

FILED
Mar 27, 2024
CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

IN RE:)
)
ADOPTION OF AMENDED JURY)
SELECTION PLAN)
_____)

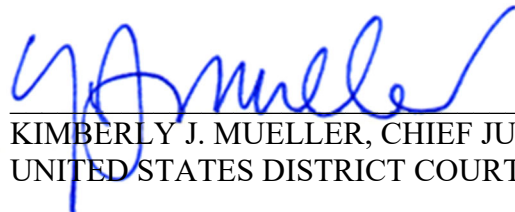
GENERAL ORDER NO. 678

Pursuant to General Order No. 666, Adoption of Amended Local Rule 120 effective August 7, 2023 and 28 U.S.C. §1869(e), the court hereby adopts the attached Amended Jury Selection Plan effective immediately, subject to approval of the Judicial Council of the Ninth Circuit.

IT IS SO ORDERED.

DATED: March 26, 2024.

FOR THE COURT:



KIMBERLY J. MUELLER, CHIEF JUDGE
UNITED STATES DISTRICT COURT



UNITED STATES DISTRICT COURT

Eastern District of California

Juror Management Plan

Adopted by the Court March 26, 2024

KIMBERLY J. MUELLER

CHIEF JUDGE

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CHAPTER ONE

General Matters

Section 1.01 Authority

The United States District Court for the Eastern District of California adopts this Juror Management Plan 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 Plan will take effect after approval by a reviewing panel of the United States Court of Appeals for the Ninth Circuit 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 The prior Jury Plan will be superseded as of the effective date of this revised Plan.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 Juror Management Defined

For purposes of this Plan, the phrase *juror management* will be deemed to include all activities associated with the master and qualified jury wheels relating to the selection, qualification, and service of grand and petit jurors.

Section 1.04 Policy

It is the policy of the Court that all litigants in this Court, entitled to trial by jury, will have the right to grand and petit juries selected at random from a fair cross section of the community in the district or division in which the Court convenes, and that all U.S. Citizens residing within the District will 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. No U.S. Citizen

will be excluded from service as a grand or petit juror because of race, color, religion, sex, national origin, or economic status.

Section 1.05 Management Responsibilities

In accordance with 28 U.S.C. §1863(b)(1), the Clerk of Court will manage the juror management process under the supervision and control of the Chief Judge. The term "Chief Judge" means the Chief Judge of this District, or any supervising judge appointed by the Chief Judge.

(a) Approved Management Methods: The Court finds that electronic data processing methods can be advantageously used for managing this Plan. Therefore, a properly programmed electronic data processing system or a combination system employing both manual and electronic machine methods, may, at the Clerk's option after consultation with the Chief Judge, 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.

Section 1.06 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 management process to any authorized deputy clerk, or to any non-court person or agency authorized pursuant to Section 1.10 below.

Section 1.07 Jury Management Divisions (See 28 U.S.C. §1869(e) and Local Rule 120)

To facilitate juror management activities, the Clerk is directed to align the Eastern District of California’s counties into the following jury management divisions:

- (a) **SACRAMENTO DIVISION:** consisting of the counties of Siskiyou, Modoc, Trinity, Shasta, Lassen, Tehama, Plumas, Glenn, Butte, Colusa, Sutter, Yuba, Sierra, Nevada, Yolo, Placer, El Dorado, Solano, Sacramento, Amador, Alpine, San Joaquin, Mono, Stanislaus and Calaveras.

- (b) **FRESNO DIVISION:** consisting of the counties of Merced, Mariposa, Madera, Fresno, Inyo, Kings, Tulare, Kern and Tuolumne.

Jurors will be selected for service from a single division or from a combination of divisions as the Chief Judge may from time to time direct. The provisions of this Plan apply to both divisions in the District, unless specifically indicated to the contrary.

Section 1.08 Emptying and Refilling the 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 by October 1st each year, with a total number as may be deemed sufficient for a period of one (1) year. The Chief Judge may grant additional time to empty and refill the master jury wheels as needed.

