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Chapter 1: Petit Juries

The right of trial by jury as it has heretofore existed shall be secured to all and remain inviolate. In all cases triable in courts inferior to the district court the jury may consist of six. The legislature may provide that verdicts in civil cases may be rendered by less than a unanimous vote of the jury. (N.M. Const. art. II, § 12.)

A jury is the finder of fact in a jury trial and the investigator in grand jury proceedings. For a jury to be fair and impartial, it is essential that jurors be selected from a representative cross-section of the population. Specific duties include the selection of prospective jurors, responsibility for notifying, summoning jurors for trial panels and preserving records relating to jury selection.

Section 1-1: Qualification and Selection of Jurors

NMSA 1978, § 38-5-1

	<ul style="list-style-type: none">• Any person who is at least eighteen years of age,• A United States citizen,• A resident of New Mexico residing in the county for which a jury may be convened and• Is not a convicted felon is eligible and may be summoned for service as a juror by the district courts and magistrate courts,• Unless the person is incapable because of physical or mental illness or infirmity to render jury service.
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Section 1-2: Automated Jury Selection

NMSA 1978, § 38-5-3

<p>County Clerk and Secretary of State</p>	<ul style="list-style-type: none"> • Each county clerk shall make available to the secretary of state a database of registered voters of his county. • The secretary of state shall preserve and make available to the information systems division of the general services department, by electronic media, a database of New Mexico registered voters, by county, which shall be updated monthly.
<p>Motor Vehicle Division</p>	<p>The director of the motor vehicle division of the taxation and revenue department shall make available by electronic media to the information systems division of the general services department a database of driver's license holders in each county, which shall be updated monthly.</p>
<p>Information Systems Division (ISD)</p>	<ul style="list-style-type: none"> • The information systems division of the general services department shall program the merger of the registered voter and driver's license databases from each county to form a master jury database and write a computer program so that a random selection of jurors can be made. • No discrimination shall be exercised except for the elimination of persons who are not eligible for jury service.
<p>Administrative Office of the Courts (AOC)</p>	<ul style="list-style-type: none"> • The administrative office of the courts shall provide specifications for the merging of the registered voter and driver's license databases. • The merged database information shall be the database that produces the random jury list for the selection of petit or grand jurors for the district and magistrate courts.
<p>Jury Order</p>	<p>The district or magistrate court shall, by order, designate the number of potential jurors to be selected and the date on which the jurors are to report for empaneling.</p>


TIME LIMIT | JURY ORDER

Within **fifteen (15) days** after receipt of a copy of the order, the administrative office of the courts shall provide the random jury list to the court.


TIME LIMIT | JURY LIST AND JURY SUMMONS

The information systems division of the general services department shall print the random jury list and jury summons mailer forms within **ten (10) days** after receiving the request from the administrative office of the courts.

ISD	<p>Upon issuance of the order, the information systems division of the general services department shall draw from the most current registered voter and driver's license databases to create the random jury list.</p>
Transfer of Juror Data to Courts	<ul style="list-style-type: none"> • The information systems division may transfer the master jury database to a district or magistrate court that has compatible equipment to accept such a transfer. • The court accepting the master jury database shall transfer the information to a programmed computer used for the random selection of petit or grand jurors.

Section 1-3: Jury Tampering

NMSA 1978, § 38-5-5

<p>Jury Tampering</p>	<p>Jury tampering consists of:</p> <ul style="list-style-type: none"> • The willful placing of names in a jury wheel or removal of the names other than in accordance with law, NMSA 1978, § 38-5-5 A.; • The selection or drawing of jurors other than in accordance with law, NMSA 1978, § 38-5-5 B.; • The attempt to threaten, coerce or induce a trial juror to vote for a false verdict or a grand juror to vote for no indictment or for a false indictment, NMSA 1978, § 38-5-5 C.; or • The threatening, coercing or inducing of a trial juror to vote for a false verdict or a grand juror to vote for no indictment or for a false indictment, NMSA 1978, § 38-5-5 D.
<p>Misdemeanors</p>	<ul style="list-style-type: none"> • Whoever violates the provisions of Subsection A or B of NMSA 1978, § 38-5-5 is guilty of a petty misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.
<p>Felonies</p>	<ul style="list-style-type: none"> • Whoever violates the provisions of Subsection C of this section is guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978. • Whoever violates the provisions of Subsection D of NMSA 1978, § 38-5-5 is guilty of a second degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

Section 1-4: Qualification and Term of Service

NMSA 1978, § 38-5-12

District Judge Duties	<p>The district judge shall determine:</p> <ul style="list-style-type: none"> • The number of jurors to be summoned for service, • The date and time for the appearance of jurors for qualification, • The number of jurors to be qualified to provide panels of jurors for trial service, • The size of trial jury panels and • The length of time jurors are retained for service.
Alternate Jury Panels	<p>Procedures such as the use of alternate jury panels should be established where appropriate to lessen the burden of jury service on persons retained on petit jury panels.</p>
Term of Service	<ul style="list-style-type: none"> • No person may be required to remain as a member of a petit jury panel for longer than six months following qualification as a juror in any year, and • In any judicial district having a population of more than three hundred thousand persons in the last federal decennial census, no person may be required to remain as a member of an actual jury panel for longer than six weeks in any calendar year unless the panel is engaged in a trial, • Nor shall he be required to remain as a member of a petit jury panel for longer than three months following qualification as a juror in any year.
Exemption from Service	<p>Persons who have served as members of a petit jury panel or a grand jury in either state or federal courts within the preceding thirty-six months shall be exempt from sitting or serving as jurors in any of the courts of this state when they, at their option, request to be excused from service.</p>

Supplementing Jury Panels	Jurors may be drawn, summoned and qualified by the district judge at any time to supplement jury panels requiring replacement or augmentation.
Term of Jury Panels	Petit jury panels may be qualified and may serve as the trial needs of the district court require without regard to court terms.

Section 1-5: Summoning a Jury

NMSA 1978, § 38-5-10

Issuance of Summons	Upon drawing a list of jurors for grand jury or petit jury service, the clerk shall issue a summons for each juror ordering his attendance at a time and place as fixed by the district judge or magistrate ordering the drawing.
Service of Summons	The summons may be served by first class mail or in a manner provided for the service of civil process.
Willful Failure to Appear	A willful failure to appear as ordered in the summons is a petty misdemeanor.
Exemptions	Accompanying each summons, the clerk of the court shall submit for the information of the jurors the listing of those classes of persons or qualifications provided by law under which an exemption from jury service may be claimed.
Exemption Form	Jurors shall be provided a form upon which they may state the facts supporting their eligibility to claim exemption from jury service and to express a claim for exemption.

