

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS

**IN RE: PLAN FOR THE RANDOM SELECTION OF JURORS**

**AMENDED GENERAL ORDER NO. 16**

Comes now for consideration the matter of incorporating the Western District of Arkansas Plan for the Random Selection of Jurors, as Amended, into the General Orders of the Court. The Plan was adopted by the Court on October 16, 2012, and approved by the Eighth Circuit Judicial Council on October 25, 2012.

The Court hereby reaffirms its adoption of said Plan in its totality, incorporating herein and making a part of this Order a copy of said Plan and a copy of the Eighth Circuit Judicial Council Order approving the Plan.

The plan adopted pursuant to this General Order supersedes the Plan for the Random Selection of Jurors adopted pursuant to General Order No. 16 dated January 20, 2012.

Entered this 30<sup>th</sup> day of January, 2013.

US DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS  
FILED

JAN 30 2013

CHRIS R. JOHNSON, Clerk  
By  Deputy Clerk



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Honorable P.K. Holmes, III  
Chief United States District Judge

**United States Courts**  
*Judicial Council of the Eighth Circuit*  
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Millie B. Adams  
Circuit Executive

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**EIGHTH CIRCUIT JUDICIAL COUNCIL**

**ORDER**

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I hereby certify that the Eighth Circuit Judicial Council has approved an amended Plan for the Random Selection of Jurors for the Western District of Arkansas, as adopted by the court on October 16, 2012.

  
Millie B. Adams  
Circuit Executive

St. Louis, Missouri  
October 25, 2012

cc: Judicial Council Members  
Chief Judge Paul K. Holmes III  
Christopher R. Johnson, Clerk of Court  
Administrative Office

Approval was given by the Jury System Committee.

JCO 2441

**IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS**

**PLAN FOR THE RANDOM SELECTION OF JURORS**

Pursuant to 28 U.S.C. §1861 *et seq.*, the following plan for the random selection of jurors is hereby adopted by this Court, subject to approval by a reviewing panel and to such rules and regulations as may be adopted from time to time by the Judicial Conference of the United States.

**APPLICABILITY OF PLAN**

**Section 101**

The Western District of Arkansas consists of six statutory divisions as follows:

1. El Dorado Division, consisting of the counties of Ashley, Bradley, Calhoun, Columbia, Ouachita, and Union.
2. Fort Smith Division, consisting of the counties of Crawford, Franklin, Johnson, Logan, Polk, Scott, and Sebastian.
3. Harrison Division, consisting of the counties of Baxter, Boone, Carroll, Marion, Newton, and Searcy.
4. Texarkana Division, consisting of the counties of Hempstead, Howard, Lafayette, Little River, Miller, Nevada, and Sevier.
5. Fayetteville Division, consisting of the counties of Benton, Madison, and Washington.
6. Hot Springs Division, consisting of the counties of Clark, Garland, Hot Spring, Montgomery, and Pike.

Unless otherwise indicated, provisions of this plan will apply to all divisions in the district.

## **POLICY**

### **Section 201**

It is the purpose of this plan to implement the policies of the United States declared in 28 U.S.C. §1861.

1. All litigants in the Western District of Arkansas entitled to trial by jury have the right to grand and petit juries selected at random from a fair cross section of the community in the district or division wherein the court convenes.
2. All citizens have the opportunity to be considered for service on grand and petit juries in the district courts of the United States.
3. All citizens have an obligation to serve as jurors when summoned for that purpose.

### **Section 202**

It is further the purpose of this plan to implement the prohibition against discrimination contained in 28 U.S.C. §1862, which provides that no citizen will 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.

## **MANAGEMENT AND SUPERVISION OF JURY SELECTION PROCESS**

### **Section 301**

The clerk of the court manages the jury selection process, under the supervision and control of the chief judge of the district court, and in the absence of the chief judge from the district, under

the supervision and control of an available regular active district judge. Any judge who has responsibility for a jury calendar within a division, or to whom is assigned general responsibility for a division, may, with respect to such jury calendar, or to such division for the purpose of this plan perform any act that the chief judge might do or perform if present and acting.

