UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

JUDICIAL COUNCIL

ENTERED
JAN 26 2005
TERESA L. DEPPNER, CLERK
U.S. District & Bankruptcy Courts
Southern District of West Virginia

In the Matter of the Review of the	*	
Amendment to the Plan Prescribing Method	*	
for Composition of Jury Wheels and the	*	
Qualification and Random Selection of Grand	*	No. 204
and Petit Jurors for the Southern District	*	
of West Virginia	*	

ORDER

The Plan Prescribing Method for the Composition of Jury Wheels and the Qualification and Random Selection of Grand and Petit Jurors for the United States District Court of the Southern District of West Virginia is hereby amended by the District Court Order dated the 14th day of January, 2005, and shown in a copy of the Order attached hereto, and it is so ORDERED.

FOR THE COUNCIL:

Samuel W. Phillips, Secretary

Date: January 26, 2005

FILED
JAN 26 2005
U.S. Court of Appeals
Fourth Circuit

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA

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PLAN PRESCRIBING METHOD FOR THE COMPOSITION OF JURY WHEELS AND THE QUALIFICATION AND RANDOM SELECTION OF GRAND AND PETIT JURORS

SECTION ONE

GENERAL POLICY MATTERS

SECTION 1.01 - ADOPTION AND IMPLEMENTATION

In accordance with 28 U.S.C. § 1863, the Court adopts the following amended Plan Prescribing Method for Composition of Jury Wheels and the Qualification and Random Selection of Grand and Petit Jurors.

This plan, as amended, shall become effective on the date approved by the proper order of the Circuit Council of the United States Court of Appeals for the Fourth Circuit, provided, however, that nothing in the amended plan shall affect the composition of the existing master or qualified jury wheels nor affect the composition or preclude the service of any jury impaneled on before the next scheduled refilling of such wheels after the latest general election as provided in this plan.

SECTION 1.02 - POLICY STATEMENT

It is the policy of this Court that all litigants entitled to trial by jury shall have the right to grand and petit juries selected at random from a cross section of the counties comprising the divisions* wherein the Court is convened, and that all qualified citizens shall have the opportunity to be considered for service on grand and petit juries and shall have an obligation to serve as jurors when summoned for that purpose. 28 U.S.C. § 1861.

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* The term "divisions" as used in this Plan shall mean active places of holding court.

SECTION 1.03 - 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. 28 U.S.C. § 1862.

SECTION 1.04 - MANAGEMENT OF THE JURY SELECTION PROCESS

In accordance with the provisions of the Jury Selection and Service Act of 1968, 28 U.S.C. § 1863(b)(1), the Clerk of Court shall manage the jury selection process. The Clerk of Court shall act under the supervision and control of the Chief Judge of this Court, or such other judge as hereinafter provided. The Clerk of Court shall perform all functions appropriately assigned to him under this plan.

SECTION 1.05 - DELEGATION OF THE CLERK'S MANAGEMENT RESPONSIBILITIES

The Clerk may delegate responsibility for the day-to-day operations of the jury selection process to any authorized deputy clerk pursuant to 28 U.S.C. §§ 1863(b)(1) and 1869(e). Deputy court clerks acting under the supervision of the Clerk of Court may perform all clerical and administrative acts or duties incident to the implementation of this plan, and, with approval of the Court, non-court personnel under the supervision of the Clerk of Court can assist in filling the master and qualified wheels.

SECTION TWO

ESTABLISHMENT OF JURY DIVISIONS

AND MASTER JURY WHEELS

SECTION 2.01 - JURY DIVISIONS

In accordance with 28 U.S.C. § 1869(e)(2), and unless otherwise directed, the following counties are assigned to the divisions indicated below:

DIVISION	COUNTIES
Bluefield	McDowell, Mercer and Monroe
Charleston	Boone, Clay, Jackson, Kanawha, Lincoln, Logan, Mingo, Nicholas, Putnam and Roane
Huntington	Cabell, Mason and Wayne
Beckley	Fayette, Greenbrier, Raleigh, Summers and Wyoming
Parkersburg	Wirt and Wood

This Plan applies to all divisions in this district, unless specifically indicated to the contrary.

SECTION 2.02 - MASTER JURY WHEELS

The Clerk shall establish and maintain a master jury wheel for each division established pursuant to Section 2.01 of this Plan and to 28 U.S.C. § 1863(b)(4), once every two years.

