OFFICE OF THE CLERK
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

304 U.S. COURTHOUSE
68 COURT STREET
BUFFALO, NEW YORK 14202-3498
(716) 551-4211 ★ FAX (716) 551-4850

MICHAEL J. ROEMER
CLERK OF COURT

JEANNE M. SPAMPATA
CHIEF DEPUTY CLERK

JUDICIAL COUNCIL
APPROVED
SEP 10 2009
C/E

August 20, 2009

Ms. Karen Greve Milton
Circuit Executive
United States Court of Appeals
Thurgood Marshall United States Courthouse
40 Centre Street, Room 2904
New York, NY 10007-1501

Re: Requested Approval of Revised Jury Plan

Dear Ms. Milton:

I am forwarding to you a copy of our District's Jury Plan which was revised and approved by Chief Judge Richard J. Arcara, on August 20, 2009. I ask that you present the Revised Jury Plan to the Second Circuit Judicial Council for approval.

Thank you for your time and consideration in this matter and if you any questions or need to discuss anything with me further, please do not hesitate to contact me.

Sincerely,

Michael J. Roemer
Clerk of Court

Enclosure

JUDICIAL COUNCIL
APPROVED
SEP 10 2009
C/E

United States District Court

Western District of New York

Jury Plan

August 20, 2009

JURY SELECTION PLAN
OF THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK
FOR THE RANDOM SELECTION OF GRAND AND PETIT JURORS
(As amended August 20, 2009)

Pursuant to the Jury Selection and Service Act of 1968, as amended, 28 U.S.C. §1861 *et seq.*, ("the Act"), this Jury Selection Plan is hereby adopted by this Court, subject to approval by the Reviewing Panel of the Judicial Council for United States Court of Appeals for the Second Circuit, and to such rules and regulations as may be adopted from time to time by the Judicial Conference of the United States.

APPLICABILITY OF THE PLAN (28 U.S.C. §§ 1861, 1863)

This Plan is applicable to the Western District of New York. 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 28 U.S.C. § 1869(e), as follows:

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

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

DECLARATION OF POLICY (28 U.S.C. § 1861)

It is the policy of the United States and this Court that all litigants in this 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 each division wherein the court convenes. It

is also the policy of the United States and this Court that all citizens who reside within the district shall have the opportunity to be considered for service on grand and petit juries and they shall have an obligation to serve as jurors when summoned for that purpose.

DISCRIMINATION PROHIBITED (28 U.S.C. § 1862)

No citizen shall be excluded from service as a grand or petit juror in this Court on account of race, color, religion, sex, national origin, or economic status.

MANAGEMENT AND SUPERVISION OF THE JURY SELECTION PROCESS (28 U.S.C. § 1863(b)(1))

The Clerk of the Court shall manage the jury selection process under the supervision and control of the Chief Judge, or such other District Judge or Judges as the Chief Judge may from time to time designate. In the event of the simultaneous absence, disability, or inability to act of the Chief Judge and the Chief Judge's designee(s), the active District Judge who is present in the District and has been in service the greatest length of time shall be authorized to act. In managing and supervising the jury selection process, the Clerk of Court is authorized to delegate duties as may be necessary in the jury selection process to Deputy Clerks.

SOURCES OF NAMES OF PROSPECTIVE JURORS (28 U.S.C. § 1863(b)(2))

The names of prospective jurors shall be selected at random, following the procedures outlined in this Plan, from the voter registration lists of the political subdivisions within each Division and from lists of licensed drivers maintained by the New York State Department of Motor Vehicle("DMV"). The voter lists and DMV lists shall be merged and any duplications between the lists shall be purged. The resulting combined list is hereinafter referred to as the "combined source list."

MAINTAINING THE MASTER JURY WHEEL (28 U.S.C. §1863(b)(3) & (4))

The names of prospective jurors selected at random from the combined source list, following the procedures outlined in this Plan, shall be placed in a Master Jury Wheel. There shall be a separate Master Jury Wheel for each of the two Divisions in the District.

