

CHAPTER 117—EVIDENCE; DEPOSITIONS

Sec.	
1781.	Transmittal of letter rogatory or request.
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AMENDMENTS

2002—Pub. L. 107-273, div. C, title I, § 11020(b)(4)(B)(ii), Nov. 2, 2002, 116 Stat. 1829, added item 1785.

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 recision 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.

§ 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.