Court of the United States and for the judicial review or enforcement of orders of administrative agencies, boards, commissions, and officers.

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(As amended Nov. 6, 1966, Pub. L. 89-773, § 1, 80 Stat. 1323.)

AMENDMENTS

1966—Pub. L. 89-773 eliminated words "for district courts" from the catchline, inserted provisions in the text empowering the Supreme Court to prescribe by general rules the practice and procedure of courts of appeals in civil actions, and the practice and procedure in proceedings for the review by the courts of appeals of decisions of the Tax Court of the United States and for the judicial review or enforcement of orders of administrative agencies, boards, commissions, and officers, and expanded the term "civil actions" to include admiralty and maritime cases, and appeals therein.

§§ 2073, 2074. Repealed. Pub. L. 89-773, § 2, Nov. 6, 1966, 80 Stat. 1323.

Section 2073, acts June 25, 1948, ch. 646, 62 Stat. 961; May 24, 1949, ch. 139, § 104, 63 Stat. 104; May 10, 1950, ch. 174, § 3, 64 Stat. 158, empowered the Supreme Court to prescribe, by general rules, the practice and procedure in admiralty and maritime cases in the district courts. See section 2072 of this title.

Section 2074, act July 27, 1954, ch. 583, § 1, 68 Stat. 567, empowered the Supreme Court to prescribe rules for review of decisions of the Tax Court of the United States. See section 2072 of this title.

SAVINGS PROVISION

Section 2 of Pub. L. 89-773 provided in part that the repeal of sections 2073 and 2074 of this title shall not operate to invalidate or repeal rules adopted under the authority of one of those sections prior to the enactment of Pub. L. 89-773, which rules shall remain in effect until superseded by rules prescribed under the authority of section 2072 of this title as amended by Pub. L. 89-773.

Chapter 133.—REVIEW—MISCELLANEOUS PROVISIONS

§ 2112. Record on review and enforcement of agency orders.

(a) The rules prescribed under the authority of section 2072 of this title may provide for the time and manner of filing and the contents of the record in all proceedings instituted in the courts of appeals to enjoin, set aside, suspend, modify, or otherwise review or enforce orders of administrative agencies, boards, commissions, and officers. Such rules may authorize the agency, board, commission, or officer to file in the court a certified list of the materials comprising the record and retain and hold for the court all such materials and transmit the same or any part thereof to the court, when and as required by it, at any time prior to the final determination of the proceeding, and such filing of such certified list of the materials comprising the record and such subsequent transmittal of any such materials when and as required shall be deemed full compliance with any provision of law requiring the filing of the record in the court. The record in such proceedings shall be certified and filed in or held for and transmitted to the court of appeals by the agency, board, commission, or officer concerned within the time and in the manner prescribed by such rules. If proceedings have been instituted in two or more courts of appeals with respect to the same order the agency, board, commission, or officer concerned shall file the record in that one of such courts in which a proceeding with respect to such order was first instituted. The other courts in which such proceedings are pending shall thereupon transfer them to the court of appeals in which the record has been filed. For the convenience of the parties in the interest of justice such court may thereafter transfer all the proceedings with respect to such order to any other court of appeals.

(b) The record to be filed in the court of appeals in such a proceeding shall consist of the order sought to be reviewed or enforced, the findings or report upon which it is based, and the pleadings, evidence, and proceedings before the agency, board, commission, or officer concerned, or such portions thereof (1) as the rules prescribed under the authority of section 2072 of this title may require to be included therein, or (2) as the agency, board, commission, or officer concerned, the petitioner for review or respondent in enforcement, as the case may be, and any intervenor in the court proceeding by written stipulation filed with the agency, board, commission, or officer concerned or in the court in any such proceeding may consistently with the rules prescribed under the authority of section 2072 of this title designate to be included therein, or (3) as the court upon motion of a party or, after a prehearing conference, upon its own motion may by order in any such proceeding designate to be included therein. Such a stipulation or order may provide in an appropriate case that no record need be filed in the court of appeals. If, however, the correctness of a finding of fact by the agency, board, commission, or officer is in question all of the evidence before the agency, board, commission, or officer shall be included in the record except such as the agency, board, commission, or officer concerned, the petitioner for review or respondent in enforement, as the case may be, and any intervenor in the court proceeding by written stipulation filed with the agency, board, commission, or officer concerned or in the court agree to omit as wholly immaterial to the questioned finding. If there is omitted from the record any portion of the proceedings before the agency, board, commission, or officer which the court subsequently determines to be proper for it to consider to enable it to review or enforce the order in question the court may direct that such additional portion of the proceedings be filed as a supplement to the record. The agency, board, commission, or officer concerned may, at its option and without regard to the foregoing provisions of this subsection, and if so requested by the petitioner for review or respondent in enforcement shall, file in the court the entire record of the proceedings before it without abbreviation.

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(As amended Pub. L. 89-773, § 5(a), (b), Nov. 6, 1966, 80 Stat. 1323.)

