

## HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§5b and 128 (Mar. 3, 1911, ch. 231, §118b, as added Feb. 17, 1936, ch. 75, 49 Stat. 1140; May 14, 1940, ch. 189, title IV, 54 Stat. 210; June 28, 1941, ch. 258, title IV, 55 Stat. 301; July 2, 1942, ch. 472, title IV, 56 Stat. 504).

This section consolidates provisions of sections 5b and 128 of title 28, U.S.C., 1940 ed., relating to appointment of law clerks for district judges.

Words in section 128 of title 28, U.S.C., 1940 ed., “but there shall not be appointed more than thirty-five of such law clerks during the first fiscal year of the enactment of this section” were omitted as executed and obsolete. Words “Thereafter such number in excess of thirty-five per year shall be limited by necessity of each case as hereinabove provided” were also deleted as superseded by section 5b of said title and obsolete. The Director of the Administrative Office has expressed such views. Chief judge of the circuit was substituted for senior circuit judge to conform to section 44 of this title.

Provisions of section 128 of title 28, U.S.C., 1940 ed., relating to salary, or compensation of such clerks are incorporated in section 604 of this title. (See reviser’s note under that section.)

The provisions in section 5b of title 28, U.S.C., 1940 ed., that district judges shall not appoint more than three law clerks in any one circuit was not repeated in the Judiciary Appropriation Acts, 1944, 1945, and 1946, 57 Stat. 242, 58 Stat. 357, 59 Stat. 196, ch. 129. The Director of the Administrative Office for United States Courts advises that as a matter of fact, more than three law clerks are serving district judges in several of the circuits at the present time. Consequently the limitation is omitted from this section.

The provision for appointment of secretaries is new. Existing law fixes compensation of secretaries but makes no provision for their appointment. (See section 604 of this title and reviser’s note thereunder.)

Minor changes were made in phraseology.

## SENATE REVISION AMENDMENT

As finally enacted, sections 374c and 374d of Title 28, U.S.C., 1946 ed., which were derived from act July 23, 1947, ch. 300, §§1, 2, 61 Stat. 409, were an additional source of this section. Hence, by Senate amendment, the section was changed to conform with such sections, and such act was included in the schedule of repeals. See 80th Congress Senate Report No. 1559.

## AMENDMENTS

1988—Pub. L. 100-702 inserted at end “A law clerk appointed under this section shall be exempt from the provisions of subchapter I of chapter 63 of title 5, unless specifically included by the appointing judge or by local rule of court.”

1959—Pub. L. 86-221 substituted provision permitting district judges to appoint necessary law clerks and secretaries subject to aggregate salary limitations for provisions permitting a district judge to appoint a secretary and also a law clerk upon certification of necessity by the chief judge of the circuit and permitting the chief judge of a district court having five or more district judges to appoint an assistant secretary.

## § 753. Reporters

(a) Each district court of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands shall appoint one or more court reporters.

The number of reporters shall be determined by the Judicial Conference of the United States.

The qualifications of such reporters shall be determined by standards formulated by the Judicial Conference. Each reporter shall take an oath faithfully to perform the duties of his office.

Each such court, with the approval of the Director of the Administrative Office of the United States Courts, may appoint additional reporters for temporary service not exceeding three months, when there is more reporting work in the district than can be performed promptly by the authorized number of reporters and the urgency is so great as to render it impracticable to obtain the approval of the Judicial Conference.

If any such court and the Judicial Conference are of the opinion that it is in the public interest that the duties of reporter should be combined with those of any other employee of the court, the Judicial Conference may authorize such a combination and fix the salary for the performance of the duties combined.

(b) Each session of the court and every other proceeding designated by rule or order of the court or by one of the judges shall be recorded verbatim by shorthand, mechanical means, electronic sound recording, or any other method, subject to regulations promulgated by the Judicial Conference and subject to the discretion and approval of the judge. The regulations promulgated pursuant to the preceding sentence shall prescribe the types of electronic sound recording or other means which may be used. Proceedings to be recorded under this section include (1) all proceedings in criminal cases had in open court; (2) all proceedings in other cases had in open court unless the parties with the approval of the judge shall agree specifically to the contrary; and (3) such other proceedings as a judge of the court may direct or as may be required by rule or order of court as<sup>1</sup> may be requested by any party to the proceeding.

The reporter or other individual designated to produce the record shall attach his official certificate to the original shorthand notes or other original records so taken and promptly file them with the clerk who shall preserve them in the public records of the court for not less than ten years.

The reporter or other individual designated to produce the record shall transcribe and certify such parts of the record of proceedings as may be required by any rule or order of court, including all arraignments, pleas, and proceedings in connection with the imposition of sentence in criminal cases unless they have been recorded by electronic sound recording as provided in this subsection and the original records so taken have been certified by him and filed with the clerk as provided in this subsection. He shall also transcribe and certify such other parts of the record of proceedings as may be required by rule or order of court. Upon the request of any party to any proceeding which has been so recorded who has agreed to pay the fee therefor, or of a judge of the court, the reporter or other individual designated to produce the record shall promptly transcribe the original records of the requested parts of the proceedings and attach to the transcript his official certificate, and deliver the same to the party or judge making the request.

The reporter or other designated individual shall promptly deliver to the clerk for the records of the court a certified copy of any transcript so made.

<sup>1</sup> So in original. Probably should be “or as”.

The transcript in any case certified by the reporter or other individual designated to produce the record shall be deemed prima facie a correct statement of the testimony taken and proceedings had. No transcripts of the proceedings of the court shall be considered as official except those made from the records certified by the reporter or other individual designated to produce the record.

The original notes or other original records and the copy of the transcript in the office of the clerk shall be open during office hours to inspection by any person without charge.

(c) The reporters shall be subject to the supervision of the appointing court and the Judicial Conference in the performance of their duties, including dealings with parties requesting transcripts.

(d) The Judicial Conference shall prescribe records which shall be maintained and reports which shall be filed by the reporters. Such records shall be inspected and audited in the same manner as the records and accounts of clerks of the district courts, and may include records showing:

- (1) the quantity of transcripts prepared;
- (2) the fees charged and the fees collected for transcripts;
- (3) any expenses incurred by the reporters in connection with transcripts;
- (4) the amount of time the reporters are in attendance upon the courts for the purpose of recording proceedings; and
- (5) such other information as the Judicial Conference may require.

(e) Each reporter shall receive an annual salary to be fixed from time to time by the Judicial Conference of the United States. For the purposes of subchapter III of chapter 83 of title 5 and chapter 84 of such title, a reporter shall be considered a full-time employee during any pay period for which a reporter receives a salary at the annual salary rate fixed for a full-time reporter under the preceding sentence. All supplies shall be furnished by the reporter at his own expense.

(f) Each reporter may charge and collect fees for transcripts requested by the parties, including the United States, at rates prescribed by the court subject to the approval of the Judicial Conference. He shall not charge a fee for any copy of a transcript delivered to the clerk for the records of court. Fees for transcripts furnished in criminal proceedings to persons proceeding under the Criminal Justice Act (18 U.S.C. 3006A), or in habeas corpus proceedings to persons allowed to sue, defend, or appeal in forma pauperis, shall be paid by the United States out of moneys appropriated for those purposes. Fees for transcripts furnished in proceedings brought under section 2255 of this title to persons permitted to sue or appeal in forma pauperis shall be paid by the United States out of money appropriated for that purpose if the trial judge or a circuit judge certifies that the suit or appeal is not frivolous and that the transcript is needed to decide the issue presented by the suit or appeal. Fees for transcripts furnished in other proceedings to persons permitted to appeal in forma pauperis shall also be paid by the United States if the trial judge or a circuit judge cer-

tifies that the appeal is not frivolous (but presents a substantial question). The reporter may require any party requesting a transcript to prepay the estimated fee in advance except as to transcripts that are to be paid for by the United States.

