**Memo re Sample Motion & Order to Preserve and Provide Jury Formation Documents**

**(For Fair Cross Section Claims)**

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**As explained below, these motions are time-sensitive: in most counties, they will be effective only if filed in or around October of each odd-numbered year. However, counsel should still be encouraged to review and file the materials outside of that time frame in an effort to demonstrate due diligence in attempting to collect the necessary information for any potential fair cross-section challenges.**

To raise a fair cross-section claim at trial through a Motion to Quash the venire, the *Duren*standard requires that attorneys prove that underrepresentation of a “distinctive group” (generally groups defined by race, gender, or ethnicity) is caused by some systematic factor. If counsel begins jury service and notices that a group is underrepresented in the venire, it is difficult if not impossible to prove that the underrepresentation is “systematic” unless counsel has requested demographic information about the jury list for the county and about the jury formation process. Underrepresentation could be “systematic” for a number of potential reasons – it could be that the source lists (the DMV list of licensed drivers and BOE list of registered voters) disproportionately excludes distinctive groups; it could be that distinctive groups are disproportionately removed during the editing process to form the master list; it could be that distinctive groups appear for jury service at lower rates because members of those groups move more frequently and therefore are less likely to receive a summons that was based on a stale address. We can’t know what step in the process the underrepresentation is occurring unless look at the data, and we can’t get the data unless we request it from the court.

In nearly all counties, the jury lists are formed every two years. The DMV sends the list of potential jurors (the drivers and voters) to the county in the Fall before the next biennium so that the Master jury list can be formed and counties can start using the list in January. The new biennium begins in 2022; therefore, the process of creating that master jury list is happening now. The list that the DMV sends to the county contains all demographic information about the potential juror; however, my knowledge and belief is that the demographic information generally is not uploaded into the jury formation software. Additionally, the AOC policies do not require the Clerk’s office to maintain the list from the DMV past it’s use – i.e. after the master list is formed. **So, if counsel waits to file this motion next year, the jury list with the demographic information may be disposed of already, which would make it impossible to examine each step in the jury formation process to determine if a systematic factor was causing underrepresentation.**

Counsel are encouraged to adopt and file the Motion to Preserve and Provide Jury Formation Documents with the Proposed Order. If the court denies the request for information, it is a potential appellate issue that could be preserved by filing a motion to quash at the beginning of jury selection and alleging a denial of a constitutional right to discovery. A sample draft of a motion to quash will be available on the NC REN website.

To familiarize yourself with this area of the law, a helpful overview of fair cross section law is included in the School of Government [trial](https://defendermanuals.sog.unc.edu/trial/251-jury-pool) and [race](https://defendermanuals.sog.unc.edu/race/63-fair-cross-section-challenges) manuals.