

(d) For the purposes of this section the following words or phrases shall have the meaning indicated:

(1) "proceeding" includes pretrial, trial, appellate review, or other stages of litigation;

(2) the degree of relationship is calculated according to the civil law system;

(3) "fiduciary" includes such relationships as executor, administrator, trustee, and guardian;

(4) "financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, adviser, or other active participant in the affairs of a party, except that:

(i) Ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the judge participates in the management of the fund;

(ii) An office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization;

(iii) The proprietary interest of a policyholder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest;

(iv) Ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.

(e) No justice, judge, or magistrate judge shall accept from the parties to the proceeding a waiver of any ground for disqualification enumerated in subsection (b). Where the ground for disqualification arises only under subsection (a), waiver may be accepted provided it is preceded by a full disclosure on the record of the basis for disqualification.

(f) Notwithstanding the preceding provisions of this section, if any justice, judge, magistrate judge, or bankruptcy judge to whom a matter has been assigned would be disqualified, after substantial judicial time has been devoted to the matter, because of the appearance or discovery, after the matter was assigned to him or her, that he or she individually or as a fiduciary, or his or her spouse or minor child residing in his or her household, has a financial interest in a party (other than an interest that could be substantially affected by the outcome), disqualification is not required if the justice, judge, magistrate judge, bankruptcy judge, spouse or minor child, as the case may be, divests himself or herself of the interest that provides the grounds for the disqualification.

(June 25, 1948, ch. 646, 62 Stat. 908; Pub. L. 93-512, §1, Dec. 5, 1974, 88 Stat. 1609; Pub. L. 95-598, title II, §214(a), (b), Nov. 6, 1978, 92 Stat. 2661; Pub. L. 100-702, title X, §1007, Nov. 19, 1988, 102 Stat. 4667; Pub. L. 101-650, title III, §321, Dec. 1, 1990, 104 Stat. 5117.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §24 (Mar. 3, 1911, ch. 231, §20, 36 Stat. 1090).

Section 24 of title 28, U.S.C., 1940 ed., applied only to district judges. The revised section is made applicable to all justices and judges of the United States.

The phrase "in which he has a substantial interest" was substituted for "concerned in interest in any suit."

The provision of section 24 of title 28, U.S.C., 1940 ed., as to giving notice of disqualification to the "senior circuit judge," and words "and thereupon such proceedings shall be had as are provided in sections 17 and 18 of this title," were omitted as unnecessary and covered by section 291 et seq. of this title relating to designation and assignment of judges. Such provision is not made by statute in case of disqualification or incapacity, for other cause. See sections 140, 143, and 144 of this title. If a judge or clerk of court is remiss in failing to notify the chief judge of the district or circuit, the judicial council of the circuit has ample power under section 332 of this title to apply a remedy.

Relationship to a party's attorney is included in the revised section as a basis of disqualification in conformity with the views of judges cognizant of the grave possibility of undesirable consequences resulting from a less inclusive rule.

Changes were made in phraseology.

AMENDMENTS

1988—Subsec. (f). Pub. L. 100-702 added subsec. (f).

1978—Pub. L. 95-598 struck out references to referees in bankruptcy in section catchline and in subsecs. (a) and (e).

1974—Pub. L. 93-512 substituted "Disqualification of justice, judge, magistrate, or referee in bankruptcy" for "Interest of justice or judge" in section catchline, reorganized structure of provisions, and expanded applicability to include magistrates and referees in bankruptcy and grounds for which disqualification may be based, and inserted provisions relating to waiver of disqualification.

CHANGE OF NAME

Words "magistrate judge" substituted for "magistrate" in section catchline and wherever appearing in subsecs. (a), (e), and (f) pursuant to section 321 of Pub. L. 101-650, set out as a note under section 631 of this title.

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. For procedures relating to Bankruptcy matters during transition period see note preceding section 151 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Pub. L. 93-512, §3, Dec. 5, 1974, 88 Stat. 1610, provided that: "This Act [amending this section] shall not apply to the trial of any proceeding commenced prior to the date of this Act [Dec. 5, 1974], nor to appellate review of any proceeding which was fully submitted to the reviewing court prior to the date of this Act."