(g) If, upon the advice of the chief judge of any district court within the circuit, the judicial council of any circuit determines that the number of court reporters provided such district court pursuant to subsection (a) of this section is insufficient to meet temporary demands and needs and that the services of additional court reporters for such district court should be provided the judges of such district court (including the senior judges thereof when such senior judges are performing substantial judicial services for such court) on a contract basis, rather than by appointment of court reporters as otherwise provided in this section, and such judicial council notifies the Director of the Administrative Office, in writing, of such determination, the Director of the Administrative Office is authorized to and shall contract, without regard to section 6101(b) to (d) of title 41, with any suitable person, firm, association, or corporation for the providing of court reporters to serve such district court under such terms and conditions as the Director of the Administrative Office finds, after consultation with the chief judge of the district court, will best serve the needs of such district court.

(June 25, 1948, ch. 646, 62 Stat. 921; Oct. 31, 1951, ch. 655, § 46, 65 Stat. 726; June 28, 1955, ch. 189, § 3(c), 69 Stat. 176; Pub. L. 85-462, § 3(c), June 20, 1958, 72 Stat. 207; Pub. L. 85-508, § 12(e), July 7, 1958, 72 Stat. 348; Pub. L. 86-568, title I, § 116(c), July 1, 1960, 74 Stat. 303; Pub. L. 89-163, Sept. 2, 1965, 79 Stat. 619; Pub. L. 89-167, Sept. 2, 1965, 79 Stat. 647; Pub. L. 91-272, § 14, June 2, 1970, 84 Stat. 298; Pub. L. 91-545, Dec. 11, 1970, 84 Stat. 1412; Pub. L. 97-164, title IV, § 401(a), Apr. 2, 1982, 96 Stat. 56; Pub. L. 104-317, title III, § 305, Oct. 19, 1996, 110 Stat. 3852; Pub. L. 111-350, § 5(g)(4), Jan. 4, 2011, 124 Stat. 3848.)

#### HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 9a(a), (b), (c), (d), and section 644 of title 48, U.S.C., 1940 ed., Territories and Insular Possessions (Apr. 30, 1900, ch. 339, § 86, 31 Stat. 158; Mar. 3, 1909, ch. 269, § 1, 35 Stat. 838; Mar. 3, 1911, ch. 231, § 5a, as added Jan. 20, 1944, ch. 3, § 1(a), (b), (c), (d), 58 Stat. 5, 6, 7; Mar. 4, 1921, ch. 161, § 1, 41 Stat. 1412; 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, 52 Stat. 1084; Feb. 12, 1925, ch. 220, 43 Stat. 890.)

Section consolidates section 9a(a), (b), (c), (d) of title 28, U.S.C., 1940 ed., and part of section 644 of title 48, U.S.C., 1940 ed., relating to reporters.

The provisions of section 644 of title 48, U.S.C., 1940 ed., Territories and Insular Possessions, relating to clerks and deputy clerks, were incorporated in section 751 of this title. The provision of said section 644 fixing the salary of the reporter at \$1,200 per annum was omitted as inconsistent with this section. Certain other provisions of said section 644 were also omitted. (See reviser's note under section 751 of this title.)

Words "including the District Court of the United States for the District of Columbia, and the district courts in the territories and insular possessions" were omitted as covered by "Each district court in the United States, the District Court for the Territory of Alaska, the United States District Court for the Dis-

trict of the Canal Zone, and the District Court of the Virgin Islands.” (See reviser’s note under section 88 of this title.) The courts in Hawaii and Puerto Rico are district courts of the United States under definitive section 451 of this title.

Words “for the performance of the duties combined” were substituted for “therefor, as provided by subsection (c) hereof, any provision of law to the contrary notwithstanding”.

Subsections (e) and (f) of this section incorporate part of the provisions of subsection 9a(c) of title 28, U.S.C., 1940 ed. The other provisions of said subsection are incorporated in sections 550 [see Prior Provisions note under that section] and 1915 of this title.