Section 1-6: Exemptions From Jury Service

NMSA 1978, § 38-5-2

Prior Service	Persons who have served as members of a petit jury panel or a grand jury in either state or federal courts within the preceding thirty-six months shall be exempt from sitting or serving as jurors in any of the courts of this state when they, at their option, request to be excused from service by reason of the exemption granted by this section.
Judicial Discretion	Any other person may be excused from jury service at the discretion of the judge upon satisfactory evidence presented to the judge with or without the person's personal attendance upon the court.
Fees and Mileage	The judge, in his discretion, upon granting any excuse, may disallow the fees and mileage of the person excused.
Disqualification	The service upon any jury of any person disqualified shall, of itself, not vitiate any indictment found or any verdict rendered by that jury, unless actual injury to the person complaining of the injury is shown.

Section 1-7: Qualifying Jury Panels

NMSA 1978, § 38-5-11

Random Selection of Jurors	The court shall empanel jurors in a random manner.
Petit Jury	The district judge or his designee or magistrate or his designee shall preside over the empaneling of a petit jury panel.
Grand Jury	The district judge or his designee shall preside over the empaneling of the grand jury panel.

Eligibility of Service	Jurors who appear for service shall be questioned under oath as to their eligibility for jury service by the district judge or his designee or magistrate or his designee.
Ruling for Excusal, Exemptions and Postponement of Service	Claims of exemption, requests for excuse from service or postponement of services shall be ruled upon by the district judge or his designee or magistrate or his designee.
Excusals	<p>A district judge or his designee or magistrate or his designee may excuse, exclude or postpone the services of any person called as a juror on the basis of:</p> <ul style="list-style-type: none"> • Physical or mental illness of the person or within his immediate family; • A written request from the person's employer for excuse on the ground that his services are essential; or • The person's prior business, professional or educational commitments which conflict with jury service, proven to the satisfaction of the district judge or his designee or magistrate or his designee.
Questionnaires for Voir Dire	The district judge or his designee or magistrate or his designee shall submit questionnaires to prospective jurors to obtain any information that will aid the court in ruling on requests for exemption or excuse from service or postponement of service or that will aid the court or parties in voir dire examination of jurors or in determining a juror's qualifications to serve on a particular petit jury panel, trial jury or grand jury.
Certification of Jury Panel Members	The district judge or his designee or magistrate or his designee shall certify a numbered list of the jury panel members' names when qualified.
Access to Jury List and Questionnaires	The certified list of jurors and the questionnaires obtained from jurors shall be made available for inspection and copying by any party to any pending proceeding or their attorney or to any person having good cause for access to the list and the questionnaires.

Section 1-8: Drawing and Qualifying Trial Jury

NMSA 1978, § 38-5-13

<p>Jury Lot Slip Container</p>	<ul style="list-style-type: none"> • The district court of each county shall provide one jury lot slip container to hold the juror lot slips for the selection of trial juries. • The container shall be constructed in a manner that allows the juror lot slips to be securely locked within and shall have a transparent window of sufficient size to permit the juror lot slips to be clearly visible. • The clerk of the district court of each county is responsible for the safekeeping of the jury lot slip container.
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CAUTION | COMPUTER SELECTION OF JURORS

A programmed computer may be used in lieu of a jury lot slip container to randomly select trial juries.

	<ul style="list-style-type: none"> • The lot slips bearing an identification number and the names of the jurors duly empaneled and present for the trial of a case, folded to conceal the name and number, shall be placed in a trial jury wheel. • The judge shall cause the lot slips to be drawn singly from the container until sufficient names have been drawn to provide the number of jurors required for the trial. • The container shall be shaken or rotated to cause the lot slips to be mixed. • The name and number of each juror shall be announced as it is called and recorded. • Twelve or six jurors shall compose a petit jury in the district courts for the trial of civil causes. • Twelve jurors shall compose a petit jury in criminal and children's court cases.
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Alternate Jurors
[RULE 10-047 B. NMRA](#)
[RULE 5-605 B. NMRA](#)

In any case, the court may direct that not more than six jurors in addition to the regular jury be called and empaneled to sit as alternate jurors.



TIME LIMIT | JURY DEMAND JUVENILE CASES, [RULE 10-228, NMRA](#)

A demand for trial by jury in delinquency proceedings shall be made in writing to the court within **ten (10) days** from the date the petition is filed or within **ten (10) days** from the appointment of an attorney for the respondent or entry of appearance by counsel for the respondent, whichever is later. If demand is not made as provided in this paragraph, trial by jury is deemed waived.

Section 1-9: Exercising Challenges to Jurors

[NMSA 1978, § 38-5-14](#)

Challenge for Good Cause	<ul style="list-style-type: none"> The court shall permit the parties to a case to express in the record of trial any challenge to a juror for good cause. The court shall rule upon the challenge and may excuse any juror for good cause.
Not within hearing of Jury	Challenges for good cause and peremptory challenges shall be made outside the hearing of the jury.
Recording of Challenges	The party making a challenge shall not be announced or disclosed to the jury panel, but each challenge shall be recorded by the clerk and placed in the case file.
Juvenile or Criminal Cases	In juvenile or criminal cases, the state or prosecution shall pass or accept or make any peremptory challenge as to each juror before the defendant is called upon to pass, accept or exercise a peremptory challenge as to the juror.

Multiple Parties

When there are two or more parties defendant or parties plaintiff, they shall exercise their peremptory challenges jointly, and if all cannot agree on a challenge desired by one party on a side, then the challenge is forfeited.

Section 1-10: Challenge to Jury Array

NMSA 1978, § 38-5-16

	Any party to a civil action or defendant in a criminal action, at the opening of trial and before the empaneling of the jury is commenced, by motion to quash the jury array, may challenge the jury panel on the ground that the members thereof were not selected substantially in accordance with law.
	<ul style="list-style-type: none"> • If the motion is sustained, then the trial will be stayed until a jury panel has been selected and qualified in accordance with law. • Such a challenge is waived if not raised before the trial jury panel has been sworn and selection of the trial jury commenced.

