

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-274 effective 270 days after Mar. 27, 1968, except as to cases in which an indictment has been returned or a petit jury empaneled prior to such effective date, see section 104 of Pub. L. 90-274, set out as a note under section 1861 of this title.

§ 1866. Selection and summoning of jury panels

(a) The jury commission, or in the absence thereof the clerk, shall maintain a qualified jury wheel and shall place in such wheel names of all persons drawn from the master jury wheel who are determined to be qualified as jurors and not exempt or excused pursuant to the district court plan. From time to time, the jury commission or the clerk shall 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 or jury commission shall 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. The jury commission or the clerk shall prepare a separate list of names of persons assigned to each grand and petit jury panel.

(b) When the court orders a grand or petit jury to be drawn, the clerk or jury commission or their duly designated deputies shall issue summonses for the required number of jurors.

Each person drawn for jury service may be served personally, or by registered, certified, or first-class mail addressed to such person at his usual residence or business address.

If such service is made personally, the summonses shall be delivered by the clerk or the jury commission or their duly designated deputies to the marshal who shall make such service.

If such service is made by mail, the summonses may be served by the marshal or by the clerk, the jury commission or their duly designated deputies, who shall make affidavit of service and shall attach thereto any receipt from the addressee for a registered or certified summons.

(c) Except as provided in section 1865 of this title or in any jury selection plan provision adopted pursuant to paragraph (5) or (6) of section 1863(b) of this title, no person or class of persons shall be disqualified, excluded, excused, or exempt from service as jurors: *Provided*, That any person summoned for jury service may be (1) excused by the court, or by the clerk under supervision of the court if the court's jury selection plan so authorizes, upon a showing of undue hardship or extreme inconvenience, for such period as the court deems necessary, at the conclusion of which such person either shall be summoned again for jury service under subsections (b) and (c) of this section or, if the court's jury selection plan so provides, the name of such person shall be reinserted into the qualified jury wheel for selection pursuant to subsection (a) of this section, or (2) excluded by the court on the ground 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, or (3) excluded upon peremptory challenge as provided by law, or (4) excluded pursuant to the procedure specified by law upon a challenge by any party for good cause shown, or (5) excluded upon determination by the court

that his service as a juror would be likely to threaten the secrecy of the proceedings, or otherwise adversely affect the integrity of jury deliberations. No person shall be excluded under clause (5) of this subsection unless the judge, in open court, determines that such is warranted and that exclusion of the person will not be inconsistent with sections 1861 and 1862 of this title. The number of persons excluded under clause (5) of this subsection shall not exceed one per centum of the number of persons who return executed jury qualification forms during the period, specified in the plan, between two consecutive fillings of the master jury wheel. The names of persons excluded under clause (5) of this subsection, together with detailed explanations for the exclusions, shall be forwarded immediately to the judicial council of the circuit, which shall have the power to make any appropriate order, prospective or retroactive, to redress any misapplication of clause (5) of this subsection, but otherwise exclusions effectuated under such clause shall not be subject to challenge under the provisions of this title. Any person excluded from a particular jury under clause (2), (3), or (4) of this subsection 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 such other jury.

(d) Whenever a person is disqualified, excused, exempt, or excluded from jury service, the jury commission or clerk shall note in the space provided on his juror qualification form or on the juror's card drawn from the qualified jury wheel the specific reason therefor.

(e) In any two-year period, no person shall be required to (1) serve or attend court for prospective service as a petit juror for a total of more than thirty days, except when necessary to complete service in a particular case, or (2) serve on more than one grand jury, or (3) serve as both a grand and petit juror.

(f) When there is an unanticipated shortage of available petit jurors drawn from the qualified jury wheel, the court may require the marshal to summon a sufficient number of petit jurors selected at random from the voter registration lists, lists of actual voters, or other lists specified in the plan, in a manner ordered by the court consistent with sections 1861 and 1862 of this title.

(g) Any person summoned for jury service who fails to appear as directed may be ordered by the district court to appear forthwith and show cause for failure to comply with the summons. Any person who fails to show good cause for noncompliance with a summons may be fined not more than \$1,000, imprisoned not more than three days, ordered to perform community service, or any combination thereof.

(June 25, 1948, ch. 646, 62 Stat. 952; May 24, 1949, ch. 179, §96, 63 Stat. 103; Pub. L. 90-274, §101, Mar. 27, 1968, 82 Stat. 58; Pub. L. 91-543, Dec. 11, 1970, 84 Stat. 1408; Pub. L. 95-572, §2(b), Nov. 2, 1978, 92 Stat. 2453; Pub. L. 97-463, §2, Jan. 12, 1983, 96 Stat. 2531; Pub. L. 100-702, title VIII, §801, Nov. 19, 1988, 102 Stat. 4657; Pub. L. 110-406, §§4, 5(b), 17(b), Oct. 13, 2008, 122 Stat. 4292, 4295.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 28, U.S.C., 1940 ed., §§ 417, 418 (Mar. 3, 1911, ch. 231, §§ 280, 281, 36 Stat. 1165).

Section consolidates parts of sections 417, 418 of title 28, U.S.C., 1940 ed., with necessary changes in phraseology.

The requirement of section 418 of title 28, U.S.C., 1940 ed., for the summoning of a special jury in accordance with the law of the state was omitted as unnecessary and incongruous in view of other sections of this chapter making adequate provision for summoning jurors.

1949 ACT

This section amends section 1866 of title 28, U.S.C., by restoring provision of original law that special juries be impaneled in accordance with laws of the respective States.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110-406, § 5(b), struck out “publicly” after “clerk shall” in second sentence and inserted “The clerk or jury commission shall 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.” after second sentence.

Subsec. (g). Pub. L. 110-406, § 17(b), substituted “\$1,000, imprisoned not more than three days, ordered to perform community service, or any combination thereof.” for “\$100 or imprisoned not more than three days, or both.”

Pub. L. 110-406, § 4, substituted “may be ordered” for “shall be ordered” and struck out “his” before “failure to comply”.

1988—Subsec. (c)(1). Pub. L. 100-702 amended cl. (1) generally. Prior to amendment, cl. (1) read as follows: “excused by 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 shall be summoned again for jury service under subsections (b) and (c) of this section, or”.

1983—Subsec. (b). Pub. L. 97-463, § 2, inserted provision in second par. authorizing service by first-class mail of persons drawn for jury service, substituted in fourth par. “If such service is made by mail, the summons may be served by the marshal or by the clerk, the jury commission or their duly designated deputies, who shall make affidavit of service and shall attach thereto any receipt from the addressee for a registered or certified summons” for “If such service is made by registered or certified mail, the summons may be served by the clerk or jury commission or their duly designated deputies who shall make affidavit of service and shall file with such affidavit the addressee’s receipt for the registered or certified summons” and struck out provision requiring the marshal, if service was made by the marshal, to attach to his return the addressee’s receipt for the registered or certified mail.

1978—Subsec. (c). Pub. L. 95-572 struck out introductory text reference to par. (7) of section 1863(b) of this title.

1970—Subsec. (b). Pub. L. 91-543 inserted provisions authorizing duly designated deputies of the clerk or the jury commission to issue summonses, and deliver them to the marshal for service when personal service is to be made, and provisions authorizing, if service is made by registered or certified mail, the clerk or the jury commission or their duly designated deputies to make service of the summons.

1968—Subsec. (a). Pub. L. 90-274 substituted provisions authorizing the commission or clerk to maintain a jury wheel of qualified jurors and to draw particular panels therefrom for provisions authorizing the marshal to summon talesmen from the bystanders when there is an insufficient number of petit jurors.

Subsec. (b). Pub. L. 90-274 substituted provisions directing the clerk or jury commission to deliver sum-

monses to the marshal for service when the court orders a grand or petit jury to be drawn and setting out the details of service for provisions requiring that, when a special jury was ordered by a district court, it had to be returned by the marshal in the same manner and form as was required in such case by the law of the State in which the district court sat.

Subsecs. (c) to (g). Pub. L. 90-274 added subsecs. (c) to (g).

1949—Act May 24, 1949, divided section into subsections and restored provisions that special juries be impaneled in accordance with State law.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-572 applicable with respect to any grand or petit juror summoned for service or actually serving on or after Nov. 2, 1978, see section 7(a) of Pub. L. 95-572, set out as an Effective Date note under section 1363 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-274 effective 270 days after Mar. 27, 1968, except as to cases in which an indictment has been returned or a petit jury empaneled prior to such effective date, see section 104 of Pub. L. 90-274, set out as a note under section 1861 of this title.

§ 1867. Challenging compliance with selection procedures

(a) In criminal cases, before the voir dire examination begins, or within seven days after the defendant discovered or could have discovered, by the exercise of diligence, the grounds therefor, whichever is earlier, the defendant may move to dismiss the indictment or stay the proceedings against him on the ground of substantial failure to comply with the provisions of this title in selecting the grand or petit jury.

(b) In criminal cases, before the voir dire examination begins, or within seven days after the Attorney General of the United States discovered or could have discovered, by the exercise of diligence, the grounds therefor, whichever is earlier, the Attorney General may move to dismiss the indictment or stay the proceedings on the ground of substantial failure to comply with the provisions of this title in selecting the grand or petit jury.

(c) In civil cases, before the voir dire examination begins, or within seven days after the party discovered or could have discovered, by the exercise of diligence, the grounds therefor, whichever is earlier, any party may move to stay the proceedings on the ground of substantial failure to comply with the provisions of this title in selecting the petit jury.

(d) Upon motion filed under subsection (a), (b), or (c) of this section, containing a sworn statement of facts which, if true, would constitute a substantial failure to comply with the provisions of this title, the moving party shall be entitled to present in support of such motion the testimony of the jury commission or clerk, if available, any relevant records and papers not public or otherwise available used by the jury commissioner or clerk, and any other relevant evidence. If the court determines that there has been a substantial failure to comply with the provisions of this title in selecting the grand jury, the court shall stay the proceedings pending the selection of a grand jury in conformity with this title or dismiss the indictment, whichever is appropriate. If the court determines that