TITLE 28—JUDICIARY AND JUDICIAL PROCEDURE

This title was enacted by act June 25, 1948, ch. 646, §1, 62 Stat. 869

<table>
<thead>
<tr>
<th>Part</th>
<th>Sec.</th>
</tr>
</thead>
<tbody>
<tr>
<td>I.</td>
<td>1–89</td>
</tr>
<tr>
<td>II.</td>
<td>501–501</td>
</tr>
<tr>
<td>III.</td>
<td>601–801</td>
</tr>
<tr>
<td>IV.</td>
<td>1251–1251</td>
</tr>
<tr>
<td>V.</td>
<td>1651–1651</td>
</tr>
<tr>
<td>VI.</td>
<td>2201–2201</td>
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</table>

AMENDMENTS

1966—Pub. L. 89–554, §4(a), Sept. 6, 1966, 80 Stat. 611, substituted "Department of Justice" for "United States Attorneys and Marshals" in item for part II.

TABLE SHOWING DISPOSITION OF ALL SECTIONS OF FORMER TITLE 28

<table>
<thead>
<tr>
<th>Title 28 Former Sections</th>
<th>Title 28 New Sections</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-89</td>
<td>133-134</td>
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<td>T. 15 §1496a</td>
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<td>1346, 2041, 2402</td>
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Page 1
<table>
<thead>
<tr>
<th>Title 28 Former Sections</th>
<th>Title 28 New Sections</th>
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<td>149a, 149b</td>
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<td>154, 155</td>
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<td>156, 156a</td>
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<td>181</td>
<td>115, 1865</td>
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<td>182</td>
<td>116, 138</td>
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<td>116</td>
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<td>117</td>
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<tr>
<td>211a</td>
<td>Rep.</td>
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<tr>
<td>212</td>
<td>43, 46</td>
</tr>
<tr>
<td>213</td>
<td>Rep.</td>
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<tr>
<td>213a, 213b</td>
<td>Elim.</td>
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<td>Rep.</td>
</tr>
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<td>215</td>
<td>Rep.</td>
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<tr>
<td>216</td>
<td>45, 47, 292</td>
</tr>
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<td>216a</td>
<td>45</td>
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<tr>
<td>217</td>
<td>Rep.</td>
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<tr>
<td>218</td>
<td>231, 456</td>
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<tr>
<td>218a</td>
<td>231</td>
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<td>2071</td>
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<td>547</td>
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<td>221</td>
<td>711, 956</td>
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<td>222</td>
<td>711, 954</td>
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<td>Rep.</td>
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<td>225(e), (f)</td>
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<td>226</td>
<td>Rep.</td>
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<td>227</td>
<td>1282</td>
</tr>
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<td>227a</td>
<td>1292, 2107</td>
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<tr>
<td>229</td>
<td>Rep.</td>
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<tr>
<td>230</td>
<td>2107</td>
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<tr>
<td>231</td>
<td>2075</td>
</tr>
<tr>
<td>241</td>
<td>171, 173, 453</td>
</tr>
<tr>
<td>242</td>
<td>Rep.</td>
</tr>
<tr>
<td>Former Sections</td>
<td>New Sections</td>
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<tr>
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</tr>
<tr>
<td>331</td>
<td>672</td>
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<td>Rep.</td>
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<td>1257, 1260, 1286</td>
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<td>345</td>
<td>Rep.</td>
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<td>346, 347</td>
<td>1254</td>
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<td>348, 349</td>
<td>Rep.</td>
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<td>349</td>
<td>1252, 1261</td>
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<td>350</td>
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<td>358</td>
<td>1259</td>
</tr>
<tr>
<td>359, 360</td>
<td>Rep.</td>
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<td>362</td>
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**Table Showing Disposition of All Sections of Former Title 28—Continued**
Table Showing Disposition of All Sections of
Former Title 28—Continued

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<td>Rep.</td>
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<td>Rep.</td>
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<td>553, 1921</td>
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<td>Rep.</td>
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<td>551, 1929</td>
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<td>559, 550</td>
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<td>598-599a</td>
<td>1873</td>
</tr>
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<td>600-600a-t</td>
<td>1821-1825</td>
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<tr>
<td>600c</td>
<td>Rep.</td>
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<td>600d</td>
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<td>602</td>
<td>Rep.</td>
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<td>603-604a-t</td>
<td>T. 18 §§ 123</td>
</tr>
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<td>605</td>
<td>(See Rev. T. 44 Table)</td>
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<td>Rep.</td>
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<td>T. 18 § 120</td>
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<td>Rep.</td>
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<td>642</td>
<td>Rep.</td>
</tr>
<tr>
<td>643, 644</td>
<td>Rep.</td>
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<td>645</td>
<td>Rep.</td>
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<td>646</td>
<td>Rep.</td>
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<td>Rep.</td>
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<td>661-667</td>
<td>Rep.</td>
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<td>668</td>
<td>Rep.</td>
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<td>Rep.</td>
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<td>Rep.</td>
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<td>Rep.</td>
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<td>Rep.</td>
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<td>Rep.</td>
</tr>
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<td>676</td>
<td>Rep.</td>
</tr>
</tbody>
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Table Showing Disposition of All Sections of Former Title 28—Continued

<table>
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<tr>
<th>Former Sections</th>
<th>New Sections</th>
</tr>
</thead>
<tbody>
<tr>
<td>790</td>
<td>Rep. See Civ. Proc. R. 75; Adm. R. 49.2</td>
</tr>
<tr>
<td>791</td>
<td>2406</td>
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<td>792</td>
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<td>811</td>
<td>1961</td>
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<td>Rep.</td>
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<tr>
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<td>819</td>
<td>Rep.</td>
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<td>Rep.</td>
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<td>1928</td>
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<td>1918</td>
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<td>823</td>
<td>Rep.</td>
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<td>825</td>
<td>Rep.</td>
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<td>2465</td>
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<td>831</td>
<td>1924</td>
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<td>832-836</td>
<td>Rep.</td>
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<td>1916</td>
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<td>2411</td>
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<td>842</td>
<td>2006</td>
</tr>
<tr>
<td>843-845</td>
<td>Rep.</td>
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<td>853</td>
<td>Rep.</td>
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<td>855</td>
<td>Rep. See Civ. Proc. R. 75; Adm. R. 49.2</td>
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<td>856-857</td>
<td>Rep.</td>
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<td>Rep.</td>
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<td>2406</td>
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<td>862</td>
<td>Rep.</td>
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<tr>
<td>865-867</td>
<td>Rep.</td>
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<td>2106</td>
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<td>872</td>
<td>2103</td>
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<td>875</td>
<td>2106</td>
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<td>2073</td>
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<td>2073</td>
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Court of Claims Rules were replaced by U.S. Claims Court Rules effective Oct. 1, 1982, and subsequently by United States Court of Federal Claims Rules effective Dec. 4, 1992.
private provisions of title 28, as set out in section 1 of this Act, pursuant to his prior appointment. Provided, however, That each circuit court of appeals shall, as in said title 28 set out, hereafter be known as a United States court of appeals. No loss of rights, interruption of jurisdiction, or prejudice to matters pending in any of such courts on the effective date of this Act shall result from its enactment.

PART I—ORGANIZATION OF COURTS

<table>
<thead>
<tr>
<th>Chap.</th>
<th>Sec.</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>1</td>
<td>Supreme Court</td>
</tr>
<tr>
<td>3</td>
<td>41</td>
<td>Courts of appeals</td>
</tr>
<tr>
<td>5</td>
<td>81</td>
<td>District courts</td>
</tr>
<tr>
<td>6</td>
<td>151</td>
<td>Bankruptcy judges</td>
</tr>
<tr>
<td>7</td>
<td>171</td>
<td>United States Court of Federal Claims</td>
</tr>
<tr>
<td>9</td>
<td>Repealed.</td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>251</td>
<td>Court of International Trade</td>
</tr>
<tr>
<td>13</td>
<td>291</td>
<td>Assignment of judges to other courts</td>
</tr>
<tr>
<td>15</td>
<td>331</td>
<td>Conferences and councils of judges</td>
</tr>
<tr>
<td>16</td>
<td>351</td>
<td>Complaints against judges and judicial discipline</td>
</tr>
<tr>
<td>17</td>
<td></td>
<td>Resignation and retirement of judges</td>
</tr>
<tr>
<td>19</td>
<td>371</td>
<td>Distribution of reports and digests</td>
</tr>
<tr>
<td>21</td>
<td>411</td>
<td>General provisions applicable to courts and judges</td>
</tr>
<tr>
<td>23</td>
<td>451</td>
<td>Civil justice expense and delay reduction plans</td>
</tr>
</tbody>
</table>

AMENDMENTS


CHAPTER I—SUPREME COURT

1. Number of justices: quorum.

1 Chapter heading amended by Pub. L. 92–397 without corresponding amendment of analysis.

§ 1. Number of justices; quorum

The Supreme Court of the United States shall consist of a Chief Justice of the United States and eight associate justices, any six of whom shall constitute a quorum.

(June 25, 1948, ch. 646, 62 Stat. 869.)

HISTORICAL AND REVISION NOTES


Appointment of “Judges of the Supreme Court” by the President by and with the advice and consent of the Senate is provided by U.S. Constitution art. 2, § 2, cl. 2.

SHORT TITLE OF 2011 AMENDMENT

Pub. L. 112–63, § 1(a), Dec. 7, 2011, 125 Stat. 758, provided that: “This Act [enacting sections 1390 and 1455 of this title, amending sections 1391, 1394, 1441, 1446, and 1453 of this title, repealing section 1392 of this title, and enacting provisions set out as notes under sections 1332 and 1390 of this title] may be cited as the ‘Federal Courts Jurisdiction and Venue Clarification Act of 2011’.”

Pub. L. 112–62, § 1, Nov. 29, 2011, 125 Stat. 756, provided that: “This Act [amending section 2107 of this title and enacting provisions set out as notes under section 2107 of this title] may be cited as the ‘Appeal Time Clarification Act of 2011’.”

Pub. L. 112–51, § 1, Nov. 9, 2011, 125 Stat. 549, provided that: “This Act [enacting sections 1442, 1446, and 1447 of this title] may be cited as the ‘Removal Clarification Act of 2011’.”


SHORT TITLE OF 2010 AMENDMENT


Pub. L. 111–223, § 1, Aug. 10, 2010, 124 Stat. 2380, provided that: “This Act [enacting chapter 181 of this title and enacting provisions set out as notes under section 401 of this title] may be cited as the ‘Securing the Protection of Our Enduring and Established Constitutional Heritage Act’ or the ‘SPEECH Act’.”

SHORT TITLE OF 2009 AMENDMENT

Pub. L. 111–122, § 1, Dec. 22, 2009, 123 Stat. 3480, provided that: “This Act [amending section 509B of this title, amending sections 1103 and 1182 of Title 8, Aliens and Nationality, and sections 1991 and 2339A of Title 18, Crimes and Criminal Procedure, and enacting provisions set out as notes under section 1182 of Title 8] may be cited as the ‘Human Rights Enforcement Act of 2009’.”

SHORT TITLE OF 2008 AMENDMENT


2. Terms of court.
4. Precedence of associate justices.
5. Salaries of justices.

**Short Title of 2007 Amendments**


**Short Title of 2005 Amendments**


Pub. L. 108–446, §4, title XII, §1223(a), Apr. 20, 2005, 119 Stat. 196, provided that: “This section [amending section 152 of this title and enacting provisions set out as notes under section 152 of this title] may be cited as the ‘Bankruptcy Judgeship Act of 2005’.”

Pub. L. 109–2, §1(a), Feb. 18, 2005, 119 Stat. 4, provided that: “This Act [enacting chapter 114 and section 1453 of this title, amending sections 1332, 1335, and 1603 of this title, and enacting provisions set out as notes under sections 1332, 1711, 2071, and 2074 of this title] may be cited as the ‘Class Action Fairness Act of 2005’.”

**Short Title of 2004 Amendments**


**Short Title of 1999 Amendments**


**Short Title of 1998 Amendments**


**Short Title of 2000 Amendments**


**Short Title of 1996 Amendments**


**Short Title of 1997 Amendments**


**Short Title of 1994 Amendments**


**Short Title of 1992 Amendments**


Pub. L. 101–650, title III, §301, Dec. 1, 1990, 104 Stat. 5104, provided that: “This title [enacting sections 178, 1367, and 1658 of this title and section 4400a of Title 5, Government Organization and Employees, amending sections 108, 112, 122, 131, 152, 158, 332, 333, 375, 376, 377, 601, 602, 604, 631, 636, 995, 996, 1334, 1391, 1411, 1452, 1499, 1665, 1610, 1821, 1871, and 2072 of this title, sections 8331, 8334, 8336, 8339, and 8402 of Title 5, provisions set out in the Appendix to Title 9, and section 385 of Title 11, Bankruptcy, renumbering section 15 of Title 9, Arbitration, as section 16 of Title 9, enacting provisions set out as a note under this title] may be cited as the ‘Bankruptcy Judgeship Act of 1992’.”
as notes under sections 176 and 191 of this title, section 8031 of Title 19, Customs Duties, and sections 446 to 450 of this title, section 606 of Title 26, Internal Revenue, and section 7701 of Title 20,首发, may be cited as the 'Technical Amendments to the Code of Federal Regulations Act of 1979'.

Pub. L. 96-452, § 1, Oct. 15, 1980, 94 Stat. 2035, provided that: "That this Act [amending sections 49, 51, and 592 to 596 of this title and amending provisions set out as notes under section 591 of this title] may be cited as the 'Ethics in Government Act of 1980'."

SHORT TITLE OF 1982 AMENDMENTS

Pub. L. 96-462, § 1, Oct. 15, 1980, 94 Stat. 2053, provided that: "This Act [amending sections 84, 95, 100, 113, and 124 of this title and enacting provisions set out as notes under sections 84, 95, 105, and 113 of this title] may be cited as the 'Federal District Court Organization Act of 1980'."

SHORT TITLE OF 1986 AMENDMENTS

Pub. L. 96-486, § 1, Dec. 1, 1980, 94 Stat. 2369, provided that: "This Act [amending sections 84 to 113 of this title] may be cited as the 'Federal District Court Organization Act of 1980'."

Pub. L. 96-458, § 1, Oct. 15, 1980, 94 Stat. 2035, provided that: "This Act [amending sections 331, 332, 372, and 404 of this title and amending provisions set out as notes under section 331 of this title] may be cited as the 'Federal District Court Organization Act of 1979'."
first Monday in October of each year and may hold such adjourned or special terms as may be necessary.

(June 25, 1948, ch. 646, 62 Stat. 869.)

**Historical and Revision Notes**


Minor changes in phraseology were made.

§ 3. Vacancy in office of Chief Justice; disability

Whenever the Chief Justice is unable to perform the duties of his office or the office is vacant, his powers and duties shall devolve upon the associate justice next in precedence who is able to act, until such disability is removed or another Chief Justice is appointed and duly qualified.

(June 25, 1948, ch. 646, 62 Stat. 869.)

**Historical and Revision Notes**


The sentence, “This provision shall apply to every Associate Justice who succeeds to the office of Chief Justice”, was omitted as covered by last portion of revised section.

Minor changes were made in phraseology.

For seniority of commissions, see section 4 of this title.

§ 4. Precedence of associate justices

Associate justices shall have precedence according to the seniority of their commissions. Justices whose commissions bear the same date shall have precedence according to seniority in age.

(June 25, 1948, ch. 646, 62 Stat. 869.)

**Historical and Revision Notes**


Minor changes in phraseology were made.

§ 5. Salaries of justices

The Chief Justice and each associate justice shall each receive a salary at annual rates 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.


**Historical and Revision Notes**


Minor changes in phraseology were made.

**References in Text**


**Amendments**

1975—Pub. L. 94-82 substituted provisions setting the annual salary of the Chief Justice and each associate...
justice at rates determined under section 225 of the Federal Salary Act of 1967, as adjusted by section 461 of this title, for provisions granting the Chief Justice and each associate justice a salary of $40,000 and $39,500 a year, respectively.

1964—Pub. L. 88–426 increased salary of Chief Justice from $35,500 to $40,000 and that of Associate Justices from $35,000 to $39,500.

1955—Act Mar. 2, 1955, increased salary of Chief Justice from $25,500 to $35,500 and salaries of Associate Justices from $25,000 to $35,000 a year.

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

**Effective Date of 1955 Amendment**

**Salary Increases**

For adjustment of salaries of Chief Justice and Associate Justices under this section, see Prior Salary Recommendations notes under section 358 of Title 2, The Congress. 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 Justice increased from $20,500 to $25,000 a year, and salaries of associate justices increased from $14,500 to $20,000 a year, by act July 31, 1926, ch. 6, § 1, 44 Stat. 919.

Salary of Chief Justice increased from $15,000 to $20,500 a year, and salaries of associate justices increased from $10,500 to $14,500 a year, by act July 31, 1914, ch. 728, § 1, 38 Stat. 650.

Salary of Chief Justice set at $15,000 a year and salaries of associate justices set at $14,500 a year by Judicial Code of 1911, act Mar. 3, 1911, ch. 231, § 1, 36 Stat. 1152.

**§ 6. Records of former court of appeals**

The records and proceedings of the court of appeals, appointed previous to the adoption of the Constitution, shall be kept until deposited with the National Archives of the United States in the office of the clerk of the Supreme Court, who shall furnish copies thereof to any person requiring and paying for them, in the manner provided by law for giving copies of the records and proceedings of the Supreme Court. Such copies shall have the same faith and credit as proceedings of the Supreme Court.


**Historical and Revision Notes**

Based on title 28, U.S.C. 1940 ed., § 329 (Mar. 3, 1911, ch. 231, § 222, 36 Stat. 1153). In a letter dated August 8, 1944, the clerk of the Supreme Court advised that many of the early records mentioned in this section were destroyed by fire. Others are on file in the Clerk’s office. Minor changes in phraseology were made.

**Amendments**

1951—Act Oct. 25, 1951, inserted “until deposited with the National Archives of the United States” in first sentence.
Form of section was simplified. The District of Columbia was added as a separate circuit. This is in accord with the decision of the Supreme Court of the United States which held the Court of Appeals for the District of Columbia to be a circuit court of appeals within the Transfer Act of Sept. 14, 1922, ch. 305, 42 Stat. 837, incorporated in the Judicial Code as §238(a), but repealed by act Feb. 13, 1925, ch. 229, §13, 43 Stat. 942. (See Sutliff and Co. v. U.S., 1928, 288 F. 1171, 28 U.S. L.Ed. 587.)

In recognizing the District of Columbia as a separate circuit, the Supreme Court recently used this language: "... the eleven circuits forming the single federal judiciary * * * (Community v. Bedford's Estate, 65 S.Ct. 1157, at page 1160, 325 U.S. 283, 89 L.Ed. 611."

See section 17 of title 28, U.S.C., 1940 ed., providing: "For the purposes of sections 17–23 of this title, the District of Columbia shall be deemed to be a judicial circuit * * *", and act Dec. 23, 1944, ch. 742, 58 Stat. 925, which amended section 215 of title 28, U.S.C., 1940 ed., incorporated in section 42 of this title. Such amendment provided that for the purposes of said section 215 "the District of Columbia shall be deemed to be a judicial circuit."


Alaska, Canal Zone, and Virgin Islands were added to the 2nd, 5th, and 3rd Circuits, respectively, to conform to section 1294 of this title.

Some of the provisions of section 864 of title 48, U.S.C., 1940 ed., have been retained in said title. For those which were incorporated in other sections of this revised title, see Distribution Table.

**AMENDMENTS**

1982—Pub. L. 97–164 increased number of judicial circuits from twelve to thirteen through addition of Federal circuit composed of all Federal judicial districts.

1980—Pub. L. 96–452 substituted "twelve" for "eleven" in text preceding table, substituted "District of the Canal Zone" for "Alabama, Canal Zone, Florida, Georgia" in item relating to fifth circuit, and added new item relating to eleventh circuit.

1951—Act Oct. 31, 1951, inserted reference to Guam in that part relating to composition of Ninth judicial circuit.

**EFFECTIVE DATE OF 1982 AMENDMENT**


**EFFECTIVE DATE OF 1980 AMENDMENT**

Section 12 of Pub. L. 96–452 provided that: "This Act and the amendments made by this Act [amending this section and sections 44 and 48 of this title, and enacting provisions set out as notes under this section] shall take effect on October 1, 1981."

**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 the end of the "transition period": being the 36-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 2201 and 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.

**COMMISSION ON STRUCTURAL ALTERNATIVES FOR THE FEDERAL COURTS OF APPEALS**

Pub. L. 105–119, title III, §305, Nov. 26, 1997, 111 Stat. 2491, established Commission on Structural Alternatives for the Federal Courts of Appeals, directed Commission to study division of United States into judicial circuits, study structure and alignment of Federal Court of Appeals system, and report to President and Congress its recommendations of changes deemed to expeditiously and effectively dispose of caseload of Federal Courts of Appeals, consistent with fundamental concepts of fairness and due process, provided for Commission’s membership and compensation of members and staff, authorized appropriations, and provided for termination of Commission 90 days after submission of its report.

**ASSIGNMENT OF JUDGES AND PROCEDURE FOR ADMINISTRATION OF PENDING CASES WITH REGARD TO REORGANIZATION OF THE FIFTH CIRCUIT COURT OF APPEALS**

Sections 5 to 10 of Pub. L. 96–452 provided that:

"SEC. 5. Each circuit judge in regular active service of the former fifth circuit whose official station on the day before the effective date of this Act [Oct. 1, 1981]—

(1) is in Louisiana, Mississippi, or Texas is assigned as a circuit judge of the new fifth circuit; and

(2) is in Alabama, Florida, or Georgia is assigned as a circuit judge of the eleventh circuit.

SEC. 6. Each judge who is a senior judge of the former fifth circuit on the day before the effective date of this Act [Oct. 1, 1981] may elect to be assigned to the new fifth circuit or to the eleventh circuit and shall notify the Director of the Administrative Office of the United States Courts of such election.

SEC. 7. The seniority of each judge...

(1) who is assigned under section 5 of this Act; or

(2) who elects to be assigned under section 6 of this Act;

shall run from the date of commission of such judge as a judge of the former fifth circuit.

SEC. 8. The eleventh circuit is authorized to hold terms or sessions of court at New Orleans, Louisiana, until such time as adequate facilities for such court are provided in Atlanta, Georgia.

SEC. 9. The provisions of the following paragraphs of this section apply to any case in which, on the day before the effective date of this Act [Oct. 1, 1981], an appeal or other proceeding has been filed with the former fifth circuit:

(1) If the matter has been submitted for decision, further proceedings in respect of the matter shall be had in the same manner and with the same effect as if this Act [amending sections 41, 44, and 48 of this title, and enacting provisions set out as notes under this section] had not been enacted.

(2) If the matter has not been submitted for decision, the appeal or proceeding, together with the original papers, printed records, and record entries duly certified, shall, by appropriate orders, be transferred to the court to which it would have gone had this Act been in full force and effect at the time such appeal was taken or other proceeding commenced.
§ 42

and further proceedings in respect of the case shall be had in the same manner and with the same effect as if the appeal or other proceeding had been filed in such court.

"(3) A petition for rehearing or a petition for rehearing en banc in a matter decided before the effective date of this Act [Oct. 1, 1981], or submitted before the effective date of this Act and decided on or after the effective date as provided in paragraph (1) of this section, shall be treated in the same manner and with the same effect as though this Act had not been enacted. If a petition for rehearing en banc is granted, the matter shall be reheard by a court comprised as though this Act had not been enacted.

SEC. 10. As used in sections 5, 6, 7, 8, and 9 of this Act, the term—

"(1) ‘former fifth circuit’ means the fifth judicial circuit of the United States as in existence on the day before the effective date of this Act [Oct. 1, 1981];

"(2) the term ‘new fifth circuit’ means the fifth judicial circuit of the United States established by the amendment made by section 2(2) of this Act [amending item relating to the fifth circuit in this section]; and

"(3) the term ‘eleventh circuit’ means the eleventh judicial circuit of the United States established by the amendment made by section 2(3) of this Act [amending item relating to the eleventh circuit in this section]."

ADMINISTRATIVE ACTION BY FIFTH CIRCUIT COURT OF APPEALS; TERMINATION OF COURT

Section 11 of Pub. L. 96–452 provided that: “The court of appeals for the fifth circuit, as constituted on the day before the effective date of this Act [Oct. 1, 1981] may take such administrative action as may be required to carry out this Act [amending sections 41, 44, and 48 of this title, and enacting provisions set out as notes under this section]. Such court shall cease to exist for administrative purposes on July 1, 1984.”

APPEALS COURT ADMINISTRATIVE UNITS

Pub. L. 95–486, § 6, Oct. 20, 1978, 92 Stat. 1633, provided that: “Any court of appeals having more than 15 active judges may constitute itself into administrative units complete with such facilities and staff as may be prescribed by the Administrative Office of the United States Courts, and may perform its en banc function by such number of members of its en banc courts as may be prescribed by rule of the court of appeals.”

NORTHERN MARIANA ISLANDS

Pub. L. 98–157, § 1(a), Nov. 8, 1977, 91 Stat. 1265, provided that: “Any court of appeals having more than 15 active judges may constitute itself into administrative units complete with such facilities and staff as may be prescribed by the Administrative Office of the United States Courts, and may perform its en banc function by such number of members of its en banc courts as may be prescribed by rule of the court of appeals.”

COMMISSION ON REVISION OF THE FEDERAL APPellate SYSTEM

Pub. L. 92–489, Oct. 13, 1972, 86 Stat. 807, as amended by Pub. L. 93–420, Sept. 19, 1974, 88 Stat. 1153, provided for the establishment, membership, travel expenses, personnel, experts and consultants, administrative and research services, cooperation of other governmental agencies, and appropriations of not to exceed $685,000 of a Commission on Revision of the Federal Court Appellate System which Commission was to study the geographical division of the judicial circuits and the structure and internal procedure of the appellate system and to report to the President, Congress, and the Chief Justice its recommendations for changes in the geographical boundaries of the circuits to expedite disposition of judicial business and for changes in the appellate court structure to expedite disposition of the appellate courts caseload in a manner consistent with fundamental concepts of fairness and due process. The Commission was to cease existence ninety days after submission of its final report, which report was submitted June 20, 1975.

CONTINUATION OF ORGANIZATION OF COURT

Section 2(b) of act June 25, 1948, ch. 646, 62 Stat. 985, provided in part that the provisions of this title as set out in section 1 of act June 25, 1948, with respect to the organization of each of the several courts therein provided, shall be construed as continuations of existing law, and the tenure of the judges, officers, and employees thereof and of the United States attorneys and marshals and their deputies and assistants, in office on Sept. 1, 1948, shall not be affected by its enactment, but each of them shall continue to serve in the same capacity under the appropriate provisions of this title, pursuant to his prior appointment.

§ 42. Allotment of Supreme Court justices to circuits

The Chief Justice of the United States and the associate justices of the Supreme Court shall from time to time be allotted as circuit justices among the circuits by order of the Supreme Court. The Chief Justice may make such allotments in vacation.

A justice may be assigned to more than one circuit, and two or more justices may be assigned to the same circuit.

(June 25, 1948, ch. 646, 62 Stat. 870.)

HISTORICAL AND REVISION NOTES


The authority of the Chief Justice in vacation to assign a circuit justice to more than one circuit was extended by omitting the phrase “whenever by reason of death or resignation, no Justice is allotted to a circuit.”

The provision in section 215 of Title 28, U.S.C., 1940 ed., that, for the purposes of said section, the “District of Columbia shall be deemed to be a judicial circuit,” was omitted, since the District of Columbia is made a judicial circuit by section 41 of this title.

The last paragraph was added to make clear the intent of Congress that the powers of the Court to assign the justices among the several circuits should be completely flexible.

Changes were made in phraseology.

§ 43. Creation and composition of courts

(a) There shall be in each circuit a court of appeals, which shall be a court of record, known as the United States Court of Appeals for the circuit.

(b) Each court of appeals shall consist of the circuit judges of the circuit in regular active service. The circuit justice and justices or judges designated or assigned shall be competent to sit as judges of the court.


HISTORICAL AND REVISION NOTES


The provision in section 212 of title 28, U.S.C., 1940 ed., for a three-judge court of appeals was permissive and did not limit the power of the court to sit en banc. Thus, subsection (b) reflects present status of law, namely, that court is composed of not only circuit judges of the circuit in active service, of whom there may be more than three, but the circuit justice or justices and judges who may be assigned or designated to the court. (See Textile Mills Securities Corporation v. Commissioner of Internal Revenue, 1942, 12 S.Ct. 272, 314 U.S. 326, 86 L.Ed. 249 and Reviser’s Notes under section 46 of this title.)
Words “with appellate jurisdiction, as hereinafter limited and established” were omitted as covered by section 1291 et seq. of this title, conferring appellate jurisdiction on the courts of appeals.

The term “court of appeals” was substituted in this section and throughout this title for the term “circuit court of appeals.”

Provision for a quorum of the court is now covered by section 46(d) of this title.

AMENDMENTS


CHANGE OF NAME OF COURT

Section 2(b) of act June 25, 1948, provided in part that each circuit court of appeals should, after Sept. 1, 1948, be known as a United States Court of Appeals, but that the enactment of act June 25, 1948 should in no way entitle any loss of rights, interruption of jurisdiction, or prejudice to matters pending in any such courts on Sept. 1, 1948.

§ 44. Appointment, tenure, residence and salary of circuit judges

(a) The President shall appoint, by and with the advice and consent of the Senate, circuit judges for the several circuits as follows:

<table>
<thead>
<tr>
<th>Circuits</th>
<th>Number of Judges</th>
</tr>
</thead>
<tbody>
<tr>
<td>District of Columbia</td>
<td>11</td>
</tr>
<tr>
<td>First</td>
<td>6</td>
</tr>
<tr>
<td>Second</td>
<td>13</td>
</tr>
<tr>
<td>Third</td>
<td>14</td>
</tr>
<tr>
<td>Fourth</td>
<td>15</td>
</tr>
<tr>
<td>Fifth</td>
<td>17</td>
</tr>
<tr>
<td>Sixth</td>
<td>16</td>
</tr>
<tr>
<td>Seventh</td>
<td>11</td>
</tr>
<tr>
<td>Eighth</td>
<td>11</td>
</tr>
<tr>
<td>Ninth</td>
<td>29</td>
</tr>
<tr>
<td>Tenth</td>
<td>12</td>
</tr>
<tr>
<td>Eleventh</td>
<td>12</td>
</tr>
<tr>
<td>Federal</td>
<td>12</td>
</tr>
</tbody>
</table>

(b) Circuit judges shall hold office during good behavior.

(c) Except in the District of Columbia, each circuit judge shall be a resident of the circuit for which appointed at the time of his appointment and thereafter while in active service. While in active service, each circuit judge of the Federal judicial circuit appointed after the effective date of the Federal Courts Improvement Act of 1982, and the chief judge of the Federal judicial circuit, whenever appointed, shall reside within fifty miles of the District of Columbia. In each circuit (other than the Federal judicial circuit) there shall be at least one circuit judge in regular active service appointed from the residents of each state in that circuit.

(d) Each circuit judge 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.


The exception in subsection (c) extends to circuit judges in the District of Columbia the effect of the recent decision in *U.S. ex rel. Laughlin v. Richer*, D.C. 1944, 56 F.Supp. 972, holding that residence requirement of section 1 of title 28, U.S.C., 1940 ed., did not apply to district judges in the District of Columbia. (See Revisor’s Note under section 134 of this title.)

The provision in section 213 of the title 28, U.S.C., 1940 ed., that “it shall be the duty of each circuit judge
in each circuit to sit as one of the judges of the circuit court of appeals in that circuit from time to time according to law,” was omitted as unnecessary since the duty to serve is implied by the creation and composition of the court in section 43 of this title.

Last sentence, providing that nothing in section 213 of title 28, U.S.C., 1940 ed., should prevent a circuit judge from holding district court as provided by law, was omitted as unnecessary. (See section 291 of this title authorizing assignments to district courts.)

Subsection (b) was added in conformity with the U.S. Constitution, art. 3.

Changes were made in phraseology.

REFERENCES IN TEXT


AMENDMENTS


1967—Subsec. (c). Pub. L. 90–119 inserted at end “In each circuit (other than the Federal judicial circuit) there shall be at least one circuit judge in regular active service appointed from the residents of each state in that circuit.”


1990—Subsec. (a). Pub. L. 101–650 altered number of permanent circuit judgeships in named circuits as follows:

<table>
<thead>
<tr>
<th>Circuits</th>
<th>Former</th>
<th>New</th>
</tr>
</thead>
<tbody>
<tr>
<td>Third</td>
<td>12</td>
<td>14</td>
</tr>
<tr>
<td>Fourth</td>
<td>11</td>
<td>15</td>
</tr>
<tr>
<td>Fifth</td>
<td>10</td>
<td>17</td>
</tr>
<tr>
<td>Sixth</td>
<td>15</td>
<td>16</td>
</tr>
<tr>
<td>Eighth</td>
<td>10</td>
<td>11</td>
</tr>
<tr>
<td>Tenth</td>
<td>10</td>
<td>12</td>
</tr>
</tbody>
</table>

1984—Subsec. (a). Pub. L. 98–333 altered number of permanent circuit judgeships in named circuits as follows:

<table>
<thead>
<tr>
<th>Circuits</th>
<th>Former</th>
<th>New</th>
</tr>
</thead>
<tbody>
<tr>
<td>District of Columbia</td>
<td>11</td>
<td>12</td>
</tr>
<tr>
<td>First</td>
<td>4</td>
<td>6</td>
</tr>
<tr>
<td>Second</td>
<td>11</td>
<td>13</td>
</tr>
<tr>
<td>Third</td>
<td>10</td>
<td>12</td>
</tr>
<tr>
<td>Fourth</td>
<td>10</td>
<td>11</td>
</tr>
<tr>
<td>Fifth</td>
<td>14</td>
<td>16</td>
</tr>
<tr>
<td>Sixth</td>
<td>11</td>
<td>15</td>
</tr>
<tr>
<td>Seventh</td>
<td>9</td>
<td>11</td>
</tr>
<tr>
<td>Eighth</td>
<td>9</td>
<td>10</td>
</tr>
<tr>
<td>Ninth</td>
<td>23</td>
<td>28</td>
</tr>
<tr>
<td>Tenth</td>
<td>8</td>
<td>10</td>
</tr>
<tr>
<td>Eleventh</td>
<td>12</td>
<td>12</td>
</tr>
<tr>
<td>Federal</td>
<td>12</td>
<td>12</td>
</tr>
</tbody>
</table>

1975—Subsec. (d). Pub. L. 94–82 substituted provision that each circuit judge 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 circuit judge shall receive a salary of $33,000 a year.

1968—Subsec. (a). Pub. L. 90–347 increased the number of circuit judges in the enumerated circuits as follows: Third Circuit, eight to nine; Fifth Circuit, nine to fifteen; Sixth Circuit, eight to nine; Ninth Circuit, nine to thirteen, and Tenth Circuit, six to seven.

1966—Subsec. (a). Pub. L. 89–372 increased the number of circuit judges in the enumerated circuits as follows: Fourth Circuit, five to seven; Sixth Circuit, six to eight; Seventh Circuit, seven to eight; Eighth Circuit, seven to eight.

1964—Subsec. (d). Pub. L. 88–426 increased the salary of the circuit judges from $25,500 to $33,000.

1963—Subsec. (a). Pub. L. 88–36 increased the number of circuit judges in the enumerated circuits, as follows: Second Circuit, six to nine; Third Circuit, seven to nine; Fourth Circuit, three to five; Fifth Circuit, seven to nine; Seventh Circuit, six to seven; and Tenth Circuit, five to six.

1955—Subsec. (d). Act Mar. 2, 1955, increased the salary of circuit judges from “$37,500” to “$45,500”.

1954—Subsec. (a). Act Feb. 10, 1954, increased the number of circuit judges in the Fifth Circuit from six to seven, and in the Ninth Circuit from seven to nine.

1949—Subsec. (a). Act Aug. 3, 1949, increased the number of circuit judges for the District of Columbia from six to nine, for the Third Circuit from six to seven, for the Seventh Circuit from five to six, and for the Tenth Circuit from four to five.

EFFECTIVE DATE OF 2008 AMENDMENT


EFFECTIVE DATE OF 1990 AMENDMENT

Section 206 of title II of Pub. L. 101–650 provided that: “This title [amending this section and section 133 of this title and enacting provisions set out as notes under this section and sections 133 and 331 of this title] shall take effect on the date of the enactment of this title [Dec. 1, 1990].”

EFFECTIVE DATE OF 1982 AMENDMENT


EFFECTIVE DATE OF 1980 AMENDMENT


EFFECTIVE DATE OF 1964 AMENDMENT

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

EFFECTIVE DATE OF 1955 AMENDMENT

Section 211 of Pub. L. 98–353 provided that: "It is the sense of the Congress that the President, in selecting individuals for nomination to the Federal judgeships created by this Act [see Short Title of 1984 Amendment note set out under section 151 of this title], shall give due consideration to qualified individuals without regard to race, color, sex, religion, or national origin."

CONTINUED SERVICE OF JUDGES


CONGRESSIONAL STATEMENT REGARDING APPOINTMENT OF JUDGES

Section 168 of Pub. L. 97–164 provided that: "The Congress—

"(1) takes notice of the fact that the quality of the Federal judiciary is determined by the competence and experience of its judges; and

"(2) suggests that the President, in nominating individuals to judgeships on the United States Court of Appeals for the Federal Circuit and the United States Claims Court [now United States Court of Federal Claims], select from a broad range of qualified individuals."

SALARY INCREASES

For adjustment of salaries of circuit 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 538 of Title 5, 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.

Salaries of circuit judges increased from $12,500 to $17,500 a year by act July 31, 1946, ch. 704, § 1, 60 Stat. 716.

Salaries of circuit judges increased from $8,500 to $12,500 a year by act Dec. 13, 1926, ch. 11, § 1, 44 Stat. 919.

Salaries of circuit judges increased from $7,000 to $8,500 a year by act Feb. 25, 1919, ch. 128, § 1, 40 Stat. 1156.

Salaries of circuit court judges set at $7,000 a year by the Judicial Code of 1911, act Mar. 3, 1911, ch. 231, § 1, 36 Stat. 1131.

ADDITIONAL JUDGES

Since 1925, the appointment of additional judges was authorized by the following acts:


Tenth circuit. Act Aug. 3, 1949, ch. 387, § 1, 63 Stat. 493. District of Columbia Court of Appeals. Act Aug. 3, 1949, ch. 387, § 1, 63 Stat. 493; act May 31, 1938, ch. 290, § 2, 52 Stat. 584; act June 19, 1928, ch. 538, 46 Stat. 1346. Act Feb. 28, 1929, ch. 363, § 2, 45 Stat. 1346, 1347 provided that "There shall be in the sixth, seventh, and tenth circuits, respectively, four circuit judges; and in the second and eighth circuits, respectively, five circuit judges; and, in each of the other circuits three circuit judges, to be appointed by the President, by and with the advice and consent of the Senate."

Another part of section 1 of act Feb. 10, 1954, which amended subsec. (a) of this section, provided for the appointment by the President, by and with the advice and consent of the Senate, of the additional judges for the Fifth and Ninth Circuits, provided for in such amendment.

Section 1(a) of Pub. L. 87–36 provided that: "The President shall appoint, by and with the advice and consent of the Senate, three additional circuit judges for the second circuit, one additional circuit judge for the third circuit, two additional circuit judges for the fourth circuit, two additional circuit judges for the fifth circuit, one additional circuit judge for the seventh circuit, and one additional circuit judge for the tenth circuit."

Section 1(a) of Pub. L. 89–372 provided that: "The President shall appoint, by and with the advice and consent of the Senate, two additional circuit judges for the fourth circuit, two additional circuit judges for the sixth circuit, one additional circuit judge for the seventh circuit, and one additional circuit judge for the eighth circuit."

Section 1(c) of Pub. L. 89–372, as amended by Pub. L. 90–347, § 2, June 18, 1968, 82 Stat. 183, provided that: "The President shall appoint, by and with the advice and consent of the Senate, four additional circuit judges for the fifth circuit." The second sentence of section 1(c) of Pub. L. 89–372 which provided that the first four vacancies occurring in the office of circuit judge in the fifth circuit shall not be filled was deleted by section 2 of Pub. L. 90–347, which also made those judgeships permanent and further provided that the present incumbents of such judgeships shall henceforth hold their offices under this section.

Section 1 of Pub. L. 90–347 provided that: '‘That the President shall appoint, by and with the advice and consent of the Senate, one additional circuit judge for the third circuit, two additional circuit judges for the fifth circuit, one additional circuit judge for the sixth circuit, four additional circuit judges for the seventh circuit, and one additional circuit judge for the tenth circuit.’’"
judges for the sixth circuit court of appeals, two additional circuit judges for the seventh circuit court of appeals, one additional circuit judge for the eighth circuit court of appeals, five additional circuit judges for the ninth circuit court of appeals, two additional circuit judges for the tenth circuit court of appeals, and one additional circuit judge for the District of Columbia circuit court of appeals.

"(2) The President shall appoint, by and with the advice and consent of the Senate, no more than 11 of such judges prior to January 21, 1985."

Section 302(a) of Pub. L. 101–650 provided that: 'The President shall appoint, by and with the advice and consent of the Senate—

"(1) 2 additional circuit judges for the third circuit court of appeals;
"(2) 4 additional circuit judges for the fourth circuit court of appeals;
"(3) 1 additional circuit judge for the fifth circuit court of appeals;
"(4) 1 additional circuit judge for the sixth circuit court of appeals;
"(5) 1 additional circuit judge for the eighth circuit court of appeals; and
"(6) 2 additional circuit judges for the tenth circuit court of appeals."

EXECUTIVE ORDER NO. 11972

EXECUTIVE ORDER NO. 12059

Ex. Ord. No. 12360. Facilitating the Administration of Justice in the Federal Courts

Ex. Ord. No. 12360, May 9, 2003, 68 F.R. 25807, provided: By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to promote the prompt appointment of judges to the federal courts, it is hereby ordered as follows:

SECTION 1. Policy. The Federal courts play a central role in the American justice system. For the Federal courts to function effectively, judicial vacancies in those courts must be filled in a timely manner with well-qualified candidates.

SEC. 2. Plan. The presidential plan announced on October 30, 2002, calls for timely consideration of judicial nominees, with the President submitting a nomination to fill a vacancy in United States courts of appeals and district courts within 180 days after the President receives notice of a vacancy or intended retirement, absent extraordinary circumstances.

SEC. 3. Responsibilities. The Counsel to the President shall take all appropriate steps to ensure that the President is in a position to make timely nominations for judicial vacancies consistent with this plan. All Federal departments and agencies shall assist, as requested and permitted by law, in the implementation of this order.

SEC. 4. Reservation of Authority. Nothing in this order shall be construed to affect the authority of the President to fill vacancies under clause 3 of section 2 of article II of the Constitution.

Scic. 5. Judicial Review. This order is intended only to improve the internal management of the Federal Government and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its departments, agencies, instrumentalities or entities, its officers or employees, or any other person.

GEORGE W. BUSH.

§ 45. Chief judges: precedence of judges

(a)(1) The chief judge of the circuit shall be the circuit 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 circuit judge; and

(C) have not served previously as chief judge.

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

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

(B) Except as provided in subparagraph (C), a circuit 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 circuit judge may serve or act as chief judge of the circuit after attaining the age of seventy years unless no other circuit judge is qualified to serve as chief judge of the circuit 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 of the court which he attends. Other circuit judges of the court in regular active service 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. The circuit justice, however, shall have precedence over all the circuit judges and shall preside at any session which he attends.

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

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

service who is''.

That the youngest circuit judge act as chief judge where all circuit judges in regular active service are seventy years of age or older the youngest shall act as chief judge.

Other provisions of section 216 of title 28, U.S.C., 1940 ed., are covered by section 47 of this title.

Subsection (c) is new.

This is based on section 216a of title 28, U.S.C., 1940 ed.

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

Changes were made in phraseology.

AMENDMENTS

1982—Subsec. (a). Pub. L. 97–164, §201(a), designated existing first sentence of subsec. (a) as par. (1), substituted “The chief judge of the circuit shall be the circuit judge in regular active service who is senior in commission and under seventy years of age” for “The circuit judge in regular active service who is senior in commission and under seventy years of age shall be the chief judge of the circuit” in par. (1) as so designated, designated existing second sentence of subsec. (a) as par. (2)(A), substituted “In any case in which no circuit judge meets the qualifications of paragraph (1), the youngest circuit judge in regular active service who is sixty-five years of age or over and who has served as circuit judge for one year or more shall act as the chief judge” for “If all the circuit 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 circuit judge for one year” in par. (2)(A) as so designated, and added pars. (2)(B) and (3).


Subsec. (c). Pub. L. 97–164, §201(b), amended subsec. (c) generally, substituting “the chief judge of the circuit shall be such other circuit judge who is qualified to serve or act as chief judge under subsection (a)” for “the circuit judge in active service next in precedence and willing to serve shall be designated by the Chief Justice as the chief judge of the circuit”.

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


EFFECTIVE DATE OF 1958 AMENDMENT


SAVINGS PROVISION

Section 203 of part A of title II of Pub. L. 97–164 provided that: “(a) The amendments to section 45 of title 28, United States Code, and to section 136 of such title, made by sections 201 and 202 of this Act, shall not apply to or affect any person serving as chief judge on the effective date of this Act [Oct. 1, 1982].

(b) The provisions of section 45(a) of title 28, United States Code, as in effect on the day before the effective date of this Act [Oct. 1, 1982], shall apply to the chief judge of a circuit serving on such effective date. The provisions of section 136(a) of title 28, United States Code, as in effect on the day before the effective date of this part [Oct. 1, 1982], shall apply to the chief judge of a district court serving on such effective date.”

APPOINTMENT OF CHIEF JUDGE OF COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Section 166 of Pub. L. 97–164 provided that: “Notwithstanding the provisions of section 45(a) of title 28, United States Code, the first chief judge of the United States Court of Appeals for the Federal Circuit shall be the Chief Judge of the United States Court of Claims or the Chief Judge of the United States Court of Customs and Patent Appeals, whoever has served longer as chief judge of his court. Notwithstanding section 45 of title 28, United States Code, whichever of the two chief judges does not become the first chief judge of the United States Court of Appeals for the Federal Circuit under the preceding sentence shall, while in active service, have precedence and be deemed senior in commission over all the circuit judges of the United States Court of Appeals for the Federal Circuit (other than the first chief judge of that circuit). When the person who first serves as chief judge of the United States Court of Appeals for the Federal Circuit vacates that position, the position shall be filled in accordance with section 45(a) of title 28, United States Code, as modified by the preceding sentence of this section.”

CHIEF JUDGE OF COURT OF APPEALS FOR DISTRICT OF COLUMBIA

Section 2(a) of act June 25, 1948, provided in part that the Chief Justice of the Court of Appeals for the District of Columbia shall be the Chief Judge of the United States Court of Appeals for the Federal Circuit. The chief judge of the Court of Appeals for the Federal Circuit shall be the circuit judge in regular active service who is senior in commission and under 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 and under seventy years of age or older 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 circuit judge for one year.”

§46. Assignment of judges; panels; hearings; quorum

(a) Circuit judges shall sit on the court and its panels in such order and at such times as the court directs.

(b) In each circuit the court may authorize the hearing and determination of cases and controversies by separate panels, each consisting of three judges, at least a majority of whom shall be judges of that court, unless such judges cannot sit because recused or disqualified, or unless the chief judge of that court certifies that there is an emergency including, but not limited to, the unavailability of a judge of the court because of illness. Such panels shall sit at the times and places and hear the cases and controversies assigned as the court directs. The United States Court of Appeals for the Federal Circuit shall determine by rule a procedure for the rotation of judges from panel to panel to en-
sure that all of the judges sit on a representa-
tive cross section of the cases heard and, not-
withstanding the first sentence of this sub-
section, may determine by rule the number of
judges, not less than three, who constitute a
panel.
(c) Cases and controversies shall be heard and
determined by a court or panel of not more than
three judges (except that the United States
Court of Appeals for the Federal Circuit may sit
in panels of more than three judges if its rules
so provide), unless a hearing or rehearing before
the court in banc is ordered by a majority of the
circuit judges of the circuit who are in regular
active service. A court in banc shall consist of
all circuit judges in regular active service, or
such number of judges as may be prescribed in
accordance with section 6 of Public Law 95–486
(92 Stat. 1633), except that any senior circuit
judge of the circuit shall be eligible (1) to par-
ticipate, at his election and upon designation
and assignment pursuant to section 294(c) of this
title and the rules of the circuit, as a member of
an in banc court reviewing a decision of a panel
of which such judge was a member, or (2) to con-
tinue to participate in the decision of a case or
controversy that was heard or reheard by the
court in banc at a time when such judge was in
regular active service.
(d) A majority of the number of judges author-
ized to constitute a court or panel thereof, as
provided in paragraph (c), shall constitute a
quorum.

(June 25, 1948, ch. 646, 62 Stat. 871; Pub. L. 88–176,
§1(b), Nov. 13, 1963, 77 Stat. 331; Pub. L. 95–486,
§5(a), (b), Oct. 20, 1978, 92 Stat. 1633; Pub. L. 97–164,
title I, §103, title II, §205, Apr. 2, 1982, 96
Stat. 53; Pub. L. 104–175, §1, Aug. 6, 1996, 110
Stat. 1556.)

HISTORICAL AND REVISION NOTICES

Subsections (a)–(c) authorize the establishment of di-
visions of the court and provide for the assignment of
circuit judges for hearings and rehearings in banc.
The Supreme Court of the United States has ruled
that, notwithstanding the three-judge provision of sec-
might lawfully consist of a greater number of judges,
and that the five active circuit judges of the third cir-
cuit might sit in banc for the determination of an ap-
peal. (See Textile Mills Securities Corporation v. Commiss-
ioner of Internal Revenue, 1941, 62 S.Ct. 272, 314 U.S. 326,
86 L.Ed. 249.)

The Supreme Court in upholding the unanimous view
of the five judges as to their right to sit in banc, not-
withstanding the contrary opinion in Langs Estate v.
Commissioner of Internal Revenue, 1938, 97 F.2d 967, said in
the Textile Mills case: “There are numerous func-
tions of the court, as a ‘court of record, with appellate
jurisdiction’, other than hearing and deciding appeals.
Under the Judicial Code these embrace: prescribing the
form of writs and other process and the form and style
of its seal (28 U.S.C., §219); the making of rules and reg-
ulations (28 U.S.C., §219); the appointment of a clerk (28
U.S.C., §221) and the approval of the appointment and
removal of deputy clerks (28 U.S.C., §222); and the fix-
ing of the ‘times’ when court shall be held (28 U.S.C.,
§223). Furthermore, those various sections of the Judi-
cial Code provide that each of these functions shall be
performed by the court.”

This section preserves the interpretation established
by the Textile Mills case but provides in subsection (c)
that cases shall be heard by a court of not more than three
judges unless the court has provided for hearing in
banc. This provision continues the tradition of a
three-judge appellate court and makes the decision of
a division, the decision of the court, unless rehearing in
banc is ordered. It makes judges available for other as-
signments, and permits a rotation of judges in such
manner as to give to each a maximum of time for the
preparation of opinions.

Whether divisions should sit simultaneously at the
same or different places in the circuit is a matter for
each court to determine.

REFERENCES IN TEXT
Section 6 of Public Law 95–486 (92 Stat. 1633), referred
to in subsec. (c), is section 6 of Pub. L. 90–486, Oct. 20,
1978, 92 Stat. 1633, which is set out as an Appeals Court
Administrative Units note under section 41 of this title.

AMENDMENTS
1996—Subsec. (c). Pub. L. 104–175, in last sentence, in-
serted “(1)” after “eligible” and “, or (2)” to continue to
participate in the decision of a case or controversy that
was heard or reheard by the court in banc at a time
when such judge was in regular active service” before
period at end.
1982—Subsec. (a). Pub. L. 97–164, §103(a), substituted
“panels” for “divisions”.
Subsec. (b). Pub. L. 97–164, §103(b), substituted “pan-
els” for “divisions” wherever appearing and inserted
provisions requiring that at least a majority of the panels of
each circuit be judges of that circuit, unless such judges
cannot sit because recused or disqualified, or unless
the chief judge of that court certifies that there is an
emergency including, but not limited to, the
unavailability of a judge of the court because of illness,
and that the United States Court of Appeals for the
Federal Circuit determine by rule a procedure for the
rotation of judges from panel to panel to ensure that
all of the judges sit on a representative cross section
of the cases heard and determine by rule the number of
judges, not less than three, who constitute a panel.
Subsec. (c). Pub. L. 97–164, §§103(c), 205, inserted pro-
vision that the United States Court of Appeals for the
Federal Circuit may sit in panels of more than three
judges if its rules so provide and that, as an alternative
to the requirement that a court in banc consist of all
circuit judges in regular active service, such a court
may consist of such number of judges as may be pres-
cribed in accordance with section 6 of Public Law
95–486 (92 Stat. 1633), except that any senior circuit
judge of the circuit shall be eligible to participate, at
his election and upon designation and assignment pur-
suant to section 294(c) of this title and the rules of the cir-
cuit, as a member of an in banc court reviewing the de-
cision of a panel of which such judge was a member.
Subsec. (d). Pub. L. 97–164, §103(d), substituted “panel”
for “division”.
1979—Pub. L. 95–486, §5(b), substituted “panels” for
“divisions” in section catchline.
Subsec. (c). Pub. L. 95–486, §5(a), substituted “panel”
for “division” and struck out provision authorizing a
retired circuit judge to sit as a judge of the court in
banc in the rehearing of a case if he sat in the court or
division in the original hearing of such case.
1963—Subsec. (c). Pub. L. 88–176 inserted “regular” be-
fore “active service” wherever appearing, and provided
that a retired circuit judge shall be competent to sit as
a judge of the court in banc, in a rehearing if he sat in
the original hearing.

EFFECTIVE DATE OF 1962 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.

§ 47. Disqualification of trial judge to hear appeal
No judge shall hear or determine an appeal
from the decision of a case or issue tried by him.
§ 48. Terms of court

(a) The courts of appeals shall hold regular sessions at the places listed below, and at such other places within the respective circuit as each court may designate by rule.

Circuits                      Places

District of Columbia ........ Washington.
First ....................... Boston.
Second ..................... New York.
Third ...................... Philadelphia. 
Fourth ..................... Richmond, Asheville.
Fifth ....................... New Orleans, Fort Worth, Jackson.
Sixth ...................... Cincinnati.
Seventh .................. Chicago.
Eighth ................... St. Louis, Kansas City, Omaha, St. Paul.
Ninth .................... San Francisco, Los Angeles, Portland, Seattle.
Tenth ..................... Denver, Wichita, Oklahoma City.
Eleventh ............... Atlanta, Jacksonville, Montgomery.
Federal .................... District of Columbia, and in any other place listed above as the court by rule directs.

(b) Each court of appeals may hold special sessions at any place within its circuit as the nature of the business may require, and upon such notice as the court orders. The court may transact any business at a special session which it might transact at a regular session.

(c) Any court of appeals may pretermitt any regular session of court at any place for insufficient business or other good cause.

(d) The times and places of the sessions of the Court of Appeals for the Federal Circuit shall be prescribed with a view to securing reasonable opportunity to citizens to appear before the court with as little inconvenience and expense to citizens as is practicable.

(e) Each court of appeals may hold special sessions at any place within the United States outside the circuit as the nature of the business may require and upon such notice as the court orders, upon a finding by the chief judge of the court of appeals (or, if the chief judge is unavailable, the most senior available active judge of the court of appeals) or the judicial council of the circuit that, because of emergency conditions, no location within the circuit is reasonably available where such special sessions could be held. The court may transact any business at a special session outside the circuit which it might transact at a regular session.

(f) If a court of appeals issues an order exercising its authority under subsection (e), the court—

(1) through the Administrative Office of the United States Courts, shall—

(A) send notice of such order, including the reasons for the issuance of such order, to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives; and

(B) not later than 180 days after the expiration of such court order submit a brief report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives describing the impact of such order, including—

(i) the reasons for the issuance of such order;

(ii) the duration of such order;

(iii) the impact of such order on litigants; and

(iv) the costs to the judiciary resulting from such order; and

(2) shall provide reasonable notice to the United States Marshals Service before the commencement of any special session held pursuant to such order.


HISTORICAL AND REVISION NOTES


Reference to San Juan as a place for holding court in the First Circuit was omitted. The revised section will permit the holding of terms at San Juan when the public interest requires.

The phrase "and at such other places within the respective circuits as may be designated by rule of court" was added to enable each court of appeals to hold such additional regular terms as changing circumstances might require.

The provisions of such section 223, for furnishing suitable rooms and accommodation at Oakland City, were omitted as obsolete since the erection of a new Federal building there.

The provisions as to fixed times for holding court in the Fifth Circuit was omitted as inconsistent with the practice in the other circuits. Words "San Francisco, Los Angeles, Portland, Seattle" were substituted for "San Francisco and two other places designated by the court" to conform with the practice in the Ninth Circuit.

Changes were made in phraseology.

SENATE REVISION AMENDMENT

By Senate amendment, Jacksonville (Fla.) was added as a place for holding a regular session of the Court of Appeals for the Fifth Circuit. See 80th Congress Senate Report No. 1599.

AMENDMENTS

1980—Subsec. (c). Pub. L. 96–452 substituted "New Orleans, Atlanta, Fort Worth, Jackson'' for "San Francisco, and two other places designated by the court" to conform to the practice in the other circuits. Words "San Francisco, Los Angeles, Portland, Seattle'' were substituted for "San Francisco and two other places designated by the court" to conform with the practice in the Ninth Circuit.

Changes were made in phraseology.

Effective Date of 1992 Amendment


Effective Date of 1982 Amendment


Effective Date of 1980 Amendment


Survey of Judicial Business in Alaska

Section 23(a) of Pub. L. 86–70, June 25, 1959, 73 Stat. 147, provided that: "The Judicial Conference of the United States, with the assistance of the Administrative Office of the United States Courts, shall conduct a study, including a field survey, of the Federal judicial business arising in the State of Alaska with a view toward directing the United States Court of Appeals for the Ninth Circuit to hold such terms of court in Anchorage or such other Alaskan cities as may be necessary for the prompt and efficient administration of justice."

§ 49. Assignment of judges to division to appoint independent counsels

(a) Beginning with the two-year period commencing on the date of the enactment of this section, three judges or justices shall be assigned for each successive two-year period to a division of the United States Court of Appeals for the District of Columbia to be the division of the court for the purpose of appointing independent counsels. The Clerk of the United States Court of Appeals for the District of Columbia Circuit shall serve as the clerk of such division of the court and shall provide such services as are needed by such division of the court.

(b) Except as provided under subsection (f) of this section, assignment to such division of the court shall not be a bar to other judicial assignments during the term of such division.

(c) In assigning judges or justices to sit on such division of the court, priority shall be given to senior circuit judges and retired justices.

(d) The Chief Justice of the United States shall designate and assign three circuit court judges or justices, one of whom shall be a judge of the United States Court of Appeals for the District of Columbia, to such division of the court. Not more than one judge or justice or senior or retired judge or justice may be named to such division from a particular court.

(e) Any vacancy in such division of the court shall be filled only for the remainder of the two-year period in which such vacancy occurs and in the same manner as initial assignments to such division were made.

(f) Except as otherwise provided in chapter 40 of this title, no member of such division of the court who participated in a function conferred on the division under chapter 40 of this title involving an independent counsel shall be eligible to participate in any judicial proceeding concerning a matter which involves such independent counsel while such independent counsel is serving in that office or which involves the exercise of such independent counsel’s official duties, regardless of whether such independent counsel is still serving in that office.


REFERENCES IN TEXT

The date of enactment of this section, referred to in subsec. (a), is Oct. 26, 1978.

AMENDMENTS

1987—Subsec. (a). Pub. L. 100–191, § 4, inserted at end: "The Clerk of the United States Court of Appeals for the District of Columbia Circuit shall serve as the
clerk of such division of the court and shall provide such services as are needed by such division of the court."

Subsec. (f). Pub. L. 100–191, § 8(a), substituted “involving an independent counsel” for “involving a independent counsel”.


Subsec. (a). Pub. L. 97–409, § 2(b)(1)(B), substituted “independent counsel’s” for “special prosecutor’s”.

Subsec. (f). Pub. L. 97–409, § 2(b)(1)(A), (C), substituted “independent counsel” for “special prosecutor” wherever appearing and “independent counsel’s” for “special prosecutor’s”.

**Effective Date of 1986 Amendment**


**Effective Date**


### CHAPTER 5—DISTRICT COURTS

#### Sec.
81. Alabama.
81A. Alaska.
82. Arizona.
83. Arkansas.
84. California.
85. Colorado.
86. Connecticut.
87. Delaware.
88. District of Columbia.
89. Florida.
90. Georgia.
91. Hawaii.
92. Idaho.
93. Illinois.
94. Indiana.
95. Iowa.
96. Kansas.
97. Kentucky.
98. Louisiana.
100. Maryland.
101. Massachusetts.
102. Michigan.
103. Minnesota.
104. Mississippi.
105. Missouri.
106. Montana.
107. Nebraska.
108. Nevada.
110. New Jersey.
111. New Mexico.
112. New York.
114. North Dakota.
115. Ohio.
116. Oklahoma.
117. Oregon.
118. Pennsylvania.
119. Puerto Rico.
120. Rhode Island.
121. South Carolina.
122. South Dakota.
123. Tennessee.
124. Texas.
125. Utah.
126. Vermont.
127. Virginia.

#### Sec.
129. West Virginia.
130. Wisconsin.
131. Wyoming.
132. Creation and composition of district courts.
133. Appointment and number of district judges.
134. Tenure and residence of district judges.
135. Salaries of district judges.
136. Chief judges; precedence of district judges.
137. Division of business among district judges.
138. Terms abolished.
139. Times for holding regular sessions.
140. Adjournment.
141. Special sessions; places; notice.
142. Repealed.
143. Vacant judgeship as affecting proceedings.
144. Bias or prejudice of judge.

### Historical and Revision Notes

Sections 81–131 of this chapter show the territorial composition of districts and divisions by counties as of January 1, 1945. All references to dates were omitted as unnecessary.

All references to fixed terms of holding court were also omitted in order to vest in each district court a wider discretion and greater flexibility in the disposition of its business. Such times will now be determined by rule of court rather than by statute. See sections 138 and 141 of this title.

#### Amendments


#### Short Title of 1978 Amendment


#### § 81. Alabama

Alabama is divided into three judicial districts to be known as the Northern, Middle, and Southern Districts of Alabama.

**Northern District**

(a) The Northern District comprises seven divisions.

(1) The Northwestern Division comprises the counties of Colbert, Franklin, and Lauderdale.

Court for the Northwestern Division shall be held at Florence.

(2) The Northeastern Division comprises the counties of Cullman, Jackson, Lawrence, Limestone, Madison, and Morgan.

Court for the Northeastern Division shall be held at Huntsville and Decatur.

(3) The Southern Division comprises the counties of Blount, Jefferson, and Shelby.

Court for the Southern Division shall be held at Birmingham.

(4) The Eastern Division comprises the counties of Calhoun, Clay, Cleburne, and Talladega.

Court for the Eastern Division shall be held at Anniston.
§ 81A

(5) The Western Division comprises the counties of Bibb, Greene, Pickens, Sumter, and Tuscaloosa. Court for the Western Division shall be held at Tuscaloosa.

(6) The Middle Division comprises the counties of Cherokee, De Kalb, Etowah, Marshall, and Saint Clair. Court for the Middle Division shall be held at Gadsden.

(7) The Jasper Division comprises the counties of Fayette, Lamar, Marion, Walker, and Winston. Court for the Jasper Division shall be held at Jasper.

Middle District

(b) The Middle District comprises three divisions.

(1) The Northern Division comprises the counties of Autauga, Barbour, Bullock, Butler, Chilton, Coosa, Covington, Crenshaw, Elmore, Lowndes, Montgomery, and Pike. Court for the Northern Division shall be held at Montgomery.

(2) The Southern Division comprises the counties of Coffee, Dale, Geneva, Henry, and Houston. Court for the Southern Division shall be held at Dothan.

(3) The Eastern Division comprises the counties of Chambers, Lee, Macon, Randolph, Russell, and Tallapoosa. Court for the Eastern Division shall be held at Opelika.

Southern District

(c) The Southern District comprises two divisions.

(1) The Northern Division comprises the counties of Dallas, Hale, Marengo, Perry, and Wilcox. Court for the Northern Division shall be held at Selma.

(2) The Southern Division comprises the counties of Baldwin, Choctaw, Clarke, Conecuh, Escambia, Mobile, Monroe, and Washington. Court for the Southern Division shall be held at Mobile.


Historical and Revision Notes


Provisions relating to the places for the maintenance of the clerks' offices were omitted as covered by section 751 of this title, providing that deputy clerks may be designated to reside and maintain offices at such places for holding court as the judge may determine.

Provisions that the offices of the court shall be kept open at all times were omitted as covered by section 452 of this title.

A provision requiring the district judge for the northern district to reside at Birmingham was omitted as incongruous with section 194 of this title, requiring every district judge to reside within the district for which he is appointed. Likewise the provision of section 142 of title 28, U.S.C., 1940 ed., requiring the court to remain in session at Birmingham at least 6 months in each calendar year was omitted as unnecessary and not in harmony with provisions respecting other districts.

The provisions for furnishing rooms and accommodations at Florence, Gadsden, Jasper and Opelika were omitted as obsolete upon advice of the Director of the Administrative Office of the United States Courts that Federal accommodations are now available in each of these places.

Changes in arrangement and phraseology were made.

AMENDMENTS


§ 81A. Alaska

Alaska constitutes one judicial district.

Court shall be held at Anchorage, Fairbanks, Juneau, Ketchikan, and Nome.


AMENDMENTS

1959—Pub. L. 86–70 inserted “Ketchikan.”

Effective Date of 1959 Amendment

Section 12 of Pub. L. 85–508 provided in part that this section, and the amendments to sections 133, 333, 373, 376, 460, 610, 753, 1292, 1291, 1292, 1294, 1346, 1963, 2072, 2301 and 2410 of this title, section 341b of Title 5, Government Organization and Employees, and sections 3241, 3401, 3771 and 3772 of Title 18, Crimes and Criminal Procedure, are effective on the admission of Alaska into the Union. Admission as a State was accomplished Jan. 3, 1959 upon issuance of Proc. No. 3369, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub. L. 85–508. See notes set out preceding section 21 of Title 48, Territories and Insular Possessions.

Continuation of Suits

Section 13 of Pub. L. 85–508 provided that: “No writ, action, indictment, cause, or proceeding pending in the District Court for the Territory of Alaska on the date when said Territory shall become a State, and no case pending in an appellate court upon appeal from the District Court for the Territory of Alaska at the time said Territory shall become a State, shall abate by the admission of the State of Alaska into the Union, but the same shall be transferred and proceeded with as hereinafter provided.

“All civil causes of action and all criminal offenses which shall have arisen or been committed prior to the admission of said State, but as to which no action, or prosecution shall be pending at the date of such admission of said State into the Union. Admission as a State was accomplished Jan. 3, 1959 upon issuance of Proc. No. 3369, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub. L. 85–508. See notes set out preceding section 21 of Title 48, Territories and Insular Possessions.”

Appeals

Section 14 of Pub. L. 85–508 provided that: “All appeals taken from the District Court for the Territory of Alaska to the Supreme Court of the United States or the United States Court of Appeals for the Ninth Circuit, previous to the admission of Alaska as a State, shall be prosecuted to final determination as though this Act had not been passed. All cases in which final
judgement has been rendered in such district court, and in which appeals might be had except for the admission of such State, may still be sued out, taken, and prosecuted in the Supreme Court of the United States or in the United States Court of Appeals for the Ninth Circuit under the provisions of then existing law, and there held and determined in like manner; and in either case, the Supreme Court of the United States, or the United States Court of Appeals, in the event of reversal, shall remand the said cause to either the State supreme court or other final appellate court of said State, or the United States district court for said district, as the case may require: Provided, That the time allowed by existing law for appeals from the district court for said Territory shall not be enlarged thereby.

TRANSFER OF CASES

Section 15 of Pub. L. 85–508 provided that: "All causes pending or determined in the District Court for the Territory of Alaska at the time of the admission of Alaska as a State which are of such nature as to be within the jurisdiction of a district court of the United States shall be transferred to the United States District Court for the District of Alaska for final disposition and enforcement in the same manner as is now provided by law with reference to the judgments and decrees in existing United States district courts. All original causes and decrees rendered upon such transferred cases in the United States District Court for the District of Alaska may be reviewed by the Supreme Court of the United States or by the United States Court of Appeals for the Ninth Circuit in the same manner as is now provided by law with reference to the judgments and decrees in existing United States district courts."

SUCCESSION OF COURTS

Section 16 of Pub. L. 85–508 provided that: "Jurisdiction of all cases pending or determined in the District Court for the Territory of Alaska not transferred to the United States District Court for the District of Alaska shall devolve upon and be exercised by the courts of appropriate State court of Alaska. All final judgments and decrees rendered upon such transferred cases in the United States District Court for the District of Alaska shall be in like manner transferred to said district court."

SUCCESSION OF COURTS

Section 17 of Pub. L. 85–508 provided that: "All cases pending in the District Court for the Territory of Alaska at the time said Territory becomes a State to the Supreme Court of the United States shall be transferred to the United States District Court for the District of Alaska for final disposition and enforcement in the same manner as is now provided by law with reference to the judgments and decrees in existing United States district courts."

PENDING CASES

Section 18 of Pub. L. 85–508 provided that: "The provisions of the preceding sections with respect to the termination of the jurisdiction of the District Court for the Territory of Alaska, the continuation of suits, the succession of courts, and the satisfaction of rights of litigants in suits before such courts, shall not be effective until three years after the effective date of this Act [see section 8(b) of Pub. L. 85–508, set out as a note preceding section 21 of Title 48, Territories and Insular Possessions], unless the President, by Executive order, shall sooner proclaim that the United States District Court for the District of Alaska, established by this Act, is prepared to assume the functions imposed upon it. During such period of three years or until such Executive order is issued, the United States District Court for the Territory of Alaska shall continue to function as heretofore. The tenure of the judges, the United States attorneys, marshals, and other officers of the United States District Court for the Territory of Alaska shall terminate at such time as that court shall cease to function as provided in this section."

SCHEDULE OF FIES, MILLAGE, OR OTHER COMPENSATION

Section 23(c) of Pub. L. 86–70, June 25, 1959, 73 Stat. 147, provided that: "Such authority as has been exercised by the Attorney General heretofore, with regard to the Federal court system in Alaska, pursuant to section 30 of the Act of June 6, 1900 (48 U. S. C. 25) shall continue to be exercised by him after the court created by section 12(b) of the Act of July 7, 1958 (72 Stat. 339, 348) [this section], providing for the admission of the State of Alaska into the Union, is established."

EX. OR. NO. 10867. ASSUMPTION OF FUNCTIONS BY UNITED STATES DISTRICT COURT FOR DISTRICT OF ALASKA

Ex. Or. No. 10867, Feb. 20, 1960, 25 F.R. 1584, provided: WHEREAS the act of July 7, 1958, 72 Stat. 339 [set out as a note preceding section 21 of Title 48, Territories and Insular Possessions], relating to the admission of the State of Alaska into the Union, provides that the United States District Court for the Territory of Alaska shall continue to function as theretofore for a period of three years after the effective date of that act, unless the President, by Executive order, shall sooner proclaim that the United States District Court for the District of Alaska, established in accordance with the provisions of that act, is prepared to assume the functions imposed upon it; and WHEREAS that act further provides that its provisions relating to the termination of the jurisdiction of the District Court for the Territory of Alaska, the continuation of suits, the succession of courts, and the satisfaction of the rights of litigants in suits before such courts shall not be effective until the expiration of the above-mentioned three-year period or until such Executive order is issued; and that the tenure of the judges, the United States Attorneys, Marshals, and other officers of the United States District Court for the Territory of Alaska shall terminate at such time as that court shall cease to function; and WHEREAS, I have appointed, by and with the advice and consent of the Senate, and commissioned the Honorable Walter N. Hodge to be United States District Judge for the District of Alaska, and he has taken his oath of office; and WHEREAS Judge Hodge has appointed an acting United States Attorney, an acting United States Marshal, and other court officers; and WHEREAS the United States District Court for the District of Alaska is now prepared to assume the functions imposed upon it: NOW, THEREFORE, by virtue of the authority vested in me by section 18 of the said act of July 7, 1958 [set out above], I hereby proclaim that the United States District Court for the District of Alaska is prepared to assume the functions imposed upon it. Accordingly, the jurisdiction of the District Court for the Territory of Alaska and the tenure of the judges, the United States Attorneys, Marshals, and other officers of that court are now terminated.

Dwight D. Eisenhower.
§ 82. Arizona

Arizona constitutes one judicial district. Court shall be held at Globe, Phoenix, Prescott, and Tucson.

(June 25, 1948, ch. 646, 62 Stat. 874.)

HISTORICAL AND REVISION NOTES


A provision for transfer of causes, civil or criminal, from one place for holding court to another was omitted. Such provision, as to civil cases, is covered by section 1404 of this title, and, as to criminal cases, is rendered unnecessary because of inherent power of the court and Rules 18-20 of the Federal Rules of Criminal Procedure, relating to venue.

A provision for making an interlocutory order at any place designated for holding court was omitted as unnecessary in view of Federal Rules of Civil Procedure, rule 77(b).

A provision requiring the clerk to keep his office at the State capital was omitted as covered by section 751 of this title.

Changes in arrangement and phraseology were made.

§ 83. Arkansas

Arkansas is divided into two judicial districts to be known as the Eastern and Western Districts of Arkansas.

Eastern District

(a) The Eastern District comprises five divisions.

(1) The Eastern Division comprises the counties of Cross, Lee, Monroe, Phillips, Sarpy, Faulkner, and Woodruff. Court for the Eastern Division shall be held at Helena.

(2) The Western Division comprises the counties of Conway, Faulkner, Lonoke, Perry, Pope, Prairie, Pulaski, Saline, Van Buren, White, and Yell. Court for the Western Division shall be held at Little Rock.

(3) The Pine Bluff Division comprises the counties of Arkansas, Chicot, Cleveland, Dallas, Desha, Drew, Grant, Jefferson, and Lincoln. Court for the Pine Bluff Division shall be held at Pine Bluff.

(4) The Northern Division comprises the counties of Cleburne, Fulton, Independence, Izard, Jackson, Sharp, and Stone. Court for the Northern Division shall be held at Batesville.

(5) The Jonesboro Division comprises the counties of Clay, Craighead, Crittenden, Greene, Lawrence, Mississippi, Poinsett, and Randolph. Court for the Jonesboro Division shall be held at Jonesboro.

Western District

(b) The Western District comprises six divisions.

(1) The Texarkana Division comprises the counties of Hempstead, Howard, Lafayette, Little River, Miller, Nevada, and Sevier. Court for the Texarkana Division shall be held at Texarkana, and may be held any where within the Federal courthouse in Texarkana that is located astride the State line between Texas and Arkansas.

(2) The El Dorado Division comprises the counties of Ashley, Bradley, Calhoun, Columbia, Ouachita, and Union. Court for the El Dorado Division shall be held at El Dorado.

(3) The Fort Smith Division comprises the counties of Crawford, Franklin, Johnson, Logan, Polk, Scott, and Sebastian. Court for the Fort Smith Division shall be held at Fort Smith.

(4) The Harrison Division comprises the counties of Baxter, Boone, Carroll, Marion, Newton, and Searcy. Court for the Harrison Division shall be held at Harrison.

(5) The Fayetteville Division comprises the counties of Benton, Madison, and Washington. Court for the Fayetteville Division shall be held at Fayetteville.

(6) The Hot Springs Division comprises the counties of Clark, Garland, Hot Springs, Montgomery, and Pike. Court for the Hot Springs Division shall be held at Hot Springs.


HISTORICAL AND REVISION NOTES


A provision making inoperative the terms of the last paragraph of this section, whenever court accommodations shall be provided in Federal buildings was omitted as unnecessary. When such buildings become available the Director of the Administrative Office of the United States Courts will, under section 604 of this title, provide court accommodations therein.

Provisions relating to places for maintenance of clerks’ offices and requiring said offices to be kept open at all times were omitted as covered by sections 452 and 751 of this title.

The provision authorizing the referee in bankruptcy for the western division of the eastern district to serve by appointment in the Hot Springs division of the western district is to be transferred to title 11, U.S.C., 1940 ed., Bankruptcy.

The provision with reference to court accommodations at Fayetteville and Hot Springs was omitted as covered by section 142 of this title.

Changes in arrangement and phraseology were made.

AMENDMENTS

2004—Subsec. (b)(1). Pub. L. 108–455 inserted “, and may be held anywhere within the Federal courthouse in Texarkana that is located astride the State line between Texas and Arkansas” after “held at Texarkana”.

1961—Subsec. (a). Pub. L. 87–35 struck out from enumeration in par. (1) the parish of Desha and in par. (2) the parishes of Arkansas, Chicot, Cleveland, Dallas, Drew, Grant, Jefferson, and Lincoln, added par. (3) consisting of such parishes, and redesignated former par. (3) and (4) as (4) and (5), respectively.

§ 84. California

California is divided into four judicial districts to be known as the Northern, Eastern, Central, and Southern Districts of California.
Northern District

(a) The Northern District comprises the counties of Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Benito, Santa Clara, Santa Cruz, San Francisco, San Mateo, and Sonoma.

Court for the Northern District shall be held at Eureka, Oakland, San Francisco, and San Jose.

Eastern District

(b) The Eastern District comprises the counties of Alpine, Amador, Butte, Calaveras, Colusa, El Dorado, Fresno, Glenn, Inyo, Kern, Kings, Lassen, Madera, Mariposa, Merced, Modoc, Mono, Nevada, Placer, Plumas, Sacramento, San Joaquin, Shasta, Sierra, Siskiyou, Solano, Stanislaus, Sutter, Tehama, Trinity, Tuolumne, Yolo, and Yuba.

Court for the Eastern District shall be held at Fresno, Redding, and Sacramento.

Central District

(c) The Central District comprises 3 divisions.

(1) The Eastern Division comprises the counties of Riverside and San Bernardino.

Court for the Eastern Division shall be held at a suitable site in the city of Riverside, the city of San Bernardino, or not more than 5 miles from the boundary of either such city.

(2) The Western Division comprises the counties of Los Angeles, San Luis Obispo, Santa Barbara, and Ventura.

Court for the Western Division shall be held at Los Angeles.

(3) The Southern Division comprises Orange County.

Court for the Southern Division shall be held at Santa Ana.

Southern District

(d) The Southern District comprises the counties of Imperial and San Diego.

Court for the Southern District shall be held at San Diego.


HISTORICAL AND REVISION NOTES


A provision relating to the place for maintenance of a clerk's office, and requiring such office to be kept open at all times, was omitted as covered by sections 452 and 751 of this title.

Changes in arrangement and phraseology were made.

AMENDMENTS

1992—Subsec. (c). Pub. L. 102–357 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: "The Central District comprises the counties of Los Angeles, Orange, Riverside, San Bernardino, San Luis Obispo, Santa Barbara, and Ventura.

"Court for the Central District shall be held at Los Angeles and Santa Ana."

1980—Subsec. (c). Pub. L. 96–462 inserted "and Santa Ana" after "at Los Angeles".

1966—Pub. L. 89–372 expanded the number of judicial districts in California from two to four by creating an Eastern and a Central District in addition to the existing Northern and Southern Districts, removed the provisions separating the Northern and Southern Districts into divisions, transferred to the newly created Eastern Division the counties of Alpine, Amador, Butte, Calaveras, Colusa, El Dorado, Glenn, Lassen, Modoc, Mono, Nevada, Placer, Plumas, Sacramento, San Joaquin, Shasta, Sierra, Siskiyou, Solano, Stanislaus, Sutter, Tehama, Trinity, Tuolumne, Yolo, and Yuba from the Northern District and Fresno, Inyo Kern, Kings, Madera, Mariposa, Merced, and Tulare from the Southern District, transferred to the newly created Central District the counties of Los Angeles, Orange, Riverside, San Bernardino, San Louis Obispo, Santa Barbara, and Ventura from the Southern District, substituted Eureka, Oakland, San Francisco, and San Jose for Eureka, Sacramento, and San Francisco as places for holding court for the Northern District, removed Fresno and Los Angeles from the list of places for holding court for the Southern District leaving San Diego as the only place for holding of court in the Southern District, and provided for the holding of court in Los Angeles for the Central District and in Fresno, Redding, and Sacramento for the Eastern District.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 3 of Pub. L. 102–357 provided that:

"(a) IN GENERAL.—This Act [amending this section and enacting provisions set out below] and the amendments made by this Act shall take effect 6 months after the date of the enactment of this Act [Aug. 26, 1992]."

"(b) PENDING CASES NOT AFFECTED.—This Act and the amendments made by this Act shall not affect any action commenced before the effective date of this Act and pending in the United States District Court for the Central District of California on such date."

"(c) JURIES NOT AFFECTED.—This Act and the amendments made by this Act shall not affect the composition, or preclude the service, of any grand or petit jury summoned, empaneled, or actually serving in the Central District of California on the effective date of this Act."

EFFECTIVE DATE OF 1980 AMENDMENT; SAVINGS PROVISION

Section 7 of Pub. L. 96–462 provided that:

"(a) This Act and the amendments made by this Act [amending this section and sections 95, 105, 113, and 124 of this title and enacting provisions set out as notes under this section and sections 95, 105, and 113 of this title] shall take effect on October 1, 1981.

"(b) Nothing in this Act shall affect the composition or preclude the service of any grand or petit juror summoned, empaneled, or actually serving in any judicial district on the effective date of this Act [Oct. 1, 1981]."

EFFECTIVE DATE OF 1966 AMENDMENT

Section 3(1) of Pub. L. 89–372 provided that: "The provisions of this section [amending this section and enacting provisions set out as a note under this section and section 133 of this title] shall become effective six months after the date of enactment of this Act [Mar. 18, 1966]."

CONGRESSIONAL FINDINGS CONCERNING CREATION OF THREE DIVISIONS IN CENTRAL DISTRICT

Section 1 of Pub. L. 102–357 provided that: "The Congress makes the following findings:

"(1) The Federal Government has the responsibility to provide quality services which are readily accessible to the people it serves.

"(2) The court facilities in the Central Judicial District of California are presently inadequate, and current and projected growth exacerbates the problem.

"(3) The population demographics of southern California have changed dramatically over the last dec-
ade, as the center of population shifts inland. Between 1980 and 1990, the population of Riverside County increased 76.5 percent, and San Bernardino County's population increased 58.5 percent, to a combined population of 2,600,000.

(4) In the next 15 years, the population in Riverside and San Bernardino Counties is expected to increase again by 70 percent and 67 percent, respectively. By the year 2005, Riverside and San Bernardino Counties will have 4,400,000 residents.

(5) As a result of the population growth, the freeways connecting the Pacific coast and the inland areas are tremendously overburdened, and Federal offices along the coast are no longer accessible to the residents of Riverside and San Bernardino Counties.

The study of business and home location in the Central Judicial District of California is urgently needed to provide for the delivery of judicial services to all areas and all residents of the Central Judicial District of California.

STUDY OF JUDICIAL BUSINESS IN CENTRAL DISTRICT: CALIFORNIA AND EASTERN DISTRICT, NEW YORK AND RECOMMENDATIONS FOR CREATION OF NEW JUDICIAL DISTRICTS


CREATION OF EASTERN AND CENTRAL DISTRICTS:
TRANSFER OF DISTRICT JUDGES, TRANSFER AND APPOINTMENT OF UNITED STATES ATTORNEYS AND UNITED STATES MARSHALS

Section 3(b)–(g) of Pub. L. 89–372 provided that:

"(b) The two district judges for the northern district of California holding office on the day before the effective date of this section [see Effective Date of 1966 Amendment note above] and whose official station is Sacramento shall, on and after such date, be district judges for the eastern district of California. All other district judges for the northern district of California holding office on the day before the effective date of this section shall, on and after such date, be district judges for the northern district of California.

"(c) The district judge for the southern district of California, residing in the northern division thereof and holding office on the day before the effective date of this section [see Effective Date of 1966 Amendment note above], shall, on and after such date, be a district judge for the eastern district of California. The two district judges for the southern district of California holding office on the day before the effective date of this section [see Effective Date of 1966 Amendment note above], and whose official station is San Diego shall, on and after such date, be the district judges for the southern district of California. All other district judges for the southern district of California holding office on the day before the effective date of this section shall, on and after such date, be district judges for the central district of California.

"(d) Nothing in this Act [amending this section and sections 44 and 133 of this title] shall in any manner affect the tenure of office of the United States attorney and the United States marshal for the southern district of California who are in office on the effective date of this section, and who shall be during the remainder of their present terms of office the United States attorney and marshal for the central district of California.

"(e) The President shall appoint, and with the advice and consent of the Senate, a United States attorney and a United States marshal for the southern district of California.

"(f) The President shall appoint, and with the advice and consent of the Senate, a United States attorney and a United States marshal for the eastern district of California."

§ 85. Colorado

Colorado constitutes one judicial district. Court shall be held at Boulder, Colorado Springs, Denver, Durango, Grand Junction, Montrose, Pueblo, and Sterling.


HISTORICAL AND REVISION NOTES


A provision for furnishing rooms and accommodations at Sterling was omitted as obsolete upon advice from the Director of the Administrative Office of the United States Courts that Federal accommodations are now available.

A provision authorizing adjournment at Denver when there is not business for terms at other places, is incorporated in section 138 of this title.

Provisions as to clerk's and marshal's deputies and maintenance of offices were deleted as covered by sections 541 [see 561], 542 [see 561], and 751 of this title.

Changes in arrangement and phraseology were made.

AMENDMENTS


EFFECTIVE DATE OF 1984 AMENDMENT

Section 411 of Pub. L. 98–620 provided that:

"(a) The amendments made by this subtitle [subtitle B (§§ 404–411) of title IV of Pub. L. 98–620, amending this section and sections 90, 93, 112, 124, and 126 of this title and enacting provisions set out as notes under sections 1, 90, 93, and 124 of this title] shall take effect on January 1, 1985.

"(b) The amendments made by this subtitle shall not affect the composition, or preclude the service, of any grand or petit jury summoned, impaneled, or actually serving on the effective date of this subtitle [Jan. 1, 1985]"

§ 86. Connecticut

Connecticut constitutes one judicial district. Court shall be held at Bridgeport, Hartford, New Haven, New London, and Waterbury.

Section 3(b), (c), (e), and (f) of Pub. L. 87–36, § 3(b), May 19, 1961, 75 Stat. 83; Pub. L. 89–558, Sept. 7, 1966, 80 Stat. 705.)

HISTORICAL AND REVISION NOTES

Florida is divided into three judicial districts to be known as the Northern, Middle, and Southern Districts of Florida.

Northern District


(c) The Southern District comprises the counties of Broward, Dade, Highlands, Indian River, Martin, Monroe, Okeechobee, Palm Beach, and St. Lucie.

Court for the Northern District shall be held at Gainesville, Marianna, Panama City, Pensacola, and Tallahassee.

Middle District
Court for the Middle District shall be held at Fernandina, Fort Myers, Jacksonville, Live Oak, Ocala, Orlando, Saint Petersburg, and Tampa.

Southern District
Court for the Southern District shall be held at Fort Lauderdale, Fort Pierce, Key West, Miami, and West Palm Beach.

AMENDMENTS

§ 87. Delaware
Delaware constitutes one judicial district.
Court shall be held at Wilmington.
(June 25, 1948, ch. 646, 62 Stat. 875.)

HISTORICAL AND REVISION NOTES
Minor changes in phraseology were made.

§ 88. District of Columbia
The District of Columbia constitutes one judicial district.
Court shall be held at Washington.
(June 25, 1948, ch. 646, 62 Stat. 875.)

HISTORICAL AND REVISION NOTES
This section expressly makes the District of Columbia a judicial district of the United States.
Section 41 of this title also makes the District of Columbia a judicial circuit of the United States.
Section 11–305 of the District of Columbia Code, 1940 ed., provides that the District Court of the United States for the District of Columbia shall possess the same powers and exercise the same jurisdiction as the district courts of the United States, and shall be deemed a court of the United States.

HISTORICAL AND REVISION NOTES

§ 89. Florida
Florida is divided into three judicial districts to be known as the Northern, Middle, and Southern Districts of Florida.

Northern District
Flagler, Hamilton, Hardee, Hernando, Hillsborough, Lake, Lee, Madison, Manatee, Marion, Nassau, Orange, Osceola, Pasco, Pinellas, Polk, Putnam, Saint Johns, Sarasota, Seminole, Sumter, Suwannee, Union, and Volusia from the Southern District and created the Middle District to comprise such counties.

1952—Subsec. (b). Act July 17, 1952, provided for holding court at Port Myers and West Palm Beach.

**Effective Date of 1988 Amendment**

Section 1021(b), (c) of title X of Pub. L. 100–702 provided that:

“(b) Effective Date.—(1) The amendments made by this section (amending this section) shall apply to any action commenced in the United States District Court for the Middle District of Florida, or in the United States District Court for the Southern District of Florida, on or after the effective date of this title (probably should be effective date of this section), and shall not affect any action pending in either such court on such effective date.

“(c) Juries.—The amendments made by this section (amending this section) shall not affect the composition, or preclude the service, of any grand or petit jury summoned, empaneled, or actually serving on the effective date of this title (probably should be effective date of this section).”

**Effective Date of 1978 Amendment; Savings Provision**

Section 5 of Pub. L. 95–408 provided that:

“(a) The amendments made by this Act [amending this section and sections 93, 97, 98, 101, 112, 114, and 133 of this title and enacting provisions set out as notes under this section and section 142 of this title] shall take effect 90 days after the date of enactment of this Act (Nov. 19, 1988).

“(2) The amendments made by subsection (a) [amending this section] shall take effect 90 days after the date of enactment of this title (Nov. 19, 1988).

“(2) The amendments made by subsection (a) [amending this section] shall take effect 90 days after the date of enactment of this title (Nov. 19, 1988).

“(c) Nothing in this Act shall affect the tenure of office of the United States Attorney and the United States Marshal for the Northern, Middle, and Southern Districts of Florida who are in office at the time of the enactment of this Act (July 30, 1962), and who shall be during the remainder of their present terms of office the United States Attorney and Marshal for the Middle District of Florida as constituted by this Act.

“(e) The President is authorized to appoint, by and with the advice and consent of the Senate, a United States Attorney and a United States Marshal for the Southern District of Florida.”

**Elimination of District Judgeship for Northern, Middle, and Southern Districts of Florida**

District judgeship for northern, middle, and southern districts changed to district judgeship for middle district only, see section 2(b) of Pub. L. 89–372, set out as a note under section 183 of this title.

**§ 90. Georgia**

Georgia is divided into three judicial districts to be known as the Northern, Middle, and Southern Districts of Georgia.

**Northern District**

(a) The Northern District comprises four divisions.

(1) The Gainesville Division comprises the counties of Banks, Barrow, Dawson, Fannin, Forsyth, Gilmer, Habersham, Hall, Jackson, Lumpkin, Pickens, Rabun, Stephens, Towns, Union, and White.

Court for the Gainesville Division shall be held at Gainesville.

(2) The Atlanta Division comprises the counties of Cherokee, Clayton, Cobb, De Kalb, Douglas, Fulton, Gwinnett, Henry, Newton, and Rockdale.

Court for the Atlanta Division shall be held at Atlanta.

(3) The Rome Division comprises the counties of Bartow, Catoosa, Chattooga, Dade, Floyd, Gordon, Murray, Paulding, Polk, Walker, and Whitfield.

Court for the Rome Division shall be held at Rome.

(4) The Newnan Division comprises the counties of Carroll, Coweta, Fayette, Haralson, Heard, Meriwether, Pike, Spalding, and Troup.

Court for the Newnan Division shall be held at Newnan.

**Middle District**

(b) The Middle District comprises seven divisions.

(1) The Athens Division comprises the counties of Clarke, Elbert, Franklin, Greene, Hart, Madison, Morgan, Oconee, Oglethorpe, and Walton.

Court for the Athens Division shall be held at Athens.

(2) The Macon Division comprises the counties of Baldwin, Bibb, Bleckley, Butts, Crawford, Hancock, Houston, Jasper, Jones, Lamar, Monroe, Peach, Pulaski, Putnam, Twiggs, Upson, Washington, and Wilkinson.

Court for the Macon Division shall be held at Macon.
(3) The Columbus Division comprises the counties of Chattahoochee, Clay, Harris, Marion, Muscogee, Quitman, Randolph, Stewart, Talbot, and Taylor.

Court for the Columbus Division shall be held at Columbus.

(4) The Americus Division comprises the counties of Ben Hill, Crisp, Dooly, Lee, Macon, Schley, Sumter, Terrell, Webster, and Wilcox.

Court for the Americus Division shall be held at Americus.

(5) The Albany Division comprises the counties of Baker, Calhoun, Dougherty, Early, Miller, Mitchell, Turner, and Worth.

Court for the Albany Division shall be held at Albany.

(6) The Valdosta Division comprises the counties of Berrien, Clinch, Cook, Echols, Irwin, Lanier, Lowndes, and Tift.

Court for the Valdosta Division shall be held at Valdosta.

(7) The Thomasville Division comprises the counties of Brooks, Colquitt, Decatur, Grady, Seminole, and Thomas.

Court for the Thomasville Division shall be held at Thomasville.

Southern District

(c) The Southern District comprises six divisions.

(1) The Augusta Division comprises the Counties of Burke, Columbia, Glascock, Jefferson, Lincoln, McDuffie, Richmond, Telfair, Warren, and Wilkes.

Court for the Augusta Division shall be held at Augusta.

(2) The Dublin Division comprises the counties of Dodge, Johnson, Laurens, Montgomery, Telfair, Treutlen, and Wheeler.

Court for the Dublin Division shall be held at Dublin.

(3) The Savannah Division comprises the counties of Bryan, Chatham, Effingham, and Liberty.

Court for the Savannah Division shall be held at Savannah.

(4) The Waycross Division comprises the counties of Atkinson, Bacon, Brantley, Charlton, Coffee, Pierce, and Ware.

Court for the Waycross Division shall be held at Waycross.

(5) The Brunswick Division comprises the counties of Appling, Camden, Glynn, Jeff Davis, Long, McIntosh, and Wayne.

Court for the Brunswick Division shall be held at Brunswick.

(6) The Statesboro Division comprises the counties of Bulloch, Candler, Emanuel, Evans, Jenkins, Screven, Tattnall, and Toombs.

Court for the Statesboro Division shall be held at Statesboro.


HISTORICAL AND REVISION NOTES


Provisions for furnishing rooms and accommodations at Americus and Dublin were omitted as obsolete upon advice of the Director of the Administrative Office of the United States Courts that Federal accommodations are now available in each of those places.

The provisions respecting court accommodations at Brunswick, Newnan, or Thomasville were omitted as covered by section 142 of this title.

Since the latest amendment of section 150 of title 28, U.S.C., 1940 ed., the former counties of Campbell and Milton were merged with Fulton County in the Atlanta Division of the Northern District.

Changes in arrangement and phraseology were made.

AMENDMENTS


1984—Subsec. (a)(1). Pub. L. 98–620, §408(a), added Fannin, Gilmer, and Pickens to the counties comprising the Gainesville Division of the Northern District.

Subsec. (a)(2). Pub. L. 98–620, §408(b), struck out Fannin, Gilmer, and Pickens from the counties comprising the Atlanta Division of the Northern District.

Subsec. (c)(6). Pub. L. 98–620, §408(c), substituted “Statesboro” for “Swainsboro” in three places.


1949—Subsec. (c). Act Aug. 16, 1949, created a Swainsboro division and provided for holding court there.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–657 effective 90 days after Nov. 14, 1986, and not to affect any action commenced before and pending on such effective date, or to affect the composition, or preclude the service, of any grand or petit jury summoned, empaneled, or actually serving on that date, see section 411 of Pub. L. 99–657, set out as a note under section 121 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 408(d) of Pub. L. 98–620 provided that: “The amendments made by this section [amending this section] shall apply to any action commenced in the United States District Court for the Northern District of Georgia on or after the effective date of this subtitle (Jan. 1, 1985), and shall not affect any action pending in such court on such effective date.”

Amendment by Pub. L. 98–620 effective Jan. 1, 1985, and not to affect the composition, or preclude the service, of any grand or petit jury summoned, empaneled, or actually serving on such date, see section 411 of Pub. L. 98–620, set out as a note under section 85 of this title.

§91. Hawaii

Hawaii constitutes one judicial district which includes the Midway Islands, Wake Island, Johnston Island, Sand Island, Kingman Reef, Palmer Island, Baker Island, Howland Island, Jarvis Island, Canton Island, and Enderbury Island: Provided, That the inclusion of Canton and Enderbury Islands in such judicial district shall in no way be construed to be prejudicial to the claims of the United Kingdom to said Islands in accordance with the agreement of April 6, 1939, between the Governments of the United States and of the United Kingdom to set up a regime for their use in common.

Court shall be held at Honolulu.
HISTORICAL AND REVISION NOTES


Section consolidates parts of sections 641 and 642a of title 48, U.S.C. 1940 ed.

The provisions of section 641 of title 48, U.S.C. 1940 ed., with reference to regular and special terms and the times of holding same were omitted as covered by sections 138 and 141 of this title.

Provisions of section 642a of title 48, U.S.C. 1940 ed., relating to jurisdiction of civil actions and criminal offenses, were omitted as covered by the general jurisdiction provisions of this title and revised title 18 (H. R. 3190, 80th Cong.).

Provisions of section 642a of title 48, U.S.C. 1940 ed., as to appeals were omitted as covered by section 1285 of this title. Provisions of said section 642a with reference to juries and jury trials were omitted as covered by chapter 121 of this title.


Changes were made in phraseology.

AMENDMENTS


1949—Act May 24, 1949, inserted provisions relating to inclusion of Canton and Enderbury Islands.

EFFECTIVE DATE OF 1959 AMENDMENT

Section 14 of Pub. L. 86–3 provided that the amendments of sections 91, 373, 1252, 1293, and 1294 of this title, sections 371 and 373 of Title 18, Crimes and Criminal Procedure, and section 644a of Title 48, Territories and Insular Possessions, the repeal of sections 536, 539, 634, 694a, and 645 of title 48, and notes set out under sections 371 and 373 of this title, are effective on admission of the State of Hawaii into the Union. See Admission of Hawaii as State note below.

CANTON AND ENDERBURY ISLANDS; SOVEREIGNTY OF KIRIBATI

By a treaty of friendship, TIAS 10777, which entered into force Sept. 23, 1983, the United States recognized the sovereignty of Kiribati over Canton Island and Enderbury Island.

ADMISSION OF HAWAII AS STATE

Admission of Hawaii into the Union was accomplished Aug. 21, 1959, on issuance of Proc. No. 3309, Aug. 21, 1959, 25 F.R. 6668, 73 Stat. c74, as required by sections 1 and 7(c) of Pub. L. 86–3, Mar. 18, 1959, 73 Stat. 4, set out as notes preceding section 191 of Title 48, Territories and Insular Possessions.

COURT OF THE UNITED STATES; DISTRICT JUDGES

Section 9(a) of Pub. L. 86–3 provided that: ‘‘The United States District Court for the District of Hawaii established by and existing under title 28 of the United States Code shall thenceforth be a court of the United States with judicial power derived from article III, section 1, of the Constitution of the United States: Provided, however, That the terms of office of the district judges for the district of Hawaii then in office shall terminate upon the effective date of this section and the President, pursuant to sections 138 and 141 of this title, United States Code, as amended by this Act, shall appoint, by and with the advice and consent of the Senate, two district judges for the said district who shall hold office during good behavior.’’

Section 9 of Pub. L. 86–3 provided in part that subsec. (a) of that section should be effective upon the admission of the State of Hawaii into the Union.

CONTINUATION OF SUITS

Section 12 of Pub. L. 86–3 provided that: ‘‘No writ, action, indictment, cause, or proceeding pending in any Court of the Territory of Hawaii or in the United States District Court for the District of Hawaii shall abate by reason of the admission of said State into the Union, but the same shall be transferred to and proceeded with in such appropriate State courts as shall be established under the constitution of said State, or shall continue in the United States District Court for the District of Hawaii, as the nature of the case may require. And no writ, action, indictment, cause or proceeding shall abate by reason of any change in the courts, but shall be proceeded with in the State or United States courts according to the laws thereof, respectively. And the appropriate State courts shall be the successors of the courts of the Territory as to all cases arising within the limits embraced within the jurisdiction of such courts, respectively, with full power to proceed with such cases, to the same, and award money or final process therein, and all the files, records, indictments, and proceedings relating to any such writ, action, indictment, cause or proceeding shall be transferred to such appropriate State courts and the same shall be proceeded with therein in due course of law.

‘‘All civil causes of action and all criminal offenses which shall have arisen or been committed prior to the admission of said State, but as to which no writ, action, indictment or proceeding shall be pending at the date of such admission, shall be subject to prosecution in the appropriate State courts or in the United States District Court for the District of Hawaii in like manner, to the same extent, and with like right of appellate review, as if said State had been created and said State courts had been established prior to the accrual of such causes of action or the commission of such offenses. The admission of said State shall effect no change in the substantive or criminal law governing such causes of action and criminal offenses which shall have arisen or been committed; and such of said criminal offenses as shall have been committed against the laws of the Territory shall be tried and punished by the appropriate courts of said State, and such as shall have been committed against the laws of the United States shall be tried and punished in the United States District Court for the District of Hawaii.’’

APPEALS

Section 13 of Pub. L. 86–3 provided that: ‘‘Parties shall have the same rights of appeal from and appellate review of final decisions of the United States District Court for the District of Hawaii or the Supreme Court of the Territory of Hawaii in any case finally decided prior to admission of said State into the Union, whether or not an appeal therefrom shall have been perfected prior to such admission, and the United States Court of Appeals for the Ninth Circuit and the Supreme Court of the United States shall have the same jurisdiction therein, as by law provided prior to admission of said State into the Union, and any mandate issued subsequent to the admission of said State shall be to the United States District Court for the District of Hawaii or a court of the State, as may be appropriate. Parties shall have the same rights of appeal from and appellate review of all orders, judgments, and decrees of the United States District Court for the District of Hawaii and of the Supreme Court of the State of Hawaii as successor to the Supreme Court of the Territory of Hawaii, in any case pending at the time of admission of said State into the Union, and the United States Court of Appeals for the Ninth Circuit and the Supreme Court of the United States shall have the same jurisdiction.
therein, as by law provided in any case arising subsequent to the admission of said State into the Union."

**Extension of Jurisdiction of United States District Court for District of Hawaii and of Civil and Criminal Laws to Midway, Wake, Johnson, Sand, etc., Islands.**

The jurisdiction of the United States District Court for the District of Hawaii and the laws of the United States relating to civil acts or offenses consummated or committed on the high seas on board a vessel belonging to the United States were extended to the Midway Islands, Wake, Johnson, Sand, etc., Islands by section 644a of Title 48, Territories and Insular Possessions.

§ 92. Idaho

Idaho, exclusive of Yellowstone National Park, constitutes one judicial district.

Court shall be held at Boise, Coeur d'Alene, Moscow, and Pocatello.


**Historical and Revision Notes**


All of Yellowstone National Park is included in the judicial district of Wyoming by section 131 of this title. Those parts of the park lying in Idaho are accordingly excluded from the judicial district of Idaho.

A provision as to the places for maintenance of the clerk's offices, and requiring that they be open at all times, was omitted as covered by sections 452-751 of this title.

Changes in arrangement and phraseology were made.

**AMENDMENTS**

1979—Pub. L. 91–272 struck out provisions which had divided the judicial district of Idaho into a Northern Division, a Central Division, a Southern Division, and an Eastern Division.

§ 93. Illinois

Illinois is divided into three judicial districts to be known as the Northern, Central, and Southern Districts of Illinois.

**Northern District**

(a) The Northern District comprises two divisions.

(1) The Eastern Division comprises the counties of Cook, Du Page, Grundy, Kane, Kendall, Lake, La Salle, and Will.

Court for the Eastern Division shall be held at Chicago and Wheaton.

(2) The Western Division comprises the counties of Boone, Carroll, De Kalb, Jo Daviess, Lee, McHenry, Ogle, Stephenson, Whiteside, and Winnebago.

Court for the Western Division shall be held at Freeport and Rockford.

**Central District**


Court for the Central District shall be held at Champaign/Urbana, Danville, Peoria, Quincy, Rock Island, and Springfield.

**Southern District**

(c) The Southern District comprises the counties of Alexander, Bond, Calhoun, Clark, Clay, Clinton, Crawford, Cumberland, Edwards, Effingham, Fayette, Franklin, Gallatin, Hamilton, Hardin, Jackson, Jasper, Jefferson, Jersey, Johnson, Lawrence, Madison, Marion, Massac, Monroe, Perry, Pope, Pulaski, Randolph, Richland, St. Clair, Saline, Union, Washington, Wayne, White, and Williamson.

Court for the Southern District shall be held at Alton, Benton, Cairo, and East Saint Louis.


**Historical and Revision Notes**


Provisions relating to appointment of deputy marshals and maintenance of offices by deputy marshals and deputy clerks were omitted as covered by sections 452, 541 (see 561), 542 (see 561), and 751 of this title.

Changes in arrangement and phraseology were made.

**AMENDMENTS**


Subsec. (a)(2). Pub. L. 98–620, §406(a)(2), added De Kalb and McHenry to the counties comprising the Western Division of the Northern District.


Subsec. (a)(1). Pub. L. 95–573, §1(1), struck out Kankakee from the counties comprising the Eastern Division of the Northern District.

Pub. L. 95–408 added Kankakee to the counties comprising the Eastern Division of the Northern District.

Subsec. (b). Pub. L. 95–573, §1(2), added Kankakee to the counties comprising the Central District.

Pub. L. 95–408 substituted “Central District” for “Southern District” in heading, struck out subsec. (b)(1) and (2) designations, which divided Southern District into a Northern and Southern Division, and in such newly created Central District, added counties of Champaign, Coles, Douglas, Edgar, Ford, Iroquois, Moultrie, Piatt, Shelby, and Vermilion to, and struck out counties of Bond, Calhoun, Jersey, and Madison from, those counties comprising the new Central Dist-
district, and substituted provisions for holding of a term of Court for Central District at Danville, Peoria, Quincy, Rock Island, and Springfield for provisions for holding of a term of Court for Northern Division of the former Southern District at Peoria and Rock Island and for Southern Division of former Southern District at Alton, Quincy, and Springfield.

Subsec. (c). Pub. L. 96–498 substituted ‘‘Southern District’’ for ‘‘Eastern District’’ in heading, and in such Southern District added counties of Bond, Calhoun, Jersey, and Madison to, and struck out counties of Champaign, Coles, Douglas, Edgar, Ford, Iroquois, Kane, Moultrie, Piatt, Shelby and Vermilion from, those counties comprising Southern District, and substituted provisions for holding of a term of Court for Southern District at Alton, Benton, Cairo, and East Saint Louis for provisions for holding of a term of Court for Eastern District at Benton, Cairo, Danville, and East Saint Louis.


**Effective Date of 1984 Amendment**

Section 406(b) of Pub. L. 98–620 provided that: ‘‘The amendments made by subsection (a) of this section [amending this section] shall apply to any action commenced in the United States District Court for the Northern District of Illinois on or after the effective date of this subtitle [Jan. 1, 1985], and shall not affect any action pending in such court on such effective date.’’

Amendment by Pub. L. 98–620 effective Jan. 1, 1985, and not to affect the composition, or preclude the service, of any grand or petit jury summoned, impaneled, or actually serving on that date, see section 411 of Pub. L. 98–620, set out as a note under section 85 of this title.

**Effective Date of 1978 Amendment; Savings Provision**

Section 6 of Pub. L. 95–573, as amended by Pub. L. 96–4, § 2, Mar. 30, 1979, 93 Stat. 7, provided that:

‘‘(a) Except as provided in subsection (b) of this section, the provisions of this Act [amending this section and sections 99, 112, and 118 of this title and enacting a provision set out as a note under section 84 of this title] shall take effect 180 days after the date of enactment of this Act [Nov. 2, 1978].’’

‘‘(b)(1) The provisions of section 5 of this Act [set out as a note under section 84 of this title] shall take effect on the date of enactment of this Act [Nov. 2, 1978].’’

‘‘(2) The provisions of the first section of this Act [amending this section] shall take effect on March 31, 1979.’’

‘‘(c) Nothing in this Act [amending this section and sections 99, 112, and 118 of this title and enacting provisions set out as a note under section 84 of this title] shall affect the composition or preclude the service of any grand or petit juror summoned, impaneled, or actually serving in any judicial district on the effective date of this Act.’’

**Effective Date of 1978 Amendment; Savings Provision**

Amendment by Pub. L. 95–498 effective 180 days after Oct. 2, 1978, with such amendment not to affect the composition or preclude the service of any grand or petit juror summoned, impaneled, or actually serving in any judicial district on the effective date of this Act, see section 5 of Pub. L. 95–498, set out as a note under section 89 of this title.

**District Judges, United States Attorneys, Assistant United States Attorneys, and United States Marshals for Central and Southern Districts; Designation; Tenure; Appointment; Grand Jury**

Pub. L. 95–498, § 4(b)(2)–(4), as added by Pub. L. 96–4, § 1, Mar. 30, 1979, 93 Stat. 6, provided that:

‘‘(2) The district judge for the Eastern District of Illinois in office on the effective date of this Act [180 days after Oct. 2, 1978] who is senior in commission shall, on and after the effective date of this Act, be a district judge for the Southern District of Illinois. The remaining district judge for the Eastern District of Illinois who is in office on the effective date of this Act and the district judges for the Southern District of Illinois who are in office on the effective date of this Act shall appoint, by and with the advice and consent of the Senate, a second district judge for the Southern District of Illinois.

‘‘(3) This section does not in any manner affect the tenure of the United States attorney, the assistant United States attorneys, or the United States marshal for the Eastern District of Illinois or for the Southern District of Illinois who are in office on the effective date of this Act [180 days after Oct. 2, 1978] by the United States attorney, the assistant United States attorneys, and the United States marshal for the Eastern District of Illinois and for the Southern District of Illinois shall, on the effective date of this Act, become the United States attorney, the assistant United States attorneys, and the United States marshal for the Southern District and for the Central District of Illinois, respectively.

‘‘(4) Notwithstanding section 3240 of title 18, United States Code, any grand jury impaneled on or after the effective date of this Act [180 days after Oct. 2, 1978] by a district court for the Central District or the Southern District of Illinois may inquire into and return indictments charging offenses against the criminal laws of the United States alleged to have been committed anywhere within the territory of the respective judicial districts as such districts were constituted before or after the effective date of this Act.’’

§ 94. Indiana

Indiana is divided into two judicial districts to be known as the Northern and Southern Districts of Indiana.

**Northern District**

(a) The Northern District comprises three divisions.

(1) The Fort Wayne Division comprises the counties of Adams, Allen, Blackford, DeKalb, Grant, Huntington, Jay, Lagrange, Noble, Steuben, Wells, and Whitley. Court for the Fort Wayne Division shall be held at Fort Wayne.

(2) The South Bend Division comprises the counties of Cass, Elkhart, Fulton, Kosciusko, LaPorte, Marshall, Miami, Pulaski, St. Joseph, Starke, and Wabash. Court for the South Bend Division shall be held at South Bend.

(3) The Hammond Division comprises the counties of Benton, Carroll, Jasper, Lake, Newton, Porter, Tippecanoe, Warren, and White. Court for the Hammond Division shall be held at Hammond and Lafayette.

**Southern District**

(b) The Southern District comprises four divisions.

(1) The Indianapolis Division comprises the counties of Bartholomew, Boone, Brown, Clinton, Decatur, Delaware, Fayette, Fountain, Franklin, Hamilton, Hancock, Hendricks, Henry, Howard, Johnson, Madison, Marion, Monroe, Montgomery,
§ 95. Iowa

Iowa is divided into two judicial districts to be known as the Northern and Southern Districts of Iowa.

Northern District

(a) The Northern District comprises four divisions.

(1) The Cedar Rapids Division comprises the counties of Benton, Cedar, Grundy, Hardin, Iowa, Jones, Linn, and Tama.

(b) The Southern District comprises six divisions.

(1) The Central Division comprises the counties of Boone, Dallas, Greene, Guthrie, Jasper, Madison, Marion, Marshall, Polk, Poweshiek, Story, and Warren.

(2) The Eastern Division comprises the counties of Des Moines, Henry, Lee, Louisa, and Van Buren.

(3) The Western Division comprises the counties of Audubon, Cass, Fremont, Harrison, Mills, Montgomery, Page, Pottawattamie, and Shelby.

(4) The Southern Division comprises the counties of Adair, Adams, Clarke, Decatur, Lucas, Ringgold, Taylor, Union, and Wayne.

(5) The Davenport Division comprises the counties of Clinton, Johnson, Muscatine, Scott, and Washington.

(6) The Ottumwa Division comprises the counties of Appanoose, Davis, Jefferson, Keokuk, Mahaska, Monroe, and Wapello.
Court for the Ottumwa Division shall be held at Ottumwa.


HISTORICAL AND REVISION NOTES


A provision relating to the maintenance of clerk's office was omitted as covered by section 751 of this title. Changes in arrangement and phraseology were made.

AMENDMENTS


Subsec. (b)(4). Pub. L. 96–462, §3(a)(2), struck out references to Fremont and Page counties in list of counties comprising Southern Division of Southern District.

§ 96. Kansas

Kansas constitutes one judicial district.

Court shall be held at Kansas City, Lawrence, Leavenworth, Salina, Topeka, Hutchinson, Wichita, Dodge City, and Fort Scott.


HISTORICAL AND REVISION NOTES


Provisions as to the appointment and residence of deputy marshals and deputy clerks and maintenance of offices by them were omitted. See sections 541 [see 561], 542 [see 561], and 751 of this title.

A provision making inoperative the terms of the last paragraph of this section, whenever, upon the recom-
Last paragraph of section 158 of title 28, U.S.C., 1940 ed., relating to process, was omitted as covered by Rule 4 of the Federal Rules of Civil Procedure.

Provisions relating to maintenance of clerk's offices were omitted as covered by sections 452 and 751 of this title.

Provisions for furnishing rooms and accommodations at Lexington and Pikeville were omitted as obsolete on advice of the Director of the Administrative Office of the United States Courts that Federal accommodations are now available in each of those places.

Words "with the waters thereof," after the list of counties in each district, were omitted as unnecessary and inconsistent with other sections of this chapter.

McCreary County of the Eastern District was formed from parts of the counties of Pulaski, Wayne, and Whiteley since the latest amendment of the Judicial Code.

Changes in arrangement and phraseology were made.

AMENDMENTS


Effective Date of 1978 Amendment; Savings Provision

Amendment by Pub. L. 95–408 effective 180 days after Oct. 2, 1978, with such amendment not to affect the composition or preclude the service of any grand or petit juror summoned, empaneled, or actually serving in any judicial district on the effective date of this Act, see section 5 of Pub. L. 95–408, set out as a note under section 89 of this title.

§ 98. Louisiana

Louisiana is divided into three judicial districts to be known as the Eastern, Middle, and Western Districts of Louisiana.

Eastern District


Court for the Eastern District shall be held at New Orleans, and Houma.

Middle District

(b) The Middle District comprises the parishes of Ascension, East Baton Rouge, East Feliciana, Iberville, Livingston, Pointe Coupee, Saint Helena, West Baton Rouge, and West Feliciana.

Court for the Middle District shall be held at Baton Rouge.

Western District

(c) The Western District comprises the parishes of Acadia, Allen, Avoyelles, Beauregard, Bienville, Bossier, Caddo, Calcasieu, Caldwell, Cameron, Catahoula, Claiborne, Concordia, Jefferson Davis, De Soto, East Carroll, Evangeline, Franklin, Grant, Iberia, Jackson, Lafayette, La Salle, Lincoln, Madison, Morehouse, Natchitoches, Ouachita, Rapides, Red River, Richland, Sabine, Saint Landry, Saint Martin, Saint Mary, Tensas, Union, Vermilion, Vernon, Webster, West Carroll, and Winn.

Court for the Western District shall be held at Alexandria, Lafayette, Lake Charles, Monroe, Opelousas, and Shreveport.


Historical and Revision Notes


Provisions relating to the maintenance of offices by the clerks were omitted as covered by sections 452 and 751 of this title.

The parishes of Allen, Beauregard, and Jefferson Davis of the Lake Charles Division of the Western District were formed out of part of Calcasieu Parish since the enactment of the Judicial Code.

Changes in arrangement and phraseology were made.

AMENDMENTS


1978—Subsec. (c). Pub. L. 95–408 struck out par. (1) to (6) designations which had divided the parishes of Western District into six divisions.

1971—Pub. L. 92–208 created a Middle District consisting of the nine parishes formerly making up Baton Rouge Division of Eastern District and designated as the entire Eastern District the thirteen parishes formerly making up New Orleans Division of Eastern District.

1961—Pub. L. 87–36 struck out from enumeration in subsection (b)(4) Lafayette, Saint Martin and Vermilion, and in subsection (b)(5) Acadia, and created sixth division of subsection (b), consisting of such parishes.

Effective Date of 1978 Amendment; Savings Provision

Amendment by Pub. L. 95–408 effective 180 days after Oct. 2, 1978, with such amendment not to affect the composition or preclude the service of any grand or petit juror summoned, empaneled, or actually serving in any judicial district on the effective date of this Act, see section 5 of Pub. L. 95–408, set out as a note under section 89 of this title.

Effective Date of 1971 Amendment

Section 3(f) of Pub. L. 92–208 provided that: "The provisions of this section [amending this section and sections 133 and 134 of this title and enacting provisions set out below] shall become effective one hundred and twenty days after the date of enactment of this Act [Dec. 18, 1971]."

District Judge, United States Attorney, and United States Marshal for Middle District; Designation; Tenure; Appointment

Section 3(b), (c) of Pub. L. 92–208 provided that:

"(b) The district judge for the Eastern District of Louisiana holding office on the day immediately prior to the effective date of this section [see Effective Date of 1971 Amendment Note above], and whose official station on such date is Baton Rouge, shall, on and after such date, be the district judge for the Middle District of Louisiana. All other district judges for the Eastern District of Louisiana holding office on the day immediately prior to the effective date of this section shall be district judges for the Eastern District of Louisiana as constituted by this section.

"(c)(1) Nothing in this section shall in any manner affect the tenure of office of the United States attorney and the United States marshal for the Eastern District of Louisiana who are in office on the effective date of this section, and who shall be during the remainder of their present terms of office the United States attorney and marshal for the Eastern District of Louisiana as constituted by this section.

"(2) The President shall appoint, by and with the advice and consent of the Senate, a United States attorney and marshal for the Middle District of Louisiana."
§ 99. Maine

Maine constitutes one judicial district.


Historical and Revision Notes


Changes in arrangement and phraseology were made.

Amendments

1978—Pub. L. 95–573 struck out provision for two separate divisions. (1) The Northern Division comprising the counties of Aroostook, Hancock, Penobscot, Piscataquis, Somerset, Waldo, and Washington and (2) the Southern Division comprising the counties of Androscoggin, Cumberland, Franklin, Kennebec, Knox, Lincoln, Oxford, Sagadahoc, and York. Effective Date of 1978 Amendment

Amendment by Pub. L. 95–573 effective 180 days after the date of the enactment of this Act (Oct. 14, 1988).

§ 100. Maryland

Maryland constitutes one judicial district comprising two divisions.

(1) The Northern Division comprises the counties of Allegany, Anne Arundel, Baltimore, Caroline, Carroll, Cecil, Dorchester, Frederick, Garrett, Harford, Howard, Kent, Queen Anne’s, Somerset, Talbot, Washington, Wicomico, and Worcester, and the City of Baltimore. Court for the Northern Division shall be held at Baltimore, Cumberland, and Denton.

(2) The Southern Division comprises the counties of Calvert, Charles, Montgomery, Prince George’s, and St. Mary’s. Court for the Southern Division shall be held at a suitable site in Montgomery or Prince George’s County not more than five miles from the boundary of Montgomery and Prince George’s Counties. (June 25, 1948, ch. 646, 62 Stat. 882; Pub. L. 95–573, §4, Dec. 14, 1978, 92 Stat. 1412; Pub. L. 100–487, §1, Oct. 14, 1988, 102 Stat. 2431.)

Historical and Revision Notes


Words “and the terms at Boston shall not be terminated or affected by the terms at Springfield, New Bedford, or Worcester,” were omitted as covered by section 138 of this title.

Provisions relating to appointment of deputy clerks and deputy marshals, and maintenance of office by said deputies were omitted as covered by sections 541 [see 561], 542 [see 561], and 751 of this title.

Provisions for furnishing rooms and accommodations at Springfield and Worcester were omitted as obsolete upon advice of Director of the Administrative Office of the United States Courts that federal accommodations have been provided at such places.

A provision requiring the return of all process to the clerk’s office at Boston, unless otherwise specially ordered by the court, was omitted, since such matters can be regulated more appropriately by court rule or order. See Federal Rules of Civil Procedure, Rule 44(g).

The provision respecting court accommodations at New Bedford was omitted as covered by section 142 of this title.

Changes in arrangement and phraseology were made.

Amendments

1988—Pub. L. 100–702 amended section generally. Prior to amendment, section provided that Maryland constituted one judicial district, and that court be held at Baltimore, Cumberland, Denton, and at a suitable site in Prince Georges County not more than five miles from the boundary of Montgomery and Prince Georges Counties.

1970—Pub. L. 91–546 added a suitable site in Prince Georges County not more than five miles from the boundary of Montgomery and Prince Georges Counties to the list of enumerated places for holding court in Maryland.

Effective Date of 1988 Amendment

Section 2 of Pub. L. 100–487 provided that:

“(a) In General.—This Act and the amendments made by this Act [amending this section] shall take effect 180 days after the date of the enactment of this Act [Oct. 14, 1988].

“(b) Pending Cases Not Affected.—This Act and the amendments made by this Act shall not affect any action commenced before the effective date of this Act and pending in the United States District Court for the District of Maryland on such date.

“(c) Juries Not Affected.—This Act and the amendments made by this Act shall not affect the composition, or preclude the service, of any grand or petit jury summoned, empaneled, or actually serving in the Judicial District of Maryland on the effective date of this Act.”

§ 101. Massachusetts

Massachusetts constitutes one judicial district. Court shall be held at Boston, New Bedford, Springfield, and Worcester. (June 25, 1948, ch. 646, 62 Stat. 882.)

Historical and Revision Notes


Words “and the terms at Boston shall not be terminated or affected by the terms at Springfield, New Bedford, or Worcester,” were omitted as covered by section 138 of this title.

Provisions relating to appointment of deputy clerks and deputy marshals, and maintenance of office by said deputies were omitted as covered by sections 541 [see 561], 542 [see 561], and 751 of this title.

Provisions for furnishing rooms and accommodations at Springfield and Worcester were omitted as obsolete upon advice of Director of the Administrative Office of the United States Courts that federal accommodations have been provided at such places.

A provision requiring the return of all process to the clerk’s office at Boston, unless otherwise specially ordered by the court, was omitted, since such matters can be regulated more appropriately by court rule or order. See Federal Rules of Civil Procedure, Rule 44(g).

The provision respecting court accommodations at New Bedford was omitted as covered by section 142 of this title.

Changes in arrangement and phraseology were made.

Amendments

1988—Pub. L. 100–702 amended section generally. Prior to amendment, section provided that Maryland constituted one judicial district, and that court be held at Baltimore, Cumberland, Denton, and at a suitable site in Prince Georges County not more than five miles from the boundary of Montgomery and Prince Georges Counties.

1970—Pub. L. 91–546 added a suitable site in Prince Georges County not more than five miles from the boundary of Montgomery and Prince Georges Counties to the list of enumerated places for holding court in Maryland.

Effective Date of 1988 Amendment

Section 2 of Pub. L. 100–487 provided that:

“(a) In General.—This Act and the amendments made by this Act [amending this section] shall take effect 180 days after the date of the enactment of this Act [Oct. 14, 1988].

“(b) Pending Cases Not Affected.—This Act and the amendments made by this Act shall not affect any action commenced before the effective date of this Act and pending in the United States District Court for the District of Maryland on such date.

“(c) Juries Not Affected.—This Act and the amendments made by this Act shall not affect the composition, or preclude the service, of any grand or petit jury summoned, empaneled, or actually serving in the Judicial District of Maryland on the effective date of this Act.”

§ 102. Michigan

Michigan is divided into two judicial districts to be known as the Eastern and Western Districts of Michigan.

Eastern District

(a) The Eastern District comprises two divisions.

(1) The Southern Division comprises the counties of Genesee, Jackson, Lapeer, Lenawee, Livingston, Macomb, Monroe, Oakland, Saint Clair, Sanilac, Shiawassee, Washtenaw, and Wayne. Court for the Southern Division shall be held at Ann Arbor, Detroit, Flint, and Port Huron.

(2) The Northern Division comprises the counties of Alcona, Alpena, Arenac, Bay,
Cheboygan, Clare, Crawford, Gladwin, Gratiot, Huron, Iosco, Isabella, Midland, Montmorency, Ogemaw, Oscoda, Otsego, Presque Isle, Roscommon, Saginaw, and Tuscola.

Court for the Northern Division shall be held at Bay City.

Western District

(b) The Western District comprises two divisions.


Court for the Southern Division shall be held at Grand Rapids, Kalamazoo, Lansing, and Traverse City.

(2) The Northern Division comprises the counties of Alger, Baraga, Chippewa, Delta, Dickinson, Gogebic, Houghton, Iron, Keweenaw, Luce, Mackinac, Marquette, Menominee, Ontonagon, and Schoolcraft.

Court for the Northern Division shall be held at Marquette and Sault Sainte Marie.


HISTORICAL AND REVISION NOTES


Provisions relating to the appointment and residence of deputy clerks and deputy marshals and maintenance of offices by such deputies were omitted as covered by section 751 of this title.

Provisions relating to appointment and residence of deputy clerks and deputy marshals and maintenance of offices by them were omitted as covered by section 751 of this title.

Changes in arrangement and phraseology were made.

AMENDMENTS


1964—Subsec. (a). Pub. L. 88–627 transferred counties of Genesee and Shiawassee from Northern Division to Southern Division, added Ann Arbor and Flint as places of court for Southern Division, and struck out Flint as a place for holding court.


§103. Minnesota

Minnesota constitutes one judicial district comprising six divisions.

(1) The First Division comprises the counties of Dodge, Fillmore, Houston, Mower, Olmsted, Steele, Wabasha, and Winona.

Court for the First Division shall be held at Winona.

(2) The Second Division comprises the counties of Blue Earth, Brown, Cottonwood, Faribault, Freeborn, Jackson, Lac qui Parle, Le Sueur, Lincoln, Lyon, Martin, Murray, Nicollet, Nobles, Pipestone, Redwood, Rock, Sibley, Waseca, Watonwan, and Yellow Medicine.

Court for the Second Division shall be held at Mankato.

(3) The Third Division comprises the counties of Chisago, Dakota, Goodhue, Ramsey, Rice, Scott, and Washington.

Court for the Third Division shall be held at Saint Paul.

(4) The Fourth Division comprises the counties of Anoka, Carver, Chippewa, Hennepin, Isanti, Kandiyohi, McLeod, Meeker, Renville, Sherburne, Swift, and Wright.

Court for the Fourth Division shall be held at Minneapolis.


Court for the Fifth Division shall be held at Duluth.

(6) The Sixth Division comprises the counties of Becker, Beltrami, Big Stone, Clay, Clearwater, Douglas, Grant, Hubbard, Kitterson, Lake of the Woods, Mahnomen, Marshall, Norman, Otter Tail, Pennington, Polk, Pope, Red Lake, Roseau, Stearns, Stevens, Todd, Traverse, Wadena, and Wilkin.

Court for the Sixth Division shall be held at Fergus Falls and Bemidji.


HISTORICAL AND REVISION NOTES


Provisions relating to the appointment and residence of deputy clerks and the maintenance of offices by them were omitted as covered by section 169 of this title.

The counties of Pennington and Lake of the Woods, in the Sixth Division, were created since the enactment of the Judicial Code.

Changes in arrangement and phraseology were made.

AMENDMENTS


2008—Subsec. (b)(1). Act Feb. 10, 1954, §2(b)(8)(c), inserted a reference to counties of Branch, Calhoun, Clinton, Hillsdale, and Ingham, with respect to composition of Southern Division of the Western District, and provided for holding court at Kalamazoo and Mason.
§ 104. Mississippi

Mississippi is divided into two judicial districts to be known as the northern and southern districts of Mississippi.

Northern District

(a) The northern district comprises four divisions.

(1) Eastern division comprises the counties of Alcorn, Attala, Chickasaw, Choctaw, Clay, Hinds, Lee, Lowndes, Monroe, Oktibbeha, Prentiss, Tishomingo, and Winston.

(b) The western division comprises the counties of Benton, Calhoun, Grenada, Lafayette, Marshall, Montgomery, Pontotoc, Tippah, Union, Webster, and Yalobusha.

Court for the eastern division shall be held at Aberdeen, Ackerman, and Corinth.

Court for the western division shall be held at Oxford.

(c) The Delta division comprises the counties of Bolivar, Coahoma, De Soto, Panola, Quitman, Tallahtachie, Tate, and Tunica.

(d) The eastern division comprises the counties of Amite, Copiah, Franklin, Hinds, Holmes, Leake, Lincoln, Madison, Pike, Rankin, Scott, Simpson, and Smith.

Court for the eastern division shall be held at Jackson.

Court for the western division shall be held at Meridian.

(e) The western division comprises the counties of Clarke, Jasper, Kemper, Lauderdale, Neshoba, Newton, Noxubee, and Wayne.

(f) The southern division comprises the counties of Adair, Audrain, Clark, Knox, Lewis, Linn, Macon, Marion, Monroe, Montgomery, Pike, Ralls, Randolph, Schuyler, Scotland, and Shelby.

Court for the southern division shall be held at Hattiesburg.

§ 105. Missouri

Missouri is divided into two judicial districts to be known as the Eastern and Western Districts of Missouri.

Eastern District

(a) The Eastern District comprises three divisions.


Court for the eastern division shall be held at Saint Louis.

(2) The Northern Division comprises the counties of Adair, Audrain, Chariton, Clark, Knox, Lewis, Linn, Macon, Marion, Monroe, Montgomery, Pike, Ralls, Randolph, Schuyler, Scotland, and Shelby.

Court for the northern Division shall be held at Hannibal.

(3) The Southeastern Division comprises the counties of Bollinger, Butler, Cape
Western District

(b) The Western District comprises five divisions.


Court for the Western Division shall be held at Kansas City.

(2) The Southwestern Division comprises the counties of Barry, Jasper, Lawrence, McDonald, Newton, Stone, and Vernon.

Court for the Southwestern Division shall be held at Joplin.

(3) The Saint Joseph Division comprises the counties of Andrew, Atchison, Buchanan, Caldwell, Clinton, Daviess, DeKalb, Gentry, Grundy, Harrison, Holt, Livingston, Mercer, Nodaway, Platte, Putnam, Sullivan, and Worth.

Court for the Saint Joseph Division shall be held at Saint Joseph.

(4) The Central Division comprises the counties of Benton, Boone, Callaway, Camden, Cole, Cooper, Hickory, Howard, Miller, Moniteau, Morgan, Osage, and Pettis.

Court for the Central Division shall be held at Jefferson City.

(5) The Southern Division comprises the counties of Cedar, Christian, Dade, Dallas, Douglas, Greene, Howell, Laclede, Oregon, Ozark, Polk, Pulaski, Taney, Texas, Webster, and Wright.

Court for the Southern Division shall be held at Springfield.


HISTORICAL AND REVISION NOTES


Provisions for furnishing rooms and accommodations at Chillicothe were omitted as obsolete upon advice of the Director of the Administrative Office of the United States Courts that Federal accommodations are now available in such place.

“Rolla” was omitted as a place for holding court in the Eastern Division of the Eastern District, and the provision for furnishing quarters there without cost to the United States was also omitted on advice from the clerk of court that no term of court has been held there since 1920. All cases arising in Phelps county in which Rolla is situated are heard at St. Louis.

Provisions relating to the maintenance of offices by the clerks and marshals or their deputies were omitted since 1920. All cases arising in Phelps county in which Rolla is situated are heard at St. Louis.

Changes were made in arrangement and phraseology.

AMENDMENTS


EFFECTIVE DATE OF 1980 AMENDMENT, SAVINGS PROVISION

Amendment by Pub. L. 96–462 effective Oct. 1, 1981, but not to affect the composition or preclude the service of any grand or petit juror summoned, empaneled, or actually serving in any judicial district on Oct. 1, 1981, see section 7 of Pub. L. 96–462, set out as a note under section 84 of this title.

Section 4(b) of Pub. L. 96–462 provided that: “The amendments made by subsection (a) [amending this section] shall not apply to any action commenced before the effective date of such amendments (Oct. 1, 1981) and pending in the United States District Court for the Eastern District of Missouri on such date.”

§ 106. Montana

Montana, exclusive of Yellowstone National Park, constitutes one judicial district.

Court shall be held at Billings, Butte, Glasgow, Great Falls, Havre, Helena, Kalispell, Lewistown, Livingston, Miles City, and Missoula.

(June 25, 1948, ch. 646, 62 Stat. 884.)

HISTORICAL AND REVISION NOTES


Provisions relating to the maintenance of offices by the clerks and marshals or their deputies were omitted as unnecessary because of inherent power of the court and Rules 18–20 of the Federal Rules of Criminal Procedure, relating to venue.

A provision for the making of any interlocutory order at any place designated for holding court was omitted as unnecessary in view of Federal Rules of Civil Procedure, Rule 77(b).

The provisions respecting court accommodations at Kalispell, Lewistown, and Livingston were omitted as covered by section 142 of this title.

Changes were made in arrangement and phraseology.

§ 107. Nebraska

Nebraska constitutes one judicial district.

Court shall be held at Lincoln, North Platte, and Omaha.

(June 25, 1948, ch. 646, 62 Stat. 884; Aug. 9, 1955, ch. 627, § 1, 69 Stat. 546.)

HISTORICAL AND REVISION NOTES


Provisions for furnishing rooms and accommodations at the various places for holding court were omitted as
§ 108. Nevada

Nevada constitutes one judicial district.
Court shall be held at Carson City, Elko, Las Vegas, Reno, Ely, and Lovelock.


HISTORICAL AND REVISION NOTES


Changes in arrangement and phraseology were made.

AMENDMENTS

1955—Act Aug. 9, 1955, struck out the separate divisions of the district and reduced the number of places of holding terms.

EFFECTIVE DATE OF 1955 AMENDMENT

Section 2 of act Aug. 9, 1955, provided that: “The amendment made by the first section of this Act [amending this section] shall take effect on September 1, 1955.”

§ 109. New Hampshire

New Hampshire constitutes one judicial district.
Court shall be held at Concord and Littleton.

(June 25, 1948, ch. 646, 62 Stat. 885.)

HISTORICAL AND REVISION NOTES


Changes in arrangement and phraseology were made.

AMENDMENTS


§ 110. New Jersey

New Jersey constitutes one judicial district.
Court shall be held at Camden, Newark and Trenton.

(June 25, 1948, ch. 646, 62 Stat. 885.)

HISTORICAL AND REVISION NOTES


Provisions relating to maintenance of offices by the clerk and marshal were omitted as covered by sections 452, 541 [see 561], 542 [see 561], and 751 of this title.

Changes in arrangement and phraseology were made.

§ 111. New Mexico

New Mexico constitutes one judicial district.
Court shall be held at Albuquerque, Las Cruces, Las Vegas, Roswell, Santa Fe, and Silver City.

(June 25, 1948, ch. 646, 62 Stat. 885.)

HISTORICAL AND REVISION NOTES


The reference to Raton as a place of holding court was omitted on advice of the clerk that court is no longer held there.

Provisions for furnishing rooms and accommodations at Las Vegas were omitted as obsolete upon advice of the Director of the Administrative Office of the United States Courts that Federal accommodations are now available.

Provisions for appointment of deputy clerks and deputy marshals and maintenance of offices at various cities were omitted as covered by sections 541 [see 561], 542 [see 561], and 751 of this title.

The provision respecting court accommodations at Silver City was omitted as covered by section 142 of this title.

Changes in arrangement and phraseology were made.

§ 112. New York

New York is divided into four judicial districts to be known as the Northern, Southern, Eastern, and Western Districts of New York.

Northern District


Court for the Northern District shall be held at Albany, Auburn, Binghamton, Malone, Plattsburgh, Syracuse, Utica, Watertown, and Plattsburgh.

Southern District

(b) The Southern District comprises the counties of Bronx, Dutchess, New York, Orange, Putnam, Rockland, Sullivan, and Westchester and concurrently with the Eastern District, the waters within the Eastern District.

Court for the Southern District shall be held at New York, White Plains, and in the Middletown-Wallkill area of Orange County or such nearby location as may be deemed appropriate.

Eastern District

(c) The Eastern District comprises the counties of Kings, Nassau, Queens, Richmond, and Suffolk and concurrently with the Southern District, the waters within the counties of Bronx and New York.

1 So in original. “Plattsburgh” appears twice.
Court for the Eastern District shall be held at Brooklyn, Hauppauge, Hempstead (including the village of Uniondale), and Central Islip.

Western District
(d) The Western District comprises the counties of Allegany, Cattaraugus, Chautauqua, Chemung, Erie, Genesee, Livingston, Monroe, Niagara, Ontario, Orleans, Schuyler, Seneca, Steuben, Wayne, Wyoming, and Yates. Court for the Western District shall be held at Buffalo, Canandaigua, Elmira, James-town, and Rochester.


HISTORICAL AND REVISION NOTES

A reference in section 178 of title 28, U.S.C., 1940 ed., to Franklin County in the list of Counties in the Northern District, in which one term might be held annually, in the discretion of the judge, was omitted as superseded by the provisions of said section 178a of title 28, requiring an annual term to be held at Malone, which is in Franklin County.

References to seizures made, matters done and processes or orders issued respecting waters within the concurrent jurisdiction of the southern and eastern districts, were omitted as unnecessary and covered by the revised language.

Provision for 20 days’ notice of the special term authorized in the discretion of the court in the counties of Clinton, Jefferson, Onondaga, Oswego, Rensselaer, St. Lawrence, Saratoga, and Schenectady was omitted as unnecessary, in view of section 140(a) of this title providing for such notice as the district judge orders.

The special provision permitting any district judge in New York to act as judge in any other district in that State upon request of the resident district judge was omitted, thus making applicable the uniform procedure for designation and assignment of district judges throughout the United States, provided by section 522 of this title.

Words “with the waters thereof” after the list of counties in each district were omitted as unnecessary and inconsistent with other sections of this chapter.

The provisions with reference to the return of process in admiralty cases, the designation of judges and their powers, and the holding of sessions for the hearing of motions and for proceedings in bankruptcy and admiralty, were omitted as unnecessary and more properly the subject of rule of court.

The provisions of sections 178 and 178a of title 28, U.S.C., 1940 ed., respecting court accommodations at Malone and in the counties of Schenectady, Rensselaer, Saratoga, Onondaga, St. Lawrence, Clinton, Jefferson, Oswego, and Franklin, were omitted as covered by section 142 of this title.

The county of Bronx, in the southern district, was formed out of a part of New York County in 1912.

Lockport was omitted as a place of holding court in the Western District. Court has not been held there for 32 years.

Changes were made in arrangement and phraseology.

AMENDMENTS

Pub. L. 108–455 substituted “Watertown, and Plattsburgh” for “and Watertown”.

1999—Subsec. (c). Pub. L. 106–113 amended last sentence generally. Prior to amendment, last sentence read as follows: “Court for the Eastern District shall be held at Brooklyn, Hauppauge, and Hempstead (including the village of Uniondale).”

1996—Subsec. (b). Pub. L. 104–317 amended last sentence generally, substituting “Court for the Southern District shall be held at New York, White Plains, and in the Middletown-Wallkill area of Orange County or such nearby location as may be deemed appropriate,” for “Court for the Southern District shall be held at New York and White Plains.”


Pub. L. 95–408, § 4(c)(2), struck out Columbia, Greene, and Ulster from those counties comprising the Southern District of New York.

Subsec. (c). Pub. L. 95–271 substituted “and Hempstead (including the village of Uniondale)” for “and Mineola, and Westbury”.


EFFECTIVE DATE OF 1984 AMENDMENT
Amendment by Pub. L. 98–620 effective Jan. 1, 1985, and not to affect the composition, or preclude the service, of any grand or petit jury summoned, impaneled, or actually serving on that date, see section 411 of Pub. L. 98–620, set out as a note under section 85 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT; SAVINGS PROVISION
Amendment by Pub. L. 95–498 effective 180 days after Oct. 2, 1978, with such amendment not to affect the composition or preclude the service of any grand or petit juror summoned, impaneled, or actually serving in any judicial district on the effective date of this Act, see section 5 of Pub. L. 95–498, set out as a note under section 89 of this title.

PRETERMISSION OF REGULAR SESSION OF COURT AT HEMPESTAD AND HOLDING OF SPECIAL SESSION AT WESTBURY; PROCEDURES APPLICABLE, APPROPRIATIONS, ETC.
Sections 2 to 5 of Pub. L. 95–271 provided that:

“SEC. 2. The United States District Court for the Eastern District of New York, by order made anywhere within its district, may pretermine the regular session of court at Hempstead until Federal quarters and accommodations are available and ready for occupancy, except that for the entire period and such pretermision, a special session of the court shall be held at Westbury. Pretermision may be ordered without regard to the provisions of section 142(a) of title 28, United States Code.

“SEC. 3. Notwithstanding the provisions of section 142 of title 28, United States Code, the Administrator of General Services, at the request of the Director of the Administrative Office of the United States Courts, shall continue to provide existing quarters and accom-
modations at Westbury for the duration of the special session held pursuant to section 2 of this Act. Appropriations to the judicial branch of Government shall be available to the Director to make necessary disbursements for such quarters and accommodations, and to pay user charges as required by section 210 of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 490) (see now 40 U.S.C. 586, 587), at rates otherwise authorized by law.

"SEC. 4. Notwithstanding the provisions of section 456 of title 28, United States Code, any judge, and any officer or employee of the judicial branch, whose official station is, on the day before the date of enactment of this Act (Apr. 28, 1978), Westbury, may maintain that official station for the duration of the special session held pursuant to section 2 of this Act.

"SEC. 5. The Director of the Administrative Office of the United States Courts may pay travel and transportation expenses in accordance with subchapter II, chapter 57 of title 5, United States Code, to any officer or employee of the judicial branch whose official station changes as a consequence of this Act [enacting this provision and amending subsec. (c) of this section] and who relocates his residence incident to such change of official station."

§ 113. North Carolina

North Carolina is divided into three judicial districts to be known as the Eastern, Middle, and Western Districts of North Carolina.

Eastern District


Court for the Eastern District shall be held at Elizabeth City, Fayetteville, Greensville, New Bern, Raleigh, Wilmington, and Wilson.

Middle District

(b) The Middle District comprises the counties of Alamance, Cabarrus, Caswell, Chatham, Davidson, Davie, Durham (excluding that portion of Durham County encompassing the Federal Correctional Institution, Butner, North Carolina), Forsyth, Guilford, Hoke, Lee, Montgomery, Moore, Orange, Person, Randolph, Richmond, Rockingham, Rowan, Scotland, Stanly, Stokes, Surry, and Yadkin.

"Court for the Middle District shall be held at Durham, Greensboro, and Winston-Salem."

Western District

(c) The Western District comprises the counties of Alexander, Alleghany, Anson, Ashe, Avery, Buncombe, Burke, Caldwell, Catawba, Cherokee, Clay, Cleveland, Gaston, Graham, Haywood, Henderson, Iredell, Jackson, Lincoln, McDowell, Macon, Madison, Mecklenburg, Mitchell, Polk, Rutherford, Swain, Transylvania, Union, Watauga, Wilkes, and Yancey.

Court for the Western District shall be held at Asheville, Bryson City, Charlotte, Shelby, and Statesville.


Historical and Revision Notes


References to civil and criminal terms at Raleigh were omitted as more properly the subject of rule of court.

The following language at the end of section 179 of title 28, U.S.C., 1940 ed., was omitted: "There shall be a judge appointed for the said middle district in the manner now provided by law who shall receive the salary now provided by law for the judges of the eastern and western districts, and a district attorney, marshal, clerk, and other officers in the manner and at the salary now provided by law. All causes in the said middle district in equity, bankruptcy, or admiralty, in which orders and decrees have already been made and which are now in process of trial, shall continue and remain subject to the jurisdiction of the judge of that district by whom the same shall have been made and before whom the same shall have been partially tried and determined."

The first sentence is superfluous in view of other sections of this title governing the appointment and compensation of the judges, clerks and marshals of the district courts and of district attorneys. The last sentence is obsolete, having been enacted in 1927, and being limited to cases affected by the creation of the middle district.

Provisions for maintenance of offices by the clerks at certain cities were omitted. (See Revisor's Note under sections 452 and 761 of this title.)

Provisions for furnishing rooms and accommodations at Durham, Rockingham, and Winston-Salem were omitted as obsolete upon advice of the Director of the Administrative Office of the United States Courts that Federal accommodations are now available in such places.

The provisions respecting court accommodations at Bryson City and Shelby were omitted as covered by section 142 of this title.

Changes in arrangement and phraseology were made.

Amendments

1992—Subsec. (a). Pub. L. 102–272, which directed the amendment of subsec. (a) by striking out "Clinton," and "Washington," and inserting "Greenville," after "Fayetteville," was executed to the second sentence to reflect the probable intent of Congress.


Subsec. (b). Pub. L. 96–462, §5(b), struck out references to Alleghany, Ashe, Watauga, and Wilkes counties in the list of counties comprising the Middle District; inserted "(excluding that portion of Durham County encompassing the Federal Correctional Institution, Butner, North Carolina)" in first sentence as the probable intent of Congress; and struck out Rockingham, Salisbury, and Wilkesboro as places for holding court.
§ 114. North Dakota

North Dakota constitutes one judicial district. Court shall be held at Bismarck, Fargo, Grand Forks, and Minot.


§ 115. Ohio

Ohio is divided into two judicial districts to be known as the Northern and Southern Districts of Ohio.

Northern District

(a) The Northern District comprises two divisions.

(1) The Eastern Division comprises the counties of Ashland, Ashtabula, Carroll, Columbiana, Crawford, Cuyahoga, Geauga, Holmes, Lake, Lorain, Mahoning, Medina, Portage, Richland, Stark, Summit, Trumbull, Tuscarawas, and Wayne.

Court for the Eastern Division shall be held at Cleveland, Youngstown, and Akron.

(2) The Western Division comprises the counties of Allen, Auglaize, Defiance, Erie, Fulton, Hancock, Hardin, Henry, Huron, Lucas, Marion, Mercer, Ottawa, Paulding, Putnam, Sandusky, Seneca, Van Wert, Williams, Woods, and Wyandot.

Court for the Western Division shall be held at Lima and Toledo.

Southern District

(b) The Southern District comprises two divisions.

(1) The Western Division comprises the counties of Adams, Brown, Butler, Champaign, Clark, Clermont, Clinton, Darke, Greene, Hamilton, Highland, Lawrence, Miami, Montgomery, Preble, Scioto, Shelby, and Warren.

Court for the Western Division shall be held at Cincinnati and Dayton.

(2) The Eastern Division comprises the counties of Athens, Belmont, Coshocton, Delaware, Fairfield, Fayette, Franklin, Gallia, Guernsey, Harrison, Hocking, Jackson, Jefferson, Knox, Licking, Logan, Madison, Meigs, Monroe, Morgan, Morrow, Muskingum, Noble, Perry, Pickaway, Pike, Ross, Union, Vinton, and Washington.

Court for the Eastern Division shall be held at Columbus, St. Clairsville, and Steubenville.


HISTORICAL AND REVISION NOTES


Other provisions of said section 181 of title 28, U.S.C., 1940 ed., are incorporated in section 1865 of this title.

Provisions relating to the place of institution or trial of prosecutions and civil actions and transfer thereof were omitted. Such provisions, as to civil cases, are covered by section 1391 et seq. of this title, and as to criminal cases, are rendered unnecessary because of inherent power of the court and Rules 18–20 of the Federal Rules of Criminal Procedure relating to venue.

The provision respecting court accommodations at Lima was omitted as covered by section 142 of this title.

Changes were made in arrangement and phraseology.

AMENDMENTS

2002—Subsec. (b)(2). Pub. L. 107–273, which directed amendment of par. (2) by inserting “St. Clairsville,” after “Columbus,”, was executed by making the insertion after “Columbus”, to reflect the probable intent of Congress.


§ 116. Oklahoma

Oklahoma is divided into three judicial districts to be known as the Northern, Eastern, and Western Districts of Oklahoma.

Northern District

(a) The Northern District comprises the counties of Craig, Creek, Delaware, Mayes, Nowata, Osage, Ottawa, Pawnee, Rogers, Tulsa, and Washington.

Court for the Northern District shall be held at Bartlesville, Miami, Pawhuska, Tulsa, and Vinita.

Eastern District

(b) The Eastern District comprises the counties of Adair, Atoka, Bryan, Carter, Cherokee, Choctaw, Coal, Haskell, Hughes, Johnston, Latimer, Le Flore Love, McCurtain, McIntosh, Marshall, Murray, Muskogee, Okfuskee, Okmulgee, Pittsburg, Pontotoc, Pushmataha, Seminole, Sequoyah, and Wagoner.

Court for the Eastern District shall be held at Ada, Ardmore, Durant, Hugo, Muskogee, Okmulgee, Poteau, and S. McAlester.

1 So in original. Probably should be followed by a comma.
Western District

(c) The Western District comprises the counties of Alfalfa, Beaver, Beckham, Blaine, Caddo, Canadian, Cimarron, Cleveland, Comanche, Cotton, Custer, Dewey, Ellis, Garfield, Garvin, Grady, Grant, Greer, Harmon, Harper, Jackson, Jefferson, Kay, Kingfisher, Kiowa, Lincoln, Logan, McClain, Major, Noble, Oklahoma, Payne, Pottawatomie, Roger Mills, Stephens, Texas, Tillman, Washita, Woods, and Woodward.

Court for the Western District shall be held at Chickasha, Enid, Guthrie, Lawton, Mangum, Oklahoma City, Pauls Valley, Ponca City, Shawnee, and Woodward.


HISTORICAL AND REVISION NOTES


Provisions for furnishing rooms and accommodations at Ada, Bartlesville, Mangum, Miami, Okmulgee, and Ponca City were omitted as obsolete, on advice of the Director of the Administrative Office of the United States Courts that Federal accommodations are now available at such places.

A provision making inoperative the requirement for furnishing court accommodations without cost to the United States whenever the same shall be provided in federal buildings at Shawnee, was omitted as unnecessary. When such buildings become available the Director will, under section 604 of this title, provide court accommodations therein.

A provision for adjournment of any term by an order made in chambers, is incorporated in section 140 of this title.

The provisions respecting court accommodations at Durant, Hugo, Poteau, Pauls Valley, Pawhuska, and Shawnee were omitted as covered by section 142 of this title.

Changes in arrangement and phraseology were made.

AMENDMENTS

1966—Pub. L. 89–526 transferred from the Eastern District in subsec. (b) to the Western District in subsec. (c) the counties of Garvin, Grady, Jefferson, McClain, and Stephens and the places for holding court at Chickasha and Pauls Valley.

EFFECTIVE DATE OF 1966 AMENDMENT

Section 2 of Pub. L. 89–526 provided that: "The amendments made by this Act (amending this section) shall take effect on the sixtieth day after the date of enactment of this Act (Aug. 4, 1966)."

§ 117. Oregon

Oregon constitutes one judicial district.

Court shall be held at Coquille, Eugene or Springfield, Klamath Falls, Medford, Pendleton, and Portland.


HISTORICAL AND REVISION NOTES


Provisions relating to appointment and residence of deputies by the clerk and marshal, and maintenance of offices by said officers, were omitted as covered by sections 541 [see 561], 542 [see 561], and 751 of this title.

Changes in arrangement and phraseology were made.

AMENDMENTS

1966—Pub. L. 89–526 substituted "Eugene or Springfield" for "Eugene".

1950—Act Aug. 3, 1950, provided for holding court at Coquille.


§ 118. Pennsylvania

Pennsylvania is divided into three judicial districts to be known as the Eastern, Middle, and Western Districts of Pennsylvania.

Eastern District

(a) The Eastern District comprises the counties of Berks, Bucks, Chester, Delaware, Lancaster, Lehigh, Montgomery, Northampton, and Philadelphia.

Court for the Eastern District shall be held at Allentown, Easton, Lancaster, Reading, and Philadelphia.

Middle District


Court for the Middle District shall be held at Harrisburg, Lewistown, Scranton, Wilkes-Barre, and Williamsport.

Western District


Court for the Western District shall be held at Erie, Johnstown, and Pittsburgh.


HISTORICAL AND REVISION NOTES


Provisions relating to appointment and residence of deputies by the clerk and marshal, and maintenance of offices by said officers, were omitted as covered by sections 541 [see 561], 542 [see 561], and 751 of this title.

Changes in arrangement and phraseology were made.

AMENDMENTS

1966—Pub. L. 89–526 substituted "Eugene or Springfield" for "Eugene".

1950—Act Aug. 3, 1950, provided for holding court at Coquille.

Provisions relating to maintenance of offices at certain places by the clerks and marshals were omitted as covered by sections 541 [see 561] and 751 of this title.

Provisions for the continuance of terms were omitted as covered by section 139 of this title.

Provisions with respect to the return of process, and the places of keeping court papers, were omitted as matters for determination by rule of court or for the action of the judicial council in cooperation with the Administrative Office of the United States Courts.

The provisions for trial of cases at Lewisdun and Erie unless counsel consent to trial elsewhere were omitted as inconsistent with the uniform practice provided by this title.

Changes were made in phraseology and arrangement.

**SENATE REVISION AMENDMENT**

By Senate amendment to the bill, Blair County was transferred from the Middle District to the Western District of Pennsylvania. This was in conformity with Act July 11, 1947, ch. 224, 61 Stat. 310, which so amended section 184 of title 28, U.S.C., 1940 ed., the source of this section. See 80th Congress Senate Report No. 1559.

**AMENDMENTS**


Subsec. (b). Pub. L. 90-277, §101(b) [title VI, §624(a)(2)], inserted “Schuylkill,” after “Potter.”


**EFFECTIVE DATE OF 1968 AMENDMENT**

Pub. L. 90-277, div. A, §101(b) [title VI, §624(b)], Oct. 21, 1968, 82 Stat. 501, provided that:

“(1) This section [amending this section] and the amendments made by this section shall take effect 180 days after the date of the enactment of this Act [Oct. 21, 1968].

“(2) This section and the amendments made by this section shall not affect any action commenced before the effective date of this section and pending on such date in the United States District Court for the Eastern District of Pennsylvania.

“(3) This section and the amendments made by this section shall not affect the composition of the grand or petit jury summoned, impaneled, or actually serving on the effective date of this section.”

§ 119. Puerto Rico

Puerto Rico constitutes one judicial district.

Court shall be held at Mayaguez, Ponce, and San Juan.

(June 25, 1948, ch. 646, 62 Stat. 889.)

**HISTORICAL AND REVISION NOTES**


Section consolidates parts of sections 863 and 864 of title 48, U.S.C., 1940 ed., with changes in phraseology necessary to effect consolidation.

The provisions of sections 863 of title 48, U.S.C., 1940 ed., for appointment of a district judge is incorporated in section 133 of this title; for tenure, in section 134 of this title, and for salary was omitted as covered by section 135 of this title.

The provisions of section 864 of title 48, U.S.C., 1940 ed., for appointment and tenure of United States attorneys and marshals are incorporated in sections 851 (now 541), 504 (now 541 to 544), and 541 (see 561) of this title.


The provisions of section 864 of title 48, U.S.C., 1940 ed., as to the holding of regular and special terms of court was omitted as covered by sections 138 and 141 of this title.

The provisions of section 864 of title 48, U.S.C., 1940 ed., that the district court shall be attached to the first circuit is incorporated in section 41 of this title.


§ 120. Rhode Island

Rhode Island constitutes one judicial district.

Court shall be held at Providence.

(June 25, 1948, ch. 646, 62 Stat. 889.)

**HISTORICAL AND REVISION NOTES**


Changes in phraseology were made.

§ 121. South Carolina

South Carolina constitutes one judicial district comprising eleven divisions.

(1) The Charleston Division comprises the counties of Berkeley, Charleston, Clarendon, Colleton, Dorchester, and Georgetown.

Court for the Charleston Division shall be held at Charleston.

(2) The Columbia Division comprises the counties of Kershaw, Lee, Lexington, Richland, and Sumter.

Court for the Columbia Division shall be held at Columbia.

(3) The Florence Division comprises the counties of Chesterfield, Darlington, Dillon, Florence, Horry, Marion, Marlboro, and Williamsburg.

Court for the Florence Division shall be held at Florence.

(4) The Aiken Division comprises the counties of Aiken, Allendale, and Barnwell.

Court for the Aiken Division shall be held at Aiken.

(5) The Orangeburg Division comprises the counties of Bamberg, Calhoun, and Orangeburg.

Court for the Orangeburg Division shall be held at Orangeburg.

(6) The Greenville Division comprises the counties of Greenville and Laurens.

Court for the Greenville Division shall be held at Greenville.

(7) The Rock Hill Division comprises the counties of Chester, Fairfield, Lancaster, and York.

Court for the Rock Hill Division shall be held at Rock Hill.


The provisions of section 863 of title 48, U.S.C., 1940 ed., for appointment of a district judge is incorporated in section 133 of this title; for tenure, in section 134 of this title, and for salary was omitted as covered by section 135 of this title.
Court for the Greenwood Division shall be held at Greenwood.

(9) The Anderson Division comprises the counties of Anderson, Oconee, and Pickens.

Court for the Anderson Division shall be held at Anderson.

(10) The Spartanburg Division comprises the counties of Cherokee, Spartanburg, and Union.

Court for the Spartanburg Division shall be held at Spartanburg.

(11) The Beaufort Division comprises the counties of Beaufort, Hampton, and Jasper.

Court for the Beaufort Division shall be held at Beaufort.


HISTORICAL AND REVISION NOTES


The last sentence of section 186 of title 28, U.S.C., 1940 ed., relating to trial of criminal cases in the division in which the offense was committed, was omitted as fully covered by Rules 18–22 of the Federal Rules of Criminal Procedure

A provision relating to the places of the clerks’ offices was omitted as covered by section 751 of this title.

The provision respecting court accommodations at Orangeburg was omitted as covered by section 142 of this title.

Changes in arrangement and phraseology were made.

AMENDMENTS


Par. (1). Pub. L. 99–657, §2(2), struck out “Beaufort,... after “counties of” and substituted “and Georgetown” for “Georgetown, and Jasper”.


1945—Pub. L. 89–242 consolidated into a single district the 10 divisions of the state which had formerly been divided into an Eastern and a Western District.

EFFECTIVE DATE OF 1945 AMENDMENT

Section 6 of Pub. L. 89–242 provided that: “The provisions of this Act [amending this section and section 133 of this title and enacting provisions set out as a note below] shall become effective on the first day of the month following the date of enactment of this Act [Oct. 7, 1965].”

CONSOLIDATION OF SOUTH CAROLINA INTO A SINGLE JUDICIAL DISTRICT

Sections 2 to 5 of Pub. L. 89–242 provided for the consolidation, in compliance with section 132 of this title, of the Eastern and Western Districts of South Carolina into a single district with continuing jurisdiction over civil cases and criminal acts pending or committed prior to Nov. 1, 1965, and appropriate provisions for the appointment or transfer of United States attorneys, marshals, and other court personnel, then serving, from the two districts to the consolidated district.

§ 122. South Dakota

South Dakota constitutes one judicial district comprising four divisions.

(1) The Northern Division comprises the counties of Brown, Campbell, Clark, Codington, Corson, Day, Deuel, Edmonds, Grant, Hamlin, McPherson, Marshall, Roberts, Spink, and Walworth.

Court for the Northern Division shall be held at Aberdeen.

(2) The Southern Division comprises the counties of Aurora, Beadle, Bon Homme, Brookings, Brule, Charles Mix, Clay, Davison, Douglas, Hanson, Hutchinson, Kingsbury, Lake, Lincoln, McCook, Miner, Minnehaha, Moody, Sanborn, Turner, Union, and Yankton.

Court for the Southern Division shall be held at Sioux Falls.

(3) The central division comprises the counties of Buffalo, Dewey, Faulk, Gregory, Haakon, Hand, Hughes, Hyde, Jerauld, Jones, Lyman, Mellette, Potter, Stanley, Sully, Todd, Tripp, and Ziebach.

Court for the Central Division shall be held at Pierre.

(4) The Western Division comprises the counties of Bennett, Butte, Custer, Fall River, Harding, Jackson, Lawrence, Meade, Pennington, Perkins, and Shannon.

Court for the Western Division shall be held at Deadwood and Rapid City.


HISTORICAL AND REVISION NOTES


A provision relating to maintenance of offices by the clerk was omitted as covered by sections 452 and 751 of this title.

Provisions that the Northern Division included Lake Traverse Indian Reservation and that part of Standing Rock Indian Reservation lying in South Dakota; that the Southern Division included the Yorkton Indian Reservation; that the Central Division included the
Cheyenne River, Lower Brule, and Crow Creek Indian Reservations; and that the Western Division included Rosebud and Pine Ridge Indian Reservations, were all omitted as surplusage. (See Reviser's Note under section 114 of this title.)

Changes in arrangement and phraseology were made.

AMENDMENTS


1972—Par. (2). Pub. L. 92–376, § 1(a), removed Gregory County from the Southern Division.

Par. (3). Pub. L. 92–376, § 1(b), added Gregory, Mellette, Todd, and Tripp counties to the Central Division and removed Armstrong county from the Central Division.

Par. (4). Pub. L. 92–376, § 1(c), removed Mellette, Todd, and Tripp counties from the Western Division.


§ 123. Tennessee

Tennessee is divided into three judicial districts to be known as the Eastern, Middle, and Western Districts of Tennessee.

Eastern District

(a) The Eastern District comprises four divisions.

(1) The Northern Division comprises the counties of Anderson, Blount, Campbell, Claiborne, Grainger, Jefferson, Knox, Loudon, Monroe, Morgan, Roane, Scott, Sevier, and Union.

Court for the Northern Division shall be held at Knoxville.

(2) The Northeastern Division comprises the counties of Carter, Cocke, Greene, Hamblen, Hancock, Hawkins, Johnson, Sullivan, Unicoi, and Washington.

Court for the Northeastern Division shall be held at Greeneville.

(3) The Southern Division comprises the counties of Bledsoe, Bradley, Hamilton, McMinn, Marion, Meigs, Polk, Rhea, and Sequatchie.

Court for the Southern Division shall be held at Chattanooga.

(4) The Winchester Division comprises the counties of Bedford, Coffee, Franklin, Grundy, Lincoln, Moore, Van Buren, and Warren.

Court for the Winchester Division shall be held at Winchester.

Middle District

(b) The Middle District comprises three divisions.

(1) The Nashville Division comprises the counties of Cannon, Cheatham, Davidson, Dickson, Houston, Humphreys, Montgomery, Robertson, Rutherford, Stewart, Sumner, Trousdale, Williamson, and Wilson.

Court for the Nashville Division shall be held at Nashville.

(2) The Northeastern Division comprises the counties of Clay, Cumberland, De Kalb, Fentress, Jackson, Macon, Overton, Pickett, Putnam, Smith, and White.

Court for the Northeastern Division shall be held at Cookeville.

(3) The Columbia Division comprises the counties of Giles, Hickman, Lawrence, Lewis, Marshall, Maury, and Wayne.

Court for the Columbia Division shall be held at Columbia.

Western District

(c) The Western Division comprises two divisions.

(1) The Eastern Division comprises the counties of Benton, Carroll, Chester, Crockett, Decatur, Dyer, Gibson, Hardeman, Hardin, Haywood, Henderson, Henry, Lake, McNairy, Madison, Obion, Perry, and Weakley.

The Eastern Division also includes the waters of Tennessee River to low-water mark on the eastern shore wherever such river forms the boundary between the western and middle districts from the north line of Alabama north to the point in Henry County, Tennessee, where the south boundary of Kentucky strikes the east bank of the river.

Court for the Eastern Division shall be held at Jackson and Dyersburg.

(2) The Western Division comprises the counties of Fayette, Lauderdale, Shelby, and Tipton.

Court for the Western Division shall be held at Memphis.

The district judge for the Eastern District in office on November 27, 1940, shall hold court in the Northern and Northeastern Divisions. The other judge of that district shall hold the terms of court in the Southern and Winchester Divisions. Each may appoint and remove all officers and employees of the court whose official headquarters are located in the divisions within which he holds court and whose appointments are vested by law in a district judge or chief judge of a district.

(Hist. & Rev. Notes)


Words "The said judge shall possess the same powers, perform the same duties, and receive the same compensation as other district judges," and words, "The President is authorized to appoint, by and with the consent of the Senate, a successor or successors to said judge as vacancies may occur. Nothing herein contained shall be construed to prevent said judge or his successors from becoming the senior district judge by succession, or from exercising the powers and rights of senior district judge of said district. The judge designated herein to hold regular and special terms of court at Winchester and Chattanooga shall make all necessary orders for the disposition of business and assignment of cases for trial in said divisions," were de-
§ 124  TITLE 28—JUDICIARY AND JUDICIAL PROCEDURE

Texas is divided into four judicial districts to be known as the Northern, Southern, Eastern, and Western Districts of Texas.

Northern District

(a) The Northern District comprises seven divisions.

(1) The Dallas Division comprises the counties of Dallas, Ellis, Hunt, Johnson, Kaufman, Navarro, and Rockwall.

Court for the Dallas Division shall be held at Dallas.

(2) The Fort Worth Division comprises the counties of Comanche, Erath, Hood, Jack, Palo Pinto, Parker, Tarrant, and Wise.

Court for the Fort Worth Division shall be held at Fort Worth.


Court for the Abilene Division shall be held at Abilene.

(4) The San Angelo Division comprises the counties of Brown, Coke, Coleman, Concho, Crockett, Glasscock, Irion, Mason, Mills, Reagan, Runnels, Schleicher, Sterling, Sutton, and Tom Green.

Court for the San Angelo Division shall be held at San Angelo.


Court for the Amarillo Division shall be held at Amarillo.

(6) The Wichita Falls Division comprises the counties of Archer, Baylor, Clay, Cottle, Foard, Hardeman, King, Knox, Montague, Wichita, Wilbarger, and Young.

Court for the Wichita Falls Division shall be held at Wichita Falls.

(7) The Lubbock Division comprises the counties of Bailey, Borden, Cochran, Crosby, Dawson, Dickens, Floyd, Gaines, Garza, Hale, Hockley, Kent, Lamb, Lubbock, Lynn, Motley, Scurry, Terry, and Yoakum.

Court for the Lubbock Division shall be held at Lubbock.

Southern District

(b) The Southern District comprises seven divisions.

(1) The Galveston Division comprises the counties of Brazoria, Chambers, Galveston, and Matagorda.
Court for the Galveston Division shall be held at Galveston.

(2) The Houston Division comprises the counties of Austin, Brazos, Colorado, Fayette, Fort Bend, Grimes, Harris, Madison, Montgomery, San Jacinto, Walker, Waller, and Wharton. Court for the Houston Division shall be held at Houston.

(3) The Laredo Division comprises the counties of Jim Hogg, La Salle, McMullen, Webb, and Zapata. Court for the Laredo Division shall be held at Laredo.

(4) The Brownsville Division comprises the counties of Cameron and Willacy. Court for the Brownsville Division shall be held at Brownsville.

(5) The Victoria Division comprises the counties of Calhoun, DeWitt, Goliad, Jackson, Lavaca, Refugio, and Victoria. Court for the Victoria Division shall be held at Victoria.

(6) The Corpus Christi Division comprises the counties of Aransas, Bee, Brooks, Duval, Jim Wells, Kenedy, Kleberg, Live Oak, Nueces, and San Patricio. Court for the Corpus Christi Division shall be held at Corpus Christi.

(7) The McAllen Division comprises the counties of Hidalgo and Starr. Court for the McAllen Division shall be held at McAllen.

Eastern District

(c) The Eastern District comprises seven divisions.

(1) The Tyler Division comprises the counties of Anderson, Cherokee, Gregg, Henderson, Panola, Rains, Rusk, Smith, Van Zandt, and Wood. Court for Tyler Division will be held at Tyler.

(2) The Beaumont Division comprises the counties of Hardin, Jasper, Jefferson, Liberty, Newton, and Orange. Court for the Beaumont Division is to be held at Beaumont.

(3) The Sherman Division comprises the counties of Collin, Cook, Delta, Denton, Fannin, Grayson, Hopkins, and Lamar. Court for the Sherman Division shall be held at Sherman and Plano.

(4) The Marshall Division comprises the counties of Camp, Cass, Harrison, Marion, Morris, and Upshur. Court for the Marshall Division shall be held at Marshall.

(5) The Texarkana Division comprises the counties of Bowie, Franklin, Red River, and Titus. Court for the Texarkana Division shall be held at Texarkana, and may be held anywhere within the Federal courthouse in Texarkana that is located astride the State line between Texas and Arkansas.

(6) The Lufkin Division comprises the counties of Angelina, Houston, Nacogdoches, Polk, Sabine, San Augustine, Shelby, Trinity, and Tyler. Court for the Lufkin Division shall be held at Lufkin.

Western District

(d) The Western District comprises seven divisions.

(1) The Austin Division comprises the counties of Bastrop, Blanco, Burleson, Burnet, Caldwell, Gillespie, Hays, Kimble, Lampasas, Lee, Llano, Mason, McCulloch, San Saba, Travis, Washington, and Williamson. Court for the Austin Division shall be held at Austin.

(2) The Waco Division comprises the counties of Bell, Bosque, Coryell, Falls, Freestone, Hamilton, Hill, Leon, Limestone, McLennan, Milam, Robertson, and Somervell. Court for the Waco Division shall be held at Waco.

(3) The El Paso Division comprises the county of El Paso. Court for the El Paso Division shall be held at El Paso.

(4) The San Antonio Division comprises the counties of Atascosa, Bandera, Bexar, Comal, Dimmit, Frio, Gonzales, Guadalupe, Karnes, Kendall, Kerr, Medina, Real, and Wilson. Court for the San Antonio Division shall be held at San Antonio.

(5) The Del Rio Division comprises the counties of Edwards, Kinney, Maverick, Terrell, Uvalde, Val Verde, and Zavalla. Court for the Del Rio Division shall be held at Del Rio.

(6) The Pecos Division comprises the counties of Brewster, Culberson, Jeff Davis, Hudspeth, Loving, Pecos, Presidio, Reeves, Ward, and Winkler. Court for the Pecos Division shall be held at Pecos.

(7) The Midland-Odessa Division comprises the counties of Andrews, Crane, Ector, Martin, Midland, and Upton. Court for the Midland-Odessa Division shall be held at Midland. Court may be held, in the discretion of the court, in Odessa, where courtroom facilities are made available at no expense to the Government.


**Historical and Revision Notes**

Words “and all prosecutions against persons for offenses committed in the county of Reagan shall be tried in the court at San Angelo: Provided, That no civil or criminal cause begun and pending prior to May 29, 1921, shall be in any way affected,” words “and all prosecutions against persons for offenses committed in the county of Pecos shall be tried in the district court at Pecos, or in Pecos City: Provided, That no civil or criminal cause begun and pending prior to March 2, 1923, shall be in any way affected,” and words “Provided, That no civil or criminal cause commenced prior to June 24, 1930, shall be in any way affected,” were all deleted as superseded by Federal Rules of Criminal Procedure, Rules 18–22, and as obsolete, in view of the lapse of time after the dates included in such provisions.

Provisions for furnishing rooms and accommodations at Pecos and Wichita Falls were omitted as obsolete, on advice of the Director of the Administrative Office of the United States Courts that Federal accommodations are now available at such places.

Provisions relating to the maintenance of offices at various cities by the clerks were omitted as covered by sections 452 and 751 of this title.

Provisions that process against residents of Pecos County shall issue from and be returnable to the clerk at Pecos City and against residents of Reagan County at San Angelo, were omitted since such matter can be regulated more appropriately by court rule or order. (See Rule 4 of Federal Rules of Civil Procedure.)

The provisions requiring notice to be given for time of holding court in Pecos division and at Corpus Christi, were omitted as covered by section 141 of this title. Five counties included in this section were created since the enactment of section 189 of title 28. These were Kleberg County and Kenedy County of the Corpus Christi Division of the southern district, Culberson County and Hudspeth County of the El Paso division of the western district, and Real County of the San Antonio Division of the western district. Pecos County is included in the Pecos division and omitted from the El Paso division of the western district to conform to the practice of the court.

Changes in arrangement and phraseology were made.

**AMENDMENTS**


"(1) In general.—This section [amending this section] and the amendments made by this section shall take effect on the date of the enactment of this Act [Dec. 3, 2003]."

"(2) Pending cases not affected.—This section and the amendments made by this section shall not affect any action commenced before the effective date of this section and pending in the United States District Court for the Eastern District of Texas on that date."


1984—Subsec. (c)(4). Act Feb. 10, 1984, § 2(b)(9)(a), struck out Edward County from list of counties comprising San Antonio Division of Western District.


**EFFECTIVE DATE OF 2003 AMENDMENT**


"(1) In general.—This section [amending this section] and the amendments made by this section shall apply to any action commenced in the United States District Court for the Southern District of Texas on or after the effective date of this subtitle [Jan. 1, 1985], and shall not affect any action pending in such court on such effective date."

Amendment by Pub. L. 98–620 effective Jan. 1, 1985, and to not affect the composition, or preclude the service, of any grand or petit jury summoned, impaneled, or actually serving on that date, see section 411 of Pub. L. 98–620, set out as a note under section 83 of this title.

**EFFECTIVE DATE OF 1984 AMENDMENT; SAVINGS PROVISION**

Amendment by Pub. L. 96–462 effective Oct. 1, 1981, but not to affect the composition or preclude the service of any grand or petit juror summoned, impaneled, or actually serving on any judicial district out Oct. 1, 1981, see section 7 of Pub. L. 96–462, set out as a note under section 84 of this title.
§ 125. Utah

Utah constitutes one judicial district comprising two divisions.
(1) The Northern Division comprises the counties of Box Elder, Cache, Davis, Morgan, Rich, and Weber.
Court for the Northern Division shall be held at Salt Lake City and Ogden.
Court for the Central Division shall be held at Salt Lake City, Provo, and St. George.


Historical and Revision Notes

A provision relating to the maintenance of offices by the clerk was omitted as covered by section 751 of this title.
Changes in arrangement and phraseology were made.

Amendments

1996—Par. (1). Pub. L. 104–317, § 606(a), inserted “Salt Lake City and” before “Ogden”.
Par. (2). Pub. L. 104–317, § 606(b), inserted “Provo, and St. George” after “Salt Lake City”.

§ 126. Vermont

Vermont constitutes one judicial district.

Court shall be held at Bennington, Brattleboro, Burlington, Montpelier, Rutland, Saint Johnsbury, and Windsor.


Historical and Revision Notes

A provision relating to the maintenance of offices by the clerk of the western district was omitted as covered by sections 452 and 751 of this title.
Changes in arrangement and phraseology were made.

Amendments

1996—Par. (1). Pub. L. 104–317, § 606(a), inserted “Salt Lake City and” before “Ogden”.
Par. (2). Pub. L. 104–317, § 606(b), inserted “Provo, and St. George” after “Salt Lake City”.

§ 127. Virginia

Virginia is divided into two judicial districts, to be known as the Eastern and Western districts of Virginia.

(a) The Eastern District comprises the counties of Accomac, Amelia, Arlington, Brunswick, Caroline, Charles City, Chesterfield, Dinwiddie, Elizabeth City, Essex, Fairfax, Fauquier, Gloucester, Goochland, Greensville, Hanover, Henrico, Isle of Wight, James City, King and Queen, King George, King William, Lancaster, Loudoun, Lunenburg, Mathews, Mecklenburg, Middlesex, Nansemond, New Kent, Norfolk, Northampton, Northumberland, Nottoway, Powhatan, Prince Edward, Prince George, Prince William, Princess Anne, Richmond, Southampton, Spotsylvania, Stafford, Surry, Sussex, Warren, Westmoreland, and York.
Court for the Eastern District shall be held at Alexandria, Newport News, Norfolk, and Richmond.

Court for the Western District shall be held at Abingdon, Big Stone Gap, Charlottesville, Danville, Harrisonburg, Lynchburg, and Roanoke.

(c) Cities and incorporated towns are included in that district in which are included the counties within the exterior boundaries of which such cities and incorporated towns are geographically located or out of the territory of which they have been incorporated.


Historical and Revision Notes

A provision relating to the maintenance of offices by the clerk of the western district was omitted as covered by sections 452 and 751 of this title.
Changes in arrangement and phraseology were made.

Senate Revision Amendment

By Senate amendment, “Newport News” was inserted after “Alexandria” in second paragraph of subsection (a) of this section. See 80th Congress Senate Report No. 1559.

Amendments

§ 128.

Washington

Washington is divided into two judicial districts to be known as the Eastern and Western Districts of Washington.

Eastern District

(a) The Eastern District comprises the counties of Adams, Asotin, Benton, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kittitas, Kittap, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman, and Yakima.

(b) Court for the Eastern District shall be held at Spokane, Yakima, Walla Walla, and Richland.

Western District

(b) The Western District comprises the counties of Clallam, Clark, Cowlitz, Grays Harbor, Island, Jefferson, King, Kitsap, Lewis, Mason, Pacific, Pierce, San Juan, Skagit, Skamania, Snohomish, Thurston, Wahkiakum, and Whatcom.

Court for the Western District shall be held at Bellingham, Seattle, Tacoma, and Vancouver.

§ 129. West Virginia

West Virginia is divided into two judicial districts to be known as the Northern and Southern Districts of West Virginia.

Northern District

(a) The Northern District comprises the counties of Barbour, Berkeley, Braxton, Brooke, Cabell, Doddridge, Gilmer, Grant, Hampshire, Hancock, Hardy, Harrison, Jefferson, Lewis, Marion, Marshall, Mineral, Monongalia, Morgan, Ohio, Pendleton, Pleasants, Pocahontas, Preston, Randolph, Ritchie, Taylor, Tucker, Tyler, Upshur, Webster, and Wetzel.

Court for the Northern District shall be held at Clarksburg, Elkins, Fairmont, Martinsburg, and Wheeling.

Southern District


Court for the Southern District shall be held at Beckley, Bluefield, Charleston, Huntington, Lewisburg, and Parkersburg.

HISTORICAL AND REVISION NOTES


HISTORICAL AND REVISION NOTES

Wisconsin is divided into two judicial districts to be known as the Eastern and Western districts of Wisconsin.

Eastern District
(a) The Eastern District comprises the counties of Brown, Calumet, Dodge, Door, Florence, Fond du Lac, Forest, Green Lake, Kenosha, Kewaunee, Langlade, Manitowoc, Marinette, Marquette, Menominee, Milwaukee, Oconto, Outagamie, Ozaukee, Racine, Shawano, Sheboygan, Walworth, Washington, Waukesha, Waupaca, Waushara, and Winnebago.

Court for the Eastern District shall be held at Green Bay, Milwaukee, and Oshkosh.

Western District
(b) The Western District comprises the counties of Adams, Ashland, Barron, Bayfield, Buffalo, Burnett, Chippewa, Clark, Columbia, Crawford, Dane, Douglas, Dunn, Eau Claire, Grant, Green, Iowa, Iron, Jackson, Jefferson, Juneau, La Crosse, Lafayette, Lincoln, Marathon, Monroe, Oneida, Pepin, Pierce, Polk, Portage, Price, Richland, Rock, Rusk, Saint Croix, Sauk, Sawyer, Taylor, Trempealeau, Vernon, Vilas, Washburn, and Wood.

Court for the Western District shall be held at Eau Claire, La Crosse, Madison, Superior, and Wausau.


HISTORICAL AND REVISION NOTES

Section consolidates section 196 of title 28, U.S.C., 1940 ed., with a portion of section 27 of title 16, U.S.C., 1940 ed., with necessary changes in arrangement and phraseology. Reference to parts of Yellowstone National Park in Montana and Idaho is derived from said section 27. Other provisions of said section are incorporated in sections 631 and 632 of this title.

Provisions of section 196 of title 28, U.S.C., 1940 ed., for furnishing rooms and accommodations at Casper was omitted as obsolete, upon advice of the Director of the Administrative Office of the United States Courts that Federal accommodations are now available there.

Provisions of section 196 of title 28, U.S.C., 1940 ed., for appointment of deputies and maintenance of offices by the clerk and marshal were omitted as covered by sections 541 (see 561), 542 (see 561), and 731 of this title.

AMENDMENTS

1948—Pub. L. 87-573 inserted references to Braxton, Pocahontas, and Webster counties and inserted references to Parkersburg, Wirt, and Wood counties.

§ 130. Wisconsin

§ 131. Wyoming

Wyoming and those portions of Yellowstone National Park situated in Montana and Idaho constitute one judicial district.

Court shall be held at Casper, Cheyenne, Evanston, Lander, Jackson, and Sheridan.


HISTORICAL AND REVISION NOTES

Section consolidates section 196 of title 28, U.S.C., 1940 ed., with a portion of section 27 of title 16, U.S.C., 1940 ed., with necessary changes in arrangement and phraseology. Reference to parts of Yellowstone National Park in Montana and Idaho is derived from said section 27. Other provisions of said section are incorporated in sections 631 and 632 of this title.

Provisions of section 196 of title 28, U.S.C., 1940 ed., for furnishing rooms and accommodations at Casper was omitted as obsolete, upon advice of the Director of the Administrative Office of the United States Courts that Federal accommodations are now available there.

Provisions of section 196 of title 28, U.S.C., 1940 ed., for appointment of deputies and maintenance of offices by the clerk and marshal were omitted as covered by sections 541 (see 561), 542 (see 561), and 731 of this title.

AMENDMENTS

§ 132. Creation and composition of district courts

(a) There shall be in each judicial district a district court which shall be a court of record known as the United States District Court for the district.

(b) Each district court shall consist of the district judge or judges for the district in regular active service. Justices or judges designated or assigned shall be competent to sit as judges of the court.

(c) Except as otherwise provided by law, or rule or order of court, the judicial power of a district court with respect to any action, suit or proceeding may be exercised by a single judge, who may preside alone and hold a regular or special session of court at the same time other sessions are held by other judges.


HISTORICAL AND REVISION NOTES
§ 133. Appointment and number of district judges

(a) The President shall appoint, by and with the advice and consent of the Senate, district judges for the several judicial districts, as follows:

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The act of Dec. 7, 1944, amended section 2 of the act of May 24, 1940, 54 Stat. 219, section 1, note of title 28, U.S.C., 1940 ed., to read as follows: "(a) Provided, That the first vacancy in the office of district judge in each of said districts except in the eastern district of Pennsylvania, shall not be filled." The act of Dec. 22, 1944, amended the same section to read as follows: "(a) Provided, That the first vacancy occurring in the office of district judge in each of said districts except the district of New Jersey shall not be filled." The act of July 24, 1946, ch. 600, § 1, 60 Stat. 654, amended the proviso in the 1940 act to read as follows: "Provided, That the first vacancy occurring in the office of district judge in each of said districts, except the district of New Jersey and the eastern district of Pennsylvania, shall not be filled." The following additional temporary judgeships, authorized by Congress, are not included in the revised section:

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<tr>
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</table>

Other provisions of said section 11–301 of the District of Columbia Code, 1940 ed., are incorporated in section 136 of this title.
A part of section 641 of title 48, U.S.C., 1940 ed., is incorporated in sections 91 and 132 of this title. Parts of sections 863 and 864 of title 48, U.S.C., 1940 ed., are retained in title 48. For other parts of those sections, see Distribution Table. Other provisions of section 643 of title 48, U.S.C., 1940 ed., are incorporated in sections 501 [now 541], 504 [now 541 to 544], and 541 [see 563] of this title.

SENATE REVISION AMENDMENT

Provisions for one district judge in the Southern District of Indiana were inserted in this section by Senate amendment. See 80th Congress Senate Report No. 1559.

CODIFICATION

Paragraph (2) of subsection (b) of section 4 of Pub. L. 95–408, cited as a credit to this section, was amended generally by Pub. L. 96–4, § 1, Mar. 30, 1979, 93 Stat. 6, and enacted provisions which are set out as a note under section 93 of this title.

AMENDMENTS


2002—Subsec. (a). Pub. L. 107–273 increased number of permanent district judgeships as follows: in Southern District of California from 8 to 13, in Central and Southern Districts of Illinois from 3 to 4, in Northern District of New York from 4 to 5, in Western District of North Carolina from 3 to 4, in Western District of Texas from 11 to 13, and in Eastern District of Virginia from 10 to 11.

2000—Subsec. (a). Pub. L. 106–553 increased number of permanent district judgeships as follows: in Arizona from 11 to 12, in Southern District of Florida from 16 to 17, in Eastern District of Kentucky from 4 to 5, in Nevada from 6 to 7, in New Mexico from 5 to 6, in South Carolina from 9 to 10, in Southern District of Texas from 18 to 19, in Western District of Texas from 10 to 11, in Eastern District of Virginia from 9 to 10, and in Eastern District of Wisconsin from 4 to 5.

1999—Subsec. (a). Pub. L. 106–113 increased number of permanent district judgeships in Arizona from 8 to 11, increased number of permanent district judgeships in Middle District of Florida from 11 to 15, and increased number of permanent district judgeships in Nevada from 4 to 6.

1997—Subsec. (a). Pub. L. 105–53 in item relating to Louisiana, reduced number of permanent district judgeships in Eastern District from 13 to 12 and increased number in Middle District from 2 to 3.

1990—Pub. L. 101–650, § 303(a), designated existing provisions as subsec. (a) and added subsec. (b).

Pub. L. 101–650, § 203(d), altered number of permanent district judgeships in named districts as follows:

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1964—Pub. L. 98–353 altered number of permanent district judgeships in named districts as follows:

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Pub. L. 95–408 substituted “Central” for “Southern” and “Southern” for “Eastern” in item relating to Illinois.

1971—Pub. L. 92–208 created a Middle District in the Louisiana listing with one judge and reduced from 10 to 9 the number of judges for the Eastern District of Louisiana.

1970—Pub. L. 91–372 altered the number of permanent district judgeships in the named districts as follows:

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## Title 28—Judiciary and Judicial Procedure

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</tr>
<tr>
<td>Connecticut</td>
<td>2</td>
<td>4</td>
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<tr>
<td>Florida:</td>
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<tr>
<td>Southern</td>
<td>4</td>
<td>6</td>
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<tr>
<td>Georgia:</td>
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<tr>
<td>Northern</td>
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<td>3</td>
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<tr>
<td>Middle</td>
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<td>2</td>
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<tr>
<td>Illinois:</td>
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<tr>
<td>Northern</td>
<td>8</td>
<td>10</td>
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<tr>
<td>Indiana:</td>
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<tr>
<td>Northern</td>
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<tr>
<td>Southern</td>
<td>2</td>
<td>3</td>
</tr>
<tr>
<td>Iowa:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Northern and Southern</td>
<td>9</td>
<td>1</td>
</tr>
<tr>
<td>Kansas:</td>
<td>2</td>
<td>3</td>
</tr>
<tr>
<td>Louisiana:</td>
<td></td>
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</tr>
<tr>
<td>Western</td>
<td>2</td>
<td>4</td>
</tr>
<tr>
<td>Maryland</td>
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<td>4</td>
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<tr>
<td>Massachusetts</td>
<td>5</td>
<td>6</td>
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<tr>
<td>Michigan:</td>
<td></td>
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<tr>
<td>Eastern</td>
<td>6</td>
<td>8</td>
</tr>
<tr>
<td>Mississippi:</td>
<td></td>
<td></td>
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<tr>
<td>Southern</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Missouri:</td>
<td></td>
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</tr>
<tr>
<td>Western</td>
<td>2</td>
<td>3</td>
</tr>
<tr>
<td>Nevada</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>New Jersey</td>
<td>7</td>
<td>8</td>
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<tr>
<td>New Mexico</td>
<td>1</td>
<td>2</td>
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<tr>
<td>New York:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Southern</td>
<td>18</td>
<td>24</td>
</tr>
<tr>
<td>North Carolina:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Eastern</td>
<td>6</td>
<td>8</td>
</tr>
<tr>
<td>Western</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Middle</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Ohio:</td>
<td></td>
<td></td>
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<tr>
<td>Northern</td>
<td>5</td>
<td>6</td>
</tr>
<tr>
<td>Oklahoma:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Northern, Eastern, and Western</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Pennsylvania:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Eastern</td>
<td>8</td>
<td>11</td>
</tr>
<tr>
<td>Middle</td>
<td>2</td>
<td>3</td>
</tr>
<tr>
<td>Western</td>
<td>5</td>
<td>8</td>
</tr>
<tr>
<td>Puerto Rico:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Eastern and Western</td>
<td>1</td>
<td>2</td>
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<tr>
<td>Tennessee:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Eastern</td>
<td>2</td>
<td>3</td>
</tr>
<tr>
<td>Middle</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Western</td>
<td>1</td>
<td>2</td>
</tr>
</tbody>
</table>

1965—Pub. L. 89–242 changed the South Carolina listing by removing references to an Eastern and Western District, with 1 judge listed for the Eastern, 1 judge for the Western, and 2 judges for the Eastern and Western combined, and substituted therefor a single reference to a South Carolina District with 4 judges.

1962—Pub. L. 87–562 amended the Florida listing by adding the Middle District with its designation of 3 judges, substituted "Northern, Middle, and Southern" for "Northern and Southern", and reduced the number of judges in the Southern District from 6 to 3.

1961—Pub. L. 87–36 increased the number of permanent district judgeships in the named districts as follows:

<table>
<thead>
<tr>
<th>State</th>
<th>Former</th>
<th>New</th>
</tr>
</thead>
<tbody>
<tr>
<td>Texas:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Northern</td>
<td>3</td>
<td>5</td>
</tr>
<tr>
<td>Southern</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Western</td>
<td>2</td>
<td>3</td>
</tr>
<tr>
<td>Utah:</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Washington:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Western</td>
<td>2</td>
<td>3</td>
</tr>
</tbody>
</table>

1959—Pub. L. 86–3 struck out provisions that restricted eligibility for appointment as district judges for the district of Hawaii to citizens of the Territory of Hawaii who have resided therein for at least three years.


1957—Pub. L. 85–310 increased the number of permanent judgeships in the district of South Dakota from 1 to 2.

1954—Act Feb. 10, 1954, increased the number of permanent judgeships in the named districts as follows:

<table>
<thead>
<tr>
<th>State</th>
<th>Former</th>
<th>New</th>
</tr>
</thead>
<tbody>
<tr>
<td>California:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Southern</td>
<td>10</td>
<td>11</td>
</tr>
<tr>
<td>Delaware</td>
<td>2</td>
<td>3</td>
</tr>
<tr>
<td>Florida:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Southern</td>
<td>3</td>
<td>4</td>
</tr>
<tr>
<td>Idaho:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Northern</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Southern</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Kentucky:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Western</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Massachusetts</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Michigan:</td>
<td></td>
<td></td>
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<tr>
<td>Eastern</td>
<td>5</td>
<td>6</td>
</tr>
<tr>
<td>Western</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Missouri:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Eastern and Western</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>New Jersey</td>
<td>6</td>
<td>7</td>
</tr>
<tr>
<td>New York</td>
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<td></td>
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<tr>
<td>Southern</td>
<td>16</td>
<td>18</td>
</tr>
<tr>
<td>North Dakota</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Ohio:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Northern</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Pennsylvania:</td>
<td></td>
<td></td>
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<tr>
<td>Eastern</td>
<td>7</td>
<td>8</td>
</tr>
<tr>
<td>Western</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Texas:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Southern</td>
<td>3</td>
<td>4</td>
</tr>
<tr>
<td>Eastern</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Virginia:</td>
<td></td>
<td></td>
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<tr>
<td>Eastern</td>
<td>2</td>
<td>3</td>
</tr>
<tr>
<td>West Virginia</td>
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<tr>
<td>Northern and Southern</td>
<td>8</td>
<td>1</td>
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<tr>
<td>Wisconsin:</td>
<td></td>
<td></td>
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<tr>
<td>Eastern</td>
<td>1</td>
<td>2</td>
</tr>
</tbody>
</table>

1950—Act Sept. 5, 1950, increased the number of permanent judgeships in the district of Delaware from 1 to 2.

Act Aug. 29, 1950, increased the number of permanent judgeships in the western district of Pennsylvania from 3 to 4.

Act Aug. 14, 1950, increased the number of permanent judgeships in the northern district of Illinois from 8 to 9.

1949—Act Aug. 3, 1949, increased the number of permanent judgeships in the named districts as follows:

<table>
<thead>
<tr>
<th>State</th>
<th>Former</th>
<th>New</th>
</tr>
</thead>
<tbody>
<tr>
<td>California:</td>
<td></td>
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</tr>
<tr>
<td>Northern</td>
<td>5</td>
<td>7</td>
</tr>
<tr>
<td>Southern</td>
<td>8</td>
<td>10</td>
</tr>
<tr>
<td>District of Columbia</td>
<td>12</td>
<td>15</td>
</tr>
<tr>
<td>Florida:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Northern and Southern</td>
<td>9</td>
<td>1</td>
</tr>
<tr>
<td>Georgia:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Northern</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Kansas</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>New Jersey</td>
<td>5</td>
<td>6</td>
</tr>
<tr>
<td>New York:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Southern</td>
<td>12</td>
<td>16</td>
</tr>
<tr>
<td>Ohio:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Northern</td>
<td>3</td>
<td>4</td>
</tr>
</tbody>
</table>
Effective Date of 2002 Amendment

(A) the date on which the first vacancy in the office of district judge occurs in such district; or

(B) July 15, 2003.''

Effective Date of 1978 Amendment; Waiver of Standards and Guidelines; Failure to Comply
Section 7 of Pub. L. 95–486 provided that:

"(a) The first section and section 2 of this Act [amending this section and enacting provisions set out as notes under this section] shall take effect immediately upon the President's promulgation and publication of standards and guidelines for the selection, on the basis of merit, of nominees for United States district court judgeships authorized by this Act [amending this section, sections 44, 46, 1337, and 1445 of this title, and section 5108 of Title 5, Government Organization and Classification, as amended by Pub. L. 95–408, set out as notes under this section and sections 41 and 44 of this title, and amending provisions set out as a note under section 45 of this title].

"(B) The President may waive such standards and guidelines with respect to any nomination by notifying the Senate of the reasons for such waiver.

"(c) Following the promulgation and publication of such standards and guidelines, no nomination or appointment to a United States district court judgeship may be invalidated on the basis of the President's failure to comply with this section or with any standards or guidelines promulgated under this section.

"(d) This Act, other than the first section and section 2 [amending this section and enacting provisions set out as notes under this section] shall take effect on the date of enactment of this Act [Oct. 20, 1978]."

Section 11 of Pub. L. 95–486 provided that: "Notwithstanding any other provision of this Act the first section and section 2 [amending this section and enacting provisions set out as notes under this section] shall not take effect before November 1, 1978.''

Effective Date of 1978 Amendment; Savings Provision
Amendment by Pub. L. 95–486 effective 180 days after Oct. 2, 1978, with such amendment not to affect the composition or preclude the service of any grand or petit juror summoned, empaneled, or actually serving in any judicial district on the effective date of this Act, see section 5 of Pub. L. 95–486, set out as a note under section 89 of this title.

Effective Date of 1971 Amendment
Amendment by Pub. L. 92–208 effective 120 days after Dec. 18, 1971, see section 3(c) of Pub. L. 92–208, set out as a note under section 98 of this title.

Effective Date of 1965 Amendment

Effective Date of 1962 Amendment
Amendment by Pub. L. 87–562 effective 90 days after July 30, 1962, see section 5 of Pub. L. 87–562, set out as a note under section 89 of this title.

Effective Date of 1959 Amendment
Section 9 of Pub. L. 86–3 provided in part that the amendment of this section and section 134 of this title is effective on admission of the State of Hawaii into the Union. Admission of Hawaii into the Union was accomplished Aug. 21, 1959, upon issuance of Proc. No. 3309, Aug. 21, 1959, 25 F.R. 6868, 73 Stat. 74, as required by sections 1 and 7(c) of Pub. L. 86–3, Mar. 18, 1959, 73 Stat. 4, set out as notes preceding section 491 of Title 48, Territories and Insular Possessions.

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. 3289, Jan. 3, 1959, 24 F.R. 81, 73 Stat. 16, as required by sections 1 and 8(c) of Pub. L. 85–508, see notes set out under section 81A of this title and preceding section 21 of Title 48, Territories and Insular Possessions.

Additional Judgeships
Pub. L. 109–115, div. A, title IV, §406, Nov. 30, 2005, 119 Stat. 2470, provided that: "The existing judgeship for the eastern district of Missouri authorized by section 203(c) of the Judicial Improvements Act of 1990 (Public Law 101–650, 104 Stat. 5089) [set out below] as amended by Public Law 105–53, as of the effective date of this Act [Nov. 30, 2005], shall be extended. The first vacancy in the office of district judge in this district occurring 20 years or more after the confirmation date of the judge named to fill the temporary judgeship created by section 203(c) shall not be filled."


"(A) 5 additional district judges for the southern district of California;

"(B) 1 additional district judge for the western district of North Carolina; and

"(C) 2 additional district judges for the western district of Texas."

Pub. L. 107–273, div. A, title III, §312(b)(1), Nov. 2, 2002, 116 Stat. 1787, provided that: "The existing district judgeships for the central district and the southern district of Illinois, the northern district of New York, and the eastern district of Virginia authorized by section 203(c)(4), (9), and (12) of the Judicial Improvements Act of 1990 (Public Law 101–650, 28 U.S.C. 313 note [set out below]) shall be authorized under section 133 of title 28, United States Code, and the incumbents in such offices shall hold the offices under section 133 of title 28, United States Code (as amended by this section)."


"(c) Temporary Judgeships.—

"(1) In General.—The President shall appoint, by and with the advice and consent of the Senate—

"(A) 1 additional district judge for the northern district of Alabama;

"(B) 1 additional judge for the district of Arizona;

"(C) 1 additional judge for the central district of California;

"(D) 1 additional judge for the southern district of Florida;

"(E) 1 additional district judge for the district of New Mexico;

"(F) 1 additional district judge for the western district of North Carolina; and

"(G) 1 additional district judge for the eastern district of Texas.

"(2) Vacancies Not Filled.—The first vacancy in the office of district judge in each of the offices of district judge authorized by this subsection, occur-

<table>
<thead>
<tr>
<th>State</th>
<th>Former</th>
<th>New</th>
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<tbody>
<tr>
<td>Oklahoma</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Western</td>
<td>3</td>
<td>4</td>
</tr>
<tr>
<td>Oregon</td>
<td>2</td>
<td>3</td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>5</td>
<td>7</td>
</tr>
<tr>
<td>Eastern</td>
<td>7</td>
<td>7</td>
</tr>
<tr>
<td>Texas</td>
<td>2</td>
<td>3</td>
</tr>
<tr>
<td>Southern</td>
<td>3</td>
<td>3</td>
</tr>
</tbody>
</table>
ring 10 years or more after the confirmation date of the judge named to fill the temporary district judgeship created in the applicable district by this subsection shall not be filled.

"(3) EFFECTIVE DATE.—This subsection shall take effect on July 15, 2003.

Pub. L. 106–553, §1(a)(2) [title III, §309(a), Dec. 21, 2000, 114 Stat. 2762, 2762A–84, provided that: "The President shall appoint, by and with the advice and consent of the Senate—

"(1) 1 additional district judge for the district of Arizona;

"(2) 1 additional district judge for the southern district of Florida;

"(3) 1 additional district judge for the eastern district of Kentucky;

"(4) 1 additional district judge for the district of Nevada;

"(5) 1 additional district judge for the district of New Mexico;

"(6) 1 additional district judge for the district of South Carolina;

"(7) 1 additional district judge for the southern district of Texas;

"(8) 1 additional district judge for the western district of Texas;

"(9) 1 additional district judge for the eastern district of Virginia; and

"(10) 1 additional district judge for the eastern district of Wisconsin."

Pub. L. 106–113, div. B, §1000(a)(1) [title III, §309(a)], Nov. 29, 1999, 113 Stat. 1535, 1501A–37, provided that: "The President shall appoint, by and with the advice and consent of the Senate—

"(1) three additional district judges for the district of Arizona;

"(2) four additional district judges for the middle district of Florida; and

"(3) two additional district judges for the district of Nevada."


"(a) In GENERAL.—The President shall appoint, by and with the advice and consent of the Senate—

"(1) 1 additional district judge for the western district of Arkansas;

"(2) 2 additional district judges for the northern district of California;

"(3) 5 additional district judges for the central district of California; and

"(4) 1 additional district judge for the southern district of California;

"(5) 2 additional district judges for the district of Connecticut;

"(6) 2 additional district judges for the middle district of Florida;

"(7) 1 additional district judge for the northern district of Florida;

"(8) 1 additional district judge for the southern district of Florida;

"(9) 1 additional district judge for the middle district of Georgia;

"(10) 1 additional district judge for the northern district of Illinois;

"(11) 1 additional district judge for the southern district of Iowa;

"(12) 1 additional district judge for the western district of Louisiana;

"(13) 1 additional district judge for the district of Maine;

"(14) 1 additional district judge for the district of Massachusetts;

"(15) 1 additional district judge for the southern district of Mississippi;

"(16) 1 additional district judge for the eastern district of Missouri;

"(17) 1 additional district judge for the district of New Hampshire;

"(18) 3 additional district judges for the district of New Jersey;

"(19) 1 additional district judge for the district of New Mexico;

"(20) 1 additional district judge for the southern district of New York;

"(21) 3 additional district judges for the eastern district of New York;

"(22) 1 additional district judge for the middle district of North Carolina;

"(23) 1 additional district judge for the southern district of Ohio;

"(24) 1 additional district judge for the northern district of Oklahoma;

"(25) 1 additional district judge for the western district of Oklahoma;

"(26) 1 additional district judge for the district of Oregon;

"(27) 3 additional district judges for the eastern district of Pennsylvania;

"(28) 1 additional district judge for the middle district of Pennsylvania;

"(29) 1 additional district judge for the district of South Carolina;

"(30) 1 additional district judge for the eastern district of Tennessee;

"(31) 1 additional district judge for the western district of Tennessee;

"(32) 1 additional district judge for the middle district of Tennessee;

"(33) 2 additional district judges for the northern district of Texas;

"(34) 1 additional district judge for the eastern district of Texas;

"(35) 5 additional district judges for the southern district of Texas;

"(36) 3 additional district judges for the western district of Texas;

"(37) 1 additional district judge for the district of Utah;

"(38) 1 additional district judge for the eastern district of Washington;

"(39) 1 additional district judge for the northern district of West Virginia; and

"(40) 1 additional district judge for the district of Wyoming.

"(b) EXISTING JUDGESHIPS.—(1) The existing district judgeships for the western district of Arkansas, the northern district of Illinois, the northern district of Indiana, the district of Massachusetts, the western district of New York, the eastern district of North Carolina, the northern district of Ohio, and the western district of Washington authorized by section 202(b) of the Bankruptcy Amendments and Federal Judgeship Act of 1984 (Public Law 98–353, 98 Stat. 347–348) [set out below]; shall, as of the effective date of this title [Dec. 1, 1990], be authorized under section 133 of title 28, United States Code, and the incumbents in those offices shall hold the office under section 133 of title 28, United States Code, as amended by this title.

"(2)(A) The existing 2 district judgeships for the eastern and western districts of Arkansas (provided by section 133 of title 28, United States Code, as in effect on the day before the effective date of this title) shall be district judgeships for the eastern district of Arkansas only, and the incumbents of such judgeships shall hold the offices under section 133 of title 28, United States Code, as amended by this title.

"(2)(B) . . .
“(B) The existing district judgeship for the northern and southern districts of Iowa (provided by section 133 of title 28, United States Code, as in effect on the day before the effective date of this title) shall be a district judgeship for the northern district of Iowa only, and the incumbent of such judgeship shall hold the office under section 133 of title 28, United States Code, as amended by this title.

“(C) The existing district judgeship for the northern, eastern, and western districts of Oklahoma (provided by section 133 of title 28, United States Code, as in effect on the day before the effective date of this title) and the occupant of which has his or her official duty station at Oklahoma City on the date of the enactment of this title [Dec. 1, 1990], shall be a district judgeship for the western district of Oklahoma only, and the incumbent of such judgeship shall hold the office under section 133 of title 28, United States Code, as amended by this title.

"TEMPORARY JUDGESHIPS.—The President shall appoint, by and with the advice and consent of the Senate—

"(1) 1 additional district judge for the eastern district of California;

"(2) 1 additional district judge for the district of Hawaii;

"(3) 1 additional district judge for the central district of Illinois;

"(4) 1 additional district judge for the southern district of Illinois;

"(5) 1 additional district judge for the district of Kansas;

"(6) 1 additional district judge for the western district of Michigan;

"(7) 1 additional district judge for the eastern district of Missouri;

"(8) 1 additional district judge for the district of Nebraska;

"(9) 1 additional district judge for the northern district of New York;

"(10) 1 additional district judge for the northern district of Ohio;

"(11) 1 additional district judge for the eastern district of Pennsylvania; and

"(12) 1 additional district judge for the eastern district of Virginia.

Except with respect to the district of Kansas, the western district of Michigan, the eastern district of Pennsylvania, the district of Hawaii, and the northern district of Ohio, the first vacancy in the office of district judge in each of the judicial districts named in this subsection, occurring 10 years or more after the confirmation date of the judge named to fill the temporary judgeship created by this subsection, shall not be filled. The first vacancy in the office of district judge in the district of Kansas occurring 21 years or more after the confirmation date of the judge named to fill the temporary judgeship created by this subsection, shall not be filled. The first vacancy in the office of district judge in the western district of Michigan, occurring after December 1, 1986, shall not be filled. The first vacancy in the office of district judge in the eastern district of Pennsylvania, occurring 5 years or more after the confirmation date of the judge named to fill the temporary judgeship created for such district under this subsection, shall not be filled. The first vacancy in the office of district judge in the northern district of Ohio occurring 19 years or more after the confirmation date of the judge named to fill the temporary judgeship created under this subsection shall not be filled. The first vacancy in the office of district judge in the district of Hawaii occurring 18 years or more after the confirmation date of the judge named to fill the temporary judgeship created under this subsection shall not be filled. For districts named in this subsection for which multiple judgeships are created by this Act, the last of those judgeships filled shall be the judgeship created under the last date of this Act [probably means July 10, 1984]."

"(a) Subject to the provisions of subsection (c), the President shall appoint, by and with the advice and consent of the Senate, one additional district judge for the district of Alaska, one additional district judge for the district of Hawaii, four additional district judges for the district of Idaho, one additional district judge for the district of Illinois, one additional district judge for the district of Indiana, one additional district judge for the district of Iowa, one additional district judge for the district of Kansas, one additional district judge for the district of Kentucky, one additional district judge for the district of Louisiana, one additional district judge for the district of Maryland, one additional district judge for the district of Massachusetts, two additional district judges for the district of Michigan, one additional district judge for the district of Minnesota, one additional district judge for the northern district of Mississippi, two additional district judges for the district of Missouri, one additional district judge for the district of Montana, one additional district judge for the district of Nebraska, one additional district judge for the district of Nevada, three additional district judges for the district of New Jersey, one additional district judge for the district of New York, two additional district judges for the eastern district of New York, one additional district judge for the district of North Carolina, one additional district judge for the district of North Dakota, one additional district judge for the district of Ohio, one additional district judge for the district of Oklahoma, one additional district judge for the district of Oregon, one additional district judge for the district of Pennsylvania, one additional district judge for the district of Rhode Island, one additional district judge for the district of South Carolina, one additional district judge for the district of South Dakota, one additional district judge for the district of Tennessee, one additional district judge for the district of Texas, one additional district judge for the district of Utah, one additional district judge for the eastern district of Virginia, one additional district judge for the eastern district of Washington, one additional district judge for the eastern district of Wisconsin, and one additional district judge for the district of Wyoming.

"(b) Subject to the provisions of subsection (c) the President shall appoint, by and with the advice and consent of the Senate, one additional district judge for the western district of Arkansas, one additional district judge for the northern district of California, one additional district judge for the district of Colorado, one additional district judge for the district of Connecticut, two additional district judges for the central district of Florida, one additional district judge for the central district of Georgia, one additional district judge for the central district of Illinois, four additional district judges for the central district of Kentucky, two additional district judges for the central district of Louisiana, one additional district judge for the central district of Maryland, one additional district judge for the central district of Massachusetts, one additional district judge for the central district of Michigan, two additional district judges for the central district of Missouri, one additional district judge for the central district of Nevada, one additional district judge for the central district of New York, two additional district judges for the central district of North Carolina, one additional district judge for the central district of Oklahoma, one additional district judge for the central district of Pennsylvania, one additional district judge for the central district of Rhode Island, one additional district judge for the central district of South Carolina, one additional district judge for the central district of South Dakota, one additional district judge for the central district of Texas, one additional district judge for the central district of Utah, one additional district judge for the central district of Virginia, one additional district judge for the central district of Washington, one additional district judge for the central district of Wisconsin, and one additional district judge for the central district of Wyoming.

"(c) For the judgeships created in subsections (a) and (b), the President shall appoint, by and with the advice and consent of the Senate, no more than twenty-nine of such judges prior to January 21, 1985.

"(d) The existing district judgeships for the district of Minnesota and the existing district judgeships for the northern district of Ohio, heretofore authorized by section 2 of the Act of October 20, 1976 (Public Law 94–486, 90 Stat. 1631) [set out below], shall, as of the effective date of this Act [probably means July 10, 1984], be authorized under section 133 of title 28, United States Code, as amended by section 133 of title 28, United States Code, as amended by this title.
Code, and the incumbents of those offices shall henceforth hold their offices under section 133, as amended by this Act."

Section 1(a) of Pub. L. 95–486 provided that: "The President shall appoint, by and with the advice and consent of the Senate, three additional district judges for the northern district of Alabama, one additional district judge for the district of Washington, one additional district judge for the district of Arizona, two additional district judges for the eastern district of Arkansas, one additional district judge for the southern district of Alabama, three additional district judges for the western district of California, three additional district judges for the eastern district of California, one additional district judge for the central district of California, two additional district judges for the southern district of California, two additional district judges for the middle district of Florida, five additional district judges for the southern district of Florida, five additional district judges for the northern district of Georgia, one additional district judge for the southern district of Georgia, three additional district judges for the northern district of Illinois, one additional district judge for the central district of Illinois, one additional district judge for the northern district of Indiana, one additional district judge for the southern district of Indiana, one additional district judge for the district of Iowa, one additional district judge for the district of Kansas, two additional district judges for the eastern district of Kentucky, four additional district judges for the eastern district of Louisiana, one additional district judge for the middle district of Louisiana, one additional district judge for the western district of Louisiana, one additional district judge for the district of Maine, two additional district judges for the district of Maryland, four additional district judges for the district of Massachusetts, three additional district judges for the eastern district of Michigan, two additional district judges for the western district of Michigan, one additional district judge for the district of Minnesota, one additional district judge for the eastern district of Missouri, five additional district judges for the eastern district of Missouri, one additional district judge for the northern district of Missouri, one additional district judge for the western district of Missouri, two additional district judges for the eastern district of Nebraska, one additional district judge for the western district of Nebraska, one additional district judge for the district of New Hampshire, two additional district judges for the district of New Jersey, one additional district judge for the district of New Mexico, one additional district judge for the northern district of New York, one additional district judge for the eastern district of New York, one additional district judge for the western district of New York, one additional district judge for the district of North Carolina, one additional district judge for the middle district of North Carolina, one additional district judge for the western district of North Carolina, one additional district judge for the northern district of Ohio, one additional district judge for the southern district of Ohio, one additional district judge for the eastern district of Ohio, one additional district judge for the northern district of Pennsylvania, one additional district judge for the district of Puerto Rico, one additional district judge for the eastern district of Puerto Rico, one additional district judge for the northern district of Tennessee, one additional district judge for the central district of Tennessee, one additional district judge for the district of Texas, one additional district judge for the western district of Texas, one additional district judge for the southern district of Texas, two additional district judges for the western district of Texas, one additional district judge for the eastern district of Texas, one additional district judge for the southern district of Texas, one additional district judge for the central district of West Virginia, one additional district judge for the western district of West Virginia, one additional district judge for the northern district of Wisconsin, and one additional district judge for the western district of Wisconsin.

Section 2 of Pub. L. 95–486 provided that: "The President shall appoint, by and with the advice and consent of the Senate, one additional district judge for the eastern district of Kentucky, one additional district judge for the district of Minnesota, one additional district judge for the northern district of Ohio, and one additional district judge for the southern district of Ohio, one additional district judge for the central district of North Carolina, three additional district judges for the western district of North Carolina, one additional district judge for the southern district of Kansas, three additional district judges for the southern district of California, three additional district judges for the northern district of California, one additional district judge for the district of Colorado, one additional district judge for the district of Connecticut, one additional district judge for the northern district of Florida, three additional district judges for the middle district of Florida, five additional district judges for the southern district of Florida, five additional district judges for the northern district of Georgia, one additional district judge for the southern district of Georgia, three additional district judges for the northern district of Illinois, one additional district judge for the central district of Illinois, one additional district judge for the northern district of Indiana, one additional district judge for the southern district of Indiana, one additional district judge for the district of Iowa, one additional district judge for the district of Kansas, two additional district judges for the eastern district of Kentucky, four additional district judges for the eastern district of Louisiana, one additional district judge for the middle district of Louisiana, one additional district judge for the western district of Louisiana, one additional district judge for the district of Maine, two additional district judges for the district of Maryland, four additional district judges for the district of Massachusetts, three additional district judges for the eastern district of Michigan, two additional district judges for the western district of Michigan, one additional district judge for the district of Minnesota, one additional district judge for the eastern district of Missouri, five additional district judges for the eastern district of Missouri, one additional district judge for the northern district of Missouri, one additional district judge for the western district of Missouri, two additional district judges for the eastern district of Nebraska, one additional district judge for the western district of Nebraska, one additional district judge for the district of New Hampshire, two additional district judges for the district of New Jersey, one additional district judge for the district of New Mexico, one additional district judge for the northern district of New York, one additional district judge for the eastern district of New York, one additional district judge for the western district of New York, one additional district judge for the district of North Carolina, one additional district judge for the middle district of North Carolina, one additional district judge for the western district of North Carolina, one additional district judge for the northern district of Ohio, one additional district judge for the southern district of Ohio, one additional district judge for the eastern district of Ohio, one additional district judge for the northern district of Pennsylvania, one additional district judge for the district of Puerto Rico, one additional district judge for the eastern district of Puerto Rico, one additional district judge for the northern district of Tennessee, one additional district judge for the central district of Tennessee, one additional district judge for the district of Texas, one additional district judge for the western district of Texas, one additional district judge for the southern district of Texas, one additional district judge for the central district of West Virginia, one additional district judge for the western district of West Virginia, one additional district judge for the northern district of Wisconsin, and one additional district judge for the western district of Wisconsin."
Ohio, one additional district judge for the southern district of Ohio, one additional district judge for the district of Rhode Island, two additional district judges for the northern district of Texas, one additional district judge for the western district of Texas, two additional district judges for the eastern district of Virginia, and one additional district judge for the district of Vermont.

Section 2(a) of Pub. L. 87–36 provided that: “The President shall appoint, by and with the advice and consent of the Senate, one additional district judge for the northern district of Alabama, one additional district judge for the district of Alaska, one additional district judge for the district of Arizona, one additional district judge for the eastern and western districts of Arkansas, two additional district judges for the northern district of California, two additional district judges for the southern district of California, one additional district judge for the district of Colorado, two additional district judges for the district of Connecticut, two additional district judges for the southern district of Florida, one additional district judge for the northern district of Georgia, two additional district judges for the northern district of Illinois, one additional district judge for the northern district of Indiana, one additional district judge for the eastern district of Iowa, one additional district judge for the western district of Iowa, one additional district judge for the district of Kansas, two additional district judges for the eastern district of Louisiana, one additional district judge for the western district of Louisiana, two additional district judges for the district of Maryland, one additional district judge for the district of Michigan, two additional district judges for the eastern district of Michigan, one additional district judge for the southern district of Mississippi, one additional district judge for the western district of Mississippi, one additional district judge for the district of Missouri, one additional district judge for the district of Nevada, one additional district judge for the district of New Jersey, two additional district judges for the eastern district of New York, six additional district judges for the southern district of New York, one additional district judge for the eastern district of North Carolina, one additional district judge for the middle district of North Carolina, one additional district judge for the western district of North Carolina, one additional district judge for the northern district of Ohio, one additional district judge for the northern, eastern, and western districts of Oklahoma, three additional district judges for the eastern district of Pennsylvania, one additional district judge for the middle district of Pennsylvania, one additional district judge for the district of Puerto Rico, one additional district judge for the eastern and western districts of South Carolina, one additional district judge for the eastern district of Tennessee, one additional district judge for the middle district of Tennessee, one additional district judge for the western district of Tennessee, two additional district judges for the northern district of Texas, one additional district judge for the southern district of Texas, one additional district judge for the western district of Texas and one additional district judge for the eastern and western districts of Washington.”

Subsec. (a)(1) of section 2 of act Feb. 10, 1954, subsec. (a)(3) of which section amended the table in this section, provided for the appointment by the President, by and with the advice and consent of the Senate, of the additional judges for the districts for which additional permanent judgeships were provided in the amendment.

Section 2(b) of Pub. L. 91–272 provided that: “The existing district judgeship for the middle and southern districts of Alabama, hereofore provided for by section 133 of title 28 of the United States Code, shall hereafter be a district judgeship for the southern district of Alabama only, and the present incumbent of such judgeship shall henceforth hold his office under this section, as amended by subsection (d) of this section.”

California.—Section 3(b) of Pub. L. 89–372 provided that: “The President shall appoint, by and with the advice and consent of the Senate, three additional district judges for the central district of California, and two additional district judges for the northern district of California.

Delaware.—Act July 24, 1946, ch. 602, 60 Stat. 654, which authorized the appointment of an additional district judgeship in Delaware was repealed by section 2 of act Sept. 5, 1950, which section, by repealing section 133 of title 28, United States Code, made the additional judgeship permanent. However, section 2 of act Sept. 5, 1950 also provided that the repeal in no way affected the tenure of the present incumbent.

Florida.—Section 2(b) of Pub. L. 89–372 provided that: “The existing district judgeship for the northern, mid-dle, and southern districts of Florida, hereofore provided for by section 133 of title 28, United States Code, shall hereafter be a district judgeship for the middle district of Florida only, and the present incumbent of such judgeship shall henceforth hold his office under section 133, as amended by this Act.”

Georgia.—Act Mar. 29, 1949, ch. 37, 63 Stat. 16, which authorized the appointment of an additional district judge for the northern district was repealed by section 2(b) of Pub. L. 87–36, which made the judgeship permanent and also provided that the incumbent of the judgeship created by act Mar. 29, 1949, should henceforth hold his office under this section, as amended by Pub. L. 87–36, §2(d).

Kansas.—Section 5(a) of Pub. L. 89–372, Mar. 18, 1966, 80 Stat. 78, which authorized the appointment of an additional district judge for the eastern district of Kansas and which provided that the first vacancy which occurred in the office of district judge in such district not filled was repealed by section 1(c) of Pub. L. 91–272, June 2, 1970, 84 Stat. 291, which provided, in part, that such judgeship be a permanent judgeship and that the present incumbent henceforth hold his office under this section, as amended by section 1(d) of Pub. L. 91–272.

Missouri.—The additional judgeship for the eastern and western districts, which was authorized by act Dec. 24, 1942, ch. 827, 56 Stat. 1083, was made permanent by act 19, 1954, which provided that the incumbent of the judgeship created by act Dec. 24, 1942, should henceforth hold his office under this section, as amended by act 19, 1954, §2(a)(2).

New Mexico.—Act Feb. 10, 1954, ch. 6, §2(b)(1), 68 Stat. 10, which provided that the appointment of an additional district judge for the district of New Mexico, which had been made permanent by act 2(b)(10) of Pub. L. 10, 1954 provided that the first vacancy occurring in the office of district judge in said district shall not be filled.

New Jersey.—Section 2(a) of Pub. L. 91–272 provided that: “The President shall appoint, by and with the advice and consent of the Senate, two additional district judges for the district of New Jersey.

Ohio.—Act May 1, 1941, ch. 83, 55 Stat. 148, which provided for the appointment of an additional district judge for the northern district was repealed by section 2(e) of act Aug. 3, 1949, which also provided that the first vacancy occurring in the office of district judge in that district shall not be filled.

Section 2(c)(1), (2) of Pub. L. 87–36 provided that: “(1) The President shall appoint, by and with the advice and consent of the Senate, one additional district judge...
and consent of the Senate an additional district judge in said district shall not be filled.

Section 2(b) of act February 10, 1954, as amended by Pub. L. 85-310, provided: "The President shall appoint, by and with the advice and consent of the Senate, one additional district judge for the district of South Dakota."

Section 2(b)(4) of act Feb. 10, 1954, provided: "The President shall appoint, by and with the advice and consent of the Senate, one additional district judge for the middle district of Tennessee."

The first vacancy occurring in the office of district judge in said district shall not be filled.

Section 2(b)(11) of act Feb. 10, 1954 also provided that the incumbent of the judgeship created by section 2(d) of act Aug. 3, 1949, should henceforth hold his office under this section, as amended by act Feb. 10, 1954, §2(a)(3).

Utah.—Act Feb. 10, 1954, ch. 6, §2(b)(6), 68 Stat. 11, which authorized the appointment of an additional judge for the district, was repealed by section 2(c) of Pub. L. 87-36, which made the judgeship permanent and also provided that the incumbent of the judgeship created by act Feb. 10, 1954, should henceforth hold his office under this section, as amended by Pub. L. 87-36, §2(d).

Virgin Islands.—Section 3(a) of Pub. L. 91-272 provided that: "The President shall appoint, by and with the advice and consent of the Senate, one additional judge for the District Court of the Virgin Islands, who shall hold office for the term of eight years and until his successor is chosen and qualified, unless sooner removed by the President for cause."

Washington.—Section 1(b) of Pub. L. 95-486 provided that: "The existing district judgeship for the eastern and western districts of Washington, heretofore provided for by section 133 of title 28 of the United States Code, shall hereafter be a district judgeship for the western district of Washington only, and the present incumbent of such judgeship shall henceforth hold his office under section 133, as amended by this Act."

Section 2(c) of Pub. L. 87-36 provided that: "The existing district judgeship for the eastern and western districts of Washington, heretofore provided for by section 133 of title 28 of the United States Code, shall hereafter be a district judgeship for the western district of Washington only, and the present incumbent of such judgeship shall henceforth hold his office under section 133, as amended by this Act [Pub. L. 87-36]."

West Virginia.—Section 2 of Pub. L. 97-471 provided that:

"(a) The existing district judgeship for the Southern District of West Virginia, authorized by section 2 of the Act entitled 'An Act to provide for the appointment of additional district and circuit judges and for other purposes', approved October 29, 1978 [Pub. L. 95-488] (92 Stat. 1632, 28 U.S.C. 133 note), shall, as of the date of enactment of this Act [Jan. 14, 1981], be authorized under section 133 of title 28 of the United States Code as a district judgeship for the Northern District of West Virginia, and the incumbent of that office shall henceforth hold office under section 133, as amended by this Act.

(b) The existing district judgeship for the Northern and Southern Districts of West Virginia shall be authorized as the district judgeship for the Southern District."

The additional judgeship for the northern and southern districts, which was authorized by act June 22, 1936, ch. 695, 49 Stat. 1805, was made permanent by section 2(a)(2) of act Feb. 10, 1954, which by section 2(b)(12) of act Feb. 10, 1954, provided that the incumbent of the judgeship created by act June 22, 1936, should henceforth hold his office under this section, as amended by act Feb. 10, 1954, §2(a)(3).
was revoked by Ex. Ord. No. 12553, Feb. 25, 1986, 51 F.R. 52455, which established the Judicial Nominating Committee Act in the Appendix to Title 5, Government Organization and Employees.

Residence of Additional Judge for Kansas
Section 2(b)(2) act Aug. 3, 1949, provided that: "The judge first appointed for the district of Kansas under the authority contained in subsection (a) [amending this section] shall reside at Wichita."

Executive Order No. 12084

Executive Order No. 12097

§ 134. Tenure and residence of district judges

(a) The district judges shall hold office during good behavior.

(b) Each district judge, except in the District of Columbia, the Southern District of New York, and the Eastern District of New York, shall reside in the district or one of the districts for which he is appointed. Each district judge of the Southern District of New York and the Eastern District of New York may reside within 20 miles of the district to which he or she is appointed.

(c) If the public interest and the nature of the business of a district court require that a district judge should maintain his abode at or near a particular place for holding court in the district or within a particular part of the district the judicial council of the circuit may so declare and may make an appropriate order. If the district judges of such a district are unable to agree as to which of them shall maintain his abode at or near the place or within the area specified in such an order the judicial council of the circuit may decide which of them shall do so.


Historical and Revision Notes


Provisions of section 1 of title 28, U.S.C., 1940 ed., relating to the number of judges in the various districts are incorporated in section 133 of this title.

A portion of section 863 of title 48, U.S.C., 1940 ed., is retained in said title 48. For remainder of section 863, see Distribution Table.

The exception in subsection (b) "except in the District of Columbia" conforms with the recent decision in U.S. ex rel. Laughlin v. Eicher, 1944, 56 F.Supp. 972, holding that residence requirement of section 1 of title 48, U.S.C., 1940 ed., did not apply to district judges in the District of Columbia. (See reviser's note under section 44 of this title.)

The clause in said last paragraph of section 1 of title 28 providing that any district judge, who violates the residence requirement, shall be deemed guilty of a high misdemeanor, was omitted. This penalty provision was attached to the residence requirement at the time of compilation of the Revised Statutes of 1878, although it is apparent that Congress only intended that the penalty should be invoked upon the unauthorized practice of law. See U.S. ex rel. Laughlin v. Eicher, supra, in which an outline of the history of said section 1 of title 28 is given.

Amendments

1996—Subsec. (b). Pub. L. 104-317 inserted "the Southern District of New York, and the Eastern District of New York, may reside within 20 miles of the district to which he or she is appointed," at end.

1971—Subsec. (c). Pub. L. 92-208 struck out provision requiring that one of the district judges for the Eastern District of Louisiana reside in East Baton Rouge Parish, Louisiana.

1966—Subsec. (a). Pub. L. 89-571 struck out provision which excepted district judges in Puerto Rico from tenure during good behavior and which instead set eight-year terms for them to be served until their successors were appointed and qualified.

1961—Subsec. (c). Pub. L. 87-36 required the residence of one of the district judges for the Eastern District of Louisiana to be in East Baton Rouge Parish, Louisiana.

1959—Subsec. (a). Pub. L. 86-3 struck out provisions which limited district judges in Hawaii to a term of six years.

1945—Subsecs. (a) and (b) reenacted without change by act Feb. 10, 1954.

Subsec. (c). Act Feb. 10, 1954, substituted entirely new provisions giving the judicial council of the circuit the authority to determine residence of district judges when it is in the public interest and the nature of the business of the district court necessitates the presence of a judge at or near a particular place for holding court in the district or within a particular part of the district, for former provisions relating to residence of one of the district judges for the District of Kansas.
Subsecs. (d), (e). Act Feb. 10, 1954, struck out subsecs. (d) and (e) which related to residence of one of the district judges for the Southern District of California and one of the district judges for the Southern District of Texas.

1964—Subsec. (c) to (e). Act Aug. 3, 1949, added subsecs. (c) to (e).

**Effective Date of 1971 Amendment**

Amendment by Pub. L. 92–208 effective 120 days after Dec. 18, 1971, see section 3(f) of Pub. L. 92–208, set out as a note under section 98 of this title.

**Effective Date of 1969 Amendment**

Amendment by Pub. L. 86–3 effective on admission of Hawaii into the Union, see Effective Date of 1969 Amendment note set out under section 283 of title 28, United States Code, shall not affect the act [Sept. 12, 1966].''

**Changes made in phraseology.**

**References in Text**


**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 $25,000 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**


**Salaries 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 recommendations 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.

**Salaries of chief judge of District Court for District of Columbia increased from $10,000 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.**

**Salaries 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 in-
§ 136  TITLE 28—JUDICIARY AND JUDICIAL PROCEDURE

creased 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 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.


HISTORICAL AND REVISION NOTES


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 provisions of 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 any district having more than one district judge, 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).”

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.
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

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.

SAYINGS 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 subsec. (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


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 pat-
ent 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 “(B) not later than 5 years after the date described in subparagraph (A). “(3) PERIODIC REPORTS.—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 keep the committees referred to in paragraph (1) informed, on a periodic basis while the pilot program is in effect, with respect to the matters referred to in subparagraphs (A) through (E) of paragraph (1).”

§ 138. Terms abolished


HISTORICAL AND REVISION NOTES

This section was substituted for a number of special provisions fixing stated times for holding terms of court in the several districts, in order to vest in the courts wider discretion and promote greater efficiency in the administration of the business of such courts.

AMENDMENTS

1963—Pub. L. 88–139 substituted provisions requiring the times for commencing regular sessions of the district court to be determined by the rules or orders of the court, authorizing such rules or orders to provide that at one or more of the places fixed by this chapter, the court shall be in continuous session on all business days throughout the year, and that at other places, a session continues until terminated by order of final adjournment or by commencement of the next regular session at the same place, for provisions that a term continues until terminated by order of final adjournment or by commencement of the next term at the same place, in the text, and “Term continued until terminated” in section catchline.

§ 140. Adjournment

(a) Any district court may, by order made anywhere within its district, adjourn, or, with the consent of the judicial council of the circuit, pretermit any regular session of court for insufficient business or other good cause.
(b) If the judge of a district court is unable to attend and unable to make an order of adjournment, the clerk may adjourn the court to the next regular session or to any earlier day which he may determine.


HISTORICAL AND REVISION NOTES


The revised section broadens these provisions, and vesta discretionary power in the court, by order made anywhere within the district, to adjourn any term of court “for insufficient business or other good cause.” To establish uniformity, the special provisions relating to Colorado and Oklahoma were omitted.

Other provisions of said sections 146 and 182 of title 28, U.S.C., 1940 ed., are incorporated in sections 85 and 116 of this title.

The provision of subsection (a) authorizing the district court, with the consent of the judicial council of the circuit, to pretermit any term of court for insuffi-
§ 141. Special sessions; places; notice

(a)(1) Special sessions of the district court may be held at such places in the district as the nature of the business may require, and upon such notice as the court orders.

(2) Any business may be transacted at a special session which might be transacted at a regular session.

(b)(1) Special sessions of the district court may be held at such places within the United States outside the district as the nature of the business may require and upon such notice as the court orders, upon a finding by either the chief judge of the district court (or, if the chief judge is unavailable, the most senior available active judge of the district court) or the judicial council of the circuit that, because of emergency conditions, no location within the district is reasonably available where such special sessions could be held.

(2) Pursuant to this subsection, any business which may be transacted at a regular session of a district court may be transacted at a special session conducted outside the district, except that a criminal trial may not be conducted at a special session outside the State in which the crime has been committed unless the defendant consents to such a criminal trial.

(3) Notwithstanding any other provision of law, any case in which special sessions are conducted pursuant to this section, the district court may summon jurors—

(A) in civil proceedings, from any part of the district in which the court ordinarily conducts business or the district in which it is holding a special session; and

(B) in criminal trials, from any part of the district in which the crime has been committed and, if the defendant so consents, from any district in which the court is conducting business pursuant to this section.

(4) If a district court issues an order exercising its authority under paragraph (1), the court—

(A) through the Administrative Office of the United States Courts, shall—

(i) send notice of such order, including the reasons for the issuance of such order, to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives; and

(ii) not later than 180 days after the expiration of such court order submit a brief report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives describing the impact of such order, including—

(I) the reasons for the issuance of such order;

(II) the duration of such order;

(III) the impact of such order on litigants; and

(IV) the costs to the judiciary resulting from such order; and

(B) shall provide reasonable notice to the United States Marshals Service before the commencement of any special session held pursuant to such order.

(5) If a district court issues an order exercising its authority under paragraph (1), the court shall direct the United States marshal of the district where the court is meeting to furnish transportation and subsistence to the same extent as that provided in sections 4282 and 4285 of title 18.

Amendments

1963—Subsecs. (a), (b). Pub. L. 88–139 substituted “session” for “term”.

§ 142. Repealed

(B) Repealed effective Oct. 1, 1962, see section 462 of Pub. L. 97–164, set out as an Effective Date of 1962 Amendment note under section 171 of this title.

Amendments


1963—Pub. L. 88–139 substituted “sessions” for “terms” and “session” for “term” wherever appearing in text and section catchline, and struck out “pursuant to rules approved by the judicial council of the circuit” after “court orders” in text.

Effective Date of Repeal


Waiver of Limitations and Restrictions

The limitations and restrictions contained in this section prior to its repeal were waived with respect to the holding of court at certain places by the following Acts:


Pub. L. 87–96, § 3(g), May 19, 1961, 75 Stat. 83, related to Kalamazoo, Michigan; Fayetteville, North Carolina; and Dyersburg, Tennessee.
§ 143 VACANT JUDESHIP AS AFFECTING PROCEEDINGS

When the office of a district judge becomes vacant, all pending process, pleadings and proceedings shall, when necessary, be continued by the clerk until a judge is appointed or designated to hold such court. (June 25, 1948, ch. 646, 62 Stat. 898.)

HISTORICAL AND REVISION NOTES


The last clause of section 26 of title 28, U.S.C., 1940 ed., prescribing the powers of a designated judge was omitted as covered by section 296 of this title. Minor changes were made in phraseology.

§ 144. BIAS OR PREJUDICE OF JUDGE

Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding.

The affidavit shall state the facts and the reasons for the belief that bias or prejudice exists, and shall be filed not less than ten days before the beginning of the term at which the proceeding is to be heard, or good cause shall be shown and shall be filed not less than ten days before the beginning of the term. (See section 291 et seq. and section 455 of this title.)

1949 ACT

This amendment clarifies the intent in section 144 of title 28, U.S.C., to conform to the law as it existed at the time of the enactment of the revision limiting the filing of affidavits of prejudice to one such affidavit in any case.

AMENDMENTS

1949—Act May 24, 1949, substituted "as to any judge" for "as to any judge" in second sentence of second par.
of their recommendations, and the Conference recommend to the Congress and the President, before Jan. 3, 1983, the number of bankruptcy judges needed after July 9, 1984, and the locations at which they were to serve, was repealed by Pub. L. 98–353, title I, §§114, 122(a), July 10, 1984, 98 Stat. 343, 346, eff. July 10, 1984.

JUDICIAL ADMINISTRATION DURING TRANSITION

Pub. L. 95–508, title IV, §407, Nov. 6, 1978, 92 Stat. 2666, which provided that the Director of the Administrative Office of the United States Courts appoint a committee of not fewer than seven United States bankruptcy judges to advise the Director with respect to matters arising during the transition period or that are relevant to the purposes of the transition period, and directed that during the transition period, the chief judge of each circuit summon at least one bankruptcy judge from each judicial district within the circuit to the judicial conference of such district called and held under section 332 of this title, was repealed by Pub. L. 98–353, title I, §§114, 122(a), July 10, 1984, 98 Stat. 343, 346, eff. July 10, 1984.

EXTENSION AND TERMINATION OF TERM OF OFFICE OF BANKRUPTCY JUDGE SERVING ON JUNE 27, 1984

Section 121(e) of Pub. L. 98–353 provided that: "The term of office of any bankruptcy judge who was serving on June 27, 1984, is extended to and shall expire at the end of the day of enactment of this Act [July 10, 1984]."

For prior extensions of the term of office of bankruptcy judges see:

§151. Designation of bankruptcy courts

In each judicial district, the bankruptcy judges in regular active service shall constitute a unit of the district court to be known as the bankruptcy court for that district. Each bankruptcy judge, as a judicial officer of the district court, may exercise the authority conferred under this chapter with respect to any action, suit, or proceeding and may preside alone and hold a regular or special session of the court, except as otherwise provided by law or by rule or order of the district court.

(Added Pub. L. 98–353, title I, §§104(a), July 10, 1984, 98 Stat. 303.)(1) Each bankruptcy judge to be appointed for a judicial district, as provided in paragraph (1), shall serve as judicial officer of the district court, may exercise the authority conferred under this chapter with respect to any action, suit, or proceeding and may preside alone and hold a regular or special session of the court, except as otherwise provided by law or by rule or order of the district court.

EFFECTIVE DATE

Section 122 of title I of Pub. L. 98–353 provided that: "The [enacting this chapter and sections 1408 to 1412 and 1452 of this title, and section 105 of Title 11, Bankruptcy, amending sections 44, 98, 131, 371, 372, 634, 957, 1334, 1360, and 1930 of this title and the amendments made by this title [enacting provisions set out as notes preceding section 151 of this title] shall take effect on the date of the enactment of this Act [July 10, 1984]."

§152. Appointment of bankruptcy judges

(a)(1) Each bankruptcy judge to be appointed for a judicial district, as provided in paragraph (2), shall be appointed by the court of appeals of the United States for the circuit in which such district is located. Such appointments shall be made after considering the recommendations of the Judicial Council submitted pursuant to subsection (b). Each bankruptcy judge shall be appointed for a term of fourteen years, subject to the provisions of subsection (e). However, upon the expiration of the term, a bankruptcy judge may, with the approval of the judicial council of the circuit, continue to perform the duties of the office until the earlier of the date which is 180 days after the expiration of the term or the date of the appointment of a successor. Bankruptcy judges shall serve as judicial officers of the United States district court established under Article III of the Constitution.

(2) The bankruptcy judges appointed pursuant to this section shall be appointed for the several judicial districts as follows:

<table>
<thead>
<tr>
<th>Districts</th>
<th>Judges</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama:</td>
<td>5</td>
</tr>
<tr>
<td>Northern</td>
<td>5</td>
</tr>
<tr>
<td>Middle</td>
<td>2</td>
</tr>
<tr>
<td>Southern</td>
<td>2</td>
</tr>
</tbody>
</table>
§ 152

Alaska ...................................................... 2
Arizona ...................................................... 7
Arkansas:
  Eastern and Western ........................................ 3
California:
  Northern ..................................................... 9
  Eastern ...................................................... 6
  Central ..................................................... 21
  Southern .................................................... 4
Colorado ..................................................... 5
Connecticut .................................................... 3
Delaware ..................................................... 1
District of Columbia ........................................ 1
Florida:
  Northern ..................................................... 1
  Middle ....................................................... 8
  Southern ..................................................... 5
Georgia:
  Northern ..................................................... 8
  Middle ....................................................... 3
  Southern ..................................................... 2
Hawaii .......................................................... 1
Idaho ............................................................ 2
Illinois:
  Northern ..................................................... 10
  Central ...................................................... 3
  Southern ..................................................... 1
Indiana:
  Northern ..................................................... 3
  Middle ....................................................... 4
  Southern ..................................................... 3
Iowa:
  Northern ..................................................... 2
  Southern ..................................................... 2
Kansas .......................................................... 4
Kentucky:
  Eastern ..................................................... 2
  Western ..................................................... 4
Louisiana:
  Eastern ..................................................... 2
  Middle ....................................................... 1
  Western ..................................................... 3
Maine .......................................................... 2
Maryland ...................................................... 4
Massachusetts .................................................. 5
Michigan:
  Eastern ..................................................... 4
  Western ..................................................... 4
Minnesota ..................................................... 4
Mississippi:
  Northern ..................................................... 1
  Southern ..................................................... 2
Missouri:
  Eastern ..................................................... 3
  Western ..................................................... 3
Montana .......................................................... 1
Nebraska ...................................................... 2
Nevada .......................................................... 3
New Hampshire .................................................. 8
New Jersey ...................................................... 2
New Mexico ..................................................... 2
New York:
  Northern ..................................................... 2
  Southern ..................................................... 9
  Eastern ..................................................... 6
  Western ..................................................... 3
North Carolina:
  Eastern ..................................................... 2
  Middle ....................................................... 2
  Western ..................................................... 2

Western territories shall serve as the bankruptcy judges for such courts. The United States court of appeals cannot agree upon the appointment of a bankruptcy judge, the chief judge of such court shall make such appointment.

(3) Whenever a majority of the judges of any court of appeals cannot agree upon the appointment of a bankruptcy judge, the chief judge of such court shall make such appointment.

(4) The judges of the district courts for the territories shall serve as the bankruptcy judges for such courts. The United States court of appeals for the circuit within which such a territorial district court is located may appoint bankruptcy judges under this chapter for such district if authorized to do so by the Congress of the United States under this section.

(b) The Judicial Conference of the United States shall, from time to time, and after considering the recommendations submitted by the Director of the Administrative Office of the United States Courts after such Director has consulted with the judicial council of the circuit involved, determine the official duty stations of bankruptcy judges and places of holding court.

(2) The Judicial Conference shall, from time to time, submit recommendations to the Congress regarding the number of bankruptcy judges needed and the districts in which such judges are needed.

(3) Not later than December 31, 1994, and not later than the end of each 2-year period thereafter, the Judicial Conference of the United States shall, from time to time, and after considering the recommendations submitted by the Director of the Administrative Office of the United States Courts after such Director has consulted with the judicial council of the circuit involved, determine the official duty stations of bankruptcy judges and places of holding court.

Page 74 TITLE 28—JUDICIARY AND JUDICIAL PROCEDURE
States shall conduct a comprehensive review of all judicial districts to assess the continuing need for the bankruptcy judges authorized by this section, and shall report to the Congress its findings and any recommendations for the elimination of any authorized position which can be eliminated when a vacancy exists by reason of resignation, retirement, removal, or death.

(c)(1) Each bankruptcy judge may hold court at such places within the judicial district, in addition to the official duty station of such judge, as the business of the court may require.

(2)(A) Bankruptcy judges may hold court at such places within the United States outside the judicial district as the nature of the business of the court may require, and upon such notice as the court orders, upon a finding by either the chief judge of the bankruptcy court (or, if the chief judge is unavailable, the most senior available bankruptcy judge) or by the judicial council of the circuit that, because of emergency conditions, no location within the district is reasonably available where the bankruptcy judges could hold court.

(B) Bankruptcy judges may transact any business at special sessions of court held outside the district pursuant to this paragraph that might be transacted at a regular session.

(C) If a bankruptcy court issues an order exercising its authority under subparagraph (A), the court—

(i) through the Administrative Office of the United States Courts, shall—

(I) send notice of such order, including the reasons for the issuance of such order, to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives; and

(II) not later than 180 days after the expiration of such court order submit a brief report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the Judicial Council of the House of Representatives describing the impact of such order, including—

(aa) the reasons for the issuance of such order;

(bb) the duration of such order;

(cc) the impact of such order on litigants; and

(dd) the costs to the judiciary resulting from such order; and

(ii) shall provide reasonable notice to the United States Marshals Service before the commencement of any special session held pursuant to such order.