Section 1-11: Oath to Jurors

Criminal Voir Dire, UJI CRIM. 14-122

Do you swear or affirm to answer truthfully the questions asked by the judge or the attorneys concerning your qualifications to serve as a juror in this case, under penalty of law?

Oath to Empaneled Jury, UJI CRIM. 14-123

14-123. Do you swear or affirm that you will arrive at a verdict according to the evidence and the law as contained in the instructions of the court?

Civil Voir Dire, UJI CIVIL 14-102

Do you and each of you solemnly swear or affirm that you will well and truly answer any and all questions propounded to you by the court or by the lawyers under the court's direction touching upon your qualifications to serve as a juror in this case?

Oath to Empaneled Civil Jury, UJI CIVIL 13-105

Do you and each of you solemnly swear or affirm that you will render a true verdict according to the law and evidence submitted?

Section 1-12: Criminal Jury Verdict

RULE 5-611 NMRA

Return	The verdict shall be unanimous and signed by the foreman. It shall be returned by the jury to the judge in open court.
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Section 1-13: Jury Refreshments, Meals and Rooms

NMSA 1978, § 34-6-41

Refreshments	The district court may provide suitable refreshments for prospective jurors summoned for jury service.
Meals	When district court juries are engaged in a trial, the court may provide suitable meals and necessary accommodations for them.

Note: AOC guidelines authorize courts to provide meals and accommodation during deliberations or sequestration.

Section 1-14: Mileage and Compensation

NMSA 1978, § 38-5-15

	Persons summoned for jury service and jurors shall be reimbursed for travel from their place of actual residence to the courthouse when their attendance is ordered, at the rate allowed public officers and employees per mile of necessary travel.
	Persons summoned for jury service and jurors shall be compensated for their time in travel, attendance and service at the highest prevailing state minimum wage rate.

Section 1-15: Employer Prohibition

NMSA 1978, § 38-5-18-19

	An employer shall not deprive an employee of his employment, or threaten or otherwise coerce him with respect thereto, because the employee receives a summons, responds thereto, serves as a juror or attends court for prospective jury service.
	An employer, either individually or through his agent, who violates Section 1 [38-5-18 NMSA 1978] of this act is guilty of a petty misdemeanor.



Section 1-16: Jury Trial in Civil Actions

RULE 1-038 NMRA

JURY DEMAND



TIME LIMIT | JURY DEMAND, RULE 1-038 A. NMRA

In civil actions any party may demand a trial by jury of any issue triable of right by serving upon the other parties a demand therefor in writing after the commencement of the action and not later than **ten (10) days** after service of the last pleading directed to such issue, and filing the demand as required by Paragraph D of Rule 1-005 NMRA.

PAYMENT OF JURY FEES

RULE 1-038 C. NMRA

<p>Six-Member Jury</p>	<p>Any party initially demanding a jury of six persons shall, at the time of filing of the jury demand, deposit with the clerk of the court a non-refundable jury fee of one hundred dollars (\$100), and after the first day of trial shall deposit one hundred dollars (\$100) additional upon commencement of court on each subsequent day the attendance of the jury is required for the trial.</p>
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<p>Twelve-Member Jury</p>	<ul style="list-style-type: none"> Any party initially demanding a jury of twelve persons shall, at the time of filing the jury demand, deposit with the clerk of the court a non-refundable jury fee of two hundred dollars (\$200), and after the first day of trial, shall deposit two hundred dollars (\$200) additional upon commencement of court upon each subsequent day the attendance of the jury is required for the trial. If a jury of six persons has been initially demanded and another party subsequently files a demand for a jury of twelve persons, each party shall deposit with the clerk of the court for and on account of jury fees the sum of one hundred dollars (\$100) and each party shall deposit one hundred dollars (\$100) additional upon commencement of court upon each subsequent day the attendance of the jury is required for the trial.
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CHALLENGES IN CIVIL CASES

RULE 1-038 E. NMRA

<p>Challenges for Cause</p>	<p>The court shall permit the parties to a case to express in the record of trial any challenge to a juror for cause.</p>
<p>Ruling on Challenge for Cause</p>	<p>The court shall rule upon the challenge and may excuse any juror for good cause.</p>
<p>Outside of Hearing of Jury</p>	<p>Challenges for good cause and peremptory challenges will be made outside the hearing of the jury.</p>
<p>Recording of Challenges</p>	<p>The party making a challenge will not be announced or disclosed to the jury panel but each challenge will be recorded by the clerk.</p>
<p>Peremptory Challenges</p>	<p>The opposing parties will alternately exercise peremptory challenges.</p>
<p>Peremptory Challenges for Six Member Jury</p>	<p>In cases tried before a jury of six, each party may challenge three jurors peremptorily.</p>
<p>Peremptory Challenges for a Twelve Member Jury</p>	<p>In cases tried before a jury of twelve, each party may challenge five jurors peremptorily.</p>

<p>Challenges for Cases With Multiple Parties</p>	<p>When there are two or more parties defendant, or parties plaintiff, they will exercise their peremptory challenges jointly and if all cannot agree on a challenge desired by one party on a side, that challenge shall not be permitted. However, if the relief sought by or against the parties on the same side of a civil case differs, or if their interests are diverse, or if cross-claims are to be tried, the court shall allow each such party on that side of the suit three peremptory challenges if the case is to be tried before a jury of six or five peremptory challenges if the case is to be tried before a jury of twelve.</p>
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MAJORITY VERDICT (SIX-MEMBER JURY)

RULE 1-038 F. NMRA

<p>Verdict</p>	<p>In civil cases tried to a jury of six persons, when the jury, or as many as five of them, have agreed upon a verdict:</p> <ul style="list-style-type: none"> • They must be conducted into court, • Their names called by the clerk, and • The verdict rendered by their foreperson; • The verdict must be in writing, • Signed by the foreperson and • Must be read by the clerk to the jury, and • The inquiry made whether it is their verdict.
<p>Polling Jurors</p>	<p>Either party may require the jury to be polled, which is done by the court or clerk, asking each juror if it is the juror's verdict; if upon such inquiry or polling, more than one of the jurors disagree thereto, the jury must be sent out again but if no such disagreement be expressed, the verdict is complete and the jury discharged from the case.</p>

MAJORITY VERDICT (TWELVE-MEMBER JURY)

