

-CITE-

28 USC Sec. 1821

01/23/00

-EXPCITE-

TITLE 28 - JUDICIARY AND JUDICIAL PROCEDURE

PART V - PROCEDURE

CHAPTER 119 - EVIDENCE; WITNESSES

-HEAD-

Sec. 1821. Per diem and mileage generally; subsistence

-STATUTE-

(a)(1) Except as otherwise provided by law, a witness in attendance at any court of the United States, or before a United States Magistrate, or before any person authorized to take his deposition pursuant to any rule or order of a court of the United States, shall be paid the fees and allowances provided by this section.

(2) As used in this section, the term "court of the United States" includes, in addition to the courts listed in section 451 of this title, any court created by Act of Congress in a territory which is invested with any jurisdiction of a district court of the United States.

(b) A witness shall be paid an attendance fee of \$40 per day for each day's attendance. A witness shall also be paid the attendance fee for the time necessarily occupied in going to and returning

from the place of attendance at the beginning and end of such attendance or at any time during such attendance.

(c)(1) A witness who travels by common carrier shall be paid for the actual expenses of travel on the basis of the means of transportation reasonably utilized and the distance necessarily traveled to and from such witness's residence by the shortest practical route in going to and returning from the place of attendance. Such a witness shall utilize a common carrier at the most economical rate reasonably available. A receipt or other evidence of actual cost shall be furnished.

(2) A travel allowance equal to the mileage allowance which the Administrator of General Services has prescribed, pursuant to section 5704 of title 5, for official travel of employees of the Federal Government shall be paid to each witness who travels by privately owned vehicle. Computation of mileage under this paragraph shall be made on the basis of a uniformed table of distances adopted by the Administrator of General Services.

(3) Toll charges for toll roads, bridges, tunnels, and ferries, taxicab fares between places of lodging and carrier terminals, and parking fees (upon presentation of a valid parking receipt), shall be paid in full to a witness incurring such expenses.

(4) All normal travel expenses within and outside the judicial district shall be taxable as costs pursuant to section 1920 of this

title.

(d)(1) A subsistence allowance shall be paid to a witness when an overnight stay is required at the place of attendance because such place is so far removed from the residence of such witness as to prohibit return thereto from day to day.

(2) A subsistence allowance for a witness shall be paid in an amount not to exceed the maximum per diem allowance prescribed by the Administrator of General Services, pursuant to section 5702(a) of title 5, for official travel in the area of attendance by employees of the Federal Government.

(3) A subsistence allowance for a witness attending in an area designated by the Administrator of General Services as a high-cost area shall be paid in an amount not to exceed the maximum actual subsistence allowance prescribed by the Administrator, pursuant to section 5702(c)(B) (FOOTNOTE 1) of title 5, for official travel in such area by employees of the Federal Government.

(FOOTNOTE 1) See References in Text note below.

(4) When a witness is detained pursuant to section 3144 of title 18 for want of security for his appearance, he shall be entitled for each day of detention when not in attendance at court, in addition to his subsistence, to the daily attendance fee provided by subsection (b) of this section.

(e) An alien who has been paroled into the United States for

prosecution, pursuant to section 212(d)(5) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(5)), or an alien who either has admitted belonging to a class of aliens who are deportable or has been determined pursuant to section 240 of such Act (8 U.S.C. 1252(b)) (FOOTNOTE 1) to be deportable, shall be ineligible to receive the fees or allowances provided by this section.

(f) Any witness who is incarcerated at the time that his or her testimony is given (except for a witness to whom the provisions of section 3144 of title 18 apply) may not receive fees or allowances under this section, regardless of whether such a witness is incarcerated at the time he or she makes a claim for fees or allowances under this section.

