

United States Courts
Judicial Council of the Eighth Circuit
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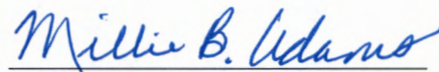
Millie B. Adams
Circuit Executive

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EIGHTH CIRCUIT JUDICIAL COUNCIL

ORDER

I hereby certify that the Eighth Circuit Judicial Council has approved the Amended Jury Plan for the Western District of Arkansas, as adopted by the Court and effective on December 20, 2022.



Millie B. Adams
Circuit Executive

St. Louis, Missouri
February 8, 2023

cc: Judicial Council Members
Chief District Judge Susan O. Hickey
Heather D. Burns, Interim Clerk of Court

Review was undertaken by the Jury System Committee.

JCO 3291

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
PLAN FOR THE RANDOM SELECTION OF JURORS**

Pursuant to 28 U.S.C. §1861 et seq. the following Plan for the random selection of jurors is hereby adopted by this court, subject to approval of the reviewing panel for the Eighth Circuit Court of Appeals, and subject to such rules and regulations as may be adopted by the Judicial Conference of the United States.

APPLICABILITY OF PLAN

The United States District Court for the Western District of Arkansas includes thirty-four (34) counties, which are grouped into six (6) statutory divisions (28 U.S.C. 83(b)). The court finds that establishing five (5) jury divisions within the district, composed of counties from which grand and petit jurors will be drawn for each place of holding court, will result in impartial trials, will avoid unnecessary expense, and will reduce burdens on persons reporting for jury service. Therefore, the court establishes five (5) jury divisions:

El Dorado Division, consisting of the counties of Ashley, Bradley, Calhoun, Columbia, Ouachita, and Union.

Fort Smith Division, consisting of the counties of Crawford, Franklin, Johnson, Logan, Polk, Scott, and Sebastian.

Hot Springs Division, consisting of the counties of Clark, Garland, Hot Spring, Montgomery, and Pike.

Northwest Division, consisting of the counties of Baxter, Benton, Boone, Carroll, Madison, Marion, Newton, Searcy, and Washington.

Texarkana Division, consisting of the counties of Hempstead, Howard, Lafayette, Little River, Miller, Nevada, and Sevier.

The provision of this Plan applies to all jury divisions in the Western District of Arkansas.

POLICY

It is the purpose of this Plan to implement the policies of the United States declared in 28 U.S.C. §1861.

1. That all litigants in the Western District of Arkansas 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 jury division wherein the court convenes;
2. That all citizens have the opportunity to be considered for service on grand and petit juries in the district courts of the United States; and
3. That all citizens have an obligation to serve as jurors when summoned for that purpose.

It is further the purpose of this Plan to implement the prohibition against discrimination contained in 28 U.S.C. §1862, which provides that no citizen will be excluded from service as a grand or petit juror in the district courts of the United States on account of race, color, religion, sex, national origin, or economic status.

MANAGEMENT OF JURY SELECTION PROCESS

In accordance with 28 U.S.C. § 1863(b)(1), the Clerk of the Court manages the jury selection process, under the supervision and control of the Chief Judge of the District Court, and in the absence of the Chief Judge from the district, under the supervision and control of an available regular active District Judge.

JURY SELECTION SOURCES

The Judges of this court find that the prospective grand and petit juror names will be drawn from two sources: 1) general election actual voter lists, and 2) lists of licensed motor vehicle operators and state identification card holders eighteen years of age or older. Both source lists, for jury management purposes, are maintained by the Arkansas Secretary of State's Office. The Secretary of State's Office will merge both source lists and remove all duplicate names. The merged list will become and be referred to as the source list for the master jury wheel. The Judges of this court do find that the source list, as described above, represents a fair cross-section of the community in this district. Accordingly, names of grand and petit jurors serving in the Western District of Arkansas will be selected by randomized procedures from the source list, in accordance with 28 U.S.C § 1863(b)(2).

THE MASTER JURY WHEEL

The master jury wheel should be emptied and refilled not later than January 1 and March 31 of each year in which there is a general election using names provided by the Secretary of State's Office. Thus, the master jury wheel will be emptied and refilled every two years. However, any Judge of the Western District of Arkansas may order additional names to be placed in the master wheel from time to time, as necessary and in accordance with the formula described.

In accordance with 28 U.S.C. § 1863(b)(4), a minimum of 1% of the names from the source list(s) will be placed in the master wheel.

MASTER AND QUALIFIED WHEELS

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, in accordance with 28 U.S.C. §1863 (b)(3).

The court authorized 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.

Although names of qualified jurors may no longer be drawn from the qualified wheel after the master wheel's emptying date, jurors drawn prior to that date and put under summons, even without specifying a reporting date, may continue to serve during their full tenure.

QUALIFICATION FOR SERVICE AND EXEMPTIONS

The Judges 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. The Judge may delegate this responsibility to the Clerk of Court or designee, in accordance with 28 U.S.C. § 1865(a).

Pursuant to the provisions of 28 U.S.C. § 1865(b), any 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 forms;
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.

Pursuant to the provisions of 28 U.S.C. § 1863(b)(6), the District Court finds that exemption of the following groups of persons, who are employed on a full-time basis, or occupational classes is in the public interest and would not be inconsistent with the Act:

1. members in active service in the Armed Forces of the United States;
2. full-time, employed members of the fire or law enforcement departments of any state, district, territory, or possession or subdivision; and
3. public officers in the executive, legislative, or judicial branches of the government of the United States, or any state, district, territory, or possession or subdivision, 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 has established internal operating procedures that allow the Clerk of Court or designee to grant permanent excuses to persons whose

service would cause them undue hardship or extreme inconvenience. These following procedures will identify specific categories of persons where excuse from jury service would be consistent with the Act.

The District Court hereby 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 will be consistent with 28 U.S.C. § 1863(b)(5), should be granted upon individual request:

1. Persons more than 70 years of age;
2. Persons who have, within the past two years, served as a grand or petit juror in a state or federal court;
3. Persons having active care and custody of a child or children less than 10 years of age whose health and/or safety would be jeopardized by their absence for jury service.
4. A person who is essential to the care of aged or infirm persons;
5. Any persons whose services are so essential to the operation of a business, commercial, or agricultural enterprise that said enterprise must close if such persons were required to perform jury duty; and
6. Persons who serve as volunteer safety personnel, specifically persons who serve without compensation as firefighters or members of a rescue squad or ambulance crew for a public agency, in accordance with 28 U.S.C. § 1863(b)(5)(B).

TEMPORARY EXCUSE FROM JURY SERVICE

In addition to the members of classes or groups excused from jury service upon request, as provided in the excuses from jury service, the Chief Judge, or any other Judge presiding over a jury trial, or the Clerk of Court or designee under the supervision of the court will determine if any person summoned for jury service may be temporarily excused upon a showing of undue hardship or extreme inconvenience, in accordance with 28 U.S.C. § 1866(c). At the conclusion of a juror's temporary excuse period, he or she will either be summoned again for jury service or his or her name will be reinserted into the master jury wheel for possible re-summoning. Whenever a person is disqualified, excused, exempt, or excluded from jury service, the specific reason will be noted in JMS.

JURORS EXCLUDED BY THE COURT

Also pursuant to the provisions of 28 U.S.C. § 1866(c), any juror who has been summoned for jury service may be excluded by the court upon the following grounds:

1. That the person may be unable to render impartial jury service or that his service as a juror would likely disrupt the proceedings;
2. That the person is peremptorily challenged as provided by law;
3. That the person should be excluded pursuant to the procedure specified by law upon a challenge by any party for good cause shown;
4. Upon a determination by the court that the person as a juror would likely threaten the secrecy of the proceedings, or otherwise adversely affect the integrity of jury deliberations; provided that no person shall be excluded under this subparagraph 4 unless the Judge, in open court, determines that exclusion is warranted, and that exclusion will not be inconsistent with 28 U.S.C. §§ 1861 and 1862. The number of persons excluded under this subparagraph 4 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 (4), 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); and
5. That any person excluded from a particular jury under the provisions of subparagraphs 1, 2, or 3 of jurors excluded by the court section 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.

DRAWING OF NAMES FOR JURY QUALIFICATION

From time to time as directed by the court, the Clerk of Court or designee shall draw names at random from the master jury wheel. A juror qualification questionnaire shall be mailed to each person whose name has been drawn from the master jury wheel. A supplemental questionnaire may be mailed along 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 the execution of any

questionnaire, the Clerk of Court or designee 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 court.

The Clerk of Court or designee may summon any person who fails to return a completed juror qualification questionnaire, as instructed, to appear before the court to complete the questionnaire. At the discretion of the court, a person summoned to appear because of failure to return a juror qualification questionnaire, who later personally appears and executes a juror qualification questionnaire before the court, may be entitled to receive the same fees and travel allowances paid to jurors under 28 U.S.C. § 1871, except where the court finds that his or her prior failure to either execute and mail the questionnaire or submit the questionnaire via the court's internet website was willful.

