

CHAPTER 49—DISTRICT COURTS

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§ 751. Clerks

(a) Each district court may appoint a clerk who shall be subject to removal by the court.

(b) The clerk may appoint, with the approval of the court, necessary deputies, clerical assistants and employees in such number as may be approved by the Director of the Administrative Office of the United States Courts. Such deputies, clerical assistants and employees shall be subject to removal by the clerk with the approval of the court.

(c) The clerk of each district court shall reside in the district for which he is appointed, except that the clerk of the district court for the District of Columbia and the Southern District of New York may reside within twenty miles thereof. The district court may designate places within the district for the offices of the clerk and his deputies, and their official stations.

(d) A clerk of a district court or his deputy or assistant shall not receive any compensation or emoluments through any office or position to which he is appointed by the court, other than that received as such clerk, deputy or assistant, whether from the United States or from private litigants.

This subsection shall not apply to clerks or deputy clerks appointed as United States magistrate judges pursuant to section 631 of this title.

(e) The clerk of each district court shall pay into the Treasury all fees, costs and other moneys collected by him, except naturalization fees listed in section 742 of Title 8 and uncollected fees not required by Act of Congress to be prepaid.

He shall make returns thereof to the Director of the Administrative Office of the United States Courts under regulations prescribed by him.

(f) When the Court of International Trade is sitting in a judicial district, other than the Southern District or Eastern District of New York, the clerk of the district court of such judicial district or an authorized deputy clerk, upon the request of the chief judge of the Court of International Trade and with the approval of such district court, shall act in the district as clerk of the Court of International Trade, as prescribed by the rules and orders of the Court of International Trade for all purposes relating to the civil action then pending before such court.

(June 25, 1948, ch. 646, 62 Stat. 920; Pub. L. 90-578, title IV, §402(b)(2), Oct. 17, 1968, 82 Stat. 1118; Pub. L. 96-417, title V, §504, Oct. 10, 1980, 94 Stat. 1743; 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., §§6, 7, 8, 524, 557, 567, 568, and 569, sections 644 and 863 of title 48, U.S.C., 1940

ed., Territories and Insular Possessions, and section 11-401 of the District of Columbia Code, 1940 ed. (R.S. §833; June 20, 1874, ch. 328, §2, 18 Stat. 109; May 28, 1896, ch. 252, §8, 29 Stat. 181; Apr. 12, 1900, ch. 191, §34, 31 Stat. 84; Apr. 30, 1900, ch. 339, §86, 31 Stat. 158; Mar. 3, 1901, ch. 854, §174, 31 Stat. 1218; June 28, 1902, ch. 1301, §1, 32 Stat. 475; June 30, 1902, ch. 1329, 32 Stat. 527; June 30, 1906, ch. 3914, §1, 34 Stat. 754; Mar. 3, 1909, ch. 269, §1, 35 Stat. 838; Mar. 3, 1911, ch. 231, §§3, 4, 291, 36 Stat. 1087, 1167; Jan. 7, 1913, ch. 6, 37 Stat. 648; Mar. 2, 1917, ch. 145, §41, 39 Stat. 965; Feb. 26, 1919, ch. 49, §§1, 4, 9, 40 Stat. 1182, 1183; Feb. 11, 1921, ch. 46, 41 Stat. 1099; Mar. 4, 1921, ch. 161, §1, 41 Stat. 1412, 1413; June 10, 1921, ch. 18, §§301, 310, 42 Stat. 23, 25; June 16, 1921, ch. 23, §1, 42 Stat. 41; July 9, 1921, ch. 42, §313, 42 Stat. 119; June 1, 1922, ch. 204, Title II, 42 Stat. 614, 616; Jan. 3, 1923, ch. 21 title II, 42 Stat. 1084; Feb. 12, 1925, ch. 220, 43 Stat. 890; Dec. 13, 1926, ch. 6, §1, 44 Stat. 919; May 17, 1932, ch. 190, 47 Stat. 158; June 25, 1936, ch. 804, 49 Stat. 1921; Mar. 26, 1938, ch. 51, §2, 52 Stat. 118; June 16, 1938, ch. 465, 52 Stat. 752; June 14, 1941, ch. 203, §§1, 2, 55 Stat. 251).

