

tually 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 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 commission 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.

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### § 1868. Maintenance and inspection of records

After the master jury wheel is emptied and refilled pursuant to section 1863(b)(4) of this title,