

§ 1611. Certain types of property immune from execution

(a) Notwithstanding the provisions of section 1610 of this chapter, the property of those organizations designated by the President as being entitled to enjoy the privileges, exemptions, and immunities provided by the International Organizations Immunities Act shall not be subject to attachment or any other judicial process impeding the disbursement of funds to, or on the order of, a foreign state as the result of an action brought in the courts of the United States or of the States.

(b) Notwithstanding the provisions of section 1610 of this chapter, the property of a foreign state shall be immune from attachment and from execution, if—

(1) the property is that of a foreign central bank or monetary authority held for its own account, unless such bank or authority, or its parent foreign government, has explicitly waived its immunity from attachment in aid of execution, or from execution, notwithstanding any withdrawal of the waiver which the bank, authority or government may purport to effect except in accordance with the terms of the waiver; or

(2) the property is, or is intended to be, used in connection with a military activity and

(A) is of a military character, or

(B) is under the control of a military authority or defense agency.

(c) Notwithstanding the provisions of section 1610 of this chapter, the property of a foreign state shall be immune from attachment and from execution in an action brought under section 302 of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 to the extent that the property is a facility or installation used by an accredited diplomatic mission for official purposes.

(Added Pub. L. 94-583, §4(a), Oct. 21, 1976, 90 Stat. 2897; amended Pub. L. 104-114, title III, §302(e), Mar. 12, 1996, 110 Stat. 818.)

REFERENCES IN TEXT

The International Organizations Immunities Act, referred to in subsec. (a), is title I of act Dec. 29, 1945, ch. 652, 59 Stat. 669, as amended, which is classified principally to subchapter XVIII (§288 et seq.) of chapter 7 of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 288 of Title 22 and Tables.

Section 302 of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996, referred to in subsec. (c), is section 302 of Pub. L. 104-114, which amended this section and enacted section 6082 of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

1996—Subsec. (c). Pub. L. 104-114 added subsec. (c).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-114 effective Aug. 1, 1996, or date determined pursuant to suspension authority of President under section 6085(b) or (c) of Title 22, Foreign Relations and Intercourse, see section 6085 of Title 22.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1609 of this title.

CHAPTER 99—GENERAL PROVISIONS

Sec.

1631. Transfer to cure want of jurisdiction.

§ 1631. Transfer to cure want of jurisdiction

Whenever a civil action is filed in a court as defined in section 610 of this title or an appeal, including a petition for review of administrative action, is noticed for or filed with such a court and that court finds that there is a want of jurisdiction, the court shall, if it is in the interest of justice, transfer such action or appeal to any other such court in which the action or appeal could have been brought at the time it was filed or noticed, and the action or appeal shall proceed as if it had been filed in or noticed for the court to which it is transferred on the date upon which it was actually filed in or noticed for the court from which it is transferred.

(Added Pub. L. 97-164, title III, §301(a), Apr. 2, 1982, 96 Stat. 55.)

EFFECTIVE DATE

Section effective Oct. 1, 1982, see section 402 of Pub. L. 97-164, set out as an Effective Date of 1982 Amendment note under section 171 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1292 of this title.

PART V—PROCEDURE

Table with 2 columns: Chap. and Sec. listing sections 111 through 133 and their corresponding section numbers.

CHAPTER 111—GENERAL PROVISIONS

Sec.

Table with 2 columns: Sec. and text describing provisions such as Writs, State laws as rules of decision, Amendment of pleadings to show jurisdiction, etc.

AMENDMENTS

1994—Pub. L. 103-465, title III, §321(b)(1)(B), Dec. 8, 1994, 108 Stat. 4946, added item 1659.
1990—Pub. L. 101-650, title III, §313(b), Dec. 1, 1990, 104 Stat. 5115, added item 1658.
1984—Pub. L. 98-620, title IV, §401(b), Nov. 8, 1984, 98 Stat. 3357, added item 1657.

CROSS REFERENCES

Criminal procedure, see section 3001 et seq. of Title 18, Crimes and Criminal Procedure.

Removal of cases from State courts, procedure, see section 1446 of this title.

§ 1651. Writs

(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

(b) An alternative writ or rule nisi may be issued by a justice or judge of a court which has jurisdiction.

(June 25, 1948, ch. 646, 62 Stat. 944; May 24, 1949, ch. 139, § 90, 63 Stat. 102.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 28, U.S.C., 1940 ed., §§ 342, 376, 377 (Mar. 3, 1911, ch. 231, §§ 234, 261, 262, 36 Stat. 1156, 1162).

Section consolidates sections 342, 376, and 377 of title 28, U.S.C., 1940 ed., with necessary changes in phraseology.

Such section 342 provided:

"The Supreme Court shall have power to issue writs of prohibition to the district courts, when proceeding as courts of admiralty and maritime jurisdiction; and writs of mandamus, in cases warranted by the principles and usages of law, to any courts appointed under the authority of the United States, or to persons holding office under the authority of the United States, where a State, or an ambassador, or other public minister, or a consul, or vice consul is a party."

Such section 376 provided:

"Writs of ne exeat may be granted by any justice of the Supreme Court, in cases where they might be granted by the Supreme Court; and by any district judge, in cases where they might be granted by the district court of which he is a judge. But no writ of ne exeat shall be granted unless a suit in equity is commenced, and satisfactory proof is made to the court or judge granting the same that the defendant designs quickly to depart from the United States."

Such section 377 provided:

"The Supreme Court and the district courts shall have power to issue writs of scire facias. The Supreme Court, the circuit courts of appeals, and the district courts shall have power to issue all writs not specifically provided for by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the usages and principles of law."

The special provisions of section 342 of title 28, U.S.C., 1940 ed., with reference to writs of prohibition and mandamus, admiralty courts and other courts and officers of the United States were omitted as unnecessary in view of the revised section.

The revised section extends the power to issue writs in aid of jurisdiction, to all courts established by Act of Congress, thus making explicit the right to exercise powers implied from the creation of such courts.

The provisions of section 376 of title 28, U.S.C., 1940 ed., with respect to the powers of a justice or judge in issuing writs of ne exeat were changed and made the basis of subsection (b) of the revised section but the conditions and limitations on the writ of ne exeat were omitted as merely confirmatory of well-settled principles of law.

The provision in section 377 of title 28, U.S.C., 1940 ed., authorizing issuance of writs of scire facias, was omitted in view of rule 81(b) of the Federal Rules of Civil Procedure abolishing such writ. The revised section is expressive of the construction recently placed upon such section by the Supreme Court in *U.S. Alkali Export Assn. v. U.S.*, 65 S.Ct. 1120, 325 U.S. 196, 89 L.Ed. 1554, and *De Beers Consol. Mines v. U.S.*, 65 S.Ct. 1130, 325 U.S. 212, 89 L.Ed. 1566.

1949 ACT

This section corrects a grammatical error in subsection (a) of section 1651 of title 28, U.S.C.

AMENDMENTS

1949—Subsec. (a). Act May 24, 1949, inserted "and" after "jurisdictions".

WRIT OF ERROR

Act Jan. 31, 1928, ch. 14, § 2, 45 Stat. 54, as amended Apr. 26, 1928, ch. 440, 45 Stat. 466; June 25, 1948, ch. 646, § 23, 62 Stat. 990, provided that: "All Acts of Congress referring to writs of error shall be construed as amended to the extent necessary to substitute appeal for writ of error."

RULES OF THE SUPREME COURT

Procedure on petition for an extraordinary writ, see rule 20, Appendix to this title.

FEDERAL RULES OF CIVIL PROCEDURE

Remedies for seizure of person and property, including arrest, attachment, garnishment, replevin, and sequestration, see rule 64, Appendix to this title.

Writs of coram nobis, coram vobis, audita querela, bills of review, and bills in the nature of bills of review abolished, see rule 60.

Writs of mandamus and scire facias abolished in district courts, see rule 81.

CROSS REFERENCES

Mandamus; statutory provisions giving district courts jurisdiction to grant relief in the nature of writs of mandamus include—

Bridges over navigable waters, removal of, see sections 495 and 519 of Title 33, Navigation and Navigable Waters.

Federal Communications Act and orders of Commission, enforcement of, see sections 11, 401, and 406 of Title 47, Telegraphs, Telephones, and Radiotelegraphs.

Federal Power Act, and orders thereunder, enforcement and prevention of violations, see sections 820 and 825m of Title 16, Conservation.

Federal Trade Commission Act, and orders thereunder, enforcement of, see section 49 of Title 15, Commerce and Trade.

Interstate Commerce Act, enforcement of, see section 11703 of Title 49, Transportation.

National Railroad Adjustment Board, enforcement of orders, see section 153 of Title 45, Railroads.

Securities and Public Utilities Holding Companies Acts and orders of Securities and Exchange Commission, enforcement of, see sections 77t, 78u, and 79r of Title 15, Commerce and Trade.

Stockyards Act, adopting by reference section 49 of Title 15, see section 222 of Title 7, Agriculture.

Tariff Act and orders of Tariff Commission, enforcement of, see section 1333 of Title 19, Customs Duties.

Puerto Rico, power of supreme and district courts to grant mandamus, see section 872 of Title 48, Territories and Insular Possessions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1407, 3202 of this title.

§ 1652. State laws as rules of decision

The laws of the several states, except where the Constitution or treaties of the United States or Acts of Congress otherwise require or provide, shall be regarded as rules of decision in civil actions in the courts of the United States, in cases where they apply.

(June 25, 1948, ch. 646, 62 Stat. 944.)

HISTORICAL REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 725 (R.S. § 721).

"Civil actions" was substituted for "trials at common law" to clarify the meaning of the Rules of Deci-

sion Act in the light of the Federal Rules of Civil Procedure. Such Act has been held to apply to suits in equity.

Changes were made in phraseology.

§ 1653. Amendment of pleadings to show jurisdiction

Defective allegations of jurisdiction may be amended, upon terms, in the trial or appellate courts.

(June 25, 1948, ch. 646, 62 Stat. 944.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 399 (Mar. 3, 1911, ch. 231, § 274c, as added Mar. 3, 1915, ch. 90, 38 Stat. 956).

Section was extended to permit amendment of all jurisdictional allegations instead of merely allegations of diversity of citizenship as provided by section 399 of title 28, U.S.C., 1940 ed.

Changes were made in phraseology.

FEDERAL RULES OF CIVIL PROCEDURE

Amended and supplemental pleadings, see rules 12 and 15, Appendix to this title.

§ 1654. Appearance personally or by counsel

In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein.

(June 25, 1948, ch. 646, 62 Stat. 944; May 24, 1949, ch. 139, § 91, 63 Stat. 103.)

HISTORICAL REVISION NOTES

1948 ACT

Based on title 28, U.S.C., 1940 ed., § 394 (Mar. 3, 1911, ch. 231, § 272, 36 Stat. 1164).

Words "as, by the rules of the said courts respectively, are permitted to manage and conduct causes therein," after "counsel," were omitted as surplusage. The revised section and section 2071 of this title effect no change in the procedure of the Tax Court before which certain accountants may be admitted as counsel for litigants under Rule 2 of the Tax Court.

Changes were made in phraseology.

1949 ACT

This section restores in section 1654 of title 28, U.S.C., language of the original law.

AMENDMENTS

1949—Act May 24, 1949, inserted "as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein".

§ 1655. Lien enforcement; absent defendants

In an action in a district court to enforce any lien upon or claim to, or to remove any incumbrance or lien or cloud upon the title to, real or personal property within the district, where any defendant cannot be served within the State, or does not voluntarily appear, the court may order the absent defendant to appear or plead by a day certain.

Such order shall be served on the absent defendant personally if practicable, wherever found, and also upon the person or persons in possession or charge of such property, if any. Where personal service is not practicable, the order shall be published as the court may direct, not less than once a week for six consecutive weeks.

If an absent defendant does not appear or plead within the time allowed, the court may proceed as if the absent defendant had been served with process within the State, but any adjudication shall, as regards the absent defendant without appearance, affect only the property which is the subject of the action. When a part of the property is within another district, but within the same state, such action may be brought in either district.

Any defendant not so personally notified may, at any time within one year after final judgment, enter his appearance, and thereupon the court shall set aside the judgment and permit such defendant to plead on payment of such costs as the court deems just.

(June 25, 1948, ch. 646, 62 Stat. 944.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 118 (Mar. 3, 1911, ch. 231, § 57, 36 Stat. 1102).

Word "action" was substituted for "suit," in view of Rule 2 of the Federal Rules of Civil Procedure.

In view of Rule 4(f) of the Federal Rules of Civil Procedure permitting service of process anywhere within the territorial limits of the States, the word "State" was substituted for "district" in the first and third paragraphs.

Changes were made in phraseology.

FEDERAL RULES OF CIVIL PROCEDURE

Process and relief from judgment or order, see rules 4 and 60, Appendix to this title.

§ 1656. Creation of new district or division or transfer of territory; lien enforcement

The creation of a new district or division or the transfer of any territory to another district or division shall not affect or divest any lien theretofore acquired in a district court upon property within such district, division or territory.

To enforce such lien, the clerk of the court in which the same is acquired, upon the request and at the cost of the party desiring the same, shall make a certified copy of the record thereof, which, when filed in the proper court of the district or division in which such property is situated after such creation or transfer shall be evidence in all courts and places equally with the original thereof; and, thereafter like proceedings shall be had thereon, and with the same effect, as though the case or proceeding had been originally instituted in such court.

(June 25, 1948, ch. 646, 62 Stat. 944; Pub. L. 95-598, title II, § 242, Nov. 6, 1978, 92 Stat. 2671.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 122 (Mar. 3, 1911, ch. 231, § 60, 36 Stat. 1103).

A provision as to creation of a new district or division or transfer of territory before March 3, 1911, was omitted as obsolete.

Words descriptive of the lien were omitted as unnecessary.

Changes were made in phraseology.

AMENDMENTS

1978—Pub. L. 95-598 directed the amendment of section by inserting "or in a bankruptcy court" after "a district court", which amendment did not become effective pursuant to section 402(b) of Pub. L. 95-598, as

amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

FEDERAL RULES OF CIVIL PROCEDURE

Effect of rule 69 on this section, see note by Advisory Committee under rule 69, Appendix to this title.

§ 1657. Priority of civil actions

(a) Notwithstanding any other provision of law, each court of the United States shall determine the order in which civil actions are heard and determined, except that the court shall expedite the consideration of any action brought under chapter 153 or section 1826 of this title, any action for temporary or preliminary injunctive relief, or any other action if good cause therefor is shown. For purposes of this subsection, “good cause” is shown if a right under the Constitution of the United States or a Federal Statute (including rights under section 552 of title 5) would be maintained in a factual context that indicates that a request for expedited consideration has merit.

(b) The Judicial Conference of the United States may modify the rules adopted by the courts to determine the order in which civil actions are heard and determined, in order to establish consistency among the judicial circuits.

(Added Pub. L. 98–620, title IV, §401(a), Nov. 8, 1984, 98 Stat. 3356.)

EFFECTIVE DATE

Section 403 of Pub. L. 98–620 provided that: “The amendments made by this subtitle [subtitle A (§§401–403) of title IV of Pub. L. 98–620, enacting this section, amending sections 596, 636, 1364, 2284, and 2349 of this title, sections 437g, 437h, and 687 of Title 2, The Congress, section 552 of Title 5, Government Organization and Employees, sections 8, 136d, 136h, 136n, 136w, 194, 1366, 1600, and 1601 of Title 7, Agriculture, section 1464 of Title 12, Banks and Banking, sections 18a, 21, 45, 57a–1, 78k–1, 687a, 687c, 719h, 1415, 2003, and 2622 of Title 15, Commerce and Trade, sections 1463a, 1910, 3117, and 3168 of Title 16, Conservation, sections 1964 and 1966 of Title 18, Crimes and Criminal Procedure, sections 346a and 348 of Title 21, Food and Drugs, section 618 of Title 22, Foreign Relations and Intercourse, section 640d–3 of Title 25, Indians, sections 3310, 6110, 6363, 7609, 9010, and 9011 of Title 26, Internal Revenue Code, sections 110, 160, 660, and 1303 of Title 29, Labor, section 816 of Title 30, Mineral Lands and Mining, section 2022 [now 4302] of Title 38, Veterans’ Benefits, section 3628 of Title 39, Postal Service, sections 300j–9, 504, 6508, and 8514 of Title 42, The Public Health and Welfare, sections 1062, 1349, 1652, and 2011 of Title 43, Public Lands, sections 355, 745, 1018, and 1205 of Title 45, Railroads, section 402 of Title 47, Telegraphs, Telephones, and Radiotelegraphs, section 2305 of former Title 49, Transportation, section 792a of Title 50, War and National Defense, and sections 462 and 1984 of Title 50, Appendix, repealing sections 1296 and 2647 of this title, section 28 of Title 15, and section 3614 of Title 42, and amending provisions set out as a note under section 2304 of Title 10, Armed Forces] shall not apply to cases pending on the date of the enactment of this subtitle [Nov. 8, 1984].”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 12 section 1821.

§ 1658. Time limitations on the commencement of civil actions arising under Acts of Congress

Except as otherwise provided by law, a civil action arising under an Act of Congress enacted

after the date of the enactment of this section may not be commenced later than 4 years after the cause of action accrues.

(Added Pub. L. 101–650, title III, §313(a), Dec. 1, 1990, 104 Stat. 5114.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in text, is the date of enactment of Pub. L. 101–650, which was approved Dec. 1, 1990.

EFFECTIVE DATE

Section 313(c) of Pub. L. 101–650 provided that: “The amendments made by this section [enacting this section] shall apply with respect to causes of action accruing on or after the date of the enactment of this Act [Dec. 1, 1990].”

§ 1659. Stay of certain actions pending disposition of related proceedings before the United States International Trade Commission

(a) **STAY.**—In a civil action involving parties that are also parties to a proceeding before the United States International Trade Commission under section 337 of the Tariff Act of 1930, at the request of a party to the civil action that is also a respondent in the proceeding before the Commission, the district court shall stay, until the determination of the Commission becomes final, proceedings in the civil action with respect to any claim that involves the same issues involved in the proceeding before the Commission, but only if such request is made within—

(1) 30 days after the party is named as a respondent in the proceeding before the Commission, or

(2) 30 days after the district court action is filed,

whichever is later.

(b) **USE OF COMMISSION RECORD.**—Notwithstanding section 337(n)(1) of the Tariff Act of 1930, after dissolution of a stay under subsection (a), the record of the proceeding before the United States International Trade Commission shall be transmitted to the district court and shall be admissible in the civil action, subject to such protective order as the district court determines necessary, to the extent permitted under the Federal Rules of Evidence and the Federal Rules of Civil Procedure.

(Added Pub. L. 103–465, title III, §321(b)(1)(A), Dec. 8, 1994, 108 Stat. 4945.)

REFERENCES IN TEXT

Section 337 of the Tariff Act of 1930, referred to in text, is classified to section 1337 of Title 19, Customs Duties.

The Federal Rules of Evidence and the Federal Rules of Civil Procedure, referred to in subsec. (b), are set out in the Appendix to this title.

EFFECTIVE DATE

Section applicable with respect to complaints filed under section 1337 of Title 19, Customs Duties, on or after the date on which the World Trade Organization Agreement enters into force with respect to the United States [Jan. 1, 1995], or in cases under section 1337 of Title 19 in which no complaint is filed, with respect to investigations initiated under such section on or after such date, see section 322 of Pub. L. 103–465, set out as an Effective Date of 1994 Amendment note under section 1337 of Title 19.

CHAPTER 113—PROCESS

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1691.	Seal and teste of process.
1692.	Process and orders affecting property in different districts.
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AMENDMENTS

1964—Pub. L. 88-619, §4(b), Oct. 3, 1964, 78 Stat. 996, added item 1696.

FEDERAL RULES OF CIVIL PROCEDURE

Process, see Rule 4, Appendix to this title.

§ 1691. Seal and teste of process

All writs and process issuing from a court of the United States shall be under the seal of the court and signed by the clerk thereof.

(June 25, 1948, ch. 646, 62 Stat. 945.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §721 (R.S. §911; Mar. 3, 1911, ch. 231, §291, 36 Stat. 1167).

Provisions as to teste of process issuing from the district courts were omitted as superseded by Rule 4 (b) of the Federal Rules of Civil Procedure. Provision for teste of the Chief Justice of writs and process was omitted as unnecessary.

A provision requiring the United States to bear the expense of providing seals was omitted as unnecessary and obsolete.

Changes were made in phraseology.

IMMUNITY FROM SEIZURE UNDER JUDICIAL PROCESS OF CULTURAL OBJECTS IMPORTED FOR TEMPORARY EXHIBITION OR DISPLAY

Presidential determination of cultural significance of objects and exhibition or display thereof in the national interest, see section 2459 of Title 22, Foreign Relations and Intercourse.

FEDERAL RULES OF CIVIL PROCEDURE

Assistance, attachment, or sequestration, see rule 70, Appendix to this title.

Execution, see rule 69.

Form of summons, see rule 4.

Injunction, see rule 65.

Process, see rule 4.

Subpoenas, see rule 45.

Summons, see rule 4.

Writs of scire facias and mandamus abolished, see rule 81.

CROSS REFERENCES

Habeas corpus, see section 2241 of this title.

Power of courts to issue writs, see section 1651 of this title.

Power of Supreme Court to prescribe rules of procedure and evidence, see section 2072 of this title.

Writs venire facias abolished, see Historical and Revision Notes under section 1867 of this title.

§ 1692. Process and orders affecting property in different districts

In proceedings in a district court where a receiver is appointed for property, real, personal, or mixed, situated in different districts, process may issue and be executed in any such district as if the property lay wholly within one district, but orders affecting the property shall be entered of record in each of such districts.

(June 25, 1948, ch. 646, 62 Stat. 945.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §117 (Mar. 3, 1911, ch. 231, §56, 36 Stat. 1102).

Provisions of section 117 of title 28, U.S.C., 1940 ed., as to jurisdiction and control of a receiver of property in several districts are the basis of section 754 of this title.

For explanation of revision of section 117 of title 28, U.S.C., 1940 ed., and its extension to include property, not only in the same judicial circuit, but in any judicial circuit. (See reviser's note under section 754 of this title.)

Changes were made in phraseology.

CROSS REFERENCES

Receivers of property in different districts, see section 754 of this title.

§ 1693. Place of arrest in civil action

Except as otherwise provided by Act of Congress, no person shall be arrested in one district for trial in another in any civil action in a district court.

(June 25, 1948, ch. 646, 62 Stat. 945.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §112 (Mar. 3, 1911, ch. 231, §51, 36 Stat. 1101; Sept. 19, 1922, ch. 345, 42 Stat. 849; Mar. 4, 1925, ch. 526, §1, 43 Stat. 1264; Apr. 16, 1936, ch. 230, 49 Stat. 1213).

Venue provisions of section 112 of title 28, U.S.C., 1940 ed., appear in sections 1391 and 1401 of this title. Other provisions are incorporated in section 1695 of this title.

The exception at the beginning of the section was substituted for "Except as provided in sections 113-117 of this title."

Changes were made in phraseology.

CROSS REFERENCES

Venue generally, see section 1391 of this title.

Waiver of venue, see section 1406 of this title.

§ 1694. Patent infringement action

In a patent infringement action commenced in a district where the defendant is not a resident but has a regular and established place of business, service of process, summons or subpoena upon such defendant may be made upon his agent or agents conducting such business.

(June 25, 1948, ch. 646, 62 Stat. 945.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §109 (Mar. 3, 1911, ch. 231, §48, 36 Stat. 1100).

Venue provisions of section 109 of title 28, U.S.C., 1940 ed., appear in section 1400 of this title.

Changes were made in phraseology.

CROSS REFERENCES

Venue in patent infringement action, see section 1400 of this title.

§ 1695. Stockholder's derivative action

Process in a stockholder's action in behalf of his corporation may be served upon such corporation in any district where it is organized or licensed to do business or is doing business.

(June 25, 1948, ch. 646, 62 Stat. 945.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §112 (Mar. 3, 1911, ch. 231, §51, 36 Stat. 1101; Sept. 19, 1922, ch. 345, 42 Stat.

849; Mar. 4, 1925, ch. 526, §1, 43 Stat. 1264; Apr. 16, 1936, ch. 230, 49 Stat. 1213).

The phrase “is organized or licensed to do business or is doing business” was substituted for the words “resides or is found,” as more specific and to conform to section 1391 of this title.

Venue provisions of section 112 of title 28, U.S.C., 1940 ed., appear in section 1391 and 1401 of this title. Other provisions are incorporated in section 1693 of this title.

Changes were made in phraseology.

CROSS REFERENCES

Venue in stockholder’s derivative action, see section 1401 of this title.

§ 1696. Service in foreign and international litigation

(a) The district court of the district in which a person resides or is found may order service upon him of any document issued in connection with a proceeding in a foreign or international tribunal. The order may be made pursuant to a letter rogatory issued, or request made, by a foreign or international tribunal or upon application of any interested person and shall direct the manner of service. Service pursuant to this subsection does not, of itself, require the recognition or enforcement in the United States of a judgment, decree, or order rendered by a foreign or international tribunal.

(b) This section does not preclude service of such a document without an order of court.

(Added Pub. L. 88–619, §4(a), Oct. 3, 1964, 78 Stat. 995.)

CHAPTER 115—EVIDENCE; DOCUMENTARY

Sec.	
1731.	Handwriting.
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1745.	Copies of foreign patent documents.
1746.	Unsworn declarations under penalty of perjury.

AMENDMENTS

1996—Pub. L. 104–199, §2(b), Sept. 21, 1996, 110 Stat. 2419, added item 1738C.

1994—Pub. L. 103–383, §3(b), Oct. 20, 1994, 108 Stat. 4066, added item 1738B.

1980—Pub. L. 96–611, §8(b), Dec. 28, 1980, 94 Stat. 3571, added item 1738A.

1976—Pub. L. 94–550, §1(b), Oct. 18, 1976, 90 Stat. 2534, added item 1746.

¹ So in original. Does not conform to section catchline.

1964—Pub. L. 88–619, §§5(b), 6(b), 7(b), Oct. 3, 1964, 78 Stat. 996, substituted “official documents” for “documents generally; copies” in item 1741, inserted “[Repealed]” in item 1742, and substituted “documents” for “specifications and drawings” in item 1745.

1951—Act Aug. 28, 1951, ch. 351, §2, 65 Stat. 206, inserted “; photographic copies” in item 1732.

1949—Act May 24, 1949, ch. 139, §92(a), 63 Stat. 103, struck out item 1745 “Printed copies of patient specifications and drawings” and renumbered item 1746 as 1745.

FEDERAL RULES OF CIVIL PROCEDURE

Civil cases—

Proof of official record, see rule 44, Appendix to this title.

Subpoena for production of documentary evidence, see rule 45.

FEDERAL RULES OF CRIMINAL PROCEDURE

Criminal cases—

Proof of official record, see rule 27, Title 18, Appendix, Crimes and Criminal Procedure.

Subpoena for production of documentary evidence, see rule 17.

§ 1731. Handwriting

The admitted or proved handwriting of any person shall be admissible, for purposes of comparison, to determine genuineness of other handwriting attributed to such person.

(June 25, 1948, ch. 646, 62 Stat. 945.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §638 (Feb. 26, 1913, ch. 79, 37 Stat. 683).

Words “as a basis for comparison by witnesses, or by the jury, court, or officer conducting such proceeding”, were omitted as superfluous.

Changes were made in phraseology.

FEDERAL RULES OF CIVIL PROCEDURE

Evidence, civil actions, see rule 43, Appendix to this title.

FEDERAL RULES OF CRIMINAL PROCEDURE

Criminal proceedings, see rule 26, Title 18, Appendix, Crimes and Criminal Procedure.

§ 1732. Record made in regular course of business; photographic copies

If any business, institution, member of a profession or calling, or any department or agency of government, in the regular course of business or activity has kept or recorded any memorandum, writing, entry, print, representation or combination thereof, of any act, transaction, occurrence, or event, and in the regular course of business has caused any or all of the same to be recorded, copied, or reproduced by any photographic, photostatic, microfilm, micro-card, miniature photographic, or other process which accurately reproduces or forms a durable medium for so reproducing the original, the original may be destroyed in the regular course of business unless its preservation is required by law. Such reproduction, when satisfactorily identified, is as admissible in evidence as the original itself in any judicial or administrative proceeding whether the original is in existence or not and an enlargement or facsimile of such reproduction is likewise admissible in evidence if the original reproduction is in existence and

available for inspection under direction of court. The introduction of a reproduced record, enlargement, or facsimile does not preclude admission of the original. This subsection shall not be construed to exclude from evidence any document or copy thereof which is otherwise admissible under the rules of evidence.

(June 25, 1948, ch. 646, 62 Stat. 945; Aug. 28, 1951, ch. 351, §§1, 3, 65 Stat. 205, 206; Pub. L. 87-183, Aug. 30, 1961, 75 Stat. 413; Pub. L. 93-595, §2(b), Jan. 2, 1975, 88 Stat. 1949.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §695 (June 20, 1936, ch. 640, §1, 49 Stat. 1561).

Changes in phraseology were made.

AMENDMENTS

1975—Pub. L. 93-595 struck out subsec. (a) which had made admissible as evidence writings or records made as a memorandum or record of any act, transaction, occurrence, or event if made in the regular course of business, and struck out designation “(b)” preceding remainder of section. See Federal Rules of Evidence set out in Appendix to this title.

1961—Subsec. (b). Pub. L. 87-183 struck out “unless held in a custodial or fiduciary capacity or” after “may be destroyed in the regular course of business”.

1951—Act Aug. 29, 1951, §3, inserted reference to photographic copies in section catchline.

Subsecs. (a), (b). Act Aug. 28, 1951, §1, designated existing provisions as subsec. (a) and added subsec. (b).

FEDERAL RULES OF CIVIL PROCEDURE

Proof of official records, see rule 44, Appendix to this title.

Effect of rule 44 on former section 695 of this title, see note by Advisory Committee under rule 44.

FEDERAL RULES OF CRIMINAL PROCEDURE

Proof of official records, see rule 27 and note of the Advisory Committee under rule 27, Title 18, Appendix, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 26 section 5555.

§ 1733. Government records and papers; copies

(a) Books or records of account or minutes of proceedings of any department or agency of the United States shall be admissible to prove the act, transaction or occurrence as a memorandum of which the same were made or kept.

(b) Properly authenticated copies or transcripts of any books, records, papers or documents of any department or agency of the United States shall be admitted in evidence equally with the originals thereof.

(c) This section does not apply to cases, actions, and proceedings to which the Federal Rules of Evidence apply.

(June 25, 1948, ch. 646, 62 Stat. 946; Pub. L. 93-595, §2(c), Jan. 2, 1975, 88 Stat. 1949.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§661-667, 671 (R.S. §§882-886, 889; July 31, 1894, ch. 174, §§17, 22, 28 Stat. 210; Mar. 2, 1895, ch. 177, §10, 28 Stat. 809; June 10, 1921, ch. 18, §§301, 302, 304, 310, 42 Stat. 23-25; May 10, 1934, ch. 277, §512, 48 Stat. 758; June 19, 1934, ch. 653, §6(a), 48 Stat. 1109).

The consolidation of sections 661-667 and 671 of title 28, U.S.C., 1940 ed., permitted omission of obsolete, un-

necessary and repetitive provisions in such sections. For example, the provision in section 665 of title 28, U.S.C., 1940 ed., authorizing the court to require production of documents on a plea of non est factum, was omitted. Such plea is obsolete in Federal practice.

Numerous provisions with respect to authentication were omitted as covered by Rule 44 of the Federal Rules of Civil Procedure.

Likewise the provision that official seals shall be judicially noticed was omitted as unnecessary. Seals of Federal agencies are judicially noticed by States and Federal courts without statutory mandate. *Gardner v. Barney*, 1867, 6 Wall. 499, 73 U.S.C. 499, 18 L.Ed. 890, 31 C.J.S. 599 n. 27-30 and 23 C.J.S. 99 n. 41. The same principle unquestionably will apply to seals of Government corporations.

Words “of any corporation all the stock of which is beneficially owned by the United States, either directly or indirectly”, in section 661 of title 28, U.S.C., 1940 ed., were omitted as covered by “or agency”. The revised section was broadened to apply to “any department or agency”. (See reviser’s note under section 1345 of this title.)

Changes were made in phraseology.

REFERENCES IN TEXT

The Federal Rules of Evidence, referred to in subsec. (c), are set out in the Appendix to this title.

AMENDMENTS

1975—Subsec. (c). Pub. L. 93-595 added subsec. (c).

FEDERAL RULES OF CIVIL PROCEDURE

Proof of official record, see rule 44, Appendix to this title.

Subpoena for production of documentary evidence, see rule 45.

FEDERAL RULES OF CRIMINAL PROCEDURE

Proof of official record, see rule 27, Title 18, Appendix, Crimes and Criminal Procedure.

Subpoena for production of documentary evidence, see rule 17.

CROSS REFERENCES

Authenticated and certified copy of Government record by Archivist admissible in evidence, see section 2116 of Title 44, Public Printing and Documents.

Authentication—

Copies of documents, etc., in the office of the Commissioner of Indian Affairs is made by section 6 of Title 25, Indians.

Original papers on file in the Bureau of Land Management are provided for by section 13 of Title 43, Public Lands.

Records by Secretary of the Interior, see section 1460 of Title 43.

Records of the Postal Service, see section 207 of Title 39, Postal Service.

Certified copies of schedules and tariffs of rates, etc., copies as evidence, see section 10303 of Title 49, Transportation.

Judicial notice of seals—

Departments of Commerce and Labor, see sections 1501 of Title 15, Commerce and Trade, and 551 of Title 29, Labor.

Department of Defense, see section 112 of Title 10, Armed Forces.

Departments of the Army, Air Force, and Navy, see sections 3012, 5012, and 8012 of Title 10.

Provisions relating to the requisites of the certificates of national banks, and the acknowledgment and filing thereof, are made by sections 22 and 23 of Title 12, Banks and Banking.

Secretary of the Interior is authorized to furnish transcripts of records in district land offices for individuals, and such transcripts, when duly certified, are made admissible as evidence by section 83 of Title 43, Public Lands.

Verification of official documents by Secretary of Agriculture, see section 2203 of Title 7, Agriculture.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 31 section 704.

§ 1734. Court record lost or destroyed, generally

(a) A lost or destroyed record of any proceeding in any court of the United States may be supplied on application of any interested party not at fault, by substituting a copy certified by the clerk of any court in which an authentic copy is lodged.

(b) Where a certified copy is not available, any interested person not at fault may file in such court a verified application for an order establishing the lost or destroyed record.

Every other interested person shall be served personally with a copy of the application and with notice of hearing on a day stated, not less than sixty days after service. Service may be made on any nonresident of the district anywhere within the jurisdiction of the United States or in any foreign country.

Proof of service in a foreign country shall be certified by a minister or consul of the United States in such country, under his official seal.

If, after the hearing, the court is satisfied that the statements contained in the application are true, it shall enter an order reciting the substance and effect of the lost or destroyed record. Such order, subject to intervening rights of third persons, shall have the same effect as the original record.

(June 25, 1948, ch. 646, 62 Stat. 946.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 681, 682, 683, and 684 (R.S. §§ 899, 900, 901, 902; Jan. 31, 1879, ch. 39, § 1, 20 Stat. 277).

Sections 681, 682, and 684 of title 28, U.S.C., 1940 ed., contained repetitious language which was eliminated by the consolidation.

Section 683 of title 28, U.S.C., 1940 ed., applied only to cases removed to the Supreme Court, and was revised so as to be applicable to cases transmitted to other courts not in existence in 1871 when the section was originally enacted.

Changes were made in phraseology.

FEDERAL RULES OF CIVIL PROCEDURE

Effect of rule 44 on former section 681 of this title, see note by Advisory Committee under rule 44, Appendix to this title.

Proof of official records, see rule 44.

FEDERAL RULES OF CRIMINAL PROCEDURE

Proof of official records, see rule 27, and note of the Advisory Committee under rule 27, Title 18, Appendix, Crimes and Criminal Procedure.

§ 1735. Court record lost or destroyed where United States interested

(a) When the record of any case or matter in any court of the United States to which the United States is a party, is lost or destroyed, a certified copy of any official paper of a United States attorney, United States marshal or clerk or other certifying or recording officer of any such court, made pursuant to law, on file in any department or agency of the United States and relating to such case or matter, shall, on being

filed in the court to which it relates, have the same effect as an original paper filed in such court. If the copy so filed discloses the date and amount of a judgment or decree and the names of the parties thereto, the court may enforce the judgment or decree as though the original record had not been lost or destroyed.

(b) Whenever the United States is interested in any lost or destroyed records or files of a court of the United States, the clerk of such court and the United States attorney for the district shall take the steps necessary to restore such records or files, under the direction of the judges of such court.

(June 25, 1948, ch. 646, 62 Stat. 946.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 685, 686 (R.S. §§ 903, 904; Jan. 31, 1879, ch. 39, §§ 2, 3, 20 Stat. 277).

A provision of section 686 of title 28, U.S.C., 1940 ed., relating to allowances to clerks and United States attorneys for their services, and disbursements incidental to restoring lost records under such section was deleted as obsolete, in view of sections 508, 509, and 604 of this title, placing such officers on a salary basis and providing for their expenses.

Words "And in all cases where any of the files, papers, or records of any court of the United States have been or shall be lost or destroyed, the files, records and papers which, pursuant to law, may have been or may be restored or supplied in place of such records, files, and papers, shall have the same force and effect, to all intents and purposes, as the originals thereof would have been entitled to," at the end of section 685 of title 28, U.S.C., 1940 ed., were omitted as fully covered by the remainder of this section and by section 1734 of this title.

Words "or agency of the United States" were substituted for "of the Government" so as to eliminate any possible ambiguity as to the scope of this section. See definitive section 451 of this title.

The phrase "so far as the judges of such courts respectively shall deem it essential to the interests of the United States that such records and files be restored or supplied," was omitted as unnecessary.

Changes were made in phraseology.

FEDERAL RULES OF CIVIL PROCEDURE

Proof of official records, see rule 44, Appendix to this title.

Effect of rule 44 on former section 685 of this title, see note by Advisory Committee under rule 44.

FEDERAL RULES OF CRIMINAL PROCEDURE

Proof of official records, see rule 27, and note of the Advisory Committee under rule 27, Title 18, Appendix, Crimes and Criminal Procedure.

§ 1736. Congressional Journals

Extracts from the Journals of the Senate and the House of Representatives, and from the Executive Journal of the Senate when the injunction of secrecy is removed, certified by the Secretary of the Senate or the Clerk of the House of Representatives shall be received in evidence with the same effect as the originals would have.

(June 25, 1948, ch. 646, 62 Stat. 947.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 676 (R.S. § 895). Changes in phraseology were made.

FEDERAL RULES OF CIVIL PROCEDURE

Proof of official records, see rule 44, Appendix to this title.

Effect of rule 44 on former section 676 of this title, see note by Advisory Committee under rule 44.

FEDERAL RULES OF CRIMINAL PROCEDURE

Proof of official records, see rule 27, and note of the Advisory Committee under rule 27, Title 18, Appendix, Crimes and Criminal Procedure.

§ 1737. Copy of officer's bond

Any person to whose custody the bond of any officer of the United States has been committed shall, on proper request and payment of the fee allowed by any Act of Congress, furnish certified copies thereof, which shall be prima facie evidence in any court of the execution, filing and contents of the bond.

(June 25, 1948, ch. 646, 62 Stat. 947.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 326, 499, 513, and 514 (R.S. §§ 783, 795; Feb. 22, 1875, ch. 95, § 3, 18 Stat. 333; Mar. 3, 1911, ch. 231, §§ 220, 291, 36 Stat. 1152, 1167).

Sections 326, 499, 513, and 514 of title 28, U.S.C., 1940 ed., were consolidated. They related to the bonds of particular officers, namely the Clerk of the Supreme Court, the United States marshals, and the clerks of the district courts. The revised section eliminates all inconsistent provisions of such sections.

The requirement that certified copies be furnished is new.

The other provisions of sections 326, 499, 513, and 514 of title 28, U.S.C., 1940 ed., are now incorporated in sections 544 and 952 of this title.

Changes were made in phraseology.

§ 1738. State and Territorial statutes and judicial proceedings; full faith and credit

The Acts of the legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto.

The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.

Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

(June 25, 1948, ch. 646, 62 Stat. 947.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 687 (R.S. § 905).

Words "Possession of the United States" were substituted for "of any country subject to the jurisdiction of the United States".

Words "or copies thereof" were added in three places. Copies have always been used to prove statutes and judicial proceedings under section 687 of title 28, U.S.C., 1940 ed. The added words will cover expressly such use.

Words "and its Territories and Possessions" were added in two places so as to make this section and section 1739 of this title uniform, the basic section of the latter having provided that nonjudicial records or

books of any State, Territory, or "country subject to the jurisdiction of the United States" should be admitted in any court or office in any other State, Territory, or "such country."

Words "a judge of the court" were substituted for "the judge, chief justice or presiding magistrate" without change of substance.

At the beginning of the last paragraph, words "Such Acts" were substituted for "And the said". This follows the language of Article IV, section 1 of the Constitution.

For additional provisions as to authentication, see Rule 44 of the Federal Rules of Civil Procedure.

Changes were made in phraseology.

FEDERAL RULES OF CIVIL PROCEDURE

Authentication of copy of official record, see rule 44, Appendix to this title.

Effect of rule 44 on former section 687 of this title, see note by Advisory Committee under rule 44.

FEDERAL RULES OF CRIMINAL PROCEDURE

Criminal cases, proof of official record, see rule 27, Title 18, Appendix, Crimes and Criminal Procedure.

CROSS REFERENCES

Full faith and credit, see Const., art. 4, § 1.

§ 1738A. Full faith and credit given to child custody determinations

(a) The appropriate authorities of every State shall enforce according to its terms, and shall not modify except as provided in subsections (f), (g), and (h) of this section, any custody determination or visitation determination made consistently with the provisions of this section by a court of another State.

(b) As used in this section, the term—

(1) "child" means a person under the age of eighteen;

(2) "contestant" means a person, including a parent or grandparent, who claims a right to custody or visitation of a child;

(3) "custody determination" means a judgment, decree, or other order of a court providing for the custody of a child, and includes permanent and temporary orders, and initial orders and modifications;

(4) "home State" means the State in which, immediately preceding the time involved, the child lived with his parents, a parent, or a person acting as parent, for at least six consecutive months, and in the case of a child less than six months old, the State in which the child lived from birth with any of such persons. Periods of temporary absence of any of such persons are counted as part of the six-month or other period;

(5) "modification" and "modify" refer to a custody or visitation determination which modifies, replaces, supersedes, or otherwise is made subsequent to, a prior custody or visitation determination concerning the same child, whether made by the same court or not;

(6) "person acting as a parent" means a person, other than a parent, who has physical custody of a child and who has either been awarded custody by a court or claims a right to custody;

(7) "physical custody" means actual possession and control of a child;

(8) "State" means a State of the United States, the District of Columbia, the Common-

wealth of Puerto Rico, or a territory or possession of the United States; and

(9) “visitation determination” means a judgment, decree, or other order of a court providing for the visitation of a child and includes permanent and temporary orders and initial orders and modifications.

(c) A child custody or visitation determination made by a court of a State is consistent with the provisions of this section only if—

(1) such court has jurisdiction under the law of such State; and

(2) one of the following conditions is met:

(A) such State (i) is the home State of the child on the date of the commencement of the proceeding, or (ii) had been the child’s home State within six months before the date of the commencement of the proceeding and the child is absent from such State because of his removal or retention by a contestant or for other reasons, and a contestant continues to live in such State;

(B)(i) it appears that no other State would have jurisdiction under subparagraph (A), and (ii) it is in the best interest of the child that a court of such State assume jurisdiction because (I) the child and his parents, or the child and at least one contestant, have a significant connection with such State other than mere physical presence in such State, and (II) there is available in such State substantial evidence concerning the child’s present or future care, protection, training, and personal relationships;

(C) the child is physically present in such State and (i) the child has been abandoned, or (ii) it is necessary in an emergency to protect the child because he has been subjected to or threatened with mistreatment or abuse;

(D)(i) it appears that no other State would have jurisdiction under subparagraph (A), (B), (C), or (E), or another State has declined to exercise jurisdiction on the ground that the State whose jurisdiction is in issue is the more appropriate forum to determine the custody or visitation of the child, and (ii) it is in the best interest of the child that such court assume jurisdiction; or

(E) the court has continuing jurisdiction pursuant to subsection (d) of this section.

(d) The jurisdiction of a court of a State which has made a child custody or visitation determination consistently with the provisions of this section continues as long as the requirement of subsection (c)(1) of this section continues to be met and such State remains the residence of the child or of any contestant.

(e) Before a child custody or visitation determination is made, reasonable notice and opportunity to be heard shall be given to the contestants, any parent whose parental rights have not been previously terminated and any person who has physical custody of a child.

(f) A court of a State may modify a determination of the custody of the same child made by a court of another State, if—

(1) it has jurisdiction to make such a child custody determination; and

(2) the court of the other State no longer has jurisdiction, or it has declined to exercise such jurisdiction to modify such determination.

(g) A court of a State shall not exercise jurisdiction in any proceeding for a custody or visitation determination commenced during the pendency of a proceeding in a court of another State where such court of that other State is exercising jurisdiction consistently with the provisions of this section to make a custody or visitation determination.

(h) A court of a State may not modify a visitation determination made by a court of another State unless the court of the other State no longer has jurisdiction to modify such determination or has declined to exercise jurisdiction to modify such determination.

(Added Pub. L. 96-611, §8(a), Dec. 28, 1980, 94 Stat. 3569; amended Pub. L. 105-374, §1, Nov. 12, 1998, 112 Stat. 3383.)

AMENDMENTS

1998—Subsec. (a). Pub. L. 105-374, §1(a), substituted “subsections (f), (g), and (h) of this section, any custody determination or visitation determination” for “subsection (f) of this section, any child custody determination”.

Subsec. (b)(2). Pub. L. 105-374, §1(b), inserted “or grandparent” after “parent”.

Subsec. (b)(3). Pub. L. 105-374, §1(c), struck out “or visitation” after “for the custody”.

Subsec. (b)(5). Pub. L. 105-374, §1(d), substituted “custody or visitation determination” for “custody determination” in two places.

Subsec. (b)(9). Pub. L. 105-374, §1(e), added par. (9).

Subsec. (c). Pub. L. 105-374, §1(f), substituted “custody or visitation determination” for “custody determination” in introductory provisions.

Subsec. (c)(2)(D)(i). Pub. L. 105-374, §1(g), inserted “or visitation” after “determine the custody”.

Subsecs. (d), (e). Pub. L. 105-374, §1(h), (i), substituted “custody or visitation determination” for “custody determination”.

