

THE JUDICIAL COUNCIL OF THE FIFTH CIRCUIT

U.S. DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
**FILED**

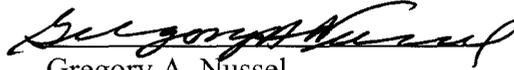
REVIEWING PANEL --- JURY SELECTION PLAN

JAN 12 2009

The Northern District of Texas has proposed an amended Jury Selection Plan, attached herein. The amended plan, having been reviewed by the Reviewing Panel of this Circuit, is approved.

CLERK, U.S. DISTRICT COURT  
By Jeremy Drupley  
Deputy

Entered for the Reviewing Panel at New Orleans, Louisiana, this 31st day of December 2008.



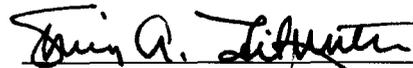
Gregory A. Nussel  
Secretary to the Judicial Council  
of the Fifth Circuit

The following judges comprised and acted as the Reviewing Panel:

(a) The Judicial Council of the Fifth Circuit:

Edith H. Jones  
Jerry E. Smith  
Carolyn Dineen King  
W. Eugene Davis  
Rhesa H. Barksdale  
James L. Dennis  
Edith Brown Clement  
Priscilla R. Owen  
Jennifer Walker Elrod  
Leslie H. Southwick  
Sarah S. Vance  
James J. Brady  
Tucker L. Melançon  
Neal B. Biggers, Jr.  
Louis G. Guirola, Jr.  
Sam R. Cummings  
Hayden Head  
Thad Heartfield  
Fred Biery

(b) United States District Judge:



Sidney A. Fitzwater  
Chief United States District Judge  
Northern District of Texas

U.S. DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
**FILED**

JAN 12 2009

CLERK, U.S. DISTRICT COURT

Deputy

*United States District Court*  
*Northern District of Texas*



**JURY PLAN**

As Amended June 2008

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
MISCELLANEOUS ORDER NO. 5**

**CURRENT PLAN FOR THE SELECTION OF GRAND AND PETIT  
JURORS IN ALL DIVISIONS OF THE NORTHERN DISTRICT OF TEXAS  
ADOPTED PURSUANT TO THE JURY SELECTION AND SERVICE  
ACT OF 1968, SECTION 1861, ET SEQ., TITLE 28, UNITED STATES CODE**

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I. PURPOSE

This plan implements the policies of the Jury Selection and Service Act of 1968 (28 U.S.C. § 1861, et seq.) to the effect that:

- A. All litigants in federal courts entitled to trial by jury will 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;
- B. All citizens will have the opportunity to be considered for service on grand and petit juries in the district courts of the United States, and 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; and
- C. All citizens will have an obligation to serve as jurors when summoned for that purpose.

II. DEFINITIONS

- A. "Court" means the District Judges of the United States District Court of the Northern District of Texas, as a collective body.

- B. "Chief Judge" means the Chief Judge of the Northern District of Texas or, in the event of the Chief Judge's absence or inability to act, the next available active District Judge in the Northern District of Texas who has been in service for the greatest length of time.
- C. "Duty Judge" means the District Judge assigned to a division. In a division having more than one District Judge, the word "Duty Judge" means the Chief Judge or other District Judge who, by agreement or designation, is responsible for overseeing jury matters in that division.
- D. "Presiding Judge" means the Judge to whom a case is assigned. The word "Judge" includes District and Magistrate Judges.
- E. "Clerk" means the Clerk of the United States District Court for the Northern District of Texas, any Deputy Clerk authorized by the Clerk, and any other person authorized by the Court to assist the Clerk in the performance of functions under this plan.
- F. "Division" means one of the statutory divisions in the Northern District of Texas as provided in 28 U.S.C. § 124.
- G. "General Election Voter Registration Lists" means the official records maintained by state or local election officials of persons registered to vote in either the most recent state or the most recent federal general election. The term also includes the list of eligible voters maintained by any federal examiner pursuant to the Voting Rights of 1965 where the names on such list have not been included on the official registration lists or other official lists maintained by the appropriate state or local officials.

- H. "Jury wheel" means a properly programmed electronic data processing system for pure randomized selection of grand or petit jurors.
- I. "Juror qualification form" means a form prescribed by the Administrative Office of the United States Courts and approved by the Judicial Conference of the United States, in accordance with 28 U.S.C. § 1869(h).
- J. "Lists of licensed drivers" means official lists of licensed drivers and state identification card holders maintained by appropriate officials of the State of Texas as such records are prepared according to the state licensing cycle.
- K. "Publicly draw" means to draw by electronic means in a place open to the public at large under supervision of the Clerk as required by the Judicial Conference of the United States. The place of the drawing may be an electronic data processing center located in or out of the district after reasonable notice is given in the district.

