THE UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF ALABAMA

PLAN FOR THE RANDOM SELECTION

OF GRAND AND PETIT JURORS

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1. Adoption of Plan; Revocation and Recision of Prior Plan

Upon approval by the Reviewing Panel of the U.S. Court of Appeals for the Eleventh Circuit, the jury plan heretofore adopted by this Court for the random selection of grand and petit jurors filed with this Court on March 17, 1997, is hereby revoked and rescinded, and the following plan is hereby adopted.

2. Declaration of Policy

a. It is the policy of the United States District Court for the Middle District of Alabama (the "Court") that all litigants in this Court entitled to trial by jury shall have the right to petit juries selected at random from a fair cross section of the community in the Division wherein the Court convenes. In the exercise of its discretion, consistent with FED.R.CIV.P. 18, the Court has determined that all criminal trials shall be conducted in Montgomery, unless otherwise ordered. Petit juries for criminal matters and grand juries shall be selected proportionately by Division for the District at large.

b. It is further the policy of the Court that all citizens shall have the opportunity to be considered for service on grand and petit juries of the Court and shall have an obligation to serve as jurors when summoned for that purpose.

c. 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.

d. Pursuant to the Jury Selection and Service Act of 1968, as amended, 28 U.S.C. § 1861, et seq., (the "Act"), the following Jury Selection Plan (this "Plan") is hereby adopted by this Court.

3. Applicability of Plan

This Plan applies to the Middle District of Alabama (the "District"), which consists of three Divisions: (1) The Northern Division comprises the Counties of Autauga, Barbour, Bullock, Butler, Clinton, Coosa, Covington, Crenshaw, Elmore, Lowndes, Montgomery and Pike; (2) The Eastern Division comprises the Counties of Chambers, Lee, Macon, Randolph, Russell, and Tallapoosa; and (3) The Southern

Division comprises the Counties of Coffee, Dale, Geneva, Henry, and Houston.

4. Management and Supervision of Jury Selection Process

Pursuant to 28 U.S.C. § 1863(b)(1), this Plan authorizes the Clerk of the Court and designated deputies to manage the jury selection process. In so doing, the Clerk and the Clerk's deputies shall act under the supervision and control of the Chief Judge of the District Court.

5. Random Selection from Voter Lists

Registration of citizens eligible to vote is uniformly conducted throughout the District. A random selection of a fair cross section of the citizens residing in the Counties of the Divisions of the District can be made from the active general election voter lists in the various Counties of the Divisions which comprise the District. To foster the policy and protect the rights secured by sections 1861 and 1862 of the Act, it is not necessary to resort to sources other than the voter registration lists. Accordingly, names of jurors shall be selected at random from the voter registration lists of the Counties that comprise the District.

6. Random Selection by Electronic Data Processing System

At the Clerk's option, and after consultation with the Court, the selection of names from complete source list databases in electronic media for the Master Jury Wheel may be accomplished by a purely randomized process through a properly programmed electronic data processing system. Similarly, at the option of the Clerk and after consultation with the Court, a properly programmed electronic data processing system for pure randomized selection may be used to select names from the Master Wheel for the purpose of determining qualification for jury service, and from the Qualified Wheel for summoning persons to serve as grand or petit jurors. Such random selections of names from the source list for inclusion in the Master Wheel by data computer personnel must insure that each County within the jury division is substantially proportionally represented in the Master Jury Wheel in accordance with 28 U.S.C. § 1863 (b)(3). The selections of names from the source list, the Master Wheel, and the Qualified Wheel must also insure that the mathematical odds of any single name being picked are substantially equal.

7. Master Jury Wheel

a. Establishment. The Clerk shall establish and maintain the Master Jury Wheel for the District. A random selection of names of registered voters from each of the Counties comprising the District's three Divisions shall be placed in the appropriate Master Jury Wheel in such numbers as to insure that each County in the Division is proportionally represented in the Master Jury Wheel. The minimum number of names for the Master Wheel shall be five percent of the total number of registered voters in the District.

b. Maintenance. The Court finds it advantageous to use an electronic data processing system to perform all clerical duties related to the jury selection system. The Court authorizes the Clerk to take such steps as are necessary to establish the Master Jury Wheel and administer the jury system including but not limited to the following:

i. Selection of names from voter registration tape, disc, or other files for inclusion in the Master Jury Wheels;

ii. Selection of names from the Master Jury Wheels for automatic addressing of jury questionnaires;

iii. Selection of names from the Qualified Jury Wheels for issuance to jurors of letters, summonses, or other notices to appear;

iv. Storing of names and addresses in the Master Jury Wheels, or names and addresses in the Qualified Jury Wheels, in such physical forms as may be required;

v. Preparation of lists of juror names, index cards, summonses, and other records as are needed or required by law.

