

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

Plan for the Random
Selection of Grand and Petit
Jurors



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I. INTRODUCTION

Pursuant to the provisions of the Jury Selection and Service Act of 1968 (Public Law 90-274), as amended, codified in 28 U.S.C. § 1861 et seq., the United States District Court for the District of New Hampshire adopts the following revised Plan for the Random Selection of Grand and Petit Jurors (hereinafter referred to as the Plan), to take effect after approval by the Reviewing Panel prescribed by 28 U.S.C. § 1863(a). The prior Plan for service in this district, which became effective December 22, 1968, as amended January 30, 1976; June 3, 1980; July 25, 1983; March 1, 1985; November 8, 1988; November 12, 1998; June 29, 2001, June 10, 2004, and February 2, 2009, is superseded as of the effective date of this revised plan.

A copy of this Plan will be provided to the Attorney General of the United States and the Administrative Office of the Courts.

II. DECLARATION OF POLICY

It is the policy of this Court that all litigants entitled to trial by jury in this district shall have the right to grand and petit juries selected at random from a fair cross section of the community in this district. All citizens shall have the opportunity to be considered for service on grand and petit juries in this Court and shall have an obligation to serve as jurors when summoned for that purpose.

III. PROHIBITION OF DISCRIMINATION

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

IV. MANAGEMENT AND SUPERVISION OF JURY SELECTION PROCESS

This Plan shall be managed by the Clerk of the Court under the supervision and control of the Chief Judge.

The Court finds that data processing systems can be advantageously used for managing this Plan. The Clerk, after consulting with the Chief Judge, may use a data processing system, or

a combination of both manual and electronic methods, to comply with the requirements of this Plan. In the event of computer malfunction or any overt and/or obvious deviation from this Plan caused by an automated process, the Clerk, with the approval of the Chief Judge, shall manually, or by alternative electronic methods, proceed from the last step correctly implemented.

Data processing systems may be maintained internally by the Court or externally by an independent vendor or governmental agency. In those circumstances in which independent vendors or agencies are utilized, they shall provide to the Court a letter certifying that the work assigned has been completed pursuant to the criteria required by the Court. Such independent vendors or agencies shall treat all information provided by the Court as confidential, shall hold the same in confidence, and shall not use this information for any other purposes other than its business with the Court. Except for instances in which specific prior written authorization is given by the Court, independent vendors or agencies used shall not disclose, publish or otherwise reveal any of this information to any other party whatsoever.

A. Definitions

1. Whenever used in this Plan, the term "Chief Judge" shall mean the Chief Judge of the District Court or, in his/her absence or by delegation, any other District Court Judge or Magistrate Judge.

2. Wherever used in this Plan, the terms "Clerk" and "Clerk of the Court" shall mean the Clerk of the District Court, any designated Deputy Clerk, or any other person authorized to assist the Clerk in performance of functions under this Plan.

3. Whenever used in this Plan, the term "Court" shall have the meaning prescribed by 28 U.S.C. § 1869(f).

4. Whenever used in this Plan, the term Petit and/or Grand Jury "Panel" shall have the same meaning as the term Petit and/or Grand Jury "Pool" as used in the Court's electronic jury management system.

5. Whenever used in this Plan, the term "State" shall mean the State of New Hampshire.

6. Regarding the Department of Safety source list, regardless of age and citizenship status, the term "active driver's licenses" shall include a) licenses held by those individuals who have been convicted as habitual motor vehicle offenders, and b) licenses held by individuals who have had their licenses temporarily suspended. The term "active licenses" shall exclude a) all

deceased individuals, b) those who reside or have moved out of State, c) those possessing expired licenses, and d) those who hold a non-driver's identification card while also possessing an otherwise valid driver's license.

7. Whenever used in this Plan, the term "data processing system" shall include any properly programmed electronic data processing system or device.

V. SELECTION OF PROSPECTIVE JURORS - SOURCE LISTS

The Court finds, pursuant to 28 U.S.C. § 1863(b)(2), that while the general election voter registration lists from all cities and towns within the State of New Hampshire represent a fair cross section of the communities from which the names of grand and petit jurors shall be selected, an even greater number of citizens will be eligible for jury service if supplemental sources are also employed. Therefore, in order to broaden the base from which potential jurors shall be chosen, and to further the policies and rights contained in 28 U.S.C. §§ 1861-1862, the Court approves the list of active licensed drivers, as maintained by the Motor Vehicle Division, Department of Safety, State of New Hampshire, as the supplemental source list, if available.

