

SIONERS" in chapter heading, and "Character of service" for "Park commissioners; jurisdiction and powers; procedure" in item 632, "Determination of number, locations, and salaries of magistrates" for "Fees and expenses" in item 633, "Compensation" for "Salaries of park commissioners; disposition of fees" in item 634, "Expenses" for "Park commissioners; residence" in item 635, "Jurisdiction and powers" for "Accounts" in item 636, "Training" for "Oaths, acknowledgments, affidavits and depositions" in item 637, "Dockets and forms; United States Code; seals" for "Seals" in item 638, and "Definitions" for "Dockets and forms; United States Code" in item 639.

1954—Act Aug. 13, 1954, ch. 728, §1(c), 68 Stat. 704, inserted "and expenses" after "Fees" in item 633.

#### Statutory Notes and Related Subsidiaries

##### CHANGE OF NAME

"UNITED STATES MAGISTRATE JUDGES" substituted for "UNITED STATES MAGISTRATES" in chapter heading and "magistrate judges" substituted for "magistrates" in item 633 pursuant to section 321 of Pub. L. 101-650, set out as a note under section 631 of this title.

#### § 631. Appointment and tenure

(a) The judges of each United States district court and the district courts of the Virgin Islands, Guam, and the Northern Mariana Islands shall appoint United States magistrate judges in such numbers and to serve at such locations within the judicial districts as the Judicial Conference may determine under this chapter. In the case of a magistrate judge appointed by the district court of the Virgin Islands, Guam, or the Northern Mariana Islands, this chapter shall apply as though the court appointing such a magistrate judge were a United States district court. Where there is more than one judge of a district court, the appointment, whether an original appointment or a reappointment, shall be by the concurrence of a majority of all the judges of such district court, and when there is no such concurrence, then by the chief judge. Where the conference deems it desirable, a magistrate judge may be designated to serve in one or more districts adjoining the district for which he is appointed. Such a designation shall be made by the concurrence of a majority of the judges of each of the district courts involved and shall specify the duties to be performed by the magistrate judge in the adjoining district or districts.

(b) No individual may be appointed or reappointed to serve as a magistrate judge under this chapter unless:

(1) He has been for at least five years a member in good standing of the bar of the highest court of a State, the District of Columbia, the Commonwealth of Puerto Rico, the Territory of Guam, the Commonwealth of the Northern Mariana Islands, or the Virgin Islands of the United States, except that an individual who does not meet the bar membership requirements of this paragraph may be appointed and serve as a part-time magistrate judge if the appointing court or courts and the conference find that no qualified individual who is a member of the bar is available to serve at a specific location;

(2) He is determined by the appointing district court or courts to be competent to perform the duties of the office;

(3) In the case of an individual appointed to serve in a national park, he resides within the exterior boundaries of that park, or at some place reasonably adjacent thereto;

(4) He is not related by blood or marriage to a judge of the appointing court or courts at the time of his initial appointment; and

(5) He is selected pursuant to standards and procedures promulgated by the Judicial Conference of the United States. Such standards and procedures shall contain provision for public notice of all vacancies in magistrate judge positions and for the establishment by the district courts of merit selection panels, composed of residents of the individual judicial districts, to assist the courts in identifying and recommending persons who are best qualified to fill such positions.

(c) A magistrate judge may hold no other civil or military office or employment under the United States: *Provided, however*, That, with the approval of the conference, a part-time referee in bankruptcy or a clerk or deputy clerk of a court of the United States may be appointed and serve as a part-time United States magistrate judge, but the conference shall fix the aggregate amount of compensation to be received for performing the duties of part-time magistrate judge and part-time referee in bankruptcy, clerk or deputy clerk: *And provided further*, That retired officers and retired enlisted personnel of the Regular and Reserve components of the Army, Navy, Air Force, Marine Corps, and Coast Guard, members of the Reserve components of the Army, Navy, Air Force, Marine Corps, and Coast Guard, and members of the Army National Guard of the United States, the Air National Guard of the United States, and the Naval Militia and of the National Guard of a State, territory, or the District of Columbia, except the National Guard disbursing officers who are on a full-time salary basis, may be appointed and serve as United States magistrate judges.

(d) Except as otherwise provided in sections 375 and 636(h) of this title, no individual may serve under this chapter after having attained the age of seventy years: *Provided, however*, That upon a majority vote of all the judges of the appointing court or courts, which is taken upon the magistrate judge's attaining age seventy and upon each subsequent anniversary thereof, a magistrate judge who has attained the age of seventy years may continue to serve and may be reappointed under this chapter.

