

Grand Jury Selection (Published Aug. 2016)

Introductory Note

The following script is intended for use by a judge in screening a panel of prospective grand jurors.

There are four grounds for excusing prospective grand jurors:

- (1) disqualification under the Judiciary Law, namely, the prospective grand juror is not a citizen, is not 18 years of age, has a felony conviction, or cannot communicate in English);¹*
- (2) physical or mental incapacity to serve;²*
- (3) hardship;³ and*
- (4) bias or prejudice.⁴*

As to the first ground – disqualification under the Judiciary Law – the governing law and rules place the initial responsibility for vetting prospective grand jurors on the Commissioner of Jurors.⁵ The judge supervising the grand jury also has the authority to excuse a prospective grand juror as disqualified under the Judiciary Law.⁶

As to the second and third grounds, the law provides for both the Commissioner and the judge to hear applications from prospective jurors for postponements and excusals based on physical or mental incapacity and on hardship.⁷ Local practice varies as to who actually vets the panel of prospective grand jurors on those two grounds – the Commissioner, the judge, or both.

As to the fourth ground, only the judge can excuse a prospective grand juror on the ground of bias or prejudice.⁸

The screening questions recommended here relate to the second, third, and fourth grounds for excusal – i.e., incapacity, hardship, and bias or prejudice. The assumption is that the panel will already have been screened by the Commissioner of Jurors on the first set of grounds for qualification under the Judiciary Law, i.e., citizenship, age, felony conviction, and proficiency in English. Of course, if the judge believes that any of those requirements of the Judiciary Law should be revisited, the judge can add questions concerning those qualifications. In any event, the following instruction does, to some extent, test the jurors' proficiency in English by asking each prospective grand juror at one point whether he or she understood the Court's instructions.

Screening Script

Welcome. We are here to select and impanel a Grand Jury. A Grand Jury consists of 23 citizens.

The primary function of the Grand Jury is to hear and examine evidence concerning criminal offenses, and then to determine whether a person should be charged with the commission of an offense and face trial for it. The Grand Jury may also examine evidence of misconduct in public office, whether criminal or otherwise.

In performing that judgment, each grand juror must be fair in rendering his or her decision as to whether a person should be charged with the commission of a crime. A fair juror is a person who has no personal bias or prejudice in favor of, or against, our criminal justice system, the district attorney, the person or persons that are the subject of a Grand Jury proceeding, or any witness, whether the witness be a police officer or civilian.

A special word about testimony of a police officer or other law enforcement person. The testimony of a witness should not be believed solely and simply because the witness is a police officer. At the same time, a witness's testimony should not be disbelieved solely and simply because the witness is a police officer. A fair grand juror must, therefore, evaluate a police officer's testimony in the same way he or she would evaluate the testimony of any other witness.

So, a fair juror is a person who will follow these instructions and listen carefully to the evidence presented in a particular case and, upon that evidence and the law, render an unbiased judgement on whether a person should be charged with a crime and face trial for it.

A Grand Jury sits for a (*specify*) period. So, each selected grand juror will be required to be here (*specify when during that period*); that means, each grand juror will be required to be here on (*specify days of the week*) from approximately (*specify time*), for a period of (*specify*), starting today and ending on (*specify*).

When your name is called, if you can serve, please take a seat in the jury box. If you have a reason you cannot serve, please step to the bench first and speak with me. This is your first and last chance to tell me that you have a problem serving on the Grand Jury. In particular, if the answer to any one or more of the following questions is yes, then, when your name is called, raise your hand and come to the bench and explain the answer to me.

1) Is there any reason you cannot be here (specify days, times, weeks when required) ?

2) Will service during that period impair your health or result in a financial hardship?

Note: Before discharging a prospective juror with a disability based on the ground that the individual's physical condition prevents him or her from serving, the court should consider, as required by the Americans with Disabilities Act, whether there is a reasonable accommodation that would allow that individual to serve on the Grand Jury.

3) If you or someone close to you has been the victim of a crime, accused or convicted of a crime, or has a pending criminal case will that experience prevent you from being fair either to the prosecutor or to a person who is the subject of a Grand Jury proceeding?

