

JURY PLAN



U.S. DISTRICT COURT DISTRICT OF MONTANA

June, 2015

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

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.

When approved, a copy of this plan will be provided to the Attorney General of the United States and to the Administrative Office of the United States Courts.

I. APPLICABILITY OF THE PLAN

By Local Rule, 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 28 U.S.C. § 1869(e).

The Billings division consists of the following counties: Big Horn, Carbon, Carter, Custer, Dawson, Fallon, Garfield, Golden Valley, McCone, Mussellshell, Park, Petroleum, Powder River, Prairie, Richland, Rosebud, Stillwater, Sweet Grass, Treasure, Wheatland, Wibaux, Yellowstone.

The Butte division consists of the following counties: Beaverhead, Deer Lodge, Gallatin, Madison, Silver Bow.

The Great Falls division consists of the following counties: Blaine, Cascade, Chouteau, Daniels, Fergus, Glacier, Hill, Judith Basin, Liberty, Phillips, Pondera, Roosevelt, Sheridan, Teton, Toole, Valley.

The Helena division consists of the following counties: Broadwater, Jefferson, Lewis and Clark, Meagher, Powell.

The Missoula division consists of the following counties: Flathead, Granite, Lake, Lincoln, Mineral, Missoula, Ravalli, Sanders.

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. 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 shall 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 that carries out automated name selection tasks for the court; and
3. A copy of the certification completed by the computer service that 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 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 registered voters and licensed drivers. These two source lists shall be merged, eliminating all known duplicate 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 merged list shall be compared against the National Change of Address database and a proprietary deceased database to ensure the accuracy and integrity of the data. The Court further finds 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 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 of the counties within each division 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 merged source list 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 within a division, and there are 100,000 names on County "A's" list (20% of the total), then the number of County "A's" names initially selected should be approximately 20% 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 counties' 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

At the clerk's option after consultation with the Court, the selection of names from the merged source list 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 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.

This process may be managed internally by the court or externally by an independent vendor or governmental agency. In those circumstances in which independent vendors or agencies are utilized, they shall provide to the court a letter certifying that the work assigned has been completed pursuant to the criteria required by the court. Such independent vendors or agencies shall treat all information provided by the court as confidential, shall hold the same in confidence, and shall not use this information for any other purpose other than its business with the court. Except for instances in which specific prior written authorization is given by the court, independent vendors or agencies used shall not disclose, publish or otherwise reveal any of this information to any person who is not involved in completing the work assigned by the court. (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 merged list as described above as the source for random selection of prospective grand and petit jurors that will represent a fair cross section of the community. This determination is supported by all the information the 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 merged 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 source 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 28 U.S.C. § 1863(b)(4), the minimum number of names to be placed in the master jury wheel 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 1,000. 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 to coincide with the schedule prescribed in M.C.A. § 3-15-403. The new master wheels shall be in use no later than September 1st of the year in which it is refilled.

VII. CREATING QUALIFIED JURY WHEELS

Upon completion of a master jury wheel for each division in the district, the clerk or approved designated mailing service shall prepare and serve by manual or electronic means to persons randomly selected in the master jury wheel a juror qualification form accompanied by instructions. Potential jurors are required to execute and return the questionnaire, duly signed and sworn, to the clerk, by mail or electronic means, within ten days in accordance with the requirements of 28 U.S.C. § 1864.

The clerk shall maintain a record of all juror qualification questionnaires 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 shall 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 at the time 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 any 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) or the clerk or authorized deputy 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 18 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 or 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 sole 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.

VIII. SUMMONING JURORS FROM THE QUALIFIED WHEELS

The clerk shall draw at random from the qualified jury wheel the names of persons as may be required for assignment to grand or petit jury panels. The clerk shall issue summonses directed to the persons whose names are drawn and serve them either by first class mail pursuant to 28 U.S.C. § 1866(b), by use of any of the alternate service methods outlined therein, or by electronic communications. The clerk shall prepare a separate list of names of persons assigned to each grand and petit jury panel. No later than five 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 and addresses. The clerk's office shall also provide to the parties updated information regarding the jury list as it becomes available.

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.

If a mailing service is utilized, the clerk will instruct such service that the questionnaire, summons forms and associated names and addresses of prospective jurors are confidential and may not be exhibited or viewed by anyone outside of the contractual relationship established for services rendered.

