

Department of State

§ 92.70

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 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 witnesses 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

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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. 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.