(e) The appointment of any individual as a full-time magistrate judge shall be for a term of eight years, and the appointment of any individuals as a part-time magistrate judge shall be for a term of four years, except that the term of a full-time or part-time magistrate judge appointed under subsection (k)<sup>1</sup> shall expire upon—

(1) the expiration of the absent magistrate judge's term,

(2) the reinstatement of the absent magistrate judge in regular service in office as a magistrate judge,

(3) the failure of the absent magistrate judge to make timely application under subsection

<sup>1</sup> See References in Text note below.

(j)<sup>1</sup> of this section for reinstatement in regular service in office as a magistrate judge after discharge or release from military service.

(4) the death or resignation of the absent magistrate judge, or

(5) the removal from office of the absent magistrate judge pursuant to subsection (i) of this section,

whichever may first occur.

(f) Upon the expiration of his term, a magistrate judge may, by a majority vote of the judges of the appointing district court or courts and with the approval of the judicial council of the circuit, continue to perform the duties of his office until his successor is appointed, or for 180 days after the date of the expiration of the magistrate judge's term, whichever is earlier.

(g) Each individual appointed as a magistrate judge under this section shall take the oath or affirmation prescribed by section 453 of this title before performing the duties of his office.

(h) Each appointment made by a judge or judges of a district court shall be entered of record in such court, and notice of such appointment shall be given at once by the clerk of that court to the Director.

(i) Removal of a magistrate judge during the term for which he is appointed shall be only for incompetency, misconduct, neglect of duty, or physical or mental disability, but a magistrate judge's office shall be terminated if the conference determines that the services performed by his office are no longer needed. Removal shall be by the judges of the district court for the judicial district in which the magistrate judge serves; where there is more than one judge of a district court, removal shall not occur unless a majority of all the judges of such court concur in the order of removal; and when there is a tie vote of the judges of the district court on the question of the removal or retention in office of a magistrate judge, then removal shall be only by a concurrence of a majority of all the judges of the council. In the case of a magistrate judge appointed under the third sentence of subsection (a) of this section, removal shall not occur unless a majority of all the judges of the appointing district courts concur in the order of removal; and where there is a tie vote on the question of the removal or retention in office of a magistrate judge, then removal shall be only by a concurrence of a majority of all the judges of the council or councils. Before any order or removal shall be entered, a full specification of the charges shall be furnished to the magistrate judge, and he shall be accorded by the judge or judges of the removing court, courts, council, or councils an opportunity to be heard on the charges.

(j) Upon the grant by the appropriate district court or courts of a leave of absence to a magistrate judge entitled to such relief under chapter 43 of title 38, such court or courts may proceed to appoint, in the manner specified in subsection (a) of this section, another magistrate judge, qualified for appointment and service under subsections (b), (c), and (d) of this section, who shall serve for the period specified in subsection (e) of this section.

(k) A United States magistrate judge appointed under this chapter shall be exempt from

the provisions of subchapter I of chapter 63 of title 5.

(June 25, 1948, ch. 646, 62 Stat. 915; May 24, 1949, ch. 139, §73, 63 Stat. 100; July 9, 1952, ch. 609, §1, 66 Stat. 509; July 25, 1956, ch. 722, 70 Stat. 642; Pub. L. 90-578, title I, §101, Oct. 17, 1968, 82 Stat. 1108; Pub. L. 94-520, §2, Oct. 17, 1976, 90 Stat. 2458; Pub. L. 95-598, title II, §231, Nov. 6, 1978, 92 Stat. 2665; Pub. L. 96-82, §3(a)-(d), Oct. 10, 1979, 93 Stat. 644, 645; Pub. L. 97-230, Aug. 6, 1982, 96 Stat. 255; Pub. L. 99-651, title II, §201(a)(1), Nov. 14, 1986, 100 Stat. 3646; Pub. L. 100-659, §5, Nov. 15, 1988, 102 Stat. 3918; Pub. L. 100-702, title X, §1003(a)(2), Nov. 19, 1988, 102 Stat. 4665; Pub. L. 101-45, title II, §104, June 30, 1989, 103 Stat. 122; Pub. L. 101-650, title III, §§308(b), 321, Dec. 1, 1990, 104 Stat. 5112, 5117; Pub. L. 103-353, §2(c), Oct. 13, 1994, 108 Stat. 3169; Pub. L. 106-518, title II, §201, Nov. 13, 2000, 114 Stat. 2412; Pub. L. 110-177, title V, §504, Jan. 7, 2008, 121 Stat. 2542; Pub. L. 111-174, §2, May 27, 2010, 124 Stat. 1216.)

