

ernment while acting within the scope of his office or employment, unless the claimant shall have first presented the claim to the appropriate Federal agency and his claim shall have been finally denied by the agency in writing and sent by certified or registered mail. The failure of an agency to make final disposition of a claim within six months after it is filed shall, at the option of the claimant any time thereafter, be deemed a final denial of the claim for purposes of this section. The provisions of this subsection shall not apply to such claims as may be asserted under the Federal Rules of Civil Procedure by third party complaint, cross-claim, or counterclaim.

(b) Action under this section shall not be instituted for any sum in excess of the amount of the claim presented to the federal agency, except where the increased amount is based upon newly discovered evidence not reasonably discoverable at the time of presenting the claim to the federal agency, or upon allegation and proof of intervening facts, relating to the amount of the claim.

(c) Disposition of any claim by the Attorney General or other head of a federal agency shall not be competent evidence of liability or amount of damages.

(June 25, 1948, ch. 646, 62 Stat. 983; May 24, 1949, ch. 139, §126, 63 Stat. 107; Pub. L. 89-506, §2, July 18, 1966, 80 Stat. 306.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 28, U.S.C., 1940 ed., §931(b) (Aug. 2, 1946, ch. 753, §410(b), 60 Stat. 844).

Section constitutes all of section 931(b), except the first sentence, of title 28, U.S.C., 1940 ed. The remainder of such section 931(b) is incorporated in section 2677 of this title.

Changes were made in phraseology.

1949 ACT

This section corrects a typographical error in section 2675(b) of title 28, U.S.C.

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (a), are set out in the Appendix to this title.

AMENDMENTS

1966—Subsec. (a). Pub. L. 89-506, §2(a), required that all administrative claims be filed with the agency or department and finally denied by the agency and sent by certified or registered mail prior to the filing of a court action against the United States, provided that the claimant be given the option of considering the claim to have been denied if the agency fails to make final disposition of the claim within six months of presentation of the claim to the agency, and provided that the requirements of the subsection would not apply to claims asserted under the Federal Rules of Civil Procedure by third party complaint, cross-claim, or counterclaim.

Subsec. (b). Pub. L. 89-506, §2(b), struck out provisions under which a claimant could, upon 15 days written notice, withdraw a claim from the agency and institute an action thereon.

1949—Subsec. (b). Act May 24, 1949, substituted "section" for "subsection".

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-506 applicable to claims accruing six months or more after July 18, 1966, see sec-

tion 10 of Pub. L. 89-506, set out as a note under section 2672 of this title.

§ 2676. Judgment as bar

The judgment in an action under section 1346(b) of this title shall constitute a complete bar to any action by the claimant, by reason of the same subject matter, against the employee of the government whose act or omission gave rise to the claim.

(June 25, 1948, ch. 646, 62 Stat. 984.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §931(b) (Aug. 2, 1946, ch. 753, §410(b), 60 Stat. 844).

Section constitutes the first sentence of section 931(b) of title 28, U.S.C., 1940 ed. Other provisions of such section 931(b) are incorporated in section 2675 of this title.

Changes were made in phraseology.

SENATE REVISION AMENDMENT

This section was eliminated by Senate amendment. See 80th Congress Senate Report No. 1559.

§ 2677. Compromise

The Attorney General or his designee may arbitrate, compromise, or settle any claim cognizable under section 1346(b) of this title, after the commencement of an action thereon.

(June 25, 1948, ch. 646, 62 Stat. 984; Pub. L. 89-506, §3, July 18, 1966, 80 Stat. 307.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §934 (Aug. 2, 1946, ch. 753, §413, 60 Stat. 845).

Changes were made in phraseology.

SENATE REVISION AMENDMENT

This section was renumbered "2676" by Senate amendment. See 80th Congress Senate Report No. 1559.

AMENDMENTS

1966—Pub. L. 89-506 struck out provision requiring that approval of court be obtained before Attorney General could arbitrate, compromise, or settle a claim after commencement of an action thereon.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-506 applicable to claims accruing six months or more after July 18, 1966, see section 10 of Pub. L. 89-506, set out as a note under section 2672 of this title.

§ 2678. Attorney fees; penalty

No attorney shall charge, demand, receive, or collect for services rendered, fees in excess of 25 per centum of any judgment rendered pursuant to section 1346(b) of this title or any settlement made pursuant to section 2677 of this title, or in excess of 20 per centum of any award, compromise, or settlement made pursuant to section 2672 of this title.

Any attorney who charges, demands, receives, or collects for services rendered in connection with such claim any amount in excess of that allowed under this section, if recovery be had, shall be fined not more than \$2,000 or imprisoned not more than one year, or both.