### III. APPLICABILITY OF PLAN

This plan will be applicable to each division of this Court as established by 28 U.S.C. § 124. A master and qualified jury wheel will be maintained for each division. The counties comprising each division are as follows:

- A. The Abilene Division comprises the counties of Callahan, Eastland, Fisher, Haskell, Howard, Jones, Mitchell, Nolan, Shackelford, Stephens, Stonewall, Taylor, and Throckmorton. Court for the Abilene Division will be held at Abilene.

- B. The Amarillo Division comprises the counties of Armstrong, Brisco, Carson, Castro, Childress, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hall, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Parmer, Potter, Randall, Roberts, Sherman, Swisher, and Wheeler. Court for the Amarillo Division will be held at Amarillo.
- C. The Dallas Division comprises the counties of Dallas, Ellis, Hunt, Johnson, Kaufman, Navarro, and Rockwall. Court for the Dallas Division will be held at Dallas.
- D. The Fort Worth Division comprises the counties of Comanche, Erath, Hood, Jack, Palo Pinto, Parker, Tarrant, and Wise. Court for the Fort Worth Division will be held at Fort Worth.
- E. The Lubbock Division comprises the counties of Bailey, Borden, Cochran, Crosby, Dawson, Dickens, Floyd, Gaines, Garza, Hale, Hockley, Kent, Lamb, Lubbock, Lynn, Motley, Scurry, Terry, and Yoakum. Court for the Lubbock Division will be held at Lubbock.
- F. The San Angelo Division comprises the counties of Brown, Coke, Coleman, Concho, Crockett, Glasscock, Irion, Menard, Mills, Reagan, Runnels, Schleicher, Sterling, Sutton, and Tom Green. Court for the San Angelo Division will be held at San Angelo.
- G. The Wichita Falls Division comprises the counties of Archer, Baylor, Clay, Cottle, Foard, Hardeman, King, Knox, Montague, Wichita, Wilbarger, and Young. Court for the Wichita Falls Division will be held at Wichita Falls.

#### IV. STATUTORY PROVISIONS INCORPORATED HEREIN

There is incorporated herein by reference all provisions of Chapter 121, sections 1861, et seq., Title 28, United States Code, and all amendments thereto, and other laws that may hereafter be enacted relating to juries and trial by jury.

#### V. MANAGEMENT OF THE JURY SELECTION PROCESS

The Clerk is responsible for managing the jury selection process under the general direction of the Duty Judge.

The Court has determined that electronic data processing methods can be advantageously used for managing this plan. Therefore, a properly programmed electronic data processing system or a combination system employing both manual and electronic machine methods may be used to select master wheel names, select names of persons to be sent questionnaires, select names of persons to be summoned, and to perform other clerical and record keeping functions as determined by the Clerk. Non-court personnel are authorized to assist the Clerk with electronic data processing to comply with the random selection of prospective jurors.

#### VI. JURY SELECTION SOURCES

The source from which the names of petit and grand jurors will be selected at random will be the General Election Voter Registration Lists from all counties within the relevant division. While such lists represent a fair cross-section of the community in this district, it is necessary to foster the statutory policy of 28 U.S.C. §§ 1861 and 1862 to supplement such lists in accordance with 28 U.S.C. § 1862(b)(2) with lists of licensed drivers from all counties within each division using an automated system that will eliminate, as reasonably as possible, any name duplications.

The list or lists used to select names for the master jury wheel will hereafter be referred to as the "source list."

## VII. MASTER JURY WHEEL

For each division, the Clerk will provide a master jury wheel into which the names and/or identifying numbers of those selected at random from the source list for that division will be placed. The total number of names initially added will be determined by the Chief Judge on recommendation of the Clerk based on the Clerk's estimate of the number needed for a period of two years. This number must be at least one-half of one percent of the total number of persons on the voter registration lists in each division, and not less than 1,000. The Clerk will refill the master jury wheel every two years between January 1 and September 1, or at more frequent intervals as determined by the Chief Judge on recommendation of the Clerk. The number of names selected from each county will be in the same ratio to the total number of names to be selected as the number of registered voters in that county bears to the total number of registered voters in the division. Additional names may be placed in the master jury wheel from time to time as may be necessary as determined by the Clerk.

For the purpose of calculating from the voter registration list the total number of registered voters within a respective division within the district, the Clerk will add together the totals contained from each county. The number taken as the total for each county may be based, at the Clerk's option, upon either a manual or a mechanized count of the names on the voter registration list. After first determining the total number of names needed for the master wheel and then the proportionate shares of names to be drawn from the source list of each particular

county, the Clerk will proceed, either manually or through a combination of manual and computer methods, to make the selection of names from the source list of each county.