Subsec. (g). Pub. L. 105-374, §1(j), which directed substitution of “custody or visitation determination” for “custody determination”, was executed by making the substitution in two places to reflect the probable intent of Congress.

Subsec. (h). Pub. L. 105-374, §1(k), added subsec. (h).

CONGRESSIONAL FINDINGS AND DECLARATION OF PURPOSE

Section 7 of Pub. L. 96-611 provided that:

“(a) The Congress finds that—

“(1) there is a large and growing number of cases annually involving disputes between persons claiming rights of custody and visitation of children under the laws, and in the courts, of different States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States;

“(2) the laws and practices by which the courts of those jurisdictions determine their jurisdiction to decide such disputes, and the effect to be given the decisions of such disputes by the courts of other jurisdictions, are often inconsistent and conflicting;

“(3) those characteristics of the law and practice in such cases, along with the limits imposed by a Federal system on the authority of each such jurisdiction to conduct investigations and take other actions outside its own boundaries, contribute to a tendency of parties involved in such disputes to frequently resort to the seizure, restraint, concealment, and interstate transportation of children, the disregard of court orders, excessive relitigation of cases, obtaining of conflicting orders by the courts of various jurisdictions, and interstate travel and communication that is so expensive and time consuming as to disrupt their occupations and commercial activities; and

“(4) among the results of those conditions and activities are the failure of the courts of such jurisdic-

tions to give full faith and credit to the judicial proceedings of the other jurisdictions, the deprivation of rights of liberty and property without due process of law, burdens on commerce among such jurisdictions and with foreign nations, and harm to the welfare of children and their parents and other custodians.

“(b) For those reasons it is necessary to establish a national system for locating parents and children who travel from one such jurisdiction to another and are concealed in connection with such disputes, and to establish national standards under which the courts of such jurisdictions will determine their jurisdiction to decide such disputes and the effect to be given by each such jurisdiction to such decisions by the courts of other such jurisdictions.

“(c) The general purposes of sections 6 to 10 of this Act [enacting this section and section 663 of Title 42, The Public Health and Welfare, amending sections 654 and 655 Title 42, and enacting provisions set out as notes under this section, sections 663 and 1305 of Title 42, and section 1073 of Title 18, Crimes and Criminal Procedure] are to—

“(1) promote cooperation between State courts to the end that a determination of custody and visitation is rendered in the State which can best decide the case in the interest of the child;

“(2) promote and expand the exchange of information and other forms of mutual assistance between States which are concerned with the same child;

“(3) facilitate the enforcement of custody and visitation decrees of sister States;

“(4) discourage continuing interstate controversies over child custody in the interest of greater stability of home environment and of secure family relationships for the child;

“(5) avoid jurisdictional competition and conflict between State courts in matters of child custody and visitation which have in the past resulted in the shifting of children from State to State with harmful effects on their well-being; and

“(6) deter interstate abductions and other unilateral removals of children undertaken to obtain custody and visitation awards.”

STATE COURT PROCEEDINGS FOR CUSTODY DETERMINATIONS; PRIORITY TREATMENT; FEES, COSTS, AND OTHER EXPENSES

Section 8(c) of Pub. L. 96-611 provided that: “In furtherance of the purposes of section 1738A of title 28, United States Code, as added by subsection (a) of this section, State courts are encouraged to—

“(1) afford priority to proceedings for custody determinations; and

“(2) award to the person entitled to custody or visitation pursuant to a custody determination which is consistent with the provisions of such section 1738A, necessary travel expenses, attorneys’ fees, costs of private investigations, witness fees or expenses, and other expenses incurred in connection with such custody determination in any case in which—

“(A) a contestant has, without the consent of the person entitled to custody or visitation pursuant to a custody determination which is consistent with the provisions of such section 1738A, (i) wrongfully removed the child from the physical custody of such person, or (ii) wrongfully retained the child after a visit or other temporary relinquishment of physical custody; or

“(B) the court determines it is appropriate.”

§ 1738B. Full faith and credit for child support orders

(a) **GENERAL RULE.**—The appropriate authorities of each State—

(1) shall enforce according to its terms a child support order made consistently with this section by a court of another State; and

(2) shall not seek or make a modification of such an order except in accordance with subsections (e), (f), and (i).

(b) **DEFINITIONS.**—In this section:

“child” means—

(A) a person under 18 years of age; and

(B) a person 18 or more years of age with respect to whom a child support order has been issued pursuant to the laws of a State.

“child’s State” means the State in which a child resides.

“child’s home State” means the State in which a child lived with a parent or a person acting as parent for at least 6 consecutive months immediately preceding the time of filing of a petition or comparable pleading for support and, if a child is less than 6 months old, the State in which the child lived from birth with any of them. A period of temporary absence of any of them is counted as part of the 6-month period.

“child support” means a payment of money, continuing support, or arrearages or the provision of a benefit (including payment of health insurance, child care, and educational expenses) for the support of a child.

“child support order”—

(A) means a judgment, decree, or order of a court requiring the payment of child support in periodic amounts or in a lump sum; and

(B) includes—

(i) a permanent or temporary order; and

(ii) an initial order or a modification of an order.

“contestant” means—

(A) a person (including a parent) who—

(i) claims a right to receive child support;

(ii) is a party to a proceeding that may result in the issuance of a child support order; or

(iii) is under a child support order; and

(B) a State or political subdivision of a State to which the right to obtain child support has been assigned.

“court” means a court or administrative agency of a State that is authorized by State law to establish the amount of child support payable by a contestant or make a modification of a child support order.

“modification” means a change in a child support order that affects the amount, scope, or duration of the order and modifies, replaces, supersedes, or otherwise is made subsequent to the child support order.

“State” means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the territories and possessions of the United States, and Indian country (as defined in section 1151 of title 18).

(c) **REQUIREMENTS OF CHILD SUPPORT ORDERS.**—A child support order made by a court of a State is made consistently with this section if—

(1) a court that makes the order, pursuant to the laws of the State in which the court is located and subsections (e), (f), and (g)—

(A) has subject matter jurisdiction to hear the matter and enter such an order; and

(B) has personal jurisdiction over the contestants; and

(2) reasonable notice and opportunity to be heard is given to the contestants.

(d) CONTINUING JURISDICTION.—A court of a State that has made a child support order consistently with this section has continuing, exclusive jurisdiction over the order if the State is the child's State or the residence of any individual contestant unless the court of another State, acting in accordance with subsections (e) and (f), has made a modification of the order.

(e) AUTHORITY TO MODIFY ORDERS.—A court of a State may modify a child support order issued by a court of another State if—

(1) the court has jurisdiction to make such a child support order pursuant to subsection (i); and

(2)(A) the court of the other State no longer has continuing, exclusive jurisdiction of the child support order because that State no longer is the child's State or the residence of any individual contestant; or

(B) each individual contestant has filed written consent with the State of continuing, exclusive jurisdiction for a court of another State to modify the order and assume continuing, exclusive jurisdiction over the order.

(f) RECOGNITION OF CHILD SUPPORT ORDERS.—If 1 or more child support orders have been issued with regard to an obligor and a child, a court shall apply the following rules in determining which order to recognize for purposes of continuing, exclusive jurisdiction and enforcement:

(1) If only 1 court has issued a child support order, the order of that court must be recognized.

(2) If 2 or more courts have issued child support orders for the same obligor and child, and only 1 of the courts would have continuing, exclusive jurisdiction under this section, the order of that court must be recognized.

(3) If 2 or more courts have issued child support orders for the same obligor and child, and more than 1 of the courts would have continuing, exclusive jurisdiction under this section, an order issued by a court in the current home State of the child must be recognized, but if an order has not been issued in the current home State of the child, the order most recently issued must be recognized.

(4) If 2 or more courts have issued child support orders for the same obligor and child, and none of the courts would have continuing, exclusive jurisdiction under this section, a court having jurisdiction over the parties shall issue a child support order, which must be recognized.

(5) The court that has issued an order recognized under this subsection is the court having continuing, exclusive jurisdiction under subsection (d).

(g) ENFORCEMENT OF MODIFIED ORDERS.—A court of a State that no longer has continuing, exclusive jurisdiction of a child support order may enforce the order with respect to nonmodifiable obligations and unsatisfied obligations that accrued before the date on which a modification of the order is made under subsections (e) and (f).

(h) CHOICE OF LAW.—

(1) IN GENERAL.—In a proceeding to establish, modify, or enforce a child support order,

the forum State's law shall apply except as provided in paragraphs (2) and (3).

(2) LAW OF STATE OF ISSUANCE OF ORDER.—In interpreting a child support order including the duration of current payments and other obligations of support, a court shall apply the law of the State of the court that issued the order.

(3) PERIOD OF LIMITATION.—In an action to enforce arrears under a child support order, a court shall apply the statute of limitation of the forum State or the State of the court that issued the order, whichever statute provides the longer period of limitation.

(i) REGISTRATION FOR MODIFICATION.—If there is no individual contestant or child residing in the issuing State, the party or support enforcement agency seeking to modify, or to modify and enforce, a child support order issued in another State shall register that order in a State with jurisdiction over the nonmovant for the purpose of modification.

(Added Pub. L. 103-383, §3(a), Oct. 20, 1994, 108 Stat. 4064; amended Pub. L. 104-193, title III, §322, Aug. 22, 1996, 110 Stat. 2221; Pub. L. 105-33, title V, §5554, Aug. 5, 1997, 111 Stat. 636.)

AMENDMENTS

1997—Subsec. (f)(4). Pub. L. 105-33, §5554(1), substituted "a court having jurisdiction over the parties shall issue a child support order, which must be recognized." for "a court may issue a child support order, which must be recognized."

Subsec. (f)(5). Pub. L. 105-33, §5554(2), inserted "under subsection (d)" after "jurisdiction".

1996—Subsec. (a)(2). Pub. L. 104-193, §322(1), substituted "subsections (e), (f), and (i)" for "subsection (e)".

Subsec. (b). Pub. L. 104-193, §322(2), inserted par. defining "child's home State".

Subsec. (c). Pub. L. 104-193, §322(3), inserted "by a court of a State" before "is made" in introductory provisions.

Subsec. (c)(1). Pub. L. 104-193, §322(4), inserted "and subsections (e), (f), and (g)" after "located".

Subsec. (d). Pub. L. 104-193, §322(5), inserted "individual" before "contestant" and substituted "subsections (e) and (f)" for "subsection (e)".

Subsec. (e). Pub. L. 104-193, §322(6), substituted "modify a child support order issued" for "make a modification of a child support order with respect to a child that is made" in introductory provisions.

Subsec. (e)(1). Pub. L. 104-193, §322(7), inserted "pursuant to subsection (i)" after "order".

Subsec. (e)(2). Pub. L. 104-193, §322(8), inserted "individual" before "contestant" in subpars. (A) and (B) and substituted "with the State of continuing, exclusive jurisdiction for a court of another State to modify the order and assume" for "to that court's making the modification and assuming" in subpar. (B).

Subsec. (f). Pub. L. 104-193, §322(10), added subsec. (f). Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 104-193, §322(11), substituted "Modified" for "Prior" in heading and "subsections (e) and (f)" for "subsection (e)" in text.

Pub. L. 104-193, §322(9), redesignated subsec. (f) as (g). Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 104-193, §322(12), inserted "including the duration of current payments and other obligations of support" before comma in par. (2) and "arrears under" after "enforce" in par. (3).

Pub. L. 104-193, §322(9), redesignated subsec. (g) as (h). Subsec. (i). Pub. L. 104-193, §322(13), added subsec. (i).

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-33 effective as if included in enactment of title III of the Personal Responsibility

and Work Opportunity Reconciliation Act of 1996, Pub. L. 104-193, see section 5557 of Pub. L. 105-33, set out as a note under section 608 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date of amendment by Pub. L. 104-193, see section 395(a)-(c) of Pub. L. 104-193, set out as a note under section 654 of Title 42, The Public Health and Welfare.

CONGRESSIONAL FINDINGS AND DECLARATION OF PURPOSE

Section 2 of Pub. L. 103-383 provided that:

“(a) FINDINGS.—The Congress finds that—

“(1) there is a large and growing number of child support cases annually involving disputes between parents who reside in different States;

“(2) the laws by which the courts of different jurisdictions determine their authority to establish child support orders are not uniform;

“(3) those laws, along with the limits imposed by the Federal system on the authority of each State to take certain actions outside its own boundaries—

“(A) encourage noncustodial parents to relocate outside the States where their children and the custodial parents reside to avoid the jurisdiction of the courts of such States, resulting in an increase in the amount of interstate travel and communication required to establish and collect on child support orders and a burden on custodial parents that is expensive, time consuming, and disruptive of occupations and commercial activity;

“(B) contribute to the pressing problem of relatively low levels of child support payments in interstate cases and to inequities in child support payments levels that are based solely on the noncustodial parent’s choice of residence;

“(C) encourage a disregard of court orders resulting in massive arrearages nationwide;

“(D) allow noncustodial parents to avoid the payment of regularly scheduled child support payments for extensive periods of time, resulting in substantial hardship for the children for whom support is due and for their custodians; and

“(E) lead to the excessive relitigation of cases and to the establishment of conflicting orders by the courts of various jurisdictions, resulting in confusion, waste of judicial resources, disrespect for the courts, and a diminution of public confidence in the rule of law; and

“(4) among the results of the conditions described in this subsection are—

“(A) the failure of the courts of the States to give full faith and credit to the judicial proceedings of the other States;

“(B) the deprivation of rights of liberty and property without due process of law;

“(C) burdens on commerce among the States; and

“(D) harm to the welfare of children and their parents and other custodians.

“(b) STATEMENT OF POLICY.—In view of the findings made in subsection (a), it is necessary to establish national standards under which the courts of the various States shall determine their jurisdiction to issue a child support order and the effect to be given by each State to child support orders issued by the courts of other States.

“(c) PURPOSES.—The purposes of this Act [enacting this section and provisions set out as a note under section 1 of this title] are—

“(1) to facilitate the enforcement of child support orders among the States;

“(2) to discourage continuing interstate controversies over child support in the interest of greater financial stability and secure family relationships for the child; and

“(3) to avoid jurisdictional competition and conflict among State courts in the establishment of child support orders.”

§ 1738C. Certain acts, records, and proceedings and the effect thereof

No State, territory, or possession of the United States, or Indian tribe, shall be required to give effect to any public act, record, or judicial proceeding of any other State, territory, possession, or tribe respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such other State, territory, possession, or tribe, or a right or claim arising from such relationship.

(Added Pub. L. 104-199, §2(a), Sept. 21, 1996, 110 Stat. 2419.)

§ 1739. State and Territorial nonjudicial records; full faith and credit

All nonjudicial records or books kept in any public office of any State, Territory, or Possession of the United States, or copies thereof, shall be proved or admitted in any court or office in any other State, Territory, or Possession by the attestation of the custodian of such records or books, and the seal of his office annexed, if there be a seal, together with a certificate of a judge of a court of record of the county, parish, or district in which such office may be kept, or of the Governor, or secretary of state, the chancellor or keeper of the great seal, of the State, Territory, or Possession that the said attestation is in due form and by the proper officers.

If the certificate is given by a judge, it shall be further authenticated by the clerk or prothonotary of the court, who shall certify, under his hand and the seal of his office, that such judge is duly commissioned and qualified; or, if given by such Governor, secretary, chancellor, or keeper of the great seal, it shall be under the great seal of the State, Territory, or Possession in which it is made.

Such records of books, or copies thereof, so authenticated, shall have the same full faith and credit in every court and office within the United States and its Territories and Possessions as they have by law or usage in the courts or offices of the State, Territory, or Possession from which they are taken.

(June 25, 1948, ch. 646, 62 Stat. 947.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §688 (R.S. §906).

Words “Possession of the United States” were substituted for “or any country subject to the jurisdiction of the United States.”

Words “or copies thereof” were added in two places. Copies have always been used to prove records and books under section 688 of title 28, U.S.C., 1940 ed., and the addition of these words clarifies the former implied meaning of such section.

In the first paragraph of the revised section words “a judge of a court of record” were substituted for words “the presiding justice of the court” and in the second paragraph “judge” was substituted for “presiding justice” for convenience and without change of substance.

Words “and its Territories and Possessions” were added after “United States”, near the end of the section, in view of provisions of section 688 of title 28, U.S.C., 1940 ed., for the admission of records and books in any court or office in any other State, Territory, or “in any such country.” (Changed to “Possession” in this section.)

See also Rule 44 of the Federal Rules of Civil Procedure.

Changes were made in phraseology.

FEDERAL RULES OF CIVIL PROCEDURE

Authentication of copy of official record, see rule 44, Appendix to this title.

Effect of rule 44 on former section 688 of this title, see note by Advisory Committee under rule 44.

FEDERAL RULES OF CRIMINAL PROCEDURE

Criminal cases, proof of official record, see rule 27, Title 18, Appendix, Crimes and Criminal Procedure.

§ 1740. Copies of consular papers

Copies of all official documents and papers in the office of any consul or vice consul of the United States, and of all official entries in the books or records of any such office, authenticated by the consul or vice consul, shall be admissible equally with the originals.

(June 25, 1948, ch. 646, 62 Stat. 947.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 677 (R.S. § 896; Apr. 5, 1906, ch. 1366, § 3, 34 Stat. 100).

Words “authenticated by the consul or vice consul” were substituted for “certified under the hand and seal of such officer”, for clarity. Words “in the courts of the United States”, were omitted after “admissible”. Such papers should be so admitted in all courts consistently with sections 1738 and 1739 of this title.

See also Rule 44 of the Federal Rules of Civil Procedure.

Changes were made in phraseology.

FEDERAL RULES OF CIVIL PROCEDURE

Authentication of copy of official record see rule 44 Appendix to this title.

Effect of rule 44 on former section 677 of this title, see note by Advisory Committee under rule 44.

FEDERAL RULES OF CRIMINAL PROCEDURE

Criminal cases, proof of official record, see rule 27, Title 18, Appendix, Crimes and Criminal Procedure.

§ 1741. Foreign official documents

An official record or document of a foreign country may be evidenced by a copy, summary, or excerpt authenticated as provided in the Federal Rules of Civil Procedure.

(June 25, 1948, ch. 646, 62 Stat. 948; May 24, 1949, ch. 139, § 92(b), 63 Stat. 103; Pub. L. 88-619, § 5(a), Oct. 3, 1964, 78 Stat. 996.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 28, U.S.C., 1940 ed., § 695e (June 20, 1936, ch. 640, § 6, 49 Stat. 1563).

Words “Nothing contained in this section shall be deemed to alter, amend, or repeal section 689 of this title,” at the end of section 695e of title 28, U.S.C., 1940 ed., were omitted. Although significant in the original Act, such words are unnecessary in a revision wherein both sections in question, as revised, are enacted at the same time.

See also Rule 44 of the Federal Rules of Civil Procedure.

Section 695e-1 of title 28, U.S.C., 1940 ed., providing for certification of Vatican City Documents will be incorporated in title 22, U.S.C., Foreign Relations and Intercourse.

Changes were made in phraseology.

1949 ACT

This section corrects a typographical error in section 1741 of title 28, U.S.C.

AMENDMENTS

1964—Pub. L. 88-619 substituted “An official record or document of a foreign country may be evidenced by a copy, summary, or excerpt authenticated as provided in the Federal Rules of Civil Procedure” for “A copy of any foreign document of record or on file in a public office of a foreign country or political subdivision thereof, certified by the lawful custodian thereof, shall be admissible in evidence when authenticated by a certificate of a consular officer of the United States resident in such foreign country, under the seal of his office, that the copy has been certified by the lawful custodian” in text, and “official documents” for “documents, generally; copies” in section catchline.

1949—Act May 24, 1949, corrected spelling of “admissible”.

FEDERAL RULES OF CIVIL PROCEDURE

Authentication of copy of official record, see rule 44 Appendix to this title.

Effect of rule 44 on former section 695e of this title, see note by Advisory Committee under rule 44.

FEDERAL RULES OF CRIMINAL PROCEDURE

Criminal cases, proof of official record, see rule 27, Title 18, Appendix, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 22 sections 1204, 4222.

[§ 1742. Repealed. Pub. L. 88-619, § 6(a), Oct. 3, 1964, 78 Stat. 996]

Section, act June 25, 1948, ch. 646, 62 Stat. 948, related to authentication and certification of copies of documents relating to land titles, by persons having custody of such of any foreign government or its agents, certification by an American minister or consul that they be true copies of the originals, the recording of such copies in the office of the General Counsel for the Department of the Treasury, and to the evidentiary value of such copies.

§ 1743. Demand on postmaster

The certificate of the Postmaster General or the General Accounting Office of the mailing to a postmaster of a statement of his account and that payment of the balance stated has not been received shall be sufficient evidence of a demand notwithstanding any allowances or credits subsequently made. A copy of such statement shall be attached to the certificate.

(June 25, 1948, ch. 646, 62 Stat. 948.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 670 (R.S. § 890; June 10, 1921, ch. 18, § 301, 42 Stat. 23).

Provisions in section 670 of title 28, U.S.C., 1940 ed., that the statement should recite that a letter has been mailed to a described post office and sufficient time has elapsed for it to have reached its destination, was omitted as superfluous.

The last clause of section 670 of title 28, U.S.C., 1940 ed., was omitted as covered by the phrase “notwithstanding any allowances or credits subsequently made” in the revised section.

Changes were made in phraseology.

TRANSFER OF FUNCTIONS

The office of Postmaster General of the Post Office Department was abolished and all functions, powers, and duties of the Postmaster General were transferred to the United States Postal Service by Pub. L. 91-375, § 4(a), Aug. 12, 1970, 84 Stat. 773, set out as a note under section 201 of Title 39, Postal Service.

FEDERAL RULES OF CIVIL PROCEDURE

Proof of official records, see rule 44, Appendix to this title.

Effect of rule 44 on former section 670 of this title, see note by Advisory Committee under rule 44.

FEDERAL RULES OF CRIMINAL PROCEDURE

Proof of official records, see rule 27, and note of the Advisory Committee under rule 27, Title 18, Appendix, Crimes and Criminal Procedure.

§ 1744. Copies of Patent Office documents, generally

Copies of letters patent or of any records, books, papers, or drawings belonging to the Patent Office and relating to patents, authenticated under the seal of the Patent Office and certified by the Commissioner of Patents, or by another officer of the Patent Office authorized to do so by the Commissioner, shall be admissible in evidence with the same effect as the originals.

Any person making application and paying the required fee may obtain such certified copies.

(June 25, 1948, ch. 646, 62 Stat. 948; May 24, 1949, ch. 139, §92(c), 63 Stat. 103.)

HISTORICAL AND REVISION NOTES

Based on section 127 of title 15, U.S.C., 1940 ed., Commerce and Trade, and title 28, U.S.C., 1940 ed., §673 (R.S. §892; Mar. 19, 1920, ch. 104, §7, 41 Stat. 535; Mar. 4, 1925, ch. 535, §2, 43 Stat. 1269).

For purposes of uniformity, words "written or printed," at the beginning of the section, were omitted. Similar sections in this chapter do not contain such words.

Words "or in his name attested by a chief of division duly designated by the commissioner," after "Commissioner of Patents," were omitted as unnecessary.

Changes in phraseology were made.

AMENDMENTS

1949—Act May 24, 1949, substituted "patents" after "relating to" for "registered trade-marks, labels, or prints", and inserted "or by another officer of the Patent Office authorized to do so by the Commissioner" after "Commissioner of Patents".

CHANGE OF NAME

Patent Office and Commissioner of Patents redesignated Patent and Trademark Office and Commissioner of Patents and Trademarks, respectively, by section 3 of Pub. L. 93-596, Jan. 2, 1975, 88 Stat. 1949, set out as a note under section 1 of Title 35, Patents.

TRANSFER OF FUNCTIONS

Functions of all officers of Department of Commerce and all functions of all agencies and employees of Department, with a few exceptions, transferred to Secretary of Commerce, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by Reorg. Plan No. 5 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees. The Patent Office [now Patent and Trademark Office], referred to in this section, is an agency of the Department of Commerce, and the Commissioner of Patents [now Commissioner of Patents and Trademarks], referred to in this section, is an officer of that Department.

FEDERAL RULES OF CIVIL PROCEDURE

Proof of official record, see rule 44, Appendix to this title.

Effect of rule 44 on former section 673 of this title, see note by Advisory Committee under rule 44.

FEDERAL RULES OF CRIMINAL PROCEDURE

Proof of official records, see rule 27, and note of the Advisory Committee under rule 44, Title 18, Appendix, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1745 of this title.

§ 1745. Copies of foreign patent documents

Copies of the specifications and drawings of foreign letters patent, or applications for foreign letters patent, and copies of excerpts of the official journals and other official publications of foreign patent offices belonging to the United States Patent Office, certified in the manner provided by section 1744 of this title are prima facie evidence of their contents and of the dates indicated on their face.

(June 25, 1948, ch. 646, 62 Stat. 948, §1746; renumbered §1745, May 24, 1949, ch. 139, §92(e), 63 Stat. 103; Pub. L. 88-619, §7(a), Oct. 3, 1964, 78 Stat. 996.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §674 (R.S. §893). Changes were made in phraseology.

PRIOR PROVISIONS

A prior section 1745, act June 25, 1948, ch. 646, 62 Stat. 948, related to printed copies of patent specifications and drawings, prior to repeal by act May 24, 1949, ch. 139, §92(d), 63 Stat. 103.

AMENDMENTS

1964—Pub. L. 88-619, among other changes, inserted "or applications for foreign letters patent, and copies of excerpts of the official journals and other official publications of foreign patent offices belonging to the United States Patent Office" in text, and substituted "documents" for "specifications and drawings" in section catchline.

1949—Act May 24, 1949, renumbered section 1746 of this title as this section.

CHANGE OF NAME

Patent Office redesignated Patent and Trademark Office, by section 3 of Pub. L. 93-596, Jan. 2, 1975, 88 Stat. 1949, set out as a note under section 1 of Title 35, Patents.

FEDERAL RULES OF CIVIL PROCEDURE

Proof of official records, see rule 44, Appendix to this title.

Effect of rule 44 on former section 675 of this title, see note by Advisory Committee under rule 44.

FEDERAL RULES OF CRIMINAL PROCEDURE

Proof of official records, see rule 27, and note of the Advisory Committee under rule 27, Title 18, Appendix, Crimes and Criminal Procedure.

§ 1746. Unsworn declarations under penalty of perjury

Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public),

such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form:

(1) If executed without the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date).

(Signature)".

(2) If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).

(Signature)".

(Added Pub. L. 94-550, §1(a), Oct. 18, 1976, 90 Stat. 2534.)

PRIOR PROVISIONS

A prior section 1746 was renumbered section 1745 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 8 sections 1183a, 1225, 1357; title 10 section 931; title 18 sections 152, 1546, 1621, 1623; title 25 section 399.

CHAPTER 117—EVIDENCE; DEPOSITIONS

Sec.

- 1781. Transmittal of letter rogatory or request.
- 1782. Assistance to foreign and international tribunals and to litigants before such tribunals.
- 1783. Subpoena of person in foreign country.
- 1784. Contempt.
- [1785. Repealed.]

AMENDMENTS

1964—Pub. L. 88-619, §§8(b), 9(b), 10(b), 12(b), Oct. 3, 1964, 78 Stat. 997, 998, substituted "Transmittal of letter rogatory or request" for "Foreign witnesses" in item 1781, "Assistance to foreign and international tribunals and to litigants before such tribunals" for "Testimony for use in foreign countries" in item 1782, "person" for "witness" in item 1783, and struck out item 1785 "Privilege against incrimination".

DEPOSITIONS IN ADMIRALTY CASES

Prior to the general unification of civil and admiralty procedure and the rescission of the Admiralty Rules on July 1, 1966, Revised Statutes §§863 to 865, as amended, which related to depositions de bene esse, when and how taken, notice, mode of taking, and transmission to court, provided as follows:

"SEC. 863. The testimony of any witness may be taken in any civil cause depending in a district court by deposition de bene esse, when the witness lives at a greater distance from the place of trial than one hundred miles, or is bound on a voyage to sea, or is about to go out of the United States, or out of the district in which the case is to be tried, and to a greater distance than one hundred miles from the place of trial, before the time of trial, or when he is ancient and infirm. The deposition may be taken before any judge of any court of the United States, or any clerk of a district court, or any chancellor, justice, or judge of a supreme or superior court, mayor or chief magistrate of a city, judge of a county court or court of common pleas of any of the United States, or any notary public, not being of counsel or attorney to either of the parties, nor interested in the event of the cause. Reasonable notice must

first be given in writing by the party or his attorney proposing to take such deposition, to the opposite party or his attorney of record, as either may be nearest, which notice shall state the name of the witness and the time and place of the taking of his deposition; and in all cases in rem, the person having the agency or possession of the property at the time of seizure shall be deemed the adverse party, until a claim shall have been put in; and whenever, by reason of the absence from the district and want of an attorney of record or other reason, the giving of the notice herein required shall be impracticable, it shall be lawful to take such depositions as there shall be urgent necessity for taking, upon such notice as any judge authorized to hold courts in such district shall think reasonable and direct. Any person may be compelled to appear and depose as provided by this section, in the same manner as witnesses may be compelled to appear and testify in court.

"SEC. 864. Every person deposing as provided in the preceding section [R.S. §863] shall be cautioned and sworn to testify the whole truth, and carefully examined.

"His testimony shall be reduced to writing or typewriting by the officer taking the deposition, or by some person under his personal supervision, or by the deponent himself in the officer's presence, and by no other person, and shall, after it has been reduced to writing or typewriting, be subscribed by the deponent. [As amended May 23, 1900, ch. 541, 31 Stat. 182.]

"SEC. 865. Every deposition taken under the two preceding sections [R.S. §§863, 864] shall be retained by the magistrate taking it, until he delivers it with his own hand into the court for which it is taken; or it shall, together with a certificate of the reasons as aforesaid of taking it and of the notice, if any, given to the adverse party, be by him sealed up and directed to such court, and remain under his seal until opened in court. But unless it appears to the satisfaction of the court that the witness is then dead, or gone out of the United States, or to a greater distance than one hundred miles from the place where the court is sitting, or that, by reason of age, sickness, bodily infirmity, or imprisonment, he is unable to travel and appear at court, such deposition shall not be used in the cause."

R.S. §§863 to 865, as amended, quoted above, were applicable to admiralty proceedings only. Proceedings in bankruptcy and copyright are governed by rule 26 et seq. of Federal Rules of Civil Procedure. See also Rules of Bankruptcy Procedure set out in the Appendix to Title 11, Bankruptcy.

FEDERAL RULES OF CIVIL PROCEDURE

Depositions and discovery, see rules 26 to 37, Appendix to this title.

Persons before whom depositions may be taken in foreign countries, see rule 28.

Subpoena for taking depositions, see rule 45.

FEDERAL RULES OF CRIMINAL PROCEDURE

Subpoena for taking depositions in criminal cases, see rule 17, Title 18, Appendix, Crimes and Criminal Procedure.

RULES OF THE UNITED STATES COURT OF FEDERAL CLAIMS

Subpoena to witness in foreign country, see rule 45, Appendix to this title.

§ 1781. Transmittal of letter rogatory or request

(a) The Department of State has power, directly, or through suitable channels—

(1) to receive a letter rogatory issued, or request made, by a foreign or international tribunal, to transmit it to the tribunal, officer, or agency in the United States to whom it is addressed, and to receive and return it after execution; and

(2) to receive a letter rogatory issued, or request made, by a tribunal in the United States, to transmit it to the foreign or international tribunal, officer, or agency to whom it is addressed, and to receive and return it after execution.

(b) This section does not preclude—

(1) the transmittal of a letter rogatory or request directly from a foreign or international tribunal to the tribunal, officer, or agency in the United States to whom it is addressed and its return in the same manner; or

(2) the transmittal of a letter rogatory or request directly from a tribunal in the United States to the foreign or international tribunal, officer, or agency to whom it is addressed and its return in the same manner.

(June 25, 1948, ch. 646, 62 Stat. 948; Pub. L. 88-619, §8(a), Oct. 3, 1964, 78 Stat. 996.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §653 (R.S. §875; Feb. 27, 1877, ch. 69, §1, 19 Stat. 241; Mar. 3, 1911, ch. 231, §291, 36 Stat. 1167).

Word "officer" was substituted for "commissioner" to obviate uncertainty as to the person to whom the letters or commissioned may be issued.

The third sentence of section 653 of title 28, U.S.C., 1940 ed., providing for admission of testimony "so taken and returned" without objection as to the method of return, was omitted as unnecessary. Obviously, if the method designated by Congress is followed, it cannot be objected to.

The last sentence of section 653 of title 26, U.S.C., 1940 ed., relating to letters rogatory from courts of foreign countries, is incorporated in section 1782 of this title.

The revised section extends the provisions of section 653 of title 28, U.S.C., 1940 ed., which applied only to cases wherein the United States was a party or was interested, so as to insure a uniform method of taking foreign depositions in all cases.

Words "courts of the United States" were inserted to make certain that the section is addressed to the Federal rather than the State courts as obviously intended by Congress.

Changes were made in phraseology.

AMENDMENTS

1964—Pub. L. 88-619 substituted provisions authorizing the Department of State to transmit a letter rogatory or request by a foreign or international tribunal, or by a tribunal in the United States, to the tribunal, officer or agency in the United States or its foreign or international counterpart, to whom addressed, and to return it after execution, and providing that this section does not preclude direct transmission of letters rogatory or requests between interested tribunals, officers or agencies of foreign, international and of United States origin, for provisions authorizing United States ministers or consuls, whenever a United States court issues letters rogatory or a commission to take a deposition, to receive the executed letters or commissions from foreign courts or officers, endorse them with the place and date of receipt and any change in the deposition, and transmit it to the clerk of the issuing court in the same manner as his official dispatches, in text and "Transmittal of letter rogatory or request" for "Foreign witnesses" in section catchline.

FEDERAL RULES OF CIVIL PROCEDURE

Persons before whom depositions may be taken in foreign countries, see rule 28, Appendix to this title.

§ 1782. Assistance to foreign and international tribunals and to litigants before such tribunals

(a) The district court of the district in which a person resides or is found may order him to give his testimony or statement or to produce a document or other thing for use in a proceeding in a foreign or international tribunal, including criminal investigations conducted before formal accusation. The order may be made pursuant to a letter rogatory issued, or request made, by a foreign or international tribunal or upon the application of any interested person and may direct that the testimony or statement be given, or the document or other thing be produced, before a person appointed by the court. By virtue of his appointment, the person appointed has power to administer any necessary oath and take the testimony or statement. The order may prescribe the practice and procedure, which may be in whole or part the practice and procedure of the foreign country or the international tribunal, for taking the testimony or statement or producing the document or other thing. To the extent that the order does not prescribe otherwise, the testimony or statement shall be taken, and the document or other thing produced, in accordance with the Federal Rules of Civil Procedure.

A person may not be compelled to give his testimony or statement or to produce a document or other thing in violation of any legally applicable privilege.

(b) This chapter does not preclude a person within the United States from voluntarily giving his testimony or statement, or producing a document or other thing, for use in a proceeding in a foreign or international tribunal before any person and in any manner acceptable to him.

(June 25, 1948, ch. 646, 62 Stat. 949; May 24, 1949, ch. 139, §93, 63 Stat. 103; Pub. L. 88-619, §9(a), Oct. 3, 1964, 78 Stat. 997; Pub. L. 104-106, div. A, title XIII, §1342(b), Feb. 10, 1996, 110 Stat. 486.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 28, U.S.C., 1940 ed., §§649-653, 701, 703, 704 (R.S. §§871-875, 4071, 4073, 4074; Feb. 27, 1877, ch. 69, §1, 19 Stat. 241; Mar. 3, 1911, ch. 231, §291, 36 Stat. 1167; June 25, 1936, ch. 804, 49 Stat. 1921).

Sections 649-652 of title 28, U.S.C., 1940 ed., applied only to the District of Columbia and contained detailed provisions for issuing subpoenas, payment of witness fees and procedure for ordering and taking depositions. These matters are all covered by Federal Rules of Civil Procedure, Rules 26-32.

Provisions in sections 649-652 of title 28, U.S.C., 1940 ed., relating to the taking of testimony in the District of Columbia for use in State and Territorial courts were omitted as covered by section 14-204 of the District of Columbia Code, 1940 ed., and Rules 26 et seq., and 46 of the Federal Rules of Civil Procedure.

Only the last sentence of section 653 of title 28, U.S.C., 1940 ed., is included in this revised section. The remaining provisions relating to depositions of witnesses in foreign countries form the basis of section 1781 of this title.

Sections 701, 703, and 704 of title 28, U.S.C., 1940 ed., were limited to "suits for the recovery of money or property depending in any court in any foreign country with which the United States are at peace, and in which the government of such foreign country shall be a party or shall have an interest."

The revised section omits this limitation in view of the general application of the last sentence of section 653 of title 28, U.S.C., 1940 ed., consolidated herein. The improvement of communications and the expected growth of foreign commerce will inevitably increase litigation involving witnesses separated by wide distances.

Therefore the revised section is made simple and clear to provide a flexible procedure for the taking of depositions. The ample safeguards of the Federal Rules of Civil Procedure, Rules 26-32, will prevent misuse of this section.

The provisions of section 703 of title 28, U.S.C., 1940 ed., for punishment of disobedience to subpoena or refusal to answer is covered by Rule 37(b)(1) of Federal Rules of Civil Procedure.

The provisions of section 704 of title 28, U.S.C., 1940 ed., with respect to fees and mileage of witnesses are covered by Rule 45(c) of Federal Rules of Civil Procedure.

Changes were made in phraseology.

1949 ACT

This amendment corrects restrictive language in section 1782 of title 28, U.S.C., in conformity with original law and permits depositions in any judicial proceeding without regard to whether the deponent is "residing" in the district or only sojourning there.

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (a), are set out in the Appendix to this title.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104-106 inserted "including criminal investigations conducted before formal accusation" after "proceeding in a foreign or international tribunal" in first sentence.

1964—Pub. L. 88-619 substituted provisions which empowered district courts to order residents to give testimony or to produce documents for use in a foreign or international tribunal, pursuant to a letter rogatory, or request, of a foreign or international tribunal or upon application of any interested person, and to direct that the evidence be presented before a person appointed by the court, provided that such person may administer oaths and take testimony, that the evidence be taken in accordance with the Federal Rules of Civil Procedure unless the order prescribes using the procedure of the foreign or international tribunal, that a person may not be compelled to give legally privileged evidence, and that this chapter doesn't preclude a person from voluntarily giving evidence for use in a foreign or international tribunal, for provisions permitting depositions of witnesses within the United States for use in any court in a foreign country with which the United States was at peace to be taken before a person authorized to administer oaths designated by the district court of the district where the witness resides or is found, and directing that the procedure used be that generally used in courts of the United States, in text, and "Assistance to foreign and international tribunals and to litigants before such tribunals" for "Testimony for use in foreign countries" in section catchline.

1949—Act May 24, 1949, struck out "residing" after "witness", and substituted "judicial proceeding" for "civil action" after "to be used in any".

CROSS REFERENCES

Fees of witnesses in the United States courts, see section 1821 of this title.

Letters rogatory from United States courts, see section 1781 of this title.

§ 1783. Subpoena of person in foreign country

(a) A court of the United States may order the issuance of a subpoena requiring the appearance as a witness before it, or before a person or body

designated by it, of a national or resident of the United States who is in a foreign country, or requiring the production of a specified document or other thing by him, if the court finds, that particular testimony or the production of the document or other thing by him is necessary in the interest of justice, and, in other than a criminal action or proceeding, if the court finds, in addition, that it is not possible to obtain his testimony in admissible form without his personal appearance or to obtain the production of the document or other thing in any other manner.

(b) The subpoena shall designate the time and place for the appearance or for the production of the document or other thing. Service of the subpoena and any order to show cause, rule, judgment, or decree authorized by this section or by section 1784 of this title shall be effected in accordance with the provisions of the Federal Rules of Civil Procedure relating to service of process on a person in a foreign country. The person serving the subpoena shall tender to the person to whom the subpoena is addressed his estimated necessary travel and attendance expenses, the amount of which shall be determined by the court and stated in the order directing the issuance of the subpoena.

(June 25, 1948, ch. 646, 62 Stat. 949; Pub. L. 88-619, § 10(a), Oct. 3, 1964, 78 Stat. 997.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 711, 712, and 713 (July 3, 1926, ch. 762, §§ 1-3, 44 Stat. 835).

Word "resident" was substituted for "or domiciled therein." (See reviser's note under section 1391 of this title.)

Words "or any assistant or district attorney acting under him," after "Attorney General" in section 712 of title 28, U.S.C., 1940 ed., were omitted, since, in any event, the approval of the Attorney General would be required. (See section 507 of this title.)

Changes were made in phraseology.

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (b), are set out in the Appendix to this title.

AMENDMENTS

1964—Pub. L. 88-619 amended section generally, and among other changes, authorized a United States court to issue a subpoena to require the appearance of a witness before it or a person or body designated by it, and the production of documents or other tangible evidence, when necessary in the interest of justice, and in other than criminal actions or proceedings, if the court finds, in addition, that its not possible to obtain admissible evidence in any other manner, and provided that the procedure relating to the subpoena shall be in accordance with the Federal Rules of Civil Procedure, and struck out provisions which authorized the issuance of a subpoena when a personally notified individual failed to appear to testify pursuant to letter rogatory, or failed to answer any question he would have to answer in any examination before the court or if such person was beyond United States jurisdiction and the testimony was desired by the Attorney General in a criminal proceeding, provided that the subpoena issue to any United States consul, that the consul make personal service of the subpoena and of any order, rule, judgment or decree, that he make return of the subpoena and tender expenses to the witness, and substituted "person" for "witness" in section catchline.

FEDERAL RULES OF CIVIL PROCEDURE

Civil case, subpoena of witness in foreign country, see Rule 45, Appendix to this title.

FEDERAL RULES OF CRIMINAL PROCEDURE

Criminal case, subpoena of witness in foreign country, see Rule 17 Title 18, Appendix, Crimes and Criminal Procedure.

RULES OF THE UNITED STATES COURT OF FEDERAL CLAIMS

Subpoena to witness in foreign country, see rule 45, Appendix to this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1784 of this title.

§ 1784. Contempt

(a) The court of the United States which has issued a subpoena served in a foreign country may order the person who has failed to appear or who has failed to produce a document or other thing as directed therein to show cause before it at a designated time why he should not be punished for contempt.

(b) The court, in the order to show cause, may direct that any of the person's property within the United States be levied upon or seized, in the manner provided by law or court rules governing levy or seizure under execution, and held to satisfy any judgment that may be rendered against him pursuant to subsection (d) of this section if adequate security, in such amount as the court may direct in the order, be given for any damage that he might suffer should he not be found in contempt. Security under this subsection may not be required of the United States.

(c) A copy of the order to show cause shall be served on the person in accordance with section 1783(b) of this title.

(d) On the return day of the order to show cause or any later day to which the hearing may be continued, proof shall be taken. If the person is found in contempt, the court, notwithstanding any limitation upon its power generally to punish for contempt, may fine him not more than \$100,000 and direct that the fine and costs of the proceedings be satisfied by a sale of the property levied upon or seized, conducted upon the notice required and in the manner provided for sales upon execution.

(June 25, 1948, ch. 646, 62 Stat. 949; Pub. L. 88-619, § 11, Oct. 3, 1964, 78 Stat. 998.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 714, 715, 716, 717, and 718 (July 3, 1926, ch. 762, §§ 4-8, 44 Stat. 836).

Sections 714-718 of title 28, U.S.C., 1940 ed., were consolidated, since all relate to contempt by a witness served personally in a foreign country.

The last sentence omits specific reference to section 118 of title 28, U.S.C., 1940 ed., now incorporated in section 1655 of this title, which provides for the method of opening judgments rendered on publication of process. (See also Rule 60(b) of the Federal Rules of Civil Procedure.)

Changes were made in phraseology.

AMENDMENTS

1964—Pub. L. 88-619 amended section generally, and among other changes, authorized the court to order a person to show cause for failing to produce a document or other thing in subsec. (a), provided that a copy of the order to show cause shall be served in accordance with section 1783(b) of this title, and struck out provisions requiring the marshal making levy or seizure to

forward to any United States consul in the country where the witness may be, a copy of the order and a request for its personal service, and to cause publication of the order in the district where the issuing court sits, in subsec. (c), and struck out provisions in subsec. (d) permitting any judgment rendered upon service by publication only to be opened for answer within one year.

FEDERAL RULES OF CIVIL PROCEDURE

Civil cases, contempt for failure to obey subpoena, see Rule 45, Appendix to this title.

FEDERAL RULES OF CRIMINAL PROCEDURE

Criminal cases, contempt for failure to obey subpoena, see Rule 17, Title 18, Appendix, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1783 of this title.

[§ 1785. Repealed. Pub. L. 88-619, § 12(a), Oct. 3, 1964, 78 Stat. 998]

Section, act June 25, 1948, ch. 646, 62 Stat. 950, provided a privilege against self-incrimination on examination under letters rogatory. See section 1782(a) of this title.

CHAPTER 119—EVIDENCE; WITNESSES

Sec.

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|--------|---|
| 1821. | Per diem and mileage generally; subsistence. |
| 1822. | Competency of interested persons; share of penalties payable. |
| [1823. | Repealed.] |
| 1824. | Mileage fees under summons as both witness and juror. |
| 1825. | Payment of fees. |
| 1826. | Recalcitrant witnesses. |
| 1827. | Interpreters in courts of the United States. |
| 1828. | Special interpretation services. |

AMENDMENTS

1978—Pub. L. 95-539, § 2(b), Oct. 28, 1978, 92 Stat. 2042, added items 1827 and 1828.

1970—Pub. L. 91-563, § 5(b), Dec. 19, 1970, 84 Stat. 1478, struck out item 1823 "United States officers and employees".

Pub. L. 91-452, title III, § 301(b), Oct. 15, 1970, 84 Stat. 932, added item 1826.

FEDERAL RULES OF CIVIL PROCEDURE

Civil cases—

Evidence, see Federal Rules of Evidence, Appendix to this title.

Subpoena for attendance of witnesses, see Rule 45.

FEDERAL RULES OF CRIMINAL PROCEDURE

Subpoena for attendance of witnesses, see Rule 17, Title 18, Appendix, Crimes and Criminal Procedure.

RULES OF EVIDENCE

Evidence, see Rule 26, Federal Rules of Criminal Procedure, Title 18, Appendix, Crimes and Criminal Procedure, and Federal Rules of Evidence, Appendix to this title.

Expert witnesses, see section 701 et seq., Federal Rules of Evidence.

CROSS REFERENCES

Criminal cases, witnesses and evidence, see sections 3481 et seq. of Title 18, Crimes and Criminal Procedure.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 11 section 503.

