

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

**IN THE MATTER OF THE REVIEW OF THE )  
JURY SELECTION PLAN SUBMITTED BY THE )  
UNITED STATES DISTRICT COURT FOR THE )  
WESTERN DISTRICT OF PENNSYLVANIA )**

**ORDER**

The Plan for the Random Jury Selection of the United States District Court for the Western District of Pennsylvania, as last amended and effective April 1, 2001, having been transmitted to this Panel as of February 5, 2009 in compliance with 28 U.S.C. 1863, and

The Reviewing Panel, consisting of Members of the Judicial Council of the Third Circuit and the Chief Judge of the United States District Court for the Western District of Pennsylvania having ascertained that it complies in all particulars with 28 U.S.C. 1863,

**NOW, THEREFORE, IT IS HEREBY ORDERED** that said Amended Plan for Random Jury Selection is hereby approved by this Reviewing Panel as of March 20, 2009 and that said Plan shall become effective April 1, 2009.

For the Judicial Council:

  
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Anthony J. Scirica  
CHIEF JUDGE, U.S. Court of Appeals  
for the Third Circuit

**PLAN OF THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA  
FOR THE RANDOM SELECTION OF GRAND AND PETIT JURORS**

Pursuant to 28 U.S.C. § 1863, the following Plan<sup>1</sup> is hereby adopted by this Court, subject to approval by a reviewing panel for the Third Circuit Judicial Council and to such rules and regulations as may be adopted from time to time by the Judicial Conference of the United States. In case of any conflict between this Plan and any statute, the statutory provisions shall govern.

**SECTION 1. Declaration of Policy**

All citizens shall have the opportunity to be considered for service on grand and petit juries in this Court and shall have an obligation to serve when summoned for this purpose.

**SECTION 2. Discrimination Prohibited**

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

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<sup>1</sup>Approved by the Judicial Council on September 23, 1968, effective December 22, 1968; as modified and approved by the Judicial Council on February 27, 1969, September 3, 1969, March 31, 1971, December 8, 1971, July 7, 1972, May 14, 1973, November 18, 1977, March 19, 1979, March 13, 1980, October 14, 1983, October 24, 1984, June 3, 1988, March 17, 1989, January 2, 1990, March 29, 2001, and March 20, 2009, effective April 1, 2009.

**SECTION 3. Applicability of Plan**

The Western District of Pennsylvania is divided into three divisions for jury selection purposes as follows:

The Pittsburgh Division consists of the counties of Allegheny, Armstrong, Beaver, Butler, Clarion, Fayette, Greene, Indiana, Jefferson, Lawrence, Mercer, Washington, and Westmoreland.

The Erie Division consists of the counties of Crawford, Elk, Erie, Forest, McKean, Venango, and Warren.

The Johnstown Division consists of the counties of Bedford, Blair, Cambria, Clearfield and Somerset.

The Provisions of this Plan shall apply to each division in the district, unless specifically indicated otherwise.

**SECTION 4. Management and Supervision of Jury Selection Process**

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 as the Chief Judge may designate.

For purposes of definition when used in this Plan, “Clerk” and “Clerk of Court” shall mean the Clerk of the district court, any authorized deputy clerk, and any other person authorized by the Court to assist the Clerk in the performance of the selection procedures authorized by the Plan.

## SECTION 5. Plan for Random Jury Selection

Voter registration lists represent a fair cross section of the community in each division of the Western District of Pennsylvania. Accordingly, names of grand and petit jurors selected to serve on or after the effective date of this Plan shall be selected at random from the voter registration lists of all the counties within the relevant divisions.

“Voter registration lists” or “voters lists” referred to throughout this Plan shall mean the voter registration lists for a statewide primary or general election as maintained by the counties. Voter registration lists are exclusively obtained electronically from the Statewide Uniform Registry of Electors (“SURE”) through the Department of State for all the appropriate jurisdictional counties.

This Plan’s reference to random selection shall mean a purely random selection of all names, or a selection where only the first selected name shall be chosen by a purely random method, with each subsequent name for that drawing chosen systematically at regular intervals through the remainder of the source list. Either selection process used must insure: 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 Judges of the Court have determined that the initial selection of persons to be considered for service as grand and petit jurors from the lists of the voters and placed in the master wheel shall be made at random in such a total number as may be deemed sufficient for a two-year period.

The number of names drawn from each county shall be substantially in the same proportion to the total number drawn from all counties within the division as the number of names on that county's list of voters bears to the total number of names on the lists of voters for all counties within the division. For example, if there are exactly 240,000 names on the list of voters of all counties within the division, and there are 48,000 names on County "A's" list (twenty percent of the total), then the number of County "A's" names initially selected should be substantially twenty percent of the total number selected from all counties within the division.

For the purpose of calculating from the lists of voters the total number of voters in the respective divisions within the district, the Clerk will add together the totals obtained for each county. The number taken as the total for each county may be based, at the Clerk's option, upon such total number as is published by the State Bureau of Elections or furnished by the Boards of Elections for the respective counties.

After determining the total number of names needed for the master jury wheel, the Clerk shall proceed through the use of a properly programmed data computer or through a combination of manual, computer or electronic methods to make the initial selection of names from the list of voters of each county.

a) DETERMINING A QUOTIENT:

The Clerk shall maintain separate master jury wheels for each of the divisions within the District, and shall place in each master jury wheel the names of all persons randomly selected from the voter registration lists for that division. The number of names to be placed initially in

each master jury wheel shall be at least one-half of one percent of the total number of voters registered in each division, and each master jury plan shall contain no less than 1,000 names.

For each division, the Clerk shall make the randomized selection by taking the total number of registered voters of the counties in that division of the court and dividing that number by the minimum number of names to be placed in the master jury wheel, and the number obtained will be the "quotient." The quotient is the ratio of selected to unselected names. For example, if the Clerk should determine that to supply court jury requirements for two years he or she will need 10,000 names in the master wheel, and if there are a total of 1,000,000 names on all county voter lists, the "quotient" to be used would be 1,000,000 divided by 10,000 or 100. The clerk would therefore take every "100th" name from the lists of voters for the master wheel.

b) DETERMINING A STARTING NUMBER. After determining the "quotient," the Clerk shall establish a starting number.

This number will locate on the voter list, whether it is on paper, a computer tape or disk, or some other electronic media record, the first name to be selected. The Clerk will draw a starting number manually by lot from numbered cards in a drum or box. Numbers used for this drawing should begin with number one and end with the same number as the "quotient." In other words, the range of numbers from which a starting number is drawn is exactly the same 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 drawn is 12, the first name chosen for each county would be the 12<sup>th</sup> name on its

list of voters, the second name would be the 112<sup>th</sup>, the third the 212<sup>th</sup>, and continue in the same sequence to the end of the list.

#### SECTION 6. Selecting the Names by Manual Methods

In the event that circumstances prevent or render impossible the foregoing method of random selection from being followed, the Court may utilize an alternate manual method of random selection on a temporary basis.

When selection from any county's list of voters is made manually, names will be chosen by counting names down the list, either in a numerical sequence if the names are numbered, or if they are not numbered, in any other logical consistent sequence. Utilizing this process, the entire list must be covered and the specific names selected will be according to the established "quotient" and "starting number" formula described above.

#### SECTION 7. Selecting the Names by Machine Method

As noted in Section 5, all voter registration lists are exclusively obtained in electronic media format from the Statewide Uniform Registry of Electors ("SURE").

Consequently, a properly programmed electronic data processing system, or a combination system employing both manual and electronic methods may, at the Clerk's option and after consultation with the Chief Judge, be used to select master wheel names from voter lists of any or all counties in the District, provided that the required proportions of names for each county are maintained.

Similarly, the Judges of the Court have determined that an electronic data processing system or a combination electronic and manual system may, at the option of the Clerk and the Chief Judge, be used to select names from the master wheel for the purpose of determining qualification of jury service and from the qualified wheel for summoning persons to serve summoned to serve as grand or petit jurors, and the recording of names of prospective jurors on any papers and records needed by the court to administer the selection and payment of jurors.

The Clerk shall post a general notice for public review in the Clerk's office and on the Court's internet website explaining the process by which names are periodically and randomly drawn.

#### SECTION 8. Master Jury Wheels For Each Division

The physical form of record on which names for the master wheel is kept may include paper lists, data processing files, computer tapes, computer disks, or some other electronic format. Pursuant to 28 U.S.C. § 1863(b)(4), the minimum number of names to be placed in the master jury wheel shall be at least  $\frac{1}{2}$  of 1% of the total number of names on all county voter lists of the Pittsburgh, Johnstown and Erie divisions, respectively.

