

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA

***PLAN FOR THE RANDOM SELECTION OF  
GRAND AND PETIT JURORS***

The United States District Court for the District of South Dakota adopts the following plan for the random selection and service of grand and petit jurors consistent with the Jury Selection and Service Act of 1968. This plan is effective upon approval of the reviewing panel and the chief judge of the district court or his or her designee as provided in 28 U.S.C. § 1863(a) and remains in effect until modified in the same manner.

The purpose of this plan is to implement the policies of the United States declared in 28 U.S.C. § 1861: to ensure litigants entitled to a jury trial have the right to grand and petit juries selected at random from a fair cross section of the community and to ensure that all citizens have the opportunity to be considered for service on grand and petit juries and have an obligation to serve as jurors when so summoned. This plan prohibits discrimination as set forth in 28 U.S.C. § 1862, which provides that no citizen shall be excluded from service as a grand or petit juror on account of race, color, religion, sex, national origin, or economic status.

This plan is applicable to the District of South Dakota, which is divided into four divisions. 28 U.S.C. § 122.

**CREATION OF THE MASTER AND QUALIFIED JURY WHEELS**

The Clerk under the supervision of the Court shall manage the jury selection process and maintain a separate master and qualified jury wheel for each division. All jurors shall be selected at random from the list of registered voters

provided by the office of the South Dakota Secretary of State. The master jury wheel shall include the names of all registered voters. The master jury wheel shall be refilled at least every four years and must be refilled between January 1 and July 1 of the year following a federal general presidential election.

The selection of 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, shall be accomplished by a purely randomized process through a properly programmed electronic data processing system. In each instance, the selection of names shall ensure that the mathematical odds of any single name being picked are substantially equal.

The Court authorizes use of the Jury Management System ("JMS"), an electronic data processing system developed by the Administrative Office of the United States Courts, to select names from the master jury wheel to fill the qualified wheel; to select names from the qualified wheel for persons to be summoned to serve as grand or petit jurors; and for the recording of names and other information on any papers and records needed by the Court to administer the selection and payment of jurors.

#### **QUALIFICATION FOR SERVICE AND EXEMPTIONS**

The Clerk under supervision of the Court shall use the information provided in the juror qualification forms and other reliable evidence to determine whether a person is unqualified or exempt for jury service within their respective divisions. Under 28 U.S.C. § 1865(b), a person is qualified to serve on grand or petit juries in the District Court unless he or she:

1. is not a citizen of the United States at least eighteen years old who has resided for a period of one year within the judicial district;
2. is unable to read, write, and understand the English language with a degree of proficiency sufficient to 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 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.

The following persons are barred from jury service on the ground that they are exempt under 28 U.S.C. § 1863(b)(6):

1. members in active service in the Armed Forces of the United States;
2. full-time, employed members of the fire, police, or other law enforcement department of any state;
3. public officers in the executive, legislative, or judicial branches of the Government of the United States, or any state who are actively engaged in the performance of official duties. Public officer shall mean a person who is either elected to public office or who is directly appointed by a person elected to public office.

## **EXCUSES FROM JURY SERVICE**

Upon individual request, the presiding judge of each division may grant an excuse from jury service if the judge finds that jury service will entail undue hardship or extreme inconvenience and the excuse will not be inconsistent with the Act. The Court may establish internal operating procedures that allow the Clerk to grant permanent excuses to persons whose service would cause them undue hardship or extreme inconvenience. These procedures will identify specific categories of persons where excuse from jury service would be consistent with the Act.

Upon individual request, volunteer safety personnel who serve without compensation as firefighters or members of a rescue squad or ambulance crew for a public agency shall be excused from jury service under 28 U.S.C. § 1863(b)(5)(B).

Upon individual request, persons summoned for jury service may be temporarily excused by the Court, or the Clerk under supervision of the Court, upon a showing of undue hardship or extreme inconvenience. At the conclusion of a juror's temporary excuse period, the person either shall be summoned again for jury service or the name of the person shall be reinserted into the qualified jury wheel for resummoning.

