

pearing 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 behalf 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; Pub. L. 101-650, title III, § 321, Dec. 1, 1990, 104 Stat. 5117.)

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 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."

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

"United States magistrate judge" and "magistrate judge" substituted for "United States magistrate" and "magistrate", respectively, in subsec. (a) pursuant to section 321 of Pub. L. 101-650, set out as a note under 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.

§ 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).

§ 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 inter-

preters, 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 offi-