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, under the direction of the court, 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 or 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 or her name will be returned to the qualified jury wheel and he or 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 or her name will not be placed back into the current 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. § 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.

A juror who has served as a trial juror will be removed from the qualified jury wheel and will not be subject to recall during the term of that wheel. However, the court may, in its discretion, grant the request of any trial juror who wishes to remain on the qualified wheel, subject to 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 23 grand jurors plus three alternates 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 the Billings division, a proportionate share of names shall be drawn from the qualified jury wheel of the Billings division in accordance with

the random selection method described in this plan.

In selecting names for a grand jury to serve in the Great Falls division, a proportionate share of names shall be drawn from the qualified jury wheel of the Great Falls division in accordance with the random selection method described in this plan.

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 of these 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 list of each division as compared to the total number of persons on the merged source list of all three divisions.

The clerk shall by manual or electronic means, prepare and 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 grand jury shall consist of 26 jurors whose names have been randomly drawn by the clerk from the total number of those who appeared and have not been excused. The 24th, 25th, and 26th names drawn shall be 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 28 U.S.C. §§ 1861 and 1862.

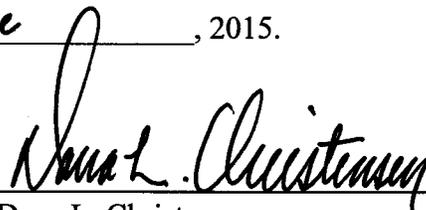
IX. OBLIGATION TO SERVE AND FAILURE TO COMPLY

Every qualified person summoned for jury service shall be obligated to serve unless excused by a judge or the clerk. Any person summoned for jury service who fails to appear as directed, to the extent the juror can be located, shall be ordered to appear and show cause for his/her failure to comply with the summons. A juror who fails to show good cause may be fined not more than \$1,000 or imprisoned for not more than three days, or both pursuant to 28 U.S.C. §§ 1864(b) and 1866(g). Additionally a juror who has been assigned to a case, sworn or affirmed, and who fails to appear at any session of court, shall be ordered to appear forthwith and show cause for the failure to appear. The trial judge may also order that pay and reimbursement owed to the juror for prior service be applied against any fine assessed.

X. 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. This plan shall be reviewed bi-annually by the Court prior to each refill of the master wheels. 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 22nd day of June, 2015.



Dana L. Christensen
Chief Judge

EXHIBIT "A"
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA

IN RE: Court instructions to non-court officials for selection of names of prospective federal jurors from voter registration lists and licensed driver lists.

In order to comply with the provisions of the Jury Selection and Service Act of 1968 (Public Law 90-274), and pursuant to this Court's Revised Plan for Jury Selection ("plan") which authorized the use of electronic data processing methods for selecting and recording names for the master jury wheel, I hereby authorize:

Person: _____

Title and Organization: _____

as a representative and officer of this Court, to carry out the instructions and orders of this Court relating to the selection and recording of prospective juror names to be extracted from the voter registration lists and licensed driver lists, in accordance with procedures specified in said plan, a copy of which is attached. In addition to the complying with the provisions of the plan, you are instructed to proceed as follows:

DATED: _____

Tyler P. Gilman, Clerk of Court

CERTIFICATION

I hereby certify that the selection and recording of names from the voter registration lists and licensed driver lists was accomplished according to the procedures specified by the court's plan and the instructions listed above. I further certify that I have and will continue to keep the information I received from the court confidential and that, absent prior written authorization from the court, I will not disclose, publish, or otherwise reveal any of this information to any person who is not involved in completing the work assigned by the court.

DATED: _____

BY: _____

(Signature)

(Title and Organization)

OFFICE OF THE CIRCUIT EXECUTIVE
UNITED STATES COURTS FOR THE NINTH CIRCUIT

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TO: Chief Judge Dana L. Christensen, Jr., District of Montana
Tyler P. Gilman, Clerk of Court, Eastern District of Montana

FROM: Robert E. Rucker, Ph.D., Assistant Circuit Executive

DATE: June 16, 2015

RE: District of Montana's Amended Jury Plan

This is to notify you that the amendments to the District of Montana's Jury Plan were approved by the Judicial Council of the Ninth Circuit on June 15, 2015.

In accordance with 28 U.S.C. § 1863(a) please send a copy of your plan to the Administrative Office and the Attorney General of the United States.

cc: Edward J. Juel, Attorney Advisor, Court Programs Division, AO