<p>Verdict</p>	<p>In civil causes tried before a jury of twelve, when the jury, or as many as ten of them, have agreed upon a verdict:</p> <ul style="list-style-type: none"> • They must be conducted into court, • Their names called by the clerk, and • The verdict rendered by their foreperson; • The verdict must be in writing, • Signed by the foreperson and • Must be read by the clerk to the jury, and • The inquiry made whether it is their verdict.
<p>Polling Jurors</p>	<p>Either party may require the jury to be polled, which is done by the court or clerk, asking each juror if it is the juror's verdict; if upon such inquiry or polling more than two of the jurors disagree thereto, the jury must be sent out again but if no such disagreement be expressed, the verdict is complete and the jury discharged from the case.</p>

COSTS AND STIPULATION TO JURY

RULE 1-038 A. NMRA

<p>Costs RULE 1-038 H. NMRA</p>	<p>Jury fees paid by a party shall be taxed as a part of the costs of the case against the party losing the case.</p>
<p>Stipulation to Jury RULE 1-038 I. NMRA</p>	<ul style="list-style-type: none"> • Notwithstanding any other provisions of this rule, if a six-person jury has been demanded and no other party has made a timely demand for a jury of twelve persons, all parties may, by unanimous agreement, file a stipulation to trial by a jury of twelve persons. • Such stipulation shall be filed no later than thirty (30) days prior to the commencement of trial. • In such a case, the jury fee shall be divided pro rata among all the parties.
<p>RULE 1-048 NMRA</p>	<p>Notwithstanding the provisions of Rule 1-038 NMRA, the parties may stipulate that the jury shall consist of any number fewer than twelve or that a verdict or finding of a stated majority of the jurors shall be taken as the verdict or finding of the jury.</p>

DISMISSAL OR WITHDRAWAL OF JURY DEMAND

RULE 1-038 J. NMRA

<p>Dismissal or Withdrawal of Jury Demand</p>	<ul style="list-style-type: none"> • When any party who has demanded a jury has been dismissed from a lawsuit or withdraws the party's jury demand prior to the commencement of trial, the district court shall apportion the payment of the jury fee among the remaining parties who desire the matter be tried to a jury as shall be fair and just under the circumstances. • Nothing contained in this rule shall require the district court to apportion any amount of the jury fee against any particular party.
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TRIAL BY JURY

N.M. CONT. ART. II, § 12

	<ul style="list-style-type: none"> • The right of trial by jury as it has heretofore existed shall be secured to all and remain inviolate. • In all cases triable in courts inferior to the district court, the jury may consist of six.
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LESS THAN UNANIMOUS VERDICTS IN CIVIL CASES

N.M. CONT. ART. II, § 12

<p>Inferior Courts</p>	<p>The legislature may provide that verdicts in civil cases may be rendered by less than a unanimous vote of the jury.</p>
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Chapter 2: Grand Juries

Section 2-1: Composition

NM CONST. ART. II, § 14

Number of Members	A grand jury shall be composed of such number, not less than twelve, as may be prescribed by law.
Residency	Citizens only, residing in the county for which a grand jury may be convened and qualified as prescribed by law, may serve on a grand jury.
Number Needed to Indict	<ul style="list-style-type: none"> • Concurrence necessary for the finding of an indictment by a grand jury shall be prescribed by law; provided, such concurrence shall never be by less than a majority of those who compose a grand jury, and, provided, at least eight must concur in finding an indictment when a grand jury is composed of twelve in number. • Until otherwise prescribed by law a grand jury shall be composed of twelve in number of which eight must concur in finding an indictment.
Convening a Grand Jury	<ul style="list-style-type: none"> • A grand jury shall be convened upon order of a judge of a court empowered to try and determine cases of capital, felonious or infamous crimes at such times as to him shall be deemed necessary, or • A grand jury shall be ordered to convene by such judge upon the filing of a petition therefor signed by not less than the greater of two hundred registered voters or two percent of the registered voters of the county, or • A grand jury may be convened in any additional manner as may be prescribed by law.

Section 2-2: Grand Jury Panels

NMSA 1978, § 31-6-1

Grand Jury Panels	<ul style="list-style-type: none">• The district judge may convene one or more grand juries at any time, without regard to court terms.• A grand jury shall serve for a period of no longer than three months.• The district judge shall summon and qualify as a panel for grand jury service such number of jurors as he deems necessary.• Each grand jury shall be composed of twelve regular jurors and a sufficient number of alternates to insure the continuity of the inquiry and the taking of testimony.• All deliberations shall be conducted by any twelve jurors, comprised of regular jurors or substituted alternates.• No more than twelve jurors may deliberate.• No juror may vote on an indictment unless the juror has heard all evidence presented on the charge.• The district judge may discharge or excuse members of a grand jury and substitute alternate grand jurors as necessary.• The names of jurors summoned for grand jury service shall be drawn from the master jury wheel of the district court for the county.
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Section 2-3: Foreman of Grand Jury

NMSA 1978, § 31-6-2

Foreperson	<ul style="list-style-type: none"> • The jurors shall select one of their number as foreman of the grand jury. • The foreman shall preside over the sessions of the grand jury. • The foreman shall administer oaths to witnesses. • The foreman will sign all reports, indictments or other undertakings of the grand jury. • The foreman may appoint one member of the grand jury as a clerk to aid in the keeping of notes or minutes and the tallying of votes during secret sessions when no persons other than grand jury members may be present. • The foreman may recess the sessions of the grand jury and reconvene them.
Excusal or Discharge of Jurors	<p>The foreman, for good cause, may request the court to excuse or discharge individual grand jurors and to replace them with alternate grand jurors as necessary to continue the work of the grand jury.</p>

Section 2-4: Challenge to Grand Jury

NMSA 1978, § 31-6-3

Motion to Quash	<ul style="list-style-type: none"> • Any person held to answer for an offense by grand jury indictment, upon arraignment to the charge therein, by motion to quash the indictment stating with particularity the ground therefor, may challenge the validity of the grand jury. • A failure to file such motion is a waiver of the challenge.
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Grounds for Motion	<p>Grounds that may be presented by such motion are limited to the following:</p> <ul style="list-style-type: none"> • The grand jury was not selected in accordance with law; • A member of the grand jury returning the indictment was ineligible to serve as a juror; or • A member of the grand jury returning the indictment was a witness against the person indicted.
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Section 2-5: Time and Place for Hearing

NMSA 1978, § 31-6-4

Time and Place	<ul style="list-style-type: none"> • A grand jury shall conduct its hearings during the usual business hours of the court which convened it. • Hearings and deliberations may be conducted at any place ordered by the convening judge and provided by the court. • Inspections or grand jury views of places under inquiry may be made when directed by the foreman wherever deemed necessary within the county, but no oral testimony or other evidence may be received except during formal private sessions.
Privacy of Deliberations	<ul style="list-style-type: none"> • All deliberations will be conducted in a private room outside the hearing or presence of any person other than the grand jury members. • All taking of testimony will be in private with no persons present other than the grand jury, the persons required or entitled to assist the grand jury and the attorney, if any, of the target witness.

