

U.S. DISTRICT COURT

N.D. OF N.Y.

FILED

December 15, 2017

LAWRENCE K. BAERMAN, CLERK

**UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF NEW YORK**

**JURY PLAN
FOR THE
RANDOM SELECTION OF GRAND AND PETIT JURORS**



GENERAL ORDER #24

**Reviewed and approved by the Second Circuit Judicial Council
On the 15th day of December, 2017**

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**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK
PLAN FOR THE RANDOM SELECTION OF JURORS**

The Jury Plan adopted by this Court for the random selection of grand and petit jurors filed with the Court on July 1, 1968, including the amendments to the original Plan, is hereby revoked and rescinded, and the following Plan is hereby adopted to become effective on the date approved by the Reviewing Panel of the U.S. Court of Appeals, Second Circuit.

1. APPLICABILITY OF THE PLAN

This Jury Plan is applicable to all divisions in the Northern District of New York. The cities of Albany, Auburn, Binghamton, Malone, Plattsburgh, Syracuse, Utica & Watertown have been designated by 28 U.S.C. § 112 as the places of holding court. There being no statutory divisions in the Northern District of New York, the district is hereby divided into divisions for jury selection purposes, as defined in 28 U.S.C. § 1869(e), as follows:

- a. **Albany Division**: Albany, Columbia, Fulton, Greene, Montgomery, Rensselaer, Saratoga, Schenectady, Schoharie, Ulster, Warren and Washington counties.
- b. **Binghamton Division**: Broome, Chenango, Delaware, Tioga and Tompkins counties.
- c. **Syracuse Division**: Cayuga, Cortland, Jefferson, Madison, Onondaga and Oswego counties.
- d. **Utica Division**: Hamilton, Herkimer, Lewis, Oneida and Otsego counties.
- e. **Plattsburgh Division**: Clinton, Essex, Franklin, and St. Lawrence counties.

2. DECLARATION OF POLICY (28 U.S.C. §1861)

It is the policy of the United States and this Court that all litigants entitled to a trial by jury will have the right to grand and petit juries selected at random from a fair cross section of the community.

It is also the policy of the United States and this Court that all citizens will have the opportunity to be considered for service on grand and petit juries and that they will have an obligation to serve as jurors when summoned for that purpose.

3. DISCRIMINATION PROHIBITED (28 U.S.C. §1862)

No citizen will be excluded from service as a grand or petit juror in this Court on account of race, color, religion, sex, national origin, or economic status.

4. MANAGEMENT AND SUPERVISION OF THE JURY SELECTION PROCESS (28 U.S.C. §1863(b)(1))

The Clerk of the Court will manage the jury selection process under the supervision and control of the Chief Judge, or his/her designee. In the event of the simultaneous absence, disability, or inability to act, of the Chief Judge and any other judges designated, the active district judge who is present in the district and has been in service the greatest length of time will be authorized to act. The use of the word "clerk" and "clerk of the court" in this plan will mean the clerk of the district court of the United States, any authorized deputy clerk, and any other person authorized by the court to assist the clerk in the performance of functions under this plan (28 U.S.C. § 1869(a)).

5. SOURCES OF NAMES OF PROSPECTIVE JURORS (28 U.S.C. §1863(b)(2))

While voter registration lists represent a fair cross section of the community, an even greater number of citizens will be eligible for jury service if supplemental source lists are used. Accordingly, names of grand and petit jurors will be selected at random from voter registration lists of all counties in the relevant division and supplemented by lists of licensed drivers and New York State tax filers for these counties from the New York State Department of Motor Vehicles ("DMV") and the New York State Department of Taxation and Finance. The voter, DMV and tax lists will be merged and duplicate records purged. The resulting combined list is hereinafter referred to as the "combined source list."

6. MAINTAINING THE MASTER JURY WHEEL (28 U.S.C. § 1863(b)(3) & (4))

The names of those randomly selected from the combined source list will be placed into the master jury wheel. The clerk will maintain a master jury wheel for each of the divisions within the district.

The minimum number of names to be placed initially in the master jury wheel of each division will be at least one-half of one percent of the total number of persons on the source lists used for each division.

The Chief Judge of this district may order additional names to be placed in the master jury wheels from time to time as necessary.

The master jury wheel will be emptied and refilled every four years between the date of the November general election and the following September. The qualified wheel will be established by October 1st of the same year.

7. METHOD AND MANNER OF RANDOM SELECTION (28 U.S.C. § 1863(b)(3))

The selection of names from complete source list databases in electronic media for the master jury wheel will be accomplished by a purely randomized process through a properly programmed electronic data processing system. Similarly, a properly programmed electronic data processing system for pure randomized selection will 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 are designed to ensure: (a) the random selection of a fair cross section of the community, (b) that the names of persons residing in each of the counties within the jury division are placed in the master jury wheel, and (c) that each county within the jury division is substantially proportionally represented in the master jury wheel. The selections of names from the source list, the master wheel, and the qualified wheel must also ensure that the mathematical odds of any single name being picked are substantially equal.

In order to ensure the exercise of proper management over the automated aspects of the jury selection process, the operator of the computer will comply with the requirements of this jury plan and such other written instructions as provided by the clerk and will certify their compliance with the requirements.

8. DRAWING OF NAMES FROM THE MASTER JURY WHEEL: COMPLETING THE JURY QUALIFICATION FORM (28 U.S.C. § 1864)

This District has adopted a two-step qualification and summoning procedure. The Jury Management System (JMS) is provided by the Administrative Office of the U.S. Courts and will be used to select names from the master jury wheel for qualification and summoning of prospective jurors.

From time to time as directed by the Court, the clerk will draw at random from the master jury wheel the names of as many persons as may be required for jury service. The clerk will mail to each person whose name is drawn from the master wheel a juror

qualification form or a notice to complete the juror qualification form electronically through the Court's internet website at www.nynd.uscourts.gov. If the person is unable to fill out the form, another may do it for him/her, and should indicate that they have done so and the reason why.

In any case in which it appears that there is an omission, ambiguity, or error in a form, the clerk will return the form with instructions to the person to make such corrections as may be necessary and to return the form to the clerk within ten days.

Any person who fails to complete the juror qualification form may be summoned by the clerk to appear and to personally complete such form. Any person failing to appear pursuant to a summons may be issued an order to show cause for failure to comply with the summons. A person failing to appear or show cause for noncompliance with a summons may be fined not more than \$1,000, imprisoned not more than three days, ordered to perform community service, or any combination thereof.

Any person who willfully misrepresents a material fact on a juror qualification form for the purpose of avoiding or securing service as a juror may be fined not more than \$1,000, imprisoned not more than three days, ordered to perform community service, or any combination thereof.

The clerk will 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.

9. QUALIFICATIONS FOR JURY SERVICE (28 U.S.C. § 1865)

The clerk is authorized and directed under the supervision of the Court to make a determination as to whether a person is qualified, unqualified, exempt, or to be excused from jury service. Such determination shall be made solely on the basis of information furnished on the juror qualification form and other competent evidence. The clerk will enter such determination in the space provided on the jurors' qualification form and/or in the JMS database.

Any person will be deemed qualified to serve on grand and petit juries in the Court unless he or she:

- 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 fill out satisfactorily the juror qualification form;
- 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/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 his/her civil rights have not been restored.

The names of persons found to be disqualified will not be placed in the qualified wheel.

Notice of persons who identify themselves as non-citizens through the juror qualification process will be provided to appropriate election officials for verifying voter registration eligibility.

10. EXEMPTION FROM JURY SERVICE (28 U.S.C. § 1863(b)(6))

The Court finds and hereby states that the following persons are barred from jury service on the ground that they are exempt:

- a. members in active service of the Armed Forces of the United States;
- b. members of the fire or police departments of any State, District, territory, possession, or subdivision thereof;
- c. public officers in the executive, legislative, or judicial branches of the government of the United States or any State, District, Territory, Possession or subdivision thereof who are actively engaged in the performance of official duties (public officer will mean a person who is either elected to public office or who is directly appointed by a person elected to public office).

The names of persons found to be exempt under this section will not be placed in the qualified wheel.

11. EXCUSES ON INDIVIDUAL REQUEST (28 U.S.C. § 1863(b)(5)(A) & (B))

This Court finds that jury service by members of the following occupational classes or groups of persons would entail undue hardship or extreme inconvenience to the members thereof, and the excuse of such members would not be inconsistent with 28 U.S.C. §1861 and 1862, and will be granted upon individual written request:

- a. persons having active care and custody of a child under (12) years of age whose health and/or safety would be jeopardized by their absence for jury service;
- b. a person who is essential to the care of the aged or infirm persons;
- c. persons more than 70 years of age;

- d. volunteer safety personnel (personnel who serve without compensation as fire fighters, members of a rescue squad or ambulance crew for a public agency);
- e. actively practicing attorneys, physicians, dentists, clergy, and registered nurses;
- f. sole proprietor of a business.