This section consolidates provisions of section 11-401 of the District of Columbia Code, 1940 ed., sections 644 and 863 of title 48, U.S.C., 1940 ed., Territories and Insular Possessions, and title 28, U.S.C., 1940 ed., sections 6, 7, 8, 524, 557, 567, 568, and 569 relating to district court clerks. Other provisions of such sections 8 and 524 are incorporated in sections 505 [now 545], 541 [see 561], and 954 of this title and other provisions of such section 11-401 of the District of Columbia Code have been retained in such Code.

Words "with the approval of the court" were substituted for "Attorney General." The power to approve appointment of court officers is more properly a judicial one. (See section 711 of this title.)

The provision in section 6 of title 28, U.S.C., 1940 ed., that the clerk be appointed by the district judge or senior judge where there was more than one member of the court was changed and the power vested in the court.

The provisions of section 644 of title 48, U.S.C., 1940 ed., Territories and Insular Possessions, relating to compensation of clerks and deputy clerks were omitted as covered by section 604 of this title. Other provisions of said section 644 are incorporated in section 753 of this title.

Provision for similar officers in Alaska, Canal Zone, and the Virgin Islands is made by sections 106, 1349, and 1405y, respectively, of title 48, U.S.C., 1940 ed. A part of section 863 of said title 48, was retained in title 48. For remainder of such section, see Distribution Table.

Words in sections 6 and 7 of title 28, U.S.C., 1940 ed., "Except as otherwise provided for by law," were omitted as obsolete and superfluous.

References in section 7 of title 28, U.S.C., 1940 ed., that the clerk recommend appointment of deputies and clerical assistants were omitted as unnecessary.

The provision that each clerk shall be subject to removal by the court is new. No tenure was provided for by title 28, U.S.C., 1940 ed., but said title contained provisions that other clerks should hold office during the pleasure of the courts which appointed them, and that deputies should hold office during the pleasure of the clerks. The Supreme Court held, in 1839, that a judge of a district court could remove the clerk thereof at pleasure in absence of any law fixing the clerk's tenure. *In re Hennen*, 38 U.S. 230, 13 Pet. 230, 10 L.Ed. 138. (See also, *Meyers v. U.S.*, 47 S.Ct. 21, 272 U.S. 52, 71 L.Ed. 160.)

Words "circuit or" after "Every clerk of the" in section 524 of title 28, U.S.C., 1940 ed., were omitted because of the abolition of the circuit courts by act Mar. 3, 1911, ch. 231, §289, 36 Stat. 1167, title 28, U.S.C., 1940 ed., §430.

The provisions in section 524 of title 28, U.S.C., 1940 ed., that the clerk shall give his personal attention to his official duties, and declaring his office vacant upon removal from his district or neglect of duty, were omitted as covered by the removal provision of this section.

The provision permitting the clerk of the district court for the District of Columbia to reside within twenty miles of the District of Columbia was added be-

cause of the relatively small and congested area of the District, as a result of which few federal officers are appointed from the District or reside therein.

The provision in subsection (b) of this section authorizing judges to designate the places for maintaining offices by the clerks was added because of many special provisions, in sections 141-196 of title 28, U.S.C., 1940 ed., for the maintenance of offices by the clerks of the district courts at various particular places. These provisions have been omitted, on revision, as covered by the more general provisions of this section. For residence requirements of United States attorneys and marshals, see sections 505 [now 545] and 541 [see 561] of this title.

A provision that a breach of section 569 of title 28, U.S.C., 1940 ed., should be deemed a vacation of the offender's appointment, was omitted as covered by the removal provision of this section.

The provision of section 569 of title 28, U.S.C., 1940 ed., limiting the compensation of a clerk who is appointed United States commissioner, to \$3,000 a year for both offices was omitted as obsolete. The proper adjustment of the compensation of such clerks is an administrative matter more appropriately regulated by the Director of the Administrative Office under the Supervision of the Judicial Conference of the United States. (See section 604 of this title.)

Reference in sections 557, 567 and 568 of title 28, U.S.C., 1940 ed., to accounting by district court clerks in Alaska, were omitted as covered by sections 106 and 107 of title 48, U.S.C., 1940 ed., Territories and Insular Possessions, relating to duties of those clerks.

References in sections 557 and 567 of title 28, U.S.C., 1940 ed., to the clerk of the district court of the United States for the District of Columbia, were omitted as covered by words "The clerk of each district court of the United States."

As revised, this section is in harmony with the provisions in chapters 45 and 47 of this title relating to accounting by the clerk of the Supreme Court and clerks of the courts of appeals.

