

and Western Districts of South Carolina heretofore provided for by section 133 of title 28 of the United States Code [this section] shall hereafter be district judgeships for the District of South Carolina and the present incumbents of such judgeships shall henceforth hold their offices under section 133, as amended by this Act."

South Dakota.—Pub. L. 85-310, Sept. 7, 1957, 71 Stat. 631, provided: "The President is authorized to appoint, by and with the advice and consent of the Senate an additional district judge for the district of South Dakota as authorized by paragraph (3) of section 2(b) of the act of February 10, 1954 [set out as a note below]."

Act Feb. 10, 1954, ch. 6, §2(b)(3), 68 Stat. 10, as amended by Pub. L. 85-310, Sept. 7, 1957, 71 Stat. 631, provided: "The President shall appoint, by and with the advice and consent of the Senate, one additional district judge for the district of South Dakota."

Tennessee.—Act Feb. 10, 1954, ch. 6, §2(b)(4), 68 Stat. 10, provided: "The President shall appoint, by and with the advice and consent of the Senate, one additional district judge for the middle district of Tennessee. The first vacancy occurring in the office of district judge in said district shall not be filled."

Texas.—Act Aug. 3, 1949, ch. 387, §2(d), 63 Stat. 495, which authorized the appointment of an additional judge for the Southern district, was repealed by act Feb. 10, 1954, ch. 6, §2(b)(11), 68 Stat. 11, which by section 2(a)(2) of act Feb. 10, 1954, made the additional judgeship permanent. Section 2(b)(11) of act Feb. 10, 1954 also provided that the incumbent of the judgeship created by section 2(d) of act Aug. 3, 1949, should henceforth hold his office under this section, as amended by act Feb. 10, 1954, §2(a)(3).

Utah.—Act Feb. 10, 1954, ch. 6, §2(b)(6), 68 Stat. 11, which authorized the appointment of an additional judge for the district, was repealed by section 2(b) of Pub. L. 87-36, which made the judgeship permanent and also provided that the incumbent of the judgeship created by act Feb. 10, 1954, should henceforth hold his office under this section, as amended by Pub. L. 87-36, §2(d).

Virgin Islands.—Pub. L. 91-272, §3(a), June 2, 1970, 84 Stat. 296, provided that: "The President shall appoint, by and with the advice and consent of the Senate, one additional judge for the District Court of the Virgin Islands, who shall hold office for the term of eight years and until his successor is chosen and qualified, unless sooner removed by the President for cause."

Washington.—Pub. L. 95-486, §1(b), Oct. 20, 1978, 92 Stat. 1630, provided that: "The existing district judgeship for the eastern and western districts of Washington, heretofore provided for by section 133 of title 28 of the United States Code, shall hereafter be a district judgeship for the western district of Washington only, and the present incumbent of such judgeship shall henceforth hold his office under section 133, as amended by this Act."

Pub. L. 87-36, §2(c), May 19, 1961, 75 Stat. 81, provided that: "The existing district judgeship for the eastern and western districts of Washington, heretofore provided for by section 133 of title 28 of the United States Code, shall hereafter be a district judgeship for the western district of Washington only, and the present incumbent of such judgeship shall henceforth hold his office under section 133, as amended by this Act [Pub. L. 87-36]."

West Virginia.—Pub. L. 97-471, §2, Jan. 14, 1983, 96 Stat. 2601, provided that:

"(a) The existing district judgeship for the Southern District of West Virginia, authorized by section 2 of the Act entitled 'An Act to provide for the appointment of additional district and circuit judges and for other purposes', approved October 20, 1978 [Pub. L. 95-486] (92 Stat. 1632; 28 U.S.C. 133 note), shall, as of the date of enactment of this Act [Jan. 14, 1983], be authorized under section 133 of title 28 of the United States Code as a district judgeship for the Northern District of West Virginia, and the incumbent of that office shall henceforth hold office under section 133, as amended by this Act.

"(b) The existing district judgeship for the Northern and Southern Districts of West Virginia shall be authorized as the district judgeship for the Southern District."

The additional judgeship for the northern and southern districts, which was authorized by act June 22, 1936, ch. 695, 49 Stat. 1805, was made permanent by act Feb. 10, 1954, ch. 6, §2(a)(2), 68 Stat. 9, which by section 2(b)(12) of act Feb. 10, 1954, provided that the incumbent of the judgeship created by act June 22, 1936, should henceforth hold his office under this section, as amended by act Feb. 10, 1954, §2(a)(3).

Wisconsin.—Pub. L. 89-372, §5(c), Mar. 18, 1966, 80 Stat. 78, which authorized the appointment of an additional district judge for the district of Wisconsin and which provided that the first vacancy occurring in the office of district judge in such district not be filled was repealed by section 1(c) of Pub. L. 91-272, June 2, 1970, 84 Stat. 294, which provided, in part, that such judgeship be a permanent judgeship and that the present incumbent henceforth hold his office under this section, as amended by section 1(d) of Pub. L. 91-272.

