



**JURY PLAN**  
**FOR THE**  
**UNITED STATES DISTRICT COURT**  
**DISTRICT OF MONTANA**

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**UNITED STATES DISTRICT COURT**

**FOR THE DISTRICT OF MONTANA**

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**REVISED PLAN FOR RANDOM JURY SELECTION**

Pursuant to the Jury Selection and Service Act of 1968, as amended, 28 U.S.C. §§ 1861 et. seq., (hereinafter the "Act"), the following Revised Plan for Random Jury Selection (hereinafter referred to as the "Plan") is hereby adopted by the Court, subject to the approval of the reviewing panel for the Ninth Circuit Court of Appeals and to such rules and regulations as may be adopted by the Judicial Conference of the United States. When approved, this Plan will supercede the revised jury plan now in effect and all amendments thereto. Nothing in this Plan, however, shall affect the composition of the various jury wheels in existence at the time of the adoption of this Plan.

**I. APPLICABILITY OF THE PLAN**

By the separate order of the Court, the District Court of Montana is divided into the following divisions: Billings Division, Butte Division, Great Falls Division, Helena Division, and Missoula Division. The same divisions are hereby adopted for jury selection purposes pursuant to Section 1869(e) of the Act.

**II. MANAGEMENT AND SUPERVISION OF THE JURY SELECTION PROCESS**

The Clerk of Court shall manage the jury selection process under the supervision and control of the Chief Judge of the

District of Montana and such other judge(s) as may be designated by the Chief Judge to perform those duties. In this Plan, "Clerk" and "Clerk of Court" shall mean the Clerk of the District of Montana, any authorized deputy clerk, and any other person authorized by the Court to assist the Clerk in the performance of functions under this Plan. See 28 U.S.C. § 1869(a).

The Court finds that electronic data processing methods can be used advantageously for managing this Plan. Therefore, a properly programmed electronic data processing system, or a combination system employing both manual and electronic methods, may be used to select names for the master jury wheel, to select names from the master jury wheel for purposes of juror qualification, to select names of persons to be summoned to serve as grand or petit jurors and to perform other clerical and record keeping functions as may be prescribed by the Court.

The Clerk shall retain and, when requested, provide public access to the following documents:

1. The Plan;
2. A copy of the Clerk's authorization and instruction to the person or computer service organization which carries out automated name selection tasks for the court; and
3. A copy of the certification completed by the computer service which sets forth its compliance with the Clerk's instructions.

The contents of all other records or papers used by the Clerk in connection with the jury selection process shall not be

disclosed to anyone other than court personnel except as provided in 28 U.S.C. § 1867.

### **III. POLICY REGARDING SELECTION OF JURORS**

This Plan is adopted pursuant to and in recognition of the Congressional policies declared in Title 28, United States Code, as follows:

#### § 1861. Declaration of Policy

It is the policy of the United States that all litigants in the Federal courts entitled to trial by jury shall 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. It is further the policy of the United States that all citizens shall have the opportunity to be considered for service on grand and petit juries in the district courts of the United States, and shall have an obligation to serve as jurors when summoned for that purpose.

#### § 1862. Discrimination Prohibited.

No citizen shall 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.

### **IV. JURY SELECTION SOURCES**

The Court finds that the sources from which the names of grand and petit jurors shall be selected at random are the lists of general election voter registration and licensed drivers. These two source lists shall be merged, eliminating all known duplicated

names and the names of licensed drivers under the age of 18 (and therefore not qualified for jury service pursuant to 28 U.S.C. § 1865(b)(1)) for all counties within each division. The Court does further find that such lists, as above described, represent a fair cross section of the community in this District.

Accordingly, names of grand and petit jurors serving in this Court shall be selected by randomized procedures from the merged lists of: (1) the names of registered voters of the counties within each jury division who are of record as registered voters in the books, lists, and/or automated voter registration systems of the Montana Secretary of State, and (2) the names of licensed drivers as maintained in the books, lists and/or automated drivers' license record systems of the Montana Department of Motor Vehicles.

## **V. CREATION OF MASTER JURY WHEELS**

### **A. RANDOM SELECTION OF NAMES**

The Court finds that the initial selection of persons to be considered for service as petit and grand jurors from the source lists shall be made at random in such total number as may be deemed sufficient for a period of two years.

The number of names drawn from each county shall be substantially in the same proportion to the total number drawn from all counties within each division as the number of names on that county's registered voter list bears to the total number of names on the registered voter lists for all counties within that

division. For example, if there are exactly 500,000 names on the registered voter lists of all counties with a division, and there are 100,000 names on County "A's" list (twenty percent of the total), then the number of County "A's" names initially selected should be approximately twenty percent of the total number selected from all counties within that division.

In calculating the total number of registered voter list names within each division, the Clerk shall add together the totals obtained for each county within that division. The number utilized as the total for each county may be based, at the Clerk's option, upon either a manual or an electronic count of names on the county's lists or upon such total number as is furnished by the Secretary of State.

After first determining the total number of names needed for the master jury wheel, and then determining the proportionate share of names to be drawn from the merged list of each particular county, the Clerk shall proceed either manually or through the use of a properly programmed data computer, or through a combination of manual and computer methods, to make the initial selection of names from the merged list of each county.

**B. METHOD AND MANNER OF RANDOM SELECTION**

The name selection system shall be planned and programmed according to a "quotient" and "starting number" formula. This formula ensures that any group of names chosen will represent all segments of source files from which names are drawn and that the

mathematical odds of any single name being picked are substantially equal.

Determining a "quotient". For each jury division, the Clerk shall make the random selection by taking the total number from the merged lists of the counties in that jury division of the Court and dividing that number by the minimum number of names to be placed in the master jury wheel for that division. The number obtained will be the "quotient". The quotient is the ratio of total names to selected names. For example, if the Clerk should determine that to supply court jury requirements for two (2) years 3,000 names are needed in the master wheel, and if there are a total of 300,000 names on the merged lists, the "quotient" to be used would be  $300,000/3,000$ , or 100, and the Clerk would therefore take every 100<sup>th</sup> name from the merged lists for the master wheel.

Determining a "Starting Number". After determining the "quotient", the Clerk shall establish a starting number. This number will locate on the merged lists the first name to be selected. The starting number will be manually drawn by lot from numbered cards placed in a jury wheel, drum or box. Cards used for this drawing should begin with a card containing number one and end with a card containing the same number as the "quotient". In other words, the range of numbers from which a starting number is drawn is exactly the same as the range between number one and the "quotient" number. As an example of how both the starting number and quotient are used, if the quotient is 100, and the starting number is 12, the first name chosen for each county would be the

12<sup>th</sup> name on its merged list, the second name would be the 112<sup>th</sup>, the third the 212<sup>th</sup>, and continuing in a similar manner to the end of the list.

In the alternative, and at the Clerk's option 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 jury 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 jury wheel by data computer personnel must ensure 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 jury wheel, and the qualified jury wheel must also ensure that the mathematical odds of any single name being picked are substantially equal.

If electronic data processing methods are used in the selection of jurors in the district, the Court shall authorize the person in charge of the data processing to act as a representative and officer of the Court to carry out its instructions and orders relative to the selection of prospective juror names. (See

attached form of instruction and certification, marked as Exhibit "A" to this Plan.)

This Plan is based on the conclusion and judgment that the policy, purpose, and intent of the Act will be fully accomplished and implemented by the use of the lists as described above as the source for random selection of prospective grand and petit jurors who represent a fair cross section of the community. This determination is supported by all the information this Court has been able to obtain after diligent effort on its part. Using either procedure ensures that: (a) the names chosen will represent all segments of the source file from which drawn, (b) the mathematical odds of any single name being picked are substantially equalized, and (c) the possibility of human discretion or choice affecting the selection of any individual's name is eliminated.

#### **VI. MAINTAINING THE MASTER JURY WHEELS**

The Clerk shall maintain a master jury wheel for each division of the district. The names and addresses of all persons randomly selected from the merged lists of the counties in each division shall be placed in the master jury wheel for that division. The physical form of record on which names for the master wheels are kept may include electronic data storage devices.

Pursuant to Section 1863(b)(4) of the Act, the minimum number of names to be placed in the master jury wheels shall be at least one-half of 1% of the total number of names on all county merged

lists, provided that if this number is determined by the Chief Judge to be cumbersome and unnecessary, the Chief Judge may determine a smaller number of names to be placed in the master jury wheel, but in no event may the number be less than one thousand. Any district or magistrate judge of the district may order additional names to be placed in a master jury wheel from time to time, as necessary and in accordance with the formula above described.

The master jury wheel for each division shall be emptied and refilled every two years, not later than June 1 of the year following a general election.