§ 1821. Per diem and mileage generally; subsistence

(a)(1) Except as otherwise provided by law, a witness in attendance at any court of the United

States, or before a United States Magistrate, or before any person authorized to take his deposition pursuant to any rule or order of a court of the United States, shall be paid the fees and allowances provided by this section.

(2) As used in this section, the term “court of the United States” includes, in addition to the courts listed in section 451 of this title, any court created by Act of Congress in a territory which is invested with any jurisdiction of a district court of the United States.

(b) A witness shall be paid an attendance fee of \$40 per day for each day’s attendance. A witness shall also be paid the attendance fee for the time necessarily occupied in going to and returning from the place of attendance at the beginning and end of such attendance or at any time during such attendance.

(c)(1) A witness who travels by common carrier shall be paid for the actual expenses of travel on the basis of the means of transportation reasonably utilized and the distance necessarily traveled to and from such witness’s residence by the shortest practical route in going to and returning from the place of attendance. Such a witness shall utilize a common carrier at the most economical rate reasonably available. A receipt or other evidence of actual cost shall be furnished.

(2) A travel allowance equal to the mileage allowance which the Administrator of General Services has prescribed, pursuant to section 5704 of title 5, for official travel of employees of the Federal Government shall be paid to each witness who travels by privately owned vehicle. Computation of mileage under this paragraph shall be made on the basis of a uniformed table of distances adopted by the Administrator of General Services.

(3) Toll charges for toll roads, bridges, tunnels, and ferries, taxicab fares between places of lodging and carrier terminals, and parking fees (upon presentation of a valid parking receipt), shall be paid in full to a witness incurring such expenses.

(4) All normal travel expenses within and outside the judicial district shall be taxable as costs pursuant to section 1920 of this title.

(d)(1) A subsistence allowance shall be paid to a witness when an overnight stay is required at the place of attendance because such place is so far removed from the residence of such witness as to prohibit return thereto from day to day.

(2) A subsistence allowance for a witness shall be paid in an amount not to exceed the maximum per diem allowance prescribed by the Administrator of General Services, pursuant to section 5702(a) of title 5, for official travel in the area of attendance by employees of the Federal Government.

(3) A subsistence allowance for a witness attending in an area designated by the Administrator of General Services as a high-cost area shall be paid in an amount not to exceed the maximum actual subsistence allowance prescribed by the Administrator, pursuant to section 5702(c)(B)¹ of title 5, for official travel in

such area by employees of the Federal Government.

(4) When a witness is detained pursuant to section 3144 of title 18 for want of security for his appearance, he shall be entitled for each day of detention when not in attendance at court, in addition to his subsistence, to the daily attendance fee provided by subsection (b) of this section.

(e) An alien who has been paroled into the United States for prosecution, pursuant to section 212(d)(5) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(5)), or an alien who either has admitted belonging to a class of aliens who are deportable or has been determined pursuant to section 240 of such Act (8 U.S.C. 1252(b))¹ to be deportable, shall be ineligible to receive the fees or allowances provided by this section.

(f) Any witness who is incarcerated at the time that his or her testimony is given (except for a witness to whom the provisions of section 3144 of title 18 apply) may not receive fees or allowances under this section, regardless of whether such a witness is incarcerated at the time he or she makes a claim for fees or allowances under this section.

(June 25, 1948, ch. 646, 62 Stat. 950; May 10, 1949, ch. 96, 63 Stat. 65; May 24, 1949, ch. 139, §94, 63 Stat. 103; Oct. 31, 1951, ch. 655, §51(a), 65 Stat. 727; Sept. 3, 1954, ch. 1263, §45, 68 Stat. 1242; Aug. 1, 1956, ch. 826, 70 Stat. 798; Pub. L. 90-274, §102(b), Mar. 27, 1968, 82 Stat. 62; Pub. L. 95-535, §1, Oct. 27, 1978, 92 Stat. 2033; Pub. L. 101-650, title III, §314(a), Dec. 1, 1990, 104 Stat. 5115; Pub. L. 102-417, §2(a)-(c), Oct. 14, 1992, 106 Stat. 2138; Pub. L. 104-208, div. C, title III, §308(g)(5)(E), Sept. 30, 1996, 110 Stat. 3009-623.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 28, U.S.C., 1940 ed., §600c, section 1115(a) of title 26, U.S.C., 1940, Internal Revenue Code, and section 11-1514 of the D.C. Code, 1940 ed. (R.S. §§823, 848; Apr. 26, 1926, ch. 183, §3, 44 Stat. 324; May 17, 1932, ch. 190, 47 Stat. 158; June 25, 1936, ch. 804, 49 Stat. 1921; Feb. 10, 1939, ch. 2, §1115(a), 53 Stat. 160; Dec. 24, 1942, ch. 825, §1, 56 Stat. 1088.

Section consolidates part of section 600c of title 28, U.S.C., 1940 ed., with section 1115(a) of title 26, U.S.C., 1940 ed., and section 11-1514 of the D.C. Code, 1940 ed.

Words “or person taking his deposition pursuant to any order of a court of the United States” were added to cover that circumstance.

Reference in section 600c of title 28, U.S.C., 1940 ed., and section 11-1514 of the D.C. Code, 1940 ed., to the district courts of Hawaii, Puerto Rico and the District of Columbia, were omitted as covered by the words “any court of the United States”.

Provision of section 600c of title 28, U.S.C., 1940 ed., for payment of witnesses is incorporated in section 1825 of this title.

Changes were made in phraseology.

SENATE REVISION AMENDMENT

By Senate amendments, all provisions relating to the Tax Court were eliminated. Therefore, as finally enacted, section 1115(a) of Title 26, U.S.C., Internal Revenue Code, was not one of the sources of this section. However, no change in the text of this section was necessary. See 80th Congress Senate Report No. 1559.

1949 ACT

This section restores certain provisions of the original statute, R.S. §848, which were inadvertently omitted from revised title 28, U.S.C., §1821.

¹ See References in Text note below.

REFERENCES IN TEXT

Subsection (c) of section 5702 of title 5, referred to in subsec. (d)(3), which related to conditions under which an employee could be reimbursed for actual and necessary expenses of official travel when the maximum per diem allowance was less than these expenses, was repealed, and subsec. (e) of section 5702 of title 5, was redesignated as subsec. (c), by Pub. L. 99-234, title I, §102, Jan. 2, 1986, 99 Stat. 1756.

Section 240 of the Immigration and Nationality Act, referred to in subsec. (e), is classified to section 1229a of Title 8, Aliens and Nationality.

AMENDMENTS

1996—Subsec. (e). Pub. L. 104-208 substituted “section 240” for “section 242(b)”.

1992—Subsec. (d)(1). Pub. L. 102-417, §2(b), struck out “(other than a witness who is incarcerated)” after “paid to a witness”.

Subsec. (d)(4). Pub. L. 102-417, §2(c), substituted “3144” for “3149”.

Subsec. (f). Pub. L. 102-417, §2(a), added subsec. (f).

1990—Subsec. (b). Pub. L. 101-650 substituted “\$40” for “\$30”.

1978—Pub. L. 95-535 increased the daily witness attendance fee from \$20 to \$30, substituted provisions relating to compensation for the actual expenses of travel based on the form of transportation used, to a travel allowance equal to the mileage allowance under section 5704 of Title 5 for a witness travelling by privately owned vehicle, and to tolls, taxi fares, and parking fees for provisions that a witness would receive 10 cents per mile and that mileage computation would be based on a uniform table of distances regardless of the mode of travel employed, provisions relating to a subsistence allowance in amounts not to exceed those which Government employees receive for official travel for provisions that such subsistence allowance would be \$16 per day, provisions relating to a witness detained for want of security for his appearance being entitled to the daily attendance fee in addition to subsistence for provisions that such a witness would be entitled to \$1 per day in addition to his subsistence, and inserted provisions defining “court of the United States” and relating to travel expenses being taxable as costs and to certain aliens being ineligible to receive fees and allowances.

1968—Pub. L. 90-274 increased the per diem allowance from \$4 to \$20, increased the mileage allowance from 8 cents per mile to 10 cents per mile, increased the daily subsistence allowance from \$8 to \$16, and directed that witnesses in the district courts for the districts of the Canal Zone, Guam, and the Virgin Islands receive the same fees and allowances provided in this section for witnesses in other district courts of the United States.

1956—Act Aug. 1, 1956, substituted “, or before any person authorized to take his deposition pursuant to any rule or order” for “or person taking his disposition pursuant to any order”, increased the payments for mileage from 7 to 8 cents per mile and subsistence allowance from \$5 to \$8 per day, and authorized the computation of mileage on the basis of a uniform table of distances adopted by the Attorney General.

1954—Act Sept. 3, 1954, struck out language which had restricted section’s applicability to those depositions taken pursuant to order of the court.

1951—Act Oct. 31, 1951, substituted “residences” for “residence” in that part of second sentence which precedes first proviso.

1949—Act May 24, 1949, inserted last par.

Act May 10, 1949, increased witnesses’ fees from \$2 to \$4 per day, mileage allowance from 5 cents to 7 cents a mile, subsistence allowance from \$3 to \$5 per day, and inserted provisos.

CHANGE OF NAME

Reference to United States magistrate or to magistrate deemed to refer to United States magistrate judge pursuant to section 321 of Pub. L. 101-650, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-208 effective, with certain transitional provisions, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 309 of Pub. L. 104-208, set out as a note under section 1101 of Title 8, Aliens and Nationality.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 2(d) of Pub. L. 102-417 provided that: “The amendments made by this section [amending this section] shall be effective on and after the date of the enactment of this act [Oct. 14, 1992] and shall apply to any witness who testified before such date and has not received any fee or allowance under section 1821 of title 28, United States Code, relating to such testimony.”

EFFECTIVE DATE OF 1978 AMENDMENT

Section 2 of Pub. L. 95-535 provided that: “The amendments made by this Act [amending this section] shall take effect on October 1, 1978, or on the date of enactment [Oct. 27, 1978], whichever occurs later.”

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.

PAYMENT OF FACT WITNESS FEE TO INCARCERATED PERSON PROHIBITED

Pub. L. 102-395, title I, §108, Oct. 6, 1992, 106 Stat. 1841, provided that: “Notwithstanding 28 U.S.C. 1821, no funds appropriated to the Department of Justice in fiscal year 1993 or any prior fiscal year, or any other funds available from the Treasury of the United States, shall be obligated or expended to pay a fact witness fee to a person who is incarcerated testifying as a fact witness in a court of the United States, as defined in 28 U.S.C. 1821(a)(2).”

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 102-140, title I, §110, Oct. 28, 1991, 105 Stat. 795.

Pub. L. 102-27, title II, §102, Apr. 10, 1991, 105 Stat. 136.

FEDERAL RULES OF CIVIL PROCEDURE

Subpoena, see rule 45, Appendix to this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 604, 2503 of this title; title 12 section 3761; title 38 section 7253.

§ 1822. Competency of interested persons; share of penalties payable

Any person interested in a share of any fine, penalty or forfeiture incurred under any Act of Congress, may be examined as a witness in any proceeding for the recovery of such fine, penalty or forfeiture by any party thereto. Such examination shall not deprive the witness of his share.

(June 25, 1948, ch. 646, 62 Stat. 950.)

HISTORICAL AND REVISION NOTES

Based on section 644 of title 18, U.S.C., 1940 ed., Criminal Code and Criminal Procedure, R.S. §5295.

Changes were made in phraseology.

[§ 1823. Repealed. Pub. L. 91-563, §5(a), Dec. 19, 1970, 84 Stat. 1478]

Section, acts June 25, 1948, ch. 646, 62 Stat. 950; May 24, 1949, ch. 139, §95, 63 Stat. 103; Oct. 5, 1949, ch. 601, 63 Stat. 704; July 7, 1952, ch. 581, 66 Stat. 439; July 28, 1955, ch. 424, §3, 69 Stat. 394, related to payment of witnesses

fees to officers and employees of the United States. See sections 5515, 5537, 5751, and 6322 of Title 5, Government Organization and Employees.

§ 1824. Mileage fees under summons as both witness and juror

No constructive or double mileage fees shall be allowed by reason of any person being summoned both as a witness and a juror.

(June 25, 1948, ch. 646, 62 Stat. 951.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §602 (May 27, 1908, ch. 200, §1, 35 Stat. 377).

Words "or as a witness in two or more cases pending in the same court and triable at the same term thereof" were omitted as covered by section 1821 of this title.

Changes were made in phraseology.

FEDERAL RULES OF CIVIL PROCEDURE

Subpoena, see rule 45, Appendix to this title.

§ 1825. Payment of fees

(a) In any case in which the United States or an officer or agency of the United States is a party, the United States marshal for the district shall pay all fees of witnesses on the certificate of the United States attorney or assistant United States attorney, and in the proceedings before a United States magistrate, on the certificate of such magistrate, except that any fees of defense witnesses, other than experts, appearing pursuant to subpoenas issued upon approval of the court, shall be paid by the United States marshal for the district—

(1) on the certificate of a Federal public defender or assistant Federal public defender, in a criminal case in which the defendant is represented by such Federal public defender or assistant Federal public defender, and

(2) on the certificate of the clerk of the court upon the affidavit of such witnesses' attendance given by other counsel appointed pursuant to section 3006A of title 18, in a criminal case in which a defendant is represented by such other counsel.

(b) In proceedings in forma pauperis for a writ of habeas corpus, and in proceedings in forma pauperis under section 2255 of this title, the United States marshal for the district shall pay, on the certificate of the district judge, all fees of witnesses for the party authorized to proceed in forma pauperis, except that any fees of witnesses for such party, other than experts, appearing pursuant to subpoenas issued upon approval of the court, shall be paid by the United States marshal for the district—

(1) on the certificate of a Federal public defender or assistant Federal public defender, in any such proceedings in which a party is represented by such Federal public defender or assistant Federal public defender, and

(2) on the certificate of the clerk of the court upon the affidavit of such witnesses' attendance given by other counsel appointed pursuant to section 3006A of title 18, in any such proceedings in which a party is represented by such other counsel.

(c) Fees and mileage need not be tendered to a witness upon service of a subpoena issued on be-

half of the United States or an officer or agency of the United States, upon service of a subpoena issued on behalf of a defendant represented by a Federal public defender, assistant Federal public defender, or other attorney appointed pursuant to section 3006A of title 18, or upon service of a subpoena issued on behalf of a party authorized to proceed in forma pauperis, if the payment of such fees and mileage is to be made by the United States marshal under this section.

(June 25, 1948, ch. 646, 62 Stat. 951; Pub. L. 89-162, Sept. 2, 1965, 79 Stat. 618; Pub. L. 99-651, title I, §104, Nov. 14, 1986, 100 Stat. 3645.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§600c, 608 (R.S. §§236, 823, 848, 855; June 10, 1921, ch. 18, §305, 42 Stat. 24; Apr. 26, 1926, ch. 183, §3, 44 Stat. 324; May 17, 1932, ch. 190, 47 Stat. 158; June 25, 1936, ch. 804, 49 Stat. 1921; Oct. 13, 1941, ch. 431, §2, 55 Stat. 736; Dec. 24, 1942, ch. 825, §1, 56 Stat. 1088).

Section consolidates parts of sections 600c and 608 of title 28, U.S.C., 1940 ed., relating to payment of witnesses. Other provisions of such sections are incorporated in sections 1821 and 1871 of this title.

Provisions in sections 600c and 608 of title 28, U.S.C., 1940 ed., for payment or certification on order of court were omitted as unnecessary and inappropriate on recommendation of the Judicial Conference Committee on Revision of the Judicial Code.

Words in section 608 of title 28, U.S.C., 1940 ed., "to which they appear to be entitled on the certificate of attendance" following the words "all fees" and the concluding phrase "which sum shall be allowed the marshal in the General Accounting Office in his accounts were omitted as unnecessary."

The second paragraph is new. It conforms to Rule 45(e) of the Federal Rules of Civil Procedure but is inconsistent with Rule 17(d) of the Federal Rules of Criminal Procedure and supersedes that rule as to Federal criminal cases. The Department of Justice suggests that Rule 17(d) is unworkable. To attempt compliance each deputy marshal serving process must carry, on the average, \$500 in cash on trips to serve process.

The marshal must advance the money from his personal funds. The Comptroller General has not been able to set up any procedure to make it feasible to advance fees to Government witnesses.

If a witness is served but fails or refuses to appear, the marshal is out of pocket the money advanced and has no recourse. In the exceptional cases of real necessity, the marshal supplies transportation to an indigent witness under established regulations which protect the disbursement.

Changes were made in phraseology.

AMENDMENTS

1986—Pub. L. 99-651 amended section generally. Prior to amendment, section read as follows:

"In any case wherein the United States or an officer or agency thereof, is a party, the United States marshal for the district shall pay all fees of witnesses on the certificate of the United States Attorney or Assistant United States Attorney, and in the proceedings before a United States Commissioner, on the certificate of such commissioner.

"In all proceedings, in forma pauperis, for a writ of habeas corpus or in proceedings under section 2255 of this title, the United States marshal for the district shall pay all fees of witnesses for the party authorized to proceed in forma pauperis, on the certificate of the district judge.

"Fees and mileage need not be tendered to the witness upon service of a subpoena issued in behalf of the United States or an officer or agency thereof, or upon service of a subpoena issued in behalf of a party, authorized to proceed in forma pauperis, where the payment

thereof is to be made by the United States marshal as authorized in this section.”

1965—Pub. L. 89-162 inserted provisions that, in all proceedings in forma pauperis, for a writ of habeas corpus, or in proceedings under section 2255 of this title, the United States marshal for the district shall pay all fees of witnesses for the party authorized to proceed in forma pauperis on the certificate of the district judge and that fees and mileage need not be tendered to the witness upon service of a subpoena issued on behalf of a party authorized to proceed in forma pauperis where the payment thereof is to be made by the United States marshal as authorized in this section.

CHANGE OF NAME

Reference to United States magistrate or to magistrate deemed to refer to United States magistrate judge pursuant to section 321 of Pub. L. 101-650, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-651 effective 120 days after Nov. 14, 1986, see section 105 of Pub. L. 99-651, set out as a note under section 3006A of Title 18, Crimes and Criminal Procedure.

CROSS REFERENCES

Accounts of marshal, see section 567 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 567 of this title.

§ 1826. Recalcitrant witnesses

(a) Whenever a witness in any proceeding before or ancillary to any court or grand jury of the United States refuses without just cause shown to comply with an order of the court to testify or provide other information, including any book, paper, document, record, recording or other material, the court, upon such refusal, or when such refusal is duly brought to its attention, may summarily order his confinement at a suitable place until such time as the witness is willing to give such testimony or provide such information. No period of such confinement shall exceed the life of—

- (1) the court proceeding, or
- (2) the term of the grand jury, including extensions,

before which such refusal to comply with the court order occurred, but in no event shall such confinement exceed eighteen months.

(b) No person confined pursuant to subsection (a) of this section shall be admitted to bail pending the determination of an appeal taken by him from the order for his confinement if it appears that the appeal is frivolous or taken for delay. Any appeal from an order of confinement under this section shall be disposed of as soon as practicable, but not later than thirty days from the filing of such appeal.

(c) Whoever escapes or attempts to escape from the custody of any facility or from any place in which or to which he is confined pursuant to this section or section 4243 of title 18, or whoever rescues or attempts to rescue or instigates, aids, or assists the escape or attempt to escape of such a person, shall be subject to imprisonment for not more than three years, or a fine of not more than \$10,000, or both.

(Added Pub. L. 91-452, title III, §301(a), Oct. 15, 1970, 84 Stat. 932; amended Pub. L. 98-473, title II, §1013, Oct. 12, 1984, 98 Stat. 2142.)

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-473 added subsec. (c).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1657 of this title; title 18 section 3050.

§ 1827. Interpreters in courts of the United States

(a) The Director of the Administrative Office of the United States Courts shall establish a program to facilitate the use of certified and otherwise qualified interpreters in judicial proceedings instituted by the United States.

(b)(1) The Director shall prescribe, determine, and certify the qualifications of persons who may serve as certified interpreters, when the Director considers certification of interpreters to be merited, for the hearing impaired (whether or not also speech impaired) and persons who speak only or primarily a language other than the English language, in judicial proceedings instituted by the United States. The Director may certify interpreters for any language if the Director determines that there is a need for certified interpreters in that language. Upon the request of the Judicial Conference of the United States for certified interpreters in a language, the Director shall certify interpreters in that language. Upon such a request from the judicial council of a circuit and the approval of the Judicial Conference, the Director shall certify interpreters for that circuit in the language requested. The judicial council of a circuit shall identify and evaluate the needs of the districts within a circuit. The Director shall certify interpreters based on the results of criterion-referenced performance examinations. The Director shall issue regulations to carry out this paragraph within 1 year after the date of the enactment of the Judicial Improvements and Access to Justice Act.

(2) Only in a case in which no certified interpreter is reasonably available as provided in subsection (d) of this section, including a case in which certification of interpreters is not provided under paragraph (1) in a particular language, may the services of otherwise qualified interpreters be used. The Director shall provide guidelines to the courts for the selection of otherwise qualified interpreters, in order to ensure that the highest standards of accuracy are maintained in all judicial proceedings subject to the provisions of this chapter.

(3) The Director shall maintain a current master list of all certified interpreters and otherwise qualified interpreters and shall report periodically on the use and performance of both certified and otherwise qualified interpreters in judicial proceedings instituted by the United States and on the languages for which interpreters have been certified. The Director shall prescribe, subject to periodic review, a schedule of reasonable fees for services rendered by interpreters, certified or otherwise, used in proceedings instituted by the United States, and in doing so shall consider the prevailing rate of compensation for comparable service in other governmental entities.

(c)(1) Each United States district court shall maintain on file in the office of the clerk, and each United States attorney shall maintain on

file, a list of all persons who have been certified as interpreters by the Director in accordance with subsection (b) of this section. The clerk shall make the list of certified interpreters for judicial proceeding available upon request.

(2) The clerk of the court, or other court employee designated by the chief judge, shall be responsible for securing the services of certified interpreters and otherwise qualified interpreters required for proceedings initiated by the United States, except that the United States attorney is responsible for securing the services of such interpreters for governmental witnesses.

(d)(1) The presiding judicial officer, with the assistance of the Director of the Administrative Office of the United States Courts, shall utilize the services of the most available certified interpreter, or when no certified interpreter is reasonably available, as determined by the presiding judicial officer, the services of an otherwise qualified interpreter, in judicial proceedings instituted by the United States, if the presiding judicial officer determines on such officer's own motion or on the motion of a party that such party (including a defendant in a criminal case), or a witness who may present testimony in such judicial proceedings—

(A) speaks only or primarily a language other than the English language; or

(B) suffers from a hearing impairment (whether or not suffering also from a speech impairment)

so as to inhibit such party's comprehension of the proceedings or communication with counsel or the presiding judicial officer, or so as to inhibit such witness' comprehension of questions and the presentation of such testimony.

(2) Upon the motion of a party, the presiding judicial officer shall determine whether to require the electronic sound recording of a judicial proceeding in which an interpreter is used under this section. In making this determination, the presiding judicial officer shall consider, among other things, the qualifications of the interpreter and prior experience in interpretation of court proceedings; whether the language to be interpreted is not one of the languages for which the Director has certified interpreters, and the complexity or length of the proceeding. In a grand jury proceeding, upon the motion of the accused, the presiding judicial officer shall require the electronic sound recording of the portion of the proceeding in which an interpreter is used.

(e)(1) If any interpreter is unable to communicate effectively with the presiding judicial officer, the United States attorney, a party (including a defendant in a criminal case), or a witness, the presiding judicial officer shall dismiss such interpreter and obtain the services of another interpreter in accordance with this section.

(2) In any judicial proceedings instituted by the United States, if the presiding judicial officer does not appoint an interpreter under subsection (d) of this section, an individual requiring the services of an interpreter may seek assistance of the clerk of court or the Director of the Administrative Office of the United States Courts in obtaining the assistance of a certified interpreter.

(f)(1) Any individual other than a witness who is entitled to interpretation under subsection (d) of this section may waive such interpretation in whole or in part. Such a waiver shall be effective only if approved by the presiding judicial officer and made expressly by such individual on the record after opportunity to consult with counsel and after the presiding judicial officer has explained to such individual, utilizing the services of the most available certified interpreter, or when no certified interpreter is reasonably available, as determined by the presiding judicial officer, the services of an otherwise competent interpreter, the nature and effect of the waiver.

(2) An individual who waives under paragraph (1) of this subsection the right to an interpreter may utilize the services of a noncertified interpreter of such individual's choice whose fees, expenses, and costs shall be paid in the manner provided for the payment of such fees, expenses, and costs of an interpreter appointed under subsection (d) of this section.

(g)(1) There are authorized to be appropriated to the Federal judiciary, and to be paid by the Director of the Administrative Office of the United States Courts, such sums as may be necessary to establish a program to facilitate the use of certified and otherwise qualified interpreters, and otherwise fulfill the provisions of this section and the Judicial Improvements and Access to Justice Act, except as provided in paragraph (3).

(2) Implementation of the provisions of this section is contingent upon the availability of appropriated funds to carry out the purposes of this section.

(3) Such salaries, fees, expenses, and costs that are incurred with respect to Government witnesses (including for grand jury proceedings) shall, unless direction is made under paragraph (4), be paid by the Attorney General from sums appropriated to the Department of Justice.

(4) Upon the request of any person in any action for which interpreting services established pursuant to subsection (d) are not otherwise provided, the clerk of the court, or other court employee designated by the chief judge, upon the request of the presiding judicial officer, shall, where possible, make such services available to that person on a cost-reimbursable basis, but the judicial officer may also require the prepayment of the estimated expenses of providing such services.

(5) If the Director of the Administrative Office of the United States Courts finds it necessary to develop and administer criterion-referenced performance examinations for purposes of certification, or other examinations for the selection of otherwise qualified interpreters, the Director may prescribe for each examination a uniform fee for applicants to take such examination. In determining the rate of the fee for each examination, the Director shall consider the fees charged by other organizations for examinations that are similar in scope or nature. Notwithstanding section 3302(b) of title 31, the Director is authorized to provide in any contract or agreement for the development or administration of examinations and the collection of fees that the contractor may retain all or a portion

of the fees in payment for the services. Notwithstanding paragraph (6) of this subsection, all fees collected after the effective date of this paragraph and not retained by a contractor shall be deposited in the fund established under section 1931 of this title and shall remain available until expended.

(6) Any moneys collected under this subsection may be used to reimburse the appropriations obligated and disbursed in payment for such services.

(h) The presiding judicial officer shall approve the compensation and expenses payable to interpreters, pursuant to the schedule of fees prescribed by the Director under subsection (b)(3).

(i) The term “presiding judicial officer” as used in this section refers to any judge of a United States district court, including a bankruptcy judge, a United States magistrate, and in the case of grand jury proceedings conducted under the auspices of the United States attorney, a United States attorney.

(j) The term “judicial proceedings instituted by the United States” as used in this section refers to all proceedings, whether criminal or civil, including pretrial and grand jury proceedings (as well as proceedings upon a petition for a writ of habeas corpus initiated in the name of the United States by a relator) conducted in, or pursuant to the lawful authority and jurisdiction of a United States district court. The term “United States district court” as used in this subsection includes any court which is created by an Act of Congress in a territory and is invested with any jurisdiction of a district court established by chapter 5 of this title.

(k) The interpretation provided by certified or otherwise qualified interpreters pursuant to this section shall be in the simultaneous mode for any party to a judicial proceeding instituted by the United States and in the consecutive mode for witnesses, except that the presiding judicial officer, sua sponte or on the motion of a party, may authorize a simultaneous, or consecutive interpretation when such officer determines after a hearing on the record that such interpretation will aid in the efficient administration of justice. The presiding judicial officer, on such officer’s motion or on the motion of a party, may order that special interpretation services as authorized in section 1828 of this title be provided if such officer determines that the provision of such services will aid in the efficient administration of justice.

(l) Notwithstanding any other provision of this section or section 1828, the presiding judicial officer may appoint a certified or otherwise qualified sign language interpreter to provide services to a party, witness, or other participant in a judicial proceeding, whether or not the proceeding is instituted by the United States, if the presiding judicial officer determines, on such officer’s own motion or on the motion of a party or other participant in the proceeding, that such individual suffers from a hearing impairment. The presiding judicial officer shall, subject to the availability of appropriated funds, approve the compensation and expenses payable to sign language interpreters appointed under this section in accordance with the schedule of fees prescribed by the Director under subsection (b)(3) of this section.

(Added Pub. L. 95-539, §2(a), Oct. 28, 1978, 92 Stat. 2040; amended Pub. L. 100-702, title VII, §§702-710, Nov. 19, 1988, 102 Stat. 4654-4657; Pub. L. 104-317, title III, §306, title IV, §402(a), Oct. 19, 1996, 110 Stat. 3852, 3854.)

REFERENCES IN TEXT

The date of the enactment of the Judicial Improvements and Access to Justice Act, referred to in subsec. (b)(1), is the date of enactment of Pub. L. 100-702, which was approved Nov. 19, 1988.

The Judicial Improvements and Access to Justice Act, referred to in subsec. (g)(1), is Pub. L. 100-702, Nov. 19, 1988, 102 Stat. 4642. For complete classification of this Act to the Code, see Short Title note set out under section 1 of this title and Tables.

The effective date of this paragraph, referred to in subsec. (g)(5), is the effective date of Pub. L. 104-317, which was approved Oct. 19, 1996.

AMENDMENTS

1996—Subsec. (g)(5), (6). Pub. L. 104-317, §402(a), added par. (5) and redesignated former par. (5) as (6).

Subsec. (l). Pub. L. 104-317, §306, added subsec. (l).

1988—Subsec. (a). Pub. L. 100-702, §702, amended subsec. (a) generally, substituting “certified and otherwise qualified interpreters in judicial proceedings instituted by the United States” for “interpreters in courts of the United States”.

Subsec. (b). Pub. L. 100-702, §703, amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “The Director shall prescribe, determine, and certify the qualifications of persons who may serve as certified interpreters in courts of the United States in bilingual proceedings and proceedings involving the hearing impaired (whether or not also speech impaired), and in so doing, the Director shall consider the education, training, and experience of those persons. The Director shall maintain a current master list of all interpreters certified by the Director and shall report annually on the frequency of requests for, and the use and effectiveness of, interpreters. The Director shall prescribe a schedule of fees for services rendered by interpreters.”

Subsec. (c). Pub. L. 100-702, §704, amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “Each United States district court shall maintain on file in the office of the clerk of court a list of all persons who have been certified as interpreters, including bilingual interpreters and oral or manual interpreters for the hearing impaired (whether or not also speech impaired), by the Director of the Administrative Office of the United States Courts in accordance with the certification program established pursuant to subsection (b) of this section.”

Subsec. (d). Pub. L. 100-702, §§705, 710(a), designated existing provisions as par. (1), in introductory provisions, substituted “qualified interpreter” for “competent interpreter”, “judicial proceedings instituted by the United States” for “any criminal or civil action initiated by the United States in a United States district court (including a petition for a writ of habeas corpus initiated in the name of the United States by a relator)”, and “such judicial proceedings” for “such action”, redesignated former pars. (1) and (2) as subpars. (A) and (B), and added par. (2).

Subsec. (e)(2). Pub. L. 100-702, §710(b), substituted “judicial proceedings instituted by the United States” for “criminal or civil action in a United States district court”.

Subsec. (g)(1) to (3). Pub. L. 100-702, §706(a), amended pars. (1) to (3) generally. Prior to amendment, pars. (1) to (3) read as follows:

“(1) Except as otherwise provided in this subsection or section 1828 of this title, the salaries, fees, expenses, and costs incident to providing the services of interpreters under subsection (d) of this section shall be paid by the Director of the Administrative Office of the United States Courts from sums appropriated to the Federal judiciary.

“(2) Such salaries, fees, expenses, and costs that are incurred with respect to Government witnesses shall, unless direction is made under paragraph (3) of this subsection, be paid by the Attorney General from sums appropriated to the Department of Justice.

“(3) The presiding judicial officer may in such officer’s discretion direct that all or part of such salaries, fees, expenses, and costs shall be apportioned between or among the parties or shall be taxed as costs in a civil action.”

Subsec. (g)(4), (5). Pub. L. 100-702, §706(b), added par. (4) and redesignated former par. (4) as (5).

Subsec. (h). Pub. L. 100-702, §707, amended subsec. (h) generally. Prior to amendment, subsec. (h) read as follows: “In any action in a court of the United States where the presiding judicial officer establishes, fixes, or approves the compensation and expenses payable to an interpreter from funds appropriated to the Federal judiciary, the presiding judicial officer shall not establish, fix, or approve compensation and expenses in excess of the maximum allowable under the schedule of fees for services prescribed pursuant to subsection (b) of this section.”

Subsec. (i). Pub. L. 100-702, §708, amended subsec. (i) generally. Prior to amendment, subsec. (i) read as follows: “The term ‘presiding judicial officer’ as used in this section and section 1828 of this title includes a judge of a United States district court, a United States magistrate, and a referee in bankruptcy.”

Subsec. (j). Pub. L. 100-702, §708, amended subsec. (j) generally. Prior to amendment, subsec. (j) read as follows: “The term ‘United States district court’ as used in this section and section 1828 of this title includes any court created by Act of Congress in a territory which is invested with any jurisdiction of a district court of the United States established by section 132 of this title.”

Subsec. (k). Pub. L. 100-702, §709, amended subsec. (k) generally. Prior to amendment, subsec. (k) read as follows: “The interpretation provided by certified interpreters pursuant to this section shall be in the consecutive mode except that the presiding judicial officer, with the approval of all interested parties, may authorize a simultaneous or summary interpretation when such officer determines that such interpretation will aid in the efficient administration of justice. The presiding judicial officer on such officer’s motion or on the motion of a party may order that special interpretation services as authorized in section 1828 of this title be provided if such officer determines that the provision of such services will aid in the efficient administration of justice.”

CHANGE OF NAME

Reference to United States magistrate or to magistrate deemed to refer to United States magistrate judge pursuant to section 321 of Pub. L. 101-650, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 712 of title VII of Pub. L. 100-702 provided that: “This title [amending this section and enacting provisions set out as notes under this section and section 1 of this title] shall become effective upon the date of enactment [Nov. 19, 1988].”

EFFECTIVE DATE

Section effective ninety days after Oct. 28, 1978, see section 10(b) of Pub. L. 95-539, set out as an Effective Date of 1978 Amendment note under section 602 of this title.

SHORT TITLE

For short title of Pub. L. 95-539 as “Court Interpreters Act”, see Short Title of 1978 Amendments note set out under section 1 of this title.

PAYMENT FOR CONTACTUAL SERVICES

Section 402(b) of Pub. L. 104-317 provided that: “Notwithstanding sections 3302(b), 1341, and 1517 of title 31,

United States Code, the Director of the Administrative Office of the United States Courts may include in any contract for the development or administration of examinations for interpreters (including such a contract entered into before the date of the enactment of this Act [Oct. 19, 1996]) a provision which permits the contractor to collect and retain fees in payment for contractual services in accordance with section 1827(g)(5) of title 28, United States Code.”

IMPACT ON EXISTING PROGRAMS

Section 711 of title VII of Pub. L. 100-702 provided that: “Nothing in this title [amending this section and enacting provisions set out as notes under this section and section 1 of this title] shall be construed to terminate or diminish existing programs for the certification of interpreters.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 604 of this title.

§ 1828. Special interpretation services

(a) The Director of the Administrative Office of the United States Courts shall establish a program for the provision of special interpretation services in criminal actions and in civil actions initiated by the United States (including petitions for writs of habeas corpus initiated in the name of the United States by relators) in a United States district court. The program shall provide a capacity for simultaneous interpretation services in multidefendant criminal actions and multidefendant civil actions.

(b) Upon the request of any person in any action for which special interpretation services established pursuant to subsection (a) are not otherwise provided, the Director, with the approval of the presiding judicial officer, may make such services available to the person requesting the services on a reimbursable basis at rates established in conformity with section 9701 of title 31, but the Director may require the prepayment of the estimated expenses of providing the services by the person requesting them.

(c) Except as otherwise provided in this subsection, the expenses incident to providing services under subsection (a) of this section shall be paid by the Director from sums appropriated to the Federal judiciary. A presiding judicial officer, in such officer’s discretion, may order that all or part of the expenses shall be apportioned between or among the parties or shall be taxed as costs in a civil action, and any moneys collected as a result of such order may be used to reimburse the appropriations obligated and disbursed in payment for such services.

(d) Appropriations available to the Director shall be available to provide services in accordance with subsection (b) of this section, and moneys collected by the Director under that subsection may be used to reimburse the appropriations charged for such services. A presiding judicial officer, in such officer’s discretion, may order that all or part of the expenses shall be apportioned between or among the parties or shall be taxed as costs in the action.

(Added Pub. L. 95-539, §2(a), Oct. 28, 1978, 92 Stat. 2042; amended Pub. L. 97-258, §3(g), Sept. 13, 1982, 96 Stat. 1065.)

AMENDMENTS

1982—Subsec. (b). Pub. L. 97-258 substituted “section 9701 of title 31” for “section 501 of the Act of August 31, 1951 (ch. 376, title 5, 65 Stat. 290; 31 U.S.C. 483a)”.

EFFECTIVE DATE

Section effective ninety days after Oct. 28, 1978, see section 10(b) of Pub. L. 95-539, set out as an Effective Date of 1978 Amendment note under section 602 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 604, 1827, 1920 of this title.

CHAPTER 121—JURIES; TRIAL BY JURY

Sec.	
1861.	Declaration of policy.
1862.	Discrimination prohibited.
1863.	Plan for random jury selection.
1864.	Drawing of names from the master jury wheel; completion of juror qualification form.
1865.	Qualifications for jury service.
1866.	Selection and summoning of jury panels.
1867.	Challenging compliance with selection procedures.
1868.	Maintenance and inspection of records.
1869.	Definitions.
1870.	Challenges.
1871.	Fees.
1872.	Issues of fact in Supreme Court.
1873.	Admiralty and maritime cases.
1874.	Actions on bonds and specialties.
1875.	Protection of jurors' employment.
1876.	Trial by jury in the Court of International Trade.
1877.	Protection of jurors.
1878.	Optional use of a one-step summoning and qualification procedure.

AMENDMENTS

1992—Pub. L. 102-572, title IV, §403(b), Oct. 29, 1992, 106 Stat. 4512, substituted "Optional" for "Experimental" in item 1878.

1988—Pub. L. 100-702, title VIII, §805(b), Nov. 19, 1988, 102 Stat. 4659, added item 1878.

1983—Pub. L. 97-463, §3(2), Jan. 12, 1983, 96 Stat. 2532, added item 1877.

1980—Pub. L. 96-417, title III, §302(b), Oct. 10, 1980, 94 Stat. 1739, added item 1876.

1978—Pub. L. 95-572, §6(a)(2), Nov. 2, 1978, 92 Stat. 2456, added item 1875.

1968—Pub. L. 90-274, §101, Mar. 27, 1968, 82 Stat. 53, substituted "Declaration of policy" for "Qualifications" as item 1861, "Discrimination prohibited" for "Exemptions" as item 1862, "Plan for random jury selection" for "Exclusion or excuse from service" as item 1863, "Drawing of names from the master jury wheel; completion of juror qualification form" for "Manner of drawing; jury commissioners and their compensation" as item 1864, "Qualifications for jury service" for "Apportionment within district; additional jury commissioners" as item 1865, "Selection and summoning of jury panels" for "Special petit juries; talesmen from bystanders" as item 1866, "Challenging compliance with selection procedures" for "Summoning jurors" as item 1867, "Maintenance and inspection of records" for "Disqualification of marshal or deputy" as item 1868, "Definitions" for "Frequency of service" as item 1869, and reenacted items 1870-1874 without change.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 5 section 8101.

§ 1861. Declaration of policy

It is the policy of the United States that all litigants in Federal courts entitled to trial by jury shall have the right to grand and petit juries selected at random from a fair cross section of the community in the district or division wherein the court convenes. It is further the pol-

icy of the United States that all citizens shall have the opportunity to be considered for service on grand and petit juries in the district courts of the United States, and shall have an obligation to serve as jurors when summoned for that purpose.

(June 25, 1948, ch. 646, 62 Stat. 951; Pub. L. 85-315, part V, §152, Sept. 9, 1957, 71 Stat. 638; Pub. L. 90-274, §101, Mar. 27, 1968, 82 Stat. 54.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§411 and 415 (Mar. 3, 1911, ch. 231, §§275, 278, 38 Stat. 1164, 1165).

The revised section prescribes uniform standards of qualification for jurors in Federal Courts instead of making qualifications depend upon State laws. This is in accord with proposed legislation recommended by the Judicial Conference of the United States.

The last paragraph is added to exclude jurors incompetent to serve as jurors in State courts.

AMENDMENTS

1968—Pub. L. 90-274 substituted provisions declaring the policy of the United States with respect to trial by jury and the opportunity to serve on such juries for provisions setting out the required qualifications of Federal jurors, including age, citizenship, residence, freedom from conviction of certain crimes, ability to read, write, speak, and understand the English language, and capability of rendering efficient jury service.

1957—Pub. L. 85-315 substituted "Qualifications of Federal jurors" for "Qualifications" in section catchline.

Pub. L. 85-315 substituted "and who has resided for a period of one year within the judicial district" for "and resides within the judicial district", and struck out provisions which prohibited service as a grand or petit juror if a person was incompetent to serve as a grand or petit juror by the law of the State in which the district court is held.

EFFECTIVE DATE OF 1968 AMENDMENT

Section 104 of Pub. L. 90-274 provided that: "This Act [amending this section and sections 1821, 1862 to 1869, and 1871 of this title, repealing section 867 of Title 48, Territories and Insular Possessions, and enacting provisions set out as notes under this section] shall become effective two hundred and seventy days after the date of enactment [Mar. 27, 1968]; *Provided*, That this Act shall not apply in any case in which an indictment has been returned or petit jury empaneled prior to such effective date."

SHORT TITLE OF 1978 AMENDMENT

Pub. L. 95-572, §1, Nov. 2, 1978, 92 Stat. 2453, provided that: "This Act [enacting sections 1363 and 1875 of this title, amending sections 1863, 1865, 1866, 1869, and 1871 of this title, renumbering section 1363 (relating to construction of references to laws of the United States or Acts of Congress) as section 1364 of this title, and enacting provisions set out as a note under section 1363 of this title] may be cited as the 'Jury System Improvements Act of 1978'."

SHORT TITLE

Section 1 of Pub. L. 90-274 provided: "That this Act [amending this section and sections 1821, 1862 to 1869, and 1871 of this title, repealing section 867 of Title 48, Territories and Insular Possessions, and enacting provisions set out as notes under this section] may be cited as the 'Jury Selection and Service Act of 1968'."

FEDERAL RULES OF CIVIL PROCEDURE

Jurors and juries, see Rules 38, 39, and 48, Appendix to this title.

FEDERAL RULES OF CRIMINAL PROCEDURE

Jurors and juries, see Rules 23 and 24, Title 18, Appendix, Crimes and Criminal Procedure.

CROSS REFERENCES

Constitutional provisions relating to trial by jury, see Const. Amends. 6 and 7.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1863, 1866, 1878 of this title.

§ 1862. Discrimination prohibited

No citizen shall be excluded from service as a grand or petit juror in the district courts of the United States or in the Court of International Trade on account of race, color, religion, sex, national origin, or economic status.

(June 25, 1948, ch. 646, 62 Stat. 952; Pub. L. 90-274, § 101, Mar. 27, 1968, 82 Stat. 54; Pub. L. 96-417, title III, § 302(c), Oct. 10, 1980, 94 Stat. 1739.)

HISTORICAL AND REVISION NOTES

This section makes provision for specific exemption of classes of citizens usually excused from jury service in the interest of the public health, safety, or welfare. The inclusion in the jury list of persons so exempted usually serves only to waste the time of the court.

AMENDMENTS

1980—Pub. L. 96-417 prohibited discrimination against service as juror in the Court of International Trade.

1968—Pub. L. 90-274 substituted provisions prohibiting discrimination against citizens in their service as jurors because of race, color, religion, sex, national origin, or economic status for provisions identifying three groups as exempt from jury service, including members of the armed forces on active duty, members of fire or police departments, and public officers actively engaged in the performance of official duties.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-417 effective Nov. 1, 1980, and applicable with respect to civil actions pending on or commenced on or after such date, see section 701(a) of Pub. L. 96-417, set out as a note under section 251 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1863, 1866, 1878 of this title.

§ 1863. Plan for random jury selection

(a) Each United States district court shall devise and place into operation a written plan for random selection of grand and petit jurors that shall be designed to achieve the objectives of sections 1861 and 1862 of this title, and that shall otherwise comply with the provisions of this title. The plan shall be placed into operation after approval by a reviewing panel consisting of the members of the judicial council of the circuit and either the chief judge of the district whose plan is being reviewed or such other active district judge of that district as the chief judge of the district may designate. The panel

shall examine the plan to ascertain that it complies with the provisions of this title. If the reviewing panel finds that the plan does not comply, the panel shall state the particulars in which the plan fails to comply and direct the district court to present within a reasonable time an alternative plan remedying the defect or defects. Separate plans may be adopted for each division or combination of divisions within a judicial district. The district court may modify a plan at any time and it shall modify the plan when so directed by the reviewing panel. The district court shall promptly notify the panel, the Administrative Office of the United States Courts, and the Attorney General of the United States, of the initial adoption and future modifications of the plan by filing copies therewith. Modifications of the plan made at the instance of the district court shall become effective after approval by the panel. Each district court shall submit a report on the jury selection process within its jurisdiction to the Administrative Office of the United States Courts in such form and at such times as the Judicial Conference of the United States may specify. The Judicial Conference of the United States may, from time to time, adopt rules and regulations governing the provisions and the operation of the plans formulated under this title.

(b) Among other things, such plan shall—

(1) either establish a jury commission, or authorize the clerk of the court, to manage the jury selection process. If the plan establishes a jury commission, the district court shall appoint one citizen to serve with the clerk of the court as the jury commissioner: *Provided, however,* That the plan for the District of Columbia may establish a jury commission consisting of three citizens. The citizen jury commissioner shall not belong to the same political party as the clerk serving with him. The clerk or the jury commission, as the case may be, shall act under the supervision and control of the chief judge of the district court or such other judge of the district court as the plan may provide. Each jury commissioner shall, during his tenure in office, reside in the judicial district or division for which he is appointed. Each citizen jury commissioner shall receive compensation to be fixed by the district court plan at a rate not to exceed \$50 per day for each day necessarily employed in the performance of his duties, plus reimbursement for travel, subsistence, and other necessary expenses incurred by him in the performance of such duties. The Judicial Conference of the United States may establish standards for allowance of travel, subsistence, and other necessary expenses incurred by jury commissioners.

