

GENERAL ORDER

2009-01

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY**

**PLAN FOR 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 for the Qualification and Random Selection of Grand and Petit Jurors.

This plan, as amended, shall become effective on the date approved by proper order of the Circuit Council of the United States Court of Appeals for the Sixth 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 or before the next scheduled refilling of such wheels after the 2004 general election as hereinbefore provided in this plan.

SECTION 1.03 — USE OF NON-COURT PERSONNEL:

The Court finds that it may also be necessary or appropriate for the Clerk to utilize the services of non-court personnel to assist in the juror management process. For purposes of this plan, the phrase “*non-court personnel*” may include, but is not limited to:

- County or Commonwealth of Kentucky officials and their employees or agents, who are responsible for custody and maintenance of the source lists identified in Section 2.04 of this Plan.

- Owners, employees, operators and/or agents of computer or data processing centers, bar-coding facilities, mail handling centers, and optical scanning facilities.

- Other administrative or clerical persons whose services may be necessary to select, process, and/or mail the various documents and records involved in the juror management process.

In the event that the Clerk elects to utilize the services of non-court personnel, he shall issue written instructions to the individual(s) describing the operations or activities to be conducted and shall require them to execute an affidavit, under penalty of perjury, certifying compliance with the written instructions.

SECTION 1.04 — SUPERVISION OF THE JUROR MANAGEMENT PROCESS:

The Clerk shall manage the jury selection process under the supervision and control of the Chief Judge. 28 U.S.C. § 1863(b)(1).

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 or other authorized non-court person or agency. 28 U.S.C. §§ 1863(b)(1) and 1869(e).

SECTION TWO
ESTABLISHMENT OF JURY DIVISIONS
AND MASTER JURY WHEELS

SECTION 2.01 — JURY DIVISIONS:

In accordance with 28 U.S.C. § 1869(e), and unless otherwise directed by the court, the following counties shall comprise the jury divisions indicated below:

JURY DIVISION	COUNTIES
Louisville	Breckinridge, Bullitt, Hardin, Jefferson, Larue, Marion, Meade, Nelson, Oldham, Spencer, Washington
Bowling Green	Adair, Allen, Barren, Butler, Casey, Clinton, Cumberland, Edmonson, Green, Hart, Logan, Metcalf, Monroe, Russell, Simpson, Taylor, Todd, Warren
Owensboro	Daviess, Grayson, Hancock, Henderson, Hopkins, McLean, Muhlenberg, Ohio, Union, Webster
Paducah	Ballard, Caldwell, Calloway, Carlisle, Christian, Crittenden, Fulton, Graves, Hickman, Livingston, Lyon, McCracken, Marshall, Trigg

SECTION 2.02 — MASTER JURY WHEELS:

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

SECTION 2.03 — EMPTYING AND REFILLING THE MASTER JURY WHEELS:

Unless otherwise ordered by the Court, the Clerk is directed to empty and refill the divisional master jury wheels between January 1, and May 1 in years subsequent to presidential elections. Upon application to the Chief Judge, the Court may grant additional time to empty and refill the divisional jury wheels as needed.

SECTION 2.04 — SOURCE LISTS:

The Court finds that voter registration lists represent a fair cross-section of the community within the Western District of Kentucky. Therefore, the primary source list for

randomly selecting names to be placed into a master jury wheel shall be the voter registration lists for each county. 28 U.S.C. § 1863(b)(2).

SECTION 2.05 — FILLING THE MASTER JURY WHEELS:

The Clerk shall initially fill the divisional master jury wheels with at least the minimum number of names indicated below. The number of names placed in the master jury wheels shall be a minimum of 0.5 percent of the total number of names on the source list. 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 approximate number of registered voters in each of said counties bears to the approximate total of registered voters in the entire jury division. 28 U.S.C. § 1863(b)(4).

Jury divisions shall bear the name of the places of holding court in the district, and the names and counties assigned to each division. The number of names selected initially for the master jury wheel, to be apportioned among the counties are:

Louisville Division Master Jury Wheel	24,000 names
Bowling Green Division Master Jury Wheel	9,000 names
Owensboro Division Master Jury Wheel	9,000 names
Paducah Division Master Jury Wheel	18,000 names

SECTION 2.06 — 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 divisional supervising judge will direct the Clerk to obtain additional names from the source lists identified in Section 2.04 of this Plan. 28 U.S.C. § 1863(b)(4).

