

proceeding for the recovery of such fine, penalty or forfeiture by any party thereto. Such examination shall not deprive the witness of his share.

(June 25, 1948, ch. 646, 62 Stat. 950.)

#### HISTORICAL AND REVISION NOTES

Based on section 644 of title 18, U.S.C., 1940 ed., Criminal Code and Criminal Procedure, R.S. § 5295.

Changes were made in phraseology.

#### [§ 1823. Repealed. Pub. L. 91-563, § 5(a), Dec. 19, 1970, 84 Stat. 1478]

Section, acts June 25, 1948, ch. 646, 62 Stat. 950; May 24, 1949, ch. 139, § 95, 63 Stat. 103; Oct. 5, 1949, ch. 601, 63 Stat. 704; July 7, 1952, ch. 581, 66 Stat. 439; July 28, 1955, ch. 424, § 3, 69 Stat. 394, related to payment of witnesses fees to officers and employees of the United States. See sections 5515, 5537, 5751, and 6322 of Title 5, Government Organization and Employees.

#### § 1824. Mileage fees under summons as both witness and juror

No constructive or double mileage fees shall be allowed by reason of any person being summoned both as a witness and a juror.

(June 25, 1948, ch. 646, 62 Stat. 951.)

#### HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 602 (May 27, 1908, ch. 200, § 1, 35 Stat. 377).

Words "or as a witness in two or more cases pending in the same court and triable at the same term thereof" were omitted as covered by section 1821 of this title.

Changes were made in phraseology.

#### § 1825. Payment of fees

(a) In any case in which the United States or an officer or agency of the United States 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 magistrate judge, on the certificate of such magistrate judge, except that any fees of defense witnesses, other than experts, appearing 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 a criminal case in which the defendant 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 a criminal case in which a defendant is represented by such other counsel.

(b) In proceedings in forma pauperis for a writ of habeas corpus, and in proceedings in forma pauperis under section 2255 of this title, the United States marshal for the district shall pay, on the certificate of the district judge, all fees of witnesses for the party authorized to proceed in forma pauperis, except that any fees of witnesses for such party, other than experts, appearing pursuant to subpoenas issued upon ap-

proval 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: