

## HISTORICAL AND REVISION NOTES

| Revised section | Source (U.S. Code) | Source (Statutes at Large)                         |
|-----------------|--------------------|--|
| 940 .....       | 50:736.            | May 5, 1950, ch. 169, §1 (Art. 140), 64 Stat. 145. |

The word “may” is substituted for the words “is authorized to \* \* \* to”.

## SUBCHAPTER XII—UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES

| Sec. | Art.                                     |
|------|--|
| 941. | 141. Status.                             |
| 942. | 142. Judges.                             |
| 943. | 143. Organization and employees.         |
| 944. | 144. Procedure.                          |
| 945. | 145. Annuities for judges and survivors. |
| 946. | 146. Code committee.                     |

## AMENDMENTS

1994—Pub. L. 103-337, div. A, title IX, §924(c)(3)(A), Oct. 5, 1994, 108 Stat. 2831, substituted “UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES” for “COURT OF MILITARY APPEALS” as subchapter heading.

1990—Pub. L. 101-510, div. A, title XIV, §1484(i)(2), Nov. 5, 1990, 104 Stat. 1718, redesignated subchapter XI as XII.

**§ 941. Art. 141. Status**

There is a court of record known as the United States Court of Appeals for the Armed Forces. The court is established under article I of the Constitution. The court is located for administrative purposes only in the Department of Defense.

(Added Pub. L. 101-189, div. A, title XIII, §1301(c), Nov. 29, 1989, 103 Stat. 1570; amended Pub. L. 103-337, div. A, title IX, §924(a)(2), Oct. 5, 1994, 108 Stat. 2831.)

## AMENDMENTS

1994—Pub. L. 103-337 substituted “Court of Appeals for the Armed Forces” for “Court of Military Appeals”.

## CHANGE OF NAME

Pub. L. 103-337, div. A, title IX, §924(a)(1), Oct. 5, 1994, 108 Stat. 2831, provided that: “The United States Court of Military Appeals shall hereafter be known and designated as the United States Court of Appeals for the Armed Forces.”

**§ 942. Art. 142. Judges**

(a) NUMBER.—The United States Court of Appeals for the Armed Forces consists of five judges.

(b) APPOINTMENT; QUALIFICATION.—(1) Each judge of the court shall be appointed from civilian life by the President, by and with the advice and consent of the Senate, for a specified term determined under paragraph (2). A judge may serve as a senior judge as provided in subsection (e).

(2) The term of a judge shall expire as follows:

(A) In the case of a judge who is appointed after January 31 and before July 31 of any year, the term shall expire on July 31 of the year in which the fifteenth anniversary of the appointment occurs.

(B) In the case of a judge who is appointed after July 31 of any year and before February 1 of the following year, the term shall expire fifteen years after such July 31.

(3) Not more than three of the judges of the court may be appointed from the same political party, and no person may be appointed to be a judge of the court unless the person is a member of the bar of a Federal court or the highest court of a State.

(4) A person may not be appointed as a judge of the court within seven years after retirement from active duty as a commissioned officer of a regular component of an armed force.

(c) REMOVAL.—Judges of the court may be removed from office by the President, upon notice and hearing, for—

- (1) neglect of duty;
- (2) misconduct; or
- (3) mental or physical disability.

A judge may not be removed by the President for any other cause.

(d) PAY AND ALLOWANCES.—Each judge of the court is entitled to the same salary and travel allowances as are, and from time to time may be, provided for judges of the United States Courts of Appeals.

(e) SENIOR JUDGES.—(1)(A) A former judge of the court who is receiving retired pay or an annuity under section 945 of this title (article 145) or under subchapter III of chapter 83 or chapter 84 of title 5 shall be a senior judge. The chief judge of the court may call upon an individual who is a senior judge of the court under this subparagraph, with the consent of the senior judge, to perform judicial duties with the court—

- (i) during a period a judge of the court is unable to perform his duties because of illness or other disability;
- (ii) during a period in which a position of judge of the court is vacant; or
- (iii) in any case in which a judge of the court recuses himself.

(B) If, at the time the term of a judge expires, no successor to that judge has been appointed, the chief judge of the court may call upon that judge (with that judge’s consent) to continue to perform judicial duties with the court until the vacancy is filled. A judge who, upon the expiration of the judge’s term, continues to perform judicial duties with the court without a break in service under this subparagraph shall be a senior judge while such service continues.

