

JURY PLAN



U.S. DISTRICT COURT DISTRICT OF MONTANA

April 7, 2023

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CHAPTER ONE

General Matters

Section 1.01 Authority

This Jury Plan is adopted by the United States District Court for the District of Montana in accordance with the provisions of the Jury Selection and Service Act of 1968 (Public Law 90-274), as amended and codified in 28 U.S.C. § 1861 *et seq.*

Section 1.02 Application

This Jury Plan will take effect on September 1, 2023. The prior Jury Plan will be superseded as of the effective date of this revised Plan. A copy of the revised plan, as approved by the reviewing panel, will be provided to the Administrative Office of the United States Courts and the Attorney General of the United States.

Section 1.03 Definitions

For purposes of this plan:

“Jury selection process” will be deemed to include all activities associated with the master and qualified jury wheels relating to the random selection, qualification, summoning, and service of grand and petit jurors.

“Chief judge” means the chief judge of this district, or any supervising judge appointed by the chief judge.

“Clerk” and “clerk of court” means the clerk of this district court, any authorized deputy clerk, or any other person authorized by the chief judge or by this plan to assist the clerk in the performance of duties under this plan.

Section 1.04 Policy

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

Section 1.05 Discrimination Prohibited

No citizen will be excluded from service as a grand or petit juror on account of race, color, religion, sex, national origin, or economic status.

Section 1.06 Management Responsibilities

In accordance with 28 U.S.C. § 1863(b)(1), the clerk of court will manage the jury selection process under the supervision and control of the chief judge, or of such other judge of the district court as the chief judge designates.

The court finds that electronic data processing methods can be advantageously used for managing this plan. At the clerk's option, after consultation with the chief judge, a properly programmed electronic data processing system or a combination system employing both manual and electronic machine methods, may be used for all randomized drawings and to perform other clerical and record-keeping jury functions.

In the event of an emergency, computer malfunction, or any overt or obvious deviation from this plan caused by automation, the clerk, with the approval of the chief judge, will manually, or by alternative electronic methods, proceed from the last step correctly implemented to

manage the plan.

Section 1.07 Delegation of the Clerk’s Management Responsibilities

In accordance with 28 U.S.C. §§ 1863(b)(1) and 1869(a), the clerk of court may delegate responsibility for the day-to-day operation of the jury selection process to any authorized deputy clerk, or to any authorized non-court person or agency.

The clerk may use the services of non-court personnel to assist in the jury selection process. For purposes of this plan, the phrase “non-court personnel” may include, but is not limited to:

- (a)** County or state officials, and their employees or agents, who are responsible for custody and maintenance of the source lists identified in Section 2.01 of this plan.
- (b)** Owners, employees, operators and/or agents of computer or data processing centers, bar-coding facilities, mail handling centers, document reproduction facilities, and optical scanning facilities, and similar facilities whose services are requested or employed by the clerk to support the jury selection process.
- (c)** Other non-court administrative or clerical persons whose services are requested or employed by the clerk to select, process, and/or mail the various documents and records involved in the jury selection process.

Section 1.08 Jury Management Divisions (*See 28 U.S.C. § 1869(e)*).

In order to facilitate the jury selection process, the clerk is directed to align Montana’s counties into the following jury management divisions:

The Billings division, which 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, and Yellowstone.

The Butte/Helena division, which consists of the following counties: Beaverhead, Broadwater, Deer Lodge, Gallatin, Jefferson, Lewis and Clark, Madison, Meagher, Powell and Silver Bow.

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

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

A separate divisional master wheel will be maintained for each jury management division. This plan applies to each of the divisional master wheels, which comprise the master jury wheel for the district. Jurors will be selected for service from a single jury management division for petit juries or from any combination of jury management divisions for grand juries as the chief judge may from time to time direct.

Section 1.09

Emptying and Refilling the District and Divisional Master Jury Wheels

The clerk of court will create and maintain a master jury wheel for each of the jury management divisions within the district. In accordance with 28 U.S.C. § 1863(b)(4), the clerk is directed to empty and refill the

master jury wheels every two years. This process will coincide with the schedule prescribed in M.C.A. § 3-15-403. When the master jury wheels are emptied, the existing qualified jury wheel will continue to be used until the clerk determines that an adequate number of persons from the new master jury wheel have been qualified. The new master wheels will be in use by September 1st of the year in which they are refilled. When the new master wheels are placed in use, the old qualified jury wheels will be emptied and new qualified jury wheels created. Summoned jurors from previous qualified jury wheels may serve at the same time with jurors selected from later qualified jury wheels. If additional time is needed to empty and refill the master jury wheels, permission must be obtained from the Chief Judge of the Circuit.