(d) With the approval of the Judicial Conference and of each of the judicial councils involved, a bankruptcy judge may be designated to serve in any district adjacent to or near the district for which such bankruptcy judge was appointed.

(e) A bankruptcy judge may be removed during the term for which such bankruptcy judge is appointed, only for incompetence, misconduct, neglect of duty, or physical or mental disability and only by the judicial council of the circuit in which the judge’s official duty station is located. Removal may not occur unless a majority of all of the judges of such council concur in the order of removal. Before any order of removal may be entered, a full specification of charges shall be furnished to such bankruptcy judge who shall be accorded an opportunity to be heard on such charges.


Amendments

2005—Subsec. (a)(1). Pub. L. 109–9, §1223(d)(1), substituted “Each bankruptcy judge to be appointed for a judicial district, as provided in paragraph (2), shall be appointed by the court of appeals of the United States for the circuit in which such district is located.” for “The United States court of appeals for the circuit shall appoint bankruptcy judges for the judicial districts established in paragraph (2) in such numbers as are established in such paragraph.”

Subsec. (a)(2). Pub. L. 109–9, §1223(d)(2), substituted “3” for “2” in item relating to middle district of Georgia and struck out item relating to middle and southern districts of Georgia.

Subsec. (c). Pub. L. 109–63 designated existing provisions as par. (1) and added par. (2).

1992—Subsec. (a)(2). Pub. L. 102–361, §2, in item relating to district of Arizona substituted “7” for “5”, in item relating to central district of California substituted “21” for “19”, in item relating to district of Connecticut substituted “3” for “2”, in item relating to middle district of Florida substituted “8” for “4”, in item relating to southern district of Florida substituted “5” for “3”, in item relating to northern district of Georgia substituted “8” for “6”, inserted item relating to middle and southern districts of Georgia, in item relating to district of Maryland substituted “4” for “3”, in item relating to district of Massachusetts substituted “5” for “4”, in item relating to district of New Jersey substituted “8” for “7”, in item relating to southern district of New York substituted “9” for “7”, in item relating to eastern district of Pennsylvania substituted “5” for “3”, in item relating to district of Virginia substituted “5” for “4”, in item relating to eastern district of Virginia substituted “5” for “4”.


1990—Subsec. (a)(1). Pub. L. 101–456 inserted after third sentence “However, upon the expiration of the term, a bankruptcy judge may, with the approval of the judicial council of the circuit, continue to perform the duties of the office until the earlier of the date which is 180 days after the expiration of the term or the date of the appointment of a successor.”

1989—Subsec. (a)(2). Pub. L. 101–567 substituted “2” for “1”, in item relating to district of Colorado substituted “5” for “4”, in item relating to district of Kansas substituted “4” for “3”, in item relating to eastern district of Kentucky substituted “2” for “1”, in item relating to district of Kentucky substituted “21” for “19”, in item relating to central district of California substituted “5” for “4”, in item relating to northern district of Maryland substituted “6” for “5”, and in item relating to eastern district of California substituted “4” for “3”.

1986—Subsec. (a)(2). Pub. L. 99–554 in item relating to eastern district and western district of Arkansas substituted “3” for “2”, in item relating to northern district of California substituted “9” for “7”, in item relating to eastern district of California substituted “6” for “4”, in item relating to central district of Califo-
portion of section 302(b) of Pub. L. 99–554, set out as a note date of the enactment of this Act [Apr. 20, 2005].''

The following bankruptcy judges shall not be filled:

(A) One additional bankruptcy judge for the southern district of California—

(B) Three additional bankruptcy judges for the central district of California—

(C) Four additional bankruptcy judges for the district of Delaware—

(D) Two additional bankruptcy judges for the southern district of Florida—

(E) One additional bankruptcy judge for the southern district of Georgia—

(F) Three additional bankruptcy judges for the district of Maryland—

(G) One additional bankruptcy judge for the eastern district of Michigan—

(H) One additional bankruptcy judge for the southern district of Mississippi—

(I) One additional bankruptcy judge for the district of New Jersey—

(J) One additional bankruptcy judge for the eastern district of New York—

(K) One additional bankruptcy judge for the northern district of New York—

(L) One additional bankruptcy judge for the southern district of Ohio—

(M) One additional bankruptcy judge for the eastern district of Pennsylvania—

(N) One additional bankruptcy judge for the district of Puerto Rico—

(Q) One additional bankruptcy judge for the western district of Tennessee—

(R) One additional bankruptcy judge for the eastern district of Virginia—

(S) One additional bankruptcy judge for the district of South Carolina—

(T) One additional bankruptcy judge for the district of Nevada—

(2) Vacancies.—

(A) Districts with single appointments.—Except as provided in subparagraphs (B), (C), (D), and (E), the first vacancy occurring in the office of bankruptcy judge in each of the judicial districts set forth in paragraph (1)—

(i) occurring 5 years or more after the appointment date of the bankruptcy judge appointed under paragraph (1) to such office; and

(ii) resulting from the death, retirement, resignation, or removal of a bankruptcy judge; shall not be filled.

(B) Central district of California.—The 1st, 2nd, and 3rd vacancies in the office of bankruptcy judge in the central district of California—

(i) occurring 5 years or more after the respective 1st, 2nd, and 3rd appointment dates of the bankruptcy judges appointed under paragraph (1)(B); and

(ii) resulting from the death, retirement, resignation, or removal of a bankruptcy judge; shall not be filled.

(C) District of Delaware.—The 1st, 2nd, 3rd, and 4th vacancies in the office of bankruptcy judge in the district of Delaware—

(i) occurring 5 years or more after the respective 1st, 2nd, 3rd, and 4th appointment dates of the bankruptcy judges appointed under paragraph (1)(F); and

(ii) resulting from the death, retirement, resignation, or removal of a bankruptcy judge; shall not be filled.

(D) Southern district of Florida.—The 1st and 2nd vacancies in the office of bankruptcy judge in the southern district of Florida—

(i) occurring 5 years or more after the respective 1st and 2nd appointment dates of the bankruptcy judges appointed under paragraph (1)(D); and

(ii) resulting from the death, retirement, resignation, or removal of a bankruptcy judge; shall not be filled.

(E) District of Maryland.—The 1st, 2nd, and 3rd vacancies in the office of bankruptcy judge in the district of Maryland—

(i) occurring 5 years or more after the respective 1st, 2nd, and 3rd appointment dates of the bankruptcy judges appointed under paragraph (1)(F); and

(ii) resulting from the death, retirement, resignation, or removal of a bankruptcy judge; shall not be filled.

 EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–8, title XII, § 1223(e), Apr. 20, 2005, 119 Stat. 198, provided that: "The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Apr. 20, 2005]."

 EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–554, see section 202(b) of Pub. L. 99–554, set out as a note under section 581 of this title.

 TEMPORARY APPOINTMENT OF ADDITIONAL JUDGES

Pub. L. 109–8, title XII, § 1223(b), (c), Apr. 20, 2005, 119 Stat. 198, provided that:

(b) Temporary Judgeships.—

(1) Appointments.—The following bankruptcy judges shall be appointed in the manner prescribed in section 152(a)(1) of title 28, United States Code, for the appointment of bankruptcy judges provided for in section 152(a)(2) of such title:

(A) One additional bankruptcy judge for the eastern district of California—

(B) Three additional bankruptcy judges for the central district of California—

(C) Four additional bankruptcy judges for the district of Delaware—

(D) Two additional bankruptcy judges for the southern district of Florida—

(E) One additional bankruptcy judge for the southern district of Georgia—

(F) Three additional bankruptcy judges for the district of Maryland—

(G) One additional bankruptcy judge for the eastern district of Michigan—

(H) One additional bankruptcy judge for the southern district of Mississippi—

(I) One additional bankruptcy judge for the district of New Jersey—

(J) One additional bankruptcy judge for the eastern district of New York—

(K) One additional bankruptcy judge for the northern district of New York—

(L) One additional bankruptcy judge for the southern district of Ohio—

(M) One additional bankruptcy judge for the eastern district of Pennsylvania—

(N) One additional bankruptcy judge for the district of Puerto Rico—

(Q) One additional bankruptcy judge for the western district of Tennessee—

(R) One additional bankruptcy judge for the eastern district of Virginia—

(S) One additional bankruptcy judge for the district of South Carolina—

(T) One additional bankruptcy judge for the district of Nevada—

(A) Districts with single appointments.—Except as provided in subparagraphs (B), (C), (D), and (E), the first vacancy occurring in the office of bankruptcy judge in each of the judicial districts set forth in paragraph (1)—

(i) occurring 5 years or more after the appointment date of the bankruptcy judge appointed under paragraph (1) to such office; and

(ii) resulting from the death, retirement, resignation, or removal of a bankruptcy judge; shall not be filled.

(B) Central district of California.—The 1st, 2nd, and 3rd vacancies in the office of bankruptcy judge in the central district of California—

(i) occurring 5 years or more after the respective 1st, 2nd, and 3rd appointment dates of the bankruptcy judges appointed under paragraph (1)(B); and

(ii) resulting from the death, retirement, resignation, or removal of a bankruptcy judge; shall not be filled.

(C) District of Delaware.—The 1st, 2nd, 3rd, and 4th vacancies in the office of bankruptcy judge in the district of Delaware—

(i) occurring 5 years or more after the respective 1st, 2nd, 3rd, and 4th appointment dates of the bankruptcy judges appointed under paragraph (1)(F); and

(ii) resulting from the death, retirement, resignation, or removal of a bankruptcy judge; shall not be filled.

(D) Southern district of Florida.—The 1st and 2nd vacancies in the office of bankruptcy judge in the southern district of Florida—

(i) occurring 5 years or more after the respective 1st and 2nd appointment dates of the bankruptcy judges appointed under paragraph (1)(D); and

(ii) resulting from the death, retirement, resignation, or removal of a bankruptcy judge; shall not be filled.

(E) District of Maryland.—The 1st, 2nd, and 3rd vacancies in the office of bankruptcy judge in the district of Maryland—

(i) occurring 5 years or more after the respective 1st, 2nd, and 3rd appointment dates of the bankruptcy judges appointed under paragraph (1)(F); and

(ii) resulting from the death, retirement, resignation, or removal of a bankruptcy judge; shall not be filled.
“(c) Extensions.—

“(1) In general.—The temporary office of bankruptcy judges authorized for the northern district of Alabama, the district of Delaware, the district of Puerto Rico, and the eastern district of Tennessee under paragraphs (1), (3), (7), and (9) of section 3(a) of the Bankruptcy Judgeship Act of 1992 [28 U.S.C. 152 note] remain applicable to the temporary office of bankruptcy judges referred to in this subsection.’’


“(a) Appointments.—The following bankruptcy judges shall be appointed in the manner prescribed in section 152(a)(1) of title 28, United States Code:

“(1) 1 additional bankruptcy judge for the northern district of Alabama.

“(2) 1 additional bankruptcy judge for the district of Colorado.

“(3) 1 additional bankruptcy judge for the district of Delaware.

“(4) 1 additional bankruptcy judge for the southern district of Illinois.

“(5) 1 additional bankruptcy judge for the district of New Hampshire.

“(6) 1 additional bankruptcy judge for the middle district of North Carolina.

“(7) 1 additional bankruptcy judge for the district of Puerto Rico.

“(8) 1 additional bankruptcy judge for the district of South Carolina.

“(9) 1 additional bankruptcy judge for the eastern district of Tennessee.

“(10) 1 additional bankruptcy judge for the western district of Texas.

“(b) Vacancies.—The first vacancy in the office of bankruptcy judge in each of the judicial districts set forth in subsection (a), resulting from the death, retirement, resignation, or removal of a bankruptcy judge, and occurring 5 years or more after the appointment to continue to serve. Such potential nominees shall be considered for such appointment. The Judicial Conference of the United States should consider reappointing incumbent bankruptcy judges under procedures prescribed by regulations issued by the Judicial Conference of the United States.

“(a)(1) Whenever a court of appeals is authorized to fill a vacancy that arises after the date of the enactment of this Act [July 10, 1984] in the office of each bankruptcy judge, the bankruptcy judge who holds such office immediately before such vacancy arises, if such bankruptcy judge requests to be considered for such appointment.

“(a)(2) When filling vacancies, the court of appeals may consider reappointing incumbent bankruptcy judges under procedures prescribed by regulations issued by the Judicial Conference of the United States.

“Notwithstanding the provisions of section 152(a)(1) of title 28, United States Code, as added by this Act, the term of office of a bankruptcy judge who is serving on the date of enactment of this Act [July 10, 1984] may continue to and expires four years after the date such bankruptcy judge was last appointed to such office or on October 1, 1986, whichever is later.

“(b) Appointments To Fill Vacancies; Nominations; Qualifications


“(a) Notwithstanding section 152 of title 28, United States Code, as added by this Act, the term of office of a bankruptcy judge who is serving on the date of enactment of this Act [July 10, 1984] may continue to and expires four years after the date such bankruptcy judge was last appointed to such office or on October 1, 1986, whichever is later.

“(b) Appointments To Fill Vacancies; Nominations; Qualifications

Extension and Termination of Term of Office of Part-Time Bankruptcy Judge Serving on July 2, 1986, in District of Oregon, Western District of Michigan, and Eastern District of Oklahoma

Pub. L. 99–349, title I, July 2, 1986, 100 Stat. 718, provided that: ‘‘Notwithstanding the provisions of section 106(b)(1) of the Bankruptcy Amendments and Federal Judgeship Act of 1984 (section 106(b)(1) of Pub. L. 98–353, set out below), a bankruptcy judge serving on a part-time basis on the date of enactment of this Act [July 2, 1986] may continue to serve as a part-time judge for such district until December 31, 1986, or until such time as a full-time bankruptcy judge for such district is appointed, whichever is earlier: Provided, That these provisions shall apply only to part-time bankruptcy judges serving in the district of Oregon, the western district of Michigan, and the eastern district of Oklahoma.’’

Extension and Termination of Term of Office of Bankruptcy Judge and Part-Time Bankruptcy Judge Serving on July 10, 1984; Practice of Law by Part-Time Bankruptcy Judge

Section 106 of Pub. L. 98–333 provided that:

“(c) Before transmitting to the court of appeals the names of the persons the judicial council for the circuit deems best qualified to fill any existing vacancy, the judicial council shall have determined that—

“(1) public notice of such vacancy has been given and an effort has been made, in the case of each such vacancy, to identify qualified candidates, without regard to race, color, sex, religion, or national origin,
“(2) such persons are members in good standing of at least one State bar, the District of Columbia bar, or the bar of the Commonwealth of Puerto Rico, and members in good standing of every other bar of which they are members,

“(3) such persons possess, and have a reputation for, integrity and good character,

“(4) such persons are of sound physical and mental health,

“(5) such persons possess and have demonstrated commitment to equal justice under law,

“(6) such persons possess and have demonstrated outstanding legal ability and competence, as evidenced by substantial legal experience, ability to deal with complex legal problems, aptitude for legal scholarship and writing, and familiarity with courts and court processes, and

“(7) such persons demeanor, character, and personality indicate that they would exhibit judicial temperament if appointed to the position of United States bankruptcy judge.”

§ 153. Salaries; character of service

(a) Each bankruptcy judge shall serve on a full-time basis and shall receive as full compensation for his services, a salary at an annual rate that is equal to 92 percent of the salary of a judge of the district court of the United States as determined pursuant to section 135, to be paid at such times as the Judicial Conference of the United States determines.

(b) A bankruptcy judge may not engage in the practice of law and may not engage in any other practice, business, occupation, or employment inconsistent with the expeditious, proper, and impartial performance of such bankruptcy judge’s duties as a judicial officer. The Conference may promulgate appropriate rules and regulations to implement this subsection.

(c) Each individual appointed under this chapter shall take the oath or affirmation prescribed by section 453 of this title before performing the duties of the office of bankruptcy judge.

(d) A bankruptcy judge appointed under this chapter shall be exempt from the provisions of subchapter I of chapter 63 of title 5.


AMENDMENTS


1987—Subsec. (a). Pub. L. 100–202 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “Each bankruptcy judge shall serve on a full-time basis and shall receive as full compensation for his services 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, to be paid at such times as the Judicial Conference of the United States determines.”

EFFECTIVE DATE OF 1987 AMENDMENT

Section 101(a) (title IV, §408(d)) of Pub. L. 100–202 provided that: “This section (amending this section, section 634 of this title, and section 356 of Title 2, The Congress) shall become effective October 1, 1988, and any salary affected by the provisions of this section shall be adjusted at the beginning of the first applicable pay period commencing on or after such date of enactment [probably should read “such date”], meaning Oct. 1, 1988.”

TRANSITION PROVISIONS

Section 1003(b) of Pub. L. 100–702 provided that:

“(1) If an individual who is exempted from the Leave Act by operation of amendments under this section (amending this section and sections 156, 631, 634, 712, 720, and 794 of this title) and who was previously subject to the provisions of subchapter I of chapter 63 of title 5, United States Code, without a break in service, again becomes subject to this subchapter on completion of his service as an exempted officer, the unused annual leave and sick leave standing to his credit when he was exempted from this subchapter is deemed to have remained to his credit.

“(2) In computing an annuity under section 3339 of title 5, United States Code, the total service of a person specified in paragraph (1) of this subsection who retired on an immediate annuity or dies leaving a survivor or survivors entitled to an annuity includes, without regard to the limitations imposed by subsection (f) of section 3339 of title 5, United States Code, the days of unused sick leave standing to his credit when he was exempted from this subchapter.

“Nothing in this Act shall permit a bankruptcy judge appointed under section 634 of this title, and section 356 of Title 2, The Congress, to retain salary and tenure while undergoing certification as a special master under section 28 U.S.C. 636(e), or to retain salary and tenure while undergoing appointment as a special master under such section.

CONTINUATION OF SALARIES OF BANKRUPTCY JUDGES IN EFFECT ON JUNE 27, 1984

Section 101(a) of Pub. L. 98–353 provided that: “The salary of a bankruptcy judge in effect on June 27, 1984, shall remain in effect until changed as a result of a determination or adjustment made pursuant to section 153(a) of title 28, United States Code, as added by this Act.”

PART-TIME BANKRUPTCY JUDGES

For provision that notwithstanding subsecs. (a) and (b) of this section, a bankruptcy judge serving on a part-time basis on July 10, 1984, may continue to serve on such basis for two years from such date, and may engage in the practice of law, see section 106 of Pub. L. 98–353, set out as a note under section 152 of this title.

SALARY INCREASES


1987—Salaries of bankruptcy judges increased to $72,500 per annum, on recommendation of the President of the United States, see note set out under section 3338 of Title 2, The Congress.


1982—Salaries of bankruptcy judges and referees in bankruptcy (full-time), or referees in bankruptcy (part-time) (maximum rate) increased to $63,900 and $31,900, respectively, effective on first day of first pay period beginning on or after Oct. 1, 1982, by Ex. Ord. No. 12387, Oct. 8, 1982, 47 F.R. 44961, formerly set out as a note under section 3332 of Title 5, Ex. Ord. No. 12367 further provided that pursuant to section 103(e) of Pub. L. 97–276 funds are not available to pay a salary at a rate which exceeds the rate in effect on Sept. 30, 1982, which
was $58,500 for bankruptcy judges and referees in bankruptcy (full-time), and $30,600 for referees in bankruptcy (part-time) (maximum rate).

§ 155. Temporary transfer of bankruptcy judges

(a) A bankruptcy judge may be transferred to serve temporarily as a bankruptcy judge in any judicial district other than the judicial district for which such bankruptcy judge was appointed upon the approval of the judicial council of each of the circuits involved.

(b) A bankruptcy judge who has retired may, upon consent, be recalled to serve as a bankruptcy judge in any judicial district by the judicial council of the circuit within which such district is located. Upon recall, a bankruptcy judge may receive a salary for such service in accordance with regulations promulgated by the Judicial Conference of the United States, subject to the restrictions on the payment of an annuity in section 377 of this title or in subchapter III of chapter 63, and chapter 84, of title 5 which are applicable to such judge.


AMENDMENTS

1988—Subsec. (b). Pub. L. 100–659 inserted “section 377 of this title or in” after “annuity in” and “which are applicable to such judge” after “title 5”.


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

Section 233 of title II of Pub. L. 99–651 provided that: “This title and the amendments made by this title [enacting section 375 of this title and amending this section and sections 374, 631, 633, 636, and 797 of this title] take effect on January 1, 1987.”

§ 156. Staff; expenses

(a) Each bankruptcy judge may appoint a secretary, a law clerk, and such additional assistants as the Director of the Administrative Office of the United States Courts determines to be necessary. 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.

(b) Upon certification to the judicial council of the circuit involved and to the Director of the Administrative Office of the United States Courts that the number of cases and proceedings pending within the jurisdiction under section 1334 of this title within a judicial district so warrants, the bankruptcy judges for such district may appoint an individual to serve as clerk of such bankruptcy court. The clerk may appoint, with the approval of such bankruptcy judges, and in such number as may be approved by the Director, necessary deputies, and may remove such deputies with the approval of such bankruptcy judges.

(c) Any court may utilize facilities or services, either on or off the court’s premises, which per-
tain to the provision of notices, dockets, calendars, and other administrative information to parties in cases filed under the provisions of title 11, United States Code, where the costs of such facilities or services are paid for out of the assets of the estate and are not charged to the United States. The utilization of such facilities or services shall be subject to such conditions and limitations as the pertinent circuit court may prescribe.

(d) No office of the bankruptcy clerk of court may be consolidated with the district clerk of court office without the prior approval of the Judicial Conference and the Congress.

(e) In a judicial district where a bankruptcy clerk has been appointed pursuant to subsection (b), the bankruptcy clerk shall be the official custodian of the records and dockets of the bankruptcy court.

(f) For purposes of financial accountability in a district where a bankruptcy clerk has been certified, such clerk shall be accountable for and pay into the Treasury all fees, costs, and other moneys collected by such clerk except uncollected fees not required by an Act of Congress to be prepaid. Such clerk shall make returns there to the Director of the Administrative Office of the United States Courts and the Director of the Executive Office For United States Trustees, under regulations prescribed by such Directors.

AMENDMENTS

1988—Subsec. (a). 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.”


Subsecs. (e), (f). Pub. L. 99–554, §§142, 144(a), added subsecs. (e) and (f).

EFFECTIVE DATE OF 1986 AMENDMENT


§ 157. Procedures

(a) Each district court may provide that any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11 shall be referred to the bankruptcy judges for the district.

(b)(1) Bankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11, referred under subsection (a) of this section, and may enter appropriate orders and judgments, subject to review under section 158 of this title.

(2) Core proceedings include, but are not limited to—

(A) matters concerning the administration of the estate;

(B) allowance or disallowance of claims against the estate or exemptions from property of the estate, and estimation of claims or interests for the purposes of confirming a plan under chapter 11, 12, or 13 of title 11 but not the liquidation or estimation of contingent or unliquidated personal injury tort or wrongful death claims against the estate for purposes of distribution in a case under title 11;

(C) counterclaims by the estate against persons filing claims against the estate;

(D) orders in respect to obtaining credit;

(E) orders to turn over property of the estate;

(F) proceedings to determine, avoid, or recover preferences;

(G) motions to terminate, annul, or modify the automatic stay;

(H) proceedings to determine, avoid, or recover fraudulent conveyances;

(I) determinations as to the dischargeability of particular debts;

(J) objections to discharges;

(K) determinations of the validity, extent, or priority of liens;

(L) confirmations of plans;

(M) orders approving the use or lease of property, including the use of cash collateral;

(N) orders approving the sale of property other than property resulting from claims brought by the estate against persons who have not filed claims against the estate;

(O) other proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor or the equity security holder relationship, except personal injury tort or wrongful death claims;

(P) recognition of foreign proceedings and other matters under chapter 15 of title 11.

(3) The bankruptcy judge shall determine, on the judge’s own motion or on timely motion of a party, whether a proceeding is a core proceeding under this subsection or is a proceeding that is otherwise related to a case under title 11. A determination that a proceeding is not a core proceeding shall not be made solely on the basis that its resolution may be affected by State law.

(4) Non-core proceedings under section 157(b)(2)(B) of title 28, United States Code, shall not be subject to the mandatory abstention provisions of section 1334(c)(2).

(5) The district court shall order that personal injury tort and wrongful death claims shall be tried in the district court in which the bankruptcy case is pending, or in the district court in the district in which the claim arose, as determined by the district court in which the bankruptcy case is pending.

(c)(1) A bankruptcy judge may hear a proceeding that is not a core proceeding but that is otherwise related to a case under title 11. In such proceeding, the bankruptcy judge shall submit proposed findings of fact and conclusions of law to the district court, and any final order or judgment shall be entered by the district judge after considering the bankruptcy judge’s proposed findings and conclusions and after reviewing de novo those matters to which any party has timely and specifically objected.

(2) Notwithstanding the provisions of paragraph (1) of this subsection, the district court, with the consent of all the parties to the proceeding, may refer a proceeding related to a case
under title 11 to a bankruptcy judge to hear and determine and to enter appropriate orders and judgments, subject to review under section 158 of this title. 

(d) The district court may withdraw, in whole or in part, any case or proceeding referred under this section, on its own motion or on timely motion of any party, for cause shown. The district court shall, on timely motion of a party, so withdraw a proceeding if the court determines that resolution of the proceeding requires consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce. 

(e) If the right to a jury trial applies in a proceeding that may be heard under this section by a bankruptcy judge, the bankruptcy judge may conduct the jury trial if specially designated to exercise such jurisdiction by the district court and with the express consent of all the parties.


AMENDMENTS


1986—Subsec. (b)(2). Pub. L. 99–554, in subpar. (B) substituted ‘‘interests’’ for ‘‘interest’’ and inserted reference to chapter 12, and in subpar. (G) inserted a comma after ‘‘annul’’.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–8 effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under Title 11, Bankruptcy, before such effective date, except as otherwise provided, see section 1561 of Pub. L. 109–8, set out as a note under section 101 of Title 11.

EFFECTIVE DATE OF 1994 AMENDMENT


EFFECTIVE DATE OF 1986 AMENDMENT


§ 158. Appeals

(a) The district courts of the United States shall have jurisdiction to hear appeals1 from final judgments, orders, and decrees; from interlocutory orders and decrees issued under section 1221(d) of title 11 increasing or reducing the time periods referred to in section 1221 of such title; and from leave of the court, from other interlocutory orders and decrees; and, with leave of the court, from interlocutory orders and decrees, of bankruptcy judges entered in cases and proceedings referred to the bankruptcy judges under section 157 of this title. An appeal under this subsection shall be taken only to the district court for the judicial district in which the bankruptcy judge is serving. 

(b)(1) The judicial council of a circuit shall establish a bankruptcy appellate panel service composed of bankruptcy judges of the districts in the circuit who are appointed by the judicial council in accordance with paragraph (3), to hear and determine, with the consent of all the parties, appeals under subsection (a) unless the judicial council finds that—

(A) there are insufficient judicial resources available in the circuit; or

(B) establishment of such service would result in undue delay or increased cost to parties in cases under title 11.

Not later than 90 days after making the finding, the judicial council shall submit to the Judicial Conference of the United States a report containing the factual basis of such finding.

(2)(A) A judicial council may reconsider, at any time, the finding described in paragraph (1).

(B) On the request of a majority of the district judges in a circuit for which a bankruptcy appellate panel service is established under paragraph (1), made after the expiration of the 1-year period beginning on the date such service is established, the judicial council of the circuit shall determine whether a circumstance specified in subparagraph (A) or (B) of such paragraph exists.

(C) On its own motion, after the expiration of the 3-year period beginning on the date a bankruptcy appellate panel service is established under paragraph (1), the judicial council of the circuit may determine whether a circumstance specified in subparagraph (A) or (B) of such paragraph exists.

(D) If the judicial council finds that either of such circumstances exists, the judicial council may provide for the completion of the appeals then pending before such service and the orderly termination of such service.

(3) Bankruptcy judges appointed under paragraph (1) shall be appointed and may be reappointed under such paragraph.

(4) If authorized by the Judicial Conference of the United States, the judicial councils of 2 or more circuits may establish a joint bankruptcy appellate panel comprised of bankruptcy judges from the districts within the circuits for which such panel is established, to hear and determine, upon the consent of all the parties, appeals under subsection (a) of this section.

(5) An appeal to be heard under this subsection shall be heard by a panel of 3 members of the bankruptcy appellate panel service, except that a member of such service may not hear an appeal originating in the district for which such member is appointed or designated under section 152 of this title.

(6) Appeals may not be heard under this subsection by a panel of the bankruptcy appellate panel service unless the district judges for the district in which the appeals occur, by majority vote, have authorized such service to hear and determine appeals originating in such district.

(c)(1) Subject to subsections (b) and (d)(2), each appeal under subsection (a) shall be heard by a 3-judge panel of the bankruptcy appellate panel service established under subsection (b)(1) unless—

1So in original. Probably should be followed by a dash.
(A) the appellant elects at the time of filing the appeal; or
(B) any other party elects, not later than 30 days after service of notice of the appeal;
to have such appeal heard by the district court.

(2) An appeal under subsections (a) and (b) of this section shall be taken in the same manner as appeals in civil proceedings generally are taken to the courts of appeals from the district courts and in the time provided by Rule 8002 of the Bankruptcy Rules.

(d)(1) The courts of appeals shall have jurisdiction of appeals from all final decisions, judgments, orders, and decrees entered under subsections (a) and (b) of this section.

(2)(A) The appropriate court of appeals shall have jurisdiction of appeals described in the first sentence of subsection (a) if the bankruptcy court, the district court, or the bankruptcy appellate panel involved, acting on its own motion or on the request of a party to the judgment, order, or decree described in such first sentence, or all the appellants and appellees (if any) acting jointly, certify that—

(i) the judgment, order, or decree involves a question of law as to which there is no controlling decision of the court of appeals for the circuit or of the Supreme Court of the United States, or involves a matter of public importance;

(ii) the judgment, order, or decree involves a question of law requiring resolution of conflicting decisions;

(iii) an immediate appeal from the judgment, order, or decree may materially advance the progress of the case or proceeding in which the appeal is taken;

and if the court of appeals authorizes the direct appeal of the judgment, order, or decree.

(B) If the bankruptcy court, the district court, or the bankruptcy appellate panel—

(i) on its own motion or on the request of a party, determines that a circumstance specified in clause (i), (ii), or (iii) of subparagraph (A) exists; or

(ii) receives a request made by a majority of the appellants and a majority of appellees (if any) acting jointly, certify that—

(E) Any request under subparagraph (B) for certification shall be made not later than 60 days after the entry of the judgment, order, or decree.


References to Text
The Bankruptcy Rules, referred to in subsec. (c)(2), are set out in the Appendix to Title 11, Bankruptcy.

Amendments
2010—Subsec. (d)(2)(D). Pub. L. 111–327 substituted “appeal is pending” for “appeal in pending”.
2005—Subsec. (c)(1). Pub. L. 109–8, §1233(a)(1), substituted “Subject to subsections (b) and (d)(2),” for “Subject to subsection (b),”.

Subsec. (d). Pub. L. 109–8, §1233(a)(2), designated existing provisions as par. (1) and added par. (2).
1994—Subsec. (a). Pub. L. 103–394, §102, which directed the amendment of subsec. (a) by striking “from” the first place it appears and all that follows through “decree,” and inserting par. (1) to (3), was executed by making the insertion and striking after “appeals” “from final judgments, orders, and decrees,” which is through “decree,” the first place appearing, to reflect the probable intent of Congress.

Subsec. (b)(1). Pub. L. 103–394, §104(c)(3), added par. (1) and struck out former par. (1) which read as follows: “The judicial council of a circuit may establish a bankruptcy appellate panel, comprised of bankruptcy judges from districts within the circuit, to hear and determine, upon the consent of all the parties, appeals under subsection (a) of this section.”


Subsec. (b)(3). Pub. L. 103–394, §104(c)(1), (3), added par. (3) and struck out former par. (3) which read as follows: “No appeal may be referred to a panel under this subsection unless the district judges for the district, by majority vote, authorize such referral of appeals originating within the district.”

Subsec. (b)(4). Pub. L. 103–394, §104(c)(1), (2), redesignated par. (2) as (4) and struck out former par. (4) which read as follows: “A panel established under this section shall consist of three bankruptcy judges, provided a bankruptcy judge may not hear an appeal originating within a district for which the judge is appointed or designated under section 152 of this title.”


Subsec. (c). Pub. L. 103–394, §104(d), designated existing provisions as par. (2) and added par. (1).
1990—Subsec. (b)(2) to (4). Pub. L. 101–650 added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively.

Effective Date of 2005 Amendment
Amendment by Pub. L. 109–8 effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under Title 11, Bankruptcy, before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as a note under section 101 of Title 11.

Effective Date of 1994 Amendment

Procedural Rules
Pub. L. 109–8, title XII, §1233(b), Apr. 20, 2005, 119 Stat. 203, provided that:

“(1) Temporary Application.—A provision of this subsection shall apply to appeals under section 158(d)(2) of title 28, United States Code, until a rule of practice and procedure relating to such provision and such ap-
peals is promulgated or amended under chapter 131 of such title.

(2) CERTIFICATION.—A district court, a bankruptcy court, or a bankruptcy appellate panel may make a certification under section 158(d)(2) of title 28, United States Code, only with respect to matters pending in the respective bankruptcy court, district court, or bankruptcy appellate panel.

(3) PROCEDURE.—Subject to any other provision of this subsection, an appeal authorized by the court of appeals under section 158(d)(2) of title 28, United States Code, shall be taken in the manner prescribed in subdivisions (a)(1), (b), (c), and (d) of rule 5 of the Federal Rules of Appellate Procedure. For purposes of subdivision (a)(1) of rule 5—

"(A) a reference in such subdivision to a district court shall be deemed to include a reference to a bankruptcy court and a bankruptcy appellate panel, as appropriate; and

“(B) a reference in such subdivision to the parties requesting permission to appeal to be served with the petition shall be deemed to include a reference to the parties to the judgment, order, or decree from which the appeal is taken.

“(4) FILING OF PETITION WITH ATTACHMENT.—A petition requesting permission to appeal, that is based on a certification made under subparagraph (A) or (B) of section 158(d)(2) shall—

“(A) be filed with the circuit clerk not later than 10 days after the certification is entered on the docket of the bankruptcy court, the district court, or the bankruptcy appellate panel from which the appeal is taken; and

“(B) have attached a copy of such certification.

“(5) REFERENCES IN RULE 5.—For purposes of rule 5 of the Federal Rules of Appellate Procedure—

“(A) a reference in such rule to a district court shall be deemed to include a reference to a bankruptcy court and to a bankruptcy appellate panel; and

“(B) a reference in such rule to a clerk of a bankruptcy court and to a clerk of a bankruptcy appellate panel.

“(6) APPLICATION OF RULES.—The Federal Rules of Appellate Procedure shall apply in the courts of appeals with respect to appeals authorized under section 158(d)(2)(A), to the extent relevant and as if such appeals were taken from final judgments, orders, or decrees of the district courts or bankruptcy appellate panels exercising appellate jurisdiction under subsection (a) or (b) of section 158 of title 28, United States Code.”

§ 159. Bankruptcy statistics

(a) The clerk of the district court, or the clerk of the bankruptcy court if one is certified pursuant to section 156(b) of this title, shall collect statistics regarding debtors who are individuals with primarily consumer debts seeking relief under chapters 7, 11, and 13 of title 11. Those statistics shall be in a standardized format prescribed by the Director of the Administrative Office of the United States Courts (referred to in this section as the “Director”).

(b) The Director shall—

(1) compile the statistics referred to in subsection (a);

(2) make the statistics available to the public; and

(3) not later than July 1, 2008, and annually thereafter, prepare, and submit to Congress a report concerning the information collected under subsection (a) that contains an analysis of the information.

(c) The compilation required under subsection (b) shall—

(1) be itemized, by chapter, with respect to title 11;

(2) be presented in the aggregate and for each district; and

(3) include information concerning—

(A) the total assets and total liabilities of the debtors described in subsection (a), and in each category of assets and liabilities, as reported in the schedules prescribed pursuant to section 2075 of this title and filed by debtors;

(B) the current monthly income, average income, and average expenses of debtors as reported on the schedules and statements that each such debtor files under sections 521 and 1322 of title 11;

(C) the aggregate amount of debt discharged in cases filed during the reporting period, determined as the difference between the total amount of debt and obligations of a debtor reported on the schedules and the amount of such debt reported in categories which are predominantly nondischargeable;

(D) the average period of time between the date of the filing of the petition and the closing of the case for cases closed during the reporting period;

(E) for cases closed during the reporting period—

(i) the number of cases in which a reaffirmation agreement was filed; and

(ii) the total number of reaffirmation agreements filed;

(ii)(I) the number of cases in which a reaffirmation agreement was filed, the number of cases in which the debtor was not represented by an attorney; and

(ii)(II) of those cases in which a reaffirmation agreement was filed, the number of cases in which the reaffirmation agreement was approved by the court;

(F) with respect to cases filed under chapter 13 of title 11, for the reporting period—

(i)(I) the number of cases in which a final order was entered determining the value of property securing a claim in an amount less than the amount of the claim; and

(ii) the number of final orders entered determining the value of property securing a claim;

(ii) the number of cases dismissed, the number of cases dismissed for failure to make payments under the plan, the number of cases refiled after dismissal, and the number of cases in which the plan was completed, separately itemized with respect to the number of modifications made before completion of the plan, if any; and

(iii) the number of cases in which the debtor filed another case during the 6-year period preceding the filing;

(G) the number of cases in which creditors were fined for misconduct and any amount of punitive damages awarded by the court for creditor misconduct; and

(H) the number of cases in which sanctions under rule 9011 of the Federal Rules of Bankruptcy Procedure were imposed against the debtor’s attorney or damages awarded under such Rule.
§ 171. Appointment and number of judges; character of court; designation of chief judge

(a) The President shall appoint, by and with the advice and consent of the Senate, sixteen judges who shall constitute a court of record known as the United States Court of Federal Claims. The court is declared to be a court established under article I of the Constitution of the United States.

(b) The President shall designate one of the judges of the Court of Federal Claims who is less than seventy years of age to serve as chief judge. The chief judge may continue to serve as such until he reaches the age of seventy years or until another judge is designated as chief judge by the President. After the designation of another judge to serve as chief judge, the former chief judge may continue to serve as a judge of the court for the balance of the term to which appointed.


CHANGE OF NAME

Section 902(b) of Pub. L. 102-572 provided that: ‘‘Reference in any other Federal law (meaning any Federal law other than chapters 7, 51, 91, and 165 of this title) or any document to—

‘‘(1) the ‘United States Claims Court’ shall be deemed to refer to the ‘United States Court of Federal Claims’; and

‘‘(2) the ‘Claims Court’ shall be deemed to refer to the ‘Court of Federal Claims’.’’

EFFECTIVE DATE OF 1992 AMENDMENT

Section 911 of title IX of Pub. L. 102-572 provided that: ‘‘This title [see Tables for classification] and the
amendments made by this title shall take effect on the date of the enactment of this Act (Oct. 29, 1992)."

**Effective Date of 1982 Amendment**

Section 402 of Pub. L. 97–164 provided that: "Unless otherwise specified, the provisions of this Act (see Short Title of 1982 Amendment note set out under section 1 of this title) shall take effect on October 1, 1982."

**Continued Service of Commissioners of Court of Claims as Judges**

Section 167 of Pub. L. 97–164 provided that Commissioners of United States Court of Claims serving immediately prior to Oct. 1, 1982, became judges of United States Claims Court (now United States Court of Federal Claims) on such date, with initial terms expiring 15 years after date of employment or on Oct. 1, 1986, whichever occurred earlier, and with salaries equal to salaries of Commissioners of Court of Claims.

**Tennessee Valley Authority Legal Representation**

Section 199 of Pub. L. 97–164 provided that: "Nothing in this Act [see Short Title of 1982 Amendment note set out under section 1 of this title] affects the authority of the Tennessee Valley Authority under the Tennessee Valley Authority Act of 1933 [16 U.S.C. 831 et seq.] to represent itself by attorneys of its choosing."

**Transition Provisions: Transfer of Pending Cases**

Section 403 of Pub. L. 97–164 provided for transfer of cases or matters pending on Oct. 1, 1982, before Court of Claims or United States Court of Customs and Patent Appeals to United States Court of Appeals for the Federal Circuit, directed that petitions for rehearing, reconsideration, or other changes in decisions of Court of Claims or United States Court of Customs and Patent Appeals rendered prior to such date be determined by United States Court of Appeals for the Federal Circuit, directed that matters pending before Commissioners of United States Court of Claims on such date be determined by United States Claims Court (now United States Court of Federal Claims), and directed that any case in which notice of appeal had been filed in district court of United States prior to such date would be decided by court of appeals to which the appeal was taken.

**Congressional Statement Regarding Appointment of Judges**

For Congressional suggestion that the President select nominees for judgeships on the Claims Court (now Court of Federal Claims) and the Court of Appeals for the Federal Circuit from a broad range of qualified individuals, see section 168 of Pub. L. 97–164, set out as a note under section 44 of this title.

## § 172. Tenure and salaries of judges

(a) Each judge of the United States Court of Federal Claims shall be appointed for a term of fifteen years.

(b) Each judge shall receive a salary at the rate of pay, and in the same manner, as judges of the district courts of the United States.

## Historical and Revision Notes

This section applies to the judges of the Court of Claims under the same rules of precedence applicable to judges of other courts. (See sections 45, 136, 212, and 253 of this title.)
ary or pay of any individual in legislative, executive, or judicial branch in position equal to or above level V of the Executive Schedule, see sections 101(g) and 141 of Pub. L. 97–92, set out as a note under section 5318 of Title 5.

1980—Salaries of judges increased to $70,900 effective on first day of first pay period beginning on or after Oct. 1, 1980, by Ex. Ord. No. 12248, Oct. 16, 1980, 45 F.R. 69199, formerly set out as a note under section 5312 of Title 5. Ex. Ord. No. 12248 further provided that pursuant to Pub. L. 96–369 funds are not available to pay a salary at a rate which exceeds the rate in effect on Sept. 30, 1980, which was $69,662.50.

Limitations on use of funds for fiscal year ending Sept. 30, 1981, appropriated by any Act to pay the salary or pay of any individual in legislative, executive, or judicial branch in position equal to or above level V of the Executive Schedule, see section 101(c) of Pub. L. 96–336, as amended, set out as a note under section 5318 of Title 5.

1979—Salaries of judges increased to $65,000 effective on first day of first pay period beginning on or after Oct. 1, 1979, by Ex. Ord. No. 12165, Oct. 9, 1979, 44 F.R. 58671, as amended by Ex. Ord. No. 12200, Mar. 12, 1980, 45 F.R. 16443, formerly set out as a note under section 5312 of Title 5. Ex. Ord. No. 12165 further provided that pursuant to Pub. L. 96–369 funds are not available to pay a salary at a rate which exceeds an increase of 5.5 percent over the applicable rate payable for such position or office in effect on Sept. 30, 1978, which was $60,662.50.

Applicability to funds appropriated by any Act for fiscal year ending Sept. 30, 1980, of limitation of section 304 of Pub. L. 95–391 on use of funds to pay the salary or pay of any individual in legislative, executive, or judicial branch in position equal to or above Level V of the Executive Schedule, see section 101 of Pub. L. 96–369, set out as a note under section 5318 of Title 5.

1979—Salaries of judges increased to $68,700 effective on first day of first pay period beginning on or after Oct. 1, 1979, by Ex. Ord. No. 12187, Oct. 7, 1979, 43 F.R. 64823, formerly set out as a note under section 5312 of Title 5. Ex. Ord. No. 12187 further provided that pursuant to the Legislative Branch Appropriation Act, 1979 (Pub. L. 95–301, title III, § 304, Sept. 30, 1979, 92 Stat. 788, set out as a note under section 5318 of Title 5), funds are not available to pay a salary at a rate which exceeds the rate in effect on Sept. 30, 1979, which was $57,500.

1977—Salaries of judges increased to $57,500 per annum, on recommendation of the President of the United States, see note set out under section 358 of Title 2, The Congress.

1976—Salaries of judges increased to $48,800 effective on first day of first pay period beginning on or after Oct. 1, 1976, by Ex. Ord. No. 12087, Oct. 7, 1976, 41 F.R. 46823, formerly set out as a note under section 5312 of Title 5. Ex. Ord. No. 12087 further provided that pursuant to the Budget and Accounting Act, 1974 (Pub. L. 93–383, title III, § 304, Sept. 30, 1974, 88 Stat. 1034, set out as a note under section 5318 of Title 5), funds are not available to pay a salary at a rate which exceeds the rate in effect on Sept. 30, 1978, which was $44,800.

1969—Salaries of judges increased from $33,000 to $42,500 per annum, commencing Feb. 14, 1969, on recommendation of the President of the United States, see note set out under section 358 of Title 2, The Congress.

1968—Salaries of chief judge and associate judges increased from $12,500 to $17,500 a year by act Oct. 1, 1968, ch. 704, § 1, 82 Stat. 716.

1966—Salary of Chief Justice, now chief judge, increased from $8,000 to $12,500 a year, and salaries of associate justices, now judges, increased from $7,500 to $12,500 a year by act Dec. 13, 1964, ch. 6, § 1, 78 Stat. 919.

1964—Salary of Chief Justice increased from $6,500 to $8,000 a year, and salaries of associate justices increased from $5,000 to $7,500 a year by act Apr. 2, 1962, ch. 29, § 1, 76 Stat. 1156.

§ 174. Assignment of judges; decisions

(a) The judicial power of the United States Court of Federal Claims with respect to any action, suit, or proceeding, except congressional reference cases, shall be exercised by a single judge, who may preside alone and hold a regular or special session of court at the same time other sessions are held by other judges.

(b) All decisions of the Court of Federal Claims shall be preserved and open to inspection.


HISTORICAL AND REVISION NOTES


This section is based on the first sentence of section 243 of title 28, U.S.C. 1940 ed. The remainder of said section is incorporated in section 175 of this title.

Words "the seat of government" were substituted for "the city of Washington" to conform to similar language respecting the Supreme Court. (See section 2 of this title.)

Words "to be fixed by rule of court" were added to provide greater flexibility in administering the business of the court. For similar provisions covering the district courts, see section 138 of this title.

Word "term" was substituted for "session" for uniformity.

Minor changes were made in phrasing.

AMENDMENTS


1982—Pub. L. 97–164 amended section generally, substituting provisions relating to assignment of judges (formerly contained in section 175) for provisions relating to terms of court. See section 173 of this title.

§ 175. Official duty station; residence

(a) The official duty station of each judge of the United States Court of Federal Claims is the District of Columbia.

(b) After appointment and while in active service, each judge shall reside within fifty miles of the District of Columbia.

(c) Retired judges of the Court of Federal Claims are not subject to restrictions as to residence. The place where a retired judge maintains the actual abode in which such judge customarily lives shall be deemed to be the judge's official duty station for the purposes of section 456 of this title.


AMENDMENTS


EFFECTIVE DATE OF 1992 AMENDMENT


EFFECTIVE DATE OF 1982 AMENDMENT


§ 176. Removal from office

(a) Removal of a judge of the United States Court of Federal Claims during the term for which he is appointed shall be only for incompetency, misconduct, neglect of duty, engaging in the practice of law, or physical or mental disability. Removal shall be by the United States Court of Appeals for the Federal Circuit, but removal may not occur unless a majority of all judges of such court of appeals concur in the order of removal.

(b) Before any order of removal may be entered, a full specification of the charges shall be furnished to the judge involved, and such judge shall be afforded an opportunity to be heard on the charges.

(c) Any cause for removal of any judge of the United States Court of Federal Claims coming to the knowledge of the Director of the Administrative Office of the United States Courts shall be reported by him to the chief judge of the United States Court of Appeals for the Federal Circuit, and a copy of the report shall at the same time be transmitted to the judge.


AMENDMENTS


EFFECTIVE DATE OF 1992 AMENDMENT


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.

§ 177. Disbarment of removed judges

A judge of the United States Court of Federal Claims removed from office in accordance with
section 176 of this title shall not be permitted at any time to practice before the Court of Federal Claims.


AMENDMENTS


EFFECTIVE DATE OF 1992 AMENDMENT


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.

§ 178. Retirement of judges of the Court of Federal Claims

(a) A judge of the United States Court of Federal Claims who retires from office after attaining the age and meeting the service requirements, whether continuously or otherwise, of this subsection shall, subject to subsection (f), be entitled to receive, during the remainder of the judge’s lifetime, an annuity equal to the salary payable to Court of Federal Claims judges in regular active service. The age and service requirements for retirement under this subsection are as follows:

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(b) A judge of the Court of Federal Claims who is not reappointed following the expiration of the term of office of such judge, and who retires upon the completion of such term shall, subject to subsection (f), be entitled to receive, during the remainder of such judge’s lifetime, an annuity equal to the salary payable to Court of Federal Claims judges in regular active service, if—

(1) such judge has served at least 1 full term as judge of the Court of Federal Claims, and

(2) not earlier than 9 months before the date on which the term of office of such judge expired, and not later than 6 months before such date, such judge advised the President in writing that such judge was willing to accept reappointment as a judge of the Court of Federal Claims.

(c) A judge of the Court of Federal Claims who has served at least 5 years, whether continuously or otherwise, as such a judge, and who retires or is removed from office upon the sole ground of mental or physical disability shall, subject to subsection (f), be entitled to receive, during the remainder of the judge’s lifetime—

(1) an annuity equal to 50 percent of the salary payable to Court of Federal Claims judges in regular active service, if before retirement such judge served less than 10 years, or

(2) an annuity equal to the salary payable to Court of Federal Claims judges in regular active service, if before retirement such judge served at least 10 years.

(d) A judge who retires under subsection (a) or (b) may, at or after such retirement, be called upon by the chief judge of the Court of Federal Claims to perform such judicial duties with the Court of Federal Claims as may be requested of the retired judge for any period or periods specified by the chief judge, except that in the case of any such judge—

(1) the aggregate of such periods in any one calendar year shall not (without his or her consent) exceed 90 calendar days; and

(2) he or she shall be relieved of performing such duties during any period in which illness or disability precludes the performance of such duties.

Any act, or failure to act, by an individual performing judicial duties pursuant to this subsection shall have the same force and effect as if it were the act (or failure to act) of a Court of Federal Claims judge in regular active service. Any individual performing judicial duties pursuant to this subsection shall receive the allowances for official travel and other expenses of a judge in regular active service.

(e)(1) Any judge who retires under the provisions of subsection (a) or (b) of this section shall be designated “senior judge”.

(2) Any judge who retires under this section shall not be counted as a judge of the Court of Federal Claims for purposes of the number of judgeships authorized by section 171 of this title.

(f)(1) A judge shall be entitled to an annuity under this section if the judge elects an annuity under this section by notifying the Director of the Administrative Office of the United States Courts in writing. Such an election—

(A) may be made only while an individual is a judge of the Court of Federal Claims (except that in the case of an individual who fails to be reappointed as judge at the expiration of a term of office, such election may be made at any time before the day after the day on which his or her successor takes office); and

(B) once made, shall, subject to subsection (k), be irrevocable.

(2) A judge who elects to receive an annuity under this section shall not be entitled to receive—

(A) any annuity to which such judge would otherwise have been entitled under subchapter III of chapter 83, or under chapter 84 (except for subchapters III and VII), of title 5, for service performed as a judge or otherwise;

(B) an annuity or salary in senior status or retirement under section 371 or 372 of this title;

(C) retired pay under section 7447 of the Internal Revenue Code of 1986; or

(D) retired pay under section 7296 of title 38.

(g) For purposes of calculating the years of service of an individual under subsections (a) and (c), only those years of service as a judge of the Court of Federal Claims or a commissioner...
of the United States Court of Claims shall be credited, and that portion of the aggregate number of years of such service that is a fractional part of 1 year shall not be credited if it is less than 6 months, and shall be credited if it is 6 months or more.

(h) An annuity under this section shall be payable at the times and in the same manner as the salary of a Court of Federal Claims judge in regular active service. Such annuity shall begin to accrue on the day following the day on which the annuitant's salary as a judge in regular active service ceases to accrue.

(i)(1) Payments under this section which would otherwise be made to a judge of the Court of Federal Claims based upon his or her service shall be paid (in whole or in part) by the Director of the Administrative Office of the United States Courts to another person if and to the extent expressly provided for in the terms of any court decree of divorce, annulment, or legal separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of divorce, annulment, or legal separation. Any payment under this paragraph to a person bars recovery by any other person.

(2) Paragraph (1) shall apply only to payments made by the Director of the Administrative Office of the United States Courts after the date of receipt by the Director of written notice of such decree, order, or agreement, and such additional information as the Director may prescribe.

(j) In this subsection, the term "court" means any court of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, or the Virgin Islands, and any Indian tribal court or court of Indian offense.

(k)(1) Subject to paragraph (4), any judge of the Court of Federal Claims who retires under this section and who thereafter in the practice of law represents (or supervises or directs the representation of) a client in making any civil claim against the United States or any agency thereof shall forfeit all rights to an annuity under this section for all periods beginning on or after the first day on which he engages in such activity.

(2) Subject to paragraph (4), if a judge of the Court of Federal Claims who retires under this section fails during any calendar year to perform judicial duties required of such judge by subsection (d), such judge shall forfeit all rights to an annuity under this section for the 1-year period which begins on the first day on which he or she so fails to perform such duties.

(3) If a judge of the Court of Federal Claims who retires under this section accepts compensation for civil office or employment under the Government of the United States (other than for the performance of judicial duties under subsection (d)), such judge shall forfeit all rights to an annuity under this section for the period for which such compensation is received.

(4)(A) If a judge makes an election under this paragraph—

(i) paragraphs (1) and (2) (and subsection (d)) shall not apply to such judge beginning on the date such election takes effect, and

(ii) the annuity payable under this section to such judge, for periods beginning on or after the date such election takes effect, shall be equal to the annuity to which such judge is entitled on the day before such effective date.

(B) An election under subparagraph (A)—

(i) may be made by a judge only if such judge meets the age and service requirements for retirement under subsection (a),

(ii) may be made only during the period during which such judge may make an election to receive an annuity under this section or while the judge is receiving an annuity under this section, and

(iii) shall be filed with the Director of the Administrative Office of the United States Courts.

Such an election, once it takes effect, shall be irrevocable.

(C) Any election under this paragraph shall take effect on the first day of the first month following the month in which the election is made.

(k)(1) Notwithstanding subsection (f)(1)(B), an individual who has filed an election under subsection (f) to receive an annuity may revoke such election at any time before the first day on which such annuity would (but for such revocation) begin to accrue with respect to such individual.

(2) Any revocation under this subsection shall be made by filing a notice thereof in writing with the Director of the Administrative Office of the United States Courts.

(3) In the case of any revocation under this subsection—

(A) for purposes of this section, the individual shall be treated as not having filed an election under subsection (f) to receive an annuity.

(B) for purposes of section 376 of this title—

(i) the individual shall be treated as not having filed an election under section 376(a)(1), and

(ii) section 376(g) shall not apply, and the amount credited to such individual's account (together with interest at 3 percent per annum, compounded on December 31 of each year to the date on which the revocation is filed) shall be returned to such individual.

(C) no credit shall be allowed for any service as a judge of the Court of Federal Claims or as a commissioner of the United States Court of Claims unless with respect to such service either there has been deducted and withheld the amount required by chapter 83 or 84 (as the case may be) of title 5 or there has been deposited in the Civil Service Retirement and Disability Fund an amount equal to the amount so required, with interest.

(D) the Court of Federal Claims shall deposit in the Civil Service Retirement and Disability Fund an amount equal to the additional amount it would have contributed to such Fund but for the election under subsection (f), and

(E) if subparagraph (D) is complied with, service on the Court of Federal Claims or as a commissioner of the United States Court of

1So in original. Probably should be "of the".
Claims shall be treated as service with respect to which deductions and contributions had been made during the period of service.

(i)(1) There is established in the Treasury a fund which shall be known as the “Court of Federal Claims Judges Retirement Fund”. The Fund is appropriated for the payment of annuities and other payments under this section.

(2) The Secretary of the Treasury shall invest, in interest bearing securities of the United States, such currently available portions of the Court of Federal Claims Judges Retirement Fund as are not immediately required for payments from the Fund. The income derived from these investments constitutes a part of the Fund.

(3)(A) There are authorized to be appropriated to the Court of Federal Claims Judges Retirement Fund amounts required to reduce to zero the unfunded liability of the Fund.

(B) For purposes of subparagraph (A), the term “unfunded liability” means the estimated excess, determined on an annual basis in accordance with the provisions of section 9503 of title 31, of the present value of all benefits payable from the Court of Federal Claims Judges Retirement Fund, over the balance in the Fund as of the date the unfunded liability is determined.

In making any determination under this subparagraph, the Comptroller General shall use the applicable information contained in the reports filed pursuant to section 9503 of title 31, with respect to the retirement annuities provided for in this section.

(C) There are authorized to be appropriated such sums as may be necessary to carry out this paragraph.


REFERENCES IN TEXT

Section 7447 of the Internal Revenue Code of 1986, referred to in subsec. (f)(2)(C), is classified to section 7447 of Title 26, Internal Revenue Code.

AMENDMENTS

1992—Pub. L. 102–572 substituted “United States Court of Federal Claims” for “United States Claims Court” in subsec. (a) and “Court of Federal Claims” for “Claims Court” in section catchline and wherever appearing in text.


Subsec. (j)(1). Pub. L. 102–198, §7(a)(2)(A), substituted “paragraph (4)” for “paragraph (2)” and “engages in any such activity” for “so practices law”.

Subsec. (j)(2). Pub. L. 102–198, §7(a)(2)(B), substituted “Subject to paragraph (4), if” for “If”.


EFFECTIVE DATE OF 1992 AMENDMENT


§179. PERSONNEL APPLICATION AND INSURANCE PROGRMS

(a) For purposes of construing and applying title 5, a judge of the United States Court of Federal Claims shall be deemed to be an “officer” under section 2104(a) of such title.

(b)(1)(A) For purposes of construing and applying chapter 89 of title 5, a judge of the United States Court of Federal Claims who—

(i) is retired under subsection (b) of section 178 of this title, and

(ii) at the time of becoming such a retired judge—

(I) was enrolled in a health benefits plan under chapter 89 of title 5, but

(II) did not satisfy the requirements of section 8905(b)(1) of title 5 (relating to eligibility to continue enrollment as an annuitant),

shall be deemed to be an annuitant meeting the requirements of section 8905(b)(1) of title 5, in accordance with the succeeding provisions of this paragraph, if the judge gives timely written notification to the chief judge of the court that the judge is willing to be called upon to perform judicial duties under section 178(d) of this title during the period of continued eligibility for enrollment, as described in subparagraph (B)(i) or (C)(ii) (whichever applies).

(B) Except as provided in subparagraph (C)—

(i) in order to be eligible for continued enrollment under this paragraph, notification under subparagraph (A) shall be made before the first day of the open enrollment period preceding the calendar year referred to in clause (ii)(II); and

(ii) if such notification is timely made, the retired judge shall be eligible for continued enrollment under this paragraph for the period—

(I) beginning on the date on which eligibility would otherwise cease, and

(II) ending on the last day of the calendar year next beginning after the end of the open enrollment period referred to in clause (i).

(C) For purposes of applying this paragraph for the first time in the case of any particular judge—

(i) subparagraph (B)(i) shall be applied by substituting “the expiration of the term of office of the judge” for the matter following “before”; and

(ii)(I) if the term of office of such judge expires before the first day of the open enrollment period referred to in subparagraph (B)(i), the period of continued eligibility for enrollment shall be as described in subparagraph (B)(ii); but

(II) if the term of office of such judge expires on or after the first day of the open enrollment period referred to in subparagraph (B)(i),
the period of continued eligibility shall not end until the last day of the calendar year next beginning after the end of the next full open enrollment period beginning after the date on which the term expires.

(2) In the event that a retired judge remains enrolled under chapter 89 of title 5 for a period of 5 consecutive years by virtue of paragraph (1) (taking into account only periods of coverage as an active judge immediately before retirement and as a retired judge pursuant to paragraph (1)), then, effective as of the day following the last day of that 5-year period—

(A) the provisions of chapter 89 of title 5 shall be applied as if such judge had satisfied the requirements of section 8905(b)(1)\(^1\) on the last day of such period; and

(B) the provisions of paragraph (1) shall cease to apply.

(3) For purposes of this subsection, the term "open enrollment period" refers to a period described in section 8905(g)(1) of title 5.

(c) For purposes of construing and applying chapter 87 of title 5, including any adjustment of insurance rates by regulation or otherwise, a judge of the United States Court of Federal Claims in regular active service or who is retired under section 178 of this title shall be deemed to be a judge of the United States described under section 8701(a)(5) of title 5.


**Effective Date of Repeal**


**[CHAPTER 9—REPEALED]**

tion 15 of the Customs Administrative Act of June 10, 1890, ch. 407, were superseded by provisions for such review by the Court of Customs Appeals created by section 28 added to that act by the Payne-Aldrich Tariff Act of Aug. 5, 1909, ch. 6. The provisions of said new section 29 were incorporated in and superseded by chapter 8 of the Judicial Code of March 3, 1911, incorporated into the Code as former chapter 8 of Title 28, Judicial Code and Judiciary.

R.S. §2608 provided for the appointment of four appraisers of merchandise, to be employed in visiting ports of entry under the direction of the Secretary of the Treasury, and to assist in the appraisement of merchandise as might be deemed necessary by the Secretary to protect and insure uniformity in the collection of the revenue from customs. It was repealed by act June 10, 1890, ch. 407, §28, 26 Stat. 141.

R.S. §2609 provided for the appointment of merchant appraisers. R.S. §2610 made every merchant refusing to serve as such appraiser liable to a penalty. Both sections were superseded by the provisions relating to appraisers and appraisements of the Customs Administrative Act of June 10, 1890, ch. 407, 26 Stat. 131, and subsequent acts, and were repealed by act Sept. 21, 1922, ch. 356, title IV, §1642, 42 Stat. 998.

R.S. §2945, which contained a provision similar to that of R.S. §2610, was repealed, without mention of section 2610, by said Customs Administrative Act of June 10, 1890, ch. 407, §29, 26 Stat. 141, and was again repealed by section 642 of act Sept. 21, 1922.

R.S. §2725, which prescribed the compensation of merchant appraisers, and section 2726, which prescribed the salary of the general appraiser at New York, were superseded by the provisions relating to general appraisers and appraisements made by the Customs Administrative Act of June 10, 1890, ch. 407, §§12, 13, 26 Stat. 136, as amended by the Payne-Aldrich Act of Aug. 5, 1909, ch. 69, 19 Stat. 246.

AMENDMENTS

1996—Subsecs. (b), (c). Pub. L. 104–317 redesignated subsec. (c) as (b) and struck out former subsec. (b) which read as follows: “The President shall designate one of the judges of the Court of International Trade who is less than seventy years of age to serve as chief judge. The chief judge shall continue to serve as chief judge until he reaches the age of seventy years and another other judge is designated as chief judge by the President. After the designation of another judge to serve as chief judge, the former chief judge may continue to serve as a judge of the court.”

1990—Subsec. (a). Pub. L. 96–417 incorporated first par. in provisions designated subsec. (a), redesignated the United States Customs Court as the United States Court of International Trade, and deleted “appointed” before “shall be”.

Subsec. (b). Pub. L. 96–417 added subsec. (b) and struck out a second paragraph requiring the President to designate from time to time one of the judges to act as chief judge.

Subsec. (c). Pub. L. 96–417 designated third par. as subsec. (c) and substituted “Court of International Trade” for “court” and “located in New York, New York” for “located at the port of New York”.

1956—Act July 14, 1956, declared the Customs Court to be a court established under article III of the Constitution of the United States.

§ 251. Appointment and number of judges; offices

(a) The President shall appoint, by and with the advice and consent of the Senate, nine judges who shall constitute a court of record to be known as the United States Court of International Trade. Not more than five of such judges shall be from the same political party. The court is a court established under article III of the Constitution of the United States.


HISTORICAL AND REVISION NOTES


This section contains only a part of section 296 of title 28, U.S.C. 1940 ed. Other provisions of such section are incorporated in sections 252, 253, 254, 455, 1581, 2071, 2639, and 2640 of this title.

The provision that vacancies should be filled by appointment of the President and confirmed by the Senate was omitted as unnecessary in view of the language of the revised section.

Words “a court of record known as” were added. (See Revisor’s Note under section 171 of this title.)

The term “chief judge” was substituted for “presiding judge.” (See revisor’s note under section 136 of this title.)

The provisions of such section 296 of title 28, U.S.C. 1940 ed., relating to assignment and powers of retired judges were omitted as covered by sections 294 and 296 of this title.

Changes in phraseology were made.

AMENDMENTS

1996—Subsecs. (b), (c). Pub. L. 104–317 redesignated subsec. (c) as (b) and struck out former subsec. (b) which read as follows: “The President shall designate one of the judges of the Court of International Trade who is less than seventy years of age to serve as chief judge. The chief judge shall continue to serve as chief judge until he reaches the age of seventy years and another other judge is designated as chief judge by the President. After the designation of another judge to serve as chief judge, the former chief judge may continue to serve as a judge of the court.”

1990—Subsec. (a). Pub. L. 96–417 incorporated first par. in provisions designated subsec. (a), redesignated the United States Customs Court as the United States Court of International Trade, and deleted “appointed” before “shall be”.

Subsec. (b). Pub. L. 96–417 added subsec. (b) and struck out a second paragraph requiring the President to designate from time to time one of the judges to act as chief judge.

Subsec. (c). Pub. L. 96–417 designated third par. as subsec. (c) and substituted “Court of International Trade” for “court” and “located in New York, New York” for “located at the port of New York”.

1956—Act July 14, 1956, declared the Customs Court to be a court established under article III of the Constitution of the United States.

EFFECTIVE DATE OF 1980 AMENDMENT


“(a) Except as otherwise provided in this section, the provisions of and amendments made by this Act [see section 1 of Pub. L. 96–417, set out as a Short Title of this Act] shall take effect on November 1, 1980 and shall apply with respect to civil actions pending on or commenced on or after such date.

“(b)(1) The following sections of title 28, United States Code, shall apply with respect to civil actions commenced on or after the effective date of this Act [Nov. 1, 1980]:

“(A) Sections 1581(d), 1581(g), 1581(h), 1581(i), and 1583, as amended by section 201 of this Act.

“(B) Sections 2631(d), 2631(g), 2631(h), 2631(i), 2632(a), 2635, 2636, 2637(c), 2639(b), 2640(a)(5), 2640(c), 2640(d), 2643(a), 2643(c)(2), 2643(c)(4), and 2644, as amended by section 301 of this Act.

“(C) Section 1796, as added by section 302(a) of this Act.

“(D) Sections 2601 and 2602, as amended by section 401 of this Act.

“(E) Section 1919, as amended by section 510 of this Act.

“(F) Section 1963A, as added by section 511(a) of this Act.

“(2) Sections 337(c) and 641(b) of the Tariff Act of 1930 [19 U.S.C. 1337(c) and 1641(b)], as amended by sections 604 and 611 of this Act, shall apply with respect to civil actions commenced on or after the effective date of this Act [Nov. 1, 1980].

“(2) Sections 337(c) and 641(b) of the Tariff Act of 1930 [19 U.S.C. 1337(c) and 1641(b)], as amended by sections 604 and 611 of this Act, shall apply with respect to civil actions commenced on or after the effective date of this Act [Nov. 1, 1980].
actions commenced on or after the effective date of this Act.

"(B) Section 296 of the Trade Act of 1974 (19 U.S.C. 2252), added by section 613 of this Act, shall apply with respect to civil actions commenced on or after the effective date of this Act.

"(C) The following sections of title 28, United States Code, shall apply with respect to civil actions commenced on or after the 90th day after the effective date of this Act (Nov. 1, 1980):

"(1) Sections 1592, 292, 293, and 295 of this title, as amended by sections 201 and 301 of this Act.

"(2) Sections 1532, 1535, and 1536, as amended by section 506, 507, and 508 of this Act.

"(2) Section 502(e) of the Tariff Act of 1930 (19 U.S.C. 1592(e)), as amended by section 609 of this Act, shall apply with respect to civil actions commenced on or after the effective date of this Act.

"[Amendment of section 701 of Pub. L. 96–417, set out above, by Pub. L. 96–542 effective as of Nov. 1, 1980, see section 3 of Pub. L. 96–542, set out as a note under section 1592a of Title 19, Customs Duties.]

REFERENCES TO CERTAIN COURTS DEEMED REFERENCES TO THE UNITED STATES COURT OF INTERNATIONAL TRADE

Section 702 of Pub. L. 96–417 provided that: "Any reference in any statute or regulation of the United States to the United States Customs Court, the U.S. Customs Court, or the Customs Court shall be deemed to be a reference to the United States Court of International Trade."

EFFECT ON CUSTOMS COURT JUDGES

Section 703 of Pub. L. 96–417 provided that: "(a) Except as provided in subsection (b) of this section, the amendments made by title I of this Act [amending this section and section 293 of this title] shall not affect the status of any individual serving as judge on the Customs Court of the Customs Court on the date of enactment of this Act (Oct. 10, 1980)."

"(b) The requirement that a person may not continue to serve as chief judge of the Court of International Trade after having reached the age of seventy years, as set forth in the amendment made by section 101 of this Act [amending this section], shall apply to any individual serving as chief judge on or after the date of enactment of this Act (Oct. 10, 1980)."

EFFECT ON PENDING CASES

Section 704 of Pub. L. 96–417 provided that: "Nothing in this Act [see section 1 of Pub. L. 96–417, set out as a Short Title of 1980 Amendment note under section 1 of this title] shall cause the dismissal of any action commenced prior to the date of enactment of this Act (Oct. 10, 1980) under jurisdictional statutes relating to the Customs Court or the Court of Customs and Patent Appeals as in effect immediately prior to such date of enactment (Oct. 10, 1980)."

TENNESSEE VALLEY AUTHORITY LEGAL REPRESENTATION

Section 705 of Pub. L. 96–417 provided that: "Nothing in this Act [see section 1 of Pub. L. 96–417, set out as a Short Title of 1980 Amendment note under section 1 of this title] affects the authority of the Tennessee Valley Authority under the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831 et seq.) to represent itself by attorneys of its choosing."

LIMITATION OR ALTERATION OF JURISDICTION

Section 4 of act July 14, 1956, provided that: "Nothing contained in this Act [amending this section and sections 282, 283, and 285 of this title] shall be construed in any way to limit or alter the jurisdiction herefore conferred upon the United States Customs Court [now Court of International Trade] by any provision of law."

CONTINUATION OF ORGANIZATION OF COURT

Section 2(b) of act June 23, 1948, provided in part that the provisions of this title as set out in section 1 of act June 25, 1948, with respect to the organization of the court, shall be construed as continuations of existing law, and the tenure of the judges, officers, and employees, in office on Sept. 1, 1948, shall not be affected by its enactment, but each of them shall continue to serve in the same capacity under the appropriate provisions of this title, pursuant to his prior appointment.

§ 252. TENURE AND SALARIES OF JUDGES


References in Text


HISTORICAL AND REVISION NOTES


A provision exempting judge’s salaries from section 1790 of the Revised Statutes was omitted, as such section was repealed by act Aug. 26, 1935, ch. 688, §1, 49 Stat. 664.

A provision for monthly salary payments was omitted since time of payment is a matter for administrative determination.

Changes were made in phraseology.

References in Text


Effective Date of 1980 Amendment

Amendment by Pub. L. 96–417 effective Nov. 1, 1980, and applicable with respect to civil actions pending on or commenced on or after such date, see section 701(a) of Pub. L. 96–417, set out as a note under section 251 of this title.

Effective Date of 1964 Amendment

Amendment by Pub. L. 88–426 effective on first day of 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

§ 253. Duties of chief judge

(a) The chief judge of the Court of International Trade, with the approval of the court, shall supervise the fiscal affairs and clerical force of the court; 1

(b) The chief judge shall promulgate dockets.

(c) The chief judge, under rules of the court, may designate any judge or judges of the court to try any case and, when the circumstances so warrant, reassign the case to another judge or judges.


Historical and Revision Notes


This section contains a part of section 296 of title 28, U.S.C., 1940 ed. Other provisions of such section are incorporated in sections 251, 252, 254, 1581, 2071, 2639, and 2640 of this title.

Provision respecting recommendations for appointment, promotion, or otherwise affecting such clerical force, was omitted as unnecessary in view of section 871 of this title.

The second paragraph is partly new and conforms with similar provisions of section 136(e) of this title, relating to the chief judges of district courts.

The term "chief judge" was substituted for "presiding judge." (See Revisor's Note under section 136 of this title.)

Changes were made in phraseology and arrangement.

Amendments

1946—Pub. L. 104–317 struck out ""precedence of judges"" after ""chief judge"" in section catchline and struck out subsec. (d) and (e) which read as follows: ""(d) Whenever the chief judge is unable to perform the duties of his office or the office is vacant, his powers and duties shall devolve upon the judge next in precedence who is able to act, until such disability is removed or another chief judge is appointed and duly qualified.

""(e) The chief judge shall have precedence and shall preside at any session which he attends. Other judges shall have precedence and shall preside according to the seniority of their commissions. Judges whose commissions bear the same date shall have precedence according to seniority in age.""

1980—Subsec. (a). Pub. L. 96–417 redesignated the Customs Court as the Court of International Trade.

1970—Pub. L. 91–271 reorganized existing provisions into lettered subsecs. (a) to (e) and made minor changes in phraseology.

1959—Pub. L. 86–243 required the chief judge to supervise the fiscal affairs and clerical force of the court, with the approval of the court.

Effective Date of 1980 Amendment

Amendment by Pub. L. 96–417 effective Nov. 1, 1980, and applicable with respect to civil actions pending on or commenced on or after such date, see section 701(a) of Pub. L. 96–417, set out as a note under section 251 of this title.

Effective Date of 1970 Amendment


Savings Provision

Amendment by Pub. L. 86–243 not to deprive Customs Court (now Court of International Trade) officers or employees of any rights, privileges, or civil service status, see section 4 of Pub. L. 86–243, set out as a note under section 871 of this title.

§ 254. Single-judge trials

Except as otherwise provided in section 255 of this title, the judicial power of the Court of International Trade with respect to any action, suit or proceeding shall be exercised by a single judge, who may preside alone and hold a regular or special session of court at the same time other sessions are held by other judges.


Historical and Revision Notes

1948 Act


This section contains a part of section 296 of title 28, U.S.C., 1940 ed. Other provisions of such section are incorporated in sections 251, 252, 254, 1581, 2071, 2639, and 2640 of this title.

Words "when in the opinion of such division or judge the ends of justice so require," which followed the phrase "grant a rehearing or retrial," were omitted as surplusage.

The term "chief judge" was substituted for "presiding judge." (See reviser's note under section 136 of this title.)

The phrase "petitions for remission of additional duties" was added to the first paragraph at the suggestion of the court to conform to existing practice.

Reappraisalment appeals are heard by a single judge and reviewed by a division. (See sections 2631 and 2632 of this title.)

The provision of section 296 of title 28, U.S.C., 1940 ed., that the presiding judge shall designate one of the three judges of a division to preside over such division was omitted as in conflict with section 253 of this title (also taken from section 296 of title 28 U.S.C., 1940 ed.), which provides that judges shall preside according to the seniority of their commissions. The latter provision is in accord with present practice.

Changes were made in arrangement and phraseology.

1949 Act

This amendment clarifies section 254 of title 28, U.S.C., by restoring language of the original law.
Title 28—Judiciary and Judicial Procedure
§ 255. Three-judge trials
(a) Upon application of any party to a civil action, or upon his own initiative, the chief judge of the Court of International Trade shall designate three judges to hear and determine any civil action which the chief judge finds: (1) raises an issue of the constitutionality of an Act of Congress, a proclamation of the President, or an Executive order; or (2) has broad or significant implications in the administration or interpretation of the customs laws.

Amendments
1970—Pub. L. 91–271 redesignated the Customs Court as the Court of International Trade.

Effective Date of 1970 Amendment

§ 256. Trials at ports other than New York
(a) The chief judge may designate any judge or judges of the court to proceed, together with necessary assistants, to any port or to any place within the jurisdiction of the United States to preside at a trial or hearing at the port or place.

(b) Upon application of a party or upon his own initiative, and upon a showing that the interests of economy, efficiency, and justice will be served, the chief judge may issue an order authorizing a judge of the court to preside in an evidentiary hearing in a foreign country whose laws do not prohibit such a hearing: Provided, however, That an interlocutory appeal may be taken from such an order pursuant to the provisions of section 1292(d)(1) of this title, and the United States Court of Appeals for the Federal Circuit may, in its discretion, consider the appeal.

Amendments
1982—Subsec. (b). Pub. L. 97–164 substituted “section 1292(d)(1) of this title, and the United States Court of Appeals for the Federal Circuit may, in its discretion, consider the appeal” for “section 1541(b) of this title, subject to the discretion of the Court of Customs and Patent Appeals as set forth in that section”.

Effective Date of 1982 Amendment

§ 257. Publication of decisions
All decisions of the Court of International Trade shall be preserved and open to inspection. The court shall forward copies of each decision and all necessary documents to the appropriate customs officer for the

Amendments
1980—Pub. L. 96–417 redesignated the Customs Court as the Court of International Trade.

Effective Date of 1980 Amendment
Amendment by Pub. L. 96–417 effective Nov. 1, 1980, and applicable with respect to civil actions pending on or commenced on or after such date, see section 701(a) of Pub. L. 96–417, set out as a note under section 255 of this title.

Prior Provisions
Provisions similar to those relating to the assignment of judges to hear and determine cases, and provisions similar to those authorizing the chief judge to designate judges to hear and determine cases within the jurisdiction of the United States, formerly contained in this section, are covered by sections 255 and 256 of this title, respectively.
§ 258. Chief judges; precedence of judges

(a)(1) The chief judge of the Court of International Trade shall be the judge of the court in regular active service who is senior in commission of those judges who—

(A) are 64 years of age or under;
(B) have served for 1 year or more as a judge of the court; and
(C) have not served previously as chief judge.

(2)(A) In any case in which no judge of the court meets the qualifications under paragraph (1), the youngest judge in regular active service who is 65 years of age or over and who has served as a judge of the court for 1 year or more shall act as the chief judge.

(B) In any case under subparagraph (A) in which there is no judge of the court in regular active service who has served as a judge of the court for 1 year or more, the judge of the court 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 under subparagraph (C), the chief judge serving under paragraph (1) shall serve for a term of 7 years and shall serve after expiration of such term until another judge is eligible under paragraph (1) to serve as chief judge.

(B) Except as provided under subparagraph (C), a judge of the court acting as chief judge under subparagraph (A) or (B) of paragraph (2) shall serve until a judge meets the qualifications under paragraph (1).

(C) No judge of the court may serve or act as chief judge of the court after attaining the age of 70 years unless no other judge is qualified to serve as chief judge 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 of the court which such judge attends. Other judges of the court 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) If the chief judge desires to be relieved of the duties as chief judge while retaining active status as a judge of the court, the chief judge may so certify to the Chief Justice of the United States, and thereafter the chief judge of the court shall be such other judge of the court who is qualified to serve or act as chief judge under subsection (a).

(d) If a chief judge is temporarily unable to perform the duties as such, such duties shall be performed by the judge of the court in active service, able and qualified to act, who is next in precedence.


CONTINUANCE OF POSITION OF CHIEF JUDGE

Section 501(c) of Pub. L. 104–317 provided that:

“(1) Notwithstanding the provisions of section 258(a) of title 28, United States Code (as added by subsection (a) of this section), the chief judge of the United States Court of International Trade who is in office on the day before the date of enactment of this Act [Oct. 19, 1996] shall continue to be such chief judge on or after such date until any one of the following events occurs:

“(A) The chief judge is relieved of his duties under section 258(c) of title 28, United States Code.

“(B) The regular active status of the chief judge is terminated.

“(C) The chief judge attains the age of 70 years.

“(D) The chief judge has served for a term of 7 years as chief judge.

“(2) When the chief judge vacates the position of chief judge under paragraph (1), the position of chief judge of the Court of International Trade shall be filled in accordance with section 258(a) of title 28, United States Code.”

CHAPTER 13—ASSIGNMENT OF JUDGES TO OTHER COURTS

Sec. 291. Circuit judges.
292. District judges.
293. Judges of the Court of International Trade.
294. Assignment of retired justices or judges to active duty.
295. Conditions upon designation and assignment.
296. Powers upon designation and assignment.
297. Assignment of judges to courts of the freely associated compact states.
temporarily any circuit judge to act as circuit judge in another circuit upon request by the chief judge or circuit justice of such circuit.

(b) The chief judge of a circuit or the circuit justice may, in the public interest, designate and assign temporarily any circuit judge within the circuit, including a judge designated and assigned to temporary duty therein, to hold a district court in any district within the circuit.


HISTORICAL AND REVISION NOTES


Section consolidates all provisions of sections 17 and 22 of title 28, U.S.C., 1940 ed., relating to designation and assignment of circuit judges. The revised section omits a reference to the Chief Justice contained in said section 22, since in exercising the powers under subsection (b), he acts as a circuit justice. Paragraph (d) of said section 17, making the section applicable to the United States Court of Appeals for the District of Columbia, is omitted since such court is included in this revision because the District of Columbia is made a separate circuit. (See section 41 of this title.) Provisions of said sections 17 and 22 authorizing the designation and assignment of circuit judges.

The term "chief judge" of the circuit was substituted for "senior circuit judge." (See reviser's note under section 136 of this title.) References in said sections 17 and 22 to retired judges were omitted as covered by section 294 of this title.


Section 7 of Pub. L. 85–755 provided that: "Nothing contained in this Act [amending this section and sections 292 and 296 of this title] shall be construed in any way to limit or alter the jurisdiction heretofore conferred upon the United States Court of Customs and Patent Appeals (now United States Court of Appeals for the Federal Circuit) by any provision of law."
allowing a determination by him to the effect that such assignment is necessary to meet the ends of justice, and (2) is approved by the chief judge of the United States District Court for the District of Columbia.

(d) The Chief Justice of the United States may designate and assign temporarily a district judge of one circuit for service in another circuit, either in a district court or court of appeals, upon presentation of a certificate of necessity by the chief judge or circuit justice of the circuit wherein the need arises.

(e) The Chief Justice of the United States may designate and assign temporarily any district judge to serve as a judge of the Court of International Trade upon presentation to him of a certificate of necessity by the chief judge of the court.


HISTORICAL AND REVISION NOTES


Section consolidates and simplifies all provisions of sections 17, 21 and 216 of title 28, U.S.C., 1940 ed., relating to designation and assignment of district judges.

Term “chief judge” was substituted for “senior circuit judge.” (See Reviser’s Note under section 136 of this title.)

Sections 17 and 21 of title 28, U.S.C., 1940 ed., were inconsistent insofar as the words “or in his absence” and “when the chief judge is absent” appeared in the same section. The revised section omits all such words and leaves designation of assignment to the chief judge and his order of seniority.


The provision of said section 17, that designation of a district judge to another circuit should be from an adjacent circuit if practicable, was omitted as an unnecessary restriction on the discretion of the Chief Justice.

The provision of said section 17, that designation of a district judge to another circuit should be from an adjacent circuit if practicable, was omitted as an unnecessary restriction on the discretion of the Chief Justice.

 Learned Hand, Senior Circuit Judge of the Second Circuit. The revised section permits a district judge to be assigned directly to the circuit court of appeals of another circuit. Under existing law it has been assumed that he must be assigned to serve as a district judge on the other circuit and then designated to serve on the circuit court of appeals by that court in which his services are required.

Many changes were made in phraseology.

AMENDMENTS

1982—Subsec. (e). Pub. L. 97–164 struck out “the Court of Claims, the Court of Customs and Patent Appeals or” after “to serve as a judge of” and “in which the need arises” after “chief judge of the court”.

1960—Subsec. (e). Pub. L. 96–417 redesignated the Customs Court as the Court of International Trade.

1956—Subsecs. (b), (d), Pub. L. 95–598 directed the amendment of subsection (c) by substituting “to hold a district court or a bankruptcy court” for “to hold a district court” and the amendment of subsection (d) by substituting “in a bankruptcy court, district court, or court of appeals for” for “either in a district court or court of appeals”, which amendments 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.

1979—Subssec. (c) to (e). Pub. L. 91–358 added subsec. (c) and redesignated former subssecs. (c) and (d) as (d) and (e), respectively.

1968—Subssecs. (a) to (c). Pub. L. 85–755 reenacted subssecs. (a) to (c) without change.

Subsec. (d). Pub. L. 85–755 incorporated provisions for assignment of district judges to the Court of Customs and Patent Appeals and the Customs Court, formerly contained in section 293 of this title and subsec. (f) of this section.

Subsec. (e). Pub. L. 85–755 struck out subsec. (e) which provided for assignment of judges of the Court of Claims to district courts. See section 293(a) of this title.

Subsec. (f). Pub. L. 85–755 struck out subsec. (f) which provided for assignment of district judges to the Customs Court. See subsec. (d) of this section.


EFFECTIVE DATE OF 1982 AMENDMENT


EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–417 effective Nov. 1, 1980, and applicable with respect to civil actions pending on or commenced on or after such date, see section 701(a) of Pub. L. 96–417, set out as a note under section 251 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–358 effective on first day of seventh calendar month which begins after July 29, 1970, see section 199(a) of Pub. L. 91–358, set out as a note under section 1257 of this title.

JURISDICTION OF UNITED STATES COURT OF CUSTOMS AND PATENT APPEALS


LIMITATION OR ALTERATION OF JURISDICTION

Amendment by act July 14, 1956, not to be construed as limiting or altering the jurisdiction heretofore con-
ferred upon the Customs Court [now United States Court of International Trade], see section 4 of act July 14, 1956, set out as a note under section 251 of this title.

§ 293. Judges of the Court of International Trade

(a) The Chief Justice of the United States may designate and assign temporarily any judge of the Court of International Trade to perform judicial duties in any circuit, either in a court of appeals or district court, upon presentation of a certificate of necessity by the chief judge or circuit justice of the circuit in which the need arises.


HISTORICAL AND REVISION NOTES


Section simplifies last sentence of section 301 of title 28, U.S.C. 1940 ed., and is in conformity with other designations and provisions of this chapter.


This section transfers from the President to the Chief Justice of the United States the authority to designate and assign which is in conformity with sections 201 and 296 of this title.

The words “he is willing to undertake” were added to make clear that such service is voluntary.

The term “chief judge” was substituted for “presiding judge.” (See reviser’s note under section 136 of this title.) Changes were made in phraseology.

AMENDMENTS

1982—Pub. L. 97–164, § 110(b), substituted “the Court of International Trade” for “other courts” in section catchline.

Subsec. (a), Pub. L. 97–164, § 110(a)(1), (2), redesignated subsec. (b) as (a). Former subsec. (a), which authorized the Chief Justice to designate and assign judges of the Court of Claims or the Court of Customs and Patent Appeals to serve temporarily on the other of these two courts or in a court of appeals or district court of any circuit in times of necessity, was struck out.

Subsec. (b), Pub. L. 97–164, § 110(a)(2), (3), redesignated subsec. (e), as that subsec. was to have become effective pursuant to Pub. L. 95–598, as subsec. (b). Former subsec. (b) redesignated (a). See 1978 Amendment note below.

Subsecs. (c), (d), Pub. L. 97–164, § 110(a)(1), struck out subsecs. (c) and (d) which related, respectively, to the authority of the chief judge of the Court of Customs and Patent Appeals to designate and assign temporarily any judge of the Court of Customs and Patent Appeals to serve as a judge of the Court of International Trade and to the authority of the chief judge of the Court of International Trade to designate and assign temporarily any judge of the Court of International Trade to serve as a judge of the Court of Customs and Patent Appeals or the Court of Claims.

Subsec. (e), Pub. L. 97–164, § 110(a)(3), redesignated subsec. (e), as that subsec. was to have become effective pursuant to Pub. L. 95–598, as subsec. (b). See 1978 Amendment note below.

1980—Subsec. (b), Pub. L. 96–417, § 102(a), redesignated the Customs Court as the Court of International Trade and authorized performance of judicial functions in a court of appeals.

Subsec. (c), Pub. L. 96–417, § 501(b), redesignated the Customs Court as the Court of International Trade.

Subsec. (d), Pub. L. 96–417, § 102(b), redesignated the Customs Court as the Court of International Trade and authorized temporary assignments to the Court of Claims of judges of the Court of International Trade upon presentation of a certificate of necessity by the chief judge of the Court of Claims.

1979—Subsec. (e), Pub. L. 95–598 directed the amendment of this section by adding subsec. (e) relating to temporary assignments of bankruptcy judges, 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.


Subsec. (a), Pub. L. 85–755 added subsec. (a). It incorporates provisions of former sections 291(a), (b) and 292(e) of this title respecting assignment of any judge of the Court of Claims to serve as circuit judge in any circuit, assignment of judges of the Court of Customs and Patent Appeals to serve as judges of the Court of Appeals or the District Court of Appeals or the District Court for the District of Columbia, and assignment of judges of the Court of Claims to district courts, respectively.

Subsec. (b), Pub. L. 85–755 designated existing second par. as subsec. (b). Subsecs. (c), (d), Pub. L. 85–755 added subsecs. (c) and (d).

1956—Act July 14, 1956, authorized the Chief Justice of the United States to designate and assign temporarily a judge of the Customs Court to perform judicial duties in a district court in any circuit.

EFFECTIVE DATE OF 1982 AMENDMENT


EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–417 effective Nov. 1, 1980, and applicable with respect to civil actions pending on or commenced on or after such date, see section 761(a) of Pub. L. 96–417, set out as a note under section 251 of this title.

JURISDICTION OF UNITED STATES COURT OF CUSTOMS AND PATENT APPEALS


LIMITATION OR ALTERATION OF JURISDICTION

Amendment by act July 14, 1956, not to be construed as limiting or altering the jurisdiction heretofore conferred upon the Customs Court [now United States Court of International Trade], see section 4 of act July 14, 1956, set out as a note under section 251 of this title.

§ 294. Assignment of retired Justices or judges to active duty

(a) Any retired Chief Justice of the United States or Associate Justice of the Supreme Court may be designated and assigned by the Chief Justice of the United States to perform such judicial duties in any circuit, including those of a circuit justice, as he is willing to undertake.

(b) Any judge of the United States who has retired from regular active service under section

1 So in original. No subsec. (b) has been enacted.
§ 295

TITLE 28—JUDICIARY AND JUDICIAL PROCEDURE

371(b) or 372(a) of this title shall be known and designated as a senior judge and may continue to perform such judicial duties as he is willing and able to undertake, when designated and assigned as provided in subsections (c) and (d).

(4) Any retired circuit or district judge may be designated and assigned by the chief judge or judicial council of his circuit to perform such judicial duties within the circuit as he is willing and able to undertake. Any other retired judge of the United States may be designated and assigned by the chief judge of his court to perform such judicial duties in such court as he is willing and able to undertake.

(d) The Chief Justice of the United States shall maintain a roster of retired judges of the United States who are willing and able to undertake special judicial duties from time to time outside their own circuit, in the case of a retired circuit or district judge, or in a court other than their own, in the case of other retired judges, which roster shall be known as the roster of senior judges. Any such retired judge of the United States may be designated and assigned by the Chief Justice to perform such judicial duties as he is willing and able to undertake in a court outside his own circuit, in the case of a retired circuit or district judge, or in a court other than his own, in the case of any other retired judge of the United States. Such designation and assignment to a court of appeals or district court shall be made upon the presentation of a certificate of necessity by the chief judge or circuit justice of the circuit wherein the need arises and to any other court of the United States upon the presentation of a certificate of necessity by the chief judge of such court. No such designation or assignment shall be made to the Supreme Court.

(e) No retired justice or judge shall perform judicial duties except when designated and assigned.


HISTORICAL AND REVISION NOTES


Section consolidates those parts of sections 375, 375a, and 375f of title 28, U.S.C., 1940 ed., relating to designation and assignment of retired justices and judges. Other provisions of said sections 375 and 375a, appear in sections 136, 371, and 756 of this title.

The term "chief judge" was substituted for "presiding judge or senior judge." (See Revisor's Note under section 136 of this title.) Changes were made in phraseology.

AMENDMENTS


Subsecs. (b) to (d), Pub. L. 85–755 revised and rearranged subject matter to apply "senior judge" to all judges who retire from regular active service under sections 371(b) and 372(a) of this title, while retaining their commissions, rather than merely to those who ask to be placed on the Chief Justice's roster, to lodge solely in the chief judge and judicial council of the circuit concerned the intracircuit assignment power, and in the Chief Justice the power to assign retired judges beyond their circuits or special courts.

Subsec. (e), Pub. L. 85–755 reenacted subsec. (e) without change.


1956—Subsec. (b). Act July 9, 1956, inserted provisions relating to assignment of retired judges of the Court of Claims.

JURISDICTION OF UNITED STATES COURT OF CUSTOMS AND PATENT APPEALS


§ 295. Conditions upon designation and assignment

No designation and assignment of a circuit or district judge in active service shall be made without the consent of the chief judge or judicial council of the circuit from which the judge is to be designated and assigned. No designation and assignment of a judge of any other court of the United States in active service shall be made without the consent of the chief judge of such court.

All designations and assignments of justices and judges shall be filed with the clerks and entered on the minutes of the courts from and to which made.

The Chief Justice of the United States, a circuit justice or a chief judge of a circuit may make new designation and assignments in accordance with the provisions of this chapter and may revoke those previously made by him.


HISTORICAL AND REVISION NOTES


This section consolidates and simplifies provisions of sections 17 and 20 of title 28, U.S.C., 1940 ed., relating to conditions upon designation and assignment as well as those applicable to filing, revoking and making new designations.


The reference in said section 20 to senior Associate Judge was omitted. (See Revisor's Note under section 136 of this title.)

The terms "chief judge" and "chief judge of a circuit" were substituted for "senior circuit judge." (See Revisor's Note under section 136 of this title.)

The alternative provision for approval by the judicial council of the circuit was inserted to conform with section 332 of this title.
§ 296. Powers upon designation and assignment

A justice or judge shall discharge, during the period of his designation and assignment, all judicial duties for which he is designated and assigned. He may be required to perform any duty which might be required of a judge of the court or district or circuit to which he is designated and assigned.

Such justice or judge shall have all the powers of a judge of the court, circuit or district to which he is designated and assigned, except the power to appoint any person to a statutory position or to designate permanently a depository of funds or a newspaper for publication of legal notices. However, a district 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, having performed in the preceding calendar year an amount of work equal to or greater than the amount of work an average judge in active service on that court would perform in 6 months, and having elected to exercise such powers, shall have the powers of a judge of that court to participate in appointment of court officers and magistrate judges, rulemaking, governance, and administrative matters.

A justice or judge who has sat by designation and assignment in another district or circuit may, notwithstanding his absence from such district or circuit or the expiration of the period of his designation and assignment, decide or join in the decision and final disposition of all matters submitted to him during such period and in the consideration and disposition of applications for rehearing or further proceedings in such matters.

CHAPTER 15—CONFERENCES AND COUNCILS OF JUDGES

Sec. 331. Judicial Conference of the United States.  
332. Judicial councils of circuits.  
333. Judicial conferences of circuits.  
334. Institutes and joint councils on sentencing.  
335. Judicial Conference of the Court of International Trade.

AMENDMENTS

§ 331. Judicial Conference of the United States

The Chief Justice of the United States shall annually summon the chief judge of each judicial circuit, the chief judge of the Court of International Trade, and a district judge from each judicial circuit to conference at such time and place in the United States as he may designate. He shall preside at such conference which shall be known as the Judicial Conference of the United States. Special sessions of the Conference may be called by the Chief Justice at such times and places as he may designate.

The district judge to be summoned from each judicial circuit shall be chosen by the circuit and district judges of the circuit and shall serve as a member of the Judicial Conference of the United States for a term of not less than 3 successive years nor more than 5 successive years, as established by majority vote of all circuit and district judges of the circuit. A district judge serving as a member of the Judicial Conference may be either a judge in regular active service or a judge retired from regular active service under section 371(b) of this title.

If the chief judge of any circuit, the chief judge of the Court of International Trade, or the district judge chosen by the judges of the circuit is unable to attend, the Chief Justice may summon any other circuit or district judge from such circuit or any other judge of the Court of International Trade, as the case may be. Every judge summoned shall attend and, unless excused by the Chief Justice, shall remain throughout the sessions of the conference and advise as to the needs of his circuit or court and as to any matters in respect of which the administration of justice in the courts of the United States may be improved.

The Conference shall make a comprehensive survey of the condition of business in the courts of the United States and prepare plans for assignment of judges to or from circuits or districts where necessary. It shall also submit suggestions and recommendations to the various courts to promote uniformity of management procedures and the expeditious conduct of court business. The Conference is authorized to exercise the authority provided in chapter 16 of this title as the Conference, or through a standing committee. If the Conference elects to establish a standing committee, it shall be appointed by the Chief Justice and all petitions for review shall be reviewed by that committee. The Conference or the standing committee may hold hearings, take sworn testimony, issue subpoenas and subpoenas duces tecum, and make necessary and appropriate orders in the exercise of its authority. Subpoenas and subpoenas duces tecum shall be issued by the clerk of the Supreme Court or by the clerk of any court of appeals, at the direction of the Chief Justice or his designee and under the seal of the court, and shall be served in the manner provided in rule 45(c) of the Federal Rules of Civil Procedure for subpoenas and subpoenas duces tecum issued on behalf of the United States or an officer or any agency thereof. The Conference may also prescribe and modify rules for the exercise of the authority provided in chapter 16 of this title. All judicial officers and employees of the United States shall promptly carry into effect all orders of the Judicial Conference or the standing committee established pursuant to this section.

The Conference shall also carry on a continuous study of the operation and effect of the general rules of practice and procedure now or hereafter in use as prescribed by the Supreme Court for the other courts of the United States pursuant to law. Such changes in and additions to those rules as the Conference may deem desirable to promote simplicity in procedure, fairness in administration, the just determination of litigation, and the elimination of unjustifiable expense and delay shall be recommended by the Conference from time to time to the Supreme Court for its consideration and adoption, modification or rejection, in accordance with law.

The Judicial Conference shall review rules prescribed under section 2071 of this title by the courts, other than the Supreme Court and the district courts, for consistency with Federal law. The Judicial Conference may modify or abrogate any such rule so reviewed found inconsistent in the course of such a review.

The Attorney General shall, upon request of the Chief Justice, report to such Conference on matters relating to the business of the several courts of the United States, with particular reference to cases to which the United States is a party.

The Chief Justice shall submit to Congress an annual report of the proceedings of the Judicial Conference and its recommendations for legislation.

The Judicial Conference shall consult with the Director of the United States Marshals Service on a continuing basis regarding the security requirements for the judicial branch of the United States Government, to ensure that the views of the Judicial Conference regarding the security requirements for the judicial branch of the Federal Government are taken into account when determining staffing levels, setting priorities for programs regarding judicial security, and allocating judicial security resources. In this paragraph, the term “judicial security” includes the security of buildings housing the judiciary, the personal security of judicial officers, the assessment of threats made to judicial officers, and the protection of all other judicial personnel.

1 So in original. The word “the” probably should appear.
The United States Marshals Service retains final authority regarding security requirements for the judicial branch of the Federal Government.


HISTORICAL AND REVISION NOTES


The provision of section 218 of title 28, U.S.C., 1940 ed., as to traveling expenses is incorporated in section 456 of this title.

Provision as to time and place for holding conference was omitted as unnecessary since the Chief Justice is vested with discretionary power to designate the time and place under the language retained.

The references to ‘‘chief judge’’ are in harmony with other sections of this title. (See Revisor’s Note under section 136 of this title.)

Provision for stated annual reports by the chief judge of the district was omitted as obsolete and unnecessary in view of sections 332 and 333 of this title.

The last paragraph is new and is inserted to authorize the communication to Congress of information which now reaches that body only because incorporated in the annual report of the Attorney General.

Numerous changes were made in phraseology and arrangement.

REFERENCES IN TEXT

Rule 45(c) of the Federal Rules of Civil Procedure, referred to in fourth paragraph, is set out in the Appendix to this title.

AMENDMENTS


1996—Pub. L. 104–317 added second par. and struck out former second par. which read as follows: ‘‘The district judge to be summoned from each judicial circuit shall be chosen by the circuit and district judges of the circuit at the annual judicial conference of the circuit held pursuant to section 333 of this title and shall serve as a member of the conference for three successive years, except that in the year following the enactment of this amended section the judges in the first, fourth, seventh, and tenth circuits shall choose a district judge to serve for one year, the judges in the second, fifth, and eighth circuits shall choose a district judge to serve for two years and the judges in the third, sixth, ninth, and District of Columbia circuits shall choose a district judge to serve for three years.’’

1986—Pub. L. 99–466, §1(a), inserted ‘‘, the chief judge of the Court of International Trade,’’ and substituted ‘‘Conference may’’ for ‘‘conference may’’ in first par.

Pub. L. 99–466, §1(b), inserted ‘‘, the chief judge of the Court of International Trade,’’ and ‘‘or any other judge of the Court of International Trade, as the case may be’’ in first sentence of third par.

Pub. L. 99–466, §1(c), substituted ‘‘Conference’’ for ‘‘conference’’ in sixth par.

1982—Pub. L. 97–164, in first par., struck out reference to the chief judge of the Court of Claims and the chief judge of the Court of Customs and Patent Appeals in the enumeration of judges which the Chief Justice must summon each year for a conference and, in third par., struck out provision that authorized the Chief Justice to summon an associate judge of the Court of Claims or the Court of Customs and Patent Appeals if the chief judge of either of those courts could not attend.

1980—Pub. L. 96–458, in fourth par., substituted ‘‘It shall also submit suggestions and recommendations to the various courts to promote uniformity of management procedures and the expeditious conduct of court business.’’ for ‘‘and shall submit suggestions to the various courts, in the interest of uniformity and expediency of business.’’, and inserted provisions relating to exercise of authority under section 372(c) as the conference or through standing committee, the holding of hearings, taking of testimony, and the issuance of subpoenas pursuant to rule 45(c) of the Federal Rules of Civil Procedure.

1978—Pub. L. 95–598 directed the amendment of section by inserting references to bankruptcy judges, which amendment did not become effective pursuant to section 456(b) of Pub. L. 95–598, as amended, set out as an Effective Date note preceding section 101 of Title II, Bankruptcy.

1961—Pub. L. 87–253 provided for the summoning to the judicial conference of the chief judge of the Court of Customs and Patent Appeals, and if he is unable to attend, for the summoning of an associate judge of such court.


1956—Act July 9, 1956, inserted provisions relating to participation of Court of Claims judges.

EFFECTIVE DATE OF 1988 AMENDMENT


EFFECTIVE DATE OF 1986 AMENDMENT

Section 4 of Pub. L. 99–466 provided that: ‘‘This Act and the amendments made by this Act (enacting section 335 of this title, amending this section and section 569 of this title, renumbering section 873 of this title as 872, and repealing former section 872 of this title) shall take effect 60 days after the date of the enactment of this Act (Oct. 14, 1986).’’

EFFECTIVE DATE OF 1982 AMENDMENT


EFFECTIVE DATE OF 1980 AMENDMENT

Section 7 of Pub. L. 96–458 provided that: ‘‘This Act [amending this section and sections 332, 372, and 604 of this title and enacting provisions set out as notes under this section and section 1 of this title] shall become effective on October 1, 1981.’’

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in this section relating to requirement that the Chief
Justice submit to Congress an annual report of pro-
cedings of the Judicial Conference and recommenda-
tions for legislation, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of
Title 31, Money and Finance, and page 13 of House Doc-
ument No. 103–7.

DEPOSIT OF FEES FOR PROCESSING OF VIOLATIONS
THROUGH CENTRAL VIOLATIONS BUREAU CASES

VI, §6066, May 11, 2005, 119 Stat. 298, provided that: "For
fiscal year 2005 and hereafter, such fees as shall be col-
clected for the processing of violations through the Cen-
tral Violations Bureau cases as prescribed by the Judi-
cial Conference of the United States shall be deposited
as offsetting receipts to the fund established under 28
U.S.C. 1931 and shall remain available to the Judiciary
until expended to reimburse any appropriation for the
amount paid out of such appropriation for expenses of the
Courts of Appeals, District Courts, and Other Judi-
cicial Services and the Administrative Offices of the
United States Courts."

POLICIES, PROCEDURES, AND METHODOLOGIES USED IN
RECOMMENDATION FOR CREATION OF ADDITIONAL FED-
ERAL JUDGESHIPS; STUDY BY GENERAL ACCOUNTING
OFFICE AND REPORT TO CONGRESS

5163, provided that the Comptroller General was to re-
view the policies, procedures, and methodologies used
by the Judicial Conference of the United States in rec-
ommending to Congress the creation of additional Fed-
eral judgeships and, not later than 18 months after Dec.
1, 1990, report the results of the review, with recom-
mendations, to the appropriate congressional commit-
tees.

FEDERAL COURTS STUDY COMMITTEE

Title I of Pub. L. 100–702, known as the "Federal
Courts Study Act", established within the Judicial
Conference of the United States, a Federal Courts
Study Committee on the future of the Federal Judici-
ary, which was directed to examine problems and issues
currently facing the courts of the United States, de-
velop a long-range plan for the future of the Federal Judi-
cary, including assessments involving alternative
methods of dispute resolution, the structure and ad-
ministration of the Federal court system, methods of
resolving intracircuit and intercircuit conflicts in the
courts of appeals, and the types of disputes resolved by
the Federal courts, and to submit, within 15 months
after Jan. 1, 1989, a report to the Judicial Conference of
the United States, the President, the Congress, the
Conference of Chief Justices, and the State Justice In-
stitute on the revisions, if any, in the laws of the
United States which the Committee, based on its study
and evaluation, deemed advisable, and further provided
for membership of the Committee, duties, powers and
functions, compensation of members, appropriations,
and expiration of the Committee 60 days after submis-
sion of report.

§ 332. Judicial councils of circuits

(a)(1) The chief judge of each judicial circuit
shall call, at least twice in each year and at
such places as he or she may designate, a meet-
ing of the judicial council of the circuit, consist-
ing of the chief judge of the circuit, who shall
preside, and an equal number of circuit judges and
district judges of the circuit, as such num-
ber is determined by majority vote of all such
judges of the circuit in regular active service.

(2) Members of the council shall serve for
terms established by a majority vote of all
judges of the circuit in regular active service.

(3) Except for the chief judge of the circuit,
either judges in regular active service or judges

retired from regular active service under section
371(b) of this title may serve as members of the
council. Service as a member of a judicial coun-
cil by a judge retired from regular active service
under section 371(b) may not be considered for
meeting the requirements of section 371(f)(1)(A),
(B), or (C).1

(4) No more than one district judge from any
one district shall serve simultaneously on the
council, unless at least one district judge from
each district within the circuit is already serv-
ring as a member of the council.

(5) In the event of the death, resignation, re-
tirement under section 371(a) or 372(a) of this
title, or disability of a member of the council, a
replacement member shall be designated to
serve the remainder of the unexpired term by
the chief judge of the circuit.

(6) Each member of the council shall attend
each council meeting unless excused by the chief
judge of the circuit.

(b) The council shall be known as the Judicial
Council of the circuit.

(c) The chief judge shall submit to the council
the semiannual reports of the Director of the
Administrative Office of the United States
Courts. The council shall take such action
thereon as may be necessary.

(d)(1) Each judicial council shall make all nec-
ecessary and appropriate orders for the effective
and expeditious administration of justice within
its circuit. Any general order relating to prac-
tice and procedure shall be made or amended
only after giving appropriate public notice and
an opportunity for comment. Any such order so
relating shall take effect upon the date specified
by such judicial council. Copies of such orders so
relating shall be furnished to the Judicial Con-
ference and the Administrative Office of the
United States Courts and be made available to
the public. Each council is authorized to hold
hearings, to take sworn testimony, and to issue
subpoenas and subpoenas duces tecum. Subpoea-
nas and subpoenas duces tecum shall be issued
by the clerk of the court of appeals, at the direc-
tion of the chief judge of the circuit or his des-
ignee and under the seal of the court, and shall
be served in the manner provided in rule 45(c) of
the Federal Rules of Civil Procedure for subpo-
eenas and subpoenas duces tecum issued on behalf
of the United States or an officer or agency there-
of.

(2) All judicial officers and employees of the
circuit shall promptly carry into effect all or-
ders of the judicial council. In the case of failure
to comply with an order made under this sub-
section or a subpoena issued under chapter 16 of
this title, a judicial council or a special commit-
tee appointed under section 353 of this title may
institute a contempt proceeding in any district
court in which the judicial officer or employee
of the circuit who fails to comply with the order
made under this subsection shall be ordered to
show cause before the court why he or she
should not be held in contempt of court.

(3) Unless an impediment to the administra-
tion of justice is involved, regular business of
the courts need not be referred to the council.

(4) Each judicial council shall periodically re-
view the rules which are prescribed under sec-

1 See References in Text note below.
tion 2071 of this title by district courts within its circuit for consistency with rules prescribed under section 2072 of this title. Each council may modify or abrogate any such rule found inconsistent in the course of such a review.

(5) The judicial council of each circuit may appoint a circuit executive. In appointing a circuit executive, the judicial council shall take into account experience in administrative and executive positions, familiarity with court procedures, and special training. The circuit executive shall exercise such administrative powers and perform such duties as may be delegated to him by the circuit council. The duties delegated to the circuit executive of each circuit may include but need not be limited to:

(1) Exercising administrative control of all nonjudicial activities of the court of appeals of the circuit in which he is appointed.

(2) Administering the personnel system of the court of appeals of the circuit.

(3) Administering the budget of the court of appeals of the circuit.

(4) Maintaining a modern accounting system.

(5) Establishing and maintaining property control records and undertaking a space management program.

(6) Conducting studies relating to the business and administration of the courts within the circuit and preparing appropriate recommendations and reports to the chief judge, the circuit council, and the Judicial Conference.

(7) Collecting, compiling, and analyzing statistical data with a view to the preparation and presentation of reports based on such data as may be directed by the chief judge, the circuit council, and the Administrative Office of the United States Courts.

(8) Representing the circuit as its liaison to the courts of the various States in which the circuit is located, the marshal's office, State and local bar associations, civic groups, news media, and other private and public groups having a reasonable interest in the administration of the circuit.

(9) Arranging and attending meetings of the judges of the circuit and of the circuit council, including preparing the agenda and serving as secretary in all such meetings.

(10) Preparing an annual report to the circuit and to the Administrative Office of the United States Courts for the preceding calendar year, including recommendations for more expeditious disposition of the business of the circuit.

All duties delegated to the circuit executive shall be subject to the general supervision of the chief judge of the circuit.

(f)(1) Each circuit executive shall be paid at a salary to be established by the Judicial Conference of the United States not to exceed the annual rate of level IV of the Executive Schedule pay rates under section 5315 of title 5.

(2) The circuit executive shall serve at the pleasure of the Judicial Conference of the United States.

(3) The circuit executive may appoint, with the approval of the circuit, necessary employees in such number as may be approved by the Director of the Administrative Office of the United States Courts.

(4) The circuit executive and his staff shall be deemed to be officers and employees of the Judicial Conference of the United States within the meaning of the statutes specified in subsection (f)(4).

(5) The circuit executive shall be subject to the general supervision of the chief judge of the circuit.

(h)(1) The United States Court of Appeals for the Federal Circuit may appoint a circuit executive, who shall serve at the pleasure of the court. In appointing a circuit executive, the court shall take into account experience in administrative and executive positions, familiarity with court procedures, and special training. The circuit executive shall exercise such administrative powers and perform such duties as may be delegated by the court. The duties delegated to the circuit executive may include the duties specified in subsection (e) of this section, insofar as such duties are applicable to the Court of Appeals for the Federal Circuit.

(2) The circuit executive shall be paid the salary for circuit executives established under subsection (f) of this section.

(3) The circuit executive may appoint, with the approval of the court, necessary employees in such number as may be approved by the Director of the Administrative Office of the United States Courts.

(4) The circuit executive and staff shall be deemed to be officers and employees of the United States within the meaning of the statutes specified in subsection (f)(4).

(5) The circuit executive may appoint either a circuit executive under this subsection or a clerk under section 711 of this title, but not both, or may appoint a combined circuit executive/clerk who shall be paid the salary of a circuit executive.
strict judges outside their districts, was omitted as surplusage, since there is nothing in this section in conflict with section 292 of this title providing for such assignments.

The requirement for attendance of circuit judges, unless excused by the chief judge, was included in conformity with a similar provision of section 331 of this title.

Changes in phraseology were made.

REFERENCES IN TEXT


AMENDMENTS

2002—Subsec. (d)(2). Pub. L. 107–273, §11043(c)(1), substituted “chapter 16 of this title” for “section 372(c) of this title” and “section 333 of this title” for “section 372(c)(4) of this title”.

Subsec. (h). Pub. L. 107–273, §11043(c)(2), struck out subsec. (h) as added by Pub. L. 106–553, which read as follows:

“(h) The United States Court of Appeals for the Federal Circuit may appoint a circuit executive, who shall serve at the pleasure of the court. In appointing a circuit executive, the court shall take into account experience in administrative and executive positions, familiarity with court procedures, and special training. The circuit executive shall exercise such administrative powers and perform such duties as may be delegated by the court. The duties delegated to the circuit executive may include but need not be limited to the duties specified in subsection (e) of this section, insofar as they are applicable to the Court of Appeals for the Federal Circuit.”

“(2) The circuit executive shall be paid the salary for circuit executives established under subsection (f) of this section.

“(3) The circuit executive may appoint, with the approval of the court, necessary employees in such number as may be approved by the Director of the Administrative Office of the United States Courts.

“(4) The circuit executive and staff shall be deemed to be officers and employees of the United States within the meaning of the statutes specified in subsection (f)(4).

“(5) The court may appoint either a circuit executive under this subsection or a clerk under section 711 of this title, but not both, or may appoint a combined circuit executive/clerk who shall be paid the salary of a circuit executive.”

2000—Subsec. (a)(3). Pub. L. 106–518, §30, 2000–Pub. L. 106–518, §30, added par. (3) and struck out former par. (3) which read as follows: “Only circuit and district judges in regular active service shall serve as members of the council.”

Subsec. (a)(5). Pub. L. 106–518, §205(2), substituted “retirement under section 371(a) or 372(a) of this title,” for “retirement”.


1991—Subsec. (a)(1). Pub. L. 102–196 substituted “such number” for “such member and service for services”.

1990—Subsec. (a)(1). Pub. L. 101–650, §621(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “The chief judge of each judicial circuit shall call, at least twice in each year and at such places as he may designate, a meeting of the judicial council of the circuit, consisting of—

“A the chief judge of the circuit, who shall preside; “(B) that number of circuit judges fixed by majority vote of all such judges in regular active service; and “(C) that number of district judges of the circuit fixed by majority vote of all circuit judges in regular active service, except that—

“(i) if the number of circuit judges fixed in accordance with subparagraph (B) of this paragraph is less than six, the number of district judges fixed in accordance with this subparagraph shall be no less than two; and “(ii) if the number of circuit judges fixed in accordance with subparagraph (B) of this paragraph is six or more, the number of district judges fixed in accordance with this subparagraph shall be no less than three.”

Subsec. (a)(3) to (7). Pub. L. 101–650, §325(b), redesignated pars. (4) to (7) as (3) to (6), respectively, and struck out former par. (3) which read as follows: “The number of circuit and district judges fixed in accordance with paragraph (1)(B) and (1)(C) of this subsection shall be set by order of the court of appeals for the circuit no less than six months prior to a scheduled meeting of the council so constituted.”

Subsec. (d)(2). Pub. L. 101–650, §403, inserted at end “In the case of failure to comply with an order made under this subsection or a subpoena issued under section 372(c) of this title, a judicial council or a special committee appointed under section 372(c)(4) of this title may institute a contempt proceeding in any district court in which the judicial officer or employee of the circuit who fails to comply with the order made under this subsection shall be ordered to show cause before the court why he or she should not be held in contempt of court.”


Subsec. (d)(1). Pub. L. 100–702, §403(b), inserted after first sentence “Any general order relating to practice and procedure shall be made or amended only after giving appropriate public notice and an opportunity for comment. Any such order so relating shall take effect upon the date specified by such judicial council. Copies of such orders so relating shall be furnished to the Judicial Conference and the Administrative Office of the United States Courts and be made available to the public.”


Subsec. (e). Pub. L. 100–702, §1018(1), substituted “executive in appointing a circuit executive, the judicial council shall take into account experience in administrative and executive positions, familiarity with court procedures, and special training.” for “executive from among persons who shall be certified by the Board of Certification.” in first sentence.

Subsec. (f). Pub. L. 100–702, §1018(2), designated last four undesignated pars. as pars. (1) to (4), respectively, and struck out former first undesignated par. which related to establishment, functions, and staffing of Board of Certification and setting standards for certification as qualified to be circuit executive.

Pub. L. 100–459 substituted “level IV” for “level V”.


Subsec. (a). Pub. L. 96–458, §2(a), in par. (1) designated existing provisions as introductory provision and in such introductory provision substituted “each judicial circuit” for “each circuit”, “a meeting of the judicial council of the circuit” for “a council of the judicial council of the circuit”, the circuit judge, unless excused by the chief judge, shall attend all sessions of the council,” and added subsparas. (A) to (C) and paras. (2) to (7).

Subsec. (c). Pub. L. 96–458, §2(b), substituted “semi-annually” for “quarterly.”
Subsec. (d), Pub. L. 96–458, §2(c), amended subsec. (d) generally, designating existing provisions as par. (1), inserting “and appropriate” after “all necessary”, substituting “justice within its circuit” for “the business of the courts within its circuit”, striking out “The district judges shall promptly carry into effect all orders of the judicial council,” after “within its circuit,” inserting provisions relating to the holding of hearings, taking of testimony, the issuance of subpoenas and service thereof under the Federal Rules of Civil Procedure, and adding pars. (2) and (3).

1978—Subsec. (d), Pub. L. 95–598 directed the amendment of subsec. (d) by inserting “and bankruptcy judges” after “The district judges”, which amendment did not become effective pursuant to section 402(b) of Pub. L. 85–598, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

1971—Pub. L. 91–647 designated existing four paragraphs as subsecs. (a), (b), (c), and (d), respectively, and added subsecs. (e) and (f).


**Effective Date of 1990 Amendment**


**Effective Date of 1988 Amendment**

Amendment by section 490(a)(2), (b) of Pub. L. 100–702 effective Dec. 1, 1988, see section 407 of Pub. L. 100–702, set out as a note under section 2071 of this title.

**Effective Date of 1980 Amendment**


### § 333. Judicial conferences of circuits

The chief judge of each circuit may summon biennially, and may summon annually, the circuit, district, magistrate, and bankruptcy judges of the circuit, in active service, to a conference at a time and place that he designates, for considering the business of the courts and advising means of improving the administration of justice within such circuit. He may preside at such conference, which shall be known as the Judicial Conference of the circuit. The judges of the District Court of Guam, the District Court of the Virgin Islands, and the District Court of the Northern Mariana Islands may also be summoned biennially, and may be summoned annually, to the conferences of their respective circuits.

Every judge summoned may attend.

The court of appeals for each circuit shall provide by its rules for representation and active participation at such conference by members of the bar of such circuit.


### Historical and Revision Notes


Section consolidates parts of sections 449 and 450 of title 28, U.S.C., 1940 ed.

Said section 450 contained definitions of “courts” and “continental United States,” and directions that sections 444–450 of title 28, U.S.C., 1940 ed., relating to the administration of United States courts, should apply to the courts of appeals, the United States Court of Appeals for the District of Columbia and to the several enumerated district courts of the United States, including those in the Territories and Possessions as well as the Court of Claims, Court of Customs and Patent Appeals, and Customs Court. It also provided that the Chief Justice and associate justices of the Court of Appeals for the District of Columbia should have the powers of the senior judge and circuit judges, respectively, of a circuit court of appeals.

The revised section omits, as surplusage, the definition of “continental United States.” Other provisions of section 450 of title 28, U.S.C., 1940 ed., referred to were omitted as unnecessary in view of section 604 of this title which provides for the powers and duties of the Director of the Administrative Office of the United States Courts. Remaining provisions of said section 450 are incorporated in said section 604 and section 610 of this title.

The provision as to travel and subsistence which was contained in said section 449 of title 28, U.S.C., 1940 ed., is incorporated in section 456 of this title.

### Amendments


1996—Pub. L. 104–134, §101(a)(1) [title III, §305], in first par. substituted “may” for “shall” before “summon biennially”, “preside at such”, and “also be summoned”.

Pub. L. 104–134, §101(a)(1) [title III, §305(2)], in second par. substituted “may” for “shall” before “attend” and struck out “, and unless excused by the chief judge, shall remain throughout the conference” before period at end.

1990—Pub. L. 101–650 substituted “biennially, and may summon annually,” for “annually”, struck out “the United States District Court for the District of the Canal Zone,” after “The judges of”, and substituted “the District Court of the Virginia Islands, and the District Court of the Northern Mariana Islands shall also be summoned biennially, and may be summoned annually,” for “and the District Court of the Virginia Islands shall also be summoned annually”.


1958—Pub. L. 85–508 struck out provisions which required judge of District Court for Territory of Alaska to be summoned annually to the conference of his circuit. See section 81A of this title which establishes a United States District Court for the State of Alaska.

1951—Act Oct. 31, 1951, inserted reference to judge of District Court of Guam in first par.

1939—Act Dec. 29, 1939, provided for the presence of judges of District Courts of Alaska, Canal Zone, and the Virgin Islands at annual conferences within their respective circuits.

### Effective Date of 1978 Amendment

Amendment by Pub. L. 95–598 effective Oct. 1, 1979, see section 402(c) of Pub. L. 95–598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

### 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 notes set out
§ 334. Institutes and joint councils on sentencing

(a) In the interest of uniformity in sentencing procedures, there is hereby authorized to be established under the auspices of the Judicial Conference of the United States, institutes and joint councils on sentencing. The Attorney General and/or the chief judge of each circuit may at any time, through the Director of the Administrative Office of the United States Courts, the Judicial Conference to convene such institutes and joint councils for the purpose of studying, discussing, and formulating the objectives, policies, standards, and criteria for sentencing those convicted of crimes and offenses in the courts of the United States. The agenda of the institutes and joint councils may include but shall not be limited to: (1) The development of standards for the content and utilization of presentence reports; (2) the establishment of factors to be used in selecting cases for special study and observation in prescribed diagnostic clinics; (3) the determination of the importance of psychiatric, emotional, sociological and physiological factors involved in crime and their bearing upon sentences; (4) the discussion of special sentencing problems in unusual cases such as treason, violation of public trust, subversion, or involving abnormal sex behavior, addiction to drugs or alcohol, and mental or physical handicaps; (5) the formulation of sentencing principles and criteria which will assist in promoting the equitable administration of the criminal laws of the United States.

(b) After the Judicial Conference has approved the time, place, participants, agenda, and other arrangements for such institutes and joint councils, the chief judge of each circuit is authorized to invite the attendance of district judges under conditions which he thinks proper and which will not unduly delay the work of the courts.

(c) The Attorney General is authorized to select and direct the attendance at such institutes and meetings of United States attorneys and other officials of the Department of Justice and may invite the participation of other interested Federal officers. He may also invite specialists in sentencing methods, criminologists, psychi atrists, penologists, and others to participate in the proceedings.

(d) The expenses of attendance of judges shall be paid from applicable appropriations for the judiciary of the United States. The expenses connected with the preparation of the plans and agenda for the conference and for the travel and other expenses incident to the attendance of officials and other participants invited by the Attorney General shall be paid from applicable appropriations of the Department of Justice.

(Added Pub. L. 85–752, §1, Aug. 25, 1958, 72 Stat. 845.)

§ 335. Judicial Conference of the Court of International Trade

(a) The chief judge of the Court of International Trade is authorized to summon annually the judges of such court to a judicial conference, at a time and place that such chief judge designates, for the purpose of considering the business of such court and improvements in the administration of justice in such court.

(b) The Court of International Trade shall provide by its rules for representation and active participation at such conference by members of the bar.


CHAPTER 16—COMPLAINTS AGAINST JUDGES AND JUDICIAL DISCIPLINE

Sec. 351. Complaints; judge defined.
352. Review of complaint by chief judge.
353. Special committees.
354. Action by judicial council.
356. Subpoena power.
357. Review of orders and actions.
358. Rules.
359. Restrictions.
361. Reimbursement of expenses.
362. Other provisions and rules not affected.
363. Court of Federal Claims, Court of International Trade, Court of Appeals for the Federal Circuit.
364. Effect of felony conviction.

§ 351. Complaints; judge defined

(a) FILING OF COMPLAINT BY ANY PERSON.—Any person alleging that a judge has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts, or alleging that such judge is unable to discharge all the duties of office by reason of mental or physical disability, may file with the clerk of the court of appeals for the circuit a written complaint containing a brief statement of the facts constituting such conduct.

(b) IDENTIFYING COMPLAINT BY CHIEF JUDGE.—In the interests of the effective and expeditious administration of the business of the courts and on the basis of information available to the chief judge of the circuit, the chief judge may, by written order stating reasons therefor, identify a complaint for purposes of this chapter and thereby dispense with filing of a written complaint.
(c) TRANSMITTAL OF COMPLAINT.—Upon receipt of a complaint filed under subsection (a), the clerk shall promptly transmit the complaint to the chief judge of the circuit, or, if the conduct complained of is that of the chief judge, to that circuit judge in regular active service next senior in date of commission (hereafter, for purposes of this chapter only, included in the term "chief judge"). The clerk shall simultaneously transmit a copy of the complaint to the judge whose conduct is the subject of the complaint. The clerk shall also transmit a copy of any complaint identified under subsection (b) to the judge whose conduct is the subject of the complaint.

(d) DEFINITIONS.—In this chapter—

(1) the term "judge" means a circuit judge, district judge, bankruptcy judge, or magistrate judge; and

(2) the term "complainant" means the person filing a complaint under subsection (a) of this section.


§ 353. Review of complaint by chief judge

(a) EXPEDITIOUS REVIEW; LIMITED INQUIRY.—The chief judge shall expeditiously review any complaint received under section 351(a) or identified under section 351(b). In determining what action to take, the chief judge may conduct a limited inquiry for the purpose of determining—

(1) whether appropriate corrective action has been or can be taken without the necessity for a formal investigation; and

(2) whether the facts stated in the complaint are either plainly untrue or are incapable of being established through investigation.

For this purpose, the chief judge may request the judge whose conduct is complained of to file a written response to the complaint. Such response shall not be made available to the complainant unless authorized by the judge filing the response. The chief judge or his or her designee may also communicate orally or in writing with the complainant, the judge whose conduct is complained of, and any other person who may have knowledge of the matter, and may review any transcripts or other relevant documents. The chief judge shall not undertake to make findings of fact about any matter that is reasonably in dispute.

(b) ACTION BY CHIEF JUDGE FOLLOWING REVIEW.—After expeditiously reviewing a complaint under subsection (a), the chief judge, by written order stating his or her reasons, may—

(1) dismiss the complaint—

(A) if the chief judge finds the complaint to be—

(i) not in conformity with section 351(a);

(ii) directly related to the merits of a decision or procedural ruling; or

(iii) frivolous, lacking sufficient evidence to raise an inference that misconduct has occurred, or containing allegations which are incapable of being established through investigation; or

(B) when a limited inquiry conducted under subsection (a) demonstrates that the allegations in the complaint lack any factual foundation or are conclusively refuted by objective evidence; or

(2) conclude the proceeding if the chief judge finds that appropriate corrective action has been taken or that action on the complaint is no longer necessary because of intervening events.

The chief judge shall transmit copies of the written order to the complainant and to the judge whose conduct is the subject of the complaint.

(c) REVIEW OF ORDERS OF CHIEF JUDGE.—A complainant or judge aggrieved by a final order of the chief judge under this section may petition the judicial council of the circuit for review thereof. The denial of a petition for review of the chief judge’s order shall be final and conclusive and shall not be judicially reviewable on appeal or otherwise.

(d) REFERRAL OF PETITIONS FOR REVIEW TO PANELS OF THE JUDICIAL COUNCIL.—Each judicial council may, pursuant to rules prescribed under section 358, refer a petition for review filed under subsection (c) to a panel of no fewer than 5 members of the council, at least 2 of whom shall be district judges.


§ 353. Special committees

(a) APPOINTMENT.—If the chief judge does not enter an order under section 352(b), the chief judge shall promptly—

(1) appoint himself or herself and equal numbers of circuit and district judges of the circuit to a special committee to investigate the facts and allegations contained in the complaint;

(2) certify the complaint and any other documents pertaining thereto to each member of such committee; and

(3) provide written notice to the complainant and the judge whose conduct is the subject of the complaint of the action taken under this subsection.

(b) CHANGE IN STATUS OR DEATH OF JUDGES.—A judge appointed to a special committee under subsection (a) may continue to serve on that committee after becoming a senior judge or, in the case of the chief judge of the circuit, after his or her term as chief judge terminates under subsection (a)(3) or (c) of section 45. If a judge appointed to a committee under subsection (a) dies, or retires from office under section 371(a),
§ 354. Action by judicial council

(a) Actions Upon Receipt of Report.—

(1) Actions.—The judicial council of a circuit, upon receipt of a report filed under section 353(c)—

(A) may conduct any additional investigation which it considers to be necessary;

(B) may dismiss the complaint; and

(C) if the complaint is not dismissed, shall take such action as is appropriate to assure the effective and expeditious administration of the business of the courts within the circuit.

(2) Description of Possible Actions if Complaint Not Dismissed.—

(A) In General.—Action by the judicial council under paragraph (1)(C) may include—

(i) ordering that, on a temporary basis for a time certain, no further cases be assigned to the judge whose conduct is the subject of the complaint;

(ii) censuring or reprimanding such judge by means of private communication; and

(iii) censuring or reprimanding such judge by means of public announcement.

(B) For Article III Judges.—If the conduct of a judge appointed to hold office during good behavior is the subject of the complaint, action by the judicial council under paragraph (1)(C) may include—

(i) certifying disability of the judge pursuant to the procedures and standards provided under section 372(b); and

(ii) requesting that the judge voluntarily retire, with the provision that the length of service requirements under section 371 of this title shall not apply.

(C) For Magistrate Judges.—If the conduct of a magistrate judge is the subject of the complaint, action by the judicial council under paragraph (1)(C) may include directing the chief judge of the district of the magistrate judge to take such action as the judicial council considers appropriate.

(3) Limitations on Judicial Council Regarding Removals.—

(A) Article III Judges.—Under no circumstances may the judicial council order removal from office of any judge appointed to hold office during good behavior.

(B) Magistrate and Bankruptcy Judges.—Any removal of a magistrate judge under this subsection shall be in accordance with section 631 and any removal of a bankruptcy judge shall be in accordance with section 132.

(4) Notice of Action to Judge.—The judicial council shall immediately provide written notice to the complainant and to the judge whose conduct is the subject of the complaint of the action taken under this subsection.

(b) Referral to Judicial Conference.—

(1) In General.—In addition to the authority granted under subsection (a), the judicial council may, in its discretion, refer any complaint under section 351, together with the record of any associated proceedings and its recommendations for appropriate action, to the Judicial Conference of the United States.

(2) Special Circumstances.—In any case in which the judicial council determines, on the basis of a complaint and an investigation under this chapter, or on the basis of information otherwise available to the judicial council, that a judge appointed to hold office during good behavior may have engaged in conduct—

(A) which might constitute one or more grounds for impeachment under article II of the Constitution, or

(B) which, in the interest of justice, is not amenable to resolution by the judicial council,

the judicial council shall promptly certify such determination, together with any complaint and a record of any associated proceedings, to the Judicial Conference of the United States.

(3) Notice to Complainant and Judge.—A judicial council acting under authority of this subsection shall, unless contrary to the interests of justice, immediately submit written notice to the complainant and to the judge whose conduct is the subject of the action taken under this subsection.


§ 355. Action by Judicial Conference

(a) In General.—Upon referral or certification of any matter under section 354(b), the Judicial Conference, after consideration of the prior proceedings and such additional investigation as it considers appropriate, shall by majority vote take such action, as described in section 354(a)(1)(C) and (2), as it considers appropriate.

(b) If Impeachment Warranted.—

(1) In General.—If the Judicial Conference concurs in the determination of the judicial council, or makes its own determination, that consideration of impeachment may be warranted, it shall so certify and transmit the determination and the record of proceedings to the House of Representatives for whatever action the House of Representatives considers to be necessary. Upon receipt of the determination and record of proceedings in the House of Representatives, the Clerk of the House of Representatives shall make available to the
public the determination and any reasons for the determination.

(2) IN CASE OF FELONY CONVICTION.—If a judge has been convicted of a felony under State or Federal law and has exhausted all means of obtaining direct review of the conviction, or the time for seeking further direct review of the conviction has passed and no such review has been sought, the Judicial Conference may, by majority vote and without referral or certification under section 354(b), transmit to the House of Representatives a determination that consideration of impeachment may be warranted, together with appropriate court records, for whatever action the House of Representatives considers to be necessary.


§ 356. Subpoena power

(a) JUDICIAL COUNCILS AND SPECIAL COMMITTEES.—In conducting any investigation under this chapter, the judicial council, or a special committee appointed under section 333, shall have full subpoena powers as provided in section 322(d).

(b) JUDICIAL CONFERENCE AND STANDING COMMITTEES.—In conducting any investigation under this chapter, the Judicial Conference, or a standing committee appointed by the Chief Justice under section 331, shall have full subpoena powers as provided in that section.


§ 357. Review of orders and actions

(a) REVIEW OF ACTION OF JUDICIAL COUNCIL.—A complainant or judge aggrieved by an action of the judicial council under section 354 may petition the Judicial Conference of the United States for review thereof.

(b) ACTION OF JUDICIAL CONFERENCE.—The Judicial Conference, or the standing committee established under section 331, may grant a petition filed by a complainant or judge under subsection (a).

(c) NO JUDICIAL REVIEW.—Except as expressly provided in this section and section 352(c), all orders and determinations, including denials of petitions for review, shall be final and conclusive and shall not be judicially reviewable on appeal or otherwise.


§ 358. Rules

(a) IN GENERAL.—Each judicial council and the Judicial Conference may prescribe such rules for the conduct of proceedings under this chapter, including the processing of petitions for review, as each considers to be appropriate.

(b) REQUIRED PROVISIONS.—Rules prescribed under subsection (a) shall contain provisions requiring that—

(1) adequate prior notice of any investigation be given in writing to the judge whose conduct is the subject of a complaint under this chapter;

(2) the judge whose conduct is the subject of a complaint under this chapter be afforded an opportunity to appear (in person or by counsel) at proceedings conducted by the investigating panel, to present oral and documentary evidence, to compel the attendance of witnesses or the production of documents, to cross-examine witnesses, and to present argument orally or in writing; and

(3) the complainant be afforded an opportunity to appear at proceedings conducted by the investigating panel, if the panel concludes that the complainant could offer substantial information.

(c) PROCEDURES.—Any rule prescribed under this section shall be made or amended only after giving appropriate public notice and an opportunity for comment. Any such rule shall be a matter of public record, and any such rule promulgated by a judicial council may be modified by the Judicial Conference. No rule promulgated under this section may limit the period of time within which a person may file a complaint under this chapter.


§ 359. Restrictions

(a) RESTRICTION ON INDIVIDUALS WHO ARE SUBJECT OF INVESTIGATION.—No judge whose conduct is the subject of an investigation under this chapter shall serve upon a special committee appointed under section 353, upon a judicial council, upon the Judicial Conference, or upon the standing committee established under section 331, until all proceedings under this chapter relating to such investigation have been finally terminated.

(b) AMICUS CURIAE.—No person shall be granted the right to intervene or to appear as amicus curiae in any proceeding before a judicial council or the Judicial Conference under this chapter.


§ 360. Disclosure of information

(a) CONFIDENTIALITY OF PROCEEDINGS.—Except as provided in section 355, all papers, documents, and records of proceedings related to investigations conducted under this chapter shall be confidential and shall not be disclosed by any person in any proceeding except to the extent that—

(1) the judicial council of the circuit in its discretion releases a copy of a report of a special committee under section 353(c) to the complainant whose complaint initiated the investigation by that special committee and to the judge whose conduct is the subject of the complaint;

(2) the judicial council of the circuit, the Judicial Conference of the United States, or the Senate or the House of Representatives by resolution, releases any such material which is believed necessary to an impeachment investigation or trial of a judge under article I of the Constitution; or

(3) such disclosure is authorized in writing by the judge who is the subject of the complaint and by the chief judge of the circuit,
the Chief Justice, or the chairman of the standing committee established under section 331.

(b) PUBLIC AVAILABILITY OF WRITTEN ORDERS.—Each written order to implement any action under section 354(a)(1)(C), which is issued by a judicial council, the Judicial Conference, or the standing committee established under section 331, shall be made available to the public through the appropriate clerk’s office of the court of appeals for the circuit. Unless contrary to the interests of justice, each such order shall be accompanied by written reasons therefor.


§ 361. Reimbursement of expenses

Upon the request of a judge whose conduct is the subject of a complaint under this chapter, the judicial council may, if the complaint has been finally dismissed under section 354(a)(1)(B), recommend that the Director of the Administrative Office of the United States Courts award reimbursement, from funds appropriated to the Federal judiciary, for those reasonable expenses, including attorneys’ fees, incurred by that judge during the investigation which would not have been incurred but for the requirements of this chapter.


§ 362. Other provisions and rules not affected

Except as expressly provided in this chapter, nothing in this chapter shall be construed to affect any other provision of this title, the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, the Federal Rules of Appellate Procedure, or the Federal Rules of Evidence.


REFERENCES IN TEXT


The Federal Rules of Criminal Procedure, referred to in text, are set out in the Appendix to Title 18, Crimes and Criminal Procedure.

§ 363. Court of Federal Claims, Court of International Trade, Court of Appeals for the Federal Circuit

The United States Court of Federal Claims, the Court of International Trade, and the Court of Appeals for the Federal Circuit shall each prescribe rules, consistent with the provisions of this chapter, establishing procedures for the filing of complaints with respect to the conduct of any judge of such court and for the investigation and resolution of such complaints. In investigating and taking action with respect to any such complaint, each such court shall have the powers granted to a judicial council under this chapter.


§ 364. Effect of felony conviction

In the case of any judge or judge of a court referred to in section 363 who is convicted of a felony under State or Federal law and has exhausted all means of obtaining direct review of the conviction, or the time for seeking further direct review of the conviction has passed and no such review has been sought, the following shall apply:

(1) The judge shall not hear or decide cases unless the judicial council of the circuit (or, in the case of a judge of a court referred to in section 363, that court) determines otherwise.

(2) Any service as such judge or judge of a court referred to in section 363, after the conviction is final and all time for filing appeals thereof has expired, shall not be included for purposes of determining years of service under section 371(c), 377, or 178 of this title or creditable service under subchapter III of chapter 33, or chapter 94, of title 5.


CHAPTER 17—RESIGNATION AND RETIREMENT OF JUSTICES AND JUDGES

Sec.

371. Retirement on salary; retirement in senior status.

372. Retirement for disability; substitute judge on failure to retire.

373. Judges in Territories and Possessions.1

374. Residence of retired judges; official station.

375. Recall of certain judges and magistrate judges.

376. Annuities for survivors of certain judicial officials of the United States.

377. Retirement of bankruptcy judges and magistrate judges.

AMENDMENTS


1956—Act Aug. 3, 1956, ch. 944, §1(a), 70 Stat. 1021, substituted “Annuities to widows of justices” for “Annuities to widows on the Chief Justice and Associate Justices of the Supreme Court of the United States” in item 375 and added item 376.

1 Section catchline amended by Pub. L. 99–396 without corresponding amendment of analysis.
$371$. Retirement on salary; retirement in senior status

(a) Any justice or judge of the United States appointed to hold office during good behavior may retire from the office after attaining the age and meeting the service requirements, whether continuous or otherwise, of subsection (c) and shall, during the remainder of his lifetime, receive an annuity equal to the salary he was receiving at the time he retired.

(b)(1) Any justice or judge of the United States appointed to hold office during good behavior may retain the office but retire from regular active service after attaining the age and meeting the service requirements, whether continuous or otherwise, of subsection (c) of this section and shall, during the remainder of his or her lifetime, continue to receive the salary of the office if he or she meets the requirements of subsection (e).

(2) In a case in which a justice or judge who retires under paragraph (1) does not meet the requirements of subsection (e), the justice or judge shall continue to receive the salary that he or she was receiving when he or she was last in active service or, if a certification under subsection (b) was made to a justice who certifies in writing his or her disability to the Chief Justice, and to a justice or judge satisfying the requirements of such subparagraph as having a temporary or permanent disability. A certification under this subparagraph shall be deemed to have met the requirements of this subsection for each calendar year thereafter.

(c) The age and service requirements for retirement under this section are as follows:

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(d) The President shall appoint, by and with the advice and consent of the Senate, a successor to a justice or judge who retires under this section.

(e)(1) In order to continue receiving the salary of the office under subsection (b), a justice must be certified in each calendar year by the Chief Justice, and a judge must be certified by the chief judge of the circuit in which the judge sits, as having met the requirements set forth in at least one of the following subparagraphs:

(A) The justice or judge must have carried in the preceding calendar year a caseload involving courtroom participation which is equal to or greater than the amount of work involving courtroom participation which an average judge in active service would perform in three months. In the instance of a justice or judge who has sat on both district courts and courts of appeals, the caseload of appellate work and trial work shall be determined separately and the results of those determinations added together for purposes of this paragraph.

(B) The justice or judge performed in the preceding calendar year substantial judicial duties not involving courtroom participation under subparagraph (A), including settlement efforts, motion decisions, writing opinions in cases that have not been orally argued, and administrative duties for the court to which the justice or judge is assigned. Any certification under this subparagraph shall include a statement describing in detail the nature and amount of work and certifying that the work done is equal to or greater than the work described in this subparagraph which an average judge in active service would perform in three months.

(C) The justice or judge has, in the preceding calendar year, performed substantial administrative duties directly related to the operation of the courts, or has performed substantial duties for a Federal or State governmental entity. A certification under this subparagraph shall specify that the work done is equal to the full-time work of an employee of the judicial branch. In any year in which a justice or judge performs work described under this subparagraph for less than the full year, one-half of such work may be aggregated with work described under subparagraph (A), (B), or (C) of this paragraph for the purpose of the justice or judge satisfying the requirements of such subparagraph.

(E) The justice or judge was unable in the preceding calendar year to perform judicial or administrative work to the extent required by any of subparagraphs (A) through (D) because of a temporary or permanent disability. A certification under this subparagraph shall be made to a justice who certify in writing his or her disability to the Chief Justice, and to a judge who certifies in writing his or her disability to the chief judge of the circuit in which the justice sits. A justice or judge who is certified under this subparagraph as having a permanent disability shall be deemed to have met the requirements of this subsection for each calendar year thereafter.

(2) Determinations of work performed under subparagraphs (A), (B), (C), and (D) of paragraph (1) shall be made pursuant to rules promulgated by the Judicial Conference of the United States. In promulgating such criteria, the Judicial Conference shall take into account existing standards promulgated by the Conference for allocation of space and staff for senior judges.

(3) If in any year a justice or judge who retires under subsection (b) does not receive a certification under this subsection (except as provided in paragraph (1)(E)), he or she may thereafter receive a certification for that year by satisfying the requirements of subparagraphs (A), (B), (C), or (D) of paragraph (1) of this subsection in a subsequent year and attributing a sufficient...
part of the work performed in such subsequent year to the earlier year so that the work so attributed, when added to the work performed during such earlier year, satisfies the requirements for certification for that year. However, a justice or judge may not receive credit for the same work for purposes of certification for more than 1 year.

(4) In the case of any justice or judge who retires under subsection (b) during a calendar year, there shall be included in the determination under this subsection of work performed during that calendar year all work performed by that justice or judge (as described in subparagraphs (A), (B), (C), and (D) of paragraph (1)) during that calendar year before such retirement.

(June 25, 1948, ch. 646, 62 Stat. 903; Oct. 31, 1951, ch. 655, §39, 65 Stat. 724; Feb. 10, 1954, ch. 6, §4(a), 68 Stat. 12; Pub. L. 98–353, title II, §204(a), July 10, 1984, 98 Stat. 350; Pub. L. 100–702, title X, §1005(a), Nov. 19, 1988, 102 Stat. 4666; Pub. L. 101–194, title VII, §705(a), Nov. 30, 1989, 103 Stat. 1770; Pub. L. 104–317, §301(b), inserted at end “in any year in which a justice or judge performs work described under this subparagraph for less than the full year, one-half of such work may be aggregated with work described under subparagraph (A), (B), (C), or (D) of this paragraph for the purpose of the justice or judge satisfying the requirements of such subparagraph.”

Subsec. (f). Pub. L. 101–317, §301(a), substituted “may thereafter receive a part payment of such retired or retainer pay if he or she meets the requirements of subparagraph (f)” for “of the office,” and added par. (2).


Subsec. (a). Pub. L. 98–353 amended subsec. (a) generally, substituting “may retire from the office after attaining the age and meeting the service requirements, whether continuous or otherwise, of subsection (c) and shall, during the remainder of his lifetime, receive an annuity equal to the salary he was receiving at the time he retired” for “who resigns after attaining the age of seventy years and after serving at least ten years continuously or otherwise shall, during the remainder of his lifetime, continue to receive the salary which he was receiving when he resigned.”
§ 372. Retirement for disability; substitute judge on failure to retire

(a) Any justice or judge of the United States appointed to hold office during good behavior who becomes permanently disabled from performing his duties may retire from regular active service, and the President shall, by and with the advice and consent of the Senate, appoint a successor.

Any justice or judge of the United States desiring to retire under this section shall certify to the President his disability in writing.

Whenever an associate justice of the Supreme Court, a chief judge of a circuit or the chief judge of the Court of International Trade, desires to retire under this section, he shall furnish to the President a certificate of disability signed by the Chief Justice of the United States.

A circuit or district judge, desiring to retire under this section, shall furnish to the President a certificate of disability signed by the chief judge of his circuit.

Any judge of the Court of International Trade desiring to retire under this section, shall furnish to the President a certificate of disability signed by the chief judge of his court.

Each justice or judge retiring under this section after serving ten years continuously or otherwise shall, during the remainder of his lifetime, receive the salary of the office. A justice or judge retiring under this section who has served less than ten years in all shall, during the remainder of his lifetime, receive one-half the salary of the office.

(b) Whenever any judge of the United States appointed to hold office during good behavior who is eligible to retire under this section does not do so and a certificate of his disability signed by a majority of the members of the Judicial Council of his circuit in the case of a circuit or district judge, or by the Chief Justice of the United States in the case of the Chief Judge of the Court of International Trade, or by the Chief Judge of his court in the case of a judge of the Court of International Trade, is presented to the President and the President finds that such judge is unable to discharge efficiently all the duties of his office by reason of permanent mental or physical disability and that the appointment of an additional judge is necessary for the efficient dispatch of business, the President may make such appointment by and with the advice and consent of the Senate. Whenever any such additional judge is appointed, the vacancy subsequently caused by the death, resignation, or retirement of the disabled judge shall not be filled. Any judge whose disability causes the appointment of an additional judge shall, for purpose of precedence, service as chief judge, or temporary performance of the duties of that office, be treated as junior in commission to the other judges of the circuit, district, or court.

(Reads further.)

HISTORICAL AND REVISION NOTES

1948 ACT


This section consolidates sections 375b, 375c, and 375d of title 28, U.S.C., 1940 ed.

Section 375b of title 28, U.S.C., 1940 ed, providing that term ‘‘senior circuit judge’’ includes the Chief Justice of the United States Supreme Court, and the term ‘‘judicial circuit’’ includes the District of Columbia, was omitted from this revision as unnecessary. Such district is included as a judicial district by section 41 of this act.

Words ‘‘justice or judge of the United States’’ were used to describe members of all courts who hold office during good behavior. (See rewriter’s note under section 371 of this title.)

Term ‘‘chief judge’’ was substituted for ‘‘Chief Justice’’ of the Court of Claims, ‘‘presiding judge’’ of the Court of Customs and Patent Appeals and ‘‘senior circuit judge.’’ (See Revisor’s Note under section 136 of this title.)

For clarity and convenience the requirement that certificates of disability be submitted ‘‘to the President,’’ was made explicit.

The revised section requires a judge of the Customs Court to furnish a certificate of disability signed by the chief judge of his court, instead of by the chief judge of the Court of Customs and Patent Appeals as in said section 375c of title 28, U.S.C., 1940 ed. This change insures signing of the certificate of disability by the chief judge possessing knowledge of the facts.

Changes were made in phraseology and arrangement.

1949 ACT

Subsection (a) of this section amends section 372 of title 28, U.S.C., to express the requirement that appointment of successors to justices or judges must be made with confirmation by the Senate. Subsection (b) of this section clarifies the intent of section 372 of title 28, U.S.C., and conforms with the language of section 371 of such title.

AMENDMENTS


Subsec. (c). Pub. L. 107–273, §11043(a)(1)(B), struck out subsec. (c), which had authorized complaints against circuit, district, bankruptcy, and magistrate judges, and set forth procedures for investigation and disposition of complaints. See chapter 16 of this title.


1960—Subsec. (c)(1). Pub. L. 90–650, §402(a), inserted at end ‘‘In the interests of the effective and expeditious administration of the business of the courts and on the basis of information available to the chief judge of the circuit, the chief judge may, by written order stating reasons therefor, identify a complaint for purposes of this subsection and thereby dispense with filing of a written complaint’’.

Subsec. (c)(3)(B). Pub. L. 101–650, §402(f), inserted before period at end ‘‘or that action on the complaint is no longer necessary because of intervening events’’.

Subsec. (c)(4). Pub. L. 101–650, §402(b), inserted at end ‘‘A judge appointed to a special committee under this paragraph may continue to serve on that committee after becoming a senior judge or, in the case of the chief judge of the circuit, after his or her term as chief judge terminates under subsection (a)(3) or (c) of section 45 of this title. If a judge appointed to a committee under this paragraph dies, or retires from office under section 371(a) of this title, while serving on the committee, the chief judge of the circuit may appoint another circuit or district judge, as the case may be, to the committee.’’

Subsec. (c)(6). Pub. L. 101–650, §402(c)(2), added subpar. (C) and redesignated former subpar. (C) as (D).

Subsec. (c)(7)(D). Pub. L. 101–650, §402(c)(1), substituted ‘‘may have engaged in conduct’’ for ‘‘has engaged in conduct’’ in introductory provisions and ‘‘article II’’ for ‘‘article I’’ in cl. (1).

Subsec. (c)(8). Pub. L. 101–650, §402(d), designated existing provisions as subpar. (A) and added subpar. (B).

Pub. L. 101–650, §402(c)(1), inserted at end ‘‘Upon receipt of the determination and record of proceedings in the House of Representatives, the Clerk of the House of Representatives shall make available to the public the determination and any reasons for the determination.’’

Subsec. (c)(11). Pub. L. 101–650, §402(e), inserted at end ‘‘No rule promulgated under this subsection may limit the period of time within which a person may file a complaint under this subsection.’’

Subsec. (c)(14). Pub. L. 101–650, §402(c)(2)(A), (B), substituted ‘‘Except as provided in paragraph (8), all’’ for ‘‘All’’ and ‘‘except to the extent that’’ for ‘‘unless’’ in introductory provisions.


Pub. L. 101–650, §402(c)(2)(C), inserted ‘‘such disclosure is’’ before ‘‘authorized’’.

Subsec. (c)(14)(C). Pub. L. 101–650, §402(c)(2)(D), (1)(2), redesignated subpar. (C) as (D) and substituted ‘‘subject of the complaint’’ for ‘‘subject to the complaint’’.

Subsec. (c)(15) to (16). Pub. L. 101–650, §402(h), added par. (16) and redesignated former pars. (16) and (17) as (17) and (18), respectively.

1988—Subsec. (c)(11). Pub. L. 100–702 inserted before last sentence ‘‘Any such rule shall be made or amended only after giving appropriate public notice and an opportunity for comment.’’


Subsec. (b), Pub. L. 97–164, §112(b), struck out ‘‘Court of Claims, Court of Customs and Patent Appeals, or’’ before ‘‘Court of International Trade’’ wherever appearing.

Subsec. (c)(17). Pub. L. 97–164, §112(c), substituted ‘‘United States Claims Court, the Court of International Trade, and the Court of Appeals for the Federal Circuit’’ for ‘‘Court of Claims, the Court of Customs and Patent Appeals, and the Customs Court’’.


Subsecs. (a), (b). Pub. L. 96–417 redesignated the Customs Court as the Court of International Trade.

Subsec. (c). Pub. L. 96–438, §3(a), added subsec. (c).


1954—Act Feb. 10, 1954, inserted ‘‘; substitute judge on failure to retire’’ in section catchline (but without adding any provisions on such subject to the text of the subsection, see 1957 amendment) and inserted ‘‘under this section’’ after ‘‘retire’’ in third, fourth, and fifth pars.

1949—Act May 24, 1949, amended section to include provision that appointment of successors to justices or judges must be made with consent of Senate, and inserted ‘‘continuously or otherwise’’ after ‘‘Each judge or justice’’ in last par.
and meeting the service requirements whether continuous or otherwise, of subsection (b) shall, during the remainder of his lifetime, receive an annuity equal to the salary he is receiving at the time he retires.

(b) The age and service requirements for retirement under subsection (a) of this section are as follows:

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(c)(1) Any judge or former judge who is receiving an annuity pursuant to this section may elect to become a senior judge of the court upon which he served before retiring.

(2) The chief judge of a judicial circuit may recall any such senior judge, with the judge's consent, to perform, for the court from which he retired, such judicial duties for such periods of time as the chief judge may specify.

(3) Any act or failure to act by a senior judge performing judicial duties pursuant to recall under paragraph (2) of this subsection shall have the same force and effect as if it were an act or failure to act of a judge on active duty; but such senior judge shall not be counted as a judge of the court on which he is serving as a recalled annuitant for purposes of the number of judgeships authorized for that court.

(4) Any senior judge performing judicial duties pursuant to recall under paragraph (2) of this subsection shall be paid, while performing such duties, the same compensation (in lieu of the annuity payable under subsection (a) of this section) and the same allowances for travel and other expenses as a judge on active duty with the court being served.

(5) Any senior judge performing judicial duties pursuant to recall under paragraph (2) of this subsection shall at all times be governed by the code of judicial conduct for United States judges approved by the Judicial Conference of the United States.

(d) Any judge who elects to become a senior judge under subsection (c) of this section and who thereafter—

(1) accepts civil office or employment under the Government of the United States (other than the performance of judicial duties pursuant to recall under subsection (c) of this section);

(2) engages in the practice of law; or

(3) materially violates the code of judicial conduct for United States judges shall cease to be a senior judge and to be eligible for recall pursuant to subsection (c) of this section.

(e) Any judge of the District Court of Guam, the District Court of the Northern Mariana Islands, or the District Court of the Virgin Islands who is removed by the President of the United States upon the sole ground of mental or physical disability, or who is not reappointed (as judge of such court), shall be entitled, upon attaining the age of sixty-five years or upon relinquishing office if he is then beyond the age of...
sixty-five years, (1) if his judicial service, continuous or otherwise, aggregates fifteen years or more, to receive during the remainder of his life an annuity equal to the salary he received when he left office, or (2) if his judicial service, continuous or otherwise, aggregated less than fifteen years but not less than ten years, to receive during the remainder of his life an annuity equal to that proportion of such salary which the aggregate number of his years of his judicial service bears to fifteen.

(f) Service at any time as a judge of the courts referred to in subsection (a) or of any other court of the United States, as defined by section 451 of this title, shall be included in the computation of aggregate years of judicial service for purposes of this section.

Any retired judge who is entitled to receive an annuity under subsection (a) shall be entitled to a cost of living adjustment in the amount payable to him computed as specified in section 8340(b) of title 5, except that in no case may the annuity payable to such retired judge, as increased under this subsection, exceed 95 per centum of the salary of a United States district court judge in regular active service.

(Historical and Revision Notes)


**AMENDMENTS**

1986—Pub. L. 99–396 amended section generally. Prior to amendment, section read as follows:

"Any judge of the United States District Court for the District of the Canal Zone, the District Court of Guam, or the District Court of the Virgin Islands, who resigns after attaining the age of seventy years or after serving at least ten years, continuously or otherwise, or after attaining the age of sixty-five years and after serving at least fifteen years, continuously or otherwise, shall continue during the remainder of his life to receive the salary he received when he relinquished office.

"Any judge of any such courts who is removed by the President of the United States upon the sole ground of mental or physical disability, or who fails of reappointment, shall be entitled, upon attaining the age of sixty-five years or upon relinquishing office if he is then beyond the age of sixty-five years, (a) if his judicial service aggregated sixteen years or more, to receive during the remainder of his life the salary he received when he relinquished office, or (b) if his judicial service aggregated less than sixteen years but not less than ten years, to receive during the remainder of his life that proportion of such salary which the aggregate number of years of his judicial service bears to sixteen.

"Any judge at any time in any other court under appointment by the President, shall be included in the computation of aggregate years of judicial service for the purposes of this section.

"Any judge who has retired by resigning under the provisions of this section, or who is otherwise entitled to payments under this section, shall be entitled after the effective date of this Act to a cost-of-living adjustment in the amount payable to him computed as specified in section 8340(b) of title 5, United States Code: Provided, however, That in no case shall the salary or amount payable to such judge as increased under this paragraph exceed 95 per centum of the salary of a United States district court judge in regular active service."

1976—Pub. L. 94–470 inserted cost-of-living adjustment provision, including limitation of payment to amount no greater than 95 per centum of salary of a United States district court judge in regular active service.

1966—Pub. L. 89–571 removed the United States District Court for District of Puerto Rico from list of courts to which the provisions of section are applicable.

1959—Pub. L. 86–3 struck out references to judges of United States District Court for District of Hawaii and to justices of Supreme Court of Territory of Hawaii. See section 91 of this title and notes thereunder.


1954—Act Feb. 10, 1954, among other changes, inserted provisions for retirement after attaining the age of 65 years and after serving at least fifteen years continuously or otherwise, changed period of service in connection with retirement at age 70, and reduced from 70 to 65 years the age requirement in connection with payment of salary after removal for mental or physical disability or failure of reappointment.

1951—Act Oct. 31, 1951, inserted reference to judge of District Court of Guam in first par.

Effective Date of 1986 Amendment

Section 21(c) of Pub. L. 99–396 provided that: "The amendments made by this section [amending this section and section 373 of this title] shall not affect the amount payable to a judge who retired in accordance with the provisions of section 373 of title 28, United States Code, in effect on the day before the date of enactment of this Act [Aug. 27, 1986]."

Effective Date of 1959 Amendment

Amendment by Pub. L. 86–3 effective on admission of State of Hawaii into the Union, see note set out under section 91 of this title. Admission of Hawaii into the Union was accomplished Aug. 21, 1959, upon issuance of Proc. No. 3309, Aug. 21, 1959, 25 F.R. 6888, 73 Stat. c74, as required by sections 1 and 2(c) of Pub. L. 86–3, Mar. 18, 1959, 73 Stat. 4, set out as notes preceding section 491 of Title 48, Territories and Insular Possessions.

Effective Date of 1958 Amendment

Amendment by Pub. L. 85–508 effective Jan. 3, 1959, upon 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 6(c) of Pub. L. 85–508, see notes set out under section 81A of this title and preceding section 21 of Title 48, Territories and Insular Possessions.

Election, Recall, Status, Compensation, Conduct, and Termination of Senior Judges

Pub. L. 94–454, title X, §1002, Oct. 5, 1984, 98 Stat. 1745, provided that:

"(a) Any judge or former judge who is receiving, or will upon attaining the age of sixty-five years be entitled to receive, payments pursuant to section 373 of title 28, United States Code[,] may elect to become a senior judge of the court on which he served while on active duty of the courts referred to in the first paragraph, or in any other court under appointment by the President, shall be included in the
consent, to perform in the District Court of Guam, the District Court of the Virgin Islands, or the District Court for the Northern Mariana Islands such judicial duties and for such periods of time as the chief judge may specify.

“(c) Any act or failure to act by a senior judge performing judicial duties pursuant to this section shall have the same force and effect as if it were the act or failure to act of a judge on active duty; but such senior judge shall not be counted as a judge of the court on which he is serving for purposes of the number of judgeships authorized for that court.

“(d) Any senior judge shall be paid, while performing duties pursuant to this section, the same compensation and allowances for travel and other expenses as a judge in active service.

“(e) Senior judges under subsection (a) of this section shall at all times be governed by the code of judicial conduct for the United States judges, approved by the Judicial Conference of the United States.

“(f) Any person who has elected to be a senior judge under subsection (a) of this section and who thereafter—

“(1) accepts civil office or employment under the Government of the United States (other than the performance of judicial duties pursuant to subsection (b) of this section);

“(2) engages in the practice of law; or

“(3) materially violated the code of judicial conduct for the United States judges, shall cease to be a senior judge and to be eligible for recall pursuant to subsection (b) of this section.”

**Section 14(d) of Pub. L. 86–3 provided in part: “That the amendments made by this subsection shall not affect the rights of any judge or justice who may have retired before the effective date of this subsection”. See Effective Date of 1959 Amendment note above.**

**Preservation of Rights of Retired Judges of the District Court for the District of Hawaii and Justices of the Supreme Court of the Territory of Hawaii**

Section 14(d) of Pub. L. 86–3 provided in part: “That the amendments made by this subsection shall not affect the rights of any judge or justice who may have retired before the effective date of this subsection”. See Effective Date of 1959 Amendment note above.

**Preservation of Rights of Retired Judges of the District Court for the Territory of Alaska**

Section 12(d) of Pub. L. 85–508 provided in part: “That the amendments made by this subsection shall not affect the rights of any judge who may have retired before it takes effect”. See Effective Date of 1958 Amendment note above.

**Judicial Service in Hawaii**

Certain judicial service in Hawaii included within computation of aggregate years of judicial service, see section 14(d) of Pub. L. 86–3, set out as a note under section 371 of this title.

§ 374. Residence of retired judges; official station

Retired judges of the United States are not subject to restrictions as to residence. The place where a retired judge maintains the actual abode in which he customarily lives shall be deemed to be his official station for the purposes of section 456 of this title. The place where a judge or magistrate judge recalled under section 155, 375, 636, or 797 of this title maintains the actual abode in which the judge or magistrate judge customarily lives shall be deemed to be the official station of such judge or magistrate judge for purposes of section 604(a)(7) of this title.


**Historical and Revision Notes**


Sections 44 and 133 of this title require that active circuit and district judges shall reside in the circuit or district to which appointed.

Changes were made in phraseology.

**Amendments**


1959—Pub. L. 86–312 inserted sentence to provide that place where retired judge maintains actual abode shall be deemed to be his official station and inserted “official station” in section catchline.

**Change of Name**

Words “magistrate judge” substituted for “magistrate” 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 1986 Amendment**


§ 375. Recall of certain judges and magistrate judges

(a)(1) A bankruptcy judge or a United States magistrate judge appointed under chapter 43 of this title, who has retired under the provisions of section 377 of this title or under the applicable provisions of title 5 upon attaining the age and years of service requirements established in section 371(c) of this title, may agree to be recalled to serve under this section for a period of five years as a bankruptcy judge or magistrate judge, as the case may be, upon certification that substantial service is expected to be performed by such retired judge or magistrate judge during such 5-year period. With the agreement of the judge or magistrate judge involved, a certification under this subsection may be renewed for successive 5-year periods.

(2) For purposes of paragraph (1) of this subsection, a certification may be made, in the case of a bankruptcy judge or a United States magistrate, by the judicial council of the circuit in which the official duty station of the judge or magistrate at the time of retirement was located.

(3) For purposes of this section, the term “bankruptcy judge” means a bankruptcy judge appointed under chapter 6 of this title or serving as a bankruptcy judge on March 31, 1984.

(b) A judge or magistrate judge recalled under this section may exercise all of the powers and duties of the office of judge or magistrate judge held at the time of retirement, including the ability to serve in any other judicial district to

1 So in original. Probably should be “United States magistrate judge.”.
the extent applicable, but may not engage in the practice of law or engage in any other business, occupation, or employment inconsistent with the expeditious, proper, and impartial performance of duties as a judicial officer.

(c) During the 5-year period in which a certification under subsection (a) is in effect, the judge or magistrate judge involved shall receive, in addition to the annuity provided under the provisions of section 377 of this title or under the applicable provisions of title 5, an amount equal to the difference between that annuity and the current salary of the office to which the judge or magistrate judge is recalled. The annuity of a bankruptcy judge or magistrate judge who completes that 5-year period of service, whose certification is not renewed, and who retired under section 377 of this title shall be equal to the salary in effect, at the end of that 5-year period, for the office from which he or she retired.

(d) A certification under subsection (a) may be terminated in accordance with chapter 16 of this title, and such a certification shall be terminated upon the death of the recalled judge or magistrate judge involved. Except as provided in subsection (b), nothing in this section shall affect the right of judges or magistrate judges who retire under the provisions of chapter 83 or chapter 84 of title 5 to serve as reemployed annuitants in accordance with the provisions of title 5. A judge or magistrate judge to whom this section applies may be recalled under section 155, 636(h), or 797 of this title, as the case may be, other than during a 5-year period in which a certification under subsection (a) is in effect with respect to that judge or magistrate judge.

(f) For purposes of determining the years of service requirements in order to be eligible for recall under this section, any service as a bankruptcy judge or a United States magistrate judge, and any prior service as a referee in bankruptcy or a United States commissioner, may be credited.

(g) Except as provided in subsection (c), a judge or magistrate judge recalled under this section who retired under the applicable provisions of title 5 shall be considered to be a reemployed annuitant under chapter 83 or chapter 84, as the case may be, of title 5.

(h) The Judicial Conference of the United States may promulgate regulations to implement this section.


Prior Provisions


Amendments


Subsec. (a)(2). Pub. L. 102–572, §904(a)(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “For purposes of paragraph (1) of this subsection, a certification may be made—

“(A) in the case of a bankruptcy judge or a United States magistrate, by the judicial council of the circuit in which the official duty station of the judge or magistrate at the time of retirement was located; and

“(B) in the case of a judge of the Claims Court, by the chief judge of the United States Claims Court.”

Subsec. (a)(3). Pub. L. 102–572, §904(a)(3), amended par. (3) generally. Prior to amendment, par. (3) read as follows: “For purposes of this section—

“(A) the term ‘bankruptcy judge’ means a bankruptcy judge appointed under chapter 6 of this title or serving as a bankruptcy judge on March 31, 1984; and

“(B) the term ‘judge of the Claims Court’ means a judge of the United States Claims Court who is appointed under chapter 7 of this title or who has served under section 167 of the Federal Courts Improvement Act of 1982.”

1990—Subsec. (a)(1). Pub. L. 101–650 substituted “section 377 of this title” for “section 371 of title”. Subsec. (c). Pub. L. 100–659, §4(b)(1), inserted “under the provisions of section 377 of title or” after “has retired”. Subsec. (c). Pub. L. 100–659, §4(b)(2), inserted “under the provisions of section 377 of title or” after “annuity provided” and inserted at end “The annuity of a bankruptcy judge or magistrate who completes that five-year period of service, whose certification is not renewed, and who retired under section 377 of this title shall be equal to the salary in effect, at the end of that five-year period, for the office from which he or she retired.” Subsec. (g). Pub. L. 100–659, §4(b)(3), inserted “who retired under the applicable provisions of title 5 after” after “section”.

Change of Name

Words “magistrate judge” and “magistrate judges” substituted for “magistrate” and “magistrates”, respectively, wherever appearing in section catchline and text pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of this title.

Effective Date of 1992 Amendment


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


§376. Annuities for survivors of certain judicial officials of the United States

(a) For the purposes of this section—

(1) “judicial official” means:
(A) a Justice or judge of the United States, as defined by section 451 of this title; 
(B) a judge of the District Court of Guam, the District Court of the Northern Mariana Islands, or the District Court of the Virgin Islands; 
(C) a Director of the Administrative Office of the United States Courts, after he or she has filed a waiver under subsection (a) of section 611 of this title; 
(D) a Director of the Federal Judicial Center, after he or she has filed a waiver under subsection (a) of section 627 of this title; 
(E) a Counselor to the Chief Justice of the United States, after he or she has filed a waiver in accordance with both subsection (a) of section 677 and subsection (a) of section 611 of this title; 
(F) a full-time bankruptcy judge or a full-time United States magistrate judge; or 
(G) a judge of the United States Court of Federal Claims; 

who notifies the Director of the Administrative Office of the United States Courts in writing of his or her intention to come within the purview of this section within six months after (i) the date upon which he or she takes office, (ii) the date upon which he or she marries, (iii) January 1, 1977, (iv) October 1, 1986, (v) the date of the enactment of the Retirement and Survivors’ Annuities for Bankruptcy Judges and Magistrates Act of 1988, in the case of a full-time bankruptcy judge or United States magistrate judge in active service on that date, (vi) the date of the enactment of the Federal Courts Study Committee Implementation Act of 1990, in the case of a full-time judge of the Court of Federal Claims in active service on that date, or (vii) the date of the enactment of the Federal Courts Administration Act of 1992;

(2) “retirement salary” means:

(A) in the case of a Justice or judge of the United States, as defined by section 451 of this title, salary paid (i) after retirement from regular active service under subsection (b) of section 371 or subsection (a) of section 372 of this title, or (ii) after retirement from office by resignation on salary under subsection (a) of section 371 of this title; 
(B) in the case of a judge of the District Court of Guam, the District Court of the Northern Mariana Islands, or the District Court of the Virgin Islands, (i) an annuity paid under subsection (a) of section 373 of this title or (ii) after retirement from office by resignation on salary under subsection (a) of section 371 of this title; 
(C) in the case of a Director of the Administrative Office of the United States Courts, an annuity paid under subsection (b) or (c) of section 611 of this title; 
(D) in the case of a Director of the Federal Judicial Center, an annuity paid under subsection (b) or (c) of section 627 of this title; 
(E) in the case of a Counselor to the Chief Justice of the United States, an annuity paid in accordance with both subsection (a) of section 677 and subsection (a) of section 611 of this title; 
(F) in the case of a bankruptcy judge or United States magistrate judge, an annuity paid under section 377 of this title; and 
(G) in the case of a judge of the United States Court of Federal Claims, an annuity paid under section 178 of this title;

(3) “widow” means the surviving wife of a “judicial official”, who:

(A) has been married to him for at least one year on the day of his death; or 
(B) is the mother of issue by that marriage;

(4) “widower” means the surviving husband of a “judicial official”, who:

(A) has been married to her for at least one year on the day of her death; or 
(B) is the father of issue by that marriage;

(5) “child” means:

(A) an unmarried child under eighteen years of age, including (i) an adopted child and (ii) a stepchild or recognized natural child who lived with the judicial official in a regular parent-child relationship; 
(B) such unmarried child between eighteen and twenty-two years of age who is a student regularly pursuing a full-time course of study or training in residence in a high school, trade school, technical or vocational institute, junior college, college, university, or comparable educational institution. A child whose twenty-second birthday occurs before July 1, or after August 31, of a calendar year, and while he or she is regularly pursuing such a course of study or training, is deemed to have become twenty-two years of age on the first day of July immediately following that birthday. A child who is a student is deemed not to have ceased being a student during an interim period between school years, if that interim period lasts no longer than five consecutive months and if that child shows, to the satisfaction of the Director of the Administrative Office of the United States Courts, that he or she has a bona fide intention of continuing to pursue a course of study or training in the same or a different school during the school semester, or other period into which the school year is divided, immediately following that interim period; or 
(C) such unmarried child, regardless of age, who is incapable of self-support because of a mental or physical disability incurred either (i) before age eighteen, or (ii) in the case of a child who is receiving an annuity as a full-time student under paragraph (5)(B) of this subsection, before the termination of that annuity;

(6) “former spouse” means a former spouse of a judicial official if the former spouse was married to such judicial official for at least 9 months; and 

(7) “assassinated” and “assassination” mean the killing of a judicial official described in paragraph (1)(A), (B), (F), or (G) of this subsection that is motivated by the performance by that judicial official of his or her official duties. 

(b)(1) Every judicial official who files a written notification of his or her intention to come
within the purview of this section, in accordance with paragraph (1) of subsection (a) of this section, shall be deemed thereby to consent and agree to having deducted and withheld from his or her salary a sum equal to 2.2 percent of that salary, and a sum equal to 3.5 percent of his or her retirement salary. The deduction from any retirement salary—

(A) of a justice or judge of the United States retired from regular active service under section 371(b) or section 372(a) of this title.

(B) of a judge of the United States Court of Federal Claims retired under section 178 of this title, or

(C) of a judicial official on recall under section 155(b), 375(c)(4), 375, or 636(h) of this title, shall be an amount equal to 2.2 percent of retirement salary.

(2) A judicial official who is not entitled to receive an immediate retirement salary upon leaving office but who is eligible to receive a deferred retirement salary on a later date shall file, within 90 days before leaving office, a written notification of his or her intention to remain within the purview of this section under such conditions and procedures as may be determined by the Director of the Administrative Office of the United States Courts. Every judicial official who files a written notification in accordance with this paragraph shall be deemed to consent to contribute, during the period before such a judicial official begins to receive his or her retirement salary, a sum equal to 3.5 percent of the deferred retirement salary which that judicial official is entitled to receive. Any judicial official who fails to file a written notification under this paragraph shall be deemed to have revoked his or her election under subsection (a) of this section.

(3) The amounts deducted and withheld from the salary of each judicial official under paragraphs (1) and (2) of this subsection shall, in accordance with such procedures as may be prescribed by the Comptroller General of the United States, be covered into the Treasury of the United States and credited to the "Judicial Survivors' Annuities Fund" established by section 3 of the Judicial Survivors' Annuities Reform Act. Such fund shall be used for the payment of annuities, refunds, and allowances as provided by this section. Payment of such salary less such deductions (and any deductions made under section 178 or 377 of this title or under subchapter III of chapter 83, or chapter 84, of title 5) shall be a full and complete discharge and acquittance of all claims and demands whatsoever for all services rendered by such judicial official during the period covered by such payment, except the rights to those benefits to which such judicial official, or his or her survivors, shall be entitled under the provisions of this section (and under section 178 or 377 of this title or under subchapter III of chapter 83, or chapter 84, of title 5).

(c)(1) There shall also be deposited to the credit of the Judicial Survivors' Annuities Fund, in accordance with such procedures as the Comptroller General of the United States may prescribe, amounts required to reduce to zero the unfunded liability of the Judicial Survivors' Annuities Fund: Provided, That such amounts shall not exceed the equivalent of 9 percent of salary or retirement salary. Such deposits shall, subject to appropriations Acts, be taken from the fund used to pay the compensation of the judicial official, and shall immediately become an integrated part of the Judicial Survivors' Annuities Fund for any use required under this section.

(2) For purposes of paragraph (1), the term "unfunded liability" means the estimated excess, determined on an annual basis in accordance with the provisions of section 9503 of title 31, United States Code, of the present value of all benefits payable from the Judicial Survivors' Annuities Fund, over the sum of—

(A) the present value of deductions to be withheld from the future basic pay of judicial officials; plus

(B) the balance in the Fund as of the date the unfunded liability is determined.

In making any determination under this paragraph, the Comptroller General shall use the applicable information contained in the reports filed pursuant to section 9503 of title 31, United States Code, with respect to the judicial survivors' annuities plan established by this section.

(3) There are authorized to be appropriated such sums as may be necessary to carry out this subsection.

(d) Each judicial official shall deposit, with interest at 4 percent per annum to December 31, 1947, and at 3 percent per annum thereafter, compounded on December 31 of each year, to the credit of the "Judicial Survivors' Annuities Fund":

(I) a sum equal to 3.5 percent of that salary, including "retirement salary", which he or she has received for serving in any of the offices designated in paragraph (1) of subsection (a) of this section prior to the date upon which he or she filed notice of an intention to come within the purview of this section with the Director of the Administrative Office of the United States Courts; and

(2) a sum equal to 3.5 percent of the basic salary, pay, or compensation which he or she has received for serving as a Senator, Representative, Delegate, or Resident Commissioner in Congress, or for serving as an "employee", as that term is defined in subsection (1) of section 8331 of title 5, prior to assuming the responsibilities of any of the offices designated in paragraph (1) of subsection (a) of this section.

The interest otherwise required by this subsection shall not be required for any period during which a judicial official was separated from all such service and was not receiving any retirement salary.

Each such judicial official may elect to make such deposits in installments, during the continuance of his or her service in those offices designated in paragraph (1) of subsection (a) of this section, in such amounts and under such conditions as may be determined in each instance by the Director of the Administrative Office of the United States Courts: Provided, That, in each instance in which a judicial official does elect to make such deposits in installments, the
Director shall require (i) that the first installment payment made shall be in an amount no smaller than that amount necessary to cover at least the last eighteen months of prior creditable civilian service, and (ii) that at least one additional installment payment shall be made every eighteen months thereafter until the total of all such deposits have been made.

Notwithstanding the failure of any such judicial official to make all such deposits or installment payments, credit shall be allowed for the service rendered, but the annuity of that judicial official's widow or widower shall be reduced by an amount equal to 10 percent of the amount of such deposits, computed as of the date of the death of such judicial official, unless such widow or widower shall elect to eliminate such service entirely from credit under subsection (k) of this section: Provided, That no deposit shall be required from any such judicial official for any honorable active duty service in the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States, or for any other creditable service rendered prior to August 1, 1930.

(e) The amounts deducted and withheld in accordance with subsection (b) of this section, and the amounts deposited in accordance with subsection (d) of this section, shall be credited to individual accounts in the name of each judicial official from whom such amounts are received, for credit to the "Judicial Survivors' Annuities Fund".

(f) The Secretary of the Treasury shall invest, from time to time, in interest bearing securities of the United States or Federal farm loan bonds, those portions of the "Judicial Survivors' Annuities Fund" which in his judgment may not be immediately required for the payment of annuities, refunds, and allowances as provided in this section. The income derived from such investments shall constitute a part of such fund for the purposes of paying annuities and carrying out the provisions of subsections (g), (h), (m), (o), (p), and (q) of this section.

(g) If any judicial official leaves office and is ineligible to receive a retirement salary or leaves office and is entitled to a deferred retirement salary but fails to make an election under subsection (b)(2) of this section, all amounts credited to his or her account established under subsection (e), together with interest at 4 percent per annum to December 31, 1947, and at 3 percent per annum thereafter, compounded on December 31 of each year, to the date of his or her relinquishment of office, minus a sum equal to 2.2 percent of salary for service while deductions were withheld under subsection (b) or for which a deposit was made by the judicial official under subsection (d), shall be returned to that judicial official in a lump-sum payment within a reasonable period of time following the date of his or her relinquishment of office. For the purposes of this section, a "reasonable period of time" shall be presumed to be no longer than 1 year following the date upon which such judicial official relinquishes his or her office.

(h) Annuities payable under this section shall be paid only in accordance with the following provisions:

(1) In any case in which a judicial official dies while in office, while receiving retirement salary, or after filing an election and otherwise complying with the conditions under subsection (b)(2) of this section (A) after having completed at least eighteen months of creditable civilian service, as computed in accordance with subsection (k) of this section, for the last eighteen months of which the salary deductions provided by subsection (b) of this section or, in lieu thereof, the deposits required by subsection (d) of this section have actually been made, or (B) if the death of such judicial official was by assassination, before having satisfied the requirements of clause (A) if, for the period of such service, the deductions provided by subsection (b) or, in lieu thereof, the deposits required by subsection (d) have actually been made:

(i) if such judicial official is survived by a widow or widower, but not by a child, there shall be paid to such widow or widower an annuity, beginning on the day on which such judicial official died, in an amount computed as provided in subsection (l) of this section; or

(ii) if such judicial official is survived by a widow or widower and a child or children, there shall be paid to such widow or widower an annuity, beginning on the day on which such judicial official died, in an amount computed as provided in subsection (l) of this section, and there shall also be paid to or on behalf of each such child an immediate annuity equal to:

(I) 10 percent of the average annual salary determined under subsection (l)(1) of this section; or

(II) 20 percent of such average annual salary, divided by the number of children; whichever is smallest; or

(iii) if such judicial official leaves no surviving widow or widower, but does leave a surviving child or children, there shall be paid to or on behalf of each such child an immediate annuity equal to:

(I) the amount of the annuity to which the judicial official's widow or widower would have been entitled under clause (i) of this paragraph, had such widow or widower survived the judicial official, divided by the number of children; or

(II) 20 percent of the average annual salary determined under subsection (l)(1) of this section; or

(III) 40 percent of such average annual salary amount, divided by the number of children; whichever is smallest.

(2) An annuity payable to a widow or widower under clause (i) or (ii) of paragraph (1) of this subsection shall be terminated upon his or her death or remarriage before attaining age 55, subject to subsection (x).

(3) An annuity payable to a child under this subsection shall terminate:

(A) if such child is receiving an annuity based upon his or her status under paragraph (5)(A) of subsection (a) of this section, on the last day of the month during which he or she becomes eighteen years of age;

(B) if such child is receiving an annuity based upon his or her status under paragraph
§ 376

(5)(B) of subsection (a) of this section, either (i) on the first day of July immediately following his or her twenty-second birthday or (ii) on the last day of the month during which he or she ceases to be a full-time student in accordance with paragraph (5)(B) of subsection (a) of this section, whichever occurs first: Provided, That if such child is rendered incapable of self-support because of a mental or physical disability incurred while receiving that annuity, that annuity shall not terminate, but shall continue without interruption and shall be deemed to have become, as of the date of disability, an annuity based upon his or her status under clause (ii) of paragraph (5)(C) of subsection (a) of this section;

(C) if such child is receiving an annuity based upon his or her status under paragraph (5)(C) of subsection (a) of this section, on the last day of the month during which he or she ceases to be incapable of self-support because of mental or physical disability; or

(D) on the last day of the month during which such child dies or marries.

(4) An annuity payable to a child or children under paragraph (1)(ii) of this subsection shall be recomputed and paid as provided in paragraph (1)(iii) of this subsection upon the death, but not upon the remarriage, of the widow or widower who is receiving an annuity under paragraph (1)(ii) of this subsection.

(5) In any case in which the annuity of a child is terminated, the annuity of each remaining child which is based upon the service of the same judicial official shall be recomputed and paid as though the child whose annuity has been terminated had not survived that judicial official.

(6) In the case of the survivor or survivors of a judicial official to whom paragraph (1)(B) applies, there shall be deducted from the annuities otherwise payable under this section an amount equal to the amount of salary deductions that would have been made if such deductions had been made for 18 months prior to the judicial official's death.

(1)(1) All questions of dependency and disability arising under this section shall be determined by the Director of the Administrative Office of the United States Courts, subject to review only by the Judicial Conference of the United States, and the decision of the Judicial Conference of the United States shall be final.

(2) The Director of the Administrative Office of the United States Courts shall determine whether the killing of a judicial official was an assassination, subject to review only by the Judicial Conference of the United States. The head of any Federal agency that investigates the killing of a judicial official shall provide information to the Director that would assist the Director in making such determination.

(j) In any case in which a payment under this section is to be made to a minor, or to a person mentally incompetent or under other legal disability, as determined by a court of competent jurisdiction, such payment may be made to the person who is constituting guardian, or other fiduciary of such claimant by the laws of the State of residence of such claimant, or to any other person who is otherwise legally vested with the care of the claimant or of the claimant's estate, and need not be made directly to such claimant. The Director of the Administrative Office of the United States Courts may, at his or her discretion, determine whether such payment is made directly to such claimant or to such guardian, fiduciary, or other person legally vested with the care of such claimant or the claimant's estate. Where no guardian or other fiduciary of such minor or such person under legal disability has been appointed under the laws of the State of residence of such claimant, the Director of the Administrative Office of the United States Courts shall determine the person who is otherwise legally vested with the care of the claimant or of the claimant's estate.

(k) The years of service rendered by a judicial official which may be creditable in calculating the amount of an annuity for such judicial official's widow or widower under subsection (i) of this section shall include—

(1) those years during which such judicial official served in any of the offices designated in paragraph (1) of subsection (a) of this section, including in the case of a Justice or judge of the United States those years during which he or she continued to hold office following retirement from regular active service under section 371 or subsection (a) of section 372 of this title;

(2) those years during which such judicial official served as a Senator, Representative, Delegate, or Resident Commissioner in Congress, prior to assuming the responsibilities of any of the offices designated in paragraph (1) of subsection (a) of this section;

(3) those years during which such judicial official honorably served on active duty in the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States, prior to assuming the responsibilities of any of the offices designated in paragraph (1) of subsection (a) of this section;

(4) those years during which such judicial official served as an "employee", as that term is defined in subsection (1) of section 8331 of title 5, prior to assuming the responsibilities of any of the offices designated in paragraph (1) of subsection (a) of this section, and

(5) those years during which such judicial official had deductions withheld from his or her retirement salary in accordance with subsection (b)(1) or (2) of this section.

For the purposes of this subsection the term "years" shall mean full years and twelfth parts

1 So in original. Comma probably should be a semicolon.
 thereof, excluding from the aggregate any fractional part of a month which numbers less than fifteen full days and including, as one full month, any fractional part of a month which numbers fifteen full days or more. Nothing in this subsection shall be interpreted as waiving or canceling that reduction in the annuity of a widow or widower which is required by subsection (d) of this section due to the failure of a judicial official to make those deposits required by subsection (d) of this section.

(l) The annuity of a widow or widower of a judicial official shall be an amount equal to the sum of—

(1) 1.5 percent of the average annual salary, including retirement salary, which such judicial official received for serving in any of the offices designated in paragraph (1) of subsection (a) of this section during those three years of such service, or during those three years while receiving a retirement salary, in which his or her annual salary or retirement salary was greatest, or (ii) if such judicial official has so served less than three years, then during the total period of such service prior to his or her death, multiplied by the total of:

(A) the number of years of creditable service tabulated in accordance with paragraph (1) of subsection (k) of this section; plus
(B) the number of years of creditable service tabulated in accordance with paragraph (2) of subsection (k) of this section; plus
(C) the number of years of creditable service tabulated in accordance with paragraph (3) of subsection (k) of this section; plus
(D) the number of years during which the judicial official had deductions withheld from his or her retirement salary under subsection (b)(1) or (2) of this section; plus
(E) the number of years up to, but not exceeding, fifteen of creditable service tabulated in accordance with paragraph (4) of subsection (k) of this section, plus:

(2) three-fourths of 1 percent of such average annual salary, multiplied by the number of years of any prior creditable service, as tabulated in accordance with subsection (k) of this section, not applied under paragraph (1) of this subsection;

except that such annuity shall not exceed an amount equal to 50 percent of such average annual salary, nor be less than an amount equal to 25 percent of such average annual salary. Any annuity determined in accordance with the provisions of this subsection shall be reduced to the extent required by subsection (d) of this section, and by the amount of any annuity payable to a former spouse under subsection (t).

(m) Each time that an increase is made under section 8340(b) of title 5 in annuities paid under subchapter III of chapter 83 of such title, each annuity payable from the Judicial Survivors' Annuities Fund shall be increased at the same time by the same percentage by which annuities are increased under that section.

(n) Each annuity authorized under this section shall accrue monthly and shall be due and payable in monthly installments on the first business day of the month following the month or other period for which the annuity shall have accrued. No annuity authorized under this section shall be assignable, either in law or in equity, except as provided in subsections (s) and (t), or subject to execution, levy, garnishment, or other legal process.

(o)(1) In any case in which a judicial official dies while in office, while receiving retirement salary, or after filing an election and otherwise complying with the conditions under subsection (b)(2) of this section, and:

(A) subject to paragraph (2) of this subsection, before having completed eighteen months of civilian service, computed in accordance with subsection (k) of this section, during which the salary deductions provided by subsection (b) of this section or the deposit required by subsection (d) of this section have actually been made; or
(B) after having completed eighteen months of civilian service, computed in accordance with subsection (k) of this section, during which all such deductions or deposits have been made, but without a survivor or survivors who are entitled to receive the annuity benefits provided by subsection (h) or (t) of this section; or
(C) the rights of all persons entitled to receive the annuity benefits provided by subsection (h) or (t) of this section terminate before a valid claim therefor has been established;

the total amount credited to the individual account of that judicial official, established under subsection (e) of this section, with interest at 4 percent per annum to December 31, 1947, and at 3 percent per annum thereafter, compounded on December 31, of each year, to the date of that judicial official's death, shall be paid, upon the establishment of a valid claim therefor, to the person or persons surviving at the date title to the payment arises, in the following order of precedence:

First, to the beneficiary or beneficiaries whom that judicial official may have designated in a writing received by the Administrative Office of the United States Courts prior to his or her death;

Second, if there be no such beneficiary, to the widow or widower of such judicial official;

Third, if none of the above, to the child or children of such judicial official and the descendants of any deceased children by representation;

Fourth, if none of the above, to the parents of such judicial official or the survivor of them;

Fifth, if none of the above, to the duly appointed executor, executrix, administrator, or administratrix of the estate of such judicial official;

Sixth, if none of the above, to such other next of kin of such judicial official, as may be determined by the Director of the Administrative Office of the United States Courts to be entitled to such payment, under the laws of the domicile of such judicial official, at the time of his or her death.

Such payment shall be a bar to recovery by any other person. For the purposes of this subsection
only, a determination that an individual is a widow, widower, or child of a judicial official may be made by the Director of the Administrative Office of the United States Courts without regard to the definitions of those terms contained in paragraphs (3), (4), and (5) of subsection (a) of this section.

(2) In cases in which a judicial official dies as a result of assassination and leaves a survivor or survivors who are entitled to receive the annuity benefits provided by subsection (b) or (t) of this section, paragraph (1)(A) of this subsection shall not apply.

(p) In any case in which all the annuities which are authorized by this section and based upon the service of a given official terminate before the aggregate amount of annuity payments received by the annuitant or annuitants equals the total amount credited to the individual account of such judicial official, established under subsection (e) of this section with interest at 4 percent per annum to December 31, 1947, and at 3 percent per annum thereafter, compounded on December 31, of each year, to the date of that judicial official's death, the difference between such total amount, with such interest, and such aggregate amount shall be paid, upon establishment of a valid claim therefore, in the order of precedence prescribed in subsection (o) of this section.

(q) Any accrued annuity benefits remaining unpaid upon the termination of an annuity, other than by the death of an annuitant, shall be paid to that annuitant. Any accrued annuity benefits remaining unpaid upon the death of an annuitant shall be paid, upon establishment of a valid claim therefore, in the following order of precedence:

First, to the duly appointed executor, executrix, administrator, or administratrix of the estate of such annuitant;

Second, if there is no such executor, executrix, administrator, or administratrix, pay-ments shall be made, after the expiration of sixty days from the date of death of such annuitant, to such individual or individuals as may appear, in the judgment of the Director of the Administrative Office of the United States Courts, to be legally entitled thereto, and such payment shall be a bar to recovery by any other individual.

(r) Nothing contained in this section shall be interpreted to prevent a widow or widower eligible for an annuity under this section from simultaneously receiving such an annuity while also receiving any other annuity to which such widow or widower may also be entitled under any other law without regard to this section: Provided, That service used in the computation of the annuity conferred by this section shall not also be credited in computing any such other annuity.

(s) A judicial official who has a former spouse may elect, under procedures prescribed by the Director of the Administrative Office of the United States Courts, to provide a survivor annuity for such former spouse under subsection (t). An election under this subsection shall be made at the time of retirement, or, if later, within 2 years after the date on which the marriage of the former spouse to the judicial official is dissolved. An election under this subsection—

(1) shall not be effective to the extent that it—

(A) conflicts with—

(i) any court order or decree referred to in subsection (t)(1), which was issued before the date of such election, or

(ii) any agreement referred to in such subsection which was entered into before such date; or

(B) would cause the total of survivor annu-ities payable under subsections (h) and (t) based on the service of the judicial official to exceed 55 percent of the average annual salary (as such term is used in subsection (l)) of such official; and

(2) shall not be effective, in the case of a judicial official who is then married, unless it is made with the spouse's written consent.

The Director of the Administrative Office of the United States Courts shall provide by regulation that paragraph (2) of this subsection may be waived if the judicial official establishes to the satisfaction of the Director that the spouse's whereabouts cannot be determined, or that, due to exceptional circumstances, requiring the judicial official to seek the spouse's consent would otherwise be inappropriate.

(t)(1) Subject to paragraphs (2) through (4) of this subsection, a former spouse of a deceased judicial official is entitled to a survivor annuity under this section if and to the extent expressly provided for in an election under subsection (s), or in the terms of any decree of divorce or annulment or any court order or court-approved property settlement agreement incident to such decree.

(2) The annuity payable to a former spouse under this subsection may not exceed the difference between—

(A) the maximum amount that would be payable as an annuity to a widow or widower under subsection (l), determined without taking into account any reduction of such annuity caused by payment of an annuity to a former spouse; and

(B) the amount of any annuity payable under this subsection to any other former spouse of the judicial official, based on an election previously made under subsection (s), or a court order previously issued.

(3) The commencement and termination of an annuity payable under this subsection shall be governed by the terms of the applicable order, decree, agreement, or election, as the case may be, except that any such annuity—

(A) shall not commence before—

(i) the day after the judicial official dies, or

(ii) the first day of the second month beginning after the date on which the Director of the Administrative Office of the United States Courts receives written notice of the order, decree, agreement, or election, as the case may be, together with such additional information or documentation as the Director may prescribe, whichever is later, and

(B) shall terminate no later than the last day of the month before the former spouse re-
marries before becoming 55 years of age or dies.

(4) For purposes of this section, a modification in a decree, order, agreement, or election referred to in paragraph (1) of this subsection shall not be effective:

(A) if such modification is made after the retirement of the judicial official concerned, and

(B) to the extent that such modification involves an annuity under this subsection.

(u) In the case of a judicial official who is assassinated, an annuity shall be paid under this section notwithstanding a survivor’s eligibility for or receipt of benefits under chapter 81 of title 5, except that the annuity for which a surviving spouse is eligible under this section shall be reduced to the extent that the total benefits paid under this section and chapter 81 of title 5 for any year would exceed the current salary for that year of the office of the judicial official.

(v) Subject to the terms of a decree, court order, or agreement described in subsection (t)(1), if any judicial official ceases to be married after making the election under subsection (a), he or she may revoke such election in writing by notifying the Director of the Administrative Office of the United States Courts. The judicial official shall also notify any spouse or former spouse of the application for revocation in accordance with such requirements as the Director of the Administrative Office of the United States Courts shall by regulation prescribe. The Director may provide under such regulations that the notification requirement may be waived with respect to a spouse or former spouse if the judicial official establishes to the satisfaction of the Director that the whereabouts of such spouse or former spouse cannot be determined.

(w) The Comptroller General of the United States shall, at the end of each 3-fiscal year period, determine whether the contributions by judicial officials under subsection (b) during that 3-year period accounted for 50 percent of the costs of the Judicial Survivors’ Annuities Fund and, if not, then what adjustments in the contribution rates under subsection (b) should be made to achieve that 50 percent figure. The Comptroller General shall report the results of each determination under this subsection to the Congress.

(x) In the case of a widow or widower whose annuity under clause (i) or (ii) of subsection (h)(1) is terminated because of remarriage before attaining 55 years of age, the annuity shall be restored at the same rate commencing on the day the remarriage is dissolved by death, divorce, or annulment, if—

(1) the widow or widower elects to receive this annuity instead of any other survivor annuity to which such widow or widower may be entitled, under this chapter or under another retirement system for Government employees, by reason of the remarriage; and

(2) any payment made to such widow or widower under subsection (o) or (p) on termination of the annuity is returned to the Judicial Survivors’ Annuities Fund.

(y) For each year of Federal judicial service completed, judicial officials who are enrolled in the Judicial Survivors’ Annuities System on the date of enactment of the Judicial Survivors Protection Act of 2009 may purchase, in 3-month increments, up to an additional year of service credit, under the terms set forth in this section. In the case of judicial officials who elect to enroll in the Judicial Survivors’ Annuities System during the statutory open enrollment period authorized under the Judicial Survivors Protection Act of 2009, for each year of Federal judicial service completed, such an official may purchase, in 3-month increments, up to an additional year of service credit for each year of Federal judicial service completed, under the terms set forth in section 4(a) of that Act.

Amendments


Subsec. (h)(2). Pub. L. 110–428, §3(b), substituted “subject to subsection (x)” for period at end.

References in Text

The date of the enactment of the Retirement and Survivors’ Annuities for Bankruptcy Judges and Magistrates Act of 1986, referred to in subsec. (a)(1)(y), is the date of the enactment of Pub. L. 100–659, which was approved Nov. 15, 1988.

The date of the enactment of the Federal Courts Study Committee Implementation Act of 1996, referred to in subsec. (a)(1)(v), is the date of enactment of Pub. L. 104–317, which was approved Oct. 29, 1996.


Section 3 of the Judicial Survivors’ Annuities Reform Act, referred to in subsec. (b)(3), is section 3 of Pub. L. 94–554, which is set out as a note below.

The date of enactment of the Judicial Survivors Protection Act of 2009, referred to in subsec. (y), is the date of enactment of Pub. L. 111–49, which was approved Aug. 12, 2009.

The Judicial Survivors Protection Act of 2009, referred to in subsec. (y), is Pub. L. 111–49, Aug. 12, 2009, 123 Stat. 1976, which amended this section and enacted provisions set out as a note under this section. Section 4(a) of the Act is set out in a note under this section. For complete classification of this Act to the Code, see Tables.

2000—Subsec. (a)(1)(D). Pub. L. 106–518, §312(b)(1), substituted "subsection (a)" for "subsection (b)".

Subsec. (a)(2)(D). Pub. L. 106–518, §312(b)(2), substituted "subsection (b) or (c)" for "subsection (c) or (d)".


Prior to amendment, par. (1) read as follows: "Every judicial official who files a written notification of his or her intention to come within the purview of this section, in accordance with paragraph (1) of subsection (a) of this section, shall be deemed thereby to consent and agree to having deducted and withheld from his or her salary, a sum equal to 2.2 percent of that salary, and a sum equal to 3.5 percent of his or her retirement salary. The deduction from any retirement salary—"

"(A) of a justice or judge of the United States retired from regular active service who is described in section 371(b)(1) of this title,"

"(B) of a justice or judge of the United States retired under section 372(a) of this title who is willing and able to perform judicial duties in accordance with section 294 of this title,"

"(C) of a judge of the United States Court of Federal Claims retired under section 178(a) or (b) of this title who meets the requirements of section 178(d) of this title, or"

"(D) of a judicial official on recall under section 155(b), 797, 373(c)(4), 375, or 636(h) of this title, shall be an amount equal to 2.2 percent of retirement salary."

Subsec. (a)(1). Pub. L. 104–317, §302, substituted "while receiving retirement salary, or after filing an election and otherwise complying with the conditions under subsection (b)(2) of this section, for "while receiving retirement salary," in introductory provisions.


Subsec. (b). Pub. L. 102–572, §201(b), designated first sentence as par. (1), substituted "a sum equal to 2.2 percent of that salary, and a sum equal to 3.5 percent of his or her retirement salary," and second sentence for "including any 'retirement salary', a sum equal to 5 percent of that salary.," added par. (2), designated last 3 sentences as par. (3), and substituted "deducted and withheld from the salary of each judicial official under paragraphs (1) and (2) of this subsection" for "so deducted and withheld from the salary of each such judicial official".

Subsec. (c)(1), (2). Pub. L. 102–572, §201(c), substituted "3.5 percent", struck out "3.5 percent", and substituted "'3.5 percent' for '2.2 percent'."

Subsec. (g). Pub. L. 102–572, §201(d), amended subsec. (g) generally. Prior to amendment, subsec. (g) read as follows: "If any judicial official resigns from office without receiving any 'retirement salary', all amounts credited to his or her individual account, together with interest at 4 percent per annum to December 31, 1947, and at 3 percent per annum thereafter, compounded on December 31 of each year, to the date of his or her relinquishment of office, shall be returned to that judicial official in a lump-sum payment within a reasonable period of time following the date of his or her relinquishment of office. For the purposes of this subsection a 'reasonable period of time' shall be presumed to be no longer than one year following the date upon which such judicial official relinquished his or her office.

Subsec. (h)(1). Pub. L. 102–572, §201(e), substituted "while receiving retirement salary, or after filing an election and otherwise complying with the conditions under subsection (b)(2) of this section," for "while receiving 'retirement salary',"

also be increased. The actual amount of the increase in such an annuity shall be determined by multiplying the amount of the annuity, on the date on which the increase in salary becomes effective, by 3 percent for each 5 percent by which such salary has been increased. In the event that such salary is increased by less than 5 percent, there shall be no increase in such annuity.

Subsec. (a)(3). Pub. L. 99–336, §2(a)(1), substituted "she marries, (ii) January 1, 1977; or (iv) October 1, 1986" for "she marries, or (ii) the date upon which the Judicial Survivors' Annuities Reform Act becomes effective" in concluding provisions.

Subsec. (a)(1)(B). Pub. L. 99–396, §21(b)(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "a judge of the United States District Court for the District of the Canal Zone, the District Court of Guam, or the District Court of the Virgin Islands;"

Subsec. (a)(2)(B). Pub. L. 99–396, §21(b)(2), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "in the case of a judge of the United States District Court for the District of the Canal Zone, the District Court of Guam, or the District Court of the Virgin Islands, 5 percent" for "4.5 percent".

Subsec. (c). Pub. L. 99–336, §2(a)(3), in amending subsec. (c) generally, designated existing provisions as pars. (1), substituted provisions which related to amounts deposited to credit of Judicial Survivors' Annuities Fund to reduce unfunded liability of Fund to zero, for provisions which related to deposit of amounts matching those deducted and withheld in accordance with subsec. (b), and added pars. (2) and (3).

Subsec. (d). Pub. L. 99–336, §2(a)(2), substituted "5 percent" for "4.5 percent" in pars. (1) and (2).

Subsec. (h)(1)(B). Pub. L. 99–336, §2(a)(4)(A), substituted "10 percent of the average annual salary determined under subsection (h)(1) of this section" for "$1,548" in cl. (1) and "20 percent of such average annual salary" for "$3,644" in cl. (ii).

Subsec. (h)(1)(C). Pub. L. 99–336, §2(a)(4)(B), substituted "20 percent of the average annual salary determined under subsection (h)(1) of this section" for "$1,860" in cl. (i) and "40 percent of such average annual salary amount" for "$5,820" in cl. (ii).

Subsec. (h)(2). Pub. L. 99–336, §2(a)(4)(C), inserted "before attaining age 55" after "or remarriage".

Subsec. (k)(1). Pub. L. 99–336, §2(e), struck out "under subsection (b) of" before "section 371".

Subsec. (l). Pub. L. 99–336, §2(a)(5)(C), (d)(3)(A), substituted provisions which set annuity limit not to exceed 50 percent of, nor be less than 25 percent of, average annual salary, for provisions which set annuity limit not to exceed 40 percent of average annual salary, and inserted provision that annuity determined in accordance with provisions of subsec. (l) be reduced by the amount of any annuity payable to a former spouse under subsection (t).


Subsec. (n). Pub. L. 99–336, §2(d)(3)(B), inserted "except as provided in subsections (s) and (t)," after "in equity," in last sentence.

Subsec. (o)(2). Pub. L. 99–336, §2(d)(3)(C), inserted "or (t)" after "subsection (h)".

Subsecs. (s), (t). Pub. L. 99–336, §2(d)(2), added subsecs. (s) and (t).

1978—Subsec. (a)(2)(A). Pub. L. 95–598 directed the amendment of subpar. (A) by adding cl. (iii) relating to bankruptcy judges, which amendment did not become effective pursuant to section 3(c) of Pub. L. 110–428, set out above, shall take effect as if included in the enactment of Public Law 110–428.

1976—Pub. L. 94–554 amended section generally so as to reform and update the existing judicial survivors' annuity program providing benefits for surviving spouses and children of all Federal Justices and judges who elect to join the program by placing the program in an actuarially sound fiscal condition, providing more liberal eligibility standards and reasonable increases in existing annuity amounts made necessary by increases in the cost of living since existing annuities were commenced, and by establishing a method for providing future periodic increases in annuity amounts by keying them into increases in judicial salaries.

1972—Subsecs. (a) to (c), (e) to (g), (1) to (k), (n), and (o). Pub. L. 92–397 substituted "of justices and judges of the United States" for "of judges" in section catchline and substituted "justice or judge" for "judge" and "justice's or judge's" wherever appearing.

1968—Subsec. (a). Pub. L. 90–466 struck out "(or within six months after the enactment of this section)" after "takes office of" and authorized Federal judges to elect within six months of marriage to participate in the judicial survivors annuity system.

1967—Subsecs. (r), (s). Pub. L. 90–219 added subsecs. (r) and (s).


CHANGE OF NAME

Words "magistrate judge" and "United States magistrate judge" substituted for "magistrate" and "United States magistrate", respectively, wherever appearing in subsec. (a) pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT


"(1) IN GENERAL.—This section [amending this section] and the amendments made by this section shall take effect on the first day of the first month beginning at least 30 days after the date of the enactment of this Act [Oct. 15, 2008] and shall apply in the case of a remarriage which is dissolved by death, divorce, or annulment on or after such first day.

"(2) LIMITED RETROACTIVE EFFECT.—

"(A) IN GENERAL.—In the case of a remarriage which is dissolved by death, divorce, or annulment within the 5-year period ending on the day before the effective date of this section, the amendments made by this section shall apply only if the widow or widower satisfies the requirements of paragraphs (1) and (2) of section 376(x) of title 28, United States Code (as amended by this section before the effective date of this section); or

"(ii) such later date as Director of the Administrative Office of the United States Courts may by regulation prescribe.

"(B) RESTORATION.—If the requirements of paragraph (1) are satisfied, the survivor annuity shall be restored, commencing on the date the remarriage was dissolved by death, annulment, or divorce, at the rate which was in effect when the annuity was terminated.

"(C) LUMP-SUM PAYMENT.—Any amounts becoming payable to the widow or widower under this subsection for the period beginning on the date on which the annuity was terminated and ending on the date on which periodic annuity payments resume shall be payable in a lump-sum payment."


§ 376 TITLE 28—JUDICIARY AND JUDICIAL PROCEDURE

EFFECTIVE DATE OF 1992 AMENDMENT
Section 202 of title II of Pub. L. 102–572 provided that: ‘‘This title [amending this section and enacting provisions set out below] and the amendments made by this title shall take effect on the date of the enactment of this Act [Oct. 29, 1992].’’ Amendment by section 902(b) of Pub. L. 102–572 effective Oct. 29, 1992, see section 911 of Pub. L. 102–572, set out as a note under section 171 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT:

Amendment by section 306(b) of Pub. L. 101–650 applicable to judges of, and senior judges in active service with, the United States Court of Federal Claims on or after Dec. 1, 1990, see section 306(t) of Pub. L. 101–650, as amended, set out as a note under section 8331 of Title 5, Government Organization and Employees.

Section 322(g) of Pub. L. 101–650 provided that: ‘‘(1) EFFECTIVE DATE.—Subject to paragraph (2), the amendments made by this Act [probably should be ‘‘section’’, which amended this section] shall apply to all judicial officials assassinated on or after May 28, 1979.

‘‘(2) RULES FOR RETROACTIVE APPLICATION.—(A) In the case of a judicial official who was assassinated on or after May 28, 1979, and for treatment of related references, see sections 373, 376(a)(7), and for treatment of related references, see sections 373, 376(a)(7), and 377 of this title.

‘‘(B) ‘judicial official’ has the meaning given that term in section 376(a)(7) of title 28, United States Code, as added by this section; and

‘‘(C) Subject to subparagraphs (A) and (B), the survivor or survivors of a judicial official to whom this paragraph applies shall be entitled to the payment of annuities they would have received under section 376 of title 28, United States Code, for the period beginning on the date such judicial official was assassinated and ending the date of the enactment of this Act. The Secretary of the Treasury shall pay into the Judicial Survivors’ Annuities fund, out of any money in the Treasury not otherwise appropriated, the amount of the annuities to which the survivor or survivors are entitled under this subparagraph.

‘‘(3) DEFINITION.—For purposes of this subsection, the term—

‘‘(A) ‘assassinated’ has the meaning given that term in section 376(a)(7) of title 28, United States Code, as added by this section; and

‘‘(B) ‘judicial official’ has the meaning given that term in section 376(a)(1) and (B) of title 28, United States Code.’’

EFFECTIVE DATE OF 1988 AMENDMENTS
Section 1017(c) of title X of Pub. L. 100–702 provided that: ‘‘The amendment made by subsection (a) [amending this section] shall apply with respect to increases in annuities which are made under section 844(b) of title 5, United States Code, on or after the date of enactment of this title [Nov. 19, 1988].’’ 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 AMENDMENTS
Amendment by Pub. L. 99–396 not to affect the amount payable to a judge who retired in accordance with the provisions of section 373 of this title in effect on the day before Aug. 27, 1986, see section 21(c) of Pub. L. 99–396, set out as a note under section 373 of this title.

Section 2(c) of Pub. L. 99–336 provided that: ‘‘This section [amending this section and enacting provisions set out below] shall take effect on October 1, 1986.’’

EFFECTIVE DATE OF 1976 AMENDMENT

Section 8 of Pub. L. 94–554 provided: ‘‘That this Act [amending this section and enacting provisions set out below] shall become effective on the first day of the third month following the month in which it is enacted [Jan. 1, 1977], or on October 1, 1976, whichever occurs last.’’

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. 5, 1959, 24 F.R. 81, 73 Stat. 16, as required by sections 1 and 8(c) of Pub. L. 85–508, see notes set out under section 81A of this title and preceding section 21 of Title 48, Territories and Insular Possessions.

RETROACTIVE EFFECT OF 1967 AMENDMENT

The provisions of section 611(a) of this title, the first paragraph of section 611(b) of this title, and subsec. (a) of this section, as added by Pub. L. 90–219, applicable to judges and former judges who retire on or after Nov. 15, 1988, see section 1017(c) of title X of Pub. L. 100–702, set out as a note under section 844 of Title 5, Government Organization and Employees.

SAVINGS PROVISION

Section 6 of Pub. L. 94–554 provided: ‘‘That the benefits conferred by this Act shall, on the date upon which this Act becomes effective (Jan. 1, 1977), immediately become available to any individual then receiving an annuity under section 2 of the Act of August 3, 1956 (70 Stat. 1021) [enacting this section], as amended: Provided, That although the rights of any judicial official electing to come within the purview of section 376 of title 28, United States Code, on or after the date upon which this Act becomes effective, shall be determined exclusively under the provisions of that section as amended by this Act, nothing in this Act shall be interpreted to cancel, abrogate, or diminish any rights to which an individual or his or her survivors may be entitled by virtue of that individuals having contributed to the judicial survivors annuity fund established by section 2 of the Act of August 3, 1956 (70 Stat. 1021) as amended, before the date upon which this Act becomes effective.’’

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 377 of this title.
Courts before the end of the open enrollment period.

SEC. 4. JUDICIAL OFFICERS' CONTRIBUTIONS FOR OPEN ENROLLMENT ELECTION.

(a) Election of Judicial Survivors' Annuities System Coverage.—An eligible judicial official may elect to participate in the Judicial Survivors' Annuities System during the open enrollment period specified in subsection (d).

(b) Manner of Making Elections.—An election under this section shall be made in writing, signed by the person making the election, and received by the Director of the Administrative Office of the United States Courts before the end of the open enrollment period.

(c) Effective Date for Elections.—Any such election shall be effective as of the first day of the first calendar month following the month in which the election is received by the Director.

(d) Open Enrollment Period Defined.—The open enrollment period under this section is the 6-month period beginning 30 days after the date of enactment of this Act [Aug. 12, 2009].

SEC. 5. DEPOSIT FOR PRIOR CREDITABLE SERVICE.

(a) Lump Sum Deposit.—Any judicial official who files a written notification of his or her intention to participate in the Judicial Survivors' Annuities System during the open enrollment period may make a deposit equaling 2.75 percent of salary, plus 3 percent annual, compounded interest, for the last 18 months of prior service, to receive the credit for prior judicial service required for immediate coverage and protection of the official's survivors. Any such deposit shall be made on or before the closure of the open enrollment period.

(b) Deposits To Be Credited to Judicial Survivors' Annuities Fund.—Deposits made under subsection (a) shall be credited to the Judicial Survivors' Annuities Fund.

SEC. 6. VOLUNTARY CONTRIBUTIONS TO ENLARGING SURVIVORS' ANNUITY.


(2) The term 'Judicial Survivors' Annuities System' means the program established under section 376 of title 28, United States Code.

(3) The term 'Judicial official' refers to incumbent judicial officers as defined in section 376(a) of title 28, United States Code.

SEC. 7. EFFECTIVE DATE.

(a) This Act, including the amendment made by section 6, shall take effect on the date of enactment of this Act [Aug. 12, 2009].

(b) Credit for Contributions Prior to 1992 Amendment at Higher Rate

Section 201(j) of title II of Pub. L. 102–572 provided that: "Notwithstanding any other provision of law, the contribution under section 376(b)(1) or (2) of title 28, United States Code (as amended by this section), of any judicial official who is within the purview of such section 376 on the effective date of this title [Oct. 29, 1992] shall be reduced by 0.5 percent for a period of time equal to the number of years of service for which the judicial official has made contributions or deposits before the enactment of this Act (Oct. 29, 1992) to the credit of the Judicial Survivors' Annuities Fund or for 18 months, whichever is less, if such contributions or deposits were never returned to the judicial official. For purposes of this subsection, the term 'years' shall mean full years and twelfth parts thereof."

(c) Redeposit of Contributions Prior to 1992 Amendment

Section 201(k) of Pub. L. 102–572 provided that: "Any judicial official as defined in section 376(a)(1) of title 28, United States Code, who makes an election under section 376(b) of title 28, United States Code, may make a redeposit, as required by section 7 of Public Law 94–554 [set out below] and section 2(c)(2) of Public Law 99–336 [set out below], to the credit of the Judicial Survivors' Annuities Fund in installments, in such amounts and under such conditions as may be determined in each instance by the Director of the Administrative Office of the United States Courts, if a judicial official elects to make a redeposit in installments—"(1) the Director shall require that the first installment payment made shall be in an amount no smaller than the last 18 months of salary deductions or deposits previously returned to that judicial official in a lump-sum payment; and"(2) the election under section 376(b) of title 28, United States Code, shall be effective upon payment of the first such installment."

AUDIT BY GAO

Pub. L. 102–572, title II, § 231(i), Oct. 29, 1992, 106 Stat. 401, required that the Comptroller General conduct an audit of the judicial survivors' annuities program under section 376 of title 28 for the 3-year period beginning on Oct. 29, 1992, and report to Congress on the results of such audit, comparing such program to other survivors' annuities programs within the Federal Government, not later than 60 days after the end of that 3-year period.

INCREASE FOR EXISTING ANNUITANTS

Section 1017(b) of title X of Pub. L. 100–702 provided that: "Each annuity payable from the Judicial Survivors' Annuities Fund under section 376 of title 28, United States Code, on the date of the enactment of this title [Nov. 19, 1988] shall be increased by 10 percent, effective on such date of enactment."
SURVIVORS' ANNUITIES FOR INCUMENTS

Section 3(b) of Pub. L. 100–659, as amended by Pub. L. 101–656, title III, §321, Dec. 1, 1990, 104 Stat. 517, provided that: “In the case of a bankruptcy judge or magistrate judge who elects an annuity under section 2(c) [28 U.S.C. 377 note], only service for which an annuity under subsection (b) or (c) and subsection (g) of section 376 of title 28, United States Code, as added by section 2 of this Act, is calculated under section 2(c) may be used in the computation of an annuity under section 376 of title 28, United States Code, as amended by subsection (a) of this section.”

COVERED BENEFICIARIES UNDER PUB. L. 99–336

Section 2(b) of Pub. L. 99–336 provided that: “The benefits conferred by section 376 of title 28, United States Code, by reason of the amendments made by this section shall apply only to individuals who become eligible for annuities under such section on or after the effective date of this section [Oct. 1, 1986], except that—

“(1) such annuities shall be computed in accordance with the provisions of section 376 of title 28, United States Code, as amended by this section, notwithstanding contributions or deposits made in accordance with applicable law at lower rates; and

“(2) no additional liability shall be created with respect to deposits made in accordance with applicable law before the effective date of this section, or after such effective date pursuant to an agreement entered into before such effective date.”

REVOCATION OF ELECTION: ELIGIBILITY SUBSEQUENT TO REVOCATION

Section 2(c) of Pub. L. 99–336 provided that:

“(1) Within 180 days after the effective date of this section [Oct. 1, 1986], any judicial official who, before such effective date, made an election under section 376 of title 28, United States Code, to come within the purview of that section, shall be entitled to revoke that election. Such revocation shall constitute a complete withdrawal from the judicial survivors’ annuities program provided for in such section 376. No such revocation shall be effective unless it is submitted in writing to the Director of the Administrative Office of the United States Courts, and until such writing is received by the Director. Upon receipt by the Director of such writing, any rights to survivorship benefits for the survivors of such judicial official shall terminate, and all amounts credited to the individual account of such judicial official under section 376(e), together with interest at 3 percent per annum, compounded on December 31 of each year to such date of revocation, shall be returned to such judicial official in a lump-sum payment.

“(2) Any judicial official who makes a revocation under paragraph (1) of this subsection and who thereafter becomes eligible to make an election under section 376(b) of title 28, United States Code, may make such election only if such judicial official redeposits, to the credit of the Judicial Survivors’ Annuities Fund, the full amount of the lump-sum payment made to such judicial official under paragraph (1) of this subsection, together with interest at 3 percent per annum, compounded on December 31 of each year from the date of such revocation until the date upon which that amount is so redeposited.

“(3) Any judicial official who fails to revoke an election in accordance with paragraph (1) of this subsection shall be deemed to have irrevocably waived the right to make that revocation.”

PAYMENT OF RETIREMENT SALARY PURSUANT TO COURT DECREES OF DIVORCE, ETC.

Section 2(d)(4) of Pub. L. 99–336 provided that: “Payments of retirement salary as defined in section 376(a)(2) of title 28, United States Code, which would otherwise be made to the judicial official upon whose service the retirement salary is based, shall be paid (in whole or in part) to another person if and to the extent expressly provided for in the terms of any court decree of divorce, annulment, or legal separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of divorce, annulment, or legal separation. Any payment under this paragraph to a person bars recovery by any other person. This paragraph shall apply only to payments made after the date of receipt by the Director of the Administrative Office of the United States Courts of written notice of such decree, order, or agreement, and such additional information and documentation as the Director may prescribe. As used in this paragraph, ‘court’ means any court of any State or the District of Columbia.”

ANNUITY PAYMENT TO SURVIVING SPOUSES OF JUDGES WHO DIED BEFORE OCTOBER 19, 1976

Pub. L. 96–504, §3, Dec. 5, 1980, 94 Stat. 2741, provided that:

“(a) As of the first pay period beginning after the effective date of this Act [Dec. 5, 1980], a surviving spouse, other than a surviving spouse who has remarried, of any Justice of the United States (as defined by section 451 of title 28, United States Code), who died before October 19, 1976, shall be paid an annuity in accordance with the provisions of section 376 of title 28, United States Code, at a rate of $20,000 per year as if such Justice had elected to come within the provisions of section 376(d) of title 28, United States Code, and having made the full deposit required by, section 376(d) of title 28, United States Code.

“(b) Notwithstanding the provisions of section 376(b) of title 28, United States Code, such annuity shall be payable as provided in section 376(m) of title 28, United States Code, until the date of the death of any such spouse.”

JUDICIAL SURVIVORS’ ANNUITY FUND; AUTHORIZATION OF APPROPRIATIONS

Pub. L. 96–504, §4, Dec. 5, 1980, 94 Stat. 2742, required the Secretary of the Treasury in consultation with the Director of the Administrative Office of the United States Courts to determine as of Dec. 5, 1980, and deposit as soon as possible thereafter, the amount necessary to offset any actuarial deficiency in the Judicial Survivors Annuities Fund.

JUDICIAL SURVIVORS’ ANNUITIES FUND

Section 3 of Pub. L. 94–554 provided: “That on the date upon which this Act becomes effective [Jan. 1, 1977] there shall be established on the books of the Treasury a fund which shall be known as The Judicial Survivors’ Annuities Fund, and all money credited to the judicial survivors annuities fund established by section 2 of the Act of August 3, 1956 (70 Stat. 1021) [enacting this section], as amended, shall be transferred to the credit of the Judicial Survivors’ Annuities Fund established by this section.”

COMPENSATION FOR ACTUARIAL DEFICIENCY IN THE ANNUITIES FUND

Section 4 of Pub. L. 94–554 provided: “That on the date upon which this Act becomes effective [Jan. 1, 1977] the Secretary of the Treasury shall ascertain from the Director of the Administrative Office of the United States Courts the amount of the actuarial deficiency in the fund transferred by section 3 of this Act [see Judicial Survivors’ Annuities Fund note above] on the date of that fund’s transfer and, at the earliest time thereafter at which appropriated funds in that amount shall become available, the Secretary shall deposit such funds, in a single payment, into the Judicial Survivors’ Annuities Fund established by section 3 of this Act. Such funds as are necessary to carry out this section are hereby authorized to be appropriated.”

INCREASES IN WIDOWS’ ANNUITIES PAID UNDER SECTION 2 OF ACT AUGUST 3, 1956

Section 5 of Pub. L. 94–554 provided: “That on the date upon which this Act becomes effective [Jan. 1, 1977] each annuity then being paid to a widow from the
judicial survivors annuity fund established by section 2 of the Act of August 3, 1956 (70 Stat. 1021) (enacting this section), as amended, shall be increased by an amount equal to one-fifth of 1 percent of the amount of such annuity multiplied by the number of months which have passed since the commencement of that annuity. For the purposes of this section, any fractional part of a month which numbers less than fifteen full days shall be excluded from the computation of the number of months and any fractional part of a month which numbers fifteen full days or more shall be included in the computation as one full month. Such funds as are necessary to carry out this section are authorized to be appropriated and, upon appropriation, shall be deposited by the Secretary of the Treasury, in a single payment, to credit of the Judicial Survivors' Annuities Fund established by section 3 of this Act [see Judicial Survivors' Annuities Fund note above]."

REVOCATION OF ELECTION TO PARTICIPATE IN ANNUITIES PROGRAM

Section 7 of Pub. L. 94–554 provided: "That, at any time within one hundred and eighty days after the date upon which this Act becomes effective (Jan. 1, 1977), any judicial official who has, prior to that date, already participated in the judicial survivors annuity program created by the Act of August 3, 1956 (70 Stat. 1021) (enacting this section) as amended, shall be entitled to revoke his or her earlier election to participate in that program and thereby completely withdraw from participation in the judicial survivors' annuities program created by this Act: Provided, That (a) any such revocation may be effected only by means of a writing filed with the Director of the Administrative Office of the United States Courts, (b) any such writing shall be deemed to have become effective no sooner than the date upon which that writing is received by the Director, (c) upon receipt of such a writing by the Director, any and all rights to survivorship benefits for such judicial official's survivors shall terminate, and all amounts credited to such judicial official's individual account, together with interest at 3 percent per annum, compounded on December 31 of each year to that date of revocation, shall thereafter be returned to that judicial official in a lump-sum refund payment, and (d) any judicial official who effects such a revocation and who subsequently again becomes eligible and elects to join the judicial survivors annuities program created by this Act under the provisions of section 376 of title 28, United States Code as amended by this Act, shall be entitled to receive the benefits of that section. A judicial official who resigns, is removed or fails of reappointment under section 260 of the Judicial Code of 1911 or the Act of August 5, 1939, chapter 433, and who is living on the date of enactment of this Act shall be deemed for the purposes of this Act to have retired from regular active service under section 371(b) or 372(a), as the case may be, of title 28, United States Code."

PRIOR DEATH OF JUDGE

Section 7 of act Aug. 3, 1956, provided that: "In the case of a living widow or a judge of the United States as defined in section 451 of title 28, United States Code, who died prior to the date of enactment of this Act [Aug. 3, 1956], an annuity shall be paid as provided in section 376 of title 28, United States Code, as added by section 2 of this Act, as if such judge had died on such date and had elected to bring himself within the purview of such section 376, but had not made the deposit provided for by subsection (c) of the said section: Provided, (a) That such widow has not remarried; and (b) that the amount of such annuity and the reduction therein because of such deposit not having been made shall be computed on the basis of the actual length of judicial and other allowable service of such judge: And provided further, That notwithstanding the provisions of subsection (g) of such section 376 such annuity shall be payable even though such judge had not rendered five years of civilian service prior to his death. In the case of a judge of the United States as defined in section 451 of title 28, United States Code, who dies within 6 months after the date of enactment of this Act after having rendered at least 5 years of civilian service computed as prescribed in subsection (o) of section 376 of title 28, United States Code, as added by section 2 of this Act, but without having made an election as provided in such section 376 to be paid without attachment or garnishment, an annuity shall be paid to his widow and surviving dependent children as provided in such section 376 as if such judge had elected to bring himself within the purview of such section 376 but had not made the deposit provided for by subsection (c) of the said section. An annuity shall be payable under this section computed on the basis of the actual length of judicial and other allowable service of the judge and subject to the reduction required by subsection (c) of such section 376 even though no deposit has been made, as required by subsection (g) of such section 376, with respect to any of such service."

§ 377. Retirement of bankruptcy judges and magistrate judges

(a) RETIREMENT BASED ON YEARS OF SERVICE.—
A bankruptcy judge or magistrate judge to whom this section applies and who retires from office after attaining the age of 65 years and serving at least 14 years, whether continuously or otherwise, as such bankruptcy judge or magistrate judge shall, subject to subsection (f), be entitled to receive, during the remainder of the
§ 377 TITLE 28—JUDICIARY AND JUDICIAL PROCEDURE Page 134

du'ves or magistrate judge's lifetime, an annuity equal to the salary being received at the time the judge or magistrate judge leaves office.

(b) Retirement Upon Failure of Reappointment.—A bankruptcy judge or magistrate judge to whom this section applies, who is not reappointed following the expiration of the term of office of such judge or magistrate judge, and who retires upon the completion of the term shall, subject to subsection (f), be entitled to receive, upon attaining the age of 65 years during the remainder of such bankruptcy judge's or magistrate judge's lifetime, an annuity equal to that portion of the salary being received at the time the judge or magistrate judge leaves office which the aggregate number of years of service, not to exceed 14 years, bears to 14, if—

(1) such judge or magistrate judge has served at least 1 full term as a bankruptcy judge or magistrate judge, and

(2) not earlier than 9 months before the date on which the term of office of such judge or magistrate judge expires, and not later than 6 months before such date, such judge or magistrate judge notified the appointing authority in writing that such judge or magistrate judge was willing to accept reappointment to the position in which such judge or magistrate judge was serving.

For purposes of this subsection, in the case of a bankruptcy judge, the written notice required by paragraph (2) shall be given to the chief judge of the circuit in which such bankruptcy judge is serving and, in the case of a magistrate judge, such notice shall be given to the chief judge of the district court in which the magistrate judge is serving.

(c) Service of at Least 8 Years.—A bankruptcy judge or magistrate judge to whom this section applies and who retires after serving at least 8 years, whether continuously or otherwise, as such a bankruptcy judge or magistrate judge shall, subject to subsection (f), be entitled to receive, upon attaining the age of 65 years and during the remainder of the judge's or magistrate's judge's lifetime, an annuity equal to that portion of the salary being received at the time the judge or magistrate judge leaves office which the aggregate number of years of service, not to exceed 14 years, bears to 14.

Such annuity shall be reduced by 1/6 of 1 percent for each full month such bankruptcy judge or magistrate judge was serving.

(d) Retirement for Disability.—A bankruptcy judge or magistrate judge to whom this section applies, who has served at least 5 years, whether continuously or otherwise, as such a bankruptcy judge or magistrate judge, and who retires or is removed from office upon the sole ground of mental or physical disability shall, subject to subsection (f), be entitled to receive, during the remainder of the judge's or magistrate judge's lifetime, an annuity equal to 40 percent of the salary being received at the time of retirement or removal or, in the case of a judge or magistrate judge who has served for at least 10 years, an amount equal to that proportion of the salary being received at the time of retirement or removal which the aggregate number of years of service, not to exceed 14 years, bears to 14.

(e) Cost-of-Living Adjustments.—A bankruptcy judge or magistrate judge who is entitled to an annuity under this section is also entitled to a cost-of-living adjustment in such annuity, calculated and payable in the same manner as adjustments under section 8340(b) of title 5, except that any such annuity, as increased under this subsection, may not exceed the salary then payable for the position from which the judge or magistrate judge retired or was removed.

(f) Election: Annuity in Lieu of Other Annuities.—A bankruptcy judge or magistrate judge shall be entitled to an annuity under this section if the judge or magistrate judge elects an annuity under this section by notifying the Director of the Administrative Office of the United States Courts. A bankruptcy judge or magistrate judge who elects to receive an annuity under this section shall not be entitled to receive 1

(1) any annuity to which such judge or magistrate judge would otherwise have been entitled under subchapter III of chapter 83, or under chapter 84 (except for subchapters III and VII), of title 5, for service performed as such a judge or magistrate judge or otherwise; and

(2) an annuity or salary in senior status or retirement under section 371 or 372 of this title.

(2)(A) In the case of an individual who is a bankruptcy judge or magistrate judge to whom this section applies may be credited; and

(B) each month of service shall be credited as one-twelfth of a year, and the fractional part of any month shall not be credited.

(2)(B) In the case of an individual who is a bankruptcy judge to whom this section applies and who retires under this section or who is removed from office under subsection (d) upon the sole ground of mental or physical disability, any service of that individual as a United States magistrate judge to whom this section applies, and any service of that individual as a full-time judicial officer who performed the duties of a magistrate judge and a bankruptcy judge at the same time, shall be included for purposes of calculating years of service under subsection (a), (b), (c), or (d), as the case may be.

1 So in original. Probably should be “receive—”.

1

(2) In the case of an individual who is a bankruptcy judge to whom this section applies and who retires under this section or who is removed from office under subsection (d) upon the sole ground of mental or physical disability, any service of that individual as a bankruptcy judge to whom this section applies, and any service of that individual as a full-time judicial officer who performed the duties of a magistrate judge and a bankruptcy judge at the same time, shall be included for purposes of calculating years of service under subsection (a), (b), (c), or (d), as the case may be.
(h) COVERED POSITIONS AND SERVICE.—This section applies to—
   (1) any bankruptcy judge appointed under—
      (A) section 152 of this title;
      (B) section 94 of the Bankruptcy Act before the repeal of that Act by section 401 of the Act of November 6, 1978 (Public Law 95–598; 92 Stat. 2682); or
      (C) section 404 of the Act of November 6, 1978 (Public Law 95–598; 92 Stat. 2549); and
   (2) any United States magistrate judge appointed under section 631 of this title, only with respect to service on or after October 1, 1979, as such a bankruptcy judge or magistrate judge.

(1) PAYMENTS PERSUANT TO COURT ORDER.—(1) Payments under this section which would otherwise be made to a bankruptcy judge or magistrate judge based upon his or her service shall be paid (in whole or in part) by the Director of the Administrative Office of the United States Courts to another person if and to the extent expressly provided for in the terms of any court decree of divorce, annulement, or legal separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of divorce, annulement, or legal separation. Any payment under this paragraph to a person bars recovery by any other person.

(2) Paragraph (1) shall apply only to payments made by the Director of the Administrative Office of the United States Courts after the date of receipt by the Director of written notice of such decree, order, or agreement, and such additional information as the Director may prescribe.

(3) As used in this subsection, the term “court” means any court of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, or the Virgin Islands, and any Indian tribal court or courts of Indian offense.

(j) DEDUCTIONS, CONTRIBUTIONS, AND DEPOSITS.—

(1) DEDUCTIONS.—Beginning with the next pay period after the Director of the Administrative Office of the United States Courts receives a notice under subsection (f) that a bankruptcy judge or magistrate judge has elected an annuity under this section, the Director shall deduct and withhold 1 percent of the salary of such bankruptcy judge or magistrate judge. Amounts shall be so deducted and withheld in a manner determined by the Director. Amounts deducted and withheld under this subsection shall be deposited in the Treasury of the United States to the credit of the Judicial Officers’ Retirement Fund. Deductions under this subsection from the salary of a bankruptcy judge or magistrate judge shall terminate upon the retirement of the bankruptcy judge or magistrate judge or upon completing 14 years of service for which contributions under this section have been made, whether continuously or otherwise, as calculated under subsection (g), whichever occurs first.

(2) CONSENT TO DEDUCTIONS; DISCHARGE OF CLAIMS.—Each bankruptcy judge or magistrate judge who makes an election under subsection (f) shall be deemed to consent and agree to the deductions from salary which are made under paragraph (1). Payment of such salary less such deductions (and any deductions made under section 376 of this title) is a full and complete discharge and acquittance of all claims and demands for all services rendered by such bankruptcy judge or magistrate judge during the period covered by such payment, except the right to those benefits to which the bankruptcy judge or magistrate judge is entitled under this section (and section 376).

(k) DEPOSITS FOR PRIOR SERVICE.—Each bankruptcy judge or magistrate judge who makes an election under subsection (f) may deposit, for service performed before such election for which contributions may be made under this section, an amount equal to 1 percent of the salary received for that service. Credit for any period covered by that service may not be allowed for purposes of an annuity under this section until a deposit under this subsection has been made for that period.

(l) INDIVIDUAL RETIREMENT RECORDS.—The amounts deducted and withheld under subsection (i), and the amounts deposited under subsection (k), shall be credited to individual accounts in the name of each bankruptcy judge or magistrate judge from whom such amounts are received, for credit to the Judicial Officers’ Retirement Fund.

(m) ANNUITIES AFFEKTED IN CERTAIN CASES.—

(1) PRACTICING LAW AFTER RETIREMENT.—
      (A) FORFEITURE OF ANNUITY.—Subject to subparagraph (B), any bankruptcy judge or magistrate judge who retires under this section and who thereafter practices law shall forfeit all rights to an annuity under this section for all periods beginning on or after the first day on which he or she so practices law.

      (B) FORFEITURE NOT TO APPLY WHERE INDIVIDUAL ELECTS TO FREEZE AMOUNT OF ANNUITY.—(i) If a bankruptcy judge or magistrate judge makes an election to practice law after retirement under this section—
          (I) subparagraph (A) shall not apply to such bankruptcy judge or magistrate judge beginning on the date such election takes effect, and
          (II) the annuity payable under this section to such bankruptcy judge or magistrate judge, for periods beginning on or after the date such election takes effect, shall be equal to the annuity to which such bankruptcy judge or magistrate judge is entitled on the day before such effective date.

          (ii) An election under clause (i)—
            (I) may be made by a bankruptcy judge or magistrate judge eligible for retirement under this section, and
            (II) shall be filed with the Director of the Administrative Office of the United States Courts.

          Such an election, once it takes effect, shall be irrevocable.

          (iii) Any election under this subparagraph shall take effect on the first day of the first
§ 377

1. ELIGIBILITY.—(A) Subject to paragraph (2), an individual who serves as a bankruptcy judge or magistrate judge and—

(i) who leaves office and is not reappointed as a bankruptcy judge or magistrate judge for at least 31 consecutive days;
(ii) who files an application with the Administrative Office of the United States Courts for payment of the lump-sum credit;
(iii) is not serving as a bankruptcy judge or magistrate judge at the time of filing of the application; and
(iv) will not become eligible to receive an annuity under this section within 31 days after filing the application;

is entitled to be paid the lump-sum credit. Payment of the lump-sum credit voids all rights to an annuity under this section based on the service on which the lump-sum credit is based, until that individual resumes office as a bankruptcy judge or magistrate judge.

(B) Lump-sum benefits authorized by subparagraphs (C), (D), and (E) of this paragraph shall be paid to the person or persons surviving the bankruptcy judge or magistrate judge and alive on the date title to the lump-sum credit passes to the person or persons surviving the bankruptcy judge or magistrate judge.

(C) The Director shall prescribe regulations under which this paragraph shall be applied in accordance with such requirements as the Director of the Administrative Office of the United States Courts shall by regulation prescribe. The Director may provide under such regulations that subparagraph (A)(i) may be waived with respect to a spouse or former spouse if the bankruptcy judge or magistrate judge establishes to the satisfaction of the Director that the whereabouts of such spouse or former spouse cannot be determined.

(D) The Director shall prescribe regulations under which this paragraph shall be applied in any case in which the Director receives two or more orders or decrees described in subparagraph (A).

2. DEFINITION.—For purposes of this section, the term “lump-sum credit” means the unfunded amount consisting of—

(A) retirement deductions made under this section from the salary of a bankruptcy judge or magistrate judge;
(B) amounts deposited under subsection (k) by a bankruptcy judge or magistrate judge covering earlier service; and
(C) interest on the deductions and deposits which, for any calendar year, shall be equal to the overall average yield to the Judicial Officers’ Retirement Fund during the preceding fiscal year from all obligations purchased by the Secretary of the Treasury during such fiscal year under subsection (o);

but does not include interest—

(i) if the service covered thereby aggregates 1 year or less; or
(ii) for the fractional part of a month in the total service.

(c) Judicial Officers’ Retirement Fund.—

(1) Establishment.—There is established in the Treasury a fund which shall be known as the “Judicial Officers’ Retirement Fund”. The Fund is appropriated for the payment of annuities, refunds, and other payments under this section.

(2) Investment of Fund.—The Secretary of the Treasury shall invest, in interest bearing securities of the United States, such currently available portions of the Judicial Officers’ Retirement Fund as are not immediately required for payments from the Fund. The income derived from these investments constitutes a part of the Fund.

(3) Unfunded Liability.—(A) There are authorized to be appropriated to the Judicial Officers’ Retirement Fund amounts required to reduce to zero the unfunded liability of the Fund.

(B) For purposes of subparagraph (A), the term “unfunded liability” means the estimated excess, determined on an annual basis in accordance with the provisions of section 9503 of title 31, of the present value of all benefits payable from the Judicial Officers’ Retirement Fund over the sum of—

(i) the present value of deductions to be withheld under this section from the future basic pay of bankruptcy judges and magistrate judges; plus

(ii) the balance in the Fund as of the date the unfunded liability is determined.

In making any determination under this subparagraph, the Comptroller General shall use the applicable information contained in the reports filed pursuant to section 9503 of title 31, with respect to the retirement annuities provided for in this section.

(C) There are authorized to be appropriated such sums as may be necessary to carry out this paragraph.


References in Text

Section 7447 of the Internal Revenue Code, referred to in subsec. (f)(3), is classified to section 7447 of Title 26, Internal Revenue Code.

Section 34 of the Bankruptcy Act, referred to in subsec. (h)(1)(B), was classified to section 62 of former Title 11, Bankruptcy. The Bankruptcy Act was repealed effective Oct. 1, 1979, by Pub. L. 96–586, §§101(a), 402(a), Nov. 6, 1978, 92 Stat. 2682, section 101 of which enacted revised Title 11.


Amendments


1988—Subsec. (f). Pub. L. 101–650, §325(b)(3)(A), substituted paras. (1) to (4) for “any annuity to which such judge or magistrate would otherwise have been entitled under subchapter III of chapter 83, or under chapter 84 (except for subchapters III and VII, of title 5).”


Change of Name

Words “magistrate judge”, “magistrate judges”, and “magistrate’s” substituted for “magistrate”, “magistrates’, and “magistrate’s”, respectively, wherever appearing in section catchline and text pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of this title.

Effective Date


“(a) In General.—Subject to subsection (b), this Act [enacting this section and section 8440a (now 8440b) of Title 5, Government Organization and Employees, amending sections 155, 375, 376, 604, 631, and 636 of this title and sections 8334 and 8462 of Title 5, and enacting provisions set out as notes under this section and sections 1 and 376 of this title] and the amendments made by this Act shall take effect on the date of the enactment of this Act (Nov. 15, 1988) and shall apply to bankruptcy judges and magistrate judges who retire on or after the date of the enactment of this Act.

“(b) Exception for Judges and Magistrate Judges Retiring On or After July 31, 1987.—A bankruptcy judge or magistrate judge who left office on or after July 31, 1987, and before the date of the enactment of this Act (Nov. 15, 1988) may elect to receive an annuity, or to participate in the Judicial Survivors’ Annuity System, under the amendments made by this Act if such bankruptcy judge or magistrate judge, within 60 days after so leaving office, accepted office or employment with the United States Government or a State government or was eligible at the time he or she left office for an immediate annuity under title 5, United States Code. Any election under this subsection shall not be valid unless it is made within 6 months after the date of the enactment of this Act and under the same conditions as other persons who may make elections under the amendments made by this Act, except that any such person who makes an election under this subsection shall not receive a lump-sum credit under section 8342 or 8424 of title 5, United States Code, for prior service and shall not be required to make contributions for prior years of creditable service.”

Annuitant of Qualified Magistrate Judge


“(a) In this section the term ‘qualified magistrate judge’ means any person who—

“(1) retired as a magistrate judge before November 15, 1988; and

“(2) on the date of filing an election under subsection (b)—

“(A) is serving as a recalled magistrate judge on a full-time basis under section 638(b) of title 28, United States Code; and

“(B) has completed at least 5 years of full-time recall service.

“(b) The Director of the Administrative Office of the United States Courts may accept the election of a qualified magistrate judge to—

“(1) receive an annuity under section 377 of title 28, United States Code; and

“(2) come within the purview of section 376 of such title.

“(c) Full-time recall service performed by a qualified magistrate judge shall be credited for service in calculating an annuity elected under this section.

“(d) The Director of the Administrative Office of the United States Courts may promulgate regulations to carry out this section.”
§ 411

TITLE 28—JUDICIARY AND JUDICIAL PROCEDURE

Retirement Annuities for Incumbent Bankruptcy Judges and Magistrate Judges


"(3) RETIREMENT ANNUITY UNDER TITLE 5 AND SECTION 377 OF TITLE 28.—A bankruptcy judge or United States magistrate judge in active service on the effective date of this Act [see Effective Date note above] shall, subject to paragraph (2), be entitled to a lump-sum credit with respect to which any contributions were made by a bankruptcy judge or magistrate judge in active service on the effective date of this Act [see Effective Date note above]. The report shall, in particular, include a discussion of the deductions from salary and deposits made for contributions to the annuity program and the need for continuing the deductions at the level established under the amendments made by this Act."

CHAPTER 19—DISTRIBUTION OF REPORTS AND DIGESTS

Sec. 411. Supreme Court reports; printing, binding, and distribution.

(a) The decisions of the Supreme Court of the United States shall be printed, bound, and distributed in the preliminary prints and bound volumes of the United States Reports as soon as practicable after rendition, to be charged to the proper appropriation for the judiciary. The number and distribution of the copies shall be under the control of the Joint Committee on Printing.

(b) Reports printed prior to June 12, 1926, shall not be furnished the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force.

(c) The Public Printer, or other printer designated by the Supreme Court of the United States, upon request, shall furnish to the Superintendent of Documents the reports required to be distributed under the provisions of this section.

(1948 Act)

Historical and Revision Notes

1948 Act


Requirements for printing, binding, and issuing Supreme Court decisions "within eight months after said
decisions have been rendered by the Supreme Court" and provision for distribution "within said period" were omitted. The phrase "as soon as practicable after rendition" was made the time for publishing such decisions as more flexible and practicable.

The words "the United States Court for China" were omitted inasmuch as that court is no longer functioning. The Secretary of State by an arrangement with the Philippines has relinquished the extraterritorial jurisdiction previously exercised by the United States in China. The 1944 Legislative and Judiciary Appropriation Act approved June 24, 1943, made no appropriation for the United States Court for China. Appropriations for other courts were made in title II of chapter 173 (57 Stat. 241). The last appropriation for the United States Court for China was in the act of July 2, 1942 (ch. 472, title IV, 56 Stat. 502).

The words "to the Secretary of War for the use of the proper courts and officers of the Philippine Islands, seven copies" were omitted in view of the independence of the Philippines, effective July 4, 1946.

The phrase "justice or judge of the United States" obviated repetition of names of courts. (See definitive section 451 of this title.)

Last sentence, fourth paragraph, of section 334 of title 28, U.S.C., 1940 ed., requiring that books should remain the property of the United States and should be preserved and turned over to successors in office, was omitted as covered by section 414 of this title.

A reference to the United States attorney for the District of Columbia was omitted as covered by "each United States attorney."

Provision authorizing distribution of volumes under this section to each place where a court of appeals is held was added for purposes of uniformity. See similar provision in section 413 of this title.

The revised section substitutes the Director of the Administrative Office of the United States Courts in lieu of the Attorney General insofar as distribution of volumes to the judiciary is concerned. This change is consistent with the duties of the former under section 414, of this title.

Provision of section 334 of title 28, U.S.C., 1940 ed., as to the custody, use and delivery to successors was omitted as obsolete on advice of the Administrative Office of the United States Courts.

The limitation of 10 copies to the library of the Supreme Court and 6 copies to the marshal of the Supreme Court for use of the justices, was omitted and the provision for distribution in such number "specified by the Chief Justice of the United States" was substituted therefor.

Authority for making an appropriation to carry into effect the provisions of this section is contained in section 334 of title 28, U.S.C., 1940 ed., Acts July 1, 1922, ch. 267, § 5, 42 Stat. 818; May 29, 1926, ch. 425, §§ 3, 44 Stat. 678 which is omitted, but not repealed, as unnecessary in this revision.

Changes were made in phraseology and arrangement.

1949 Act


It substitutes, in such section 411(a), "Director of the Bureau of Land Management" for "Commissioner of the General Land Office," in view of section 403 of such plan which abolished the General Land Office and created the Bureau of Land Management, headed by a Di-

director. It inserts as new, in such section 411(a), references to the Secretary of Defense, Secretary of the Air Force, and Judge Advocate General of the Air Force, in view of the creation of the National Military Establishment, headed by the Secretary of Defense, and the establishment of the Department of the Air Force in 1947.

Subsection (b) of this section redesignates, in section 411(b) of title 28, U.S.C., the Secretary of War as "Secretary of the Army," for the reasons stated above, and corrects a typographical error in the word "court-martial.""

**AMENDMENTS**

1952—Act July 10, 1952, amended section generally to provide for flexibility in the printing and distribution of the reports under congressional control.

1951—Subsec. (c). Act Oct. 31, 1951, in second par., substituted "Secretary of the Army" for "Secretary of War".


Subsec. (b). Act May 24, 1949, § 68(b), substituted "Secretary of the Army" for "Secretary of War" and "Court-martial" for "court-martial".

§ 412. Sale of Supreme Court reports

The Public Printer, or other printer designated by the Supreme Court of the United States shall print such additional bound volumes and preliminary prints of such reports as may be required for sale to the public. Such additional copies shall be sold by the Superintendent of Documents, as provided by law.


**HISTORICAL AND REVISION NOTES**


The authority for making an appropriation to carry into effect the provisions of this section is contained in section 336 of title 28, U.S.C., 1940 ed., acts July 1, 1922, ch. 267, § 4, 42 Stat. 818; May 29, 1926, ch. 425, § 2, 44 Stat. 677 which is omitted, but not repealed, as unnecessary in this revision.

Reference to digests was omitted to conform to administrative practice. (See section 604(a)(b) of this title.)

Changes were made in phraseology.

**AMENDMENTS**

1952—Act July 10, 1952, permitted Superintendent of Documents to sell reports under same terms as other Government publications.

§ 413. Publications; distribution to courts

Distribution of publications to Federal courts in accordance with the provisions of this chapter shall not be made to any place where such court is held in a building not owned or controlled by the United States unless such publications are committed to the custody of an officer of the United States at such building.
The Attorney General and the Director in the procurement of law books, books of reference or periodicals may exchange or sell similar items and apply the allowance or proceeds to payment in whole or in part of the cost of the items procured.


HISTORICAL AND REVISION NOTES

1948 ACT


Other provisions of section 1131 of title 26, U.S.C., 1940 ed., are incorporated in section 601 of this title.

Provisions of section 330 of title 28, U.S.C., 1940 ed., limiting the price to be paid for volumes of the Federal Reporter and other similar reports were omitted after consultation with the Administrative Office of United States Courts as more properly covered by current appropriation acts. Similar provisions relating to the Federal Digest and the United States Code Annotated were omitted as covered in current appropriation acts. (See Act June 29, 1944, ch. 286, title II, § 212, 58 Stat. 361, 367.)

Provisions of said section 337 of title 26, U.S.C., 1940 ed., that books are to remain United States property, so marked, and transmitted to successors in office of persons receiving them, were omitted as covered by section 414 of this title.


Provision in section 337 of title 28, U.S.C., 1940 ed., for distribution to the Court of Appeals and District Court for the District of Columbia was omitted as covered by the phrase "Each place where a circuit court of appeals or district court is regularly held."

The revised section is extended to include the Customs Court as well as the Court of Claims and Court of Customs and Patent Appeals. All judges receive the Supreme Court reports and digests under section 414 of this title. Presumably the Congress did not intend to deny distribution of the Federal Reporter and digests to the Custom Court while providing for all other courts under said section 337.

The revised section provides for distribution of volumes to the judiciary by the Director of the Administrative Office of the United States Courts. (See reviser's note under section 411 of this title.)

Similar publications are purchased by the Marshal of Supreme Court for the use of the Court. (See section 672(2) of this title.)

The provisions of section 337 of title 28, U.S.C., 1940 ed., requiring annual estimates and disbursement of moneys under this section were omitted. Such provisions are covered by appropriate sections of title 31, U.S.C., 1940 ed., Money and Finance.

Provision of section 337 of title 28, U.S.C., 1940 ed., as to transfer, use, and delivery of books was omitted as obsolete on advice of the Administrative Office of the United States Courts.

Numerous changes were made in phraseology and superfluous language was omitted.

SENATE REVISION AMENDMENT

As finally enacted, part of act July 9, 1947, ch. 211, title IV, § 54 Stat. 306, which was classified to Title 28, U.S.C., 1946 ed., § 380, became one of the sources of this section and was accordingly included in the schedule of repeal by Senate amendment. See 80th Cong. Senate Report No. 1559.

Although section 1131 of Title 26, U.S.C. (Internal Revenue Code) is one of the sources of this section, it was struck out of the schedule of repeal by Senate amendment and accordingly remains in Title 26. See 80th Cong. Senate Report No. 1559.

1949 ACT

Subsection (a) of this section eliminates from section 413 of title 28, U.S.C., the provision for furnishing books to the Tax Court, which procures books under section 1131 of the Internal Revenue Code (28 U.S.C., 1946 ed., § 411).

Subsection (b) of this section incorporates in section 413 of title 28, U.S.C., with changes in phraseology, the provisions of act of June 3, 1917 (ch. 400, title II, § 204, 49 Stat. 321), which was not incorporated in title 18 when the revision was enacted. As amended, section 413 is expanded to give like authority with respect to procurement of books to the Director of the Administrative Office of the United States Courts, as well as to the Attorney General, to prevent an obvious inconsistency.

AMENDMENTS

1922—Act July 10, 1922, amended section generally, and permitted delivery of publication to buildings controlled by the Government as well as to buildings owned by it.

1949—Act May 24, 1949, struck out reference to the Tax Court in former provisions enumerating judges and courts to receive certain publications, and inserted provisions set out as second par.

§ 414. Transmittal of books to successors

All government publications and law books furnished to justices, judges, clerks of courts, and United States attorneys of the United States and its territories and possessions, and other officers of the United States or an agency thereof shall be transmitted to their successors in office. All permanent or bound books and publications furnished under this chapter except those books furnished to the Library of Congress for international exchange shall remain the property of the United States and shall be marked plainly, "The Property of the United States".


HISTORICAL AND REVISION NOTES


Section consolidates sections 90 of titles 5, U.S.C., 1940 ed., providing that "statutes" shall be delivered to successors of United States attorneys and clerks and proc-
visions of section 530 of title 28, U.S.C., 1940 ed., requiring that all laws, rules, and other matters shall be marked as property of the United States and shall be transmitted to their successors, with section 92 of title 44, U.S.C., 1940 ed., relating to transmission of “Government publications.” Words “All Government publications and lawbooks” and “furnished under this chapter” were used to cover “all statutes” and “The Federal Reporter and continuations thereto.” Words “‘justices and judges of the United States’” were substituted for “United States judges” in conformity with uniform use of the phrase to describe all members of the Federal judiciary. Similar provisions in sections 334 and 377 of title 28, U.S.C., 1940 ed., were therefore omitted as covered by this revised section.

Other provisions of said section 530 of title 28, U.S.C., 1940 ed., were omitted. (See reviser’s note under section 413 of this title.)

The words “permanent or bound” were inserted in the last sentence of the revised section to obviate the wasteful practice under existing law of marking temporary pamphlets.

Changes were made in phraseology.

**SENATE REVISION AMENDMENT**

As finally enacted, part of act July 9, 1947, ch. 211, title IV, 61 Stat. 396, which was classified to Title 28, U.S.C., 1946 ed., §530, became one of the sources of this section and was accordingly included in the schedule of repeals by Senate amendment. See 80th Congress Senate Report No. 1559.

**AMENDMENTS**

1962—Pub. L. 87–845 substituted “furnished to justices, judges, clerks of courts, and United States attorneys of the United States and its territories and possessions, and other officers of the United States or an agency thereof” for “furnished to justices and judges of the United States and of the Territorial Courts, United States attorneys, clerks of courts, and other officers of the United States”.

**EFFECTIVE DATE OF 1962 AMENDMENT**

Section 25 of Pub. L. 87–845 provided that: “This Act [enacting section 4210 of Title 18, Crimes and Criminal Procedure, and section 858 of Title 50, War and National Defense, and amending this section, sections 547, 1404, and 1406 of this title, section 14 of Title 18, section 1934 of Title 22, Foreign Relations and Intercourse, section 196 of Title 24, Hospitals and Asylums, and sections 191a and 191b of Title 50] takes effect January 2, 1963. Laws enacted after January 9, 1962, that are inconsistent with this Act, supersede it to the extent of the inconsistency.”


Section, acts June 25, 1948, ch. 464, 62 Stat. 906; May 24, 1949, ch. 139, §70, 63 Stat. 100, provided for distribution of copies of decisions of Court of Claims. See section 174(b) of this title.

**EFFECTIVE DATE OF REPEAL**


**CHAPTER 21—GENERAL PROVISIONS APPLICABLE TO COURTS AND JUDGES**

Sec.


452. Courts always open; power unrestricted by expiration of sessions.

453. Oath of justices and judges.

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1 So in original. Does not conform to section catchline.

Practice of law by justices and judges.

Disqualification of justice, judge, or magistrate judge.

Travelling expenses of justices and judges; official duty stations.

Records; obsolete papers.

Relative of justice or judge ineligible to appointment.

Administration of oaths and acknowledgments.

Application to other courts.

Adjustments in certain salaries.

Court accommodations.

Expenses of litigation.

**AMENDMENTS**


**CHANGE OF NAME**

Words “magistrate judge” substituted for “magistrate” in item 455 pursuant to section 321 of Pub. L. 101–450, set out as a note under section 631 of this title.


As used in this title:

The term “court of the United States” includes the Supreme Court of the United States, courts of appeals, district courts constituted by chapter 5 of this title, including the Court of International Trade and any court created by Act of Congress the judges of which are entitled to hold office during good behavior.

The terms “district court” and “district court of the United States” mean the courts constituted by chapter 5 of this title.

The term “judge of the United States” includes judges of the courts of appeals, district courts, Court of International Trade and any court created by Act of Congress, the judges of which are entitled to hold office during good behavior.

The term “justice of the United States” includes the Chief Justice of the United States and the associate justices of the Supreme Court.

The terms “district” and “judicial district” means the districts enumerated in Chapter 5 of this title.

The term “department” means one of the executive departments enumerated in section 1 of Title 5, unless the context shows that such term was intended to describe the executive, legislative, or judicial branches of the government.

The term “agency” includes any department, independent establishment, commission, administration, authority, board or bureau of the United States or any corporation in which the
United States has a proprietary interest, unless the context shows that such term was intended to be used in a more limited sense.


HISTORICAL AND REVISIONS NOTES
This section was inserted to make possible a greater simplification in consolidation of the provisions incorporated in this title.

The definitions of agency and department conform with such definitions in section 6 of revised title 18, U.S.C. (H.R. 3190, 80th Cong.).

SENATE REVISION AMENDMENT
Those provisions of this section which related to the Tax Court were eliminated by Senate amendment. See 80th Congress Senate Report No. 1559.

REFERENCES IN TEXT
Section 1 of Title 5, referred to in text, is section 1 of former Title 5, Executive Departments and Governmental Offices and Employees, the provisions of which are covered by section 101 of Title 5, Government Organization and Employees.

AMENDMENTS
1982—Pub. L. 97-164 struck out references to the Court of Claims and to the Court of Customs and Patent Appeals in the definitions of ‘‘court of the United States’’ and ‘‘judge of the United States’’.

1980—Pub. L. 96-417 redesignated the Customs Court as the Court of International Trade.

1976—Pub. L. 95-598 directed the amendment of section by inserting references to bankruptcy courts and bankruptcy judges, 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.

1966—Pub. L. 89-571 removed the United States District Court for the District of Puerto Rico from the definition of ‘‘court of the United States’’.

1959—Pub. L. 86-3 substituted ‘‘the United States District Court for the District of Puerto Rico’’ for ‘‘including the districts of Hawaii and Puerto Rico’’ in provisions defining ‘‘court of the United States’’.

EFFECTIVE DATE OF 1982 AMENDMENT

EFFECTIVE DATE OF 1980 AMENDMENT
Amendment by Pub. L. 96-417 effective Nov. 1, 1980, and applicable with respect to civil actions pending on or commenced on or after such date, see section 761(a) of Pub. L. 96-417, set out as a note under section 251 of this title.

EFFECTIVE DATE OF 1959 AMENDMENT
Section 10 of Pub. L. 86-3 provided that the amendment made by section 10 of Pub. L. 86-3 shall be effective on admission of the State of Hawaii into the Union. Admission of Hawaii into the Union was accomplished Aug. 21, 1959, on issuance of Proc. No. 3309, Aug. 21, 1959, 25 F.R. 6688, 73 Stat. c74, as required by sections 1 and 7(c) of Pub. L. 86-3, Mar. 18, 1959, 73 Stat. 4, set out as notes preceding §491 of Title 48, Territories and Insular Possessions.

‘‘Circuit Court of Appeals’’—‘‘Senior Circuit Judge’’, Etc. Defined
Section 32 of act June 25, 1948, as amended by act May 24, 1949, ch. 139, §127, 63 Stat. 107, provided that:

‘‘(a) All laws of the United States in force on September 1, 1948, in which reference is made to a circuit court of appeals’’; ‘‘senior circuit judge’’; ‘‘senior district judge’’; ‘‘presiding judge’’; ‘‘chief justice’’, except when reference to the Chief Justice of the United States is intended; or ‘‘justice’’, except when used with respect to a justice of the Supreme Court of the United States in his capacity as such or as a circuit judge, are hereby amended by substituting ‘‘court of appeals’’ for ‘‘circuit court of appeals’’; ‘‘chief judge of the circuit’’ for ‘‘senior circuit judge’’; ‘‘chief judge of the district court’’ for ‘‘senior district judge’’; ‘‘chief judge for presiding judge’’; ‘‘chief judge’’ for ‘‘chief justice’’, except when reference to the Chief Justice of the United States is intended; and ‘‘judge’’ for ‘‘justice’’, except when the latter term is used with respect to a justice of the Supreme Court of the United States in his capacity as such or as a circuit justice.

‘‘(b) All laws of the United States in force on September 1, 1948, in which reference is made to the Supreme Court of the District of Columbia or to the District Court of the United States for the District of Columbia are amended by substituting ‘‘United States District Court for the District of Columbia’’ for such designations.

‘‘(c) All laws of the United States in force on September 1, 1948, in which reference is made to the ‘Conference of Senior Circuit Judges,’ or to the ‘Judicial Conference of Senior Circuit Judges’ are amended by substituting ‘Judicial Conference of the United States’ for such designations.

‘‘(d) This section shall not be construed to amend historical references to courts or judicial offices which have no present or future application to such courts or offices.

JUDGES OF THE UNITED STATES
Section 2(a) of act June 25, 1948, as amended by act Sept. 3, 1954, ch. 1263, §51(a), 68 Stat. 1245, provided that: ‘‘The Chief Justices of the United States Court of Appeals for the District of Columbia, the District Court of the United States for the District of Columbia, and the Court of Claims [now United States Court of Federal Claims], and the presiding judge of the Court of Customs and Patent Appeals [now United States Court of Appeals for the Federal Circuit], in office on the effective date of this Act, shall be judges of the United States within the meaning of Section 451 of Title 28, Judiciary and Judicial Procedure, of the United States Code, set out in Section 1 of this Act. The Chief Justice of the United States Court of Appeals for the District of Columbia and the Associate Justices thereof, the Officer, the Chief Justice of the Court of the United States for the District of Columbia (formerly named the Supreme Court of the District of Columbia) and the Associate Justices thereof, the Chief Justice of the Court of Claims [now United States Court of Federal Claims], and the presiding judge of the Court of Customs and Patent Appeals [now United States Court of Appeals for the Federal Circuit], in office on the effective date of this Act, shall be judges of the United States within the meaning of Section 451 of Title 28, Judiciary and Judicial Procedure, of the United States Code, set out in Section 1 of this Act. The Chief Justice of the United States Court of Appeals for the District of Columbia and the Associate Justices thereof, in office on the effective date of this Act, shall be circuit judges of the District of Columbia Circuit and vested with all the rights, powers, and duties thereof, and the said Chief Justice of the United States Court of Appeals for the District of Columbia shall be Chief Judge of said Circuit. The Chief Justice of the District Court of the United States for the District of Columbia (formerly named the Supreme Court of the District of Columbia) and the Associate Justices thereof, in office on the effective date of this Act, shall be district judges for the District of Columbia, vest ed with all the rights, powers, and duties thereof.’’

Section 51(b) of act Sept. 3, 1954, provided that this amendment should take effect as of Sept. 1, 1948.
§ 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 filling 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.


HISTORICAL AND REVISION NOTES


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.”


HISTORICAL AND REVISION NOTES


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


§ 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


§ 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:
§ 455

about the personal financial interests of his personal and fiduciary financial interests, and spouse and minor children residing in his house - make a reasonable effort to inform himself on the record of the basis for the disqualification.

and (c) A judge should inform himself about his personal and fiduciary financial interests, and make a reasonable effort to inform himself about the personal financial interests of his spouse and minor children residing in his household.

(d) For the purposes of this section the following words or phrases shall have the meaning indicated:

(1) “proceeding” includes pretrial, trial, appellate review, or other stages of litigation;
(2) the degree of relationship is calculated according to the civil law system;
(3) “fiduciary” includes such relationships as executor, administrator, trustee, and guardian;
(4) “financial interest” means ownership of a legal or equitable interest, however small, or a relationship as director, adviser, or other active participant in the affairs of a party, except that:
(i) Ownership in a mutual or common investment fund that holds securities is not a “financial interest” in such securities unless the judge participates in the management of the fund;
(ii) An office in an educational, religious, charitable, fraternal, or civic organization is not a “financial interest” in securities held by the organization;
(iii) The proprietary interest of a policyholder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, is a “financial interest” in the organization only if the outcome of the proceeding could substantially affect the value of the securities.
(iv) Ownership of government securities is a “financial interest” in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.

(e) No justice, judge, or magistrate judge shall accept from the parties to the proceeding a waiver of any ground for disqualification enumerated in subsection (b). Where the ground for disqualification arises only under subsection (a), waiver may be accepted provided it is preceded by a full disclosure on the record of the basis for disqualification.

(f) Notwithstanding the preceding provisions of this section, if any justice, judge, magistrate judge, or bankruptcy judge to whom a matter has been assigned would be disqualified, after substantial judicial time has been devoted to the matter, because of the appearance or discovery, after the matter was assigned to him or her, that he or she individually or as a fiduciary, or his or her spouse or minor child residing in his or her household, has a financial interest in a party (other than an interest that could be substantially affected by the outcome), disqualification is not required if the justice, judge, magistrate judge, bankruptcy judge, spouse or minor child, as the case may be, divests himself or herself of the interest that provides the grounds for the disqualification.


HISTORICAL AND REVISION NOTES

Section 24 of title 28, U.S.C., 1940 ed., applied only to district judges. The revised section is made applicable to all justices and judges of the United States.

The phrase “in which he has a substantial interest” was substituted for “concerned in interest in any suit.”

The provision of section 24 of title 28, U.S.C., 1940 ed., as to giving notice of disqualification to the “senior circuit judge,” and words “and thereupon such proceedings shall be had as are provided in sections 17 and 18 of this title,” were omitted as unnecessary and covered by section 291 et seq. of this title relating to designation and assignment of judges. Such provision is not made by statute in case of disqualification or incapacity, for other cause. See sections 140, 143, and 144 of this title. If a judge or clerk of court is remiss in failing to notify the chief judge of the district or circuit, the judicial council of the circuit has ample power under section 332 of this title to apply a remedy.

Relationship to a party’s attorney is included in the revised section as a basis of disqualification in conformity with the views of judges cognizant of the grave possibility of undesirable consequences resulting from a less inclusive rule.

Changes were made in phraseology.

AMENDMENTS
1978—Pub. L. 95–598 struck out references to referees in bankruptcy in section catchline and in subsecs. (a) and (e).
1974—Pub. L. 93–512 substituted “Disqualification of justice, judge, magistrate, or referee in bankruptcy” for “Interest of justice or judge” in section catchline, reorganized structure of provisions in and expanded applicability to include magistrates and referees in bankruptcy and grounds for which disqualification may be based, and inserted provisions relating to waiver of disqualification.

CHANGE OF NAME
Words “magistrate judge” substituted for “magistrate” in section catchline and wherever appearing in subsecs. (a), (e), and (f) pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT
Amendment by Pub. L. 95–598 effective Oct. 1, 1979, see section 402(c) of Pub. L. 95–598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy. For procedures relating to Bankruptcy matters during transition period see note preceding section 151 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT
Section 3 of Pub. L. 93–512 provided that: “This Act [amending this section] shall not apply to the trial of any proceeding commenced prior to the date of this Act [Dec. 5, 1974], nor to appellate review of any proceeding which was fully submitted to the reviewing court prior to the date of this Act.”
§ 456. Traveling expenses of justices and judges; official duty stations

(a) The Director of the Administrative Office of the United States Courts shall pay each justice or judge of the United States, and each retired justice or judge recalled or designated and assigned to active duty, while attending court or transacting official business at a place other than his official duty station for any continuous period of less than thirty calendar days (1) all necessary transportation expenses certified by the justice or judge; and (2) payments for subsistence expenses at rates or in amounts which the Director establishes, in accordance with regulations which the Director shall prescribe with the approval of the Judicial Conference of the United States and after considering the rates or amounts set by the Administrator of General Services and the President pursuant to section 5702 of title 5, The Director of the Administrative Office of the United States Courts shall also pay each justice or judge of the United States, and each retired justice or judge recalled or designated and assigned to active duty, while attending court or transacting official business under an assignment authorized under chapter 13 of this title which exceeds in duration a continuous period of thirty calendar days, all necessary transportation expenses and actual and necessary expenses of subsistence actually incurred, notwithstanding the provisions of section 5702 of title 5, in accordance with regulations which the Director shall prescribe with the approval of the Judicial Conference of the United States.

(b) The official duty station of the Chief Justice of the United States, the Justices of the Supreme Court of the United States, and the judges of the United States Court of Appeals for the District of Columbia Circuit, the United States Court of Appeals for the Federal Circuit, and the United States District Court for the District of Columbia shall be the District of Columbia.

(c) The official duty station of the judges of the United States Court of International Trade shall be New York City.

(d) The official duty station of each district judge shall be that place where a district court holds regular sessions at or near which the judge performs a substantial portion of his judicial work, which is nearest the place where he maintains his actual abode in which he customarily lives.

(e) The official duty station of a circuit judge shall be that place where a circuit or district court holds regular sessions at or near which the judge performs a substantial portion of his judicial work, or that place where the Director provides chambers to the judge where he performs a substantial portion of his judicial work, which is nearest the place where he maintains his actual abode in which he customarily lives.

(f) The official duty station of a retired judge shall be established in accordance with section 374 of this title.

(g) Each circuit or district judge whose official duty station is not fixed expressly by this section shall notify the Director of the Administrative Office of the United States Courts in writing of his actual abode and official duty station upon his appointment and from time to time thereafter as his official duty station may change.


Historical and Revision Notes

the Judicial Conference of the United States was omitted as covered by the first paragraph of the revised section.

The provision in section 218 of title 28, U.S.C., 1940 ed., requiring the marshal of the Supreme Court to pay the expenses of attending the Judicial Conference of the United States is omitted as covered in part by section 550 [see 571] of this title under which United States marshals pay the travel allowances of circuit, district, and certain other judges. The expenses of the Chief Justice of the United States in attending such Conference were required also under said section 218 to be paid by the Supreme Court marshal. Such requirement is also omitted upon advice of the Director of the Administrative Office of the United States Courts that the matter of payment is one of administrative convenience. As to manner of payment of salaries to active and retired Justices of the Supreme Court, see reviser's note under section 550 [see 571] of this title.

Words "justice or judge of the United States" were used to describe members of all courts. See definitive section 451 of this title.

The remaining provisions of sections 218 of title 28, U.S.C., relating to the Judicial Conference of the United States and 449 of title 28, U.S.C., 1940 ed., relating to judicial conferences of circuits, are incorporated in sections 331 and 333, respectively.

The provision in section 1102(d) of title 28, U.S.C., 1940 ed., relating to traveling and subsistence expenses of judges of The Tax Court of the United States, successor to the Board of Tax Appeals.

Numerous changes were made in phraseology.

**Senate Revision Amendments**

Those provisions of this section which related to the Tax Court were eliminated by Senate amendment, therefore section 1102(d) of title 28, U.S.C., was not one of the sources of this section as finally enacted.

As finally enacted, part of act July 9, 1947, ch. 211, title IV, 61 Stat. 303, which was classified to title 28, U.S.C., 1946 ed., §296a, became one of the sources of this section and was accordingly included in the schedule of repeals by Senate amendment. See 80th Congress Senate Report No. 1559.

**AMENDMENTS**

1986—Subsec. (a). Pub. L. 99–234 substituted "pay each justice or judge of the United States, and each retired justice or judge recalled or designated and assigned to active duty, while attending court or transacting official business at a place other than his official duty station, shall, upon his certificate, be paid by the Director of the Administrative Office of the United States Courts with the approval of the Judicial Conference of the United States, reimbursement for his actual and necessary expenses of subsistence not in excess of the maximum amount fixed by the Travel Expense Act of 1949, as amended", and inserted "The Director of the Administrative Office of the United States Courts shall also pay each justice or judge of the United States, and each retired justice or judge recalled or designated and assigned to active duty, while attending court or transacting official business under an assignment authorized under chapter 13 of this title which exceeds in duration a continuous period of thirty calendar days, all necessary transportation expenses and actual and necessary expenses of subsistence actually incurred, notwithstanding the provisions of section 5702 of title 5, in accordance with regulations which the Director shall prescribe with the approval of the Judicial Conference of the United States."

Subsec. (b). Pub. L. 97–164 designated existing designated second par. as subsec. (b), and in subsec. (b) as so designated, substituted "official duty station" for "official station", struck out references to the judges of The Court of Claims and the Court of Customs and Patent Appeals, and inserted reference to the judges of the United States Court of Appeals for the Federal Circuit.

Subsec. (c). Pub. L. 97–164 designated existing designated third par. as subsec. (c) and substituted "official duty station" for "official station".

Subsec. (d). Pub. L. 97–164 designated existing designated fourth par. as subsec. (d) and substituted "The official duty station of each district judge shall be that place where a district court holds regular sessions at or near which the judge performs a substantial portion of his judicial work, which is nearest the place in which he maintains his actual abode in which he customarily lives" for "The official duty station of each circuit and district judge, including each district judge in the Terri
dories and possessions, shall be that place where a district court is regularly held and at or near which the judge performs a substantial portion of his judicial work, which is nearest the place where he maintains an actual abode in which he customarily lives".

Subsecs. (e), (f). Pub. L. 97–164 added subsecs. (e) and (f).

Subsec. (g). Pub. L. 97–164 designated existing designated fifth par. as subsec. (g) and substituted "Each circuit or district judge whose official duty station is not fixed expressly by this section shall notify the Director of the Administrative Office of the United States Courts in writing of his actual abode and official duty station upon his appointment and from time to time thereafter as his official duty station may change" for "Each circuit judge and each district judge whose official station is not fixed expressly in the second paragraph of this section shall notify the Director of the Administrative Office of the United States Courts in writing of his actual abode and his official station".

1980—Pub. L. 96–417 redesignated the Customs Court as the Court of International Trade.

1978—Pub. L. 95–596 directed the amendment of section by inserting references to the United States Bank-
ruptcy Court for the District of Columbia and bankrupt
cy judges, 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.

1959—Pub. L. 86–138 authorized payment to justices
and judges of a per diem allowance or a maximum
amount for actual expenses of subsistence in place of
reasonable maintenance expenses actually incurred,
not exceeding $15 per day.

1953—Act Aug. 8, 1953, increased limit of reimbursable
maintenance from $10 to $15 per day.

**Effective Date of 1986 Amendment**

Amendment by Pub. L. 99–234 effective (1) on effective
date of regulations to be promulgated not later than
150 days after Jan. 2, 1986, or (2) 180 days after Jan. 2,
1986, whichever occurs first, see section 301(a) of Pub. L.
99–234, set out as a note under section 5701 of Title 5,
Government Organization and Employees.

**Effective Date of 1982 Amendment**

Amendment by Pub. L. 97–174 effective Oct. 1, 1982,
see section 402 of Pub. L. 97–174, set out as a note under
section 171 of this title.

**Effective Date of 1980 Amendment**

Amendment by Pub. L. 96–417 effective Nov. 1, 1980,
and applicable with respect to civil actions pending on
or commenced on or after such date, see section 701(a)
of Pub. L. 96–417, set out as a note under section 251 of
this title.

**Report on Transportation Needs**

Director of Administrative Office of United States
Courts, within one year after Oct. 27, 1986, to prepare,
consultation with Marshal of Supreme Court of
United States, Clerk of United States Court of Military
Appeals, and Court Administrator of United States Tax
Courts, to prepare and transmit to Congress, appropriate recom-
mandations concerning transportation needs of judicial branch
and of courts established pursuant to Article I of the
Constitution.

**Promulgation of Regulations by Director**

Director to promulgate regulations effectuating in-
creases in reimbursement for expenses, see section 6 of
note under section 604 of this title.

§ 457. Records; obsolete papers

The records of district courts and of courts of
appeals shall be kept at one or more of the places
where court is held. Such places shall be
designated by the respective courts except when
otherwise directed by the judicial council of the
circuit.

Papers of any court established by Act of Con-
gress which have become obsolete and are no
longer necessary or useful, may be disposed of
with the approval of the court concerned in the
manner provided by sections 366–380 of Title 44
and in accordance with the rules of the Judicial
Conference of the United States.

(June 25, 1948, ch. 646, 62 Stat. 908; Pub. L. 95–598,
title II, §216, Nov. 6, 1978, 92 Stat. 2661.)

**Historical and Revision Notes**

Based on title 28, U.S.C., 1940 ed., §§10, 523a, 523b,
396, §§1–2, 46 Stat. 946).

Section consolidates and simplifies sections 10, 523a
and 523b of title 28, U.S.C., 1940 ed., relating to filing
district court records and destroying obsolete papers and
bankruptcy proofs of claims.

The revised section enlarges scope of section 10 of
title 28, U.S.C., 1940 ed., to include places of keeping
records of courts of appeals which was not covered by
existing law.

The provisions in section 10 of title 28, U.S.C., 1940
ed., that where court is held “at more than one place”
and the place of keeping the records “is not specially
provided by law, they shall be kept at either of the
places” designated by the court, was changed to permit
the judicial councils of the circuits to make the deter-
mination without requiring special enactment of Con-
gress. See section 322 of this title as to purpose and du-
ties of the judicial councils.

The provision of section 523a of title 28, U.S.C., 1940
ed., authorizing destruction of records by the Attorney
General was rewritten in the second paragraph to give
such authority, respecting court records, to the Direc-
tor of the Administrative Office of the United States
Courts. Such Director, under section 604 of this title,
now exercises administrative authority over clerks and
commissioners.

A similar provision with respect to records of United
States attorneys and marshals was omitted as supers-
eded by sections 366 and 380 of title 44, U.S.C., 1940 ed.,
Public Printing and Documents, which prescribe the
exclusive method for disposition of such papers.

Substantial changes were made in phraseology and
arrangement.

**References in Text**

Sections 366–380 of Title 44, referred to in text, were
repealed and the provisions thereof reenacted as chapter
33 (§3301 et seq.) of Title 44, Public Printing and

**Amendments**

1979—Pub. L. 95–598 directed the amendment of sec-
tion by inserting “of bankruptcy courts,” after “The
record”, 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.

§ 458. Relative of justice or judge ineligible to ap-
pointment

(a)(1) No person shall be appointed to or em-
ployed in any office or duty in any court who is
related by affinity or consanguinity within the
degree of first cousin to any justice or judge of
such court.

(2) With respect to the appointment of a judge
of a court exercising judicial power under article
III of the United States Constitution (other than
the Supreme Court), subsection (b) shall apply
in lieu of this subsection.

(b)(1) In this subsection, the term—
(A) “same court” means—
(i) in the case of a district court, the court
of a single judicial district; and
(ii) in the case of a court of appeals, the
court of appeals of a single circuit; and

(B) “member”—
(i) means an active judge or a judge retired
in senior status under section 371(b); and
(ii) shall not include a retired judge, ex-
cept as described under clause (i).

(2) No person may be appointed to the position
of judge of a court exercising judicial power
under article III of the United States Constitu-
tion (other than the Supreme Court) who is re-
lated by affinity or consanguinity within the de-
gree of first cousin to any judge who is a mem-
ber of the same court.

(June 25, 1948, ch. 646, 62 Stat. 908; Pub. L.


§ 459. Administration of oaths and acknowledgments

Each justice or judge of the United States may administer oaths and affirmations and take acknowledgments.

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

HISTORICAL AND REVISION NOTES


A provision referring to circuit court employees as of December 21, 1911, was omitted as obsolete.

Changes in phraseology were made.

AMENDMENTS

1998—Pub. L. 105–300 designated existing provisions as subsec. (a)(1) and added subsec. (a)(2) and (b).

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–300, §1(b), Oct. 27, 1998, 112 Stat. 2837, provided that: ''This Act [amending this section] shall take effect on the date of enactment of this Act (Oct. 27, 1998) and shall apply only to any individual whose nomination is submitted to the Senate on or after such date.''

§ 459. Administration of oaths and acknowledgments

This section was included to make clear that the provisions of this chapter are equally applicable in Alaska, the Canal Zone and the Virgin Islands in view of definitive section 451 of this title.

AMENDMENTS


1982—Pub. L. 97–164 substituted “Application to other courts” for “Application to Canal Zone, Guam and Virgin Islands” in section catchline designated existing provisions as subsec. (a), substituted “Sections 452 through 459 and section 462 of this chapter shall also apply to the United States District Court for the Territory of Alaska” for “Sections 452–459 of this chapter shall also apply to 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 and the judges thereof” and added subsec. (b).


1958—Pub. L. 85–508 struck out provisions which made sections 452 to 459 applicable to the District Court for the Territory of Alaska. See section 81A of this title which establishes a United States District Court for the State of Alaska.

1951—Act Oct. 31, 1951, inserted “Guam” in section catchline, and inserted reference to the District Court of Guam in text.

EFFECTIVE DATE OF 1992 AMENDMENT


EFFECTIVE DATE OF 1982 AMENDMENT


EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–508 effective Nov. 6, 1978, see section 402(d) of Pub. L. 95–508, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–508 effective Jan. 3, 1959, upon admission of Alaska into the Union pursuant to
$461. Adjustments in certain salaries

(a)(1) Subject to paragraph (2), effective at the beginning of the first applicable pay period commencing on or after the first day of the month in which an adjustment takes effect under section 5303 of title 5 in the rates of pay under the General Schedule (except as provided in subsection (b)), each salary rate which is subject to adjustment under this section shall be adjusted by an amount, rounded to the nearest multiple of $100 (or if midway between multiples of $100, to the next higher multiple of $100) equal to the percentage of such salary rate which corresponds to the most recent percentage change in the ECI (relative to the date described in the next sentence), as determined under section 704(a)(1) of the Ethics Reform Act of 1989. The appropriate date under this sentence is the first day of the fiscal year in which such adjustment in the rates of pay under the General Schedule takes effect.

(2) In no event shall the percentage adjustment taking effect under paragraph (1) in any calendar year (before rounding), in any salary rate, exceed the percentage adjustment taking effect in such calendar year under section 5303 of title 5 in the rates of pay under the General Schedule.

(b) Subsection (a) shall not apply to the extent it would reduce the salary of any individual whose compensation may not, under section 1 of article III of the Constitution of the United States, be diminished during such individual’s continuance in office.


References in Text

The General Schedule, referred to in subsec. (a), is set out under section 5332 of Title 5, Government Organization and Employees.

Section 704(a)(1) of the Ethics Reform Act of 1989, referred to in subsec. (a)(1), is section 704(a)(1) of Pub. L. 101–194, which is set out as a note under section 5318 of Title 5.
§ 461

§ 461

adjournment in accordance with section 461 of title 28, United States Code.

§ 461

that: "Pursuant to section 140 of Public Law 97–92 [set out below], Justices and judges of the United States are authorized during fiscal year 2002, to receive a salary adjustment in accordance with 28 U.S.C. 461.

§ 461


§ 461

that: "Pursuant to section 140 of Public Law 97–92 [set out below], Justices and judges of the United States are authorized during fiscal year 1998, to receive a salary adjustment in accordance with 28 U.S.C. 461.

§ 461

that: "Pursuant to section 140 of Public Law 97–92 [set out below], Justices and judges of the United States are authorized during fiscal year 1997, to receive a salary adjustment in accordance with 28 U.S.C. 461.

§ 461

that: "Pursuant to section 140 of Public Law 97–92 [set out below], Justices and judges of the United States are authorized during fiscal year 1996, to receive a salary adjustment in accordance with 28 U.S.C. 461.

§ 461

Justices and judges of the United States are authorized during fiscal year 1995, to receive a salary adjustment in accordance with 28 U.S.C. 461.

§ 461

Justices and judges of the United States are authorized during fiscal year 1994, to receive a salary adjustment in accordance with 28 U.S.C. 461.

§ 461

Justices and judges of the United States are authorized during fiscal year 1993, to receive a salary adjustment in accordance with 28 U.S.C. 461.

§ 461

Justices and judges of the United States are authorized during fiscal year 1992, to receive a salary adjustment in accordance with 28 U.S.C. 461.

§ 461

Justices and judges of the United States are authorized during calendar year 1991, to receive a salary adjustment in accordance with 28 U.S.C. 461.

§ 461

Pakistan, on or after Jan. 1, 1991, the rate of basic pay for the Chief Justice of the United States, an associate justice of the Supreme Court of the United States, a judge of a United States circuit court, a judge of a district court of the United States, and a judge of the United States Court of International Trade shall be increased in the amount of 25 percent of their respectively provided that effective the first day of the first applicable pay period beginning that pursuant to 5 U.S.C. 5305 of title 5, United States Code, shall be increased by an amount, rounded to the nearest multiple of $100 (or if midway between multiples of $100, to the next higher multiple of $100), equal to the overall percentage of the adjustment taking effect under section 5305 of title 5, United States Code, in the rates of pay under the General Schedule during fiscal year 1984.

§ 461

The rate of basic pay for any office or position in the judicial branch of the Government shall be determined as if section 620(b) of Pub. L. 100–440 (5 U.S.C. 5305 note) and section 619(b) of Pub. L. 101–194 (5 U.S.C. 5318 note) had never been enacted, see section 702 of Pub. L. 101–194, set out as a note under section 5303 of Title 5.

§ 461

Pursuant to section 140 of Public Law 97–92 [set out below], justices and judges of the United States shall receive the same percentage increase in salary accorded to employees paid under the General Schedule (pursuant to 5 U.S.C. 5305).

§ 461

Pursuant to section 140 of Public Law 97–92 [set out below], during fiscal year 1987, justices and judges of the United States shall receive the same percentage increase in salary accorded to employees paid under the General Schedule (pursuant to 5 U.S.C. 5305).

§ 461

Effective on the first day of the first applicable pay period commencing on or after Jan. 1, 1985, each rate of pay subject to adjustment by section 461 of title 28, United States Code, shall be increased by an amount, rounded to the nearest multiple of $100 (or if midway between multiples of $100, to the next higher multiple of $100), equal to the overall percentage of the adjustment taking effect under section 5305 of title 5, United States Code, in the rates of pay under the General Schedule during fiscal year 1984.

SPECIFIC CONGRESSIONAL AUTHORIZATION REQUIRED FOR SALARY INCREASES FOR FEDERAL JUDGES AND JUSTICES OF THE SUPREME COURT

Pub. L. 97–92, § 140, Dec. 15, 1981, 95 Stat. 1200, as amended by Pub. L. 107–77, title VI, § 625, Nov. 28, 2001, 115 Stat. 803, provided that: "Notwithstanding any other provision of law or of this joint resolution [Pub. L. 97–92], none of the funds appropriated by this joint resolution or by any other Act shall be obligated or expended to increase, after the date of enactment of this joint resolution [Dec. 15, 1981], any salary of any Federal judge or of any Justice of the Supreme Court, except as may be specifically authorized by Act of Congress hereafter enacted: Provided, That nothing in this limitation shall be construed to reduce any salary which may be in effect at the time of enactment of this joint resolution nor shall this limitation be construed in any manner to reduce the salary of any Federal judge or of any Justice of the Supreme Court. This section shall apply to fiscal year 1981 and each fiscal year thereafter."

SALARY RATE LIMITATIONS ON USE OF FUNDS

1982—Limitations on use of funds for fiscal year ending Sept. 30, 1982, appropriated by any Act to pay the salary or pay of any individual in legislative, executive, or judicial branch in position equal to or above level V of the Executive Schedule, see section 101(e) of Pub. L. 97–276, as amended, set out as a note under section 5318 of Title 5, Government Organization and Employees.

1981—Limitations on use of funds for fiscal year ending Sept. 30, 1981, appropriated by any Act to pay the salary or pay of any individual in legislative, executive, or judicial branch in position equal to or above level V of the Executive Schedule, see sections 101(g) and 141 of Pub. L. 97–92, set out as a note under section 5318 of Title 5.

1980—Limitations on use of funds for fiscal year ending Sept. 30, 1980, appropriated by any Act to pay the
salary or pay of any individual in legislative, executive, or judicial branch in position equal to or above level V of the Executive Schedule, see section 101(c) of Pub. L. 96–336, as amended, set out as a note under section 5318 of Title 5.

1979—Applicability to funds appropriated by any Act for fiscal year ending Sept. 30, 1980, of limitation of section 304 of Pub. L. 95–391 on use of funds to pay the salary or pay of any individual in legislative, executive, or judicial branch in position equal to or above level V of the Executive Schedule, see section 101 of Pub. L. 96–86, set out as a note under section 5318 of Title 5.

1978—Limitations on use of funds for fiscal year ending Sept. 30, 1979, appropriated by any Act to pay the salary or pay of any individual in legislative, executive, or judicial branch in position equal or above level V of the Executive Schedule, see section 304 of Pub. L. 95–391 and section 613 of Pub. L. 95–429, set out as a note under section 5318 of Title 5.

§ 462. Court accommodations

(a) Sessions of courts of the United States (except the Supreme Court) shall be held only at places where the Director of the Administrative Office of the United States Courts provides accommodations, or where suitable accommodations are furnished without cost to the judicial branch.

(b) The Director of the Administrative Office of the United States Courts shall provide accommodations, including chambers and courtrooms, only at places where regular sessions of court are authorized by law to be held, but only if the judicial council of the appropriate circuit has approved the accommodations as necessary.

(c) The limitations and restrictions contained in subsection (b) of this section shall not prevent the Director from furnishing chambers to circuit judges at places within the circuit other than where regular sessions of court are authorized by law to be held, when the judicial council of the circuit approves.

(d) The Director of the Administrative Office of the United States Courts shall provide permanent accommodations for the United States Court of Appeals for the Federal Circuit and for the United States Court of Federal Claims only at the District of Columbia. However, each such court may hold regular and special sessions at other places utilizing the accommodations which the Director provides to other courts.

(e) The Director of the Administrative Office of the United States Courts shall provide accommodations for probation officers, pretrial service officers, and Federal Public Defender Organizations at such places as may be approved by the judicial council of the appropriate circuit.

(f) Upon the request of the Director, the Administrator of General Services is authorized and directed to provide the accommodations the Director requests, and to close accommodations which the Director recommends for closure with the approval of the Judicial Conference of the United States.


AMENDMENTS


1989—Subsec. (c). Pub. L. 100–702 substituted “within the circuit other than where regular sessions of court are authorized by law to be held,” for “where Federal facilities are available”.

EFFECTIVE DATE OF 1992 AMENDMENT


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.

§ 463. Expenses of litigation

Whenever a Chief Justice, justice, judge, officer, or employee of any United States court is sued in his official capacity, or is otherwise required to defend acts taken or omissions made in his official capacity, and the services of an attorney for the Government are not reasonably available pursuant to chapter 31 of this title, the Director of the Administrative Office of the United States Courts may pay the costs of his defense. The Director shall prescribe regulations for such payments subject to the approval of the Judicial Conference of the United States.


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 23—CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLANS

Sec.

471. Requirement for a district court civil justice expense and delay reduction plan.

472. Development and implementation of a civil justice expense and delay reduction plan.

473. Content of civil justice expense and delay reduction plans.

474. Review of district court action.

475. Periodic district court assessment.

476. Enhancement of judicial information dissemination.

477. Model civil justice expense and delay reduction plan.

478. Advisory groups.

479. Information on litigation management and cost and delay reduction.

480. Training programs.

481. Automated case information.

482. Definitions.

§ 471. Requirement for a district court civil justice expense and delay reduction plan

There shall be implemented by each United States district court, in accordance with this chapter, a civil justice expense and delay reduction plan. The plan may be a plan developed by
such district court or a model plan developed by the Judicial Conference of the United States. The purposes of each plan are to facilitate deliberate adjudication of civil cases on the merits, monitor discovery, improve litigation management, and ensure just, speedy, and inexpensive resolutions of civil disputes.


AMENDMENTS
1991—Pub. L. 102–198 substituted “this chapter” for “this title”.

CONGRESSIONAL STATEMENT OF FINDINGS
Section 102 of Pub. L. 101–650 provided that: “The Congress makes the following findings:

“(1) The problems of cost and delay in civil litigation in any United States district court must be addressed in the context of the full range of demands made on the district court’s resources by both civil and criminal matters.

“(2) The courts, the litigants, the litigants’ attorneys, and the Congress and the executive branch, share responsibility for cost and delay in civil litigation and its impact on access to the courts, adjudication of cases on the merits, and the ability of the civil justice system to provide proper and timely judicial relief for aggrieved parties.

“(3) The solutions to problems of cost and delay must include significant contributions by the courts, the litigants, the litigants’ attorneys, and by the Congress and the executive branch.

“(4) In identifying, developing, and implementing solutions to problems of cost and delay in civil litigation, it is necessary to achieve a method of consultation so that individual judicial officers, litigants, and litigants’ attorneys who have developed techniques for litigation management and cost and delay reduction can effectively and promptly communicate those techniques to all participants in the civil justice system.

“(5) Evidence suggests that an effective litigation management and cost and delay reduction program should incorporate several interrelated principles, including—

“(A) the differential treatment of cases that provides for individualized and specific management according to their needs, complexity, duration, and probable litigation careers;

“(B) early involvement of a judicial officer in planning the progress of a case, controlling the discovery process, and scheduling hearings, trials, and other litigation events;

“(C) regular communication between a judicial officer and attorneys during the pretrial process; and

“(D) utilization of alternative dispute resolution programs in appropriate cases.

“(6) Because the increasing volume and complexity of civil and criminal cases imposes increasingly heavy workload burdens on judicial officers, clerks of court, and other court personnel, it is necessary to create an effective administrative structure to ensure ongoing consultation and communication regarding effective litigation management and cost and delay reduction principles and techniques.”

IMPLEMENTATION OF PLANS

“(b) IMPLEMENTATION.—(1) Except as provided in section 105 of this Act [set out below], each United States district court shall, within three years after the date of the enactment of this title [Dec. 1, 1990], implement a civil justice expense and delay reduction plan under section 471 of title 28, United States Code, as added by subsection (a).

“(2)(A) The requirements set forth in sections 471, 472, 473, 474, 475, 477, and 478 of title 28, United States Code, as added by subsection (a), shall remain in effect permanently.

“(B) The requirements set forth in section 476 of title 28, United States Code, as added by subsection (a), shall remain in effect permanently.

“(c) EARLY IMPLEMENTATION DISTRICT COURTS.—

“(1) Any United States district court that, no earlier than June 30, 1991, and no later than December 31, 1991, develops and implements a civil justice expense and delay reduction plan under chapter 23 of title 28, United States Code, as added by subsection (a), shall be designated by the Judicial Conference of the United States as an Early Implementation District Court.

“(2) The chief judge of a district so designated may apply to the Judicial Conference for additional resources, including technological and personnel support and information systems necessary to implement its civil justice expense and delay reduction plan. The Judicial Conference may provide such resources out of funds appropriated pursuant to section 106(a) [Pub. L. 101–650, title I, Dec. 1, 1990, 104 Stat. 5098].

“(3) Within 18 months after the date of the enactment of this title [Dec. 1, 1990], the Judicial Conference shall prepare a report on the plans developed and implemented by the Early Implementation District Courts.

“(4) The Director of the Administrative Office of the United States Courts shall transmit to the United States district courts and to the Committees on the Judiciary of the Senate and House of Representatives—

“(A) copies of the plans developed and implemented by the Early Implementation District Courts;

“(B) summaries of the reports submitted by such district courts pursuant to section 472(d) of title 28, United States Code, as added by subsection (a); and

“(C) the report prepared in accordance with paragraph (3) of this subsection.”

DEMONSTRATION PROGRAM

“(a) IN GENERAL.—(1) During the 5-year period beginning on January 1, 1991, the Judicial Conference of the United States shall conduct a demonstration program in accordance with subsection (b).

“(2) A district court participating in the demonstration program may also be an Early Implementation District Court under section 103(c) [set out above].

“(b) PROGRAM REQUIREMENT.—(1) The United States District Court for the Western District of Michigan and the United States District Court for the Northern District of Ohio shall experiment with systems of differentiated case management that provide specifically for the assignment of cases to appropriate processing tracks that operate under distinct and explicit rules, procedures, and timeframes for the completion of discovery and for trial.

“(2) The United States District Court for the Northern District of California, the United States District Court for the Northern District of West Virginia, and the United States District Court for the Western District of Missouri shall experiment with various methods of reducing cost and delay in civil litigation, including alternative dispute resolution, that such district courts and the Judicial Conference of the United States shall select.

“(c) STUDY OF RESULTS.—The Judicial Conference of the United States, in consultation with the Director of
the Federal Judicial Center and the Director of the Administrative Office of the United States Courts, shall study the experience of the district courts under the demonstration program.

(4) REPORT.—Not later than June 30, 1997, the Judicial Conference of the United States shall transmit to the Committees on the Judiciary of the Senate and the House of Representatives a report of the results of the demonstration program.

Pilot program


(a) In general.—(1) During the 5-year period beginning on January 1, 1991, the Judicial Conference of the United States shall conduct a pilot program in accordance with subsection (b).

(2) A district court participating in the pilot program shall be designated as an Early Implementation District Court under section 103(c) [set out above].

(b) Program requirements.—(1) Ten district courts (in this section referred to as ‘‘Pilot Districts’’) designated by the Judicial Conference of the United States shall implement expense and delay reduction plans under chapter 23 of title 28, United States Code (as added by section 103(a)), not later than December 31, 1991. In addition to complying with all other applicable provisions of chapter 23 of title 28, United States Code (as added by section 103(a)), the expense and delay reduction plans implemented by the Pilot Districts shall include the 6 principles and guidelines of litigation management and cost and delay reduction identified in section 473(a) of title 28, United States Code.

(2) At least 5 of the Pilot Districts designated by the Judicial Conference shall be judicial districts encompassing metropolitan areas.

(3) The expense and delay reduction plans implemented by the Pilot Districts shall remain in effect for a period of 4 years. At the end of that 4-year period, the Pilot Districts shall no longer be required to include, in their expense and delay reduction plans, the 6 principles and guidelines of litigation management and cost and delay reduction described in paragraph (1).

(c) Program study report.—(1) Not later than June 30, 1997, the Judicial Conference shall submit to the Committees on the Judiciary of the Senate and House of Representatives a report on the results of the pilot program under this section that includes an assessment of the extent to which costs and delays were reduced as a result of the program. The report shall compare those results to the impact on costs and delays in ten comparable judicial districts for which the application of section 473(a) of title 28, United States Code, had been discretionary. That comparison shall be based on a study conducted by an independent organization with expertise in the area of Federal court management.

(2)(A) The Judicial Conference shall include in its report a recommendation as to whether some or all district courts should be required to include, in their expense and delay reduction plans, the 6 principles and guidelines of litigation management and cost and delay reduction identified in section 473(a) of title 28, United States Code.

(B) If the Judicial Conference recommends in its report that some or all district courts be required to include such principles and guidelines in their expense and delay reduction plans, the Judicial Conference shall initiate proceedings for the prescription of rules implementing its recommendation, pursuant to chapter 131 of title 28, United States Code.

§ 472. Development and implementation of a civil justice expense and delay reduction plan

(a) The civil justice expense and delay reduction plan implemented by a district court shall be developed or selected, as the case may be, after consideration of the recommendations of an advisory group appointed in accordance with section 478 of this title.

(b) The advisory group of a United States district court shall submit to the court a report, which shall be made available to the public and which shall include—

(1) an assessment of the matters referred to in subsection (c)(1);

(2) the basis for its recommendation that the district court develop a plan or select a model plan;

(3) recommended measures, rules and programs; and

(4) an explanation of the manner in which the recommended plan complies with section 473 of this title.

(c)(1) In developing its recommendations, the advisory group of a district court shall promptly complete a thorough assessment of the state of the court’s civil and criminal dockets. In performing the assessment for a district court, the advisory group shall—

(A) determine the condition of the civil and criminal dockets;

(B) identify trends in case filings and in the demands being placed on the court’s resources;

(C) identify the principal causes of cost and delay in civil litigation, giving consideration to such potential causes as court procedures and the ways in which litigants and their attorneys approach and conduct litigation; and

(D) examine the extent to which costs and delays could be reduced by a better assessment of the impact of new legislation on the courts.

(2) In developing its recommendations, the advisory group of a district court shall take into account the particular needs and circumstances of the district court, litigants in such court, and the litigants’ attorneys.

(3) The advisory group of a district court shall ensure that its recommended actions include significant contributions to be made by the court, the litigants, and the litigants’ attorneys toward reducing cost and delay and thereby facilitating access to the courts.

(d) The chief judge of the district court shall transmit a copy of the plan implemented in accordance with subsection (a) and the report prepared in accordance with subsection (b) of this section to—

(1) the Director of the Administrative Office of the United States Courts;

(2) the judicial council of the circuit in which the district court is located; and

(3) the chief judge of each of the other United States district courts located in such circuit.

§ 473. Content of civil justice expense and delay reduction plans

(a) In formulating the provisions of its civil justice expense and delay reduction plan, each United States district court, in consultation with an advisory group appointed under section 478 of this title, shall consider and may include the following principles and guidelines of litigation management and cost and delay reduction:

1. systematic, differential treatment of civil cases that tailors the level of individualized and case specific management to such criteria as case complexity, the amount of time reasonably needed to prepare the case for trial, and the judicial and other resources required and available for the preparation and disposition of the case;

2. early and ongoing control of the pretrial process through involvement of a judicial officer in—
   (A) assessing and planning the progress of a case;
   (B) setting early, firm trial dates, such that the trial is scheduled to occur within eighteen months after the filing of the complaint, unless a judicial officer certifies that—
      (i) the demands of the case and its complexity make such a trial date incompatible with serving the ends of justice; or
      (ii) the trial cannot reasonably be held within such time because of the complexity of the case or the number or complexity of pending criminal cases;
   (C) controlling the extent of discovery and the time for completion of discovery, and ensuring compliance with appropriate requested discovery in a timely fashion; and
   (D) setting, at the earliest practicable time, deadlines for filing motions and a time framework for their disposition;

3. for all cases that the court or an individual judicial officer determines are complex and any other appropriate cases, careful and deliberate monitoring through a discovery-case management conference or a series of such conferences at which the presiding judicial officer—
   (A) explores the parties’ receptivity to, and the propriety of, settlement or proceeding with the litigation;
   (B) identifies or formulates the principal issues in contention and, in appropriate cases, provides for the staged resolution or bifurcation of issues for trial consistent with Rule 42(b) of the Federal Rules of Civil Procedure;
   (C) prepares a discovery schedule and plan consistent with any presumptive time limits that a district court may set for the completion of discovery and with any procedures a district court may develop to—
      (i) identify and limit the volume of discovery available to avoid unnecessary or unduly burdensome or expensive discovery; and
      (ii) phase discovery into two or more stages; and
   (D) sets, at the earliest practicable time, deadlines for filing motions and a time framework for their disposition;

4. encouragement of cost-effective discovery through voluntary exchange of information among litigants and their attorneys and through the use of cooperative discovery devices;

5. conservation of judicial resources by prohibiting the consideration of discovery motions unless accompanied by a certification that the moving party has made a reasonable and good faith effort to reach agreement with opposing counsel on the matters set forth in the motion; and

6. authorization to refer appropriate cases to alternative dispute resolution programs that—
   (A) have been designated for use in a district court; or
   (B) the court may make available, including mediation, minitrial, and summary jury trial.

(b) In formulating the provisions of its civil justice expense and delay reduction plan, each United States district court, in consultation with an advisory group appointed under section 478 of this title, shall consider and may include the following litigation management and cost and delay reduction techniques:

1. a requirement that counsel for each party to a case jointly present a discovery-case management plan for the case at the initial pretrial conference, or explain the reasons for their failure to do so;

2. a requirement that each party be represented at each pretrial conference by an attorney who has the authority to bind that party regarding all matters previously identified by the court for discussion at the conference and all reasonably related matters;

3. a requirement that all requests for extensions of deadlines for completion of discovery or for postponement of the trial be signed by the attorney and the party making the request;

4. a neutral evaluation program for the presentation of the legal and factual basis of a case to a neutral court representative selected by the court at a nonbinding conference conducted early in the litigation;

5. a requirement that, upon notice by the court, representatives of the parties with authority to bind them in settlement discussions be present or available by telephone during any settlement conference; and

6. such other features as the district court considers appropriate after considering the recommendations of the advisory group referred to in section 472(a) of this title.

(c) Nothing in a civil justice expense and delay reduction plan relating to the settlement authority provisions of this section shall alter or conflict with the authority of the Attorney General to conduct litigation on behalf of the United States, or any delegation of the Attorney General.


REFERENCES IN TEXT
§ 474. Review of district court action

(a)(1) The chief judge of each district court in a circuit and the chief judge of the circuit shall, as a committee—
(A) review each plan and report submitted pursuant to section 472(d) of this title; and
(B) make such suggestions for additional actions or modified actions of that district court as the committee considers appropriate for reducing cost and delay in civil litigation in the district court.

(2) The chief judge of a circuit may designate another judge of the circuit as chief judge of a district court; and the chief judge of a district court may designate another judge of the circuit to perform that judge’s responsibilities under paragraph (1) of this subsection.

(b) The Judicial Conference of the United States—
(1) shall review each plan and report submitted by a district court pursuant to section 472(d) of this title; and
(2) may request the district court to take additional action if the Judicial Conference determines that such court has not adequately responded to the conditions relevant to the civil and criminal dockets of the court or to the recommendations of the district court’s advisory group.


AMENDMENTS
Subsec. (a)(2). Pub. L. 102–198, § 2(2)(B), substituted “court may designate another judge of the circuit” for “court to perform the”.

§ 475. Periodic district court assessment

After developing or selecting a civil justice expense and delay reduction plan, each United States district court shall assess annually the condition of the court’s civil and criminal dockets with a view to determining appropriate additional actions that may be taken by the court to reduce cost and delay in civil litigation and to improve the litigation management practices of the court. In performing such assessment, the court shall consult with an advisory group appointed in accordance with section 472 of this title.


AMENDMENTS

§ 476. Enhancement of judicial information dissemination

(a) The Director of the Administrative Office of the United States Courts shall prepare a semiannual report, available to the public, that discloses for each judicial officer—
(1) the number of motions that have been pending for more than six months and the name of each case in which such motion has been pending;
(2) the number of bench trials that have been submitted for more than six months and the name of each case in which such trials are under submission; and
(3) the number and names of cases that have not been terminated within three years after filing.

(b) To ensure uniformity of reporting, the standards for categorization or characterization of judicial actions to be prescribed in accordance with section 481 of this title shall apply to the semiannual report prepared under subsection (a).


§ 477. Model civil justice expense and delay reduction plan

(a)(1) Based on the plans developed and implemented by the United States district courts designated as Early Implementation District Courts pursuant to section 103(c) of the Civil Justice Reform Act of 1990, the Judicial Conference of the United States may develop one or more model civil justice expense and delay reduction plans. Any such model plan shall be accompanied by a report explaining the manner in which the plan complies with section 473 of this title.

(2) The Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts may make recommendations to the Judicial Conference regarding the development of any model civil justice expense and delay reduction plan.

(b) The Director of the Administrative Office of the United States Courts shall transmit to the United States district courts and to the Committees on the Judiciary of the Senate and the House of Representatives copies of any model plan and accompanying report.


REFERENCES IN TEXT
Section 103(c) of the Civil Justice Reform Act of 1990 (Pub. L. 101–650), referred to in subsec. (a)(1), is set out as a note under section 471 of this title.

§ 478. Advisory groups

(a) Within ninety days after the date of the enactment of this chapter, the advisory group required in each United States district court in accordance with section 472 of this title shall be appointed by the chief judge of each district court, after consultation with the other judges of such court.

(b) The advisory group of a district court shall be balanced and include attorneys and other persons who are representative of major categories of litigants in such court, as determined by the chief judge of such court.

(c) Subject to subsection (d), in no event shall any member of the advisory group serve longer than four years.

(d) Notwithstanding subsection (c), the United States Attorney for a judicial district, or his or her designee, shall be a permanent member of the advisory group for that district court.
§ 479. Information on litigation management and cost and delay reduction

(a) Within four years after the date of the enactment of this chapter, the Judicial Conference of the United States shall prepare a comprehensive report on all plans received pursuant to section 472(d) of this title. The Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts may make recommendations regarding such report to the Judicial Conference during the preparation of the report. The Judicial Conference shall transmit copies of the report to the United States district courts and to the Committees on the Judiciary of the Senate and the House of Representatives.

(b) The Judicial Conference of the United States shall, on a continuing basis—

(1) study ways to improve litigation management and dispute resolution services in the district courts; and

(2) make recommendations to the district courts on ways to improve such services.

(c)(1) The Judicial Conference of the United States shall prepare, periodically revise, and transmit to the United States district courts a Manual for Litigation Management and Cost and Delay Reduction. The Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts shall make recommendations regarding the preparation of and any subsequent revisions to the Manual.

(2) The Manual shall be developed after careful evaluation of the plans implemented under section 472 of this title, the demonstration program conducted under section 104 of the Civil Justice Reform Act of 1990, and the pilot program conducted under section 105 of the Civil Justice Reform Act of 1990.

(3) The Manual shall contain a description and analysis of the litigation management, cost and delay reduction principles and techniques, and alternative dispute resolution programs considered most effective by the Judicial Conference, the Director of the Federal Judicial Center, and the Director of the Administrative Office of the United States Courts.


References in Text

The date of the enactment of this chapter, referred to in subsec. (a), is the date of enactment of Pub. L. 101–650, which was approved Dec. 1, 1990.

§ 480. Training programs

The Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts shall develop and conduct comprehensive education and training programs to ensure that all judicial officers, clerks of court, courtroom deputies, and other appropriate court personnel are thoroughly familiar with the most recent available information and analyses about litigation management and other techniques for reducing cost and expediting the resolution of civil litigation. The curriculum of such training programs shall be periodically revised to reflect such information and analyses.


§ 481. Automated case information

(a) The Director of the Administrative Office of the United States Courts shall ensure that each United States district court has the automated capability readily to retrieve information about the status of each case in such court.

(b)(1) In carrying out subsection (a), the Director shall prescribe—

(A) the information to be recorded in district court automated systems; and

(B) standards for uniform categorization or characterization of judicial actions for the purpose of recording information on judicial actions in the district court automated systems.

(2) The uniform standards prescribed under paragraph (1)(B) of this subsection shall include a definition of what constitutes a dismissal of a case and standards for measuring the period for which a motion has been pending.

(c) Each United States district court shall record information as prescribed pursuant to subsection (b) of this section.


§ 482. Definitions

As used in this chapter, the term "judicial officer" means a United States district court judge or a United States magistrate judge.


Change of Name


PART II—DEPARTMENT OF JUSTICE

Chap. 31. The Attorney General .......................... 501
TITLE 28—JUDICIARY AND JUDICIAL PROCEDURE

§ 501

Executive department

The Department of Justice is an executive department of the United States at the seat of Government.

### § 502. Seal

The Attorney General shall have a seal for the Department of Justice. The design of the seal is subject to the approval of the President.

(Added Pub. L. 89–554, § 4(c), Sept. 6, 1966, 80 Stat. 611.)

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<td>5 U.S.C. 292</td>
<td>R.S. § 353</td>
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The section is rewritten to conform to other statutes authorizing departmental seals. The words “The seal heretofore provided for the office of the Attorney General shall be” are omitted as obsolete.

### Prior Provisions

A prior section 502, act June 25, 1948, ch. 646, 62 Stat. 909, related to appointment of assistant United States attorneys, prior to repeal by Pub. L. 89–554, § 8(a), and reenactment in section 542 of this title by section 4(c) of Pub. L. 89–554.

### § 503. Attorney General

The President shall appoint, by and with the advice and consent of the Senate, an Attorney General of the United States. The Attorney General is the head of the Department of Justice.

(Added Pub. L. 89–554, § 4(c), Sept. 6, 1966, 80 Stat. 612.)

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<td>5 U.S.C. 294</td>
<td>§ 1062</td>
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The words “may appoint” are substituted for “is authorized to appoint”.

### Prior Provisions

A prior section 503, act June 25, 1948, ch. 646, 62 Stat. 909, related to appointment of attorneys to assist United States attorneys, prior to repeal by Pub. L. 89–554, § 8(a), and reenactment in section 543 of this title by section 4(c) of Pub. L. 89–554.

### § 504. Deputy Attorney General

The President may appoint, by and with the advice and consent of the Senate, a Deputy Attorney General.


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<th>U.S. Code</th>
<th>Revised Statutes and Statutes at Large</th>
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The words “may appoint” are substituted for “is authorized to appoint”. So much of the Act of Mar. 3, 1963, as relates to pay is omitted as superseded by § 303(c) of the Act of Aug. 14, 1964, Pub. L. 88–426, 78 Stat. 416, which is codified in section 5314 of title 5, United States Code.

### Prior Provisions

to tenure and oath of office of United States attorneys, prior to repeal by Pub. L. 89–554, §8(a), and reenactment in sections 541 and 544 of this title by section 4(c) of Pub. L. 89–554.

AMENDMENTS


§ 504a. Associate Attorney General

The President shall appoint, by and with the advice and consent of the Senate, an Associate Attorney General.


The words ‘‘There shall be in the Department of Justice’’ are omitted as unnecessary, the title of the position establishing their location in the Department of Justice.


The number of Assistant Attorneys General referred to in the Act of Mar. 2, 1943, is changed from ‘‘six’’ to ‘‘nine’’ to reflect the three additional Assistant Attorneys General authorized by 1950 Reorg. Plan No. 2, 1953 Reorg. Plan No. 4, and the Act of Sept. 9, 1957.

The words ‘‘learned in the law’’ are omitted as unnecessary. Such a requirement is not made of the Attorney General, United States attorneys, or United States judges. (See reviser’s note under 28 U.S.C. 501, 1964 ed.)

The reference in former section 295 of title 5 to the Assistant Attorneys General assisting the Solicitor General are omitted on authority of the transfer of functions made by 1960 Reorg. Plan No. 2 and 1953 Reorg. Plan No. 4.

Provisions of 1950 Reorg. Plan No. 2, §4, and 1953 Reorg. Plan No. 4, §2, abolishing positions and transferring incumbents are omitted as executed.

Provisions relating to pay of Assistant Attorneys General are omitted as superseded by §303(d) of the Act of August 14, 1964, Pub. L. 88–426, 78 Stat. 418, which is codified in section 5315 of title 5, United States Code.

Prior Provisions

A prior section 506, act June 25, 1948, ch. 616, 62 Stat. 909, related to vacancies in the office of United States attorney, prior to repeal by Pub. L. 89–554, §8(a), and reenactment in section 546 of this title by section 4(c) of Pub. L. 89–554.

AMENDMENTS


Effective Date of 1978 Amendment

Amendment by Pub. L. 95–598 effective Nov. 6, 1978, see section 402(d) of Pub. L. 95–598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

§ 507. Assistant Attorney General for Administration

(a) The Attorney General shall appoint, with the approval of the President, an Assistant At-
torney General for Administration, who shall perform such duties as the Attorney General may prescribe.

(b) The position of Assistant Attorney General for Administration is in the competitive service.

(c) Notwithstanding the provisions of section 901 of title 31, United States Code, the Assistant Attorney General for Administration shall be the Chief Financial Officer of the Department of Justice.


**§ 507A. Assistant Attorney General for National Security**

(a) Of the Assistant Attorneys General appointed under section 506, one shall serve, upon the designation of the President, as the Assistant Attorney General for National Security.

(b) The Assistant Attorney General for National Security shall—

1. serve as the head of the National Security Division of the Department of Justice under section 509A of this title;

2. serve as primary liaison to the Director of National Intelligence for the Department of Justice; and

3. perform such other duties as the Attorney General may prescribe.


**§ 508. Vacancies**

(a) In case of a vacancy in the office of Attorney General, or of his absence or disability, the Deputy Attorney General may exercise all the duties of that office, and for the purpose of section 3345 of title 5 the Deputy Attorney General is the first assistant to the Attorney General.

(b) When by reason of absence, disability, or vacancy in office, neither the Attorney General nor the Deputy Attorney General is available to exercise the duties of the office of Attorney General, the Associate Attorney General shall act as Attorney General. The Attorney General may designate the Solicitor General and the Assistant Attorneys General, in further order of succession, to act as Attorney General.


**§ 507A. Assistant Attorney General for National Security**

(a) Of the Assistant Attorneys General appointed under section 506, one shall serve, upon the designation of the President, as the Assistant Attorney General for National Security.

(b) The Assistant Attorney General for National Security shall—

1. serve as the head of the National Security Division of the Department of Justice under section 509A of this title;

2. serve as primary liaison to the Director of National Intelligence for the Department of Justice; and

3. perform such other duties as the Attorney General may prescribe.


**§ 508. Vacancies**

(a) In case of a vacancy in the office of Attorney General, or of his absence or disability, the Deputy Attorney General may exercise all the duties of that office, and for the purpose of section 3345 of title 5 the Deputy Attorney General is the first assistant to the Attorney General.

(b) When by reason of absence, disability, or vacancy in office, neither the Attorney General nor the Deputy Attorney General is available to exercise the duties of the office of Attorney General, the Associate Attorney General shall act as Attorney General. The Attorney General may designate the Solicitor General and the Assistant Attorneys General, in further order of succession, to act as Attorney General.


**AMENDMENTS**

1977—Subsec. (b). Pub. L. 95–139 substituted ‘‘the Associate Attorney General shall act as Attorney General’ for ‘‘the Assistant Attorneys General and the Solicitor General, in such order of succession as the Attorney General may from time to time prescribe, shall act as Attorney General’’.

**§ 509. Functions of the Attorney General**

All functions of other officers of the Department of Justice and all functions of agencies and employees of the Department of Justice are vested in the Attorney General except the functions—

1. vested by subchapter II of chapter 5 of title 5 in administrative law judges employed by the Department of Justice;

2. of the Federal Prison Industries, Inc.; and

3. of the Board of Directors and officers of the Federal Prison Industries, Inc.


**AMENDMENTS**

1977—Subsec. (b). Pub. L. 95–139 substituted ‘‘the Associate Attorney General shall act as Attorney General’ for ‘‘the Assistant Attorneys General and the Solicitor General, in such order of succession as the Attorney General may from time to time prescribe, shall act as Attorney General’’.
The section is restated to allow incorporation into this chapter.

[The Historical and Revision Notes for former section 507, from which this section is partially derived, is set out under section 547 of this title.]

**Prior Provisions**

A prior section 509, act June 25, 1948, ch. 646, 62 Stat. 910, related to expenses of United States attorneys, prior to repeal by Pub. L. 89–554, §8(a), and reenactment in section 549 of this title by section 4(c) of Pub. L. 89–554.

**Amendments**


1984—Pub. L. 98–473 inserted “and” at end of par. (2), substituted a period for “;” and “;” at end of par. (3), and struck out par. (4) which related to functions of Board of Parole.

1978—Par. (1), Pub. L. 95–251 substituted “administrative law judges” for “hearing examiners”.

**Effective Date of 1984 Amendment**


**Transfer of Functions**

For transfer of functions, personnel, assets, and liabilities of the Domestic Emergency Support Teams of the Department of Justice, including the functions of the Attorney General relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(4) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Domestic Emergency Support Teams of Ex. Ord. No. 12656, Nov. 18, 1988, 53 F.R. 47491, set out as a note under section 5195 of Title 42, The Public Health and Welfare.

**Emergency Preparedness Functions**

For assignment of certain emergency preparedness functions to the Attorney General, see Parts 1, 2, and 11 of Ex. Ord. No. 12656, Nov. 19, 1988, 53 F.R. 47491, set out as a note under section 5195 of Title 42, The Public Health and Welfare.

**Unsolved Civil Rights Crimes**


“(a) In General.—The Attorney General shall designate a Supervisory Special Agent in the Civil Rights Unit of the Federal Bureau of Investigation of the Department of Justice.

“(b) Responsibility.—

“(1) In General.—The Attorney General shall be responsible for coordinating the investigation and prosecution of violations of criminal civil rights statutes that occurred not later than December 31, 1969, and resulted in a death.

“(2) Coordination.—In investigating a complaint under paragraph (1), the Deputy Chief may coordinate investigative activities with State and local law enforcement officials.

“(c) Study and Report.—

“(1) Study.—The Attorney General shall annually conduct a study of the cases under the jurisdiction of the Deputy Chief or under the jurisdiction of the Supervisory Special Agent and, in conducting the study, shall determine—

“(A) the number of open investigations within the Department for violations of criminal civil rights statutes that occurred not later than December 31, 1969;

“(B) the number of new cases opened pursuant to this Act since the murders and the age of potential witnesses; and

“(C) the number of unsolved Federal cases charged within the study period, including the case names, the jurisdiction in which the charges were brought, and the date the charges were filed.

“(D) the number of cases referred by the Department to a State or local law enforcement agency or prosecutor within the study period, the number of such cases that resulted in State charges being filed, the jurisdiction in which such charges were filed, the date the charges were filed, and if a jurisdiction declines to prosecute or participate in an investigation of a case so referred, the fact it did so;

“(E) the number of cases within the study period that were closed without Federal prosecution, the case names of unsolved Federal cases, the dates the cases were closed, and the relevant federal statutes;

“(F) the number of attorneys who worked, in whole or in part, on any case described in subsection (b)(1); and

“(G) the applications submitted for grants under section 5, the award of such grants, and the purposes for which the grant amount were expended.

“(2) Report.—Not later than 6 months after the date of enactment of this Act (Oct. 7, 2008), and each year thereafter, the Attorney General shall prepare and submit to Congress a report containing the results of the study conducted under paragraph (1).

“SEC. 4. SUPERVISORY SPECIAL AGENT IN THE CIVIL RIGHTS UNIT OF THE FEDERAL BUREAU OF INVESTIGATION.

“(a) In General.—The Attorney General shall designate a Supervisory Special Agent in the Civil Rights Unit of the Federal Bureau of Investigation of the Department of Justice.

“(b) Responsibility.—

“(1) In General.—The Supervisory Special Agent shall be responsible for investigating violations of criminal civil rights statutes that occurred not later than December 31, 1969, and resulted in a death.

“(2) Coordination.—In investigating a complaint under paragraph (1), the Supervisory Special Agent may coordinate the investigative activities with State and local law enforcement officials.

“SEC. 5. GRANTS TO STATE AND LOCAL LAW ENFORCEMENT.

“(a) In General.—The Attorney General may award grants to State or local law enforcement agencies for expenses associated with the investigation and prosecution by them of criminal offenses, involving civil rights, that occurred not later than December 31, 1969, and resulted in a death.

“(b) Authorization of Appropriations.—There are authorized to be appropriated $2,000,000 for each of the fiscal years 2008 through 2017 to carry out this section.

“SEC. 6. AUTHORIZATION OF APPROPRIATIONS.

“(a) In General.—There are authorized to be appropriated, in addition to any other amounts otherwise au-
authorized to be appropriated for this purpose, to the Attorney General $10,000,000 for each of the fiscal years 2009 through 2015 for training and technical assistance for state and local law enforcement agencies and United States attorneys in the investigation, apprehension, and prosecution of violations of criminal civil rights statutes that occurred not later than December 31, 1969, and resulted in a death. These funds shall be allocated by the Attorney General to the Deputy Chief of the Criminal Section of the Civil Rights Division and the Special Agent of the Civil Rights Unit of the Federal Bureau of Investigation in order to advance the purposes set forth in this Act.

"SEC. 7. DEFINITION OF 'CRIMINAL CIVIL RIGHTS STATUTES'.—In addition to any amounts authorized to be appropriated under title XI of the Civil Rights Act of 1964 (42 U.S.C. 2000h et seq.), there are authorized to be appropriated $1,500,000 for fiscal year 2008 and each subsequent fiscal year, to enable the Service (in carrying out the functions described in title X of such Act (42 U.S.C. 2000g et seq.)) to provide technical assistance by bringing together law enforcement agencies and communities in the investigation of violations of criminal civil rights statutes, in cases described in section 4(b).

"SEC. 8. SUNSET.—There is authorized to be appropriated for each of fiscal years 2006 through 2009, for—

(a) $10,000,000 for each of the fiscal years 2006 through 2009, for the purpose of assisting state and local law enforcement agencies in the investigation, apprehension, and prosecution of organized retail theft for each fiscal year.

(b) $10,000,000 for each of the fiscal years 2006 through 2009, for educating and training Federal, State, and local law enforcement regarding organized retail theft, and for reentering the items into commerce.

(c) $5,000,000 for each of the fiscal years 2006 through 2009, for educating and training Federal, State, and local law enforcement regarding organized retail theft and for the purpose of reselling the items or for reentering the items into commerce.

(d) $5,000,000 for each of the fiscal years 2006 through 2009, for educating and training Federal, State, and local law enforcement regarding organized retail theft and for the purpose of reselling the items or for reentering the items into commerce.

(e) $5,000,000 for each of the fiscal years 2006 through 2009, for educating and training Federal, State, and local law enforcement regarding organized retail theft and for the purpose of reselling the items or for reentering the items into commerce.

(f) $5,000,000 for each of the fiscal years 2006 through 2009, for educating and training Federal, State, and local law enforcement regarding organized retail theft and for the purpose of reselling the items or for reentering the items into commerce.

United States-Mexico Border Violence Task Force


"(a) TASK FORCE.—(1) The Attorney General shall establish the United States-Mexico Border Violence Task Force in Laredo, Texas, to combat drug and firearms trafficking, violence, and kidnapping along the border between the United States and Mexico and to provide expertise to the law enforcement and homeland security agencies along the border between the United States and Mexico. The Task Force shall include personnel from the Bureau of Alcohol, Tobacco, Firearms, and Explosives, Immigration and Customs Enforcement, the Drug Enforcement Administration, Customs and Border Protection, other Federal agencies (as appropriate), the Texas Department of Public Safety, and local law enforcement agencies.

(b) The Attorney General shall make available funds to provide for the ongoing administrative and technological costs to Federal, State, and local law enforcement agencies participating in the Task Force.

"(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $10,000,000 for each of the fiscal years 2006 through 2009, for—

(1) the establishment and operation of the United States-Mexico Border Violence Task Force; and
(2) the investigation, apprehension, and prosecution of individuals engaged in drug and firearms trafficking, violence, and kidnapping along the border between the United States and Mexico.

"(c) PRIVACY OFFICER.—There is an official to be designated a senior official in the Department of Justice to assume primary responsibility for privacy policy.

(d) RESPONSIBILITIES.—The responsibilities of such official shall include advising the Attorney General regarding—

(1) appropriate privacy protections, relating to the collection, storage, use, disclosure, and security of personally identifiable information, with respect to the Department's existing or proposed information technology and information systems;
(2) privacy implications of legislative and regulatory proposals affecting the Department and involving the collection, storage, use, disclosure, and security of personally identifiable information;
(3) implementation of policies and procedures, including appropriate training and auditing, to ensure the Department's compliance with privacy laws and policies, including section 552a of title 5, United States Code, and Section 208 of the E-Govern-
ment Act of 2002 (Public Law 107–347) [set out in a note under section 3501 of Title 44, Public Printing and Documents];

(4) ensuring that adequate resources and staff are devoted to meeting the Department's privacy-related functions and obligations;

(5) appropriate notifications regarding the Department's privacy policies and privacy-related inquiry and complaint procedures; and

(6) privacy-related reports from the Department to Congress and the President.

"(c) Review of Privacy Related Functions, Resources, and Report.—Within 120 days of his designation, the privacy official shall prepare a comprehensive report to the Attorney General and to the Committees on the Judiciary of the House of Representatives and of the Senate, describing the organization and resources of the Department with respect to privacy and related information management functions, including access, security, and records management, assessing the Department’s current and future needs relating to information privacy issues, and making appropriate recommendations regarding the Department’s organizational structure and personnel.

"(4) Annual Report.—The privacy official shall submit a report to the Committees on the Judiciary of the House of Representatives and of the Senate on an annual basis on activities of the Department that affect privacy, including a summary of complaints of privacy violations, implementation of section 552a of title 5, United States Code, internal controls, and other relevant matters."

REPORT TO CONGRESS ON STATUS OF UNITED STATES PERSONS OR RESIDENTS DETAINED ON SUSPICION OF TERRORISM

Pub. L. 109–162, title XI, §1176, Jan. 5, 2006, 119 Stat. 3125, provided that: "Not less often than once every 12 months, the Attorney General shall submit to Congress a report on the status of United States persons or residents detained, as of the date of the report, on suspicion of terrorism. The report shall—

"(1) specify the number of persons or residents so detained; and

"(2) specify the standards developed by the Department of Justice for recommending or determining that a person should be tried as a criminal defendant or should be designated as an enemy combatant."

FEDERAL BUREAU OF INVESTIGATION USE OF TRANSLATORS

Pub. L. 108–458, title II, §816, Oct. 27, 2004, 118 Stat. 385, provided that: "(a) In General.—The Attorney General shall establish such regional computer forensic laboratories as the Attorney General considers appropriate, and provide support to existing computer forensic laboratories, in order that all such computer forensic laboratories have the capability—

"(1) to provide forensic examinations with respect to seized or intercepted computer evidence relating to criminal activity (including cyberterrorism);

"(2) to provide training and education for Federal, State, and local law enforcement personnel and prosecutors regarding investigations, forensic analyses, and prosecutions of computer-related crime (including cyberterrorism);

"(3) to assist Federal, State, and local law enforcement in enforcing Federal, State, and local criminal laws relating to computer-related crime;

"(4) to facilitate and promote the sharing of Federal law enforcement expertise and information about the investigation, analysis, and prosecution of computer-related crime with State and local law enforcement personnel and prosecutors, including the use of multijurisdictional task forces; and

"(5) to carry out such other activities as the Attorney General considers appropriate.

(b) Authorization of Appropriations.—

"(1) Authorization.—There is hereby authorized to be appropriated in each fiscal year $50,000,000 for purposes of carrying out this section.

"(2) Availability.—Amounts appropriated pursuant to the authorization of appropriations in paragraph (1) shall remain available until expended."

TRAINING OF GOVERNMENT OFFICIALS REGARDING IDENTIFICATION AND USE OF FOREIGN INTELLIGENCE

Pub. L. 107–56, title IX, §908, Oct. 26, 2001, 115 Stat. 301, provided that: "(a) Program Required.—The Attorney General shall, in consultation with the Director of Central Intelligence, carry out a program to provide appropriate training to officials described in subsection (b) in order to assist such officials in—

"(1) identifying foreign intelligence information in the course of their duties; and

"(2) utilizing foreign intelligence information in the course of their duties, to the extent that the utilization of such information is appropriate for such duties.

(b) Officials.—The officials provided training under subsection (a) are, at the discretion of the Attorney General and the Director, the following:

"(1) Officials of the Federal Government who are not ordinarily engaged in the collection, dissemination, and use of foreign intelligence in the performance of their duties.

"(7) a description of the implementation of quality control procedures and mechanisms for monitoring compliance with quality control procedures."

AUTHORIZATION FOR ADDITIONAL ASSISTANT UNITED STATES ATTORNEYS FOR PROJECT SAFER NEIGHBORHOODS


"(a) In General.—The Attorney General shall establish a program for each United States Attorney to provide for coordination with State and local law enforcement officials in the identification and prosecution of violations of Federal firearms laws including school gun violence and juvenile gun offenses.

(b) Authorization for Hiring 94 Additional Assistant United States Attorneys.—There are authorized to be appropriated to carry out this section $9,000,000 for fiscal year 2002 to hire an additional Assistant United States Attorney in each United States Attorney Office."

DEVELOPMENT AND SUPPORT OF CYBERSECURITY FORENSIC CAPABILITIES

Pub. L. 107–96, title VIII, §816, Oct. 26, 2001, 115 Stat. 385, provided that: "(a) In General.—The Attorney General shall establish such regional computer forensic laboratories as the Attorney General considers appropriate, and provide support to existing computer forensic laboratories, in order that all such computer forensic laboratories have the capability—

"(1) to provide forensic examinations with respect to seized or intercepted computer evidence relating to criminal activity (including cyberterrorism);

"(2) to provide training and education for Federal, State, and local law enforcement personnel and prosecutors regarding investigations, forensic analyses, and prosecutions of computer-related crime (including cyberterrorism);

"(3) to assist Federal, State, and local law enforcement in enforcing Federal, State, and local criminal laws relating to computer-related crime;

"(4) to facilitate and promote the sharing of Federal law enforcement expertise and information about the investigation, analysis, and prosecution of computer-related crime with State and local law enforcement personnel and prosecutors, including the use of multijurisdictional task forces; and

"(5) to carry out such other activities as the Attorney General considers appropriate.

(b) Authorization of Appropriations.—

"(1) Authorization.—There is hereby authorized to be appropriated in each fiscal year $50,000,000 for purposes of carrying out this section.

"(2) Availability.—Amounts appropriated pursuant to the authorization of appropriations in paragraph (1) shall remain available until expended."
“(2) Officials of State and local governments who encounter, or may encounter in the course of a terrorist event, foreign intelligence in the performance of their duties.

“(c) AUTHORIZATION OF APPROPRIATIONS.—There is hereby authorized to be appropriated for the Department of Justice such sums as may be necessary for purposes of carrying out the program required by subsection (a).”

[Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the intelligence community deemed to be a reference to the Director of National Intelligence. Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director’s capacity as the head of the intelligence community deemed to be a reference to the Director of National Intelligence.]

FIRST RESPONDERS ASSISTANCE ACT


“(a) GRANT AUTHORIZATION.—The Attorney General shall make grants described in subsections (b) and (c) to States and units of local government to improve the ability of State and local law enforcement, fire department and first responders to respond to and prevent acts of terrorism.

“(b) TERRORISM PREVENTION GRANTS.—Terrorism prevention grants under this subsection may be used for programs, projects, and other activities to—

“(1) hire additional law enforcement personnel dedicated to intelligence gathering and analysis functions, including the formation of full-time intelligence and analysis units;

“(2) purchase technology and equipment for intelligence gathering and analysis functions, including wire-tap, pen links, cameras, and computer hardware and software;

“(3) purchase equipment for responding to a critical incident, including protective equipment for patrol officers such as quick masks;

“(4) purchase equipment for managing a critical incident, such as communications equipment for improved interoperability among surrounding jurisdictions and mobile command posts for overall scene management; and

“(5) fund technical assistance programs that emphasize coordination among neighboring law enforcement agencies for sharing resources, and resources coordination among law enforcement agencies for combining intelligence gathering and analysis functions, and the development of policy, procedures, memorandums of understanding, and other best practices.

“(c) ANTITERRORISM TRAINING GRANTS.—Antiterrorism training grants under this subsection may be used for programs, projects, and other activities to address—

“(1) intelligence gathering and analysis techniques;

“(2) community engagement and outreach;

“(3) critical incident management for all forms of terrorist attack;

“(4) threat assessment capabilities;

“(5) conducting followup investigations; and

“(6) stabilizing a community after a terrorist incident.

“(d) APPLICATION.—

“(1) IN GENERAL.—Each eligible entity that desires to receive a grant under this section shall submit an application to the Attorney General, at such time, in such manner, and accompanied by such additional information as the Attorney General may reasonably require.

“(2) CONTENTS.—Each application submitted pursuant to paragraph (1) shall—

“(A) describe the activities for which assistance under this section is sought; and

“(B) provide such additional assurances as the Attorney General determines to be essential to ensure compliance with the requirements of this section.

“(e) MINIMUM AMOUNT.—If all applications submitted by a State or units of local government within that State have not been funded under this section in any fiscal year, that State, if it qualifies, and the units of local government within that State shall receive in that fiscal year not less than 0.5 percent of the total amount appropriated in that fiscal year for grants under this section.

“(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $25,000,000 for each of the fiscal years 2003 through 2007.”

REIMBURSEMENT OF EMPLOYEES TRAVELING ON BEHALF OF UNITED STATES IN TEMPORARY DUTY STATUS

Pub. L. 104–208, div. A, title I, §101(a) [title I, §115], Sept. 30, 1996, 110 Stat. 3009, 3009–22, provided that: “Effective with the enactment of this Act (Sept. 30, 1996) and in any fiscal year hereafter, under policies established by the Attorney General, the Department of Justice may reimburse employees who are paid by an appropriation account within the Department of Justice and are traveling on behalf of the United States in temporary duty status for Federal, State, and local taxes heretofore and hereafter resulting from any reimbursement of travel expenses from an appropriation account within the Department of Justice: Provided, That such reimbursement may include an amount equal to all income taxes for which the employee would be liable due to such reimbursement.”

OVERSEAS LAW ENFORCEMENT TRAINING ACTIVITIES

Pub. L. 104–132, title VIII, §801, Apr. 24, 1996, 110 Stat. 1304, provided that: “The Attorney General and the Secretary of the Treasury are authorized to support law enforcement training activities in foreign countries, in consultation with the Secretary of State, for the purpose of improving the effectiveness of the law enforcement training activities of foreign governments in investigating and prosecuting transnational offenses.”

REIMBURSEMENT BY OTHER GOVERNMENT AGENCIES OF DEPARTMENT OF JUSTICE SALARIES AND EXPENSES IN HIGH-COST LITIGATION

Pub. L. 104–317, title I, §109, Nov. 29, 1996, 110 Stat. 1375, provided that: “Notwithstanding 31 U.S.C. §3302 or any other law, in litigation involving unusual costs, the Department of Justice may receive and retain reimbursement for salaries and expenses, for fiscal year 1996 and thereafter, from any other governmental component being represented in the litigation.”

NEIGHBORHOOD REVITALIZATION

Pub. L. 104–365, title I, Oct. 6, 1996, 110 Stat. 1830, provided in part: “That for fiscal year 1997 and thereafter the Attorney General shall (1) promote neighborhood revitalization by developing a plan for the use of Federal funds appropriated for selected activities in the Departments of Labor, Education, Health and Human Services, Transportation, Agriculture, and Housing and Urban Development; (2) the Attorney General shall solicit from State and local governments plans to revitalize neighborhoods using programs administered by such agencies; and (3) the Attorney General shall review and approve such plans in consultation with the Federal agency to which funds are appropriated.”

PROCUREMENT OF EXPERT WITNESSES WITHOUT REGARD TO COMPETITIVE PROCUREMENT PROCEDURES

Pub. L. 102–140, title VI, §611(a), Oct. 28, 1991, 105 Stat. 832, provided that, notwithstanding any other provision of law: “For fiscal year 1992 and thereafter, the Department of Justice may procure the services of expert witnesses for use in preparing or prosecuting a civil or
criminal action, without regard to competitive procurement procedures, including the Commerce Business Daily publication requirements: Provided, That no witness shall be paid more than one attendance fee for any calendar day.''

**STRUCTURAL REFORMS TO IMPROVE FEDERAL RESPONSE TO CRIMES AFFECTING FINANCIAL INSTITUTIONS**


SEC. 2536. ESTABLISHMENT OF FINANCIAL INSTITUTIONS CRIME UNIT AND OFFICE OF SPECIAL COUNSEL FOR FINANCIAL INSTITUTIONS CRIME UNIT.

"(a) Establishment.—There is established within the Office of the Deputy Attorney General in the Department of Justice a Financial Institutions Fraud Unit to be headed by a special counsel (hereafter in this title [probably means this subtitle which is subtitle D (§§2536–2540) of title XXV of Pub. L. 101–647, which amended section 1441a of Title 12, Banks and Banking, and enacted this note] referred to as the ‘Special Counsel’),"

"(b) Responsibility.—The Financial Institutions Fraud Unit and the Special Counsel shall be responsible to and shall report directly to the Deputy Attorney General.

"(c) Sunset.—The provisions of this section shall cease to apply at the end of the 5-year period beginning on the date of the enactment of this Act [Nov. 29, 1990]."

SEC. 2537. APPOINTMENT RESPONSIBILITIES AND COMPENSATION OF THE SPECIAL COUNSEL.

"(a) Appointment.—The Special Counsel shall be appointed by the President, by and with the advice and consent of the Senate.

"(b) Responsibilities.—The Special Counsel shall—

"(1) supervise and coordinate investigations and prosecutions within the Department of Justice of fraud and other criminal activity in and against the financial services industry, including, to the extent consistent with the independent counsel provision of chapter 40 of title 28, United States Code, any such activity by any current or former elected official or high-level executive branch official or any member of the immediate family of any such official;

"(2) ensure that Federal law relating to civil enforcement, asset seizure and forfeiture, money laundering, and racketeering are used to the fullest extent authorized to recover the proceeds of unlawful activities from persons who have committed crimes in and against the financial services industry; and

"(3) ensure that adequate resources are made available for the investigation and prosecution of fraud and other criminal activity in and against the financial services industry.

"(c) Compensation.—The Special Counsel shall be paid at the basic pay payable for level V of the Executive Schedule.

SEC. 2538. ASSIGNMENT OF PERSONNEL.

"There shall be assigned to the Financial Institutions Fraud Unit such personnel as the Attorney General deems necessary to provide an adequate level of enforcement activity in the area of fraud and other criminal activity in and against the financial services industry.

SEC. 2539. FINANCIAL INSTITUTIONS FRAUD TASK FORCES.

"(a) Establishment.—The Attorney General shall establish such financial institutions fraud task forces as the Attorney General deems appropriate to ensure that adequate resources are made available to investigate and prosecute crimes in and against financial institutions and to recover the proceeds of unlawful activities from persons who have committed fraud or have engaged in other criminal activity in or against the financial services industry.

"(b) Supervision.—The Attorney General shall determine how each task force shall be supervised and may provide for the supervision of any task force by the Special Counsel.

"(c) Senior Interagency Group.—

"(1) Establishment.—The Attorney General shall establish a senior interagency group to assist in identifying the most significant financial institution fraud cases and in allocating investigative and prosecution resources where they are most needed.

"(2) Membership.—The senior interagency group shall be chaired by the Special Counsel and shall include senior officials from—

"(A) the Department of Justice, including representatives of the Federal Bureau of Investigation, the Advisory Committee of United States Attorneys, and other relevant entities;

"(B) the Department of the Treasury;

"(C) the Federal Deposit Insurance Corporation;

"(D) the Office of the Comptroller of the Currency;

"(E) the Board of Governors of the Federal Reserve System; and

"(F) the National Credit Union Administration.

"(3) Duties.—This senior interagency group shall enhance interagency coordination and assist in accelerating the investigations and prosecution of financial institutions fraud.

[Pub. L. 111–203, title III, §§351, 359(1), July 21, 2010, 124 Stat. 1546, 1548, which provided that, effective on the transfer date (see section 5411 of Title 12, Banks and Banking, section 2538(c)(2) of Pub. L. 101–647, set out above, is amended by striking out subparas. (C) and (D) and redesignating subparas. (E) to (H) as (C) through (G), respectively), was executed by redesignating subparas. (E) to (H) as (C) to (F), respectively, and striking out former subparas. (C) and (D), to reflect the probable intent of Congress.]

**AUTHORIZATION OF APPROPRIATIONS FOR HUMANITARIAN EXPENSES INCURRED BY FEDERAL BUREAU OF INVESTIGATION AND DRUG ENFORCEMENT ADMINISTRATION**

Pub. L. 101–647, title XXXII, §3201, Nov. 29, 1990, 104 Stat. 4916, as amended by Pub. L. 103–77, div. A, §101(b) (title I, §109(a)), Oct. 21, 1998, 112 Stat. 2681–50, 2681–67, provided that: "Appropriations in this or any other Act hereafter for the Federal Bureau of Investigation, the Drug Enforcement Administration, or the Immigration and Naturalization Service are available, in an amount of not to exceed $25,000 each per fiscal year, to pay humanitarian expenses incurred by or for any employee (including the employee's immediate family) that results from or is incident to serious illness, serious injury, or death occurring to the employee while on official duty or business."

[For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of Title 8, Aliens and Nationality.]

**INVESTIGATION OF FINANCIAL INSTITUTIONS: ASSISTANCE OF GOVERNMENT PERSONNEL**


"(a) Notwithstanding any other law and in any fiscal year—

"(1) The Attorney General shall accept, and Federal departments and agencies, including the United States Secret Service, the Internal Revenue Service, the Resolution Trust Corporation, and the appropriate Federal banking agency, may provide, without reimbursement, the services of attorneys, law enforcement personnel, and other employees of any other departments or agencies of the Federal Government to assist the Department of Justice, subject to the supervision of the Attorney General, in the investigation and prosecution of fraud or other criminal or illegal activity.
unlawful activity in or against any federally insured financial institution or the Resolution Trust Corporation;

(2) any attorney of a department or agency whose services are accepted pursuant to paragraph (1) may, subject to the supervision of the Attorney General, conduct any kind of legal proceeding, civil or criminal, including grand jury proceedings and proceedings before committing magistrate judges, and perform any other investigatory or prosecutorial function, which United States attorneys are authorized by law to conduct or perform whether or not the attorney is a resident of the district in which the proceeding is brought; and

(3) law enforcement personnel of the United States Secret Service are authorized, subject to the supervision of the Attorney General, to conduct or perform any kind of investigation, civil or criminal, related to fraud or other criminal or unlawful activity in or against any federally insured financial institution or the Resolution Trust Corporation, which the Department of Justice law enforcement personnel are authorized by law to conduct or perform: Provided, That the Secret Service shall not initiate investigations pursuant to this section independent of the supervision of the Attorney General.

(b) This section—

(1) shall not, except as expressly provided herein, alter the authority of any Federal law enforcement agency; and

(2) shall expire on December 31, 2004.

(c) This section applies notwithstanding any other provision of law enacted by the 101st Congress after October 15, 1990, that by its terms would grant authority to, or otherwise affect the authority of, the Secret Service or other departments or agencies of the Federal Government to conduct or to assist the Department of Justice in conducting investigations or prosecutions of fraud or other criminal or unlawful activity in or against any federally insured financial institution or the Resolution Trust Corporation, and any other such provision shall not be effective in granting or otherwise affecting any such authority.

[For transfer of the functions, personnel, assets, and obligations of the United States Secret Service, including the functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 381, 551(d), 552(d), and 557 of Title 6, Domestic Security, and for treatment of related references, see note set out under section 1551 of Title 8, Aliens and Nationality.]

**JUSTICE DEPARTMENT ORGANIZED CRIME AND DRUG ENFORCEMENT ENHANCEMENT**


[For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of Title 8, Aliens and Nationality.]

**SEC. 1051. SHORT TITLE.**

‘‘This subtitle may be cited as the ‘Justice Department Organized Crime and Drug Enforcement Enhancement Act of 1988’.’’

**SEC. 1052. FINDINGS.**

‘‘The Congress finds that—

(1) organized criminal activity contributes significantly to the importation, distribution, and sale of illegal and dangerous drugs;

(2) trends in drug trafficking patterns necessitate a response that gives appropriate weight to—

(A) the prosecution of drug-related crimes; and

(B) the forfeiture and seizure of assets and other civil remedies used to strike at the inherent strength of the drug networks and organized crime groups;

(3) law enforcement components of the Department of Justice should give high priority to the enforcement of civil sanctions against drug networks and organized crime groups; and

(4) the structure of the Department of Justice Criminal Division needs to be reviewed in order to determine the most effective structure to address such drug-related problems.

**SEC. 1053. CIVIL ENFORCEMENT REPORT.**

‘‘(a) REPORT.—Not later than 1 year after the date of the enactment of this title [Nov. 18, 1988], the Director of National Drug Control Policy (the Director) in consultation with the Attorney General, shall report to the Congress on the necessity to establish a new division or make other organizational changes within the Department of Justice in order to promote better civil and criminal law enforcement. In preparing such report, the Director shall consider restructuring and consolidating one or more of the following divisions and programs:—

1(1) the Organized Crime and Racketeering Section of the Criminal Division and all subordinate strike forces therein;

(2) the Narcotic and Dangerous Drug Section of the Criminal Division;

(3) the Asset Forfeiture Office of the Criminal Division; and

(4) the Organized Crime Drug Enforcement Task Force Program.[.]

(1) LEGISLATIVE RECOMMENDATIONS.—The report submitted under subsection (a) shall include appropriate legislative recommendations for the Congress.
SEC. 1054. CIVIL ENFORCEMENT ENHANCEMENT.

(a) Duty of Attorney General.—The Attorney General shall ensure that each component of the Department of Justice having criminal law enforcement responsibilities with respect to the prosecution of organized crime and controlled substances violations, including each United States Attorney's Office, attaches a high priority to the enforcement of civil statutes creating ancillary sanctions and remedies for such violations, such as civil penalties and actions, forfeitures, injunctions and restraining orders, and collection of fines.

(b) Duty of Associate Attorney General.—The Associate Attorney General shall be responsible for implementing the policy set forth in this subsection.

(c) Authorization of Appropriations.—(1) There are authorized to be appropriated $3,000,000 for salaries and expenses to the Department of Justice General Legal Activities Account and $3,000,000 for salaries and expenses for United States Attorneys for fiscal year 1989.

(2) Any appropriation of funds authorized under paragraph (1) shall be—

(A) in addition to any appropriations requested by the President in the 1989 fiscal year budget submitted by the President to the Congress on February 18, 1988, or provided in regular appropriations Acts or continuing resolutions for the fiscal year ending September 30, 1989; and

(B) used to increase the number of field attorneys and related support staff over such personnel levels employed at the Department of Justice on September 30, 1988.

(3) Any increase in full-time equivalent positions described under paragraph (2)(B) shall be exclusively used for asset forfeiture and civil enforcement and be assigned to appropriate field offices of the Organized Crime and Racketeering Section and the Organized Crime Drug Enforcement Task Forces.

(d) Reporting Requirement.—The Attorney General, at the end of each such fiscal year, shall file a report with the Congress setting forth the extent of such enhancement efforts, as well as the need for any enhancements in resources necessary to carry out this policy.

SEC. 1055. EXPENSES OF TASK FORCES.

(a) Appropriations and Reimbursements Procedure.—Beginning in fiscal year 1990, the Attorney General in his budget shall submit a separate appropriation request for expenses relating to all Federal agencies participating in the Organized Crime Drug Enforcement Task Forces. Such appropriations shall be made to the Department of Justice's Intergency Law Enforcement Appropriation Account for the Attorney General to make reimbursements to the involved agencies as necessary.

(b) Enhancement of Field Activities.—The appropriations and reimbursements procedure described under subsection (a) shall—

(1) provide for the flexibility of the Task Forces which is vital to success;

(2) permit Federal law enforcement resources to be shifted in response to changing patterns of organized criminal drug activities;

(3) permit the Attorney General to reallocate resources among the organizational components of the Task Forces and between regions without undue delay; and

(4) ensure that the Task Forces function as a unit, without the competition for resources among the participating agencies that would undermine the overall effort.

[For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semianual, or other periodic report listed in House Document No. 103–7 (in which a report required under section 1054(d) of Pub. L. 100–690, set out above, is listed on page 118), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.]

IMPACT ANALYSIS OF ADDITIONAL RESOURCES TO CERTAIN COMPONENTS OF FEDERAL CRIMINAL JUSTICE SYSTEM; STUDY BY COMPTROLLER GENERAL AND REPORT TO CONGRESS

Pub. L. 100–690, title IX, § 9201, Nov. 18, 1988, 102 Stat. 4555, provided that:

(a) Study.—The Comptroller General of the United States shall conduct a study—

(1) to determine the impact of additional resources to certain components of the Federal criminal justice system on other components of the system and of enhanced or new Federal criminal penalties or laws on the agencies and offices of the Department of Justice, the Federal courts, and other components of the Federal criminal justice system; and

(2) use the data derived from the impact analysis to develop a model that can be applied by Congress and Federal agencies and departments to help determine appropriate staff and budget responses in order to maintain balance in the Federal criminal justice system and effectively implement changes in resources, laws, or penalties.

(b) Report to Congress.—The Comptroller General shall report the results and recommendations derived from the study required by subsection (a) no later than 1 year after the date of enactment of this Act [Nov. 18, 1988].

FEDERAL ENVIRONMENTAL OR NATURAL RESOURCE LAWS; INVESTIGATIONS RESPECTING, ETC.

Pub. L. 96–132, § 12, Nov. 30, 1979, 93 Stat. 1048, provided that: "The Attorney General may, with the concurrence of any agency or Department with primary enforcement responsibility for an environmental or natural resource law, investigate any violation, of an environmental or natural resource law of the United States, and bring such actions as are necessary to enforce such laws. This section does not affect the criminal law enforcement authority of the Attorney General."

POSITIONS IN DRUG ENFORCEMENT ADMINISTRATION; GRADES EXCEPTED FROM COMPETITIVE SERVICE; VACANCIES; REMOVAL, SUSPENSION, OR REDUCTION IN RANK OR PAY; RATE OF PAY

Pub. L. 94–103, title II, § 201, Oct. 15, 1976, 90 Stat. 2425, provided that:

(a) Effective beginning one year after date of the enactment of this Act [Oct. 15, 1976], the following positions in the Drug Enforcement Administration (and individuals holding such positions) are hereby excepted from the competitive service:

(1) positions at GS–16, 17, and 18 of the General Schedule under section 5332(a) of title 5, United States Code, and

(2) positions at GS–15 of the General Schedule which are designated as—

(A) regional directors,

(B) office heads, or

(C) executive assistants (or equivalent positions) under the immediate supervision of the Administrator (or the Deputy Administrator) of the Drug Enforcement Administration.

(b) Effective during the one year period beginning on the date of the enactment of this Act [Oct. 15, 1976], vacancies in positions in the Drug Enforcement Administration (other than positions described in subsection (a)) at a grade not lower than GS–14 shall be filled—

(1) first, from applicants who have continuously held positions described in subsection (a) since the date of the enactment of this Act and who have applied for, and are qualified to fill, such vacancies, and

(2) then, from other applicants in the order which would have occurred in the absence of this subsection.

Any individual placed in a position under paragraph (1) shall be paid in accordance with subsection (d).
“(c)(1) Effective beginning one year after the date of the enactment of this Act [Oct. 15, 1976], an individual in a position described in subsection (a) may be removed, suspended for more than 30 days, furloughed without pay, or reduced in rank or pay by the Administrator of the Drug Enforcement Administration if—

(A) such individual has been employed in the Drug Enforcement Administration for less than the one-year period immediately preceding the date of such action, and

(B) the Administrator determines, in his discretion, that such action would promote the efficiency of the service.

“(2) Effective beginning one year after the date of the enactment of this Act [Oct. 15, 1976], an individual in a position described in subsection (a) may be reduced in rank or pay by the Administrator within the Drug Enforcement Administration if—

(A) such individual has been continuously employed in such position since the date of the enactment of this Act, and

(B) the Administrator determines, in his discretion, that such action would promote the efficiency of the service.

Any individual reduced in rank or pay under this paragraph shall be paid in accordance with subsection (d).

“(3) The provisions of sections 7512 and 7701 of title 5, United States Code, and otherwise applicable Executive orders, shall not apply with respect to actions taken by the Administrator under paragraph (1) or any reduction in rank or pay (under paragraph (2) or otherwise) of any individual in a position described in subsection (a).

“(d) Any individual whose pay is to be determined in accordance with this subsection shall be paid basic pay at the rate of basic pay he was receiving immediately before he was placed in a position under subsection (b)(1) or reduced in rank or pay under subsection (c)(2), as the case may be, until such time as the rate of basic pay he would receive in the absence of this subsection exceeds such rate of basic pay. The provisions of section 5307 of title 5, United States Code, shall not apply in any case in which this subsection applies.

[(References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.).]

REORGANIZATION PLAN NO. 1 OF 1968


Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, February 7, 1968, pursuant to the provisions of chapter 9 of title 5 of the United States Code.

NARCOTICS; DRUG ABUSE CONTROL

SECTION 1. TRANSFER OF FUNCTIONS FROM TREASURY DEPARTMENT

There are hereby transferred to the Attorney General:

(a) Those functions of the Secretary of the Treasury which are administered through or with respect to the Bureau of Narcotics.

(b) All functions of the Bureau of Narcotics, of the Commissioner of Narcotics, and of all other officers, employees, and agencies of the Department of the Treasury not otherwise provided for in this reorganization plan.

(c) So much of other functions or parts of functions of the Secretary of the Treasury and the Department of the Treasury as is incidental to or necessary for the performance of the functions transferred by paragraphs (a) and (b) of this section.

SEC. 2. TRANSFER OF FUNCTIONS FROM THE DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

There are hereby transferred to the Attorney General:

(a) The functions of the Secretary of Health, Education, and Welfare under the Drug Abuse Control Amendments of 1965 (Public Law 89–74; 79 Stat. 226) [see Short Title note under 21 U.S.C. 301], except the function of regulating the counterfeiting of those drugs which are not controlled “depressant or stimulant” drugs.

(b) So much of other functions or parts of functions of the Secretary of Health, Education, and Welfare, and of the Department of Health, Education, and Welfare, as is incidental to or necessary for the performance of the functions transferred by paragraph (a) of this section.

SEC. 3. BUREAU OF NARCOTICS AND DANGEROUS DRUGS

(a) [Repealed. Reorg. Plan No. 2 of 1973, §3, 38 F.R. 19532, 87 Stat. 1091, eff. July 1, 1973. Subsection established the Bureau of Narcotics and Dangerous Drugs in the Department of Justice and provided that it be headed by a Director appointed by the Attorney General.]

(b) There are hereby established in the Department of Justice, in addition to the positions transferred to that Department by this Plan, four new positions, appointment to which shall be made by the Attorney General in the competitive service. Two of those positions shall have compensation at the rate now or hereafter provided for GS-18 positions of the General Schedule and the other two shall have compensation at the rate now or hereafter provided for GS-16 positions of the General Schedule (5 U.S.C. 5332). Each such position shall have such title and duties as the Attorney General shall prescribe.

[(References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.).]

SEC. 4. ABOLITION

The Bureau of Narcotics in the Department of the Treasury, including the office of Commissioner of Narcotics (21 U.S.C. 161), is hereby abolished. The Secretary of the Treasury shall make such provision as he may deem necessary with respect to terminating those affairs of the Bureau of Narcotics not otherwise provided for in this reorganization plan.

SEC. 5. PERFORMANCE OF TRANSFERRED FUNCTIONS

The Attorney General may from time to time make such provisions as he shall deem appropriate for the performance of any of the functions transferred to him by the provisions of this reorganization plan by any officer, employee, or organizational entity of the Department of Justice.

SEC. 6. INCIDENTAL TRANSFERS

(a) There are hereby transferred to the Department of Justice all of the positions, personnel, property, records, and unexpended balances of appropriations, allocations, and other funds, available or to be made available, (1) of the Bureau of Narcotics, and (2) of the Bureau of Drug Abuse Control of the Department of Health, Education, and Welfare.

(b) There shall be transferred to the Department of Justice, at such time or times as the Director of the Bureau of the Budget shall direct, so much as the Director shall determine of other positions, personnel, property, records and unexpended balances of appropriations, allocations, and other funds of the Department of the Treasury and of the Department of Health, Education, and Welfare employed, used, held, available or to be made available in connection with functions transferred by the provisions of this reorganization plan.

(c) Such further measures and dispositions as the Director of the Bureau of the Budget shall deem to be necessary in order to effectuate the transfers provided...
in this section shall be carried out in such manner as he may direct and by such agencies as he shall designate.

MESSAGE OF THE PRESIDENT

To the Congress of the United States:

In my first Reorganization Plan of 1968, I call for the creation of a new and powerful Bureau of Narcotics and Dangerous Drugs.

With this action, America will serve notice to the pusher and the peddler that their criminal acts must stop. No matter how well organized they are, we will be better organized. No matter how well they have concealed their activities, we will root them out.

Today, Federal investigation and enforcement of our narcotics laws are fragmented. One major element—the Bureau of Narcotics—is in the Treasury Department and responsible for the control of marihuana and narcotics such as heroin. Another—the Bureau of Drug Abuse Control—is in the Department of Health, Education, and Welfare, and is responsible for the control of dangerous drugs including depressants, stimulants, and hallucinogens such as LSD.

Neither is located in the agency which is primarily concerned with Federal law enforcement—the Department of Justice.

This separation of responsibilities—despite the relentless and dedicated efforts of the agents of each Bureau—has complicated and hindered our response to a national menace.

For example, more than nine out of ten seizures of LSD made by the Bureau of Drug Abuse Control have also turned up marihuana—but that Bureau has no jurisdiction over marihuana.

In many instances, we are confronted by well organized, disciplined and resourceful criminals who reap huge profits at the expense of their unfortunate victims.

The response of the Federal Government must be unified. And it must be total.

Today, in my Message on Crime, I recommended strong new laws to control dangerous drugs. I also recommended an increase of more than thirty percent in the number of Federal agents enforcing the narcotic and dangerous drug laws.

I now propose that a single Bureau of Narcotics and Dangerous Drugs be established in the Department of Justice to administer those laws and to bring to the American people the most efficient and effective Federal law enforcement machinery we can devise.

Under this Reorganization Plan the Attorney General will have full authority and responsibility for enforcing the Federal laws relating to narcotics and dangerous drugs. The new Bureau of Narcotics and Dangerous Drugs, to be headed by a Director appointed by the Attorney General, will:

—consolidate the authority and preserve the experience and manpower of the Bureau of Narcotics and the Bureau of Drug Abuse Control.

—work with states and local governments in their crackdown on illegal trade in drugs and narcotics, and help to train local agents and investigators.

—maintain worldwide operations, working closely with other nations, to suppress the trade in illicit narcotics and marihuana.

—conduct an extensive campaign of research and a nationwide public education program on drug abuse and its tragic effects.

The Plan I forward today moves in the direction recommended by two distinguished groups:

—1948 Hoover Commission

—the 1963 Presidential Advisory Commission on Narcotic and Drug Abuse.

This Administration and this Congress have the will and the determination to stop the illicit traffic in drugs.

But we need more than the will and the determination. We need a modern and efficient instrument of Government to transform our plans into action. That is what this Reorganization Plan calls for.

The Plan has been prepared in accordance with chapter 9 of title 5 of the United States Code.

I have found, after investigation, that each reorganization included in the plan is necessary to accomplish one or more of the purposes set forth in section 901(a) of title 5 of the United States Code.

I have also found that, by reason of these reorganizations, it is necessary to include in the accompanying plan provisions for the appointment and compensation of the five new positions as specified in section 3 of the plan. The rates of compensation fixed for these new positions are those which I have found to prevail in respect of comparable positions in the Executive Branch of the Government.

Should the reorganization I propose take effect, they will make possible more effective and efficient administration of Federal law enforcement functions. It is not practicable at this time, however, to itemize the reduction in expenditures which may result.

I recommend that the Congress allow this urgently needed and important Reorganization Plan to become effective.

LYNDON B. JOHNSON.

THE WHITE HOUSE, February 7, 1968

REORGANIZATION PLAN NO. 2 OF 1973


LAW ENFORCEMENT IN ILLICIT DRUG ACTIVITIES

SECTION 1. TRANSFERS TO THE ATTORNEY GENERAL

There are hereby transferred from the Secretary of the Treasury, the Department of the Treasury, and any other officer or any agency of the Department of the Treasury, to the Attorney General all intelligence, investigative, and law enforcement functions vested by law in the Secretary, the Department, officers, or agencies which relate to the suppression of illicit traffic in narcotics, dangerous drugs, or marihuana, except that the Secretary shall retain, and continue to perform, those functions, to the extent that they relate to searches and seizures of illicit narcotics, dangerous drugs, or marihuana or to the apprehension or detention of persons in connection therewith, at regular inspection locations at ports of entry or anywhere along the land or water borders of the United States: Provided, that any illicit narcotics, dangerous drugs, marihuana, or related evidence seized, and any person apprehended or detained by the Secretary or any officer of the Department of the Treasury, pursuant to the authority retained in them by virtue of this section, shall be turned over forthwith to the jurisdiction of the Attorney General: Provided further, that nothing in this section shall be construed as limiting in any way any authority vested by law in the Secretary of the Treasury, the Department of the Treasury, or any other officer or any agency of that Department on the effective date of this Plan with respect to contraband other than illicit narcotics, dangerous drugs, and marihuana: and Provided further, that nothing in this section shall be construed as limiting in any way any authority the Attorney General, the Department of Justice, or any other officer or any agency of that Department may otherwise have to make investigations or engage in law enforcement activities, including activities relating to the suppression of illicit traffic in narcotics, dangerous drugs, and marihuana, at ports of entry or along the land and water borders of the United States.

SEC. 2. TRANSFERS TO THE SECRETARY OF THE TREASURY

to Secretary of the Treasury of functions vested in Attorney General, Department of Justice, or any other officer of such Department respecting inspection at ports of entry of persons, and documents of persons, entering or leaving the United States.]

SEC. 3. ABOLITION

The Bureau of Narcotics and Dangerous Drugs, including the Office of Director thereof, is hereby abolished, and section 3(a) of Reorganization Plan No. 1 of 1968 is hereby repealed. The Attorney General shall make such provision as he may deem necessary with respect to terminating those affairs of the Bureau of Narcotics and Dangerous Drugs not otherwise provided for in this Reorganization Plan.

SEC. 4. DRUG ENFORCEMENT ADMINISTRATION

There is established in the Department of Justice an agency which shall be known as the Drug Enforcement Administration, hereinafter referred to as “the Administration.”

SEC. 5. OFFICERS OF THE ADMINISTRATION

(a) There shall be at the head of the Administration the Administrator of Drug Enforcement, hereinafter referred to as “the Administrator.” The Administrator shall be appointed by the President by and with the advice and consent of the Senate, and shall receive compensation at the rate now or hereafter prescribed by law for positions of level III of the Executive Schedule Pay Rates (5 U.S.C. 5314). He shall perform such functions as the Attorney General shall from time to time direct.

(b) There shall be in the Administration a Deputy Administrator of the Drug Enforcement Administration, hereinafter referred to as “the Deputy Administrator,” who shall be appointed by the President by and with the advice and consent of the Senate, and shall perform such functions as the Attorney General may from time to time direct, and shall receive compensation at the rate now or hereafter prescribed by law for positions of level V of the Executive Schedule Pay Rates (5 U.S.C. 5316).

(c) The Deputy Administrator or such other official of the Department of Justice as the Attorney General shall from time to time designate shall act as Administrator during the absence or disability of the Administrator or in the event of a vacancy in the office of Administrator.

SEC. 6. PERFORMANCE OF TRANSFERRED FUNCTIONS

The Attorney General may from time to time make such provisions as he shall deem appropriate authorizing the performance of any of the functions transferred to him by the provisions of this Reorganization Plan by any officer, employee, or agency of the Department of Justice.

Section, former subsec. (a) designation, and subsec. (b) providing for performance of functions transferred to Secretary of Treasury by any officer, employee, or agency of Treasury Department, repealed by Pub. L. 93-253, §1(a)(2), Mar. 16, 1974, 88 Stat. 50, eff. July 1, 1974.

SEC. 7. COORDINATION

The Attorney General, acting through the Administrator and such other officials of the Department of Justice as he may designate, shall provide for the coordination of all drug law enforcement functions vested in the Attorney General so as to assure maximum cooperation between and among the Administration, the Federal Bureau of Investigation, and other units of the Department involved in the performance of these and related functions.

SEC. 8. INCIDENTAL TRANSFERS

(a) So much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available or to be made available in connection with the functions transferred to the Attorney General and to the Secretary of the Treasury by this Reorganization Plan as the Director of the Office of Management and Budget shall determine shall be transferred to the Department of Justice and to the Department of the Treasury, respectively, at such time or times as the Director shall direct.

(b) Such further measures and dispositions as the Director of the Office of Management and Budget shall deem to be necessary in order to effectuate transfers referred to in subsection (a) of this section shall be carried out in such manner as he shall direct and by such Federal agencies as he shall designate.

SEC. 9. INTERIM OFFICERS

(a) The President may authorize any person who, immediately prior to the effective date of this Reorganization Plan, held a position in the Executive Branch of the Government to act as Administrator until the office of Administrator is for the first time filled pursuant to the provisions of this Reorganization Plan or by recess appointment as the case may be.

(b) The President may similarly authorize any such person to act as Deputy Administrator.

(c) The President may authorize any person who serves in an acting capacity under the foregoing provisions of this section to receive the compensation attached to the office in respect to which he serves. Such compensation, if authorized, shall be in lieu of, but not in addition to, other compensation from the United States to which such person may be entitled.

SEC. 10. EFFECTIVE DATE

The provisions of this Reorganization Plan shall take effect as provided by section 906(a) of title 5 of the United States Code or on July 1, 1973, whichever is later.

MESSAGE OF THE PRESIDENT

To the Congress of the United States:

Drug abuse is one of the most vicious and corrosive forces attacking the foundations of American society today. It is a major cause of crime and a merciless destroyer of human lives. We must fight it with all of the resources at our command.

This Administration has declared all-out, global war on the drug menace. As I reported to the Congress earlier this month in my State of the Union message, there is evidence of significant progress on a number of fronts in that war.

Both the rate of new addiction to heroin and the number of narcotic-related deaths showed an encouraging downturn last year. More drug addicts and abusers are in treatment and rehabilitation programs than ever before.

Progress in pinching off the supply of illicit drugs was evident in last year’s stepped-up volume of drug seizures worldwide—which more than doubled in 1972 over the 1971 level.

Arrests of traffickers have risen by more than one-third since 1971. Prompt Congressional action on my proposal for mandatory minimum sentences for pushers of hard drugs will help ensure that convictions stemming from such arrests lead to actual imprisonment of the guilty.

Notwithstanding these gains, much more must be done. The resilience of the international drug trade remains grimly impressive—current estimates suggest that we still intercept only a small fraction of all the heroin and cocaine entering this country. Local police still find that more than one of every three suspects arrested for street crimes is a narcotic abuser or addict.

And the total number of Americans addicted to narcotics, suffering terribly themselves and inflicting their suffering in countless others, still stands in the hundreds of thousands.
A UNIFIED COMMAND FOR DRUG ENFORCEMENT

Seeking ways to intensify our counter-offensive against this menace, I am asking the Congress today to join with this Administration in strengthening and streamlining the Federal drug law enforcement effort. Funding for this effort during the past five years, from $36 million in fiscal year 1969 to $257 million in fiscal year 1974—more money is not the most pressing enforcement need at present. Nor is there a primary need for more manpower working on the problem, over 2100 new agents having already been added to the Federal drug enforcement agencies under this Administration, an increase of more than 250 percent over the 1969 level.

The enforcement work could benefit significantly, however, from consolidation of our anti-drug forces under a single unified command. Right now the Federal Government is fighting the war on drug abuse under a distinct handicap, for its efforts are those of a loosely confederated alliance facing a resourceful, elusive, worldwide enemy. Admiral Mahan, the master naval strategist, described this handicap precisely when he wrote that “Granting the same aggregate of force, it is never as great in two hands as in one, because it is not perfectly concentrated.”

More specifically, the drug law enforcement activities of the United States now are not merely in two hands but in half a dozen. Within the Department of Justice, with no overall direction below the level of the Attorney General, these fragmented forces include the Bureau of Narcotics and Dangerous Drugs, the Office for Drug Abuse Law Enforcement, the Office of Narcotics Intelligence, and certain activities of the Law Enforcement Assistance Administration. The Treasury Department is also heavily engaged in enforcement work through the Bureau of Customs.

This aggregation of Federal drug activities has grown up rapidly over the past few years in response to the urgent need for stronger anti-drug measures. It has enabled us to make a very encouraging beginning in the accelerated drug enforcement drive of this Administration.

But it also has serious operational and organizational shortcomings. Certainly the cold-blooded underworld networks that funnel narcotics from suppliers all over the world into the veins of American drug victims are no respecters of the bureaucratic dividing lines that now complicate our anti-drug efforts. On the contrary, these modern-day slave traders can derive only advantage from the limitations of the existing organizational patchwork. Experience has now given us a good basis for correcting those limitations, and it is time to do so.

I therefore propose creation of a single, comprehensive Federal agency within the Department of Justice to lead the war against illicit drug traffic. Reorganization Plan No. 2 of 1973, which I am transmitting to the Congress with this message, would establish such an agency, to be called the Drug Enforcement Administration. It would be headed by an Administrator reporting directly to the Attorney General.

The Drug Enforcement Administration would carry out the following anti-drug functions, and would absorb the associated manpower and budgets:

—All functions of the Bureau of Narcotics and Dangerous Drugs (which would be abolished as a separate entity by the reorganization plan);

—Those functions of the Bureau of Customs pertaining to drug investigations and intelligence (to be transferred from the Treasury Department to the Attorney General by the reorganization plan);

—All functions of the Office of Drug Abuse Law Enforcement; and

—All functions of the Office of National Narcotics Intelligence.

Merger of the latter two organizations into the new agency would be effected by an executive order dissolving and transferring the personnel under Reorganization Plan No. 2 by the Congress. Drug law enforcement research currently funded by the Law Enforcement Assistance Administration and other agencies would also be transferred to the new agency by executive action.

The major responsibility of the Drug Enforcement Administration would thus include:

—development of overall Federal drug law enforcement strategy, programs, planning, and evaluation;

—full investigation and prosecution for violations of suspects for violations under all Federal drug trafficking laws;

—full investigation and preparation for prosecution of suspects connected with illicit drugs seized at U.S. ports-of-entry and international borders;

—conduct of all relations with drug law enforcement officials of foreign governments, under the policy guidance of the Cabinet Committee on International Narcotics Control;

—full coordination and cooperation with State and local law enforcement officials on joint drug enforcement efforts; and

—regulation of the legal manufacture of drugs and other controlled substances under Federal regulations.

The Attorney General, working closely with the Administrator of this new agency, would have authority to make needed program adjustments. He would take steps within the Department of Justice to ensure that high priority emphasis is placed on the prosecution and sentencing of drug traffickers following their apprehension by the enforcement organization. He would also have the authority and responsibility for securing the fullest possible cooperation—particularly with respect to collection of drug intelligence—from all Federal departments and agencies which can contribute to the anti-drug war, including the Internal Revenue Service and the Federal Bureau of Investigation.

My proposals would make possible a more effective antidrug role for the FBI, especially in dealing with the relationship between drug trafficking and organized crime. I intend to see that the resources of the FBI are fully committed to assist in supporting the new Drug Enforcement Administration.

The consolidation effected under Reorganization Plan No. 2 would reinforce the basic law enforcement and criminal justice mission of the Department of Justice. With worldwide drug law enforcement responsibilities no longer divided among several organizations in two different Cabinet departments, more complete and cumulative drug law enforcement intelligence could be compiled. Patterns of international and domestic illicit drug production, distribution, and sale could be more directly compared and interpreted. Case-by-case drug law enforcement activities could be more comprehensively linked, cross-referenced, and coordinated into a single, organic enforcement operation. In short, drug law enforcement officers would be able to spend more time going after the traffickers and less time coordinating with one another.

Such progress could be especially helpful on the international front. Narcotics control action plans, developed under the leadership of the Cabinet Committee on International Narcotics Control, are now being carried out by U.S. officials in cooperation with host governments in 59 countries around the world. This wide-ranging effort to cut off drug supplies before they ever reach U.S. borders or streets is just now beginning to bear fruit. We can enhance its effectiveness, with little disruption of ongoing enforcement activities, by merging the highly effective narcotics force of overseas Customs agents and the rapidly developing international activities of the Bureau of Narcotics and Dangerous Drugs into the Drug Enforcement Administration. The new agency would work closely with the Cabinet Committee under the active leadership of the U.S. Ambassador in each country where anti-drug programs are underway.

Two years ago, when I established the Special Action Office for Drug Abuse Prevention within the Executive Office of the President, we gained an organization with the necessary resources, breadth, and leadership capac-
ity to begin dealing decisively with the ‘demand’ side of the drug abuse problem—treatment and rehabilitation for those who have been drug victims, and preventive programs for potential drug abusers. This year, by permitting my reorganization proposals to take effect, the Congress can help provide a similar capability on the ‘supply’ side. The proposed Drug Enforcement Administration, working as a Cabinet-level unit with the Special Action Office, would arm Americans with a potent one-two punch to help us fight back against the deadly menace of drug abuse. I ask full Congressional cooperation in its establishment.

**IMPROVING PORT-OF-ENTRY INSPECTIONS**

No heroin or cocaine is produced within the United States; domestic availability of these substances results solely from their illegal importation. The careful and complete inspection of all persons and goods coming into the United States is therefore an integral part of effective Federal drug law enforcement.

At the present time, however, Federal responsibility for conducting port-of-entry inspections is awkwardly divided among several Cabinet departments. The principal agencies involved are the Treasury Department’s Bureau of Customs, which inspects goods, and the Justice Department’s Immigration and Naturalization Service, which inspects persons and their papers. The two utilize separate inspection procedures, hold differing views of inspection priorities, and employ dissimilar personnel management practices.

To reduce the possibility that illicit drugs will escape detection at port-of-entry because of divided responsibility, and to enhance the effectiveness of the Drug Enforcement Administration, the reorganization plan which I am proposing today would transfer to the Secretary of the Treasury all functions currently vested in Justice Department officials to inspect persons, or the documents of persons.

When the plan takes effect, it is my intention to direct the Secretary of the Treasury to use the resources so transferred—including some 1,000 employees of the Immigration and Naturalization Service—to augment the staff and budget of the Bureau of Customs. The Bureau’s primary responsibilities would then include:

- inspection of all persons and goods entering the United States;
- enforcement of U.S. laws governing the international movement of goods, except the investigation of contraband drugs and narcotics; and
- transfer of the investigation responsibility for all drug law enforcement cases to the Department of Justice.

The reorganization would thus group most port-of-entry inspection functions in a single Cabinet department. It would reduce the need for much day-to-day interdepartmental coordination, allow more efficient staffing at some field locations, and remove the basis for damaging interagency rivalries. It would also give the Secretary of the Treasury the authority and flexibility to meet changing requirements in inspecting the international flow of people and goods.

For these reasons, I am convinced that inspection activities at U.S. ports-of-entry can more effectively support our drug law enforcement efforts if concentrated in a single agency. The processing of persons at ports-of-entry is too closely interrelated with the inspection of goods to remain organizationally separated from it any longer. Both types of inspections have numerous objectives besides drug law enforcement, so it is logical to vest them in the Treasury Department, which has long had the principal responsibility for port-of-entry inspection of goods, including those transported in connection with persons. As long as the inspections are conducted with full awareness of related drug con-cerns it is neither necessary nor desirable that they be made a responsibility of the primary drug enforcement organization.

**DECLARATIONS**

After investigation, I have found that each action included in Reorganization Plan No. 2 of 1973 is necessary to accomplish one or more of the purposes set forth in Section 901(a) of Title 5 of the United States Code. In particular, the plan is responsive of the intention of the Congress as expressed in Section 901(a)(1): “to promote better execution of the laws, more effective management of the executive branch and of its agencies and functions, and expeditious administration of the public business;” Section 901(a)(3): “to increase the efficiency of the operations of the Government to the fullest extent practicable;” Section 901(a)(5): “to reduce the number of agencies by consolidating those having similar functions under a single head, and to abolish such agencies or functions as may not be necessary for the efficient conduct of the Government;” and Section 901(a)(6): “to eliminate overlapping and duplication of effort.”

As required by law, the plan has one logically consistent subject matter: consolidation of Federal drug law enforcement activities in a manner designed to increase their effectiveness.

The plan would establish in the Department of Justice a new Administration designated as the Drug Enforcement Administration. The reorganizations provided for in the plan make necessary the appointment and compensation of new officers as specified in Section 5 of the plan. The rates of compensation fixed for these officers would be comparable to those fixed for officers in the executive branch who have similar responsibilities.

While it is not practicable to specify all of the expenditure reductions and other economies which may result from the actions proposed, some savings may be anticipated in administrative costs now associated with the functions being transferred and consolidated. The proposed reorganization is a necessary step in upgrading the effectiveness of our Nation’s drug law enforcement effort. Both of the proposed changes would build on the strengths of established agencies, yielding maximum gains in the battle against drug abuse with minimum loss of time and momentum in the transition.

I am confident that this reorganization plan would significantly increase the overall efficiency and effectiveness of the Federal Government. I urge the Congress to allow it to become effective.

**The White House, March 28, 1973**

**EX. ORD. NO. 12146. MANAGEMENT OF FEDERAL LEGAL RESOURCES**


By the authority vested in me as President by the Constitution and statutes of the United States of America, it is hereby ordered as follows:

1–1. Establishment of the Federal Legal Council

1–101. There is hereby established the Federal Legal Council, which shall be composed of the Attorney General and the representatives of not more than 16 other agencies. The agency representative shall be designated by the head of the agency.

1–102. The initial membership of the Council, in addition to the Attorney General, shall consist of representatives designated by the heads of the following agencies:

(a) The Department of Commerce.
(b) The Department of Defense.
(c) The Department of Energy.
(d) The Environmental Protection Agency.
eral legal resources, including those matters specified in Section 1–201, and (b) to avoid inconsistent or unnec-

eral legal resources that are beyond the capacity or

obono legal services by Federal attorneys;

offices; and

1–103. The initial members of the Council shall serve for a term of two years. Thereafter, the agencies which compose the membership shall be designated annually by the Council and at least five positions on the Council, other than that held by the Attorney General, shall rotate annually.

1–104. In addition to the above members, the Directors of the Office of Management and Budget and the Office of Personnel Management, or their designees, shall be advisory members of the Council.

1–105. The Attorney General shall chair the Council and provide staff for its operation. Representatives of agencies that are not members of the Council may serve on or chair subcommittees of the Council.

1–2. FUNCTIONS OF THE COUNCIL

1–201. The Council shall promote:

(a) coordination and communication among Federal legal offices;

(b) improved management of Federal lawyers, associated support personnel, and information systems;

(c) improvements in the training provided to Federal lawyers;

(d) the facilitation of the personal donation of pro

bono legal services by Federal attorneys;

(e) the use of joint or shared legal facilities in field offices; and

(f) the delegation of legal work to field offices.

1–202. The Council shall study and seek to resolve problems in the efficient and effective management of Federal legal resources that are beyond the capacity or authority of individual agencies to resolve.

1–203. The Council shall develop recommendations for legislation and other actions: (a) to increase the effi-
cient and effective operation and management of Fed-

eral legal resources, including those matters specified in Section 1–201, and (b) to avoid inconsistent or unnec-

essary litigation by agencies.

1–3. LITIGATION NOTICE SYSTEM

1–301. The Attorney General shall establish and maintain a litigation notice system that provides timely information about all civil litigation pending in the courts in which the Federal Government is a party or has a significant interest.

1–302. The Attorney General shall issue rules to govern operation of the notice system. The rules shall in-

clude the following requirement:

(a) All agencies with authority to litigate cases in court shall promptly notify the Attorney General about those cases that fall in classes or categories designated from time to time by the Attorney General.

(b) The Attorney General shall provide all agencies reasonable access to the information collected in the litigation notice system.

1–4. RESOLUTION OF INTERAGENCY LEGAL DISPUTES

1–401. Whenever two or more Executive agencies are unable to resolve a legal dispute between them, includ-
ing the question of which has jurisdiction to administer a particular program or to regulate a particular activ-

ity, each agency is encouraged to submit the dispute to the Attorney General.

1–402. Whenever two or more Executive agencies whose heads serve at the pleasure of the President are unable to resolve such a legal dispute, the agencies shall submit the dispute to the Attorney General prior to proceeding in any court, except where there is spe-
cific statutory vesting of responsibility for a resolution elsewhere.

1–5. ACCESS TO LEGAL OPINIONS

1–501. In addition to the disclosure now required by law, all agencies are encouraged to make available for public inspection and copying other opinions of their legal officers that are statements of policy or interpre-
tation that have been adopted by the agency, unless the agency determines that disclosure would result in demonstrable harm.

1–502. All agencies are encouraged to make available on request other legal opinions, when the agency deter-

mines that disclosure would not be harmful.

1–6. AUTOMATED LEGAL RESEARCH AND INFORMATION SYSTEMS

1–601. The Attorney General, in coordination with the Secretary of Defense and other agency heads, shall pro-

vide for a computerized legal research system that will be available to all Federal law offices on a reimburs-
able basis. The system may include in its data base such Federal regulations, case briefs, and legal opin-

ions, as the Attorney General deems appropriate.

1–602. The Federal Legal Council shall provide leadership for all Federal legal offices in establishing appropriate word processing and management information systems.

1–7. RESPONSIBILITIES OF THE AGENCIES

1–701. Each agency shall (a) review the management and operation of its legal activities and report in one year to the Federal Legal Council all steps being taken to improve those operations, and (b) cooperate with the Federal Legal Council and the Attorney General in the performance of the functions provided by this Order.

1–702. To the extent permitted by law, each agency shall furnish the Federal Legal Council and the Attor-
gney General with reports, information and assistance as requested to carry out the provisions of this Order.

EXECUTIVE ORDER No. 13271


EX. ORD. No. 13402, STRENGTHENING FEDERAL EFFORTS TO PROTECT AGAINST IDENTITY THEFT


By the authority vested in me as President by the Constitution and the laws of the United States of America.

It is hereby ordered as follows:

SECTION 1. Policy. It is the policy of the United States to use Federal resources effectively to deter, prevent, detect, investigate, proceed against, and prosecute unlawful use by persons of the identifying information of other persons, including through:

(a) increased aggressive law enforcement actions designed to prevent, investigate, and prosecute identity theft crimes, recover the proceeds of such crimes, and ensure just and effective punishment of those who perpetrate identity theft;

(b) improved public outreach by the Federal Government to better (i) educate the public about identity theft and protective measures against identity theft, and (ii) address how the private sector can take appropriate steps to protect personal data and educate the public about identity theft; and

(c) increased safeguards that Federal departments, agencies, and instrumentalities can implement to better secure government-held personal data.

SEC. 2. Establishment of the Identity Theft Task Force.
(a) There is hereby established the Identity Theft Task Force.

(b) The Task Force shall consist exclusively of:

(i) the Attorney General, who shall serve as Chairman of the Task Force;
(ii) the Chairman of the Federal Trade Commission, who shall serve as Co-Chairman of the Task Force;
(iii) the Secretary of the Treasury;
(iv) the Secretary of Commerce;
(v) the Secretary of Health and Human Services;
(vi) the Secretary of Veterans Affairs;
(vii) the Secretary of Homeland Security;
(viii) the Director of the Office of Management and Budget;
(ix) the Commissioner of Social Security;
(x) the following officers of the United States:
   (A) the Chairman of the Board of Governors of the Federal Reserve System;
   (B) the Chairperson of the Board of Directors of the Federal Deposit Insurance Corporation;
   (C) the Comptroller of the Currency;
   (D) the Director of the Office of Thrift Supervision;
   (E) the Chairman of the National Credit Union Administration Board; and
   (F) the Postmaster General; and

(xi) such other officers of the United States as the Attorney General may designate from time to time, with the concurrence of the respective heads of departments and agencies concerned.

(c) The Chairman and Co-Chairman shall convene and preside at the meetings of the Task Force, determine its agenda, direct its work and, as appropriate, establish and direct subgroups of the Task Force that shall consist exclusively of members of the Task Force. Such subgroups may address particular subject matters, such as criminal law enforcement or private sector education and outreach. The Chairman and Co-Chairman may also designate, with the concurrence of the head of the department, agency, or instrumentality of which the official is part, such other Federal officials as they deem appropriate for participation in the Task Force subgroups.

(d) A member of the Task Force, including the Chairman and Co-Chairman, may designate, to perform the Task Force or Task Force subgroup functions of the member, any person who is a part of the member’s department, agency, or instrumentality and who has high-level policy or operational duties or responsibilities related to the mission of the Task Force.

(e) The Task Force, in implementing the policy set forth in section 1 of this order, shall:

(a) review the activities of executive branch departments, agencies, and instrumentalities relating to the policy set forth in section 1, and build upon these prior activities, prepare and submit in writing to the President by February 9, 2007, or as soon as practicable thereafter, a coordinated strategic plan to further improve the effectiveness and efficiency of the Federal Government’s activities in the areas of identity theft awareness, prevention, detection, and prosecution.

(b) coordinate, as appropriate and subject to section 5(a) of this order, Federal Government efforts related to implementation of the policy set forth in section 1 of this order;

(c) obtain information and advice relating to the policy set forth in section 1 from representatives of State, local, and tribal governments, private sector entities, and individuals, in a manner that seeks their individual advice and does not involve collective judgment or consensus advice and deliberation and without giving any such person a vote or a veto over the activities or advice of the Task Force;

(d) promote enhanced cooperation by Federal departments and agencies with State and local authorities responsible for the prevention, investigation, and prosecution of significant identity theft crimes, including through avoiding unnecessary duplication of effort and expenditure of resources; and

(e) provide advice on the establishment, execution, and efficiency of policies and activities to implement the policy set forth in section 1:

(i) to the President in written reports from time to time, including recommendations for administrative action or proposals for legislation; and

(ii) to the heads of departments, agencies, and instrumentalities as appropriate from time to time within the discretion of the Chairman and the Co-Chairman.

SIS. 4. Cooperation. (a) To the extent permitted by law and applicable presidential guidance, executive departments, agencies, and instrumentalities shall provide to the Task Force such information, support, and assistance as the Task Force, through its Chairman and Co-Chairman, may request to implement this order.

(b) The Task Force shall be located in the Department of Justice for administrative purposes, and to the extent permitted by law, the Department of Justice shall provide the funding and administrative support the Task Force needs to implement this order, as determined by the Attorney General.

SIS. 5. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law to an executive department, agency, or instrumentality or the head thereof; and

(ii) functions of the Director of the Office of Management and Budget relating to budget, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is intended only to improve the internal management of the Federal Government and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its departments, agencies, instrumentalities, or entities, its officers or employees, or any other person.

SIS. 6. Termination. Unless the Task Force is sooner terminated by the President, the Attorney General may terminate the Task Force by a written notice of its termination published in the Federal Register.

GEORGE W. BUSH.

EX. ORD. NO. 13519, ESTABLISHMENT OF THE FINANCIAL FRAUD ENFORCEMENT TASK FORCE

Ex. Ord. No. 13519, Nov. 17, 2009, 74 F.R. 60123, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to strengthen the efforts of the Department of Justice, in conjunction with Federal, State, tribal, territorial, and local agencies, to investigate and prosecute significant financial crimes and other violations relating to the current financial crisis and economic recovery efforts, recover the proceeds of such crimes and violations, and ensure just and effective punishment of those who perpetrate financial crimes and violations, it is hereby ordered as follows:

SECTION 1. Establishment. There is hereby established an interagency Financial Fraud Enforcement Task Force (Task Force) led by the Department of Justice.

SIS. 2. Membership and Operation. The Task Force shall be chaired by the Attorney General and consist of senior-level officials from the following departments, agencies, and offices selected by the heads of the respective departments, agencies, and offices in consultation with the Attorney General:

(a) the Department of Justice;
(b) the Department of the Treasury;
(c) the Department of Commerce;
(d) the Department of Labor;
(e) the Department of Housing and Urban Development;
(f) the Department of Education;
(g) the Department of Homeland Security;
(h) the Securities and Exchange Commission;
(i) the Commodity Futures Trading Commission;
(ii) the Federal Trade Commission;
(iii) the Federal Deposit Insurance Corporation;
(iv) the Board of Governors of the Federal Reserve System;
(v) the Federal Housing Finance Agency;
(vi) the Office of Thrift Supervision;
(vii) the Office of the Comptroller of the Currency;
(viii) the Small Business Administration;
(ix) the Federal Bureau of Investigation;
(x) the Social Security Administration;
(xi) the Internal Revenue Service, Criminal Investigations;
(xii) the Financial Crimes Enforcement Network;
(xiii) the United States Postal Inspection Service;
(xiv) the Secret Service;
(xv) the United States Immigration and Customs Enforcement;
(xvi) relevant Offices of Inspectors General and related Federal entities, including without limitation the Office of the Inspector General for the Department of Housing and Urban Development, the Recovery Accountability and Transparency Board, and the Office of the Special Inspector General for the Troubled Asset Relief Program; and
(xvii) such other executive branch departments, agencies, or offices as the President may, from time to time, designate or that the Attorney General may invite.

The Attorney General shall convene and, through the Deputy Attorney General, direct the work of the Task Force in fulfilling all its functions under this order. The Attorney General shall convene the first meeting of the Task Force within 30 days of the date of this order and shall thereafter convene the Task Force at such times as he deems appropriate. At the direction of the Attorney General, the Task Force may establish subgroups consisting exclusively of Task Force members or their designees under this section, including but not limited to a Steering Committee chaired by the Deputy Attorney General, and subcommittees addressing enforcement efforts, training and information sharing, and victims' rights, as the Attorney General deems appropriate.

S 3. Mission and Functions. Consistent with the authorities assigned to the Attorney General by law, and other applicable law, the Task Force shall:
(a) provide advice to the Attorney General for the investigation and prosecution of cases of bank, mortgage, loan, and lending fraud; securities and commodities fraud; retirement plan fraud; mail and wire fraud; tax crimes; money laundering; False Claims Act violations; unfair competition; discrimination; and other financial crimes and violations (hereafter financial crimes and violations), when such cases are determined by the Attorney General, for purposes of this order, to be significant;
(b) make recommendations to the Attorney General, from time to time, for action to enhance cooperation among Federal, State, local, tribal, and territorial authorities responsible for the investigation and prosecution of significant financial crimes and violations; and
(c) coordinate law enforcement operations with representatives of State, local, tribal, and territorial law enforcement.

S 4. Coordination with State, Local, Tribal, and Territorial Law Enforcement. Consistent with the objectives set out in this order, and to the extent permitted by law, the Attorney General is encouraged to invite the following representatives of State, local, tribal, and territorial law enforcement to participate in the Task Force's subcommittee addressing enforcement efforts in the subcommittee's performance of the functions set forth in section 3(c) of this order relating to the coordination of Federal, State, local, tribal, and territorial law enforcement operations involving financial crimes and violations:
(a) the National Association of Attorneys General;
(b) the National District Attorneys Association; and
(c) such other representatives of State, local, tribal, and territorial law enforcement as the Attorney General deems appropriate.

S 5. Outreach. Consistent with the law enforcement objectives set out in this order, the Task Force, in accordance with applicable law, in addition to regular meetings, shall conduct outreach with representatives of financial institutions, corporate entities, nonprofit organizations, State, local, tribal, and territorial governments and agencies, and other interested persons to foster greater coordination and participation in the detection and prosecution of financial fraud and financial crimes, and in the enforcement of antitrust and anti-discrimination laws.

S 6. Administration. The Department of Justice, to the extent permitted by law and subject to the availability of appropriations, shall provide administrative support and funding for the Task Force.

S 7. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:
(i) authority granted by law to an executive department, agency, or the head thereof, or the status of that department or agency within the Federal Government; or
(ii) functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.
(b) This Task Force shall replace, and continue the work of, the Corporate Fraud Task Force created by Executive Order 13271 of July 9, 2002. Executive Order 13271 is hereby terminated pursuant to section 6 of that order.
(c) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.
(d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

S 8. Termination. The Task Force shall terminate when directed by the President or, with the approval of the President, by the Attorney General.

BARACK OBAMA.
(b) The section established under subsection (a) is authorized to—
(1) take appropriate legal action against individuals suspected of participating in serious human rights offenses; and
(2) coordinate any such legal action with the United States Attorney for the relevant jurisdiction.

(c) The Attorney General shall, as appropriate, consult with the Secretary of Homeland Security and the Secretary of State.

(d) In determining the appropriate legal action to take against individuals who are suspected of committing serious human rights offenses under Federal law, the section shall take into consideration the availability of criminal prosecution under the laws of the United States for such offenses or in a foreign jurisdiction that is prepared to undertake a prosecution for the conduct that forms the basis for such offenses.

(e) The term “serious human rights offenses” includes violations of Federal criminal laws relating to genocide, torture, war crimes, and the use or recruitment of child soldiers under sections 1091, 2340, 2340A, 2441, and 2442 of title 18, United States Code.


REFERENCES IN TEXT
The date of the enactment of the Human Rights Enforcement Act of 2009, referred to in subsec. (a), is the date of enactment of Pub. L. 111–122, which was approved Dec. 22, 2009.

§ 510. Delegation of authority
The Attorney General may from time to time make such provisions as he considers appropriate authorizing the performance by any other officer, employee, or agency of the Department of Justice of any function of the Attorney General.

(Added Pub. L. 89–554, § 4(c), Sept. 6, 1966, 80 Stat. 612.)

HISTORICAL AND REVISION NOTES

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<th>Revised Statutes and Statutes at Large</th>
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§ 512. Attorney General to advise heads of executive departments
The head of an executive department may require the opinion of the Attorney General on questions of law arising in the administration of his department.

(Added Pub. L. 89–554, § 4(c), Sept. 6, 1966, 80 Stat. 613.)

HISTORICAL AND REVISION NOTES

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§ 513. Attorney General to advise Secretaries of military departments
When a question of law arises in the administration of the Department of the Army, the Department of the Navy, or the Department of the Air Force, the cognizance of which is not given by statute to some other officer from whom the Secretary of the military department concerned may require advice, the Secretary of the military department shall send it to the Attorney General for disposition.

(Added Pub. L. 89–554, § 4(c), Sept. 6, 1966, 80 Stat. 613.)

HISTORICAL AND REVISION NOTES

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The Department of War was designated the Department of the Army by the Act of July 26, 1947, ch. 343, § 365, 61 Stat. 501. “Department of the Air Force” is added on authority of the Act of July 26, 1947, ch. 343, § 367(a), (f), 61 Stat. 502. The word “Secretary” is substituted for “head.” The words “military department” are substituted for “department” to conform to section 102 of title 5, United States Code, and section 101 of title 16, United States Code. The words “for disposition” are substituted for “to be by him referred to the proper officer in his department, or otherwise disposed of as he may deem proper.”

§ 514. Legal services on pending claims in departments and agencies
When the head of an executive department or agency is of the opinion that the interests of the United States require the service of counsel on the examination of any witness concerning any claim, or on the legal investigation of any claim, pending in the department or agency, he shall notify the Attorney General, giving all facts necessary to enable him to furnish proper professional service in attending the examination or making the investigation, and the Attorney General shall provide for the service.

(Added Pub. L. 89–554, § 4(c), Sept. 6, 1966, 80 Stat. 613.)

HISTORICAL AND REVISION NOTES

The words “including any function transferred to the Attorney General by the provisions of this reorganization plan” are omitted as executed and unnecessary as the words “any function of the Attorney General” include the functions transferred to the Attorney General by 1950 Reorg. Plan No. 2.

PRIOR PROVISIONS
A prior section 510, act June 25, 1948, ch. 646, 62 Stat. 916, related to clerical assistants and messengers for United States attorneys, prior to repeal by Pub. L. 89–554, § 8(a), and reenactment in section 550 of this title by section 4(c) of Pub. L. 89–554.

§ 511. Attorney General to advise the President
The Attorney General shall give his advice and opinion on questions of law when required by the President.

(Added Pub. L. 89–554, § 4(c), Sept. 6, 1966, 80 Stat. 612.)
§ 515. Authority for legal proceedings; commission, oath, and salary for special attorneys

(a) The Attorney General or any other officer of the Department of Justice, or any attorney specially appointed by the Attorney General under law, may, when specifically directed by the Attorney General, conduct any kind of legal proceeding, civil or criminal, including grand jury proceedings and proceedings before committing magistrate judges, which United States attorneys are authorized by law to conduct, whether or not he is a resident of the district in which the proceeding is brought.

(b) Each attorney specially retained under authority of the Department of Justice shall be commissioned as special assistant to the Attorney General or special attorney, and shall take the oath required by law. Foreign counsel employed in special cases are not required to take the oath. The Attorney General shall fix the annual salary of a special assistant or special attorney.

(Added Pub. L. 89–554, § 4(c), Sept. 6, 1966, 80 Stat. 613; amended Pub. L. 101–650, set out as a note under section 631 of this title. Minor changes are made in phrasing to allow for the combining of the two sections.)

§ 516. Conduct of litigation reserved to Department of Justice

Except as otherwise authorized by law, the conduct of litigation in which the United States, an agency, or officer thereof is a party, or is interested, and securing evidence therefor, is reserved to officers of the Department of Justice, under the direction of the Attorney General.

(Added Pub. L. 89–554, § 4(c), Sept. 6, 1966, 80 Stat. 613.)

§ 517. Interests of United States in pending suits

The Solicitor General, or any officer of the Department of Justice, may be sent by the Attorney General to any State or district in the United States to attend to the interests of the United States in a suit pending in a court of the United States, or in a court of a State, or to attend to any other interest of the United States.

(Added Pub. L. 89–554, § 4(c), Sept. 6, 1966, 80 Stat. 613.)

§ 518. Conduct and argument of cases

(a) Except when the Attorney General in a particular case directs otherwise, the Attorney
General and the Solicitor General shall conduct and argue suits and appeals in the Supreme Court and suits in the United States Court of Federal Claims or in the United States Court of Appeals for the Federal Circuit and in the Court of International Trade in which the United States is interested.

(b) When the Attorney General considers it in the interests of the United States, he may personally conduct and argue any case in a court of the United States in which the United States is interested, or he may direct the Solicitor General or any officer of the Department of Justice to do so.


HISTORICAL AND REVISION NOTES

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<th>Revised Statutes and Statutes at Large</th>
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The words “and writs of error” are omitted on authority of the Act of Jan. 31, 1928, ch. 14, § 1, 45 Stat. 54. The word “considers” is substituted for “deems”.

AMENDMENTS


EFFECTIVE DATE OF 1992 AMENDMENT


EFFECTIVE DATE OF 1982 AMENDMENT


EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–417 effective Nov. 1, 1980, and applicable with respect to civil actions pending on or commenced on or after such date, see section 701(a) of Pub. L. 96–417, set out as a note under section 251 of this title.

§ 519. Supervision of litigation

Except as otherwise authorized by law, the Attorney General shall supervise all litigation to which the United States, an agency, or officer thereof is a party, and shall direct all United States attorneys, assistant United States attorneys, and special attorneys appointed under section 543 of this title in the discharge of their respective duties.

(Added Pub. L. 89–554, § 4(c), Sept. 6, 1966, 80 Stat. 614.)

HISTORICAL AND REVISION NOTES

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<td>§ 519</td>
<td>28 U.S.C. 587(b)</td>
<td>[None].</td>
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The words “Except as otherwise authorized by law,” are added to provide for existing and future exceptions (e.g., section 1037 of title 10).

The words “or officer” are added for clarity and to align this section with section 516 which is of similar import.

The words “special attorneys appointed under section 543” are substituted for “attorneys appointed under section 543” to reflect the revision of this title.

INTELLIGENCE AND NATIONAL SECURITY ASPECTS OF ESPIONAGE PROSECUTIONS


USE OF ANNUITY BROKERS IN STRUCTURED SETTLEMENTS


“(a) Establishment and Transmission of List of Approved Annuity Brokers.—Not later than 6 months after the date of enactment of this Act [Nov. 2, 2002], the Attorney General shall establish a list of annuity brokers who meet minimum qualifications for providing annuity brokerage services in connection with structured settlements entered by the United States. This list shall be updated upon request by any annuity broker that meets the minimum qualifications for inclusion on the list. The Attorney General shall transmit such list, and any updates to such list, to all United States Attorneys.

“(b) Authority To Select Annuity Broker for Structured Settlements.—In any structured settlement that is not negotiated exclusively through the Civil Division of the Department of Justice, the United States Attorney (or his designee) involved in any settlement negotiations shall have the exclusive authority to select an annuity broker from the list of such brokers established by the Attorney General, provided that all documents related to any settlement comply with Department of Justice requirements.”

CASE MANAGEMENT INFORMATION AND TRACKING SYSTEMS FOR FEDERAL JUDICIAL DISTRICTS AND DIVISIONS OF DEPARTMENT, PREPARATION, SUBMISSION, ETC., OF PLAN

Pub. L. 96–132, § 11, Nov. 30, 1979, 93 Stat. 1047, required the Attorney General, not later than Apr. 15, 1980, after consultation with the Director of the Executive Office of United States Attorneys and such Assistant Attorneys as appropriate, to prepare and submit to the Committee on the Judiciary of the Senate and the House of Representatives a plan for the activation and coordination, within the Department of Justice, of compatible, comprehensive case management information and tracking systems for each of the judicial districts of the United States and for each of the divisions of the Department.

REPORT TO CONGRESS REGARDING PROVISIONS OF LAW CONSIDERED UNCONSTITUTIONAL BY THE DEPARTMENT OF JUSTICE; DECLARATION OF SUCH POSITION

Pub. L. 96–132, § 21, Nov. 30, 1979, 93 Stat. 1049, required the Attorney General, during the fiscal year ending Sept. 30, 1980, to transmit a report to each House of Congress in any case in which the Attorney General considered the provisions of law enacted by the Con-
gress and at issue to be unconstitutional and in such cases required a representative of the Department of Justice participating in such case to make a declaration that such opinion of the Attorney General regarding the constitutionality of those provisions of law involved constitutes the opinion of the executive branch of the government with respect to such matter. Such provisions were contained in Pub. L. 95–624, §13, Nov. 9, 1978, 92 Stat. 3464.

STUDY AND REPORT TO CONGRESS ON EXTENT TO WHICH VIOLATIONS OF FEDERAL CRIMINAL LAWS ARE NOT PROSECUTED

Pub. L. 95–624, §17, Nov. 9, 1978, 92 Stat. 3465, provided that the Attorney General undertake a study and make recommendations concerning violations of Federal criminal laws which have not been prosecuted and present such study and recommendations to the Committee on the Judiciary of the Senate and the House of Representatives not later than Oct. 1, 1979.

EXECUTIVE ORDER No. 12778


EX. ORD. No. 12988. CIVIL JUSTICE REFORM

Ex. Ord. No. 12988, Feb. 5, 1996, 61 F.R. 4729, provided:

(a) To promote the just and efficient resolution of civil claims, those Federal agencies and litigation counsel that conduct or otherwise participate in civil litigation involving the United States Government, to encourage the filing of only meritorious civil claims, to improve legislative and regulatory drafting to reduce needless litigation, to promote fair and prompt adjudication before administrative tribunals, and to provide a model for similar reforms of litigation practices in the private sector and in various states, it is hereby ordered as follows:

SECTION 1. Guidelines to Promote Just and Efficient Government Civil Litigation. To promote the just and efficient resolution of civil claims, those Federal agencies and litigation counsel that conduct or otherwise participate in civil litigation in which the United States Government in Federal court shall respect and adhere to the following guidelines during the conduct of such litigation:

(a) Pre-filing Notice of a Complaint. No litigation counsel shall file a claim initiating civil litigation without first making a reasonable effort to notify all disputants about the nature of the dispute and to attempt to achieve a settlement, or confirming that the referring agency that previously handled the dispute has made a reasonable effort to notify the disputants and to achieve a settlement or has used its conciliation process.

(b) Settlement Conferences. As soon as practicable after ascertaining the nature of a dispute in litigation, and throughout the litigation, litigation counsel shall evaluate settlement possibilities and make reasonable efforts to settle the litigation. Such efforts shall include offering to participate in a settlement conference or moving the court for a conference pursuant to Rule 16 of the Federal Rules of Civil Procedure [28 U.S.C. App.] in an attempt to resolve the dispute without additional civil litigation.

(c) Alternative Methods of Resolving the Dispute in Litigation. Litigation counsel shall make reasonable attempts to resolve a dispute expeditiously and properly before proceeding to trial.

(1) Whenever feasible, claims should be resolved through informal discussions, negotiations, and settlements rather than through utilization of any formal court proceeding. Where the benefits of Alternative Dispute Resolution (“ADR”) may be derived, and after consultation with the agency referring the matter, litigation counsel should suggest the use of an appropriate ADR technique to the parties.

(2) It is appropriate to use ADR techniques or processes to resolve claims of or against the United States or its agencies, after litigation counsel determines that the use of a particular technique is warranted in the context of a particular claim or claims, and that such use will materially contribute to the prompt, fair, and efficient resolution of the claims.

(3) To facilitate broader and effective use of informal and formal ADR methods, litigation counsel should be trained in ADR techniques.

(d) Discovery. To the extent practical, litigation counsel shall make every reasonable effort to streamline and expedite discovery in cases under counsel’s supervision and control.

(1) Review of Proposed Document Requests. Each agency within the executive branch shall establish a coordinated procedure for the conduct and review of document discovery undertaken in litigation directly by that agency when that agency is litigation counsel. The procedure shall include, but is not necessarily limited to, review by a senior lawyer prior to service or filing of the request in litigation to determine that the request is not cumulative or duplicative, unreasonable, oppressive, unduly burdensome or expensive, taking into account the requirements of the litigation, the amount in controversy, the importance of the issues at stake in the litigation, and whether the documents can be obtained from some other source that is more convenient, less burdensome, or less expensive.

(2) Discovery Motions. Before petitioning a court to resolve a discovery motion or petitioning a court to impose sanctions for discovery abuses, litigation counsel shall attempt to resolve the dispute with opposing counsel. If litigation counsel makes a discovery motion concerning the dispute, he or she shall represent in that motion that any attempt at resolution was unsuccessful or impracticable under the circumstances.

(3) Sanctions. Litigation counsel shall take steps to seek sanctions against opposing counsel and opposing parties where appropriate.

(1) Litigation counsel shall evaluate filings made by opposing parties and, where appropriate, shall petition the court to impose sanctions against those responsible for abusive practices.

(2) Prior to filing a motion for sanctions, litigation counsel shall submit the motion for review to the sanctions officer or designee of the agency when that agency is litigation counsel. Such officer or designee shall be a senior supervising attorney within the agency, and shall be licensed to practice law before a State court, courts of the District of Columbia, or courts of any territory or Commonwealth of the United States. The sanctions officer or designee shall also review motions for sanctions that are filed against litigation counsel, the United States, its agencies, or its officers.

(f) Improved Use of Litigation Resources. Litigation counsel shall employ efficient case management techniques and shall make reasonable efforts to expedite civil litigation in cases under that counsel’s supervision and control. This includes but is not limited to:

(1) making reasonable efforts to negotiate with other parties about, and stipulate to, facts that are not in dispute;

(2) reviewing and revising pleadings and other filings to ensure that they are accurate and that they reflect a narrowing of issues, if any, that has resulted from discovery;

(3) requesting early trial dates where practicable;

(4) moving for summary judgment in every case where the movant would be likely to prevail, or where the motion is likely to narrow the issues to be tried; and
(5) reviewing and revising pleadings and other filings to ensure that unmeritorious threshold defenses and jurisdictional arguments, resulting in unnecessary delay, are not raised.

SISC. 2. Government Pro Bono and Volunteer Service. All Federal agencies should develop appropriate programs to encourage and facilitate pro bono legal and other volunteer service by government employees to be performed on their own time, including attorneys, as permitted by statute, regulation, or other rule or guideline.


(a) General Duty to Review Legislation and Regulations. Within current budgetary constraints and existing executive branch coordination mechanisms and procedures established in OMB Circular A-19 and Executive Order No. 12866 [5 U.S.C. 301 note], each agency promulgating new regulations, reviewing existing regulations, developing legislative proposals concerning regulations, and developing new legislation shall adhere to the following requirements:

(1) The agency’s proposed legislation and regulations shall be reviewed by the agency to eliminate drafting errors and ambiguity;

(2) The agency’s proposed legislation and regulations shall be written to minimize litigation; and

(3) The agency’s proposed legislation and regulations shall provide a clear legal standard for affected conduct rather than a general standard, while promoting simplification and burden reduction.

(b) Specific Issues for Review. In conducting the reviews required by subsection (a), each agency formulating proposed legislation and regulations shall make every reasonable effort to ensure:

(1) That the legislation, as appropriate—

(A) specifies whether all causes of action arising under the law are subject to statutes of limitations;

(B) provides a clear legal standard for affected conduct;

(C) provides a clear legal standard for affected conduct rather than a general standard, and shall promote simplification and burden reduction;

(D) specifies in clear language the preemptive effect, if any, to be given to the law;

(E) specifies whether the provisions of the law are severable if one or more of them is found to be unconstitutional;

(F) specifies in clear language whether it grants private parties a right to sue and, if so, the relief available and the conditions and terms for authorized awards of attorney’s fees, if any;

(G) specifies in clear language whether it grants private parties a right to sue and, if so, the relief available and the conditions and terms for authorized awards of attorney’s fees, if any;

(H) specifies whether administrative proceedings are to be required before parties may file suit in court and, if so, describes those proceedings and requires the exhaustion of administrative remedies;

(I) specifies whether administrative proceedings are to be required before parties may file suit in court and, if so, describes those proceedings and requires the exhaustion of administrative remedies;

(J) specifies whether administrative proceedings are to be required before parties may file suit in court and, if so, describes those proceedings and requires the exhaustion of administrative remedies;

(K) specifies whether administrative proceedings are to be required before parties may file suit in court and, if so, describes those proceedings and requires the exhaustion of administrative remedies;

(L) specifies whether administrative proceedings are to be required before parties may file suit in court and, if so, describes those proceedings and requires the exhaustion of administrative remedies;

(M) defines key statutory terms, either explicitly or by reference to other statutes that explicitly define those terms;

(N) specifies whether the legislation applies to the Federal Government or its agencies;

(O) specifies whether the legislation applies to States, territories, the District of Columbia, and the Commonwealths of Puerto Rico and of the Northern Mariana Islands;

(P) specifies what remedies are available such as money damages, civil penalties, injunctive relief, and attorney’s fees; and

(Q) addresses other important issues affecting clarity and general draftsmanship of legislation set forth by the Attorney General, with the concurrence of the Director of the Office of Management and Budget (“OMB”) and after consultation with affected agencies, that are determined to be in accordance with the purposes of this order.

(2) that the regulation, as appropriate—

(A) specifies in clear language the preemptive effect, if any, to be given to the regulation;

(B) specifies in clear language the effect on existing Federal law or regulation, if any, including all provisions repealed, circumscribed, displaced, impaired, or modified;

(C) provides a clear legal standard for affected conduct rather than a general standard, while promoting simplification and burden reduction;

(D) specifies in clear language the retroactive effect, if any, to be given to the regulation;

(E) specifies whether administrative proceedings are to be required before parties may file suit in court and, if so, describes those proceedings and requires the exhaustion of administrative remedies; and

(F) addresses other important issues affecting clarity and general draftsmanship of regulations set forth by the Attorney General, with the concurrence of the Director of OMB and after consultation with affected agencies, that are determined to be in accordance with the purposes of this order.

(c) Agency Review. The agencies shall review such draft legislation or regulation to determine that either the draft legislation or regulation meets the applicable standards provided in subsections (a) and (b) of this section, or it is unreasonable to require the particular piece of draft legislation or regulation to meet one or more of those standards.

SISC. 4. Principles to Promote Just and Efficient Administrative Adjudications.

(a) Implementation of Administrative Conference Recommendations. In order to promote just and efficient resolution of disputes, an agency that adjudicates administrative claims shall, to the extent reasonable and practicable, and when not in conflict with other sections of this order, implement the recommendations of the Administrative Conference of the United States, entitled “Case Management as a Tool for Improving Agency Adjudication,” as contained in 1 C.F.R. 305.86-7 (1991).

(b) Improvements in Administrative Adjudication. All Federal agencies should review their administrative adjudicatory processes and develop specific procedures to reduce delay in decision-making, to facilitate self-representation where appropriate, to expand non-lawyer counseling and representation where appropriate, and to invest maximum discretion in fact-finding officers to encourage appropriate settlement of claims as early as possible.

(c) Bias. All Federal agencies should review their administrative adjudicatory processes to identify any type of bias on the part of the decision-makers that results in an injustice to persons who appear before administrative adjudicatory tribunals; regularly train all fact-finders, administrative law judges, and other decision-makers to eliminate such bias; and establish appropriate mechanisms to receive and resolve complaints of such bias from persons who appear before administrative adjudicatory tribunals.

(d) Public Education. All Federal agencies should develop effective and simple methods, including the use of electronic technology, to educate the public about its claims/benefits policies and procedures.

SISC. 5. Coordination by the Department of Justice.

(a) The Attorney General shall coordinate efforts by Federal agencies to implement sections 1, 2 and 4 of this order.

(b) To implement the principles and purposes announced by this order, the Attorney General is authorized to issue guidelines implementing sections 1 and 4.
of this order for the Department of Justice. Such guidelines shall serve as models for internal guidelines that may be issued by other agencies pursuant to this order.

Sic. 6. Definitions. For purposes of this order:

(a) The term “agency” shall be defined as that term is defined in section 105 of title 5, United States Code.

(b) The term “litigation counsel” shall be defined as the trial counsel or the office in which such trial counsel is employed, such as the United States Attorney’s Office for the district in which the litigation is pending or a litigating division of the Department of Justice.

Sic. 7. No Private Rights Created. This order is intended only to improve the internal management of the executive branch in resolving disputes, conducting litigation in a reasonable and just manner, reviewing legislation and regulations. This order shall not be construed as creating any right or benefit, substantive or procedural, enforceable at law or in equity by a party against an agency of the United States, against any other person. This order shall not be construed to create any right to judicial review involving the compliance or noncompliance of the United States, its agencies, its officers, or any other person with this order. Nothing in this order shall be construed to obligate the United States to accept a particular settlement or resolution of a dispute, to alter its standards for accepting settlements, to forego seeking a consent decree or other relief, or to alter any existing delegation of settlement or litigating authority.

Sic. 8. Scope.

(a) No Applicability to Criminal Matters or Proceedings in Foreign Courts. This order is applicable to civil matters only. It is not intended to affect criminal matters, including enforcement of criminal fines or judgments, including enforcement of criminal fines or judgments, including enforcement of criminal fines or judgments, including enforcement of criminal fines or judgments.

(b) Application of Notice Provision. Notice pursuant to subsection (a) of section 1 is not required (1) in any action to seize or forfeit assets subject to forfeiture or in any action to seize property; (2) in any bankruptcy, insolvency, conservatorship, receivership, or liquidation proceeding; (3) when the assets that are the subject of the action or that would satisfy the judgment are subject to flight, dissipation, or destruction; (4) when the défendant is subject to flight; (5) when, as determined by litigation counsel, exigent circumstances make providing such notice impracticable or such notice would otherwise defeat the purpose of the litigation, such as in actions seeking temporary restraining orders or preliminary injunctive relief; or (6) in those limited classes of cases where the Attorney General determines that providing such notice would defeat the purpose of the litigation.

(c) Additional Guidance as to Scope. The Attorney General shall have the authority to issue further guidance as to the scope of this order, except section 3, consistent with the purposes of this order.

Sic. 9. Conflicts with Other Rules. Nothing in this order shall be construed to require litigation counsel or any agency to act in a manner contrary to the Federal Rules of Civil Procedure [28 U.S.C. App.], Tax Court Rules of Practice and Procedure, State or Federal law, other applicable rules of practice or procedure, or court order.

Sic. 10. Privileged Information. Nothing in this order shall compel or authorize the disclosure of privileged information, sensitive law enforcement information, information affecting national security, or information the disclosure of which is prohibited by law.

Sic. 11. Effective Date. This order shall become effective 90 days after the date of signature. This order shall not apply to litigation commenced prior to the effective date.

§ 520. Transmission of petitions in United States Court of Federal Claims or in United States Court of Appeals for the Federal Circuit; statement furnished by departments

(a) In suits against the United States in the United States Court of Federal Claims or in the United States Court of Appeals for the Federal Circuit founded on a contract, agreement, or transaction with an executive department or military department, or a bureau, officer, or agent thereof, or when the matter or thing on which the claim is based has been passed on and decided by an executive department, military department, bureau, or officer authorized to adjust it, the Attorney General shall send to the department, bureau, or officer a printed copy of the petition filed by the claimant, with a request that the department, bureau, or officer furnish to the Attorney General all facts, circumstances, and evidence concerning the claim in the possession or knowledge of the department, bureau, or officer.

(b) Within a reasonable time after receipt of the request from the Attorney General, the executive department, military department, bureau, or officer shall furnish the Attorney General with a written statement of all facts, information, and proofs. The statement shall contain a reference to or description of all official documents and papers, if any, as may furnish proof of facts referred to in it, or may be necessary and proper for the defense of the United States against the claim, mentioning the department, office, or place where the same is kept or may be secured. If the claim has been passed on and decided by the department, bureau, or officer, the statement shall briefly state the reasons and principles on which the decision was based. When the decision was founded on an Act of Congress it shall be cited specifically, and if any previous interpretation or construction has been given to the Act, section, or clause by the department, bureau, or officer, it shall be set forth briefly in the statement and a copy of the opinion filed, if any, attached to it. When a decision in the case has been based on a regulation of a department or when a regulation has, in the opinion of the department, bureau, or officer sending the statement, any bearing on the claim, it shall be distinctly quoted at length in the statement. When more than one case or class of cases is pending, the defense of which rests on the same facts, circumstances, and proofs, the department, bureau, or officer may certify and send one statement and it shall be held to apply to all cases as if made out, certified, and sent in each case respectively.


HISTORICAL AND REVISION NOTES

Derivation U.S. Code Revised Statutes and Statutes at Large

§ 512. Revocation. Executive Order No. 12778 is hereby revoked.

WILLIAM J. CLINTON.
The section is reorganized and restated for clarity. In subsection (a), the word “concerning” is substituted for “touching”. In subsection (b), the words “without delay” are omitted as unnecessary in view of the requirement that the statement be furnished “Within a reasonable time”. The word “briefly” is substituted for “succinctly”. The words “in suit” are omitted as unnecessary.

The words “executive department” are substituted for “department” because “department” as used in R.S. §118 meant “executive department”. (See R.S. §159.) The words “military department” are inserted to preserve the application of the source law. Before enactment of the National Security Act Amendments of 1949 (63 Stat. 576), the Department of the Army, the Department of the Navy, and the Department of the Air Force were Executive departments. The National Security Act Amendments of 1949 established the Department of Defense as an Executive Department including the Department of the Army, the Department of the Navy, and the Department of the Air Force as military departments, not as Executive departments. However, the source law for this section, which was in effect in 1949, remained applicable to the Secretaries of the military departments by virtue of section 12(g) of the National Security Act Amendments of 1949 (63 Stat. 591), which is set out in the reviser’s note for section 301 of title 5, United States Code.

AMENDMENTS

EFFECTIVE DATE OF 1992 AMENDMENT

EFFECTIVE DATE OF 1982 AMENDMENT

§ 521. Publication and distribution of opinions

The Attorney General, from time to time—
(1) shall cause to be edited, and printed in the Government Printing Office, such of his opinions as he considers valuable for preservation in volumes; and
(2) may prescribe the manner for the distribution of the volumes.

Each volume shall contain headnotes, an index, and such footnotes as the Attorney General may approve.

(Added Pub. L. 89–554, §4(c), Sept. 6, 1966, 80 Stat. 614.)

HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Derivation</th>
<th>U.S. Code</th>
<th>Revised Statutes and Statutes at Large</th>
</tr>
</thead>
<tbody>
<tr>
<td>5 U.S.C. 365 (1st sentence, as applicable to the Attorney General; 2d and 3d sentences)</td>
<td>R.S. §380 (1st sentence, as applicable to the Attorney General; 2d and 3d sentences).</td>
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The words “The Attorney General . . . shall report” are substituted for “It shall be the duty of the Attorney General to make . . . a report”. The word “beginning” is substituted for “commencing”. The words “pertaining to the Department that he considers proper” are substituted for “appertaining thereto that he may deem proper”.

The words “and a detailed statement of the amounts used for defraying the expenses of the United States courts in each judicial district” are omitted as obsolete. 1

1 So in original. Probably should be followed by “the”.

In paragraph (3), the words “involving the United States” are inserted for clarity. The function of reporting on all cases pending in the United States courts is now vested in the Administrative Office of the United States Courts, see 28 U.S.C. 964.

REFERENCES IN TEXT
The date of enactment of 21st Century Department of Justice Appropriations Authorization Act, referred to in subsec. (a) and added subsec. (b).

in subsec. (b), is the date of enactment of Pub. L. 107–273, which was approved Nov. 2, 2002.

AMENDMENTS
2002—Pub. L. 107–273 designated existing provisions as subsec. (a) and added subsec. (b).

1976—Pub. L. 94–273 substituted “April 1 of each year” for “at the beginning of each regular session of Congress”.

REPORT TO CONGRESS ON BANKING LAW OFFENSES
Pub. L. 101–647, title XXV, § 2546, Nov. 29, 1990, 104 Stat. 4895, provided that:

“(a) In General.—

“(1) Data Collection.—The Attorney General shall compile and collect data concerning—

“(A) the nature and number of civil and criminal investigations, prosecutions, and related proceedings, and civil enforcement and recovery proceedings, in progress with respect to banking law offenses under sections 981, 1006, 1032, and 3322(d) of title 18, United States Code, and section 951 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 [12 U.S.C. 1831a] and conspiracies to commit any such offenses, including inactive investigations of such offenses;

“(B) the number of—

“(i) investigations, prosecutions, and related proceedings described in subparagraph (A), which are inactive as of the close of the reporting period but have not been closed or declined; and

“(ii) unaddressed referrals which allege criminal misconduct involving offenses described in subparagraph (A), and the reasons such matters are inactive and the referrals unaddressed;

“(C) the nature and number of such matters closed, settled, or litigated to conclusion; and

“(D) the results achieved, including convictions and pretrial diversions, fines and penalties levied, restitution assessed and collected, and damages recovered, in such matters.

“(2) Analysis and Report.—The Attorney General shall analyze and report to the Congress on the data described in paragraph (1) and its coordination and other related activities named in section 2539(c)(2) (probably means section 2539(c)(3) of Pub. L. 101–647, set out as a note under section 508 of this title) and shall provide such report on the data monthly through December 31, 1991, and quarterly after such date.

(b) Specifics of Report.—The report required by subsection (a) shall—

“(1) categorize data as to various types of financial institutions and appropriate dollar loss categories;

“(2) disclose data for each Federal judicial district;

“(3) describe the activities of the Financial Institution Fraud Unit; and

“(4) list—

“(A) the number of institutions, categorized by failed and open institutions, in which evidence of significant fraud, unlawful activity, insider abuse or serious misconduct has been alleged or detected;

“(B) civil, criminal, and administrative enforcement actions, including those of the Federal financial institutions regulatory agencies, brought against offenders;

“(C) any settlements or judgments obtained against offenders;

“(D) indictments, guilty pleas, or verdicts obtained against offenders; and

“(E) the resources allocated in pursuit of investigations, prosecutions, and sentencings (including indictments, guilty pleas, or verdicts obtained against offenders) and related proceedings.”

CONGRESSIONAL OVERSIGHT

REPORT TO CONGRESS ON ROBBERIES AND BURGLARIES INVOLVING CONTROLLED SUBSTANCES
Pub. L. 98–305, § 4, May 31, 1984, 98 Stat. 222, provided that: “For each of the first three years after the date of enactment of this Act [May 31, 1984], the Attorney General of the United States shall submit an annual report to the Congress with respect to the enforcement activities of the Attorney General relating to the offenses created by the amendment made by section 2 of this Act [enacting section 2181 of Title 18, Crimes and Criminal Procedure].”

REPORT TO CONGRESS ON SEXUAL EXPLOITATION OF CHILDREN
Pub. L. 98–292, § 9, May 21, 1984, 98 Stat. 206, provided that: “Beginning one hundred and twenty days after the date of enactment of this Act [May 21, 1984], and every year thereafter, the Attorney General shall report to the Congress on prosecutions, convictions, and forfeitures under chapter 110 of title 18 of the United States Code.”

§ 523. Requisitions

The Attorney General shall sign all requisitions for the advance or payment of moneys appropriated for the Department of Justice, out of the Treasury, subject to the same control as is exercised on like estimates or accounts by the Government Accountability Office.


Historical and Revision Notes

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<tr>
<th>Derivation</th>
<th>U.S. Code</th>
<th>Revised Statutes and Statutes at Large</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>5 U.S.C. 319</td>
<td>R.S. § 430</td>
</tr>
</tbody>
</table>

The words “General Accounting Office” are substituted for “First Auditor or First Comptroller of the Treasury” on authority of the Act of June 10, 1921, ch. 18, §304, 42 Stat. 24.

AMENDMENTS

§ 524. Availability of appropriations

(a) Appropriations for the Department of Justice are available to the Attorney General for payment of—

(1) notarial fees, including such additional stenographic services as are required in connection therewith in the taking of depositions, and compensation and expenses of witnesses and informants, all at the rates authorized or
§ 524

TITLE 28—JUDICIARY AND JUDICIAL PROCEDURE

Page 184

approved by the Attorney General or the Assistant Attorney General for Administration; and

(2) when ordered by the court, actual expenses of meals and lodging for marshals, deputy marshals, or criers when acting as bailiffs in attendance on juries.

(b) Except as provided in subsection (a) of this section, a claim of not more than $500 for expenses related to litigation that is beyond the control of the Department may be paid out of appropriations currently available to the Department for expenses related to litigation when the Comptroller General settles the payment.

(c)(1) There is established in the United States Treasury a special fund to be known as the Department of Justice Assets Forfeiture Fund (hereafter in this subsection referred to as the “Fund”) which shall be available to the Department for expenses related to litigation when the Comptroller General settles the payment.

(i) payments for—

(I) contract services;

(II) the employment of outside contractors to operate and manage properties or provide other specialized services necessary to dispose of such properties in an effort to maximize the return from such properties; and

(III) reimbursement of any Federal, State, or local agency for any expenditures made to perform the functions described in this clause;

(ii) payments to reimburse any Federal agency participating in the Fund for investigative costs leading to seizures;

(iii) payments for contracting for the services of experts and consultants needed by the Department of Justice to assist in carrying out duties related to asset seizure and forfeiture; and

(iv) payments made pursuant to guidelines promulgated by the Attorney General if such payments are necessary and directly related to seizure and forfeiture program expenses for—

(I) the purchase or lease of automatic data processing systems (not less than a majority of which use will be related to such program);

(II) training;

(III) printing;

(IV) the storage, protection, and destruction of controlled substances; and

(V) contracting for services directly related to the identification of forfeitable assets, and the processing of and accounting for forfeitures;

(B) the payment of awards for information or assistance directly relating to violations of the criminal drug laws of the United States or of sections 1956 and 1957 of title 18, sections 5313 and 5324 of title 31, and section 6050I of the Internal Revenue Code of 1986;

(C) at the discretion of the Attorney General, the payment of awards for information or assistance leading to a civil or criminal forfeiture involving any Federal agency participating in the Fund;

(D) the compromise and payment of valid liens and mortgages against property that has been forfeited pursuant to any law enforced or administered by the Department of Justice, subject to the discretion of the Attorney General to determine the validity of any such lien or mortgage and the amount of payment to be made, and the employment of attorneys and other personnel skilled in State real estate law as necessary;

(E)(i) for disbursements authorized in connection with remission or mitigation procedures relating to property forfeited under any law enforced or administered by the Department of Justice; and

(ii) for payment for—

(I) costs incurred by or on behalf of the Department of Justice in connection with the removal, for purposes of Federal forfeiture and disposition, of any hazardous substance or pollutant or contaminant associated with the illegal manufacture of amphetamine or methamphetamine; and

(II) costs incurred by or on behalf of a State or local government in connection with such removal in any case in which such State or local government has assisted in a Federal prosecution relating to amphetamine or methamphetamine, to the extent such costs exceed equitable sharing payments made to such State or local government in such case;

(F)(i) for equipping for law enforcement functions of any Government-owned or leased vessel, vehicle, or aircraft available for official use by any Federal agency participating in the Fund;

(ii) for equipping any vessel, vehicle, or aircraft available for official use by a State or local law enforcement agency to enable the vessel, vehicle, or aircraft to assist law enforcement functions if the vessel, vehicle, or aircraft will be used in a joint law enforcement operation with a Federal agency participating in the Fund; and

(iii) payments for other equipment directly related to seizure or forfeiture, including laboratory equipment, protective equipment, communications equipment, and the operation and maintenance costs of such equipment;

(G) for purchase of evidence of any violation of the Controlled Substances Act, the Controlled Substances Import and Export Act, chapter 96 of title 18, or sections 1956 and 1957 of title 18;

(H) the payment of State and local property taxes on forfeited real property that accrued between the date of the violation giving rise to the forfeiture and the date of the forfeiture order; and

(I) payment of overtime salaries, travel, fuel, training, equipment, and other similar
costs of State or local law enforcement officers that are incurred in a joint law enforcement operation with a Federal law enforcement agency participating in the Fund.

Amounts for paying the expenses authorized by subparagraphs (B), (F), and (G) shall be specified in appropriations Acts and may be used under authorities available to the organization receiving the funds. Amounts for other authorized expenditures and payments from the Fund, including equitable sharing payments, are not required to be specified in appropriations acts. The Attorney General may exempt the procurements of equipment and services under subparagraph (A) under the Fund from division C (except sections 3302, 3501(b), 3502, 3506, 4710, and 4711) of subtitle I of title 41, section 6101(b) to (d) of title 41, and other provisions of law as may be necessary to maintain the security and confidentiality related to criminal investigations.

(2) Any award paid from the Fund, as provided in paragraph (1)(B) or (C), shall be paid at the discretion of the Attorney General or his delegate, under existing departmental delegation policies for the payment of awards, except that the authority to pay an award of $250,000 or more shall not be delegated to any person other than the Deputy Attorney General, the Associate Attorney General, the Director of the Federal Bureau of Investigation, or the Administrator of the Drug Enforcement Administration. Any award pursuant to paragraph (1)(B) shall not exceed $500,000. Any award pursuant to paragraph (1)(C) shall not exceed $500,000 or one-fourth of the amount realized by the United States from the property forfeited, without the personal approval of the Attorney General and written notice within 30 days thereof to the Chairmen and ranking minority members of the Committees on Appropriations and the Judiciary of the Senate and of the House of Representatives.

(3) Any amount under subparagraph (G) of paragraph (1) shall be paid at the discretion of the Attorney General or his delegate, except that the authority to pay $100,000 or more may be delegated only to the respective head of the agency involved.

(4) There shall be deposited in the Fund—
(A) all amounts from the forfeiture of property under any law enforced or administered by the Department of Justice, except all proceeds of forfeitures available for use by the Secretary of the Treasury or the Secretary of the Interior pursuant to section 11(d) of the Endangered Species Act (16 U.S.C. 1540(d)) or section 6(d) of the Lacey Act Amendments of 1981 (16 U.S.C. 3375(d)), or the Postmaster General of the United States pursuant to 39 U.S.C. 2003(b)(7);
(B) all amounts representing the Federal equitable share from the forfeiture of property under any Federal, State, local or foreign law, for any Federal agency participating in the Fund;
(C) all amounts transferred by the Secretary of the Treasury pursuant to section 9703(g)(4)(A)(ii)1 of title 31; and
(D) all amounts collected—

1 See References in Text note below.

(i) by the United States pursuant to a reimbursement order under paragraph (2) of section 413(q) of the Controlled Substances Act (21 U.S.C. 853); and
(ii) pursuant to a restitution order under paragraph (1) or (3) of section 413(q) of the Controlled Substances Act for injuries to the United States.

(5) Amounts in the Fund, and in any holding accounts associated with the Fund, that are not currently needed for the purpose of this section shall be kept on deposit or invested in obligations of, or guaranteed by, the United States and all earnings on such investments shall be deposited in the Fund.

(A) The Attorney General shall transmit to Congress and make available to the public, not later than 4 months after the end of each fiscal year, detailed reports for the prior fiscal year as follows:
(i) A report on total deposits to the Fund by State of deposit.
(ii) A report on total expenses paid from the Fund, by category of expense and recipient agency, including equitable sharing payments.
(iii) A report describing the number, value, and types of properties placed into official use by Federal agencies.
(iv) A report describing the number, value, and types of properties transferred to State and local law enforcement agencies, by recipient agency.
(v) A report, by type of disposition, describing the number, value, and types of forfeited property disposed of during the year.
(vi) A report on the year-end inventory of property under seizure, but not yet forfeited, that reflects the type of property, its estimated value, and the estimated value of liens and mortgages outstanding on the property.
(vii) A report listing each property in the year-end inventory, not yet forfeited, with an outstanding equity of not less than $1,000,000.

(B) The Attorney General shall transmit to Congress and make available to the public, not later than 2 months after final issuance, the audited financial statements for each fiscal year for the Fund.

(C) Reports under subparagraph (A) shall include information with respect to all forfeitures under any law enforced or administered by the Department of Justice.

(D) The transmittal and publication requirements in subparagraphs (A) and (B) may be satisfied by—
(i) posting the reports on an Internet website maintained by the Department of Justice for a period of not less than 2 years; and
(ii) notifying the Committees on the Judiciary of the House of Representatives and the Senate when the reports are available electronically.

(7) The provisions of this subsection relating to deposits in the Fund shall apply to all property in the custody of the Department of Justice on or after the effective date of the Comprehensive Forfeiture Act of 1983.

(A) There are authorized to be appropriated such sums as necessary for the purposes described in subparagraphs (B), (F), and (G) of paragraph (1).
(B) Subject to subparagraphs (C) and (D), at the end of each of fiscal years 1994, 1995, and 1996, the Attorney General shall transfer from the Fund not more than $100,000,000 to the Special Forfeiture Fund established by section 6073 of the Anti-Drug Abuse Act of 1986, to that extent that the sum of the transfers in any fiscal year limitation, and shall be disbursed on order of the Attorney General.

(3) Upon request of the Attorney General, the Secretary of the Treasury may invest and reinvest the fund described herein in public debt securities with maturities suitable for the needs of the fund and bearing interest at rates determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States or comparable maturities.

(4) Evidences of any intangible personal property (other than money) accepted hereunder shall be deposited in the Treasury in a separate fund and held in trust by the Secretary of the Treasury for the benefit of the Department of Justice.

(9)(A) Following the completion of procedures for the forfeiture of property pursuant to any law enforced or administered by the Department of Justice, the Attorney General is authorized, in her discretion, to warrant clear title to any subsequent purchaser or transferee of such property. (B) For fiscal years 2002 and 2003, the Attorney General is authorized to transfer, under such terms and conditions as the Attorney General shall specify, real or personal property of limited or marginal value, to a State or local government agency, or its designated contractor or transferee, for use to support drug abuse treatment, drug and crime prevention and education, housing, job skills, and other community-based public health and safety programs. Each such transfer shall be subject to satisfaction by the recipient of any outstanding lien against the property transferred, but no such transfer shall create or confer any private right of action in any person against the United States.

(10) The Attorney General shall transfer from the Fund to the Secretary of the Treasury for deposit in the Department of the Treasury Forfeiture Fund amounts appropriate to reflect the degree of participation of the Department of the Treasury law enforcement organizations (described in section 9703(p) of title 31) in the law enforcement effort resulting in the forfeiture pursuant to laws enforced or administered by the Department of Justice.

(11) For purposes of this subsection and notwithstanding section 9703 of title 31 or any other law, property is forfeited pursuant to a law enforced or administered by the Department of Justice if it is forfeited pursuant to—

(A) a judicial forfeiture proceeding when the underlying seizure was made by an officer of a Federal law enforcement agency participating in the Department of Justice Assets Forfeiture Fund or the property was maintained by the United States Marshals Service; or

(B) a civil administrative forfeiture proceeding conducted by a Department of Justice law enforcement component or pursuant to the authority of the Secretary of Commerce.

(d)(1) The Attorney General may accept, hold, administer, and use gifts, devises, and bequests of any property or services for the purpose of aiding or facilitating the work of the Department of Justice.

(2) Gifts, devises, and bequests of money, the proceeds of sale or liquidation of any other property accepted hereunder, and any income accruing from any property accepted hereunder—(A) shall be deposited in the Treasury in a separate fund and held in trust by the Secretary of the Treasury for the benefit of the Department of Justice; and

(B) are hereby appropriated, without fiscal year limitation, and shall be disbursed on order of the Attorney General.

(3) Upon request of the Attorney General, the Secretary of the Treasury may invest and reinvest the fund described herein in public debt securities with maturities suitable for the needs of the fund and bearing interest at rates determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States or comparable maturities.

(4) Evidences of any intangible personal property (other than money) accepted hereunder shall be considered a gift, devise, or bequest to, or for the use of, the United States.


*So in original. Probably should be capitalized.*

HISTORICAL AND REVISION NOTES 1966 ACT

<table>
<thead>
<tr>
<th>Derivation</th>
<th>U.S. Code</th>
<th>Revised Statutes and Statutes at Large</th>
</tr>
</thead>
</table>

The words “now or hereafter” are omitted as unnecessary. The words “Assistant Attorney General for Administration” are substituted for “his administrative assistant” to make the statute more specific and to reflect the current title of the position, see §307 of the Act of Aug. 14, 1964, Pub. L. 88–426, 78 Stat. 432.

1982 ACT

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

The words “After October 10, 1949” are omitted as executed. The words “Except as provided in subsection (a) of this section” are added for clarity. The words “fees, storage, or other items of” are omitted as surplus. The words “to the Department” are added for clarity.

REFERENCES IN TEXT

Section 6050I of the Internal Revenue Code of 1986, referred to in subsec. (c)(1)(B), is classified to section 6050I of Title 26, Internal Revenue Code.

The Controlled Substances Act, referred to in subsection (c)(1)(G), is title III of Pub. L. 91–513, Oct. 27, 1970, 84 Stat. 1242, which is classified principally to subchapter I (§801 et seq.) of chapter 13 of Title 21, Food and Drugs. For complete classification of this Act to the Code, see Short Title note set out under section 801 of Title 21 and Tables.

The Controlled Substances Import and Export Act, referred to in subsection (c)(1)(E), is title III of Pub. L. 91–513, Oct. 27, 1970, 84 Stat. 1243, which is classified principally to subchapter II (§801 et seq.) of chapter 13 of Title 21. For complete classification of this Act to the Code, see Short Title note set out under section 891 of Title 21 and Tables.


Section 6073 of the Anti-Drug Abuse Act of 1988, referred to in subsection (c)(8)(B), was classified to section 1569 of Title 21, Food and Drugs, prior to repeal by Pub. L. 103–121, title I, §109, Oct. 27, 1993, 107 Stat. 1194, which is not classified to the Code.

COMPILED

Amendment by Pub. L. 104–91 is based on section 109 of H.R. 2076, One Hundred Fourth Congress, as passed by the House of Representatives on Dec. 6, 1995, which was enacted into law by Pub. L. 104–91.

AMENDMENTS


Subsec. (c)(1). Pub. L. 107–273, §204(a)(2)(C), (D), in concluding provisions, substituted “(B), (F), and (G)” for “(A)(iv), (B), (F), (G), and (H)” and “under the Fund” for “under the fund”.

Subsec. (c)(1)(D). Pub. L. 107–273, §204(a)(2)(B), struck out subpar. (I) which read as follows: “after all reimbursements and program-related expenses have been met at the end of fiscal year 1989, the Attorney General may transfer deposits from the Fund to the building and facilities account of the Federal prison system for the construction of correctional institutions.”

Subsec. (c)(2). Pub. L. 107–273, §204(a)(3), substituted “shall not exceed $500,000” for “shall not exceed $250,000” and “the lesser of $500,000” for “the lesser of $250,000”, struck out for “information” after “Any award paid from the Fund” and after “Any award in two places, and inserted before period at end “, without both the personal approval of the Attorney General and written notice within 30 days thereof to the Chairman and ranking minority member of the Committees on Appropriations and the Judiciary of the Senate and of the House of Representatives”.


Subsec. (c)(6). Pub. L. 107–273, §204(a)(6), substituted “(B), (F), and (G)” for “(A)(iv), (B), (F), (G), and (H)”.

Subsec. (c)(9)(B). Pub. L. 107–273, §204(a)(7), substituted “years 2002 and 2003” for “year 1996 and “Each such transfer shall be subject to satisfaction by the recipient involved of any outstanding lien against the property transferred, but no such transfer shall” for “such transfer shall”


Subsec. (c)(6). Pub. L. 106–183 amended par. (6) generally. Prior to amendment, par. (6) required the Attorney General to transmit to Congress, not later than 4 months after the end of each fiscal year, detailed reports on the value of property forfeited under a law enforced or administered by the Department of Justice.
with respect to which funds were not deposited in the Fund and on the value of such property transferred to a State or local law enforcement agency, on the Fund's behalf, to pay amounts owed by debtors of the United States, and on certain property not forfeited, on profits and losses with respect to forfeited property, on forfeited property transactions, on audits reports from State and local law enforcement agencies, and on certain activities, or any other authorized purpose of the Department, litigative/prosecutive, and correctional activities, or any other authorized purpose of the Department of Justice. Any amounts provided pursuant to this section may be used under authorities available to the organization receiving the funds.


1993—Subsec. (c)(9)(E). Pub. L. 103–121, which directed the striking of "subsection (E)", was executed by striking subpar. (E) which read as follows: "Subject to the notification procedures contained in section 606 of Public Law 103–121, and after satisfying the transfer requirement in subparagraph (B) above, any excess unobligated balance remaining in the Fund on September 30, 1994 shall be available to the Attorney General, without fiscal year limitation, for any Federal law enforcement, litigative/prosecutive, and correctional activities, or any other authorized purpose of the Department of Justice. Any amounts provided pursuant to this section may be used under authorities available to the organization receiving the funds."

Subsec. (c)(9)(A). Pub. L. 104–94, which directed amendment of subsec. (c)(9) of this section by adding subpar. (E) relating to excess unobligated balance remaining in the Fund on Sept. 30, 1995, was executed by adding subpar. (E) at the end of subsec. (c)(8), to reflect the redesignation of subsec. (c)(9) as (c)(8) by Pub. L. 104–96. See below.

Subsec. (c)(9)(A). Pub. L. 104–208, §101(a) [title I, §114(a)], struck out "(C)," after "(B)," in concluding provisions.

Subsec. (c)(8)(A). Pub. L. 104–208, §101(a) [title I, §114(a)], struck out "(C)," after "(B)," in concluding provisions.

Subsec. (c)(8)(B). Pub. L. 104–208, §101(a) [title I, §114(a)], struck out "(C)," after "(B)," and substituted "(C)," for "(B)," in concluding provisions.


Pub. L. 102–395, §114(c), amended the sentence read as follows: "Amounts for paying the expenses authorized by subparagraphs (A)(i), (B), (C), (F), and (G) shall be specified in appropriations acts."
ments to reimburse any Federal, State, or local agency for any expenditures made to perform the foregoing functions; and

(9) payments made pursuant to regulations promulgated by the Attorney General, that are necessary and direct program-related expenses for the purchase or lease of automatic data processing equipment not less than a law enforcement function, or a program related, training, printing, contracting for services directly related to the identification of forfeitable assets processing of and accounting for forfeitures, and the safeguarding, protection, and destruction of controlled substances;’’.


Subsec. (c)(1)(F). Pub. L. 102–393, §638(f)(1)(B), amended subpar. (F) generally. Prior to amendment, subpar. (F) read as follows: “For equipping law enforcement functions any government-owned or leased vehicles, and aircraft available for official use by any federal agency participating in the Fund;”.


Subsec. (c)(6)(B)(v). Pub. L. 102–393, §638(f)(3), amended subpar. (B)(v). Prior to amendment, cl. (v) read as follows: “any defendant’s equity in property valued at $1,000,000 or more; and”.

Subsec. (c)(9)(A). Pub. L. 102–393, §638(f)(4), substituted “(A)(ii)” for “(A) ii” and “(G), and (H)” for “and (G)”.

Subsec. (c)(9)(E). Pub. L. 102–395, §114(b), struck out “to be transferred to any Federal agency” after “without fiscal year limitation,” and substituted for period at end “of Federal agencies. Any amounts provided pursuant to this section may be used under authorities granted by the Attorney General” in introductory provisions.

Pub. L. 102–393, §638(f)(5), struck out “to procure vehicles, equipment, and other capital investment items” before “for law enforcement”.

Subsec. (c)(11)(C). Pub. L. 102–140, §112(7), inserted “payment of authorized expenses:”.

Subsec. (c)(11). (12). Pub. L. 102–393, §638(f)(6), added pars. (11) and (12) and struck out former par. (11) which read as follows: “For the purposes of this subsection, property is forfeited pursuant to a law enforced or administered by the Department of Justice if it is forfeited pursuant to—

“(A) any criminal forfeiture proceeding;

“(B) any civil judicial forfeiture proceeding; or

“(C) any civil administrative forfeiture proceeding conducted by the Department of Justice, except to the extent that the seizure was effected by a Customs officer or that custody was maintained by the United States Customs Service in which case the provisions of section 613A of the Tariff Act of 1930 (19 U.S.C. 1613a) shall apply.”


Subsec. (c)(1)(C). Pub. L. 102–140, §112(2), added subpar. (C) and struck out former subpar. (C) which read as follows: “At the discretion of the Attorney General, the payment of awards for information or assistance leading to—

“(i) a civil or criminal forfeiture under the Controlled Substances Act or the Controlled Substances Import and Export Act;

“(ii) a criminal forfeiture under chapter 96 of title 18;

“(iii) a civil forfeiture under section 981 of title 18; or

“(iv) a criminal forfeiture under section 982 of title 18.”.

Subsec. (c)(1)(F). Pub. L. 102–140, §112(3), (4), struck out “drug” before “law enforcement functions” and substituted “any federal agency participating in the Fund” for “the Drug Enforcement Administration, the Federal Bureau of Investigation, the Immigration and Naturalization Service, or the United States Marshals Service”.

Subsec. (c)(4). Pub. L. 102–140, §112(5), added par. (4) and struck out former par. (4) which read as follows: “There shall be deposited in the Fund all amounts from the forfeiture of property under any law enforced or administered by the Department of Justice, except all proceeds of forfeitures available for use by the Secretary of the Treasury or the Secretary of the Interior pursuant to section 11(d) of the Endangered Species Act (16 U.S.C. 1540(d)) or section 6(d) of the Lacey Act Amendments of 1981 (16 U.S.C. 3377(d)) or the Postmaster General of the United States pursuant to section 2003(b)(7) of title 39.”.

Subsec. (c)(5). Pub. L. 102–140, §112(6), inserted “, and in any holding accounts associated with the Fund” after first reference to “Fund”.

Subsec. (c)(9)(C). Pub. L. 102–140, §112(7), inserted at end “Further, transfers under subsection (B) may be made only to the extent that the sum of the transfers for the current fiscal year and the unobligated balance at the beginning of the current fiscal year for the Special Forfeiture Fund do not exceed $150,000,000.”

Subsec. (c)(9)(E). Pub. L. 102–140, §112(8)(B), which directed the substitution of Federal agency to procure vehicles, equipment, and other capital investment items for law enforcement, prosecution and correctional activities, and related training requirements “to procure vehicles, equipment, and other capital investment items for the law enforcement, prosecution and correctional activities of the Department of Justice” was executed by making the substitution for the quoted words which in the original contained a comma after “prosecution”, to reflect the probable intent of Congress.

Pub. L. 102–140, §112(8)(A), substituted “of each fiscal year thereafter” for “, 1992”.


1990—Subsec. (c)(1)(C). Pub. L. 101–647, §2005, added subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: “The payment of awards for information or assistance leading to a civil or criminal forfeiture under any law enforced or administered by the Department of Justice, at the discretion of the Attorney General:”.

Pub. L. 101–647, §1601, which directed substitution of “the payment of awards for information or assistance leading to a civil or criminal forfeiture under any law enforced or administered by the Department of Justice,” for “the payment of awards for information or assistance leading to a civil or criminal forfeiture under the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 800 et seq.) or a criminal forfeiture under the Racketeer Influenced and Corrupt Organizations statute (18 U.S.C. 1961 et seq.),” was executed by making the substitution for “the payment of awards for information or assistance leading to a civil or criminal forfeiture under the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 800 et seq.) or a criminal forfeiture under the Racketeer Influenced and Corrupt Organizations statute (18 U.S.C. 1961 et seq.),” to reflect the probable intent of Congress.


Subsec. (c)(9). Pub. L. 101–647, §2001(a), inserted “(A)” before “there” and substituted subpars. (B) to (D) for “(A) for each fiscal year of 1991, 1992, and 1993, the Attorney General shall transfer not to exceed $15,000,000 in unobligated amounts available in the Fund to the Special Forfeiture Fund: Provided, That such amounts will be transferred on a quarterly basis: Provided further, That, upon each transfer, not to exceed $15,000,000, or, if determined by the Attorney General to be necessary to meet forfeiture program expenses, an amount not to exceed one-tenth of the previous year’s obligation shall be retained in the Fund and remain available for payment of authorized expenses: Provided further, That,
any unobligated amounts in excess of $150,000,000 shall remain on deposit in the Fund.”

Pub. L. 101–509 amended second sentence generally, substituting sentence providing for transfers to Special Forfeiture Fund in fiscal years 1991, 1992, and 1993 for sentence that read as follows: “At the end of each of fiscal years 1990, 1991, and 1992, unobligated amounts not to exceed $150,000,000 remaining in the Fund shall be deposited in the Special Forfeiture Fund, except that an amount not to exceed $15,000,000 or, if determined necessary by the Attorney General to meet asset specific expenses, an amount equal to one-twelfth of the previous year’s expenditures may be carried forward and remain available for appropriation in the next fiscal year.”


1988—Subsec. (c). Pub. L. 100–690 amended subsec. (c) generally, revising and restating as pars. (1) to (10) provisions of former pars. (1) to (8).


1986—Subsec. (c)(1)(A). Pub. L. 99–570, § 1152(a)(1)(2), inserted provisions allowing payments that are necessary and direct program-related expenses for the purchase or lease of automatic data processing equipment, training, printing, contracting for services directly related to the processing of and accounting for forfeitures, and the storage, protection, and destruction of controlled substances.

Subsec. (c)(1)(B) to (E), Pub. L. 99–570, § 1152(a)(1)(3), added subpar. (B) and redesignated former subpars. (B) to (E) as (C) to (F), respectively.

Subsec. (c)(1)(F). Pub. L. 99–566, § 27(a), which directed the amendment of subpar. (E) by inserting “‘the Federal Bureau of Investigation, the United States Marshals Service,’” after “for official use by” and a comma before “or” was not executed in view of prior redesignation of subpar. (E) as (F) and substantively similar amendment by section 1152(a) of Pub. L. 99–570.

Pub. L. 99–570, § 1152(a)(1)(3), (4), redesignated former subpar. (E) as (F) and amended it generally. Prior to amendment, subpar. (E) read as follows: “for equipping for law enforcement functions of forfeited vessels, vehicles, and aircraft retained as provided by law for official use by the Drug Enforcement Administration or the Immigration and Naturalization Service; and”.

Former subpar. (F) redesignated (G).


Subsec. (c)(4). Pub. L. 99–570, § 1152(a)(1)(5), and Pub. L. 99–570, § 27(b), made substantially identical amendments substituting “except all proceeds of forfeitures available for use by the Secretary of the Treasury or the Secretary of the Interior pursuant to section 11(d) of the Endangered Species Act (16 U.S.C. 1548(d); or section 6(d) of the Lacey Act Amendments of 1981 (16 U.S.C. 3375(d))” for “remaining after the payment of expenses for forfeiture and sale authorized by law”.

Subsec. (c)(1)(H), (I). Pub. L. 99–570, § 1152(a)(1)(6), redesignated par. (9) as (8), and struck out former par. (8) which provided for an authorization of appropriations for fiscal years 1984 to 1987 and deposit of excess amounts in the general fund of the Treasury of the United States.


Subsec. (c)(1)(E), (F). Pub. L. 98–473, § 2303(a), added subpars. (E) and (F).

Subsec. (c)(2) to (9). Pub. L. 98–473, § 2303(b), added subpar. (3) and redesignated existing pars. (3) to (8) as (4) to (9), respectively.


Subsecs. (a), (b). Pub. L. 97–258, § 2(g)(1)(C), (D), designated existing provisions as subsec. (a) and added subsec. (b).

Effective Date of 2000 Amendment

Amendment by Pub. L. 106–185 applicable to any forfeiture proceeding commenced on or after the date that is 120 days after Apr. 25, 2000, see section 21 of Pub. L. 106–185, set out as a note under section 1524 of Title 8, Aliens and Nationality.

Effective Date of 1994 Amendment

Section 339013(b) of Pub. L. 108–322 provided that: “The amendment made by subsection (a) [amending this section] shall apply to all claims pending at the time of or commenced subsequent to the date of enactment of this Act [Sept. 13, 1994].”

Transfer of Forfeited Real or Personal Property

Pub. L. 108–199, div. B, title I, § 108, Jan. 23, 2004, 118 Stat. 461, provided that: “(a) Hereafter, the Attorney General is authorized to transfer, under such terms and conditions as the Attorney General shall specify, forfeited real or personal property of limited or marginal value, as such value is determined by guidelines established by the Attorney General, to a State or local government agency, or its designated contractor or transferee, for use to support drug abuse treatment, drug and crime prevention and education, housing, job skills, and other community-based public health and safety programs.

“(b) Any transfer under the preceding proviso [probably should be “subsection (a)”] shall not create or confer any private right of action in any person against the United States, and shall be treated as a reprogramming under section 605 of this Act [118 Stat. 93].”

Grant Programs; Availability of Funds for Jails With Pay-To-Stay Programs

Pub. L. 106–553, § 1(a)(2) [title I, § 117, formerly §118], Dec. 21, 2000, 114 Stat. 2762, 2762A–69, renumbered § 1(a)(2) [title I, § 117], Pub. L. 106–554, § 1(a)(4) [div. A, § 213(a)(2)], Dec. 21, 2000, 114 Stat. 2765, 2763A–179, provided that: “Notwithstanding any other provision of law, for fiscal 2001 and hereafter, with respect to any grant program for which amounts are made available under this title, no grant funds may be made available to any local jail that runs ‘pay-to-stay programs.’”

Use of Funds Made Available for Removal of Substances Associated With Illegal Manufacture of Amphetamines and Methamphetamines

Pub. L. 106–310, div. B, title XXXVI, § 3621(c)(1), Oct. 17, 2000, 114 Stat. 2301A–20, provided that: “Any amounts made available from the Department of Justice Asset Forfeiture Fund in a fiscal year by reason of the amendment made by subsection (a) [amending this section] shall supplement, and not supplant, any other amounts made available to the Department of Justice in such fiscal year from other sources for payment of costs described in section 524(c)(1)(E)(ii) of title 28, United States Code, as so amended.”

Acquisition of Equipment or Interim Services with Counterterrorism Funds


Pub. L. 105–277, div. A, § 101(b) [title I, § 115], Oct. 21, 1998, 112 Stat. 2681–50, 2681–68, provided that: “(a)(1) Notwithstanding any other provision of law, for fiscal year 1999, the Attorney General may obligate any funds appropriated for or reimbursed to the Counterterrorism programs, projects or activities of the Department of Justice to purchase or lease equipment or any related items, or to acquire interim serv-
owever, with respect to any grant program for which
is thereby established the Counterterrorism Fund which shall remain available
and services in order to support an on-
cluding sufficient information to explain the circum-
ities necessitating the exercise of the authority
inal Rules and Procedures Noted in the Federal Register; and
section 11002 of title 42 of the United States Code,
the Treasury of the United States a separate
est available only to the extent an official budget
om and services in order to support an ongoing
equipment, related items, or services required are not available within the Department of
held by a department or agency of the Federal Government.
ishment to Congress."
1985: [former 2 U.S.C. 901(b)(2)(D)(i), as amended: "Provided further, That the amount not previously designated by the President as an emergency requirement shall be available only to the extent an official budget request, for a specific dollar amount that includes designation of the entire amount of the request as an emergency requirement, as defined in the Balanced Budget and Emergency Deficit Control Act of 1985 (see Short Title note set out under 2 U.S.C. 900), as amended, is transmitted to Congress."

UNAUTHORIZED TRANSFERS FROM DEPARTMENT OF JUSTICE ACCOUNTS: CONTROL OF ALLOCATION OF FUNDS BY AUTHORITY OTHER THAN OFFICE OF MANAGEMENT AND BUDGET OR DEPARTMENT OF JUSTICE


"(1) No transfers may be made from Department of Justice accounts other than those authorized in this Act (probably means H.R. 2076, One Hundred Fourth Congress, which was vetoed), or in previous or subsequent appropriations Acts for the Department of Justice, or in part II of title 28 of the United States Code, or in section 10601 of title 42 of the United States Code; and

"(2) No appropriation account within the Department of Justice shall have its allocation of funds controlled by other than an appropriation issued by the Office of Management and Budget or an allotment advice issued by the Department of Justice."

Similar provisions were contained in the following prior appropriation act:
§ 525  TITLE 28—JUDICIARY AND JUDICIAL PROCEDURE  Page 192


USE OF DEPOSITS TRANSFERRED FROM ASSETS FORFEITURE FUND TO BUILDINGS AND FACILITIES ACCOUNT OF FEDERAL PRISON SYSTEM


For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of Title 8, Aliens and Nationality.

Similar provisions were contained in the following prior appropriation acts:


NOTICE AND APPROVAL OF TRANSFER OF SUBSECTION (c)(1)(H) DEPOSITS


AMENDMENTS


Subsec. (a)(2). Pub. L. 99–554, § 144(c)(2)(B), struck out references to courts of the Canal Zone and trustees in cases under title 11.

1978—Pub. L. 95–598, § 219(b), substituted “marshals, and trustees” for “and marshals” in section catchline.

Subsec. (a)(1). Pub. L. 95–518, § 219(a), substituted “trustees” for “trustees”.

Subsec. (a)(2). Pub. L. 95–598, § 220, substituted “officers, trustees and receivers in bankruptcy” and “trustees” for “commissioners”.

CHANGE OF NAME

“United States magistrate judges” substituted for “United States magistrates” in subsection (a)(2) pursuant to section 321 of Pub. L. 101–650, set out as a note under section 611 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT


EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–598 effective Oct. 1, 1979, see section 402(c) of Pub. L. 95–598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

§ 527. Establishment of working capital fund

There is hereby authorized to be established a working capital fund for the Department of Jus-
tice, which shall be available, without fiscal year limitation, for expenses and equipment necessary for maintenance and operations of such administrative services as the Attorney General, with the approval of the Office of Management and Budget, determines may be performed more advantageously as central services. The capital of the fund shall consist of the amount of the fair and reasonable value of such inventories, equipment, and other assets and inventories on order pertaining to the services to be carried on by the fund as the Attorney General may transfer to the fund less related liabilities and unpaid obligations together with any appropriations made for the purpose of providing capital. The fund shall be reimbursed or credited with advance payments from applicable appropriations and funds of the Department of Justice, other Federal agencies, and other sources authorized by law for supplies, materials, and services at rates which will recover the expenses of operations including accrual of annual leave and depreciation of plant and equipment of the fund. The fund shall also be credited with other receipts from sale or exchange of property or in payment for loss or damage to property held by the fund. There shall be transferred into the Treasury as miscellaneous receipts, as of the close of each fiscal year, any net income after making provisions for prior year losses, if any.


Debt Collection Improvement

Pub. L. 107–273, div. C, title I, §11013(a), Nov. 2, 2002, 116 Stat. 1823, provided that: “Notwithstanding section 3302 of title 31, United States Code, or any other statute affecting the crediting of collections, the Attorney General may credit, as an offsetting collection, to the Department of Justice Working Capital Fund up to 3 percent of all amounts collected pursuant to civil debt collection litigation activities of the Department of Justice. Such amounts in the Working Capital Fund shall remain available until expended and shall be subject to the terms and conditions of that fund, and shall be used first, for paying the costs of processing and tracking civil and criminal debt-collection litigation, and, thereafter, for financial systems and for debt-collection-related personnel, administrative, and litigation expenses.”

CREDITING TO WORKING CAPITAL FUND OF AMOUNTS COLLECTED PURSUANT TO CIVIL DEBT COLLECTION LITIGATION ACTIVITIES

Pub. L. 103–121, title I, §108, Oct. 27, 1993, 107 Stat. 1184, as amended by Pub. L. 107–273, div. A, title II, §204(g), Nov. 2, 2002, 116 Stat. 1776, which authorized Attorney General to credit, as an offsetting collection, to Department of Justice Working Capital Fund, for fiscal year 1994 and thereafter, up to six percent of all amounts collected pursuant to civil debt collection litigation activities of Department of Justice, and provided that such amounts would remain available until expended, be subject to the terms and conditions of that fund, and be used, first, for paying costs of processing and tracking such litigation, and, thereafter, for financial systems, and other personnel, administrative, and litigation expenses of debt collection activities, was repealed by Pub. L. 107–273, div. C, title I, §11013(b), Nov. 2, 2002, 116 Stat. 1823.

Capital Equipment Acquisition, Etc., by Income Retained from or Transferred to Working Capital Fund; Amounts and Limitations


“Of the total income of the Working Capital Fund in fiscal year 1992 and each fiscal year thereafter, not to exceed 4 percent of the total income may be retained, to remain available until expended, for the acquisition of capital equipment and for the improvement and implementation of the Department’s financial management and payroll/personnel systems: Provided, That in fiscal year 1992, not to exceed $4,000,000 of the total income retained shall be used for improvements to the Department’s data processing operation: Provided further, That any proposed use of the retained income in fiscal year 1992 and thereafter, except for the $4,000,000 specified above, shall only be made after notification to the Committees on Appropriations of the House of Representatives and the Senate in accordance with section 606 of this Act.”

§528. Disqualification of officers and employees of the Department of Justice

The Attorney General shall promulgate rules and regulations which require the disqualification of any officer or employee of the Department of Justice, including a United States attorney or a member of such attorney’s staff, from participation in a particular investigation or prosecution if such participation may result in a personal, financial, or political conflict of interest, or the appearance thereof. Such rules and regulations may provide that a willful violation of any provision thereof shall result in removal from office.


Effective Date


§529. Annual report of Attorney General

(a) Beginning on June 1, 1979, and at the beginning of each regular session of Congress thereafter, the Attorney General shall report to Congress on the activities and operations of the Public Integrity Section or any other unit of the Department of Justice designated to supervise the investigation and prosecution of—

(1) any violation of Federal criminal law by any individual who holds or who at the time of such violation held a position, whether or not
elective, as a Federal Government officer, employee, or special employee, if such violation relates directly or indirectly to such individual’s Federal Government position, employment, or compensation;
(2) any violation of any Federal criminal law relating to lobbying, conflict of interest campaigns, and election to public office committed by any person, except insofar as such violation relates to a matter involving discrimination or intimidation on grounds of race, color, religion, or national origin;
(3) any violation of Federal criminal law by any individual who holds or who at the time of such violation held a position, whether or not elective, as a State or local government officer or employee, if such violation relates directly or indirectly to such individual’s State or local government position, employment, or compensation; and
(4) such other matters as the Attorney General may deem appropriate.

Such report shall include the number, type, and disposition of all investigations and prosecutions supervised by such Section or such unit, properly infringe upon the privacy rights of any individual.

(b) Notwithstanding any provision of law limiting the amount of management or administrative expenses, the Attorney General shall, not later than May 2, 2003, and of every year thereafter, prepare and provide to the Committees on the Judiciary and Appropriations of each House of Congress using funds available for the underlying programs—

(1) a report identifying and describing every grant (other than one made to a governmental entity, pursuant to a statutory formula), cooperative agreement, or programmatic services contract that was made, entered into, awarded, or, for which additional or supplemental funds were provided in the immediately preceding fiscal year, by or on behalf of the Office of Justice Programs (including any component or unit thereof, and the Office of Community Oriented Policing Services), and including, without limitation, for each such grant, cooperative agreement, or contract: the term, the dollar amount or value, a description of its specific purpose or purposes, the names of all grantees or parties, the names of each unsuccessful applicant or bidder, and a description of the specific purpose or purposes proposed in each unsuccessful application or bid, and of the reason or reasons for rejection or denial of the same; and
(2) a report identifying and reviewing every contract (other than one made to a governmental entity, pursuant to a statutory formula), cooperative agreement, or programmatic services contract made, entered into, awarded, or for which additional or supplemental funds were provided, after October 1, 2002, by or on behalf of the Office of Justice Programs (including any component or unit thereof, and the Office of Community Oriented Policing Services) that was programmatically and financially closed out or that otherwise ended in the immediately preceding fiscal year (or even if not yet closed out, was terminated or otherwise ended in the fiscal year that ended 2 years before the end of such immediately preceding fiscal year), and including, without limitation, for each such grant, cooperative agreement, or contract: a description of how the appropriated funds involved actually were spent, statistics relating to its performance, its specific purpose or purposes, and its effectiveness, and a written declaration by each non-Federal grantee and each non-Federal party to such agreement or to such contract, that—
(A) the appropriated funds were spent for such purpose or purposes, and only such purpose or purposes;
(B) the terms of the grant, cooperative agreement, or contract were complied with; and
(C) all documentation necessary for conducting a full and proper audit under generally accepted accounting principles, and any (additional) documentation that may have been required under the grant, cooperative agreement, or contract, have been kept in an orderly fashion and will be preserved for not less than 3 years from the date of such close out, termination, or end;

except that the requirement of this paragraph shall be deemed satisfied with respect to any such description, statistics, or declaration if such non-Federal grantee or such non-Federal party shall have failed to provide the same to the Attorney General, and the Attorney General notes the fact of such failure and the name of such grantee or such party in the report.


AMENDMENTS

2002—Pub. L. 107–273, § 205(a), designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE


§ 530. Payment of travel and transportation expenses of newly appointed special agents

The Attorney General or the Attorney General’s designee is authorized to pay the travel expenses of newly appointed special agents and the transportation expenses of their families and household goods and personal effects from place of residence at time of selection to the first duty station, to the extent such payments are authorized by section 5723 of title 5 for new appointees who may receive payments under that section.

§ 530A. Authorization of appropriations for travel and related expenses and for health care of personnel serving abroad

There are authorized to be used from appropriations, for any fiscal year, for the Department of Justice, such sums as may be necessary—

(1) for travel and related expenses of employees of the Department of Justice serving abroad and their families, to be payable in the same manner as applicable with respect to the Foreign Service under paragraphs (2), (3), (5), (6), (8), (9), (11), and (15) of section 901 of the Foreign Service Act of 1980, and under the regulations issued by the Secretary of State; and

(2) for health care for such employees and families, to be provided under section 904 of that Act.


§ 530B. Ethical standards for attorneys for the Government

(a) An attorney for the Government shall be subject to State laws and rules, and local Federal court rules, governing attorneys in each State where such attorney engages in that attorney’s duties, to the same extent and in the same manner as other attorneys in that State.

(b) The Attorney General shall make and amend rules of the Department of Justice to assure compliance with this section.

(c) As used in this section, the term “attorney for the Government” includes any attorney described in section 77.2(a) of part 77 of title 28 of the Code of Federal Regulations and also in -


§ 530C. Authority to use available funds

(a) In General.—Except to the extent provided otherwise by law, the activities of the Department of Justice (including any bureau, office, board, division, commission, subdivision, unit, or other component thereof) may, in the reasonable discretion of the Attorney General, be carried out through any means, including—

(1) through the Department’s own personnel, acting within, from, or through the Department itself;

(2) by sending or receiving details of personnel to other branches or agencies of the Federal Government, on a reimbursable, partially-reimbursable, or nonreimbursable basis;

(3) through reimbursable agreements with other Federal agencies for work, materials, or equipment;

(4) through contracts, grants, or cooperative agreements with non-Federal parties; and

(5) as provided in subsection (b), in section 524, and in any other provision of law consistent herewith, including, without limitation, section 102(b) of Public Law 102–395 (106 Stat. 1838), as incorporated by section 815(d) of Public Law 104–132 (110 Stat. 1315).

(b) PERMITTED USES.—

(1) GENERAL PERMITTED USES.—Funds available to the Attorney General (i.e., all funds available to carry out the activities described in subsection (a)) may be used, without limitation, for the following:

(A) The purchase, lease, maintenance, and operation of passenger motor vehicles, or police-type motor vehicles for law enforcement purposes, without regard to general purchase price limitation for the then-current fiscal year.

(B) The purchase of insurance for motor vehicles, boats, and aircraft operated in official Government business in foreign countries.

(C) Services of experts and consultants, including private counsel, as authorized by section 3109 of title 5, at rates of pay for individuals not to exceed the maximum daily rate payable from time to time under section 5332 of title 5.

(D) Official reception and representation expenses (i.e., official expenses of a social nature intended in whole or in predominant part to promote goodwill toward the Department or its missions, but excluding expenses of public tours of facilities of the Department of Justice), in accordance with distributions and procedures established, and rules issued, by the Attorney General, and expenses of public tours of facilities of the Department of Justice.

(E) Unforeseen emergencies of a confidential character, to be expended under the direction of the Attorney General and accounted for solely on the certificate of the Attorney General.

(F) Miscellaneous and emergency expenses authorized or approved by the Attorney General, the Deputy Attorney General, the Associate Attorney General, or the Assistant Attorney General for Administration.

(G) In accordance with procedures established and rules issued by the Attorney General—

(i) attendance at meetings and seminars;

(ii) conferences and training; and

(iii) advances of reimbursable moneys under section 3324 of title 31: Provided, That travel advances of such moneys to law enforcement personnel engaged in undercover activity shall be considered to be public
money for purposes of section 3527 of title 31.

(H) Contracting with individuals for personal services abroad, except that such individuals shall not be regarded as employees of the United States for the purpose of any law administered by the Office of Personnel Management.

(I) Payment of interpreters and translators who are not citizens of the United States, in accordance with procedures established and rules issued by the Attorney General.

(J) Expenses or allowances for uniforms as authorized by section 5901 of title 5, but without regard to the general purchase price limitation for the then-current fiscal year.

(K) Expenses of—

(i) primary and secondary schooling for dependents of personnel stationed outside the United States at cost not in excess of those authorized by the Department of Defense for the same area, when it is determined by the Attorney General that schools available in the locality are unable to provide adequately for the education of such dependents; and

(ii) transportation of those dependents between their place of residence and schools serving the area which those dependents would normally attend when the Attorney General, under such regulations as he may prescribe, determines that such schools are not accessible by public means of transportation.

(L) payment of rewards (i.e., payments pursuant to public advertisements for assistance to the Department of Justice), in accordance with procedures and regulations established or issued by the Attorney General: Provided, That—

(i) no such reward shall exceed $2,000,000, unless—

(I) the reward is to combat domestic terrorism or international terrorism (as defined in section 2331 of title 18); or

(II) a statute should authorize a higher amount;

(ii) no such reward of $250,000 or more may be made or offered without the personal approval of either the Attorney General or the President;

(iii) the Attorney General shall give written notice to the Chairmen and ranking minority members of the Committees on Appropriations and the Judiciary of the Senate and of the House of Representatives not later than 30 days after the approval of a reward under clause (ii);

(iv) any executive agency or military department (as defined, respectively, in sections 105 and 102 of title 5) may provide the Attorney General with funds for the payment of rewards; and

(v) neither the failure of the Attorney General to authorize a payment nor the amount authorized shall be subject to judicial review.

(2) SPECIFIC PERMITTED USES.—

(A) AIRCRAFT AND BOATS.—Funds available to the Attorney General for United States Attorneys, for the Federal Bureau of Investigation, for the United States Marshals Service, for the Bureau of Alcohol, Tobacco, Firearms and Explosives, for the Drug Enforcement Administration, and for the Immigration and Naturalization Service may be used for the purchase, lease, maintenance, and operation of aircraft and boats, for law enforcement purposes.

(B) PURCHASE OF AMMUNITION AND FIREARMS; FIREARMS COMPETITIONS.—Funds available to the Attorney General for United States Attorneys, for the Federal Bureau of Investigation, for the United States Marshals Service, for the Bureau of Alcohol, Tobacco, Firearms and Explosives, for the Drug Enforcement Administration, for the Federal Prison System, for the Office of the Inspector General, and for the Immigration and Naturalization Service may be used for—

(i) the purchase of ammunition and firearms; and

(ii) participation in firearms competitions.

(C) CONSTRUCTION.—Funds available to the Attorney General for construction may be used for expenses of planning, designing, acquiring, building, constructing, activating, renovating, converting, expanding, extending, remodeling, equipping, repairing, or maintaining buildings or facilities, including the expenses of acquisition of sites therefor, and all necessary expenses incident or related thereto; but the foregoing shall not be construed to mean that funds generally available for salaries and expenses are not also available for certain incidental or minor construction, activation, remodeling, maintenance, and other related construction costs.

(3) FEES AND EXPENSES OF WITNESSES.—Funds available to the Attorney General for fees and expenses of witnesses may be used for—

(A) expenses, mileage, compensation, protection, and per diem in lieu of subsistence, of witnesses (including advances of public money) and as authorized by section 1821 or other law, except that no witness may be paid more than 1 attendance fee for any 1 calendar day;

(B) fees and expenses of neutrals in alternative dispute resolution proceedings, where the Department of Justice is a party; and

(C) construction of protected witness safesites.

(4) FEDERAL BUREAU OF INVESTIGATION.— Funds available to the Attorney General for the Federal Bureau of Investigation for the detection, investigation, and prosecution of crimes against the United States may be used for the conduct of all its authorized activities.

(5) IMMIGRATION AND NATURALIZATION SERVICE.—Funds available to the Attorney General for the Immigration and Naturalization Service may be used for—

(A) acquisition of land as sites for enforcement fences, and construction incident to such fences;

(B) cash advances to aliens for meals and lodging en route;
(C) refunds of maintenance bills, immigration fines, and other items properly returnable, except deposits of aliens who become public charges and deposits to secure payment of fines and passage money; and

(D) expenses and allowances incurred in tracking lost persons, as required by public exigencies, in aid of State or local law enforcement agencies.

(6) FEDERAL PRISON SYSTEM.—Funds available to the Attorney General for the Federal Prison System may be used for—

(A) inmate medical services and inmate legal services, within the Federal prison system;

(B) the purchase and exchange of farm products and livestock;

(C) the acquisition of land as provided in section 4010 of title 18; and

(D) the construction of buildings and facilities for penal and correctional institutions (including prison camps), by contract or force account, including the payment of United States prisoners for their work performed in any such construction;

except that no funds may be used to distribute or make available to a prisoner any commercially published information or material that is sexually explicit or features nudity.

(7) DETENTION TRUSTEE.—Funds available to the Attorney General for the Detention Trustee may be used for all the activities of such Trustee in the exercise of all power and functions authorized by law relating to the detention of Federal prisoners in non-Federal institutions or otherwise in the custody of the United States Marshals Service and to the detention of aliens in the custody of the Immigration and Naturalization Service, including the overseeing of construction of detention facilities or for housing related to such detention, the management of funds appropriated to the Department for the exercise of detention functions, and the direction of the United States Marshals Service and Immigration Service with respect to the exercise of detention policy setting and operations for the Department of Justice.

(c) RELATED PROVISIONS.—

(1) LIMITATION OF COMPENSATION OF INDIVIDUALS EMPLOYED AS ATTORNEYS.—No funds available to the Attorney General may be used to pay compensation for services provided by an individual employed as an attorney (other than an individual employed to provide services as a foreign attorney in special cases) unless such individual is duly licensed and authorized to practice as an attorney under the law of a State, a territory of the United States, or the District of Columbia.

(2) REIMBURSEMENTS PAID TO GOVERNMENTAL ENTITIES.—Funds available to the Attorney General that are paid as reimbursement to a governmental unit of the Department of Justice, to another Federal entity, or to a unit of State or local government, may be used under authorities available to the unit or entity receiving such reimbursement.

(d) FOREIGN REIMBURSEMENTS.—Whenever the Department of Justice or any component participates in a cooperative project to improve law enforcement or national security operations or services with a friendly foreign country on a cost-sharing basis, any reimbursements or contributions received from that foreign country to meet its share of the project may be credited to appropriate current appropriations accounts of the Department of Justice or any component. The amount of a reimbursement or contribution credited shall be available only for payment of the share of the project expenses allocated to the participating foreign country.

(e) RAILROAD POLICE TRAINING FEES.—The Attorney General is authorized to establish and collect a fee to defray the costs of railroad police officers participating in a Federal Bureau of Investigation law enforcement training program authorized by Public Law 106–110, and to credit such fees to the appropriation account “Federal Bureau of Investigation, Salaries and Expenses”, to be available until expended for salaries and expenses incurred in providing such services.

(f) WARRANTY WORK.—In instances where the Attorney General determines that law enforcement-, security-, or mission-related considerations mitigate against obtaining maintenance or repair services from private sector entities for equipment under warranty, the Attorney General is authorized to seek reimbursement from such entities for warranty work performed at Department of Justice facilities, and to credit any payment made for such work to any appropriation charged therefor.


REFERENCES IN TEXT
Section 102(b) of Public Law 102–395, referred to in subsec. (a)(5), is section 102(b) of Pub. L. 102–395, title I, Oct. 6, 1992, 106 Stat. 1638, as amended, which is set out as a note under section 533 of this title.

Section 815(d) of Public Law 104–132, referred to in subsec. (a)(5), is section 815(d) of Pub. L. 104–132, title VIII, Apr. 24, 1996, 110 Stat. 3151, which is set out as a note under section 533 of this title.


ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS
For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of Title 8, Aliens and Nationality.

AMENDMENTS

USE OF FEDERAL TRAINING FACILITIES

“(a) FEDERAL TRAINING FACILITIES.—Unless authorized in writing by the Attorney General, or the Assistant Attorney General for Administration, if so delegated by the Attorney General, the Department of Justice (and each entity within it) shall use for any predominantly internal training or conference meeting only a facility that does not require a payment to a pri-
§ 530D. Report on enforcement of laws

(a) REPORT.—

(1) In general.—The Attorney General shall submit to the Congress a report of any instance in which the Attorney General or any officer of the Department of Justice—

(A) establishes or implements a formal or informal policy to refrain—

(i) from enforcing, applying, or administering any provision of any Federal statute, rule, regulation, program, policy, or other law whose enforcement, application, or administration is within the responsibility of the Attorney General or such officer on the grounds that such provision is unconstitutional; or

(ii) within any judicial jurisdiction of or within the United States, from adhering to, enforcing, applying, or complying with, any standing rule of decision (binding upon courts of, or inferior to those of, that jurisdiction) established by a final decision of any court of, or superior to those of, that jurisdiction, respecting the interpretation, construction, or application of the Constitution, any statute, rule, regulation, program, policy, or other law whose enforcement, application, or administration is within the responsibility of the Attorney General or such officer;

(B) determines—

(i) to contest affirmatively, in any judicial, administrative, or other proceeding, the constitutionality of any provision of any Federal statute, rule, regulation, program, policy, or other law; or

(ii) to refrain (on the grounds that the provision is unconstitutional) from defending or asserting, in any judicial, administrative, or other proceeding, the constitutionality of any provision of any Federal statute, rule, regulation, program, policy, or other law, or not to appeal or request review of any judicial, administrative, or other determination adversely affecting the constitutionality of any such provision; or

(C) approves (other than in circumstances in which a report is submitted to the Joint Committee on Taxation, pursuant to section 6405 of the Internal Revenue Code of 1986) the settlement or compromise (other than in bankruptcy) of any claim, suit, or other action—

(i) against the United States (including any agency or instrumentality thereof) for a sum that exceeds, or is likely to exceed, $2,000,000, excluding prejudgment interest; or

(ii) by the United States (including any agency or instrumentality thereof) pursuant to an agreement, consent decree, or order (or pursuant to any modification of an agreement, consent decree, or order) that provides injunctive or other nonmonetary relief that exceeds, or is likely to exceed, 3 years in duration: Provided, That for purposes of this clause, the term “injunctive or other nonmonetary relief” shall not be understood to include the following, where the same are a matter of public record—

(I) debarments, suspensions, or other exclusions from Government contracts or grants;

(II) mere reporting requirements or agreements (including sanctions for failure to report);

(III) requirements or agreements merely to comply with statutes or regulations;

(IV) requirements or agreements to surrender professional licenses or to cease the practice of professions, occupations, or industries;

(V) any criminal sentence or any requirements or agreements to perform community service, to serve probation, or to participate in supervised release from detention, confinement, or prison; or

(VI) agreements to cooperate with the government in investigations or prosecutions (whether or not the agreement is a matter of public record).

(b) DEADLINE.—A report shall be submitted—

(1) under subsection (a)(1)(A), not later than 30 days after the establishment or implementation of each policy;

(2) under subsection (a)(1)(B), within such time as will reasonably enable the House of Representatives and the Senate to take action separately or jointly, to intervene in timely fashion in the proceeding, but in no event later than 30 days after the making of each determination; and

(3) under subsection (a)(1)(C), not later than 30 days after the conclusion of each fiscal-year quarter, with respect to all approvals occurring in such quarter.
(c) CONTENTS.—A report required by subsection (a) shall—

(1) specify the date of the establishment or implementation of the policy described in subsection (a)(1)(A), of the making of the determination described in subsection (a)(1)(B), or of each approval described in subsection (a)(1)(C);

(2) include a complete and detailed statement of the relevant issues and background (including a complete and detailed statement of the reasons for the policy or determination, and the identity of the officer responsible for establishing or implementing such policy, making such determination, or approving such settlement or compromise), except that—

(A) such details may be omitted as may be absolutely necessary to prevent improper disclosure of national-security- or classified information, of any information subject to the deliberative-process-, executive-, attorney-work-product-, or attorney-client privileges, or of any information the disclosure of which is prohibited by section 6103 of the Internal Revenue Code of 1986, or other law or any court order if the fact of each such omission (and the precise ground or grounds therefore) is clearly noted in the statement: Provided, That this subparagraph shall not be construed to deny to the Congress (including any House, Committee, or agency thereof) any such omitted details (or related information) that it lawfully may seek, subsequent to the submission of the report; and

(B) the requirements of this paragraph shall be deemed satisfied—

(I) in the case of an approval described in subsection (a)(1)(C)(i), if an unredacted copy of the entire settlement agreement and consent decree or order (if any) is provided, along with a statement indicating the legal and factual basis or bases for the settlement or compromise (if not apparent on the face of documents provided); and

(ii) in the case of an approval described in subsection (a)(1)(C)(ii), if an unredacted copy of the entire settlement agreement and consent decree or order (if any) is provided, along with a statement indicating the injunctive or other nonmonetary relief (if not apparent on the face of documents provided); and

(3) in the case of a determination described in subsection (a)(1)(B) or an approval described in subsection (a)(1)(C), indicate the nature, tribunal, identifying information, and status of the proceeding, suit, or action.

(d) DECLARATION.—In the case of a determination described in subsection (a)(1)(B), the representative of the United States participating in the proceeding shall make a clear declaration in the proceeding that any position expressed as to the constitutionality of the provision involved is the position of the executive branch of the Federal Government (or, as applicable, of the President or of any executive agency or military department).

(e) APPLICABILITY TO THE PRESIDENT AND TO EXECUTIVE AGENCIES AND MILITARY DEPARTMENTS.—The reporting, declaration, and other provisions of this section relating to the Attorney General and other officers of the Department of Justice shall apply to the President (but only with respect to the promulgation of any unclassified Executive order or similar memorandum or order), to the head of each executive agency or military department (as defined, respectively, in sections 105 and 102 of title 5, United States Code) that establishes or implements a policy described in subsection (a)(1)(A) or is authorized to conduct litigation, and to the officers of such executive agency.


REFERENCES IN TEXT

Section 605 of the Internal Revenue Code of 1986, referred to in subsec. (a)(1)(C), is classified to section 605 of Title 26, Internal Revenue Code.

Section 6103 of the Internal Revenue Code of 1986, referred to in subsec. (c)(2)(A), is classified to section 6103 of Title 26, Internal Revenue Code.

REPORT ON POLICIES AND DETERMINATIONS MADE PRIOR TO ENACTMENT OF SECTION


“(3) Not later than 30 days after the date of the enactment of this Act [Nov. 2, 2002], the President shall advise the head of each executive agency or military department (as defined, respectively, in sections 105 and 102 of title 5, United States Code) of the enactment of this section [enacting this section and amending sections 130f and 288k of Title 2, The Congress].

