

tions 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.

“Chief judge,” in the District of Columbia, was substituted for “Chief Justice” which appeared in section 11-302 of the District of Columbia Code. (See reviser’s note under section 136 of this title.)

Words “to be paid in monthly installments” were omitted, since the time of payment is a matter of administrative convenience. See 20 Comp. Gen. 834.

The provision of section 5 of title 28, U.S.C., 1940 ed., for salaries of judges of the district court of Alaska was omitted as covered by section 101 of Title 48, U.S.C., 1940 ed., Territories and Insular Possessions, as amended by a separate section in the bill to enact this revised title. The provision of said section for salary of the Virgin Islands district judge was omitted as covered by section 5a of title 28, U.S.C., 1940 ed., as amended by a separate section in the bill to enact this revised title. Such section 5a is recommended for transfer to title 48, U.S.C., 1940 ed., because of the dual nature of the Virgin Islands district court.

For salary of the district judge of Canal Zone district court, see section 1348 of title 48, U.S.C., 1940 ed., Territories and Insular Possessions.

Changes were made in phraseology.

#### REFERENCES IN TEXT

Section 225 of the Federal Salary Act of 1967, referred to in text, is section 225 of Pub. L. 90-206, Dec. 16, 1967, 81 Stat. 642, as amended, which is classified to chapter 11 (§351 et seq.) of Title 2, The Congress.

#### AMENDMENTS

1975—Pub. L. 94-82 substituted provision that each judge of a district court shall receive a salary at an annual rate determined under section 225 of the Federal Salary Act of 1967, as adjusted by section 461 of this title, for provision that each such judge receive a salary of \$30,000.

1964—Pub. L. 88-426 increased the salary of the district court judges from \$22,500 to \$30,000, and that of the

chief judge of the District Court for the District of Columbia from \$23,000 to \$30,500.

1955—Act Mar. 2, 1955, increased the salaries of the district court judges from \$15,000 to \$22,500 a year and increased the salary of the chief judge of the District Court for the District of Columbia from \$15,500 to \$23,000 a year.

#### EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88-426 effective on the first day of the first pay period which begins on or after July 1, 1964, except to the extent provided in section 501(c) of Pub. L. 88-426, see section 501 of Pub. L. 88-426.

#### EFFECTIVE DATE OF 1955 AMENDMENT

Amendment by act Mar. 2, 1955, effective Mar. 1, 1955, see section 5 of act Mar. 2, 1955, set out as a note under section 4501 of Title 2, The Congress.

#### SALARY INCREASES

For adjustment of salaries of district judges under this section, see the executive order detailing the adjustment of certain rates of pay set out as a note under section 5332 of Title 5, Government Organization and Employees.

For prior year salary increases per the recommendation of the President, see Prior Salary Recommendations notes under section 358 of Title 2, The Congress.

For miscellaneous provisions dealing with adjustments of pay and limitations on use of funds to pay salaries in prior years, see notes under section 5318 of Title 5, Government Organization and Employees.

Salary of chief judge of District Court for District of Columbia increased from \$10,500 to \$15,500 a year, and salaries of all other district court judges increased from \$10,000 to \$15,000 a year by act July 31, 1946, ch. 704, §1, 60 Stat. 716.

Salary of chief judge of District Court of District of Columbia increased from \$7,500 to \$10,500 a year, and salaries of all other district court judges increased from \$7,500 to \$10,000 a year by act Dec. 13, 1926, ch. 6, §1, 44 Stat. 919.

Salaries of district court judges increased from \$6,000 to \$7,500 a year by act Feb. 25, 1919, ch. 29, §1, 40 Stat. 1156.

Salaries of chief justice and associate justices of Supreme Court of District of Columbia, forerunner of District Court for District of Columbia, were set at \$5,000 by act Mar. 3, 1901, ch. 854, §1, 30 Stat. 1199, and increased to \$7,500 a year by act Feb. 25, 1919, ch. 29, §1, 40 Stat. 1156.

Salaries of district court judges set at \$6,000 a year by Judicial Code of 1911, act Mar. 3, 1911, ch. 231, §1, 36 Stat. 1087.

