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Attorney for Defendant
RUDOLPH GIULIANI

IN THE SUPERIOR COURT

COUNTY OF MARICOPA, STATE OF ARIZONA

STATE OF ARIZONA,)	Case No.: CR2024-006850-012
)	
Plaintiff,)	DEFENDANT GIULIANI'S MOTION FOR
)	A COURT ORDER 1) DISCLOSING STATE
vs.)	GRAND JURY SELECTION RECORDS
)	AND MATERIALS AND VOTER
RUDOLPH GIULIANI (012),)	REGISTRATION CARDS AND 2) TO
)	DEPOSE THE JURY COMMISSIONER
Defendant.)	(Oral argument requested)
)	
)	

COMES NOW Defendant Rudolph Giuliani (hereinafter "Mr. Giuliani"), by and through his undersigned counsel, and hereby respectfully submits his motion for a court order disclosing the 93 State Grand Jury 81 (hereinafter "SGJ") selection records and materials and voter registration cards and an order for the deposition of the jury commissioner used.

Mr. Giuliani is seeking disclosure of the information identified in this motion to investigate and determine whether a motion to challenge the SGJ, SGJ jurors, and SGJ proceedings is warranted.

The current deadline to file a motion to challenge the SGJ is September 23, 2024.

1 Undersigned counsel called Mathew Martin, a man who works at the jury
2 commissioner's office, and left messages and sent emails but received no answer, undersigned
3 counsel called again on a different day and was able to speak to Mr. Martin, but Mr. Martin said
4 he cannot answer questions and referred undersigned counsel to legal counsel Dennis Carpenter.
5 Undersigned counsel called and left a message and sent an email to Mr. Carpenter but did not
6 receive a response.
7

8 **Authority**

9 **The Court Should Grant The Motion In The Interest Of Justice And Because Defendant** 10 **Giuliani Has Substantial Need In Preparation Of His Case For The Information And** 11 **Material And He Is Unable Without Undue Hardship To Obtain The Substantial** 12 **Equivalent By Other Means**

13 An accused is entitled to due process in grand jury proceedings. *O'Meara v. Gottsfeld*,
14 174 Ariz. 576, 851 P.2d 1375 (1993). In addition, "due process... requires the use of an unbiased
15 grand jury and a fair and impartial presentation of the evidence. *Walker v. Superior Court*, 191
16 Ariz. 424, 956 P.2d 1246 (App. 1998).
17

18 The Fifth Amendment Due Process guarantees have been extended to the grand jury
19 process. *Beck v. Washington*, 369 U.S. 541, 82 S.Ct. 955 (1962). *See also, U.S. v. Balsys*, 524
20 U.S. 666, 118 S.Ct. 2218 (1998). Grand jury proceedings may be challenged for denial of
21 substantial procedural rights; an accused is entitled to due process during grand jury proceedings,
22 which requires the use of an unbiased grand jury and fair and impartial presentation of evidence.
23 *Crimmins v. Superior Court in and for Maricopa County*, 137 Ariz. 39, 41, 668 P.2d 882, 884
24 (1983). The primary function of a grand jury is to investigate whether there is probable cause to
25 believe that a crime was committed and whether the person under investigation committed that
26 crime. *State v. Superior Court In and For County of Coconino*, 186 Ariz. 143, 920 P.2d 23
27 (1996).
28

1 “[A]s a matter of fundamental fairness, ‘... justice dictates that the defendant be entitled
2 to the benefit of any *reasonable* opportunity to prepare his defense and to prove his innocence.’”
3
4 *State ex rel. Corbin v. Superior Court*, 103 Ariz. 465, 468, 445 P.2d 441, 444 (1968), quoting
5 *State ex rel. Mahoney v. Superior Court*, 78 Ariz. 74, 79, 275 P.2d 887, 890
6 (1954) (emphasis in original).