8. Procedure for Random Selection For Master Wheel

Described in this Plan is the procedure for electronic data processing for pure random selection of names for the Master Jury Wheels which the Court finds will result in the drawing of names representing a fair cross section of all parts of the District. According to this procedure, applicable to the initial drawing as well as such additional drawings as may from time to time be necessary, the names selected shall

be from the voters' files as maintained by the Registrar of Voters for each County, according to the pure random process set forth in Section 6 of this Plan. Thus selected, the names from each County comprising the Divisions for which the Master Jury Wheel is being established shall be merged into a single, combined file, referred to as a "Master Wheel." All of the persons whose names appear on the Master Wheel shall be mailed juror qualification questionnaires, as described in this Plan. The names of persons found qualified to serve as jurors, based upon their response to the juror qualification questionnaire, shall be transferred to a "Qualified Wheel," as described in this Plan. As jurors are required, to meet the need of the Court, they shall be summoned to appear, on a pure random basis from the Qualified Wheel for the Division concerned.

9. General Requirements of Master Wheel

a. The minimum number of names to be placed in the Master Wheel shall not be less than five percent of the total number of registered voters in the district. The Master Wheel currently in full force and effect shall be emptied and refilled every four years not later than the first of September of the year following a general presidential election year. Once the Master Wheel has been refilled, the Qualified Jury Wheel shall also be emptied and refilled with those qualified jurors from the newly filled Master Wheel.

b. The Chief Judge of the Court, or any other Judge designated by the Chief Judge, may order additional names to be placed in the Master Jury Wheel as necessary from time to time.

10. Drawing Names from the Master Jury Wheel

a. From time to time, as required, the Clerk, after reasonable public notice, shall publicly draw at random from the Master Jury Wheel by electronic data processing procedures authorized by this plan, the names and addresses of persons to whom questionnaires will be sent for the purpose of examining their qualifications for jury service.

b. The Clerk shall then prepare a list of the names drawn, which list shall not be disclosed to any person except on order of the Court or pursuant to 28 U.S.C. §§ 1867 and 1868. The Clerk shall mail to every person whose name is drawn from the Master Jury Wheel a juror qualification questionnaire accompanied by instructions to complete and return it to the Clerk by mail within 10 days.

c. The juror qualification questionnaire required by 28 U.S.C. §§ 1864(a) and 1869(h) shall be in the form prescribed by the Administrative Office of the United States Courts and approved by the Judicial Conference of the United States.

11. Authorization to Determine Qualifications, Excuses, and Exemptions

For the express purpose of authorizing the Clerk of the Court under the supervision of the Court to determine juror qualifications, exemptions or excuses, the Court hereby incorporates in this plan the provisions of 28 U.S.C. § 1865, which reads as follows:

> "(a) the Chief Judge of the district court, or other such other district court judge as the plan may provide, or the clerk under supervision of the court on his or her initiative...shall determine solely on the basis of information provided on the juror qualification form or other competent evidence whether a person is unqualified for, or exempt, or to be excused from jury service. The clerk shall enter such determination in the space provided on the juror qualification form (or in the database)."

12. Qualification of Jurors

a. Upon receipt of completed juror qualification questionnaires, the Clerk shall review the questionnaires and all persons found to be disqualified, or exempted or excused from service as jurors shall be excluded from the Qualified Jury Wheels.

b. If a person is not disqualified, exempted, excused or otherwise ineligible for service for one of the reasons enumerated in this plan, persons selected for inclusion in a Qualified Jury Wheel shall be presumed qualified for service.

c. In accordance with the provisions of 28 U.S.C. § 1865(b), any citizen of the United States who has reached the age of 18 years and has resided for a period of one year within the District shall be deemed qualified to serve on grand or petit juries unless he or she:

   i. is unable to read, write or understand the English language with a degree of proficiency sufficient to satisfactorily complete the juror qualification questionnaire;

ii. is unable to speak the English language;

iii. is incapable, by reason of mental or physical infirmity, to render satisfactory jury service; or

iv. 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.

13. Exemption from Jury Service

As required by the Act, 28 U.S.C. § 1863(b)(6), the following persons are exempted from jury service; provided, however, that should the exemptions set forth in 28 U.S.C. § 1863(b)(6) be changed, modified or amended, this plan is hereby amended without further action to conform to those changes, modifications or amendments:

a. members in active service in the armed forces of the United States;

b. members of the fire or police departments of the state, or subdivision thereof;

c. public officers in the executive, legislative, or judicial branches of the government of the United States, or the state, or subdivision thereof, who are actively engaged in the performance of official duties. (The term "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.)