The minimum number of names to be placed initially in the Master Jury Wheels shall be as follows:

1. Buffalo Division - 25,000 names beginning with the 2009 master wheel refill
2. Rochester Division - 20,000 names beginning with the 2009 master wheel refill

Each Master Jury Wheel shall be emptied and refilled at least annually, and upon order of the Chief Judge or the Chief Judge's designee(s), may be supplemented with additional names selected on a random basis to assure an adequate supply of qualified jurors. The Clerk of Court, with the approval of the Chief Judge or the Chief Judge's designee(s),

may revise the minimum number of names for any Master Jury Wheel without need for amendment to this Plan.

METHOD AND MANNER OF RANDOM SELECTION (28 U.S.C. §1863(b)(3))

The selection of names from complete source list databases in electronic media for the creation of a master jury wheel will be accomplished by using a properly programmed electronic data processing system employing a purely random selection technique. A properly programmed electronic data processing system for pure randomized selection will be used to select names from the master jury 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 jury wheel by data computer personnel must insure that the names of persons residing in each county within the jury division is substantially proportionally represented in the master jury wheel according to the number of registered voters in each county. The selection of names from the source list and the master jury 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.

DRAWING OF NAMES FROM THE MASTER JURY WHEEL - ONE STEP SUMMONING AND COMPLETION OF JURY QUALIFICATION FORM (28 U.S.C. §§ 1878, 1864(a), 1864(b) and 1866(g))

This District has adopted the one-step summoning and qualification procedure. Accordingly, all prospective jurors shall be qualified and summoned in a single procedure through the use of the Jury Management System. The Jury Management System (JMS) provided and supported by the Administrative Office of the United States Courts, shall be used to select names from the master jury wheel of persons to be summoned to serve as grand or petit jurors and for the recording of names and other information on any papers and records needed by the Court to administer the selection and payment of juries.

From time to time, as ordered by the Court, the Clerk of the Court shall draw at random from the master jury wheel using a properly programmed data processing system, the names of as many individuals as may be required for jury service for a particular jury division. The Court will specify the number of jurors to be drawn based upon anticipated juror usage plus a margin of additional names sufficient to compensate for individuals who become unavailable or ineligible to serve as jurors.

The Clerk of Court will post a general notice for public review in the Clerk's Office and to the Court's website explaining the processes by which names are periodically and randomly drawn.

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 to the Clerk's Office within ten (10) days. The form may either (1) be completed manually and returned to the Clerk's Office by mail, or (2) effective October 1, 2009, be completed electronically through the Court's internet website at www.nywd.uscourts.gov. The qualification questionnaire used will be approved as to form and content by the Judicial Conference of the United States Courts and the Administrative Office of the United States Courts.

Each juror qualification questionnaire will require completion by the individual to whom the questionnaire is addressed. Should the addressee be unable to complete the questionnaire, another individual may do so, indicating the need and reason(s) therefore. In cases where there appears to be an omission, ambiguity or error in a completed juror qualification questionnaire, the questionnaire will be returned promptly to the individual with instructions that corrections or additional information are required.

Any person failing to return a juror qualification questionnaire may be summoned to do so. Any person failing to appear pursuant to a summons may be ordered by

the Court to appear and show cause for failure to comply with the summons. A person failing to appear or show cause for noncompliance with a jury summons may be fined not more than $1,000.00, imprisoned not more than three (3) days or ordered to perform community service (or any combination thereof).

SELECTION, SUMMONING, AND ASSIGNMENT OF GRAND JURORS (28 U.S.C. §§ 1866 and 1878)

Upon order of the Court, if a grand jury is to be impaneled, this will be done initially from the prospective jurors reporting. Separate grand jury panels shall be selected and maintained in each divisional office. 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.

