

1999 HOUSE JUDICIARY

HB 1237

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1237

House Judiciary Committee

Conference Committee

Hearing Date January 25, 1999

Tape Number	Side A	Side B	Meter #
2	X		0
Committee Clerk Signature <i>Alan Gindberg</i>			

Minutes:

JUDGE JAMES VUKELIC: I am appearing on behalf of the Judicial Conference which urges you to pass this bill. It is a housekeeping bill that will correct an oversight that occurred when the statute was amended to let us use 6 jurors. It is a waste of money to call in 24 prospective jurors when you are only going to seat six.

COMMITTEE ACTION: January 25, 1999

REP. MAHONEY moved that the committee recommend that the bill DO PASS. Rep. Hawken seconded and the motion passed on a roll call vote with 15 ayes, 0 nays and 0 absent. Rep. Hawken was assigned to carry the bill on the floor.

Date: 1/25/1  
Roll Call Vote #: 1

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1237

House JUDICIARY Committee

Subcommittee on \_\_\_\_\_  
or  
 Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do pass

Motion Made By Mahoney Seconded By Hawken

Representatives	Yes	No	Representatives	Yes	No
REP. DEKREY	✓		REP. SVEEN	✓	
REP. CLEARY	✓				
REP. DELMORE	✓				
REP. DISRUD	✓				
REP. FAIRFIELD	✓				
✓ REP. GORDER	✓				
REP. GUNTER	✓				
REP. HAWKEN	✓				
REP. KELSH	✓				
REP. KLEMIN	✓				
REP. KOPPELMAN	✓				
REP. MAHONEY	✓				
REP. MARAGOS	✓				
REP. MEYER	✓				

Total (Yes) 15 No 0

Absent 0

Floor Assignment Hawken

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)  
January 25, 1999 3:39 p.m.

Module No: HR-15-1139  
Carrier: Hawken  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**

**HB 1237: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO PASS**  
(15 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1237 was placed on the  
Eleventh order on the calendar.



1999 SENATE JUDICIARY

HB 1237

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1237

Senate Judiciary Committee

Conference Committee

Hearing Date March 3, 1999

Tape Number	Side A	Side B	Meter #
1		x	4150 - end
2	x		0 - 2284
3-16-99 1	x		1240 - 1900
Committee Clerk Signature <i>Jackie To Hmon</i>			

Minutes:

HB1237 relates to completing a jury panel.

SENATOR STENEHJEM opened the hearing on HB1237 at 11:00 A.M.

REPRESENTATIVE KLEMIN, District 47, testified in support of HB1237. This bill is introduced on behalf of the Judicial Conference.

JIM GANJE, Supreme Court, testified to explain HB1237. Testimony attached.

JOHN MCCLINTOCK, JR., District Judge in Rugby, testified in support of HB1237. We get jury standards and their standards are less than this. I don't feel this statute is necessary.

MIKE HOFMANN, Attorney in Mandan, testified in opposition of HB1237. I feel this bill affects a person's right to a fair trial. This bill affects misdemeanor cases. You are affecting the process by not having enough people.

SENATOR TRAYNOR asked if he was familiar with Rule 9.

MIKE HOFMANN stated that he was not.

SENATOR WATNE asked if this bill was targeted toward misdemeanor cases, what would be the maximum penalty for a class A misdemeanor.

MIKE HOFMANN stated that one year and a \$2,000 fine.

JOHN MCCLINTOCK, JR. stated that he works with the clerk's office to decide how many people to summon in.

SENATOR WATNE asked when a jury panel is put together if they may serve for more than one trial.

JOHN MCCLINTOCK, JR. stated that may happen in the urban areas, in the rural area we have a jury role. From that we summon the number of people, they just sit for the one trial.

SENATOR STENEHJEM stated that he wondered if this is procedural rule that the legislature is involved in, the Constitution said the procedural rules should be decided by court.

JOHN MCCLINTOCK, JR stated that he thought that is true. The Court rules are fair.

ANN SUMMERS, ACLU, testified in opposition to HB1237.

SENATOR STENEHJEM CLOSED the hearing on HB1237.