The Chief Judge, or such other district judge as the Chief Judge may designate, may order additional names to be placed in the master wheel from time to time, as necessary. The master jury wheel shall be emptied and refilled every two years and refilled within four months after a November general election.

SECTION 9. Drawing of Names from the Master Jury Wheels: Completion of Juror Qualification Forms

The Clerk or a designated deputy clerk in each of the Court's divisions shall, at periodic intervals, draw at random from the master jury wheel the names of as many persons as may be required to maintain an adequate number of names in the qualified wheel.

The Clerk may have prepared, by manual, computer, or electronic means, alphabetized lists of the names drawn. These lists shall not be exhibited to any person except as provided herein and in accordance with 28 U.S.C. §§ 1867(f), 1868. The Clerk shall, by manual, computer, or electronic means, prepare and have mailed to every person whose name is so drawn, a juror qualification questionnaire form, accompanied by instructions to execute and return the questionnaire duly signed and sworn, to the Clerk by mail or through the Court's internet website within ten days, in accordance with 28 U.S.C. § 1864(a).

A second juror qualification questionnaire form will be mailed to any person who fails to complete and return the initial juror qualification questionnaire as instructed. If the person fails to complete and return the second juror qualification questionnaire, such person may be summoned by the Clerk to appear and fill out such form. Any such person who fails to appear as directed, or who appears to have willfully misrepresented a material fact on any such form for the purpose of securing or avoiding service as a juror, may be ordered by the Court to appear and explain his/her failure to appear or his/her alleged misrepresentation(s).

SECTION 10. Qualifications for Jury Service

(a) Upon recommendation of the Clerk, the Chief Judge or such other district judge as the Chief Judge may designate, or the Clerk under supervision of the Court, shall determine solely on

the basis of information provided on the jury qualification form and other competent evidence whether a person is qualified, unqualified, exempt, or to be excused from jury service. The Clerk shall enter such determination on the juror qualification form or in the juror record in the database of a computer program or on such other qualifying reports that contain the list of names drawn from the master wheel.

(b) In making such determination, the Court shall deem any person qualified to serve on grand and petit juries in the district unless he or she:

(1) is not a citizen of the United States, is less than eighteen years old, or has not resided for a period of one year within the judicial district;

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

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

(4) has a charge pending against him or her for the commission of a crime, 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 or her civil rights have not been restored.

#### SECTION 11. Excuses on Individual Request

The district court hereby finds that jury service by members of the following occupation classes or groups of persons may entail undue hardship or extreme inconvenience to the members thereof, and the excuse of such members for the life of the unexpired master wheel will not be

inconsistent with 28 U.S.C. §§ 1861, 1862 and shall be granted individually upon written request:

- (1) Any person 70 years of age and over;
- (2) Any person who has served on a federal grand or petit jury panel within the past 2 years;
- (3) Any person not gainfully employed full-time outside the home and having sole, full-time active custody of a child or children under 8 years of age, and the health and/or safety of such child or children would be jeopardized by that person's absence for jury; or any person not gainfully employed full-time outside the home who is likewise essential to the care of aged or infirm persons and who reside full time in the same household. This category does not apply to health care workers and/or those employed as caregivers;
- (4) Any person whose presence is so essential to the operation of a business, that such business must close or cease to function during that person's their absence for jury duty;
- (5) Any volunteer safety personnel who serve in an official capacity without compensation as firefighters, members of rescue squads or ambulance crews of a public agency of the United States, or any state, district, territory or possession of the United States, or any unit of local government, department or instrumentality of any of the foregoing. "Public Agency" for this purpose means the United States, any state of the United States, the District of Columbia, or any unit of local government, department, or instrumentality of the foregoing.
- (6) In addition to the foregoing categories of persons, upon appearing for jury service, a Judge may determine that a prospective juror shall be excused from jury service, upon a request

and showing that jury service would entail undue hardship or extreme inconvenience to the juror and that the excuse will not be inconsistent with the Act.