**Section 302**

The chief judge may authorize non-court personnel to assist the clerk in the performance of his or her functions under this plan.

**JURY SELECTION SOURCES**

**Section 401**

The judges of this Court find that the prospective grand and petit juror names will be drawn from two sources: 1) general election voter registration lists, and 2) lists of licensed motor vehicle operators eighteen years or older. Both source lists, for jury management purposes, are maintained by the Arkansas Secretary of State's Office. The Secretary of State's Office will merge both source lists and remove all duplicate names. The merged list will become and be referred to as the source list for the master jury wheel. The judges of this Court do find that the source list, as described above, represents a fair cross-section of the community in this district. Accordingly, names of grand and petit jurors serving in the Western District of Arkansas will be selected by randomized procedures from the source list.

**Section 402**

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. A properly programmed electronic data processing system must

be used to select names from the master jury wheel for the purpose of determining qualification for jury service, and from the qualified wheels for summoning persons to serve as grand or petit jurors. This automated random selection of names must ensure that each county within the jury division is proportionally represented in relation to the number of registered voters, in accordance with 28 U.S.C. §1863 (b)(3). The selection of names from the source list and the master jury wheel must also ensure that the mathematical odds of any single name being selected are substantially equal.

### **Section 403**

In order to ensure proper supervision and management over the automated aspects of jury selection and in accordance with statutory requirements, the clerk of court must comply with the instructions for random selection of grand and petit jurors by electronic machine methods contained in the Court's plan and such written instructions as provided by the court, and will certify that the work has been completed pursuant to such instructions.

In the event of computer malfunction or any overt and/or obvious deviation from this plan caused by automation, the clerk, with the approval of the chief judge or such other judge(s) as may be designated, should manually proceed from the last step correctly implemented.

### **Section 404**

The random selection of names from the source lists from counties within the respective divisions must be planned and programmed according to a "starting number" and "quotient" formula.

This formula will ensure that any group of names chosen will represent all segments of source lists from which drawn and that the mathematical odds of any single name being picked are substantially equal. The selection process will be accomplished as follows:

1. After determining the total number of registered voters in a particular division, the clerk will determine the number of names to be drawn in that division. The number must be adequate to provide the grand and petit jurors that will be needed during a

two-year period, but in no event less than 1,000.

2. The clerk will then compute a quotient to establish the increment of names on the voters' registration list to be passed for each name taken. The quotient is arrived at by dividing the total number of registered voters in a division by the number of names to be drawn.
3. The clerk will then determine a starting number by drawing a number at random from a drum, box, or similar device. The range of numbers in the receptacle will begin with one. The high number will be the sum of the quotient and the remainder left over from the quotient computation.
4. The starting number and the quotient will then be used to select names from the voter lists for each county within the division. If, for example, the starting number is 19 and the quotient is 100, the 19th name will be selected from the list of each county along with the 100th name thereafter, measuring the name intervals in any convenient reasonable way approximating the number 100. Whether the selection process is accomplished by manual or mechanical means, the procedure must ensure names of persons residing in each of the counties within the division are placed in the master jury wheel, and will ensure each county within the division is substantially proportionally represented in the master jury wheel for that division.

## **MASTER JURY WHEELS**

### **Section 501**

The clerk will maintain for each division an appropriate master jury wheel. The master jury wheel is a properly programmed electronic data processing system, tape or device. The names and

addresses of all persons randomly selected from the source lists of the counties in the division will be placed in the wheel for that division.

### **Section 502**

The master jury wheel should be emptied and refilled not later than December 31 of each year in which there is a general election using names provided by the Secretary of State's Office. Thus, the master jury wheel will be emptied and refilled every two years. However, any judge of the Western District of Arkansas may order additional names to be placed in the master wheel from time to time, as necessary and in accordance with the formula described.