Any person who willfully misrepresents a material fact on a jury qualification questionnaire for the purpose of avoiding or securing service as a juror may be fined not more than \$1,000, imprisoned not more than three days, ordered to perform community service, or any combination.

Each person drawn for jury service may be served personally, or by registered, certified, or first-class mail addressed to such person at his or her usual residence or business address. If service is made personally, the Clerk of Court or designee will deliver the juror qualification questionnaire and summons to the Marshal, who will serve the forms. If service is made by registered or certified mail, the Marshal or Clerk of Court or designee will serve the juror qualification questionnaire and summons and make an affidavit of service. Any receipt from the addressee will be attached to the affidavit.

DRAWING OF NAMES FOR PETIT AND GRAND JURY PANELS

In accordance with 28 U.S.C. § 1863(b)(8), each petit jury panel will be summoned on a division-wide basis and will sit at the statutory place or places of holding court in the division. When jurors are needed, the Clerk of Court or designee shall select at random from the qualified jury wheel the number of jurors required. Each of those jurors will be mailed a summons.

Any person summoned, who fails to appear or who fails to show good cause for the failure to comply with the summons, may be fined not more than \$1,000, imprisoned not more than three days, ordered to perform community service, or any combination.

All petit jurors who report for service pursuant to a summons will be considered the petit jury panel. Prior to the opening of court, a randomized list will be generated of all those jurors who have reported for service. The jurors will be seated in this randomized order. 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.

Grand juries may be drawn for and from the entire district or for and from any separate jury division, or combination of divisions, but are empaneled only at Fort Smith, unless otherwise ordered by the court. As directed by the court, a grand jury will be drawn from the qualified jury wheels of each of the jury divisions substantially in proportion to the number of actual voters of the respective divisions.

UNANTICIPATED SHORTAGE OF PETIT JURORS

When there is an unanticipated shortage of available petit jurors, at the direction of the Clerk of Court or designee, the court may extend the petit juror's term of service to meet the requirements of the court.

RELEASE OF JUROR INFORMATION

In accordance with 28 U.S.C. § 1863(b)(7), names and personal information concerning petit and grand jurors shall not be disclosed to attorneys, parties, the public, or the media, except:

1. Names and personal information concerning persons who have been entered in the jury wheel shall not be disclosed, except upon order of the court;
2. Names and personal information concerning prospective and sitting petit jurors shall not be disclosed to the public or media outside open court, except upon order of the court. A request for disclosure of petit juror names and personal information to the media or public must be made to the presiding Judge;
3. The Clerk of Court or designee will only provide names and personal information concerning prospective petit jurors to the attorneys, or a party if proceeding pro se, in a case set for trial. The attorneys or pro se party may not share the jury information except as necessary for purposes of jury selection;
4. The presiding Judge may order juror names and personal information kept confidential when the interests of justice require; and
5. The names of grand jurors may be provided by the Clerk of Court or designee to the U.S. Attorney's Office prior to the convening of the grand jury.

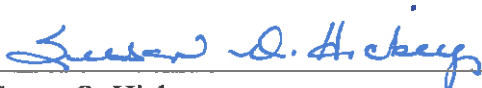
In accordance with 28 U.S.C. § 1867(f), the contents of all other records or papers used by the court in connection with the jury selection process will not be disclosed until after the master jury wheel has been emptied and refilled and all persons selected to serve as jurors before the master wheel was emptied have completed such service. However, the court may at any time order disclosure of such records and papers as may be necessary in the preparation or presentation of a motion challenging compliance with selection procedures under 28 U.S.C. §1867(a), (b), or (c). The parties in a case will be allowed to inspect, reproduce, and copy such records or papers at all reasonable times during the preparation and pendency of such motion.

PROTECTION OF EMPLOYMENT RIGHTS

If an employer discharges, threatens to discharge, intimidates, or coerces any permanent employee by reason of such employee's jury service or the attendance or scheduled attendance in connection with such service in this court, the employer shall be considered in violation of the provisions of 28 U.S.C. § 1875.

Nothing in this Plan will affect the composition of any jury panel drawn prior to the effective date of this Plan.

Adopted by the Judges of the United States District Court for the Western District of Arkansas this 20th day of December, 2022.



Susan O. Hickey
Chief U.S. District Judge