

Attachment E

Overview -- Jury Selection in New Jersey

An Overview of the Jury Selection Process

The jury selection process begins with the creation of the master jury list. As provided by N.J.S.A. 2B:20-2, the Judiciary receives and compiles source records from the Division of Taxation, Motor Vehicle Commission, and Board of Elections. The Administrative Office of the Courts sorts and merges the source records to eliminate duplicate names and create a single list comprised of prospective jurors in each county.

Court staff complete that process on at least an annual basis to maintain a master list that is as comprehensive and non-duplicative as possible. In conjunction with that annual process, the Judiciary regularly updates the master jury list through use of the National Change of Address database maintained by the United State Postal Service. The use of multiple lists is one way to reach more members of the community than would be represented in a single source, such as Motor Vehicle records.

New Jersey, like most state and local jurisdictions, uses a one-step summoning process. Accordingly, the first document mailed to a prospective juror directs the recipient to complete the qualification process either online, using the eResponse system, or by returning a hardcopy questionnaire. That first summons notice also informs the recipient of the date or term of their jury service. The summons notice includes basic information, including a contact number and email address for the local jury management office, as well as a link to the eResponse system.

If the recipient does not complete the online questionnaire within three weeks, the Judiciary automatically sends a hardcopy questionnaire. Statewide, around 85% of respondents complete the qualification process using the online eResponse system. The remaining 15% mail back a hardcopy questionnaire.

Eligibility to serve as a juror is set by N.J.S.A. 2B:20-1. That statute provides that, to qualify as a juror, an individual must:

- be 18 years of age or older;
- be able to read and understand the English language;
- be a citizen of the United States;
- be a resident of the county in which summoned;
- not have been convicted of any indictable offense under state or federal law; and
- not have any mental or physical disability that will prevent the person from properly serving as a juror.

The summons notice directs the recipient to complete the qualification process (either online or in hardcopy) even if not qualified to serve.

Consistent with statewide policies, jury management may request documentation to confirm that an individual does not meet the qualification criteria. The Judiciary maintains records of all such dismissed jurors, including the categorical reason for their dismissal.

A person who qualifies for jury service may request a pre-reporting excusal. N.J.S.A. 2B:20-10 lists grounds for such excusals, which include being 75 years or older; recent jury service; severe hardship, including medical inability, financial hardship, and caregiving or specialized employment responsibilities; or service as a volunteer firefighter or on a first aid squad. Individuals can request to be excused only for the listed statutory reasons.

To be excused before reporting on any grounds other than those listed in section -10, the prospective juror must submit documentation for review by the Assignment Judge or their designee, pursuant to N.J.S.A. 2B:20-9. Standard forms are posted on the Judiciary's public website. The Judiciary maintains records of all jurors who are excused before reporting, including the reason for their excusal.

An individual who meets the qualification criteria set forth in N.J.S.A. 2B:20-1 and who does not seek a pre-reporting excusal may request to defer jury service to a future date. Requests for an initial deferral to a date selected

by the juror within the coming year are liberally granted to maximize participation by eligible jurors. Requests for repeated deferrals are subject to heightened scrutiny and may be granted or denied at the direction of the Assignment Judge or designee. The Judiciary maintains records of all jurors who are deferred, including the reason for their deferral.

In New Jersey and all jurisdictions, some juror summonses do not generate a response, either because they do not reach the intended recipient or because the recipient does not complete the qualification process. Around 10% of summons notices are returned as undeliverable. Another 15% of delivered notices yield no response. In follow-up with non-responsive jurors, some individuals report that they did not respond because they believed that they are not eligible to serve as a juror.

Jurors who complete the qualification process and indicate they are available to report when summoned are confirmed for service. Some or all confirmed jurors may be “called off” (advised not to report by text message, email, web posting, and phone message) because they are not needed until later in a multiday term or because all scheduled trials have resolved.

The Statutes & Court Rules that Govern Jury Selection

- N.J.S.A. 2B:20-1. Qualifications of jurors.
- N.J.S.A. 2B:20-2. Preparation of juror source list.
- N.J.S.A. 2B:20-9. Excuses and deferrals by Assignment Judge.
- N.J.S.A. 2B:20-10. Grounds for excuse from jury service.
- N.J.S.A. 2B:23-13. Peremptory challenges.
- Rule 1:8-3. Examination of Jurors; Challenges.
- Rule 1:8-5. Availability of Petit Jury List.

2B:20-1. Qualifications of jurors.

Every person summoned as a juror:

- a. shall be 18 years of age or older;
- b. shall be able to read and understand the English language;
- c. shall be a citizen of the United States;
- d. shall be a resident of the county in which the person is summoned;
- e. shall not have been convicted of any indictable offense under the laws of this State, another state, or the United States;
- f. shall not have any mental or physical disability which will prevent the person from properly serving as a juror.

L.1995, c. 44, § 1; amended, L. 1997, c. 127.