SECTION 2.03 - SOURCE LISTS

Pursuant to 28 U.S.C. § 1863(2), the use of actual voter registration lists as the source of names for prospective jurors is consistent with the Jury Selection and Service Act of 1968, effectuates the statement of policy set forth herein, and does not discriminate against any citizen or

class of citizens. The Clerk of Court shall, on and after the effective date of this plan, select the names of prospective jurors at random from the master source lists of those counties within each of the five designated divisions of this Judicial District.

SECTION 2.04 - FILLING THE MASTER JURY WHEEL

The Clerk shall establish and maintain a master jury wheel for each division established pursuant to Sections 2.01 and 2.02 of this Plan. The Master Jury Wheel shall contain the names of those persons selected at random for prospective jury service. The number of names to be placed in the divisional master jury wheels shall be apportioned among the counties in each of the divisions based upon the approximate ratio that the number of names on the master source lists in each of said counties bear to the approximate total of names on the master source lists in all divisions.

Jury divisions shall bear the names of the places of holding court in the district, and the names and counties assigned to each division. Pursuant to 28 U.S.C. 1863(b)(4), the number of names selected initially for the master jury wheel, to be apportioned among the counties, are:

Bluefield Division Master Jury Wheel	5,000 names
Charleston Division Master Jury Wheel	15,000 names
Huntington Division Master Jury Wheel	5,000 names
Beckley Division Master Jury Wheel	5,000 names
Parkersburg Division Master Jury Wheel	5,000 names

SECTION 2.05 - ADDITION OF NAMES TO THE MASTER JURY WHEELS:

It may be necessary to place additional names into one or more of the master jury wheels. Should such a need arise, either the Chief Judge or the supervising divisional judge will direct the Clerk to obtain additional names from the source lists identified in Section 2.03 of this Plan. 28 U.S.C. § 1863(b)(4).

SECTION 2.06 - METHOD AND MANNER OF RANDOM SELECTION:

a. Determining a quotient

For each division, the Clerk shall make the randomized selection by taking the total number of names from the source list of the counties assigned to that active place of holding 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/she will need 10,000 names in the master wheel, and if there are a total of 1,000,000 names on all county source lists, the "quotient" to be used would be 10,000/1,000,000 or 100, and the Clerk would therefore take every 100th name from the source list 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 source list, or on the automated source list, the first name to be selected. The starting number will either be manually drawn by lot, chosen by automated means, or chosen by any accepted randomizing method.

c. Proportional representation by counties

The Clerk shall insure that each county assigned to each active place of holding court is substantially proportionally represented in the master jury wheel. For the purposes of determining proportional representation in the master jury wheel, the number of registered voters in each county will be used.

d. Method and Manner of Random Selection

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 determining qualification for jury service, and from the qualified wheel for 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 division is substantially proportionally represented in the master jury wheel in accordance with 28 U.S.C. § 1863(b)(3). The selections of names from the source list, the master wheel, and the qualified wheel must also insure that the mathematical odds of any single name being picked are substantially equal.

SECTION 2.07 - PLACING NAMES INTO THE MASTER JURY WHEELS:

Each active place of holding court within the district shall have a master jury wheel which shall be in the custody, care and control of the Clerk of the Court, and shall be carefully maintained, preserved and secured at all times by the Clerk of Court's designated deputy clerk or clerks. The names and addresses of all persons selected at random from the county source lists of the respective places of holding court pursuant to this plan shall be placed in the master jury wheel for that place of holding court. The physical form of record on which names for the master wheels are kept will be computer generated lists and will remain on the disc drives of the computers of the Clerk of Court. Pursuant to 28 U.S.C. § 1863(b)(4) of the Act, the minimum number of names to be placed initially in the master jury wheels shall be a number equivalent to 0.5% of the total number of names on all county voter lists.

The Chief Judge may order additional names of registered voters to be selected at random and in accordance with the formula herein above described from the source list of each county and placed

in the master jury wheel as needs and circumstances may require. As herein provided, the master jury wheel of each place of holding court shall be emptied every two years and refilled, but, in the event of some ascertained impropriety or unsatisfactory operation, the wheel may, on order of the Chief Judge, be emptied and refilled at other times. The master jury wheels currently in full force and effect shall be emptied and refilled by July 1, 2005 and every two years thereafter. After the names are selected from the source list for each divisional master wheel, each individual is then assigned a random number.

