

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON



PLAN FOR THE RANDOM SELECTION OF GRAND AND PETIT JURORS

PLAN APPROVED BY THE COURT
January 14, 2022

PLAN APPROVED BY THE NINTH CIRCUIT JUDICIAL COUNCIL
February 24, 2022

EFFECTIVE DATE OF THE PLAN
March 1, 2022

PLAN FOR THE RANDOM SELECTION OF GRAND AND PETIT JURORS

CHAPTER ONE

General Matters

Section 1.01

Authority

This Jury Plan is adopted by the United States District Court for the Eastern District of Washington 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 after approval by the reviewing panel, which includes the Ninth Circuit Judicial Council, pursuant to 28 U.S.C. § 1863(a). The prior Jury Plan will be superseded as of the effective date of this revised Plan.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 jury wheels and qualified jury lists created with each trial, 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.

“Registered Voters” means registered voters in a particular county or division, absent the voters deemed inactive by the State of Washington.

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. The Clerk will instruct non-court personnel that the notices and forms (and associated names and addresses of prospective jurors) are confidential and may not be exhibited to or viewed by anyone outside of the contractual relationship established for services rendered to the Court. Information contained within the questionnaire will not be disclosed to non-court personnel. 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 counties in the Eastern District of Washington into the following jury management divisions:

Spokane – Jury Division A:

Adams, Asotin, Chelan, Columbia, Douglas, Ferry, Garfield, Grant, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens and Whitman.

Yakima and Richland – Jury Division B:

Benton, Franklin, Kittitas, Klickitat, Walla Walla and Yakima.

A separate divisional master wheel will be maintained for each 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 at random from a fair cross-section of the community in each jury division wherein the Court convenes. In an emergency or in the discretion of a judicial officer, jurors from the master wheels of Jury Division A and Jury Division B may be combined, reassigned to the other division or reassigned to hear cases moved to that division from the other division.

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 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, not later than June 1 of the year following a general election. When the master jury wheels are emptied, any existing qualified jury list will continue to be used until the Clerk determines that an adequate number of persons from the new master jury wheel have been qualified. Summoned jurors from previous qualified jury lists may serve at the same time with jurors selected from later qualified jury lists. 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, 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 purposes of determining qualification and summoning persons for grand and petit jury service, 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 division is substantially proportionally represented in the master jury wheel for each division 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 empaneled 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 wheels.

Section 1.12

Protection of Jurors' Employment

No employer can discharge, threaten to discharge, intimidate, or coerce any permanent employee by reason of 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

Modifications to this Plan may be made from time to time by this Court, upon approval of the reviewing panel, which includes the Ninth Circuit Judicial Council, and shall 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 county general election voter registration lists, along with driver's license and identification card lists, represent a fair cross section of the citizens residing within the communities in the Eastern District of Washington. The records of registered voters in each presidential general election are maintained in the books, lists, and/or automated voter registration systems of the Secretary of State, Olympia, Washington. The Department of Licensing, Olympia, Washington, maintains the lists and/or automated records of holders of drivers' licenses and identification cards. Accordingly, names of grand and petit jurors serving in this Court will be selected by randomized procedures from these source lists.

Section 2.02 **Size of the Master Jury Wheels** (*See* 28 U.S.C. § 1863(b)(4))

The entire source lists from each division will be merged to form the District's master jury wheel. 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. If, after consultation with the Chief Judge, the Clerk determines that the total number of names contained on the approved source lists is cumbersome and unnecessary for juror management purposes, the Clerk is authorized to randomly select from the combined source lists within each jury division a minimum number of names, at least one-half of one percent of the names on the source list(s), sufficient to qualify prospective jurors for a two year period to initially fill the master jury wheels for each jury division. As of the date of this plan, the minimum number of names deemed sufficient to qualify prospective jurors for a two-year period are as follows:

Spokane – Division A: 55,000 names

Yakima and Richland – Division B: 55,000 names

The Chief Judge may order additional names to be placed in the master jury wheels from time to time as necessary.

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 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 division is substantially proportionately represented in the master jury wheels. For purposes of determining proportional representation in the master jury wheels, the number of registered voters in each county will be used.

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 division names and enter them into the master jury wheel for the appropriate jury divisions.

National Change of Address Database. At least yearly, the Clerk will submit the names on the master jury wheels to an address verification service. The service will provide updates using the U.S. Postal Service and/or other change-of-address systems, and corrections will be made as appropriate before mailing qualification notices to potential jurors.

CHAPTER THREE

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

Section 3.01 Drawing Names from the Master Jury Wheel

From time to time as directed by the Court, the Clerk must draw at random from the master jury wheel of each division, the names of as many persons as may be required for jury service in each division. 28 U.S.C. § 1864(a).

Section 3.02 Juror Qualification Questionnaire

(a) The Clerk will mail a jury summons notice to every person randomly selected pursuant to Section 3.01 of this Plan. 28 U.S.C. § 1864(a). The notice will direct the juror to complete a juror qualification questionnaire through the Court's internet website within ten days. If a juror does not complete the juror qualification questionnaire online, a paper copy of the questionnaire will be mailed with instructions to complete and return the questionnaire to the Clerk by mail within ten days of receipt. The summons notice will advise the juror of selection, upon qualification, for inclusion in that division's qualified jury list, and will specify the dates of potential service for said list. It will be from this qualified jury list that a petit or grand jury will be empaneled.

(b) **Supplemental Draw for Undeliverable and Non- Responding Juror Qualification Notices.** For all qualification notices returned to the Court as "undeliverable" or those to which no response has been received (after the Clerk has sent a follow-up mailing to the person who has not responded), the Clerk, as soon as practicable, will issue the same number of new jury summons notices to be mailed to addresses within the same zip code area to which the undeliverable or non-responding jury summons

notices had been sent. If these mailings from the supplemental draw are returned undeliverable or the intended recipient does not respond, no additional qualification notices will be issued. If no names from that zip code are available, no additional jury summons notices will be mailed. The Clerk will randomly draw these names for additional jury summons notices from the master jury wheels.

