

*AMENDED PLAN FOR THE RANDOM SELECTION OF
GRAND AND PETIT JURORS
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA*

Pursuant to the Jury Selection and Service Act of 1968 (Public Law 90-274) as amended by Public Law 92-269, and further amendments, the Judges of the United States District Court for the District of South Dakota hereby adopt the following plan for the random selection and service of grand and petit jurors in all divisions of the United States District Court for the District of South Dakota. The master and qualified wheels existing at the time of the adoption of this plan were created under the provisions of the Jury Plan adopted by the District of South Dakota in 1993. With the exception of those jurors qualified and/or summoned under the provisions of that plan who have not yet completed their service, all jurors summoned for service following the adoption of this plan will be qualified and summoned under provisions of this plan. All future master and qualified wheels will be created under the the provisions of this plan.

I.

EFFECTIVE DATE AND DURATION

This plan for jury selection shall be placed in operation after approval by the reviewing panel as provided in Title 28, U.S.C. Section 1863(a), and shall remain in force and effect until modified by the court with the approval of said reviewing panel.

II

POLICY OF THE PLAN

A. It is the purpose of this plan to implement the policies of the United States declared in

Section 1861 of Title 28, United States Code.

- (1) that all litigants in Federal Courts 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 district or division wherein the Court convenes.
- (2) that all citizens shall have the opportunity to be considered for service on grand and petit juries in the District Courts of the United States, and
- (3) that all citizens shall have an obligation to serve as jurors when summoned for that purpose.

B. It is further the purpose of this plan to implement the prohibition against discrimination contained in Title 28, U.S.C. Section 1862, which provides that no citizen shall be excluded from service as a grand or petit juror in the District Courts of the United States on account of race, color, religion, sex, national origin, or economic status.

III.

APPLICABILITY OF PLAN

Pursuant to Section 1869(e) the District of South Dakota is hereby divided for jury selection purposes into four divisions, which are identical with the statutory composition of the district, as follows:

NORTHERN DIVISION - consisting of the counties of Brown, Campbell, Clark, Codington, Corson, Day, Deuel, Edmunds, Grant, Hamlin, McPherson, Marshall, Roberts, Spink and Walworth.

SOUTHERN DIVISION - consisting of the counties of Aurora, Beadle, Bon Homme, Brookings, Brule, Charles Mix, Clay, Davison, Douglas, Hanson, Hutchinson, Kingsbury,

Lake, Lincoln, McCook, Miner, Minnehaha, Moody, Sanborn, Turner, Union and Yankton.

CENTRAL DIVISION - consisting of the counties of Buffalo, Dewey, Faulk, Gregory, Haakon, Hand, Hughes, Hyde, Jerauld, Jones, Lyman, Mellette, Potter, Stanley, Sully, Todd, Tripp, and Ziebach.

WESTERN DIVISION - consisting of the counties of Bennett, Butte, Custer, Fall River, Harding, Jackson, Lawrence, Meade, Pennington, Perkins, and Shannon.

IV.

MANAGEMENT OF THE JURY SELECTION PROCESS

The Clerk of this Court under the supervision of the Judges of this Court shall manage the jury selection process and maintain a separate master and qualified jury wheel for each of the respective divisions. For purposes of this plan, the term "Clerk" is meant to include the Clerk of this Court, any authorized deputy, and any other person authorized by the court to assist the Clerk in the performance of functions under this plan.

V.

SOURCE OF NAMES OF PROSPECTIVE JURORS

South Dakota law allows citizens who are 18 years of age and older to register to vote. Because voter registration lists represent a fair cross section of the community, all grand and petit jurors shall be selected at random from the master voter registration lists maintained by the various county auditors. Such random selections may be made in any of the following alternative methods:

- (1) Copies of master voter registration lists may be secured from the county

auditors and a random selection of names may be made from such lists;

or

(2) The Clerk or a deputy clerk may proceed to the office of the county auditor and make the random selection of names directly from the original records;

or

(3) The Clerk may authorize county auditor personnel, acting in accordance with specific instructions, to randomly select the required number of names from the county lists in a manner consistent with this plan.

VI.

METHOD OF RANDOMLY SELECTING NAMES FROM VOTER REGISTRATION

LISTS FOR CREATION OF MASTER AND QUALIFIED JURY WHEELS

A. Selection Process

The Clerk or deputy clerks shall, either by manual or electronic methods or a combination of the two, make the random selection of names from registered voter lists of the various counties. Such random selection must ensure that names of registered voters from each county of each jury division are substantially proportionately represented in each division's master wheel.

