

Editorial Notes

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.

§ 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.

Editorial Notes

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 per-

son 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”.

§ 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.

Editorial Notes

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 wit-

ness 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 it is 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.

§ 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.