

## **CHAPTER 29-17 TRIAL JURY**

### **29-17-01. Jurors in criminal actions same as those summoned for civil actions.**

The jurors duly drawn and summoned for the trial of civil actions also are the jurors for the trial of criminal actions.

### **29-17-02. How trial jury formed.**

A trial jury for a criminal action must be formed in the same manner as a trial jury in a civil action.

### **29-17-03. Clerk selection of juror names - Randomized list.**

At the opening of the court, the clerk shall select the names of prospective jurors from a randomized list of names developed in accordance with chapter 27-09.1 and supreme court rule.

### **29-17-04. Parties may require names of all jurors in panel to be called.**

When a case is called for trial, and before drawing the jury, either party may require the names of all the jurors in the panel to be called, and the court may order that an attachment issue against those who are absent, but the court, in its discretion, may wait or not for the return of the attachment.

### **29-17-05. Manner of drawing jury.**

Repealed by S.L. 2009, ch. 280, § 3.

### **29-17-06. Ballots laid aside until jurors discharged.**

Repealed by S.L. 2009, ch. 280, § 3.

### **29-17-07. When jurors discharged names returned to box.**

Repealed by S.L. 2009, ch. 280, § 3.

### **29-17-08. Name of absent or disqualified juror returned to box when jury completed.**

Repealed by S.L. 2009, ch. 280, § 3.

### **29-17-09. Completion of panel - Procedure.**

Repealed by S.L. 1999, ch. 292, § 2.

### **29-17-10. Names of additional jurors - Ballots deposited in box.**

Repealed by S.L. 2009, ch. 280, § 3.

### **29-17-11. Drawing the jury.**

Repealed by S.L. 2009, ch. 280, § 3.

### **29-17-12. Number of jurors - How sworn.**

In all felony cases when a jury is impaneled, a jury must consist of twelve qualified jurors. In class A misdemeanor cases when a jury is impaneled, a jury must consist of six qualified jurors unless the defendant makes a timely written demand for a jury of twelve. In all other misdemeanor cases when a jury is impaneled, a jury must consist of six qualified jurors. Jurors must be sworn or affirmed well and truly to try and true deliverance make between the state of North Dakota and the defendant whom they have in charge, and to give a true verdict according to the evidence. The verdict must be unanimous.

**29-17-13. Number failing, others summoned.**

If a sufficient number of jurors cannot be selected to form a trial jury, the court, as often as is necessary, may order the sheriff to summon from the body of the county as many persons qualified to serve as jurors as the court deems sufficient to form a jury. The jurors so summoned may be called from the list returned by the sheriff, and as many of them not excused or discharged as may be necessary to complete the jury must be impaneled and sworn.

**29-17-14. Juror may affirm.**

Superseded by N.D.R.Ct. 6.10.

**29-17-15. Challenges defined and classified.**

A challenge is an objection made to the trial jurors and is of two kinds:

1. To the panel; and
2. To an individual juror.

**29-17-16. When several defendants are tried together they must join their challenges.**

When several defendants are tried together they cannot sever their challenges but must join therein.

**29-17-17. Panel defined.**

A jury panel is a list of jurors returned by a sheriff to serve at a particular court or for the trial of a particular action.

**29-17-18. Challenge to panel defined.**

A challenge to a panel is an objection made to all the trial jurors returned and may be taken by either party.

**29-17-19. Causes for challenge to panel.**

A challenge to a panel can be founded only on a material departure from the forms prescribed by law in respect to the drawing and return of the jury, or on the intentional omission of the sheriff to summon one or more of the jurors drawn.

**29-17-20. Challenge to panel before challenge to individual juror.**

A challenge to a jury panel must be taken before a juror is sworn and must be in writing specifying plainly and distinctly the facts constituting the ground of challenge.

**29-17-21. Sufficiency of facts controverted - Procedure.**

If the sufficiency of the facts alleged as a ground of challenge of a panel is controverted by the adverse party, that party may except to the challenge. The exception need not be in writing but must be entered upon the minutes of the court, and thereupon the court shall proceed to try the sufficiency of the challenge, assuming the facts therein alleged to be true.

**29-17-22. Facts stated in challenge denied - Procedure.**

If, on the exception, the court deems the challenge to a panel sufficient, it, if justice requires it, may permit the party excepting to withdraw the party's exception, and to deny the facts alleged in the challenge. If the exception is allowed, the court, in like manner, may permit an amendment of the challenge.

**29-17-23. Trial of question of fact.**

If facts alleged as the grounds of a challenge to a panel are denied, the denial, in like manner, may be oral and must be entered upon the minutes of the court, and the court shall proceed to try the questions of fact.

**29-17-24. Officers may be examined.**

Upon the trial of a challenge to a panel, the officers, whether judicial or ministerial, whose irregularity is complained of, as well as any other persons, may be examined to prove or disprove the facts alleged as the ground of the challenge.

**29-17-25. Challenge taken for officer's bias.**

When a jury is formed from persons whose names are not drawn as jurors, a challenge may be taken to the panel on account of any bias of the officer who summoned them, which would be good ground of challenge to a juror. Such challenge must be made in the same form and determined in the same manner as if made to a juror.

**29-17-26. Challenge allowed - Jury discharged.**

If upon an exception to a challenge to a panel, or a denial of the facts, the challenge is allowed, the court shall discharge the jury, and another jury can be summoned for the same term forthwith from the body of the county, or the judge may order a jury to be drawn and summoned in the regular manner. If the challenge is disallowed, the court shall direct the jury to be impaneled.