### § 136. Chief judges; precedence of district judges

(a)(1) In any district having more than one district judge, the chief judge of the district shall be the district judge in regular active service who is senior in commission of those judges who—

(A) are sixty-four years of age or under;

(B) have served for one year or more as a district judge; and

(C) have not served previously as chief judge.

(2)(A) In any case in which no district judge meets the qualifications of paragraph (1), the youngest district judge in regular active service who is sixty-five years of age or over and who has served as district judge for one year or more shall act as the chief judge.

(B) In any case under subparagraph (A) in which there is no district judge in regular active service who has served as a district judge for one year or more, the district judge in regular active service who is senior in commission and who has

not served previously as chief judge shall act as the chief judge.

(3)(A) Except as provided in subparagraph (C), the chief judge of the district appointed under paragraph (1) shall serve for a term of seven years and shall serve after expiration of such term until another judge is eligible under paragraph (1) to serve as chief judge of the district.

(B) Except as provided in subparagraph (C), a district judge acting as chief judge under subparagraph (A) or (B) of paragraph (2) shall serve until a judge has been appointed who meets the qualifications under paragraph (1).

(C) No district judge may serve or act as chief judge of the district after attaining the age of seventy years unless no other district judge is qualified to serve as chief judge of the district under paragraph (1) or is qualified to act as chief judge under paragraph (2).

(b) The chief judge shall have precedence and preside at any session which he attends.

Other district judges shall have precedence and preside according to the seniority of their commissions. Judges whose commissions bear the same date shall have precedence according to seniority in age.

(c) A judge whose commission extends over more than one district shall be junior to all district judges except in the district in which he resided at the time he entered upon the duties of his office.

(d) If the chief judge desires to be relieved of his duties as chief judge while retaining his active status as district judge, he may so certify to the Chief Justice of the United States, and thereafter, the chief judge of the district shall be such other district judge who is qualified to serve or act as chief judge under subsection (a).

(e) If a chief judge is temporarily unable to perform his duties as such, they shall be performed by the district judge in active service, present in the district and able and qualified to act, who is next in precedence.

(June 25, 1948, ch. 646, 62 Stat. 897; Oct. 31, 1951, ch. 655, §37, 65 Stat. 723; Pub. L. 85-593, §2, Aug. 6, 1958, 72 Stat. 497; Pub. L. 97-164, title II, §202, Apr. 2, 1982, 96 Stat. 52.)

#### HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §375 and District of Columbia Code, 1940 ed., §11-301 (Mar. 3, 1901, ch. 854, §§60, 61, 31 Stat. 1199; Mar. 3, 1911, ch. 231, §260, 36 Stat. 1161; Mar. 3, 1911, ch. 231, §289, 32 Stat. 1167; Feb. 25, 1919, ch. 29, §6, 40 Stat. 1157; Dec. 20, 1928, ch. 41, 45 Stat. 1056; Mar. 1, 1929, ch. 419, 45 Stat. 1422; June 19, 1930, ch. 537, 46 Stat. 785; May 31, 1938, ch. 290, §5, 52 Stat. 584).

Section consolidates portions of section 375 of title 28, U.S.C., 1940 ed., and section 11-301 of the District of Columbia Code, 1940 ed. The provisions of said section 375 relating to resignation and retirement of judges, and appointment of court officers, are incorporated in sections 294, 371, and 756 of this title. Other provisions of said section 11-301 of the District of Columbia Code are incorporated in section 133 of this title.

Subsection (a), providing for a "chief judge" is new. Such term replaces the terms "senior district judge," and "Chief Justice" of the District Court in the District of Columbia. It is employed in view of the great increase of administrative duties of such judge. The use of the term "chief judge" with respect to the District of Columbia will result in uniform nomenclature for all district courts. The district judges of that court have expressed approval of such designation.

The provision in said section 11-301 of the District of Columbia Code, 1940 ed., that the "Chief Justice" shall be appointed by the President, by and with the advice and consent of the Senate, was omitted for the purpose of establishing a uniform method of creating the position of chief judge in all districts. The District of Columbia is expressly made a judicial district by section 88 of this title.

