

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF WEST VIRGINIA**

**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 or 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 fair cross section of the counties comprising the divisions* wherein the Court is convened, and that all 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.

* 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
Clarksburg	Harrison, Doddridge, Gilmer, Marion, Monongalia, Taylor, Ritchie, Calhoun, Braxton, Preston and Pleasants
Elkins	Randolph, Barbour, Grant, Hardy, Lewis, Pendleton, Tucker, Upshur, Webster and Pocahontas
Martinsburg	Berkeley, Hampshire, Jefferson, Mineral and Morgan
Wheeling	Ohio, Brooke, Hancock, Marshall, Tyler and Wetzel

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, once every four years.

SECTION 2.03 - SOURCE LISTS

The Clerk shall establish and maintain a master list of residents of the division from which

prospective jurors are to be chosen. The master list shall be a list of individuals compiled from the following two source lists:

- (1) persons who are registered to vote in the county within the division;
- (2) persons who hold a valid motor vehicle operator's or chauffeur's license as determined from the drivers' license lists provided by the Division of Motor Vehicles.

SECTION 2.04 - FILLING THE MASTER JURY WHEEL

The Clerk shall compile and maintain a master jury wheel for each jury division by combining all the names from each source list, identified in Section 2.03, and eliminating all duplicates. The list of licensed drivers shall be the primary list and duplicate names shall be eliminated from the list of registered voters.

In order to verify that a fair cross section of the community will be selected through the use of the source lists consistent with the Jury Selection and Service Act of 1968, a report will be made by the Clerk of this Court to the Chief Judge as expeditiously as the qualifying process permits, showing the race and sex of a fair sample of those persons selected pursuant to this plan who have returned juror qualification forms whether or not such persons were subsequently deemed qualified or unqualified, or were excused or exempted or served.

The plan's reference to random selection shall mean that in any selection procedure only the first name shall be chosen by a purely random method and that each subsequent name for that drawing may be systematically taken at regular intervals throughout the remainder of the source list. This randomized selection procedure, which is described hereinafter, insures: (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.

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 and licensed drivers 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 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.

SECTION 2.07 - PLACING NAMES INTO THE MASTER JURY WHEELS:

Each active point 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 and licensed drivers 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 four 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 August 1 of each year following a general presidential election. 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 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 clerk or jury commission shall post a general notice for public review in the clerk's office and on the court's website explaining the process by which names are periodically and randomly drawn. 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 may 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 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, or is not eighteen years of age, or has not 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)(5)(A), 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 ten

years and who are not employed outside the home; or a person who is essential to the care of aged, infirm or gravely ill persons;

(5) 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 summoned 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). The Clerk shall insure, that at all times, a minimum of 300 names shall be kept in each qualified jury wheel. The Clerk shall maintain all of the qualified wheels through the use of a properly programmed data computer.

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 court divisions. Such names shall be 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 or jury commission shall post a general notice for public review in the clerk's office and on the court's website explaining the process by which names are periodically and randomly drawn.

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

Any person summoned for jury service who fails to appear as directed shall be ordered by the Court to appear forthwith and show cause for his/her failure to comply with the summons. Any person

who fails to show cause for noncompliance with a summons may be subject to the penalties provided in §1864(b) and § 1866(g) of the Act.

The Court will be alert to any changes and requirements and will make adjustment to jury needs by selection of additional names from the master jury wheel and by placing names of additional qualified jurors in the qualified jury wheel for any of the four active divisions as needed. In the event of any unanticipated shortage of available petit jurors drawn from the qualified jury wheel, the Court may require the marshal to summon a sufficient number of persons selected at random from the source list as provided in the plan and in a manner consistent with provisions of §§ 1861-1862 of the Act.

SECTION 4.03 - ASSIGNMENT TO PANELS

When the names of jurors have been drawn at random from the qualified jury wheel and those jurors have been summoned to report on a particular date, or otherwise notified to report on a series of dates, the Clerk shall assign jurors to panels in random order.