The list(s) used to select names for the Master Jury Wheel shall be referred to as the "source list(s)." The selection of names from such source list(s) shall be done in a manner consistent with the selection procedures described within this Plan.

A. Voter Registration Source List

Voter registration lists within the State of New Hampshire may be submitted in handwritten, electronic, or printed format. The Clerk shall, through the use of a data processing system, select names from these voter registration lists for inclusion in the Master Wheel. The data processing system shall be designed to a) achieve random sampling or selection, b) traverse the entire database so that all registered voters have an equal chance of selection, and c) assure that the number of names to be drawn from each county shall be substantially in the same proportion as the number of names that each county's voter registration list bears to the total number of names on the voter registration list for all counties within the State.

B. Licensed Driver Source List

The Court authorizes the Clerk to supplement the names drawn from the voter registration source list (see Section V (A) above) with a similarly-sized list of individuals having active driver's licenses issued by the State of New Hampshire. A data processing system designed to achieve random sampling or selection shall be employed.

The Motor Vehicle Division of Department of Safety for the State of New Hampshire maintains an integrated database of all licensed drivers within the State. The Court authorizes the Motor Vehicle Division to exclude from its random sampling those individuals who are deceased, who reside or have moved out of the State, who possess expired licenses, and who hold a nondriver's identification card while also possessing an otherwise valid driver's license.

The number of licensed driver names drawn for each county shall be substantially proportionate to the number of names that each county's voter registration list bears to the total number of names on the voter registration list for all counties within the State.

C. Merger of Source Lists

If a supplemental licensed driver source list is available, the names drawn from the two source lists shall be merged using a data processing system. Every reasonable effort shall be made to eliminate duplications. The names drawn from the source list(s) will constitute the Master Jury Wheel.

D. Pure Randomized Selection Process

The selection of names from the source list(s) for inclusion in the Master Jury Wheel shall be accomplished through a randomized process by using routines developed by the National Institute of Standards and Technology (NIST) or by using some other randomized process approved by the Administrative Office of the United States Courts. The chosen selection methodology must ensure that each county within the State is substantially proportionally represented in the Master Jury Wheel in accordance with 28 U.S.C. § 1863(b)(3).

Similarly, the Clerk shall use a data processing system to randomly select names from the Master Jury Wheel for inclusion in the Qualified Jury Wheel. Persons whose names are selected for inclusion the Qualified Jury Wheel will receive qualification questionnaires and, if qualified, may be summoned to serve as grand or petit jurors. The selections of names from the source

list(s), the Master Jury Wheel, and the Qualified Jury Wheel must also ensure that the mathematical odds of any single name being picked within those list(s)/wheels are substantially equal.

VI. MASTER JURY WHEEL

The Clerk shall randomly select names from the source list(s) in order to create the Master Jury Wheel. The Master Jury Wheel shall contain an electronic list of the names, addresses, and participant numbers of potential jurors. Unless the Chief Judge directs otherwise, this list shall not be disclosed to any person except as provided herein and in 28 U.S.C. §§ 1867-1868.

Pursuant to 28 U.S.C. § 1863(b)(4), the Court finds that it would be cumbersome and unnecessary to place at least one-half of one percent of the total number of persons on the source list(s) into the Master Wheel. Accordingly, the initial selection of names from the source list(s) for inclusion in the Master Jury Wheel shall be, in the judgment of the Clerk, sufficient to satisfy the estimated juror needs for the entire four-year period. In no event shall the minimum number of names initially placed in the Master Jury Wheel be less than one thousand (1,000). The Chief Judge may order additional names be placed in the Master Jury Wheel from time to time as necessary. 28 U.S.C. § 1863(b)(4).

The Master Jury Wheel shall be emptied and initially refilled, as herein provided, once every four (4) years, within twelve (12) months (or as soon as practical) following the November general election, and will be maintained by the use of a data processing system.

When the Master Jury Wheel is emptied, the existing Qualified Jury Wheel will continue to be used until the Clerk determines that an adequate number of persons from the new Master Jury Wheel have been qualified. At that time, the old Qualified Jury Wheel shall be emptied and a new Qualified Jury Wheel created.

VII. QUALIFIED JURY WHEEL

From time to time, as directed by the Chief Judge, the Clerk shall randomly select names from the Master Jury Wheel for potential inclusion in the Qualified Jury Wheel. 28 U.S.C. § 1864(a). The Clerk 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. Id. The Clerk shall maintain an alphabetical list of the names selected that will include each potential juror's address and participant number. Id. Unless the Chief Judge directs otherwise, this list shall not be exhibited to any person except as provided herein and in 28 U.S.C. §§ 1867-1868.