Section 1.09 Emptying and Refilling the Qualified Jury Wheels

When the master wheels are emptied, the existing qualified wheels will continue to be used until the Clerk determines that an adequate number of persons from the new master wheels have been qualified. At that time, the old

qualified wheels will be emptied and new qualified wheels created. Jurors from previous qualified jury wheels may serve at the same time with jurors selected from later qualified jury wheels.

Section 1.10 Use of Non-Court Personnel

The Clerk may use the services of non-court personnel to assist in the juror management process. For purposes of this plan, the phrase "*non-court personnel*" may include, but is not limited to:

- (a) County or State of California 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, whose services are requested or employed by the Clerk to support the juror management 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 juror management process.

Section 1.11 Method and Manner for the Random Selection of Jurors

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

that the possibility of human discretion or choice affecting the selection of any individual's name is eliminated.

(a) **Purely Randomized Process:** At the Clerk's option, and after consultation with the Chief Judge, 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 pure randomized selection may be used to select names from the master wheel to determine 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 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.)

(1) The method and manner of purely randomized selection will be as follows:

(i) **Determining a "Quotient"**

The Clerk will make the systematic randomized selection by taking the total number of names available for selection and dividing that number by the number of

names needed for the master wheel. The number obtained will be the "quotient."

(ii) **Determining a "Starting Number"**

After determining the "quotient," the Clerk will establish a "starting number." This number will be the first name to be selected. The "starting number" will be manually drawn by lot beginning with the number one and ending with the same number as the "quotient." As an example of how both the "starting number" and the "quotient" are used, if we suppose the "quotient" to be "100" and the "starting number" to be "12," the first name chosen would be the 12th name on the list, the second name would be the 112th, etc., and continued in the same manner to the end of the list.

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 California county voter registration lists and the State of California Department of Motor Vehicles records represent a fair cross section of the citizens residing within the communities in the Eastern District of California.

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

(a) The names of all persons randomly selected from the voter registration records of the counties in each division and the names of all persons randomly selected from the State of California, Department of Motor Vehicle Records, will be equal in number and will be placed in the master jury wheel for that division. These two lists will be merged and duplicate records purged. The Court takes notice that when two or more source lists are used, one person's name may appear more than once. The Clerk will, either manually or through automated systems, eliminate as reasonably as possible such duplications before any selection procedures begin.

(b) Pursuant to 28 U.S.C. §1863 (b)(4) of the Act, the minimum number of names to be placed in the master jury wheels will be at least one-half of one percent of the total number of names on all county voter registration records.

(c) 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

In accordance with 28 U.S.C. §1863(b)(3), the Clerk will determine the number of records needed in the master wheel. The number of names drawn from each county will be substantially in the same proportion to the total number drawn from all counties within the division.

Section 2.04 Filling the Master Jury Wheels

After first determining the total number of names needed for the master wheel and then the proportionate share of names to be drawn a combination of the voter registration records and the State of California Department of Motor Vehicle records, the Clerk will proceed, either manually or through a combination of manual and computer methods, to make the initial selection of names from the record of each county.

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

A general notice will be posted in the Clerk's Office and on the Court's website that explains the process by which names are randomly and periodically drawn from the wheel.

The Clerk, either all at once or at periodic intervals, will draw at random from the master jury wheels the names of as many persons as may be required to maintain an adequate number of names in the qualified jury wheels. The number of names to be drawn will be determined by the Clerk based upon anticipated juror needs by the Court plus a margin of extra names sufficient to compensate for the estimated number that will turn out to be unavailable or ineligible.

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 wheel to determine 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 wheel by data computer personnel must insure 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 wheel, and the qualified wheel must also insure that the mathematical odds of any single name being picked are substantially equal.

Section 3.02 Juror Qualification Questionnaires

The juror qualification form prescribed by the Administrative Office of the United States Courts and approved by the Judicial Conference of the United States will be used.