<p>Presence of Attorney</p>	<ul style="list-style-type: none"> • Persons required or entitled to be present at the taking of testimony before the grand jury may include the district attorney and the attorney general and their staffs, interpreters, court reporters, security officers, the witness and an attorney for the target witness; provided that such security personnel may be present only with special leave of the district court and are neither potential witnesses nor otherwise interested parties in the matter being presented to the grand jury. • If a target witness has his attorney present, the attorney may be present only while the target witness is testifying and may advise the witness but may not speak so that he can be heard by the grand jurors or otherwise participate in the proceedings.
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Section 2-6: Return of Indictments

NMSA 1978, § 31-6-5

	<ul style="list-style-type: none"> • Indictments shall be returned by the grand jury within twenty-four hours following the day when the indictment is voted. Indictments shall not name persons as unindicted coconspirators. • Indictments may be filed and prosecution and trial had thereon without regard to court terms. • No-bills shall be sealed and filed with the district court clerk. • Upon application to the court by the state or the person named in the proposed indictment, the court may release a sealed no-bill for good cause shown.
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Section 2-7: Record of Testimony

NMSA 1978, § 31-6-8

Record of Proceedings	All proceedings in the grand jury room, with the exception of the deliberations of the grand jury, shall be reported verbatim and the notes or transcriptions thereof certified by the court reporter or stenographer making them, with the notes or transcriptions then deposited with the clerk or other officer of the district court as directed by the district judge.
Transcription and Certification	Upon order of the district court in cases where an indictment is returned, the notes may be caused to be transcribed and certified by the stenographer or court reporter who made them, if available, or by another person qualified and competent to transcribe them accurately.
Evidence	Copies of documentary evidence or a summary thereof if directed by the district court exhibited to the grand jury shall be made a part of the record.
Destruction of Notes for No Bill	In cases where an indictment is not returned, the notes or transcriptions shall be destroyed unless ordered by the district judge to be preserved for good cause shown, including but not limited to the prosecution of a witness for perjury.

Section 2-8: Oaths

NMSA 1978, § 31-6-6

Oaths	The following oaths shall be administered by the district judge to jurors, officers of the court or others assigned to assist the grand jury, and by the foreman to witnesses:
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Juror Oath

"You, as members of this grand jury, do swear (or affirm) that you will diligently inquire and true indictment make, of all public offenses against the people of this state, committed or triable within this county, of which you shall receive legal evidence; that you shall indict no person through malice, hatred or ill will; nor have any not indicted through fear, favor or affection, or for any reward or the hope or promise thereof; but in all your indictments, reports or undertakings, you shall present the truth, according to the best of your skill and understanding, and further that you will forever keep secret whatever you or any other juror may have said or in what manner you or any other juror may have voted on any matter before you; and that you will keep secret the testimony of any witness heard by you unless ordered by the court to disclose the same in the trial or prosecution of the witness for perjury before the grand jury, so help you God."

Oath for Officer or Other Person

"You do swear (or affirm) that you will keep secret all proceedings occurring in your presence or of which you may learn as a result of your service in aid of the grand jury, so help you God."

Oath for Witness

"You do swear (or affirm) that the testimony which you are about to give will be the truth, so help you God."

- Any person found to have violated the oath under Paragraph (1) or (2) of Subsection A of this section shall be guilty of a misdemeanor.
- This subsection shall not apply to communications by the prosecuting attorney to his staff or grand jury aides and in obtaining and presenting evidence, preparing indictments, reports and other undertakings of the grand jury and in preparation for trial.

Section 2-9: Assistance for Grand Jury

NMSA 1978, § 31-6-7

	<ul style="list-style-type: none"> • A grand jury shall conduct its hearing during the usual business hours of the court which convened it. • Hearings and deliberations may be conducted at any place ordered by the convening judge and provided by the court. • Inspections or grand jury views of places under inquiry may be made when directed by the foreman wherever deemed necessary within the county, but no oral testimony or other evidence may be received except during formal private sessions.
	<ul style="list-style-type: none"> • All deliberations will be conducted in a private room outside the hearing or presence of any person other than the grand jury members. • All taking of testimony will be in private with no persons present other than the grand jury, the persons required or entitled to assist the grand jury and the attorney, if any, of the target witness.
	<ul style="list-style-type: none"> • Persons required or entitled to be present at the taking of testimony before the grand jury may include the district attorney and the attorney general and their staffs, interpreters, court reporters, security officers, the witness and an attorney for the target witness; provided that such security personnel may be present only with special leave of the district court and are neither potential witnesses nor otherwise interested parties in the matter being presented to the grand jury. • If a target witness has his attorney present, the attorney may be present only while the target witness is testifying and may advise the witness but may not speak so that he can be heard by the grand jurors or otherwise participate in the proceedings.

Section 2-10: Grand Jury Proceedings

RULE 5-506 NMRA

Indictment	<ul style="list-style-type: none"> Grand jury indictments shall be public when they are filed with the court. Upon request, the court may order an indictment sealed until arrest.
Sound Recording	<ul style="list-style-type: none"> A sound recording shall be made of the testimony of all witnesses and any explanation or instructions of the prosecutor and any comments made by the prosecutor or other persons in the presence of the grand jury. No record shall be made of the deliberations of the grand jury.
Copy of Recording	<p>At any time after indictment, on request of a party, the district court clerk shall furnish a copy of the tape recording of:</p> <ul style="list-style-type: none"> The defendant's testimony before the grand jury; and The entire proceedings, unless the state objects to some portions of the tape, in which case the court shall determine which portions of the proceedings are to be furnished to defendant.
Disclosure	<p>The district court may prohibit disclosure of that portion of testimony or proceedings which creates substantial risk of harm to some person or which is irrelevant to the defendant.</p>

Section 2-11: Charge to Grand Jury

NMSA 1978, § 31-6-9 OR UJI CRIM. 14-8001

	<p>The district judge convening a grand jury shall charge it with its duties and direct it as to any special inquiry into violations of law that he wishes it to make.</p>
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Section 2-12: Abuse of Grand Jury Procedures

NMSA 1978, § 31-6-9.1

	<p>The prosecuting attorney shall not use the grand jury solely for the purpose of obtaining additional evidence against an already indicted person on the charge or accusation for which the person was indicted.</p>

Section 2-13: Requirement for Indictment

NMSA 1978, § 31-6-10

<p>Number of Jurors Concurring</p>	<ul style="list-style-type: none"> • Before the grand jury may vote an indictment charging an offense against the laws of the state, it must be satisfied from the lawful evidence before it that an offense against the laws has been committed and that there is probable cause to accuse by indictment the person named, of the commission of the offense so that he may be brought to trial therefor. • In the absence of an indictment against a person holding public office or a presentment for the removal of a local elected officer, the grand jury shall not denigrate that person's moral fitness to hold public office. • Eight jurors must concur to return an indictment.

Section 2-14: Evidence Before Grand Jury

NMSA 1978, § 31-6-11

	<ul style="list-style-type: none"> • Evidence before the grand jury upon which it may find an indictment is the oral testimony of witnesses under oath and any documentary or other physical evidence exhibited to the jurors. • The sufficiency or competency of the evidence upon which an indictment is returned shall not be subject to review absent a showing of bad faith on the part of the prosecuting attorney assisting the grand jury.
	<ul style="list-style-type: none"> • It is the duty of the grand jury to weigh all the evidence submitted to it, and when it has reason to believe that other competent evidence is available that may explain away or disprove a charge or accusation or that would make an indictment unjustified, then, it should order the evidence produced. • The target shall be notified of his target status and be given an opportunity to testify, if he desires to do so, unless the prosecutor determines that notification may result in flight, endanger other persons, obstruct justice, or the prosecutor is unable with reasonable diligence to notify said person. • A showing of reasonable diligence in notifying the target by the prosecutor is not required unless and until the target establishes actual and substantial prejudice as a result of an alleged failure by the prosecutor to exercise reasonable diligence in notifying the target of his target status before the grand jury. • The prosecuting attorney assisting the grand jury shall present evidence that directly negates the guilt of the target where he is aware of such evidence.

Section 2-15: Renewed Presentation of Evidence Forbidden

NMSA 1978, § 31-6-11

	After a grand jury acts on the merits of evidence presented to it and returns a no-bill, the same matter shall not be presented again to that jury or another grand jury on the same evidence.
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Section 2-16: Subpoena Power: Notice to Witnesses

NMSA 1978, § 31-6-12



TIME LIMIT |

The grand jury has power:

- To order the attendance of witnesses before it,
- To cause the production of all public and private records or other evidence relevant to its inquiry and
- To enforce such power by subpoena issued on its own authority through the district court convening the grand jury and executed by any public officer charged with the execution of legal process of the district court; provided that all subpoenaed witnesses shall be given a minimum of **thirty-six (36) hours'** notice unless a shorter period is specifically approved for each witness by a judge of the district court.

Subpoena of Grand Jury Target	<ul style="list-style-type: none"> • The target of the investigation shall not be subpoenaed except where it is found by the prosecuting attorney to be essential to the investigation. • If the target and his attorney, if he has one, sign a document stating that the target will assert the fifth amendment, he shall be excused from testifying on those matters as to which the district judge determines he has a valid fifth-amendment privilege.
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Subpoenas to Witnesses

Subpoenas directed to witnesses shall be returnable only when the grand jury is sitting.

Section 2-17: Compensation of Jurors and Witnesses

NMSA 1978, § 31-6-13

<p>Per Diem</p>	<ul style="list-style-type: none"> Grand jurors shall be paid by the district court a per diem allowance and mileage for their necessary travel for their attendance and service in the amounts provided by law for trial or petit jurors. Witnesses attending the grand jury under subpoena shall be paid by the district court a per diem allowance and mileage for their necessary travel in the amounts provided by law for witnesses attending trials.
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Section 2-18: Per Diem and Mileage for Witnesses

NMSA 1978, § 38-6-4

<p>No Fees</p>	<p>Witnesses shall be allowed no fees for services, but shall receive per diem expense and mileage at the rate specified for nonsalaried public officers as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] for that time in which attendance is required, with certification of the clerk of the court.</p>
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Expert Witness Fee	<ul style="list-style-type: none">• The district judge in any civil case pending in the district court may order the payment of a reasonable fee, to be taxed as costs, in addition to the per diem and mileage as provided for in Subsection A of this section, for any witness who qualifies as an expert and who testifies in the cause in person or by deposition.• The additional compensation shall include a reasonable fee to compensate the witness for the time required in preparation or investigation prior to the giving of the witness's testimony.• The expert witness fee which may be allowed by the court shall be limited to one expert regarding liability and one expert regarding damages unless the court finds that additional expert testimony was reasonably necessary to the prevailing party and the expert testimony was not cumulative.
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Chapter 3: Jury Handbook

Section 3-1: Some Terms You Will Learn

Action, Case, Suit, Lawsuit These words mean the same thing. They all refer to a legal dispute brought into court for trial.
Answer The paper in which the defendant answers the claims of the plaintiff.
Bailiff The bailiff is an officer of the court who waits upon the court and the jury and maintains order in the court.
Civil Case A lawsuit is called a "civil case" when it is between persons in their private capacities or relations, or when the government, whether federal, state or local, or some department thereof, sues an individual under the law, as distinguished from prosecuting a criminal charge. It results generally in a verdict for the plaintiff or the defendant and, in many cases, involves the giving or denying of damages.
Clerk The clerk sits at the desk in front of the judge during selection of the jury, is an officer of the court and keeps a record of papers filed. The clerk has custody of the pleadings and records of the trial of the case, orders made by the court during the trial and the verdict at the end of the trial.
Complaint The document or legal pleading in which the person who brings the lawsuit sets forth allegations, accusations or charges against another person.
Court Reporter The court reporter takes down in shorthand or on a machine everything that transpires which constitutes the stenographic record in the case. The notes so made are subject to transcription later, should occasion, such as an appeal, require it.
Criminal Case A lawsuit is called a "criminal case" when it is between the state on one side, as plaintiff, and a person on the other side, as defendant, charging the defendant with committing a crime, the verdict usually being "guilty" or "not guilty."