The number of names to be drawn, both initially and for any subsequent sampling, shall be determined by the Clerk based upon anticipated jury demands of the Court plus a margin of extra names sufficient to compensate for the estimated number of persons selected who will be unavailable or ineligible for jury service. 28 U.S.C. § 1864(a). The Clerk shall prepare and mail to every person whose name is drawn a juror qualification questionnaire accompanied by instructions to execute and return the questionnaire, duly signed and sworn, to the Clerk, by mail or electronic means, within ten (10) days in accordance with 28 U.S.C. § 1864(a). If a person is unable to fill out the form, another shall prepare it for him/her and the preparer shall indicate that s/he has done so and the reason why. In any case in which it appears that there is an omission, ambiguity, or error in a questionnaire, the Clerk shall return it with instructions to the person to make any needed additions or corrections and to return it to the Clerk within ten (10) days. Juror qualification questionnaires shall be maintained in the custody of the Jury Administrator.

Any person who fails to return a completed juror qualification questionnaire as instructed may, if time permits, be sent a warning letter requesting immediate return of the completed questionnaire and notified of the possible ramifications of their inaction. Persons who do not respond to this warning letter may be noticed to appear at a qualification hearing before the Magistrate Judge or the Clerk, at which the person may be questioned only with regard to his/her responses to questions on the questionnaire. Any information acquired during a qualification hearing shall be noted on the questionnaire.

The Clerk shall maintain in the Qualified Jury Wheel the names of all persons drawn from the Master Jury Wheel who are qualified to serve as jurors and are not exempt or excused from such service. The Qualified Jury Wheel shall be maintained by the use of a data processing system and shall contain an electronic list of the names, addresses, and participant numbers of qualified jurors.

The Qualified Jury Wheel shall be emptied, refilled, and/or supplemented based upon the anticipated jury demands of the Court.

VIII. DETERMINATION OF QUALIFICATION FOR, AND EXEMPTION OR EXCUSE FROM, JURY SERVICE: QUALIFICATION PHASE

The Chief Judge, on his/her initiative or upon recommendation of the Clerk, or the Clerk under the supervision of the Court, shall determine on the basis of information provided on the juror qualification questionnaire and other competent evidence whether a person is disqualified, exempt, or is to be excused from jury service. The Clerk shall record such determination in a data processing system. The Clerk may require a juror to produce documentation to support a request for disqualification, exemption or excuse.

A. Qualification for Jury Service

Pursuant to 28 U.S.C. § 1865(b), any person shall be deemed qualified to serve on grand and petit juries in this district unless the person:

- (1) is not a citizen of the United States eighteen years or older who has resided for a period of one year within this district;
- (2) is unable to read, write, and understand the English language with a degree of proficiency sufficient to satisfactorily fill out the 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/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 (1) year and his/her civil rights have not been restored by pardon or amnesty.

B. Exemption from Jury Service

Pursuant to 28 U.S.C. § 1863(b)(6), the following groups of persons and occupational classes are exempt from jury duty:

- (1) members in active service in the Armed Forces of the United States;
- (2) full-time members of the fire or police departments of any state, district, territory, possession, or subdivision thereof; and

- (3) 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" shall mean a person who is either elected to public office or who is directly appointed by a person elected to public office.

As the above-mentioned statute bars the enumerated groups of persons from service, they can only become qualified upon legislation so permitting. Should such legislation occur following the implementation of the Plan, the language of the statute shall govern until the Plan can be amended.

C. Permanent Excuse from Jury Service on Individual Request

Pursuant to 28 U.S.C. § 1863(b)(5), the Court finds that jury service by members of the below occupational classes or groups of persons would entail undue hardship or extreme inconvenience, and that their excuse would not be inconsistent with 28 U.S.C. §§ 1861-1862. The following requests for excuse from jury service shall be granted by the Court on individual written request:

- (1) all persons over seventy years of age;
- (2) all persons who have served as a grand or petit juror in a state or federal court within the preceding two years; and
- (3) volunteer safety personnel, such as persons who serve a public agency without compensation, as firefighters or members of a rescue squad or ambulance crew.

IX. SUMMONING OF JURY PANELS

From time to time, as ordered by the Court, the Clerk shall draw at random from the Qualified Jury Wheel the names of as many persons as may be required for grand or petit jury service in the district by using a data processing system. 28 U.S.C. § 1866(a). The Clerk 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. *Id.* The Clerk shall prepare a separate list of names of persons assigned to each grand and petit jury panel. *Id.* The Clerk shall issue summonses directed to the persons whose names are drawn and serve them either by first

class mail pursuant to 28 U.S.C. § 1866(b), by use of any of the alternative service methods outlined therein, or by electronic communication.