**MARCH 16, 1999 TAPE 1, SIDE A**

SENATOR LYSON stated that he felt the attorney who spoke in opposition makes sense to me.

SENATOR TRAYNOR stated that he felt this is better left to the Judiciary and their rulemaking authority.

SENATOR TRAYNOR made a motion for DO PASS, SENATOR WATNE seconded.

Discussion. Senator Lyson discussed that he doesn't like when it is discussed that this may cost

Page 3  
Senate Judiciary Committee  
Bill/Resolution Number HB1237  
Hearing Date March 3, 1999

too much. Senator Nelson stated that you will keep pulling some in until you have enough jurors. This wasn't an issue until Tom Schoppert found it and brought it to attention.

Motion carried. 6 - 0 - 0

SENATOR TRAYNOR will carry the bill.

Date: 3-16-99  
Roll Call Vote #: 1

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB1237

Senate Judiciary \_\_\_\_\_ Committee

Subcommittee on \_\_\_\_\_  
or  
 Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass

Motion Made By Senator Traynor Seconded By Senator Nelson

Senators	Yes	No	Senators	Yes	No
Senator Wayne Stenehjem	X				
Senator Darlene Watne	X				
Senator Stanley Lyson	X				
Senator John Traynor	X				
Senator Dennis Bercier	X				
Senator Carolynn Nelson	X				

Total (Yes) 5 No 0

Absent 0

Floor Assignment Senator Traynor

REPORT OF STANDING COMMITTEE (410)  
March 16, 1999 3:54 p.m.

Module No: SR-47-4939  
Carrier: Traynor  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**

**HB 1237: Judiciary Committee (Sen. W. Stenehjem, Chairman)** recommends **DO PASS**  
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1237 was placed on the  
Fourteenth order on the calendar.

1999 TESTIMONY

HB 1237

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

When a jury has been duly summoned, if, upon calling a cause for trial, twenty-four of the jurors summoned do not appear, the court may order the sheriff to summon from the body of the county as many persons as it may think proper, sufficient to make at least twenty-four jurors, from whom a jury for the trial of the cause may be selected.

### History

Source: C. Crim. P. 1877, § 303; R.C. 1895, § 8135; R.C. 1899, § 8135; R.C. 1905, § 9944; C.L. 1913, § 10781; R.C. 1943, § 29-1709.

## 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.

### History

Source: C. Crim. P. 1877, § 306; R.C. 1895, § 8138; R.C. 1899, § 8138; R.C. 1905, § 9947; C.L. 1913, § 10784; R.C. 1943, § 29-1712; S.L. 1977, ch. 292, § 1; 1985, ch. 346, § 2; 1989, ch. 398, § 1.



CHAMBERS OF  
***THE DISTRICT COURT***  
PIERCE COUNTY COURTHOUSE  
240 SOUTHEAST SECOND STREET  
P.O. BOX 387  
RUGBY, NORTH DAKOTA 58368-0387  
TEL (701) 776-5375  
FAX (701) 776-6893

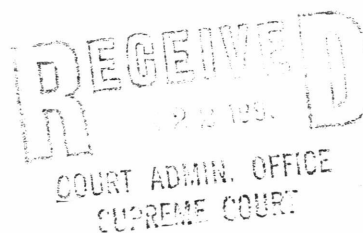
**JOHN C. McCLINTOCK, JR.**  
DISTRICT JUDGE

**DEBRA C. MARTINSON, RMR**  
Official Court Reporter

January 21, 1999

**DALE A. THOMPSON**  
Judicial Referee  
314 West Fifth Street  
Bottineau, ND 58318-1200  
TEL (701) 228-2375  
FAX (701) 228-2336

Rep. Duane Dekrey  
Chairman, House Judiciary Committee  
State Capitol  
Bismarck, ND 58505



Re: H.B. 1237

Dear Chairman Dekrey and Committee Members:

It would be a pleasure to meet and testify before you again. However, my schedule on the 25th of January, 1999, will not permit me to travel to Bismarck. Therefore, I respectfully submit this letter in regards to my support for House Bill 1237, especially in reference to the repeal of N.D.C.C. 29-17-09.

