

TITLE 28 - JUDICIARY AND JUDICIAL PROCEDURE**PART V - PROCEDURE****CHAPTER 117 - EVIDENCE; DEPOSITIONS****§ 1782. Assistance to foreign and international tribunals and to litigants before such tribunals**

(a) The district court of the district in which a person resides or is found may order him to give his testimony or statement or to produce a document or other thing for use in a proceeding in a foreign or international tribunal, including criminal investigations conducted before formal accusation. The order may be made pursuant to a letter rogatory issued, or request made, by a foreign or international tribunal or upon the application of any interested person and may direct that the testimony or statement be given, or the document or other thing be produced, before a person appointed by the court. By virtue of his appointment, the person appointed has power to administer any necessary oath and take the testimony or statement. The order may prescribe the practice and procedure, which may be in whole or part the practice and procedure of the foreign country or the international tribunal, for taking the testimony or statement or producing the document or other thing. To the extent that the order does not prescribe otherwise, the testimony or statement shall be taken, and the document or other thing produced, in accordance with the Federal Rules of Civil Procedure.

A person may not be compelled to give his testimony or statement or to produce a document or other thing in violation of any legally applicable privilege.

(b) This chapter does not preclude a person within the United States from voluntarily giving his testimony or statement, or producing a document or other thing, for use in a proceeding in a foreign or international tribunal before any person and in any manner acceptable to him.

(June 25, 1948, ch. 646, 62 Stat. 949; May 24, 1949, ch. 139, § 93, 63 Stat. 103; Pub. L. 88–619, § 9(a), Oct. 3, 1964, 78 Stat. 997; Pub. L. 104–106, div. A, title XIII, § 1342(b), Feb. 10, 1996, 110 Stat. 486.)

Historical and Revision Notes

1948 Act

Based on title 28, U.S.C., 1940 ed., §§ 649–653, 701, 703, 704 (R.S. §§ 871–875, 4071, 4073, 4074; Feb. 27, 1877, ch. 69, § 1, 19 Stat. 241; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167; June 25, 1936, ch. 804, 49 Stat. 1921).

Sections 649–652 of title 28, U.S.C., 1940 ed., applied only to the District of Columbia and contained detailed provisions for issuing subpoenas, payment of witness fees and procedure for ordering and taking depositions. These matters are all covered by Federal Rules of Civil Procedure, Rules 26–32.

Provisions in sections 649–652 of title 28, U.S.C., 1940 ed., relating to the taking of testimony in the District of Columbia for use in State and Territorial courts were omitted as covered by section 14–204 of the District of Columbia Code, 1940 ed., and Rules 26 et seq., and 46 of the Federal Rules of Civil Procedure.

Only the last sentence of section 653 of title 28, U.S.C., 1940 ed., is included in this revised section. The remaining provisions relating to depositions of witnesses in foreign countries form the basis of section 1781 of this title.

Sections 701, 703, and 704 of title 28, U.S.C., 1940 ed., were limited to “suits for the recovery of money or property depending in any court in any foreign country with which the United States are at peace, and in which the government of such foreign country shall be a party or shall have an interest.”

The revised section omits this limitation in view of the general application of the last sentence of section 653 of title 28, U.S.C., 1940 ed., consolidated herein. The improvement of communications and the expected growth of foreign commerce will inevitably increase litigation involving witnesses separated by wide distances.

Therefore the revised section is made simple and clear to provide a flexible procedure for the taking of depositions. The ample safeguards of the Federal Rules of Civil Procedure, Rules 26–32, will prevent misuse of this section.

The provisions of section 703 of title 28, U.S.C., 1940 ed., for punishment of disobedience to subpoena or refusal to answer is covered by Rule 37(b)(1) of Federal Rules of Civil Procedure.

NB: This unofficial compilation of the U.S. Code is current as of Jan. 4, 2012 (see <http://www.law.cornell.edu/uscode/uscpri.html>).

The provisions of section 704 of title 28, U.S.C., 1940 ed., with respect to fees and mileage of witnesses are covered by Rule 45(c) of Federal Rules of Civil Procedure.

Changes were made in phraseology.

1949 Act

This amendment corrects restrictive language in section 1782 of title 28, U.S.C., in conformity with original law and permits depositions in any judicial proceeding without regard to whether the deponent is “residing” in the district or only sojourning there.

References in Text

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

Amendments

1996—Subsec. (a). Pub. L. 104–106 inserted “, including criminal investigations conducted before formal accusation” after “proceeding in a foreign or international tribunal” in first sentence.

1964—Pub. L. 88–619 substituted provisions which empowered district courts to order residents to give testimony or to produce documents for use in a foreign or international tribunal, pursuant to a letter rogatory, or request, of a foreign or international tribunal or upon application of any interested person, and to direct that the evidence be presented before a person appointed by the court, provided that such person may administer oaths and take testimony, that the evidence be taken in accordance with the Federal Rules of Civil Procedure unless the order prescribes using the procedure of the foreign or international tribunal, that a person may not be compelled to give legally privileged evidence, and that this chapter doesn’t preclude a person from voluntarily giving evidence for use in a foreign or international tribunal, for provisions permitting depositions of witnesses within the United States for use in any court in a foreign country with which the United States was at peace to be taken before a person authorized to administer oaths designated by the district court of the district where the witness resides or is found, and directing that the procedure used be that generally used in courts of the United States, in text, and “Assistance to foreign and international tribunals and to litigants before such tribunals” for “Testimony for use in foreign countries” in section catchline.

1949—Act May 24, 1949, struck out “residing” after “witness”, and substituted “judicial proceeding” for “civil action” after “to be used in any”.