12. TEMPORARY EXCUSES (28 U.S.C. § 1866(c))

Upon a showing of undue hardship or extreme inconvenience, a person summoned for jury service may be excused by the clerk, under supervision of the Court, for such period of time as the clerk deems necessary. At the conclusion of such period, the person's name will be summoned again for jury service, or placed back into the qualified wheel. If the circumstances causing undue hardship or extreme inconvenience may be reasonably expected to continue for an indefinite period, the prospective juror may be excused from the current jury wheel.

Due to the large geographic distribution and the variable climate of the Northern District, the Court recognizes that a juror's travel distance may cause an undue hardship or extreme inconvenience. Accordingly, the clerk will evaluate travel conditions on a case-by-case basis at the time of summoning for a temporary excuse pursuant to this section.

If a summoned juror has changed residence from one division of the Court to another division of the Court, subsequent to the establishment of their qualification, such juror will be excused from service in the division of original residence for such period of time as the clerk deems necessary. At the conclusion of that period, the person will be summoned for jury service in the division of current residence.

A summoned juror, who has previously attended court for prospective service as a grand or petit juror in a state or federal court, will be granted a two-year postponement, upon individual written request (28 U.S.C. § 1866(e)).

13. QUALIFIED JURY WHEEL (28 U.S.C. § 1866(a))

The clerk will maintain separate qualified jury wheels for each division in the district and will place in such wheels the names of all persons drawn at random from the master jury wheels and not disqualified, exempt, or excused pursuant to this plan. The qualified wheels may be refilled in one drawing, or in increments.

14. SELECTION AND SUMMONING OF JURY POOLS DISCLOSURE OF POOL NAMES (28 U.S.C. §1863(b)(8); 1866)

From time to time the clerk will draw at random from the qualified jury wheel or wheels, either manually or by use of a properly programmed data computer, such numbers of names of persons as may be required for assignment to grand or petit jury pools. Each person drawn for jury service will be issued a summons. Summonses will be served by first-class mail addressed to each potential juror at his/her usual residence. The clerk will 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. Names drawn from a qualified jury wheel will not be made available to the public or the press until the jurors have been summoned and have appeared at the courthouse. Requests for disclosure of these names shall be made in writing to the presiding trial judge. In accordance with 28 U.S.C. § 1863(b)(7), the Court may, at any time, keep these names confidential in any case where the interest of justice so requires.

Any person summoned for jury service who fails to appear as directed may be ordered by the Court to appear forthwith and show cause for failure to comply with the summons. Any person who fails to show good cause for noncompliance with a summons may be fined not more than \$1,000, imprisoned not more than three days, ordered to perform community service, or any combination thereof.

15. PUBLIC ACCESS

The office of the Clerk of the Court will retain and, when requested, provide access to the following public documents:

- a. Jury Selection Plan (General Order 24), available at www.nynd.uscourts.gov.
- b. The clerk's instructions to the agency that carries out the automated name selection tasks for the refill of the jury wheel.
- c. Required public notices, showing where and when posted.

16. MAINTENANCE AND DISCLOSURE OF RECORDS (28 U.S.C. §1867(f); 1868)

- a. Contents of Records

The contents of records or papers used by the clerk in connection with the jury selection process will not be disclosed to anyone other than court personnel except (1) pursuant to this plan, (2) as authorized by the Chief Judge or Jury Judge, or (3) as may be necessary in the preparation of a motion challenging the juror selection process (28

U.S.C. § 1867). The parties in a case will be allowed to inspect, reproduce and copy such records or papers at all reasonable times during the preparation and pendency of such a motion. Any person who discloses the contents of any record or paper in violation of this subsection may be fined not more than \$1,000, imprisoned not more than one year, or both.