14. Individual Requests for Excuse or Deferment

a. Statutory Authority. Pursuant to 28 U.S.C. § 1863(5)(A), this Plan specifies, those groups of persons or occupational classes whose members shall, upon an individual request, be excused from jury service. Pursuant to 28 U.S.C. § 1866 (c), persons summoned for jury service may be excused by the Clerk upon a showing of undue or extreme inconvenience. Based upon this statutory authority, this Plan provides that the Clerk of the Court is authorized to excuse persons summoned for jury service for undue hardship or extreme inconvenience, or any other factor which the Court has specified in this Plan. The Court finds that this delegation of authority to the Clerk, and designated deputies, is consistent with the intent of 28 U.S.C. § 1869(j), which defines

undue hardship or extreme inconvenience as factors which the Court has determined warrant excuse. The statute reads in pertinent part as follows:

> "[U]ndue hardship or extreme inconvenience," as a basis for excuse from immediate jury service under section 1866(c)(1) of this chapter, shall mean great distance, either in miles or travel time, from the place of holding court, grave illness in the family or any other emergency which outweighs in immediacy and urgency the obligation to serve as a juror when summoned, or any other factor which the court determines to constitute an undue hardship or to create an extreme inconvenience to the juror; and in addition, in situations where it is anticipated that a trial or grand jury proceeding may require more than thirty days of service, the court may consider, as a further basis for temporary excuse, severe economic hardship to an employer which would result from the absence of a key employee during the period of such service.

b. Deferment of Occupational Classes or Groups. The Court hereby finds that jury service by members of the following occupational classes or groups of persons may entail undue hardship or extreme inconvenience to members thereof, that excuse or deferment of such members is not inconsistent with the Act, and that such persons shall be granted an excuse or deferment of service upon individual request:

i. Persons over 70 years of age;

ii. Persons actively engaged in professional occupations on a full-time basis, such as doctors, registered nurses, lawyers, active members of the clergy, members of religious orders, and teachers;

iii. Persons having active care and custody of a child or children under 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 an aged or infirm person;

iv. Any person who has served as a grand or petit juror in a state or federal court prior to his or her current call within the past two years;

v. Any person whose services are so essential to the operation of a business, commercial or agricultural enterprise that the enterprise would suffer a severe economic hardship from the absence of the person;

vi. Any person making a showing of "undue hardship or extreme inconvenience," as defined in 28 U.S.C. § 1869(j), for such period as is deemed necessary;

vii. Students enrolled full time in a public, parochial or private school; and

viii. Public agency volunteer safety personnel, e.g., persons who serve without compensation as firefighters, members of a rescue squad or ambulance crew.

c. Excuses or Deferments on Individual Request. In addition to the excuses or deferment permitted in this plan, and consistent with the determination made in this plan, any judge or the Clerk of the Court may excuse or defer any person summoned for grand or petit jury service when it is determined that service by the person would entail undue hardship or extreme inconvenience. A person summoned for service may request in writing an excuse or deferment prior to reporting or may make a request for excuse or deferment before a judge in open court. Written requests should be addressed to the Clerk of the Court and set forth the reason or reasons why service would cause undue hardship or extreme inconvenience. The Clerk of the Court shall maintain a record of all requests for excuse or deferment and the action taken. The Clerk of the Court shall inform a person granted a temporary excuse or deferment that she or he will be subject to subsequent random selection for jury service.

d. Service By Persons Excused or Deferred. If a person summoned for jury service is granted a temporary excuse or deferment for a period of time, upon the expiration of that period of time, the person shall be subject to jury service as set forth in this section.

i. Temporarily excused or deferred jurors whose period of excuse or deferment has expired shall be summoned on a pure, random basis for service on a civil or criminal petit jury.

ii. For each civil or criminal petit jury, the total number of temporarily

excused or deferred jurors summoned shall not exceed fifteen percent (15%) of the total number of jurors summoned for civil or criminal petit jury service.

iii. The methods employed to comply with the requirement that temporarily excused or deferred jurors are summoned for jury service at the end of the period of excuse or deferment shall insure that these persons are not given any preference over any other person with respect to the final compilation of the lists from which jurors will be selected for service on a civil or criminal petit jury.

15. Qualified Jury Wheels

The names of those persons deemed qualified shall be placed in the Qualified Jury Wheel, comprising the three Divisions of this Court. Names of prospective jurors shall be drawn on a pure random basis from the Qualified Jury Wheel according to Section 6 of this Plan. The prospective jurors whose names have been drawn shall be summoned to appear for a time certain as may be designated by the Chief Judge or such other Judge of the Court as the Chief Judge may designate. The Clerk of the Court shall give these prospective juror appropriate instructions concerning service as jurors. The Clerk of the Court shall assure that at all times in the Qualified Wheel there are not less than 600 names from the Northern Division and 200 names from the Eastern and Southern Divisions, respectively.

