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(g) *Officers of the Foreign Service in other countries.* An officer of the Foreign Service stationed in one country is not expected to authenticate the signature or seal of an officer of the Foreign Service stationed in another country. When it is necessary for the seal and signature of an officer of the Foreign Service to be authenticated, such authentication will be done in the Department of State. An official of a foreign government requesting the authentication of the seal and signature of an officer of the United States Foreign Service who is, or was, stationed in another country should be informed that the document to be authenticated will have to be sent to the Department for this purpose. Any document bearing the seal and signature of an officer of the Foreign Service which is received at a Foreign Service post from a person in the United States with the request that it be further authenticated should be referred to the Department of State.

§92.42 Certification of copies of foreign records relating to land titles.

In certifying documents of the kind described in title 28, section 1742, of the United States Code, diplomatic and consular officers of the United States will conform to the Federal procedures for authenticating foreign public documents (§92.39), unless otherwise instructed in a specific case.

§92.43 Fees for notarial services and authentications.

The fees for administering an oath or affirmation and making a certificate thereof, for the taking of an acknowledgment of the execution of a document and executing a certificate thereof, for certifying to the correctness of a copy of or an extract from a document, official or private, for authenticating a foreign document, or for the noting of a bill of exchange, certifying to protest, etc., are as prescribed under the caption Documentary services in the Schedule of Fees (§22.1 of this chapter), unless the service is performed under a "no fee" item of the same caption of the Schedule. If an oath or affirmation is administered concurrently to several persons and only one consular certificate (jurat) is executed, only one fee is collectible. If more than one person

joins in making an acknowledgment but only one certificate is executed, only one fee shall be charged.

[22 FR 10858, Dec. 27, 1957, as amended at 63 FR 6480, Feb. 9, 1998]

DEPOSITIONS AND LETTERS ROGATORY

§92.49 "Deposition" defined.

A deposition is the testimony of a witness taken in writing under oath or affirmation, before some designated or appointed person or officer, in answer to interrogatories, oral or written. (For the distinction between a deposition and an affidavit see §92.22.)

§92.50 Use of depositions in court actions.

Generally depositions may be taken and used in all civil actions or suits. In criminal cases in the United States, a deposition cannot be used, unless a statute has been enacted which permits a defendant in a criminal case to have a deposition taken in his own behalf, or unless the defendant consents to the taking of a deposition by the State for use by the prosecution. (For exception in connection with the proving of foreign documents for use in criminal actions, see §92.65.)

§92.51 Methods of taking depositions in foreign countries.

Rule 28(b) of the Rules of Civil Procedure for the District Courts of the United States provides that depositions may be taken in foreign countries by any of the following four methods:

(a) Pursuant to any applicable treaty or convention, or

(b) Pursuant to a letter of request (whether or not captioned a letter rogatory), or

(c) On notice before a person authorized to administer oaths in the place in which the examination is held, either by the law thereof or by the law of the United States. Notarizing officials as defined by 22 CFR 92.1 are so authorized by the law of the United States, or

(d) Before a person commissioned by the court, and a person so commissioned shall have the power by virtue of the commission to administer any necessary oath and take testimony.

[60 FR 51722, Oct. 3, 1995]

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§ 92.52 “Deposition on notice” defined.

A *deposition on notice* is a deposition taken before a competent official after reasonable notice has been given in writing by the party or attorney proposing to take such deposition to the opposing party or attorney of record. Notarizing officers, as defined by 22 CFR 92.1, are competent officials for taking depositions on notice in foreign countries (see § 92.51). This method of taking a deposition does not necessarily involve the issuance of a commission or other court order.

[60 FR 51722, Oct. 3, 1995]

§ 92.53 “Commission to take depositions” defined.

A *commission to take depositions* is a written authority issued by a court of justice, or by a quasi-judicial body, or a body acting in such capacity, giving power to take the testimony of witnesses who cannot appear personally to be examined in the court or before the body issuing the commission. In Federal practice, a commission to take depositions is issued only when necessary or convenient, on application and notice. The commission indicates the action or hearing in which the depositions are intended to be used, and the person or persons required to take the depositions, usually by name or descriptive title (see § 92.55 for manner of designating notarizing officers). Normally a commission is accompanied by detailed instructions for its execution.

[22 FR 10858, Dec. 27, 1957, as amended at 60 FR 51723, Oct. 3, 1995]

§ 92.54 “Letters rogatory” defined.