#### HISTORICAL AND REVISION NOTES

##### 1948 ACT

Based on title 28, U.S.C., 1940 ed., §§526 and 527, sections 27, 66, 80e, 100, 117e, 129, 172, 198e, 204e, 256d, 395e, 403c-5, 403h-5, 404c-5, and 408m of title 16, U.S.C., 1940 ed., Conservation, and section 863 of title 48, U.S.C., 1940 ed., Territories and Insular Possessions (May 27, 1894, ch. 72, §5, 28 Stat. 74; May 28, 1896, ch. 252, §§19, 20, 29 Stat. 184; Apr. 12, 1900, ch. 191, §34, 31 Stat. 84; Mar. 2, 1901, ch. 814, 31 Stat. 956; Mar. 3, 1911, ch. 231, §291, 36 Stat. 1167; Jan. 7, 1913, ch. 6, 37 Stat. 648; Aug. 22, 1914, ch. 264, §6, 38 Stat. 700; June 30, 1916, ch. 197, §6, 39 Stat. 245; Aug. 21, 1916, ch. 368, §6, 39 Stat. 523; Mar. 2, 1917, ch. 145, §41, 39 Stat. 965; June 2, 1920, ch. 218, §§7, 8, 41 Stat. 733; Mar. 4, 1921, ch. 161, §1, 41 Stat. 1412; Dec. 13, 1926, ch. 6, §1, 44 Stat. 919; Apr. 25, 1928, ch. 434, §6, 45 Stat. 460; Apr. 26, 1928, ch. 438, §6, 45 Stat. 464; Mar. 2, 1929, ch. 583, §6, 45 Stat. 1538; Apr. 19, 1930, ch. 200, §6, 46 Stat. 228; June 25, 1935, ch. 309, §1, 49 Stat. 422; Aug. 19, 1937, ch. 703, §5, 50 Stat. 702; Mar. 26, 1938, ch. 51, §2, 52 Stat. 118; June 25, 1938, ch. 684, §1, 52 Stat. 1164; June 28, 1938, ch. 778, §1, 52 Stat. 1213; Mar. 4, 1940, ch. 40, §2, 54 Stat. 43; Mar. 6, 1942, ch. 150, §5, 56 Stat. 134; Mar. 6, 1942, ch. 151, §5, 56 Stat. 137; Apr. 29, 1942, ch. 264, §5, 56 Stat. 260; June 5, 1942, ch. 341, §5, 56 Stat. 318; Dec. 28, 1945, ch. 592, 59 Stat. 659, 660; Apr. 23, 1946, ch. 202, §1, 60 Stat. 119, 120).

Section consolidates section 526 and a portion of 527, both of title 28, U.S.C., 1940 ed., with provisions of sections 27, 66, 80e, 100, 117e, 129, 172, 198e, 204e, 256d, 395e, 403c-5, 403h-5, 404c-5 and 408m of title 16, U.S.C., 1940 ed., and provisions of section 863 of title 48, U.S.C., 1940 ed., Territories and Insular Possessions, relating to appointment of United States commissioners. For other provisions of said sections see Distribution Table.

Some of the provisions of section 863 of title 48, U.S.C., 1940 ed., Territories and Insular Possessions were retained in that title.

The provision of sections 395e, 403c-5, 404c-5, and 408m of title 16, U.S.C., 1940 ed., for appointment of the Park Commissioner in the Hawaii National Park, Shennandoah National Park, Great Smoky Mountains National Park, Mammoth Cave National Park and Isle Royale National Park upon "the recommendation of the Secretary of the Interior" was omitted as inconsistent not only with other provisions of this title but with other statutes applicable to other national parks.

All such park commissioners are United States commissioners and the revision of these sections makes possible uniformity and consistency in administrative matters concerning such commissioners. (See, also, sections 604 and 634 of this title.)

Words "the Director of the Administrative Office of the United States Courts" were substituted for "Attor-

ney General” in section 526 of title 28, U.S.C., 1940 ed., in view of the general supervision by the Director over clerks and commissioners under section 601 et seq. of this title.

See, also, section 751 of this title prohibiting clerks from receiving compensation in another capacity.

First sentence of subsection (b) was substituted for the provision in section 527 of title 28, U.S.C., 1940 ed., prohibiting specified persons from acting as commissioners.

Words “at such places in the district as may be designated by the district court,” in section 526 of title 28, U.S.C., 1940 ed., were omitted as unnecessary.

A provision in section 526 of title 28, U.S.C., 1940 ed., that commissioners should have the same powers and duties as are conferred and imposed by law, was omitted as superfluous.

The phrase in sections 526 and 527 of title 16, U.S.C., 1940 ed., “except as provided in section 591” and section 591, the effect of which was to except Alaska from this section, were omitted as unnecessary. This revised section by its terms limits the section and chapter 43 of this title to commissioners appointed by a “district court,” which includes the courts enumerated in chapter 5 of this title but not those of Alaska, Canal Zone, or Virgin Islands.

Sections from title 16, U.S.C., 1940 ed., contained no tenure provisions.

Changes in phraseology were made.

*Prior residence requirement for national park commissioners in section 635.*—Based on sections 1a and 403c-9 of title 16, U.S.C., 1940 ed., Conservation (Aug. 19, 1937, ch. 703, § 8, 50 Stat. 702; June 28, 1938, ch. 778, § 1, 52 Stat. 1213).