NOMINATION OF WOMEN AND BLACKS TO FEDERAL JUDGESHIPS

Pub. L. 95-486, §8, Oct. 20, 1978, 92 Stat. 1633, provided that: "The Congress—

"(1) takes notice of the fact that only 1 percent of Federal judges are women and only 4 percent are blacks; and

"(2) suggests that the President, in selecting individuals for nomination to the Federal judgeships created by this Act [for classification see Effective Date of 1978 Amendment note above], give due consideration to qualified individuals regardless of race, color, sex, religion, or national origin."

RESIDENCE OF ADDITIONAL JUDGE FOR KANSAS

Act Aug. 3, 1949, ch. 387, §2(b)(2), 63 Stat. 495, provided that: "The judge first appointed for the district of Kansas under the authority contained in subsection (a) [amending this section] shall reside at Wichita."

EXECUTIVE ORDER NO. 12084

Ex. Ord. No. 12084, Sept. 27, 1978, 43 F.R. 44815, as amended by Ex. Ord. No. 12097, Nov. 8, 1978, 43 F.R. 52455, which established the Judicial Nominating Commission for the District of Puerto Rico and provided for its membership, functions, etc., was revoked by Ex. Ord. No. 12305, May 5, 1981, 46 F.R. 25421, set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

EXECUTIVE ORDER NO. 12097

Ex. Ord. No. 12097, Nov. 8, 1978, 43 F.R. 52455, which provided standards and guidelines for the selection of nominees for United States district court judgeships, was revoked by Ex. Ord. No. 12553, Feb. 25, 1986, 51 F.R. 7237.

§ 134. Tenure and residence of district judges

(a) The district judges shall hold office during good behavior.

(b) Each district judge, except in the District of Columbia, the Southern District of New York, and the Eastern District of New York, shall reside in the district or one of the districts for which he is appointed. Each district judge of the Southern District of New York and the Eastern District of New York may reside within 20 miles of the district to which he or she is appointed.

(c) If the public interest and the nature of the business of a district court require that a district judge should maintain his abode at or near a particular place for holding court in the dis-

trict or within a particular part of the district the judicial council of the circuit may so declare and may make an appropriate order. If the district judges of such a district are unable to agree as to which of them shall maintain his abode at or near the place or within the area specified in such an order the judicial council of the circuit may decide which of them shall do so.

(June 25, 1948, ch. 646, 62 Stat. 896; Aug. 3, 1949, ch. 387, §2(b)(1), 63 Stat. 495; Feb. 10, 1954, ch. 6, §2(b)(13)(a), 68 Stat. 12; Pub. L. 86-3, §9(c), Mar. 18, 1959, 73 Stat. 8; Pub. L. 87-36, §2(e)(3), May 19, 1961, 75 Stat. 83; Pub. L. 89-571, §1, Sept. 12, 1966, 80 Stat. 764; Pub. L. 92-208, §3(e), Dec. 18, 1971, 85 Stat. 742; Pub. L. 104-317, title VI, §607, Oct. 19, 1996, 110 Stat. 3860.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §1 and section 863 of title 48, U.S.C., 1940 ed., Territories and Insular Possessions (Apr. 12, 1900, ch. 191, §34, 31 Stat. 84; Mar. 3, 1911, ch. 231, §1, 36 Stat. 1087; Jan. 7, 1913, ch. 6, 37 Stat. 648; July 30, 1914, ch. 216, 38 Stat. 580; Mar. 2, 1917, ch. 145, §41, 39 Stat. 965; Mar. 4, 1921, ch. 161, §1, 41 Stat. 1412; Sept. 14, 1922, ch. 306, §1, 42 Stat. 837; Mar. 26, 1938, ch. 51, §2, 52 Stat. 118).

Section consolidates the last paragraph of section 1 of title 28, U.S.C., 1940 ed., with portions of section 863 of title 48, U.S.C., 1940 ed., with changes in phraseology necessary to effect consolidation.

Provisions of section 1 of title 28, U.S.C., 1940 ed., relating to the number of judges in the various districts are incorporated in section 133 of this title.

A portion of section 863 of title 48, U.S.C., 1940 ed., is retained in said title 48. For remainder of section 863, see Distribution Table.

The exception in subsection (b) "except in the District of Columbia" conforms with the recent decision in *U.S. ex. rel. Laughlin v. Eicher*, 1944, 56 F.Supp. 972, holding that residence requirement of section 1 of title 28, U.S.C., 1940 ed., did not apply to district judges in the District of Columbia. (See reviser's note under section 44 of this title.)

The clause in said last paragraph of section 1 of title 28 providing that any district judge, who violates the residence requirement, shall be deemed guilty of a high misdemeanor, was omitted. This penalty provision was attached to the residence requirement at the time of compilation of the Revised Statutes of 1878, although it is apparent that Congress only intended that the penalty should be invoked upon the unauthorized practice of law. See *U.S. ex. rel. Laughlin v. Eicher*, supra, in which an outline of the history of said section 1 of title 28 is given.

AMENDMENTS

1996—Subsec. (b). Pub. L. 104-317 inserted "the Southern District of New York, and the Eastern District of New York," after "the District of Columbia," and inserted "Each district judge of the Southern District of New York and the Eastern District of New York may reside within 20 miles of the district to which he or she is appointed." at end.

1971—Subsec. (c). Pub. L. 92-208 struck out provision requiring that one of the district judges for the Eastern District of Louisiana reside in East Baton Rouge Parish, Louisiana.

1966—Subsec. (a). Pub. L. 89-571 struck out provisions which excepted district judges in Puerto Rico from tenure during good behavior and which instead set eight-year terms for them to be served until their successors were appointed and qualified.

1961—Subsec. (c). Pub. L. 87-36 required the residence of one of the district judges for the Eastern District of Louisiana to be in East Baton Rouge Parish, Louisiana.

1959—Subsec. (a). Pub. L. 86-3 struck out provisions which limited district judges in Hawaii to a term of six years.

1954—Subsecs. (a) and (b) reenacted without change by act Feb. 10, 1954.

Subsec. (c). Act Feb. 10, 1954, substituted entirely new provisions giving the judicial council of the circuit the authority to determine residence of district judges when it is in the public interest and the nature of the business of the district court necessitates the presence of a judge at or near a particular place for holding court in the district or within a particular part of the district, for former provisions relating to residence of one of the district judges for the District of Kansas.

Subsecs. (d), (e). Act Feb. 10, 1954, struck out subsecs. (d) and (e) which related to residence of one of the district judges for the Southern District of California and one of the district judges for the Southern District of Texas.

1949—Subsecs. (c) to (e). Act Aug. 3, 1949, added subsecs. (c) to (e).

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92-208 effective 120 days after Dec. 18, 1971, see section 3(f) of Pub. L. 92-208, set out as a note under section 98 of this title.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86-3 effective on admission of Hawaii into the Union, see Effective Date of 1959 Amendment note set out under section 133 of this title. Admission of Hawaii into the Union was accomplished Aug. 21, 1959, upon issuance of Proc. No. 3309, Aug. 21, 1959, 25 F.R. 6868, 73 Stat. c74, as required by sections 1 and 7(c) of Pub. L. 86-3, Mar. 18, 1959, 73 Stat. 4, set out as notes preceding section 491 of Title 48, Territories and Insular Possessions.

TENURE AND SALARY RIGHTS OF JUDGES IN PUERTO RICO IN OFFICE ON SEPTEMBER 12, 1966

Pub. L. 89-571, §4, Sept. 12, 1966, 80 Stat. 764, provided that: "The amendments made by this section to sections 134 and 373 of title 28, United States Code, shall not affect the tenure of office or right to continue to receive salary after resignation, retirement, or failure of reappointment of any district judge for the district of Puerto Rico who is in office on the date of enactment of this Act [Sept. 12, 1966]."

APPLICABILITY OF ORDERS UNDER 1954 AMENDMENT

Act Feb. 10, 1954, ch. 6, §2(b)(13)(b), 68 Stat. 12, provided: "Orders made by the judicial councils of the circuits under the second sentence of subsection (c) of section 134 of Title 28, as amended by this section, determining that a specified district judge shall maintain his abode at or near a place or within an area which the council has theretofore designated for the abode of a district judge under the first sentence of such subsection, shall be applicable only to district judges appointed after the enactment of this act [Feb. 10, 1954]."

§ 135. Salaries of district judges

Each judge of a district court of the United States shall receive a salary at an annual rate determined under section 225 of the Federal Salary Act of 1967 (2 U.S.C. 351-361), as adjusted by section 461 of this title.

(June 25, 1948, ch. 646, 62 Stat. 897; Mar. 2, 1955, ch. 9, §1(c), 69 Stat. 10; Pub. L. 88-426, title IV, §403(c), Aug. 14, 1964, 78 Stat. 434; Pub. L. 94-82, title II, §205(b)(3), Aug. 9, 1975, 89 Stat. 422.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §5, and District of Columbia Code, 1940 ed., §11-302 (Mar. 3, 1911, ch. 231, §2, 36 Stat. 1087; Feb. 25, 1919, ch. 29, §1, 40 Stat. 1156; Dec. 13, 1926, ch. 6, 44 Stat. 919; May 17, 1932, ch. 190, 47 Stat. 158; July 31, 1946, ch. 704, §1, 60 Stat. 716).

Section consolidates section 5 of title 28, U.S.C., 1940 ed., and section 11-302 of the District of Columbia Code, 1940 ed.