

Court of Appeals for the Armed Forces shall be as prescribed by rules of the Supreme Court.

(June 25, 1948, ch. 646, 62 Stat. 961; May 24, 1949, ch. 139, §106, 63 Stat. 104; Pub. L. 98-209, §10(b), Dec. 6, 1983, 97 Stat. 1406; Pub. L. 100-352, §5(b), June 27, 1988, 102 Stat. 663; Pub. L. 103-337, div. A, title IX, §924(d)(1)(C), Oct. 5, 1994, 108 Stat. 2832.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 28, U.S.C., 1940 ed., §§47, 47a, 349a, 350, 380, 380a, section 29 of title 15, U.S.C., 1940 ed., Commerce and Trade, and section 45 of title 49, U.S.C., 1940 ed., Transportation (Feb. 11, 1903, ch. 544, §2, 32 Stat. 1167; Mar. 3, 1911, ch. 231, §§210, 266, 291, 36 Stat. 1150, 1162, 1167; Mar. 4, 1913, ch. 160, 37 Stat. 1013; Oct. 22, 1913, ch. 32, 38 Stat. 220; Sept. 6, 1916, ch. 448, §6, 39 Stat. 727; Feb. 13, 1925, ch. 229, §§1, 8 (a, b, d), 43 Stat. 938, 940; Jan. 31, 1928, ch. 14, §1, 45 Stat. 54; June 7, 1934, ch. 426, 48 Stat. 936; Aug. 24, 1937, ch. 754, §§2, 3, 50 Stat. 752; June 9, 1944, ch. 239, 58 Stat. 272).

Section consolidates section 350 of title 28, U.S.C., 1940 ed., with those portions of sections 47, 47a, 349a, 380, and 380a, of said title 28, section 29, of title 15, U.S.C., 1940 ed., and section 45 of title 49, U.S.C., 1940 ed., respective time for taking direct appeal. (For disposition of other provisions of said sections, see Distribution Table.)

Subsection (a) of the revised section is derived from sections 349a and 380a of title 28, U.S.C., 1940 ed. The phrase "under rules prescribed by the Supreme Court" was substituted for the phrase "under such rules as may be prescribed by the proper courts" which appeared in both such sections. The Supreme Court by its revised rules 10-13 has made adequate provision for filing record and docketing case. (See Revised Rules of the Supreme Court following section 354 of title 28, U.S.C., 1940 ed.)

Subsection (b) is in accord with sections 47 and 47a of title 28, U.S.C., 1940 ed., and section 29 of title 15, U.S.C., 1940 ed., Commerce and Trade, and section 45 of title 49, U.S.C., 1940 ed., Transportation.

Subsection (c), with respect to the time for taking other appeals or petitioning for a writ of certiorari, substitutes, as more specific, the words "ninety days" for the words "three months" contained in section 350 of title 28, U.S.C., 1940 ed. The provision in said section 350 for allowance of additional time was retained, notwithstanding the language of the Supreme Court in *Comm'r v. Bedford's Estate*, 1945, 65 S.Ct. 1157, 1159, 325 U.S. 283, 89 L.Ed. 1611, to the effect that the 3 months' period is "more than ample * * * to determine whether to seek further review".

In subsection (c), words "in a civil action, suit, or proceeding" were added because section 350 of title 28, U.S.C., 1940 ed., was superseded as to criminal cases by Federal Rules of Criminal Procedure, Rule 39(a)(2), (b)(2).

Words "or the United States Court of Appeals for the District of Columbia" in section 350 of title 28, U.S.C., 1940 ed., were omitted as covered by "court of appeals" in subsection (d) of this revised section.

Words in section 350 of title 28, U.S.C., 1940 ed., "excepting that writs of certiorari to the Supreme Court of the Philippine Islands may be granted where application therefor is made within six months", were omitted as obsolete, in view of the independence of the Philippines recognized by section 1240 of title 48, U.S.C., 1940 ed., Territories and Insular Possessions.

Subsection (e) relates only to supersedeas or stay of execution of judgments sought to be reviewed in the Supreme Court on writ of certiorari. Supersedeas or stay of proceedings taken to the Supreme Court by appeal from courts of appeals, or direct appeals from a district court or three-judge courts, is governed by Rule 62 of the Federal Rules of Civil Procedure.

Changes were made in phraseology.

1949 ACT

This section clarifies the meaning of subsection (c) of section 2101 of title 28, U.S.C. At present, such subsection, after the words, "ninety days after entry of such judgment or decree", reads, "unless, upon application for writ of certiorari, for good cause, the Supreme Court or a justice thereof allows an additional time not exceeding sixty days."

The new subsection (d) of section 2101 supplies an omission in revised title 28, U.S.C., and confirms the authority of the Supreme Court to regulate the time for seeking review of State criminal cases.

The other amendment merely renumbers subsections (d) and (e) of such section 2101 as subsections (e) and (f), respectively.

AMENDMENTS

1994—Subsec. (g). Pub. L. 103-337 substituted "Court of Appeals for the Armed Forces" for "Court of Military Appeals".

1988—Subsec. (a). Pub. L. 100-352 substituted "section 1253" for "sections 1252, 1253, and 2282".

1983—Subsec. (g). Pub. L. 98-209 added subsec. (g).

1949—Subsec. (c). Act May 24, 1949, §106(a), clarified the allowance of an additional 60 days in which to apply for a writ of certiorari.

Subsecs. (d) to (f). Act May 24, 1949, §106(b), added subsec. (d) and redesignated former subsecs. (d) and (e) as (e) and (f), respectively.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-352 effective ninety days after June 27, 1988, except that such amendment not to apply to cases pending in Supreme Court on such effective date or affect right to review or manner of reviewing judgment or decree of court which was entered before such effective date, see section 7 of Pub. L. 100-352, set out as a note under section 1254 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-209 effective on first day of eighth calendar month beginning after Dec. 6, 1983, see section 12(a)(1) of Pub. L. 98-209, set out as a note under section 801 of Title 10, Armed Forces.

§ 2102. Priority of criminal case on appeal from State court

Criminal cases on review from State courts shall have priority, on the docket of the Supreme Court, over all cases except cases to which the United States is a party and such other cases as the court may decide to be of public importance.

(June 25, 1948, ch. 646, 62 Stat. 962.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §351 (Mar. 3, 1911, ch. 231, §253, 36 Stat. 1160; Jan. 31, 1928, ch. 14, §1, 45 Stat. 54).

Changes were made in phraseology.

[§ 2103. Repealed. Pub. L. 100-352, §5(c), June 27, 1988, 102 Stat. 663]

Section, acts June 25, 1948, ch. 646, 62 Stat. 962; Sept. 19, 1962, Pub. L. 87-669, §1, 76 Stat. 556, provided that appeal from State court or from a United States court of appeals improvidently taken be regarded as petition for writ of certiorari.

EFFECTIVE DATE OF REPEAL

Repeal effective ninety days after June 27, 1988, except that such repeal not to apply to cases pending in Supreme Court on such effective date or affect right to review or manner of reviewing judgment or decree of court which was entered into before such effective date,

see section 7 of Pub. L. 100-352, set out as a note under section 1254 of this title.

§ 2104. Reviews of State court decisions

A review by the Supreme Court of a judgment or decree of a State court shall be conducted in the same manner and under the same regulations, and shall have the same effect, as if the judgment or decree reviewed had been rendered in a court of the United States.

(June 25, 1948, ch. 646, 62 Stat. 962; Pub. L. 100-352, § 5(d)(1), June 27, 1988, 102 Stat. 663.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 871 (R.S., § 1003).

Words "An appeal to" were substituted for "writs of error from", in view of the abolition of the writ of error.

Changes were made in phraseology.

AMENDMENTS

1988—Pub. L. 100-352 substituted "Reviews of State court decisions" for "Appeals from State courts" in section catchline and amended text generally. Prior to amendment, text read as follows: "An appeal to the Supreme Court from a State court shall be taken in the same manner and under the same regulations, and shall have the same effect, as if the judgment or decree appealed from had been rendered in a court of the United States."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-352 effective ninety days after June 27, 1988, except that such amendment not to apply to cases pending in Supreme Court on such effective date or affect right to review or manner of reviewing judgment or decree of court which was entered before such effective date, see section 7 of Pub. L. 100-352, set out as a note under section 1254 of this title.

§ 2105. Scope of review; abatement

There shall be no reversal in the Supreme Court or a court of appeals for error in ruling upon matters in abatement which do not involve jurisdiction.

(June 25, 1948, ch. 646, 62 Stat. 963.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 879 (R.S. § 1011; Feb. 18, 1875, ch. 80, § 1, 18 Stat. 318).