§ 456. Traveling expenses of justices and judges; official duty stations

(a) The Director of the Administrative Office of the United States Courts shall pay each justice or judge of the United States, and each retired justice or judge recalled or designated and assigned to active duty, while attending court or transacting official business at a place other than his official duty station for any continuous period of less than thirty calendar days (1) all necessary transportation expenses certified by the justice or judge; and (2) payments for subsistence expenses at rates or in amounts which the Director establishes, in accordance with regulations which the Director shall prescribe with

the approval of the Judicial Conference of the United States and after considering the rates or amounts set by the Administrator of General Services and the President pursuant to section 5702 of title 5. The Director of the Administrative Office of the United States Courts shall also pay each justice or judge of the United States, and each retired justice or judge recalled or designated and assigned to active duty, while attending court or transacting official business under an assignment authorized under chapter 13 of this title which exceeds in duration a continuous period of thirty calendar days, all necessary transportation expenses and actual and necessary expenses of subsistence actually incurred, notwithstanding the provisions of section 5702 of title 5, in accordance with regulations which the Director shall prescribe with the approval of the Judicial Conference of the United States.

(b) The official duty station of the Chief Justice of the United States, the Justices of the Supreme Court of the United States, and the judges of the United States Court of Appeals for the District of Columbia Circuit, the United States Court of Appeals for the Federal Circuit, and the United States District Court for the District of Columbia shall be the District of Columbia.

(c) The official duty station of the judges of the United States Court of International Trade shall be New York City.

(d) The official duty station of each district judge shall be that place where a district court holds regular sessions at or near which the judge performs a substantial portion of his judicial work, which is nearest the place where he maintains his actual abode in which he customarily lives.

(e) The official duty station of a circuit judge shall be that place where a circuit or district court holds regular sessions at or near which the judge performs a substantial portion of his judicial work, or that place where the Director provides chambers to the judge where he performs a substantial portion of his judicial work, which is nearest the place where he maintains his actual abode in which he customarily lives.

(f) The official duty station of a retired judge shall be established in accordance with section 374 of this title.

(g) Each circuit or district judge whose official duty station is not fixed expressly by this section shall notify the Director of the Administrative Office of the United States Courts in writing of his actual abode and official duty station upon his appointment and from time to time thereafter as his official duty station may change.

(June 25, 1948, ch. 646, 62 Stat. 908; Aug. 8, 1953, ch. 376, 67 Stat. 488; Pub. L. 86-138, Aug. 7, 1959, 73 Stat. 285; Pub. L. 95-598, title II, §215, Nov. 6, 1978, 92 Stat. 2661; Pub. L. 96-417, title V, §501(11), Oct. 10, 1980, 94 Stat. 1742; Pub. L. 97-164, title I, §115(a)(1), Apr. 2, 1982, 96 Stat. 30; Pub. L. 99-234, title I, §107(d), Jan. 2, 1986, 99 Stat. 1759.)

HISTORICAL AND REVISION NOTES

Based on section 1102(d) of title 26, U.S.C., 1940 ed., Internal Revenue Code, and title 28, U.S.C., 1940 ed., §218,

270, 296, 296a, 302, 374, 449 (Mar. 3, 1911, ch. 231, §§189, 259, 36 Stat. 1143, 1161, and §187(a) as added Oct. 10, 1940, ch. 843, §1, 54 Stat. 1101; and section 307 as added Aug. 7, 1939, ch. 501, §1, 53 Stat. 1224; Sept. 14, 1922, ch. 306, §2, 42 Stat. 838; Feb. 24, 1925, ch. 301, §2, 43 Stat. 965; May 29, 1928, ch. 852, §711, 45 Stat. 882; Mar. 2, 1929, ch. 488, §1, 45 Stat. 1475; June 23, 1930, ch. 573, §1, 46 Stat. 799; Feb. 10, 1939, ch. 2, §1102(d), 53 Stat. 159; Apr. 22, 1940, ch. 126, 54 Stat. 149; May 3, 1945, ch. 106, title I, §1, 59 Stat. 127; May 21, 1945, ch. 129, title IV, 59 Stat. 197; July 5, 1946, ch. 541, title IV, 60 Stat. 477).

Section 270 of title 28, U.S.C., 1940 ed., related to the Chief Justice and each judge of the Court of Claims and provided for payment of expenses on order of court.

Sections 296, 296a of title 28, U.S.C., 1940 ed., provided for payment of such expenses of the Customs Court judges.

Section 302 of title 28, U.S.C., 1940 ed., provided for the payment of expenses of a judge of the Court of Customs and Patent Appeals upon his certificate. It contained no \$10 limitation upon his daily subsistence expense and in addition authorized the necessary expenses for travel and attendance of one stenographic clerk who accompanied him. This latter provision is the basis for section 834 of this title. Other provisions of said section 302 of title 28, U.S.C., 1940 ed., are incorporated in sections 214 and 452 of this title.