“(4)(A) Not later than 90 days after the date of the enactment of this Act [Nov. 2, 2002], the Attorney General (and, as applicable, the President, and the head of any executive agency or military department described in subsection (e) of section 530D of title 26, United States Code, as added by subsection (a)) shall submit to Congress a report (in accordance with subsections (a), (c), and (e) of such section) on—

“(i) all policies of which the Attorney General and applicable official are aware described in subsection (a)(1)(A) of such section that were established or implemented before the date of the enactment of this Act and were in effect on such date; and

“(ii) all determinations of which the Attorney General and applicable official are aware described in subsection (a)(1)(B) of such section that were made before the date of the enactment of this Act and were in effect on such date.

“(B) If a determination described in subparagraph (A)(ii) relates to any judicial, administrative, or other proceeding that is pending in the 90-day period beginning on the date of the enactment of this Act [Nov. 2, 2002], with respect to any such determination, then the report required by this paragraph shall be submitted within such time as will reasonably enable the House of Representatives and the Senate to take action, separately or jointly, to intervene in timely fashion in the proceeding, but not later than 30 days after the date of the enactment of this Act.”

CHAPTER 33—FEDERAL BUREAU OF INVESTIGATION

Sec. 531. Federal Bureau of Investigation.

532. Director of the Federal Bureau of Investigation.

533. Investigative and other officials; appointment.

534. Acquisition, preservation, and exchange of identification records and information; appointment of officials.

535. Investigation of crimes involving Government officers and employees; limitations.
§ 531. Federal Bureau of Investigation

The Federal Bureau of Investigation is in the Department of Justice.

(Amended Pub. L. 89–554, § 4(e), Sept. 6, 1966, 80 Stat. 616.)

HISTORICAL AND REVISION NOTES

The section is supplied for convenience and clarification. The Bureau of Investigation in the Department of Justice, the earliest predecessor agency of the Federal Bureau of Investigation, was created administratively in 1908. It appears that funds used for the Bureau of Investigation were first obtained through the Department of Justice Appropriation Act of May 22, 1908, ch. 186, §1 (par. beginning “From the appropriations for the prosecution of crimes”), 35 Stat. 296, although that statutory provision makes no express mention of the Bureau or of the investigative function.

Section 3 of Executive Order No. 6106 of June 10, 1933, specifically recognized the Bureau of Investigation in the Department of Justice and provided that all that Bureau’s functions together with the investigative functions of the Bureau of Prohibition were “transferred to and consolidated in a Division of Investigation in the Department of Justice, at the head of which shall be a Director of Investigation.”

The Division of Investigation was first designated as the “Federal Bureau of Investigation” by the Act of Mar. 22, 1935, ch. 39, title II, § 49, 49 Stat. 77, and has been so designated in statutes since that date.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the Federal Bureau of Investigation, including the functions of the Attorney General relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(b)(3) and sections 121(g)(1), 531(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.

ENTERPRISE ARCHITECTURE


“(a) ENTERPRISE ARCHITECTURE DEFINED.—In this section, the term ‘enterprise architecture’ means a detailed outline or blueprint of the information technology infrastructure of the Federal Bureau of Investigation that will satisfy the ongoing mission and goals of the Federal Bureau of Investigation and that sets forth specific and identifiable benchmarks.

“(b) ENTERPRISE ARCHITECTURE.—The Federal Bureau of Investigation shall—

“(1) continually maintain and update an enterprise architecture; and

“(2) maintain a state of the art and up to date information technology infrastructure that is in compliance with the enterprise architecture of the Federal Bureau of Investigation.

“(c) REPORT.—Subject to subsection (d), the Director of the Federal Bureau of Investigation shall, on an annual basis, submit to the Committees on the Judiciary of the Senate and House of Representatives a report on whether the major information technology investments of the Federal Bureau of Investigation are in compliance with the enterprise architecture of the Federal Bureau of Investigation and identify any inability or expectation of inability to meet the terms set forth in the enterprise architecture.

“(d) FAILURE TO MEET TERMS.—If the Director of the Federal Bureau of Investigation identifies any inability or expectation of inability to meet the terms set forth in the enterprise architecture in a report under subsection (c), the report under subsection (c) shall—

“(1) be twice a year until the inability is corrected;

“(2) include a statement as to whether the inability or expectation of inability to meet the terms set forth in the enterprise architecture is substantially related to resources; and

“(3) if the inability or expectation of inability is substantially related to resources, include a request for additional funding that would resolve the problem or a request to reprogram funds that would resolve the problem.

“(e) ENTERPRISE ARCHITECTURE, AGENCY PLANS AND REPORTS.—This section shall be carried out in compliance with the requirements set forth in section 1016(e) and (h) [6 U.S.C. 486(e), (h)].”

REPORT TO CONGRESS

Pub. L. 108–405, title II, § 203(f), Oct. 30, 2004, 118 Stat. 2271, provided that: “If the Department of Justice plans to modify or supplement the core genetic markers needed for compatibility with the CODIS system, it shall notify the Judiciary Committee of the Senate and the Judiciary Committee of the House of Representatives in writing not later than 180 days before any change is made and explain the reasons for such change.”

MORGAN P. HARDIMAN CHILD ABDUCTION AND SERIAL MURDER INVESTIGATIVE RESOURCES CENTER

“(a) ESTABLISHMENT.—Not later than 90 days after the date of enactment of this Act [Oct. 30, 1998], the Attorney General shall establish within the Federal Bureau of Investigation a Child Abduction and Serial Murder Investigative Resources Center to be known as the ‘Morgan P. Hardiman Child Abduction and Serial Murder Investigative Resources Center’ (in this section referred to as the ‘CASMIRC’).

“(b) PURPOSE.—The CASMIRC shall be managed by the National Center for the Analysis of Violent Crime of the Critical Incident Response Group of the Federal Bureau of Investigation (in this section referred to as the ‘NCAVC’), and by multidisciplinary resource teams in Federal Bureau of Investigation field offices, in order to provide investigative support through the coordination and provision of Federal law enforcement resources, training, and application of other multidisciplinary expertise, to assist Federal, State, and local authorities in matters involving child abductions, mysterious disappearances of children, child homicide, and serial murder investigations; and

“(c) DUTIES OF THE CASMIRC.—The CASMIRC shall perform such duties as the Attorney General determines appropriate to carry out the purposes of the CASMIRC, including—

“(1) identifying, developing, researching, acquiring, and refining multidisciplinary information and specialties to provide for the most current expertise available to advance investigative knowledge and practices used in child abduction, mysterious disappearances of children, child homicide, and serial murder investigations;

“(2) providing advice and coordinating the application of current and emerging technical, forensic, and other Federal assistance to Federal, State, and local authorities in child abduction, mysterious disappearances of children, child homicide, and serial murder investigations;

“(3) providing investigative support, research findings, and violent crime analysis to Federal, State, and local authorities in child abduction, mysterious disappearances of children, child homicide, and serial murder investigations;

“(4) providing, if requested by a Federal, State, or local law enforcement agency, on-site consultation and advice in child abduction, mysterious disappearances of children, child homicide, and serial murder investigations;

“(5) coordinating the application of resources of pertinent Federal law enforcement agencies, and other Federal entities including, but not limited to, the United States Customs Service, the Secret Service, the Postal Inspection Service, and the United States Marshals Service, as appropriate, and with the concurrence of the agency head to support Federal, State, and local law enforcement involved in child abduction, mysterious disappearance of a child, child homicide, and serial murder investigations;

“(6) conducting ongoing research related to child abductions, mysterious disappearances of children, child homicides, and serial murder, including identification and investigative application of current and emerging technologies, identification of investigative searching technologies and methods for physically locating abducted children, investigative use of offender behavioral assessment and analysis concepts, gathering statistics and information necessary for case identification, trend analysis, and case linkages to advance the investigative effectiveness of outstanding abducted children cases, develop investigative systems to identify and track serious offender that repeatedly victimize children for comparison to uncleared offenses, and other investigative research pertinent to child abduction, mysterious disappearance of a child, child homicide, and serial murder covered in this section;

“(7) working with the NCAVC in coordination with the National Center For Missing and Exploited Children and the Office of Juvenile Justice and Delinquency Prevention of the Department of Justice to provide appropriate training to Federal, State, and local law enforcement in matters regarding child abductions, mysterious disappearances of children, child homicides; and

“(8) establishing a centralized repository based upon case data reflecting child abductions, mysterious disappearances of children, child homicides, and serial murder submitted by State and local agencies, and an automated system for the efficient collection, retrieval, analysis, and reporting of information regarding CASMIRC involved investigative resources, methods, and requests for and provision of investigative support services.

“(d) APPOINTMENT OF PERSONNEL TO THE CASMIRC.—

“(1) SELECTION OF MEMBERS OF THE CASMIRC AND PARTICIPATING STATE AND LOCAL LAW ENFORCEMENT PERSONNEL.—The Director of the Federal Bureau of Investigation shall appoint the members of the CASMIRC. The CASMIRC shall be staffed with Federal Bureau of Investigation personnel and other necessary personnel selected for their expertise that would enable them to assist in the research, data collection, and analysis, and provision of investigative support in child abduction, mysterious disappearances of children, child homicide and serial murder investigations. The Director may, with the concurrence of the appropriate State or local agency, also appoint State and local law enforcement personnel to work with the CASMIRC.

“(2) STATUS.—Each member of the CASMIRC (and each individual from any State or local law enforcement agency appointed to work with the CASMIRC) shall remain as an employee of that member’s or individual’s respective agency for all purposes (including the purpose of performance review), and service with the CASMIRC shall be without interruption or loss of civil service privilege or status and shall be on a nonreimbursable basis, except if appropriate to reimburse State and local law enforcement for overtime costs for an individual appointed to work with the resource team. Additionally, reimbursement of travel and per diem expenses will occur for State and local law enforcement participation in resident fellowship programs at the NCAVC when offered.

“(3) TRAINING.—CASMIRC personnel, under the guidance of the Federal Bureau of Investigation’s National Center for the Analysis of Violent Crime and in consultation with the National Center For Missing and Exploited Children, shall develop a specialized course of instruction devoted to training members of the CASMIRC consistent with the purpose of this section. The CASMIRC shall also work with the National Center For Missing and Exploited Children and the Office of Juvenile Justice and Delinquency Prevention of the Department of Justice to develop a course of instruction for State and local law enforcement personnel to facilitate the dissemination of the most current multidisciplinary expertise on investigation of child abductions, mysterious disappearances of children, child homicides, and serial murder of children.

“(e) REPORT TO CONGRESS.—One year after the establishment of the CASMIRC, the Attorney General shall submit to Congress a report, which shall include—

“(1) a description of the goals and activities of the CASMIRC; and

“(2) information regarding—

“(A) the number and qualifications of the members appointed to the CASMIRC;

“(B) the provision of equipment, administrative support, and office space for the CASMIRC; and

“(C) the projected resource needs for the CASMIRC.

“(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary for each of fiscal years 1999, 2000, and 2001. [For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the
Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 541(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."

[For transfer of the functions, personnel, assets, and obligations of the United States Secret Service, including the functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 381, 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.]

**FEDERAL BUREAU OF INVESTIGATION FUNDING AUTHORIZATIONS**


"(a) In general.—With funds made available pursuant to subsection (c) —

"(1) the Attorney General shall —

"(A) provide support and enhance the technical support center and tactical operations of the Federal Bureau of Investigation;

"(B) create a Federal Bureau of Investigation counterterrorism and counterintelligence fund for costs associated with the investigation of cases involving cases of terrorism;

"(C) expand and improve the instructional, operational support, and construction of the Federal Bureau of Investigation Academy;

"(D) construct a Federal Bureau of Investigation laboratory, provide laboratory examination support, and provide for a command center;

"(E) make grants to States to carry out the activities described in subsection (b); and

"(F) increase personnel to support counterterrorism activities; and

"(2) the Director of the Federal Bureau of Investigation shall expand the combined DNA Identification System (CODIS) to include analyses of DNA samples collected from —

"(A) individuals convicted of a qualifying Federal offense, as determined under section 3(d) of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135a(d));

"(B) individuals convicted of a qualifying District of Columbia offense, as determined under section 4(d) of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135b(d)); and

"(C) members of the Armed Forces convicted of a qualifying military offense, as determined under section 1665(d) of title 10, United States Code.

"(b) STATE GRANTS.—

"(1) Authorization.—The Attorney General, in consultation with the Director of the Federal Bureau of Investigation, may make grants to each State eligible under paragraph (2) to be used by the chief executive officer of the State, in conjunction with units of local government, other States, or any combination thereof, to carry out all or part of a program to establish, develop, update, or upgrade—

"(A) computerized identification systems that are compatible and integrated with the databases of the National Crime Information Center of the Federal Bureau of Investigation;

"(B) the capability to analyze deoxyribonucleic acid (DNA) in a forensic laboratory in ways that are compatible and integrated with the combined DNA Identification System (CODIS) of the Federal Bureau of Investigation; and

"(C) automated fingerprint identification systems that are compatible and integrated with the Integrated Automated Fingerprint Identification System (IAFIS) of the Federal Bureau of Investigation.

"(2) Eligibility.—To be eligible to receive a grant under this subsection, a State shall require that each person convicted of a felony of a sexual nature shall provide to appropriate law enforcement officials, as designated by the chief executive officer of the State, a sample of blood, saliva, or other specimens necessary to conduct a DNA analysis consistent with the standards established for DNA testing by the Director of the Federal Bureau of Investigation.

"(3) Interstate Compacts.—A State may enter into a compact or compacts with another State or States to carry out this subsection.

"(c) Authorization of Appropriations.—

"(1) In general.—There are authorized to be appropriated for the activities of the Federal Bureau of Investigation, to help meet the increased demands for activities to combat terrorism—

"(A) $114,000,000 for fiscal year 1997; and

"(B) $166,000,000 for fiscal year 1998;

"(C) $96,000,000 for fiscal year 1999; and

"(D) $92,000,000 for fiscal year 2000.

"(2) Availability of funds.—Funds made available pursuant to paragraph (1), in any fiscal year, shall remain available until expended.

"(3) Allocation.—

"(A) In general.—Of the total amount appropriated to carry out subsection (b) in a fiscal year—

"(i) the greater of 0.25 percent of such amount or $500,000 shall be allocated to each eligible State; and

"(ii) of the total funds remaining after the allocation under clause (i), there shall be allocated to each State an amount which bears the same ratio to the amount of remaining funds described in this subparagraph as the population of such State bears to the population of all States.

"(B) Definition.—For purposes of this paragraph, the term ‘State’ means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands, except that for purposes of the allocation under this subparagraph, American Samoa and the Commonwealth of the Northern Mariana Islands shall be considered as one State and that for these purposes, 67 percent of the amounts allocated shall be allocated to American Samoa, and 33 percent to the Commonwealth of the Northern Mariana Islands.”

§ 532. Director of the Federal Bureau of Investigation

The Attorney General may appoint a Director of the Federal Bureau of Investigation. The Director of the Federal Bureau of Investigation is the head of the Federal Bureau of Investigation.

(Added Pub. L. 89–554, § 4(c), Sept. 6, 1966, 80 Stat. 616.)

**HISTORICAL AND REVISION NOTES**

The section is supplied for convenience and clarification and is based on section 3 of Executive Order No. 6166 of June 10, 1933, which provided for the transfer of the functions of the Bureau of Investigation together with the investigative functions of the Bureau of Prohibition to a “Division of Investigation in the Department of Justice, at the head of which shall be a Director of Investigation”. The Division of Investigation was first designated as the “Federal Bureau of Investigation” by the Act of Mar. 22, 1935, ch. 39, title II, 49 Stat. 77, and has been so designated in statutes since that date. The title of “Director of the Federal Bureau of Investigation” was recognized by statute in the Act of June 5, 1936, ch. 529, 49 Stat. 1441, and has been used in statutes since that date.

**FINDINGS**

Pub. L. 112–24, § 1, July 26, 2011, 125 Stat. 238, provided that: “Congress finds that—
SEC. 2001. IMPROVEMENT OF INTELLIGENCE CAPABILITIES; DIRECTORATE OF INTELLIGENCE; INTELLIGENCE CAREER SERVICE.


(1) on May 12, 2011, the President requested that Congress extend the term of Robert S. Mueller III as Director of the Federal Bureau of Investigation by 2 years, citing the critical need for continuity and stability at the Federal Bureau of Investigation in the face of ongoing threats to the United States and leadership transitions at the Federal agencies charged with protecting national security;

(2) in light of the May 1, 2011, successful operation against Osama bin Laden, the continuing threat to national security, and the approaching 10th anniversary of the attacks of September 11, 2001, the President’s request for a limited, 1-time exception to the term limit of the Director of the Federal Bureau of Investigation, in these exceptional circumstances, is appropriate; and

(3) this Act [amending provisions set out as a note under this section] is intended to provide a 1-time exception to the 10-year statutory limit on the term of the Director of the Bureau of Investigation in light of the President’s request and existing exceptional circumstances, and is not intended to create a precedent.

IMPROVEMENT OF INTELLIGENCE CAPABILITIES; DIRECTORATE OF INTELLIGENCE; INTELLIGENCE CAREER SERVICE.

The Director of the Federal Bureau of Investigation shall continue efforts to improve the intelligence capabilities of the Bureau, and shall continue efforts to improve the intelligence capabilities of the Federal Bureau of Investigation of an institutional nature with substantial expertise in, and commitment to, the intelligence mission of the Bureau.

(4) the intelligence mission of the Bureau describes and development of the intelligence mission of the Bureau.

(5) In the report, the members of the Commission also urged that the Federal Bureau of Investigation fully institutionalize the shift of the Bureau to a preventive counterterrorism posture.

(6) The Director of the Federal Bureau of Investigation shall establish a budget structure to support the four principal missions of the Bureau, as follows:

(a) NATIONAL INTELLIGENCE WORKFORCE.—(1) In developing and maintaining a national intelligence workforce under subsection (b), the Director of the Federal Bureau of Investigation shall develop and maintain a specialized and integrated national intelligence workforce consisting of agents, analysts, linguists, and surveillance specialists who are recruited, trained, and rewarded in a manner which ensures the existence within the Federal Bureau of Investigation of an institutional culture with substantial expertise in, and commitment to, the intelligence mission of the Bureau.

(b) The Director shall—

(A) establish career positions in national intelligence matters for agents, analysts, and related personnel of the Bureau; and

(B) in furtherance of the requirement under subparagraph (A) and to the maximum extent practicable, afford agents, analysts, and related personnel of the Bureau the opportunity to work in the career specialty selected by such agents, analysts, and related personnel over their entire career with the Bureau.

(c) The Director shall—

(1) on May 12, 2011, the President requested that Congress extend the term of Robert S. Mueller III as Director of the Federal Bureau of Investigation by 2 years, citing the critical need for continuity and stability at the Federal Bureau of Investigation in the face of ongoing threats to the United States and leadership transitions at the Federal agencies charged with protecting national security;

(2) in light of the May 1, 2011, successful operation against Osama bin Laden, the continuing threat to national security, and the approaching 10th anniversary of the attacks of September 11, 2001, the President’s request for a limited, 1-time exception to the term limit of the Director of the Federal Bureau of Investigation, in these exceptional circumstances, is appropriate; and

(3) this Act [amending provisions set out as a note under this section] is intended to provide a 1-time exception to the 10-year statutory limit on the term of the Director of the Bureau of Investigation in light of the President’s request and existing exceptional circumstances, and is not intended to create a precedent.

IMPROVEMENT OF INTELLIGENCE CAPABILITIES; DIRECTORATE OF INTELLIGENCE; INTELLIGENCE CAREER SERVICE.

(4) The Director shall provide for such expansion of the secure facilities in the field offices of the Bureau as is necessary to ensure the discharge of the field offices of the intelligence mission of the Bureau.

(5) The Director shall require that each Field Intelligence Group manager ensures the integration of analysts, agents, linguists, and surveillance personnel in the field.

(6) The Director shall—

(a) carry out subsections (b) through (d) through the head of the Directorate of Intelligence of the Federal Bureau of Investigation.

(b) The Director of the Federal Bureau of Investigation shall carry out subsections (b) through (d) under this Act [Dec. 17, 2004], the Director of the Federal Bureau of Investigation shall carry out the requirements of this Act, and every 12 months thereafter, the Director shall submit to Congress a report on the progress made as of the date of such report in addressing Bureau and national program priorities.

(7) The Director shall submit to Congress a report on the progress made as of the date of such report in addressing Bureau and national program priorities.

(8) The Director shall, to the maximum extent practicable, ensure that the successful discharge of advanced training courses, and of one or more assignments to another element of the intelligence community, is a pre-condition to advancement to higher level intelligence assignments within the Bureau.

(d) FIELD OFFICE MATTERS.—(1) In improving the intelligence capabilities of the Federal Bureau of Investigation under subsection (b), the Director of the Federal Bureau of Investigation shall ensure that each Field Intelligence Group reports directly to a field office senior manager responsible for intelligence matters.

(2) The Director shall provide for such expansion of the secure facilities in the field offices of the Bureau as is necessary to ensure the discharge by the field offices of the intelligence mission of the Bureau.

(3) The Director shall require that each Field Intelligence Group manager ensures the integration of analysts, agents, linguists, and surveillance personnel in the field.

(4) The Director shall—

(a) carry out subsections (b) through (d) through the head of the Directorate of Intelligence of the Federal Bureau of Investigation.

(b) The Director of the Federal Bureau of Investigation shall carry out subsections (b) through (d) under this Act [Dec. 17, 2004], the Director of the Federal Bureau of Investigation shall carry out the requirements of this Act, and every 12 months thereafter, the Director shall submit to Congress a report on the progress made as of the date of such report in addressing Bureau and national program priorities.

(7) BUDGET MATTERS.—The Director of the Federal Bureau of Investigation shall establish a budget structure of the Federal Bureau of Investigation to reflect the four principal missions of the Bureau as follows:

(1) Intelligence.

(2) Counterterrorism and counterintelligence.

(3) Criminal enterprises federal crimes.

(4) Criminal justice services.

(8) REPORTS.—(1) Not later than 180 days after the date of the enactment of this Act [Dec. 17, 2004], the Director of the Federal Bureau of Investigation shall submit to Congress a report on the progress made as of the date of such report in carrying out the requirements of this section.

(2) The Director shall include in each annual program review of the Federal Bureau of Investigation that is submitted to Congress a report on the progress made by each field office of the Bureau during the period covered by such review in addressing Bureau and national program priorities.

(3) Not later than 180 days after the date of the enactment of this Act, and every 12 months thereafter, the Director shall submit to Congress a report assessing the qualifications, status, and roles of analysts at Bureau headquarters and in the field offices of the Bureau.

(4) Not later than 180 days after the date of the enactment of this Act, and every 12 months thereafter, the Director shall submit to Congress a report on the
progress of the Bureau in implementing information-sharing principles.

‘‘SEC. 2002. DIRECTORATE OF INTELLIGENCE OF THE FEDERAL BUREAU OF INVESTIGATION.

(a) DIRECTORATE OF INTELLIGENCE OF FEDERAL BUREAU OF INVESTIGATION.—The element of the Federal Bureau of Investigation known as of the date of enactment of this Act (Dec. 17, 2004) as the Office of Intelligence shall hereby be redesignated as the Directorate of Intelligence of the Federal Bureau of Investigation.

(b) HEAD OF DIRECTORATE.—The head of the Directorate of Intelligence shall be the Executive Assistant Director for Intelligence of the Federal Bureau of Investigation.

(c) RESPONSIBILITIES.—The Directorate of Intelligence shall be responsible for the following:

(1) Supervision of all national intelligence programs, projects, and activities of the Bureau.

(2) The discharge by the Bureau of the requirements in section 102B of the National Security Act of 1947 (50 U.S.C. 403–5b).

(3) The oversight of Bureau field intelligence operations.

(4) Coordinating human source development and management by the Bureau.

(5) Coordinating collection by the Bureau against nationally-determined intelligence requirements.

(6) Strategic analysis.

(7) Intelligence program and budget management.

(8) The intelligence workforce.

(9) Any other responsibilities specified by the Director of the Federal Bureau of Investigation or specified by law.

(d) STAFF.—The Directorate of Intelligence shall consist of such staff as the Director of the Federal Bureau of Investigation considers appropriate for the activities of the Directorate.

‘‘SEC. 2003. FEDERAL BUREAU OF INVESTIGATION INTELLIGENCE CAREER SERVICE.

(a) ESTABLISHMENT OF FEDERAL BUREAU OF INVESTIGATION INTELLIGENCE CAREER SERVICE.—The Director of the Federal Bureau of Investigation may—

(1) in consultation with the Director of the Office of Personnel Management—

(A) establish positions for intelligence analysts, and prescribe standards and procedures for establishing and classifying such positions, without regard to chapter 51 of title 5, United States Code; and

(B) fix the rate of basic pay for such positions, without regard to subchapter III of chapter 53 of title 5, United States Code, if the rate of pay is not greater than the rate of basic pay payable for level IV of the Executive Schedule (5 U.S.C. 5313);

(2) appoint individuals to such positions; and

(3) establish a performance management system for such individuals with at least one level of performance above a retention standard.

(b) REPORTING REQUIREMENT.—Not less than 60 days before the date of the implementation of authorities authorized under this section, the Director of the Federal Bureau of Investigation shall submit an operating plan describing the Director’s intended use of the authorities under this section to the appropriate committees of Congress.

(c) ANNUAL REPORT.—Not later than December 31, 2005, and annually thereafter for 4 years, the Director of the Federal Bureau of Investigation shall submit an annual report of the use of the permanent authorities provided under this section during the preceding fiscal year to the appropriate committees of Congress.

(d) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term ‘appropriate committees of Congress’ means ‘(sic)—

(1) the Committees on Appropriations, Homeland Security and Governmental Affairs, and the Judiciary and the Select Committee on Intelligence of the Senate; and

(2) the Committees on Appropriations, Government Reform [now Committee on Oversight and Government Reform], and the Judiciary and the Permanent Select Committee on Intelligence of the House of Representatives.’’

WEBSTER COMMISSION IMPLEMENTATION REPORT


‘‘(a) IMPLEMENTATION PLAN.—Not later than 6 months after the date of enactment of this Act (Nov. 2, 2002), the Director of the Federal Bureau of Investigation shall submit to the appropriate Committees of Congress a plan for implementation of the recommendations of the Commission for Review of FBI Security Programs, dated March 31, 2002, including the costs of such implementation.

‘‘(b) ANNUAL REPORTS.—On the date that is 1 year after the submission of the plan described in subsection (a), and for 2 years thereafter, the Director of the Federal Bureau of Investigation shall submit to the appropriate Committees of Congress a report on the implementation of such plan.

‘‘(c) APPROPRIATE COMMITTEES OF CONGRESS.—For purposes of this section, the term ‘appropriate Committees of Congress’ means—

(1) the Committees on the Judiciary of the Senate and the House of Representatives; and

(2) the Committees on Appropriations of the Senate and the House of Representatives.

‘‘(d) STAFF.—The element of the Federal Bureau of Investigation known as of the date of the enactment of this Act (Dec. 17, 2004) as the Office of Intelligence shall hereby be redesignated as the Directorate of Intelligence of the Federal Bureau of Investigation.

‘‘(e) REPORT.—The Attorney General shall report to the Committees on the Judiciary of the House of Representatives and the Senate on—

(1) the number of translators employed by the FBI and other components of the Department of Justice;

(2) any legal or practical impediments to using translators employed by other Federal, State, or local agencies, on a full, part-time, or shared basis; and

(3) the needs of the FBI for specific translation services in certain languages, and recommendations for meeting those needs.’’

EMPLOYMENT OF TRANSLATORS BY THE FEDERAL BUREAU OF INVESTIGATION


‘‘(a) AUTHORITY.—The Director of the Federal Bureau of Investigation is authorized to expedite the employment of personnel as translators to support counter-terrorism investigations and operations without regard to applicable Federal personnel requirements and limitations.

‘‘(b) SECURITY REQUIREMENTS.—The Director of the Federal Bureau of Investigation shall establish such security requirements as are necessary for the personnel employed as translators under subsection (a).

‘‘(c) REPORT.—The Attorney General shall report to the Committees on the Judiciary of the House of Representatives and the Senate on—

(1) the number of translators employed by the FBI and other components of the Department of Justice;

(2) any legal or practical impediments to using translators employed by other Federal, State, or local agencies, on a full, part-time, or shared basis; and

(3) the needs of the FBI for specific translation services in certain languages, and recommendations for meeting those needs.’’

FBI CRITICAL SKILLS SCHOLARSHIP PROGRAM


‘‘(a) STUDY.—The Director of the Federal Bureau of Investigation shall conduct a study relative to the establishment of an undergraduate training program with respect to employees of the Federal Bureau of Investigation that is similar in purpose, conditions, content, and administration to undergraduate training programs administered by the Central Intelligence Agency (under section 8 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403)), the National Security Agency (under section 5 of the National Security Agency Act of 1970 (50 U.S.C. 502)), and the Defense Intelligence Agency (under section 1018 [now 1628] of title 10, United States Code).

‘‘(b) IMPLEMENTATION.—Any program proposed under subsection (a) may be implemented only after the Department of Justice and the Office of Management and

(continued)
Budget review and approve the implementation of such program.

“(c) AVAILABILITY OF FUNDS.—Any payment made by the Director of the Federal Bureau of Investigation to carry out any program proposed to be established under subsection (a) may be made in any fiscal year only to the extent that appropriated funds are available for that purpose.”

**CONFIRMATION AND COMPENSATION OF DIRECTOR; TERM OF SERVICE**


“(a) Effective as of the day following the date on which the present incumbent in the office of Director ceases to serve as such, the Director of the Federal Bureau of Investigation shall be appointed by the President, by and with the advice and consent of the Senate, and shall receive compensation at the rate prescribed for level II of the Federal Executive Salary Schedule (section 5333 of Title 5, Government Organization and Employees).

“(b) Effective with respect to any individual appointment by the President, by and with the advice and consent of the Senate, the second sentence of subsection (b) shall not apply. The provisions of subsections (a) to (c) of section 5333 of title 5, United States Code, shall apply to any individual appointed under this section.

“(c)(1) Effective on the date of enactment of this subsection [July 26, 2011], a new term of service for the office of Director of the Federal Bureau of Investigation shall be created, which shall begin on or after August 3, 2011, and continue until September 4, 2013. Notwithstanding the second sentence of subsection (b) of this section, the incumbent Director of the Federal Bureau of Investigation on the date of enactment of this subsection shall be eligible to be appointed to the new term of service provided for by this subsection, by and with the advice and consent of the Senate, and only for that new term of service. Nothing in this subsection shall prevent the President, by and with the advice of the Senate, from appointing an individual, other than the incumbent Director of the Federal Bureau of Investigation, to a 10-year term of service subject to the provisions of subsection (b) after the date of enactment of this subsection.

“(2) The individual who is the incumbent in the office of the Director of the Federal Bureau of Investigation on the date of enactment of this subsection may not serve as Director after September 4, 2013.

“(3) With regard to the individual who is the incumbent in the office of the Director of the Federal Bureau of Investigation on the date of enactment of this subsection, the second sentence of subsection (b) shall not apply.”

§533. Investigative and other officials; appointment

The Attorney General may appoint officials—

(1) to detect and prosecute crimes against the United States;

(2) to assist in the protection of the person of the President; and

(3) to assist in the protection of the person of the Attorney General.

This section does not limit the authority of departments and agencies to investigate crimes against the United States when investigative jurisdiction has been assigned by law to such departments and agencies.


**HISTORICAL AND REVISION NOTES**

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<tr>
<th>Derivation</th>
<th>U.S. Code</th>
<th>Revised Statutes and Statutes at Large</th>
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</thead>
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<td>5 U.S.C. 299, 300</td>
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<td>28 U.S.C. 302; words of 1st par. under “Federal Bureau of Investigation”, less applicability to acquisition etc. of identification and other records, 78 Stat. 571.</td>
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The section is from the Department of Justice Appropriation Act, 1966. Similar provisions were contained in each appropriation Act for the Department running back to 1921, which Acts are identified in a note under sections 299 and 300 of title 5, U.S.C. 1964 ed.

The section is reorganized for clarity. The authority to appoint officials for the cited purposes is implied. The word “may” is substituted for “is authorized to”. The words “who shall be vested with the authority necessary for the execution of such duties” are omitted as unnecessary as the appointment of the officials for the purposes indicated carries with it the authority necessary to perform their duties.

In paragraph (2), the words “to assist in” are added for clarity and in recognition of the provisions of 18 U.S.C. 3056 which vest in the United States Secret Service the responsibility for the protection of the person of the President. As so revised, this paragraph will assure that the Secret Service will continue to have primary responsibility for the protection of the President but at the same time will permit the Federal Bureau of Investigation to render assistance in such protection.

The last sentence is added because in various areas the authority to investigate certain criminal offenses has been specifically assigned by statute to departments and agencies other than the Federal Bureau of Investigation. For example, the enforcement of the internal revenue laws is specifically a function of the Secretary of the Treasury and he is authorized to employ such number of persons as he deems proper for the enforcement of such laws (26 U.S.C. 7801, 7803). The Secretary of the Treasury is specifically authorized to direct the collection of imports and to appoint such employees for that purpose as he deems necessary (19 U.S.C. 3, 6). The U.S. Coast Guard is specifically authorized to enforce or assist in enforcing the Federal laws upon the high seas and waters subject to the jurisdiction of the United States (14 U.S.C. 2). Subject to the direction of the Secretary of the Treasury, the Secret Service is specifically authorized to detect and arrest persons committing offenses against the laws of the United States relating to coins and obligations and securities of the United States and foreign governments (18 U.S.C. 3956).

**AMENDMENTS**


FBI INVESTIGATIONS OF ESPIONAGE BY PERSONS EMPLOYED OR ASSIGNED TO UNITED STATES DIPLOMATIC MISSIONS ABRROAD

Pub. L. 101–193, title VI, §603, Nov. 30, 1989, 103 Stat. 1710, provided that: “Subject to the authority of the Attorney General, the FBI shall supervise the conduct of all investigations of violations of the espionage laws of the United States by persons employed by or assigned to United States diplomatic missions abroad. All departments and agencies shall report immediately to

1 So in original. The word “and” probably should not appear.

2 So in original. The period probably should be “;” and.”
the FBI any information concerning such a violation. All departments and agencies shall provide appropriate assistance to the FBI in the conduct of such investigations, nothing in this provision shall be construed as establishing a defense to any criminal, civil, or administrative action.'"

UNCOVERED INVESTIGATIVE OPERATIONS CONDUCTED BY FEDERAL BUREAU OF INVESTIGATION OR DRUG ENFORCEMENT ADMINISTRATION; ANNUAL REPORT TO CONGRESS; FINANCIAL AUDIT

Pub. L. 112–55, div. B, title II, §207, Nov. 18, 2011, 125 Stat. 619, provided that: ‘‘Notwithstanding any other provision of law, Public Law 102–395 section 102(b) [set out below] shall extend to the Bureau of Alcohol, Tobacco, Firearms and Explosives in the conduct of undercover investigative operations and shall apply without fiscal year limitation with respect to any undercover investigative operation by the Bureau of Alcohol, Tobacco, Firearms, and Explosives that is necessary for the detection and prosecution of crimes against the United States.’’

Similar provisions were contained in the following prior appropriation acts:


(b) provided to an agent by an individual cooperating with the Government in an investigation, who received the proceeds or money from or at the direction of a subject of the investigation, may be used by the director of the Federal Bureau of Investigation or the director of the Drug Enforcement Administration for the purpose of purchasing property, buildings, and other facilities, and for leasing space, within the United States, the District of Columbia, and the territories and possessions of the United States, without regard to section 1341 of title 21 of the United States Code, section 7372(a) of the United States Code [(former) 41 U.S.C. 6301(a)], section 305 of the Act of June 30, 1949 (63 Stat. 396; [former] 41 U.S.C. 250) [(now 41 U.S.C. 4501 et seq.), the third undesignated paragraph under the heading of ‘Miscellaneous’ of the Act of March 3, 1877 (19 Stat. 370; 40 U.S.C. 54 [(now 40 U.S.C. 8141)], section 3731 of the Revised Statutes [(former) 41 U.S.C. 6306(a)], and subsections (a) and (c) of section 304 of the Federal Property and Administrative Services Act of 1949 (63 Stat. 395; [former] 41 U.S.C. 254(a) [(now 41 U.S.C. 3301) and (c) [(repealed)].

(b) sums authorized to be appropriated for the Federal Bureau of Investigation and for the Drug Enforcement Administration may be used to establish or to acquire proprietary corporations or business entities as part of an undercover investigative operation, and to operate such corporations or business entities on a commercial basis, without regard to section 9102 of title 31 of the United States Code.

(c) sums authorized to be appropriated for the Federal Bureau of Investigation and for the Drug Enforcement Administration for fiscal year 1996, and the proceeds from such undercover operation, may be deposited in banks or other financial institutions designated by the Director of the Federal Bureau of Investigation or the Drug Enforcement Administration, as the case may be, for the conduct of such undercover operations, if designated by the Attorney General, a member of such Review Committee, that any action authorized by subparagraph (A), (B), (C), or (D) is necessary for the conduct of such undercover operation. If the undercover operation is designed to collect foreign intelligence or counterintelligence, the certification that any action authorized by subparagraph (A), (B), (C), or (D) is necessary for the conduct of such undercover operation shall be by the Director of the Federal Bureau of Investigation (or a designee of the Director who is in a position not lower than Deputy Assistant Director in the National Security Branch or a similar successor position) and the Attorney General (or a designee of the Attorney General who is in the National Security Division in a position not lower than Deputy Assistant Attorney General or a similar successor position). Such certification shall continue in effect for the duration of such undercover operation, without regard to fiscal years.

(2) Notwithstanding paragraph (1), it shall not be necessary to obtain such certification for an undercover operation in order that proceeds or other money—

(A) received by an undercover agent from or at the direction of a subject of an investigation, or

(b) provided to an agent by an individual cooperating with the Government in an investigation, who received the proceeds or money from or at the direction of a subject of the investigation, may be used as a subject of the investigation directs without regard to section 3302 of title 31 of the United States Code: Provided, That the Director of the Federal Bureau of Investigation or the Administrator of the Drug Enforcement Administration, or their designees, in advance or as soon as practicable thereafter, make a written determination that such a use would further the investigation: And provided further, That the financial audit requirements of paragraphs (5) and (6) shall apply in each investigation where such a determination has been made.
“(2) For the purposes of paragraph (1), ‘undercover operation’ means any undercover operation of the Federal Bureau of Investigation, other than a foreign counterintelligence undercover operation—

(A) in which the gross receipts exceed $50,000, and

(B) which is exempted from section 3617 of the Revised Statutes (31 U.S.C. 484) [31 U.S.C. 3302(b)] or section 304(a) of the Government Corporation Control Act (31 U.S.C. 690(a)) [31 U.S.C. 9102].”

§ 534. Acquisition, preservation, and exchange of identification records and information; appointment of officials

(a) The Attorney General shall—

(1) acquire, collect, classify, and preserve identification, criminal identification, crime, and other records;

(2) acquire, collect, classify, and preserve any information which would assist in the identification of any deceased individual who has not been identified after the discovery of such deceased individual;

(3) acquire, collect, classify, and preserve any information which would assist in the location of any missing person (including an emancipated person as defined by the laws of the place of residence of such person) and provide confirmation as to any entry for such a person to the parent, legal guardian, or next of kin of that person (and the Attorney General may acquire, collect, classify, and preserve such information from such parent, guardian, or next of kin); and

(4) exchange such records and information with, and for the official use of, authorized officials of the Federal Government, including the United States Sentencing Commission, the States, including State sentencing commis-
sions, Indian tribes, cities, and penal and other institutions.

(b) The exchange of records and information authorized by subsection (a)(4) of this section is subject to cancellation if dissemination is made outside the receiving departments or related agencies.

(c) The Attorney General may appoint officials to perform the functions authorized by this section.

(d) INDIAN LAW ENFORCEMENT AGENCIES.—The Attorney General shall permit tribal and Bureau of Indian Affairs law enforcement agencies—

(1) to access and enter information into Federal criminal information databases; and

(2) to obtain information from the databases.

(e) For purposes of this section, the term “other institutions” includes—

(1) railroad police departments which perform the administration of criminal justice and have arrest powers pursuant to a State statute, which allocate a substantial part of their annual budget to the administration of criminal justice, and which meet training requirements established by law or ordinance for law enforcement officers; and

(2) police departments of private colleges or universities which perform the administration of criminal justice and have arrest powers pursuant to a State statute, which allocate a substantial part of their annual budget to the administration of criminal justice, and which meet training requirements established by law or ordinance for law enforcement officers.

(f)(1) Information from national crime information databases consisting of identification records, criminal history records, protection orders, and wanted person records may be disseminated to civil or criminal courts for use in domestic violence or stalking cases. Nothing in this subsection shall be construed to permit access to such records for any other purpose.

(2) Federal, tribal, and State criminal justice agencies authorized to enter information into criminal information databases may include—

(A) arrests, convictions, and arrest warrants for stalking or domestic violence or for violations of protection orders for the protection of parties from stalking or domestic violence; and

(B) protection orders for the protection of persons from stalking or domestic violence, provided such orders are subject to periodic verification.

(3) As used in this subsection—

(A) the term “national crime information databases” means the National Crime Information Center and its incorporated criminal history databases, including the Interstate Identification Index; and

(B) the term “protection order” includes—

(i) any injunction, restraining order, or any other order issued by a civil or criminal court for the purpose of preventing violent or threatening acts or harassment against, sexual violence or contact or communication with or physical proximity to, another person, including any temporary or final orders issued by civil or criminal courts whether obtained by filing an independent action or as a pendente lite order in another proceeding so long as any civil order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection; and

(ii) any support, child custody or visitation provisions, orders, remedies, or relief issued as part of a protection order, restraining order, or stay away injunction pursuant to State, tribal, territorial, or local law authorizing the issuance of protection orders, restraining orders, or injunctions for the protection of victims of domestic violence, dating violence, sexual assault, or stalking.


HISTORICAL AND REVISION NOTES

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<tr>
<th>Derivation</th>
<th>U.S. Code</th>
<th>Revised Statutes and Statutes at Large</th>
</tr>
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The sections are combined and reorganized for clarity. Former section 300 of title 5 was from the Department of Justice Appropriation Act, 1965. Similar provisions were contained in each appropriation Act for the Department of Justice running back to 1921, which Acts are identified in a note under former section 340 of title 5, U.S.C. 1964 ed.

In subsection (a), the word “shall” is substituted for “has the duty” as a more direct expression. The function of acquiring, collecting, classifying, etc., referred to in former section 340 of title 5 was transferred to the Attorney General by 1950 Reorg., Plan No. 2, §1, eff. May 24, 1950, 64 Stat. 1261, which is codified in section 509 of this title. Accordingly, the first 29 words and last 30 words of former section 340 are omitted as unnecessary.

In subsection (c), the authority to appoint officials for the cited purposes is implied.

AMENDMENTS


Subsec. (d). Pub. L. 111–211, §233(a)(2), added subsec. (d) and struck out former subsec. (d). Prior to amendment, text read as follows: “The Attorney General shall permit Indian law enforcement agencies, in cases of domestic violence, dating violence, sexual assault, and stalking, to enter information into Federal criminal information databases and to obtain information from the databases.”

Subsec. (e). Pub. L. 111–211, §233(a)(3), which directed redesignation of “the second subsection” as (f),
could not be executed because only one subsec. (e) appeared subsequent to amendment by Pub. L. 109–248. See 2006 Amendment note below.


Subsec. (e). Pub. L. 109–248 redesignated subsec. (e), relating to information from national crime information databases, as (f).

Subsec. (e)(3)(B). Pub. L. 109–162, § 1118, added subpar. (B) and struck out former subpar. (B) which read as follows: “the term ‘protection order’ includes an injunction or any other order issued for the purpose of preventing violent or threatening acts or harassment against, or contact or communication with or physical proximity to, another person, including temporary and final orders issued by civil or criminal courts (other than support or child custody orders) whether obtained by filing an independent action or as a pendente lite order in another proceeding so long as any civil order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection.”

Subsec. (f). Pub. L. 109–248 redesignated subsec. (e), relating to information from national crime information databases, as (f).


Subsec. (a)(4). Pub. L. 107–273, § 11094, added par. (4) and struck out former par. (4) which read as follows: “exchange such records and information with, and for the official use of, authorized officials of the Federal Government, the States, cities, and penal and other institutions.”


Subsec. (a). Pub. L. 97–292, § 2(a), added section (a), redesignating section (b) as subsection (c) and redesignating former par. (2) as (a) and (4), and substituted “exchange such records and information” for “exchange these records” in par. (2).

Subsec. (b). Pub. L. 97–292, § 2(b), substituted “exchange of records and information authorized by subsection (a)” for “exchange of records authorized by subsection (a)(2)”.

REGULATIONS
Pub. L. 103–322, title IV, § 4061(b), Sept. 3, 1994, 108 Stat. 1951, provided that: “The Attorney General may make rules to carry out the subsection added to section 534 of title 28, United States Code, by subsection (a), after consultation with the officials charged with managing the National Crime Information Center and the Criminal Justice Information Services Advisory Policy Board.”

ACCESS TO NATIONAL CRIME INFORMATION DATABASES
Pub. L. 111–211, title II, § 233(b), July 29, 2010, 124 Stat. 2279, provided that: “(1) IN GENERAL.—The Attorney General shall ensure that tribal law enforcement officials that meet applicable Federal or State requirements be permitted access to national crime information databases.

(2) SANCTIONS.—For purpose of sanctions for noncompliance with requirements of, or misuse of, national crime information databases and information obtained from those databases, the Secretary of the Department of Justice, or the head of a Federal or State agency or official shall be treated as Federal law enforcement agency or official, in accordance with Federal law, to the extent necessary to ensure compliance with Federal law.”

(3) NCIC.—Each tribal justice official serving an Indian tribe with criminal jurisdiction over Indian country shall be considered to be an authorized law enforcement officer for purposes of access to the National Crime Information Center of the Federal Bureau of Investigation.

(4) The definition of “Indian tribe” and “Indian country” used in section 223(b) of Pub. L. 111–211, set out above, see section 233(a) of Pub. L. 111–211, set out as a note under section 2801 of Title 25, Indians.

ADDITIONAL REPORTING ON CRIME

(1) TRAFFICKING OFFENSE CLASSIFICATION.—The Director of the Federal Bureau of Investigation shall—

(A) the offense of human trafficking as a Part I crime in the Uniform Crime Reports;

(B) to the extent feasible, establish subcategories for State sex crimes that involve—

(A) a person who is younger than 18 years of age;

(B) the use of force, fraud or coercion;

(C) neither of the elements described in subparagraphs (A) and (B); and

(D) classify the offense of human trafficking as a Group A offense for purpose of the National Incident-Based Reporting System.

(2) ADDITIONAL INFORMATION.—The Director of the Federal Bureau of Investigation shall revise the Uniform Crime Reporting System probably should be “Program” and the National Incident-Based Reporting System to distinguish between reports of—

(A) incidents of assisting or promoting prostitution, which shall include crimes committed by persons who—

(A) do not directly engage in commercial sex acts; and

(B) direct, manage, or profit from such acts, such as State pimping and pandering crimes;

(B) incidents of purchasing prostitution, which shall include crimes committed by persons who purchase or attempt to purchase or trade anything of value for commercial sex acts; and

(C) incidents of prostitution, which shall include crimes committed by persons providing or attempting to provide commercial sex acts.”

TRIBAL REGISTRY
Pub. L. 110–162, title IX, § 905(b), Jan. 5, 2006, 119 Stat. 3080, provided that:

(1) ESTABLISHMENT.—The Attorney General shall contract with any interested Indian tribe, tribal organization, or tribal nonprofit organization to develop and maintain—

(A) a national tribal sex offender registry; and

(B) a tribal protection order registry containing civil and criminal orders of protection issued by Indian tribes and participating jurisdictions.

(2) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section [amending this section] $1,000,000, for each of fiscal years 2007 through 2011, to remain available until expended.”

NATIONAL GANG INTELLIGENCE CENTER

(A) ESTABLISHMENT.—The Attorney General shall establish a National Gang Intelligence Center and gang information database to be housed at and administered by the Federal Bureau of Investigation to collect, analyze, and disseminate gang activity information from—

(1) the Federal Bureau of Investigation;

(2) the Bureau of Alcohol, Tobacco, Firearms, and Explosives;

(3) the Drug Enforcement Administration; and

(4) the Bureau of Prisons;

(5) the United States Marshals Service;
§ 534

TITLE 28—JUDICIARY AND JUDICIAL PROCEDURE

Page 210

“(6) the Directorate of Border and Transportation Security of the Department of Homeland Security; “(7) the Department of Housing and Urban Development; “(8) the Office of Justice Services of the Bureau of Indian Affairs; “(9) tribal, State, and local law enforcement; “(10) Federal, tribal, State, and local prosecutors; “(11) Federal, tribal, State, and local probation and parole offices; “(12) Federal, tribal, State, and local prisons and jails; “(13) any other entity as appropriate.

(b) INFORMATION.—The Center established under subsection (a) shall make available the information referred to in subsection (a) to— “(1) Federal, tribal, State, and local law enforcement agencies; “(2) Federal, tribal, State, and local corrections agencies and penal institutions; “(3) Federal, tribal, State, and local prosecutorial agencies; and “(4) any other entity as appropriate.

(c) ANNUAL REPORT.—The Center established under subsection (a) shall annually submit to Congress a report on gang activity.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $10,000,000 for fiscal year 2006 and for each fiscal year thereafter.”

REVIEWS OF CRIMINAL RECORDS OF APPLICANTS FOR PRIVATE SECURITY OFFICER EMPLOYMENT


(b) FINDINGS.—Congress finds that— “(1) employment of private security officers in the United States is growing rapidly; “(2) private security officers function as an adjunct to, but not a replacement for, public law enforcement by helping to reduce and prevent crime; “(3) such private security officers protect individuals, property, and proprietary information, and provide protection to such diverse operations as banks, hospitals, research and development centers, manufacturing facilities, defense and aerospace contractors, high technology businesses, nuclear power plants, chemical companies, oil and gas refineries, airports, communication facilities and operations, office complexes, schools, residential properties, apartment complexes, gated communities, and others; “(4) sworn law enforcement officers provide significant services to the citizens of the United States in its public areas, and are supplemented by private security officers; “(5) the threat of additional terrorist attacks requires cooperation between public and private sectors and demands professional, reliable, and responsible security officers for the protection of people, facilities, and institutions; “(6) the trend in the Nation toward growth in such security services has accelerated rapidly; “(7) such growth makes available more public sector law enforcement officers to combat serious and violent crimes, including terrorism; “(8) the American public deserves the employment of qualified, well-trained private security personnel (as an adjunct to sworn law enforcement officers; and “(9) private security officers and applicants for private security officer positions should be thoroughly screened and trained.

(c) DEFINITIONS.—In this section:

(1) EMPLOYEE.—The term ‘employee’ includes both a current employee and an applicant for employment as a private security officer; “(2) AUTHORIZED EMPLOYER.—The term ‘authorized employer’ means any person that— “(A) employs private security officers; and “(B) is authorized by regulations promulgated by the Attorney General to request a criminal history record information search of an employee through a State identification bureau pursuant to this section.

(3) PRIVATE SECURITY OFFICER.—The term ‘private security officer’ means— “(A) an individual other than an employee of a Federal, State, or local government, whose primary duty is to perform security services, full or part time, for consideration, whether armed or unarmed and in uniform or plain clothes (except for services excluded from coverage under this Act [this section] if the Attorney General determines by regulation that such exclusion would serve the public interest); but “(B) does not include— “(i) employees whose duties are primarily internal audit or credit functions; “(ii) employees of electronic security system companies acting as technicians or monitors; or “(iii) employees primarily involved in the secure movement of prisoners.

(4) SECURITY SERVICES.—The term ‘security services’ means acts to protect people or property as defined by regulations promulgated by the Attorney General.

(5) STATE IDENTIFICATION BUREAU.—The term ‘State identification bureau’ means the State entity designated by the Attorney General for the submission and receipt of criminal history record information.

(d) CRIMINAL HISTORY RECORD INFORMATION SEARCH.— “(1) IN GENERAL.— “(A) SUBMISSION OF FINGERPRINTS.—An authorized employer may submit to the State identification bureau of a participating State, fingerprints or other means of positive identification, as determined by the Attorney General, of an employee of such employer for purposes of a criminal history record information search pursuant to this Act [this section]. “(B) EMPLOYER RIGHTS.— “(I) PERMISSION.—An authorized employer shall obtain written consent from an employee to submit to the State identification bureau of the participating State the request to search the criminal history record information of the employee under this Act [this section].

(ii) ACCESS.—An authorized employer shall provide to the employee confidential access to any information requested to the employee received by the authorized employer pursuant to this Act [this section].

(iii) PROVIDING INFORMATION TO THE STATE IDENTIFICATION BUREAU.—Upon receipt of a request for a criminal history record information search from an authorized employer pursuant to this Act [this section], submitted through the State identification bureau of a participating State, the Attorney General shall— “(I) search the appropriate records of the Criminal Justice Information Services Division of the Federal Bureau of Investigation; and “(ii) promptly provide any resulting identification and criminal history record information to the submitting State identification bureau requesting the information.

(1) USE OF INFORMATION.— “(1) IN GENERAL.—Upon receipt of the criminal history record information from the Attorney General by the State identification bureau, the information shall be used only as provided in clause (ii). “(ii) TERMS.—In the case of— “(I) a participating State that has no State standards for qualification to be a private security officer, the State shall notify an authorized
employer as to the fact of whether an employee has been—

“(aa) convicted of a felony, an offense involving dishonesty or a false statement if the conviction occurred during the previous 10 years, or an offense involving the use or attempted use of physical force against the person of another if the conviction occurred during the previous 10 years; or

“(bb) charged with a criminal felony for which there has been no resolution during the preceding 365 days; or

“(II) a participating State that has State standards for qualification to be a private security officer, the State shall use the information received pursuant to this Act [this section] in applying the State standards and shall only notify the employer of the results of the application of the State standards.

“(E) FREQUENCY OF REQUESTS.—An authorized employer may request a criminal history record information search for an employee only once every 12 months of continuous employment by that employee unless the authorized employer has good cause to submit additional requests.

“(2) REGULATIONS.—Not later than 180 days after the date of enactment of this Act [Dec. 17, 2004], the Attorney General shall issue such final or interim final regulations as may be necessary to carry out this Act [this section], including—

“(A) measures relating to the security, confidentiality, accuracy, use, submission, dissemination, destruction of information and audits, and record keeping;

“(B) standards for qualification as an authorized employer; and

“(C) the imposition of reasonable fees necessary for conducting the background checks.

“(3) CRIMINAL PENALTIES FOR USE OF INFORMATION.—Whoever knowingly and intentionally uses any information obtained pursuant to this Act [this section] other than for the purpose of determining the suitability of an individual for employment as a private security officer shall be fined under title 18, United States Code, or imprisoned for not more than 2 years, or both.

“(4) USER FEES.—

“(A) IN GENERAL.—The Director of the Federal Bureau of Investigation may—

“(i) collect fees to process background checks provided for by this Act [this section]; and

“(ii) establish such fees at a level to include an additional amount to defray expenses for the automated fingerprint identification and criminal justice information services and associated costs.

“(B) LIMITATIONS.—Any fee collected under this subsection—

“(i) shall, consistent with Public Law 101–515 [see Tables for classification] and Public Law 104–99 (see Tables for classification), be credited to the appropriation to be used for salaries and services described in such Public Laws and in sub-subparagraph (A); and

“(ii) shall be available for expenditure only to pay the costs of such activities and services; and

“(iii) shall remain available until expended.

“(C) STATE COSTS.—Nothing in this Act [this section] shall be construed as restricting the right of a State to assess a reasonable fee on an authorized employer for the costs of the State of administering this Act [this section].

“(D) STATE OPT OUT.—A State may decline to participate in the background check system authorized by this Act [this section] by enacting a law or issuing an order by the Governor (if consistent with State law) providing that the State is declining to participate pursuant to this subsection.”

CRIMINAL BACKGROUND CHECKS FOR APPLICANTS FOR EMPLOYMENT IN NURSING FACILITIES AND HOME HEALTH CARE AGENCIES


“(a)(1) A nursing facility or home health care agency may submit a request to the Attorney General to conduct a search and exchange of records described in subsection (b) regarding an applicant for employment if the employment position is involved in direct patient care.

“(2) A nursing facility or home health care agency requesting a search and exchange of records under this section shall submit to the Attorney General through the appropriate State agency or agency designated by the Attorney General a copy of an employment applicant’s fingerprints, a statement signed by the applicant authorizing the nursing facility or home health care agency to request the search and exchange of records, and any other identification information not more than 7 days (excluding Saturdays, Sundays, and legal public holidays under section 6103(a) of title 5, United States Code) after acquiring the fingerprints, signed statement, and information.

“(b) Pursuant to any submission that complies with the requirements of subsection (a), the Attorney General shall search the records of the Criminal Justice Information Services Division of the Federal Bureau of Investigation for any criminal history records corresponding to the fingerprints or other identification information submitted. The Attorney General shall provide any corresponding information resulting from the search to the appropriate State agency or agency designated by the Attorney General to receive such information.

“(c) Information regarding an applicant for employment in a nursing facility or home health care agency obtained pursuant to this section may be used only by the facility or agency requesting the information and only for the purpose of determining the suitability of the applicant for employment by the facility or agency in a position involved in direct patient care.

“(d) The Attorney General may charge a reasonable fee, not to exceed $50 per request, to any nursing facility or home health care agency requesting a search and exchange of records pursuant to this section.

“(e) Not later than 2 years after the date of enactment of this Act [Oct. 21, 1998], the Attorney General shall submit a report to Congress on the number of requests for searches and exchanges of records made under this section by nursing facilities and home health care agencies and the disposition of such requests.

“(f) Whoever knowingly uses any information obtained pursuant to this section for a purpose other than as authorized under subsection (c) shall be fined in accordance with title 18, United States Code, imprisoned for not more than 2 years, or both.

“(g) A nursing facility or home health care agency that, in denying employment for an applicant, reasonably relies upon information provided by the Attorney General pursuant to this section shall not be liable in any action brought by the applicant based on the employment determination resulting from the incompleteness or inaccuracy of the information.

“(h) The Attorney General may promulgate such regulations as are necessary to carry out this section, including regulations regarding the security, confidentiality, accuracy, use, destruction, and dissemination of information, audits and recordkeeping, the imposition of fees, and any necessary modifications to the definitions contained in subsection (i).

“(i) In this section:

“(1) The term ‘home health care agency’ means an agency that provides home health care or personal care services on a visiting basis in a place of residence.
Fourth Congress, as passed by the House of Representatives on Dec. 6, 1995, and as enacted into law by Pub. L. 104-91, title I, §101(a), Jan. 6, 1996, 110 Stat. 11, as amended by Pub. L. 104-91, title II, §211, Jan. 28, 1996, 110 Stat. 37, provided in part that: "for fiscal year 1991 and hereafter the Director of the Federal Bureau of Investigation may establish and collect fees to process fingerprint identification records and name checks for non-criminal justice, non-law enforcement employment and licensing purposes and for certain employees of private sector contractors with classified Government contracts, and notwithstanding the provisions of 31 U.S.C. 3302, credit such fees to this appropriation to be used for salaries and other expenses incurred in providing these services, and that the Director of the Federal Bureau of Investigation may establish such fees at a level to include an additional amount to establish a fund to remain available until expended to defray expenses for the automation of fingerprint identification and criminal justice information services and associated costs".

**HATE CRIME STATISTICS**


"(b)(1) Under the authority of section 534 of title 28, United States Code, the Attorney General shall acquire data, for each calendar year, about crimes that manifest evidence of prejudice based on race, gender and gender identity, religion, disability, sexual orientation, or ethnicity, including where appropriate the crimes of murder, non-negligent manslaughter; forcible rape; aggravated assault, simple assault, intimidation; arson; and destruction, damage or vandalism of property.

"(2) The Attorney General shall establish guidelines for the collection of such data including the necessary evidence and criteria that must be present for a finding of manifest prejudice and procedures for carrying out the purposes of this section.

"(3) Nothing in this section creates a cause of action or a right to bring an action, including an action based on discrimination due to sexual orientation. As used in this section, the term 'sexual orientation' means consensual homosexuality or heterosexuality. This subsection does not limit any existing cause of action or right to bring an action, including any action under the Administrative Procedure Act [5 U.S.C. 551 et seq., 701 et seq.] or the All Writs Act [see 28 U.S.C. 1651].

"(4) Data acquired under this section shall be used only for research or statistical purposes and may not contain any information that may reveal the identity of an individual victim of a crime.

"(5) The Attorney General shall publish an annual summary of the data acquired under this section, including data about crimes committed by, and crimes directed against, juveniles.

"(c) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section through fiscal year 2002.

"SEC. 2. (a) Congress finds that—

"(1) the American family life is the foundation of American Society.

"(2) Federal policy should encourage the well-being, financial security, and health of the American family.

"(3) schools should not de-emphasize the critical value of American family life.

"(d) Nothing in this Act shall be construed, nor shall any funds appropriated to carry out the purpose of the Act be used, to promote or encourage homosexuality.''

**UNIFORM FEDERAL CRIME REPORTING ACT OF 1988**

Section 7332 of Pub. L. 100-690 provided that: "(a) SHORT TITLE.—This section may be cited as the 'Uniform Federal Crime Reporting Act of 1988'.

**FBI FERS TO PROCESS FINGERPRINT IDENTIFICATION RECORDS AND NAME CHECKS**

Pub. L. 101-515, title II, Nov. 5, 1990, 104 Stat. 2112, as amended by section 113 of H.R. 2076, One Hundred Fourth Congress, as passed by the House of Representatives on Dec. 6, 1995, and as enacted into law by Pub. L. 104-91, title I, §101(a), Jan. 6, 1996, 110 Stat. 11, as amended by Pub. L. 104-91, title II, §211, Jan. 28, 1996, 110 Stat. 37, provided in part that: "for fiscal year 1991 and hereafter the Director of the Federal Bureau of Investigation shall submit a report to the Committees on the Judiciary of the Senate and House of Representatives that details the progress that has been made in implementing NCIC 2000 and a complete justification for the funds requested in the following fiscal year for NCIC 2000.''

**SEC. 614. REPORT.**

"By February 1 of each fiscal year for which funds for NCIC 2000 are requested, the Director of the Federal Bureau of Investigation shall submit a report to the Committees on the Judiciary of the Senate and House of Representatives that details the progress that has been made in implementing NCIC 2000 and a complete justification for the funds requested in the following fiscal year for NCIC 2000.''

**National Crime Information Center Project 2000**

Pub. L. 101-647, title VI, subtitle B, Nov. 29, 1990, 104 Stat. 4823, provided that:

**SEC. 611. SHORT TITLE.**

"This section [subtitle] may be cited as the 'National Law Enforcement Cooperation Act of 1990'.

**SEC. 612. FINDINGS.**

"The Congress finds that—

"(1) cooperation among Federal, State and local law enforcement agencies is critical to an effective national response to the problems of violent crime and drug trafficking in the United States;

"(2) the National Crime Information Center, which links more than 16,000 Federal, State and local law enforcement agencies, is the single most important avenue of cooperation among law enforcement agencies;

"(3) major improvements to the National Crime Information Center are needed because the current system is more than twenty years old; carries much greater volumes of enforcement information; and at this time is unable to incorporate technological advances that would significantly improve its performance; and

"(4) the Federal Bureau of Investigation, working with State and local law enforcement agencies and private organizations, has developed a promising plan, 'NCIC 2000', to make the necessary upgrades to the National Crime Information Center that should meet the needs of United States law enforcement agencies into the next century.

**SEC. 613. AUTHORIZATION OF APPROPRIATIONS.**

"There are authorized to be appropriated the following sums to implement the 'NCIC 2000' project:

"(1) $17,000,000 for fiscal year 1991;

"(2) $25,000,000 for fiscal year 1992;

"(3) $22,000,000 for fiscal year 1993;

"(4) $9,000,000 for fiscal year 1994; and

"(5) such sums as may be necessary for fiscal year 1995.

**SEC. 614. REPORT.**

"By February 1 of each fiscal year for which funds for NCIC 2000 are requested, the Director of the Federal Bureau of Investigation shall submit a report to the Committees on the Judiciary of the Senate and House of Representatives that details the progress that has been made in implementing NCIC 2000 and a complete justification for the funds requested in the following fiscal year for NCIC 2000.'"
“(b) Definitions.—For purposes of this section, the term ‘Uniform Crime Reports’ means the reports authorized under section 534 of title 28, United States Code, and administered by the Federal Bureau of Investigation which compiles nationwide criminal statistics for use in law enforcement administration, operation, and management and to assess the nature and type of crime in the United States.

“(c) Establishment of System.—

“(1) In general.—The Attorney General shall acquire, collect, classify, and preserve national data on Federal criminal offenses as part of the Uniform Crime Reports.

“(2) Reporting by Federal agencies.—All departments and agencies within the Federal government (including the Department of Defense) which routinely investigate complaints of criminal activity, shall report details about crime within their respective jurisdiction to the Attorney General in a uniform manner and on a form prescribed by the Attorney General. The reporting required by this subsection shall be limited to the reporting of those crimes comprising the Uniform Crime Reports.

“(3) Distribution of data.—The Attorney General shall distribute data received pursuant to paragraph (2), in the form of annual Uniform Crime Reports for the United States, to the President, Members of the Congress, State governments, and officials of localities and penal and other institutions participating in the Uniform Crime Reports program.

“(d) Role of Federal Bureau of Investigation.—The Attorney General may designate the Federal Bureau of Investigation as the lead agency for purposes of performing the functions authorized by this section and may appoint or establish such advisory and oversight boards as may be necessary to assist the Bureau in ensuring uniformity, quality, and maximum use of the data collected.

“(e) Inclusion of offenses involving illegal drugs.—The Director of the Federal Bureau of Investigation is authorized to classify offenses involving illegal drugs and drug trafficking as a part I crime in the Uniform Crime Reports.

“(f) Authorization of appropriations.—There are authorized to be appropriated $350,000 for fiscal year 1989 and such sums as may be necessary to carry out the provisions of this section after fiscal year 1989.

“(g) Effective date.—The provisions of this section shall be effective on January 1, 1989.”

FAMILY AND DOMESTIC VIOLENCE; DATA COLLECTION AND REPORTING

Section 7609 of Pub. L. 102-690 provided that:

“(a) Family Violence Reporting.—Under the authority of section 534 of title 28, United States Code, the Attorney General shall require, and include in uniform crime reports, data that indicate—

“(1) the age of the victim; and

“(2) the relationship of the victim to the offender, for crimes of murder, aggravated assault, simple assault, rape, sexual offenses, and offenses against children.

“(b) National Crime Survey.—The Director of the Bureau of Justice Statistics, through the annual National Crime Survey, shall collect and publish data that more accurately measures the extent of domestic violence in America, especially the physical and sexual abuse of children and the elderly.

“(c) Authorization of Appropriations.—There are authorized to be appropriated in fiscal years 1989, 1990, 1991, and 1992, such sums as are necessary to carry out the purposes of this section.”

PARIMUTUEL LICENSING SIMPLIFICATION

Pub. L. 100-413, Aug. 22, 1988, 102 Stat. 1101, provided that:

“SECTION 1. SHORT TITLE.

“This Act may be cited as the ‘Parimutuel Licensing Simplification Act of 1988’.

“SEC. 2. SUBMISSION BY ASSOCIATION OF STATE REGULATORY OFFICIALS.

“(a) In general.—An association of State officials regulating parimutuel wagering, designated for the purpose of this section by the Attorney General, may submit fingerprints to the Attorney General on behalf of any applicant for State license to participate in parimutuel wagering. In response to such a submission, the Attorney General may, to the extent provided by law, exchange, for licensing and employment purposes, identification and criminal history records with the State governmental bodies to which such applicant has applied.

“(b) Definition.—As used in this section, the term ‘State’ means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

“SEC. 3. EFFECTIVE DATE.

“This Act shall take effect on July 1, 1989.”

Funds for Exchange of Identification Records

Pub. L. 92-544, title II, §201, Oct. 25, 1972, 86 Stat. 1115, provided that: “The funds provided for Salaries and Expenses, Federal Bureau of Investigation, may be used hereafter, in addition to those uses authorized thereunder, for the exchange of identification records with officials or federally chartered or insured banking institutions to promote or maintain the security of those institutions, and, if authorized by State statute and approved by the Attorney General, to officials of State and local governments for purposes of employment and licensing, any such exchange to be made only for the official use of any such official and subject to the same restrictions with respect to dissemination as that provided for under the aforementioned appropriation.”

§ 535. Investigation of crimes involving Government officers and employees; limitations

(a) The Attorney General and the Federal Bureau of Investigation may investigate any violation of Federal criminal law involving Government officers and employees—

(1) notwithstanding any other provision of law; and

(2) without limiting the authority to investigate any matter which is referred to them or on a department or agency of the Government.

(b) Any information, allegation, matter, or complaint witnessed, discovered, or received in a department or agency of the executive branch of the Government relating to violations of Federal criminal law involving Government officers and employees shall be expeditiously reported to the Attorney General by the head of the department or agency, or the witness, discoverer, or recipient, as appropriate, unless—

(1) the responsibility to perform an investigation with respect thereto is specifically assigned otherwise by another provision of law; or

(2) as to any department or agency of the Government, the Attorney General directs otherwise with respect to a specified class of information, allegation, or complaint.

(c) This section does not limit—

(1) the authority of the military departments to investigate persons or offenses over which the armed forces have jurisdiction under the Uniform Code of Military Justice (chapter 47 of title 10); or

(2) the primary authority of the Postmaster General to investigate postal offenses.

HISTORICAL AND REVISION NOTES

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The section is reorganized for clarity and continuity.
In subsection (a), the word “may” is substituted for “shall have authority”. The word “is” is substituted for “may have been or may hereafter be”.
In subsection (c), the words “This section does not limit” are substituted for “that the provisions of this section shall not limit, in any way”. The words “(chapter 47 of title 10)” are added after “Uniform Code of Military Justice” to reflect the codification of that Code in title 10, United States Code.

AMENDMENTS

§ 536. Positions in excepted service

All positions in the Federal Bureau of Investigation are excepted from the competitive service, and the incumbents of such positions occupy positions in the excepted service.

(Added Pub. L. 89–554, § 4(c), Sept. 6, 1966, 80 Stat. 617.)

HISTORICAL AND REVISION NOTES

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The section is revised and restated to eliminate ambiguity and give true effect to the prohibition against the use of appropriations to the Federal Bureau of Investigation. The language used to define the excepted status of the positions, officers, and employees is based on revised sections 2102 and 2103 of title 5, United States Code.
The provisions of this section were made permanent by the Act of July 28, 1950, 64 Stat. 380. Identical provisions appearing in former section 306d of title 5 are derived from the Department of Justice Appropriation Act, 1965, and earlier appropriation Acts for the Department of Justice running back to 1942, which Acts are identified in a note under former section 306d of title 5, U.S.C. 1964 ed.

§ 537. Expenses of unforeseen emergencies of a confidential character

Appropriations for the Federal Bureau of Investigation are available for expenses of unforeseen emergencies of a confidential character, when so specified in the appropriation concerned, to be spent under the direction of the Attorney General. The Attorney General shall certify the amount spent that he considers advisable not to specify, and his certification is a sufficient voucher for the amount therein expressed to have been spent.

(Added Pub. L. 89–554, § 4(c), Sept. 6, 1966, 80 Stat. 617.)

HISTORICAL AND REVISION NOTES

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The section is revised and reorganized for clarity. The words “now or hereafter provided” are omitted as unnecessary. The words “for expenses of membership in the International Commission of Criminal Police and” are omitted as obsolete. The Act of Aug. 27, 1958, Pub. L. 85–768, 72 Stat. 921 (22 U.S.C. 263a) authorizes the Attorney General to accept and maintain, on behalf of the United States, membership in the International Criminal Police Organization, and to designate any departments and agencies which may participate in the United States representation with that organization; and authorizes each participating department and agency to pay its pro rata share, as determined by the Attorney General, of the expenses of such membership. The word “spent” is substituted for “expended”. The words “certify the amount spent that he considers” are substituted for “make a certificate of the amount of any such expenditure as he may think it”. The words “his certification is a sufficient voucher” are substituted for “and every such certificate shall be deemed a sufficient voucher”.

§ 538. Investigation of aircraft piracy and related violations

The Federal Bureau of Investigation shall investigate any violation of section 46314 or chapter 465 of title 49.


§ 539. Counterintelligence official reception and representation expenses

The Director of the Federal Bureau of Investigation may use funds available to the Federal Bureau of Investigation for counterintelligence programs to pay the expenses of hosting foreign officials in the United States under the auspices of the Federal Bureau of Investigation for consultation on counterintelligence matters.


§ 540. Investigation of felonious killings of State or local law enforcement officers

The Attorney General and the Federal Bureau of Investigation may investigate felonious killings of officials and employees of a State or political subdivision thereof while engaged in or on account of the performance of official duties relating to the prevention, detection, investigation, or prosecution of an offense against the criminal laws of a State or political subdivision, when such investigation is requested by the head of the agency employing the official or em-
employee killed, and under such guidelines as the Attorney General or his designee may establish. 

(Added Pub. L. 100–690, title VII, §7331(a), Nov. 18, 1988, 102 Stat. 4468.)

§ 540A. Investigation of violent crimes against travelers

(a) IN GENERAL.—At the request of an appropriate law enforcement official of a State or political subdivision, the Attorney General and Director of the Federal Bureau of Investigation may assist in the investigation of a felony crime of violence in violation of the law of any State in which the victim appears to have been selected because he or she is a traveler.

(b) FOREIGN TRAVELERS.—In a case in which the traveler who is a victim of a crime described in subsection (a) is from a foreign nation, the Attorney General and Director of the Federal Bureau of Investigation, and, when appropriate, the Secretary of State shall assist the prosecuting and law enforcement officials of a State or political subdivision to the fullest extent possible in securing from abroad such evidence or other information as may be needed for the effective investigation and prosecution of the crime.

(c) DEFINITIONS.—In this section—

(1) “felony crime of violence” means an offense punishable by more than one year in prison that has as an element the use, attempted use, or threatened use of physical force against the person of another.

(2) “State” means a State, the District of Columbia, and any commonwealth, territory, or possession of the United States.

(3) “traveler” means a victim of a crime of violence who is not a resident of the State in which the crime of violence occurred.


AMENDMENTS

1996—Subsec. (c). Pub. L. 104–294 designated three undesignated pars. as pars. (1) to (3).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–294 effective Sept. 13, 1994, see section 604(d) of Pub. L. 104–294, set out as a note under section 15 of Title 18, Crimes and Criminal Procedure.

§ 540B. Investigation of serial killings

(a) IN GENERAL.—The Attorney General and the Director of the Federal Bureau of Investigation may investigate serial killings in violation of the laws of a State or political subdivision, if such investigation is requested by the head of a law enforcement agency with investigative or prosecutorial jurisdiction over the offense.

(b) DEFINITIONS.—In this section:

(1) KILLING.—The term “killing” means conduct that would constitute an offense under subparagraph (A) of section 1111 of title 18, United States Code, if Federal jurisdiction existed.

(2) SERIAL KILLINGS.—The term “serial killings” means a series of three or more killings, not less than one of which was committed within the United States, having common characteristics such as to suggest the reasonable possibility that the crimes were committed by the same actor or actors.

(3) STATE.—The term “State” means a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.


§ 540C. FBI police

(a) DEFINITIONS.—In this section:

(1) DIRECTOR.—The term “Director” means the Director of the Federal Bureau of Investigation.

(2) FBI BUILDINGS AND GROUNDS.—(A) IN GENERAL.—The term “FBI buildings and grounds” means—

(i) the whole or any part of any building or structure which is occupied under a lease or otherwise by the Federal Bureau of Investigation and is subject to supervision and control by the Federal Bureau of Investigation;

(ii) the land upon which there is situated any building or structure which is occupied wholly by the Federal Bureau of Investigation; and

(iii) any enclosed passageway connecting 2 or more buildings or structures occupied in whole or in part by the Federal Bureau of Investigation.

(B) INCLUSION.—The term “FBI buildings and grounds” includes adjacent streets and sidewalks not to exceed 500 feet from such property.

(3) FBI POLICE.—The term “FBI police” means the permanent police force established under subsection (b).

(b) ESTABLISHMENT OF FBI POLICE; DUTIES.—

(1) IN GENERAL.—Subject to the supervision of the Attorney General, the Director may establish a permanent police force, to be known as the FBI police.

(2) DUTIES.—The FBI police shall perform such duties as the Director may prescribe in connection with the protection of persons and property within FBI buildings and grounds.

(3) UNIFORMED REPRESENTATIVE.—The Director, or designated representative duly authorized by the Attorney General, may appoint uniformed representatives of the Federal Bureau of Investigation as FBI police for duty in connection with the policing of all FBI buildings and grounds.

(4) AUTHORITY.—

(A) IN GENERAL.—In accordance with regulations prescribed by the Director and approved by the Attorney General, the FBI police may—

(i) police the FBI buildings and grounds for the purpose of protecting persons and property;

(ii) in the performance of duties necessary for carrying out subparagraph (A), make arrests and otherwise enforce the laws of the United States, including the laws of the District of Columbia;
(iii) carry firearms as may be required for the performance of duties; 
(iv) prevent breaches of the peace and suppress affrays and unlawful assemblies; and 
(v) hold the same powers as sheriffs and constables when policing FBI buildings and grounds.

(B) EXCEPTION.—The authority and policing powers of FBI police under this paragraph shall not include the service of civil process.

(5) PAY AND BENEFITS.—
(A) IN GENERAL.—The rates of basic pay, salary schedule, pay provisions, and benefits for members of the FBI police shall be equivalent to the rates of basic pay, salary schedule, pay provisions, and benefits applicable to members of the United States Secret Service Uniformed Division.
(B) APPLICATION.—Pay and benefits for the FBI police under subparagraph (A)—
(i) shall be established by regulation; 
(ii) shall apply with respect to pay periods beginning after January 1, 2003; and 
(iii) shall not result in any decrease in the rates of pay or benefits of any individual.

(c) AUTHORITY OF METROPOLITAN POLICE FORCE.—This section does not affect the authority of the Metropolitan Police Force of the District of Columbia with respect to FBI buildings and grounds.


PRIOR PROVISIONS


TRANSFER OF FUNCTIONS

For transfer of the functions, personnel, assets, and obligations of the United States Secret Service, including the functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 381, 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 23, 2002, as modified, set out as a note under section 542 of Title 6.

CHAPTER 35—UNITED STATES ATTORNEYS

Sec. 541. United States attorneys.
Sec. 542. Assistant United States attorneys.
Sec. 543. Special attorneys.
Sec. 544. Oath of office.
Sec. 545. Residence.
Sec. 546. Vacancies.
Sec. 547. Duties.
Sec. 548. Salaries.
Sec. 549. Expenses.
Sec. 550. Clerical assistants, messengers, and private process servers.

AMENDMENTS


§ 541. United States attorneys

(a) The President shall appoint, by and with the advice and consent of the Senate, a United States attorney for each judicial district.

(b) Each United States attorney shall be appointed for a term of four years. On the expiration of his term, a United States attorney shall continue to perform the duties of his office until his successor is appointed and qualifies.

(c) Each United States attorney is subject to removal by the President.

(Added Pub. L. 89–554, §4(c), Sept. 6, 1966, 80 Stat. 617.)

HISTORICAL AND REVISION NOTES

1966 ACT

Derivation | U.S. Code | Revised Statutes and Statutes at Large
--- | --- | ---
(a) | 28 U.S.C. 501 | [None].
(b) | 28 U.S.C. 504(a) | [None].
(c) | 28 U.S.C. 504(b) | (less 2d sentence).

In subsection (c), the word “is” is substituted for “shall be”.

1948 ACT


The term “United States attorney” was adopted in this section for “attorney for the United States.” Since the decision of the Supreme Court of the United States in In re Neagle, 1890 (10 S. Ct. 658, 135 U.S. 1, 34, L. Ed. 55) where the terms “attorneys of the United States” and “district attorneys” were used interchangeably, Congress has also designated such officers as either “United States attorneys” or as “district attorneys.”
§ 543. Special attorneys

(a) The Attorney General may appoint attorneys to assist United States attorneys when the public interest so requires, including the appointment of qualified tribal prosecutors and other qualified attorneys to assist in prosecuting Federal offenses committed in Indian country.

(b) Each attorney appointed under this section is subject to removal by the Attorney General.


HISTORICAL AND REVISION NOTES

1966 ACT

Derivation | U.S. Code | Revised Statutes and Statutes at Large
--- | --- | ---
(a) | 28 U.S.C. 503 | [None].
(b) | 28 U.S.C. 504(b) | [None].

In subsection (b), the word “is” is substituted for “shall be”.

1948 ACT


Words “United States attorneys” were substituted for “district attorneys.” (See reviser’s note under section 501 [now 541] of this title.)

The exception of Alaska from the operation of such section 483 was omitted as covered by section 199 of title 48, U.S.C., 1940 ed., Territories and Insular Possessions, authorizing appointment of assistant United States attorneys in Alaska.

Reference in such section 483 to “District of Columbia” was omitted. (See reviser’s note under section 501 [now 541] of this title.)

The provisions of sections 483 and 594 of title 28, U.S.C., 1940 ed., requiring the judges and United States attorneys to certify or evidence in writing the necessity for assistant United States attorneys in their respective districts, and specifying that such opinion of the judge shall state to the Attorney General the facts as distinguished from conclusions, showing the necessity therefor, were omitted. The Attorney General, as chief law enforcement officer, is in a better position to determine such necessity.

The salary provisions of such section 594 were omitted as covered by section 508 (now 548) of this title.

Changes were made in phraseology.

PRIOR PROVISIONS

A prior section 542, act June 25, 1948, ch. 646, 62 Stat. 911, related to appointment and tenure of deputies and assistants for United States marshals, prior to repeal by Pub. L. 89–554, § 8(a), and reenactment in section 502 of this title by section 4(c) of Pub. L. 89–554.

1948 ACT


Words “United States attorneys” were substituted for “district attorneys.” (See reviser’s note under section 501 [now 541] of this title.)

The exception of Alaska from the operation of such section 483 was omitted as covered by section 199 of title 48, U.S.C., 1940 ed., Territories and Insular Possessions, authorizing appointment of assistant United States attorneys in Alaska.

Reference in such section 483 to “District of Columbia” was omitted. (See reviser’s note under section 501 [now 541] of this title.)

The provisions of sections 483 and 594 of title 28, U.S.C., 1940 ed., requiring the judges and United States attorneys to certify or evidence in writing the necessity for assistant United States attorneys in their respective districts, and specifying that such opinion of the judge shall state to the Attorney General the facts as distinguished from conclusions, showing the necessity therefor, were omitted. The Attorney General, as chief law enforcement officer, is in a better position to determine such necessity.

The salary provisions of such section 594 were omitted as covered by section 508 (now 548) of this title.

Changes were made in phraseology.

PRIOR PROVISIONS

A prior section 543, act June 25, 1948, ch. 646, 62 Stat. 911, related to oath of office for United States Mar-

1948 ACT

Prior section 503.—Based on section 312 of title 5, U.S.C., 1940 ed., Executive Departments and Government Officers and Employees (R.S. § 363).

Other provisions of section 312 of title 5, U.S.C., 1940 ed., are incorporated in sections 507 (now 509 and 547) and 508 (now 548) of this title.

Changes were made in phraseology.

PRIOR PROVISIONS

A prior section 543, act June 25, 1948, ch. 646, 62 Stat. 911, related to oath of office for United States Mar-

1948 ACT

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Other provisions of section 312 of title 5, U.S.C., 1940 ed., are incorporated in sections 507 (now 509 and 547) and 508 (now 548) of this title.

Changes were made in phraseology.

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A prior section 543, act June 25, 1948, ch. 646, 62 Stat. 911, related to oath of office for United States Mar-

1948 ACT

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Other provisions of section 312 of title 5, U.S.C., 1940 ed., are incorporated in sections 507 (now 509 and 547) and 508 (now 548) of this title.

Changes were made in phraseology.

PRIOR PROVISIONS

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1948 ACT

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Other provisions of section 312 of title 5, U.S.C., 1940 ed., are incorporated in sections 507 (now 509 and 547) and 508 (now 548) of this title.

Changes were made in phraseology.

PRIOR PROVISIONS

A prior section 543, act June 25, 1948, ch. 646, 62 Stat. 911, related to oath of office for United States Mar-
Each United States attorney, assistant United States attorney, and attorney appointed under section 543 of this title, before taking office, shall take an oath to execute faithfully his duties.

(Amended Pub. L. 89–554, §4(c), Sept. 6, 1966, 80 Stat. 618.)

**Prior Provisions**

(a) Each United States attorney shall reside in the district for which he is appointed, except that these officers of the District of Columbia, the Southern District of New York, and the Eastern District of New York may reside within 20 miles thereof. Each assistant United States attorney shall reside in the district for which he or she is appointed or within 25 miles thereof. The provisions of this subsection shall not apply to any United States attorney or assistant United States attorney appointed for the Northern Mariana Islands who at the same time is serving in the same capacity in another district. Pursuant to an order from the Attorney General or his designee, a United States attorney or an assistant United States attorney may be assigned dual or additional responsibilities that exempt such officer from the residency requirement established by the order and subject to renewal.

(b) The Attorney General may determine the official stations of United States attorneys and assistant United States attorneys within the districts for which they are appointed.


**Historical and Revision Notes**

### 1966 Act

**Derivation**

<table>
<thead>
<tr>
<th>U.S. Code</th>
<th>Revised Statutes and Statutes at Large</th>
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<tr>
<td>28 U.S.C. 504(c).</td>
<td>[None].</td>
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</table>

### 1948 Act


Words “United States attorney” were substituted for district attorney, and reference to District of Columbia was omitted. (See reviser’s note under section 501 [now 541] of this title.)

Reference to the territories in said section 482, was also omitted as covered by provisions of title 48, U.S.C., 1940 ed., Territories and Insular Possessions. See sections 109 and 112 of such title applicable to United States attorney in Alaska, and 1335 applicable in the Canal Zone, and 1405 applicable in the Virgin Islands.

The provision as to the tenure of the assistant United States attorneys and special attorneys is new. Existing law contains no provision as to tenure or removal of such officials. While the Supreme Court has held that the power of removal of executive officials is incident to the power of appointment, this section expressly provides for removal. See Meyes v. United States, 1926 (47 S.Ct. 21, 72 U.S. 52, 71 L.Ed. 160).

Said section 315 contained a provision that special attorneys appointed to assist United States attorneys should take the same oath required of the latter. This section was extended to assistant United States attorneys respecting whom no provision existed as to oath.

A portion of section 663 of title 48, U.S.C., 1940 ed., is retained in said title 48. For remainder of said section 863, see Distribution Table. Other provisions of section 663 of such title are incorporated in sections 133, 501 [now 541], and 541 [see 561] of this title. Other changes were made in phraseology.

### 1948 Act

**Prior Provisions**

Prior section 505.—Based on title 28, U.S.C., 1940 ed., §524 (June 20, 1874, ch. 328, §2, 18 Stat. 109; May 28, 1896, ch. 252, §§8, 12, 29 Stat. 181, 183; Mar. 3, 1911, ch. 231, §391, 36 Stat. 325; June 14, 1911, ch. 231, §391, 36 Stat. 1167; June 14, 1911, ch. 231, §391, 36 Stat. 1167). Sections 507(b) [now 519] of this title, charging the Attorney General with the duty of supervising the United States attorneys in the performance of their duties, are to remain in title 5.

The provisions permitting the United States attorney and his assistants 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 of Columbia.
the District or reside therein. Also the residence requirement of this section has no relation to domicile or voting residence nor does it affect the citizenship or residence status of District of Columbia officeholders in the several States from which appointed.

Only citizens of Hawaii resident therein at least 3 years preceding appointment may be appointed as United States Attorneys for the district of Hawaii. See section 501 [now 541] of this title.

Other provisions of section 524 of title 28, U.S.C., 1940 ed., were incorporated in sections 541 [see 561] and 751 of this title.

Changes were made in phraseology.

**PRIOR PROVISIONS**

A prior section 545, act June 25, 1948, ch. 646, 62 Stat. 911, related to vacancies in the office of the United States Marshal, prior to repeal by Pub. L. 89–554, §8(a), and reenactment in section 565 of this title by section 4(c) of Pub. L. 89–554.

### AMENDMENTS

2006—Subsec. (a). Pub. L. 109–177 inserted at end "Pursuant to an order from the Attorney General or his designee, a United States attorney or an assistant United States attorney may be assigned dual or additional responsibilities that exempt such officer from the residency requirement in this subsection for a specific period as established by the order and subject to renewal."

1994—Subsec. (a). Pub. L. 103–322 struck out "and assistant United States attorney" after "Each United States attorney" and inserted after first sentence "Each assistant United States attorney shall reside in the district for which he or she is appointed or within 25 miles thereof."


1978—Subsec. (a). Pub. L. 95–530 inserted provision that this subsection not apply to any United States attorney or assistant United States attorney appointed for the Northern Mariana Islands who at the same time is serving in the same capacity in another district.

### EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–177, title V, §501(b), Mar. 9, 2006, 120 Stat. 246, provided that: "The amendment made by subsection (a) [amending this section] shall take effect as of February 1, 2005."

#### § 546. Vacancies

(a) Except as provided in subsection (b), the Attorney General may appoint a United States attorney for the district in which the office of United States attorney is vacant.

(b) The Attorney General shall not appoint as United States attorney a person to whose appointment by the President to that office the Senate refused to give advice and consent.

(c) A person appointed as United States attorney under this section may serve until the earlier of—

1. the qualification of a United States attorney for such district appointed by the President under section 541 of this title; or
2. the expiration of 120 days after appointment by the Attorney General under this section.

(d) If an appointment expires under subsection (c)(2), the district court for such district may appoint a United States attorney to serve until the vacancy is filled. The order of appointment by the court shall be filed with the clerk of the court.


#### HISTORICAL AND REVISION NOTES

**1946 ACT**

<table>
<thead>
<tr>
<th>Derivation</th>
<th>U.S. Code</th>
<th>Revised Statutes and Statutes at Large</th>
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<tr>
<td>28 U.S.C. 506</td>
<td>(None).</td>
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**1948 ACT**


Words "United States attorney" were substituted for "district attorney." (See Revisor's Note under section 501 [now 541] of this title.)

Words "The Supreme Court of the Territory, and the district court of the United States for the District of Columbia" were omitted as obsolete. This section, as revised, applies to all districts enumerated in chapter 5 of this title. There were no provisions respecting vacancies in Hawaii and Puerto Rico. Therefore this section remedies this situation and establishes a uniform method to fill interim vacancies.

Words "and a copy shall be entered on the journal of the court" after "filed in the clerk's office of said court", in section 511 of title 28, U.S.C., 1940 ed., were omitted as unnecessary.

The provisions of section 511 of title 28, U.S.C., 1940 ed., relating to marshals, are incorporated in sections 544 and 545 (see Prior Provisions notes under those sections) of this title.

Changes were made in phraseology.

**PRIOR PROVISIONS**

A prior section 546, act June 25, 1948, ch. 646, 62 Stat. 911, related to death of a marshal, prior to repeal by Pub. L. 89–554, §8(a), and reenactment in section 566 of this title by section 4(c) of Pub. L. 89–554.

### AMENDMENTS

2007—Subsecs. (c), (d), Pub. L. 110–34 added subsecs. (c) and (d) and struck out former subsec. (c) which read as follows: "A person appointed as United States attorney under this section may serve until the qualification of a United States Attorney for such district appointed by the President under section 541 of this title."

2006—Subsecs. (c), (d), Pub. L. 109–177 added subsec. (c) and struck out former subsecs. (c) and (d) which related to length of service of a United States attorney appointed under this section and appointment of a United States attorney by a district court after expiration of a previous appointment, respectively.

1966—Pub. L. 99–466 amended section generally. Prior to amendment, section read as follows: "The district court for a district in which the office of United States attorney is vacant may appoint a United States attorney to serve until the vacancy is filled. The order of appointment by the court shall be filed with the clerk of the court."

### EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–34, §3, June 14, 2007, 121 Stat. 224, provided that:

"(a) IN GENERAL.—The amendments made by this Act [amending this section] shall take effect on the date of enactment of this Act [June 14, 2007]."

"(b) APPLICATION.—"

"(1) IN GENERAL.—Any person serving as a United States attorney on the day before the date of enact-
ment of this Act [June 14, 2007] who was appointed by the President under section 546 of title 28, United States Code, may serve until the earlier of—

(a) the qualification of a United States attorney for such district appointed by the President under section 541 of that title; or

(b) 120 days after the date of enactment of this Act.

(2) Expired Appointments.—If an appointment expires under paragraph (1), the district court for that district may appoint a United States attorney for that district under section 546(d) of title 28, United States Code, as added by this Act.

§ 547. Duties

Except as otherwise provided by law, each United States attorney, within his district, shall—

1. Prosecute for all offenses against the United States;

2. Prosecute or defend, for the Government, all civil actions, suits or proceedings in which the United States is concerned;

3. Appear in behalf of the defendants in all civil actions, suits or proceedings pending in his district against collectors, or other officers of the revenue or customs for any act done by them or for the recovery of any money exacted by or paid to these officers, and by them paid into the Treasury;

4. Institute and prosecute proceedings for the collection of fines, penalties, and forfeitures incurred for violation of any revenue law, unless satisfied on investigation that justice does not require the proceedings; and

5. Make such reports as the Attorney General may direct.

(Added Pub. L. 89–554, § 4(c), Sept. 6, 1966, 80 Stat. 618.)

REFERENCES


This section consolidates provisions of the sections enumerated above.

Other provisions of section 312 of title 5, U.S.C., 1940 ed., are incorporated in sections 503 (now 543) and 508 (now 548) of this title.

All requirements in said sections for reports to officers other than the Attorney General are omitted as unnecessary and are simplified in subsection (a)(5) of this section. The Attorney General directs the course of litigation in government cases and makes appropriate rules for furnishing information promptly to the Departments interested.

Specific duties fixed by sections 485–489 of title 28, U.S.C., 1940 ed., and the second paragraph of section 305e of title 25, U.S.C., 1940 ed., to prosecute and defend both civil and criminal proceedings, are covered in subsections (a)(1)–(4) of this section.

Use of “revenue law” in subsection (a)(4) in this section, which is based on section 496 of title 28, U.S.C., 1940 ed., obviates repetition of provisions relating to customs and revenue laws as both are covered by the term. For discussion of this point, see reviser’s note under section 3283 in House Report 152, 80th Cong., 2d Sess., H.R. 1600 Eightieth Congress, for revision of the Criminal Code.

The following sections of said title 5, U.S.C., 1940 ed., are superseded by, covered by, or inconsistent with subsection (a)(2)(5) of this section, subsection (b) of this section [now section 519 of this title], and section 5 of Executive Order No. 6166 of June 10, 1933, transferring to the Department of Justice the function of supervising the work of United States attorneys in connection with suits by or against the United States exercised by any agency or officer:

Section 324 requiring said General Counsel to examine and compare the reports made by collectors of bonds delivered by them to United States attorneys for suit, and of the returns of such bonds;

Section 329 authorizing said General Counsel to instruct United States attorneys, marshals and clerks in all matters relating to suits, except for taxes, forfeitures and penalties, and to require them to make such reports to him as he may direct. The first provision of section 329 of title 5, U.S.C., 1940 ed., is covered by the last paragraph of this section [now section 519 of this title], under which the Attorney General exercises supervision of the duties of United States attorneys. The Director of the Administrative Office of the United States Courts supervises the duties of clerks under chapter 41 of this title. The provision for authority of said General Counsel over marshals, also contained in section 329, is incorporated in section 547 [see Prior Provisions note below] of this title in which such authority is vested in the Attorney General.

Section 327 of title 5, U.S.C., 1940 ed., authorized said General Counsel to establish regulations, subject to approval by the Attorney General, to be observed by United States attorneys and marshals in which the United States is a party. The provision as to United States attorneys is also covered by the last paragraph of this section [now section 519 of this title], and that as to marshals is covered by section 547 [see Prior Provisions note below] of this title.

Provisions of section 327 of title 5, U.S.C., 1940 ed., relating to establishment of regulations for the observance of collectors of the customs, by the General Counsel for the Department of the Treasury, with the approval of the Secretary of the Treasury, was omitted and recommended for repeal as covered by section 66 of title 19, U.S.C., 1940 ed., Customs Duties.

The last paragraph of this section [now section 519 of this title], is based on the first clause of section 317 of title 5, U.S.C., 1940 ed.; see also section 309 of title 5. The second clause of said section 317 is covered by subsection (a)(5) of this section. The authority of the Attorney General over marshals and the requirement that they shall report to him the conduct and state of their offices, contained also in said section 317, is incorporated in section 547 [see Prior Provisions note below] of this title.

Section 330 of title 5, U.S.C., 1940 ed., which required that United States attorneys should conduct, under direction of the General Counsel of the Treasury, all suits and proceedings involving the United States under the laws governing national banking associations is covered by subsection (a)(5) of this section.

Section 331 of title 5, U.S.C., 1940 ed., requiring United States attorneys to obey directions of the Department of Justice in suits for money due the United States Department of the Treasury, is covered also by subsection (a)(2) of this section.
§ 548. Salaries

Subject to sections 5315 through 5317 of title 5, the Attorney General shall fix the annual salaries of United States attorneys, assistant United States attorneys, and attorneys appointed under section 543 of this title at rates of compensation not in excess of the rate of basic compensation provided for Executive Level IV of the Executive Schedule set forth in section 5315 of title 5, United States Code.


HISTORICAL AND REVISION NOTES

1966 ACT


According to a Department of Justice interpretation, provisions for specific salaries were superseded by section 678 of title 5, which provides for adjustment of compensation by heads of departments. Hence, this section leaves the amount of compensation to the Attorney General.

Section 578b of title 28, U.S.C., 1940 ed., providing that United States attorneys shall be paid for their services, was omitted as unnecessary.

Section 578e of title 28, U.S.C., 1940 ed., providing that United States attorneys shall not receive fees in addition to their salaries, was omitted as obsolete, in view of this section and current practice.

Other provisions of section 312 of title 5, U.S.C., 1940 ed., are incorporated in sections 505 (now 543) and 507 (now 547) of this title, and other provisions of section 579 of title 28, U.S.C., 1940 ed., are incorporated in section 552 [see Prior Provisions note for that section] of this title.
General, whose compensation is prescribed in the General Schedule of the Classification Act of 1949, as amended [now covered by chapter 51 and subchapter III of chapter 53 of Title 5]."

**ALASKA, CANAL ZONE AND VIRGIN ISLANDS**

Act Mar. 2, 1955, ch. 9, §2(b), 69 Stat. 10, provided that:

"The salaries of United States attorneys and assistant United States attorneys for the districts of Alaska, Canal Zone, and the Virgin Islands are subject to the provisions of section 508 of title 28, United States Code [now this section]."

**SALARY LIMITATIONS**


§ 549. Expenses

Necessary office expenses of United States attorneys shall be allowed when authorized by the Attorney General.

(Added Pub. L. 89-554, §4(c), Sept. 6, 1966, 80 Stat. 618.)

**HISTORICAL AND REVISION NOTES**

**1966 ACT**

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<td>.............</td>
<td>28 U.S.C. 589.</td>
<td>[None].</td>
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The second paragraph of former section 508 is omitted as it was superseded by the Travel Expense Act of 1949, which is codified in subchapter I of chapter 57 of title 5, United States Code.

The second paragraph was based in part on former section 73 of title 5, 1949 ed., which was superseded by the Subsistence Expense Act of 1926.

Section 6 of the Travel Expense Act of 1949, which is codified in section 5705 of title 5, United States Code, substantially reenacted former section 73 of title 5, 1949 ed., which was repealed by the Act of June 23, 1948, ch. 646, by which title 28 was originally enacted. The purpose of section 6 was to allow reimbursement for only such actual and necessary travel expenses incurred unless otherwise permitted by the Act of 1949 itself or by laws relating to the military. Section 6 did not, however, provide for the exception of United States attorneys as did former section 73.

Sections 2 and 3 of the Act of 1949, which are codified in sections 5701 and 5702 of title 5, United States Code, defined the coverage of the Act and allowed for specific exclusions in the legislative and judicial branches but did not mention an exclusion in the executive branch for United States attorneys.

Section 7 of the 1949 Act, which is codified in section 5707 of title 5, United States Code, expressly vested in the Director of the Bureau of the Budget the authority to prescribe regulations covering travel allowances and the reimbursement of travel expenses.

Section 8 of the 1949 Act, which is codified in section 5708(1), (2) of title 5, United States Code, made specific exclusions from the coverage of the Act, and United States attorneys were not so excluded.

Section 9 of the 1949 Act, which is codified in section 5708(3), (4) of title 5, United States Code, modified acts inconsistent with the 1949 Act, and specifically mentioned acts which authorize reimbursement of "actual and necessary" expenses.

1948 ACT


First paragraph of this section is from section 587 of title 28, U.S.C., 1940 ed., which did not apply to Alaska because of the restriction in section 591 of said title 28. However, the latter section has been superseded, in that respect, by subsequent appropriation acts, the latest being act July 5, 1946, ch. 541, title II, 60 Stat. 480, which specifically allows office expenses for United States attorneys in Alaska. This section applies to all United States attorneys.

Section 73 of title 5, U.S.C., 1940 ed., allowed only actual traveling expenses to Government employees, except "district attorneys," marshals and clerks of courts and their deputies. It has been superseded by the Subsistence Expense Act of 1926. See sections 821 et seq. of said title 5. References in section 592 of title 28, U.S.C., 1940 ed., to absence "from their respective official residences and to going to and returning from attendance before courts, etc., were omitted as surplusage and covered by the phrase "on official business." Language relating to Standardized Government Travel Regulations was also omitted as the reference to the provision in the Subsistence Expense Act, supra, authorizing those regulations. Verification under oath provision was omitted as covered by section 553 [see Prior Provisions note for that section] of this title which simplifies procedure by requiring payment upon certification by the payee. The penal provisions of title 18 are ample protection against fraud and an oath alone is no deterrent.

The requirement in section 592 of title 28, U.S.C., 1940 ed., that the marshals should include such payments in their accounts for auditing and allowance, was omitted as unnecessary. See section 541 et seq. [now section 561 et seq.] of this title and section 71 et seq. of title 31, U.S.C., 1940 ed.

Section 318 of title 5, U.S.C., 1940 ed., required the Attorney General to supervise the accounts of "district attorneys, marshals, clerks, and other court officers. The language of this section covers that requirement. The provision as to marshals is incorporated in section 547 [see Prior Provisions note under that section] of this title.

Quarterly expense accounts were required of United States attorneys and marshals by section 587 of title 28, U.S.C., 1940 ed. Such provision is omitted as unnecessary in view of this section and section 547 [see Prior Provisions note under that section] of this title. Further provisions of said section 587 that office expenses of United States attorneys, assistants, and marshals should be allowed under regulations of the Attorney General and verified under oath, are simplified by this section and section 550 [see Prior Provisions note under that section] of this title. Another provision that accounts therefor should be submitted to, examined by the district court and, when approved by the court then audited and allowed by law, was omitted. The power of the Attorney General is sufficient. The reference to audit and allowance was unnecessary as covered by section 71 et seq. of title 31, U.S.C., 1940 ed., Money and Finance. Said section 586 applied also to marshals and deputies and those provisions are incorporated in section 550 [see Prior Provisions note under that section] of this title. The exception in sections 586 and 591 of title 28, U.S.C., 1940 ed., that the former should not apply in Alaska was omitted as unnecessary. Section 114 of title 48, U.S.C., 1940 ed., Territories and Insular Possessions, requires travel expense accounts to be rendered and paid as in other districts.

Changes were made in phraseology.
§ 550. Clerical assistants, messengers, and private process servers

The United States attorneys may employ clerical assistants, messengers, and private process servers on approval of the Attorney General.


HISTORICAL AND REVISION NOTES

1966 ACT


A prior section 555, act June 25, 1948, ch. 646, 62 Stat. 913, related to the delivery of all unsealed process to the successor marshal or his deputies, prior to repeal by Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 663, and reenactment in section 576 of this title by section 4(c) of Pub. L. 89–554.

AMENDMENTS

1990—Pub. L. 101–647 substituted “‘messengers, and private process servers’” for “‘and messengers’” in section catchline and text.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–647 effective 180 days after Nov. 29, 1990, see section 3631 of Pub. L. 101–647, set out as an Effective Date note under section 3001 of this title.

CHAPTER 37—UNITED STATES MARSHALS SERVICE

Sec.
561. United States Marshals Service.
562. Vacancies.
563. Oath of office.
564. Powers as sheriff.
565. Expenses of the Service.
566. Powers and duties.
567. Collection of fees; accounting.
568. Practice of law prohibited.
569. Reemployment rights.
570. Repealed. [570.] [572.] [572a.]
571. Repealed. [571.] [572a.]
572. [Repealed.] [572a.]
572a. [Repealed.] [572a.]
573. Repealed. [572a.]
574. Repealed. [572a.]
575. Renumbered. [572a.]
576. Renumbered. [572a.]

AMENDMENTS


§ 561. United States Marshals Service

(a) There is hereby established a United States Marshals Service as a bureau within the Depart-
ment of Justice under the authority and direction of the Attorney General. There shall be at the head of the United States Marshals Service (hereafter in this chapter referred to as the ‘‘Service’’) a Director who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) The Director of the United States Marshals Service (hereafter in this chapter referred to as the ‘‘Director’’) shall, in addition to the powers and duties set forth in this chapter, exercise such other functions as may be delegated by the Attorney General.

(c) The President shall appoint, by and with the advice and consent of the Senate, a United States marshal for each judicial district of the United States and for the Superior Court of the District of Columbia, except that any marshal appointed for the Northern Mariana Islands may at the same time serve as marshal in another judicial district. Each United States marshal shall be an official of the Service and shall serve under the direction of the Director.

(d) Each marshal shall be appointed for a term of four years. A marshal shall, unless that marshal has resigned or been removed by the President, continue to perform the duties of that office after the end of that 4-year term until a successor is appointed and qualifies.

(e) The Director shall designate places within a judicial district for the official station and offices of each marshal. Each marshal shall reside within the district for which such marshal is appointed, except that—

(1) the marshal for the District of Columbia, for the Superior Court of the District of Columbia, and for the Southern District of New York may reside within 20 miles of the district for which the marshal is appointed; and

(2) any marshal appointed for the Northern Mariana Islands who at the same time is serving as marshal in another district may reside in such other district.

(f) The Director is authorized to appoint and fix the compensation of such employees as are necessary to carry out the powers and duties of the Service and may designate such employees as law enforcement officers in accordance with such policies and procedures as the Director shall establish pursuant to the applicable provisions of title 5 and regulations issued thereunder.

(g) The Director shall supervise and direct the United States Marshals Service in the performance of its duties.

(h) The Director may administer oaths and may take affirmations of officials and employees of the Service, but shall not demand or accept any fee or compensation therefor.

(i) Each marshal appointed under this section should have—

(1) a minimum of 4 years of command-level law enforcement management duties, including personnel, budget, and accountable property issues, in a police department, sheriff’s office or Federal law enforcement agency;

(2) experience in coordinating with other law enforcement agencies, particularly at the State and local level;

(3) college-level academic experience; and

(4) experience in or with county, State, and Federal court systems or experience with protection of court personnel, jurors, and witnesses.


PRIOR PROVISIONS


AMENDMENTS


2002—Subsec. (i). Pub. L. 107–273 struck out subsec. (i) which read as follows: ‘‘There are authorized to be appropriated such sums as may be necessary to carry out the functions of the Service.’’

§ 562. Vacancies

(a) In the case of a vacancy in the office of a United States marshal, the Attorney General may designate a person to perform the functions of and act as marshal, except that the Attorney General may not designate to act as marshal any person who was appointed by the President to that office but with respect to such appointment the Senate has refused to give its advice and consent.

(b) A person designated by the Attorney General under subsection (a) may serve until the earliest of the following events:

(1) The entry into office of a United States marshal appointed by the President, pursuant to section 561(c).

(2) The expiration of the thirtieth day following the end of the next session of the Senate.

(3) If such designee of the Attorney General is appointed by the President pursuant to section 561(c), but the Senate refuses to give its advice and consent to the appointment, the expiration of the thirtieth day following such refusal.


PRIOR PROVISIONS


§ 563. Oath of office

The Director and each United States marshal and law enforcement officer of the Service, before taking office, shall take an oath or affirmation to faithfully execute the duties of that office.


PRIOR PROVISIONS

A prior section 563, added Pub. L. 89–554, § 4(c), Sept. 6, 1966, 80 Stat. 619, specifically stated the oath of office to be taken, prior to repeal by Pub. L. 100–690, § 7608(a)(1). See section 561(h) of this title.
§ 564. Powers as sheriff

United States marshals, deputy marshals and such other officials of the Service as may be designated by the Director, in executing the laws of the United States within a State, may exercise the same powers which a sheriff of the State may exercise in executing the laws thereof.


Prior Provisions


§ 565. Expenses of the Service

The Director is authorized to use funds appropriated for the Service to make payments for expenses incurred pursuant to personal services contracts and cooperative agreements, authorized by the Attorney General, for security guards and for the service of summons on complaints, subpoenas, and notices in lieu of services by United States marshals and deputy marshals.


Prior Provisions


§ 566. Powers and duties

(a) It is the primary role and mission of the United States Marshals Service to provide for the security and to obey, execute, and enforce all orders of the United States District Courts, the United States Courts of Appeals, the Court of International Trade, and the United States Tax Court, as provided by law.

(b) The United States marshal of each district is the marshal of the district court and of the court of appeals when sitting in that district, and of the Court of International Trade holding sessions in that district, and may, in the discretion of the respective courts, be required to attend any session of court.

(c) Except as otherwise provided by law or Rule of Procedure, the United States Marshals Service shall execute all lawful writs, process, and orders issued under the authority of the United States, and shall command all necessary assistance to execute its duties.

(d) Each United States marshal, deputy marshal, and any other official of the Service as may be designated by the Director may carry firearms and make arrests without warrant for any offense against the United States committed in his or her presence, or for any felony cognizable under the laws of the United States if he or she has reasonable grounds to believe that the person to be arrested has committed or is committing such felony.

(e)(1) The United States Marshals Service is authorized to—

(A) provide for the personal protection of Federal jurists, court officers, witnesses, and other threatened persons in the interests of justice where criminal intimidation impedes on the functioning of the judicial process or any other official proceeding; and

(B) investigate such fugitive matters, both within and outside the United States, as directed by the Attorney General.

(2) Nothing in paragraph (1)(B) shall be construed to interfere with or supersede the authority of other Federal agencies or bureaus.

(f) In accordance with procedures established by the Director, and except for public money deposited under section 2041 of this title, each United States marshal shall deposit public monies that the marshal collects into the Treasury, subject to disbursement by the marshal. At the end of each accounting period, the earned part of public monies accruing to the United States shall be deposited in the Treasury to the credit of the appropriate receipt accounts.

(g) Prior to resignation, retirement, or removal from office—

(1) a United States marshal shall deliver to the marshal’s successor all prisoners in his custody and all unserved process; and

(2) a deputy marshal shall deliver to the marshal all process in the custody of the deputy marshal.

(h) The United States marshals shall pay such office expenses of United States Attorneys as may be directed by the Attorney General.

(i) The Director of the United States Marshals Service shall consult with the Judicial Conference of the United States on a continuing basis regarding the security requirements for the judicial branch of the Federal Government, to ensure that the views of the Judicial Conference regarding the security requirements for the judicial branch of the Federal Government are taken into account when determining staffing levels, setting priorities for programs regarding judicial security, and allocating judicial security resources. In this paragraph, the term “judicial security” includes the security of buildings housing the judiciary, the personal security of judicial officers, the assessment of threats made to judicial officers, and the protection of all other judicial personnel. The United States Marshals Service retains final authority regarding security requirements for the judicial branch of the Federal Government.


Prior Provisions

A prior section 566, added Pub. L. 89–554, §4(c), Sept. 6, 1966, 80 Stat. 620; amended Pub. L. 92–310, title II, §206(b), June 6, 1972, 86 Stat. 203, provided that upon death of a marshal his deputy or deputies perform his duties until a successor is appointed and qualifies, prior to repeal by Pub. L. 100–690, §7608(a)(1).

Amendments

2008—Subsec. (a). Pub. L. 110–177, §102(a), substituted ‘‘the Court of International Trade, and the United States Tax Court, as provided by law’’ for ‘‘and the Court of International Trade’’.

§ 567. Collection of fees; accounting

(a) Each United States marshal shall collect, as far as possible, his lawful fees and account for the same as public moneys.

(b) The marshal's accounts of fees and costs paid to a witness or juror on certificate of attendance issued as provided by sections 1825 and 1871 of this title may not be reexamined to charge him for an erroneous payment of the fees or costs.


In subsection (b), the words “may not” are substituted for “shall not”.

1948 ACT


Section consolidates first sentence of section 577 with section 578a of title 28, U.S.C., 1940 ed., with changes of phraseology necessary to effect consolidation. Other provisions of said section 577 are incorporated in section 1929 of this title.

The qualification that payments of witness fees or costs be made upon “order of court,” contained in said section 577 of title 28, U.S.C., 1940 ed., was omitted as obsolete and suitable reference was made to sections 1825 and 1871 of this title under which payments are now made on certificates of attendance.

Section 578a of title 28, U.S.C., 1940 ed., is rewritten in simpler terms without change of substance. The provision of such section 578a, prohibiting the collection of fees from the United States, was omitted as covered by section 2412 of this title, providing that the United States should be liable only for fees when such liability is expressly provided by Congress.

The provision of section 578a of title 28, U.S.C., 1940 ed., requiring that fees and emoluments collected by the marshal shall be deposited by him in accordance with the provisions of section 495 of title 31, U.S.C., 1940 ed., Money and Finance, was omitted as said section 495 governs such deposits without implementation in this section.

Prior Provisions


Amendments

1988—Pub. L. 100–690 renumbered section 572 of this title as this section.

§ 568. Practice of law prohibited

A United States marshal or deputy marshal may not practice law in any court of the United States.


Historical and Revision Notes

1966 Act

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<tr>
<th>Derivation</th>
<th>U.S. Code</th>
<th>Revised Statutes and Statutes at Large</th>
</tr>
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The words “may not” are substituted for “shall not”.

1948 ACT


Section consolidates parts of sections 395 and 396 of title 28, U.S.C., 1940 ed. Similar provisions in said sections, relating to clerks, are incorporated in section 955 of this title.

The revised section substitutes, as simpler and more appropriate, the prohibition against practice of law “in any court of the United States” for the more involved language of section 395 of title 28, U.S.C., 1940 ed., which provided that no clerks or marshals, deputies, or assistants within the district for which appointed “shall act as solicitor, proctor, attorney or counsel, in any cause depending in any of said courts, or in any district for which he is acting as such officer.”

Provisions of section 396 of title 28, U.S.C., 1940 ed., for striking the name of an offender from the roll of attorneys and for recommendation of dismissal, were omitted as unnecessary and as covered by section 541 of this title.

Changes were made in phraseology.

Prior Provisions


Amendments

1988—Pub. L. 100–690 renumbered section 575 of this title as this section.

§ 569. Reemployment rights

(a) A United States marshal for a judicial district who was appointed from a position in the competitive service (as defined in section 2102 of title 5) in the United States Marshals Service and who, for reasons other than misconduct, neglect of duty, or malfeasance, is removed from such office, is entitled to be reemployed in any
vacant position in the competitive service in the United States Marshals Service at the same grade or pay level, or lower, as the individual’s former position if—

(1) the individual is qualified for the vacant position; and

(2) the individual has made application for the position not later than ninety days after being removed from office as a United States marshal.

Such individual shall be so reemployed within thirty days after making such application or after being removed from office, whichever is later. An individual denied reemployment under this section in a position because the individual is not qualified for that position may appeal that denial to the Merit Systems Protection Board under section 7701 of title 5.

(b) Any United States marshal serving on the effective date of this section shall continue to serve for the remainder of the term for which such marshal was appointed, unless sooner removed by the President.


REFERENCES IN TEXT
The effective date of this section, referred to in subsec. (b), is Oct. 1, 1984. See Effective Date note set out below.

PRIOR PROVISIONS
A prior section 569, added Pub. L. 89–554, §4(c), Sept. 6, 1966, 80 Stat. 626; amended Pub. L. 95–598, title II, §221, Nov. 6, 1978, 92 Stat. 2662; Pub. L. 96–417, title V, §501(12), Oct. 10, 1980, 94 Stat. 1742; Pub. L. 99–429, Sept. 30, 1986, 100 Stat. 4513; Pub. L. 99–554, title III, §307(a), Oct. 27, 1986, 100 Stat. 3125, which provided that the Attorney General conduct such studies and surveys as necessary to evaluate needs, feasibility, and effectiveness of the United States trustee system, and report result of such studies and surveys to Congress, the President, and the Judicial Conference of the United States, beginning on or before January 3, 1980, and annually thereafter during the transition period; that not later than January 3, 1984, the Attorney General report to Congress, the President, and the Judicial Conference of the United States, as to the feasibility, projected annual cost and effectiveness of the United States trustee system, as determined on the basis of the studies and surveys respecting the operation of the United States trustee system in the districts, together with recommendations as to the desirability and method of proceeding with implementation of the United States trustee system in all judicial districts of the United States; and that chapter 15 of title 11 and chapter 39 of this title were repealed, and all references to the United States trustee contained in this title were deleted, 30 days after the effective date of Pub. L. 99–554 (see section 302 of Pub. L. 99–554, set out as a note under section 561 of this title), with service of any United States trustee, of any assistant United States trustee, and of any employee employed or appointed under the authority of such assistant United States trustee, and of any employee employed or appointed under the authority of such chapter 39 was terminated on such date, was repealed by Pub. L. 99–554, title III, §307(b), Oct. 27, 1986, 100 Stat. 3125.

§ 571. United States trustees
(a) The Attorney General shall appoint one United States trustee for each of the following regions composed of Federal judicial districts (without regard to section 451):

(1) The judicial districts established for the States of Maine, Massachusetts, New Hampshire, and Rhode Island.
(2) The judicial districts established for the States of Connecticut, New York, and Vermont.

(3) The judicial districts established for the States of Delaware, New Jersey, and Pennsylvania.

(4) The judicial districts established for the States of Maryland, North Carolina, South Carolina, Virginia, and West Virginia and for the District of Columbia.

(5) The judicial districts established for the States of Louisiana and Mississippi.

(6) The Northern District of Texas and the Eastern District of Texas.

(7) The Southern District of Texas and the Western District of Texas.

(8) The judicial districts established for the States of Kentucky and Tennessee.

(9) The judicial districts established for the States of Michigan and Ohio.

(10) The Central District of Illinois and the Southern District of Illinois; and the judicial districts established for the State of Indiana.

(11) The Northern District of Illinois; and the judicial districts established for the State of Wisconsin.

(12) The judicial districts established for the States of Minnesota, Iowa, North Dakota, and South Dakota.

(13) The judicial districts established for the States of Arkansas, Nebraska, and Missouri.

(14) The District of Arizona.

(15) The Southern District of California; and the judicial districts established for the State of Hawaii, and for Guam and the Commonwealth of the Northern Mariana Islands.

(16) The Central District of California.

(17) The Eastern District of California and the Northern District of California; and the judicial district established for the State of Nevada.


(19) The judicial districts established for the States of Colorado, Utah, and Wyoming (including those portions of Yellowstone National Park situated in the States of Montana and Idaho).

(20) The judicial districts established for the States of Kansas, New Mexico, and Oklahoma.

(21) The judicial districts established for the States of Alabama, Florida, and Georgia and for the Commonwealth of Puerto Rico and the Virgin Islands of the United States.

(b) Each United States trustee shall be appointed for a term of five years. On the expiration of his term, a United States trustee shall continue to perform the duties of his office until his successor is appointed and qualifies.

(c) Each United States trustee is subject to removal by the Attorney General.


§581
TITLE 28—JUDICIARY AND JUDICIAL PROCEDURE
Page 228

CODIFICATION
Section 408(c) of Pub. L. 95–598, as amended, which provided for the repeal of this section and the deletion of any references to United States Trustees in this title at a prospective date, was repealed by section 307(b) of Pub. L. 99–554. See note set out preceding section 581 of this title.

AMENDMENTS

1986—Subsec. (a). Pub. L. 99–554, §111(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "The Attorney General shall appoint one United States trustee for each of the following districts or groups of districts:"

"(1) District of Maine, District of New Hampshire, District of Massachusetts, and District of Rhode Island.

"(2) District of New York.

"(3) District of Delaware and District of New Jersey.


"(5) Northern District of Alabama.

"(6) Northern District of Texas.

"(7) Northern District of Illinois.

"(8) District of Minnesota, District of North Dakota, District of South Dakota.

"(9) Central District of California.

"(10) District of Colorado and District of Kansas."

Subsec. (b). Pub. L. 99–554, §111(b), substituted "five years" for "seven years" and "office" for "Office".

Subsec. (c). Pub. L. 99–554, §111(c), struck out "for cause" after "removal".

EFFECTIVE DATE OF 1986 AMENDMENT; TRANSITION AND ADMINISTRATIVE PROVISIONS


"SEC. 301. INCUMBENT UNITED STATES TRUSTEES."

"(a) Area For Which Appointed.—Notwithstanding any paragraph of section 581(a) of title 28, United States Code, as in effect before the effective date of this Act, a United States trustee serving in such office on the effective date of this Act shall serve the remaining term of such office as United States trustee for the region specified in a paragraph of such section, as amended by this Act, that includes the site at which the primary official station of the United States trustee is located immediately before the effective date of this Act.

"(b) Term of Office.—Notwithstanding section 581(b) of title 28, United States Code, as in effect before the effective date of this Act, the term of office of any United States trustee serving in such office on the date of the enactment of this Act (Oct. 27, 1986) shall expire:

"(1) 2 years after the expiration date of such term of office under such section, as so in effect, or

"(2) 4 years after the date of the enactment of this Act, whichever occurs first.

"SEC. 302. EFFECTIVE DATES; APPLICATION OF AMENDMENTS.

"(a) General Effective Date.—Except as provided in subsections (b), (c), (d), (e), and (f) of this Act and the amendments made by this Act (see Short Title of 1986 Amendment note below) shall take effect 30 days after the date of the enactment of this Act (Oct. 27, 1986).

"(b) Amendments Relating to Bankruptcy Judges and Incumbent United States Trustees.—Subtitle A of title I, and sections 301 and 307(a) (amending sections 152 and 156 of this title, enacting provisions set out as notes under section 581 of this title, and amending provisions set out as notes under section 152 of this title and preceding section 581 of this title), shall take effect on the date of the enactment of this Act (Oct. 27, 1986).
(c) Amendments Relating to Family Farmers.—(1) The amendments made by subtitle B of title II [§§ 251 to 257 of Pub. L. 99–554, see Tables for classification] shall not apply with respect to cases commenced under title 11 of the United States Code before the effective date of this Act.

(2) Section 1202 of title 11 of the United States Code (as added by the amendment made by section 255 of this Act) shall take effect on the effective date of this Act and before the amendment made by section 227 of this Act [amending section 1202 of this title].

(3) Until the amendments made by subtitle A of title II of this Act [§§ 201 to 231 of Pub. L. 99–554, see Tables for classification] become effective in a district and apply to a case, for purposes of such case—

(A)(i) any reference in section 326(b) of title 11 of the United States Code to chapter 13 of title 11 of the United States Code shall be deemed to be a reference to chapter 12 or chapter 13 of title 11 of the United States Code,

(ii) any reference in such section 326(b) to section 1302(d) of title 11 of the United States Code shall be deemed to be a reference to section 1302(d) of title 11 of the United States Code or section 586(b) of title 28 of the United States Code, and

(iii) any reference in such section 326(b) to section 1302(d) of title 11 of the United States Code shall be deemed to be a reference to section 1302(a) or section 1302(a) of title 11 of the United States Code, and

(B) the first two references in section 1302(a) of title 11 of the United States Code (as added by the amendment made by section 255 of this Act) to the United States trustee shall be deemed to be a reference to the court, and

(ii) any reference in such section 1302(a) to section 586(b) of title 28 of the United States Code shall be deemed to be a reference to section 1302(c) of title 11 of the United States Code (as so added).

(d) Application of Amendments to Judicial Districts.—

(1) Certain Regions Not Currently Served by United States Trustees.—(A) The amendments made by subtitle A of title II of this Act [§§ 201 to 231 of Pub. L. 99–554, see Tables for classification], and section 1930(a)(6) of title 28 of the United States Code (as added by section 117(4) of this Act) shall not—

(i) become effective in or with respect to a judicial district specified in subparagraph (B) until, or

(ii) apply to cases while pending in such district before, the expiration of the 2-year period beginning on the effective date of this Act or of the 30-day period beginning on the date the Attorney General certifies under section 303 of this Act the region specified in a paragraph of section 581(a) of title 28, United States Code, as amended by section 111(a) of this Act, that includes such district, whichever occurs first.

(B) Subparagraph (A) applies to the following:

(i) The judicial districts established for the State of Louisiana.

(ii) The judicial districts established for the State of Mississippi.

(iii) The Southern District of Texas and the Western District of Texas.

(iv) The judicial districts established for the State of Kentucky.

(v) The judicial districts established for the State of Tennessee.

(vi) The judicial districts established for the State of Michigan.

(vii) The judicial districts established for the State of Ohio.

(viii) The judicial districts established for the State of Illinois (other than the Northern District of Illinois).

(ix) The judicial districts established for the State of Indiana.

(x) The judicial districts established for the State of Arkansas.

(xi) The judicial districts established for the State of Nebraska.

(xii) The judicial districts established for the State of Missouri.

(xiii) The District of Arizona.

(xiv) The District of Hawaii.

(xv) The judicial districts established for Guam.

(xvi) The judicial districts established for the Commonwealth of the Northern Mariana Islands.

(xvii) The judicial districts established for the State of California (other than the Central District of California).

(xviii) The District of Nevada.

(xix) The District of Alaska.

(xx) The District of Idaho.

(2) Certain Remaining Judicial Districts Not Currently Served by United States Trustees.—(A) The amendments made by subtitle A of title II of this Act [§§ 201 to 231 of Pub. L. 99–554, see Tables for classification], and section 1930(a)(6) of title 28 of the United States Code (as added by section 117(4) of this Act), shall not—

(i) become effective in or with respect to a judicial district specified in subparagraph (B) until, or

(ii) apply to cases while pending in such district before, the expiration of the 2-year period beginning on the effective date of this Act or of the 30-day period beginning on the date the Attorney General certifies under section 303 of this Act the region specified in a paragraph of section 581(a) of title 28, United States Code, as amended by section 111(a) of this Act, that includes such district, whichever occurs first.

(C) Subparagraph (A) applies to the following:

(i) The judicial districts established for the State of New Mexico.

(ii) The judicial districts established for the State of Oklahoma.

(iii) The District of Utah.

(iv) The District of Wyoming (including those portions of Yellowstone National Park situated in the States of Montana and Idaho).

(v) The judicial districts established for the State of Alabama.

(vi) The judicial districts established for the State of Florida.

(vii) The judicial districts established for the State of Georgia.

(viii) The judicial districts established for the States of Montana and Idaho.

(ix) The judicial districts established for the States of South Dakota, North Dakota, and Minnesota.

(x) The judicial districts established for the State of Washington.

(xi) The judicial districts established for the State of Oregon.

(xii) The judicial districts established for the State of Nevada.

(xiii) The judicial districts established for the State of Idaho.

(xiv) The judicial districts established for the State of Arizona.

(xv) The judicial districts established for the State of California (other than the Central District of California).

(xvi) The District of Colorado.

(xvii) The District of Utah.

(xviii) The District of Arizona.

(xix) The District of Hawaii.

(xx) The judicial districts established for Guam.

(xxii) The judicial districts established for the Commonwealth of the Northern Mariana Islands.

(xxiii) The judicial districts established for the State of California (other than the Central District of California).

(xxiv) The District of Nevada.

(xxv) The District of Alaska.

(xxvi) The District of Idaho.

(xxvii) The District of Montana.

(xxviii) The judicial districts established for the State of Washington.

(xxix) The judicial districts established for the State of Oregon.

(3) Judicial Districts for the States of Alabama and North Carolina.—(A) Notwithstanding paragraphs (1) and (2), and any other provision of law, the amendments made by subtitle A of title II of this Act [§§ 201 to 231 of Pub. L. 99–554, see Tables for classification], and section 1930(a)(6) of title 28 of the United States Code (as added by section 117(4) of this Act), shall not—

(i) become effective in or with respect to a judicial district specified in subparagraph (B) until, or

(ii) apply to cases while pending in such district before, the expiration of the 2-year period beginning on the effective date of this Act or of the 30-day period beginning on the date the Attorney General certifies under section 303 of this Act the region specified in a paragraph of section 581(a) of title 28, United States Code, as amended by section 111(a) of this Act, that includes such district, whichever occurs first.
§ 581

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(i) become effective in or with respect to a judicial district specified in subparagraph (E) until, or

(ii) apply to cases while pending in such district before,

such district elects to be included in a bankruptcy region established in section 581(a) of title 28, United States Code, as amended by section 111(a) of this Act, except that the amendments made to section 585(a) of title 11, United States Code, shall become effective as of the date of the enactment of the Federal Courts Study Committee Implementation Act of 1990 [Dec. 1, 1990].

(B) Any election under subparagraph (A) shall be made upon a majority vote of the chief judge of such district and each bankruptcy judge in such judicial district in favor of such election.

(C) Notice that an election has been made under subparagraph (A) shall be given, not later than 10 days after such election, to the Attorney General and the appropriate Federal Circuit Court of Appeals for such district.

(D) Any election made under subparagraph (A) shall become effective on the date the amendments made by subtitle A of title II of this Act become effective in the region that includes such district or 30 days after the Attorney General receives the notice required under subparagraph (C), whichever occurs later.

(E) Subparagraph (A) applies to the following:

(i) The judicial districts established for the State of Alabama.

(ii) The judicial districts established for the State of North Carolina.

(F)(i) Subject to clause (ii), with respect to cases under chapters 7, 11, 12, and 13 of title 11, United States Code—

(I) commenced before the effective date of this Act, and

(II) pending in a judicial district in the State of Alabama or the State of North Carolina before any election made under subparagraph (A) by such district becomes effective, the amendments made by section 113 [amending section 586 of this title] and subtitle A of title II of this Act, and section 1930(a)(6) of title 28 of the United States Code (as added by section 117(4) of this Act), shall not apply until the expiration of the 1-year period beginning on the date such election becomes effective.

(ii) For purposes of clause (i), the amendments made by section 113 and subtitle A of title II of this Act, and section 1930(a)(6) of title 28 of the United States Code (as added by section 117(4) of this Act), shall not apply until the expiration of the 1-year period beginning on the date such election becomes effective.

(G) Notwithstanding section 589a of title 28, United States Code, as added by section 115 of this Act, funds collected as a result of the amendments made by section 117 of this Act [amending section 1930 of this title] in a judicial district in the State of Alabama or the State of North Carolina under section 1930(a) of title 28, United States Code, before the date the amendments made by subtitle A of title II of this Act take effect in such district shall be deposited in the general receipts of the Treasury.

(H) The repeal made by section 231 of this Act [repealing chapter 15 of title 11] shall not apply in or with respect to the Northern District of Alabama until March 1, 1987, or the effective date of any election made under subparagraph (A) by such district, whichever occurs first.

(I) In any judicial district in the State of Alabama or the State of North Carolina that has not made the election described in subparagraph (A), any person who is appointed under regulations issued by the Judicial Conference of the United States to administer estates in cases under title 11 of the United States Code may—

(i) establish, maintain, and supervise a panel of private trustees that are eligible and available to serve as trustees in cases under title 11, United States Code, and

(ii) supervise the administration of cases and trustees in cases under chapters 7, 11, 12, and 13 of title 11, United States Code, until the amendments made by subtitle A of title II take effect in such district.

(3) APPLICATION OF UNITED STATES TRUSTEE SYSTEM AND QUARTERLY FEES TO CERTAIN CASES.—

(I) IN GENERAL.—Subject to paragraph (2), with respect to cases under chapters 7, 11, 12, and 13 of title 11, United States Code—

(A) commenced before the effective date of this Act, and

(B) pending in a judicial district referred to in section 581(a) of title 28, United States Code, as amended by section 111(a) of this Act, for which a United States trustee is not authorized before the effective date of this Act to be appointed, the amendments made by section 113 [amending section 586 of this title] and subtitle A of title II of this Act [§§ 201 to 231 of Pub. L. 99–554, see Tables for classification], and section 1930(a)(6) of title 28 of the United States Code (as added by section 117(4) of this Act), shall not apply until the expiration of the 3-year period beginning on the effective date of this Act, or of the 1-year period beginning on the date the Attorney General certifies under section 303 of this Act the region specified in a paragraph of such section 581(a), as so amended, that includes such district, whichever occurs first.

(2) AMENDMENTS INAPPLICABLE.—For purposes of paragraph (1), the amendments made by section 113 and subtitle A of title II of this Act, and section 1930(a)(6) of title 28 of the United States Code (as added by section 117(4) of this Act), shall not apply until the expiration of the 3-year period beginning on the date such election becomes effective.

(3) RULE OF CONSTRUCTION REGARDING FEES FOR CASES.—This Act [see Short Title of 1986 Amendment note below] and the amendments made by section 117(4) of this Act [amending section 1930 of this title] shall not be construed to require the payment of a fee under paragraph (6) of section 1930(a) of title 28, United States Code, in a case under title 11 of the United States Code for any conduct or period occurring before such paragraph becomes effective in the district in which such case is pending.

SEC. 303. CERTIFICATION OF JUDICIAL DISTRICTS; NOTICE AND PUBLICATION OF CERTIFICATION.

(a) CERTIFICATION BY ATTORNEY GENERAL.—The Attorney General may certify in writing a region specified in a paragraph of section 581(a) of title 28, United States Code (other than paragraph (1b), as amended by section 111(a) of this Act, to the appropriate court of appeals of the United States, for the purpose of informing such court that certain amendments made by this Act will become effective in accordance with section 302 of this Act.

(b) NOTICE AND PUBLICATION OF CERTIFICATION.—Whenever the Attorney General transmits a certification under subsection (a), the Attorney General shall simultaneously—
"SEC. 305. APPLICATION OF CERTAIN BANKRUPTCY RULES.

"(a) RULES RELATING TO THE UNITED STATES TRUSTEE SYSTEM.—If a United States trustee is not authorized, before the effective date of this Act, to be appointed for a judicial district referred to in section 581(a) of title 28, United States Code, as amended by section 111(a) of this Act, then part X of the Bankruptcy Rules [11 U.S.C. App.] shall not apply to cases in such district until the amendments made by subtitle A of title II of this Act (§§201 to 231 of Pub. L. 99–554, see Tables for classification) become effective under section 302 of this Act in such district.

"(b) RULES RELATING TO CHAPTER 12 OR TITLE 11.—The rules prescribed under section 2075 of title 28, United States Code, and in effect on the date of the enactment of this Act, shall apply to cases filed under chapter 12 of title 11, United States Code, to the extent practicable and not inconsistent with the amendments made by title II of this Act (see Tables for classification).

"SEC. 306. SALARY OF INCUMBENT UNITED STATES TRUSTEES.

"For service as a United States trustee in the period beginning on the effective date of this Act and ending on the expiration under section 301 of this Act of their respective terms of office, the salary payable to United States trustees serving in such offices on the effective date of this Act shall be fixed in accordance with section 587 of title 28, United States Code, as amended by section 114(a) of this Act.

"SEC. 307. PRESERVATION OF UNITED STATES TRUSTEE SYSTEM DURING PENDENCY OF LEGISLATION; REPEALER.


"(b) TERMINATION AMENDMENT.—Section 408 of the Act of November 6, 1978 (Public Law 95–594; 92 Stat. 2687), is repealed.

"SEC. 308. CONSIDERATION OF CURRENT PRIVATE TRUSTEES FOR APPOINTMENT BY UNITED STATES TRUSTEES.

"(a) TRUSTEES IN BANKRUPTCY CASES UNDER CHAPTER 7.—It is the sense of the Congress that individuals who are serving before the effective date of this Act, as trustees in cases under chapter 7 of title 11, United States Code, should be considered by United States trustees for appointment under section 586(a)(1) of title 28, United States Code, to the panels of private trustees that are established as a result of the amendments made by this Act (see Short Title of 1986 Amendment note below).

"(b) STANDING TRUSTEES IN BANKRUPTCY CASES UNDER CHAPTER 13.—It is the sense of the Congress that individuals who are serving before the effective date of this Act, as standing trustees in cases under chapter 13 of title 11, United States Code, should be considered by the United States trustees for appointment under section 586(b) of title 28, United States Code, as standing trustees who are appointed as a result of the amendments made by this Act (see Short Title of 1986 Amendment note below).

"SEC. 309. APPOINTMENT OF UNITED STATES TRUSTEES BY THE ATTORNEY GENERAL.

"It is the sense of the Congress that individuals otherwise qualified who are serving, before the effective date of this Act, as estate administrators under title 11 of the United States Code should be considered by the Attorney General for appointment under sections 581 and 582 of title 28, United States Code, to new positions of United States trustee and assistant United States trustee resulting from the amendments made by this Act (see Short Title of 1986 Amendment note below).

"SEC. 310. ELECTRONIC CASE MANAGEMENT DEMONSTRATION PROJECT.

"(a) ESTABLISHMENT OF PROJECT.—Not later than 1 year after the effective date of this Act, the Director of the Executive Office for United States Trustees, in consultation with the Director of the Administrative Office of the United States Courts, shall establish an electronic case management demonstration project to be carried out in 3 Federal judicial districts that have a sufficiently large and varied bankruptcy caseload so as to provide a meaningful evaluation of the cost and effectiveness of such system. A contract for such project shall be awarded—

"(1) on the basis of competitive bids submitted by qualified nongovernmental entities that are able to design an automated joint information system for use by the United States courts and by United States trustees, and

"(2) in accordance with the Federal Property and Administrative Services Act of 1949 [see chapters 1 to 11 of Title 40, Public Buildings, Property, and Works, and division C (except sections 3302, 3307(c), 3506, 3509, 3906, 4710, and 4711) of subtitle I of Title 41, Public Contracts], the Office of Federal Procurement Policy Act [see division B (except sections 1123, 2303, 2304, and 2313) of subtitle I of Title 41], and title 31 of the United States Code.

"(b) STUDY BY GENERAL ACCOUNTING OFFICE [NOW GOVERNMENT ACCOUNTABILITY OFFICE].—Not later than 1 year after the electronic case management system begins to operate in all of the judicial districts participating in the demonstration project carried out under subsection (a), the General Accounting Office [now Government Accountability Office] shall conduct a study to compare the cost and effectiveness of such system with the cost and effectiveness of case management systems used in Federal judicial districts that are not participating in such project.

"(c) TERM OF PROJECT.—The demonstration project required by subsection (a) shall be carried out until—

"(1) the expiration of the 2-year period beginning on the date the electronic case management system begins to operate in all of the judicial districts participating in such project, or
“(2) legislation is enacted to extend, expand, modify, or terminate the operation of such project, whichever occurs first.

(i) Use by Clerks of the Courts.—The electronic case management system demonstrated under the project required by subsection (a) shall provide the clerk of court in each district in which such system is operated, with a means of—

“(1) maintaining a complete electronic case file of all relevant information contained in petitions and schedules (and any amendments thereto) relating to debtors in cases under title 11 of the United States Code, including—

“(A) a complete list of creditors in each such case, as listed by the debtor,

“(B) a complete list of assets scheduled by the debtor, the value of such asset, and any action taken by the trustee or debtor in possession with regard to such asset during the pendency of such case,

“(C) a complete list of debts and, with respect to each debt, any priority of such debt under title 11 of the United States Code,

“(ii) whether such debt is secured or unsecured, and

“(iii) whether such debt is contingent or non-contingent, and

“(D) the debtor’s statements of current expenses and income, and

“(2) maintaining all calendars and dockets and producing all notices required to be sent in cases under title 11 of the United States Code.

“(e) Use by United States Trustees.—The electronic case management system demonstrated under the project required by subsection (a) shall provide, at a minimum, the United States trustee in each district in which such system is operated, with a means to maintain a complete electronic case file of

“(1) complete electronic case files which contain, in addition to the information listed in subsection (d), records of case openings, case closings, hearings, and the filing of all motions, trustee appointments, pleadings, and responses, as well as a record of the responses by the United States trustee to those motions, trustee appointments, and pleadings,

“(2) a means to generate standardized forms for motions, appointments, pleadings, and responses,

“(3) a means to generate standard management reports and letters on an exception basis,

“(4) a means to maintain accounting records, reports, and information required to be maintained by debtors in possession and trustees in cases under title 11 of the United States Code,

“(5) a means to calculate and record distribution to creditors, final applications and orders for distribution, and final case closing reports, and

“(6) a means to monitor the payment of filing and other required fees.

“(f) Availability to Certain Governmental Entities.—Unlimited access to information maintained in the electronic case management system demonstrated under the project required by subsection (a) shall be provided at no charge to the following:

“(1) The Congress.

“(2) The Executive Office for the United States Trustees.


“(4) The clerks of the courts in judicial districts in which such system is operated and persons who review case information, in accordance with section 107(a) of title 11, United States Code, in the offices of the clerks.

“(5) The judges on the bankruptcy and district courts in districts in which such system is operated.

“(6) Trustees in cases pending in districts in which such system is operated.

“(6) Use by Other Usms.—(1) The entity which is awarded a contract to provide the electronic case management system demonstrated under this project may, under guidelines established by the Director of the Executive Office for the United States Trustees in the provisions of such contract, collect reasonable fees from assets of the estate of a debtor in bankruptcy for providing notices and services to the court and trustees under the demonstration project.

“(2) Access to information maintained in electronic case files pursuant to the demonstration project may be provided to persons other than those specified in subsection (f), but such access shall be limited to viewing such information only. A reasonable charge for such access may be collected by the entity which is awarded a contract under this section, in accordance with the guidelines established by the Director of the Executive Office for the United States Trustees in such contract. A reasonable portion of any charge so collected may be required by the Director to be remitted to the Executive Office for United States Trustees and deposited in the United States Trustee System Fund established in section 589a of title 28, United States Code.

“(h) Security.—Access provided under subsection (f) to an entity or an individual shall be subject to such security limitations as may be imposed by the Congress or the head of the affected entity.

“SEC. 311. CASES PENDING UNDER THE BANKRUPTCY ACT.

“At the end of one calendar year following the date the amendments made by subtitle B of title II of this Act [(§§ 201 to 231 of Pub. L. 99–554, see Tables for classification] take effect in a district in which any case is still pending under the Bankruptcy Act [see 11 U.S.C. notes preceding this section], the district court shall withdraw the reference of any such case and, after notice and a hearing, determine the status of the case. Such case shall be remanded to the bankruptcy judge with such instructions as are necessary for the prompt closing of the case and with a requirement that a progress report on the case be provided by the bankruptcy judge after such interval as the district court deems appropriate.”

Effective Date

Chapter effective Oct. 1, 1979, see section 402(c) of Pub. L. 95–598, set out as a note preceding section 101 of Title 11, Bankruptcy.

Short Title of 1986 Amendment

Section 1 of Pub. L. 99–594 provided: ‘‘That this Act [enacting section 589a of this title and section 307 and chapter 12 of Title 11, Bankruptcy, amending this section, sections 49, 98, 152, 156, 157, 526, 582, 584 to 587, 684, 1334, and 1930 of this title, sections 101 to 103, 105, 108, 109, 303, 321, 322, 321, 326, 327, 329, 330, 341, 343, 345 to 348, 362 to 365, 502, 503, 521 to 524, 546 to 549, 554, 557, 701, 703 to 707, 724, 726 to 728, 743, 1102, 1104 to 1106, 1112, 1121, 1129, 1183, 1202, 1302, 1306, 1307, and 1324 to 1326 of Title 11, Bankruptcy Form No. 1, set out in the Appendix to Title 11, repealing chapters 11 and 12 of Title 11, enacting provisions set out as notes under this section and section 589 of this title, amending provisions set out as notes preceding this section and under section 152 of this title, and repealing provisions set out as a note preceding this section] may be cited as the ‘‘Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986’’.’’

Bankruptcy Crimes

Pub. L. 109–182, title XI, §1175, Jan. 5, 2006, 119 Stat. 3125, provided that: ‘‘The Director of the Executive Office for United States Trustees shall prepare an annual report to the Congress detailing—

“(1) the number and types of criminal referrals made by the United States Trustee Program;

“(2) the outcomes of each criminal referral;

“(3) for any year in which the number of criminal referrals is less than for the prior year, an explanation of the decrease; and

“(4) the United States Trustee Program’s efforts to prevent bankruptcy fraud and abuse, particularly
with respect to the establishment of uniform internal controls to detect common, higher risk frauds, such as a debtor's failure to disclose all assets."

§ 582. Assistant United States trustees

(a) The Attorney General may appoint one or more assistant United States trustees in any region when the public interest so requires.
(b) Each assistant United States trustee is subject to removal by the Attorney General.


Codification
Section 408(c) of Pub. L. 95–598, as amended, which provided for the repeal of this section and the deletion of any references to United States Trustees in this title at a prospective date, was repealed by section 307(b) of Pub. L. 99–554. See note set out preceding section 581 of this title.

Amendments

Effective Date of 1986 Amendment

Appointment of United States Trustees by Attorney General

For sense of Congress concerning consideration of estate administrators under title 11 by the Attorney General for appointment under this section as U.S. trustee and assistant U.S. trustee, see section 309 of Pub. L. 99–554, set out as a note under section 581 of this title.

§ 583. Oath of office

Each United States trustee and assistant United States trustee, before taking office, shall take an oath to execute faithfully his duties.

(Added Pub. L. 95–598, title II, §224(a), Nov. 6, 1978, 92 Stat. 2663.)

Codification
Section 408(c) of Pub. L. 95–598, as amended, which provided for the repeal of this section and the deletion of any references to United States Trustees in this title at a prospective date, was repealed by section 307(b) of Pub. L. 99–554. See note set out preceding section 581 of this title.

§ 584. Official stations

The Attorney General may determine the official stations of the United States trustees and assistant United States trustees within the regions for which they were appointed.


Codification
Section 408(c) of Pub. L. 95–598, as amended, which provided for the repeal of this section and the deletion of any references to United States Trustees in this title at a prospective date, was repealed by section 307(b) of Pub. L. 99–554. See note set out preceding section 581 of this title.

Amendments
1986—Pub. L. 99–554 substituted "regions" for "districts".

Effective Date of 1986 Amendment

§ 585. Vacancies

(a) The Attorney General may appoint an acting United States trustee for a region in which the office of the United States trustee is vacant. The individual so appointed may serve until the date on which the vacancy is filled by appointment under section 581 of this title or by designation under subsection (b) of this section.
(b) The Attorney General may designate a United States trustee to serve in not more than two regions for such time as the public interest requires.


Codification
Section 408(c) of Pub. L. 95–598, as amended, which provided for the repeal of this section and the deletion of any references to United States Trustees in this title at a prospective date, was repealed by section 307(b) of Pub. L. 99–554. See note set out preceding section 581 of this title.

Amendments
1986—Pub. L. 99–554 amended section generally. Prior to amendment, section read as follows: "The Attorney General may appoint an acting United States trustee for a district in which the office of United States trustee is vacant, or may designate a United States trustee for another judicial district to serve as trustee for the district in which such vacancy exists. The individual so appointed or designated may serve until the earlier of 90 days after such appointment or designation, as the case may be, or the date on which the vacancy is filled by appointment under section 581 of this title."

Effective Date of 1986 Amendment

§ 586. Duties; supervision by Attorney General

(a) Each United States trustee, within the region for which such United States trustee is appointed, shall—
(1) establish, maintain, and supervise a panel of private trustees that are eligible and available to serve as trustees in cases under chapter 7 of title 11;
(2) serve as and perform the duties of a trustee in a case under title 11 when required under title 11 to serve as trustee in such a case;
(3) supervise the administration of cases and trustees in cases under chapter 7, 11, 12, 13, or 15 of title 11 by, whenever the United States trustee considers it to be appropriate—
(A)(i) reviewing, in accordance with procedural guidelines adopted by the Executive Office of the United States Trustee (which guidelines shall be applied uniformly by the United States trustee except when circumstances warrant different treatment), appli-
§ 586: Bankruptcy Abuse Prevention and Consumer Protection Act of 2005; performed under section 603(a) of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005; United States trustee under title 11 and taking such actions as the United States trustee deems to be appropriate to prevent undue delay in such progress; and

(E) monitoring creditors’ committees appointed under title 11;

(F) notifying the appropriate United States attorney of matters which relate to the occurrence of any action which may constitute a crime under the laws of the United States and, on the request of the United States attorney, assisting the United States attorney in carrying out prosecutions based on such action;

(G) monitoring the progress of cases under title 11 and taking such actions as the United States trustee deems to be appropriate to ensure that all reports, schedules, and fees required to be filed under title 11 and this title by the debtor are properly and timely filed;

(H) in small business cases (as defined in section 101 of title 11), performing the additional duties specified in title 11 pertaining to such cases; and

(I) monitoring applications filed under section 327 of title 11 and, whenever the United States trustee deems it to be appropriate, filing with the court comments with respect to the approval of such applications;

(j) deposit or invest under section 345 of title 11 money received as trustee in cases under title 11;

(k) perform the duties prescribed for the United States trustee under title 11 and this title, and such duties consistent with title 11 and this title as the Attorney General may prescribe;

(l) make such reports as the Attorney General directs, including the results of audits performed under section 603(a) of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005;

(m) in each of such small business cases—

(A) conduct an initial debtor interview as soon as practicable after the date of the order for relief but before the first meeting scheduled under section 341(a) of title 11, at which time the United States trustee shall—

(i) begin to investigate the debtor’s viability;

(ii) inquire about the debtor’s business plan;

(iii) explain the debtor’s obligations to file monthly operating reports and other required reports;

(iv) attempt to develop an agreed scheduling order; and

(v) inform the debtor of other obligations;

(B) if determined to be appropriate and advisable, visit the appropriate business premises of the debtor, ascertain the state of the debtor’s books and records, and verify that the debtor has filed its tax returns; and

(C) review and monitor the debtor’s activities, to determine as promptly as possible whether the debtor will be unable to confirm a plan; and

(8) in any case in which the United States trustee finds material grounds for any relief under section 1112 of title 11, apply promptly after making that finding to the court for relief.

(b) If the number of cases under chapter 12 or 13 of title 11 commenced in a particular region so warrants, the United States trustee for such region may, subject to the approval of the Attorney General, appoint one or more individuals to serve as standing trustee, or designate one or more assistant United States trustees to serve in cases under such chapter. The United States trustee for such region shall supervise any such individual appointed as standing trustee in the performance of the duties of standing trustee.

(c) Each United States trustee shall be under the general supervision of the Attorney General, who shall provide general coordination and assistance to the United States trustees.

(d)(1) The Attorney General shall prescribe by rule qualifications for membership on the panels established by United States trustees under paragraph (a)(1) of this section, and qualifications for appointment under subsection (b) of this section to serve as standing trustee in cases under chapter 12 or 13 of title 11. The Attorney General may not require that an individual be an attorney in order to qualify for appointment under subsection (b) of this section to serve as standing trustee in cases under chapter 12 or 13 of title 11.

(2) A trustee whose appointment under subsection (a)(1) or under subsection (b) is terminated or who ceases to be assigned to cases filed under title 11, United States Code, may obtain judicial review of the final agency decision by commencing an action in the district court of the United States for the district for which the panel to which the trustee is appointed under subsection (a)(1) of this section, or in the district court of the United States for the district in which the trustee is appointed under subsection (b) resides, after first exhausting all available administrative remedies, which if the trustee so elects, shall also include an administrative hearing on the record. Unless the trustee elects to have an administrative hearing on the record, the trustee shall be deemed to have exhausted all administrative remedies for purposes of this paragraph if the agency fails to make a final agency decision within 90 days after the trustee requests administrative remedies. The Attorney General shall prescribe procedures to implement this
paragraph. The decision of the agency shall be affirmed by the district court unless it is unreasonable and without cause based on the administrative record before the agency.

(e)(1) The Attorney General, after consultation with a United States trustee that has appointed an individual under subsection (b) of this section to serve as standing trustee in cases under chapter 12 or 13 of title 11, shall fix—

(A) a maximum annual compensation for such individual consisting of—

(i) an amount not to exceed the highest annual rate of basic pay in effect for level V of the Executive Schedule; and

(ii) the cash value of employment benefits comparable to the employment benefits provided by the United States to individuals who are employed by the United States at the same rate of basic pay to perform similar services during the same period of time; and

(B) a percentage fee not to exceed—

(i) in the case of a debtor who is not a family farmer, ten percent; or

(ii) in the case of a debtor who is a family farmer, the sum of—

(I) not to exceed ten percent of the payments made under the plan of such debtor, with respect to payments in an aggregate amount not to exceed $450,000; and

(II) three percent of payments made under the plan of such debtor, with respect to payments made after the aggregate amount of payments made under the plan exceeds $450,000;

based on such maximum annual compensation and the actual, necessary expenses incurred by such individual as standing trustee.

(2) Such individual shall collect such percentage fee from all payments received by such individual under plans in the cases under chapter 12 or 13 of title 11 for which such individual serves as standing trustee. Such individual shall pay to the United States trustee, and the United States trustee shall deposit in the United States Trustee System Fund—

(A) any amount by which the actual compensation of such individual exceeds 5 percent upon all payments received under plans in cases under chapter 12 or 13 of title 11 for which such individual serves as standing trustee; and

(B) any amount by which the percentage for all such cases exceeds—

(i) such individual’s actual compensation for such cases, as adjusted under subparagraph (A) of paragraph (1); plus

(ii) the actual, necessary expenses incurred by such individual as standing trustee in such cases. Subject to the approval of the Attorney General, any or all of the interest earned from the deposit of payments under plans by such individual may be utilized to pay actual, necessary expenses without regard to the percentage limitation contained in subparagraph (d)(1)(B) of this section.

(3) After first exhausting all available administrative remedies, an individual appointed under subsection (b) may obtain judicial review of final agency action to deny a claim of actual, necessary expenses under this subsection by commencing an action in the district court of the United States for the district where the individual resides. The decision of the agency shall be affirmed by the district court unless it is unreasonable and without cause based upon the administrative record before the agency.

(4) The Attorney General shall prescribe procedures to implement this subsection.

(f)(1) The United States trustee for each district is authorized to contract with auditors to perform audits in cases designated by the United States trustee, in accordance with the procedures established under section 503(a) of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.

(2)(A) The report of each audit referred to in paragraph (1) shall be filed with the court and transmitted to the United States trustee. Each report shall clearly and conspicuously specify any material misstatement of income or expenses or of assets identified by the person performing the audit. In any case in which a material misstatement of income or expenditures or of assets has been reported, the clerk of the district court (or the clerk of the bankruptcy court if one is certified under section 156(b) of this title) shall give notice of the misstatement to the creditors in the case.

(B) If a material misstatement of income or expenditures or of assets is reported, the United States trustee shall—

(i) report the material misstatement, if appropriate, to the United States Attorney pursuant to section 3057 of title 18; and

(ii) if advisable, take appropriate action, including but not limited to commencing an adversary proceeding to revoke the debtor’s discharge pursuant to section 727(d) of title 11.


REFERENCES IN TEXT

Section 603(a) of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, referred to in subsec. (a)(6) and (f)(1), in section 603(a) of Pub. L. 109–8, which provided for the repeal of this section and the deletion of any references to United States Trustees in this title at a prospective date, was repealed by section 307(b) of Pub. L. 99–554. See note set out preceding section 581 of this title.

CODIFICATION

Section 498(c) of Pub. L. 95–598, which provided for the repeal of this section and the deletion of any references to United States Trustees in this title at a prospective date, was repealed by section 307(b) of Pub. L. 99–554. See note set out preceding section 581 of this title.

AMENDMENTS


§ 586
Subsec. (a)(8), Pub. L. 111–327, §2(c)(3)(C), struck out "the United States trustee shall" before "apply promptly".

Subsec. (a)(3), Pub. L. 109–8, §802(c)(3), substituted "13, or 15" for "or 13" in introductory provisions.

Subsec. (a)(3)(H), (I), Pub. L. 109–8, §439(1), added subpar. (H) and redesignated former subpar. (H) as (I).

Subsec. (a)(6), Pub. L. 109–8, §603(b)(1), added par. (6) and struck out former par. (6) which read as follows: make such reports as the Attorney General directs.

Subsec. (a)(7), (8), Pub. L. 109–8, §439(2)–(4), added pars. (7) and (8).

Subsec. (d), Pub. L. 109–8, §1231(a), designated existing provisions as par. (1) and added par. (2).

Subsec. (e)(3), (4), Pub. L. 109–8, §1231(b), added pars. (3) and (4).

Subsec. (f), Pub. L. 109–8, §603(b)(2), added subsec. (f).

1994—Subsec. (a)(3), Pub. L. 103–394 inserted "12," after "11," in introductory provisions and amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "a maximum annual compensation for such individual, not to exceed the annual rate of basic pay in effect for step 1 of grade GS–16 of the General Schedule prescribed under section 5332 of title 5; and".

1990—Subsec. (e)(1)(A), Pub. L. 101–509 amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "(A) establish a method of selecting appropriate persons for the duties of standing trustee in such cases, as adjusted under subparagraph (A) of this paragraph; plus

(ii) the actual, necessary expenses incurred by such individual as standing trustee in such cases.

Effective Date of 2005 Amendment
Amendment by sections 439, 802(c)(3), and 1231 of Pub. L. 109–8 effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under Title 11, Bankruptcy, before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as a note under section 101 of Title 11.

Amendment by section 603(b) of Pub. L. 109–8 effective 18 months after Apr. 20, 2005, see section 603(e) of Pub. L. 109–8, set out as a note under section 521 of Title 11, Bankruptcy.

Effective Date of 1994 Amendment

Effective Date of 1990 Amendment
Amendment by Pub. L. 101–509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, §305] of Pub. L. 101–509, set out as a note under section 5301 of Title 5, Government Organization and Employees.

Effective Date of 1986 Amendment
Effective date and applicability of amendment by Pub. L. 99–554 dependent upon the judicial district involved, see section 302(d), (e) of Pub. L. 99–554, set out as a note under section 581 of this title.

Audit Procedures
Pub. L. 109–8, title VI, §603(a), Apr. 20, 2005, 119 Stat. 122, provided that:

"(1) Establishment of Procedures.—The Attorney General (in judicial districts served by bankruptcy administrators) shall establish procedures to determine the accuracy, veracity, and completeness of petitions, schedules, and other information that the debtor is required to provide under sections 521 and 522 of title 11, United States Code, and, if applicable, section 111 of such title, in cases filed under chapter 7 or 13 of such title in which the debtor is an individual. Such audits shall be in accordance with generally accepted auditing standards and performed by independent certified public accountants or independent licensed public accountants, provided that the Attorney General and the Judicial Conference, as appropriate, may develop alternative auditing standards not later than 2 years after the date of enactment of this Act [Apr. 20, 2005]."

"(2) Procedures.—Those procedures required by paragraph (1) shall—

(A) establish a method of selecting appropriate qualified persons to contract to perform those audits;
“(B) establish a method of randomly selecting cases to be audited, except that not less than 1 out of every 250 cases in each Federal judicial district shall be selected for audit;

“(C) require audits of schedules of income and expenses that reflect greater than average variances from the statistical norm of the district in which the schedules were filed if those variances occur by reason of higher income or higher expenses than the statistical norm of the district in which the schedules were filed; and

“(D) establish procedures for providing, not less frequently than annually, public information concerning the aggregate results of such audits including the percentage of cases, by district, in which a material misstatement of income or expenditures is reported.”

APPLICATION TO ALL STANDING TRUSTEES
Section 529 [title I, §110(b)] of Pub. L. 95–598 provided that: “The amendment made by subsection (a) [amending this section] shall apply to any trustee to whom the provisions of section 302(d)(3) of the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986 [Public Law 99–54] [Pub. L. 99–554; 100 Stat. 3121] [set out in an Effective Date of 1986 Amendment note under section 581 of this title] apply.”

§ 587. Salaries
Subject to sections 5315 through 5317 of title 5, the Attorney General shall fix the annual salaries of United States trustees and assistant United States trustees at rates of compensation not in excess of the rate of basic compensation provided for Executive Level IV of the Executive Schedule set forth in section 5315 of title 5, United States Code.


CODIFICATION
Section 408(c) of Pub. L. 95–598, as amended, which provided for the repeal of this section and the deletion of any references to United States Trustees in this title at a prospective date, was repealed by section 307(b) of Pub. L. 99–554. See note set out preceding section 581 of this title.

AMENDMENTS
1986—Pub. L. 99–554 amended section generally. Prior to amendment, section read as follows: “The Attorney General shall fix the annual salaries of United States trustees and assistant United States trustees at rates of compensation not to exceed the lowest annual rate of basic pay in effect for grade GS–16 of the General Schedule prescribed under section 5332 of title 5.”

EFFECTIVE DATE OF 1986 AMENDMENT

§ 588. Expenses
Necessary office expenses of the United States trustee shall be allowed when authorized by the Attorney General.

(Added Pub. L. 95–598, title II, § 224(a), Nov. 6, 1978, 92 Stat. 2664.)

CODIFICATION
Section 408(c) of Pub. L. 95–598, as amended, which provided for the repeal of this section and the deletion of any references to United States Trustees in this title at a prospective date, was repealed by section 307(b) of Pub. L. 99–554. See note set out preceding section 581 of this title.

§ 589. Staff and other employees
The United States trustee may employ staff and other employees on approval of the Attorney General.

(Added Pub. L. 95–598, title II, § 224(a), Nov. 6, 1978, 92 Stat. 2664.)

CODIFICATION
Section 408(c) of Pub. L. 95–598, as amended, which provided for the repeal of this section and the deletion of any references to United States Trustees in this title at a prospective date, was repealed by section 307(b) of Pub. L. 99–554. See note set out preceding section 581 of this title.

TEMPORARY SUSPENSION OF LIMITATION ON APPOINTMENTS
Pub. L. 99–554, title I, §114(b), Oct. 27, 1986, 100 Stat. 3093, provided that: “During the period beginning on the effective date of this Act [see section 302 of Pub. L. 99–554, set out as an Effective Date note under section 581 of this title] and ending on October 1, 1989, the provisions of title 5 of the United States Code governing appointments in the competitive service shall not apply with respect to appointments under section 589 of title 28, United States Code.”

§ 589a. United States Trustee System Fund
(a) There is hereby established in the Treasury of the United States a special fund to be known as the “United States Trustee System Fund” (hereinafter in this section referred to as the “Fund”). Monies in the Fund shall be available to the Attorney General without fiscal year limitation in such amounts as may be specified in appropriations Acts for the following purposes in connection with the operations of United States trustees—

(1) salaries and related employee benefits;
(2) travel and transportation;
(3) rental of space;
(4) communication, utilities, and miscellaneous computer charges;
(5) security investigations and audits;
(6) supplies, books, and other materials for legal research;
(7) furniture and equipment;
(8) miscellaneous services, including those obtained by contract; and
(9) printing.

(b) For the purpose of recovering the cost of services of the United States Trustee System, there shall be deposited as offsetting collections to the appropriation “United States Trustee System Fund”, to remain available until expended, the following—

(1)(A) 40.46 percent of the fees collected under section 1930(a)(1); and
(B) 28.33 percent of the fees collected under section 1930(a)(1); and
(2) 55 percent of the fees collected under section 1930(a)(3) of this title;
(3) one-half of the fees collected under section 1930(a)(4) of this title;
(4) one-half of the fees collected under section 1930(a)(5) of this title;
(5) 100 percent of the fees collected under section 1930(a)(6) of this title;
§ 589b

TITLE 28—JUDICIARY AND JUDICIAL PROCEDURE

Page 238

(6) three-fourths of the fees collected under the last sentence of section 1930(a) of this title;

(7) the compensation of trustees received under section 530(d) of title 11 by the clerks of the bankruptcy courts;

(8) excess fees collected under section 586(e)(2) of this title;

(9) interest earned on Fund investment; and

shall be paid to the United States Treasury.

(c) Amounts in the Fund which are not currently needed for the purposes specified in subsection (a) shall be kept on deposit or invested in obligations of, or guaranteed by, the United States.

(d) The Attorney General shall transmit to the Congress, not later than 120 days after the end of each fiscal year, a detailed report on the amounts deposited in the Fund and a description of expenditures made under this section.

(e) There are authorized to be appropriated to the Fund for any fiscal year such sums as may be necessary to supplement amounts deposited under subsection (b) for the purposes specified in subsection (a).


CODIFICATION

Amendment by Pub. L. 104–91 is based on section 111(b) and (c) of H.R. 2076, One Hundred Fourth Congress, as passed by the House of Representatives on Dec. 6, 1995, which was enacted into law by Pub. L. 104–91.

AMENDMENTS


2005—Subsec. (b)(1). Pub. L. 109–8, §325(b)(1), as amended by Pub. L. 109–13, §6058(a), added par. (1) and struck out former par. (1), which read as follows: “27.42 percent of the fees collected under section 1930(a)(1) of this title.”

1999—Subsec. (b)(1). Pub. L. 106–113, §1000(a)(1) [title I, §113], substituted “27.42 percent” for “23.08 percent”.

Subsec. (b)(9). Pub. L. 106–113, §1000(a)(1) [title I], added par. (9).

1996—Pub. L. 104–208 reenacted section catchline without change and amended text generally, revising and restating as subsec. (a) to (e) provisions of former subsecs. (a) to (f).


1995—Subsec. (b)(1). Pub. L. 103–121, §111(a)(2), substituted “23.08 per centum” for “one-half”.

Subsec. (b)(2). Pub. L. 103–121, §111(b)(2), substituted “37.5 per centum” for “50 per centum”.

Subsec. (f)(1). Pub. L. 103–121, §111(b)(3), substituted “12.5 per centum” for “16.7 per centum”.


Subsec. (b)(5). Pub. L. 102–140, §111(b)(2), substituted “60 per centum” for “all”.


Effective Date of 2005 Amendments

Pub. L. 109–13, div. A, title VI, §6058(b), May 11, 2005, 119 Stat. 297, provided that: “This section amending this section and section 1900 of this title, enacting provisions set out as a note under this section, and amending provisions set out as notes under this section and sections 1900 and 1901 of this title] and the amendment made by this section shall take effect immediately after the enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 [Pub. L. 109–8, approved Apr. 20, 2005].”


Effective Date of 1999 Amendment

Pub. L. 106–113, div. B, §1000(a)(1) [title I, §113], Nov. 29, 1999, 113 Stat. 1535, 1501A–20, provided that the amendment made by section 1000(a)(1) [title I, §113] is effective 30 days after Nov. 29, 1999.

Effective Date of 1996 Amendment

Section 101(a) [title I, §108(c)] of Pub. L. 104–208 provided that: “Notwithstanding any other provision of law or of this Act, the amendments made by subsection (b) of this section shall take effect upon enactment of this Act [Sept. 30, 1996].”

Effective Date of 1993 Amendment

Section 111(a)(1) of Pub. L. 103–121 provided in part that the amendment made by that section is effective 30 days after Oct. 27, 1993.

Effective Date of 1991 Amendment

Section 111(b) of Pub. L. 103–121 provided in part that the amendment made by that section is effective 30 days after Oct. 27, 1993.

Effective Date

Section effective 30 days after Oct. 27, 1986, see section 302(a) of Pub. L. 99–554, set out as a note under section 581 of this title.

§ 589b. Bankruptcy data

(a) RULES.—The Attorney General shall, within a reasonable time after the effective date of this section, issue rules requiring uniform forms for (and from time to time thereafter to appropriately modify and approve—)

(1) final reports by trustees in cases under chapters 7, 12, and 13 of title 11; and

(2) periodic reports by debtors in possession or trustees in cases under chapter 11 of title 11.
(b) REPORTS.—Each report referred to in subsection (a) shall be designed (and the requirements as to place and manner of filing shall be established) so as to facilitate compilation of data and maximum possible access of the public, both by physical inspection at one or more central filing locations, and by electronic access through the Internet or other appropriate media.

(c) REQUIRED INFORMATION.—The information required to be filed in the reports referred to in subsection (b) shall be that which is in the best interests of debtors and creditors, and in the public interest in reasonable and adequate information to evaluate the efficiency and practicality of the Federal bankruptcy system. In issuing rules proposing the forms referred to in subsection (a), the Attorney General shall strike the best achievable practical balance between—

(1) the reasonable needs of the public for information about the operational results of the Federal bankruptcy system;
(2) economy, simplicity, and lack of undue burden on persons with a duty to file reports; and
(3) appropriate privacy concerns and safeguards.

(d) FINAL REPORTS.—The uniform forms for final reports required under subsection (a) for use by trustees under chapters 7, 12, and 13 of title 11 shall, in addition to such other matters as are required by law or as the Attorney General in the discretion of the Attorney General shall propose, include with respect to a case under such title—

(1) information about the length of time the case was pending;
(2) assets abandoned;
(3) assets exempted;
(4) receipts and disbursements of the estate;
(5) expenses of administration, including for use under section 707(b), actual costs of administering cases under chapter 15 of title 11;
(6) claims asserted;
(7) claims allowed; and
(8) distributions to claimants and claims discharged without payment,
in each case by appropriate category and, in cases under chapters 12 and 13 of title 11, date of confirmation of the plan, each modification thereto, and defaults by the debtor in performance under the plan.

(e) PERIODIC REPORTS.—The uniform forms for periodic reports required under subsection (a) for use by trustees or debtors in possession under chapter 11 of title 11 shall, in addition to such other matters as are required by law or as the Attorney General in the discretion of the Attorney General shall propose, include—

(1) information about the industry classification, published by the Department of Commerce, for the businesses conducted by the debtor;
(2) length of time the case has been pending;
(3) number of full-time employees as of the date of the order for relief and at the end of each reporting period since the case was filed;
(4) cash receipts, cash disbursements and profitability of the debtor for the most recent period and cumulatively since the date of the order for relief;
(5) compliance with title 11, whether or not tax returns and tax payments since the date of the order for relief have been timely filed and made;
(6) all professional fees approved by the court in the case for the most recent period and cumulatively since the date of the order for relief (separately reported, for the professional fees incurred by or on behalf of the debtor, between those that would have been incurred absent a bankruptcy case and those not); and
(7) plans of reorganization filed and confirmed and, with respect thereto, by class, the recoveries of the holders, expressed in aggregate dollar values and, in the case of claims, as a percentage of total claims of the class allowed.

(Added Pub. L. 109–8, title VI, § 602(a), Apr. 20, 2005, 119 Stat. 120.)

REFERENCES IN TEXT

For the effective date of this section, referred to in subsec. (a), see Effective Date note set out below.

**Effective Date**

Section effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under Title 11, Bankruptcy, before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as an Effective Date of 2005 Amendment note under section 101 of Title 11.

**CHAPTER 40—INDEPENDENT COUNSEL**

sec.
591. Applicability of provisions of this chapter.
592. Preliminary investigation and application for appointment of an independent counsel.
593. Duties of the division of the court.
594. Authority and duties of an independent counsel.
595. Congressional oversight.
596. Removal of an independent counsel; termination of office.
597. Relationship with Department of Justice.
598. Severability.
599. Termination of effect of chapter.

**AMENDMENTS**


§ 591. Applicability of provisions of this chapter

(a) PRELIMINARY INVESTIGATION WITH RESPECT TO CERTAIN COVERED PERSONS.—The Attorney General shall conduct a preliminary investigation in accordance with section 592 whenever the Attorney General receives information sufficient to constitute grounds to investigate whether any person described in subsection (b) may have violated any Federal criminal law other than a violation classified as a Class B or C misdemeanor or an infraction.

(b) PERSONS TO WHOM SUBSECTION (a) APPLIES.—The persons referred to in subsection (a) are—
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EQUIREMENTS FOR RECUSAL DETERMINA

which a personal, financial, or political conflict of interest, the Attorney General may

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(1) WHEN RECUSAL IS REQUIRED.—(A) If informa-

(1) the President and Vice President;

(2) any individual serving in a position listed in section 5312 of title 5;

(3) any individual working in the Executive

Office of the President who is compensated at a rate of pay at or above level II of the Execu-

tive Schedule under section 5313 of title 5;

(4) any Assistant Attorney General and any individual working in the Department of Jus-

tice who is compensated at a rate of pay at or above level III of the Executive Schedule

under section 5314 of title 5;

(5) the Director of Central Intelligence, the Deputy Director of Central Intelligence, and

the Commissioner of Internal Revenue;

(6) the chairman and treasurer of the principal national campaign committee seeking

the election or reelection of the President, and

(7) any individual who held an office or posi-

tion described in paragraph (1), (2), (3), (4), or

(5) for 1 year after leaving the office or posi-

(c) PRELIMINARY INVESTIGATION WITH RESPECT TO

OTHER PERSONS.—

(1) IN GENERAL.—When the Attorney General determines that an investigation or prosecu-

tion of a person by the Department of Justice may result in a personal, financial, or political conflict of interest, the Attorney General may conduct a preliminary investigation of such person in accordance with section 592 if the Attorney General receives information sufficient to constitute grounds to investigate whether that person may have violated Federal criminal law other than a violation classified as a Class B or C misdemeanor or an infrac-

tion.

(2) MEMBERS OF CONGRESS.—When the Attorney General determines that it would be in the public interest, the Attorney General may conduct a preliminary investigation in accordance with section 592 if the Attorney General receives information sufficient to constitute grounds to investigate whether a Member of Congress may have violated any Federal criminal law other than a violation classified as a Class B or C misdemeanor or an infrac-

tion.

(3) Any individual who leaves any office or position described in paragraph (1), (2), (3), (4), or

(5) for 1 year after leaving the office or posi-


(4) Any individual who is compensated at a rate of pay at or above level III of the Executive Schedule under section 5314 of title 5;

(5) Any individual who is compensated at a rate of pay at or above level II of the Executive Schedule under section 5313 of title 5;

(6) The chairman and treasurer of the principal national campaign committee seeking the election or reelection of the President, and

(7) Any individual who held an office or position described in any of paragraphs (1) through (5) of this subsection during the incumbency of one President and who continued to hold the office or position for not more than 90 days into the term of the next President, during the 1-year period after the individual leaves the office or position; and

Subsec. (c). Pub. L. 103–270, § 4(a), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: "PRELIMINARY INVESTIGATION WITH RESPECT TO PERSONS NOT LISTED IN SUBSECTION (b).—The Attorney General may conduct a preliminary investigation in accordance with section 592 if—

General determines that the information is specific and from a credible source, the Attorney General shall, upon making that determination, commence a preliminary investigation with respect to that information. If the Attorney General determines that he or she is unable to determine, within that 30-day period, whether the information is specific and from a credible source, the Attorney General shall, at the end of that 30-day period, commence a preliminary investigation with respect to that information.

(e) RECUSAL OF ATTORNEY GENERAL.—

(1) When recusal is required.—(A) If information received under this chapter involves the Attorney General, the next most senior offi-

(2) Requirements for recusal determination.—Before personally making any other determination under this chapter with respect to information received under this chapter, the Attorney General shall determine under paragraph (1)(B) whether recusal is necessary. The Attorney General shall set forth this determination in writing, identify the facts considered by the Attorney General, and set forth the reasons for the recusal. The Attorney General shall file this determination with any notification or application submitted to the divi-

sion of the court under this chapter with respect to such information.


Amendments

1994—Subsec. (b)(6) to (8). Pub. L. 103–270, § 4(b), redesignated par. (8) as (6) and substituted "; and" for the period at end, added par. (7), and struck out former pars. (6) and (7) which read as follows:

"(6) any individual who leaves any office or position described in any of paragraphs (1) through (5) of this subsection, during the incumbency of the President under whom such individual served in the office or position plus one year after such incumbency, but in no event longer than a period of three years after the individual leaves the office or position; and"

"(7) any individual who held an office or position described in any of paragraphs (1) through (5) of this subsection during the incumbency of one President and who continued to hold the office or position for not more than 90 days into the term of the next President, during the 1-year period after the individual leaves the office or position; and"

Subsec. (c). Pub. L. 103–270, § 4(a), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: "PRELIMINARY INVESTIGATION WITH RESPECT TO PERSONS NOT LISTED IN SUBSECTION (b).—The Attorney General may conduct a preliminary investigation in accordance with section 592 if—

General determines that the information is specific and from a credible source, the Attorney General shall, upon making that determination, commence a preliminary investigation with respect to that information. If the Attorney General determines that he or she is unable to determine, within that 30-day period, whether the information is specific and from a credible source, the Attorney General shall, at the end of that 30-day period, commence a preliminary investigation with respect to that information.

(e) RECUSAL OF ATTORNEY GENERAL.—

(1) When recusal is required.—(A) If information received under this chapter involves the Attorney General, the next most senior offi-

(2) Requirements for recusal determination.—Before personally making any other determination under this chapter with respect to information received under this chapter, the Attorney General shall determine under paragraph (1)(B) whether recusal is necessary. The Attorney General shall set forth this determination in writing, identify the facts considered by the Attorney General, and set forth the reasons for the recusal. The Attorney General shall file this determination with any notification or application submitted to the divi-

sion of the court under this chapter with respect to such information.
“(1) the Attorney General receives information sufficient to constitute grounds to investigate whether any person other than a person described in subsection (b) may have violated any Federal criminal law other than a violation classified as a Class B or C misdemeanor or an infraction; and

“(2) the Attorney General determines that an investigation or prosecution of the person, with respect to the information received, by the Attorney General or other officer of the Department of Justice may result in a personal, financial, or political conflict of interest.”


Subsec. (e). Pub. L. 103–270, § 3(k), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: “(e) RECUSAL OF ATTORNEY GENERAL.—

“(1) When recusal is required.—If information received under this chapter involves the Attorney General or a person with whom the Attorney General has a current or recent personal or financial relationship, the Attorney General shall recuse himself or herself by designating the next most senior officer in the Department of Justice whom that information does not involve and who does not have a current or recent personal or financial relationship with such person to perform the duties assigned under this chapter to the Attorney General with respect to that information.

“(2) Requirements for recusal determination.—The Attorney General shall, before personally making any other determination under this chapter with respect to information received under this chapter, determine under paragraph (1) whether to recuse himself or herself with respect to that information. A determination to recuse shall be in writing, shall identify the facts considered by the Attorney General, and shall set forth the reasons for the recusal. The Attorney General shall file this determination with any notification or application submitted to the division of the court under this chapter with respect to the information involved.”

1987—Pub. L. 100–191 amended section generally, substituting subsecs. (a) to (e) relating to applicability of chapter for former subsecs. (a) to (c) relating to similar subject.

1984—Subsec. (a). Pub. L. 98–473 substituted “Class B or C misdemeanor or an infraction” for “petty offense”.


Subsec. (b)(3). Pub. L. 97–409, § 4(a)(3), substituted who is compensated at or above a rate equivalent to level II” for “and compensated at a rate not less than the annual rate of basic pay provided for level IV”.

Subsec. (b)(4), (5). Pub. L. 97–409, § 3, redesignated as par. (5) “the Director of Central Intelligence” and all that followed through end of par. (4). Former par. (5) redesignated (6).

Subsec. (b)(6). Pub. L. 97–409, § 3, redesignated former par. (5) as (6) and substituted “through (5) of this subsection during the period consisting of the incumbency of the President or during the period the last preceding President held office, if such preceding President was of the same political party as the incumbent President; and”. Former par. (6) redesignated (8).


Subsec. (b)(8). Pub. L. 97–409, § 3, redesignated former par. (6) as (8) and substituted “the chairman and treasurer of the principal national campaign committee seeking the election or reelection of the President, and any officer of the campaign exercising authority at the national level, such as the campaign manager or director, or the incumbency of the President” for “any officer of the principal national campaign committee seeking the election or reelection of the President”.


CHANGE OF NAME

Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the intelligence community deemed to be a reference to the Director of National Intelligence. Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the Central Intelligence Agency deemed to be a reference to the Director of the Central Intelligence Agency. See section 1081(a), (b) of Pub. L. 108–458, set out as a note under section 401 of Title 50, War and National Defense.

EFFECTIVE DATE OF 1994 AMENDMENT: TRANSITION PROVISIONS

Section 7 of Pub. L. 103–270 provided that:

“(a) IN GENERAL.—Except as provided in this section, the amendments made by this Act (amending this section and sections 592 to 599 of this title) shall apply with respect to independent counsels appointed before, on, or after the date of enactment of this Act (June 30, 1994).

“(b) ASSIGNMENT OF EMPLOYEE TO CERTIFY EXPENDITURES.—An independent counsel appointed prior to the date of enactment of this Act shall assign to an employee the duty of certifying expenditures, as required by section 594(f) of title 28, United States Code, as added by section 3(a), by the date that is 30 days after the date of enactment of this Act.

“(c) OFFICE SPACE.—The Administrator of General Services, in applying section 594(h)(3) of title 28, United States Code, as added by section 3(a), to determine whether the office of an independent counsel appointed prior to the date of enactment of this Act should be moved to a Federal building, shall take into account the moving, legal, and other expenses that might arise if the office were moved.

“(d) TRAVEL AND SUBSISTENCE EXPENSES.—For purposes of the restrictions on reimbursement of travel and subsistence expenses of an independent counsel and employees of an office of independent counsel contained in section 594(b) of title 28, United States Code, as amended by section 3(b), as applied to the office of an independent counsel appointed before the date of enactment of this Act, the 1-year service period shall begin on the date of enactment of this Act.

“(e) RATES OF COMPENSATION.—The limitation on rates of compensation of employees of an office of independent counsel contained in the last sentence of section 594(c) of title 28, United States Code, as amended by section 3(c), shall not be applied to cause a reduction in the rate of compensation of an employee appointed before the date of enactment of this Act.

“(f) PERIODIC REPORTING.—The determinations by the division of the court contained in the last sentence of section 596(b)(2) of title 28, United States Code, as amended by section 3(h), shall, for the office of an independent counsel appointed before the date of enactment of this Act, be required no later than 1 year after the date of enactment of this Act and at the end of each succeeding 1-year period.

“(g) REPORTING REQUIREMENTS.—No amendment made by this Act that establishes or modifies a requirement that any person submit a report to any other person with respect to an activity occurring during any time period shall be construed to require that a report submitted prior to the date of enactment of this Act, with respect to that time period be supplemented to include information with respect to such activity.

“(h) REGULATORY INDEPENDENT COUNSEL.—Notwithstanding the restriction in section 593(b)(2) of title 28, United States Code, the division of the court described in section 49 of that title shall be available to act as an independent counsel for any individual who, on the date of enactment of this Act, is serving as a regulatory independent
counsel under parts 600 and 603 of title 28, Code of Federal Regulations. If such an individual is so appointed, such an independent counsel shall comply with chapter 40 of title 28, United States Code, as amended by this Act, in the same manner and to the same extent as an independent counsel appointed before the date of enactment of this Act is required to comply with that chapter, except that subsection (f) of this section shall not apply to such an independent counsel.

"(i) White House Personnel Report.—Section 6 [enacting provisions set out as a note under section 115 of Title 3, The President] shall take effect on January 1, 1995."

Effective Date of 1987 Amendment
Section 6 of Pub. L. 100–191 provided that:

"(a) In General.—Subject to subsection (b), the amendments made by this Act [enacting section 599 of this title, amending this section, sections 49 and 592 to 596 of this title, sections 203 and 205 of Pub. L. 95–521 set out in the Appendix to Title 5, Government Organization and Employees, and section 202 of Title 18, Crimes and Criminal Procedure, enacting provisions set out as a note under section 1 of this title, and amending provisions set out below] take effect on the date of the enactment of this Act [Dec. 15, 1987].

"(b) Preceeding Proceedings.—With respect to any proceeding under chapter 39 of title 28, United States Code (before the redesignation of such chapter as chapter 40, Crimes and Criminal Procedure, enacting provisions set out as a note under section 1 of this title, and amending provisions set out below) that take effect on the date of the enactment of this Act [Dec. 15, 1987], the following shall apply:

"(1) Except as provided in paragraphs (2) and (3), the provisions of chapter 40 of such title as in effect on the day before such date of enactment shall, in lieu of the amendments made by this Act, continue to apply on or after such date to such proceeding until such proceeding is terminated in accordance with such chapter.

"(2) The following provisions shall apply to such proceeding on or after such date of enactment:

"(A) Section 593(f) of title 28, United States Code, as amended by section 2 of this Act, relating to the award of attorneys’ fees.

"(B) Section 594(d)(2) of such title, as added by section 2 of this Act, relating to independent counsel and their appointees as special government employees and to their financial disclosure requirements.

"(C) Section 594(h)(1)(A) of such title, as added by section 2 of this Act, relating to reporting by independent counsel, except that the 6-month period described in such section 594(h)(1)(A) shall be calculated from the date of the enactment of this Act.

"(D) Section 594(i) of such title, as added by section 2 of this Act, relating to the independence of the office of independent counsel for certain purposes.

"(E) Section 594(k) of such title, as added by section 2 of this Act, relating to custody of records of independent counsel.

"(F) Section 596(a)(3) of such title, as amended by section 2 of this Act, relating to judicial review of the removal of an independent counsel from office.

"(G) Section 596(c) of such title, as added by section 2 of this Act, relating to audits of expenditures of independent counsel.

"(H) The amendments made by section 3 of this Act [amending sections 203 and 205 of Pub. L. 95–521, set out in Appendix to Title 5, and section 202 of Title 18], relating to the status of independent counsel and their appointees as special government employees and to their financial disclosure requirements.

"(J) Section 594(j) of title 28, United States Code, as added by section 2 of this Act, relating to certain standards of conduct shall, 90 days after the date of the enactment of this Act, apply to a pending proceeding described in this subsection."

Effective Date of 1984 Amendment

Effective Date
Section 604 of Pub. L. 95–521 provided that: "Except as provided in this section, the amendments made by this title [enacting this chapter and sections 49, 528, and 529 of this title] shall take effect on the date of the enactment of this Act [Oct. 26, 1978]. The provisions of chapter 39 of title 28 of the United States Code, as added by section 603 of this Act, shall not apply to specific information received by the Attorney General pursuant to section 591 of such title 28, if the Attorney General determines that—

"(1) such specific information is directly related to a prosecution pending at the time such specific information is received by the Attorney General;

"(2) such specific information is related to a matter which has been presented to a grand jury and is received by the Attorney General within one hundred and eighty days of the date of the enactment of this Act; or

"(3) such specific information is related to an investigation that is pending at the time such specific information is received by the Attorney General, and such specific information is received by the Attorney General within ninety days of the date of the enactment of this Act."

Permanent Appropriation for Expenses of Independent Counsel

Contingency Fund for Independent Counsel
Section 601(c) of Pub. L. 95–521, as amended by Pub. L. 97–409, §20(c)(2), Jan. 3, 1983, 96 Stat. 2039; Pub. L. 100–191, §5(b), Dec. 15, 1987, 101 Stat. 1307, provided that: "There are authorized to be appropriated for each fiscal year such sums as may be necessary, to be held by the Department of Justice as a contingent fund for the use of any independent counsel appointed under chapter 40 (relating to independent counsels) of title 28 of the United States Code in the carrying out of functions under such chapter."

§592. Preliminary investigation and application for appointment of an independent counsel

(a) Conduct of Preliminary Investigation.—

(1) In General.—A preliminary investigation conducted under this chapter shall be of such matters as the Attorney General considers appropriate in order to make a determination, under subsection (b) or (c), on whether further investigation is warranted, with respect to each potential violation, or allegation of a violation, of criminal law. The Attorney General shall make such determination not later than 90 days after the preliminary investigation is commenced, except that, in the case of a preliminary investigation commenced after a congressional request under subsection (g), the Attorney General shall make such determination not later than 90 days after the request is received.
notify the division of the court specified in section 593(a) of the commencement of such preliminary investigation and the date of such commencement.

(2) LIMITED AUTHORITY OF ATTORNEY GENERAL.—In conducting preliminary investigations under this chapter, the Attorney General shall have no authority to convene grand juries, plea bargain, grant immunity, or issue subpoenas.

(B) The Attorney General shall not base a determination under this chapter that information with respect to a violation of criminal law by a person is not specific and from a credible source upon a determination that such person lacked the state of mind required for the violation of criminal law.

(ii) The Attorney General shall not base a determination under this chapter that there are no reasonable grounds to believe that further investigation is warranted, upon a determination that such person lacked the state of mind required for the violation of criminal law.

(c) Determination That Further Investigation Not Warranted.—

(I) Notification of Division of the Court.—If the Attorney General, upon completion of a preliminary investigation under this chapter, determines that there are no reasonable grounds to believe that further investigation is warranted, the Attorney General shall promptly so notify the division of the court, and the division of the court shall have no power to appoint an independent counsel with respect to the matters involved.

(2) Form of Notification.—Such notification shall contain a summary of the information received and a summary of the results of the preliminary investigation.

(c) Determination That Further Investigation is Warranted.—

(A) Application for Appointment of Independent Counsel.—The Attorney General shall apply to the division of the court for the appointment of an independent counsel if—

(A) the Attorney General, upon completion of a preliminary investigation under this chapter, determines that there are reasonable grounds to believe that further investigation is warranted; or

(B) the 90-day period referred to in subsection (a)(1), and any extension granted under subsection (a)(3), have elapsed and the Attorney General has not filed a notification with the division of the court under subsection (b)(1).

In determining under this chapter whether reasonable grounds exist to warrant further investigation, the Attorney General shall comply with the written or other established policies of the Department of Justice with respect to the conduct of criminal investigations.

(2) Receipt of Additional Information.—If, after submitting a notification under subsection (b)(1), the Attorney General receives additional information sufficient to constitute grounds to investigate the matters to which such notification related, the Attorney General shall—

(A) conduct such additional preliminary investigation as the Attorney General considers appropriate for a period of not more than 90 days after the date on which such additional information is received; and

(B) otherwise comply with the provisions of this section with respect to such additional preliminary investigation to the same extent as any other preliminary investigation under this section.

(d) Contents of Application.—Any application for the appointment of an independent counsel under this chapter shall contain sufficient information to assist the division of the court in selecting an independent counsel and in defining that independent counsel's prosecutorial jurisdiction such that the independent counsel has adequate authority to fully investigate and prosecute the subject matter and all matters related to that subject matter.

(e) Disclosure of Information.—Except as otherwise provided in this chapter or as is deemed necessary for law enforcement purposes, no officer or employee of the Department of Justice or such office may, without leave of the division of the court, disclose to any individual outside the Department of Justice or such office any notification, application, or any other document, materials, or memorandum supplied to the division of the court under this chapter. Nothing in this chapter shall be construed as authorizing the withholding of information from the Congress.

(f) Limitation on Judicial Review.—The Attorney General's determination under this chapter to apply to the division of the court for the appointment of an independent counsel shall not be reviewable in any court.

(g) Congressional Request.—

(1) By Judiciary Committee or Members Thereof.—The Committee on the Judiciary of either House of the Congress, or a majority of majority party members or a majority of all nonmajority party members of either such committee, may request in writing that the Attorney General apply for the appointment of an independent counsel.

(2) Report by Attorney General Pursuant to Request.—Not later than 30 days after the receipt of a request under paragraph (1), the Attorney General shall submit to the committee making the request, or to the committee on which the persons making the request serve, a report on whether the Attorney General has begun or will begin a preliminary investigation under this chapter of the matters with respect to which the request is made, in accordance with subsection (a) or (c) of section 591, as the case may be. The report shall set forth the reasons for the Attorney General's decision regarding such preliminary investiga-
tion as it relates to each of the matters with respect to which the congressional request is made. If there is such a preliminary investigation, the report shall include the date on which the preliminary investigation began or will begin.

(3) SUBMISSION OF INFORMATION IN RESPONSE TO CONGRESSIONAL REQUEST.—At the same time as any notification, application, or any other document, material, or memorandum is supplied to the division of the court pursuant to this section with respect to a preliminary investigation of any matter with respect to which a request is made under paragraph (1), such notification, application, or other document, material, or memorandum shall be supplied to the committee making the request, or to the committee on which the persons making the request serve. If no application for the appointment of an independent counsel is made to the division of the court under this section pursuant to such a preliminary investigation, the Attorney General shall submit a report to that committee stating the reasons why such application was not made, addressing each matter with respect to which the congressional request was made.

(4) DISCLOSURE OF INFORMATION.—Any report, notification, application, or other document, material, or memorandum supplied to a committee under this subsection shall not be revealed to any third party, except that the committee may, either on its own initiative or upon the request of the Attorney General, make public such portion or portions of such report, notification, application, document, material, or memorandum as will not in the committee’s judgment prejudice the rights of any individual.


AMENDMENTS

1994—Subsec. (e). Pub. L. 103–270 inserted “or as is deemed necessary for law enforcement purposes” after “Except as otherwise provided in this chapter”.

1987—Pub. L. 100–191 amended section generally, substituting provisions relating to preliminary investigation and appointment of an independent counsel for provisions relating to appointment of an independent counsel.

1983—Subsec. (a). Pub. L. 97–409, §4(b), designated existing provisions as par. (1), substituted “Upon receiving information that the Attorney General determines is sufficient to constitute grounds to investigate that any person covered by the Act has engaged in conduct described in subsection (a) or (c) of section 591 of this title, the Attorney General for “The Attorney General, upon receiving specific information that any of the persons described in section 591(b) of this title has engaged in conduct described in section 591(a) of this title,” inserted “In determining whether grounds to investigate exist, the Attorney General shall consider— (A) the degree of specificity of the information received, and (B) the credibility of the source of the information.”, and added par. (2).

Subsec. (b)(1). Pub. L. 97–409, §§2(a)(1)(A), 4(c), substituted “that there are no reasonable grounds to believe that further investigation or prosecution is warranted” for “that the matter is so unsubstantiated that no further investigation or prosecution is warranted” and substituted “independent counsel” for “special prosecutor”.

Subsec. (c)(1). Pub. L. 97–409, §§2(a)(1)(A), 4(d), substituted “finds reasonable grounds to believe that further investigation or prosecution is warranted” for “finds the matter warrants further investigation or prosecution after preliminary investigation”, “that there are no reasonable grounds to believe that further investigation or prosecution is warranted” for “that the matter is so unsubstantiated as not to warrant further investigation or prosecution”, and “independent counsel” for “special prosecutor”, and inserted provision that in determining whether reasonable grounds exist to warrant further investigation or prosecution, the Attorney General shall comply with written or other established policies of the Department of Justice with respect to the enforcement of criminal laws.


Subsec. (c)(2)(A). Pub. L. 97–409, §4(e)(1), substituted “information sufficient to constitute grounds to investigate” for “specific information” after “receives additional”.

Subsec. (c)(2)(B). Pub. L. 97–409, §4(e)(2), substituted “reasonable grounds exist to warrant” for “such information warrants” after “appropriate, that”.

Subsec. (d)(1), (e), (f). Pub. L. 97–409, §2(a)(1), substituted “independent counsel” for “special prosecutor” and “independent counsel’s” for “special prosecutor’s” wherever appearing.

Section Effective Date

Amendment by Pub. L. 103–270 applicable with respect to independent counsels appointed before, on, or after June 30, 1994, see section 7(a) of Pub. L. 103–270, set out as an Effective Date of 1994 Amendment: Transition Provisions note under section 591 of this title.


§ 593. Duties of the division of the court

(a) REFERENCE TO DIVISION OF THE COURT.—The division of the court to which this chapter refers is the division established under section 49 of this title.

(b) APPOINTMENT AND JURISDICTION OF INDEPENDENT COUNSEL.—

(1) AUTHORITY.—Upon receipt of an application under section 592(c), the division of the court shall appoint an appropriate independent counsel and shall define that independent counsel’s prosecutorial jurisdiction.

(2) QUALIFICATIONS OF INDEPENDENT COUNSEL.—The division of the court shall appoint as independent counsel an individual who has appropriate experience and who will conduct the investigation and any prosecution in a prompt, responsible, and cost-effective manner. The division of the court shall seek to appoint as independent counsel an individual who will serve to the extent necessary to complete the investigation and any prosecution without undue delay. The division of the court may not appoint as an independent counsel any person who holds any office of profit or trust under the United States.

(3) SCOPE OF PROSECUTORIAL JURISDICTION.—In defining the independent counsel’s prosecutorial jurisdiction, the division of the court
shall assure that the independent counsel has adequate authority to fully investigate and prosecute the subject matter with respect to which the Attorney General has requested the appointment of the independent counsel, and all matters related to that subject matter. Such jurisdiction shall also include the authority to investigate and prosecute Federal crimes, other than those classified as Class B or C misdemeanors or infractions, that may arise out of the investigation or prosecution of the matter with respect to which the Attorney General’s request was made, including perjury, obstruction of justice, destruction of evidence, and intimidation of witnesses.

(4) Disclosure of identity and prosecutorial jurisdiction.—An independent counsel’s identity and prosecutorial jurisdiction (including any expansion under subsection (c)) may not be made public except upon the request of the Attorney General or upon a determination of the division of the court that disclosure of the identity and prosecutorial jurisdiction of such independent counsel would be in the best interests of justice. In any event, the identity and prosecutorial jurisdiction of such independent counsel shall be made public when any indictment is returned, or any criminal information is filed, pursuant to the independent counsel’s investigation.

(c) Expansion of jurisdiction.—

(1) In general.—The division of the court, upon the request of the Attorney General, may expand the prosecutorial jurisdiction of an independent counsel, and such expansion may be in lieu of the appointment of another independent counsel.

(2) Procedure for request by independent counsel.—(A) If the independent counsel discovers information about possible violations of a criminal law by persons as provided in section 591, which are not covered by the prosecutorial jurisdiction of the independent counsel, the independent counsel may submit such information to the Attorney General. The Attorney General shall then conduct a preliminary investigation of the information in accordance with the provisions of section 592, except that such preliminary investigation shall not exceed 30 days from the date such information is received. In making the determinations required by section 592, the Attorney General shall give great weight to any recommendations of the independent counsel.

(B) If the Attorney General determines, after according great weight to the recommendations of the independent counsel, that there are no reasonable grounds to believe that further investigation is warranted, the Attorney General shall promptly so notify the division of the court and the division of the court shall have no power to expand the jurisdiction of the independent counsel or to appoint another independent counsel with respect to the matters involved.

(C) If—

(i) the Attorney General determines that there are reasonable grounds to believe that further investigation is warranted; or

(ii) the 30-day period referred to in subparagraph (A) elapses without a notification to the division of the court that no further investigation is warranted, the division of the court shall expand the jurisdiction of the appropriate independent counsel to include the matters involved or shall appoint another independent counsel to investigate such matters.

(d) Return for further explanation.—Upon receipt of a notification under section 592 or subsection (c)(2)(B) of this section from the Attorney General that there are no reasonable grounds to believe that further investigation is warranted with respect to information received under this chapter, the division of the court shall have no authority to overrule this determination but may return the matter to the Attorney General for further explanation of the reasons for such determination.

(e) Vacancies.—If a vacancy in office arises by reason of the resignation, death, or removal of an independent counsel, the division of the court shall appoint an independent counsel to complete the work of the independent counsel whose resignation, death, or removal caused the vacancy, except that in the case of a vacancy arising by reason of the removal of an independent counsel, the division of the court may appoint an acting independent counsel to serve until any judicial review of such removal is completed.

(f) Attorneys’ fees.—

(1) Award of fees.—Upon the request of an individual who is the subject of an investigation conducted by an independent counsel pursuant to this chapter, the division of the court may, if no indictment is brought against such individual pursuant to that investigation, award reimbursement for those reasonable attorneys’ fees incurred by that individual during that investigation which would not have been incurred but for the requirements of this chapter. The division of the court shall notify the former independent counsel who conducted the investigation and Attorney General of any request for attorneys’ fees under this subsection.

(2) Evaluation of fees.—The division of the court shall direct such independent counsel and the Attorney General to file a written evaluation of any request for attorneys’ fees under this subsection, addressing—

(A) the sufficiency of the documentation;

(B) the need or justification for the underlying item;

(C) whether the underlying item would have been incurred but for the requirements of this chapter; and

(D) the reasonableness of the amount of money requested.

(g) Disclosure of information.—The division of the court may, subject to section 594(h)(2), allow the disclosure of any notification, application, or any other document, material, or memorandum supplied to the division of the court under this chapter.

(h) Amicus curiae briefs.—When presented with significant legal issues, the division of the court may disclose sufficient information about

1 So in original.

2 So in original. Probably should be preceded by “the”.
the issues to permit the filing of timely amicus curiae briefs.


AMENDMENTS


Subsec. (f)(2). Pub. L. 103–270, §3(n)(2), in introductory provisions substituted “shall direct such independent counsel and” for “may direct” and “subsection, addressing—” before “subsection, analyzing for each expense—” added subpars. (A) to (D) and struck out former subpars. (A) to (C) which read as follows:

“(A) the sufficiency of the documentation;

“(B) the need or justification for the underlying item; and

“(C) the reasonableness of the amount of money requested.”

1987—Pub. L. 100–191 amended section generally, substituting subsecs. (a) to (h) for former subsecs. (a) to (g) which related to similar subject matter.

1983—Subsec. (b), Pub. L. 97–409, §2(a)(1), substituted “special prosecutor” for “special prosecutor” and “special prosecutor’s” wherever appearing.

Subsecs. (c) to (e). Pub. L. 97–409, §2(a)(1)(A), substituted “special prosecutor’s” for “special prosecutor’s” wherever appearing.

Subsecs. (f) to (g). Pub. L. 97–409, §5, added subsecs. (f) and (g).


effective date of 1994 amendment; transition provisions

Amendment by Pub. L. 103–270 applicable with respect to independent counsels appointed before, on, or after June 30, 1994, and, notwithstanding restriction in subsec. (b)(2) of this section, the division of the court described in section 49 of this title is authorized to appoint as an independent counsel any individual who, on June 30, 1994, is serving as a regulatory independent counsel under parts 600 and 603 of title 28, Code of Federal Regulations, see section 7(a), (h) of Pub. L. 103–270, set out as a note under section 591 of this title.


Effective date of 1987 amendment


§594. Authority and duties of an independent counsel

(a) AUTHORIZED.—Notwithstanding any other provision of law, an independent counsel appointed under this chapter shall have, with respect to all matters in such independent counsel’s prosecutorial jurisdiction established under this chapter, full power of and independent authority to exercise all investigatory and prosecutorial functions and powers of the Department of Justice, the Attorney General, and any other officer or employee of the Department of Justice, except that the Attorney General shall exercise direction or control as to those matters that specifically require the Attorney General’s personal action under section 2516 of title 18. Such investigatory and prosecutorial functions and powers shall include—

(1) conducting proceedings before grand juries and other investigations;

(2) participating in court proceedings and engaging in any litigation, including civil and criminal matters, that such independent counsel considers necessary;

(3) appealing any decision of a court in any case or proceeding in which such independent counsel participates in an official capacity;

(4) reviewing all documentary evidence available from any source;

(5) determining whether to contest the assertion of any testimonial privilege;

(6) receiving appropriate national security clearances and, if necessary, contesting in court (including, where appropriate, participating in in camera proceedings) any claim of privilege or attempt to withhold evidence on grounds of national security;

(7) making applications to any Federal court for a grant of immunity to any witness, consistent with applicable statutory requirements, or for warrants, subpoenas, or other court orders, and, for purposes of sections 6003, 6004, and 6005 of title 18, exercising the authority vested in a United States attorney or the Attorney General;

(8) inspecting, obtaining, or using the original or a copy of any tax return, in accordance with the applicable statutes and regulations, and, for purposes of section 6103 of the Internal Revenue Code of 1986 and the regulations issued thereunder, exercising the powers vested in a United States attorney or the Attorney General;

(9) initiating and conducting prosecutions in any court of competent jurisdiction, framing and signing indictments, filing informations, and handling all aspects of any case, in the name of the United States; and

(10) consulting with the United States attorney for the district in which any violation of law with respect to which the independent counsel is appointed was alleged to have occurred.

(b) COMPENSATION.—

(1) IN GENERAL.—An independent counsel appointed under this chapter shall receive compensation at the per diem rate equal to the annual rate of basic pay payable for level IV of the Executive Schedule under section 5315 of title 5.

(2) TRAVEL EXPENSES.—Except as provided in paragraph (3), an independent counsel and persons appointed under subsection (c) shall be entitled to the payment of travel expenses as provided by subchapter I of chapter 57 of title 5, United States Code, including travel, per diem, and subsistence expenses in accordance with section 5703 of title 5.

(3) TRAVEL TO PRIMARY OFFICE.—

(A) IN GENERAL.—After 1 year of service under this chapter, an independent counsel and persons appointed under subsection (c) shall not be entitled to the payment of travel, per diem, or subsistence expenses under subchapter I of chapter 57 of title 5, United States Code, for the purpose of commuting to or from the city in which the primary office of the independent counsel or person is located. The 1-year period may be extended
for successive 6-month periods if the independent counsel and the division of the court certify that the payment is in the public interest to carry out the purposes of this chapter.

(B) RELEVANT FACTORS.—In making any certification under this paragraph with respect to travel and subsistence expenses of an independent counsel or person appointed under subsection (c), the independent counsel and the division of the court shall consider, among other relevant factors—

(i) the cost to the Government of reimbursing such travel and subsistence expenses;

(ii) the period of time for which the independent counsel anticipates that the activities of the independent counsel or person, as the case may be, will continue;

(iii) the personal and financial burdens on the independent counsel or person, as the case may be, of relocating so that such travel and subsistence expenses would not be incurred; and

(iv) the burdens associated with appointing a new independent counsel, or appointing another person under subsection (c), to replace the individual involved who is unable or unwilling to so relocate.

(c) ADDITIONAL PERSONNEL.—For the purposes of carrying out the duties of an office of independent counsel, such independent counsel may appoint, fix the compensation, and assign the duties of such employees as such independent counsel considers necessary (including investigators, attorneys, and part-time consultants). The positions of all such employees are exempt from the competitive service. Such employees shall be compensated at levels not to exceed those payable for comparable positions in the Office of United States Attorney for the District of Columbia under sections 548 and 550, but in no event shall any such employee be compensated at a rate greater than the rate of basic pay payable for level ES-4 of the Senior Executive Service Schedule under section 5382 of title 5, as adjusted for the District of Columbia under section 5384 of that title regardless of the locality in which an employee is employed.

(d) ASSISTANCE OF DEPARTMENT OF JUSTICE.—

(1) IN CARRYING OUT FUNCTIONS.—An independent counsel may request assistance from the Department of Justice in carrying out the functions of the independent counsel, and the Department of Justice shall provide that assistance, which may include access to any records, files, or other materials relevant to matters within such independent counsel's prosecutorial jurisdiction, and the use of the resources and personnel necessary to perform such independent counsel's duties. At the request of an independent counsel, prosecutors, administrative personnel, and other employees of the Department of Justice may be detailed to the staff of the independent counsel.

(2) PAYMENT OF AND REPORTS ON EXPENDITURES OF INDEPENDENT COUNSEL.—The Department of Justice shall pay all costs relating to the establishment and operation of any office of independent counsel. The Attorney General shall submit to the Congress, not later than 30 days after the end of each fiscal year, a report on amounts paid during that fiscal year for expenses of investigations and prosecutions by independent counsel. Each such report shall include a statement of all payments made for activities of independent counsel but may not reveal the identity or prosecutorial jurisdiction of any independent counsel which has not been disclosed under section 593(b)(4).

(e) REFERRAL OF OTHER MATTERS TO AN INDEPENDENT COUNSEL.—An independent counsel may ask the Attorney General or the division of the court to refer to the independent counsel matters related to the independent counsel's prosecutorial jurisdiction, and the Attorney General or the division of the court, as the case may be, may refer such matters. If the Attorney General refers a matter to an independent counsel on the Attorney General's own initiative, the independent counsel may accept such referral if the matter relates to the independent counsel's prosecutorial jurisdiction. If the Attorney General refers any matter to the independent counsel pursuant to the independent counsel's request, or if the independent counsel accepts a referral made by the Attorney General on the Attorney General's own initiative, the independent counsel shall so notify the division of the court.

(f) COMPLIANCE WITH POLICIES OF THE DEPARTMENT OF JUSTICE.—

(1) IN GENERAL.—An independent counsel shall, except to the extent that to do so would be inconsistent with the purposes of this chapter, comply with the written or other established policies of the Department of Justice respecting enforcement of the criminal laws. To determine these policies and policies under subsection (b)(1)(B), the independent counsel shall, except to the extent that doing so would be inconsistent with the purposes of this chapter, consult with the Department of Justice.

(2) NATIONAL SECURITY.—An independent counsel shall comply with guidelines and procedures used by the Department in the handling and use of classified material.

(g) DISMISSAL OF MATTERS.—The independent counsel shall have full authority to dismiss matters within the independent counsel's prosecutorial jurisdiction without conducting an investigation or at any subsequent time before prosecution, if to do so would be consistent with the written or other established policies of the Department of Justice with respect to the enforcement of criminal laws.

(h) REPORTS BY INDEPENDENT COUNSEL.—

(1) REQUIRED REPORTS.—An independent counsel shall—

(A) file with the division of the court, with respect to the 6-month period beginning on the date of his or her appointment, and with respect to each 6-month period thereafter until the office of that independent counsel terminates, a report which identifies and explains major expenses, and summarizes all other expenses, incurred by that office during the 6-month period with respect to which the report is filed, and estimates future expenses of that office; and

(B) before the termination of the independent counsel's office under section 596(b), file
a final report with the division of the court, setting forth fully and completely a description of the work of the independent counsel, including the disposition of all cases brought.

(2) DISCLOSURE OF INFORMATION IN REPORTS.—The division of the court may release to the Congress, the public, or any appropriate person, such portions of a report made under this subsection as the division of the court considers appropriate. The division of the court shall make such orders as are appropriate to protect the rights of any individual named in such report and to prevent undue interference with any pending prosecution. The division of the court may make any portion of a final report filed under paragraph (1)(B) available to any individual named in such report for the purposes of receiving within a time limit set by the division of the court any comments or factual information that such individual may submit. Such comments and factual information, in whole or in part, may, in the discretion of the division of the court, be included as an appendix to such final report.

(3) PUBLICATION OF REPORTS.—At the request of an independent counsel, the Public Printer shall cause to be printed any report previously released to the public under paragraph (2). The independent counsel shall certify the number of copies necessary for the public, and the Public Printer shall place the cost of the required number to the debit of such independent counsel. Additional copies shall be made available to the public through the depository library program and Superintendent of Documents sales program pursuant to sections 1702 and 1903 of title 44.

(1) INDEPENDENCE FROM DEPARTMENT OF JUSTICE.—Each independent counsel appointed under this chapter, and the persons appointed by that independent counsel under subsection (c), are separate from and independent of the Department of Justice for purposes of sections 202 through 209 of title 18.

(2) STANDARDS OF CONDUCT APPLICABLE TO INDEPENDENT COUNSEL, PERSONS SERVING IN THE OFFICE OF AN INDEPENDENT COUNSEL, AND THEIR LAW FIRMS.—

(1) RESTRICTIONS ON EMPLOYMENT WHILE INDEPENDENT COUNSEL AND APPOINTEES ARE SERVING.—(A) During the period in which an independent counsel is serving under this chapter—

(i) such independent counsel, and

(ii) any person associated with a firm with which such independent counsel is associated,

may not represent in any matter any person involved in any investigation or prosecution under this chapter.

(B) During the period in which any person appointed by an independent counsel under subsection (c) is serving in the office of independent counsel, such person may not represent in any matter any person involved in any investigation or prosecution under this chapter.

(2) POST EMPLOYMENT RESTRICTIONS ON INDEPENDENT COUNSEL AND APPOINTEES.—(A) Each independent counsel and each person appointed by that independent counsel under subsection (c) may not, for 3 years following the termination of the service under this chapter of that independent counsel or appointed person, as the case may be, represent any person in any matter if that individual was the subject of an investigation or prosecution under this chapter that was conducted by that independent counsel.

(B) Each independent counsel and each person appointed by that independent counsel under subsection (c) may not, for 1 year following the termination of the service under this chapter of that independent counsel or appointed person, as the case may be, represent any person in any matter involving any investigation or prosecution under this chapter.

(3) ONE-YEAR BAN ON REPRESENTATION BY MEMBERS OF FIRMS OF INDEPENDENT COUNSEL.—Any person who is associated with a firm with which an independent counsel is associated or becomes associated after termination of the service of that independent counsel under this chapter may not, for 1 year following such termination, represent any person in any matter involving any investigation or prosecution under this chapter.

(4) DEFINITIONS.—For purposes of this subsection—

(A) the term “firm” means a law firm whether organized as a partnership or corporation; and

(B) a person is “associated” with a firm if that person is an officer, director, partner, or other member or employee of that firm.

(5) ENFORCEMENT.—The Attorney General and the Director of the Office of Government Ethics have authority to enforce compliance with this subsection.

(k) CUSTODY OF RECORDS OF AN INDEPENDENT COUNSEL.—

(1) TRANSFER OF RECORDS.—Upon termination of the office of an independent counsel, that independent counsel shall transfer to the Archivist of the United States all records which have been created or received by that office. Before this transfer, the independent counsel shall clearly identify which of these records are subject to rule 6(e) of the Federal Rules of Criminal Procedure as grand jury materials and which of these records have been classified as national security information. Any records which were compiled by an independent counsel and, upon termination of the independent counsel’s office, were stored with the division of the court or elsewhere before the enactment of the Independent Counsel Re-authorization Act of 1987, shall also be transferred to the Archivist of the United States by the division of the court or the person in possession of such records.

(2) MAINTENANCE, USE, AND DISPOSAL OF RECORDS.—Records transferred to the Archivist under this chapter shall be maintained, used, and disposed of in accordance with chapters 21, 29, and 33 of title 44.

(3) ACCESS TO RECORDS.—

(A) IN GENERAL.—Subject to paragraph (4), access to the records transferred to the Ar-
chivist under this chapter shall be governed by section 552 of title 5.

(B) ACCESS BY DEPARTMENT OF JUSTICE.—
The Archivist shall, upon written application by the Attorney General, disclose any such records to the Department of Justice for purposes of an ongoing law enforcement investigation or court proceeding, except that, in the case of grand jury materials, such records shall be so disclosed only by order of the court of jurisdiction under rule 6(e) of the Federal Rules of Criminal Procedure.

(C) EXCEPTION.—Notwithstanding any restriction on access imposed by law, the Archivist and persons employed by the National Archives and Records Administration who are engaged in the performance of normal archival work shall be permitted access to the records transferred to the Archivist under this chapter.

(4) RECORDS PROVIDED BY CONGRESS.—Records of an investigation conducted by a committee of the House of Representatives or the Senate which are provided to an independent counsel; and

[(B) L]ACCESS BY DEPARTMENT OF JUSTICE

(A) shall be maintained as a separate body of records within the records of the independent counsel; and

(B) shall, after the records have been transferred to the Archivist under this chapter, be made available, except as provided in paragraph (3)(B) and (C), in accordance with the rules governing release of the records of the House of Congress that provided the records to the independent counsel.

Subparagraph (B) shall not apply to those records which have been surrendered pursuant to grand jury or court proceedings.

(i) Cost Controls and Administrative Support.—

(1) COST CONTROLS.—

(A) IN GENERAL.—An independent counsel shall—

(i) conduct all activities with due regard for expense;

(ii) authorize only reasonable and lawful expenditures; and

(iii) promptly, upon taking office, assign to a specific employee the duty of certifying that expenditures of the independent counsel are reasonable and made in accordance with law.

(B) LIABILITY FOR INVALID CERTIFICATION.—An employee making a certification under subparagraph (A)(iii) shall be liable for an invalid certification to the same extent as a certifying official certifying a voucher is liable under section 3528 of title 31.

(C) DEPARTMENT OF JUSTICE POLICIES.—An independent counsel shall comply with the established policies of the Department of Justice respecting expenditures of funds, except to the extent that compliance would be inconsistent with the purposes of this chapter.

(2) ADMINISTRATIVE SUPPORT.—The Director of the Administrative Office of the United States Courts shall provide administrative support and guidance to each independent counsel. No officer or employee of the Administrative Office of the United States Courts shall disclose information related to an independent counsel's expenditures, personnel, or administrative acts or arrangements without the authorization of the independent counsel.

(3) OFFICE SPACE.—The Administrator of General Services, in consultation with the Director of the Administrative Office of the United States Courts, shall promptly provide appropriate office space for each independent counsel. Such office space shall be within a Federal building unless the Administrator of General Services determines that other arrangements would cost less. Until such office space is provided, the Administrative Office of the United States Courts shall provide newly appointed independent counsels immediately upon appointment with appropriate, temporary office space, equipment, and supplies.


REFERENCES IN TEXT

Section 6103 of the Internal Revenue Code of 1986, referred to in subsection (a)(8), is classified to section 6103 of Title 26, Internal Revenue Code.

The Federal Rules of Criminal Procedure, referred to in subsection (k)(1), (3)(B), are set out in the Appendix to Title 18, Crimes and Criminal Procedure.


AMENDMENTS

1996—Subsec. (b)(3)(A). Pub. L. 104–208, § 110(a) [title I, § 118(a), (b)], in second sentence substituted “for successive 6-month periods” for “by 6-months” and “independent counsel and the division of the court” for “employee assigned duties under subsection (b)(1)(A)(iii) certified”.

Subsec. (b)(3)(B). Pub. L. 104–208, § 110(a) [title I, § 118(c)], which directed the amendment of second sentence of subsection (b)(3)(A) by striking “such employee” and inserting “the independent counsel” and “the division of the court”, was executed to introductory provisions of section (b)(3)(B) by substituting “the independent counsel and the division of the court” for “such employee” to reflect the probable intent of Congress.

1994—Subsec. (b). Pub. L. 103–270, § 3(b), designated existing text as pars. (1) and inserted heading, and added pars. (2) and (3).

Subsec. (c). Pub. L. 103–270, § 3(c), substituted last sentence for former last sentence which read as follows: “No such employee may be compensated at a rate exceeding the maximum rate of pay payable for GS–18 of the General Schedule under section 5332 of title 5.”

Subsec. (d)(1). Pub. L. 103–270, § 3(m), inserted at end “At the request of an independent counsel, prosecutors, administrative personnel, and other employees of the Department of Justice may be detailed to the staff of the independent counsel.”

Subsec. (f). Pub. L. 103–270, § 3(e), designated existing provisions as paras. (1) and inserted heading, substituted “shall, except to the extent that to do so would be in-
consistent with the purposes of this chapter, comply" for "shall, except where not possible, comply", inserted at end "To determine these policies and policies under subsec. (i)(1)(B), the independent counsel shall, except to the extent that doing so would be inconsistent with the purposes of this chapter, consult with the Department of Justice," and added par. (2).


Subsec. (i). Pub. L. 103–270, § 3(a), added subsec. (i).

1987—Pub. L. 100–191 amended section generally, substituting subsecs. (a) to (k) for former subsecs. (a) to (g) which related to similar subject matter.


Subsec. (a). Pub. L. 97–409, § 2(a)(1), substituted "independent counsel" for "special prosecutor" wherever appearing and "independent counsel’s" for "special prosecutor’s".


Subsecs. (b), (c). Pub. L. 97–409, § 2(a)(1)(A), substituted "independent counsel" for "special prosecutor" and "independent counsel’s" for "special prosecutor’s" wherever appearing.

Subsec. (d), (e). Pub. L. 97–409, § 2(a)(1)(A), substituted "independent counsel" for "special prosecutor" and "independent counsel’s" for "special prosecutor’s" wherever appearing.

Subsec. (f). Pub. L. 97–409, § 2(a)(1)(A), substituted "independent counsel" for "special prosecutor", "except where not possible" for "to the extent that such special prosecutor deems appropriate", and "written or other established policies" for "written policies".

Subsec. (g). Pub. L. 97–409, § 6(c), added subsec. (g).

Effective Date of 1994 Amendment; Transition Provisions

Amendment by Pub. L. 103–270 applicable with respect to independent counsels appointed before, on, or after June 30, 1994, with transition provisions relating to assignment of employee to certify expenditures and relating to office space, travel and subsistence expenses, rates of compensation, and reporting requirements established or modified by Pub. L. 103–270, see section 7(a)(e), (g) of Pub. L. 103–270, set out as a note under section 591 of this title.

Effective Date of 1987 Amendment

Amendment by Pub. L. 100–191 effective Dec. 15, 1987, and applicable to proceedings initiated and independent counsels appointed on and after Dec. 15, 1987, but with the following provisions applicable to previously initiated proceedings pending on Dec. 15, 1987: subsec. (d)(2) (relating to reports by Attorney General on expenditures by independent counsel, except that the first such report shall be made only with respect to expenditures on or after Dec. 15, 1987), subsec. (h)(1)(A) except that the 6-month periods described in subsec. (h)(1)(A) of this section shall be calculated from Dec. 15, 1987, subsec. (i), subsec. (k) of this section, and 90 days after Dec. 15, 1987, subsec. (j), see section 6 of Pub. L. 100–191, set out as a note under section 591 of this title.

§ 595. Congressional oversight

(a) Oversight of Conduct of Independent Counsel.

(1) Congressional oversight.—The appropriate committees of the Congress shall have oversight jurisdiction with respect to the official conduct of any independent counsel appointed under this chapter, and such independent counsel shall have the duty to cooperate with the exercise of such oversight jurisdiction.

(2) Reports to Congress.—An independent counsel appointed under this chapter shall submit to the Congress and annually a report on the activities of the independent counsel, including a description of the progress of any investigation or prosecution conducted by the independent counsel. Such report may omit any matter that in the judgment of the independent counsel should be kept confidential, but shall provide information adequate to justify the expenditures that the office of the independent counsel has made.

(b) Oversight of Conduct of Attorney General.—Within 15 days after receiving an inquiry about a particular case under this chapter, which is a matter of public knowledge, from a committee of the Congress with jurisdiction over this chapter, the Attorney General shall provide the following information to that committee with respect to that case:

(1) When the information about the case was received.

(2) Whether a preliminary investigation is being conducted, and if so, the date it began.

(3) Whether an application for the appointment of an independent counsel or a notification that further investigation is not warranted has been filed with the division of the court, and if so, the date of such filing.


Amendments

1994—Subsec. (a)(2). Pub. L. 103–270 substituted "annually a report on the activities of the independent counsel, including a description of the progress of any investigation or prosecution conducted by the independent counsel. Such report may omit any matter that in the judgment of the independent counsel should be kept confidential, but shall provide information adequate to justify the expenditures that the office of the independent counsel has made" for "such statements or reports on the activities of such independent counsel as the independent counsel considers appropriate".

1987—Pub. L. 100–191 amended section generally, substituting subsec. (a) (to (c) relating to congressional oversight for former subsecs. (a) to (e) relating to reporting and congressional oversight.

§ 596. Removal of an independent counsel; termination of office

(a) Removal; report on removal.—

(1) Grounds for removal.—An independent counsel appointed under this chapter may be removed from office, other than by impeachment and conviction, only by the personal action of the Attorney General and only for good cause, physical or mental disability (if not prohibited by law protecting persons from discrimination on the basis of such a disability), or any other condition that substantially impairs the performance of such independent counsel’s duties.

(2) Report to division of the court and Congress.—If an independent counsel is removed from office, the Attorney General shall promptly submit to the division of the court and the Committees on the Judiciary of the Senate and the House of Representatives a report specifying the facts found and the ultimate grounds for such removal. The committees shall make available to the public such report, except that each committee may, if necessary to protect the rights of any individual named in the report or to prevent undue interference with any pending prosecution, postpone or refrain from publishing any or all of the report. The division of the court may release any or all of such report in accordance with section 594(h)(2).

(3) Judicial review of removal.—An independent counsel removed from office may obtain judicial review of the removal in a civil action commenced in the United States District Court for the District of Columbia. A member of the division of the court may not hear or determine any such civil action or any appeal of a decision in any such civil action. The independent counsel may be reinstated or granted other appropriate relief by order of the court.

(b) Termination of Office.—

(1) Termination by action of independent counsel.—An office of independent counsel shall terminate when—

(A) the independent counsel notifies the Attorney General that the investigation of all matters within the prosecutorial jurisdiction of such independent counsel or accepted by such independent counsel under section 594(e), and any resulting prosecutions, have been completed or so substantially completed that it would be appropriate for the Department of Justice to complete such investigations and prosecutions; and

(B) the independent counsel files a final report in compliance with section 594(h)(1)(B).

(2) Termination by division of the court.—The division of the court, either on its own motion or upon the request of the Attorney General, may terminate an office of independent counsel at any time, on the ground that the investigation of all matters within the prosecutorial jurisdiction of such independent counsel or accepted by such independent counsel under section 594(e), and any resulting prosecutions, have been completed or so substantially completed that it would be appropriate for the Department of Justice to complete such investigations and prosecutions. At the time of such termination, the independent counsel shall file the final report required by section 594(h)(1)(B). If the Attorney General has not made a request under this paragraph, the division of the court shall determine on its own motion whether termination is appropriate under this paragraph no later than 2 years after the appointment of an independent counsel, at the end of the succeeding 2-year period, and thereafter at the end of each succeeding 1-year period.

(c) Audits.—(1) On or before June 30 of each year, an independent counsel shall prepare a statement of expenditures for the 6 months that ended on the immediately preceding March 31. On or before December 31 of each year, an independent counsel shall prepare a statement of expenditures for the fiscal year that ended on the immediately preceding September 30. An independent counsel whose office is terminated prior to the end of the fiscal year shall prepare a statement of expenditures on or before the date that is 90 days after the date on which the office is terminated.

(2) The Comptroller General shall—

(A) conduct a financial review of a mid-year statement and a financial audit of a year-end statement and statement on termination; and

(B) report the results to the Committee on the Judiciary, Committee on Governmental Affairs, and Committee on Appropriations of the Senate and the Committee on the Judiciary, Committee on Government Operations, and Committee on Appropriations of the House of Representatives not later than 90 days following the submission of each such statement.


1So in original.
§ 597. Relationship with Department of Justice
(a) Suspension of Other Investigations and Proceedings.—Whenever a matter is in the prosecutorial jurisdiction of an independent counsel or has been accepted by an independent counsel under section 594(e), the Department of Justice, the Attorney General, and all other officers and employees of the Department of Justice shall suspend all investigations and proceedings regarding such matter, except to the extent required by section 594(d)(1), and except insofar as such independent counsel agrees in writing that such investigation or proceedings may be continued by the Department of Justice.
(b) Presentation as Amicus Curiae Permitted.—Nothing in this chapter shall prevent the Attorney General or the Solicitor General from making a presentation as amicus curiae to any court as to issues of law raised by any case or proceeding in which an independent counsel participates in an official capacity or any appeal of such a case or proceeding.

Amendments
1987—Pub. L. 100–191 amended section generally, substituting provisions relating to relationship with Department of Justice for substantially similar provisions.

Effective Date of 1987 Amendment

§ 598. Severability
If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the remainder of this chapter and the application of such provision to other persons not similarly situated or to other circumstances shall not be affected by such invalidation.

Amendments

Effective Date of 1987 Amendment

Effective Date of 1984 Amendment
Amendment by Pub. L. 98–620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98–620, set out as an Effective Date note under section 1657 of this title.
§ 599. Termination of effect of chapter

This chapter shall cease to be effective five years after the date of the enactment of the Independent Counsel Reauthorization Act of 1994, except that this chapter shall continue in effect with respect to then pending matters before an independent counsel that in the judgment of such counsel require such continuation until that independent counsel determines such matters have been completed.


REFERENCES IN TEXT

The date of the enactment of the Independent Counsel Reauthorization Act of 1994, referred to in text, is the date of enactment of Pub. L. 103–270, which was approved June 30, 1994.

AMENDMENTS


EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–270 applicable with respect to independent counsels appointed before, on, or after June 30, 1994, see section 7(a) of Pub. L. 103–270, set out as an Effective Date of 1994 Amendment; Transition Provisions note under section 591 of this title.

EFFECTIVE DATE

Section effective Dec. 15, 1987, see section 6 of Pub. L. 100–191, set out as a note under section 591 of this title.

CHAPTER 40A—BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES

Sec.

599A. Bureau of Alcohol, Tobacco, Firearms, and Explosives

599B. Personnel management demonstration project

§ 599A. Bureau of alcohol, tobacco, firearms, and Explosives

(a) Establishment. —

(1) In General. — There is established within the Department of Justice under the general authority of the Attorney General the Bureau of Alcohol, Tobacco, Firearms, and Explosives (in this section referred to as the “Bureau”).

(2) Director. — There shall be at the head of the Bureau a Director, Bureau of Alcohol, Tobacco, Firearms, and Explosives (in this subtitle referred to as the “Director”). The Director shall be appointed by the President, by and with the advice and consent of the Senate and shall perform such functions as the Attorney General shall direct. The Director shall receive compensation at the rate prescribed by law under section 5314 of title V of the United States Code, for positions at level III of the Executive Schedule.

(b) Coordination. — The Attorney General, acting through the Director and such other officials of the Department of Justice as the Attorney General may designate, shall provide for the coordination of all firearms, explosives, tobacco enforcement, and arson enforcement functions vested in the Attorney General so as to assure maximum cooperation between and among any officer, employee, or agency of the Department of Justice involved in the performance of these and related functions.

(c) Performance of Transferred Functions. — The Attorney General may make such provisions as the Attorney General determines appropriate to authorize the performance by any officer, employee, or agency of the Department of Justice of any function transferred to the Attorney General under this section.

(d) Responsibilities. — Subject to the direction of the Attorney General, the Bureau shall be responsible for investigating —

(1) criminal and regulatory violations of the Federal firearms, explosives, arson, alcohol, and tobacco smuggling laws;

(2) the functions transferred by subsection (c) of section 1111 of the Homeland Security Act of 2002 (as enacted on the date of the enactment of such Act); and

(3) any other function related to the investigation of violent crime or domestic terrorism that is delegated to the Bureau by the Attorney General.

(c) Transfer of Authorities, Functions, Personnel, and Assets to the Department of Justice. —

(1) In General. — Subject to paragraph (2), but notwithstanding any other provision of law, there are transferred to the Department of Justice the authorities, functions, personnel, and assets of the Bureau of Alcohol, Tobacco and Firearms, which shall be maintained as a distinct entity within the Department of Justice, including the related functions of the Secretary of the Treasury.

(2) Building Prospectus. — Prospectus PDC-98W10, giving the General Services Administration the authority for site acquisition, design, and construction of a new headquarters building for the Bureau of Alcohol, Tobacco and Firearms, is transferred, and deemed to apply, to the Bureau of Alcohol, Tobacco, Firearms, and Explosives established in the Department of Justice under subsection (a).


REFERENCES IN TEXT

section 1453-3 of Title 7, Agriculture, section 1701 of Title 8, Aliens and Nationality, section 2223b of Title 15, Commerce and Trade, sections 441 to 447, 921 to 923, 925, 926, 1261, 1952, 2341, 2343, and 2346 of Title 18, sections 6103 and 7801 of Title 26, Internal Revenue Code, sections 713 and 9703 of Title 31, Money and Finance, sections 10952 and 13821 of Title 42, The Public Health and Welfare, sections 80303 and 80304 of Title 49, Transportation, and provisions set out as a note under section 921 of Title 18. For complete classification of sub-
title B to the Code, see Tables.

Section (c) of section 1111 of the Homeland Security Act of 2002 (as enacted on the date of the enactment of such Act), referred to in subsec. (b)(2), is section 1111(c) of Pub. L. 107–296, title XI, Nov. 25, 2002, 116 Stat. 2273, which was classified to section 531(c) of Title 6, Domestic Security, prior to transfer of subsec. (c)(1), (3) of such section to subsec. (c)(1), (3) of this section.

Paragraph (2), referred to in subsec. (c)(1), meant paragraph (2) of section 1111(c) of Pub. L. 107–296, when subsec. (c)(1) of this section was originally included in section 1111 of Pub. L. 107–296. See Codification note below. Section 1111(c)(2) of Pub. L. 107–296 is classified to section 531(c)(2) of Title 6, Domestic Security.

Codification

The section catchline and text of subsecs. (a) to (c)(1), (3) of section 1111 of Pub. L. 107–296, formerly classified to section 531 of Title 6, Domestic Security, which were transferred to this chapter, redesignated as this section, and amended by Pub. L. 109–162, § 1187(b), (c)(2), was based on Pub. L. 107–296, title XI, § 1115, Nov. 25, 2002, 116 Stat. 2280.

AMENDMENTS

2006—Pub. L. 109–162 transferred section 1115 of Pub. L. 107–296 to this chapter, redesignated it as this section, and substituted “demonstration project” for “Demonstration Project” in the section catchline. See Codification note above.

PART III—COURT OFFICERS AND EMPLOYEES

Chap. 41. Administrative Office of United States Courts ........................................ 601
42. Federal Judicial Center .................................. 620
43. United States Magistrate Judges .... 631
44. Alternative Dispute Resolution ...... 651
45. Supreme Court ..................................... 671
47. Courts of Appeals ............................. 711
49. District Courts ................................. 751
51. United States Court of Federal Claims ...................................................... 791

[53. Repealed.]
55. Court of International Trade ........... 871
57. General Provisions Applicable to Court Officers and Employees .... 951
58. United States Sentencing Commission ...................................................... 991

SENATE REVISION AMENDMENT

Chapter 59 was renumbered as Chapter 57 but without change in its section numbers, by Senate amendment. See 80th Congress Senate Report No. 1559.

AMENDMENTS

“Bankruptcy Courts”, which amendment did not become effective pursuant to section 402(b) of Pub. L. 95–554, as amended, set out as an Effective Date note preceding section 301 of Title 11, Bankruptcy.


CHANGE OF NAME


CHAPTER 41—ADMINISTRATIVE OFFICE OF UNITED STATES COURTS

Sec. 601. Creation; Director and Deputy Director.

602. Employees.

603. Salaries.

604. Duties of Director generally.

605. Budget estimates.

606. Duties of Deputy Director.

607. Practice of law prohibited.

608. Seal.

609. Courts’ appointive power unaffected.

610. Courts defined.

611. Retirement of Director.


613. Disbursing and certifying officers.

AMENDMENTS


1999—Act May 24, 1999, ch. 139, §72a, 63 Stat. 100, in effect with respect to an applicant or employee—

“A veterans’ preference in the consideration of applicants for employment, and in the conduct of any reductions in force, within the judicial branch; and

“(B) redress for alleged violations of any rights provided for under subparagraph (A).

“(2) Procedures.—Under the procedures, a preference eligible (as defined by section 2108 of title 5, United States Code) shall be afforded preferences in a manner and to the extent consistent with preferences afforded to preference eligibles in the executive branch.

“(3) Exclusions.—Nothing in the procedures shall apply with respect to an applicant or employee—

“(A) whose appointment is made by the President with the advice and consent of the Senate;

“(B) whose appointment is as a judicial officer;

“(C) whose appointment is required by statute to be made by or with the approval of a court or judicial officer; or

“(D) whose appointment is to a position, the duties of which are equivalent to those of a Senior Executive Service position within the meaning of section 3301(b) of title 5, United States Code.

“(4) Definitions.—For purposes of this subsection, the term ‘judicial officer’ means a justice, judge, or magistrate judge listed in subparagraph (A), (B), (F), or (G) of section 371(a)(1) of title 28, United States Code.

“(5) Submission to Congress; effective date.—

“(A) Submission to Congress.—Not later than 12 months after the date of enactment of this Act [Oct. 31, 1998], the Judicial Conference of the United States shall submit a copy of the procedures prescribed under this subsection to the Committee on Government Reform and Oversight of Congress and the Committee on the Judiciary of the House of Representatives and the Committee on Governmental Affairs of Congress.

“(B) Effective date.—The procedures prescribed under this subsection shall take effect 13 months after the date of enactment of this Act.”

REFERENCE TO ASSISTANT DIRECTOR DERIVED FROM DEPUTY DIRECTOR

Section 5(a)(4) of Pub. L. 86–370 provided that: “Whenever the Assistant Director of the Administrative Office of the United States Courts is referred to in any other law, such reference shall be deemed to be to the Deputy Director of the Administrative Office of the United States Courts.”

CONTINUATION OF LAW EXISTING ON SEPT. 1, 1948

Section 2(b) of act June 25, 1948, provided that: “The provisions of title 28, Judiciary and Judicial Procedure, of the United States Code, set out in section 1 of this Act, with respect to the organization of each of the several courts therein provided for and of the Administrative Office of the United States Courts, shall be construed as continuations of existing law, and the tenure of the judges, officers, and employees thereof and of the United States attorneys and marshals and their deputies and assistants, in office on the effective date of
this Act [Sept. 1, 1948], shall not be affected by its enactment, but each of them shall continue to serve in the same capacity under the appropriate provisions of title 28, as set out in section 1 of this Act, pursuant to his prior appointment: Provided, however, That each circuit court of appeals shall, as in said title 28 set out, hereafter be known as a United States court of appeals. No loss of rights, interruption of jurisdiction, or prejudice to matters pending in any of such courts on the effective date of this Act shall result from its enactment."

§ 602. Employees

(a) The Director shall appoint and fix the compensation of necessary employees of the Administrative Office in accordance with the Administrative Office of the United States Courts Personnel Act of 1990.

(b) Notwithstanding any other law, the Director may appoint certified interpreters in accordance with section 604(a)(16)(B) of this title with regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, relating to classification and General Schedule pay rates, but the compensation of any person appointed under this subsection shall not exceed the appropriate equivalent of the highest rate of pay payable for the highest grade established in the General Schedule, section 5332 of title 5.

(c) The Director may obtain personal services as authorized by section 3109 of title 5, at rates not to exceed the appropriate equivalent of the highest rate of pay payable for the highest grade established in the General Schedule, section 5332 of title 5.

(d) All functions of other officers and employees of the Administrative Office and all functions of organizational units of the Administrative Office are vested in the Director. The Director may delegate any of the Director’s functions, powers, duties, and authority (except the authority to promulgate rules and regulations) to such officers and employees of the judicial branch of Government as the Director may designate, and subject to such terms and conditions as the Director may consider appropriate; and may authorize the successive redelegation of such functions, powers, duties, and authority as the Director may deem desirable. All official acts performed by such officers and employees shall have the same force and effect as though performed by the Director in person.


HISTORICAL AND REVISION NOTES


This section contains provisions in section 445 of title 28, U.S.C., 1940 ed., for appointment of employees.

Words "with the approval of the Supreme Court" were omitted to relieve the court of the burden of approving appointments which in practice should properly be made by the Director under the supervision of the Judicial Conference of the United States.

The remainder of section 445 of title 28, U.S.C., 1940 ed., is incorporated in sections 603 and 607 of this title. Changes were made in phraseology.

REFERENCES IN TEXT


AMENDMENTS

1990—Subsec. (a). Pub. L. 101–474, §5(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "The Director shall appoint and fix the compensation of necessary employees of the Administrative Office in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of title 5, relating to classification and General Schedule pay rates."


1978—Pub. L. 95–539, among other changes, substituted provision authorizing the Director to appoint and fix the compensation of necessary employees in accordance with chapter 51 and subchapter III of chapter 53 of title 5 for provision authorizing the Director, subject to the provisions of the civil service laws, to appoint necessary employees for the Administrative Office and inserted provisions relating to appointing and fixing the compensation of certified interpreters, to obtaining personal services as authorized by section 3109 of title 5, and to transferring to the Director all of the functions of the officers and employees of the Administrative Office and all the functions of the organizational units of the Administrative Office with power in the Director to delegate his authority.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 10 of Pub. L. 95–539 provided that:

"(a) Except as provided in subsection (b), this Act [enacting section 1827 and 1828 of this title, amending this section and sections 603, 604, and 1920 of this title, enacting provisions set out as notes under this section and section 1 of this title, and repealing provisions set out as a note under this section] shall take effect on the date of the enactment of this Act [Oct. 28, 1978]."

"(b) Section 2 of this Act [enacting sections 1827 and 1828 of this title] shall take effect ninety days after the date of the enactment of this Act [Oct. 28, 1978]."

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18 rates are to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 (title I, §101(c)(1)) of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

ADMINISTRATIVE OFFICE OF UNITED STATES COURTS PERSONNEL

Sections 1 to 4 and 6 of Pub. L. 101–474 provided that:

"SECTION 1. SHORT TITLE.

"This Act [see References in Text note above and Tables for classification] may be cited as the 'Administrative Office of the United States Courts Personnel Act of 1990'."

"SEC. 2. GENERAL PERSONNEL AUTHORITY.

"The Director of the Administrative Office of the United States Courts (hereinafter in this Act referred to as the 'Director') may appoint, fix the compensation of, assign, and direct such personnel as the Director determines necessary to discharge the duties and functions of the Administrative Office.
“SEC. 3. ESTABLISHMENT OF PERSONNEL MANAGEMENT SYSTEM.

“(a) The Director shall, by regulation, establish a personnel management system for the Administrative Office which provides for the appointment, pay, promotion, and assignment of all employees on the basis of merit, but without regard to the provisions of title 5, United States Code, governing appointments and other personnel actions in the competitive service, or the provisions of chapter 51 and subchapter III of chapter 53 of such title, relating to classification and General Schedule pay rates. The system shall apply to all Administrative Office employees except those referred to in section 603 of title 28, United States Code, and shall, at a minimum—

“(1) provide for a schedule of pay rates applicable to all employees; except as provided in paragraph (10), the basic pay of any person appointed under this section shall not exceed the rate of basic pay for level V of the Executive Schedule;

“(2) incorporate pay comparability principles as set forth in section 5301(a) of title 5, United States Code; and shall provide for the same basic pay of employees at the same time and in the same percentage amount as rates of basic pay are adjusted for General Schedule and prevailing rate employees, as appropriate;

“(3) provide for the adjustment of the pay of employees, the granting of periodic pay adjustments, incentive awards, and resolution of employee grievances;

“(4) establish procedures for disciplinary actions, including reduction in grade or pay, suspension, and removal, based on unacceptable performance or misconduct, except that—

“(A) such procedures shall be consistent with—

“(i) section 403 of title 5, United States Code, to the extent that they relate to adverse actions based on unacceptable performance; and

“(ii) chapter 75 of title 5, United States Code, to the extent that they relate to adverse actions covered by such chapter; and

“(B) the Director may exempt from these procedures positions of a confidential or policy-determining character, not to exceed 4 percent of the authorized positions of the Administrative Office;

“(5) establish procedures for premium pay (including overtime), except that the Director may at his discretion implement flexible and compressed work schedules and may exempt the hours constituting such schedules from premium pay to the extent he deems necessary to implement such schedules;

“(6) include the principles set forth in section 2301(b) of title 5, United States Code;

“(7) include the principles set forth in section 2302(b) of title 5, United States Code;

“(8) prohibit personnel practices prohibited under section 2302(b) of title 5, United States Code;

“(9) prohibit discrimination on the basis of race, color, religion, age, sex, national origin, political affiliation, marital status, or handicapping condition; the Director must promulgate regulations providing procedures for resolving complaints of discrimination by employees and applicants for employment;

“(10) provide for the basic pay of not more than 5 percent of the authorized positions of the Administrative Office (excluding the positions referred to in section 603 of title 28, United States Code) to be set at rates not to exceed the rate of basic pay for positions at level IV of the Executive Schedule; the aggregate pay (including basic pay and incentive awards) of any individual whose basic pay is set under this subsection may not exceed the salary of the Director; and

“(11) in the case of any individual who would be a preference eligible in the executive branch, provide preference for that individual in a manner and to an extent consistent with preference accorded to preference eligibles in the executive branch.