Subsection (b) is new and conforms with similar provisions respecting associate justices of the Supreme Court and circuit judges in sections 4 and 45 of this title.

Subsection (c) is from the proviso in the second paragraph of section 375 of title 28, U.S.C., 1940 ed., which applied only in cases of appointment of court officers. Here it is made applicable to all district judges.

Subsections (d) and (e) are new, and conform with section 44 of this title relating to precedence of circuit judges.

The official status of the Chief Justice of the District Court for the District of Columbia holding office at the effective date of this act is preserved by section 2 of the bill to enact revised title 28.

#### AMENDMENTS

1982—Subsec. (a). Pub. L. 97-164, §202(a), designated existing first sentence of subsec. (a) as par. (1), substituted "In any district having more than one district judge, the chief judge of the district shall be the district judge in regular active service who is senior in commission of those judges who—(A) are sixty-four years of age or under; (B) have served for one year or more as a district judge; and (C) have not served previously as chief judge" for "In each district having more than one judge the district judge in regular active service who is senior in commission and under seventy years of age shall be the chief judge of the district court" in par. (1) as so designated, designated existing second sentence of subsec. (a) as par. (2)(A), substituted "In any case in which no district judge meets the qualifications of paragraph (1), the youngest district judge in regular active service who is sixty-five years of age or over and who has served as district judge for one year or more shall act as the chief judge" for "If all the district judges in regular active service are seventy years of age or older the youngest shall act as chief judge until a judge has been appointed and qualified who is under seventy years of age, but a judge may not act as chief judge until he has served as a district judge for one year" in par. (2)(A) as so designated, and added pars. (2)(B) and (3).

Subsec. (d). Pub. L. 97-164, §202(b), substituted "and thereafter, the chief judge of the district shall be such other district judge who is qualified to serve or act as chief judge under subsection (a)" for "and thereafter the district judge in active service next in precedence and willing to serve shall be designated by the Chief Justice as the chief judge of the district court".

1958—Subsec. (a). Pub. L. 85-593 provided that chief judges of district courts cease to serve as such upon reaching the age of seventy, that the youngest district judge act as chief judge where all district judges in regular active service are seventy years or older until a judge under seventy has been appointed and qualified, and that district judge must have served one year before acting as chief judge.

1951—Subsec. (a). Act Oct. 31, 1951, inserted "in active service who is".

#### 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 1958 AMENDMENT

Amendment by Pub. L. 85-593 effective at expiration of one year from Aug. 6, 1958, see section 3 of Pub. L. 85-593, as amended, set out as a note under section 45 of this title.

## SAVINGS PROVISION

Amendment by Pub. L. 97-164 not to apply or affect any person serving as chief judge on the effective date of Pub. L. 97-164 [Oct. 1, 1982], and the provisions of subsection (a) of this section as in effect on the day before the effective date of part A of title II of Pub. L. 97-164 [Oct. 1, 1982] applicable to the chief judge of a district court serving on such effective date, see section 203 of Pub. L. 97-164, set out as a note under section 45 of this title.

**§ 137. Division of business among district judges**

The business of a court having more than one judge shall be divided among the judges as provided by the rules and orders of the court.

The chief judge of the district court shall be responsible for the observance of such rules and orders, and shall divide the business and assign the cases so far as such rules and orders do not otherwise prescribe.

If the district judges in any district are unable to agree upon the adoption of rules or orders for that purpose the judicial council of the circuit shall make the necessary orders.

(June 25, 1948, ch. 646, 62 Stat. 897.)

## HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 27 (Mar. 3, 1911, ch. 231, § 23, 36 Stat. 1090).

Section was rewritten and the practice simplified. It provided for division of business and assignment of cases by agreement of judges and, in case of inability to agree, that the senior circuit judge of the circuit should make necessary orders.

The revised section is consistent with section 332 of this title, that the last paragraph of which requires the judicial council to make all necessary orders for the effective and expeditious administration of the business of the courts within the circuit.