Section 1.10 Method and Manner of the Random Selection of Jurors

The randomized selection procedures set forth in this plan must ensure that the names chosen will represent all segments of the source lists from which drawn and that the mathematical odds of any single name being picked are substantially equal.

- (a) The selection of names from the complete source list databases in electronic media for the master jury wheels 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 chief judge, a properly programmed electronic data processing system for purely randomized selection may be used to select names from the master wheel for the purpose of determining qualification for jury service, from the qualified wheel for summoning persons to serve as grand or petit jurors, from the pool of jurors to serve as a panel, and from the panel of jurors to serve as a jury. Such random selections of names from

the source lists for inclusion in the master wheels by data computer personnel must ensure that each county within the jury management division is substantially proportionally represented in the master jury wheel in accordance with 28 U.S.C. § 1863(b)(3). The purely randomized selection procedure may be used for all drawings. (*See* Section 2.03 herein for the procedures to ensure proper proportional county representation in the divisional master jury wheels.).

(b) Manual Randomized Selection of Jury Panels and Petit

Juries After the jurors have been summoned, the clerk has the option, after consultation with the chief judge, to randomly select jurors manually for petit or grand jury panels and for petit juries for specific cases by:

- (1)** preserving the computer prepared random sequence of the names of jurors summoned and assigning jurors to panels in the order listed; or preserving the computer prepared random sequence of the names of jurors impaneled and assigning jurors to petit juries in the order listed; or
- (2)** drawing names at random from a box, jury wheel, or similar container containing the names of the present pool or panel of jurors.

Section 1.11 General Notice

In accordance with 28 U.S.C. § 1864(a), the clerk will post a general notice for public review in the clerk's office and on the court's public website explaining the process by which names are periodically and randomly drawn from the source list and the master and qualified wheels.

Section 1.12 Protection of Jurors' Employment

No employer can discharge, threaten to discharge, intimidate, or coerce any permanent employee over such employee's jury service, or the attendance or scheduled attendance in connection with such jury service. Any employer who violates the provisions of this section will be subject to penalties specified by 28 U.S.C. § 1875.

Section 1.13 Modifications

This plan will be reviewed every other year by the court prior to each refill of the master wheels. Modifications to this plan may be made from time to time by this court, upon approval of the Ninth Circuit Reviewing Panel of the Judicial Council and must be made when so directed by the reviewing panel.

CHAPTER TWO

Source Lists, Initial Random Selection, and the Master Jury Wheel

Section 2.01

Source Lists (*See* 28 U.S.C. §§ 1861 and 1863(b)(2) and (3))

The court finds that sources from which the names of grand and petit jurors will be selected at random are the lists of general election registered voters, licensed drivers and state identification card holders. These sources lists will be merged, eliminating all known duplicate names and the names of anyone under the age of 18. The court takes notice that when two or more source lists are used, one person's name may appear more than once. The clerk, must, either manually or through automated systems, eliminate as reasonably as possible such duplicates before any selection procedures begin. The court further finds that such lists, as described above, represent a fair cross section of the citizens residing within the communities in the District of Montana.

Section 2.02

Size of the Master Jury Wheels (*See* 28 U.S.C. § 1863(b)(4))

Pursuant to 28 U.S.C. § 1863(b)(4), the minimum number of names to be placed in the master jury wheel, at the time of creation, will 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.

Section 2.03 Substantial Proportional Representation and the Master Jury Wheels

When selecting names from the combined source lists, specific and detailed procedures will be followed to ensure the random selection of a fair cross section of the persons residing in the community in the jury management division where the court convenes. Such random selection of names from the combined source lists for inclusion in the master wheel will be designed to ensure that each county within the jury management division is substantially proportionately represented in the master jury wheels.

Section 2.04 Filling the Master Jury Wheels

Once the names for each county have been randomly selected, the clerk will combine and randomly sort all jury management division names and enter them into the master jury wheel for the appropriate jury management divisions.

CHAPTER THREE

Drawing Names from the Master Jury Wheel, Juror Qualification, and the Qualified Jury Wheel

Section 3.01 Drawing Names from the Master Jury Wheel

From time to time as directed by the chief judge, the clerk must draw at random from the master jury wheel of each jury management division, the names of as many persons as may be required for jury service in each jury management division.

Section 3.02 Juror Qualification Questionnaires

Upon completion of a master jury wheel for each jury management division in the district, the clerk or approved designated mailing service will prepare and serve by manual or electronic means to persons randomly selected pursuant to Section 3.01 of this plan 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 will maintain a record of all juror qualification questionnaires returned, including those returned by the post office as undeliverable. Insofar as feasible, the clerk will investigate forms which are not returned or not delivered and locate and encourage the addressees to complete and return the forms. Should the clerk be unable to locate the addressee, the clerk may draw at random from the master wheel of each jury management division a replacement juror from the same zip code as the initial addressee.

