

The Ohio Jury Management Association  
[www.ohiojury.org](http://www.ohiojury.org)

The Ohio Jury Management Association promotes and enhances jury service through excellent jury management.

David Ballmann, President  
 Montgomery Co. Common Pleas Court  
 937/224-3887  
[ballmand@montcourt.org](mailto:ballmand@montcourt.org)

Hon. J. Timothy Campbell, Vice President  
 Xenia, OH  
[Tim.cmpbl@gmail.com](mailto:Tim.cmpbl@gmail.com)

Victoria Robertson, Sec/Treasurer  
 Butler County Common Pleas Court  
 H. 513/423-0526  
[VRRobertson@aol.com](mailto:VRRobertson@aol.com)

Jean E. Atkin, Trustee  
 Attorney  
 Newbury, Ohio  
[jeanatkin@winstream.net](mailto:jeanatkin@winstream.net)

E. J. Griffith, Trustee  
 Greene County Common Pleas Court  
 937/562-5300  
[egriffith@co.greene.oh.us](mailto:egriffith@co.greene.oh.us)

Tom Shields, Trustee  
 Franklin County Municipal Court  
 614/645-7652  
[shieldst@fcmcclerk.com](mailto:shieldst@fcmcclerk.com)

Scott F. Sturges, Trustee Attorney  
 Columbus, OH  
[sfsturges@gmail.com](mailto:sfsturges@gmail.com)

Mary Bodey, Trustee  
 Wood Co. Common Pleas Court  
 419/354-9042  
[mbodey@co.wood.oh.us](mailto:mbodey@co.wood.oh.us)

Hon. Reeve Kelsey, Trustee  
 Wood Co. Common Pleas Court  
 419/354-9220  
[rkelsey@co.wood.oh.us](mailto:rkelsey@co.wood.oh.us)

Jacqueline Reihner, Trustee  
 Ashtabula County Prosecutor's Office  
 440-576-3658  
[jkreihner@ashtabulacounty.us](mailto:jkreihner@ashtabulacounty.us)

Bradley Seitz, Trustee  
 Hamilton County Common Pleas Court  
 513/946-5880  
[bseitz@cms.hamilton-co.org](mailto:bseitz@cms.hamilton-co.org)

# Jury Notes

## What Jury Managers Should Know About Grand Jury Service

Submitted by Jean Atkin, OJMA Trustee

Grand jury proceedings have recently been the subject of an increased level of media interest and reporting. There is often confusion about what a grand jury does and how it differs from a trial jury. While jury managers may have little direct contact with the grand jury process, understanding what happens during grand jury service is important. This article presents the basics about grand jury service.

### Grand Jury Selection and Composition:

The Ohio Revised Code requires that a judge of the Common Pleas Court supervise the impaneling of the grand jury. The same annual jury list used for the selection of trial jurors is also the source of the names of individuals to be selected for grand jury service. A minimum of twenty-five people are to be randomly selected from the annual source list, with the first fifteen constituting the grand jury. There is no maximum number of names to be drawn. There will need to be a decision made as to how many names need to be drawn to enable the court to have fifteen people able to serve considering non-deliverable summons, excuses, and postponements.

The process to select the individuals to serve on the grand jury is very structured and does not permit deviation. There is no option to change the order in which names are used for creating the grand jury. If a prospective grand juror cannot be located or is excused by the court or by a judge of the court, the next individual, **in the order drawn from the annual jury list for grand jury service**, must be substituted. If all of the names from the original draw are exhausted before the grand jury is selected, the judge will need to order the commissioners of jurors to draw a specific number of additional names to complete the process. Again, these additional names must be used in the order drawn. (continued on next page)

Fifteen individuals constitute the grand jury. The judge has an option to select an individual from outside of the jury draw process to serve as the foreperson of the grand jury. The selected person must meet the qualifications of a juror but their name must not be included in the annual jury list. The jury commissioners will need to check the annual list to verify that the name of the person the judge would like to serve as the foreperson has not already been selected during the annual jury draw. There are nine voting members of the grand jury. As a result of the required selection process, this group will be composed of the first nine (or eight if an outside foreperson is designated) names remaining on the list after eliminating the names of those not located, excused or postponed. The next six individuals remaining on the list will be alternate grand jurors. In the event that a voting grand juror becomes unavailable during their term of service, the alternate juror whose name is next on the list, must be selected to become a voting grand juror.

#### Grand Jury Drawing, Notification and Exemptions:

The same process used for the drawing and notification of trial jurors is used for the selection of grand jurors. This means that public notice of the drawing must be published and the same public officials, or their designees, must be present for the drawing. There are no exemptions from grand jury service. Grand jurors may be excused or have their service postponed in the same manner as trial jurors. There is no statutory provision for challenging grand jurors. Grand jurors who have a direct conflict of interest on a specific matter are subject to disqualification by the grand jury foreperson from voting on that particular presentment.

#### Compensation of Grand Jurors and Restrictions on Future Jury Service

The compensation for grand jurors is set by the county commissioners, not to exceed forty dollars per day (the same limitation on the compensation of trial jurors was removed by the Jury Modernization Act in 2012). **A person who has served as a grand juror is prohibited from serving again, either as a grand juror or trial juror, in the remainder of that jury year or in the next jury year.**

The jury commissioners should be aware of this limitation in the preparation of the annual jury list. In counties with less than one hundred thousand population, the court may make a different rule regarding restrictions for subsequent grand juror and petit juror service.