(2) specify whether the names of prospective jurors shall be selected from the voter registration lists or the lists of actual voters of the political subdivisions within the district or division. The plan shall prescribe some other source or sources of names in addition to voter lists where necessary to foster the policy and protect the rights secured by sections 1861 and 1862 of this title. The plan for the District of Columbia may require the names of prospective jurors to be selected from the city di-

rectory rather than from voter lists. The plans for the districts of Puerto Rico and the Canal Zone may prescribe some other source or sources of names of prospective jurors in lieu of voter lists, the use of which shall be consistent with the policies declared and rights secured by sections 1861 and 1862 of this title. The plan for the district of Massachusetts may require the names of prospective jurors to be selected from the resident list provided for in chapter 234A, Massachusetts General Laws, or comparable authority, rather than from voter lists.

(3) specify detailed procedures to be followed by the jury commission or clerk in selecting names from the sources specified in paragraph (2) of this subsection. These procedures shall be designed to ensure the random selection of a fair cross section of the persons residing in the community in the district or division wherein the court convenes. They shall ensure that names of persons residing in each of the counties, parishes, or similar political subdivisions within the judicial district or division are placed in a master jury wheel; and shall ensure that each county, parish, or similar political subdivision within the district or division is substantially proportionally represented in the master jury wheel for that judicial district, division, or combination of divisions. For the purposes of determining proportional representation in the master jury wheel, either the number of actual voters at the last general election in each county, parish, or similar political subdivision, or the number of registered voters if registration of voters is uniformly required throughout the district or division, may be used.

(4) provide for a master jury wheel (or a device similar in purpose and function) into which the names of those randomly selected shall be placed. The plan shall fix a minimum number of names to be placed initially on the master jury wheel, which shall be at least one-half of 1 per centum of the total number of persons on the list used as a source of names for the district or division; but if this number of names is believed to be cumbersome and unnecessary, the plan may fix a smaller number of names to be placed in the master wheel, but in no event less than one thousand. The chief judge of the district court, or such other district court judge as the plan may provide, may order additional names to be placed in the master jury wheel from time to time as necessary. The plan shall provide for periodic emptying and refilling of the master jury wheel at specified times, the interval for which shall not exceed four years.

(5)(A) except as provided in subparagraph (B), specify those groups of persons or occupational classes whose members shall on individual request therefor, be excused from jury service. Such groups or classes shall be excused only if the district court finds, and the plan states, that jury service by such class or group would entail undue hardship or extreme inconvenience to the members thereof, and excuse of members thereof would not be inconsistent with sections 1861 and 1862 of this title.

(B) specify that volunteer safety personnel, upon individual request, shall be excused from

jury service. For purposes of this subparagraph, the term "volunteer safety personnel" means individuals serving a public agency (as defined in section 1203(6) of title I of the Omnibus Crime Control and Safe Streets Act of 1968) in an official capacity, without compensation, as firefighters or members of a rescue squad or ambulance crew.

(6) specify that the following persons are barred from jury service on the ground that they are exempt: (A) members in active service in the Armed Forces of the United States; (B) members of the fire or police departments of any State, the District of Columbia, any territory or possession of the United States, or any subdivision of a State, the District of Columbia, or such territory or possession; (C) public officers in the executive, legislative, or judicial branches of the Government of the United States, or of any State, the District of Columbia, any territory or possession of the United States, or any subdivision of a State, the District of Columbia, or such territory or possession, who are actively engaged in the performance of official duties.

(7) fix the time when the names drawn from the qualified jury wheel shall be disclosed to parties and to the public. If the plan permits these names to be made public, it may nevertheless permit the chief judge of the district court, or such other district court judge as the plan may provide, to keep these names confidential in any case where the interests of justice so require.

(8) specify the procedures to be followed by the clerk or jury commission in assigning persons whose names have been drawn from the qualified jury wheel to grand and petit jury panels.

(c) The initial plan shall be devised by each district court and transmitted to the reviewing panel specified in subsection (a) of this section within one hundred and twenty days of the date of enactment of the Jury Selection and Service Act of 1968. The panel shall approve or direct the modification of each plan so submitted within sixty days thereafter. Each plan or modification made at the direction of the panel shall become effective after approval at such time thereafter as the panel directs, in no event to exceed ninety days from the date of approval. Modifications made at the instance of the district court under subsection (a) of this section shall be effective at such time thereafter as the panel directs, in no event to exceed ninety days from the date of modification.

(d) State, local, and Federal officials having custody, possession, or control of voter registration lists, lists of actual voters, or other appropriate records shall make such lists and records available to the jury commission or clerks for inspection, reproduction, and copying at all reasonable times as the commission or clerk may deem necessary and proper for the performance of duties under this title. The district courts shall have jurisdiction upon application by the Attorney General of the United States to compel compliance with this subsection by appropriate process.

(June 25, 1948, ch. 646, 62 Stat. 952; Pub. L. 90-274, § 101, Mar. 27, 1968, 82 Stat. 54; Pub. L. 92-269, § 2,

Apr. 6, 1972, 86 Stat. 117; Pub. L. 95-572, §2(a), Nov. 2, 1978, 92 Stat. 2453; Pub. L. 100-702, title VIII, §802(b), (c), Nov. 19, 1988, 102 Stat. 4657, 4658; Pub. L. 102-572, title IV, §401, Oct. 29, 1992, 106 Stat. 4511.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940, ed., §415 (Mar. 3, 1911, ch. 231, §278, 36 Stat. 1165).

Subsections (a) and (b) are new and merely declaratory of existing practice.

The phrase "or previous condition of servitude" was omitted as obsolete.

Changes were made in phraseology.

REFERENCES IN TEXT

Section 1203(6) of title I of the Omnibus Crime Control and Safe Streets Act of 1968, referred to in subsec. (b)(5)(B), is section 1203(6) of Pub. L. 90-351, which is classified to section 3796b(6) of Title 42, The Public Health and Welfare.

The date of enactment of the Jury Selection and Service Act of 1968, referred to in subsec. (c), is the date of enactment of Pub. L. 90-274, which was approved Mar. 27, 1968.

AMENDMENTS

1992—Subsec. (b)(2). Pub. L. 102-572 inserted at end "The plan for the district of Massachusetts may require the names of prospective jurors to be selected from the resident list provided for in chapter 234A, Massachusetts General Laws, or comparable authority, rather than from voter lists."

1988—Subsec. (b)(5). Pub. L. 100-702, §802(b), designated existing provisions as subpar. (A), inserted "except as provided in subparagraph (B).", and added subpar. (B).

Subsec. (b)(6). Pub. L. 100-702, §802(b), amended par. (6) generally. Prior to amendment, par. (6) read as follows: "specify those groups of persons or occupational classes whose members shall be barred from jury service on the ground that they are exempt. Such groups or classes shall be exempt only if the district court finds, and the plan states, that their exemption is in the public interest and would not be inconsistent with sections 1861 and 1862 of this title. The plan shall provide for exemption of the following persons: (i) members in active service in the Armed Forces of the United States; (ii) members of the fire or police departments of any State, district, territory, possession, or subdivision thereof; (iii) public officers in the executive, legislative, or judicial branches of the Government of the United States, or any State, district, territory, or possession or subdivision thereof, who are actively engaged in the performance of official duties."

1978—Subsec. (b)(7) to (9). Pub. L. 95-572 struck out par. (7) relating to random jury selection plan provision for fixing the distance, in miles or in travel time, from each place of holding court beyond which prospective jurors residing should, on individual request, be excused from jury service on the ground of undue hardship in traveling to the place where court was held, now incorporated in definition of "undue hardship or extreme inconvenience" in section 1869(j) of this title, and redesignated pars. (8) and (9) as (7) and (8), respectively.

1972—Subsec. (b)(4). Pub. L. 92-269 inserted provisions requiring the master jury wheel to be emptied and refilled in not greater than four years intervals.

1968—Subsec. (a). Pub. L. 90-274 substituted provisions requiring a written plan covering the random selection of jurors by each United States District Court and the adoption, review, and modification of the plan for provisions authorizing district judges to exclude or excuse for good cause persons called as jurors.

Subsec. (b). Pub. L. 90-274 substituted provisions setting out the nine required features of a plan for random jury selection, including management by commission

or clerk, selection from voter registration lists, detailed procedures for selecting names, a master jury wheel, excused or exempted groups, maximum distances of travel, disclosure of names, and procedures for assigning jurors drawn from the jury wheel to particular grand and petit jury panels, for provisions authorizing the district court to excuse, for the public interests, classes or groups upon a finding that such jury service would entail undue hardship, extreme inconvenience, or serious obstruction or delay in the fair and impartial administration of justice.

Subsec. (c). Pub. L. 90-274 substituted provisions covering the transmittal of the plan to a reviewing panel and the modification thereof for provisions prohibiting the exclusion of any citizen from juror service on account of race or color.

Subsec. (d). Pub. L. 90-274 added subsec. (d).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-572 effective Jan. 1, 1993, see section 1101(a) of Pub. L. 102-572, set out as a note under section 905 of Title 2, The Congress.

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.

REFILLING OF MASTER JURY WHEEL NOT LATER THAN SEPTEMBER 1, 1973; REFILLING OF QUALIFIED JURY WHEEL NOT LATER THAN OCTOBER 1, 1973; RETROACTIVE EFFECT

Sections 3 and 4 of Pub. L. 92-269 provided that:

"SEC. 3. (a) Each judicial district and each division or combination of divisions within a judicial district, for which a separate plan for random selection of jurors has been adopted pursuant to section 1863 of title 28, United States Code, other than the District of Columbia and the districts of Puerto Rico and the Canal Zone, shall not later than September 1, 1973, refill its master jury wheel with names obtained from the voter registration lists for, or the lists of actual voters in, the 1972 general election.

"(b) The District of Columbia and the judicial districts of Puerto Rico and the Canal Zone shall not later than September 1, 1973, refill their master jury wheels from sources which include the names of persons eighteen years of age or older.

"(c) The qualified jury wheel in each judicial district, and in each division or combination of divisions in a judicial district for which a separate plan for random selection of jurors has been adopted, shall be refilled from the master jury wheel not later than October 1, 1973.

"SEC. 4. (a) Nothing in this Act amending this section and section 1865 of this title shall affect the composition of any master jury wheel or qualified jury wheel prior to the date on which it is first refilled in compliance with the terms of section 3.

"(b) Nothing in this Act shall affect the composition or preclude the service of any jury empaneled on or before the date on which the qualified jury wheel from which the jurors' names were drawn is refilled in compliance with the provisions of section 3."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1866, 1867, 1868 of this title.

§ 1864. Drawing of names from the master jury wheel; completion of juror qualification form

(a) From time to time as directed by the district court, the clerk or a district judge shall publicly draw at random from the master jury wheel the names of as many persons as may be required for jury service. The clerk or jury commission may, upon order of the court, prepare an alphabetical list of the names drawn from the master jury wheel. Any list so prepared shall not be disclosed to any person except pursuant to the district court plan or pursuant to section 1867 or 1868 of this title. The clerk or jury commission shall mail to every person whose name is drawn from the master wheel a juror qualification form accompanied by instructions to fill out and return the form, duly signed and sworn, to the clerk or jury commission by mail within ten days. If the person is unable to fill out the form, another shall do it for him, and shall indicate that he has done so and the reason therefor. In any case in which it appears that there is an omission, ambiguity, or error in a form, the clerk or jury commission shall return the form with instructions to the person to make such additions or corrections as may be necessary and to return the form to the clerk or jury commission within ten days. Any person who fails to return a completed juror qualification form as instructed may be summoned by the clerk or jury commission forthwith to appear before the clerk or jury commission to fill out a juror qualification form. A person summoned to appear because of failure to return a juror qualification form as instructed who personally appears and executes a juror qualification form before the clerk or jury commission may, at the discretion of the district court, except where his prior failure to execute and mail such form was willful, be entitled to receive for such appearance the same fees and travel allowances paid to jurors under section 1871 of this title. At the time of his appearance for jury service, any person may be required to fill out another juror qualification form in the presence of the jury commission or the clerk of the court, at which time, in such cases as it appears warranted, the person may be questioned, but only with regard to his responses to questions contained on the form. Any information thus acquired by the clerk or jury commission may be noted on the juror qualification form and transmitted to the chief judge or such district court judge as the plan may provide.

(b) Any person summoned pursuant to subsection (a) of this section who fails to appear as directed shall be ordered by the district court forthwith to appear and show cause for his failure to comply with the summons. Any person who fails to appear pursuant to such order or who fails to show good cause for noncompliance with the summons may be fined not more than \$100 or imprisoned not more than three days, or both. Any person who willfully misrepresents a material fact on a juror qualification form for the purpose of avoiding or securing service as a juror may be fined not more than \$100 or imprisoned not more than three days, or both.

(June 25, 1948, ch. 646, 62 Stat. 952; Pub. L. 90-274, § 101, Mar. 27, 1968, 82 Stat. 57; Pub. L. 100-702, title VIII, § 803(a), Nov. 19, 1988, 102 Stat. 4658.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 412, 412a (Mar. 3, 1911, ch. 231, § 276, 36 Stat. 1164; Feb. 3, 1917, ch. 27, 39 Stat. 873; May 21, 1945, ch. 129, title IV, 59 Stat. 198; July 5, 1946, ch. 541, title IV, 60 Stat. 478).

The words "The district court" were substituted for the phrase "the judge thereof, or by the judge senior in commission in districts having more than one judge" to conform to other sections authorizing appointment of court officers. See section 751 of this title relating to appointment of district court clerk.

The limitation in section 412a of title 28, U.S.C., 1940 ed., that jury commissioners shall serve no more than three days in any one term of court was omitted as unnecessary. This is a matter that may safely be left to the discretion of the court.

The last paragraph was added in conformity with section 11-1401 of the District of Columbia Code, 1940 ed., providing for three jury commissioners.

Changes were made in phraseology.

SENATE REVISION AMENDMENT

As finally enacted, act July 9, 1947, ch. 211, title IV, 61 Stat. 304, which was classified to Title 28, U.S.C., 1946 ed., § 412a, was also a source of this section. Accordingly such act was included by Senate amendment in the schedule of repeals. See 80th Congress Senate Report No. 1559.

AMENDMENTS

1988—Subsec. (a). Pub. L. 100-702 amended second sentence generally. Prior to amendment, second sentence read as follows: "The clerk or jury commission shall prepare an alphabetical list of the names drawn, which list shall not be disclosed to any person except pursuant to the district court plan and to sections 1867 and 1868 of this title."

1968—Pub. L. 90-274 substituted provisions for the public drawing of names from the master jury wheel, the completion of the jury qualification form, and the penalties for failure to appear and for misrepresentation of material facts for provisions requiring the drawing of names from a jury box, the refilling of the box by the clerk and a jury commissioner, the requirements and compensation of the commissioner, and the alternate placement of names by the clerk and the commissioner.

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.

FEDERAL RULES OF CIVIL PROCEDURE

Jurors and juries, see rules 38, 39, 46, 47, and 48, Appendix to this title.

FEDERAL RULES OF CRIMINAL PROCEDURE

Jurors and juries, see rules 6, 23, 24, and 51, Title 18, Appendix, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1869 of this title.

§ 1865. Qualifications for jury service

(a) The chief judge of the district court, or such other district court judge as the plan may provide, on his initiative or upon recommendation of the clerk or jury commission, shall determine solely on the basis of information provided on the juror qualification form and other competent evidence whether a person is unqualified for, or exempt, or to be excused from jury service. The clerk shall enter such determina-

tion in the space provided on the juror qualification form and in any alphabetical list of names drawn from the master jury wheel. If a person did not appear in response to a summons, such fact shall be noted on said list.

(b) In making such determination the chief judge of the district court, or such other district court judge as the plan may provide, shall deem any person qualified to serve on grand and petit juries in the district court unless he—

(1) is not a citizen of the United States eighteen years old who has resided for a period of one year within the judicial district;

(2) is unable to read, write, and understand the English language with a degree of proficiency sufficient to fill out satisfactorily the juror qualification form;

(3) is unable to speak the English language;

(4) is incapable, by reason of mental or physical infirmity, to render satisfactory jury service; or

(5) has a charge pending against him for the commission of, or has been convicted in a State or Federal court of record of, a crime punishable by imprisonment for more than one year and his civil rights have not been restored.

(June 25, 1948, ch. 646, 62 Stat. 952; Pub. L. 90-274, § 101, Mar. 27, 1968, 82 Stat. 58; Pub. L. 92-269, § 1, Apr. 6, 1972, 86 Stat. 117; Pub. L. 95-572, § 3(a), Nov. 2, 1978, 92 Stat. 2453; Pub. L. 100-702, title VIII, § 803(b), Nov. 19, 1988, 102 Stat. 4658.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 181, 413 (Mar. 3, 1911, ch. 231, §§ 100, 277, 36 Stat. 1121, 1164).

Section consolidates a part of section 181 with section 413 of title 28, U.S.C., 1940 ed. Other provisions of said section 181 are incorporated in section 115 of this title.

Word "jurors" was changed to "grand and petit jurors" upon authority of *Agnew v. United States*, 1897, 17 S.Ct. 235, 165 U.S. 36, 41 L.Ed. 624, construing such term to include both types of jurors.

The last sentence of subsection (a) was added to conform with existing practice in many districts. Subsection (b) extends to all districts a provision of section 181 of title 28, U.S.C., 1940 ed., which was designed for the convenience of the districts in Ohio and permitted jurors drawn for service at Cleveland, Toledo, and Columbus to serve at Youngstown, Lima, and Steubenville, respectively.

Changes were made in phraseology.

AMENDMENTS

1988—Subsec. (a). Pub. L. 100-702 substituted "in any alphabetical" for "the alphabetical".

1978—Subsec. (b)(5). Pub. L. 95-572 struck out "by pardon or amnesty" after "civil rights have not been restored".

1972—Subsec. (b)(1). Pub. L. 92-269 substituted "eighteen years old" for "twenty-one years old".

1968—Subsec. (a). Pub. L. 90-274 substituted provisions for the excusing of persons from jury service by the chief judge of the district court or by other district court judge for provisions requiring the selection of jurors so as to be most favorable to an impartial trial and so as to minimize the expense and burden of jury service.

Subsec. (b). Pub. L. 90-274 substituted provisions setting out the conditions of ineligibility for jury service for provisions authorizing the service of jurors in a place within the district other than the place for which the jurors were summoned.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-572 applicable with respect to any grand or petit juror summoned for service or ac-

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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1866, 1876 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 publicly 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 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 summons 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 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.

(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 therefore.

(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 shall be ordered by the district court to appear forthwith and show cause for his 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 \$100 or imprisoned not more than three days, or both.

(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.)

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

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 summonses 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 ac-

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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1869 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 sec-

tion 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1864, 1878 of this title.

§ 1868. Maintenance and inspection of records

After the master jury wheel is emptied and re-filled 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 commission 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1864 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 main-

tained by any Federal examiners 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 programed 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 fur-

nished 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 when summoned, or any other factor which the court determines to constitute an undue hardship or to create an extreme inconvenience to the juror; and in addition, in situations where it is anticipated that a trial or grand jury proceeding may require more than thirty days of service, the court may consider, as a further basis for temporary excuse, severe economic hardship to an employer which would result from the absence of a key employee during the period of such service;

(k) "publicly draw", as referred to in sections 1864 and 1866 of this chapter, shall mean a drawing which is conducted within the district after reasonable public notice and which is open to the public at large under the supervision of the clerk or jury commission, except that when a drawing is made by means of electronic data processing, "publicly draw" shall mean a drawing which is conducted at a data processing center located in or out of the district, after reasonable public notice given in the district for which juror names are being drawn, and which is open to the public at large under such supervision of the clerk or jury commission as the Judicial Conference of the United States shall by regulation require; and

(l) "jury summons" shall mean a summons issued by a clerk of court, jury commission, or their duly designated deputies, containing either a preprinted or stamped seal of court, and containing the name of the issuing clerk imprinted in preprinted, type, or facsimile manner on the summons or the envelopes transmitting the summons.

(June 25, 1948, ch. 646, 62 Stat. 953; Pub. L. 88-139, § 2, Oct. 16, 1963, 77 Stat. 248; Pub. L. 90-274, § 101, Mar. 27, 1968, 82 Stat. 61; Pub. L. 91-358, title I, § 172(b), July 29, 1970, 84 Stat. 590; Pub. L. 92-437, § 1, Sept. 29, 1972, 86 Stat. 740; Pub. L. 95-572, §§ 3(b), 4, Nov. 2, 1978, 92 Stat. 2453; Pub. L. 95-598, title II, § 243, Nov. 6, 1978, 92 Stat. 2671; Pub. L. 99-650, § 3, Nov. 14, 1986, 100 Stat. 3641; Pub. L. 100-702, title VIII, §§ 802(a), 804, Nov. 19, 1988, 102 Stat. 4657, 4658.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 423 (Mar. 3, 1911, ch. 231, § 286, 36 Stat. 1166). Changes were made in phraseology.

REFERENCES IN TEXT

The Voting Rights Act of 1965, referred to in subsec. (c), is Pub. L. 89-110, Aug. 6, 1965, 79 Stat. 437, as amend-

ed, which is classified generally to subchapters I-A (§1973 et seq.), I-B (§1973aa et seq.), and I-C (§1973bb et seq.) of chapter 20 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1973 of Title 42 and Tables.

AMENDMENTS

1988—Subsec. (a). Pub. L. 100-702, § 802(a), amended subsec. (a) generally, substituting "any authorized deputy clerk, and any other person authorized by the court to assist the clerk in the performance of functions under this chapter" for "or any authorized deputy clerk".

Subsec. (f). Pub. L. 100-702, § 804, amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows: "district court of the United States", "district court", and "court" shall mean courts constituted under chapter 5 of title 28, United States Code, section 22 of the Organic Act of Guam, as amended (64 Stat. 389; 48 U.S.C. 1424), section 21 of the Revised Organic Act of the Virgin Islands (68 Stat. 506; 48 U.S.C. 1611), and section 1 of title 3, Canal Zone Code;".

1986—Subsec. (f). Pub. L. 99-650 struck out "except that for purposes of sections 1861, 1862, 1866(c), 1866(d), and 1867 of this chapter such terms shall include the Superior Court of the District of Columbia" after "Canal Zone Code;".

1978—Subsec. (f). Pub. L. 95-598 directed the amendment of subsec. (f) by inserting "chapter 6 of title 28, United States Code," after "chapter 5 of title 28, United States Code," which amendment did not become effective pursuant to section 402(b) of Pub. L. 95-598, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

Subsec. (h). Pub. L. 95-572, § 3(b), struck out "by pardon or amnesty" after "civil rights restored".

Subsecs. (j) to (l). Pub. L. 95-572, § 4, added subsecs. (j) to (l).

1972—Subsec. (h). Pub. L. 92-437 added race and occupation to the particulars to be elicited on the juror qualification form, in provisions distinguishing between information to be requested and information to be required, struck out "race and occupation of a potential juror", and in information to be contained in the form, struck out "race, color" and "occupation" from the particulars, and required additional material to be contained in the form that information concerning race is required solely to enforce nondiscrimination in jury selection and that it has no bearing on an individual's qualification for jury service.

1970—Subsec. (f). Pub. L. 91-358 substituted reference to the Superior Court of the District of Columbia for references to the District of Columbia Court of General Sessions and the Juvenile Court of the District of Columbia.

1968—Pub. L. 90-274 substituted provisions defining "clerk", "clerk of the court", "chief judge", "voter registration lists", "list of actual voters", "division", "district court", "jury wheel", "juror qualification form", and "public officer" for provisions allowing the challenge of a petit juror who had been summoned and attended court as a petit juror at any session held within one year prior to the challenge.

1963—Pub. L. 88-139 substituted "session" for "term".

EFFECTIVE DATE OF 1986 AMENDMENT

Section 4(a) of Pub. L. 99-650 provided in part that: "The provisions of this Act [amending this section] shall take effect 180 days after the date of enactment of this Act [Nov. 14, 1986]".

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 1972 AMENDMENT

Section 2 of Pub. L. 92-437 provided that: "This Act [amending this section] shall take effect on the sixtieth day after the date of its enactment [Sept. 29, 1972]."

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-358 effective first day of seventh calendar month which begins after July 29, 1970, see section 199(a) of Pub. L. 91-358, set out as a note under section 1257 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.

TERMINATION OF UNITED STATES DISTRICT COURT FOR THE DISTRICT OF THE CANAL ZONE

For termination of the United States District Court for the District of the Canal Zone at end of the "transition period", being the 30-month period beginning Oct. 1, 1979, and ending midnight Mar. 31, 1982, see Paragraph 5 of Article XI of the Panama Canal Treaty of 1977 and sections 2101 and 2201 to 2203 of Pub. L. 96-70, title II, Sept. 27, 1979, 93 Stat. 493, formerly classified to sections 3831 and 3841 to 3843, respectively, of Title 22, Foreign Relations and Intercourse.

§ 1870. Challenges

In civil cases, each party shall be entitled to three peremptory challenges. Several defendants or several plaintiffs may be considered as a single party for the purposes of making challenges, or the court may allow additional peremptory challenges and permit them to be exercised separately or jointly.

All challenges for cause or favor, whether to the array or panel or to individual jurors, shall be determined by the court.

(June 25, 1948, ch. 646, 62 Stat. 953; Pub. L. 86-282, Sept. 16, 1959, 73 Stat. 565.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 424 (Mar. 3, 1911, ch. 231, § 287, 36 Stat. 1166).

Provisions of section 424 of title 28, U.S.C., 1940 ed., relating to the number of peremptory challenges in criminal cases were deleted as superseded by Rule 24 of the Federal Rules of Criminal Procedure.

The last sentence of the first paragraph was added to permit the same flexibility in the matter of challenges in civil cases as is permitted in criminal cases by said Rule 24.

Words "without aid of triers" at end of section 424 of title 28, U.S.C., 1940 ed., were omitted as surplusage.

Changes were made in phraseology.

AMENDMENTS

1959—Pub. L. 86-282 substituted "may" for "shall" after "several plaintiffs", and "or the court may allow" for ". If there is more than one defendant the court may allow the defendants".

FEDERAL RULES OF CIVIL PROCEDURE

Alternate jurors, challenges, see rule 47, Appendix to this title.

Jurors and juries, see rules 38, 39, 47 and 48.

FEDERAL RULES OF CRIMINAL PROCEDURE

Criminal cases, jury challenges, see rule 24, Title 18, Appendix, Crimes and Criminal Procedure.

CROSS REFERENCES

Challenges in summary trials, see section 394 of Title 33, Navigation and Navigable Waters.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1876 of this title.

§ 1871. Fees

(a) Grand and petit jurors in district courts appearing pursuant to this chapter shall be paid the fees and allowances provided by this section. The requisite fees and allowances shall be disbursed on the certificate of the clerk of court in accordance with the procedure established by the Director of the Administrative Office of the United States Courts. Attendance fees for extended service under subsection (b) of this section shall be certified by the clerk only upon the order of a district judge.

(b)(1) A juror shall be paid an attendance fee of \$40 per day for actual attendance at the place of trial or hearing. A juror shall also be paid the attendance fee for the time necessarily occupied in going to and returning from such place at the beginning and end of such service or at any time during such service.

(2) A petit juror required to attend more than thirty days in hearing one case may be paid, in the discretion of the trial judge, an additional fee, not exceeding \$10 more than the attendance fee, for each day in excess of thirty days on which he is required to hear such case.

(3) A grand juror required to attend more than forty-five days of actual service may be paid, in the discretion of the district judge in charge of the particular grand jury, an additional fee, not exceeding \$10 more than the attendance fee, for each day in excess of forty-five days of actual service.

(4) A grand or petit juror required to attend more than ten days of actual service may be paid, in the discretion of the judge, the appropriate fees at the end of the first ten days and at the end of every ten days of service thereafter.

(5) Certification of additional attendance fees may be ordered by the judge to be made effective commencing on the first day of extended service, without reference to the date of such certification.

(c)(1) A travel allowance not to exceed the maximum rate per mile that the Director of the Administrative Office of the United States Courts has prescribed pursuant to section 604(a)(7) of this title for payment to supporting court personnel in travel status using privately owned automobiles shall be paid to each juror, regardless of the mode of transportation actually employed. The prescribed rate shall be paid for the distance necessarily traveled to and from a juror's residence by the shortest practical route in going to and returning from the place of service. Actual mileage in full at the prescribed rate is payable at the beginning and at the end of a juror's term of service.

(2) The Director shall promulgate rules regulating interim travel allowances to jurors. Distances traveled to and from court should coincide with the shortest practical route.

(3) Toll charges for toll roads, bridges, tunnels, and ferries shall be paid in full to the juror incurring such charges. In the discretion of the court, reasonable parking fees may be paid to the juror incurring such fees upon presentation

of a valid parking receipt. Parking fees shall not be included in any tabulation of mileage cost allowances.

(4) Any juror who travels to district court pursuant to summons in an area outside of the contiguous forty-eight States of the United States shall be paid the travel expenses provided under this section, or actual reasonable transportation expenses subject to the discretion of the district judge or clerk of court as circumstances indicate, exercising due regard for the mode of transportation, the availability of alternative modes, and the shortest practical route between residence and court.

(5) A grand juror who travels to district court pursuant to a summons may be paid the travel expenses provided under this section or, under guidelines established by the Judicial Conference, the actual reasonable costs of travel by aircraft when travel by other means is not feasible and when certified by the chief judge of the district court in which the grand juror serves.

(d)(1) A subsistence allowance covering meals and lodging of jurors shall be established from time to time by the Director of the Administrative Office of the United States Courts pursuant to section 604(a)(7) of this title, except that such allowance shall not exceed the allowance for supporting court personnel in travel status in the same geographical area. Claims for such allowance shall not require itemization.

(2) A subsistence allowance shall be paid to a juror when an overnight stay is required at the place of holding court, and for the time necessarily spent in traveling to and from the place of attendance if an overnight stay is required.

(3) A subsistence allowance for jurors serving in district courts outside of the contiguous forty-eight States of the United States shall be allowed at a rate not to exceed that per diem allowance which is paid to supporting court personnel in travel status in those areas where the Director of the Administrative Office of the United States Courts has prescribed an increased per diem fee pursuant to section 604(a)(7) of this title.

(e) During any period in which a jury is ordered to be kept together and not to separate, the actual cost of subsistence shall be paid upon the order of the court in lieu of the subsistence allowances payable under subsection (d) of this section. Such allowance for the jurors ordered to be kept separate or sequestered shall include the cost of meals, lodging, and other expenditures ordered in the discretion of the court for their convenience and comfort.

(f) A juror who must necessarily use public transportation in traveling to and from court, the full cost of which is not met by the transportation expenses allowable under subsection (c) of this section on account of the short distance traveled in miles, may be paid, in the discretion of the court, the actual reasonable expense of such public transportation, pursuant to the methods of payment provided by this section. Jurors who are required to remain at the court beyond the normal business closing hour for deliberation or for any other reason may be transported to their homes, or to temporary lodgings where such lodgings are ordered by the court, in a manner directed by the clerk and paid from funds authorized under this section.

(g) The Director of the Administrative Office of the United States Courts shall promulgate such regulations as may be necessary to carry out his authority under this section.

(June 25, 1948, ch. 646, 62 Stat. 953; May 24, 1949, ch. 139, §97, 63 Stat. 103; July 14, 1949, ch. 333, 63 Stat. 411; Pub. L. 85-299, Sept. 7, 1957, 71 Stat. 618; Pub. L. 89-165, Sept. 2, 1965, 79 Stat. 645; Pub. L. 90-274, §102(a), Mar. 27, 1968, 82 Stat. 62; Pub. L. 95-572, §5, Nov. 2, 1978, 92 Stat. 2454; Pub. L. 101-650, title III, §314(b), Dec. 1, 1990, 104 Stat. 5115; Pub. L. 102-572, title IV, §402, Oct. 29, 1992, 106 Stat. 4511.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 28, U.S.C., 1940 ed., §§ 600, 600a, 600b, 608, and sections 11-1512 and 11-1513 of the D.C. Code, 1940 ed., (R.S. §§236, 323; Apr. 26, 1926, ch. 183, §§1, 2, 44 Stat. 323; May 17, 1932, ch. 190, 47 Stat. 158; Oct. 13, 1941, ch. 431, §2, 55 Stat. 736).

Section consolidates section 600 of title 28, U.S.C., 1940 ed., and sections 11-1512 and 11-1513 of the D.C. Code, 1940 ed., with part of section 608 of title 28, U.S.C., 1940 ed. The remainder of such section 608, relating to payment of witnesses' compensation, is the basis of section 1825 of this title.

Words "place of service" were substituted for references to attendance at court, in view of the earlier reference to service before commissioners.

The Advisory Committee to the House Committee on Revision of the Laws in revision of this title, recommends a careful study of the compensation of witnesses and jurors. Furthermore, provision should be made for the subsistence of jurors and witnesses serving at such distance from their homes as precludes daily travel to and from the court.

Changes were made in phraseology.

1949 ACT

This section incorporates in section 1871 of title 28, U.S.C., with changes in phraseology, the provisions of act of June 25, 1948 (ch. 652, 62 Stat. 1016), which became law subsequent to the enactment of the revision.

AMENDMENTS

1992—Subsec. (c)(5). Pub. L. 102-572 added par. (5).

1990—Subsec. (b). Pub. L. 101-650 substituted "\$40" for "\$30" in par. (1) and "\$10" for "\$5" in pars. (2) and (3).

1978—Subsecs. (a) to (g). Pub. L. 95-572, in revising text, substituted subsecs. (a) to (g) for prior five unnumbered paragraphs, and among other changes, deleted reference to fees for service before United States commissioners, now provided for in chapter 43 (section 631 et seq.) of this title relating to United States magistrates; increased to \$30 from \$20 allowance for actual attendance; continued the discretionary additional fee for extended service, increasing to forty-five from thirty days the basic service requirement; generalized travel allowance provisions in place of 10 cents per mile travel allowance from residence to place of service when commencing and terminating service and any necessary daily or interim travel, not to exceed a subsistence allowance of \$16 per day; and deleted provision for same fees for service in districts courts for districts of Guam and Canal Zone as provided for services in other Federal district courts as covered in definition of "district court of the United States" in section 1869(f) of this title.

1968—Pub. L. 90-274 increased from \$10 to \$20 the per diem allowance for grand and petit jurors, increased from \$14 to \$25 the fee for extra days in cases requiring attendance in excess of 30 days, increased from \$10 to \$16 the daily subsistence rate when travel appears impracticable, increased from \$10 to \$20 per day the limit after which payment of fees by the marshal must be on

the certificate of the trial judge, provided for the allowance of amounts expended for tolls, for toll roads, for toll tunnels, and for toll bridges, and directed that grand and petit jurors in the district courts for the districts of Guam and the Canal Zone receive the same fees and allowances provided for grand and petit jurors in other district courts of the United States.

1965—Pub. L. 89-165 increased from \$7 to \$10 the per diem allowance for grand and petit jurors, increased from \$10 to \$14 the fee for extra days in cases requiring attendance in excess of 30 days, prohibited payment for interim or daily travel at the 10-cent-per-mile rate in excess of the subsistence allowance which would have been paid if he had remained at the place of holding court overnight or during temporary recess, increased from \$7 to \$10 the daily subsistence rate when travel daily appears impracticable, and increased from \$7 to \$10 per day the limit after which payment of fees by the marshal must be on the certificate of the trial judge.

1957—Pub. L. 85-299 increased from 7 to 10 cents per mile and \$5 to \$7 per day the mileage and subsistence allowances of grand and petit jurors.

1949—Act July 14, 1949, increased the per diem fee paid jurors from \$5 to \$7, provided for per diem fee payments not to exceed \$10 for each day in excess of thirty days, increased the mileage payment from 5 cents per mile to 7 cents, and provided for the certification of the judge in cases where the jury fee is in excess of \$7 per diem.

Act May 24, 1949, increased jury fees and mileage and subsistence allowances.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-572 effective Jan. 1, 1993, see section 1101(a) of Pub. L. 102-572, set out as a note under section 905 of Title 2, The Congress.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-572 applicable with respect to any grand or petit juror serving on or after the sixtieth day following Nov. 2, 1978, see section 7(b) 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.

REFRESHMENT OF JURORS

Pub. L. 101-162, title IV, Nov. 21, 1989, 103 Stat. 1012, provided: "That for fiscal year 1990 and hereafter, funds appropriated under this heading [COURTS OF APPEALS, DISTRICT COURTS AND OTHER JUDICIAL SERVICES AND FEES OF JURORS AND COMMISSIONERS] shall be available for refreshment of jurors."

CROSS REFERENCES

Accounts of marshal, see section 567 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 567, 1864, 1876 of this title.

§ 1872. Issues of fact in Supreme Court

In all original actions at law in the Supreme Court against citizens of the United States, issues of fact shall be tried by a jury.

(June 25, 1948, ch. 646, 62 Stat. 953.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 343 (Mar. 3, 1911, ch. 231, § 235, 36 Stat. 1156).

Changes were made in phraseology.

§ 1873. Admiralty and maritime cases

In any case of admiralty and maritime jurisdiction relating to any matter of contract or tort arising upon or concerning any vessel of twenty tons or upward, enrolled and licensed for the coasting trade, and employed in the business of commerce and navigation between places in different states upon the lakes and navigable waters connecting said lakes, the trial of all issues of fact shall be by jury if either party demands it.

(June 25, 1948, ch. 646, 62 Stat. 953.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 770 (R.S. §§ 566, 648; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167).

Words "and Territories" following words "in different States" were omitted as obsolete. The act of February 26, 1845, ch. 20, 5 Stat. 726, from which this language was derived was intended primarily to cover the Great Lakes regions.

The first sentence of section 770 of title 28, U.S.C., 1940 ed., providing generally for the right of jury trials in district courts, was omitted as covered by Rule 38 of the Federal Rules of Civil Procedure.

Changes were made in phraseology.

FEDERAL RULES OF CIVIL PROCEDURE

Jury trial of right, see rule 38, Appendix to this title.

FEDERAL RULES OF CRIMINAL PROCEDURE

Trial by jury, see rule 23, Title 18, Appendix, Crimes and Criminal Procedure.

§ 1874. Actions on bonds and specialties

In all actions to recover the forfeiture annexed to any articles of agreement, covenant, bond, or other specialty, wherein the forfeiture, breach, or nonperformance appears by default or confession of the defendant, the court shall render judgment for the plaintiff for such amount as is due. If the sum is uncertain, it shall, upon request of either party, be assessed by a jury.

(June 25, 1948, ch. 646, 62 Stat. 953.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 785 (R.S. § 961).

Word "actions" was substituted for "all suits brought," in view of Rule 2 of the Federal Rules of Civil Procedure. For the same reason, words "according to equity," after "to recover so much as is due," were omitted.

Words "or upon demurrer," after "default or confession of the defendant," were omitted in view of Federal Rules of Civil Procedure, Rule 7(c), abolishing demurrers.

Changes were made in phraseology.

§ 1875. Protection of jurors' employment

(a) No employer shall discharge, threaten to discharge, intimidate, or coerce any permanent employee by reason of such employee's jury service, or the attendance or scheduled attendance in connection with such service, in any court of the United States.

(b) Any employer who violates the provisions of this section—

(1) shall be liable for damages for any loss of wages or other benefits suffered by an employee by reason of such violation;

(2) may be enjoined from further violations of this section and ordered to provide other

appropriate relief, including but not limited to the reinstatement of any employee discharged by reason of his jury service; and

(3) shall be subject to a civil penalty of not more than \$1,000 for each violation as to each employee.

(c) Any individual who is reinstated to a position of employment in accordance with the provisions of this section shall be considered as having been on furlough or leave of absence during his period of jury service, shall be reinstated to his position of employment without loss of seniority, and shall be entitled to participate in insurance or other benefits offered by the employer pursuant to established rules and practices relating to employees on furlough or leave of absence in effect with the employer at the time such individual entered upon jury service.

(d)(1) An individual claiming that his employer has violated the provisions of this section may make application to the district court for the district in which such employer maintains a place of business and the court shall, upon finding probable merit in such claim, appoint counsel to represent such individual in any action in the district court necessary to the resolution of such claim. Such counsel shall be compensated and necessary expenses repaid to the extent provided by section 3006A of title 18, United States Code.

(2) In any action or proceeding under this section, the court may award a prevailing employee who brings such action by retained counsel a reasonable attorney's fee as part of the costs. The court may tax a defendant employer, as costs payable to the court, the attorney fees and expenses incurred on behalf of a prevailing employee, where such costs were expended by the court pursuant to paragraph (1) of this subsection. The court may award a prevailing employer a reasonable attorney's fee as part of the costs only if the court finds that the action is frivolous, vexatious, or brought in bad faith.

(Added Pub. L. 95-572, §6(a)(1), Nov. 2, 1978, 92 Stat. 2456; amended Pub. L. 97-463, §1, Jan. 12, 1983, 96 Stat. 2531.)

AMENDMENTS

1983—Subsec. (d)(1). Pub. L. 97-463, §1(1), substituted designation “(d)(1)” for “(d)” before “An individual claiming”.

Subsec. (d)(2). Pub. L. 97-463, §1(2), inserted provision empowering the court to tax a defendant employer, as costs payable to the court, the attorney fees and expenses incurred on behalf of a prevailing employee, where such costs were expended by the court pursuant to par. (1) of this subsection and, in existing provisions, substituted “only if the court finds that the action is frivolous” for “if the court determines that the action is frivolous”.

EFFECTIVE DATE

Section 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 a note under section 1363 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1363 of this title.

§ 1876. Trial by jury in the Court of International Trade

(a) In any civil action in the Court of International Trade which is to be tried before a jury,

the jury shall be selected in accordance with the provisions of this chapter and under the procedures set forth in the jury selection plan of the district court for the judicial district in which the case is to be tried.

(b) Whenever the Court of International Trade conducts a jury trial—

(1) the clerk of the district court for the judicial district in which the Court of International Trade is sitting, or an authorized deputy clerk, shall act as clerk of the Court of International Trade for the purposes of selecting and summoning the jury;

(2) the qualifications for jurors shall be the same as those established by section 1865(b) of this title for jurors in the district courts of the United States;

(3) each party shall be entitled to challenge jurors in accordance with section 1870 of this title; and

(4) jurors shall be compensated in accordance with section 1871 of this title.

(Added Pub. L. 96-417, title III, §302(a), Oct. 10, 1980, 94 Stat. 1739.)

EFFECTIVE DATE

Section applicable with respect to civil actions commenced on or after Nov. 1, 1980, see section 701(b)(1)(C) of Pub. L. 96-417, set out as an Effective Date of 1980 Amendment note under section 251 of this title.

§ 1877. Protection of jurors

(a) Subject to the provisions of this section and title 5 of the United States Code, subchapter 1 of chapter 81, title 5, United States Code, applies to a Federal grand or petit juror, except that entitlement to disability compensation payments does not commence until the day after the date of termination of service as a juror.

(b) In administering this section with respect to a juror covered by this section—

(1) a juror is deemed to receive monthly pay at the minimum rate for grade GS-2 of the General Schedule unless his actual pay as a Government employee while serving on court leave is higher, in which case monthly pay is determined in accordance with section 8114 of title 5, United States Code, and

(2) performance of duty as a juror includes that time when a juror is (A) in attendance at court pursuant to a summons, (B) in deliberation, (C) sequestered by order of a judge, or (D) at a site, by order of the court, for the taking of a view.

(Added Pub. L. 97-463, §3(1), Jan. 12, 1983, 96 Stat. 2531.)

§ 1878. Optional use of a one-step summoning and qualification procedure

(a) At the option of each district court, jurors may be summoned and qualified in a single procedure, if the court's jury selection plan so authorizes, in lieu of the two separate procedures otherwise provided for by this chapter. Courts shall ensure that a one-step summoning and qualification procedure conducted under this section does not violate the policies and objectives set forth in sections 1861 and 1862 of this title.

(b) Jury selection conducted under this section shall be subject to challenge under section 1867 of this title for substantial failure to comply with the provisions of this title in selecting the jury. However, no challenge under section 1867 of this title shall lie solely on the basis that a jury was selected in accordance with a one-step summoning and qualification procedure authorized by this section.

(Added Pub. L. 100-702, title VIII, §805(a), Nov. 19, 1988, 102 Stat. 4658; amended Pub. L. 102-572, title IV, §403(a), Oct. 29, 1992, 106 Stat. 4512.)

AMENDMENTS

1992—Pub. L. 102-572 substituted “Optional” for “Experimental” in section catchline and amended text generally. Prior to amendment, text read as follows:

“(a) The Judicial Conference of the United States is hereby authorized to develop and conduct an experiment in which jurors serving in a limited number of United States district courts shall be qualified and summoned in a single procedure, in lieu of the two separate procedures otherwise provided for by this chapter. The Judicial Conference shall designate the district courts to participate in this experiment, but in no event shall the number of courts participating exceed ten. An experiment may be conducted pursuant to this section for a period not to exceed 2 years. The Judicial Conference shall ensure that an experiment conducted pursuant to this section does not violate the policies and objectives set forth in sections 1861 and 1862 of this title, and shall terminate the experiment immediately if it determines that these policies and objectives are being violated or whenever in its judgment good cause for such termination exists.

“(b) Jury selection conducted pursuant to this section shall be subject to challenge under section 1867 of this title for substantial failure to comply with the provisions of this title in selecting the jury. However, no challenge under section 1867 of this title shall lie solely on the basis that a jury was selected in accordance with an experiment conducted pursuant to this section.”

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-572 effective Jan. 1, 1993, see section 1101(a) of Pub. L. 102-572, set out as a note under section 905 of Title 2, The Congress.

SAVINGS PROVISION

Section 403(c) of Pub. L. 102-572 provided that: “For courts participating in the experiment authorized under section 1878 of title 28, United States Code (as in effect before the effective date of this section [Jan. 1, 1993]), the amendment made by subsection (a) of this section [amending this section] shall be effective on and after January 1, 1992.”

CHAPTER 123—FEES AND COSTS

Sec.	
1911.	Supreme Court.
1912.	Damages and costs on affirmance.
1913.	Courts of appeals.
1914.	District court; filing and miscellaneous fees; rules of court.
1915.	Proceedings in forma pauperis.
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1916.	Seamen’s suits.
1917.	District courts; fee on filing notice of or petition for appeal.
1918.	District courts; fines, forfeitures and criminal proceedings.
1919.	Dismissal for lack of jurisdiction.
1920.	Taxation of costs.
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1922.	Witness fees before United States commissioners.

Sec.	
1923.	Docket fees and costs of briefs.
1924.	Verification of bill of costs.
1925.	Admiralty and maritime cases.
1926.	Court of Federal Claims.
1927.	Counsel’s liability for excessive costs.
1928.	Patent infringement action; disclaimer not filed.
1929.	Extraordinary expenses not expressly authorized.
1930.	Bankruptcy fees.
1931.	Disposition of filing fees.
1932. ¹	Judicial Panel on Multidistrict Litigation.
1932. ¹	Revocation of earned release credit.