B. Determining Numbers of Names to Draw

Master jury wheels shall be emptied and refilled every four years between January 1, and July 1 of the year following the Federal General Election. The Court shall determine the total number of names to be drawn for each division. The Chief judge may order additional names to be placed in any master wheel at any time.

E. Electronic data Processing Methods

The Court directs the use of electronic data processing methods for any task in which the clerk finds its use advantageous.

F. Taking Names from Voter Registration Lists

Whenever the court uses automated methods, or a combination of manual and automated methods, the system for electronically selecting names from voter lists for the master wheel shall provide for random selection.

G. Taking Names from the Master and Qualified Wheels

Selecting persons from the master jury wheel who will be mailed qualification questionnaires may be accomplished by a purely randomized process through routines approved by the National Institute of Standards and Technology. Similarly, a properly programmed electronic data processing system for pure randomized selection may be used to select jurors to be summoned from the qualified wheel to serve as grand or petit jurors. Such random selections of names from the master wheel must insure that each county within the jury division is substantially proportionally represented when mailing questionnaires and summoning jurors for service.

VII.

QUALIFICATION FOR SERVICE

Exempt and Excused Groups

Judges of the Court, presiding over their respective divisions, shall determine, solely on the basis of information provided on the juror qualification forms and other competent evidence, whether a person is unqualified for, exempt from, or to be excused from jury service.

A. Qualifications

Pursuant to the provisions of Title 28 United States Code, Section 1865(b) any

person shall be determined to be qualified to serve on grand or petit juries in the District 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 the judicial 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 forms;
- (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 such persons has not been pardoned or granted amnesty.

B. Exemptions from Jury Service

Pursuant to the provisions of Title 28 United States Code, Section 1863(b)(6) 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:

- (1) members in active service in the Armed Forces of the United States;
- (2) full-time, employed members of the 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 any 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.)

C. Excuses from Jury Service

Pursuant to the provisions of Title 28, United States Code, Section 1863(b)(5), by the adoption of this plan, the District Court hereby finds that jury service by members of the following occupation 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, and shall be granted upon individual request:

- (1) Over 70 years of age.
- (2) A person who has served as a grand or petit juror within the last two years.
- (3) A person having active care and custody of a child or children under 10 years of age whose health and/or safety would be jeopardized by absence for jury service; or a person who is essential to the care of aged or infirm persons.
- (4) Actively practicing or engaged full-time in one of the following: attorney; physician; dentist; registered nurse; member of the clergy or of a religious order.
- (5) Volunteer safety personnel who serve without compensation as firefighters or members of a rescue squad or ambulance crew for a public agency of the United States, or any State, District, territory, or possession or subdivision thereof.

D. Temporary Excuse from Jury Service

In addition to the members of classes or groups subject to excuse from jury service

on request as herein above provided, any person summoned for jury service may be temporarily excused by a Judge of the Court, or by the Clerk under supervision of the Court, upon a showing of undue hardship or extreme inconvenience. At the conclusion of a juror's temporary excuse period, such person either shall be summoned again for jury service or the name of such person shall be reinserted into the qualified jury wheel for possible resummoning.

E. Jurors Excluded by the Court

Pursuant to the provisions of Title 28 U.S.C. Section 1866(c), any juror who has been summoned for jury service may be excluded by the Court upon the following grounds:

- (1) That such person may be unable to render impartial jury service or that his service as a juror would be likely to disrupt the proceedings;
- (2) That such person is peremptorily challenged as provided by law;
- (3) That such person should be excluded pursuant to the procedure specified by law upon a challenge by any party for good cause shown;
- (4) Upon a determination by the Court that such person as a juror would be likely to threaten the secrecy of the proceedings, or otherwise adversely affect the integrity of jury deliberations; provided that no person shall be excluded under this sub-paragraph (4) unless the judge, in open court, determines that such is warranted, and that exclusion of such person will not be inconsistent with Sections 1861 and 1862 of Title 28 United States Code. The number of persons excluded under this subparagraph (4) shall not exceed one percentum of the number of persons who return executed jury qualification forms during the period, specified in this plan, between two consecutive fillings of the master wheel.

The names of persons excluded under this paragraph (4) together with detailed explanations for the exclusions, shall be forwarded immediately to the judicial council of the circuit, for disposition under the provisions of Title 28, USC, Section 1866(c).

(5) That any person excluded from a particular jury under the provisions of subparagraph (1), (2) or (3) of this subsection (E) of this plan, shall be eligible to sit on another jury if this basis for his initial exclusion would not be relevant to his ability to serve on such other jury.

