the court, the prosecutor, the bailiff, and all other persons or officials should be made through or under the foreperson's direction.

17. End your work at as early a date as is permitted by the seriousness of your task and your need to be thorough in completing that task. Your duties must be exercised fairly, impartially, and with absolute honesty. Your indictments must be found solely upon the evidence presented to you. You must not allow public sentiment or pressure to influence your decision. As a grand juror, you serve in the same judicial capacity as does a judge of this court or a judge of the Nebraska Supreme Court. You must make your decisions based solely on the evidence offered to you and the applicable law. Public sentiment is appropriate in the house of our legislature but it is not appropriate as the basis of a judicial decision.

You must not present any indictment, finding, or recommendation based on malice, hatred, or prejudice. You shall not fail or refuse to present an indictment through fear, favor, or affection, or any reward or hope of reward. In reaching your conclusions you must not be guided or influenced in any degree by your political, religious, business, social, or other affiliation, by personal whim, passion or prejudice. You must seek and present the truth, the whole truth and nothing but the truth according to the best of your ability.

Please keep this charge and return it to me or the clerk of this court at the close of your work.

Dated: _____.

BY THE COURT:

Judge of the District Court