#### **VII. CREATING QUALIFIED JURY WHEELS**

Upon completion of a master jury wheel for each division in the district, the Clerk shall mail to persons randomly selected in the master jury wheel a juror qualification form accompanied by instructions to complete and return the form, duly signed and sworn, to the Clerk within ten (10) days, in accordance with the requirements of 28 U.S.C. § 1864.

The Clerk shall maintain a record of all juror qualification forms returned, including those returned by the Post Office as undeliverable. Insofar as feasible, the Clerk shall investigate forms which are not returned or not delivered and locate and encourage the addressees to complete and return the forms.

The Clerk shall maintain a separate qualified jury wheel or a device similar in purpose and function for each division, and shall place in such wheel the names of all persons drawn from the master jury wheel and not disqualified, exempt or excused pursuant to the Plan. The Clerk shall ensure that at all times sufficient names are contained in each such qualified wheel to satisfy the requirements of that division. The Clerk may maintain these wheels through the use of a properly programmed computer. The qualified jury wheel in each division shall be emptied and refilled with names when the master jury wheel is emptied and refilled.

**A. QUALIFICATIONS FOR JURY SERVICE**

The Chief Judge or other judge(s) designated by the Chief Judge to consider juror excuse requests, on his or her initiative or upon recommendation of the Clerk, or the Clerk under supervision of the Court, shall determine solely on the basis of information provided on the juror qualification form and other competent evidence whether a person is unqualified, or exempt, or to be excused from jury service. The Clerk shall enter such determination in the space provided on the juror qualification form and in the juror record in the database in an automated jury system. If a person did not appear in response to a summons, such fact shall be noted. In making such determination, the Chief Judge or designated judge(s) shall deem any person qualified to serve on grand and petit juries in the district unless the person:

- (1) is not a citizen of the United States at

least eighteen years old who has resided for a period of one year within the judicial district;

(2) is unable to read, write, and understand the English language with a degree of proficiency sufficient to complete satisfactorily the juror qualification form;

(3) is unable to speak the English language;

(4) is incapable, by reason of mental or physical infirmity, to render satisfactory jury service; or

(5) 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.

#### **B. EXEMPTIONS FROM JURY SERVICE**

The Court finds that the Act expressly exempts the following occupational classes or groups of persons and, accordingly, such groups are exempt from jury service:

(1) full-time members in active service of the armed forces of the United States;

(2) full-time members of any government police or regular fire department (not including volunteer or non-governmental departments);

(3) full-time public officials of the United States, state, local or tribal governments who are actively engaged in the performance of official duties ("public official" shall mean a

person who is either elected to public office or who is an officer directly appointed by a person elected to public office).

**C. EXCUSES ON INDIVIDUAL REQUEST**

The Court finds that jury service by members of the following groups of persons would entail undue hardship and extreme inconvenience to the members thereof, and serious obstruction and delay in the fair and impartial administration of justice, and that their excuse from jury service will not be inconsistent with the Act and may be claimed, if desired, and shall be granted by the Court upon individual request:

(1) persons over 75 years of age at the time of completion of the juror qualification questionnaire form or at the time of being called to serve;

(2) persons having active care and custody of a minor, or an aged or infirm person, whose health and/or safety would be jeopardized by their absence for jury service;

(3) persons serving a public agency, without compensation, as volunteer firefighters or members of a rescue squad or ambulance crew; and

(4) persons who have served as a grand or petit juror in a federal court in the District of Montana within the last two years.

For purposes of this Plan, the Clerk of Court, or a deputy clerk under supervision of the Clerk of Court, is authorized to

determine when persons are qualified, unqualified, exempt, or excused from jury service.

**VIII. SUMMONING OF JURORS FROM THE QUALIFIED WHEELS**

From time to time, the Court or the Clerk, if so ordered by the Court, shall publicly 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, and the Clerk shall prepare a separate list of names of persons assigned to each grand and petit jury panel. No later than seven days before the start of any trial, the office of the Clerk shall make available to the parties the names of prospective jurors called from the petit jury list for that trial, excluding their social security numbers. The Clerk's office shall also provide to the parties updated information regarding the jury list as it becomes available. The Chief Judge or any judge before whom a case is pending in which any of the prospective jurors are expected to serve, may by special order require that the Clerk keep these names confidential where the interest of justice so requires.

Following the conclusion of a case for which a petit jury panel is summoned, the Clerk shall not disclose to anyone the names of the persons serving on the panel unless the requesting party has petitioned the trial judge and received written permission to obtain the names of the panel members.

Disclosure of the names of persons serving on grand jury panels is not permitted at any time absent Court Order.