The selection of names from the source list may be accomplished by a purely randomized process through a properly programmed electronic data processing system. The selection process must ensure that each county within a jury division is substantially proportionally represented in the master wheel in accordance with 28 U.S.C. § 1863(b)(3). The selection of names from the source list must also ensure that the mathematical odds of any single name being picked are substantially equal.

#### VIII. DRAWING NAMES FROM THE MASTER WHEEL AND COMPLETION OF JUROR QUALIFICATION FORMS

At periodic intervals, the Clerk will publicly draw at random from the master jury wheels the names of as many persons as may be required to maintain an adequate number of names in the qualified jury wheels. This may be accomplished using a properly programmed electronic data processing system for pure randomized selection.

The Clerk will mail to each person whose name is drawn a juror qualification form prescribed by the Administrative Office of the United States Courts and approved by the Judicial Conference of the United States, together with an appropriate letter of instruction directing the completion and return by mail or on-line within ten days. Each person will be admonished on transmittal of the questionnaire that failure to complete and return this questionnaire form, or any wilful misrepresentation of any material fact requested by it for the purpose of avoiding or securing jury service, may subject such person to criminal penalties.

## IX. QUALIFICATIONS, EXEMPTIONS, AND EXCUSES FROM JURY SERVICE

Under the supervision of the Duty Judge, the Clerk will determine, solely on the basis of information provided on the juror qualification form and other competent evidence, whether a person is qualified for, unqualified for, exempt from, or eligible for excuse from jury service under subparagraphs A, B, and C below. The determination will be noted on the juror qualification form or on supporting documentation and recorded in automated records of the master jury wheel. The method used for this determination may be either electronic, manual, or a combination of both.

### A. Qualifications.

Every person will be deemed qualified to serve on grand and petit juries in this district, unless he or she:

1. is not a citizen of the United States, at least 18 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 jury qualification form;
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 or 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 or her civil rights have not been restored.

B. Exemptions.

The following persons are exempt from jury service under 28 U.S.C.

§ 1863(b)(6):

1. members in active service in the Armed Forces of the United States;
2. 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, or possession or subdivision thereof, who are actively engaged in the performance of official duties.

C. Automatic Excuses on Individual Request.

The Court has determined that jury service by 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 will not be inconsistent with 28 U.S.C. §§ 1861 and 1862, and will be granted upon individual request.

1. a person who is over the age of 70 years;
2. a person who serves in an official capacity without compensation as a firefighter or member of a rescue squad or ambulance crew for a public agency in accordance with 28 U.S.C. § 1863(b)(5)(B); and
3. a person who has served on a federal grand or petit jury panel within the past two years.

## X. QUALIFIED JURY WHEEL

The Clerk will place the name of each person drawn from the master jury wheel who is determined to be qualified as a juror and not exempt or excused under paragraph IX in the qualified jury wheel for the division in which that person resides. The qualified jury wheel in each division will be emptied and refilled within six months after refilling the corresponding master jury wheel, but not later than October 1 of the refill year. A minimum of 300 names must be maintained in the qualified jury wheel in each division.

## XI. SUMMONING OF JURORS

When the Duty Judge orders a grand or petit jury to be drawn, the Clerk will publicly draw at random the names of persons in the number required for service from the qualified wheel using a properly programmed electronic data system for pure randomized selection. The Clerk will issue summons for persons randomly chosen by this process in accordance with 28 U.S.C. § 1866(b). Thereafter, the persons summoned will be gathered in the designated central jury room for selection to grand and petit jury panels using lists of names randomly drawn from the names of those who have been summoned.

The Court has determined that the composition of persons summoned to serve on any grand jury convened in any of the seven divisions identified in this plan also represents a fair cross section of the entire population of the district. Therefore, grand jury sessions may be held at any of the seven divisions and grand jurors may be drawn from the qualified jury wheel for a single division or a combination of some or all divisions. If a grand jury is drawn from the qualified jury wheel of more than one division, the names will be drawn in essentially the same

proportion that the number of names on the voter registration lists in each division bears to the total number of names on all of the voter registration lists of the combined divisions.

## XII. FURTHER EXCUSES AND EXCLUSIONS AFTER SUMMONS

Except as provided in paragraph IX above, no person will be disqualified, excluded, excused, or exempt from service as a juror, provided that any person summoned for jury service may be excused by a Judge or by the Clerk under the supervision of the Duty Judge upon a showing of undue hardship or extreme inconvenience, for such period as deemed necessary. The Clerk will make arrangements as to any juror who has been excused temporarily based on undue hardship or extreme inconvenience for deferral of the juror's service to the specific future date ordered by the Judge granting the excuse, or if the juror is excused indefinitely for such a reason the Clerk will return the juror's name to the qualified wheel.