In its broader sense in international practice, the term *letters rogatory* denotes a formal request from a court in which an action is pending, to a foreign court to perform some judicial act. Examples are requests for the taking of evidence, the serving of a summons, subpoena, or other legal notice, or the execution of a civil judgment. In United States usage, letters rogatory have been commonly utilized only for the purpose of obtaining evidence. Requests rest entirely upon the comity of courts toward each other, and customarily embody a promise of reciprocity.

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The legal sufficiency of documents executed in foreign countries for use in judicial proceedings in the United States, and the validity of the execution, are matters for determination by the competent judicial authorities of the American jurisdiction where the proceedings are held, subject to the applicable laws of that jurisdiction. See § 92.66 for procedures in the use of letters rogatory requesting the taking of depositions in foreign jurisdictions.

§ 92.55 Consular authority and responsibility for taking depositions.

(a) *Requests to take depositions or designations to execute commissions to take depositions.* Any United States notarizing officer may be requested to take a deposition on notice, or designated to execute a commission to take depositions. A commission or notice should, if possible, identify the officer who is to take depositions by his official title only in the following manner: “Any notarizing officer of the United States of America at (name of locality)”. The notarizing officer responsible for the performance of notarial acts at a post should act on a request to take a deposition on notice, or should execute the commission, when the documents are drawn in this manner, provided local law does not preclude such action. However, when the officer (or officers) is designated by name as well as by title, only the officer (or officers) so designated may take the depositions. In either instance, the officer must be a disinterested party. Rule 28(c) of the Rules of Civil Procedure for the district courts of the United States prohibits the taking of a deposition before a person who is a relative, employee, attorney or counsel of any of the parties, or who is a relative or employee of such attorney or counsel, or who is financially interested in the action.

(b) *Authority in Federal law.* The authority for the taking of depositions, charging the appropriate fees, and imposing the penalty for giving false evidence is generally set forth in 22 U.S.C. 4215 and 4221. The taking of depositions for federal courts of the United States is further governed by the Federal Rules of Civil Procedure. For the provisions of law which govern particularly the taking of depositions to prove the

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genuineness of foreign documents which it is desired to introduce in evidence in any criminal action or proceeding is a United States federal court, see 18 U.S.C. 3491 through 3496.

(c) *Procedure where laws of the foreign country do not permit the taking of depositions.* In countries where the right to take depositions is not secured by treaty, notarizing officers may take depositions only if the laws or authorities of the national government will permit them to do so. Notarizing officers in countries where the taking of depositions is not permitted who receive notices or commissions for taking depositions should return the documents to the parties from whom they are received explaining why they are returning them, and indicating what other method or methods may be available for obtaining the depositions, whether by letters rogatory or otherwise.

[60 FR 51722, Oct. 3, 1995]

§ 92.56 Summary of procedure for taking depositions.

In taking a deposition on notice or executing a commission to take depositions, a notarizing officer should conform to any statutory enactments on the subject in the jurisdiction in which the depositions will be used. He should also comply with any special instructions which accompany the request for a deposition on notice or a commission. Unless otherwise directed by statutory enactments or special instructions, the officer should proceed as follows in taking depositions:

(a) Request the witnesses, whose testimony is needed, to appear before him; or, at the request of any party to the action or proceeding, request designated persons to supply him or the requesting party with needed records or documents in their possession, or copies thereof;

(b) When necessary, act as interpreter or translator, or see that arrangements are made for some qualified person to act in this capacity;

(c) Before the testimony is taken, administer oaths (or affirmations in lieu thereof) to the interpreter or translator (if there is one), to the stenographer taking down the testimony, and to each witness;

(d) Have the witnesses examined in accordance with the procedure described in §§ 92.57 to 92.60;

(e) Either record, or have recorded in his presence and under his direction, the testimony of the witnesses;

(f) Take the testimony, or have it taken, stenographically in question-and-answer form and transcribed (see § 92.58) unless the parties to the action agree otherwise (rules 30(c) and 31(b), Rules of Civil Procedure for the District Courts of the United States);

(g) Be actually present throughout the examination of the witnesses, but recess the examination for reasonable periods of time and for sufficient reasons;

(h) Mark or cause to be marked, by identifying exhibit numbers or letters, all documents identified by a witness or counsel and submitted for the record.

[22 FR 10858, Dec. 27, 1957, as amended at 60 FR 51723, Oct. 3, 1995]

§ 92.57 Oral examination of witnesses.

