

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

GENERAL ORDER 09 - 2

March 3, 2009

REGARDING MODIFICATIONS TO THE JURY PLAN

By public notice dated December 29, 2008, this Court provided notice and solicited comment regarding certain modifications to the *Jury Plan* for the United States District Court for the District of Massachusetts. After review, the Judges of the United States District Court for the District of Massachusetts approved the Court's *Jury Plan* in the form attached hereto. Further, pursuant to 28 U.S.C. §1863, the Plan was approved by the First Circuit Judicial Council on February 23, 2009.

The modifications to the Plan are made to conform to the requirements of the Judicial Administration and Technical Amendments Act of 2008. This revised Plan is effective as of March 3, 2009.

So Ordered.

Mark L. Wolf

Mark L. Wolf
Chief Judge

Rya W. Zobel

Rya W. Zobel
United States District Judge

Douglas P. Woodlock

Douglas P. Woodlock
United States District Judge

Richard G. Stearns

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United States District Judge

Patti B. Saris

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United States District Judge

Michael A Ponsor

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United States District Judge

F. Dennis Saylor IV

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United States District Judge

Morris E. Lasker

Morris E. Lasker
Senior United States District Judge

Joseph L. Tauro

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United States District Judge

William G. Young

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Nathaniel M. Gorton

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Reginald C. Lindsay

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Nancy Gertner

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United States District Judge

George A. O'Toole

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Edward F. Harrington

Edward F. Harrington
Senior United States District Judge

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
PLAN FOR RANDOM SELECTION OF JURORS
(Effective March 3, 2009)**

Pursuant to the Jury Selection and Service Act of 1968, as amended, 28 U.S.C. §1863, the Court adopts the following Plan for the Random Selection of Jurors (the “Plan”).

This Court utilizes the one-step summoning and qualification procedure, as authorized by 28 U.S.C. §1878. Accordingly, jurors shall be qualified and summoned in a single procedure.

1. DEFINITIONS

For purposes of the Plan, the Clerk shall mean the Clerk of the Court, any authorized deputy clerks, and any other person authorized by the Court to assist the Clerk in the performance of functions under this Plan. The “Jury Commissioner” shall mean the Jury Commissioner for the Commonwealth of Massachusetts or his designees. The Jury Commissioner is hereby authorized to assist the Clerk in the performance of producing the Master Jury Wheel.

2. APPLICABILITY

Pursuant to 28 U.S.C. §1869(e), the Master Jury Wheel for the District of Massachusetts is hereby divided into three divisions for petit and grand jury selection, as follows: **Eastern Division:** The Counties of Essex, Middlesex, Suffolk, Norfolk, Bristol, Plymouth, Barnstable, Dukes, Nantucket. **Central Division:** The County of Worcester. **Western Division:** The Counties of Franklin, Hampshire, Hampden, and Berkshire.

3. DISCRIMINATION PROHIBITED

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

4. MANAGEMENT AND SUPERVISION OF JURY SELECTION PROCESS

The Clerk shall manage the jury selection process under the general supervision of the Chief Judge or his designee.

5. RANDOM SELECTION FROM CROSS-SECTION OF THE COMMUNITY

- a.** It is the policy of this Court that all citizens of this district shall have the opportunity to be considered for service on grand and petit juries and to ensure, to the greatest extent possible, that all grand and petit juries in the three divisions of the District of Massachusetts are drawn at random from source lists in the relevant division, that represent a fair cross-section of the community of that division. All citizens shall have an obligation to serve as jurors when summonsed for the purpose of serving on grand and petit juries.
- b.** In order to implement the Court’s policy, the Clerk shall take the following steps, beginning on or after the effective date of this Plan. In the first step, described as the “initial” draw in paragraph 7 of this Plan, the Clerk, or his or her designee, shall select at random, from the Master Jury Wheel, the names of persons to whom summonses will be issued for service as grand or petit jurors. The Master Jury Wheel in use as of the effective date of this Plan, however, may be used until it is emptied according to law. In the second step, described as the “supplemental draw,” in paragraph 8 of this Plan, the Clerk shall select the name of a person at random, from the Supplemental Jury Wheel, to whom an additional summons will be issued, according to the procedures described in paragraph 8, for each summons returned to the Court as “undeliverable” by the United States Postal Service. The source and composition of the Master Jury Wheel and the Supplemental Jury Wheel are described in paragraph 6 of this Plan.