“(b) The Director may apply the provisions of sections 5723 and 6304(f) of title 5, United States Code, to the positions referred to in subsection (a)(10) and in section 603 of title 28, United States Code, including the Deputy Director.

“(c) The Director may provide for incentive awards for the positions referred to in section 603 of title 28, United States Code, including the Deputy Director, subject to the aggregate pay limitation in subsection (a)(10).

“(d) The Chief Justice of the United States or the Judicial Conference of the United States may grant incentive awards to the Director, except that the Director’s aggregate pay for any fiscal year, including salary and incentive awards, may not exceed the salary of a United States circuit judge. The Chief Justice or the Judicial Conference may authorize application of section 5723 of title 5, United States Code, to the Director.

“(e) The Director may develop and conduct programs to meet the short- and long-range training needs of the agency.

“(f) Notwithstanding any other provision of law, an individual who is an employee of the Administrative Office on the day before the effective date of this section and who, as of that day, was entitled to—

“(1) appeal a reduction in grade or removal to the Merit Systems Protection Board under chapter 43 of title 5, United States Code;

“(2) appeal an adverse action to the Merit Systems Protection Board under chapter 75 of title 5, United States Code, or

“(3) file an appeal with the Equal Employment Opportunity Commission under part 1613 of title 29 of the Code of Federal Regulations, shall continue to be entitled to file such appeal so long as the individual remains an employee of the Administrative Office, except that this provision shall not apply to employees in positions referred to in section 603 of title 28, United States Code, or in positions of a confidential or policy-determining character referred to in subsection (a)(10).

“(g) Nothing in this Act shall be construed to abolish or diminish any right or remedy granted to employees of or applicants for employment in the Administrative Office by any law prohibiting discrimination in Federal employment on the basis of race, color, religion, age, sex, national origin, political affiliation, marital status, or handicapping condition, except that, with respect to any such employees and applicants for employment, any authority granted under any such law to the Equal Employment Opportunity Commission, the Office of Personnel Management, the Merit Systems Protection Board, or any other agency in the executive branch, shall be exercised by the Administrative Office.

“SEC. 4. NONCOMPETITIVE APPOINTMENTS.

“(a) Notwithstanding any other provision of law, any employee of the Administrative Office who has completed at least 1 year of continuous service under a nontemporary appointment under the personnel system established pursuant to section 3 acquires a competitive status for appointment to any position in the competitive service for which the employee possesses the required qualifications.

“(b) A period of continuous service performed as a nontemporary employee of the Administrative Office immediately before the personnel system under section 3 takes effect shall, for purposes of subsection (a), be treated as if it had been performed under such system.

“SEC. 5. AUTHORIZATION.

“There are authorized to be appropriated for fiscal year 1990 and for each fiscal year thereafter such sums as may be necessary to carry out the provisions of this Act.”

CONTRACT LIMITATIONS

Section 11 of Pub. L. 95-539 provided that: “Any contracts entered into under this Act or any of the amendments made by this Act [enacting sections 1827 and 1828 of this title, amending this section and sections 603, 604, and 1920 of this title, enacting provisions set out as notes under this section and section 1 of this title, and repealing provisions set out as a note under this section] shall be limited to such extent or in such amounts as are provided in advance in appropriation Acts.”
§ 603

EMPLOYMENT OF EXPERTS OR CONSULTANTS: RATES


§ 603. Salaries

The salary of the Assistant Director shall be the same as the salary of a district judge. Notwithstanding any other provision of law, the Director shall not be deemed to be an “employee” for the purpose of subchapter I of chapter 63 of title 5. The salary of the Deputy Director shall be 92 percent of the salary of the Director. The salaries of six additional positions shall be fixed by the Director at rates not to exceed the annual rate of basic pay for positions at level IV of the Executive Schedule under section 5315 of title 5.


HISTORICAL AND REVISION NOTES


This section consolidates parts of title 28, U.S.C., 1940 ed., §§444, 445. The remainder of said sections are incorporated in sections 601, 602, 606, 607, and 608 of this title. The figure "$3,378.50" was substituted for "$7,500" as the salary of the Assistant Director in conformity with section 934 of title 5, U.S.C., 1940 ed., Executive Departments and Government Officers and Employees.

Changes were made in phraseology.

SENATE REVISION AMENDMENT

The [former] figure, "$7,500," with respect to salary of the Assistant Director, was restored by Senate amendment. See 80th Congress Senate Report No. 1559, amendments Nos. 15 and 65.

AMENDMENTS

1990—Pub. L. 101–474 inserted after first sentence "Notwithstanding any other provision of law, the Director shall not be deemed to be an ‘employee’ for the purpose of subchapter I of chapter 63 of title 5. The salary of the Deputy Director shall be 92 percent of the salary of the Director.” and struck out “of the Deputy Director and” after “The salaries of”.

1988—Pub. L. 100–459 substituted “six” for “three”.

1987—Pub. L. 100–202 substituted “The salaries of the Deputy Director and of three additional positions shall be fixed by the Director at rates not to exceed the annual rate of basic pay for positions at level IV of the Executive Schedule under section 5315 of title 5.” for “The salary of the Deputy Director and of three additional positions shall be fixed by the Director at rates not to exceed the annual rate of basic pay for positions at level IV of the Executive Schedule under section 5315 of title 5.”

1978—Pub. L. 95–539 struck out provision authorizing the Director to fix the compensation of Administrative Office employees in accordance with the Classification Act of 1949.

1967—Pub. L. 90–206 increased salaries of Director and Deputy Director from $27,000 and $26,000 per year to a salary equivalent to a United States district judge and the same amount of basic pay for positions at level V of the Executive Schedule under section 5316 of title 5, respectively.

1964—Pub. L. 88–426 substituted "$27,000 for "$15,000 and "$26,000 for "$12,500".

1959—Pub. L. 86–370 substituted “Deputy Director” for “Assistant Director”.


1949—Act Oct. 15, 1949, increased salaries of Director from $10,000 to $15,000 per annum and Assistant Director from $7,500 to $12,500 per annum.

EFFECTIVE DATE OF 1978 AMENDMENT


EFFECTIVE DATE OF 1967 AMENDMENT

Section 220(a)(3) of title II of Pub. L. 90–206 provided, except as otherwise expressly provided, that: “Sections 213(d) and (e) [amending this section and section 792 of this title], 214(j), (k), (l), (n), and (o) [amending sections 609] and 61–1 of Title 2. The Congress, and section 5533 of Title 5, Government Organization and Employees], 215 [amending sections 5314 to 5316 of Title 5], 217 [amending section 5545 of Title 5], 219 [amending sections 193a and 193a–1 of Title 2, sections 42a and 5a of former Title 31, Money and Finance, sections 162a, 166b, and 166b–1 of former Title 40, Public Buildings, Property, and Works, and section 39a of former Title 44, Public Printing and Documents], and 226(c) [amending material set out as a note under section 102 of Title 2] shall become effective at the beginning of the first pay period which begins on or after the date of enactment of this title [Dec. 16, 1967].”

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–426 effective on first day of 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(a) of Pub. L. 88–426.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86–370 effective Sept. 23, 1959, see section 7(a) of Pub. L. 86–370.

EFFECTIVE DATE OF 1949 AMENDMENT

The increased compensation provided for by act Oct. 15, 1949, took effect on first day of first pay period which began after Oct. 15, 1949, see section 9 of act Oct. 15, 1949.

SALARY INCREASES

1987—Salaries of Director and Deputy Director increased respectively to $89,500 and $72,500 per annum, on recommendation of the President of the United States, see note set out under section 358 of Title 2, The Congress.

1977—Salaries of Director and Deputy Director increased respectively to $54,500 and $46,500 per annum, on recommendation of the President of the United States, see note set out under section 358 of Title 2.

1969—Salaries of Director and Deputy Director increased respectively from $30,000 and $28,000 to $40,000 and $30,000 per annum, commencing February 14, 1969, on recommendation of the President of the United States, see note set out under section 358 of Title 2.

1967—Pub. L. 90–206, title II, §213(a), Dec. 16, 1967, 81 Stat. 625, provided that: “The rates of basic compensation of officers and employees in or under the judicial branch of the Government whose rates of compensation are fixed by or pursuant to paragraph (2) of subdivision (d) of a section 62 of the Bankruptcy Act (11 U.S.C. 102(a)(2), section 566(a) of Title 18, United States Code, the third sentence of section 603, sections 671 to 675, inclusive, or section 604(a)(5), of Title 28, United States
The rates of basic compensation of officers and employees subject to the Classification Act of 1949, as amended [chapter 51 and subchapter III of chapter 53 of Title 5], in corresponding rates of compensation for officers and employees subject to the Classification Act of 1949, as amended [chapter 51 and subchapter III of chapter 53 of Title 5], are hereby increased by amounts equal to the increases provided by section 612(a)(1) of the Bankruptcy Act (11 U.S.C. 102(a)(1)), section 3656 of title 18, United States Code, or section 604(a)(5), or sections 672 to 675, inclusive, of title 28, United States Code, insofar as the latter section applies to graded positions, are hereby increased by amounts reflecting the respective applicable increases provided by this title [amending section 5332(a) of Title 5] in corresponding rates of compensation for officers and employees subject to section 5332 of Title 5, United States Code.

Section 202(a) of Pub. L. 89–202 effective as of beginning of first pay period which begins on or after Oct. 1, 1966, see section 220(a)(2) of Pub. L. 90–206, set out as a note under section 5332 of Title 5.

1966—Pub. L. 89–504, title II, § 202(a), July 18, 1966, 80 Stat. 293, provided that: "The rates of basic compensation of officers and employees in or under the judicial branch of the Government whose rates of compensation are fixed by or pursuant to paragraph (2) of subdivision a of section 62 of the Bankruptcy Act (11 U.S.C. 102(a)(2)), section 3656 of title 18, United States Code, the second sentence of section 603, sections 671 to 675, inclusive, or section 604(a)(5), of title 28, United States Code, insofar as the latter section applies to graded positions, are hereby increased by amounts reflecting the respective applicable increases provided by section 102(a) of title I of this Act [amending section 1113(b) of former Title 5, Executive Departments and Government Officers and Employees] in corresponding rates of compensation for officers and employees subject to the Classification Act of 1949, as amended [chapter 51 and subchapter III of chapter 53 of Title 5, Government Organization and Employees]."

Section 302 of title II of Pub. L. 89–504 provided that: "This title shall become effective as follows:

(1) This section and section 201 [enacting provisions set out as a note under section 1 of this title] shall become effective on the date of enactment of this Act [July 18, 1966].

(2) Section 202 [enacting provisions set out as note above and under sections 604 and 753 of this title] shall become effective on the first day of the first pay period which begins on or after July 1, 1966."

1965—Pub. L. 89–301, § 12(a), Oct. 29, 1965, 79 Stat. 1211, provided that: "The rates of basic compensation of officers and employees in or under the judicial branch of the Government whose rates of compensation are fixed by or pursuant to paragraph (2) of subdivision a of section 62 of the Bankruptcy Act (11 U.S.C. 102(a)(2)), section 3656 of Title 18, United States Code, the third sentence of section 603, sections 671 to 675, inclusive, or section 604(a)(5), of title 28, United States Code, insofar as the latter section applies to graded positions, are hereby increased by amounts reflecting the respective applicable increases provided by section 2(a) of this Act [amending section 1113(b) of former Title 5, Executive Departments and Government Officers and Employees] in corresponding rates of compensation for officers and employees subject to the Classification Act of 1949, as amended [chapter 51 and subchapter III of chapter 53 of Title 5, Government Organization and Employees]."

1962—Pub. L. 87–703, title VI, § 1004(a), Oct. 11, 1962, 76 Stat. 866, provided that: "The rates of basic compensation of officers and employees in or under the judicial branch of the Government whose rates of compensation are fixed by or pursuant to paragraph (2) of subdivision a of section 62 of the Bankruptcy Act (11 U.S.C. 102(a)(2)), section 3656 of title 18 of the United States Code, the third sentence of section 603, sections 604(a)(5), or section 672 to 675 inclusive, of title 28 of the United States Code, or section 107(a)(6) of the Act of July 31, 1956, as amended (5 U.S.C. 2206(a)(6); (section 2206(a)(6) of former Title 5, Executive Departments and Government Officers and Employees), are hereby increased by two amounts, the first amount to be effective for the period beginning as of the first day of the first pay period which begins on or after January 1, 1964, and the second amount to be effective on the first day of the first pay period which begins on or after January 1, 1964, and thereafter, which reflect the respective applicable increases provided by this title of this Act in corresponding rates of compensation for officers and employees subject to the Classification Act of 1949, as amended [chapter 51 and subchapter III of chapter 53 of Title 5, Government Organization and Employees]."

1960—Pub. L. 86–568, title I, § 116(a), July 1, 1960, 74 Stat. 303, provided that: "The rates of basic compensation of officers and employees in or under the judicial branch of the Government whose rates of compensation are fixed by or pursuant to paragraph (2) of subdivision a of section 62 of the Bankruptcy Act (11 U.S.C. 102(a)(2)), section 3656 of title 18 of the United States Code, the third sentence of section 603, section 604(a)(5), or sections 672 to 675, inclusive, of title 28 of the United States Code, or section 107(a)(6) of the Act of July 31, 1956, as amended (5 U.S.C. 2206(a)(6)), are hereby increased by amounts equal to the increases provided by section 612(a)(12) of this title [amending former section 1113(b) of Title 5] in corresponding rates of compensation paid to officers and employees subject to the Classification Act of 1949, as amended [chapter 51 and subchapter III of chapter 53 of Title 5, Government Organization and Employees]."

1956—Pub. L. 84–304, title III, § 302(d), Oct. 4, 1956, 75 Stat. 793, provided that: "On and after the effective date of this subsection, section 116(a) of the Federal Employees Salary Increase Act of 1956 (Part B of the Act of July 1, 1960; 74 Stat. 303; Public Law 86–568) [set out as a note above] shall not be applicable with respect to the duty Director of the Administrative Office of the United States Courts."
§ 604. Duties of Director generally

(a) The Director shall be the administrative officer of the courts, and under the supervision and direction of the Judicial Conference of the United States, shall:

(1) Supervise all administrative matters relating to the offices of clerks and other clerical and administrative personnel of the courts;

(2) Examine the state of the dockets of the courts; secure information as to the courts’ need of assistance; prepare and transmit semi-annually to the chief judges of the circuits, statistical data and reports as to the business of the courts;

(3) Submit to the annual meeting of the Judicial Conference of the United States, at least two weeks prior thereto, a report of the activities of the Administrative Office and the state of the business of the courts, together with the statistical data submitted to the chief judges of the circuits under paragraph (a)(2) of this section, and the Director’s recommendations, which report, data and recommendations shall be public documents.

(4) Submit to Congress and the Attorney General copies of the report, data and recommendations required by paragraph (a)(3) of this section;

(5) Fix the compensation of clerks of court, deputies, librarians, clerks, secretaries, stenographers, clerical assistants, and other employees of the courts whose compensation is not otherwise fixed by law, and, notwithstanding any other provision of law, pay on behalf of Justices and judges of the United States appointed to hold office during good behavior, United States magistrate judges, bankruptcy judges appointed under section 6 of this title, judges of the District Court of Guam, judges of the District Court for the Northern Mariana Islands, judges of the District Court of the Virgin Islands, bankruptcy judges and magistrate judges retired under section 377 of this title, and judges retired under section 373 of this title, who are aged 65 or over, any increases in the cost of Federal Employees’ Group Life Insurance imposed after April 24, 1999, including any expenses generated by such payments, as authorized by the Judicial Conference of the United States;

(6) Determine and pay necessary office expenses of courts, judges, and those court officials whose expenses are by law allowable, and the lawful fees of United States magistrate judges;

(7) Regulate and pay annuities to widows and surviving dependent children of justices and judges of the United States, judges of the United States Court of Federal Claims, bankruptcy judges and magistrate judges retired under section 377 of this title, except that the reimbursement of subsistence expenses may not exceed that authorized by the Director for judges of the United States under section 456 of title 5, except otherwise

1 So in original. Comma probably should not appear.
provided pursuant to paragraph (17)); (B) provide or make available readily to each court appropriate equipment for the interpretation of proceedings in accordance with section 1828 of this title; and (C) enter into and perform contracts and other transactions upon such terms as the Director may deem appropriate as may be necessary to the conduct of the work of the judicial branch of Government (except the Supreme Court unless otherwise provided pursuant to paragraph (17)), and contracts for nonpersonal services providing pretrial services, agencies, for the interpretation of proceedings, and for the provision of special interpretation services pursuant to section 1828 of this title may be awarded without regard to section 6101(b) to (d) of title 41;

(11) Audit, vouchers and accounts of the courts, the Federal Judicial Center, the offices providing pretrial services, and their clerical and administrative personnel;

(12) Provide accommodations for the courts, the Federal Judicial Center, the offices providing pretrial services and their clerical and administrative personnel;

(13) Lay before Congress, annually, statistical tables that will accurately reflect the business transacted by the several bankruptcy courts, and all other pertinent data relating to such courts;

(14) Pursuant to section 1827 of this title, establish a program for the certification and utilization of interpreters in courts of the United States;

(15) Pursuant to section 1828 of this title, establish a program for the provision of special interpretation services in courts of the United States;

(16)(A) In those districts where the Director considers it advisable based on the need for interpreters, authorize the full-time or part-time employment by the court of certified interpreters; (B) where the Director considers it advisable based on the need for interpreters, appoint certified interpreters on a full-time or part-time basis, for services in various courts, and (C) pay out of monies appropriated for the judiciary interpretation services; and (D) pay out of monies appropriated for the judiciary interpretation services in courts of the United States;

(17) In the Director’s discretion, (A) accept and utilize voluntary and uncompensated (gratuitous) services, including services as authorized by section 3102(b) of title 5, United States Code; and (B) accept, hold, administer, and utilize gifts and bequests of personal property for the purpose of aiding or facilitating the work of the judicial branch of Government, but gifts or bequests of money shall be covered into the Treasury;

(18) Establish procedures and mechanisms within the judicial branch for processing fines, restitution, forfeitures of bail bonds or collateral, and assessments;

(19) Regulate and pay annuities to bankruptcy judges and United States magistrate judges in accordance with section 377 of this title and paragraphs (1)(B) and (2) of section 2(c) of the Retirement and Survivors’ Annui-

(20) Periodically compile—

(A) the rules which are prescribed under section 2071 of this title by courts other than the Supreme Court;

(B) the rules which are prescribed under section 358 of this title; and

(C) the orders which are required to be publicly available under section 360(b) of this title;

so as to provide a current record of such rules and orders;

(21) Establish a program of incentive awards for employees of the judicial branch of the United States Government, other than any judge who is entitled to hold office during good behavior;

(22) Receive and expend, either directly or by transfer to the United States Marshals Service or other Government agency, funds appropriated for the procurement, installation, and maintenance of security equipment and protective services for the United States Courts in courthouses and adjacent areas, including building ingress/egress control, inspection of packages, directed security patrols, and other similar activities;

(23) Regulate and pay annuities to judges of the United States Court of Federal Claims in accordance with section 178 of this title;

(24) Perform such other duties as may be assigned to him by the Supreme Court or the Judicial Conference of the United States.

(b) The clerical and administrative personnel of the courts shall comply with all requests by the Director for information or statistical data as to the state of court dockets.

(c) Inspection of court dockets outside the continental United States may be made through United States officials residing within the jurisdiction where the inspection is made.

(d) The Director, under the supervision and direction of the conference, shall:

(1) supervise all administrative matters relating to the offices of the United States magistrate judges;

(2) gather, compile, and evaluate all statistical and other information required for the performance of his duties and the duties of the conference with respect to such officers;

(3) lay before Congress annually statistical tables and other information which will accurately reflect the business which has come before the various United States magistrate judges, including (A) the number of matters in which the parties consented to the exercise of jurisdiction by a magistrate judge, (B) the number of appeals taken pursuant to the decisions of magistrate judges and the disposition of such appeals, and (C) the professional background and qualifications of individuals appointed under section 631 of this title to serve as magistrate judge;

(4) prepare and distribute a manual, with annual supplements and periodic revisions, for the use of such officers, which shall set forth their powers and duties, describe all categories
of proceedings that may arise before them, and contain such other information as may be required to enable them to discharge their powers and duties promptly, effectively, and impartially.

(e) The Director may promulgate appropriate rules and regulations approved by the conference and not inconsistent with any provision of law, to assist him in the performance of the duties conferred upon him by subsection (d) of this section. Magistrate judges shall keep such records and make such reports as are specified in such rules and regulations.

(f) The Director may, promulgate, issue, rescind, and amend rules and regulations (including regulations prescribing standards of conduct for Administrative Office employees) as may be necessary to carry out the Director’s functions, powers, duties, and authority. The Director may publish in the Federal Register such rules, regulations, and notices for the judicial branch of Government as the Director determines to be of public interest; and the Director of the Federal Register hereby is authorized to accept and shall publish such materials.

(g)(1) When authorized to exchange personal property, the Director may exchange or sell similar items and may apply the exchange allowance or proceeds of sale in such cases in whole or in part payment for the property acquired, but any transaction carried out under the authority of this subsection shall be evidenced in writing.

(2) The Director hereby is authorized to enter into contracts for public utility services and related terminal equipment for periods not exceeding ten years.

(3)(A) In order to promote the recycling and reuse of recyclable materials, the Director may provide for the sale or disposal of recyclable scrap materials from paper products and other consumable office supplies held by an entity within the judicial branch.

(B) The sale or disposal of recyclable materials under subparagraph (A) shall be consistent with the procedures provided in sections 541–555 of title 40 for the sale of surplus property.

(C) Proceeds from the sale of recyclable materials under subparagraph (A) shall be deposited as offsetting collections to the fund established under section 1931 of this title and shall remain available until expended to reimburse any appropriations for the operation and maintenance of the judicial branch.

(4) The Director is hereby authorized:

(A) to enter into contracts for the acquisition of severable services for a period that begins in one fiscal year and ends in the next fiscal year to the same extent as the head of an executive agency under the authority of section 2351 of title 41, United States Code;

(B) to enter into contracts for multiple years for the acquisition of property and services to the same extent as executive agencies under the authority of section 294c of title 41, United States Code; and

(C) to make advance, partial, progress or other payments under contracts for property or services to the same extent as executive agencies under the authority of section 255 of title 41, United States Code.

(h)(1) The Director shall, out of funds appropriated for the operation and maintenance of the courts, provide facilities and pay necessary expenses incurred by the judicial councils of the circuits and the Judicial Conference under chapter 16 of this title, including mileage allowance and witness fees, at the same rate as provided in section 1821 of this title. Administrative and professional assistance from the Administrative Office of the United States Courts may be requested by each judicial council and the Judicial Conference for purposes of discharging their duties under chapter 16 of this title.

(2) The Director of the Administrative Office of the United States Courts shall include in his annual report filed with the Congress under this section a summary of the number of complaints filed with each judicial council under chapter 16 of this title, indicating the general nature of such complaints and the disposition of those complaints in which action has been taken.


HISTORICAL AND REVISION NOTES


For purposes of uniformity, all provisions of law governing regulation and allowance of office, travel, and subsistence expenses of all officers and employees of the courts, except those provisions relating to Supreme Court officers and employees, are incorporated in subsection (a)(6)(7) of this section. Likewise the provisions respecting the compensation of court officers and employees, except those of the Supreme Court, are incorporated in subsection (a)(5). In each instance the power to fix and determine such salaries and expenses is transferred to the Director of the Administrative Office of the United States Courts. This change is in conformity with the Administrative Office Act 1939 included in this chapter.

Compensation of bailiffs however is provided by sections 713 and 755 of this title and that of court reporters by section 703 of this title.

Salaries and travel expenses of Court of Claims Commissioners are covered by section 792 of this title.

The language “and the lawful fees of United States Commissioners” in subsections (a)(6) and (a)(8) of this section and “the officers of the United States Commissioners” in subsection (a)(9) is new. It conforms with sections 633, 636 and 639 of this title.

Subsection (a)(5) covers the provisions of section 726-1 and 726a of title 18, U.S.C., 1940 ed., which provided that probation officers’ salaries should not be less than $1,600 nor more than $3,600 per annum and their traveling expenses should not exceed more than 4 cents per mile.

Words “and officers and employees of the Administrative Office” were added in subsection (a)(7) to expressly authorize travel and subsistence expenses of such officers and employees.

The power to fix such pay and allowances is transferred to the Director as above indicated, and conforms with the Administrative Office Act of 1939. For further explanation of the general supervision of probation officers, see reviser’s note under section 3654, H. Rept. to accompany H.R. 3190 for revision of title 18, U.S.C.

Subsection (a)(8) covers the provisions of section 1131 of title 26, U.S.C. 1940 ed. Such section 1131 authorized the Tax Court, successor to the Board of Tax Appeals, to make expenditures for personal services, rent, law books, reference books, periodicals, and provided that all expenditures should be paid out of appropriations for the Tax Court, on itemized vouchers approved by the Chief Judge of the Tax Court.

Two references to “officials and employees covered by this chapter” were changed to “clerical and administrative personnel,” following the language of paragraph (a)(1), conferring general power to supervise such personnel as respects administrative matters.

Similar language was used in paragraph (b) instead of “The clerks of the district courts, their deputies and assistants, and all other employees of said courts.”

The provisions of section 374b of title 28, U.S.C., 1940 ed., based on successive acts relating to classification and compensation of secretaries and law clerks were omitted as temporary and unnecessary in revision, in view of subsection (a)(5) of this section under which the salaries of all personnel are necessarily limited by current appropriation acts.

For increases in basic rates of compensation for other judicial officers and employees see, also, section 521 of Act June 30, 1945, ch. 246.

The designation “senior circuit judges” was changed to “chief judges of the circuits” in conformity with section 45 of this title.


Provisions of said section, requiring the clerk of such court to give bond, were omitted as covered by section 952 of this title. Provisions of said section, relating to regulation of clerk’s fees by such court were omitted so as to render uniform the method of such regulation as prescribed by section 1913 of this title, and the provisions of the section relating to said court and the judges thereof were incorporated as contained in sections 711 and 713 of this title.

For distribution of other provisions of sections on which this section is based, see Distribution Table.

Changes were made in phraseology and arrangement.

**Senate Revision Amendments**

By Senate amendment, all provisions relating to the Tax Court were eliminated, therefore, as finally enacted, sections 1130(a)(b) and 1131 of Title 26, U.S.C., Internal Revenue Code (1940 ed.), did not constitute part of the source of this section. However, no change in the text of the section was necessary. See 80th Congress Senate Report No. 1559.

As finally enacted, part of act July 9, 1947, ch. 211, title IV, 61 Stat. 304, 363, which was classified to title 28, U.S.C., 1946 ed., §374b, became one of the sources of this section and was accordingly included in the schedule of repeals by Senate amendment. See 80th Congress Senate Report No. 1559.

**References in Text**

Section 3(c) of the Retirement and Survivors’ Annuities for Bankruptcy Judges and Magistrates Act of 1988, referred to in subsec. (a)(19), is section 2(c) of Pub. L. 100–659, Nov. 15, 1988, 102 Stat. 3916, which is set out as a note under section 377 of this title.

Section 253 of title 41, United States Code, referred to in subsec. (g)(4)(A), probably means section 393L of act June 30, 1949, ch. 268, which was classified to section 253 of former Title 41, Public Contracts, and was repealed and restated as section 3902 of Title 41, Public Contracts, by Pub. L. 111–350, §§3, 7(b), Jan. 4, 2011, 124 Stat. 3677, 3855.

Section 254 of title 41, United States Code, referred to in subsec. (g)(4)(B), probably means section 394B of act June 30, 1949, ch. 268, which was classified to section 254 of former Title 41, Public Contracts, and was repealed and restated as section 3963 of Title 41, Public Contracts, by Pub. L. 111–350, §§3, 7(b), Jan. 4, 2011, 124 Stat. 3677, 3855.

Section 255 of title 41, United States Code, referred to in subsec. (g)(4)(C), probably means section 395 of act June 30, 1949, ch. 268, which was classified to section 255 of former Title 41, Public Contracts, and was repealed and restated as chapter 45 (§4501 et seq.) of Title 41,

**AMENDMENTS**


2009—Subsec. (a)(5). Pub. L. 111–8 substituted “United States magistrate judges, bankruptcy judges appointed under chapter 6 of this title, judges of the District Court of Guam, judges of the District Court for the Northern Mariana Islands, judges of the District Court of the Virgin Islands, bankruptcy judges and magistrate judges appointed under chapter 6 of this title, who are” for “magistrate judges appointed under section 631 of this title”.


2000—Subsec. (a)(8). Pub. L. 101–618, § 304(d), amended par. (8) generally. Prior to amendment, par. (8) read as follows: “Disburse, directly or through the several United States marshals, moneys appropriated for the maintenance and operation of the courts:

Subsec. (a)(24). Pub. L. 106–518, § 294, struck out the second par. (24) which read as follows: “Lay before Congress, annually, statistical tables that will accurately reflect the business imposed on the Federal courts by the savings and loan crisis.”

1999—Subsec. (a)(5). Pub. L. 106–113 inserted before semicolon at end “; and, notwithstanding any other provision of law, pay on behalf of Justices and judges of the United States appointed to hold office during good behavior, aged 65 or over, any increases in the cost of Federal Employees’ Group Life Insurance imposed after April 24, 1998, including any expenses generated by such payments, as authorized by the Judicial Conference of the United States.”


Subsec. (a)(7). Pub. L. 100–702, § 1011, as amended by Pub. L. 101–650, § 325(c)(1), which directed amendment of par. (7 “by [sic] at the end the following: ‘without regard to the per diem allowances and amounts for reimbursement of actual and necessary expenses established by the Administrator of General Services under section 5702 of title 5, except that the reimbursement of subsistence expenses may not exceed that authorized by the Director for judges of the United States under section 456 of this title;’” was executed by inserting the new language after the comma at the end to reflect the probable intent of Congress.


Subsec. (a)(16). (17). Pub. L. 111–350, § 1008(1), redesignated pars. (15) and (16) as (16) and (17), respectively. Former par. (17) redesignated (18).


Pub. L. 100–702, § 402(a), as amended by Pub. L. 101–474, § 5(r), and Pub. L. 101–650, § 306(e)(1)(A), redesignated par. (19), relating to performance of other duties, as (20) and added par. (19) relating to compilation of rules and orders.

Pub. L. 100–659, § 6(a)(2), redesignated par. (18), relating to performance of other duties, as (19).


1986—Subsec. (f). Pub. L. 99–554 struck out subsec. (f) as added by Pub. L. 99–558, § 225(b), which related to the Director naming qualified persons to membership on the panel of trustees, their number, qualifications, removal, etc.


Subsec. (a)(10). Pub. L. 97–267, § 7(2), substituted “providing pretrial services” for “pretrial service agencies”.

Subsec. (a)(11). Pub. L. 97–267, § 7(3), substituted “offices providing pretrial services” for “pretrial service agencies”.

Subsec. (a)(12). Pub. L. 97–267, § 7(4), substituted “offices providing pretrial services” for “pretrial service agencies”.


1979—Subsec. (d)(3). Pub. L. 96–92 added cls. (A), (B), and (C).

1978—Subsec. (a)(10). Pub. L. 95–539, § 3(a), expanded the duties of the Director to include providing or making available equipment for interpretation of proceedings in accordance with section 1828 of this title and to include entering into and performing contracts necessary to the conduct of the work of the judicial branch and exempted from the provisions of section 5 of title 41 contracts for nonpersonal services for pretrial agencies, for interpretation of proceedings, and for special interpretation services pursuant to section 1828 of this title.

Subsec. (a)(13). (14). Pub. L. 95–598, § 225(a), added par. (13) relating to annual statistical tables reflecting the
business of the several bankruptcy courts, and redesignated former par. (13), relating to provision of special interpretation services in courts of the United States, as (14). Subsec. (a)(13) to (16). Pub. L. 95–539, § 3(b), (c), added pars. (13) to (16). Former par. (13) redesignated (17).

Subsec. (a)(17). Pub. L. 95–539, § 3(b), redesignated former par. (13) as (17).

Subsec. (f). Pub. L. 95–598, § 225(b), added subsec. (f) relating to the naming of qualified persons to membership on the panel of trustees. Subsecs. (f), (g). Pub. L. 95–539, § 4, added subsecs. (f) and (g).


Subsec. (a)(10). Pub. L. 93–619 redesignated former par. (9) as (10) and substituted “the offices of the United States magistrates and commissioners, and the offices of pretrial services agencies” for “and the Administrative Office and the offices of the United States magistrates”. Former par. (10) redesignated (11).


Subsecs. (d), (e). Pub. L. 90–578 § 201(b), added subsecs. (d) and (e).


CHANGE OF NAME


EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–8, div. A, title III, § 307(c), Mar. 11, 2009, 123 Stat. 649, provided that: “Subsection (b) [(enacting provisions set out as a note under section 8701 of Title 5, Government Organization and Employees] and the amendment made by subsection (a) [(amending this section)] shall apply with respect to any payment made on or after the first day of the first applicable pay period beginning on or after the date of enactment of this Act [Jan. 7, 2008].”

EFFECTIVE DATE OF 1992 AMENDMENT


EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 306(e)(1) of Pub. L. 101–650 applicable to judges of, and senior judges in active service with, the United States Court of Federal Claims on or after Dec. 1, 1990, see section 306(e) of Pub. L. 101–650, as amended, set out as a note under section 8331 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by section 402(a) of Pub. L. 100–702 effective Dec. 1, 1988, see section 407 of Pub. L. 100–702, set out as a note under section 2071 of this title.

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


EFFECTIVE DATE OF 1980 AMENDMENTS

Amendment by Pub. L. 96–532 effective sixty days after Dec. 12, 1980, see section 3 of Pub. L. 96–532, set out as a note under section 3102 of Title 5, Government Organization and Employees.


EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95–598 effective Oct. 1, 1978, except when a later effective date is applicable, which is the earlier of date when implementation of amendment by appointment by magistrates [now United States magistrate judges] and assumption of office takes place or third anniversary of enactment of Pub. L. 90–578 on Oct. 27, 1968, see section 308 of Pub. L. 90–578, set out as a note under section 631 of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsecs. (a)(4), (d)(3), and (h)(2) of this section relating to reporting certain information annually to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 12 of House Document No. 103–7.

EXPIRATION OF AUTHORITIES

Pub. L. 109–115, div. A, title IV, § 407(c), Nov. 30, 2005, 119 Stat. 2471, which provided that the authorities granted in this section (amending this section and sec-
tion 612 of this title) were to expire on Sept. 30, 2010, was repealed by Pub. L. 111–8, div. D, title III, §308, Mar. 11, 2009, 123 Stat. 649.

REPORTS BY DIRECTOR OF ADMINISTRATIVE OFFICE OF UNITED STATES COURTS

For requirement that Director of Administrative Office of the United States Courts include statistical information about implementation of chapter 44 of this title in annual report under section 604(a)(3) of this title, see section 903(a) of Pub. L. 100–702, set out as a note under section 651 of this title.

1970 INCREASE IN PAY RATES OF JUDICIAL BRANCH EMPLOYEES WHOSE RATES OF PAY ARE FIXED BY ADMINISTRATIVE ACTION

Adjustment of rates of pay of judicial branch employees whose rates of pay are fixed by administrative action by not to exceed the amounts of the adjustment for corresponding rates for employees subject to the section 2(a) of Pub. L. 91–231, which raised such corresponding rates for employees subject to the section 2(a) of Pub. L. 91–231, formerly set out as a note under section 5332 of Title 5, Government Organization and Employees.

COMPENSATION AND APPOINTMENT OF SECRETARIES AND LAW CLERKS

Provisions authorizing the appointment and compensation of secretaries and law clerks to circuit and district judges in such number and at such rates of compensation as may be determined by the Judicial Conference of the United States were contained in the following appropriation acts:


July 6, 1950, ch. 896, Ch. III, title IV, 64 Stat. 631.

LIMITATION ON AGGREGATE SALARIES OF SECRETARIES AND LAW CLERKS

1967—Pub. L. 90–206, title II, §213(b), Dec. 16, 1967, 81 Stat. 635, provided that: "The limitations provided by applicable law on the effective date of this section [see Effective Date of 1967 Amendment Note set out under section 5332 of Title 5, Government Organization and Employees] with respect to the aggregate salaries payable to secretaries and law clerks of circuit and district judges are hereby increased by amounts which reflect the respective applicable increases provided by section 2(a) of this Act (amending section 5332(a) of Title 5, Government Organization and Employees) and employees subject to section 5332 of Title 5, United States Code"

Section 213(b) of Pub. L. 90–206 effective as of the beginning of the first pay period which begins on or after Oct. 1, 1967, see section 220(a)(2) of Pub. L. 90–206, set out as a note under section 5332 of Title 5.

1966—Pub. L. 89–504, title II, §220(b), July 18, 1966, 80 Stat. 294, provided that: "The limitations provided by applicable law on the effective date of this section with respect to the aggregate salaries payable to secretaries and law clerks of circuit and district judges are hereby increased by amounts which reflect the respective applicable increases provided by section 2(a) of this Act (amending section 1113(b) of former Title 5, Executive Departments and Government Officers and Employees) in corresponding rates of compensation for officers and employees subject to the Classification Act of 1949, as amended [chapter 51 and subchapter III of chapter 53 of Title 5, Government Organization and Employees]."

Provision effective first day of first pay period which begins on or after July 26, 1966, see section 230 of Pub. L. 89–504, set out as a note under section 603 of this title.

1965—Pub. L. 89–301, §12(b), Oct. 29, 1965, 79 Stat. 1122, provided that: "The limitations provided by applicable law on the effective date of this section with respect to the aggregate salaries payable to secretaries and law clerks of circuit and district judges are hereby increased by amounts which reflect the respective applicable increases provided by section 2(a) of this Act (amending section 1113(b) of former Title 5, Executive Departments and Government Officers and Employees) in corresponding rates of compensation for officers and employees subject to the Classification Act of 1949, as amended [chapter 51 and subchapter III of chapter 53 of Title 5, Government Organization and Employees]."

1964—Pub. L. 88–426, title IV, §402(b), Aug. 14, 1964, 78 Stat. 433, provided that: "The limitation provided by applicable law on the effective date of this section with respect to the aggregate salaries payable to secretaries and law clerks of circuit and district judges are hereby increased by amounts which reflect the respective applicable increases provided by the title I of this Act in corresponding rates of compensation for officers and employees subject to the Classification Act of 1949, as amended [chapter 51 and subchapter III of chapter 53 of Title 5, Government Organization and Employees]."

1962—Pub. L. 87–793, title VI, §604(b), Oct. 11, 1962, 76 Stat. 866, provided that: "The limitations provided by applicable law on the effective date of this section with respect to the aggregate salaries payable to secretaries and law clerks of circuit and district judges are hereby increased by amounts which reflect the respective applicable increases provided by the title I of this Act in corresponding rates of compensation for officers and employees subject to the Classification Act of 1949, as amended [chapter 51 and subchapter III of chapter 53 of Title 5, Government Organization and Employees]."

1960—Pub. L. 86–568, title I, §116(b), July 1, 1960, 74 Stat. 333, provided that: "The limitations provided by applicable law on the effective date of this section with respect to the aggregate salaries payable to secretaries and law clerks of circuit and district judges are hereby increased by amounts which reflect the respective applicable increases provided by the title I of this Act in corresponding rates of compensation for officers and employees subject to the Classification Act of 1949, as amended [chapter 51 and subchapter III of chapter 53 of Title 5, Government Organization and Employees]."
and law clerks of circuit and district judges are hereby increased by the amounts necessary to pay the additional basic compensation provided by this Part.

Words "this Part", referred to above, means Part B of Pub. L. 86–568, which enacted section 932e of former Title 5, Executive Departments and Government Officers and Employees, and amended section 753 of this title, sections 313, 2291, 2292, and 2293 of former Title 5, sections 308 and 601 of Title 2, The Congress, sections 1113, and 2292 of former Title 5, section 509c of Title 16, Conservation, and section 867 of Title 22.

1956—Pub. L. 84–542, § 3(b), June 20, 1956, 72 Stat. 207, provided that: "The limitations of $15,485 and $18,000 with respect to the aggregate salaries payable to secretaries and law clerks of circuit and district judges, contained in the paragraph designated "Salaries of supporting personnel" in the Judiciary Appropriation Act, 1958 (71 Stat. 65; Public Law 85–49), or any subsequent appropriation Act, shall be increased by the amounts necessary to pay the additional basic compensation provided by this Act."

1955—Act June 28, 1955, ch. 189, § 3(b), 69 Stat. 175, provided that: "The limitations of $10,560 and $14,355 with respect to the aggregate salaries payable to secretaries and law clerks of circuit and district judges, contained in the paragraph in the heading 'Salaries of supporting personnel' in the Judiciary Appropriation Act, 1953 (Public Law 470, Eighty-third Congress), or in any subsequent appropriation Act, shall be increased by the amounts necessary to pay the additional basic compensation provided by this Act."

1953—Act Oct. 24, 1951, ch. 534, § 1(d), 65 Stat. 613, provided that: "The limitations of $9,600 and $13,050 with respect to the aggregate salaries payable to secretaries and law clerks of circuit and district judges, contained in the sixteenth paragraph under the heading 'Miscellaneous salaries' in the Judiciary Appropriation Act, 1951 (Public Law 759, Eighty-first Congress), or in any subsequent appropriation Act, shall be increased by the amounts necessary to pay the additional basic compensation provided by this Act."

The particular paragraph of the 'Judiciary Appropriation Act, 1951 (Public Law 759, Eighty-first Congress)' referred to above, is act Sept. 6, 1950, ch. 895, ch. III, title IV, § 401 (part), 64 Stat. 631. The salary limitations therein, also referred to above, were identical to those in the Judiciary Appropriation Act, 1952 (act Oct. 22, 1951, ch. 539, title IV, § 401 (part), 65 Stat. 596).

INCREASES IN COMPENSATION RATES

Increases in rates of basic compensation fixed pursuant to subsection (a)(3) of this section, see notes under section 603 of this title.

TRAVEL AND SUBSISTENCE EXPENSES

Pub. L. 87–139, § 6, Aug. 14, 1961, 75 Stat. 490, provided that: "The Director of the Administrative Office of the United States Courts shall promulgate, in accordance with section 604(a)(7) and section 458 of title 28 of the United States Code, such regulations as he may deem necessary to effectuate the increases provided by this Act [amending section 533 of this title, former Title 5, Executive Departments and Government Officers and Employees, and sections 2297, 2298, and 1711 of Title 22, Foreign Relations and Intercourse]."

§ 605. Budget estimates

The Director, under the supervision of the Judicial Conference of the United States, shall submit to the Office of Management and Budget annual estimates of the expenditures and appropriations necessary for the maintenance and operation of the courts and the Administrative Office and the operation of the judicial survivors annuity fund, and such supplemental and deficiency estimates as may be required from time to time for the same purposes, according to law. The Director shall cause periodic examinations of the judicial survivors annuity fund to be made by an actuary, who may be an actuary employed by another department of the Government temporarily assigned for the purpose, and whose findings and recommendations shall be transmitted by the Director to the Judicial Conference.

Such estimates shall be approved, before presentation to the Office of Management and Budget, by the Judicial Conference of the United States, except that the estimate with respect to the Court of International Trade shall be approved by such court and the estimate with respect to the United States Court of Appeals for the Federal Circuit shall be approved by such court.


HISTORICAL AND REVISION NOTES


This section contains provisions of section 447 of title 28, U.S.C., 1940 ed., relating to budget estimates. The remainder of said section 447 is incorporated in section 604 of this title.

The designation "senior circuit judges" was changed to "chief judges of the circuits" in conformity with section 45 of this title.

Changes were made in phraseology.

SENATE REVISION AMENDMENT

Those provisions of this section which related to the Tax Court were eliminated by Senate amendment. See 80th Congress Senate Report No. 1559.

AMENDMENTS

1982—Pub. L. 97–253 struck out paragraph which had provided that budget estimates be included in the budget without revision, but subject to the recommendations of the Bureau of the Budget, as provided by section 11 of Title 31 for the estimates of the Supreme Court. See section 1105(b) of Title 31, Money and Finance.

Pub. L. 97–164 substituted "Office of Management and Budget" for "Bureau of the Budget" wherever appearing and inserted requirement that the estimate of the expenditures and appropriations necessary for the maintenance and operation of the United States Court of Appeals for the Federal Circuit be approved by such court.

1960—Pub. L. 96–417 redesignated the Customs Court as the Court of International Trade.

1961—Pub. L. 87–253 struck out from second paragraph the requirement that the estimate with respect to the Court of Customs and Patent Appeals be approved by such court.

1956—Act Aug. 3, 1956, inserted provision to authorize the Director to include in the budget estimates of the courts the expenditures and appropriations necessary for the operation of the judicial survivors annuity fund, and inserted provision that Director shall cause periodic actuarial examinations to be made of the judicial survivors annuity fund and shall report the actuary's findings and recommendations to the Judicial Conference.
§ 606. Duties of Deputy Director

The Deputy Director shall perform the duties assigned to him by the Director, and shall act as Director during the absence or incapacity of the Director or when the Director’s office is vacant.


HISTORICAL AND REVISION NOTES


This section contains provisions as to duties of Assistant Director in section 444 of title 28, U.S.C., 1940 ed. The remainder of said section 444 is incorporated in sections 601, 603 and 608 of this title.

AMENDMENTS

1959—Pub. L. 86–370 substituted “Deputy Director” for “Assistant Director”.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86–370 effective Sept. 23, 1959, see section 7(a) of Pub. L. 86–370.

REFERENCE TO ASSISTANT DIRECTOR DERIVED REFERENCE TO DEPUTY DIRECTOR

References in any other law to Assistant Director of the Administrative Office of the United States Courts deemed to be reference to the Deputy Director of the Administrative Office of the United States Courts, see note set out under section 601 of this title.

§ 607. Practice of law prohibited

An officer or employee of the Administrative Office shall not engage directly or indirectly in the practice of law in any court of the United States.

(June 25, 1948, ch. 646, 62 Stat. 915.)

HISTORICAL AND REVISION NOTES


This section contains the last paragraph of title 28, U.S.C., 1940 ed., § 444. The remainder of said section is incorporated in sections 602 and 603 of this title.

Changes were made in phraseology.

§ 608. Seal

The Director shall use a seal approved by the Supreme Court. Judicial notice shall be taken of such seal.

(June 25, 1948, ch. 646, 62 Stat. 915.)

HISTORICAL AND REVISION NOTES


This section contains a part of section 444 of title 28, U.S.C., 1940 ed. The remainder of said section 444 is incorporated in sections 601, 603 and 608 of this title.

Changes were made in phraseology.

§ 609. Courts’ appointive power unaffected

The authority of the courts to appoint their own administrative or clerical personnel shall not be limited by any provisions of this chapter.

(June 25, 1948, ch. 646, 62 Stat. 915.)

HISTORICAL AND REVISION NOTES


This section contains the last clause of section 446(1) of title 28, U.S.C., 1940 ed.

A similar provision with respect to the Attorney General’s authority over United States attorneys and their assistants, and United States marshals and their deputies was omitted as unnecessary since there is nothing in this chapter that could affect such authority of the Attorney General.


Minor changes were made in phraseology.

§ 610. Courts defined

As used in this chapter the word “courts” includes the courts of appeals and district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, the District Court of the Virgin Islands, the United States Court of Federal Claims, and the Court of International Trade.


HISTORICAL AND REVISION NOTES


Words “and the United States Court for China” were omitted. See reviser’s note under section 411 of this title.

Provisions making this chapter and sections 332 and 333 of this title expressly applicable to the Court of Appeals for the District of Columbia were omitted as covered by “courts of appeals.” (See section 41 of this title and reviser’s notes under such section and section 44 of this title.)

A definition of “continental United States” as “the States of the Union and the District of Columbia” is omitted as unnecessary. (See reviser’s note under section 333 of this title.)

The term “district courts in the United States” in this section includes the District Court for the District of Columbia. (See section 88 of this title.)

Other provisions of section 450 of title 28, U.S.C., 1940 ed., are incorporated in sections 333 and 604 of this title.

The phrase “all other courts of the United States established by Act of Congress” was added to provide for future growth of the Federal judicial system. (See Senate Revision Amendment below.)

Changes in arrangement and phraseology were made.

SENATE REVISION AMENDMENT

Those provisions of this section which related to the Tax Court were eliminated by Senate amendment. See 80th Congress Senate Report No. 1559.
AMENDMENTS


1982—Pub. L. 97–164 substituted “the United States Claims Court” for “the Court of Claims, the Court of Customs and Patent Appeals”.

1980—Pub. L. 96–417 redesignated the Customs Court as the Court of International Trade.

1978—Pub. L. 96–96 directed the amendment of section by substituting “, district courts, and bankruptcy courts” for “and district courts”, which amendment did not become effective pursuant to section 422(b) of Pub. L. 95–591, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

1958—Pub. L. 85–508 struck out provisions which included District Court for Territory of Alaska within definition of court. See section 81A of this title which establishes a United States District Court for the State of Alaska.

1952—Oct. 31, 1951, inserted reference to the District Court of Guam.

EFFECTIVE DATE OF 1992 AMENDMENT


EFFECTIVE DATE OF 1982 AMENDMENT


EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–417 effective Nov. 1, 1980, and applicable with respect to civil actions pending on or commenced on or after such date, see section 701(a) of Pub. L. 96–417, set out as a note under section 251 of this title.

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. 2269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub. L. 85–508, see notes set out under section 81A of this title and preceding section 211 of Title 48, Territories and Insular Possessions.

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 the end of the “transition period”, being the 30-month period beginning Oct. 1, 1979, and ending midnight Mar. 31, 1982, see Para. 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 3631 and 3641 to 3643, respectively, of Title 22, Foreign Relations and Intercourse.

§ 611. Retirement of Director

(a) The Director may, by written election filed with the Chief Justice of the United States within 6 months after the date on which he takes office, waive coverage under chapter 83 of title 5, subchapter III (the Civil Service Retirement System) or chapter 84 of title 5 (the Federal Employees’ Retirement System), whichever is applicable, and bring himself within the purview of this section. A Director who elects coverage under this section shall be deemed an “employee” for purposes of chapter 84 of title 5, subchapter III, regardless of whether he has waived the coverage of chapter 83, subchapter III, or chapter 84. Waiver of coverage under chapter 83, subchapter III, and election of this section shall not operate to foreclose to the Director, upon separation from service other than by retirement, such opportunity as the law may provide to secure retirement credit under chapter 83 for service as Director by depositing with interest the amount required by section 8340 of title 5. A Director who waives coverage under chapter 84 and elects this section may secure retirement credit under chapter 84 for service as Director by depositing with interest 1.3 percent of basic pay for service from January 1, 1984, through December 31, 1986, and the amount referred to in section 8422(a) of title 5, for service after December 31, 1986. Interest shall be computed under section 8334(e) of title 5.

(b) Upon the retirement of a Director who has elected coverage under this section and who has at least fifteen years of service and has attained the age of sixty-five years the Administrative Office of the United States Courts shall pay him an annuity for life equal to 80 per centum of the salary of the office at the time of his retirement.

Upon the retirement of a Director who has elected coverage under this section and who has at least ten years of service, but who is not eligible to receive the annuity under the first paragraph of this subsection, the Administrative Office of the United States Courts shall pay him an annuity for life equal to that proportion of 80 per centum of the salary of the office at the time of his retirement that the number of years of his service bears to fifteen, reduced by one-quarter of 1 per centum for each full month, if any, he is under the age of sixty-five at the time of separation from service.

(c) A Director who has elected coverage under this section and who becomes permanently disabled to perform the duties of his office shall be retired and shall receive an annuity for life equal to 80 per centum of the salary of the office at the time of his retirement if he has at least fifteen years of service, or equal to that proportion of 80 percentum of such salary that the aggregate number of years of his service bears to fifteen if he has less than fifteen years of service, but in no event less than 50 per centum of such salary.

(d) For the purpose of this section, “service” means service, whether or not continuous, as Director of the Administrative Office of the United States Courts, and any service, not to exceed five years, as a judge of the United States, a Senator or Representative in Congress, a congressional employee in the capacity of primary administrative assistant to a Member of Congress or in the capacity of staff director or chief counsel for the majority or the minority of a committee or subcommittee of the Senate or House of Representatives, or a civilian official appointed by the President, by and with the advice and consent of the Senate.

(e) Each annuity payable under this section shall be increased by the same percentage amount and effective on the same date as annuities payable under chapter 83 of title 5, are increased as provided by section 8340 of title 5.

AMENDMENTS

2000—Subsec. (b). Pub. L. 106–518, § 301(a)(2), substituted “has at least fifteen years of service and has” for “has served at least fifteen years and” in first par. and “who has at least ten years of service” for “who has served at least ten years,” in second par.

Subsec. (c). Pub. L. 106–518, § 301(a)(3), substituted “at least fifteen years of service,” for “served at least fifteen years,” and “less than fifteen years of service,” for “served less than fifteen years.”

Subsec. (d). Pub. L. 106–518, § 301(a)(1), inserted “a congressional employee in the capacity of primary administrative assistant to a Member of Congress or in the capacity of staff director or chief counsel for the majority or the minority of a committee or subcommittee of the Senate or House of Representatives,” after “Congress,”.

1988—Subsec. (a). Pub. L. 100–702, § 1006(a)(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “The Director may, by written election filed with the Chief Justice of the United States within six months after the date on which he takes office, waive coverage under subchapter III (relating to civil service retirement) of chapter 83, title 5, United States Code, and bring himself within the purview of this section. Such waiver and election shall not operate to foreclose to the Director, upon separation from service other than by retirement, such opportunity as the law may provide to secure civil service retirement credit for service as Director by depositing with interest the amount required by section 8334 of title 5, United States Code.”

Subsec. (e). Pub. L. 100–702, § 1004(a), added subsec. (e).

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1004(b) of title X of Pub. L. 100–702 provided that: “The amendments made by this section [amending this section and section 367 of this title] shall apply to cost-of-living increases that go into effect on or after the date of enactment of this title [Nov. 19, 1988] with respect to any annuity being paid or becoming payable on or after the date of enactment of this title [Nov. 19, 1988].”

RETOACTIVE EFFECT

Section 205 of Pub. L. 90–219 provided that:

“(a) Except as provided in subsection (b), the amendments made by this title [enacting this section and amending sections 376 and 604 of this title], insofar as they relate to retirement and survivorship benefits of the Director of the Administrative Office of the United States Courts, shall be applicable only with respect to persons first appointed to such office after the date of enactment of this Act [Dec. 20, 1967].

“(b) The provisions of section 611(a), the first paragraph of section 611(b), and section 376(e), of title 28, United States Code, as added by such amendments, shall be applicable to a Director or former Director of the Administrative Office of the United States Courts who was first appointed prior to the date of enactment of this Act [Dec. 20, 1967] if at the time such Director or former Director left or leaves such office he had, or shall have, attained the age of sixty-five years and completed fifteen years of service as Director of the Administrative Office of the United States Courts and if, on or before the expiration of six months following the date of enactment of this Act [Dec. 20, 1967], he makes the election referred to in section 611(a) or section 376(e), or both, as the case may be.”

§ 612. Judiciary Information Technology Fund

(a) ESTABLISHMENT AND AVAILABILITY OF FUND.—There is hereby established in the Treasury of the United States a special fund to be known as the “Judiciary Information Technology Fund” (hereafter in this section referred to as the “Fund”). Moneys in the Fund shall be available to the Director without fiscal year limitation for the procurement (by lease, purchase, exchange, transfer, or otherwise) of information technology resources for program activities included in the courts of appeals, district courts, and other judicial services account of the judicial branch of the United States. The Fund shall also be available for expenses, including personal services, support personnel in the courts and in the Administrative Office of the United States Courts, and other costs, for the effective management, coordination, operation, and use of information technology resources purchased by the Fund. In addition, all agencies of the judiciary may make deposits into the Fund to meet their information technology needs in accordance with subsections (b) and (c).

(b) PLAN FOR MEETING INFORMATION TECHNOLOGY NEEDS

(1) DEVELOPMENT OF PLAN.—The Director shall develop and annually revise, with the approval of the Judicial Conference of the United States, a long range plan for meeting the information technology resources needs of the activities funded under subsection (a) and shall include an annual estimate of any fees that may be collected under section 404 of the Judiciary Appropriations Act, 1991 (Public Law 101–515; 104 Stat. 2133). Such plan and revisions shall be submitted to Congress.

(2) EXPENDITURES CONSISTENT WITH PLAN.—The Director may use amounts in the Fund to procure information technology resources for the activities funded under subsection (a) only in accordance with the plan developed under paragraph (1).

(c) DEPOSITS INTO FUND.—

(1) DEPOSITS.—There shall be deposited in the Fund—

(A) all proceeds resulting from activities conducted under subsection (a), including net proceeds of disposal of excess or surplus property, all fees collected after the date of the enactment of the Judicial Amendments Act of 1994 by the judiciary under section 404 of the Judiciary Appropriations Act, 1991 (Public Law 101–515; 104 Stat. 2133) and receipts from carriers and others for loss of or damage to property;

(B) amounts available for activities described in subsection (a) from funds appropriated to the judiciary; and

(C) any advances and reimbursements required by paragraph (2).

(2) ADVANCES AND REIMBURSEMENTS.—Whenever the Director procures information technology resources for any entity in the judicial branch other than the courts or the Administrative Office, that entity shall advance or reimburse the Fund, whichever the Director considers appropriate, for the costs of the information technology resources, from appropriations available to that entity.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Fund
for any fiscal year such sums as are required to supplement amounts deposited under subsection (c) in order to conduct activities under subsection (a).

(e) CONTRACT AUTHORITY.—
(1) FOR EACH FISCAL YEAR.—In fiscal year 1990, and in each succeeding fiscal year, the Director may enter into contracts for the procurement of information technology resources in amounts which, in the aggregate, do not exceed amounts estimated to be collected under subsection (c) for that fiscal year in advance of the availability of amounts in the Fund for such contracts.

(2) MULTYYEAR CONTRACTS.—In conducting activities under subsection (a), the Director is authorized to enter into multiyear contracts for information technology resources for periods of not more than five years for any contract, if—
(A) funds are available and adequate for payment of the costs of such contract for the first fiscal year and for payment of any costs of cancellation or termination of the contract;
(B) such contract is in accordance with the Director's authority in section 604(g) of 28 U.S.C.; and;
(C) the Director determines that—
(i) the need for the information technology resources being provided will continue over the period of the contract; and
(ii) the use of the multi-year contract will yield substantial cost savings when compared with other methods of providing the necessary resources.

(3) CANCELLATION COSTS OF MULTYYEAR CONTRACT.—Any cancellation costs incurred with respect to a contract entered into under paragraph (2) shall be paid from currently available amounts in the Fund.

(f) AUTHORITY OF ADMINISTRATOR OF GENERAL SERVICES.—Nothing in this section shall be construed to limit the authority of the Administrator of General Services under sections 501–505 of title 40.

(g) ANNUAL REPORT.—
(1) IN GENERAL.—The Director shall submit to the Congress an annual report on the operation of the Fund, including on the inventory, use, and acquisition of information technology resources from the Fund and the consistency of such acquisition with the plan prepared under subsection (b). The report shall set forth the amounts deposited into the Fund under subsection (c).

(2) ADDITIONAL CONTENTS OF REPORT.—The annual report submitted under this subsection shall include—
(A) the specific actions taken and the progress made to improve the plan developed under subsection (b) and the long range automation plan and strategic business plan developed under subsection (k); and
(B) a comparison of planned Fund expenditures and accomplishments with actual Fund expenditures and accomplishments, and the reasons for any delays in scheduled systems development, or budget overruns.

(h) REPROGRAMMING.—The Director of the Administrative Office of the United States Courts, under the supervision of the Judicial Conference of the United States, may transfer amounts up to $1,000,000 from the Fund into the account to which the funds were originally appropriated. Any amounts transferred from the Fund in excess of $1,000,000 in any fiscal year may only be transferred by following reprogramming procedures in compliance with section 606 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1989 (Public Law 101–459; 102 Stat. 2227).

(i) APPROPRIATIONS INTO THE FUND.—If the budget request of the judiciary is appropriated in full, the amount deposited into the Fund during any fiscal year under the authority of subsection (c)(1)(B) will be the same as the amount of funds requested by the judiciary for activities described in subsection (a). If an amount to be deposited is not specified in statute by Congress and if the full request is not appropriated, the amount to be deposited under subsection (c)(1)(B) will be set by the spending priorities established by the Judicial Conference.

(j) LONG RANGE MANAGEMENT AND BUSINESS PLANS.—The Director of the Administrative Office of the United States Court shall—
(1) develop an overall strategic business plan which would identify the judiciary's missions, goals, and objectives;
(2) develop a long range automation plan based on the strategic business plan and user needs assessments;
(3) establish effective Administrative Office oversight of court automation efforts to ensure the effective operation of existing systems and control over developments of future systems;
(4) expedite efforts to complete the development and implementation of life cycle management standards;
(5) utilize the standards in developing the next generation of case management and financial systems; and
(6) assess the current utilization and future user requirements of the data communications network.


REFERENCES IN TEXT
Section 404 of Public Law 101–515, referred to in subsec. (b)(1) and (c)(1)(A), was formerly set out as a Court Fees for Electronic Access to Information note under section 1913 of this title.

The date of the enactment of the Judicial Amendments Act of 1994, referred to in subsec. (c)(1)(A), is the

1 So in original. The comma probably should not appear.
2 See References in Text note below.
date of enactment of Pub. L. 103–420, which was approved Oct. 25, 1994.

Subsection (k), referred to in subsec. (g)(2)(A), was redesignated subsection (l) of this section by Pub. L. 106–518, title I, §101(2), Nov. 13, 2000, 114 Stat. 2411.


**AMENDMENTS**

2005—Subsec. (e)(2)(B). Pub. L. 109–115 substituted “such contract is in accordance with the Director’s authority in section 604(g) of 28 U.S.C.; and,” for “such contract is awarded on a fully competitive basis; and.”


Subsec. (f). Pub. L. 106–518, §101(2), redesignated subsec. (g) as (f) and struck out former subsec. (f) which read as follows: “(f) APPLICABILITY OF PROCUREMENT STATUTE.—The procurement of information technology equipment under this section shall be conducted in compliance with the provisions of law, policies, and regulations applicable to executive agencies under division E of the Clinger-Cohen Act of 1996 (40 U.S.C. 1401 et seq.).”

Subsec. (g). Pub. L. 106–518, §101(2), redesignated subsec. (h) as (g). Former subsec. (g) redesignated (f).

Subsec. (g)(3). Pub. L. 106–518, §101(3), struck out par. (3) which read as follows: “(3) REPORT IN YEAR OF TERMINATION OF AUTHORITY.—The annual report submitted under this subsection for any year in which the authority for this section is to terminate under subsection (m), shall be submitted no later than 9 months before the date of such termination.”


Subsec. (i). Pub. L. 106–518, §101(2), redesignated subsec. (j) as (i) and substituted “judiciary” for “Judiciary” in two places, “authority of subsection (c)(1)(B)” for “authority of subparagraph (c)(1)(B)” and “under subsection (c)(1)(B)” for “under (c)(1)(B)”. Former subsec. (i) redesignated (h).

Subsecs. (j), (k). Pub. L. 106–518, §101(2), redesignated subsecs. (j) and (k) as (j) and (k), respectively.


Subsec. (i). Pub. L. 105–119 struck out subsec. (i) which read as follows: “(i) TERMINATION OF AUTHORITY.—The Fund, and the activities funded by the Fund under subsection (a) and (b)(1), shall cease to exist on September 30, 1998.


Pub. L. 104–106, §5602(a)(3), (4), redesignated subsec. (m) as (l) and struck out former subsec. (l) which read as follows: “(l) DEFINITION.—For purposes of this section, the term ‘automatic data processing equipment’ has the meaning given that term in section 111(a)(2)(A) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(a)(2)(A)).”

other than those established in subsection (a) only by following reprogramming procedures in compliance with provisions set forth in section 606 of Public Law 104–182.


Subsec. (m). Pub. L. 103–420, § 2(9), (10), redesignated subsec. (l) as (m) and substituted “September 30, 1997” for “September 30, 1994” and “fund established under section 1931 of this title” for “Judicial Services Account”.

Effective Date of 1996 Amendment

§613. Disbursing and certifying officers

(a) DISBURSING OFFICERS.—The Director may designate in writing officers and employees of the judicial branch of the Government, including the courts as defined in section 610 other than the Supreme Court, to be disbursing officers in such numbers and locations as the Director considers necessary. Such disbursing officers shall—

(1) disburse moneys appropriated to the judicial branch and other funds only in strict accordance with payment requests certified by the Director or in accordance with subsection (b);

(2) examine payment requests as necessary to ascertain whether they are in proper form, certified, and approved; and

(3) be held accountable for their actions as provided by law, except that such a disbursing officer shall not be held accountable or responsible for any illegal, improper, or incorrect payment resulting from any false, inaccurate, or misleading certificate for which a certifying officer is responsible under subsection (b).

(b) CERTIFYING OFFICERS.—

(1) IN GENERAL.—The Director may designate in writing officers and employees of the judicial branch of the Government, including the courts as defined in section 610 other than the Supreme Court, to certify payment requests payable from appropriations and funds. Such certifying officers shall be responsible and accountable for—

(A) the existence and correctness of the facts recited in the certificate or other request for payment or its supporting papers;

(B) the legality of the proposed payment under the appropriation or fund involved; and

(C) the correctness of the computations of certified payment requests.

(2) LIABILITY.—The liability of a certifying officer shall be enforced in the same manner and to the same extent as provided by law with respect to the enforcement of the liability of disbursing and other accountable officers. A certifying officer shall be required to make restitution to the United States for the amount of any illegal, improper, or incorrect payment resulting from any false, inaccurate, or misleading certificates made by the certifying officer, as well as for any payment prohibited by law or which did not represent a legal obligation under the appropriation or fund involved.

(c) RIGHTS.—A certifying or disbursing officer—

(1) has the right to apply for and obtain a decision by the Comptroller General on any question of law involved in a payment request presented for certification; and

(2) is entitled to relief from liability arising under this section in accordance with this title.

(d) OTHER AUTHORITY NOT AFFECTED.—Nothing in this section affects the authority of the courts with respect to moneys deposited with the courts under chapter 129 of this title.


Construction
Pub. L. 106–518, title III, § 304(c), Nov. 13, 2000, 114 Stat. 2418, provided that: “The amendment made by subsection (a) [enacting this section] shall not be construed to authorize the hiring of any Federal officer or employee.”

Similar Provisions
Pub. L. 106–553, § 1(a)(2) [title III, § 304], Dec. 21, 2000, 114 Stat. 2762, 2762A–83, provided that:

“(a) The Director of the Administrative Office of the United States Courts (the Director) may designate in writing officers and employees of the judicial branch of the United States Government, including the courts as defined in section 610 of title 28, United States Code, but excluding the Supreme Court, to be disbursing officers in such numbers and locations as the Director considers necessary. These disbursing officers will: (1) disburse moneys appropriated to the judicial branch and other funds only in strict accordance with payment requests certified by the Director or in accordance with subsection (b) of this section; (2) examine payment requests as necessary to ascertain whether they are in proper form, certified, and approved; and (3) be held accountable as provided by law. However, a disbursing officer will not be held accountable or responsible for any illegal, improper, or incorrect payment resulting from any false, inaccurate, or misleading certificate for which a certifying officer is responsible under subsection (b) of this section.

“(b)(1) The Director may designate in writing officers and employees of the judicial branch of the United States Government, including the courts as defined in section 610 of title 28, United States Code, but excluding the Supreme Court, to certify payment requests payable from appropriations and funds. These certifying officers will be responsible and accountable for: (A) the existence and correctness of the facts recited in the certificate or other request for payment or its supporting papers; (B) the legality of the proposed payment under the appropriation or fund involved; and (C) the correctness of the computations of certified payment requests.

“(2) The liability of a certifying officer will be enforced in the same manner and to the same extent as
provided by law with respect to the enforcement of the liability of disbursing and other accountable officers. A certifying officer shall be required to make restitution to the United States for the amount of any illegal, improper, or incorrect payment resulting from any false, inaccurate, or misleading certificates made by the certifying officer, as well as for any payment prohibited by law or which did not represent a legal obligation under the appropriation or fund involved.

“(c) A certifying or disbursing officer: (1) has the right to apply for and obtain a decision by the Comptroller General on any question of law involved in a payment request presented for certification; and (2) is entitled to relief from liability arising under this section as provided by law.

“(d) The Director shall disburse, directly or through officials designated pursuant to this section, appropriations and other funds for the maintenance and operation of the courts.

“(e) Nothing in this section affects the authority of the courts to receive or disburse moneys in accordance with chapter 129 of title 28, United States Code.

“(f) This section shall be effective for fiscal year 2001 and hereafter.”

CHAPTER 42—FEDERAL JUDICIAL CENTER

Sec. 620. Federal Judicial Center.
621. Board; composition, tenure of members, compensation.
622. Meetings; conduct of business.
623. Duties of the Board.
624. Powers of the Board.
625. Director and staff.
626. Compensation of the Director and Deputy Director.
627. Retirement; employee benefits.
628. Appropriations and accounting.
629. Federal Judicial Center Foundation.

AMENDMENTS


§ 620. Federal Judicial Center

(a) There is established within the judicial branch of the Government a Federal Judicial Center, whose purpose it shall be to further the development and adoption of improved judicial administration in the courts of the United States.

(b) The Center shall have the following functions:

(1) to conduct research and study of the operation of the courts of the United States, and to stimulate and coordinate such research and study on the part of other public and private persons and agencies;

(2) to develop and present for consideration by the Judicial Conference of the United States recommendations for improvement of the administration and management of the courts of the United States;

(3) to stimulate, create, develop, and conduct programs of continuing education and training for personnel of the judicial branch of the Government and other persons whose participation in such programs would improve the operation of the judicial branch, including, but not limited to, judges, United States magistrate judges, clerks of court, probation officers, and persons serving as mediators and arbitrators;

(4) insofar as may be consistent with the performance of the other functions set forth in this section, to provide staff, research, and planning assistance to the Judicial Conference of the United States and its committees;

(5) insofar as may be consistent with the performance of the other functions set forth in this section, to cooperate with the State Justice Institute in the establishment and coordination of research and programs concerning the administration of justice; and

(6) insofar as may be consistent with the performance of the other functions set forth in this section, to cooperate with and assist agencies of the Federal Government and other appropriate organizations in providing information and advice to further improvement in the administration of justice in the courts of foreign countries and to acquire information about judicial administration in foreign countries that may contribute to performing the other functions set forth in this section.


AMENDMENTS

1988—Subsec. (b)(3). Pub. L. 100–702 amended par. (3) generally. Prior to amendment, par. (3) read as follows: “to stimulate, create, develop, and conduct programs of continuing education and training for personnel of the judicial branch of the Government, including, but not limited to, judges, clerks of court, probation officers, and United States magistrate judges.”


1978—Subsec. (b)(3). Pub. L. 95–598 directed the amendment of par. (3) by striking out “referees,” and by substituting “magistrates” for “commissioners.”


Change of Name


Effective Date of 1992 Amendment


Effective Date of 1986 Amendment

Section 6(c) of Pub. L. 99–336 provided that: “The amendments made by this section (amending this section and section 288d of Title 2, The Congress, and re-

1So in original. Probably should not be capitalized.
designating sections 1364 to 1366 of this title) shall take effect on the date of the enactment of this Act [June 19, 1986].

Effective Date of 1984 Amendment


Study of Intercircuit Conflicts and Structural Alternatives for Courts of Appeals by Federal Judicial Center.


§ 621. Board; composition, tenure of members, compensation

(a) The activities of the Center shall be supervised by a Board to be composed of—

(1) the Chief Justice of the United States, who shall be the permanent Chairman of the Board;

(2) two circuit judges, three district judges, one bankruptcy judge, and one magistrate judge, elected by vote of the members of the Judicial Conference of the United States, except that any circuit or district judge so elected may be either a judge in regular active service or a judge retired from regular active service under section 371(b) of this title but shall not be a member of the Judicial Conference of the United States; and

(3) the Director of the Administrative Office of the United States Courts, who shall be a permanent member of the Board.

(b) The term of office of each elected member of the Board shall be four years. A member elected to serve for an unexpired term arising by virtue of the death, disability, retirement pursuant to section 371(a) or section 372(a) of this title, or resignation of a member shall be elected only for such unexpired term.

(c) No member elected for a four-year term shall be eligible for reelection to the Board.

(d) Members of the Board shall serve without additional compensation, but shall be reimbursed for actual and necessary expenses incurred in the performance of their official duties.


Amendments

1996—Subsec. (a)(2). Pub. L. 104–317, §601(b)(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "two active judges of the courts of appeals of the United States, three active judges of the district courts of the United States, one active judge of the bankruptcy courts of the United States elected by vote of the members of the Judicial Conference of the United States: Provided, however, That the judges so elected shall not be members of the Judicial Conference of the United States; and—"

Subsec. (b). Pub. L. 104–317, §601(b)(2), substituted "retirement pursuant to section 371(a) or section 372(a) of this title," for "retirement:"


Subsec. (b). Pub. L. 95–598, §229, struck out provisions requiring that section 629 of this title govern the terms of office of the first members elected to the Board.

Effective Date of 1978 Amendment

Amendment by Pub. L. 95–598 effective Oct. 1, 1979, see section 402(c) of Pub. L. 95–598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

§ 622. Meetings; conduct of business

(a) Regular meetings of the Board shall be held quarterly. Special meetings shall be held from time to time upon the call of the Chairman, acting at his own discretion or pursuant to the petition of any four members.

(b) Each member of the Board shall be entitled to one vote. A simple majority of the membership shall constitute a quorum for the conduct of business. The Board shall act upon the concurrence of a simple majority of the members present and voting.


§ 623. Duties of the Board

(a) In its direction and supervision of the activities of the Federal Judicial Center, the Board shall—

(1) establish such policies and develop such programs for the Federal Judicial Center as will further achievement of its purpose and performance of its functions;

(2) formulate recommendations for improvements in the administration of the courts of the United States, in the training of the personnel of those courts, and in the management of their resources;

(3) submit to the Judicial Conference of the United States, at least one month in advance of its annual meeting, a report of the activities of the Center and such recommendations as the Board may propose for the consideration of the Conference;

(4) present to other government departments agencies, and instrumentalities whose programs or activities relate to the administration of justice in the courts of the United States the recommendations of the Center for the improvement of such programs or activities;

(5) study and determine ways in which automatic data processing and systems procedures may be applied to the administration of the courts of the United States, and include in the annual report required by paragraph (3) of this subsection details of the results of the studies and determinations made pursuant to this paragraph;

(6) consider and recommend to both public and private agencies aspects of the operation of the courts of the United States deemed worthy of special study; and
§ 624. Powers of the Board

The Board is authorized—

(1) to appoint and fix the duties of the Director and the Deputy Director of the Federal Judicial Center, who shall serve at the pleasure of the Board;

(2) to request from any department, agency, or independent instrumentality of the Government any information it deems necessary to the performance of the functions of the Federal Judicial Center set forth in this chapter, and each such department, agency, or instrumentality is directed to cooperate with the Board and, to the extent permitted by law, to furnish such information to the Center upon request of the Chairman or upon request of the Director when the Board has delegated this authority to him;

(3) to contract with and compensate government and private agencies or persons for research projects and other services, without regard to section 6101(b) to (d) of title 41, and to delegate such contract authority to the Director of the Federal Judicial Center, who is hereby empowered to exercise such delegated authority.


AMENDMENTS


TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (b) of this section relating to requirement that the Board transmit to Congress copies of all reports and recommendations submitted to the Judicial Conference of the United States, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 12 of House Document No. 103–7.

§ 625. Director and staff

(a) The Director shall supervise the activities of persons employed by the Center and perform other duties assigned to him by the Board.

(b) The Director shall appoint and fix the compensation of such additional professional personnel as the Board may deem necessary, without regard to the provisions of title 5, United States Code, governing appointments in competitive service, or the provisions of chapter 51 and subchapter III of chapter 53 of such title, relating to classification and General Schedule pay rates: Provided, however, That the compensation of any person appointed under this subsection shall not exceed the annual rate of basic pay of level V of the Executive Schedule pay rates, section 3316, title 5, United States Code: And provided further, That the salary of a reemployed annuitant under the Civil Service Retirement Act shall be adjusted pursuant to the provisions of section 8344, title 5, United States Code.

(c) The Director shall appoint and fix the compensation of such secretarial and clerical personnel as he may deem necessary, subject to the provisions of title 5, United States Code, governing appointments in competitive service without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title, relating to classification and General Schedule pay rates.

(d) The Director may procure personal services as authorized by section 3109 of title 5, United States Code, at rates not to exceed the daily equivalent of the highest rate payable under General Schedule pay rates, section 5332, title 5, United States Code. (e) The Director is authorized to incur necessary travel and other miscellaneous expenses incident to the operation of the Center.


REFERENCES IN TEXT

The General Schedule, referred to in subsec. (b), is set out under section 632 of Title 5, Government Organization and Employees. The Civil Service Retirement Act, referred to in subsec. (b), is act May 29, 1908, ch. 349, 46 Stat. 468, as amended by act July 31, 1956, ch. 804, §401, 70 Stat. 743, which was repealed by Pub. L. 89–554, §8(a), Sept. 6, 1966, 80 Stat. 632, and reenacted by the first section thereof as subchapter III (§8331 et seq.) of chapter 83 of Title 5.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 (title I, §101(c)(1)) of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

AMENDMENTS

1992—Subsec. (c). Pub. L. 102–572 substituted “competitive service without regard to” for “competitive service and”.

EFFECTIVE DATE OF 1992 AMENDMENT


1 So in original. Should be “Service”.

§ 624

TITLE 28—JUDICIARY AND JUDICIAL PROCEDURE

Page 276
§ 626. Compensation of the Director and Deputy Director

The compensation of the Director of the Federal Judicial Center shall be the same as that of the Director of the Administrative Office of the United States Courts, and his appointment and salary shall not be subject to the provisions of title 5, United States Code, governing appointments in competitive service, or the provisions of chapter 51 and subchapter III of chapter 53 of such title, relating to classification and General Schedule pay rates: Provided, however, That any Director who is a justice or judge of the United States in active or retired status shall serve without additional compensation. The compensation of the Deputy Director of the Federal Judicial Center shall be the same as that of the Deputy Director of the Administrative Office of the United States Courts.


REFERENCES IN TEXT

The General Schedule, referred to in text, is set out under section 5332 of Title 5, Government Organization and Employees.

AMENDMENTS

1988—Pub. L. 100–702 inserted “and Deputy Director” in section catchline and inserted at end of text “The compensation of the Deputy Director of the Federal Judicial Center shall be the same as that of the Deputy Director of the Administrative Office of the United States Courts.”

EFFECTIVE DATE OF 1988 AMENDMENT

Section 304(c) of Pub. L. 100–702 provided that: “The amendment made by subsection (b) [amending this section] shall be effective for fiscal years beginning on or after October 1, 1988.”

§ 627. Retirement; employee benefits

(a) The Director, Deputy Director, the professional staff, and the clerical and secretarial employees of the Federal Judicial Center shall be deemed to be officers and employees of the judicial branch of the United States Government within the meaning of subchapter III of chapter 83 (relating to civil service retirement), chapter 84 (relating to Federal employees’ retirement system), chapter 87 (relating to Federal employees’ life insurance program), and chapter 89 (relating to Federal employees’ health benefits program) of title 5, United States Code: Provided, however, That the Director, upon written notice filed with the Director of the Administrative Office of the United States Courts within 6 months after the date on which he takes office, may waive coverage under chapter 83 of title 5, subchapter III (the Civil Service Retirement System) or chapter 84 of title 5 (the Federal Employees’ Retirement System), whichever is applicable, and elect coverage under the retirement and disability provisions of this section. A Director who elects coverage under this section shall be deemed an “employee” for purposes of chapter 84 of title 5, subchapter III, regardless of whether he has waived the coverage of chapter 83, subchapter III, or chapter 84: And provided further, That upon his nonretirement separation from the Federal Judicial Center, waiver of coverage under chapter 83, subchapter III, and election of this section shall not operate to foreclose to the Director such opportunity as the law may provide to secure retirement credit under chapter 83 for service as Director by depositing with interest the amount required by section 8334 of title 5. A Director who waives coverage under chapter 84 and elects this section may secure retirement credit under chapter 84 for service as Director by depositing with interest 1.3 percent of basic pay for service from January 1, 1984, through December 31, 1986, and the amount referred to in section 8422(a) of title 5, for service after December 31, 1986. Interest shall be computed under section 8334(e) of title 5.

(b) Upon the retirement of a Director who has elected coverage under this section and who has at least fifteen years of service and has attained the age of sixty-five years the Director of the Administrative Office of the United States Courts shall pay him an annuity for life equal to 80 per centum of the salary of the office at the time of his retirement.

Upon the retirement of a Director who has elected coverage under this section and who has at least ten years of service, but who is not eligible to receive an annuity under the first paragraph of this subsection, the Administrative Office of the United States Courts shall pay him an annuity for life equal to that proportion of 80 per centum of the salary of the office at the time of his retirement that the number of years of his service bears to fifteen, reduced by one-quarter of 1 per centum for each full month, if any, he is under the age of sixty-five at the time of separation from service.

(c) A director who has elected coverage under this section and who becomes permanently disabled to perform the duties of his office shall be retired and shall receive an annuity for life equal to 80 per centum of the salary of the office at the time of his retirement if he has at least fifteen years of service, or equal to that proportion of 80 per centum of such salary that the aggregate number of years of his service bears to fifteen if he has less than fifteen years of service, but in no event less than 50 per centum of such salary.

(d) For the purpose of this section, “service” means service, whether or not continuous, as Director of the Federal Judicial Center, and any service, not to exceed five years, as a judge of the United States, a Senator or Representative in Congress, a congressional employee in the capacity of primary administrative assistant to a Member of Congress or in the capacity of staff director or chief counsel for the majority or the minority of a committee or subcommittee of the Senate or House of Representatives, or a civilian official appointed by the President, by and with the advice and consent of the Senate.

(e) Each annuity payable under this section shall be increased by the same percentage amount and effective on the same date as annuities payable under chapter 83 of title 5, are increased as provided by section 8340 of title 5.

§ 628. Appropriations and accounting

There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this chapter. The Administrative Office of the United States Courts shall provide accounting, disbursing, auditing, and other fiscal services for the Federal Judicial Center.

amendments of each gift of cash or cash equivalent, and a description of any other gift. The Center shall include in its annual report of the activities of the Center under section 623(a)(3) a description of the purposes for which gifts were used during the year covered by the report.

(f) For the purpose of Federal income, estate, and gift taxes, property accepted under this section shall be considered as a gift or bequest to or for the use of the United States.

(Added Pub. L. 100–702, title III, § 301(a), Nov. 19, 1988, 102 Stat. 4646.)

Prior Provisions


Chapter 43—United States Magistrate Judges

Sec. 631. Appointment and tenure.
632. Character of service.
633. Determination of number, locations, and salaries of magistrate judges.
634. Compensation.
635. Expenses.
636. Jurisdiction, powers, and temporary assignment.
637. Training.
638. Dockets and forms; United States Code; seals.
639. Definitions.

Amendments


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. 102–238, 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 any State, the District of Columbia, or 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) of this section, 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 (j) 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 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.


Historical and Revision Notes

1948 Act


See References in Text note below.
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, were retained in that title. The Secretary of the Interior'' was omitted as inconsequential.

andandoah 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 631 of this title.)

Words "the Director of the Administrative Office of the United States Courts" were substituted for "Attorney 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 257 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 256 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 256 and 257 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.


Changes in phraseology were made.


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.
§ 631

TITLE 28—JUDICIARY AND JUDICIAL PROCEDURE

Page 282


1994—Subsec. (j). Pub. L. 103–353, § 2(c), redesignated subsec. (k) as (j), substituted “chapter 43 of title 38” for “chapter 43 of title 38, section 60”, 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.


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,” and, 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 first sentence of before “this paragraph.”

1988—Subsec. (e). Pub. L. 100–650 substituted “(‘k’)” for “(‘j’)” in introductory text, “(‘j’)” for “(‘i’)” in par. (3), and “(‘i’)” for “(‘h’)” in par. (5).


1986—Subsec. (d). Pub. L. 99–651 substituted “Except as otherwise provided in sections 375 and 636(h) of this title,” for “No”, and “the majority” for “the unani-

mous”, and inserted “which is taken upon the mag-

istrate’s attaining age seventy and upon each subse-

quent 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 standing 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. 96–62, § 3(a), substituted “Where the conference deems it desirable, a magistrate may be designated to serve in one or more districts ad-

joining 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 des-

irable by the conference that the territorial jurisdic-

tion 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 con-

currence of the chief judges of such district courts.”

Subsec. (b). Pub. L. 96–62, § 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 prior to such appointment or reappointment of par. (1) preceding subpar. (A), struck out subpar. (C) relating to service by members of the bar of the highest court of one of the two or more States where the area involved is under the ad-

ministration 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. 96–62, § 3(c), added par. (5).


Subsec. (g). Pub. L. 96–62, § 3(d)(1), redesign-

ated former subsecs. (f) to (j) as (g) to (k), respectively.

1978—Subsec. (c). Pub. L. 95–598 directed the amend-

ment of subsec. (c) by substituting “of the conference,” for “of the conference, a part-time referee in bank-

ruptcy or” and “magistrate” 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.

1976—Subsec. (a). Pub. L. 94–520, § 2(1), (2), inserted “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 mag-

istrate 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 superceded by existing provisions prior provisions for appointments for certain specified national parks, required appointment in the 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 in the 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 judicial district which should be served in its entirety by one magistrate, and omitted last par. prescribing appoint-

ment record and notice. See subsec. (g) of this sec-

tion.

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 em-

ployed by a Federal justice or judge, but such restric-

tion 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 which was not less than the amount of compensation 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 design-

ated as subsec. (c), omitted express restriction against holding dual offices when employed by a Fed-

eral justice or judge, provided for approval of the conference with respect to part-time service as a mag-

istrate of part-time referee in bankruptcy or clerk or deputy clerk of a Federal court, formerly requiring appro-

val of the Director as to service of clerk or deputy clerk of court as a commissioner, made former provi-

sions as to aggregate amount of compensation for serv-

ice 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. (e). Pub. L. 90–578 substituted provisions design-

ated 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 of provisions of former subsec. (c) of this section for term of four years unless sooner removed by the district court.
that was issued before the enactment of this Act, shall be affected.''

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

Section 321 of Pub. L. 101–650 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 magistrate 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. 103–333 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. 103–333, 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**


**Effective Date of 1979 Amendment**

Section 3(e) of Pub. L. 96–82 provided that: "The amendment made by subsection (c) of this section [amending this chapter] shall not take effect until 90 days after the meeting of the Judicial Conference of the United States to begin with 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**

Section 403 of Pub. L. 90–578 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**

Section 1 of Pub. L. 96–82 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**

Section 501 of Pub. L. 90–578 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 408(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**

Section 3(e) of Pub. L. 96–82 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**

Section 3(f) of Pub. L. 96–82 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**

Section 9 of Pub. L. 96–82 provided for a study by the Judicial Conference of the United States to begin with-
in 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

Section 10 of Pub. L. 96–82 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

Section 401 of Pub. L. 90–578 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 3531(1)(V), 3532(1), 3571(a)(7), and 3581(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 date preceding the date of enactment of this Act [Oct. 17, 1968], shall continue in effect until no United States commissioner remains in service.”

§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.


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.

CHANGE OF NAME


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 re-
quired 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 attorneys, bar associations, and other parties having relevant experience or information.

(3) The surveys shall be made with a view toward creating and maintaining a system of full-time United States magistrate judges. However, should the Director find, as a result of any such surveys, areas in which the employment of a full-time magistrate judge would not be feasible or desirable, he shall recommend the appointment of part-time United States magistrate judges in such numbers and at such locations as may be required to permit prompt and efficient issuance of process and to permit individuals charged with criminal offenses against the United States to be brought before a judicial officer of the United States promptly after arrest.

(b) DETERMINATION BY THE CONFERENCE.—Upon the completion of the initial surveys required by subsection (a) of this section, the Director shall report to the district courts, the councils, and the conference his recommendations concerning the number of full-time magistrates and part-time magistrates, their respective locations, and the amount of their respective salaries under section 634 of this title. The district courts shall advise their respective councils, stating their recommendations and the reasons therefor; the councils shall advise the conference, stating their recommendations and the reasons therefor, and shall also report to the conference the recommendations of the district courts. The conference shall determine, in the light of the recommendations of the Director, the district courts, and the councils, the number of full-time United States magistrates and part-time United States magistrates, the locations at which they shall serve, and their respective salaries. Such determinations shall take effect in each judicial district at such time as the district court for such judicial district shall determine, but in no event later than one year after they are promulgated.

(c) CHANGES IN NUMBER, LOCATIONS, AND SALARIES.—Except as otherwise provided in this chapter, the conference may, from time to time, make such in the light of the recommendations of the Director, the district courts, and the councils, change the number, locations, and salaries of full-time and part-time magistrate judges, as the expeditious administration of justice may require.


REFERENCES IN TEXT


AMENDMENTS


1979—Subsec. (c). Pub. L. 96-82 struck out provision that determinations of the conference changing the number, locations, and salaries of full-time and part-time magistrates take effect sixty days after they are promulgated.

1968—Pub. L. 90-578 substituted provisions for determination of number, locations, and salaries of magistrates, comprising subsecs. (a) to (c) of this section, relating to: surveys by the Director; determination by the conference; and changes in number, locations, and salaries, respectively, for prior provisions for fees and expenses of United States commissioners, prescribing in undesignated introductory provisions a $15,500 limitation for any one calendar year for certain enumerated services rendered, and in former subsec. (c) for actual and necessary office expenses, including compensation of a necessary clerical assistant, of United States commissioners performing full time duty in offices and not engaged in practice of law, now covered in sections 634 and 635 of this title.

1957—Subsec. (a). Pub. L. 85-276, §1, placed in subsec. (a) provisions of former subsec. (b) relating to limitation of compensation of commissioners and, among other charges, increased fees and compensation of commissioners.

Subsec. (b). Pub. L. 85-276, §2, repealed subsec. (b) which limited compensation of commissioners.


CHANGE OF NAME

Words “magistrate judges” and “magistrate judge” substituted for “magistrates” and “magistrate”, respectively, in section catchline and, except for historical references, wherever appearing in subsecs. (a)(2), (3), and (c) pursuant to section 321 of Pub. L. 101-650, set out as a note under section 631 of this title. Previously, “United States magistrates” substituted for “United States commissioners” in subsec. (a)(2) pursuant to Pub. L. 90-578.

EFFECTIVE DATE OF 1986 AMENDMENT


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.

§ 634. Compensation

(a) Officers appointed under this chapter shall receive, as full compensation for their services,
salaries to be fixed by the conference pursuant to section 633, at rates for full-time United States magistrate judges up to an annual rate equal to 92 percent of the salary of a judge of the district court of the United States, as determined pursuant to section 135, and at rates for part-time magistrate judges of not less than an annual salary of $100, nor more than one-half the maximum salary payable to a full-time magistrate judge. In fixing the amount of salary to be paid to any officer appointed under this chapter, consideration shall be given to the average number and the nature of matters that have arisen during the immediately preceding period of five years, and that may be expected thereafter to arise, over which such officer would have jurisdiction and to such other factors as may be material. Disbursement of salaries shall be made by or pursuant to the order of the Director.

(b) Except as provided by section 8341, title 5, relating to reductions of the salaries of reemployed annuitants under subchapter III of chapter 83 of such title and unless the office has been terminated as provided in this chapter, the salary of a full-time United States magistrate judge shall not be reduced, during the term in which he is serving, below the salary fixed for him at the beginning of that term.

(c) All United States magistrate judges, effective upon their taking the oath or affirmation of office, and all necessary legal, clerical, and secretarial assistants appointed in the offices of full-time United States magistrate judges shall be deemed to be officers and employees in the judicial branch of the United States Government within the meaning of subchapter III (relating to civil service retirement) of chapter 83, chapter 97 (relating to Federal employees' group life insurance), and chapter 89 (relating to Federal employees' health benefits program) of title 5. Part-time magistrate judges shall not be excluded from coverage under these chapters solely for lack of a prearranged regular tour of duty. A legal assistant 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.


HISTORICAL AND REVISION NOTES

Based on sections 28, 72, 74, 80th, 103, 114, 117, 117, 122, 122a, 133, 157, 156b, 156h, 198h, 204h, 204i, 204j, 256h, 256h, 370, 380, 395h, 395j, 405c–9, 405c–11, 433h–7, 433h–9, 434–7, 434–9, 436–9, and 438g of title 16, U.S.C. 1940 ed., Conservation


Section consolidates provisions of sections 29, 72, 74, 80th, 103, 104, 117, 117, 132, 132a, 133, 175, 176, 198h, 198j, 209h, 209i, 209j, 256h, 370, 380, 395h, 395j, 403c–9, 405c–11, 406h–7, 406j–9, 406l–7, 406m–7, 408h, and 408q of title 16, Conservation, relating to salary and fees of park commissioners with changes in arrangement and phraseology necessary to effect consolidation.

The provisions of some of these sections that the park commissioner should be “paid an annual salary, as appropriated for by Congress, payable quarterly” were rewritten upon advice of the Judicial Conference Committee on the Revision of the Judicial Code appointed by the Chief Justice of the United States, in order to place administration supervision of commissioners upon the district court and the Judicial Conference of the United States.

The provisions of some of these sections for deposit of fees, costs, expenses, fines, and penalties with the clerk of district court were rewritten to provide merely that he should account for the same as public moneys.

The provisions of some of these sections with reference to salaries of the United States attorney and his assistants and the United States marshal and his deputies were omitted as covered by sections 508 (now 548) and 552 [see Prior Provisions note for that section] of this title.

SENIOR REVISION AMENDMENT

As finally enacted, section 158d of title 16, U.S.C., which was derived from act May 15, 1947, ch. 5, §4, 61 Stat. 91, 92, was an additional source of this section and was accordingly included by Senate amendment in the schedule of repeals. See 80th Congress Senate Report No. 1159.

AMENDMENTS

1988—Subsec. (c). Pub. L. 100–702 inserted at end “A legal assistant 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.”

1967—Subsec. (a). Pub. L. 90–202 amended first sentence generally. Prior to amendment, first sentence read as follows: “Officers appointed under this chapter shall receive as full compensation for their services salaries to be fixed by the conference pursuant to section 633 of this title, at rates for full-time and part-time United States magistrates not to exceed rates 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 except that the salary of a part-time United States magistrate shall not be less than $100 nor more than one-half the maximum salary payable to a full-time magistrate.”

1954—Subsec. (a). Pub. L. 89–335, §108(a), substituted “rates 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” for “the rates now or hereafter provided for full-time and part-time referees in bankruptcy, respectively, referred to in section 49a of the Bankruptcy Act (11 U.S.C. 68(a)), as amended.”


1978—Subsec. (a). Pub. L. 95–598 directed the amendment of subsec. (a) by substituting “not to exceed $48,500 per annum, subject to adjustment in accordance with section 225 of the Federal Salary Act of 1967 and section 461 of this title,” for “for full-time and part-time United States magistrates not to exceed the rates now or hereafter provided for full-time and part-time referees in bankruptcy, respectively, referred to in section 48a of the Bankruptcy Act (11 U.S.C. 68(a), as amended”), which amendment did not become effective pursuant to section 482(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 substituted provision fixing the maximum annual salary of a part-time magistrate appointed under this chapter at one-half the maximum salary payable to a full-time magistrate for a former provision that fixed such annual salaries at $15,000 per year and provided that the salary of a full-time magistrate was not to exceed 75% of the annual salary of a United States District Court judge.

1972—Subsec. (a). Pub. L. 92–428 substituted limits of compensation for full-time and part-time United States magistrates at rates not exceeding those of full-time and part-time referees in bankruptcy, with exceptions that the salary of a part-time United States magistrate shall not be less than $100 or more than $35,000 per annum and that the salary of a full-time United States magistrate shall not exceed 75% of the salary of a judge of a district court of the United States, for provisions fixing maximum limits for full-time and part-time United States magistrates at $22,500 and $11,000, respectively, and minimum limit for part-time United States magistrates at $100 per annum.

1968—Pub. L. 90–578 substituted provisions for compensation of United States magistrates, comprising subsections (a) to (c) of this section and relating to: limitation on amount of compensation and consideration of certain factors for its determination; reduction of salaries of full-time magistrates; and consideration as judicial branch officers and employees of United States magistrates and necessary clerical and secretarial assistants, for prior provisions for salaries of park commissioners and disposition of fees, fines, and costs collected as public moneys.

CHANGE OF NAME

Words “magistrate judges” and “magistrate judge” substituted for “magistrates” and “magistrate”, respectively, wherever appearing in text pursuant to section 323 of Pub. L. 101–650, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–202 effective Oct. 1, 1988, and any salary affected by the amendment to be adjusted at beginning of first applicable pay period commencing on or after such date, see section 101(a) [title IV, §408(d)] of Pub. L. 100–202, set out as a note under section 153 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 108(a) of Pub. L. 98–353 effective July 10, 1984, see section 122(a) of Pub. L. 98–353, set out as an Effective Date note under section 151 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 the 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.

SALARY INCREASES

1987—Maximum salaries of U.S. magistrates (full-time) and U.S. magistrates (part-time) increased respectively to $72,500 and $36,200 per annum, on recommendation of the President of the United States, see note set out under section 358 of Title 2, The Congress.

CONTINUATION OF MAXIMUM RATES OF SALARY OF FULL-TIME AND PART-TIME UNITED STATES MAGISTRATES IN EFFECT ON JUNE 27, 1984

Section 108(b) of Pub. L. 98–353 provided that: “The maximum rates for salary of full-time and part-time United States magistrates [now United States magistrate judges] in effect on June 27, 1984, shall remain in effect until changed as a result of a determination made under section 634(a) of title 28, United States Code, as amended by this Act.”

1968—Pub. L. 90–578 effective June 27, 1984, see section 122(c) of Pub. L. 98–353, set out as an Effective Date note under section 151 of this title.

§635. EXPENSES

(a) Full-time United States magistrate judges serving under this chapter shall be allowed their actual and necessary expenses incurred in the performance of their duties, including the compensation of such legal assistants as the Judicial Conference, on the basis of the recommendations of the judicial councils, considers necessary, and the compensation of necessary clerical and secretarial assistance. Such expenses and compensation shall be determined and paid by the Director under such regulations as the Director shall prescribe with the approval of the conference. The Administrator of General Services shall provide such magistrate judges with necessary courtrooms, office space, furniture and facilities within United States courthouses or office buildings owned or occupied by departments or agencies of the United States, or should suitable courtroom and office space not be available within any such courthouse or office building, the Administrator of General Services, at the request of the Director, shall procure and pay for suitable courtroom and office space, furniture and facilities for such magistrate judge in another building, but only if such request has been approved as necessary by the judicial council of the appropriate circuit.

(b) Under such regulations as the Director shall prescribe with the approval of the conference, the Director shall reimburse part-time magistrate judges for actual expenses necessarily incurred by them in the performance of their duties under this chapter. Such reimbursement may be made, at rates not exceeding those prescribed by such regulations, for expenses incurred by such part-time magistrate judges for clerical and secretarial assistance, stationery, telephone and other communications services, travel, and such other expenses as may be determined to be necessary for the proper performance of the duties of such officers: Provided, however, That no reimbursement shall be made for all or any portion of the expense incurred by such part-time magistrate judges for the procurement of office space.


HISTORICAL AND REVISION NOTES

The provision of section 597c of title 28, U.S.C., 1940 ed., excepting commissioners in the Territory of Alaska was omitted as unnecessary since this exception is implicit in the revised section. The words “in each judicial district” limit the section to the commissioners in the districts enumerated in chapter 5 which includes Hawaii, Canal Zone, [Guam] and Virgin Islands.

Salaries of park commissioners are provided by section 634 of this title.

Changes were made in phraseology.

AMENDMENTS

1979—Subsec. (a). Pub. L. 96–82 inserted reference to the compensation of such legal assistants as the Judicial Conference, on the basis of the recommendations of the judicial councils of the circuits, considers necessary.

1968—Pub. L. 90–578 substituted provisions relating to expenses for provisions prescribing residence for park commissioners. See section 631(b)(3) of this title.

CHANGE OF NAME

Words ““magistrate judges” and ““magistrate judge” substituted for ““magistrates” and ““magistrate””, respectively, wherever appearing in text pursuant to section 331 of Pub. L. 196–82, 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.

§ 636. Jurisdiction, powers, and temporary assignment

(a) Each United States magistrate judge serving under this chapter shall have within the district in which sessions are held by the court that appointed the magistrate judge, at other places where that court may function, and elsewhere authorized by law—

(1) all powers and duties conferred or imposed upon United States commissioners by law or by the Rules of Criminal Procedure for the United States District Courts;

(2) the power to administer oaths and affirmations, issue orders pursuant to section 3142 of title 18 concerning release or detention of persons pending trial, and take acknowledgments, affidavits, and depositions;

(3) the power to conduct trials under section 3401, title 18, United States Code, in conformity with and subject to the limitations of that section;

(4) the power to enter a sentence for a petty offense; and

(5) the power to enter a sentence for a class A misdemeanor in a case in which the parties have consented.

(b)(1) Notwithstanding any provision of law to the contrary—

(A) a judge may designate a magistrate judge to hear and determine any pretrial matter pending before the court, except a motion for injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss or quash an indictment or information made by the defendant, to suppress evidence in a criminal case, to dismiss or to permit maintenance of a class action, to dismiss for failure to state a claim upon which relief can be granted, and to involuntarily dismiss an action. A judge of the court may reconsider any pretrial matter under this subparagraph (A) where it has been shown that the magistrate judge's order is clearly erroneous or contrary to law.

(B) a judge may also designate a magistrate judge to conduct hearings, including evidentiary hearings, and to submit to a judge of the court proposed findings of fact and recommendations for the disposition, by a judge of the court, of any motion excepted in subparagraph (A), of applications for posttrial relief made by individuals convicted of criminal offenses and of prisoner petitions challenging conditions of confinement.

(C) the magistrate judge shall file his proposed findings and recommendations under subparagraph (B) with the court and a copy shall forthwith be mailed to all parties.

Within fourteen days after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court. A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions.

(2) A judge may designate a magistrate judge to serve as a special master pursuant to the applicable provisions of this title and the Federal Rules of Civil Procedure for the United States district courts. A judge may designate a magistrate judge to serve as a special master in any civil case, upon consent of the parties, without regard to the provisions of rule 53(b) of the Federal Rules of Civil Procedure for the United States district courts.

(3) A magistrate judge may be assigned such additional duties as are not inconsistent with the Constitution and laws of the United States.

(4) Each district court shall establish rules pursuant to which the magistrate judges shall discharge their duties.

(c) Notwithstanding any provision of law to the contrary—

(1) Upon the consent of the parties, a full-time United States magistrate judge or a part-time United States magistrate judge who serves as a full-time judicial officer may conduct any or all proceedings in a jury or nonjury civil matter and order the entry of judgment in the case, when specially designated to exercise such jurisdiction by the district court or courts he serves. Upon the consent of the parties, pursuant to their specific written request, any other part-time magistrate judge may exercise such jurisdic—

1 So in original. Probably should be “post-trial”. 
tion, if such magistrate judge meets the bar membership requirements set forth in section 631(b)(1) and the chief judge of the district court certifies that a full-time magistrate judge is not reasonably available in accordance with guidelines established by the judicial council of the circuit. When there is more than one judge of a district court, designation under this paragraph 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.

(2) If a magistrate judge is designated to exercise civil jurisdiction under paragraph (1) of this subsection, the clerk of court shall, at the time the action is filed, notify the parties of the availability of a magistrate judge to exercise such jurisdiction. The decision of the parties shall be communicated to the clerk of court. Thereafter, either the district court judge or the magistrate judge may again advise the parties of the availability of the magistrate judge, but in so doing, shall also advise the parties that they are free to withhold consent without adverse substantive consequences. Rules of court for the reference of civil matters to magistrate judges shall include procedures to protect the voluntariness of the parties' consent.

(3) Upon entry of judgment in any case referred under paragraph (1) of this subsection, an aggrieved party may appeal directly to the appropriate United States court of appeals from the judgment of the magistrate judge in the same manner as an appeal from any other judgment of a district court. The consent of the parties allows a magistrate judge designated to exercise civil jurisdiction under paragraph (1) of this subsection to direct the entry of a judgment of the district court in accordance with the Federal Rules of Civil Procedure. Nothing in this paragraph shall be construed as a limitation of any party's right to seek review by the Supreme Court of the United States.

(4) The court may, for good cause shown on its own motion, or under extraordinary circumstances shown by any party, vacate a reference of a civil matter to a magistrate judge under this subsection.

(5) The magistrate judge shall, subject to guidelines of the Judicial Conference, determine whether the record taken pursuant to this section shall be taken by electronic sound recording, by a court reporter, or by other means.

(d) The practice and procedure for the trial of cases before officers serving under this chapter shall conform to rules promulgated by the Supreme Court pursuant to section 2072 of this title.

(e) CONTEMPT AUTHORITY.—

(1) IN GENERAL.—A United States magistrate judge serving under this chapter shall have within the territorial jurisdiction prescribed by the appointment of such magistrate judge the power to exercise contempt authority as set forth in this subsection.

(2) SUMMARY CRIMINAL CONTEMPT AUTHORITY.—A magistrate judge shall have the power to punish summarily by fine or imprisonment, or both, such contempt of the authority of such magistrate judge constituting misbehavior of any person in the magistrate judge's presence so as to obstruct the administration of justice. The order of contempt shall be issued under the Federal Rules of Criminal Procedure.

(3) ADDITIONAL CRIMINAL CONTEMPT AUTHORITY IN CIVIL CONSENT AND MISDEMEANOR CASES.—In any case in which a United States magistrate judge presides with the consent of the parties under subsection (c) of this section, and in any misdemeanor case proceeding before a magistrate judge under section 3401 of title 18, the magistrate judge shall have the power to punish, by fine or imprisonment, or both, criminal contempt constituting disobedience or resistance to the magistrate judge's lawful writ, process, order, rule, decree, or command. Disposition of such contempt shall be conducted upon notice and hearing under the Federal Rules of Criminal Procedure.

(4) CIVIL CONTEMPT AUTHORITY IN CIVIL CONSENT AND MISDEMEANOR CASES.—In any case in which a United States magistrate judge presides with the consent of the parties under subsection (c) of this section, and in any misdemeanor case proceeding before a magistrate judge under section 3401 of title 18, the magistrate judge may exercise the civil contempt authority of the district court. This paragraph shall not be construed to limit the authority of a magistrate judge to order sanctions under any other statute, the Federal Rules of Civil Procedure, or the Federal Rules of Criminal Procedure.

(5) CRIMINAL CONTEMPT PENALTIES.—The sentence imposed by a magistrate judge for any criminal contempt provided for in paragraphs (2) and (3) shall not exceed the penalties for a Class C misdemeanor as set forth in sections 3581(b)(8) and 3571(b)(6) of title 18.

(6) CERTIFICATION OF OTHER CONTEMPTS TO THE DISTRICT COURT.—Upon the commission of any such act—

(A) in any case in which a United States magistrate judge presides with the consent of the parties under subsection (c) of this section, or in any misdemeanor case proceeding before a magistrate judge under section 3401 of title 18, that may, in the opinion of the magistrate judge, constitute a serious criminal contempt punishable by penalties exceeding those set forth in paragraph (5) of this subsection, or

(B) in any other case or proceeding under subsection (a) or (b) of this section, or any other statute, where—

(i) the act committed in the magistrate judge's presence may, in the opinion of the magistrate judge, constitute a serious criminal contempt punishable by penalties

(ii) the act constitutes a criminal contempt occurring outside the presence of the magistrate judge, or

(iii) the act constitutes a civil contempt, the magistrate judge shall forthwith certify the facts to a district judge and may serve or cause to be served, upon any person whose be-
behavior is brought into question under this paragraph, an order requiring such person to appear before a district judge upon a day certain to show cause why that person should not be adjudged in contempt by reason of the facts so stated. The district judge shall thereupon hear the evidence as to the act or conduct complained of and, if it is such as to warrant punishment, punish such person in the same manner and to the same extent as for a contempt committed before a district judge.

(7) APPEALS OF MAGISTRATE JUDGE CONTEMPT ORDERS.—The appeal of an order of contempt under this subsection shall be made to the court of appeals in cases proceeding under subsection (c) of this section. The appeal of any other order of contempt issued under this section shall be made to the district court.

(f) In an emergency and upon the concurrence of the chief judge of the districts involved, a United States magistrate judge may be temporarily assigned to perform any of the duties specified in subsection (a), (b), or (c) of this section in a judicial district other than the judicial district for which he has been appointed. No magistrate judge shall perform any of such duties in a district to which he has been temporarily assigned until an order has been issued by the chief judge of such district specifying (1) the emergency by reason of which he has been transferred, (2) the duration of his assignment, and (3) the duties which he is authorized to perform. A magistrate judge so assigned shall not be entitled to additional compensation but shall be reimbursed for actual and necessary expenses incurred in the performance of his duties in accordance with section 635.

(g) A United States magistrate judge may perform the verification function required by section 4107 of title 18, United States Code. A magistrate judge may be assigned by a judge of any United States district court to perform the verification function required by section 4108 and the appointment of counsel authorized by section 4109 of title 18, United States Code, and may perform such functions beyond the territorial limits of the United States. A magistrate judge assigned such functions shall have no authority to perform any other function within the territory of a foreign country.

(h) A United States magistrate judge who has retired may, upon the consent of the chief judge of the district involved, be recalled to serve as a magistrate judge in any judicial district by the judicial council of the circuit within which such district is located. Upon recall, a magistrate judge may receive a salary for such service in the district is located. Upon recall, a magistrate judge may receive a salary for such service in the district in which an individual is to serve as a magistrate judge, shall not apply to the recall of a retired magistrate judge under this subsection or section 375 of this title. Any other requirement set forth in section 631(b) shall apply to the recall of a retired magistrate judge under this subsection or section 375 of this title unless such retired magistrate judge met such requirement upon appointment or reappointment as a magistrate judge under section 631.


HISTORICAL AND REVISION NOTES


Section consolidates provisions of sections 27, 66, 67, 68, 80f, 100, 117e, 129, 172, 181b, 204e, 256d, 376, 395e, 403c–5, 403c–6, 403h–5, 404c–5, 408m of title 16, U.S.C., 1940 ed., relating to jurisdiction and powers of park commissioners with necessary changes in arrangement and phraseology. For other provisions of such sections, see Distribution Table.

The provisions of sections 27, 66, 67, 68, 100, 117e, 129, 172, 181b, 204e, 256d, 376, 395e, 403c–5, 403c–6, 403h–5, 404c–5, 408m of title 16, U.S.C., 1940 ed., relating to the powers of park commissioners respecting issuance of warrants of arrest and other process were omitted and are recommended for repeal as covered by sections 304 and 314 of revised title 18 (H.R. 1400, 80th Cong.), and Rules 4, 5(c), and 9 of the new Federal Rules of Criminal Procedure.

Provisions in sections 27, 66, 67, 68, 100, 117e, 129, 172, 181b, 204e, 256d, 376, 395e, 403c–5, 403c–6, 403h–5, 404c–5, 408m of title 16, U.S.C., 1940 ed., for arrest without warrant for violation of law or regulation within a national park were also omitted and are recommended for repeal as covered by section 304 of revised title 18 (H.R. 2200, 79th Cong.), Rule 4 of the Federal Rules of Criminal Procedure and Rule 4 of the Federal Rules of Civil Procedure.
SENATE REVISION AMENDMENT

As finally enacted, section 158b of Title 16, U.S.C., which was derived from act May 15, 1947, ch. 55, § 2, 61 Stat. 92, was an additional source of this section, and such act was accordingly included by Senate amendment in the schedule of repeals. No change in the text of the section was necessary as the result of inclusion of such section 158b. 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., was an additional source of this section, and such act was accordingly included by Senate amendment in the schedule of repeals. See 80th Congress Senate Report No. 1559.

Prior oaths, acknowledgments, affidavits, and deposition provisions in section 637.—Based on title 28, U.S.C., 1940 ed., §§ 525, 758 (R.S. §§ 945, 1524), and referred to in section 525 of title 28, U.S.C., 1940 ed., was omitted as unnecessary. The provision of said section 758 that acknowledgments of bail and affidavits should have the same effect as if taken before judges was omitted as surplusage.


Word “acknowledgments” was inserted to make it clear that commissioners, like justices of the peace, can take acknowledgments as well as oaths, affidavits, etc.

The authority to take depositions was included to conform to Federal Rules of Civil Procedure, Rule 28.

Changes were made in phraseology.

REFERENCES IN TEXT

The Rules of Criminal Procedure for the United States District Courts, referred to in subsec. (a)(1) and (e)(2)–(4), are set out in the Appendix to Title 18, Crimes and Criminal Procedure.

The Federal Rules of Civil Procedure for the United States district courts, referred to in subsecs. (b)(2), (c)(3), and (e)(4), are set out in the Appendix to this title.

AMENDMENTS


2008—Subsec. (a). Pub. L. 109–63 substituted “district in which sessions are held by the court that appointed the magistrate judge, at other places where that court may function, and elsewhere as authorized by law” for “territorial jurisdiction prescribed by his appointment” in introductory provisions.


2000—Subsec. (a)(4), (5). Pub. L. 100–518, § 203(b), added pars. (4) and (5) and struck out former pars. (4) and (5) which read as follows: “(4) the power to enter a sentence for a petty offense that is a class B misdemeanor charging a motor vehicle offense, a class C misdemeanor, or an infraction; and (5) the power to enter a sentence for a class A misdemeanor, or a class B or C misdemeanor not covered by paragraph (4), in a case in which the parties have consented.”


Subsec. (a)(4), (5). Pub. L. 104–317, § 202(b)(2), added pars. (4) and (5) and struck out former par. (4) which read as follows: “the power to enter a sentence for a misdemeanor or infraction with the consent of the parties.”

Subsec. (c)(3). Pub. L. 104–317, § 207(1)(A), substituted “The consent of the parties” for “In this circumstance, the consent of the parties”.

Subsec. (c)(4) to (7). Pub. L. 104–317, § 207(1)(B), (C), redesignated pars. (6) and (7) as (4) and (5) and struck out former pars. (4) and (5) which read as follows: “(4) Notwithstanding the provisions of paragraph (3) of this subsection, at the time of reference to a magistrate, the parties may further consent to appeal on the record to a judge of the district court in the same manner as on an appeal from a judgment of the district court to a court of appeals. Wherever possible the local rules of the district court and the rules promulgated by the conference shall endeavor to make such appeal inexpensive. The district court may affirm, reverse, modify, or remand the magistrate’s judgment. “(5) Cases in the district courts under paragraph (4) of this subsection may be reviewed by the appropriate United States court of appeals upon petition for leave to appeal by a party stating specific objections to the judgment. Nothing in this paragraph shall be construed to be a limitation on any party’s right to seek review by the Supreme Court of the United States.”

Subsec. (d). Pub. L. 104–317, § 207(2), struck out “and” for the taking and hearing of appeals to the district courts,” after “officers serving under this chapter”.

Subsec. (f). Pub. L. 104–317, § 201, substituted “subsection (a), (b), or (c)” for “subsection (a) or (b)” in first sentence.

1990—Subsec. (c)(2). Pub. L. 101–650 substituted “the availability of a magistrate to exercise” for “their right to consent to the exercise of” in first sentence and amended third sentence generally. Prior to amendment, third sentence read as follows: “Thereafter, neither the district judge nor the magistrate shall attempt to persuade or induce any party to consent to reference of any civil matter to a magistrate.”


Subsec. (c)(7). Pub. L. 100–702, § 1014, amended par. (7) generally. Prior to amendment, par. (7) read as follows: “The magistrate shall determine, taking into account the complexity of the particular matter referred to the magistrate, whether the record in the proceeding shall be taken, pursuant to section 753 of this title, by electronic sound recording means, by a court reporter appointed or employed by the court to take a verbatim record by shorthand or by mechanical means, or by an employee of the court designated by the court to take such record by electronic sound recording means, or by a court reporter or court stenographer appointed or employed by the court to take a verbatim record in open court. Notwithstanding the magistrate’s determination, (A) the proceeding shall be taken down by a court reporter or court stenographer if the court reporter or court stenographer is available to exercise such function, (B) the proceeding shall be recorded by a means other than a court reporter if all parties so agree, and (C) no record of the proceeding shall be made if all parties so agree. Reporters referred to in this paragraph may be transferred for temporary service in any district court of the judicial circuit for reporting proceedings under this subsection, or for other reporting duties in such court.”

Subsec. (d). Pub. L. 100–702, § 404(b)(1), substituted “section 2072 of this title” for “section 3402 of title 18, United States Code”.

Subsec. (h). Pub. L. 100–659 inserted “section 377 of this title or in” after “annuity set forth in” and “which are applicable to such magistrate” after “title 5” in second sentence.


1984—Subsec. (a)(2). Pub. L. 98–473 substituted “issue orders pursuant to section 3102 of title 18 concerning release or detention of persons pending trial” for “impose conditions of release under section 3146 of title 18”. 
§ 637. Training

The Federal Judicial Center shall conduct periodic training programs and seminars for both full-time and part-time United States magistrate judges, including an introductory training program for new magistrate judges, to be held within one year after initial appointment.

Subsec. (c), Pub. L. 90–578 designated existing provisions as subsec. (c), and substituted "United States magistrate" for "United States commissioner", provisions for appointment under this chapter rather than after July 10, 1946, provision that the form of the seal be prescribed by the conference rather than the Director, and "without fee" for "without additional fee".

CHANGE OF NAME

"United States magistrate judges" and "United States magistrate judge" substituted for "United States magistrates" and "United States magistrate", respectively, in subsecs. (a) and (c) 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.

§ 639. Definitions

As used in this chapter—

(1) "Conference" shall mean the Judicial Conference of the United States;

(2) "Council" shall mean the Judicial Council of the Circuit;

(3) "Director" shall mean the Director of the Administrative Office of the United States Courts;

(4) "Full-time magistrate judge" shall mean a full-time United States magistrate judge;

(5) "Part-time magistrate judge" shall mean a part-time United States magistrate judge; and

(6) "United States magistrate judge" and "magistrate judge" shall mean both full-time and part-time United States magistrate judges.


HISTORICAL AND REVISION NOTES


Changes were made in phraseology.

AMENDMENTS

1968—Pub. L. 90–578 substituted definition provisions for prior requirements obligating the Director to furnish docket books and forms to United States commissioners, and, with approval of the chief judge of the district court, a copy of the United States Code, declaring such property to remain United States property, and calling for transmission of such property to successors in office or for its disposal as directed by the Director, now incorporated in section 638(a) and (b) of this title.

CHANGE OF NAME

Words "magistrate judge" and "magistrate judges" substituted for "magistrate" and "magistrates", respectively, 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.

CHAPTER 44—ALTERNATIVE DISPUTE RESOLUTION

Sec. 651. Authorization of alternative dispute resolution.

652. Jurisdiction.

653. Neutrals.

654. Arbitration.

655. Arbitrators.

656. Subpoenas.

657. Arbitration award and judgment.

658. Compensation of arbitrators and neutrals.

AMENDMENTS


§ 651. Authorization of alternative dispute resolution

(a) DEFINITION.—For purposes of this chapter, an alternative dispute resolution process includes any process or procedure, other than an adjudication by a presiding judge, in which a neutral third party participates to assist in the resolution of issues in controversy, through processes such as early neutral evaluation, mediation, minitrial, and arbitration as provided in sections 654 through 658.

(b) AUTHORITY.—Each United States district court shall authorize, by local rule adopted under section 2071(a), the use of alternative dispute resolution processes in all civil actions, including adversary proceedings in bankruptcy, in accordance with this chapter, except that the use of arbitration may be authorized only as provided in section 654. Each United States district court shall devise and implement its own alternative dispute resolution program, by local rule adopted under section 2071(a), to encourage and promote the use of alternative dispute resolution in its district.

(c) EXISTING ALTERNATIVE DISPUTE RESOLUTION PROGRAMS.—In those courts where an alternative dispute resolution program is in place on the date of the enactment of the Alternative Dispute Resolution Act of 1998, the court shall examine the effectiveness of that program and adopt such improvements to the program as are consistent with the provisions and purposes of this chapter.

(d) ADMINISTRATION OF ALTERNATIVE DISPUTE RESOLUTION PROGRAMS.—Each United States district court shall designate an employee, or a judicial officer, who is knowledgeable in alternative dispute resolution practices and processes to implement, administer, oversee, and evaluate the court's alternative dispute resolution program. Such person may also be respon-
sible for recruiting, screening, and training attorneys to serve as neutrals and arbitrators in the court’s alternative dispute resolution program.

(e) TITLE IX NOT AFFECTED.—This chapter shall not affect Title IX of United States Code.

(f) PROGRAM SUPPORT.—The Federal Judicial Center and the Administrative Office of the United States Courts are authorized to assist the district courts in the establishment and improvement of alternative dispute resolution programs by identifying particular practices employed in successful programs and providing additional assistance as needed and appropriate.


REFERENCES IN TEXT

The date of the enactment of the Alternative Dispute Resolution Act of 1998, referred to in subsec. (c), is the date of enactment of Pub. L. 105–315, which was approved Oct. 30, 1998.

AMENDMENTS


EFFECTIVE DATE

Section 907 of title IX of Pub. L. 100–702 provided that this title and the amendments made by this title (enacting this chapter and provisions set out as notes under this section and section 652 of this title) shall take effect 180 days after the date of enactment of this Act (Nov. 19, 1988).


Section 2 of Pub. L. 103–192 provided that this chapter and the item relating to this chapter in the table of chapters at the beginning of part III of this title continued on or after Dec. 14, 1993, as if they had not been repealed by section 906 of Pub. L. 100–702, formerly set out above, as such section was in effect on the day before Dec. 14, 1993.

CONGRESSIONAL FINDINGS AND DECLARATION OF POLICY


“(1) alternative dispute resolution, when supported by the bench and bar, and utilizing properly trained neutrals in a program adequately administered by the court, has the potential to provide a variety of benefits, including greater satisfaction of the parties, innovative methods of resolving disputes, and greater efficiency in achieving settlements;

“(2) certain forms of alternative dispute resolution, including mediation, early neutral evaluation, mini-trials, and voluntary arbitration, may have potential to reduce the large backlog of cases now pending in some Federal courts throughout the United States, thereby allowing the courts to process their remaining cases more efficiently; and

“(3) the continued growth of Federal appellate court-annexed mediation programs suggests that this form of alternative dispute resolution can be equally effective in resolving disputes in the Federal trial courts; therefore, the district courts should consider including mediation in their local alternative dispute resolution programs.”

MODEL PROCEDURES

Section 902 of title IX of Pub. L. 100–702 provided that: “The Judicial Conference of the United States may develop model rules relating to procedures for arbitration under chapter 44, as added by section 901 of this Act. No model rule may supersede any provision of such chapter 44, this title [enacting this chapter and provisions set out as notes under this section and section 652 of this title], or any law of the United States.”

REPORTS BY DIRECTOR OF ADMINISTRATIVE OFFICE OF UNITED STATES COURTS AND BY FEDERAL JUDICIAL CENTER

Section 903 of Pub. L. 100–702 provided that:

“(a) ANNUAL REPORT BY DIRECTOR OF ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS.—The Director of the Administrative Office of the United States Courts shall include in the annual report of the activities of the Administrative Office required under section 604(a)(3) [28 U.S.C. 604(a)(3)], statistical information about the implementation of chapter 44, as added by section 901 of this Act.

“(b) REPORT BY FEDERAL JUDICIAL CENTER.—Not later than 5 years after the date of enactment of this Act [Nov. 19, 1988], the Federal Judicial Center, in consultation with the Director of the Administrative Office of the United States Courts, shall submit to the Congress a report on the implementation of chapter 44, as added by section 901 of this Act, which shall include the following:

“(1) A description of the arbitration programs authorized by such chapter, as conceived and as implemented in the judicial districts in which such programs are authorized.

“(2) A determination of the level of satisfaction with the arbitration programs in those judicial districts by a sampling of court personnel, attorneys, and litigants whose cases have been referred to arbitration.

“(3) A summary of those program features that can be identified as being related to program acceptance both within and across judicial districts.

“(4) A description of the levels of satisfaction relative to the cost per hearing of each program.

“(5) Recommendations to the Congress on whether to terminate or continue chapter 44, or, alternatively, to enact an arbitration provision in title 28, United States Code, authorizing arbitration in all Federal district courts.”

EFFECT ON JUDICIAL RULEMAKING POWERS

Section 904 of title IX of Pub. L. 100–702 provided that: “Nothing in this title [enacting this chapter and provisions set out as notes under this section and section 652 of this title], or in chapter 44, as added by section 901 of this Act, is intended to abridge, modify, or enlarge the rule making powers of the Federal judiciary.”

AUTHORIZATION OF APPROPRIATIONS

Pub. L. 105–315, §11, Oct. 30, 1998, 112 Stat. 2998, provided that: “There are authorized to be appropriated for each fiscal year such sums as may be necessary to carry out chapter 44 of title 28, United States Code, as amended by this Act.”

Section 905 of Pub. L. 100–702, as amended by Pub. L. 103–192, §1(b), Dec. 14, 1993, 107 Stat. 2292, Pub. L. 103–420, §3(a), Oct. 25, 1994, 108 Stat. 4345, Pub. L. 105–315, §1, Oct. 6, 1997, 111 Stat. 1173, provided that: “There are authorized to be appropriated for each fiscal year to the judicial branch such sums as may be necessary to carry out the purposes of chapter 44, as added by section 901 of this Act. Funds appropriated under this section shall be allocated by the Administrative Office of the United States Courts to Federal judicial districts and to the Federal Judicial Center. The funds so appropriated are authorized to remain available until expended.”
§ 652. Jurisdiction

(a) Consideration of Alternative Dispute Resolution in Appropriate Cases.—Notwithstanding any provision of law to the contrary and except as provided in subsections (b) and (c), each district court shall, by local rule adopted under section 2071(a), require that litigants in all civil cases consider the use of an alternative dispute resolution process at an appropriate stage in the litigation. Each district court shall provide litigants in all civil cases with at least one alternative dispute resolution process, including, but not limited to, mediation, early neutral evaluation, minitrial, and arbitration as authorized in sections 654 through 658. Any district court that elects to require the use of alternative dispute resolution in certain cases may do so only with respect to mediation, early neutral evaluation, and, if the parties consent, arbitration.

(b) Actions Exempted From Consideration of Alternative Dispute Resolution.—Each district court may exempt from the requirements of this section specific cases or categories of cases in which use of alternative dispute resolution would not be appropriate. In defining these exemptions, each district court shall consult with members of the bar, including the United States Attorney for that district.

(c) Authority of the Attorney General.—Nothing in this section shall alter or conflict with the authority of the Attorney General to conduct litigation on behalf of the United States, with the authority of any Federal agency authorized to conduct litigation in the United States courts, or with any delegation of litigation authority by the Attorney General.

(d) Confidentiality Provisions.—Until such time as rules are adopted under chapter 131 of this title providing for the confidentiality of alternative dispute resolution processes and to prohibit disclosure of confidential dispute resolution communications.


Amendments


§ 654. Arbitration

(a) Referral of Actions to Arbitration.—Notwithstanding any provision of law to the contrary and except as provided in subsections (a), (b), and (c) of section 652 and subsection (d) of this section, a district court may allow the referral to arbitration of any civil action (including any adversary proceeding in bankruptcy) pending before it when the parties consent, except that referral to arbitration may not be made where—

(1) the action is based on an alleged violation of a right secured by the Constitution of the United States;

(2) jurisdiction is based in whole or in part on section 1343 of this title; or

(3) the relief sought consists of money damages in an amount greater than $150,000.

(b) Safeguards in Consent Cases.—Until such time as rules are adopted under chapter 131 of this title relating to procedures described in this subsection, the district court shall, by local rule adopted under section 2071(a), establish procedures to ensure that any civil action in which arbitration by consent is allowed under subsection (a)—

(1) consent to arbitration is freely and knowingly obtained; and

(2) no party or attorney is prejudiced for refusing to participate in arbitration.

(c) Presumptions.—For purposes of subsection (a)(3), a district court may presume damages are not in excess of $150,000 unless counsel certifies that damages exceed such amount.

§ 653. Neutrals

(a) Panel of Neutrals.—Each district court that authorizes the use of alternative dispute resolution processes shall adopt appropriate processes for making neutrals available for use by the parties for each category of process offered. Each district court shall promulgate its own procedures and criteria for the selection of neutrals on its panels.

(b) Qualifications and Training.—Each person serving as a neutral in an alternative dispute resolution process should be qualified and trained to serve as a neutral in the appropriate alternative dispute resolution process. For this purpose, the district court may use, among others, magistrate judges who have been trained to serve as neutrals in alternative dispute resolution processes. Professional neutrals from the private sector, and persons who have been trained to serve as neutrals in alternative dispute resolution processes. Until such time as rules are adopted under chapter 131 of this title relating to the disqualification of neutrals, each district court shall issue rules under section 2071(a) relating to the disqualification of neutrals (including, where appropriate, disqualification under section 456 of this title, other applicable law, and professional responsibility standards).


Amendments

(d) Existing Programs.—Nothing in this chapter is deemed to affect any program in which arbitration is conducted pursuant to section 1 of the Judicial Improvements and Access to Justice Act (Public Law 100–702), as amended by section 1 of Public Law 105–53.


References in Text

Amendments

§ 657. Arbitration Award and Judgment

(a) Filing and Effect of Arbitration Award.—An arbitration award made by an arbitrator under this chapter, along with proof of service of such award on the other party by the prevailing party or by the plaintiff, shall be filed promptly after the arbitration hearing is concluded with the clerk of the district court that referred the case to arbitration. Such award shall be entered as the judgment of the court after the time has expired for requesting a trial de novo. The judgment so entered shall be subject to the same provisions of law and shall have the same force and effect as a judgment of the court in a civil action, except that the judgment shall not be subject to review in any other court by appeal or otherwise.

(b) Sealing of Arbitration Award.—The district court shall provide, by local rule adopted under section 2071(a), that the contents of any arbitration award made under this chapter shall not be made known to any judge who might be assigned to the case until the district court has entered final judgment in the action or the action has otherwise terminated.

(c) Trial de Novo of Arbitration Awards.—(1) Time for Filing Demand.—Within 30 days after the filing of an arbitration award with a district court under subsection (a), any party may file a written demand for a trial de novo in the district court.

(2) Action Restored to Court Docket.—Upon a demand for a trial de novo, the action shall be restored to the docket of the court and treated for all purposes as if it had not been referred to arbitration.

(3) Exclusion of Evidence of Arbitration.—The court shall not admit at the trial de novo any evidence that there has been an arbitration proceeding, the nature or amount of any award, or any other matter concerning the conduct of the arbitration proceeding, unless—

(A) the evidence would otherwise be admissible in the court under the Federal Rules of Evidence; or

(B) the parties have otherwise stipulated.


References in Text
The Federal Rules of Evidence, referred to in text, are set out in the Appendix to this title.

Amendments
§ 658. Compensation of arbitrators and neutrals

(a) Compensation.—The district court shall, subject to regulations approved by the Judicial Conference of the United States, establish the amount of compensation, if any, that each arbitrator or neutral shall receive for services rendered in each case under this chapter.

(b) Transportation Allowances.—Under regulations prescribed by the Director of the Administrative Office of the United States Courts, a district court may reimburse arbitrators and other neutrals for actual transportation expenses necessarily incurred in the performance of duties under this chapter.


AMENDMENTS


CHAPTER 45—SUPREME COURT

§ 671. Clerk

(a) The Supreme Court may appoint and fix the compensation of a clerk and one or more deputy clerks. The clerk shall be subject to removal by the Court. Deputy clerks shall be subject to removal by the clerk with the approval of the Court or the Chief Justice of the United States.


(c) The clerk may appoint and fix the compensation of necessary assistants and messengers with the approval of the Chief Justice of the United States.

(d) The clerk shall pay into the Treasury all fees, costs, and other moneys collected by him. He shall make annual returns thereof to the Court under regulations prescribed by it.


HISTORICAL AND REVISION NOTES


This section consolidates sections 541 and 542 of title 28, U.S.C., 1940 ed., with parts of sections 325, 326 and 327 of such title.

The provisions in said section 325 relating to appointment of a marshal and reporter are incorporated in sections 672 and 673 of this title.

The provisions in section 327 of title 28, U.S.C., 1940 ed., relating to duties and liabilities of the clerk and his deputies are incorporated in section 954 of this title.

The provision of section 328 of title 28, U.S.C., 1940 ed., that a duly certified copy of the clerk's bond should be competent evidence in any court, is incorporated in section 1737 of this title.

The provision that the clerk shall be subject to removal by the Court is new. Section 327 of title 28, U.S.C., 1940 ed., contained a similar provision as to deputies, but fixed no term of office for the clerk and made no provision for his removal. The Supreme Court held, in 1839, that a district judge had power to remove his clerk 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 Myers v. U.S., 1926, 272 U.S. 52, 71 L.Ed. 166.)

The provision in section 328 of title 28, U.S.C., 1940 ed., that the clerk's bond be not less than $5,000 and not more than $20,000 was omitted. The Supreme Court should have wide discretion in such administrative matters. (See Hearings before Appropriations Committee, House of Representatives, 78th Cong., 2d sess., on Judiciary Appropriation Bill for 1945, page 102.)

A provision of section 329 of title 28, U.S.C., 1940 ed., that a renewed or augmented bond should be required upon the Attorney General's motion and after thirty days' notice was omitted. The manner of requiring such bond is left to the Court's discretion by the revised section.

A further provision of section 329 of title 28, U.S.C., 1940 ed., that the failure to furnish such renewed or augmented bond should vacate the clerk's office was omitted as unnecessary, since the clerk is removable by the Court under this section.

The references in section 341 of title 28, U.S.C., 1940 ed., to return "under oath" to be made "on the 1st day of January of each year, or thirty days thereafter" and on a form prescribed by the Attorney General", were omitted as fully covered by the revised language "annual returns" under "regulations prescribed by the Court". Verification seems unnecessary especially as clerks of the courts of appeals are not required to submit similar returns under oath (see section 711 of this title). "Court" was substituted for "Attorney General", since the latter's powers and functions in court administrative matters have been transferred to the Director of the Administration Office of the United States Courts. (See sections 604 and 607 of this title.) The Director, however, exercises no authority in Supreme Court matters.

Section 342 of title 28, U.S.C., 1940 ed., provided that the clerk "shall not retain", out of fees received, more than $6,000 annually above clerk hire and expenses; that the surplus should be paid into the Treasury. Such salary limitation is omitted as inconsistent with larger salaries paid other clerks of courts.

The provisions that the Court shall fix the compensation of deputy clerks, and that the clerk shall fix the compensation of assistants and messengers with the approval of the Chief Justice, are new. Current appropriation Acts providing that the compensation of officers and employees of the Supreme Court, other than clerk and reporter shall be fixed by the court, unnecessarily burden the court with administrative details. Provision for allowance and approval of payments of compensation and office expenses by the clerk upon allowance and approval by the Chief Justice, instead of by the Court, was inserted with the approval of the Judicial Conference Committee on Revision of the Judicial Code as not inconsistent with section 542 of title 28, U.S.C., 1940 ed.

References in sections 541 and 542 of title 28, U.S.C., 1940 ed., to certification of expenses by the justices and for audit and allowances by the General Accounting Of-
§ 672. Marshal

(a) The Supreme Court may appoint a marshal, who shall be subject to removal by the Court, and may fix his compensation.

(b) The marshal may, with the approval of the Chief Justice of the United States, appoint and fix the compensation of necessary assistants and other employees to attend the Court, and necessary custodial employees.

c) The marshal shall:

1. Attend the Court at its sessions;
2. Serve and execute all process and orders issued by the Court or a member thereof;
3. Take charge of all property of the United States used by the Court or its members;
4. Disburse funds appropriated for work upon the Supreme Court building and grounds under the jurisdiction of the Architect of the Capitol upon certified vouchers submitted by the Architect;
5. Disburse funds appropriated for the purchase of books, pamphlets, periodicals and other publications, and for their repair, binding, and rebinding, upon vouchers certified by the librarian of the Court;
6. Pay the salaries of the Chief Justice, associate justices, and all officers and employees of the Court and disburse other funds appropriated for disbursement, under the direction of the Chief Justice;
7. Pay the expenses of printing briefs and travel expenses of attorneys in behalf of persons whose motions to appear in forma pauperis in the Supreme Court have been approved and when counsel have been appointed by the Supreme Court, upon vouchers certified by the clerk of the Court;
8. Oversee the Supreme Court Police.


Historical and Revision Notes


Provisions of section 325 of title 28, U.S.C., 1940 ed., relating to appointment of clerk and reporter of the Supreme Court are incorporated in sections 671 and 673 of this title.

Provision of section 331 of title 28, U.S.C., 1940 ed., fixing the marshal's salary at "not to exceed $5,500 per annum" was omitted and the court given authority to fix the salary in conformity with sections 671 and 673 of this title relating to the clerk and the reporter.

Part of subsection (c)(5) is new. It recognizes the propriety of certification by the Court Librarian of vouchers for expenditures for the library. (See reviser's note under section 674 of this title.)

The marshal's duties as superintendent of the Supreme Court building are incorporated in section 13c of title 40, U.S.C., 1940 ed.

Changes were made in phraseology.

AMENDMENTS

1964—Subsec. (c)(6). Pub. L. 88-279, §2(a), struck out "except the clerk, his deputies and employees," after "employees of the Court".

Effective Date of 1964 Amendment

Amendment by Pub. L. 88-279 effective upon appropriation and availability of funds to pay salaries and other expenses of the clerk's office, see section 4 of Pub. L. 88-279, set out as a note under section 671 of this title.

Appropriations

Annual appropriations to carry out amendment of this section by Pub. L. 88-279, see section 3 of Pub. L. 88-279, set out as a note under section 671 of this title.

§ 673. Reporter

(a) The Supreme Court may appoint and fix the compensation of a reporter of its decisions who shall be subject to removal by the Court.

(b) The reporter may appoint and fix the compensation of necessary professional and clerical assistants and other employees, with the approval of the Court or the Chief Justice of the United States.

c) The reporter shall, under the direction of the Court or the Chief Justice, prepare the decisions of the Court for publication in bound volumes and advance copies in pamphlet installments.

The reporter shall determine the quality and size of the paper, type, format, proofs and binding subject to the approval of the Court or the Chief Justice.

(June 25, 1948, ch. 646, 62 Stat. 919.)

Historical and Revision Notes


This section consolidates sections 332 and 333 of title 28, U.S.C., 1940 ed., with part of section 325 of such title.

Provisions of section 325 of title 28, U.S.C., 1940 ed., relating to appointment of clerk and marshal of the Su-
Supreme Court are incorporated in sections 671 and 672 of this title.

The provision as to tenure is new and is added to ensure consistency with other revised sections relating to tenure of court officers.

The provisions of section 333 of title 28, U.S.C., 1940 ed., fixing the reporter's salary at $8,000 per annum, were omitted and the Court given authority to fix the salary in conformity with sections 671 and 672 of this title relating to the clerk and the marshal.

Provisions of section 333 of title 28, U.S.C., 1940 ed., for allowance of stationery, supplies, equipment, and office rent were omitted as obsolete. Offices are now provided in the Supreme Court building and supplies are furnished by the marshal.

The last sentence of section 333 of title 28, U.S.C., 1940 ed., relating to the payment of the reporter's expenses from appropriation for the Supreme Court, was omitted as surplusage.

The revised section makes specific the implied power to fix the compensation of the reporter's assistants.

The provision in section 332 of title 28, U.S.C., 1940 ed., authorizing the Public Printer to do the printing referred to in such section, was omitted as unnecessary. (See section 111 of title 44, U.S.C., 1940 ed., Public Printing and Documents.)

Authority for making an appropriation to carry into effect the provisions of this section relating to compensation and allowances of the reporter, compensation of his assistants, and preparation of the decisions of the Supreme Court for publication, is contained in section 336 of title 28, U.S.C., 1940 ed. (Acts July 1, 1922, ch. 267, § 1, 42 Stat. 818; May 29, 1924, ch. 204, title II, 43 Stat. 218; Feb. 27, 1925, ch. 364, title II, 44 Stat. 1028).

The provision in section 332 of title 28, U.S.C., 1940 ed., relating to the payment of the reporter's expenses from appropriation for the Supreme Court, was omitted as surplusage.

The revised section makes specific the implied power to fix the compensation of the reporter's assistants.

The provision in section 332 of title 28, U.S.C., 1940 ed., authorizing the Public Printer to do the printing referred to in such section, was omitted as unnecessary. (See section 111 of title 44, U.S.C., 1940 ed., Public Printing and Documents.)

Authority for making an appropriation to carry into effect the provisions of this section relating to compensation and allowances of the reporter, compensation of his assistants, and preparation of the decisions of the Supreme Court for publication, is contained in section 336 of title 28, U.S.C., 1940 ed. (Acts July 1, 1922, ch. 267, § 1, 42 Stat. 818; May 29, 1924, ch. 204, title II, 43 Stat. 218; Feb. 27, 1925, ch. 364, title II, 44 Stat. 1028), which is omitted, but not repealed, as unnecessary in this revision.

§ 674. Librarian

(a) The Supreme Court may appoint a librarian, whose salary it shall fix, and who shall be subject to removal by the Court.

(b) The librarian shall, with the approval of the Chief Justice, appoint necessary assistants and fix their compensation and make rules governing the use of the library.

(c) He shall select and acquire by purchase, gift, bequest, or exchange, such books, pamphlets, periodicals, microfilm and other processed copy as may be required by the Court for its official use and for the reasonable needs of its bar.

(d) The librarian shall certify to the marshal for payment vouchers covering expenditures for the purchase of such books and other material, and for binding, rebinding and repairing the same.


HISTORICAL AND REVISION NOTES

This section gives statutory recognition to the office of librarian. For many years the Court has appointed its librarian directly through the Chief Justice, rather than through the marshal. Other members of the library staff are appointed by the librarian, with the approval of the Chief Justice.

Under this section the marshal will not be required to certify to expenditures for some 2,000 books bought for the library each year but this will be the duty of the librarian.

AMENDMENTS

1972—Subsec. (d). Pub. L. 92–310 struck out sentence which required the librarian to furnish a bond.

§ 675. Law clerks and secretaries

The Chief Justice of the United States, and the associate justices of the Supreme Court may appoint law clerks and secretaries whose salaries shall be fixed by the Court.

(June 25, 1948, ch. 646, 62 Stat. 919.)

HISTORICAL AND REVISION NOTES


This section gives statutory recognition to the office of librarian. For many years the Court has appointed its librarian directly through the Chief Justice, rather than through the marshal. Other members of the library staff are appointed by the librarian, with the approval of the Chief Justice.

Under this section the marshal will not be required to certify to expenditures for some 2,000 books bought for the library each year but this will be the duty of the librarian.

AMENDMENTS

1972—Subsec. (d). Pub. L. 92–310 struck out sentence which required the librarian to furnish a bond.

§ 676. Printing and binding

(a) The printing and binding for the Supreme Court, including the printing and binding of individual copies, advance pamphlet installments, and bound volumes, of its decisions, whether requisitioned or ordered by the Court or any of its officers or by any other office or agency, and whether paid for by, or charged to the appropriation for, the Court or any other office or agency, shall be done by the printer or printers whom the Court or the Chief Justice of the United States may select, unless it shall otherwise order.

(b) Whenever advance pamphlet installments and bound volumes of the Court's decisions are printed by a private printer, an adequate number of copies for distribution in accordance with the requirements of section 411 of this title and for sale to the public shall be provided and made available for these purposes in such manner and at such prices as may be determined from time to time by the Supreme Court or the Chief Justice of the United States, in lieu of compliance by the Public Printer and the Superintendent of Documents with the requirements of sections 411 and 412 of this title with respect to such copies. Pending distribution or sale, such copies shall be the property of the United States and shall be held in the custody of the marshal or such other person, organization, or agency, as the Supreme Court or the Chief Justice of the United States may designate.


HISTORICAL AND REVISION NOTES

1948 ACT

§ 677. Counselor to the Chief Justice

(a) The Chief Justice of the United States may appoint a Counselor who shall serve at the pleasure of the Chief Justice and shall perform such duties as may be assigned to him by the Chief Justice. The salary payable to the Counselor shall be fixed by the Chief Justice at a rate which shall not exceed the salary payable to the Director of the Administrative Office of the United States Courts. The Counselor may elect to bring himself within the same retirement program available to the Director of the Administrative Office of the United States Courts, as provided by section 611 of this title, by filing a written election with the Chief Justice within the time and in the manner prescribed by section 611.

(b) The Counselor, with the approval of the Chief Justice, may appoint and fix the compensation of necessary employees. The Counselor and his employees shall be deemed employees of the Supreme Court.

(c)(1) Notwithstanding section 1342 of title 31, the Counselor, with the approval of the Chief Justice, may accept voluntary personal services to assist with public and visitor programs.

(2) No person may volunteer personal services under this subsection unless the person has first agreed, in writing, to waive any claim against the United States arising out of or in connection with such services, other than a claim under chapter 81 of title 5.

(3) No person volunteering personal services under this subsection shall be considered an employee of the United States for any purpose other than for purposes of—

(A) chapter 81 of title 5; or

(B) chapter 171 of this title.

(4) In the administration of this subsection, the Counselor shall ensure that the acceptance of personal services shall not result in the reduction of pay or displacement of any employee of the Supreme Court.


AMENDMENTS


CHAPTER 47—COURTS OF APPEALS

Sec. 711. Clerks and employees.

712. Law clerks and secretaries.

713. Librarians.

714. Criers and messengers.

715. Staff attorneys and technical assistants.

AMENDMENTS


§ 711. Clerks and employees

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

(b) The clerk, with the approval of the court, may appoint 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 shall pay into the Treasury all fees, costs and other moneys collected by him and make returns thereof to the Director of the Administrative Office of the United States Courts under regulations prescribed by him.

(Historical and Revision Notes


This section consolidates section 546 of title 28, U.S.C., 1940 ed., with parts of sections 221, 222, and 544 of such title and a part of section 11–204 of the District of Columbia Code, 1940 ed. Other provisions of such sections are incorporated in sections 604, 713, 954, 956, 961, and 962 of this title. Some provisions of section 11–204 of the District of Columbia Code, 1940 ed., were retained in that code. (See reviser’s note under section 604 of this title.)

Discrepancies between such section 11–204 of District of Columbia Code, 1940 ed., and the more general provisions of title 28 were eliminated by adopting the more general provisions.


A provision that the returns should be filed annually was changed to place the times of accounting within the time of the court.

(June 25, 1948, ch. 646, 62 Stat. 920.)
the discretion of the Director of the Administrative Office of the United States Courts, who has supervision over such accounts. (See section 604 of this title.)

This section is in harmony with section 671 of this title as to accounting similarly by the Clerk of the Supreme Court.

“Court of appeals” was substituted for “circuit court of appeals” to conform to section 43 of this title.

The provision that each clerk shall be removable by the court is new. Section 222 of title 28, U.S.C., 1946 ed., provided that deputies might be removed at the pleasure of the clerk, subject to the court's approval, and there was no term of office specified for the clerk and no provision for his removal.

The words “and other necessary employees” were added in subsection (b) to supply an omission of existing law and to give statutory authority for the appointment of necessary employees for which compensation is annually appropriated.

Changes were made in phraseology.

§ 712. Law clerks and secretaries

Circuit judges may appoint necessary law clerks and secretaries. 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.


HISTORICAL AND REVISION NOTES


Provision of section 222a of title 28, U.S.C., 1940 ed., relating to compensation of law clerks is incorporated in section 604 of this title. (See reviser's note under such section.)

Words “with the approval of the Attorney General,” were omitted to confer on circuit judges the same authority given Supreme Court justices under section 675 of this title.

The proviso 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.)

Changes were made in phraseology.

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.”

§ 713. Librarians

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

(b) 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. The librarian may remove such library assistants with the approval of the court.


HISTORICAL AND REVISION NOTES

1948 ACT


The Judicial Code provides for the appointment of assistants and messengers in the Supreme Court, criers and “persons to wait upon juries” in the district courts, a messenger in the Court of Customs and Patent Appeals, and a bailiff and a chief messenger in the Court of Claims (see title 28, U.S.C., 1940 ed., §§24, 241, 305, 331) and also provided (see same title, §547) that criers, bailiffs and messengers of the courts of appeals should be allowed the same compensation as allowed for similar services in the district courts, but did not provide for the appointment of said criers, bailiffs and messengers. This section authorizes such appointments.

The provisions of section 223 of title 28, U.S.C., 1940 ed., that the United States marshal shall provide for the expenses of criers, bailiffs and messengers for the circuit courts of appeals are superseded by sections 601–610 of this title vesting such functions in the Administrative Office of the United States Courts.

Provisions of section 11–204 of District of Columbia Code, 1940 ed., relating to appointment and compensation of clerk of the United States Court of Appeals for the District of Columbia are incorporated in sections 711 and 604 of this title, respectively. Other provisions of such section were retained in the District of Columbia Code. (See reviser's note under section 604 of this title.)

Compensation of bailiffs is provided by section 755 of this title. Other provisions of section 547 of title 28, U.S.C., 1940 ed., relating to compensation of criers, clerks, and messengers are incorporated in section 604 of this title.

Marshal for the Court of Appeals for the District of Columbia was authorized by the District of Columbia Appropriation Act of June 29, 1937, 50 Stat. 378. The duties of criers and bailiffs are made specific consistently with section 755 of this title, and existing administrative practice.

The removal provisions are added to make this section consistent with the same provisions in other sections relating to tenure of court officers.

Changes in phraseology and arrangement were made.

1949 ACT

This section corrects typographical errors in section 713 of title 28, U.S.C.

AMENDMENTS


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.

**Effective Date of 1982 Amendment**


**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 sections 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.


**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**

§ 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 monies 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.


HISTORICAL AND REVISION NOTES


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 324 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 power. See section 711 of this title.

The provision in section 8 of title 28, U.S.C., 1940 ed., that the clerk be appointed by the district judge or sen-
As revised, this section is in harmony with the provisions in chapters 45 and 47 of this title relating to accounting by the clerk of the Supreme Court and clerks of the courts of appeals.

Provisions as to time and method of accounting and settlement of accounts were omitted as covered by chapter 41 of this title giving the Director of the Administrative Office of the United States Courts supervision over such accounts, and of chapter 2, Audit and Settlement of Accounts, of title 31, U.S.C., 1940 ed., Money and Finance.

Provisions as to particular fees and moneys to be accounted for were omitted as covered by words “all fees, costs and other moneys.” Included in such provisions was a provision as to naturalization fees, but a later act, now appearing in section 742 of title 8, U.S.C., 1940 ed., Aliens and Nationality, provided a different method of accounting and an exception expressly referring to such section was inserted in this section.

Changes were made in phraseology.

REFERENCES IN TEXT
Section 742 of Title 8, referred to in subsec. (e), was repealed by act June 27, 1952, ch. 477, title IV, §463(a)(42), 66 Stat. 280. See section 1455 of Title 8, Aliens and Nationality.

AMENDMENTS

CHANGE OF NAME

EFFECTIVE DATE OF 1980 AMENDMENT
Amendment by Pub. L. 96–417 effective Nov. 1, 1980, and applicable with respect to civil actions pending on or commenced on or after such date, see section 701(a) of Pub. L. 96–417, set out as a note under section 251 of this title.

§ 752. Law clerks and secretaries

District judges may appoint necessary law clerks and secretaries subject to any limitation on the aggregate salaries of such employees which may be imposed by law. 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.


HISTORICAL AND REVISION NOTES

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 126 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 hereinafore 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. See 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 courts 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 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 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.

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 the record shall be deemed prima facie a correct record of the proceedings as may be required by rule or order of court as may be requested by any party to the proceeding.

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 also be paid by the United States out of moneys 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 certifies 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

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1 So in original. Probably should be “or as”. 
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. 


HISTORICAL AND REVISION NOTES


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 annual 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 District of the Canal Zone, and the District Court of the Virgin Islands.” (See reviser's note under section 98 of this title.) The courts in Hawaii and Puerto Rico are district courts of the United States under definitive section 451 of this title.

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

Subsections (c) and (f) of this section incorporate part of the provisions of subsection 9(a) 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


AMENDMENTS

2011—Subsec. (g), Pub. L. 111–350 substituted “section 6101(b) to (d) of title 41” for “section 3070 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(4), struck out provisions limiting to the $3,000 to $7,500 range the annual salary paid to reporters.


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 recording 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), Act June 28, 1955, 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.

1951—Subsec. (a), Pub. L. 85–462 increased maximum annual salary from $6,450 to $7,085.

1945—Subsec. (e). Act June 28, 1945, increased maximum annual salary from $6,000 to $6,450.

1931—Subsec. (a), Pub. L. 48–455, Aug. 31, 1931, inserted reference to District Court of Guam in first par.

EFFECTIVE DATE OF 1982 AMENDMENT


**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**


**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 [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 Paragraphs 1 and 2 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 Table of Statutes at Large.

**Salary Limitation for Court Reporters**


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.


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**


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.


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 limiting 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.


HISTORICAL AND REVISION NOTES


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 of a law clerk, and requiring that only so much of that compensation as is in excess of compensation to which he would be entitled as a crier shall be deemed compensation of a law clerk for purposes of any limitation imposed by law upon aggregate salaries of law clerks and secretaries appointed by a district judge.

§ 756. Power to appoint

Whenever a majority of the district judges of any district court cannot agree upon the appointment of any officer of such court, the chief judge shall make such appointment.

(June 25, 1948, ch. 646, 62 Stat. 923.)

HISTORICAL AND REVISION NOTES


The term "chief judge" was substituted for "senior district judge". (See reviser's note under section 136 of this title.)

Minor changes in phraseology were made.

[CHAPTER 50—OMITTED]

CHAPTER 51—UNITED STATES COURT OF FEDERAL CLAIMS


AMENDMENTS


1982—Pub. L. 97–164, title I, §121(b), (c)(2), (d)(2), (f)(2), (g)(2), Apr. 2, 1982, 96 Stat. 34–36, substituted "UNITED STATES CLAIMS COURT" for "UNITED STATES COURT OF CLAIMS" as chapter heading and, in analysis of sections in the chapter, struck out item 792 "Commissioners" substituted "Law clerks and secretaries" for "Stenographers and clerical employees" in item 794, substituted "Bailiffs and messengers" for "Bailiff and messenger" in item 795, and substituted "judges" for "commissioners" in item 797.


§ 791. Clerk

(a) The United States Court of Federal Claims may appoint a clerk who shall be subject to removal by the court. The clerk, with the approval of the court, may appoint necessary deputies and employees in such numbers as may be approved by the Director of the Administrative Office of the United States Courts. Such deputies and employees shall be subject to removal by the clerk with the approval of the court.

(b) The clerk shall pay into the Treasury all fees, costs and other moneys collected by him. He shall make return thereof to the Director of the Administrative Office of the United States Courts under regulations prescribed by him.

(c) On the first day of every regular session of Congress, the clerk shall transmit to Congress a full and complete statement of all the judgments rendered by the court during the previous year, showing the dates and amounts thereof.
and the parties in whose favor they were rendered, together with a brief synopsis of the nature of the claims upon which they were rendered, and a statement of the costs taxed in each case.


**Historical and Revision Notes**


This section consolidates a part of sections 244 and 248 with sections 283a and 289, all of title 28, U.S.C., 1940 ed.

Provisions in section 248 of title 28, U.S.C., 1940 ed., for distribution by the clerk or copies of the court’s decisions is incorporated in section 415 of this title.

Certain provisions of section 244 of title 28, U.S.C., 1940 ed., relating to the bailiff and the chief messenger of the Court of Claims, and powers and duties of the clerk, his deputies and assistants, are incorporated in sections 795 and 956 of this title.

A provision in section 244 of title 28, U.S.C., 1940 ed., relating to the oath of the clerk of such court was omitted as covered by section 951 of this title.

Word “clerk” was substituted for “chief clerk” to harmonize with such designation of clerks of all other courts.

Provision that such officers shall be under the direction of the court in the performance of their duties was omitted as superfluous.

Provision in section 244 of title 28, U.S.C., 1940 ed., that the clerk and assistant shall be subject to removal by the Court was substituted for the grounds of misconduct or incapacity. This change is in harmony with like provisions as to the clerks of other courts.

Section 289 of title 28, U.S.C., 1940 ed., required the Attorney General to duplicate the reporting to Congress of judgments which are furnished by the clerk. The revised section eliminates such duplication by requiring the clerk to transmit the information to Congress.


As revised, this section is consistent with similar provisions as to clerks of districts courts and the courts of appeals in chapters 47 and 49 of this title.

Changes in phraseology were made.

**Amendments**


1982—Subsec. (a). Pub. L. 97-164 substituted “The United States Claims Court may appoint a clerk, who shall be subject to removal by the court” for “The Court of Claims may appoint a clerk and an assistant clerk, each of whom shall be subject to removal by the court” and “The clerk, with the approval of the court, may appoint necessary deputies and employees in such numbers as may be approved by the Director of the Administrative Office of the United States Courts. Such deputies and employees shall be subject to removal by the Clerk with the approval of the Court” for “The court shall report any such removal and the cause thereof to Congress as soon as possible”.

**Effective Date of 1992 Amendment**


**Effective Date of 1982 Amendment**


**Termination of Reporting Requirements**

For termination, effective May 15, 2000, of provisions in subsec. (c) of this section requiring transmittal to Congress of an annual statement relating to judgments rendered by the court, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 13 of House Document No. 103-7.


**Effective Date of Repeal**

Repeal 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.


Section, acts June 25, 1948, ch. 646, 62 Stat. 924, related to appointment of reporter-commissioners by Court of Claims and employment of stenographers therefor.

**§794. Law clerks and secretaries**

The judges of the United States Court of Federal Claims may appoint necessary law clerks and secretaries, in such numbers as the Judicial Conference of the United States may approve for district judges, subject to any limitation of the aggregate salaries of such employees which may be imposed by law. 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.


**Historical and Revision Notes**


The first sentence of the revised section makes express provision for appointment of stenographers and necessary clerical employees.

Other provisions of section 270 of title 28, U.S.C., 1940 ed., are incorporated in sections 456 and 792 of this title.

Specific provision for $5 per diem for stenographers is omitted as unnecessary and inconsistent with section 902 of this title, Travel and subsistence allowances of Government employees are governed by sections 822-833 of title 5, U.S.C., 1940 ed., Executive Departments and Government Officers and Employees.

Changes were made in phraseology.

**Effective Date of 1982 Amendment**

§ 795

TITLE 28—JUDICIARY AND JUDICIAL PROCEDURE

Page 310

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.”

1982—Pub. L. 97–164 substituted “Law clerks and secretaries” for “Stenographers and clerical employees” as section catchline and, in text, substituted “The Court of Claims shall appoint stenographers and other clerical employees in such numbers as may prove, subject to any limitation of the aggregate salaries of such employees which may be imposed by law” for “The Court of Claims shall appoint stenographers and other clerical employees in such numbers as may be necessary each of whom shall be subject to removal by the court”.

EFFECTIVE DATE OF 1992 AMENDMENT


EFFECTIVE DATE OF 1982 AMENDMENT


§ 785. Bailiffs and messengers

The chief judge of the United States Court of Federal Claims, with the approval of the court, may appoint necessary bailiffs and messengers, in such numbers as the Director of the Administrative Office of the United States Courts may approve, each of whom shall be subject to removal by the chief judge, with the approval of the court.


HISTORICAL AND REVISION NOTES


The provision in section 244 of title 28, U.S.C., 1940 ed., that the bailiff should serve 4 years unless sooner removed by the court for cause, was changed by omitting the 4-year tenure and removal “for cause” requirement. As revised this section conforms with sections relating to the similar court officers.

Term “chief messenger” in section 244 of title 28, U.S.C., 1940 ed., was changed to “messenger” as the court has but one messenger.

A provision of section 244 of title 28, U.S.C., 1940 ed., providing for appointment of a clerk and assistant is incorporated in section 391 of this title, and a provision thereof, relating to powers and duties of the clerk, his deputies and assistants, is incorporated in section 956 of this title.

The second paragraph was added to conform with sections 713, 755, and 834 of this title. Changes were made in phraseology.

AMENDMENTS


1982—Pub. L. 97–164 substituted “Bailiffs and messengers” for “Bailiff and messenger” in section catchline and, in text, substituted “The chief judge of United States Claims Court, with the approval of the court, may appoint necessary bailiffs and messengers, in such numbers as the Director of the Administrative Office of the United States Courts may approve, each of whom shall be subject to removal by the chief judge, with the approval of the court” for “The Court of Claims may appoint a bailiff and a messenger who shall be subject to removal by the court” and struck out provision that the bailiff attend the court, preserve order, and perform such other necessary duties as the court might direct.

EFFECTIVE DATE OF 1992 AMENDMENT


EFFECTIVE DATE OF 1982 AMENDMENT


§ 796. Reporting of court proceedings

Subject to the approval of the United States Court of Federal Claims, the Director of the Administrative Office of the United States Courts is authorized to contract for the reporting of all proceedings that have in open court, and in such contract to fix the terms and conditions under which such reporting services shall be performed, including the terms and conditions under which transcripts shall be supplied by the contractor to the court and other persons, departments, and agencies.


AMENDMENTS


1982—Pub. L. 97–164 substituted “Subject to the approval of the United States Claims Court, the Director of the Administrative Office of the United States Courts” for “The Court of Claims”.

EFFECTIVE DATE OF 1992 AMENDMENT


EFFECTIVE DATE OF 1982 AMENDMENT


§ 797. Recall of retired judges

(a)(1) Any judge of the United States Court of Federal Claims who has retired from regular active service under subchapter III of chapter 83, or chapter 84, of title 5 shall be known and designated as a senior judge and may perform duties as a judge when recalled pursuant to subsection (b) of this section.

(2) Any judge of the Court of Federal Claims receiving an annuity under section 178(c) of this title (pertaining to disability) who, in the estimation of the chief judge, has recovered sufficiently to render judicial service, shall be
known and designated as a senior judge and may perform duties as a judge when recalled under subsection (b) of this section.

(b) The chief judge of the Court of Federal Claims may, whenever he deems it advisable, recall any senior judge, with such judge’s consent, to perform such duties as a judge and for such period of time as the chief judge may specify.

(c) Any senior judge performing duties pursuant to this section shall not be counted as a judge for purposes of the number of judgeships authorized by section 171 of this title.

(d) Any senior judge, while performing duties pursuant to this section, shall be paid the same allowances for travel and other expenses as a judge in active service. Such senior judge shall also receive from the Court of Federal Claims supplemental pay in an amount sufficient, when added to his retirement annuity, to equal the salary of a judge in active service for the same period or periods of time. Such supplemental pay shall be paid in the same manner as the salary of a judge.

Subsec. (d). Pub. L. 97–164 substituted “judge” for “commissioner” wherever appearing, “Such senior judge” for “He”, and “Claims Court” for “Court of Claims”.


Effective Date of 1982 Amendment

§ 798. Places of holding court; appointment of special masters

(a) The United States Court of Federal Claims is authorized to use facilities and hold court in Washington, District of Columbia, and throughout the United States (including its territories and possessions) as necessary for compliance with sections 173 and 2503(c) of this title. The facilities of the Federal courts, as well as other comparable facilities administered by the General Services Administration, shall be made available for trials and other proceedings outside of the District of Columbia.

(b) Upon application of a party or upon the judge’s own initiative, and upon a showing that the interests of economy, efficiency, and justice will be served, the chief judge of the Court of Federal Claims may issue an order authorizing a judge of the court to conduct proceedings, including evidentiary hearings and trials, in a foreign country whose laws do not prohibit such proceedings, except that an interlocutory appeal may be taken from such an order pursuant to section 1292(d)(2) of this title, and the United States Court of Appeals for the Federal Circuit may, in its discretion, consider the appeal.

(c) The chief judge of the Court of Federal Claims may appoint special masters to assist the court in carrying out its functions. Any special masters so appointed shall carry out their responsibilities and be compensated in accordance with procedures set forth in the rules of the court.

Subsec. (d). Pub. L. 97–164 substituted “judge” for “commissioner” wherever appearing, “Such senior judge” for “He”, and “Claims Court” for “Court of Claims”.


Effective Date of 1982 Amendment
Subsec. (c), Pub. L. 102–572, §§902(a)(2), 906(b)(1), redesignated former subsec. (b) as (c) and substituted “Court of Federal Claims” for “Claims Court”.  

**Effective Date of 1992 Amendment**  

**[CHAPTER 53—REPEALED]**  


Section 831, act June 25, 1948, ch. 646, 62 Stat. 924, authorized Court of Customs and Patent Appeals to appoint a clerk, assistant clerks, stenographic law clerks, clerical assistants, and other necessary employees, and set out duties of clerk.  

Section 832, acts June 25, 1948, ch. 646, 62 Stat. 924; May 24, 1949, ch. 139, § 76, 63 Stat. 101, authorized Court of Customs and Patent Appeals to appoint a marshal and such other duties as necessary bailiffs and messengers and set out duties of those bailiffs and messengers.  

**Effective Date of Repeal**  

**CHAPTER 55—COURT OF INTERNATIONAL TRADE**  

Sec. 871. Clerk, chief deputy clerk, assistant clerk, deputies, assistants, and other employees.  

872. Criers, bailiffs, and messengers.  

**AMENDMENTS**  


1959—Pub. L. 86–243, § 1, Sept. 9, 1959, 73 Stat. 474, substituted “as the Court of International Trade” for “as the Customs Court”.  


**§ 871. Clerk, chief deputy clerk, assistant clerk, deputies, assistants, and other employees**  

The Court of International Trade may appoint a clerk, a chief deputy clerk, an assistant clerk, deputies and such clerks and assistants, and other employees as may be necessary for the effective dispatch of the business of the court, which shall be subject to removal by the court.  


**Historical and Revision Notes**  

Section is based on the last two sentences of section 6 of title 19, U.S.C. 1940 ed., which provided for appointment by the Attorney General in conformity with the civil service laws. This and other administrative powers of the Department of Justice with respect to the courts were transferred to the Administrative Office of the United States Courts by section 446 of title 28, U.S.C., 1940 ed., which is section 904 of this title. The revised section vests the power of appointment in the chief judge to conform with section 233 of this title and rules 5 and 22 of the Rules of the Customs Court adopted May 29, 1936.  

Changes were made in phraseology.  

**AMENDMENTS**  

1980—Pub. L. 96–417 redesignated the Customs Court as the Court of International Trade.  

1959—Pub. L. 86–243 included chief deputy clerk and assistant clerk in section catchline, transferred the appointing authority from the chief judge to the Customs Court, provided for appointment of a chief deputy clerk, an assistant clerk and deputy clerks and for power of removal and deleted reference to the civil service laws with respect to appointments.  

**Effective Date of 1980 Amendment**  
Amendment by Pub. L. 96–417 effective Nov. 1, 1980, and applicable with respect to civil actions pending on or commenced on or after such date, see section 701(a) of Pub. L. 96–417, set out as a note under section 251 of this title.  

**Savings Provision**  
Section 4 of Pub. L. 86–243 provided that: “Nothing contained in the amendments made by this Act [enacting section 873 and amending this section and sections 550, and 872 of this title] shall be construed to deprive any person serving on the date of enactment of this Act [Sept. 9, 1959] as an officer or employee of the Customs Court of any rights, privileges, or civil service status, if any, to which such person is entitled under the laws of the United States or regulations thereunder.”

**§ 872. Criers, bailiffs, and messengers**  

The Court of International Trade may appoint such criers as it may require for said court, which criers shall also perform the duties of bailiffs and messengers and such other duties as the court directs and shall be subject to removal by the court.  


**Prior Provisions**  

**AMENDMENTS**  

1986—Pub. L. 99–466 renumbered section 873 of this title as this section.  

1980—Pub. L. 96–417 redesignated the Customs Court as the Court of International Trade.  

**Effective Date of 1980 Amendment**  
Amendment by Pub. L. 96–417 effective Nov. 1, 1980, and applicable with respect to civil actions pending on or commenced on or after such date, see section 701(a)
of Pub. L. 96–417, set out as a note under section 251 of this title.

Savings Provision

Enactment of section by Pub. L. 86–243 not to deprive Customs Court officers or employees of any rights, privileges, or civil service status, see section 4 of Pub. L. 86–243, set out as a note under section 871 of this title.

§ 953. Administration of oaths and acknowledgments

Each clerk of court and his deputies may administer oaths and affirmations and take acknowledgments.

(June 25, 1948, ch. 646, 62 Stat. 926.)

Historical and Revision Notes


As respects acknowledgments, sections 264, 523 and 525 of title 28, U.S.C., 1940 ed., and section 11–402 of District of Columbia Code, 1940 ed., referred only to the Court of Claims and the District Court for the District of Columbia. However, section 555 of said title 28, before amendment in 1944, provided for the collection of a fee by district court clerks for taking acknowledgments. The 1944 amendment provided for the fixing of fees by the Judicial Conference of the United States. If notaries and other minor officials may take acknowledgments there seems to be no reason why clerks of Federal courts and their deputies should not have such power.

Words "Except as provided in section 591 of this title." in section 525 of title 28, U.S.C., 1940 ed., were omitted. Under such section 591, the provisions of such section 525 were inapplicable to the Territory of Alaska, but a later act of June 6, 1900, ch. 786, §7, 31 Stat. 324, section 106 of title 48, U.S.C., 1940 ed., Territories and Insular Possessions, provided that clerks of the District Court for Alaska should perform the duties required or authorized to be performed by clerks of United States courts in other districts.


Provisions of section 264 of title 28, U.S.C., 1940 ed., and section 1114(a) of title 28, U.S.C., 1940 ed., relating to administration of oaths and acknowledgments by judges, are incorporated in section 459 of this title. For distribution of other provisions of such section 1114(a) of title 28, see Distribution Table.

Changes in phraseology were made.

Senate Revision Amendment

Those provisions of this section which related to the Tax Court were eliminated by Senate amendment, therefore section 1114(a) of Title 26, U.S.C., Internal Revenue Code, was not a part of the source of this section upon final enactment. The Senate amendments also eliminated section 1114(a) of the Internal Revenue Code from the schedule of repeals. See 80th Congress Senate Report No. 1559.

| Page 313 | TITLE 28—JUDICIARY AND JUDICIAL PROCEDURE | §953 |
§ 954. Vacancy in clerk position; absence of clerk

When the office of clerk is vacant, the deputy clerks shall perform the duties of the clerk in the name of the last person who held that office. When the clerk is incapacitated, absent, or otherwise unavailable to perform official duties, the deputy clerks shall perform the duties of the clerk in the name of the clerk. The court may designate a deputy clerk to act temporarily as clerk of the court in his or her own name.


HISTORICAL AND REVISION NOTES


Section consolidates parts of sections 8, 222 and 327 of title 28, U.S.C., 1940 ed.

Sections 8, 222 and 327 of title 28, U.S.C., 1940 ed., related only to district courts, courts of appeals and the Supreme Court, respectively. This section applies to all Federal courts and is in conformity with section 548 [§66] of this title relating to death of a United States marshal.

The provision for continuance of the salary of the clerk of the Supreme Court until his successor is appointed and qualifies was inserted to preserve existing law as declared in the unpublished opinion of Chief Justice Taft, March 30, 1922 (filed in the Department of Justice), with respect to a deceased clerk of the Supreme Court.

Other provisions of sections 8, 222 and 327 of title 28, U.S.C., 1940 ed., are incorporated in sections 671, 711, and 751 of this title.

AMENDMENTS

1996—Pub. L. 104–317 substituted “Vacancy in clerk position; absence of clerk” for “Death of clerk; duties in his name until his successor is appointed and qualifies.”

“Vacancy in clerk position; absence of clerk.”

1972—Pub. L. 92–310 struck out “and remedies against” before “deputies” in section catchline and repealed provisions which related to the default or misfeasance of a deputy in connection with the bond of a deceased clerk of a Federal court.

§ 955. Practice of law restricted

The clerk of each court and his deputies and assistants shall not practice law in any court of the United States.

(June 25, 1948, ch. 646, 62 Stat. 926.)

HISTORICAL AND REVISION NOTES


Section consolidates parts of sections 8, 222 and 327 of title 28, U.S.C., 1940 ed. The reminder, relating to United States marshals and their deputies, is incorporated in section 556 of this title.

Sections 395 and 396 of title 28, U.S.C., 1940 ed., have been extended to include all clerks, deputies, and assistants.

The revised section substitutes as simpler and more appropriate, the prohibition against practice of law “in any court of the United States.” (See reviser’s note under section 556 of this title.)

For explanation of provisions omitted from sections 395 and 396 of title 28, U.S.C., 1940 ed., also see reviser’s note under section 556 of this title.

Changes in phraseology were made.

§ 956. Powers and duties of clerks and deputies

The clerk of each court and his deputies and assistants shall exercise the powers and perform the duties assigned to them by the court.

(June 25, 1948, ch. 646, 62 Stat. 926.)

HISTORICAL AND REVISION NOTES


This section contains only a part of sections 221, 244, 304 and 305 of title 28, U.S.C., 1940 ed. The other provisions of such sections are incorporated in sections 604, 711, 831, 833, 834, 957 and 1926 of this title.

Sections 221, 244, 304 and 305 of title 28, U.S.C., 1940 ed., related to the clerks of the circuit courts of appeals, the Court of Claims and the Court of Customs and Patent Appeals.

The phrase “assigned to them by the court” was substituted for the indefinite provision of section 221 of title 28, U.S.C., 1940 ed., that the clerk of each circuit court of appeals “shall exercise the same powers and perform the same duties * * * as are exercised and performed by the clerk of the Supreme Court, so far as the same may be applicable.”

This section is new insofar as it affects the Clerk of the Supreme Court and clerks of the district courts and the Customs Court. Existing law does not prescribe the powers and duties of those clerks. The duties of the clerk of the Customs Court have been prescribed by the rules of such court adopted May 29, 1916.

Changes were made in phraseology.

§ 957. Clerks ineligible for certain offices

A clerk of a court or any of his deputies shall not be appointed a commissioner, master, referee or receiver in any case, unless there are special reasons requiring such appointment which are recited in the order of appointment.


HISTORICAL AND REVISION NOTES


Section consolidates section 127 with part of 304 of title 28, U.S.C., 1940 ed.


Appointment and compensation of masters for district courts, see Rule 53(a) of the Federal Rules of Civil Procedure.

The words “commissioner” and “referee” did not appear in section 127 of title 28, U.S.C., 1940 ed. They were added to subsection (a) to remove possible ambiguity.

Words “by the court or any judge thereof” in section 304 of title 28, U.S.C., 1940 ed., were omitted as surplusage.

Words “or assistant clerks” and “in any case” were added in subsection (b) to make the section applicable to that officer and consistent with the prohibition in this section against deputies of district court clerks.

Minor changes were made in phraseology.

AMENDMENTS

1982—Pub. L. 97–164 struck out designation “(a)” before “A clerk of a district court” and struck out subsec. (b) which provided that the clerk or assistant clerk of the Court of Customs and Patent Appeals could not be appointed a commissioner, master, or referee in any case.

1978—Pub. L. 95–598 directed the amendment of section by inserting “or bankruptcy court” after “district court”, 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.

**Effective Date of 1964 Amendment**

Amendment by Pub. L. 98–333 effective July 10, 1984, see section 402(a) of Pub. L. 98–333, set out as an Effective Date note under section 151 of this title.

**Effective Date of 1982 Amendment**


§ 958. Persons ineligible as receivers

A person holding any civil or military office or employment under the United States or employed by any justice or judge of the United States shall not at the same time be appointed a receiver in any case in any court of the United States.

(June 25, 1948, ch. 646, 62 Stat. 926.)

**Historical and Revision Notes**


Provisions of section 527 of title 28, U.S.C., 1940 ed., relating to ineligibility of various persons as United States commissioner appear as section 612 of this title. Words “janitor of any Government building” were omitted as covered by words “person holding any civil or military employment under the United States” used in the revised section.

The general language of the revised section was substituted for the provisions of section 527 of title 28, U.S.C., 1940 ed., enumerating certain officers and employees.

The exception of Alaska by reference to “section 591 of this title” in section 527 of title 28, U.S.C., 1940 ed., was omitted as surplusage. Alaska is excluded by reason of the words “any court of the United States” which are limited by definitive section 451 of this title.

Changes in phraseology were made.

§ 959. Trustees and receivers sueable; management; State laws

(a) Trustees, receivers or managers of any property, including debtors in possession, may be sued, without leave of the court appointing them, with respect to any of their acts or transactions in carrying on business connected with such property. Such actions shall be subject to the general equity power of such court so far as the same may be necessary to the ends of justice, but this shall not deprive a litigant of his right to trial by jury.

(b) Except as provided in section 1166 of title 11, a trustee, receiver or manager appointed in any cause pending in any court of the United States, including a debtor in possession, shall manage and operate the property in his possession as such trustee, receiver or manager according to the requirements of the valid laws of the State in which such property is situated, in the same manner that the owner or possessor thereof would be bound to do if in possession thereof.


**Historical and Revision Notes**


Section consolidates part of section 124 of title 28, U.S.C., 1940 ed., with section 125 of the same title. The criminal penalty for violation of said section 124 is incorporated in section 1911 of Title 18, Crimes and Criminal Procedure.

Section was extended and made applicable to trustees and debtors in possession. The provision at the end of subsection (a) for preserving the right to a jury trial was added to clarify the intent of section 125 of title 28, U.S.C., 1940 ed., as construed in Vandy v. Receiver of Toledo, St. L. and K.C. R.R. Co., C.C. 1895, 67 F. 379.

Changes in phraseology were made.

**Amendments**

1978—Subsec. (b). Pub. L. 95–598 substituted “Except as provided in section 1166 of title 11, a trustee” for “A trustee”.

**Effective Date of 1978 Amendment**

Amendment by Pub. L. 95–598 effective Oct. 1, 1978, see section 402(c) of Pub. L. 95–598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

§ 960. Tax liability

(a) Any officers and agents conducting any business under authority of a United States court shall be subject to all Federal, State and local taxes applicable to such business to the same extent as if it were conducted by an individual or corporation.

(b) A tax under subsection (a) shall be paid on or before the due date of the tax under applicable nonbankruptcy law, unless—

(1) the tax is a property tax secured by a lien against property that is abandoned under section 554 of title 11, within a reasonable period of time after the lien attaches, by the trustee in a case under title 11; or

(2) payment of the tax is excused under a specific provision of title 11.

(c) In a case pending under chapter 7 of title 11, payment of a tax may be deferred until final distribution is made under section 726 of title 11, if—

(1) the tax was not incurred by a trustee duly appointed or elected under chapter 7 of title 11; or

(2) before the due date of the tax, an order of the court makes a finding of probable insufficiency of funds of the estate to pay in full the administrative expenses allowed under section 503(b) of title 11 that have the same priority in distribution under section 726(b) of title 11 as the priority of that tax.


**Historical and Revision Notes**


A provision in section 124a of title 28, U.S.C., 1940 ed., relating to taxes accruing prior to the effective date of the 1934 act, was omitted as obsolete.
§ 961. Office expenses of clerks

Each clerk of court shall be allowed his necessary office expenses when authorized by the Director of the Administrative Office of the United States Courts.

(June 25, 1948, ch. 646, 62 Stat. 927.)

HISTORICAL AND REVISION NOTES


Section consolidates parts of sections 544 and 563 of title 28, U.S.C., 1940 ed. For remainder of such sections, see Distribution Table.

Changes were made in phraseology.


§ 963. Courts defined

As used in this chapter, unless the context indicates otherwise, the words "court" and "courts" include the Supreme Court of the United States and the courts enumerated in section 619 of this title.

(June 25, 1948, ch. 646, 62 Stat. 927.)

HISTORICAL AND REVISION NOTES

This section was included to embrace the Supreme Court and all courts under the supervision of the Administrative Office of the United States Courts. See section 619 of this title and reviser's note thereunder.

CHAPTER 58—UNITED STATES SENTENCING COMMISSION

Sec.

991. United States Sentencing Commission; establishment and purposes.

992. Terms of office; compensation.

993. Powers and duties of Chair.

994. Duties of the Commission.


996. Director and staff.

997. Annual report.

998. Definitions.

AMENDMENTS


§ 991. United States Sentencing Commission; establishment and purposes

(a) There is established as an independent commission in the judicial branch of the United States a United States Sentencing Commission which shall consist of seven voting members and one nonvoting member. The President, after consultation with representatives of judges, prosecuting attorneys, defense attorneys, law enforcement officials, senior citizens, victims of crime, and others interested in the criminal justice process, shall appoint the voting members of the Commission, by and with the advice and consent of the Senate, one of whom shall be appointed, by and with the advice and consent of the Senate, as the Chair and three of whom shall be designated by the President as Vice Chairs. At least 3 of the members shall be Federal judges selected after considering a list of six judges recommended to the President by the Judicial Conference of the United States. Not more than four of the members of the Commission shall be members of the same political party, and of the three Vice Chairs, no more than two shall be members of the same political party. The Attorney General, or the Attorney General's designee, shall be an ex officio, nonvoting member of the Commission. The Chair, Vice Chairs, and members of the Commission shall be subject to removal from the Commission by the President only for neglect of duty or malfeasance in office or for other good cause shown.

(b) The purposes of the United States Sentencing Commission are to—

(1) establish sentencing policies and practices for the Federal criminal justice system that—

(A) assure the meeting of the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code;

(B) provide certainty and fairness in meeting the purposes of sentencing, avoiding unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar criminal conduct while maintaining sufficient flexibility to permit individualized sentences when warranted by mitigating or aggravating factors not taken into account in the establishment of general sentencing practices; and

(C) reflect, to the extent practicable, advancement in knowledge of human behavior as it relates to the criminal justice process; and

(2) develop means of measuring the degree to which the sentencing, penal, and correctional practices are effective in meeting the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code.

AMENDMENTS


1994—Subsec. (a). Pub. L. 103–322, §280005(c)(1), (2), in second sentence, substituted “Chair” for “Chairman” and in fifth sentence, substituted “the Attorney General’s designee” for “his designee”.

Pub. L. 103–322, §280005(a), as amended by Pub. L. 104–294, in second sentence, substituted “‘and three of whom shall be designated by the President as Vice Chairs,’ ” for the period at end, in fourth sentence, substituted “, and of the three Vice Chairs, no more than two shall be members of the same political party.’’ ” for the period at end, in last sentence, substituted “‘Chair, Vice Chairs,’ ” for “Chairman”.


EFFECTIVE DATE OF 2003 AMENDMENT
Pub. L. 108–21, title IV, §401(n)(2), Apr. 30, 2003, 117 Stat. 676, provided that: “The amendment made under paragraph (1) [amending this section] shall not apply to any person who is serving, or who has been nominated to serve, as a member of the Sentencing Commission on the date of enactment of this Act [Apr. 30, 2003].”

EFFECTIVE DATE OF 1996 AMENDMENT
Amendment by Pub. L. 104–294 effective Sept. 13, 1994, see section 604(d) of Pub. L. 104–294, set out as a note under section 13 of Title 18, Crimes and Criminal Procedure.

COMPOSITION OF MEMBERS OF COMMISSION DURING FIRST FIVE-YEAR PERIOD
For provisions directing that, notwithstanding the provisions of this section, during the five-year period following Oct. 12, 1984, the United States Sentencing Commission shall consist of nine members, including two ex officio, nonvoting members, see section 235(b)(6) of Pub. L. 98–473, set out as an Effective Date note under section 3551 of Title 18, Crimes and Criminal Procedure.

§992. Terms of office; compensation

(a) The voting members of the United States Sentencing Commission shall be appointed for six-year terms, except that the initial terms of the first members of the Commission shall be staggered so that—

(1) two members, including the Chair, serve terms of six years;

(2) three members serve terms of four years; and

(3) two members serve terms of two years.

(b)(1) Subject to paragraph (2)—

(A) no voting member of the Commission may serve more than two full terms; and

(B) a voting member appointed to fill a vacancy that occurs before the expiration of the term for which a predecessor was appointed shall be appointed only for the remainder of such term.

(2) A voting member of the Commission whose term has expired may continue to serve until the earlier of—

(A) the date on which a successor has taken office; or

(B) the date on which the Congress adjourns sine die to end the session of Congress that commences after the date on which the member’s term expired.

(c) The Chair and Vice Chairs of the Commission shall hold full-time positions and shall be compensated during their terms of office at the annual rate at which judges of the United States courts of appeals are compensated. The voting members of the Commission, other than the Chair and Vice Chairs, shall hold full-time positions until the end of the first six years after the sentencing guidelines go into effect pursuant to section 235(a)(1)(B)(ii) of the Sentencing Reform Act of 1984, and shall be compensated at the annual rate at which judges of the United States courts of appeals are compensated. Therefore, the voting members of the Commission, other than the Chair and Vice Chairs, shall hold part-time positions and shall be paid at the daily rate at which judges of the United States courts of appeals are compensated. A Federal judge may serve as a member of the Commission without resigning the judge’s appointment as a Federal judge.

(d) Sections 44(c) and 134(b) of this title (relating to the residence of judges) do not apply to any judge holding a full-time position on the Commission under subsection (c) of this section.


REFERENCES IN TEXT
Section 235(a)(1)(B)(ii) of the Sentencing Reform Act of 1984, referred to in subsec. (c), is section 235(a)(1)(B)(ii) of Pub. L. 98–473, which is set out as an Effective Date note under section 3551 of Title 18, Crimes and Criminal Procedure.

AMENDMENTS

1994—Subsec. (a)(1). Pub. L. 103–322, §280005(c)(1), substituted “Chair” for “Chairman”.

Subsec. (c). Pub. L. 103–322, §280005(b), (c)(3), amended first sentence generally, substituting “The Chair and Vice Chairs of the Commission shall hold full-time positions and shall be compensated during their terms” for “The Chairman of the Commission shall hold a full-time position and shall be compensated during the term”, in second sentence, substituted “Chair and Vice Chairs” for “Chairman”, in third sentence, substituted “Chair and Vice Chairs,” for “Chairman”, and in last sentence, substituted “the judge’s appointment” for “his appointment”.

1992—Subsec. (b). Pub. L. 102–349 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “No voting member may serve more than two full terms. A voting member appointed to fill a vacancy that occurs before the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term.”


1 So in original.
§ 993. Powers and duties of Chair

The Chair shall—

(a) call and preside at meetings of the Commission, which shall be held for at least two weeks in each quarter after the members of the Commission hold part-time positions; and

(b) direct—

(1) the preparation of requests for appropriations for the Commission; and

(2) the use of funds made available to the Commission.


AMENDMENTS

1994—Pub. L. 103–322 substituted “Chair” for “Chairman” in section catchline and introductory provisions.


§ 994. Duties of the Commission

(a) The Commission, by affirmative vote of at least four members of the Commission, and pur- suant to its rules and regulations and consistent with all pertinent provisions of any Federal statute shall promulgate and distribute to all courts of the United States and to the United States Probation System—

(1) guidelines, as described in this section, for use of a sentencing court in determining the sentence to be imposed in a criminal case, including—

(A) a determination whether to impose a sentence to probation, a fine, or a term of imprisonment;

(B) a determination as to the appropriate amount of a fine or the appropriate length of a term of probation or a term of imprisonment;

(C) a determination whether a sentence to a term of imprisonment should include a requirement that the defendant be placed on a term of supervised release after imprisonment, and, if so, the appropriate length of such a term;

(D) a determination whether multiple sentences to terms of imprisonment should be ordered to run concurrently or consecutively; and

(E) a determination under paragraphs (6) and (11)1 of section 3563(b) of title 18;

(2) general policy statements regarding appli- cation of the guidelines or any other aspect of sentencing or sentence implementation that in the view of the Commission would further the purposes set forth in section 3553(a)(2) of title 18, United States Code, including the appropriate use of—

(A) the sanctions set forth in sections 3554, 3555, and 3556 of title 18;

(B) the conditions of probation and super- vised release set forth in sections 3563(b) and 3583(d) of title 18;

(C) the sentence modification provisions set forth in sections 3563(c), 3564, 3573, and 3582(c) of title 18;

(D) the fine imposition provisions set forth in section 3572 of title 18;

(E) the authority granted under rule 11(e)(2) of the Federal Rules of Criminal Pro- cedure to accept or reject a plea agreement entered into pursuant to rule 11(e)(1); and

(F) the temporary release provisions set forth in section 3624(c) of title 18;

(b) The Commission, in the guidelines promul- gated pursuant to subsection (a)(1), shall, for each category of offense involving each category of defendant, establish a sentencing range that is consistent with all pertinent provisions of title 18, United States Code.

(2) If a sentence specified by the guidelines in- cludes a term of imprisonment, the maximum of the range established for such a term shall not exceed the minimum of that range by more than the greater of 25 percent or 6 months, except that, if the minimum term of the range is 30 years or more, the maximum may be life imprison- ment.

(c) The Commission, in establishing categories of offenses for use in the guidelines and policy statements governing the imposition of sentences of probation, a fine, or imprisonment, governing the imposition of other authorized sanctions, governing the size of a fine or the length of a term of probation, imprisonment, or supervised release, and governing the conditions of probation, supervised release, or imprison- ment, shall consider whether the following mat- ters, among others, have any relevance to the nature, extent, place of service, or other inci- dents2 of an appropriate sentence, and shall take them into account only to the extent that they do have relevance—

(1) the grade of the offense;

(2) the circumstances under which the offense was committed which mitigate or aggra- vate the seriousness of the offense;

1 See References in Text note below.
2 See original. Probably should be “incidence”.
(3) the nature and degree of the harm caused by the offense, including whether it involved property, irreplaceable property, a person, a number of persons, or a breach of public trust;
(4) the community view of the gravity of the offense;
(5) the public concern generated by the offense;
(6) the deterrent effect a particular sentence may have on the commission of the offense by others; and
(7) the current incidence of the offense in the community and in the Nation as a whole.

(d) The Commission in establishing categories of defendants for use in the guidelines and policy statements governing the imposition of sentences of probation, a fine, or imprisonment, governing the imposition of other authorized sanctions, governing the size of a fine or the length of a term of probation, imprisonment, or supervised release, and governing the conditions of probation, supervised release, or imprisonment, shall consider whether the following matters, among others, with respect to a defendant, have any relevance to the nature, extent, place of service, or other incidents of defendants for use in the guidelines and policy statements, in reciting to minimize the likelihood that the Federal prison population will exceed the capacity of the Federal prisons, as determined by the Commission.

(h) The Commission shall assure that the guidelines specify a sentence to a term of imprisonment at or near the maximum term authorized for categories of defendants in which the defendant is eighteen years old or older and—

(1) has been convicted of a felony that is—
(A) a crime of violence; or
(B) an offense described in section 401 of the Controlled Substances Act (21 U.S.C. 841), sections 1002(a), 1005, and 1009 of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 955, and 959), and chapter 705 of title 46; and
(2) has previously been convicted of two or more prior felonies, each of which is—
(A) a crime of violence; or
(B) an offense described in section 401 of the Controlled Substances Act (21 U.S.C. 841), sections 1002(a), 1005, and 1009 of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 955, and 959), and chapter 705 of title 46.

(i) The Commission shall assure that the guidelines specify a sentence to a substantial term of imprisonment for categories of defendants in which the defendant—
(1) has a history of two or more prior Federal, State, or local felony convictions for offenses committed on different occasions;
(2) committed the offense as part of a pattern of criminal conduct from which the defendant derived a substantial portion of the defendant’s income;
(3) committed the offense in furtherance of a conspiracy with three or more persons engaging in a pattern of racketeering activity in which the defendant participated in a managerial or supervisory capacity;
(4) committed a crime of violence that constitutes a felony while on release pending trial, sentence, or appeal from a Federal, State, or local felony for which he was ultimately convicted; or
(5) committed a felony that is set forth in section 401 or 1010 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 841 and 960), and that involved trafficking in a substantial quantity of a controlled substance.

(j) The Commission shall assure that the guidelines reflect the general appropriateness of imposing a sentence other than imprisonment in cases in which the defendant is a first offender who has not been convicted of a crime of violence or an otherwise serious offense, and the general appropriateness of imposing a term of imprisonment on a person convicted of a crime of violence that results in serious bodily injury.

(k) The Commission shall assure that the guidelines reflect the inappropriateness of im-
posing a sentence to a term of imprisonment for the purpose of rehabilitating the defendant or providing the defendant with needed educational or vocational training, medical care, or other correctional treatment.

The Commission shall insure that the guidelines promulgated pursuant to subsection (a)(1) reflect—

(1) the appropriateness of imposing an incremental penalty for each offense in a case in which a defendant is convicted of—

(A) multiple offenses committed in the same course of conduct that result in the exercise of ancillary jurisdiction over one or more of the offenses; and

(B) multiple offenses committed at different times, including those cases in which the subsequent offense is a violation of section 3146 (penalty for failure to appear) or is committed while the person is released pursuant to the provisions of section 3147 (penalty for an offense committed while on release) of title 18; and

(2) the general inappropriateness of imposing consecutive terms of imprisonment for an offense of conspiring to commit an offense or soliciting commission of an offense and for an offense that was the sole object of the conspiracy or solicitation.

(m) The Commission shall insure that the guidelines reflect the fact that, in many cases, current sentences do not accurately reflect the seriousness of the offense. This will require that, as a starting point in its development of the initial sets of guidelines for particular categories of cases, the Commission ascertain the average sentences imposed in such categories of cases prior to the creation of the Commission, and in cases involving sentences to terms of imprisonment, the length of such terms actually served. The Commission shall not be bound by such average sentences, and shall independently develop a sentencing range that is consistent with the purposes of sentencing described in section 3553(a)(2) of title 18, United States Code.

(n) The Commission shall assure that the guidelines reflect the general appropriateness of imposing a lower sentence than would otherwise be imposed, including a sentence that is lower than that established by statute as a minimum sentence, to take into account a defendant’s substantial assistance in the investigation or prosecution of another person who has committed an offense.

(o) The Commission periodically shall review and revise, in consideration of comments and data coming to its attention, the guidelines promulgated pursuant to the provisions of this section. In fulfilling its duties and in exercising its powers, the Commission shall consult with authorities on, and individual and institutional representatives of, various aspects of the Federal criminal justice system. The United States Probation System, the Bureau of Prisons, the Judicial Conference of the United States, the Criminal Division of the United States Department of Justice, and a representative of the Federal Public Defenders shall submit to the Commission any observations, comments, or questions pertinent to the work of the Commission whenever they believe such communication would be useful, and shall, at least annually, submit to the Commission a written report commenting on the operation of the Commission’s guidelines, suggesting changes in the guidelines that appear to be warranted, and otherwise assessing the Commission’s work.

(p) The Commission, at or after the beginning of a regular session of Congress, but not later than the first day of May, may promulgate under subsection (a) of this section and submit to Congress amendments to the guidelines and modifications to previously submitted amendments that have not taken effect, including modifications to the effective dates of such amendments. Such an amendment or modification shall be accompanied by a statement of the reasons therefor and shall take effect on a date specified by the Commission, which shall be no earlier than 180 days after being so submitted and no later than the first day of November of the calendar year in which the amendment or modification is submitted, except to the extent that the effective date is revised or the amendment is otherwise modified or disapproved by Act of Congress.

(q) The Commission and the Bureau of Prisons shall submit to Congress an analysis and recommendations concerning maximum utilization of resources to deal effectively with the Federal prison population. Such report shall be based upon consideration of a variety of alternatives, including—

(1) modernization of existing facilities;

(2) inmate classification and periodic review of such classification for use in placing inmates in the least restrictive facility necessary to ensure adequate security; and

(3) use of existing Federal facilities, such as those currently within military jurisdiction.

(r) The Commission, not later than two years after the initial set of sentencing guidelines promulgated under subsection (a) goes into effect, and thereafter whenever it finds it advisable, shall recommend to the Congress that it raise or lower the grades, or otherwise modify the maximum penalties, of those offenses for which such an adjustment appears appropriate.

(s) The Commission shall give due consideration to any petition filed by a defendant requesting modification of the guidelines utilized in the sentencing of such defendant, on the basis of changed circumstances unrelated to the defendant, including changes in—

(1) the community view of the gravity of the offense;

(2) the public concern generated by the offense; and

(3) the deterrent effect particular sentences may have on the commission of the offense by others.

(t) The Commission, in promulgating general policy statements regarding the sentencing modification provisions in section 3582(c)(1)(A) of title 18, shall describe what should be considered extraordinary and compelling reasons for sentence reduction, including the criteria to be applied and a list of specific examples. Rehabilitation of the defendant alone shall not be considered an extraordinary and compelling reason.
(u) If the Commission reduces the term of imprisonment recommended in the guidelines applicable to a particular offense or category of offenses, it shall specify in what circumstances and by what amount the sentences of prisoners serving terms of imprisonment for the offense may be reduced.

(v) The Commission shall ensure that the general policy statements promulgated pursuant to subsection (a)(2) include a policy limiting consecutive terms of imprisonment for an offense involving a violation of a general prohibition and for an offense involving a violation of a specific prohibition encompassed within the general prohibition.

(w)(1) The Chief Judge of each district court shall ensure that, within 30 days following entry of judgment in every criminal case, the sentencing court submits to the Commission, in a format approved and required by the Commission, a written report of the sentence, the offense for which it is imposed, the age, race, sex of the offender, and information regarding factors made relevant by the guidelines. The report shall also include—

(A) the judgment and commitment order;
(B) the written statement of reasons for the sentence imposed (which shall include the reason for any departure from the otherwise applicable guideline range and which shall be stated on the written statement of reasons form issued by the Judicial Conference and approved by the United States Sentencing Commission);
(C) any plea agreement;
(D) the indictment or other charging document;
(E) the presentence report; and
(F) any other information as the Commission finds appropriate.

The information referred to in subparagraphs (A) through (F) shall be submitted by the sentencing court in a format approved and required by the Commission.

(2) The Commission shall, upon request, make available to the House and Senate Committees on the Judiciary, the written reports and all underlying records accompanying those reports described in this section, as well as other records received from courts.

(3) The Commission shall submit to Congress at least annually an analysis of these documents, any recommendations for legislation that the Commission concludes is warranted by that analysis, and an accounting of those districts that the Commission believes have not submitted the appropriate information and documents required by this section.

(4) The Commission shall make available to the Attorney General, upon request, such data files as the Commission itself may assemble or maintain in electronic form as a component of a fine, the expected costs to the Government of any imprisonment, supervised release, or probation sentence that is ordered.


REFERENCES IN TEXT

Paragraphs (6) and (11) of section 3563(b) of title 18, referred to in subsec. (a)(1)(E), were renumbered paragraphs (5) and (10), respectively, of section 3563(b) by Pub. L. 101–181, title II, § 2032(b), Apr. 24, 1996, 110 Stat. 1227.

The Federal Rules of Criminal Procedure, referred to in subsec. (a)(2)(E), are set out in the Appendix to Title 18, Crimes and Criminal Procedure.

AMENDMENTS


Subsec. (w)(1). Pub. L. 109–177, §735(1)(A), (C), inserted “in a format approved and required by the Commission,” after “submits to the Commission” in introductory provisions and inserted concluding provisions:

Subsec. (w)(1)(B). Pub. L. 109–177, §735(1)(B), inserted “written” before “statement of reasons for the sentence imposed” and “which shall be stated on the written statement of reasons form issued by the Judicial Conference and approved by the United States Sentencing Commission” after “applicable guideline range”.

Subsec. (w)(4). Pub. L. 109–177, §735(2), substituted “itself may assemble or maintain in electronic form as a result of the” for “may assemble or maintain in electronic form that include any”.  

2003—Subsec. (a). Pub. L. 108–21, §401(h), amended subsec. (w) generally. Prior to amendment, subsec. (w) read as follows: “The appropriate judge or officer shall submit to the Commission in connection with each sentence imposed (other than a sentence imposed for a petty offense, as defined in title 18, for which there is no applicable sentencing guideline) a written report of the sentence, the offense for which it is imposed, the age, race, and sex of the offender, information regarding factors made relevant by the guidelines, and such other information as the Commission finds appropriate. The Commission shall submit to Congress at least annually an analysis of these reports and any recommendations for legislation that the Commission concludes is warranted by that analysis.”

Subsec. (i)(2). Pub. L. 103–322, § 280005(c)(4), substituted “‘the defendant’ for ‘he’ and “‘the defendant’s’ for ‘his’.


Subsec. (n). Pub. L. 100–690, § 7083, substituted “‘as a minimum sentence’ for ‘as minimum sentence’.

Subsec. (p). Pub. L. 100–690, § 7109, amended subsec. (p) generally. Prior to amendment, subsec. (p) read as follows: “The Commission, at or after the beginning of a regular session of Congress but not later than the first day of May, shall report to the Congress any amendments of the guidelines promulgated pursuant to subsection (a)(1), and a report of the reasons therefor, and the amended guidelines shall take effect one hundred and eighty days after the Commission reports them, except to the extent the effective date is enlarged or the guidelines are disapproved or modified by Act of Congress.”

1987—Subsec. (y). Pub. L. 100–182, § 23(a), substituted “‘two years’ for “‘one year’.”

Subsec. (s). Pub. L. 100–182, § 23(b), struck out at end: “Within one hundred and eighty days of the filing of such petition the Commission shall provide written notice to the defendant whether or not it has approved the petition. If the petition is disapproved the written notice shall contain the reasons for such disapproval. The Commission shall submit to the Congress at least annually an analysis of such written notices.”

Subsec. (w). Pub. L. 100–182, § 16(b), inserted (“other than a sentence imposed for a petty offense, as defined in title 18, for which there is no applicable sentencing guideline)’’ after “‘each sentence imposed’.”


Subsec. (a)(2)(D) to (F). Pub. L. 99–363, § 2(1)(A), (C), redesignated former subpars. (D) and (E) and (F), respectively.


Pub. L. 99–363, § 2(2), amended par. (3) generally. Prior to amendment, par. (3) read as follows: “guidelines or general policy statements regarding the appropriate use of the probation revocation provisions set forth in sections 3565 of title 18, and the provisions for modification of the term or conditions of probation or supervised release set forth in sections 3563(c), 3564(d), and 3563(e) of title 18.”

Subsec. (b). Pub. L. 99–363, § 2(3), designated existing provisions as pars. (1) and (2), and in par. (2) substituted “the greater of 25 percent or 6 months, except that, if the maximum term of the range is 30 years or more, the maximum may be life imprisonment” for “25 percent.”

Subsec. (b)(2). Pub. L. 99–646, § 56, substituted “‘that, if the maximum’” for “‘that, if the maximum’.”

Subsec. (b). Pub. L. 99–646, § 60(c)(1), (2), substituted “‘guidelines specify’ for “‘guidelines will specify’” and struck out “by section 3563(b) of title 18, United States Code,” after “‘term authorized’” in introductory text.

Subsec. (i). Pub. L. 99–646, § 60(b)(2), substituted “‘guidelines specify’ for “‘guidelines will specify’”.

Subsec. (j)(2). Pub. L. 99–570, § 1006(b)(1), (2), added subsec. (n) and redesignated former subsecs. (n) to (t) as (o) to (u), respectively.

Subsec. (u). Pub. L. 99–646, § 60(b)(3), which directed that subsec. (t) be amended by inserting “in what circumstances and” and “after ‘specify’” and striking out “that are outside the applicable guideline ranges” after “‘terms of imprisonment,” was executed to subsec. (u) to reflect the probable intent of Congress and the intervening redesignation of subsec. (t) as (u) by Pub. L. 99–570.

Pub. L. 99–570, § 1006(b), redesignated subsec. (t) as (u).


Pub. L. 99–570, § 1006(b), redesignated former subsec. (u) to (x) as (v) to (x), respectively.

1985—Subsec. (q). Pub. L. 99–217 substituted “‘not later than one year after the initial set of sentencing guidelines promulgated under subsection (a) goes into effect’” for “‘within three years of the date of enactment of the Sentencing Reform Act of 1983’.”

Effect of Date of 1987 Amendment

Amendment by Pub. L. 100–182 applicable with respect to offenses committed after Dec. 7, 1987, see section 26 of Pub. L. 100–182, set out as a note under section 3006A of Title 18, Crimes and Criminal Procedure.

Termination of Reporting Requirements

For termination, effective May 15, 2000, of provisions in subsection (w) of this section relating to requirement that the Commission submit to Congress at least annually an analysis of reports and recommendations for legislation that the Commission concludes is warranted by that analysis, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 15 of House Document No. 103–7.

Provisions for Review, Promulgation, or Amendment of Federal Sentencing Guidelines


§ 995. Powers of the Commission

(a) The Commission, by vote of a majority of the members present and voting, shall have the power to—

(1) establish general policies and promulgate such rules and regulations as are necessary to carry out the purposes of this chapter;

(2) appoint and fix the salary and duties of the Staff Director of the Sentencing Commission, who shall serve at the discretion of the Commission and who shall be compensated at a rate not to exceed the highest rate now or hereafter prescribed for level IV of the Senior Executive Service Schedule (5 U.S.C. 3382);

(3) deny, revise, or ratify any request for regular, supplemental, or deficiency appropriations prior to any submission of such request to the Office of Management and Budget by the Chair;

(4) procure for the Commission temporary and intermittent services to the same extent as is authorized by section 3109(b) of title 5, United States Code;

(5) utilize, with their consent, the services, equipment, personnel, information, and facilities of other Federal, State, local, and private agencies and instrumentalities with or without reimbursement therefor;

(6) without regard to 31 U.S.C. 3324, enter into and perform such contracts, leases, cooperative agreements, and other transactions as may be necessary in the conduct of the functions of the Commission, with any public agency, or with any person, firm, association, corporation, educational institution, or nonprofit organization;
(7) accept and employ, in carrying out the provisions of this title, voluntary and uncompensated services, notwithstanding the provisions of 31 U.S.C. 1342, however, individuals providing such services shall not be considered Federal employees except for purposes of chapter 81 of title 5, United States Code, with respect to job-incurred disability and title 28, United States Code, with respect to tort claims;

(8) request such information, data, and reports from any Federal agency or judicial officer as the Commission may from time to time require and as may be produced consistent with other law;

(9) monitor the performance of probation officers with regard to sentencing recommendations, including application of the Sentencing Commission guidelines and policy statements;

(10) issue instructions to probation officers concerning the application of Commission guidelines and policy statements;

(11) arrange with the head of any other Federal agency for the performance by such agency of any function of the Commission, with or without reimbursement;

(12) establish a research and development program within the Commission for the purpose of—

(A) serving as a clearinghouse and information center for the collection, preparation, and dissemination of information on Federal sentencing practices; and

(B) assisting and serving in a consulting capacity to Federal courts, departments, and agencies in the development, maintenance, and coordination of sound sentencing practices;

(13) collect systematically the data obtained from studies, research, and the empirical experience of public and private agencies concerning the sentencing process;

(14) publish data concerning the sentencing process;

(15) collect systematically and disseminate information concerning sentences actually imposed, and the relationship of such sentences to the factors set forth in section 3553(a) of title 18, United States Code;

(16) collect systematically and disseminate information regarding the effectiveness of sentences imposed;

(17) devise and conduct, in various geographical locations, seminars and workshops providing continuing studies for persons engaged in the sentencing field;

(18) devise and conduct periodic training programs of instruction in sentencing techniques for judicial and probation personnel and other persons connected with the sentencing process;

(19) study the feasibility of developing guidelines for the disposition of juvenile delinquents;

(20) make recommendations to Congress concerning modification or enactment of statutes relating to sentencing, penal, and correctional matters that the Commission finds to be necessary and advisable to carry out an effective, humane and rational sentencing policy;

(21) hold hearings and call witnesses that might assist the Commission in the exercise of its powers or duties;

(22) perform such other functions as are required to permit Federal courts to meet their responsibilities under section 3553(a) of title 18, United States Code, and to permit others involved in the Federal criminal justice system to meet their related responsibilities;

(23) retain private attorneys to provide legal advice to the Commission in the conduct of its work, or to appear for or represent the Commission in any case in which the Commission is authorized by law to represent itself, or in which the Commission is representing itself with the consent of the Department of Justice; and the Commission may in its discretion pay reasonable attorney's fees to private attorneys employed by it out of its appropriated funds. When serving as officers or employees of the United States, such private attorneys shall be considered special government employees as defined in section 202(a) of title 18; and

(24) grant incentive awards to its employees pursuant to chapter 45 of title 5, United States Code.

(b) The Commission shall have such other powers and duties and shall perform such other functions as may be necessary to carry out the purposes of this chapter, and may delegate to any member or designated person such powers as may be appropriate other than the power to establish general policy statements and guidelines pursuant to section 994(a)(1) and (2), the issuance of general policies and promulgation of rules and regulations pursuant to subsection (a)(1) of this section, and the decisions as to the factors to be considered in establishment of categories of offenses and offenders pursuant to section 994(b). The Commission shall, with respect to its activities under subsections (a)(9), (a)(10), (a)(11), (a)(12), (a)(13), (a)(14), (a)(15), (a)(16), (a)(17), and (a)(18), to the extent practicable, utilize existing resources of the Administrative Office of the United States Courts and the Federal Judicial Center for the purpose of avoiding unnecessary duplication.

(c) Upon the request of the Commission, each Federal agency is authorized and directed to make its services, equipment, personnel, facilities, and information available to the greatest practicable extent to the Commission in the execution of its functions.

(d) A simple majority of the membership then serving shall constitute a quorum for the conduct of business. Other than for the promulgation of guidelines and policy statements pursuant to section 994, the Commission may exercise its powers and fulfill its duties by the vote of a simple majority of the members present.

(e) Except as otherwise provided by law, the Commission shall maintain and make available for public inspection a record of the final vote of each member on any action taken by it.

§ 996. Director and staff

(a) The Staff Director shall supervise the activities of persons employed by the Commission and perform other duties assigned to the Staff Director by the Commission.

(b) The Staff Director shall, subject to the approval of the Commission, appoint such officers and employees as are necessary in the execution of the functions of the Commission. The officers and employees of the Commission shall be exempt from the provisions of part III of title 5, except the following: chapters 45 (Incentive Awards), 63 (Leave), 81 (Compensation for Work Injuries), 85 (Retirement), 87 (Life Insurance), and 89 (Health Insurance), and subchapter VI of chapter 55 (Payment for accumulated and accrued leave).


AMENDMENTS


1994—Subsec. (a)(3). Pub. L. 103–322 substituted “Chair” for “Chairman”.


Termination Date of 2008 Amendment

Pub. L. 110–177, title V, §996(a), Jan. 7, 2008, 121 Stat. 2541, provided that: “The amendment made by subsection (a) [amending this section] shall cease to have force and effect on September 30, 2010.”

§ 998. Definitions

As used in this chapter—

(a) “Commission” means the United States Sentencing Commission;

(b) “Commissioner” means a member of the United States Sentencing Commission;

(c) “guidelines” means the guidelines promulgated by the Commission pursuant to section 994(a) of this title; and

(d) “rules and regulations” means rules and regulations promulgated by the Commission pursuant to section 995 of this title.


PART IV—JURISDICTION AND VENUE

<table>
<thead>
<tr>
<th>Chap.</th>
<th>Sec.</th>
<th>Title 28—Judiciary and Judicial Procedure</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>81</td>
<td>1251</td>
<td>81. Supreme Court</td>
<td></td>
</tr>
<tr>
<td>83</td>
<td>1291</td>
<td>83. Courts of Appeals</td>
<td></td>
</tr>
<tr>
<td>85</td>
<td>1331</td>
<td>85. District Courts; Jurisdiction</td>
<td></td>
</tr>
<tr>
<td>85</td>
<td>1351</td>
<td>85. District Courts; Venue</td>
<td></td>
</tr>
<tr>
<td>89</td>
<td>1441</td>
<td>89. District Courts; Removal of Cases from State Courts</td>
<td></td>
</tr>
<tr>
<td>91</td>
<td>1491</td>
<td>91. United States Court of Federal Claims</td>
<td></td>
</tr>
<tr>
<td>[93]</td>
<td></td>
<td>93. Repealed</td>
<td></td>
</tr>
<tr>
<td>95</td>
<td>1581</td>
<td>95. Court of International Trade</td>
<td></td>
</tr>
<tr>
<td>97</td>
<td>1602</td>
<td>97. Jurisdictional Immunities of Foreign States</td>
<td></td>
</tr>
</tbody>
</table>

AMENDMENTS


1 So in original. Probably should be “1330”.


CHAPTER 81—SUPREME COURT

Sec. 1251. Original jurisdiction.

(1252. Repealed.)

1253. Direct appeals from decisions of three-judge courts.

1254. Courts of appeals; certiorari; certified questions.

(1255, 1256. Repealed.)

1257. State courts; certiorari.

1258. Supreme Court of Puerto Rico; certiorari.

1259. Court of Appeals for the Armed Forces; certiorari.

AMENDMENTS


DEFINITIONS OF COURTS AND JUDGES

Section 32 of act June 25, 1948, as amended by act May 24, 1949, ch. 139, 35 Stat. 1277, 63 Stat. 107, provided:

“(a) All laws of the United States in force on September 1, 1948, in which reference is made to a ‘circuit court of appeals’; ‘senior circuit judge’; ‘senior district judge’; ‘presiding judge;’ ‘chief justice’, except when reference to the Chief Justice of the United States is intended; or ‘justice’, except when used with respect to a justice of the Supreme Court of the United States in his capacity as such or as a circuit justice, are hereby amended by substituting ‘court of appeals’ for ‘circuit court of appeals;’ ‘chief judge of the circuit’ for ‘senior circuit judge’; ‘chief judge of the district court’ for ‘senior district judge;’ ‘chief judge’ for ‘presiding judge;’ ‘chief justice’ for ‘chief justice’, except when reference to the Chief Justice of the United States is intended; and ‘judge’ for ‘justice’, except when the latter term is used with respect to a justice of the Supreme Court of the United States in his capacity as such or as a circuit justice.

(b) All laws of the United States in force on September 1, 1948, in which reference is made to the ‘Conference of Senior Circuit Judges’, or to the ‘Judicial Conference of Senior Circuit Judges’ are amended by substituting ‘Judicial Conference of the United States’ for such designations.

(c) All laws of the United States in force on September 1, 1948, in which reference is made to the ‘Conference of Senior Circuit Judges’, or to the ‘Judicial Conference of Senior Circuit Judges’ are amended by substituting ‘Judicial Conference of the United States’ for such designations.

(d) This section shall not be construed to amend historical references to courts or judicial offices which have no present or future application to such courts or offices.”

§ 1251. Original jurisdiction

(a) The Supreme Court shall have original and exclusive jurisdiction of all controversies between two or more States.

(b) The Supreme Court shall have original but not exclusive jurisdiction of:

(1) All actions or proceedings to which ambassadors, other public ministers, consuls, or vice consuls of foreign states are parties;

(2) All controversies between the United States and a State;

(3) All actions or proceedings by a State against the citizens of another State or against aliens.


HISTORICAL AND REVISION NOTES


This section reconciles provisions of sections 341 and 371(7), (8) of title 28, U.S.C. 1940 ed., with Article 3, section 2 and Amendment 11 of the Constitution.

Sections 341 and 371 of title 28, U.S.C. 1940 ed., were not wholly consistent with such constitutional provision. Said section 341 provided that the Supreme Court should have original jurisdiction of controversies between a State and citizens of other States or aliens, whereas the 11th Amendment prohibits an action in any Federal Court against a State by citizens of another State or aliens.

The original jurisdiction conferred on the Supreme Court by Article 3, section 2, of the Constitution is not exclusive by virtue of that provision alone. Congress may provide for or deny exclusiveness. Ames v. Kansas, 1884, 4 S.Ct. 437, 111 U.S. 449, 28 L.Ed. 442; U.S. v. 4,450.72 Acres of Land, Clearwater County, State of Minnesota, D.C. Minn., 1939, 27 F.Supp. 167, affirmed 125 F.2d 636.

Sections 341 and 371 of title 28, U.S.C., 1940 ed., did not confer expressly exclusive jurisdiction on the Supreme Court in civil cases between States. Louisiana v. Texas, 1939, 29 S.Ct. 251, 176 U.S. 1, 44 L.Ed. 347, as has been provided in subsection (a)(1) of the revised section.

The language at the beginning of said section for which said subsection has been substituted, was ambiguous and made it appear that an action by a State against the United States would be within the exclusive jurisdiction of the Supreme Court. However, in U.S. v. Louisiana, 1887, 8 S.Ct. 17, 123 U.S. 32, 31 L.Ed. 69, the Supreme Court, in a case appealed from the Court of Claims, held to the contrary.

So, also, in actions by the United States to condemn lands of a State or to enforce penalties for violation of a Federal statute against a State-owned utility, the United States district courts have jurisdiction. See United States v. State of Utah, 1931, 51 S.Ct. 438, 283 U.S. 64, 75 L.Ed. 844; United States v. 4,450.72 Acres of Land, Clearwater County, State of Minnesota, D.C.Minn. 1939, 27 F.Supp. 167, affirmed 125 F.2d 636; United States v. State of California, 1936, 56 S.Ct. 421, 297 U.S. 175, 80 L.Ed. 567.

The intent of section 371(7), (8) of title 28, U.S.C., 1940 ed., that the jurisdiction of the courts of the United States should be exclusive of the courts of the States in controversies to which a State is a party, and suits against ambassadors, public ministers, consuls and vice consuls, is preserved and clarified by this section and section 1331 of this title.

The revised section preserves existing law with reference to foreign ambassadors, other public ministers and consuls. Under subsection (a)(2) the Supreme Court has exclusive jurisdiction of actions or proceedings against the ambassadors or public ministers of other nations.
Under subsection (b)(1) the Supreme Court has original but not exclusive jurisdiction of actions or proceedings brought by such ambassadors or other public ministers or to which consuls or vice consuls of other nations are parties.

Section 1351 of this title gives to United States district courts, exclusive of the courts of the States, jurisdiction of civil actions against such consuls and vice consuls.


Changes were made in phrasing.

AMENDMENTS

1978—Subsec. (a). Pub. L. 95–393, § 8(b)(1), designated introductory provision of subsec. (a) and (a)(1) as (a), and struck out “(2) All actions or proceedings against ambassadors or other public ministers of foreign states or their domestics or domestic servants, not inconsistent with the law of nations.”

Subsec. (b)(1). Pub. L. 95–393, §§ 8(b)(2), substituted “to which ambassadors, other public ministers, consuls, or” for “brought by ambassadors or other public ministers of foreign states or to which consuls or”.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–393 effective at the end of the ninety-day period beginning on Sept. 30, 1978, see section 9 of Pub. L. 95–393, set out as an Effective Date note under section 254a of Title 22, Foreign Relations and Intercourse.

STATUTES GOVERNING WRITS OF ERROR TO APPLY TO APPEALS


EFFECTIVE DATE OF REPEAL

Repeal effective ninety days after June 27, 1988, except that such repeal not to apply to cases pending in Supreme Court on such effective date or affect right to review or manner of reviewing judgment or decree of court which was entered into before such effective date, see section 7 of Pub. L. 100–352, set out as a note under section 1254 of this title.

§ 1253. Direct appeals from decisions of three-judge courts

Except as otherwise provided by law, any party may appeal to the Supreme Court from an order granting or denying, after notice and hearing, an interlocutory or permanent injunction in any civil action, suit or proceeding required by any Act of Congress to be heard and determined by a district court of three judges.

(June 25, 1948, ch. 646, 62 Stat. 928.)

HISTORICAL AND REVISION NOTES


This section consolidates the provisions of sections 47, 47a, 380, and 380a of title 28, U.S.C., 1940 ed., relating to direct appeals from decisions of three-judge courts involving orders of the Interstate Commerce Commission or holding State or Federal laws repugnant to the Constitution of the United States.

For distribution of other provisions of the sections on which this revised section is based, see Distribution Table.

The language in section 380 of title 28, U.S.C., 1940 ed., referring to restraining the enforcement or execution of an order made by an administrative board or a State officer was omitted as covered by this revised section and section 2251 of this title.

Words in section 380a of title 28, U.S.C., 1940 ed., “shall not be construed to be in derogation of any right of direct appeal to the Supreme Court of the United States under existing provisions of law,” were omitted as unnecessary.

Section 217 of title 7, U.S.C., 1940 ed., Agriculture, provides for a three-judge court in proceedings to suspend or restrain the enforcement or orders of the Secretary of Agriculture under the Packers and Stockyards Act of 1921.


Section 28 of title 15, U.S.C., 1940 ed., Commerce and Trade, and section 44 of title 49, U.S.C., 1940 ed., Transportation, are identical and provide for convening of a three-judge court to hear and determine civil cases arising under the Sherman anti-trust law and the Interstate Commerce Act, respectively, wherein the United States is plaintiff and when the Attorney General deems such cases of general public importance.


§ 1254. Courts of appeals; certiorari; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

(2) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

(June 25, 1948, ch. 646, 62 Stat. 928; Pub. L. 100–352, § 2(a), (b), June 27, 1988, 102 Stat. 662.)

HISTORICAL AND REVISION NOTES

Section consolidates sections 346 and 347 of title 28, U.S.C., 1940 ed.

(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

(b) For the purposes of this section, the term "highest court of a State" includes the District of Columbia Court of Appeals.


HISTORICAL AND REVISION NOTES

§ 1258. Supreme Court of Puerto Rico; certiorari

Final judgments or decrees rendered by the Supreme Court of the Commonwealth of Puerto Rico may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of the Commonwealth of Puerto Rico is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.


AMENDMENTS

1994—Pub. L. 103–337 substituted “Court of Appeals for the Armed Forces” for “Court of Military Appeals” in section catchline and wherever appearing in text.


§ 1259. Court of Appeals for the Armed Forces; certiorari

Decisions of the United States Court of Appeals for the Armed Forces may be reviewed by the Supreme Court by writ of certiorari in the following cases:

(1) Cases reviewed by the Court of Appeals for the Armed Forces under section 867(a)(1) of title 10.

(2) Cases certified to the Court of Appeals for the Armed Forces by the Judge Advocate General under section 867(a)(2) of title 10.

(3) Cases in which the Court of Appeals for the Armed Forces granted a petition for review under section 867(a)(3) of title 10.

(4) Cases, other than those described in paragraphs (1), (2), and (3) of this subsection, in which the Court of Appeals for the Armed Forces granted relief.


AMENDMENTS


EFFECTIVE DATE

Section effective on the first day of the eighth calendar month beginning after Dec. 6, 1983, see section 12(a)(1) of Pub. L. 98–209, set out as an Effective Date of 1983 Amendment note under section 801 of Title 10, Armed Forces.

CHAPTER 83—COURTS OF APPEALS

§ 1291. Final decisions of district courts.

Final decisions of district courts.

[1292. Interlocutory decisions. Repealed.]

1294. Circuits in which decisions reviewable.


1296. Review of certain agency actions.

AMENDMENTS


1978—Pub. L. 95–596, title II, § 236(b), Nov. 6, 1978, 92 Stat. 2667, directed the addition of item 1293, “Bankruptcy appeals”, 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.


§ 1291. Final decisions of district courts

The courts of appeals (other than the United States Court of Appeals for the Federal Circuit)
shall have jurisdiction of appeals from all final decisions of the district courts 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, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292(c) and (d) and 1295 of this title.


HISTORICAL AND REVISION NOTES


This section rephrases and simplifies paragraphs “First”, “Second”, and “Third” of section 225(a) of title 28, U.S.C., 1940 ed., which referred to each Territory and Possession separately, and to sections 61 and 62 of the Canal Zone Code, section 933(a)(1) of said title relating to jurisdiction of appeals in tort claims cases, and the provisions of section 1356 of title 48, U.S.C., 1940 ed., relating to jurisdiction of appeals from final judgments of the district court for the Canal Zone.

The district courts for the districts of Hawaii and Puerto Rico are embraced in the term “district courts of the United States.” (See definitive section 451 of this title.)

Paragraph “Fourth” of section 225(a) of title 28, U.S.C., 1940 ed., is incorporated in section 1293 of this title.

Words “Fifth. In the United States Court for China, in all cases” in said section 225(a) were omitted. (See reviser’s note under section 411 of this title.)


Section 61 of title 7 of the Canal Zone Code is also incorporated in sections 1291 and 1295 of this title.

In addition to the jurisdiction conferred by this chapter, the courts of appeals also have appellate jurisdiction in proceedings under Title 11, Bankruptcy, and jurisdiction to review:

(1) Orders of the Secretary of the Treasury denying an application for, suspending, revoking, or annulling a basic permit under chapter 8 of title 27;
(2) Orders of the Interstate Commerce Commission, the Federal Communications Commission, the Civil Aeronautics Board, the Board of Governors of the Federal Reserve System and the Federal Trade Commission, based on violations of the antitrust laws or unfair or deceptive acts, methods, or practices in commerce;
(3) Orders of the Secretary of the Army under sections 504, 505 and 516 of title 31, U.S.C., 1940 ed., Navigation and Navigable Waters;
(4) Orders of the Civil Aeronautics Board under chapter 9 of title 49, except orders as to foreign air carriers which are subject to the President’s approval;
(5) Orders under chapter 1 of title 7, refusing to designate boards of trade as contract markets or suspending or revoking such designations, or excluding persons from trading in contract markets;
(6) Orders of the Federal Power Commission under chapter 12 of title 16;
(7) Orders of the Federal Security Administrator under section 371(e) of title 21, in a case of actual controversy as to the validity of any such order, by any person adversely affected thereby;
(8) Orders of the Federal Power Commission under chapter 15B of title 15;
(9) Final orders of the National Labor Relations Board;
(10) Cease and desist orders under section 193 of title 7;
(11) Orders of the Securities and Exchange Commission;
(12) Orders to cease and desist from violating section 1599 of title 7;
(13) Wage orders of the Administrator of the Wage and Hour Division of the Department of Labor under section 208 of title 29;
(14) Orders under sections 81r and 1641 of title 19, U.S.C., 1940 ed., Customs Duties.

The courts of appeals also have jurisdiction to enforce:

(1) Orders of the Interstate Commerce Commission, the Federal Communications Commission, the Civil Aeronautics Board, the Board of Governors of the Federal Reserve System, and the Federal Trade Commission, based on violations of the antitrust laws or unfair or deceptive acts, methods, or practices in commerce;
(2) Final orders of the National Labor Relations Board;
(3) Orders to cease and desist from violating section 1599 of title 7.

The Court of Appeals for the District of Columbia also has jurisdiction to review orders of the Post Office Department under section 576 of title 39 relating to discriminations in sending second-class publications by freight; Second, Maritime Commission orders denying transfer to foreign registry of vessels under subsidy contract; sugar allotment orders; decisions of the Federal Communications Commission granting or refusing applications for construction permits for radio stations, or for radio station licenses, or for renewal or modification of radio station licenses, or suspending any radio operator’s license.

Changes were made in phraseology.

AMENDMENTS

1962—Pub. L. 97–164, § 124, inserted “other than the United States Court of Appeals for the Federal Circuit” after “The court of appeals” and inserted provision that the jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292(c) and (d) and 1295 of this title.


EFFECTIVE DATE OF 1962 AMENDMENT


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. c.16 as required by sections 1 and 8(c) of Pub. L. 85–508, see notes set out under section 81A of this title and preceding section 21 of Title 48, Territories and Insular Possessions.

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 the end of the “transition period”, being the 30-month period beginning Oct.
§ 1292. Interlocutory decisions

(a) Except as provided in subsections (c) and (d) of this section, the courts of appeals shall have jurisdiction of appeals from:

(1) Interlocutory orders of the district courts 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, or of the judges thereof, granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions, except where a direct review may be had in the Supreme Court;

(2) Interlocutory orders appointing receivers, refusing orders to wind up receiverships or to take steps to accomplish the purposes thereof, such as directing sales or other dispositions of property;

(3) Interlocutory decrees of such district courts or the judges thereof determining the rights and liabilities of the parties to admiralty cases in which appeals from final decrees are allowed.

(b) When a district judge, in making in a civil action an order not otherwise appealable under this section, shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall so state in writing in such order. The Court of Appeals which would have jurisdiction of an appeal under section 1292(a) of this title, or when any judge of the United States Court of Federal Claims, in issuing an interlocutory order, includes in the order a statement that a controlling question of law is involved with respect to which there is a substantial ground for difference of opinion and that an immediate appeal from that order may materially advance the ultimate termination of the litigation, the United States Court of Appeals for the Federal Circuit may, in its discretion, permit an appeal to be taken from such order, if application is made to that Court within ten days after the entry of such order.

(2) When the chief judge of the United States Court of Federal Claims issues an order under section 758(b) of this title, or when any judge of the United States Court of Federal Claims, in issuing an interlocutory order, includes in the order a statement that a controlling question of law is involved with respect to which there is a substantial ground for difference of opinion and that an immediate appeal from that order may materially advance the ultimate termination of the litigation, the United States Court of Appeals for the Federal Circuit may, in its discretion, permit an appeal to be taken from such order, if application is made to that Court within ten days after the entry of such order.

(3) Neither the application for nor the granting of an appeal under this subsection shall stay proceedings in the Court of International Trade or in the Court of Federal Claims, as the case may be, unless a stay is ordered by a judge of the Court of International Trade or of the Court of Federal Claims or by the United States Court of Appeals for the Federal Circuit or a judge of that court.

(4)(A) The United States Court of Appeals for the Federal Circuit shall have exclusive jurisdiction of an appeal from an interlocutory order of a district court of the United States, the District Court of Guam, the District Court of the Virgin Islands, or the District Court for the Northern Mariana Islands, granting or denying, in whole or in part, a motion to transfer an action to the United States Court of Federal Claims under section 1631 of this title.

(B) When a motion to transfer an action to the Court of Federal Claims is filed in a district court, no further proceedings shall be taken in the district court until 60 days after the court has ruled upon the motion. If an appeal is taken from the district court’s grant or denial of the motion, proceedings shall be further stayed until the appeal has been decided by the Court of Appeals for the Federal Circuit. The stay of proceedings in the district court shall not bar the granting of preliminary or injunctive relief, where appropriate and where expedition is reasonably necessary. However, during the period in which proceedings are stayed as provided in this subparagraph, no transfer to the Court of Federal Claims pursuant to the motion shall be carried out.

(e) The Supreme Court may prescribe rules, in accordance with section 2072 of this title, to provide for an appeal of an interlocutory decision to the courts of appeals that is not otherwise provided for under subsection (a), (b), (c), or (d).

HISTORICAL AND REVISION NOTES

Section consolidates sections 225(b), 227 and part of 227a of title 28, U.S.C. 1940 ed., with necessary changes in phraseology to effect the consolidation.

The second paragraph of section 225(b) of title 28, U.S.C. 1940 ed., relating to review of decisions of the district courts, under section 9 of the Railway Labor Act (section 159 of title 45), was omitted as covered by section 1291 of this title.

Words in section 227 of title 28, U.S.C. 1940 ed., relating to stay of proceedings pending appeal were omitted as superseded by Federal Rules of Civil Procedure, Rule 73.


Words in section 227 of title 28, U.S.C. 1940 ed., “and sections 346 and 347 of this title shall apply to such cases in the circuit courts of appeals as to other cases therein,” at the end of the first sentence of section 227 of title 28, U.S.C. 1940 ed., were deleted as fully covered by section 1254 of this title, applicable to any case in a court of appeals. Other procedural provisions of said section 227 were omitted as covered by section 2101 et seq. of this title.

In subsection (4), which is based on section 227a of title 28, U.S.C. 1940 ed., words “civil actions” were substituted for “suit in equity” and word “judgment” was substituted for “decree,” in view of Rules 2 and 54 of the Federal Rules of Civil Procedure.

The provision of sections 227 and 227a of title 28, U.S.C. 1940 ed., that appeal must be taken within thirty days after entry of order, decree or judgment is incorporated in section 2101 of this title.

The provision of section 227a of title 28, U.S.C. 1940 ed., relating to stay of proceedings pending appeal, were omitted as superseded by Rule 73 of the Federal Rules of Civil Procedure.

The district courts for the districts of Hawaii and Puerto Rico are embraced in the term “district courts of the United States.” (See note to section 451 of this title.) Consequently the specific reference in section 225 of title 28, U.S.C. 1940 ed., to “the United States district courts for Hawaii” was omitted.

The District Court for the District of Puerto Rico is not enumerated in section 225(b) of title 28, U.S.C. 1940 ed., nevertheless subsection (2) of the revised section does not except such court. Thus in conformity with the last sentence of section 864, title 48, U.S.C. 1940 ed., for distribution of said section 864, see Distribution Table.

Section 61 of title 7 of the Canal Zone Code is also incorporated in sections 1291 and 1294 of this title.

AMENDMENTS
1922—Subsec. (d)(2). Pub. L. 102–572, §§ 902(b)(1), 906(c), substituted “When the chief judge of the United States Court of Federal Claims issues an order under section 798(b) of this title, or when any judge of the United States Court of Federal Claims” for “When any judge of the United States Claims Court”.


Subsec. (d)(4). Pub. L. 102–572, § 902(b), substituted “United States Court of Federal Claims” for “United States Claims Court” in subpar. (A) and “Court of Federal Claims” for “Claims Court” in two places in subpar. (B).


1982—Subsec. (d)(4). Pub. L. 97–164, § 125(a)(1), substituted “Except as provided in subsections (c) and (d) of this section, the courts” for “The courts” in introductory provisions.


§ 1294. Circuits in which decisions reviewable

Except as provided in sections 1293(c), 1293(d), and 1295 of this title, appeals from reviewable decisions of the district and territorial courts shall be taken to the courts of appeals as follows:

1. From a district court of the United States to the court of appeals for the circuit embracing the district.

2. From the United States District Court for the District of the Canal Zone, to the Court of Appeals for the Fifth Circuit.

3. From the District Court of the Virgin Islands, to the Court of Appeals for the Third Circuit.

4. From the District Court of Guam, to the Court of Appeals for the Ninth Circuit.

1978—Pub. L. 95–598 directed the amendment of section 160(a) of this title and bankruptcy courts, respectively.

HISTORICAL AND REVISION NOTES


Section consolidates the venue provisions of sections 645, 864, 865, and 1392 of title 48, U.S.C. 1940 ed., Territories and Insular Possessions, and sections 1141(b)(1)(2)(3) to title 26, U.S.C. 1940 ed., Internal Revenue Code and sections 225(d) and 865 of said title 48. Other provisions of said section 864, not incorporated in this section and sections 41 and 119 of this title, were retained in title 48. Other provisions of said section 1356 are incorporated in section 1291 of this title. Other provisions of said section 1392 were also retained in title 48.

Paragraph (3) of section 1141(b) of title 26, U.S.C. 1940 ed., was omitted as executed. It made such subsection applicable to all decisions of the Board of Tax Appeals (Tax Court) rendered on and after May 10, 1934.

Provisions of section 225(d) of title 28, U.S.C. 1940 ed., for review of the decisions of the United States Court for China were omitted. (See reviser’s note under section 411 of this title.)

Subsection (b) rephrases and rearranges the relevant provisions of section 1141(b)(1)(2)(3) of title 26, U.S.C. 1940 ed.

Specific reference to the United States district courts for the districts of Hawaii, Puerto Rico and District of Columbia was omitted as unnecessary, these courts being embraced in the definition of “a district court of the United States” contained in section 451 of this title.

Administrative orders, referred to in reviser’s note under section 1291 of this title, are reviewable and enforceable in the following circuits:

ORDERS REVIEWABLE

1. Alcoholic permit orders—in the District of Columbia or in the circuit where the applicant or permittee resides or has his principal place of business;

2. Antitrust and unfair trade orders—in the circuit where unlawful act occurred or petitioner resides or carries on business;

3. Bridge alteration; cost orders—in the circuit where bridge is wholly or partly located;

4. Civil aeronautics orders—in the District of Columbia or circuit where petitioner resides or has his principal place of business;

5. Commodity exchange orders—in the circuit where board of trade has its principal place of business or in circuit where petitioner for review of exclusion order carries on business;

6. Electric and water power orders—in the District of Columbia or circuit where licensee or public utility to which order relates is located or has its principal place of business;

7. Food, drug and cosmetic orders—in the circuit where person adversely affected resides or has his principal place of business;

8. Gas orders—in the District of Columbia or circuit where company to which order relates is located or has its principal place of business;

9. National Labor Relations Board’s final orders—in the District of Columbia or circuit where unfair labor practice occurred or violator resides or transacts business;

10. Packers cease and desist orders—in the circuit where packer has his principal place of business;

11. Radio license decisions—in the District of Columbia;

12. Securities and Exchange Commission orders—in the District of Columbia or circuit where petitioner resides or has his principal place of business;

13. Seed orders—in the circuit where violator resides or has his principal place of business;

14. Wage orders—in the District of Columbia or circuit where petitioner resides or has his principal place of business;

15. Foreign Trade Zones Board orders—in the circuit where the Zone is located;

16. Customhouse broker license orders—in circuit where applicant or licensee resides or has his principal place of business.

ORDERS ENFORCEABLE

1. Antitrust and unfair trade orders—in the circuit where unlawful act occurred or person allegedly committing unlawful act resides or carries on business;

2. National Labor Relations Board’s final orders—in the circuit where unfair labor practice occurred or violator resides or transacts business;

3. Seed orders—in the circuit where violator resides or has his principal place of business.

Section 61 of title 7 of the Canal Zone Code is also incorporated in sections 1291 and 1292 of this title.

Changes were made in phrasing.

By Senate amendment, this section was renumbered “1294”. and subsec. (b), which related to the Tax Court, was eliminated. Therefore, as finally enacted, sections 1141(b)(1)(2)(3) of Title 26, U.S.C., Internal Revenue Code 1939, was not one of the sources of this section. The Senate amendments also eliminated section 1141 of the Internal Revenue Code 1939 from the schedule of repeals. See Senate Report No. 1599.

AMENDMENTS

1982—Pub. L. 97–164 substituted “Except as provided in sections 1293(c), 1293(d), and 1295 of this title, appeals from reviewable decisions”, for “Appeals from reviewable decisions” in introductory provisions.

1978—Pub. L. 95–598 directed the amendment of section by substituting “district, bankruptcy, and territorial”, for “district and territorial”. and by adding pars. (5) and (6) relating to panels designated under section 160(a) of this title and bankruptcy courts, respectively, which amendment did not become effective pursuant to section 162(b) of Pub. L. 95–598, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.
John Doe: Title 48, Territories and Insular Possessions.

under section 81A of this title and preceding section 21 by sections 1 and 8(c) of Pub. L. 85–508, see notes set out No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, as required

admission of Alaska into the Union pursuant to Proc.

Federal Circuit shall have exclusive jurisdic -

see section 402 of Pub. L. 97–164, set out as a note under

as required by sections 1 and 7(c) of Pub. L. 86–3, Mar.

Proc. No. 3309, Aug. 21, 1959, 25 F.R. 6868, 73 Stat. c74,

Union was accomplished Aug. 25, 1959, on issuance of

State of Hawaii into the Union, see note set out under

of Title 48, Territories and Insular Possessions.

§ 1295. Jurisdiction of the United States Court of Appeals for the Federal Circuit

(a) The United States Court of Appeals for the Federal Circuit shall have exclusive jurisdict-

(1) of an appeal from a final decision of a dist-

(2) of an appeal from a final decision of a dist-

(3) of an appeal from a final decision of the

© 2023 Copyright of the United States Court of Appeals for the Federal Circuit.

(b) The head of any executive department or agency may, with the approval of the Attorney General, refer to the Court of Appeals for the Federal Circuit for judicial review any final de-

pursuant to the terms of any contract with the
United States awarded by that department or agency which the head of such department or agency has concluded is not entitled to finality pursuant to the review standards specified in section 7107(b) of title 41. The head of each executive department or agency shall make any referral under this section within one hundred and twenty days after the receipt of a copy of the final appeal decision.

(b) The Court of Appeals for the Federal Circuit shall review the matter referred in accordance with the standards specified in section 7107(b) of title 41. The court shall proceed with judicial review on the record made before the board of contract appeals on matters so referred as in other cases pending in such court, shall determine the issue of finality of the appeal decision, and shall, if appropriate, render judgment thereon, or remand the matter to any administrative or executive body or official with such direction as it may deem proper and just.


AMENDMENT OF SUBSECTION (a)(4)(A)

Pub. L. 112–29, §7(c)(2), (e), Sept. 16, 2011, 125 Stat. 314, 315, provided that, effective upon the expiration of the 1-year period beginning on Sept. 16, 2011, and applicable to proceedings commenced on or after that effective date, subsection (a)(4)(A) of this section is amended to read as follows: “the Patent Trial and Appeal Board of the United States Patent and Trademark Office with respect to a patent application, derivation proceeding, reexamination, post-grant review, or inter partes review under title 35, at the instance of a party who exercised that party’s right to participate in the applicable proceeding before or appeal to the Board, except that an applicant or a party to a derivation proceeding may also have remedy by civil action pursuant to section 145 or 146 of title 35; an appeal under this subparagraph of a decision of the Board with respect to an application or derivation proceeding shall waive the right of such applicant or party to proceed under section 145 or 146 of title 35.” See 2011 Amendment Notes below.

REFERENCES IN TEXT

The Harmonized Tariff Schedule of the United States, referred to in subsec. (a)(7), is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of Title 19, Customs Duties.


Section 5 of the Emergency Petroleum Allocation Act of 1973, referred to in subsec. (a)(12), is section 5 of Pub. L. 93–159, which was classified to section 754 of Title 15, Commerce and Trade, and was omitted from the Code.

Section 506(c) of the Natural Gas Policy Act of 1978, referred to in subsec. (a)(13), is classified to section 3416(c) of Title 15.


AMENDMENTS

2011—Subsec. (a)(1). Pub. L. 112–29, §19(b), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “of an appeal from a final decision of a district court of the United States, the United States District Court for the District of the Canal Zone, the District Court of the Virgin Islands, or the District Court for the Northern Mariana Islands, if the jurisdiction of that court was based, in whole or in part, on section 1836 of this title, except that a case involving a claim arising under any Act of Congress relating to copyrights, exclusive rights in mask works, or trademarks and no other claims under section 1338(a) shall be governed by sections 1291, 1292, and 1294 of this title.”

Subsec. (a)(4)(A). Pub. L. 112–29, §7(c)(2), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “the Board of Patent Appeals and Interferences of the United States Patent and Trademark Office with respect to patent applications and interferences, at the instance of an applicant for a patent or any party to a patent interference, and any such appeal shall waive the right of such applicant or party to proceed under section 145 or 146 of title 35.”


Subsec. (b). Pub. L. 111–350, §5(g)(5)(B), substituted “section 7107(b) of title 41” for “section 10(b) of the Contract Disputes Act of 1978 (41 U.S.C. 607(b)(1))”.

Subsec. (c). Pub. L. 111–350, §5(g)(5)(C), substituted “section 7107(b) of title 41” for “section 10(b) of the Contract Disputes Act of 1978”.


Subsec. (a)(4)(C). Pub. L. 106–113, §1000(a)(9) [title IV, §4732(b)(2)], substituted “145, 146, or 154(b)” for “145 or 146”.


Subsec. (a)(11) to (14). Pub. L. 102–572, §102(c), added pars. (11) to (14).


