

IN THE SAC & FOX TRIBE OF THE MISSISSIPPI IN IOWA
TRIBAL COURT
349 MESKWAKI ROAD
TAMA, IOWA 52339-9629

FILED

MAR 21 2011

TRIBAL COURT
SAC & FOX TRIBE OF THE
MISSISSIPPI IN IOWA

IN THE MATTER OF THE JURY SELECTION
POLICY PROMULGATED BY THE CHIEF JUDGE

AC-2011-002

ORDER

WHEREAS, Sac and Fox Tribal Code Section 13-6401 (f) provides that the procedure for selection of a jury in a criminal case shall be the same as established under the Tribe's Rules of Civil Procedure; and

WHEREAS, Sac and Fox Tribe of the Mississippi in Iowa Tribal Court Rule G-1 (c) provides that in the absence of a specific rule, the Court may adopt any suitable mode of proceeding; and

WHEREAS, specific procedures for the selection, qualification and challenges with respect to jurors in criminal cases are not included in the Sac and Fox Tribal Code, nor are such specific procedures included in the Tribe's Rules of Civil Procedure; and

WHEREAS, a jury selection procedure is necessary to establish a fair and uniform method for the selection, qualification and challenge with respect to jurors in criminal cases.

THEREFORE, pursuant to the authority included in the Sac and Fox Tribe of the Mississippi in Iowa Tribal Code, and the authority included in the Tribe's Rules of Civil Procedure, the Court hereby adopts the following Jury Selection Policy:

Section 1. Qualifications. Any enrolled member of the Sac and Fox Tribe of the Mississippi in Iowa, between the ages of 18 and 75 who resides on the Sac and Fox Tribe of the Mississippi in Iowa Settlement, shall be eligible to be a juror in a criminal case. Judges and other officers or employees of the Court shall not be eligible to be jurors while thus employed.

Section 2. Jury Questionnaire. As a supplement to oral voir dire, a sworn jury questionnaire designed for use in criminal cases may be used to obtain information helpful to the parties and the court in jury selection before the jurors are called into court for examination. Court personnel may distribute the questionnaire to the prospective jurors and collect them when completed. The court shall make the completed questionnaires available to counsel.

Section 3. Challenge to Panel. Either party may challenge the jury panel on the ground that there has been a material departure from the requirements of law governing the selection, drawing or summoning the jurors. The challenge shall be in writing, specifying the facts constituting the grounds of the challenge, and shall be made before a jury is sworn. If the opposing party objects to either the sufficiency of the challenge or the facts on which it is based, the court shall hear and determine the challenge.

Section 4. Voir Dire Examination.

Subsection (a). Purpose; By Whom Made. A voir dire examination shall be conducted for the purpose of discovering bases for challenge for cause and for the purpose of gaining knowledge to enable an informed exercise of peremptory challenges, and shall be open to the public except upon order of the court as provided in Subsection (d). The Judge shall initiate the voir dire examination by identifying the parties and their respective counsel and by briefly outlining the nature of the case. The court shall then inquire of the prospective jurors which the judge deems necessary touching their qualifications to serve as jurors in the case on trial. Before exercising challenges, either party may make a reasonable inquiry of a prospective juror or jurors in reference to their qualifications to sit as jurors in the case. A verbatim record of the voir dire examination shall be made at the request of either party.

Subsection (b). Sequestration of Jurors. In the discretion of the court the examination of each juror may take place outside of the presence of other chosen and prospective jurors. Whenever there is a significant possibility that individual jurors will be ineligible to serve because of exposure to prejudicial material, the examination of each juror with respect to the juror's exposure shall take place outside the presence of other chosen and prospective jurors.

Subsection (c). Order of Drawing, Examination and Challenge.

1. The court shall first direct that such a number of the members of the jury panel be drawn and called as will equal the number of which the jury shall be composed for trial of the case plus the number of peremptory challenges available to all the parties, and the number of any alternate jurors.
2. The prospective jurors so drawn and called shall be sworn to answer truthfully questions asked them relative to their qualifications to serve as jurors in the case.
3. The prospective jurors shall be examined as to their qualifications, first by the court, then by the parties, commencing with the defendant.
4. A challenge for cause may be made at any time during voir dire by any party. At the close of voir dire any additional challenges for cause shall be made, first by the defense and then by the prosecution.
5. If any prospective juror is challenged and excused for cause another shall be drawn from the jury panel so that the number subject to voir dire will remain equal to the number initially called.

