

the selection of foreign counsel to represent him at the time of taking of such testimony. In cases of testimony taken on written interrogatories, such provision shall be made only upon the request of any such party prior to the issuance of such commission. Selection of foreign counsel shall be made by the party whom such foreign counsel is to represent within ten days prior to the taking of testimony or by the court from which the commission issued, upon the request of such party made within such time.

(b) Any consular officer to whom a commission is addressed to take testimony, who is interested in the outcome of the criminal action or proceeding in which the foreign documents in question are to be used or has participated in the prosecution of such action or proceeding, whether by investigations, preparation of evidence, or otherwise, may be disqualified on his own motion or on that of the United States or any other party to such criminal action or proceeding made to the court from which the commission issued at any time prior to the execution thereof. If after notice and hearing, the court grants the motion, it shall instruct the consular officer thus disqualified to send the commission to any other consular officer of the United States named by the court, and such other officer shall execute the commission according to its terms and shall for all purposes be deemed the officer to whom the commission is addressed.

(c) The provisions of this section and sections 3493-3496 of this title applicable to consular officers shall be applicable to diplomatic officers pursuant to such regulations as may be prescribed by the President. For purposes of this section and sections 3493 through 3496 of this title, the term "consular officers" includes any United States citizen who is designated to perform notarial functions pursuant to section 1750 of the Revised Statutes, as amended (22 U.S.C. 4221).

(June 25, 1948, ch. 645, 62 Stat. 834; May 24, 1949, ch. 139, § 53, 63 Stat. 96; Pub. L. 94-149, § 4, Dec. 12, 1975, 89 Stat. 806; Pub. L. 105-277, div. G, subdiv. B, title XXII, § 2222(c)(2), Oct. 21, 1998, 112 Stat. 2681-818.)

HISTORICAL AND REVISION NOTES 1948 ACT

Based on section 695b of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary (June 20, 1936, ch. 640, § 3, 49 Stat. 1562).

1949 ACT

This section [section 53] corrects section 3492(a) of title 18, U.S.C., so that the reference in the first sentence thereof will be to the correct section number in title 28, U.S.C., as revised and enacted in 1948.

REFERENCES IN TEXT

The Federal Rules of Evidence, referred to in subsec. (a), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

1998—Subsec. (c). Pub. L. 105-277 inserted at end "For purposes of this section and sections 3493 through 3496 of this title, the term 'consular officers' includes any United States citizen who is designated to perform notarial functions pursuant to section 1750 of the Revised Statutes, as amended (22 U.S.C. 4221)."

1975—Subsec. (a). Pub. L. 94-149 substituted "the authentication requirements of the Federal Rules of Evidence" for "the requirements of section 1732 of Title 28".

1949—Subsec. (a). Act May 24, 1949, substituted "section 1732" for "section 695".

§ 3493. Deposition to authenticate foreign documents

The consular officer to whom any commission authorized under section 3492 of this title is addressed shall take testimony in accordance with its terms. Every person whose testimony is taken shall be cautioned and sworn to testify the whole truth and carefully examined. His testimony shall be reduced to writing or typewriting by the consular officer taking the testimony, or by some person under his personal supervision, or by the witness himself, in the presence of the consular officer and by no other person, and shall, after it has been reduced to writing or typewriting, be subscribed by the witness. Every foreign document, with respect to which testimony is taken, shall be annexed to such testimony and subscribed by each witness who appears for the purpose of establishing the genuineness of such document. When counsel for all the parties attend the examination of any witness whose testimony is to be taken on written interrogatories, they may consent that oral interrogatories in addition to those accompanying the commission may be put to the witness. The consular officer taking any testimony shall require an interpreter to be present when his services are needed or are requested by any party or his attorney.

(June 25, 1948, ch. 645, 62 Stat. 835.)

HISTORICAL AND REVISION NOTES

Based on section 695c of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary (June 20, 1936, ch. 640, § 4, 49 Stat. 1563).

§ 3494. Certification of genuineness of foreign document

If the consular officer executing any commission authorized under section 3492 of this title shall be satisfied, upon all the testimony taken, that a foreign document is genuine, he shall certify such document to be genuine under the seal of his office. Such certification shall include a statement that he is not subject to disqualification under the provisions of section 3492 of this title. He shall thereupon transmit, by mail, such foreign documents, together with the record of all testimony taken and the commission which has been executed, to the clerk of the court from which such commission issued, in the manner in which his official dispatches are transmitted to the Government. The clerk receiving any executed commission shall open it and shall make any foreign documents and record of testimony, transmitted with such commission, available for inspection by the parties to the criminal action or proceeding in which such documents are to be used, and said parties shall be furnished copies of such documents free of charge.

(June 25, 1948, ch. 645, 62 Stat. 835.)

HISTORICAL AND REVISION NOTES

Based on section 695d of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary (June 20, 1936, ch. 640, § 5, 49 Stat. 1563).