6. MASTER JURY WHEEL, SUPPLEMENTAL JURY WHEEL

- a. Master Jury Wheel**

 - i.** The Clerk shall request that the Massachusetts Jury Commissioner (“MJC”) utilize the random selection procedures outlined in the MJC’s regulation entitled “Specification of Random Selection Methods and Procedures (describing the use by the MJC of the Marsaglia Random Number Generator) for the selection of the names to be placed in the Master Jury Wheel for each division, so that each county shall be represented in proportion to the number of names on its resident lists.
 - ii.** The Court finds that electronic data processing methods can be advantageously used for selecting and copying names from the municipal resident lists for inclusion in the Master Jury Wheel. Therefore, the Clerk shall use a purely randomized process, through a properly programmed electronic data processing system, to obtain names from the municipal

resident lists for inclusion in the Master Jury Wheel. In selecting names for the Master Jury Wheel, however, the Clerk shall maintain the substantial proportionality of names for each county in accordance with 28 U.S.C. § 1863(b)(3).

- iii. The Master Jury Wheel shall consist of the names and addresses of all persons randomly selected from the municipal resident lists as described above. The physical form of record on which names from the Master Jury Wheel are kept may include labels or such electronic devices as magnetic tapes or disc files.
- iv. Initially, the Clerk shall place in the Master Jury Wheel the number of names that are perceived to be needed in order to provide qualified jurors for the Court, but this number shall always be at least 35,000 names for the Eastern division, 4,000 names for the Central division and 4,000 names for the Western division. The Clerk shall empty and refill the Master Jury Wheel once every year during the period between January 1st and April 30th in conformance with this Plan or at more frequent intervals as deemed necessary or expedient by the Clerk under the supervision of the Chief Judge. The Chief Judge, or his designee, may order additional names to be placed in the Master Jury Wheel at other times, as needed, in accordance with Paragraph 6(a)(i) of this Plan.

b. The Supplemental Jury Wheel

Using the procedures described in paragraph 6 (a) (i)-(iv) above, the Clerk shall create a Supplemental Jury Wheel for the purposes described in paragraphs 5 (b) and 8 of this Plan.

c. National Change of Address Database

The Clerk shall submit the names on the Master Jury Wheel and the Supplemental Jury Wheel twice a year to be updated through the national change-of-address system of the United States Postal Service and corrected as appropriate before issuing summonses.

7. METHOD AND MANNER OF RANDOM SELECTION FOR INITIAL DRAW

- a. The Clerk, either at one time or at periodic intervals, shall draw at random from the Master Jury Wheel, the names of as many persons as may be required based upon the anticipated juror demands by the Court. The number of names, plus additional names sufficient to compensate for the estimated number of prospective jurors who will be unavailable or ineligible, shall be determined by the Court.

- b. The Jury Administrator shall post the Court's Jury Plan for public review in the Clerk's Office for each division of the Court and on the Court's website, so that the process by which names are periodically and randomly drawn will be public knowledge.
- c. The Clerk, by automated or manual means, shall prepare and cause to be mailed to every person whose name is drawn, a one-step juror summons/qualification form, accompanied by instructions to complete and return the form to the Clerk by first-class mail, duly signed and sworn, within ten days from the receipt of the form, in accordance with 28 U.S.C. § 1864(a).
- d. The Clerk shall issue summonses to the persons so drawn and serve the summonses by registered, certified or first class mail, as the Clerk shall determine with the approval of the Chief Judge, addressed to each such person at his or her usual residence or business address.