Cross-Examination

The questions asked by a lawyer to the opposing party or witnesses of the opposing party.

Defendant

In a civil case, the defendant is the person against whom the lawsuit is brought. In a criminal case, the defendant is the person charged with an offense.

Deposition

Testimony taken under oath in the same manner as during a trial. This is ordinarily done because of illness or absence of a party, or to determine prior to trial how a witness will testify at trial.

Examination, Direct Examination

The questions which the lawyer asks the lawyer's client or the client's own witnesses.

Exhibits

Objects including pictures, books, letters and documents which are produced as evidence in a case. These are called "exhibits."

Instructions or "Charge" to Jury

The outline of the rules of law which the jury must follow in their deliberations in deciding the factual issues submitted to them.

Issue

A disputed question of fact is referred to as an "issue." It is sometimes spoken of as one of the "questions" which the jury must answer in order to reach a verdict.

Jury Panel

The whole number of prospective jurors from which the trial jury is chosen.

Objection

A reason or argument by a lawyer that a question asked or statement made was not proper or in accordance with the law.

Objection Overruled

This term means that, in the judge's opinion, the lawyer's objection is not proper or correct under the rules of law. The judge's ruling, so far as a juror is concerned, is final and may not be questioned.

Objection Sustained

When a lawyer objects to a question or the form of a question, the judge may say "objection sustained." This means that the judge agrees that under the rules of the law, the lawyer's objection to a statement or a question is proper. This ruling likewise is not subject to question by the jurors.

Opening Statement

Before introducing any evidence for their side of the case, lawyers are permitted to tell the jury what the case is about and with what evidence they intend to prove their side of the case. This is called the "opening statement."

Parties

The plaintiff and defendant in the case. They are also sometimes called the "litigants."

Plaintiff

The person who starts a lawsuit.

Pleadings

The parties in a lawsuit must file in court papers stating their claims against each other. In a civil case, these usually consist of a complaint filed by the plaintiff, an answer filed by the defendant and, oftentimes, a reply filed by the plaintiff. These are called the "pleadings."

Record

This refers to the pleadings, the exhibits and the word-for-word record made by the court of all the proceedings at the trial.

Rests

This is a legal phrase which means that the party has concluded the evidence he/she wants to introduce in that stage of the trial.

Striking Testimony

On some occasions, after a witness has testified, the judge will order certain evidence deleted from the record and will direct the jury to disregard it. When this is done, the jury will treat this evidence as though it had never been given and will wholly disregard it.

Subpoena

The document which is issued for service upon a witness to compel the witness to appear in court.

Verdict

The finding made by the jurors on the issues submitted to them is the "verdict."

Section 3-2: Right to a Jury Trial

The Constitutions of the United States and the State of New Mexico guarantee the right of trial by jury. Juries consist of six or twelve members depending on the court and type of case.

Section 3-3: Who May Serve

Any person who is qualified to vote may be summoned for service as a juror.

Section 3-4: Selection of Jurors

Jurors are selected by the clerk of the district court, at random, by _____

_____ (set forth method used to select jurors).

Section 3-5: Exemption from Service

The following persons may be exempted from jury service:

- Persons incapable of serving because of physical or mental illness or infirmity;
- Persons exempted from jury service at the discretion of the district court;
- Persons who have served as members of a petit jury panel or a grand jury in either the courts of the United States or the State of New Mexico, within the preceding thirty-six (36) months are exempt from jury service in the courts of the state at the juror's option; and
- Persons exempted from jury duty by the judge upon satisfactory evidence presented to him, although the person requesting to be excused need not be personally present in court when making the request.

The clerk of the court will provide a juror with a form which must be completed in order to claim an exemption from jury service because of physical or mental illness or infirmity or to express a claim for exemption for other reason.

Section 3-6: Length of Service

A person is not required to remain a member of a jury panel for longer than _____ (set forth the number) months.

Section 3-7: Obligation of Employers

Employers who deprive their employees of employment or threaten or coerce them with respect to jury duty, upon conviction, are guilty of a petty misdemeanor.

Section 3-8: Emergency

If illness or other emergency requires that you be delayed or absent, telephone _____, promptly.

Section 3-9: Failure to Appear

Willful failure to appear as a juror is a criminal offense.

Section 3-10: Compensation

Jurors may be reimbursed for mileage for traveling to and from their place of residence to the court at the rate of _____ (set forth rate) cents (\$.) per mile. In addition a juror may receive compensation for each hour in attendance and service as jurors at the prevailing minimum wage rate for New Mexico of _____ (set forth minimum wage).

Section 3-11: Meals

The court may provide meals to jurors who are serving on a case. You are not required to eat with other jurors except when you are in deliberation or otherwise restricted by the judge.

Section 3-12: Function of Jurors

Jurors judge the facts in both criminal and civil cases. In a criminal case a jury determines the guilt or innocence of a person accused of committing a criminal offense. In a civil case a jury determines disputes involving money, property and other things of value.

Section 3-13: Juror Responsibilities

Members selected must not have personal knowledge regarding the facts of the particular case which might influence their decision. In order to reach this objective, the judge or attorneys question the jurors concerning their family relationship with or their personal knowledge of the parties or the attorneys and their personal knowledge of the facts of the case. This is called the "voir dire," meaning "to tell the truth." If the relationship or knowledge would tend to influence the juror's decision in the case, the juror is disqualified from serving in the case.

Section 3-14: Disqualification of Jurors

The qualification of jurors is one of the most important aspects of any trial, thus making the honest and forthright answers to the questions of the judge and attorneys unusually important. Jurors may be selected or rejected for many and various reasons, none of which reflect upon the individual juror. Jurors should not take it as a personal insult if they are not selected to serve. In the event that the questions asked by the judge or attorneys become offensive, a juror may request permission of the court to refuse to answer.

Section 3-15: Juror Oath

Once a jury has been selected, each juror selected is required to take an oath or affirmation that he will return a verdict according to the law and evidence as presented in court.