**29-17-27. Challenge to individual juror - Peremptory or for cause.**

Superseded by N.D.R.Crim.P., Rule 24.

**29-17-28. Jurors examined by either party.**

Superseded by N.D.R.Crim.P., Rule 24.

**29-17-29. Challenge taken before juror sworn.**

Superseded by N.D.R.Crim.P., Rule 24.

**29-17-30. Peremptory challenge.**

A peremptory challenge can be taken by either party and may be oral. It is an objection to a juror for which no reason need be given but upon which the court must exclude that juror.

**29-17-31. Challenges to prosecution and defendant.**

Superseded by N.D.R.Crim.P., Rule 24.

**29-17-32. Challenge for cause.**

Superseded by N.D.R.Crim.P., Rule 24.

**29-17-33. Challenges for cause defined and classified.**

A challenge for cause is an objection to a particular juror and is either:

1. General, that the juror is disqualified from serving in any case or trial; or
2. Particular, that the juror is disqualified from serving in the case on trial.

**29-17-34. General causes of challenge specified.**

General causes of challenges are:

1. A want of any of the qualifications prescribed by law to render a person a competent juror, including a want of knowledge of the English language as used in the courts; and
2. Unsoundness of mind or such defect in the faculties of the mind or organs of the body as renders the juror incapable of performing the duties of a juror.

**29-17-35. Particular causes of challenge specified.**

Particular causes of challenge are of two kinds:

1. A bias which, when the existence of the facts is ascertained, in judgment of law disqualifies the juror, and which is known in this title as implied bias; and
2. The existence of a state of mind on the part of the juror, with reference to the case or to either party, which satisfies the court, in the exercise of a sound discretion, that the

juror cannot try the issue impartially without prejudice to the substantial rights of the party challenging, and which is known in this title as actual bias.

**29-17-36. Matters constituting implied bias specified.**

A challenge for implied bias of a juror may be taken for all or any of the following causes, and for no other:

1. Consanguinity or relationship to the person alleged to be injured by the offense charged, or on whose complaint the prosecution was instituted, or to the defendant.
2. The relationship of guardian and ward, attorney and client, master and servant, landlord and tenant, or debtor and creditor, or membership in the family of the defendant, or of the person alleged to be injured by the offense charged, or on whose complaint the prosecution was instituted, or employment by either.
3. Being a party adverse to the defendant in a civil action, or having complained against or been accused by the defendant in a criminal prosecution.
4. Having served on the grand jury which found the indictment, or on a coroner's jury which inquired into the death of a person whose death is the subject of the action.
5. Having served on a trial jury which has tried another person for the offense charged.
6. Having been one of a jury formerly sworn to try the same charge, and whose verdict was set aside, or which was discharged without a verdict, after the cause was submitted to it.
7. Having served as a juror in a civil action brought against the defendant for the act charged as an offense.
8. Repealed by S.L. 1975, ch. 106, § 673.
9. Having served as a member of the jury panel within two years.

**29-17-37. Exemption is not cause.**

An exemption from service on a jury is not a cause of challenge but the privilege of the person exempted.

**29-17-38. How challenge taken - Cause stated.**

In a challenge for implied bias, one or more of the causes stated in section 29-17-36 must be alleged. In a challenge for actual bias, the cause stated in subsection 2 of section 29-17-35 must be alleged, but no person may be disqualified as a juror by reason of the fact that the person may have heard from others or read in newspapers or public journals any statement or statements with regard to the case to be submitted to the jury, if it appears to the satisfaction of the court that the impression remaining upon the mind of such person from the statements so communicated to the person will not prevent the person from trying the case fairly and impartially. The challenge may be oral but must be entered upon the minutes of the court.

**29-17-39. Exception to the challenge.**

Superseded by N.D.R.Crim.P., Rule 24.

**29-17-40. All challenges tried by the court.**

Superseded by N.D.R.Crim.P., Rule 24.

**29-17-41. Juror challenged a witness.**

Superseded by N.D.R.Crim.P., Rule 24.

**29-17-42. Other witnesses may be examined - Rules of evidence.**

Superseded by N.D.R.Crim.P., Rule 24.

**29-17-43. Court must allow or disallow challenge.**

Superseded by N.D.R.Crim.P., Rule 24.

**29-17-44. Order of taking challenges.**

All challenges to an individual juror, except peremptory, must be taken, first by the defendant, and then by the state, and each party shall exhaust all of that party's challenges before the other begins.

**29-17-45. Order of challenges for cause.**

The challenges of either party for cause need not all be taken at once, but they must be taken separately, in the following order, including in each challenge all the causes of challenge belonging to the same class:

1. To the panel;
2. To an individual juror for a general disqualification;
3. To an individual juror for implied bias; and
4. To an individual juror for actual bias.

**29-17-46. Peremptory challenges taken.**

If all challenges on both sides are disallowed, either party, first the state and then the defendant, may take a peremptory challenge, unless the party's peremptory challenges are exhausted.

**29-17-47. Alternate jurors, selection - Procedure.**

Superseded by N.D.R.Crim.P., Rule 24.

**29-17-48. Alternate jurors, oath - Duties.**

Superseded by N.D.R.Crim.P., Rule 24.