



NEWSLETTER OF THE

**WESTERN DISTRICT OF WISCONSIN
BAR ASSOCIATION**

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Western District Juror Pools Mirror Population

Committee Revises Juror Qualification Form

By Stephen E. Ehlke

This fall a committee appointed by Chief Judge Barbara Crabb met on several occasions to review the juror selection process in the Western District of Wisconsin. Three principal areas were discussed by the committee: 1) reviewing opt-outs allowed for jury service; 2) revising the actual format of the "Federal Court Juror Qualification Questionnaire;" and 3) reviewing the racial/ethnic makeup of juries in comparison to the actual population to determine if a better selection process could be implemented. Before discussing the committee's findings, a little background regarding the selection of jurors in the Western District may be useful.

As may be obvious, there are a number of methods by which a jury pool could be drawn. Some jurisdictions use City directories. Others use drivers license lists. Still others use voter registration lists or actual voting lists, or a combination of the two. In the Western District, voter lists from the last presidential election are used. To select potential jurors the Clerk of Court follows the "Plan of the United States District Court for the Western District of Wisconsin for the Random Selection of Grand and Petit Jurors."

The Juror Selection Plan reinforces the federal policies that all litigants are entitled to jurors who are randomly selected from their local communities and that all citizens shall have the opportunity (and have the responsibility) to serve as jurors regardless of race, color, religion, sex, national origin or economic status. To ensure compliance with the "local community" policy, the Western District is divided into five divisions: Eau Claire, La Crosse, Madison, Superior and Wausau. A new list of potential jurors is created every four years from official local voter lists. One thousand prospective jurors are then randomly drawn from the new list. This group of 1,000 becomes the source of grand or trial jurors for the next four years. A copy of the Juror Selection Plan is available through the clerk of court's office.

With this system in place, the jury selection committee reviewed and discussed the three general topics identified above. As to the first issue (review of the opt-outs allowed for jury service), it was the consensus of the committee that only two grounds for requesting an excuse would be shown on the jury qualification questionnaire: (1) membership in a volunteer fire department, rescue squad or ambulance crew and (2) persons age 75 or older. The former questionnaire included a number of additional excuses. For example, practicing attorneys, physicians, registered or practical nurses could seek to be excused. There were other available excuses as well. In place of these specific excuses, the committee decided there would simply be one question asking the prospective juror whether there is any reason why jury service would pose a great hardship for that person.

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Juror Pools

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Apart from this substantive change, revision of the form's format was quite thorough. Perhaps the most significant change was to simplify the appearance of the form, making it much easier to read and complete. In addition, of course, there were a number of items that were "cleaned up," or brought into current usage, for example, changing the designation of "Hispanic" to "Latino/Latina," eliminating the question regarding marital status, and asking whether a person with a disability needs a reasonable accommodation to permit service as a juror. The committee also added an inquiry about a prospective juror's need for any special accommodation. A copy of the revised form developed by the committee is inserted into this Newsletter.

The committee invites counsel to make additional suggestions for improvement in the form.

The final issue, whether the composition of the jury pools reflects the population in the Western District of Wisconsin, was potentially the most complicated. As it turned out, however, the current selection system actually produced jury panels that closely mirrored the actual population in the Western District. Because this issue is central to the integrity of the jury system, the committee felt it was important to publish the actual statistics from the last jury selection process for the public and the bar to review. These statistics may be found on pages 6 and 7 of this Newsletter.

The jury committee concluded that the current system of selecting potential jurors has produced good results. After discussing alternative methods, it was the consensus of the committee that it would be difficult, if not impossible, to come up with a system which would do any better. Moreover, using voter lists for the potential juror has many attributes. First, voter lists are neutral in application. Second, using recent voting lists ensures fairly recent home addresses (thereby making it more likely the juror qualification form will be returned). Third, everyone on the list is a citizen of the United States (a requirement for jury service). To the extent there is a difference between the percentage of minorities selected and the actual population in the Western District, the committee believes it is incumbent on community leaders and the bar to encourage people to vote in every election, thereby insuring that they will be considered as potential jurors.

THE PRESIDENT'S CORNER

By
Thomas W. Bertz
President

WE WILL BE STRONGER

The startling terrorist attack on the World Trade Center, the Pentagon and the later Anthrax scare has invoked our resolve to unite to eradicate terrorism. We are now engaged in air attacks as well as ground operations in Afghanistan and the military victories against the Taliban and al-Qaeda demonstrates the strength of this resolve. At the time of this writing plans are being made to institute a form of government to take political charge of Afghanistan when the military battles are completed.

It is hoped that the new governmental alliance in Afghanistan will restore some of the basic freedoms that we have enjoyed for centuries in our country. It is also hoped that the country can unite as a people in the pursuit of their freedoms. To do that Afghanistan leaders must recognize the genius of our federal constitution and our rule of law that has given our country its strength.