The Clerk will mail a juror qualification questionnaire 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 (10) days. If a juror does not complete the juror qualification questionnaire online, a paper copy of the questionnaire may be mailed with instructions to complete and return the questionnaire to the Clerk by mail within ten days of receipt.

Section 3.03 Failure to Submit a Juror Qualification Questionnaire

If a person fails to submit a completed juror qualification questionnaire, the Clerk may note the failure in the juror's record. Upon Order of the Court, the Clerk thereafter may pursue such matter in accordance with the provisions of 28 U.S.C. §1864(a) of the Act. No juror fees or costs for this appearance will be paid, unless otherwise ordered by the Court.

Section 3.04 Determining Juror Qualification Status

The Chief Judge or designated judge, on their own initiative, or upon recommendation of the Clerk, will determine solely on the basis of information provided on the juror qualification form and other competent evidence, whether a person is unqualified for, or exempt, or to be excused from jury service. The Clerk will, by manual or computer means, enter this determination in the space provided on the juror qualification form. (28 U.S.C. §1865(a)). The Clerk will enter such determination on the juror qualification form or juror records in the database in the master jury wheel.

(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, eighteen (18) years of age who has resided within the judicial district for one year;
- (2) Is unable to read, write and understand the English language with a degree of proficiency sufficient to fill out 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 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) 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:

- (i) Over seventy (70) years of age;
- (ii) persons who have, within the past two years, served as a federal grand or petit juror; or
- (iii) Volunteer safety personnel, specifically individuals serving a public agency in an official capacity, without compensation, as firefighters or members of a rescue squad or ambulance crew.

(2) **Temporary Excuse:** In addition to the members of groups and occupational classes subject to excuse from jury service on individual request, any person summoned for jury service may, upon written

request, be excused by the Court, or by the Clerk of the Court, upon a showing of undue hardship or extreme inconvenience, for such period as the Court deems necessary, at the conclusion of which such person will be notified again for jury service within a reasonable time or as the Court may direct. The name of such person will be reinserted into the qualified jury wheel of the Court.

(i) Undue hardship or extreme inconvenience: as a basis for excuse from immediate jury service under this section means a 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 (30) 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.

Section 3.05 Qualified Jury Wheels

The Clerk will maintain separate qualified jury wheels or devices similar in purpose and function for each division, and will place in the wheels the names of all persons drawn from the master wheels and not disqualified, exempt or excused pursuant to this Plan. The Clerk will insure at all times an adequate number of names are maintained in each wheel. The Clerk may maintain these wheels by using an automated system.

CHAPTER FOUR

Selection of Grand and Petit Jurors

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

From time to time, the clerk will draw at random from the qualified jury wheel such number of names of persons as may be required for assignment to grand and petit jury panels. The clerk will post a general notice for public review in the clerk's office and on the court's website explaining the process by which names are periodically and randomly drawn.

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

Upon Court Order, the Clerk will randomly select, by manual or computer means, from the designated qualified jury wheel the designated number of persons to be summoned for a specific date. Names of persons summoned and appearing for service may be considered as a petit jury pool, from which separate trial panels will be randomly selected by lot. Pooling of jurors, staggered trial starts and multiple voir dire may be used in the assignment of jurors to petit jury panels. The Clerk will prepare for the Court and counsel a separate list of names of persons assigned to each petit jury panel. Jurors will complete and return their summons information sheets either by regular mail or through the Court's internet site.

The names of trial jurors may be released to the parties, the public, or the press at the conclusion of a trial (civil or criminal) only upon leave of the court. All requests for release of juror names must be made in writing to the presiding trial judge.

Section 4.03 Unanticipated Shortage of Jurors (See 28 U.S.C. §1866(f))

When there is an unanticipated shortage of available petit jurors drawn from the qualified jury wheels, the Chief Judge or designated judge may require the United States Marshal to summon a sufficient number of additional petit jurors. These jurors will be selected at random, in a manner ordered by the Court, consistent with 28 U.S.C. §1862.

Section 4.04 Petit Jury Term

In any two-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 as both a grand and petit juror.