Pursuant to 28 U.S.C. § 1866(f), when there is an unanticipated shortage of available petit jurors drawn from the Qualified Jury Wheel, the Court may require the United States Marshal to summon a sufficient number of petit jurors, selected at random from the voter registration lists, lists of actual voters, or other lists specified in this Plan, in a manner ordered by the Court consistent with 28 U.S.C. §§ 1861-1862.

A. Petit Jury Panel

The petit jury panel list shall be disclosed to the parties at least five (5) working days prior to the date scheduled for jury selection, unless otherwise directed by the Chief Judge or the presiding judge. However, the Court may order such names to be kept confidential in any case in which the interests of justice so require. Unless ordered to be confidential, the petit jury panel list shall be made available at the Clerk's Office to the media and the public, upon request, as soon as possible following jury selection. This list shall contain only the jurors' names with no other identifying information. No further information regarding a jury panel shall be provided to the media or public except as provided by federal statute, local rule, this Plan, or as specifically authorized by court order on motion by the requesting party.

When the Court requires less than an entire summoned petit jury panel for a jury selection day, the Clerk shall randomly select the names of the jurors to report. If the Court will be conducting multiple jury selections on the same day, the judicial officer(s) shall advise the Clerk as to the number of jurors required for each jury selection and the Clerk will randomly assign the number of jurors requested from the jurors in attendance. If the judicial officer(s) provide no specific direction, the Clerk shall randomly assign an appropriate number of jurors required for an individual case.

During jury selection, the names of potential petit juror shall be randomly drawn. This selection shall be made by extracting names randomly from a box or similar receptacle containing the names of the present jury panel or by using a data processing system. After the jury selection has concluded, the list of names of empaneled petit jurors shall not be disclosed to the public or media except on motion decided by the presiding judge.

B. Grand Jury Panel

Grand jury panel lists shall not be disclosed, except as may be directed by the Chief Judge, and shall be maintained as required by 28 U.S.C. § 1866(a). The names of twenty-three (23) qualified persons shall be randomly selected from the summoned grand jury pool, which shall then constitute the grand jury empaneled for service. The balance of grand jurors neither excused nor found to be disqualified or exempt from jury service may be assigned as alternates or, at the discretion of the Chief Judge or Magistrate Judge, may be assigned to a petit jury pool to serve at some future date.

C. Duration of Jury Service

In any two (2) year period, no person shall be required to serve or attend court for prospective service as a petit juror for a total of more than thirty (30) days, except when necessary to complete service in a particular case. 28 U.S.C. § 1866(e). Pursuant to Fed. R. Crim. P. 6(g), grand jurors shall serve for a term not in excess of eighteen (18) months, unless the Court finds that it is in the public's interest to extend their term of service. An extension of grand jury service may be granted for no more than six (6) months, except as otherwise provided by statute. Fed. R. Crim. P. 6(g). In any two (2) year period, no juror shall be required to serve upon more than one grand jury or to serve as both a grand juror and a petit juror. 28 U.S.C. § 1866(e).

X. TEMPORARY OR PERMANENT EXCUSE FROM JURY SERVICE ON INDIVIDUAL REQUEST: SUMMONS PHASE

A. Excuse Standard

A request to be excused from jury service after the issuance of a juror summons may be granted only upon a showing of undue hardship, extreme inconvenience, or for any other cause deemed appropriate consistent with 28 U.S.C. § 1866(c).

B. Excuse Request Prior to Petit Jury Selection or Grand Jury Empanelment

Following the issuance of a summons and prior to the commencement of petit jury selection or grand jury empanelment, the Chief Judge or a Magistrate Judge shall determine, on

the basis of information provided on the Juror Information Form and other competent evidence, whether a summoned juror who was initially qualified for jury service may be considered for temporary or permanent excuse. The Chief Judge or a Magistrate Judge may make this determination individually or upon recommendation of the Clerk. The Clerk is delegated the authority to grant temporary excuses of short duration.

All requests for excuse from jury service should be submitted in writing and supported by documentation when appropriate. Except in emergency situations, excuse requests should be returned to the clerk's office by a date certain that is provided in the summons. Jurors who report for jury service and request to be excused, without having previously submitted a written excuse request, shall not receive an attendance fee or mileage reimbursement absent a showing of good cause for failure to submit an advance written excuse request.