The Court has determined that service by the following groups of persons and occupational classes of persons would entail undue hardship or extreme inconvenience to the members thereof and that excuse from jury service of the members thereof on individual request after summons would not be inconsistent with 28 U.S.C. §§ 1861 and 1862:

- A. a person licensed to and actively practicing medicine in the state;
- B. a person who actively cares for a child or children under ten years of age whose service on a jury would require leaving the child or children without adequate supervision;
- C. a person essential to care for an aged or infirm person; or
- D. a full-time student of a public or private secondary school or an accredited college or university.

### XIII. SELECTION OF JURORS IN CASES OF UNANTICIPATED SHORTAGE

When there is an unanticipated shortage of available petit jurors drawn from any division's qualified jury wheel, the Duty Judge may require the marshal to summon a sufficient number of additional petit jurors selected at random from the qualified jury wheel of that division.

### XIV. FAILURE TO APPEAR AS SUMMONED

Any person summoned for jury service who fails to appear as directed may be ordered by the Presiding Judge to appear forthwith and show cause for the person's failure to comply with the summons. Any person who fails to show good cause for non-compliance with a summons may be fined and/or imprisoned as allowed by law.

### XV. CHALLENGING COMPLIANCE WITH SELECTION PROCEDURE

In civil cases and in criminal cases, the exclusive method of challenging any jury on the ground that such jury was not selected in conformity with the provisions of Chapter 121 of Title 28, United States Code, will be that provided by any existing statute and rule of criminal and civil procedure, including but not limited to 28 U.S.C. § 1867.

### XVI. DISCLOSURE OF RECORDS

Disclosure of the contents of any jury records and papers used by the Clerk in connection with the jury selection process is not permitted except as provided by 28 U.S.C. § 1867(f) or on order of the Duty Judge. Parties requesting access to these records must submit the request in writing to the Clerk setting forth the reasons for requesting access.

The clerk will not disclose the names of jurors drawn from the qualified wheel for service on a grand jury panel. These names will be kept confidential except as otherwise authorized by order of the Duty Judge.

The Clerk will not disclose the names of jurors drawn from the qualified wheel for service on a petit jury panel in a case—unless otherwise ordered by the Presiding Judge—until the first day of the jurors' term of service, at which time the names will be disclosed only as necessary for voir dire proceedings. The Clerk will not disclose the juror names to the media or public except on order of the Presiding Judge.

#### XVII. MAINTENANCE OF RECORDS

After any master jury wheel is emptied and refilled as provided in this plan and after all persons selected to serve as jurors prior to emptying of the master jury wheel have completed such service, all papers and records compiled and maintained by the Clerk prior to emptying of the master jury wheel will be preserved in the custody of the Clerk for four years, or for such longer period as may be ordered by the Duty Judge.

#### XVIII. REPORTING STATEMENT

This plan is based on the conclusion and judgment that the policy, purpose, and intent of the Jury Selection and Service Act of 1968 will be fully accomplished and implemented by the use of voter registration lists, as supplemented by the inclusion of subsequent registrants to the latest practicable date and lists of licensed drivers, as the source of an at-random selection of prospective grand and petit jurors who represent a fair cross section of the community. As required by the Judicial Conference of the United States, a report will be made within six months

after each periodic refilling of the master wheel on forms approved by the Judicial Conference giving general data relating to the master wheel, the time and manner of name selection, an analysis of the race, ethnicity and sex of prospective jurors based on returns from a statistically reliable sample of persons chosen at random from the master jury wheel to whom juror qualification forms have been sent, and an analysis by race, ethnicity, and sex of all persons who have actually been qualified for jury service during the period covered by the report.

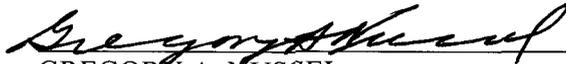
XIX. EFFECTIVE DATE

Provisions of the plan now in effect are superseded and this plan as amended will take effect when approved by a reviewing panel of the Judicial Council of the United States Court of Appeals for the Fifth Circuit, as provided in 28 U.S.C. § 1863.

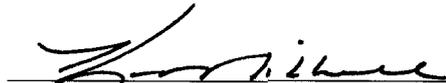
Signed this 12<sup>th</sup> day of June, 2008.

  
\_\_\_\_\_  
SIDNEY A. FITZWATER  
CHIEF JUDGE

This amended plan approved by the Judicial Council of the Fifth Circuit on this 31st  
day of December 2008.

  
GREGORY A. NUSSEL  
SECRETARY OF THE COUNCIL

Filed this 12th day of January, 2009.

  
KAREN MITCHELL  
CLERK OF COURT