7 The Arizona Supreme Court in *Murphy v. Superior Court*, 142 Ariz. 273, 278, 689 P.2d
8 532 (1984) held:

9 “While “there is no general constitutional right to discovery in a criminal case,”
10 *Weatherford v. Bursey*, 429 U.S. 545, 559, 97 S.Ct. 837, 846, 51 L.Ed.2d 30, 42 (1977),
11 **we have recognized that Rule 15.3 is intended to effectuate the constitutional right of**
12 **cross-examination contained in the confrontation clause of the Sixth Amendment of**
13 **the United States Constitution.** *State v. Jessen*, 134 Ariz. 458, 657 P.2d 871 (1982). In
14 *State ex rel. Baumert v. Superior Court*, 133 Ariz. 371, 373, 651 P.2d 1196, 1198 (1982),
15 we said:

16 **[T]he purpose of allowing pretrial discovery in criminal cases is based**
17 **on the principle that both the prosecution and the accused should**
18 **be in possession of all relevant and reasonably accessible information**
19 **prior to trial. The Rules of Criminal Procedure facilitate the exchange**
20 **of information between the State and an accused in order to avoid**
21 **surprise, delay, and to sharpen and narrow the issues for trial.”**

22 [Emphasis added]

23 “[T]he purpose of the **interview** is to ascertain each individual **witness**’ [description] of
24 the event in question in order for counsel to build his defense and determine areas of
25 discrepancy to use in his client’s behalf.” *Kirkendall v. Fisher, supra*, 27 Ariz.App. 210, 212, 553
26 P.2d 243, 245 (1976).

27 If information falls outside the mandatory disclosure provisions, the defendant may seek
28 disclosure pursuant to a motion and court order. *Carpenter v. Superior Court*, 176 Ariz. 486,
490, 862 P.2d 246 (App. 1993).

 Pursuant to Rule 15.1(g), Arizona Rules of Criminal Procedure, a court may order any
person to make available to the Defendant the information and material requested by Mr.
Giuliani by showing (1) a substantial need in the preparation of the defendant’s case for the

1 material or information not otherwise covered by Rule 15.1, and (2) that the defendant is unable
2 without undue hardship to obtain the substantial equivalent by other means.

3 Rule 12.28, Arizona Rules of Criminal Procedure is entitled “Challenge to State Grand
4 Jury, Grand Juror, or Grand Jury Proceedings” and states in relevant part:

5 “(a) Grounds for Challenge.

6 (1) *A state grand jury may be challenged only on the ground that the state grand jurors*
7 ***were not drawn or selected according to law or Rule 12.22.***

8 (2) *An individual state grand juror may be challenged only on the ground that the juror is*
9 *not qualified to sit on the state grand jury or on a particular matter.*

(3) A defendant may challenge the grand jury proceeding under Rule 12.9.”

[Emphasis added]

10 Rule 12.22, Arizona Rules of Criminal Procedure is entitled “Selection and Preparation
11 of State Grand Jurors” and states in pertinent part:

12 “(b) Assistance. The Supreme Court Chief Justice must designate the assignment judge
13 for a state grand jury, as provided in A.R.S. § 21-421. The presiding judge and jury
14 commissioner in each county must assist the assignment judge in impaneling a state
15 grand jury. *At the assignment judge's direction, the jury commissioner of each county*
16 ***must submit to the assignment judge, by a date set by that judge, a specified number of***
17 ***prospective jurors selected at random.*** *The total number of prospective jurors must be*
18 *based on reasonably proportional representation for each county according to the most*
19 *recently published federal statewide census, and should include no less than 3*
20 *prospective state grand jurors from each county.*

21 (c) Preliminary Selection. *With the assistance of the jury commissioner in the county in*
22 *which the assignment judge is serving, the assignment judge must send a questionnaire to*
23 *each prospective state grand juror. From those prospective state grand jurors who return*
24 *questionnaires and who are qualified and not excused, the jury commissioner must*
25 ***select at random a number of them sufficient for the final selection of state grand***
26 ***jurors.*** *Each person must be summoned to appear before the assignment judge for final*
27 *selection. The jury commissioner must keep a permanent record of the reason for*
28 *excusing a prospective state grand juror.*