Subsec. (a)(7). Pub. L. 100–418 substituted “U.S. note 6 to subchapter X of chapter 98 of the Harmonized Tariff Schedule of the United States” for “headnote 6 to schedule 8, part 4, of the Tariff Schedules of the United States”.


EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by section 7(c)(2) of Pub. L. 112–29 effective upon the expiration of the 1-year period beginning on Sept. 16, 2011, and applicable to proceedings commenced on or after that effective date, with certain exceptions, see section 9(e) of Pub. L. 112–29, set out as a note under section 6 of Title 35, Patents.

Pub. L. 112–29, §19(e), Sept. 16, 2011, 125 Stat. 333, provided that: “The amendments made by this section [en-
act section 1454 of this title and section 299 of Title 35, Patents, and amending this section and section 1338 of this title shall apply to any civil action commenced on or after the date of the enactment of this Act [Sept. 16, 2011]."

**Effective Date of 1999 Amendment**

Amendment by section 1000(a)(9) [title IV, §4602(b)(2)] of Pub. L. 106-113 effective on date that is 6 months after Nov. 29, 1999, and, except for design patent application filed under chapter 16 of Title 35, applicable to any application filed on or after such date, see section 1000(a)(9) [title IV, §4605(a)] of Pub. L. 106-113, set out as a note under section 154 of Title 35, Patents.

Amendment by section 1000(a)(9) [title IV, §4732(b)(14)] of Pub. L. 106-113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, §4731] of Pub. L. 106-113, set out as a note under section 1 of Title 35, Patents.

**Effective Date of 1992 Amendment**

Amendment by section 102(c) of Pub. L. 102-572 effective Jan. 1, 1993, see section 1101(a) of Pub. L. 102-572, set out as a note under section 905 of Title 2, The Congress.


**Effective Date of 1988 Amendment**

Amendment by Pub. L. 100-418 effective Jan. 1, 1989, and applicable with respect to articles entered on or after such date, see section 1212(b)(1) of Pub. L. 100-418, set out as an Effective Date note under section 3601 of Title 19, Customs Duties.

**Effective Date of 1984 Amendment**

Amendment by Pub. L. 98-622 applicable to all United States patents granted before, on, or after Nov. 8, 1984, and to all applications for United States patents pending on or filed after that date, except as otherwise provided, see section 106 of Pub. L. 98-622, set out as an Effective Date note under section 171 of this title.

**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.

**Abolition of Temporary Emergency Court of Appeals**

Section 103(d), (e) of Pub. L. 102-572 provided that:

“(d) ABOLITION OF COURT.—The Temporary Emergency Court of Appeals created by section 211(b) of the Economic Stabilization Act of 1970 [Pub. L. 91-379, formerly set out as a note under section 1904 of Title 12, Banks and Banking] is abolished, effective 6 months after the date of the enactment of this Act [Oct. 29, 1992].

(e) PENDING CASES.—(1) Any appeal which, before the effective date of abolition described in subsection (d), is pending in the Temporary Emergency Court of Appeals but has not been submitted to a panel of such court as of that date shall be assigned to the United States Court of Appeals for the Federal Circuit as though the appeal had originally been filed in that court.

(2) Any case which, before the effective date of abolition described in subsection (d), has been submitted to a panel of the Temporary Emergency Court of Appeals and as to which the mandate has not been issued as of that date shall remain with that panel for all purposes and notwithstanding the provisions of sections 291 and 292 of title 28, United States Code, that panel shall be assigned to the United States Court of Appeals for the Federal Circuit for the purpose of deciding such case.”

**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 the 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.

§ 1296. Review of certain agency actions

(a) JURISDICTION.—Subject to the provisions of chapter 179, the United States Court of Appeals for the Federal Circuit shall have jurisdiction over a petition for review of a final decision under chapter 5 of title 3 of—

(1) an appropriate agency (as determined under section 154 of title 3);

(2) the Federal Labor Relations Authority made under part D of subchapter II of chapter 5 of title 3, notwithstanding section 7123 of title 5; or

(3) the Secretary of Labor or the Occupational Safety and Health Review Commission, made under part C of subchapter II of chapter 5 of title 3.

(b) FILING OF PETITION.—Any petition for review under this section must be filed within 30 days after the date the petitioner receives notice of the final decision.


**Prior Provisions**


**Effective Date**

Section 3(d) of Pub. L. 104-331 provided that: “The amendments made by this section (enacting this section and sections 1415 and 3903 to 3908 of this title and amending sections 1346 and 2402 of this title) shall take effect on October 1, 1997.”

**Chapter 85—District Courts; Jurisdiction**

Sec. 1330. Actions against foreign states.

1331. Federal question.

1332. Diversity of citizenship; amount in controversy; costs.

1333. Admiralty, maritime and prize cases.

1334. Bankruptcy cases and proceedings.

1335. Interpleader.

1336. Surface Transportation Board's orders.

1337. Commerce and antitrust regulations; amount in controversy.

1338. Patents, plant variety protection, copyrights, mask works, designs, trademarks, and unfair competition.

1339. Postal matters.

1340. Internal revenue; customs duties.

1341. Taxes by States.

1342. Rate orders of State agencies.

1343. Civil rights and elective franchise.

1344. Election disputes.
§ 1330

TITLE 28—JUDICIARY AND JUDICIAL PROCEDURE

Page 338

Sec. 1345. United States as plaintiff.
1346. United States as defendant.
1347. Partition action where United States is joint tenant.
1348. Banking association as party.
1349. Corporation organized under federal law as party.
1350. Alien’s action for tort.
1351. Consuls, vice consuls, and members of a diplomatic mission as defendant.
1352. Bonds executed under federal law.
1353. Indian allotments.
1354. Land grants from different states.
1355. Fine, penalty or forfeiture.
1356. Seizures not within admiralty and maritime jurisdiction.
1357. Injuries under Federal laws.
1358. Eminent domain.
1359. Parties collusively joined or made.
1360. State civil jurisdiction in actions to which Indians are parties.
1361. Action to compel an officer of the United States to perform his duty.
1362. Indian tribes.
1363. Jurors’ employment rights.
1364. Direct actions against insurers of members of diplomatic missions and their families.
1365. Senate actions.
1367. Supplemental jurisdiction.
1368. Counterclaims in unfair practices in international trade.
1369. Multiparty, multijurisdictional actions.

AMENDMENTS

1978—Pub. L. 95–596, title II, §238(b), Nov. 6, 1978, 92 Stat. 2588, directed the substitution of “Bankruptcy appeals” for “Bankruptcy matters and proceedings” in item 1334, which amendment did not become effective pursuant to section 402(b) of Pub. L. 95–596, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.
Pub. L. 95–393, §§7(b), (a)(2), Sept. 30, 1978, 92 Stat. 810, substituted “Consuls, vice consuls, and members of a diplomatic mission as defendant” for “Consuls and vice consuls as defendants” in item 1331 and added item 1364 “Direct actions against insurers of members of diplomatic missions and their families”.

§ 1330. Actions against foreign states

(a) The district courts shall have original jurisdiction without regard to amount in controversy of any nonjury civil action against a foreign state as defined in section 1603(a) of this title as to any claim for relief in personam with respect to which the foreign state is not entitled to immunity either under sections 1605–1607 of this title or under any applicable international agreement.

(b) Personal jurisdiction over a foreign state shall exist as to every claim for relief over which the district courts have jurisdiction under subsection (a) where service has been made under section 1608 of this title.

(c) For purposes of subsection (b), an appearance by a foreign state does not confer personal jurisdiction with respect to any claim for relief not arising out of any transaction or occurrence enumerated in sections 1605–1607 of this title.


EFFECTIVE DATE

Section effective 90 days after Oct. 21, 1976, see section 8 of Pub. L. 94–583, set out as a note under section 1602 of this title.

§ 1331. Federal question

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.


HISTORICAL AND REVISION NOTES


Jurisdiction of federal questions arising under other sections of this chapter is not dependent upon the amount in controversy. (See annotations under former section 41 of title 28, U.S.C., and 35 C.J.S., p. 833 et seq., §§30–43. See, also, reviser’s note under section 1332 of this title.)
Words “wherein the matter in controversy exceeds the sum or value of $3,000, exclusive of interest and costs,” were added to conform to rulings of the Supreme Court. See construction of provision relating to jurisdictional amount requirement in cases involving a Federal question in United States v. Sayward, 16 S.Ct. 371, 160 U.S. 493, 40 L.Ed. 508; Fishback v. Western Union Tel. Co., 16 S.Ct. 506, 161 U.S. 493, 40 L.Ed. 630; and Halt v. Indiana Manufacturing Co., 1900, 20 S.Ct. 272, 176 U.S. 68, 44 L.Ed. 374.

Words “all civil actions” were substituted for “all suits of a civil nature, at common law or in equity” to conform with Rule 2 of the Federal Rules of Civil Procedure.

Words “or treatises” were substituted for “or treatises made, or which shall be made under their authority,” for purposes of brevity.

The remaining provisions of section 41(1) of title 28, U.S.C., 1940 ed., are incorporated in sections 1332, 1341, 1342, 1345, 1354, and 1359 of this title.

Changes were made in arrangement and phraseology.

AMENDMENTS

1980—Pub. L. 96–486 struck out “; amount in controversy; costs” in section catchline, struck out minimum amount in controversy requirement of $10,000 for original jurisdiction in federal question cases which neces-
sarily striking the exception to such required mini-
mum amount that authorized original jurisdiction in actions brought against the United States, any agency thereof, or any officer or employee thereof in an offi-
cial capacity, struck out provision authorizing the dis-

1976—Subsec. (a), Pub. L. 94–574 struck out $10,000 ju-

1958—Pub. L. 85–554 included costs in section catch-

EFFECTIVE DATE OF 1980 AMENDMENT; APPLICABILITY

Section 4 of Pub. L. 96–486 provided: “This Act [amending this section and section 2072 of Title 15, Commerce and Trade, and enacting provisions set out as a note under section 1 of this title] shall apply only in the case of actions com-

EFFECTIVE DATE OF 1958 AMENDMENT

Section 3 of Pub. L. 85–554 provided that: “This Act [amending this section and sections 1332 and 1346 of this title] shall become effective after the date of the enactment of this Act [July 23, 1958].”

§ 1332. Diversity of citizenship; amount in con-

The district courts shall have original ju-

(a) The district courts shall have original ju-

(b) Except when express provision therefor is

(c) For the purposes of this section and section

1411 of this title—

(1) a corporation shall be deemed to be a cit-

(2) The district courts shall have original ju-

(3) citizens of different States and in which

(4) a foreign state, defined in section 1603(a) of

Every State and foreign state of which

The insured shall be deemed to be a citizen only of

The legal representative of the estate of a
decedent shall be deemed to be a citizen only of

the same State as the decedent, and the legal

representative of an infant or incom-

petent shall be deemed to be a citizen only of

the same State as the infant or incompetent.

(d)(1) In this subsection—

(A) the term “class” means all of the class

members in a class action;

(B) the term “class action” means any civil

action filed under rule 23 of the Federal Rules

of Civil Procedure or similar State statute or

rule of judicial procedure authorizing an ac-

tion to be brought by 1 or more representative

persons as a class action;

(C) the term “class certification order” means

an order issued by a court approving the treat-

ment of some or all aspects of a civil action

as a class action; and

(D) the term “class members” means the

persons (named or unnamed) who fall within

the definition of the proposed or certified class

in a class action.

(2) The district courts shall have original ju-

The plaintiff shall be deemed a citizen only of

(1) citizens of different States;

(2) citizens of a State and citizens or sub-

jects of a foreign state who are lawfully ad-

mitted for permanent residence in the United

States and are domiciled in the same State;

(3) citizens of different States and in which

citizens or subjects of a foreign state are addi-
tional parties; and

(4) a foreign state, defined in section 1603(a) of

this title, as plaintiff and citizens of a State

or of different States.

the required amount in controversy, com-

puted without regard to set-off or counterclaim and ex-
clusive of interest and costs, the district court
may deny costs to the plaintiff and, in addition,
may impose costs on the plaintiff.

may impose costs on the plaintiff.

A corporation shall be deemed to be a citizen
only of the State or foreign state where it has its principal place of
business, except that in any direct action against the insurer of a policy or contract of
liability insurance, whether incorporated or unincorporated, to which action the insured is
not joined as a party-defendant, such insurer
shall be deemed a citizen of—

A corporation shall be deemed to be a cit-

Every State and foreign state by which

the insurer has been incorporated; and

(2) the legal representative of the estate of a
decedent shall be deemed to be a citizen only of

the same State as the decedent, and the legal

representative of an infant or incom-

petent shall be deemed to be a citizen only of

the same State as the infant or incompetent.

(1) any member of a class of plaintiffs is a

citizen of a State different from any defend-
ant;

(2) any member of a class of plaintiffs is a

citizen of a State different from any defend-
ant;

(3) any member of a class of plaintiffs is a

citizen of a State different from any defend-
ant;
§ 1332

Title 28—Judiciary and Judicial Procedure

Page 340

Every state and any defendant is a citizen of a State; or

(C) any member of a class of plaintiffs is a citizen of a State and any defendant is a foreign state or a citizen or subject of a foreign state.

(3) A district court may, in the interests of justice and looking at the totality of the circumstances, decline to exercise jurisdiction under paragraph (2) over a class action in which greater than one-third but less than two-thirds of the members of all proposed plaintiff classes in the aggregate and the primary defendants are citizens of the State in which the action was originally filed based on consideration of—

(A) whether the claims asserted involve matters of national or interstate interest;

(B) whether the claims asserted will be governed by laws of the State in which the action was originally filed or by the laws of other States;

(C) whether the class action has been pleaded in a manner that seeks to avoid Federal jurisdiction;

(D) whether the action was brought in a forum with a distinct nexus with the class members, the alleged harm, or the defendants;

(E) whether the number of citizens of the State in which the action was originally filed in all proposed plaintiff classes in the aggregate is substantially larger than the number of citizens from any other State, and the citizenship of the other members of the proposed class is dispersed among a substantial number of States; and

(F) whether, during the 3-year period preceding the filing of that class action, 1 or more other class actions asserting the same or similar claims on behalf of the same or other persons have been filed.

(4) A district court shall decline to exercise jurisdiction under paragraph (2)—

(A)(i) over a class action in which—

(I) greater than two-thirds of the members of all proposed plaintiff classes in the aggregate are citizens of the State in which the action was originally filed;

(aa) from whom significant relief is sought by members of the plaintiff class;

(bb) whose alleged conduct forms a significant basis for the claims asserted by the proposed plaintiff class; and

(bb) who is a citizen of the State in which the action was originally filed; and

(III) principal injuries resulting from the alleged conduct or any related conduct of each defendant were incurred in the State in which the action was originally filed; and

(ii) during the 3-year period preceding the filing of that class action, no other class action has been filed asserting the same or similar factual allegations against any of the defendants on behalf of the same or other persons; or

(B) two-thirds or more of the members of all proposed plaintiff classes in the aggregate, and the primary defendants, are citizens of the State in which the action was originally filed.

(5) Paragraphs (2) through (4) shall not apply to any class action in which—

(A) the primary defendants are States, State officials, or other governmental entities against whom the district court may be foreclosed from ordering relief; or

(B) the number of members of all proposed plaintiff classes in the aggregate is less than 100.

(6) In any class action, the claims of the individual class members shall be aggregated to determine whether the matter in controversy exceeds the sum or value of $5,000,000, exclusive of interest and costs.

(7) Citizenship of the members of the proposed plaintiff classes shall be determined for purposes of paragraphs (2) through (6) as of the date of filing of the complaint or amended complaint, or, if the case stated by the initial pleading is not subject to Federal jurisdiction, as of the date of service by plaintiffs of an amended pleading, motion, or other paper, indicating the existence of Federal jurisdiction.

(8) This subsection shall apply to any class action before or after the entry of a class certification order by the court with respect to that action.

(9) Paragraph (2) shall not apply to any class action that solely involves a claim—


(B) that relates to the internal affairs or governance of a corporation or other form of business enterprise and that arises under or by virtue of the laws of the State in which such corporation or business enterprise is incorporated or organized; or

(C) that relates to the rights, duties (including fiduciary duties), and obligations relating to or created by or pursuant to any security (as defined under section 2(a)(1) of the Securities Act of 1933 (15 U.S.C. 77a(a)(1)) and the regulations issued thereunder).

(10) For purposes of this subsection and section 1453, an unincorporated association shall be deemed to be a citizen of the State where it has its principal place of business and the State under whose laws it is organized.

(11)(A) For purposes of this subsection and section 1453, a mass action shall be deemed to be a class action removable under paragraphs (2) through (10) if it otherwise meets the provisions of those paragraphs.

(B)(i) As used in subparagraph (A), the term "mass action" means any civil action (except a civil action within the scope of section 1711(2)) in which monetary relief claims of 100 or more persons are proposed to be tried jointly on the ground that the plaintiffs' claims involve common questions of law or fact, except that jurisdiction shall exist only over those plaintiffs whose claims in a mass action satisfy the jurisdictional amount requirements under subsection (a).

1 So in original. Probably should be preceded by "section".

2 So in original. Probably should be "7p(f)(3)".
(ii) As used in subparagraph (A), the term

“mass action” shall not include any civil action in-

which—

(I) all of the claims in the action arise from

an event or occurrence in the State in which

the action was filed, and that allegedly re-
sulted in injuries in that State or in States

to which it is contiguious;

(II) the claims are joined upon motion of a de-
defendant;

(III) all of the claims in the action are as-
serted on behalf of the general public (and not

on behalf of individual claimants or members of a

purported class) pursuant to a State statute

specifically authorizing such action; or

(IV) the claims have been consolidated or

coordinated solely for pretrial proceedings.

(C)(i) Any action(s) removed to Federal court

pursuant to this subsection shall not thereafter

be transferred to any other court pursuant to

section 1407, or the rules promulgated there-

under, unless a majority of the plaintiffs in the

action request transfer pursuant to section 1407.

(ii) This subparagraph will not apply—

(I) to cases certified pursuant to rule 23

of the Federal Rules of Civil Procedure; or

(II) if plaintiffs propose that the action pro-

ceed as a class action pursuant to rule 23 of


(D) The limitations periods on any claims as-
serted in a mass action that is removed to Fed-

eral court pursuant to this subsection shall be
deemed tolled during the period that the action

is pending in Federal court.

(e) The word “States”, as used in this section,

includes the Territories, the District of Colum-

bia, and the Commonwealth of Puerto Rico.

(June 25, 1948, ch. 646, 62 Stat. 930; July 26, 1956,

ch. 740, 70 Stat. 658; Pub. L. 85–554, § 2, July 25,

1958, 72 Stat. 415; Pub. L. 88–439, § 1, Aug. 14, 1964,


Stat. 758.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C. 1940 ed., § 41(1) (Mar. 3, 1911,

ch. 231, § 24, par. 1, 36 Stat. 1091; May 14, 1934, ch. 283, § 1,

48 Stat. 775; Aug. 21, 1937, ch. 729, § 1, 50 Stat. 738; Apr.


Other provisions of section 41(1) of title 28, U.S.C.

1940 ed., are incorporated in sections 1331, 1341, 1342,

1345, 1354, and 1339 of this title. (See reviser’s notes

under said sections.)

Jurisdiction conferred by other sections of this chap-

ter, except section 1335, is not dependent upon diversity

of citizenship. (See annotations under former section 41


See, also, reviser’s note under section 1331 of this title.)

As to citizenship of bank where jurisdiction depends

upon diversity of citizenship, see section 1348 of this
title.

Words “all civil actions” were substituted for “all

suits of a civil nature, at common law or in equity” in

order to conform to Rule 2 of the Federal Rules of Civil

Procedure.

Words “or citizens of the District of Columbia, Ter-

ritory of Hawaii, or Alaska, and any State or Territory”

which were inserted by the amendatory act April 20,
Subsec. (a)(2). Pub. L. 112–63, §101(2), inserted before semicolon at end “, except that the district courts shall not have original jurisdiction under this subsection of an action between citizens of a State and citizens or subjects of a foreign state who are lawfully admitted for permanent residence in the United States and are domiciled in the same State.”

Subsec. (c)(1). Pub. L. 112–63, §102, substituted “every State and foreign state” for “any State”, “has been incorporated and of the State or foreign state” for “it has been incorporated and of the State”, and “such insurer shall be deemed a citizen of” for “such insurer shall be deemed a citizen of the State of which the insured is a citizen, as well as of any State by which the insurer has been incorporated and of the State where it has its principal place of business;” and added subpars. (A) to (C).

2005—Subsecs. (d), (e). Pub. L. 109–2 added subsec. (d) and redesignated former subsec. (d) as (e).

1996—Subsecs. (a), (b). Pub. L. 104–317 substituted “$75,000” for “$50,000”.


Section consolidates certain provisions of sections 41(3), 371(3) and 371(4) of title 28, U.S.C., 1940 ed. Other provisions of sections 41(3) and 371(4), relating to seizures, are incorporated in section 1336 of this title. (See reviser's note thereunder.)

The “saving to suitors” clause in sections 41(3) and 371(3) of title 28, U.S.C., 1940 ed., was changed by substituting the words “any other remedy to which he is otherwise entitled” for the words “the right of a common law remedy where the common law is competent to give it.” The substituted language is simpler and more expressive of the original intent of Congress and is in conformity with Rule 2 of the Federal Rules of Civil Procedure abolishing the distinction between law and equity.

Provisions of section 41(3) of title 28, U.S.C., 1940 ed., based on the 1917 and 1922 amendments, relating to remedies under State workmen’s compensation laws, were deleted. Such amendments were held unconstitutional by the Supreme Court. (See Knickerbocker Ice Co. v. Stewart, 1920, 40 S.Ct. 438, 253 U.S. 149, 64 L.Ed. 834, and State of Washington v. W. C. Dawson & Co., 1924, 44 S.Ct. 302, 294 U.S. 219, 68 L.Ed. 646.)

Words “libellant or petitioner” were substituted for “suitors” to describe moving party in admiralty cases.

Changes were made in phraseology.

1949 ACT

This section amends section 1333(a)(1) of title 28, U.S.C., by substituting “suitors” for “libellant or petitioner” to conform to the language of the law in existence at the time of the enactment of the revision of title 28.

AMENDMENTS

1949—Subd. (1). Act May 24, 1949, substituted “suitors” for “libellant or petitioner”.

§ 1334. Bankruptcy cases and proceedings

(a) Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11.

(b) Except as provided in subsection (c)(2), and notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.

(c)(1) Except with respect to a case under chapter 15 of title 11, nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.

(2) Upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under title 11 but not arising under title 11 or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section, the district court shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction.

(d) Any decision to abstain or not to abstain made under subsection (c) (other than a decision not to abstain in a proceeding described in subsection (c)(2)) is not reviewable by appeal or otherwise by the court of appeals under section 158(d), 1291, or 1292 of this title or by the Supreme Court of the United States under section 1254 of this title. Subsection (c) and this subsection shall not be construed to limit the applicability of the stay provided for by section 362 of title 11, United States Code, as such section applies to an action affecting the property of the estate in bankruptcy.

(e) The district court in which a case under title 11 is commenced or is pending shall have exclusive jurisdiction—

(1) of all the property, wherever located, of the debtor as of the commencement of such case, and of property of the estate; and

(2) over all claims or causes of action that involve construction of section 327 of title 11, United States Code, or rules relating to disclosure requirements under section 327.

(Historical and Revision Notes


Changes in phraseology were made.

AMENDMENTS

2005—Subsec. (b). Pub. L. 109–8, § 324(a)(1), substituted “Except as provided in subsection (e)(2), and notwithstanding” for “Notwithstanding”.

Subsec. (c)(1). Pub. L. 109–8, § 302(c)(2), substituted “Except with respect to a case under chapter 15 of title 11, nothing in” for “Nothing in”.

Subsec. (d). Pub. L. 109–8, § 1219, substituted “made under subsection (c)” for “made under this subsection” and “Subsection (c) and this subsection” for “This subsection”.

Subsec. (e). Pub. L. 109–8, § 324(a)(2), added subsec. (e) and struck out former subsec. (e) which read as follows:—

“The district court in which a case under title 11 is commenced or is pending shall have exclusive jurisdiction of all the property, wherever located, of the debtor as of the commencement of such case, and of property of the estate.”

1994—Subsecs. (c)(2), (d), Pub. L. 103–394, § 104(b)(2), inserted “(other than a decision not to abstain in a proceeding described in subsection (c)(2))” after “subsection” in second sentence of subsec. (c)(2) and designated that sentence and third sentence of subsec. (c)(2) as subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 103–394, § 104(b)(1), redesignated subsec. (d) as (e).

1990—Subsec. (c)(2), Pub. L. 101–650 inserted in second sentence “or not to abstain” after “to abstain” and “by the court of appeals under section 158(d), 1291, or 1292 of this title or by the Supreme Court of the United States under section 1254 of this title” before period at end.

1986—Subsec. (d), Pub. L. 99–554 substituted “and of property of the estate” for “and of the estate.”

1984—Pub. L. 98–353 in amending section generally, substituted “cases” for “matters” in section catchline, designated existing provision as subsec. (a), and in subsec. (a) as so designated, substituted “Except as provided in subsection (b) of this section, the district” for “The district” and “original and exclusive jurisdiction of all cases under title 11” for “original jurisdiction,
exclusive of the courts of the States, of all matters and proceedings in bankruptcy,” and added subsecs. (b) to (d).

1978—Pub. L. 95–598 directed the general amendment of section to relate to bankruptcy appeals, 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.

**Effective Date of 2005 Amendment**

Pub. L. 109–8, title III, §324(b), Apr. 20, 2005, 119 Stat. 98, provided that: “This section [amending this section] shall only apply to cases filed after the date of enactment of this Act [Apr. 20, 2005].”

Amendment by sections 802(c)(2) and 1219 of Pub. L. 109–8 effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under Title 11, Bankruptcy, before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as a note under section 101 of Title 11.

**Effective Date of 2004 Amendment**

Amendment by Pub. L. 103–394 effective Oct. 27, 1994, see section 302(a) of Pub. L. 99–554, set out as an Effective Date note under section 581 of this title.

**Effective Date of 2003 Amendment**


**Effective Date of 2002 Amendment**


**Effective Date of 2001 Amendment**


**Effective Date of 2000 Amendment**

Amendment by Pub. L. 106–479 effective Nov. 19, 2000, see section 201(a) of Pub. L. 106–479, set out as a note under section 151 of this title.

**Effective Date of 1999 Amendment**


**Effective Date of 1998 Amendment**


**Effective Date of 1997 Amendment**


**Effective Date of 1996 Amendment**


**Effective Date of 1995 Amendment**

Amendment by Pub. L. 104–69 effective Oct. 27, 1995, see section 201(a) of Pub. L. 104–69, set out as a note under section 151 of this title.

**Effective Date of 1994 Amendment**


**Effective Date of 1994 Amendment**


**Effective Date of 1994 Amendment**

Amendment by Pub. L. 103–353 effective Oct. 27, 1994, and not applicable with respect to cases commenced under Title 11, Bankruptcy, before Oct. 27, 1994, see section 702 of Pub. L. 103–353, set out as an Effective Date note preceding section 151 of this title.

**Jurisdiction Over and Transfer of Bankruptcy Cases and Proceedings**

Section 115 of Pub. L. 98–333 provided that:

“(a) On the date of the enactment of this Act [July 10, 1984] the appropriate district court of the United States shall have jurisdiction of—

"(1) cases, and matters and proceedings in cases, under the Bankruptcy Act [former Title 11, Bankruptcy] that are pending on July 10, 1984, or to proceedings arising in or related to such cases, see section 122(a), (b) of Pub. L. 98–333, set out as an Effective Date note under section 151 of this title.

**Historical and Revision Notes**


**Interpleader**

(a) The district courts shall have original jurisdiction of any civil action of interpleader or in the nature of interpleader filed by any person, firm, or corporation, association, or society hav-
§ 1336. Surface Transportation Board’s orders

(a) Except as otherwise provided by Act of Congress, the district courts shall have jurisdiction of any civil action to enforce, in whole or in part, any order of the Surface Transportation Board, and to enjoin or suspend, in whole or in part, any order of the Surface Transportation Board for the payment of money or the collection of fines, penalties, and forfeitures.

(b) When a district court or the United States Court of Federal Claims refers a question or issue to the Surface Transportation Board for determination, the court which referred the question or issue shall have exclusive jurisdiction of a civil action to enforce, enjoin, set aside, annul, or suspend, in whole or in part, any order of the Surface Transportation Board arising out of such referral.

(c) Any action brought under subsection (b) of this section shall be filed within 90 days from the date that the order of the Surface Transportation Board becomes final.


HISTORICAL AND REVISION NOTES


Words “Except as otherwise provided by enactment of Congress” were inserted because of certain similar cases of which the courts of appeals are given jurisdiction. (See, for example, section 21 of title 15, U.S.C., subsec. (a) and added subsecs. (b) and (c).

Words “any civil action” were substituted for “all cases” and “cases” in view of Rule 2 of the Federal Rules of Civil Procedure.

Changes were made in phraseology.

AMENDMENTS

1995—Pub. L. 104–88 substituted “Surface Transportation Board’s” for “Interstate Commerce Commission’s” in section catchline and “Surface Transportation Board” for “Interstate Commerce Commission” wherever appearing in text.


1982—Subsec. (b). Pub. L. 97–164 substituted “United States Claims Court” for “Court of Claims”.

1975—Subsec. (a). Pub. L. 93–584 substituted provisions that the district courts shall have jurisdiction of civil actions to enforce, in whole or in part, orders of the Interstate Commerce Commission, and to enjoin or suspend, in whole or in part, any order of the Interstate Commerce Commission for the payment of money or the collection of fines, penalties, and forfeitures, for provisions that the district courts shall have jurisdiction of civil actions to enforce, enjoin, set aside, annul or suspend, in whole or in part, any order of the Interstate Commerce Commission.

1964—Pub. L. 88–513 designated existing provisions as subsec. (a) and added subsecs. (b) and (c).

Effective Date of 1995 Amendment

Amendment by Pub. L. 104–88 effective Jan. 1, 1996, see section 2 of Pub. L. 104–88, set out as an Effective Date note under section 701 of Title 49, Transportation.

§ 1337. Commerce and antitrust regulations; amount in controversy, costs

(a) The district courts shall have original jurisdiction of any civil action or proceeding arising under any Act of Congress regulating commerce or protecting trade and commerce against restraints and monopolies: Provided, however, That the district courts shall have original jurisdiction of an action brought under section 11706 or 14706 of title 49, only if the matter in controversy for each receipt or bill of lading exceeds $10,000, exclusive of interest and costs.

(b) Except when express provision therefor is otherwise made in a statute of the United States, where a plaintiff who files the case under section 11706 or 14706 of title 49, originally in the Federal courts is finally adjudged to be entitled to recover less than the sum or value of $10,000, computed without regard to any setoff or counterclaim to which the defendant may be adjudged to be entitled, and exclusive of any interest and costs, the district court may deny costs to the plaintiff and, in addition, may impose costs on the plaintiff.

(c) The district courts shall not have jurisdiction under this section of any matter within the exclusive jurisdiction of the Court of International Trade under chapter 95 of this title.


HISTORICAL AND REVISION NOTES


Words “civil action” were substituted for “suits”, in view of Rule 2 of the Federal Rules of Civil Procedure.

Changes were made in phraseology.

AMENDMENTS

1995—Subsecs. (a), (b). Pub. L. 104–88 substituted “11706 or 14706” for “11706”.


1978—Pub. L. 95–486 designated existing provisions as subsec. (a), inserted proviso giving the district courts
§ 1338. Patents, plant variety protection, copyrights, mask works, designs, trademarks, and unfair competition

(a) The district courts shall have original jurisdiction of any civil action arising under any Act of Congress relating to patents, plant variety protection, copyrights, and trademarks. No State court shall have jurisdiction over any claim for relief arising under any Act of Congress relating to patents, plant variety protection, or copyrights. For purposes of this subsection, the term “State” includes any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands.

(b) The district courts shall have original jurisdiction of any civil action asserting a claim of unfair competition when joined with a sub-

(c) Subsections (a) and (b) apply to exclusive rights in mask works under chapter 13 of title 17, and to exclusive rights in designs under chapter 13 of title 17, to the same extent as such sub-

Historical and Revision Notes


Section consolidates section 41(7) with section 371(5) of title 28, U.S.C., 1940 ed., with necessary changes in phraseology.

Words “of any civil action” were substituted for “all suits at law or in equity” and “cases” to conform section to Rule 2 of the Federal Rules of Civil Procedure.

Words “patents” was substituted for “patent-right” in said section 371 (Fifth) of title 28, U.S.C., 1940 ed.

Similar provisions respecting suits cognizable in district courts, including those of territories and possessions. (See section 34 of title 17, U.S.C., 1940 ed., Copyrights.)

Subsection (b) is added and is intended to avoid “piecemeal” litigation to enforce common-law and statutory copyright, patent, and trade-mark rights by specifically permitting such enforcement in a single civil action in the district court. While this is the rule under Federal decisions, this section would enact it as statutory authority. The problem is discussed at length in Hurn v. Oursler (1933, 33 S.Ct. 586, 289 U.S. 237, 77 L.Ed. 1148) and in Musher Foundation v. Alba Trading Co. (C.C.A. 1942, 127 F.2d 9) (majority and dissenting opinions).

Amendments

2011—Subsec. (a). Pub. L. 112–29 substituted “No State court shall have jurisdiction over any claim for relief arising under any Act of Congress relating to patents, plant variety protection, or copyrights. For purposes of this subsection, the term ‘State’ includes any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands.” for “Such jurisdiction shall be exclusive of the courts of the states in patent, plant variety protection and copyright cases.”

1999—Pub. L. 106–113 substituted “trademarks” for “trade-marks” in section catchline and subsec. (a) and substituted “trademark” for “trade-mark” in subsec. (b).


1970—Pub. L. 91–577 inserted references to “plant variety protection” in section catchline and in subsecs. (a) and (b).
§ 1341

28, U.S.C., 1940 ed., is based on the Judicial Code of 1911. At that time the only court, other than the district courts, having jurisdiction of customs cases, was the Court of Customs Appeals which became the Court of Customs and Patent Appeals in 1929. The Customs Court was created in 1926 as a court of original jurisdiction over customs cases. (See reviser’s note preceding section 251 of this title.)

Words “any civil action” were substituted for “all cases” in view of Rule 2 of the Federal Rules of Civil Procedure.

Changes were made in phraseology.

AMENDMENTS

1980—Pub. L. 96–417 redesignated the Customs Court as the Court of International Trade.

Effective Date of 1980 Amendment

Amendment by Pub. L. 96–417 effective Nov. 1, 1980, and applicable with respect to civil actions pending on or commenced on or after such date, see section 701(a) of Pub. L. 96–417, set out as a note under section 251 of this title.

§ 1341. Taxes by States

The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State.

(June 25, 1948, ch. 646, 62 Stat. 932.)

Historical and Revision Notes


Other provisions of section 41(1) of title 28, U.S.C., 1940 ed., are incorporated in sections 1331, 1332, 1342, 1345, 1354, and 1359 of this title.

Words “at law or in equity” before “in the courts of such State” were omitted as unnecessary.

Words “civil action” were substituted for “suits,” “at law or in equity” in view of Rule 2 of the Federal Rules of Civil Procedure.

Words “under State law” were substituted for “imposed by or pursuant to the laws of any State” for the same reason.

§ 1342. Rate orders of State agencies

The district courts shall not enjoin, suspend or restrain the operation of, or compliance with, any order affecting rates chargeable by a public utility and made by a State administrative agency or a rate-making body of a State political subdivision, where:

(1) Jurisdiction is based solely on diversity of citizenship or repugnance of the order to the Federal Constitution; and,

(2) The order does not interfere with interstate commerce; and,

(3) The order has been made after reasonable notice and hearing; and,

(4) A plain, speedy and efficient remedy may be had in the courts of such State.

(June 25, 1948, ch. 646, 62 Stat. 932.)

Historical and Revision Notes


Other provisions of section 41(1) of title 28, U.S.C., 1940 ed., are incorporated in sections 1331, 1332, 1341, 1345, 1354, and 1359 of this title.

Words “at law or in equity” before “in the courts of such State” were omitted as unnecessary.

Words “civil action” were substituted for “suit,” in view of Rule 2 of the Federal Rules of Civil Procedure.

Word “operation” was substituted for “enforcement, operation or execution” for the same reason.

§ 1343. Civil rights and elective franchise

(a) The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1883 of Title 42;

(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1983 of Title 42 which he had knowledge were about to occur and power to prevent;

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

(b) For purposes of this section—

(1) The District of Columbia shall be considered to be a State; and

(2) any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.


Historical and Revision Notes

Based on title 28, U.S.C., 1940 ed., §41(12), (13), and (14) (Mar. 3, 1911, ch. 231, §24, pars. 12, 13, 14, 36 Stat. 1092). Words “civil action” were substituted for “suits,” “suits at law or in equity” in view of Rule 2 of the Federal Rules of Civil Procedure.

Numerous changes were made in arrangement and phraseology.

Amendments

1979—Pub. L. 96–170 designated existing provisions as subsec. (a) and added subsec. (b).


1954—Act Sept. 3, 1954, substituted “section 1883 of Title 42” for “section 47 of Title 8” wherever appearing.

Effective Date of 1979 Amendment

Section 3 of Pub. L. 96–170 provided that: “The amendments made by this Act [amending this section and section 883 of Title 42, The Public Health and Welfare] shall apply with respect to any deprivation of rights, privileges, or immunities secured by the Constitution and laws occurring after the date of the enactment of this Act (Dec. 29, 1979).”
§ 1344. Election disputes

The district courts shall have original jurisdiction of any civil action to recover possession of any office, except that of elector of President or Vice President, United States Senator, Representative in or delegate to Congress, or member of a state legislature, authorized by law to be commenced, where in it appears that the sole question touching the title to office arises out of denial of the right to vote, to any citizen offering to vote, on account of race, color or previous condition of servitude.

The jurisdiction under this section shall extend only so far as to determine the rights of the parties to office by reason of the denial of the right, guaranteed by the Constitution of the United States and secured by any law, to enforce the right of citizens of the United States to vote in all the States.

(June 25, 1948, ch. 646, 62 Stat. 932.)

HISTORICAL AND REVISION NOTES


Words “civil action” were substituted for “suits,” in view of Rule 2 of the Federal Rules of Civil Procedure.

Words “United States Senator” were added, as no reason appears for including Representatives and excluding Senators. Moreover, the Seventeenth amendment, providing for the popular election of Senators, was adopted after the passage of the 1911 law on which this section is based.

Changes were made in phraseology.

§ 1345. United States as plaintiff

Except as otherwise provided by Act of Congress, the district courts shall have original jurisdiction of all civil actions, suits or proceedings commenced by the United States, or by any agency or officer thereof expressly authorized to sue by Act of Congress.

(June 25, 1948, ch. 646, 62 Stat. 933.)

HISTORICAL AND REVISION NOTES


Other provisions of section 41(1) of title 28, U.S.C., 1940 ed., are incorporated in sections 1331, 1332, 1341, 1342, 1354, and 1359 of this title.

Words “civil actions, suits or proceedings” were substituted for “suits of a civil nature, at common law or in equity” in view of Rules 2 and 81(a)(7) of the Federal Rules of Civil Procedure.

Word “agency” was inserted in order that this section shall apply to agencies by agencies of the Government and to conform with special acts authorizing such actions. (See definitive section 451 of this title.)

The phrase “Except as otherwise provided by Act of Congress,” at the beginning of the section was inserted to make clear that jurisdiction exists generally in district courts in the absence of special provisions conferring it elsewhere.

Changes were made in phraseology.

§ 1346. United States as defendant

(a) The district courts shall have original jurisdiction, concurrent with the United States Court of Federal Claims, of:

1. Any civil action against the United States for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or any penalty claimed to have been collected without authority or any sum alleged to have been excessive or in any manner wrongfully collected under the Internal-revenue laws;

2. Any other civil action or claim against the United States, not exceeding $10,000 in amount, founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort, except that the district courts shall not have jurisdiction of any civil action or claim against the United States founded upon any express or implied contract with the United States or for liquidated or unliquidated damages in cases not sounding in tort which are subject to sections 7104(b)(1) and 7107(a)(1) of title 41. For the purpose of this paragraph, an express or implied contract with the Army and Air Force Exchange Service, Navy Exchanges, Marine Corps Exchanges, Coast Guard Exchanges, or Exchange Councils of the National Aeronautics and Space Administration shall be considered an express or implied contract.

(b)(1) Subject to the provisions of chapter 171 of this title, the district courts, together with the United States District Court for the District of the Canal Zone and the District Court of the Virgin Islands, shall have exclusive jurisdiction of civil actions on claims against the United States, for money damages, accruing on and after January 1, 1945, for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

(b)(2) No person convicted of a felony who is incarcerated while awaiting sentencing while serving a sentence may bring a civil action against the United States or an agency, officer, or employee of the Government, for mental or emotional injury suffered while in custody without a prior showing of physical injury.

(c) The jurisdiction conferred by this section includes jurisdiction of any set-off, counterclaim, or other claim or demand whatever on the part of the United States against any plaintiff commencing an action under this section.

(d) The district courts shall not have jurisdiction under this section of any civil action or claim for a pension.

(e) The district courts shall have original jurisdiction of any civil action against the United States provided in section 6226, 6226(a), 7429, or 7428 (in the case of the United States district court for the District of Columbia) or section 7429 of the Internal Revenue Code of 1986.

(f) The district courts shall have exclusive original jurisdiction of civil actions under section 2409a to quiet title to any estate or interest in real property in which an interest is claimed by the United States.

(g) Subject to the provisions of chapter 179, the district courts of the United States shall
have exclusive jurisdiction over any civil action commenced under section 453(2) of this title, by a covered employee under chapter 5 of such title.


The revised section retains the language of section 41(20) of title 28, U.S.C., 1940 ed., with respect to actions by the United States if the collector is dead or not in office when action is commenced, and consequently maintains the long existing distinctions in practice between actions against the United States and actions against the collector who made the assessment or collection. In the latter class of actions either party may demand a jury trial while jury trial is denied in actions against the United States. See section 2402 of this title. In reality all such actions are against the United States and not against local collectors. (See Lowe v. United States, 1938, 58 S.Ct. 896, 304 U.S. 302, 82 L.Ed. 1362; Manseu v. United States, D.C.Mich. 1943, 52 F.Supp. 395, and Combined Metals Reduction Co. v. United States, D.C.Del. 1943, 53 F.Supp. 739.)

The revised subsection (c)(1) omitted clause: “but no suit pending on the 27th day of June 1898 shall abate or be affected by this provision,” contained in section 41(20) of title 28, U.S.C., 1940 ed., as obsolete and superfluous. The words contained in section 41(20) of title 28, U.S.C., 1940 ed., “claims growing out of the Civil War, and commonly known as ‘war-claims,’ or to hear and determine other claims which had been reported adversely prior to the 3d day of March 1867 by any court, department, or commission authorized to have and determine the same,” were omitted for the same reason. The words “in a civil action or in admiralty” in subsection (a)(2), were substituted for “either in a court of law, equity, or admiralty” to conform to Rule 2 of the Federal Rules of Civil Procedure.

Words in section 41(20) “in respect to which claims the party would be entitled to redress against the United States, either in a court of law, equity, or admiralty, if the United States were suable” were omitted from subsection (a)(2) of this revised section as unnecessary. See reviser’s note under section 1491 of this title.

For jurisdiction of The Tax Court to review claims for refunds of processing taxes collected under the unconstitutional Agriculture Adjustment Act, see sections 644–659 of title 7, U.S.C., 1940 ed., Agriculture, and the 1942 Revenue Act, Act Oct. 21, 1942, ch. 610, title V, §510(a), (c), (d), 56 Stat. 667. (See, also, Lamborn v. United States, C.C.P.A. 1939, 104 F.2d 75, certiorari denied 60 S.Ct. 115, 308 U.S. 589, 84 L.Ed. 493.)

See, also, reviser’s note under section 1491 of this title as to jurisdiction of the Court of Claims in suits against the United States generally. For venue of actions under this section, see section 1402 of this title and reviser’s note thereunder.

Minor changes were made in phraseology.

S E N A T E R E V I S I O N A M E N D M E N T

The provision of title 28, U.S.C., 1932, which related to application of the Federal Rules of Civil Procedure, were originally set out in section 2676 of this revised title, but such section 2676 was eliminated by Senate amendment. See 80th Congress Senate Report No. 1559, amendment No. 61.

1949 ACT

This section corrects typographical errors in section 1362(a)(1) of title 28, U.S.C., and in section 1346(b) of such title.

R E F E R E N C E S I N T E X T

Sections 6226, 6228(a), 7426, 7428, and 7429 of the Internal Revenue Code of 1986, referred to in subsec. (e), are classified to sections 6226, 6228(a), 7426, 7428, and 7429, respectively, of Title 26, Internal Revenue Code.

A M E N D M E N T S


1982—Subsec. (a). Pub. L. 97–164 substituted "United States Claims Court" for "Court of Claims".

Subsec. (e). Pub. L. 97–248 substituted "section 6226, 6223(a), 7426, or" for "section 7426 or section 7423(a)".

1976—Subsec. (e). Pub. L. 94–455 inserted "or section 7429" and "or section 7428 (in the case of the United States district court for the District of Columbia)" after "section 7426".


1970—Subsec. (a)(2). Pub. L. 91–950 specified that the term "express or implied contracts with the United States" includes express or implied contracts with the Army and Air Force Exchange Service, Navy Exchanges, Marine Corps Exchanges, Coast Guard Exchanges, or Exchange Councils of the National Aeronautics and Space Administration.


1964—Subsec. (d). Pub. L. 88–519 struck out provisions which prohibited district courts from exercising jurisdiction of civil actions or claims to recover fees, salary, or compensation for official services of officers or employees of the United States.


1953—Subsec. (d). Act Oct. 31, 1951, inserted references to "claim" and "employees".

1949—Subsec. (a)(1). Act May 24, 1949, § 80(a), inserted '(i) if the claim does not exceed $10,000 or (ii)'.

Subsec. (b). Acts Apr. 25, 1949, and May 24, 1949, § 80(b), made a technical change to correct "chapter 171" to read "chapter 171", and inserted "and after January 1, 1945" after "for money damages".

EFFECTIVE DATE OF 1996 AMENDMENT
Amendment by Pub. L. 104–331 effective Oct. 1, 1997, see section 3(d) of Pub. L. 104–331, set out as an Effective Date note under section 1296 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

EFFECTIVE DATE OF 1983 AMENDMENTS
Amendment by Pub. L. 97–248 applicable to partnership taxable years beginning after Sept. 3, 1982, with provision for the applicability of the amendment to any partnership taxable year ending after Sept. 3, 1982, if the partnership, each partner, and each indirect partner requests such application and the Secretary of the Treasury or his delegate consents to such application, see section 407(a)(1), (3) of Pub. L. 97–248, set out as an Effective Date note under section 6221 of Title 26, Internal Revenue Code.


EFFECTIVE DATE OF 1978 AMENDMENT
Amendment by Pub. L. 95–563 effective with respect to contracts entered into 120 days after Nov. 1, 1978 and, at the election of the contractor, with respect to any claim pending at such time before the contracting officer or initiated thereafter, see section 16 of Pub. L. 95–563, Nov. 1, 1978, 92 Stat. 2591, formerly set out as an Effective Date note under section 601 of former Title 41, Public Contracts.
§ 1348. Banking association as party

The district courts shall have original jurisdiction of any civil action commenced by the United States, or by direction of any officer thereof, against any national banking association, any civil action to wind up the affairs of any such association, and any action by a banking association established in the district for which the court is held, under chapter 2 of Title 12, to enjoin the Comptroller of the Currency, or any receiver acting under his direction, as provided by such chapter.

All national banking associations shall, for the purposes of all other actions by or against them, be deemed citizens of the States in which they are respectively located.

(June 25, 1948, ch. 646, 62 Stat. 933.)

HISTORICAL AND REVISION NOTES


Words “any civil action” were substituted for “all cases,” in view of Rule 2 of the Federal Rules of Civil Procedure.

Words “real, personal, or mixed, and all suits in equity,” after “all other actions by or against them,” were omitted as superfluous.

§ 1349. Corporation organized under federal law as party

The district courts shall not have jurisdiction of any civil action by or against any corporation upon the ground that it was incorporated by or under an Act of Congress, unless the United States is the owner of more than one-half of its capital stock.

(June 25, 1948, ch. 646, 62 Stat. 934.)

HISTORICAL AND REVISION NOTES


Words “civil action” were substituted for “action or suit,” in view of Rule 2 of the Federal Rules of Civil Procedure.

Minor changes were made in phraseology.

§ 1350. Alien’s action for tort

The district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States.

(June 25, 1948, ch. 646, 62 Stat. 934.)

HISTORICAL AND REVISION NOTES


Words “civil action” were substituted for “suits,” in view of Rule 2 of the Federal Rules of Civil Procedure.

Changes in phraseology were made.

TORTURE VICTIM PROTECTION

Pub. L. 102–256, Mar. 12, 1992, 106 Stat. 73, provided that:

“SECTION 1. SHORT TITLE.

“This Act may be cited as the ‘Torture Victim Protection Act of 1991’.

“SEC. 2. ESTABLISHMENT OF CIVIL ACTION.

“(a) LIABILITY.—An individual who, under actual or apparent authority, or color of law, of any foreign nation—

“(1) subjects an individual to torture shall, in a civil action, be liable for damages to that individual; or

“(2) subjects an individual to extrajudicial killing shall, in a civil action, be liable for damages to the individual’s legal representative, or to any person who may be a claimant in an action for wrongful death.

“(b) EXHAUSTION OF REMEDIES.—A court shall decline to hear a claim under this section if the claimant has not exhausted adequate and available remedies in the place in which the conduct giving rise to the claim occurred.

“(c) STATUTE OF LIMITATIONS.—No action shall be maintained under this section unless it is commenced within 10 years after the cause of action arose.

“SEC. 3. DEFINITIONS.

“(a) EXTRAJUDICIAL KILLING.—For the purposes of this Act, the term ‘extraordinary killing’ means a deliberate killing not authorized by a previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples. Such term, however, does not include any such killing that, under international law, is lawfully carried out under the authority of a foreign nation.

“(b) TORTURE.—For the purposes of this Act—

“(1) the term ‘torture’ means any act, directed against an individual in the offender’s custody or physical control, by which severe pain or suffering, or the administration or application, or threat of imminent death, shall, in a civil action, be liable for damages to that individual; or

“(2) mental pain or suffering refers to prolonged mental harm caused by or resulting from—

“(A) the intentional infliction or threatened infliction of severe physical pain or suffering;

“(B) the administration or application, or threatened administration or application, of mind altering substances or other procedures calculated to disrupt profoundly the senses or the personality; or

“(C) the threat of imminent death; or

“(D) the threat that another individual will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind altering substances or other procedures calculated to disrupt profoundly the senses or the personality.”

§ 1351. Consuls, vice consuls, and members of a diplomatic mission as defendant

The district courts shall have original jurisdiction, exclusive of the courts of the States, of all civil actions and proceedings against—

(1) consuls or vice consuls of foreign states; or
(2) members of a mission or members of their families (as such terms are defined in section 2 of the Diplomatic Relations Act).


HISTORICAL AND REVISION NOTES


Words "civil action" were substituted for "suits," and "all suits and proceedings" in view of Rule 2 of the Federal Rules of Civil Procedure.

Changes were made in phraseology.

REFERENCES IN TEXT

Section 2 of the Diplomatic Relations Act, referred to in par. (2), is classified to section 254a of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

1978—Pub. L. 95–393 substituted "Consuls, vice consuls, and members of a diplomatic mission as defendants" for "Consuls and vice consuls as defendants" in section catchline, designated existing provisions as introductory provision preceding par. (1), and in such introductory provision as so designated, substituted "civil actions and proceedings against—" for "actions and proceedings against consuls or vice consuls of foreign states", and added pars. (1) and (2).

1949—Act May 24, 1949, substituted "of all actions and proceedings" for "of any civil action".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–393 effective at end of ninety-day period beginning on Sept. 30, 1978, see section 9 of Pub. L. 95–393, set out as an Effective Date note under section 254a of Title 22, Foreign Relations and Intercourse.

§ 1352. Bonds executed under federal law

The district courts shall have original jurisdiction, concurrent with State courts, of any action on a bond executed under any law of the United States, except matters within the jurisdiction of the Court of International Trade under section 1582 of this title.


HISTORICAL AND REVISION NOTES

This section is necessary to permit actions in the district courts upon any bond authorized by a law of the United States. In the absence of this new provision, such actions could not be maintained except by the United States, where the amount and other jurisdictional requisites did not exist. The new section also makes clear that it does not affect the right to prosecute such actions in State courts.

AMENDMENTS


EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–417 applicable with respect to civil actions commenced on or after the 90th day after Nov. 1, 1980, see section 701(c)(1)(B) of Pub. L. 96–417, set out as a note under section 261 of this title.

§ 1353. Indian allotments

The district courts shall have original jurisdiction of any civil action involving the right of any person, in whole or in part of Indian blood or descent, to any allotment of land under any Act of Congress or treaty.

The judgment in favor of any claimant to an allotment of land shall have the same effect, when properly certified to the Secretary of the Interior, as if such allotment had been allowed and approved by him; but this provision shall not apply to any lands held on or before December 21, 1911, by either of the Five Civilized Tribes, the Osage Nation of Indians, nor to any of the lands within the Quapaw Indian Agency.

(June 25, 1948, ch. 646, 62 Stat. 934.)

HISTORICAL AND REVISION NOTES


Words "any civil action" were substituted for "all actions, suits, or proceedings," in view of Rule 2 of the Federal Rules of Civil Procedure.

The sentence "The right of appeal shall be allowed to either party as in other cases" was omitted as covered by section 1291 of this title, relating to appeals to the court of appeals.

Changes in phraseology were made.

§ 1354. Land grants from different states

The district courts shall have original jurisdiction of actions between citizens of the same state claiming lands under grants from different states.

(June 25, 1948, ch. 646, 62 Stat. 934.)

HISTORICAL AND REVISION NOTES


Other provisions of section 41(1) of title 28, U.S.C., 1940 ed., are incorporated in sections 1351, 1352, 1341, 1342, 1345, and 1359 of this title.

Changes were made in phraseology.

§ 1355. Fine, penalty or forfeiture

(a) The district courts shall have original jurisdiction, exclusive of the courts of the States, of any action or proceeding for the recovery or enforcement of any fine, penalty, or forfeiture, pecuniary or otherwise, incurred under any Act of Congress, except matters within the jurisdiction of the Court of International Trade under section 1582 of this title.

(b) (1) A forfeiture action or proceeding may be brought in—

   (A) the district court for the district in which any of the acts or omissions giving rise to the forfeiture occurred, or

   (B) any other district where venue for the forfeiture action or proceeding is specifically provided for in section 1395 of this title or any other statute.

(2) Whenever property subject to forfeiture under the laws of the United States is located in a foreign country, or has been detained or seized pursuant to legal process or competent authority of a foreign government, an action or proceeding for forfeiture may be brought as provided in paragraph (1), or in the United States District court for the District of Columbia.

1 So in original. Probably should be capitalized.
§ 1356. Seizures not within admiralty and maritime jurisdiction

The district courts shall have original jurisdiction, exclusive of the courts of the States, of any seizure under any law of the United States on land or upon waters not within admiralty and maritime jurisdiction, except matters within the jurisdiction of the Court of International Trade under section 1582 of this title.

(June 25, 1948, ch. 646, 62 Stat. 934.)

HISTORICAL AND REVISION NOTES


Section consolidates certain provisions of sections 41(3) and 371(4) of title 28, U.S.C., 1940 ed. Other provisions of such sections are incorporated in section 1333 of this title.
of a district court, were omitted as unnecessary. Any court will dismiss a case not within its jurisdiction when its attention is drawn to the fact, or even on its own motion.

The assignee clause in section 41(1) of title 28, U.S.C., 1940 ed., "is a jumble of legislative jargon." (For further references to the consequences of "its obscure phraseology," see, 35 Ill. Law Rev., January 1941, pp. 569-571.)

The revised section changes this clause by confining its application to cases wherein the assignment is improperly or collusively made to invoke jurisdiction. Furthermore, the difficulty of applying the original clause is overcome and the original purpose of such clause is better served by substantially following section 80 of title 28, U.S.C., 1940 ed.

The assignee clause was incorporated in the original Judiciary Act of 1789. Such section 80 was enacted in 1787. The history of the assignee clause "shows clearly that its purpose and effect, at the time of its enactment were to prevent the conferring of jurisdiction on the Federal courts, on grounds of diversity of citizenship, by assignment, in cases in which it would not otherwise exist." (Sowell v. Federal Reserve Bank, 1925, 45 S.Ct. 528, 529, 268 U.S. 449, 453, 69 L.Ed. 1041, 1048.) Thus the purpose of the assignee clause was to prevent the manufacture of Federal jurisdiction by the device of assignment. It achieves this purpose only partially. For example, the assignee clause excepts two types of choses in action from its coverage: (1) Foreign bill of exchange; and (2) corporate bearer paper. But this does not prevent the use of assignment of these choses in action to create the necessary diversity or alienage for jurisdictional purposes. Such section 80 does, however, prevent that. (See Bullard v. City of Cisco, 1933, 54 S.Ct. 177, 179, 78 L.Ed. 254, 93 A.L.R. 141.) Its coverage against collusive jurisdiction is unlimited, and its approach is direct. The assignee clause, on the other hand, prevents the bona fide assignee of a chose in action within its terms from resorting to the Federal courts unless there is jurisdiction to support the assignee-plaintiff's case and a showing that there would have been jurisdiction if the assignor had brought the action in lieu of the assignee-plaintiff. Since the assignee clause deals with the bona fide assignee, there has been much litigation to determine the assignments which should or should not be within the purview of the clause. Thus the courts have thought it advisable to limit the term "chose in action" and exclude from its scope (1) an implied in law duty or promise, and (2) a transfer of a property interest; and to exclude an assignment by operation of law from the coverage of the clause. Intermediate assignments and reassignment also give difficulty.

§ 1360. State civil jurisdiction in actions to which Indians are parties

(a) Each of the States listed in the following table shall have jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country listed opposite the name of the State to the same extent that such State has jurisdiction over other civil causes of action, and those civil laws of such State that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State:

<table>
<thead>
<tr>
<th>State of</th>
<th>Indian country affected</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nebraska</td>
<td>All Indian country within the State.</td>
</tr>
<tr>
<td>Oregon</td>
<td>All Indian country within the State.</td>
</tr>
<tr>
<td>Wisconsin</td>
<td>All Indian country within the State.</td>
</tr>
<tr>
<td>Minnesota</td>
<td>All Indian country within the State, except the Red Lake Reservation.</td>
</tr>
</tbody>
</table>

(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall confer jurisdiction upon the State to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein.

(c) Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or community in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the State, be given full force and effect in the determination of civil causes of action pursuant to this section.


Amendments

1984—Subsec. (a). Pub. L. 98–353 struck out "or Territory" after "Each of the States", struck out "or Territory" after "State" in 5 places, and substituted "within the State" for "within the Territory" in item relating to Alaska.

1978—Subsec. (a). Pub. L. 95–598 directed the amendment of subsec. (a) by substituting in the item relating to Alaska "within the State" for "within the Territory", 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.

1958—Subsec. (a). Pub. L. 85–615 gave Alaska jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in all Indian country within the Territory of Alaska.


Effective Date of 1984 Amendment

Amendment by Pub. L. 98–353 effective July 10, 1984, see section 122(a) of Pub. L. 98–353, set out as an Effective Date note under section 151 of this title.

Admission of Alaska as State

Admission of Alaska into the Union was accomplished Jan. 3, 1959, on issuance of Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 2(c) of Pub. L. 85–598, July 7, 1958, 72 Stat. 259, set out as notes preceding section 21 of Title 48, Territories and Insular Possessions.

Amendment of State Constitutions To Remove Legal Impediment; Effective Date

Section 6 of act Aug. 15, 1953, provided that: "Notwithstanding the provisions of any Enabling Act for
the admission of a State, the consent of the United States is hereby given to the people of any State to amend, where necessary, their State constitution or existing statutes, as the case may be, to remove any legal impediment to the assumption of civil and criminal jurisdiction in accordance with the provisions of this Act [adding this section and section 1162 of Title 18, Crimes and Criminal Procedure]: Provided, That the provisions of this Act shall not become effective with respect to such assumption of jurisdiction by any such State until the people thereof have appropriately amended their State constitution or statutes as the case may be."

Consent of United States to other States to Assume Jurisdiction

Act Aug. 15, 1953, ch. 505, §7, 67 Stat. 590, which gave consent of the United States to any other State not having jurisdiction with respect to criminal offenses or civil causes of action, or with respect to both, as provided for in this section and section 1162 of Title 18, Crimes and Criminal Procedure, to assume jurisdiction at such time and in such manner as the people of the State shall, by legislative action, obligate and bind the State to assumption thereof, was repealed by section 403(b) of Pub. L. 90–284, title IV, Apr. 11, 1968, 82 Stat. 79, such repeal not to affect any cession of jurisdiction made pursuant to such section prior to its repeal.

Retrocession of Jurisdiction by State

Retrocession of jurisdiction by State acquired by State pursuant to section 7 of Act Aug. 15, 1953, prior to its repeal, see section 1323 of Title 25, Indians.

§ 1361. Action to compel an officer of the United States to perform his duty

The district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff.


§ 1362. Indian tribes

The district courts shall have original jurisdiction of all civil actions, brought by any Indian tribe or band with a governing body duly recognized by the Secretary of the Interior, wherein the matter in controversy arises under the Constitution, laws, or treaties of the United States.


§ 1363. Jurors' employment rights

The district courts shall have original jurisdiction of any civil action brought for the protection of jurors' employment under section 1875 of this title.


Prior Provisions

A prior section 1363 was renumbered section 1366 of this title.

Effective Date

Section 7 of Pub. L. 95–572 provided that:

“(a) Except as provided in subsection (b) of this section, the amendments made by this Act [enacting this section and section 1875, renumbering section 1363, relating to construction of references to laws of the United States Acts of Congress, as section 1364, and amending sections 1863, 1865, 1866, 1869, and 1871 of this title] shall apply with respect to any grand or petit juror summoned for service or actually serving on or after the date of enactment of this Act [Nov. 2, 1978].

“(b) The amendment made by section 5 of this Act (amending section 1671 of this title) shall apply with respect to any grand or petit juror serving on or after the sixtieth day following the date of enactment of this Act [Nov. 2, 1978]."

§ 1364. Direct actions against insurers of members of diplomatic missions and their families

(a) The district courts shall have original and exclusive jurisdiction, without regard to the amount in controversy, of any civil action commenced by any person against an insurer who by contract has insured an individual, who is, or was at the time of the tortious act or omission, a member of a mission (within the meaning of section 2(3) of the Diplomatic Relations Act (22 U.S.C. 254(a)(3))) or a member of the family of such a member of a mission, or an individual described in section 19 of the Convention on Privileges and Immunities of the United Nations of February 13, 1946, against liability for personal injury, death, or damage to property.

(b) Any direct action brought against an insurer under subsection (a) shall be tried without a jury, but shall not be subject to the defense that the insured is immune from suit, that the insured is an indispensable party, or in the absence of fraud or collusion, that the insured has violated a term of the contract, unless the contract was cancelled before the claim arose.


Codification

Two other sections 1364 were renumbered sections 1365 and 1366 of this title.

Amendments

1987—Subsec. (a). Pub. L. 100–204 inserted “, or was at the time of the tortious act or omission,” after “who is”. 1982—Subsec. (a). Pub. L. 97–241 substituted “within the meaning of section 2(3) of the Diplomatic Relations Act (22 U.S.C. 254(a)(3))’’ for “as defined in the Vienna Convention on Diplomatic Relations’’.

Effective Date of 1987 Amendment

Section 138(b) of Pub. L. 100–204 provided that: “The amendment made by subsection (a) [amending this section] shall apply to the first tortious act or omission occurring after the date of enactment of this Act [Dec. 22, 1987].”

Effective Date of 1982 Amendment


Effective Date

Section effective at end of ninety-day period beginning on Sept. 30, 1978, see section 9 of Pub. L. 95–393, set out as a note under section 254(a) of Title 22, Foreign Relations and Intercourse.

§ 1365. Senate actions

(a) The United States District Court for the District of Columbia shall have original juris-
diction, without regard to the amount in controversy, over any civil action brought by the Senate or any authorized committee or subcommittee of the Senate to enforce, to secure a declaratory judgment concerning the validity of, or to prevent a threatened refusal or failure to comply with, any subpoena or order issued by the Senate or committee or subcommittee of the Senate to any entity acting or purporting to act under color or authority of State law or to any natural person to secure the production of documents or other materials of any kind or the answering of any deposition or interrogatory or to secure testimony or any combination thereof. This section shall not apply to an action to enforce, to secure a declaratory judgment concerning the validity of, or to prevent a threatened refusal to comply with, any subpoena or order issued to an officer or employee of the executive branch of the Federal Government acting within his or her official capacity, except that this section shall apply if the refusal to comply is based on the assertion of a personal privilege or objection and is not based on a governmental privilege or objection the assertion of which has been authorized by the executive branch of the Federal Government.

(b) Upon application by the Senate or any authorized committee or subcommittee of the Senate, the district court shall issue an order to the entity or person refusing, or failing to comply with, or threatening to refuse or not to comply with, a subpoena or order of the Senate or committee or subcommittee of the Senate requiring such entity or person to comply forthwith. Any refusal or failure to obey a lawful order of the district court issued pursuant to this section may be held by such court to be a contempt thereof. A contempt proceeding shall be commenced by an order to show cause before the court why the entity or person refusing or failing to obey the court order should not be held in contempt of court. Such contempt proceeding shall be tried by the court and shall be summary in manner. The purpose of sanctions imposed as a result of such contempt proceeding shall be to compel obedience to the order of the court. Process in any such action or contempt proceeding may be served in any judicial district wherein the entity or party refusing, or failing to comply, or threatening to refuse or not to comply, resides, transacts business, or may be found, and subpoenas for witnesses who are required to attend such proceeding may run into any other district.

Nothing in this section shall confer upon such court jurisdiction to affect by injunction or otherwise the issuance or effect of any subpoena or order of the Senate or any committee or subcommittee of the Senate or to review, modify, suspend, terminate, or set aside any such order or subpoena, except as provided in subsection (a). An action, contempt proceeding, or sanction brought or imposed pursuant to this section shall not abate upon adjournment sine die by the Senate at the end of a Congress if the Senate or the committee or subcommittee of the Senate which issued the subpoena or order certifies to the court that it maintains its interest in securing the documents, answers, or testimony during such adjournment.


(d) The Senate or any committee or subcommittee of the Senate commencing and prosecuting a civil action or contempt proceeding under this section may be represented in such action by such attorneys as the Senate may designate.

(e) A civil action commenced or prosecuted under this section, may not be authorized pursuant to the Standing Order of the Senate “authorizing suits by Senate Committees” (S. Jour. 572, May 28, 1928).

(f) For the purposes of this section the term “committee” includes standing, select, or special committees of the Senate established by law or resolution.


AMENDMENTS

1996—Subsec. (a). Pub. L. 104–292 substituted “executive branch of the Federal Government acting within his or her official capacity” for “Federal Government acting within his or her official capacity”.

1984—Subsec. (c). Pub. L. 98–620 struck out subsec. (c) which provided that in any civil action or contempt proceeding brought pursuant to this section, the court had to assign the action or proceeding for hearing at the earliest practicable date and cause the action or proceeding in every way to be expedited, and that any appeal or petition for review from any order or judgment in such action or proceeding had to be expedited in the same manner.

Effective Date of 1984 Amendment

Amendment by Pub. L. 98–620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98–620, set out as an Effective Date note under section 1367 of this title.

Effective Date

Section effective Jan. 3, 1979, see section 717 of Pub. L. 95–521, set out as a note under section 298 of Title 2, The Congress.

§1366. Construction of references to laws of the United States or Acts of Congress

For the purposes of this chapter, references to laws of the United States or Acts of Congress do not include laws applicable exclusively to the District of Columbia.


§1367. Supplemental jurisdiction

(a) Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in
the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.

(b) In any civil action of which the district courts have original jurisdiction founded solely on section 1332 of this title, the district courts shall not have supplemental jurisdiction under subsection (a) over claims by plaintiffs against persons made parties under Rule 14, 19, 20, or 24 of the Federal Rules of Civil Procedure, or over claims by persons proposed to be joined as plaintiffs under Rule 19 of such rules, or seeking to intervene as plaintiffs under Rule 24 of such rules, when exercising supplemental jurisdiction over such claims would be inconsistent with the jurisdictional requirements of section 1332.

(c) The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if—

(1) the claim raises a novel or complex issue of State law;

(2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction;

(3) the district court has dismissed all claims over which it has original jurisdiction, or

(4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

(d) The period of limitations for any claim asserted under subsection (a), and for any other claim in the same action that is voluntarily dismissed at the same time as or after the dismissal of the claim under subsection (a), shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period.

(e) As used in this section, the term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.


REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (b), are set out in the Appendix to this title.

EFFECTIVE DATE

Section 310(c) of Pub. L. 101–650 provided that: "The amendments made by this section (enacting this section) shall apply to civil actions commenced on or after the date of the enactment of this Act [Dec. 1, 1990]."

§ 1368. Counterclaims in unfair practices in international trade.

The district courts shall have original jurisdiction of any civil action brought on a counterclaim raised pursuant to section 337(c) of the Tariff Act of 1930, to the extent that it arises out of the transaction or occurrence that is the subject matter of the opposing party’s claim in the proceeding under section 337(a) of that Act.


REFERENCES IN TEXT

Section 337 of the Tariff Act of 1930, referred to in text, is classified to section 1337 of Title 19, Customs Duties.

EFFECTIVE DATE

Section applicable with respect to complaints filed under section 1337 of Title 19, Customs Duties, on or after the date on which the World Trade Organization Agreement enters into force with respect to the United States [Jan. 1, 1995], or in cases under section 1337 of Title 19 in which no complaint is filed, with respect to investigations initiated under such section on or after such date, see section 322 of Pub. L. 103–465, set out as an Effective Date of 1994 Amendment note under section 1337 of Title 19.

§ 1369. Multiparty, multiforum jurisdiction

(a) In general.—The district courts shall have original jurisdiction of any civil action involving minimal diversity between adverse parties that arises from a single accident, where at least 75 natural persons have died in the accident at a discrete location, if—

(1) a defendant resides in a State and a substantial part of the accident took place in another State or other location, regardless of whether that defendant is also a resident of the State where a substantial part of the accident took place;

(2) any two defendants reside in different States, regardless of whether such defendants are also residents of the same State or States; or

(3) substantial parts of the accident took place in different States.

(b) Limitation of jurisdiction of district courts.—The district court shall abstain from hearing any civil action described in subsection (a) in which—

(1) the substantial majority of all plaintiffs are citizens of a single State of which the primary defendants are also citizens; and

(2) the claims asserted will be governed primarily by the laws of that State.

(c) Special rules and definitions.—For purposes of this section—

(1) minimal diversity exists between adverse parties if any party is a citizen of a State and any adverse party is a citizen of another State, a citizen or subject of a foreign state, or a foreign state as defined in section 1603(a) of this title;

(2) a corporation is deemed to be a citizen of any State, and a citizen or subject of any foreign state, in which it is incorporated or has its principal place of business, and is deemed to be a resident of any State in which it is incorporated or licensed to do business or is doing business;

(3) the term "injury" means—

(A) physical harm to a natural person; and

(B) physical damage to or destruction of tangible property, but only if physical harm described in subparagraph (A) exists;

(4) the term "accident" means a sudden accident, or a natural event culminating in an accident, that results in death incurred at a discrete location by at least 75 natural persons; and
(5) the term “State” includes the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(d) INTERVENING PARTIES.—In any action in a district court which is or could have been brought, in whole or in part, under this section, any person with a claim arising from the accident described in subsection (a) shall be permitted to intervene as a party plaintiff in the action, even if that person could not have brought an action in a district court as an original matter.

(e) NOTIFICATION OF JUDICIAL PANEL ON MULTIDISTRICT LITIGATION.—A district court in which an action under this section is pending shall promptly notify the judicial panel on multidistrict litigation of the pendency of the action.


SEC. 1392. Venue generally.

1391. Venue generally.

1393. Repealed.

1394. Banking association’s action against Comptroller of Currency.

1395. Fine, penalty or forfeiture.

1396. Internal revenue taxes.

1397. Interpleader.

1398. Interstate Commerce Commission’s orders.

1399. Partition action involving United States.

1400. Patents and copyrights, mask works, and designs.

1401. Stockholder’s derivative action.

1402. United States as defendant.

1403. Eminent domain.

1404. Change of venue.

1405. Creation or alteration of district or division.

1406. Cure or waiver of defects.

1407. Multidistrict litigation.

1408. Venue of cases under title 11.

1409. Venue of proceedings arising under title 11 or arising in or related to cases under title 11.

1410. Venue of cases ancillary to foreign proceedings.

1411. Jury trials.

1412. Change of venue.

1413. Venue of cases under chapter 5 of title 3.

AMENDMENTS


(1) shall take effect upon the expiration of the 30-day period beginning on the date of the enactment of this Act [Dec. 7, 2011]; and

(2) shall apply to—

(A) any action that is commenced in a United States district court on or after such effective date; and

(B) any action that is removed from a State court to a United States district court and that had been commenced, within the meaning of State law, on or after such effective date.”

1390. Scope

(a) VENUE DEFINED.—As used in this chapter, the term “venue” refers to the geographic specification of the proper court or courts for the litigation of a civil action that is within the subject-matter jurisdiction of the district courts in general, and does not refer to any grant or restriction of subject-matter jurisdiction providing for a civil action to be adjudicated only by the district court for a particular district or districts.

(b) EXCLUSION OF CERTAIN CASES.—Except as otherwise provided by law, this chapter shall not govern the venue of a civil action in which the district court exercises the jurisdiction conferred by section 1333, except that such civil actions may be transferred between district courts as provided in this chapter.

(c) CLARIFICATION REGARDING CASES REMOVED FROM STATE COURTS.—This chapter shall not determine the district court to which a civil action pending in a State court may be removed, but shall govern the transfer of an action so removed as between districts and divisions of the United States district courts.


Effective Date


(1) shall take effect upon the expiration of the 30-day period beginning on the date of the enactment of this Act [Dec. 7, 2011]; and

(2) shall apply to—

(A) any action that is commenced in a United States district court on or after such effective date; and

(B) any action that is removed from a State court to a United States district court and that had been commenced, within the meaning of State law, on or after such effective date.”

§ 1391. Venue generally

(a) APPLICABILITY OF SECTION.—Except as otherwise provided by law—

(1) this section shall govern the venue of all civil actions brought in district courts of the United States; and

(2) the proper venue for a civil action shall be determined without regard to whether the action is local or transitory in nature.

(b) VENUE IN GENERAL.—A civil action may be brought in—

(1) a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located; and

(2) a judicial district in which a substantial part of the events or omissions giving rise
the claim occurred, or a substantial part of property that is the subject of the action is situated; or
(3) if there is no district in which an action may otherwise be brought as provided in this section, any judicial district in which any defendant is subject to the court’s personal jurisdiction with respect to such action.

(c) RESIDENCY.—For all venue purposes—
(1) a natural person, including an alien lawfully admitted for permanent residence in the United States, shall be deemed to reside in the judicial district in which that person is domiciled;
(2) an entity with the capacity to sue and be sued in its common name under applicable law, whether or not incorporated, shall be deemed to reside, if a defendant, in any judicial district in which such defendant is subject to the court’s personal jurisdiction with respect to the civil action in question and, if a plaintiff, only in the judicial district in which it maintains its principal place of business; and
(3) a defendant not resident in the United States may be sued in any judicial district, and the joinder of such a defendant shall be disregarded in determining where the action may be brought with respect to other defendants.

(d) RESIDENCY OF CORPORATIONS IN STATES WITH MULTIPLE DISTRICTS.—For purposes of venue under this chapter, in a State which has more than one judicial district and in which a defendant that is a corporation is subject to personal jurisdiction at the time an action is commenced, such corporation shall be deemed to reside in any district in that State within which its contacts would be sufficient to subject it to personal jurisdiction if that district were a separate State, and, if there is no such district, the corporation shall be deemed to reside in the district within which it has the most significant contacts.

(e) ACTIONS WHERE DEFENDANT IS OFFICER OR EMPLOYEE OF THE UNITED STATES.—
(1) IN GENERAL.—A civil action in which a defendant is an officer or employee of the United States or any agency thereof acting in his official capacity or under color of legal authority, or an agency of the United States, or the United States, may, except as otherwise provided by law, be brought in any judicial district in which (A) a defendant in the action resides, (B) a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (C) the plaintiff resides if that district were a separate State, and, if there is no such district, the corporation shall be deemed to reside in the district within which it has the most significant contacts.

(f) CIVIL ACTIONS AGAINST A FOREIGN STATE.—
A civil action against a foreign state as defined in section 1603(a) of this title may be brought—
(1) in any judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated;
(2) in any judicial district in which the vessel or cargo of a foreign state is situated, if the claim is asserted under section 1605(b) of this title;
(3) in any judicial district in which the agency or instrumentality is licensed to do business or is doing business, if the action is brought against an agency or instrumentality of a foreign state as defined in section 1603(b) of this title; or
(4) in the United States District Court for the District of Columbia if the action is brought against a foreign state or political subdivision thereof.

(g) MULTIPARTY, MULTIFORUM LITIGATION.—
A civil action in which jurisdiction of the district court is based upon section 1391 of this title may be brought in any district in which any defendant resides or in which a substantial part of the accident giving rise to the action took place.


HISTORICAL AND REVISION NOTES


Section consolidates section 111 of title 28, U.S.C., 1940 ed., with part of section 112 of such title.

The portion of section 112 of title 28, U.S.C., 1940 ed., relating to venue generally constitutes this section and the parts relating to arrest of the defendant, venue and process in stockholders’ actions constitute sections 1401, 1403, and 1405 of this title.

 Provision in section 111 of title 28, U.S.C., 1940 ed., that a district court may proceed as to parties before it although one or more defendants do not reside in the district, and that its judgment shall be without prejudice to such absent defendants, was omitted as covered by rule 19(b) of the Federal Rules of Civil Procedure.

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

Word “reside” was substituted for “whereof he is an inhabitant” for clarity inasmuch as “inhabitant” and “resident” are synonymous. (See Ex parte Shaw, 186 U.S. 350, 22 S.Ct. 935, 145 U.S. 444, 36 L.Ed. 768; Standard Stoker Co., Inc. v. Lower, D.C., 1931, 46 F.2d 678; Edgewater Realty Co.
v. Tennessee Coal, Iron & Railroad Co., D.C., 1943, 49 F.Supp. 807.) Reference to “all plaintiffs” and “all defendants” were substituted for references to “the plaintiff” and “the defendant,” in view of many decisions holding that the singular terms were used in a collective sense. (See Smith v. Lyon, 1890, 10 S.Ct. 303, 133 U.S. 315, 33 L.Ed. 635; Hove v. Jameson, 1897, 17 S.Ct. 596, 166 U.S. 395, 41 L.Ed. 1049; and Fetter v. Livermore, D.C., 1926, 15 F.2d 462.)

In subsection (c), references to defendants “found” within a district or voluntarily appearing were omitted. The use of the word “found” made section 111 of title 28, U.S.C., 1940 ed., ambiguous. The argument that an action could be brought in the district where one defendant resided and a nonresident defendant was “found,” was rejected in Camp v. Gress, 1919, 39 S.Ct. 478, 250 U.S. 308, 63 L.Ed. 997. However, this ambiguity will be obviated in the future by the omission of such reference.

Subsection (d) of this section is added to give statutory recognition to the weight of authority concerning a rule of venue as to which there has been a sharp conflict of decisions. (See Sandusky Foundry & Machine Co. v. DeLavand, 1918, D.C.Ohio, 251 F. 631, 632, and cases cited. See also Keating v. Pennsylvania Co., 1917, D.C.Ohio, 245 F. 155 and cases cited.) Changes were made in phraseology.

REFERENCES IN TEXT
The Federal Rules of Civil Procedure, referred to in subsec. (e), are set out in the Appendix to this title.

AMENDMENTS
1976—Subsec. (e). Pub. L. 94–574 provided that, in actions against the United States, its agencies, or officers or employees in their official capacities, additional persons may be joined in accordance with the Federal Rules of Civil Procedure and with other venue requirements which would be applicable if the United States, its agencies, or one of its officers or employees were not parties.


1966—Subsec. (a). Pub. L. 89–714, §1, authorized a civil action to be brought in the judicial district in which the claim arose.

Subsec. (b). Pub. L. 89–714, §1, authorized a civil action to be brought in the judicial district in which the claim arose.

Subsec. (f). Pub. L. 89–714, §2, repealed subsec. (f) which permitted a civil action on a tort claim arising out of the manufacture, assembly, repair, ownership, maintenance, use, or operation of an automobile to be brought in the judicial district wherein the act or omission complained of occurred. Present provisions are now contained in subssecs. (a) and (b) of this section.


EFFECTIVE DATE OF 2011 AMENDMENT
Amendment by Pub. L. 112–63 effective upon the expiration of the 30-day period beginning on Dec. 7, 2011, and applicable to any action commenced in a United States district court on or after such effective date, and to any action removed from a State court to a United States district court that had been commenced, within the meaning of State law, on or after such effective date, see section 203 of Pub. L. 112–63, set out as an Effective Date note under section 1390 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT
Amendment by Pub. L. 107–273 applicable to a civil action if the accident giving rise to the cause of action occurred on or after the 90th day after Nov. 2, 2002, see section 1103(c) of Pub. L. 107–273, set out as an Effective Date note under section 1390 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

EFFECTIVE DATE OF 1988 AMENDMENT
Section 1013(b) of title X of Pub. L. 100–702 provided that: “The amendment made by this section [amending this section] takes effect 90 days after the date of enactment of this title [Nov. 19, 1988].”

EFFECTIVE DATE OF 1976 AMENDMENT
Amendment by Pub. L. 94–583 effective 90 days after Oct. 21, 1976, see section 8 of Pub. L. 94–583, set out as an Effective Date note under section 1392 of this title.


EFFECTIVE DATE OF REPEAL
Repeal by Pub. L. 112–63 effective upon the expiration of the 30-day period beginning on Dec. 7, 2011, and applicable to any action commenced in a United States district court on or after such effective date, and to any action removed from a State court to a United States district court that had been commenced, within the meaning of State law, on or after such effective date, see section 205 of Pub. L. 112–63, set out as an Effective Date note under section 1390 of this title.

Section, act June 25, 1948, ch. 646, 62 Stat. 935, related to divisional venue in civil cases of a single defendant or defendants in different divisions.

Effective Date of Repeal
Section 1001(b) of Pub. L. 100–702 provided that: "The amendments made by this section [repealing this section] take effect 90 days after the date of enactment of this Act [Nov. 19, 1988]."

§ 1394. Banking association's action against Comptroller of Currency

Any civil action by a national banking association to enjoin the Comptroller of the Currency, under the provisions of any Act of Congress relating to such associations, may be prosecuted in the judicial district where such association is located.

(June 25, 1948, ch. 646, 62 Stat. 935.)

Historical and Revision Notes

Words "Any civil action" were substituted for "All proceedings:" in view of Rule 2 of the Federal Rules of Civil Procedure.

Changes were made in phraseology.

Exception as to Transfer of Functions

Functions vested by any provision of law in the Comptroller of the Currency, referred to in this section, were not included in the transfer of functions of officers, agencies and employees of the Department of the Treasury to the Secretary of the Treasury, made by Reorg. Plan No. 26 of 1950, §1, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280. See section 321(c)(2) of Title 31, Money and Finance.

§ 1395. Fine, penalty or forfeiture

(a) A civil proceeding for the recovery of a pecuniary fine, penalty or forfeiture may be prosecuted in the district where it accrues or the defendant is found.

(b) A civil proceeding for the forfeiture of property may be prosecuted in any district where such property is found.

(c) A civil proceeding for the forfeiture of property seized outside any judicial district may be prosecuted in any district into which the property is brought.

(d) A proceeding in admiralty for the enforcement of fines, penalties and forfeitures against a vessel may be brought in any district in which the vessel is arrested.

(e) Any proceeding for the forfeiture of a vessel or cargo entering a port of entry closed by the President in pursuance of law, or of goods and chattels coming from a State or section declared by proclamation of the President to be in insurrection, or of any vessel or vehicle conveying persons or property to or from such State or section or belonging in whole or in part to a resident thereof, may be prosecuted in any district into which the property is taken and in which the proceeding is instituted.

(June 25, 1948, ch. 646, 62 Stat. 936.)

Historical and Revision Notes
Based on title 28, U.S.C., 1940 ed., §§104, 106, 107, and 108, and section 3745(c) of title 26, U.S.C., 1940 ed., Internal Revenue Code (Mar. 3, 1911, ch. 231, §§43, 45, 46, 47, 36 Stat. 1100; Feb. 10, 1939, ch. 2, §3745(c), 53 Stat. 460). This section consolidates section 3745(c) of title 26, U.S.C., 1940 ed., with sections 184, 106, 107, and 108 of title 28, U.S.C., 1940 ed., relating to venue in civil proceedings to recover and enforce civil fines, penalties, and forfeitures, pecuniary or otherwise. Subsection (a) is based on said section 104 of title 28 and said section 3745(c) of title 26. Subsections (b) and (c) consolidate such sections 106 and 107 of title 28. Subsection (e) is based on such section 108 of title 28.

Subsection (b) substituted words "may be prosecuted in any district where such property is found" for "shall be prosecuted in the district where the seizure is made," to include not only property seized, but also all other property subject to forfeiture.

Words "civil" and "fine" were inserted to make this section applicable to the many provisions of the United States Code for fines essentially civil. (See reviser's note under section 1335 of this title.)

Provisions of section 3745(c) of title 26, U.S.C., 1940 ed., that such suit may be brought "before any other court of competent jurisdiction" were omitted as misleading surplusage, since United States district courts, under section 1335 of this title, have exclusive jurisdiction.

Subsection (d) was added for completeness and clarity.

Changes were made in phraseology.

Senate Revision Amendment

While section 3745(c) of Title 26, U.S.C., Internal Revenue Code, is one of the sources of this section, it was eliminated from the schedule of repeals by Senate amendment. Therefore, such section 3745(c) remains in Title 26. See 80th Congress Senate Report No. 1559.

§ 1396. Internal revenue taxes

Any civil action for the collection of internal revenue taxes may be brought in the district where the liability for such tax accrues, in the district of the taxpayer’s residence, or in the district where the return was filed.

(June 25, 1948, ch. 646, 62 Stat. 936.)

Historical and Revision Notes


Words "or in the district where the return was filed" are new. This extension of venue will permit of an action in a district easily determinable for collection of revenue earned in several districts, or States, but the return for which is filed with one collector.

Changes were made in phraseology.

Senate Revision Amendment

While section 3744 of Title 26, U.S.C., Internal Revenue Code (1939), is one of the sources of this section, it was eliminated from the schedule of repeals by Senate amendment. Therefore, it remains in Title 26 (I.R.C. 1939). See 80th Congress Senate Report No. 1559.

§ 1397. Interpleader

Any civil action of interpleader or in the nature of interpleader under section 1335 of this title may be brought in the judicial district in which one or more of the claimants reside.

(June 25, 1948, ch. 646, 62 Stat. 936.)

Historical and Revision Notes
Provisions of section 41(25) of title 28, U.S.C., 1940 ed., relating to jurisdiction are the basis of section 1335 of this title and other provisions thereof are incorporated in section 2863 of this title.

Words “civil action” were substituted for “suit,” in view of Rule 2 of the Federal Rules of Civil Procedure. Changes were made in phraseology.

§ 1398. Interstate Commerce Commission’s orders

(a) Except as otherwise provided by law, a civil action brought under section 1336(a) of this title shall be brought only in a judicial district in which any of the parties bringing the action resides or has its principal office.

(b) A civil action to enforce, enjoin, set aside, annul, or suspend, in whole or in part, an order of the Interstate Commerce Commission made pursuant to the referral of a question or issue by a district court or by the United States Court of Federal Claims, shall be brought only in the court which referred the question or issue.


HISTORICAL AND REVISION NOTES


This section is completely rewritten to give effect to changes recommended by the Judicial Conference of the United States.

Section 43 of title 28, U.S.C., 1940 ed., is as follows:

§43. Venue of suits relating to orders of Interstate Commerce Commission.

“(a) Venue of suits relating to orders of the Interstate Commerce Commission.

“(1) The venue of any suit brought to enforce, suspend, or set aside, in whole or in part, any order of the Interstate Commerce Commission shall be in the judicial district wherein is the residence of the party or any of the parties upon whose petition the order was made, except that where the order does not relate to transportation or is not made upon the petition of any party the venue shall be in the district where the matter complained of in the petition before the commission arises, and except that where the order does not relate either to transportation or to a matter so complained of before the commission the matter covered by the order shall be deemed to arise in the district where one of the petitioners in court has either its principal office or its principal operating office. In case such transportation relates to a through shipment the term ‘destination’ shall be construed as meaning final destination of such shipment.” The amendment of section 207 of title 28, U.S.C., 1940 ed., proposed by the Judicial Conference is:

“(Except as otherwise provided in the Act entitled ‘An Act to Regulate Commerce’, approved February 4, 1887, as amended, the venue of any suit brought to enforce, suspend, or set aside, in whole or in part, any order of the Interstate Commerce Commission shall be in the judicial district wherein is the residence of the party or any of the parties bringing the suit or wherein such party or any of such parties has its principal office.”

The revised section substitutes the words “Except as otherwise provided by law” for the words of the conference bill, “in the act entitled ‘An Act to Regulate Commerce, approved February 4, 1887, as amended’.” (See section 16 of title 49, U.S.C., 1940 ed., which provides for jurisdiction and venue of actions to enforce Interstate Commerce Commission orders for the payment of money.)

AMENDMENTS


1982—Subsec. (b). Pub. L. 97–164 substituted “United States Claims Court” for “Court of Claims”.

1975—Subsec. (a). Pub. L. 93–584 substituted provisions that civil actions under section 1336(a) of this title shall be brought only in a judicial district in which any of the parties bringing the action resides or has its principal office, for provisions that civil actions to enforce, suspend, or set aside in whole or in part orders of the Interstate Commerce Commission shall be brought in such judicial district.

1964—Pub. L. 88–513 designated existing provisions as subsec. (a) and added subsec. (b).

Effective Date of 1992 Amendment


Effective Date of 1982 Amendment


Effective Date of 1975 Amendment

Amendment by Pub. L. 93–584 not applicable to actions commenced on or before last day of first month beginning after Jan. 2, 1975, and actions to enjoin or suspend orders of Interstate Commerce Commission which are pending when this amendment becomes effective shall not be affected thereby, but shall proceed to final disposition under the law existing on the date they were commenced, see section 10 of Pub. L. 93–584, set out as a note under section 2231 of this title.

Abolition of Interstate Commerce Commission and Transfer of Functions

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104–88, to Surface Transportation Board effective Jan. 1, 1996, by section 701 of Title 49, Transportation, and section 101 of Pub. L. 104–88, set out as a note under section 701 of Title 49. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104–88, set out as a note under section 701 of Title 49.

§ 1399. Partition action involving United States

Any civil action by any tenant in common or joint tenant for the partition of lands, where the United States is one of the tenants in common or joint tenants, may be brought only in the judicial district where such lands are located or, if located in different districts in the same State, in any of such districts.

(June 25, 1948, ch. 646, 62 Stat. 936.)

HISTORICAL AND REVISION NOTES


Words “civil action” were substituted for “suits in equity,” in view of Rule 2 of the Federal Rules of Civil Procedure.

Provision with respect to property in different districts was added to conform with section 1392 of this title.

Changes were made in phraseology.

§ 1400. Patents and copyrights, mask works, and designs

(a) Civil actions, suits, or proceedings arising under any Act of Congress relating to copyrights
or exclusive rights in mask works or designs may be instituted in the district in which the defendant or his agent resides or may be found.

(b) Any civil action for patent infringement may be brought in the judicial district where the defendant resides, or where the defendant has committed acts of infringement and has a regular and established place of business.


_HISTORICAL AND REVISION NOTES_


Subsection (b) is based on section 109 of title 28, U.S.C., 1940 ed., with the following changes:

Words “civil action” were substituted for “suit,” and words “in law or in equity,” after “shall have jurisdiction” were deleted, in view of Rule 2 of the Federal Rules of Civil Procedure.

Words in subsection (b) “where the defendant resides” were substituted for “of which the defendant is an inhabitant.” A corresponding change was made in subsection (a). Words “inhabitant” and “resident,” as respects venue, are synonymous. (See reviser’s note under section 1391 of this title.

Words “whether a person, partnership, or corporation” before “has committed” were omitted as surplusage.


Jurisdiction and venue of patent suits against residents of foreign countries or persons residing in plurality of districts, see section 72a of title 35, U.S.C., 1940 ed., Patents.

_SENATE REVISION AMENDMENT_

Title 17 of the United States Code was enacted into positive law by act July 30, 1947, ch. 391, 61 Stat. 562, and, in such enactment, section 35 of the prior title became section 111 of the new title, and all Acts from which sections of the prior title had been derived, were repealed. Therefore, this paragraph should read: “Based on Title 28, U.S.C., 1940 ed., §109 (Mar. 3, 1911, ch. 231, §35, 36 Stat. 1100), and section 111 of Title 17, U.S.C., 1946 ed., Copyrights.” By Senate amendment, section 111 of Title 17 U.S.C., is included in the schedule of repeals. See 80th Congress Senate Report No. 1559.

_AMMENDMENTS_

1999—Pub. L. 106–44 amended section catchline generally so as to read “Patents and copyrights, mask works, and designs”.


Subsec. (a). Pub. L. 105–304, §503(c)(1), inserted “or designs” after “mask works”.


§1401. Stockholder’s derivative action

Any civil action by a stockholder on behalf of his corporation may be prosecuted in any judicial district where the corporation might have sued the same defendants.

(June 25, 1948, ch. 646, 62 Stat. 936.)

_HISTORICAL AND REVISION NOTES_


of section 931(a) of such title, the latter provisions relating to tort claims cases. The jurisdictional provisions of such section 931(a) are incorporated in section 1391(b) of this title. For other provisions thereof, see Distribution Table.

Provisions of section 762 of title 28, U.S.C., 1940 ed., relating to the verification and contents of a petition filed against the United States were omitted as unnecessary. Section 265 of title 28, U.S.C., 1940 ed., relative to the petition in cases filed in the Court of Claims was also omitted from the revised title. (See also, Rule 11 of the Federal Rules of Civil Procedure.)

Words "civil action" were substituted for "suit" in view of Rule 2 of the Federal Rules of Civil Procedure. Changes were made in phraseology.

**AMENDMENTS**

1962—Subsec. (a). Pub. L. 97–164 inserted "in a district court" after "civil action" in introductory provisions preceding par. (1). The phrase "civil action" also appeared in par. (2), but no change was made to reflect the probable intent of Congress as indicated on page 79 of House Report No. 97–312.


1958—Subsec. (a). Pub. L. 85–920 substituted "in a district court" for "in the district court of the United States without regard to the United States in any such district." and substituted "in a district court" for "in any district of the United States" in introductory provisions preceding pars. (1) and (2).

Changes were made in phraseology.

**EFFECTIVE DATE OF 1982 AMENDMENT**


**EFFECTIVE DATE OF 1966 AMENDMENT**


### § 1403. Eminent domain

Proceedings to condemn real estate for the use of the United States or its departments or agencies shall be brought in the district court of the district where the land is located or, if located in different districts in the same State, in any of such districts.

*(June 25, 1948, ch. 646, 62 Stat. 937.)*  
**HISTORICAL AND REVISION NOTES**


Section constitutes the first clause of the second sentence of section 257, of title 40, U.S.C., 1940 ed. The revised section is expressive of the purpose of such section 257 with necessary changes in phraseology.

The jurisdiction provision of section 257 of title 40, U.S.C., 1940 ed., is incorporated in section 1392 of this title.


Provision with respect to property in different districts was added to conform with section 1392 of this title.

See, also, section 1392 of this title which fixes venue of an action involving property in different districts in the same State.

### § 1404. Change of venue

(a) For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought or to any district or division to which all parties have consented.

(b) Upon motion, consent or stipulation of all parties, any action, suit or proceeding of a civil nature or any motion or hearing thereof, may be transferred, in the discretion of the court, from the division in which pending to any other division in the same district. Transfer of proceedings in rem brought by or on behalf of the United States may be transferred under this section without the consent of the United States where all other parties request transfer.

(c) A district court may order any civil action to be tried at any place within the division in which it is pending.

(d) Transfers from a district court of the United States to the District Court of Guam, the District Court for the Northern Marianas Islands, or the District Court of the Virgin Islands shall not be permitted under this section. As otherwise used in this section, the term "district court" includes the District Court of Guam, the District Court for the Northern Marianas Islands, and the District Court of the Virgin Islands, and the term "district" includes the territorial jurisdiction of each such court.

**HISTORICAL AND REVISION NOTES**


Section 119 of title 28, U.S.C., 1940 ed., related only to transfer of cases from one division to another on stipulation of the parties.

Subsection (a) was drafted in accordance with the doctrine of forum non conveniens, permitting transfer to a more convenient forum, even though the venue is proper. As an example of the need of such a provision, see *Baltimore & Ohio R. Co. v. Kepner*, 1911, 62 S.Ct. 5, 314 U.S. 44, 86 L.Ed. 28, which was prosecuted under the Federal Employer's Liability Act in New York, although the accident occurred and the employee resided in Ohio. The new subsection requires the court to determine that the transfer is necessary for convenience of the parties and witnesses, and further, that it is in the interest of justice to so do.

Sections 143, 172, 177, and 181 of title 28, U.S.C., 1940 ed., relating to the district courts of Arizona, Montana, New Mexico, and Ohio, contained special provisions similar to subsection (b), applicable to those States. To establish uniformity, the general language of such subsection has been drafted and the special provisions of those sections omitted.

Subsection (b) is based upon section 163 of title 28, U.S.C., 1940 ed., which applied only to the district of Maine. This revised subsection extends to all judicial districts and permits transfer of cases between divisions. Criminal cases may be transferred pursuant to Rules 12–21 of the new Federal Rules of Criminal Procedure, and the criminal provisions of said section 163 are therefore omitted.

**AMENDMENTS**

2011—Subsec. (a). Pub. L. 112–63, § 204(1), inserted "or to any district or division to which all parties have consented" before period at end.

Subsec. (d). Pub. L. 112–63, § 204(2), substituted "Transfers from a district court of the United States to the District Court of Guam, the District Court for the Northern Marianas Islands, or the District Court of the Virgin Islands shall not be permitted under this section. As otherwise used in this section," for "As used in this section."
§ 1405  Creation or alteration of district or division

Actions or proceedings pending at the time of the creation of a new district or division or transfer of a county or territory from one division or district to another may be tried in the district or division as it existed at the institution of the action or proceeding, or in the district or division so created or to which the county or territory is so transferred as the parties shall agree or the court direct.

(June 25, 1948, ch. 646, 62 Stat. 937.)

HISTORICAL AND REVISION NOTES


Enforcement of liens in like circumstances is provided by section 1556 of this title.

Remainder of section 121 of title 28, U.S.C., 1940 ed., is incorporated in section 3240 of revised title 18, Crimes and Criminal Procedure (H.R. 1600, 80th Cong.).

Changes were made in phraseology.

§ 1406. Cure or waiver of defects

(a) The district court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought.

(b) Nothing in this chapter shall impair the jurisdiction of a district court of any matter involving a party who does not interpose timely and sufficient objection to the venue.

(c) As used in this section, the term “district court” includes the District Court of Guam, the District Court for the Northern Mariana Islands, and the District Court of the Virgin Islands, and the term “district” includes the territorial jurisdiction of each such court.


HISTORICAL AND REVISION NOTES

1948 ACT

Subsection (a) provides statutory sanction for transfer instead of dismissal, where venue is improperly laid.

Subsection (b) is declaratory of existing law. (See Panama R.R. Co. v. Johnson, 1924, 44 S.Ct. 391, 264 U.S. 375, 68 L.Ed. 749.) It makes clear the intent of Congress that venue provisions are not jurisdictional but may be waived.

1949 ACT

This section removes an ambiguity in section 1406(a) of title 28, U.S.C., by substituting “may” for “shall”, thus making it clear that the court may decline to transfer a case brought in the wrong district under circumstances where it would not be in the interest of justice to make such transfer. (The amendment to section 1406(a) of this title described in this note was altered in the bill as enacted. See Cong. Rec., vol. 85, pt. 5, pp. 5825, 5827, 6263, 6284.)

AMENDMENTS

1962—Subsec. (c), Pub. L. 104–317 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “As used in this section, ‘district court’ includes the United States District Court for the District of the Canal Zone; and ‘district’ includes the territorial jurisdiction of that court.”

1962—Subsecs. (c), (d). Pub. L. 97–164 redesignated subsec. (d) as (c), (d), Pub. L. 97–164 redesignated subsec. (d) as (c), Former subsec. (c), which provided that if a case within the exclusive jurisdiction of the Court of Claims were filed in a district court, the district court, if it were in the interest of justice, was required to transfer the case to the Court of Claims where the case would proceed as if it had been filed in the Court of Claims on the date that it was filed in the district court, was struck out.


1949—Subsec. (a). Act May 24, 1949, inserted “dismiss, or if it be in the interest of justice”,

 EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–317 applicable to cases pending on Oct. 19, 1996, and to cases commenced on or after such date, see section 610(c) of Pub. L. 104–317 set out as a note under section 1404 of this title.

 EFFECTIVE DATE OF 1982 AMENDMENT


 EFFECTIVE DATE OF 1962 AMENDMENT


 EFFECTIVE DATE OF 1960 AMENDMENT

Section 4 of Pub. L. 86–770 provided that: “The amendments made by sections 1 and 2 of this Act [adding subsec. (c) of this section and section 1506 of this title] shall apply to any case or proceeding pending on, or brought after, the date of enactment of this Act [Sept. 13, 1960] in the district courts or the Court of Claims.”

§ 1407. Multidistrict litigation

(a) When civil actions involving one or more common questions of fact are pending in different districts, such actions may be transferred to any district for coordinated or consolidated
pretrial proceedings. Such transfers shall be made by the judicial panel on multidistrict litigation authorized by this section upon its determination that transfers for such proceedings will be for the convenience of parties and witnesses and will promote the just and efficient conduct of such actions. Each action so transferred shall be remanded by the panel at or before the conclusion of such pretrial proceedings to the district from which it was transferred unless it shall have been previously terminated: Provided, however, That the panel may separate any claim, cross-claim, counter-claim, or third-party claim and remand any of such claims before the remainder of the action is remanded.

(b) Such coordinated or consolidated pretrial proceedings shall be conducted by the judicial panel on multidistrict litigation. For this purpose, upon request of the panel, a circuit judge or a district judge may be designated and assigned temporarily for service in the transferee district by the Chief Justice of the United States or the chief judge of the circuit, as may be required, in accordance with the provisions of chapter 13 of this title. With the consent of the transferee district court, such actions may be assigned by the panel to a judge or judges of such district. The judge or judges to whom such actions are assigned are the members of the judicial panel on multidistrict litigation, and other circuit and district judges designated when needed by the panel may exercise the powers of a district judge in any district for the purpose of conducting pretrial depositions in such coordinated or consolidated pretrial proceedings.

(c) Proceedings for the transfer of an action under this section may be initiated by—

(i) the judicial panel on multidistrict litigation on its own initiative, or

(ii) motion filed with the panel by a party in any action in which transfer for coordinated or consolidated pretrial proceedings under this section may be appropriate. A copy of such motion shall be filed in the district court in which the moving party’s action is pending.

The panel shall give notice to the parties in all actions in which transfers for coordinated or consolidated pretrial proceedings are contemplated, and such notice shall specify the time and place of any hearing to determine whether such transfer shall be made. Orders of the panel to set a hearing and other orders of the panel issued prior to the order either directing or denying transfer shall be filed in the office of the clerk of the district court in which a transfer hearing is to be or has been held. Petitions for an extraordinary writ to review an order to transfer or orders subsequent to transfer shall be filed only in the court of appeals having jurisdiction over the district in which a hearing is to be or has been held. Petitions for an extraordinary writ to review an order to transfer or orders subsequent to transfer shall be filed only in the court of appeals having jurisdiction over the transferee district. There shall be no appeal or review of an order of the panel denying a motion to transfer for consolidated or coordinated proceedings.


(h) Notwithstanding the provisions of section 1404 or subsection (f) of this section, the judicial panel on multidistrict litigation may consolidate and transfer with or without the consent of the parties, for both pretrial purposes and for trial, any action brought under section 4C of the Clayton Act.


REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (f), are set out in the Appendix to this title.

Section 4C of the Clayton Act, referred to in subsec. (h), is section 4C of act Oct. 15, 1914, ch. 323, as added by Pub. L. 94–435, title III, § 301, Sept. 30, 1976, 90 Stat. 1394, which is classified to section 15c of Title 15, Commerce and Trade.

AMENDMENTS


§ 1408. Venue of cases under title 11

Except as provided in section 1410 of this title, a case under title 11 may be commenced in the district court for the district—
§ 1409 Title 28—Judiciary and Judicial Procedure Page 368

(1) in which the domicile, residence, principal place of business in the United States, or principal assets in the United States, of the person or entity that is the subject of such case have been located for the one hundred and eighty days immediately preceding such commencement, or for a longer portion of such one-hundred-and-eighty-day period than the domicile, residence, or principal place of business, in the United States, or principal assets in the United States, of such person were located in any other district; or

(2) in which there is pending a case under title 11 concerning such person's affiliate, general partner, or partnership.


Prior Provisions

A prior section 1408, added by Pub. L. 95–598, title II, §240(a), Nov. 6, 1978, 92 Stat. 2668, which related to bankruptcy appeals, 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.

Effective Date

Section effective July 10, 1984, see section 122(a) of Pub. L. 98–353, set out as a note under section 151 of this title.

§ 1409. Venue of proceedings arising under title 11 or arising in or related to cases under title 11

(a) Except as otherwise provided in subsections (b) and (d), a proceeding arising under title 11 or arising in or related to a case under title 11 may be commenced in the district court in which such case is pending.

(b) Except as provided in subsection (d) of this section, a trustee in a case under title 11 may commence a proceeding arising in or related to such case to recover a money judgment of or property worth less than $1,000 or a consumer debt of less than $15,000, or a debt (excluding a consumer debt) against a noninsider of less than $10,000, or a debt (excluding a consumer debt) against a noninsider of less than $10,000, only in the district court for the district where the defendant resides.

(c) Except as provided in subsection (b) of this section, a trustee in a case under title 11 may commence a proceeding arising in or related to such case as statutory successor to the debtor or creditors under section 541 or 544(b) of title 11 in the district court for the district where the State or Federal court sits in which, under applicable nonbankruptcy venue provisions, the debtor or creditors, as the case may be, may have commenced an action on which such proceeding is based if the case under title 11 had not been commenced.

(d) A trustee may commence a proceeding arising under title 11 or arising in or related to a case under title 11 based on a claim arising after the commencement of such case from the operation of the business of the debtor only in the district court for the district where a State or Federal court sits in which, under applicable nonbankruptcy venue provisions, an action on such claim may have been brought.

(e) A proceeding arising under title 11 or arising in or related to a case under title 11, based on a claim arising after the commencement of such case from the operation of the business of the debtor, may be commenced against the representative of the estate in such case in the district court for the district where the State or Federal court sits in which the party commencing such proceeding may, under applicable nonbankruptcy venue provisions, have brought an action on such claim, or in the district court in which such case is pending.


Adjustment of Dollar Amounts

For adjustment of certain dollar amounts specified in this section, that is not reflected in text, see Adjustment of Dollar Amounts note below.

Amendments

2005—Subsec. (b). Pub. L. 109–8 substituted "$15,000, or a debt (excluding a consumer debt) against a noninsider of less than $10,000," for "$5,000."

Effective Date of 2005 Amendment

Amendment by Pub. L. 109–8 effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under Title 11, Bankruptcy, before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as a note under section 101 of Title 11.

Effective Date

Section effective July 10, 1984, see section 122(a) of Pub. L. 98–353, set out as a note under section 151 of this title.

Adjustment of Dollar Amounts

The dollar amounts specified in this section were adjusted by notices of the Judicial Conference of the United States pursuant to section 104 of Title 11, Bankruptcy, as follows:

By notice dated Feb. 19, 2010, 75 F.R. 8747, effective Apr. 1, 2010, in subsec. (b), dollar amounts "1,100", "16,425", and "10,950" were adjusted to "1,175", "17,575", and "11,725", respectively. See notice of the Judicial Conference of the United States set out as a note under section 104 of Title 11.

By notice dated Feb. 7, 2007, 72 F.R. 7082, effective Apr. 1, 2007, in subsec. (b), dollar amounts "1,000", "15,000", and "10,000" were adjusted to "1,100", "16,425", and "10,950", respectively.

§ 1410. Venue of cases ancillary to foreign proceedings

A case under chapter 15 of title 11 may be commenced in the district court of the United States for the district—

(1) in which the debtor has its principal place of business or principal assets in the United States;

(2) if the debtor does not have a place of business or assets in the United States, in which there is pending against the debtor an action or proceeding in a Federal or State court; or

(3) in a case other than those specified in paragraph (1) or (2), in which venue will be consistent with the interests of justice and the convenience of the parties, having regard to the relief sought by the foreign representative.

AMENDMENTS

EFFECTIVE DATE OF 2005 AMENDMENT
Amendment by Pub. L. 109–8 effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under Title 11, Bankruptcy, before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as a note under section 101 of Title 11.

EFFECTIVE DATE
Section effective July 10, 1984, see section 122(a) of Pub. L. 98–333, set out as a note under section 151 of this title.

§ 1411. Jury trials
(a) Except as provided in subsection (b) of this section, this chapter and title 11 do not affect any right to trial by jury that an individual has under applicable nonbankruptcy law with regard to a personal injury or wrongful death tort claim.

(b) The district court may order the issues arising under section 303 of title 11 to be tried without a jury.


EFFECTIVE DATE
Section effective July 10, 1984, except that subsection (a) is not applicable with respect to cases under Title 11, Bankruptcy, that are pending on July 10, 1984, or to proceedings arising in or related to such cases, see section 122(a)(2) of Pub. L. 98–333, set out as a note under section 151 of this title.

§ 1412. Change of venue
A district court may transfer a case or proceeding under title 11 to a district court for another district, in the interest of justice or for the convenience of the parties.


EFFECTIVE DATE
Section effective July 10, 1984, see section 122(a) of Pub. L. 98–333, set out as a note under section 151 of this title.

§ 1413. Venue of cases under chapter 5 of title 3
Notwithstanding the preceding provisions of this chapter, a civil action under section 1334(c) may be brought in the United States district court for the district in which the employee is employed or in the United States District Court for the District of Columbia.


CODIFICATION
Pub. L. 104–331, § 3(b)(2)(A), which directed the amendment of chapter 37 of this title by adding this section at end, was executed by adding this section at the end of chapter 37 of this title to reflect the probable intent of Congress.

EFFECTIVE DATE
Section effective Oct. 1, 1997, see section 3(d) of Pub. L. 104–331, set out as a note under section 1296 of this title.

CHAPTER 89—DISTRICT COURTS; REMOVAL OF CASES FROM STATE COURTS

Sec. 1441. Removal of civil actions.
1442. Federal officers and agencies sued or prosecuted.
1442a. Members of armed forces sued or prosecuted.
1443. Civil rights cases.
1444. Foreclosure action against United States.
1445. Removal of claims related to bankruptcy cases.
1447. Procedure after removal generally.
1449. State court record supplied.
1450. Attachment or sequestration; securities.
1451. Definitions.
1452. Removal of claims related to bankruptcy cases.
1453. Removal of class actions.
1454. Patent, plant variety protection, and copyright cases.

AMENDMENTS


§ 1441. Removal of civil actions
(a) GENERALLY.—Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendant, to the district court of the United States for the district and division embracing the place where such action is pending.

(b) REMOVAL BASED ON DIVERSITY OF CITIZENSHIP.—(1) In determining whether a civil action is removable on the basis of the jurisdiction under section 1332(a) of this title, the citizenship of defendants sued under fictitious names shall be disregarded.

(2) A civil action otherwise removable solely on the basis of the jurisdiction under section 1332(a) of this title may not be removed if any of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.

(c) JOINER OF FEDERAL LAW CLAIMS AND STATE LAW CLAIMS.—(1) If a civil action includes—

(A) a claim arising under the Constitution, laws, or treaties of the United States (within the meaning of section 1331 of this title), and

1 So in original. Does not conform to section catchline.
(B) a claim not within the original or supplemental jurisdiction of the district court or a claim that has been made nonremovable by statute, the entire action may be removed if the action would be removable without the inclusion of the claim described in subparagraph (B).

(2) Upon removal of an action described in paragraph (1), the district court shall sever from the action all claims described in paragraph (1)(B) and shall remand the severed claims to the State court from which the action was removed. Only defendants against whom a claim described in paragraph (1)(A) has been asserted are required to join in or consent to the removal under paragraph (1).

(d) ACTIONS AGAINST FOREIGN STATES.—Any civil action brought in a State court against a foreign state as defined in section 1603(a) of this title may be removed by the foreign state to the district court of the United States for the district and division embracing the place where such action is pending. Upon removal the action shall be tried by the court without jury. Where removal is based upon this subsection, the time limitations of section 1446(b) of this chapter may be enlarged at any time for cause shown.

(e) MULTIPARTY, MULTIFORUM JURISDICTION.—

(1) Notwithstanding the provisions of subsection (b) of this section, a defendant in a civil action in a State court may remove the action to the district court of the United States for the district and division embracing the place where the action is pending if—

(A) the action could have been brought in a United States district court under section 1399 of this title; or

(B) the defendant is a party to an action which is or could have been brought, in whole or in part, under section 1399 in a United States district court and arises from the same accident as the action in State court, even if the action to be removed could not have been brought in a district court as an original matter.

The removal of an action under this subsection shall be made in accordance with section 1446 of this title, except that a notice of removal may also be filed before trial of the action in State court within 30 days after the date on which the defendant first becomes a party to an action under section 1399 in a United States district court and arises from the same accident as the action in State court, or at a later time with leave of the district court.

(2) Whenever an action is removed under this subsection and the district court to which it is removed or transferred under section 1407(j) has made a liability determination requiring further proceedings as to damages, the district court shall remand the action to the State court from which it had been removed for the determination of damages, unless the court finds that, for the convenience of parties and witnesses and in the interest of justice, the action should be retained for the determination of damages.

(3) Any remand under paragraph (2) shall not be effective until 60 days after the district court has issued an order determining liability and has certified its intention to remand the removed action for the determination of damages. An appeal with respect to the liability determination of the district court may be taken during that 60-day period to the court of appeals with appellate jurisdiction over the district court. In the event a party files such an appeal, the remand shall not be effective until the appeal has been finally disposed of. Once the remand has become effective, the liability determination shall not be subject to further review by appeal or otherwise.

(4) Any decision under this subsection concerning remand for the determination of damages shall not be reviewable by appeal or otherwise.

(5) An action removed under this subsection shall be deemed to be an action under section 1369 and an action in which jurisdiction is based on section 1369 of this title for purposes of this section and sections 1407, 1697, and 1785 of this title.

(6) Nothing in this subsection shall restrict the authority of the district court to transfer or dismiss an action on the ground of inconvenience of forum.

(f) DERIVATIVE REMOVAL JURISDICTION.—The court to which a civil action is removed under this section is not precluded from hearing and determining any claim in such civil action because the State court from which such civil action is removed did not have jurisdiction over that claim.


HISTORICAL AND REVISION NOTES


Section consolidates removal provisions of sections 71 and 114 of title 28, U.S.C. 1940 ed., and is intended to resolve ambiguities and conflicts of decisions. Phrases such as “in suits of a civil nature, at law or in equity,” the words “case,” “cause,” “suit,” and the like have been omitted and the words “civil action” substituted in harmony with Rules 2 and 81(c) of the Federal Rules of Civil Procedure.

Ambiguous phrases such as “the District Court of the United States for the proper district” have been clarified by the substitution of the phrase “the district and division embracing the place where such action is pending.” (See General Investment Co. v. Lake Shore & M.S. Ry. Co., 1922, 43 S.Ct. 107, 112, 260 U.S. 261, 67 L.Ed. 244 and cases cited therein.)

All the provisions with reference to removal of controversies between citizens of different States because of inability, from prejudice or local influence, to obtain justice, have been discarded. These provisions, born of the bitter sectional feelings engendered by the Civil War and the Reconstruction period, have no place in the jurisprudence of a nation since united by three wars against foreign powers. Indeed, the practice of removal for prejudice or local influence has not been employed much in recent years.

Subsection (c) has been substituted for the provision in section 71 of title 28, U.S.C., 1940 ed., “and when in any suit mentioned in this section, there shall be a con-
trovery which is wholly between citizens of different States, and which can be fully determined as between them, then either one or more of the defendants actually interested in such controversy may remove said suit into the district court of the United States.”

This quoted language has occasioned much confusion. The courts have attempted to distinguish between separate and separable controversies, a distinction which is sound in theory but illusory in substance. (See 41 Harv. L. Rev. 1048; 35 Ill. L. Rev. 576.)

Subsection (c) permits the removal of a separate cause of action but not of a separable controversy unless it constitutes a separate and independent claim or cause of action within the original jurisdiction of the United States District Courts. In this respect it will somewhat decrease the volume of Federal litigation.

Rules 18, 20, and 23 of the Federal Rules of Civil Procedure permit the most liberal joinder of parties, claims, and remedies in civil actions. Therefore there will be no procedural difficulty occasioned by the removal of the entire action. Conversely, if the court so desires, it may remand to the State court all non-removable matters.


AMENDMENTS


Subsec. (a). Pub. L. 112–63, § 103(a)(2), inserted heading and in text struck out at end “For purposes of removal under this chapter, the citizenship of defendants sued under fictitious names shall be disregarded.”

Subsec. (b). Pub. L. 112–63, § 103(a)(3), amended subsec. (b) generally. Prior to amendment, text read as follows: “Any civil action of which the district courts have original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States shall be removable without regard to the citizenship or residence of the parties. Any other such action shall be removable only if none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.”

Subsec. (c). Pub. L. 112–63, § 103(a)(4), amended subsec. (c) generally. Prior to amendment, text read as follows: “Whenever a separate and independent claim or cause of action within the jurisdiction conferred by section 1331 of this title is joined with one or more otherwise non-removable claims or causes of action, the entire case may be removed and the district court may determine all issues therein, or, in its discretion, may remand all matters in which State law predominates.”


2002—Subsecs. (e), (f). Pub. L. 107–273 added subsec. (e), redesignated former subsec. (e) as (f), and substituted “The court to which a civil action is removed under this section” for “The court to which such civil action is removed”.

1991—Subsec. (c). Pub. L. 102–198 struck out comma after “title” and substituted “may” for “may may” before “remand”.

1986—Subsec. (c). Pub. L. 100–702 inserted at end “For purposes of removal under this chapter, the citizenship of defendants sued under fictitious names shall be disregarded.”


EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 112–63 effective upon the expiration of the 30-day period beginning on Dec. 7, 2011, and applicable to any action or prosecution commenced on or after such effective date, with provisions for treatment of cases removed to Federal court, see section 105 of Pub. L. 112–63, set out as a note under section 1332 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–273 applicable to a civil action if the accident giving rise to the cause of action occurred on or after the 90th day after Nov. 2, 2002, see section 11029(c) of Pub. L. 107–273, setting out as an Effective Date note under section 1369 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 3(b) of Pub. L. 99–336 provided that: “The amendment made by this section [amending this section] shall apply with respect to claims in civil actions commenced in State courts on or after the date of the enactment of this section [June 19, 1986].”

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–583 effective 90 days after Oct. 21, 1976, see section 8 of Pub. L. 94–583, set out as an Effective Date note under section 1602 of this title.

§ 1442. Federal officers or agencies sued or prosecuted

(a) A civil action or criminal prosecution that is commenced in a State court and that is against or directed to any of the following may be removed by them to the district court of the United States for the district and division embracing the place wherein it is pending:

(1) The United States or any agency thereof or any officer (or any person acting under that officer) of the United States or of any agency thereof, in an official or individual capacity, for or relating to any act under color of such office or on account of any right, title or authority claimed under any Act of Congress for the apprehension or punishment of criminals or the collection of the revenue.

(2) A property holder whose title is derived from any such officer, where such action or prosecution affects the validity of any law of the United States.

(3) Any officer of the courts of the United States, for or relating to any act under color of office or in the performance of his duties.

(4) Any officer of either House of Congress, for or relating to any act in the discharge of his official duty under an order of such House.

(b) A personal action commenced in any State court by an alien against any citizen of a State who is, or at the time the alleged action accrued was, a civil officer of the United States and is a nonresident of such State, wherein jurisdiction is obtained by the State court by personal service of process, may be removed by the defendant to the district court of the United States for the district and division in which the defendant was served with process.

(c) As used in subsection (a), the terms “civil action” and “criminal prosecution” include any proceeding (whether or not ancillary to another proceeding) to the extent that in such proceeding a judicial order, including a subpoena for
testimony or documents, is sought or issued. If removal is sought for a proceeding described in the previous sentence, and there is no other basis for removal, only that proceeding may be removed to the district court.


Historical and Revision Notes


The revised subsection (a)(1) is extended to apply to all officers and employees of the United States or any agency thereof. Section 76 of title 28, U.S.C., 1940 ed., was limited to revenue officers engaged in the enforcement of the criminal or revenue laws.

The procedural provisions of section 76 of title 28, U.S.C., 1940 ed., are incorporated in sections 1446 and 1447 of this title. (See reviser’s notes under those sections.) Changes were made in phraseology.

Amendments

2011—Subsec. (a). Pub. L. 112–51, § 2(a)(1), inserted “that is” after “or criminal prosecution”, “and that is” after “in a State court”, and “or directed to” after “against” in introductory provisions.

Subsec. (a)(1). Pub. L. 112–51, §2(b)(1), substituted “capacity, for or relating to” for “capacity for” and struck out “sued” after “thereof.”.

Subsec. (a)(3), (4). Pub. L. 112–51, §2(b)(2), inserted “or relating to” after “for”.


Subsec. (a). Pub. L. 104–317, §206(a)(2), struck out “persons” after “following” in introductory provisions and substituted “The United States or any agency thereof or any officer (or any person acting under that officer) of the United States or of any agency thereof, sued in an official or individual capacity for any act under color of such office” for “Any officer of the United States or any agency thereof, or person acting under him, for any act under color of such office” in par. (1).

§1442a. Members of armed forces sued or prosecuted

A civil or criminal prosecution in a court of a State of the United States against a member of the armed forces of the United States on account of an act done under color of his office or status, or in respect to which he claims any right, title, or authority under a law of the United States respecting the armed forces thereof, or under the law of war, may at any time before the trial or final hearing thereof be removed to the district court of the United States for the district where it is pending in the manner prescribed by law, and it shall thereupon be entered on the docket of the district court, which shall proceed as if the cause had been originally commenced therein and shall have full power to hear and determine the cause.

(Added Aug. 10, 1956, ch. 1041, §19(a), 70 A Stat. 626.)

Derivation

Section was from the Uniform Code of Military Justice, act May 5, 1950, ch. 169, §9, 64 Stat. 146, which was based on Article 117, Articles of War, act June 4, 1920, ch. 227, subch. II, §1, 41 Stat. 811, as amended June 24, 1948, ch. 625, title II, §242, 62 Stat. 642.

§1443. Civil rights cases

Any of the following civil actions or criminal prosecutions, commenced in a State court may be removed by the defendant to the district court of the United States for the district and division embracing the place wherein it is pending:

(1) Against any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof;

(2) For any act under color of authority derived from any law providing for equal rights, or for refusing to do any act on the ground that it would be inconsistent with such law.

(Added Aug. 10, 1956, ch. 646, 62 Stat. 938.)

Historical and Revision Notes


Words “or in the part of the State where such suit or prosecution is pending” after “courts of such States,” were omitted as unnecessary.

Changes were made in phraseology.

§1444. Foreclosure action against United States

Any action brought under section 2410 of this title against the United States in any State court may be removed by the United States to the district court of the United States for the district and division in which the action is pending.

(June 25, 1948, ch. 646, 62 Stat. 938; May 24, 1949, ch. 139, §82, 63 Stat. 101.)

Historical and Revision Notes

1948 Act


The procedural provisions of section 903 of title 28, U.S.C., 1940 ed., were omitted as covered by section 1446 of this title.

Changes were made in phraseology.

1949 Act

This section corrects typographical errors in section 1444 of title 28, U.S.C.

Amendments

1949—Act May 24, 1949, inserted “court” between “State” and “may”, and substituted “division” for “districts”.

§1445. Nonremovable actions

(a) A civil action in any State court against a railroad or its receivers or trustees, arising under sections 1–4 and 5–10 of the Act of April 22, 1908 (45 U.S.C. 51–54, 55–60), may not be removed to any district court of the United States.

(b) A civil action in any State court against a carrier or its receivers or trustees to recover damages for delay, loss, or injury of shipments, arising under section 11706 or 14706 of title 49,
may not be removed to any district court of the United States unless the matter in controversy exceeds $10,000, exclusive of interest and costs. 

(c) A civil action in any State court arising under the workmen’s compensation laws of such State may not be removed to any district court of the United States.

(d) A civil action in any State court arising under section 40302 of the Violence Against Women Act of 1994 may not be removed to any district court of the United States.


HISTORICAL AND REVISION NOTES


The words “or its receivers or trustees” were inserted in both subsections to make clear that nonremovable actions against a carrier do not become removable under section 1442 of this title when filed against court receivers or trustees.

This was the unprecedent rule prior to the act of Aug. 23, 1916, ch. 399, 39 Stat. 532, amending section 76 of title 28, U.S.C., 1910 ed., and permitted removal of actions against officers of United States courts. The cases are in conflict as to whether under that amendment the case becomes removable when the carrier is in receivership or undergoing reorganization. The revised section resolves the conflict by denying the right of removal to receivers and trustees where it would be nonexistent if the carrier were the party defendant. Thus the subject matter rather than legalistic distinctions as to the identity of the parties is made determinative consideration.

A reference in section 71 of title 28, U.S.C., 1940 ed., to sections 51–59 of title 45, U.S.C., 1940 ed., Railroads, was changed to “51–60.” Such sections 51–59 embraced all of chapter 2 of said title 45 when the law on which such section 71 was based was enacted, but a new section (60) was added in 1938.

Other provisions of section 71 of title 28, U.S.C., 1940 ed., appear in section 1441 of this title. Changes were made in phraseology.

REFERENCES IN TEXT


AMENDMENTS


1995—Subsec. (b). Pub. L. 104–88 substituted “carrier” for “common carrier” and “11706 or 14706” for “11707”.


1993—Subsec. (b). Pub. L. 98–486 substituted “$10,000” for “$3,000”.

Pub. L. 95–473 substituted “section 11707 of title 49” for “section 20 of Title 49”.

1986—Pub. L. 95–546 substituted “Nonremovable actions” for “Carriers; nonremovable actions”) in section catchline and added subsec. (c).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–287 effective July 5, 1994, see section 8(1) of Pub. L. 104–287, set out as a note under section 5303 of Title 49, Transportation.

§ 1446. Procedure for removal of civil actions

(a) GENERALLY.—A defendant or defendants desiring to remove any civil action from a State court shall file in the district court of the United States for the district and division within which such action is pending a notice of removal signed pursuant to Rule 11 of the Federal Rules of Civil Procedure and containing a short and plain statement of the grounds for removal, together with a copy of all process, pleadings, and orders served upon such defendant or defendants in such action.

(b) REQUIREMENTS; GENERALLY.—(1) The notice of removal of a civil action or proceeding shall be filed within 30 days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within 30 days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter.

(2)(A) When a civil action is removed solely under section 1441(a), all defendants who have been properly joined and served must join in or consent to the removal of the action.

(2)(B) Each defendant shall have 30 days after receipt by or service on that defendant of the initial pleading or summons described in paragraph (1) to file the notice of removal.

(2)(C) If defendants are served at different times, and a later-served defendant files a notice of removal, any earlier-served defendant may consent to the removal even though that earlier-served defendant did not previously initiate or consent to removal.

(3) Except as provided in subsection (c), if the case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable.

(c) REQUIREMENTS; REMOVAL BASED ON DIVERSITY OF CITIZENSHIP.—(1) A case may not be removed under subsection (b)(3) on the basis of jurisdiction conferred by section 1332 more than 1 year after commencement of the action, unless the district court finds that the plaintiff has acted in bad faith in order to prevent a defendant from removing the action.

(2) If removal of a civil action is sought on the basis of the jurisdiction conferred by section 1332(a), the sum demanded in good faith in the initial pleading shall be deemed to be the amount in controversy, except that—

(A) the notice of removal may assert the amount in controversy if the initial pleading seeks—

...
(i) nonmonetary relief; or
(ii) a money judgment, but the State practice either does not permit demand for a specific sum or permits recovery of damages in excess of the amount demanded; and

(B) removal of the action is proper on the basis of an amount in controversy asserted under subparagraph (A) if the district court finds, by the preponderance of the evidence, that the amount in controversy exceeds the amount specified in section 1332(a).

(3)(A) If the case stated by the initial pleading is not removable solely because the amount in controversy does not exceed the amount specified in section 1332(a), information relating to the amount in controversy in the record of the State proceeding, or in responses to discovery, shall be treated as an "other paper" under subsection (b)(3).

(B) If the notice of removal is filed more than 1 year after commencement of the action and the district court finds that the plaintiff deliberately failed to disclose the actual amount in controversy to prevent removal, that finding shall be deemed bad faith under paragraph (1).

(d) NOTICE TO ADVERSE PARTIES AND STATE COURT.—Promptly after the filing of such notice of removal of a civil action the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the notice with the clerk of such State court, which shall effect the removal and the State court shall proceed no further unless and until the case is remanded.

(e) COUNTERCLAIM IN 337 PROCEEDING.—With respect to any counterclaim removed to a district court pursuant to section 337(c) of the Tariff Act of 1930, the district court shall resolve such counterclaim in the same manner as an original complaint under the Federal Rules of Civil Procedure, except that the payment of a filing fee shall not be required in such cases and the counterclaim shall relate back to the date of the original complaint in the proceeding before the International Trade Commission under section 337 of that Act.

(g)\(^1\) Where the civil action or criminal prosecution that is removable under section 1442(a) is a proceeding in which a judicial order for testimony or documents is sought or issued or sought to be enforced, the 30-day requirement of subsection (b) of this section and paragraph (1) of section 155(b) is satisfied if the person or entity desiring to remove the proceeding files the notice of removal not later than 30 days after receiving, through service, notice of any such proceeding.

\(^1\)So in original. Section does not contain a subsec. (f).

The requirements of section 74 of title 28, U.S.C., 1940 ed., that the clerk of the State court shall furnish copies of pleadings and proceedings to the petitioner and that the petitioner shall file the same in the district court are covered by section 1447 of this title.

The provisions of section 74 of title 28, U.S.C., 1940 ed., requiring the adverse parties to plead anew in the district court were omitted as unnecessary in view of Federal Rules of Civil Procedure, Rule 81(c).

The last sentence of such section was omitted as covered by section 1447(d) of this title.

1949 ACT

Subsection (b) of section 1446 of title 28, U.S.C., as revised, has been found to create difficulty in those States, such as New York, where suit is commenced by the service of a summons and the plaintiff's initial pleading is not required to be served or filed until later.

The first paragraph of the amendment to subsection (b) corrects this situation by providing that the petition for removal need not be filed until 20 days after the defendant has received a copy of the plaintiff's initial pleading.

This provision, however, without more, would create further difficulty in those States, such as Kentucky, where suit is commenced by the filing of the plaintiff's initial pleading and the issuance and service of a summons which contains a requirement that a copy of the pleading be served upon or otherwise furnished to the defendant. Accordingly the first paragraph of the amendment provides that in such cases the petition for removal shall be filed within 20 days after the service of the summons.

The first paragraph of the amendment conforms to the amendment of rule 81(c) of the Federal Rules of Civil Procedure relating to removed actions, adopted by the Supreme Court on December 29, 1948, and reported by the Court to the present session of Congress.

The second paragraph of the amendment to subsection (b) is intended to make clear that the right of removal may be exercised at a later stage of the case if the initial pleading does not state a removable case but its removability is subsequently disclosed. This is declaratory of the existing rule laid down by the decisions. (See for example, Powers v. Chesapeake etc., R. Co., 169 U.S. 92.)

In addition, this amendment clarifies the intent of section 1455(e) of this title, to indicate that notice need not be given simultaneously with the filing, but may be given promptly thereafter.

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsections (a) and (e), are set out in the Appendix to this title.

Section 337 of the Tariff Act of 1930, referred to in subsection (e), is classified to section 1337 of Title 19, Customs Duties.

AMENDMENTS

2011—Pub. L. 112–63, § 103(b)(1), amended section catchline generally, substituting “Procedure for removal of civil actions” for “Procedure for removal”. Subsec. (a), Pub. L. 112–63, § 103(b)(2), inserted heading and struck out “or criminal prosecution” after “civil action” in text. Subsec. (b), Pub. L. 112–63, § 103(b)(3)(A), (B), inserted heading, designated first par. as par. (1), added pars. (2) and (3), and struck out second par. which read as follows: “If the case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable, except that a case may not be removed on the basis of jurisdiction conferred by section 1332 of this title more than 1 year after commencement of the action.”

Subsec. (b)(1). Pub. L. 112–63, § 103(b)(4)(B), substituted “30 days” for “thirty days” in two places. Subsec. (c). Pub. L. 112–63, § 103(b)(3)(C), added subsec. (e) and struck out former subsec. (c) which related to notice of removal of a criminal prosecution.

Subsec. (d). Pub. L. 112–63, § 103(b)(4)(A), inserted heading. Subsec. (e). (f). Pub. L. 112–63, § 103(b)(4)(C), (D), redesignated subsec. (f) as (e), inserted heading, and struck out former subsec. (e) which read as follows: “If the defendant or defendants are in actual custody on process issued by the State court, the district court shall issue its writ of habeas corpus, and the marshal shall thereupon take such defendant or defendants into his custody and deliver a copy of the writ to the clerk of such State court.”

Subsec. (g). Pub. L. 112–63, § 104, substituted “subsection (b) of this section and paragraph (1) of section 1455(b)” for “subsections (b) and (c)”.

Pub. L. 112–51 added subsec. (g).

1996—Subsec. (c)(1). Pub. L. 104–371 substituted “defendant or defendants” for “petitioner”.


1991—Subsec. (c)(1), Pub. L. 102–198, § 10(a)(1), (4), substituted “notice of” for “petition for” and “the notice” for “the petition”.

Subsec. (c)(2). Pub. L. 102–198, § 10(a)(1), (4), substituted “notice of” for “petition for” and substituted “notice of” for “petition for” and substituted “notice for” for “petition for” in three places.

Subsec. (c)(3). Pub. L. 102–198, § 10(a)(1), (2), substituted “notice of” for “petition for” and substituted “prosecution is first remedied” for “petition is first denied”.

Subsec. (c)(4), (5). Pub. L. 102–198, § 10(a)(3), added pars. (4) and (5) and struck out former pars. (4) and (5) which read as follows: “(4) The United States district court to which such petition is directed shall examine the petition promptly. If it clearly appears on the face of the petition and any exhibits annexed thereto that the petition for removal should not be granted, the court shall make an order for its summary dismissal. “(5) If the United States district court does not order the summary dismissal of such petition, it shall order an evidentiary hearing to be held promptly and after such hearing shall make such disposition of the petition as justice shall require.”

1988—Subsec. (a). Pub. L. 100–702, § 1016(b)(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “A defendant or defendants desiring to remove any civil action or criminal prosecution from a State court shall file in the district court of the United States for the district and division within which such action is pending a verified petition containing a short and plain statement of the facts which entitle him or them to removal together with a copy of all process, pleadings and orders served upon him or them in such action.”

Subsec. (b). Pub. L. 100–702, § 1016(b)(2), substituted “notice of removal” for “petition for removal” in two places and inserted before period at end of second par. except that a case may not be removed on the basis of jurisdiction conferred by section 1332 of this title more than 1 year after commencement of the action”. Subsecs. (d) to (f). Pub. L. 100–702, § 1016(b)(3), redesignated subsecs. (e) and (f) as (d) and (e), respectively, and struck out former subsec. (d) which read as follows: “Each petition for removal of a civil action or proceeding, except a petition in behalf of the United States, shall be accompanied by a bond with good and sufficient surety conditioned that the defendant or defendants will pay all costs and disbursements incurred by reason of the removal proceedings should it be deter-
minded that the case was not removable or was improperly removed.'


1967—Subsec. (b). Pub. L. 90–204 substituted ‘‘three days’’ for ‘‘twenty days’’ wherever appearing.

1965—Subsec. (b). Pub. L. 88–215 substituted ‘‘thirty days’’ for ‘‘twenty days’’ wherever appearing.

1949—Subsec. (b). Act May 24, 1949, § 83(a), substituted ‘‘the petition for removal need not be filed until 20 days after the defendant has received a copy of the plaintiff’s initial pleading, and provided that the petition for removal shall be filed within 20 days after the service of summons. ’’

Subsec. (e). Act May 24, 1949, § 83(b), indicated that notice need not be given simultaneously with the filing, but may be made promptly thereafter.

Effective Date of 2011 Amendment
Amendment by Pub. L. 112–63 effective upon the expiration of the 30-day period beginning on Dec. 7, 2011, and applicable to any action or proceeding commenced on or after such effective date, with provisions for treatment of cases removed to Federal court, see section 105 of Pub. L. 112–63, set out as a note under section 1332 of this title.

Effective Date of 1994 Amendment
Amendment by Pub. L. 103–465 applicable with respect to complaints filed under section 1337 of Title 19, Customs Duties, on or after the date on which the World Trade Organization Agreement enters into force with respect to complaints filed under section 1337 of Title 19, Customs Duties, on or after the date on which the World Trade Organization Agreement enters into force with respect to complaints filed under such section on or after such date, see section 322 of Pub. L. 102–156 substituted ‘‘thirty days’’ for ‘‘twenty days’’ wherever appearing.

Subsec. (e). Act May 24, 1949, § 83(a), provided that the petition for removal need not be filed until 20 days after the defendant has received a copy of the plaintiff’s initial pleading, and provided that the petition for removal shall be filed within 20 days after the service of summons.

Effective Date of 1977 Amendment
Amendment by Pub. L. 95–78 note under section 80 of said section 80 appear in section 1919 of this title.

Procedural after removal generally
(a) In any case removed from a State court, the district court may issue all necessary orders and process to bring before it all proper parties whether served by process issued by the State court or otherwise.
(b) It may require the removing party to file with its clerk copies of all records and proceedings in such State court or may cause the same to be brought before it by writ of certiorari issued to such State court.
(c) A motion to remand the case on the basis of any defect other than lack of subject matter jurisdiction must be made within 30 days after the filing of the notice of removal under section 1446(a). If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded. An order remanding the case may require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal. A certified copy of the order of remand shall be mailed by the clerk of the district court to the clerk of the State court.
(d) An order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise, except that an order remanding a case to the State court from which it was removed pursuant to section 1442 or 1443 of this title shall be reviewable by appeal or otherwise.
(e) If after removal the plaintiff seeks to join additional defendants whose joinder would destroy subject matter jurisdiction, the court may deny joinder, or permit joinder and remand the action to the State court.

(Historical and Revision Notes)
1948 Act
in a State court, to be used in any district court
ords and proceedings in any suit or prosecution
such facts, direct such record to be supplied by
the district court may, on affidavit reciting
of the United States, and the clerk of such State
ting party’’ for ‘‘petitioner’’.
1949—Subsec. (c). Pub. L. 100–702, §1016(c)(1), amended
subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ‘‘If at any time before final judgment it appears that the case was removed improvidently and without jurisdiction, the district court shall re-
mand the case, and may order the payment of just
costs. A certified copy of the order of remand shall be
mailed by its clerk to the clerk of the State court. The
State court may thereupon proceed with such case.’’
(e).
provision.
1949—Subsec. (c). Act May 24, 1949, §84(a), struck out
former subsecs. (c) and (d), renumbered former subsec.
(e) to be subsec. (c) and inserted at end of first sentence of
new subsec. (c) ‘‘and may order the payment of just
costs’’.
Subsec. (d). Act May 24, 1949, §84(b), added subsec. (d).

**Exception to Subsection (d)**
Act Aug. 4, 1947, ch. 458, §3(c), 61 Stat. 732, provides in
part that the United States shall have the right to ap-
peal from any order of remand entered in any case re-
moved to a United States district court pursuant to the
provisions of act Apr. 22, 1926, ch. 115, 44 Stat. 239.
These acts referred to herein relate to restrictions on
land of the Five Civilized Tribes of Oklahoma and are
set out as notes under section 356 of Title 25, Indians.

§ 1448. Process after removal

In all cases removed from any State court to
any district court of the United States in which
any one or more of the defendants has not been
served with process or in which the service has
not been perfected prior to removal, or in which
process served proves to be defective, such pro-
cess or service may be completed or new process
issued in the same manner as in cases originally
filed in such district court.

This section shall not deprive any defendant
upon whom process is served after removal of
his right to move to remand the case.

(June 25, 1948, ch. 646, 62 Stat. 940.)

**Historical and Revision Notes**

Based on title 28, U.S.C., 1940 ed., §83 (Apr. 16, 1920,
ch. 146, 41 Stat. 554).

Words ‘‘district court of the United States’’ were sub-
stituted for ‘‘United States Court,’’ because only the
district courts now possess jurisdiction over removed
civil and criminal cases.

Changes were made in phraseology.

§ 1449. State court record supplied

Where a party is entitled to copies of the rec-
ords and proceedings in any suit or prosecution in
a State court, to be used in any district court
of the United States, and the clerk of such State
court, upon demand, and the payment or tender
of the legal fees, fails to deliver certified copies,
the district court may, on affidavit reciting such
facts, direct such record to be supplied by
affidavit or otherwise. Thereupon such proceed-
ings, trial, and judgment may be had in such dis-

certified copies had been filed in the district
court.

(June 25, 1948, ch. 646, 62 Stat. 940; May 24, 1949,
ch. 139, §85, 63 Stat. 102.)

**Historical and Revision Notes**

1948 Act

231, §36, 36 Stat. 1098).

Changes were made in phraseology.

1949 Act

This section corrects a typographical error by elimi-
nating from section 1449 of title 28, U.S.C., the words
‘‘any attachment or sequestration of the’’, which had
been inadvertently included, and inserting in lieu
thereof the words, ‘‘and the clerk of such State court, upon’’.

**Amendments**
1949—Act May 24, 1949, substituted ‘‘and the clerk of
such State court, upon’’ for ‘‘any attachment or se-
questration of the’’.

§ 1450. Attachment or sequestration; securities

Whenever any action is removed from a State
court to a district court of the United States, any
attachment or sequestration of the goods or
estate of the defendant in such action in the
State court shall hold the goods or estate to an-
swer the final judgment or decree in the same
manner as they would have been held to answer
final judgment or decree had it been rendered by
the State court.

All bonds, undertakings, or security given by
either party in such action prior to its removal
shall remain valid and effective notwithstanding
such removal.

All injunctions, orders, and other proceedings
had in such action prior to its removal shall re-
main in full force and effect until dissolved or
modified by the district court.

(June 25, 1948, ch. 646, 62 Stat. 940.)

**Historical and Revision Notes**

231, §36, 36 Stat. 1098).

Changes were made in phraseology.

§ 1451. Definitions

For purposes of this chapter—
(1) The term ‘‘State court’’ includes the Su-
perior Court of the District of Columbia.
(2) The term ‘‘State’’ includes the District of
Columbia.

(Added Pub. L. 91–358, title I, §172(d)(1), July 29,
1970, 84 Stat. 591.)

**Effective Date**

Section effective first day of seventh calendar month
which begins after July 29, 1970, see section 196(a) of
Pub. L. 91–358, set out as an Effective Date of 1970
Amendment note under section 1257 of this title.

§ 1452. Removal of claims related to bankruptcy
cases

(a) A party may remove any claim or cause of
action in a civil action other than a proceeding
before the United States Tax Court or a civil ac-

(June 25, 1948, ch. 646, 62 Stat. 940.)

**Historical and Revision Notes**

231, §36, 36 Stat. 1098).

Changes were made in phraseology.

1949 Act

This section corrects a typographical error by elimi-
nating from section 1449 of title 28, U.S.C., the words
‘‘any attachment or sequestration of the’’, which had
been inadvertently included, and inserting in lieu
thereof the words, ‘‘and the clerk of such State court, upon’’.

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**Historical and Revision Notes**

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ch. 139, §85, 63 Stat. 102.)

**Historical and Revision Notes**

1948 Act

231, §36, 36 Stat. 1098).

Changes were made in phraseology.
§ 1453. Removal of class actions

(a) Definitions.—In this section, the terms “class”, “class action”, “class certification order”, and “class member” shall have the meanings given such terms under section 1332(d)(1).

(b) In General.—A class action may be removed to a district court of the United States in accordance with section 1446 (except that the 1-year limitation under section 1446(c)(1) shall not apply), without regard to whether any defendant is a citizen of the State in which the action is brought, except that such action may be removed by any defendant without the consent of all defendants.

(c) Review of Remand Orders.—

(1) In General.—Section 1447 shall apply to any removal of a case under this section, except that notwithstanding section 1446(d), a court of appeals may accept an appeal from an order of a district court granting or denying a motion to remand a class action to the State court from which it was removed if application is made to the court of appeals not more than 10 days after entry of the order.

(2) Time Period for Judgment.—If the court of appeals accepts an appeal under paragraph (1), the court shall complete all action on such appeal, including rendering judgment, not later than 60 days after the date on which such appeal was filed, unless an extension is granted under paragraph (3).

(3) Extension of Time Period.—The court of appeals may grant an extension of the 60-day period described in paragraph (2) if—

(A) all parties to the proceeding agree to such extension, for any period of time; or

(B) such extension is for good cause shown and in the interests of justice, for a period not to exceed 10 days.

(4) Denial of Appeal.—If a final judgment on the appeal under paragraph (1) is not issued before the end of the period described in paragraph (2), including any extension under paragraph (3), the appeal shall be denied.

(d) Exception.—This section shall not apply to any class action that solely involves—


(2) a claim that relates to the internal affairs or governance of a corporation or other form of business enterprise and arises under or by virtue of the laws of the State in which such corporation or business enterprise is incorporated or organized; or

(3) a claim that relates to the rights, duties (including fiduciary duties), and obligations relating to or created by or pursuant to any security (as defined under section 2(a)(1) of the Securities Act of 1933 (15 U.S.C. 77a(a)(1)) and the regulations issued thereunder).

§ 1454. Patent, plant variety protection, and copyright cases

(a) In General.—A civil action in which any party asserts a claim for relief arising under any Act of Congress relating to patents, plant variety protection, or copyrights may be removed to the district court of the United States for the district and division embracing the place where the action is pending.

(b) Special Rules.—The removal of an action under this section shall be made in accordance with section 1446, except that if the removal is based solely on this section—

(1) the action may be removed by any party; and

(2) the time limitations contained in section 1446(b) may be extended at any time for cause shown.
(c) CLARIFICATION OF JURISDICTION IN CERTAIN CASES.—The court to which a civil action is removed under this section is not precluded from hearing and determining any claim in the civil action because the State court from which the civil action is removed did not have jurisdiction over that claim.

(d) REMAND.—If a civil action is removed solely under this section, the district court—

(1) shall remand all claims that are neither a basis for removal under subsection (a) nor within the original or supplemental jurisdiction of the district court under any Act of Congress; and

(2) may, under the circumstances specified in section 1367(c), remand any claims within the supplemental jurisdiction of the district court under section 1367.


**Effective Date**

Section applicable to any civil action commenced on or after Sept. 16, 2011, see section 19(c) of Pub. L. 112–29, set out as an Effective Date of 2011 Amendment note under section 1295 of this title.

§ 1455. Procedure for removal of criminal prosecutions

(a) NOTICE OF REMOVAL.—A defendant or defendants desiring to remove any criminal prosecution from a State court shall file in the district court of the United States for the district and division within which such prosecution is pending a notice of removal signed pursuant to Rule 11 of the Federal Rules of Civil Procedure and containing a short and plain statement of the grounds for removal, together with a copy of all process, pleadings, and orders served upon such defendant or defendants in such action.

(b) REQUIREMENTS.—(1) A notice of removal of a criminal prosecution shall be filed not later than 30 days after the arraignment in the State court, or at any time before trial, whichever is earlier, except that for good cause shown the United States district court may enter an order granting the defendant or defendants leave to file the notice at a later time.

(2) A notice of removal of a criminal prosecution shall include all grounds for such removal. A failure to state grounds that exist at the time of the filing of the notice shall constitute a waiver of such grounds, and a second notice may be filed only on grounds not existing at the time of the original notice. For good cause shown, the United States district court may grant relief from the limitations of this paragraph.

(3) The filing of a notice of removal of a criminal prosecution shall not prevent the State court in which such prosecution is pending from proceeding further, except that a judgment of conviction shall not be entered unless the prosecution is first remanded.

(4) The United States district court in which such notice is filed shall examine the notice promptly. If it clearly appears on the face of the notice and any exhibits annexed thereto that removal should not be permitted, the court shall make an order for summary remand.

(5) If the United States district court does not order the summary remand of such prosecution, it shall order an evidentiary hearing to be held promptly and, after such hearing, shall make such disposition of the prosecution as justice shall require. If the United States district court determines that removal shall be permitted, it shall so notify the State court in which prosecution is pending, which shall proceed no further.

(c) WRIT OF HABEAS CORPUS.—If the defendant or defendants are in actual custody on process issued by the State court, the district court shall issue its writ of habeas corpus, and the marshal shall thereupon take such defendant or defendants into the marshal's custody and deliver a copy of the writ to the clerk of such State court.


REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (a), are set out in the Appendix to this title.

**Effective Date**

Section effective upon the expiration of the 30-day period beginning on Dec. 7, 2011, applicable to any action or prosecution commenced on or after such effective date, with provisions for treatment of cases removed to Federal court, see section 105 of Pub. L. 112–63, set out as an Effective Date of 2011 Amendment note under section 1332 of this title.

[CHAPTER 90—OMITTED]

**Codification**

Chapter 90, consisting of sections 1471 to 1482, which was added by Pub. L. 95–598, title II, §241(a), Nov. 6, 1980, 92 Stat. 2668, and which related to district courts and bankruptcy courts, 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.

**Transition to New Court System**


**CHAPTER 91—UNITED STATES COURT OF FEDERAL CLAIMS**

Sec. 1491. Claims against United States generally; actions involving Tennessee Valley Authority.

1492. Congressional reference cases.
§ 1491

TITLE 28—JUDICIAIY AND JUDICIAL PROCEDURE

This section inserts in the analysis of chapter 91 of title 28, U.S.C., item 1505, corresponding to new section 1505.

**Amendments**


1949—Act May 24, 1949, ch. 139, §66, 63 Stat. 102, added item 1506.

**§ 1491. Claims against United States generally; actions involving Tennessee Valley Authority**

(a)(1) The United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort. For the purpose of this paragraph, an express or implied contract with the Army and Air Force Exchange Service, Navy Exchanges, Marine Corps Exchanges, Coast Guard Exchanges, or Exchange Councils of the National Aeronautics and Space Administration shall be considered an express or implied contract with the United States.

(2) To provide an entire remedy and to complete the relief afforded by the judgment, the court may, as an incident of and collateral to any such judgment, issue orders directing restoration to office or position, placement in appropriate duty or retirement status, and correction of applicable records, and such orders may be issued to any appropriate official of the United States. In any case within its jurisdiction, the court shall have the power to render appropriate matters to any administrative or executive body or official with such direction as it may deem proper and just. The Court of Federal Claims shall have jurisdiction to render judgment upon any claim by or against, or dispute with, a contractor arising under section 7404(b)(1) of title 41, including a dispute concerning termination of a contract, rights in tangible or intangible property, compliance with cost accounting standards, and other nonmonetary disputes on which a decision of the contracting officer has been issued under section 6 of that Act.

(b)(1) Both the United States Court of Federal Claims and the district courts of the United States shall have jurisdiction to render judgment on an action by an interested party objecting to a solicitation by a Federal agency for bids or proposals for a proposed contract or to a proposed award or the award of a contract or any alleged violation of statute or regulation in connection with a procurement or a proposed procurement. Both the United States Court of Federal Claims and the district courts of the United States shall have jurisdiction to entertain such an action without regard to whether suit is instituted before or after the contract is awarded.

(2) To afford relief in such an action, the courts may award any relief that the court considers proper, including declaratory and injunctive relief except that any monetary relief shall be limited to bid preparation and proposal costs.

(3) In exercising jurisdiction under this subsection, the courts shall give due regard to the interests of national defense and national security and the need for expeditious resolution of the action.

(4) In any action under this subsection, the courts shall review the agency’s decision pursuant to the standards set forth in section 706 of title 5.

(5) If an interested party who is a member of the private sector commences an action described in paragraph (1) with respect to a public-private competition conducted under Office of Management and Budget Circular A–76 regarding the performance of an activity or function of a Federal agency, or a decision to convert a function performed by Federal employees to private sector performance without a competition...

1 See References in Text note below.

2 So in original. Probably should be “United”.
under Office of Management and Budget Circular A-76, then an interested party described in section 3551(2)(B) of title 31 shall be entitled to intervene in that action.

(6) Jurisdiction over any action described in paragraph (1) arising out of a maritime contract, or a solicitation for a proposed maritime contract, shall be governed by this section and shall not be subject to the jurisdiction of the district courts of the United States under the Suits in Admiralty Act (chapter 309 of title 46) or the Public Vessels Act (chapter 311 of title 46).

(c) Nothing herein shall be construed to give the United States Court of Federal Claims jurisdiction of any civil action within the exclusive jurisdiction of the Court of International Trade, or of any action against, or founded on conduct of, the Tennessee Valley Authority, or to amend or modify the provisions of the Tennessee Valley Authority Act of 1933 with respect to actions by or against the Authority.

 cruces, 1932, 76 Ct.Cl. 370.

Changes were made in phraseology.

REFERENCES IN TEXT

Section 6 of the Contract Disputes Act of 1978, referred to in subsec. (a)(2), was classified to section 605 of former Title 41, Public Contracts, and was repealed and restated as subsecs. (a) to (c)(1) and (d) to (h) of section 7103 of Title 41, Public Contracts, by Pub. L. 111–350, §§ 3, 5(b), Jan. 4, 2011, 124 Stat. 3677, 3855.

The Tennessee Valley Authority Act of 1933, referred to in subsec. (c), is act May 18, 1933, ch. 32, 48 Stat. 58, which is classified generally to chapter 12A (§ 381 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see section 831 of Title 16 and Tables.

AMENDMENTS


2008—Subsec. (b)(5). Pub. L. 110–417 struck out par. (5), as added by Pub. L. 110–161, which read as follows: “If a private sector interested party commences an action described in paragraph (1) in the case of a public-private competition conducted under Office of Management and Budget Circular A-76 regarding performance of an activity or function of a Federal agency, or a decision to convert a function performed by Federal employees to private sector performance without a competition under Office of Management and Budget Circular A-76, then an official or person described in section 3551(2)(B) of title 31 shall be entitled to intervene in that action.”


1996—Subsec. (a)(3). Pub. L. 104–320, § 12(a)(2), struck out par. (3) which read as follows: “To afford complete relief on any contract claim brought before the contract is awarded, the court shall have exclusive jurisdiction to grant declaratory judgments and such equitable and extraordinary relief as it deems proper, including but not limited to injunctive relief. In exercising this jurisdiction, the court shall give due regard to the interests of national defense and national security.”

Subsecs. (b), (c), Pub. L. 104–320, § 12(a)(1), (3), added subsec. (b) and redesignated former subsec. (b) as (c).


1982—Subsec. (a)(1). Pub. L. 97–161 designated first two sentences of existing first undesignated paragraph as subsec. (a)(1) and substituted “United States Claims Court” for “Court of Claims”.


Subsec. (b). Pub. L. 97–161 designated existing second undesignated paragraph as subsec. (b) and substituted “court of, the Tennessee Valley Authority, or” for “actions of, the Tennessee Valley Authority, nor”,

HISTORICAL AND REVISION NOTES


District courts are given concurrent jurisdiction of certain claims against the United States under section 1346 of this title. (See also reviser’s note under that section and section 1621 of this title relating to jurisdiction of the Tax Court.)

The proviso in section 256(1) of title 28, U.S.C., 1940 ed., relating to claims growing out of the Civil War, commonly known as “war claims,” and other claims which had been reported adversely before March 3, 1887 by any court, department, or commission authorized to determine them, were omitted as obsolete.

The exception in section 256(1) of title 28, U.S.C., 1940 ed., as to pension claims appears in section 1501 of this title.

Words “in respect of which claims the party would be entitled to recover against the United States either in a court of law, equity, or admiralty, if the United States were liable” were omitted as unnecessary since the Court of Claims manifestly, under this section will determine whether a petition against the United States states a cause of action. In any event, the Court of Claims has no admiralty jurisdiction, but the Suits in Admiralty Act, sections 741–752 of title 46, U.S.C., 1940 ed., Shipping, vests exclusive jurisdiction over suits in admiralty against the United States in the district courts. 28 U.S.C. 1333, 1932, 76 Ct.Cl. 170.

For additional provisions respecting jurisdiction of the court of claims in war contract cases see section 114b of Title 41, U.S.C., 1940 ed., Public Contracts.
“Tennessee Valley Authority Act of 1933” for “Tennessee Valley Authority Act of 1933, as amended.”

1980—Pub. L. 96–417 substituted “Court of Claims of any civil action within the exclusive jurisdiction of the Court of International Trade, or of any action” for “in suits” in second par.

1978—Pub. L. 95–563 provided that the Court of Claims would have jurisdiction to render judgment upon any claim by or against, or dispute with, a contractor arising under the Contract Disputes Act of 1978.

1972—Pub. L. 92–415 inserted provisions authorizing the court to issue orders directing restoration to office or position, placement in appropriate duty or retirement status and correction of applicable records and to issue such orders to any United States official and to demand appropriate matters to administrative and executive bodies with proper directions.

1970—Pub. L. 91–350 specified that the term “express or implied contracts with the United States” includes express or implied contracts with the Army and Air Force Exchange Service, Navy Exchanges, Marine Corps Exchanges, Coast Guard Exchanges, or Exchange Councils of the National Aeronautics and Space Administration.

1954—Act Sept. 3, 1954, inserted “; actions involving Tennessee Valley Authority” in section catchline and altered the form of first par. to spell out the general jurisdiction of the Court in paragraph form rather than as clauses of the par.

1933—Act July 28, 1933, substituted “United States Court of Claims” for “Court of Claims” near beginning of section, and inserted last part.

Effective Date of 2011 Amendment
Pub. L. 112–81, div. A, title VIII, § 861(b), Dec. 31, 2011, 125 Stat. 1251, provided that: “The amendment made by subsection (a) [amending this section] shall apply to any cause of action filed on or after the first day of the first month beginning more than 30 days after the date of the enactment of this Act [Dec. 31, 2011].”

Effective Date of 2008 Amendment
Pub. L. 110–181, div. A, title III, § 326(d), Jan. 28, 2008, 122 Stat. 63, provided that: “Subparagraph (B) of section 3551(2) of title 31, United States Code (as added by subsection (a)), and paragraph (5) of section 1491(b) of title 28, United States Code (as added by subsection (c)), shall apply to—

(1) a protest or civil action that challenges final selection of the source of performance of an activity or function of a Federal agency that is made pursuant to a study initiated under Office of Management and Budget Circular A–76 on or after January 1, 2004; and

(2) any other protest or civil action that relates to a public-private competition initiated under Office of Management and Budget Circular A–76, or to a decision to convert a function performed by Federal employees to private sector performance without a competition under Office of Management and Budget Circular A–76, on or after the date of the enactment of this Act [Jan. 28, 2008].”

Effective Date of 2007 Amendment
Paragraph (5) of subsec. (b) of this section applicable to protests and civil actions that challenge final selections of sources of performance of an activity or function of a Federal agency that are made pursuant to studies initiated under Office of Management and Budget Circular A–76 on or after Jan. 1, 2004; and to any other protests and civil actions that relate to public-private competitions initiated under Office of Management and Budget Circular A–76, or a decision to convert a function performed by Federal employees to private sector performance without a competition under Office of Management and Budget Circular A–76, on or after Dec. 26, 2007, see section 739(c)(3) of Pub. L. 110–161, set out as a note under section 501 of Title 31, Money and Finance.

Amendment by Pub. L. 110–161 applicable with respect to fiscal year 2008 and each succeeding fiscal year, see section 739(e) of Pub. L. 110–161, set out as a note under section 501 of Title 31, Money and Finance.

Effective Date of 1996 Amendment
Section 12(b) of Pub. L. 104–320 provided that: “This section [amending this section and section 3556 of Title 31, Money and Finance, and enacting provisions set out as notes under this section and section 3556 of Title 31] and the amendments made by this section shall take effect on December 31, 1996 and shall apply to all actions filed on or after that date.”

Effective Date of 1992 Amendment

Effective Date of 1980 Amendment
Amendment by Pub. L. 96–417 effective Nov. 1, 1980, and applicable with respect to civil actions pending on or commenced on or after such date, see section 701(a) of Pub. L. 96–417, set out as a note under section 251 of this title.

Effective Date of 1978 Amendment
Amendment by Pub. L. 95–563 effective with respect to contracts entered into 120 days after Nov. 1, 1978, and, at the election of the contractor, with respect to any claim pending at such time before the contracting officer or initiated thereafter, see section 16 of Pub. L. 95–563, Nov. 1, 1978, 92 Stat. 2357, formerly set out as an Effective Date note under section 601 of former Title 41, Public Contracts.

Effective Date of 1972 Amendment
Section 2 of Pub. L. 92–415 provided that: “This Act [amending this section] shall be applicable to all judicial proceedings pending on or instituted after the date of its enactment [Aug. 29, 1972].”

Effective Date of 1970 Amendment
Amendment by Pub. L. 91–350 applicable to claims and civil actions dismissed before or pending on July 23, 1970, if the claim or civil action was based upon a transaction, omission, or breach that occurred not more than six years prior to July 23, 1970, notwithstanding a determination or judgment made prior to July 23, 1970, that the United States district courts or the United States Court of Claims did not have jurisdiction to entertain a suit on an express or implied contract with a nonappropriated fund instrumentality of the United States, see section 2 of Pub. L. 91–350, set out as a note under section 1346 of this title.

Savings Provision
Section 12(e) of Pub. L. 104–320 provided that: “(1) ORDERS.—A termination under subsection (d) [set out below] shall not terminate the effectiveness of or—
orders that have been issued by a court in connection with an action within the jurisdiction of that court on or before December 31, 2000. Such orders shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked by a court of competent jurisdiction or by operation of law.

“(2) Proceedings and applications.—(A) A termination under subsection (d) shall not affect the jurisdiction of a court of the United States to continue with any proceeding that is pending before the court on December 31, 2000.

“(B) Orders may be issued in any such proceeding, appeals may be taken therefrom, and payments may be modified absent such termination.”

**SUNSET PROVISION**

Section 12(d) of Pub. L. 104–320 provided that: “The jurisdiction of the district courts of the United States over the actions described in section 1491(b)(1) of title 28, United States Code (as amended by subsection (a) of this section) shall terminate on January 1, 2001 unless extended by Congress. The savings provisions in subsection (e) [set out above] shall apply if the bid protest on the jurisdiction of the district courts of the United States terminates under this subsection.”

**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, set out as a note under section 542 of Title 6.

**STUDY ON CONCURRENT JURISDICTION**

Pub. L. 104–320, §12(c), Oct. 19, 1996, 110 Stat. 3875, required that, no earlier than 2 years after Dec. 31, 1996, the General Accounting Office was to undertake a study regarding the concurrent jurisdiction of the district courts of the United States and the Court of Federal Claims over bid protests to determine whether concurrent jurisdiction was necessary, which study was to be completed no later than Dec. 31, 1999, and was to specifically consider the effect of any proposed change on the ability of small businesses to challenge violations of Federal procurement law.

**§ 1492. Congressional reference cases**

Any bill, except a bill for a pension, may be referred by either House of Congress to the chief judge of the United States Court of Federal Claims for a report in conformity with section 2509 of this title.


**HISTORICAL AND REVISION NOTICES**


This section contains only the jurisdictional provisions of section 257 of title 28, U.S.C., 1940 ed. The procedural provisions are incorporated in section 2509 of this title. Changes were made in phraseology.

**AMENDMENTS**


1982—Pub. L. 97–164 substituted “chief judge of the United States Claims Court” for “chief commissioner of the Court of Claims”.

1965—Pub. L. 89–681 substituted provisions allowing any bill, except a bill for a pension, to be referred by either House of Congress to the chief commissioner of the Court of Claims for a report in conformity with section 2509 of this title for provisions giving the Court of Claims jurisdiction to report to either House of Congress on any bill referred by such House, except a bill for a pension, and to render judgment if the claim against the United States represented by the referred bill was one over which the court had jurisdiction under other Acts of Congress.

**EFFECTIVE DATE OF 1992 AMENDMENT**


**EFFECTIVE DATE OF 1982 AMENDMENT**


Section, act June 25, 1948, ch. 646, 62 Stat. 941, authorized Court of Claims to give legal advice to heads of executive departments in matters referred to it by the heads, if Court had jurisdiction over the matters.

**§ 1494. Accounts of officers, agents or contractors**

The United States Court of Federal Claims shall have jurisdiction to determine the amount, if any, due to or from the United States by reason of any unsettled account of any officer or agent of, or contractor with, the United States, or a guarantor, surety or personal representative of any such officer, agent or contractor, and to render judgment thereof, where—

(1) claimant or the person he represents has applied to the proper department of the Government for settlement of the account;

(2) three years have elapsed from the date of such application without settlement; and

(3) no suit upon the same has been brought by the United States.


**HISTORICAL AND REVISION NOTES**


Only the jurisdictional provisions of section 287 of title 28, U.S.C., 1940 ed., are contained in this section. The procedural provisions are incorporated in section 2511 of this title.

Changes were made in phraseology.

**AMENDMENTS**


1 So in original. Probably should be “thereon.”.
1982—Pub. L. 97–164 substituted “‘United States Claims Court’ for “‘Court of Claims’”.
1953—Act July 26, 1953, substituted “‘United States Court of Claims’” for “‘Court of Claims’”, inserted ““to or from” after “due”, and inserted “and to render judgment thereon.”.

**Effective Date of 1992 Amendment**

**Effective Date of 1982 Amendment**

### § 1495. Damages for unjust conviction and imprisonment; claim against United States

The United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim for damages by any person unjustly convicted of an offense against the United States and imprisoned.


**Historical and Revision Notes**


Only the jurisdictional provision of section 729 of title 18, U.S.C., 1940 ed., appears in this section. The remainder is incorporated in section 2813 of this title.

Changes were made in phraseology.

**Amendments**


1982—Pub. L. 97–164 substituted “‘United States Claims Court’” for “‘Court of Claims’”.

**Effective Date of 1992 Amendment**

**Effective Date of 1982 Amendment**

### § 1496. Disbursing officers' claims

The United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim by a disbursing officer of the United States or by his administrator or executor for relief from responsibility for loss, in line of duty, of Government funds, vouchers, records or other papers in his charge.


**Historical and Revision Notes**


Words “paymaster, quartermaster, commissary of subsistence, or other,” preceding “disbursing officer of the United States,” were omitted. See Henderson v. United States, 197, 42 Ct.Cl. 448 and Hobbs v. United States, 1881, 17 Ct.Cl. 189, holding that the term “other disbursing officer” extends to any disbursing officer of the executive departments of the Government.

Words “by capture or otherwise” were omitted as surplusage.

Words “and for which such officer was and is held responsible,” at the end of section 250(3) of title 28, U.S.C., 1940 ed., were omitted as surplusage.

Changes were made in phraseology.

**Amendments**


1982—Pub. L. 97–164 substituted “‘United States Claims Court’” for “‘Court of Claims’”.

**Effective Date of 1992 Amendment**

**Effective Date of 1982 Amendment**

### § 1497. Oyster growers’ damages from dredging operations

The United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim for damages to oyster growers on private or leased lands or bottoms arising from dredging operations or use of other machinery and equipment in making river and harbor improvements authorized by Act of Congress.


**Historical and Revision Notes**


The proviso at the end of section 250a of title 28, U.S.C., 1940 ed., is incorporated in section 2501 of this title.

Words “river and harbor improvements” were substituted for “such improvements”. In view of Diros v. U.S., 1881, 17 Ct.Cl. 160, holding that words, “such improvements” were not limited to the specific improvements listed in the 1935 act, but applied to any river and harbor improvements.

Changes were made in phraseology.

**Amendments**


1982—Pub. L. 97–164 substituted “‘growers’” for “‘growers,’” in section catchline, and “United States Claims Court” for “‘Court of Claims’” in text.

**Effective Date of 1992 Amendment**

**Effective Date of 1982 Amendment**
§ 1498. Patent and copyright cases

(a) Whenever an invention described in and covered by a patent of the United States is used or manufactured by or for the United States without license of the owner thereof or lawful right to use or manufacture the same, the owner's remedy shall be by action against the United States in the United States Court of Federal Claims for the recovery of his reasonable and entire compensation for such use and manufacture. Reasonable and entire compensation shall include the owner's reasonable costs, including reasonable fees for expert witnesses and attorneys, in pursuing the action if the owner is an independent inventor, a nonprofit organization, or an entity that had no more than 500 employees at any time during the 5-year period preceding the use or manufacture of the patented invention by or for the United States. Notwithstanding the preceding sentences, unless the action has been pending for more than 10 years from the time of filing to the time that the owner applies for such costs and fees, reasonable and entire compensation shall not include such costs and fees if the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust.

For the purposes of this section, the use or manufacture of an invention described in and covered by a patent of the United States by a contractor, a subcontractor, or any person, firm, or corporation for the Government and with the authorization or consent of the Government, shall be construed as use or manufacture for the United States.

The court shall not award compensation under this section if the claim is based on the use or manufacture by or for the United States of any article owned, leased, used by, or in the possession of the United States prior to July 1, 1918.

A Government employee shall have the right to bring suit against the Government under this section except where he was in a position to order, influence, or induce use of the invention by or for the Government. This section shall not confer a right of action on any patentee or any assignee of such patentee with respect to any invention discovered or invented by a person while in the employment or service of the United States, where the invention was related to the official functions of the employee, in cases in which such functions included research and development, or in the making of which Government time, materials or facilities were used.

(b) Hereafter, whenever the copyright in any work protected under the copyright laws of the United States shall be infringed by the United States, by a corporation owned or controlled by the United States, or by a contractor, subcontractor, or any person, firm, or corporation acting for the Government and with the authorization or consent of the Government, the exclusive action which may be brought for such infringement shall be an action by the copyright owner against the United States in the Court of Federal Claims for the recovery of his reasonable and entire compensation as damages for such infringement, including the minimum statutory damages as set forth in section 504(c) of title 17, United States Code: Provided, That a Government employee shall have a right of action against the Government under this subsection except where he was in a position to order, influence, or induce use of the copyright righted work by the Government: Provided, however, That this subsection shall not confer a right of action on any copyright owner or any assignee of such owner with respect to any copyrighted work prepared by a person while in the employment or service of the United States, where the copyrighted work was prepared as a part of the official functions of the employee, or in the preparation of which Government time, material, or facilities were used: And provided further, That before such action against the United States has been instituted the appropriate corporation owned or controlled by the United States or the head of the appropriate department or agency of the Government, as the case may be, is authorized to enter into an agreement with the copyright owner in settlement and compromise for the damages accruing to him by reason of such infringement and to settle the claim administratively out of available appropriations.

Except as otherwise provided by law, no recovery shall be had for any infringement of a copyright covered by this subsection committed more than three years prior to the filing of the complaint or counterclaim for infringement in the action, except that the period between the date of receipt of a written claim for compensation by the Department or agency of the Government or corporation owned or controlled by the United States, as the case may be, having authority to settle such claim and the date of mailing by the Government of a notice to the claimant that his claim has been denied shall not be counted as a part of the three years, unless suit is brought before the last-mentioned date.

(c) The provisions of this section shall not apply to any claim arising in a foreign country.

(d) Hereafter, whenever a plant variety protected by a certificate of plant variety protection under the laws of the United States shall be infringed by the United States, by a corporation owned or controlled by the United States, or by a contractor, subcontractor, or any person, firm, or corporation acting for the Government, and with the authorization and consent of the Government, the exclusive remedy of the owner of such certificate shall be by action against the United States in the Court of Federal Claims for the recovery of his reasonable and entire compensation as damages for such infringement: Provided, That a Government employee shall have a right of action against the Government under this subsection except where he was in a position to order, influence, or induce use of the protected plant variety by the Government: Provided, however, That this subsection shall not confer a right of action on any certificate owner or any assignee of such owner with respect to any protected plant variety made by a person while in the employment or service of the United States, where such variety was prepared as a part of the official functions of the em-
ployee, or in the preparation of which Government employee was used: And provided further, That before such action against the United States has been instituted, the appropriate corporation owned or controlled by the United States or the head of the appropriate agency of the Government, as the case may be, is authorized to enter into an agreement with the certificate owner in full settlement and compromise, for the damages accrued to him by reason of such infringement and to settle the claim administratively out of available appropriations.

(e) Subsections (b) and (c) of this section apply to exclusive rights in designs under chapter 13 of title 17, to the same extent as such subsections apply to copyrights.


HISTORICAL AND REVISION NOTES
1948 ACT

Provisions contained in the second proviso of section 68 of title 35, U.S.C., 1940 ed., relating to right of the United States to any general or special defense available to defendants in patent infringement suits were omitted as unnecessary. In the absence of statutory restriction, any defense available to a private party is equally available to the United States. Changes in phraseology were made.

1949 ACT
This amendment clarifies section 1498 of title 28, U.S.C., by restating its first paragraph to conform more closely with the original law.

REFERENCES IN TEXT
Hereafter, referred to in subsec. (b), probably means the date of enactment of Pub. L. 86–726, which was approved on Sept. 8, 1960.

The copyright laws of the United States, referred to in subsec. (b), are classified generally to Title 17, Copyrights.

Hereafter, referred to in subsec. (d), probably means the date of enactment of Pub. L. 91–577, which was approved on Dec. 24, 1969.

AMENDMENTS
1968—Subsec. (e). Pub. L. 90–634 inserted “, and to exclusive rights in designs under chapter 13 of title 17,” after “title 17”.
1977—Subsec. (b), Pub. L. 105–147, § 3, substituted “action which may be brought for such infringement shall be an action by the copyright owner” for “remedy of the owner of such copyright shall be by action”. 1988—Subsec. (a). Pub. L. 101–358 inserted at end of first par. “Reasonable and entire compensation shall include the owner’s reasonable costs, including reasonable fees for expert witnesses and attorneys, in pursuing the action if the owner is an independent inventor, a nonprofit organization, or an entity that had no more than 500 employees at any time during the 5-year period preceding the use or manufacture of the patented invention by or for the United States. Notwithstanding the preceding sentences, unless the action has been pending for more than 10 years from the time of filing to the time that the owner applies for such costs and fees, reasonable and entire compensation shall not include such costs and fees if the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust.”
Subsec. (b), (d). Pub. L. 102–572, § 902(a)(2), substituted “Court of Federal Claims” for “Claims Court”.
Subsec. (b), (d). Pub. L. 97–164, § 133(d)(2), substituted “Claims Court” for “Court of Claims”.
1976—Subsec. (b). Pub. L. 94–553 substituted “section 50(c) of title 17” for “section 101(b) of title 17”.
Pub. L. 86–726, § 1, designated existing provisions as subsec. (a) and added subsecs. (b) and (c).
1952—Act July 17, 1952, allowed Government employees to maintain patent suits against the United States in certain instances.
1949—Act May 29, 1949, conferred first par. of section to original law.

EFFECTIVE DATE OF 1996 AMENDMENT
Section 1(b) of Pub. L. 104–308 provided that: ‘‘The amendment made by subsection (a) [amending this section] shall apply to actions under section 1998(a) of title 28, United States Code, that are pending on, or brought on or after, the date of the enactment of this Act [Oct. 19, 1996].’’

EFFECTIVE DATE OF 1992 AMENDMENT

EFFECTIVE DATE OF 1992 AMENDMENT

EFFECTIVE DATE OF 1976 AMENDMENT
Amendment by Pub. L. 94–553 effective Jan. 1, 1978, see section 102 of Pub. L. 94–553, set out as an Effective Date note preceding section 101 of Title 17, Copyrights.

EFFECTIVE DATE OF 1970 AMENDMENT

WAIVER OF IMMUNITY FOR MEMBERS OF CONGRESS
Section 2 of Pub. L. 86–726 provided that: ‘‘Nothing in this Act [amending this section and section 2386 of Title 10, Armed Forces] shall be construed to in any way waive any immunity provided for Members of Congress under article 1 of section 6 of the Constitution of the United States.’’

§ 1499. Liquidated damages withheld from contractors under chapter 37 of title 40
The United States Court of Federal Claims shall have jurisdiction to render judgment upon
any claim for liquidated damages withheld from a contractor or subcontractor under section 3703 of title 40.


HISTORICAL AND REVISION NOTES


This section contains only the jurisdictional proviso in the last clause of section 324 of title 40, U.S.C., 1940 ed.

Changes in phraseology were made.

AMENDMENTS


1962—Pub. L. 87–581 amended section generally, substituting “Liquidated damages withheld from contractors under Contract Work Hours Standards Act” for “Penalties imposed against contractors under eight hour law” in section catchline, and “liquidated damages withheld from a contractor or subcontractor under section 104 of the Contract Work Hours Standards Act” for “a penalty withheld from a contractor or subcontractor under section 324 of Title 40” in text.

EFFECTIVE DATE OF 1992 AMENDMENT


EFFECTIVE DATE OF 1982 AMENDMENT


§ 1500. Pendency of claims in other courts

The United States Court of Federal Claims shall not have jurisdiction of any claim for or in respect to which the plaintiff or his assignee has pending in any other court any suit or process against the United States or any person who, at the time when the cause of action alleged in such suit or process arose, was, in respect therefor, acting or professing to act, directly or indirectly under the authority of the United States.


HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §260 (Mar. 3, 1911, ch. 231, §154, 36 Stat. 1138). Words “or in the Supreme Court on appeal therefrom” were omitted as unnecessary. Changes were made in phraseology.

AMENDMENTS


1982—Pub. L. 97–164 substituted “United States Claims Court” for “Court of Claims”.

EFFECTIVE DATE OF 1992 AMENDMENT


EFFECTIVE DATE OF 1982 AMENDMENT


§ 1501. Pensions

The United States Court of Federal Claims shall not have jurisdiction of any claim for a pension.


HISTORICAL AND REVISION NOTES


AMENDMENTS


1982—Pub. L. 97–164 substituted “United States Claims Court” for “Court of Claims”.

EFFECTIVE DATE OF 1992 AMENDMENT


EFFECTIVE DATE OF 1982 AMENDMENT


§ 1502. Treaty cases

Except as otherwise provided by Act of Congress, the United States Court of Federal Claims...
shall not have jurisdiction of any claim against the United States growing out of or dependent upon any treaty entered into with foreign nations.


HISTORICAL AND REVISION NOTES

1949 ACT


Phrase “Except as otherwise provided by enactment of Congress” was inserted to cover cases where special Acts confer jurisdiction. (See Sioux Tribe of Indians v. United States, 1945, 97 Ct.Cl. 613, certiorari denied 63 S.Ct. 922, 318 U.S. 795, 87 L.Ed. 1158, and In re United States, 1973, 17 Wall. 439, 443, 21 L.Ed. 696.) Words “not pending therein on December 1, 1862,” were omitted as obsolete.

Changes in phraseology were made.

1949 ACT

This section, in amending section 1502 of title 28, U.S.C., conforms with the provisions of act of August 13, 1946 (ch. 959, §25, 60 Stat. 1056), which affected section 153 of the Judicial Code of 1911 by striking therefrom the words “or with Indian tribes.” Such section 153 of the Judicial Code was the source of such section 1502.

AMENDMENTS


1949—Act May 24, 1949, struck out “or with Indian tribes” after “foreign nations”.

EFFECTIVE DATE OF 1992 AMENDMENT


EFFECTIVE DATE OF 1982 AMENDMENT


Section, act June 25, 1948, ch. 646, 62 Stat. 942, directed that the Court of Claims have jurisdiction to review by appeal final judgments in the district courts in civil actions based on tort claims brought under section 1986(b) of this title if the notice of appeal filed in the district court had affixed to it a written consent on behalf of the appellees that the appeal be taken to the Court of Claims.

EFFECTIVE DATE OF REPEAL


§ 1505. Indian claims

The United States Court of Federal Claims shall have jurisdiction of any claim against the United States accruing after August 13, 1946, in favor of any tribe, band, or other identifiable group of American Indians residing within the territorial limits of the United States or Alaska whenever such claim is one arising under the Constitution, laws or treaties of the United States, or Executive orders of the President, or is one which otherwise would be cognizable in the Court of Federal Claims if the claimant were not an Indian tribe, band or group.


HISTORICAL AND REVISION NOTES

1949 ACT

The omitted language is as follows: “In any suit brought under the jurisdiction conferred by this section the claimant shall be entitled to recover in the same manner, to the same extent, and subject to the same conditions and limitations, and the United States shall be entitled to the same defenses, both at law and in equity, and to the same offsets, counterclaims, and demands, as in cases brought in the Court of Claims under section 250 of this title: Provided, however, That
nothing contained in this section shall be construed as altering the fiduciary or other relations between the United States and the several Indian tribes, bands, or groups."

**AMENDMENTS**

1992—Pub. L. 102–572 substituted “United States Court of Federal Claims” for “United States Claims Court” and “Court of Federal Claims” for “Claims Court”.

1982—Pub. L. 97–164 substituted “The United States Claims Court shall have jurisdiction” for “The Court of Claims shall have jurisdiction” and “cognizable in the Claims Court” for “cognizable in the Court of Claims”.

**Effective Date of 1992 Amendment**


**Effective Date of 1982 Amendment**


[§ 1506. Repealed. Pub. L. 97–164, title I, § 133(h), Apr. 2, 1982, 96 Stat. 41] Section, added Pub. L. 86–770, §2(a), Sept. 13, 1960, 74 Stat. 912, provided that if a case within the exclusive jurisdiction of the district courts was filed in the Court of Claims, the Court of Claims, if it were in the interest of justice, had to transfer such case to any district court in which it could have been brought at the time such case was filed, where the case would proceed as if it had been filed in the district court on the date it was filed in the Court of Claims.

**Effective Date of Repeal**


**§ 1507. Jurisdiction for certain declaratory judgments**

The United States Court of Federal Claims shall have jurisdiction to hear any suit for and issue a declaratory judgment under section 7428 of the Internal Revenue Code of 1986.

(Added Pub. L. 94–455, title XIII, §1306(b)(9)(A), Oct. 4, 1986, referred to in text, are classified to sections 6226 and 6228(a) of Title 26, Internal Revenue Code.

**References in Text**

Sections 6226 and 6228(a) of the Internal Revenue Code of 1986, referred to in text, are classified to sections 6226 and 6228(a) of Title 26, Internal Revenue Code.

**AMENDMENTS**


**Effective Date of 1992 Amendment**


**Effective Date**

Section applicable to partnership taxable years beginning after Sept. 3, 1982, with provision for the applicability of this section to any partnership taxable year ending after Sept. 3, 1982, if the partnership, each partner, and each indirect partner requests such application and the Secretary of the Treasury or his delegate consents to such application, see section 407(a)(1), (3) of Pub. L. 97–248, set out as a note under section 6221 of Title 26, Internal Revenue Code.

**§ 1509. No jurisdiction in cases involving refunds of tax shelter promoter and understatement penalties**

The United States Court of Federal Claims shall not have jurisdiction to hear any action or proceeding for any refund or credit of any penalty imposed under section 6701 of the Internal Revenue Code of 1986 (relating to penalty for promoting abusive tax shelters, etc.) or section 6701 of such Code (relating to penalties for aiding and abetting understatement of tax liability).


**References in Text**

Sections 6700 and 6701 of the Internal Revenue Code of 1986, referred to in text, are classified to sections 6700 and 6701, respectively, of Title 26, Internal Revenue Code.
CHAPTER 95—COURT OF INTERNATIONAL TRADE

Sec. 1581. Civil actions against the United States and agencies and officers thereof.

Sec. 1582. Civil actions commenced by the United States.

Sec. 1583. Counterclaims, cross-claims, and third-party actions.

Sec. 1584. Civil actions under the North American Free Trade Agreement or the United States-Canada Free-Trade Agreement.

Sec. 1585. Powers in law and equity.

AMENDMENTS


§ 1581. Civil actions against the United States and agencies and officers thereof

(a) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced to contest the denial of a protest, in whole or in part, under section 515 of the Tariff Act of 1930.

(b) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced under section 516 of the Tariff Act of 1930.

(c) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced under section 516A of the Tariff Act of 1930.

(d) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced to review:

(1) any final determination of the Secretary of Labor under section 223 of the Trade Act of 1974 with respect to the eligibility of workers for adjustment assistance under such Act;

(2) any final determination of the Secretary of Commerce under section 251 of the Trade Act of 1974 with respect to the eligibility of a firm for adjustment assistance under such Act;

(3) any final determination of the Secretary of Commerce under section 273 of the Trade Act of 1974 with respect to the eligibility of a community for adjustment assistance under such Act; and

(4) any final determination of the Secretary of Agriculture under section 293 or 296 of the Trade Act of 1974 (19 U.S.C. 2401b) with respect to the eligibility of a group of agricul-

1 See References in Text note below.
The Court of International Trade shall have exclusive jurisdiction of any civil action commenced to review any final determination of the Secretary of the Treasury under section 516A(b)(1) of the Trade Agreements Act of 1979.

The Court of International Trade shall have exclusive jurisdiction of any civil action involving an application for an order directing the administering authority or the International Trade Commission to make confidential information available under section 777(c)(2) of the Tariff Act of 1930.

This subsection shall not confer jurisdiction over an antidumping or countervailing duty determination which is reviewable either by the Court of International Trade under section 516A(a) of the Tariff Act of 1930 or by a bi-national panel under article 1904 of the North American Free Trade Agreement or the United States-Canada Free-Trade Agreement and section 516A(g) of the Tariff Act of 1930.

The Court of International Trade shall not have jurisdiction of any civil action arising under section 305 of the Tariff Act of 1930.

The United States Customs Court, the predecessor of the Court of International Trade, was omitted in the general revision of this chapter by Pub. L. 96–417.

The predecessor of the United States Customs Court was the Board of General Appraisers which was created by the Customs Administrative Act of June 10, 1890. The Board was under the administrative supervision of the Secretary of the Treasury.

From 1890 to 1926, the Board of General Appraisers had jurisdiction over all protests from decisions of the collectors of customs and appeals for reappraisement under sections 13 and 14 of the Customs Administrative Act of June 10, 1890, ch. 407, 26 Stat. 136.

The Customs Court was established by act May 28, 1926, ch. 411, §§ 1, 2, 44 Stat. 669, sections 405a and 405b of Title 19, Customs Duties, and said act transferred to it all the jurisdiction and powers of the former Board of General Appraisers. The Tariff Act of June 1930, ch. 497, title IV, § 516, 46 Stat. 737, section 1518 of Title 19, continued the Customs Court as constituted on June 17, 1930 with, however, several important changes.

REFERENCES IN TEXT

Section 515 of the Tariff Act of 1930, referred to in subsec. (a), is classified to section 1515 of Title 19, Customs Duties.

Section 516 of the Tariff Act of 1930, referred to in subsec. (b), is classified to section 1516 of Title 19, Customs Duties.

Section 516A of the Tariff Act of 1930, referred to in subsections (a)–(h) of this section and subject to the exception set forth in subsection (i) of this section, the Court of International Trade shall have exclusive jurisdiction of any civil action commenced against the United States, its agencies, or its officers, that arises out of any law of the United States providing for—

1. revenue from imports or tonnage;
2. tariffs, duties, fees, or other taxes on the importation of merchandise for reasons other than the raising of revenue;
3. embargoes or other quantitative restrictions on the importation of merchandise for reasons other than the protection of the public health or safety; or
4. administration and enforcement with respect to the matters referred to in paragraphs (1)–(3) of this subsection and subsections (a)–(h) of this section.

This subsection shall not confer jurisdiction over an antidumping or countervailing duty determination which is reviewable either by the Court of International Trade under section 516A(a) of the Tariff Act of 1930 or by a bi-national panel under article 1904 of the North American Free Trade Agreement or the United States-Canada Free-Trade Agreement and section 516A(g) of the Tariff Act of 1930.

The Court of International Trade shall not have jurisdiction of any civil action arising under section 305 of the Tariff Act of 1930.

The United States Customs Court, the predecessor of the Court of International Trade, was omitted in the general revision of this chapter by Pub. L. 96–417.

The predecessor of the United States Customs Court was the Board of General Appraisers which was created by the Customs Administrative Act of June 10, 1890. The Board was under the administrative supervision of the Secretary of the Treasury.

From 1890 to 1926, the Board of General Appraisers had jurisdiction over all protests from decisions of the collectors of customs and appeals for reappraisement under sections 13 and 14 of the Customs Administrative Act of June 10, 1890, ch. 407, 26 Stat. 136.

The Customs Court was established by act May 28, 1926, ch. 411, §§ 1, 2, 44 Stat. 669, sections 405a and 405b of Title 19, Customs Duties, and said act transferred to it all the jurisdiction and powers of the former Board of General Appraisers. The Tariff Act of June 1930, ch. 497, title IV, § 516, 46 Stat. 737, section 1518 of Title 19, continued the Customs Court as constituted on June 17, 1930 with, however, several important changes.

REFERENCES IN TEXT

Section 515 of the Tariff Act of 1930, referred to in subsec. (a), is classified to section 1515 of Title 19, Customs Duties.

Section 516 of the Tariff Act of 1930, referred to in subsec. (b), is classified to section 1516 of Title 19, Customs Duties.

Section 516A of the Tariff Act of 1930, referred to in subsections (a)–(h) of this section and subject to the exception set forth in subsection (i) of this section, the Court of International Trade shall have exclusive jurisdiction of any civil action commenced against the United States, its agencies, or its officers, that arises out of any law of the United States providing for—

1. revenue from imports or tonnage;
2. tariffs, duties, fees, or other taxes on the importation of merchandise for reasons other than the raising of revenue;
3. embargoes or other quantitative restrictions on the importation of merchandise for reasons other than the protection of the public health or safety; or
4. administration and enforcement with respect to the matters referred to in paragraphs (1)–(3) of this subsection and subsections (a)–(h) of this section.

This subsection shall not confer jurisdiction over an antidumping or countervailing duty determination which is reviewable either by the Court of International Trade under section 516A(a) of the Tariff Act of 1930 or by a bi-national panel under article 1904 of the North American Free Trade Agreement or the United States-Canada Free-Trade Agreement and section 516A(g) of the Tariff Act of 1930.

The Court of International Trade shall not have jurisdiction of any civil action arising under section 305 of the Tariff Act of 1930.
Title 28—Judiciary and Judicial Procedure

Prior Provisions


Amendments


Subsec. (1). Pub. L. 103-182, § 414(a)(1), inserted “the North American Free Trade Agreement or” before “the United States-Canada Free-Trade Agreement” in last sentence.

1988—Subsec. (1). Pub. L. 100-449 inserted at end “This subsection shall not confer jurisdiction over an anti-dumping or countervailing duty determination which is reviewable either by the Court of International Trade under section 516A(a) of the Tariff Act of 1930 or by a binational panel under article 1904 of the United States-Canada Free-Trade Agreement and section 516A(g) of the Tariff Act of 1990.”

1986—Subsec. (g)(1). Pub. L. 99-514 substituted “(3)” for “(3) or (c)”.

1984—Subsec. (g)(1). Pub. L. 98-573 amended par. (1) generally, substituting “a customs broker’s license under section 641(b)(2) or (3) or (c) of the Tariff Act of 1930, or to deny a customs broker’s permit under section 641(c)(1) of such Act, or to revoke a license or permit under section 641(b)(5) or (c)(2) of such Act” for “or revoke a customs broker’s license under section 641(a) of the Tariff Act of 1990”.

Subsec. (g)(2). Pub. L. 98-573 amended par. (2) generally, substituting “any decision of the Secretary of the Treasury to revoke or suspend a customs broker’s license, or impose a monetary penalty in lieu thereof, under section 641(d)(2)(B) of the Tariff Act of 1990” for “any order of the Secretary of the Treasury to revoke or suspend a customs broker’s license under section 641(b) of the Tariff Act of 1930”.

Effective Date of 2009 Amendment

Except as otherwise provided and subject to certain applicability provisions, amendment by Pub. L. 111-5 effective upon the expiration of the 90-day period beginning on Feb. 17, 2009, see section 1891 of Pub. L. 111-5, set out as an Effective and Termination Dates of 2009 Amendment note under section 2271 of Title 19, Customs Duties.

Effective Date of 1993 Amendment

Amendment by section 414(a)(1) of Pub. L. 103-182 effective on the date the North American Free Trade Agreement enters into force with respect to the United States, on Jan. 1, 1994, but not applicable to any final determination described in section 1516(a)(1)(B) or (2)(B)(1), (ii), or (iii) of Title 19, Customs Duties, notice of which is published in the Federal Register before such date, or to a determination described in section 1516(a)(2)(B)(vi) of Title 19, notice of which is received by the Government of Canada or Mexico before such date, or to any binational panel review under the United States-Canada Free-Trade Agreement, or to any extraordinary challenge arising out of any such review, that was commenced before such date, see section 416 of Pub. L. 103-182, set out as an Effective Date note under section 9431 of Title 19.

Effective and Termination Dates of 1988 Amendment

Amendment by Pub. L. 100-449 effective on date United States-Canada Free-Trade Agreement enters into force (Jan. 1, 1989), and to cease to have effect on date Agreement ceases to be in force, see section 501(a), (c) of Pub. L. 100-449, set out in a note under section 2112 of Title 19, Customs Duties.

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-573 effective on close of 180th day after Oct. 30, 1984, see section 214(d) of Pub. L. 98-573, set out as a note under section 1304 of Title 19, Customs Duties.

Effective Date

Chapter effective Nov. 1, 1980, and applicable with respect to civil actions pending on or commenced on or after such date, see section 701(a) of Pub. L. 96-417, set out as an Effective Date of 1980 Amendment note under section 2251 of this title.

Subsecs. (d) and (g) to (i) of this section applicable with respect to civil actions commenced on or after Nov. 1, 1980, see section 701(b)(1)(A) of Pub. L. 96-417.

Application of 1995 Amendment

Section 884(b) of Pub. L. 103-182 provided that: “For purposes of applying the amendments made by subsection (a) [amending this section and sections 2631, 2636, 2640, and 2642 of this title], any decision or order of the Customs Service denying, suspending, or revoking the accreditation of a private laboratory on or after the date of the enactment of this Act [Dec. 8, 1993] and before regulations to implement section 499(b) of the Tariff Act of 1930 [19 U.S.C. 1499(b)] are issued shall be treated as having been denied, suspended, or revoked under such section 499(b).”

Transfer of Functions

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 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.

Effect of Termination of NAFTA Country Status

For provisions relating to effect of termination of NAFTA country status on sections 401 to 416 of Pub. L. 103-182, see section 9411 of Title 19, Customs Duties.

§ 1582. Civil actions commenced by the United States

The Court of International Trade shall have exclusive jurisdiction of any civil action which arises out of an import transaction and which is commenced by the United States—

(1) to recover a civil penalty under section 592, 593A, 641(b)(6), 641(d)(2)(A), 704(1)(2), or 734(1)(2) of the Tariff Act of 1930;

(2) to recover upon a bond relating to the importation of merchandise required by the laws of the United States or by the Secretary of the Treasury;

and

(3) to recover customs duties.


References in Text

Sections 592, 593A, 641(b)(6), 641(d)(2)(A), 704(1)(2), and 734(1)(2) of the Tariff Act of 1930, referred to in par. (1), are classified to sections 592, 593A, 641(b)(6), 641(d)(2)(A), 1672(1)(2), and 1673(c)(1)(2), respectively, of Title 19, Customs Duties.

Prior Provisions

§1001(b)(4)(B), 93 Stat. 305, related to the jurisdiction of the Customs Court, prior to the general revision of this chapter by Pub. L. 96–417.

Amendments


1986—Par. (1). Pub. L. 99–514 substituted "64(b)(6)" for "64(a)(1)(C)".


Effective Date of 1984 Amendment

Amendment by Pub. L. 98–573 effective on close of 1984th day after Nov. 1, 1984, see section 214(d) of Pub. L. 98–573, set out as a note under section 1304 of Title 19, Customs Duties.

§1583. Counterclaims, cross-claims, and third-party actions

In any civil action in the Court of International Trade, the court shall have exclusive jurisdiction to render judgment upon any counterclaim, cross-claim, or third-party action of any party, if (1) such claim or action involves the imported merchandise that is the subject matter of such civil action, or (2) such claim or action is to recover upon a bond or customs duties relating to such merchandise.


Prior Provisions


Effective Date

Section applicable with respect to civil actions commenced on or after the 90th day after Nov. 1, 1980, see section 701(c)(1)(A) of Pub. L. 96–417, set out as an Effective Date of 1980 Amendment note under section 251 of this title.

§1584. Civil actions under the North American Free Trade Agreement or the United States-Canada Free-Trade Agreement

The United States Court of International Trade shall have exclusive jurisdiction of any civil action which arises under section 777(f) of the Tariff Act of 1930 and is commenced by the United States to enforce administrative sanctions levied for violation of a protective order or an undertaking.


References in Text

Section 777(f) of the Tariff Act of 1930, referred to in text, is classified to section 1677(f) of Title 19, Customs Duties.

Prior Provisions

A prior section 1584, added Pub. L. 96–417, title II, §201, Oct. 10, 1980, 94 Stat. 1729, provided that if a civil action within the exclusive jurisdiction of the Court of International Trade was commenced in a district court of the United States, the district court, in the interest of justice, was to transfer such civil action to the Court of International Trade, where such action would proceed as if it had been commenced in the Court of International Trade in the first instance, and that if a civil action within the exclusive jurisdiction of a district court, a court of appeals, or the Court of Customs and Patent Appeals was commenced in the Court of International Trade, the Court of International Trade, in the interest of justice, would transfer such civil action to the appropriate district court or court of appeals or to the Court of Customs and Patent Appeals where such action was to proceed as if it had been commenced in such court in the first instance, prior to repeal by Pub. L. 97–164, title I, §135, Apr. 2, 1982, 96 Stat. 41, effective Oct. 1, 1982.

Amendments

1993—Pub. L. 103–182 amended section catchline generally, inserting "the North American Free Trade Agreement or", and in text substituted "section 777(f)" for "section 777(d)".

Effective Date of 1993 Amendment

Amendment by Pub. L. 103–182 effective on the date the North American Free Trade Agreement enters into force with respect to the United States [Jan. 1, 1994], but not applicable to any final determination described in section 1516a(a)(1)(B) or (2)(B)(i), (ii), or (iii) of Title 19, Customs Duties, notice of which is published in the Federal Register before such date, or to a determination described in section 1516a(a)(2)(B)(vi) of Title 19, notice of which is received by the Government of Canada or Mexico before such date, or to any binational panel review under the United States-Canada Free-Trade Agreement, or to any extraordinary challenge arising out of any such review that was commenced before such date, see section 416 of Pub. L. 103–182, set out as an Effective Date note under section 3431 of Title 19.

Effective and Termination Dates

Section effective on date United States-Canada Free-Trade Agreement enters into force [Jan. 1, 1989], and to cease to have effect on date Agreement ceases to be in force, or to any extraordinary challenge arising out of any such review that was commenced before such date, see section 416 of Pub. L. 103–182, set out as an Effective Date note under section 3431 of Title 19.

§1585. Powers in law and equity

The Court of International Trade shall possess all the powers in law and equity of, or as conferred by statute upon, a district court of the United States.


Chapter 97—Jurisdictional Immunities of Foreign States

Sec. 1602. Findings and declaration of purpose.

1603. Definitions.

1604. Immunity of a foreign state from jurisdiction.

1605. General exceptions to the jurisdictional immunity of a foreign state.

1605A. Terrorism exception to the jurisdictional immunity of a foreign state.

1606. Extent of liability.

1607. Counterclaims.

1608. Service; time to answer default.

1993—Pub. L. 103–182 amended section catchline generally, inserting "the North American Free Trade Agreement or", and in text substituted "section 777(f)" for "section 777(d)".

Effective Date of 1993 Amendment

Amendment by Pub. L. 103–182 effective on the date the North American Free Trade Agreement enters into force with respect to the United States [Jan. 1, 1994], but not applicable to any final determination described in section 1516a(a)(1)(B) or (2)(B)(i), (ii), or (iii) of Title 19, Customs Duties, notice of which is published in the Federal Register before such date, or to a determination described in section 1516a(a)(2)(B)(vi) of Title 19, notice of which is received by the Government of Canada or Mexico before such date, or to any binational panel review under the United States-Canada Free-Trade Agreement, or to any extraordinary challenge arising out of any such review that was commenced before such date, see section 416 of Pub. L. 103–182, set out as an Effective Date note under section 3431 of Title 19.

Effective and Termination Dates

Section effective on date United States-Canada Free-Trade Agreement enters into force [Jan. 1, 1989], and to cease to have effect on date Agreement ceases to be in force, or to any extraordinary challenge arising out of any such review that was commenced before such date, see section 416 of Pub. L. 103–182, set out as an Effective Date note under section 3431 of Title 19.

1So in original. Does not conform to section catchline.
§ 1602. Findings and declaration of purpose

The Congress finds that the determination by United States courts of the claims of foreign states to immunity from the jurisdiction of such courts would serve the interests of justice and would protect the rights of both foreign states and litigants in United States courts. Under international law, states are not immune from the jurisdiction of foreign courts insofar as their commercial activities are concerned, and their commercial property may be reached and levied upon for the satisfaction of judgments rendered against them in connection with their commercial activities. Claims of foreign states to immunity should henceforth be decided by courts of the United States and of the States in conformity with the principles set forth in this chapter.


Effective Date

Section 8 of Pub. L. 94–583 provided that: “This Act [enacting this chapter and section 1330 of this title, amending sections 1332, 1391, and 1441 of this title, and enacting provisions set out as notes under this section and section 1 of this title] shall take effect ninety days after the date of its enactment [Oct. 21, 1976].”

Short Title


Separability

Section 7 of Pub. L. 94–583 provided that: “If any provision of this Act [enacting this chapter and section 1330 of this title, amending sections 1332, 1391, and 1441 of this title, and enacting provisions set out as notes under this section and section 1 of this title] or the application thereof to any foreign state is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.”

§ 1603. Definitions

For purposes of this chapter—

(a) A “foreign state”, except as used in section 1608 of this title, includes a political subdivision of a foreign state or an agency or instrumentality of a foreign state as defined in subsection (b).

(b) An “agency or instrumentality of a foreign state” means any entity—

(1) which is a separate legal person, corporate or otherwise, and

(2) which is an organ of a foreign state or political subdivision thereof, or a majority of whose shares or other ownership interest is owned by a foreign state or political subdivision thereof, and

(3) which is neither a citizen of a State of the United States as defined in section 1332 (c) and (e) of this title, nor created under the laws of any third country.

(c) The “United States” includes all territory and waters, continental or insular, subject to the jurisdiction of the United States.

(d) A “commercial activity” means either a regular course of commercial conduct or a particular commercial transaction or act. The commercial character of an activity shall be determined by reference to the nature of the course of conduct or particular transaction or act, rather than by reference to its purpose.

(e) A “commercial activity carried on in the United States by a foreign state” means commercial activity carried on by such state and having substantial contact with the United States.


Amendments


Effective Date of 2005 Amendment

Amendment by Pub. L. 109–2 applicable to any civil action commenced on or after Feb. 18, 2005, see section 9 of Pub. L. 109–2, set out as a note under section 1332 of this title.

§ 1604. Immunity of a foreign state from jurisdiction

Subject to existing international agreements to which the United States is a party at the time of enactment of this Act a foreign state shall be immune from the jurisdiction of the courts of the United States and of the States except as provided in sections 1605 to 1607 of this chapter.


References in Text

The time of enactment of this Act, referred to in text, probably means the time of enactment of Pub. L. 94–583, which was approved Oct. 21, 1976.

§ 1605. General exceptions to the jurisdictional immunity of a foreign state

(a) A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case—

(1) in which the foreign state has waived its immunity either explicitly or by implication, notwithstanding any withdrawal of the waiver which the foreign state may purport to effect except in accordance with the terms of the waiver; and

(2) in which the action is based upon a commercial activity carried on in the United States by the foreign state; or upon an act performed in the United States in connection with a commercial activity of the foreign state elsewhere; or upon an act outside the territory of the United States in connection with a commercial activity of the foreign state elsewhere and that act causes a direct effect in the United States;
(3) in which rights in property taken in violation of international law are in issue and that property or any property exchanged for such property is present in the United States in connection with a commercial activity carried on in the United States by the foreign state; or that property or any property exchanged for such property is owned or operated by an agency or instrumentality of the foreign state and that agency or instrumentality is engaged in a commercial activity in the United States;

(4) in which rights in property in the United States acquired by succession or gift or rights in immovable property situated in the United States are in issue;

(5) not otherwise encompassed in paragraph (2) above, in which money damages are sought against a foreign state for personal injury or death, or damage to or loss of property, occurring in the United States and caused by the tortious act or omission of that foreign state or of any official or employee of that foreign state while acting within the scope of his office or employment; except this paragraph shall not apply to—

(A) any claim based upon the exercise or performance or the failure to exercise or perform a discretionary function regardless of whether the discretion be abused, or

(B) any claim arising out of malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights; or

(6) in which the action is brought, either to enforce an agreement made by the foreign state with or for the benefit of a private party to submit to arbitration all or any differences which have arisen or which may arise between the parties with respect to a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration under the laws of the United States, or to confirm an award made pursuant to such an agreement to arbitrate, if (A) the arbitration takes place or is intended to take place in the United States, (B) the agreement or award is or may be governed by a treaty or other international agreement in force for the United States calling for the recognition and enforcement of arbitral awards, (C) the underlying claim, save for the agreement to arbitrate, could have been brought in a United States court under this section or section 1607, or (D) paragraph (1) of this subsection is otherwise applicable.

(b) A foreign state shall not be immune from the jurisdiction of the courts of the United States in any case in which a suit in admiralty is brought to enforce a maritime lien against a vessel or cargo of the foreign state, which maritime lien is based upon a commercial activity of the foreign state: Provided, That—

(1) notice of the suit is given by delivery of a copy of the summons and of the complaint to the person, or his agent, having possession of the vessel or cargo against which the maritime lien is asserted; and if the vessel or cargo is arrested pursuant to process obtained on behalf of the party bringing the suit, the service of process of arrest shall be deemed to constitute valid delivery of such notice, but the party bringing the suit shall be liable for any damages sustained by the foreign state as a result of the arrest if the party bringing the suit had actual or constructive knowledge that the vessel or cargo of a foreign state was involved; and

(2) notice to the foreign state of the commencement of suit as provided in section 1608 of this title is initiated within ten days after the delivery of notice as provided in paragraph (1) of this subsection or, in the case of a party who was unaware that the vessel or cargo of a foreign state was involved, of the date such party determined the existence of the foreign state’s interest.

(c) Whenever notice is delivered under subsection (b)(1), the suit to enforce a maritime lien shall thereafter proceed and shall be heard and determined according to the principles of law and rules of practice of suits in rem whenever it appears that, had the vessel been privately owned and possessed, a suit in rem might have been maintained. A decree against the foreign state may include costs of the suit and, if the decree is for a money judgment, interest as ordered by the court, except that the court may not award judgment against the foreign state in an amount greater than the value of the vessel or cargo upon which the maritime lien arose. Such value shall be determined as of the time notice is served under subsection (b)(1). Decrees shall be subject to appeal and revision as provided in other cases of admiralty and maritime jurisdiction. Nothing shall preclude the plaintiff in any proper case from seeking relief in personam in the same action brought to enforce a maritime lien as provided in this section.

(d) A foreign state shall not be immune from the jurisdiction of the courts of the United States in any action brought to foreclose a preferred mortgage, as defined in section 31301 of title 46. Such action shall be brought, heard, and determined in accordance with the provisions of chapter 313 of title 46 and in accordance with the principles of law and rules of practice of suits in rem, whenever it appears that had the vessel been privately owned and possessed a suit in rem might have been maintained.


(g) LIMITATION ON DISCOVERY.—

(1) IN GENERAL.—(A) Subject to paragraph (2), if an action is filed that would otherwise be barred by section 1604, but for section 1605A, the court, upon request of the Attorney General, shall stay any request, demand, or order for discovery on the United States that the Attorney General certifies would significantly interfere with a criminal investigation or prosecution, or a national security operation, related to the incident that gave rise to the cause of action, until such time as the Attorney General advises the court that such request, demand, or order will no longer so interfere.

(B) A stay under this paragraph shall be in effect during the 12-month period beginning on the date on which the court issues the order to stay discovery. The court shall renew the
order to stay discovery for additional 12-month periods upon motion by the United States if the Attorney General certifies that discovery would significantly interfere with a criminal investigation or prosecution, or a national security operation, related to the incident that gave rise to the cause of action.

(2) SUNSET.—(A) Subject to subparagraph (B), no stay shall be granted or continued in effect under paragraph (1) after the date that is 10 years after the date on which the incident that gave rise to the cause of action occurred.

(B) After the period referred to in subparagraph (A), the court, upon request of the Attorney General, may stay any request, demand, or order for discovery on the United States that the court finds a substantial like-lihood would—

(i) create a serious threat of death or serious bodily injury to any person;

(ii) adversely affect the ability of the United States to work in cooperation with foreign and international law enforcement agencies in investigating violations of United States law;

(iii) obstruct the criminal case related to the incident that gave rise to the cause of action or undermine the potential for a conviction in such case.

(3) EVALUATION OF EVIDENCE.—The court’s evaluation of any request for a stay under this subsection filed by the Attorney General shall be conducted ex parte and in camera.

(4) BAR ON MOTIONS TO DISMISS.—A stay of discovery under this subsection shall constitute a bar to the granting of a motion to dismiss under rules 12(b)(6) and 56 of the Federal Rules of Civil Procedure.

(5) CONSTRUCTION.—Nothing in this subsection shall prevent the United States from seeking protective orders or asserting privileges ordinarily available to the United States.

(Amended Pub. L. 94–583, § 4(a), Oct. 21, 1976, 90 Stat. 2892; amended Pub. L. 100–640, § 1, Nov. 9, 1988, 102 Stat. 3333; Pub. L. 100–669, § 2, Nov. 16, 1988, 102 Stat. 3969; Pub. L. 100–702, § 1(3), struck out at end "Whenever notice is delivered under subsection (b)(1) of this section, the maritime lien shall thereafter be deemed to be an in personam claim against the foreign state which at that time owns the vessel or cargo involved: Provided, That a court may not award judgment against the foreign state in an amount greater than the value of the vessel or cargo upon which the maritime lien arose, such value to be determined as of the time notice is served under subsection (b)(1) of this section."); Pub. L. 100–640, § 1(1), substituted "and if the vessel or cargo is arrested pursuant to process obtained on behalf of the party bringing the suit, the service of process of arrest shall be deemed to be an in personam claim against the vessel or cargo of a foreign state involved, in which event the service of process of arrest shall be deemed to constitute valid delivery of such notice, but the party bringing the suit shall be liable for any damages sustained by the foreign state as a result of the arrest if the party bringing the suit had actual or constructive knowledge that the vessel or cargo of a foreign state was involved for "but such notice shall not be deemed to have been delivered, nor may it thereafter be delivered, if the vessel or cargo is arrested pursuant to process obtained on behalf of the party bringing the suit, unless the party was unaware that the vessel or cargo of a foreign state was involved, in which event the service of process of arrest shall be deemed to constitute valid delivery of such notice."); Pub. L. 100–669 added par. (6).

References in Text

Rules 12(b)(6) and 56 of the Federal Rules of Civil Procedure, referred to in subsec. (g)(4), are set out in the Appendix to this title.

Amendments

2008—Subsec. (a)(7). Pub. L. 110–181, § 1083(b)(1)(A), struck out par. (7) which provided for lack of jurisdictional immunity in certain cases in which money damages were sought against a foreign state for personal injury or death caused by an act of torture, extrajudicial killing, aircraft sabotage, hostage taking, or the provision of material support or resources for such act.

Subsecs. (e), (f). Pub. L. 110–181, § 1083(b)(1)(B), struck out subsecs. (e) and (f) which defined "torture", "extra-judicial killing", "hostage taking", and "aircraft sabotage" and provided for a 10-year statute of limitations for actions brought under former subsec. (a)(7) of this section.

Subsec. (g)(1)(A). Pub. L. 110–181, § 1083(b)(1)(C), substituted "but for section 1605A" for "but for subsection (a)(7)".


1997—Subsec. (a)(7)(B). Pub. L. 105–11 substituted "neither the claimant nor the victim was" for "the claimant or victim was not".


Subsecs. (e) to (g). Pub. L. 104–132, § 221(a)(2), added subsecs. (e) to (g).


Subsec. (b). Pub. L. 100–702, § 1(3), struck out at end "Whenever notice is delivered under subsection (b)(1) of this section, the maritime lien shall thereafter be deemed to be an in personam claim against the foreign state which at that time owns the vessel or cargo involved: Provided, That a court may not award judgment against the foreign state in an amount greater than the value of the vessel or cargo upon which the maritime lien arose, such value to be determined as of the time notice is served under subsection (b)(1) of this section."

Subsec. (b)(1). Pub. L. 100–669, § 1(1), substituted "and if the vessel or cargo is arrested pursuant to process obtained on behalf of the party bringing the suit, the service of process of arrest shall be deemed to be an in personam claim against the vessel or cargo of a foreign state involved, in which event the service of process of arrest shall be deemed to constitute valid delivery of such notice, but the party bringing the suit shall be liable for any damages sustained by the foreign state as a result of the arrest if the party bringing the suit had actual or constructive knowledge that the vessel or cargo of a foreign state was involved for "but such notice shall not be deemed to have been delivered, nor may it thereafter be delivered, if the vessel or cargo is arrested pursuant to process obtained on behalf of the party bringing the suit, unless the party was unaware that the vessel or cargo of a foreign state was involved, in which event the service of process of arrest shall be deemed to constitute valid delivery of such notice."); Pub. L. 100–669 added par. (6).

Subsec. (b)(2). Pub. L. 100–660, § 1(2), substituted paragraph (1) of this subsection for "subsection (b)(1) of this section".

Subsecs. (c), (d). Pub. L. 100–702, § 1(3), added subsecs. (c) and (d).

Effective Date of 2008 Amendment

For applicability of amendments by Pub. L. 110–181 to pending cases, see section 1083(c) of Pub. L. 110–181, set out as an Effective Date note under section 1605A of this title.

Effective Date of 1997 Amendment

Pub. L. 105–11 provided that the amendment made by that Act was effective with respect to any cause of action arising before, on, or after Apr. 25, 1997.

Effective Date of 1996 Amendment

Section 221(c) of title II of Pub. L. 104–132 provided that: "The amendments made by this subtitle [subtitle B (§ 221) of title II of Pub. L. 104–132, amending this section and section 1610 of this title] shall apply to any cause of action arising before, on, or after the date of the enactment of this Act [Apr. 24, 1996]."

Effective Date of 1988 Amendment

Section 3 of Pub. L. 100–640 provided that: "The amendments made by this Act [amending this section
and section 1610 of this title] shall apply to actions commenced on or after the date of the enactment of this Act (Nov. 9, 1988)."

CIVIL LIABILITY FOR ACTS OF STATE SPONSORED TERRORISM


“(a) an [sic] official, employee, or agent of a foreign state designated as a state sponsor of terrorism designated under section 6(j) of the Export Administration Act of 1979 [50 U.S.C. App. 2405(j)] while acting within the scope of his or her office, employment, or agency shall be liable to a United States national or the national’s legal representative for personal injury or death caused by acts of that official, employee, or agent for which the courts of the United States may maintain jurisdiction under [former] section 1605(a)(7) of title 28, United States Code, for money damages which may include economic damages, solatium, pain, and suffering, and punitive damages if the acts were among those described in [former] section 1605(a)(7).

“(b) Provisions related to statute of limitations and limitations on discovery that would apply to an action brought under 28 U.S.C. 1605(f) and (g) shall also apply to actions brought under this section. No action shall be maintained under this action [sic] if an official, employee, or agent of the United States, while acting within the scope of his or her office, employment, or agency would not be liable to such acts if carried out within the United States.”

§1605A. Terrorism exception to the jurisdictional immunity of a foreign state

(a) IN GENERAL.—

(1) NO IMMUNITY.—A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case not otherwise covered by this chapter in which money damages are sought against a foreign state for personal injury or death that was caused by an act of torture, extrajudicial killing, aircraft sabotage, hostage taking, or the provision of material support or resources for such an act if such act or provision of material support or resources is engaged in by an official, employee, or agent of such foreign state while acting within the scope of his or her office, employment, or agency.

(2) CLAIM HEARD.—The court shall hear a claim under this section if—

(A)(i)(I) the foreign state was designated as a state sponsor of terrorism at the time the act described in paragraph (1) occurred, or was so designated as a result of such act, and, subject to subclause (II), either remains so designated when the claim is filed under this section or was so designated within the 6-month period before the claim is filed under this section; or

(II) in the case of an action that is refiled under this section by reason of section 1083(c)(2)(A) of the National Defense Authorization Act for Fiscal Year 2008 or is filed under this section by reason of section 1083(c)(3) of that Act, the foreign state was designated as a state sponsor of terrorism when the original action or the related action under section 1065(a)(7) (as in effect before the enactment of this section) or section 589 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997 (as contained in section 101(c) of division A of Public Law 104–208) was filed;

(ii) the claimant or the victim was, at the time the act described in paragraph (1) occurred—

(I) a national of the United States;

(II) a member of the armed forces; or

(III) otherwise an employee of the Government of the United States, or of an individual performing a contract awarded by the United States Government, acting within the scope of the employee’s employment; and

(iii) in a case in which the act occurred in the foreign state against which the claim has been brought, the claimant has afforded the foreign state a reasonable opportunity to arbitrate the claim in accordance with the accepted international rules of arbitration; or

(B) the act described in paragraph (1) is related to Case Number 1:06CV06130 (EGS) in the United States District Court for the District of Columbia.

(b) LIMITATIONS.—An action may be brought or maintained under this section if the action is commenced, or a related action was commenced under section 1605(a)(7) (before the date of the enactment of this section) or section 589 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997 (as contained in section 101(c) of division A of Public Law 104–208) not later than the latter of—

(1) 10 years after April 24, 1996; or

(2) 10 years after the date on which the cause of action arose.

(c) PRIVATE RIGHT OF ACTION.—A foreign state that is or was a state sponsor of terrorism as described in subsection (a)(2)(A)(i), and any official, employee, or agent of that foreign state while acting within the scope of his or her office, employment, or agency, shall be liable to—

(1) a national of the United States,

(2) a member of the armed forces,

(3) an employee of the Government of the United States, or of an individual performing a contract awarded by the United States Government, acting within the scope of the employee’s employment, or

(4) the legal representative of a person described in paragraph (1), (2), or (3), for personal injury or death caused by acts described in subsection (a)(1) of that foreign state, or of an official, employee, or agent of that foreign state, for which the courts of the United States may maintain jurisdiction under this section for money damages. In any such action, damages may include economic damages, solatium, pain and suffering, and punitive damages. In any such action, a foreign state shall be vicariously liable for the acts of its officials, employees, or agents.

(d) ADDITIONAL DAMAGES.—After an action has been brought under subsection (c), actions may also be brought for reasonably foreseeable property loss, whether insured or uninsured, third party liability, and loss claims under life and property insurance policies, by reason of the same acts on which the action under subsection (c) is based.

(e) SPECIAL MASTERS.—
(1) IN GENERAL.—The courts of the United States may appoint special masters to hear damage claims brought under this section.

(2) TRANSFER OF FUNDS.—The Attorney General shall transfer, from funds available for the program under section 1404C of the Victims of Crime Act of 1984 (42 U.S.C. 10603c), to the Administrator of the United States district court in which any case is pending which has been brought or maintained under this section such funds as may be required to cover the costs of special masters appointed under paragraph (1). Any amount paid in compensation to any such special master shall constitute an item of court costs.

(f) APPEAL.—In an action brought under this section, appeals from orders not conclusively ending the litigation may only be taken pursuant to section 1292(b) of this title.

(g) PROPERTY DISPOSITION.—(h) DEFINITIONS.—For purposes of this section—

(A) subject to attachment in aid of execution, or execution, under section 1610;

(B) located within that judicial district; and

(C) titled in the name of any defendant, or titled in the name of any entity controlled by any defendant if such notice contains a statement listing such controlled entity.

(2) NOTICE.—A notice of pending action pursuant to this section to which is attached a copy of the complaint filed in the action, shall have the effect of establishing a lien of lis pendens upon any real property or tangible personal property that is—

(A) subject to attachment in aid of execution, or execution, under section 1610;

(B) located within that judicial district; and

(C) titled in the name of any defendant, or titled in the name of any entity controlled by any defendant if such notice contains a statement listing such controlled entity.

(2) NOTICE.—A notice of pending action pursuant to this section shall be filed by the clerk of the district court in which the action was initially brought, or in any other United States district court in which the action is pending which has been brought or maintained under this section such funds as may be required to cover the costs of special masters appointed under paragraph (1). Any amount paid in compensation to any such special master shall constitute an item of court costs.

(2) NOTICE.—A notice of pending action pursuant to this section shall be filed by the clerk of the district court in which the action was initially brought, or in any other United States district court in which the action is pending which has been brought or maintained under this section such funds as may be required to cover the costs of special masters appointed under paragraph (1). Any amount paid in compensation to any such special master shall constitute an item of court costs.

(h) DEFINITIONS.—For purposes of this section—

(1) the term “aircraft sabotage” has the meaning given that term in Article 1 of the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation;

(2) the term “hostage taking” has the meaning given that term in Article 1 of the International Convention Against the Taking of Hostages;

(3) the term “material support or resources” has the meaning given that term in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22));

(4) the term “armed forces” has the meaning given that term in section 101(a) of title 10;

(5) the term “national of the United States” has the meaning given that term in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22));

(6) the term “state sponsor of terrorism” means a country the government of which the Secretary of State has determined, for purposes of section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)), section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371), section 40 of the Arms Export Control Act (22 U.S.C. 2780), or any other provision of law, is a government that has repeatedly provided support for acts of international terrorism; and

(7) the terms “torture” and “extrajudicial killing” have the meaning given those terms in section 3 of the Torture Victim Protection Act of 1991 (28 U.S.C. 1350 note).


REFERENCES IN TEXT

Section 1083(c) of the National Defense Authorization Act for Fiscal Year 2008, referred to in subsec. (a)(2)(A)(i)(II) and (b), is section 1083(c) of Pub. L. 110–181, which is set out as a note below.

The enactment of this section and the date of the enactment of this section, referred to in subsecs. (a)(2)(A)(i)(II) and (b), refers to the date of enactment of Pub. L. 110–181, which was approved Jan. 28, 2008.


Section 3 of the Torture Victim Protection Act of 1991, referred to in subsec. (b)(5), is section 3 of Pub. L. 102–256, which is set out as a note under section 1550 of this title.

EFFECTIVE DATE


“(1) IN GENERAL.—The amendments made by this section [enacting this section and amending sections 1605, 1607 and 1610 of this title and section 10603a of Title 42, The Public Health and Welfare] shall apply to any claim arising under section 1605A of title 28, United States Code.

“(2) PRIOR ACTIONS.—

“(A) IN GENERAL.—With respect to any action that—

“(i) was brought under section 1605(a)(7) of title 28, United States Code, or section 589 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997 (as contained in section 161(c) of division A of Public Law 104–208) (28 U.S.C. 1605 note), before the date of the enactment of this Act [Jan. 28, 2008],

“(ii) relied upon either such provision as creating a cause of action,

“(iii) has been adversely affected on the grounds that either or both of these provisions fail to create a cause of action against the state, and

“(iv) as of such date of enactment, is before the courts in any form, including on appeal or motion under rule 60(b) of the Federal Rules of Civil Procedure [28 U.S.C. App.],

that action, and any judgment in the action shall, on motion made by plaintiffs to the United States district court where the action was initially brought, or judgment in the action was initially entered, be given effect as if the action had originally been filed under section 1605A(c) of title 28, United States Code.

“(B) DEFENDANTS WAIVED.—The defenses of res judicata, collateral estoppel, and limitation period are waived—

“(i) in any action with respect to which a motion is made under subparagraph (A), or

“(ii) in any action that was originally brought, before the date of the enactment of this Act, under section 1605A(a)(7) of title 28, United States Code, or section 589 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act,
RESERVING THE JURISDICTION OF THE COURTS

"(4) PUBLICATION OF PROVISIONS.—The Federal Register, may, after consultation with the appropriate congressional committees, designate 1 or more entities to assist in providing compensation to nationals of the United States, pursuant to a claims agreement.

"(5) AUTHORITY OF THE SECRETARY.—The designee of an entity under paragraph (1) is within the sole discretion of the Secretary, and may not be delegated. The designation shall not be subject to judicial review.

"(B) PROPERTY DESCRIBED.—The property described in this subparagraph is any property that—

"(i) relates to the claims agreement; and

"(II) transferred to the entity; or

"(III) transferred from the entity.

"(2) OTHER ACTS.—An entity designated by the Secretary under subsection (a)(1), and any person acting through or on behalf of such entity, shall not be liable in any Federal or State court for any action taken to implement a claims agreement.

"(c) NONAPPLICABILITY OF THE GOVERNMENT CORPORATION CONTROL ACT.—An entity designated by the Secretary under subsection (a)(1) shall not be subject to chapter 91 of title 31, United States Code (commonly known as the 'Government Corporation Control Act').

"SEC. 5. RECEIPT OF ADEQUATE FUNDS; IMMUNITIES OF LIBYA.

"(a) IMMUNITY.—

"(1) IN GENERAL.—Notwithstanding any other provision of law, upon submission of a certificate described in paragraph (2)—

"(A) Libya, an agency or instrumentality of Libya, and the property of Libya or an agency or instrumentality of Libya, shall not be subject to the exceptions to immunity from jurisdiction, liens, attachment, and execution contained in section 1605A, [former] 1605(a)(7), or 1610 (insofar as section 1610 relates to a judgment under such section 1605A or [former] 1605(a)(7)) of title 28, United States Code;

"(B) section 1605A(c) of title 28, United States Code, section 1083(c) of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181; 122 Stat. 342; 28 U.S.C. 1605A note), section 589 of the Foreign Operations, Export Financing,
§ 1605A

and Related Programs Appropriations Act, 1997 [Pub. L. 104-208, div. A, title I, §101(c) (28 U.S.C. 1605 note)], and any other private right of action relating to acts by a state sponsor of terrorism arising under Federal, State, or foreign law shall not apply with respect to claims against Libya, or any of its agencies, instrumentalities, officials, employees, or agents in any action in a Federal or State court; and

"(C) any attachment, decree, lien, execution, garnishment, or other judicial process brought against property of Libya, or property of any agency, instrumentality, official, employee, or agent of Libya, in connection with an action that would be precluded by subparagraph (A) or (B) shall be void.

"(2) CERTIFICATION.—A certification described in this paragraph is a certification—

"(A) by the Secretary to the appropriate congressional committees; and

"(B) stating that the United States Government has received funds pursuant to the claims agreement that are sufficient to ensure—

the payment of the settlements referred to in section 654(b) of division J of the Consolidated Appropriations Act, 2008 (Public Law 110-161; 122 Stat. 2342) and 14, 2008, claims arising under section 1605A of title 28, United States Code (including any action brought under [former] section 1605(a)(7) of title 28, United States Code, or section 389 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997 (28 U.S.C. 1605 note), that has been given effect as if the action had originally been filed under section 1608(c) of title 28, United States Code, pursuant to section 1083(c) of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181; 122 Stat. 342; 28 U.S.C. 1605A note).

"(b) TEMPORAL SCOPE.—Subsection (a) shall apply only with respect to any conduct or event occurring before June 30, 2006, regardless of whether, or the extent to which, application of that subsection affects any action filed before, on, or after that date.

"(c) AUTHORITY OF THE SECRETARY.—The certification by the Secretary referred to in subsection (a)(2) may not be delegated, and shall not be subject to judicial review.

APPLICABILITY TO IRAQ


"(1) APPLICABILITY.—The President may waive any provision of this section [enacting this section and amending sections 1605, 1607 and 1610 of this title and section 1063a of Title 42, The Public Health and Welfare] with respect to Iraq, insofar as that provision may, in the President's determination, affect Iraq or any agency or instrumentality thereof, if the President determines that—

"(A) the waiver is in the national security interest of the United States;

"(B) the waiver will promote the reconstruction of the United States Armed Forces at the time of those terrorist acts by the Saddam Hussein regime against individuals who were United States nationals or members of the United States Armed Forces at the time of those terrorist acts and whose claims cannot be addressed in courts in the United States due to the exercise of the waiver authority under paragraph (1)."

EX. ORD. No. 13477, SETTLEMENT OF CLAIMS AGAINST LIBYA

Ex. Ord. No. 13477, Oct. 31, 2008, 73 F.R. 65965, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and pursuant to the August 14, 2003, claims settlement agreement between the United States of America and Libya (Claims Settlement Agreement), and in recognition of the October 31, 2008, certification of the Secretary of State, pursuant to section 5(a)(2) of the Libyan Claims Resolution Act (Public Law 110-301), it is hereby ordered as follows:

SECTION 1. All claims within the terms of Article I of the Claims Settlement Agreement (Article I) are settled.

(a) Claims of United States nationals within the terms of Article I are espoused by the United States and are settled according to the terms of the Claims Settlement Agreement.

(i) No United States national may assert or maintain any claim within the terms of Article I in any forum, domestic or foreign, except under the procedures provided for by the Secretary of State.

(ii) Any pending suit in any court, domestic or foreign, by United States nationals (including any suit with a judgment that is still subject to appeal or other forms of direct judicial review) coming within the terms of Article I shall be terminated.

(iii) The Secretary of State shall provide for procedures governing applications by United States nationals with claims within the terms of Article I for compensation for those claims.

(iv) The Attorney General shall enforce this subsection through all appropriate means, which may include seeking the dismissal, with prejudice, of any claim of a United States national within the terms of Article I pending or filed in any forum, domestic or foreign.

(b) Claims of foreign nationals within the terms of Article I are settled according to the terms of the Claims Settlement Agreement.

(i) No foreign national may assert or maintain any claim coming within the terms of Article I in any forum in the United States.

(ii) Any pending suit in any court in the United States by foreign nationals (including any suit with a judgment that is still subject to appeal or other forms of direct judicial review) coming within the terms of Article I shall be terminated.

(iii) Neither the dismissal of the lawsuit, nor anything in this order, shall affect the ability of any foreign national to pursue other available remedies for claims coming within the terms of Article I in foreign courts or through the efforts of foreign governments.

(iv) The Attorney General shall enforce this subsection through all appropriate means, which may include seeking the dismissal, with prejudice, of any claim of a foreign national within the terms of Article I pending or filed in any court in the United States.
SEC. 2. For purposes of this order:
(a) The term “United States national” has the same meaning as “national of the United States” in section 101(a)(21) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(21)), but also includes any entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches).
(b) The term “foreign national” means any person other than a United States national.
(c) The term “person” means any individual or entity, including both natural and juridical persons.
(d) The term “entity” means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization.
SEC. 3. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, instrumentalities, or entities, its officers or employees, or any other person.

GEORGE W. BUSH.

WAIVER OF SECTION 1083 OF THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2008

Determination of President of the United States, No. 2008–9, Jan. 28, 2008, 73 F.R. 6571, provided:
Memorandum for the Secretary of State
By the authority vested in me as President by the Constitution and the laws of the United States, including section 301 of title 3, United States Code, and section 1083(d) of the National Defense Authorization Act for Fiscal Year 2008 (the “Act”), I hereby determine that:
• All provisions of section 1083 of the Act, if applied to Iraq or any agency or instrumentality thereof, may affect Iraq or its agencies or instrumentalities, by exposing Iraq or its agencies or instrumentalities to liability in United States courts and by entangling their assets in litigation.
• The economic security and successful reconstruction of Iraq continue to be top national security priorities of the United States. Section 1083 of the Act threatens those key priorities. If permitted to apply to Iraq, section 1083 would risk the entanglement of substantial Iraqi assets in litigation in the United States—including those of the Development Fund for Iraq, the Central Bank of Iraq, and commercial entities in the United States in which Iraq has an interest. Section 1083 also would expose Iraq to new liability of at least several billion dollars by undoing judgments favorable to Iraq, by foreclosing available defenses on which Iraq is relying in pending litigation, and by creating a new Federal cause of action backed by the prospect of punitive damages to support claims that may previously have been foreclosed. If permitted to apply to Iraq, section 1083 would have a significant financial impact on Iraq and would result in the redirection of financial resources from the continued reconstruction of Iraq and the harming of Iraq’s stability, contrary to the interests of the United States.
• A waiver of all provisions of section 1083 with respect to Iraq and any agency or instrumentality of Iraq is therefore in the national security interest of the United States and will promote the reconstruction of, the consolidation of democracy in, and the relations of the United States with, Iraq.
• Iraq continues to be a reliable ally of the United States and a partner in combating acts of international terrorism. The November 28, 2007, Declaration of Principles for a Long-Term Relationship of Cooperation and Friendship between the Republic of Iraq and the United States of America confirmed the commitment of the United States and Iraq to build an enduring relationship in the political, diplomatic, economic, and security arenas and to work together to combat all terrorist groups, including al-Qaeda.

You are authorized and directed to notify the Congress of this determination and waiver and the accompanying memorandum of justification (not set out in the Code), incorporated by reference herein, and to arrange for their publication in the Federal Register.

GEORGE W. BUSH.

§ 1606. Extent of liability

As to any claim for relief with respect to which a foreign state is not entitled to immunity under section 1605 or 1607 of this chapter, the foreign state shall be liable in the same manner and to the same extent as a private individual under like circumstances; but a foreign state except for an agency or instrumentality thereof shall not be liable if, however, in any case wherein death was caused, the law of the place where the action or omission occurred provides, or has been construed to provide, for damages only punitive in nature, the foreign state shall be liable for actual or compensatory damages measured by the pecuniary injuries resulting from such death which were incurred by the persons for whose benefit the action was brought.


AMENDMENTS


§ 1607. Counterclaims

In any action brought by a foreign state, or in which a foreign state intervenes, in a court of the United States or of a State, the foreign state shall not be accorded immunity with respect to any counterclaim—
(a) for which a foreign state would not be entitled to immunity under section 1605A of this chapter and has such claim been brought in a separate action against the foreign state; or
(b) arising out of the transaction or occurrence that is the subject matter of the claim of the foreign state; or
(c) to the extent that the counterclaim does not seek relief exceeding in amount or differing in kind from that sought by the foreign state.

§ 1608. Service; time to answer; default

(a) Service in the courts of the United States and of the States shall be made upon a foreign state or political subdivision of a foreign state:

(1) by delivery of a copy of the summons and complaint in accordance with any special arrangement for service between the plaintiff and the foreign state or political subdivision; or

(2) if no special arrangement exists, by delivery of a copy of the summons and complaint in accordance with an applicable international convention on service of judicial documents; or

(3) if service cannot be made under paragraphs (1) or (2), by sending a copy of the summons and complaint and a notice of suit, together with a translation of each into the official language of the foreign state, by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the head of the ministry of foreign affairs of the foreign state concerned, or

(4) if service cannot be made within 30 days under paragraph (3), by sending two copies of the summons and complaint and a notice of suit, together with a translation of each into the official language of the foreign state, by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the Secretary of State in Washington, District of Columbia, to the attention of the Director of Special Consular Services—and the Secretary shall transmit one copy of the papers through diplomatic channels to the foreign state and shall send to the clerk of the court a certified copy of the diplomatic note indicating when the papers were transmitted.

As used in this subsection, a “notice of suit” shall mean a notice addressed to a foreign state and in a form prescribed by the Secretary of State by regulation.

(b) Service in the courts of the United States and of the States shall be made upon an agency or instrumentality of a foreign state:

(1) by delivery of a copy of the summons and complaint in accordance with any special arrangement for service between the plaintiff and the agency or instrumentality; or

(2) if no special arrangement exists, by delivery of a copy of the summons and complaint either to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process in the United States; or in accordance with an applicable international convention on service of judicial documents; or

(3) if service cannot be made under paragraphs (1) or (2), and if reasonably calculated to give actual notice, by delivery of a copy of the summons and complaint, together with a translation of each into the official language of the foreign state—

(A) as directed by an authority of the foreign state or political subdivision in response to a letter rogatory or request or

(B) by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the agency or instrumentality to be served, or

(C) as directed by order of the court consistent with the law of the place where service is to be made.

(c) Service shall be deemed to have been made—

(1) in the case of service under subsection (a)(4), as of the date of transmittal indicated in the certified copy of the diplomatic note; and

(2) in any other case under this section, as of the date of receipt indicated in the certification, signed and returned postal receipt, or other proof of service applicable to the method of service employed.

(d) In any action brought in a court of the United States or of a State, a foreign state, a political subdivision thereof, or an agency or instrumentality of a foreign state, unless the claimant establishes his claim or right to relief by evidence satisfactory to the court. A copy of any such default judgment shall be sent to the foreign state or political subdivision in the manner prescribed for service in this section.


§ 1609. Immunity from attachment and execution of property of a foreign state

Subject to existing international agreements to which the United States is a party at the time of enactment of this Act the property in the United States of a foreign state shall be immune from attachment arrest and execution except as provided in sections 1610 and 1611 of this chapter.


REFERENCES IN TEXT

The time of enactment of this Act, referred to in text, probably means the time of enactment of Pub. L. 94–583, which was approved Oct. 21, 1976.

§ 1610. Exceptions to the immunity from attachment or execution

(a) The property in the United States of a foreign state, as defined in section 1608(a) of this chapter, used for a commercial activity in the United States, shall not be immune from attachment in aid of execution, or from execution, upon a judgment entered by a court of the United States or of a State after the effective date of this Act, if—
(1) the foreign state has waived its immunity from attachment in aid of execution or from execution either explicitly or by implication, notwithstanding any withdrawal of the waiver the foreign state may purport to effect except in accordance with the terms of the waiver; or

(2) the property is or was used for the commercial activity upon which the claim is based; or

(3) the execution relates to a judgment establishing rights in property which has been taken in violation of international law or which has been exchanged for property taken in violation of international law; or

(4) the execution relates to a judgment establishing rights in property—

(A) which is acquired by succession or gift, or

(B) which is immovable and situated in the United States: Provided, That such property is not used for purposes of maintaining a diplomatic or consular mission or the residence of the Chief of such mission, or

(5) the property consists of any contractual obligation or any proceeds from such a contractual obligation to indemnify or hold harmless the foreign state or its employees under a policy of automobile or other liability or casualty insurance covering the claim which merged into the judgment, or

(6) the judgment is based on an order confirming an arbitral award rendered against the foreign state, provided that attachment in aid of execution, or execution, would not be inconsistent with any provision in the arbitral agreement, or

(7) the judgment relates to a claim for which the foreign state is not immune under section 1605A, regardless of whether the property is or was involved with the act upon which the claim is based.

(b) In addition to subsection (a), any property in the United States of an agency or instrumentality of a foreign state engaged in commercial activity in the United States shall not be immune from attachment in aid of execution, or from execution, upon a judgment entered by a court of the United States or of a State after the effective date of this Act, if—

(1) the agency or instrumentality has waived its immunity from attachment in aid of execution or from execution either explicitly or implicitly, notwithstanding any withdrawal of the waiver the agency or instrumentality may purport to effect except in accordance with the terms of the waiver; or

(2) the judgment relates to a claim for which the agency or instrumentality is not immune by virtue of section 1605(a)(2), (3), or (5), 1605(b), or 1605A of this chapter, regardless of whether the property is or was involved in the act upon which the claim is based.

(c) No attachment or execution referred to in subsections (a) and (b) of this section shall be permitted until the court has ordered such attachment and execution, and having determined that a reasonable period of time has elapsed following the entry of judgment and the giving of any notice required under section 1608(e) of this chapter.

(d) The property of a foreign state, as defined in section 1933(a) of this chapter, used for a commercial activity in the United States, shall not be immune from attachment prior to the entry of judgment in any action brought in a court of the United States or of a State, or prior to the lapse of the period of time provided in subsection (c) of this section, if—

(1) the foreign state has explicitly waived its immunity from attachment prior to judgment, notwithstanding any withdrawal of the waiver the foreign state may purport to effect except in accordance with the terms of the waiver, and

(2) the purpose of the attachment is to secure satisfaction of a judgment that has been or may ultimately be entered against the foreign state, and not to obtain jurisdiction.

(e) The vessels of a foreign state shall not be immune from arrest in rem, interlocutory sale, and execution in actions brought to foreclose a preferred mortgage as provided in section 1605(d).

(f)(1)(A) Notwithstanding any other provision of law, including but not limited to section 208(f) of the Foreign Missions Act (22 U.S.C. 4308(f)), and except as provided in subparagraph (B), any property with respect to which financial transactions are prohibited or regulated pursuant to section 5(b) of the Trading with the Enemy Act (50 U.S.C. App. 5(b)), section 620(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2370(a)), sections 202 and 203 of the International Emergency Economic Powers Act (50 U.S.C. 1701–1702), or any other proclamation, order, regulation, or license issued pursuant thereto, shall be subject to execution or attachment in aid of execution of any judgment relating to a claim for which a foreign state (including any agency or instrumentality or such state) claiming such property is not immune under section 1605(a)(7) (as in effect before the enactment of section 1605A) or section 1605A.

(B) Subparagraph (A) shall not apply if, at the time the property is expropriated or seized by the foreign state, the property has been held in title by a natural person or, if held in trust, has been held for the benefit of a natural person or persons.

(2)(A) At the request of any party in whose favor a judgment has been issued with respect to a claim for which the foreign state is not immune under section 1605(a)(7) (as in effect before the enactment of section 1605A) or section 1605A, the Secretary of the Treasury and the Secretary of State should make every effort to fully, promptly, and effectively assist any judgment creditor or any court that has issued any such judgment in identifying, locating, and executing against the property of that foreign state or any agency or instrumentality of such state.

(B) In providing such assistance, the Secretaries—

(i) may provide such information to the court under seal; and

(ii) shall make every effort to provide the information in a manner sufficient to allow the court to direct the United States Marshall’s office to promptly and effectively execute against that property.
§ 1610 TITLE 28—JUDICIARY AND JUDICIAL PROCEDURE Page 404

(3) WAIVER.—The President may waive any provision of paragraph (1) in the interest of national security.

