

105TH CONGRESS
2D SESSION

S. 2030

To amend the Federal Rules of Civil Procedure, relating to counsel for witnesses in grand jury proceedings, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 4, 1998

Mr. BUMPERS introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend the Federal Rules of Civil Procedure, relating to counsel for witnesses in grand jury proceedings, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Grand Jury Due Proc-
5 ess Act”.

6 **SEC. 2. GRAND JURIES.**

7 (a) IN GENERAL.—Rule 6 of the Federal Rules of
8 Criminal Procedure is amended—

(1) in subdivision (d), by inserting “and counsel for that witness (as provided in subdivision (h))” after “under examination”; and

(2) by adding at the end the following:

“(h) COUNSEL FOR GRAND JURY WITNESSES.—

“(1) IN GENERAL.—

“(A) RIGHT OF ASSISTANCE.—Each witness subpoenaed to appear and testify before a grand jury in a district court, or to produce books, papers, documents, or other objects before that grand jury, shall be allowed the assistance of counsel during such time as the witness is questioned in the grand jury room.

“(B) RETENTION OR APPOINTMENT.—

Counsel for a witness described in subparagraph (A)—

“(i) may be retained by the witness;

or

“(ii) in the case of a witness who is determined by the court to be financially unable to obtain counsel, shall be appointed as provided in section 3006A of title 18, United States Code.

1 “(2) POWERS AND DUTIES OF COUNSEL.—A
2 counsel retained by or appointed for a witness under
3 paragraph (1)—

4 “(A) shall be allowed to be present in the
5 grand jury room only during the questioning of
6 the witness and only to advise the witness;

7 “(B) shall not be permitted to address the
8 attorney for the government or any grand juror,
9 or otherwise participate in the proceedings be-
10 fore the grand jury; and

11 “(C) shall not represent more than 1 client
12 in a grand jury proceeding, if the exercise of
13 the independent judgment of the counsel on be-
14 half of 1 or both clients will be, or is likely to
15 be, adversely affected by the representation of
16 another client.

17 “(3) POWERS OF THE COURT.—

18 “(A) IN GENERAL.—If the court deter-
19 mines that counsel retained by or appointed for
20 a witness under this subdivision has violated
21 paragraph (2), or that such action is necessary
22 to ensure that the activities of the grand jury
23 are not unduly delayed or impeded, the court
24 may—

1 “(i) remove the counsel and either ap-
2 point new counsel or order the witness to
3 obtain new counsel; and

4 “(ii) with respect to a violation of
5 paragraph (2)(C), order separate represen-
6 tation of the witnesses at issue, giving ap-
7 propriate weight to the right of each wit-
8 ness to counsel of his or her own choosing.

9 “(B) NO EFFECT ON OTHER SANCTIONS.—
10 Nothing in this paragraph shall be construed to
11 affect the contempt powers of the court or the
12 power of the court to impose other appropriate
13 sanctions.

14 “(4) NOTICE.—Upon service of any subpoena
15 requiring any witness to testify or produce informa-
16 tion at any proceeding before a grand jury
17 impaneled before a district court, the witness shall
18 be given adequate and reasonable notice of the right
19 to the presence of counsel in the grand jury room,
20 as provided in this subdivision.”.

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