(2) A senior judge shall be paid for each day on which he performs judicial duties with the court an amount equal to the daily equivalent of the annual rate of pay provided for a judge of the court. Such pay shall be in lieu of retired pay and in lieu of an annuity under section 945 of this title (article 145), subchapter III of chapter 83 or subchapter II of chapter 84 of title 5, or any other retirement system for employees of the Federal Government.

(3) A senior judge, while performing duties referred to in paragraph (1), shall be provided with such office space and staff assistance as the chief judge considers appropriate and shall be entitled to the per diem, travel allowances, and other allowances provided for judges of the court.

(4) A senior judge shall be considered to be an officer or employee of the United States with respect to his status as a senior judge, but only during periods the senior judge is performing du-

ties referred to in paragraph (1). For the purposes of section 205 of title 18, a senior judge shall be considered to be a special government employee during such periods. Any provision of law that prohibits or limits the political or business activities of an employee of the United States shall apply to a senior judge only during such periods.

(5) The court shall prescribe rules for the use and conduct of senior judges of the court. The chief judge of the court shall transmit such rules, and any amendments to such rules, to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives not later than 15 days after the issuance of such rules or amendments, as the case may be.

(6) For purposes of subchapter III of chapter 83 of title 5 (relating to the Civil Service Retirement and Disability System) and chapter 84 of such title (relating to the Federal Employees' Retirement System) and for purposes of any other Federal Government retirement system for employees of the Federal Government—

(A) a period during which a senior judge performs duties referred to in paragraph (1) shall not be considered creditable service;

(B) no amount shall be withheld from the pay of a senior judge as a retirement contribution under section 8334, 8343, 8422, or 8432 of title 5 or under any other such retirement system for any period during which the senior judge performs duties referred to in paragraph (1);

(C) no contribution shall be made by the Federal Government to any retirement system with respect to a senior judge for any period during which the senior judge performs duties referred to in paragraph (1); and

(D) a senior judge shall not be considered to be a reemployed annuitant for any period during which the senior judge performs duties referred to in paragraph (1).

(f) SERVICE OF ARTICLE III JUDGES.—(1) The Chief Justice of the United States, upon the request of the chief judge of the court, may designate a judge of a United States court of appeals or of a United States district court to perform the duties of judge of the United States Court of Appeals for the Armed Forces—

(A) during a period a judge of the court is unable to perform his duties because of illness or other disability;

(B) in any case in which a judge of the court recuses himself; or

(C) during a period when there is a vacancy on the court and in the opinion of the chief judge of the court such a designation is necessary for the proper dispatch of the business of the court.

(2) The chief judge of the court may not request that a designation be made under paragraph (1) unless the chief judge has determined that no person is available to perform judicial duties with the court as a senior judge under subsection (e).

(3) A designation under paragraph (1) may be made only with the consent of the designated judge and the concurrence of the chief judge of the court of appeals or district court concerned.

(4) Per diem, travel allowances, and other allowances paid to the designated judge in connection with the performance of duties for the court shall be paid from funds available for the payment of per diem and such allowances for judges of the court.

(g) EFFECT OF VACANCY ON COURT.—A vacancy on the court does not impair the right of the remaining judges to exercise the powers of the court.

(Added Pub. L. 101-189, div. A, title XIII, §1301(c), Nov. 29, 1989, 103 Stat. 1570; amended Pub. L. 101-510, div. A, title V, §541(f), Nov. 5, 1990, 104 Stat. 1565; Pub. L. 102-190, div. A, title X, §1061(b)(1)(A), (B), (2), Dec. 5, 1991, 105 Stat. 1474; Pub. L. 103-337, div. A, title IX, §924(c)(1), Oct. 5, 1994, 108 Stat. 2831; Pub. L. 104-106, div. A, title XV, §1502(a)(2), Feb. 10, 1996, 110 Stat. 502; Pub. L. 106-65, div. A, title X, §1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 113-66, div. A, title V, §531(a), Dec. 26, 2013, 127 Stat. 759; Pub. L. 113-291, div. A, title V, §540(a), Dec. 19, 2014, 128 Stat. 3371.)

#### AMENDMENTS

2014—Subsec. (b)(2)(A). Pub. L. 113-291, §540(a)(1), substituted “January 31” for “March 31”, “July 31 of any year” for “October 1 of any year”, and “July 31 of the year” for “September 30 of the year”.