**-SOURCE-**

(June 25, 1948, ch. 646, 62 Stat. 950; May 10, 1949, ch. 96, 63 Stat. 65; May 24, 1949, ch. 139, Sec. 94, 63 Stat. 103; Oct. 31, 1951, ch. 655, Sec. 51(a), 65 Stat. 727; Sept. 3, 1954, ch. 1263, Sec. 45, 68 Stat. 1242; Aug. 1, 1956, ch. 826, 70 Stat. 798; Pub. L. 90-274, Sec. 102(b), Mar. 27, 1968, 82 Stat. 62; Pub. L. 95-535, Sec. 1, Oct. 27, 1978, 92 Stat. 2033; Pub. L. 101-650, title III, Sec. 314(a), Dec. 1, 1990, 104 Stat. 5115; Pub. L. 102-417, Sec. 2(a)-(c), Oct. 14, 1992, 106 Stat. 2138; Pub. L. 104-208, div. C, title III, Sec. 308(g)(5)(E), Sept. 30, 1996, 110 Stat. 3009-623.)

**-MISC1-**

## HISTORICAL AND REVISION NOTES

### 1948 ACT

Based on title 28, U.S.C., 1940 ed., Sec. 600c, section 1115(a) of title 26, U.S.C., 1940, Internal Revenue Code, and section 11-1514 of the D.C. Code, 1940 ed. (R.S. Sec. 823, 848; Apr. 26, 1926, ch. 183, Sec. 3, 44 Stat. 324; May 17, 1932, ch. 190, 47 Stat. 158; June 25, 1936, ch. 804, 49 Stat. 1921; Feb. 10, 1939, ch. 2, Sec. 1115(a), 53 Stat. 160; Dec. 24, 1942, ch. 825, Sec. 1, 56 Stat. 1088.

Section consolidates part of section 600c of title 28, U.S.C., 1940 ed., with section 1115(a) of title 26, U.S.C., 1940 ed., and section 11-1514 of the D.C. Code, 1940 ed.

Words "or person taking his deposition pursuant to any order of a court of the United States" were added to cover that circumstance.

Reference in section 600c of title 28, U.S.C., 1940 ed., and section 11-1514 of the D.C. Code, 1940 ed., to the district courts of Hawaii, Puerto Rico and the District of Columbia, were omitted as covered by the words "any court of the United States".

Provision of section 600c of title 28, U.S.C., 1940 ed., for payment of witnesses is incorporated in section 1825 of this title.

Changes were made in phraseology.

### SENATE REVISION AMENDMENT

By Senate amendments, all provisions relating to the Tax Court were eliminated. Therefore, as finally enacted, section 1115(a) of Title 26, U.S.C., Internal Revenue Code, was not one of the sources of this section. However, no change in the text of this section was necessary. See 80th Congress Senate Report No. 1559.

#### 1949 ACT

This section restores certain provisions of the original statute, R.S. Sec. 848, which were inadvertently omitted from revised title 28, U.S.C., Sec. 1821.

-REFTEXT-

#### REFERENCES IN TEXT

Subsection (c) of section 5702 of title 5, referred to in subsec. (d)(3), which related to conditions under which an employee could be reimbursed for actual and necessary expenses of official travel when the maximum per diem allowance was less than these expenses, was repealed, and subsec. (e) of section 5702 of title 5, was redesignated as subsec. (c), by Pub. L. 99-234, title I, Sec. 102, Jan. 2, 1986, 99 Stat. 1756.

Section 240 of the Immigration and Nationality Act, referred to in subsec. (e), is classified to section 1229a of Title 8, Aliens and Nationality.

-MISC2-

#### AMENDMENTS

1996 - Subsec. (e). Pub. L. 104-208 substituted "section 240" for "section 242(b)".

1992 - Subsec. (d)(1). Pub. L. 102-417, Sec. 2(b), struck out "(other than a witness who is incarcerated)" after "paid to a witness".

Subsec. (d)(4). Pub. L. 102-417, Sec. 2(c), substituted "3144" for "3149".

Subsec. (f). Pub. L. 102-417, Sec. 2(a), added subsec. (f).

1990 - Subsec. (b). Pub. L. 101-650 substituted "\$40" for "\$30".