## **JURORS EXCLUDED BY THE COURT**

Any juror who has been summoned for jury service may be excluded by the Court upon the following grounds pursuant to 28 U.S.C. § 1866(c):

- A. That the person may be unable to render impartial jury service or that his service as a juror would likely disrupt the proceedings;

- B. That the person is peremptorily challenged as provided by law;
- C. That the person is excluded pursuant to the procedure specified by law upon a challenge by any party for good cause shown;
- D. Upon a determination by the Court that the person as a juror would be likely to threaten the secrecy of the proceedings, or otherwise adversely affect the integrity of jury deliberations; provided that the judge, in open court, determines exclusion is warranted, and not inconsistent with 28 U.S.C. §§ 1861 and 1862. The number of persons excluded under this subparagraph shall not exceed one percent of the number of persons who return executed jury qualification forms during the period, specified in this plan, between two consecutive fillings of the master wheel. The names of persons excluded under this subparagraph, together with detailed explanations for the exclusions, shall be forwarded immediately to the Eighth Circuit Judicial Council for disposition under the provisions of 28 U.S.C. § 1866(c).
- E. That any person excluded from a particular jury under the provisions of subparagraphs A, B, or C shall be eligible to sit on another jury if the basis for his initial exclusion would not be relevant to his ability to serve on that jury.

#### **JURY QUALIFICATION QUESTIONNAIRES**

A juror qualification questionnaire shall be made available to each person whose name has been drawn from the master jury wheel with instructions to complete and return the form. A supplemental questionnaire may be made

available with the qualification questionnaire at the direction of the presiding judge in each division. In any case in which it appears there is an omission, ambiguity, or error in a form, the Clerk shall return the form with instructions to the person to make additions or corrections as may be necessary and to return the form to the Clerk.

### **QUALIFIED JURY WHEEL**

The Clerk shall maintain a separate qualified jury wheel for each division in the district and shall place in those wheels the names of all persons drawn from the master jury wheel of the relevant division who are found qualified and not exempt or excused from service. The Clerk shall ensure that at all times a sufficient number of names are contained in each of the qualified wheels so grand and petit jury panels may be drawn at any time required by the Court.

Following the refill of the master wheel, each division's qualified wheel shall be emptied as soon as the process of qualifying jurors from the new master wheel has produced a sufficient number of qualified jurors to supply the Court's needs.

### **SELECTION AND SUMMONING OF JURY PANELS**

#### **A. Petit Jury Panels**

When the Court orders a petit jury to be drawn, the Clerk will select at random from the qualified jury wheel of the applicable division the number of jurors required and will issue summonses. When the summoned jurors report, a randomized list will be generated for seating. In the alternative, a judge may choose to have the names of all jurors who have reported for service placed in a courtroom jury wheel from which names shall be drawn at random.

## **B. Grand Jury Panels**

Grand jury panels may consist of jurors from one or more divisions or jurors from the entire district as determined by the Chief Judge. When the Court orders a grand jury to be drawn, the Clerk will select at random from the qualified jury wheel the number of jurors required and will issue summons. If the grand jury includes jurors from more than one division, the selection of grand jurors shall be made so that each division is proportionately represented on the grand jury. Grand jurors shall be summoned in the same manner as petit jurors.

### **UNANTICIPATED SHORTAGE OF PETIT JURORS**

When there is an unanticipated shortage of available petit jurors on a panel drawn from a master or qualified wheel, the Court may order the Clerk to summon a sufficient number of petit jurors selected at random from the voter registration lists of one or more counties in a manner ordered by the Court consistent with sections 1861 and 1862 of the Act.

### **RELEASE OF JUROR INFORMATION**

#### **A. Petit Jury Panels**

Attorneys for parties participating in voir dire and their staff and consultants may electronically access the names and other personal information concerning petit jurors summoned to report. Such information is confidential. Attorneys may review this information with their clients but may not provide copies. Following jury selection, such information must be returned or destroyed as directed by the Clerk.

All others, including pro se litigants, must motion the Court to obtain access. Access may be denied in any case where the interests of justice so require.


**B. Grand Jury Panels**

The United States Attorney's Office may electronically access the names and other personal information concerning grand jurors summoned to report. Such information is confidential and may not be copied and shared with others. Following grand jury selection, such information must be returned or destroyed as directed by the Clerk.

This plan supersedes all existing plans and constitutes the rule of this Court.

Dated May 8, 2023.

BY THE COURT:



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ROBERTO A. LANGE  
CHIEF JUDGE



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**EIGHTH CIRCUIT JUDICIAL COUNCIL**

**ORDER**

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I hereby certify that the Eighth Circuit Judicial Council has approved the Amended Jury Plan for the District of South Dakota, as adopted by the Court on May 8, 2023.

  
Millie B. Adams  
Circuit Executive

St. Louis, Missouri  
May 15, 2023

cc: Judicial Council Members  
Chief District Judge Roberto Lange  
Matthew W. Thelen, Clerk of Court

Review was undertaken by the Jury System Committee.

JCO 3319