

ployee, where such costs were expended by the court pursuant to paragraph (1) of this subsection. The court may award a prevailing employer a reasonable attorney's fee as part of the costs only if the court finds that the action is frivolous, vexatious, or brought in bad faith.

(Added Pub. L. 95-572, §6(a)(1), Nov. 2, 1978, 92 Stat. 2456; amended Pub. L. 97-463, §1, Jan. 12, 1983, 96 Stat. 2531; Pub. L. 110-406, §19, Oct. 13, 2008, 122 Stat. 4295.)

#### AMENDMENTS

2008—Subsec. (b)(3). Pub. L. 110-406 substituted “\$5,000 for each violation as to each employee, and may be ordered to perform community service.” for “\$1,000 for each violation as to each employee.”

1983—Subsec. (d)(1). Pub. L. 97-463, §1(1), substituted designation “(d)(1)” for “(d)” before “An individual claiming”.

Subsec. (d)(2). Pub. L. 97-463, §1(2), inserted provision empowering the court to tax a defendant employer, as costs payable to the court, the attorney fees and expenses incurred on behalf of a prevailing employee, where such costs were expended by the court pursuant to par. (1) of this subsection and, in existing provisions, substituted “only if the court finds that the action is frivolous” for “if the court determines that the action is frivolous”.

#### EFFECTIVE DATE

Section applicable with respect to any grand or petit juror summoned for service or actually serving on or after Nov. 2, 1978, see section 7(a) of Pub. L. 95-572, set out as a note under section 1363 of this title.

### § 1876. Trial by jury in the Court of International Trade

(a) In any civil action in the Court of International Trade which is to be tried before a jury, the jury shall be selected in accordance with the provisions of this chapter and under the procedures set forth in the jury selection plan of the district court for the judicial district in which the case is to be tried.

(b) Whenever the Court of International Trade conducts a jury trial—

(1) the clerk of the district court for the judicial district in which the Court of International Trade is sitting, or an authorized deputy clerk, shall act as clerk of the Court of International Trade for the purposes of selecting and summoning the jury;

(2) the qualifications for jurors shall be the same as those established by section 1865(b) of this title for jurors in the district courts of the United States;

(3) each party shall be entitled to challenge jurors in accordance with section 1870 of this title; and

(4) jurors shall be compensated in accordance with section 1871 of this title.

(Added Pub. L. 96-417, title III, §302(a), Oct. 10, 1980, 94 Stat. 1739.)

#### EFFECTIVE DATE

Section applicable with respect to civil actions commenced on or after Nov. 1, 1980, see section 701(b)(1)(C) of Pub. L. 96-417, set out as an Effective Date of 1980 Amendment note under section 251 of this title.

### § 1877. Protection of jurors

(a) Subject to the provisions of this section and title 5 of the United States Code, subchapter

1 of chapter 81, title 5, United States Code, applies to a Federal grand or petit juror, except that entitlement to disability compensation payments does not commence until the day after the date of termination of service as a juror.

(b) In administering this section with respect to a juror covered by this section—

(1) a juror is deemed to receive monthly pay at the minimum rate for grade GS-2 of the General Schedule unless his actual pay as a Government employee while serving on court leave is higher, in which case monthly pay is determined in accordance with section 8114 of title 5, United States Code, and

(2) performance of duty as a juror includes that time when a juror is (A) in attendance at court pursuant to a summons, (B) in deliberation, (C) sequestered by order of a judge, or (D) at a site, by order of the court, for the taking of a view.

(Added Pub. L. 97-463, §3(1), Jan. 12, 1983, 96 Stat. 2531.)

#### REFERENCES IN TEXT

The General Schedule, referred to in subsec. (b)(1), is set out under section 5332 of Title 5, Government Organization and Employees.

### § 1878. Optional use of a one-step summoning and qualification procedure

(a) At the option of each district court, jurors may be summoned and qualified in a single procedure, if the court's jury selection plan so authorizes, in lieu of the two separate procedures otherwise provided for by this chapter. Courts shall ensure that a one-step summoning and qualification procedure conducted under this section does not violate the policies and objectives set forth in sections 1861 and 1862 of this title.

(b) Jury selection conducted under this section shall be subject to challenge under section 1867 of this title for substantial failure to comply with the provisions of this title in selecting the jury. However, no challenge under section 1867 of this title shall lie solely on the basis that a jury was selected in accordance with a one-step summoning and qualification procedure authorized by this section.

(Added Pub. L. 100-702, title VIII, §805(a), Nov. 19, 1988, 102 Stat. 4658; amended Pub. L. 102-572, title IV, §403(a), Oct. 29, 1992, 106 Stat. 4512.)

#### AMENDMENTS

1992—Pub. L. 102-572 substituted “Optional” for “Experimental” in section catchline and amended text generally. Prior to amendment, text read as follows:

“(a) The Judicial Conference of the United States is hereby authorized to develop and conduct an experiment in which jurors serving in a limited number of United States district courts shall be qualified and summoned in a single procedure, in lieu of the two separate procedures otherwise provided for by this chapter. The Judicial Conference shall designate the district courts to participate in this experiment, but in no event shall the number of courts participating exceed ten. An experiment may be conducted pursuant to this section for a period not to exceed 2 years. The Judicial Conference shall ensure that an experiment conducted pursuant to this section does not violate the policies and objectives set forth in sections 1861 and 1862 of this

title, and shall terminate the experiment immediately if it determines that these policies and objectives are being violated or whenever in its judgment good cause for such termination exists.

