

752, 1071, 1581, 1583 and 1588 of Title 18, Crimes and Criminal Procedure, in the general revision of Title 18 by act June 25, 1948, ch. 645, 62 Stat. 683.

#### CODIFICATION

R.S. §1982 derived from acts Apr. 9, 1866, ch. 31, §4, 14 Stat. 28; May 31, 1870, Ch. 114, §9, 16 Stat. 142.

Section was formerly classified to section 49 of Title 8, Aliens and Nationality.

#### CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, substituted "United States attorneys" for "district attorneys". See section 541 of Title 28, Judiciary and Judicial Procedure, and Historical and Revision Notes thereunder.

"United States magistrate judges" substituted in text for "magistrates" pursuant to section 321 of Pub. L. 101-650, set out as a note under section 631 of Title 28. Previously, "magistrates" substituted for "commissioners" pursuant to Pub. L. 90-578. See chapter 43 (§631 et seq.) of Title 28.

Reference to the district courts substituted for reference to the circuit courts on authority of section 291 of act Mar. 3, 1911.

### § 1988. Proceedings in vindication of civil rights

#### (a) Applicability of statutory and common law

The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of titles 13, 24, and 70 of the Revised Statutes for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty.

#### (b) Attorney's fees

In any action or proceeding to enforce a provision of sections 1981, 1981a, 1982, 1983, 1985, and 1986 of this title, title IX of Public Law 92-318 [20 U.S.C. 1681 et seq.], the Religious Freedom Restoration Act of 1993 [42 U.S.C. 2000bb et seq.], the Religious Land Use and Institutionalized Persons Act of 2000 [42 U.S.C. 2000cc et seq.], title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], or section 13981 of this title, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity such officer shall not be held liable for any costs, including attorney's fees, unless such action was clearly in excess of such officer's jurisdiction.

#### (c) Expert fees

In awarding an attorney's fee under subsection (b) of this section in any action or proceeding to

enforce a provision of section 1981 or 1981a of this title, the court, in its discretion, may include expert fees as part of the attorney's fee.

(R.S. §722; Pub. L. 94-559, §2, Oct. 19, 1976, 90 Stat. 2641; Pub. L. 96-481, title II, §205(c), Oct. 21, 1980, 94 Stat. 2330; Pub. L. 102-166, title I, §§103, 113(a), Nov. 21, 1991, 105 Stat. 1074, 1079; Pub. L. 103-141, §4(a), Nov. 16, 1993, 107 Stat. 1489; Pub. L. 103-322, title IV, §40303, Sept. 13, 1994, 108 Stat. 1942; Pub. L. 104-317, title III, §309(b), Oct. 19, 1996, 110 Stat. 3853; Pub. L. 106-274, §4(d), Sept. 22, 2000, 114 Stat. 804.)

#### REFERENCES IN TEXT

Title 13 of the Revised Statutes, referred to in subsec. (a), was in the original "this Title" meaning title 13 of the Revised Statutes, consisting of R.S. §§530 to 1093. For complete classification of R.S. §§530 to 1093 to the Code, see Tables.

Title 24 of the Revised Statutes, referred to in subsec. (a), was in the original "Title 'CIVIL RIGHTS,'" meaning title 24 of the Revised Statutes, consisting of R.S. §§1977 to 1991, which are classified to sections 1981 to 1983, 1985 to 1987, and 1989 to 1994 of this title. For complete classification of R.S. §§1977 to 1991 to the Code, see Tables.

Title 70 of the Revised Statutes, referred to in subsec. (a), was in the original "Title 'CRIMES,'" meaning title 70 of the Revised Statutes, consisting of R.S. §§5323 to 5550. For complete classification of R.S. §§5323 to 5550, see Tables.

Title IX of Public Law 92-318, referred to in subsec. (b), is title IX of Pub. L. 92-318, June 23, 1972, 86 Stat. 373, as amended, known as the Patsy Takemoto Mink Equal Opportunity in Education Act, which is classified principally to chapter 38 (§1681 et seq.) of Title 20, Education. For complete classification of title IX to the Code, see Short Title note set out under section 1681 of Title 20 and Tables.

The Religious Freedom Restoration Act of 1993, referred to in subsec. (b), is Pub. L. 103-141, Nov. 16, 1993, 107 Stat. 1488, which is classified principally to chapter 21B (§2000bb et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000bb of this title and Tables.

The Religious Land Use and Institutionalized Persons Act of 2000, referred to in subsec. (b), is Pub. L. 106-274, Sept. 22, 2000, 114 Stat. 803, which is classified principally to chapter 21C (§2000cc et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000cc of this title and Tables.

The Civil Rights Act of 1964, referred to in subsec. (b), is Pub. L. 88-352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Civil Rights Act of 1964 is classified generally to subchapter V (§2000d et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

#### CODIFICATION

R.S. §722 derived from acts Apr. 9, 1866, ch. 31, §3, 14 Stat. 27; May 31, 1870, ch. 114, §18, 16 Stat. 144.

Section was formerly classified to section 729 of Title 28 prior to the general revision and enactment of Title 28, Judiciary and Judicial Procedure, by act June 25, 1948, ch. 646, §1, 62 Stat. 869.

#### AMENDMENTS

2000—Subsec. (b), Pub. L. 106-274 inserted "the Religious Land Use and Institutionalized Persons Act of 2000," after "Religious Freedom Restoration Act of 1993," and deleted comma after "section 13981 of this title."

1996—Subsec. (b), Pub. L. 104-317 inserted before period at end " , except that in any action brought against a judicial officer for an act or omission taken

in such officer's judicial capacity such officer shall not be held liable for any costs, including attorney's fees, unless such action was clearly in excess of such officer's jurisdiction".

1994—Subsec. (b). Pub. L. 103-322, which directed the amendment of the last sentence of this section by striking "or" after "92-318," and by inserting " , or section 13981 of this title," after "1964", was executed to subsec. (b) of this section by striking "or" after "Act of 1993," and by inserting " , or section 13981 of this title," after "1964", to reflect the probable intent of Congress and amendments by Pub. L. 102-166 and Pub. L. 103-141. See 1993 and 1991 Amendment notes below.

1993—Subsec. (b). Pub. L. 103-141 inserted "the Religious Freedom Restoration Act of 1993," before "or title VI".

1991—Subsec. (a). Pub. L. 102-166, §113(a)(1), designated first sentence of existing provisions as subsec. (a).

Subsec. (b). Pub. L. 102-166, §§103, 113(a)(1), designated second sentence of existing provisions as subsec. (b) and inserted "1981a," after "1981,".

Subsec. (c). Pub. L. 102-166, §113(a)(2), added subsec. (c).

1980—Pub. L. 96-481 struck out "or in any civil action or proceeding, by or on behalf of the United States of America, to enforce, or charging a violation of, a provision of the United States Internal Revenue Code,".

1976—Pub. L. 94-559 authorized the court, in its discretion, to allow a reasonable attorney's fee as part of the prevailing party's costs.

#### EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-166 effective Nov. 21, 1991, except as otherwise provided, see section 402 of Pub. L. 102-166, set out as a note under section 1981 of this title.

#### EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-481 effective Oct. 1, 1981, and applicable to adversary adjudication as defined in section 504(b)(1)(C) of Title 5, Government Organization and Employees, and to civil actions and adversary adjudications described in section 2412 of Title 28, Judiciary and Judicial Procedure, which are pending on, or commenced on or after Oct. 1, 1981, see section 208 of Pub. L. 96-481, set out as an Effective Date note under section 2412 of Title 28.

#### SHORT TITLE OF 1976 AMENDMENT

Pub. L. 94-559, §1, Oct. 19, 1976, 90 Stat. 2641, provided: "That this Act [amending this section] may be cited as 'The Civil Rights Attorney's Fees Awards Act of 1976'."

### § 1989. United States magistrate judges; appointment of persons to execute warrants

The district courts of the United States and the district courts of the Territories, from time to time, shall increase the number of United States magistrate judges, so as to afford a speedy and convenient means for the arrest and examination of persons charged with the crimes referred to in section 1987 of this title; and such magistrate judges are authorized and required to exercise all the powers and duties conferred on them herein with regard to such offenses in like manner as they are authorized by law to exercise with regard to other offenses against the laws of the United States. Said magistrate judges are empowered, within their respective counties, to appoint, in writing, under their hands, one or more suitable persons, from time to time, who shall execute all such warrants or other process as the magistrate judges may issue in the lawful performance of their duties, and the persons so appointed shall have authority to summon and call to their aid the bystand-

ers or posse comitatus of the proper county, or such portion of the land or naval forces of the United States, or of the militia, as may be necessary to the performance of the duty with which they are charged; and such warrants shall run and be executed anywhere in the State or Territory within which they are issued.

(R.S. §§1983, 1984; Mar. 3, 1911, ch. 231, §291, 36 Stat. 1167; Pub. L. 90-578, title IV, §402(b)(2), Oct. 17, 1968, 82 Stat. 1118; Pub. L. 101-650, title III, §321, Dec. 1, 1990, 104 Stat. 5117.)

#### CODIFICATION

R.S. §§1983 and 1984 derived from acts Apr. 9, 1866, ch. 31, §§4, 5, 14 Stat. 28; May 31, 1870, ch. 114, §§9, 10, 16 Stat. 142.

Section was formerly classified to section 50 of Title 8, Aliens and Nationality.

#### CHANGE OF NAME

"United States magistrate judges" and "magistrate judges" substituted in text for "magistrates" wherever appearing pursuant to section 321 of Pub. L. 101-650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure. Previously, "magistrates" substituted for "commissioners" pursuant to Pub. L. 90-578. See chapter 43 (§631 et seq.) of Title 28.

"District courts" substituted for "circuit courts" on authority of section 291 of act Mar. 3, 1911.

### § 1990. Marshal to obey precepts; refusing to receive or execute process

Every marshal and deputy marshal shall obey and execute all warrants or other process, when directed to him, issued under the provisions of section 1989 of this title. Every marshal and deputy marshal who refuses to receive any warrant or other process when tendered to him, issued in pursuance of the provisions of this section, or refuses or neglects to use all proper means diligently to execute the same, shall be liable to a fine in the sum of \$1,000, for the benefit of the party aggrieved thereby.

(R.S. §§1985, 5517.)

#### CODIFICATION

R.S. §1985 derived from acts Apr. 9, 1866, ch. 31, §5, 14 Stat. 28; May 31, 1870, ch. 114, §10, 16 Stat. 142.

R.S. §5517 derived from act May 31, 1870, ch. 114, §10, 16 Stat. 142.

Section was formerly classified to section 51 of Title 8, Aliens and Nationality.

### § 1991. Fees; persons appointed to execute process

Every person appointed to execute process under section 1989 of this title shall be entitled to a fee of \$5 for each party he may arrest and take before any United States magistrate judge, with such other fees as may be deemed reasonable by the magistrate judge for any additional services necessarily performed by him, such as attending at the examination, keeping the prisoner in custody, and providing him with food and lodging during his detention, and until the final determination of the magistrate judge; such fees to be made up in conformity with the fees usually charged by the officers of the courts of justice within the proper district or county, as near as may be practicable, and paid out of the Treasury of the United States on the certificate of the judge of the district within which the