SECTION 12. Exemptions from Jury Service

Only the following persons who are barred from jury service under the provisions of 28 U.S.C. § 1863(b)(6) shall be exempt from jury service under this Plan:

(1) Members in active service in the Armed Forces of the United States.

(2) Members of the regular fire or police departments of any state, district, territory, possession or subdivision thereof;

(3) Full-time public officers in the executive, legislative, or judicial branches of the Government of the United States, or of any State, the District of Columbia, any territory or possession of the United States, or any subdivision of a State, the District of Columbia, or such territory or possession, 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.

SECTION 13. Qualified Jury Wheel for Each Division

The Clerk, designated deputy clerk, or another person authorized by the court to assist the Clerk in the performance of jury functions for the Pittsburgh, Johnstown and Erie divisions, shall maintain separate qualified jury wheels for each division and shall place in such wheels the names of all persons drawn from the master jury list in each division, who are not disqualified, exempt or excused pursuant to this Plan.

The qualified wheel for each division shall be emptied and refilled every two (2) years and within seven (7) months after a November general election in order that names shall be drawn no sooner than June 1st, unless otherwise ordered by the Court.

From time to time the Court may direct the Clerk to draw from the qualified wheel, via random manual or electronic selection, such number of persons as may be required for grand and petit jury arrays and supplemental arrays and to print their names and addresses on summons forms.

A supplemental array is a small list of prospective jurors which may be added to a regular array as necessary, when a regular array needs to be supplemented because of the number of jurors excused or because of increased jury requirements. Such supplemental array will become a part of the regular array until that array is terminated.

Lists of those juror names drawn from the qualified jury wheel and summoned for a term of court shall be made available to members of the bar who have cases pending on the current trial list and in accordance with Local Rules and the administrative practices of this Court.

From time to time, as grand juries are required in each court division, the Clerk shall order a random drawing from the qualified wheel of a sufficient number of names to realize, after excuses, a grand jury panel.

When the court orders a grand or petit jury to be drawn, the Clerk shall issue summonses for the required number of jurors. Each person drawn for jury service may be served in the manner prescribed in 28 U.S.C. § 1866(b). An alphabetical list may be prepared by the Clerk of persons assigned to each grand or petit jury.

Requests by summoned jurors to be excused from jury service shall be in writing, and received by the Clerk prior to the date summoned, except in emergency situations. Excuses from jury service will be by Order of the Court or by the Clerk, under the supervision of the Court. The clerk is specifically authorized to grant temporary excuses, under the supervision of the Court, upon a showing of undue hardship or extreme inconvenience and for such period of time as the clerk deems necessary. Permanent exclusions and excuses will be by Order of the Court or by the Clerk, under the supervision of the Court.

Except as provided elsewhere in this Plan, no person or class of persons shall be disqualified, excluded, excused or exempted from service as jurors; provided, however, that any person summoned for jury service may be:

1. Excused for a temporary period by the Court, or by the Clerk under the supervision of the Court, upon a showing of undue hardship or extreme inconvenience, for such period as is deemed necessary. At the conclusion of such temporary excuse period, the name of such person shall be reinserted into the qualified jury wheel for selection pursuant to 28 U.S.C. § 1886(a).

2. Excluded by the Court on the ground that such person may be unable to render impartial jury service, or that his or her service as a juror would be likely to disrupt the proceedings.

3. Excluded upon peremptory challenge as provided by law.

4. Excluded pursuant to the procedure specified by law upon a challenge by any party for good cause shown.

5. Excluded upon determination of the Court, after hearing in open court, that his or her service as a juror would be likely to threaten the secrecy of the proceedings, or otherwise

adversely affect the integrity of jury deliberations, and that exclusion of such person will not be inconsistent with the policy stated in 28 U.S.C. §§ 1861, 1862.

Jurors who do not make a request in advance to be excused, and who report for jury service and request immediate release will not be paid by the Court for their service unless they can prove circumstances that warranted their travel to the courthouse.

Whenever a person is disqualified, excused, exempt or excluded from jury service, the Clerk shall note the same on the manual record or electronic tracking program being used at the time.

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

Any person summoned for jury service who failed to appear as directed may be ordered by the district court to appear forthwith and show cause for his or her failure to comply with the summons. Any person who fails to show good cause for noncompliance to a summons may be fined not more than \$1000, imprisoned not more than three days, or ordered to perform community service, or any combination thereof.

#### SECTION 14. Assignment to Panels

The names of all jurors reporting for petit jury service shall be placed in the jury wheel in the jury rooms in Pittsburgh, Johnstown or Erie, or will be available in the database of a computer program available to the court divisions. Names shall be drawn at random from the wheel or computer program and assigned to cases. After challenges are made during jury

selection, the names remaining shall be placed immediately in the wheel or computer program for service on other cases. The system shall be employed to optimize the use of summoned jurors.

If a juror who has been selected for a case and who has given appropriate oath or affirmation, thereafter fails to appear at any session of court at the time and place fixed by the Court, he or she shall be adjudged in contempt of Court. Notwithstanding any sentence imposed by the Court, that juror shall not be paid juror's fees for any days served on the case for which that juror had been selected unless good cause is shown for failure to appear.

#### SECTION 15. Disclosure of Records

(a) Names drawn from the qualified jury wheel to serve as petit jurors shall not be disclosed to the public or media until the jurors have been summoned and have appeared at the courthouse. The Court in any case may order that the names be kept confidential when the interests of justice so require, and may otherwise restrict the disclosure of juror information in accordance with local rules of court. Any request for disclosure shall be made to the Court by written motion.

(b) The contents of records or papers used by the Clerk in connection with the jury selection process shall not be disclosed except pursuant to this Plan or as may be necessary in the preparation or presentation of a motion challenging compliance with the selection procedures of the district court Plan. The parties in a case shall be allowed to inspect, reproduce, and copy such records or papers at all reasonable times during the pendency of such motion. Any person who

discloses the contents of any record or paper shall be subject to penalty as provided in the Jury Selection and Service Act of 1968 as amended.

(c) Names of grand jurors shall not be disclosed except upon special order of the Court.

#### SECTION 16. Non-Citizens Report

The Chief Judge or the Clerk may, upon being advised that any potential juror identified him/herself, or has been determined to be, a non-citizen of the United States, notify the Department of State, Bureau of Elections. Any individual claiming to be a non-citizen shall provide proof of his/her non-citizen status in writing upon request by the Clerk.

#### SECTION 17. Authorization to Use a Contractor

The Court authorizes the Clerk to designate and contract for a competent electronic data processing service to perform any of the automated methods, tasks and procedures required by this plan, including but not limited to the creation of master wheels, the selection of prospective juror names, and the mailing of juror qualification forms. The selection of prospective juror names will be conducted pursuant to instructions by the Clerk and the contractor will certify that the work has been completed pursuant to those instructions.

#### SECTION 18. Protection of Jurors Employment

(a) No employer shall discharge, threaten to discharge, intimidate, or coerce any permanent employee by reason of such employee's jury service, or the attendance or scheduled attendance in connection with such service, in any court of the United States.

(b) Any employer who violates the provisions of this section -

(1) shall be liable for damages for any loss of wages or other benefits suffered by an employee by reason of such violation;

(2) may be enjoined from further violations of this section and ordered to provide other appropriate relief, including but not limited to the reinstatement of any employee discharged by reason of his jury service; and

(3) shall be subject to a civil penalty of not more than \$5000 for each violation as to each employee and may be ordered to perform community service.

ENTERED this 29<sup>th</sup> day of JANUARY, 2009.



DONETTA W. AMBROSE, C.J.



MAURICE B. COHILL, JR., S.J.



GUSTAVE DIAMOND, S.J.



ALAN N. BLOCH, S.J.



WILLIAM L. STANDISH, S.J.



GARY L. LANCASTER, D.J.



SEAN J. McLAUGHLIN, D.J.



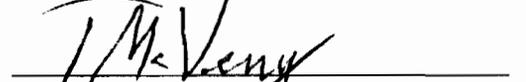
KIM R. GIBSON, D.J.



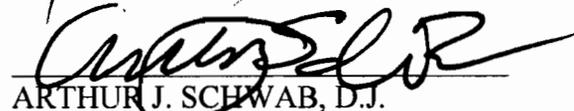
JOY FLOWERS CONTI, D.J.



DAVID STEWART CERCONE, D.J.



TERRENCE F. McVERRY, D.J.



ARTHUR J. SCHWAB, D.J.



NORA BARRY FISCHER, D.J.