

**Federal Practice Committee Meeting
Minutes
Judicial Conference - Kansas City, MO
Friday, July 9, 1999
Gary D. McFarland**

1. Remarks from Chief Judge Cambridge. Chief Judge Cambridge expressed his gratitude to John Guthery for his work this year as chair of the Federal Practice Committee. Additionally, Chief Judge Cambridge thanked all members who have served this past year.
2. The minutes from the last meeting held in Hastings, NE, on March 26, 1999, were approved.
3. Reports.
 - A. Lawyer Appointment. John Guthery inquired if this committee is to work on only civil cases as he was told that the committee would be working on civil case appointments only. There has been suggestion that a form be created so as to ask attorneys to volunteer for civil case appointments. There was discussion regarding the mailing out of this survey form. It was asked if this form could be mailed out with the attorney renewal form. It was agreed that the form would be mailed out at the same time the attorney renewal forms go out in late December. John asked the status of the preparation of the survey form, there was no information at this time. Magistrate Judge Jaudzemis interjected that Robin Hadfield, Pro Se Attorney, has not heard anything from the Committee as to the preparation of this form. It is hoped that the form can be completed between now and October, and can then be approved at the October Federal Practice Committee meeting. Magistrate Judge Jaudzemis discussed the fact that it was very difficult to get attorneys to agree to take civil case appointments. John Guthery relayed the practice in state court, wherein a fax is sent out to a number of attorneys stating the type of case, basis of action, case information, and asks for volunteers. John said that this had been a successful system for the state district courts, this option will be discussed at the meeting in October.
 - B. Technology. There was general discussion on the DOAR equipment and of the Bar web page. Bob Cannon will chair this committee.
 - C. Rules Committee. Magistrate Judge Thalken is hopeful that the first draft of the Rules will be completed by October and will be available for the next meeting. He relayed that the Rules will need to be adapted to embrace the changes in rules as to alternative dispute resolution. Senior Judge Strom will speak with Ralph Whitten at Creighton University about distributing a draft of the Rules prior to the October meeting.

- D. North Platte Committee. One member of this Committee was present, Gary McFarland. Gary's letter to Marcia Fangmeyer and John Gale was read to the Federal Practice Committee. Senior Judge Strom discussed the library being used in North Platte. It seems that no one knows what the current policy is for the use of the library. District Judge Kopf interjected that the need for the use of the library may not be that extensive, due to the fact that computer access to Westlaw and Lexis is so readily available. Magistrate Judge Thalken stated that Angie Lange, Circuit Librarian, has reduced the number of articles, books, etc., that are going to the North Platte library. It was generally felt that this is not a very useful library if attorneys have computers in their offices. There was also discussion of the issue that had been raised by Marcia Fangmeyer and John Gale as to the first creditor meetings being held in North Platte. Currently, the first creditor meetings are held in the Bankruptcy Courtroom. This space is quite small. Suggestions were made as to using the library for these first creditor meetings. Bankruptcy Judge Minahan stated that the 341 meetings are scheduled one year in advance, so, scheduling for use of the courtroom should not be a problem. Chief Judge Cambridge stated that he will contact Trish Dugan, U.S. Trustee, regarding this problem.
- E. Seminar Reports - Report by David Stickman. Mr. Stickman said that the training which was to be presented at the Bar Association meeting in October will not be presented, because there is not adequate time between now and then to prepare. This seminar will be postponed until approximately March of 2000. Mr. Stickman asked for ideas from the Committee as to suggested topics for training, please see attachment #1. There was discussion regarding coordinating the training with the spring break at the Creighton University Law School. Senior Judge Strom will check with the Dean of Creighton Law School as to the availability of space at Creighton for the training. District Judge Bataillon suggested there be an examination and training on the differences between federal and state court practices. Judge Bataillon felt that our civil case filings are down because of the extensive pretrial procedures. John Guthery stated that by the time training is held in March, 2000, the state court rule changes will be in place. Another suggestion for a training topic was civility in the practice of law. This could be done as a break-out session. David Stickman stated that he is hopeful that topics and an agenda for training for March, 2000, will be completed by the October Bar meeting. David Stickman will visit with Roger Kirst, they will then present the ideas for training to the judges prior to the October Bar meeting for finalization at the next Federal Practice Meeting.
4. Magistrate Judge David Piester gave a report on the mediation program. He stated that fifty percent of the cases going through mediation are settling. An annual workshop is scheduled for July 30, for mediation training, the Fed/Med training is scheduled for the end of September. Magistrate Judge Piester pointed out that there is a considerable difference in the number of cases referred to mediation between the Omaha and Lincoln offices.