AMENDMENTS

1996—Pub. L. 104-317, title IV, §403(a)(2), Oct. 19, 1996, 110 Stat. 3854, added item 1932 “Judicial Panel on Multidistrict Litigation”.

Pub. L. 104-134, title I, §101[(a)] [title VIII, §§805(b), 809(b)], Apr. 26, 1996, 110 Stat. 1321, 1321-75, 1321-76; renumbered title I, Pub. L. 104-140, §1(a), May 2, 1996, 110 Stat. 1327, added item 1915A and item 1932 “Revocation of earned release credit”.

1992—Pub. L. 102-572, title IX, §§902(b)(2), 908(b)(2), Oct. 29, 1992, 106 Stat. 4516, 4519, substituted “Dismissal” for “District courts; dismissal” in item 1919 and “Court of Federal Claims” for “Claims Court” as item 1926.

1988—Pub. L. 100-702, title X, §1020(a)(8), Nov. 19, 1988, 102 Stat. 4672, substituted “court” for “courts” after “District” in item 1914.

1986—Pub. L. 99-500, §101(b) [title IV, §407(d)], Oct. 18, 1986, 100 Stat. 1783-39, 1783-64, and Pub. L. 99-591, §101(b) [title IV, §407(d)], Oct. 30, 1986, 100 Stat. 3341-39, 3341-64, added item 1931.

1984—Pub. L. 98-353, title I, §111(c), July 10, 1984, 98 Stat. 343, substituted “fees” for “courts” in item 1930. Notwithstanding directory language that the amendment be made to the table of sections for chapter 125 of this title, the amendment was executed to the table of sections for chapter 123 of this title to reflect the probable intent of Congress.

1982—Pub. L. 97-164, title I, §139(p)(2), Apr. 2, 1982, 96 Stat. 44, substituted “Claims Court” for “Court of Customs and Patent Appeals” in item 1926.

1978—Pub. L. 95-598, title II, §246(b), Nov. 6, 1978, 92 Stat. 2672, added item 1930.

CROSS REFERENCES

Jury fees, see section 1871 of this title.
Witnesses, fees and subsistence, see section 1821 et seq. of this title.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 11 sections 507, 707, 1112, 1208, 1225, 1307, 1325; title 26 section 1398.

§ 1911. Supreme Court

The Supreme Court may fix the fees to be charged by its clerk.

The fees of the clerk, cost of serving process, and other necessary disbursements incidental to any case before the court, may be taxed against the litigants as the court directs.

(June 25, 1948, ch. 646, 62 Stat. 954.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §330 (Mar. 3, 1911, ch. 231, §223, 36 Stat. 1153).

The second paragraph was inserted to give statutory sanction to existing practice.

Changes were made in phraseology.

RULES OF THE SUPREME COURT

Fees to be charged pursuant to this section, see rule 38, Appendix to this title.

¹ So in original. Two sections 1932 have been enacted.

CROSS REFERENCES

Payment by clerk into Treasury of all fees, costs, and emoluments, see section 671 of this title.

§ 1912. Damages and costs on affirmance

Where a judgment is affirmed by the Supreme Court or a court of appeals, the court in its discretion may adjudge to the prevailing party just damages for his delay, and single or double costs.

(June 25, 1948, ch. 646, 62 Stat. 954.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §878, and section 1141(c)(4) of title 26 U.S.C., 1940 ed., Internal Revenue Code (R.S. §1010; Mar. 3, 1911, ch. 231, §§117, 289, 36 Stat. 1131, 1167; Feb. 10, 1939, ch. 2, §1141(c)(4), 53 Stat. 165).

Section consolidates section 878 of title 28 with section 1141(c)(4) of title 26, both U.S.C., 1940 ed., with changes in phraseology necessary to effect consolidation.

Words “prevailing party” were substituted for “the respondents in error,” contained in said section 878 of title 28, since writs of error have been abolished.

SENATE REVISION AMENDMENT

By Senate amendment, all provisions relating to the Tax Court were eliminated. Therefore, section 1141(c)(4) of Title 26, U.S.C., Internal Revenue Code, was not one of the sources of this section as finally enacted. However, no change in the text of this section was necessary. See 80th Congress Senate Report No. 1559.

RULES OF THE SUPREME COURT

Interest and damages, see rule 42, Appendix to this title.

CROSS REFERENCES

Damages and costs in Courts of Appeals, see rules of the various Courts of Appeals.

§ 1913. Courts of appeals

The fees and costs to be charged and collected in each court of appeals shall be prescribed from time to time by the Judicial Conference of the United States. Such fees and costs shall be reasonable and uniform in all the circuits.

(June 25, 1948, ch. 646, 62 Stat. 954.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §543 (Mar. 3, 1891, ch. 517, §2, 26 Stat. 826; Feb. 19, 1897, ch. 263, 29 Stat. 536; Sept. 27, 1944, ch. 413, 58 Stat. 743).

Words “and in the United States Circuit Court of Appeals for the District of Columbia” were omitted as covered by “each court of appeals.”

Judicial Conference of Senior Circuit Judges was changed to Judicial Conference “of the United States” in conformity with section 331 of this title.

Changes were made in phraseology.

COURT FEES FOR ELECTRONIC ACCESS TO INFORMATION

Pub. L. 102-140, title III, §303, Oct. 28, 1991, 105 Stat. 810, as amended by Pub. L. 104-317, title IV, §403(b), Oct. 19, 1996, 110 Stat. 3854, provided that:

“(a) The Judicial Conference shall hereafter prescribe reasonable fees, pursuant to sections 1913, 1914, 1926, 1930, and 1932 of title 28, United States Code, for collection by the courts under those sections for access to information available through automatic data processing equipment. These fees may distinguish between classes of persons, and shall provide for exempting persons or classes of persons from the fees, in order to avoid unreasonable burdens and to promote public access to

such information. The Director of the Administrative Office of the United States Courts, under the direction of the Judicial Conference of the United States, shall prescribe a schedule of reasonable fees for electronic access to information which the Director is required to maintain and make available to the public.

“(b) The Judicial Conference and the Director shall transmit each schedule of fees prescribed under paragraph (a) to the Congress at least 30 days before the schedule becomes effective. All fees hereafter collected by the Judiciary under paragraph (a) as a charge for services rendered shall be deposited as offsetting collections to the Judiciary Automation Fund pursuant to 28 U.S.C. 612(c)(1)(A) to reimburse expenses incurred in providing these services.”

Similar provisions were contained in the following prior appropriation act:

Pub. L. 101-515, title IV, §404, Nov. 5, 1990, 104 Stat. 2132.

COURT OF APPEALS FEE SCHEDULE

(Effective April 1, 1996)

Following are fees to be charged for services to be performed by clerks of the courts of appeals. No fees are to be charged for services rendered on behalf of the United States, with the exception of those specifically prescribed in items 2, 4, and 13. No fees under this schedule shall be charged to federal agencies or programs which are funded from judiciary appropriations, including, but not limited to, agencies, organizations, and individuals providing services authorized by the Criminal Justice Act, 18 U.S.C. §3006A, and Bankruptcy Administrator programs.

(1) For docketing a case on appeal or review, or docketing any other proceeding, \$100. A separate fee shall be paid by each party filing a notice of appeal in the district court, but parties filing a joint notice of appeal in the district court are required to pay only one fee. A docketing fee shall not be charged for the docketing of an application for the allowance of an interlocutory appeal under 28 U.S.C. §1292(b), unless the appeal is allowed.

(2) For every search of the records of the court and certifying the results thereof, \$15.

(3) For certifying any document or paper, whether the certification is made directly on the document, or by separate instrument, \$5.

(4) For reproducing any record or paper, 50 cents per page. This fee shall apply to paper copies made from either: (1) original documents; or (2) microfiche or microfilm reproductions of the original records.

(5) For reproduction of the magnetic tape recordings, either cassette or reel-to-reel, \$15 including the cost of materials.

(6) For reproduction of the record in any appeal in which the requirement of an appendix is dispensed with by any court of appeals pursuant to Rule 30(f), F.R.A.P., a flat fee of \$25.

(7) For each microfiche or microfilm copy of any court record, where available, \$3.

(8) For retrieval of a record from a Federal Records Center, National Archives, or other storage location removed from the place of business of the court, \$25.

(9) For a check paid into the court which is returned for lack of funds, \$25.

(10) Fees to be charged and collected for copies of opinions shall be fixed, from time to time, by each court, commensurate with the cost of printing.

(11) The court may charge and collect fees, commensurate with the cost of printing, for copies of the local rules of court. The court may also distribute copies of the local rules without charge.

(12) The clerk shall assess a charge for the handling of registry funds deposited with the court, to be assessed from interest earnings and in accordance with the detailed fee schedule issued by the Director of the Administrative Office of the United States Courts.

(13) For usage of electronic access to court data, 60 cents per minute of usage [provided the court may, for

good cause, exempt persons or classes of persons from the fees, in order to avoid unreasonable burdens and to promote public access to such information]. All such fees collected shall be deposited to the Judiciary Automation Fund. This fee shall apply to the United States. (The Judicial Conference has approved an advisory note clarifying the judiciary's policy with respect to exemptions from this fee.)

CROSS REFERENCES

Fees and costs, see rules of the various Courts of Appeals.

Power of Judicial Conference of the United States, see section 331 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2077 of this title.

§ 1914. District court; filing and miscellaneous fees; rules of court

(a) The clerk of each district court shall require the parties instituting any civil action, suit or proceeding in such court, whether by original process, removal or otherwise, to pay a filing fee of \$150, except that on application for a writ of habeas corpus the filing fee shall be \$5.

(b) The clerk shall collect from the parties such additional fees only as are prescribed by the Judicial Conference of the United States.

(c) Each district court by rule or standing order may require advance payment of fees.

(June 25, 1948, ch. 646, 62 Stat. 954; Pub. L. 95-598, title II, §244, Nov. 6, 1978, 92 Stat. 2671; Pub. L. 99-336, §4(a), June 19, 1986, 100 Stat. 637; Pub. L. 99-500, §101(b) [title IV, §407(a)], Oct. 18, 1986, 100 Stat. 1783-39, 1783-64, and Pub. L. 99-591, §101(b) [title IV, §407(a)], Oct. 30, 1986, 100 Stat. 3341-39, 3341-64; Pub. L. 104-317, title IV, §401(a), Oct. 19, 1996, 110 Stat. 3853.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§549, 553 and 555 (R.S. §828; June 28, 1902, ch. 1301, §1, 32 Stat. 476; Feb. 11, 1925, ch. 204, §§2, 6, 8, 43 Stat. 857, 858; Jan. 22, 1927, ch. 50, §2, 44 Stat. 1023; Jan. 31, 1928, ch. 14, §1, 45 Stat. 54; Mar. 3, 1942, ch. 124, §2, 56 Stat. 122; Sept. 27, 1944, ch. 414, §§1, 4, 5, 58 Stat. 743, 744).

Section consolidates sections 549, 553, and 555 of title 28, U.S.C., 1940 ed., as amended with necessary changes of phraseology.

The phrase "filing fee" was substituted for the inconsistent and misleading words of sections 549 and 553 of title 28, U.S.C., 1940 ed., "as full payment for all services to be rendered by the clerk" etc. thus removing the necessity for including exceptions and referring to other sections containing provisions for additional fees.

The provision in section 549 of title 28, U.S.C., 1940 ed., for payment of fees by the parties instituting criminal proceedings by indictment or information, was omitted. Such proceedings are instituted only by the United States from which costs cannot be exacted.

The provision in section 549 of title 28, U.S.C., 1940 ed., for taxation of fees as costs, was omitted as covered by section 1920 of this title.

Words "or appeal from a deportation order of a United States Commissioner" in section 553 of title 28, U.S.C., 1940 ed., were omitted as obsolete since repeal of the Chinese Exclusion Act by act Dec. 17, 1943, ch. 344, §1, 57 Stat. 600. Appeal was formerly conferred by section 282 of title 8, U.S.C., 1940 ed., Aliens and Nationality.

Subsection (d) excepting the District of Columbia, was added to preserve the existing schedule of fees prescribed by section 11-1509 of the District of Columbia Code, 1940 ed.

CODIFICATION

Pub. L. 99-591 is a corrected version of Pub. L. 99-500.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104-317 substituted "\$150" for "\$120".

1986—Subsec. (a). Pub. L. 99-500 and Pub. L. 99-591 substituted "\$120" for "\$60".

Subsec. (d). Pub. L. 99-336 struck out subsec. (d) which provided that section was not applicable to District of Columbia.

1978—Subsec. (a). Pub. L. 95-598 substituted "\$60" for "\$15".

EFFECTIVE DATE OF 1996 AMENDMENT

Section 401(c) of Pub. L. 104-317 provided that: "This section [amending this section and section 1931 of this title] shall take effect 60 days after the date of the enactment of this Act [Oct. 19, 1996]."

EFFECTIVE DATE OF 1986 AMENDMENT

Section 4(c) of Pub. L. 99-336 provided that: "The amendments made by this section [amending this section] shall apply with respect to any civil action, suit, or proceeding instituted on or after the date of the enactment of this Act [June 19, 1986]."

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-598 effective Oct. 1, 1979, see section 402(c) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

COURT FEES FOR ELECTRONIC ACCESS TO INFORMATION

Judicial Conference to prescribe reasonable fees for collection by courts under this section for access to information available through automatic data processing equipment and fees to be deposited in Judiciary Automation Fund, see section 303 of Pub. L. 102-140, set out as a note under section 1913 of this title.

DISTRICT COURT MISCELLANEOUS FEE SCHEDULE

(Effective January 1, 1998)

Following are fees to be charged for services to be performed by clerks of the district courts. No fees are to be charged for services rendered on behalf of the United States, with the exception of those specifically prescribed in items 2, 4, and 14. No fees under this schedule shall be charged to federal agencies or programs which are funded from judiciary appropriations, including, but not limited to, agencies, organizations, and individuals providing services authorized by the Criminal Justice Act, 18 U.S.C. §3006A, and Bankruptcy Administrator programs.

(1) For filing or indexing any paper not in a case or proceeding for which a case filing fee has been paid, \$20. This fee is applicable to the filing of a petition to perpetuate testimony, Rule 27(a), Federal Rules of Civil Procedure, the filing of papers by trustees under 28 U.S.C. §754, the filing of letters rogatory or letters of request, and registering of a judgment from another district pursuant to 28 U.S.C. §1963.

(2) For every search of the records of the district court conducted by the clerk of the district court or a deputy clerk, \$15 per name or item searched. This fee shall apply to services rendered on behalf of the United States if the information requested is available through electronic access.

(3) For certification of any document or paper, whether the certification is made directly on the document or by separate instrument, \$5. For exemplification of any document or paper, twice the amount of the fee for certification.

(4) For reproducing any record or paper, 50 cents per page. This fee shall apply to paper copies made from either: (1) original documents; or (2) microfiche or microfilm reproductions of the original records. This fee

shall apply to services rendered on behalf of the United States if the record or paper requested is available through electronic access.

(5) For reproduction of magnetic tape recordings, either cassette or reel-to-reel, \$15 including the cost of materials.

(6) Repealed.

(7) For each microfiche sheet of film or microfilm jacket copy of any court record, where available, \$3.

(8) For retrieval of a record from a Federal Records Center, National Archives, or other storage location removed from the place of business of the court, \$25.

(9) For a check paid into the court which is returned for lack of funds, \$25.

(10) For an appeal to a district judge from a judgment of conviction by a magistrate in a misdemeanor case, \$25.

(11) For original admission of attorneys to practice, \$50 each, including a certificate of admission. For a duplicate certificate of admission or certificate of good standing, \$15.

(12) The court may charge and collect fees, commensurate with the cost of printing, for copies of the local rules of court. The court may also distribute copies of the local rules without charge.

(13) The clerk shall assess a charge for the handling of registry funds deposited with the court, to be assessed from interest earnings and in accordance with the detailed fee schedule issued by the Director of the Administrative Office of the United States Courts.

(14) For usage of electronic access to court data, 60 cents per minute of usage [provided the court may, for good cause, exempt persons or classes of persons from the fees, in order to avoid unreasonable burdens and to promote public access to such information]. All such fees collected shall be deposited to the Judiciary Automation Fund. This fee shall apply to the United States. (The Judicial Conference has approved an advisory note clarifying the judiciary's policy with respect to exemptions from this fee.)

(15) For filing an action brought under Title III of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996, P.L. 104-114, 110 Stat. 785 (1996), \$4180. (This fee is in addition to the filing fee prescribed in 28 U.S.C. 1914(a) for instituting any civil action other than a writ of habeas corpus.)

CROSS REFERENCES

Advance payment of fees, see local rules of the various district courts.

Appeal of certiorari, fee on filing notice of or petition, or upon receipt of order allowing, or notice of allowance of, see section 1917 of this title.

Exemption of United States from payment of fees, see section 2412 of this title.

Payment by clerk into Treasury of all fees, costs and other moneys collected, see section 751 of this title.

Power of Judicial Conference of the United States, see section 331 of this title.

Reporter's fee for copy of transcript, see section 753 of this title.

Taxation of costs, see section 1920 of this title.

In admiralty and maritime cases, see section 1925 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1930, 1931, 2412 of this title; title 11 section 330.

§ 1915. Proceedings in forma pauperis

(a)(1) Subject to subsection (b), any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees or security therefor, by a person who submits an affidavit that includes a statement of all assets such prisoner possesses that the person is unable to pay

such fees or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that the person is entitled to redress.

(2) A prisoner seeking to bring a civil action or appeal a judgment in a civil action or proceeding without prepayment of fees or security therefor, in addition to filing the affidavit filed under paragraph (1), shall submit a certified copy of the trust fund account statement (or institutional equivalent) for the prisoner for the 6-month period immediately preceding the filing of the complaint or notice of appeal, obtained from the appropriate official of each prison at which the prisoner is or was confined.

(3) An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.

(b)(1) Notwithstanding subsection (a), if a prisoner brings a civil action or files an appeal in forma pauperis, the prisoner shall be required to pay the full amount of a filing fee. The court shall assess and, when funds exist, collect, as a partial payment of any court fees required by law, an initial partial filing fee of 20 percent of the greater of—

(A) the average monthly deposits to the prisoner's account; or

(B) the average monthly balance in the prisoner's account for the 6-month period immediately preceding the filing of the complaint or notice of appeal.

(2) After payment of the initial partial filing fee, the prisoner shall be required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. The agency having custody of the prisoner shall forward payments from the prisoner's account to the clerk of the court each time the amount in the account exceeds \$10 until the filing fees are paid.

(3) In no event shall the filing fee collected exceed the amount of fees permitted by statute for the commencement of a civil action or an appeal of a civil action or criminal judgment.

(4) In no event shall a prisoner be prohibited from bringing a civil action or appealing a civil or criminal judgment for the reason that the prisoner has no assets and no means by which to pay the initial partial filing fee.

(c) Upon the filing of an affidavit in accordance with subsections (a) and (b) and the prepayment of any partial filing fee as may be required under subsection (b), the court may direct payment by the United States of the expenses of (1) printing the record on appeal in any civil or criminal case, if such printing is required by the appellate court; (2) preparing a transcript of proceedings before a United States magistrate in any civil or criminal case, if such transcript is required by the district court, in the case of proceedings conducted under section 636(b) of this title or under section 3401(b) of title 18, United States Code; and (3) printing the record on appeal if such printing is required by the appellate court, in the case of proceedings conducted pursuant to section 636(c) of this title. Such expenses shall be paid when authorized by the Director of the Administrative Office of the United States Courts.

(d) The officers of the court shall issue and serve all process, and perform all duties in such

cases. Witnesses shall attend as in other cases, and the same remedies shall be available as are provided for by law in other cases.

(e)(1) The court may request an attorney to represent any person unable to afford counsel.

(2) Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that—

(A) the allegation of poverty is untrue; or

(B) the action or appeal—

(i) is frivolous or malicious;

(ii) fails to state a claim on which relief may be granted; or

(iii) seeks monetary relief against a defendant who is immune from such relief.

(f)(1) Judgment may be rendered for costs at the conclusion of the suit or action as in other proceedings, but the United States shall not be liable for any of the costs thus incurred. If the United States has paid the cost of a stenographic transcript or printed record for the prevailing party, the same shall be taxed in favor of the United States.

(2)(A) If the judgment against a prisoner includes the payment of costs under this subsection, the prisoner shall be required to pay the full amount of the costs ordered.

(B) The prisoner shall be required to make payments for costs under this subsection in the same manner as is provided for filing fees under subsection (a)(2).

(C) In no event shall the costs collected exceed the amount of the costs ordered by the court.

(g) In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

(h) As used in this section, the term “prisoner” means any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program.

(June 25, 1948, ch. 646, 62 Stat. 954; May 24, 1949, ch. 139, §98, 63 Stat. 104; Oct. 31, 1951, ch. 655, §51(b), (c), 65 Stat. 727; Pub. L. 86–320, Sept. 21, 1959, 73 Stat. 590; Pub. L. 96–82, §6, Oct. 10, 1979, 93 Stat. 645; Pub. L. 104–134, title I, §101(a) [title VIII, §804(a), (c)–(e)], Apr. 26, 1996, 110 Stat. 1321, 1321–73 to 1321–75; renumbered title I, Pub. L. 104–140, §1(a), May 2, 1996, 110 Stat. 1327.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 28, U.S.C., 1940 ed., §§9a(c)(e), 832, 833, 834, 835, and 836 (July 20, 1892, ch. 209, §§1–5, 27 Stat. 252; June 25, 1910, ch. 435, 36 Stat. 866; Mar. 3, 1911, ch. 231, §5a, as added Jan. 20, 1944, ch. 3, §1, 58 Stat. 5; June 27, 1922, ch. 246, 42 Stat. 666; Jan. 31, 1928, ch. 14, §1, 45 Stat. 54).

Section consolidates a part of section 9a(c)(e) with sections 832–836 of title 28, U.S.C., 1940 ed.

For distribution of other provisions of section 9a of title 28, U.S.C., 1940 ed., see Distribution Table.

Section 832 of title 28, U.S.C., 1940 ed., was completely rewritten, and constitutes subsections (a) and (b).

Words “and willful false swearing in any affidavit provided for in this section or section 832 of this title, shall be punishable as perjury as in other cases,” in section 833 of title 28, U.S.C., 1940 ed., were omitted as covered by the general perjury statute, title 18, U.S.C., 1940 ed., §231 (H.R. 1600, 80th Cong., sec. 1621).

A proviso in section 836 of title 28, U.S.C., 1940 ed., that the United States should not be liable for costs was deleted as covered by section 2412 of this title.

The provision in section 9a(e) of title 28, U.S.C., 1940 ed., respecting stenographic transcripts furnished on appeals in civil cases is extended by subsection (b) of the revised section to include criminal cases. Obviously it would be inconsistent to furnish the same to a poor person in a civil case involving money only and to deny it in a criminal proceeding where life and liberty are in jeopardy.

The provision of section 832 of title 28, U.S.C., 1940 ed., for payment when authorized by the Attorney General was revised to substitute the Director of the Administrative Office of the United States Courts who now disburses such items.

Changes in phraseology were made.

1949 ACT

This amendment clarifies the meaning of subsection (b) of section 1915 of title 28, U.S.C., and supplies, in subsection (e) of section 1915, an inadvertent omission to make possible the recovery of public funds expended in printing the record for persons successfully suing in forma pauperis.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–134, §101(a) [title VIII, §804(a)(1)], designated first paragraph as par. (1), substituted “Subject to subsection (b), any” for “Any”, struck out “and costs” after “of fees”, substituted “submits an affidavit that includes a statement of all assets such prisoner possesses” for “makes affidavit”, substituted “such fees” for “such costs”, substituted “the person” for “he” in two places, added par. (2), and designated last paragraph as par. (3).

Subsec. (b). Pub. L. 104–134, §101(a) [title VIII, §804(a)(3)], added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 104–134, §101(a) [title VIII, §804(a)(2), (4)], redesignated subsec. (b) as (c) and substituted “subsections (a) and (b) and the prepayment of any partial filing fee as may be required under subsection (b)” for “subsection (a) of this section”. Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 104–134, §101(a) [title VIII, §804(a)(2)], redesignated subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 104–134, §101(a) [title VIII, §804(a)(5)], amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: “The court may request an attorney to represent any such person unable to employ counsel and may dismiss the case if the allegation of poverty is untrue, or if satisfied that the action is frivolous or malicious.”

Pub. L. 104–134, §101(a) [title VIII, §804(a)(2)], redesignated subsec. (d) as (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 104–134, §101(a) [title VIII, §804(a)(2), (c)], redesignated subsec. (e) as (f), designated existing provisions as par. (1) and substituted “proceedings” for “cases”, and added par. (2).

Subsec. (g). Pub. L. 104–134, §101(a) [title VIII, §804(d)], added subsec. (g).

Subsec. (h). Pub. L. 104–134, §101(a) [title VIII, §804(e)], added subsec. (h).

1979—Subsec. (b). Pub. L. 96–82 substituted “Upon the filing of an affidavit in accordance with subsection (a) of this section, the court may direct payment by the

United States of the expenses of (1) printing the record on appeal in any civil or criminal case, if such printing is required by the appellate court; (2) preparing a transcript of proceedings before a United States magistrate in any civil or criminal case, if such transcript is required by the district court, in the case of proceedings conducted under section 636(b) of this title or under section 3401(b) of title 18, United States Code; and (3) printing the record on appeal if such printing is required by the appellate court, in the case of proceedings conducted pursuant to section 636(c) of this title” and “Such expenses shall be paid when authorized by the Director of the Administrative Office of the United States Courts” for “In any civil or criminal case the court may, upon the filing of a like affidavit, direct that the expense of printing the record on appeal, if such printing is required by the appellate court, be paid by the United States, and the same shall be paid when authorized by the Director of the Administrative Office of the United States Courts”.

1959—Subsec. (a). Pub. L. 86-320 substituted “person” for “citizen”.

1951—Subsec. (b). Act Oct. 31, 1951, struck out “furnishing a stenographic transcript and” after “expense of”.

Subsec. (e). Act Oct. 31, 1951, inserted provision that the United States shall not be liable for any of the costs incurred.

1949—Subsec. (b). Act May 24, 1949, §98(a), inserted “such printing is” between “if” and “required”.

Subsec. (e). Act May 24, 1949, §98(b), inserted “or printed record” after “stenographic transcript”.

CHANGE OF NAME

Reference to United States magistrate or to magistrate deemed to refer to United States magistrate judge pursuant to section 321 of Pub. L. 101-650, set out as a note under section 631 of this title.

FEDERAL RULES OF CIVIL PROCEDURE

Default judgment, see rule 55, Appendix to this title.

CROSS REFERENCES

Fair housing, enforcement by private persons in Federal or State courts without payment of fees, costs, or security, see section 3613 of Title 42, The Public Health and Welfare.

Reporters for United States District Court, see section 753 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1930, 2503 of this title; title 10 section 867a; title 11 section 523; title 18 section 3006A.

§ 1915A. Screening

(a) SCREENING.—The court shall review, before docketing, if feasible or, in any event, as soon as practicable after docketing, a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity.

(b) GROUNDS FOR DISMISSAL.—On review, the court shall identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint—

- (1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or
- (2) seeks monetary relief from a defendant who is immune from such relief.

(c) DEFINITION.—As used in this section, the term “prisoner” means any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the

terms and conditions of parole, probation, pretrial release, or diversionary program.

(Added Pub. L. 104-134, title I, §101[(a)] [title VIII, §805(a)], Apr. 26, 1996, 110 Stat. 1321, 1321-75; renumbered title I, Pub. L. 104-140, §1(a), May 2, 1996, 110 Stat. 1327.)

§ 1916. Seamen’s suits

In all courts of the United States, seamen may institute and prosecute suits and appeals in their own names and for their own benefit for wages or salvage or the enforcement of laws enacted for their health or safety without prepaying fees or costs or furnishing security therefor.

(June 25, 1948, ch. 646, 62 Stat. 955.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §837 (June 12, 1917, ch. 27, §1, 40 Stat. 157; July 1, 1918, ch. 113, §1, 40 Stat. 683).

Changes in phraseology were made.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1921 of this title.

§ 1917. District courts; fee on filing notice of or petition for appeal

Upon the filing of any separate or joint notice of appeal or application for appeal or upon the receipt of any order allowing, or notice of the allowance of, an appeal or of a writ of certiorari \$5 shall be paid to the clerk of the district court, by the appellant or petitioner.

(June 25, 1948, ch. 646, 62 Stat. 955.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §552 (Feb. 11, 1925, ch. 204, §5, 43 Stat. 857; Jan. 31, 1928, ch. 14, §1, 45 Stat. 54; Sept. 27, 1944, ch. 414, §3, 58 Stat. 744).

Words “to the clerk of the district court” were added to clarify the intent of Congress, as shown by the title of the 1944 act containing this section, and by the text of such Act in its entirety.

Words “as an additional fee in said suit or action, or proceeding in bankruptcy” were omitted. The entire text of the basic 1944 act shows that Congress intended it to apply to all actions, suits and proceedings, including bankruptcy proceedings, and nowhere else in such act is any reference made to bankruptcy proceedings.

Changes were made in phraseology.

§ 1918. District courts; fines, forfeitures and criminal proceedings

(a) Costs shall be included in any judgment, order, or decree rendered against any person for the violation of an Act of Congress in which a civil fine or forfeiture of property is provided for.

(b) Whenever any conviction for any offense not capital is obtained in a district court, the court may order that the defendant pay the costs of prosecution.

(June 25, 1948, ch. 646, 62 Stat. 955.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §822 (R.S. §974). Changes were made in phraseology.

CROSS REFERENCES

Docket fees and costs of briefs, see notes under section 1923 of this title.

Particular items taxable as costs, see section 1920 of this title and notes thereto.

Witness fees, see notes under sections 1821 and 1825 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 21 section 844.

§ 1919. Dismissal for lack of jurisdiction

Whenever any action or suit is dismissed in any district court, the Court of International Trade, or the Court of Federal Claims for want of jurisdiction, such court may order the payment of just costs.

(June 25, 1948, ch. 646, 62 Stat. 955; Pub. L. 96-417, title V, §510, Oct. 10, 1980, 94 Stat. 1743; Pub. L. 102-572, title IX, §908(a), (b)(1), Oct. 29, 1992, 106 Stat. 4519.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §80 (Mar. 3, 1911, ch. 231, §37, 36 Stat. 1098).

Words "dismissal for want of jurisdiction" were substituted for "it shall appear to the satisfaction of the said district court, at any time after such suit has been brought or removed thereto, that such suit does not really and substantially involve a dispute or controversy properly within the jurisdiction of said district court". The substituted language is sufficient. (See reviser's note under section 1359 of this title.) The provisions of section 80 of title 28, U.S.C., 1940 ed., relating to dismissal for improper or collusive joinder in removal proceedings, are incorporated in section 1359 of this title. Other provisions of section 80 of title 28, U.S.C., 1940 ed., appear in section 1447 of this title.

Changes were made in phraseology.

AMENDMENTS

1992—Pub. L. 102-572 substituted "Dismissal" for "District courts; dismissal" in section catchline and inserted reference to Court of Federal Claims in text.

1980—Pub. L. 96-417 included dismissals in Court of International Trade for want of jurisdiction.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-572 effective Oct. 29, 1992, see section 911 of Pub. L. 102-572, set out as a note under section 171 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-417 applicable with respect to civil actions commenced on or after Nov. 1, 1980, see section 701(b)(1)(E) of Pub. L. 96-417, set out as a note under section 251 of this title.

§ 1920. Taxation of costs

A judge or clerk of any court of the United States may tax as costs the following:

- (1) Fees of the clerk and marshal;
- (2) Fees of the court reporter for all or any part of the stenographic transcript necessarily obtained for use in the case;
- (3) Fees and disbursements for printing and witnesses;
- (4) Fees for exemplification and copies of papers necessarily obtained for use in the case;
- (5) Docket fees under section 1923 of this title;
- (6) Compensation of court appointed experts, compensation of interpreters, and salaries, fees, expenses, and costs of special interpretation services under section 1828 of this title.

A bill of costs shall be filed in the case and, upon allowance, included in the judgment or decree.

(June 25, 1948, ch. 646, 62 Stat. 955; Pub. L. 95-539, §7, Oct. 28, 1978, 92 Stat. 2044.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§9a(a) and 830 (R.S. §983; Mar. 3, 1911, ch. 231, §5a, as added Jan. 20, 1944, ch. 3, §1, 58 Stat. 5).

For distribution of other provisions of section 9a of title 28, U.S.C., 1940 ed., see table at end of reviser's notes.

Word "may" was substituted for "shall" before "tax as costs," in view of Rule 54(d) of the Federal Rules of Civil Procedure, providing for allowance of costs to the prevailing party as of course "unless the court otherwise directs".

Changes were made in phraseology.

AMENDMENTS

1978—Par. (6). Pub. L. 95-539 added par. (6).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-539 effective Oct. 28, 1978, see section 10(a) of Pub. L. 95-539, set out as a note under section 602 of this title.

FEDERAL RULES OF CIVIL PROCEDURE

Costs allowed to prevailing party, see rule 54, Appendix to this title.

Costs of previously dismissed action, see rule 41.

Motion for retaxation of costs by clerk in civil actions, see rule 54.

Offer of judgment affecting costs, see rule 68.

Taxation of costs in civil actions by clerk, see rule 54.

United States agencies, and officers, liability for fees and costs, see rule 54.

CROSS REFERENCES

Authority to administer oaths, see section 2903 of Title 5, Government Organization and Employees.

Costs, denial of to plaintiff where plaintiff recovers less than \$10,000, see section 1332 of this title.

Definition of "court of the United States," see section 451 of this title.

Exemption of United States for costs except where statute permits taxation, see section 2412 of this title.

Fees and costs in admiralty and maritime cases, see section 1925 of this title.

Marshal's fees, see section 1921 of this title.

Per diem, mileage and subsistence of witnesses, see notes under section 1821 of this title.

Reporter's transcript, fees for, see section 753 of this title.

Taxation of costs in fine, forfeiture and criminal proceedings, see section 1918 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1821, 2412, 2503 of this title; title 21 section 844.

§ 1921. United States marshal's fees

(a)(1) The United States marshals or deputy marshals shall routinely collect, and a court may tax as costs, fees for the following:

(A) Serving a writ of possession, partition, execution, attachment in rem, or libel in admiralty, warrant, attachment, summons, complaints, or any other writ, order or process in any case or proceeding.

(B) Serving a subpoena or summons for a witness or appraiser.

(C) Forwarding any writ, order, or process to another judicial district for service.

(D) The preparation of any notice of sale, proclamation in admiralty, or other public notice or bill of sale.

(E) The keeping of attached property (including boats, vessels, or other property at-

tached or libeled), actual expenses incurred, such as storage, moving, boat hire, or other special transportation, watchmen's or keepers' fees, insurance, and an hourly rate, including overtime, for each deputy marshal required for special services, such as guarding, inventorying, and moving.

(F) Copies of writs or other papers furnished at the request of any party.

(G) Necessary travel in serving or endeavoring to serve any process, writ, or order, except in the District of Columbia, with mileage to be computed from the place where service is returnable to the place of service or endeavor.

(H) Overtime expenses incurred by deputy marshals in the course of serving or executing civil process.

(2) The marshals shall collect, in advance, a deposit to cover the initial expenses for special services required under paragraph (1)(E), and periodically thereafter such amounts as may be necessary to pay such expenses until the litigation is concluded. This paragraph applies to all private litigants, including seamen proceeding pursuant to section 1916 of this title.

(3) For purposes of paragraph (1)(G), if two or more services or endeavors, or if an endeavor and a service, are made in behalf of the same party in the same case on the same trip, mileage shall be computed to the place of service or endeavor which is most remote from the place where service is returnable, adding thereto any additional mileage traveled in serving or endeavoring to serve in behalf of the party. If two or more writs of any kind, required to be served in behalf of the same party on the same person in the same case or proceeding, may be served at the same time, mileage on only one such writ shall be collected.

(b) The Attorney General shall from time to time prescribe by regulation the fees to be taxed and collected under subsection (a). Such fees shall, to the extent practicable, reflect the actual and reasonable cost of the service provided.

(c)(1) The United States Marshals Service shall collect a commission of 3 percent of the first \$1,000 collected and 1½ percent on the excess of any sum over \$1,000, for seizing or levying on property (including seizures in admiralty), disposing of such property by sale, setoff, or otherwise, and receiving and paying over money, except that the amount of commission shall be within the range set by the Attorney General. if¹ the property is not disposed of by marshal's sale, the commission shall be in such amount, within the range set by the Attorney General, as may be allowed by the court. In any case in which the vessel or other property is sold by a public auctioneer, or by some party other than a marshal or deputy marshal, the commission authorized under this subsection shall be reduced by the amount paid to such auctioneer or other party. This subsection applies to any judicially ordered sale or execution sale, without regard to whether the judicial order of sale constitutes a seizure or levy within the meaning of State law. This subsection shall not apply to any seizure, forfeiture, sale, or other disposition

of property pursuant to the applicable provisions of law amended by the Comprehensive Forfeiture Act of 1984 (98 Stat. 2040).

(2) The Attorney General shall prescribe from time to time regulations which establish a minimum and maximum amount for the commission collected under paragraph (1).

(d) The United States marshals may require a deposit to cover the fees and expenses prescribed under this section.

(e) Notwithstanding section 3302 of title 31, the United States Marshals Service is authorized, to the extent provided in advance in appropriations Acts—

(1) to credit to such Service's appropriation all fees, commissions, and expenses collected by such Service for—

(A) the service of civil process, including complaints, summonses, subpoenas, and similar process; and

(B) seizures, levies, and sales associated with judicial orders of execution; and

(2) to use such credited amounts for the purpose of carrying out such activities.

(June 25, 1948, ch. 646, 62 Stat. 955; Sept. 9, 1950, ch. 937, 64 Stat. 824; Pub. L. 87-621, §1, Aug. 31, 1962, 76 Stat. 417; Pub. L. 99-646, §39(a), Nov. 10, 1986, 100 Stat. 3600; Pub. L. 100-690, title VII, §7608(c), Nov. 18, 1988, 102 Stat. 4515; Pub. L. 101-647, title XII, §1212, Nov. 29, 1990, 104 Stat. 4833.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §574 (R.S. §§823, 829; May 28, 1896, ch. 252, §6, 29 Stat. 179; May 29, 1930, ch. 356, 46 Stat. 486; Aug. 3, 1935, ch. 431, §2, 49 Stat. 513).

Provisions for serving venire and summoning grand and petit jurors were omitted as useless since marshal's fees are now covered into the Treasury and there is no basis for apportioning the cost of summoning jurors for a term of court and taxing the same to individual cases.

The marshal's fee "for holding a court of inquiry or other proceedings before a jury, including summoning a jury, \$5" is omitted as obsolete in the Federal practice. See, Black's Law Dictionary "Court of Inquiry." See, also, Webster's International Dictionary.

A fee of 50 cents "for each bail bond" is omitted as covered by the general provision for taxation of marshal's fees in criminal cases.

The provisions for a fee of \$5 for drawing and executing a deed and \$1 for executing a deed prepared by a party or his attorney are omitted as unnecessary. It is the marshal's duty to execute conveyances of property which he sells on execution and his salary compensates him therefor. There is no occasion for him to draw such a deed and no beneficial purpose in taxing the parties a fee for his signature.

The 2 per centum fee for disbursing moneys is omitted as an unnecessary burden upon funds belonging to litigants.

The provision that a folio consists of "100 words or major fraction thereof" is inserted to conform with section 607 of title 28, U.S.C., 1940 ed., which is transferred to title 44, U.S.C., 1940 ed., Public Printing and Documents, along with section 606 of said title 28, to which said section 607 also relates.

The provision for a lump sum to be determined by the court and taxed in criminal cases was added. It fixes a maximum of \$25 in misdemeanor cases and \$100 in felony cases. It may be questioned whether costs as such should ever be taxed against the convicted defendant in a criminal case. The acquitted defendant is not permitted to tax costs against the United States. Indeed the allowance of costs in criminal cases is not a matter

¹ So in original. Probably should be capitalized.

of right but rests completely within the discretion of the court. *Morris v. United States*, 1911, 185 Fed. 73, 107 C.C.A. 293.

In *Alberty v. U.S.*, C.C.A.9, 1937, 91 F.2d 461, the defendant was fined \$100 on each of 11 accounts of an indictment under the 1906 Food and Drug Act (title 21, §§ 2, 10, U.S.C., 1934 ed., as amended). Costs of prosecution were taxed in the sum of \$1,499.80. Yet the court in its discretion might have reached substantially the same result by imposing a fine of \$200 on each count without any taxation of costs.

Changes were made in phraseology.

REFERENCES IN TEXT

The Comprehensive Forfeiture Act of 1984, referred to in subsec. (c)(1), is chapter III of title II of Pub. L. 98-473, Oct. 12, 1984, 98 Stat. 2040, as amended. For complete classification of this Act to the Code, see Short Title of 1984 Amendment note set out under section 1961 of Title 18, Crimes and Criminal Procedure, and Tables.

AMENDMENTS

1990—Subsec. (c)(1). Pub. L. 101-647 substituted “if the property is not disposed of by marshal’s sale” for “If the property is to be disposed of by marshal’s sale”.

1988—Pub. L. 100-690 added subsecs. (a) to (d), struck out former subsecs. (a) and (b), and redesignated former subsec. (c) as (e).

1986—Pub. L. 99-646 designated existing provisions as subsec. (a) with pars. (1) to (9) and subsec. (b) with pars. (1) and (2), substituted a period for the semicolon at end of each par., and added subsec. (c).

1962—Pub. L. 87-621 increased fees for serving an attachment in rem, or libel in admiralty, warrant, attachment, summons, capias, or any other writ from \$2 to \$3, for serving a subpoena or summons for a witness or appraiser from 50 cents to \$2, for preparation of a proclamation in admiralty from 30 cents to \$3, and for copies of writs or other papers furnished at the request of any party from 10 to 30 cents per folio of 100 words or fraction thereof, and mileage for necessary travel from 10 cents a mile to 12 cents per mile, or fraction thereof, inserted provisions authorizing a fee of \$1, in addition to the prescribed fee, for forwarding any writ, order, or process to another judicial district for service, and \$3 for preparation of any notice of sale or other public notice or bill of sale, permitting payment of travel expenses where there is an endeavor to serve any process, writ, or order, prohibiting collection of mileage fees for services or endeavors to serve in the District of Columbia, and empowering marshals to require a deposit to cover all fees and expenses, and substituted provisions authorizing a fee of \$3 for serving a writ of possession, partition, execution, order or process, and commissions of 3 per centum on the first \$1,000 collected and 1½ per centum on amounts over \$1,000 for seizing and levying on property (including seizures in admiralty), disposing of the same and receiving and paying over the money for provisions which permitted a marshal serving such a writ or process, and seizing and levying on property, advertising and disposing of the same and receiving and paying over the money, to receive the same fees and poundage as allowed for similar services to the sheriffs of the States in which the service is rendered, and 2½ per centum on any sum under \$500, and 1½ per centum on amounts over \$500 for sale of vessels or other property under process in admiralty, or under the order of a court of admiralty, and provisions permitting collection of actual expenses incurred, and \$3 per hour for each deputy marshal required, for the keeping of property attached, and directing the marshal to collect, in advance, a deposit to cover initial expenses and periodically thereafter such amounts as necessary to pay expenses until litigation is concluded, for provisions which allowed only such compensation as the court, on petition, might allow.

1950—Act Sept. 9, 1950, increased mileage fees from 6 to 10 cents a mile.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 39(b) of Pub. L. 99-646 provided that: “The amendments made by this section [amending this section] shall take effect 30 days after the date of enactment of this Act [Nov. 10, 1986].”

EFFECTIVE DATE OF 1962 AMENDMENT

Section 3 of Pub. L. 87-621 provided that: “This Act [amending this section] shall become effective ninety days after enactment [Aug. 31, 1962].”

COLLECTION AND DISPOSITION OF FEES AND EXPENSES FOR SERVICES

Pub. L. 101-162, title II, Nov. 21, 1989, 103 Stat. 997, provided in part: “That notwithstanding the provisions of title 31 U.S.C. 3302, for fiscal year 1990 and hereafter the Director of the United States Marshals Service may collect fees and expenses for the services authorized by 28 U.S.C. 1921 as amended by Public Law 100-690, and credit such fees to this appropriation to be used for salaries and other expenses incurred in providing these services”.

FEDERAL RULES OF CIVIL PROCEDURE

Admiralty and maritime rules of practice (which included libel procedures) were superseded, and civil and admiralty procedures in United States district courts were unified, effective July 1, 1966, see rule 1 and Supplemental Rules for Certain Admiralty and Maritime Claims, Appendix to this title.

Proceeds of sales under admiralty process, see rule E.

CROSS REFERENCES

Collection of fees and accounting by marshal, see section 567 of this title.

Execution of all lawful writs and process, see section 566 of this title.

Power of State sheriff, see section 564 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 12 section 3711.

§ 1922. Witness fees before United States commissioners

The fees of more than four witnesses shall not be taxed against the United States, in the examination of any criminal case before a United States commissioner, unless their materiality and importance are first approved and certified to by the United States attorney for the district in which the examination is had.

(June 25, 1948, ch. 646, 62 Stat. 956.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 828 (R.S. § 981; May 28, 1896, ch. 252, § 19, 29 Stat. 184).

Last clause of section 828 of title 28, U.S.C., 1940 ed., providing “and such taxation shall be subject to revision, as in other cases” was omitted as unnecessary in view of the inherent power of the court to revise costs taxed.

Changes were made in phraseology.

CHANGE OF NAME

Reference to United States commissioners deemed to be reference to United States magistrates pursuant to Pub. L. 90-578, title IV, § 402, Oct. 17, 1968, 82 Stat. 1118. See chapter 43 (§ 631 et seq.) of this title.

Reference to United States magistrate or to magistrate deemed to refer to United States magistrate judge pursuant to section 321 of Pub. L. 101-650, set out as a note under section 631 of this title.

CROSS REFERENCES

Compensation of United States magistrate judges, see section 634 of this title.

Liability of United States for costs, see section 2412 of this title.

§ 1923. Docket fees and costs of briefs

(a) Attorney's and proctor's docket fees in courts of the United States may be taxed as costs as follows:

\$20 on trial or final hearing (including a default judgment whether entered by the court or by the clerk) in civil, criminal, or admiralty cases, except that in cases of admiralty and maritime jurisdiction where the libellant recovers less than \$50 the proctor's docket fee shall be \$10;

\$20 in admiralty appeals involving not over \$1,000;

\$50 in admiralty appeals involving not over \$5,000;

\$100 in admiralty appeals involving more than \$5,000;

\$5 on discontinuance of a civil action;

\$5 on motion for judgment and other proceedings on recognizances;

\$2.50 for each deposition admitted in evidence.