#### Grand Jury Proceedings and Voting

The grand jury listens to evidence presented by the prosecutor and decides if there is sufficient evidence to charge the subject individual with a crime. Grand jurors are allowed to question witnesses. Only potential felony cases are presented to the grand jury. The grand jury has the discretion to return an indictment to the charge recommended by the prosecutor, a different charge (either a felony or misdemeanor) or to find that there is not sufficient evidence for any criminal charge (a "no bill"). Alternate grand jurors also hear the proceedings before the grand jury so that they may substitute for a regular grand juror who is absent when the matter is submitted for a vote. Only the nine regular grand jurors vote on the matters submitted. Alternate grand jurors are excused during the discussion and vote. An indictment is returned when seven or more of the nine regular grand jurors vote for the charge, returning what is known as a "true bill". The outcome of the voting is reported by the grand jury foreperson through the prosecutor, who then files the necessary paperwork with the court to initiate the indicted criminal cases.

#### Secrecy of Grand Jury Proceedings

Unlike a trial jury, the grand jury operates outside of public view. As a part of the required oath to grand jurors, mandated secrecy is emphasized. Grand jurors may never disclose what was presented, who testified, or any of the discussions or decisions made during the grand jury session, unless ordered to do so by the court. The Judge will oversee the operation of the grand jury. Only the court may determine that a disclosure about grand jury procedure is needed in the furtherance of justice.

#### Charge of and Oath to the Grand Jury

Ohio law requires that the grand jurors, after being sworn, be instructed about their duties and (*continued*)

responsibilities by a judge of the court of common pleas. The required grand juror oath is contained in Ohio Revised Code section 2939.06. The language of the oath, which was amended in 2003, permits jurors to either swear or affirm to the oath. The obligation of secrecy imposed by the oath given to grand jurors must be presented by the judge. The judge must also explain the law as it relates to grand jury proceedings. This duty may not be delegated to the prosecutor or to court staff. A number of courts use the language contained in the brochure "Grand Jury Service - A Citizens Guide", produced by the Ohio Judicial Conference ([www.ohiojudges.org](http://www.ohiojudges.org)), as a starting point for preparing the required charge to the grand jury.

### ***Batson* and Beyond**

By Hon. Reeve Kelsey, OJMA Trustee

The basic *Batson* rule is that it is inappropriate during voir dire to exercise a peremptory challenge against a prospective juror solely because of the race or sex of the juror. And when a *Batson* challenge is made, the party exercising the peremptory challenge must provide a race or gender neutral explanation for the peremptory challenge. There is now a case pending before the United States Supreme Court that could make the standard three part *Batson* analysis more complex.

Timothy Foster, an 18 year old African-American, was convicted of murdering Queen Madge White, an elderly white woman, during the course of a burglary. During voir dire the state exercised its peremptory challenges to remove four black prospective jurors resulting in an all-white jury. Race neutral reasons were given for the exercise of the peremptory challenges. Foster was sentenced to death.

In the ensuing habeas corpus proceedings Foster's counsel were able to obtain the prosecution's jury selection notes. First, on the roster of the prospective jurors, the black jurors were highlighted in green and marked with a "B". Second, the juror questionnaires required the juror to identify the juror's race. On the black juror's questionnaires the answer "Black" was circled. Third, the black jurors were coded as "B#1," "B#2," and "B#3," etc. Fourth, the notes revealed the prosecution had ranked the black jurors on a scale from

most acceptable to least acceptable. And finally the prosecution had created a "Definite NO's" list containing six names of which five were black. This case, *Foster v. Chatman*, will be argued in November. So stay tuned!

### **Ashtabula County Court of Common Pleas**

Jackie Reihner, OJMA Trustee

[jkreihner@ashtabulacounty.us](mailto:jkreihner@ashtabulacounty.us)

The Number of Jury Trials

For 2014: 11 Criminal and 1 Civil.

From 12/01/2015 to 07/28/2015: 7 Criminal and 2 Civil.

The Jury Commission for Ashtabula County summons jurors for three Common Pleas Courts as well as Eastern and Western County Courts. Jurors are summoned from a pool of more than 40,000 registered voters for one specific date. Jurors are paid \$15.00 per day and \$20.00 a day after 10 days of service.

Ashtabula County Jury Commission went through some major changes starting in mid- 2014. The first changes made were: creating a Jury Manager position to cover the office full time instead of two part time commissioners, implementing a new computer program, NextGen, to manage jurors, and the use of a newly designed summons. The Jury Manager now checks the jury in on trial day in the courtroom, assists the Courts during panel selection, and processes juror excuses and all correspondence with the jurors. The new summons is a self-mailer; one half contains a questionnaire which jurors return prior to their service date and the other half the juror keeps for reporting instructions and to bring to court for checking in.

The courts also moved away from drawing a venire for every four month session to one big draw at the beginning of each calendar year. Jurors were drawn previously using a two-step system starting with a qualification form sent notifying jurors that they could be drawn at any time during a four month session then a second notice was mailed notating the jurors' specific dates and court to report to with the possibility of being called more than once during a two week period. Now, having the large pool of jurors allows the Courts to draw a new group of jurors for each day a trial is scheduled, eliminating the need for jurors to remain available for two weeks. We are getting a positive response from jurors regarding these new processes and hope to continue to improve the experience between the jurors and the Courts.