5. DOAR Equipment. Gary McFarland updated the Committee on the availability of DOAR equipment and stated that there will be training on DOAR equipment in Omaha and Lincoln, in Omaha on July 26, and in Lincoln on July 27. Chief Judge Cambridge suggested that a notice be prepared for the Daily Record and the Lincoln Reporter announcing this training. See attachment #2.
6. Court Opinions on the Internet - John Guthery. At this time, Bankruptcy opinions are being loaded to the Bar's web page. John continues to seek this information from the District Court. John did state that the Bar web page will soon have a search engine.
7. Dedication of the Roman L. Hruska Courthouse. Gary McFarland stated that he has been in contact with both John Guthery as to the Nebraska Bar, and Mike Nelson with the Omaha Bar, regarding a ceremony for the building dedication. John Guthery stated that Wayne Mark will be taking over the presidency of the Omaha Bar. Gary will contact Wayne regarding the building dedication. Chief Judge Cambridge gave a short report as to the status of the courthouse project. At this time, substantial completion is being planned for March, with court occupancy one to two months later. Chief Judge Cambridge did discuss the fact that the law library and conference room have both been pulled out of the contract with Clark Construction and will be done by subsequent contract, hopefully, prior to the move-in date.

John Guthery asked if the Bar Associations participated in the building dedication, would the reception be open to everyone, or would it be restricted? Chief Judge Cambridge responded that it would not be restricted and that the Kansas City Bar had done a number of things to assist in the building dedication of the Kansas City, Missouri, courthouse. Gary McFarland gave a short report on the participation of the Kansas City Bar at their building dedication.

Senior Judge Strom distributed a survey from the Circuit Executive's Office regarding jury selection practices, please see attachment #3. This survey is to be returned to the Circuit Executive's Office.

The Bar Association Meeting is scheduled for October 8 and 9, in Lincoln, Nebraska. John Guthery will do a follow-up letter to Committee members to schedule our next meeting, as to the time and date at the Bar Association.

The meeting was concluded.

DOAR Training

July 26th & 27th, 1999



Evidence Presentation Equipment

The United States District Court for the District of Nebraska is proud to offer DOAR evidence presentation equipment. This training will demonstrate how to use the DOAR presenter to effectively present evidence to the judge and jury via video monitors. Types of evidence demonstrated will include documents, photographs, video tapes, x-rays, and 3-D objects.

July 26th: Omaha-Edward Zorinsky Federal Building
9th Floor, Courtroom #1
8:00am & 3:15pm

July 27th: Lincoln- Robert V. Denney Federal Building
5th Floor, Courtroom #1
9:00am & 3:00pm

* Sessions will last approximately 1 hour.

Training Provided by:
United States District Court
District of Nebraska

Questions?
Contact Kathy Griess
Courtroom Deputy Supervisor
(402) 221-3860

JURY SELECTION SURVEY

Attached is the summary from the Gender Fairness Task Force Report on Jury Selection. You are invited to give your reflections on the following issues:

1. Are the differences in the selection method - source lists, categories of excusals, correspondence and questionnaires from the court/clerk's office - significant?
2. Are there statistically sound ways to increase the racial mix of the Qualified Jury Wheel or panels?
3. Should potential jurors be automatically excused from jury service upon reaching the age of 70?
4. How have you seen courts accommodate disabilities?

** Please return to:

Circuit Executive's Office,
1114 Market Street, Suite 611
St. Louis, MO 63101

V. JURY SELECTION, COMPOSITION AND INSTRUCTION

A. Jury Selection Process

The Jury Selection and Service Act (JSSA), 28 U.S.C. § 1861 *et seq.*, requires each federal district to devise and adopt a plan for the random selection of grand and petit jurors to ensure representation of a fair cross section of the community in the district or division where the court convenes. The statute also requires that each county, parish, or political subdivision be "substantially proportionally represented" in each district's Master Jury Wheel. 28 U.S.C. § 1863(b)(3). The key component of the Sixth Amendment "fair cross section" requirement is that "jury wheels, pools of names, or venires from which juries are drawn must not systematically exclude distinctive groups in the community and thereby fail to be reasonably representative thereof." Duren v. Missouri, 439 U.S. 357, 363 (1979).

The JSSA states that the names of prospective jurors shall be selected from voter registration lists or lists of actual voters. 28 U.S.C. § 1863(b)(2). Other sources of names may be used to supplement the list if necessary to ensure representative jury wheels. *Id.* In 1974, the Judicial Conference approved a resolution that required the judicial circuits to "review the sampling reports for their districts relating to jury representative data by race and sex," and to take such action as may be necessary to ensure the randomness and non-discrimination requirements of the JSSA are met. *Jud. Conf. Rep.* (September 1974) at 55. Form JS-12 was specially created to comply with this reporting requirement. The most recent modification of the form requires the district courts to compare statistical samples of the Master Jury Wheel (consisting of the names of all persons who returned juror qualification questionnaire forms) or Qualified Jury Wheel against general population data. Form JS-12 (Rev. 4/91). The instructions state that the JS-12 should be maintained by the district court as part of its jury wheel records. *Id.*

Juror qualification and grounds for exemption are statutory matters over which the courts have no discretion, with one exception.²⁴ The JSSA allows the judges of each district to excuse groups of persons if the court finds and the jury plan states that jury service would entail undue hardship or extreme inconvenience to the members. 28 U.S.C. § 1863(b)(5)(A). The judges also have broad discretion to excuse individuals from jury service upon a showing of undue hardship or extreme inconvenience.