(b) The docket fees of United States attorneys and United States trustees shall be paid to the clerk of court and by him paid into the Treasury.

(c) In admiralty appeals the court may allow as costs for printing the briefs of the successful party not more than:

\$25 where the amount involved is not over \$1,000;

\$50 where the amount involved is not over \$5,000;

\$75 where the amount involved is over \$5,000.

(June 25, 1948, ch. 646, 62 Stat. 956; June 18, 1954, ch. 304, 68 Stat. 253; Pub. L. 95-598, title II, § 245, Nov. 6, 1978, 92 Stat. 2671.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 571, 572, and 578 (R.S. §§ 823, 824; May 28, 1896, ch. 252, §§ 6, 24, 29 Stat. 179, 186; Feb. 26, 1919, ch. 49, § 1, 40 Stat. 1182; July 19, 1919, ch. 24, § 1, 41 Stat. 209; Feb. 11, 1921, ch. 46, 41 Stat. 1099; June 6, 1930, ch. 409, 46 Stat. 522; Aug. 3, 1935, ch. 431, § 1, 49 Stat. 513).

Section consolidates sections 571, 572, and 578 of title 28, U.S.C., 1940 ed.

The phrase "\$20 on trial or final hearing in civil, criminal, or admiralty cases" was substituted for the following provisions of section 572 of title 28, U.S.C., 1940 ed., "On trial before a jury, in civil or criminal causes or before referees, or on a final hearing in equity or admiralty, a docket fee of \$20", and the limitation of \$10 in "cases at law when judgment is rendered without a jury" was omitted. This simplified restatement provides for a single docket fee in each case which reaches final hearing or trial. Since the docket fee is arbitrary, any limitation or distinction between law cases tried with or without a jury is unrealistic.

Word "solicitor" was omitted as obsolete and inapplicable in civil, criminal, or admiralty practice.

Words "motion for judgment" were substituted for "scire facias" to conform to Rules 2 and 81 of the Federal Rules of Civil Procedure.

Changes were made in phraseology.

CODIFICATION

Section 408(c) of Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2687, as amended by Pub. L. 98-166, title II, § 200, Nov. 28, 1983, 97 Stat. 1081; Pub. L. 98-353, title III, § 323, July 10, 1984, 98 Stat. 358; Pub. L. 99-429, Sept. 30, 1986, 100 Stat. 985; Pub. L. 99-500, § 101(b) [title II, § 200], Oct. 18,

1986, 100 Stat. 1783-39, 1783-45, and Pub. L. 99-591, § 101(b) [title II, § 200], Oct. 30, 1986, 100 Stat. 3341-39, 3341-45; Pub. L. 99-554, title III, § 307(a), Oct. 27, 1986, 100 Stat. 3125, which provided for the deletion of any references to United States Trustees in this title at a prospective date, was repealed by Pub. L. 99-554, title III, § 307(b), Oct. 27, 1986, 100 Stat. 3125.

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-598 inserted "and United States trustees" after "United States attorneys".

1954—Subsec. (a). Act June 18, 1954, inserted in first item "including a default judgment whether entered by the court or by the clerk" after "final hearing".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-598 effective Oct. 1, 1979, see section 402(c) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

FEDERAL RULES OF CIVIL PROCEDURE

Admiralty and maritime rules of practice (which included libel procedures) were superseded, and civil and admiralty procedures in United States district courts were unified, effective July 1, 1966, see rule 1 and Supplemental Rules for Certain Admiralty and Maritime Claims, Appendix to this title.

Application of, see rule 81.

Depositions, see rules 26 to 32.

FEDERAL RULES OF CRIMINAL PROCEDURE

Depositions, see rule 15, Title 18, Appendix, Crimes and Criminal Procedure.

CROSS REFERENCES

Taxation of costs—

Admiralty cases, see section 1925 of this title.

Criminal cases, see section 1918 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1920 of this title.

§ 1924. Verification of bill of costs

Before any bill of costs is taxed, the party claiming any item of cost or disbursement shall attach thereto an affidavit, made by himself or by his duly authorized attorney or agent having knowledge of the facts, that such item is correct and has been necessarily incurred in the case and that the services for which fees have been charged were actually and necessarily performed.

(June 25, 1948, ch. 646, 62 Stat. 957.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 831 (R.S. § 984; June 10, 1921, ch. 18, § 304, 42 Stat. 24).

Section as revised conforms to existing Federal Practice. See note to subdivision (d) of Rule 54 of the Federal Rules of Civil Procedure. For discussion as to verification of bill of costs under existing practice, see—8 Hughes, Federal Practice, Jurisdiction and Procedure—Civil and Criminal, § 641.

Words "or allowed by the General Accounting Office" were omitted as unnecessary. That office will not allow items in a tax bill for costs against the United States unless such bill has been taxed by the court, and the court, under this section, cannot tax as costs items in an unverified bill.

Changes were made in phraseology.

§ 1925. Admiralty and maritime cases

Except as otherwise provided by Act of Congress, the allowance and taxation of costs in ad-

miralty and maritime cases shall be prescribed by rules promulgated by the Supreme Court.

(June 25, 1948, ch. 646, 62 Stat. 957.)

HISTORICAL AND REVISION NOTES

This section was drafted to make possible the promulgation of comprehensive and uniform rules governing costs in admiralty. Various enactments of Congress, all over 100 years old, relate to particular features of such matter, but do not set forth any comprehensive and uniform procedure. See, for example, sections 818, 826, and 827 of title 28, U.S.C., 1940 ed.

FEDERAL RULES OF CIVIL PROCEDURE

Fees and costs in admiralty proceedings, see Rules 41, 43, 54 and Rules C and E, Appendix to this title.

§ 1926. Court of Federal Claims

(a) The Judicial Conference of the United States shall prescribe from time to time the fees and costs to be charged and collected in the United States Court of Federal Claims.

(b) The court and its officers shall collect only such fees and costs as the Judicial Conference prescribes. The court may require advance payment of fees by rule.

(June 25, 1948, ch. 646, 62 Stat. 957; Pub. L. 97-164, title I, § 139(p)(1), Apr. 2, 1982, 96 Stat. 44; Pub. L. 102-572, title IX, § 902(b), Oct. 29, 1992, 106 Stat. 4516.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 304 (Mar. 3, 1911, ch. 231, § 191, 36 Stat. 1144).

For distribution of other provisions of section 304 of title 28, U.S.C., 1940 ed., see Distribution Table.

Changes were made in phraseology.

AMENDMENTS

1992—Pub. L. 102-572 substituted “Court of Federal Claims” for “Claims Court” as section catchline and “United States Court of Federal Claims” for “United States Claims Court” in subsec. (a).

1982—Pub. L. 97-164 substituted “Claims Court” for “Court of Customs and Patent Appeals” as section catchline and, in text substituted provisions directing the Judicial Conference of the United States to prescribe from time to time the fees and costs to be charged and collected in the United States Claims Court and directing the court and its officers to collect only such fees and costs as the Judicial Conference prescribes, with the court authorized to require advance payment of fees by rule for provisions which had directed that fees and costs in the Court of Customs and Patent Appeals be fixed by a table of fees adopted by such court and approved by the Supreme Court, that the fees and costs so fixed not exceed the fees and costs charged in the Supreme Court, and that the fees be accounted for and paid over to the Treasury.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-572 effective Oct. 29, 1992, see section 911 of Pub. L. 102-572, set out as a note under section 171 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-164 effective Oct. 1, 1982, see section 402 of Pub. L. 97-164, set out as a note under section 171 of this title.

COURT FEES FOR ELECTRONIC ACCESS TO INFORMATION

Judicial Conference to prescribe reasonable fees for collection by courts under this section for access to information available through automatic data processing equipment and fees to be deposited in Judiciary Auto-

mation Fund, see section 303 of Pub. L. 102-140, set out as a note under section 1913 of this title.

UNITED STATES COURT OF FEDERAL CLAIMS FEE SCHEDULE

(Effective December 1, 1998)

Following are fees to be charged for services to be performed by the clerk of the United States Court of Federal Claims. No fees are to be charged for services rendered on behalf of the United States, with the exception of those specifically prescribed in items 2, 8, and 9. No fees under this schedule shall be charged to federal agencies or programs which are funded from judiciary appropriations, including, but not limited to, agencies, organizations, and individuals providing services authorized by the Criminal Justice Act, 18 U.S.C. § 3006A, and Bankruptcy Administrator programs.

(1) For filing a civil action or proceeding, \$120.

(2) For reproducing any record or paper, 50 cents per page. This fee shall apply to paper copies made from either: (a) original documents; or (b) microfiche or microfilm reproductions of the original records. This fee shall apply to services rendered on behalf of the United States if the record or paper requested is available through electronic access.

(3) For certification of any document or paper, whether the certification is made directly on the document or by separate instrument, \$5. For exemplification of any document or paper, twice the amount of the charge for certification.

(4) For admission of attorneys to practice, \$20 each, including a certificate of admission. For a duplicate certificate of admission or certificate of good standing, \$5.

(5) For receipt of a monthly listing of court orders and opinions, \$10 per year.

(6) The court may charge and collect fees, commensurate with the cost of printing, for copies of the local rules of court. The court may also distribute copies of the local rules without charge.

(7) For a check paid into the court which is returned for lack of funds, \$25.

(8) For usage of electronic access to court data, 60 cents per minute of usage [provided the court may, for good cause, exempt persons or classes of persons from the fees, in order to avoid unreasonable burdens and to promote public access to such information]. All such fees collected shall be deposited to the Judiciary Automation Fund. This fee shall apply to the United States. (The Judicial Conference has approved an advisory note clarifying the judiciary's policy with respect to exemptions from this fee.)

(9) For every search of the records of the Court of Federal Claims conducted by the clerk of the court or a deputy clerk, \$15 per name or item searched. This fee shall apply to services rendered on behalf of the United States if the information requested is available through electronic access.

§ 1927. Counsel's liability for excessive costs

Any attorney or other person admitted to conduct cases in any court of the United States or any Territory thereof who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct.

(June 25, 1948, ch. 646, 62 Stat. 957; Pub. L. 96-349, § 3, Sept. 12, 1980, 94 Stat. 1156.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 829 (R.S. § 982).

Word “personally” was inserted upon authority of *Motion Picture Patents Co. v. Steiner et al.*, 1912, 201 F. 63, 119 C.C.A. 401. Reference to “proctor” was omitted as covered by the revised section.

See definition of “court of the United States” in section 451 of this title.

Changes were made in phraseology.

AMENDMENTS

1980—Pub. L. 96-349 substituted judicial authorization to require attorneys to satisfy excess costs, expenses, and attorneys’ fees reasonably incurred because of multiplication of proceedings for such prior authority to impose liability for increased costs based on multiplication of proceedings.

FEDERAL RULES OF CIVIL PROCEDURE

Costs, see rules 11 and 54, Appendix to this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2503 of this title; title 19 section 1516a.

§ 1928. Patent infringement action; disclaimer not filed

Whenever a judgment is rendered for the plaintiff in any patent infringement action involving a part of a patent and it appears that the patentee, in his specifications, claimed to be, but was not, the original and first inventor or discoverer of any material or substantial part of the thing patented, no costs shall be included in such judgment, unless the proper disclaimer has been filed in the Patent Office prior to the commencement of the action.

(June 25, 1948, ch. 646, 62 Stat. 957.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §821 (R.S. §973).

Word “action” was substituted for “any suit at law or in equity” to conform with Rule 2 of the Federal Rules of Civil Procedure.

Words “or decree” were omitted after “judgment,” because a judgment under Rule 54(a) of the Federal Rules of Civil Procedure by definition includes a decree.

Changes were made in phraseology.

CHANGE OF NAME

Patent Office redesignated Patent and Trademark Office, by section 3 of Pub. L. 93-596, Jan. 2, 1975, 88 Stat. 1949, set out as a note under section 1 of Title 35, Patents.

FEDERAL RULES OF CIVIL PROCEDURE

Costs, see rule 54, Appendix to this title.

CROSS REFERENCES

Costs where disclaimer not filed in patent infringement action, see section 288 of Title 35, Patents.

§ 1929. Extraordinary expenses not expressly authorized

Where the ministerial officers of the United States incur extraordinary expense in executing Acts of Congress, the payment of which is not specifically provided for, the Attorney General may allow the payment thereof.

(June 25, 1948, ch. 646, 62 Stat. 957.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §577 (R.S. §846; Feb. 18, 1875, ch. 80, §1, Stat. 318; May 28, 1896, ch. 252, §13, 29 Stat. 183; May 27, 1908, ch. 200, §1, 35 Stat. 375; Mar. 3, 1911, ch. 231, §291, 36 Stat. 1167; Feb. 26, 1919, ch. 49, §7, 40 Stat. 1182; Oct. 13, 1941, ch. 431, §1, 55 Stat. 736).

Provision for payment of expenses under section 577 of title 28, U.S.C., 1940 ed., from appropriations for ex-

penses of the judiciary was omitted as unnecessary. Such expenses are carried in the Judiciary Appropriation Acts and will continue without this provision.

The first sentence of said section 577 is incorporated in section 551 of this title.

The qualifying phrase “under the special taxation of the district court in which the said services have been or shall be rendered, to be paid from the appropriation for defraying the expenses of the Judiciary,” was omitted, and the functions of allowing extraordinary expenses was vested in the Attorney General instead of the President. Neither the President nor the district judge should be burdened with such duty since the Attorney General only has the information upon which to act.

Changes were made in phraseology.

§ 1930. Bankruptcy fees

(a) Notwithstanding section 1915 of this title, the parties commencing a case under title 11 shall pay to the clerk of the district court or the clerk of the bankruptcy court, if one has been certified pursuant to section 156(b) of this title, the following filing fees:

(1) For a case commenced under chapter 7 or 13 of title 11, \$130.

(2) For a case commenced under chapter 9 of title 11, \$300.

(3) For a case commenced under chapter 11 of title 11 that does not concern a railroad, as defined in section 101 of title 11, \$800.

(4) For a case commenced under chapter 11 of title 11 concerning a railroad, as so defined, \$1,000.

(5) For a case commenced under chapter 12 of title 11, \$200.

(6) In addition to the filing fee paid to the clerk, a quarterly fee shall be paid to the United States trustee, for deposit in the Treasury, in each case under chapter 11 of title 11 for each quarter (including any fraction thereof) until the case is converted or dismissed, whichever occurs first. The fee shall be \$250 for each quarter in which disbursements total less than \$15,000; \$500 for each quarter in which disbursements total \$15,000 or more but less than \$75,000; \$750 for each quarter in which disbursements total \$75,000 or more but less than \$150,000; \$1,250 for each quarter in which disbursements total \$150,000 or more but less than \$225,000; \$1,500 for each quarter in which disbursements total \$225,000 or more but less than \$300,000; \$3,750 for each quarter in which disbursements total \$300,000 or more but less than \$1,000,000; \$5,000 for each quarter in which disbursements total \$1,000,000 or more but less than \$2,000,000; \$7,500 for each quarter in which disbursements total \$2,000,000 or more but less than \$3,000,000; \$8,000 for each quarter in which disbursements total \$3,000,000 or more but less than \$5,000,000; \$10,000 for each quarter in which disbursements total \$5,000,000 or more. The fee shall be payable on the last day of the calendar month following the calendar quarter for which the fee is owed.

An individual commencing a voluntary case or a joint case under title 11 may pay such fee in installments. For converting, on request of the debtor, a case under chapter 7, or 13 of title 11, to a case under chapter 11 of title 11, the debtor shall pay to the clerk of the district court or the clerk of the bankruptcy court, if one has been

certified pursuant to section 156(b) of this title, a fee of \$400.

(b) The Judicial Conference of the United States may prescribe additional fees in cases under title 11 of the same kind as the Judicial Conference prescribes under section 1914(b) of this title.

(c) Upon the filing of any separate or joint notice of appeal or application for appeal or upon the receipt of any order allowing, or notice of the allowance of, an appeal or a writ of certiorari \$5 shall be paid to the clerk of the court, by the appellant or petitioner.

(d) Whenever any case or proceeding is dismissed in any bankruptcy court for want of jurisdiction, such court may order the payment of just costs.

(e) The clerk of the court may collect only the fees prescribed under this section.

(Added Pub. L. 95-598, title II, §246(a), Nov. 6, 1978, 92 Stat. 2671; amended Pub. L. 98-353, title I, §111(a), (b), July 10, 1984, 98 Stat. 342; Pub. L. 99-500, §101(b) [title IV, §407(b)], Oct. 18, 1986, 100 Stat. 1783-39, 1783-64, and Pub. L. 99-591, §101(b) [title IV, §407(b)], Oct. 30, 1986, 100 Stat. 3341-39, 3341-64; Pub. L. 99-554, title I, §§117, 144(f), Oct. 27, 1986, 100 Stat. 3095, 3097; Pub. L. 101-162, title IV, §406(a), Nov. 21, 1989, 103 Stat. 1016; Pub. L. 102-140, title I, §111(a), Oct. 28, 1991, 105 Stat. 795; Pub. L. 103-121, title I, §111(a)(1), (b)(1), Oct. 27, 1993, 107 Stat. 1164; Pub. L. 104-91, title I, §101(a), Jan. 6, 1996, 110 Stat. 11, amended Pub. L. 104-99, title II, §211, Jan. 26, 1996, 110 Stat. 37; Pub. L. 104-208, div. A, title I, §101(a) [title I, §109(a)], Sept. 30, 1996, 110 Stat. 3009, 3009-18.)

CODIFICATION

Amendment by Pub. L. 104-91 is based on section 111(a) of H.R. 2076, One Hundred Fourth Congress, as passed by House of Representatives on Dec. 6, 1995, which was enacted into law by Pub. L. 104-91.

Pub. L. 99-591 is a corrected version of Pub. L. 99-500.

AMENDMENTS

1996—Subsec. (a)(3). Pub. L. 104-208 inserted a dollar sign before “800”.

Subsec. (a)(6). Pub. L. 104-208 substituted “\$500 for each quarter in which disbursements total \$15,000 or more but less than \$75,000; \$750 for each quarter in which disbursements total \$75,000 or more but less than \$150,000; \$1,250 for each quarter in which disbursements total \$150,000 or more but less than \$225,000; \$1,500 for each quarter in which disbursements total \$225,000 or more but less than \$300,000; \$3,750 for each quarter in which disbursements total \$300,000 or more but less than \$1,000,000; \$5,000 for each quarter in which disbursements total \$1,000,000 or more but less than \$2,000,000; \$7,500 for each quarter in which disbursements total \$2,000,000 or more but less than \$3,000,000; \$8,000 for each quarter in which disbursements total \$3,000,000 or more but less than \$5,000,000; \$10,000 for each quarter in which disbursements total \$5,000,000 or more. The fee shall be payable on the last day of the calendar month following the calendar quarter for which the fee is owed.” for “\$500 for each quarter in which disbursements total \$15,000 or more but less than \$150,000; \$1,250 or each quarter in which disbursements total \$150,000 or more but less than \$300,000; \$3,750 for each quarter in which disbursements total \$300,000 or more but less than \$3,000,000; \$5,000 for each quarter in which disbursements total \$3,000,000 or more. The fee shall be payable on the last day of the calendar month following the calendar quarter for which the fee is owed.”

Pub. L. 104-91, as amended by Pub. L. 104-99, struck out “a plan is confirmed or” before “the case is converted”.

1993—Subsec. (a)(1). Pub. L. 103-121, §111(a)(1), substituted “\$130” for “\$120”.

Subsec. (a)(3). Pub. L. 103-81, §111(b)(1), substituted “800” for “\$600”.

1991—Subsec. (a)(3). Pub. L. 102-140, §111(a)(1), substituted “\$600” for “\$500”.

Subsec. (a)(6). Pub. L. 102-140, §111(a)(2), substituted “\$250” for “\$150”, “\$500” for “\$300”, “\$1,250” for “\$750”, “\$3,750” for “\$2,250”, and “\$5,000” for “\$3,000”.

1989—Subsec. (a)(1). Pub. L. 101-162 substituted “\$120” for “\$90”.

1986—Subsec. (a). Pub. L. 99-554, §§117(5), 144(f), in introductory and closing provisions, substituted “of the district court or the clerk of the bankruptcy court, if one has been certified pursuant to section 156(b) of this title” for “of the court”, and in closing provisions, inserted provision that for conversion, on request of the debtor, of a case under chapter 7 or 13 of title 11, to a case under chapter 11 of title 11, the debtor pay to the clerk of the court a fee of \$400.

Subsec. (a)(1). Pub. L. 99-500 and Pub. L. 99-591, Pub. L. 99-554, §117(1), amended par. (1) identically substituting “\$90” for “\$60”.

Subsec. (a)(3). Pub. L. 99-554, §117(2), substituted “\$500” for “\$200”.

Subsec. (a)(4). Pub. L. 99-554, §117(3), substituted “\$1,000” for “\$500”.

Subsec. (a)(5), (6). Pub. L. 99-554, §117(4), added pars. (5) and (6).

1984—Pub. L. 98-353, §111(b), substituted “fees” for “courts” in section catchline.

Subsecs. (a), (c), (e). Pub. L. 98-353, §111(a), substituted “clerk of the court” for “clerk of the bankruptcy court”.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 111(a) of Pub. L. 103-121 provided in part that the amendment made by that section is effective 30 days after Oct. 27, 1993.

Section 111(b) of Pub. L. 103-121 provided in part that the amendment made by that section is effective 30 days after Oct. 27, 1993.

EFFECTIVE DATE OF 1991 AMENDMENT

Section 111 of Pub. L. 102-140 provided that the amendment made by that section is effective 60 days after Oct. 28, 1991.

EFFECTIVE DATE OF 1989 AMENDMENT; MISCELLANEOUS FEES

Section 406(a) of Pub. L. 101-162 provided that: “Section 1930(a)(1) of title 28, United States Code, is amended by striking out ‘\$90’ and inserting in lieu thereof ‘\$120’. Pursuant to section 1930(b) of title 28, the Judicial Conference of the United States shall prescribe a fee of \$60 on motions seeking relief from the automatic stay under 11 U.S.C. section 362(b) and motions to compel abandonment of property of the estate. The fees established pursuant to the preceding two sentences shall take effect 30 days after the enactment of this Act [Nov. 21, 1989].”

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-554 effective 30 days after Oct. 27, 1986, with effective date and applicability of enactment of subsec. (a)(6) of this section by section 117(4) of Pub. L. 99-554 dependent upon the judicial district involved, see section 302(a), (d), (e) of Pub. L. 99-554, set out as a note under section 581 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective July 10, 1984, see section 122(a) of Pub. L. 98-353, set out as an Effective Date note under section 151 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1979, see section 402(c) of Pub. L. 95-598, set out as a note preceding section 101 of Title 11, Bankruptcy.

ACCRUAL AND PAYMENT OF QUARTERLY FEES IN CHAPTER 11 CASES AFTER JAN. 27, 1996; CONFIRMATION STATUS OF PLANS

Section 101(a) of Pub. L. 104-91, as amended by Pub. L. 104-208, div. A, title I, §101(a) [title I, §109(d)], Sept. 30, 1996, 110 Stat. 3009, 3009-19, provided in part: "That, notwithstanding any other provision of law, the fees under 28 U.S.C. 1930(a)(6) shall accrue and be payable from and after January 27, 1996, in all cases (including, without limitation, any cases pending as of that date), regardless of confirmation status of their plans".

REPORT ON BANKRUPTCY FEES

Section 111(d) of Pub. L. 103-121 provided that:

"(1) REPORT REQUIRED.—Not later than March 31, 1998, the Judicial Conference of the United States shall submit to the Committees on the Judiciary of the House of Representatives and the Senate, a report relating to the bankruptcy fee system and the impact of such system on various participants in bankruptcy cases.

"(2) CONTENTS OF REPORT.—Such report shall include—

"(A)(i) an estimate of the costs and benefits that would result from waiving bankruptcy fees payable by debtors who are individuals, and

"(ii) recommendations regarding various revenue sources to offset the net cost of waiving such fees; and

"(B)(i) an evaluation of the effects that would result in cases under chapters 11 and 13 of title 11, United States Code, from using a graduated bankruptcy fee system based on assets, liabilities, or both of the debtor, and

"(ii) recommendations regarding various methods to implement such a graduated bankruptcy fee system.

"(3) WAIVER OF FEES IN SELECTED DISTRICTS.—For purposes of carrying out paragraphs (1) and (2), the Judicial Conference of the United States shall carry out in not more than six judicial districts, throughout the 3-year period beginning on October 1, 1994, a program under which fees payable under section 1930 of title 28, United States Code, may be waived in cases under chapter 7 of title 11, United States Code, for debtors who are individuals unable to pay such fees in installments.

"(4) STUDY OF GRADUATED FEE SYSTEM.—For purposes of carrying out paragraphs (1) and (2), the Judicial Conference of the United States shall carry out, in not fewer than six judicial districts, a study to estimate the results that would occur in cases under chapters 11 and 13 of title 11, United States Code, if filing fees payable under section 1930 of title 28, United States Code, were paid on a graduated scale based on assets, liabilities, or both of the debtor."

COURT FEES FOR ELECTRONIC ACCESS TO INFORMATION

Judicial Conference to prescribe reasonable fees for collection by courts under this section for access to information available through automatic data processing equipment and fees to be deposited in Judiciary Automation Fund, see section 303 of Pub. L. 102-140, set out as a note under section 1913 of this title.

ISSUANCE OF NOTICES TO CREDITORS AND OTHER INTERESTED PARTIES

Section 403 of Pub. L. 101-162 provided that: "Notwithstanding any other provision of law, for fiscal year 1990 and hereafter, (a) The Administrative Office of the United States Courts, or any other agency or instrumentality of the United States, is prohibited from restricting solely to staff of the Clerks of the United States Bankruptcy Courts the issuance of notices to creditors and other interested parties. (b) The Adminis-

trative Office shall permit and encourage the preparation and mailing of such notices to be performed by or at the expense of the debtors, trustees or such other interested parties as the Court may direct and approve. (c) The Director of the Administrative Office of the United States Courts shall make appropriate provisions for the use of and accounting for any postage required pursuant to such directives."

COLLECTION AND DISPOSITION OF FEES IN BANKRUPTCY CASES

Section 404(a) of Pub. L. 101-162 provided that: "For fiscal year 1990 and hereafter, such fees as shall be collected for the preparation and mailing of notices in bankruptcy cases as prescribed by the Judicial Conference of the United States pursuant to 28 U.S.C. 1930(b) shall be deposited to the 'Courts of Appeals, District Courts, and Other Judicial Services, Salaries and Expenses' appropriation to be used for salaries and other expenses incurred in providing these services."

BANKRUPTCY COURT MISCELLANEOUS FEE SCHEDULE

(Effective January 1, 1998)

Following are fees to be charged for services to be performed by clerks of the bankruptcy courts. No fees are to be charged for services rendered on behalf of the United States, with the exception of those specifically prescribed in items 1, 5, and 23, or to bankruptcy administrators appointed under Public Law No. 99-554, §302(d)(3)(I). No fees under this schedule shall be charged to federal agencies or programs which are funded from judiciary appropriations, including, but not limited to, agencies, organizations, and individuals providing services authorized by the Criminal Justice Act, 18 U.S.C. §3006A.

(1) For reproducing any record or paper, 50 cents per page. This fee shall apply to paper copies made from either: (1) original documents; or (2) microfiche or microfilm reproductions of the original records. This fee shall apply to services rendered on behalf of the United States if the record or paper requested is available through electronic access.

(2) For certification of any document or paper, whether the certification is made directly on the document or by separate instrument, \$5. For exemplification of any document or paper, twice the amount of the charge for certification.

(3) For reproduction of magnetic tape recordings, either cassette or reel-to-reel, \$15 including the cost of materials.

(4) For amendments to a debtor's schedules of creditors or lists of creditors, \$20 for each amendment, provided the bankruptcy judge may, for good cause, waive the charge in any case.

(5) For every search of the records of the bankruptcy court conducted by the clerk of the bankruptcy court or a deputy clerk, \$15 per name or item searched. This fee shall apply to services rendered on behalf of the United States if the information requested is available through electronic access.

(6) For filing a complaint, a fee shall be collected in the same amount as the filing fee prescribed in 28 U.S.C. §1914(a) for instituting any civil action other than a writ of habeas corpus. If the United States, other than a United States trustee acting as a trustee in a case under title 11, or a debtor is the plaintiff, no fee is required. If a trustee or debtor in possession is the plaintiff, the fee should be payable only from the estate and to the extent there is any estate realized. If a child support creditor or its representative is the plaintiff, and if such plaintiff files the form required by §304(g) of the Bankruptcy Reform Act of 1994, no fee is required.

(7) For filing or indexing any paper not in a case or proceeding for which a filing fee has been paid, including registering a judgment from another district, \$20.

(8) In all cases filed under Title 11, the clerk shall collect from the debtor or the petitioner a miscellaneous administrative fee of \$30. This fee may be paid in in-

stallments in the same manner that the filing fee may be paid in installments, consistent with the procedure set forth in Federal Rule of Bankruptcy Procedure 1006.

(8.1) Upon the filing of a petition under chapter 7 of the Bankruptcy Code, the petitioner shall pay \$15 to the clerk of the court for payment to trustees serving in cases as provided in 11 U.S.C. § 330(b)(2). An application to pay the fee in installments may be filed in the manner set forth in Federal Rule of Bankruptcy Procedure 1006(b).

(8.2) Upon the filing of a motion to convert a case to chapter 7 of the Bankruptcy Code, the movant shall pay \$15 to the clerk of [the] court for payment to trustees serving in cases as provided in 11 U.S.C. § 330(b)(2). Upon the filing of a notice of conversion pursuant to section 1208(a) or section 1307(a) of the Code, \$15 shall be paid to the clerk of the court for payment to trustees serving in cases as provided in 11 U.S.C. § 330(b)(2). If the trustee serving in the case before the conversion is the movant, the fee shall be payable only from the estate that exists prior to conversion.

(9) For filing a motion to reopen a Bankruptcy Code case, a fee shall be collected in the same amount as the filing fee prescribed by 28 U.S.C. § 1930(a) for commencing a new case on the date of reopening, unless the reopening is to correct an administrative error or for actions related to the debtor's discharge. The court may waive this fee under appropriate circumstances or may defer payment of the fee from trustees pending discovery of additional assets.

(10) Repealed.

(11) Repealed.

(12) For each microfiche sheet of film or microfilm jacket copy of any court record, where available, \$3.

(13) For retrieval of a record from a Federal Records Center, National Archives, or other storage location removed from the place of business of the court, \$25.

(14) For a check paid into the court which is returned for lack of funds, \$25.

(15) Repealed.

(16) For docketing a proceeding on appeal or review from a final judgment of a bankruptcy judge pursuant to 28 U.S.C. § 158(a) and (b), the fee shall be the same amount as the fee for docketing a case on appeal or review to the appellate court as required by Item 1 of the Courts of Appeals Miscellaneous Fee Schedule. A separate fee shall be paid by each party filing a notice of appeal in the bankruptcy court, but parties filing a joint notice of appeal in the bankruptcy court are required to pay only one fee.

(17) For filing a petition ancillary to a foreign proceeding under 11 U.S.C. § 304, \$500.

(18) The court may charge and collect fees, commensurate with the cost of printing, for copies of the local rules of court. The court may also distribute copies of the local rules without charge.

(19) The clerk shall assess a charge for the handling of registry funds deposited with the court, to be assessed from interest earnings and in accordance with the detailed fee schedule issued by the Director of the Administrative Office of the United States Courts.

(20) When a joint case filed under § 302 of title 11 is divided into two separate cases at the request of the debtor(s), a fee shall be charged equal to one-half the current filing fee for the chapter under which the joint case was commenced.

(21) For filing a motion to terminate, annul, modify, or condition the automatic stay provided under § 362(a) of title 11, a motion to compel abandonment of property of the estate pursuant to Rule 6007(b) of the Federal Rules of Bankruptcy Procedure, or a motion to withdraw the reference of a case or proceeding under 28 U.S.C. § 157(d), a fee shall be collected in the amount of one-half the filing fee prescribed in 28 U.S.C. § 1914(a) for instituting any civil action other than a writ of habeas corpus. If a child support creditor or its representative is the movant, and if such movant files the form required by § 304(g) of the Bankruptcy Reform Act of 1994, no fee is required.

(22) For docketing a cross appeal from a bankruptcy court determination, the fee shall be the same amount

as the fee for docketing a case on appeal or review to the appellate court as required by Item 1 of the Courts of Appeals Miscellaneous Fee Schedule.

(23) For usage of electronic access to court data, 60 cents per minute of usage [provided the court may, for good cause, exempt persons or classes of persons from the fees, in order to avoid unreasonable burdens and to promote public access to such information]. All such fees collected shall be deposited to the Judiciary Information Technology Fund. This fee shall apply to the United States. (The Judicial Conference has approved an advisory note clarifying the judiciary's policy with respect to exemptions from this fee.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 589a of this title; title 11 sections 104, 1129.

§ 1931. Disposition of filing fees

(a) Of the amounts paid to the clerk of court as a fee under section 1914(a) or as part of a judgment for costs under section 2412(a)(2) of this title, \$90 shall be deposited into a special fund of the Treasury to be available to offset funds appropriated for the operation and maintenance of the courts of the United States.

(b) If the court authorizes a fee under section 1914(a) or an amount included in a judgment for costs under section 2412(a)(2) of this title of less than \$150, the entire fee or amount, up to \$90, shall be deposited into the special fund provided in this section.

(Added Pub. L. 99-500, § 101(b) [title IV, § 407(c)], Oct. 18, 1986, 100 Stat. 1783-39, 1783-64, and Pub. L. 99-591, § 101(b) [title IV, § 407(c)], Oct. 30, 1986, 100 Stat. 3341-39, 3341-64; amended Pub. L. 101-162, title IV, § 406(d), Nov. 21, 1989, 103 Stat. 1016; Pub. L. 102-572, title III, § 301(b), Oct. 29, 1992, 106 Stat. 4511; Pub. L. 104-317, title IV, § 401(b), Oct. 19, 1996, 110 Stat. 3853.)

CODIFICATION

Pub. L. 99-591 is a corrected version of Pub. L. 99-500.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104-317, § 401(b)(1), substituted “\$90” for “\$60”.

Subsec. (b). Pub. L. 104-317, § 401(b)(2), substituted “\$150” for “\$120” and “\$90” for “\$60”.

1992—Pub. L. 102-572 substituted present provisions for former provisions which read as follows:

“The following portion of moneys paid to the clerk of court as filing fees under this chapter shall be deposited into a special fund of the Treasury to be available to offset funds appropriated for the operation and maintenance of the courts of the United States:

“Under section 1914(a), \$60.”

1989—Pub. L. 101-162, which directed that “as provided in annual appropriation acts” be struck out before colon, was executed by striking out “as provided in annual appropriation Acts” before colon as probable intent of Congress.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-317 effective 60 days after Oct. 19, 1996, see section 401(c) of Pub. L. 104-317, set out as a note under section 1914 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-572 effective Jan. 1, 1993, see section 1101(a) of Pub. L. 102-572, set out as a note under section 905 of Title 2, The Congress.

DISPOSITION OF FEES

Section 404 of Pub. L. 104-317 provided that:

“(a) DISPOSITION OF ATTORNEY ADMISSION FEES.—For each fee collected for admission of an attorney to practice, as prescribed by the Judicial Conference of the United States pursuant to section 1914 of title 28, United States Code, \$30 of that portion of the fee exceeding \$20 shall be deposited into the special fund of the Treasury established under section 1931 of title 28, United States Code. Any portion exceeding \$5 of the fee for a duplicate certificate of admission or certificate of good standing, as prescribed by the Judicial Conference of the United States pursuant to section 1914 of title 28, United States Code, shall be deposited into the special fund of the Treasury established under section 1931 of title 28, United States Code.

“(b) DISPOSITION OF BANKRUPTCY COMPLAINT FILING FEES.—For each fee collected for filing an adversary complaint in a bankruptcy proceeding, as established in Item 6 of the Bankruptcy Court Miscellaneous Fee Schedule prescribed by the Judicial Conference of the United States pursuant to section 1930(b) of title 28, United States Code, the portion of the fee exceeding \$120 shall be deposited into the special fund of the Treasury established under section 1931 of title 28, United States Code.

“(c) EFFECTIVE DATE.—This section shall take effect 60 days after the date of the enactment of this Act [Oct. 19, 1996].”

COLLECTION AND DEPOSIT OF MISCELLANEOUS BANKRUPTCY FEES

Section 406(b) of Pub. L. 101-162, as amended by Pub. L. 103-121, title I, §111(a)(3), (b)(4), Oct. 27, 1993, 107 Stat. 1164, provided that: “All fees as shall be hereafter collected for any service enumerated after item 18 of the bankruptcy miscellaneous fee schedule prescribed by the Judicial Conference of the United States pursuant to 28 U.S.C. section 1930(b) and 30.76 per centum of the fees hereafter collected under 28 U.S.C. section 1930(a)(1) and 25 percent of the fees hereafter collected under 28 U.S.C. section 1930(a)(3) shall be deposited as offsetting receipts to the fund established under 28 U.S.C. section 1931 and shall remain available to the Judiciary until expended to reimburse any appropriation for the amount paid out of such appropriation for expenses of the Courts of Appeals, District Courts, and other Judicial Services and the Administrative Office of the United States Courts. The Judicial Conference shall report to the Committees on Appropriations of the House of Representatives and the Senate on a quarterly basis beginning on the first day of each fiscal year regarding the sums deposited in said fund.”

[Section 111(a), (b) of Pub. L. 103-121 provided in part that the amendments to section 406(b) of Pub. L. 101-162, set out above, are effective 30 days after Oct. 27, 1993.]

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 604, 1827 of this title.

§ 1932.¹ Judicial Panel on Multidistrict Litigation

The Judicial Conference of the United States shall prescribe from time to time the fees and costs to be charged and collected by the Judicial Panel on Multidistrict Litigation.

(Added Pub. L. 104-317, title IV, §403(a)(1), Oct. 19, 1996, 110 Stat. 3854.)

§ 1932.¹ Revocation of earned release credit

In any civil action brought by an adult convicted of a crime and confined in a Federal correctional facility, the court may order the revocation of such earned good time credit under

section 3624(b) of title 18, United States Code, that has not yet vested, if, on its own motion or the motion of any party, the court finds that—

(1) the claim was filed for a malicious purpose;

(2) the claim was filed solely to harass the party against which it was filed; or

(3) the claimant testifies falsely or otherwise knowingly presents false evidence or information to the court.

(Added Pub. L. 104-134, title I, §101[(a)] [title VIII, §809(a)], Apr. 26, 1996, 110 Stat. 1321, 1321-76; renumbered title I, Pub. L. 104-140, §1(a), May 2, 1996, 110 Stat. 1327.)

CHAPTER 125—PENDING ACTIONS AND JUDGMENTS

Sec.	Interest.
1961.	Lien.
1962.	Registration of judgments for enforcement in other districts.
1963.	Registration of judgments for enforcement in other districts.
[1963A.]	Repealed.]
1964.	Constructive notice of pending actions.

AMENDMENTS

1996—Pub. L. 104-317, title II, §203(b), Oct. 19, 1996, 110 Stat. 3850, substituted “for enforcement in other districts” for “of the district courts and the Court of International Trade” in item 1963.

1988—Pub. L. 100-702, title X, §1002(b)(3), Nov. 19, 1988, 102 Stat. 4664, substituted “Registration of judgments of the district courts and the Court of International Trade” for “Registration in other districts” in item 1963 and repealed item 1963A “Registration of judgments of the Court of International Trade”.

1980—Pub. L. 96-417, title V, §511(b), Oct. 10, 1980, 94 Stat. 1743, added item 1963A.

1958—Pub. L. 85-689, §1(b), (c), Aug. 20, 1958, 72 Stat. 683, substituted “CHAPTER 125—PENDING ACTIONS AND JUDGMENTS” for “CHAPTER 125—JUDGMENTS” in chapter heading and added item 1964.

FEDERAL RULES OF CIVIL PROCEDURE

Judgments, see rules 54 to 58, Appendix to this title.

CROSS REFERENCES

Declaratory judgments, see sections 2201 and 2202 of this title.

§ 1961. Interest

(a) Interest shall be allowed on any money judgment in a civil case recovered in a district court. Execution therefor may be levied by the marshal, in any case where, by the law of the State in which such court is held, execution may be levied for interest on judgments recovered in the courts of the State. Such interest shall be calculated from the date of the entry of the judgment, at a rate equal to the coupon issue yield equivalent (as determined by the Secretary of the Treasury) of the average accepted auction price for the last auction of fifty-two week United States Treasury bills settled immediately prior to the date of the judgment. The Director of the Administrative Office of the United States Courts shall distribute notice of that rate and any changes in it to all Federal judges.

(b) Interest shall be computed daily to the date of payment except as provided in section 2516(b) of this title and section 1304(b) of title 31, and shall be compounded annually.

¹ Another section 1932 is set out after this section.

¹ Another section 1932 is set out preceding this section.

(c)(1) This section shall not apply in any judgment of any court with respect to any internal revenue tax case. Interest shall be allowed in such cases at the underpayment rate or overpayment rate (whichever is appropriate) established under section 6621 of the Internal Revenue Code of 1986.

(2) Except as otherwise provided in paragraph (1) of this subsection, interest shall be allowed on all final judgments against the United States in the United States Court of Appeals for the Federal circuit,¹ at the rate provided in subsection (a) and as provided in subsection (b).

(3) Interest shall be allowed, computed, and paid on judgments of the United States Court of Federal Claims only as provided in paragraph (1) of this subsection or in any other provision of law.

(4) This section shall not be construed to affect the interest on any judgment of any court not specified in this section.

(June 25, 1948, ch. 646, 62 Stat. 957; Pub. L. 97-164, title III, §302(a), Apr. 2, 1982, 96 Stat. 55; Pub. L. 97-258, §2(m)(1), Sept. 13, 1982, 96 Stat. 1062; Pub. L. 97-452, §2(d)(1), Jan. 12, 1983, 96 Stat. 2478; Pub. L. 99-514, §2, title XV, §1511(c)(17), Oct. 22, 1986, 100 Stat. 2095, 2745; Pub. L. 102-572, title IX, §902(b)(1), Oct. 29, 1992, 106 Stat. 4516.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §811 (R.S. §966; Mar. 3, 1911, ch. 231, §291, 36 Stat. 1167).
Changes were made in phraseology.

REFERENCES IN TEXT

Section 6621 of the Internal Revenue Code of 1986, referred to in subsec. (c)(1), is classified to section 6621 of Title 26, Internal Revenue Code.

AMENDMENTS

1992—Subsec. (c)(3). Pub. L. 102-572 substituted “United States Court of Federal Claims” for “United States Claims Court”.

1986—Subsec. (c)(1). Pub. L. 99-514, §1511(c)(17), substituted “the underpayment rate or overpayment rate (whichever is appropriate) established” for “a rate established”.

Pub. L. 99-514, §2, substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954”.

1983—Subsec. (b). Pub. L. 97-452 substituted “section 1304(b) of title 31” for “section 1302 of the Act of July 27, 1956 (31 U.S.C. 724a)”.

1982—Subsec. (a). Pub. L. 97-164, §302(a)(1), (2), designated existing provisions as subsec. (a), substituted “at a rate equal to the coupon issue yield equivalent (as determined by the Secretary of the Treasury) of the average accepted auction price for the last auction of fifty-two week United States Treasury bills settled immediately prior to the date of the judgment” for “at the rate allowed by State law”, and inserted provision that the Director of the Administrative Office of the United States Courts distribute notice of the rate and any changes in it to all Federal judges.

Subsec. (b). Pub. L. 97-258 substituted “this title and section 1304(b)(1) of title 31” for “title 28, United States Code, and section 1302 of the Act of July 27, 1956 (31 U.S.C. 724a)”.

Subsecs. (b), (c). Pub. L. 97-164, §302(a)(3), added subsecs. (b) and (c).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-572 effective Oct. 29, 1992, see section 911 of Pub. L. 102-572, set out as a note under section 171 of this title.

¹ So in original. Probably should be capitalized.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1511(c)(17) of Pub. L. 99-514 applicable for purposes of determining interest for periods after Dec. 31, 1986, see section 1511(d) of Pub. L. 99-514, set out as a note under section 6621 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1982 AMENDMENTS

Section 2(m) of Pub. L. 97-258 provided that the amendment made by that section is effective Oct. 1, 1982.

Amendment by Pub. L. 97-164 effective Oct. 1, 1982, see section 402 of Pub. L. 97-164, set out as a note under section 171 of this title.

FEDERAL RULES OF CIVIL PROCEDURE

Execution, see rule 69, Appendix to this title.

CROSS REFERENCES

Interest on—

Affirmed judgments of Court of Federal Claims, see section 2516 of this title.

Judgments against United States, see section 2411 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2412 of this title; title 15 section 4303; title 21 section 844a; title 22 section 6082; title 26 section 6622.

§ 1962. Lien

Every judgment rendered by a district court within a State shall be a lien on the property located in such State in the same manner, to the same extent and under the same conditions as a judgment of a court of general jurisdiction in such State, and shall cease to be a lien in the same manner and time. This section does not apply to judgments entered in favor of the United States. Whenever the law of any State requires a judgment of a State court to be registered, recorded, docketed or indexed, or any other act to be done, in a particular manner, or in a certain office or county or parish before such lien attaches, such requirements shall apply only if the law of such State authorizes the judgment of a court of the United States to be registered, recorded, docketed, indexed or otherwise conformed to rules and requirements relating to judgments of the courts of the State.

(June 25, 1948, ch. 646, 62 Stat. 958; Pub. L. 101-647, title XXXVI, §3627, Nov. 29, 1990, 104 Stat. 4965.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§812 and 814 (R.S. §967; Aug. 1, 1888, ch. 729, §1, 25 Stat. 357; Mar. 3, 1911, ch. 231, §291, 36 Stat. 1167; Aug. 17, 1912, ch. 300, 37 Stat. 311).

Section consolidates sections 812 and 814 of title 28, U.S.C., 1940 ed., with changes in phraseology necessary to effect consolidation and to clarify the meaning of such sections.

Omitted words “or decree” after “judgments” as unnecessary inasmuch as Rule 54(a) of the Federal Rules of Civil Procedure by definition of judgment includes a decree.

Words “in the State of Louisiana” after “or parish” were omitted as unnecessary.

A reference to section 813 of title 28, U.S.C., 1940 ed., was omitted, since such section is omitted from this revision as covered by Rule 79(c) of the Federal Rules of Civil Procedure.

AMENDMENTS

1990—Pub. L. 101-647 inserted after first sentence “This section does not apply to judgments entered in favor of the United States.”

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-647 effective 180 days after Nov. 29, 1990, see section 3631 of Pub. L. 101-647, set out as an Effective Date note under section 3001 of this title.