2B:20-2. Preparation of juror source list.

- a. The names of persons eligible for jury service shall be selected from a single juror source list of county residents whose names and addresses shall be obtained from a merger of the following lists: registered voters, licensed drivers, filers of State gross income tax returns and filers of homestead rebate or credit application forms. The county election board, the Division of Motor Vehicles and the State Division of Taxation shall provide these lists annually to the Assignment Judge of the county. The Assignment Judge may provide for the merger of additional lists of persons eligible for jury service that may contribute to the breadth of the juror source list. Merger of the lists of eligible jurors into a single juror source list shall include a reasonable attempt to eliminate duplication of names.
- b. The juror source list shall be compiled once a year or more often as directed by the Assignment Judge,
- c. The juror source list may be expanded by the Supreme Court as it deems appropriate.

Amended, L. 2007, c. 62, § 41.

2B:20-9. Excuses and deferrals by Assignment Judge.

- a. A person may be excused from jury service or may have jury service deferred only by the Assignment Judge of the county in which the person was summoned, or by the Assignment Judge's designee.
- b. The Assignment Judge may require verification of any of the facts supporting the grounds for a request for excuse or deferral. Records shall be kept of all requests for excuses and deferrals, and of the granting of excuses and deferrals.

Source: 2A:78-1

L. 1995, c. 44, § 1.

2B:20-10. Grounds for excuse from jury service.

An excuse from jury service shall be granted only if:

- a. The prospective juror is 75 years of age or older;
- b. The prospective juror has served as a juror within the last three years in the county to which the juror is being summoned;
- c. Jury service will impose a severe hardship due to circumstances which are not likely to change within the following year. Severe hardship includes the following circumstances:
 - (1) The prospective juror has a medical inability to serve which is verified by a licensed physician.
 - (2) The prospective juror will suffer a severe financial hardship which will compromise the juror's ability to support himself, herself, or dependents. In determining whether to excuse the prospective juror, the Assignment Judge shall consider:
 - (a) the sources of the prospective juror's household income; and
 - (b) the availability and extent of income reimbursement; and
 - (c) the expected length of service.
 - (3) The prospective juror has a personal obligation to care for another, including a dependent who is sick, is elderly, or has an infirmity or a minor child, who requires the prospective juror's personal care and attention, and no alternative care is available without severe financial hardship on the prospective juror or the person requiring care.
 - (4) The prospective juror provides highly specialized technical health care services for which replacement cannot reasonably be obtained.

(5) The prospective juror is a health care worker directly involved in the care of a person with a mental or physical disability, and the prospective juror's continued presence is essential to the personal treatment of that person.

(6) The prospective juror is a member of the full-time instructional staff of a grammar school or high school, the scheduled jury service is during the school term, and a replacement cannot reasonably be obtained. In determining whether to excuse the prospective juror or grant a deferral of service, the Assignment Judge shall consider:

(a) the impact on the school considering the number and function of teachers called for jury service during the current academic year; and

(b) the special role of certified special education teachers in providing continuity of instruction to students with disabilities;

d. The prospective juror is a member of a volunteer fire department or fire patrol; or

e. The prospective juror is a volunteer member of a first aid or rescue squad.

Amended L. 2017, c. 131, § 3.

2B:23-13. Peremptory challenges.

Upon the trial of any action in any court of this State, the parties shall be entitled to peremptory challenges as follows:

- a. In any civil action, each party, 6.
- b. Upon an indictment for kidnapping, murder, aggravated manslaughter, manslaughter, aggravated assault, aggravated sexual assault, sexual assault, aggravated criminal sexual contact, aggravated arson, arson, burglary, robbery, forgery if it constitutes a crime of the third degree as defined by subsection b. of N.J.S.2C:21-1, or perjury, the defendant, 20 peremptory challenges if tried alone and 10 challenges if tried jointly and the State, 12 peremptory challenges if the defendant is tried alone and 6 peremptory challenges for each 10 afforded the defendants if tried jointly.
- c. Upon any other indictment, defendants, 10 each; the State, 10 peremptory challenges for each 10 challenges allowed to the defendants. When the case is to be tried by a jury from another county, each defendant, 5 peremptory challenges, and the State, 5 peremptory challenges for each 5 peremptory challenges afforded the defendants.

Amended, L. 2007, c. 204, § 5.

Rule 1:8-3. Examination of Jurors; Challenges.

(a) Examination of Jurors. For the purpose of determining whether a challenge should be interposed, the court shall interrogate the prospective jurors in the box after the required number are drawn without placing them under oath. The parties or their attorneys may supplement the court's interrogation in its discretion.

(b) Challenges in the Array; Challenges for Cause. Any party may challenge the array in writing on the ground that the jurors were not selected, drawn or summoned according to law. A challenge to the array shall be decided before any individual juror is examined. A challenge to any individual juror which by law is ground of challenge for cause must be made before the juror is sworn to try the case, but the court for good cause may permit it to be made after the juror is sworn but before any evidence is presented. All challenges shall be tried by the court.