The last paragraph of subsection (b) of this section was revised to conform with the language of section 556 of title 28, U.S.C., 1940 ed., providing for inspection of books in the offices of clerks of district courts. Such section 556 will be omitted, however, as more properly coverable by rule of court.

#### REFERENCES IN TEXT

The Criminal Justice Act, referred to in subsec. (f), probably means Pub. L. 88-455, Aug. 20, 1964, 78 Stat. 552, known as the Criminal Justice Act of 1964, which is classified to section 3006A of Title 18, Crimes and Criminal Procedure, and provisions set out as notes under section 3006A of Title 18.

#### AMENDMENTS

2011—Subsec. (g). Pub. L. 111-350 substituted “section 6101(b) to (d) of title 41” for “section 3709 of the Revised Statutes of the United States, as amended (41 U.S.C. 5)”.

1996—Subsec. (e). Pub. L. 104-317 inserted “For the purposes of subchapter III of chapter 83 of title 5 and chapter 84 of such title, a reporter shall be considered a full-time employee during any pay period for which a reporter receives a salary at the annual salary rate fixed for a full-time reporter under the preceding sentence.” after first sentence.

1982—Subsec. (b). Pub. L. 97-164, amended subsec. (b) generally, substituting provisions permitting proceedings to be recorded using electronic sound recording, or any other method, subject to the approval and authorization of the Judicial Conference and of the presiding judge, for provisions requiring that an official court reporter attend each session of the court and every other proceeding designated by rule or order of the court or one of the judges.

1970—Subsec. (e). Pub. L. 91-272, §14(1), struck out provisions limiting to the \$3,000 to \$7,630 range the annual salary paid to reporters.

Subsec. (f). Pub. L. 91-545 restricted authorization of United States to pay fees for transcripts furnished in criminal proceedings to transcripts furnished to persons proceeding under the Criminal Justice Act.

Subsec. (g). Pub. L. 91-272, §14(2), added subsec. (g).

1965—Subsec. (b). Pub. L. 89-163 made provision for recording of proceedings in United States District Courts by means of electronic sound recording devices, made subject to the Judicial Conference the types of electronic sound recording means used by the reporters, made electronic sound recordings of proceedings on arraignment, plea, and sentence in a criminal case when properly certified by the court reporter admissible evidence to establish the record of that part of the proceedings, required the transcribing of arraignments in addition to the criminal proceedings already required to be transcribed, and waived the transcribing requirement for arraignments, pleas, and sentencing proceedings when such proceedings have been electronically recorded and such records certified and filed as provided in this subsection.

Subsec. (f). Pub. L. 89-167 provided for payment by United States of fees for transcripts furnished in proceedings brought under section 2255 of this title to persons permitted to sue or appeal in forma pauperis if trial judge or a circuit judge certifies that the suit or

appeal is not frivolous and that the transcript is needed to decide the issue presented by the suit or appeal.

1960—Subsec. (e). Pub. L. 86-568 increased maximum annual salary from \$7,095 to \$7,630.

1958—Subsec. (a). Pub. L. 85-508 struck out provisions which related to District Court for Territory of Alaska. See section 81A of this title which establishes a United States District Court for State of Alaska.

Subsec. (e). Pub. L. 85-462 increased maximum annual salary from \$6,450 to \$7,095.

1955—Subsec. (e). Act June 28, 1955, increased maximum annual salary from \$6,000 to \$6,450.

1951—Subsec. (a). Act Oct. 31, 1951, inserted reference to District Court of Guam in first par.

#### 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 1960 AMENDMENT

Amendment by Pub. L. 86-568 effective on the first day of the first pay period which begins on or after July 1, 1960, see section 122 of Pub. L. 86-568.

#### EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85-508 effective Jan. 3, 1959, on admission of Alaska into the Union pursuant to Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub. L. 85-508, see Pub. L. 85-508, set out as a note preceding section 21 of Title 48, Territories and Insular Possessions.