16. Selection of Jurors

a. Juror selection through summons or notice from a Qualified Jury Wheel shall be as needed by the Court.

i. Civil Petit Juries. Jurors for civil petit juries for court in Montgomery shall be drawn from the Northern Division Wheel; Jurors for civil petit juries for court in Dothan shall be drawn from the Southern Division Wheel; and Jurors for civil petit juries for court in Opelika shall be drawn from the Eastern Division Wheel. Upon motion of the parties or upon its own motion, a judge may direct that a petit jury be drawn from the District at large in the same manner as specified for drawing criminal juries.

ii. Criminal Petit Juries. The Court has determined that unless otherwise

ordered all criminal cases shall be tried in Montgomery. Jurors for criminal petit juries shall be drawn from the District at large by drawing names from each Division Wheel in approximately the same proportion to the total number drawn as the number of names in the Master Wheel from that Division bears to the total number of names in the Master Wheel.

b. Whenever required, the Clerk shall draw by a pure random process as authorized by this Plan names from the Qualified Jury Wheel for service as petit jurors.

c. The names placed in the Qualified Jury Wheels shall not be made public except upon order of the Court for good cause shown.

d. The lists of names so drawn shall not be exhibited to any person except as provided herein and in 28 U.S.C. §§ 1867 and 1868, as amended. While the drawing shall be public, the actual names so drawn shall not be disclosed to the public until after the jury panel has been qualified and sworn in open court. However, names of prospective jurors along with juror profiles shall be made available to counsel, except in instances where there is a pro-se litigant, at 3:00 p.m. on the Friday prior to jury selection on Monday. In instances where jurors are selected on a day other than Monday, the names of prospective jurors and juror profiles will be made available to counsel at 3:00 p.m. on the day prior to jury selection. The names of prospective jurors will be made available in pro-se litigant cases at 8:00 A.M. on the day of jury selection; provided, however, that any judge of this Court may order the names and information to be kept confidential in a case or cases where the interest of justice so requires.

e. Names of petit jurors who are called but who are not needed or not chosen for actual service shall be deferred for one year and then placed back into the Qualified Jury Wheel.

17. <u>Selection of Grand Jurors</u>

a. The names of grand jurors shall be drawn randomly and proportionately by Division for the District at large.

b. The names of grand jurors chosen and sworn shall not be made public unless

the interests of justice require otherwise. No name of a grand juror shall be made public unless authorized by a written order of the Court.

c. At such times as may be appropriate to the needs of the Court, the Chief Judge, or such other Judge as the Chief Judge may designate, may order that additional names for grand jury service shall be drawn from the Qualified Jury Wheels and the persons so drawn and summoned to serve as grand jurors shall be instructed and sworn.

d. Upon the discharge of a grand jury, the persons called to serve thereon shall not again be called for jury duty until the Master Jury Wheel for that Division is emptied and again refilled.

18. Disclosure and Maintenance of Records

a. The contents of records or papers used by the Clerk in connection with the jury selection process shall not be disclosed to anyone except Court personnel at any time, without the express consent of the Chief Judge, except pursuant to 28 U.S.C. §§ 1867(a), (b), (c), and 1868.

b. The Court may order the names to be kept confidential in a case or cases where the interest of justice so requires. The names of persons chosen to serve as grand jurors in this District shall remain confidential in the interest of justice unless otherwise ordered by the Court.

c. After any Master Wheel is emptied and refilled as provided in this plan, and all persons selected to serve as jurors prior to emptying the Master Wheel have completed such service, all papers and records compiled and maintained by the Clerk prior to emptying the Master Wheel shall be preserved in the custody of the Clerk for four years, or for such longer period as may be ordered by the Court.

19. Designation of Judge to Act in Place of the Chief Judge

In the event that the Chief Judge is unable to perform his or her duties under this Plan, including his or her temporary absence from the District, and has not designated another Judge to do so, the Judge of the Court who is authorized to perform the duties of the Chief Judge in case of his or her temporary inability to do so, as provided in 28 U.S.C. § 136(e), shall perform the duties of the Chief Judge under this Plan during the

latter's inability or unavailability.

20. Effective Date

This Plan shall become effective after approval by the Eleventh Circuit Judicial Council Reviewing Panel (the "Panel") upon such date as the Panel shall designate, or if no such designation is made, this Plan shall become effective upon the date of its approval by the Panel.

IT IS SO ORDERED.

DONE this 1st day of November 2001

CHIEF UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT JUDGE