

Multiple Defendants¹ with Multiple Juries²

There are (specify the number) defendants and we are thus conducting (specify the number) trials in one, with a separate jury for each defendant in order to ensure that the evidence as it applies to a particular defendant will be considered only by the jury selected to render a verdict for that defendant.

[Note: The following must be read for each defendant:]

The jury assigned to render a verdict for (specify name of the defendant) is (identify his or her jury in some way, e.g., by location, name of foreperson, or some other designation of each jury).

In order to be fair to each defendant, there may be days or portions of a day when only one jury will be present in the courtroom. Should that take place, the absent jury should not speculate on the reason for that separation or about what may have taken place in its absence. Nor may that jury draw any inference, for or against the People or the defendant for whom it is assigned to render a verdict.

Each jury must evaluate the evidence as it applies to the defendant for whom that jury is assigned to render a verdict.

A fair and separate consideration of the evidence that applies to each defendant may result in a verdict for one defendant that may or may not be the same as that rendered for another defendant.

No member of one jury is permitted to speak to a member of the other jury about the case during the trial or during deliberations at the end of the trial.

It may be that one jury will arrive at a verdict before the other jury. Should any member of the jury that has not yet rendered its verdict inadvertently learn of the verdict of the other jury, that juror must not discuss it with his or her fellow jurors and must immediately report it to the court. And that juror must not permit that knowledge to affect his or her verdict.³

1. See CPL 300.10 (4) (“In its charge, the court . . . must instruct the jury to render a verdict separately and specifically upon each count submitted to it, and with respect to each defendant if there be more than one”).

2. See *People v. Ricardo B.*, 73 NY2d 228, 235 (1989) (authorized two juries in a case where the difference in evidence was the inculpatory statement of one defendant. “It should be clear, however, that multiple juries are the exception, not the rule. . . . The first order of business of the criminal courts, however, is justice, not economy or convenience and the use of multiple juries can only magnify the problems inherent in joint trials because of the need to insulate the juries from inadmissible evidence or argument. Multiple juries are to be used sparingly and then only after a full consideration of the impact the procedure will have on the defendants' due process rights and after thorough precautions have been taken to protect those rights”); *People v. Warren*, 20 NY3d 393 (2013) (in a simultaneous trial of two defendants, one before a jury, the other before the judge, it was error for the court to deny the application of the defendant being tried by the jury to have his jury excused from the courtroom while the other defendant testified on his own behalf); *People v. Garcia*, 194 Misc.2d 263 (Supreme Court 2002) (denying an application for dual juries).

3. See *People v. Irizarry*, 83 NY2d 557 (1994) (in a trial with two juries, the court did not err, in the absence of demonstrated prejudice, in declining to seal the first jury's verdict until the second verdict was returned).