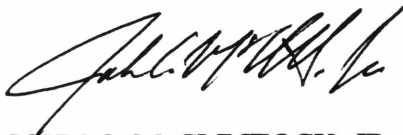
I want to relate to you a trial experience I had this past year involving N.D.C.C. 29-17-09, which basically requires a minimum of 24 prospective jurors to be present at the start of a trial. I was presiding over a jury trial in McHenry County which involved a DUI charge, a class B misdemeanor, and a 6 person jury panel. Through the process of summoning a jury (contacting a certain number knowing that some may be excused prior to the trial date), we had 23 prospective jurors appear for the trial. The minimum number that we need in a 6 person jury to be placed in the box for jury selection is 14. So, in essence we had 9 remaining prospective jurors to use in case any of the original 14 are excused. I felt very comfortable with these numbers. Well, we completed the jury selection and before we swore the 6 selected as our jury panel, the defense attorney made a motion for a mistrial, based upon N.D.C.C. 29-17-09. I had never encountered this maneuver before in my prior jury trials. I gave the defendant the option of continuing the trial and obviously he had an issue for possible appeal, or continue with his motion for mistrial which I felt I had to grant due to the statutory provision of N.D.C.C. 29-17-09. He chose the latter, so I dismissed the jury and set a subsequent trial date.

As stated, we had plenty of prospective jurors present for a 6 person jury in this situation. However, with this particular statute on the books I felt compelled to grant the mistrial. How do you tell a defendant, who has a serious matter before him, that a law is meaningless when its right in front of you and has a pretty clear meaning to it? It would seem to me that the statute

was possibly intended for 12 person jury trials, and it was never considered for a change when our judicial system began allowing 6 person juries to be used.

Anyway, because of the experience I had which resulted in wasting time, money, and energy for a law which appears to be outdated, and which appears to be an excessive requirement for a 6 person jury, I strongly encourage your approval of House Bill 1237.

Respectfully yours,



JOHN C. McCLINTOCK, JR.  
District Judge

jcm

pc: Hon. Burt Riskedahl

## SUMMARY - HOUSE BILL NO. 1237

House Bill No. 1237 resulted from a legislative proposal submitted to the North Dakota Judicial Conference by the Conference's Legislative Committee. The Legislative Committee periodically reviews statutory issues that have arisen and are of concern to the judiciary. The Judicial Conference is comprised of all judges of the state, the attorney general, the clerk of the supreme court, and representatives of the bar association and the municipal judges' association. The Conference voted unanimously to support the legislative proposal that has been introduced as House Bill 1237.

The primary purpose of House Bill 1237 is to repeal NDCC Section 29-17-09, which provides that twenty-four prospective jurors must be summoned for each jury trial and jurors for the trial must then be selected from among those twenty-four. The statute has remained unchanged since the Code was revised in 1943. NDCC Section 29-17-12 requires a jury of twelve in felony criminal cases and a jury of six, unless the defendant timely demands a jury of twelve, in misdemeanor cases. Very rarely is it necessary to summon twenty-four prospective jurors in order to seat the number of qualified jurors required by law. To require that twenty-four prospective jurors be summoned in every case unnecessarily expends funds to compensate those summoned for their time and travel and unnecessarily subjects North Dakota citizens to being summoned for possible jury duty when they are not needed.

NDCC Chapter 27-09.1 governs the manner in which prospective jurors are selected for possible jury duty. Section 27-09.1-18 provides that the supreme court may adopt rules regulating the selection and service of jurors. The Supreme Court has adopted Administrative Rule 9, which requires the development of a state-wide jury selection plan. Jury panels are to be obtained in the manner prescribed in the plan. The number of prospective jurors summoned under the plan varies from judicial district to judicial district and is based in part on historical practice and the number of peremptory challenges and challenges for cause that are permitted in each criminal or civil case.

NDCC Section 29-17-09, which would be repealed by House Bill 1237, requires summoning prospective jurors in a manner inconsistent with the jury selection plan established by the Supreme Court under the rule-making authority conferred by Section 27-09.1-18. Repeal of the statute would ensure consistent and fiscally prudent juror selection practices. House Bill 1237 also makes a minor amendment to Section 29-17-11 to reflect the repeal of Section 29-17-09.