Section 374 of title 28, U.S.C., 1940 ed., related to circuit justices, circuit judges and district judges, including district judges in Alaska, Hawaii, and Puerto Rico. References to these territories is omitted as unnecessary. Provision for Alaska judges is covered by section 460 of this title, and section 114 of title 48, U.S.C., 1940 ed., Territories and Insular Possessions, as amended by a separate section in the bill to enact this revision. Hawaii and Puerto Rico are included as districts by sections 91 and 119 of this title, and judges thereof are "judges of the United States" as defined in section 451 of this title.

The inconsistent provision of said section 270 of title 28, U.S.C., 1940 ed., with reference to payment on order of court was omitted to permit payment to every judge on his certificate.

The \$10 per day subsistence limitation applicable to all other judges was extended to the judges of the Court of Customs and Patent Appeals.

The provision of said section 270 of title 28, U.S.C., 1940 ed., relating to traveling expenses of commissioners and stenographers is incorporated in sections 792 and 794 of this title.

The provisions of said section 296 of title 28, U.S.C., 1940 ed., relating to organization of the Customs Court are the basis of sections 251, 252, 253, and 254 of this title. Other provisions of said section 296 are incorporated in sections 1581, 2071, 2639, and 2640 of this title, and the retirement provisions of that section are covered by sections 371 and 372 of this title.

The provision of section 296 of title 28, U.S.C., 1940 ed., expenses of retired judges was made applicable to all judges.

The provision of section 218 of title 28, U.S.C., 1940 ed., for payment of travel expenses of judges attending the Judicial Conference of the United States was omitted as covered by the first paragraph of the revised section.

The provision in section 218 of title 28, U.S.C., 1940 ed., requiring the marshal of the Supreme Court to pay the expenses of attending the Judicial Conference of the United States is omitted as covered in part by section 550 [see 571] of this title under which United States marshals pay the travel allowances of circuit, district, and certain other judges. The expenses of the Chief Justice of the United States in attending such Conference were required also under said section 218 to be paid by the Supreme Court marshal. Such requirement is also omitted upon advice of the Director of the Administrative Office of the United States Courts that the matter of payment is one of administrative convenience. As to manner of payment of salaries to active and retired Justices of the Supreme Court, see reviser's note under section 550 [see 571] of this title.

Words “justice or judge of the United States” were used to describe members of all courts. See definitive section 451 of this title.

The remaining provisions of sections 218 of title 28, U.S.C., 1940 ed., relating to the Judicial Conference of the United States and 449 of title 28, U.S.C., 1940 ed., relating to judicial conferences of circuits, are incorporated in sections 331 and 333, respectively.

Said section 1102(d) of title 26, U.S.C., 1940 ed., related to traveling and subsistence expenses of judges of the Tax Court of the United States, successor to the Board of Tax Appeals.

Numerous changes were made in phraseology.

SENATE REVISION AMENDMENTS

Those provisions of this section which related to the Tax Court were eliminated by Senate amendment, therefore section 1102(d) of title 26, U.S.C., was not one of the sources of this section as finally enacted.

As finally enacted, part of act July 9, 1947, ch. 211, title IV, 61 Stat. 303, which was classified to title 28, U.S.C., 1946 ed., § 296a, became one of the sources of this section and was accordingly included in the schedule of repeals by Senate amendment. See 80th Congress Senate Report No. 1559.

AMENDMENTS

1986—Subsec. (a). Pub. L. 99-234 substituted “payments for subsistence expenses at rates or in amounts which the Director establishes, in accordance with regulations which the Director shall prescribe with the approval of the Judicial Conference of the United States and after considering the rates or amounts set by the Administrator of General Services and the President pursuant to section 5702 of title 5” for “a per diem allowance for travel at the rate which the Director establishes not to exceed the maximum per diem allowance fixed by section 5702(a) of title 5, or in accordance with regulations which the Director shall prescribe with the approval of the Judicial Conference of the United States, reimbursement for his actual and necessary expenses of subsistence not in excess of the maximum amount fixed by section 5702 of title 5”.

1982—Pub. L. 97-164 inserted “; official duty stations” in section catchline.