6. After both parties have had an opportunity to challenge for cause, each, commencing with the defendant, may exercise alternately the peremptory challenges permitted by this order.
7. When the peremptory challenges have been exercised, the jury shall be selected from the remaining prospective jurors in the order in which they were called until the number equals the number of which the jury shall be composed for trial of the case plus the alternate jurors.

The court may order that jurors be drawn, examined and challenged according to a different method than provided for in this subsection upon motion of a party.

Subsection (d). Jury Voir Dire Shall be Open to the Public. The process by which jurors are drawn, examined and challenged shall be open to the public unless either party demonstrates by clear and convincing evidence that voir dire, or any part thereof, should be closed to the public. In considering a request to exclude the public during voir dire, the court shall balance the juror's privacy interests, the defendant's right to a fair and public trial, and the public's interest in access to the courts. The court may order closure of voir dire only if it finds that there is a substantial likelihood that conducting the voir dire in open court would interfere with an overriding interest, including the defendant's interest in a fair trial and the juror's legitimate privacy interests in not disclosing deeply personal matters to the public. Any closure of voir dire shall be no broader than is necessary to protect the overriding interests involved.

Section 5. Challenge for Cause.

Subsection (a). Grounds. A juror may be challenged for cause by either party upon any of the following grounds:

1. The existence of a state of mind on the part of the juror which satisfies the court that the juror cannot try the case impartially and without prejudice to the substantial rights of the party challenging.
2. A felony conviction, unless the juror's civil rights have been restored.
3. A physical or mental defect which renders the juror incapable of performing the duties of a juror.
4. Being a spouse, parent, grandparent, brother or sister, or first or second cousin to any of the parties, their counsel or the judge.
5. Being a party adverse to the defendant in a civil action, or having complained against, or been accused by the defendant, in a criminal prosecution.
6. Having served on a trial jury which has tried another person for the same or a related offense to that charged in the complaint.
7. Having been a member of a jury formerly sworn to try the same complaint.
8. Having served as a juror in any case involving the defendant.

Subsection (b). How and when Exercised. A challenge for cause may be oral and shall state the grounds on which it is based. The challenge shall be made before the juror is sworn to try the case, but the court may for good cause shown permit the challenge to be made after the juror is sworn but before all the jurors constituting the jury are sworn. If a challenge for cause is made the court sustains the challenge, the juror shall be excused.

Section 6. Peremptory Challenges. The defendant and the prosecution shall each be entitled to three peremptory challenges. If there is more than one defendant, the court may allow the defendants additional peremptory challenges, and in that event the

prosecution's peremptory challenges shall be correspondingly increased.

All peremptory challenges shall be exercised out of the hearing of the jury panel.

Section 7. Order of Challenges to the Panel and to Individual Jurors. Challenges to the panel and to individual jurors shall be made in the following order:

1. To the panel.
2. To an individual juror for cause.
3. Peremptory challenge to an individual juror.

Section 8. Alternate Jurors. A trial judge may empanel alternate or additional jurors whenever in the judge's discretion, the judge believes it advisable to have such jurors available to replace jurors who, prior to the time the jury retires to consider its verdict, become unable or disqualified to perform their duties. An alternate juror who does not replace a principal juror shall be discharged after the jury retires to consider its verdict. Alternate jurors, in the order in which they are called, shall replace jurors who prior to the time the jury retires to consider its verdict, become unable or disqualified to perform their duties. Alternate jurors shall be drawn in the same manner, have the same qualifications, and be subject to the same examination and challenges for cause as the regular jurors. No additional peremptory challenges shall be allowed for alternate jurors except that unused peremptory challenges for the regular jury may be exercised against alternate jurors. If a juror becomes unable or disqualified to perform a juror's duties after the jury has retired to consider its verdict, a mistrial shall be declared, unless the parties agree that the jury shall consist of a lesser number than that selected for the trial.

This Jury Selection Policy shall take effect March 21, 2011. So ORDERED this 21st day
of March 2011.

A handwritten signature in cursive script that reads "Joseph Plumer". The signature is written in black ink and is positioned above a horizontal line.

Chief Judge Joseph Plumer
Sac and Fox Tribe of the Mississippi
In Iowa Tribal Court