When a witness is examined on the basis of oral interrogatories, the counsel for the party requesting the deposition has the right to conduct a direct examination of the witness without interruption except in the form of objection by opposing counsel. The opposing counsel has the same right on cross-examination. Cross-examination may be followed by redirect and recross-examinations until the interrogation is complete. The notarizing officer taking the deposition should endeavor to restrain counsel from indulging in lengthy colloquies, digressions, or asides, and from attempts to intimidate or mislead the witness. The notarizing officer has no authority to sustain or overrule objections but should have them recorded as provided in § 92.59. Instead of taking part in the oral examination of a witness, the parties notified of the taking of a deposition may transmit written interrogatories to the notarizing officer. The notarizing officer should then question the witness on the basis of the written interrogatories and should record the answers verbatim. (Rules 30 (c) and 31

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(b), Rules of Civil Procedure for the District Courts of the United States.)

[22 FR 10858, Dec. 27, 1957, as amended at 60 FR 51723, Oct. 3, 1995]

§ 92.58 Examination on basis of written interrogatories.

Written interrogatories are usually divided into three parts:

- (a) The direct interrogatories or interrogatories in chief;
- (b) The cross-interrogatories; and
- (c) The redirect interrogatories.

Recross-interrogatories sometimes follow redirect interrogatories. The notarizing officer should not furnish the witness with a copy of the interrogatories in advance of the questioning, nor should he allow the witness to examine the interrogatories in advance of the questioning. Although it may be necessary for the officer, when communicating with the witness for the purpose of asking him to appear to testify, to indicate in general terms the nature of the evidence which is being sought, this information should not be given in such detail as to permit the witness to formulate his answers to the interrogatories prior to his appearance before the notarizing officer. The officer taking the deposition should put the interrogatories to the witness separately and in order. The written interrogatories should not be repeated in the record (unless special instructions to that effect are given), but an appropriate reference should be made thereto. These references should, of course, be followed by the witness' answers. All of the written interrogatories must be put to the witness, even though at some point during the examination the witness disclaims further knowledge of the subject. When counsel for all of the parties attend an examination conducted on written interrogatories, the notarizing officer may, all counsel having consented thereto, permit oral examination of the witness following the close of the examination upon written interrogatories. The oral examination should be conducted in the same manner and order as if not preceded by an examination upon written interrogatories.

[22 FR 10858, Dec. 27, 1957, as amended at 60 FR 51723, Oct. 3, 1995; 61 FR 14375, Apr. 1, 1996]

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§ 92.59 Recording of objections.

All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings must be noted in the deposition. Evidence objected to will be taken subject to the objections. (Rules 30 (c) and 31 (b), Rules of Civil Procedure for the District Courts of the United States.)

§ 92.60 Examination procedures.

(a) *Explaining interrogatory to witness.* If the witness does not understand what an interrogatory means, the notarizing officer should explain it to him, if possible, but only so as to get an answer strictly responsive to the interrogatory.

(b) *Refreshing memory by reference to written records.* A witness may be permitted to refresh his memory by referring to notes, papers or other documents. The notarizing officer should have such occurrence noted in the record of the testimony together with a statement of his opinion as to whether the witness was using the notes, papers or other documents to refresh his memory or for the sake of testifying to matters not then of his personal knowledge.

(c) *Conferring with counsel.* When the witness confers with counsel before answering any interrogatory, the notarizing officer should have that fact noted in the record of the testimony.

(d) *Examining witness as to personal knowledge.* The notarizing officer may at any time during the examination of a witness propound such inquiries as may be necessary to satisfy himself whether the witness is testifying from his personal knowledge of the subject matter of the examination.

(e) *Witness not to leave officer's presence.* The notarizing officer should request the witness not to leave his presence during the examination, except during the recesses for meals, rest, etc., authorized in § 92.56 (g). Failure of the witness to comply with this request must be noted in the record.

[22 FR 10858, Dec. 27, 1957, as amended at 60 FR 51723, Oct. 3, 1995]

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§ 92.61 Transcription and signing of record of examination.

