

FILED

Oct 14 2020

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY s/ CharityW DEPUTY

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

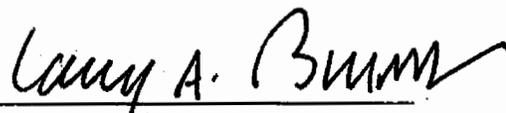
In the matter of)
)
ADOPTION OF A JURY)
SELECTION PLAN (AS)
AMENDED))
_____)

General Order No. 147-H

Pursuant to 28 U.S.C. §§ 1861 through 1869, as amended, the following Jury Selection Plan is hereby adopted by this court. This Plan supersedes General Orders 147 – 147-G, General Orders 626 - 626B and Civil Local Rule 83.10. Civil Local Rule 83.10 is repealed and removed from the Court's Local Rules.

IT IS SO ORDERED.

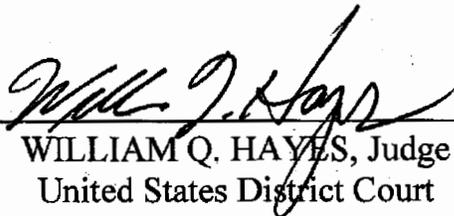
Dated: October 5, 2020



LARRY ALAN BURNS,
Chief Judge
United States District Court

SEE ATTACHED

DANA M. SABRAW, Judge
United States District Court



WILLIAM Q. HAYES, Judge
United States District Court

SEE ATTACHED

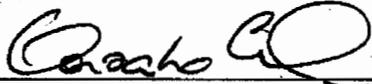
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United States District Court



ANTHONY J. BATTAGLIA, Judge
United States District Court



CATHY ANN BENCIVENGO, Judge
United States District Court



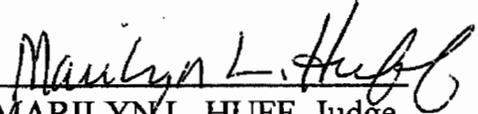
GONZALO P. CURIEL, Judge
United States District Court



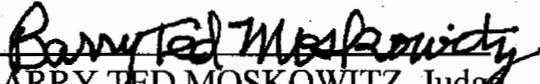
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TODD W. ROBINSON, Judge
United States District Court



MARILYN L. HUFF, Judge
United States District Court



BARRY TED MOSKOWITZ, Judge
United States District Court

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JEFFREY T. MILLER, Judge
United States District Court



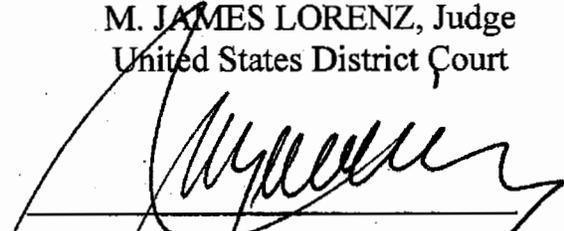
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United States District Court

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M. JAMES LORENZ, Judge
United States District Court



JOHN A. HOUSTON, Judge
United States District Court



ROGER T. BENITEZ, Judge
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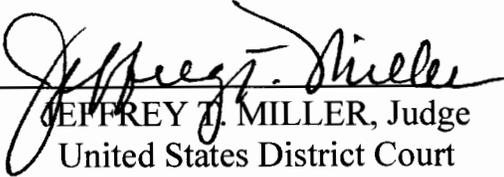
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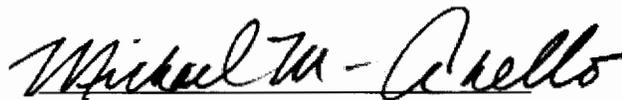
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SOUTHERN DISTRICT OF CALIFORNIA

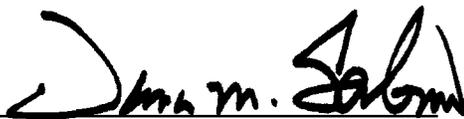
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Dated: _____

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Chief Judge
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DANA M. SABRAW, Judge
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WILLIAM Q. HAYES, Judge
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UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF CALIFORNIA

JURY PLAN

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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 Southern District of California, which consists of the counties of San Diego and Imperial, 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 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 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 “Jury 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. Therefore, 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 or Jury 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.

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.

When requests for names to build the master wheel are issued to non-court personnel (e.g., computer personnel, local or state officials), the work must be conducted pursuant to detailed instructions by the Clerk of Court. Once such selection is completed, the non-court personnel must certify that the selection was completed pursuant to the instructions of the Clerk of Court.

Section 1.08

Emptying and Refilling the District Master Jury Wheel

The Clerk of Court will create and maintain a master jury wheel. In accordance with 28 U.S.C. § 1863(b)(4), the Clerk is directed to empty and refill the master jury wheel by the first of May every two years after the general national elections. When the master jury wheel is 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. At that time, the old qualified jury wheel will be emptied and new qualified jury wheel created. Summoned jurors from the previous qualified jury wheel may serve at the same time with jurors selected from a later qualified jury wheel. If additional time is needed to empty and refill the master jury wheel, permission must be obtained from the Chief Judge of the Circuit.

