

§ 954. Vacancy in clerk position; absence of clerk

When the office of clerk is vacant, the deputy clerks shall perform the duties of the clerk in the name of the last person who held that office. When the clerk is incapacitated, absent, or otherwise unavailable to perform official duties, the deputy clerks shall perform the duties of the clerk in the name of the clerk. The court may designate a deputy clerk to act temporarily as clerk of the court in his or her own name.

(June 25, 1948, ch. 646, 62 Stat. 926; Pub. L. 92-310, title II, §206(f), June 6, 1972, 86 Stat. 203; Pub. L. 104-317, title II, §204(a), Oct. 19, 1996, 110 Stat. 3850.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§8, 222 and 327 (Mar. 3, 1911, ch. 231, §§4, 125, 221, 36 Stat. 1087, 1132, 1153).

Section consolidates parts of sections 8, 222 and 327 of title 28, U.S.C., 1940 ed.

Sections 8, 222 and 327 of title 28, U.S.C., 1940 ed., related only to district courts, courts of appeals and the Supreme Court, respectively. This section applies to all Federal courts and is in conformity with section 548 [546] of this title relating to death of a United States marshal.

The provision for continuance of the salary of the clerk of the Supreme Court until his successor is appointed and qualifies was inserted to preserve existing law as declared in the unpublished opinion of Chief Justice Taft, March 23, 1932 (filed in the Department of Justice), with respect to a deceased clerk of the Supreme Court.

Other provisions of sections 8, 222 and 327 of title 28, U.S.C., 1940 ed., are incorporated in sections 671, 711, and 751 of this title.

AMENDMENTS

1996—Pub. L. 104-317 substituted “Vacancy in clerk position; absence of clerk” for “Death of clerk; duties of deputies” in section catchline and amended text generally. Prior to amendment, text read as follows:

“Upon the death of any clerk of court, his deputy or deputies shall execute the duties of the deceased clerk in his name until his successor is appointed and qualifies.

“The compensation of a deceased clerk of the Supreme Court may be paid to his personal representatives until his successor is appointed and qualifies.”

1972—Pub. L. 92-310 struck out “and remedies against” before “deputies” in section catchline and repealed provisions which related to the default or misfeasance of a deputy in connection with the bond of a deceased clerk of a Federal court.

§ 955. Practice of law restricted

The clerk of each court and his deputies and assistants shall not practice law in any court of the United States.

(June 25, 1948, ch. 646, 62 Stat. 926.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§395 and 396 (Mar. 3, 1911, ch. 231, §§273, 274, 36 Stat. 1164).

Section consolidates parts of sections 395 and 396 of title 28, U.S.C., 1940 ed. The remainder, relating to United States marshals and their deputies, is incorporated in section 556 of this title.

Sections 395 and 396 of title 28, U.S.C., 1940 ed., have been extended to include all clerks, deputies, and assistants.

The revised section substitutes as simpler and more appropriate, the prohibition against practice of law “in any court of the United States.” (See reviser’s note under section 556 of this title.)

For explanation of provisions omitted from sections 395 and 396 of title 28, U.S.C., 1940 ed., also see reviser’s note under section 556 of this title.

Changes in phraseology were made.

§ 956. Powers and duties of clerks and deputies

The clerk of each court and his deputies and assistants shall exercise the powers and perform the duties assigned to them by the court.

(June 25, 1948, ch. 646, 62 Stat. 926.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§221, 244, 304 and 305 (Mar. 3, 1911, ch. 231, §§124, 139, 191, 192, 36 Stat. 1132, 1136, 1144; June 16, 1930, ch. 494, 46 Stat. 589).

This section contains only a part of sections 221, 244, 304 and 305 of title 28, U.S.C., 1940 ed. The other provisions of such sections are incorporated in sections 604, 711, 831, 833, 834, 957 and 1926 of this title.

Sections 221, 244, 304 and 305 of title 28, U.S.C., 1940 ed., related to the clerks of the circuit courts of appeals, the Court of Claims and the Court of Customs and Patent Appeals.

The phrase “assigned to them by the court” was substituted for the indefinite provision of section 221 of title 28, U.S.C., 1940 ed., that the clerk of each circuit court of appeals “shall exercise the same powers and perform the same duties * * * as are exercised and performed by the clerk of the Supreme Court, so far as the same may be applicable.”

This section is new insofar as it affects the Clerk of the Supreme Court and clerks of the district courts and the Customs Court. Existing law does not prescribe the powers and duties of those clerks. The duties of the clerk of the Customs Court have been prescribed by the rules of such court adopted May 29, 1936.

Changes were made in phraseology.

§ 957. Clerks ineligible for certain offices

A clerk of a court or any of his deputies shall not be appointed a commissioner, master, referee or receiver in any case, unless there are special reasons requiring such appointment which are recited in the order of appointment.

(June 25, 1948, ch. 646, 62 Stat. 926; Pub. L. 95-598, title II, §234, Nov. 6, 1978, 92 Stat. 2667; Pub. L. 97-164, title I, §122(b), Apr. 2, 1982, 96 Stat. 36; Pub. L. 98-353, title I, §109, July 10, 1984, 98 Stat. 342.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§127, 304 (Mar. 3, 1911, ch. 231, §§68, 191, 36 Stat. 1105, 1144).

Section consolidates section 127 with part of 304 of title 28, U.S.C., 1940 ed.

Provisions of section 304 of title 28, U.S.C., 1940 ed., relating to appointment, powers, duties, and compensation of the clerk of the Court of Customs and Patent Appeals, and table of fees are incorporated in sections 604, 831, 956 and 1926 of this title.