8. METHOD AND MANNER OF RANDOM SELECTION FOR SUPPLEMENTAL DRAW FOR “UNDELIVERABLES”

- a. For each summons returned by the United States Postal Service to the Court as “undeliverable,” the Clerk shall draw at random from the Supplemental Jury Wheel the name of a resident who lives in the same zip code area to which the undeliverable summons had been sent and prepare and cause to be mailed to such resident a new one-step juror summons/qualification form.
- b. The Clerk shall submit the names and addresses of the “undeliverables” to the Office of the Jury Commissioner of Massachusetts (“OJC”), so that the OJC may also update its lists.

9. QUALIFICATIONS, EXEMPTIONS, AND EXCUSES FROM JURY SERVICE

a. Qualifications

Under the supervision of the Court, the Clerk, shall determine, solely on the basis of information provided on the juror qualification form and other competent evidence, whether a person is unqualified for, or exempt, or to be excused from jury service. The determination shall be noted in the space provided on the juror qualification form or on supporting documentation. Any person shall be deemed qualified for jury service unless he or she:

- i. is not a citizen of the United States;
- ii. is less than eighteen years of age;
- iii. has not resided within the judicial district for a period of one year or more;
- iv. is unable to read, write, and understand the English language with a degree of proficiency sufficient to fill out satisfactorily the juror qualification form;
- v. is unable to speak the English language;
- vi. is unable, by reason of mental or physical infirmity, to render satisfactory jury service; or
- vii. 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 been lost and have not been restored.

b. Exemptions

The following classes of persons are exempt from jury service:

- i. members in active service in the armed forces of the United States;
- ii. members of the fire or police departments of any state, district, territory, possession or subdivision thereof;
- iii. 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. Public officer shall mean a person who is either elected to public office or who is directly appointed by the person elected to public office.

c. Excuses

The Clerk, upon individual request, shall excuse the following classes of persons:

- i. any person over the age of 70 years old;

- ii. any person who has served at least 5 days of state jury service or any federal jury service within the last 3 years;
- iii. volunteer safety personnel who serve without compensation as firefighters or members of a rescue squad or ambulance crew for a public agency in accordance with 28 U.S.C. §1863(b)(5)(B). (Public agency shall mean the United States, the Commonwealth of Massachusetts, or any unit of municipal government, department, or instrumentality of the foregoing.)

Under the supervision of the Court, the Clerk, upon individual request showing undue hardship or extreme inconvenience, may excuse any person from jury service for the period that such extreme hardship or inconvenience exists. “Undue hardship or extreme inconvenience” shall mean illness of the juror or a member of the juror’s household; the active care and custody of a child under ten years of age; the active full-time care of an aged or infirm person; or business or recreational travel plans established before the receipt of the summons for jury service.

10. MISCELLANEOUS

- a. No person shall make public or disclose to any person not employed by this Court the names drawn from the Master Jury Wheel until the jurors have been summoned and have appeared, or failed to appear, in response to the summons. Any judge of this Court may order that the names of jurors remain confidential thereafter if the interests of justice so require.
- b. The names of any jurors drawn from the Master Jury Wheel and selected to sit on a Grand Jury shall be kept confidential and not made public or disclosed to any person not employed by the Court, except as otherwise authorized by a court order in an individual case pursuant to 28 U.S.C. § 1867(f).
- c. If a judge of this Court finds that a case requires a large array of jurors but it later appears that the array is larger than necessary, the Clerk shall draw by lots the surplus jurors and assign them as is or appears appropriate. Jurors left over in the array of jurors summoned for grand jury or petit jury service may be called in at the next impaneling of a grand jury or petit jury, together with those jurors who were temporarily excused.
- d. From time to time, the Court may direct the Clerk to draw from the Master Jury Wheel, in accordance with Paragraph 7 of this Plan, such number of persons as may be required for additional arrays. An “additional” array” shall mean a small list of prospective grand or petit jurors which may be added to a regular array of such jurors as necessary when a regular array requires additional names because of excused or increased jury requirements. When added to the regular array, the additional array shall then become a part of the regular array.

Mark L. Wolf

Mark L. Wolf
Chief Judge

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