Section 3.03

Failure to Submit a Juror Qualification Questionnaire or Appear

Pursuant to 28 U.S.C. § 1864(a), if a person fails to submit a completed juror qualification questionnaire, the clerk may issue a summons to the person directing them to appear in the clerk's office to complete the qualification questionnaire. No juror fees or costs for this appearance will be paid, unless otherwise ordered by the court. 28 U.S.C § 1864(b) lists the penalties that may be imposed by the court.

Section 3.04

Determining Juror Qualification Status

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, will 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 must enter such determination on the questionnaire or in the jury management database.

(a) Disqualification from Jury Service

In accordance with 28 U.S.C. § 1865(b), any person will be deemed qualified to serve on grand and petit juries in this district unless such person:

- (1)** is not a citizen of the United States, is less than 18 years old, or has not 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 satisfactorily fill out the juror qualification questionnaire;
- (3)** is unable to speak the English language;
- (4)** is incapable, by reason of mental or physical infirm, to

- render satisfactory jury service; or
- (5) has a charge pending against him 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 civil rights have not been restored.

(b) Exemption from Jury Service

In accordance with 28 U.S.C. § 1863(b)(6), the following persons are barred from jury service on the grounds that they are exempt:

- (1) full-time members in active service in 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); and
- (3) full-time public officers in the executive, legislative, or judicial branches of the government of the United States, or any state, local or tribal governments who are actively engaged in the performance of their official duties. A “public officer” means a person who is elected to public office or who is directly appointed by a person elected to public officer.

(c) Excuses from Jury Service on Individual Request

- (1) In accordance with 28 U.S.C. § 1863(b)(5)(A) and (B), the court finds that jury service by members of the following occupational classes or groups of persons would entail undue hardship or extreme inconvenience to the members thereof, and the excuse of such members would not be inconsistent with §§ 1861 and 1862 of 28

U.S.C., and will be granted upon individual request to those:

- (A) persons over 75 years of age at the time of the completion of the juror qualification questionnaire form or at the time of being called to serve;
- (B) 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;
- (C) persons serving a public agency, without compensation, as volunteer safety personnel (such as firefighters or members of a rescue squad or ambulance crew); and
- (D) persons who have served as grand or petit jurors in federal court in the District of Montana within the past two years.

(2) Upon application showing undue hardship or extreme inconvenience, any qualified juror may be excused from jury service for such period as the clerk deems necessary. Unless otherwise directed by the court, those individuals excused from jury service under this section, will be deferred for possible future selection within the current jury wheel.

(3) 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.

Section 3.05 Qualified Jury Wheel

The clerk must maintain a separate qualified jury wheel for each jury

management division within the district and will place in such wheels the names of all persons randomly selected from their respective master jury wheel who are determined to be qualified to serve as jurors and are not exempt or excused from service pursuant to this plan.

CHAPTER FOUR

Selection of Grand and Petit Jurors

Section 4.01 Selection and Empanelment of Grand and Petit Jurors (*See* 28 U.S.C. § 1866(a))

The clerk will draw at random from the qualified jury wheels the names of as many persons as may be required for assignment to grand and petit jury panels in the district. (*See* Section 1.10 herein for random selection procedures.). Regardless of the case venue, a petit jury panel will be drawn from the wheel of the jury management division in which the trial is held unless the presiding judge orders otherwise.

Section 4.02 Summoning Grand and/or Petit Jurors (*See* 28 U.S.C. § 1866(b))

The clerk will 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.

Section 4.03 Disclosure of Petit Juror Information

- (a) **To Attorneys and Parties:** The clerk will prepare a separate list of names of persons assigned to each petit jury panel. The office of the clerk will 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 will also provide to the parties updated information regarding the jury list as it becomes available. Notwithstanding this general policy, any trial judge may order the clerk to keep jurors' names confidential until the morning

of trial in any case where the interests of justice so require. Following the conclusion of a case for which a petit jury has been summoned, the clerk will not disclose the names of the panel members to the parties absent written permission from the trial judge.

- (b) **To the Public and the Media:** The names of prospective and sitting petit jurors will not be distributed to the public and media unless the requesting party has petitioned the trial judge and received written permission to obtain the names of the panel members.

Section 4.04 Grand Jury Impanelment (*See* 28 U.S.C. § 1863(b)(8))

When the court orders a grand jury to be impaneled, the clerk will randomly draw from the qualified jury wheels a sufficient number of names from which 23 grand jurors plus alternates can be selected. The impanelment of every grand jury or special grand jury will not be conducted in open court or within public view.