A person selected for jury service may be excused by the Clerk of Court from such service only upon a finding that jury service would constitute an undue hardship or extreme inconvenience. The Clerk shall establish an appropriate mechanism for considering requests for excuse from jury service. A reasonable excuse may be a planned vacation, an important business meeting, or another similar event that would cause inconvenience to the juror if required to report for jury service. Those jurors so excused shall be ordered by the Clerk to report for jury service at another time during their tenure, so as to provide for approximately equal distribution of time among the members chosen for jury service during the period for which the jurors were called to serve. Once a juror has been selected and has served for his/her entire designated period of service, his/her name shall not be returned to the

qualified jury wheel.

SECTION 4.04 - FREQUENCY OF SERVICE

In any two-year period, no person shall be required to (1) serve or attend court for prospective service as a petit juror for a total of more than thirty 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 petit juror.

Further, it shall be the policy of the Court that in a two-year period no juror shall be required (1) to be subject to call for petit juror service for more than three months after their first call, (2) to be called for petit juror service more than five times during such three months of service, except when necessary to complete service in a particular case, (3) to serve (after being sworn to try the issues) on more than one petit jury, or (4) unless serving as a member of a special grand jury or otherwise ordered by the Chief Judge of the district, to serve as a member of a grand jury for more than eighteen months, or (5) to be called for grand jury service more than six times.

SECTION 4.05 - FEES

A juror shall be paid an attendance fee of \$40 per day for actual attendance at the place of trial or hearing. A petit juror required to attend more than 10 days in hearing one case may be paid, in the discretion of the trial judge, an additional fee, not exceeding \$10 more than the attendance fee, for each day in excess of 10 days on which he is required to hear such case.

28 U.S.C. § 1871(b)(1) and (b)(2).

SECTION 4.06 - GRAND JURIES

Each active point of holding court in the district shall have a grand jury drawn and qualified. The Clerk shall draw names from the qualified jury wheel to serve as grand jurors for each point of holding court. The number of jurors to be summoned, the date and time for convening of the grand jury, and future meeting dates for the grand jury shall be specified by order entered by the resident judge.

The grand jurors serving, at each point of holding court, typically review evidence and/or indictments of crimes committed in their respective counties. From time to time, due to issues that may arise and effect the statute of limitations, the Speedy Trial Act, 18 U.S.C. § 3161, et seq., criminal complaints and other matters, it may be necessary for the United States Attorney to present matters to a grand jury in one point of holding court that arose from another point of holding court. In recognition of speedy trial concerns and judicial economy, this plan hereby permits such practice to occur. The United States Attorney shall notify the court in advance before invoking this provision of the jury plan and permission shall be at the court’s discretion.

In order to avoid conflicting reporting dates for grand juries within the district, grand jury meeting dates at each point of holding court may be scheduled in the following months:

January	Clarksburg	Martinsburg
February	Wheeling	Elkins
March	Clarksburg	Martinsburg
April	Wheeling	Elkins
May	Clarksburg	Martinsburg
June	Wheeling	Elkins
July	Clarksburg	Martinsburg

August	Wheeling	Elkins
September	Clarksburg	Martinsburg
October	Wheeling	Elkins
November	Clarksburg	Martinsburg
December	Wheeling	Elkins

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.

SECTION 5.02 - DISCLOSURE OF PETIT JURY PANEL INFORMATION

Except as stated in the second paragraph of this section, names of jurors drawn from the qualified jury wheel shall not be made public until the jurors have been summoned and, have been chosen to serve on the jury but, in any case or cases when the interests of justice so require, the Court may then order the names not to be disclosed.

Names of jurors drawn for jury service for a particular period or session of court and the contents of records or papers used by the Clerk in connection with the jury selection process may be disclosed to counsel for parties in litigation set for trial during such period or session, or to any party acting pro se in such litigation, as the Court directs.

SECTION 5.03 - MAINTENANCE AND INSPECTION OF 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.

