

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 commissioner 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 there has been a substantial failure to comply with the provisions of this title in selecting the petit jury, the court shall stay the proceedings pending the selection of a petit jury in conformity with this title.

(e) The procedures prescribed by this section shall be the exclusive means by which a person accused of a Federal crime, the Attorney General of the United States or a party in a civil case may challenge any jury on the ground that such jury was not selected in conformity with the provisions of this title. Nothing in this section shall preclude any person or the United States from pursuing any other remedy, civil or criminal, which may be available for the vindication or enforcement of any law prohibiting discrimination on account of race, color, religion, sex, national origin or economic status in the selection of persons for service on grand or petit juries.

(f) The contents of records or papers used by the jury commissioner or clerk in connection with

the jury selection process shall not be disclosed, except pursuant to the district court plan or as may be necessary in the preparation or presentation of a motion under subsection (a), (b), or (c) of this section, until after the master jury wheel has been emptied and refilled pursuant to section 1863(b)(4) of this title and all persons selected to serve as jurors before the master wheel was emptied have completed such service. The parties in a case shall be allowed to inspect, reproduce, and copy such records or papers at all reasonable times during the preparation and pendency of such a motion. Any person who discloses the contents of any record or paper in violation of this subsection may be fined not more than \$1,000 or imprisoned not more than one year, or both.

(June 25, 1948, ch. 646, 62 Stat. 953; Pub. L. 85-259, Sept. 2, 1957, 71 Stat. 583; Pub. L. 90-274, §101, Mar. 27, 1968, 82 Stat. 59.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §416 (Mar. 3, 1911, ch. 231, §279, 36 Stat. 1165; Jan. 31, 1929, ch. 126, 45 Stat. 1145).

Provisions for service by a disinterested person when marshal or his deputy is disqualified is incorporated in section 1868 of this title.

Provision for payment and reimbursement of postage and registry fee were omitted as covered by section 560 of this title.

Word "summons" was substituted for "writ of venire facias" in harmony with the Federal Rules of Civil Procedure which abolished unnecessary forms. See Rule 81(b) thereof, and Rule 12 of the Federal Rules of Criminal Procedure.

Provision of section 416 of title 28, U.S.C., 1940 ed., that the receipt of the person so addressed by registered mail should be regarded as personal service, was omitted. Such omission is consistent with Rule 5(b) of the Federal Rules of Civil Procedure providing that service by mail is complete upon mailing.

Provision for attachment to the return of the addressee's receipt for the summons, was inserted to cover its disposition.

Provision that no mileage shall be allowed for service by mail was omitted as unnecessary.

Changes were made in phraseology.

AMENDMENTS

1968—Pub. L. 90-274 substituted provisions by which a defendant may assert noncompliance with the selection procedures of the jury for provisions covering the issuance of summonses for jurors and service thereof upon jurors.

1957—Pub. L. 85-259 inserted "or certified" in second and third sentences.

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.

**§ 1868. Maintenance and inspection of records**

After the master jury wheel is emptied and refilled pursuant to section 1863(b)(4) of this title, and after all persons selected to serve as jurors before the master wheel was emptied have completed such service, all records and papers compiled and maintained by the jury commissioner or clerk before the master wheel was emptied shall be preserved in the custody of the clerk for four

years or for such longer period as may be ordered by a court, and shall be available for public inspection for the purpose of determining the validity of the selection of any jury.

(June 25, 1948, ch. 646, 62 Stat. 953; Pub. L. 90-274, § 101, Mar. 27, 1968, 82 Stat. 60.)

#### HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 416, 417 (Mar. 3, 1911, ch. 231, §§ 279, 280, 36 Stat. 1165, Jan. 31, 1929, ch. 126, 45 Stat. 1145).

Section consolidates parts of sections 416, 417 of title 28, U.S.C., 1940 ed., with necessary changes in phraseology.

The remaining portion of section 416 of title 28, U.S.C., 1940 ed., constitutes section 1867 of this title.

The remainder of section 417 of title 28, U.S.C., 1940 ed., is incorporated in section 1866 of this title.

Words, "in the opinion of the court, disqualified" were substituted for "not an indifferent person, or is interested in the event of the cause".

#### AMENDMENTS

1968—Pub. L. 90-274 substituted provisions for the maintenance and inspection of records in the hands of the commission or clerk before the master wheel was emptied for provisions covering the disqualification of the United States marshal or his deputy and the appointment of a disinterested person by the court.

#### 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.

### § 1869. Definitions

For purposes of this chapter—

(a) "clerk" and "clerk of the court" shall mean the clerk of the district court of the United States, any authorized deputy clerk, and any other person authorized by the court to assist the clerk in the performance of functions under this chapter;

(b) "chief judge" shall mean the chief judge of any district court of the United States;

(c) "voter registration lists" shall mean the official records maintained by State or local election officials of persons registered to vote in either the most recent State or the most recent Federal general election, or, in the case of a State or political subdivision thereof that does not require registration as a prerequisite to voting, other official lists of persons qualified to vote in such election. The term shall also include the list of eligible voters maintained by any Federal examiner pursuant to the Voting Rights Act of 1965 where the names on such list have not been included on the official registration lists or other official lists maintained by the appropriate State or local officials. With respect to the districts of Guam and the Virgin Islands, "voter registration lists" shall mean the official records maintained by territorial election officials of persons registered to vote in the most recent territorial general election;

(d) "lists of actual voters" shall mean the official lists of persons actually voting in either the most recent State or the most recent Federal general election;

(e) "division" shall mean: (1) one or more statutory divisions of a judicial district; or (2)

in statutory divisions that contain more than one place of holding court, or in judicial districts where there are no statutory divisions, such counties, parishes, or similar political subdivisions surrounding the places where court is held as the district court plan shall determine: *Provided*, That each county, parish, or similar political subdivision shall be included in some such division;

(f) "district court of the United States", "district court", and "court" shall mean any district court established by chapter 5 of this title, and any court which is created by Act of Congress in a territory and is invested with any jurisdiction of a district court established by chapter 5 of this title;

(g) "jury wheel" shall include any device or system similar in purpose or function, such as a properly programmed electronic data processing system or device;

(h) "juror qualification form" shall mean a form prescribed by the Administrative Office of the United States Courts and approved by the Judicial Conference of the United States, which shall elicit the name, address, age, race, occupation, education, length of residence within the judicial district, distance from residence to place of holding court, prior jury service, and citizenship of a potential juror, and whether he should be excused or exempted from jury service, has any physical or mental infirmity impairing his capacity to serve as juror, is able to read, write, speak, and understand the English language, has pending against him any charge for the commission of a State or Federal criminal offense punishable by imprisonment for more than one year, or has been convicted in any State or Federal court of record of a crime punishable by imprisonment for more than one year and has not had his civil rights restored. The form shall request, but not require, any other information not inconsistent with the provisions of this title and required by the district court plan in the interests of the sound administration of justice. The form shall also elicit the sworn statement that his responses are true to the best of his knowledge. Notarization shall not be required. The form shall contain words clearly informing the person that the furnishing of any information with respect to his religion, national origin, or economic status is not a prerequisite to his qualification for jury service, that such information need not be furnished if the person finds it objectionable to do so, and that information concerning race is required solely to enforce nondiscrimination in jury selection and has no bearing on an individual's qualification for jury service.

(i) "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;

(j) "undue hardship or extreme inconvenience", as a basis for excuse from immediate jury service under section 1866(c)(1) of this chapter, shall mean great distance, either in miles or traveltime, 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