- (a) **Divisional Grand Juries:** In selecting names for a grand jury to serve in the Billings division, a proportionate share of names will 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 will be drawn from the qualified jury wheel of the Great Falls jury management 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, a proportionate share of names will be drawn from the qualified jury wheels of the Missoula jury management division and the Butte/Helena jury management division in accordance with the random selection method described in this plan. The proportionate share will be based on the total number of persons in the merged source list of each jury management division as compared to the total number of persons on the merged source list of the Missoula jury management division and the Butte/Helena jury management division.

Section 4.05 Term of Regular Grand Jury

Each grand jury will serve until discharged by the chief judge, but no regular grand jury will serve more than 18 months unless the court extends the service of the grand jury upon a determination that such extension is in the public interest, in accordance with Rule 6(g) of the Federal Rules of Criminal Procedure.

Section 4.06 Term of Special Grand Jury

Each grand jury will serve until discharged by the judge, but no special grand jury will serve more than 18 months unless the court extends the service of the grand jury upon a determination that such extension is in the public interest, in accordance with Rule 6(g) of the Federal Rules of Criminal Procedure.

Section 4.07 Management of Regular or Special Grand Jury

It will be the responsibility of the foreperson to ensure that at each session, there is a sufficient number of grand jurors in attendance to constitute a quorum.

Section 4.08 Alternate Grand Jurors

The grand jury will consist of 23 jurors whose names have been randomly drawn by the clerk from the total number of those who appeared and have not been excused. The remaining names drawn will be alternate jurors.

The jurors not impaneled will be dismissed.

Section 4.09 Disclosure of Grand Juror Information (*See* 28 U.S.C. § 1863(b)(7))

Except as authorized by written order of the court, the names and information relating to any summoned or serving grand juror or grand jury panel will be confidential and not disclosed to any litigant or member of the public. Applications for disclosure of grand juror information must be made by motion and must set forth why disclosure should be allowed.

CHAPTER FIVE

Exclusion or Excuse from Jury Service

Section 5.01 Exclusion or Excuse from Jury Service

Except as provided elsewhere in this plan, no person or class of persons will be disqualified, excluded, excused, or exempted from service as jurors; provided, however, that any person summoned for jury service may be:

- (a) excluded by the court on the grounds that such person may be unable to render impartial jury service or that his service as a juror would be likely to disrupt the proceedings;
- (b) excluded upon peremptory challenge as provided by law;
- (c) excluded pursuant to the procedure specified by law upon a challenge by any party for good cause shown;
- (d) excluded upon determination of the court, after hearing in open court, that service as a juror would be likely to threaten the secrecy of the proceedings, or otherwise adversely affect the integrity of jury deliberations, and that exclusion of such person will not be inconsistent with the policy stated in 28 U.S.C. §§ 1861 and 1862.

Section 5.02 Jury Service Limit

In any two (2) year period, no person will be required to:

- (a) serve or attend court for prospective service as a petit juror for a total of more than thirty (30) days, except when necessary to complete service in a particular case, or
- (b) serve on more than one grand jury, or
- (c) serve as both a grand and petit juror.

Section 5.03 Permanent Exclusion or Excuse from Jury Service

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.

Section 5.04 Obligation to Serve and Failure to Comply

Every qualified person summoned for jury service will 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, may 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, will 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.

CHAPTER SIX

Disclosure and Retention of Jury Selection Records

Section 6.01 Release of Jury Plan Information

A copy of this Jury Plan will be posted to the court's public website. All other requests for information about the jury selection process must be submitted in writing to the clerk of court, who will confer with the chief judge prior to releasing any information.

Section 6.02 Release of Juror Records (See 28 U.S.C. § 1867(f))

The contents of records and papers used in the jury selection process will not be disclosed, except upon written order of the court. Applications for disclosure of records related to the jury selection process must be made by motion to the chief judge and must set forth why disclosure should be allowed.

Section 6.03 Retention of Juror Records

In accordance with 28 U.S.C. § 1868, the clerk will keep all records and papers relating to the jury selection process for four years following the emptying and refilling of the master jury wheels and the completion of service of all jurors selected from those master jury wheels, or for such longer periods of time as the court may require. Such records may then be destroyed, providing the means used ensures the privacy of their contents.

Section 6.04 Request to Inspect Juror Records (See 28 U.S.C. § 1868)

Applications to inspect jury selection process records to determine the validity of the selection of any jury must be made by motion to the chief

judge and must set forth why disclosure should be allowed.

CHAPTER SEVEN

Approval of Jury Plan

This plan will remain in full force and effect until approval of one or more modifications by the reviewing panel of the Ninth Circuit Court of Appeals.

SO ORDERED this 11th day of April, 2023.



Brian M. Morris, Chief Judge
United States District Court



Kathleen L. DeSoto
United States Magistrate Judge