Section consolidates section 1a with part of section 403c-9 of title 16, U.S.C., 1940 ed., relating to residence of a national park commissioner.

The provisions of sections 1a and 403c-9 of title 16, U.S.C., 1940 ed., relating to designation by the Secretary of the Interior of some place of residence reasonably adjacent to the park was modified by making such designation subject to the approval of the appointing court.

#### SENATE REVISION AMENDMENT

By Senate amendment, “Big Bend” and “Crater Lake” were inserted in subsection (a) of this section, and section 158a of title 16, U.S.C., which was derived from act May 15, 1947, ch. 55, § 1, 61 Stat. 91, accordingly became an additional source of this section, such Act being included in the schedule of repeals. See 80th Congress Senate Report No. 1559.

As finally enacted, act May 15, 1947, ch. 57, 61 Stat. 92, which amended section 403c-5 of title 16, U.S.C., became an additional source of this section and was accordingly included in the schedule of repeals by Senate amendment. See 80th Congress Senate Report No. 1559.

#### 1949 ACT

This amendment conforms the language of section 631(b) to the provisions of section 35 of the Bankruptcy Act, as amended by the act of June 28, 1946 (§ 3, 60 Stat. 324), that full-time referees in bankruptcy may not be appointed United States Commissioners.

This amendment also removes an ambiguity from section 631(b) by making it clear that the Director of the Administrative Office of the United States Courts has power to establish maximum limits of compensation to be received for performing the combined offices of commissioner and clerk or deputy clerk. This was the intent of sections 631 and 751 of title 28. (See the fifteenth paragraph of the reviser’s note to the latter section, H. Rept. No. 308, April 25, 1947, p. A90, to accompany H.R. 3214, 80th Cong.)

#### Editorial Notes

##### REFERENCES IN TEXT

Subsections (j) and (k) of this section, referred to in subsec. (e), probably mean subsecs. (j) and (k) prior to

amendment by Pub. L. 103-353, § 2(c)(1), (2), Oct. 13, 1994, 108 Stat. 3169, which redesignated subsec. (k) as (j) and struck out former subsec. (j).

##### AMENDMENTS

2010—Subsec. (a). Pub. L. 111-174 struck out “(including any judge in regular active service and any judge who has retired from regular active service under section 371(b) of this title, when designated and assigned to the court to which such judge was appointed)” after “Northern Mariana Islands” in the first sentence.

2008—Subsec. (a). Pub. L. 110-177 substituted “Northern Mariana Islands (including any judge in regular active service and any judge who has retired from regular active service under section 371(b) of this title, when designated and assigned to the court to which such judge was appointed) shall appoint” for “Northern Mariana Islands shall appoint”.

2000—Subsec. (a). Pub. L. 106-518, § 201(1), substituted “The judges of each United States district court and the district courts of the Virgin Islands, Guam, and the Northern Mariana Islands shall appoint United States magistrate judges in such numbers and to serve at such locations within the judicial districts as the Judicial Conference may determine under this chapter. In the case of a magistrate judge appointed by the district court of the Virgin Islands, Guam, or the Northern Mariana Islands, this chapter shall apply as though the court appointing such a magistrate judge were a United States district court.” for “The judges of each United States district court and the district court of the Virgin Islands shall appoint United States magistrate judges in such numbers and to serve at such locations within the judicial district as the conference may determine under this chapter. In the case of a magistrate appointed by the district court of the Virgin Islands, this chapter shall apply as though the court appointing such magistrate judge were a United States district court.”

Subsec. (b)(1). Pub. L. 106-518, § 201(2), inserted “the Territory of Guam, the Commonwealth of the Northern Mariana Islands,” after “Commonwealth of Puerto Rico.”

1994—Subsec. (j). Pub. L. 103-353, § 2(c), redesignated subsec. (k) as (j), substituted “chapter 43 of title 38” for “the terms of subsection (i) of this section”, and struck out former subsec. (j) which related to uncompensated leave of absence for magistrate inducted into the Armed Forces and reinstatement as magistrate in regular service.

Subsecs. (k), (l). Pub. L. 103-353, § 2(c)(2), redesignated subsecs. (k) and (l) as (j) and (k), respectively.

1990—Subsec. (f). Pub. L. 101-650 substituted “180” for “60”.

1989—Subsec. (b)(1). Pub. L. 101-45 struck out “and he is a member in good standing of the bar of the highest court of the State in which he is to serve, or, in the case of an individual appointed to serve—

“(A) in the District of Columbia, a member in good standing of the bar of the United States district court for the District of Columbia; or

“(B) in the Commonwealth of Puerto Rico, a member in good standing of the bar of the Supreme Court of Puerto Rico, and in the Virgin Islands of the United States, a member in good standing of the bar of the district court of the Virgin Islands;” after “Virgin Islands of the United States,” and struck out “the first sentence of” before “this paragraph”.