Each grand jury shall serve until discharged by the Chief Judge, but no regular, criminal grand jury shall serve for more than eighteen (18) months unless the Court extends the service of the grand jury for a period of six months or less, upon a determination that such extension is in the public interest. Special Grand Juries as defined in 18 U.S.C. § 3331, shall serve a term of eighteen (18) months unless an order for its discharge is entered earlier by the Court. If, at the end of an eighteen-month term or any extension thereof, the Court determines the business of the grand jury has not been completed, the Court may enter an order extending such term for up to three additional six month periods. No special grand

jury term so extended shall exceed thirty-six months, except as provided in 18 U.S.C. § 3333(e).

The Court may direct that alternate jurors may be designated at the time a grand jury is selected. Alternate jurors in the order in which they were designated may thereafter be impaneled to replace excused jurors. Alternate jurors shall be drawn in the same manner and shall have the same qualification as the regular jurors and if impaneled shall be subject to the same challenges, shall take the same oath and shall have the same functions, powers, facilities and privileges as the regular grand jurors.

QUALIFICATIONS FOR JURY SERVICE (28 U.S.C. §1865(b))

The Chief Judge or presiding judge, on his or her own initiative, or on the recommendation of the Clerk of Court, or the Clerk of Court under the supervision of the Court, shall determine solely on the basis of information provided on the juror qualification form and other competent evidence whether a person is unqualified for, or exempt, or to be excused from jury service. The Clerk shall enter such determination in the space provided on the juror qualification form and in the electronic database. If a person did not appear in response to a summons, such fact shall be noted.

Any person shall be deemed qualified to serve on grand and petit juries in this Court unless he or she:

(1) is not a citizen of the United States eighteen years old who has resided for a period of one year within this District;

(2) is unable to read, write, and understand the English language with a degree of proficiency sufficient to fill out satisfactorily the juror qualification form;

(3) is unable to speak the English language;

(4) is incapable, by reason of mental or physical infirmity, to render satisfactory jury service; or

(5) has a charge pending against him for the commission of, or has been convicted in a State or Federal court of record of, a crime punishable by imprisonment for more than one year and his civil rights have not been restored.

Notice of persons who identify themselves as non-citizens through the juror qualification process shall be provided by the Clerk of Court to appropriate election officials for verifying voter registration eligibility.

EXEMPTIONS FROM JURY SERVICE (28 U.S.C. §§1863(b)(6); 1869(i))

The Court hereby finds that the exemption of the following occupational classes or groups of persons is in the public interest, not inconsistent with the Act, and shall be granted:

(1) members in active service of the armed forces of the United States;

(2) members of Fire or Police Departments of any State, District, Territory, Possession, or subdivision thereof;

(3) public officers in the executive, legislative, or judicial branches of the government of the United States or an State, District, Territory, or Possession or subdivision thereof who are actively engaged in the performance of official duties (public officer shall mean a person who is either elected to public office or who is directly appointed by a person elected to public office).

EXCUSE FROM JURY SERVICE UPON INDIVIDUAL REQUEST (28 U.S.C. §§1863(b)(5)(A) & (B); 1866(e); 1869(j) and District Court Clerk's Manual Chapter 23)

The 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 would not be inconsistent with the Act and that upon individual request and after review by the presiding judge, such persons shall be excused:

(1) Persons over seventy (70) years of age;

(2) Persons who have, within the past two years, served on a federal grand or petit jury panel;

(3) Persons having active care and custody of a child or children under ten (10) years of age whose health and/or safety would be jeopardized by their absence for jury service, or a person who is essential to the care of aged or infirm persons; and

(4) Any person whose services are so essential to the operation of a business, commercial, or agricultural enterprise that said enterprise must close if such person were required to perform jury duty.

TEMPORARY EXCUSES (28 U.S.C. § 1866(c))

The Chief Judge, presiding judge or the Clerk of Court under the supervision of the Court may grant temporary excuses on the grounds of undue hardship or extreme inconvenience. The names of individuals temporarily excused shall be reinserted into the master jury wheel for possible resummoning.

PERIOD OF POTENTIAL PETIT JURY SERVICE (District Court Clerk's Manual Chapter 23)

Persons summoned for petit jury service shall be subject to being called for such service for a period of ninety (90) days following the date of first appearance or reporting, 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.

FREQUENCY OF SERVICE (28 U.S.C. §1866(e))

In any two-year period, no person shall be required to (1) serve or attend court for prospective service as a petit juror for a total of more than thirty (30) days, except when necessary to complete service in a particular case, or (2) to serve on more than one grand jury, or (3) to serve as both a grand and petit juror.

RECORDS TO BE MAINTAINED BY THE CLERK AND MADE PUBLIC UPON REQUEST (28 U.S.C. §§1863(a); 1867(f); 1868)

The Clerk of Court shall retain all jury records and papers complied and maintained by the Clerk of Court, including the following documents:

(1) Jury Selection Plan;

(2) Orders regarding refilling of the master jury wheel, petit juries, and grand juries;

(3) Jury memos from the Administrative Office and internal memos;

(4) Qualification questionnaires

(5) Pre-screening questionnaires

(6) Individual petit jury and grand jury panel information

(7) Administrative Office reports: JS-11, JS-11G and AO-12.

These records shall not be disclosed, except (1) pursuant to this Plan, or (2) pursuant to an order of the Court finding disclosure is necessary in preparation of a motion challenging the selection of a jury, until the master jury wheel has been refilled and all

persons selected as jurors from the prior master jury wheel have completed service. Parties who have obtained an order of disclosure shall be allowed to inspect, reproduce, and copy such records at reasonable times during the pendency of the motion challenging the selection of a jury.

Upon written order of the Court, except when the court orders a longer retention period, these records can be disposed of four (4) years after the master jury wheel has been refilled and all persons selected have completed jury service in accordance with 28 U.S.C. § 1868. These records shall not be transferred to the Federal Records Center.

RELEASE OF JUROR INFORMATION (28 U.S.C. §1863(b)(7))

Names and personal information concerning petit and grand jurors shall not be disclosed to attorneys, parties, the public or the media, except as provided herein.

Names and personal information concerning persons who have been entered in the jury wheel shall not be disclosed, except upon order of the Court.

Names and personal information concerning prospective and sitting petit jurors shall not be disclosed to the public or media outside open court, except upon order of the Court. A request for disclosure of petit juror names and personal information to the media or public must be made in writing to the presiding judge.

The Clerk of Court may provide names and personal information concerning prospective petit jurors to the attorneys (or a party if proceeding *pro se*) in a case set for trial

unless otherwise directed by the Court. The names and information will be provided in written form only (hereafter "the jury list"). The attorneys (or party) may not share the jury list or information therein except as necessary for purposes of jury selection. Following jury selection, the attorneys (or party) provided the jury list must return to the clerk the jury list and any copies made from the jury list provided to them and/or destroy them.

The Court may order juror names and personal information to be kept confidential where the interests of justice so require.

APPLICABILITY AND DEFINITIONS (28 U.S.C. § 1869)

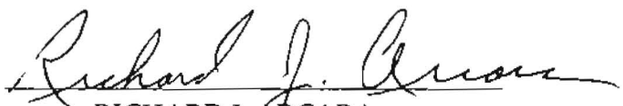
The provisions of this Plan apply to both divisions in the District unless specifically indicated otherwise.

The definitions set forth in 28 U.S.C. § 1869 shall apply to this Plan unless specifically indicated otherwise.

EFFECTIVE DATE

This plan as amended this 20th day of August, 2009, shall become effective when approved by the Judicial Council of the Second Circuit.

FOR THE COURT



RICHARD J. ARCARA
Chief United States District Judge