§ 452. Courts always open; powers unrestricted by expiration of sessions

All courts of the United States shall be deemed always open for the purpose of filing proper papers, issuing and returning process, and making motions and orders.

The continued existence or expiration of a session of a court in no way affects the power of the court to do any act or take any proceeding.

(June 25, 1948, ch. 646, 62 Stat. 907; Pub. L. 88–139, § 2, Oct. 16, 1963, 77 Stat. 248.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 13 and 302 (Mar. 3, 1911, ch. 231, §§ 9, 189, 36 Stat. 1088, 1143; Mar. 2, 1929, ch. 488, § 1, 45 Stat. 1475).

Sections 13 and 302 of title 28, U.S.C., 1940 ed., related only to district courts and the Court of Customs and Patent Appeals, and this section has been written to cover all other courts of the United States.

Other provisions of said section 302 of title 28, U.S.C., 1940 ed., are incorporated in sections 214, 456, and 604 of this title.

The phrase ''always open'' means ''never closed'' and signifies the time when a court can exercise its functions. With respect to matters enumerated by statute or rule as to which the court is ''always open,'' there is no time when the court is without power to act. (Ex parte Branch, 63 Ala. 383, 387.)

Section 13 of title 28, U.S.C., 1940 ed., provided that ''The district courts, as courts of admiralty and as courts of equity, shall be deemed always open * * *'' for enumerated purposes, and that the judge ''at chambers or in the clerk's office, and in vacation as well as in term,'' may make orders and issue process. The revised section omits all reference to the nature of the action or proceeding and enumeration of the acts which may be performed by the court. This is in accord with Rules 45(c) and 56 of the new Federal Rules of Criminal Procedure which contain similar provisions with respect to criminal procedure both in the courts of appeals and in the district courts.

Rules 6(c) and 77(a) of the Federal Rules of Civil Procedure contain provisions similar to the second and first paragraphs, respectively, of this section with respect to civil actions in district courts.

AMENDMENTS

1963—Pub. L. 88–139 substituted ''expiration of sessions'' for ''terms'' in section catchline, and ''session'' for ''term'' in text.

§ 453. Oaths of justices and judges

Each justice or judge of the United States shall take the following oath or affirmation before performing the duties of his office: ''I, _____ _____, do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as _____ under the Constitution and laws of the United States. So help me God.''

(June 25, 1948, ch. 646, 62 Stat. 907; Pub. L. 101–650, title IV, § 404, Dec. 1, 1990, 104 Stat. 5124.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 241, 372, and District of Columbia Code, 1940 ed., §§ 11–203, 11–303 (R.S.D.C., § 752, 18 Stat. pt. II, 90; Feb. 9, 1893, ch. 74, § 3, 27 Stat. 435; Mar. 3, 1901, ch. 854, § 223, 31 Stat. 1224; Mar. 3, 1911, ch. 231, §§ 136, 137, 257, 36 Stat. 1135, 1161; Feb. 25, 1919, ch. 29, § 4, 40 Stat. 1157).

This section consolidates sections 11–203 and 11–303 of District of Columbia Code, 1940 ed., and section 372 of title 28, U.S.C., 1940 ed., with that portion of section 241 of said title 28 providing that judges of the Court of Claims shall take an oath of office. The remainder of said section 241 comprises sections 171 and 173 of this title.

The phrase ''justice or judge of the United States'' was substituted for ''justices of the Supreme Court, the circuit judges, and the district judges'' appearing in said section 372, in order to extend the provisions of this section to judges of the Court of Claims, Customs Court, and Court of Customs and Patent Appeals and to all judges of any court which may be created by enactment of Congress. See definition in section 451 of this title.

The Attorney General has ruled that the expression ''any judge of any court of the United States'' applied to the Chief Justice and all judges of the Court of Claims. (21 Op. Atty. Gen. 449.)

AMENDMENTS

1990—Pub. L. 101–650 substituted ''under the Constitution'' for ''according to the best of my abilities and understanding, agreeably to the Constitution''.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–650 effective 90 days after Dec. 1, 1990, see section 407 of Pub. L. 101–650, set out as a note under section 332 of this title.

§ 454. Practice of law by justices and judges

Any justice or judge appointed under the authority of the United States who engages in the practice of law is guilty of a high misdemeanor.

(June 25, 1948, ch. 646, 62 Stat. 908.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 373 (Mar. 3, 1911, ch. 231, § 258, 36 Stat. 1161).

Changes in phraseology were made.

§ 455. Disqualification of justice, judge, or magistrate judge

(a) Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

(b) He shall also disqualify himself in the following circumstances:

(1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(2) Where in private practice he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;

(3) Where he has served in governmental employment and in such capacity participated as counsel, adviser or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy;

(4) He knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

(5) He or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person: