

Department of Justice

§21.2

(e) *Residence.* The term *residence* is not limited to the legal residence, but includes any place at which the witness is actually residing and at which the subpoena or summons is served. If the residence of the witness at the time of appearance is different from the place of subpoena or summons, the new place of residence shall be considered the witness' residence for computation of the transportation allowance; but, if the witness is on a business or vacation trip at the time of appearance, the witness shall be paid for travel from the place of service if this does not result in the witness being paid for more travel than is actually performed.

(f) *Summons.* An official request, invitation or call, evidenced by an official writing of the court, authority, or party responsible for the conduct of the proceeding.

§21.2 Employees of the United States serving as witnesses.

(a) *Applicability.* This section applies to employees of the United States as defined by 5 U.S.C. 2105, except those whose pay is disbursed by the Secretary of the Senate or the Clerk of the House of Representatives.

(b) *Entitlement to travel expenses—(1) Official capacity.* An employee is entitled to travel expenses (in accordance with §21.2(c)) in connection with any judicial or agency proceeding with respect to which the employee is summoned (and is authorized by the employee's agency to respond to such summons), or is assigned by his or her agency:

(i) To testify or produce official records on behalf of the United States, or

(ii) To testify in his or her official capacity or produce official records on behalf of a party other than the United States.

The witness appropriation of the Department of Justice is not available for expenses incurred under these conditions.

(2) *Unofficial capacity, federal involvement.* An employee is entitled to travel expenses (in accordance with paragraph (c) of this section) in connection with any judicial or agency proceeding with respect to which the employee is summoned to testify on behalf of the

United States. If an employee is summoned to testify on behalf of a party other than the United States, the employee's travel expenses shall be payable by the court, authority, or party which caused the employee to be summoned.

(3) *Unofficial capacity, no Federal involvement.* An employee who appears as a witness in any judicial proceeding in an unofficial capacity in which there is no Federal involvement is not authorized Government travel expenses and may retain reimbursement for expenses which he or she receives from the court, authority or party which caused the employee to be summoned.

(c) *Allowable travel expenses.* An employee qualifying for payment of travel expenses by virtue of being called in an official capacity or on behalf of the United States shall be paid at rates and in amounts allowable for other purposes under the provisions of 5 U.S.C. 5702-5705 and applicable regulations prescribed thereunder by the Administrator, General Services, and the employing agency. Such payment shall be reduced to the extent that the travel expenses are paid to the employee for his or her appearance by the court, authority, or party which caused the employee to be summoned as a witness in an official capacity on behalf of a party other than the United States.

(d) *Payment and reimbursement—(1) Payable by the employing agency.* If an employee serves as a witness, and the case involves the activity in connection with which he or she is employed, the travel expenses are payable from the appropriation of the employing agency. The Comptroller General has defined the extent to which the case must be related to the agency's activity as a condition to the agency's responsibility for payment in 23 Comp. Gen. 47, 49 (1943), which states "the employing agency is required to pay . . . the traveling expenses incurred by the witness only where the information or facts ascertained by the employee as part of his official duties forms the basis of the case, or where the proceeding is predicated upon a law that that agency is required to administer." In 39 Comp. Gen. 1, 2 (1959), the Comptroller General determined that if an employee testifies regarding facts and

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information he or she acquires in the course of his or her assigned duties, the employing agency is responsible for the payment of the employee's travel expenses. In these instances, the witness appropriation of the Department of Justice is not available for payment of expenses.

(2) *Payable by the Department of Justice.* If an employee appears on behalf of the United States in an unofficial capacity in a judicial proceeding involving the Department of Justice, the employee's travel expenses are payable by the Department of Justice. The employing agency may advance or pay the travel expenses of the employee and later obtain reimbursement from the Department of Justice by submitting an appropriate bill together with a copy of the approved advance or travel voucher.

(e) *Leave and attendance fee—(1) Leave.* An employee is considered to be in official duty status when appearing as a witness in his or her official capacity or on behalf of the United States in an unofficial capacity. An employee is entitled to court leave when he or she appears as a witness in an unofficial capacity not on behalf of the United States, and the United States, the District of Columbia, or a State or local government is a party to the case. An employee must use annual leave or leave without pay to appear as a witness when the United States, the District of Columbia, or a State or local government is not a party.

(2) *Attendance fee.* An employee who appears on behalf of the United States is not entitled to receive an attendance fee. An employee who appears on behalf of a party other than the United States while in official duty status or while on court leave should request an attendance fee from the court, authority, or party which caused the employee to be summoned. Such fee shall be remitted to the employing agency. An employee who must use annual leave or leave without pay to appear as a witness may retain an attendance fee which he or she receives.

§ 21.3 Aliens.

(a) *Aliens entitled to payment of \$30 per day.* The following aliens are entitled

to witness fees and allowances provided in § 21.4:

(1) Aliens lawfully admitted for permanent residence (documentary evidence: Form I-151 or Form I-551, Alien Registration Receipt Card);

(2) Aliens lawfully admitted in one of the nonimmigrant categories described in 8 U.S.C. 1101(a)(15) (documentary evidence: unexpired Form I-94, Arrival-Departure Record). But see below § 21.3(b);

(3) Aliens admitted as refugees under 8 U.S.C. 1157 and aliens granted asylum under 8 U.S.C. 1158 (documentary evidence: Form I-94, Arrival-Departure Record, indicating admission as refugee under 8 U.S.C. 1157 or granting asylum under 8 U.S.C. 1158, employment authorized);

(4) Aliens who have rendered themselves amenable to deportation proceedings, but have not admitted deportability or have not been determined to be deportable pursuant to section 242 of the Immigration and Nationality Act (8 U.S.C. 1252).

(b) *Aliens entitled to payment of \$1 per day.* An alien who is "excludable" in accordance with 8 U.S.C. 1226, but whose removal is stayed by the Attorney General (in accordance with 8 U.S.C. 1227(d)) because:

(1) The testimony of the alien is necessary on behalf of the United States in the prosecution of offenders against the United States, or

(2) The testimony of the alien is necessary on behalf of an indigent criminal defendant in accordance with Rule 17(b) of the Federal Rules of Criminal Procedures,

is entitled to a \$1 per day witness fee. No other fees and allowances are authorized.

(c) *Aliens not entitled to payment.* An alien who has been paroled into the United States for prosecution pursuant to 8 U.S.C. 1182(d)(5) (documentary evidence: Form I-94, Arrival-Departure Record, Parole Edition), or an alien who has admitted belonging to a class of aliens who are deportable, or an alien who has been determined pursuant to 8 U.S.C. 1252(b) to be deportable (documentary evidence: decision by a