After the master jury wheel is emptied and refilled and after all persons selected to serve as jurors before the master wheel was emptied have completed such service, all records and papers compiled and maintained by the jury office with regard to the emptied master jury wheel will be preserved in the custody of the clerk for four years.

b. Names of Trial Jurors

1. The names of trial jurors may be released to the parties, the public, or the press at the conclusion of a trial only upon leave of the Court. All requests for release of juror names must be made in writing to the presiding trial judge.
2. Lists of potential juror names and Jury Biographical Information Sheets, provided to attorneys at the start of jury selection, are the property of the Court and must be returned to the Court at the conclusion of each day's proceedings for proper disposal.
3. Pursuant to Rule 49.1 (e) of the Federal Rules of Criminal Procedure, this Court has determined that the names of all jurors and potential jurors will not be disclosed in the public docket or in transcripts filed with the Court absent an order of the Court. Transcripts will be filed in redacted form in the public docket. All requests for unredacted transcripts should be submitted in writing to the presiding trial judge.¹

c. Report on Operation of the Jury Selection Plan (AO-12)

Any party seeking disclosure of the Report on Operation of the Jury Selection Plan (AO-12), must make written application to the Chief Judge or designated jury judge. Disclosure will be made only upon the approval of the Chief Judge or jury judge.

17. GRAND JURY PANELS

Grand juries may be drawn for and from any separate jury division, or for and from any combination of divisions. If a grand jury is to be drawn from a division only, the clerk will draw at random from the qualified wheel of that division such number of prospective grand jurors as may be required for assignment to the grand jury pool. If a grand jury is to be drawn from a combination of jury divisions, the clerk will draw at random from the qualified wheels of each division such number of prospective grand jurors as may be

¹ See also FRCrP 49.1, Privacy Protection for Filings made with the Court (including committee notes).

required in the same ratio that the number of registered voters in each division bears to the total number of registered voters in the combined divisions.

Each person drawn for grand jury service will be issued a summons. The summons will be served by first-class mail addressed to such person at their usual residence.

Individuals summoned to serve as grand jurors may request excusal, temporary excusal, exemption, or disqualification pursuant to the categories described in Sections 9-12 of this plan.

Each grand jury will serve until discharged by court order, but no regular, criminal grand jury will serve for more than eighteen months unless the Court extends the service of the grand jury for a period of six months or less, upon a determination that such extension is in the public interest. Special Grand Juries, as defined in 18 U.S.C. § 3331, will serve a term of eighteen months unless an order for its discharge is entered earlier by the Court. If, at the end of an eighteen-month term or any extension thereof, the District Court determines the business of the grand jury has not been completed, the Court may enter an order extending such term for up to three additional six-month periods. No special grand jury term so extended will exceed thirty-six months, except as provided in 18 U.S.C. § 3333(e).

The Court may direct that alternate jurors be designated at the time a grand jury is selected. Alternate jurors, in the order in which they were designated, may thereafter be impaneled to replace excused jurors. Alternate jurors will be drawn in the same manner and will have the same qualification as the regular jurors and, if impaneled, will be subject to the same challenges, will take the same oath, and will have the same functions, powers, facilities, and privileges as the regular grand jurors.

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

The contents of records or papers used by the clerk in connection with the grand jury selection process may be disclosed to the United States Attorney's Office upon written request to the clerk. Names and contact information for empaneled grand jurors will be provided to the U.S. Attorney's Office without prior leave.

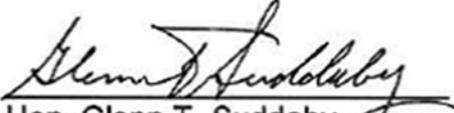
**18. CHALLENGES TO THE SELECTION PROCEDURES
(28 U.S.C. § 1867)**

Any challenge to this plan or the Court's compliance with the provisions of this plan or compliance with the provisions of the Jury Selection and Service Act of 1968 will be made within the times and in the manner provided in 28 U.S.C. § 1867.

**19. ADOPTION OF THE PLAN
(28 U.S.C. § 1863(a))**

The plan is approved and adopted by the Board of Judges of this District on the date entered below. The plan will be placed into operation in accordance with the provisions of the Jury Selection Act of 1968, Section 1863(a). Work toward implementing this plan will begin as soon as practicable after its approval by a reviewing panel consisting of the members of the Judicial Council of the 2nd Circuit and the Chief Judge of this Court, or such District Judge(s) as may be designated by him. This plan will take effect upon approval by the reviewing Panel of the U.S. Court of Appeals, 2nd Circuit.

Dated this 8th day of December, 2017


Hon. Glenn T. Suddaby
Chief U.S. District Judge

Reviewed and approved by the Second Circuit Judicial Council
On the 15th day of December, 2017