4) Is there any reason you could not be fair in evaluating the credibility and accuracy of the testimony of a police officer or any other witness?

5) Do you have a religious or other belief that would prevent you from sitting on a Grand Jury and deciding whether a person should or should not be charged with the commission of a crime?

6) Is there any other reason you could not be fair in deciding whether a person should be charged with a crime?

Again, if your answer to any one or more of those questions is yes, then when your name is called, raise your hand and come to the bench and explain the answer to me.

Note: If a juror does not come to the bench, ask that juror, as he/she takes a seat in the jury box, the following question to make sure the juror was listening and understood:

Did you understand what I have said so far?

Note: Once all jurors are seated in the box, before the swearing, ask:

Ladies and Gentlemen, can each of you promise me to be fair in making the decision whether a person should be charged with a crime?

If anyone said no, please raise your hand.

Once you begin hearing cases, if a case comes before you and you know a party or a witness, or you know something about the case before the case was

presented to you, or for any reason you could not be fair in judging that one case, you must immediately report that to the assistant district attorney. Do I have your promise that you will do that?

If anyone said no, please raise your hand.

Swear the Grand Jurors.

1. *See* Judiciary Law § 510 (qualifications of jurors); Judiciary Law § 518 (court to discharge trial and grand jurors if not qualified); Judiciary Law § 509 (Commissioner of Jurors to determine qualification of prospective jurors); CPL 190.20 (2) (b) (court may refuse to swear prospective grand juror, or discharge sworn grand juror, if disqualified under the Judiciary Law); 22 NYCRR 128.5 (e) (procedure for Commissioner determining whether prospective trial and grand jurors qualified or disqualified).

2. *See* Judiciary Law § 517 (c) (providing for excusal of prospective grand jurors on grounds of physical or mental incapacity and of hardship); *see also* 22 NYCRR 128.6-a (b) (1) (i); 22 NYCRR Pt. 128, app. A (II) (A), (B).

3. *See* n.2, *supra*.

4. *See* CPL 190.20 (2) (b) (providing that court may refuse to swear prospective grand juror, or discharge sworn grand juror, on ground of bias or prejudice).

5. *See* Judiciary Law § 502 (Commissioner of Jurors responsible for “drawing, selection, summoning and impaneling of jurors”); Judiciary Law § 509 (providing for procedure for Commissioner to use in determining whether prospective grand and trial jurors qualified under the Judiciary Law); *see also* 22 NYCRR 128.5; New York State Unified Court System, *Best Practices for Jury System Operations* (April 2009), pp. 26-27, Practices 5 (a)-(e) (practices for Commissioners of Jurors to use in determining prospective jurors’ qualification under the Judiciary Law); pp. 52-53, Principle 14 (“Assure that only qualified jurors are sent to *voir dire*.”), Practices 14 (a), (b), (c) (practices for vetting prospective jurors for Judiciary Law qualification before being sent to judge).

6. *See* Judiciary Law § 518 (“The court shall discharge a person from serving as a trial or a grand juror whenever it satisfactorily appears that he or she is not qualified”); CPL 190.20 (2) (b) (providing that court may refuse to swear prospective grand juror, or discharge sworn grand juror, on ground that juror is “disqualified from service pursuant to the judiciary law”); *see also* New York State Unified Court System, *Best Practices for Jury System Operations* (April 2009), p. 52, Standard 14.1 (where there is any question about a prospective juror’s ability to communicate in English [a requirement for qualification under the Judiciary Law], the Commissioner defers to the judge for final decision); Practice 14 (c) (noting that jurors are questioned four times regarding disqualifying felony convictions: in juror questionnaire, summons, Commissioner’s oral questioning, and judge’s oral questioning).

7. *See* Judiciary Law § 517 (b), (c) (providing for excusal of prospective grand jurors by Commissioner or by judge on grounds of physical or mental incapacity and or hardship); *see also* 22 NYCRR 128.6-a (b) (1) (i), (c); 22 NYCRR Pt. 128, app. A (II) (A), (B).

8. *See* n.4, *supra*.