

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA

**PLAN FOR THE RANDOM SELECTION OF
GRAND AND PETIT JURORS
July 22, 2008**

Pursuant to the Jury Selection and Service Act of 1968, as amended, 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 1999. 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 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 28 U.S.C. § 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 28 U.S.C. § 1861.
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 prohibit discrimination as set forth in 28 U.S.C. § 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 28 U.S. C. § 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.

V.

CREATION OF THE MASTER AND QUALIFIED JURY WHEEL

A. Source of Names of Prospective Jurors

Because voter registration lists represent a fair cross section of the community, all jurors shall be selected at random from the list of registered voters provided by the office of the South Dakota Secretary of State.

B. The Master Jury Wheel

The master jury wheel shall be refilled at least every four years and must be refilled between January 1 and July 1 of the year following a federal general presidential election. To ensure that the master wheel for each division contains names from each county in each division in the same proportion that existed in the list of registered voters, the master jury wheel shall include the names of all registered voters.

C. Taking Names from the Master and Qualified Wheels

The selection of names from the master jury 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, shall be accomplished by a purely randomized process through a properly programmed electronic data processing system. In each instance, the selections of names shall ensure that the mathematical odds of any single name being picked are substantially equal.

The Court has authorized use of the Jury Management System (“JMS”), an electronic data processing system developed by the Administrative Office of the United States Courts, to select names from the master jury wheel to fill the qualified wheel; to select names from the qualified wheel for 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 jurors.

VI

QUALIFICATION FOR SERVICE AND EXEMPTIONS

The Judges shall use the information provided in the juror qualification forms and other competent evidence to determine whether a person is unqualified or exempt for jury service within their respective divisions. The Judge may delegate this responsibility to the Clerk.

A. Qualification for Jury Service

Pursuant to the provisions of 28 U.S.C. § 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 his or her civil rights have not been restored by pardon or amnesty.

B. Exemptions from Jury Service

Pursuant to the provisions of 28 U.S.C. § 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;

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, or 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.)

VII.

EXCUSES FROM JURY SERVICE

Upon individual request, the presiding judge of each division may grant an excuse from jury service if the judge finds that jury service will entail undue hardship or extreme inconvenience and the excuse will not be inconsistent with the Act. The Court may establish internal operating procedures that allow the Clerk or the Clerk's designee to grant permanent excuses to persons whose service would cause them undue hardship or extreme inconvenience. These procedures would identify specific categories of persons where excuse from jury service would be consistent with the Act.

Pursuant to 28 U.S.C. § 1863(b)(5)(B), the court will grant an excuse, upon individual request, to 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.

Upon individual request, persons summoned for jury service may be temporarily excused by a Judge, or by the Clerk or the Clerk's designee 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.

VIII.

JURORS EXCLUDED BY THE COURT

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

- A. 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;
- B. That such person is peremptorily challenged as provided by law;
- C. That such person should be excluded pursuant to the procedure specified by law upon a challenge by any party for good cause shown;
- D. 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 subparagraph D unless the judge, in open court, determines that such is warranted, and that exclusion of such person will not be inconsistent with 28 U.S.C. §§ 1861 and 1862. The number of persons excluded under this subparagraph D shall not exceed one percent 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 subparagraph (D), together with detailed explanations for the exclusions, shall be forwarded immediately to the Eighth Circuit Judicial Council for disposition under the provisions of 28 U.S.C. § 1866(c).

- E. That any person excluded from a particular jury under the provisions of subparagraphs A, B, or C of this section VIII 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.

IX.

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

From time to time as directed by the Court, the Clerk shall draw names at random from the master jury wheel. 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.

X

QUALIFIED JURY WHEEL

The Clerk shall maintain a separate qualified jury wheel for each division in the district and shall 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.

Following the refill of the master wheel, 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.

XI.

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.

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 choose 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. Composition of Grand Jury Panels

Grand jury panels will consist of jurors from one or more division of the District as approved by the Chief Judge. The Chief Judge shall determine where each grand jury 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. If the grand jury is to include jurors from more than one division, 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 or more jury division shall serve the entire judicial district.

XII.

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 United States Marshal to summon a sufficient number of petit jurors to meet the requirement of the Court. Such additional petit jurors shall be selected at random by the United States Marshal from voter registration lists of one or more counties in the division as the Court may direct in its order.

XIII.

RELEASE OF JUROR INFORMATION

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.

- A. Names and personal information concerning persons who have been entered in the jury wheel shall not be disclosed, except upon order of the Court.
- B. 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 to the presiding judge.
- C. The Clerk will only 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 upon motion of the party if ordered by the court. If so ordered by the court, the names and

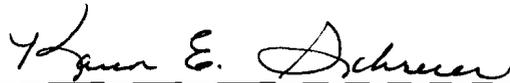
information will be provided in written form. The attorneys (or party) may not share the jury information except as necessary for purposes of jury selection. Following jury selection, the information provided to the attorneys (or party) and any copies that have been made of that information must be returned to the Clerk or destroyed.

- D. The court may order juror names and personal information to be kept confidential where the interests of justice so require.
- E. The names of grand jurors may be provided to the U.S. Attorney's Office prior to the convening of the Grand Jury.
- F. A copy of the qualified petit jury list and answers to questionnaires may be provided to the U.S. Attorney's Office and to the office of the Federal Public Defender.

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

Dated July 22, 2008.

BY THE COURT:



KAREN E. SCHREIER
CHIEF JUDGE