1978 - Pub. L. 95-535 increased the daily witness attendance fee from \$20 to \$30, substituted provisions relating to compensation for the actual expenses of travel based on the form of transportation used, to a travel allowance equal to the mileage allowance under section 5704 of Title 5 for a witness travelling by privately owned vehicle, and to tolls, taxi fares, and parking fees for provisions that a witness would receive 10 cents per mile and that mileage computation would be based on a uniform table of distances regardless of the mode of travel employed, provisions relating to a subsistence allowance in amounts not to exceed those which Government employees receive for official travel for provisions that such subsistence allowance would be \$16 per day, provisions relating to a witness detained for want of security for

his appearance being entitled to the daily attendance fee in addition to subsistence for provisions that such a witness would be entitled to \$1 per day in addition to his subsistence, and inserted provisions defining "court of the United States" and relating to travel expenses being taxable as costs and to certain aliens being ineligible to receive fees and allowances.

1968 - Pub. L. 90-274 increased the per diem allowance from \$4 to \$20, increased the mileage allowance from 8 cents per mile to 10 cents per mile, increased the daily subsistence allowance from \$8 to \$16, and directed that witnesses in the district courts for the districts of the Canal Zone, Guam, and the Virgin Islands receive the same fees and allowances provided in this section for witnesses in other district courts of the United States.

1956 - Act Aug. 1, 1956, substituted ", or before any person authorized to take his deposition pursuant to any rule or order" for "or person taking his disposition pursuant to any order", increased the payments for mileage from 7 to 8 cents per mile and subsistence allowance from \$5 to \$8 per day, and authorized the computation of mileage on the basis of a uniform table of distances adopted by the Attorney General.

1954 - Act Sept. 3, 1954, struck out language which had restricted section's applicability to those depositions taken pursuant to order of the court.



1951 - Act Oct. 31, 1951, substituted "residences" for "residence" in that part of second sentence which precedes first proviso.

1949 - Act May 24, 1949, inserted last par.

Act May 10, 1949, increased witnesses' fees from \$2 to \$4 per day, mileage allowance from 5 cents to 7 cents a mile, subsistence allowance from \$3 to \$5 per day, and inserted provisos.

-CHANGE-

#### CHANGE OF NAME

Reference to United States magistrate or to magistrate deemed to refer to United States magistrate judge pursuant to section 321 of Pub. L. 101-650, set out as a note under section 631 of this title.

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#### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-208 effective, with certain transitional provisions, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 309 of Pub. L. 104-208, set out as a note under section 1101 of Title 8, Aliens and Nationality.

#### EFFECTIVE DATE OF 1992 AMENDMENT

Section 2(d) of Pub. L. 102-417 provided that: "The amendments made by this section (amending this section) shall be effective on and after the date of the enactment of this act (Oct. 14, 1992) and

shall apply to any witness who testified before such date and has not received any fee or allowance under section 1821 of title 28, United States Code, relating to such testimony."

#### EFFECTIVE DATE OF 1978 AMENDMENT

Section 2 of Pub. L. 95-535 provided that: "The amendments made by this Act (amending this section) shall take effect on October 1, 1978, or on the date of enactment (Oct. 27, 1978), whichever occurs later."

#### EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-274 effective 270 days after Mar. 27, 1968, except as to cases in which an indictment has been returned or a petit jury empaneled prior to such effective date, see section 104 of Pub. L. 90-274, set out as a note under section 1861 of this title.

#### PAYMENT OF FACT WITNESS FEE TO INCARCERATED PERSON PROHIBITED

Pub. L. 102-395, title I, Sec. 108, Oct. 6, 1992, 106 Stat. 1841, provided that: "Notwithstanding 28 U.S.C. 1821, no funds appropriated to the Department of Justice in fiscal year 1993 or any prior fiscal year, or any other funds available from the Treasury of the United States, shall be obligated or expended to pay a fact witness fee to a person who is incarcerated testifying as a fact witness in a court of the United States, as defined in 28 U.S.C. 1821(a)(2)."

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 102-140, title I, Sec. 110, Oct. 28, 1991, 105 Stat. 795.

Pub. L. 102-27, title II, Sec. 102, Apr. 10, 1991, 105 Stat. 136.

-CROSS-

#### FEDERAL RULES OF CIVIL PROCEDURE

Subpoena, see rule 45, Appendix to this title.

-SECREP-

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 604, 2503 of this title; title 12 section 3761; title 38 section 7253.