§ 3495. Fees and expenses of consuls, counsel, interpreters and witnesses

(a) The consular fees prescribed under section 1201 of Title 22, for official services in connection with the taking of testimony under sections 3492-3494 of this title, and the fees of any witness whose testimony is taken shall be paid by the party who applied for the commission pursuant to which such testimony was taken. Every witness under section 3493 of this title shall be entitled to receive, for each day's attendance, fees prescribed under section 3496 of this title. Every foreign counsel selected pursuant to a commission issued on application of the United States, and every interpreter whose services are required by a consular officer under section 3493 of this title, shall be paid by the United States, such compensation, together with such personal and incidental expense upon verified statements filed with the consular officer, as he may allow. Compensation and expenses of foreign counsel selected pursuant to a commission issued on application of any party other than the United States shall be paid by the party whom such counsel represents and shall be allowed in the same manner.

(b) Whenever any party makes affidavit, prior to the issuance of a commission for the purpose of taking testimony, that he is not possessed of sufficient means and is actually unable to pay any fees and costs incurred under this section, such fees and costs shall, upon order of the court, be paid in the same manner as fees and costs are paid which are chargeable to the United States.

(c) Any appropriation available for the payment of fees and costs in the case of witnesses subpoenaed in behalf of the United States in criminal cases shall be available for any fees or costs which the United States is required to pay under this section.

(June 25, 1948, ch. 645, 62 Stat. 836; May 24, 1949, ch. 139, § 54, 63 Stat. 96.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on section 695f of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary (June 20, 1936, ch. 640, § 7, 49 Stat. 1564).

1949 ACT

This section [section 54] corrects the reference in the first sentence of section 3495(a) of title 18, U.S.C., because the provisions which were formerly set out as section 127 of title 22, U.S.C., are now set out as section 1201 of such title.

REFERENCES IN TEXT

Section 1201 of Title 22, referred to in subsec. (a), was transferred to section 4219 of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

1949—Subsec. (a). Act May 24, 1949, substituted "section 1201" for "section 127".

§ 3496. Regulations by President as to commissions, fees of witnesses, counsel and interpreters

The President is authorized to prescribe regulations governing the manner of executing and returning commissions by consular officers under the provisions of sections 3492-3494 of this title and schedules of fees allowable to witnesses, foreign counsel, and interpreters under section 3495 of this title.

(June 25, 1948, ch. 645, 62 Stat. 836.)

HISTORICAL AND REVISION NOTES

Based on section 695g of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary (June 20, 1936, ch. 640, § 8, 49 Stat. 1564).

EX. ORD. NO. 10307. DELEGATION OF AUTHORITY

Ex. Ord. No. 10307, Nov. 23, 1951, 16 F.R. 11907, provided:

By virtue of the authority vested in me by the act of August 8, 1950, 64 Stat. 419 (3 U.S.C. Supp. 301-303), I hereby delegate to the Secretary of State (1) the authority vested in the President by section 3496 of title 18 of the United States Code (62 Stat. 836) to prescribe regulations governing the manner of executing and returning commissions by consular officers under the provisions of sections 3492-3494 of the said title, and schedules of fees allowable to witnesses, foreign counsel, and interpreters under section 3495 of the said title, and (2) the authority vested in the President by section 3492(c) of title 18 of the United States Code (62 Stat. 835) to prescribe regulations making the provisions of sections 3492-3496 of the said title applicable to diplomatic officers.

Executive Order No. 8298 of December 4, 1939, entitled "Regulations Governing the Manner of Executing and Returning Commissions by Officers of the Foreign Service in Criminal Cases, and Schedule of Fees and Compensation in Such Cases", is hereby revoked.

§ 3497. Account as evidence of embezzlement

Upon the trial of any indictment against any person for embezzling public money it shall be sufficient evidence, prima facie, for the purpose of showing a balance against such person, to produce a transcript from the books and proceedings of the Government Accountability Office.

(June 25, 1948, ch. 645, 62 Stat. 836; Pub. L. 108-271, § 8(b), July 7, 2004, 118 Stat. 814.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 179, 355; section 668 of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary (R.S. § 887; Mar. 4, 1909, ch. 321, §§ 93, 225, 35 Stat. 1105, 1133; June 10, 1921, ch. 18, § 304, 42 Stat. 24).

This section is a consolidation of section 179 of title 18, U.S.C., 1940 ed., with similar provisions of section 355 of title 18, U.S.C., 1940 ed., and section 668 of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary, with changes of phraseology only except that "General Accounting Office" was substituted for "Treasury Department".

Other provisions of said section 355 of title 18, U.S.C., 1940 ed., are incorporated in section 1711 of this title.

Words in second sentence of said section 355 of title 18, U.S.C., 1940 ed., which preceded the semicolon therein and which read "Any failure to produce or to pay over any such money or property, when required so to do as above provided, shall be taken to be prima facie evidence of such embezzlement" were omitted as surplusage, because such failure to produce or to pay over such money or property constitutes embezzlement. (See sections 653 and 1711 of this title.)