1988—Subsec. (e). Pub. L. 100-659 substituted “(k)” for “(j)” in introductory text, “(j)” for “(i)” in par. (3), and “(i)” for “(h)” in par. (5).

Subsec. (l). Pub. L. 100-702 added subsec. (l).

1986—Subsec. (d). Pub. L. 99-651 substituted “Except as otherwise provided in sections 375 and 636(h) of this title, no” for “No”, and “a majority” for “the unanimous”, and inserted “which is taken upon the magistrate’s attaining age seventy and upon each subsequent anniversary thereof,” after “courts.”

1982—Subsec. (b)(1). Pub. L. 97-230 substituted “He has been for at least five years a member in good stand-

ing of the bar of the highest court of a State, the District of Columbia, the Commonwealth of Puerto Rico, or the Virgin Islands of the United States, and he is a member” for “He is, and has been for at least five years, a member”.

1979—Subsec. (a). Pub. L. 96-82, §3(a), substituted “Where the conference deems it desirable, a magistrate may be designated to serve in one or more districts adjoining the district for which he is appointed” and “Such a designation shall be made by the concurrence of a majority of the judges of each of the district courts involved and shall specify the duties to be performed by the magistrate in the adjoining district or districts” for “Where an area under the administration of the National Park Service, or the United States Fish and Wildlife Service, or any other Federal agency, extends into two or more judicial districts and it is deemed desirable by the conference that the territorial jurisdiction of a magistrate’s appointment include the entirety of such area, the appointment or reappointment shall be made by the concurrence of a majority of all judges of the district courts of the judicial districts involved, and where there is no such concurrence by the concurrence of the chief judges of such district courts”.

Subsec. (b). Pub. L. 96-82, §3(b), substituted “appointed or reappointed to serve” for “appointed or serve” in provisions preceding par. (1), inserted “, and has been for at least 5 years,” after “He is” in provisions of par. (1) preceding subpar. (A), struck out subpar. (C) relating to service by members an good standing of the bar of the highest court of one of the two or more States where the area involved is under the administration of the National Park Service, the United States Fish and Wildlife Service, or any other Federal agency that extends to two or more States.

Subsec. (b)(5). Pub. L. 96-82, §3(c), added par. (5).

Subsec. (f). Pub. L. 96-82, §3(d)(2), added subsec. (f). Former subsec. (f) redesignated (g).

Subsecs. (g) to (k). Pub. L. 96-82, §3(d)(1), redesignated former subsecs. (f) to (j) as (g) to (k), respectively.

1978—Subsec. (c). Pub. L. 95-598 directed the amendment of subsec. (c) by substituting “of the conference,” for “of the conference, a part-time referee in bankruptcy or” and “magistrate and” for “magistrate and part-time referee in bankruptcy,” which amendment did not become effective pursuant to section 402(b) of Pub. L. 95-598, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

1976—Subsec. (a). Pub. L. 94-520, §2(1), (2), inserted “and the district court of the Virgin Islands” after “United States district court”, and provided that in the case of a magistrate appointed by the district court of the Virgin Islands, this chapter was to apply as though the appointing court were a United States District Court.

Subsec. (b). Pub. L. 94-520, §2(3), provided that a magistrate appointed under this chapter to serve in the Virgin Islands, must be a member in good standing of the bar of the district court of the Virgin Islands.

1968—Pub. L. 90-578 revised provisions of this section generally as described for subsecs. (a) to (j) hereunder, substituting provisions for appointment and tenure of magistrates for appointment and tenure of commissioners.

Subsec. (a). Pub. L. 90-578 provided for determination of number of appointees by the conference, rather than by the district court, authorized the determination of location of service, omitted as superseded by existing provisions prior provisions for appointments for certain specified national parks, required appointments in a district court with more than one judge to be concurred in by majority of all the judges, and by the chief judge in absence of such concurrence, required such concurrence of judges of district courts or concurrence of chief judges in absence of such concurrence by the judges where appointments are for an area under administration of the National Park Service, or the United States Fish and Wildlife Service, or any other Federal agency, which extends into more than one judi-

cial district which should be served in its entirety by one magistrate, and omitted last par. prescribing appointment record and notice. See subsec. (g) of this section.

Subsec. (b). Pub. L. 90-578 added subsec. (b). Prior provisions which were eliminated prohibited holding dual offices when the person held a civil or military office or employment under the United States or was employed by a Federal justice or judge, but such restriction was made inapplicable to a part-time referee in bankruptcy, or to a clerk or deputy clerk of a Federal court when approved by the Director and compensated in an aggregate amount fixed by the Director for performance of dual duties. See subsec. (c) of this section.