#### SAVINGS PROVISION

Section 401(b) of Pub. L. 97-164 provided that: “The regulations promulgated by the Judicial Conference pursuant to subsection (b) of section 753 of title 28, as amended by subsection (a) of this section, shall not take effect before one year after the effective date of this Act [Oct. 1, 1982]. During the one-year period after the date of the enactment of this Act [Apr. 2, 1982], the Judicial Conference shall experiment with the different methods of recording court proceedings. Prior to the effective date of such regulations, the law and regulations in effect the day before the date of enactment of this Act shall remain in full force and effect.”

#### TERMINATION OF UNITED STATES DISTRICT COURT FOR THE DISTRICT OF THE CANAL ZONE

For termination of the United States District Court for the District of the Canal Zone at end of the “transition period”, being the 30-month period beginning Oct. 1, 1979, and ending midnight Mar. 31, 1982, see Paragraph 5 of Article XI of the Panama Canal Treaty of 1977 and sections 2101 and 2201 to 2203 of Pub. L. 96-70, title II, Sept. 27, 1979, 93 Stat. 493, formerly classified to sections 3831 and 3841 to 3843, respectively, of Title 22, Foreign Relations and Intercourse.

#### SALARY LIMITATION FOR COURT REPORTERS

1967—Pub. L. 90-206, title II, §213(c), Dec. 16, 1967, 81 Stat. 635, inserted a new salary limitation for court reporters effective the first pay period which begins on or after Oct. 1, 1967, which reflected the respective applicable pay increases provided by section 202(a) of Pub. L. 90-206 in corresponding rates of compensation for particular officers and employees of the government.

1966—Pub. L. 89-504, title II, §202(c), July 18, 1966, 80 Stat. 294, inserted a new salary limitation for court reporters effective the first pay period which begins on or after July 1, 1966, which reflected the respective applicable pay increases provided by section 102(a) of title I of Pub. L. 89-504 in corresponding rates of compensation for particular officers and employees of the government.

1965—Pub. L. 89-301, §12(c), Oct. 29, 1965, 79 Stat. 1122, inserted a new salary limitation for court reporters which reflected the applicable pay increases provided

by section 2(a) of Pub. L. 89-301 in corresponding rates of compensation for particular government officers and employees.

1964—Pub. L. 88-426, title IV, §402(c), Aug. 14, 1964, 78 Stat. 434, inserted a new salary limitation for court reporters which reflected the applicable pay increases provided by title I of Pub. L. 88-426 in corresponding rates of compensation for particular government officers and employees.

1962—Pub. L. 87-793, title VI, §1004(c), Oct. 11, 1962, 76 Stat. 866, inserted a new salary limitation for court reporters effective for the pay period beginning on or after Oct. 11, 1962, and ending immediately prior to the first pay period beginning on or after Jan. 1, 1964, and provided for a second salary limitation effective for the first pay period beginning on or after Jan. 1, 1964, which reflected applicable pay increases provided by title II of Pub. L. 87-793 in corresponding rates of compensation for particular government officers and employees.

#### § 754. Receivers of property in different districts

A receiver appointed in any civil action or proceeding involving property, real, personal or mixed, situated in different districts shall, upon giving bond as required by the court, be vested with complete jurisdiction and control of all such property with the right to take possession thereof.

He shall have capacity to sue in any district without ancillary appointment, and may be sued with respect thereto as provided in section 959 of this title.

Such receiver shall, within ten days after the entry of his order of appointment, file copies of the complaint and such order of appointment in the district court for each district in which property is located. The failure to file such copies in any district shall divest the receiver of jurisdiction and control over all such property in that district.

(June 25, 1948, ch. 646, 62 Stat. 922.)

##### HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §117 (Mar. 3, 1911, ch. 231, §56, 36 Stat. 1102).

Word "action" was substituted for "suit", in view of Rule 2 of the Federal Rules of Civil Procedure.

Section 117 of title 28, U.S.C., 1940 ed., applied to land or other property of a fixed character lying in different States within the same circuit. Words "property, real, personal or mixed, situated in different districts", were inserted to broaden the scope of this section to cover all property in different districts without respect to situs "within different states within same judicial circuit".