Subsec. (b)(2)(B). Pub. L. 113-291, §540(a)(2), substituted “July 31” for “September 30” in two places and “February 1” for “April 1”.

2013—Subsec. (b)(4). Pub. L. 113-66 amended par. (4) generally. Prior to amendment, par. (4) read as follows: “For purposes of appointment of judges to the court, a person retired from the armed forces after 20 or more years of active service (whether or not such person is on the retired list) shall not be considered to be in civilian life.”

1999—Subsec. (e)(5). Pub. L. 106-65 substituted “and the Committee on Armed Services” for “and the Committee on National Security”.

1996—Subsec. (e)(5). Pub. L. 104-106 substituted “Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives” for “Committees on Armed Services of the Senate and the House of Representatives”.

1994—Subsecs. (a), (f)(1). Pub. L. 103-337 substituted “Court of Appeals for the Armed Forces” for “Court of Military Appeals”.

1991—Subsec. (e)(1). Pub. L. 102-190, §1061(b)(1)(A)(i)-(iv), designated existing provisions as subpar. (A), struck out “(2)(A)” before “The chief judge”, moved sentence beginning “The chief judge of the court” to end of par. (1)(A), substituted “an individual who is a senior judge of the court under this subparagraph” for “a senior judge of the court”, and added subpar. (B).

Subsec. (e)(2). Pub. L. 102-190, §1061(b)(1)(A)(ii), (v), redesignated par. (2)(B) as (2) and incorporated former par. (2)(A) into par. (1)(A).

Subsec. (e)(3), (4), (6). Pub. L. 102-190, §1061(b)(1)(B), substituted “paragraph (1)” for “paragraph (2)” wherever appearing.

Subsec. (f)(1)(C). Pub. L. 102-190, §1061(b)(2)(A), added subpar. (C).

Subsec. (f)(2) to (4). Pub. L. 102-190, §1061(b)(2)(B), (C), added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively.

1990—Subsec. (b)(1). Pub. L. 101-510, §541(f)(1), substituted “civilian life” for “civil life”.

Subsec. (b)(4). Pub. L. 101-510, §541(f)(2), added par. (4).

#### EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 113-66, div. A, title V, §531(b), Dec. 26, 2013, 127 Stat. 759, provided that: “The amendment made by sub-

section (a) [amending this section] shall take effect on the date of the enactment of this Act [Dec. 26, 2013], and shall apply with respect to appointments to the United States Court of Appeals for the Armed Forces that occur on or after that date.”

#### EFFECTIVE DATE OF 1991 AMENDMENT

Pub. L. 102-190, div. A, title X, §1061(b)(1)(D), Dec. 5, 1991, 105 Stat. 1474, provided that: “The amendments made by this paragraph [amending this section and section 945 of this title] shall take effect as of November 29, 1989.”

#### EFFECTIVE DATE FOR REPEAL OF TERMINATION OF AUTHORITY FOR CHIEF JUSTICE OF UNITED STATES TO DESIGNATE ARTICLE III JUDGES FOR TEMPORARY SERVICE ON COURT OF APPEALS FOR THE ARMED FORCES

Pub. L. 104-201, div. A, title X, §1074(c)(2), Sept. 23, 1996, 110 Stat. 2660, provided that: “The authority provided under section 942(f) of title 10, United States Code, shall be effective as if section 1142 of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104-106; 110 Stat. 467) [repealing section 1301(i) of Pub. L. 101-189, set out below] had been enacted on September 29, 1995.”

#### SAVING PROVISION

Pub. L. 113-291, div. A, title V, §540(b), Dec. 19, 2014, 128 Stat. 3371, provided that: “No person who is serving as a judge of the court on the date of the enactment of this Act [Dec. 19, 2014], and no survivor of any such person, shall be deprived of any annuity provided by section 945 of title 10, United States Code, by the operation of the amendments made by subsection (a) [amending this section].”

#### TRANSITIONAL PROVISIONS

Pub. L. 101-189, div. A, title XIII, §1301(d)-(i), Nov. 29, 1989, 103 Stat. 1574-1576, as amended by Pub. L. 104-106, div. A, title XI, §1142, Feb. 10, 1996, 110 Stat. 467; Pub. L. 104-201, div. A, title X, §1068(c), Sept. 23, 1996, 110 Stat. 2655, provided that:

“(d) TRANSITION FROM THREE-JUDGE COURT TO FIVE-JUDGE COURT.—(1) Effective during the period before October 1, 1990—

“(A) the number of members of the United States Court of Military Appeals [now United States Court of Appeals for the Armed Forces] shall (notwithstanding subsection (a) of section 942 of title 10, United States Code, as enacted by subsection (c)) be three; and

“(B) the maximum number of members of the court who may be appointed from the same political party shall (notwithstanding subsection (b)(3) of section 942) be two.

