

IN THE SUPERIOR COURT OF UPSON COUNTY

STATE OF GEORGIA

FILED & RECORDED
SUPERIOR COURT CLERK'S OFFICE
UPSON COUNTY, GA 30286

Date/Time: 6-30-14 2:57pm

TERESA HARPER, CSO

ORDER TO ESTABLISH THE JURY MANAGEMENT PLAN FOR UPSON COUNTY

Pursuant to O.C.G.A. § 15-1-5 et seq and the Rules of the Supreme Court of Georgia, this Order is established to provide for the efficient and orderly management of jury operations in the Superior Court of Upson County, Georgia, hereafter referred to as "County." Any existing Order establishing an automated jury system in the County or creating or amending any jury management plan is hereby vacated and replaced by this Order. The provisions of this Order relating to selection, excusal, and deferral of grand and trial jurors are inapplicable in cases where the District Attorney in a criminal matter seeks a death sentence. In the event a death sentence is sought, the selection, excusal, and deferral of grand and trial jurors will proceed in accordance with the relevant statutes of this State.

1.

Appointment of Superior Court Clerk to Exercise Authority to Defer, Excuse and Inactivate Jurors

(a) Pursuant to O.C.G.A. § 15-12-1.1, the Court hereby appoints the Clerk of Superior Court to exercise the authority to defer, excuse, and inactivate trial or grand jurors according to law as compiled for easy reference in this Order. This Order shall not be construed to change any legal duties, rights, or privileges provided by law, but shall be obeyed as an operational order in following the law. The Court retains the authority to defer, excuse, or inactivate jurors, and to review and revise any action taken by the Clerk.

2.

Master List

(a) Effective July 1, 2014 the Clerk of Superior Court shall receive the County Master Jury List, hereafter referred to as the "Master List," annually from the Council of Superior Court Clerks of Georgia. Such lists shall constitute the jury list of the County effective upon receipt in any subsequent year. O.C.G.A. § 15-12-40.1(d).

(b) The Clerk and the county governing authority shall cause the annual subscription invoice for the Master List to be promptly paid so as to facilitate certification of the Master List. O.C.G.A. § 15-12-40.1(d).

(c) The Clerk shall not add names to or delete names from the Master List, but may flag names and modify names and other information as expressly authorized herein below.

3.

Master List Maintenance

(a) The Clerk may perform local maintenance of the Master List by notation or flagging of jurors who have been excused, deferred or inactivated as provided by law or this Order. The reason for a permanent inactivation shall be included as a notation or flag. In the maintenance of the list, no names shall be actually removed or deleted from the list.

(b) The Clerk may update residence or mailing address information of a person on the Master List.

(c) The Clerk may update the name of a person upon identifying that such person has had a name change by virtue of marriage or judgment of a court.

(d) The Clerk shall make a report to the Court of all jurors who have been excused, deferred or inactivated when so ordered by the Court or as required by law.

4.

Computer Jury Management System

(a) Pursuant to O.C.G.A. § 15-6-61(a)(20), the Clerk of Superior Court shall acquire, keep and maintain an automated computer based jury management system that facilitates the maintenance, operation and usage of the Master List and system. To the extent the County and Clerk have agreed upon an automated jury management system and such a system is in use, it is approved and the Clerk is required to comply with O.C.G.A. § 15-6-61(a)(20) and other applicable law in its operation, including but not limited to the following provisions under this section.

(b) The Master List shall be entered into the jury management system under the direction and control of the Clerk.

(c) Adequate backup copies of the Master List shall be saved annually to such media as directed by the Clerk and placed in the vault of the Clerk's office or other secure location for safekeeping or restoration in case of loss for any reason.

(d) Annually, following July 1 of each year, the Clerk shall create and store a backup copy of the Master List which was used for the previous year. Such copy shall be available for examination upon order of the Court.

(e) Potential jurors shall be summoned using the jury management system by randomly selecting names from the Master List by the use of a random number generator computer program designed to provide each eligible person in the Master List an equal chance of being selected, unless such person is ineligible for service for such term as provided for by law and this Order.

(f) Upon order of the Court, the Clerk shall promptly execute the entire juror summoning process including random selection, issuance of summons for each selected juror and service of each summons. The order of the Court shall specify the number of jurors required to be summoned, the type of jurors, grand or trial, and the date and time jurors are required to report for service.

5.

Guidelines for Deferral, Excusal and Inactivation of Jurors

(a) **Definitions.** The below words and phrases as used in this Order shall have the same meaning as the same words and phrases defined in O.C.G.A. § 15-12-1:

(1) "Array" means the body of persons subject to voir dire from which the final jury and alternate jurors are selected.

(2) "Choose" or "chosen" means the act of randomly selecting potential jurors from the county master jury list in a manner that does not deliberately or systematically exclude identifiable and distinct groups from the venire.

(3) "Clerk" means the clerk of the superior court or a jury clerk if one is appointed pursuant to subsection (a) of Code Section 15-12-11 Code Section 15-12-12.

(4) "Council" means The Council of Superior Court Clerks of Georgia.

(5) "County master jury list" means a list compiled by the council of names of persons, including their addresses, city of residence, dates of birth, and gender, eligible for trial or grand jury service.

(6) "Defer" means a postponement of a person's jury service until a later date.

(7) "Excuse" means the grant of a person's request for temporary exemption from jury service.

(8) "Inactivate" means removing a person's name and identifying information who has been identified on the county master jury list as a person who is permanently prevented from being chosen as a trial or grand juror because such person is statutorily ineligible or incompetent to serve as a juror.

(9) "State-wide master jury list" means a comprehensive master list that identifies every person of this state who can be determined to be *prima facie* qualified to serve as a trial or grand juror.

(10) "Venire" means the list of persons summoned to serve as trial or grand jurors for a particular term of court.

(b) The Court hereby establishes the following guidelines for deferrals and excusals:

1. Except for permanently mentally or physically disabled persons all grants of excusals shall be treated as deferrals and jury service shall be "deferred to a date and time certain within that term or the next succeeding term or shall be deferred as set forth in [this] court order." O.C.G.A. § 15-12-1.1(a)(1).
2. Any excusals or deferrals subsequent to a first excusal or deferral shall be made based upon good cause shown at the time of the subsequent request for excusal or deferral.
3. The Clerk of Superior Court is appointed by this Order to exercise authority, except in death penalty cases or in which the Court has ordered otherwise, to excuse or defer jury service to a later date under the circumstances enumerated below, provided the presumption shall always be to defer jury service to a later date rather than excusing the juror; and further provided no summoned juror shall be excused or deferred more than once without express authority of the judge then presiding, with disclosure of the juror's previous excusal or deferral. The Clerk shall maintain a written record of the documentation supporting the excusal or deferral. The Court shall provide any and all affidavit forms required under the following provisions, pursuant to O.C.G.A. § 15-12-1.1(a)(1).

- i. "Any person who shows that he or she will be engaged during his or her term of jury duty as a trial or grand juror in work necessary to the public health, safety, or good order or who shows other good cause why he or she should be exempt from jury duty may have his or her jury service deferred or excused by the judge of the court to which he or she has been summoned or by some other person who has been duly appointed by order of the chief judge to excuse jurors... It shall be the duty of the court to provide affidavits for the purpose of requesting a deferral of or excusal from jury service." O.C.G.A. § 15-12-1.1(a)(1).
- ii. "[A]ny person who is a full-time student at a college, university, vocational school, or other postsecondary school who, during the period of time the student is enrolled and taking classes or exams, requests to be excused or deferred from jury duty shall be excused or deferred from jury duty." O.C.G.A. § 15-12-1.1(a)(2). Provided, however, that the person shall be deferred until a jury trial week that coincides with his or her availability, or, if no such availability exists within the 12 months following original issuance of summons, then excused. Such person shall execute court-provided affidavit stating the facts substantiating the deferral and excusal requests or provide proof of enrollment and school calendar.
- iii. "[A]ny person who is the primary caregiver having active care and custody of a child six years of age or younger, who executes an affidavit on a form provided by the court stating that such person is the primary caregiver having active care and custody of a child six years of age or younger and stating that such person has no reasonably available alternative child care, and who requests to be excused or deferred shall be excused or deferred from jury duty." O.C.G.A. § 15-12-1.1(a)(3).
- iv. "[A]ny person who is a primary teacher in a home study program as defined in subsection (c) of Code Section 20-2-690 who, during the period of time the person is teaching, requests to be excused or deferred from jury duty and executes an affidavit on a form provided by the court stating that such person is the primary teacher in a home study program and stating that such person has no reasonably available alternative for the child or children in the home study program shall be excused or deferred from jury duty." O.C.G.A. § 15-12-1.1(a)(4). Provided, however, that the person shall be deferred until a jury trial week that coincides with his or her availability, or, if no such availability exists within the 12 months following original issuance of summons, then excused. Such person shall execute an affidavit stating the facts

substantiating the deferral and excusal requests or provide proof of home study program and or school calendar.