**A. EXCUSES ON INDIVIDUAL REQUEST AFTER SUMMONS**

In addition to the excuses provided in section VII of this Plan, any judge of this District or the Clerk may excuse any person who has been summoned for grand or petit jury service upon a showing by the prospective juror that jury service would entail undue hardship or extreme inconvenience. An application for an excuse for undue hardship and extreme inconvenience made prior to reporting for service must set forth the reason or reasons for an excuse and must be addressed to the Clerk of Court. Upon receipt of the application for an excuse, the Clerk shall make any investigation into the circumstances of the application that is deemed necessary and shall approve or disapprove the request. The Clerk shall maintain a record of all applications for excuse and dispositions thereof. Any judge while in open Court or the Clerk in all other situations shall inform each temporarily excused juror that his/her name will be returned to the qualified jury wheel and he/she will be subject to subsequent random selection for jury service. However, if a juror is permanently excused from jury service for purposes of an existing qualified jury wheel, his/her name will not be placed back into the wheel for possible selection at a later date.

The Plan hereby incorporates the definition of "undue hardship or extreme inconvenience" in the Act, 28 U.S.C.A. § 1869(j):

"undue 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.

The Court hereby finds that there is no distance, either in miles or travel time, from any point within the District which, by itself, would constitute undue hardship for prospective jurors to travel to places of holding court.

When there is an excess of jurors present, either grand or petit, and their presence is required for only one day, the Court shall, in its discretion upon excusing the excess jurors, inform them that their names will be put back in the qualified jury wheel, subject to subsequent random selection.

#### **B. SELECTION AND SUMMONING OF GRAND JURORS**

When the Court orders a grand jury to be impaneled, the Clerk shall randomly draw from the qualified jury wheels a sufficient number of names from which twenty-three plus three alternate grand

jurors can be selected, giving consideration to jurors who may be excused, may have died, or may have moved from the District. In selecting names for a grand jury to serve in either the Billings Division or the Great Falls Division, a proportionate share of names shall be drawn from the qualified jury wheels of both said divisions in accordance with the random selection method described in this Plan. The proportionate share shall be based on the total number of persons in the merged source lists of each division as compared to the total number of persons on the source lists of both divisions.

In selecting names for a grand jury to serve in the Missoula Division, the Butte Division or the Helena Division, a proportionate share of names shall be drawn from the qualified jury wheels of all three said divisions in accordance with the random selection method described in this Plan. The proportionate share shall be based on the total number of persons in the merged source lists of each division as compared to the total number of persons on the merged source lists of all three divisions.

The Clerk shall send by mail notices and summons to the persons whose names were drawn in this manner. Upon appearance before the Court of the jurors summoned, the Court may excuse any juror for cause. The Clerk shall then draw twenty-six (26) names at random from the total number of those who appear and are not excused. These persons shall serve as grand jurors, with the 24<sup>th</sup>, 25<sup>th</sup>, and 26<sup>th</sup> names representing alternate jurors. The jurors not impaneled shall be dismissed.

**C. UNANTICIPATED SHORTAGE OF JURORS**

Where there is an unanticipated shortage of available petit or grand jurors, the Court may require the United States Marshal to summon a sufficient number of jurors selected at random from the source lists specified in this Plan, in a manner ordered by the Court consistent with Sections 1861 and 1862 of the Act, as amended.

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**IX. DURATION OF PLAN**

This Plan shall remain in full force and effect until approval of one or more modifications by the reviewing panel of the Ninth Circuit Court of Appeals. Modifications may be initiated by the Court and submitted to the reviewing panel or by such rules and regulations as may be adopted by the Judicial Conference of the United States.

SO ORDERED this \_\_\_\_ day of \_\_\_\_\_, 2002.

\_\_\_\_\_  
Donald W. Molloy,  
Chief Judge

\_\_\_\_\_  
Richard F. Cebull  
District Judge

\_\_\_\_\_  
Sam E. Haddon  
District Judge

SIGNATURES TO DOCUMENT

Dated February 10<sup>th</sup>, 2003

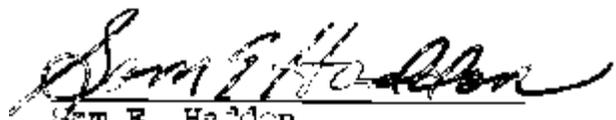
February 2003



Ronald W. Molloy,  
Chief Judge



Richard F. Conill  
District Judge



Sam E. Haddon  
District Judge