Subsec. (c). Pub. L. 90-578 incorporated provisions of former subsec. (b) of this section in provisions designated as subsec. (c), omitted express restriction against holding dual offices when employed by a Federal justice or judge, provided for approval of the conference with respect to part-time service as a magistrate of part-time referee in bankruptcy or clerk or deputy clerk of a Federal court, formerly requiring approval of the Director as to service of clerk or deputy clerk of court as a commissioner, made former provisions as to aggregate amount of compensation for service as clerk or deputy clerk of court and commissioner applicable to part-time service as magistrate of part-time referee in bankruptcy, clerk and deputy clerk of court, and authorized appointment of retired military personnel, except National Guard disbursing officers who are on a full-time salary basis, as United States magistrates. Former subsec. (c) which provided for a four year term of office of commissioner unless sooner removed by the district court. See subsecs. (e) and (h) of this section.

Subsec. (d). Pub. L. 90-578 added subsec. (d).

Subsec. (e). Pub. L. 90-578 substituted provisions designated as subsec. (e) for term of office of eight and four years for full-time and part-time officers and for expiration of term of office for provisions of former subsec. (c) of this section for term of four years unless sooner removed by the district court.

Subsec. (f). Pub. L. 90-578 added subsec. (f).

Subsec. (g). Pub. L. 90-578 incorporated provisions of last par. of former subsec. (a) of this section in provisions designated as subsec. (g) and provided expressly for appointment by a judge or judges of a district court.

Subsecs. (h) to (j). Pub. L. 90-578 added subsecs. (h) to (j).

1956—Subsec. (a). Act July 25, 1956, provided for two United States Commissioners for the Cumberland Gap National Historical Park.

1952—Subsec. (a). Act July 9, 1952, provided for two United States Commissioners for the Great Smoky Mountains National Park, in place of one.

1949—Subsec. (b). Act May 24, 1949, amended second sentence generally. Prior to amendment, second sentence read as follows: “This subsection shall not apply to a referee in bankruptcy nor shall it apply to a clerk or deputy clerk of a court of the United States whose appointment as commissioner is approved by the Director of the Administrative Office of the United States Courts.”

## Statutory Notes and Related Subsidiaries

### CHANGE OF NAME

“United States magistrate judges”, “magistrate judge”, and “magistrate judge’s” substituted for “United States magistrates”, “magistrate”, and “magistrate’s”, respectively, wherever appearing in text pursuant to section 321 of Pub. L. 101-650, set out as a note below.

Pub. L. 101-650, title III, §321, Dec. 1, 1990, 104 Stat. 5117, provided that: “After the enactment of this Act [Dec. 1, 1990], each United States magistrate appointed under section 631 of title 28, United States Code, shall be known as a United States magistrate judge, and any reference to any United States magistrate or mag-

istrate that is contained in title 28, United States Code, in any other Federal statute, or in any regulation of any department or agency of the United States in the executive branch that was issued before the enactment of this Act, shall be deemed to refer to a United States magistrate judge appointed under section 631 of title 28, United States Code.”

#### EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-353 effective with respect to reemployments initiated on or after the first day after the 60-day period beginning Oct. 13, 1994, with transition rules, see section 8 of Pub. L. 103-353, set out as an Effective Date note under section 4301 of Title 38, Veterans’ Benefits.

#### EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-659 effective Nov. 15, 1988, and applicable to bankruptcy judges and magistrate judges who retire on or after Nov. 15, 1988, with exception for judges and magistrate judges retiring on or after July 31, 1987, see section 9 of Pub. L. 100-659, as amended, set out as an Effective Date note under section 377 of this title.

#### EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-651 effective Jan. 1, 1987, see section 203 of Pub. L. 99-651, set out as a note under section 155 of this title.

#### EFFECTIVE DATE OF 1979 AMENDMENT

Pub. L. 96-82, §3(g), Oct. 10, 1979, 93 Stat. 645, provided that: “The amendment made by subsection (c) of this section [amending this section] shall not take effect until 30 days after the meeting of the Judicial Conference of the United States next following the effective date of this Act [Oct. 10, 1979].” [The meeting of the Judicial Conference took place on Mar. 5 and 6, 1980.]

#### EFFECTIVE DATE OF 1968 AMENDMENT

Pub. L. 90-578, title IV, §403, Oct. 17, 1968, 82 Stat. 1119, provided that: “Except as otherwise provided by sections 401 and 402 of this title [set out as Appointment of Magistrates and Applicable Law notes below], this Act [amending this chapter and sections 202, 3006A, 3041, 3043, 3045, 3060, 3102, 3116, 3184, 3191, 3195, 3401, 3402, 3569, and 3771 of Title 18, Crimes and Criminal Procedure, and enacting provisions set out as notes under this section] shall take effect on the date of its enactment [Oct. 17, 1968].”