(g) PROPERTY IN CERTAIN ACTIONS.—

(1) IN GENERAL.—Subject to paragraph (3), the property of a foreign state against which a judgment is entered under section 1605A, and the property of an agency or instrumentality of such a state, including property that is in a separate juridical entity or is an interest held directly or indirectly in a separate juridical entity, is subject to attachment in aid of execution, and execution, upon that judgment as provided in this section, regardless of—

(A) the level of economic control over the property by the government of the foreign state;

(B) whether the profits of the property go to that government;

(C) the degree to which officials of that government manage the property or otherwise control its daily affairs;

(D) whether that government is the sole beneficiary in interest of the property; or

(E) whether establishing the property as a separate entity would entitle the foreign state to benefits in United States courts while avoiding its obligations.

(2) UNITED STATES SOVEREIGN IMMUNITY INAPPLICABLE.—Any property of a foreign state, or agency or instrumentality of a foreign state, to which paragraph (1) applies shall not be immune from attachment in aid of execution, or execution, upon a judgment entered under section 1605A because the property is regulated by the United States Government by reason of action taken against that foreign state under the Trading With the Enemy Act or the International Emergency Economic Powers Act.

(3) THIRD-PARTY JOINT PROPERTY HOLDERS.—Nothing in this subsection shall be construed to supersede the authority of a court to prevent appropriately the impairment of an interest held by a person who is not liable in the action giving rise to a judgment in property subject to attachment in aid of execution, or execution, upon such judgment.


REFERENCES IN TEXT

The effective date of this Act, referred to in subsec. (a) and (b), is 90 days after Oct. 21, 1976, see section 8 of Pub. L. 94–583, set out as an Effective Date note under section 1602 of this title.


The Trading with the Enemy Act, referred to in subsec. (g)(2), is act Oct. 6, 1917, ch. 106, 40 Stat. 411, which is classified to sections 7 to 39 and 41 to 44 of Title 50, Appendix, War and National Defense. For complete classification of this Act to the Code, see Tables.


AMENDMENTS


Subsec. (b)(2). Pub. L. 110–181, § 1083(b)(3)(B), substituted “or (5), 1605b, or 1605A” for “(5), or (7), or 1605b)”.

Subsec. (f)(1)(A), (2)(A). Pub. L. 110–181, § 1083(b)(3)(C), inserted “(as in effect before the enactment of section 1605A) or section 1605A” after “section 1605(a)(7)”.


Subsec. (b)(2). Pub. L. 104–132, 1221(b)(2), substituted “(5), or (7),” for “(5),” and “involved in the act” for “used for the activity”.


EFFECTIVE DATE OF 2008 AMENDMENT

For applicability of amendments by Pub. L. 110–181 to pending cases, see section 1083(c) of Pub. L. 110–181, set out as an Effective Date note under section 1605A of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–277, div. A, § 101(h) [title I, § 117(c)], Oct. 21, 1998, 112 Stat. 2681–480, 2681–491, provided that: “The amendments made by subsections (a) and (b) (other than this section and section 1606 of this title) shall apply to any claim for which a foreign state is not immune under section 1605(a)(7) of title 28, United States Code, arising before, on, or after the date of enactment of this Act [Oct. 21, 1998].”

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–132 applicable to any cause of action arising before, on, or after Apr. 24, 1996, see section 221(c) of Pub. L. 104–132, set out as a note under section 1605 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–410 applicable to actions commenced on or after Nov. 9, 1988, see section 3 of Pub. L. 100–640, set out as a note under section 1605 of this title.

SATISFACTION OF JUDGMENTS FROM BLOCKED ASSETS OF TERRORISTS, TERRORIST ORGANIZATIONS, AND STATE SPONSORS OF TERRORISM

Pub. L. 107–297, title II, § 201(a), (b), (d), Nov. 26, 2002, 116 Stat. 2337, 2339, provided that:

“(a) IN GENERAL.—Notwithstanding any other provision of law, and except as provided in subsection (b), in every case in which a person has obtained a judgment against a terrorist party on a claim based upon an act of terrorism, or for which a terrorist party is not im-
mune under section 1605(a)(7) of title 28, United States Code, the blocked assets of that terrorist party (including the blocked assets of any agency or instrumental-ity of that terrorist party) shall be subject to execution or attachment in aid of execution in order to satisfy such judgment to the extent of any compensatory dam-
gages for which such terrorist party has been adjudged liable.

“(b) PRESIDENTIAL WAIVER.—

“(1) IN GENERAL.—Subject to paragraph (2), upon de-
determining on an asset-by-asset basis that a waiver is necessary in the national security interest, the Presi-
dent may waive the requirements of subsection (a) in
connection with (and prior to the enforcement of) any
judicial order directing attachment in aid of execu-
tion or execution against any property subject to the
Vienna Convention on Diplomatic Relations or the
Vienna Convention on Consular Relations.

“(2) EXCEPTION.—A waiver under this subsection shall
do not apply to:

“(A) property subject to the Vienna Convention on
Diplomatic Relations or the Vienna Convention on
Consular Relations that has been used by the
United States for any non-diplomatic purpose (in-
cluding use as rental property), or the proceeds of
such use; or

“(B) the proceeds of any sale or transfer for value
to a third party of any asset subject to the Vienna
Convention on Diplomatic Relations or the Vienna
Convention on Consular Relations.

“(d) DEFINITIONS.—In this section, the following de-

(1) ACT OF TERRORISM.—The term ‘act of terrorism’
means—

“(A) any act or event certified under section
102(1) [Pub. L. 107–297, set out in a note under
section 6701 of Title 15, Commerce and Trade]; or

“(B) to the extent not covered by subparagraph
(A), any terrorist activity (as defined in section
212(a)(3)(B)(iii) of the Immigration and Nationality

“(2) BLOCKED ASSET.—The term ‘blocked asset’
means—

“(A) any asset seized or frozen by the United
States under section 5(b) of the Trading With
the Enemy Act (50 U.S.C. App. 5(b)) or under sections
202 and 203 of the International Emergency
Economic Powers Act (50 U.S.C. 1701; 1702); and

“(B) does not include property that—

“(1) is issued by the United States
Government for final payment, transfer, or
 disposition by or to a person subject to the juris-
diction of the United States in connection with a
transaction for which the issuance of such license
has been specifically required by statute other
than the International Emergency Economic
Powers Act (50 U.S.C. 1701 et seq.); or

“(ii) in the case of property subject to the
Vienna Convention on Diplomatic Relations or the
Vienna Convention on Consular Relations, or that
enjoys equivalent privileges and immunities
under the law of the United States, is being used
exclusively for diplomatic or consular purposes.

“(3) CERTAIN PROPERTY.—The term ‘property
subject to the Vienna Convention on Diplomatic
Relations or the Vienna Convention on Consular
Relations’ and the term ‘asset subject to the Vienna
Convention on Diplomatic Relations or the Vienna
Convention on Consular Relations’ mean any property or
 asset, respectively, the attachment in aid of execu-
tion or execution of which would result in a violation
of any prohibition of the United States under the Vi-
enna Convention on Diplomatic Relations or the Vi-
enna Convention on Consular Relations, as the case
may be.

“(4) TERRORIST PARTY.—The term ‘terrorist party’
means a terrorist, a terrorist organization (as defined
in section 212(a)(3)(B)(vi) of the Immigration and Na-
tionality Act (8 U.S.C. 1182(a)(3)(B)(vi))), or a foreign
technity designated as a state sponsor of terrorism under
section 616(h) of the Export Administration Act of 1979
(50 U.S.C. App. 2456(e)(4)) or section 402(a) of the

WAIVER OF EXCEPTION TO IMMUNITY FROM
ATTACHMENT OR EXECUTION

the President to waive the requirements of section
101(h) [title I, § 117] of Pub. L. 105–277, which amended
division section and section 1606 of this title and enacted
provisions set out as a note above, in the interest of na-
tional security, was repealed by Pub. L. 106–358, div. C,
1543, renumbered § 2002(g)(2), Pub. L. 107–297, title II,

Determination of President of the United States, No.
99–1, Oct. 21, 1998, 64 F.R. 56483, which provided for
waiver of requirements of section 101(h) [title I, § 117(b)]
of div. A of Pub. L. 105–277, relating to blocked property
of terrorist-list states, was superseded by Determina-
28, 2000, 65 F.R. 66483, set out below.

DETERMINATION TO WAIVE ATTACHMENT PROVISIONS
RELATING TO BLOCKED PROPERTY OF TERRORIST-LIST
STATES

Determination of President of the United States, No.
2001–3, Oct. 28, 2000, 65 F.R. 66483, provided:

Memorandum for the Secretary of State [and] the
Secretary of the Treasury

By the authority vested in me as President by the
Constitution and laws of the States of America,
including section 2002(g) of H.R. 3244, the ‘‘Victims of
Trafficking and Violence Protection Act of
2000,’’ (approved October 28, 2000) [section 2002(g) of
Pub. L. 106–358, amending this section and section 1606
of this title and repealing provisions set out as a note
above], I hereby determine that subsection (f)(1) of sec-
tion 1610 of title 28, United States Code, which provides
that any property with respect to which financial
transactions are prohibited or regulated pursuant to
section 5(b) of the Trading with the Enemy Act (50
U.S.C.[C.] App. 5(b)), section 620(a) of the Foreign
Assistance Act of 1961 (22 U.S.C. 2370(a)), sections 202
and 203 of the International Emergency Economic
Powers Act (50 U.S.C. 1701–1702), and proclamations, orders,
regulations, and licenses issued pursuant thereto, be
subject to execution or attachment in aid of execu-
tion or execution of any judgment relating to a claim for
which a foreign state claiming such property is not immune
from the jurisdiction of courts of the United States or of
the States under section 1605(a)(7) of title 28, United
States Code, would impede the ability of the President to
conduct foreign policy in the interest of national security
and would, in particular, impede the effectiveness of
such prohibitions and regulations upon financial
transactions. Therefore, pursuant to section 2002(a) [now
2002(g)] of H.R. 3244, the ‘‘Victim’s of Trafficking and
Violence Protection Act of 2000,’’ I hereby waive sub-
section (f)(1) of section 1610 of title 28, United States
Code, in the interest of national security. This waiver,
together with the amendment of subsection (f)(2) of the
Foreign Sovereign Immunities Act [probably means
subsection (b) of this section] and the repeal of the sub-
section (h) of section 117 of the Treasury and General
Government Appropriations Act, 1999 [section 101(h)
section 1606 of this title], supersedes my prior waiver of
the requirements of subsections (a) and (b) of said sec-
tion 117 [amending this section and section 1606 of this
title], executed on October 21, 1998 [former Determina-
tion of President of the United States, No. 99–1, Oct.
21, 1998, 64 F.R. 56483].

The Secretary of State is authorized and directed to
publish this determination in the Federal Register.

WILLIAM J. CLINTON.
§ 1611. Certain types of property immune from execution

(a) Notwithstanding the provisions of section 1610 of this chapter, the property of those organizations designated by the President as being entitled to enjoy the privileges, exemptions, and immunities provided by the International Organizations Immunities Act shall not be subject to attachment or any other judicial process impeding the disbursement of funds to, or on the order of, a foreign state as the result of an action brought in the courts of the United States or of the States.

(b) Notwithstanding the provisions of section 1610 of this chapter, the property of a foreign state shall be immune from attachment and from execution, if—

(1) the property is that of a foreign central bank or monetary authority held for its own account, unless such bank or authority, or its parent foreign government, has explicitly waived its immunity from attachment in aid of execution, or from execution, notwithstanding any withdrawal of the waiver which the bank, authority or government may purport to effect except in accordance with the terms of the waiver; or

(2) the property is, or is intended to be, used in connection with a military activity and

(A) is of a military character, or

(B) is under the control of a military authority or defense agency.

(c) Notwithstanding the provisions of section 1610 of this chapter, the property of a foreign state shall be immune from attachment and from execution in an action brought under section 302 of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 to the extent that the property is a facility or installation used by an accredited diplomatic mission for official purposes.


REFERENCES IN TEXT

The International Organizations Immunities Act, referred to in subsec. (a), is title I of act Dec. 29, 1945, ch. 652, 59 Stat. 669, as amended, which is classified primarily to subchapter XVIII (§238 et seq.) of chapter 7 of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 288 of Title 22 and Table for section 2897.

Section 302 of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996, referred to in subsec. (c), is section 302 of Pub. L. 104–114, which amended this section and enacted section 6882 of Title 22, Foreign Relations and Intercourse.

AMENDMENTS


EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–114 effective Aug. 1, 1996, or date determined pursuant to suspension authority of President under section 6085(b) or (c) of Title 22, Foreign Relations and Intercourse, see section 6085 of Title 22.

CHAPTER 99—GENERAL PROVISIONS

Sec. 1631. Transfer to cure want of jurisdiction

Whenever a civil action is filed in a court as defined in section 610 of this title or an appeal, including a petition for review of administrative action, is noticed for or filed with such a court and that court finds that there is a want of jurisdiction, the court shall, if it is in the interest of justice, transfer such action or appeal to any other such court in which the action or appeal could have been brought at the time it was filed or noticed, and the action or appeal shall proceed as if it had been filed in or noticed for the court to which it is transferred on the date upon which it was actually filed in or noticed for the court from which it is transferred.


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.

PART V—PROCEDURE

CHAPTER 111—GENERAL PROVISIONS

Sec. 1651. Writs

1652. State laws as rules of decision

1653. Amendment of pleadings to show jurisdiction

1654. Appearance personally or by counsel

1655. Lien enforcement; absent defendants

1656. Creation of new district or division or transfer of territory

1657. Priority of civil actions

1658. Time limitations on the commencement of civil actions arising under Acts of Congress

1659. Stay of certain actions pending disposition of related proceedings before the United States International Trade Commission

AMENDMENTS


1990—Pub. L. 100–566, title III, §313(b), Nov. 8, 1994, added item 1657


§ 1651. Writs

(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respec-
tive jurisdictions and agreeable to the usages and principles of law.

(b) An alternative writ or rule nisi may be issued by a justice or judge of a court which has jurisdiction.

(June 25, 1948, ch. 646, 62 Stat. 944; May 24, 1949, ch. 139, §90, 63 Stat. 102.)

HISTORICAL AND REVISION NOTES
1948 ACT


Section consolidates sections 342, 376, and 377 of title 28, U.S.C., 1940 ed., with necessary changes in phraseology.

Such section 342 provided:

"The Supreme Court shall have power to issue writs of prohibition to the district courts, when proceeding as courts of admiralty and maritime jurisdiction; and writes of mandamus, in cases warranted by the principles and usages of law, to any courts appointed under the authority of the United States, or to persons holding office under the authority of the United States, where a State, or an ambassador, or other public minister, or a consul, or vice consul is a party."

Such section 376 provided:

"Writs of ne exeat may be granted by any justice of the Supreme Court, in cases where they might be granted by the Supreme Court; and by any district judge, in cases where they might be granted by the district court of which he is a judge. But no writ of ne exeat shall be granted unless a suit in equity is commenced, and satisfactory proof is made to the court or judge granting the same that the defendant designs quickly to depart from the United States."

Such section 377 provided:

"The Supreme Court and the district courts shall have power to issue writs of scire facias. The Supreme Court, the circuit courts of appeals, and the district courts shall have power to issue all writs not specifically provided for by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the usages and principles of law."

The special provisions of section 342 of title 28, U.S.C., 1940 ed., with reference to writings of prohibition and mandamus, admiralty courts and other courts and officers of the United States were omitted as unnecessary in view of the revised section.

The revised section extends the power to issue writs in aid of jurisdiction, to all courts established by Act of Congress, thus making explicit the right to exercise powers implied from the creation of such courts.

The provisions of section 376 of title 28, U.S.C., 1940 ed., with respect to the powers of a justice or judge in issuing writs of ne exeat were changed and made the basis of subsection (b) of the revised section but the conditions and limitations on the writ of ne exeat were omitted as merely confirmatory of well-settled principles of law.


1949 ACT

This section corrects a grammatical error in subsection (a) of section 1651 of title 28, U.S.C.

AMENDMENTS
1949—Subsec. (a). Act May 24, 1949, inserted "and" after "jurisdictions".

WRIT OF ERROR

§1652. State laws as rules of decision

The laws of the several states, except where the Constitution or treaties of the United States or Acts of Congress otherwise require or provide, shall be regarded as rules of decision in civil actions in the courts of the United States, in cases where they apply.

(June 25, 1948, ch. 646, 62 Stat. 944.)

HISTORICAL AND REVISION NOTES


"Civil actions" was substituted for "trials at common law" to clarify the meaning of the Rules of Decision Act in the light of the Federal Rules of Civil Procedure. Such Act has been held to apply to suits in equity.

Changes were made in phraseology.

§1653. Amendment of pleadings to show jurisdiction

Defective allegations of jurisdiction may be amended, upon terms, in the trial or appellate courts.

(June 25, 1948, ch. 646, 62 Stat. 944.)

HISTORICAL AND REVISION NOTES


Section was extended to permit amendment of all jurisdictional allegations instead of merely allegations of diversity of citizenship as provided by section 399 of title 28, U.S.C., 1940 ed.

Changes were made in phraseology.

§1654. Appearance personally or by counsel

In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein.

(June 25, 1948, ch. 646, 62 Stat. 944; May 24, 1949, ch. 139, §91, 63 Stat. 103.)

HISTORICAL AND REVISION NOTES


"Civil actions" was substituted for "trials at common law" to clarify the meaning of the Rules of Decision Act in the light of the Federal Rules of Civil Procedure. Such Act has been held to apply to suits in equity.

Changes were made in phraseology.

1949 ACT

This section restores in section 1654 of title 28, U.S.C., language of the original law.

AMENDMENTS
1949—Act May 24, 1949, inserted "as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein".

§1655. Lien enforcement; absent defendants

In an action in a district court to enforce any lien upon or claim to, or to remove any incum-
brance or lien or cloud upon the title to, real or personal property within the district, where any defendant cannot be served within the State, or does not voluntarily appear, the court may order the absent defendant to appear or plead by a duly authorized agent.

Such order shall be served on the absent defendant personally if practicable, wherever found, and also upon the person or persons in possession or charge of such property, if any. Where personal service is not practicable, the order shall be published as the court may direct, not less than once a week for six consecutive weeks.

If an absent defendant does not appear or plead within the time allowed, the court may proceed as if the absent defendant had been served with process within the State, but any adjudication shall, as regards the absent defendant without appearance, affect only the property which is the subject of the action. When a part of the property is within another district, but within the same state, such action may be brought in either district.

Any defendant not so personally notified may, at any time within one year after final judgment, enter his appearance, and thereupon the court shall set aside the judgment and permit such defendant to plead on payment of such costs as the court deems just.

(June 25, 1948, ch. 646, 62 Stat. 944.)

HISTORICAL AND REVISION NOTES


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

In view of Rule 4(f) of the Federal Rules of Civil Procedure permitting service of process anywhere within the territorial limits of the States, the word “State” was substituted for “district” in the first and third paragraphs.

Changes were made in phraseology.

§ 1656. Creation of new district or division or transfer of territory; lien enforcement

The creation of a new district or division or the transfer of any territory to another district or division shall not affect or divest any lien theretofore acquired in a district court upon property within such district, division or territory.

To enforce such lien, the clerk of the court in which the same is acquired, upon the request and at the cost of the party desiring the same, shall make a certified copy of the record thereof, which, when filed in the proper court of the district or division in which such property is situated after such creation or transfer shall be evidence in all courts and places equally with the original thereof; and, thereafter like proceedings shall be had thereon, and with the same effect, as though the case or proceeding had been originally instituted in such court.


HISTORICAL AND REVISION NOTES


A provision as to creation of a new district or division or transfer of territory before March 3, 1911, was omitted as obsolete.

Words descriptive of the lien were omitted as unnecessary.

Changes were made in phraseology.

AMENDMENTS

1978—Pub. L. 95–598 directed the amendment of section by inserting “or in a bankruptcy court” after “a district court”, 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.

§ 1657. Priority of civil actions

(a) Notwithstanding any other provision of law, each court of the United States shall determine the order in which civil actions are heard and determined, except that the court shall expedite the consideration of any action brought under chapter 153 or section 1826 of this title, any action for temporary or preliminary injunctive relief, or any other action if good cause therefor is shown. For purposes of this subsection, “good cause” is shown if a right under the Constitution of the United States or a Federal Statute (including rights under section 552 of title 5) would be maintained in a factual context that indicates that a request for expedited consideration has merit.

(b) The Judicial Conference of the United States may modify the rules adopted by the courts to determine the order in which civil actions are heard and determined, in order to establish consistency among the judicial circuits.

(Added Pub. L. 98–620, title IV, §401(a), Nov. 8, 1984, 98 Stat. 3356.)

EFFECTIVE DATE

Section 403 of Pub. L. 98–620 provided that: “The amendments made by this subtitle (subtitle A (§§401–403) of title IV of Pub. L. 98–620, enacting this section, amending sections 596, 636, 1394, 2284, and 2349 of this title, sections 437g, 437h, and 687 of Title 2, The Congress, section 552 of Title 5, Government Organization and Employees, sections 8, 1361, 1363, 1369, 194, 1396, 1600, and 1601 of Title 7, Agriculture, section 1464 of Title 12, Banks and Banking, sections 18a, 21, 45, 57f–1, 78k–1, 687a, 687c, 719h, 1415, 2063, and 2622 of Title 15, Commerce and Trade, sections 1493a, 1910, 3117, and 3168 of Title 16, Conservation, sections 1964 and 1966 of Title 18, Crimes and Criminal Procedure, sections 346a and 348 of Title 21, Food and Drugs, section 618 of Title 22, Foreign,149, Foreign Relations and Intercourse, section 640d–3 of Title 25, Indians, sections 3310, 6110, 6383, 7609, 9010, and 9011 of Title 26, Internal Revenue Code, sections 110, 180, 600, and 1303 of Title 29, Labor, section 816 of Title 30, Mineral Lands and Mining, section 2022 (now 4302) of Title 33, Veterans’ Benefits, section 3638 of Title 33, Postal Service, sections 3009–9, 304, 6058, and 8514 of Title 34, Medicaid and State Children’s Health Insurance Programs, section 1902, Title 35, Federal Credit Unions, section 3513, Title 38, Veterans’ Benefits, section 3673 of Title 39, Postal Service, section 4001, Title 40, Transportation, sections 101 and 402 of Title 41, Civil Rights, section 501, and Title 42, The Public Health and Welfare, sections 1002, 1062, 1349, 1652, and 2011 of Title 43, Public Lands, sections 355, 745, 1018, and 1205 of Title 45, Railroads, section 402 of Title 47, Telephones, section 792a of Title 50, War and National Defense, and sections 462 and 1984 of Title 50, Appendix, repealing sections 1296 and 2647 of this title, section 28 of Title 15, 2nd section 3614 of Title 42, and amending provisions set out as a note under section 2304 of Title 10, Armed Forces) shall not apply to cases pending on the date of the enactment of this subtitle [Nov. 8, 1984].”

§ 1658. Time limitations on the commencement of civil actions arising under Acts of Congress

(a) Except as otherwise provided by law, a civil action arising under an Act of Congress en-
acted after the date of the enactment of this section may not be commenced later than 4 years after the cause of action accrues.

(b) Notwithstanding subsection (a), a private right of action that involves a claim of fraud, deceit, manipulation, or contrivance in contravention of a regulatory requirement concerning the securities laws, as defined in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47)), may be brought not later than the earlier of—

(1) 2 years after the discovery of the facts constituting the violation; or

(2) 5 years after such violation.


REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsec. (a), is the date of enactment of Pub. L. 101–650, which was approved Dec. 1, 1990.

AMENDMENTS

2002—Pub. L. 107–204 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–204, title VIII, §804(b), July 30, 2002, 116 Stat. 801, provided that: “The limitations period provided by section 1658(b) of title 28, United States Code, as added by this section, shall apply to all proceedings addressed by this section that are commenced on or after the date of enactment of this Act [July 30, 2002].”

EFFECTIVE DATE

Section 337(c) of Pub. L. 101–650 provided that: ‘‘The amendments made by this section [enacting this section] shall apply with respect to causes of action accruing on or after the date of enactment of this Act [Dec. 1, 1990].’’

NO CREATION OF ACTIONS

Pub. L. 107–204, title VIII, §804(c), July 30, 2002, 116 Stat. 801, provided that: ‘‘Nothing in this section [amending this section and enacting provisions set out as a note under this section] shall create a new, private right of action.’’

§1659. Stay of certain actions pending disposition of related proceedings before the United States International Trade Commission

(a) STAY.—In a civil action involving parties that are also parties to a proceeding before the United States International Trade Commission under section 337 of the Tariff Act of 1930, at the request of a party to the civil action that is also a respondent in the proceeding before the Commission, the district court shall stay, until the determination of the Commission becomes final, proceedings in the civil action with respect to any claim that involves the same issues involved in the proceeding before the Commission, but only if such request is made within—

(1) 30 days after the party is named as a respondent in the proceeding before the Commission, or

(2) 30 days after the district court action is filed, whichever is later.

(b) USE OF COMMISSION RECORD.—Notwithstanding section 337(n)(1) of the Tariff Act of 1930, after dissolution of a stay under subsection (a), the record of the proceeding before the United States International Trade Commission shall be transmitted to the district court and shall be admissible in the civil action, subject to such protective order as the district court determines necessary, to the extent permitted under the Federal Rules of Evidence and the Federal Rules of Civil Procedure.


REFERENCES IN TEXT

Section 337 of the Tariff Act of 1930, referred to in text, is classified to section 1337 of Title 19, Customs Duties.


EFFECTIVE DATE

Section applicable with respect to complaints filed under section 1337 of Title 19, Customs Duties, on or after the date on which the World Trade Organization Agreement enters into force with respect to the United States (Jan. 1, 1995), or in cases under section 1337 of Title 19 in which no complaint is filed, with respect to investigations initiated under such section on or after such date, see section 322 of Pub. L. 103–465, set out as an Effective Date of 1994 Amendment note under section 1337 of Title 19.

CHAPTER 113—PROCESS

§1691. Seal and test of process

Sec. 1691. Seal and test of process.

1692. Process and orders affecting property in different districts.

1693. Place of arrest in civil action.


1695. Stockholder’s derivative action.

1696. Service in foreign and international litigation.

1697. Service in multiparty, multiforum actions.

AMENDMENTS


§1691. Seal and test of process

All writs and process issuing from a court of the United States shall be under the seal of the court and signed by the clerk thereof.

(June 25, 1948, ch. 646, 62 Stat. 945.)

HISTORICAL AND REVISION NOTES


Provisions as to test of process issuing from the district courts were omitted as superseded by Rule 4 (b) of the Federal Rules of Civil Procedure. Provision for test of the Chief Justice of writs and process was omitted as unnecessary.

A provision requiring the United States to bear the expense of providing seals was omitted as unnecessary and obsolete.

Changes were made in phraseology.

IMMUNITY FROM SEIZURE UNDER JUDICIAL PROCESS OF CULTURAL OBJECTS IMPORTED FOR TEMPORARY EXHIBITION OR DISPLAY

Presidential determination of cultural significance of objects and exhibition or display thereof in the na-
§ 1692. Process and orders affecting property in different districts

In proceedings in a district court where a receiver is appointed for property, real, personal, or mixed, situated in different districts, process may issue and be executed in any such district as if the property lay wholly within one district, but orders affecting the property shall be entered of record in each of such districts.

(June 25, 1948, ch. 646, 62 Stat. 945.)

Historical and Revision Notes


Provisions of section 117 of title 28, U.S.C., 1940 ed., as to jurisdiction and control of a receiver of property in several districts are the basis of section 754 of this title.

For explanation of revision of section 117 of title 28, U.S.C., 1940 ed., and its extension to include property, not only in the same judicial circuit, but in any judicial circuit. (See reviser's note under section 754 of this title.) Changes were made in phraseology.

§ 1693. Place of arrest in civil action

Except as otherwise provided by Act of Congress, no person shall be arrested in one district for trial in another in any civil action in a district court.

(June 25, 1948, ch. 646, 62 Stat. 945.)

Historical and Revision Notes


The exception at the beginning of the section was substituted for “Except as provided in sections 113-117 of this title.” Changes were made in phraseology.

§ 1694. Patent infringement action

In a patent infringement action commenced in a district where the defendant is not a resident but has a regular and established place of business, service of process, summons or subpoena upon such defendant may be made upon his agent or agents conducting such business.

(June 25, 1948, ch. 646, 62 Stat. 945.)

Historical and Revision Notes


Changes were made in phraseology.

§ 1695. Stockholder's derivative action

Process in a stockholder’s action in behalf of his corporation may be served upon such corporation in any district where it is organized or licensed to do business or is doing business.

(June 25, 1948, ch. 646, 62 Stat. 945.)

Historical and Revision Notes


The phrase “is organized or licensed to do business or is doing business” was substituted for the words “resides or is found,” as more specific and to conform to section 1391 of this title.


Changes were made in phraseology.

§ 1696. Service in foreign and international litigation

(a) The district court of the district in which a person resides or is found may order service upon him of any document issued in connection with a proceeding in a foreign or international tribunal. The order may be made pursuant to a letter rogatory issued, or request made, by a foreign or international tribunal or upon application of any interested person and shall direct the manner of service. Service pursuant to this subsection does not, of itself, require the recognition or enforcement in the United States of a judgment, decree, or order rendered by a foreign or international tribunal.

(b) This section does not preclude service of such a document without an order of court.


§ 1697. Service in multiparty, multijurisdictional actions

When the jurisdiction of the district court is based in whole or in part upon section 1399 of this title, process, other than subpoenas, may be served at any place within the United States, or anywhere outside the United States if otherwise permitted by law.


Effective Date

Section applicable to a civil action if the accident giving rise to the cause of action occurred on or after the 90th day after Nov. 2, 2002, see section 11020(c) of Pub. L. 107–273, set out as a note under section 1369 of this title.

CHAPTER 114—CLASS ACTIONS

Sec.

1711. Definitions.

1712. Coupon settlements.

1713. Protection against loss by class members.

1714. Protection against discrimination based on geographic location.

1715. Notifications to appropriate Federal and State officials.

§ 1711. Definitions

In this chapter:

(1) CLASS.—The term “class” means all of the class members in a class action.

(2) CLASS ACTION.—The term “class action” means any civil action filed in a district court of the United States under rule 23 of the Federal Rules of Civil Procedure or any civil action that is removed to a district court of the United States that was originally filed under a State statute or rule of judicial procedure authorizing an action to be brought by 1 or more representatives as a class action.
(3) Class Counsel.—The term “class counsel” means the persons who serve as the attorneys for the class members in a proposed or certified class action.

(4) Class Members.—The term “class member” means the persons (named or unnamed) who fall within the definition of the proposed or certified class in a class action.

(5) Plaintiff Class Action.—The term “plaintiff class action” means a class action in which class members are plaintiffs.

§ 1712. Coupon Settlements

(a) Contingent Fees in Coupon Settlements.—If a proposed settlement in a class action provides for a recovery of coupons to a class member, the portion of any attorney’s fee award to class counsel that is attributable to the award of the coupons shall be based on the value to class members of the coupons that are redeemed.

(b) Other Attorney’s Fee Awards in Coupon Settlements.—

(1) In General.—If a proposed settlement in a class action provides for a recovery of coupons to class members, and a portion of the recovery of the coupons is not used to determine the attorney’s fee to be paid to class counsel, any attorney’s fee award shall be based upon the amount of time class counsel reasonably expended working on the action.

(2) Court Approval.—Any attorney’s fee under this subsection shall be subject to approval by the court and shall include an appropriate attorney’s fee, if any, for obtaining equitable relief, including an injunction, if applicable. Nothing in this subsection shall be construed to prohibit application of a lodestar with a multiplier method of determining attorney’s fees.

(c) Attorney’s Fee Awards Calculated on a Mixed Basis in Coupon Settlements.—If a proposed settlement in a class action provides for an award of coupons to class members and also provides for equitable relief, including injunctive relief—

(1) that portion of the attorney’s fee to be paid to class counsel that is based upon a portion of the recovery of the coupons shall be calculated in accordance with subsection (a); and

(2) that portion of the attorney’s fee to be paid to class counsel that is not based upon a portion of the recovery of the coupons shall be calculated in accordance with subsection (b).

(d) Settlement Valuation Expertise.—In a class action involving the awarding of coupons, the court may, in its discretion upon the motion of a party, receive expert testimony from a witness qualified to provide information on the actual value to the class members of the coupons that are redeemed.

(e) Judicial Scrutiny of Coupon Settlements.—In a proposed settlement under which class members would be awarded coupons, the court may approve the proposed settlement only after a hearing to determine whether, and making a written finding that, the settlement is fair, reasonable, and adequate for class members. The court, in its discretion, may also require that a proposed settlement agreement provide for the distribution of a portion of the value of unclaimed coupons to 1 or more charitable or governmental organizations, as agreed to by the parties. The distribution and redemption of any proceeds under this subsection shall not be used to calculate attorneys’ fees under this section.

consideration of interstate cases of national importance under diversity jurisdiction; and

(3) benefit society by encouraging innovation and lowering consumer prices.
§ 1713. Protection against loss by class members

The court may approve a proposed settlement under which any class member is obligated to pay sums to class counsel that would result in a net loss to the class member only if the court makes a written finding that nonmonetary benefits to the class member substantially outweigh the monetary loss.

(Added Pub. L. 109–2, §3(a), Feb. 18, 2005, 119 Stat. 7.)

§ 1714. Protection against discrimination based on geographic location

The court may not approve a proposed settlement that provides for the payment of greater sums to some class members than to others solely on the basis that the class members to whom the greater sums are to be paid are located in closer geographic proximity to the court.

(Added Pub. L. 109–2, §3(a), Feb. 18, 2005, 119 Stat. 7.)

§ 1715. Notifications to appropriate Federal and State officials

(a) Definitions.—

(1) Appropriate Federal official.—In this section, the term "appropriate Federal official" means—

(A) the Attorney General of the United States; or

(B) in any case in which the defendant is a Federal depository institution, a State depository institution, a depository institution holding company, a foreign bank, or a non-depository institution subsidiary of the foregoing (as such terms are defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)), the person who has the primary Federal regulatory or supervisory responsibility with respect to the defendant, if some or all of the matters alleged in the class action are subject to regulation or supervision by that person.

(2) Appropriate State official.—In this section, the term "appropriate State official" means the person in the State who has the primary regulatory or supervisory authority, or the matters alleged in the class action are not subject to regulation or supervision by that person, then the appropriate State official shall be the State attorney general.

(b) In General.—Not later than 10 days after a proposed settlement of a class action is filed in court, each defendant that is participating in the proposed settlement shall serve upon the appropriate State official of each State in which a class member resides and the appropriate Federal official, a notice of the proposed settlement consisting of—

(1) a copy of the complaint and any materials filed with the complaint and any amended complaints (except such materials shall not be required to be served if such materials are made electronically available through the Internet and such service includes notice of how to electronically access such material);

(2) notice of any scheduled judicial hearing in the class action;

(3) any proposed or final notification to class members of—

(A)(i) the members' rights to request exclusion from the class action; or

(ii) if no right to request exclusion exists, a statement that no such right exists; and

(B) a proposed settlement of a class action;

(4) any proposed or final class action settlement;

(5) any settlement or other agreement contemporaneously made between class counsel and counsel for the defendants;

(6) any final judgment or notice of dismissal; and

(7) if feasible, the names of class members who reside in each State and the estimated proportionate share of the claims of such members to the entire settlement to that State's appropriate State official; or

(B) if the provision of information under subparagraph (A) is not feasible, a reasonable estimate of the number of class members residing in each State and the estimated proportionate share of the claims of such members to the entire settlement; and

(8) any written judicial opinion relating to the materials described under subparagraphs (3) through (6).

(c) Depository Institutions Notification.—

(1) Federal and Other Depository Institutions.—In any case in which the defendant is a Federal depository institution, a depository institution holding company, a foreign bank, or a non-depository institution subsidiary of the foregoing, the notice requirements of this section are satisfied by serving the notice required under subsection (b) upon the person who has the primary Federal regulatory or supervisory responsibility with respect to the defendant, if some or all of the matters alleged in the class action are subject to regulation or supervision by that person.

(2) State Depository Institutions.—In any case in which the defendant is a State depository institution (as that term is defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)), the notice requirements of this section are satisfied by serving the notice required under subsection (b) upon the State bank supervisor (as that term is defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)) of the State in which the defendant is incorporated or chartered, if some or all of the matters alleged in the class action are subject to regulation or supervision by that person, and upon the appropriate Federal official.

(d) Final Approval.—An order giving final approval of a proposed settlement may not be issued earlier than 90 days after the later of the dates on which the appropriate Federal official and the appropriate State official are served with the notice required under subsection (b).
CHAPTER 115—EVIDENCE; DOCUMENTARY

Sec. 1731. Handwriting.
1732. Record made in regular course of business; photographic copies.
1733. Government records and papers; copies.
1734. Court record lost or destroyed generally.
1735. Court record lost or destroyed where United States interested.
1736. Congressional Journals.
1737. Copy of officer’s bond.
1738. State and Territorial nonjudicial records; full faith and credit.
1738A. Full faith and credit given to child custody determinations.
1738B. Full faith and credit for child support orders.
1738C. Certain acts, records, and proceedings and the effect thereof.
1739. State and Territorial nonjudicial records; full faith and credit.
1740. Copies of consular papers.
1741. Foreign official documents.
1742. Repealed.
1743. Demand on postmaster.
1745. Copies of foreign patent documents.
1746. Unsworn declarations under penalty of perjury.

AMENDMENTS


1 So in original. Does not conform to section catchline.
2 So in original. Probably should be “section”.
3 So in original. Does not conform to section catchline.
§ 1733. Government records and papers; copies

(a) Books or records of account or minutes of proceedings of any department or agency of the United States shall be admissible to prove the act, transaction or occurrence as a memorandum of which the same were made or kept.

(b) Properly authenticated copies or transcripts of any books, records, papers or documents of any department or agency of the United States shall be admitted in evidence equally with the originals thereof.

(c) This section does not apply to cases, actions, and proceedings to which the Federal Rules of Evidence apply.


HISTORICAL AND REVISION NOTES


The consolidation of sections 661–667 and 671 of title 28, U.S.C., 1940 ed., permitted omission of obsolete, unnecessary and repetitive provisions in such sections. For example, the provision in section 665 of title 28, U.S.C., 1940 ed., authorizing the court to require production of documents on a plea of non est factum, was omitted. Such plea is obsolete in Federal practice. Numerous provisions with respect to authentication were omitted as covered by Rule 44 of the Federal Rules of Civil Procedure.

Likewise the provision that official seals shall be judicially noticed was omitted as unnecessary. Seals of Federal agencies are judicially noticed by States and judicially noticed was omitted as unnecessary. Seals of Federal courts without statutory mandate. Gardner v. Barney, 1867, 6 Wall. 499, 73 U.S.C. 499, 18 L.Ed. 890, 31 C.J.S. 599 n. 27–30 and 23 C.J.S. 99 n. 41. The same principle unquestionably will apply to seals of Government corporations.

Words “of any corporation all the stock of which is beneficially owned by the United States, either directly or indirectly”, in section 661 of title 28, U.S.C., 1940 ed., were omitted as covered by “or agency”. The revised section was broadened to apply to “any department or agency”. (See reviser’s note under section 1345 of this title.)

Changes were made in phraseology.

REFERENCES IN TEXT

The Federal Rules of Evidence, referred to in subsec. (c), are set out in the Appendix to this title.

AMENDMENTS

1975—Pub. L. 93–595 struck out subsec. (a) which had made admissible as evidence writings or records made as a memorandum or record of any act, transaction, occurrence, or event if made in the regular course of business, and struck out designation “(b)” preceding remainder of section. See Federal Rules of Evidence set out in Appendix to this title.

1931—Act Aug. 29, 1931, §3, inserted reference to photographic copies in section catchline.

Subsecs. (a), (b). Act Aug. 28, 1951, §1, designated existing provisions as subsec. (a) and added subsec. (b).

§ 1734. Court record lost or destroyed, generally

(a) A lost or destroyed record of any proceeding in any court of the United States may be supplied on application of any interested party not at fault, by substituting a copy certified by the clerk of any court in which an authentic copy is lodged.

(b) Where a certified copy is not available, any interested person not at fault may file in such court a verified application for an order establishing the lost or destroyed record.

Every other interested person shall be served personally with a copy of the application and with notice of hearing on a day stated, not less than sixty days after service. Service may be made on any nonresident of the district anywhere within the jurisdiction of the United States or in any foreign country.

Proof of service in a foreign country shall be certified by a minister or consul of the United States in such country, under his official seal.

If, after the hearing, the court is satisfied that the statements contained in the application are true, it shall enter an order reciting the substance and effect of the lost or destroyed record. Such order, subject to intervening rights of third persons, shall have the same effect as the original record.

(June 25, 1948, ch. 646, 62 Stat. 946.)

HISTORICAL AND REVISION NOTES


Sections 681, 682, and 684 of title 28, U.S.C., 1940 ed., contained repetitious language which was eliminated by the consolidation.

Section 683 of title 28, U.S.C., 1940 ed., applied only to cases removed to the Supreme Court, and was revised so as to be applicable to cases transmitted to other courts not in existence in 1871 when the section was originally enacted.

Changes were made in phraseology.

§ 1735. Court record lost or destroyed where United States interested

(a) When the record of any case or matter in any court of the United States to which the United States is a party, is lost or destroyed, a certified copy of any official paper of a United States attorney, United States marshal or clerk or other certifying or recording officer of any such court, made pursuant to law, on file in any department or agency of the United States and relating to such case or matter, shall, on being filed in the court to which it relates, have the same effect as an original paper filed in such court. If the copy so filed discloses the date and amount of a judgment or decree and the names of the parties thereto, the court may enforce the judgment or decree as though the original record had not been lost or destroyed.

(b) Whenever the United States is interested in any lost or destroyed records or files of a court of the United States, the clerk of such court and the United States attorney for the district shall take the steps necessary to restore such records or files, under the direction of the judges of such court.

(June 25, 1948, ch. 646, 62 Stat. 946.)

HISTORICAL AND REVISION NOTES

A provision of section 686 of title 28, U.S.C., 1940 ed., relating to allowances to clerks and United States attorneys for their services, and disbursements incidental to restoring lost records under such section was deleted as obsolete, in view of sections 508, 509, and 604 of this title, placing such officers on a salary basis and providing for their expenses.

Words "And in all cases where any of the files, papers, or records of any court of the United States have been or shall be lost or destroyed, the files, records and papers which, pursuant to law, may have been or may be restored or supplied in place of such records, files, and papers, shall have the same force and effect, to all intents and purposes, as the originals thereof would have been entitled to," at the end of section 685 of title 28, U.S.C., 1940 ed., were omitted as fully covered by the remainder of this section and by section 1734 of this title.

Words "or agency of the United States" were substituted for "of the Government" so as to eliminate any possible ambiguity as to the scope of this section. See definitive section 451 of this title.

The phrase "so far as the judges of such courts respectively shall deem it essential to the interests of the United States that such records and files be restored or supplied," was omitted as unnecessary.

Changes were made in phraseology.

§ 1736. Congressional Journals

Extracts from the Journals of the Senate and the House of Representatives, and from the Executive Journal of the Senate when the injunction of secrecy is removed, certified by the Secretary of the Senate or the Clerk of the House of Representatives shall be received in evidence with the same effect as the originals would have.

(June 25, 1948, ch. 646, 62 Stat. 947.)

Historical and Revision Notes


Changes in phraseology were made.

§ 1737. Copy of officer's bond

Any person to whose custody the bond of any officer of the United States has been committed shall, on proper request and payment of the fee allowed by any Act of Congress, furnish certified copies thereof, which shall be prima facie evidence in any court of the execution, filing and contents of the bond.

(June 25, 1948, ch. 646, 62 Stat. 947.)

Historical and Revision Notes


Sections 326, 499, 513, and 514 of title 28, U.S.C., 1940 ed., were consolidated. They related to the bonds of particular officers, namely the Clerk of the Supreme Court, the United States marshals, and the clerks of the district courts. The revised section eliminates all inconsistent provisions of such sections.

The requirement that certified copies be furnished is new.

The other provisions of sections 326, 499, 513, and 514 of title 28, U.S.C., 1940 ed., are now incorporated in sections 544 and 952 of this title.

Changes were made in phraseology.

§ 1738. State and territorial statutes and judicial proceedings; full faith and credit

The Acts of the legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto.

The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.

Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

(June 25, 1948, ch. 646, 62 Stat. 947.)

Historical and Revision Notes


Words "Possession of the United States" were substituted for "of any country subject to the jurisdiction of the United States".

Words "or copies thereof" were added in three places. Copies have always been used to prove statutes and judicial proceedings under section 687 of title 28, U.S.C., 1940 ed. The added words will cover expressly such use.

Words "and its Territories and Possessions" were added in two places so as to make this section and section 1729 of this title uniform, the basic section of the latter having provided that nonjudicial records or books of any State, Territory, or "country subject to the jurisdiction of the United States" should be admitted in any court or office in any other State, Territory, or "such country."

Words "a judge of the court" were substituted for "the judge, chief justice or presiding magistrate" without change of substance.

At the beginning of the last paragraph, words "Such Acts" were substituted for "And the said". This follows the language of Article IV, section 1 of the Constitution.

For additional provisions as to authentication, see Rule 44 of the Federal Rules of Civil Procedure.

Changes were made in phraseology.

§ 1738A. Full faith and credit given to child custody determinations

(a) The appropriate authorities of every State shall enforce according to its terms, and shall not modify except as provided in subsections (f), (g), and (h) of this section, any custody determination or visitation determination made consistently with the provisions of this section by a court of another State.

(b) As used in this section, the term—

(1) "child" means a person under the age of eighteen;

(2) "contestant" means a person, including a parent or grandparent, who claims a right to custody or visitation of a child;

(3) "custody determination" means a judgment, decree, or other order of a court providing for the custody of a child, and includes permanent and temporary orders, and initial orders and modifications;

(4) "home State" means the State in which, immediately preceding the time involved, the child lived with his parents, a parent, or a person acting as parent, for at least six consecu-
tive months, and in the case of a child less than six months old, the State in which the child lived from birth with any of such persons. Periods of temporary absence of any of such persons are counted as part of the six-month or other period.

(5) “modification” and “modify” refer to a custody or visitation determination which modifies, replaces, superseded, or otherwise is made subsequent to, a prior custody or visitation determination concerning the same child, whether made by the same court or not;

(6) “person acting as a parent” means a person, other than a parent, who has physical custody of a child and who has either been awarded custody by a court or claims a right to custody;

(7) “physical custody” means actual possession and control of a child;

(8) “State” means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States; and

(9) “visitation determination” means a judgment, decree, or other order of a court providing for the visitation of a child and includes permanent and temporary orders and initial orders and modifications.

(c) A child custody or visitation determination made by a court of a State is consistent with the provisions of this section only if—

(1) such court has jurisdiction under the law of such State; and

(2) one of the following conditions is met:

(A) such State (i) is the home State of the child on the date of the commencement of the proceeding, or (ii) had been the child’s home State within six months before the date of the commencement of the proceeding and the child is absent from such State because of his removal or retention by a contestant or for other reasons, and a contestant continues to live in such State;

(B)(i) it appears that no other State would have jurisdiction under subparagraph (A), and (ii) it is in the best interest of the child that a court of such State assume jurisdiction because (I) the child and his parents, or the child and at least one contestant, have a significant connection with such State other than mere physical presence in such State, and (II) there is available in such State substantial evidence concerning the child’s present or future care, protection, training, and personal relationships;

(C) the child is physically present in such State and (i) the child has been abandoned, or (ii) it is necessary in an emergency to protect the child because the child, a sibling, or parent of the child has been subjected to or threatened with mistreatment or abuse;

(D)(i) it appears that no other State would have jurisdiction under subparagraph (A), (B), (C), or (E), or another State has declined to exercise jurisdiction on the ground that the State whose jurisdiction is in issue is the more appropriate forum to determine the custody or visitation of the child, and (ii) it is in the best interest of the child that such court assume jurisdiction;

(E) the court has continuing jurisdiction pursuant to subsection (d) of this section.

(d) The jurisdiction of a court of a State which has made a child custody or visitation determination consistently with the provisions of this section continues as long as the requirement of subsection (c)(1) of this section continues to be met and such State remains the residence of the child or of any contestant.

(e) Before a child custody or visitation determination is made, reasonable notice and opportunity to be heard shall be given to the contestants, any parent whose parental rights have not been previously terminated and any person who has physical custody of a child.

(f) A court of a State may modify a determination of the custody of the same child made by a court of another State, if—

(1) it has jurisdiction to make such a child custody determination; and

(2) the court of the other State no longer has jurisdiction, or it has declined to exercise such jurisdiction to modify such determination.

(g) A court of a State shall not exercise jurisdiction in any proceeding for a custody or visitation determination commenced during the pendency of a proceeding in a court of another State where such court of that other State is exercising jurisdiction consistently with the provisions of this section to make a custody or visitation determination.

(h) A court of a State may not modify a visitation determination made by a court of another State unless the court of the other State no longer has jurisdiction to modify such determination or has declined to exercise jurisdiction to modify such determination.


AMENDMENTS

2000—Subsec. (c)(2)(C)(ii). Pub. L. 106–386 substituted “the child, a sibling, or parent of the child” for “he”.

1998—Subsec. (a). Pub. L. 105–374, § 1(a), substituted “subsections (f), (g), and (h) of this section, any custody determination or visitation determination” for “subsection (f) of this section, any custody determination”. Subsec. (b)(2). Pub. L. 105–374, § 1(b), inserted “or grandparent” after “parent”. Subsec. (b)(3). Pub. L. 105–374, § 1(c), struck out “or visitation” after “for the custody”. Subsec. (b)(5). Pub. L. 105–374, § 1(d), substituted “custody or visitation determination” for “custody determination” in two places.

Subsec. (b)(9). Pub. L. 105–374, § 1(e), added par. (9).

Subsec. (c). Pub. L. 105–374, § 1(f), substituted “custody or visitation determination” for “custody determination” in introductory provisions.

Subsec. (c)(2)(D)(i). Pub. L. 105–374, § 1(g), inserted “or visitation” after “determine the custody”.

Subsec. (d), (e). Pub. L. 105–374, § 1(h), (i), substituted “custody or visitation determination” for “custody determination”.

Subsec. (g). Pub. L. 105–374, § 1(j), which directed substitution of “custody or visitation determination” for “custody determination”, was executed by making the substitution in two places to reflect the probable intent of Congress.


REPORT ON EFFECTS OF PARENTAL KIDNAPPING LAWS IN DOMESTIC VIOLENCE CASES

“(a) IN GENERAL.—The Attorney General shall—

“(1) conduct a study of Federal and State laws relating to child custody, including custody provisions in protection orders, the Uniform Child Custody Jurisdiction and Enforcement Act adopted by the National Conference of Commissioners on Uniform State Laws in July 1980, and the amendments made by that section (a) with respect to the Parental Kidnapping Prevention Act of 1980 [see note under section 1305 of Title 28, The Public Health and Welfare] and the amendments made by that Act, and the effect of those laws on child custody cases in which domestic violence is a factor; and

“(2) submit to Congress a report describing the results of that study, including the effects of implementing or applying model State laws, and the recommendations of the Attorney General to reduce the incidence or pattern of violence against women or of sexual assault of the child.

“(b) AUTHORIZATION OF APPROPRIATIONS.—In carrying out subsection (a) with respect to the Parental Kidnapping Prevention Act of 1980 and the amendments made by that Act, the Attorney General shall examine the sufficiency of defenses to parental abduction charges available in cases involving domestic violence, and the burdens and risks encountered by victims of domestic violence arising from jurisdictional requirements of that Act and the amendments made by that Act.

“(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $200,000 for fiscal year 2001.

[For definitions of ‘‘domestic violence’’ and ‘‘sexual assault’’ as used in section 1303(a)–(c) of Pub. L. 106–386, set out above, see section 1002 of Pub. L. 106–386, set out as a note under section 3796gg–2 of Title 42, The Public Health and Welfare.]”

CONGRESSIONAL FINDINGS AND DECLARATION OF PURPOSE

Section 7 of Pub. L. 96–611 provided that:

“(a) The Congress finds that—

“(1) there is a large and growing number of cases annually involving disputes between persons claiming rights of custody and visitation of children under the laws, and in the courts, of different States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States;

“(2) the laws and practices by which the courts of those jurisdictions determine their jurisdiction to decide such disputes, and the effect to be given the decisions of such disputes by the courts of other jurisdictions, are often inconsistent and conflicting;

“(3) those characteristics of the law and practice in such cases, along with the limits imposed by a Federal system on the authority of each such jurisdiction to conduct investigations and take other actions outside its own boundaries, contribute to a tendency of parties involved in such disputes to frequently resort to the seizure, restraint, concealment, and interstate transportation of children, the disregard of court orders, excessive relitigation of cases, obtaining of conflicting orders by the courts of various jurisdictions, and interstate travel and communication that is so expensive and time consuming as to disrupt their occupations and commercial activities; and

“(4) among the results of those conditions and activities are the failure of the courts of such jurisdictions to give full faith and credit to the judicial proceedings of the other jurisdictions, the deprivation of rights of liberty and property without due process of law, burdens on commerce among such jurisdictions and with foreign nations, and harm to the welfare of children and their parents and other custodians.

“(b) For those reasons it is necessary to establish a national system for locating parents and children who travel from one such jurisdiction to another and are concealed in connection with such disputes, and to establish national standards under which the courts of such jurisdictions will determine their jurisdiction to decide such disputes and the effect to be given by each such jurisdiction to such decisions by the courts of other such jurisdictions.

“(c) The general purposes of sections 6 to 10 of this Act [enacting this section and section 663 of Title 42, The Public Health and Welfare, amending sections 654 and 655 Title 42, and enacting provisions set out as notes under this section, sections 663 and 1305 of Title 42, and section 1073 of Title 18, Crimes and Criminal Procedure] are to—

“(1) promote cooperation between State courts to the end that a determination of custody and visitation is rendered in the State which can best decide the case in the interest of the child;

“(2) promote and expand the exchange of information and other forms of mutual assistance between States which are concerned with the same child;

“(3) facilitate the enforcement of custody and visitation decrees of sister States;

“(4) discourage continuing interstate controversies over child custody in the interest of greater stability of home environment and of secure family relationships for the child;

“(5) avoid jurisdictional competition and conflict between State courts in matters of child custody and visitation which have in the past resulted in the shifting of children from State to State with harmful effects on their well-being; and

“(6) deter interstate abductions and other unilateral removals of children undertaken to obtain custody and visitation awards.”

STATE COURT PROCEEDINGS FOR CUSTODY DETERMINATIONS: PRIORITY TREATMENT, FEES, COSTS, AND OTHER EXPENSES

Section 6(c) of Pub. L. 96–611 provided that: “In furtherance of the purposes of section 1738A of title 28, United States Code, as added by subsection (a) of this section, State courts are encouraged to—

“(1) afford priority to proceedings for custody determinations; and

“(2) award to the person entitled to custody or visitation pursuant to a custody determination which is consistent with the provisions of such section 1738A, necessary travel expenses, attorneys’ fees, costs of private investigations, witness fees or expenses, and other expenses incurred in connection with such custody determination in any case in which—

“(A) a contestant has, without the consent of the person entitled to custody or visitation pursuant to such determination, wrongfully removed the child from the physical custody of such person, or (ii) wrongfully retained the child after a visit or other temporary relinquishment of physical custody; or

“(B) the court determines it is appropriate.”

§ 1738B. Full faith and credit for child support orders

(a) GENERAL RULE.—The appropriate authorities of each State—

“(1) shall enforce according to its terms a child support order made consistently with this section by a court of another State; and

“(2) shall not seek or make a modification of such an order except in accordance with subsections (e), (f), and (i).”

(b) DEFINITIONS.—In this section:

“child” means—

(A) a person under 18 years of age; and

(B) a person 18 or more years of age with respect to whom a child support order has been issued pursuant to the laws of a State.

“child’s State” means the State in which a child resides.
“child’s home State” means the State in which a child lived with a parent or a person acting as parent for at least 6 consecutive months immediately preceding the time of filing of a petition or comparable pleading for support and, if a child is less than 6 months old, the State in which the child lived from birth with any of them. A period of temporary absence of any of them is counted as part of the 6-month period.

“child support” means a payment of money, continuing support, or arrearages or the provision of a benefit (including payment of health insurance, child care, and educational expenses) for the support of a child.

“child support order” means—
(A) a judgment, decree, or order of a court requiring the payment of child support in periodic amounts or in a lump sum; and
(B) includes—
(i) a permanent or temporary order; and
(ii) an initial order or a modification of an order.

“contestant” means—
(A) a person (including a parent) who—
(i) claims a right to receive child support;
(ii) is a party to a proceeding that may result in the issuance of a child support order; or
(iii) is under a child support order; and
(B) a State or political subdivision of a State to which the right to obtain child support has been assigned.

“court” means a court or administrative agency of a State that is authorized by State law to establish the amount of child support payable by a contestant or make a modification of a child support order.

“modification” means a change in a child support order that affects the amount, scope, or duration of the order and modifies, repeals, supersedes, or otherwise is made subsequent to the child support order.

“State” means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the territories and possessions of the United States, and Indian country (as defined in section 1151 of title 18).

(c) Requirements of Child Support Orders.—A child support order made by a court of a State is made consistently with this section if—
(1) a court that makes the order, pursuant to the laws of the State in which the court is located and subsections (e), (f), and (g)—
(A) has subject matter jurisdiction to hear the matter and enter such an order; and
(B) has personal jurisdiction over the contestants; and
(2) reasonable notice and opportunity to be heard is given to the contestants.

(d) Continuing Jurisdiction.—A court of a State that has made a child support order consistently with this section has continuing, exclusive jurisdiction over the order if the State is the child’s State or the residence of any individual contestant unless the court of another State, acting in accordance with subsections (e) and (f), has made a modification of the order.

(e) Authority To Modify Orders.—A court of a State may modify a child support order issued by a court of another State if—
(1) the court has jurisdiction to make such a child support order pursuant to subsection (i); and
(2) (A) the court of the other State no longer has continuing, exclusive jurisdiction of the child support order because that State no longer is the child’s State or the residence of any individual contestant; or
(B) each individual contestant has filed written consent with the State of continuing, exclusive jurisdiction over the order.

(f) Recognition of Child Support Orders.—If 1 or more child support orders have been issued with regard to an obligor and a child, a court shall apply the following rules in determining which order to recognize for purposes of continuing, exclusive jurisdiction and enforcement:
(1) If only 1 court has issued a child support order, the order of that court must be recognized.
(2) If 2 or more courts have issued child support orders for the same obligor and child, and only 1 of the courts would have continuing, exclusive jurisdiction under this section, the order of that court must be recognized.
(3) If 2 or more courts have issued child support orders for the same obligor and child, and more than 1 of the courts would have continuing, exclusive jurisdiction under this section, an order issued by a court in the current home State of the child must be recognized, but if an order has not been issued in the current home State of the child, the order most recently issued must be recognized.
(4) If 2 or more courts have issued child support orders for the same obligor and child, and none of the courts would have continuing, exclusive jurisdiction under this section, a court having jurisdiction over the parties shall issue a child support order, which must be recognized.
(5) The court that has issued an order recognized under this subsection is the court having continuing, exclusive jurisdiction under subsection (d).

(g) Enforcement of Modified Orders.—A court of a State that no longer has continuing, exclusive jurisdiction of a child support order may enforce the order with respect to nonmodifiable obligations and unsatisfied obligations that accrued before the date on which a modification of the order is made under subsections (e) and (f).

(h) Choice of Law.—
(1) In General.—In a proceeding to establish, modify, or enforce a child support order, the forum State’s law shall apply except as provided in paragraphs (2) and (3).
(2) Law of State of Issuance of Order.—In interpreting a child support order including the duration of current payments and other obligations of support, a court shall apply the
law of the State of the court that issued the order.

(3) Period of limitation.—In an action to enforce arrears under a child support order, a court shall apply the statute of limitation of the forum State or the State of the court that issued the order, whichever statute provides the longer period of limitation.

(i) Registration for modification.—If there is no individual contestant or child residing in the issuing State, the party or support enforcement agency seeking to modify, or to modify and enforce, a child support order issued in another State shall register that order in a State with jurisdiction over the nonmovant for the purpose of modification.


AMENDMENTS

1997—Subsec. (j)(4). Pub. L. 105–33, §5554(1), substituted “court having jurisdiction over the parties shall issue a child support order, which must be recognized.” for “a court may issue a child support order, which must be recognized.”

Subsec. (j)(5). Pub. L. 105–33, §5554(2), inserted “under subsection (d)” after “jurisdiction”.

1996—Subsec. (a)(2). Pub. L. 104–193, §322(1), substituted “subsections (e), (f), and (i)” for “subsection (e)”.

Subsec. (b). Pub. L. 104–193, §322(2), inserted par. defining “child’s home State”.

Subsec. (c). Pub. L. 104–193, §322(3), inserted “by a court of a State” before “is made” in introductory provisions.

Subsec. (c)(1). Pub. L. 104–193, §322(4), inserted “and subsections (e), (f), and (g)” after “located”.

Subsec. (d). Pub. L. 104–193, §322(5), inserted “individual” before “contestant” and substituted “subsections (e) and (f)” for “subsection (e)”.

Subsec. (e). Pub. L. 104–193, §322(6), substituted “modify a child support order issued” for “make a modification of a child support order with respect to a child that is made” in introductory provisions.

Subsec. (e)(1). Pub. L. 104–193, §322(7), inserted “pur- suant to subsection (1) after “order”.

Subsec. (e)(2). Pub. L. 104–193, §322(8), inserted “individual” before “contestant” in subpars. (A) and (B) and substituted “with the State of continuing, exclusive jurisdiction for a court of another State to modify the order and assume” for “to that court’s making the modification and assuming” in subpar. (B).


Subsec. (g). Pub. L. 104–193, §322(11), substituted “Modified” for “Prior in heading and “subsections (e) and (f)” for “subsection (e)” in text.

Pub. L. 104–193, §322(9), redesignated subsec. (f) as (g).

Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 104–193, §322(12), inserted “including the duration of current payments and other obligations of support” before comma in par. (2) and “arrears under” after “enforce” in par. (3).

Pub. L. 104–193, §322(9), redesignated subsec. (g) as (h).


EFFECTIVE DATE OF 1997 AMENDMENT


EFFECTIVE DATE OF 1996 AMENDMENT

For effective date of amendment by Pub. L. 104–193, see section 398(a)–(c) of Pub. L. 104–193, set out as a note under section 654 of Title 42, The Public Health and Welfare.

CONGRESSIONAL FINDINGS AND DECLARATION OF PURPOSE

Section 2 of Pub. L. 103–383 provided that—

(a) FINDINGS.—The Congress finds that—

(1) there is a large and growing number of child support cases annually involving disputes between parents who reside in different States;

(2) the laws by which the courts of different jurisdictions determine their authority to establish child support orders are not uniform;

(3) those laws, along with the limits imposed by the Federal system on the authority of each State to take certain actions outside its own boundaries—

“(A) encourage noncustodial parents to relocate outside the States where their children and the custodial parents reside to avoid the jurisdiction of the courts of such States, resulting in an increase in the amount of interstate travel and communication required to establish and collect on child support orders and a burden on custodial parents that is expensive, time consuming, and disruptive of occupations and commercial activity. 

“(B) contribute to the pressing problem of relatively low levels of child support payments in interstate cases and to inequities in child support payments levels that are based solely on the non-custodial parent’s choice of residence;

“(C) encourage a disregard of court orders resulting in massive arrearages nationwide;

“(D) allow noncustodial parents to avoid the payment of regularly scheduled child support payments for extensive periods of time, resulting in substantial hardship for the children for whom support is due and for their custodians; and

“(E) lead to the excessive litigation of cases and to the establishment of conflicting orders by the courts of various jurisdictions, resulting in confusion, waste of judicial resources, disrespect for the courts, and a diminution of public confidence in the rule of law; and

“(4) among the results of the conditions described in this subsection are—

“(A) the failure of the courts of the States to give full faith and credit to the judicial proceedings of the other States; 

“(B) the deprivation of rights of liberty and property without due process of law;

“(C) burdens on commerce among the States; and

“(D) harm to the welfare of children and their parents and other custodians.

“(b) STATEMENT OF POLICY.—In view of the findings made in subsection (a), it is necessary to establish national standards under which the courts of the various States shall determine their jurisdiction to issue a child support order and the effect to be given by each State to child support orders issued by the courts of other States.

“(c) PURPOSES.—The purposes of this Act [enacting this section and provisions set out as a note under section 1 of this title] are—

“(1) to facilitate the enforcement of child support orders among the States;

“(2) to discourage continuing interstate controversies over child support in the interest of greater financial stability and secure family relationships for the child; and

“(3) to avoid jurisdictional competition and conflict among State courts in the establishment of child support orders.”

§1738C. Certain acts, records, and proceedings and the effect thereof

No State, territory, or possession of the United States, or Indian tribe, shall be required to give effect to any public act, record, or judi-
clial proceeding of any other State, territory, possession, or tribe respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such other State, territory, possession, or tribe, or a right or claim arising from such relationship.


§ 1739. State and Territorial nonjudicial records; full faith and credit

All nonjudicial records or books kept in any public office of any State, Territory, or Possession of the United States, or copies thereof, shall be proved or admitted in any court or office in any other State, Territory, or Possession by the attestation of the custodian of such records or books, and the seal of his office annexed, if there be a seal, together with a certificate of a judge of a court of record of the county, parish, or district in which such office may be kept, or of the Governor, or secretary of state, the chancellor or keeper of the great seal, of the State, Territory, or Possession that the said attestation is in due form and by the proper officers. If the certificate is given by a judge, it shall be further authenticated by the clerk or prothonotary of the court, who shall certify, under his hand and the seal of his office, that such judge is duly commissioned and qualified; or, if given by such Governor, secretary, chancellor, or keeper of the great seal, it shall be under the great seal of the State, Territory, or Possession in which it is made.

Such records or books, or copies thereof, so authenticated, shall have the same full faith and credit in every court and office within the United States and its Territories and Possessions as they have by law or usage in the courts or offices of the State, Territory, or Possession from which they are taken.


HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §688 (R.S. §906). Words “Possession of the United States” were substituted for “or any country subject to the jurisdiction of the United States.” Words “or copies thereof” were added in two places. Copies have always been used to prove records and books under section 688 of title 28, U.S.C., 1940 ed., and the addition of these words clarifies the former implied meaning of such section.

In the first paragraph of the revised section words “a judge of a court of record” were substituted for words “the presiding justice of the court” and in the second paragraph “judge” was substituted for “presiding justice” for convenience and without change of substance.

Words “and its Territories and Possessions” were added after “United States”, near the end of the section, in view of provisions of section 688 of title 28, U.S.C., 1940 ed., for the admission of records and books in any court or office in any other State, Territory, or “in any such country.” (Changed to “Possession” in this section.)

See also Rule 44 of the Federal Rules of Civil Procedure.

Changes were made in phraseology.

§ 1740. Copies of consular papers

Copies of all official documents and papers in the office of any consul or vice consul of the United States, and of all official entries in the books or records of any such office, authenticated by the consul or vice consul, shall be admissible equally with the originals.


HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §677 (R.S. §896; Apr. 5, 1906, ch. 1306, §3, 34 Stat. 100). Words “authenticated by the consul or vice consul” were substituted for “certified under the hand and seal of such officer”, for clarity. Words “in the courts of the United States”, were omitted after “admissible”. Such papers should be so admitted in all courts consistently with sections 1738 and 1739 of this title.

See also Rule 44 of the Federal Rules of Civil Procedure.

Changes were made in phraseology.

§ 1741. Foreign official documents

An official record or document of a foreign country may be evidenced by a copy, summary, or excerpt authenticated as provided in the Federal Rules of Civil Procedure.


HISTORICAL AND REVISION NOTES

1948 ACT


Words “Nothing contained in this section shall be deemed to alter, amend, or repeal section 689 of this title,” at the end of section 695e of title 28, U.S.C., 1940 ed., were omitted. Although significant in the original Act, such words are unnecessary in a revision wherein both sections in question, as revised, are enacted at the same time.

See also Rule 44 of the Federal Rules of Civil Procedure.


Changes were made in phraseology.

1949 ACT

This section corrects a typographical error in section 1741 of title 28, U.S.C.

AMENDMENTS

1964—Pub. L. 88–619 substituted “An official record or document of a foreign country may be evidenced by a copy, summary, or excerpt authenticated as provided in the Federal Rules of Civil Procedure” for “A copy of any foreign document of record or on file in a public office of a foreign country or political subdivision thereof, certified by the lawful custodian thereof, shall be admissible in evidence when authenticated by a certificate of a consular officer of the United States resident in such foreign country, under the seal of his office, that the copy has been certified by the lawful custodian in text, and ‘‘official documents’’ for ‘‘documents, generally; copies’’ in section catchline.

1949—Act May 24, 1949, corrected spelling of “admissible”.

§ 1743. Demand on postmaster

The certificate of the Postmaster General or the Government Accountability Office of the mailing to a postmaster of a statement of his account and that payment of the balance stated has not been received shall be sufficient evidence of a demand notwithstanding any allowances or credits subsequently made. A copy of such statement shall be attached to the certificate.


HISTORICAL AND REVISION NOTES


Provisions in section 670 of title 28, U.S.C., 1940 ed., that the statement should recite that a letter has been mailed to a described post office and sufficient time has elapsed for it to have reached its destination, was omitted as superfluous.

The last clause of section 670 of title 28, U.S.C., 1940 ed., was omitted as covered by the phrase “notwithstanding any allowances or credits subsequently made” in the revised section.

Changes were made in phraseology.

AMENDMENTS


TRANSFER OF FUNCTIONS

The office of Postmaster General of the Post Office Department was abolished and all functions, powers, and duties of the Postmaster General were transferred to the United States Postal Service by Pub. L. 91–375, §4(a), Aug. 12, 1970, 84 Stat. 773, set out as a note under section 201 of Title 39, Postal Service.


Copies of letters patent or of any records, books, papers, or drawings belonging to the United States Patent and Trademark Office and relating to patents, authenticated under the seal of the United States Patent and Trademark Office and certified by the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, or by another officer of the United States Patent and Trademark Office authorized to do so by the Director, shall be admissible in evidence with the same effect as the originals.

Any person making application and paying the required fee may obtain such certified copies.


HISTORICAL AND REVISION NOTES


For purposes of uniformity, words “written or printed” at the beginning of the section, were omitted.
ment made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form:

(1) If executed without the United States: “I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).”

(Signature).

(2) If executed within the United States, its territories, possessions, or commonwealths: “I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).”

(Signature).


PRIOR PROVISIONS

A prior section 1746 was renumbered section 1745 of this title.

CHAPTER 117—EVIDENCE; DEPOSITIONS

§ 1781. Transmittal of letter rogatory or request

(a) The Department of State has power, directly, or through suitable channels—

(1) to receive a letter rogatory issued, or request made, by a foreign or international tribunal, to transmit it to the tribunal, officer, or agency in the United States to whom it is addressed, and to receive and return it after execution; and

(2) to receive a letter rogatory issued, or request made, by a tribunal in the United States, to transmit it to the foreign or international tribunal, officer, or agency to whom it is addressed, and to receive and return it after execution.

(b) This section does not preclude—

(1) the transmittal of a letter rogatory or request directly from a foreign or international
tribunal to the tribunal, officer, or agency in the United States to whom it is addressed and its return in the same manner; or

(2) the transmission of a letter rogatory or request directly from a tribunal in the United States to the foreign or international tribunal, officer, or agency to whom it is addressed and its return in the same manner.


HISTORICAL AND REVISION NOTES


Word “officer” was substituted for “commissioner” to obviate uncertainty as to the person to whom the letters or commission issued may be addressed.

The third sentence of section 653 of title 28, U.S.C., 1940 ed., providing for admission of testimony “so taken and returned” without objection as to the method of return, was omitted as unnecessary. Obviously, if the method designated by Congress is followed, it cannot be objected to.

The last sentence of section 653 of title 26, U.S.C., 1940 ed., relating to letters rogatory from courts of foreign countries, is incorporated in section 1782 of this title.

The revised section extends the provisions of section 653 of title 28, U.S.C., 1940 ed., which applied only to cases wherein the United States was a party or was interested, so as to insure a uniform method of taking foreign depositions in all cases.

Words “courts of the United States” were inserted to make certain that the section is addressed to the Federal rather than the State courts as obviously intended by Congress.

Changes were made in phraseology.

AMENDMENTS

1946—Pub. L. 88–619 substituted provisions authorizing the Department of State to transmit a letter rogatory or request by a foreign or international tribunal, or by a tribunal in the United States, to the tribunal, officer or agency in the United States or its foreign or international counterpart, to whom addressed, and to return it after execution, and providing that this section does not preclude direct transmission of letters rogatory or requests between interested tribunals, officers or agencies of foreign, international and of United States origin, for provisions authorizing United States ministers or consuls, whenever a United States court issues letters rogatory or a commission to take a deposition, to receive the executed letters or commissions from foreign courts or officers, endorse them with the place and date of receipt and any change in the deposition, and transmit it to the clerk of the issuing court in the same manner as his official dispatches, in text and “Transmittal of letter rogatory or request” for “Foreign witnesses” in section catchline.

§1782. Assistance to foreign and international tribunals and to litigants before such tribunals

(a) The district court of the district in which a person resides or is found may order him to give his testimony or statement or to produce a document or other thing for use in a proceeding in a foreign or international tribunal, including criminal investigations conducted before formal accusation. The order may be made pursuant to a letter rogatory issued, or request made, by a foreign or international tribunal or upon the application of any interested person and may direct that the testimony or statement be given, or the document or other thing be produced, before a person appointed by the court. By virtue of his appointment, the person appointed has power to administer any necessary oath and take the testimony or statement. The order may prescribe the practice and procedure, which may be in whole or in part the practice and procedure of the foreign country or the international tribunal, for taking the testimony or statement or producing the document or other thing. To the extent that the order does not prescribe otherwise, the testimony or statement shall be taken, and the document or other thing produced, in accordance with the Federal Rules of Civil Procedure.

A person may not be compelled to give his testimony or statement or to produce a document or other thing in violation of any legally applicable privilege.

(b) This chapter does not preclude a person within the United States from voluntarily giving his testimony or statement, or producing a document or other thing, for use in a proceeding in a foreign or international tribunal before any person and in any manner acceptable to him.


HISTORICAL AND REVISION NOTES

1948 ACT


Only the last sentence of section 653 of title 28, U.S.C., 1940 ed., is included in this revised section. The remaining provisions relating to depositions of witnesses in foreign countries form the basis of section 1781 of this title.

Sections 701, 703, and 704 of title 28, U.S.C., 1940 ed., were limited to “suits for the recovery of money or property depending in any court in any foreign country with which the United States are at peace, and in which the government of such foreign country shall be a party or shall have an interest.”

The revised section omits this limitation in view of the general application of the last sentence of section 653 of title 28, U.S.C., 1940 ed., consolidated herein. The improvement of communications and the expected growth of foreign commerce will inevitably increase litigation involving witnesses separated by wide distances.

Therefore the revised section is made simple and clear to provide a flexible procedure for the taking of depositions. The ample safeguards of the Federal Rules of Civil Procedure, Rules 26–32, will prevent misuse of this section.

The provisions of section 703 of title 28, U.S.C., 1940 ed., for punishment of disobedience to subpoena or refusal to answer is covered by Rule 37(b)(1) of Federal Rules or Civil Procedure.

The provisions of section 704 of title 28, U.S.C., 1940 ed., with respect to fees and mileage of witnesses are
covered by Rule 45(c) of Federal Rules of Civil Procedure.
Changes were made in phraseology.

1949 Act

This amendment corrects restrictive language in section 1782 of title 28, U.S.C., in conformity with original law and permits depositions in any judicial proceeding without regard to whether the deponent is "residing in the district or only sojourning there.

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (a), are set out in the Appendix to this title.

AMENDMENTS

1949—Subsec. (a). Pub. L. 104–106 inserted "including criminal investigations conducted before formal accusation" after "proceeding in a foreign or international tribunal" in first sentence.

1964—Pub. L. 88–619 substituted provisions which empowered district courts to order residents to give testimony or to produce documents for use in a foreign or international tribunal, pursuant to a letter rogatory, or request, of a foreign or international tribunal or upon application of any interested person, and to direct that the evidence be presented before a person appointed by the court, provided that such person may administer oaths and take testimony, that the evidence be taken in accordance with the Federal Rules of Civil Procedure unless the order prescribes using the procedure of the foreign or international tribunal, that a person may not be compelled to give legally privileged evidence, and that this chapter doesn't preclude a person from voluntarily giving evidence for use in a foreign or international tribunal, for provisions permitting depositions of witnesses within the United States for use in any court in a foreign country with which the United States was at peace to be taken before a person authorized to administer oaths designated by the district court of the district where the witness resides or is found, and directing that the procedure used be that generally used in courts of the United States, in text, and "Assistance to foreign and international tribunals and to litigants before such tribunals" for "Testimony for use in foreign countries" in section catchline.

1949—Act May 24, 1949, struck out "residing" after "witness", and substituted "judicial proceeding" for "civil action" after "to be used in any".

§ 1783. Subpoena of person in foreign country

(a) A court of the United States may order the issuance of a subpoena requiring the appearance as a witness before it, or before a person or body designated by it, of a national or resident of the United States who is in a foreign country, or requiring the production of a specified document or other thing by him, if the court finds that particular testimony or the production of the document or other thing by him is necessary in the interest of justice, and, in other than a criminal action or proceeding, if the court finds, in addition, that it is not possible to obtain his testimony in admissible form without his personal appearance or to obtain the production of the document or other thing in any other manner.

(b) The subpoena shall designate the time and place for the appearance or for the production of the document or other thing. Service of the subpoena and any order to show cause, rule, judgment, or decree authorized by this section or by section 1784 of this title shall be effected in accordance with the provisions of the Federal Rules of Civil Procedure relating to service of process on a person in a foreign country. The person serving the subpoena shall tender to the person to whom the subpoena is addressed his estimated necessary travel and attendance expenses, the amount of which shall be determined by the court and stated in the order directing the issuance of the subpoena.

(Historical and Revision Notes


Word "resident" was substituted for "or domiciled therein." (See reviser's note under section 1391 of this title.)

Words "or any assistant or district attorney acting under him," after "Attorney General" in section 712 of title 28, U.S.C., 1940 ed., were omitted, since, in any event, the approval of the Attorney General would be required. (See section 507 of this title.)

Changes were made in phraseology.

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (b), are set out in the Appendix to this title.

AMENDMENTS

1964—Pub. L. 88–619 amended section generally, and among other changes, authorized a United States court to issue a subpoena to require the appearance of a witness before it or a person or body designated by it, and the production of documents or other tangible evidence, when necessary in the interest of justice, and in other than criminal actions or proceedings, if the court finds, in addition, that its not possible to obtain admissible evidence in any other manner, and provided that the procedure relating to the subpoena shall be in accordance with the Federal Rules of Civil Procedure, and struck out provisions which authorized the issuance of a subpoena when a personally notified individual failed to appear to testify pursuant to letter rogatory, or failed to answer any question he would have to answer in any examination before the court or if such person was beyond United States jurisdiction and the testimony was desired by the Attorney General in a criminal proceeding, provided that the subpoena issue to any United States consul, that the consul make personal service of the subpoena and of any order, rule, judgment or decree, that he make return of the subpoena and tender expenses to the witness, and substituted "person" for "witness" in section catchline.

§ 1784. Contempt

(a) The court of the United States which has issued a subpoena served in a foreign country may order the person who has failed to appear or who has failed to produce a document or other thing as directed therein to show cause before it at a designated time why he should not be punished for contempt.

(b) The court, in the order to show cause, may direct that any of the person's property within the United States be levied upon or seized, in the manner provided by law or court rules governing levy or seizure under execution, and held to satisfy any judgment that may be rendered against him pursuant to subsection (d) of this section if adequate security, in such amount as the court may direct, in the form of a bond or other security, be given for any damage that he might suffer should he not be found in contempt. Security under this subsection may not be required of the United States.
(c) A copy of the order to show cause shall be served on the person in accordance with section 1783(b) of this title.
(d) On the return day of the order to show cause or any later day to which the hearing may be continued, proof shall be taken. If the person is found in contempt, the court, notwithstanding any limitation upon its power generally to punish for contempt, may fine him not more than $100,000 and direct that the fine and costs of the proceedings be satisfied by a sale of the property levied upon or seized, conducted upon the notice required and in the manner provided for sales upon execution.


Historical and Revision Notes


The last sentence omits specific reference to section 118 of title 28, U.S.C., 1940 ed., now incorporated in section 1635 of this title, which provides for the method of opening judgments rendered on publication of process. (See also Rule 60(b) of the Federal Rules of Civil Procedure.)

Changes were made in phraseology.

Amendments

1964—Pub. L. 88–619 amended section generally, and among other changes, authorized the court to order a person to show cause for failing to produce a document or other thing in subsec. (a), provided that a copy of the order to show cause shall be served in accordance with section 1783(b) of this title, and struck out provisions requiring the marshal making levy or seizure to forward to any United States consul in the country where the witness may be, a copy of the order and a request for its personal service, and to cause publication of the order in the district where the issuing court sits, in subsec. (c), and struck out provisions in subsec. (d) permitting any judgment rendered upon service by publication only to be opened for answer within one year.

§ 1785. Subpoenas in multiparty, multiformum actions

When the jurisdiction of the district court is based in whole or in part upon section 1369 of this title, a subpoena for attendance at a hearing or trial may, if authorized by the court upon motion for good cause shown, and upon such terms and conditions as the court may impose, be served at any place within the United States, or anywhere outside the United States if otherwise permitted by law.


Prior Provisions


Effective Date

Section applicable to a civil action if the accident giving rise to the cause of action occurred on or after the 90th day after Nov. 2, 2002, see section 11020(c) of Pub. L. 107–273, set out as a note under section 1369 of this title.

Chapter 119—Evidence; Witnesses

§ 1821. Per diem and mileage generally; subsistence

(a)(1) Except as otherwise provided by law, a witness in attendance at any court of the United States, or before a United States Magistrate Judge, or before any person authorized to take his deposition pursuant to any rule or order of a court of the United States, shall be paid the fees and allowances provided by this section.

(2) As used in this section, the term “court of the United States” includes, in addition to the courts listed in section 451 of this title, any court created by Act of Congress in a territory which is invested with any jurisdiction of a district court of the United States.

(b) A witness shall be paid an attendance fee of $40 per day for each day’s attendance. A witness shall also be paid the attendance fee for the time necessarily occupied in going to and returning from the place of attendance at the beginning and end of such attendance or at any time during such attendance.

(c)(1) A witness who travels by common carrier shall be paid for the actual expenses of travel on the basis of the means of transportation reasonably utilized and the distance necessarily traveled to and from such witness’s residence by the shortest practical route in going to and returning from the place of attendance. Such a witness shall utilize a common carrier at the most economical rate reasonably available. A receipt or other evidence of actual cost shall be furnished.

(2) A travel allowance equal to the mileage allowance which the Administrator of General Services has prescribed, pursuant to section 5704 of title 5, for official travel of employees of the Federal Government shall be paid to each witness who travels by privately owned vehicle. Computation of mileage under this paragraph shall be made on the basis of a uniformed table of distances adopted by the Administrator of General Services.

(3) Toll charges for toll roads, bridges, tunnels, and ferries, taxicab fares between places of lodging and carrier terminals, and parking fees (upon presentation of a valid parking receipt), shall be paid in full to a witness incurring such expenses.

(4) All normal travel expenses within and outside the judicial district shall be taxable as costs pursuant to section 1920 of this title.
(d)(1) A subsistence allowance shall be paid to a witness when an overnight stay is required at the place of attendance because such place is so far removed from the residence of such witness as to prohibit return thereto from day to day.

A subsistence allowance for a witness shall be paid in an amount not to exceed the maximum per diem allowance prescribed by the Administrator of General Services, pursuant to section 5702(a) of title 5, for official travel in the area of attendance by employees of the Federal Government.

(3) A subsistence allowance for a witness attending in an area designated by the Administrator of General Services as a high-cost area shall be paid in an amount not to exceed the maximum actual subsistence allowance prescribed by the Administrator, pursuant to section 5702(c)(B) of title 5, for official travel in such area by employees of the Federal Government.

(4) When a witness is detained pursuant to section 3144 of title 18 for want of security for his appearance, he shall be entitled for each day of detention when not in attendance at court, in addition to his subsistence, to the daily allowance provided by subsection (b) of this section.

(e) An alien who has been paroled into the United States for prosecution, pursuant to section 212(d)(5) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(5)), or an alien who either has admitted belonging to a class of aliens who are deportable or has been determined pursuant to section 240 of such Act (8 U.S.C. 1252(b)) to be deportable, shall be ineligible to receive the fees or allowances provided by this section.

(f) Any witness who is incarcerated at the time that his or her subsistence allowance (except for a witness to whom the provisions of section 3144 of title 18 apply) may not receive fees or allowances under this section, regardless of whether such a witness is incarcerated at the time he or she makes a claim for fees or allowances under this section.


HISTORICAL AND REVISION NOTES
1948 ACT


Words—“or person taking his deposition pursuant to any order of a court of the United States” were added to cover that circumstance.

Reference in section 600c of title 28, U.S.C., 1940 ed., and section 11–1514 of the D.C. Code, 1940 ed., to the district courts of Hawaii, Puerto Rico and the District of Columbia, were omitted as covered by the words “any court of the United States”.


Changes were made in phraseology.

Satoshi Revison Amendment

By Senate amendments, all provisions relating to the Tax Court were eliminated. Therefore, as finally enacted, section 1115(a) of Title 26, U.S.C., Internal Revenue Code, was not one of the sources of this section. However, no change in the text of this section was necessary. See 80th Congress Senate Report No. 1559.

1949 ACT

This section restores certain provisions of the original statute, R.S. §948, which were inadvertently omitted from revised title 28, U.S.C., §1-1224.

REFERENCES IN TEXT

Subsection (e) of section 5702 of title 5, referred to in subsec. (d)(3), which related to conditions under which an employee could be reimbursed for actual and necessary expenses of official travel when the maximum per diem allowance was less than these expenses, was repealed, and subsec. (e) of section 2707 of title 5, was redesignated as subsec. (c), by Pub. L. 99–234, title I, §102, Jan. 2, 1986, 99 Stat. 1756.

Section 240 of the Immigration and Nationality Act, referred to in subsec. (e), is classified to section 1229a of Title 8, Aliens and Nationality.

AMENDMENTS

1996—Subsec. (e). Pub. L. 104–208 substituted “section 240” for “section 242(b)”.

1992—Subsec. (d)(1). Pub. L. 102–417, §2(b), struck out “(other than a witness who is incarcerated)” after “paid to a witness”.

Subsec. (d)(4). Pub. L. 102–417, §2(c), substituted “3144” for “3149”.


1978—Pub. L. 95–535 increased the daily witness attendance fee from $20 to $30, substituted provisions relating to compensation for the actual expenses of travel based on the form of transportation used, to a travel allowance equal to the mileage allowance under section 5704 of Title 5 for a witness travelling by privately owned vehicle, and to tolls, taxi fares, and parking fees for provisions that a witness would receive 10 cents per mile and that mileage computation would be based on a uniform table of distances regardless of the mode of travel employed, provisions relating to a subsistence allowance in amounts not to exceed those which Government employees receive for official travel for provisions that such subsistence allowance would be $16 per day, provisions relating to a witness detained for want of security for his appearance being entitled to the daily attendance fee in addition to subsistence for provisions that such a witness would be entitled to $2 per day in addition to his subsistence, and inserted provisions defining "court of the United States" and relating to travel expenses being taxable as costs and to certain aliens being ineligible to receive fees and allowances.

1968—Pub. L. 90–274 increased the per diem allowance from $4 to $20. Increased the mileage allowance from 8 cents per mile to 10 cents per mile, increased the daily subsistence allowance from $8 to $16, and directed that witnesses in the district courts for the districts of the Canal Zone, Guam, and the Virgin Islands receive the
same fees and allowances provided in this section for witnesses in other district courts of the United States.

1956—Act Aug. 1, 1956, substituted "or before any person authorized to take his deposition pursuant to any rule or order" for "or person taking his disposition pursuant to any order", increased the payments for mileage from 7 to 8 cents per mile and subsistence allowance from $5 to $8 per day, and authorized the computation of mileage on the basis of a uniform table of distances adopted by the Attorney General.

1954—Act Sept. 3, 1954, struck out language which had restricted section's applicability to those depositions taken pursuant to order of the court.

1951—Act Oct. 31, 1951, substituted "residences" for "residence" in that part of second sentence which preceded first proviso.

1949—Act May 24, 1949, inserted last par.

Act May 10, 1949, increased witnesses' fees from $2 to $4 per day, mileage allowance from 5 cents to 7 cents a mile, subsistence allowance from $3 to $5 per day, and inserted provisos.

CHANGE OF NAME


EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-208 effective, with certain transitional provisions, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 309 of Pub. L. 104-208, set out as a note under section 1101 of Title 8, Aliens and Nationality.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 2(d) of Pub. L. 102-417 provided that: "The amendments made by this section [amending this section] shall be effective on and after the date of enactment of this act [Oct. 14, 1992] and shall apply to any witness who testified before such date and has not received any fee or allowance under section 1821 of title 28, United States Code, relating to such testimony."

EFFECTIVE DATE OF 1978 AMENDMENT

Section 2 of Pub. L. 95-535 provided that: "The amendments made by this Act [amending this section] shall take effect on October 1, 1978, or on the date of enactment of this Act [Oct. 27, 1978], whichever occurs later."

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-274 effective 270 days after Mar. 27, 1968, except as to cases in which an indictment has been returned or a petit jury empaneled prior to such effective date, see section 104 of Pub. L. 90-274, set out as a note under section 2263 of Title 18, Crimes and Criminal Procedure.

PAYMENT OF FACT WITNESS FEES TO INCARCERATED PERSON PROHIBITED

Pub. L. 102-395, title I, §108, Oct. 6, 1992, 106 Stat. 1841, provided that: "Notwithstanding 28 U.S.C. 1821, no funds appropriated to the Department of Justice in fiscal year 1993 or any prior fiscal year, or any other funds available from the Treasury of the United States, shall be obligated or expended to pay a fact witness fee to a person who is incarcerated testifying as a fact witness in a court of the United States, as defined in 28 U.S.C. 1821(a)(2)."

Similar provisions were contained in the following prior appropriation acts:


§ 1822. Competency of interested persons; share of penalties payable

Any person interested in a share of any fine, penalty or forfeiture incurred under any Act of Congress, may be examined as a witness in any proceeding for the recovery of such fine, penalty or forfeiture by any party thereto. Such examination shall not deprive the witness of his share.

(June 25, 1948, ch. 646, 62 Stat. 950.)

HISTORICAL AND REVISION NOTES


Changes were made in phraseology.


§1824. Mileage fees under summons as both witness and juror

No constructive or double mileage fees shall be allowed by reason of any person being summoned both as a witness and a juror.

(June 25, 1948, ch. 646, 62 Stat. 951.)

HISTORICAL AND REVISION NOTES


Words "or as a witness in two or more cases pending in the same court and triable at the same term thereof" were omitted as covered by section 1821 of this title.

Changes were made in phraseology.

§1825. Payment of fees

(a) In any case in which the United States or an officer or agency of the United States is a party, the United States marshal for the district shall pay all fees of witnesses on the certificate of the United States attorney or assistant United States attorney, and in the proceedings before a United States magistrate judge, on the certificate of such magistrate judge, except that any fees of defense witnesses, other than experts, appearing pursuant to subpoenas issued upon approval of the court, shall be paid by the United States marshal for the district—

(1) on the certificate of a Federal public defender or assistant Federal public defender, in a criminal case in which the defendant is represented by such Federal public defender or assistant Federal public defender, and

(2) on the certificate of the clerk of the court upon the affidavit of such witnesses' attendance given by other counsel appointed pursuant to section 3006A of title 18, in a criminal case in which a defendant is represented by such other counsel.

(b) In proceedings in forma pauperis for a writ of habeas corpus, and in proceedings in forma pauperis under section 2255 of this title, the United States marshal for the district shall pay, on the certificate of the district judge, all fees of witnesses for the party authorized to proceed in forma pauperis, except that any fees of witnesses for such party, other than experts, ap-
pating pursuant to subpoenas issued upon approval of the court, shall be paid by the United States marshal for the district—

(1) on the certificate of a Federal public defender or assistant Federal public defender, in any such proceedings in which a party is represented by such Federal public defender or assistant Federal public defender, and

(2) on the certificate of the clerk of the court upon the affidavit of such witnesses' attendance given by other counsel appointed pursuant to section 3006A of title 18, in any such proceedings in which a party is represented by such other counsel.

(c) Fees and mileage need not be tendered to a witness upon service of a subpoena issued on behalf of a defendant represented by a Federal public defender, assistant Federal public defender, or other attorney appointed pursuant to section 3006A of title 18, or upon service of a subpoena issued on behalf of a party authorized to proceed in forma pauperis, if the payment of such fees and mileage is to be made by the United States marshal under this section.


HISTORICAL AND REVISION NOTES


Section consolidates parts of sections 600c and 608 of title 28, U.S.C., 1940 ed., relating to payment of witnesses. Other provisions of such sections are incorporated in sections 1821 and 1871 of this title.

Provisions in sections 600c and 608 of title 28, U.S.C., 1940 ed., for payment or certification on order of court were omitted as unnecessary and inappropriate on recommendation of the Judicial Conference Committee on Revision of the Judicial Code.

Words in section 608 of title 28, U.S.C., 1940 ed., “to which they appear to be entitled on the certificate of attendance” following the words “all fees” and the concluding phrase “which sum shall be allowed the marshal in the General Accounting Office in his accounts were omitted as unnecessary.”

The second paragraph is new. It conforms to Rule 45(e) of the Federal Rules of Civil Procedure but is inconsistent with Rule 17(d) of the Federal Rules of Criminal Procedure and supersedes that rule as to Federal criminal cases. The Department of Justice suggests that Rule 17(e) be made applicable. To attempt compliance each deputy marshal serving process must carry, on the average, $500 in cash on trips to serve process. The marshal must advance the money from his personal funds. The Comptroller General has not been able to set up any procedure to make it feasible to advance fees to Government witnesses. If a witness is served but fails or refuses to appear, the marshal is out of pocket the money advanced and has no recourse. In the exceptional cases of real necessity, the marshal supplies transportation to an indigent witness under established regulations which protect the disbursement.

Changes were made in phraseology.

AMENDMENTS

1986—Pub. L. 99–651 amended section generally. Prior to amendment, section read as follows:

“In any case wherein the United States or an officer or agency thereof, is a party, the United States marshals for the district shall pay all fees of witnesses on the certificate of the United States Attorney or Assistant United States Attorney, and in the proceedings before a United States Commissioner, on the certificate of such commissioner.

“In all proceedings, in forma pauperis, for a writ of habeas corpus or in proceedings under section 2255 of this title, the United States marshal for the district shall pay all fees of witnesses for the party authorized to proceed in forma pauperis, on the certificate of the district judge.

“Fees and mileage need not be tendered to the witness upon service of a subpoena issued in behalf of the United States or an officer or agency thereof, or upon service of a subpoena issued on behalf of a party, authorized to proceed in forma pauperis, where the payment thereof is to be made by the United States marshal as authorized in this section.”

1965—Pub. L. 98–162 inserted provisions that, in all proceedings in forma pauperis, for a writ of habeas corpus, or in proceedings under section 2255 of this title, the United States marshal for the district shall pay all fees of witnesses for the party authorized to proceed in forma pauperis on the certificate of the district judge and that fees and mileage need not be tendered to the witness upon service of a subpoena issued on behalf of a party authorized to proceed in forma pauperis where the payment thereof is to be made by the United States marshal as authorized in this section.

CHANGE OF NAME

“United States magistrate judge” and “magistrate judge” substituted for “United States magistrate” and “magistrate”, respectively, in subsec. (a) pursuant to section 321 of Pub. L. 101–650, set out as a note under this title.

EFFECTIVE DATE OF 1986 AMENDMENT


§ 1826. Recalcitrant witnesses

(a) Whenever a witness in any proceeding before or ancillary to any court or grand jury of the United States refuses without just cause shown to comply with an order of the court to testify or provide other information, including any book, paper, document, record, recording or other material, the court, upon such refusal, or when such refusal is duly brought to its attention, may summarily order his confinement at a suitable place until such time as the witness is willing to give such testimony or provide such information. No period of such confinement shall exceed the life of—

(1) the court proceeding, or

(2) the term of the grand jury, including extensions,

before which such refusal to comply with the court order occurred, but in no event shall such confinement exceed eighteen months.

(b) No person confined pursuant to subsection (a) of this section shall be admitted to bail pending the determination of an appeal taken by him from the order for his confinement if it appears that the appeal is frivolous or taken for delay. Any appeal from an order of confinement under this section shall be disposed of as soon as practicable, but not later than thirty days from the filing of such appeal.

(c) Whoever escapes or attempts to escape from the custody of any facility or from any
place in which or to which he is confined pursuant to this section or section 4243 of title 18, or whoever rescues or attempts to rescue or instigates, aids, or assists the escape or attempt to escape of such a person, shall be subject to imprisonment for not more than three years, or a fine of not more than $10,000, or both.


AMENDMENTS


§ 1827. Interpreters in courts of the United States

(a) The Director of the Administrative Office of the United States Courts shall establish a program to facilitate the use of certified and otherwise qualified interpreters in judicial proceedings instituted by the United States.

(b)(1) The Director shall prescribe, determine, and certify the qualifications of persons who may serve as certified interpreters, when the Director considers certification of interpreters to be merited, for the hearing impaired (whether or not also speech impaired) and persons who speak only or primarily a language other than the English language, in judicial proceedings instituted by the United States. The Director may certify interpreters for any language if the Director determines that there is a need for certified interpreters in that language. Upon the request of the Judicial Conference of the United States for certified interpreters in a language, the Director shall certify interpreters in that language. Upon such a request from the judicial council of a circuit and the approval of the Judicial Conference, the Director shall certify interpreters for that circuit in the language requested. The judicial council of a circuit shall identify and evaluate the needs of the districts within a circuit. The Director shall certify interpreters based on the results of criterion-referenced performance examinations. The Director shall issue regulations to carry out this paragraph within 1 year after the date of the enactment of the Judicial Improvements and Access to Justice Act.

(2) Only in a case in which no certified interpreter is reasonably available as provided in subsection (d) of this section, including a defendant in a criminal case), or a witness (including a defendant in a criminal case), or a witness who may present testimony in such judicial proceedings—

(A) speaks only or primarily a language other than the English language; or

(B) suffers from a hearing impairment (whether or not suffering also from a speech impairment)

so as to inhibit such party’s comprehension of the proceedings or communication with counsel or the presiding judicial officer, or so as to inhibit such witness’ comprehension of questions and the presentation of such testimony.

(2) Upon the motion of a party, the presiding judicial officer shall determine whether to require the electronic sound recording of a judicial proceeding in which an interpreter is used under this section. In making this determination, the presiding judicial officer shall consider, among other things, the qualifications of the interpreter and prior experience in interpretation of court proceedings; whether the language to be interpreted is not one of the languages for which the Director has certified interpreters, and the complexity or length of the proceeding. In a grand jury proceeding, upon the motion of the accused, the presiding judicial officer shall require the electronic sound recording of the portion of the proceeding in which an interpreter is used.

(c)(1) If any interpreter is unable to communicate effectively with the presiding judicial officer, the United States attorney, a party (including a defendant in a criminal case), or a witness, the presiding judicial officer shall dismiss such interpreter and obtain the services of another interpreter in accordance with this section.

(2) In any judicial proceedings instituted by the United States, if the presiding judicial offi-
cer does not appoint an interpreter under subsection (d) of this section, an individual requiring the services of an interpreter may seek assistance of the clerk of court or the Director of the Administrative Office of the United States Courts in obtaining the assistance of a certified interpreter.

(f)(1) Any individual other than a witness who is entitled to interpretation under subsection (d) of this section may waive such interpretation in whole or in part. Such a waiver shall be effective only if approved by the presiding judicial officer and made expressly by such individual on the record after opportunity to consult with counsel and after the presiding judicial officer has explained to such individual, utilizing the services of the most available certified interpreter, or when no certified interpreter is reasonably available, as determined by the presiding judicial officer, the services of an otherwise competent interpreter, the nature and effect of the waiver.

(2) An individual who waives under paragraph (1) of this subsection the right to an interpreter may utilize the services of a noncertified interpreter of such individual’s choice whose fees, expenses, and costs shall be paid in the manner provided for the payment of such fees, expenses, and costs of an interpreter appointed under subsection (b) of this section.

(g)(1) There are authorized to be appropriated to the Federal judiciary, and to be paid by the Director of the Administrative Office of the United States Courts, such sums as may be necessary to establish a program to facilitate the use of certified and otherwise qualified interpreters, and otherwise fulfill the provisions of this section and the Judicial Improvements and Access to Justice Act, except as provided in paragraph (3).

(2) Implementation of the provisions of this section is contingent upon the availability of appropriated funds to carry out the purposes of this section.

(3) Such salaries, fees, expenses, and costs that are incurred with respect to Government witnesses (including for grand jury proceedings) shall unless direction is made under paragraph (4), be paid by the Attorney General from sums appropriated to the Department of Justice.

(4) Upon the request of any person in any action for which interpreting services established pursuant to subsection (d) are not otherwise provided, the clerk of the court, or other court employee designated by the chief judge, upon the request of the presiding judicial officer, shall, where possible, make such services available to that person on a cost-reimbursable basis, but the judicial officer may also require the prepayment of the estimated expenses of providing such services.

(5) If the Director of the Administrative Office of the United States Courts finds it necessary to develop and administer criterion-referenced performance examinations for purposes of certification, or other examinations for the selection of otherwise qualified interpreters, the Director may prescribe for each examination a uniform fee for applicants to take such examination. In determining the rate of the fee for each examination, the Director shall consider the fees charged by other organizations for examinations that are similar in scope or nature. Notwithstanding section 3302(b) of title 31, the Director is authorized to provide in any contract or agreement for the development or administration of examinations and the collection of fees that the contractor may retain all or a portion of the fees in payment for the services. Notwithstanding paragraph (6) of this subsection, all fees collected after the effective date of this paragraph and not retained by a contractor shall be deposited in the fund established under section 1931 of this title and shall remain available until expended.

(6) Any moneys collected under this section may be used to reimburse the appropriations obligated and disbursed in payment for such services.

(b) The presiding judicial officer shall approve the compensation and expenses payable to interpreters, pursuant to the schedule of fees prescribed by the Director under subsection (b)(3).

(i) The term “presiding judicial officer” as used in this section refers to any judge of a United States district court, including a bankruptcy judge, a United States magistrate judge, and in the case of grand jury proceedings conducted under the auspices of the United States attorney, a United States attorney.

(j) The term “judicial proceedings instituted by the United States” as used in this section refers to all proceedings, whether criminal or civil, including pretrial and grand jury proceedings (as well as proceedings upon a petition for a writ of habeas corpus initiated in the name of the United States by a relator) conducted in, or pursuant to the lawful authority and jurisdiction of a United States district court. The term “United States district court” as used in this subsection includes any court which is created by an Act of Congress in a territory and is invested with any jurisdiction of a district court established by chapter 5 of this title.

(k) The interpretation provided by certified or otherwise qualified interpreters pursuant to this section shall be in the simultaneous mode for any party to a judicial proceeding instituted by the United States and in the consecutive mode for witnesses, except that the presiding judicial officer, sua sponte or on the motion of a party, may authorize a simultaneous, or consecutive interpretation when such officer determines after a hearing on the record that such interpretation will aid in the efficient administration of justice. The presiding judicial officer, on such officer’s motion or on the motion of a party, may order that special interpretation services as authorized in section 1828 of this title be provided if such officer determines that the provision of such services will aid in the efficient administration of justice.

(l) Notwithstanding any other provision of this section or section 1828, the presiding judicial officer may appoint a certified or otherwise qualified sign language interpreter to provide services to a party, witness, or other participant in a judicial proceeding, whether or not the proceeding is instituted by the United States, if the presiding judicial officer determines, on such officer’s own motion or on the motion of a party or other participant in the proceeding, that such
individual suffers from a hearing impairment. The presiding judicial officer shall, subject to the availability of appropriated funds, approve the compensation and expenses payable to sign language interpreters appointed under this section in accordance with the schedule of fees prescribed by the Director under subsection (b)(3) of this section.


REFERENCES IN TEXT

The date of the enactment of the Judicial Improvements and Access to Justice Act, referred to in subsec. (b)(1), is the date of enactment of Pub. L. 100–702, which was approved Nov. 19, 1988.


The effective date of this paragraph, referred to in subsec. (g)(5), is the effective date of Pub. L. 104–317, which was approved Oct. 19, 1996.

AMENDMENTS

1996—Subsec. (g)(5), (6). Pub. L. 104–317, §402(a), added par. (5) and redesignated former par. (5) as (6).


1988—Subsec. (a). Pub. L. 100–702, §702, amended subsec. (a) generally, substituting “certified and otherwise qualified interpreters in judicial proceedings instituted by the United States” for “interpreters in courts of the United States”.

Subsec. (b). Pub. L. 100–702, §703, amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “The Director shall prescribe, determine, and certify the qualifications of persons who may serve as certified interpreters in courts of the United States in bilingual proceedings and proceedings involving the hearing impaired (whether or not also speech impaired), and in so doing, the Director shall consider the education, training, and experience of those persons. The Director shall maintain a current master list of all interpreters certified by the Director and shall report annually to the Senate and the House of Representatives the frequency of requests for, and the use and effectiveness of, interpreters. The Director shall prescribe a schedule of fees for services rendered by interpreters.”

Subsec. (c). Pub. L. 100–702, §704, amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “Each United States district court shall maintain on file in the office of the clerk of court a list of all persons who have been certified as interpreters, including bilingual interpreters and oral or manual interpreters for the hearing impaired (whether or not also speech impaired), by the Director of the Administrative Office of the United States Courts in accordance with the certification program established pursuant to subsection (b) of this section.”

Subsec. (d). Pub. L. 100–702, §§705, 710(a), designated existing provisions as par. (1), in introductory provisons, substituted “qualified interpreter” for “competent interpreter”, “judicial proceedings instituted by the United States” for “any criminal or civil action initiated by the United States in a United States district court (including a petition for a writ of habeas corpus initiated in the name of the United States by a relator)”, and “such judicial proceedings” for “such action”, redesignated former pars. (1) and (2) as subsups. (A) and (B), and added par. (2).

Subsec. (e)(2). Pub. L. 100–702, §710(b), substituted “judicial proceedings instituted by the United States” for “criminal or civil action in a United States district court”.

Subsec. (g)(1) to (3). Pub. L. 100–702, §706(a), amended pars. (1) to (3) generally. Prior to amendment, pars. (1) to (3) read as follows: “(1) Except as otherwise provided in this subsection or section 1828 of this title, the salaries, fees, expenses, and costs incident to providing the services of interpreters under subsection (d) of this section shall be paid by the Director of the Administrative Office of the United States Courts from sums appropriated to the Federal judiciary.

(2) Such salaries, fees, expenses, and costs that are incurred with respect to Government witnesses shall, unless direction is made under paragraph (3) of this subsection, be paid by the Attorney General from sums appropriated to the Department of Justice.

(3) The presiding judicial officer may in such officer’s discretion direct that all or part of such salaries, fees, expenses, and costs shall be apportioned between or among the parties or shall be taxed as costs in a civil action.”

Subsec. (g)(4), (5). Pub. L. 100–702, §706(b), added par. (4) and redesignated former par. (4) as (5).

Subsec. (h). Pub. L. 100–702, §707, amended subsec. (h) generally. Prior to amendment, subsec. (b) read as follows: “In any action in a court of the United States where the presiding judicial officer establishes, fixes, or approves the compensation and expenses payable to an interpreter from funds appropriated to the Federal judiciary, the presiding judicial officer shall not establish, fix, or approve compensation and expenses in excess of the maximum allowable under the schedule of fees for services prescribed pursuant to subsection (b) of this section.”

Subsec. (i). Pub. L. 100–702, §708, amended subsec. (i) generally. Prior to amendment, subsec. (i) read as follows: “The term ‘presiding judicial officer’ as used in this section and section 1828 of this title includes a judge of a United States district court, a United States magistrate, and a referee in bankruptcy.”

Subsec. (j). Pub. L. 100–702, §708, amended subsec. (j) generally. Prior to amendment, subsec. (j) read as follows: “The term ‘United States district court’ as used in this section and section 1828 of this title includes any court created by Act of Congress in a territory which is invested with any jurisdiction of a district court of the United States established by section 132 of this title.”

Subsec. (k). Pub. L. 100–702, §709, amended subsec. (k) generally. Prior to amendment, subsec. (k) read as follows: “The interpretation provided by certified interpreters pursuant to this section shall be in the consecutive mode except that the presiding judicial officer, with the approval of all interested parties, may authorize a simultaneous or summary interpretation when such officer determines that such interpretation will aid in the efficient administration of justice. The presiding judicial officer on such officer’s motion or on the motion of a party may order that special interpretation services as authorized in section 1828 of this title be provided if such officer determines that the provision of such services will aid in the efficient administration of justice.”

CHANGE OF NAME


EFFECTIVE DATE OF 1988 AMENDMENT

Section 712 of title VII of Pub. L. 100–702 provided that: “This title [amending this section and enacting provisions set out as notes under this section and section 1 of this title] shall become effective upon the date of enactment [Nov. 19, 1988].”

EFFECTIVE DATE

Section effective ninety days after Oct. 28, 1978, see section 10(b) of Pub. L. 95–539, set out as an Effective
§ 1828  
**TITLE 28—JUDICIARY AND JUDICIAL PROCEDURE**

Date of 1978 Amendment note under section 602 of this title.

**SHORT TITLE**


**PAYMENT FOR CONTRACTUAL SERVICES**

Section 402(b) of Pub. L. 104–317 provided that: “Notwithstanding sections 3302(b), 1341, and 1517 of title 31, United States Code, the Director of the Administrative Office of the United States Courts may include in any contract for the development or administration of examinations for interpreters (including such a contract entered into before the date of the enactment of this Act (Oct. 19, 1996)) a provision which permits the contractor to collect and retain fees in payment for contractual services in accordance with section 1827(g)(2) of title 29, United States Code.”

**IMPACT ON EXISTING PROGRAMS**

Section 711 of title VII of Pub. L. 100–702 provided that: “Nothing in this title [amending this section and section 1 of this title] shall be construed to terminate or diminish existing programs for the certification of interpreters.”

**§ 1828. Special interpretation services**

(a) The Director of the Administrative Office of the United States Courts shall establish a program for the provision of special interpretation services in criminal actions and in civil actions initiated by the United States (including petitions for writs of habeas corpus initiated in the name of the United States by relators) in a United States district court. The program shall provide a capacity for simultaneous interpretation services in multidefendant criminal actions and multidefendant civil actions.

(b) Upon the request of any person in any action for which special interpretation services established pursuant to subsection (a) are not otherwise provided, the Director, with the approval of the presiding judicial officer, may make such services available to the person requesting the services on a reimbursable basis at rates established in conformity with section 9701 of title 31, but the Director may require the prepayment of the estimated expenses of providing the services by the person requesting them.

(c) Except as otherwise provided in this subsection, the expenses incident to providing services under subsection (a) of this section shall be paid by the Director from sums appropriated to the Federal judiciary. A presiding judicial officer, in such officer’s discretion, may order that all or part of the expenses shall be apportioned between or among the parties or shall be taxed as costs in the action.

(d) Appropriations available to the Director shall be available to provide services in accordance with subsection (b) of this section, and moneys collected by the Director under that subsection may be used to reimburse the appropriations obligated and disbursed in payment for such services.


**AMENDMENTS**


**EFFECTIVE DATE**

Section effective ninety days after Oct. 28, 1978, see section 10(b) of Pub. L. 95–539, set out as an Effective Date of 1978 Amendment note under section 602 of this title.

**CHAPTER 121—JURIES; TRIAL BY JURY**

Sec.
1861. Declaration of policy.
1862. Discrimination prohibited.
1863. Plan for random jury selection.
1864. Drawing of names from the master jury wheel; completion of juror qualification form.
1865. Qualifications for jury service.
1866. Selection and summoning of jury panels.
1868. Maintenance and inspection of records.
1869. Definitions.
1870. Challenges.
1871. Fees.
1872. Issues of fact in Supreme Court.
1873. Admiralty and maritime cases.
1874. Actions on bonds and specialties.
1875. Protection of jurors’ employment.
1876. Trial by jury in the Court of International Trade.
1877. Protection of jurors.
1878. Optional use of a one-step summoning and qualification procedure.

**AMENDMENTS**

1968—Pub. L. 90–274, § 101, Mar. 27, 1968, 82 Stat. 53, substituted “Declaration of policy” for “Definitions” as item 176, “Discrimination prohibited” for “Exemptions” as item 176, “Plan for random jury selection” for “Exclusion or excuse from service” as item 176, “Drawing of names from the master jury wheel” for “Apportionment within district; additional jury commissioners and their compensation” as item 176, “Qualifications for jury service” for “Apportionment within district; additional jury commissioners” as item 161, “‘Selection and summoning of jury panels’” for “Special petit juries; sequestering of witnesses” as item 161, “‘Manner of drawing; jury commissioners and their compensation’” as item 161, “‘Selection and summoning of jury panels’” for “Special petit juries; sequestering of witnesses” as item 161, “‘Manner of drawing; jury commissioners and their compensation’” as item 161, “‘Exclusions’” for “‘Exclusions’” as item 161, “‘Exclusions’” for “‘Exclusions’” as item 161.

**§ 1861. Declaration of policy**

It is the policy of the United States that all litigants in Federal courts entitled to trial by jury shall have the right to grand and petit juries selected at random from a fair cross section
of the community in the district or division wherein the court convenes. It is further the policy of the United States that all citizens shall have the opportunity to be considered for service on grand and petit juries in the district courts of the United States, and shall have an obligation to serve as jurors when summoned for that purpose.


HISTORICAL AND REVISION NOTES


The revised section prescribes uniform standards of qualification for jurors in Federal Courts instead of making qualifications depend upon State laws. This is in accord with proposed legislation recommended by the Judicial Conference of the United States.

The last paragraph is added to exclude jurors incompetent to serve as jurors in State courts.

AMENDMENTS

1968—Pub. L. 90–274 substituted provisions declaring the policy of the United States with respect to trial by jury and the opportunity to serve on such juries for provisions setting out the required qualifications of Federal jurors, including age, citizenship, residence, freedom from conviction of certain crimes, ability to read, write, speak, and understand the English language, and capability of rendering efficient jury service.


Pub. L. 85–315 substituted “and who has resided for a period of one year within the judicial district” for “and resides within the judicial district—”, and struck out provisions which prohibited service as a grand or petit juror if a person was incompetent to serve as a grand or petit juror by the law of the State in which the district court is held.

EFFECTIVE DATE OF 1968 AMENDMENT

Section 104 of Pub. L. 90–274 provided that: “This Act [amending this section and sections 1821, 1862 to 1869, and 1871 of this title, repealing section 867 of Title 48, Territories and Insular Possessions, and enacting provisions set out as notes under this section] shall become effective two hundred and seventy days after the date of enactment [Mar. 27, 1968]: Provided, That this Act shall not apply in any case in which an indictment has been returned or a petit jury empaneled prior to such effective date, see section 104 of Pub. L. 90–274, set out as a note under section 1861 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–274 effective 270 days after Mar. 27, 1968, except as to cases in which an indictment has been returned or a petit jury empaneled prior to such effective date, see section 104 of Pub. L. 90–274, set out as a note under section 1861 of this title.

§ 1863. Plan for random jury selection

(a) Each United States district court shall devise and place into operation a written plan for random selection of grand and petit jurors that shall be designed to achieve the objectives of sections 1861 and 1862 of this title, and that shall otherwise comply with the provisions of this title. The plan shall be placed into operation after approval by a reviewing panel consisting of the members of the judicial council of the circuit and either the chief judge of the district whose plan is being reviewed or such other active district judge of that district as the chief judge of the district may designate. The panel shall examine the plan to ascertain that it complies with the provisions of this title. If the reviewing panel finds that the plan does not comply, the panel shall state the particulars in which the plan fails to comply and direct the district court to present within a reasonable time an alternative plan remedying the defect or defects. Separate plans may be adopted for each division or combination of divisions within a judicial district. The district court may modify a plan at any time and it shall modify the plan when so directed by the reviewing panel. The district court shall promptly notify the panel, the Administrative Office of the United States Courts, and the Attorney General of the United States, of the initial adoption and future modifications of the plan by filing copies therewith. Modifications of the plan made at the instance of the district court shall become effec-
§ 1863

Title 28—Judiciary and Judicial Procedure

Page 434

tive after approval by the panel. Each district court shall submit a report on the jury selection process within its jurisdiction to the Administrative Office of the United States Courts in such form and at such times as the Judicial Conference of the United States may specify. The Judicial Conference of the United States may, from time to time, adopt rules and regulations governing the provisions and the operation of the plans formulated under this title.

(b) Among other things, such plan shall—

(1) either establish a jury commission, or authorize the clerk of the court, to manage the jury selection process. If the plan establishes a jury commission, the district court shall appoint one citizen to serve with the clerk of the court as the jury commission: Provided, how-

ever, That the plan for the District of Columbia may establish a jury commission consisting of three citizens. The citizen jury commission shall not belong to the same political party as the clerk serving with him. The clerk or the jury commission, as the case may be, shall act under the supervision and control of the chief judge of the district court or such other judge of the district court as the plan may provide. Each jury commissioner shall, during his tenure in office, reside in the judicial district or division for which he is ap-

pointed. Each citizen jury commissioner shall receive compensation to be fixed by the district court plan at a rate not to exceed $50 per day for each day necessarily employed in the performance of his duties, plus reimbursement for travel, subsistence, and other necessary expenses incurred by him in the performance of such duties. The Judicial Conference of the United States may establish standards for allowance of travel, subsistence, and other necessary expenses incurred by jury commis-

sioners.

(2) specify whether the names of prospective jurors shall be selected from the voter registration lists or the lists of actual voters of the political subdivisions within the district or division. The plan shall prescribe some other source or sources of names in addition to voter lists where necessary to foster the policy and protect the rights secured by sections 1861 and 1862 of this title. The plan for the District of Columbia may require the names of prospective jurors to be selected from the city directory rather than from voter lists. The plans for the districts of Puerto Rico and the Canal Zone may prescribe some other source or sources of names of prospective jurors in lieu of voter lists, the use of which shall be consistent with the policies declared and rights secured by sections 1861 and 1862 of this title. The plan for the district of Massachusetts may require the names of prospective jurors to be selected from the resident list provided for in chapter 234A, Massachusetts General Laws, or comparable authority, rather than from voter lists.

(3) specify detailed procedures to be followed by the jury commission or clerk in selecting names from the sources specified in paragraph (2) of this subsection. These procedures shall be designed to ensure the random selection of a fair cross section of the persons residing in the community in the district or division wherein the court convenes. They shall ensure that names of persons residing in each of the counties, parishes, or similar political subdivisions within the judicial district or division are placed in a master jury wheel; and shall ensure that each county, parish, or similar political subdivision within the district or division is substantially proportionally re-

presented in the master jury wheel for that judicial district, division, or combination of divisions. For the purposes of determining pro-

portional representation in the master jury wheel, either the number of actual voters at the last general election in each county, parish, or similar political subdivision, or the number of registered voters if registration of voters is uniformly required throughout the district or division, may be used.

(4) provide for a master jury wheel (or a device similar in purpose and function) into which the names of those randomly selected shall be placed. The plan shall fix a minimum number of names to be placed initially in the master jury wheel, which shall be at least one-

half of 1 per centum of the total number of persons on the lists used as a source of names for the district or division; but if this number of names is believed to be cumbersome and un-
necessary, the plan may fix a smaller number of names to be placed in the master wheel, but in no event less than one thousand. The chief judge of the district court, or such other dis-

trict court judge as the plan may provide, may order additional names to be placed in the master jury wheel from time to time as nec-

essary. The plan shall provide for periodic emptying and refilling of the master jury wheel at specified times, the interval for which shall not exceed four years.

(5)(A) except as provided in subparagraph (B), specify those groups of persons or occupa-

tional classes whose members shall, on individual request therefor, be excused from jury service. Such groups or classes shall be ex-

cused only if the district court finds, and the plan states, that jury service by such class or group would entail undue hardship or extreme inconvenience to the members thereof, and ex-

cuse of members thereof would not be inconsis-

tent with sections 1861 and 1862 of this title.

(B) specify that volunteer safety personnel, upon individual request, shall be excused from jury service. For purposes of this subpara-

graph, the term “volunteer safety personnel” means individuals serving a public agency (as defined in section 1203(6) of title I of the Omni-

bus Crime Control and Safe Streets Act of 1968) in an official capacity, without compensation, as firefighters or members of a rescue squad or ambulance crew.

(6) specify that the following persons are barred from jury service on the ground that they are exempt: (A) members in active serv-

ice in the Armed Forces of the United States; (B) members of the fire or police departments of any State, the District of Columbia, any territory or possession of the United States, or any subdivision of a State, the District of Co-

See References in Text note below.
lumbia, or such territory or possession; (C) public officers in the executive, legislative, or judicial branches of the Government of the United States, or of any State, the District of Columbia, any territory or possession of the United States, or any subdivision of a State, the District of Columbia, or such territory or possession, who are actively engaged in the performance of official duties.

(7) fix the time when the names drawn from the qualified jury wheel shall be disclosed to parties and to the public. If the plan permits these names to be made public, it may nevertheless permit the chief judge of the district court, or such other district court judge as the plan may provide, to keep these names confidential in any case where the interests of justice so require.

(8) specify the procedures to be followed by the clerk or jury commission in assigning persons whose names have been drawn from the qualified jury wheel to grand and petit jury panels.

(c) The initial plan shall be devised by each district court and transmitted to the reviewing panel specified in subsection (a) of this section within one hundred and twenty days of the date of enactment of the Jury Selection and Service Act of 1968. The panel shall approve or direct the modification of each plan so submitted within sixty days thereafter. Each plan or modification made at the direction of the panel shall become effective after approval at such time thereafter as the panel directs, in no event to exceed ninety days from the date of approval. Modifications made at the instance of the district court under subsection (a) of this section shall be effective at such time thereafter as the panel directs, in no event to exceed ninety days from the date of modification.

(d) State, local, and Federal officers having custody, possession, or control of voter registration lists, lists of actual voters, or other appropriate records shall make such lists and records available to the jury commission or clerks for inspection, reproduction, and copying at all reasonable times as the commission or clerk may deem necessary and proper for the performance of duties under this title. The district courts shall have jurisdiction upon application by the Attorney General of the United States to compel compliance with this subsection by appropriate process.

(Historically and Revision Notes


Subsections (a) and (b) are new and merely declarative of existing practice.

The phrase "or previous condition of servitude" was omitted as obsolete.

Changes were made in phraseology.

References in Text

Section 1203(b) of title I of the Omnibus Crime Control and Safe Streets Act of 1968, referred to in subsec. (b)(5)(B), was successively renumbered and redesignated as section 1204(b) of the Act which is classified to section 3796(b) of Title 42, The Public Health and Welfare.

The date of enactment of the Jury Selection and Service Act of 1968, referred to in subsec. (c), is the date of enactment of Pub. L. 90-274, which was approved Mar. 27, 1968.

Amendments

1992—Subsec. (b)(2). Pub. L. 102-572 inserted at end "the plan for the district of Massachusetts may require the names of prospective jurors to be selected from the resident list provided for in chapter 234A, Massachusetts General Laws, or comparable authority, rather than from voter lists."

1988—Subsec. (b)(5). Pub. L. 100-100, § 702(b), redesignated existing provisions as subpar. (A), inserted "except as provided in subparagraph (B)", and added subpar. (B).

Subsec. (b)(6). Pub. L. 100-100, § 802(b), amended par. (6) generally. Prior to amendment, par. (6) read as follows: "specify those groups of persons or occupational classes whose members shall be barred from jury service on the ground that they are exempt. Such groups or classes shall be exempt only if the district court finds, and the plan states, that their exemption is in the public interest and would not be inconsistent with sections 1861 and 1862 of this title. The plan shall provide for exemption of the following persons: (i) members in active service in the Armed Forces of the United States; (ii) members of the fire or police departments of any State, district, territory, possession, or subdivision thereof; (iii) public officers in the executive, legislative, or judicial branches of the Government of the United States, or any State, district, territory, possession or subdivision thereof, who are actively engaged in the performance of official duties."

1978—Subsec. (b)(7) to (9). Pub. L. 95-572 struck out par. (7) relating to random jury selection plan provision for fixing the distance, in miles or in travel time, from each place of holding court beyond which prospective jurors residing should, on individual request, be excused from jury service on the ground of undue hardship in traveling to the place where court was held, now incorporated in definition of "undue hardship or extreme inconvenience" in section 1889(b) of this title, and redesignated pars. (8) and (9) as (7) and (8), respectively.

1972—Subsec. (b)(4). Pub. L. 92-269 inserted provisions requiring the master jury wheel to be emptied and refilled in not greater than four years intervals.

1968—Subsec. (a). Pub. L. 90-274 substituted provisions requiring a written plan covering the random selection of jurors by each United States District in the district and the adoption, review, and modification of the plan for provisions authorizing district judges to exclude or excuse for good cause persons called as jurors.

Subsec. (b). Pub. L. 90-274 substituted provisions setting out the nine required features of a plan for random jury selection, including management by commission or clerk, selection from voter registration lists, detailed procedures for selecting names, a master jury wheel, excluded or exempted groups, maximum distances of travel, disclosure of names, and procedures for assigning jurors drawn from the jury wheel to particular grand and petit jury panels, for provisions authorizing the district court to excuse, for the public interest, classes or groups upon a finding that such jury service would entail undue hardship, extreme inconvenience, or serious obstruction or delay in the fair and impartial administration of justice.

Subsec. (c). Pub. L. 90-274 substituted provisions covering the transmittal of the plan to a reviewing panel and the modification thereof for provisions prohibiting the exclusion of any citizen from juror service on account of race or color.


Effective Date of 1992 Amendment

Amendment by Pub. L. 102-572 effective Jan. 1, 1993, see section 1101(a) of Pub. L. 102-572, set out as a note under section 905 of Title 2, The Congress.

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Sections 3 and 4 of Pub. L. 92–269 provided that:

"(Sec. 3. (a) Each judicial district and each division or combination of divisions within a judicial district, for which a separate plan for random selection of jurors has been adopted pursuant to section 1863 of title 28, United States Code, other than the District of Columbia and the districts of Puerto Rico and the Canal Zone, shall not later than September 1, 1973, refill its master jury wheel with names obtained from the voter registration lists for, or the lists of actual voters in, that district or combination of districts within a judicial district, for which a separate plan for random selection of jurors has been adopted, shall be refilled from the master jury wheel not later than October 1, 1973.

"(b) Nothing in this Act amending this section and section 1865 of this title shall affect the composition of any master jury wheel or qualified jury wheel prior to the date on which it is first refilled in compliance with the terms of section 3.

"(c) The qualified jury wheel in each judicial district, and in each division or combination of divisions in a judicial district for which a separate plan for random selection of jurors has been adopted, shall be refilled from the master jury wheel not later than October 1, 1973.

"(d) The District of Columbia and the judicial districts of Puerto Rico and the Canal Zone shall not later than September 1, 1973, refill their master jury wheels from sources which include the names of persons eighteen years of age or older.

"(e) The qualified jury wheel in each judicial district, and in each division or combination of divisions in a judicial district for which a separate plan for random selection of jurors has been adopted, shall be refilled from the master jury wheel not later than October 1, 1973.

Fed. Statutes Title 28-436

§ 1864. Drawing of names from the master jury wheel; completion of juror qualification form

(a) From time to time as directed by the district court, the clerk or a district judge shall draw at random from the master jury wheel the names of as many persons as may be required for jury service. The clerk or jury commission shall post a general notice for public review in the clerk's office and on the court's website explaining the process by which names are periodically and randomly drawn. The clerk or jury commission shall post a general notice for public review in the clerk's office and on the court's website explaining the process by which names are periodically and randomly drawn. The clerk or jury commission shall post a general notice for public review in the clerk's office and on the court's website explaining the process by which names are periodically and randomly drawn. The clerk or jury commission shall post a general notice for public review in the clerk's office and on the court's website explaining the process by which names are periodically and randomly drawn. 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The last paragraph was added in conformity with section 11–1401 of the District of Columbia Code, 1940 ed., providing for three jury commissioners. Changes were made in phraseology.

**SENATE REVISION AMENDMENT**

As finally enacted, act July 9, 1947, ch. 211, title IV, 61 Stat. 301, which was classified to Title 28, U.S.C., 1946 ed., § 412a, was also a source of this section. Accordingly such act was included by Senate amendment in the schedule of repeals. See 80th Congress Senate Report No. 1559.

**AMENDMENTS**

2008—Subsec. (a). Pub. L. 110–406, § 5(a), struck out "publicly" after "judge shall" in first sentence and inserted "The clerk or jury commission shall post a general notice for public review in the clerk's office and on the court's website explaining the process by which names are periodically and randomly drawn." after first sentence.

(b), Pub. L. 110–406, §17(a), substituted "$1,000, imprisoned not more than three days, ordered to perform community service, or any combination thereof, for "$100 or imprisoned not more than three days, or both." in two places.

1988—Subsec. (a). Pub. L. 100–702 amended second sentence generally. Prior to amendment, second sentence read as follows: "The clerk or jury commission shall prepare an alphabetical list of the names drawn, which list shall not be disclosed to any person except pursuant to the district court plan and to sections 1867 and 1868 of this title."

1968—Pub. L. 90–274 substituted provisions for the public drawing of names from the master jury wheel, the completion of the jury qualification form, and the penalties for failure to appear and for misrepresentation of material facts for provisions requiring the drawing of names from a jury box, the refilling of the box by the clerk and a jury commissioner, the requirements and compensation of the commissioner, and the alternate placement of names by the clerk and the commissioner.

**EFFECTIVE DATE OF 1968 AMENDMENT**

Amendment by Pub. L. 90–274 effective 270 days after Mar. 27, 1968, except as to cases in which an indictment out as a note under section 1861 of this title.

§ 1865. Qualifications for jury service

(a) The chief judge of the district court, or such other district court judge as the plan may provide, on his initiative or upon recommendation of the clerk or jury commission, or the clerk under supervision of the court if the court's jury selection plan so authorizes, shall determine solely on the basis of information provided on the juror qualification form and other competent evidence whether a person is unqualified for, or exempt, or to be excused from jury service. The clerk shall enter such determination in the space provided on the juror qualification form and in any alphabetical list of names drawn from the master jury wheel. If a person did not appear in response to a summons, such fact shall be noted on said list.

(b) In making such determination the chief judge of the district court, or such other district court judge as the plan may provide, or the clerk if the court's jury selection plan so provides, shall deem any person qualified to serve on grand and petit juries in the district court unless he:

1. is not a citizen of the United States eighteen years old who has resided for a period of one year within the judicial district;

2. is unable to read, write, and understand the English language with a degree of proficiency sufficient to fill out satisfactorily the juror qualification form;

3. is unable to speak the English language;

4. is incapable, by reason of mental or physical infirmity, to render satisfactory jury service; or

5. has a charge pending against him for the commission of, or has been convicted in a State or Federal court of record of, a crime punishable by imprisonment for more than one year and his civil rights have not been restored.


**HISTORICAL AND REVISION NOTES**


Word "jurers" was changed to "grand and petit jurors" upon authority of Agnew v. United States, 1897, 17 S.Ct. 235, 165 U.S. 36, 41 L.Ed. 624, construing such term to include both types of jurors.

The last sentence of subsection (a) was added to conform with existing practice in many districts. Subsection (b) extends to all districts a provision of section 181 of title 28, U.S.C., 1940 ed., which was designed for the convenience of the districts in Ohio and permitted jurors drawn for service at Cleveland, Toledo, and Columbus to serve at Youngstown, Lima, and Steubenville, respectively.

Changes were made in phraseology.

**AMENDMENTS**

2000—Subsec. (a). Pub. L. 106–518, §305(1), inserted "or the clerk under supervision of the court if the court's jury selection plan so authorizes," after "jury commission,".

Subsec. (b). Pub. L. 106–518, §305(2), inserted "or the clerk if the court's jury selection plan so provides," after "may provide," in introductory provisions.

1988—Subsec. (a). Pub. L. 100–702 substituted "in any alphabetical" for "the alphabetical".

1979—Subsec. (b)(6). Pub. L. 95–572 struck out "by pardon or amnesty" after "civil rights have not been restored".

1972—Subsec. (b)(1). Pub. L. 92–269 substituted "eighteen years old" for "twenty-one years old".

1968—Subsec. (a). Pub. L. 90–274 substituted provisions for the excusing of persons from jury service by the chief judge of the district court or by other district court judge for provisions requiring the selection of jurors so as to be most favorable to an impartial trial and so as to minimize the expense and burden of jury service.

Subsec. (b). Pub. L. 90–274 substituted provisions setting out the conditions of ineligibility for jury service for provisions authorizing the service of jurors in a place within the district other than the place for which the jurors were summoned.

**EFFECTIVE DATE OF 1978 AMENDMENT**

Amendment by Pub. L. 95–572 applicable with respect to any grand or petit juror summoned for service or actually serving on or after Nov. 2, 1978, see section 7(a) of Pub. L. 95–572, set out as an Effective Date note under section 1363 of this title.
§ 1866. Selection and summoning of jury panels

(a) The jury commission, or in the absence thereof the clerk, shall maintain a qualified jury wheel and shall place in such wheel names of all persons drawn from the master jury wheel who are determined to be qualified as jurors and not exempt or excused pursuant to the district court plan. From time to time, the jury commission or the clerk shall draw at random from the qualified jury wheel such number of names of persons as may be required for assignment to grand and petit jury panels. The clerk or jury commission shall post a general notice for public review in the clerk’s office and on the court’s website explaining the process by which names are periodically and randomly drawn. The jury commission or the clerk shall prepare a separate list of names of persons assigned to each grand and petit jury panel.

(b) When the court orders a grand or petit jury to be drawn, the clerk or jury commission or their duly designated deputies shall issue summons for the required number of jurors. Each person drawn for jury service may be served personally, or by registered, certified, or first-class mail addressed to such person at his usual residence or business address.

If such service is made personally, the summons may be served by the marshal or by the clerk, the jury commission or their duly designated deputies, who shall make affidavit of service and shall attach thereto any receipt from the addressee for a registered or certified summons.

(c) Except as provided in section 1865 of this title or in any jury selection plan provision adopted pursuant to paragraph (5) or (6) of section 1863(b) of this title, no person or class of persons shall be disqualified, excluded, excused, or exempt from service as jurors: Provided, That any person summoned for jury service may be (1) excused by the court, or by the clerk under supervision of the court if the court’s jury selection plan so authorizes, upon a showing of undue hardship or extreme inconvenience, for such period as the court deems necessary, at the conclusion of which such person either shall be summoned again for jury service under subsections (b) and (c) of this section or, if the court’s jury selection plan so provides, the name of such person shall be reinserted into the qualified jury wheel for selection pursuant to subsection (a) of this section, or (2) excluded by the court on the ground that such person may be unable to render impartial jury service or that his service as a juror would be likely to disrupt the proceedings, or (3) excluded upon peremptory challenge as provided by law, or (4) excluded pursuant to the procedure specified by law upon a challenge by any party for good cause shown, or (5) excluded upon determination by the court that his service as a juror would be likely to threaten the secrecy of the proceedings, or otherwise adversely affect the integrity of jury deliberations. No person shall be excluded under clause (5) of this subsection unless the judge, in open court, determines that such is warranted and that exclusion of the person will not be inconsistent with sections 1861 and 1862 of this title. The number of persons excluded under clause (5) of this subsection shall not exceed one per centum of the number of persons who return executed jury qualification forms during the period, specified in the plan, between two consecutive fillings of the master jury wheel. The names of persons excluded under clause (5) of this subsection, together with detailed explanations for the exclusions, shall be forwarded immediately to the judicial council of the circuit, which shall have the power to make any appropriate order, prospective or retroactive, to redress any misapplication of clause (5) of this subsection, but otherwise exclusions effectuated under such clause shall not be subject to challenge under the provisions of this title. Any person excluded from a particular jury under clause (2), (3), or (4) of this subsection shall be eligible to sit on another jury if the basis for his initial exclusion would not be relevant to his ability to serve on such other jury.

(d) Whenever a person is disqualified, excluded, exempt, or excluded from jury service, the jury commission or clerk shall note in the space provided on his juror qualification form or on the juror’s card drawn from the qualified jury wheel the specific reason therefor.

(e) In any two-year period, no person shall be required to (1) serve or attend court for prospective service as a petit juror for a total of more than thirty days, except when necessary to complete service in a particular case, or (2) serve on more than one grand jury, or (3) serve as both a grand and petit juror.

(f) When there is an unanticipated shortage of available petit jurors drawn from the qualified jury wheel, the court may require the marshal to summon a sufficient number of petit jurors selected at random from the voter registration lists, lists of actual voters, or other lists specified in the plan, in a manner ordered by the court consistent with sections 1861 and 1862 of this title.

(g) Any person summoned for jury service who fails to appear as directed may be ordered by the district court to appear forthwith and show cause for failure to comply with the summons. Any person who fails to show good cause for noncompliance with a summons may be fined not more than $1,000, imprisoned not more than three days, ordered to perform community service, or any combination thereof.


The requirement of section 418 of title 28, U.S.C., 1940 ed., for the summoning of a special jury in accordance with the law of the state was omitted as unnecessary and incongruous in view of other sections of this chapter making adequate provision for summoning jurors.

This section amends section 1866 of title 28, U.S.C., by restoring provision of original law that special juries be impaneled in accordance with laws of the respective States.

Amendments

2008—Subsec. (a). Pub. L. 110–406, § 5(b), struck out "publicly" after "clerk shall" in second sentence and inserted "The clerk or jury commission shall post a general notice for public review in the clerk's office and on the court's website explaining the process by which names are periodically and randomly drawn." after second sentence.

Subsec. (g). Pub. L. 110–406, § 17(b), substituted "$1,000, imprisoned not more than three days, ordered to perform community service, or any combination thereof," for "$100 or imprisoned not more than three days, or both."

Pub. L. 110–406, § 4, substituted "may be ordered" for "shall be ordered" and struck out "his" before "failure to comply."

1988—Subsec. (c)(1). Pub. L. 100–702 amended cl. (1) generally. Prior to amendment, cl. (1) read as follows: "excused by the court, upon a showing of undue hardship or extreme inconvenience, for such period as the court deems necessary, at the conclusion of which such person shall be summoned again for jury service under subsections (b) and (c) of this section.".

1983—Subsec. (b). Pub. L. 97–463, § 2, inserted provision in second par. authorizing service by first-class mail of persons drawn for jury service, substituted in fourth paragraph. "If such service is made by mail, the summons may be served by the marshal or by the clerk, the jury commission or their duly designated deputies, who shall make affidavit of service and shall attach thereto any receipt from the addressee for a registered or certified summons" for "If such service is made by registered or certified mail, the summons shall be served by the clerk or jury commission or their duly designated deputies who shall make affidavit of service and shall file with such affidavit the addressee's receipt for the registered or certified summons" and struck out provision requiring the marshal, if service was made by the marshal, to attach to his return the addressee's receipt for the registered or certified mail.

1978—Subsec. (c). Pub. L. 95–572 struck out introductory text reference to par. (7) of section 1863(b) of this title.

1970—Subsec. (b). Pub. L. 91–543 inserted provisions authorizing duly designated deputies of the clerk or the jury commission to issue summonses, and deliver them to the marshal for service when personal service is to be made, and provisions authorizing, if service is made by registered or certified mail, the clerk or the jury commission or their duly designated deputies to make service of the summons.

1968—Subsec. (a). Pub. L. 90–274 substituted provisions authorizing the commission or clerk to maintain a jury wheel of qualified jurors and to draw particular panels therefrom for provisions authorizing the marshal to summon talemen from the bystanders when there is an insufficient number of petit jurors.

Subsec. (b). Pub. L. 90–274 substituted provisions directing the clerk or jury commission to deliver summons to the marshal for service when the court orders a grand or petit jury to be drawn and setting out the details of service for provisions requiring that, when a special jury was ordered by a district court, it had to be returned by the marshal in the same manner and form as was required in such case by the law of the State in which the district court sat.

Subsecs. (c) to (g). Pub. L. 90–274 added subsec. (c) to (g).
there has been a substantial failure to comply with the provisions of this title in selecting the petit jury, the court shall stay the proceedings pending the selection of a petit jury in conformity with this title.

(e) The procedures prescribed by this section shall be the exclusive means by which a person accused of a Federal crime, the Attorney General of the United States or a party in a civil case may challenge any jury on the ground that such jury was not selected in conformity with the provisions of this title. Nothing in this section shall preclude any person or the United States from pursuing any other remedy, civil or criminal, which may be available for the vindication or enforcement of any law prohibiting discrimination on account of race, color, religion, sex, national origin or economic status in the selection of persons for service on grand or petit juries.

(f) The contents of records or papers used by the jury commission or clerk in connection with the jury selection process shall not be disclosed, except pursuant to the district court plan or as may be necessary in the preparation or presentation of a motion under subsection (a), (b), or (c) of this section, until after the master jury wheel has been emptied and refilled pursuant to section 1863(b)(4) of this title and all persons selected to serve as jurors before the master wheel was emptied have completed such service. The parties in a case shall be allowed to inspect, reproduce, and copy such records or papers at all reasonable times during the preparation and pendency of such a motion. Any person who discloses the contents of any record or paper in violation of this subsection may be fined not more than $1,000 or imprisoned not more than one year, or both.

(Historical and Revision Notes)


Provisions for service by a disinterested person when marshal or his deputy is disqualified is incorporated in section 1868 of this title.

Provision for payment and reimbursement of postage and registry fee were omitted as covered by section 509 of this title.

Word “summons” was substituted for “writ of venire facias” in harmony with the Federal Rules of Civil Procedure which abolished unnecessary forms. See Rule 81(b) thereof, and Rule 12 of the Federal Rules of Criminal Procedure.

Provision of section 416 of title 28, U.S.C., 1940 ed., that the receipt of the person so addressed by registered mail should be regarded as personal service, was omitted. Such omission is consistent with Rule 5(b) of the Federal Rules of Civil Procedure providing that service by mail is complete upon mailing.

Provision for attachment to the return of the addressee’s receipt for the summons, was inserted to cover its disposition.

Provision that no mileage shall be allowed for service by mail was omitted as unnecessary. Changes were made in phraseology.

Amendments

1968—Pub. L. 90–274 substituted provisions by which a defendant may assert noncompliance with the selection procedures of the jury for provisions covering the issuance of summonses for jurors and service thereof upon jurors.

1957—Pub. L. 85–259 inserted “or certified” in second and third sentences.

Effective Date of 1968 Amendment

Amendment by Pub. L. 90–274 effective 270 days after Mar. 27, 1968, except as to cases in which an indictment has been returned or a petit jury empaneled prior to such effective date, see section 186 of Pub. L. 90–274, set out as a note under section 1861 of this title.

§ 1868. Maintenance and inspection of records

After the master jury wheel is emptied and refilled pursuant to section 1863(b)(4) of this title, and after all persons selected to serve as jurors before the master wheel was emptied have completed such service, all records and papers compiled and maintained by the jury commission or clerk before the master wheel was emptied shall be preserved in the custody of the clerk for four years or for such longer period as may be ordered by a court, and shall be available for public inspection for the purpose of determining the validity of the selection of any jury.


Historical and Revision Notes


Words, “in the opinion of the court, disqualified” were substituted for “not an indifferent person, or is interested in the event of the cause”.

Amendments

1968—Pub. L. 90–274 substituted provisions for the maintenance and inspection of records in the hands of the commission or clerk before the master wheel was emptied for provisions covering the disqualification of the United States marshal or his deputy and the appointment of a disinterested person by the court.

Effective Date of 1968 Amendment

Amendment by Pub. L. 90–274 effective 270 days after Mar. 27, 1968, except as to cases in which an indictment has been returned or a petit jury empaneled prior to such effective date, see section 186 of Pub. L. 90–274, set out as a note under section 1861 of this title.

§ 1869. Definitions

For purposes of this chapter—

(a) “clerk” and “clerk of the court” shall mean the clerk of the district court of the United States, any authorized deputy clerk, and any other person authorized by the court to assist the clerk in the performance of functions under this chapter;

(b) “chief judge” shall mean the chief judge of any district court of the United States;

(c) “voter registration lists” shall mean the official records maintained by State or local election officials of persons registered to vote in either the most recent State or the most recent Federal general election, or, in the case
of a State or political subdivision thereof that does not require registration as a prerequisite to voting, other official lists of persons qualified to vote in such election. The term shall also include the list of eligible voters maintained by any Federal examiner pursuant to the Voting Rights Act of 1965 where the names on such list have not been included on the official registration lists or other official lists maintained by the appropriate State or local officials. With respect to the districts of Guam and the Virgin Islands, “voter registration lists” shall mean the official records maintained by territorial election officials of persons registered to vote in the most recent territorial general election;

(d) “lists of actual voters” shall mean the official lists of persons actually voting in either the most recent State or the most recent Federal general election;

(e) “division” shall mean: (1) one or more statutory divisions of a judicial district; or (2) in statutory divisions that contain more than one place of holding court, or in judicial districts where there are no statutory divisions, such counties, parishes, or similar political subdivisions surrounding the places where court is held as the district court plan shall determine: Provided, That each county, parish, or similar political subdivision shall be included in some such division;

(f) “district court of the United States”, “district court”, and “court” shall mean any district court established by chapter 5 of this title, and any court which is created by Act of Congress in a territory and is invested with any jurisdiction of a district court established by chapter 5 of this title;

(g) “jury wheel” shall include any device or system similar in purpose or function, such as a properly programed electronic data processing system or device;

(h) “juror qualification form” shall mean a form prescribed by the Administrative Office of the United States Courts and approved by the Judicial Conference of the United States, which shall elicit the name, address, age, race, occupation, education, length of residence within the judicial district, distance from residence to place of holding court, prior jury service, and citizenship of a potential juror, and whether he should be excused or exempted from jury service, has any physical or mental infirmity impairing his capacity to serve as juror, is able to read, write, speak, and understand the English language, has pending against him any charge for the commission of a State or Federal criminal offense punishable by imprisonment for more than one year, or has been convicted in any State or Federal court of record of a crime punishable by imprisonment for more than one year and has not had his civil rights restored. The form shall request, but not require, any other information not inconsistent with the provisions of this title and required by the district court plan in the interests of the sound administration of justice. The form shall also elicit the sworn statement that his responses are true to the best of his knowledge. Notarization shall not be required. The form shall contain words clearly informing the person that the furnishing of any information with respect to his religion, national origin, or economic status is not a prerequisite to his qualification for jury service, that such information need not be furnished if the person finds it objectionable to do so, and that information concerning race is required solely to enforce nondiscrimination in jury selection and has no bearing on an individual’s qualification for jury service.

(i) “public officer” shall mean a person who is either elected to public office or who is directly appointed by a person elected to public office;

(j) “undue hardship or extreme inconvenience”, as a basis for excuse from immediate jury service under section 1866(c)(1) of this chapter, shall mean great distance, either in miles or traveltime, from the place of holding court, grave illness in the family or any other emergency which outweighs in immediacy and urgency the obligation to serve as a juror when summoned, or any other factor which the court determines constitutes a hardship or to create an extreme inconvenience to the juror; and in addition, in situations where it is anticipated that a trial or grand jury proceeding may require more than thirty days of service, the court may consider, as a further basis for temporary excuse, severe economic hardship to an employer which would result from the absence of a key employee during the period of such service; and

(k) “jury summons” shall mean a summons issued by a clerk of court, jury commission, or their duly designated deputies, containing either a preprinted or stamped seal of court, and containing the name of the issuing clerk imprinted in preprinted, typed, or facsimile manner on the summons or the envelopes transmitting the summons.


HISTORICAL AND REVENSION NOTES


REFERENCES IN TEXT


AMENDMENTS

2008—Subsecs. (j) to (l). Pub. L. 110-406 inserted “and” at end of subsec. (j), redesignated subsec. (i) as (k), and struck out former subsec. (k) which defined “publicly draw”. 


$1870$

**TITLE 28—JUDICIARY AND JUDICIAL PROCEDURE**

Page 442

1968—Subsec. (a). Pub. L. 100–702, § 802(a), amended subsec. (a) generally, substituting “any authorized deputy clerk, and any other person authorized by the court to assist the clerk in the performance of functions under this chapter” for “or any authorized deputy clerk”.


1966—Subsec. (f). Pub. L. 90–650 struck out “except that for purposes of sections 1861, 1862, 1866(c), 1886(d), and 1887 of this chapter such terms shall include the Superior Court of the District of Columbia after “Canal Zone Code”.

1978—Subsec. (f). Pub. L. 95–598 directed the amendment of subsec. (f) by inserting “chapter 6 of title 28, United States Code,” after “chapter 5 of title 28, United States Code,” 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.

Subsec. (h). Pub. L. 95–572, § 3(b), struck out “by pardon or amnesty” after “civil rights restored”.


1972—Subsec. (b). Pub. L. 92–437 added race and occupation to the particulars to be elicited on the juror qualification form, in provisions distinguishing between information to be requested and information to be required, struck out “race and occupation of a potential juror”, and in information to be contained in the form, struck out “race, color” and “occupation” from the particulars, and required additional material to be contained in the form that information concerning race is required solely to enforce nondiscrimination in jury selection and that it has no bearing on an individual’s qualification for jury service.


1968—Pub. L. 90–274 substituted provisions defining “clerk”, “clerk of the court”, “chief judge”, “voter registration lists”, “list of actual voters”, “division”, “district wheel”, “juror qualification form”, and “public officer” for provisions allowing the challenge of a petit juror who had been summoned and attended court as a petit juror at any session held within one year prior to the challenge.

1963—Pub. L. 88–139 substituted “session” for “term”.

**Effective Date of 1968 Amendment**

Section 4(a) of Pub. L. 99–650 provided in part that: “The provisions of this Act [amending this section] shall take effect 180 days after the date of enactment of this Act [Nov. 14, 1986].”

**Effective Date of 1978 Amendment**

Amendment by Pub. L. 95–572 applicable with respect to any grand or petit juror summoned for service or actually serving on or after Nov. 27, 1978, see section 7(a) of Pub. L. 95–572, set out as an Effective Date note under section 1363 of this title.

**Effective Date of 1972 Amendment**

Section 2 of Pub. L. 92–437 provided that: “This Act [amending this section] shall take effect on the sixthtieth day after the date of its enactment [Sept. 29, 1972].”

**Effective Date of 1970 Amendment**

Amendment by Pub. L. 91–358 effective first day of seventh calendar month which begins after July 29, 1970, see section 199(a) of Pub. L. 91–358, set out as a note under section 1257 of this title.

**Effective Date of 1968 Amendment**

Amendment by Pub. L. 90–274 effective 270 days after Mar. 27, 1968, except as to cases in which an indictment has been returned or a petit jury empaneled prior to such effective date, see section 194 of Pub. L. 90–274, set out as a note under section 1861 of this title.

**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 the end of the “transition period”, being the 30-month period beginning Oct. 1, 1978, and ending midnight Mar. 31, 1982, see Paragraph 5 of Article XI of the Panama Canal Treaty of 1977 and sections 1201 and 2201 to 2203 of Pub. L. 96–70, title II, Sept. 27, 1979, 93 Stat. 493, formerly classified to sections 3631 and 3641 to 3643, respectively, of Title 22, Foreign Relations and Intercourse.

§ 1870. Challenges

In civil cases, each party shall be entitled to three peremptory challenges. Several defendants or several plaintiffs may be considered as a single party for the purposes of making challenges, or the court may allow additional peremptory challenges and permit them to be exercised separately or jointly.

All challenges for cause or favor, whether to the array or panel or to individual jurors, shall be determined by the court.


**Historical and Revision Notes**


Provisions of section 424 of title 28, U.S.C., 1940 ed., relating to the number of peremptory challenges in criminal cases were deleted as superseded by Rule 24 of the Federal Rules of Criminal Procedure.

The last sentence of the first paragraph was added to permit the same flexibility in the matter of challenges in civil cases as is permitted in criminal cases by said Rule 24.

Words “without aid of triers” at end of section 424 of title 28, U.S.C., 1940 ed., were omitted as surplusage.

Changes were made in phraseology.

**Amendments**

1959—Pub. L. 86–282 substituted “may” for “shall” after “several plaintiffs”, and “, or the court may allow” for “. If there is more than one defendant the court may allow the defendants”.

§ 1871. Fees

(a) Grand and petit jurors in district courts appearing pursuant to this chapter shall be paid the fees and allowances provided by this section.

The requisite fees and allowances shall be disbursed on the certificate of the clerk of court in accordance with the procedure established by the Director of the Administrative Office of the United States Courts. Attendance fees for extended service under subsection (b) of this section shall be certified by the clerk only upon the order of a district judge.

(b)(1) A juror shall be paid an attendance fee of $40 per day for actual attendance at the place of trial or hearing. A juror shall also be paid the attendance fee for the time necessarily occupied in going to and returning from such place at the
beginning and end of such service or at any time during such service.

(2) A petit juror required to attend more than ten days in hearing one case may be paid, in the discretion of the trial judge, an additional fee, not exceeding $10 more than the attendance fee, for each day in excess of ten days on which he is required to hear such case.

(3) A grand juror required to attend more than forty-five days of actual service may be paid, in the discretion of the district judge in charge of the particular grand jury, an additional fee, not exceeding $10 more than the attendance fee, for each day in excess of forty-five days of actual service.

(4) A grand or petit juror required to attend more than ten days of actual service may be paid, in the discretion of the judge, the appropriate fees at the end of the first ten days and at the end of every ten days of service thereafter.

(5) Certification of additional attendance fees may be ordered by the judge to be made effective commencing on the first day of extended service, without reference to the date of such certification.

(c)(1) A travel allowance not to exceed the maximum rate per mile that the Director of the Administrative Office of the United States Courts has prescribed pursuant to section 604(a)(7) of this title for payment to supporting court personnel in travel status using privately owned automobiles shall be paid to each juror, regardless of the mode of transportation actually employed. The prescribed rate shall be paid for the distance necessarily traveled to and from a juror's residence by the shortest practical route in going to and returning from the place of service. Actual mileage in full at the prescribed rate shall be paid at the beginning and at the end of a juror's term of service.

(2) The Director shall promulgate rules regulating interim travel allowances to jurors. Distances traveled to and from court should coincide with the shortest practical route.

(3) Toll charges for toll roads, bridges, tunnels, and ferries shall be paid in full to the juror incurring such charges. In the discretion of the court, reasonable parking fees may be paid to the juror incurring such fees upon presentation of a valid parking receipt. Parking fees shall not be included in any tabulation of mileage cost allowances.

(4) Any juror who travels to district court pursuant to summons in an area outside of the contiguous forty-eight States of the United States shall be paid the travel expenses provided under this section, or actual reasonable transportation expenses subject to the discretion of the district judge or clerk of court as circumstances indicate, exercising due regard for the mode of transportation, the availability of alternative modes, and the shortest practical route between residence and court.

(5) A grand juror who travels to district court pursuant to a summons may be paid the travel expenses provided under this section or, under guidelines established by the Judicial Conference, the actual reasonable costs of travel by aircraft when travel by other means is not feasible and when certified by the chief judge of the district court in which the grand juror serves.

(d)(1) A subsistence allowance covering meals and lodging of jurors shall be established from time to time by the Director of the Administrative Office of the United States Courts pursuant to section 604(a)(7) of this title, except that such allowance shall not exceed the allowance for supporting court personnel in travel status in the same geographical area. Claims for such allowance shall not require itemization.

(2) A subsistence allowance shall be paid to a juror when an overnight stay is required at the place of holding court, and for the time necessarily spent in traveling to and from the place of attendance if an overnight stay is required.

(3) A subsistence allowance for jurors serving in district courts outside of the contiguous forty-eight States of the United States allowed at a rate not to exceed that per diem allowance which is paid to supporting court personnel in travel status in those areas where the Director of the Administrative Office of the United States Courts has prescribed an increased per diem fee pursuant to section 604(a)(7) of this title.

(e) During any period in which a jury is ordered to be kept together and not to separate, the actual cost of subsistence shall be paid upon the order of the court in lieu of the subsistence allowance payable under subsection (d) of this section. Such allowance for the jurors ordered to be kept separate or sequestered shall include the cost of meals, lodging, and other expenditures ordered in the discretion of the court for their convenience and comfort.

(f) A juror who must necessarily use public transportation in traveling to and from court, the full cost of which is not met by the transportation expenses allowable under subsection (c) of this section on account of the short distance traveled in miles, may be paid, in the discretion of the court, the actual reasonable expense of such public transportation, pursuant to the methods of payment provided by this section. Jurors who are required to remain at the court beyond the normal business closing hour for deliberation or for any other reason may be transported to their homes, or to temporary lodgings where such lodgings are ordered by the court, in a manner directed by the clerk and paid from funds authorized under this section.

(g) The Director of the Administrative Office of the United States Courts shall promulgate such regulations as may be necessary to carry out his authority under this section.

(Historical and Revision Notes

1948 ACT


Words “place of service” were substituted for references to attendance at court, in view of the earlier reference to service before commissioners. The Advisory Committee to the House Committee on Revision of the Laws in revision of this title, recommends a careful study of the compensation of witnesses and jurors. Furthermore, provision should be made for the subsistence of jurors and witnesses serving at such distance from their homes as precludes daily attendance at court.

Changes were made in phraseology.

1949 Act

This section incorporates in section 1871 of title 28, U.S.C., with changes in phraseology, the provisions of act of June 25, 1948 (ch. 552, 62 Stat. 1016), which became law subsequent to the enactment of the revision.

AMENDMENTS


1989—Subsec. (b). Pub. L. 101–660 substituted “$40” for “$30” in par. (1) and “$10” for “$5” in pars. (2) and (3).

1978—Subsecs. (a) to (g). Pub. L. 95–572, in revising text, substituted subsecs. (a) to (g) for prior five unnumbered paragraphs, and among other changes, deleted reference to fees for service before United States commissioners, now provided for in chapter 3 (section 631 et seq.) of this title relating to United States magistrates; increased to $30 from $20 allowance for actual attendance; continued the discretionary additional fee for extended service, increasing to forty-five from thirty days the basic service requirement; generalized travel allowance provisions in place of 10 cents per mile travel allowance from residence to place of service when commencing and terminating service and any necessary daily or interim travel, not to exceed a subsistence allowance of $16 per day; and deleted provision for same fees for service in districts courts for districts of Guam and Canal Zone as provided for services in other Federal district courts as covered in definition of “district court of the United States” in section 1889(f) of this title.

1968—Pub. L. 90–274 increased from $10 to $20 the per diem allowance for grand and petit jurors, increased from $14 to $20 the fee for extra days in cases requiring attendance in excess of 30 days, increased from $10 to $16 the daily subsistence rate when travel appears impracticable, increased from $10 to $20 per day the limit after which payment of fees by the marshal must be on the certificate of the trial judge, provided for the allowance of amounts expended for tolls, for toll roads, for toll tunnels, and for toll bridges, and directed that grand and petit jurors in the district courts for the districts of Guam and the Canal Zone receive the same fees and allowances provided for grand and petit jurors in other district courts of the United States.

1965—Pub. L. 89–165 increased from $7 to $10 the per diem allowance for grand and petit jurors, increased from $10 to $14 the fee for extra days in cases requiring attendance in excess of 30 days, prohibited payment for interim or daily travel at the 10-cent-per-mile rate in excess of the subsistence allowance which would have been paid if he had remained at the place of holding court overnight or during temporary recess, increased from $7 to $10 the daily subsistence rate when travel daily appears impracticable, and increased from $7 to $10 per day the limit after which payment of fees by the marshal must be on the certificate of the trial judge.

1949—Act July 14, 1949, increased the per diem fee paid jurors from $5 to $7, provided for per diem fee payments not to exceed $10 for each day in excess of thirty days, increased the mileage payment from 5 cents per mile to 7 cents, and provided for the certification of the judge in cases where the jury fee is in excess of $7 per diem.

Act May 24, 1949, increased jury fees and mileage and subsistence allowances.

Effective Date of 2008 Amendment


Effective Date of 1992 Amendment

Amendment by Pub. L. 102–572 applicable with respect to any grand or petit juror serving on or after the sixtieth day following Nov. 2, 1992, see section 7(b) of Pub. L. 95–572, set out as an Effective Date note under section 1383 of this title.

Effective Date of 1968 Amendment

Amendment by Pub. L. 90–274 effective 270 days after Mar. 27, 1968, except as to cases in which an indictment has been returned or a petit jury empaneled prior to such effective date, see section 194 of Pub. L. 90–274, set out as a note under section 1861 of this title.

Refinement of Jurors


§1872. Issues of fact in Supreme Court

In all original actions at law in the Supreme Court against citizens of the United States, issues of fact shall be tried by a jury.

(June 25, 1948, ch. 646, 62 Stat. 953.)

Historical and Revision Notes


Changes were made in phraseology.

§1873. Admiralty and maritime cases

In any case of admiralty and maritime jurisdiction relating to any matter of contract or tort arising upon or concerning any vessel of twenty tons or upward, enrolled and licensed for the coasting trade, and employed in the business of commerce and navigation between places in different states upon the lakes and navigable waters connecting said lakes, the trial of all issues of fact shall be by jury if either party demands it.

(June 25, 1948, ch. 646, 62 Stat. 953.)

Historical and Revision Notes


Words “and Territories” following words “in different States” were omitted as obsolete. The act of February 26, 1845, ch. 22, §1, 5 Stat. 725, from which this language was derived was intended primarily to cover the Great Lakes regions.
The first sentence of section 770 of title 28, U.S.C., 1940 ed., providing generally for the right of jury trials in district courts, was omitted as covered by Rule 38 of the Federal Rules of Civil Procedure.

Changes were made in phraseology.

§ 1874. Actions on bonds and specialties

In all actions to recover the forfeiture annexed to any articles of agreement, covenant, bond, or other specialty, wherein the forfeiture, breach, or nonperformance appears by default or confession of the defendant, the court shall render judgment for the plaintiff for such amount as is due. If the sum is uncertain, it shall, upon request of either party, be assessed by a jury.

(June 25, 1948, ch. 466, 62 Stat. 953.)

HISTORICAL AND REVISION NOTES


Word "actions" was substituted for "all suits brought," in view of Rule 2 of the Federal Rules of Civil Procedure. For the same reason, words "according to equity," after "to recover so much as is due," were omitted.

Words "or upon demurrer," after "default or confession of the defendant," were omitted in view of Federal Rules of Civil Procedure, Rule 7(c), abolishing demurrers.

Changes were made in phraseology.

§ 1875. Protection of jurors' employment

(a) No employer shall discharge, threaten to discharge, intimidate, or coerce any permanent employee by reason of such employee's jury service, or the attendance or scheduled attendance in connection with such service, in any court of the United States.

(b) Any employer who violates the provisions of this section—

(1) shall be liable for damages for any loss of wages or other benefits suffered by an employee by reason of such violation;

(2) may be enjoined from further violations of this section and ordered to provide other appropriate relief, including but not limited to the reinstatement of any employee discharged by reason of his jury service; and

(3) shall be subject to a civil penalty of not more than $5,000 for each violation as to each employee, and may be ordered to perform community service.

Changes were made in phraseology.

| § 1876. Trial by jury in the Court of International Trade |

(a) In any civil action in the Court of International Trade which is to be tried before a jury, the jury shall be selected in accordance with the provisions of this chapter and under the procedures set forth in the jury selection plan of the district court for the judicial district in which the case is to be tried.

(b) Whenever the Court of International Trade conducts a jury trial—

(1) the clerk of the district court for the judicial district in which the Court of International Trade is sitting, or an authorized deputy clerk, shall act as clerk of the Court of International Trade for the purposes of selecting and summoning the jury;

(2) the qualifications for jurors shall be the same as those established by section 1865(b) of this title for jurors in the district courts of the United States;

(3) each party shall be entitled to challenge jurors in accordance with section 1870 of this title; and

(4) jurors shall be compensated in accordance with section 1871 of this title.
§ 1877. Protection of jurors
(a) Subject to the provisions of this section and title 5 of the United States Code, subchapter 1 of chapter 81, title 5, United States Code, applies to a Federal grand or petit juror, except that entitlement to disability compensation payments does not commence until the day after the date of termination of service as a juror.
(b) In administering this section with respect to a juror covered by this section—
(1) a juror is deemed to receive monthly pay at the minimum rate for grade GS-2 of the General Schedule unless his actual pay as a Government employee while serving on court leave is higher, in which case monthly pay is determined in accordance with section 8114 of title 5, United States Code, and
(2) performance of duty as a juror includes that time when a juror is (A) in attendance at a court pursuant to a summons, (B) in deliberation, (C) sequestered by order of a judge, or (D) at a site, by order of the court, for the taking of a view.

§ 1878. Optional use of a one-step summoning and qualification procedure
(a) At the option of each district court, jurors may be summoned and qualified in a single procedure, if the court’s jury selection plan so authorizes, in lieu of the two separate procedures otherwise provided for by this chapter. Courts shall ensure that a one-step summoning and qualification procedure conducted under this section does not violate the policies and objectives set forth in sections 1861 and 1862 of this title.
(b) Jury selection conducted under this section shall be subject to challenge under section 1867 of this title for substantial failure to comply with the provisions of this title in selecting the jury. However, no challenge under section 1867 of this title shall lie solely on the basis that a jury was selected in accordance with an experiment conducted pursuant to this section.

Effective Date of 1992 Amendment

Savings Provision
Section 403(c) of Pub. L. 102–572 provided that: “For courts participating in the experiment authorized under section 1878 of title 28, United States Code (as in effect before the effective date of this section [Jan. 1, 1993]), the amendment made by subsection (a) of this section [amending this section] shall be effective on and after January 1, 1992.”

CHAPTER 123—FEES AND COSTS


1992—Pub. L. 102–572 substituted “‘Optional’ for ‘‘Experimental’’ in section catchline and amended text generally. Prior to amendment, text read as follows: “(a) The Judicial Conference of the United States is hereby authorized to develop and conduct an experiment in which jurors serving in a limited number of United States district courts shall be qualified and summoned in a single procedure, in lieu of the two separate procedures otherwise provided for by this chapter. The Judicial Conference shall designate the district courts to participate in this experiment, but in no event shall the number of courts participating exceed fifteen. An experiment may be conducted pursuant to this section for a period not to exceed 2 years. The Judicial Conference shall ensure that an experiment conducted pursuant to this section does not violate the policies and objectives set forth in sections 1861 and 1862 of this title, and shall terminate the experiment immediately if it determines that these policies and objectives are being violated or whenever in its judgment good cause for such termination exists. “(b) Jury selection conducted pursuant to this section shall be subject to challenge under section 1867 of this title for substantial failure to comply with the provisions of this title in selecting the jury. However, no challenge under section 1867 of this title shall lie solely on the basis that a jury was selected in accordance with an experiment conducted pursuant to this section.”

Effective Date of 1992 Amendment

Savings Provision
Section 403(c) of Pub. L. 102–572 provided that: “For courts participating in the experiment authorized under section 1878 of title 28, United States Code (as in effect before the effective date of this section [Jan. 1, 1993]), the amendment made by subsection (a) of this section [amending this section] shall be effective on and after January 1, 1992.”

CHAP. 123—FEES AND COSTS

1911. Supreme Court.
1912. Damages and costs on affirmance.
1913. Courts of appeals.
1914. District court; filing and miscellaneous fees; rules of court.
1915A. Seamen’s suits.
1916. Taxation of costs.
1917. District court; fee on filing notice of or petition for appeal.
1918. District courts; fines, forfeitures and criminal proceedings.
1919. Dismissal for lack of jurisdiction.
1920. Taxation of costs.
1921. United States marshal’s fees.
1922. Witness fees before United States magistrate judges.
1923. Docket fees and costs of briefs.
1924. Verification of bill of costs.
1925. Admiralty and maritime cases.
1926. Court of Federal Claims.
1927. Counsel’s liability for excessive costs.
1928. Patent infringement action; disclaimer not authorized.
1929. Extraordinary expenses not expressly authorized.
1930. Bankruptcy fees.
1931. Disposition of filing fees.
1932. 1 Judicial Panel on Multidistrict Litigation.
1932. 1 Revocation of earned release credit.

AMENDMENTS

1992—Pub. L. 102–572 substituted “‘Optional’ for ‘‘Experimental’’ in section catchline and amended text generally. Prior to amendment, text read as follows: “(a) The Judicial Conference of the United States is hereby authorized to develop and conduct an experiment in which jurors serving in a limited number of United States district courts shall be qualified and summoned in a single procedure, in lieu of the two separate procedures otherwise provided for by this chapter. The Judicial Conference shall designate the district courts to participate in this experiment, but in no event shall the number of courts participating exceed fifteen. An experiment may be conducted pursuant to this section for a period not to exceed 2 years. The Judicial Conference shall ensure that an experiment conducted pursuant to this section does not violate the policies and objectives set forth in sections 1861 and 1862 of this title, and shall terminate the experiment immediately if it determines that these policies and objectives are being violated or whenever in its judgment good cause for such termination exists. “(b) Jury selection conducted pursuant to this section shall be subject to challenge under section 1867 of this title for substantial failure to comply with the provisions of this title in selecting the jury. However, no challenge under section 1867 of this title shall lie solely on the basis that a jury was selected in accordance with an experiment conducted pursuant to this section.”
of the sources of this section as finally enacted. However, no change in the text of this section was necessary. See 80th Congress Senate Report No. 1559.

§ 1913. Courts of appeals

The fees and costs to be charged and collected in each court of appeals shall be prescribed from time to time by the Judicial Conference of the United States. Such fees and costs shall be reasonable and uniform in all the circuits.

(June 25, 1948, ch. 646, 62 Stat. 954.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C. 1940 ed., §543 (Mar. 3, 1911, ch. 517, §2, 26 Stat. 626; Feb. 19, 1897, ch. 263, 29 Stat. 536; Sept. 27, 1944, ch. 413, 58 Stat. 743). Words “and in the United States Circuit Court of Appeals for the District of Columbia” were omitted as covered by “each court of appeals.” Judicial Conference of Senior Circuit Judges was changed to Judicial Conference of “the United States” in conformity with section 331 of this title. Changes were made in phraseology.

APPEALS FILED IN COURTS OF APPEALS

Pub. L. 109–171, title X, §10001(b), Feb. 8, 2006, 120 Stat. 183, provided that: “The $250 fee for docketing a case on appeal or review, or docketing any other proceeding, in a court of appeals, as prescribed by the Judicial Conference, effective as of January 1, 2003, under section 1913 of title 28, United States Code, shall be increased to $450.”

COURT FEES FOR ELECTRONIC ACCESS TO INFORMATION


“(a) The Judicial Conference may, only to the extent necessary, prescribe reasonable fees, pursuant to sections 1913, 1914, 1926, 1930, and 1932 of title 28, United States Code, for collection by the courts under those sections for access to information available through automatic data processing equipment. These fees may distinguish between classes of persons, and shall provide for exempting persons or classes of persons from the fees, in order to avoid unreasonable burdens and to promote public access to such information. The Director of the Administrative Office of the United States Courts, under the direction of the Judicial Conference of the United States, shall prescribe a schedule of reasonable fees for electronic access to information which the Director is required to maintain and make available to the public.

“(b) The Judicial Conference and the Director shall transmit each schedule of fees prescribed under paragraph (a) to the Congress at least 30 days before the schedule becomes effective. All fees hereafter collected by the Judiciary under paragraph (a) as a charge for services rendered shall be deposited as offsets against collections to the Judiciary Automation Fund pursuant to 28 U.S.C. 612(c)(1)(A) to reimburse expenses incurred in providing these services.”

Similar provisions were contained in the following prior appropriation act:


§ 1914. District court; filing and miscellaneous fees; rules of court

(a) The clerk of each district court shall require the parties instituting any civil action, suit or proceeding in such court, whether by original process, removal or otherwise, to pay a filing fee of $350, except that on application for a writ of habeas corpus the filing fee shall be $5.
made by this section shall take effect 60 days after the date of the enactment of this Act [Feb. 8, 2006]."

**Effective Date of 2004 Amendment**

Pub. L. 108–447, div. B, title III, § 307(c), Dec. 8, 2004, 118 Stat. 2895, provided that: "This section [amending this section and section 1931 of this title] shall take effect 60 days after the date of the enactment of this Act [Dec. 8, 2004]."

**Effective Date of 1996 Amendment**

Section 401(c) of Pub. L. 104–317 provided that: "This section [amending this section and section 1931 of this title] shall take effect 60 days after the date of the enactment of this Act [Oct. 19, 1996]."

**Effective Date of 1986 Amendment**

Section 4(c) of Pub. L. 95–336 provided that: "The amendments made by this section [amending this section] shall apply with respect to any civil action, suit, or proceeding instituted on or after the date of the enactment of this Act [June 19, 1986]."

**Effective Date of 1978 Amendment**

Amendment by Pub. L. 95–598 effective Oct. 1, 1979, see section 402(c) of Pub. L. 95–598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

**Court Fees for Electronic Access to Information**

Judicial Conference to prescribe reasonable fees for collection by courts under this section for access to information available through automatic data processing equipment and fees to be deposited in Judiciary Automation Fund, see section 303 of Pub. L. 102–140, set out as a note under section 1913 of this title.

§ 1915. Proceedings in forma pauperis

(a)(1) Subject to subsection (b), any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees or security therefor, by a person who submits an affidavit that includes a statement of all assets such prisoner possesses that the person is unable to pay such fees or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that the person is entitled to redesse.

(2) A prisoner seeking to bring a civil action or appeal a judgment in a civil action or proceeding without prepayment of fees or security therefor, in addition to filing the affidavit filed under paragraph (1), shall submit a certified copy of the trust fund account statement (or institutional equivalent) for the prisoner for the 6-month period immediately preceding the filing of the complaint or notice of appeal, obtained from the appropriate official of each prison at which the prisoner is or was confined.

(3) An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.

(b)(1) Notwithstanding subsection (a), if a prisoner brings a civil action or files an appeal in forma pauperis, the prisoner shall be required to pay the full amount of a filing fee. The court shall assess and, when funds exist, collect, as a partial payment of any court fees required by law, an initial partial filing fee of 20 percent of the greater of—

(A) the average monthly deposits to the prisoner’s account; or
(B) the average monthly balance in the prisoner’s account for the 6-month period immediately preceding the filing of the complaint or notice of appeal.

(2) After payment of the initial partial filing fee, the prisoner shall be required to make monthly payments of 20 percent of the preceding month’s income credited to the prisoner’s account. The agency having custody of the prisoner shall forward payments from the prisoner’s account to the clerk of the court each time the amount in the account exceeds $10 until the filing fees are paid.

(3) In no event shall the filing fee collected exceed the amount of fees permitted by statute for the commencement of a civil action or an appeal of a civil action or criminal judgment.

(4) In no event shall a prisoner be prohibited from bringing a civil action or appealing a civil or criminal judgment for the reason that the prisoner has no assets and no means by which to pay the initial partial filing fee.

(c) Upon the filing of an affidavit in accordance with subsections (a) and (b) and the prepayment of any partial filing fee as may be required under subsection (b), the court may direct payment by the United States of the expenses of (1) printing the record on appeal in any civil or criminal case, if such printing is required by the appellate court; (2) preparing a transcript of proceedings before a United States magistrate judge in any civil or criminal case, if such transcript is required by the district court, in the case of proceedings conducted under section 636(b) of this title or under section 3401(b) of title 18, United States Code; and (3) printing the record on appeal if such printing is required by the appellate court, in the case of proceedings conducted pursuant to section 636(b) of title 28, United States Code, in the case of proceedings conducted before a United States magistrate judge in any civil or criminal case, if such transcript is required by the district court, in the case of proceedings conducted under section 636(b) of this title or under section 3401(b) of title 18, United States Code.

Such expenses shall be paid when authorized by the Director of the Administrative Office of the United States Courts.

(d) The officers of the court shall issue and account to the clerk of the court each time the prisoner shall forward payments from the prisoner’s account for the 6-month period immediately preceding the filing of the complaint or notice of appeal.

(e) (1) The court may require the prisoner to report any person who may have been paid, the court shall dismiss the case at any time if the court determines that—

(A) the allegations of poverty are untrue; or

(B) the action or appeal—

(i) is frivolous or malicious;

(ii) fails to state a claim on which relief may be granted; or

(iii) seeks monetary relief against a defendant who is immune from such relief.

(f) (1) Judgment may be rendered for costs at the conclusion of the suit or action as in other proceedings, but the United States shall not be liable for any of the costs thus incurred. If the United States has paid the costs of a stenographic transcript or printed record for the prevailing party, the same shall be taxed in favor of the United States.

(2) (A) If the judgment against a prisoner includes the payment of costs under this subsection, the prisoner shall be required to pay the full amount of the costs ordered.

(B) The prisoner shall be required to make payments for costs under this subsection in the same manner as is provided for filing fees under subsection (a)(2).

(C) In no event shall the costs collected exceed the amount of the costs ordered by the court.

(g) In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

(h) As used in this section, the term “prisoner” means any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program.
§ 1915A. Screening

(a) Screening.—The court shall review, before docketing, if feasible or, in any event, as soon as practicable after docketing, a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity.

(b) Grounds for Dismissal.—On review, the court shall identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint—

(1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or

(2) seeks monetary relief from a defendant who is immune from such relief.

(c) Definition.—As used in this section, the term “prisoner” means any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program.


§ 1916. Seamen’s suits

In all courts of the United States, seamen may institute and prosecute suits and appeals in their own names and for their own benefit for wages or salvage or the enforcement of laws enacted for their health or safety without paying fees or costs or furnishing security therefor.

(June 25, 1948, ch. 464, 62 Stat. 955.)

Historical and Revision Notes


Changes in phraseology were made.

§ 1917. District courts; fee on filing notice of or petition for appeal

Upon the filing of any separate or joint notice of appeal or application for appeal or upon the receipt of any order allowing, or notice of the allowance of, an appeal or of a writ of certiorari $5 shall be paid to the clerk of the district court, by the appellant or petitioner.

(June 25, 1948, ch. 464, 62 Stat. 955.)

Historical and Revision Notes


Words “to the clerk of the district court” were added to clarify the intent of Congress, as shown by the title of the 1944 act containing this section, and by the text of such Act in its entirety.
Words “as an additional fee in said suit or action, or proceeding in bankruptcy” were omitted. The entire text of the basic 1944 act shows that Congress intended it to apply to all actions, suits and proceedings, including bankruptcy proceedings, and nowhere else in such act is any reference made to bankruptcy proceedings.

Changes were made in phraseology.

§ 1918. District courts; fines, forfeitures and criminal proceedings

(a) Costs shall be included in any judgment, order, or decree rendered against any person for the violation of an Act of Congress in which a civil fine or forfeiture of property is provided for.

(b) Whenever any conviction for any offense not capital is obtained in a district court, the court may order that the defendant pay the costs of prosecution.

(June 25, 1948, ch. 646, 62 Stat. 955.)

HISTORICAL AND REVISION NOTES
Based on title 28, U.S.C., 1940 ed., §822 (R.S. §974). Changes were made in phraseology.

§ 1919. Dismissal for lack of jurisdiction

Whenever any action or suit is dismissed in any district court, the Court of International Trade, or the Court of Federal Claims for want of jurisdiction, such court may order the payment of just costs.


HISTORICAL AND REVISION NOTES
Based on title 28, U.S.C., 1940 ed., §80 (Mar. 3, 1911, ch. 231, §5a, 36 Stat. 5). Words “dismissed for want of jurisdiction” were substituted for “it shall appear to the satisfaction of the said district court, at any time after such suit has been brought or removed thereto, that such suit does not really and substantially involve a dispute or controversy properly within the jurisdiction of said district court”. The substituted language is sufficient. (See reviser’s note under section 1359 of this title.) The provisions of section 80 of title 28, U.S.C., 1940 ed., relating to dismissal for improper or collusive joinder in removal proceedings, are incorporated in section 1359 of this title. Other provisions of section 80 of title 28, U.S.C., 1940 ed., appear in section 1447 of this title. Changes were made in phraseology.

AMENDMENTS


EFFECTIVE DATE OF 1992 AMENDMENT

EFFECTIVE DATE OF 1967 AMENDMENT
Amendment by Pub. L. 90–356 applicable with respect to civil actions commenced on or after Nov. 1, 1967, see section 701(b)(1)(E) of Pub. L. 90–417, set out as a note under section 231 of this title.

§ 1920. Taxation of costs

A judge or clerk of any court of the United States may tax as costs the following:

(1) Fees of the clerk and marshal;
(2) Fees for printed or electronically recorded transcripts necessarily obtained for use in the case;
(3) Fees and disbursements for printing and witnesses;
(4) Fees for exemplification and the costs of making copies of any materials where the copies are necessarily obtained for use in the case;
(5) Docket fees under section 1923 of this title;
(6) Compensation of court appointed experts, compensation of interpreters, and salaries, fees, expenses, and costs of special interpretation services under section 1828 of this title.

A bill of costs shall be filed in the case and, upon allowance, included in the judgment or decree.


HISTORICAL AND REVISION NOTES

Word “may” was substituted for “shall” before “as costs,” in view of Rule 54(d) of the Federal Rules of Civil Procedure, providing for allowance of costs to the prevailing party as of course “unless the court otherwise directs.”

Changes were made in phraseology.

AMENDMENTS
2008—Par. (2). Pub. L. 110–406, §6(1), substituted “for printed or electronically recorded transcripts” for “of the court reporter for all or any part of the stenographic transcript”.

Par. (4). Pub. L. 110–406, §6(2), substituted “the costs of making copies of any materials where the copies are” for “copies of papers”.


EFFECTIVE DATE OF 1978 AMENDMENT

§ 1921. United States marshal’s fees

(a)(1) The United States marshals or deputy marshals shall routinely collect, and a court may tax as costs, fees for the following:

(A) Serving a writ of possession, partition, execution, attachment in rem, or libel in admiralty, warrant, attachment, summons, complaints, or any other writ, order or process in any case or proceeding;

(B) Serving a subpoena or summons for a witness or appraiser.

(C) Forwording any writ, order, or process to another judicial district for service.

(D) The preparation of any notice of sale, proclamation in admiralty, or other public notice or bill of sale.

(E) The keeping of attached property (including boats, vessels, or other property attached or libeled), actual expenses incurred, such as storage, moving, boat hire, or other
special transportation, watchmen's or keepers' fees, insurance, and an hourly rate, including overtime, for each deputy marshal required for special services, such as guarding, inventorying, and moving.

(F) Copies of writs or other papers furnished at the request of any party.

(G) Necessary travel in serving or endeavoring to serve any process, writ, or order, except in the District of Columbia, with mileage to be computed from the place where service is returnable to the place of service or endeavor.

(H) Overtime expenses incurred by deputy marshals in the course of serving or executing civil process.

(2) The marshals shall collect, in advance, a deposit to cover the initial expenses for special services required under paragraph (1)(E), and periodically thereafter such amounts as may be necessary to pay such expenses until the litigation is concluded. This paragraph applies to all private litigants, including seamen proceeding in rem and in execution, and in all civil actions and suits, and in civil cases of admiralty and maritime jurisdiction.

(3) For purposes of paragraph (1)(G), if two or more services or endeavors, or if an endeavor and a service, are made in behalf of the same party in the same case on the same trip, mileage shall be computed to the place of service or endeavor which is most remote from the place where service is returnable, adding thereto any additional mileage traveled in serving or endeavoring to serve in behalf of the party. If two or more writs of any kind, required to be served at the same time, mileage on only one such writ shall be collected.

(b) The Attorney General shall from time to time prescribe by regulation the fees to be taxed and collected under subsection (a). Such fees shall, to the extent practicable, reflect the actual and reasonable cost of the service provided.

(c)(1) The United States Marshals Service shall collect a commission of 3 percent of the first $1,000 collected and 1½ percent on the excess of any sum over $1,000, for seizing or levying on property (including seizures in admiralty), disposing of such property by sale, setoff, or otherwise, and receiving and paying over money, except that the amount of commission shall be within the range set by the Attorney General.

If the property is not disposed of by marshal's sale, the commission shall be in such amount, within the range set by the Attorney General, as may be allowed by the court. In any case in which the vessel or other property is sold by a public auctioneer, or by some party other than a marshal or deputy marshal, the commission authorized under this subsection shall be reduced by the amount paid to such auctioneer or other party. This subsection applies to any judicially ordered sale or execution sale, without regard to whether the judicial order of sale constitutes a seizure or levy within the meaning of State law. This subsection shall not apply to any seizure, forfeiture, sale, or other disposition of property pursuant to the applicable provisions of law amended by the Comprehensive Forfeiture Act of 1984 (98 Stat. 2040).

(2) The Attorney General shall prescribe from time to time regulations which establish a minimum and maximum amount for the commission collected under paragraph (1).

(d) The United States marshals may require a deposit to cover the fees and expenses prescribed under this section.

(e) Notwithstanding section 3302 of title 31, the United States Marshals Service is authorized, to the extent provided in advance in appropriations Acts—

(1) to credit to such Service's appropriation all fees, commissions, and expenses collected by such Service for—

(A) the service of civil process, including complaints, summonses, subpoenas, and similar process; and

(B) seizures, levies, and sales associated with judicial orders of execution; and

(2) to use such credited amounts for the purpose of carrying out such activities.


Historical and Revision Notes


Provisions for serving venires and summoning grand and petit jurors were omitted as useless since marshal's fees are now covered into the Treasury and there is no basis for apportioning the cost of summoning jurors for a term of court and taxing the same to individual cases.

The marshal's fee “for holding a court of inquiry or other proceedings before a jury, including summoning a jury,” $52 is omitted as obsolete in the Federal practice. See, Black's Law Dictionary “Court of Inquiry.” See, also, Webster's International Dictionary.

A fee of 50 cents “for each bail bond” is omitted as covered by the general provision for taxation of marshal's fees in criminal cases.

The provisions for a fee of $5 for drawing and executing a deed and $1 for executing a deed prepared by a party or his attorney are omitted as unnecessary. It is the marshal's duty to execute conveyances of property which he sells on execution and his salary compensates him therefor. There is no occasion for him to draw such a deed and no beneficial purpose in taxing the parties a fee for his signature.

The 2 per centum fee for disbursing moneys is omitted as an unnecessary burden upon funds belonging to litigants.

The provision that a folio consists of “100 words or major fraction thereof” is inserted to conform with section 607 of title 28, U.S.C., 1940 ed., which is transferred to title 44, U.S.C., 1949 ed., Public Printing and Documents, along with section 606 of said title 28, to which said section 607 also relates.

The provision for a lump sum to be determined by the court and taxed in criminal cases was added. It fixes a maximum of $25 in misdemeanor cases and $100 in felony cases. It may be questioned whether costs as such should ever be taxed against the convicted defendant in a criminal case. The acquitted defendant is not permitted to tax costs against the United States. Indeed the allowance of costs in criminal cases is not a matter of right but rests completely within the discretion of

1 So in original. Probably should be capitalized.

In *Allcy v. U.S.*, 4 C.C.A.9, 1897, 91 F.2d 461, the defendant was fined $100 on each of 11 accounts of an indictment under the 1906 Food and Drug Act (title 21, §§2, 10, U.S.C., 1934 ed., as amended). Costs of prosecution were taxed in the sum of $1,499.80. Yet the court in its discretion might have reached substantially the same result by imposing a fine of $200 on each count without any taxation of costs.

Changes were made in phraseology.

**REFERENCES IN TEXT**

The Comprehensive Forfeiture Act of 1984, referred to in subsec. (c)(1), substituted former subsec. (a) and (b), and redesignated former subsec. (c) as (e).

1986—Pub. L. 99–666 designated existing provisions as subsec. (a)(1) to (9) and subsec. (b) to (9) and subsec. (1) and (2), substituted a period for the semicolon at end of subsec. (a), and struck out former subsec. (c).

1962—Pub. L. 87–621 increased fees for serving an attachment in rem, or libel in admiralty, warrant, attachment, summons, capias, or any other writ from $2 to $3, and for serving a subpoena or summons for a witness or appraiser from 50 cents to $2, for preparation of a proclamation in admiralty from 30 cents to $3, and for copies of writs or other papers furnished at the request of any party from 10 to 30 cents per folio of 100 words or fraction thereof, and mileage for necessary travel from 10 cents a mile to 12 cents per mile, or fraction thereof, inserted provisions authorizing a fee of $1, in addition to the prescribed fee, for forwarding any writ, order, or process to another judicial district for service, and $3 for preparation of any notice of sale or other public notice or bill of sale, permitting payment of travel expenses where there is an endeavor to serve any process, writ, or order, prohibiting collection of mileage fees for services or endeavors to serve in the District of Columbia, and empowering marshals to require a deposit to cover all fees and expenses, and substituted provisions authorizing a fee of $3 for serving a writ of possession, partition, execution, order or process, and commissions of 3 per cent on the first $1,000 collected and 1½ per cent on amounts over $1,000 for seizing and levying on property (including seizures in admiralty), disposing of the same and receiving and paying over the money for provisions which permitted a marshal serving such a writ or process, and seizing and levying on property, advertising and disposing of the same and receiving and paying over the money, to receive the same fees and poudrage as allowed for similar services to the sheriffs of the States in which the service is rendered, and 2½ per cent on any sum under $500, and 1½ per cent on amounts over $500 for sale of vessels or other property under process in admiralty, or under the order of a court of admiralty, and provisions permitting collection of actual expenses incurred, and $3 per hour for each deputy marshal required, for the keeping of property attached, and directing the marshal to collect, in advance, a deposit to cover initial expenses and periodically thereafter such amounts as necessary to pay expenses until litigation is concluded, for provisions which allowed only such compensation as the court, on petition, might allow.

1950—Act Sept. 9, 1950, increased mileage fees from 6 to 10 cents a mile.

**AMENDMENTS**

1990—Subsec. (c)(1). Pub. L. 101–647 substituted “if the property is not disposed of by marshal’s sale” for “if the property is to be disposed of by marshal’s sale”, 1988—Pub. L. 100–690 added subsec. (a), (b), (c), and (e), added subsec. (f), redesignated former subsec. (c) as (e), and struck out former subsec. (c).

1962—Pub. L. 87–621 provided that: “This Act [amending this section] shall take effect 30 days after the date of enactment of this Act [Nov. 10, 1966].”

**EFFECTIVE DATE OF 1962 AMENDMENT**

Section 3 of Pub. L. 87–621 provided that: “This Act [amending this section] shall become effective ninety days after enactment [Aug. 31, 1962].”

**COLLECTION AND DISPOSITION OF FEES AND EXPENSES FOR SERVICES**

Pub. L. 101–162, title II, Nov. 21, 1989, 103 Stat. 997, provided in part: “That notwithstanding the provisions of section 1961 of Title 18, Crimes and Criminal Procedure, and Tables, the Director of the United States Marshals Service may collect fees and expenses for the services authorized by 28 U.S.C. 2921 as amended by Public Law 100–690, and credit such fees to such appropriation to be used for salaries and other expenses incurred in providing these services.”

§ 1922. Witness fees before United States magistrate judges

The fees of more than four witnesses shall not be taxed against the United States, in the examination of any criminal case before a United States magistrate judge, unless their materiality and importance are first approved and certified to by the United States attorney for the district in which the examination is had.


**HISTORICAL AND REVISION NOTES**


Last clause of section 829 of title 28, U.S.C., 1940 ed., providing “and such taxation shall be subject to revision, as in other cases”, was omitted as unnecessary in view of the inherent power of the court to revise costs taxed.

Changes were made in phraseology.

**CHANGE OF NAME**


§ 1923. Docket fees and costs of briefs

(a) Attorney’s and proctor’s docket fees in courts of the United States may be taxed as costs as follows:

$20 on trial or final hearing (including a default judgment whether entered by the court or by the clerk) in civil, criminal, or admiralty cases, except that in cases of admiralty and maritime jurisdiction where the libellant recovers less than $50 the proctor’s docket fee shall be $10;

$20 in admiralty appeals involving not over $1,000;

$50 in admiralty appeals involving not over $5,000;

$100 in admiralty appeals involving more than $5,000;

$5 on discontinuance of a civil action;
$5 on motion for judgment and other proceedings on recognizances;
$2.50 for each deposition admitted in evidence.
(b) The docket fees of United States attorneys and United States trustees shall be paid to the clerk of court and by him paid into the Treasury.
(c) In admiralty appeals the court may allow as costs for printing the briefs of the successful party not more than:
$25 where the amount involved is not over $1,000;
$50 where the amount involved is not over $5,000;
$75 where the amount involved is over $5,000.


HISTORICAL AND REVISION NOTES
Section consolidates sections 571, 572, and 578 of title 28, U.S.C., 1940 ed.
The phrase “$20 on trial or final hearing in civil, criminal, or admiralty cases” was substituted for the following provisions of section 572 of title 28, U.S.C., 1940 ed., “On trial before a jury, in civil or criminal causes or before referees, or on a final hearing in equity or admiralty, a docket fee of $20”, and the limitation of $10 in “cases at law when judgment is rendered without a jury” was omitted. This simplified restatement provides for a single docket fee in each case which reaches final hearing or trial. Since the docket fee is arbitrary, any limitation or distinction between law cases tried with or without a jury is unrealistic.

Word “solicitor” was omitted as obsolete and inapplicable in civil, criminal, or admiralty practice.
Words “motion for judgment” were substituted for “scire facias” to conform to Rules 2 and 81 of the Federal Rules of Civil Procedure.
Changes were made in phraseology.

CODIFICATION

AMENDMENTS
1964—Subsec. (a). Act June 18, 1964, inserted in first item “including a default judgment whether entered by the court or by the clerk” after “final hearing”.

EFFECTIVE DATE OF 1978 AMENDMENT
Amendment by Pub. L. 95–598 effective Oct. 1, 1979, see section 402(c) of Pub. L. 95–598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

§ 1924. Verification of bill of costs

Before any bill of costs is taxed, the party claiming any item of cost or disbursement shall attach thereto an affidavit, made by himself or by his duly authorized attorney or agent having knowledge of the facts, that such item is correct and has been necessarily incurred in the case and that the services for which fees have been charged were actually and necessarily performed.

(June 25, 1948, ch. 646, 62 Stat. 957.)

HISTORICAL AND REVISION NOTES
Section as revised conforms to existing Federal Practice. See note to subdivision (d) of Rule 54 of the Federal Rules of Civil Procedure. For discussion as to verification of bill of costs under existing practice, see—Hughes, Federal Practice, Jurisdiction and Procedure—Civil and Criminal, §641.
Words “or allowed by the General Accounting Office” were omitted as unnecessary. That office will not allow items in a tax bill for costs against the United States unless such bill has been taxed by the court, and the court, under this section, cannot tax as costs items in an unverified bill.
Changes were made in phraseology.

§ 1925. Admiralty and maritime cases

Except as otherwise provided by Act of Congress, the allowance and taxation of costs in admiralty and maritime cases shall be prescribed by rules promulgated by the Supreme Court.

(June 25, 1948, ch. 646, 62 Stat. 957.)

HISTORICAL AND REVISION NOTES
This section was drafted to make possible the promulgation of comprehensive and uniform rules governing costs in admiralty. Various enactments of Congress, all over 100 years old, relate to particular features of such matter, but do not set forth any comprehensive and uniform procedure. See, for example, sections 818, 825, and 827 of title 28, U.S.C., 1940 ed.

§ 1926. Court of Federal Claims

(a) The Judicial Conference of the United States shall prescribe from time to time the fees and costs to be charged and collected in the United States Court of Federal Claims.
(b) The court and its officers shall collect only such fees and costs as the Judicial Conference prescribes. The court may require advance payment of fees by rule.


HISTORICAL AND REVISION NOTES
Changes were made in phraseology.

AMENDMENTS
1982—Pub. L. 97–164 substituted “Claims Court” for “Court of Customs and Patent Appeals” as section catchline and, in text, substituted provisions directing the Judicial Conference of the United States to prescribe from time to time the fees and costs to be
charged and collected in the United States Claims Court and directing the court and its officers to collect only such fees and costs as the Judicial Conference pre-
scribes, with the court authorized to require advance payment of fees by rule for provisions which had di-
rected that fees and costs in the Court of Customs and Patent Appeals be fixed by a table of fees adopted by such court and approved by the Supreme Court, that the fees and costs so fixed not exceed the fees and costs charged in the Supreme Court, and that the fees be ac-
counted for and paid over to the Treasury.

**Effective Date of 1992 Amendment**

**Effective Date of 1982 Amendment**

**Court Fees for Electronic Access to Information**
Judicial Conference to prescribe reasonable fees for collection by courts under this section for access to in-
formation available through automatic data processing equipment and fees to be deposited in Judiciary Auto-
mation Fund, see section 305 of Pub. L. 102–140, set out as a note under section 1913 of this title.

§ 1927. Counsel's liability for excessive costs
Any attorney or other person admitted to con-
duct cases in any court of the United States or any Territory thereof who so multiplies the pro-
cedings in any case unreasonably and vexa-
tiously may be required by the court to satisfy personally the excess costs, expenses, and attor-
neys' fees reasonably incurred because of such conduct.


**Historical and Revision Notes**
Word "personally" was inserted upon authority of Motion Picture Patents Co. v. Steiner et al., 1912, 201 F. 63, 119 C.C.A. 401. Reference to "proctor" was omitted as covered by the revised section.
See definition of "court of the United States" in section 451 of this title.
Changes were made in phraseology.

**Amendments**
1960—Pub. L. 96–349 substituted judicial authorization to require attorneys to satisfy excess costs, expenses, and attorneys' fees reasonably incurred because of mul-
tiplication of proceedings for such prior authority to impose liability for increased costs based on mul-
tiplication of proceedings.

§ 1928. Patent infringement action; disclaimer not filed
Whenever a judgment is rendered for the
plaintiff in any patent infringement action in-
volving a part of a patent and it appears that the patentee, in his specifications, claimed to
be, but was not, the original and first inventor or discoverer of any material or substantial part of the thing patented, no costs shall be included in such judgment, unless the proper disclaimer has been filed in the United States Patent and Trademark Office prior to the commencement of the action.


**Historical and Revision Notes**
Word "action" was substituted for "any suit at law or in equity" to conform with Rule 2 of the Federal Rules of Civil Procedure.
Words "or decree" were omitted after "judgment," because a judgment under Rule 54(a) of the Federal Rules of Civil Procedure by definition includes a de-
cree.
Changes were made in phraseology.

**Amendments**

**Effective Date of 1999 Amendment**
Amendment by Pub. L. 106–113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, §4731] of Pub. L. 106–113, set out as a note under section 1 of Title 35, Patents.

§ 1929. Extraordinary expenses not expressly au-
thorized
Where the ministerial officers of the United
States incur extraordinary expense in executing Acts of Congress, the payment of which is not specifically provided for, the Attorney General may allow the payment thereof.

(June 25, 1948, ch. 646, 62 Stat. 957.)

**Historical and Revision Notes**

Provision for payment of expenses under section 577 of title 28, U.S.C., 1940 ed., from appropriations for ex-
"<s>penses of the judiciary was omitted as unnecessary. Such expenses are carried in the Judiciary Appropria-
tion Acts and will continue without this provision.
The first sentence of said section 577 is incorporated in section 534 of this title.
The qualifying phrase "under the special taxation of the district court in which the said services have been or shall be rendered, to be paid from the appropriation for defraying the expenses of the Judiciary," was omit-
ted, and the functions of allowing extraordinary ex-
"<s>penses was vested in the Attorney General instead of the President. Neither the President nor the district judge should be burdened with such duty since the At-
torney General only has the information upon which to act.
Changes were made in phraseology.

§ 1930. Bankruptcy fees
(a) The parties commencing a case under title 11 shall pay to the clerk of the district court or the clerk of the bankruptcy court, if one has been certified pursuant to section 156(b) of this title, the following filing fees:
(1) For a case commenced under—
(A) chapter 7 of title 11, $245, and
(B) chapter 13 of title 11, $325.
(2) For a case commenced under chapter 9 of title 11, equal to the fee specified in paragraph
(3) for filing a case under chapter 11 of title 11. The amount by which the fee payable under this paragraph exceeds $300 shall be deposited in the fund established under section 1931 of this title.
(3) For a case commenced under chapter 11 of title 11 that does not concern a railroad, as defined in section 101 of title 11, $1,000.

**Historical and Revision Notes**
(4) For a case commenced under chapter 11 of title 11 concerning a railroad, as so defined, $1,000.

(5) For a case commenced under chapter 12 of title 11, $200.

(6) In addition to the filing fee paid to the clerk, a quarterly fee shall be paid to the United States trustee, for deposit in the Treasury, in each case under chapter 11 of title 11 for each quarter (including any fraction thereof) until the case is converted or dismissed, whichever occurs first. The fee shall be $325 for each quarter in which disbursements total less than $15,000; $650 for each quarter in which disbursements total $15,000 or more but less than $75,000; $1,250 for each quarter in which disbursements total $75,000 or more but less than $150,000; $1,625 for each quarter in which disbursements total $150,000 or more but less than $225,000; $1,950 for each quarter in which disbursements total $225,000 or more but less than $300,000; $4,875 for each quarter in which disbursements total $300,000 or more but less than $1,000,000; $6,500 for each quarter in which disbursements total $1,000,000 or more but less than $2,000,000; $9,750 for each quarter in which disbursements total $2,000,000 or more but less than $3,000,000; $10,400 for each quarter in which disbursements total $3,000,000 or more but less than $5,000,000; $13,000 for each quarter in which disbursements total $5,000,000 or more but less than $15,000,000; $20,000 for each quarter in which disbursements total $15,000,000 or more but less than $30,000,000; $30,000 for each quarter in which disbursements total $30,000,000 or more but less than $75,000,000; $45,000 for each quarter in which disbursements total $75,000,000 or more but less than $150,000,000; $67,500 for each quarter in which disbursements total $150,000,000 or more but less than $300,000,000; $100,000 for each quarter in which disbursements total $300,000,000 or more but less than $500,000,000; $200,000 for each quarter in which disbursements total $500,000,000 or more but less than $1 billion; $350,000 for each quarter in which disbursements total $1 billion or more but less than $2 billion; and $500,000 for each quarter in which disbursements total $2 billion or more.

(b) The Judicial Conference of the United States may prescribe additional fees in cases under title 11 of the same kind as the Judicial Conference prescribes under section 1931 of this title.

(c) Upon the filing of any separate or joint notice of appeal or application for appeal or upon the receipt of any order allowing, or notice of the allowance of, an appeal or a writ of certiorari, $5 shall be paid to the clerk of the court, by the appellant or petitioner.

(d) Whenever any case or proceeding is dismissed in any bankruptcy court for want of jurisdiction, such court may order the payment of just costs.

(e) The clerk of the court may collect only the fees prescribed under this section.

(f)(1) Under the procedures prescribed by the Judicial Conference of the United States, the district court or the bankruptcy court may waive the filing fee in a case under chapter 7 of title 11 for an individual if the court determines that such individual has income less than 150 percent of the income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved and is unable to pay that fee in installments. For purposes of this paragraph, the term ‘filing fee’ means the filing fee required by subsection (a), or any other fee prescribed by the Judicial Conference under subsections (b) and (c) that is payable to the clerk upon the commencement of a case under section 7.

(2) The district court or the bankruptcy court may waive for such debtors other fees prescribed under subsections (b) and (c).

(3) This subsection does not restrict the district court or the bankruptcy court from waiving, in accordance with Judicial Conference policy, fees prescribed under this section for other debtors and creditors.


REFERENCES IN TEXT

Section 673(2) of the Omnibus Budget Reconciliation Act of 1981, referred to in subsec. (f)(1), is section 673(2) of Pub. L. 97–35, which is classified to section 9902(2) of Title 42, The Public Health and Welfare.

AMENDMENTS

2007—Subsec. (a)(6). Pub. L. 110–161 substituted last two sentences for former last two sentences which read...
as follows: "The fee shall be $250 for each quarter in which disbursements total less than $15,000; $500 for each quarter in which disbursements total $15,000 or more but less than $75,000; $750 for each quarter in which disbursements total $75,000 or more but less than $150,000; $1,250 for each quarter in which disbursements total $150,000 or more but less than $225,000; $1,500 for each quarter in which disbursements total $225,000 or more but less than $300,000; $3,750 for each quarter in which disbursements total $300,000 or more but less than $1,000,000; $5,000 for each quarter in which disbursements total $1,000,000 or more but less than $3,000,000; $7,500 for each quarter in which disbursements total $2,000,000 or more but less than $3,000,000; $8,000 for each quarter in which disbursements total $3,000,000 or more but less than $5,000,000; $10,000 for each quarter in which disbursements total $5,000,000 or more. The fee shall be payable on the last day of the calendar month following the calendar quarter for which the fee is owed."

Pub. L. 104–91, as amended by Pub. L. 104–99, struck out "a plan is confirmed or" before "the case is converted".

1995—Subsec. (a)(1). Pub. L. 103–121, §111(a)(1), substituted "$130" for "$120".

Subsec. (a)(3). Pub. L. 103–81, §111(b)(1), substituted "$800" for "$600".


1986—Subsec. (a). Pub. L. 99–554, §§117(5), 144(f), in introductory and closing provisions, substituted "of the district court or the clerk of the bankruptcy court, if one has been certified pursuant to section 156(b) of this title" for "of the court", and in closing provisions, inserted provision that for conversion, on request of the debtor, of a case under chapter 7 or 13 of title 11, to a case under chapter 11 of title 11, the debtor pay to the clerk of the court a fee of $400.


Subsec. (a)(4). Pub. L. 99–554, §117(3), substituted "$1,000" for "$500".


Subsecs. (a), (c), (e). Pub. L. 98–353, §111(a), substituted "clerk of the court" for "clerk of the bankruptcy court".

Effective Date of 2007 Amendment
Pub. L. 110–161, div. B, title II, §213(b), Dec. 26, 2007, 121 Stat. 114, provided that: "This section [amending this section] and the amendment made by this section shall take effect January 1, 2008, or the date of the enactment of this Act [Dec. 26, 2007], whichever is later."

Effective Date of 2006 Amendment
Pub. L. 109–171, title X, §10101(a)(c), Feb. 8, 2006, 120 Stat. 184, provided that: "This section [amending this section and enacting provisions set out as a note under section 1931 of this title] and the amendments made by this section shall take effect 60 days after the enactment of this Act [Feb. 8, 2006]."

Effective Date of 2005 Amendments

Amendment by Pub. L. 109–8 effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under Title 11, Bankruptcy, before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as a note under section 101 of Title 11.

Effective Date of 1999 Amendment
Pub. L. 106–113, div. B, §1000(a)(1) [title I, §113], Nov. 29, 1999, 113 Stat. 1535, 1501A–20, provided that the amendment made by section 1000(a)(1) [title I, §113] is effective 30 days after Nov. 29, 1999.

Effective Date of 1993 Amendment
Section 111(a) of Pub. L. 103–121 provided in part that the amendment made by that section is effective 30 days after Oct. 27, 1993.
Section 111(b) of Pub. L. 103–121 provided in part that the amendment made by that section is effective 30 days after Oct. 27, 1993.

**Effective Date of 1991 Amendment**
Section 111 of Pub. L. 102–140 provided that the amendment made by that section is effective 60 days after Oct. 28, 1991.

**Effective Date of 1989 Amendment; Miscellaneous Fees**
Section 406(a) of Pub. L. 101–162 provided that: “Section 1909(a)(1) of title 28, United States Code, is amended by striking out ‘$90’ and inserting in lieu thereof ‘$120’. Pursuant to section 1930(b) of title 28, the Judicial Conference of the United States shall prescribe a fee of $90 on motions seeking relief from the automatic stay under 11 U.S.C. section 362(b) and motions to compel abandonment of property of the estate. The fees established pursuant to the preceding two sentences shall take effect 30 days after the enactment of this Act (Nov. 21, 1989).”

**Effective Date of 1986 Amendment**
Amendment by Pub. L. 99–554 effective 30 days after Oct. 27, 1986, with effective date and applicability of enactment of subsec. (a)(6) of this section by section 117(d) of Pub. L. 99–554 dependent upon the judicial district involved, see section 122(a) of Pub. L. 99–554, set out as a note under section 581 of this title.

**Effective Date of 1984 Amendment**
Amendment by Pub. L. 98–333 effective July 10, 1984, see section 122(a) of Pub. L. 98–333, set out as an Effective Date note under section 151 of this title.

**Effective Date**
Section effective Oct. 1, 1979, see section 402(c) of Pub. L. 99–588, set out as a note preceding section 101 of Title 11, Bankruptcy.

**Use of Increased Receipts**

**Accrual and Payment of Quarterly Fees in Chapter 11 Cases After Jan. 27, 1996; Confirmation Status of Plans**
Section 101(a) of Pub. L. 104–91, as amended by Pub. L. 104–208, div. A, title I, §101(a) (title I, §108(d)), Sept. 30, 1996, 110 Stat. 3003, 3009–19, provided in part: “That, notwithstanding any other provision of law, the fees under 28 U.S.C. 1909(a)(6) shall accrue and be payable from and after January 27, 1996, in all cases (including, without limitation, any cases pending as of that date), regardless of confirmation status of their plans”.

**Report on Bankruptcy Fees**
Section 111(d) of Pub. L. 103–121 provided that: “(1) REPORT REQUIRED.—Not later than March 31, 1998, the Judicial Conference of the United States shall submit to the Committees on the Judiciary of the House of Representatives and the Senate, a report relating to the bankruptcy fee system and the impact of such system on various participants in bankruptcy cases.

“(2) CONTENTS OF REPORT.—Such report shall include—

“(A)(i) an estimate of the costs and benefits that would result from waiving bankruptcy fees payable by debtors who are individuals, and

“(ii) recommendations regarding various revenue sources to offset the net cost of waiving such fees; and

“(B)(i) an evaluation of the effects that would result in cases under chapters 11 and 13 of title 11, United States Code, from using a graduated bankruptcy fee system based on assets, liabilities, or both of the debtor, and

“(ii) recommendations regarding various methods to implement such a graduated bankruptcy fee system.

“(3) WAIVER OF FEES IN SELECTED DISTRICTS.—For purposes of carrying out paragraphs (1) and (2), the Judicial Conference of the United States shall carry out in not more than six judicial districts, throughout the 3-year period beginning on October 1, 1994, a program under which fees payable under section 1930 of title 28, United States Code, may be waived in cases under chapter 7 of title 11, United States Code, for debtors who are individuals unable to pay such fees in installments.

“(4) STUDY OF GRADUATED FEE SYSTEM.—For purposes of carrying out paragraphs (1) and (2), the Judicial Conference of the United States shall carry out, in not fewer than six judicial districts, a study to examine the results that would occur in cases under chapters 11 and 13 of title 11, United States Code, if filing fees payable under section 1930 of title 28, United States Code, were paid on a graduated scale based on assets, liabilities, or both of the debtor.”

**Court Fees for Electronic Access to Information**
Judicial Conference to prescribe reasonable fees for collection by courts under this section for access to information available through automatic data processing equipment and fees to be deposited in Judiciary Automation Fund, see section 303 of Pub. L. 102–140, set out as a note under section 1933 of this title.

**Issuance of Notices to Creditors and Other Interested Parties**
Section 403 of Pub. L. 101–162 provided that: “Notwithstanding any other provision of law, for fiscal year 1990 and hereafter, (a) The Administrative Office of the United States Courts, or any other agency or instrumentality of the United States, is prohibited from restricting solely to staff of the Clerks of the United States Bankruptcy Courts the issuance of notices to creditors and other interested parties. (b) The Administrative Office shall permit and encourage the preparation and mailing of such notices to be performed by or at the expense of the debtors, trustees or such other interested parties as the Court may direct and approve. (c) The Director of the Administrative Office of the United States Courts shall make appropriate provisions for the use of and accounting for any postage required pursuant to such directives.”

**Collection and Disposition of Fees in Bankruptcy Cases**
Section 404(a) of Pub. L. 101–162 provided that: “For fiscal year 1990 and hereafter, such fees as shall be collected for the preparation and mailing of notices in bankruptcy cases as prescribed by the Judicial Conference of the United States pursuant to 28 U.S.C. 1930(b) shall be deposited to the ‘Courts of Appeals, District Courts, and Other Judicial Services, Salaries and Expenses’ appropriation to be used for salaries and other expenses incurred in providing these services.”

§ 1931. Disposition of filing fees
(a) Of the amounts paid to the clerk of court as a fee under section 1914(a) or as part of a judgment for costs under section 2412(a)(2) of this title, $190 shall be deposited into a special fund of the Treasury to be available to offset funds appropriated for the operation and maintenance of the courts of the United States.
(b) If the court authorizes a fee under section 1914(a) or an amount included in a judgment for
costs under section 2412(a)(2) of this title of less than $250, the entire fee or amount, up to $190, shall be deposited into the special fund provided in this section.


Codification

Amendments

Subsec. (b). Pub. L. 108–447, §307(b)(2), substituted “$250” for “$150” and “$190” for “$90”.

1986—Subsec. (a). Pub. L. 104–317, §401(b)(1), substituted “$90” for “$60”.

Subsec. (b). Pub. L. 104–317, §401(b)(2), substituted “$150” for “$120” and “$90” for “$60”.

Section 1914(a), $60.''

1989—Pub. L. 101–162, which directed that “as provided in annual appropriation acts” be struck out before colon, was executed by striking out “as provided in annual appropriation Acts” before colon as probable intention of Congress.

Effective Date of 2004 Amendment

Effective Date of 1996 Amendment
Amendment by Pub. L. 104–317 effective 60 days after Oct. 19, 1996, see section 401(c) of Pub. L. 104–317, set out as a note under section 1914 of this title.

Effective Date of 1992 Amendment

Expenditure Limitation
Pub. L. 109–171, title X, §10001(c), Feb. 8, 2006, 120 Stat. 183, provided that: “Incremental amounts collected by reason of the enactment of this section [amending section 1914 of this title and enacting provisions set out as notes under sections 1913 and 1914 of this title] shall be deposited in a special fund in the Treasury to be established after the enactment of this Act [Feb. 8, 2006]. Such amounts shall be available for the purposes specified in section 1913(a) of title 28, United States Code, but only to the extent specifically appropriated by an Act of Congress enacted after the enactment of this Act.”

Disposition of Fees
Pub. L. 106–518, title I, §102, Nov. 23, 2000, 114 Stat. 2611, provided that: “For fiscal year 2001 and each fiscal year thereafter, any portion of miscellaneous fees collected as prescribed by the Judicial Conference of the United States under sections 1913, 1914(b), 1929(a), 1938(b), and 1932 of title 28, United States Code, exceeding the amount of such fees in effect on September 30, 2000, shall be deposited into the special fund of the Treasury established under section 1931 of title 28, United States Code.”

Section 404 of Pub. L. 104–317 provided that:

“(a) DISPOSITION OF ATTORNEY ADMISSION FEES.—For each fee collected for admission of an attorney to practice, as prescribed by the Judicial Conference of the United States pursuant to section 1914 of title 28, United States Code, $30 of that portion of the fee exceeding $20 shall be deposited into the special fund of the Treasury established under section 1931 of title 28, United States Code. Any portion exceeding $5 of that fee shall be deposited as a duplicate certificate of admission or certificate of good standing, as prescribed by the Judicial Conference of the United States pursuant to section 1914 of title 28, United States Code, shall be deposited into the special fund of the Treasury established under section 1931 of title 28, United States Code.

“(b) DISPOSITION OF BANKRUPTCY COMPLAINT FILING FEES.—For each fee collected for filing an adversary complaint in a bankruptcy proceeding, as established in Item 6 of the Bankruptcy Court Miscellaneous Fee Schedule prescribed by the Judicial Conference of the United States pursuant to section 1930(b) of title 28, United States Code, the portion of the fee exceeding $120 shall be deposited into the special fund of the Treasury established under section 1931 of title 28, United States Code.

“(c) EFFECTIVE DATE.—This section shall take effect 60 days after the date of the enactment of this Act [Oct. 19, 1996].”

Collection and Deposit of Miscellaneous Bankruptcy Fees

[For termination, effective May 15, 2000, of provisions relating to a quarterly report to the Committees on...]}

§ 1932. Judicial Panel on Multidistrict Litigation

The Judicial Conference of the United States shall prescribe from time to time the fees and costs to be charged and collected by the Judicial Panel on Multidistrict Litigation.


§ 1932. Revocation of earned release credit

In any civil action brought by an adult convicted of a crime and confined in a Federal correctional facility, the court may order the revocation of such earned good time credit under section 3621(b) of title 18, United States Code, that has not yet vested, if, on its own motion or the motion of any party, the court finds that—

(1) the claim was filed for a malicious purpose;

(2) the claim was filed solely to harass the party against which it was filed; or

(3) the claimant testifies falsely or otherwise knowingly presents false evidence or information to the court.


CHAPTER 125—PENDING ACTIONS AND JUDGMENTS

Sec. 1961. Interest.


1963. Registration of judgments for enforcement in other districts.

[1963A. Repealed.]


AMENDMENTS


HISTORICAL AND Revision Notes


REFERENCES IN Text

Section 6621 of the Internal Revenue Code of 1986, referred to in subsec. (c)(1), is classified to section 6621 of Title 26, Internal Revenue Code.

1 Another section 1932 is set out after this section.

2 Another section 1932 is set out preceding this section.

3 So in original. The period probably should not appear.

4 So in original. Probably should be capitalized.
AMENDMENTS

2000—Subsec. (a). Pub. L. 106-554 substituted the weekly average 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the calendar week preceding, for “the coupon issue yield equivalent (as determined by the Secretary of the Treasury) of the average accepted auction price for the last auction of fifty-two week United States Treasury bills settled immediately prior to”.


1986—Subsec. (c)(1). Pub. L. 99-514, §1511(c)(17), substituted “the underpayment rate or overpayment rate (whichever is appropriate) established” for “a rate established”.


1982—Subsec. (a). Pub. L. 97-164, §302(a)(1), (2), designated existing provisions as subsec. (a), substituted “at a rate equal to the coupon issue yield equivalent (as determined by the Secretary of the Treasury) of the average accepted auction price for the last auction of fifty-two week United States Treasury bills settled immediately prior to the date of the judgment” for “at the rate allowed by State law”, and inserted provision that the Director of the Administrative Office of the United States Courts distribute notice of the rate and any changes in it to all Federal judges.


Subsecs. (b), (c). Pub. L. 97-164, §302(a)(3), added subsecs. (b) and (c).

EFFECTIVE DATE OF 1992 AMENDMENT

EFFECTIVE DATE OF 1986 AMENDMENTS
Amendment by section 1511(c)(17) of Pub. L. 99-514 applicable for purposes of determining interest for periods after Dec. 31, 1986, see section 1511(d) of Pub. L. 99-514, set out as a note under section 6221 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1982 AMENDMENTS
Section 2(m) of Pub. L. 97-258 provided that the amendment made by that section is effective Oct. 1, 1982.


§1962. Lien

Every judgment rendered by a district court within a State shall be a lien on the property located in such State in the same manner, to the same extent and under the same conditions as a judgment of a court of general jurisdiction in such State, and shall cease to be a lien in the same manner and time. This section does not apply to judgments entered in favor of the United States. Whenever the law of any State requires a judgment of a State court to be recorded, docketed or indexed, or any other act to be done, in a particular manner, or in a certain office or county or parish before such lien attaches, such requirements shall apply only if the law of such State authorizes the judgment of a court of the United States to be registered, recorded, docketed, indexed or otherwise conformed to rules and requirements relating to judgments of the courts of the State.


HISTORICAL AND REVISION NOTES


Section consolidates sections 812 and 814 of title 28, U.S.C. 1940 ed., with changes in phraseology necessary to effect consolidation and to clarify the meaning of such sections.

Omitted words “or decree” after “judgments” as unnecessary inasmuch as Rule 54(a) of the Federal Rules of Civil Procedure by definition of judgment includes a decree.

Words “in the State of Louisiana” after “or parish” were omitted as unnecessary.

A reference to section 813 of title 28, U.S.C. 1940 ed., was omitted, since such section is omitted from this revision as covered by Rule 79(c) of the Federal Rules of Civil Procedure.

AMENDMENTS

1990—Pub. L. 101-647 inserted after first sentence “This section does not apply to judgments entered in favor of the United States.”

EFFECTIVE DATE OF 1990 AMENDMENT
Amendment by Pub. L. 101-647 effective 180 days after Nov. 29, 1990, see section 3631 of Pub. L. 101-647, set out as an Effective Date note under section 3601 of this title.

§1963. Registration of judgments for enforcement in other districts

A judgment in an action for the recovery of money or property entered in any court of appeals, district court, bankruptcy court, or in the Court of International Trade may be registered by filing a certified copy of the judgment in any other district or, with respect to the Court of International Trade, in any judicial district, when the judgment has become final by appeal or expiration of the time for appeal or when ordered by the court that entered the judgment for good cause shown. Such a judgment entered in favor of the United States may be so registered any time after judgment is entered. A judgment so registered shall have the same effect as a judgment of the district court of the district where registered and may be enforced in like manner.

A certified copy of the satisfaction of any judgment in whole or in part may be registered in like manner in any district in which the judgment is a lien.

The procedure prescribed under this section is in addition to other procedures provided by law for the enforcement of judgments.

HISTORICAL AND REVISION NOTES

This section follows the recommendation of the Supreme Court's Advisory Committee on Federal Rules of Civil Procedure (1937) which included the following rule:

“Rule 77. Registration of Judgments in Other District Courts. A judgment entered in any district court and which has become final through expiration of the time for appeal or by mandate on appeal may be registered in any other district court by filing therein an authenticated copy of the judgment. When so registered the judgment shall have the same effect and like proceedings for its enforcement may be taken therein in the court in which it is registered as if the judgment had been originally entered by that court. If in the court in which the judgment was originally entered, the judgment has been satisfied in whole or in part or if an order has been made modifying or vacating it or affecting or suspending its operation, the party procuring the registration shall and any other party may file authenticated copies of the satisfaction or order with the court in which the judgment is registered. This rule shall not be construed to limit the effect of the Act of February 20, 1905, § 20 (33 Stat. 1084), U.S.C., title 28, § 28, or to authorize the registration elsewhere of an order or a judgment rendered in a divorce action in the District of Columbia.”

Section 2508 of this title provides for the registration of judgments of the Court of Claims in favor of the United States in any district. See, also, section 2413 of this title.

The phrase “for the recovery of money or property” was not in the committee's draft of Rule 77 of Federal Rules of Civil Procedure but was inserted in the revised section to exclude judgments in divorce actions, and any other actions, the registration of which would serve no useful purpose.

AMENDMENTS

1906—Pub. L. 104–317 substituted “for enforcement in other districts” for “of the district courts and the Court of International Trade”, in first undesignated par. substituted “court of appeals, district court, bankruptcy court,” for “district court”, and “copy of the judgment” for “copy of such judgment”, and added undesignated par. at end.

1909—Pub. L. 101–647 inserted after first sentence “Such a judgment entered in favor of the United States may be so registered any time after judgment is entered.”

1988—Pub. L. 100–702 substituted “Registration of judgments of the district courts and the Court of International Trade” for “Registration in other districts” in section catchline and amended first sentence generally. Prior to amendment, first sentence read as follows: “A judgment entered in favor of the United States may be so registered any time after judgment is entered.”

1958—Pub. L. 85–508 provided that: “The amendments made by this Act [enacting this section] shall only be effective with respect to actions commenced in United States district courts more than one hundred and eighty days after the date of enactment of this Act [Aug. 20, 1958].”

CHAPTER 127—EXECUTIONS AND JUDICIAL SALES

§ 1964. Constructive notice of pending actions

Where the law of a State requires a notice of an action concerning real property pending in a court of the State to be registered, recorded, docketed, or indexed in a particular manner, or in a certain office or county or parish in order to give constructive notice of the action as it relates to the real property, and such law authorizes a notice of an action concerning real property pending in a United States district court to be registered, recorded, docketed, or indexed in the same manner, or in the same place, those requirements of the State law must be complied with in order to give constructive notice of such an action pending in a United States district court as it relates to real property in such State.


EFFECTIVE DATE

Section 2 of Pub. L. 85–689 provided that: “The amendments made by this Act [enacting this section] shall only be effective with respect to actions commenced in United States district courts more than one hundred and eighty days after the date of enactment of this Act [Aug. 20, 1958].”

§ 2001. Sale of realty generally

(a) Any realty or interest therein sold under any order or decree of any court of the United States shall be sold as a whole or in separate parcels at public sale at the courthouse of the county, parish, or city in which the greater part of the property is located, or upon the premises or some parcel thereof located therein, as the...
court directs. Such sale shall be upon such terms and conditions as the court directs.

Property in the possession of a receiver or receivers appointed by one or more district courts shall be sold at public sale in the district wherein such receiver was first appointed, at the courthouse of the county, parish, or city situated therein in which the greater part of the property in such district is located, or on the premises or some parcel thereof located in such county, parish, or city, as such court directs, unless the court orders the sale of the property or one or more parcels thereof in one or more ancillary districts.

(b) After a hearing, of which notice to all interested parties shall be given by publication or otherwise as the court directs, the court may order the sale of such realty or interest or any part thereof at private sale for cash or other consideration and upon such terms and conditions as the court approves, if it finds that the best interests of the estate will be preserved thereby. Before confirmation of any private sale, the court shall appoint three disinterested persons to appraise such property or different groups of three appraisers each to appraise properties of different classes or situated in different localities. No private sale shall be confirmed at a price less than two-thirds of the appraised value. Before confirmation of any private sale, the terms thereof shall be published in such newspaper or newspapers of general circulation as the court directs at least ten days before confirmation. The private sale shall not be confirmed if a bona fide offer is made, under conditions prescribed by the court, which guarantees confirmation. The private sale shall not be confirmed if a price less than two-thirds of the appraised value is offered in the private sale.

(c) This section shall not apply to sales and proceedings under Title 11 or by receivers or conservators of banks appointed by the Comptroller of the Currency.

(Historical and Revision Notes)

1948 Act


A provision making the section applicable to pending proceedings was deleted as obsolete.

Word "under" was substituted for "ordered pursuant to section 847 of this title by" after "A public sale of realty or interest therein". Sections 847 and 848, of title 28, U.S.C., 1940 ed., now sections 1001 and 1004 of this title, relate only to sales under orders or decrees, without any reference to sales under judgments. In 1921 the Supreme Court held, in Yazoo & M. V. R. Co. v. City of Clarksdale, 1921, 42 S.Ct. 277, 257 U.S. 10, 66 L.Ed. 104, that such section 847 did not apply to sales under common law executions. At that time such section 849 of title 28, U.S.C., 1940 ed., read as it has been revised above, without any reference to sales under orders or decrees, with any reference to sales under judgments. Sections 847 and 848, of title 28, U.S.C., 1940 ed., now sections 1001 and 1004 of this title, relate only to sales under orders or decrees, without any reference to sales under judgments. In 1935, such sections 847, 848 and 849 were amended by one act, ch. 77, 49 Stat. 159, and, in such section 849, the words "pursuant to the provisions of this Act" were inserted, but the word "judgment," though retained in such section 849, was not inserted in such sections 847 and 848. It is probable that Congress did not intend, in 1935 to make such sections 847 and 848 applicable to sales under judgments in law actions. Hence, to make all three sections consistent, the above-mentioned substitution was made.

Reference to circuit was deleted from first and second paragraphs as unnecessary and inapplicable. Publication in a newspaper in a large circuit remote from the county in which the reality is situated, might be wholly insufficient to give notice to interested parties.

Changes were made in phraseology.

1949 Act

This section corrects a typographical error in section 1002 of title 28, U.S.C.

Amendments

1949—Act May 24, 1949, substituted "11" for "11" after "Title" in third par.

§ 2003. Marshal's incapacity after levy on or sale of realty

Whenever a United States marshal dies, is removed from office, or the term of his commission expires, after levying on realty or any interest therein under a writ of execution issued by a court of the United States, and before sale or other final disposition thereof, like process shall issue to the succeeding marshal and the same proceedings shall be had as if such contingency had not occurred.
Whenever any such contingency arises after a marshal has sold any realty or interest therein and before a deed is executed, the court may, on application by the purchaser, or the plaintiff in whose action the sale was made, setting forth the facts of the case and the reason why the title was not perfected by such marshal, order the succeeding marshal to perfect the title and execute a deed to the purchaser, upon payment of the purchase money and unpaid costs.

(June 25, 1948, ch. 646, 62 Stat. 959; May 24, 1949, ch. 139, §101, 63 Stat. 104.)

HIStoryCAL AND REvision Notes
1948 ACT
Words “realty” was substituted for “lands, tenements, or hereditaments” in two places, the two terms being synonymous. (See Black’s Law Dictionary, 3d Ed., p. 1969.)
Word “action” was substituted for “suit”, in view of Rule 2 of the Federal Rules of Civil Procedure, prescribing but one form of action.
Changes were made in phraseology.

1949 ACT
This section corrects a typographical error in section 2003 of title 28, U.S.C.

AMENDMENTS

§ 2004. Sale of personality generally
Any personality sold under any order or decree of any court of the United States shall be sold in accordance with section 2001 of this title, unless the court orders otherwise.

This section shall not apply to sales and proceedings under Title 11 or by receivers or conservators of banks appointed by the Comptroller of the Currency.

(June 25, 1948, ch. 646, 62 Stat. 959.)

HISTORICAL AND REVISION NOTES

AMENDMENTS

1969 A
Changes were made in phraseology.

2002 A
Par. (2). Pub. L. 107–296 inserted “, the Director, Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice,” after “the Secretary of the Treasury”.

EFFECTIVE DATE OF 2002 AMENDMENT
Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

§ 2007. Imprisonment for debt
(a) A person shall not be imprisoned for debt on a writ of execution or other process issued from a court of the United States in any State wherein imprisonment for debt has been abolished. All modifications, conditions, and restrictions upon such imprisonment provided by State law shall apply to any writ of execution or process issued from a court of the United States in accordance with the procedure applicable in such State.

(b) Any person arrested or imprisoned in any State on a writ of execution or other process issued from any court of the United States shall have the same jail privileges and be governed by the same regulations as persons confined in like cases on process issued from the courts of such State. The same requirements governing discharge as are applicable in such State shall apply. Any proceedings for discharge shall be conducted before a United States magistrate judge for the judicial district wherein the defendant is held.

CHAPTER 129—MONEYS PAID INTO COURT

§ 2041. Deposit of moneys in pending or adjudicated cases

All moneys paid into any court of the United States, or received by the officers thereof, in any case pending or adjudicated in such court, shall be forthwith deposited with the Treasurer of the United States, or a designated depositary, in the name and to the credit of such court.

This section shall not prevent the delivery of any such money to the rightful owners upon security, according to agreement of parties, under the direction of the court.


HISTORICAL AND REVISION NOTES


Changes were made in phraseology.

AMENDMENTS

1962—Pub. L. 97–258 substituted “Deposit of moneys in pending or adjudicated cases” for “Deposit” in section catchline.


Words “and the money deposited as aforesaid shall constitute and be a permanent appropriation for payments in accordance with such orders” were omitted, in view of section 725p(b)(14) of title 31, U.S.C., which repealed permanent appropriations of unclaimed money accounts and substituted authorization for annual appropriations effective July 1, 1985.

Changes were made in phraseology.

In U. S. Law Week, Nov. 7, 1939, Rep. Walter Chandler (Author of Chandler Act, Bankruptcy) observed as to the Judicial Code:

“Among the major subjects needing study and revision are—Numerous procedural changes which have been brought about through adoption of the Federal Rules of Civil Procedure should be codified.” * * *

AMENDMENTS

1982—Pub. L. 97–258 inserted references to section 2041 in two places.

§ 2043. Deposit of other moneys

Except for public moneys deposited under section 2041 of this title, each clerk of the United States courts shall deposit public moneys that the clerk collects into a checking account in the Treasury, subject to disbursement by the clerk. At the end of each accounting period, the earned part of public moneys accruing to the United States shall be deposited in the Treasury to the credit of the appropriate receipt accounts.


HISTORICAL AND REVISION NOTES


Changes were made in phraseology.

AMENDMENTS

1982—Pub. L. 97–258 substituted “Deposit of moneys in pending or adjudicated cases” for “Deposit” in section catchline.

REGISTRY ADMINISTRATION ACCOUNT

Pub. L. 100–459, title IV, §400, Oct. 1, 1988, 102 Stat. 2211, provided: “That any funds hereafter collected by the Judiciary as a charge for services rendered in administering accounts kept in a court’s registry shall be deposited into a separate account entitled ‘Registry Administration Account’ in the Treasury of the United States. Such funds shall remain available to the Judiciary until expended to reimburse any appropriation for the amount paid out of such appropriation for expenses of the Courts of Appeals, District Courts and Other Judicial Services and the Administrative Office of the United States Courts.”
stituted for “Treasurer of the United States” because of section 1 of Reorganization Plan No. 26 of 1939 (eff. July 31, 1939, 64 Stat. 1280), restated as section 321 of the revised title contained in section 1 of the bill. The text of 31:725v(b)(last sentence) is omitted as obsolete.

§ 2044. Payment of fine with bond money

On motion of the United States attorney, the court shall order any money belonging to and deposited by or on behalf of the defendant with the court for the purposes of a criminal appearance bail bond (trial or appeal) to be held and paid over to the United States attorney to be applied to the payment of any assessment, fine, restitution, or penalty imposed upon the defendant. The court shall not release any money deposited for bond purposes after a plea or a verdict of the defendant’s guilt has been entered and before sentencing except upon a showing that an assessment, fine, restitution or penalty cannot be imposed for the offense the defendant committed or that the defendant would suffer an undue hardship. This section shall not apply to any third party surety.


EFFECTIVE DATE

Section effective 180 days after Nov. 29, 1990, and applicable with respect to certain actions for debts owed the United States pending in court on that effective date, see section 3631 of Pub. L. 101–647, set out as a note under section 3001 of this title.

§ 2045. Investment of court registry funds

(a) The Director of the Administrative Office of the United States Courts, or the Director’s designee under subsection (b), may request the Secretary of the Treasury to invest funds recovered under section 2041 in public debt securities with maturities suitable to the needs of the funds, as determined by the Director or the Director’s designee, and bearing interest at a rate determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturity.

(b) The Director may designate the clerk of a court described in section 610 to exercise the authority conferred by subsection (a).


CHAPTER 131—RULES OF COURTS

Sec.
2071. Rule-making power generally.
2072. Rules of procedure and evidence; power to prescribe.
2074. Rules of procedure and evidence; submission to Congress; effective date.
2075. Bankruptcy rules.
[2076. Repealed.]
2077. Publication of rules; advisory committees.

AMENDMENTS


§ 2071. Rule-making power generally

(a) The Supreme Court and all courts established by Act of Congress may from time to time prescribe rules for the conduct of their business. Such rules shall be consistent with Acts of Congress and rules of practice and procedure prescribed under section 2072 of this title.

(b) Any rule prescribed by a court, other than the Supreme Court, under subsection (a) shall be prescribed only after giving appropriate public notice and an opportunity for comment. Such rule shall take effect upon the date specified by the prescribing court and shall have such effect on pending proceedings as the prescribing court may order.

(c)(1) A rule of a district court prescribed under subsection (a) shall remain in effect unless modified or abrogated by the judicial council of the relevant circuit.

(2) Any other rule prescribed by a court other than the Supreme Court under subsection (a) shall remain in effect unless modified or abrogated by the Judicial Conference.

(d) Copies of rules prescribed under subsection (a) by a district court shall be furnished to the judicial council, and copies of all rules prescribed by a court other than the Supreme Court under subsection (a) shall be furnished to the Director of the Administrative Office of the United States Courts and made available to the public.

(e) If the prescribing court determines that there is an immediate need for a rule, such court may proceed under this section without public notice and opportunity for comment, but such court shall promptly thereafter afford such notice and opportunity for comment.

(f) No rule may be prescribed by a district court other than under this section.


HISTORICAL AND REVISION NOTES

1948 ACT


Sections 219, 263, 296, 307, 723, and 761 of title 28, U.S.C., 1940 ed., gave specified courts, other than the Supreme Court, power to make rules. Section 761 of such title related to rules established in the district courts and Court of Claims. Section 1111 of title 26, U.S.C., 1940 ed., related to Tax Court. This section consolidates all such provisions. For other provisions of such sections, see Distribution Table.

Recognition by Congress of the broad rule-making power of the courts will make it possible for the courts
to prescribe complete and uniform modes of procedure, and likewise, at least in part, the necessity of searching in two places, namely, in the Acts of Congress and in the rules of the courts for procedural requisites. Formerly, General Cummings recently said: ‘Legislative bodies have neither the time to inquire objectively into the details of judicial procedure nor the opportunity to determine the necessity for amendment or change. Frequently such legislation has been enacted for the purpose of meeting particular problems or supposed difficulties, but the results have usually been confusing or otherwise unsatisfactory. Comprehensive action has been lacking for the obvious reason that the professional nature of the task would leave the legislature little time for matters of substance and statemanship. It often happened that an admitted need for change, even in limited areas, could not be secured.’—The New Criminal Rules—Another Triumph of the Democratic Process. American Bar Association Journal, May 1945.

Provisions of sections 283 and 296 of title 28, U.S.C., 1940 ed., authorizing the Court of Claims and Customs Court to punish for contempt, were omitted as covered by H. R. 1660, § 401, 80th Congress, for revision of the Criminal Code. Provisions of section 1111 of title 26, U.S.C., 1940 ed., making applicable to Tax Court Proceedings ‘the rules of evidence applicable in the courts of the District of Columbia in the type of proceeding which, prior to Sept. 16, 1938, were within the jurisdiction of the courts of equity of said District,’ were omitted as unnecessary and inconsistent with other provisions of law relating to the Federal courts. The rules of evidence in Tax Court proceedings are the same as those which apply to civil procedure in other courts. See Dempster Mill Mfg. Co. v. Burnet, 1931, 46 F.2d 694, 60 App.D.C. 23.

For rule-making power of the Supreme Court in copyright infringement actions, see section 25(e) of title 17, U.S.C., Copyrights. See, also, section 205(a) of title 11, U.S.C., 1940 ed., Bankruptcy, authorizing the Supreme Court to promulgate rules relating to service of process in railroad reorganization proceedings.

**SENATE REVISION AMENDMENT**

By Senate amendment, all provisions relating to the Tax Court were eliminated. Therefore, section 1111 of Title 26, U.S.C., Internal Revenue Code, was not one of the sources of this section as finally enacted. However, no change in the text of this section was necessary. See 80th Congress Senate Report No. 1559.

1949 ACT

This amendment clarifies section 2071 of title 26, U.S.C., by giving express recognition to the power of the Supreme Court to prescribe its own rules and by giving a better description of its procedural rules.

**AMENDMENTS**

1988—Pub. L. 100–702 designated existing provisions as subsec. (a), substituted ‘‘under section 2072 of this title’’ for ‘‘by the Supreme Court’’, and added subsec. (b) to (d).

1949—Act May 24, 1949, expressed recognition to the Supreme Court’s power to prescribe its own rules and give a better description of its procedural rules.

**EFFECTIVE DATE OF 1988 AMENDMENT**

Section 407 of title IV of Pub. L. 100–702 provided that: ‘‘This title enacting sections 2072 to 2074 of this title, amending this section, sections 331, 332, 372, 604, 636, and 2077 of this title, section 460h–8 of Title 16, Conservation, and section 3402 of Title 18, Crimes and Criminal Procedure, repealing former section 2072 and sections 2771 and 3772 of Title 18, and enacting provisions set out as notes under this section shall take effect on December 1, 1988.’’

**EFFECTIVE DATE OF 1983 AMENDMENT**

Pub. L. 97–462, § 4, Jan. 12, 1983, 96 Stat. 2530, provided that: ‘‘The amendments made by this Act [enacting provisions set out as notes below, amending Rule 4 of the Federal Rules of Civil Procedure, set out in the Appendix to this title, adding Form 18–A in the Appendix of Forms, and amending section 951 of Title 18, Crimes and Criminal Procedure] shall take effect 45 days after the enactment of this Act [Jan. 12, 1983].’’

**SHORT TITLE OF 1983 AMENDMENT**


**SAVINGS PROVISION**

Section 406 of title IV of Pub. L. 100–702 provided that: ‘‘The rules prescribed in accordance with law before the effective date of this title [Dec. 1, 1988] and in effect on the date of such effective date shall remain in force until changed pursuant to the law as amended by this title [see Effective Date of 1988 Amendment note above].’’

**RULEMAKING AUTHORITY OF SUPREME COURT AND JUDICIAL CONFERENCE**


**TAX COURT RULEMAKING NOT AFFECTED**

Section 406 of title IV of Pub. L. 100–702 provided that: ‘‘The amendments made by this title [see Effective Date of 1988 Amendment note above] shall not affect the authority of the Tax Court to prescribe rules under section 7453 of the Internal Revenue Code of 1986 [26 U.S.C. 7453].’’

**ADmiralty Rules**

The Rules of Practice in Admiralty and Maritime Cases, promulgated by the Supreme Court on Dec. 20, 1920, effective Mar. 7, 1921, as revised, amended, and supplemented, were rescinded, effective July 1, 1965, in accordance with the general unification of civil and admiralty procedure which became effective July 1, 1965. Provision for certain distinctly maritime remedies were preserved however in the Supplemental Rules for Certain Admiralty and Maritime Claims, rules A to F, Federal Rules of Civil Procedure, Appendix to this title.

**§ 2072. Rules of procedure and evidence; power to prescribe**

(a) The Supreme Court shall have the power to prescribe general rules of practice and procedure and rules of evidence for cases in the United States district courts (including proceedings before magistrate judges thereof) and courts of appeals.

(b) Such rules shall not abridge, enlarge or modify any substantive right. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.

(c) Such rules may define when a ruling of a district court is final for the purposes of appeal under section 1291 of this title.


AMENDMENTS


CHANGE OF NAME

Words “magistrate judges” substituted for “magistrates” in subsec. (a) pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of this title.

EFFECTIVE DATE

Section effective Dec. 1, 1988, see section 407 of Pub. L. 100–702, set out as an Effective Date of 1988 Amendment note under section 2071 of this title.

APPLICABILITY TO VIRGIN ISLANDS

Rules of civil procedure promulgated under this section as applicable to the District Court of the Virgin Islands, see section 1615 of Title 48, Territories and Insular Possessions.

ADMARITY RULES

The Rules of Practice in Admiralty and Maritime Cases, promulgated by the Supreme Court on Dec. 20, 1920, effective Mar. 7, 1921, as revised, amended, and supplemented, were rescinded, effective July 1, 1966, in accordance with the general unification of civil and admiralty procedure which became effective July 1, 1966. Provision for certain distinctly maritime remedies were preserved however, in the Supplemental Rules for Certain Admiralty and Maritime Claims, Rules A to F, Federal Rules of Civil Procedure, Appendix to this title.

§ 2073. Rules of procedure and evidence; method of prescribing

(a)(1) The Judicial Conference shall prescribe and publish the procedures for the consideration of proposed rules under this section.