FEDERAL RULES OF CIVIL PROCEDURE

Judgments, see rules 54 to 58, Appendix to this title.

CROSS REFERENCES

Declaratory judgments, see sections 2201 and 2202 of this title.

§ 1963. Registration of judgments for enforcement in other districts

A judgment in an action for the recovery of money or property entered in any court of appeals, district court, bankruptcy court, or in the Court of International Trade may be registered by filing a certified copy of the judgment in any other district or, with respect to the Court of International Trade, in any judicial district, when the judgment has become final by appeal or expiration of the time for appeal or when ordered by the court that entered the judgment for good cause shown. Such a judgment entered in favor of the United States may be so registered any time after judgment is entered. A judgment so registered shall have the same effect as a judgment of the district court of the district where registered and may be enforced in like manner.

A certified copy of the satisfaction of any judgment in whole or in part may be registered in like manner in any district in which the judgment is a lien.

The procedure prescribed under this section is in addition to other procedures provided by law for the enforcement of judgments.

(June 25, 1948, ch. 646, 62 Stat. 958; Aug. 23, 1954, ch. 837, 68 Stat. 772; Pub. L. 85-508, §12(o), July 7, 1958, 72 Stat. 349; Pub. L. 100-702, title X, §1002(a), (b)(1), Nov. 19, 1988, 102 Stat. 4664; Pub. L. 101-647, title XXXVI, §3628, Nov. 29, 1990, 104 Stat. 4965; Pub. L. 104-317, title II, §203(a), Oct. 19, 1996, 110 Stat. 3849.)

HISTORICAL AND REVISION NOTES

This section follows the recommendation of the Supreme Court's Advisory Committee on Federal Rules of Civil Procedure (1937) which included the following rule:

“Rule 77. REGISTRATION OF JUDGMENTS IN OTHER DISTRICT COURTS. A judgment entered in any district court and which has become final through expiration of the time for appeal or by mandate on appeal may be registered in any other district court by filing therein an authenticated copy of the judgment. When so registered the judgment shall have the same effect and like proceedings for its enforcement may be taken thereon in the court in which it is registered as if the judgment had been originally entered by that court. If in the court in which the judgment was originally entered, the judgment has been satisfied in whole or in part or if an order has been made modifying or vacating it or affecting or suspending its operation, the party procuring the registration shall and any other party may file authenticated copies of the satisfaction or

order with the court in which the judgment is registered. This rule shall not be construed to limit the effect of the Act of February 20, 1905, c. 592, §20 (33 Stat. 729), as amended, U.S.C., title 15, §100; or the Act of March 4, 1909, c. 320, §§36 and 37 (35 Stat. 1084), U.S.C., title 17, §§36 and 37; or §56 of the Judicial Code, U.S.C., title 28, §117; or to authorize the registration elsewhere of an order or a judgment rendered in a divorce action in the District of Columbia.”

Section 2508 of this title provides for the registration of judgments of the Court of Claims in favor of the United States in any district. See, also, section 2413 of this title.

The phrase “for the recovery of money or property” was not in the committee's draft of Rule 77 of Federal Rules of Civil Procedure but was inserted in the revised section to exclude judgments in divorce actions, and any other actions, the registration of which would serve no useful purpose.

AMENDMENTS

1996—Pub. L. 104-317 in section catchline substituted “for enforcement in other districts” for “of the district courts and the Court of International Trade”, in first undesignated par. substituted “court of appeals, district court, bankruptcy court,” for “district court” and “copy of the judgment” for “copy of such judgment”, and added undesignated par. at end.

1990—Pub. L. 101-647 inserted after first sentence “Such a judgment entered in favor of the United States may be so registered any time after judgment is entered.”

1988—Pub. L. 100-702 substituted “Registration of judgments of the district courts and the Court of International Trade” for “Registration in other districts” in section catchline and amended first sentence generally. Prior to amendment, first sentence read as follows: “A judgment in an action for the recovery of money or property now or hereafter entered in any district court which has become final by appeal or expiration of time for appeal may be registered in any other district by filing therein a certified copy of such judgment.”

1958—Pub. L. 85-508 struck out provisions which extended provisions of section to District Court for Territory of Alaska. See section 81A of this title which establishes a United States District Court for the State of Alaska.

1954—Act Aug. 23, 1954, extended provisions of section to District Court for Territory of Alaska.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-647 effective 180 days after Nov. 29, 1990, see section 3631 of Pub. L. 101-647, set out as an Effective Date note under section 3001 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1002(c) of title X of Pub. L. 100-702 provided that: “The amendments made by this section [amending this section and repealing section 1963A of this title] take effect 90 days after the date of enactment of this title [Nov. 19, 1988].”

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85-508 effective Jan. 3, 1959, on admission of Alaska into the Union pursuant to Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub. L. 85-508, see notes set out under section 81A of this title and preceding section 21 of Title 48, Territories and Insular Possessions.

[§ 1963A. Repealed. Pub. L. 100-702, title X, § 1002(b)(2), Nov. 19, 1988, 102 Stat. 4664]

Section, added Pub. L. 96-417, title V, §511(a), Oct. 10, 1980, 94 Stat. 1743, provided for registration of judgments of the Court of International Trade. See section 1963 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective 90 days after Nov. 19, 1988, see section 1002(c) of Pub. L. 100-702, set out as an Effective Date of 1988 Amendment note under section 1963 of this title.

§ 1964. Constructive notice of pending actions

Where the law of a State requires a notice of an action concerning real property pending in a court of the State to be registered, recorded, docketed, or indexed in a particular manner, or in a certain office or county or parish in order to give constructive notice of the action as it relates to the real property, and such law authorizes a notice of an action concerning real property pending in a United States district court to be registered, recorded, docketed, or indexed in the same manner, or in the same place, those requirements of the State law must be complied with in order to give constructive notice of such an action pending in a United States district court as it relates to real property in such State.

(Added Pub. L. 85-689, §1(a), Aug. 20, 1958, 72 Stat. 683.)

EFFECTIVE DATE

Section 2 of Pub. L. 85-689 provided that: "The amendments made by this Act [enacting this section] shall only be effective with respect to actions commenced in United States district courts more than one hundred and eighty days after the date of enactment of this Act [Aug. 20, 1958]."

CHAPTER 127—EXECUTIONS AND JUDICIAL SALES

Sec.	
2001.	Sale of realty generally.
2002.	Notice of sale of realty.
2003.	Marshal's incapacity after levy on or sale of realty.
2004.	Sale of personalty generally.
2005.	Appraisal of goods taken on execution.
2006.	Execution against revenue officer.
2007.	Imprisonment for debt.

§ 2001. Sale of realty generally

(a) Any realty or interest therein sold under any order or decree of any court of the United States shall be sold as a whole or in separate parcels at public sale at the courthouse of the county, parish, or city in which the greater part of the property is located, or upon the premises or some parcel thereof located therein, as the court directs. Such sale shall be upon such terms and conditions as the court directs.

Property in the possession of a receiver or receivers appointed by one or more district courts shall be sold at public sale in the district wherein any such receiver was first appointed, at the courthouse of the county, parish, or city situated therein in which the greater part of the property in such district is located, or on the premises or some parcel thereof located in such county, parish, or city, as such court directs, unless the court orders the sale of the property or one or more parcels thereof in one or more ancillary districts.

(b) After a hearing, of which notice to all interested parties shall be given by publication or otherwise as the court directs, the court may order the sale of such realty or interest or any

part thereof at private sale for cash or other consideration and upon such terms and conditions as the court approves, if it finds that the best interests of the estate will be conserved thereby. Before confirmation of any private sale, the court shall appoint three disinterested persons to appraise such property or different groups of three appraisers each to appraise properties of different classes or situated in different localities. No private sale shall be confirmed at a price less than two-thirds of the appraised value. Before confirmation of any private sale, the terms thereof shall be published in such newspaper or newspapers of general circulation as the court directs at least ten days before confirmation. The private sale shall not be confirmed if a bona fide offer is made, under conditions prescribed by the court, which guarantees at least a 10 per centum increase over the price offered in the private sale.

(c) This section shall not apply to sales and proceedings under Title 11 or by receivers or conservators of banks appointed by the Comptroller of the Currency.

(June 25, 1948, ch. 646, 62 Stat. 958; May 24, 1949, ch. 139, §99, 63 Stat. 104.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 28, U.S.C., 1940 ed., §847 (Mar. 3, 1893, ch. 225, §1, 27 Stat. 751; June 19, 1934, ch. 662, 48 Stat. 1119; Apr. 24, 1935, ch. 77, §1, 49 Stat. 159; June 19, 1935, ch. 276, 49 Stat. 390).

A provision making the section applicable to pending proceedings was deleted as obsolete.

The term "court of the United States" is defined in section 451 of this title.

Changes were made in phraseology.

1949 ACT

This section corrects a typographical error in subsection (a) of section 2001 of title 28, U.S.C.

AMENDMENTS

1949—Subsec. (a). Act May 24, 1949, corrected spelling of "ancillary" in second par.

FEDERAL RULES OF CIVIL PROCEDURE

Execution, see rule 69, Appendix to this title.

CROSS REFERENCES

Sale of property in bankruptcy proceedings, see section 363 of Title 11, Bankruptcy.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2004, 3201, 3202 of this title.

§ 2002. Notice of sale of realty

A public sale of realty or interest therein under any order, judgment or decree of any court of the United States shall not be made without notice published once a week for at least four weeks prior to the sale in at least one newspaper regularly issued and of general circulation in the county, state, or judicial district of the United States wherein the realty is situated.

If such realty is situated in more than one county, state, district or circuit, such notice shall be published in one or more of the counties, states, or districts wherein it is situated, as

the court directs. The notice shall be substantially in such form and contain such description of the property by reference or otherwise as the court approves. The court may direct that the publication be made in other newspapers.

This section shall not apply to sales and proceedings under Title 11 or by receivers or conservators of banks appointed by the Comptroller of the Currency.

(June 25, 1948, ch. 646, 62 Stat. 959; May 24, 1949, ch. 139, §100, 63 Stat. 104.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 28, U.S.C., 1940 ed., §849 (Mar. 3, 1893, ch. 225, §3, 27 Stat. 751; Apr. 24, 1935, ch. 77, §3, 49 Stat. 160; June 19, 1935, ch. 276, 49 Stat. 390).

A provision making the section applicable to pending proceedings was deleted as obsolete.

Word "under" was substituted for "ordered pursuant to section 847 of this title by" after "A public sale of realty or interest therein".

Sections 847 and 848, of title 28, U.S.C., 1940 ed., now sections 2001 and 2004 of this title, relate only to sales under orders or decrees, without any reference to sales under judgments. In 1921 the Supreme Court held, in *Yazoo & M. V. R. Co. v. City of Clarksdale*, 1921, 42 S.Ct. 27, 257 U.S. 10, 66 L.Ed. 104, that such section 847 did not apply to sales under common law executions. At that time such section 849 of title 28, U.S.C., 1940 ed., read as it has been revised above, without any reference to such section 847. However, in 1935, such sections 847, 848 and 849 were amended by one act, ch. 77, 49 Stat. 159, and, in such section 849, the words "pursuant to the provisions of this Act" were inserted, but the word "judgment," though retained in such section 849, was not inserted in such sections 847 and 848. It is probable that Congress did not intend, in 1935 to make such sections 847 and 848 applicable to sales under judgments in law actions. Hence, to make all three sections consistent, the above-mentioned substitution was made.

Reference to circuit was deleted from first and second paragraphs as unnecessary and inappropriate. Publication in a newspaper in a large circuit remote from the county in which the realty is situate, might be wholly insufficient to give notice to interested parties.

Changes were made in phraseology.

1949 ACT

This section corrects a typographical error in section 2002 of title 28, U.S.C.

AMENDMENTS

1949—Act May 24, 1949, substituted "11" for "II" after "Title" in third par.

FEDERAL RULES OF CIVIL PROCEDURE

Execution, see rule 69, Appendix to this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3201, 3202 of this title.

§ 2003. Marshal's incapacity after levy on or sale of realty

Whenever a United States marshal dies, is removed from office, or the term of his commission expires, after levying on realty or any interest therein under a writ of execution issued by a court of the United States, and before sale or other final disposition thereof, like process shall issue to the succeeding marshal and the same proceedings shall be had as if such contingency had not occurred.

Whenever any such contingency arises after a marshal has sold any realty or interest therein and before a deed is executed, the court may, on application by the purchaser, or the plaintiff in whose action the sale was made, setting forth the facts of the case and the reason why the title was not perfected by such marshal, order the succeeding marshal to perfect the title and execute a deed to the purchaser, upon payment of the purchase money and unpaid costs.

(June 25, 1948, ch. 646, 62 Stat. 959; May 24, 1949, ch. 139, §101, 63 Stat. 104.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 28, U.S.C., 1940 ed., §850 (R.S. §994).

Word "realty" was substituted for "lands, tenements, or hereditaments" in two places, the two terms being synonymous. (See Black's Law Dictionary, 3d Ed., p. 1969.)

Word "action" was substituted for "suit", in view of Rule 2 of the Federal Rules of Civil Procedure, prescribing but one form of action.

Changes were made in phraseology.

1949 ACT

This section corrects a typographical error in section 2003 of title 28, U.S.C.

AMENDMENTS

1949—Act May 24, 1949, corrected spelling of "realty" in first par.

FEDERAL RULES OF CIVIL PROCEDURE

Execution, see rule 69, Appendix to this title.

§ 2004. Sale of personalty generally

Any personalty sold under any order or decree of any court of the United States shall be sold in accordance with section 2001 of this title, unless the court orders otherwise.

This section shall not apply to sales and proceedings under Title 11 or by receivers or conservators of banks appointed by the Comptroller of the Currency.

(June 25, 1948, ch. 646, 62 Stat. 959.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §848 (Mar. 3, 1893, ch. 225, §2, 27 Stat. 751; Apr. 24, 1935, ch. 77, §2, 49 Stat. 160; June 19, 1935, ch. 276, 49 Stat. 390).

A provision making the section applicable to pending proceedings was deleted as obsolete.

Changes were made in phraseology.

FEDERAL RULES OF CIVIL PROCEDURE

Execution, see rule 69, Appendix to this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3202 of this title.

§ 2005. Appraisal of goods taken on execution

Whenever State law requires that goods taken on execution be appraised before sale, goods taken under execution issued from a court of the United States shall be appraised in like manner.

The United States marshal shall summon the appraisers in the same manner as the sheriff is required to summon appraisers under State law.

If the appraisers fail to attend and perform their required duties, the marshal may sell the goods without an appraisal. Appraisers attend-

ing and performing their duties, shall receive the fees allowed for appraisals under State law. (June 25, 1948, ch. 646, 62 Stat. 959.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §846 (R.S. §993).

Words "shall be appraised in like manner" were substituted for "the appraisers appointed under the authority of the State may appraise goods taken in execution on a fieri facias issued out of any court of the United States". The change precludes construction that the State appraisers only are available to appraise such goods in civil actions in the federal courts.

Changes were made in phraseology.

FEDERAL RULES OF CIVIL PROCEDURE

Execution, see rule 69, Appendix to this title.

§ 2006. Execution against revenue officer

Execution shall not issue against a collector or other revenue officer on a final judgment in any proceeding against him for any of his acts, or for the recovery of any money exacted by or paid to him and subsequently paid into the Treasury, in performing his official duties, if the court certifies that:

- (1) probable cause existed; or
- (2) the officer acted under the directions of the Secretary of the Treasury or other proper Government officer.

When such certificate has been issued, the amount of the judgment shall be paid out of the proper appropriation by the Treasury.

(June 25, 1948, ch. 646, 62 Stat. 960.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §842 (R.S. §989). Changes were made in phraseology.

FEDERAL RULES OF CIVIL PROCEDURE

Execution, against certain public officers, see rule 69, Appendix to this title.
Judgment, see rule 54.

CROSS REFERENCES

Executions in favor of United States, see section 2413 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 26 section 7422.

§ 2007. Imprisonment for debt

(a) A person shall not be imprisoned for debt on a writ of execution or other process issued from a court of the United States in any State wherein imprisonment for debt has been abolished. All modifications, conditions, and restrictions upon such imprisonment provided by State law shall apply to any writ of execution or process issued from a court of the United States in accordance with the procedure applicable in such State.

(b) Any person arrested or imprisoned in any State on a writ of execution or other process issued from any court of the United States in a civil action shall have the same jail privileges and be governed by the same regulations as persons confined in like cases on process issued from the courts of such State. The same requirements governing discharge as are applicable in such State shall apply. Any proceedings for dis-

charge shall be conducted before a United States commissioner for the judicial district wherein the defendant is held.

(June 25, 1948, ch. 646, 62 Stat. 960.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§843, 844, and 845 (R.S. §§990, 991, 992; May 28, 1896, ch. 252, §19, 29 Stat. 184; Mar. 2, 1901, ch. 814, 31 Stat. 956; Mar. 3, 1911, ch. 231, §291, 36 Stat. 1167).

Changes were made in phraseology.

CHANGE OF NAME

Reference to United States commissioner deemed to be reference to United States magistrate, pursuant to Pub. L. 90-578, title IV, §402(b)(2), Oct. 17, 1968, 82 Stat. 1118. See chapter 43 (§631 et seq.) of this title.

Reference to United States magistrate or to magistrate deemed to refer to United States magistrate judge pursuant to section 321 of Pub. L. 101-650, set out as a note under section 631 of this title.

FEDERAL RULES OF CIVIL PROCEDURE

Execution and seizure of person or property, see rules 64 and 69, Appendix to this title.

CHAPTER 129—MONEYS PAID INTO COURT

Sec.

- | | |
|-------|--|
| 2041. | Deposit of moneys in pending or adjudicated cases. |
| 2042. | Withdrawal. |
| 2043. | Deposit of other moneys. |
| 2044. | Payment of fine with bond money. |

AMENDMENTS

1990—Pub. L. 101-647, title XXXVI, §3629(b), Nov. 29, 1990, 104 Stat. 4966, which directed the amendment of the table of sections for chapter 29 by adding item 2044, was executed by adding item 2044 to the table of sections for chapter 129 to reflect the probable intent of Congress.

1982—Pub. L. 97-258, §2(g)(4)(A), (B), Sept. 13, 1982, 96 Stat. 1060, substituted "Deposit of moneys in pending or adjudicated cases" for "Deposit" in item 2041 and added item 2043.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 11 section 347.

§ 2041. Deposit of moneys in pending or adjudicated cases

All moneys paid into any court of the United States, or received by the officers thereof, in any case pending or adjudicated in such court, shall be forthwith deposited with the Treasurer of the United States or a designated depository, in the name and to the credit of such court.

This section shall not prevent the delivery of any such money to the rightful owners upon security, according to agreement of parties, under the direction of the court.

(June 25, 1948, ch. 646, 62 Stat. 960; Pub. L. 97-258, §2(g)(4)(C), Sept. 13, 1982, 96 Stat. 1061.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §851 (R.S. §995; May 29, 1920, ch. 214, §1, 41 Stat. 654).

Changes were made in phraseology.

AMENDMENTS

1982—Pub. L. 97-258 substituted "Deposit of moneys in pending or adjudicated cases" for "Deposit" in section catchline.

REGISTRY ADMINISTRATION ACCOUNT

Pub. L. 100-459, title IV, §400, Oct. 1, 1988, 102 Stat. 2211, provided: "That any funds hereafter collected by

the Judiciary as a charge for services rendered in administering accounts kept in a court's registry shall be deposited into a separate account entitled 'Registry Administration Account' in the Treasury of the United States. Such funds shall remain available to the Judiciary until expended to reimburse any appropriation for the amount paid out of such appropriation for expenses of the Courts of Appeals, District Courts and Other Judicial Services and the Administrative Office of the United States Courts'.

FEDERAL RULES OF CIVIL PROCEDURE

Bringing funds into court, see rule C, Appendix to this title.

Claims against proceeds in registry, see rule E.

Deposit in court, see rule 67.

Funds in court registry, see rule E.

CROSS REFERENCES

Condemnation proceedings, deposit in registry of court, see section 258a of Title 40, Public Buildings, Property, and Works.

Court officers depositing registry moneys, see section 646 of Title 18, Crimes and Criminal Procedure.

Depositaries of public moneys and financial agents of Government, see section 90 of Title 12, Banks and Banking.

Limitation of liability, deposit of value of interest in court, see section 185 of Title 46, Appendix, Shipping.

Powers upon designation and assignment, exception as to permanent designation of depository of funds, see section 296 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 566, 2042, 2043 of this title.

§ 2042. Withdrawal

No money deposited under section 2041 of this title shall be withdrawn except by order of court.

In every case in which the right to withdraw money deposited in court under section 2041 has been adjudicated or is not in dispute and such money has remained so deposited for at least five years unclaimed by the person entitled thereto, such court shall cause such money to be deposited in the Treasury in the name and to the credit of the United States. Any claimant entitled to any such money may, on petition to the court and upon notice to the United States attorney and full proof of the right thereto, obtain an order directing payment to him.

(June 25, 1948, ch. 646, 62 Stat. 960; Pub. L. 97-258, §2(g)(4)(D), Sept. 13, 1982, 96 Stat. 1061.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §852 (R.S. §996; Feb. 19, 1897, ch. 265, §3, 29 Stat. 578; Mar. 3, 1911, ch. 224, 36 Stat. 1083).

Words "and the money deposited as aforesaid shall constitute and be a permanent appropriation for payments in obedience to such orders" were omitted, in view of section 725p(b)(14), of title 31, U.S.C., 1940 ed., which repealed permanent appropriations of unclaimed money accounts and substituted authorization for annual appropriations effective July 1, 1935.

Changes were made in phraseology.

In U. S. Law Week, Nov. 7, 1939, Rep. Walter Chandler (Author of Chandler Act, Bankruptcy) observed as to the Judicial Code:

"Among the major subjects needing study and revision are—Numerous procedural changes which have been brought about through adoption of the Federal Rules of Civil Procedure should be codified." * * *

AMENDMENTS

1982—Pub. L. 97-258 inserted references to section 2041 in two places.

FEDERAL RULES OF CIVIL PROCEDURE

Deposit in court, see rule 67, Appendix to this title.

CROSS REFERENCES

Unclaimed moneys, see section 347 of Title 11, Bankruptcy.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 18 section 3666.

§ 2043. Deposit of other moneys

Except for public moneys deposited under section 2041 of this title, each clerk of the United States courts shall deposit public moneys that the clerk collects into a checking account in the Treasury, subject to disbursement by the clerk. At the end of each accounting period, the earned part of public moneys accruing to the United States shall be deposited in the Treasury to the credit of the appropriate receipt accounts.

(Added Pub. L. 97-258, §2(g)(4)(E), Sept. 13, 1982, 96 Stat. 1061.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
28:2043	31:725v(b)(related to clerks).	June 26, 1934, ch. 756, §23(b)(related to clerks), 48 Stat. 1236; restated Dec. 21, 1944, ch. 631, §1, 58 Stat. 845.

The words "Except for public moneys deposited under section 2041 of this title . . . public moneys" are substituted for "All fees and other collections other than moneys referred to in subsection (a) of this section" for consistency and because 31:725v(a) is superseded by 28:2041 and is not part of the revised title contained in section 1 of the bill. The word "Treasury" is substituted for "Treasurer of the United States" because of section 1 of Reorganization Plan No. 26 of 1950 (eff. July 31, 1950, 64 Stat. 1280), restated as section 321 of the revised title contained in section 1 of the bill. The text of 31:725v(b)(last sentence) is omitted as obsolete.

§ 2044. Payment of fine with bond money

On motion of the United States attorney, the court shall order any money belonging to and deposited by or on behalf of the defendant with the court for the purposes of a criminal appearance bail bond (trial or appeal) to be held and paid over to the United States attorney to be applied to the payment of any assessment, fine, restitution, or penalty imposed upon the defendant. The court shall not release any money deposited for bond purposes after a plea or a verdict of the defendant's guilt has been entered and before sentencing except upon a showing that an assessment, fine, restitution or penalty cannot be imposed for the offense the defendant committed or that the defendant would suffer an undue hardship. This section shall not apply to any third party surety.

(Added Pub. L. 101-647, title XXXVI, §3629(a), Nov. 29, 1990, 104 Stat. 4966.)

EFFECTIVE DATE

Section effective 180 days after Nov. 29, 1990, and applicable with respect to certain actions for debts owed the United States pending in court on that effective date, see section 3631 of Pub. L. 101-647, set out as a note under section 3001 of this title.

CHAPTER 131—RULES OF COURTS

Sec.	
2071.	Rule-making power generally.
2072.	Rules of procedure and evidence; power to prescribe.
2073.	Rules of procedure and evidence; method of prescribing.
2074.	Rules of procedure and evidence; submission to Congress; effective date.
2075.	Bankruptcy rules.
[2076.	Repealed.]
2077.	Publication of rules; advisory committees.

AMENDMENTS

1988—Pub. L. 100-702, title IV, §401(d), Nov. 19, 1988, 102 Stat. 4650, added items 2072 to 2075 and struck out former items 2072 “Rules of civil procedure”, 2075 “Bankruptcy rules”, and 2076 “Rules of evidence”.

1982—Pub. L. 97-164, title II, §208(b), Apr. 2, 1982, 96 Stat. 55, added item 2077.

1975—Pub. L. 93-595, §2(a)(2), Jan. 2, 1975, 88 Stat. 1949, added item 2076.

1966—Pub. L. 89-773, §3, Nov. 6, 1966, 80 Stat. 1323, struck out “for district courts” in item 2072 and struck out items 2073 and 2074.

1964—Pub. L. 88-623, §2, Oct. 3, 1964, 78 Stat. 1001, added item 2075.

1954—Act July 27, 1954, ch. 583, §2, 68 Stat. 567, added item 2074.

FEDERAL RULES OF CRIMINAL PROCEDURE

Criminal procedure rules are set out in Title 18, Appendix, Crimes and Criminal Procedure.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 652, 653, 654 of this title.

§ 2071. Rule-making power generally

(a) The Supreme Court and all courts established by Act of Congress may from time to time prescribe rules for the conduct of their business. Such rules shall be consistent with Acts of Congress and rules of practice and procedure prescribed under section 2072 of this title.

(b) Any rule prescribed by a court, other than the Supreme Court, under subsection (a) shall be prescribed only after giving appropriate public notice and an opportunity for comment. Such rule shall take effect upon the date specified by the prescribing court and shall have such effect on pending proceedings as the prescribing court may order.

(c)(1) A rule of a district court prescribed under subsection (a) shall remain in effect unless modified or abrogated by the judicial council of the relevant circuit.

(2) Any other rule prescribed by a court other than the Supreme Court under subsection (a) shall remain in effect unless modified or abrogated by the Judicial Conference.

(d) Copies of rules prescribed under subsection (a) by a district court shall be furnished to the judicial council, and copies of all rules prescribed by a court other than the Supreme Court under subsection (a) shall be furnished to the Director of the Administrative Office of the United States Courts and made available to the public.

(e) If the prescribing court determines that there is an immediate need for a rule, such court may proceed under this section without public notice and opportunity for comment, but such court shall promptly thereafter afford such notice and opportunity for comment.

(f) No rule may be prescribed by a district court other than under this section.

(June 25, 1948, ch. 646, 62 Stat. 961; May 24, 1949, ch. 139, §102, 63 Stat. 104; Pub. L. 100-702, title IV, §403(a)(1), Nov. 19, 1988, 102 Stat. 4650.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 28, U.S.C., 1940 ed., §§219, 263, 296, 307, 723, 731, and 761, and section 1111 of title 26, U.S.C., 1940 ed., Internal Revenue Code (R.S. §§913, 918; Mar. 3, 1887, ch. 359, §4, 24 Stat. 506; Mar. 3, 1911, ch. 231, §§122, 157, 194, 291, 297, 36 Stat. 1132, 1139, 1145, 1167, 1168; Mar. 3, 1911, ch. 231, §187(a), as added Oct. 10, 1940, ch. 843, §1, 54 Stat. 1101; Feb. 13, 1925, ch. 229, §13, 43 Stat. 941; Mar. 2, 1929, ch. 488, §1, 45 Stat. 1475; Feb. 10, 1939, ch. 2, §1111, 53 Stat. 160; Oct. 21, 1942, ch. 619, title V, §504(a), (c), 56 Stat. 957).

Sections 219, 263, 296, 307, 723, and 731 of title 28, U.S.C., 1940 ed., gave specified courts, other than the Supreme Court, power to make rules. Section 761 of such title related to rules established in the district courts and Court of Claims. Section 1111 of title 26, U.S.C., 1940 ed., related to Tax Court. This section consolidates all such provisions. For other provisions of such sections, see Distribution Table.

Recognition by Congress of the broad rule-making power of the courts will make it possible for the courts to prescribe complete and uniform modes of procedure, and alleviate, at least in part, the necessity of searching in two places, namely in the Acts of Congress and in the rules of the courts, for procedural requisites.

Former Attorney General Cummings recently said: “Legislative bodies have neither the time to inquire objectively into the details of judicial procedure nor the opportunity to determine the necessity for amendment or change. Frequently such legislation has been enacted for the purpose of meeting particular problems or supposed difficulties, but the results have usually been confusing or otherwise unsatisfactory. Comprehensive action has been lacking for the obvious reason that the professional nature of the task would leave the legislature little time for matters of substance and statesmanship. It often happened that an admitted need for change, even in limited areas, could not be secured.”—The New Criminal Rules—Another Triumph of the Democratic Process. American Bar Association Journal, May 1945.

Provisions of sections 263 and 296 of title 28, U.S.C., 1940 ed., authorizing the Court of Claims and Customs Court to punish for contempt, were omitted as covered by H. R. 1600, §401, 80th Congress, for revision of the Criminal Code.

Provisions of section 1111 of title 26, U.S.C., 1940 ed., making applicable to Tax Court Proceedings “the rules of evidence applicable in the courts of the District of Columbia in the type of proceeding which, prior to Sept. 16, 1938, were within the jurisdiction of the courts of equity of said District,” were omitted as unnecessary and inconsistent with other provisions of law relating to the Federal courts. The rules of evidence in Tax Court proceedings are the same as those which apply to civil procedure in other courts. See *Dempster Mill. Mfg. Co. v. Burnet*, 1931, 46 F.2d 604, 60 App.D.C. 23.

For rule-making power of the Supreme Court in copyright infringement actions, see section 25(e) of title 17, U.S.C., 1940 ed., Copyrights. See, also, section 205(a) of title 11, U.S.C., 1940 ed., Bankruptcy, authorizing the Supreme Court to promulgate rules relating to service of process in railroad reorganization proceedings.

SENATE REVISION AMENDMENT

By Senate amendment, all provisions relating to the Tax Court were eliminated. Therefore, section 1111 of Title 26, U.S.C., Internal Revenue Code, was not one of the sources of this section as finally enacted. However, no change in the text of this section was necessary. See 80th Congress Senate Report No. 1559.

1949 ACT

This amendment clarifies section 2071 of title 28, U.S.C., by giving express recognition to the power of the Supreme Court to prescribe its own rules and by giving a better description of its procedural rules.

AMENDMENTS

1988—Pub. L. 100-702 designated existing provisions as subsec. (a), substituted “under section 2072 of this title” for “by the Supreme Court”, and added subsecs. (b) to (f).

1949—Act May 24, 1949, expressed recognition to the Supreme Court’s power to prescribe its own rules and give a better description of its procedural rules.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 407 of title IV of Pub. L. 100-702 provided that: “This title [enacting sections 2072 to 2074 of this title, amending this section, sections 331, 332, 372, 604, 636, and 2077 of this title, section 460n-8 of Title 16, Conservation, and section 3402 of Title 18, Crimes and Criminal Procedure, repealing former section 2072 and section 2076 of this title and sections 3771 and 3772 of Title 18, and enacting provisions set out as notes under this section] shall take effect on December 1, 1988.”

EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 97-462, § 4, Jan. 12, 1983, 96 Stat. 2530, provided that: “The amendments made by this Act [enacting provisions set out as notes below, amending Rule 4 of the Federal Rules of Civil Procedure, set out in the Appendix to this title, adding Form 18-A in the Appendix of Forms, and amending section 951 of Title 18, Crimes and Criminal Procedure] shall take effect 45 days after the enactment of this Act [Jan. 12, 1983].”

SHORT TITLE OF 1983 AMENDMENT

Pub. L. 97-462, § 1, Jan. 12, 1983, 96 Stat. 2527, provided: “That this Act [enacting provisions set out as notes below, amending Rule 4 of the Federal Rules of Civil Procedure, set out in the Appendix to this title, adding Form 18-A in the Appendix of Forms, and amending section 951 of Title 18, Crimes and Criminal Procedure] may be cited as the ‘Federal Rules of Civil Procedure Amendments Act of 1982.’”

SAVINGS PROVISION

Section 406 of title IV of Pub. L. 100-702 provided that: “The rules prescribed in accordance with law before the effective date of this title [Dec. 1, 1988] and in effect on the date of such effective date shall remain in force until changed pursuant to the law as amended by this title [see Effective Date of 1988 Amendment note above].”

TAX COURT RULEMAKING NOT AFFECTED

Section 405 of title IV of Pub. L. 100-702 provided that: “The amendments made by this title [see Effective Date of 1988 Amendment note above] shall not affect the authority of the Tax Court to prescribe rules under section 7453 of the Internal Revenue Code of 1986 [26 U.S.C. 7453].”

ADMIRALTY RULES

The Rules of Practice in Admiralty and Maritime Cases, promulgated by the Supreme Court on Dec. 20, 1920, effective Mar. 7, 1921, as revised, amended, and supplemented, were rescinded, effective July 1, 1966, in accordance with the general unification of civil and admiralty procedure which became effective July 1, 1966. Provision for certain distinctly maritime remedies were preserved however in the Supplemental Rules for Certain Admiralty and Maritime Claims, rules A to F, Federal Rules of Civil Procedure, Appendix to this title.

FEDERAL RULES OF CIVIL PROCEDURE

Rules by district courts, authority to make, see rule 83, Appendix to this title.

FEDERAL RULES OF CRIMINAL PROCEDURE

Court of Appeals, rules, see rule 57, Title 18, Appendix, Crimes and Criminal Procedure.

District court rules, see rule 57.

CROSS REFERENCES

Court of Appeals—

Designation and assignment of District Court judge to sit on, see section 292 of this title.

Designation of places for terms or sessions of, see section 48 of this title.

Participation by members of bar at judicial conference of circuit, see section 333 of this title.

Court of International Trade—

Assignment or reassignment of cases, see section 253 of this title.

Notice of time and place of hearing before judge or division, see section 2632 of this title.

District Court—

Advance payment of fees, see section 1914 of this title.

Division of business, see section 137 of this title.

Exercise of judicial powers, see section 132 of this title.

Regular terms, see section 138 of this title.

Special terms, see section 141 of this title.

Tax Court rules, see section 7453 of Title 26, Internal Revenue Code.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 331, 332, 604, 651, 652, 653, 654, 657, 2077 of this title; title 42 section 300aa-12.

§ 2072. Rules of procedure and evidence; power to prescribe

(a) The Supreme Court shall have the power to prescribe general rules of practice and procedure and rules of evidence for cases in the United States district courts (including proceedings before magistrates thereof) and courts of appeals.

(b) Such rules shall not abridge, enlarge or modify any substantive right. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.

(c) Such rules may define when a ruling of a district court is final for the purposes of appeal under section 1291 of this title.

(Added Pub. L. 100-702, title IV, § 401(a), Nov. 19, 1988, 102 Stat. 4648; amended Pub. L. 101-650, title III, § 315, Dec. 1, 1990, 104 Stat. 5115.)

PRIOR PROVISIONS

A prior section 2072, acts June 25, 1948, ch. 646, 62 Stat. 961; May 24, 1949, ch. 139, § 103, 63 Stat. 104; July 18, 1949, ch. 343, § 2, 63 Stat. 446; May 10, 1950, ch. 174, § 2, 64 Stat. 158; July 7, 1958, Pub. L. 85-508, § 12(m), 72 Stat. 348; Nov. 6, 1966, Pub. L. 89-773, § 1, 80 Stat. 1323, authorized the Supreme Court to prescribe rules of civil procedure, prior to repeal by Pub. L. 100-702, §§ 401(a), 407, effective Dec. 1, 1988.

AMENDMENTS

1990—Subsec. (c). Pub. L. 101-650 added subsec. (c).

CHANGE OF NAME

Reference to United States magistrate or to magistrate deemed to refer to United States magistrate judge pursuant to section 321 of Pub. L. 101-650, set out as a note under section 631 of this title.

EFFECTIVE DATE

Section effective Dec. 1, 1988, see section 407 of Pub. L. 100-702, set out as an Effective Date of 1988 Amendment note under section 2071 of this title.

APPLICABILITY TO VIRGIN ISLANDS

Rules of civil procedure promulgated under this section as applicable to the District Court of the Virgin Islands, see section 1615 of Title 48, Territories and Insular Possessions.

ADMIRALTY RULES

The Rules of Practice in Admiralty and Maritime Cases, promulgated by the Supreme Court on Dec. 20, 1920, effective Mar. 7, 1921, as revised, amended, and supplemented, were rescinded, effective July 1, 1966, in accordance with the general unification of civil and admiralty procedure which became effective July 1, 1966. Provision for certain distinctly maritime remedies were preserved however, in the Supplemental Rules for Certain Admiralty and Maritime Claims, Rules A to F, Federal Rules of Civil Procedure, Appendix to this title.

FEDERAL RULES OF CIVIL PROCEDURE

Application of rules of procedure, see rules 1, 2, 35, 38, 81, Appendix to this title.

Evidence, see rule 43.

One form of action, see rules 1 and 2.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 332, 636, 1292, 2071, 2073, 2074, 2112 of this title; title 26 section 7482; title 29 section 160; title 38 section 7292.

§ 2073. Rules of procedure and evidence; method of prescribing

(a)(1) The Judicial Conference shall prescribe and publish the procedures for the consideration of proposed rules under this section.

(2) The Judicial Conference may authorize the appointment of committees to assist the Conference by recommending rules to be prescribed under sections 2072 and 2075 of this title. Each such committee shall consist of members of the bench and the professional bar, and trial and appellate judges.

(b) The Judicial Conference shall authorize the appointment of a standing committee on rules of practice, procedure, and evidence under subsection (a) of this section. Such standing committee shall review each recommendation of any other committees so appointed and recommend to the Judicial Conference rules of practice, procedure, and evidence and such changes in rules proposed by a committee appointed under subsection (a)(2) of this section as may be necessary to maintain consistency and otherwise promote the interest of justice.

(c)(1) Each meeting for the transaction of business under this chapter by any committee appointed under this section shall be open to the public, except when the committee so meeting, in open session and with a majority present, determines that it is in the public interest that all or part of the remainder of the meeting on that day shall be closed to the public, and states the reason for so closing the meeting. Minutes of each meeting for the transaction of business under this chapter shall be maintained by the committee and made available to the public, except that any portion of such minutes, relating to a closed meeting and made available to the public, may contain such deletions as may be necessary to avoid frustrating the purposes of closing the meeting.

(2) Any meeting for the transaction of business under this chapter, by a committee appointed

under this section, shall be preceded by sufficient notice to enable all interested persons to attend.

(d) In making a recommendation under this section or under section 2072 or 2075, the body making that recommendation shall provide a proposed rule, an explanatory note on the rule, and a written report explaining the body's action, including any minority or other separate views.

(e) Failure to comply with this section does not invalidate a rule prescribed under section 2072 or 2075 of this title.

(Added Pub. L. 100-702, title IV, §401(a), Nov. 19, 1988, 102 Stat. 4649; amended Pub. L. 103-394, title I, §104(e), Oct. 22, 1994, 108 Stat. 4110.)

PRIOR PROVISIONS

A prior section 2073, acts June 25, 1948, ch. 646, 62 Stat. 961; May 24, 1949, ch. 139, §104, 63 Stat. 104; May 10, 1950, ch. 174, §3, 64 Stat. 158, empowered the Supreme Court to prescribe, by general rules, the practice and procedure in admiralty and maritime cases in the district courts, prior to repeal by Pub. L. 89-773, §2, Nov. 6, 1966, 80 Stat. 1323.

AMENDMENTS

1994—Subsec. (a)(2). Pub. L. 103-394, §104(e)(1), substituted "sections 2072 and 2075" for "section 2072".

Subsecs. (d), (e). Pub. L. 103-394, §104(e)(2), inserted "or 2075" after "2072".

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-394 effective Oct. 22, 1994, and not applicable with respect to cases commenced under Title 11, Bankruptcy, before Oct. 22, 1994, see section 702 of Pub. L. 103-394, set out as a note under section 101 of Title 11.

EFFECTIVE DATE

Section effective Dec. 1, 1988, see section 407 of Pub. L. 100-702, set out as an Effective Date of 1988 Amendment note under section 2071 of this title.

§ 2074. Rules of procedure and evidence; submission to Congress; effective date

(a) The Supreme Court shall transmit to the Congress not later than May 1 of the year in which a rule prescribed under section 2072 is to become effective a copy of the proposed rule. Such rule shall take effect no earlier than December 1 of the year in which such rule is so transmitted unless otherwise provided by law. The Supreme Court may fix the extent such rule shall apply to proceedings then pending, except that the Supreme Court shall not require the application of such rule to further proceedings then pending to the extent that, in the opinion of the court in which such proceedings are pending, the application of such rule in such proceedings would not be feasible or would work injustice, in which event the former rule applies.

(b) Any such rule creating, abolishing, or modifying an evidentiary privilege shall have no force or effect unless approved by Act of Congress.

(Added Pub. L. 100-702, title IV, §401(a), Nov. 19, 1988, 102 Stat. 4649.)

PRIOR PROVISIONS

A prior section 2074, act July 27, 1954, ch. 583, §1, 68 Stat. 567, empowered the Supreme Court to prescribe

rules for review of decisions of the Tax Court of the United States, prior to repeal by Pub. L. 89-773, §2, Nov. 6, 1966, 80 Stat. 1323.

EFFECTIVE DATE

Section effective Dec. 1, 1988, see section 407 of Pub. L. 100-702, set out as an Effective Date of 1988 Amendment note under section 2071 of this title.

MODIFICATION OF AMENDMENTS TO FEDERAL RULES OF EVIDENCE PROPOSED APRIL 29, 1994; EFFECTIVE DATE

Pub. L. 103-322, title IV, §40141, Sept. 13, 1994, 108 Stat. 1918, provided that:

“(a) MODIFICATION OF PROPOSED AMENDMENT.—The proposed amendments to the Federal Rules of Evidence that are embraced by an order entered by the Supreme Court of the United States on April 29, 1994, shall take effect on December 1, 1994, as otherwise provided by law, but with the amendment made by subsection (b).

“(b) RULE.—[Amended Rule 412 of the Federal Rules of Evidence.]

“(c) TECHNICAL AMENDMENT.—[Amended table of contents for the Federal Rules of Evidence.]”

MODIFICATION OF AMENDMENTS TO FEDERAL RULES OF CRIMINAL PROCEDURE PROPOSED APRIL 29, 1994; EFFECTIVE DATE

Pub. L. 103-322, title XXIII, §230101, Sept. 13, 1994, 108 Stat. 2077, provided that:

“(a) MODIFICATION OF PROPOSED AMENDMENTS.—The proposed amendments to the Federal Rules of Criminal Procedure which are embraced by an order entered by the Supreme Court of the United States on April 29, 1994, shall take effect on December 1, 1994, as otherwise provided by law, but with the following amendments:

“(b) IN GENERAL.—[Amended Rule 32 of the Federal Rules of Criminal Procedure.]

“(c) EFFECTIVE DATE.—The amendments made by subsection (b) shall become effective on December 1, 1994.”

AMENDMENTS TO CIVIL RULES PROPOSED APRIL 30, 1991

Pub. L. 102-198, §11, Dec. 9, 1991, 105 Stat. 1626, provided that:

“(a) TECHNICAL AMENDMENT.—Rule 15(c)(3) of the Federal Rules of Civil Procedure for the United States Courts, as transmitted to the Congress by the Supreme Court pursuant to section 2074 of title 28, United States Code, to become effective on December 1, 1991, is amended by striking ‘Rule 4(m)’ and inserting ‘Rule 4(j)’.

“(b) AMENDMENT TO FORMS.—Form 1-A, Notice of Lawsuit and Request for Waiver of Service of Summons, and Form 1-B, Waiver of Service of Summons, included in the transmittal by the Supreme Court described in subsection (a), shall not be effective and Form 18-A, Notice and Acknowledgment for Service by Mail, abrogated by the Supreme Court in such transmittal, effective December 1, 1991, shall continue in effect on or after that date.”

AMENDMENTS TO CIVIL RULES PROPOSED APRIL 28, 1982

Pub. L. 97-462, §5, Jan. 12, 1983, 96 Stat. 2530, provided that: “The amendments to the Federal Rules of Civil Procedure [Rule 4], the effective date of which was delayed by the Act entitled ‘An Act to delay the effective date of proposed amendments to rule 4 of the Federal Rules of Civil Procedure’, approved August 2, 1982 (96 Stat. 246) [Pub. L. 97-227, see below], shall not take effect.”

Pub. L. 97-227, Aug. 2, 1982, 96 Stat. 246, provided: “That notwithstanding the provisions of section 2072 of title 28, United States Code, the amendments to rule 4 of the Federal Rules of Civil Procedure as proposed by the Supreme Court of the United States and transmitted to the Congress by the Chief Justice on April 28, 1982, shall take effect on October 1, 1983, unless previously approved, disapproved, or modified by Act of Congress.

“SEC. 2. This Act shall be effective as of August 1, 1982, but shall not apply to the service of process that

takes place between August 1, 1982, and the date of enactment of this Act [Aug. 2, 1982].”

AMENDMENTS TO CRIMINAL RULES AND RULES OF EVIDENCE PROPOSED APRIL 30, 1979; POSTPONEMENT OF EFFECTIVE DATE

Pub. L. 96-42, July 31, 1979, 93 Stat. 326, provided: “That notwithstanding any provision of section 3771 or 3772 of title 18 of the United States Code or of section 2072, 2075, or 2076 of title 28 of the United States Code to the contrary—

“(1) the amendments proposed by the United States Supreme Court and transmitted by the Chief Justice on April 30, 1979, to the Federal Rules of Criminal Procedure affecting rules 11(e)(6), 17(h), 32(f), and 44(c), and adding new rules 26.2 and 32.1, and the amendment so proposed and transmitted to the Federal Rules of Evidence affecting rule 410, shall not take effect until December 1, 1980, or until and then only to the extent approved by Act of Congress, whichever is earlier; and

“(2) the amendment proposed by the United States Supreme Court and transmitted by the Chief Justice on April 30, 1979, affecting rule 40 of the Federal Rules of Criminal Procedure shall take effect on August 1, 1979, with the following amendments:

“(A) In the matter designated as paragraph (1) of subdivision (d), strike out ‘in accordance with Rule 32.1(a)’.