After the examination of a witness is completed, the stenographic record of the examination must be fully transcribed and the transcription attached securely to any document or documents to which the testimony in the record pertains. (See § 92.63 regarding the arrangement of papers.) The transcribed deposition must then be submitted to the witness for examination and read to or by him, unless such examination and reading are waived by the witness and by the parties to the action. Any changes in form or substance desired by the witness should be entered upon the deposition by the notarizing officer with a statement of the reasons given by the witness for making the changes. The witness should then sign the transcript of his deposition and should initial in the margin each correction made at his request. However, the signature and initials of the witness may be omitted if the parties to the action by stipulation waive the signing or if the witness is ill, refuses to sign, or cannot be found. If the deposition is not signed by the witness, the notarizing officer should sign it and should state on the record the reason for his action, *i.e.*, the waiver of the parties, the illness or absence of the witness, or the refusal of the witness to sign, giving the reasons for such refusal. The deposition may then be used as though signed by the witness except when, on the motion to suppress, the court holds that the reasons given for the refusal to sign require the rejection of the deposition in whole or in part. (Rules 30 (e) and 31 (b), Rules of Civil Procedure for the District Courts of the United States.)

[22 FR 10858, Dec. 27, 1957, as amended at 60 FR 51723, Oct. 3, 1995]

§ 92.62 Captioning and certifying depositions.

The notarizing officer should prepare a caption for every deposition; should certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness; and should sign and seal the certification in the manner prescribed in §§ 92.15 and 92.16. (Rules 30 (f) (1) and 31 (b), Rules

of Civil Procedures for the District Courts of the United States.)

[22 FR 10858, Dec. 27, 1957, as amended at 60 FR 51723, Oct. 3, 1995]

§ 92.63 Arrangement of papers.

Unless special instructions to the contrary are received, the various papers comprising the completed record of the depositions should usually be arranged in the following order from bottom to top:

(a) Commission to take depositions (or notice of taking depositions), with interrogatories, exhibits, and other supporting documents fastened thereto.

(b) Statement of fees charged, if one is prepared on a separate sheet.

(c) Record of the responses of the various witnesses, including any exhibits the witnesses may submit.

(d) Closing certificate.

All of these papers should be fastened together with ribbon, the ends of which should be secured beneath the notarizing officer's seal affixed to the closing certificate.

[22 FR 10858, Dec. 27, 1957, as amended at 60 FR 51723, Oct. 3, 1995]

§ 92.64 Filing depositions.

(a) *Preparation and transmission of envelope.* The notice or commission, the interrogatories, the record of the witnesses' answers, the exhibits, and all other documents and papers pertaining to the depositions should be fastened together (see § 92.63 regarding the arrangement of papers) and should be enclosed in an envelope sealed with the wax engraving seal of the post. The envelope should be endorsed with the title of the action and should be marked and addressed. The sealed envelope should then be transmitted to the court in which the action is pending.

(b) *Furnishing copies.* The original completed depositions should not be sent to any of the parties to the action or to their counsel. However, the notarizing officer may furnish a copy of a deposition to the deponent or to any party to the action upon the payment of the copying fee and if certification is desired under official seal that the copy is a true copy, the certification

fee prescribed in the Tariff of Fees, Foreign Service of the United States of America (§ 22.1 of this chapter).

[22 FR 10858, Dec. 27, 1957, as amended at 60 FR 51723, Oct. 3, 1995]

§ 92.65 Depositions to prove genuineness of foreign documents.

(a) *Authority to execute commission.* Under the provisions of section 1 of the act of June 25, 1948, as amended (sec. 1, 62 Stat. 834, sec. 53, 63 Stat. 96; 18 U.S.C. 3492), a diplomatic or consular officer may be commissioned by an United States court to take the testimony of a witness in a foreign country either on oral or written interrogatories, or partly on oral and partly on written interrogatories, for the purpose of determining the genuineness of any foreign document (any book, paper, statement, record, account, writing, or other document, or any portion thereof, of whatever character and in whatever form, as well as any copy thereof equally with the original, which is not in the United States) which it is desired to introduce in evidence in any criminal action or proceeding in any United States court under the provisions of section 1 of the act of June 25, 1948 (sec. 1, 62 Stat. 945; 28 U.S.C. 1732). Such testimony may also be taken to determine whether the foreign document was made in the regular course of business and whether it was the regular course of business to make such document. The term "business" includes business, profession, occupation, and calling of every kind. (Sec. 1, 62 Stat. 945, 28 U.S.C. 1732.)