SECTION 2.07 — METHOD AND MANNER OF RANDOM SELECTION:

Unless otherwise approved by the Court, the Clerk may elect to use either of the two

random selection procedures in order to ensure both proportional representation and random selection of names from the various county source lists identified in Section 2.04 of this Plan:

(a) **Computerized Random Selection Programs:**

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 routines approved by the National Institute of Standards and Technology (NIST).

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 jury 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.

- (b) **Alternate Random Selection Procedures:** In the event that the Clerk elects not to use a computerized random selection program to select names from one or more of the county source lists, then the Clerk shall employ the "interval and starting number" selection process set forth in Appendix (1) of this Plan.

SECTION 2.08 — PLACING NAMES INTO THE MASTER JURY WHEELS:

Each name selected pursuant to Section 2.07 of this Plan shall be placed into the appropriate divisional master jury wheel.

SECTION 2.09 — DRAWING OF NAMES FROM THE MASTER JURY WHEELS:

The Clerk or his designee shall publicly draw at random from the master jury wheels the names of as many persons as may be required for jury service. 28 U.S.C. § 1864(a).

SECTION 2.10 — MAILING OF JUROR QUALIFICATION QUESTIONNAIRES:

The Clerk or his designee shall mail a juror qualification questionnaire to every person whose name is drawn from a master jury wheel, with instructions to complete and return the questionnaire by mail or through the court internet web site. 28 U.S.C. § 1864(a).

SECTION THREE

QUALIFYING GRAND AND PETIT JURORS

SECTION 3.01 — QUALIFICATIONS FOR JURY SERVICE:

Every person is qualified for jury service unless that person:

- (a) Is not a citizen of the United States eighteen years old who has resided for a period of one year within the judicial district;
- (b) Is unable to read, write, and understand the English language with a degree of proficiency sufficient to satisfactorily fill out the juror qualification questionnaire;
- (c) Is unable to speak the English language;
- (d) Is incapable, by reason of mental or physical infirmity, to render satisfactory jury service; or

(e) Has a charge pending against him or her 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 that his or her civil rights have not been restored. 28 U.S.C. § 1865(b).

SECTION 3.02 — EXEMPTION FROM JURY SERVICE:

The following persons shall be exempt from jury service in this Court:

1. Members in active service of the Armed Forces of the United States;
2. Member of any governmental police or regular fire department (not including volunteer or non-governmental departments); and
3. Public official of the United States, state, or local government who is elected to public office or directly appointed by one elected to office.

SECTION 3.03 — PERSONS WHO SHALL BE EXCUSED FROM JURY SERVICE:

(1) The Court finds that jury service by members of the occupational classes or groups of persons set out below would entail undue hardship or extreme inconvenience to the members thereof, and that excuse of members thereof would not be inconsistent with Sections 1861 and 1862 of Title 28, United States Code. Accordingly, members of such classes or groups shall, upon individual request therefore, be excused from jury service:

- (a) All persons over seventy (70) years of age;
- (b) A person who has served as a grand or petit juror within the past two years;
- (c) A person who serves without compensation as a volunteer firefighter or a member of a rescue squad or ambulance crew; and

- (d) All Full-time students.
- (2) **Persons Who May be Excused from Jury Service:**
 - (a) A person having active care and custody of a person whose health and/or safety would be jeopardized if required to be absent for jury service; and
 - (b) A person whose services are so essential to the operation of a business, commercial or agricultural enterprise that it must close or cease to function if they are required to perform jury duty.
- (3) **Temporary Excuse upon Individual Requests:** The Court may temporarily excuse any qualified juror from jury service upon application showing undue hardship or extreme inconvenience. Unless otherwise directed by the Court, those individuals temporarily excused from jury service should have their names reinserted into the qualified jury wheel, or deferred until another date for service.
28 U.S.C. § 1866(c)(1).

SECTION 3.04—DETERMINATION OF QUALIFICATION FOR JURY SERVICE.

In accordance with 28 U.S.C. § 1865(a) and (b), the chief judge of the district court, or any other district judge or magistrate judge of the district, or the clerk under supervision of the court, is authorized to determine whether a person is qualified for, or exempt, or to be excused from jury service.

SECTION FOUR

QUALIFIED JUROR WHEEL ESTABLISHMENT AND SUMMONING PROCEDURES

SECTION 4.01 — QUALIFIED JUROR WHEELS:

The Clerk or designee shall establish and maintain a qualified jury wheel. Qualified juror wheels for the respective jury divisions may be maintained, at the discretion of the Clerk, in the main office in the district or in the respective jury divisional offices. The Clerk or designee, after review of the qualification forms, shall place in the qualified jury wheel for each of the jury divisions the names of persons determined to be qualified for jury service. 28 U.S.C. § 1866(a).

The qualified jury wheels shall continue to be used during the master wheel emptying and refilling process. Upon the completion of the master wheel process the qualified wheels will be emptied and refilled with the names of qualified persons from the newly refilled master wheel.

SECTION 4.02 — DRAWING AND SUMMONING OF JURY PANELS:

From time to time, after reasonable public notice, the Clerk, either at the main office or the particular jury divisional office, shall publicly draw from the respective jury division qualified jury wheel such number of names of persons as directed by the Court for service as grand or petit jurors for that respective jury 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.

SECTION FIVE

DISCLOSURE OF JURY RECORDS

SECTION 5.01 — DISCLOSURE OF GRAND JUROR INFORMATION:

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 District Court. Furthermore, the impanelment of every regular special grand jury shall not be conducted in open court or within public view. 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.

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 designee, be disclosed to the parties seven days prior to the trial date unless otherwise ordered by the court and to the public when ordered by the court. Notwithstanding this general policy, the District Court may order the Clerk to keep these names confidential in any case 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 provide a copy of this plan to any person requesting information about the juror qualification process.
- (b) **Release of Master Jury Wheel Information:** Any list prepared pursuant to 28 U.S.C. § 1864(a) shall not be disclosed to any person except upon written order of the District Court, except pursuant to 28 U.S.C. § 1867.
- (c) **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

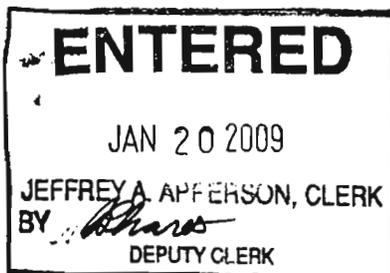
seven days prior to trial unless otherwise ordered by the court. All other records and papers used in connection with the juror qualification and selection process shall not be disclosed, except upon written order of the District Court, unless otherwise provided for in Sections 5.02 and 5.03(a) of this plan. Parties desiring to prepare or present a motion pursuant to 28 U.S.C. § 1867 shall make written application for disclosure to the District Court and tender an appropriate order therewith.

- (d) **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 20 day of January, 2009, in Louisville, Kentucky, on behalf of the Judges of the United States District Court, Western District of Kentucky.

Thomas B. Russell

Thomas B. Russell
Chief Judge



APPENDIX (1) — ALTERNATE RANDOM SELECTION PROCEDURES

Unless otherwise directed by the Court, in the event that the Clerk elects not to use a form of computerized random selection, the following “starting number and interval” selection process should be employed:

- STEP (1) Identify the local, state, or federal official who has responsibility for, and custody of, the source list for each county in a particular jury division.
- STEP (2) Communicate with the custodian to determine the total number of names contained on the source lists of the most recent general election; or in the event that a particular county intends to purge its source list information following a general election, then on a date to be specified by the Clerk.
- STEP (3) After determining the total number of names for each county, segregate the counties into the jury divisions defined in Section 2.01 of this plan.
- STEP (4) Calculate the total number of names for all of the counties within a particular jury division.
- STEP (5) Divide the total number of names contained on all of the source lists in a particular jury division by the total number of names required to be placed in that jury division’s master jury wheel in accordance with Section 2.06 of this plan. The numerical value produced by this calculation shall be referred to as the **interval number**, which represents the interval between selected names on the county source lists, e.g.:

Assume [1] that there are 660,000 names on the combined source lists for the counties comprising a particular jury division; and [2] that the total number of names to be

placed into that division's master jury wheel is 6,000. Given these assumptions, the clerk would divide 660,000 by 6,000. The result of this calculation would produce an interval number of 110.

STEP (6) After calculating the interval number for each jury division, the Clerk should then publicly draw at random for each jury division a **starting number**, to ensure that every name in each of the intervals has an equal chance of being chosen. This starting number shall be selected from a range of numbers which includes the number one through the interval number for each jury division. The selected starting number represents the first name to be selected from each county's source list.

STEP (7) After calculating the interval and starting numbers, the Clerk shall arrange to select the first name from each county's source list which corresponds to the starting number, and thereafter, shall select every subsequent name throughout the remainder of the source list which corresponds to the interval number, e.g.:

Assuming that the starting number for a particular jury division was 10, and the interval number for that jury division was 110, the clerk would arrange that the tenth name from each county's source list be selected, and thereafter every 110th name throughout the remainder of the source lists for each county be selected, e.g. 10, 120, 230, 340, etc.