VIII.

DRAWING OF NAMES FROM MASTER WHEEL AND MAILING OF JURY QUALIFICATION QUESTIONNAIRES

The Clerk shall publicly draw at random from the master jury wheel, either at one time or at periodic intervals as determined by the clerk, the names of as many persons as may be required for jury service. These names shall then be arranged on a list, which shall not be disclosed except as provided in Section 1867 and 1868 of the Act. A juror qualification questionnaire shall be mailed to each person whose name has been drawn from the master jury wheel. In any case in which it appears that there is an omission, ambiguity, or error in the execution of any questionnaire, the clerk shall return the form with instructions to the person to make such additions or corrections as may be necessary and to again return the said form to the clerk.

IX.

QUALIFIED JURY WHEEL

The Clerk may maintain a separate qualified jury wheel for each division in the district, and may place in such wheels the names of all persons drawn from the master jury wheel of the

relevant division who are found not disqualified, exempt, or excused from service. The Clerk shall ensure that at all times a sufficient number of names are contained in each of the qualified wheels so that grand and petit jury panels may be drawn at any time required by the court.

Every four years, in the year following the Federal General Election, each division's qualified wheel shall be emptied as soon as the process of qualifying jurors from the new master wheel has produced a sufficient number of qualified jurors to supply the Court's needs. Normally, the emptying (removal of unused names) of the qualified wheels shall be accomplished by July 1 unless the Court should find it necessary to authorize the Clerk to extend that time.

X.

DRAWING OF NAMES FROM QUALIFIED WHEELS, THE ISSUANCE OF SUMMONS AND DISCLOSURE OF NAMES

A. Petit Jury Panels

(1) Division Basis

Each petit jury panel will be summoned on a division-wide basis and will sit at the statutory place or places of holding court in the division.

(2) Drawing from Qualified Jury Wheels

When jurors are needed the clerk shall select at random from the qualified jury wheel the number of jurors needed. Each of those jurors will be mailed a summons requiring their appearance for service on a given day and time.

(3) Petit Jury Panels

All petit jurors who report for service pursuant to a summons will be considered the petit jury panel. Prior to the opening of court, a randomized list will be generated of all those jurors who have reported for service. The jurors will be seated in this randomized order. In the

alternative, a Judge may chose to have the names of all jurors who have reported for service placed in a courtroom jury wheel from which such names shall be drawn at random.

B. Grand Jury Panels

(1) District Basis

Grand jury panels will be called on a district wide basis and may sit in any one of the statutory places of holding court in the district. The Chief Judge of the district may approve the selection of a grand jury selected from a specific division or divisions. If such a panel is selected, the Chief Judge will determine where that panel will report for service.

(2) Drawing from the Qualified Jury Wheels

At such times that a judge of this Court shall order, the Clerk or deputy clerks shall draw sufficient names from the qualified wheel to establish a grand jury panel. The selection of grand jurors shall be made so that each division is proportionately represented on the grand jury . Grand jurors shall be summoned in the same manner as was specified above for petit jurors.

(3) Grand Jury Panels

In the interest of achieving administrative economies, the Court may at any time direct that one grand jury comprised of jurors drawn from the qualified wheel of only one jury division shall serve the entire judicial district.

(C) Disclosure of Names

The lists of names drawn from any master or qualified wheel shall not be disclosed. The names of petit jurors summoned for a particular trial may be made available by the clerk's office prior to trial. The names of grand jurors may be provided to the U.S. Attorney's Office prior to the convening of the Grand Jury. The Court may order any list of juror names to be kept

confidential in a case or cases when the interest of justice so requires.

XI.

UNANTICIPATED SHORTAGE OF PETIT JURORS

When there occurs an unanticipated shortage of available petit jurors on a panel drawn from a master or qualified wheel, the Court may enter an order directing the marshal to summon a sufficient number of petit jurors to meet the requirement of the Court. Such additional petit jurors shall be selected publicly at random by the marshal from voter registration lists of one or more counties in the division as the Court may direct in its order. The marshal may not pick talesmen from by-standers.

XII.

DEFINITIONS AND GENERAL PROVISIONS

There is incorporated herein by reference the provisions of Section 1861 to 1878, of Title 28, United States Code, together with all future amendments of said sections and all laws hereafter enacted relating to grand and petit juries, and trial by jury in the United States.

This plan supersedes all existing plans and shall constitute the rule of this Court.

May 18, 1949
Dated:

Lawrence L. Piersol
Lawrence L. Piersol, Chief Judge
United States District Court
District of South Dakota