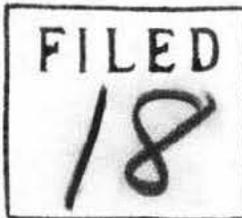


MAGISTRATE COURTS:
JURIES:

A sheriff is allowed the sum of \$2.00 for issuing a "special venire facias" for a jury in a magistrate court. A magistrate judge is under no duty to summon a regular jury panel.



April 21, 1952

4/27/52

Honorable Joe Collins
Prosecuting Attorney
Cedar County
Stockton, Missouri

Dear Sir:

Some time ago you wrote to this department requesting an official opinion. You thus stated your request:

"I should like to have your opinion as to what a sheriff is allowed for summoning a jury in Magistrate court in fourth class counties.

"First: For summoning a jury of twelve men.

"Second: For summoning a jury of more than twelve men."

Shortly thereafter, we wrote to you asking whether by "a jury of twelve men" you did not mean a jury panel of twelve men from which a six-man jury would be selected. To this, you wrote the following letter:

"As suggested in your letter of October 26, I am writing you again setting forth the information desired.

"It has been the custom in this county to not summon a jury panel in magistrate court and when a jury is needed it has been the custom for the parties to the suit to ask the sheriff to summon a jury of 12 men and it has been the practice and custom of the party losing the suit to pay the sheriff a fee of 50¢ for each juror summoned or a total fee of \$6.00.

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"The last civil suit tried before Magistrate Judge Campbell resulted in a verdict against plaintiff. Plaintiff desires to pay the costs but wants to know how much he should pay the sheriff for summoning the jury of 12 men, and Magistrate Judge Campbell asked me to write for your opinion on the matter.

"Judge Campbell would also like to know whether or not he should have the sheriff summon a regular jury panel and if so, how often he should have one summoned and what fees the sheriff would be entitled to for summoning same."

Your second letter still does not answer our question but we must assume that this is your meaning since in the second question of your first letter you speak of a "jury of more than twelve men," which could, of course, refer only to a jury panel.

Your first question then becomes: "What is a sheriff allowed for summoning a jury panel of twelve men for a magistrate court jury?" And your second question becomes: "What is a sheriff allowed for summoning a magistrate court jury panel of more than twelve men?"

At this point we feel that we should clarify a matter which has a very important bearing on your questions. In the fourth paragraph of your second letter to us, you state that "when a jury is needed in magistrate court in your county, it has been the custom for the parties to the suit to ask the sheriff to summon a jury of twelve men" There is no provision in the law which sanctions a procedure of this sort. The correct procedure is set forth in Section 499.150, RSMo 1949, which states:

"In any county now or hereafter having a population of less than seventy thousand inhabitants, the magistrate or magistrates may, by order of record, direct that jurors be selected by issuing a summons to the sheriff or other officer ordering him to summons the appropriate number of jurors. In such event, each juror summoned shall receive one dollar per day for every day

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he may actually serve as such, and five cents for every mile he may necessarily travel going from his place of residence to the place where the trial is held, and such fees and expenses shall be taxed as costs in the particular case tried. In the event that the magistrate or magistrates make the order herein provided for, the order shall have the effect of suspending the provisions of sections 499.010 to 499.160 in the selection of the general county panel and the selection of jurors thereunder; and such provisions shall remain suspended until such order is rescinded."

You will observe from the above section that "the magistrate or magistrates may, by order of record, direct the sheriff to summons the appropriate number of jurors." If, therefore, the magistrate does not make the order and the sheriff summons the jurors at the request of the parties to the suit, the whole proceeding is illegal and the sheriff would not be entitled to any compensation.

If, however, the procedure followed is that outlined in Section 499.150, supra, which is that the magistrate, by order of record, directs the sheriff to summon the appropriate number of jurors, then the opinion written by this department on September 3, 1947, to Honorable O. A. Kamp, Judge of the Magistrate Court of Montgomery County, would apply. A copy of this opinion is enclosed. You will note that the Kamp opinion holds that such a jury as you contemplate would be a "special venire facias" for the summoning of which the sheriff would be entitled to a fee of \$2.00. This would be true whether the jury summoned was a twelve-man jury panel or more. Regardless of number, it would be a "special venire facias" for which the law of Missouri (now Section 57.280, RSMo 1949) allows the sheriff \$2.00.

In your second letter to us, you state: "Judge Campbell would also like to know whether or not he should have the sheriff summon a regular jury panel and if so, how often he should have one summoned and what fees the sheriff would be entitled to for summoning same."

We assume that by "regular jury panel", you mean a panel to be used in more than one case, or a "standing jury panel."

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No duty is imposed upon a magistrate judge to summon a regular jury panel. Section 499.010, RSMo 1949, does impose such a duty upon the board of jury commissioners. That section reads:

"At least once each year on or before the first day of May, the board of jury commissioners shall select names of not less than four hundred persons having all of the qualifications of jurors; and in selecting such names the board shall select such number of persons from each township as the population of such townships bears to the population of the entire county. No persons shall be selected who has served on any grand, petit or magistrate jury within one year from the time of making the selection. The names and addresses of the persons selected from each township shall be written on separate slips of paper of the same kind and size and placed in a box with a sliding lid and thoroughly mixed."

This matter is also discussed in the Kamp opinion which is enclosed.

CONCLUSION

It is the opinion of this department that for issuing a "special venire facias" for a jury in magistrate court, a sheriff is allowed the sum of \$2.00. It is our further opinion that a magistrate judge is under no duty to summon a regular jury panel.

Respectfully submitted,

HUGH P. WILLIAMSON
Assistant Attorney General

APPROVED:



J. E. TAYLOR
Attorney General

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Enclosure.