As we know, the power of this country is rooted in our constitution which has united this country during these present trying times and will continue to unite this country in the future. What sets our country apart from other countries is that our constitution guarantees numerous freedoms for all of its citizens. It is these freedoms which the judiciary has recognized which make the legal fabric of this country unique despite its numerous races, creeds and customs.

At this time each of us in the Western District Bar Association have a rare opportunity to

contribute to the strength of our country by making contributions to our profession and to our judiciary. By making our organization stronger we can insure that the Western District Bar Association will continue to be there to take on future challenges. By doing so, all of us will be stronger.

ANNUAL MEETINGS AWARDED CLE CREDITS

The Wisconsin Supreme Court's Board of Bar Examiners has awarded 3.0 CLE credits for the legal education portions of the 2000 and 2001 Annual Meeting. The 2000 Annual Meeting took place on June 8, 2000, and the 2001 Annual Meeting took place on April 27, 2001.

The Supreme Court of Minnesota's Board of Continuing Education, per Event Code 62719, has determined that the April 27, 2001, CLE program qualifies for 2.75 Minnesota CLE credits of the standard category.

The WDBA will again apply for Wisconsin and Minnesota CLE credits for the 2002 Annual Meeting CLE program.

Public Comment Sought On Proposed Rule Changes

Various amendments have been proposed to a number of federal rules, including the following (as summarized by the Judicial Conference's Advisory Committee):

II. Proposed Amendments to the Federal Rules of Civil Procedure:

The proposed amendments to **Rule 23** (Class Actions) are based on an extensive study of class actions begun in 1991 by the Advisory Committee on Civil Rules. The proposed class action amendments focus on judicial oversight of settlements, attorney appointment, attorney compensation, and timing of the certification decision and notice.

The proposed amendment of **Rule 23(c)(1)(A)** requires a court to make the class-certification decision "at an early practicable time" instead of "as soon as practicable." The amendment and the accompanying Committee Note explain that a court must make the certification decision promptly but only after obtaining the information necessary to make the decision on an informed basis.

Rule 23(c)(2) would be amended to require that class-action notices be in "plain, easily understood language." Under the amendment, notice must be provided in (b)(1) and (b)(2) class actions as well as in (b)(3) class actions. But the extent of the distribution is more limited than in (b)(3) actions and is provided by means calculated to reach a reasonable number of class members. Although a member cannot request exclusion from (b)(1) or (b)(2) actions, the notice informs members of the litigation so that they can, among other things, monitor it to ensure that appointed counsel are adequately representing their interests.

Rule 23(e) would be amended in several respects to strengthen the rule's provisions governing the review and approval of proposed class settlements. First, the amendment makes clear that a court must approve every pre-certification settlement, voluntary dismissal,

compromise, or withdrawal of class claims. Second, the amendment adopts an explicit standard for approving a class settlement. The settlement must be "fair, reasonable, and adequate," and the court must make detailed findings to support the conclusion that the settlement meets this standard. Third, the amendment authorizes a court to direct a party to disclose any agreement or understanding made in connection with a proposed settlement.

Proposed **Rule 23(e)(3)** creates a new procedure that permits a court to provide a second opt-out opportunity on settlement of a (b)(3) class action. The purpose is to support an informed decision by each class member after known settlement terms provide the opportunity and incentive to think carefully about the consequences of remaining in the class. The second opportunity is relevant only if the opt-out opportunity required in all (b)(3) actions has expired before settlement terms are known; when, as often happens, certification is directed at the same time as a settlement is proposed, the initial (b)(3) right to request exclusion protects class members without any need for a second opportunity. The committee is particularly interested in receiving comments on the choice between alternative 1, which embodies a preference for allowing a second opportunity, and alternative 2, which is neutral.

Proposed **Rule 23(g)** sets out appointment procedures for class counsel. The amended rule adopts an explicit standard that class counsel "must fairly and adequately represent the interests of the class." The Committee Note makes clear that appointment as class counsel entails special, paramount responsibilities to the class as a whole. As part of the order appointing class counsel, the court may direct counsel to propose terms for awarding fees and costs, which may foster competitive applications.

Rule 23(h) would address the handling of attorney fee awards, including notification of the class of a motion for award of fees, the rights of objectors, and the criteria to be considered in determining the amount of the fee award. The amendment requires class counsel to provide notice in a reasonable manner to class members regarding any motion for an award of attorney

fees. A court must make findings of the motion for attorney fee awards. The Committee Note lists factors that a court may consider in assessing the “reasonableness” of an attorney fee award. Under the amendment, a class member or a party from whom payment is sought may object to a motion for an award of attorney fees.

Amended **Rule 51** (Instructions to Jury; Objections; Plain Error) restates Rule 51 in more direct terms and adds some new features. It begins by clearly authorizing the court to direct submission of requests before trial, and describing the opportunities to file requests after the initial deadline. It requires the court to inform the party of all proposed instructions, not only action on requests. A request is sufficient to assign as error a failure to give the request, without separately objecting to the failure, if the court made a definitive ruling on the record rejecting the request. A plain error affecting substantial rights also may be assigned as error despite failure to make proper requests or objections.

Rule 53 (Masters) would be comprehensively amended to reflect contemporary practice. Courts now appoint special masters for pretrial and post-judgment purposes, even though the existing rule addresses only “trial” masters. Moreover, the existing rule provides little guidance on appointment standards or procedures. The proposed amendments would establish a framework for appointment of masters without encouraging or discouraging their use. Under the amended rule, a trial master may be appointed in an action to be tried by a jury only if directed by statute or if the parties consent. Comment is particularly requested on whether the default standard of review should be de novo review of all fact findings of a master, or whether a two-track review standard is more appropriate, i.e., a “de novo” standard governing substantive fact findings and a “clearly erroneous” standard governing non-substantive fact findings.

Rule 54 (Judgments; Costs) and **Rule 71A** (Condemnation of Property) would be amended to reflect amendments to Rule 53.

IV. Proposed Amendments to the Federal Rules of Evidence:

The limitation on admitting extrinsic evidence contained in **Rule 608(b)** (Evidence of Character and Conduct of Witness) would be clarified and narrowed under the proposed amendment to apply only to cases in which the proponent’s sole purpose is to impeach the witness’s character for “veracity.” The existing rule prohibits admitting extrinsic evidence to impeach a witness’s “credibility,” which has been construed broadly by some courts, resulting in conflicting case law. By limiting the application of the rule to proof of a witness’s character for truthfulness, the proposed amendment clearly permits admitting extrinsic evidence offered for other grounds of impeachment.

Rule 804(b)(3) (Statement against interest) would be amended to provide uniform treatment of hearsay statements offered as declarations against interest. The rule’s requirement to present corroborating circumstances indicating the trustworthiness of any statement exposing the declarant to criminal liability that exculpates the accused would be extended to apply to a statement that incriminates the accused.

The full text of the proposed amendments, and the Committee Notes are available at: www.uscourts.gov/rules.

The Association’s Court Rules, Practice and Procedure Committee reviewed the proposed changes. At its December 5, 2001, meeting, the Board decided not to submit any comments on behalf of the Association. However, individual attorneys are welcome to submit comments. Written comments on the proposed amendments may be sent to:

Peter G. McCabe, Secretary
Committee on Rules of Practice and Procedure
of the Judicial Conference of the United States
Thurgood Marshall Federal Judiciary Building
Washington, D.C. 20544

by mail, or electronically via the Internet at www.uscourts.gov/rules. Anyone wishing to submit comments is encouraged to do so on or before February 15, 2002.

Should Trial Jurors Wear Identifying Badges?

At a recent Western District court security meeting it was discussed whether it would be advisable for trial jurors to wear identifying badges in the Courthouse. In addition to security implications it was discussed whether identifying jurors would increase or decrease the chance of inappropriate conversations taking place within earshot of the jurors in the Courthouse. Clerk of Court Joseph W. Skupniewitz invites comments the Western District Bar Association on the question of juror badges. Comments can be addressed to him for forwarding to the court security committee:

Phone: 1-608-264-5156 ext 5714

Fax: 1-608-264-5925

E-mail: Josephskupniewitz@WIWD.USCourts.gov

The following charts are referenced in our cover story on the current selection system actually produced jury panels that closely mirrored the actual population in the Western District. Because this issue is central to the integrity of the jury system, the committee felt it was important to publish the actual statistics from the last jury selection process for the public and the bar to review.

Western District of Wisconsin - Madison Division			
This table reflects persons qualified as jurors	Number in Wheel Sample	Percent of Sample	Percent class found in general population of the jury division
TOTAL	2784	100.00	100.00
White	2655	95.37	96.10
Black	43	1.54	1.90
American Indian	10	.36	.30
Asian	8	.29	1.30
Other	39	1.40	.40
Unknown	29	1.04	

Western District of Wisconsin - Wausau Division			
This table reflects persons qualified as jurors	Number in Wheel Sample	Percent of Sample	Percent class found in general population of the jury division
TOTAL	172	100.00	100.00
White	165	95.93	98.30
Black	0		.10
American Indian	2	1.16	.80
Asian	1	.58	.70
Other			.10
Unknown	4	2.33	