Provisions as to time and method of accounting and settlement of accounts were omitted as covered by chapter 41 of this title giving the Director of the Administrative Office of the United States Courts supervision over such accounts, and of chapter 2, Audit and Settlement of Accounts, of title 31, U.S.C., 1940 ed., Money and Finance.

Provisions as to particular fees and moneys to be accounted for were omitted as covered by words "all fees, costs and other moneys." Included in such provisions was a provision as to naturalization fees, but a later act, now appearing in section 742 of title 8, U.S.C., 1940 ed., Aliens and Nationality, provided a different method of accounting and an exception expressly referring to such section was inserted in this section.

Changes were made in phraseology.

REFERENCES IN TEXT

Section 742 of Title 8, referred to in subsec. (e), was repealed by act June 27, 1952, ch. 477, title IV, §403(a)(42), 66 Stat. 280. See section 1455 of Title 8, Aliens and Nationality.

AMENDMENTS

1980—Subsec. (f). Pub. L. 96-417 added subsec. (f).

CHANGE OF NAME

"United States magistrate judges" substituted for "United States magistrates" in subsec. (d) pursuant to section 321 of Pub. L. 101-650, set out as a note under section 631 of this title. Previously, "United States magistrates" substituted for "United States commissioners" pursuant to Pub. L. 90-578. See chapter 43 (§631 et seq.) 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.

§ 752. Law clerks and secretaries

District judges may appoint necessary law clerks and secretaries subject to any limitation on the aggregate salaries of such employees which may be imposed by law. A law clerk appointed under this section shall be exempt from the provisions of subchapter I of chapter 63 of title 5, unless specifically included by the appointing judge or by local rule of court.

(June 25, 1948, ch. 646, 62 Stat. 921; Pub. L. 86-221, Sept. 1, 1959, 73 Stat. 452; Pub. L. 100-702, title X, §1003(a)(3), Nov. 19, 1988, 102 Stat. 4665.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§5b and 128 (Mar. 3, 1911, ch. 231, §118b, as added Feb. 17, 1936, ch. 75, 49 Stat. 1140; May 14, 1940, ch. 189, title IV, 54 Stat. 210; June 28, 1941, ch. 258, title IV, 55 Stat. 301; July 2, 1942, ch. 472, title IV, 56 Stat. 504).

This section consolidates provisions of sections 5b and 128 of title 28, U.S.C., 1940 ed., relating to appointment of law clerks for district judges.

Words in section 128 of title 28, U.S.C., 1940 ed., "but there shall not be appointed more than thirty-five of such law clerks during the first fiscal year of the enactment of this section" were omitted as executed and obsolete. Words "Thereafter such number in excess of thirty-five per year shall be limited by necessity of each case as hereinabove provided" were also deleted as superseded by section 5b of said title and obsolete. The Director of the Administrative Office has expressed such views. Chief judge of the circuit was substituted for senior circuit judge to conform to section 44 of this title.

Provisions of section 128 of title 28, U.S.C., 1940 ed., relating to salary, or compensation of such clerks are incorporated in section 604 of this title. (See reviser's note under that section.)

The provisions in section 5b of title 28, U.S.C., 1940 ed., that district judges shall not appoint more than three law clerks in any one circuit was not repeated in the Judiciary Appropriation Acts, 1944, 1945, and 1946, 57 Stat. 242, 58 Stat. 357, 59 Stat. 196, ch. 129. The Director of the Administrative Office for United States Courts advises that as a matter of fact, more than three law clerks are serving district judges in several of the circuits at the present time. Consequently the limitation is omitted from this section.

The provision for appointment of secretaries is new. Existing law fixes compensation of secretaries but makes no provision for their appointment. (See section 604 of this title and reviser's note thereunder.)

Minor changes were made in phraseology.

SENATE REVISION AMENDMENT

As finally enacted, sections 374c and 374d of Title 28, U.S.C., 1946 ed., which were derived from act July 23, 1947, ch. 300, §§1, 2, 61 Stat. 409, were an additional source of this section. Hence, by Senate amendment, the section was changed to conform with such sections, and such act was included in the schedule of repeals. See 80th Congress Senate Report No. 1559.

AMENDMENTS

1988—Pub. L. 100-702 inserted at end "A law clerk appointed under this section shall be exempt from the provisions of subchapter I of chapter 63 of title 5, unless specifically included by the appointing judge or by local rule of court."

1959—Pub. L. 86-221 substituted provision permitting district judges to appoint necessary law clerks and secretaries subject to aggregate salary limitations for provisions permitting a district judge to appoint a sec-