Section 3-16: Types of Cases

Jurors are called upon to hear both criminal and civil cases. Criminal cases are brought by the State of New Mexico, or in some cases, by a city or county, against an individual charged with a crime. The individual is not guilty until the jury unanimously makes that determination.

Civil cases vary somewhat from criminal cases in that the dispute is between individuals, business organizations or governmental entities, such as the state, a county or a municipality. Ordinarily, one party, called the plaintiff, will be making a claim for damages against another party called the defendant. In some instances, the defendant will also make a claim for damages against the plaintiff, called a counterclaim. A third party, called a third-party defendant, may also be a party in the action and damages or other relief may be requested from this party. In civil cases the jury determines the amount of money or other damages to be awarded.

In both civil and criminal cases after the evidence has been presented, an explanation of the law applicable to the case and other instructions to the jury are given. This is usually followed by closing arguments or statements by the lawyers. The jury is then asked to deliberate and reach a verdict in the manner described by the court.

Section 3-17: Evidence

Evidence is usually presented in the courtroom by question and answer. The attorneys or a party will question the witnesses and the answers become the evidence which you consider.

At times, the court will prohibit a witness from answering to avoid the jury from hearing improper evidence. The lawyers may object to certain evidence and the judge will then decide if the evidence may be presented to the jury. The jury should not consider as evidence any statement made by a witness or a lawyer which the judge has ruled to be improper evidence.

In listening to testimony, the jury should consider whether or not a witness is truthful. It is important that a jury's decision or verdict not be based upon false evidence.

Any documents, photographs or objects admitted into evidence are to be considered equally with the testimony of witnesses. The jury may also be asked to consider evidence in the form of depositions which are statements made by witnesses prior to trial. These will be read by the parties or attorneys and are just as important as other evidence.

Section 3-18: Juror Conduct

Jurors remain seated throughout the proceedings in court except when requested by the bailiff to stand.

The attitude and conduct of each juror throughout the trial is equally as important as that of the judge, parties, attorneys and witnesses. Because the jury has the important duty of deciding the true facts and applying those facts to the law applicable to the particular case, it is important that each juror understand the facts and apply the applicable law in order to reach a proper result.

It is important that jurors arrive at the time scheduled for the case to begin.

Jurors must remain alert throughout the trial. IF A JUROR IS UNABLE TO HEAR OR SEE THE EVIDENCE PRESENTED, IT IS THE JUROR'S DUTY TO MAKE THIS KNOWN TO THE JUDGE SO THAT APPROPRIATE ARRANGEMENTS CAN BE MADE.

Jurors may not discuss the case with anyone including the other jurors and if anyone attempts to discuss the case with a juror, it is the juror's duty to report this to the judge through the bailiff. Discussions concerning the evidence, witnesses or any aspect of the case with family members or friends is prohibited.

Jurors must avoid news accounts of the trial, whether they be on radio or television or in the newspaper or other written publications.

Jurors may not inspect the scene of the occurrence which is the subject of the trial unless the court specifically makes provision for a view of the scene. This is important because the place where the incident occurred may be entirely changed from what it was at the time of the occurrence.

Only in rare cases are members of the jury kept away from their home continuously during the trial. They can leave to go home at night, but they cannot discuss the case with anyone, not even a member of their family.

Jurors should dress comfortably and conservatively in order to avoid distracting others by their attire.

Section 3-19: Deliberations of Jury

After the judge has provided the jury with the law applicable to the case, it is the juror's sworn duty to follow the law as explained by the judge and apply it to the facts presented in court.

The manner in which the jury deliberates in the jury room is completely within the jury's control. The jurors should first select a foreman. The foreman may be either a woman or a man. Once a foreman of the jury is selected by the jurors, it is advisable that the foreman act as chairperson for the procedural guidance of the jury during its deliberations. The foreman has only one vote and should not be permitted to influence the other jurors any more than any other juror.

Each juror's vote should reflect the juror's opinion. No juror should permit himself to be pressured or pushed into a decision. Each juror should carefully consider the opinions and reasons of other jurors and avoid a stubborn attitude in order to prove a point.

A juror may not agree with the law as explained by the judge in the instructions to the jury. Any disagreement as to the law should have no effect on the decision of the juror. The jury is not deciding the law, but is determining the true facts. The juror's duty is to carefully listen to the judge, witnesses and lawyers, to deliberate, and deliberate calmly and fairly, and to decide intelligently and justly.

Section 3-20: Verdict of Jurors

In criminal cases, the agreement of all jurors is required to reach a verdict.

In civil cases, if the jury consists of twelve persons, ten or more must concur in a verdict. If the jury consists of six persons, five or more must concur in a verdict.

After a verdict is reached by the jury, the foreman should notify the bailiff that the jury is ready to report to the judge.

Section 3-21: Questions During Deliberation

Jurors' questions that cannot be resolved among the jurors may be submitted by a note to the judge setting forth the question. The note should be folded so that it cannot be seen by anyone. It is delivered to the bailiff for delivery to the judge. Jurors should make every effort possible to resolve all questions among themselves in order to avoid any outside influence from anyone including the judge.

Section 3-22: Time Spent Waiting

Jurors may be required to sit and wait for periods of time prior to and during a trial. This time is usually spent by the judge and attorneys considering legal matters necessary for a fair determination of the rights of the persons involved or to save time later on in the proceedings. Oftentimes, however, the judge may be called upon to consider emergency matters.

Conflicts in schedules may sometimes develop which result in delays. The courts are constantly searching for and implementing new ways to eliminate or avoid jurors having to spend unnecessary waiting time.

The courts will appreciate any suggestions on how the process may be improved.

Section 3-23: Civic Duty

You have been summoned to render an important service as a juror. As a juror, you will serve as an officer of the court, along with the lawyers and the judges.

Trial by jury has long been one of the cornerstones of judicial administration. The right has survived through the centuries as a vigorous and necessary force in the lives of free men and women.

The decisions of the jury affect the property rights, and even the life and the liberty of those whose cases come before it. Those chosen for jury service should take pride in performing this most important duty to their country and to their fellow men.

The proper and efficient functioning of the jury system requires that each juror exercise intelligence, integrity, sound judgment and complete impartiality in the performance of his duty.

When you give to the performance of jury service the best combined efforts of your mind, heart and conscience, you will feel that you are making a substantial contribution to the stability and perpetuation of an institution which must be preserved if freedom under a democratic government is to endure.