(d) Examination. ***Each prospective state grand juror must be examined under oath or***
affirmation to confirm that the prospective juror is qualified to be a state grand juror...
and that the prospective juror will act impartially and without prejudice. Inquiry also
may be made about other relevant subjects. A verbatim record of this examination must
be made, transcribed, and filed with the superior court clerk of the county in which the
assignment judge is serving. [Emphasis added]

/// ///

1 Rule 12.9, Arizona Rules of Criminal Procedure is entitled “Challenge to Grand Jury
2 Proceedings” and states in relevant part:

3 “(a) Grounds. A defendant may challenge a grand jury proceeding only by filing a motion
4 for a new finding of probable cause alleging that the defendant was denied a substantial
5 procedural right or that an insufficient number of qualified grand jurors concurred in the
6 indictment.”

7 Mr. Giuliani seeks:

8 1) to take the deposition of the jury commissioner to ask questions including, but not
9 limited to, how the jury commissioner submitted “a specified number of prospective
10 jurors selected at random” and how the jury commissioner “select[ed] at random a
11 number of them sufficient for the final selection of state grand jurors?;

12 2) the completed questionnaires of the grand jurors; and

13 3) a verbatim record/transcript of the examination of each of the grand jurors under oath
14 or affirmation.

15 Arizona Revised Statute §21-423(B) states:

16 “The jury commissioner of the county in which the assignment judge is serving shall
17 cause the panel members to be summoned for service....”

18 The qualifications of a grand juror are stated in A.R.S. §21-201.

19 Rule 12.2, Arizona Rules of Criminal Procedure is entitled “Grounds to Disqualify a
20 Grand Juror” and states (A.R.S. §21-211 states almost verbatim the same thing):

21 “A grand juror is disqualified from serving in any particular matter if the juror is:

22 (a) a witness in the matter;

23 (b) ***interested directly or indirectly in the matter under investigation;***

24 (c) related within the fourth degree by either consanguinity or affinity to a person under
25 investigation, a victim, or a witness; or

26 (d) ***biased or prejudiced in favor of either the State*** or a person under investigation.”
27 [Emphasis added]

28 The Attorney General (hereinafter “AG”) applies in writing which leads a state grand
jury being empaneled. A.R.S. §21-421.

Mr. Giuliani seeks a copy of any and all written applications from the AG for the SGJ.

1 Arizona Revised Statute §21-301(A) states:

2 “The jury commissioner shall produce a master jury list. The master jury list shall be
3 comprised of the names and addresses of eligible persons who reside in the county and
4 shall include persons on the voter registration list of the county, other persons eligible for
5 jury service who have been licensed pursuant to title 28, chapter 8, article 4 or 51 and
6 persons from other lists as determined by the supreme court.”

7 Arizona Revised Statute §21-311 states:

8 “A. If a superior court uses a master jury file, the presiding judge of the superior court, on
9 completion of the master jury list and at other times as necessary, shall order the jury
10 commissioner to randomly select from the master jury list the number of names that are
11 necessary to provide a sufficient number of persons for jury service during the ensuing
12 six months or a shorter time period as the presiding judge deems appropriate....

13 B. To establish the master jury file the jury commissioner or the jury commissioner's
14 designee shall randomly select from the master jury list the number of names specified in
15 the order.”

16 Arizona Revised Statute §21-331 is entitled “Procedure for summoning jurors” and
17 states:

18 “A. The jury commissioner or jury manager shall use either of the following methods for
19 summoning persons for a particular juror pool:

20 1. The court shall order the jury commissioner or jury manager to summon a specific
21 number of qualified jurors, at random, for either a trial jury or grand jury panel.

22 2. The jury commissioner or jury manager shall determine a specific number of persons
23 to be summoned for a court location and date.”

24 Mr. Giuliani further seeks:

25 1) a copy of the complete unredacted master jury list that was used to select the SGJ and

26 2) to take the deposition of the jury commissioner to ask questions including, but not
27 limited to, a) what method was used to summon jurors ARS 21-331(A)(1) or (2) how the
28 jury commissioner “randomly select[ed] from the master jury list the number of names
that ... [were] necessary to provide a sufficient number of persons for jury service...” and
the jury commissioner or his/her designee “randomly select[ed] from the master jury list
the number of names specified in the order.”

Arizona Revised Statute §21-312 is entitled “Juror records” and states:

“A. The list of juror names or other juror information shall not be released unless
specifically required by law or ordered by the court.

1 B. All records that contain juror biographical information are closed to the public and
2 shall be returned to the jury commissioner, the jury manager or the court when jury
3 selection is completed and may not be further disclosed or disseminated by a party or the
party's attorney."

4 Arizona Revised Statute §21-302 is entitled "Juror summoning; procedures" and states in
5 relevant part:

6 "B. The superior court in each county shall summon grand jurors from the master jury list
7 pursuant to rules adopted by the supreme court.

8 C. Jurors shall be summoned by using a countywide summoning method that is in
compliance with the constitutions of the United States and this state.

9 D. A court may use alternative procedures for summoning jurors that are in compliance
10 with the constitutions of the United States and this state by providing for the summoning
of jurors from a fair cross section of the community as provided in a plan approved
11 pursuant to rules adopted by the supreme court.

12 E. If the superior court in a county has multiple court locations, the court may propose
alternative procedures for summoning jurors as provided in a plan approved by the
13 supreme court or the presiding judge of the county in which the court is located. The
alternative procedures may be designed to minimize the distance prospective jurors must
14 travel and to avoid unnecessary travel expenses by dividing the county into jury districts
or using a countywide juror summoning method that affords all qualified persons in the
15 county an opportunity to be considered for jury service at any court location."

16 During the deposition of the jury commissioner Mr. Giuliani wants to ask questions
17 including, but not limited to, what "countywide summoning method" or "alternative procedures"
18 was/were used to summon the SGJ "from a fair cross section of the community as provided in
19 [the] plan pursuant to rules adopted by the supreme court"?

20 Mr. Giuliani seeks a Court order for a copy of the voter registration cards of the SGJ. The
21 voter registration cards for the SGJ are needed to determine whether or not the individual jurors
22 were interested directly or indirectly in the matter under investigation, whether or not the jurors
23 were biased or prejudiced in favor of the state, whether or not a juror should have been
24 disqualified, and whether or not the jurors were "from a fair cross section of the community".
25

26 /// ///
27
28

1 Arizona Revised Statute §21-313 is entitled “Use of jury management automation
2 systems; random selection” and states in pertinent part:

3 “A. A jury management automation system may be used in the performance of the duties
4 imposed by this title.

5 B. In any county where a jury management automation system is used, the jury
6 commissioner or jury manager shall cause the device to be programmed to ensure random
7 selection procedures.

8 C. The courts shall use random selection procedures throughout the juror selection
9 process including:

- 10 1. Selecting persons to be qualified or summoned for jury service.
- 11 2. Assigning jurors to panels.
- 12 3. Calling jurors for voir dire.”

13 During the deposition of the jury commissioner Mr. Giuliani wants to ask questions
14 including, but not limited to, was a jury management automation system used to select the state
15 grand jury, the name, address, and telephone number of the person who programmed the device
16 to ensure a random selection procedure, the date(s) it was programmed, and what random
17 selection procedure was used?

18 Mr. Giuliani requests a copy of the program that was used.

19 A jury commissioner or juror manager shall use a questionnaire to determine whether a
20 person is qualified to serve or has valid grounds to be excused or postponed from service and
21 may destroy the fully answered questionnaire ninety days after the commissioner or manager
22 receives it. A.R.S. §21-314.

23 Mr. Giuliani requests a copy of the questionnaires for the state grand jurors if they still
24 exist.

25 Based upon the foregoing, the Court should grant Defendant Giuliani’s motion.

26 Dated this 30th day of August, 2024

LAW OFFICE OF MARK L. WILLIAMS

27 /s/ Mark L. Williams
28 Mark L. Williams, Esq.
Attorney for Defendant

1 **ORIGINAL e-Filed this 30th day of August, 2024, to:**

2 Clerk of the Court
3 Maricopa County Superior Court
4 175 West Madison, 12th Floor
5 Phoenix, Arizona 85003

6 COPY of the foregoing emailed this 30th day of August, 2024 to:

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