The revised language is substituted for the provisions of section 879 of title 28, U.S.C., 1940 ed., to avoid any construction that matters of fact are not reviewable in nonjury cases. Such section 879 related to review upon a writ of error which applied only to actions at law. (See Rule 52(a) of the Federal Rules of Civil Procedure limiting the review of questions of fact which renders unnecessary any statutory limitation.)

Rule 7(c) of the Federal Rules of Civil Procedure abolished all pleas, and the rules adopted the motion as a substitute therefor.

Words "matters in abatement" were, therefore, substituted for the abolished "plea in abatement" and "plea to the jurisdiction."

Changes were made in phraseology.

§ 2106. Determination

The Supreme Court or any other court of appellate jurisdiction may affirm, modify, vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances.

(June 25, 1948, ch. 646, 62 Stat. 963.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 344, 876, 877 (R.S. § 701; Mar. 3, 1891, ch. 517, §§ 10, 11, 26 Stat. 829; Mar. 3, 1911, ch. 231, §§ 231, 236, 237, 291, 36 Stat. 1156, 1167; Dec. 23, 1914, ch. 2, 38 Stat. 790; Sept. 16, 1916, ch. 448, § 2, 39 Stat. 726; Feb. 17, 1922, ch. 54, 42 Stat. 366; Feb. 13, 1925, ch. 229, § 1, 43 Stat. 937; Jan. 31, 1928, ch. 14, § 1, 45 Stat. 54).

Section consolidates part of section 344 of title 28, U.S.C., 1940 ed., with sections 876 and 877 of said title. Other provisions of said section 344 are incorporated in sections 1257 and 2103 of this title.

Words "or a court of appeals" were inserted after "Supreme Court" upon authority of *United States v. Illinois Surety Co.*, C.C.A. 1915, 226 F. 653, affirmed 37 S.Ct. 614, 244 U.S. 376, 61 L.Ed. 1206, wherein it was held that this section also applied to the courts of appeals in view of section 11 of the Circuit Court of Appeals Act of Mar. 3, 1891, ch. 517, 28 Stat. 829.

The revised section will cover instances where the Supreme Court remands a case to the highest court of a State and to the United States Tax Court. It will also cover a remand of a case to the Court of Claims or the Court of Customs and Patent Appeals. For authority to remand a case to The Tax Court, see *Equitable Life Assurance Society of U.S. v. Commissioner of Internal Revenue*, 1944, 64 S.Ct. 722, 321 U.S. 560, 88 L.Ed. 927.

Revised section will also permit a remand by the Supreme Court to a court of appeals inasmuch as such latter court then would be a lower court. The revised section is in conformity with numerous holdings of the Supreme Court to the effect that such a remand may be made. See especially, *Maryland Casualty Co. v. United States*, 1929, 49 S.Ct. 484, 279 U.S. 792, 73 L.Ed. 960; *Krauss Bros. Co. v. Mellon*, 1928, 48 S.Ct. 358, 276 U.S. 386, 72 L.Ed. 620 and *Buzyuski v. Luckenbach S. S. Co.*, 1928, 48 S.Ct. 440, 277 U.S. 226, 72 L.Ed. 860.

The last sentence of section 876 of title 28, U.S.C., 1940 ed., providing that the Supreme Court should not issue execution but should send a special mandate to the inferior court to award execution, was omitted. See rule 34 of the revised rules of the Supreme Court relating to Mandates, and section 1651 of this title authorizing the Supreme Court to issue all writs necessary in aid of its jurisdiction.

Changes were made in phraseology.

§ 2107. Time for appeal to court of appeals

(a) Except as otherwise provided in this section, no appeal shall bring any judgment, order or decree in an action, suit or proceeding of a civil nature before a court of appeals for review unless notice of appeal is filed, within thirty days after the entry of such judgment, order or decree.

(b) In any such action, suit, or proceeding, the time as to all parties shall be 60 days from such entry if one of the parties is—

- (1) the United States;
- (2) a United States agency;
- (3) a United States officer or employee sued in an official capacity; or
- (4) a current or former United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on behalf of the United States, including all instances in which the United States represents that officer or employee when the judgment, order, or decree is entered or files the appeal for that officer or employee.

(c) The district court may, upon motion filed not later than 30 days after the expiration of the