The revised section permits the receiver appointed by any district court to control all property of the defendant in whatever district the property is situated. The provisions of section 117 of title 28, U.S.C., 1940 ed., for divesting the receiver's jurisdiction and control of property in other districts upon disapproval by the circuit court of appeals or a judge thereof of the circuit embracing the district of appointment was omitted as unnecessary in view of sections 1292 and 2107 of this title. Said section 1292 provides for review of the order of appointment and the directions of the reviewing court will control the receiver.

Provisions of section 117 of title 28, U.S.C., 1940 ed., relating to process are the basis of section 1692 of this title.

Under section 117 of title 28, U.S.C., 1940 ed., failure to file copies of the complaint and order of appointment in any district where part of the property was located divested the receiver of jurisdiction over all the property except that part located in the State where the suit was brought. This has been changed by limit-

ing the exception to the district where the copies are not filed. Obviously the election of the receiver not to take control of property in one district ought not to preclude his control in those districts in which he did file such copies.

Changes were made in phraseology.

#### § 755. Criers and bailiffs

Each district judge may appoint a crier for the court in which he presides who shall perform also the duties of bailiff and messenger. A crier may perform also the duties of law clerk if he is qualified to do so and the district judge who appointed him designates him to serve as a crier-law clerk. A crier designated to serve as a crier-law clerk shall receive the compensation of a law clerk, but only so much of that compensation as is in excess of the compensation to which he would be entitled as a crier shall be deemed the compensation of a law clerk for the purposes of any limitation imposed by law upon the aggregate salaries of law clerks and secretaries appointed by a district judge.

Each United States marshal may employ, with the approval of the judge, not exceeding four bailiffs as the district judge may determine, to attend the court, maintain order, wait upon the grand and petit juries, and perform such other necessary duties as the judge or marshal may direct.

If the position of crier or bailiff is to be filled by the appointment of a person who has not previously served as either crier or bailiff, preference in the appointment shall be given to a person who has served in the military or naval forces of the United States in time of war and who has been honorably discharged therefrom, if in the opinion of the appointing officer such person is as well qualified as any other available person to perform to the satisfaction of the appointing officer all the duties of the position.

(June 25, 1948, ch. 646, 62 Stat. 923; Pub. L. 89-281, Oct. 21, 1965, 79 Stat. 1012; Pub. L. 100-690, title VII, §7608(b), Nov. 18, 1988, 102 Stat. 4515.)

##### HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§9, 595, 596 (R.S. §715; Mar. 3, 1905, ch. 1487, 33 Stat. 1259; Mar. 3, 1911, ch. 231, §5, 36 Stat. 1088; June 1, 1922, ch. 204, title II, 42 Stat. 617; Jan. 3, 1923, ch. 21, title II, 42 Stat. 1084; May 28, 1924, ch. 204, title II, 43 Stat. 221; May 14, 1940, ch. 189, title III, 54 Stat. 204; June 28, 1941, ch. 258, title III, 55 Stat. 295; July 2, 1942, ch. 472, title III, 56 Stat. 486; July 1, 1943, ch. 182, title II, 57 Stat. 286; June 28, 1944, ch. 294, title II, 58 Stat. 410; Dec. 7, 1944, ch. 522, §§1, 2, 58 Stat. 796; May 21, 1945, ch. 129, title II, 59 Stat. 184).

Section consolidates parts of sections 9, 595, and 596 of title 28, U.S.C., 1940 ed. The other provisions of such sections appear in section 604 of this title.

Compensation of criers and other court attendants, except bailiffs under section 604 of this title, will be fixed by the Director of the Administrative Office of the United States Courts.

##### AMENDMENTS

1988—Pub. L. 100-690 struck out third par. which provided each bailiff an allowance of \$6 a day for services to be paid only for actual attendance when court was in session or judge or jury was present.

1965—Pub. L. 89-281 inserted provisions to first par. permitting a crier to perform duties of law clerk if he is qualified to do so and district judge who appointed him designates him to serve as a crier-law clerk, specifying that a crier-law clerk shall receive compensation