“(b) Jury selection conducted pursuant to this section shall be subject to challenge under section 1867 of this title for substantial failure to comply with the provisions of this title in selecting the jury. However, no challenge under section 1867 of this title shall lie solely on the basis that a jury was selected in accordance with an experiment conducted pursuant to this section.”

#### EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-572 effective Jan. 1, 1993, see section 1101(a) of Pub. L. 102-572, set out as a note under section 905 of Title 2, The Congress.

#### SAVINGS PROVISION

Pub. L. 102-572, title IV, § 403(c), Oct. 29, 1972, 106 Stat. 4512, provided that: “For courts participating in the experiment authorized under section 1878 of title 28, United States Code (as in effect before the effective date of this section [Jan. 1, 1993]), the amendment made by subsection (a) of this section [amending this section] shall be effective on and after January 1, 1992.”

### CHAPTER 123—FEES AND COSTS

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1911.	Supreme Court.
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1932. <sup>1</sup>	Judicial Panel on Multidistrict Litigation.
1932. <sup>1</sup>	Revocation of earned release credit.

#### AMENDMENTS

1996—Pub. L. 104-317, title IV, § 403(a)(2), Oct. 19, 1996, 110 Stat. 3854, added item 1932 “Judicial Panel on Multidistrict Litigation”.

Pub. L. 104-134, title I, § 101[(a)] [title VIII, §§ 805(b), 809(b)], Apr. 26, 1996, 110 Stat. 1321, 1321-75, 1321-76; renumbered title I, Pub. L. 104-140, § 1(a), May 2, 1996, 110 Stat. 1327, added item 1915A and item 1932 “Revocation of earned release credit”.

1992—Pub. L. 102-572, title IX, §§ 902(b)(2), 908(b)(2), Oct. 29, 1992, 106 Stat. 4516, 4519, substituted “Dismissal” for “District courts; dismissal” in item 1919 and “Court of Federal Claims” for “Claims Court” as item 1926.

1988—Pub. L. 100-702, title X, § 1020(a)(8), Nov. 19, 1988, 102 Stat. 4672, substituted “court” for “courts” after “District” in item 1914.

<sup>1</sup> So in original. Two sections 1932 have been enacted.

1986—Pub. L. 99-500, § 101(b) [title IV, § 407(d)], Oct. 18, 1986, 100 Stat. 1783-39, 1783-64, and Pub. L. 99-591, § 101(b) [title IV, § 407(d)], Oct. 30, 1986, 100 Stat. 3341-39, 3341-64, added item 1931.

1984—Pub. L. 98-353, title I, § 111(c), July 10, 1984, 98 Stat. 343, substituted “fees” for “courts” in item 1930. Notwithstanding directory language that the amendment be made to the table of sections for chapter 125 of this title, the amendment was executed to the table of sections for chapter 123 of this title to reflect the probable intent of Congress.

1982—Pub. L. 97-164, title I, § 139(p)(2), Apr. 2, 1982, 96 Stat. 44, substituted “Claims Court” for “Court of Customs and Patent Appeals” in item 1926.

1978—Pub. L. 95-598, title II, § 246(b), Nov. 6, 1978, 92 Stat. 2672, added item 1930.

#### CHANGE OF NAME

“United States magistrate judges” substituted for “United States magistrates” in item 1922 pursuant to section 321 of Pub. L. 101-650, set out as a note under section 631 of this title. Previously, “United States magistrates” substituted for “United States commissioners” pursuant to Pub. L. 90-578. See chapter 43 (§ 631 et seq.) of this title.

### § 1911. Supreme Court

The Supreme Court may fix the fees to be charged by its clerk.

The fees of the clerk, cost of serving process, and other necessary disbursements incidental to any case before the court, may be taxed against the litigants as the court directs.

(June 25, 1948, ch. 646, 62 Stat. 954.)

#### HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 330 (Mar. 3, 1911, ch. 231, § 223, 36 Stat. 1153).

The second paragraph was inserted to give statutory sanction to existing practice.

Changes were made in phraseology.

### § 1912. Damages and costs on affirmance

Where a judgment is affirmed by the Supreme Court or a court of appeals, the court in its discretion may adjudge to the prevailing party just damages for his delay, and single or double costs.

(June 25, 1948, ch. 646, 62 Stat. 954.)

#### HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 878, and section 1141(c)(4) of title 26 U.S.C., 1940 ed., Internal Revenue Code (R.S. § 1010; Mar. 3, 1911, ch. 231, §§ 117, 289, 36 Stat. 1131, 1167; Feb. 10, 1939, ch. 2, § 1141(c)(4), 53 Stat. 165).

Section consolidates section 878 of title 28 with section 1141(c)(4) of title 26, both U.S.C., 1940 ed., with changes in phraseology necessary to effect consolidation.

Words “prevailing party” were substituted for “the respondents in error,” contained in said section 878 of title 28, since writs of error have been abolished.

#### SENATE REVISION AMENDMENT

By Senate amendment, all provisions relating to the Tax Court were eliminated. Therefore, section 1141(c)(4) of Title 26, U.S.C., Internal Revenue Code, was not one of the sources of this section as finally enacted. However, no change in the text of this section was necessary. See 80th Congress Senate Report No. 1559.

### § 1913. Courts of appeals

The fees and costs to be charged and collected in each court of appeals shall be prescribed from