- v. “[A]ny person who is the primary unpaid caregiver for a person over the age of six; who executes an affidavit on a form provided by the court stating that such primary caregiver is responsible for the care of a person with such physical or cognitive limitations that he or she is unable to care for himself or herself and cannot be left unattended and that the primary caregiver has no reasonably available alternative to provide for the care; and who requests to be excused or deferred shall be excused or deferred from jury duty. Any person seeking the exemption shall furnish to the court, in addition to the aforementioned affidavit, a statement of a physician, or other medical provider, supporting the affidavit's statements related to the medical condition of the person with physical or cognitive limitations.” O.C.G.A. § 15-12-1.1(a)(5).
- vi. “Any person who is 70 years of age or older shall be entitled to request that the [C]lerk excuse such person from jury service in the county. Upon such request, the [C]lerk shall inactivate such person. The request for excusal shall be made to the [C]lerk in writing and shall be accompanied by an affidavit providing the person's name, age, and such other information as the [C]lerk may require. The [C]lerk of each county shall make available affidavit forms for the purposes of this subsection.” O.C.G.A. § 15-12-1.1(b).
- vii. “Any service member on ordered military duty or the spouse of any such service member who requests to be excused or deferred shall be excused or deferred from jury duty upon presentation of a copy of a valid military identification card and execution of an affidavit in the form required by the court for deferral or excusal under this paragraph.” O.C.G.A. § 15-12-1.1(c)(2). “Ordered military duty” means any military duty performed in the service of the state or of the United States, including, but not limited to, attendance at any service school or schools conducted by the armed forces of the United States which requires a service member to be at least 50 miles from his or her home.” O.C.G.A. § 15-12-1.1(c)(1)(A). “Service member” means an active duty member of the regular or reserve component of the United States armed forces, the United States Coast Guard, the Georgia National Guard, or the Georgia Air National Guard who was on ordered federal duty for a period of 90 days or longer.” O.C.G.A. § 15-12-1.1(c)(1)(B).

viii. "Any person summoned to serve as a juror in any court of this state shall be excused from such service during his attendance as a legislator in the General Assembly." O.C.G.A. § 15-12-2.

ix. Any person who has objective documentation demonstrating an inability to attend on the dates for which presence is required for service (e.g. temporary medical condition, reasonably unalterable travel plans, etc.) may be deferred for "good cause," O.C.G.A. § 15-12-1.1(a)(1), until issuance of summons for the next available jury trial week that coincides with such person's availability, or excused if no date coincides with such person's availability over the following 12 months.

x. The Clerk shall excuse any person summoned for grand jury duty that does not meet the qualifications required under O.C.G.A. § 15-12-60.

xi. "In addition to any other qualifications provided ... no person shall be qualified to serve as a juror ... unless that person is a citizen of the United States." O.C.G.A. § 15-12-4(b).

xii. All deferred jurors shall be added to the total number of jurors ordered to report for a subsequent jury trial week of the Clerk's choosing. O.C.G.A. § 15-12-1.1(a)(1).

4. Unless otherwise stated in this Order or in the laws of this state, and subject to the discretion of the Clerk, the following listed reasons are established as "good cause why [persons] should be exempt from jury duty." O.C.G.A. § 15-12-1.1(a)(1). Persons excused under the following provisions may be inactivated for purposes of the Master List.

- i. "Any person who is 70 years of age or older shall be entitled to request that the [C]lerk excuse such person from jury service in the county. Upon such request, the [C]lerk shall inactivate such person. The request for excusal shall be made to the [C]lerk in writing and shall be accompanied by an affidavit providing the person's name, age, and such other information as the [C]lerk may require. The [C]lerk shall make available affidavit forms for the purposes of this subsection." O.C.G.A. § 15-12-1.1(b).
- ii. Any person identified as being a noncitizen of the United States shall be inactivated.
- iii. Any person identified as not having attained the age of 18 years shall be inactivated.

- iv. Any person identified as a convicted felon who has not had civil rights restored shall be inactivated.
- v. Any person adjudicated by a court of competent jurisdiction as being mentally incompetent shall be inactivated.
- vi. Any person identified as a nonresident of this county shall be inactivated.
- vii. Any person identified as deceased shall be inactivated.
- viii. Any person who has a documented permanent medical condition that would prevent attendance for jury service shall be permanently inactivated. A statement from a physician stating such fact shall be presented to the Clerk prior to inactivation.
- ix. For any person whose name is duplicated on the master jury list, the Clerk shall inactivate one of the entries so that the person is only eligible for selection by one name. Inactivation of a duplicate name shall be determined by the duplication of dates of birth, driver's license number and/or any other unique identifying data.