Subsec. (a). Pub. L. 97-164 designated existing undesignated first par. as subsec. (a), substituted “The Director of the Administrative Office of the United States Courts shall pay each justice or judge of the United States, and each retired justice or judge recalled or designated and assigned to active duty, while attending court or transacting official business at a place other than his official duty station for any continuous period of less than thirty calendar days (1) all necessary transportation expenses certified by the justice or judge; and (2) a per diem allowance for travel at the rate which the Director establishes not to exceed the maximum per diem allowance fixed by section 5702(a) of title 5, or in accordance with regulations which the Director shall prescribe with the approval of the Judicial Conference of the United States, reimbursement for his actual and necessary expenses of subsistence not in excess of the maximum amount fixed by section 5702 of title 5” for “Each Justice or judge of the United States and each retired Justice or judge recalled or designated and assigned to active duty, while attending court or transacting official business at a place other than his official station, shall, upon his certificate, be paid by the Director of the Administrative Office of the United States Courts all necessary traveling expenses, and also a per diem allowance in lieu of actual expenses of subsistence (as defined in the Travel Expense Act of 1949, as amended, 63 Stat. 166; 5 U.S.C. 835) at the per diem rate provided for by the Travel Expense Act of 1949, as amended, or, in accordance with regulations prescribed by the Director of the Administrative Office of the United States Courts with the approval of the Judicial Conference of the United States, reimbursement for his actual expenses of subsistence not in excess of the max-

imum amount fixed by the Travel Expense Act of 1949, as amended”, and inserted “The Director of the Administrative Office of the United States Courts shall also pay each justice or judge of the United States, and each retired justice or judge recalled or designated and assigned to active duty, while attending court or transacting official business under an assignment authorized under chapter 13 of this title which exceeds in duration a continuous period of thirty calendar days, all necessary transportation expenses and actual and necessary expenses of subsistence actually incurred, notwithstanding the provisions of section 5702 of title 5, in accordance with regulations which the Director shall prescribe with the approval of the Judicial Conference of the United States.”

Subsec. (b). Pub. L. 97-164 designated existing undesignated second par. as subsec. (b), and in subsec. (b) as so designated, substituted “official duty station” for “official station”, struck out references to the judges of the Court of Claims and the Court of Customs and Patent Appeals, and inserted reference to the judges of the United States Court of Appeals for the Federal Circuit.

Subsec. (c). Pub. L. 97-164 designated existing undesignated third par. as subsec. (c) and substituted “official duty station” for “official station”.

Subsec. (d). Pub. L. 97-164 designated existing undesignated fourth par. as subsec. (d) and substituted “The official duty station of each district judge shall be that place where a district court holds regular sessions at or near which the judge performs a substantial portion of his judicial work, which is nearest the place where he maintains his actual abode in which he customarily lives” for “The official station of each circuit and district judge, including each district judge in the Territories and possessions, shall be that place where a district court is regularly held and at or near which the judge performs a substantial portion of his judicial work, which is nearest the place where he maintains an actual abode in which he customarily lives”.

Subsecs. (e), (f). Pub. L. 97-164 added subsecs. (e) and (f).

Subsec. (g). Pub. L. 97-164 designated existing undesignated fifth par. as subsec. (g) and substituted “Each circuit or district judge whose official duty station is not fixed expressly by this section shall notify the Director of the Administrative Office of the United States Courts in writing of his actual abode and official duty station upon his appointment and from time to time thereafter as his official duty station may change” for “Each circuit judge and each district judge whose official station is not fixed expressly in the second paragraph of this section shall upon his appointment and from time to time thereafter as his official station may change, notify the Director of the Administrative Office of the United States Courts in writing of his actual abode and his official station”.

1980—Pub. L. 96-417 redesignated the Customs Court as the Court of International Trade.

1978—Pub. L. 95-598 directed the amendment of section by inserting references to the United States Bankruptcy Court for the District of Columbia and bankruptcy judges, 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.

1959—Pub. L. 86-138 authorized payment to justices and judges of a per diem allowance or a maximum amount for actual expenses of subsistence in place of reasonable maintenance expenses actually incurred, not exceeding \$15 per day.

1953—Act Aug. 8, 1953, increased limit of reimbursable maintenance from \$10 to \$15 per day.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-234 effective (1) on effective date of regulations to be promulgated not later than 150 days after Jan. 2, 1986, or (2) 180 days after Jan. 2, 1986, whichever occurs first, see section 301(a) of Pub. L. 99-234, set out as a note under section 5701 of Title 5, Government Organization and Employees.

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.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-417 effective Nov. 1, 1980, and applicable with respect to civil actions pending on or commenced on or after such date, see section 701(a) of Pub. L. 96-417, set out as a note under section 251 of this title.

REPORT ON TRANSPORTATION NEEDS

Pub. L. 99-550, §3, Oct. 27, 1986, 100 Stat. 3070, directed Director of Administrative Office of United States Courts, within one year after Oct. 27, 1986, to prepare, in consultation with Marshal of Supreme Court of United States, Clerk of United States Court of Military Appeals, and Court Administrator of United States Tax Court, and transmit to Congress, appropriate recommendations concerning transportation needs of judicial branch and of courts established pursuant to Article I of the Constitution.