## PILOT PROGRAM IN CERTAIN DISTRICT COURTS

Pub. L. 111-349, Jan. 4, 2011, § 1, 124 Stat. 3674, provided that:

“(a) ESTABLISHMENT.—

“(1) IN GENERAL.—There is established a program, in each of the United States district courts designated under subsection (b), under which—

“(A) those district judges of that district court who request to hear cases under which 1 or more issues arising under any Act of Congress relating to patents or plant variety protection are required to be decided, are designated by the chief judge of the court to hear those cases;

“(B) cases described in subparagraph (A) are randomly assigned to the judges of the district court, regardless of whether the judges are designated under subparagraph (A);

“(C) a judge not designated under subparagraph (A) to whom a case is assigned under subparagraph (B) may decline to accept the case; and

“(D) a case declined under subparagraph (C) is randomly reassigned to 1 of those judges of the court designated under subparagraph (A).

“(2) SENIOR JUDGES.—Senior judges of a district court may be designated under paragraph (1)(A) if at least 1 judge of the court in regular active service is also so designated.

“(3) RIGHT TO TRANSFER CASES PRESERVED.—This section shall not be construed to limit the ability of a judge to request the reassignment of or otherwise transfer a case to which the judge is assigned under this section, in accordance with otherwise applicable rules of the court.

“(b) DESIGNATION.—

“(1) IN GENERAL.—Not later than 6 months after the date of the enactment of this Act [Jan. 4, 2011], the Director of the Administrative Office of the United

States Courts shall designate not less than 6 United States district courts, in at least 3 different judicial circuits, in which the program established under subsection (a) will be carried out.

“(2) CRITERIA FOR DESIGNATIONS.—

“(A) IN GENERAL.—The Director shall make designations under paragraph (1) from—

“(i) the 15 district courts in which the largest number of patent and plant variety protection cases were filed in the most recent calendar year that has ended; or

“(ii) the district courts that have adopted, or certified to the Director the intention to adopt, local rules for patent and plant variety protection cases.

“(B) SELECTION OF COURTS.—From amongst the district courts that satisfy the criteria for designation under this subsection, the Director shall select—

“(i) 3 district courts that each have at least 10 district judges authorized to be appointed by the President, whether under section 133(a) of title 28, United States Code, or on a temporary basis under any other provision of law, and at least 3 judges of the court have made the request under subsection (a)(1)(A); and

“(ii) 3 district courts that each have fewer than 10 district judges authorized to be appointed by the President, whether under section 133(a) of title 28, United States Code, or on a temporary basis under any other provision of law, and at least 2 judges of the court have made the request under subsection (a)(1)(A).

“(c) DURATION.—The program established under subsection (a) shall terminate 10 years after the end of the 6-month period described in subsection (b).

“(d) APPLICABILITY.—The program established under subsection (a) shall apply in a district court designated under subsection (b) only to cases commenced on or after the date of such designation.

“(e) REPORTS TO CONGRESS.—

“(1) IN GENERAL.—At the times specified in paragraph (2), the Director of the Administrative Office of the United States Courts, in consultation with the chief judge of each of the district courts designated under subsection (b) and the Director of the Federal Judicial Center, shall submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate a report on the pilot program established under subsection (a). The report shall include—

“(A) an analysis of the extent to which the program has succeeded in developing expertise in patent and plant variety protection cases among the district judges of the district courts so designated;

“(B) an analysis of the extent to which the program has improved the efficiency of the courts involved by reason of such expertise;

“(C) with respect to patent cases handled by the judges designated pursuant to subsection (a)(1)(A) and judges not so designated, a comparison between the 2 groups of judges with respect to—

“(i) the rate of reversal by the Court of Appeals for the Federal Circuit, of such cases on the issues of claim construction and substantive patent law; and

“(ii) the period of time elapsed from the date on which a case is filed to the date on which trial begins or summary judgment is entered;

“(D) a discussion of any evidence indicating that litigants select certain of the judicial districts designated under subsection (b) in an attempt to ensure a given outcome; and

“(E) an analysis of whether the pilot program should be extended to other district courts, or should be made permanent and apply to all district courts.

“(2) TIMETABLE FOR REPORTS.—The times referred to in paragraph (1) are—

“(A) not later than the date that is 5 years and 3 months after the end of the 6-month period described in subsection (b); and