AMENDMENTS

1966—Subsec. (a). Pub. L. 89-773, § 5(a), substituted "The rules prescribed under the authority of section 2072 of this title may provide for the time and manner of filing" for "The several courts of appeal shall have power to adopt, with the approval of the Judicial Conference of the United States, rules, which so far as practicable shall be uniform in all such courts prescribing the time and manner of filing." See section 2072 of this title.

Subsec. (b). Pub. L. 89-773, § 5(b), substituted "the rules prescribed under the authority of section 2072 of this title" for "the said rules of the court of appeals" and for "the rules of such court."

SAVINGS PROVISON

Section 5(c) of Pub. L. 89-773 provided that: "The amendments of section 2112 of title 28 of the United States Code [this section] made by this Act shall not operate to invalidate or repeal rules adopted under the authority of that section prior to the enactment of this Act [Nov. 6, 1966], which rules shall remain in effect until superseded by rules prescribed under the authority of section 2072 of title 28 of the United States Code [section 2072 of this title] as amended by this Act."

Part VI.—PARTICULAR PROCEEDINGS

AMENDMENTS

1966—Pub. L. 89-793, title VI, § 603, Nov. 8, 1966, 80 Stat. 1450, added chapter 175.

Pub. L. 89-554, § 4(d), Sept. 6, 1966, 80 Stat. 621, added chapter 158.

Chapter 153.—HABEAS CORPUS

AMENDMENTS

1966—Pub. L. 89-711, § 3, Nov. 2, 1966, 80 Stat. 1106, substituted "Federal courts" for "State Courts" in item 2254.

§ 2241. Power to grant writ.

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(d) Where an application for a writ of habeas corpus is made by a person in custody under the judgment and sentence of a State court of a State which contains two or more Federal judicial districts, the application may be filed in the district court for the district wherein such person is in custody or in the district court for the district within which the State court was held which convicted and sentenced him and each of such district courts shall have concurrent jurisdiction to entertain the application. The district court for the district wherein such an application is filed in the exercise of its discretion and in furtherance of justice may transfer the application to the other district court for hearing and determination. (As amended Sept. 19, 1966, Pub. L. 89-590, 80 Stat. 811.)

AMENDMENTS

1966—Subsec. (d). Pub. L. 89-590 added subsec. (d).

§ 2244. Finality of determination.

(a) No circuit or district judge shall be required to entertain an application for a writ of habeas corpus to inquire into the detention of a person pursuant to a judgment of a court of the United States if it appears that the legality of such detention has been determined by a judge or court of the United States on a prior application for a writ of habeas corpus and the petition presents no new ground not heretofore presented and determined, and the judge or court is satisfied that the ends of justice will not be served by such inquiry.

(b) When after an evidentiary hearing on the merits of a material factual issue, or after a hearing on the merits of an issue of law, a person in custody pursuant to the judgment of a State court has been denied by a court of the United States or a justice or judge of the United States release from custody or other remedy on an application for a writ of habeas corpus, a subsequent application for a writ of habeas corpus in behalf of such person need not be entertained by a court of the United States or a justice or judge of the United States unless the application alleges and is predicated on a factual or other ground not adjudicated on the hearing of the earlier application for the writ, and unless the court, justice, or judge is satisfied that the applicant has not on the earlier application deliberately withheld the newly asserted ground or otherwise abused the writ.

(c) In a habeas corpus proceeding brought in behalf of a person in custody pursuant to the judgment of a State court, a prior judgment of the Supreme Court of the United States on an appeal or review by a writ of certiorari at the instance of the prisoner of the decision of such State court, shall be conclusive as to all issues of fact or law with respect to an asserted denial of a Federal right which constitutes ground for discharge in a habeas corpus proceeding, actually adjudicated by the Supreme Court therein, unless the applicant for the writ of habeas corpus shall plead and the court shall find the existence of a material and controlling fact which did not appear in the record of the proceeding in the Supreme Court and the court shall further find that the applicant for the writ of habeas corpus could not have caused such fact to appear in such record by the exercise of reasonable diligence. (As amended Nov. 2, 1966, Pub. L. 89-711, § 1, 80 Stat. 1104.)

AMENDMENTS

1966—Subsec. (a). Pub. L. 89-711 designated existing provisions as subsec. (a) and, in subsec. (a) as so designated, struck out provision making the subsection's terms applicable to applications seeking inquiry into detention of persons detained pursuant to judgments of State courts.

Subsecs. (b) and (c). Pub. L. 89-711 added subsecs. (b) and (c).

§ 2254. State custody; remedies in Federal courts.

(a) The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the constitution or laws or treaties of the United States.

(b) An application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that the applicant has exhausted the remedies available in the courts of the State, or that there is either an absence of available State corrective process or the existence of circumstances rendering such process ineffective to protect the rights of the prisoner.

(c) An applicant shall not be deemed to have exhausted the remedies available in the courts of the State, within the meaning of this section, if he has the right under the law of the State to raise, by any available procedure, the question presented.