“(2) In the application of paragraph (2) of section 942(b) of title 10, United States Code (as enacted by subsection (c)) to the judge who is first appointed to one of the two new positions of the court created as of October 1, 1990, as designated by the President at the time of appointment, the anniversary referred to in subparagraph (A) of that paragraph shall be treated as being the seventh anniversary and the number of years referred to in subparagraph (B) of that paragraph shall be treated as being seven.

“(e) TRANSITION RULES RELATING TO RETIREMENT OF NEW JUDGES.—(1) Except as otherwise provided in paragraphs (2) and (3), a judge to whom subsection (d)(2) applies shall be eligible for an annuity as provided in section 945 of title 10, United States Code, as enacted by subsection (c).

“(2) The annuity of a judge referred to in paragraph (1) is computed under subsection (b) of such section 945 only if the judge—

“(A) completes the term of service for which he is first appointed;

“(B) is reappointed as a judge of the United States Court of Military Appeals [now United States Court

of Appeals for the Armed Forces] at any time after the completion of such term of service;

“(C) is separated from civilian service in the Federal Government after completing a total of 15 years as a judge of such court; and

“(D) elects to receive an annuity under such section in accordance with subsection (a)(2) of such section.

“(3) In the case of a judge referred to in paragraph (1) who is separated from civilian service after completing the term of service for which he is first appointed as a judge of the United States Court of Military Appeals [now United States Court of Appeals for the Armed Forces] and before completing a total of 15 years as a judge of such court, the annuity of such judge (if elected in accordance with section 945(a)(2) of title 10, United States Code) shall be  $\frac{1}{15}$  of the amount computed under subsection (b) of such section times the number of years (including any fraction thereof) of such judge’s service as a judge of the court.

“(f) APPLICABILITY OF AMENDED RETIREMENT PROVISIONS.—Except as otherwise provided in subsections (c) and (d), section 945 of title 10, United States Code, as enacted by subsection (c), applies with respect to judges of the United States Court of Military Appeals [now United States Court of Appeals for the Armed Forces] whose terms of service on such court end after September 28, 1988, and to the survivors of such judges.

“(g) TERMS OF CURRENT JUDGES.—Section 942(b) of title 10, United States Code, as enacted by subsection (c), shall not apply to the term of office of a judge of the United States Court of Military Appeals [now United States Court of Appeals for the Armed Forces] serving on such court on the date of the enactment of this Act [Nov. 29, 1989]. The term of office of such a judge shall expire on the later of (A) the date the term of such judge would have expired under section 867(a)(1) of title 10, United States Code, as in effect on the day before such date of enactment, or (B) September 30 of the year in which the term of such judge would have expired under such section 867(a)(1).

“(h) CIVIL SERVICE STATUS OF CURRENT EMPLOYEES.—Section 943(c) of title 10, United States Code, as enacted by subsection (c), shall not be applied to change the civil service status of any attorney who is an employee of the United States Court of Military Appeals [now United States Court of Appeals for the Armed Forces] on the day before the date of the enactment of this Act [Nov. 29, 1989].”

#### § 943. Art. 143. Organization and employees

(a) CHIEF JUDGE.—(1) The chief judge of the United States Court of Appeals for the Armed Forces shall be the judge of the court in regular active service who is senior in commission among the judges of the court who—

(A) have served for one or more years as judges of the court; and

(B) have not previously served as chief judge.

(2) In any case in which there is no judge of the court in regular active service who has served as a judge of the court for at least one year, the judge of the court in regular active service who is senior in commission and has not served previously as chief judge shall act as the chief judge.

(3) Except as provided in paragraph (4), a judge of the court shall serve as the chief judge under paragraph (1) for a term of five years. If no other judge is eligible under paragraph (1) to serve as chief judge upon the expiration of that term, the chief judge shall continue to serve as chief judge until another judge becomes eligible under that paragraph to serve as chief judge.

(4)(A) The term of a chief judge shall be terminated before the end of five years if—