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

When a jury has been duly summoned, if, upon calling a cause for trial, twenty-four of the jurors summoned do not appear, the court may order the sheriff to summon from the body of the county as many persons as it may think proper, sufficient to make at least twenty-four jurors, from whom a jury for the trial of the cause may be selected.

**Source:** C. Crim. P. 1877, § 303; R.C. 1895, § 8135; R.C. 1899, § 8135; R.C. 1905, § 9944; C.L. 1913, § 10781; R.C. 1943, § 29-1709.

*AR 9 amended  
Effective December 9, 1992*

**JURY SELECTION PROCEDURE**

Administrative  
Rule 9

Pursuant to Article VI, Section 3 of the North Dakota Constitution and Section 27-09.1-18, NDCC, the Supreme Court of North Dakota promulgates the following Administrative Rule relating to jury selection:

1. All courts conducting jury trials shall use jurors selected only pursuant to the Uniform Jury Selection and Service Act (NDCC 27-09.1) and this Administrative Rule.
2. All courts conducting jury trials shall obtain jury panels in the manner prescribed by the jury selection plan filed with the Clerk of the North Dakota Supreme Court.
3. The State Court Administrator, after consultation with the Jury Standards Committee, shall file a jury selection plan with the Clerk of the North Dakota Supreme Court. The plan shall detail the procedures to be followed in selecting and managing jurors in order to implement the policies set forth in Chapter 27-09.1 NDCC.
4. The State Court Administrator shall also file the jury selection plan with the clerk of district court of each county prior to November 1st of each even-numbered year.

Dated this 9th day of December, 1992.

Ralph J. Erickstad, Chief Justice  
Gerald W. VandeWalle, Justice  
Herbert L. Meschke, Justice  
Beryl J. Levine, Justice  
J. Philip Johnson, Justice

ATTEST:  
Penny Miller, Clerk  
North Dakota Supreme Court

SOURCE: AR 9-1979 adopted as Emergency Rule effective August 1, 1979; readopted September 26, 1979; amended December 9, 1992.

**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.

Source: C. Crim. P. 1877, § 295; R.C. 1895, § 8127; R.C. 1899, § 8127; R.C. 1905, § 9936; C.L. 1913, § 10773; R.C. 1943, § 29-1701.      **Collateral References.**  
Jury ← 67.  
See generally, 47 Am. Jur. 2d, Jury, §§ 755-158.  
50 C.J.S. Juries, §§ 171-174.

**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.

Source: C. Crim. P. 1877, § 296; R.C. 1895, § 8128; R.C. 1899, § 8128; R.C. 1905, § 9937; C.L. 1913, § 10774; R.C. 1943, § 29-1702.

**29-17-03. Clerk to prepare ballots.** At the opening of the court, the clerk shall prepare separate ballots, each containing the name of a person returned as a juror. Such ballots must be folded as nearly alike as possible and so that the name cannot be seen, and must be deposited in a sufficient box.

Source: C. Crim. P. 1877, § 297; R.C. 1895, § 8129; R.C. 1899, § 8129; R.C. 1905, § 9938; C.L. 1913, § 10775; R.C. 1943, § 29-1703.

**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.

Source: C. Crim. P. 1877, § 298; R.C. 1895, § 8130; R.C. 1899, § 8130; R.C. 1905, § 9939; C.L. 1913, § 10776; R.C. 1943, § 29-1704.

**29-17-05. Manner of drawing jury.** Before the name of any juror is drawn, the box prepared as is provided in section 29-17-03 must be closed and shaken so as to intermingle the ballots therein. The clerk then, without looking at the ballots, shall draw them from the box.

Source: C. Crim. P. 1877, § 299; R.C. 1895, § 8131; R.C. 1899, § 8131; R.C. 1905, § 9940; C.L. 1913, § 10777; R.C. 1943, § 29-1705.      of jurors from a list of names before him, but such error was waived by failure of counsel to make timely objection. *Territory v. O'Hare* (1890) 1 ND 30, 44 NW 1003.

