

Editorial Notes

AMENDMENTS

1982—Pub. L. 97-164 substituted “Librarians” for “Criers, bailiffs, and messengers” in section catchline.

Subsec. (a). Pub. L. 97-164 struck out “and necessary library assistants” after “Each court of appeals may appoint a librarian”.

Subsec. (b). Pub. L. 97-164 substituted “The librarian, with the approval of the court, may appoint necessary library assistants in such numbers as the Director of the Administrative Office of the United States Courts may approve” for “Each court of appeals, except the Court of Appeals for the District of Columbia, may appoint a crier and such messengers as may be necessary, all of whom shall be subject to removal by the court” and “The librarian may remove such library assistants with the approval of the court” for “The crier shall also perform the duties of bailiff and messenger”.

Subsecs. (c), (d). Pub. L. 97-164 struck out subsecs. (c) and (d) which had provided, respectively, that the Court of Appeals for the District of Columbia could appoint a marshal, who would attend the court at its sessions, be custodian of its courthouse, have supervision over its custodial employees, take charge of all property of the United States used by the court or its employees, and perform such other duties as the court might direct, that the court could also appoint necessary messengers who would be subject to removal by the court, that the United States marshal of the district in which a court of appeals was sitting or in which a circuit judge was present in chambers, could, with the approval of the court or judge, employ necessary bailiffs, that the bailiffs would attend the court, preserve order, and perform such other necessary duties as the court, judge or marshal might direct, and that such bailiffs would receive the same compensation as bailiffs employed for the district courts. See section 714 of this title.

1949—Act May 24, 1949, inserted subsection designation (b) preceding second par. and renumbered former subsecs. (b) and (c) as (c) and (d), respectively.

Statutory Notes and Related Subsidiaries

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.

CONTINUATION OF SERVICE OF MARSHAL FOR COURT OF APPEALS FOR DISTRICT OF COLUMBIA; APPLICABILITY OF OTHER LAW TO COURT DURING SUCH INDIVIDUAL'S SERVICE

Pub. L. 98-620, title IV, § 415, Nov. 8, 1984, 98 Stat. 3364, provided that: “Any individual who, on the date of the enactment of the Federal Courts Improvement Act of 1982 [Pub. L. 97-164, enacted Apr. 2, 1982], was serving as marshal for the Court of Appeals for the District of Columbia under section 713(c) of title 28, United States Code, may, after the date of the enactment of this Act [Nov. 8, 1984], so serve under that section as in effect on the date of the enactment of the Federal Courts Improvement Act of 1982. While such individual so serves, the provisions of section 714(a) of title 28, United States Code, shall not apply to the Court of Appeals for the District of Columbia.”

§ 714. Criers and messengers

(a) Each court of appeals may appoint a crier who shall be subject to removal by the court.

(b) The crier, with the approval of the court, may appoint necessary messengers in such number as the Director of the Administrative Office of the United States Courts may approve. The crier may remove such messengers with the approval of the court. The crier shall also perform the duties of bailiff and messenger.

(Added Pub. L. 97-164, title I, § 120(c)(1), Apr. 2, 1982, 96 Stat. 33.)

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective Oct. 1, 1982, see section 402 of Pub. L. 97-164, set out as an Effective Date of 1982 Amendment note under section 171 of this title.

APPLICABILITY OF THIS SECTION TO COURT OF APPEALS FOR DISTRICT OF COLUMBIA DURING CONTINUED SERVICE OF MARSHAL FOR COURT IN OFFICE ON APR. 2, 1982

Subsec. (a) of this section not applicable to the Court of Appeals for the District of Columbia during the continued service as Marshal for such Court of any individual who was serving in such office under section 713(c) of this title as of Apr. 2, 1982, see section 415 of Pub. L. 98-620, set out as a note under section 713 of this title.

§ 715. Staff attorneys and technical assistants

(a) The chief judge of each court of appeals, with the approval of the court, may appoint a senior staff attorney, who shall be subject to removal by the chief judge with the approval of the court.

(b) The senior staff attorney, with the approval of the chief judge, may appoint necessary staff attorneys and secretarial and clerical employees in such numbers as the Director of the Administrative Office of the United States Courts may approve, but in no event may the number of staff attorneys exceed the number of positions expressly authorized in an annual appropriation Act. The senior staff attorney may remove such staff attorneys and secretarial and clerical employees with the approval of the chief judge.

(c) The chief judge of the Court of Appeals for the Federal Circuit, with the approval of the court, may appoint a senior technical assistant who shall be subject to removal by the chief judge with the approval of the court.

(d) The senior technical assistant, with the approval of the court, may appoint necessary technical assistants in such number as the Director of the Administrative Office of the United States Courts may approve, but in no event may the number of technical assistants in the Court of Appeals for the Federal Circuit exceed the number of circuit judges in regular active service within such circuit. The senior technical assistant may remove such technical assistants with the approval of the court.

(Added Pub. L. 97-164, title I, § 120(c)(1), Apr. 2, 1982, 96 Stat. 34.)

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective Oct. 1, 1982, see section 402 of Pub. L. 97-164, set out as an Effective Date of 1982 Amendment note under section 171 of this title.

CHAPTER 49—DISTRICT COURTS

Sec.	
751.	Clerks.
752.	Law clerks and secretaries.
753.	Reporters.
754.	Receivers of property in different districts.

Sec.	
755.	Criers and bailiffs.
756.	Power to appoint.

§ 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 because 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 of