Under the JSSA, in order to be "qualified" for jury service one must be a citizen of the United States, be 18 years of age or older, be a resident of the district for one year, be able to read, write, understand and speak English, have no mental or physical infirmity that would render a candidate incapable of service, and have no pending felony charges or convictions. 28 U.S.C. § 1865(b).

The following categories of persons are "exempt" from jury service and barred from serving: active members of the armed services, members of the fire or police department, and active public officers in the executive, legislative or judicial branches of the federal or state government. 28 U.S.C. § 1863(b)(6).

²⁴ Volunteer safety personnel must be excused from jury service upon individual request.

Methodology

In December 1995, we asked each district to provide a copy of the district's Jury Plan, JS-12 Forms, Juror Questionnaire Forms, Summons and any other information or correspondence provided to prospective jurors. Selected districts, based on availability of data and type of source lists, were also questioned on the process of juror qualification.

We reviewed the materials provided, noting any part of the selection process and record keeping that was not in accord with the requirements above. We also examined the process to determine whether there were any steps that could have disparate impact on women or on men. With the assistance of the Task Force consultant and her research staff at the University of Illinois we compared the gender composition of the jury wheels reflected on JS-12 records to the gender composition of the district, as reflected by census data.

The Task Force did not have the resources to conduct an analysis of the numbers of men and women excused in each district under each excuse category. However, one district reviewing its jury plan did such an analysis of potential jurors excused over a one-year period and provided the information to the Task Force for review. The Task Force viewed the findings in this district as a sample which might suggest the results of a circuit-wide review.

B. Jury Plans, Source Lists, and Excuse Categories

The source list used can greatly affect the composition of the master jury wheel. If the source list is not representative of the actual district population, the resulting master jury wheel, and ultimately the juries drawn from it, may not reflect the demographics of the population.

Seven of ten districts in the Eighth Circuit utilized voter registration lists as the source from which jurors were selected. In two districts a narrower list, actual voters, was used as the source list. In one jurisdiction the court had broadened its source list to include registered voters, licensed drivers and holders of state identification cards²⁵. This approach reflects a trend in district courts nationwide. According to the Administrative Office of the Courts, at least nineteen districts supplement voter lists with driver's license lists and at least one uses computerized residence lists in lieu of voter lists.²⁶

A comparison of Master Jury Wheel Composition, as reflected by JS-12 data, and census data population in the Eighth Circuit districts revealed no absolute or comparative statistical disparity in the relative proportions of women and men.²⁷

The number of excuse categories used in the districts ranged from as few as three to as many as eleven. The most commonly used reasons for excusing jurors were that the potential

²⁵ Since these data were gathered several of the districts in the Eighth Circuit have revised their jury plans and broadened their source lists to include driver's license lists.

²⁶ Districts supplementing with driver's lists include Southern Alabama, Northern California, Colorado, Connecticut, D.C., Hawaii, Central Illinois, Eastern and Western Michigan, New Hampshire, New Jersey, Eastern, Northern and Western New York, Eastern Pennsylvania, Middle Tennessee, Northern Texas and Western Washington. The District of Massachusetts uses residence lists.

²⁷ We were unable to conduct this analysis in one district, which stated that it did not maintain JS-12 data.

jurors were over the age of 70, had served as a grand or petit juror in the last two years, or had active care/custody of a child (usually under the age of 10), whose safety or health would be jeopardized. However, other districts also excused some or all of the following persons: those essential to the care of an aged or infirm person (9); those essential to the operation of a business (7); professionals including doctors (9) dentists (9), lawyers (9), registered nurses (9), osteopaths (1), chiropractors (1) and undertakers (1); members of the clergy or religious orders (7); teachers (3), school administrators (1) and school bus drivers (2); students; and those lacking transportation to and from the courthouse (1).

Most districts used one of several standardized juror questionnaire forms prepared by the Administrative Office of the Courts. Administrative staff responsible for the jury panels sort through returned forms to eliminate those who have indicated adequate reason to be excused. Most potential jurors who are removed from the jury wheel for reasons of disqualification, exemption or excuse are identified through this administrative process and never even appear in court.

A review of jury plans and the juror questionnaire forms used revealed some inconsistencies. In some districts the jury plans specified categories of persons to be excused for hardship, but the questionnaires sent to potential jurors did not list those categories. In other districts, excuse categories not in the jury plans appeared on the questionnaires used. Also of concern was that the jury questionnaires are often formatted in a way that does not clearly indicate that a potential juror, by marking one of these categories, is requesting to be excused. Rather, the items appear more as demographic questions and may have the unintended effect of encouraging otherwise willing potential jurors to opt out of jury service by providing information about their age, occupation, or family status.

Finally, the statistical analysis of jurors excused in one district under each of ten excuse categories yielded the following results. Of 10,000 juror questionnaires reviewed, 1,546 or 15% of potential jurors were excused. Overall, females comprised 63% of excused jurors. Women formed a substantially larger proportion of excused persons who were over the age of 70, primary caretakers/custodians of a child under the age of 10, and full time registered nurses. As a result of the analysis, the judges in the district decided to reduce the number of excuses to three, eliminating the second two above.