The Clerk shall record all excuse determinations a) on the Juror Information Form, b) on the listing of names drawn from the Qualified Jury Wheel, or c) in a data processing system. If a person does not appear in response to a summons, such fact shall be noted on the appropriate juror record. 28 U.S.C. § 1865(a).

C. Excuse Request After Commencement of Petit Jury Selection or Grand Jury Empanelment

After the commencement of a petit jury selection, all juror excuse requests shall be addressed by the presiding judge. The Magistrate Judge shall have authority over all requests for excuse during the grand jury empanelment process. Requests for temporary excuse by members of a sitting grand jury may be resolved by the Clerk.

During petit jury selection or grand jury empanelment, no person or class of persons shall be disqualified, excluded, excused, or exempt from jury service by the presiding judge, except that any person summoned for jury service may be:

- (1) excused upon a showing of undue hardship or extreme inconvenience;
- (2) excluded on the ground that such person may be unable to render impartial jury service or that this service as a juror would be likely to disrupt the proceedings;
- (3) excluded pursuant to the procedure specified by law upon a challenge by any party for good cause shown;
- (4) excluded upon peremptory challenge as provided by law; or

- (5) excluded upon determination, made in open court, that such person's service as a juror would be likely to threaten the secrecy of the proceedings or otherwise adversely affect the integrity of jury deliberations, and that exclusion of such person would not be inconsistent with the policy of 28 U.S.C. §§ 1861-1862. In this event, the name of any person so excluded shall be forwarded by the Clerk immediately to the Judicial Council of the United States Court of Appeals for the First Circuit, together with the Court's detailed explanation for the exclusion, as provided in 28 U.S.C. § 1866(c)(5).

Any person excluded from a particular jury under (2), (3), or (4) above, shall be eligible to sit on another jury if the basis for the initial exclusion would not prohibit future service.

D. Juror Obligation to Serve Post-Excuse

Any juror temporarily excused may be issued a subsequent summons upon the expiration of the conditions that were the grounds for the initial temporary excuse. Any juror permanently excused shall be deemed excused for the duration of the Master Jury Wheel. The Court, in lieu of permanently excusing an otherwise qualified juror, may limit the juror's term of service.

XI. OBLIGATION TO SERVE AND FAILURE TO COMPLY

Every qualified person summoned for jury service shall be obligated to serve. Any person summoned for jury service who fails to appear as directed, to the extent the juror can be located, shall be ordered to appear and show cause for his/her failure to comply with the summons. A juror who fails to show good cause may be fined not more than \$1,000, imprisoned for not more than three days, or ordered to perform community service, or any combination thereof. 28 U.S.C. § 1864(b); 28 U.S.C. § 1866(g). Additionally, a juror who has been assigned to a case, sworn or affirmed, and who fails to appear at any session of court, shall be ordered to appear forthwith and show cause for the failure to appear. The trial judge may also order that pay and reimbursement owed to the juror for prior service be applied against any fine assessed.

XII. GOVERNMENT DISMISSAL OF A GRAND JUROR AFTER EMPANELMENT

Following empanelment of a grand jury, the government may move for the dismissal or temporary excuse of a grand juror for the reasons provided in Fed. R. Crim. P. 6(h) and 28 U.S.C. § 1866(c).

XIII. MAINTENANCE, INSPECTION AND DISCLOSURE OF RECORDS

After the Master Jury Wheel is emptied and refilled pursuant to Section VI of this Plan, and after all persons who were selected to serve as jurors prior to the Master Jury Wheel being emptied have completed their service, all records and papers compiled and maintained by the Clerk shall be preserved for four (4) years and shall be available for public inspection for the purpose of determining the validity of the selection of any jury. 28 U.S.C. § 1868. Such records may then be destroyed in a manner that insures the privacy of the contents.

The contents of all juror records or papers used by the Clerk in connection with the jury selection process shall not be disclosed except as otherwise provided in this Plan or as provided by law or local rule. When any demand is made on the Clerk for an inspection or permission to reproduce and copy the contents of records or papers used in connection with the jury selection process pursuant to 28 U.S.C. §§ 1867(d) and (f) or 28 U.S.C. § 1868, the demand shall be made by motion and the Clerk shall refer the matter to the Chief Judge.

Dated at Concord, New Hampshire, this 6th day of August, 2014.

Joseph N. Laplante
Joseph N. Laplante, Chief Judge
United States District Court

Paul J. Barbadoro
Paul J. Barbadoro, District Judge
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Steven J. McAuliffe, District Judge
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Andrea K. Johnstone, Magistrate Judge
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Approved by the Judicial Council
for the First Circuit

Date: February 23, 2015