(c) Peremptory Challenges in Civil Actions. In civil actions each party shall be entitled to 6 peremptory challenges. Parties represented by the same attorney shall be deemed 1 party for the purposes of this rule. Where, however, multiple parties having a substantial identity of interest in one or more issues are represented by different attorneys, the trial court in its discretion may, on application of counsel prior to the selection of the jury, accord the adverse party such additional number of peremptory challenges as it deems appropriate in order to avoid unfairness to the adverse party.

(d) Peremptory Challenges in Criminal Actions. Upon indictment for kidnapping, murder, aggravated manslaughter, manslaughter, aggravated assault, aggravated sexual assault, sexual assault, aggravated criminal sexual contact, aggravated arson, arson, burglary, robbery, forgery if it constitutes a crime of the third degree as defined by N.J.S.A. 2C:21-1(b), or perjury, the defendant shall be entitled to 20 peremptory challenges if tried alone and to 10 such challenges when tried jointly; and the State shall have 12 peremptory challenges if the defendant is tried alone and 6 peremptory challenges for each 10 afforded defendants when tried jointly. In other criminal actions each defendant shall be entitled to 10 peremptory challenges and the State shall have 10 peremptory challenges for each 10 challenges afforded defendants. When the case is to be tried by a foreign jury, each defendant shall be entitled

to 5 peremptory challenges, and the State 5 peremptory challenges for each 5 peremptory challenges afforded defendants.

(e) Order of Exercising of Peremptory Challenges.

(1) In any case in which each side is entitled to an equal number of challenges, those challenges shall alternate one by one, with the State in a criminal case and the plaintiff in a civil case exercising the first challenge.

(2) In any case in which there is more than one defendant and/or an uneven number of peremptory challenges, the court shall establish the order of challenge, which shall be set forth on the record prior to the commencement of the jury selection process.

(3) The passing of a peremptory challenge by any party shall not constitute a waiver of the right thereafter to exercise the same against any juror, unless all parties pass successive challenges.

(f) Conference Before Examination. Prior to the examination of the prospective jurors, the court shall hold a conference on the record to determine the areas of inquiry during voir dire. Attorneys shall submit proposed voir dire questions in writing in advance. If requested, the court shall determine whether the attorneys may participate in the questioning of the prospective jurors and, if so, to what extent. During the course of the questioning, additional questions of prospective jurors may be requested and asked as appropriate under the circumstances. The judge shall rule on the record on the proposed voir dire questions and on any requested attorney participation.

(g) Jury Selection Must be Conducted in Open Court. Subject to (1) and (2) below, the public must be provided reasonable access to the courtroom during the jury selection portion of the trial.

(1) Exclusion of Public from Courtroom; Compelling Reasons; Alternatives. The trial judge may not exclude the public from the courtroom unless there is a compelling need to do so. In making that determination, the trial judge shall first consider reasonable alternatives, such as holding jury selection in a larger courtroom, if one is available. If there are compelling reasons to exclude the public from the courtroom, the judge shall consider alternative ways to permit

observation, including electronic means. The trial judge shall issue a statement of reasons for limiting or denying public access to jury selection.

(2) Voir Dire of Individual Jurors. The requirement of public access to the courtroom during jury selection does not preclude the court from conducting the voir dire of any individual juror on the record at sidebar, or in writing.

Note: Source-R.R. 3:7-2(b)(c), 4:48-1, 4:48-3. Paragraphs (c) and (d) amended July 7, 1971 to be effective September 13, 1971; paragraph (d) amended July 21, 1980 to be effective September 8, 1980; paragraph (a) amended September 28, 1982 to be effective immediately; paragraph (d) amended July 22, 1983 to be effective September 12, 1983; paragraph (d) amended July 26, 1984 to be effective September 10, 1984; paragraph (d) amended November 5, 1986 to be effective January 1, 1987; paragraph (c) amended November 7, 1988 to be effective January 2, 1989; paragraph (e) added July 14, 1992 to be effective September 1, 1992; paragraph (b) amended July 13, 1994 to be effective September 1, 1994; paragraph (f) added July 5, 2000 to be effective September 5, 2000; paragraph (f) amended July 27, 2006 to be effective September 1, 2006; new paragraph (g) adopted July 9, 2013 to be effective September 1, 2013; paragraphs (a) and (d) amended July 27, 2018 to be effective September 1, 2018.

Rule 1:8-5. Availability of Petit Jury List.

The list of the general panel of petit jurors shall be made available by the clerk of the court to any party requesting the same at least 10 days prior to the date fixed for trial.

Note: Source-R.R. 3:7-2(a). Amended July 16, 1979 to be effective September 10, 1979; amended September 28, 1982 to be effective immediately; amended July 27, 2018 to be effective September 1, 2018.