#### SHORT TITLE OF 1979 AMENDMENT

Pub. L. 96-82, §1, Oct. 10, 1979, 93 Stat. 643, provided: “That this Act [amending this section, sections 604, 633, 634, 635, 636, and 1915 of this title, and section 3401 of Title 18, Crimes and Criminal Procedure, and enacting provisions set out as notes under this section] may be cited as the ‘Federal Magistrate Act of 1979.’”

#### SHORT TITLE OF 1968 AMENDMENT

Pub. L. 90-578, §1, Oct. 17, 1968, 82 Stat. 1107, provided: “That this Act [amending this chapter and sections 202, 3006A, 3041, 3043, 3045, 3060, 3102, 3116, 3184, 3191, 3195, 3401, 3402, 3569, and 3771 of Title 18, Crimes and Criminal Procedure, and enacting provisions set out as notes under this section] may be cited as the ‘Federal Magistrates Act.’”

#### SHORT TITLE

This chapter is popularly known as the “Federal Magistrates Act”.

#### SEPARABILITY

Pub. L. 90-578, title V, §501, Oct. 17, 1968, 82 Stat. 1119, provided that: “If any provision of this Act [amending this chapter and sections 202, 3006A, 3041, 3043, 3045, 3060, 3102, 3116, 3184, 3191, 3195, 3401, 3402, 3569, and 3771 of

Title 18, Crimes and Criminal Procedure, and enacting provisions set out as notes under this section] or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the Act and of its application to other persons and circumstances shall not be affected.”

#### TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

#### DUE CONSIDERATION BY MERIT SELECTION PANELS OF WOMEN, BLACKS, HISPANICS, AND OTHER MINORITIES

Pub. L. 96-82, §3(e), Oct. 10, 1979, 93 Stat. 645, provided that: “The merit selection panels established under section 631(b)(5) of title 28, United States Code, in recommending persons to the district court, shall give due consideration to all qualified individuals, especially such groups as women, blacks, Hispanics, and other minorities.”

#### MAGISTRATES SERVING PRIOR TO PROMULGATION OF MAGISTRATE SELECTION STANDARDS AND PROCEDURES BY JUDICIAL CONFERENCE; REAPPOINTMENT; CERTIFICATION AS QUALIFIED

Pub. L. 96-82, §3(f), Oct. 10, 1979, 93 Stat. 645, provided that magistrates serving prior to the promulgation of magistrate selection standards and procedures by the Judicial Conference of the United States could only exercise the jurisdiction conferred under section 636(c) of this title after having been reappointed under such standards and procedures or after having been certified as qualified to exercise such jurisdiction by the judicial council of the circuit in which the magistrate served.

#### JUDICIAL CONFERENCE STUDY OF THE FUTURE OF THE MAGISTRATE SYSTEM

Pub. L. 96-82, §9, Oct. 10, 1979, 93 Stat. 647, provided for a study by the Judicial Conference of the United States to begin within 90 days after the effective date of Pub. L. 96-82, which was approved Oct. 10, 1979, and to be completed and made available to Congress within 24 months thereafter respecting the future of the magistrate system.

#### AUTHORIZATION OF APPROPRIATIONS

Pub. L. 96-82, §10, Oct. 10, 1979, 93 Stat. 647, provided that: “Such sums as may be necessary to carry out the purposes of this Act [see Short Title of 1979 Amendment note above] are hereby authorized to be appropriated for expenditure on or after October 1, 1979.”

#### APPOINTMENT OF MAGISTRATES

Pub. L. 90-578, title IV, §401, Oct. 17, 1968, 82 Stat. 1118, provided that:

“(a) No individual may serve as a United States commissioner within any judicial district after the date on which a United States magistrate [now United States magistrate judge] assumes office in such judicial district.

“(b) An individual serving as a United States commissioner within any judicial district on the date of enactment of this Act [Oct. 17, 1968] who is a member in good standing of the bar of the highest court of any State may be appointed to the office of United States magistrate for an initial term, and may be reappointed to such office for successive terms, notwithstanding his failure to meet the bar membership qualification imposed by section 631(b)(1) of chapter 43, title 28, United States Code: *Provided, however*, That any appointment or reappointment of such an individual must be by

unanimous vote of all the judges of the appointing district court or courts.”

#### APPLICABLE LAW

Pub. L. 90-578, title IV, § 402, Oct. 17, 1968, 82 Stat. 1118, provided that:

“(a) All provisions of law relating to the powers, duties, jurisdiction, functions, service, compensation, and facilities of United States commissioners, as such provisions existed on the day preceding the date of enactment of this Act [Oct. 17, 1968], shall continue in effect in each judicial district until but not on or after (1) the date on which the first United States magistrate [now United States magistrate judge] assumes office within such judicial district pursuant to section 631 of chapter 43, title 28, United States Code, as amended by this Act, or (2) the third anniversary of the date of enactment of this Act [Oct. 17, 1968], whichever date is earlier.