6.

Recurring and Repetitive Service

(a) "No person shall be allowed to serve on the trial jury of the superior court or on any trial jury in other courts for more than four weeks in any one year unless he or she is actually engaged in the trial of a case when the four weeks expire, in which case he or she shall be discharged as soon as the case is decided." O.C.G.A. § 15-12-3.

(b) "Any person who has served as a trial or grand juror at any session of the superior or state courts shall be ineligible for duty as a juror until the next succeeding county master jury list has been received by the [C]lerk." OC.G.A. § 15-12-4(a).

(c) "Whenever a term of court is not held because of the nonattendance of the judge or for some other cause, the jurors summoned for such term of court shall serve at the next succeeding term." O.C.G.A. § 15-12-5.

(d) If jurors are summoned to a term of court and after the jurors' appearance all cases scheduled to be tried have been settled, continued or are otherwise not

subject to trial the jurors scheduled for appearance shall be excused from further service and not be deferred.

7.

Selection of Grand Jurors

(a) “[T]he clerk shall choose a sufficient number of persons to serve as grand jurors from the county master jury list in the same manner as trial jurors are chosen. The clerk, not less than 20 days before the commencement of each term of court at which a regular grand jury is impaneled, shall issue summonses by mail to the persons chosen for grand jury service.” O.C.G.A. § 15-12-62.1.

(b) “Prior to empaneling, swearing, and charging the grand jury, the presiding judge and the district attorney may examine prospective grand jurors as to their qualifications to serve as provided in Code Section 15-12-4 and 15-12-60. Such examination shall be conducted after the administration of the preliminary oath set forth [below]. Any prospective grand juror who is not qualified to serve shall be excused by the presiding judge.

“Prior to examination, the presiding judge, the district attorney, or the clerk shall administer the following oath or affirmation to prospective grand jurors:

“You shall give true answers to all questions as may be asked by the court or the district attorney concerning your qualifications to serve as a grand juror.” O.C.G.A. § 15-12-66.

After being given the above oath, potential grand jurors shall be asked the following questions relating to their qualifications as described under O.C.G.A. § 15-12-60 as grand jurors:

1. Have you resided in the County for at least six months preceding the time of your proposed service?
2. Are you the current holder of any elective office in state or local government or held any such office within two years preceding the time of your proposed service?
3. Are you 18 years of age or older?
4. Have you ever been convicted of a felony? If yes, have you had your civil rights restored?
5. Are you incompetent owing either to mental illness or mental retardation?

(c) The Court may in its discretion ask in the juror questionnaires questions in addition to or in replacement of the above. O.C.G.A. § 15-12-11(b).

(d) The Clerk shall excuse any person summoned for grand jury duty that does not meet the additional statutory qualifications for grand jurors. The Clerk shall be authorized to defer, excuse or inactivate grand jurors in accordance with the guidelines set forth in this Jury Plan.

(e) "When from challenge or from any other cause there are not a sufficient number of persons in attendance to complete the empaneling of grand jurors, the presiding judge shall order the clerk to choose at random from the names of persons summoned as trial jurors a sufficient number of prospective grand jurors necessary to complete the grand jury. Nothing in this Code section shall be construed as barring the court from taking any action against a person who has been summoned to appear as a juror as provided in Code Section 15-12-10." O.C.G.A § 15-12-66.1.

8.

Juror Information

(a) In accordance with O.C.G.A. § 50-18-72(a)(6), the Clerk has no duty to provide to any requesting entity or party in litigation "information that is collected and used by The Council of Superior Court Clerks of Georgia for creating, compiling, and maintaining state-wide master jury lists and county master jury lists for the purpose of establishing and maintaining county jury source lists pursuant to the provisions of Chapter 12 of Title 15." This data includes but is not limited to the names, dates of birth, addresses, age, race, gender, telephone numbers or other identifying information. O.C.G.A. § 50-18-72(a)(6). Unless otherwise ordered by the Court, the only exception to the preceding is when a challenge is filed to an array of the grand jury or the trial jury, and then only when ordered by the judge to provide said list. O.C.G.A. § 50-18-72(a)(6). The Clerk shall nonetheless provide all Master List information to any judge executing this Order, or his or her successor in office, upon request without necessity of an Order.