Section 1.09

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 wheel 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 or Jury 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 wheel 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.).

(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 or Jury 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 1.10

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 1.11 **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 1.12 **Modifications**

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))

Voter Registration Lists: The Court finds that county voter registration lists represent a fair cross section of the citizens residing within the communities in the Southern District of California.

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

In no event should the quantity of names placed in the master jury wheel be less than one-half of one percent of the total number of names on registered voter lists.

The Chief Judge or Jury 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 Wheel**

When selecting names from the source list, 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 source list 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.

Section 2.04

Filling the Master Jury Wheel

The master wheel will be obtained as follows: The Clerk must ascertain the total number of registered voters in both counties and divide that number by the number of names to be selected for the master jury wheel. For instance, if there are 500,000 registered voters and 20,000 names are needed, 500,000 will be divided by 20,000 producing a quotient of 25. Then the Clerk must draw by lot a number, between zero and 26, and the name corresponding to that number from the source lists of each county, along with each 25th name corresponding to that number thereafter to the end of the source list.

The master wheel must maintain a division for each county between jurors who reside in each county. Jurors may be selected for service in one county, or both as the Court may direct.

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 required, the Clerk must draw at random from the master jury wheel the names of as many persons as may be required for jury service. 28 U.S.C. § 1864(a).

Section 3.02

Juror Qualification Questionnaires

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 will be mailed with instructions to complete and return the questionnaire to the Clerk by mail within ten (10) days of receipt.

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 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.

Section 3.04

Determining Juror Qualification Status

The 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), 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 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.

The Clerk of Court or his designee will submit to the designated Jury Judge any returned juror qualification questionnaires containing information that suggests doubt as to the individual's English skills so that the Jury Judge may determine whether the individual is qualified to serve as a juror.

(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 municipality, county or district; 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 age 70 years or older;
- (B)** Any person having active care and custody of a child or children under 10 years of age whose health and/or safety would be jeopardized by absence of such person for jury service; or a person who is essential to the care of aged or infirm persons;
- (C)** persons who have served as grand or petit jurors in a federal court within the past two years; or
- (D)** volunteer safety personnel. For purposes of this subparagraph, the term “volunteer safety personnel” means individuals serving a public agency (as defined in Section 1203(6) of Title I of the Omnibus Crime Control and Safe Streets Act of 1968) in an official capacity, without compensation, 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 Clerk deems necessary. Unless otherwise directed by the Court,

those individuals temporarily excused from jury service should either be summoned again for jury service with their pool if it is deferred, or their names should be reinserted into their respective qualified jury wheel for possible future selection.

Undue hardship or extreme inconvenience as a basis for excuse from immediate jury service under this section will mean 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; in situations where it is anticipated that a trial or grand jury proceeding may require more than thirty 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; or any other factor which the Court determines to constitute an undue hardship or to create an extreme inconvenience to the juror.

Section 3.05

Qualified Jury Wheel

The Clerk must maintain a qualified jury wheel for this district and will place in said wheel 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 Impanelment of Grand and Petit Jurors** (*See* 28 U.S.C. § 1866(a))

The Clerk will draw at random from the qualified jury wheel the names of as many persons as may be required for assignment to grand and petit jury panels in the District. Grand jurors will be randomly drawn from both counties maintaining the proportional relationship between the two counties. From those summoned for grand jury, 23 names will be chosen at random in the presence of a judge of the Court on the day when said jurors report in response to summons. These must serve as members of a grand jury. The remaining jurors summoned must serve as replacement grand jurors or as petit jurors.

Section 4.02 **Summoning Grand and/or Petit Jurors** (*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 – One Day Appearance/One Trial**

It is the policy of the Southern District of California that all prospective petit jurors serve “one day” or “one trial” during a two week “on call” term of service. Petit jurors appearing in the United States District Court for the Southern District of California may, upon completion of their “one day” or “one trial” 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 4.04

Disclosure of Petit Juror Information

Names drawn from the qualified jury wheel must not be made public except by order of Court. The Clerk must provide copies of the information cards respecting the petit jury panel members who are selected for service in this court to the U.S. Attorney, and to Federal Defenders of San Diego, and to the District Court Library for the use of civil and other criminal practitioners. The cards will have the jurors' Social Security Numbers, addresses and telephone numbers blocked out. The Clerk must provide copies of information cards to the U.S. Attorney of grand jurors who are selected for service. 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.

Section 4.05

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

One or more grand juries will be impaneled for this district in accordance with court orders issued by the Chief Judge or Jury Judge. The impanelment of every grand jury will not be conducted in open court or within public view.

Section 4.06

Term of Grand Jury

Each grand jury will serve until discharged by the Court, 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 impaneled to replace excused grand jurors. Alternate grand jurors will be drawn in the same manner and must have the same qualifications as the regular grand jurors, and if impaneled, must 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 or his designee 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**

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 may 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 or Jury 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 or Jury 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.

Section 6.05**Report on Operation of the Jury Selection Plan**

The Clerk of Court or his designee will complete and submit an AO-12 Report on Operation of the Jury Selection Plan to the Chief Judge and designated Jury Judge one year after the first mailing of juror qualification forms from the Master Jury Wheel.