(June 25, 1948, ch. 646, 62 Stat. 984; Pub. L. 89-506, §4, July 18, 1966, 80 Stat. 307.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §944 (Aug. 2, 1946, ch. 753, §422, 60 Stat. 846).

Words "shall be guilty of a misdemeanor" and "shall, upon conviction thereof", in the second sentence, were omitted in conformity with revised title 18, U.S.C., Crimes and Criminal Procedure (H.R. 1600, 80th Cong.). See sections 1 and 2 of said revised title 18.

Changes were made in phraseology.

SENATE REVISION AMENDMENT

This section was renumbered "2677" by Senate amendment. See 80th Congress Senate Report No. 1559.

AMENDMENTS

1966—Pub. L. 89-506 raised the limitations on allowable attorneys fees from 10 to 20 percent for administrative settlements and from 20 to 25 percent for fees in cases after suit is filed and removed the requirement of agency or court allowance of the amount of attorneys fees.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-506 applicable to claims accruing six months or more after July 18, 1966, see section 10 of Pub. L. 89-506, set out as a note under section 2672 of this title.

§ 2679. Exclusiveness of remedy

(a) The authority of any federal agency to sue and be sued in its own name shall not be construed to authorize suits against such federal agency on claims which are cognizable under section 1346(b) of this title, and the remedies provided by this title in such cases shall be exclusive.

(b)(1) The remedy against the United States provided by sections 1346(b) and 2672 of this title for injury or loss of property, or personal injury or death arising or resulting from the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment is exclusive of any other civil action or proceeding for money damages by reason of the same subject matter against the employee whose act or omission gave rise to the claim or against the estate of such employee. Any other civil action or proceeding for money damages arising out of or relating to the same subject matter against the employee or the employee's estate is precluded without regard to when the act or omission occurred.

(2) Paragraph (1) does not extend or apply to a civil action against an employee of the Government—

(A) which is brought for a violation of the Constitution of the United States, or

(B) which is brought for a violation of a statute of the United States under which such action against an individual is otherwise authorized.

(c) The Attorney General shall defend any civil action or proceeding brought in any court against any employee of the Government or his estate for any such damage or injury. The employee against whom such civil action or proceeding is brought shall deliver within such time after date of service or knowledge of service as determined by the Attorney General, all process served upon him or an attested true copy thereof to his immediate superior or to

whomever was designated by the head of his department to receive such papers and such person shall promptly furnish copies of the pleadings and process therein to the United States attorney for the district embracing the place wherein the proceeding is brought, to the Attorney General, and to the head of his employing Federal agency.

(d)(1) Upon certification by the Attorney General that the defendant employee was acting within the scope of his office or employment at the time of the incident out of which the claim arose, any civil action or proceeding commenced upon such claim in a United States district court shall be deemed an action against the United States under the provisions of this title and all references thereto, and the United States shall be substituted as the party defendant.

(2) Upon certification by the Attorney General that the defendant employee was acting within the scope of his office or employment at the time of the incident out of which the claim arose, any civil action or proceeding commenced upon such claim in a State court shall be removed without bond at any time before trial by the Attorney General to the district court of the United States for the district and division embracing the place in which the action or proceeding is pending. Such action or proceeding shall be deemed to be an action or proceeding brought against the United States under the provisions of this title and all references thereto, and the United States shall be substituted as the party defendant. This certification of the Attorney General shall conclusively establish scope of office or employment for purposes of removal.

(3) In the event that the Attorney General has refused to certify scope of office or employment under this section, the employee may at any time before trial petition the court to find and certify that the employee was acting within the scope of his office or employment. Upon such certification by the court, such action or proceeding shall be deemed to be an action or proceeding brought against the United States under the provisions of this title and all references thereto, and the United States shall be substituted as the party defendant. A copy of the petition shall be served upon the United States in accordance with the provisions of Rule 4(d)(4)¹ of the Federal Rules of Civil Procedure. In the event the petition is filed in a civil action or proceeding pending in a State court, the action or proceeding may be removed without bond by the Attorney General to the district court of the United States for the district and division embracing the place in which it is pending. If, in considering the petition, the district court determines that the employee was not acting within the scope of his office or employment, the action or proceeding shall be remanded to the State court.

(4) Upon certification, any action or proceeding subject to paragraph (1), (2), or (3) shall proceed in the same manner as any action against the United States filed pursuant to section 1346(b) of this title and shall be subject to the limitations and exceptions applicable to those actions.

¹ So in original. Probably should be a reference to Rule 4(i).