Appointment and compensation of masters for district courts, see Rule 53(a) of the Federal Rules of Civil Procedure.

The words “commissioner” and “referee” did not appear in section 127 of title 28, U.S.C., 1940 ed. They were added to subsection (a) to remove possible ambiguity.

Words “by the court or any judge thereof” in section 304 of title 28, U.S.C., 1940 ed., were omitted as surplusage.

Words “or assistant clerks” and “in any case” were added in subsection (b) to make the section applicable to that officer and consistent with the prohibition in this section against deputies of district court clerks.

Minor changes were made in phraseology.

AMENDMENTS

1984—Pub. L. 98-353 struck out “district” before “court”.

1982—Pub. L. 97-164 struck out designation “(a)” before “A clerk of a district court” and struck out subsec. (b) which had provided that the clerk or assistant clerk of the Court of Customs and Patent Appeals could not be appointed a commissioner, master, or referee in any case.

1978—Pub. L. 95-598 directed the amendment of section by inserting “or bankruptcy court” after “district court”, which amendment did not become effective pursuant to section 402(b) of Pub. L. 95-598, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective July 10, 1984, see section 122(a) of Pub. L. 98-353, set out as an Effective Date note under section 151 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-164 effective Oct. 1, 1982, see section 402 of Pub. L. 97-164, set out as a note under section 171 of this title.

§ 958. Persons ineligible as receivers

A person holding any civil or military office or employment under the United States or employed by any justice or judge of the United States shall not at the same time be appointed a receiver in any case in any court of the United States.

(June 25, 1948, ch. 646, 62 Stat. 926.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 527 (May 28, 1896, ch. 252, § 20, 29 Stat. 184; Dec. 28, 1945, ch. 592, 59 Stat. 659).

Provisions of section 527 of title 28, U.S.C., 1940 ed., relating to ineligibility of various persons as United States commissioner appear as section 631 of this title. Words “janitor of any Government building” were omitted as covered by words “person holding any civil or military employment under the United States” used in the revised section.

The general language of the revised section was substituted for the provisions of section 527 of title 28, U.S.C., 1940 ed., enumerating certain officers and employees.

The exception of Alaska by reference to “section 591 of this title” in section 527 of title 28, U.S.C., 1940 ed., was omitted as surplusage. Alaska is excluded by reason of the words “any court of the United States” which are limited by definitive section 451 of this title.

Changes in phraseology were made.

§ 959. Trustees and receivers suable; management; State laws

(a) Trustees, receivers or managers of any property, including debtors in possession, may be sued, without leave of the court appointing them, with respect to any of their acts or transactions in carrying on business connected with such property. Such actions shall be subject to the general equity power of such court so far as the same may be necessary to the ends of justice, but this shall not deprive a litigant of his right to trial by jury.

(b) Except as provided in section 1166 of title 11, a trustee, receiver or manager appointed in any cause pending in any court of the United States, including a debtor in possession, shall manage and operate the property in his possession as such trustee, receiver or manager according to the requirements of the valid laws of the State in which such property is situated, in

the same manner that the owner or possessor thereof would be bound to do if in possession thereof.

(June 25, 1948, ch. 646, 62 Stat. 926; Pub. L. 95-598, title II, § 235, Nov. 6, 1978, 92 Stat. 2667.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 124, 125 (Mar. 3, 1911, ch. 231, §§ 65, 66, 36 Stat. 1104).

Section consolidates part of section 124 of title 28, U.S.C., 1940 ed., with section 125 of the same title. The criminal penalty for violation of said section 124 is incorporated in section 1911 of Title 18, Crimes and Criminal Procedure.

Section was extended and made applicable to trustees and debtors in possession. The provision at the end of subsection (a) for preserving the right to a jury trial was added to clarify the intent of section 125 of title 28, U.S.C., 1940 ed., as construed in *Vany v. Receiver of Toledo, St. L. and K.C. R.R. Co.*, C.C. 1895, 67 F. 379.

Changes in phraseology were made.

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-598 substituted “Except as provided in section 1166 of title 11, a trustee” for “A trustee”.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-598 effective Oct. 1, 1979, see section 402(c) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

§ 960. Tax liability

(a) Any officers and agents conducting any business under authority of a United States court shall be subject to all Federal, State and local taxes applicable to such business to the same extent as if it were conducted by an individual or corporation.

(b) A tax under subsection (a) shall be paid on or before the due date of the tax under applicable nonbankruptcy law, unless—

(1) the tax is a property tax secured by a lien against property that is abandoned under section 554 of title 11, within a reasonable period of time after the lien attaches, by the trustee in a case under title 11; or

(2) payment of the tax is excused under a specific provision of title 11.

(c) In a case pending under chapter 7 of title 11, payment of a tax may be deferred until final distribution is made under section 726 of title 11, if—

(1) the tax was not incurred by a trustee duly appointed or elected under chapter 7 of title 11; or

(2) before the due date of the tax, an order of the court makes a finding of probable insufficiency of funds of the estate to pay in full the administrative expenses allowed under section 503(b) of title 11 that have the same priority in distribution under section 726(b) of title 11 as the priority of that tax.

(June 25, 1948, ch. 646, 62 Stat. 927; Pub. L. 109-8, title VII, § 712(a), Apr. 20, 2005, 119 Stat. 127.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 124a (June 18, 1934, ch. 585, 48 Stat. 993).

A proviso in section 124a of title 28, U.S.C., 1940 ed., relating to taxes accruing prior to the effective date of the 1934 act, was omitted as obsolete.