A petit juror required to attend more than ten days in hearing one case may be paid, in the discretion of the trial judge, an additional fee, not exceeding the limit set forth by statute, for each day in excess of ten days on which the juror is required to hear such case.

A petit juror required to attend more than ten days of actual service may be paid, in the discretion of the judge, the appropriate fees at the end of the first ten days and at the end of every ten days of service thereafter.

The judge may order certification of additional attendance fees to be made effective commencing on the first day of extended service, without reference to the date of such certification.

Petit jurors appearing in the United States District Court for the Eastern District of California may, upon completion of their service, be released from further jury service obligations for a period of not less than two years. The Court reserves the right to modify the provisions of this petit jury policy when the interests of justice so require.

Section 4.05 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 will be furnished to the attorneys for the parties and any parties appearing *pro se* in said trial at the beginning of jury selection, unless otherwise ordered by the trial judge. Notwithstanding this general policy, any trial judge may order the Clerk to keep jurors names confidential in any case where the interests of justice so require.

- (b) **To the Public and the Media:** The names and information relating to any prospective or sitting petit jurors will not be disclosed to the public or media outside open court, except upon order of the Court. Applications for disclosure of petit juror names or information to the media or public must be made by motion (with a memorandum of authorities) to the presiding trial judge. The presiding trial judge may order the Clerk to keep the jurors' names confidential in any case where the interests of justice so require.

Section 4.06 Grand Jury Impanelment (See 28 U.S.C. §1863(b)(8))

From time to time as grand juries are required, the Court will order the random drawing from each division's qualified wheel the names of persons as may be required for assignment to the grand jury panels. The total number of grand jurors to be summoned will be based on a pro-rata share of the total number of

persons on the voter registration record of each division as compared to the total number of persons on the voter registration records of all divisions. Special grand juries will be selected in the same manner as regular grand juries.

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

Section 4.07 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 4.08 Term of Special Grand Jury

Each Special Grand Jury as defined in 18 U.S.C. §3331, will serve for a term of 18 months unless an order for its discharge or an extension of its term is entered by the Court in accordance with §§ 3331 or 3333 of 18 U.S.C.

Section 4.09 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 impaneled to replace excused grand jurors. Alternate grand jurors will be drawn in the same manner and will have the same qualifications as the regular grand jurors, and if impaneled, will be subject to the same challenges, will take the same oath, and will have the same authority as the regular grand jurors.

Section 4.10 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 (with a memorandum of authorities) to the Chief Judge and must show exceptional and compelling circumstances why disclosure should be allowed.

CHAPTER FIVE

Exclusion or Excuse from Jury Service

Section 5.01 Exclusion or Excuse from Jury Service (28 U.S.C. §1866(c))

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; or
- (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 qualified jury wheel 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 Juror Management Plan to any person requesting information about the juror management process, and may post the Plan to the court's public website. All other requests for information about the juror management process must be submitted in writing (with a memorandum of authorities) 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 juror management process will not be disclosed, except upon written order of the court. Applications for disclosure of juror management records must be made by motion (with a memorandum of authorities) to the Chief Judge and must show exceptional and compelling circumstances why disclosure should be allowed.

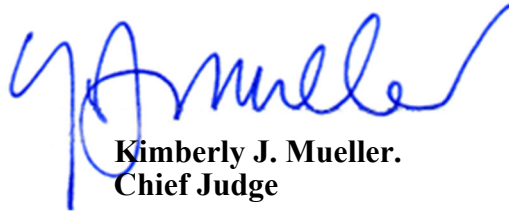
Section 6.03 Retention of Juror Records (See 28 U.S.C. §1868)

The clerk will keep all records and papers relating to the juror management 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 Jury Wheel Records (See 28 U.S.C. §1868)

Applications to inspect juror management records to determine the validity of the selection of any jury must be made by motion (with a memorandum of authorities) to the Chief Judge, and must show exceptional and compelling circumstances why disclosure should be allowed.

ADOPTED with the consent of the Court, the 26th day of March 2024.



Kimberly J. Mueller.
Chief Judge