**List of Names.**

It was error for clerk to call off the names

**29-17-06. Ballots laid aside until jurors discharged.** When a jury is completed, the ballots containing the names of the jurors sworn must be laid aside and kept apart from the ballots containing the names of the other jurors, until the jurors so sworn are discharged.

Source: C. Crim. P. 1877, § 300; R.C. 1895, § 8132; R.C. 1899, § 8132; R.C. 1905, § 9941; C.L. 1913, § 10778; R.C. 1943, § 29-1706.

**29-17-07. When jurors discharged names returned to box.** After the jurors are discharged from service on a trial jury, the ballots containing their names must be folded again and returned to the box, and so on, as often as a trial is had.

Source: C. Crim. P. 1877, § 301; R.C. 1895, § 8133; R.C. 1899, § 8133; R.C. 1905, § 9942; C.L. 1913, § 10779; R.C. 1943, § 29-1707.

**29-17-08. Name of absent or disqualified juror returned to box when jury completed.** If a juror is absent when his name is drawn, or is set aside or excused from serving on the trial, the ballot containing his name must be folded and returned to the box as soon as the jurors are sworn.

Source: C. Crim. P. 1877, § 302; R.C. 1895, § 8134; R.C. 1899, § 8134; R.C. 1905, § 9943; C.L. 1913, § 10780; R.C. 1943, § 29-1708.

#### Civil Trial.

A trial judge may excuse a juror who is absent when his name is called and may draw another in his place. State ex rel.

Pepple v. Banik (1911) 21 ND 417, 131 NW 262.

#### Criminal Trial.

A criminal trial may proceed even if a juror is absent when his name is called. State ex rel. Pepple v. Banik (1911) 21 ND 417, 131 NW 262.

**29-17-09. Completion of panel — Procedure.** When a jury has been duly summoned, if, upon calling a cause for trial, twenty-four of the jurors summoned do not appear, the court may order the sheriff to summon from the body of the county as many persons as it may think proper, sufficient to make at least twenty-four jurors, from whom a jury for the trial of the cause may be selected.

Source: C. Crim. P. 1877, § 303; R.C. 1895, § 8135; R.C. 1899, § 8135; R.C. 1905, § 9944; C.L. 1913, § 10781; R.C. 1943, § 29-1709.

**29-17-10. Names of additional jurors — Ballots deposited in box.** The name of each person summoned to complete the jury must be written on a distinct piece of paper, and the pieces of paper bearing such names must be folded as nearly alike as possible so that the name thereon cannot be seen, and, then must be deposited in the box mentioned in section 29-17-03.

Source: C. Crim. P. 1877, § 304; R.C. 1895, § 8136; R.C. 1899, § 8136; R.C. 1905, § 9945; C.L. 1913, § 10782; R.C. 1943, § 29-1710.

**29-17-11. Drawing the jury.** After a jury panel is completed as is provided in section 29-17-09, the clerk, under the direction of the court, shall draw publicly out of the box so many of the ballots, one after another, as are sufficient to form a jury.

Source: C. Crim. P. 1877, § 305; R.C. 1895, § 8137; R.C. 1899, § 8137; R.C. 1905, § 9946; C.L. 1913, § 10783; R.C. 1943, § 29-1711.

#### List of Names.

It is error to call a jury from a list and not by taking names from a box. Territory v. O'Hare (1890) 1 ND 30, 44 NW 1003.

**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.

Re: HB1237

# Tuntland and Hoffman

Lawyers

104 3<sup>rd</sup> Ave., NW — P.O. Box 1315  
Mandan, ND 58554

March 3, 1999

Senator Wayne Stenehjem  
c/o Sandy Tabor

SENT BY FAX 224-1621

Dear Senator Stenehjem:

Attached hereto is the Order I referred to in my testimony this morning. In regard to the first paragraph of the Order and Judge Hagerty's scenario, 17 or 18 people would be the absolute minimum required to pick a six person jury. As I told you this morning, my experience in Burleigh and Morton Counties is that the Court summons only 17 jurors initially. Even under Judge Hagerty's scenario of four challenges for cause, we are already coming up short. I also told you of a recent case I had where 17 were initially summoned, but only 15 showed up. Even if only three jurors were challenged for cause, we are still two people short. The big danger here, as I described to you this morning, is that when judges see the numbers starting to fall short, they appear to stop granting legitimate challenges for cause. Also, these cases are typically scheduled for only one day of trial, and it takes time for a sheriff to go out and obtain additional jurors. Therefore, there is real pressure on the parties to not use all of their legitimate peremptory challenges.