Western District of Wisconsin - La Crosse Division			
This table reflects persons qualified as jurors	Number in Wheel Sample	Percent of Sample	Percent class found in general population of the jury division
TOTAL	165	100.00	100.00
White	158	95.76	98.60
Black	0		.20
American Indian	2	1.21	.40
Asian	1	.61	.70
Other	1	.61	.10
Unknown	3	1.82	

Western District of Wisconsin - Superior Division			
This table reflects persons qualified as jurors	Number in Wheel Sample	Percent of Sample	Percent class found in general population of the jury division
TOTAL	159	100.00	100.00
White	151	94.97	97.00
Black	0		.10
American Indian	3	1.89	2.50
Asian	0		.20
Other	1	.63	.10
Unknown	4	2.52	

Western District of Wisconsin - Eau Claire Division			
This table reflects persons qualified as jurors	Number in Wheel Sample	Percent of Sample	Percent class found in general population of the jury division
TOTAL	171	100.00	100.00
White	169	98.83	98.50
Black	0		.30
American Indian	0		.30
Asian	1	.58	.70
Other	0		.10
Unknown	4	2.01	

FEDERAL COURT JUROR QUALIFICATION FORM

PLEASE READ LETTER ON OTHER SIDE

PRINT OR TYPE YOUR ANSWERS

(1) If your name and permanent address are not correct, please check and show corrections on reverse side.

RETURN THIS FORM WITHIN 10 DAYS IN THE ENCLOSED ENVELOPE TO:

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN
POST OFFICE BOX 432
MADISON, WISCONSIN 53701

(2) Home telephone: () _____ Work Telephone: () _____

(3) Birth Date: Month: _____ Day: _____ Year _____

(4) Are you: Male Female

(5) How far did you go in school? _____

(6) Are you employed? YES NO If yes, what is your occupation? _____

Your employer's name and address: _____

(7) Is Wisconsin now your home? YES NO What County do you live in now? _____
If applicable, give the names of other counties or states in which you lived during the past twelve months and show dates:

(8) Are you: African American Asian American Latino/Latina Native American White Multi-ethnic or other: _____

(Federal law requires all prospective jurors to indicate their race. This answer is required solely to avoid discrimination in juror selection and has absolutely no bearing on qualifications for jury service. By answering this question you help the federal court check and observe the juror selection process so that discrimination cannot occur. In this way the federal courts can ensure that jurors are randomly selected from a fair cross section of the community).

(9) Do you understand spoken English? YES NO Do you speak English? YES NO Can you read English? YES NO

(10) Do you have any physical or mental disability that might impair your capacity to serve as a juror? YES NO If "YES," explain on the reverse side.
If so, do you believe you could serve as a juror if the court reasonably accommodated your disability? YES NO If "YES," explain on the reverse side.

(11) Are you employed full time in any of these jobs?

- A public official of the United States, state, or local government who is either elected to public office or directly appointed by one elected to office.
- A member of any governmental police or regular fire department (not including volunteer or commercial departments).
- A member in active service of the armed forces of the United States.

(12) Have you ever been convicted, whether by your guilty plea, your plea of no contest, or by a judge's or a jury's guilty verdict, of a state or federal crime for which the punishment could have been more than one year in prison? YES NO If "YES," were you ever pardoned? YES NO If "YES," explain on reverse side.

(13) Are any criminal charges pending against you now? YES NO

If you answered "YES" to either question (12) or (13), then state on the reverse side of this form: (1) the date of the conviction(s) or the date that the pending charges were filed, (2) the sentence imposed (if a conviction), and (3) the name and location of the court.

(14) You may CHOOSE to be excused from jury service if you fit within one of the two categories listed below. If you wish to be excused for this reason, then mark the category that applies to you. However, if you DO wish to serve, then do NOT mark either category.

- You are over 75 years old.
- You serve without compensation as a fire fighter or member of a rescue squad or ambulance crew for a public agency.

(15) JURY SERVICE IS A PRIVILEGE AND OBLIGATION OF EVERY AMERICAN. However, if you have any additional reasons why you think you would not be able to fulfill your duty to serve as a juror, please explain them on the reverse side.

I SWEAR OR AFFIRM THAT ALL ANSWERS ARE TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF.

SIGN HERE → _____ DATE SIGNED _____

YOU MUST ANSWER ALL QUESTIONS THAT APPLY TO YOU. PLEASE MAKE SURE YOU HAVE DONE SO.

If another person filled out this form for you, that person must provide his or her name, address, and the reason why you needed assistance on other side of this form.

MISSION STATEMENT

WDBA

It is the mission of the Western District of Wisconsin Bar Association to promote the just, speedy, respectful and efficient determination of every action filed in the District Court: by acting as an effective liaison among the District Court, federal practitioners, litigants and the public; by encouraging, fostering and supporting educational opportunities that improve the practice of law in this District; and by serving the needs of the District Court, federal practitioners, litigants and the public.



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