“(b) On and after the date on which the first United States magistrate assumes office within any judicial district pursuant to section 631 of chapter 43, title 28, United States Code, as amended by this Act, or the third anniversary of the date of enactment of this Act [Oct. 17, 1968], whichever date is earlier—

“(1) the provisions of chapter 43, title 28, United States Code, as amended by this Act [this chapter], shall be effective within such judicial district except as otherwise specifically provided by section 401(b) of this title [set out as Appointment of Magistrates note above]; and

“(2) within such judicial district every reference to a United States commissioner contained in any previously enacted statute of the United States (other than sections 8331(1)(E), 8332(i), 8701(a)(7), and 8901(1)(G) of title 5), any previously promulgated rule of any court of the United States, or any previously promulgated regulation of any executive department or agency of the United States, shall be deemed to be a reference to a United States magistrate duly appointed under section 631 of chapter 43, title 28, United States Code, as amended by this Act.

“(c) The administrative powers and duties of the Director of the Administrative Office of the United States Courts with respect to United States commissioners under the provisions of chapter 41, title 28, United States Code, as such provisions existed on the day preceding the date of enactment of this Act [Oct. 17, 1968], shall continue in effect until no United States commissioner remains in service.”

#### SPECIAL COMMISSIONER FOR GRAND CANYON NATIONAL PARK; APPOINTMENT; JURISDICTION; COMPENSATION

Pub. L. 86-258, Sept. 14, 1959, 73 Stat. 546, required the United States District Court for the District of Arizona to appoint a special commissioner for the Grand Canyon National Park, Arizona, and provided for the term, jurisdiction, and salary of the commissioner.

#### JURISDICTIONAL LIMITATION OF COMMISSIONER HOLDING OFFICE ON JULY 9, 1952

Act July 9, 1952, ch. 609, § 2, 66 Stat. 509, provided that the jurisdiction of the United States commissioner for the Great Smoky Mountains National Park on July 9, 1952, would be limited to the portion of the park situated in North Carolina.

### § 632. Character of service

(a) Full-time United States magistrate judges may not engage in the practice of law, and may not engage in any other business, occupation, or employment inconsistent with the expeditious, proper, and impartial performance of their duties as judicial officers.

(b) Part-time United States magistrate judges shall render such service as judicial officers as is required by law. While so serving they may engage in the practice of law, but may not serve as

counsel in any criminal action in any court of the United States, nor act in any capacity that is, under such regulations as the conference may establish, inconsistent with the proper discharge of their office. Within such restrictions, they may engage in any other business, occupation, or employment which is not inconsistent with the expeditious, proper, and impartial performance of their duties as judicial officers.

(June 25, 1948, ch. 646, 62 Stat. 916; Pub. L. 90-578, title I, § 101, Oct. 17, 1968, 82 Stat. 1110; Pub. L. 101-650, title III, § 321, Dec. 1, 1990, 104 Stat. 5117.)

### Editorial Notes

#### AMENDMENTS

1968—Pub. L. 90-578 substituted provisions as to character of service of full-time and part-time United States magistrates for former provisions prescribing jurisdiction and powers of national park commissioners and practice and procedure before such officers. See section 636 of this title.

### Statutory Notes and Related Subsidiaries

#### CHANGE OF NAME

“United States magistrate judges” substituted for “United States magistrates” wherever appearing in text pursuant to section 321 of Pub. L. 101-650, set out as a note under section 631 of this title.

#### EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-578 effective Oct. 17, 1968, except when a later effective date is applicable, which is the earlier of date when implementation of amendment by appointment of magistrates [now United States magistrate judges] and assumption of office takes place or third anniversary of enactment of Pub. L. 90-578 on Oct. 17, 1968, see section 403 of Pub. L. 90-578, set out as a note under section 631 of this title.

### § 633. Determination of number, locations, and salaries of magistrate judges

#### (a) SURVEYS BY THE DIRECTOR.—

(1) The Director shall, within one year immediately following the date of the enactment of the Federal Magistrates Act, make a careful survey of conditions in judicial districts to determine (A) the number of appointments of full-time magistrates and part-time magistrates required to be made under this chapter to provide for the expeditious and effective administration of justice, (B) the locations at which such officers shall serve, and (C) their respective salaries under section 634 of this title. Thereafter, the Director shall, from time to time, make such surveys, general or local, as the conference shall deem expedient.

(2) In the course of any survey, the Director shall take into account local conditions in each judicial district, including the areas and the populations to be served, the transportation and communications facilities available, the amount and distribution of business of the type expected to arise before officers appointed under this chapter (including such matters as may be assigned under section 636(b) of this chapter), and any other material factors. The Director shall give consideration to suggestions from any interested parties, including district judges, United States magistrate judges or officers appointed under this chapter, United States attor-