In paragraph 2 of the Order, Judge Hagerty indicates that summoning 24 jurors would not be necessary for selection of a six-person jury. I submit to you and the members of your committee that 24 jurors is necessary for all of the reasons outlined above and in my presentation to you this morning. There needs to be a sufficient number of perspective jurors in the courtroom to insure that legitimate challenges for cause are done, and that a party has the opportunity to exercise the legitimate number of peremptory challenges. Judge Hagerty's statement that 29-17-11 was enacted before misdemeanor cases were tried to six-person juries is consistent with Senator Traynor's comment this morning that misdemeanors used to be tried to twelve-person juries. I do not know the history of this, but I can tell you that I recently tried a felony where the Court and Clerk brought in 27 perspective jurors and we ended up being short. The idea that only a limited amount of perspective jurors is necessary is spreading from misdemeanors to felonies and it is causing the same problems in the felony cases. Again, I submit to you that the present protection of 24 perspective jurors is necessary for a misdemeanor, and I wish there was a higher limit required for felony cases.

Tom Tuntland  
Michael R. Hoffman

tunthoff@btigate.com

Phone (701) 667-1888  
Fax (701) 667-1308



Senator Stenejem

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March 3, 1999

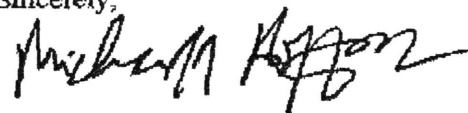
In regard to the last sentence of paragraph two, I disagree highly with the argument about additional cost and unnecessary disruption of lives. By what cost do we measure a person's right to a fair trial in this state, and requesting people to come in and do jury service is by no means an unnecessary disruption of lives.

As to the last paragraph of Judge Hagerty's Order, I cannot disagree more, for all of the reasons as set forth above. It is my experience that bringing in only a limited number of perspective jurors does not insure a person's right to a appropriate challenges for cause or use of peremptory challenges.

Presently Section 29-17-11 calls for 24 jurors and it is a protection in place and appropriate. Please do not repeal the protection already in place. When I prepare a case for trial, I want to do the trial and get the trial over with one way or the other. This means that I want a sufficient number of perspective jurors available so that we can properly do the trial in the day that the courts give us to do these trials. We don't need the pressure of waiting for the Sheriff to bring in a completely new group of people to question, or to decide to give up appropriate challenges for cause or peremptory challenges.

Thank you for your assistance.

Sincerely,



Michael R. Hoffman

MRH/mmk

STATE OF NORTH DAKOTA  
COUNTY OF BURLEIGH

IN DISTRICT COURT  
Case No. 98-K-2464



**Order**

The defendant has requested the Court and the Clerk summon at least 24 prospective jurors from whom a jury for the trial may be selected. The jury in this case will be a six-person jury. Each party is entitled to four peremptory challenges. The Court anticipates three or four prospective jurors may be challenged for cause.

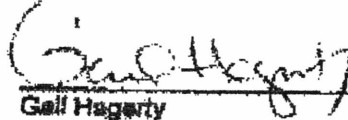
Summoning 24 jurors would almost certainly mean several jurors would be summoned who would not be necessary for selection of a six-person jury. (Section 28-17-11 of the North Dakota Century Code, which calls for summoning of 24 prospective jurors, was enacted before misdemeanor cases were tried to six-person juries.) The result is additional cost to the system and unnecessary disruption of the lives of several people and inconvenience not only to prospective jurors but to their families and employers.

The Court will not summon 24 jurors initially, but during jury selection will summon any additional jurors necessary to ensure that all appropriate challenges for cause are granted and the parties are able to use all the peremptory challenges to which they are entitled.

6  
4  
4  
3  
—  
17

Dated February 22, 1999.

BY THE COURT:



Gail Hagarly  
District Judge