PROMULGATION OF REGULATIONS BY DIRECTOR

Director to promulgate regulations effectuating increases in reimbursement for expenses, see section 6 of Pub. L. 87-139, Aug. 14, 1961, 75 Stat. 340, set out as a note under section 604 of this title.

§ 457. Records; obsolete papers

The records of district courts and of courts of appeals shall be kept at one or more of the places where court is held. Such places shall be designated by the respective courts except when otherwise directed by the judicial council of the circuit.

Papers of any court established by Act of Congress which have become obsolete and are no longer necessary or useful, may be disposed of with the approval of the court concerned in the manner provided by sections 366-380 of Title 44 and in accordance with the rules of the Judicial Conference of the United States.

(June 25, 1948, ch. 646, 62 Stat. 908; Pub. L. 95-598, title II, §216, Nov. 6, 1978, 92 Stat. 2661.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§10, 523a, 523b, (Mar. 3, 1911, ch. 231, §6, 36 Stat. 1088; June 3, 1930, ch. 396, §1, 2, 46 Stat. 496).

Section consolidates and simplifies sections 10, 523a and 523b of title 28, U.S.C., 1940 ed., relating to filing district court records and destroying obsolete papers and bankruptcy proofs of claims.

The revised section enlarges scope of section 10 of title 28, U.S.C., 1940 ed., to include places of keeping records of courts of appeals which was not covered by existing law.

The provisions in section 10 of title 28, U.S.C., 1940 ed., that where court is held "at more than one place" and the place of keeping the records "is not specially provided by law, they shall be kept at either of the places" designated by the court, was changed to permit the judicial councils of the circuits to make the determination without requiring special enactment of Congress. See section 332 of this title as to purpose and duties of the judicial councils.

The provision of section 523a of title 28, U.S.C., 1940 ed., authorizing destruction of records by the Attorney General was rewritten in the second paragraph to give such authority, respecting court records, to the Director of the Administrative Office of the United States Courts. Such Director, under section 604 of this title, now exercises administrative authority over clerks and commissioners.

A similar provision with respect to records of United States attorneys and marshals was omitted as superseded by sections 366 and 380 of title 44, U.S.C., 1940 ed., Public Printing and Documents, which prescribe the exclusive method for disposition of such papers.

Substantial changes were made in phraseology and arrangement.

REFERENCES IN TEXT

Sections 366-380 of Title 44, referred to in text, were repealed and the provisions thereof reenacted as chapter 33 (§3301 et seq.) of Title 44, Public Printing and Documents, by Pub. L. 90-620, Oct. 22, 1968, 82 Stat. 1238.

AMENDMENTS

1978—Pub. L. 95-598 directed the amendment of section by inserting "of bankruptcy courts," after "The record", 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.

§ 458. Relative of justice or judge ineligible to appointment

(a)(1) No person shall be appointed to or employed in any office or duty in any court who is related by affinity or consanguinity within the degree of first cousin to any justice or judge of such court.

(2) With respect to the appointment of a judge of a court exercising judicial power under article III of the United States Constitution (other than the Supreme Court), subsection (b) shall apply in lieu of this subsection.

(b)(1) In this subsection, the term—

(A) "same court" means—

(i) in the case of a district court, the court of a single judicial district; and

(ii) in the case of a court of appeals, the court of appeals of a single circuit; and

(B) "member"—

(i) means an active judge or a judge retired in senior status under section 371(b); and

(ii) shall not include a retired judge, except as described under clause (i).

(2) No person may be appointed to the position of judge of a court exercising judicial power under article III of the United States Constitution (other than the Supreme Court) who is related by affinity or consanguinity within the degree of first cousin to any judge who is a member of the same court.

(June 25, 1948, ch. 646, 62 Stat. 908; Pub. L. 105-300, §1(a), Oct. 27, 1998, 112 Stat. 2836.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §126 (Mar. 3, 1887, ch. 373, §7, 24 Stat. 555; Aug. 13, 1888, ch. 866, §7, 25 Stat. 437; Mar. 3, 1911, ch. 231, §67, 36 Stat. 1105; Dec. 21, 1911, ch. 4, 37 Stat. 46).

A provision referring to circuit court employees as of December 21, 1911, was omitted as obsolete.

Changes in phraseology were made.

AMENDMENTS

1998—Pub. L. 105-300 designated existing provisions as subsec. (a)(1) and added subsecs. (a)(2) and (b).

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-300, §1(b), Oct. 27, 1998, 112 Stat. 2837, provided that: "This Act [amending this section] shall take effect on the date of enactment of this Act [Oct. 27, 1998] and shall apply only to any individual whose