(b) In accordance with O.C.G.A. § 15-12-43.1, "upon the request of a party or his or her attorney, the clerk shall make available for review by such persons the county master jury list."

(c) In accordance with O.C.G.A. § 15-12-161, "[t]he clerk shall provide the prosecuting attorney and the accused with the names and identifying information relative to prospective jurors for the case being tried."

Juror Questionnaires

(a) "Prospective trial and grand jurors in all counties may be required to answer written questionnaires, as may be determined and submitted by the judges of such counties, concerning their qualifications as jurors. In propounding the court's questions, the court may consider the suggestions of counsel. In the court's questionnaire and during voir dire examination, judges should ensure that the privacy of prospective jurors is reasonably protected and that the questioning by counsel is consistent with the purpose of the voir dire process." O.C.G.A. § 15-12-11(b). Questionnaires may only issue upon order of the judge assigned to the case.

(b) Unless otherwise ordered, "[j]uror questionnaires shall be confidential and shall be exempt from public disclosure pursuant to Code Section 50-18-70; provided, however, that jury questionnaires shall be provided to the court and to the parties at any stage of the proceedings, including pretrial, trial, appellate, or post-conviction proceedings, and shall be made a part of the record under seal. The information disclosed to a party pursuant to this subsection shall only be used by the parties for purposes of pursuing a claim, defense, or other issue in the case." O.C.G.A. § 15-12-11(c).

Summoning Jurors

(a) "[I]n each county, upon court order, the clerk shall choose a random list of persons from the Master List to comprise the venire." O.C.G.A. § 15-12-40.1(g).

(b) "[T]rial juries shall be chosen from a Master List. The presiding judge shall order the clerk to choose the number of jurors necessary to conduct the business of the court. The clerk shall choose the names of persons to serve as trial jurors for the trial of civil and criminal cases in the court." O.C.G.A. § 15-12-120.1.

(c) "[T]he clerk shall choose a sufficient number of persons to serve as grand jurors from the county master jury list in the same manner as trial jurors are chosen. The clerk, not less than 20 days before the commencement of each term of court at which a regular grand jury is impaneled, shall issue summonses by mail to the persons chosen for grand jury service." O.C.G.A. § 15-12-62.1.

(d) Unless the Court orders otherwise, "the clerk shall be authorized to mail all summonses by first-class mail addressed to the prospective jurors' most notorious places of abode at least 25 days prior to the date of the court the prospective jurors shall attend. Failure to receive the notice personally shall be a defense to a

contempt citation.” O.C.G.A. § 15-12-65.1. This provision does not limit the Court’s constitutional or statutory authority to order the Clerk to summon jurors.

(e) The summons envelope shall bear return address from the issuing court, whether superior court, state court, or probate court, or Clerk. See generally O.C.G.A. § 15-12-65.1 and O.C.G.A. § 15-12-120.1. The summons itself shall bear the names of all the sitting judges of the court issuing the summons or, if all are recused, then the name of the assigned judge presiding at a specially set jury trial. O.C.G.A. § 15-12-40.1(g).

(f) “If any person is duly summoned to appear as a trial or grand juror at court and neglects or refuses to appear, or if any juror absents himself or herself without leave of the court, such neglect, refusal, or absence may, after notice and hearing, be punished as contempt of court.” O.C.G.A. § 15-12-10.

11.
Conflict of Laws

To the extent that this Order should conflict with any law duly passed by the Georgia General Assembly or with any ruling of an appellate court of this state or with any ruling of a federal court or United States Supreme Court which constitutes mandatory legal authority, the law of the superior tribunal or governing body shall control.

12.
Judicial Power

All provisions of this Order are subject to revision by any judge in any particular case.

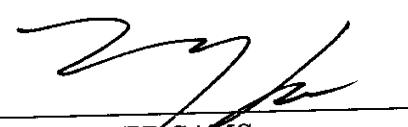
[Signatures on following page]

IT IS SO ORDERED this 30th day of June, 2014.


CHRISTOPHER C. EDWARDS
CHIEF JUDGE OF SUPERIOR COURT
UPSON COUNTY


TOMMY R. HANKINSON
JUDGE OF SUPERIOR COURT
UPSON COUNTY


ROBERT M. CRAWFORD
JUDGE OF SUPERIOR COURT
UPSON COUNTY


W. FLETCHER SAMS
JUDGE OF SUPERIOR COURT
UPSON COUNTY