(b) *Disqualification to execute commission.* Any diplomatic or consular officer to whom a commission is addressed to take testimony, who is interested in the outcome of the criminal action or proceeding in which the foreign documents in question are intended to be used or who has participated in the prosecution of such action or proceeding, whether by investigations, preparation of evidence, or otherwise, may be disqualified on his own motion or on that of the United States or any other party to such criminal action or proceeding made to the court from which the commission issued at any time prior to the execution thereof. If, after notice and hearing, the court

grants the motion, it will instruct the diplomatic or consular officer thus disqualified to send the commission to any other diplomatic or consular officer of the United States named by the court, and such other officer should execute the commission according to its terms and will for all purposes be deemed the officer to whom the commission is addressed. (Section 1, 62 Stat. 834, sec. 53, 63 Stat. 96; 18 U.S.C. 3492.)

(c) *Execution and return of commission.* (1) Commissions issued in criminal cases under the authority of the act of June 25, 1948, as amended, to take testimony in connection with foreign documents should be executed and returned by officers of the Foreign Service in accordance with section 1 of that act, as amended (sec. 1, 62 Stat. 835; 18 U.S.C. 3493, 3494), and in accordance with any special instructions which may accompany the commission. For details not covered by such section or by special instructions, officers of the Foreign Service should be guided by such instructions as may be issued by the Department of State in connection with the taking of depositions generally. (See §§ 92.55 to 92.64.)

(2) Section 1 of the act of June 25, 1948 (sec. 1, 62 Stat. 835; 18 U.S.C. 3493) provides that every person whose testimony is taken should be cautioned and sworn to testify the whole truth and should be carefully examined. The testimony should be reduced to writing or typewriting by the consular officer, or by some person under his personal supervision, or by the witness himself in the presence of the consular officer, and by no other person. After it has been reduced to writing or typewriting, the testimony must be signed by the witness. Every foreign document with respect to which testimony is taken must be annexed to such testimony and must be signed by each witness who appears for the purpose of establishing the genuineness of such document.

(3) When counsel for all of the parties attend the examination of any witness whose testimony will be taken on written interrogatories, they may consent that oral interrogatories, in addition to those accompanying the commission, be put to the witness. The consular officer taking the testimony

should require an interpreter to be present when his services are needed or are requested by any party or his attorney. (Section 1, 62 Stat. 835, 18 U.S.C. 3493.)

(4) Section 1 of the act of June 25, 1948 (sec. 1, 62 Stat. 835; 18 U.S.C. 3494) provides that the consular officer, who executes any commission authorized under the same section, as amended (sec. 1, 62 Stat. 834, sec. 53, 63 Stat. 96; 18 U.S.C. 3492) and who is satisfied, upon all the testimony taken, that a foreign document is genuine, should certify such document to be genuine under the seal of his office. This certification must include a statement that the officer is not subject to disqualification under the provisions of section 1 of the act of June 25, 1948, as amended (sec. 1, 62 Stat. 834, sec. 53, 63 Stat. 96; 18 U.S.C. 3492). For purposes of assessment of fees, the issuance of this certificate shall be regarded as a part of the consular service of executing the commission, and no separate fee shall be charged for the certificate.

(5) The consular officer should then forward such foreign documents, together with the record of all testimony taken and the commission which has been executed, to the Department of State for transmission to the clerk of the court from which the commission issued. (Section 1, 62 Stat. 835; 18 U.S.C. 3494.) (See § 92.64 regarding the filing of depositions generally.)

(Sec. 303, 60 Stat. 1002, 62 Stat. 836; 22 U.S.C. 843, 18 U.S.C. 3496, E.O. 10307; 16 FR 11907, 3 CFR 1949-1953 Comp., page 387)

§ 92.66 Depositions taken before foreign officials or other persons in a foreign country.

(a) *Customary practice.* Under Federal law (Rule 28(b), Rules of Civil Procedure for the District Courts of the United States) and under the laws of some of the States, a commission to take depositions can be issued to a foreign official or to a private person in a foreign country. However, this method is rarely used; commissions are generally issued to U.S. notarizing officers. In those countries where U.S. notarizing officers are not permitted to take testimony (see § 92.55(c)) and where depositions must be taken before

a foreign authority, letters rogatory are usually issued to a foreign court.