“(B) In the matter designated as paragraph (2) of subdivision (d), strike out ‘in accordance with Rule 32.1(a)(1)’.”

APPROVAL AND EFFECTIVE DATE OF RULES GOVERNING SECTION 2254 CASES AND SECTION 2255 PROCEEDINGS FOR UNITED STATES DISTRICT COURTS

Pub. L. 94-426, §1, Sept. 28, 1976, 90 Stat. 1334, provided: “That the rules governing section 2254 cases in the United States district courts and the rules governing section 2255 proceedings for the United States district courts, as proposed by the United States Supreme Court, which were delayed by the Act entitled ‘An Act to delay the effective date of certain proposed amendments to the Federal Rules of Criminal Procedure and certain other rules promulgated by the United States Supreme Court’ (Public Law 94-349), are approved with the amendments set forth in section 2 of this Act and shall take effect as so amended, with respect to petitions under section 2254 and motions under section 2255 of title 28 of the United States Code filed on or after February 1, 1977.”

POSTPONEMENT OF EFFECTIVE DATE OF PROPOSED RULES AND FORMS GOVERNING PROCEEDINGS UNDER SECTIONS 2254 AND 2255 OF THIS TITLE

Pub. L. 94-349, §2, July 8, 1976, 90 Stat. 822, provided: “That, notwithstanding the provisions of section 2072 of title 28 of the United States Code, the rules and forms governing section 2254 [section 2254 of this title] cases in the United States district courts and the rules and forms governing section 2255 [section 2255 of this title] proceedings in the United States district courts which are embraced by the order entered by the United States Supreme Court on April 26, 1976, and which were transmitted to the Congress on or about April 26, 1976, shall not take effect until thirty days after the adjournment sine die of the 94th Congress, or until and to the extent approved by Act of Congress, whichever is earlier.”

APPROVAL AND EFFECTIVE DATE OF AMENDMENTS PROPOSED NOVEMBER 20, 1972 AND DECEMBER 18, 1972

Pub. L. 93-595, §3, Jan. 2, 1975, 88 Stat. 1949, provided that: “The Congress expressly approves the amendments to the Federal Rules of Civil Procedure [Rules 30(c), 32(c), 43, and 44.1] and the amendments to the Federal Rules of Criminal Procedure [Rules 26, 26.1, and 28], which are embraced by the orders entered by the Supreme Court of the United States on November 20,

1972, and December 18, 1972, and such amendments shall take effect on the one hundred and eightieth day beginning after the date of the enactment of this Act [Jan. 2, 1975].”

CONGRESSIONAL APPROVAL REQUIREMENT FOR PROPOSED RULES OF EVIDENCE FOR UNITED STATES COURTS AND AMENDMENTS TO FEDERAL RULES OF CIVIC PROCEDURE AND CRIMINAL PROCEDURE; SUSPENSION OF EFFECTIVENESS OF SUCH RULES

Pub. L. 93-12, Mar. 30, 1973, 87 Stat. 9, provided: “That notwithstanding any other provisions of law, the Rules of Evidence for United States Courts and Magistrates, the Amendments to the Federal Rules of Civil Procedure, and the Amendments to the Federal Rules of Criminal Procedure, which are embraced by the orders entered by the Supreme Court of the United States on Monday, November 20, 1972, and Monday, December 18, 1972, shall have no force or effect except to the extent, and with such amendments, as they may be expressly approved by the Act of Congress.”

§ 2075. Bankruptcy rules

The Supreme Court shall have the power to prescribe by general rules, the forms of process, writs, pleadings, and motions, and the practice and procedure in cases under title 11.

Such rules shall not abridge, enlarge, or modify any substantive right.

The Supreme Court shall transmit to Congress not later than May 1 of the year in which a rule prescribed under this section is to become effective a copy of the proposed rule. The rule shall take effect no earlier than December 1 of the year in which it is transmitted to Congress unless otherwise provided by law.

(Added Pub. L. 88-623, §1, Oct. 3, 1964, 78 Stat. 1001; amended Pub. L. 95-598, title II, §247, Nov. 6, 1978, 92 Stat. 2672; Pub. L. 103-394, title I, §104(f), Oct. 22, 1994, 108 Stat. 4110.)

AMENDMENTS

1994—Pub. L. 103-394 amended third par. generally. Prior to amendment, third par. read as follows: “Such rules shall not take effect until they have been reported to Congress by the Chief Justice at or after the beginning of a regular session thereof but not later than the first day of May and until the expiration of ninety days after they have been thus reported.”

1978—Pub. L. 95-598 substituted “in cases under title 11” for “under the Bankruptcy Act” and struck out provisions directing that all laws in conflict with bankruptcy rules be of no further force or effect after such rules have taken effect.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-394 effective Oct. 22, 1994, and not applicable with respect to cases commenced under Title 11, Bankruptcy, before Oct. 22, 1994, see section 702 of Pub. L. 103-394, set out as a note under section 101 of Title 11.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-598 effective Nov. 6, 1978, see section 402(d) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

RULES PROMULGATED BY SUPREME COURT

Pub. L. 98-353, title III, §320, July 10, 1984, 98 Stat. 357, provided that: “The Supreme Court shall prescribe general rules implementing the practice and procedure to be followed under section 707(b) of title 11, United States Code. Section 2075 of title 28, United States Code, shall apply with respect to the general rules prescribed under this section.”

APPLICABILITY OF RULES TO CASES UNDER TITLE 11

Pub. L. 95-598, title IV, §405(d), Nov. 6, 1978, 92 Stat. 2685, provided that: “The rules prescribed under section 2075 of title 28 of the United States Code and in effect on September 30, 1979, shall apply to cases under title 11, to the extent not inconsistent with the amendments made by this Act, or with this Act [see Tables for complete classification of Pub. L. 95-598], until such rules are repealed or superseded by rules prescribed and effective under such section, as amended by section 248 of this Act.”

ADDITIONAL RULEMAKING POWER

Pub. L. 95-598, title IV, §410, Nov. 6, 1978, 92 Stat. 2687, provided that: “The Supreme Court may issue such additional rules of procedure, consistent with Acts of Congress, as may be necessary for the orderly transfer of functions and records and the orderly transition to the new bankruptcy court system created by this Act [see Tables for complete classification of Pub. L. 95-598].”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2073 of this title.

[§ 2076. Repealed. Pub. L. 100-702, title IV, § 401(c), Nov. 19, 1988, 102 Stat. 4650]

Section, added Pub. L. 93-595, §2(a)(1), Jan. 2, 1975, 88 Stat. 1948; amended Pub. L. 94-149, §2, Dec. 12, 1975, 89 Stat. 806, authorized the Supreme Court to prescribe amendments to Federal Rules of Evidence. See sections 2072 to 2074 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Dec. 1, 1988, see section 407 of Pub. L. 100-702, set out as an Effective Date of 1988 Amendment note under section 2071 of this title.

§ 2077. Publication of rules; advisory committees

(a) The rules for the conduct of the business of each court of appeals, including the operating procedures of such court, shall be published. Each court of appeals shall print or cause to be printed necessary copies of the rules. The Judicial Conference shall prescribe the fees for sales of copies under section 1913 of this title, but the Judicial Conference may provide for free distribution of copies to members of the bar of each court and to other interested persons.

(b) Each court, except the Supreme Court, that is authorized to prescribe rules of the conduct of such court's business under section 2071 of this title shall appoint an advisory committee for the study of the rules of practice and internal operating procedures of such court and, in the case of an advisory committee appointed by a court of appeals, of the rules of the judicial council of the circuit. The advisory committee shall make recommendations to the court concerning such rules and procedures. Members of the committee shall serve without compensation, but the Director may pay travel and transportation expenses in accordance with section 5703 of title 5.

(Added Pub. L. 97-164, title II, §208(a), Apr. 2, 1982, 96 Stat. 54; amended Pub. L. 100-702, title IV, §401(b), Nov. 19, 1988, 102 Stat. 4650; Pub. L. 101-650, title IV, §406, Dec. 1, 1990, 104 Stat. 5124.)

AMENDMENTS

1990—Subsec. (b). Pub. L. 101-650 inserted before period at end of first sentence “and, in the case of an advisory committee appointed by a court of appeals, of the rules of the judicial council of the circuit”.

1988—Subsec. (b). Pub. L. 100-702 substituted “Each court, except the Supreme Court, that is authorized to prescribe rules of the conduct of such court’s business under section 2071 of this title shall appoint” for “Each court of appeals shall appoint” and “such court” for “the court of appeals”.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-650 effective 90 days after Dec. 1, 1990, see section 407 of Pub. L. 101-650, set out as a note under section 332 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-702 effective Dec. 1, 1988, see section 407 of Pub. L. 100-702, set out as a note under section 2071 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1982, see section 402 of Pub. L. 97-164, set out as an Effective Date of 1982 Amendment note under section 171 of this title.

CHAPTER 133—REVIEW—MISCELLANEOUS PROVISIONS

Sec.	
2101.	Supreme Court; time for appeal or certiorari; docketing; stay.
2102.	Priority of criminal case on appeal from State court.
[2103.]	Repealed.]
2104.	Reviews of State court decisions.
2105.	Scope of review; abatement.
2106.	Determination.
2107.	Time for appeal to court of appeals.
2108.	Proof of amount in controversy.
2109.	Quorum of Supreme Court justices absent.
[2110.]	Repealed.]
2111.	Harmless error.
2112.	Record on review and enforcement of agency orders.
2113.	Definition.

HISTORICAL AND REVISION NOTES

1949 ACT

This section inserts in the chapter analysis of chapter 133 of title 28, U.S.C., a new item “2111.” in view of the insertion in such title, by another section of this bill, of a new section 2111.

AMENDMENTS

1988—Pub. L. 100-352, §5(c), (d)(2), June 27, 1988, 102 Stat. 663, struck out item 2103 “Appeal from State court or from a United States court of appeals improvidently taken regarded as petition for writ of certiorari” and substituted “Reviews of State court decisions” for “Appeals from State courts” in item 2104.

1982—Pub. L. 97-164, title I, §136, Apr. 2, 1982, 96 Stat. 41, struck out item 2110 “Time for appeal to Court of Claims in tort claims cases”.

1970—Pub. L. 91-358, title I, §172(a)(2)(B), July 29, 1970, 84 Stat. 590, added item 2113.

1962—Pub. L. 87-669, §2, Sept. 19, 1962, 76 Stat. 556, substituted “or from a United States court of appeals improvidently taken regarded as petition for” for “improvidently taken regarded as” in item 2103.

1958—Pub. L. 85-791, §1, Aug. 28, 1958, 72 Stat. 941, added item 2112.

1949—Act May 24, 1949, ch. 139, §105, 63 Stat. 104, added item 2111.

FEDERAL RULES OF APPELLATE PROCEDURE

See Appendix to this title.

FEDERAL RULES OF CRIMINAL PROCEDURE

Stay of execution and relief pending review, see rule 38, Title 18, Appendix, Crimes and Criminal Procedure.

§ 2101. Supreme Court; time for appeal or certiorari; docketing; stay

(a) A direct appeal to the Supreme Court from any decision under section 1253 of this title, holding unconstitutional in whole or in part, any Act of Congress, shall be taken within thirty days after the entry of the interlocutory or final order, judgment or decree. The record shall be made up and the case docketed within sixty days from the time such appeal is taken under rules prescribed by the Supreme Court.

(b) Any other direct appeal to the Supreme Court which is authorized by law, from a decision of a district court in any civil action, suit or proceeding, shall be taken within thirty days from the judgment, order or decree, appealed from, if interlocutory, and within sixty days if final.

(c) Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree. A justice of the Supreme Court, for good cause shown, may extend the time for applying for a writ of certiorari for a period not exceeding sixty days.

(d) The time for appeal or application for a writ of certiorari to review the judgment of a State court in a criminal case shall be as prescribed by rules of the Supreme Court.

(e) An application to the Supreme Court for a writ of certiorari to review a case before judgment has been rendered in the court of appeals may be made at any time before judgment.

(f) In any case in which the final judgment or decree of any court is subject to review by the Supreme Court on writ of certiorari, the execution and enforcement of such judgment or decree may be stayed for a reasonable time to enable the party aggrieved to obtain a writ of certiorari from the Supreme Court. The stay may be granted by a judge of the court rendering the judgment or decree or by a justice of the Supreme Court, and may be conditioned on the giving of security, approved by such judge or justice, that if the aggrieved party fails to make application for such writ within the period allotted therefor, or fails to obtain an order granting his application, or fails to make his plea good in the Supreme Court, he shall answer for all damages and costs which the other party may sustain by reason of the stay.

(g) The time for application for a writ of certiorari to review a decision of the United States Court of Appeals for the Armed Forces shall be as prescribed by rules of the Supreme Court.

(June 25, 1948, ch. 646, 62 Stat. 961; May 24, 1949, ch. 139, §106, 63 Stat. 104; Pub. L. 98-209, §10(b), Dec. 6, 1983, 97 Stat. 1406; Pub. L. 100-352, §5(b), June 27, 1988, 102 Stat. 663; Pub. L. 103-337, div. A, title IX, §924(d)(1)(C), Oct. 5, 1994, 108 Stat. 2832.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 28, U.S.C., 1940 ed., §§47, 47a, 349a, 350, 380, 380a, section 29 of title 15, U.S.C., 1940 ed., Commerce and Trade, and section 45 of title 49, U.S.C., 1940 ed., Transportation (Feb. 11, 1903, ch. 544, §2, 32 Stat.

1167; Mar. 3, 1911, ch. 231, §§210, 266, 291, 36 Stat. 1150, 1162, 1167; Mar. 4, 1913, ch. 160, 37 Stat. 1013; Oct. 22, 1913, ch. 32, 38 Stat. 220; Sept. 6, 1916, ch. 448, §6, 39 Stat. 727; Feb. 13, 1925, ch. 229, §1, 8 (a, b, d), 43 Stat. 938, 940; Jan. 31, 1928, ch. 14, §1, 45 Stat. 54; June 7, 1934, ch. 426, 48 Stat. 936; Aug. 24, 1937, ch. 754, §2, 3, 50 Stat. 752; June 9, 1944, ch. 239, 58 Stat. 272).

Section consolidates section 350 of title 28, U.S.C., 1940 ed., with those portions of sections 47, 47a, 349a, 380, and 380a, of said title 28, section 29, of title 15, U.S.C., 1940 ed., and section 45 of title 49, U.S.C., 1940 ed., respective time for taking direct appeal. (For disposition of other provisions of said sections, see Distribution Table.)

Subsection (a) of the revised section is derived from sections 349a and 380a of title 28, U.S.C., 1940 ed. The phrase “under rules prescribed by the Supreme Court” was substituted for the phrase “under such rules as may be prescribed by the proper courts” which appeared in both such sections. The Supreme Court by its revised rules 10–13 has made adequate provision for filing record and docketing case. (See Revised Rules of the Supreme Court following section 354 of title 28, U.S.C., 1940 ed.)

Subsection (b) is in accord with sections 47 and 47a of title 28, U.S.C., 1940 ed., and section 29 of title 15, U.S.C., 1940 ed., Commerce and Trade, and section 45 of title 49, U.S.C., 1940 ed., Transportation.

Subsection (c), with respect to the time for taking other appeals or petitioning for a writ of certiorari, substitutes, as more specific, the words “ninety days” for the words “three months” contained in section 350 of title 28, U.S.C., 1940 ed. The provision in said section 350 for allowance of additional time was retained, notwithstanding the language of the Supreme Court in *Comm’r v. Bedford’s Estate*, 1945, 65 S.Ct. 1157, 1159, 325 U.S. 283, 89 L.Ed. 1611, to the effect that the 3 months’ period is “more than ample * * * to determine whether to seek further review”.

In subsection (c), words “in a civil action, suit, or proceeding” were added because section 350 of title 28, U.S.C., 1940 ed., was superseded as to criminal cases by Federal Rules of Criminal Procedure, Rule 39(a)(2), (b)(2).

Words “or the United States Court of Appeals for the District of Columbia” in section 350 of title 28, U.S.C., 1940 ed., were omitted as covered by “court of appeals” in subsection (d) of this revised section.

Words in section 350 of title 28, U.S.C., 1940 ed., “excepting that writs of certiorari to the Supreme Court of the Philippine Islands may be granted where application therefor is made within six months”, were omitted as obsolete, in view of the independence of the Philippines recognized by section 1240 of title 48, U.S.C., 1940 ed., Territories and Insular Possessions.

Subsection (e) relates only to supersedeas or stay of execution of judgments sought to be reviewed in the Supreme Court on writ of certiorari. Supersedeas or stay of proceedings taken to the Supreme Court by appeal from courts of appeals, or direct appeals from a district court or three-judge courts, is governed by Rule 62 of the Federal Rules of Civil Procedure.

Changes were made in phraseology.

1949 ACT

This section clarifies the meaning of subsection (c) of section 2101 of title 28, U.S.C. At present, such subsection, after the words, “ninety days after entry of such judgment or decree”, reads, “unless, upon application for writ of certiorari, for good cause, the Supreme Court or a justice thereof allows an additional time not exceeding sixty days.”

The new subsection (d) of section 2101 supplies an omission in revised title 28, U.S.C., and confirms the authority of the Supreme Court to regulate the time for seeking review of State criminal cases.

The other amendment merely renumbers subsections (d) and (e) of such section 2101 as subsections (e) and (f), respectively.

AMENDMENTS

1994—Subsec. (g). Pub. L. 103–337 substituted “Court of Appeals for the Armed Forces” for “Court of Military Appeals”.

1988—Subsec. (a). Pub. L. 100–352 substituted “section 1253” for “sections 1252, 1253, and 2282”.

1983—Subsec. (g). Pub. L. 98–209 added subsec. (g).

1949—Subsec. (c). Act May 24, 1949, §106(a), clarified the allowance of an additional 60 days in which to apply for a writ of certiorari.

Subsecs. (d) to (f). Act May 24, 1949, §106(b), added subsec. (d) and redesignated former subsecs. (d) and (e) as (e) and (f), respectively.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–352 effective ninety days after June 27, 1988, except that such amendment not to apply to cases pending in Supreme Court on such effective date or affect right to review or manner of reviewing judgment or decree of court which was entered before such effective date, see section 7 of Pub. L. 100–352, set out as a note under section 1254 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective on first day of eighth calendar month beginning after Dec. 6, 1983, see section 12(a)(1) of Pub. L. 98–209, set out as a note under section 801 of Title 10, Armed Forces.

FEDERAL RULES OF APPELLATE PROCEDURE

Criminal cases, time for appeal, see rule 4, Appendix to this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2350 of this title.

§ 2102. Priority of criminal case on appeal from State court

Criminal cases on review from State courts shall have priority, on the docket of the Supreme Court, over all cases except cases to which the United States is a party and such other cases as the court may decide to be of public importance.

(June 25, 1948, ch. 646, 62 Stat. 962.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §351 (Mar. 3, 1911, ch. 231, §253, 36 Stat. 1160; Jan. 31, 1928, ch. 14, §1, 45 Stat. 54).

Changes were made in phraseology.

[§ 2103. Repealed. Pub. L. 100–352, §5(c), June 27, 1988, 102 Stat. 663]

Section, acts June 25, 1948, ch. 646, 62 Stat. 962; Sept. 19, 1962, Pub. L. 87–669, §1, 76 Stat. 556, provided that appeal from State court or from a United States court of appeals improvidently taken be regarded as petition for writ of certiorari.

EFFECTIVE DATE OF REPEAL

Repeal effective ninety days after June 27, 1988, except that such repeal not to apply to cases pending in Supreme Court on such effective date or affect right to review or manner of reviewing judgment or decree of court which was entered into before such effective date, see section 7 of Pub. L. 100–352, set out as a note under section 1254 of this title.

§ 2104. Reviews of State court decisions

A review by the Supreme Court of a judgment or decree of a State court shall be conducted in the same manner and under the same regulations, and shall have the same effect, as if the

judgment or decree reviewed had been rendered in a court of the United States.

(June 25, 1948, ch. 646, 62 Stat. 962; Pub. L. 100-352, § 5(d)(1), June 27, 1988, 102 Stat. 663.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 871 (R.S., § 1003).

Words "An appeal to" were substituted for "writs of error from", in view of the abolition of the writ of error.

Changes were made in phraseology.

AMENDMENTS

1988—Pub. L. 100-352 substituted "Reviews of State court decisions" for "Appeals from State courts" in section catchline and amended text generally. Prior to amendment, text read as follows: "An appeal to the Supreme Court from a State court shall be taken in the same manner and under the same regulations, and shall have the same effect, as if the judgment or decree appealed from had been rendered in a court of the United States."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-352 effective ninety days after June 27, 1988, except that such amendment not to apply to cases pending in Supreme Court on such effective date or affect right to review or manner of reviewing judgment or decree of court which was entered before such effective date, see section 7 of Pub. L. 100-352, set out as a note under section 1254 of this title.

§ 2105. Scope of review; abatement

There shall be no reversal in the Supreme Court or a court of appeals for error in ruling upon matters in abatement which do not involve jurisdiction.

(June 25, 1948, ch. 646, 62 Stat. 963.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 879 (R.S. § 1011; Feb. 18, 1875, ch. 80, § 1, 18 Stat. 318).

The revised language is substituted for the provisions of section 879 of title 28, U.S.C., 1940 ed., to avoid any construction that matters of fact are not reviewable in nonjury cases. Such section 879 related to review upon a writ of error which applied only to actions at law. (See Rule 52(a) of the Federal Rules of Civil Procedure limiting the review of questions of fact which renders unnecessary any statutory limitation.)

Rule 7(c) of the Federal Rules of Civil Procedure abolished all pleas, and the rules adopted the motion as a substitute therefor.

Words "matters in abatement" were, therefore, substituted for the abolished "plea in abatement" and "plea to the jurisdiction."

Changes were made in phraseology.

§ 2106. Determination

The Supreme Court or any other court of appellate jurisdiction may affirm, modify, vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances.

(June 25, 1948, ch. 646, 62 Stat. 963.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 344, 876, 877 (R.S. § 701; Mar. 3, 1891, ch. 517, §§ 10, 11, 26 Stat. 829; Mar. 3, 1911, ch. 231, §§ 231, 236, 237, 291, 36 Stat. 1156, 1167; Dec. 23, 1914, ch. 2, 38 Stat. 790; Sept. 16, 1916, ch. 448, § 2, 39

Stat. 726; Feb. 17, 1922, ch. 54, 42 Stat. 366; Feb. 13, 1925, ch. 229, § 1, 43 Stat. 937; Jan. 31, 1928, ch. 14, § 1, 45 Stat. 54).

Section consolidates part of section 344 of title 28, U.S.C., 1940 ed., with sections 876 and 877 of said title. Other provisions of said section 344 are incorporated in sections 1257 and 2103 of this title.

Words "or a court of appeals" were inserted after "Supreme Court" upon authority of *United States v. Illinois Surety Co.*, C.C.A. 1915, 226 F. 653, affirmed 37 S.Ct. 614, 244 U.S. 376, 61 L.Ed. 1206, wherein it was held that this section also applied to the courts of appeals in view of section 11 of the Circuit Court of Appeals Act of Mar. 3, 1891, ch. 517, 28 Stat. 829.

The revised section will cover instances where the Supreme Court remands a case to the highest court of a State and to the United States Tax Court. It will also cover a remand of a case to the Court of Claims or the Court of Customs and Patent Appeals. For authority to remand a case to The Tax Court, see *Equitable Life Assurance Society of U.S. v. Commissioner of Internal Revenue*, 1944, 64 S.Ct. 722, 321 U.S. 560, 88 L.Ed. 927.

Revised section will also permit a remand by the Supreme Court to a court of appeals inasmuch as such latter court then would be a lower court. The revised section is in conformity with numerous holdings of the Supreme Court to the effect that such a remand may be made. See especially, *Maryland Casualty Co. v. United States*, 1929, 49 S.Ct. 484, 279 U.S. 792, 73 L.Ed. 960; *Krauss Bros. Co. v. Mellon*, 1928, 48 S.Ct. 358, 276 U.S. 386, 72 L.Ed. 620 and *Buzyuski v. Luckenbach S. S. Co.*, 1928, 48 S.Ct. 440, 277 U.S. 226, 72 L.Ed. 860.

The last sentence of section 876 of title 28, U.S.C., 1940 ed., providing that the Supreme Court should not issue execution but should send a special mandate to the inferior court to award execution, was omitted. See rule 34 of the revised rules of the Supreme Court relating to Mandates, and section 1651 of this title authorizing the Supreme Court to issue all writs necessary in aid of its jurisdiction.

Changes were made in phraseology.

§ 2107. Time for appeal to court of appeals

(a) Except as otherwise provided in this section, no appeal shall bring any judgment, order or decree in an action, suit or proceeding of a civil nature before a court of appeals for review unless notice of appeal is filed, within thirty days after the entry of such judgment, order or decree.

(b) In any such action, suit or proceeding in which the United States or an officer or agency thereof is a party, the time as to all parties shall be sixty days from such entry.

(c) The district court may, upon motion filed not later than 30 days after the expiration of the time otherwise set for bringing appeal, extend the time for appeal upon a showing of excusable neglect or good cause. In addition, if the district court finds—

(1) that a party entitled to notice of the entry of a judgment or order did not receive such notice from the clerk or any party within 21 days of its entry, and

(2) that no party would be prejudiced,

the district court may, upon motion filed within 180 days after entry of the judgment or order or within 7 days after receipt of such notice, whichever is earlier, reopen the time for appeal for a period of 14 days from the date of entry of the order reopening the time for appeal.

(d) This section shall not apply to bankruptcy matters or other proceedings under Title 11.

(June 25, 1948, ch. 646, 62 Stat. 963; May 24, 1949, ch. 139, §§ 107, 108, 63 Stat. 104; Pub. L. 95-598,

title II, § 248, Nov. 6, 1978, 92 Stat. 2672; Pub. L. 102-198, § 12, Dec. 9, 1991, 105 Stat. 1627.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 28, U.S.C., 1940 ed., §§ 227a, 230, and section 1142 of title 26, U.S.C., 1940 ed., Internal Revenue Code (Mar. 3, 1891, ch. 517, § 11, 26 Stat. 829; Mar. 3, 1911, ch. 231, § 129, 36 Stat. 1134; Feb. 13, 1925, ch. 229, § 8(c), 43 Stat. 940; Feb. 28, 1927, ch. 228, 44 Stat. 1261; Jan. 31, 1928, ch. 14, § 1, 45 Stat. 54; Feb. 10, 1939, ch. 2, § 1142, 53 Stat. 165; Oct. 21, 1942, ch. 619, title V, § 504(a), (c), 56 Stat. 957).

Section consolidates sections 227a and 230 of title 28, U.S.C., 1940 ed., with section 1142 of title 26, U.S.C., 1940 ed., Internal Revenue Code. Other provisions of such section 227a are incorporated in section 1292 of this title.

Section 227a of title 28, U.S.C., 1940 ed., provided a time limit of 30 days for appeals from patent-infringement decisions, and section 230 of title 28, U.S.C., 1940 ed., permitted 3 months for appeals generally. The revised section adopts the 30-day limit in conformity with recommendations of members of the Judicial Conference of the United States and proposed amendment to Rule 73 of the Federal Rules of Civil Procedure.

Section 1142 of title 26, U.S.C., 1940 ed., provided for 3 months within which to petition for appeal from a decision of The Tax Court. The second paragraph of the revised section reduces this to 60 days for reasons explained above. Other provisions of said section 1142 making a distinction between decisions before and after June 6, 1932, were omitted as executed.

Words "in an action, suit, or proceeding of a civil nature" were added in view of Rule 37 of the Federal Rules of Criminal Procedure prescribing a different limitation for criminal appeals.

Words "notice of appeal is filed" were substituted for provisions of sections 230 of title 28, U.S.C., 1940 ed., and 1142 of title 26, U.S.C., 1940 ed., for petition and allowance of appeal in order to eliminate the useless paper work involved in a pro forma application for appeal and perfunctory allowance of the same. The effect of the section is to require appeals to the courts of appeals in all cases to be taken by filing notice of appeal. See Rule 73(b) of Federal Rules of Civil Procedure.

The case of *Mosier v. Federal Reserve Bank of New York*, C.C.A. 1942, 132 F.2d 710, holds that the Federal Rules of Civil Procedure changing the method of "taking" an appeal, do not affect the time limitation prescribed by section 230 of title 28, U.S.C., 1940 ed.

Word "order" was added, in two places, after "judgment" so as to make the section cover all appeals of which the courts of appeals have jurisdiction, as set forth in section 1291 et seq. of this title.

The last paragraph was added in conformity with section 48 of title 11, U.S.C., 1940 ed., Bankruptcy, and other sections of that title regulating appellate procedure in bankruptcy matters.

The third paragraph was inserted to conform to the existing practice in Admiralty upon the recommendation of the Committee on the Federal Courts of the New York County Lawyers Association.

The time for appeal to the Court of Customs and Patent Appeals in patent and trade-mark cases is governed by section 89 of title 15, U.S.C., 1940 ed., Commerce and Trade, and section 60 of title 35, U.S.C., 1940 ed., Patents, and Rule 25 of the Rules of such court, and, in customs cases, by section 2601 of this title.

Changes were made in phraseology.

SENATE REVISION AMENDMENT

By Senate amendment, all provisions relating to the Tax Court were eliminated. Therefore, section 1142 of title 26, U.S.C., Internal Revenue Code, was not one of the sources of this section as finally enacted. However, no change in the text of this section was necessary. See 80th Congress Senate Report No. 1559.

1949 ACT

This amendment to section 2107 of title 28, U.S.C., restores the former 15-day limitation of time within which to appeal from an interlocutory order in admiralty.

This amendment eliminates as surplusage the words "in any such action, suit or proceeding," from the fourth paragraph of section 2107 of title 28, U.S.C., and corrects a typographical error in the same paragraph.

AMENDMENTS

1991—Pub. L. 102-198 designated first and second pars. as subsecs. (a) and (b), respectively, added subsec. (c), designated fifth par. as subsec. (d), and struck out third and fourth pars. which read as follows:

"In any action, suit or proceeding in admiralty, the notice of appeal shall be filed within ninety days after the entry of the order, judgment or decree appealed from, if it is a final decision, and within fifteen days after its entry if it is an interlocutory decree.

"The district court may extend the time for appeal not exceeding thirty days from the expiration of the original time herein prescribed, upon a showing of excusable neglect based on failure of a party to learn of the entry of the judgment, order or decree."

1978—Pub. L. 95-598 directed the amendment of section by inserting "or the bankruptcy court" after "district court" and by striking out the final paragraph, which amendment did not become effective pursuant to section 402(b) of Pub. L. 95-598, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

1949—Act May 24, 1949, restored, in third par., the 15-day limitation of time within which to appeal from an interlocutory order in admiralty, and in fourth par., substituted "The district court may" for "The district court, in any such action, suit, or proceeding, may" and corrected spelling of "excusable".

FEDERAL RULES OF APPELLATE PROCEDURE

Criminal cases, time for appeal, see rule 4, Appendix to this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 15 section 29; title 21 section 848.

§ 2108. Proof of amount in controversy

Where the power of any court of appeals to review a case depends upon the amount or value in controversy, such amount or value, if not otherwise satisfactorily disclosed upon the record, may be shown and ascertained by the oath of a party to the case or by other competent evidence.

(June 25, 1948, ch. 646, 62 Stat. 963.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 231 (Feb. 13, 1925, ch. 229, § 9, 43 Stat. 941).

Words "or in the Supreme Court" were omitted. Section 7 of the 1925 act containing such words related to review by the Supreme Court of the United States of decisions of the Supreme Court of the Philippine Islands and designated a certain jurisdictional amount. Such section 7 has now become obsolete, in view of the recognition of the independence of the Philippines, title 48 U.S.C., 1940 ed., § 1240, Territories and Insular Possessions, and there is no other case wherein the power of the Supreme Court to review depends on the amount or value in controversy.

§ 2109. Quorum of Supreme Court justices absent

If a case brought to the Supreme Court by direct appeal from a district court cannot be

heard and determined because of the absence of a quorum of qualified justices, the Chief Justice of the United States may order it remitted to the court of appeals for the circuit including the district in which the case arose, to be heard and determined by that court either sitting in banc or specially constituted and composed of the three circuit judges senior in commission who are able to sit, as such order may direct. The decision of such court shall be final and conclusive. In the event of the disqualification or disability of one or more of such circuit judges, such court shall be filled as provided in chapter 15 of this title.

In any other case brought to the Supreme Court for review, which cannot be heard and determined because of the absence of a quorum of qualified justices, if a majority of the qualified justices shall be of opinion that the case cannot be heard and determined at the next ensuing term, the court shall enter its order affirming the judgment of the court from which the case was brought for review with the same effect as upon affirmance by an equally divided court.

(June 25, 1948, ch. 646, 62 Stat. 963.)

HISTORICAL AND REVISION NOTES

Based on portions of section 29 of title 15, U.S.C., 1940 ed., Commerce and Trade, and section 45 of title 49, U.S.C., 1940 ed., Transportation (Feb. 11, 1903, ch. 544, § 2, 32 Stat. 823; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167; June 9, 1944, ch. 239, 58 Stat. 272).

Section consolidates portions of section 29 of title 15, U.S.C., 1940 ed., and section 45 of title 49, U.S.C., 1940 ed., with changes of substance and phraseology.

The revised section includes the principal provisions of sections 29 and 45 of titles 15 and 49, U.S.C., 1940 ed., respectively, in case of the absence of a quorum of qualified Justices of the Supreme Court.

Sections 29 and 45 of titles 15 and 49, U.S.C., 1940 ed., respectively, were identical and were applicable only to decisions of three-judge courts in antitrust cases under section 107 of said title 15 and Interstate Commerce cases under sections 1, 8, and 12 of said title 49, "or any other acts having a like purpose that may hereinafter be enacted." The revised section broadens and extends the application of such provisions to include "any case involving a direct appeal to the Supreme Court from the decision of a district court or a district court of three judges which cannot be heard and determined because of the absence of a quorum of qualified justices." It includes direct appeals in criminal cases under section 3731 of title 18 (H.R. 1600, 80th Cong.).

Sections 29 and 45 of titles 15 and 49, U.S.C., 1940 ed., respectively provided that the Supreme Court certify the case to the Circuit Court of Appeals and that the Senior Circuit Judge, qualified to participate should designate himself and two other circuit judges next in order of seniority. Other provisions were made for designation of circuit judges from other circuits in case of insufficient circuit judges being available in the circuit.

The revised section permits the Chief Justice of the United States to designate the "court of appeals" to hear the case in banc or by means of a specially constituted court of appeals composed of the three circuit judges senior in commission who are able to sit. In case of disqualification or disability, the court shall be filled by designation and assignment as provided in chapter 15 of this title.

The provisions of section 29 of title 15, U.S.C., 1940 ed., and section 45 of title 49, U.S.C., 1940 ed., relating to time for appeal are incorporated in section 2101 of this title. The provisions of said sections for direct appeal to the Supreme Court are retained in said titles 15 and 49.

The second paragraph of the revised section is new. It recognizes the necessity of final disposition of litigation in which appellate review has been had and further review by the Supreme Court is impossible for lack of a quorum of qualified justices.

[§ 2110. Repealed. Pub. L. 97-164, title I, § 136, Apr. 2, 1982, 96 Stat. 41]

Section, acts June 25, 1948, ch. 646, 62 Stat. 964; May 24, 1949, ch. 139, § 109, 63 Stat. 105, provided that appeals to the Court of Claims in tort claims cases, as provided in section 1504 of this title, be taken within 90 days after the entry of the final judgment of the district court.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1982, see section 402 of Pub. L. 97-164, set out as an Effective Date of 1982 Amendment note under section 171 of this title.

§ 2111. Harmless error

On the hearing of any appeal or writ of certiorari in any case, the court shall give judgment after an examination of the record without regard to errors or defects which do not affect the substantial rights of the parties.

(Added May 24, 1949, ch. 139, § 110, 63 Stat. 105.)

HISTORICAL AND REVISION NOTES

1949 ACT

Incorporates in title 28, U.S.C., as section 2111 thereof, the harmless error provisions of section 269 of the Judicial Code (now repealed), which applied to all courts of the United States and to all cases therein and therefore was superseded only in part by the Federal Procedural Rules, which apply only to the United States district courts.

FEDERAL RULES OF CIVIL PROCEDURE

Harmless error, see rule 61, Appendix to this title.

§ 2112. Record on review and enforcement of agency orders

(a) The rules prescribed under the authority of section 2072 of this title may provide for the time and manner of filing and the contents of the record in all proceedings instituted in the courts of appeals to enjoin, set aside, suspend, modify, or otherwise review or enforce orders of administrative agencies, boards, commissions, and officers. Such rules may authorize the agency, board, commission, or officer to file in the court a certified list of the materials comprising the record and retain and hold for the court all such materials and transmit the same or any part thereof to the court, when and as required by it, at any time prior to the final determination of the proceeding, and such filing of such certified list of the materials comprising the record and such subsequent transmittal of any such materials when and as required shall be deemed full compliance with any provision of law requiring the filing of the record in the court. The record in such proceedings shall be certified and filed in or held for and transmitted to the court of appeals by the agency, board, commission, or officer concerned within the time and in the manner prescribed by such rules. If proceedings are instituted in two or more courts of appeals with respect to the same order, the following shall apply:

(1) If within ten days after issuance of the order the agency, board, commission, or offi-

cer concerned receives, from the persons instituting the proceedings, the petition for review with respect to proceedings in at least two courts of appeals, the agency, board, commission, or officer shall proceed in accordance with paragraph (3) of this subsection. If within ten days after the issuance of the order the agency, board, commission, or officer concerned receives, from the persons instituting the proceedings, the petition for review with respect to proceedings in only one court of appeals, the agency, board, commission, or officer shall file the record in that court notwithstanding the institution in any other court of appeals of proceedings for review of that order. In all other cases in which proceedings have been instituted in two or more courts of appeals with respect to the same order, the agency, board, commission, or officer concerned shall file the record in the court in which proceedings with respect to the order were first instituted.

(2) For purposes of paragraph (1) of this subsection, a copy of the petition or other pleading which institutes proceedings in a court of appeals and which is stamped by the court with the date of filing shall constitute the petition for review. Each agency, board, commission, or officer, as the case may be, shall designate by rule the office and the officer who must receive petitions for review under paragraph (1).

(3) If an agency, board, commission, or officer receives two or more petitions for review of an order in accordance with the first sentence of paragraph (1) of this subsection, the agency, board, commission, or officer shall, promptly after the expiration of the ten-day period specified in that sentence, so notify the judicial panel on multidistrict litigation authorized by section 1407 of this title, in such form as that panel shall prescribe. The judicial panel on multidistrict litigation shall, by means of random selection, designate one court of appeals, from among the courts of appeals in which petitions for review have been filed and received within the ten-day period specified in the first sentence of paragraph (1), in which the record is to be filed, and shall issue an order consolidating the petitions for review in that court of appeals. The judicial panel on multidistrict litigation shall, after providing notice to the public and an opportunity for the submission of comments, prescribe rules with respect to the consolidation of proceedings under this paragraph. The agency, board, commission, or officer concerned shall file the record in the court of appeals designated pursuant to this paragraph.

(4) Any court of appeals in which proceedings with respect to an order of an agency, board, commission, or officer have been instituted may, to the extent authorized by law, stay the effective date of the order. Any such stay may thereafter be modified, revoked, or extended by a court of appeals designated pursuant to paragraph (3) with respect to that order or by any other court of appeals to which the proceedings are transferred.

(5) All courts in which proceedings are instituted with respect to the same order, other

than the court in which the record is filed pursuant to this subsection, shall transfer those proceedings to the court in which the record is so filed. For the convenience of the parties in the interest of justice, the court in which the record is filed may thereafter transfer all the proceedings with respect to that order to any other court of appeals.

(b) The record to be filed in the court of appeals in such a proceeding shall consist of the order sought to be reviewed or enforced, the findings or report upon which it is based, and the pleadings, evidence, and proceedings before the agency, board, commission, or officer concerned, or such portions thereof (1) as the rules prescribed under the authority of section 2072 of this title may require to be included therein, or (2) as the agency, board, commission, or officer concerned, the petitioner for review or respondent in enforcement, as the case may be, and any intervenor in the court proceeding by written stipulation filed with the agency, board, commission, or officer concerned or in the court in any such proceeding may consistently with the rules prescribed under the authority of section 2072 of this title designate to be included therein, or (3) as the court upon motion of a party or, after a prehearing conference, upon its own motion may by order in any such proceeding designate to be included therein. Such a stipulation or order may provide in an appropriate case that no record need be filed in the court of appeals. If, however, the correctness of a finding of fact by the agency, board, commission, or officer is in question all of the evidence before the agency, board, commission, or officer shall be included in the record except such as the agency, board, commission, or officer concerned, the petitioner for review or respondent in enforcement, as the case may be, and any intervenor in the court proceeding by written stipulation filed with the agency, board, commission, or officer concerned or in the court agree to omit as wholly immaterial to the questioned finding. If there is omitted from the record any portion of the proceedings before the agency, board, commission, or officer which the court subsequently determines to be proper for it to consider to enable it to review or enforce the order in question the court may direct that such additional portion of the proceedings be filed as a supplement to the record. The agency, board, commission, or officer concerned may, at its option and without regard to the foregoing provisions of this subsection, and if so requested by the petitioner for review or respondent in enforcement shall, file in the court the entire record of the proceedings before it without abbreviation.

(c) The agency, board, commission, or officer concerned may transmit to the court of appeals the original papers comprising the whole or any part of the record or any supplemental record, otherwise true copies of such papers certified by an authorized officer or deputy of the agency, board, commission, or officer concerned shall be transmitted. Any original papers thus transmitted to the court of appeals shall be returned to the agency, board, commission, or officer concerned upon the final determination of the review or enforcement proceeding. Pending such final determination any such papers may be re-

turned by the court temporarily to the custody of the agency, board, commission, or officer concerned if needed for the transaction of the public business. Certified copies of any papers included in the record or any supplemental record may also be returned to the agency, board, commission, or officer concerned upon the final determination of review or enforcement proceedings.

(d) The provisions of this section are not applicable to proceedings to review decisions of the Tax Court of the United States or to proceedings to review or enforce those orders of administrative agencies, boards, commissions, or officers which are by law reviewable or enforceable by the district courts.

(Added Pub. L. 85-791, § 2, Aug. 28, 1958, 72 Stat. 941; amended Pub. L. 89-773, § 5(a), (b), Nov. 6, 1966, 80 Stat. 1323; Pub. L. 100-236, § 1, Jan. 8, 1988, 101 Stat. 1731.)

AMENDMENTS

1988—Subsec. (a). Pub. L. 100-236 substituted “If proceedings are instituted in two or more courts of appeals with respect to the same order, the following shall apply:” and pars. (1) to (5) for “If proceedings have been instituted in two or more courts of appeals with respect to the same order the agency, board, commission, or officer concerned shall file the record in that one of such courts in which a proceeding with respect to such order was first instituted. The other courts in which such proceedings are pending shall thereupon transfer them to the court of appeals in which the record has been filed. For the convenience of the parties in the interest of justice such court may thereafter transfer all the proceedings with respect to such order to any other court of appeals.”

1966—Subsec. (a). Pub. L. 89-773, § 5(a), substituted “The rules prescribed under the authority of section 2072 of this title may provide for the time and manner of filing” for “The several courts of appeal shall have power to adopt, with the approval of the Judicial Conference of the United States, rules, which so far as practicable shall be uniform in all such courts prescribing the time and manner of filing.” See section 2072 of this title.

Subsec. (b). Pub. L. 89-773, § 5(b), substituted “the rules prescribed under the authority of section 2072 of this title” for “the said rules of the court of appeals” and for “the rules of such court”.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 3 of Pub. L. 100-236 provided that: “The amendments made by this Act [amending this section and section 1369 of Title 33, Navigation and Navigable Waters] take effect 180 days after the date of the enactment of this Act [Jan 8, 1988], except that the judicial panel on multidistrict litigation may issue rules pursuant to subsection (a)(3) of section 2112 of title 28, United States Code (as added by section 1), on or after such date of enactment.”

SAVINGS PROVISION

Section 5(c) of Pub. L. 89-773 provided that: “The amendments of section 2112 of title 28 of the United States Code made by this Act shall not operate to invalidate or repeal rules adopted under the authority of that section prior to the enactment of this Act [Nov. 6, 1966], which rules shall remain in effect until superseded by rules prescribed under the authority of section 2072 of title 28 of the United States Code as amended by this Act.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2346 of this title; title 5 section 7123; title 7 sections 8, 9, 136n, 194, 228b-3, 1115, 1600, 1601; title 12 sections 1467a, 1786, 1818, 1848,

2266, 2268, 4583, 4634; title 15 sections 21, 45, 57a, 78y, 79x, 80a-42, 80b-13, 687e, 717r, 1193, 1262, 1474, 1710, 1825, 2060, 2618, 3416; title 16 sections 773f, 825l, 1536, 1858, 2437, 3142, 3373, 5010, 5507; title 19 sections 81r, 1677f; title 20 sections 1234g, 1412, 1416, 7372, 7711, 8896; title 21 sections 346a, 348, 355, 360g, 360kk, 371; title 22 section 1631f; title 25 section 4161; title 26 section 3310; title 27 section 204; title 29 sections 160, 210, 660, 667, 727, 1578; title 30 sections 816, 1462; title 31 section 1263; title 33 section 921; title 39 section 3628; title 40 section 333; title 42 sections 263a, 263b, 291h, 504, 1316, 1320a-7a, 1320a-8, 2022, 3027, 3785, 5311, 5405, 6029, 6306, 6869, 7525, 8412, 9152; title 43 sections 355, 1349; title 46 App. section 1181; title 47 section 402; title 49 section 46110.

§ 2113. Definition

For purposes of this chapter, the terms “State court”, “State courts”, and “highest court of a State” include the District of Columbia Court of Appeals.

(Added Pub. L. 91-358, title I, § 172(a)(2)(A), July 29, 1970, 84 Stat. 590.)

EFFECTIVE DATE

Section effective the first day of the seventh calendar month which begins after July 29, 1970, see section 199(a) of Pub. L. 91-358, set out as an Effective Date of 1970 Amendment note under section 1257 of this title.

PART VI—PARTICULAR PROCEEDINGS

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SENATE REVISION AMENDMENT

Chapters 169, 171 and 173 were renumbered “167”, “169” and “171”, respectively, without change in their section numbers, by Senate amendment. See 80th Congress Senate Report No. 1559.

AMENDMENTS

1998—Pub. L. 105-304, title IV, § 406(b), Oct. 28, 1998, 112 Stat. 2905, added item for chapter 180.

¹ So in original.