

Department of State

§ 92.67

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 diplo-

matic 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