(b) *Transmission of letters rogatory to foreign officials.* Letters rogatory may often be sent direct from court to court. However, some foreign governments require that these requests for judicial aid be submitted through the diplomatic channel (*i.e.*, that they be submitted to the Ministry for Foreign Affairs by the American diplomatic representative). A usual requirement is that the letters rogatory as well as the interrogatories and other papers included with them be accompanied by a complete translation into the language (or into one of the languages) of the country of execution. Another requirement is that provision be made for the payment of fees and expenses. Inquiries from interested parties or their attorneys, or from American courts, as to customary procedural requirements in given countries, may be addressed direct to the respective American embassies and legations in foreign capitals, or to the Department of State, Washington, DC 20520.

(c) *Return of letters rogatory executed by foreign officials.* (1) Letters rogatory executed by foreign officials are returned through the same channel by which they were initially transmitted. When such documents are returned to a United States diplomatic mission, the responsible officer should endorse thereon a certificate stating the date and place of their receipt. This certificate should be appended to the documents as a separate sheet. The officer should then enclose the documents in an envelope sealed with the wax engraving seal of the post and bearing an endorsement indicating the title of the action to which the letters rogatory pertain. The name and address of the American judicial body from which the letters rogatory issued should also be placed on the envelope.

(2) If the executed letters rogatory are returned to the diplomatic mission from the Foreign Office in an envelope bearing the seals of the foreign judicial authority who took the testimony, that sealed envelope should not be opened at the mission. The responsible officer should place a certificate on the envelope showing the date it was received at his office and indicating that

it is being forwarded in the same condition as received from the foreign authorities. He should then place that sealed envelope in a second envelope, sealed with the wax engraving seal of the post, and bearing the title of the action and the name and address of the American judicial body from which the letters rogatory issued.

(3) Charges should be made for executing either of the certificates mentioned in paragraphs (c) (1) and (2) of this section, as prescribed by item 67 of the Tariff of Fees, Foreign Service of the United States of America (§22.1 of this chapter), unless the service is classifiable in a no-fee category under the exemption for Federal agencies and corporations (item 83 of the same Tariff).

(4) The sealed letters rogatory should be transmitted by appropriate means to the court in which the action is pending. See title 28, section 1781, of the United States Code concerning the manner of making return to a court of the United States (Federal court).

(d) *Transmissions of commissions to foreign officials or other persons.* A commission to take depositions which is addressed to an official or person in a foreign country other than a United States notarizing officer may be sent directly to the person designated. However, if such a commission is sent to the United States diplomatic mission in the country where the depositions are intended to be taken, it should be forwarded to the Foreign Office for transmission to the person appointed in the commission. If sent to a United States consular office, the commission may be forwarded by that office directly to the person designated, or, if the notarial officer deems it more advisable to do so, he may send the commission to the United States diplomatic mission for transmission through the medium of the foreign office.

[22 FR 10858, Dec. 27, 1957, as amended at 32 FR 11775, Aug. 16, 1967; 60 FR 51722, Oct. 3, 1995]

§ 92.67 Taking of depositions in United States pursuant to foreign letters rogatory.

(a) *Authority and procedure.* The taking of depositions by authority of State

courts for use in the courts of foreign countries is governed by the laws of the individual States. As respects Federal practice, 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. 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. This 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 or in any manner acceptable to him (28 U.S.C. 1782).

(b) *Formulation of letters rogatory.* A letter rogatory customarily states the nature of the judicial assistance sought by the originating court, prays that this assistance be extended, incorporates an undertaking of future reciprocity in like circumstances, and makes some provision for payment of fees and costs entailed in its execution. As respects Federal practice, it is not

required that a letter rogatory emanating from a foreign court be authenticated by a diplomatic or consular officer of the United States or that it be submitted through the diplomatic channel; the seal of the originating court suffices. When testimony is desired, the letter rogatory should state whether it is intended to be taken upon oral or written interrogatories. If the party on whose behalf the testimony is intended to be taken will not be represented by counsel, written interrogatories should be attached. Except where manifestly unneeded (e.g. a Spanish-language letter rogatory intended for execution in Puerto Rico) or dispensed with by arrangement with the court, letters rogatory and interrogatories in a foreign language should be accompanied by English translations.

(c) *Addressing letters rogatory.* To avert uncertainties and minimize possibilities for refusal of courts to comply with requests contained in letters rogatory in the form in which they are presented, it is advisable that counsel for the parties in whose behalf testimony is sought ascertain in advance if possible, with the assistance of correspondent counsel in the United States or that of a consular representative or agent of his nation in the United States, the exact title of the court, Federal or State as the case may be, which will be prepared to entertain the letter rogatory. In Federal practice the following form of address is acceptable:

The U.S. District Court for the _____ (e.g. Northern, Southern) District of _____ (State) _____ (City) _____, (State)

In instances where it is not feasible to ascertain the correct form of address at the time of preparation of the letter rogatory, and it will be left for counsel in the United States, or a consul or agent in the United States of the nation of origin of the letter rogatory to effect its transmission to an appropriate court, the following form may be used: "To the Appropriate Judicial Authority at (name of locality)."