SECTION 2.08 - DRAWING OF NAMES FROM THE MASTER JURY WHEELS:

From time to time as directed by the Court, the Clerk shall publicly draw from the master jury wheels' numerical list the names of as many persons as may be required to maintain an adequate number of names in the qualified jury wheel for that place of holding court. The number of names to be drawn shall be determined by the Clerk or judge, based upon anticipated juror demands by the Court plus a margin of extra names sufficient to compensate for the estimated number that will prove to be unavailable or ineligible. The Clerk may prepare, by manual or computer means, an alphabetized list of the names drawn. 28 U.S.C. § 1864(a). These names shall not be exhibited to any person except as provided herein and in §§ 1867 and 1868 of the Act, as amended.

SECTION 2.09 - MAILING OF JUROR QUALIFICATION QUESTIONNAIRES:

The Clerk shall by manual or computer means, mail to every person whose name is so drawn a juror qualification form accompanied by instructions to fill out and return the form, duly signed and sworn, to the Clerk by mail within ten days in accordance with § 1864(a) of the Act, as amended. If the person is unable to fill out the form, another shall do it for him/her, and shall indicate thereon that he has done so and the reason therefor. Improperly completed forms shall be returned to the person for proper completion. Persons may be summoned to appear before the Clerk for failure to complete

and return the form. The Clerk shall employ other procedures provided in the Act in order to assure proper and satisfactory completion and return of the juror qualification forms, as a basis, together with other competent evidence, for determination by the Chief Judge, or another district judge designated by him/her for that purpose, whether any person is unqualified for, or exempt, or to be excused from jury service. If the person did not appear in response to a summons, such fact shall be noted on said list. Penal provisions may be invoked against persons not complying with or for violating provisions of the Act, as provided in § 1864(a) thereof.

SECTION 2.10 - RECONSTITUTION OF MASTER JURY WHEEL

The jury wheel for each division shall be reconstituted upon the approval of the amended Jury Plan, and the master jury wheel and the qualified jury wheel for each division shall be emptied as set forth in this plan.

SECTION THREE

QUALIFYING GRAND AND PETIT JURORS

SECTION 3.01 - GENERAL

Returned questionnaires shall be examined to determine qualification to serve. Only objective criteria may be used to determine whether any person has satisfied any qualification for jury service or whether a basis exists for exempting or excusing any person from jury service.

If the questionnaire indicates that the prospective juror is not qualified or is exempt or excluded as provided by law, the questionnaire shall be so marked and laid aside. All other questionnaires shall be placed on file, and the names corresponding to them shall constitute the qualified prospective jurors and shall be placed in the qualified jury wheel.

SECTION 3.02 - QUALIFICATION FOR JURY SERVICE

Pursuant to 28 U.S.C. § 1865(b), or as subsequently amended, a person shall be deemed qualified to serve as a grand or petit juror unless he

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

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

(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.

SECTION 3.03 - EXEMPTION FROM JURY SERVICE:

Pursuant to 28 U.S.C. § 1863(b)(6), or as subsequently amended, the following persons are exempt from jury service:

(1) members in active service of the Armed Forces of the United States; or

(2) members of the fire or police departments 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; or

(3) 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.

SECTION 3.04 - PERSONS WHO MAY BE EXCUSED FROM JURY SERVICE:

Pursuant to 28 U.S.C. § 1863(b), or as subsequently amended, the Court finds that jury service by the following groups or classes of persons might entail undue hardship, cause extreme inconvenience, and to excuse them would not be inconsistent with law or the policy as stated in this plan. Therefore, upon individual request, the following groups or classes of persons may be excused:

(1) all persons over 70 years of age;

(2) any person who has served as a grand or petit juror in any Federal or State court within the preceding two years;

(3) all members of the National Guard during periods of time when they are on active duty;

(4) all persons having primary care and custody of a child or children under the age of six years and who are not employed outside the home; or who are primary caretakers of elderly or infirm persons; or a person who is essential to the care of aged or infirm persons;

(5) the spouse of any person summonsed to serve on the same jury panel;

(6) a person whose services are so essential to the operation of a business, commercial or agriculture enterprise that it must close or cease to function if that person is required to perform jury duty.

Pursuant to 28 U.S.C. § 1863, all volunteer safety personnel, upon individual request, shall be excused. "Volunteer safety personnel" means individuals serving a public agency (as defined in section 1203(6) of title I of the Omnibus Crime Control and Safe Streets Act of 1968) in an official capacity, without compensation, as firefighters or members of a rescue squad or ambulance crew.