Section 3.03

Failure to Submit a Juror Qualification Questionnaire or Appear

If a person fails to submit a completed juror qualification questionnaire, the Clerk may issue a subsequent summons to the person directing them to appear in the Clerk's Office to complete the qualification questionnaire. 28 U.S.C. § 1864(a). 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 for failure to appear pursuant to court order, failure to show good cause for noncompliance with the summons, or willful misrepresentation of a material fact on a jury qualification form for the purpose of avoiding or securing service as a juror.

Section 3.04

Determining Juror Qualification Status

The Chief Judge or designee, upon the recommendation of the Clerk of Court, or the Clerk of Court or designee, under the supervision of the Court, will determine solely on the basis of information provided on the juror qualification questionnaire and other competent evidence whether a person is unqualified for, exempt, or to be excused from jury service. 28 U.S.C. § 1865(a). 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) and Ninth Circuit caselaw, 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 infirmity, to render satisfactory jury service; or
- (5) Has been convicted in a State or Federal court of record of a crime for which he/she was punished for more than one year and his/her 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) Members in active service in the Armed Forces of the United States;
- (2) Members of the fire or police departments of any state, district, territory, possession, or subdivision thereof; and
- (3) Public officers in the executive, legislative, or judicial branches of the Government of the United States, or any state, district, territory, possession or subdivision thereof, 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 office.

(c) Excuses from Jury Service on Individual Request

- (1) **Permanent Excuse.** 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 written request to those:

- (A) Persons who have served as grand or petit jurors in the U.S. District Court, Eastern District of Washington, within the past two years; or
- (B) Persons who serve a public agency without compensation as volunteer safety personnel (such as firefighters or members of a rescue squad or ambulance crew).

(2) **Temporary Excuse.** Upon application showing undue hardship or extreme inconvenience, any qualified juror may be temporarily excused from jury service for such period as the Court deems necessary. Unless otherwise directed by the Court, those individuals temporarily excused from jury service shall be reinserted into their respective master jury wheel for possible future selection.

Section 3.05

Qualified Jury List

The Clerk must maintain a separate listing of qualified jurors for each pool in each of the jury divisions within the district and will place on such lists 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 master 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 1.11 herein for random selection procedures.).

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

The Clerk will issue and serve personally or send by first class mail summonses to the persons whose names are so drawn.

Section 4.03 Petit Jury Term – Two Week/One Day Appearance/One Trial or One Deferral

It is the policy of the Eastern District of Washington that all prospective petit jurors serve “one day” or “one trial” during a two week “on call” term of service, during which two-week period no prospective petit juror will be required to report to the courthouse more than once unless (1) the jury-selection process in the cases to which he or she has been prospectively assigned is continuing, or (2) he or she is selected as a juror. Prospective jurors who are not selected as trial jurors will have satisfied their jury service obligation upon completion of voir dire, empanelment of the final jury, and discharge by the judge. Those prospective jurors who are selected as trial jurors will have satisfied their jury service obligation upon completion of the trial and discharge by the judge. The Court reserves the right to modify the provisions of this petit jury policy when the interests of justice so require.

Section 4.04 Disclosure of Petit Juror Information

(a) To Attorneys and Parties: When the Clerk has assigned a venire panel to a particular trial, the list of names so assigned may be furnished to the attorneys for the parties and any parties appearing *pro se* in said trial at a time in advance, if allowed by standing order of the Court or otherwise ordered by the trial judge. 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.

(b) To the Public and the Media: The names of prospective and sitting petit jurors will be disclosed to the public or media only upon order of the Court. A request for disclosure of petit juror names to the media or public must be made in writing to the presiding judge.

Section 4.05

Grand Jury Empanelment (*See* 28 U.S.C. § 1863(b)(8))

One or more grand juries will be empaneled for this district or any division or combined divisions of this district in accordance with court orders issued by the Chief Judge. The empanelment of every regular or special grand jury will not be conducted in open court or within public view.

(a) Divisional Grand Juries: If a grand jury is to be empaneled for service in a division only, the Clerk will draw at random from the qualified juror list of that division such number of prospective grand jurors as the Chief Judge may direct.

(b) Combined Divisional or Entire District Grand Juries: If a grand jury is to be empaneled for service in combined divisions or in the entire district, the Clerk will draw at random from the qualified juror list of each division such number of prospective grand jurors as the Chief Judge may direct, in the same ratio that the number of registered voters in each division bears to the total number of registered voters in the combined divisions or in the district.

Section 4.06

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 4.07

Alternate Grand Jurors

The Court may direct that alternate grand jurors be selected at the same

time a grand jury is selected. Alternate grand jurors, in the order in which they were selected, may thereafter be empaneled to replace excused grand jurors. Alternate grand jurors will be drawn in the same manner and shall have the same qualifications as the regular grand jurors, and if empaneled, shall be subject to the same challenges, will take the same oath and have the same authority as the regular grand jurors.

Section 4.08

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 to the Chief Judge 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/her 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**

Whenever a person is permanently excluded or excused from jury service under this Chapter, the Clerk will note the same on the questionnaire or in the jury management database.

CHAPTER SIX

Disclosure and Retention of Jury Selection Records

Section 6.01 **Release of Jury Plan Information**

The Clerk is authorized to provide a copy of this Jury Plan to any person requesting information about the jury selection process and to post the Plan 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* 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 presiding 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)

After a master jury wheel is emptied and all jurors have completed their service, 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.