### **Section 503**

28 U.S.C. §1864 provides the following:

1. From time to time as directed by the district court, the clerk or a district judge must, after reasonable notice, draw at random from the master jury wheel as to each division the names of as many persons as may be required for jury service in that division. On request of the court, the clerk must have the capacity to prepare an alphabetical list of the names drawn, which list will not be disclosed to any person except pursuant to the district court plan and to 28 U.S.C. §§1867 and 1868. The clerk must mail to every person whose name is drawn from the master wheel a jury qualification form accompanied by instructions to fill out and return the form, duly signed and sworn, to the clerk by mail or through the court's internet website within ten days. 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 additions or corrections as may be necessary and to return the form to the clerk within ten days. The clerk may summon any person who fails to return a completed

jury qualification form, as instructed, to appear before the clerk to complete the form. At the discretion of the district court, a person summoned to appear because of failure to return a jury qualification form who later personally appears and executes a jury qualification form before the clerk may be entitled to receive the same fees and travel allowances paid to jurors under 28 U.S.C. §1871, except where the court finds that his or her prior failure to either execute and mail the form or submit the form via the court's internet website was willful.

2. Any person summoned pursuant to subparagraph 1 above who fails to appear as directed will be ordered by the district court to appear and show cause for his or her failure to comply with the summons. Any person who fails to appear pursuant to such order or who fails to show good cause for noncompliance with the summons may be fined not more than \$1,000, imprisoned not more than three days, ordered to perform community service, or any combination. Any person who willfully misrepresents a material fact on a jury 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. At the time of his or her appearance for jury service, any person may be required to fill out another jury qualification form in the presence of the clerk of the court, at which time, in such case as it appears warranted, the person may be questioned, but only with regard to his or her responses to questions contained on the form. Any information thus acquired by the clerk may be noted on the jury qualification form and transmitted to the judge responsible for determining that person's qualifications to serve as a juror.

## **QUALIFIED JURY WHEELS**

### **Section 601**

The clerk will maintain a qualified jury wheel for each division in the district and will place in such wheel names of all persons drawn from the master jury wheel who are determined to be qualified as jurors and not exempt or excused pursuant to this plan.

### **Section 602**

The chief judge of the district court, or any other judge presiding over a jury trial, or the clerk under supervision of the court, will determine solely on the basis of information provided on the jury qualification form and other competent evidence whether a person is disqualified, excluded, exempt or excused from jury service. The clerk will enter a determination in the court's jury management system.

### **Section 603**

In making such determination the judge will deem any person qualified to serve on grand and petit juries in the district court unless:

1. Such person is not a citizen of the United States eighteen years old who has resided for a period of one year within the judicial district.
2. Such person 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. Such person is unable to speak the English language.
4. Such person is incapable, by reason of mental or physical infirmity, to render satisfactory jury service.
5. Such person 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 by pardon or amnesty.

**Section 604**

The district court hereby finds that, according to 28 U.S.C. §1863 (b)(6), the following persons are barred from jury service on the ground that they are exempt:

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.
3. Public officers in the executive, legislative, or judicial branches of the United States government, or the State of Arkansas, or subdivision thereof, who are actively engaged in the performance of official duties.

**Section 605**

The district court hereby 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 will be consistent with 28 U.S.C. §§1861 and 1862, and should be granted upon individual request.

1. Persons more than 70 years of age.
2. Persons who have, within the past two years, served as a grand or petit juror in a state or federal court.
3. Persons having active care and custody of a child or children less than 10 years of age whose health and/or safety would be jeopardized by their absence for jury service; or a person who is essential to the care of aged or infirm persons.
4. Any persons whose services are so essential to the operation of a business,

commercial, or agricultural enterprise that said enterprise must close if such persons were required to perform jury duty.

5. Persons who serve as volunteer safety personnel, specifically persons who serve without compensation as firefighters or members of a rescue squad or ambulance crew for a public agency.

### **Section 606**

Within 120 days after the master jury wheels are emptied and refilled as provided by this plan, qualified wheels should be emptied and refilled. The clerk will ensure that an ample number of names are contained in each of such wheels at all times as will adequately supply the court with jurors.

## **DRAWING NAMES FOR ASSIGNMENT TO JURY PANELS**

### **Section 701**

The court or the clerk, if so ordered by the court, will draw at random from the qualified jury wheel or wheels such number of names of persons as may be required for assignment to grand or petit jury panels. The clerk may also be directed to draw a supplemental array, a small list of prospective jurors, which may be added to a regular array whose numbers have been depleted through attrition. A supplemental array may also be drawn, by order of the court, when increased jury requirements make it necessary.

### **Section 702**

When the court orders a grand or petit jury to be drawn, the clerk or a duly designated deputy will issue summonses for the required number of jurors. Each person drawn for jury service may be served personally, or by registered, certified, or first-class mail addressed to such person at his or her

usual residence or business address.

1. If such service is made personally, the summons will be delivered by the clerk or a duly designated deputy to the marshal who must make such service.
2. If such service is made by mail, the summons may be served by the marshal or by the clerk or by their duly designated deputies, who will make affidavits of service and will attach thereto any receipt from the addressee for a registered or certified summons.

### **Section 703**

The clerk will prepare a separate list of names of persons assigned to each grand and petit jury panel.

1. Except by order of the court, the names of persons assigned to a grand jury panel may not be publicly disclosed.
2. The names of prospective and sitting petit jurors will not be disclosed to the public or media outside open court, except upon order of the court. Names and personal information concerning prospective petit jurors may be disclosed to attorneys and unrepresented parties with the permission of the presiding judge. A request for disclosure of petit juror names to the media or public must be made to the presiding judge. If juror information is released it shall be limited to the juror name and city of residence.

### **Section 704**

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

1. Such person may be unable to render impartial jury service.

2. The service of such person as a juror would be likely to disrupt the proceedings.
3. Such person is peremptorily challenged as provided by law.
4. Such person should be excluded pursuant to the procedure specified by law upon a challenge by any party for good cause shown.
5. The court has determined that the service of such person as a juror would be likely to threaten the secrecy of the proceedings, or otherwise adversely affect the integrity of jury deliberations; provided, however, that no person should be excluded under this subparagraph unless the judge, in open court, determines that such exclusion is warranted and that the exclusion of the person will be consistent with 28 U.S.C. §§1861 and 1862. Further provided that the number of persons who return excluded under this subparagraph should not exceed one percent of the number of persons who return executed jury qualification forms during the period of approximately four years intervening between two consecutive fillings of the master jury wheel or device under this plan; and provided further that the names of persons excluded under this subparagraph together with detailed explanations for the exclusions, will be forwarded immediately to the Judicial Council of the Eighth Circuit, for its disposition under paragraph (c), 28 U.S.C. §1866.
6. Any person excluded from a particular jury under subparagraphs 1, 2, 3, or 4 of this plan will be eligible to serve on another jury if the basis for his or her initial exclusion would not be relevant to his or her ability to serve on another jury.

### **Section 705**

In addition to those members of the classes or groups identified in Section 605 who may be excused on individual request, any other person summoned for jury service may be excused by the court, upon a showing of undue hardship or extreme inconvenience, for such period as the court

deems necessary, at the conclusion of which such person may be summoned again for jury service.

So far as practical such request for excusal will be made in writing.

#### **Section 706**

The clerk, under supervision of the court, will have the authority to excuse temporarily selected jurors if a reasonable excuse is advanced. A reasonable excuse may be a planned vacation, an important business meeting, illness, or other similar event that would cause undue hardship and extreme inconvenience to the juror if required to report for jury service. Those jurors so excused will be ordered by the clerk to report for service at another time when their service will be needed.

When authorized by the chief judge, the clerk of the court, under the supervision of the court, as provided herein, will have the authority to determine whether persons are qualified, unqualified, exempt or excused from jury service.