Provided, however, that any person summonsed for jury service may be (1) excused, as the

Court, or the Clerk under supervision of the Court, may direct, upon a showing undue hardship or extreme inconvenience, for such period as the court deems necessary, or (2) excluded by the Court upon a finding that such person may be unable to render impartial jury service, or that his service as a juror would disrupt proceedings, or (3) excluded upon peremptory challenge as provided by law, or (4) excluded pursuant to the procedure specified by law upon a challenge by any party for good cause shown, or (5) excluded upon determination by the court that his service as a juror would be likely to threaten the secrecy of the proceedings, or otherwise adversely affect the integrity of jury deliberations. Whenever a person is exempted, excused, or excluded, except for cause (5) above, from jury service, the Clerk or his designee shall note in the space provided on the juror qualification form the specific ground of exemption, excuse or exclusion. When a juror is excluded for cause (5) above, the judge must determine that such exclusion is warranted.

At the conclusion of a juror's temporary excuse, such juror either shall be summoned again for jury service, or the name of such person shall be reinserted into the master jury wheel for possible resummoning.

SECTION FOUR

QUALIFIED JURY WHEEL ESTABLISHMENT AND SUMMONING PROCEDURES

SECTION 4.01 - QUALIFIED JURY WHEELS:

Into the qualified jury wheel for each division shall be placed the names of all persons drawn at random, from the master jury wheel who are deemed to be qualified as jurors and not exempt, excluded or excused. 28 U.S.C. §1866(a).

SECTION 4.02 - DRAWING AND SUMMONING OF JURY PANELS:

From time to time, as the needs of the Court direct, and after reasonable public notice, the Clerk of Court shall be ordered to draw the names of grand and petit jurors for service in the divisions. Such names shall be publicly drawn from the qualified jury wheels of the respective division as ordered by the Court for service as grand or petit jurors for that respective division.

The Clerk shall issue a jury summons for each person so drawn and issue such summons by first class mail, unless the Court directs otherwise.

After drawing names for jury service for a specified period from the qualified jury wheel, the Clerk shall possess the capability to generate an alphabetical list of names in the event access to such a list becomes necessary.

The Clerk is authorized to grant temporary excuses to prospective jurors on the grounds of undue hardship or extreme inconvenience.

SECTION FIVE

DISCLOSURE OF JURY RECORDS

SECTION 5.01 - DISCLOSURE OF GRAND JUROR INFORMATION:

In accordance with 28 U.S.C. § 1863(b)(7), the names and information relating to any summoned or serving grand juror or grand jury panel shall be confidential and not disclosed to any litigant or member of the public except upon written order of the Court, with the exception of the United States Attorney for impanelment purposes. Applications for disclosure of grand juror information must be made by motion to the Chief Judge and must show exceptional and compelling circumstances why disclosure should be allowed. The United States Attorney shall give notice to the Federal Public Defender of the impanelment of a new grand jury. Upon motion made by the Federal Public Defender, the Court may disclose the grand jury information where the interests of justice so require.

SECTION 5.02 - DISCLOSURE OF PETIT JURY PANEL INFORMATION:

In accordance with 28 U.S.C. § 1863(b)(7), the names of persons assigned to individual petit jury panels may, upon request to the Clerk of Court or his designee, be disclosed to the parties and to the public when ordered by the Court. Notwithstanding this general policy, the Court may order the Clerk to keep these names confidential where the interests of justice so require.

SECTION 5.03 - DISCLOSURE OF JURY RECORDS GENERALLY:

(a) **Release of Jury Plan Information:** Upon request, the Clerk is authorized to provided a copy of this plan to any person requesting information about the juror qualification and selection process.

(b) **Release of Juror Management Records:** In accordance with 28 U.S.C. § 1867(f), the contents of juror information forms may be disclosed to the parties prior to trial for a particular jury panel unless otherwise ordered by the Court. All other records and papers used in connection with the juror qualification and selection process shall not be disclosed, except upon written order of the Court, unless otherwise provided for in Sections 5.01, 5.02 and 5.03(a) of this plan. Parties desiring to prepare or present a motion pursuant to 28 U.S.C. § 1867 shall make written application for disclosure to the Court and tender an appropriate order therewith.

(c) **Retention of Juror Management Records:** In accordance with 28 U.S.C. § 1868, the Clerk shall keep all records and papers relating to the juror management process for four years following the emptying and refilling of the master jury wheels, or for such longer period of time as the Court may require. Upon written request to the Chief Judge, the Court may direct that the Clerk make selected juror management records available for public inspection for the purpose of determining the validity of the selection of any jury.

IT IS SO ORDERED this 14th day of JANUARY, 2005, in Charleston, West Virginia, on behalf of the Judges of the United States District Court, Southern District of West Virginia.

David A. Faber

DAVID A. FABER
Chief United States District Judge