(d) *Submitting letters rogatory to courts in the United States.* A letter rogatory may be submitted to the clerk of the

court of which assistance is sought, either in person or by mail. This may be direct by international mail from the originating foreign court. Alternatively, submission to the clerk of court may be effected in person or by mail by any party to the action at law or his attorney or agent, or by a consular officer or agent in the United States of the foreign national concerned. Finally, the Department of State has been authorized (62 Stat. 949; 28 U.S.C. 1781) to receive a letter rogatory issued, or request made, by a foreign or international tribunal, to transmit it to the tribunal, officer, or agency in the United States to whom it is addressed, and to receive and return it after execution. This authorization does not preclude—

(1) The transmittal of a letter rogatory or request directly from a foreign or international tribunal to the tribunal, officer, or agency in the United States to whom it is addressed and its return in the same manner; or

(2) The transmittal of a letter rogatory or request directly from a tribunal in the United States to the foreign or international tribunal, officer, or agency to whom it is addressed and its return in the same manner.

[32 FR 11775, Aug. 16, 1967]

§ 92.68 Foreign Service fees and incidental costs in the taking of evidence.

The fees for the taking of evidence by officers of the Foreign Service are as prescribed by the Tariff or Fees, Foreign Service of the United States of America (§22.1 of this chapter), under the caption "Services Relating to the Taking of Evidence," unless the service is performed for official use, which comes under the caption "Exemption for Federal Agencies and Corporations" of the same Tariff. See §22.6 of this chapter concerning the requirement for advance deposit of estimated fees. When the party on whose behalf the evidence is sought or his local representative is not present to effect direct payment of such incidental costs as postage or travel of witnesses, the advance deposit required by the officer shall be in an amount estimated as sufficient to cover these in addition to the fees proper. The same rule shall apply

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to charges for interpreting or for the taking and transcribing of a stenographic record when performed commercially rather than by staff members at Tariff of Fee rates.

§ 92.69 Charges payable to foreign officials, witnesses, foreign counsel, and interpreters.

(a) *Execution of letters rogatory by foreign officials.* Procedures for payment of foreign costs will be by arrangement with the foreign authorities.

(b) *Execution of commissions by foreign officials or other persons abroad.* Procedure for the payment of foreign costs will be as arranged, by the tribunal requiring the evidence, with its commissioner.

(c) *Witness fees and allowances when depositions are taken pursuant to commission from a Federal court.* A witness attending in any court of the United States, or before a United States commissioner, or before any person authorized to take his deposition pursuant to any rule or order of a court of the United States, shall receive \$4 for each day's attendance and for the time necessarily occupied in going to and returning from the same, and 8 cents per mile for going from and returning to his place of residence. Witnesses who are not salaried employees of the Government and who are not in custody and who attend at points so far removed from their respective residence as to prohibit return thereto from day to day shall be entitled to an additional allowance of \$8 per day for expenses of subsistence, including the time necessarily occupied in going to and returning from the place of attendance (28 U.S.C. 1821, Supp. IV). Witnesses giving depositions before consular officers pursuant to a commission issued by the Federal Court are entitled to these fees and allowances, and the officer shall make payment thereof in the same manner as payment is made of other expenses involved in the execution of the commission, charging the advance deposit provided by the party at whose request the depositions are taken (see § 92.68). In any case to which the Government of the United States, or an officer or agency thereof, is a party, the United States marshal for the district will pay all fees of wit-

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nesses on the certificate of the United States Attorney or Assistant United States Attorney, and in the proceedings before a United States Commissioner, on the certificate of such commissioner (28 U.S.C. 1825).

§ 92.70 Special fees for depositions in connection with foreign documents.

(a) *Fees payable to witnesses.* Each witness whose testimony is obtained under a commission to take testimony in connection with foreign documents for use in criminal cases shall be entitled to receive compensation at the rate of \$15 a day for each day of attendance, plus 8 cents a mile for going from his place of residence or business to the place of examination, and returning, by the shortest feasible route (18 U.S.C. 3495 and 3496, and E.O. 10307, 3 CFR, 1949-1953 Comp.). When, however it is necessary to procure the attendance of a witness on behalf of the United States or an indigent party, an officer or agent of the United States may negotiate with the witness to pay compensation at such higher rate as may be approved by the Attorney General, plus the mileage allowance stated above (5 U.S.C. 341). The expense of the compensation and mileage of each witness will be borne by the party, or parties, applying for the commission unless the commission is accompanied by an order of court (18 U.S.C. 3495(b) that all fees, compensations, and other expenses authorized by these regulations are chargeable to the United States (18 U.S.C. 3495).

(b) *Fee payable to counsel.* Each counsel who represents a party to the action or proceeding in the examination before the commissioner will receive compensation for each day of attendance at a rate of not less than \$15 a day and not more than \$50 a day, as agreed between him and the party whom he represents, plus such actual and necessary expenses as may be allowed by the commissioner upon verified statements filed with him. If the commission is issued on application of the United States, the compensation and expenses of counsel representing each party are chargeable to the United States under section 3495(b) of title 18 of the United States Code (18 U.S.C.

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3495 and 3496, and E.O. 10307, 3 CFR, 1949-1953 Comp.).

(c) *Fees payable to interpreters and translators.* Each interpreter and translator employed by the commissioner under these regulations shall receive an allowance of \$10 a day, plus 8 cents a mile for going from his place of residence or business to the place of examination and returning, by the shortest feasible route. The compensation and mileage of interpreters and translators shall be chargeable to the United States.

(d) *Time for paying fees.* Witnesses, counsel, interpreters, and translators will be paid, in accordance with the foregoing regulations, by the commissioner at the conclusion of their services. Other expenses authorized by these regulations will be paid by the commissioner as they are incurred.

(e) *Payment of fees by the United States.* When it appears that the commission was issued on application of the United States or when the commission is accompanied by an order of court that all fees, compensation, and other expenses authorized by these regulations are chargeable to the United States under section 3495(b) of title 18 of the United States Code, the commissioner shall execute the commission without charge for his service as commissioner in connection therewith. The Commissioner shall pay witnesses, counsel, interpreter, or translator, and other expenses authorized by these regulations through the disbursing officer in his area in accordance with instructions which will be issued in each case.

(f) *Payment of fees by other parties.* When fees, compensation, and other expenses authorized by this section are chargeable to any party other than the United States, the commissioner shall undertake the execution of the commission only if such party deposits with the Department of State or with the appropriate Foreign Service post, in advance, an amount to be set by the court as apparently adequate to defray all fees, compensation, and other expenses authorized by this part. If the amount of the deposit is later found to be insufficient, the depositor shall be so notified, and the commissioner shall retain the commission and other papers until a sufficient supplemental

amount has been deposited. If the amount of the deposit exceeds the aggregate amount of fees, compensation, and other expenses authorized by this part, the excess shall be returned to the party, or parties, entitled thereto. The commissioner shall pay witnesses, counsel, interpreter, or translator, and other expenses authorized by this section, from the proceeds of a check which the disbursing officer for his area will be authorized to draw on the Treasurer of the United States.

§ 92.71 Fees for letters rogatory executed by officials in the United States.

Arrangements for the payment of fees should be made directly with the court in the United States by the party in the foreign country at whose request the depositions are taken, either through his legal representative in the United States or through the appropriate diplomatic or consular officer of his country in the United States. (See § 92.67 regarding the execution of letters rogatory in the United States.)

MISCELLANEOUS NOTARIAL SERVICES

§ 92.72 Services in connection with patents and patent applications.

(a) *Affidavit of applicant.* The form of the affidavit of an applicant for a United States patent depends on who is making the application, the type of invention, and the circumstances of the case. Officers of the Foreign Service are not responsible for the correctness of form of such affidavits, and should not endeavor to advise in their preparation. Persons who inquire at a Foreign Service post regarding the filing of patent applications may be referred to the pamphlet entitled "General Information Concerning Patents," if copies thereof are available at the post.

(b) *Oath or affirmation of applicant—*
(1) *Authority to administer oath or affirmation.* When an applicant for a patent resides in a foreign country, his oath or affirmation may be made before any diplomatic or consular officer of the United States authorized to administer oaths, or before any officer having an official seal and authorized to administer oaths in the foreign country in which the applicant may be, whose authority shall be proved by certificate of