#### **Section 707**

In any two-year period, no person will 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.
2. Serve on more than one grand jury.
3. Serve as both a grand and petit juror.

In keeping with the announced policy of the Judicial Conference and to reduce the inconvenience caused to jurors by extended time on call, insofar as is practical, the clerk will attempt to replace arrays on a two month basis, except that Harrison Division arrays will be replaced on a three month basis.

#### **Section 708**

Whenever a person is disqualified, excused, exempt, or excluded from jury service, or fails to appear in response to a summons, the clerk will note the specific reason on his or her jury

qualification form, and in the court's electronic database. Jurors who do not make a request in advance to be excused, and who report for jury service and request immediate release, will not be paid by the court for their service, unless they can prove that circumstances so warranted their making the trip to the courthouse.

#### **Section 709**

When there is an unanticipated shortage of available petit jurors drawn from the qualified jury wheel, the court may require the marshal to summon a sufficient number of petit jurors selected at random from the source lists, in a manner ordered by the court consistent with 28 U.S.C. §§1861 and 1862.

#### **Section 710**

Pursuant to 28 U.S.C. §1878, the Western District of Arkansas will employ a two-step methodology for qualifying and summoning jurors as provided for by the Jury Selection and Service Act.

## **GRAND JURIES**

#### **Section 801**

Grand juries may be drawn for and from the entire district or for and from any separate division, or combination of divisions. When the court orders a grand jury to be drawn for and from the entire district, the names will be drawn from the qualified jury wheels of each of the divisions substantially in proportion to the number of registered voters of the respective divisions as nearly as reasonably practicable. Grand juries drawn from a combination of divisions will be drawn from the qualified wheels of each division in the combination substantially in proportion to the number of registered voters of the respective divisions of the combination as nearly as reasonably practicable.

## **PUBLIC RECORDS**

### **Section 901**

The office of the clerk of the court should retain and, when requested, provide public access to the following documents:

1. The Court's "Juror Selection Plan," including a verbatim description of the method used in determining the "quotient" and "starting number",
2. Verbal or graphically charted description of the procedure employed in the automated selection system, and
3. A copy of the Court's authorization and instruction order to the person or computer service organization which carries out automated name selection tasks for the court.

### **Section 902**

The contents of all other records or papers used by the clerk in connection with the jury selection process will not be disclosed until after the master jury wheel has been emptied and refilled pursuant to 28 U.S.C. §1863 (b) (4) and all persons selected to serve as jurors before the master wheel was emptied have completed such service. However, the court may at any time order disclosure of such records and papers as may be necessary in the preparation or presentation of a motion challenging compliance with selection procedures under 28 U.S.C. §1867(a), (b), or (c). 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 motion.

## **TENURE OF JURORS SUMMONED PRIOR TO EMPTYING**

### **Section 1001**

Although names of qualified jurors may no longer be drawn from the qualified wheel after the wheel's emptying date, jurors drawn prior to that date and put under summons, even without specifying a reporting date, may continue to serve during their full tenure.

## **DEFINITIONS**

### **Section 1101**

For purposes of this plan terms will have the same meaning under this plan as they have in 28 U.S.C. §1869.

## **CHALLENGING A JURY**

### **Section 1201**

The procedures prescribed in 18 U.S.C. §1867 will be the exclusive means by which a person may challenge any jury on the ground that such jury was not selected in conformity with the provisions of this plan or of the Jury Selection and Service Act of 1968, as amended.

## EFFECT ON PANELS DRAWN PRIOR TO EFFECTIVE DATE

### Section 1301

Nothing in this plan will affect the composition of any jury panel drawn prior to the effective date of this plan.

Adopted by the Judges of the United States District Court for the Western District of Arkansas this 16th day of OCTOBER, 2012.

  
FOR THE COURT  
P.K. Holmes, III  
CHIEF U.S. DISTRICT JUDGE

Approved by the Judicial Council of the Eighth Circuit this 25th day of October, 2012.

CIRCUIT EXECUTIVE