

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

FILED
U.S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

2000 APR 17 PM 12:12

COURT REPORTER
SERVICES, INC.
1000-5000
NEW YORK



JURY PLAN

Adopted March 16, 2000
Filed April 17, 2000

JURY PLAN

Pursuant to the Jury Selection and Service Act of 1968, Public Law 99-274, 28 U.S.C. Section 1863 et seq., as amended [the Act], the following plan is hereby adopted by this Court, subject to approval by a reviewing panel and to such rules and regulations as may be adopted from time to time by the Judicial Conference of the United States.

1. Management and Supervision of Jury Selection Process

It is hereby established that the Clerk of the Court of the Western District of New York shall manage the jury selection process under the supervision and control of the Chief Judge. The functions of the Clerk under this Plan, or any portion thereof, may be delegated by the Clerk to any other person authorized by the Court to assist the Clerk in such regard.

2. Policy

It shall be the policy in the Western District of New York that all litigants in federal court entitled to trial by jury shall have the right to grand and petit juries selected at random from a fair cross-section of the community in the division wherein the Court convenes. It is further the policy of this District that all citizens not otherwise disqualified under law shall have the opportunity to be considered for service on grand and petit juries in the division wherein the Court convenes and that no citizen shall be excluded from service as a grand or petit juror in such division on account of race, color, religion, sex, national origin, or economic status. As stated in section 5, this Court, in an effort to broaden representation among prospective jurors, shall commence drawing names from voter registration lists merged with New York State Department of Motor Vehicles records, beginning in 1994 with the refilling of the Buffalo master jury wheel, and in 1995 with the Rochester master jury wheel.

3. Divisions

There being no statutory divisions in the Western District of New York, the District is hereby divided into two divisions for jury selection purposes only, as defined in Section 1869(e) of the Act, as follows:

Buffalo Division – Counties of Erie, Genesee, Niagara, Orleans, Wyoming, Chautauqua, Cattaraugus, and Allegany -- for sessions of Court held at Buffalo.

Rochester Division -- Counties of Livingston, Monroe, Ontario, Seneca, Wayne, Yates, Steuben, Schuyler, and Chemung -- for sessions of Court held at Rochester.

4. Master Jury Wheel

The Clerk of the Court shall maintain a master jury wheel for each of the divisions within the District. The minimum number of names to be placed initially in the master jury wheels shall be as follows:

Buffalo Division - 15,000 names
Rochester Division - 12,000 names

The Chief Judge may order additional names to be placed in the master jury wheels from time to time as necessary.

5. Method and Manner of Random Selection

As noted in section 2, the Court will draw names from voter registration lists and New York State Department of Motor Vehicle records commencing in 1994 with the refilling of the Buffalo master jury wheel and in 1995 with the Rochester master jury wheel. The motor vehicle records will supplement the voter registration lists to the extent possible using records provided by the State of New York as such records are prepared in the normal course of business. The Court takes notice that in the event two or more source lists are used, one person's name may appear more than once. A system will be developed, before any selection procedures begin, to eliminate as reasonably as possible such duplications. The list or lists used to select names for the master wheel shall hereafter be referred to as the "combined source list." Accordingly, names of petit and grand jurors serving in this District shall be selected by randomized procedure from the combined source list.

This plan's reference to random selection shall mean that in any selection procedure, only the first name shall be chosen by a purely random method and that each subsequent name for that drawing may be systematically taken at regular intervals throughout the remainder of the combined source list. This random selection procedure insures (a) that names chosen will represent all segments of the source file from which drawn; (b) that the mathematical odds of any single name being picked are substantially equalized; and (c) that the possibility of human discretion or choice affecting the selection of any individual's name is eliminated.

The Clerk of the Court shall determine the number of names to be randomly selected from each county within a division as that county's pro rata share of the minimum number of names set forth in section 4 for that division; it shall do the same when any additional names are ordered by the Chief Judge pursuant to section 4. Each county shall be substantially, proportionately represented in the master jury wheel according to the number of names contained in its combined source list.

The Clerk of the Court shall make the random selection by taking the number of names in each county's combined source list and adding them together to give the total number of names in the combined source list in that division. That total shall then be divided into the number of names in the combined source list in each separate county to give the percentage of the total that each county represents. These percentages will then be multiplied by the total number of names needed for the division to give the proportionate number of names needed from each county. The Clerk shall proceed to make the initial selection of names from the combined source list of each county.

A. Determining the "Quotient" for Each County. The Clerk of the Court shall determine the "quotient" by taking the total number of names in a county's combined source list and dividing that number by the number of names needed from that county. The number obtained will be the "quotient." The "quotient" is the ratio of total names to selected names. For example, if the Clerk of the Court should determine that 200 names are needed from Orleans County, whose combined source list contains a total of 20,000 persons, the "quotient" to be used would be 20,000 divided by 200 or 100. The Clerk of the Court would therefore take every 100th name in that county's combined source list.

B. Determining a "Starting Number." After determining the "quotient," the Clerk of the Court shall establish a starting number. This number will locate on the combined source list the first name to be selected for each county. The "starting number" will be manually drawn by lot from numbered cards placed in a jury wheel, drum, or box. Cards used for this drawing should begin with a card containing number one and end with a card containing the same number as the "quotient." In other words, the range of numbers from which a "starting number" is drawn is exactly the same as the range between number one and whatever the "quotient" number happens to be. As an example of how both the "starting number" and "quotient" are used, if we suppose the "quotient" to be 100 and the "starting number" is 12, the first name chosen for that county would be the 12th name on its combined source list, the second name would be the 112th, the third name the 212th, etc., and continued in this manner to the end of the list.

C. Selecting the Names by Machine Methods. At the Clerk's option, and after consultation with the Court, the selection of names from complete source list databases in electronic media for the master jury wheel may be accomplished by a purely randomized process through a properly programmed electronic data processing system. Similarly, at the option of the Clerk and after consultation with the Court, a properly programmed electronic data processing system for pure randomized selection may be used to select names from the master wheel for the purpose of summoning persons to serve as grand or petit jurors. Such random selections of names from the source list for inclusion in the master wheel by data computer personnel must insure that each county within the jury division is substantially proportionally represented in the

master jury wheel in accordance with 28 U.S.C. Section 1863(b)(3). The selection of names from the source list and the master wheel must also insure that the mathematical odds of any single name being picked are substantially equal.

In order to ensure the exercise of proper supervision and management over the automated aspects of jury selection and in accordance with statutory requirements, the operator of the computer shall comply with the instructions for random selection of grand and petit jurors by electronic machine methods contained in the Court's plan for random selection of grand and petit jurors and such additional written instructions as provided by the Court.

6. Drawing of Names from the Master Jury Wheel and Completion of Jury Qualification Form

From time to time, as ordered by the District Court, the Clerk of the Court shall publicly draw at random from the master jury wheel for a particular division the names of as many persons as may be required for jury service. The Clerk of the Court shall retain the names so drawn, and shall mail to every person whose name is drawn from the master jury wheel a one-step summons/qualification form, accompanied by instructions to fill out and return the form, duly signed and sworn, to the Clerk, by mail, within 10 days.

7. Selection, Summoning, and Assignment to Jury Panels

Upon order of the Court, if a grand jury is to be impaneled, this will be done initially from the prospective jurors reporting. Prospective jurors not designated to sit on a grand jury shall thereafter be added to the pool from which petit jurors shall be selected and shall remain available for service until selected or until the time for service expires.

Names drawn from the master jury wheel shall not be made public until summonses have been issued for said jurors, provided that the Chief Judge may order the names to be kept confidential in a case or cases when the interests of justice so require.

8. Determination of Qualification for Jury Service

The Chief Judge or other District Judge of the Court shall determine, in accordance with Section 1865 of the Act and this plan, whether a person is unqualified for, exempt from, or to be excused from jury service. The Clerk or Jury Administrator may recommend to the Chief Judge or other District Judge that an individual be found unqualified for, be exempt from, or be excused from jury service.

9. Exemption from Jury Service

The District Court hereby finds that exemption of the following groups of persons or occupational classes is in the public interest and would not be inconsistent with the Act, and accordingly, members of such groups are barred from jury service:

- A. Full-time members in active service in the Armed Forces of the United States;
- B. Full-time members of any governmental police or regular fire department (not including non-governmental departments); and
- C. Public officers of the United States, State, or local government who are elected to public office or directly appointed by one elected to office.

10. Excuses on Individual Request

The District Court hereby finds that jury service by members of the following occupational classes or groups of persons would entail undue hardship or extreme inconvenience to the members thereof, and the excuse of such members will not be inconsistent with the Act; upon individual request and after review by the presiding judge persons in the following classes shall be excused:

- 1. A person over 70 years of age;
- 2. A person who has served as a grand or petit juror within the last 2 years;
- 3. A person actively serving without compensation as a firefighter, rescue squad or ambulance crew member for a public agency;
- 4. A person having active care and custody of any children under 10 years of age or of any aged or infirm persons whose health and/or safety would be jeopardized by your absence;
- 5. A person whose services are so essential to the operation of a business (sole proprietor) or agricultural enterprise that it must close or cease to function if you are required to perform jury.

Full-time, actively practicing in one of these occupations:

- 6. Attorney;
- 7. Physician;

8. Dentist;
9. Registered nurse;
10. Member of the clergy or a religious order.

11. Temporary Excuses

Pursuant to 28 U.S.C. Section 1866(c), temporary excuses on the grounds of undue hardship or extreme inconvenience may be granted by the Court or, under the Court's supervision, by the Clerk of Court. The names of individuals temporarily excused shall be reinserted into the jury wheel for possible resummoning.

12. Emptying and Refilling Master Jury Wheels

After the initial filling of the master jury wheel for each division, it shall be completely emptied and refilled in the years hereinafter designated:

Buffalo Division - 2000 and every second year thereafter between January 1 and September 1, using the most current voter registration lists and motor vehicle records available.

Rochester Division - 2001 and every second year thereafter between January 1 and September 1, using the most current voter registration lists and motor vehicle records available.

13. One-Step Summoning and Qualification Procedure

This Court has adopted the one-step summoning and qualification procedure, as authorized by 28 U.S.C. Section 1878. Accordingly, all prospective jurors shall be qualified and summoned in a single procedure.

14. Period of Jury Service

It shall be the general policy of this Court that persons summoned to petit jury service shall serve for a period of 90-days following the date of first appearance or report, unless they shall then be serving as jurors in an uncompleted trial, or until they shall have completed service as a trial juror in one trial, whichever shall have occurred first. In the latter regard, it shall rest within the discretion of the Chief Judge, upon the

recommendation of the presiding judge, to direct that such persons not be excused at the conclusion of one trial, such as where said trial was particularly brief.

15. Imposition of Charges Against Party or Counsel

In any civil case in which a settlement is reached, or in which the Court is notified of settlement, later than the close of business on the last business day before jurors are to appear for jury selection, the Court, in its discretion and as stated in Local Rule 11(c), may assess reasonable charges reflecting the costs to the government of compensating the said jurors for their needless appearance. Said charges may be assessed against one or more of the parties, or against one or more counsel, as to the Court appears proper. Said charges shall be deposited by the Clerk into the Treasury of the United States.

16. Applicability and Definitions

The provisions of this plan apply to both divisions in the District unless specifically indicated otherwise.

The definitions set forth in Section 1869 of the Act shall apply to this plan unless specifically indicated otherwise.

17. Effective Date

This plan as amended this 16 day of March, 2000, shall become effective when approved by the Judicial Council of the Second Circuit.

FOR THE COURT



DAVID G. LARIMER
Chief United States District Judge