(2) The Judicial Conference may authorize the appointment of committees to assist the Conference by recommending rules to be prescribed under sections 2072 and 2075 of this title. Each such committee shall consist of members of the bench and the professional bar, and trial and appellate judges.

(b) The Judicial Conference shall authorize the appointment of a standing committee on rules of practice, procedure, and evidence under subsection (a) of this section. Such standing committee shall review each recommendation of any other committees so appointed and recommend to the Judicial Conference rules of practice, procedure, and evidence and such changes in rules proposed by a committee appointed under subsection (a)(2) of this section as may be necessary to maintain consistency and otherwise promote the interest of justice.

(c)(1) Each meeting for the transaction of business under this chapter by any committee appointed under this section shall be open to the public, except when the committee so meeting, in open session and with a majority present, determines that it is in the public interest that all or part of the remainder of the meeting on that day shall be closed to the public, and states the reason for so closing the meeting. Minutes of each meeting for the transaction of business under this chapter shall be maintained by the committee and made available to the public, except that any portion or much minutes, relating to a closed meeting and made available to the public, may contain such deletions as may be necessary to avoid frustrating the purposes of closing the meeting.

(2) Any meeting for the transaction of business under this chapter, by a committee appointed under this section, shall be preceded by sufficient notice to enable all interested persons to attend.

(d) In making a recommendation under this section or under section 2072 or 2075, the body making that recommendation shall provide a proposed rule, an explanatory note on the rule, and a written report explaining the body’s action, including any minority or other separate views.

(e) Failure to comply with this section does not invalidate a rule prescribed under section 2072 or 2075 of this title.


PRIOR PROVISIONS


AMENDMENTS

1994—Subsec. (a)(2). Pub. L. 103–394, §104(e)(1), substituted “sections 2072 and 2073” for “section 2072”.

Subsec. (d), (e). Pub. L. 103–394, §104(e)(2), inserted “or 2075” after “2072”.

EFFECTIVE DATE OF 1994 AMENDMENT


EFFECTIVE DATE

Section effective Dec. 1, 1988, see section 407 of Pub. L. 100–702, set out as an Effective Date of 1988 Amendment note under section 2071 of this title.

MORE COMPLETE INFORMATION REGARDING ASSETS OF THE ESTATE

Pub. L. 109–8, title IV, §419, Apr. 20, 2005, 119 Stat. 109, provided that:

“(a) IN GENERAL.—

“(1) DISCLOSURE.—The Judicial Conference of the United States, in accordance with section 2075 of title 28 of the United States Code and after consideration of the views of the Director of the Executive Office for United States Trustees, shall propose amended Federal Rules of Bankruptcy Procedure and in accordance with rule 9009 of the Federal Rules of Bankruptcy Procedure (11 U.S.C. App.) shall prescribe official bankruptcy forms directing debtors under chapter 11 of title 11 of United States Code, to disclose the information described in paragraph (2) by filing and serving periodic financial and other reports designed to provide such information.

“(2) INFORMATION.—The information referred to in paragraph (1) is the value, operations, and profit-
ability of any closely held corporation, partnership, or of any other entity in which the debtor holds a substantial or controlling interest.

(b) Purpose.—The purpose of the rules and forms under subsection (a) shall be to assist parties in interest taking steps to ensure that the debtor’s interest in any entity referred to in subsection (a)(2) is used for the payment of allowed claims against debtor.”

STANDARD FORM DISCLOSURE STATEMENT AND PLAN

(1) the reasonable needs of the courts, the United States trustee, creditors, and other parties in interest for reasonably complete information; and

(2) economy and simplicity for debtors.”

UNIFORM REPORTING RULES AND FORMS FOR SMALL BUSINESS CASES
Pub. L. 109–8, title IV, § 435, Apr. 20, 2005, 119 Stat. 111, provided that:

“(a) PROPOSAL OF RULES AND FORMS.—The Judicial Conference of the United States shall propose in accordance with section 2073 of title 11, United States Code, as amended by this Act, official bankruptcy forms, directing small business debtors (as defined in section 101 of title 11, United States Code, as amended by this Act), in accordance with rule 9009 of the Federal Rules of Bankruptcy Procedure [11 U.S.C. App.] official bankruptcy forms, directing small business debtors to file periodic financial and other reports containing information, including information relating to—

(1) the debtor’s profitability;

(2) the debtor’s cash receipts and disbursements; and

(3) whether the debtor is timely filing tax returns and paying taxes and other administrative expenses when due.

(b) Purpose.—The rules and forms proposed under subsection (a) shall be designed to achieve a practical balance among—

(1) the reasonable needs of the bankruptcy court, the United States trustee, creditors, and other parties in interest for reasonably complete information;

(2) a small business debtor’s interest that required reports be easy and inexpensive to complete; and

(3) the interest of all parties that the required reports help such debtor to understand such debtor’s financial condition and plan the [sic] such debtor’s future.”

§ 2074. Rules of procedure and evidence; submission to Congress; effective date

(a) The Supreme Court shall transmit to the Congress not later than May 1 of the year in which a rule prescribed under section 2072 is to become effective a copy of the proposed rule. Such rule shall take effect no earlier than December 1 of the year in which such rule is so transmitted unless otherwise provided by law. The Supreme Court may fix the extent such rule shall apply to proceedings then pending, except that the Supreme Court shall not require the application of such rule to further proceedings then pending to the extent that, in the opinion of the court in which such proceedings are pending, the application of such rule in such proceedings would not be feasible or would work injustice, in which event the former rule applies.

(b) Any such rule creating, abolishing, or modifying an evidentiary privilege shall have no force or effect unless approved by Act of Congress.

(Added Pub. L. 100–702, title IV, § 401(a), Nov. 19, 1988, 102 Stat. 4649.)

PRIOR PROVISIONS

EFFECTIVE DATE
Section effective Dec. 1, 1988, see section 407 of Pub. L. 100–702, set out as an Effective Date of 1988 Amendment note under section 2071 of this title.

AMENDMENT TO RULE 23 OF FEDERAL RULES OF CIVIL PROCEDURE; EFFECTIVE DATE
Pub. L. 109–2, § 7, Feb. 18, 2005, 119 Stat. 13, provided that: “Notwithstanding any other provision of law, the amendments to rule 23 of the Federal Rules of Civil Procedure, which are set forth in the order entered by the Supreme Court of the United States on March 27, 2003, shall take effect on the date of enactment of this Act [Feb. 18, 2005] or on December 1, 2003 (as specified in that order), whichever occurs first.”

MODIFICATION OF AMENDMENTS TO FEDERAL RULES OF CRIMINAL PROCEDURE PROPOSED APRIL 29, 2002; EFFECTIVE DATE
Pub. L. 107–273, div. C, title I, § 11019(a), Nov. 2, 2002, 116 Stat. 1853, provided that: “The proposed amendments to the Federal Rules of Criminal Procedure that are embraced by an order entered by the Supreme Court of the United States on April 29, 2002, shall take effect on December 1, 2002, as otherwise provided by law, but with the amendments made in subsection (b) [amending Rule 16 of the Federal Rules of Criminal Procedure].”

MODIFICATION OF AMENDMENTS TO FEDERAL RULES OF EVIDENCE PROPOSED APRIL 29, 1994; EFFECTIVE DATE

“(a) MODIFICATION OF PROPOSED AMENDMENT.—The proposed amendments to the Federal Rules of Evidence that are embraced by an order entered by the Supreme Court of the United States on April 29, 1994, shall take effect on December 1, 1994, as otherwise provided by law, but with the amendment made by subsection (b).

“(b) RULE.—[Amended Rule 412 of the Federal Rules of Evidence.]

“(c) TECHNICAL AMENDMENT.—[Amended table of contents for the Federal Rules of Evidence.]”

MODIFICATION OF AMENDMENTS TO FEDERAL RULES OF CRIMINAL PROCEDURE PROPOSED APRIL 29, 1994; EFFECTIVE DATE

“(a) MODIFICATION OF PROPOSED AMENDMENTS.—The proposed amendments to the Federal Rules of Criminal Procedure which are embraced by an order entered by the Supreme Court of the United States on April 29, 1994, shall take effect on December 1, 1994, as otherwise provided by law, but with the following amendments:

“(b) IN GENERAL.—[Amended Rule 32 of the Federal Rules of Criminal Procedure.]

“(c) EFFECTIVE DATE.—The amendments made by subsection (b) shall become effective on December 1, 1994.”

AMENDMENTS TO CIVIL RULES PROPOSED APRIL 30, 1991

“(a) TECHNICAL AMENDMENT.—Rule 15(c)(3) of the Federal Rules of Civil Procedure for the United States
Courts, as transmitted to the Congress by the Supreme Court pursuant to section 2074 of title 28, United States Code, to become effective on December 1, 1971, is amended by striking 'Rule 4(m) and inserting 'Rule 4(c)'."

“(b) AMENDMENT TO FORMS.—Form 1–A, Notice of Lawsuit and Request for Waiver of Service of Summons, and Form 1–B, Waiver of Service of Summons, included in the transmittal by the Supreme Court described in subsection (a), shall not be effective and Form 18–A, Notice and Acknowledgment for Service by Mail, abrogated by the Supreme Court in such transmittal, effective December 1, 1971, shall continue in effect on or after that date.”

AMENDMENTS TO CIVIL RULES PROPOSED APRIL 28, 1982


Pub. L. 97–227, Aug. 2, 1982, 96 Stat. 246, provided: “That notwithstanding the provisions of section 2072 of title 28, United States Code, the amendments to rule 4 of the Federal Rules of Civil Procedure as proposed by the Supreme Court of the United States and transmitted to the Congress by the Chief Justice on April 28, 1982, shall take effect on October 1, 1983, unless previously approved, disapproved, or modified by Act of Congress.

“SEC. 2. This Act shall be effective as of August 1, 1982, but shall not apply to the service of process that takes place between August 1, 1982, and the date of enactment of this Act [Aug. 2, 1982].”

AMENDMENTS TO CRIMINAL RULES AND RULES OF EVIDENCE PROPOSED APRIL 30, 1979; POSTPONEMENT OF EFFECTIVE DATE


(1) the amendments proposed by the United States Supreme Court and transmitted by the Chief Justice on April 30, 1979, to the Federal Rules of Criminal Procedure affecting rules 11(e)(6), 17(h), 32(f), and 44(c), and adding new rules 26.2 and 32.1, and the amendments so proposed and transmitted to the Federal Rules of Evidence affecting rule 410, shall not take effect until December 1, 1980, or until and then only to the extent approved by Act of Congress, whichever is earlier; and

(2) the amendment proposed by the United States Supreme Court and transmitted by the Chief Justice on April 30, 1979, affecting rule 40 of the Federal Rules of Criminal Procedure shall take effect on August 1, 1979, with the following amendments:

(A) In the matter designated as paragraph (1) of subdivision (d), strike out ‘in accordance with Rule 32.1(a)’. [32.1(a)]

(B) In the matter designated as paragraph (2) of subdivision (d), strike out ‘in accordance with Rule 32.1a(a)’.

APPROVAL AND EFFECTIVE DATE OF AMENDMENTS PROPOSED APRIL 26, 1976

Pub. L. 95–78, § 1, July 30, 1977, 91 Stat. 319, provided: “That notwithstanding the first section of the Act entitled ‘An Act to delay the effective date of certain proposed amendments to the Federal Rules of Criminal Procedure and certain other rules promulgated by the United States Supreme Court’ [Public Law 94–349, approved July 8, 1976] [90 Stat. 222] the amendments to rules 6(e), 23, 24, 40.1, and 41(c)(2) of the Rules of Criminal Procedure for the United States district courts [set out in the Appendix to Title 18, Crimes and Criminal Procedure] which are embraced by the order entered by the United States Supreme Court on April 26, 1976, shall take effect only as provided in this Act [see section 4 of Pub. L. 95–78, set out below].”

EFFECTIVE DATE OF PUB. L. 95–78


APPROVAL AND EFFECTIVE DATE OF RULES GOVERNING SECTION 2254 CASES AND SECTION 2255 PROCEEDINGS FOR UNITED STATES DISTRICT COURTS

Pub. L. 94–426, § 1, Sept. 28, 1976, 90 Stat. 1334, provided: “That the rules governing section 2254 cases in the United States district courts and the rules governing section 2255 proceedings for the United States district courts, as proposed by the United States Supreme Court, which were delayed by the Act entitled ‘An Act to delay the effective date of certain proposed amendments to the Federal Rules of Criminal Procedure and certain other rules promulgated by the United States Supreme Court’ [Public Law 94–349], are approved with the amendments set forth in section 2 of this Act and shall take effect as so amended, with respect to petitions under section 2254 and motions under section 2255 of title 28 of the United States Code filed on or after February 1, 1977.”

AMENDMENTS TO CRIMINAL RULES UNDER SUPREME COURT ORDER OF APRIL 26, 1976; POSTPONEMENT OF EFFECTIVE DATE

Pub. L. 94–349, § 1, July 8, 1976, 90 Stat. 822, provided: “That, notwithstanding the provisions of sections 3771 and 3772 of title 18 of the United States Code and section 2254 of title 28 of the United States Code, the amendments to rules 4(e), 23, 24, 40.1 and 41(c)(2) of the Rules of Criminal Procedure for the United States district courts which are embraced by the order entered by the United States Supreme Court on April 26, 1976, and which were transmitted to the Congress on or about April 26, 1976, shall not take effect until August 1, 1977, or until and to the extent approved by Act of Congress, whichever is earlier. The remainder of the proposed amendments to the Federal Rules of Criminal Procedure [rules 6(f), 41(a), (c)(1), and 50(b)] shall become effective August 1, 1976, pursuant to law.”

POSTPONEMENT OF EFFECTIVE DATE OF PROPOSED RULES AND FORMS GOVERNING PROCEEDINGS UNDER SECTIONS 2254 AND 2255 OF THIS TITLE

Pub. L. 94–349, § 2, July 8, 1976, 90 Stat. 822, provided: “That, notwithstanding the provisions of section 2072 of title 28 of the United States Code, the rules and forms governing section 2254 [section 2254 of this title] cases in the United States district courts and the rules and forms governing section 2255 [section 2255 of this title] proceedings in the United States district courts which are embraced by the order entered by the United States Supreme Court on April 26, 1976, and which were transmitted to the Congress on or about April 26, 1976, shall not take effect until thirty days after the adjournment sine die of the 94th Congress, or until and to the extent approved by Act of Congress, whichever is earlier.”

APPROVAL AND EFFECTIVE DATE OF AMENDMENTS PROPOSED APRIL 22, 1974

Pub. L. 94–64, § 2, July 31, 1975, 89 Stat. 379, provided that: “The amendments proposed by the United States Supreme Court pursuant to section 2074 of title 28, United States Code, to become effective on December 1, 1971, is amended by striking ‘Rule 4(m) and inserting ‘Rule 4(c)’.”
Supreme Court to the Federal Rules of Criminal Procedure [adding rules 12.1, 12.2, and 29.1 and amending rules 4, 9(a), 11, 12, 15, 16, 17(f), 20, 32(a),(c), (d), (e), and 43] which were in effect on September 30, 1979, shall be applicable to cases under title 11, to the extent not inconsistent with the amendments made by section 3 of this Act.

Rule 11(e)(6), which shall take effect on August 1, 1975, with respect to the amendment to Rule 11, insofar as it adds a statement.

Amendment by Pub. L. 93–361, July 30, 1974, 88 Stat. 397, provided:

That, notwithstanding the provisions of sections 3771 and 3772 of title 18 of the United States Code, the effective date of the proposed amendments to the Federal Rules of Criminal Procedure which are embraced by the orders entered by the United States Supreme Court on April 22, 1974, and which were transmitted to the Congress by the Chief Justice on April 22, 1974, is postponed until August 1, 1975.


Pub. L. 93–12, Mar. 30, 1973, 87 Stat. 9, provided: "That, notwithstanding any other provisions of law, the Rules of Evidence for United States Courts and Magistrates, the Amendments to the Federal Rules of Civil Procedure, and the Amendments to the Federal Rules of Criminal Procedure, which are embraced by the orders entered by the Supreme Court of the United States on November 20, 1972, and December 18, 1972, and such amendments shall take effect on the one hundred and eightieth day beginning after the date of the enactment of this Act [Jan. 2, 1973]."

Amendments to Criminal Rules Under Supreme Court Order of April 22, 1974; Postponement of Effective Date Until August 1, 1975

Pub. L. 93–361, July 30, 1974, 88 Stat. 397, provided: "That, notwithstanding the provisions of sections 3771 and 3772 of title 18 of the United States Code, the effective date of the proposed amendments to the Federal Rules of Criminal Procedure which are embraced by the order entered by the United States Supreme Court on April 22, 1974, and which were transmitted to the Congress by the Chief Justice on April 22, 1974, is postponed until August 1, 1975."


Pub. L. 93–361, July 30, 1973, 88 Stat. 9, provided: "That, notwithstanding any other provisions of law, the Rules of Evidence for United States Courts and Magistrates, the Amendments to the Federal Rules of Civil Procedure, and the Amendments to the Federal Rules of Criminal Procedure, which are embraced by the orders entered by the Supreme Court of the United States on November 20, 1972, and December 18, 1972, shall have no force or effect except to the extent, and with such amendments, as they may be expressly approved by the Act of Congress."

§ 2075. Bankruptcy rules

The Supreme Court shall have the power to prescribe by general rules, the forms of process, writs, pleadings, and motions, and the practice and procedure in cases under title 11.

Such rules shall not abridge, enlarge, or modify any substantive right.

The Supreme Court shall transmit to Congress not later than May 1 of the year in which a rule prescribed under this section is to become effective a copy of the proposed rule. The rule shall take effect not earlier than December 1 of the year in which it is transmitted to Congress unless otherwise provided by law.

The bankruptcy rules promulgated under this section shall prescribe a form for the statement required under section 707(b)(2)(C) of title 11 and may provide general rules on the content of such statement.


Amendments

2005—Pub. L. 109–8 inserted at end "The bankruptcy rules promulgated under this section shall prescribe a form for the statement required under section 707(b)(2)(C) of title 11 and may provide general rules on the content of such statement."

1994—Pub. L. 103–394 amended third par. generally. Prior to amendment, third par. read as follows: "Such rules shall not take effect until they have been reported to Congress by the Chief Justice at or after the beginning of a regular session thereof but not later than the first day of May and until the expiration of ninety days after they have been thus reported."

1978—Pub. L. 95–598 substituted "in cases under title 11" for "under the Bankruptcy Act" and struck out provisions directing that all laws in conflict with bankruptcy rules be of no further force or effect after such rules have taken effect.

Effective Date of 2005 Amendment

Amendment by Pub. L. 109–8 effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under title 11, Bankruptcy, before such effective date, except as otherwise provided, see section 501 of Pub. L. 109–8, set out as a note under section 101 of Title 11.

Effective Date of 1994 Amendment


Effective Date of 1978 Amendment

Amendment by Pub. L. 95–598 effective Nov. 6, 1978, see section 402(d) of Pub. L. 95–598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

Rules Promulgated by Supreme Court

Pub. L. 98–353, title III, §320, July 10, 1984, 98 Stat. 337, provided that: "The Supreme Court shall prescribe general rules implementing the practice and procedure to be followed under section 707(b)(2)(C) of title 11, United States Code. Section 2075 of title 28, United States Code, shall apply with respect to the general rules prescribed under this section."

Applicability of Rules to Cases Under Title 11

Pub. L. 95–598, title IV, §405(d), Nov. 6, 1978, 92 Stat. 2685, provided that: "The rules prescribed under section 2075 of title 28 of the United States Code and in effect on September 30, 1979, shall apply to cases under title 11, to the extent not inconsistent with the amendments made by this Act, or with this Act [see Tables for complete classification of Pub. L. 95–598], until such rules are repealed or superseded by rules prescribed and effective under such section, as amended by section 247 of this Act."

Additional Rulemaking Power

Pub. L. 95–598, title IV, §410, Nov. 6, 1978, 92 Stat. 3697, provided that: "The Supreme Court may issue such additional rules of procedure, consistent with Acts of Congress, as may be necessary for the orderly transfer of functions and records and the orderly transition to the new bankruptcy court system created by this Act [see Tables for complete classification of Pub. L. 95–598]."
CHAPTER 133—REVIEW—MISCELLANEOUS PROVISIONS

§ 2101. Supreme Court; time for appeal or certiorari; docketing; stay

(a) A direct appeal to the Supreme Court from any decision under section 1253 of this title, holding unconstitutional in whole or in part, any Act of Congress, shall be taken within thirty days after the entry of the interlocutory or final order, judgment or decree. The record shall be made up and the case docketed within sixty days after the entry of the interlocutory or final order, judgment or decree. The record shall be made up and the case docketed within sixty days after the entry of the interlocutory or final order, judgment or decree. A justice of the Supreme Court, for good cause shown, may extend the time for applying for a writ of certiorari for a period not exceeding sixty days.
(d) The time for appeal or application for a writ of certiorari to review the judgment of a State court in a criminal case shall be as prescribed by rules of the Supreme Court.

(e) An application to the Supreme Court for a writ of certiorari to review a case before judgment has been rendered in the court of appeals may be made at any time before judgment.

(f) In any case in which the final judgment or decree of any court is subject to review by the Supreme Court on writ of certiorari, the execution and enforcement of such judgment or decree may be stayed for a reasonable time to enable the party aggrieved to obtain a writ of certiorari from the Supreme Court. The stay may be granted by a judge of the court rendering the judgment or decree or by a justice of the Supreme Court, and may be conditioned on the giving of security, approved by such judge or justice, that if the aggrieved party fails to make application for such writ within the period allotted therefor, or fails to obtain an order granting his application, or fails to make his plea good in the Supreme Court, he shall answer for all damages and costs which the other party may sustain by reason of the stay.

(g) The time for application for a writ of certiorari to review a decision of the United States Court of Appeals for the Armed Forces shall be as prescribed by rules of the Supreme Court.


HISTORICAL AND REVISION NOTES

1949 ACT


Section consolidates section 350 of title 28, U.S.C., 1940 ed., with those portions of sections 47, 47a, 39a, 390, and 380a, of said title 28, section 29, section 28 of title 15, U.S.C., 1940 ed., and section 45 of title 49, U.S.C., 1940 ed., respective time for taking direct appeal. (For disposition of other provisions of said sections, see Distribution Table.)

Subsection (a) of the revised section is derived from sections 39a and 380a of title 28, U.S.C., 1940 ed. The phrase “under rules prescribed by the Supreme Court” was substituted for the phrase “under such rules as may be prescribed by the proper courts” which appeared in both such sections. The Supreme Court by its revised rules 10–15 has made adequate provision for filling record and docketing case. (See Revised Rules of the Supreme Court following section 354 of title 28, U.S.C., 1940 ed.)


Subsection (c), with respect to the time for taking other appeals or petitioning for a writ of certiorari, substitutes, as more specific, the words “ninety days” for the words “three months” contained in section 350 of title 28, U.S.C., 1940 ed. The provision in said section 350 for allowance of additional time was retained, notwithstanding the language of the Supreme Court in Comm'r v. Bedford's Estate, 1945, 65 S.Ct. 1157, 1159, 325 U.S. 283, 89 L.Ed. 1611, to the effect that the 3 months’ period is “more than ample * * * to determine whether to seek further review.”

In subsection (c), words “in a civil action, suit, or proceeding” were added because section 350 of title 28, U.S.C., 1940 ed., was superseded as to criminal cases by Federal Rules of Criminal Procedure, Rule 39(a)(2), (b)(2).

Words “or the United States Court of Appeals for the District of Columbia” in section 350 of title 28, U.S.C., 1940 ed., were omitted as covered by “court of appeals” in subsection (d) of this revised section.

Words in section 350 of title 28, U.S.C., 1940 ed., “excepting that writs of certiorari to the Supreme Court of the Philippine Islands may be granted where application therefor is made within six months”, were omitted as obsolete, in view of the independence of the Philippines recognized by section 1240 of title 48, U.S.C., 1940 ed., Territories and Insular Possessions.

Subsection (e) relates only to supersedeas or stay of execution of judgments sought to be reviewed in the Supreme Court on writ of certiorari. Supersedeas or stay of proceedings taken to the Supreme Court by appeal from courts of appeals, or direct appeals from a district court or three-judge courts, is governed by Rule 62 of the Federal Rules of Civil Procedure.

Changes were made in phraseology.

1949 ACT

This section clarifies the meaning of subsection (c) of section 2101 of title 28, U.S.C. At present, such subsection, after the words, “ninety days after entry of such judgment or decree”, reads, “unless, upon application for writ of certiorari, for good cause, the Supreme Court or a justice thereof allows an additional time not exceeding sixty days.”

The new subsection (d) of section 2101 supplies an omission in revised title 28, U.S.C., and confirms the authority of the Supreme Court to regulate the time for seeking review of State criminal cases.

The other amendment merely renumbers subsections (d) and (e) of such section 2101 as subsections (e) and (f), respectively.

AMENDMENTS

1994—Subsec. (g). Pub. L. 103–337 substituted “Court of Appeals for the Armed Forces” for “Court of Military Appeals”.


1949—Subsec. (c). Act May 24, 1949, §106(a), clarified the allowance of an additional 60 days in which to apply for a writ of certiorari.

Subsecs. (d) to (f). Act May 24, 1949, §106(b), added subsec. (d) and redesignated former subsecs. (d) and (e) as (e) and (f), respectively.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–352 effective ninety days after June 27, 1988, except that such amendment not to apply to cases pending in Supreme Court on such effective date or affect right to review or manner of reviewing judgment or decree of court which was entered before such effective date, see section 7 of Pub. L. 100–352, set out as a note under section 1253 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

§ 2102. Priority of criminal case on appeal from State court

Criminal cases on review from State courts shall have priority, on the docket of the Supreme Court, over all cases except cases to which the United States is a party and such other cases as the court may decide to be of public importance.

(June 25, 1948, ch. 646, 62 Stat. 962.)

HISTORICAL AND REVISION NOTES


Changes were made in phraseology.


EFFECTIVE DATE OF REPEAL

Repeal effective ninety days after June 27, 1988, except that such repeal not to apply to cases pending in Supreme Court on such effective date or affect right to review or manner of review, see section 7 of Pub. L. 100–352, set out as a note under section 1254 of this title.

 § 2104. Reviews of State court decisions

A review by the Supreme Court of a judgment or decree of a State court shall be conducted in the same manner and under the same regulations, and shall have the same effect, as if the judgment or decree reviewed had been rendered in a court of the United States.


HISTORICAL AND REVISION NOTES


Words “An appeal to” were substituted for “writs of error from”, in view of the abolition of the writ of error.

Changes were made in phraseology.

AMENDMENTS

1968—Pub. L. 100–352 substituted “Reviews of State court decisions” for “Appeals from State courts” in section catchline and amended text generally. Prior to amendment, text read as follows: “An appeal to the Supreme Court from a State court shall be taken in the same manner and under the same regulations, and shall have the same effect, as if the judgment or decree appealed from had been rendered in a court of the United States.”

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 100–352 effective ninety days after June 27, 1988, except that such amendment not to apply to cases pending in Supreme Court on such effective date or affect right to review or manner of reviewing judgment or decree of court which was entered before such effective date, see section 7 of Pub. L. 100–352, set out as a note under section 1254 of this title.

§ 2105. Scope of review; abatement

There shall be no reversal in the Supreme Court or a court of appeals for error in ruling upon matters in abatement which do not involve jurisdiction.

(June 25, 1948, ch. 646, 62 Stat. 963.)

HISTORICAL AND REVISION NOTES


The revised language is substituted for the provisions of section 879 of title 28, U.S.C., 1940 ed., to avoid any construction that matters of fact are not reviewable in nonjury cases. Such section 879 related to review upon a writ of error which applied only to actions at law. (See Rule 52(a) of the Federal Rules of Civil Procedure limiting the review of questions of fact which renders unnecessary any statutory limitation.)

Rule 7(c) of the Federal Rules of Civil Procedure abolished all pleas, and the rules adopted the motion as a substitute therefore.

Words “matters in abatement” were, therefore, substituted for the abolished “plea in abatement” and “plea to the jurisdiction.”

Changes were made in phraseology.

§ 2106. Determination

The Supreme Court or any other court of appellate jurisdiction may affirm, modify, vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances.

(June 25, 1948, ch. 646, 62 Stat. 963.)

HISTORICAL AND REVISION NOTES


Section consolidates part of section 344 of title 28, U.S.C., 1940 ed., with sections 876 and 877 of said title. Other provisions of said section 344 are incorporated in sections 1257 and 2103 of this title.

Words “or a court of appeals” were inserted after “Supreme Court” upon authority of United States v. Illinois Surety Co., C.C.A. 1915, 226 F. 653, affirmed 37 S.Ct. 614, 244 U.S. 376, 61 L.Ed. 1206, wherein it was held that this section also applied to the courts of appeals in view of section 11 of the Circuit Court of Appeals Act of Mar. 3, 1891, ch. 517, 28 Stat. 829.

The revised section will cover instances where the Supreme Court remands a case to the highest court of a State and to the United States Tax Court. It will also cover a remand of a case to the Court of Claims or the Court of Customs and Patent Appeals. For authority to remand a case to The Tax Court, see Equitable Life Assurance Society of U.S. v. Commissioner of Internal Revenue, 1944, 64 S.Ct. 722, 321 U.S. 560, 89 L.Ed. 927.

Revised section will also permit a remand by the Supreme Court to a court of appeals inasmuch as such latter court then would be a lower court. The revised section is in conformity with numerous holdings of the Supreme Court to the effect that such a remand may be made. See especially, Maryland Casualty Co. v. United States, 1929, 49 S.Ct. 484, 279 U.S. 792, 73 L.Ed. 960; Krauss Bros. Co. v. Mellon, 1929, 48 S.Ct. 275, 276 U.S. 386, 72 L.Ed. 620 and Buczyński v. Luckenbach S. S. Co., 1928, 48 S.Ct. 440, 277 U.S. 226, 72 L.Ed. 860.

The last sentence of section 876 of title 28, U.S.C., 1940 ed., providing that the Supreme Court should not issue execution but should send a special mandate to the inferior court to award execution, was omitted. See rule 34 of the revised rules of the Supreme Court relating to
§ 2107. Time for appeal to court of appeals

(a) Except as otherwise provided in this section, no appeal shall bring any judgment, order or decree in an action, suit or proceeding of a civil nature before a court of appeals for review unless notice of appeal is filed, within thirty days after the entry of such judgment, order or decree.

(b) In any such action, suit, or proceeding, the time as to all parties shall be 60 days from such entry if one of the parties is:

(1) the United States;
(2) a United States agency;
(3) a United States officer or employee sued in an official capacity; or
(4) a current or former United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on behalf of the United States, including all instances in which the United States represents that officer or employee when the judgment, order, or decree is entered or files the appeal for that officer or employee.

(c) The district court may, upon motion filed not later than 30 days after the expiration of the time otherwise set for bringing appeal, extend the time for appeal upon a showing of excusable neglect or good cause. In addition, if the district court finds—

(1) that a party entitled to notice of the entry of a judgment or order did not receive such notice from the clerk or any party within 21 days of its entry, and
(2) that no party would be prejudiced, the district court may, upon motion filed within 180 days after entry of the judgment or order or within 14 days after receipt of such notice, which is sooner, reopen the time for appeal for a period of 14 days from the date of entry of the order reopening the time for appeal.

(d) This section shall not apply to bankruptcy matters or other proceedings under Title 11.

(Historical and Revision Notes)

1948 ACT


Section 227a of title 28, U.S.C., 1940 ed., provided a time limit of 30 days for appeals from patent-infringe-
designated fifth par. as subsec. (d), and struck out third and fourth pars. which read as follows:

"In any action, suit or proceeding in admiralty, the notice of appeal shall be filed within ninety days after the entry of the order, judgment or decree appealed from, if it is a final decision, and within fifteen days after its entry if it is an interlocutory decree.

"A district court may extend the time for appeal not exceeding thirty days from the expiration of the original time herein prescribed, upon a showing of excusable neglect based on failure of a party to learn of the entry of the judgment, order or decree.""

1978—Pub. L. 95–596 directed the amendment of section by inserting "or the bankruptcy court" after "district court" and by striking out the final par., which amendment did not become effective pursuant to section 402(b) of Pub. L. 95–596, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

1969 May 24, 1949, restored, in third par., the 15-day limitation of time within which to appeal from an interlocutory order in admiralty, and in fourth par., substituted "The district court may" for "The district court, in any such action, suit, or proceeding, may" and corrected spelling of "excusable".

Effective Date of 2011 Amendment
Pub. L. 112–62, § 4, Nov. 29, 2011, 125 Stat. 757, provided that: "The amendment made by this Act [amending this section] shall take effect on December 1, 2011."

Effective Date of 2009 Amendment

Findings
Pub. L. 112–62, § 2, Nov. 29, 2011, 125 Stat. 756, provided that: "Congress finds that—

"(1) section 2107 of title 28, United States Code, and rule 4 of the Federal Rules of Appellate Procedure provide that the time to appeal for most civil actions is 30 days, but that the appeal time for all parties is 60 days when the parties in the civil action include the United States, a United States officer, or a United States agency;

"(2) the 60-day period should apply if one of the parties is—

"(A) the United States;

"(B) a United States agency;

"(C) a United States officer or employee sued in an official capacity; or

"(D) a current or former United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on behalf of the United States;

"(3) section 2107 of title 28, United States Code, and rule 4 of the Federal Rules of Appellate Procedure (as amended to take effect on December 1, 2011, in accordance with section 2974 of that title) should uniformly apply the 60-day period to those civil actions relating to a Federal officer or employee sued in an individual capacity for an act or omission occurring in connection with Federal duties;

"(4) the civil actions to which the 60-day period should apply include all civil actions in which a legal officer of the United States represents the relevant officer or employee when the judgment or order is entered or in which the United States files the appeal for that officer or employee; and

"(5) the application of the 60-day period in section 2107 of title 28, United States Code, and rule 4 of the Federal Rules of Appellate Procedure—

"(A) is not limited to civil actions in which representation of the United States is provided by the Department of Justice; and

"(B) includes all civil actions in which the representation of the United States is provided by a Federal legal officer acting in an official capacity, such as civil actions in which a Member, officer, or employee of the Senate or the House of Representatives is represented by the Office of Senate Legal Counsel or the Office of General Counsel of the House of Representatives."

§ 2108. Proof of amount in controversy
Where the power of any court of appeals to review a case depends upon the amount or value in controversy, such amount or value, if not otherwise satisfactorily disclosed upon the record, may be shown and ascertained by the oath of a party to the case or by other competent evidence.

(June 25, 1948, ch. 646, 62 Stat. 963.)

Historical and Revision Notes

Words "or in the Supreme Court" were omitted. Section 7 of the 1925 act containing such words related to review by the Supreme Court of the United States of decisions of the Supreme Court of the Philippines Islands and designated a certain jurisdictional amount. Such section 7 has now become obsolete, in view of the recognition of the independence of the Philippines, title 48 U.S.C., 1940 ed., § 1240, Territories and Insular Possessions, and there is no other case wherein the power of the Supreme Court to review depends on the amount or value in controversy.

§ 2109. Quorum of Supreme Court justices absent
If a case brought to the Supreme Court by direct appeal from a district court cannot be heard and determined because of the absence of a quorum of qualified justices, the Chief Justice of the United States may order it remitted to the court of appeals for the circuit including the district in which the case arose, to be heard and determined by that court either sitting in banc or specially constituted and composed of the three circuit judges senior in commission who are able to sit, as such order may direct. The decision of such court shall be final and conclusive. In the event of the disqualification or disability of one or more of such circuit judges, such court shall be filled as provided in chapter 15 of this title.

In any other case brought to the Supreme Court for review, which cannot be heard and determined because of the absence of a quorum of qualified justices, if a majority of the qualified justices shall be of opinion that the case cannot be heard and determined at the next ensuing term, the court shall enter its order affirming the judgment of the court from which the case was brought for review with the same effect as upon affirmance by an equally divided court.

(June 25, 1948, ch. 646, 62 Stat. 963.)

Historical and Revision Notes


The revised section includes the principal provisions of sections 29 and 45 of titles 15 and 49, U.S.C., 1946 ed., respectively, in case of the absence of a quorum of qualified Justices of the Supreme Court.
Sections 29 and 45 of titles 15 and 49, U.S.C., 1940 ed., respectively, were identical and were applicable only to decisions of three-judge courts in antitrust cases under section 107 of said title 15 and Interstate Commerce cases under sections 1, 8, and 12 of said title 49, "or any other acts having a like purpose that may hereinafter be enacted." The revised section broadens and extends the application of such provisions to include "any case involving a direct appeal to the Supreme Court from the decision of a district court or a district court of three judges which cannot be heard and determined because of the absence of a quorum of qualified justices." It includes direct appeals in criminal cases under section 3731 of title 18 (H.R. 1600, 80th Cong.).

Sections 29 and 45 of titles 15 and 49, U.S.C., 1940 ed., respectively provided that the Supreme Court certify the case to the Circuit Court of Appeals and that the Senior Circuit Judge, qualified to participate should designate himself and two other circuit judges next in order of seniority. Other provisions were made for designation of circuit judges from other circuits in case of insufficient circuit judges being available in the circuit.

The revised section permits the Chief Justice of the United States to designate the "court of appeals" to hear the case in banc or by means of a specially constituted court of appeals composed of the three circuit judges senior in commission who are able to sit. In case of disqualification or disability, the court shall be filled by designation and assignment as provided in chapter 15 of this title.

The provisions of section 29 of title 15, U.S.C., 1940 ed., and section 45 of title 49, U.S.C., 1940 ed., relating to time for appeal are incorporated in section 2101 of this title. The provisions of said sections for direct appeal to the Supreme Court are retained in said titles 15 and 49.

The second paragraph of the revised section is new. It recognizes the necessity of final disposition of litigation in which appellate review has been had and further review by the Supreme Court is impossible for lack of a quorum of qualified justices.


Section, acts June 25, 1948, ch. 464, 62 Stat. 964; May 21, 1949, ch. 139, §109, 63 Stat. 105, provided that appeals to the Court of Claims in tort claims cases, as provided in section 1504 of this title, be taken within 90 days after the entry of the final judgment of the district court.

Effective Date of Repeal
Repeal 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.

§ 2111. Harmless error

On the hearing of any appeal or writ of certiorari in any case, the court shall give judgment after an examination of the record without regard to errors or defects which do not affect the substantial rights of the parties.

(Added May 24, 1949, ch. 139, §110, 63 Stat. 105.)

Historical and Revision Notes

1949 ACT

Incorporates in title 28, U.S.C., as section 2111 thereof, the harmless error provisions of section 269 of the Judicial Code (now repealed), which applied to all courts of the United States and to all cases therein and therefore was superseded only in part by the Federal Procedural Rules, which apply only to the United States district courts.

§ 2112. Record on review and enforcement of agency orders

(a) The rules prescribed under the authority of section 2072 of this title may provide for the time and manner of filing and the contents of the record in all proceedings instituted in the courts of appeals to enjoin, set aside, suspend, modify, or otherwise review or enforce orders of administrative agencies, boards, commissions, and officers. Such rules may authorize the agency, board, commission, or officer to file in the court a certified list of the materials comprising the record and retain and hold for the court all such materials and transmit the same or any part thereof to the court, when and as required by it, at any time prior to the final determination of the proceeding, and such filing of such certified list of the materials comprising the record and such subsequent transmittal of any such materials when and as required shall be deemed full compliance with any provision of law requiring the filing of the record in the court. The record in such proceedings shall be certified and filed in or held for and transmitted to the court of appeals by the agency, board, commission, or officer concerned within the time and in the manner prescribed by such rules. If proceedings are instituted in two or more courts of appeals with respect to the same order, the following shall apply:

(1) If within ten days after issuance of the order the agency, board, commission, or officer concerned receives, from the persons instituting the proceedings, the petition for review with respect to proceedings in at least two courts of appeals, the agency, board, commission, or officer shall proceed in accordance with paragraph (3) of this subsection. If within ten days after the issuance of the order the agency, board, commission, or officer concerned receives, from the persons instituting the proceedings, the petition for review with respect to proceedings in only one court of appeals, the agency, board, commission, or officer shall file the record in that court notwithstanding the institution in any other court of appeals proceedings for review of that order. In all other cases in which proceedings have been instituted in two or more courts of appeals with respect to the same order, the agency, board, commission, or officer concerned shall file the record in the court in which proceedings with respect to the order were first instituted.

(2) For purposes of paragraph (1) of this subsection, a copy of the petition or other pleading which institutes proceedings in a court of appeals and which is stamped by the court with the date of filing shall constitute the petition for review. Each agency, board, commission, or officer, as the case may be, shall designate by rule the office and the officer who must receive petitions for review under paragraph (1).

(3) If an agency, board, commission, or officer receives two or more petitions for review of an order in accordance with the first sentence of paragraph (1) of this subsection, the agency, board, commission, or officer shall, promptly after the expiration of the ten-day
§ 2112

by the agency, board, commission, or officer is concerned, the petition for review or respondent in enforcement, as the case may be, and any intervenor in the court proceeding by written stipulation filed with the agency, board, commission, or officer concerned or in the court agree to omit as wholly immaterial to the questioned finding or order, as the case may be, any portion of the proceedings before the agency, board, commission, or officer which the court subsequently determines to be proper for it to consider to enable it to review or enforce the order in question the court may direct that such additional portion of the proceedings be filed as a supplement to the record. The agency, board, commission, or officer concerned may, at its option and without regard to the foregoing provisions of this subsection, and if so requested by the petitioner for review or respondent in enforcement shall, file in the court the entire record of the proceedings before it without abbreviation.

(c) The agency, board, commission, or officer concerned may transmit to the court of appeals the original papers comprising the whole or any part of the record or any supplemental record, or otherwise true copies of such papers certified by an authorized officer or deputy of the agency, board, commission, or officer concerned shall be transmitted. Any original papers thus transmitted to the court of appeals shall be returned to the agency, board, commission, or officer concerned upon the final determination of the review or enforcement proceeding. Pending such final determination any such papers may be returned by the court temporarily to the custody of the agency, board, commission, or officer concerned if needed for the transaction of the public business. Certified copies of any papers included in the record or any supplemental record may also be returned to the agency, board, commission, or officer concerned upon the final determination of review or enforcement proceedings.

(d) The provisions of this section are not applicable to proceedings to review decisions of the Tax Court of the United States or to proceedings to review or enforce those orders of administrative agencies, boards, commissions, or officers which are by law reviewable or enforceable by the district courts.


AMENDMENTS

1988—Subsec. (a). Pub. L. 100–236 substituted “If proceedings are instituted in two or more courts of appeals with respect to the same order, the following shall apply:” and pars. (1) to (5) for “If proceedings have been instituted in two or more courts of appeals with respect to the same order the agency, board, commission, or officer concerned shall file the record in that one of such courts in which a proceeding with respect to such order was first instituted. The other courts in which such proceedings are pending shall thereupon transfer them to the court of appeals in which the record has been filed. For the convenience of the parties in the interest of justice such court may thereafter transfer all the proceedings with respect to such order to any other court of appeals.”

1965—Subsec. (a). Pub. L. 89–773, § 8(a), substituted “The rules prescribed under the authority of section 2072 of this title may provide for the time and manner of filing” for “The several courts of appeal shall have

period specified in that sentence, so notify the judicial panel on multidistrict litigation authorized by section 1407 of this title, in such form as that panel shall prescribe. The judicial panel on multidistrict litigation shall, by means of random selection, designate one court of appeals, from among the courts of appeals in which petitions for review have been filed and received within the ten-day period specified in the first sentence of paragraph (1), in which the record is to be filed, and shall issue an order consolidating the petitions for review in that court of appeals. The judicial panel on multidistrict litigation shall, after providing notice to the public and an opportunity for the submission of comments, prescribe rules with respect to the consolidation of other court of appeals designated pursuant to this paragraph.

(4) Any court of appeals in which proceedings with respect to an order of an agency, board, commission, or officer have been instituted may, to the extent authorized by law, stay the effective date of the order. Any such stay may thereafter be modified, revoked, or extended by a court of appeals designated pursuant to paragraph (3) with respect to that order or by any other court of appeals to which the proceedings are transferred.

(5) All courts in which proceedings are instituted with respect to the same order, other than the court in which the record is filed pursuant to this subsection, shall transfer those proceedings to the court in which the record is so filed. For the convenience of the parties in the interest of justice, the court in which the record is filed may thereafter transfer all the proceedings with respect to that order to any other court of appeals.

(b) The record to be filed in the court of appeals in such a proceeding shall consist of the order sought to be reviewed or enforced, the findings or report upon which it is based, and the pleadings, evidence, and proceedings before the agency, board, commission, or officer concerned, or such portions thereof (1) as the rules prescribed under the authority of section 2072 of this title may require to be included therein, or (2) as the agency, board, commission, or officer concerned, the petitioner for review or respondent in enforcement, as the case may be, and any intervenor in the court proceeding by written stipulation filed with the agency, board, commission, or officer concerned or in the court agree to omit as wholly immaterial to the questioned finding or order in question the court may direct that such additional portion of the proceedings be filed as a supplement to the record.

(c) The agency, board, commission, or officer concerned may transmit to the court of appeals the original papers comprising the whole or any part of the record or any supplemental record, or otherwise true copies of such papers certified by an authorized officer or deputy of the agency, board, commission, or officer concerned shall be transmitted. Any original papers thus transmitted to the court of appeals shall be returned to the agency, board, commission, or officer concerned upon the final determination of the review or enforcement proceeding. Pending such final determination any such papers may be returned by the court temporarily to the custody of the agency, board, commission, or officer concerned if needed for the transaction of the public business. Certified copies of any papers included in the record or any supplemental record may also be returned to the agency, board, commission, or officer concerned upon the final determination of review or enforcement proceedings.

(d) The provisions of this section are not applicable to proceedings to review decisions of the Tax Court of the United States or to proceedings to review or enforce those orders of administrative agencies, boards, commissions, or officers which are by law reviewable or enforceable by the district courts.


AMENDMENTS

1965—Subsec. (a). Pub. L. 89–773, § 8(a), substituted “The rules prescribed under the authority of section 2072 of this title may provide for the time and manner of filing” for “The several courts of appeal shall have

period specified in that sentence, so notify the judicial panel on multidistrict litigation authorized by section 1407 of this title, in such form as that panel shall prescribe. The judicial panel on multidistrict litigation shall, by means of random selection, designate one court of appeals, from among the courts of appeals in which petitions for review have been filed and received within the ten-day period specified in the first sentence of paragraph (1), in which the record is to be filed, and shall issue an order consolidating the petitions for review in that court of appeals. The judicial panel on multidistrict litigation shall, after providing notice to the public and an opportunity for the submission of comments, prescribe rules with respect to the consolidation of other court of appeals designated pursuant to this paragraph.

(4) Any court of appeals in which proceedings with respect to an order of an agency, board, commission, or officer have been instituted may, to the extent authorized by law, stay the effective date of the order. Any such stay may thereafter be modified, revoked, or extended by a court of appeals designated pursuant to paragraph (3) with respect to that order or by any other court of appeals to which the proceedings are transferred.

(5) All courts in which proceedings are instituted with respect to the same order, other than the court in which the record is filed pursuant to this subsection, shall transfer those proceedings to the court in which the record is so filed. For the convenience of the parties in the interest of justice, the court in which the record is filed may thereafter transfer all the proceedings with respect to that order to any other court of appeals.

(b) The record to be filed in the court of appeals in such a proceeding shall consist of the order sought to be reviewed or enforced, the findings or report upon which it is based, and the pleadings, evidence, and proceedings before the agency, board, commission, or officer concerned, or such portions thereof (1) as the rules prescribed under the authority of section 2072 of this title may require to be included therein, or (2) as the agency, board, commission, or officer concerned, the petitioner for review or respondent in enforcement, as the case may be, and any intervenor in the court proceeding by written stipulation filed with the agency, board, commission, or officer concerned or in the court agree to omit as wholly immaterial to the questioned finding or order in question the court may direct that such additional portion of the proceedings be filed as a supplement to the record.

(c) The agency, board, commission, or officer concerned may transmit to the court of appeals the original papers comprising the whole or any part of the record or any supplemental record, or otherwise true copies of such papers certified by an authorized officer or deputy of the agency, board, commission, or officer concerned shall be transmitted. Any original papers thus transmitted to the court of appeals shall be returned to the agency, board, commission, or officer concerned upon the final determination of the review or enforcement proceeding. Pending such final determination any such papers may be returned by the court temporarily to the custody of the agency, board, commission, or officer concerned if needed for the transaction of the public business. Certified copies of any papers included in the record or any supplemental record may also be returned to the agency, board, commission, or officer concerned upon the final determination of review or enforcement proceedings.

(d) The provisions of this section are not applicable to proceedings to review decisions of the Tax Court of the United States or to proceedings to review or enforce those orders of administrative agencies, boards, commissions, or officers which are by law reviewable or enforceable by the district courts.


AMENDMENTS

1965—Subsec. (a). Pub. L. 89–773, § 8(a), substituted “The rules prescribed under the authority of section 2072 of this title may provide for the time and manner of filing” for “The several courts of appeal shall have
power to adopt, with the approval of the Judicial Conference of the United States, rules, which so far as practicable shall be uniform in all such courts prescribing the time and manner of filing.” See section 2072 of this title.

Subsec. (b). Pub. L. 89–773, §5(b), substituted “the rules prescribed under the authority of section 2072 of this title” for “the said rules of the court of appeals” and for “the rules of such court”.

Effective Date of 1966 Amendment


1956—Pub. L. 84–305, title III, §305(c)(2), Dec. 29, 1955, 70 Stat. 315, which direct amendment of the item for chapter 157 in the table of chapters of this title by substituting “Surface Transportation Board” for “Interstate Commerce Commission”, was executed by making the substitution in the table of chapters for this part to reflect the probable intent of Congress.


CHAPTER 151—DECLARATORY JUDGMENTS

Sec. 2201. Creation of remedy.

2202. Further relief.

§ 2201. Creation of remedy

(a) In a case of actual controversy within its jurisdiction, except with respect to Federal taxes other than actions brought under section 7228 of the Internal Revenue Code of 1954, a proceeding under section 505 or 1146 of title 11, or in any civil action involving an antidumping or countervailing duty proceeding regarding a class

1 So in original.

2 So in original. Probably should be capitalized.
or kind of merchandise of a free trade area country (as defined in section 516A(f)(10) of the Tariff Act of 1930), as determined by the administering authority, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

(b) For limitations on actions brought with respect to drug patents see section 505 or 512 of the Federal Food, Drug, and Cosmetic Act, or section 351 of the Public Health Service Act.


HISTORICAL AND REVISION NOTES

1948 Act


This section is based on the first paragraph of section 400 of title 28, U.S.C. 1940 ed. Other provisions of such section are incorporated in section 2202 of this title.

While this section does not exclude declaratory judgments with respect to State taxes, such suits will not ordinarily be entertained in the courts of the United States where State law makes provision for payment under protest and recovery back or otherwise affords adequate remedy in the State courts. See Great Lakes Dredge & Dock Co. v. Huffman, 1943, 63 S.Ct. 1070, 319 U.S. 293, 87 L.Ed. 1407. See also Spector Motor Service v. McLaughlin, Conn. 1944, 65 S.Ct. 152, 253 U.S. 101, 89 L.Ed. 161. See also section 1341 of this title forbidding district courts to restrain enforcements of State taxes where State courts afford plain, speedy, and efficient remedy.

Changes were made in phraseology.

1949 Act

Section corrects a typographical error in section 2201 of title 28, U.S.C.

REFERENCES IN TEXT

Section 7428 of the Internal Revenue Code of 1986, referred to in subsec. (a), is classified to section 7428 of Title 26, Internal Revenue Code.

Section 516A(f)(10) of the Tariff Act of 1930, referred to in subsec. (a), is classified to section 516A(f)(10) of Title 19, Customs Duties.

Sections 505 and 512 of the Federal Food, Drug, and Cosmetic Act, referred to in subsec. (b), are classified to sections 355 and 360b, respectively, of Title 21, Food and Drugs.

Section 351 of the Public Health Service Act, referred to in subsec. (b), is classified to section 262 of Title 42, The Public Health and Welfare.

AMENDMENTS

2010—Subsec. (b), Pub. L. 111–148 inserted “, or section 351 of the Public Health Service Act” before period.

1993—Subsec. (a), Pub. L. 103–182 substituted “merchandise of a free trade area country (as defined in section 516A(f)(10) of the Tariff Act of 1930),” for “Canadian merchandise.”

1988—Subsec. (a), Pub. L. 100–449 substituted “1986,” for “1954 or” and inserted “or in any civil action involving an antidumping or countervailing duty proceeding regarding a class or kind of Canadian merchandise, as determined by the administering authority,” after “title 11.”

Subsec. (b). Pub. L. 100–360 inserted “or 512” after “505”.

1984—Pub. L. 98–417 designated existing provisions as subsec. (a) and added subsec. (b).


1956—Pub. L. 84–588 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 the State of Alaska.


1949—Act May 24, 1949, corrected spelling of “or” in second sentence.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–182 effective on the date the North American Free Trade Agreement enters into force with respect to the United States [Jan. 1, 1994], but not applicable to any final determination described in section 1516a(a)(1)(B) or (2)(B)(i), (ii), or (iii) of Title 19, Customs Duties, notice of which is published in the Federal Register before such date, or to a determination described in section 1516a(a)(2)(B)(vi) of Title 19, notice of which is received by the Government of Canada or Mexico before such date, or to any binational panel review under the United States-Canada Free-Trade Agreement, or to any extraordinary challenge arising out of any such review that was commenced before such date, see section 416 of Pub. L. 103–182, set out as an Effective Date note under section 3431 of Title 19.

EFFECTIVE AND TERMINATION DATES OF 1988 AMENDMENT

Amendment by Pub. L. 100–449 effective on date United States-Canada Free-Trade Agreement enters into force [Jan. 1, 1989], and to cease to have effect on date Agreement ceases to be in force, see section 551(a), (c) of Pub. L. 100–449, set out in a note under section 2112 of Title 19, Customs Duties.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–598 effective Oct. 1, 1979, see section 402(c) of Pub. L. 95–598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 applicable with respect to pleadings filed with the United States Tax Court, the District Court of the United States for the District of Columbia, or the United States Court of Claims more than 6 months after Oct. 4, 1976, but only with respect to determinations (or requests for determinations) made after Jan. 1, 1976, see section 1306(c) of Pub. L. 94–455, set out as an Effective Date note under section 7428 of Title 26, Internal Revenue Code.

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. 2389, Jan. 3, 1959, 24 F.R. 61, 73 Stat. 15, as required by sections 1 and 8(c) of Pub. L. 85–508, see notes set out under section 81A of this title and preceding section 21 of Title 48, Territories and Insular Possessions.
EFFECT OF TERMINATION OF NAFTA COUNTRY STATUS

For provisions relating to effect of termination of NAFTA country status on sections 401 to 416 of Pub. L. 103–182, see section 3451 of Title 19, Customs Duties.

AMOUNT IN CONTROVERSY

Jurisdictional amount in diversity of citizenship cases, see section 1332 of this title.

§ 2202. Further relief

Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment.

(June 25, 1948, ch. 646, 62 Stat. 964.)

HISTORICAL AND REVISION NOTES


This section is based on the second paragraph of section 400 of title 28, U.S.C., 1940 ed. Other provisions of such section are incorporated in section 2201 of this title.

Provision in said section 400 that the court shall require adverse parties whose rights are adjudicated to show cause why further relief should not be granted forthwith, were omitted as unnecessary and covered by the revised section.

Provisions relating to submission of interrogatories to a jury were omitted as covered by rule 49 of the Federal Rules of Civil Procedure.

Changes were made in phraseology.

CHAPTER 153—HABEAS CORPOUS

Sec.
2241. Power to grant writ.
2242. Application.
2243. Issuance of writ; return; hearing; decision.
2244. Finality of determination.
2245. Certificate of trial judge admissible in evidence.
2246. Evidence; depositions; affidavits.
2247. Documentary evidence.
2248. Return or answer; conclusiveness.
2249. Certified copies of indictment, plea and judgment; duty of respondent.
2250. Indigent petitioner entitled to documents without cost.
2251. Stay of State court proceedings.
2252. Notice.
2253. Appeal.
2254. State custody; remedies in Federal courts.
2255. Federal custody; remedies on motion attacking sentence.
2256. Omitted.

SENATE REVISION AMENDMENT

Chapter catchline was changed by Senate amendment. See 80th Congress Senate Report No. 1559.

AMENDMENTS

1978—Pub. L. 95–598, title II, § 250(b), Nov. 6, 1978, 92 Stat. 2672, directed the addition of item 2256 “Habeas corpus from bankruptcy courts”, which amendment did not become effective pursuant to section 102(b) of Pub. L. 95–598, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.


§ 2241. Power to grant writ

(a) Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions. The order of a circuit judge shall be entered in the records of the district court of the district wherein the restraint complained of is had.

(b) The Supreme Court, any justice thereof, and any circuit judge may decline to entertain an application for a writ of habeas corpus and may transfer the application for hearing and determination to the district court having jurisdiction to entertain it.

(c) The writ of habeas corpus shall not extend to a prisoner unless—

(1) He is in custody under or by color of the authority of the United States or is committed for trial before some court thereof; or

(2) He is in custody for an act done or omitted in pursuance of an Act of Congress, or an order, process, judgment or decree of a court or judge of the United States; or

(3) He is in custody in violation of the Constitution or laws or treaties of the United States; or

(4) He, being a citizen of a foreign state and domiciled therein is in custody for an act done or omitted under any alleged right, title, authority, privilege, protection, or exemption claimed under the commission, order or sanction of any foreign state, or under color thereof, the validity and effect of which depend upon the law of nations; or

(5) It is necessary to bring him into court to testify or for trial.

(d) Where an application for a writ of habeas corpus is made by a person in custody under the judgment and sentence of a State court of a State which contains two or more Federal judicial districts, the application may be filed in the district court for the district wherein such person is in custody or in the district court for the district within which the State court was held which convicted and sentenced him and each of such district courts shall have concurrent jurisdiction to entertain the application. The district court for the district wherein such an application is filed in the exercise of its discretion and in furtherance of justice may transfer the application to the other district court for hearing and determination.

(e)(1) No court, justice, or judge shall have jurisdiction to hear or consider an application for a writ of habeas corpus filed by or on behalf of an alien detained by the United States who has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination.

(2) Except as provided in paragraphs (2) and (3) of section 1005(e) of the Detainee Treatment Act of 2005 (10 U.S.C. 801 note), no court, justice, or judge shall have jurisdiction to hear or consider any other action against the United States or its agents relating to any aspect of the detention, transfer, treatment, trial, or conditions of confinement of an alien who is or was detained by the United States and has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination.

(June 25, 1948, ch. 646, 62 Stat. 964; May 24, 1949, ch. 139, §112, 63 Stat. 105; Pub. L. 89–590, Sept. 19,

**HISTORICAL AND REVISION NOTES**

**1948 ACT**


Words “for the purpose of an inquiry into the cause of restraint of liberty” in section 452 of title 28, U.S.C., 1940 ed., were omitted as merely descriptive of the writ.

Subsection (b) was added to give statutory sanction to orderly and appropriate procedure. A circuit judge who unnecessarily entertains applications which should be addressed to the district court, thereby disqualifies himself to hear such matters on appeal and to that extent limits his usefulness as a judge of the court of appeals. The Supreme Court and Supreme Court Justices should not be burdened with applications for writs cognizable in the district courts.

**1949 ACT**

This section inserts commas in certain parts of the text of subsection (b) of section 2241 of title 28, U.S.C., for the purpose of proper punctuation.

**REFERENCES IN TEXT**

Section 1005(e) of the Detainee Treatment Act of 2005, referred to in subsection (b), is section 1005(e) of title X of div. A of Pub. L. 109–148, which is set out as a note under section 801 of title 10, Armed Forces.

**AMENDMENTS**


1949—Subsec. (b). Act May 24, 1949, inserted commas after “Supreme Court” and “any justice thereof”.

**EFFECTIVE DATE OF 2006 AMENDMENT**

Pub. L. 109–366, §7(b), Oct. 17, 2006, 120 Stat. 2636, provided that: “The amendment made by subsection (a) (amending this section) shall take effect on the date of the enactment of this Act [Oct. 17, 2006], and shall apply to all cases, without exception, pending on or after the date of the enactment of this Act which relate to any aspect of the detention, transfer, treatment, trial, or conditions of detention of an alien detained by the United States since September 11, 2001.”

**TREATY OBLIGATIONS NOT ESTABLISHING GROUNDS FOR CERTAIN CLAIMS**


“(a) IN GENERAL.—No person may invoke the Geneva Conventions or any protocols thereto in any habeas corpus or other civil action or proceeding to which the United States, or a current or former officer, employee, member of the Armed Forces, or other agent of the United States is a party as a source of rights in any court of the United States or its States or territories. and

“(b) GENEVA CONVENTIONS DEFINED.—In this section, the term ‘Geneva Conventions’ means—

“(1) the Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, done at Geneva August 12, 1949 (6 UST 3114);

“(2) the Convention for the Amelioration of the Condition of the Wounded, Sick, and Shipwrecked Members of the Armed Forces at Sea, done at Geneva August 12, 1949 (6 UST 3217);

“(3) the Convention Relative to the Treatment of Prisoners of War, done at Geneva August 12, 1949 (6 UST 3316); and

“(4) the Convention Relative to the Protection of Civilian Persons in Time of War, done at Geneva August 12, 1949 (6 UST 3516).”

**§ 2242. Application**

Application for a writ of habeas corpus shall be in writing signed and verified by the person for whose relief it is intended or by someone acting in his behalf.

It shall allege the facts concerning the applicant’s commitment or detention, the name of the person who has custody over him and by virtue of what claim or authority, if known.

It may be amended or supplemented as provided in the rules of procedure applicable to civil actions.

If addressed to the Supreme Court, a justice thereof or a circuit judge shall state the reasons for not making application to the district court of the district in which the applicant is held.

(June 25, 1948, ch. 646, 62 Stat. 965.)

**HISTORICAL AND REVISION NOTES**

Based on title 28, U.S.C., 1940 ed., §454 (R.S. §754). Words “or by someone acting in his behalf” were added. This follows the actual practice of the courts, as set forth in United States ex rel. Funaro v. Watchorn, C.C. 1908, 164 F. 152; Collins v. Traeger, C.C.A. 1928, 27 F.2d 842, and cases cited.

The third paragraph is new. It was added to conform to existing practice as approved by judicial decisions. See Dorsey v. Gill (App.D.C.) 148 F.2d 857, 865, 866. See also Holiday v. Johnston, 61 S.Ct. 1015, 313 U.S. 342, 85 L.Ed. 1392.

Changes were made in phraseology.

**§ 2243. Issuance of writ; return; hearing; decision**

A court, justice or judge entertaining an application for a writ of habeas corpus shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.

The writ, or order to show cause shall be directed to the person having custody of the person detained. It shall be returned within three days unless for good cause additional time, not exceeding twenty days, is allowed.

The person to whom the writ or order is directed shall make a return certifying the true cause of the detention.

When the writ or order is returned a day shall be set for hearing, not more than five days after the return unless for good cause additional time is allowed.
Unless the application for the writ and the return present only issues of law to whom the writ is directed shall be required to produce at the hearing the body of the person detained.

The applicant or the person detained may, under oath, deny any of the facts set forth in the return or allege any other material facts.

The return and all suggestions made against it may be amended, by leave of court, before or after being filed.

The court shall summarily hear and determine the facts, and dispose of the matter as law and justice require.

(June 25, 1948, ch. 646, 62 Stat. 965.)

HISTORICAL AND REVISION NOTES


The requirement for return within 3 days “unless for good cause additional time, not exceeding 20 days is allowed” in the second paragraph, was substituted for the provision of such section 455 which allowed 3 days for return if within 20 miles, 10 days if more than 20 but not more than 100 miles, and 20 days if more than 100 miles distant.

Words “unless for good cause additional time is allowed” in the fourth paragraph, were substituted for words “unless the party petitioning requests a longer time” in section 459 of title 28, U.S.C., 1940 ed.

The fifth paragraph providing for production of the body of the detained person at the hearing is in conformity with Walker v. Johnston, 1941, 61 S.Ct. 574, 312 U.S. 275, 85 L.Ed. 830.

Changes were made in phraseology.

§ 2244. Finality of determination

(a) No circuit or district judge shall be required to entertain an application for a writ of habeas corpus to inquire into the detention of a person pursuant to a judgment of a court of the United States if it appears that the legality of such detention has been determined by a judge or court of the United States on a prior application for a writ of habeas corpus, except as provided in section 2255.

(b)(1) A claim presented in a second or successive habeas corpus application under section 2254 that was presented in a prior application shall be dismissed.

(2) A claim presented in a second or successive habeas corpus application under section 2254 that was not presented in a prior application shall be dismissed unless—

(A) the applicant shows that the claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

(B)(i) the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and

(ii) the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

(3)(A) Before a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.

(B) A motion in the court of appeals for an order authorizing the district court to consider a second or successive application shall be determined by a three-judge panel of the court of appeals.

(C) The court of appeals may authorize the filing of a second or successive application only if it determines that the application makes a prima facie showing that the application satisfies the requirements of this subsection.

(D) The court of appeals shall grant or deny the authorization to file a second or successive application not later than 30 days after the filing of the motion.

(E) The grant or denial of an authorization by a court of appeals to file a second or successive application shall not be appealable and shall not be the subject of a petition for rehearing or for a writ of certiorari.

(4) A district court shall dismiss any claim presented in a second or successive application that the court of appeals has authorized to be filed unless the applicant shows that the claim satisfies the requirements of this section.

(c) In a habeas corpus proceeding brought in behalf of a person in custody pursuant to the judgment of a State court, a prior judgment of the Supreme Court of the United States on an appeal or review by a writ of certiorari at the instance of the prisoner of the decision of such State court, shall be conclusive as to all issues of fact or law with respect to an asserted denial of a Federal right which constitutes ground for discharge in a habeas corpus proceeding, actually adjudicated by the Supreme Court therein, unless the applicant for the writ of habeas corpus shall plead and the court shall find the existence of a material and controlling fact which did not appear in the record of the proceeding in the Supreme Court and the court shall further find that the applicant for the writ of habeas corpus could not have caused such fact to appear in such record by the exercise of reasonable diligence.

(d)(1) A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of—

(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;

(B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;

(C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.
§ 2245. Certificate of trial judge admissible in evidence

On the hearing of an application for a writ of habeas corpus to inquire into the legality of the detention of a person pursuant to a judgment the certificate of the judge who presided at the trial resulting in the judgment, setting forth the facts occurring at the trial, shall be admissible in evidence. Copies of the certificate shall be filed with the court in which the application is pending and in the court in which the trial took place.

(June 25, 1948, ch. 646, 62 Stat. 966.)

HISTORICAL AND REVISION NOTES

This section makes no material change in existing law. It is derived from H.R. 4232 introduced in the first session of the Seventy-ninth Congress by Chairman Hatton Sumners of the House Committee on the Judiciary and referred to that Committee.

The practice of suing out successive, repetitious, and unfounded writs of habeas corpus imposes an unnecessary burden on the courts. See Dorsey v. Gill, 1945, 148 F.2d 857, 862, in which Miller, J., notes that “petitions for the writ are used not only as they should be to protect unfortunate persons against miscarriages of justice, but also as a device for harassing court, custodial, and enforcement officers with a multiplicity of repetitious, meritless requests for relief. The most extreme example is that of a person who, between July 1, 1939, and April 9, 1944, presented in the District Court 50 petitions for writs of habeas corpus; another person has presented 27 petitions; a third, 24; a fourth, 22; a fifth, 20. One hundred nineteen persons have presented 597 petitions—an average of 5.”

Senate Revision Amendments

Section amended to modify original language which denied Federal judges power to entertain application for writ where legality of detention had been determined on prior application and later application presented no new grounds, and to omit reference to rehearing in section catch line and original provision authorizing hearing judge to grant rehearing, 86th Congress, Senate Report No. 1559, Amendment No. 45.

AMENDMENTS

1966—Subsec. (a), Pub. L. 90–132, §106(a), substituted “, except as provided in section 2255.” for “and the petition presents no new ground not heretofore presented and determined, and the judge or court is satisfied that the ends of justice will not be served by such inquiry.” Subsec. (b), Pub. L. 90–132, §106(b), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “When after an evidentiary hearing on the merits of a material factual issue, or after a hearing on the merits of an issue of law, a person in custody pursuant to the judgment of a State court has been denied by a court of the United States or a justice or judge of the United States release from custody or other remedy on an application for a writ of habeas corpus, a subsequent application for a writ of habeas corpus in behalf of such person need not be entertained by a court of the United States unless the application alleges and is predicated on a factual or other ground not adjudicated on the hearing of the earlier application for the writ, and unless the court, justice, or judge is satisfied that the applicant has not on the earlier application deliberately withheld the newly asserted ground or otherwise abused the writ.” Subsec. (d), Pub. L. 90–132, §101, added subsec. (d).

1966—Pub. L. 89–711 designated existing provisions as subsec. (a), struck out provision making the subsection’s terms applicable to applications seeking inquiry into detention of persons detained pursuant to judgments of State courts, and added subsecs. (b) and (c).
§ 2251. Stay of State court proceedings

(a) In General.—
(1) Pending matters.—A justice or judge of the United States before whom a habeas corpus proceeding is pending, may, before final judgment or after final judgment of discharge, or pending appeal, stay any proceeding against the person detained in any State court or by or under the authority of any State for any matter involved in the habeas corpus proceeding.

(2) Matter not pending.—For purposes of this section, a habeas corpus proceeding is not pending until the application is filed.

(3) Application for appointment of counsel.—If a State prisoner sentenced to death is a habeas corpus proceeding is pending before the court of appeals for the circuit in which the detention complained of is void, if the proceeding is dismissed, or if the court certifies that the case is not anticipated on appeal, the court shall issue a certificate to the solicitor general of the United States certifying that the case involves a federal claim.

(b) No further proceedings.—After the granting of such a stay, any such proceeding in any State court or by or under the authority of any State shall be void if no stay is granted, any such proceeding shall be as valid as if no habeas corpus proceedings or appeal were pending.

§ 2250. Indigent petitioner entitled to documents without cost

If on any application for a writ of habeas corpus an order has been made permitting the petitioner to prosecute the application in forma pauperis, the clerk of any court of the United States shall furnish to the petitioner without cost certified copies of such documents or parts of the record on file in his office as may be required by order of the judge before whom the application is pending.

§ 2251. Stay of State court proceedings

(a) In General.—
(1) Pending matters.—A justice or judge of the United States before whom a habeas corpus proceeding is pending, may, before final judgment or after final judgment of discharge, or pending appeal, stay any proceeding against the person detained in any State court or by or under the authority of any State for any matter involved in the habeas corpus proceeding.

(2) Matter not pending.—For purposes of this section, a habeas corpus proceeding is not pending until the application is filed.

(3) Application for appointment of counsel.—If a State prisoner sentenced to death is a habeas corpus proceeding is pending before the court of appeals for the circuit in which the detention complained of is void, if the proceeding is dismissed, or if the court certifies that the case is not anticipated on appeal, the court shall issue a certificate to the solicitor general of the United States certifying that the case involves a federal claim.

(b) No further proceedings.—After the granting of such a stay, any such proceeding in any State court or by or under the authority of any State shall be void if no stay is granted, any such proceeding shall be as valid as if no habeas corpus proceedings or appeal were pending.

§ 2250. Indigent petitioner entitled to documents without cost

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§ 2251. Stay of State court proceedings

(a) In General.—
(1) Pending matters.—A justice or judge of the United States before whom a habeas corpus proceeding is pending, may, before final judgment or after final judgment of discharge, or pending appeal, stay any proceeding against the person detained in any State court or by or under the authority of any State for any matter involved in the habeas corpus proceeding.

(2) Matter not pending.—For purposes of this section, a habeas corpus proceeding is not pending until the application is filed.

(3) Application for appointment of counsel.—If a State prisoner sentenced to death is a habeas corpus proceeding is pending before the court of appeals for the circuit in which the detention complained of is void, if the proceeding is dismissed, or if the court certifies that the case is not anticipated on appeal, the court shall issue a certificate to the solicitor general of the United States certifying that the case involves a federal claim.

(b) No further proceedings.—After the granting of such a stay, any such proceeding in any State court or by or under the authority of any State shall be void if no stay is granted, any such proceeding shall be as valid as if no habeas corpus proceedings or appeal were pending.

Provisions relating to proceedings pending in 1934 were deleted as obsolete.

A provision requiring an appeal to be taken within 3 months was omitted as covered by sections 2201 and 2107 of this title.

Changes were made in phraseology.

AMENDMENTS

1966—Pub. L. 89–292 substituted "appeal or removed" for "appeal, or removed" in first sentence of section 2253.

1965—Pub. L. 89–292 substituted "proceeding pending under section 2255 before a district judge, or "appeal or removed" for "appeal, or removed" in first sentence of section 2253.

1962—Pub. L. 87–553 replaced "appeal" by "appeal or removed", "appeal" by "appeal or removed", and "judicial review" by "appeal or removed" in first sentence of section 2253.

1961—Pub. L. 87–553 substituted "appeal or removed" for "appeal or removed" in first sentence of section 2253.

1958—Pub. L. 85–872 substituted "appeal or removed" for "appeal or removed" in first sentence of section 2253.

1956—Pub. L. 84–235 substituted "proceeding pending under section 2255 before a district judge, or appeal or removed" for "appeal or removed" in first sentence of section 2253.

1955—Pub. L. 84–235 substituted "appeal or removed" for "appeal or removed" in first sentence of section 2253.

1952—Pub. L. 82–591 substituted "appeal or removed" for "appeal or removed" in first sentence of section 2253.

1948—Pub. L. 70–523 substituted "appeal or removed" for "appeal or removed" in first sentence of section 2253.

1940—Pub. L. 76–374 substituted "appeal or removed" for "appeal or removed" in first sentence of section 2253.

1934—Pub. L. 73–564 substituted "appeal or removed" for "appeal or removed" in first sentence of section 2253.

1933—Pub. L. 72–631 substituted "appeal or removed" for "appeal or removed" in first sentence of section 2253.

1932—Pub. L. 72–323 substituted "appeal or removed" for "appeal or removed" in first sentence of section 2253.

1927—Pub. L. 69–1255 substituted "appeal or removed" for "appeal or removed" in first sentence of section 2253.

1925—Pub. L. 63–274 substituted "appeal or removed" for "appeal or removed" in first sentence of section 2253.

1919—Pub. L. 65–649 substituted "appeal or removed" for "appeal or removed" in first sentence of section 2253.

1918—Pub. L. 65–192 substituted "appeal or removed" for "appeal or removed" in first sentence of section 2253.

1916—Pub. L. 65–110 substituted "appeal or removed" for "appeal or removed" in first sentence of section 2253.

1913—Pub. L. 62–118 substituted "appeal or removed" for "appeal or removed" in first sentence of section 2253.

1912—Pub. L. 62–117 substituted "appeal or removed" for "appeal or removed" in first sentence of section 2253.

1911—Pub. L. 62–74 substituted "appeal or removed" for "appeal or removed" in first sentence of section 2253.

1910—Pub. L. 61–176 substituted "appeal or removed" for "appeal or removed" in first sentence of section 2253.

1909—Pub. L. 60–12 substituted "appeal or removed" for "appeal or removed" in first sentence of section 2253.

1908—Pub. L. 60–12 substituted "appeal or removed" for "appeal or removed" in first sentence of section 2253.

1907—Pub. L. 59–249 substituted "appeal or removed" for "appeal or removed" in first sentence of section 2253.

1906—Pub. L. 59–8 substituted "appeal or removed" for "appeal or removed" in first sentence of section 2253.
(B) the final order in a proceeding under section 2255.

(2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

(3) The certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2).


HISTORICAL AND REVISION NOTES

1948 ACT


This section consolidates paragraph (a) of section 463, and section 466 of title 28, U.S.C., 1940 ed.

The last two sentences of section 463(a) of title 28, U.S.C., 1940 ed., were omitted. They were repeated in section 452 of title 28, U.S.C., 1940 ed. (See reviser's note under section 2241 of this title.)

Changes were made in phraseology.

1949 ACT

This section corrects a typographical error in the second paragraph of section 2253 of title 28.

AMENDMENTS

1996—Pub. L. 104–132 reenacted section catchline without change and amended text generally. Prior to amendment, text read as follows:

"A habeas corpus proceeding before a circuit or district judge, the final order shall be subject to review, on appeal, by the court of appeals for the circuit where the proceedings is had.

There shall be no right of appeal from such an order in a proceeding to test the validity of a warrant to remove, to another district or place for commitment or trial, a person charged with a criminal offense against the United States, or to test the validity of his detention pending removal proceedings.

"An appeal may not be taken to the court of appeals from the final order in a habeas corpus proceeding where the detention complained of arises out of process issued by a State court, unless the justice or judge who rendered the order or a circuit justice or judge issues a certificate of probable cause."

1951—Act Oct. 31, 1951, substituted "to remove, to another district or place for commitment or trial, a person charged with a criminal offense against the United States, or to test the validity of his detention pending removal proceedings."

1966—Pub. L. 89–299 substituted "section 3042 of Title 18 or the" in second par. for "section 3042 of Title 18 or the " in second par.

1996—Pub. L. 104–132 reenacted section catchline without change and amended text generally. Prior to amendment, text read as follows:

"A habeas corpus proceeding before a circuit or district judge, the final order shall be subject to review, on appeal, by the court of appeals for the circuit where the proceedings is had.

There shall be no right of appeal from such an order in a proceeding to test the validity of a warrant to remove, to another district or place for commitment or trial, a person charged with a criminal offense against the United States, or to test the validity of his detention pending removal proceedings.

"An appeal may not be taken to the court of appeals from the final order in a habeas corpus proceeding where the detention complained of arises out of process issued by a State court, unless the justice or judge who rendered the order or a circuit justice or judge issues a certificate of probable cause."

1951—Act Oct. 31, 1951, substituted "to remove, to another district or place for commitment or trial, a person charged with a criminal offense against the United States, or to test the validity of his detention pending removal proceedings."

1966—Pub. L. 89–299 substituted "section 3042 of Title 18 or the" in second par. for "section 3042 of Title 18 or the " in second par.

§ 2254. State custody; remedies in Federal courts

(a) The Supreme Court, a Justice thereof, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.

(b)(1) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that—

(A) the applicant has exhausted the remedies available in the courts of the State; or

(B)(i) there is an absence of available State corrective process; or

(ii) circumstances exist that render such process ineffective to protect the rights of the applicant.

(2) An application for a writ of habeas corpus may be denied on the merits, notwithstanding the failure of the applicant to exhaust the remedies available in the courts of the State.

(3) A State shall not be deemed to have waived the exhaustion requirement or be estopped from reliance upon the requirement unless the State, through counsel, expressly waives the requirement.

(c) An applicant shall not be deemed to have exhausted the remedies available in the courts of the State, within the meaning of this section, if he has the right under the law of the State to raise, by any available procedure, the question presented.

(d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim—

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

(e)(1) In a proceeding instituted by an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court, a determination of a factual issue made by a State court shall be presumed to be correct. The applicant shall have the burden of rebutting the presumption of correctness by clear and convincing evidence.

(2) If the applicant has failed to develop the factual basis of a claim in State court proceedings, the court shall not hold an evidentiary hearing on the claim unless the applicant shows that—

(A) the claim relies on—

(i) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

(ii) a factual predicate that could not have been previously discovered through the exercise of due diligence; and

(B) the facts underlying the claim would be sufficient to establish by clear and convincing evidence that but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

(f) If the applicant challenges the sufficiency of the evidence adduced in such State court proceeding to support the State court’s determination of a factual issue made therein, the applicant, if able, shall produce that part of the record pertinent to a determination of the sufficiency of the evidence to support such deter-
minution. If the applicant, because of indigency or other reason is unable to produce such part of the record, then the State shall produce such part of the record and the Federal court shall direct the State to do so by order directed to an appropriate State officer. If the State cannot provide such pertinent part of the record, then the court shall determine under the existing facts and circumstances what weight shall be given to the State court’s factual determination.

(g) A copy of the official records of the State court, duly certified by the clerk of such court to be a true and correct copy of a finding, judicial opinion, or other reliable written indicia showing such a factual determination by the State court shall be admissible in the Federal court proceeding.

(h) Except as provided in section 408 of the Controlled Substances Act, in all proceedings brought under this section, and any subsequent proceedings on review, the court may appoint counsel for an applicant who is or becomes financially unable to afford counsel, except as provided by a rule promulgated by the Supreme Court pursuant to statutory authority. Appointment of counsel under this section shall be governed by section 3006A of title 18.

1. The ineffectiveness or incompetence of counsel during Federal or State collateral post-conviction proceedings shall not be a ground for relief in a proceeding arising under section 2254.

2. The ineffectiveness or incompetence of counsel during Federal or State collateral post-conviction proceedings shall not be a ground for relief in a proceeding arising under section 2254.

3. Except as provided in section 408 of the Controlled Substances Act, in all proceedings brought under this section, and any subsequent proceedings on review, the court may appoint counsel for an applicant who is or becomes financially unable to afford counsel, except as provided by a rule promulgated by the Supreme Court pursuant to statutory authority. Appointment of counsel under this section shall be governed by section 3006A of title 18.

4. The ineffectiveness or incompetence of counsel during Federal or State collateral post-conviction proceedings shall not be a ground for relief in a proceeding arising under section 2254.

5. The ineffectiveness or incompetence of counsel during Federal or State collateral post-conviction proceedings shall not be a ground for relief in a proceeding arising under section 2254.

6. The ineffectiveness or incompetence of counsel during Federal or State collateral post-conviction proceedings shall not be a ground for relief in a proceeding arising under section 2254.

7. The ineffectiveness or incompetence of counsel during Federal or State collateral post-conviction proceedings shall not be a ground for relief in a proceeding arising under section 2254.

8. The ineffectiveness or incompetence of counsel during Federal or State collateral post-conviction proceedings shall not be a ground for relief in a proceeding arising under section 2254.

9. The ineffectiveness or incompetence of counsel during Federal or State collateral post-conviction proceedings shall not be a ground for relief in a proceeding arising under section 2254.

10. The ineffectiveness or incompetence of counsel during Federal or State collateral post-conviction proceedings shall not be a ground for relief in a proceeding arising under section 2254.

11. The ineffectiveness or incompetence of counsel during Federal or State collateral post-conviction proceedings shall not be a ground for relief in a proceeding arising under section 2254.

12. The ineffectiveness or incompetence of counsel during Federal or State collateral post-conviction proceedings shall not be a ground for relief in a proceeding arising under section 2254.

APPENDIX OF FORMS

Rule 1. Scope

(a) CASES INVOLVING A PETITION UNDER 28 U.S.C. §2241. These rules govern a petition for a writ of habeas corpus filed in a United States district court under 28 U.S.C. §2241 by:

(1) a person in custody under a state-court judgment who seeks a determination that the custody violates the Constitution, laws, or treaties of the United States; and

(2) a person in custody under a state-court or federal-court judgment who seeks a determination that future custody under a state-court judgment would violate the Constitution, laws, or treaties of the United States.

(b) OTHER CASES. The district court may apply any or all of these rules to a habeas corpus petition not covered by Rule 1(a).


ADVISORY COMMITTEE NOTE

Rule 1 provides that the habeas corpus rules are applicable to petitions by persons in custody pursuant to a judgment of a state court. See Preiser v. Rodriguez, 411 U.S. 473, 484 (1973). Whether the rules ought to apply to other situations (e.g., person in active military service, Glazier v. Hackel, 440 F.2d 592 (9th Cir. 1971); or a reservist called to active duty but not reported, Hammond v. Lenfest, 398 F.2d 705 (2d Cir. 1968)) is left to the discretion of the court.

The basic scope of habeas corpus is prescribed by statute, 28 U.S.C. §2241(c) provides that the "writ of habeas corpus shall not extend to a prisoner unless * * * (h)e is in custody in violation of the Constitution." 28 U.S.C. §2254 deals specifically with state custody, providing that habeas corpus shall apply only "in behalf of a person in custody pursuant to a judgment of a state court * * *".

In Preiser v. Rodriguez, supra, the court said: "It is clear * * * that the essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and that the traditional function of the writ is to secure release from illegal custody." 411 U.S. at 484. Initially the Supreme Court held that habeas corpus was appropriate only in those situations in which petitioner's claim would, if upheld, result in an immediate release from a present custody. McNally v. Hill, 293 U.S. 38 (1934). This was changed in Peyton v. Rose, 391 U.S. 54 (1968), in which the court held that habeas corpus was a proper way to attack a consecutive sentence to be served in the future, expressing the view that consecutive sentences resulted in present custody under both judgments, not merely the one imposing the first sentence. This view was expanded in Carafas v. LaVallee, 391 U.S. 234 (1968), to recognize the propriety of habeas corpus in a case in which petitioner was in custody when the petition had been originally filed but had since been unconditionally released from custody. See also Preiser v. Rodriguez, 411 U.S. at 486 et seq.


The courts are not unanimous in dealing with the above situations, and the boundaries of custody remain somewhat unclear. In Morgan v. Thomas, 321 F.Supp. 565 (S.D.Miss. 1970), the court noted:

it is axiomatic that actual physical custody or restraint is not required to confer habeas jurisdiction. Rather, the term is synonymous with restraint of liberty. The real question is how much restraint of one’s liberty is necessary before the right to apply for the writ comes into play. * * *

It is clear however, that something more than moral restraint is necessary to make for a case of habeas corpus.

321 F.Supp. at 573

Hammond v. Lenfest, 398 F.2d 705 (2d Cir. 1968), reviewed prior “custody” doctrine and reaffirmed a generalized flexible approach to the issue. In speaking about 28 U.S.C. §2241, the first section in the habeas corpus statutes, the court said:

While the language of the Act indicates that a writ of habeas corpus is appropriate only when a petitioner is “in custody,” * * * the Act “does not attempt to mark the boundaries of ‘custody’ nor in any way other than by use of that word attempt to limit the situations in which the writ can be used.” * * *

And, recent Supreme Court decisions have made clear that “[i]t [habeas corpus] is not now and never has been a static, narrow, formalistic remedy; its scope has grown to achieve its grand purpose—the protection of individuals against erosion of their right to be free from wrongful restraints upon their liberty.” * * * “Besides physical imprisonment, there are other restraints on a man’s liberty, restraints not shared by the public generally, which have been thought sufficient in the English-speaking world to support the issuance of habeas corpus.”

398 F.2d at 710-711

There is, as of now, no final list of the situations which are appropriate for habeas corpus relief. It is not the intent of these rules or notes to define or limit “custody.”

It is, however, the view of the Advisory Committee that claims of improper conditions of custody or confinement (not related to the propriety of the custody itself), can better be handled by other means such as 42 U.S.C. §1983 and other related statutes. In Wilbur v. Swanson, 404 U.S. 249 (1971), the court treated a habeas corpus petition by a state prisoner challenging the conditions of confinement as a claim for relief under 42 U.S.C. §1983, the Civil Rights Act. Compare Johnson v. Avery, 393 U.S. 483 (1969).

The distinction between duration of confinement and conditions of confinement may be difficult to draw. Compare Preiser v. Rodriguez, 411 U.S. 470 (1973), with Clutchette v. Procunier, 497 F.2d 809 (9th Cir. 1974), modified, 510 F.2d 613 (1975).
Committee Notes on Rules—2004 Amendment

The language of Rule 1 has been amended as part of general restyling of the rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic and no substantive change is intended.

Changes Made After Publication and Comments. In response to at least one commentator on the published rules, the Committee modified Rule 1(b) to reflect the point that if the court was considering a habeas petition not covered by § 2254, the court could apply some or all of the rules.

Rule 2. The Petition

(a) Current Custody; Naming the Respondent. If the petitioner is currently in custody under a state-court judgment, the petition must name as respondent the state officer who has custody.

(b) Future Custody; Naming the Respondents and Specifying the Judgment. If the petitioner is not yet in custody—but may be subject to future custody—under the state-court judgment being contested, the petition must name as respondents both the officer who has current custody and the attorney general of the state where the judgment was entered. The petition must ask for relief from the state-court judgment being contested.

(c) Form. The petition must:

(1) specify all the grounds for relief available to the petitioner;

(2) state the facts supporting each ground;

(3) state the relief requested;

(4) be printed, typewritten, or legibly handwritten; and

(5) be signed under penalty of perjury by the petitioner or by a person authorized to sign it for the petitioner under 28 U.S.C. § 2242.

(d) Standard Form. The petition must substantially follow either the form appended to these rules or a form prescribed by a local district-court rule. The clerk must make forms available to petitioners without charge.

(e) Separate Petitions for Judgments of Separate Courts. A petitioner who seeks relief from judgments of more than one state court must file a separate petition covering the judgment or judgments of each court.


Advisory Committee Note

Rule 2 describes the requirements of the actual petition, including matters relating to its form, contents, scope, and sufficiency. The rule provides more specific guidance for a petitioner and the court than 28 U.S.C. § 2242, after which it is patterned.

Subdivision (a) provides that an applicant challenging a state judgment, pursuant to which he is presently in custody, must make his application in the form of a petition for a writ of habeas corpus. It also requires that the state officer having custody of the applicant be named as respondent. This is consistent with 28 U.S.C. § 2242, which says in part, “[Application for a writ of habeas corpus] shall be addressed to the proper court of the state whose action subjects the petitioner to custody, as well as the government officer who has present official custody of the petitioner if there is such an officer and his identity is ascertainable.

In any of the above situations the judge may require or allow the petitioner to join an additional or different party as a respondent if to do so would serve the ends of justice.

As seen in rule 1 and paragraphs (4) and (5) above, these rules contemplate that a petitioner currently in federal custody will be permitted to apply for habeas relief from a state restraint which is to go into effect in the future. There has been disagreement in the courts as to whether they have jurisdiction of the habeas application under these circumstances (compare Piper v. United States, 306 F. Supp. 1259 (D. Conn. 1969), with United States ex rel. Meadows v. New York, 426 F. 2d 1176 (2d Cir. 1970), cert. denied, 401 U.S. 941 (1971)). This rule seeks to make clear that they do have such jurisdiction.

Subdivision (c) provides that unless a district court requires otherwise by local rule, the petition must be in the form annexed to these rules. Having a standard prescribed form has several advantages. In the past, petitions have frequently contained more conclusory statements than the law, unsupported by any facts. Since it is the relationship of the facts to the claim asserted that is important,
tant, these petitions were obviously deficient. In addition, lengthy and often illegible petitions, arranged in no logical order, were submitted to judges who have had to spend hours deciphering them. For example, Passic v. Michigan, 98 F. Supp. 1015, 1016 (E.D. Mich. 1951), the court dismissed a petition for habeas corpus, describing it as "two thousand pages of irrational, prolix and redundant pleadings." Administrative convenience, of benefit to both the court and the petitioner, results from the use of a prescribed form. Judge Hubert L. Will briefly described the experience with the use of a standard form in the Northern District of Illinois:

Our own experience, though somewhat limited, has been quite satisfactory. * * *

In 60 days, (petitions) almost always contain the necessary basic information * * *. Very rarely do we get the kind of hybrid federal-state habeas corpus petition with civil rights allegations thrown in which were previously characterized as "entertaining, but not serious." The form is particularly helpful in getting information about whether there has been an exhaustion of state remedies or, at least, where that information can be obtained.

The requirement of a standard form benefits the petitioner as well. His assertions are more readily apparent, and a meritorious claim is more likely to be properly raised and supported. The inclusion in the form of the ten most frequently raised grounds in habeas corpus petitions is intended to encourage the applicant to raise all his asserted grounds in one petition. It may better enable him to recognize if an issue he seeks to raise is cognizable under habeas corpus and hopefully inform him of those issues as to which he must first exhaust his state remedies.

Some commentators have suggested that the use of forms is of little help because the questions usually are too general, amounting to little more than a restatement of the statute. They contend the blanks permit a prisoner to fill in the same ambiguous answers he would have offered without the aid of a form. See Comment, Developments in the Law—Federal Habeas Corpus, 83 Harv.L.Rev. 1038, 1177–1178 (1970). Certainly, as long as the statute requires factual pleading, the adequacy of a petition will continue to be affected largely by the petitioner's intelligence and the legal advice available to him. On balance, however, the use of forms has contributed enough to warrant mandating their use.

Giving the petitioner a list of often-raised grounds may, it is said, encourage perjury. See Comment, Developments in the Law—Federal Habeas Corpus, 83 Harv.L.Rev. 1038, 1178 (1970). Most inmates are aware of, or have access to, some common constitutional grounds for relief. Thus, the risk of perjury is not likely to be substantially increased and the benefit of the list for information about whether there has been an exhaustion of state remedies or, at least, where that information can be obtained.

The requirement of a standard form benefits the petitioner as well. His assertions are more readily apparent, and a meritorious claim is more likely to be properly raised and supported. The inclusion in the form of the ten most frequently raised grounds in habeas corpus petitions is intended to encourage the applicant to raise all his asserted grounds in one petition. It may better enable him to recognize if an issue he seeks to raise is cognizable under habeas corpus and hopefully inform him of those issues as to which he must first exhaust his state remedies.

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Legal assistance is increasingly available to inmates through paraprofessional programs involving law students or special programs staffed by members of the bar. See Jacob and Sharma, Justice After Trial: Prisoners' Need for Legal Services in the Criminal-Correctional Process, 18 Kan.L.Rev. 493 (1970). In these situations, the prescribed form can be filled out more completely, and it does serve to ensure a degree of uniformity in the manner in which habeas corpus claims are presented.
by the petitioner. As reflected in 28 U.S.C. § 2242, an application for habeas corpus relief may be filed by the person who is seeking relief, or by someone acting on behalf of that person. See, e.g., Whitmore v. Arkansas, 491 U.S. 149 (1990) (discussion of requisites for “next friend” standing in petition for habeas corpus). Thus, under the, [sic] amended rule the petition may be signed by petitioner personally or by someone acting on behalf of the petitioner, assuming that the person is authorized to do so, for example, an attorney for the petitioner. The Committee envisions that the courts will apply third-party, or “next-friend,” standing analysis in deciding whether the signer was actually authorized to sign the petition on behalf of the petitioner.

The language in new Rule 2(d) has been changed to reflect that a petitioner must substantially follow the standard form, which is appended to the rules, or a form provided by the court. The current rule, Rule 2(c), seems to indicate a preference for the standard “national” form. Under the amended rule, there is no statuted preference. The Committee understood that current practice in some courts is that if the petitioner first files a petition using the national form, the courts may then ask the petitioner to supplement it with the local form.

Current Rule 2(e), which provided for returning an insufficient petition, has been deleted. The Committee believed that the approach in Federal Rule of Civil Procedure 5(e) was more appropriate for dealing with petitions that do not conform to the form requirements of the rule. That Rule provides that the clerk may not refuse to accept a filing solely for the reason that it fails to comply with these rules or local rules. Before the adoption of a one-year statute of limitations in the Antiterrorism and Effective Death Penalty Act of 1996, 110 Stat. 1214, the petitioner suffered no penalty, other than delay, if the petition was deemed insufficient. Now that a one-year statute of limitations applies to petitions filed under § 2254, see 28 U.S.C. § 2241(d)(1), the court’s dismissal of a petition because it is not in proper form may pose a significant penalty for a petitioner, who may not be able to file another petition within the one-year limitations period. Now, under revised Rule 3(b), the clerk is required to file a petition, even though it may otherwise fail to comply with the provisions in revised Rule 2(c). The Committee believed that the better procedure was to accept the defective petition and require the petitioner to submit a corrected petition that conforms to Rule 2(c).

Changes Made After Publication and Comments. The Committee changed Rule 2(c)(2) to read “state the facts” (sic) “briefly summarize the facts.” As one commentator noted, the current language may actually mislead the petitioner and is also redundant. The Committee modified Rule 2(c)(5) to emphasize that any person, other than the petitioner, who signs the petition must be authorized to do so; the revised rule now specifically cites §2242. The Note was changed to reflect that point.

Rule 2(c)(4) was modified to account for those cases where the petitioner prints the petition on a computer word-processing program.

AMENDMENTS BY PUBLIC LAW

1976—Subd. (c). Pub. L. 94–426, §2(1), inserted “substantially” after “The petition shall be in,” and struck out requirement that the petition follow the prescribed form.

Subd. (e). Pub. L. 94–426, §2(2), inserted “substantially” after “district court does not,” and struck out provision which permitted the clerk to return a petition for noncompliance without a judge so directing.

Rule 3. Filing the Petition; Inmate Filing

(a) WHERE TO FILE; COPIES; FILING FEE. An original and two copies of the petition must be filed with the clerk and must be accompanied by:

(1) the applicable filing fee, or
(2) a motion for leave to proceed in forma pauperis, the affidavit required by 28 U.S.C. §1915, and a certificate from the warden or other appropriate officer of the place of confinement showing the amount of money or securities that the petitioner has in any account in the institution.

(b) FILING. The clerk must file the petition and enter it on the docket.

(c) TIME TO FILE. The time for filing a petition is governed by 28 U.S.C. §2244(d).

(d) INMATE FILING. A petition filed by an inmate confined in an institution is timely if deposited in the institution’s internal mailing system on or before the last day for filing. If an institution has a system designed for legal mail, the inmate must use that system to receive the benefit of this rule. Timely filing may be shown by a declaration in compliance with 28 U.S.C. §1746 or by a notarized statement, either of which must set forth the date of deposit and state that first-class postage has been prepaid.


ADVISORY COMMITTEE NOTE

Rule 3 sets out the procedures to be followed by the petitioner and the court in filing the petition. Some of its provisions are currently dealt with by local rule or practice, while others are innovations. Subdivision (a) specifies the petitioner’s responsibilities. It requires that the petition, which must be accompanied by two or more conformed copies thereof, be filed in the office of the clerk of the district court. The petition must be accompanied by the filing fee prescribed by law (presently $5; see 28 U.S.C. §1914(a)), unless leave to prosecute the petition in forma pauperis is applied for and granted. In the event the petitioner desires to prosecute the petition in forma pauperis, he must file the affidavit required by 28 U.S.C. §1915, together with a certificate showing the amount of funds in his institutional account.

Requiring that the petition be filed in the office of the clerk of the district court provides an efficient and uniform system of filing habeas corpus petitions. Subdivision (b) requires the clerk to file the petition. If the filing fee accompanies the petition, it may be filed immediately, and, if not, it is contemplated that prompt attention will be given to the request to proceed in forma pauperis. The court may delegate the issuance of the order to the clerk in those cases in which it is clear from the petition that there is full compliance with the requirements to proceed in forma pauperis. Requiring the copies of the petition to be filed with the clerk will have an impact not only upon administrative matters, but upon more basic problems as well. In districts with more than one judge, a petitioner under present circumstances may send a petition to more than one judge. If no central filing system exists for each district, two judges may independently take different action on the same petition. Even if the action taken is consistent, there may be needless duplication of effort. The requirement of an additional two copies of the form of the petition is a current practice in many courts. An efficient filing system requires one copy for use by the court (central file), one for the respondent (under 3(b), the respondent receives a copy of the petition whether an answer is required or not), and one for petitioner’s counsel, if appointed. Since rule 2 provides that blank copies of the petition in the prescribed form are to be furnished to the applicant free of charge, there should be no undue burden created by this requirement. Attached to copies of the petition supplied in accordance with rule 2 is an affidavit form for the use of peti-
tioners desiring to proceed in forma pauperis. The form requires information concerning the petitioner's financial resources. In forma pauperis cases, the petition must also be accompanied by a certificate indicating the amount of funds in the petitioner's institution account. Usually the certificate will be from the warden. If the petitioner is on probation or parole, the court might want to require a certificate from the supervising officer. Petitions by persons on probation or parole are not numerous enough, however, to justify making special provision for this situation in the text of the rule.

The certificate will verify the amount of funds credited to the petitioner in an institution account. The district or local rule may require that any amount credited to the petitioner, in excess of a stated maximum, must be used for the payment of the filing fee. Since prosecuting an action in forma pauperis is a privilege (see § 1916(b)(1)), it is not to be granted when the petitioner has sufficient resources.

The rule calls the clerk's duties with regard to filing the petition. If the petition does not appear on its face to comply with the requirements of rules 2 and 3, it may be returned in accordance with rule 2(e). If it appears to comply, it must be filed and entered on the docket in the clerk's office. However, under this subdivision the respondent is not required to answer or otherwise move with respect to the petition unless so ordered by the court.

COMMITTEE NOTES ON RULES—2004 AMENDMENT

The last sentence of current Rule 3(b), dealing with an answer being filed by the respondent, has been modified to include the words, above local rule require that any amount credited to the petitioner in an institution account. Usually the certificate will be from the warden. If the petitioner is on probation or parole, the court might want to require a certificate from the supervising officer. Petitions by persons on probation or parole are not numerous enough, however, to justify making special provision for this situation in the text of the rule.

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cause. In view of the widespread state of work overload in prosecutors’ offices (see, e.g., Allen, 424 F.2d at 141), additional time is granted in some jurisdictions as a matter of course. Rule 4, which contains no fixed time requirement, gives the court the discretion to take into account various factors such as the respondent’s workload and the availability of transcripts before determining a time within which an answer must be made.

Rule 4 authorizes the judge to “take such other action as the judge deems appropriate.” This is designed to afford the judge flexibility in a case where either dismissal or an order to answer may be inappropriate. For example, the judge may want to authorize the respondent to make a motion to dismiss based upon information furnished by respondent, which may show that petitioner’s claims have already been decided on the merits in a federal court; that petitioner has failed to exhaust state remedies; that the petitioner is not in custody within the meaning of 28 U.S.C. §2254; or that a decision in the matter is pending in state court. In these situations, a dismissal may be called for on procedural grounds, which may avoid burdening the respondent with the necessity of filing an answer on the substantive merits of the petition. In other situations, the judge may want to consider a motion from respondent to make the petition more certain. Or the judge may want to dismiss some allegations in the petition, requiring the respondent to answer only those claims which appear to have some arguable merit.

Rule 4 requires that a copy of the petition and any order be served by certified mail on the respondent and the attorney general of the state involved. See 28 U.S.C. §2252. Presently, the respondent often does not receive a copy of the petition unless the court directs an answer under 28 U.S.C. §2243. Although the attorney general is served, he is not required to answer if it is more appropriate for some other agency to do so. Although the rule does not specifically so provide, it is assumed that copies of the court orders to respondent will be mailed to petitioner by the court.

**COMMITTEE NOTES ON RULES—2004 AMENDMENT**

The language of Rule 4 has been amended as part of general restyling of the rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic and no substantive change is intended, except as described below.

The amended rule reflects that the response to a habeas petition may be a motion.

The requirement that in every case the clerk must serve a copy of the petition on the respondent by certified mail has been deleted. In addition, the current requirement that the petition be sent to the Attorney General of the state has been modified to reflect practice in some jurisdictions that the appropriate state official may be someone other than the Attorney General, for example, the officer in charge of a local confinement facility. This comports with a similar provision in 28 U.S.C. §2252, which addresses notice of habeas corpus proceedings to the state’s attorney general or other appropriate officer of the state.

**Changes Made After Publication and Comments.** The Rule was modified slightly to reflect the view of some commentators that it is common practice in some districts for the government to file a pre-answer motion to dismiss. The Committee agreed with that recommendation and changed the word “pleading” in the rule to “response.” It also made several minor changes to the Committee Note.

**Rule 5. The Answer and the Reply**

(a) WHEN REQUIRED. The respondent is not required to answer the petition unless a judge so orders.

(b) CONTENTS: ADDRESSING THE ALLEGATIONS; STATING A BAR. The answer must address the allegations in the petition. In addition, it must state whether any claim in the petition is barred by a failure to exhaust state remedies, a procedural bar, non-retroactivity, or a statute of limitations.

(c) CONTENTS: TRANSCRIPTS. The answer must also indicate what transcripts of the proceedings (of pretrial, trial, sentencing, or post-conviction proceedings) are available, when they can be furnished, and what proceedings have been recorded but not transcribed. The respondent must attach to the answer parts of the transcript that the respondent considers relevant. The judge may order that the respondent furnish other parts of existing transcripts or that parts of untranscribed records be transcribed and furnished. If a transcript cannot be obtained, the respondent may submit a narrative summary of the evidence.

(d) CONTENTS: BRIEFS ON APPEAL AND OPINIONS. The respondent must also file with the answer a copy of:

1. any brief that the petitioner submitted in an appellate court contesting the conviction or sentence, or contesting an adverse judgment or order in a post-conviction proceeding;
2. any brief that the prosecution submitted in an appellate court relating to the conviction or sentence; and
3. the opinions and dispositive orders of the appellate court relating to the conviction or the sentence.

(e) REPLY. The petitioner may submit a reply to the respondent’s answer or other pleading within a time fixed by the judge.


**ADVISORY COMMITTEE NOTE**

Rule 5 details the contents of the “answer”. (This is a change in terminology from “return,” which is still used below when referring to prior practice.) The answer plays an obviously important role in a habeas proceeding:

The return serves several important functions: it permits the court and the parties to uncover quickly the disputed issues; it may reveal to the petitioner’s attorney grounds for release that the petitioner did not know; and it may demonstrate that the petitioner’s claim is wholly without merit.


The answer must respond to the allegations of the petition. While some districts require this by local rule (see, e.g., E.D.N.C.R. 17 (B)), under 28 U.S.C. §2243 little specificity is demanded. As a result, courts occasionally receive answers which contain only a statement certifying the true cause of detention, or a series of delaying motions such as motions to dismiss. The requirement of the proposed rule that the “answer shall respond to the allegations of the petition” is intended to ensure that a responsive pleading will be filed and thus the functions of the answer fully served.

The answer must also state whether the petitioner has exhausted his state remedies. This is a prerequisite to eligibility for the writ under 28 U.S.C. §2254(b) and applies to every ground the petitioner raises. Most form petitions now in use contain questions requiring information relevant to whether the petitioner has exhausted his remedies. However, the exhaustion requirement is often not understood by the unemployed petitioner. The attorney general has both the legal expertise and access to the record and thus is in a much better position to inform the court on the matter of exhaustion of state remedies. An alleged failure to exhaust state remedies as to any ground in the petition may be raised by a motion by the attorney general,
thus avoiding the necessity of a formal answer as to that ground.

The rule requires the answer to indicate what transcripts are available, when they can be furnished, and what other proceedings have been recorded and not transcribed. This will serve to inform the court and petitioner as to what factual allegations can be checked against the actual transcripts. The transcripts include pretrial motions to suppress; transcripts of the trial or guilty plea proceeding; and transcripts of any post-conviction proceedings which may have taken place. The respondent is required to furnish those portions of the transcripts which he believes relevant. The court may order the furnishing of additional portions of the transcripts upon the request of petitioner or upon the court’s own motion.

Where transcripts are unavailable, the rule provides that a narrative summary of the evidence may be submitted.

Rule 5 (and the general procedure set up by this entire set of rules) does not contemplate a traverse to the answer, except under special circumstances. See advisory committee note to rule 9. Therefore, the common law assumption of verity of the allegations of a return until impeached, as codified in 28 U.S.C. § 2248, is no longer applicable. The meaning of the section, with its assumption “to the extent that the judge finds from the evidence that they (the allegations) are not true,” has given attorneys and courts a great deal of difficulty. It seems that when the petition and return pose an issue of fact, no traverse is required; *Stewart v. Overholser*, 186 F.2d 339 (D.C. Cir. 1950).

We read §2248 of the Judicial Code as not requiring a traverse when a factual issue has been clearly framed by the petition and the return or answer. This section provides that the allegations of a return or answer to an order to show cause shall be accepted as true if not traversed, except to the extent the judge finds from the evidence that they are not true. This contemplates that where the petition and return or answer do present an issue of fact material to the legality of detention, evidence is required to resolve that issue despite the absence of a traverse. This reference to evidence assumes a hearing on issues raised by the allegations of the petition and the return or answer to the order to show cause.

186 F.2d at 342, n. 5

In actual practice, the traverse tends to be a mere pro forma refutation of the return, serving little if any evidentiary function. In the interests of a more streamlined and manageable habeas corpus procedure, it is not required except in those instances where it will serve a truly useful purpose. Also, under rule 11 the court is given the discretion to incorporate Federal Rules of Civil Procedure when appropriate, so civil rule 15(a) may be used to allow the petitioner to amend his petition when the court feels this is called for by the contents of the answer.

Rule 5 does not indicate who the answer is to be served upon, but it necessarily implies that it will be mailed to the petitioner (or to his attorney if he has one). The number of copies of the answer required is left to the court’s discretion. Although the rule requires only a copy of petitioner’s brief on appeal, respondent is free also to file a copy of respondent’s brief. In practice, courts have found it helpful to have a copy of respondent’s brief.

**Committee Notes on Rules—2004 Amendment**

The language of Rule 5 has been amended as part of general restyling of the rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic and no substantive change is intended except as described below.

Revised Rule 5(a), which provides that the respondent is not required to file an answer to the petition, unless a judge so orders, is taken from current Rule 3(b). The revised rule does not address the practice in some districts, where the respondent files a pre-answer motion to dismiss the petition. But revised Rule 4 permits that practice and reflects the view that if the court does not dismiss the petition, it may require (or permit) the respondent to file a motion.

Rule 5(b) has been amended to require that the answer address not only failure to exhaust state remedies, but also procedural bars, non-retroactivity, and any statute of limitations. Although the latter matters are not addressed in the current rule, the Committee intends no substantive change with the additional new language. See, e.g., 28 U.S.C. § 2244(d)(1). Instead, the Committee believes that the explicit mention of those issues in the rule conforms to current case law and statutory provisions. See, e.g., 28 U.S.C. § 2244(d)(1).

Revised Rule 5(d) includes new material. First, Rule 5(d)(2), requires a respondent—assuming an answer is filed—to provide the court with a copy of any brief submitted by the prosecution to the appellate court. And Rule 5(d)(3) now provides that the respondent also file copies of any opinions and dispositive orders of the appellate court concerning the conviction or sentence. These provisions are intended to ensure that the court is provided with additional information that may assist it in resolving the issues raised, or not raised, in the petition.

Finally, revised Rule 5(e) adopts the practice in some jurisdictions of giving the petitioner an opportunity to file a reply to the respondent’s answer. Rather than using terms such as “traverse,” see 28 U.S.C. § 2248, to identify the petitioner’s response to the answer, the rule uses the more general term “reply.’’ The rule prescribes that the court set the time for such responses and in lieu of setting specific time limits in each case, the court may decide to include such time limits in its local rules.

changes made after publication and comments. Rule 5(a) was modified to read that the government is not required to “respond” to the petition unless the court so orders; the term “respond” was used because it leaves open the possibility that the government’s first response (as it is in some districts) is in the form of a pre-answer motion to dismiss the petition. The Note has been changed to reflect the fact that although the rule itself does not reflect that particular motion, it is used in some districts and refers the reader to Rule 4. The Committee also deleted the reference to “affirmative defenses,” because the Committee believed that the term was a misnomer in the context of habeas petitions. The Note was also changed to reflect that there has been a potential substantive change from the current rule, to the extent that the published rule now requires that the answer address procedural bars and any statute of limitations. The Note states that the Committee believes the new language reflects current law.

The Note was modified to address the use of the term “traverse.” One commentator noted that that is the term that is commonly used but that it does not appear in the rule itself.

**Rule 6. Discovery**

(a) LEAVE OF COURT REQUIRED. A judge may, for good cause, authorize a party to conduct discovery under the Federal Rules of Civil Procedure and may limit the extent of discovery. If necessary for effective discovery, the judge may appoint an attorney for a petitioner who qualifies to have counsel appointed under 18 U.S.C. §3006A.

(b) REQUESTING DISCOVERY. A party requesting discovery must provide reasons for the request. The request must also include any proposed interrogatories and requests for admission, and must specify any requested documents.

(c) DEPOSITION EXPENSES. If the respondent is granted leave to take a deposition, the judge
may require the respondent to pay the travel expenses, subsistence expenses, and fees of the petitioner’s attorney to attend the deposition. (As amended Apr. 26, 2004, eff. Dec. 1, 2004.)

ADVISORY COMMITTEE NOTE
This rule prescribes the procedures governing discovery in habeas corpus cases. Subdivision (a) provides that any party may utilize the processes of discovery available under the Federal Rules of Civil Procedure (rules 26–37) if, and to the extent that, the judge allows. It also provides for the appointment of counsel for a petitioner who qualifies for this when counsel is necessary for the effective utilization of discovery procedures permitted by the judge.

Subdivision (a) is consistent with * * * Harris v. Nelson, 394 U.S. 286 (1969). In that case the court noted, [1] it is clear that there was no intention to extend to habeas cases the method of discovery, and, in particular, the discovery provisions * * * of the new [Federal Rules of Civil Procedure].

However, citing the lack of methods for securing information in habeas proceedings, the court pointed to an alternative.

Clearly, in these circumstances * * * the courts may fashion appropriate modes of procedure, by analogy to existing rules or otherwise in conformity with judicial usage. * * * Their authority is expressly confirmed in the All Writs Act, 28 U.S.C. § 1651.

The court concluded that the issue of discovery in habeas corpus cases could best be dealt with as part of an effort to provide general rules of practice for habeas corpus cases:

In fact, it is our view that the rulemaking machinery should be invoked to formulate rules of practice with respect to federal habeas corpus and § 2255 proceedings, on a comprehensive basis and not merely one confined to discovery. The problems presented by these proceedings are materially different from those dealt with in the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure, and reliance upon usage and the opaque language of Civil Rule 81(a)(2) is transparently inadequate. In our view the results of a meticulous formulation and adoption of special rules for federal habeas corpus and § 2255 proceedings would promise much benefit.

Discovery may, in appropriate cases, aid in developing facts necessary to decide whether to order an evidentiary hearing or to grant the writ following an evidentiary hearing:

We are aware that confinement sometimes induces fantasy which has its basis in the paranoia of prison rather than in fact. But where specific allegations before the court show reason to believe that the petitioner, if the facts are fully developed, be able to demonstrate that he is confined illegally and is therefore entitled to relief, it is the duty of the court to provide the necessary facilities and procedures for an adequate inquiry. Obviously, in exercising this power, the court may utilize familiar procedures, as appropriate, whether these are found in the civil or criminal rules or elsewhere in the “usages and principles.”

Granting discovery is left to the discretion of the court, discretion to be exercised where there is a showing of good cause why discovery should be allowed. Several commentators have suggested that at least some discovery should be permitted without leave of court. It is argued that the courts will be burdened with weighing the propriety of requests to which the discovered party has no objection. Additionally, the availability of protective orders under Fed.R.Civ.R., Rules 30(b) and 31(d) will provide the necessary safeguards. See Developments in the Law—Federal Habeas Corpus, 83 Harv.L.Rev. 1038, 1186-87 (1970); Civil Discovery in Habeas Corpus, 67 Colum.L.Rev. 1310 (1967).

Nonetheless, it is felt the requirement of prior court approval of all discovery is necessary to prevent abuse, so this requirement is specifically mandated in the rule.

While requests for discovery in habeas proceedings normally follow the granting of an evidentiary hearing, there may be instances in which discovery would be appropriate beforehand. Such an approach was advocated in Wagner v. United States, 418 F.2d 618, 621 (9th Cir. 1969), where the opinion stated the trial court could permit interrogatories, provide for deposing witnesses, “and take such other prehearing steps as may be appropriate.” While this was an action under §2255, the reasoning would apply equally well to petitions by state prisoners. Such pre-hearing discovery may show an evidentiary hearing to be unnecessary, as when there are “no disputed issues of law or fact.” * * * 394 U.S. at 1181 (1970). The court in Harris alluded to such a possibility when it said “the court may * * * authorize such proceedings with respect to development, before or in conjunction with the hearing of the facts * * *” (emphasis added) 394 U.S. at 300. Such pre-hearing discovery, unlike all discovery under rule 6, requires leave of court. In addition, the provisions in rule 7 for the use of an expanded record may eliminate much of the need for this type of discovery. While probably not as frequently sought or granted as discovery in conjunction with an evidentiary hearing, it may nonetheless serve a valuable function.

In order to make pre-hearing discovery meaningful, subdivision (a) provides that the judge should appoint counsel for a petitioner who is without counsel and qualifies for appointment when this is necessary for the proper utilization of discovery procedures. Rule 8 provides for the appointment of counsel at the evidentiary hearing stage (see rule 8(b) and advisory committee note), but this would not assist the petitioner who seeks to utilize discovery to stave off dismissal of his petition (see rule 9 and advisory committee note) or to demonstrate that an evidentiary hearing is necessary. Thus, if the judge grants a petitioner’s request for discovery prior to making a decision as to the necessity for an evidentiary hearing, he should determine whether counsel is necessary for the effective utilization of such discovery and, if so, appoint counsel for the petitioner if the petitioner qualifies for such appointment.

This rule contains very little specificity as to what types and methods of discovery should be made available to the parties in a habeas proceeding, or how, once made available, these discovery procedures should be administered. The purpose of this rule is to get experience in how discovery would work in actual practice by letting district court judges fashion their own rules in the context of individual cases. When the results of such experience are available it would be desirable to consider whether further, more specific codification should take place.

Subdivision (b) provides for judicial consideration of all matters subject to discovery. A statement of the interrogatories, or requests for admission sought to be answered, and a list of any documents sought to be produced, must accompany a request for discovery. This is to advise the judge of the necessity for discovery and enable him to make certain that the inquiry is relevant and appropriately narrow.

Subdivision (c) refers to the situation where the respondent is granted leave to take the deposition of the petitioner or any other person. In such a case the judge may direct the respondent to pay the expenses and fees of counsel for the petitioner to attend the taking of the deposition, as a condition granting the respondent leave. While the judge is not required to impose this condition subdivision (c) will give the court the means to do so. Such a provision affords some protection to the indigent petitioner who may be prejudiced by inability to have counsel, often court-appointed, present at the taking of a deposition. It is recognized
that under 18 U.S.C. §3006A(g), court-appointed counsel in a §2254 proceeding is entitled to receive up to $250 and reimbursement for expenses reasonably incurred. (Compare Fed.R.Crim.P. 15(c).) Typically, however, this does not adequately reimburse counsel if he must attend the taking of depositions or be involved in other pre-hearing proceedings. Subdivision (c) is intended to provide additional funds, if necessary, to be paid by the state government (respondent to petitioner’s counsel).

Although the rule does not specifically so provide, it is assumed that a petitioner who qualifies for the appointment of counsel under 18 U.S.C. §3006A(g) and is granted leave to take a deposition will be allowed witness costs. This will include recording and transcription of the witness’s statement. Such costs are payable pursuant to 28 U.S.C. §1825. See Opinion of Comptroller General, February 28, 1974.

Committee Notes on Rules—2004 Amendment

The language of Rule 6 has been amended as part of general restyling of the rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic and no substantive change is intended.

Although current Rule 6(b) contains no requirement that the parties provide reasons for the requested discovery, the revised rule does so and also includes a requirement that the request be accompanied by any proposed interrogatories and requests for admission, and must specify any requested documents. The Committee believes that the revised rule makes explicit what has been implicit in current practice.

Changes Made After Publication and Comments. Rule 6(b) was modified to require that discovery requests be supported by reasons, to assist the court in deciding what, if any, discovery should take place. The Committee believed that the change made explicit what has been implicit in current practice.

Rule 7. Expanding the Record

(a) In General. If the petition is not dismissed, the judge may direct the parties to expand the record by submitting additional materials relating to the petition. The judge may require that these materials be authenticated.

(b) Types of Materials. The materials that may be required include, but are not limited to, the filing of the petition, documents, exhibits, and answers under oath to written interrogatories propounded by the judge. Affidavits may also be submitted and considered as part of the record.

(c) Review by the Opposing Party. The judge must give the party against whom the additional materials are offered an opportunity to admit or deny their correctness.


Advisory Committee Note

This rule provides that the judge may direct that the record be expanded. The purpose is to enable the judge to dispose of some habeas petitions not dismissed on the pleadings, without the time and expense required for an evidentiary hearing. An expanded record may also be helpful when an evidentiary hearing is ordered.

The record may be expanded to include additional material relevant to the merits of the petition. While most petitions are dismissed either summarily or after a response has been made, of those that remain, by far the majority require an evidentiary hearing. In the fiscal year ending June 30, 1970, for example, of 8,423 §2254 cases terminated, 8,203 resulted in court action. Of these, 7,612 were dismissed before a prehearing conference and 469 merit further court action (e.g., expansion of the record, prehearing conference, or an evidentiary hearing). Of the remaining 56 cases, 463 required an evidentiary hearing, often time-consuming, costly, and, at least occasionally, unnecessary. See Director of the Administrative Office of the United States Courts, Annual Report, 245a–245c (table C4) (1970). In some instances these hearings were necessitated by slight omissions in the state record which might have been cured by the use of an expanded record.

Authorizing expansion of the record will, hopefully, eliminate some unnecessary hearings. The value of this approach was articulated in Raines v. United States, 423 F.2d 526, 529–530 (4th Cir. 1970):

Unless it is clear from the pleadings and the files and records that the prisoner is entitled to no relief, the statute makes a hearing mandatory. We think there is a permissible intermediate step that may avoid the necessity for an expensive and time consuming evidentiary hearing in every Section 2255 case. It may instead be perfectly appropriate, depending upon the nature of the allegations, for the district court to proceed by requiring that the record be expanded to include letters, documentary evidence, and, in an appropriate case, even affidavits. United States v. Carlino, 400 F.2d 56 (2d Cir. 1968); Accardi v. United States, 379 F.2d 782 (2d Cir. 1967); Accardi v. United States, 379 F.2d 312 (2d Cir. 1967). When the issue is one of credibility, resolution on the basis of affidavits can rarely be conclusive, but that is not to say they may not be helpful. In Harris v. Nelson, 394 U.S. 286, 300 (1969), the court said:

At any time in the proceedings * * * either on [the court’s] own motion or upon cause shown by the petitioner, it may issue such writs and take or authorize such proceedings * * * before or in conjunction with the hearing of the facts * * * [emphasis added]”

Subdivision (b) specifies the materials which may be added to the record. These include, without limitation, letters predating the filing of the petition in the district court, documents, exhibits, and answers under oath directed to written interrogatories propounded by the judge. Under this subdivision affidavits may be submitted and considered as part of the record. Such affidavits “shall be consistent with 28 U.S.C. §§2261, 2268 and the decision in Raines with regard to types of material that may be considered upon application for a writ of habeas corpus. See United States v. Carlino, 400 F.2d 56, 58 (2d Cir. 1968), and Muchabroda v. United States, 368 U.S. 487 (1962).”

Under subdivision (c) all materials proposed to be included in the record must be submitted to the party against whom they are to be offered.

Under subdivision (d) the judge can require authentication if he believes it desirable to do so.

Committee Notes on Rules—2004 Amendment

The language of Rule 7 has been amended as part of general restyling of the rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic and no substantive change is intended, except as noted below.

Revised Rule 7(a) is not intended to restrict the court’s authority to expand the record through means other than requiring the parties themselves to provide the information. Further, the rule has been changed to remove the reference to the “merits” of the petition in the recognition that a court may wish to expand the record in order to assist it in deciding an issue other than the merits of the petition.

The language in current Rule 7(d), which deals with authentication of materials in the expanded record, has been moved to revised Rule 7(a).
Changes Made After Publication and Comments. The Committee modified Rule 7(a) by removing the reference to the “merits” of the petition. One commentator said that the court might wish to expand the record for purposes other than the merits of the case. The Committee agreed to the change and also changed the rule to reflect that someone other than a party may authenticate the materials.

Rule 8. Evidentiary Hearing

(a) Determining Whether to Hold a Hearing. If the petition is not dismissed, the judge must review the answer, any transcripts and records of state-court proceedings, and any materials submitted under Rule 7 to determine whether an evidentiary hearing is warranted.

(b) Reference to a Magistrate Judge. A judge may, under 28 U.S.C. §636(b), refer the petition to a magistrate judge to conduct hearings and to file proposed findings of fact and recommendations for disposition. When they are filed, the clerk must promptly serve copies of the proposed findings and recommendations on all parties. Within 14 days after being served, a party may file objections as provided by local court rule. The judge must determine de novo any proposed finding or recommendation to which objection is made. The judge may accept, reject, or modify any proposed finding or recommendation.

(c) Appointing Counsel; Time of Hearing. If an evidentiary hearing is warranted, the judge must appoint an attorney to represent a petitioner who qualifies to have counsel appointed under 18 U.S.C. §3006A. The judge must conduct the hearing as soon as practicable after giving the attorneys adequate time to investigate and prepare. These rules do not limit the appointment of counsel under §3006A at any stage of the proceedings.


Advisory Committee Note

This rule outlines the procedure to be followed by the court immediately prior to and after the determination of whether to hold an evidentiary hearing.

The provisions are applicable if the petition has not been dismissed at a previous stage in the proceeding (including a summary dismissal under rule 4); a dismissal pursuant to a motion by the respondent; a dismissal after the answer and petition are considered; or a dismissal after consideration of the pleadings and an expanded record.

If dismissal has not been ordered, the court must determine whether an evidentiary hearing is required. This determination is to be made upon a review of the answer, the transcript and record of state-court proceedings, and if there is one, the expanded record. As the United States Supreme Court noted in Townsend v. United States, 344 U.S. 294, 73 S.Ct. 279, 97 L.Ed. 344 (1953); ordinarily (the complete state-court record—including the transcript of testimony (or if unavailable some adequate substitute, such as a narrative record), the pleadings, court opinions, and other pertinent documents—is indispensable to determining whether the habeas applicant received a full and fair state-court evidentiary hearing resulting in reliable findings.

A qualified, experienced magistrate will, it is hoped, acquire an expertise in examining these post-trial relief applications and summarizing their important contents for the district judge, thereby facilitating his decisions. Law clerks are presently utilized to prepare. These rules do not limit the appointment of counsel under §3006A at any stage of the proceeding.

The circumstances under which a federal hearing is mandatory are now specified in 28 U.S.C. §2254(d). The 1966 amendment clearly places the burden of the petitioner, when there has already been a state hearing, to show that it was not a fair or adequate hearing for one or more of the specifically enumerated reasons, in order to force a federal evidentiary hearing. Since the function of an evidentiary hearing is to try issues of fact (372 U.S. at 309), such a hearing is unnecessary when only issues of law are raised. See, e.g., Yezman v. United States, 326 F.2d 293 (9th Cir. 1963).

In situations in which an evidentiary hearing is not mandatory, the judge may nonetheless decide that an evidentiary hearing is desirable. The purpose of the test is to indicate the situations in which the holding of an evidentiary hearing is mandatory. In all other cases where the material facts are in dispute, the holding of such a hearing is in the discretion of the district judge.

372 U.S. at 310

If the judge decides that an evidentiary hearing is neither required nor desirable, he shall make such a disposition of the petition “as justice shall require.” Most habeas petitions are dismissed before the prehearing conference stage (see Director of the Administrative Office of the United States Courts, Annual Report 245a–245c (table C4) (1970)) and of those not dismissed, the majority raise factual issues that necessitate an evidentiary hearing. If no hearing is required, most petitions are dismissed, but in unusual cases the court may grant the relief sought without a hearing. This includes immediate release from custody ornullification of a judgment under which the sentence is to be served in the future.

Subdivision (b) provides that a magistrate, when so empowered by rule of the district court, may recommend to the district judge that an evidentiary hearing be held or that the petition be dismissed, provided he gives the district judge a sufficiently detailed description of the facts so that the judge may decide whether or not to hold an evidentiary hearing. This provision is not inconsistent with the holding in Wingo v. Wedding, 417 U.S. 461 (1974), that the Federal Magistrates Act did not change the requirement of the habeas corpus statute that federal judges personally conduct habeas evidentiary hearings, and that consequently a local district court rule was invalid insofar as it authorized a magistrate to hold such hearings. 28 U.S.C. §636(b) provides that a district court may, by rule authorize any magistrate to perform certain additional duties, including preliminary review of applications for posttrial relief made by individuals convicted of criminal offenses, and submission of a report and recommendations to facilitate things, and of the district judge having jurisdiction over the case as to whether there should be a hearing.

As noted in Wingo, review “by Magistrates of applications for post-trial relief is thus limited to review for the purpose of proposing, not holding, evidentiary hearings.” Utilization of the magistrate as specified in subdivision (b) will aid in the expeditious and fair handling of habeas petitions.

A qualified, experienced magistrate will, it is hoped, acquire an expertise in examining these post-conviction review applications and summarizing their important contents for the district judge, thereby facilitating his decisions. Law clerks are presently
The rule does not contain a specific provision on the subpoenaing of witnesses. It is left to local practice to determine the method for doing this. The implementation of 28 U.S.C. §1920 on the payment of witness fees is dealt with in an opinion of the Comptroller General, February 28, 1974.

COMMITTEE NOTES ON RULES—2004 AMENDMENT

The language of Rule 8 has been amended as part of general restyling of the rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic and no substantive change is intended.

Rule 8(a) is not intended to supersede the restrictions on evidentiary hearings contained in 28 U.S.C. §2254(e)(2).

The requirement in current Rule 8(b)(2) that a copy of the magistrate judge’s findings must be promptly mailed to all parties has been changed in revised Rule 8(b) to require that copies of those findings be served on all parties. As used in this rule, “service” means service consistent with Federal Rule of Civil Procedure 5(b), which allows mailing the service.

Changes Made After Publication and Comments. The Committee changed the Committee Note to reflect the view that the amendments to Rule 8 were not intended to supersede the restrictions on evidentiary hearings contained in §2254(e)(2).

COMMITTEE NOTES ON RULES—2009 AMENDMENT

The time set in the former rule at 10 days has been revised to 14 days. See the Committee Note to Federal Rules of Criminal Procedure 45(a).

AMENDMENTS BY PUBLIC LAW

1976—Subd. (b). Pub. L. 94–577, §2(a)(1), substituted provisions which authorized magistrates, when designated to do so in accordance with section 636(b) of this title, to conduct hearings, including evidentiary hearings, on the petition and to submit to a judge of the court proposed findings of fact and recommendations for disposition, which directed the magistrate to file proposed findings and recommendations with the court with copies furnished to all parties which allowed parties thus served 10 days to file written objections thereto, and which directed a judge of the court to make de novo determinations of the objected-to portions and to accept, reject, or modify the findings or recommendations for provisions under which the magistrate had been empowered only to recommend to the district judge that an evidentiary hearing be held or that the petition be dismissed.

Subd. (c). Pub. L. 94–577, §2(b)(1), substituted “and the hearing shall be conducted” for “and shall conduct the hearing.”

Pub. L. 94–426 provided that these rules not limit the appointment of counsel under section 3006A of title 18, if the interest of justice so require.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 2(c) of Pub. L. 94–577 provided that: “The amendments made by this section [amending subds. (b) and (c) of this rule and Rule 8(b), (c) of the Rules Governing Proceedings Under Section 2255 of this title] shall take effect with respect to petitions under section 2254 and motions under section 2255 of title 28 of the United States Code filed on or after February 1, 1977.”

Rule 9. Second or Successive Petitions

Before presenting a second or successive petition, the petitioner must obtain an order from the appropriate court of appeals authorizing the district court to consider the petition as required by 28 U.S.C. §2244(b)(3) and (4).
This rule is intended to minimize abuse of the writ of habeas corpus by limiting the right to assert stale claims and to file multiple petitions. Subdivision (a) deals with the delayed petition. Subdivision (b) deals with the second or successive petition.

Subdivision (a) provides that a petition attacking the judgment of a state court may be dismissed on the grounds of delay if the petitioner knew or should have known of the existence of the grounds he is presently asserting in the petition and the delay has resulted in the state being prejudiced in its ability to respond to the petition. If the delay is more than five years after the judgment of conviction, prejudice is presumed, although this presumption is rebuttable by the petitioner. Otherwise, the state has the burden of showing such prejudice.

The assertion of stale claims is a problem which is not likely to decrease in frequency. Following the decisions in Jones v. Cunningham, 371 U.S. 256 (1963), and Benson v. California, 322 F.2d 199 (9th Cir. 1964), the concept of custody expanded greatly, lengthening the time period during which a habeas corpus petition may be filed. The petitioner who is not unconditionally discharged may be on parole or probation for many years. He may at some date, perhaps ten or fifteen years after conviction, decide to challenge the state court judgment. The grounds most often troublesome to the court are ineffective counsel, denial of right of appeal, plea of guilty unlawfully induced, use of a coerced confession, and illegally constituted jury. The latter four grounds are often interlocked with the allegation of ineffective counsel. When they are asserted after the passage of many years, both the attorney for the defendant and the state have difficulty in ascertaining what the facts are. It often develops that the defense attorney has little or no recollection as to what took place and that many of the participants in the trial are dead or their whereabouts unknown. The court reporter’s notes may have been lost or destroyed, thus eliminating any exact record of what transpired. If the case was decided on a guilty plea, even if the record is intact, it may not satisfactorily reveal the extent of the defense attorney’s efforts in behalf of the petitioner. As a consequence, there is obvious difficulty in investigating petitioner’s allegations.

The interest of both the petitioner and the government can best be served if claims are raised while the evidence is still fresh. The American Bar Association has recognized the interest of the state in protecting itself against stale claims by limiting the right to raise such claims after completion of service of a sentence imposed and pursuant to a challenged judgment. See ABA Standards Relating to Post-Conviction Remedies § 2.4 (c), p. 45 (Approved Draft, 1968). Subdivision (a) is not limited to those who have completed their sentence. Its reach is broader, extending to all instances where delay may be disregarded where (1) there has been a change of law or fact (new evidence) or (2) where the court, in the interest of justice, feels that the collateral attack should be entertained and the prisoner makes a proper showing as to why he has not asserted a particular ground for relief.

Subdivision (a) establishes the presumption that the passage of more than five years from the time of the judgment of conviction to the time of filing a habeas petition is prejudicial to the state. “Presumption” has the meaning given it by Fed.R.Evid. 301. The prisoner has “the burden of going forward with evidence to rebut or meet the presumption” that the state has not been prejudiced by the passage of a substantial period of time. This does not impose too heavy a burden on the petitioner. He usually knows what persons are important to the issue of whether the state has been prejudiced. Rule 6 can be used by the court to allow petitioner liberal discovery to learn whether witnesses have died or whether other circumstances prejudicial to the state have occurred. Even if the petitioner should fail to overcome the presumption of prejudice to the state, he is not automatically barred from asserting his claim. As discussed previously, he may proceed if he neither knew nor, by the exercise of reasonable diligence, could have known of the grounds for relief.

The presumption of prejudice does not come into play if the time lag is not more than five years.

The time limitation should have a positive effect in encouraging petitioners who have knowledge of it to assert all their claims as soon after conviction as possible. The implementation of this rule can be substantially furthered by the development of greater legal resources for prisoners. See ABA Standards Relating to Post-Conviction Remedies § 3.1, pp. 49-50 (Approved Draft, 1968).

Subdivision (a) does not constitute an abridgment or modification of a substantive right under 28 U.S.C. §2254. There are safeguards for the hardship cases. The rule provides a flexible standard for determining when a petition will be barred.

Subdivision (b) deals with the problem of successive habeas petitions. It provides that the judge may dismiss a second or successive petition (1) if it fails to allege new or different grounds for relief or (2) if new or different grounds for relief are alleged and the judge finds the failure of the petitioner to assert those grounds in a prior petition is inexcusable.

In Sanders v. United States, 373 U.S. 1 (1963), the court, in dealing with the problem of successive applications, stated:
Controlling weight may be given to denial of a prior application for federal habeas corpus or §2255 relief only if (1) the same ground presented in the subsequent application was determined adversely to the applicant on the prior application, (2) the prior determination was on the merits, and (3) the ends of justice would not be served by reaching the merits of the subsequent application. [Emphasis added.]

373 U.S. at 15

The requirement is that the prior determination of the same ground has been on the merits. This requirement is in 28 U.S.C. §2244(b) and has been reiterated in many cases since Sanders. See Gains v. Allgood, 391 F.2d 692 (5th Cir. 1968); Hutchinson v. Craven, 415 F.2d 278 (9th Cir. 1969); Brown v. Peyton, 435 F.2d 1392 (4th Cir. 1970).

With reference to a successive application asserting a new ground or one not previously decided on the merits, the court in Sanders noted:

"In either case, full consideration of the merits of the new application can be avoided only if there has been an abuse of the writ * * * and this the Government has the burden of pleading * * *" Thus, for example, if a prisoner deliberately withheld one of two grounds for federal collateral relief at the time of filing his first application, * * * he may be deemed to have waived his right to a hearing on a second application presenting the withheld ground.

373 U.S. at 17-18

Subdivision (b) has incorporated this principle and requires that the judge find petitioner's failure to have asserted the new grounds in the prior petition to be inexcusable.

Sanders, 18 U.S.C. §2244, and subdivision (b) make it clear that the court has discretion to entertain a successive application.

The burden is on the government to plead abuse of the writ. See Sanders v. United States, 373 U.S. 1, 10 (1963); Dixon v. Jacobs, 427 F.2d 589, 596 (D.C.Cir. 1970); cf. Johnson v. Copinger, 420 F.2d 395 (4th Cir. 1969). Once the government has done this, the petitioner has the burden of proving that he has not abused the writ. In Price v. Johnston, 334 U.S. 266, 292 (1948), the court said:

"[I]f the Government chooses * * * to claim that the prisoner has abused the writ of habeas corpus, it rests with the Government to make that claim with clarity and particularity in its return to the order to show cause. That is not an intolerable burden. The Government is usually well acquainted with the facts that are necessary to make such a claim. Once a particular abuse has been alleged, the prisoner has the burden of answering that allegation and of proving that he has not abused the writ.

Substantive (b) is consistent with the important and well established purpose of habeas corpus. It does not eliminate a remedy to which the petitioner is rightfully entitled. However, in Sanders, the court pointed out:

"Nothing in the traditions of habeas corpus requires the federal courts to tolerate needless piecemeal litigation, or to entertain collateral proceedings whose only purpose is to vex, harass, or delay."

373 U.S. at 18

There are instances in which petitioner's failure to assert a ground in a prior petition is excusable. A retroactive change in the law and newly discovered evidence are examples. In rare instances, the court may feel a need to entertain a petition alleging grounds that have already been decided on the merits. Sanders, 373 U.S. at 16. However, abusive use of the writ should be deliberately withheld in the hope of getting two or more hearings or in the hope that delay will result in witnesses and records being lost. There are instances in which a petitioner will have three or four petitions pending at the same time in the same court. There are many hundreds of cases where the application is at least the second one by the petitioner. This subdivision is aimed at screening out the abusive petitions from this large volume, so that the more meritorious petitions can get quicker and fuller consideration.

The form petition, supplied in accordance with rule 2(c), encourages the petitioner to raise all of his available grounds in one petition. It sets out the most common grounds asserted so that these may be brought to the court's attention.

Some commentators contend that the problem of abuse of the writ of habeas corpus is greatly overstated:

Most prisoners, of course, are interested in being released as soon as possible; only rarely will one inexcusably neglect to raise all available issues in his first federal application. The purpose of the “abuse” bar is apparently to deter repetitious applications from those few bored or vindictive prisoners * * *.

83 Harv.L.Rev. at 1153-1154

See also ABA Standards Relating to Post-Conviction Remedies §4.2, commentary at 92 (Approved Draft, 1968), which states: “The occasional, highly litigious prisoner stands out as the rarest exception.” While no recent systematic study of repetitious applications exists, there is no reason to believe that the problem has decreased in significance in relation to the total number of §2254 petitions filed. That number has increased from 584 in 1949 to 12,088 in 1971. See Director of the Administrative Office of the United States Courts, Annual Report, table 16 (1971). It is appropriate that action be taken by rule to allow the courts to deal with this problem, whatever its specific magnitude. The bar set up by subdivision (b) is not one of rigid application, but rather is within the discretion of the courts on a case-by-case basis.

If it appears to the court after examining the petition and answer (where appropriate) that there is a high probability that the petition will be barred under either subdivision of rule 8, the court ought to afford petitioner an opportunity to explain his apparent abuse. One way of doing this is by the use of the form annexed hereto. The use of a form will ensure a full airing of the issue so that the court is in a better position to decide whether the petition should be barred. This conforms with Johnson v. Copinger, 420 F.2d 395 (4th Cir. 1969), where the court stated:

"The petitioner is obligated to present facts demonstrating that his earlier failure to raise his claims is excusable and does not amount to an abuse of the writ. However, it is inherent in this obligation placed upon the petitioner that he must be given an opportunity to make his explanation, if he has one. If he is not afforded such an opportunity, the requirement that he satisfy the court that he has not abused the writ is meaningless. Nor do we think that a procedure which allows the imposition of a forfeiture for abuse of the writ, without allowing the petitioner an opportunity to be heard on the issue, comports with the minimum requirements of fairness.

420 F.2d at 399

Use of the recommended form will contribute to an orderly handling of habeas petitions and will contribute to the ability of the courts to distinguish the excusable from the inexcusable delay or failure to assert a ground for relief in a prior petition.

COMMITTEE NOTES ON RULES—2004 AMENDMENT

The language of Rule 9 has been amended as part of general restyling of the rules to make them more easily understood and to make style and terminology consistent throughout the rules. The change is intended to be stylistic and no substantive change is intended, except as noted below.
First, current Rule 9(a) has been deleted as unnecessary in light of the applicable one-year statute of limitations for §2254 petitions, added as part of the Antiterrorism and Effective Death Penalty Act of 1996, 28 U.S.C. §2244(d).

Second, current Rule 9(b), now Rule 9, has been changed to also reflect provisions in the Antiterrorism and Effective Death Penalty Act of 1996, 28 U.S.C. §2244(b)(3) and (4), which now require a petitioner to obtain approval from the appropriate court of appeals before filing a second or successive petition.

Finally, the title of Rule 9 has been changed to reflect the fact that the only topic now addressed in the rules is that of second or successive petitions.

Changes Made After Publication and Comments. The Committee made no changes to Rule 9.

AMENDMENTS BY PUBLIC LAW

1976—Subd. (a). Pub. L. 94–426, §2(7), struck out provision which established a rebuttable presumption of prejudice to the state if the petition was filed more than five years after conviction and started the running of the five year period, where a petition challenged the validity of an action after conviction, from the date of the order of such action.

Subd. (b). Pub. L. 94–426, §2(8), substituted “constituted an abuse of the writ” for “is not excusable”.

Rule 10. Powers of a Magistrate Judge


ADVISORY COMMITTEE NOTE

Under this rule the duties imposed upon the judge of the district court by rules 2, 3, 4, 6, and 7 may be performed by a magistrate if and to the extent he is empowered to do so by a rule of the district court. However, when such duties involve the making of an order under rule 4 disposing of the petition, that order must be made by the court. The magistrate in such instances must submit to the court his report as to the facts and his recommendation with respect to the order.


Under 28 U.S.C. §636(b), any district court, by the concurrence of a majority of all the judges of such district court, may establish rules pursuant to which any full-time United States magistrate ** may be assigned within the territorial jurisdiction of such court such additional duties as are not inconsistent with the Constitution and laws of the United States. The proposed rule recognizes the limitations imposed by 28 U.S.C. §636(b) upon the powers of magistrates to act in federal postconviction proceedings. These limitations are: (1) that the magistrate may act only pursuant to a rule passed by the majority of the judges in the district court in which the magistrate serves, and (2) that the duties performed by the magistrate pursuant to such rule be consistent with the Constitution and laws of the United States.

It has been suggested that magistrates be empowered by law to hold hearings and make final decisions in habeas proceedings. See Proposed Reformation of Federal Habeas Corpus Procedure: Use of Federal Magistrates, 54 Iowa L.Rev. 1147, 1158 (1969). However, the Federal Magistrates Act does not authorize such use of magistrates. Wingo v. Wedding, 418 U.S. 461 (1974). See advisory committee note to rule 4. While the use of magistrates can help alleviate the strain imposed on the district courts by the large number of unmeritorious habeas petitions, neither 28 U.S.C. §636(b) nor this rule contemplate the abdication of its decision-making responsibility. See also Developments in the Law—Federal Habeas Corpus, 83 Harv. L.Rev. 1038, 1188 (1970).

Where a full-time magistrate is not available, the duties contemplated by this rule may be assigned to a part-time magistrate.

1979 AMENDMENT

This amendment conforms the rule to subsequently enacted legislation clarifying and further defining the duties which may be assigned to a magistrate, 18 U.S.C. §636, as amended in 1978 by Pub. L. 95–541. To the extent that rule 10 is more restrictive than §636, the limitations are of no effect, for the statute expressly governs “[n]otwithstanding any provision of law to the contrary.”

The reference to particular rules is stricken, as under §636(b)(1)(A) a judge may designate a magistrate to perform duties under other rules as well (e.g., order that further transcripts be furnished under rule 5; appoint counsel under rule 8). The reference to “established standards and criteria” is stricken, as §636(4) requires each district court to “establish rules pursuant to which the magistrates shall discharge their duties.” The exception with respect to a rule 4 order dismissing a petition is stricken, as that limitation appears in §636(b)(1)(B) and is thereby applicable to certain other actions under these rules as well (e.g., determination of a need for an evidentiary hearing under rule 8; dismissal of a delayed or successive petition under rule 9).

COMMITTEE NOTES ON RULES—2004 AMENDMENT

The language of Rule 10 has been amended as part of general restyling of the rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic and no substantive change is intended.

Changes Made After Publication and Comments. The Committee restyled the proposed rule.

AMENDMENTS BY PUBLIC LAW

1976—Pub. L. 94–426 inserted “, and to the extent the district court has established standards and criteria for the performance of such duties” after “rule of the district court.”

Rule 11. Certificate of Appealability; Time to Appeal

(a) CERTIFICATE OF APPEALABILITY. The district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant. Before entering the final order, the court may direct the parties to submit arguments on whether a certificate should issue. If the court issues a certificate, the court must state the specific issue or issues that satisfy the showing required by 28 U.S.C. §2253(c)(2). If the court denies a certificate, the parties may not appeal the denial but may seek a certificate from the court of appeals under Federal Rule of Appellate Procedure 22. A motion to reconsider a denial does not extend the time to appeal.

(b) TIME TO APPEAL. Federal Rule of Appellate Procedure 4(a) governs the time to appeal an order entered under these rules. A timely notice of appeal must be filed even if the district court issues a certificate of appealability.

Committee Notes on Rules—2009

§ 2254
Subdivision (a). As provided in 28 U.S.C. § 2253(c), an applicant may not apply to the court of appeals from a final order in a proceeding under § 2254 unless a judge issues a certificate of appealability (COA), identifying the specific issues for which the applicant has made a substantial showing of a denial of constitutional right. New Rule 11(a) makes the requirements concerning COAs more prominent by adding and consolidating them in the appropriate rule of the Rules Governing § 2254 Cases in the United States District Courts. Rule 11(a) also requires the district judge to grant or deny the certificate at the time a final order is issued. See 3d Cir. R. 22.2, 111.3. This will ensure prompt decision making when the issues are fresh, rather than postponing consideration of the certificate until after a notice of appeal is filed. These changes will expedite proceedings, avoid unnecessary remands, and help inform the applicant's decision whether to file a notice of appeal.

Subdivision (b). The new subdivision is designed to direct parties to the appropriate rule governing the timing of the notice of appeal and make it clear that the district court's grant of a COA does not eliminate the need to file a notice of appeal. Changes Made to Proposed Amendment Released for Public Comment. In response to public comments, a sentence was added stating that prior to the entry of the final order the district court may direct the parties to submit arguments on whether or not a certificate should issue. This allows a court in complex cases (such as death penalty cases with numerous claims) to solicit briefing that might narrow the issues for appeal. For purposes of clarification, two sentences were added at the end of subdivision (a) stating that (1) although the district court's denial of a certificate is not appealable, a certificate may be sought in the court of appeals, and (2) a motion for reconsideration of a denial of a certificate does not extend the time to appeal.

Finally, a new subdivision (b) was added to mirror the information provided in subdivision (b) of Rule 11 of the Rules Governing § 2255 Proceedings, directing petitioners to Rule 4 of the appellate rules and indicating that notice of appeal must be filed even if a COA is issued. Minor changes were also made to conform to style conventions.

References in Text

The Federal Rules of Appellate Procedure, referred to in text, are set out in the Appendix to this title.


The Federal Rules of Civil Procedure, to the extent that they are not inconsistent with any statutory provisions or these rules, may be applied to a proceeding under these rules.


Advisory Committee Note

Habeas corpus proceedings are characterized as civil in nature. See e.g., Fisher v. Baker, 203 U.S. 174, 181 (1906). However, under Fed.R.Civ.P. 81(a)(2), the applicability of the civil rules to habeas corpus actions has been limited, although the various courts which have considered this problem have had difficulty in setting out the boundaries of this limitation. See Harris v. Nelson, 394 U.S. 286 (1969) at 289, footnote 1. Rule 11 is intended to conform with the Supreme Court's approach in the Harris case. There the court was dealing with the petitioner's contention that Civil Rule 33 granting the right to discovery via written interrogatories except in limited circumstances not applicable to this case; but we conclude that, in appropriate circumstances, a district court, confronted by a petition for habeas corpus which establishes a prima facie case for relief, may use or authorize the use of suitable discovery procedures, including interrogatories, reasonably fashioned to elicit facts necessary to help the court to "dispose of the matter as law and justice require." 28 U.S.C. § 2243.

394 U.S. at 290

The court then went on to consider the contention that the "conformity" provision of Rule 81(a)(2) should be rigidly applied so that the civil rules would be applicable only to the extent that habeas corpus practice had conformed to the practice in civil actions at the time of the adoption of the Federal Rules of Civil Procedure on September 16, 1938. The court said:

Although there is little direct evidence, relevant to the present problem, of the purpose of the "conformity" provision of Rule 81(a)(2), the concern of the draftsmen, as a general matter, seems to have been to provide for the continuing applicability of the "civil" rules in their new form to those areas of practice in habeas corpus and other enumerated proceedings in which the "specified" proceedings had theretofore utilized the modes of civil practice. Otherwise, those proceedings were to be considered outside of the scope of the rules without prejudice, of course, to the use of particular rules by analogy or otherwise, where appropriate.

394 U.S. at 294

The court then reiterated its commitment to judicial discretion in formulating rules and procedures for habeas corpus proceedings by stating:

[The habeas corpus jurisdiction and the duty to exercise it being present, the courts may fashion appropriate modes of procedure, by analogy to existing rules or otherwise in conformity with judicial usage. Where their duties require it, this is the inescapable obligation of the courts. Their authority is expressly confirmed in the All Writs Act, 28 U.S.C. § 1651.]

394 U.S. at 299

Rule 6 of these proposed rules deals specifically with the issue of discovery in habeas actions in a manner consistent with Harris. Rule 11 extends this approach to allow the court considering the petition to use any of the rules of civil procedure (unless inconsistent with these rules of habeas corpus) when in its discretion the court decides they are appropriate under the circumstances of the particular case. The court does not have to rigidly apply rules which would be inconsistent or inequitable in the overall framework of habeas corpus. Rule 11 merely recognizes and affirms their discretionary power to use their judgment in promoting the ends of justice.

Rule 11 permits application of the civil rules only when it would be appropriate to do so. Illustrative of an inappropriate application is that rejected by the Supreme Court in Pitchess v. Davis, 90 S.Ct. 1748 (1970), holding that Fed.R.Civ.P. 60(b) should not be applied in a habeas case when it would have the effect of altering the statutory exhaustion requirement of 28 U.S.C. § 2254.

Committee Notes on Rules—2004 Amendment

The language of Rule 11 has been amended as part of a general restyling of the rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic and no substantive change is intended.

Changes Made After Publication and Comments. The Committee made no changes to Rule 11.
COMMITTEE NOTES ON RULES—2009 AMENDMENT

The amendment renumbers current Rule 11 to accommodate the new rule on certificates of appealability.

REFERENCES IN TEXT
The Federal Rules of Civil Procedure, referred to in heading and text, are set out in the Appendix to this title.

APPENDIX OF FORMS
Petition for Relief From a Conviction or Sentence
By a Person in State Custody


Instructions

1. To use this form, you must be a person who is currently serving a sentence under a judgment against you in a state court. You are asking for relief from the conviction or the sentence. This form is your petition for relief.

2. You may also use this form to challenge a state judgment that imposed a sentence to be served in the future, but you must fill in the name of the state where the judgment was entered. If you want to challenge a federal judgment that imposed a sentence to be served in the future, you should file a motion under 28 U.S.C. § 2255 in the federal court that entered the judgment.

3. Make sure the form is typed or neatly written.

4. You must tell the truth and sign the form. If you make a false statement of a material fact, you may be prosecuted for perjury.

5. Answer all the questions. You do not need to cite law. You may submit additional pages if necessary. If you do not fill out the form properly, you will be asked to submit additional or correct information. If you want to submit a brief or arguments, you must submit them in a separate memorandum.

6. You must pay a fee of $5. If the fee is paid, your petition will be filed. If you cannot pay the fee, you may ask to proceed in forma pauperis (as a poor person). To do that, you must fill out the last page of this form. Also, you must submit a certificate signed by an officer at the institution where you are confined showing the amount of money that the institution is holding for you. If your account exceeds $____, you must pay the filing fee.

7. In this petition, you may challenge the judgment entered by only one court. If you want to challenge a judgment entered by a different court (either in the same state or in different states), you must file a separate petition.

8. When you have completed the form, send the original and two copies to the Clerk of the United States District Court at this address:

   Clerk, United States District Court for ______________
   Address
   City, State Zip Code

9. **CAUTION:** You must include in this petition all the grounds for relief from the conviction or sentence that you challenge. And you must state the facts that support each ground. If you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

10. **CAPITAL CASES:** If you are under a sentence of death, you are entitled to the assistance of counsel and should request the appointment of counsel.
PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

<table>
<thead>
<tr>
<th>United States District Court</th>
<th>District</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name (under which you were convicted):</td>
<td>Docket or Case No.:</td>
</tr>
<tr>
<td>Place of Confinement:</td>
<td>Prisoner No.:</td>
</tr>
<tr>
<td>Petitioner (include the name under which you were convicted)</td>
<td>Respondent (authorized person having custody of petitioner)</td>
</tr>
<tr>
<td>v.</td>
<td></td>
</tr>
</tbody>
</table>

The Attorney General of the State of

PETITION

1. (a) Name and location of court that entered the judgment of conviction you are challenging: ____________________________

   (b) Criminal docket or case number (if you know): ____________________________

2. (a) Date of the judgment of conviction (if you know): ____________________________

   (b) Date of sentencing: ____________________________

3. Length of sentence: ____________________________

4. In this case, were you convicted on more than one count or of more than one crime? Yes ☐ No ☐

5. Identify all crimes of which you were convicted and sentenced in this case: ____________________________

6. (a) What was your plea? (Check one)

   (1) Not guilty ☐

   (2) Guilty ☐

   (3) Nolo contendere (no contest) ☐

   (4) Insanity plea ☐

   (b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to? ____________________________

   ____________________________

   ____________________________
§ 2254

(c) If you went to trial, what kind of trial did you have? (Check one)

Jury □ Judge only □

7. Did you testify at a pretrial hearing, trial, or a post-trial hearing?

Yes □ No □

8. Did you appeal from the judgment of conviction?

Yes □ No □

9. If you did appeal, answer the following:

(a) Name of court: ____________________________________________

(b) Docket or case number (if you know): __________________________

(c) Result: ____________________________________________________

(d) Date of result (if you know): _________________________________

(e) Citation to the case (if you know): ____________________________

(f) Grounds raised: _____________________________________________

(g) Did you seek further review by a higher state court? Yes □ No □

If yes, answer the following:

(1) Name of court: ____________________________________________

(2) Docket or case number (if you know): __________________________

(3) Result: ____________________________________________________

(4) Date of result (if you know): _________________________________

(5) Citation to the case (if you know): ____________________________

(6) Grounds raised: _____________________________________________

(h) Did you file a petition for certiorari in the United States Supreme Court? Yes □ No □

If yes, answer the following:

(1) Docket or case number (if you know): __________________________
10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court?
   Yes □ No □

11. If your answer to Question 10 was “Yes,” give the following information:
   (a) (1) Name of court: __________________________
   (2) Docket or case number (if you know): __________________________
   (3) Date of filing (if you know): __________________________
   (4) Nature of the proceeding: __________________________
   (5) Grounds raised: __________________________________
   (6) Did you receive a hearing where evidence was given on your petition, application, or motion? Yes □ No □
   (7) Result: __________________________________
   (8) Date of result (if you know): __________________________
   (b) If you filed any second petition, application, or motion, give the same information:
      (1) Name of court: __________________________
      (2) Docket or case number (if you know): __________________________
      (3) Date of filing (if you know): __________________________
      (4) Nature of the proceeding: __________________________
      (5) Grounds raised: __________________________________
(6) Did you receive a hearing where evidence was given on your petition, application, or
motion?   Yes □  No □ 
(7) Result: __________________________________________________________
(8) Date of result (if you know): ________________________________________

c) If you filed any third petition, application, or motion, give the same information:
(1) Name of court: ______________________________________________________
(2) Docket or case number (if you know): _________________________________
(3) Date of filing (if you know): _________________________________________
(4) Nature of the proceeding: __________________________________________
(5) Grounds raised: _____________________________________________________

(6) Did you receive a hearing where evidence was given on your petition, application, or
motion?   Yes □  No □ 
(7) Result: __________________________________________________________
(8) Date of result (if you know): ________________________________________

d) Did you appeal to the highest state court having jurisdiction over the action taken on your
petition, application, or motion?
(1) First petition:   Yes □  No □ 
(2) Second petition: Yes □  No □ 
(3) Third petition:   Yes □  No □ 
(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not:
________________________________________________________________________
12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND ONE: ________________________________

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

(b) If you did not exhaust your state remedies on Ground One, explain why: ________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

(c) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: ________________________________

________________________________________________________________________

________________________________________________________________________

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes ☐ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: ________________________________

Name and location of the court where the motion or petition was filed: ________________________________
Docket or case number (if you know): __________________________

Date of the court's decision: ________________________________

Result (attach a copy of the court's opinion or order, if available): __________________________

(3) Did you receive a hearing on your motion or petition?

Yes □  No □

(4) Did you appeal from the denial of your motion or petition?

Yes □  No □

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes □  No □

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: __________________________

Docket or case number (if you know): __________________________

Date of the court's decision: ________________________________

Result (attach a copy of the court's opinion or order, if available): __________________________

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

__________________________

__________________________

__________________________

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One:

__________________________

__________________________

__________________________

GROUND TWO:

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim):

__________________________

__________________________

__________________________
(b) If you did not exhaust your state remedies on Ground Two, explain why: ________________________________

(c) **Direct Appeal of Ground Two:**
   (1) If you appealed from the judgment of conviction, did you raise this issue?
      Yes ☐ No ☐
   (2) If you did not raise this issue in your direct appeal, explain why: ________________________________

(d) **Post-Conviction Proceedings:**
   (1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?
      Yes ☐ No ☐
   (2) If your answer to Question (d)(1) is "Yes," state:
      Type of motion or petition: ________________________________
      Name and location of the court where the motion or petition was filed: ________________________________
      Docket or case number (if you know): ________________________________
      Date of the court’s decision: ________________________________
      Result (attach a copy of the court’s opinion or order, if available): ________________________________

(3) Did you receive a hearing on your motion or petition?
   Yes ☐ No ☐

(4) Did you appeal from the denial of your motion or petition?
   Yes ☐ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?
   Yes ☐ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:
      Name and location of the court where the appeal was filed: ________________________________
Docket or case number (if you know): ________________________________

Date of the court's decision: ______________________________________

Result (attach a copy of the court's opinion or order, if available): ________________________________

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two: ________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

GROUND THREE: ________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

(a) **Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim):**

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

(b) If you did not exhaust your state remedies on Ground Three, explain why: ________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

(c) **Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did **not** raise this issue in your direct appeal, explain why: ________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________
(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes ☐ No ☐

(2) If your answer to Question (d)(1) is “Yes,” state:

Type of motion or petition: ______________________________

Name and location of the court where the motion or petition was filed: ______________________________

Docket or case number (if you know): ______________________________

Date of the court’s decision: ______________________________

Result (attach a copy of the court’s opinion or order, if available): ______________________________

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion or petition?

Yes ☐ No ☐

(5) If your answer to Question (d)(4) is “Yes,” did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (d)(4) is “Yes,” state:

Name and location of the court where the appeal was filed: ______________________________

Docket or case number (if you know): ______________________________

Date of the court’s decision: ______________________________

Result (attach a copy of the court’s opinion or order, if available): ______________________________

(7) If your answer to Question (d)(4) or Question (d)(5) is “No,” explain why you did not raise this issue:

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three: ______________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________
GROUND FOUR:

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim):


(b) If you did not exhaust your state remedies on Ground Four, explain why:


(c) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?
   Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why:


(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes ☐ No ☐

(2) If your answer to Question (d)(1) is “Yes,” state:
   Type of motion or petition: ____________________________
   Name and location of the court where the motion or petition was filed: ____________________________
   Docket or case number (if you know): ____________________________
   Date of the court’s decision: ____________________________
   Result (attach a copy of the court’s opinion or order, if available): ____________________________

(3) Did you receive a hearing on your motion or petition?
   Yes ☐ No ☐

(4) Did you appeal from the denial of your motion or petition?
   Yes ☐ No ☐
(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes □ No □

(6) If your answer to Question (d)(4) is "Yes," state:
Name and location of the court where the appeal was filed: ________________________________

Docket or case number (if you know): ________________________________

Date of the court’s decision: ________________________________

Result (attach a copy of the court’s opinion or order, if available): ________________________________

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: ________________________________

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four: ________________________________

13. Please answer these additional questions about the petition you are filing:

(a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? Yes □ No □

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them: ________________________________

(b) Is there any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: ________________________________

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? Yes □ No □
If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available.  

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging?  Yes ☐  No ☐  
If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.  

16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:
   (a) At preliminary hearing:  
   (b) At arraignment and plea:  
   (c) At trial:  
   (d) At sentencing:  
   (e) On appeal:  
   (f) In any post-conviction proceeding:  
   (g) On appeal from any ruling against you in a post-conviction proceeding:  

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging?  Yes ☐  No ☐
(a) If so, give name and location of court that imposed the other sentence you will serve in the future: 

(b) Give the date the other sentence was imposed: 

(c) Give the length of the other sentence: 

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future?  Yes ☐ No ☐

18. TIMELINESS OF PETITION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition.* 

* The Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”) as contained in 28 U.S.C. § 2244(d) provides in part that:

(1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of —

(continued...)
Therefore, petitioner asks that the Court grant the following relief: ________________________________ 

or any other relief to which petitioner may be entitled.

__________________________
Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on ___________________ (month, date, year).

Executed (signed) on ___________________ (date).

__________________________
Signature of Petitioner

* (...continued)
(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
(B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;
(C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

(2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.
If the person signing is not petitioner, state relationship to petitioner and explain why petitioner is not signing this petition.
IN FORMA PAUPERIS DECLARATION

[Insert appropriate court]

(Petitioner)

v.

(Respondent(s))

I, , declare that I am the petitioner in the above entitled case; that in support of my motion to proceed without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to relief.

1. Are you presently employed? Yes □ No □
   a. If the answer is “yes,” state the amount of your salary or wages per month, and give the name and address of your employer.
   
   b. If the answer is “no,” state the date of last employment and the amount of the salary and wages per month which you received.

2. Have you received within the past twelve months any money from any of the following sources?
   a. Business, profession or form of self-employment?
      Yes □ No □
   
   b. Rent payments, interest or dividends?
      Yes □ No □
   
   c. Pensions, annuities or life insurance payments?
      Yes □ No □
   
   d. Gifts or inheritances?
      Yes □ No □
   
   e. Any other sources?
      Yes □ No □

   If the answer to any of the above is “yes,” describe each source of money and state the amount received from each during the past twelve months.

3. Do you own cash, or do you have money in a checking or savings account?
   Yes □ No □ (Include any funds in prison accounts.)
   If the answer is “yes,” state the total value of the items owned.

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?
   Yes □ No □
   If the answer is “yes,” describe the property and state its approximate value.

5. List the persons who are dependent upon you for support, state your relationship to those persons, and indicate how much you contribute toward their support.

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on _________.

(date)

Signature of Petitioner

Certificate

I hereby certify that the petitioner herein has the sum of $_______ on account to his credit at the institution where he is confined. I further certify that petitioner likewise has the following securities to his credit according to the records of said institution:

Authorized Officer of Institution


MODEL FORM FOR USE IN 28 U.S.C. §2254 CASES INVOLVING A RULE 9 ISSUE

Form No. 9


Changes Made After Publication and Comments—Forms Accompanying Rules Governing §2254 and §2255 Proceedings. Responding to a number of comments from the public, the Committee deleted from both sets of official forms the list of possible grounds of relief. The Committee made additional minor style corrections to the forms.

§ 2255. Federal custody; remedies on motion attacking sentence

(a) A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

(b) Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the United States attorney, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto. If the court finds that the judgment was rendered without jurisdiction, or that the sentence imposed was not authorized by law or otherwise open to collateral attack, or that there has been such a denial or infringement of the constitutional rights of the prisoner as to render the judgment vulnerable to collateral attack, the court shall vacate and set the judgment aside and shall discharge the prisoner or resentence him or grant a new trial or correct the sentence as may appear appropriate.

(c) A court may entertain and determine such motion without requiring the production of the prisoner at the hearing.

(d) An appeal may be taken to the court of appeals from the order entered on the motion as from a final judgment on application for a writ of habeas corpus.

(e) An application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section, shall not be entertained if it appears that the applicant has failed to apply for relief, by
motion, to the court which sentenced him, or that such court has denied him relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention.

(5) A 1-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of—

(1) the date on which the judgment of conviction becomes final;

(2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making a motion by such governmental action;

(3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

(g) Except as provided in section 408 of the Controlled Substances Act, in all proceedings brought under this section, and any subsequent proceedings on review, the court may appoint counsel, except as provided by a rule promulgated by the Supreme Court pursuant to statutory authority. Appointment of counsel under this section shall be governed by section 3006A of title 18.

(h) A second or successive motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals to contain—

(1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense;

(2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.


2006—Pub. L. 110–177 designated first through eighth undesignated pars. as subssecs. (a) to (h), respectively.


DESCRIPTION OF RULES AND FORMS GOVERNING PROCEEDINGS UNDER SECCTIONS 2254 AND 2255 OF THIS TITLE

Rules and forms governing proceedings under sections 2254 and 2255 of this title proposed by Supreme Court order of Apr. 26, 1976, effective 30 days after adjournment sine die of 94th Congress, or until and to the extent approved by Act of Congress, whichever is earlier, see section 2 of Pub. L. 94–349, set out as a note under section 2074 of this title.

APPROVAL AND EFFECTIVE DATE OF RULES GOVERNING PROCEEDINGS FOR UNITED STATES DISTRICT COURTS

For approval and effective date of rules governing petitions under section 2254 and motions under section 2255 of this title, see section 1 of Pub. L. 94–426, set out as a note under section 2074 of this title.

rules of the United States;
(2) the court lacked jurisdiction to enter the judgment;
(3) the sentence exceeded the maximum allowed by law; or
(4) the judgment or sentence is otherwise subject to collateral review; and

(b) a person in custody under a judgment of a state court or another federal court, and subject to future custody under a judgment of the district court, who seeks a determination that:
(1) future custody under a judgment of the district court would violate the Constitution or laws of the United States;
(2) the district court lacked jurisdiction to enter the judgment;
(3) the district court’s sentence exceeded the maximum allowed by law; or
(4) the district court’s judgment or sentence is otherwise subject to collateral review.


ADVISORY COMMITTEE NOTE
The basic scope of this postconviction remedy is prescribed by 28 U.S.C. §2255. Under these rules the person seeking relief from federal custody files a motion to vacate, set aside, or correct sentence, rather than a petition for habeas corpus. This is consistent with the terminology used in section 2255 and indicates the difference between this remedy and federal habeas for a state prisoner. Also, habeas corpus is available to the person in federal custody if his “remedy by motion is inadequate or ineffective to test the legality of his detention.”

Whereas sections 2241–2254 (dealing with federal habeas corpus for those in state custody) speak of the district court judge “issuing the writ” as the operative remedy, section 2255 provides that, if the judge finds the movant’s assertions to be meritorious, he “shall discharge the prisoner or resentence him or grant a new trial or correct the sentence as may appear appropriate.” This is possible because a motion under §2255 is a further step in the movant’s criminal case and not a separate civil action, as appears from the legislative history of section 2 of S. 20, 80th Congress, the provisions of which were incorporated by the same Congress in title 28 U.S.C. as §2255. In reporting S. 20 favorably to the Senate Judiciary Committee (Sen. Rep. 1526, 80th Cong. 2d Sess., p. 2):

The two main advantages of such motion remedy over the present habeas corpus are as follows:

First, habeas corpus is a separate civil action and not a further step in the criminal case in which petitioner is sentenced (Ex parte Tom Tong, 168 U.S. 556, 559 (1898)). It is not a determination of guilt or innocence of the charge upon which petitioner was sentenced. Where a prisoner sustains his right to discharge in habeas corpus, it is usually because some right—such as lack of counsel—has been denied which reflects no determination of his guilt or innocence but affects solely the fairness of his earlier criminal trial. Even under the broad power in the statute “to dispose of the party as law and justice require” (28 U.S.C.A., sec. 461), the court or judge is by no means in the same advantageous position in habeas corpus to do justice as would be so if the matter were determined in the criminal proceeding (see Medley, petitioner, 134 U.S. 150, 174 (1890)). For instance, the judge (by habeas corpus) cannot grant a new trial in the criminal case. Since the motion remedy is in the criminal proceeding, this section 2 affords the opportunity and expressly gives the broad powers to set aside the judgment and to “discharge the prisoner or resentence him or grant a new trial or correct the sentence as may appear appropriate.”

The fact that a motion under §2255 is a further step in the movant’s criminal case rather than a separate civil action has significance at several points in these rules. See, e.g., advisory committee note to rule 3 (re no filing fee), advisory committee note to rule 4 (re availability of files, etc., relating to the judgment), advisory committee note to rule 6 (re availability of discovery under criminal procedure rules), advisory committee note to rule 11 (re no extension of time for appeal), and advisory committee note to rule 12 (re applicability of federal criminal rules). However, the fact that Congress has characterized the motion as a further step in the criminal proceedings does not mean that proceedings upon such a motion are of necessity governed by the same legal principles which are applicable at a criminal trial regarding such matters as counsel, presence, confrontation, self-incrimination, and burden of proof.

The challenge of decisions such as the revocation of probation or parole are not appropriately dealt with under 28 U.S.C. §2255, which is a continuation of the original criminal action. Other remedies, such as habeas corpus, are available in such situations.

Although rule 1 indicates that these rules apply to a motion for a determination that the judgment was imposed “in violation of the . . . laws of the United States,” the language of 28 U.S.C. §2255, it is not the intent of these rules to define or limit what is encompassed within that phrase. See Davis v. United States, 417 U.S. 533 (1974), holding that it is not true “that every asserted error of law can be raised on a §2255 motion,” and that the appropriate inquiry is “whether the claimed error of law was a fundamental defect which inherently results in a complete miscarriage of justice, and whether [it . . . present[s] exceptional circumstances where the need for the remedy afforded by the writ of habeas corpus is apparent.”

For a discussion of the “custody” requirement and the intended limited scope of this remedy, see advisory committee note to §2254 rule 1.

COMMITTEE NOTES ON RULES—2004 AMENDMENT
The language of Rule 1 has been amended as part of general restyling of the rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic and no substantive change is intended.

Changes Made After Publication and Comments. The Committee made no changes to Rule 1.

Rule 2. The Motion

(a) APPLYING FOR RELIEF. The application must be in the form of a motion to vacate, set aside, or correct the sentence.

(b) FORM. The motion must:
(1) specify all the grounds for relief available to the moving party;
(2) state the facts supporting each ground;
(3) state the relief requested;
(4) be printed, typewritten, or legibly handwritten; and
(5) be signed under penalty of perjury by the movant or by a person authorized to sign it for the movant.

(c) STANDARD FORM. The motion must substantially follow either the form appended to these rules or a form prescribed by a local district-court rule. The clerk must make forms available to moving parties without charge.

(d) SEPARATE MOTIONS FOR SEPARATE JUDGMENTS. A moving party who seeks relief from more than one judgment must file a separate motion covering each judgment.


ADVISORY COMMITTEE NOTE
Under these rules the application for relief is in the form of a motion rather than a petition (see rule 1 and
As regards Defendant’s Motion under Rule 35, said Motion must be denied as its presumes a valid conviction of the offense with which he was charged and may be used only to attack the sentence. It may not be used to examine errors occurring prior to the imposition of sentence.

295 F Supp at 1085

See also: Moss v. United States, 263 F 2d at 616; Duggins v. United States, 249 F 2d at 484; Migdal v. United States, 298 F 2d 513, 514 (9th Cir 1961); Jones v. United States, 400 F 2d at 894; United States v. Coke, 404 F 2d at 857; and United States v. Brown, 413 F 2d at 879.

A major difficulty in deciding whether rule 35 or §2255 is the proper remedy is the uncertainty as to what is meant by an “illegal sentence.” The Supreme Court dealt with this issue in Hill v. United States, 368 US 424 (1962). The prisoner brought a §2255 motion to vacate sentence on the ground that he had not been given a Fed.R.Crim.P. 32(a) opportunity to make a statement in his own behalf at the time of sentencing. The majority held this was not an error subject to collateral attack under §2255. The five-member majority considered the motion as one brought pursuant to rule 35, but denied relief, stating: [T]he narrow function of Rule 35 is to permit correction at any time of an illegal sentence, not to re-examine errors occurring at the trial or other proceedings prior to the imposition of sentence. The sentence in this case was not illegal. The punishment meted out was not in excess of that prescribed by the relevant statutes, multiple terms were not imposed for the same offense, nor were the terms of the sentence itself legally or constitutionally invalid in any other respect.

368 US at 430

The four dissenters felt the majority definition of “illegal” was too narrow. [Rule 35] provides for the correction of an “illegal sentence” without regard to the reasons why that sentence is illegal and contains not a single word to support the Court’s conclusion that only a sentence illegal by reason of the punishment it imposes is “illegal” within the meaning of the Rule. I would have thought that a sentence imposed in an illegal manner—whether the amount or form of the punishment meted out constitutes an additional violation of law or not—would be recognized as an “illegal sentence” under any normal reading of the English language.

368 US at 431–432

The 1966 amendment of rule 35 added language permitting correction of a sentence imposed in an “illegal manner.” However, there is a 120-day time limit on a motion to do this, and the added language does not clarify the intent of the rule or its relation to §2255. The courts have been flexible in considering motions under circumstances in which relief might appear to be precluded by Hill v. United States. In Peterson v. United States, 432 F 2d 545 (8th Cir 1970), the court was confronted with a motion for reduction of sentence by a prisoner claiming to have received a harsher sentence than his codefendants because he stood trial rather than pleaded guilty. He alleged that this violated his constitutional right to a jury trial. The court ruled that, even though it was past the 120-day time period for a motion to reduce sentence, the claim was still cognizable under rule 35 as a motion to correct an illegal sentence.

The courts have made even greater use of §2255 in these types of situations. In United States v. Lewis, 392 F 2d 449 (4th Cir 1968), the prisoner moved under rule 35 and rule 35 for relief from a sentence he claimed was the result of the judge’s misunderstanding of the relevant sentencing law. The court held that he could not get relief under rule 35 because he was past the 120 days for correction of a sentence imposed in an illegal manner and under Hill v. United States it was not an illegal
§ 2255 TITLE 28—JUDICIARY AND JUDICIAL PROCEDURE Page 524

sentence. However, §2255 was applicable because of its "otherwise subject to collateral attack" language. The flaw was not a mere trial error relating to the finding of guilt, but a rare and unusual error which amounted to "exceptional circumstances" embraced in §2255's words "collateral attack." See 368 U.S. at 444 for discussion of other cases allowing use of §2255 to attack the sentence itself in similar circumstances, especially where the judge has sentenced out of a miscarriage of justice. In United States v. McCarthy, 433 F.2d 591, 592 (1st Cir. 1970), the court allowed a prisoner who was past the time limit for a proper rule 35 motion to use §2255 to attack the sentence which he received upon a plea of guilty on the ground that it was induced by an unfilled promise of the prosecutor to recommend leniency. The court specifically noted that under §2255 this was a proper collateral attack on the sentence and there was no need to attack the conviction as well.

The court in United States v. Malcolm, 492 F.2d 809, 814, 818 (2d Cir. 1970), allowed a prisoner to challenge his sentence under §2255 without attacking the conviction. It held rule 35 inapplicable because the sentence was not illegal on its face, but the manner in which the sentence was imposed raised a question of the denial of due process in the sentencing itself which was cognizable under §2255.

The flexible approach taken by the courts in the above cases seems to be the reasonable way to handle these situations in which rule 35 and §2255 appear to overlap. For a further discussion of this problem, see C. Wright, Federal Practice and Procedure: Criminal §§581–587 (1969, Supp. 1975).

See the advisory committee note to rule 2 of the 2294 rules for further discussion of the purposes and intent of rule 2 of these §2255 rules.

1982 AMENDMENT

Subdivision (b). The amendment takes into account 28 U.S.C. §1746, enacted after adoption of the §2255 rules. Section 1746 provides that in lieu of an affidavit under penalty of perjury that the foregoing is true and correct, an unsworn statement may be given under penalty of perjury to a notary public in the United States, its territories, possessions or outlying areas, who may ask the moving party to supplement it with the statement. The current rule, Rule 2(c), was enacted to substitute the standard form, which is appended to the rules, or a form provided by the court. The current rule, Rule 2(c), seems to indicate a preference for the standard "national" form. Under the amended rule, there is no stated preference. The Committee understood that the current practice in some courts is that if the moving party first files a motion using the national form, that courts may ask the moving party to supplement it with the local form.

Current Rule 2(d), which provided for returning an insufficient motion[,] has been deleted. The Committee believed that the approach in Federal Rule of Civil Procedure 5(e) was more appropriate for dealing with motions that do not conform to the form requirements of the rule. That Rule provides that the clerk may not refuse to accept a filing solely for the reason that it fails to comply with these rules or local rules. Before the adoption of a one-year statute of limitations in the Antiterrorism and Effective Death Penalty Act of 1996, 110 Stat. 1214, the moving party suffered no penalty, other than delay, if the motion was deemed insufficient. Now that a one-year statute of limitations applies to motions filed under §2255, see 28 U.S.C. §2244(d)(1), the court’s dismissal of a motion because it is not in proper form may pose a significant penalty for a moving party, who may not be able to file another motion within the one-year limitations period. Now, under revised Rule 3(b), the clerk is required to file a motion, even though it may otherwise fail to comply with the provisions in revised Rule 2(b). The Committee believed that the better procedure was to accept the defective motion and require the moving party to submit a corrected motion that conforms to Rule 2(b).

Changes Made After Publication and Comments. The Committee changed Rule 2(b)(2) to read "state the facts" rather than [sic] "briefly summarize the facts." One commentator had written that the current language may actually mislead the petitioner and is also redundant.

Rule 2(b)(4) was also modified to reflect that some motions may be printed using a word processing program.

Finally, Rule 2(b)(5) was changed to emphasize that any person, other than the petitioner, who signs the petition must be authorized to do so.

AMENDMENTS


Subd. (d). Pub. L. 94–426, §2(4), inserted "substantially" after "district court does not", and struck out provision which permitted the clerk to return a motion for nonconformance without a judge so directing.

Rule 3. Filing the Motion; Inmate Filing

(a) WHERE TO FILE; COPIES. An original and two copies of the motion must be filed with the clerk.

(b) FILING AND SERVICE. The clerk must file the motion and enter it on the criminal docket of the case in which the challenged judgment was entered. The clerk must then deliver or serve a copy of the motion on the United States attorney in that district, together with a notice of its filing.

(c) TIME TO FILE. The time for filing a motion is governed by 28 U.S.C. §2255 para. 6.

(d) INMATE FILING. A paper filed by an inmate confined in an institution is timely if deposited in the institution’s internal mailing system on or before the last day for filing. If an institution has a system designed for legal mail, the inmate must use that system to receive the benefit of this rule. Timely filing may be shown by a declaration in compliance with 28 U.S.C. §1746 or by
Title 28—Judiciary and Judicial Procedure
§2255

Before the adoption of a one-year statute of limitations in the Antiterrorism and Effective Death Penalty Act of 1996, 110 Stat. 1214, the moving party suffered no penalty, other than delay, if the petition was deemed insufficient. That Act, however, added a one-year statute of limitations to motions filed under §2255, see 28 U.S.C. §2244(d)(1). Thus, a court’s dismissal of a defective motion may pose a significant penalty for a movant who may not be able to file a corrected motion within the one-year limitation period. The Committee believed that the better procedure was to accept the defective motion and require the movant to submit a corrected motion that conforms to Rule 2. Thus, revised Rule 3(b) requires the clerk to file a motion, even though it may otherwise fail to comply with Rule 2.

Revised Rule 3(c), which sets out a specific reference to 28 U.S.C. §2255, paragraph 6, is new and has been added to put moving parties on notice that a one-year statute of limitations applies to motions filed under these Rules. Although the rule does not address the issue, every circuit that has addressed the issue has taken the position that equitable tolling of the statute of limitations is available in appropriate circumstances. See, e.g., Dunlap v. United States, 250 F.3d 1001, 1004–07 (6th Cir. 2001); Moore v. United States, 173 F.3d 1131, 1133–35 (6th Cir. 1999); Sandvik v. United States, 177 F.3d 1289, 1270–72 (11th Cir. 1999). The Supreme Court has not addressed the question directly. See Duncan v. Walker, 533 U.S. 167, 181 (2001) (“We . . . have no occasion to address the question that Justice Stevens raises concerning the availability of equitable tolling.”).

Rule 3(d) is new and provides guidance on determining whether a motion from an inmate is considered to have been filed in a timely fashion. The new provision parallels Federal Rule of Appellate Procedure 26(a)(2)(C).

Changes Made After Publication and Comments. The Committee modified the Committee Note to reflect that the clerk must file a motion, even in those instances where the necessary filing fee or in forma pauperis form is not attached. The Note also includes new language concerning the equitable tolling of the statute of limitations.

Rule 4. Preliminary Review

(a) Referral to a Judge. The clerk must promptly forward the motion to the judge who conducted the trial and imposed sentence or, if the judge who imposed sentence was not the trial judge, to the judge who conducted the proceedings being challenged. If the appropriate judge is not available, the clerk must forward the motion to a judge under the court’s assignment procedure.

(b) Initial Consideration by the Judge. The judge who receives the motion must promptly examine it. If it plainly appears from the motion, any attached exhibits, and the record of prior proceedings that the moving party is not entitled to relief, the judge may deny the motion and direct the clerk to notify the moving party. If the motion is not dismissed, the judge must order the United States attorney to file an answer, motion, or other response within a fixed time, or to take other action the judge may order.

The theory that Congress intended the trial judge to preside at a section 2255 hearing apparently originated in Carrell v. United States, 173 F.2d 348 (4th Cir. 1949), where the panel of judges included Chief Judge Parker of the Fourth Circuit, chairman of the Judicial Conference committee which drafted section 2255. But the legislative history does not indicate that Congress wanted the trial judge to preside. Indeed the advantages of section 2255 can all be achieved if the case is heard in the sentencing district, regardless of which judge hears it. According to the Senate committee report the purpose of the bill was to make the proceeding a part of the criminal action so the court could resentence the applicant, or grant him a new trial. (A judge presiding over a habeas corpus action does not have these powers.) In addition, Congress did not want the cases heard in the districts for the government to file a pre-answer motion to dismiss the §2255 motion. The Committee agreed with that recommendation and changed the word “pleading” in the rule to “response.” It also made several minor changes to the Committee Note.

Rule 5. The Answer and the Reply

(a) When Required. The respondent is not required to answer the motion unless a judge so orders.

(b) Contents. The answer must address the allegations in the motion. In addition, it must state whether the moving party has used any other federal remedies, including any prior post-conviction motions under these rules or any previous rules, and whether the moving party received an evidentiary hearing.

(c) Records of Prior Proceedings. If the answer refers to briefs or transcripts of the prior proceedings that are not available in the court’s records, the judge must order the government to furnish them within a reasonable time that will not unduly delay the proceedings.

(d) Reply. The moving party may submit a reply to the respondent’s answer or other pleading within a time fixed by the judge.


Advisory Committee Note

Unlike the habeas corpus statutes (see 28 U.S.C. §§2243, 2248) §2255 does not specifically call for a return or answer by the United States Attorney or set any time limits as to when one must be submitted. The general practice, however, if the motion is not summarily dismissed, is for the government to file an answer to the motion as well as counter-affidavits, when appro-
priate. Rule 4 provides for an answer to the motion by the United States Attorney, and rule 5 indicates what its contents should be.

There is no requirement that the movant exhaust his remedies prior to seeking relief under §2255. However, the courts have held that such a motion is inappropriate if the movant is simultaneously appealing the decision.

We are of the view that there is no jurisdictional bar to the District Court's entertaining a Section 2255 motion during the pendency of a direct appeal but that the orderly administration of criminal law includes considering such a motion absent extraordinary circumstances.

Womack v. United States, 395 F.2d 630, 631 (D.C.Cir. 1968)

Also see Masters v. Eide, 333 F.2d 517 (8th Cir. 1965). The answer may thus cut short consideration of the motion if it discloses the taking of an appeal which was omitted from the form motion filed by the movant.

There is nothing in §2255 which corresponds to the §2248 requirement of a traverse to the answer. Numerous cases have held that the government's answer and affidavits are not conclusive against the movant, and if they raise disputed issues of fact a hearing must be held. Machibrod v. United States, 368 U.S. 487, 494, 495 (1962); United States v. Salerno, 290 F.2d 195, 196 (2d Cir. 1961); Romero v. United States, 327 F.2d 711, 712 (5th Cir. 1964); Scott v. United States, 319 F.2d 641, 642, 643 (6th Cir. 1965); Schiebelhut v. United States, 357 F.2d 743, 745 (6th Cir. 1966); and Del Piano v. United States, 362 F.2d 931, 932, 933 (3d Cir. 1966). None of these cases make any mention of a traverse by the movant to the government's answer. As under rule 5 of the §2252 rules, there is no intention here that such a traverse be required, except under special circumstances. See advisory committee note to rule 9.

Subdivision (b) provides for the government to supplement its answers with appropriate copies of transcripts or briefs if for some reason the judge does not already have them under his control. This is because the government will in all probability have easier access to such papers than the movant, and it will conserve the court's time to have the government produce them rather than the movant, who would in most instances have to apply in forma pauperis for the government to supply them for him anyway.

For further discussion, see the advisory committee note to rule 5 of the §2252 rules.

COMMITTEE NOTES ON RULES—2004 AMENDMENT

The language of Rule 5 has been amended as part of general restyling of the rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic and no substantive change is intended.

Revised Rule 5(a), which provides that the respondent is not required to file an answer to the motion, unless a judge so orders, is taken from current Rule 3(b). The revised rule does not address the practice in some districts, where the respondent files a pre-answer motion to dismiss the motion. But revised Rule 4(b) contemplates that practice and has been changed to reflect the view that if the court does not dismiss the motion, it may require (or permit) the respondent to file a motion.

Finally, revised Rule 5(d) adopts the practice in some jurisdictions giving the movant an opportunity to file a reply to the respondent's answer. Rather than using terms such as "traverse," see 28 U.S.C. §2248, to identify the movant's response to the answer, the rule uses the more general term "reply." The Rule prescribes that the court set the time for such responses, and in lieu of setting specific time limits in each case, the court may decide to include such time thereafter.

Changes Made After Publication and Comments. Rule 5(a) was modified to read that the government is not required to "respond" to the motion unless the court so orders; the term "respond" was used because it leaves open the possibility that the government's first response (as it is in some districts) is in the form of a pre-answer motion to dismiss the petition. The Note has been changed to reflect the fact that although the rule itself does not reflect that particular motion, it is used in some districts and refers the reader to Rule 4.

Finally, the Committee changed the Note to address the use of the term "traverse," a point raised by one of the commentators on the proposed rule.

Rule 6. Discovery

(a) LEAVE OF COURT REQUIRED. A judge may, for good cause, authorize a party to conduct discovery under the Federal Rules of Criminal Procedure or Civil Procedure, or in accordance with the practices and principles of law. If necessary for effective discovery, the judge must appoint an attorney for a moving party who qualifies to have counsel appointed under 18 U.S.C. § 3006A.

(b) REQUESTING DISCOVERY. A party requesting discovery must provide reasons for the request. The request must also include any proposed interrogatories and requests for admission, and must specify any requested documents.

(c) DEPOSITION EXPENSES. If the government is granted leave to take a deposition, the judge may require the government to pay the travel expenses, subsistence expenses, and fees of the moving party's attorney to attend the deposition.


ADVISORY COMMITTEE NOTE

This rule differs from the corresponding discovery rule under the §2254 rules in that it includes the processes of discovery available under the Federal Rules of Criminal Procedure as well as the civil. This is because of the nature of a §2255 motion as a continuing part of the criminal proceeding (see advisory committee note to rule 1) as well as a remedy analogous to habeas corpus by state prisoners.

See the advisory committee note to rule 6 of the §2254 rules. The discussion there is fully applicable to discovery under these rules for §2255 motions.

COMMITTEE NOTES ON RULES—2004 AMENDMENT

The language of Rule 6 has been amended as part of general restyling of the rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic and no substantive change is intended, except as indicated below.

Although current Rule 6(b) contains no requirement that the parties provide reasons for the requested discovery, the revised rule does so and also includes a requirement that the request be accompanied by any proposed interrogatories and requests for admission, and must specify any requested documents. The Committee believes that the revised rule makes explicit what has been implicit in current practice.

Changes Made After Publication and Comments. The Committee modified Rule 6(b), to require that discovery requests be supported by reasons, to assist the court in deciding what, if any, discovery should take place. The Committee amended the Note to reflect the view that it believed that the change made explicit what has been implicit in current practice.

REFERENCES IN TEXT

The Federal Rules of Criminal Procedure, referred to in subd. (a), are set out in the Appendix to Title 18, Crimes and Criminal Procedure.

The Federal Rules of Civil Procedure, referred to in subd. (a), are set out in the Appendix to this title.
Rule 7. Expanding the Record

(a) In general. If the motion is not dismissed, the judge may direct the parties to expand the record by submitting additional materials relating to the motion. The judge may require that these materials be authenticated.

(b) Types of materials. The materials that may be required include letters predating the filing of the motion, documents, exhibits, and answers under oath to written interrogatories propounded by the judge. Affidavits also may be submitted and considered as part of the record.

(c) Review by the Opposing Party. The judge must give the party against whom the additional materials are offered an opportunity to admit or deny their correctness.


Advisory Committee Note

It is less likely that the court will feel the need to expand the record in a § 2255 proceeding than in a habeas corpus proceeding, because the trial (or sentencing) judge is the one hearing the motion (see rule 4) and should already have a complete file on the case in his possession. However, rule 7 provides a convenient method for supplementing his file if the case warrants it. See the advisory committee note to rule 7 of the § 2254 rules for a full discussion of reasons and procedures for expanding the record.

Committee Notes on Rules—2004 Amendment

The language of Rule 7 has been amended as part of general restyling of the rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic and no substantive change is intended.

Revised Rule 7(a) is not intended to restrict the court’s authority to expand the record through means other than requiring the parties themselves to provide the information.

The language in current Rule 7(d), which deals with authentication of materials in the expanded record, has been moved to revised Rule 7(a).

Changes Made After Publication and Comments. Rule 7(a) was changed by removing the reference to the “merits” of the motion. One commentator had stated that the court may wish to expand the record for purposes other than the merits of the case. The Committee agreed and also changed the rule to reflect that someone other than a party may authenticate the materials.

Rule 8. Evidentiary Hearing

(a) Determining Whether to Hold a Hearing. If the motion is not dismissed, the judge must review the answer, any transcripts and records of prior proceedings, and any materials submitted under Rule 7 to determine whether an evidentiary hearing is warranted.

(b) Reference to a Magistrate Judge. A judge may, under 28 U.S.C. § 636(b), refer the motion to a magistrate judge to conduct hearings and to file proposed findings of fact and recommendations for disposition. When they are filed, the clerk must promptly serve copies of the proposed findings and recommendations on all parties. Within 14 days after being served, a party may file objections as provided by local court rule. The judge must determine de novo any proposed finding or recommendation to which objection is made. The judge may accept, reject, or modify any proposed finding or recommendation.

(c) Appointing Counsel; Time of Hearing. If an evidentiary hearing is warranted, the judge must appoint an attorney to represent a moving party who qualifies to have counsel appointed under 18 U.S.C. § 3006A. The judge must conduct the hearing as soon as practicable after giving the attorneys adequate time to investigate and prepare. These rules do not limit the appointment of counsel under § 3006A at any stage of the proceeding.

(d) Producing a Statement. Federal Rule of Criminal Procedure 26.2(a)–(d) and (f) applies at a hearing under this rule. If a party does not comply with a Rule 26.2(a) order to produce a witness’s statement, the court must not consider that witness’s testimony.


Advisory Committee Note

The standards for § 2255 hearings are essentially the same as for evidentiary hearings under a habeas petition, except that the previous federal fact-finding proceeding is in issue rather than the state’s. Also § 2255 does not set specific time limits for holding the hearing, as does § 2243 for a habeas action. With these minor differences in mind, see the advisory committee note to rule 8 of § 2254 rules, which is applicable to rule 8 of these § 2255 rules.

1993 Amendment

The amendment to Rule 8 is one of a series of parallel amendments to Federal Rules of Criminal Procedure 32, 32.1, and 46 which extend the scope of Rule 26.2 (Producing of Witness Statements) to proceedings other than the trial itself. The amendments are grounded on the compelling need for accurate and credible information in making decisions concerning the defendant’s liberty. See the Advisory Committee Note to Rule 26.2(g). A few courts have recognized the authority of a judicial officer to order production of prior statements by a witness at a Section 2255 hearing, see, e.g., United States v. White, 912 F.2d 379, 382, n.4 (4th Cir. 1990). The amendment to Rule 8 grants explicit authority to do so. The amendment is not intended to require production of a witness’s statement before the witness actually presents oral testimony.

Committee Notes on Rules—2004 Amendment

The language of Rule 8 has been amended as part of general restyling of the rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic and no substantive change is intended, except as described below.

The requirement in current Rule 8(b)(2) that a copy of the magistrate judge’s findings must be promptly mailed to all parties has been changed in revised Rule 8(b) to require that copies of those findings be served on all parties. As used in this rule, “service” means service consistent with Federal Rule of Civil Procedure 5(b), which allows mailing the copies.

Changes Made After Publication and Comments. The Committee made no changes to Rule 8, as published for public comment.

Committee Notes on Rules—2009 Amendment

The time set in the former rule at 10 days has been revised to 14 days. See the Committee Note to Federal Rules of Criminal Procedure 45(a).

References in Text

The Federal Rules of Criminal Procedure, referred to in subd. (d), are set out in the Appendix to Title 18, Crimes and Criminal Procedure.
AMENDMENTS BY PUBLIC LAW

1976—Subd. (b). Pub. L. 94–577, §2(a)(2), substituted provisions which authorized magistrates, when designated to do so in accordance with section 636(b) of this title, to conduct hearings, including evidentiary hearings, on the petition and to submit to a judge of the court proposed findings of fact and recommendations for disposition, which directed the magistrate to file proposed findings and recommendations with the court with copies furnished to all parties, which allowed parties thus served 10 days to file written objections thereto, and which directed a judge of the court to make de novo determinations of the objections to accept, reject, or modify the findings or recommendations for provisions under which the magistrate had been empowered only to recommend to the district judge that an evidentiary hearing be held or that the petition be dismissed.

Subd. (c). Pub. L. 94–577, §2(b)(2), substituted “and the hearing shall be conducted” for “and shall conduct the hearing shall be conducted” for “and shall conduct the hearing to file proposed findings and recommendations with the court, with copies furnished to all parties, which allowed parties thus served 10 days to file written objections thereto, and which directed a judge of the court to make de novo determinations of the objections to accept, reject, or modify the findings or recommendations for provisions under which the magistrate had been empowered only to recommend to the district judge that an evidentiary hearing be held or that the petition be dismissed.

Pub. L. 94–426 provided that these rules not limit the appointment of counsel under section 3006A of title 18, if the interest of justice so require.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendments made by Pub. L. 94–577 effective with respect to motions under section 2255 of this title filed on or after Feb. 1, 1977, see section 2(c) of Pub. L. 94–577, set out as a note under Rule 8 of the Rules Governing Cases Under Section 2254 of this title.

Rule 9. Second or Successive Motions

Before presenting a second or successive motion, the moving party must obtain an order from the appropriate court of appeals authorizing the district court to consider the motion, as required by 28 U.S.C. § 2255, para. 8. (As amended Pub. L. 94–426, §2(9), (10), Sept. 28, 1976, 90 Stat. 1335; Apr. 26, 2004, eff. Dec. 1, 2004.)

ADVISORY COMMITTEE NOTE

Unlike the statutory provisions on habeas corpus (28 U.S.C. §§2241–2254), §2255 specifically provides that “a motion for such relief may be made at any time.” [Emphasis added.] Subdivision (a) provides that delayed motions may be barred from consideration if the government has been prejudiced in its ability to respond to the motion by the delay and the movant’s failure to seek relief earlier is not excusable within the terms of the rule. Case law, dealing with this issue, is in conflict.

Some courts have held that the literal language of §2255 precludes any possible time bar to a motion brought under it. In Heflin v. United States, 358 U.S. 415 (1959), the concurring opinion noted that the statute [28 U.S.C. §2255] further provides: “A motion * * * may be made at any time.” This * * * simply means that, as in habeas corpus, there is no statute of limitations, no res judicata, and that the doctrine of laches is inapplicable.

358 U.S. at 420

McKinney v. United States, 208 F.2d 844 (D.C.Cir.1953) reverses the district court’s dismissal of a §2255 motion for being too late, the court stating:

McKinney’s present application for relief comes late in the day; he has served some fifteen years in prison. But tardiness is irrelevant where a constitutional issue is raised and where the prisoner is still confined.

208 F.2d at 846, 847


It has also been held that delay in filing a §2255 motion does not bar the movant because of lack of reasonable diligence in pressing the claim. The statute [28 U.S.C. §2255], when it states that the motion may be made at any time, excludes the doctrine of a showing of diligence in delayed filings. A number of courts have considered contentions similar to those made here and have concluded that there are no time limitations. This result excludes the requirement of diligence which is in reality a time limitation.

Hauer v. United States, 334 F.2d 441, 442 (10th Cir. 1964)

Other courts have recognized that delay may have a negative effect on the movant. In Raines v. United States, 423 F.2d 526 (4th Cir. 1970), the court stated:

[If] both petitioners’ silence for extended periods, one for 28 months and the other for nine years, serves to render their allegations less believable. “Although a delay in filing a section 2255 motion is not a controlling element * * * it may merit some consideration * * * .”

423 F.2d at 531


There have been holdings by some courts that a delay in filing a §2255 motion operates to increase the burden of proof which the movant must meet to obtain relief. The reasons for this, as expressed in United States v. Bostic, 206 F.Supp. 855 (D.C.Cir. 1962), are equitable in nature.

Obviously, the burden of proof on a motion to vacate a sentence under 28 U.S.C. §2255 is on the moving party. . . . The burden is particularly heavy if the issue is one of fact and a long time has elapsed since the trial of the case. While neither the statute of limitations nor laches can bar the assertion of a constitutional right, nevertheless, the passage of time may make it impracticable to retry a case if the motion is granted and a new trial is ordered. No doubt, at times such a motion is a product of an afterthought. Long delay may raise a question of good faith.

206 F.Supp. at 856–857

See also United States v. Wiggins, 184 F.Supp. at 676.

A requirement that the movant display reasonable diligence in filing a §2255 motion has been adopted by some courts dealing with delayed motions. The court in United States v. Moore, 166 F.2d 192 (7th Cir. 1948), cert. denied, 334 U.S. 849 (1948), said this, again for equitable reasons.

[We] agree with the District Court that the petitioner has too long slept upon his rights. * * * [A]pparently there is no limitation of time within which * * * a motion to vacate may be filed, except that an applicant must show reasonable diligence in presenting his claim. * * *

The reasons which support the rule requiring diligence seem obvious. * * * Law enforcement officials change, witnesses die, memories grow dim. The prosecuting tribunal is put to a disadvantage if an unexpected retrial should be necessary after long passage of time.

166 F.2d at 105

In accord see Desmond v. United States, 333 F.2d 378, 381 (1st Cir. 1964), on remand, 345 F.2d 225 (1st Cir. 1965).
One of the major arguments advanced by the courts which would penalize a movant who waits an unduly long time before filing a §2255 motion is that such delay is highly prejudicial to the prosecution. In Desmond v. United States, writing of a §2255 motion alleging denial of effective appeal because of deception by movant’s own counsel, the court said:

Applications for relief such as this must be made promptly. It will not do for a prisoner to wait until government witnesses have become unavailable as by death, serious illness or absence from the country, or until the memory of available government witnesses has faded. It will not even do for a prisoner to wait any longer than is reasonably necessary to prepare appropriate moving papers, however inartistic, after discovery of the deception practiced upon him by his attorney.

333 F.2d at 381

In a similar vein are United States v. Moore and United States v. Bostic, supra, and United States v. Wiggins, 184 F. Supp. at 676.

Subdivision (a) provides a flexible, equitable time limitation based on laches to prevent movants from withholding their claims so as to prejudice the government both in meeting the allegations of the motion and in any possible retrial. It includes a reasonable diligence requirement for ascertaining possible grounds for relief. If the delay is found to be excusable, or non-prejudicial to the government, the time bar is inoperative.

Subdivision (b) is consistent with the language of §2255 and relevant case law.

The annexed form is intended to serve the same purpose as the comparable one included in the §2254 rules. For further discussion applicable to this rule, see the advisory committee note to rule 9 of the §2254 rules.

COMMITTEE NOTES ON RULES—2004 AMENDMENT

The language of Rule 9 has been amended as part of general restyling of the rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic and no substantive change is intended, except as indicated below.

First, current Rule 9(a) has been deleted as unnecessary in light of the applicable one-year statute of limitations for §2255 motions, added as part of the Antiterrorism and Effective Death Penalty Act of 1996, 28 U.S.C. §2255, para. 6.

Second, the remainder of revised Rule 9 reflects provisions in the Antiterrorism and Effective Death Penalty Act of 1996, 28 U.S.C. §2255, parh. (sic) 8, which now require a moving party to obtain approval from the appropriate court of appeals before filing a second or successive motion.

Finally, the title of the rule has been changed to reflect the fact that the revised version addresses only the topic of second or successive motions.

Changes Made After Publication and Comments. The Committee made no changes to Rule 9, as published.

AMENDMENTS BY PUBLIC LAW

1976—Subd. (a). Pub. L. 94–426, §2(9), struck out provision which established a rebuttable presumption of prejudice to government if the petition was filed more than five years after conviction.

Subd. (b). Pub. L. 94–426, §2(10), substituted “constituted an abuse of the procedure governed by these rules for “is not excusable”.

Rule 10. Powers of a Magistrate Judge

A magistrate judge may perform the duties of a district judge under these rules, as authorized by 28 U.S.C. §636.


ADVISORY COMMITTEE NOTE

See the advisory committee note to rule 10 of the §2254 rules for a discussion fully applicable here as well.

1979 AMENDMENT

This amendment conforms the rule to 18 U.S.C. §636. See Advisory Committee Note to rule 10 of the Rules Governing Section 2254 Cases in the United States District Courts.

COMMITTEE NOTES ON RULES—2004 AMENDMENT

The language of Rule 10 has been amended as part of general restyling of the rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic and no substantive change is intended.

Changes Made After Publication and Comments. The Committee restyled the proposed rule.

AMENDMENTS BY PUBLIC LAW

1976—Pub. L. 94–426 inserted “, and to the extent the district court has established standards and criteria for the performance of such duties,” after “rule of the district court”.

Rule 11. Certificate of Appealability; Time to Appeal

(a) CERTIFICATE OF APPEALABILITY. The district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant. Before entering the final order, the court may direct the parties to submit arguments on whether a certificate should issue. If the court issues a certificate, the court must state the specific issue or issues that satisfy the showing required by 28 U.S.C. §2253(c)(2).

If the court denies a certificate, a party may not appeal the denial but may seek a certificate from the court of appeals under Federal Rule of Appellate Procedure 22. A motion to reconsider a denial does not extend the time to appeal.

(b) TIME TO APPEAL. Federal Rule of Appellate Procedure 4(a) governs the time to appeal an order entered under these rules. A timely notice of appeal must be filed even if the district court issues a certificate of appealability. These rules do not extend the time to appeal the original judgment of conviction.


ADVISORY COMMITTEE NOTE

Rule 11 is intended to make clear that, although a §2255 action is a continuation of the criminal case, the bringing of a §2255 action does not extend the time.

1979 AMENDMENT

Prior to the promulgation of the Rules Governing Section 2255 Proceedings, the courts consistently held that the time for appeal in a section 2255 case is as provided in Fed.R.App.P 4(a), that is, 60 days when the government is a party, rather than as provided in appellate rule 4(b), which says that the time is 10 days in criminal cases. This result has often been explained on the ground that rule 4(a) has to do with civil cases and that “proceedings under section 2255 are civil in nature.” E.g., Rothman v. United States, 508 F.2d 648 (3d Cir. 1975). Because the new section 2255 rules are based upon the premise “that a motion under §2255 is a further step in the movant’s criminal case rather than a separate civil action,” see Advisory Committee Note to rule 1, the question has arisen whether the new rules
have the effect of shortening the time for appeal to that provided in appellate rule 4(b). A sentence has been added to rule 11 in order to make it clear that this is not the case.

Even though section 2255 proceedings are a further step in the criminal case, the added sentence correctly states current law. In United States v. Hugman, 342 U.S. 205 (1952), the Supreme Court noted that such appeals “are governed by the civil rules applicable to appeals from final judgments in habeas corpus actions.” In support, the Court cited Mercado v. United States, 183 F.2d 486 (1st Cir. 1950), a case rejecting the argument that because §2255 proceedings are criminal in nature the time for appeal is only 10 days. The Mercado court concluded that the situation was governed by that part of 28 U.S.C. §2255 which reads: “An appeal may be taken to the court of appeals from the order entered on the motion as from a final judgment on application for a writ of habeas corpus.” Thus, because appellate rule 4(a) is applicable in habeas cases, it likewise governs in §2255 cases even though they are criminal in nature.

Committee Notes on Rules—2004 Amendment

The language of Rule 11 has been amended as part of general restyling of the rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic and no substantive change is intended.

Changes Made After Publication and Comments. The Committee made no changes to Rule 11, as published.

Committee Notes on Rules—2009 Amendment

Subdivision (a). As provided in 28 U.S.C. §2255(c), an applicant may not appeal to the court of appeals from a final order in a proceeding under §2255 unless a judge issues a COA, identifying the specific issues for which the applicant has made a substantial showing of a denial of constitutional right. New Rule 11(a) makes the requirements concerning certificates of appealability more prominent by adding and consolidating them in the appropriate rule of the Rules Governing §2255 Proceedings for the United States District Courts. Rule 11(a) also requires the district judge to grant or deny the certificate at the time a final order is issued. See 3d Cir. R. 22.2, 111.3. This will ensure prompt decision making when the issues are fresh, rather than postponing consideration of the certificate until after a notice of appeal is filed. These changes will expedite proceedings, avoid unnecessary remands, and help to inform the applicant’s decision whether to file a notice of appeal.

Subdivision (b). The amendment is designed to make it clear that the district court’s grant of a COA does not eliminate the need to file a notice of appeal.

Changes Made to Proposed Amendment Released for Public Comment. In response to public comments, a sentence was added stating that prior to the entry of the final order the district court may direct the parties to submit arguments on whether or not a certificate should issue. This allows a court in complex cases (such as death penalty cases with numerous claims) to solicit briefing that might narrow the issues for appeal. For purposes of clarification, two sentences were added at the end of subdivision (a) stating that (1) although the district court’s denial of a certificate is not appealable, a certificate may be sought in the court of appeals, and (2) a motion for reconsideration of a denial of a certificate does not extend the time to appeal. Finally, a sentence indicating that notice of appeal must be filed even if a COA is issued was added to subdivision (b).

Minor changes were also made to conform to style conventions.

References in Text

The Federal Rules of Appellate Procedure, referred to in text, are set out in the Appendix to this title.


The Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure, to the extent that they are not inconsistent with any statutory provisions or these rules, may be applied to a proceeding under these rules.


Advisory Committee Note

This rule differs from rule 11 of the §2254 rules in that it includes the Federal Rules of Criminal Procedure as well as the civil. This is because of the nature of a §2255 motion as a continuing part of the criminal proceeding (see advisory committee note to rule 1) as well as a remedy analogous to habeas corpus by state prisoners. Since §2255 has been considered analogous to habeas as respects the restrictions in Fed.R.Civ.P. 81(a)(2) (see Sullivan v. United States, 198 F.Supp. 624 (S.D.N.Y. 1961)), rule 12 is needed. For discussion, see the advisory committee note to rule 11 of the §2254 rules.

Committee Notes on Rules—2004 Amendment

The language of Rule 12 has been amended as part of general restyling of the rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic and no substantive change is intended.

Changes Made After Publication and Comments. The Committee made no changes to Rule 12.

References in Text

The Federal Rules of Civil Procedure, referred to in heading and text, are set out in the Appendix to this title.

The Federal Rules of Criminal Procedure, referred to in heading and text, are set out in the Appendix to Title 18, Crimes and Criminal Procedure.

Appendix of Forms
Motion to Vacate, Set Aside, or Correct a Sentence
By a Person in Federal Custody

(Motion Under 28 U.S.C. § 2255)

Instructions

1. To use this form, you must be a person who is serving a sentence under a judgment against you in a federal court. You are asking for relief from the conviction or the sentence. This form is your motion for relief.

2. You must file the form in the United States district court that entered the judgment that you are challenging. If you want to challenge a federal judgment that imposed a sentence to be served in the future, you should file the motion in the federal court that entered that judgment.

3. Make sure the form is typed or neatly written.

4. You must tell the truth and sign the form. If you make a false statement of a material fact, you may be prosecuted for perjury.

5. Answer all the questions. You do not need to cite law. You may submit additional pages if necessary. If you do not fill out the form properly, you will be asked to submit additional or correct information. If you want to submit a brief or arguments, you must submit them in a separate memorandum.

6. If you cannot pay for the costs of this motion (such as costs for an attorney or transcripts), you may ask to proceed in forma pauperis (as a poor person). To do that, you must fill out the last page of this form. Also, you must submit a certificate signed by an officer at the institution where you are confined show the amount of money that the institution is holding for you.

7. In this motion, you may challenge the judgment entered by only one court. If you want to challenge a judgment entered by a different judge or division (either in the same district or in a different district), you must file a separate motion.

8. When you have completed the form, send the original and two copies to the Clerk of the United States District Court at this address:

   Clerk, United States District Court for ______________________
   Address
   City, State Zip Code

9. CAUTION: You must include in this motion all the grounds for relief from the conviction or sentence that you challenge. And you must state the facts that support each ground. If you fail to set forth all the grounds in this motion, you may be barred from presenting additional grounds at a later date.

10. CAPITAL CASES: If you are under a sentence of death, you are entitled to the assistance of counsel and should request the appointment of counsel.
MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court  

<table>
<thead>
<tr>
<th>Name (under which you were convicted):</th>
<th>Docket or Case No.:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Place of Confinement:</td>
<td>Prisoner No.:</td>
</tr>
</tbody>
</table>

UNITED STATES OF AMERICA  

 Movant (include name under which you were convicted)

v.

MOTION

1. (a) Name and location of court that entered the judgment of conviction you are challenging: 


(b) Criminal docket or case number (if you know): 


2. (a) Date of the judgment of conviction (if you know): 


(b) Date of sentencing: 


3. Length of sentence: 


4. Nature of crime (all counts): 


5. (a) What was your plea? (Check one)
   (1) Not guilty  
   (2) Guilty  
   (3) Nolo contendere (no contest)  

(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to? 


6. If you went to trial, what kind of trial did you have? (Check one)  

   Jury  
   Judge only  


7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes ☐ No ☐
8. Did you appeal from the judgment of conviction? Yes ☐ No ☐
9. If you did appeal, answer the following:
   (a) Name of court: ____________________________________________
   (b) Docket or case number (if you know): _________________________
   (c) Result: __________________________________________________
   (d) Date of result (if you know): _________________________________
   (e) Citation to the case (if you know): __________________________
   (f) Grounds raised: ___________________________________________
      ___________________________________________________________
      __________________________________________________________
      __________________________________________________________
      __________________________________________________________
      __________________________________________________________
   (g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☐
      If "Yes," answer the following:
      (1) Docket or case number (if you know): _________________________
      (2) Result: __________________________________________________
      (3) Date of result (if you know): _________________________________
      (4) Citation to the case (if you know): __________________________
      (5) Grounds raised: __________________________________________
      ___________________________________________________________
      __________________________________________________________
      __________________________________________________________
      __________________________________________________________
      __________________________________________________________
10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications concerning this judgment of conviction in any court? Yes ☐ No ☐
11. If your answer to Question 10 was "Yes," give the following information:
   (a) (1) Name of court: __________________________________________
       (2) Docket or case number (if you know): _________________________
       (3) Date of filing (if you know): ________________________________
(4) Nature of the proceeding: ________________________________

(5) Grounds raised: _________________________________________

__________________________________________________________________

__________________________________________________________________

__________________________________________________________________

__________________________________________________________________

__________________________________________________________________

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?  Yes ☐  No ☐

(7) Result: ________________________________________________

(8) Date of result (if you know): ________________________________

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: ________________________________

(2) Docket or case number (if you know): _______________________

(3) Date of filing (if you know): ________________________________

(4) Nature of the proceeding: ________________________________

(5) Grounds raised: _________________________________________

__________________________________________________________________

__________________________________________________________________

__________________________________________________________________

__________________________________________________________________

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?  Yes ☐  No ☐

(7) Result: ________________________________________________

(8) Date of result (if you know): ________________________________

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition:  Yes ☐  No ☐

(2) Second petition:  Yes ☐  No ☐
(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

____________________________________________________________________________________

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: __________________________________________________________________________

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

____________________________________________________________________________________

____________________________________________________________________________________

____________________________________________________________________________________

____________________________________________________________________________________

____________________________________________________________________________________

(b) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐   No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _______________________

____________________________________________________________________________________

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐   No ☐

(2) If your answer to Question (c)(1) is “Yes,” state:

Type of motion or petition: ____________________________________________________________

Name and location of the court where the motion or petition was filed: ____________________

____________________________________________________________________________________
Docket or case number (if you know): ____________________________________________

Date of the court’s decision: ________________________________________________

Result (attach a copy of the court’s opinion or order, if available): ____________________________

(3) Did you receive a hearing on your motion, petition, or application?
   Yes ☐  No ☐

(4) Did you appeal from the denial of your motion, petition, or application?
   Yes ☐  No ☐

(5) If your answer to Question (c)(4) is “Yes,” did you raise this issue in the appeal?
   Yes ☐  No ☐

(6) If your answer to Question (c)(4) is “Yes,” state:
   Name and location of the court where the appeal was filed: ____________________________

Docket or case number (if you know): ____________________________________________

Date of the court’s decision: ________________________________________________

Result (attach a copy of the court’s opinion or order, if available): ____________________________

(7) If your answer to Question (c)(4) or Question (c)(5) is “No,” explain why you did not appeal or raise this issue: ____________________________

GROUND TWO: ________________________________________________________________

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):
(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?
   Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: __________________________

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?
   Yes ☐ No ☐

(2) If your answer to Question (c)(1) is “Yes,” state:
   Type of motion or petition: __________________________
   Name and location of the court where the motion or petition was filed: __________________________

   Docket or case number (if you know): __________________________
   Date of the court’s decision: __________________________
   Result (attach a copy of the court’s opinion or order, if available): __________________________

(3) Did you receive a hearing on your motion, petition, or application?
   Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?
   Yes ☐ No ☐

(5) If your answer to Question (c)(4) is “Yes,” did you raise this issue in the appeal?
   Yes ☐ No ☐

(6) If your answer to Question (c)(4) is “Yes,” state:
   Name and location of the court where the appeal was filed: __________________________

   Docket or case number (if you know): __________________________
   Date of the court’s decision: __________________________
   Result (attach a copy of the court’s opinion or order, if available): __________________________
(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: ________________________________

______________________________________________________________

______________________________________________________________

______________________________________________________________

GROUND THREE: ____________________________________________

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

______________________________________________________________

______________________________________________________________

______________________________________________________________

______________________________________________________________

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: ________________________________

______________________________________________________________

______________________________________________________________

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: ________________________________________________________________

Name and location of the court where the motion or petition was filed: ______________________________

______________________________________________________________

Docket or case number (if you know): ________________________________________________________

Date of the court's decision: ______________________________________________________________
Result (attach a copy of the court’s opinion or order, if available): ____________________________

(3) Did you receive a hearing on your motion, petition, or application?
   Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?
   Yes ☐ No ☐

(5) If your answer to Question (c)(4) is “Yes,” did you raise this issue in the appeal?
   Yes ☐ No ☐

(6) If your answer to Question (c)(4) is “Yes,” state:
   Name and location of the court where the appeal was filed: ________________________________

   Docket or case number (if you know): ________________________________________________

   Date of the court’s decision: _______________________________________________________

   Result (attach a copy of the court’s opinion or order, if available): ____________________

(7) If your answer to Question (c)(4) or Question (c)(5) is “No,” explain why you did not appeal or raise this issue: ________________________________________________________________

GROUND FOUR:

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim):
(b) Direct Appeal of Ground Four:
   (1) If you appealed from the judgment of conviction, did you raise this issue?
       Yes ☐ No ☐
   (2) If you did not raise this issue in your direct appeal, explain why: __________________________

(c) Post-Conviction Proceedings:
   (1) Did you raise this issue in any post-conviction motion, petition, or application?
       Yes ☐ No ☐
   (2) If your answer to Question (c)(1) is "Yes," state:
       Type of motion or petition: __________________________
       Name and location of the court where the motion or petition was filed: __________________________
       Docket or case number (if you know): __________________________
       Date of the court's decision: __________________________
       Result (attach a copy of the court's opinion or order, if available): __________________________

   (3) Did you receive a hearing on your motion, petition, or application?
       Yes ☐ No ☐

   (4) Did you appeal from the denial of your motion, petition, or application?
       Yes ☐ No ☐

   (5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?
       Yes ☐ No ☐

   (6) If your answer to Question (c)(4) is "Yes," state:
       Name and location of the court where the appeal was filed: __________________________
       Docket or case number (if you know): __________________________
       Date of the court's decision: __________________________
       Result (attach a copy of the court's opinion or order, if available): __________________________
(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

__________________________________________________________

__________________________________________________________

__________________________________________________________

__________________________________________________________

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

__________________________________________________________

__________________________________________________________

__________________________________________________________

__________________________________________________________

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the judgment you are challenging?  
   Yes ☐  No ☐  
   If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised:

__________________________________________________________

__________________________________________________________

__________________________________________________________

__________________________________________________________

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:
   (a) At preliminary hearing:

__________________________________________________________

(b) At arraignment and plea:

__________________________________________________________

(c) At trial:

__________________________________________________________

(d) At sentencing:

__________________________________________________________
16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☐ No ☐

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☐

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: __________________________________________

(b) Give the date the other sentence was imposed: __________________________

(c) Give the length of the other sentence: _________________________________

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☐
18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.*

---

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of —

(1) the date on which the judgment of conviction became final;
(2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
(3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
(4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.
Therefore, movant asks that the Court grant the following relief:

or any other relief to which movant may be entitled.

________________________
Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on ____________ (month, date, year).

Executed (signed) on ____________ (date).

________________________
Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.
IN FORMA PAUPERIS DECLARATION

[Insert appropriate court]

United States  

v.  

(Movant)  

DECLARATION IN SUPPORT OF REQUEST TO PROCEED IN FORMA PAUPERIS

I, , declare that I am the movant in the above entitled case; that in support of my motion to proceed without being required to prepay fees, costs or give security therefor, I state that because of my poverty, I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to relief.

1. Are you presently employed? Yes □ No □
   a. If the answer is “yes,” state the amount of your salary or wages per month, and give the name and address of your employer.
   b. If the answer is “no,” state the date of last employment and the amount of the salary and wages per month which you received.

2. Have you received within the past twelve months any money from any of the following sources?
   a. Business, profession or form of self-employment? Yes □ No □
   b. Rent payments, interest or dividends? Yes □ No □
   c. Pensions, annuities or life insurance payments? Yes □ No □
   d. Gifts or inheritances? Yes □ No □
   e. Any other sources? Yes □ No □

   If the answer to any of the above is “yes,” describe each source of money and state the amount received from each during the past twelve months.

3. Do you own any cash, or do you have money in a checking or savings account?
   Yes □ No □

   (Include any funds in prison accounts)
   If the answer is “yes,” state the total value of the items owned.

4. Do you own real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?
   Yes □ No □

   If the answer is “yes,” describe the property and state its approximate value.

5. List the persons who are dependent upon you for support, state your relationship to those persons, and indicate how much you contribute toward their support.

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on ____________.

Signature of Movant

CERTIFICATE

I hereby certify that the movant herein has the sum of $____ on account to his credit at the institution where he is confined.

Authorized Officer of Institution


MODEL FORM FOR USE IN 28 U.S.C. § 2255 CASES INVOLVING A RULE 9 ISSUE

Form No. 9

Changes Made After Publication and Comments—Forms Accompanying Rules Governing § 2254 and § 2255 Proceedings. Responding to a number of comments from the public, the Committee deleted from both sets of official forms the list of possible grounds of relief. The Committee made additional minor style corrections to the forms.

IN FORMA PAUPERIS DECLARATION

I further certify that movant likewise has the following securities to his credit according to the records of said institution:

Authorized Officer of Institution

[Omitted as obsolete]

SECTION

A bankruptcy court may issue a writ of habeas corpus—
(a) when appropriate to bring a person before the court;
   (1) for examination;
   (2) ordering the release of a debtor in a case under chapter 11 or 13 of title 11; and
   (B) such process was issued for the collection of a debt—
   (i) dischargeable under title 11; or
   (ii) that is or will be provided for in a plan under chapter 11 or 13 of title 11; and
   (C) before the issuance of such writ, notice and a hearing have been afforded the adverse party of such debtor in custody to contest the issuance of such writ.

PRIORITY PROVISIONS

A prior section 2256, added Pub. L. 95–144, title II, § 250(a), Nov. 6, 1977, 92 Stat. 2672, 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. Section read as follows:

§ 2236. Habeas corpus from bankruptcy courts

A bankruptcy court may issue a writ of habeas corpus—
(1) when appropriate to bring a person before the court—
   (A) for examination;
   (B) to testify; or
   (C) to perform a duty imposed on such person under this title; or
   (2) ordering the release of a debtor in a case under title 11 in custody under the judgment of a Federal or State court if—
   (A) such debtor was arrested or imprisoned on process in any civil action;
   (B) such process was issued for the collection of a debt—
   (i) dischargeable under title 11; or
   (ii) that is or will be provided for in a plan under chapter 11 or 13 of title 11; and
   (C) before the issuance of such writ, notice and a hearing have been afforded the adverse party of such debtor in custody to contest the issuance of such writ.

CHAPTER 154—SPECIAL HABEAS CORPUS PROCEDURES IN CAPITAL CASES

Sec. 2261. Prisoners in State custody subject to capital sentence; appointment of counsel; requirement of rule of court or statute; procedures for appointment.

2262. Mandatory stay of execution; duration; limits on stays of execution; successive petitions.

2263. Filing of habeas corpus application; time requirements; tolling rules.
§ 2261. Prisoners in State custody subject to capital sentence; appointment of counsel; requirement of rule of court or statute; procedures for appointment

(a) This chapter shall apply to cases arising under section 2254 brought by prisoners in State custody who are subject to a capital sentence. It shall apply only if the provisions of subsections (b) and (c) are satisfied.

(b) COUNSEL.—This chapter is applicable if—

(1) the Attorney General of the United States certifies that a State has established a mechanism for providing counsel in post-conviction proceedings as provided in section 2265; and

(2) counsel was appointed pursuant to that mechanism, petitioner validly waived counsel, petitioner retained counsel, or petitioner was found not to be indigent.

(c) Any mechanism for the appointment, compensation, and reimbursement of counsel as provided in subsection (b) must offer counsel to all State prisoners under capital sentence and must provide for the entry of an order by a court of record—

(1) appointing one or more counsels to represent the prisoner upon a finding that the prisoner is indigent and accepted the offer or is unable competently to decide whether to accept or reject the offer;

(2) finding, after a hearing if necessary, that the prisoner rejected the offer of counsel and made the decision with an understanding of its legal consequences; or

(3) denying the appointment of counsel upon a finding that the prisoner is not indigent.

(d) No counsel appointed pursuant to subsections (b) and (c) to represent a State prisoner under capital sentence shall have previously represented the prisoner at trial in the case for which the appointment is made unless the prisoner and counsel expressly request continued representation.

(e) The ineffectiveness or incompetence of counsel during State or Federal post-conviction proceedings in a capital case shall not be a ground for relief in a proceeding arising under section 2254. This limitation shall not preclude the appointment of different counsel, on the court’s own motion or at the request of the prisoner, at any phase of State or Federal post-conviction proceedings on the basis of the ineffectiveness or incompetence of counsel in such proceedings.


AMENDMENTS

2006—Subsec. (b). Pub. L. 109–177, §507(a), added subsec. (b) and struck out former subsec. (b) which read as follows: “This chapter is applicable if a State establishes by statute, rule of its court of last resort, or by another agency authorized by State law, a mechanism for the appointment, compensation, and payment of reasonable litigation expenses of competent counsel in State post-conviction proceedings brought by indigent prisoners whose capital convictions and sentences have been upheld on direct appeal to the court of last resort in the State or have otherwise become final for State law purposes. The rule of court or statute must provide standards of competency for the appointment of such counsel.”

Subsec. (d). Pub. L. 109–177, §507(b), struck out “or on direct appeal” after “at trial”.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–177 applicable to cases pending on or after Mar. 9, 2006, with special rule for certain cases pending on that date, see section 507(d) of Pub. L. 109–177, set out as a note under section 2251 of this title.

EFFECTIVE DATE

Section 107(c) of Pub. L. 104–132 provided that: “Chapter 154 of title 28, United States Code (as added by subsection (a)) shall apply to cases pending on or after the date of enactment of this Act [Apr. 24, 1996].”

§ 2262. Mandatory stay of execution; duration; limits on stays of execution; successive petitions

(a) Upon the entry in the appropriate State court of record of an order under section 2261(c), a warrant or order setting an execution date for a State prisoner shall be stayed upon application to any court that would have jurisdiction over any proceedings filed under section 2254. The application shall recite that the State has invoked the post-conviction review procedures of this chapter and that the scheduled execution is subject to stay.

(b) A stay of execution granted pursuant to subsection (a) shall expire if—

(1) a State prisoner fails to file a habeas corpus application under section 2254 within the time required in section 2263;

(2) before a court of competent jurisdiction, in the presence of counsel, unless the prisoner has competently and knowingly waived such counsel, and after having been advised of the consequences, a State prisoner under capital sentence waives the right to pursue habeas corpus review under section 2254; or

(3) a State prisoner files a habeas corpus petition under section 2254 within the time required by section 2263 and fails to make a substantial showing of the denial of a Federal right or is denied relief in the district court or at any subsequent stage of review.

(c) If one of the conditions in subsection (b) has occurred, no Federal court thereafter shall have the authority to enter a stay of execution in the case, unless the court of appeals approves the filing of a second or successive application under section 2244(b).

§ 2263. Filing of habeas corpus application; time requirements; tolling rules

(a) Any application under this chapter for habeas corpus relief under section 2254 must be filed in the appropriate district court not later than 180 days after final State court affirmation of the conviction and sentence on direct review or the expiration of the time for seeking such review.

(b) The time requirements established by subsection (a) shall be tolled—

(1) from the date that a petition for certiorari is filed in the Supreme Court until the date of final disposition of the petition if a State prisoner files the petition to secure review by the Supreme Court of the affirmance of a capital sentence on direct review by the court of last resort of the State or other final State court decision on direct review;

(2) from the date on which the first petition for post-conviction review or other collateral relief is filed until the final State court disposition of such petition; and

(3) during an additional period not to exceed 30 days, if—

(A) a motion for an extension of time is filed in the Federal district court that would have jurisdiction over the case upon the filing of a habeas corpus application under section 2254; and

(B) a showing of good cause is made for the failure to file the habeas corpus application within the time period established by this section.


§ 2264. Scope of Federal review; district court adjudications

(a) Whenever a State prisoner under capital sentence files a petition for habeas corpus relief to which this chapter applies, the district court shall only consider a claim or claims that have been raised and decided on the merits in the State courts, unless the failure to raise the claim properly is—

(1) the result of State action in violation of the Constitution or laws of the United States;

(2) the result of the Supreme Court’s recognition of a new Federal right that is made retroactively applicable; or

(3) based on a factual predicate that could not have been discovered through the exercise of due diligence in time to present the claim for State or Federal post-conviction review.

(b) Following review subject to subsections (a), (d), and (e) of section 2254, the court shall rule on the claims properly before it.


§ 2265. Certification and judicial review

(a) CERTIFICATION.—

(1) IN GENERAL.—If requested by an appropriate State official, the Attorney General of the United States shall determine—

(A) whether the State has established a mechanism for the appointment, compensa-

tion, and payment of reasonable litigation expenses of competent counsel in State post-conviction proceedings brought by indigent prisoners who have been sentenced to death;

(B) the date on which the mechanism described in subparagraph (A) was established; and

(C) whether the State provides standards of competency for the appointment of counsel in proceedings described in subparagraph (A).

(2) EFFECTIVE DATE.—The date the mechanism described in paragraph (1)(A) was established shall be the effective date of the certification under this subsection.

(3) ONLY EXPRESS REQUIREMENTS.—There are no requirements for certification or for application of this chapter other than those expressly stated in this chapter.

(b) REGULATIONS.—The Attorney General shall promulgate regulations to implement the certification procedure under subsection (a).

(c) REVIEW OF CERTIFICATION.—

(1) IN GENERAL.—The determination by the Attorney General regarding whether to certify a State under this section is subject to review exclusively as provided under chapter 158 of this title.

(2) VENUE.—The Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction over matters under paragraph (1), subject to review by the Supreme Court under section 2350 of this title.

(3) STANDARD OF REVIEW.—The determination by the Attorney General regarding whether to certify a State under this section shall be subject to de novo review.


PRIOR PROVISIONS


§ 2266. Limitation periods for determining applications and motions

(a) The adjudication of any application under section 2254 that is subject to this chapter, and the adjudication of any motion under section 2255 by a person under sentence of death, shall be given priority by the district court and by the court of appeals over all noncapital matters.

(b) (1)(A) A district court shall render a final determination and enter a final judgment on any application for a writ of habeas corpus brought under this chapter in a capital case not later than 450 days after the date on which the application is filed, or 60 days after the date on which the case is submitted for decision, whichever is earlier.
(B) A district court shall afford the parties at least 120 days in which to complete all actions, including the preparation of all pleadings and briefs, and if necessary, a hearing, prior to the submission of the case for decision.

(C) A district court may delay for not more than one additional 30-day period beyond the period specified in subparagraph (A), the rendering of a determination of an application for a writ of habeas corpus if the court issues a written order making a finding, and stating the reasons for the finding, that the ends of justice that would be served by allowing the delay outweigh the best interests of the public and the applicant in a speedy disposition of the application.

(ii) The factors, among others, that a court shall consider in determining whether a delay in the disposition of an application is warranted are as follows:

(I) Whether the failure to allow the delay would be likely to result in a miscarriage of justice.

(II) Whether the case is so unusual or so complex, due to the number of defendants, the nature of the prosecution, or the existence of novel questions of fact or law, that it is unreasonable to expect adequate briefing within the time limitations established by subparagraph (A).

(III) Whether the failure to allow a delay in a case that, taken as a whole, is not so unusual or so complex as described in subclause (II), but would otherwise deny the applicant reasonable time to obtain counsel, would unreasonably deny the applicant or the government continuity of counsel, or would deny counsel for the applicant or the government the reasonable time necessary for effective preparation, taking into account the exercise of due diligence.

(iii) No delay in disposition shall be permissible because of general congestion of the court’s calendar.

(iv) The court shall transmit a copy of any order issued under clause (i) to the Director of the Administrative Office of the United States Courts for inclusion in the report under paragraph (5).

(2) The time limitations under paragraph (1) shall apply to—

(A) an initial application for a writ of habeas corpus;

(B) any second or successive application for a writ of habeas corpus; and

(C) any redetermination of an application for a writ of habeas corpus following a remand by the court of appeals or the Supreme Court for further proceedings, in which case the limitation period shall run from the date the remand is ordered.

(3) The time limitations under this section shall not be construed to entitle an applicant to a stay of execution, to which the applicant would otherwise not be entitled, for the purpose of litigating any application or appeal.

(4)(A) The failure of a court to meet or comply with a time limitation under this section shall not be a ground for granting relief from a judgment of conviction or sentence.

(B) The State may enforce a time limitation under this section by petitioning for a writ of mandamus to the court of appeals. The court of appeals shall act on the petition for a writ of mandamus not later than 30 days after the filing of the petition.

(5)(A) The Administrative Office of the United States Courts shall submit to Congress an annual report on the compliance by the district courts with the time limitations under this section.

(B) The report described in subparagraph (A) shall include copies of the orders submitted by the district courts under paragraph (1)(D)(iv).

(c)(1)(A) A court of appeals shall hear and render a final determination of any appeal of an order granting or denying, in whole or in part, an application brought under this chapter in a capital case not later than 120 days after the date on which the answering brief is filed, or if no reply brief is filed, not later than 120 days after the date on which the answering brief is filed.

(B)(i) A court of appeals shall decide whether to grant a petition for rehearing or other request for rehearing en banc not later than 30 days after the date on which the petition for rehearing is filed unless a responsive pleading is required, in which case the court shall decide whether to grant the petition not later than 30 days after the date on which the responsive pleading is filed.

(ii) If a petition for rehearing or rehearing en banc is granted, the court of appeals shall hear and render a final determination of the appeal not later than 120 days after the date on which the order granting rehearing or rehearing en banc is entered.

(2) The time limitations under paragraph (1) shall apply to—

(A) an initial application for a writ of habeas corpus;

(B) any second or successive application for a writ of habeas corpus; and

(C) any redetermination of an application for a writ of habeas corpus or related appeal following a remand by the court of appeals or the Supreme Court for further proceedings, in which case the limitation period shall run from the date the remand is ordered.

(3) The time limitations under this section shall not be construed to entitle an applicant to a stay of execution, to which the applicant would otherwise not be entitled, for the purpose of litigating any application or appeal.

(4)(A) The failure of a court to meet or comply with a time limitation under this section shall not be a ground for granting relief from a judgment of conviction or sentence.

(B) The State may enforce a time limitation under this section by petitioning for a writ of mandamus to the Supreme Court.

(5) The Administrative Office of the United States Courts shall submit to Congress an annual report on the compliance by the courts of appeals with the time limitations under this section.

AMENDMENTS

2006—Subsec. (b)(1)(A). Pub. L. 109–177 substituted “180 days after the date on which the application is filed,” for “60 days after the date on which the case is submitted for decision, whichever is earlier” for “180 days after the date on which the application is filed”.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–177 applicable to cases pending on or after Mar. 9, 2006, with special rule for certain cases pending on that date, see section 2251 of this title.

CHAPTER 155—INJUNCTIONS; THREE-JUDGE COURTS

Sec. 2281. Repealed.

2282. Repealed.

2283. Stay of State court proceedings.

2284. Three-judge district court; when required; composition; procedure.

AMENDMENTS


Section 2281, act June 25, 1948, ch. 646, 62 Stat. 968, provided that an interlocutory or permanent injunction restraining the enforcement, operation or execution of a State statute on grounds of unconstitutionality should not be granted unless the application has been heard and determined by a three-judge district court.

Section 2282, act June 25, 1948, ch. 646, 62 Stat. 968, provided that an interlocutory or permanent injunction restraining the enforcement, operation or execution of any Act of Congress on grounds of unconstitutionality should not be granted unless the application therefor has been heard and determined by a three-judge district court.

EFFECTIVE DATE OF REPEAL

Repeal not applicable to any action commenced on or before Aug. 12, 1976, see section 7 of Pub. L. 94–381 set out as an Effective Date of Repeal.

§ 2283. Stay of State court proceedings

A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

(Hist. & Rev. Notes)


An exception as to acts of Congress relating to bankruptcy was omitted and the general exception substituted to cover all exceptions.

The phrase “in aid of its jurisdiction” was added to conform to section 1651 of this title and to make clear the recognized power of the Federal courts to stay proceedings in State cases removed to the district courts.

The exceptions specifically include the words “to protect or effectuate its judgments,” for lack of which the Supreme Court held that the Federal courts are without power to enjoin litigatation of cases and controversies fully accounted for by such courts. (See Toucey v. New York Life Insurance Co., 62 S.C.t. 139, 314 U.S. 118, 86 L.Ed. 100. A vigorous dissenting opinion (62 S.C.t. 148) notes that at the time of the 1911 revision of the Judicial Code, the power of the courts of the United States to protect their judgments was unquestioned and that the revisers of that code noted no change and Congress intended no change.

Therefore the revised section restores the basic law as generally understood and interpreted prior to the Toucey decision.

Changes were made in phraseology.

§ 2284. Three-judge court; when required; composition; procedure

(a) A district court of three judges shall be convened when otherwise required by Act of Congress, or when an action is filed challenging the constitutionality of the apportionment of congressional districts or the apportionment of any statewide legislative body.

(b) In any action required to be heard and determined by a district court of three judges under subsection (a) of this section, the composition and procedure of the court shall be as follows:

(1) Upon the filing of a request for three judges, the judge to whom the request is presented shall, unless he determines that three judges are not required, immediately notify the chief judge of the circuit, who shall designate two other judges, at least one of whom shall be a circuit judge. The judges so designated, and the judge to whom the request was presented, shall serve as members of the court to hear and determine the action or proceeding.

(2) If the action is against a State, or officer or agency thereof, at least five days’ notice of hearing of the action shall be given by registered or certified mail to the Governor and attorney general of the State.

(3) A single judge may conduct all proceedings except the trial, and enter all orders permitted by the rules of civil procedure except as provided in this subsection. He may grant a temporary restraining order on a specific finding, based on evidence submitted, that specified irreparable damage will result if the order is not granted, which order, unless previously revoked by the district judge, shall remain in force only until the hearing and determination by the district court of three judges of an application for a preliminary injunction. A single judge shall not appoint a master, or order a reference, or hear and determine any application for a preliminary or permanent injunction or motion to vacate such an injunction, or enter judgment on the merits. Any action of a single judge may be reviewed by the full court at any time before final judgment.

(Hist. & Rev. Notes)

The rules of civil procedure, referred to in subsec. (b)(3), are set out in the Appendix to this title.

**AMENDMENTS**

1984—Subsec. (b)(2). Pub. L. 98–620 struck out provision that the hearing had to be given precedence and held at the earliest practicable day.

1976—Pub. L. 94–361 substituted “Three-judge court; when required” for “Three-judge district court” in section catchline, and generally revised section to alter the method by which three-judge courts are composed, the procedure used by such courts, and to conform its requirements to the repeal of sections 2281 and 2282 of this title.

1960—Pub. L. 86–507 substituted “by registered mail or by certified mail by the clerk and” for “by registered mail by the clerk and”.

**EFFECTIVE DATE OF 1984 AMENDMENT**

Amendment by Pub. L. 98–620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98–620, set out as an Effective Date note under section 1657 of this title.

**EFFECTIVE DATE OF 1976 AMENDMENT**

Section 7 of Pub. L. 94–361 provided that: “This Act [amending this section and section 2403 of this title and repealing sections 2281 and 2282 of this title] shall not apply to any action commenced on or before the date of enactment [Aug. 12, 1976].”

### CHAPTER 157—SURFACE TRANSPORTATION BOARD ORDERS; ENFORCEMENT AND REVIEW

Sec. 2321. Judicial review of Board’s orders and decisions; procedure generally; process.

Sec. 2322. United States as party.

Sec. 2323. Duties of Attorney General; intervenors.

### AMENDMENTS


1975—Pub. L. 93–584, §6, Jan. 2, 1975, 88 Stat. 1918, substituted “Judicial Review of Commission’s orders and decisions; procedure generally; process” for “Procedure generally; process” in item 2321 and struck out item 2324 “Stay of Commission’s order” and item 2325 “Injunction; three-judge court required”.

### HISTORICAL AND REVISION NOTES

#### 1948 ACT


Word “actions” was substituted for “cases,” in view of rule 2 of the Federal Rules of Civil Procedure. The exception as to procedure in the infliction of criminal punishment was omitted as unnecessary, as Title 18, U.S.C., Crimes and Criminal Procedure, and the Federal Rules of Criminal Procedure govern procedure in criminal matters.

Changes were made in phraseology.

#### 1949 ACT

This section corrects, in section 2321 of title 28, U.S.C., the reference to certain sections in title 49,
§ 2322. United States as party

All actions specified in section 2321 of this title shall be brought by or against the United States. (June 25, 1948, ch. 646, 62 Stat. 969.)

Historical and Revision Notes


Word "actions" was substituted for "cases and proceedings", in view of Rule 2 of the Federal Rules of Civil Procedure.

A provision authorizing intervention by the United States was omitted. The United States, under the provisions of this section, is a necessary and indispensable original party, and hence intervention is unnecessary. (See Lambert Run Coal Co. v. Baltimore & O. R. Co., 1922, 42 S.Ct. 349, 286 U.S. 277, 66 L.Ed. 671.)

§ 2323. Duties of Attorney General; intervenors

The Attorney General shall represent the Government in the actions specified in section 2321 of this title and in enforcement actions and actions to collect civil penalties under subtitle IV of title 49.

The Surface Transportation Board and any party or parties in interest to the proceeding before the Board, in which an order or requirement is made, may appear as parties of their own motion and as of right, and be represented by their counsel, in any action involving the validity of such order or requirement or any part thereof, and the interest of such party.

Communities, associations, corporations, firms, and individuals interested in the controversy or question before the Board, or in any action commenced under the aforesaid sections may intervene in said action at any time after commencement thereof.

The Attorney General shall not dispose of or discontinue said action or proceeding over the objection of such party or intervenor, who may prosecute, defend, or continue said action or proceeding unaffected by the action or non-action of the Attorney General therein.


Historical and Revision Notes

1948 ACT


The provision in the second sentence of section 45a of title 28, U.S.C., 1940 ed., authorizing the Attorney General to employ and compensate special attorneys was omitted as covered by sections 503 and 508 [now 543 and 548] of this title. The provision in the same sentence authorizing the court to make rules for the conduct and procedure of actions under this section were omitted as covered by the Federal Rules of Civil Procedure and section 2071 of this title relating to authority of district courts to promulgate local rules of procedure.

The last paragraph of section 45a of title 28, U.S.C., 1940 ed., was omitted as merely repetitive of the language immediately following the first proviso.

Word "action" was substituted for "suit" in conformity with Rule 2 of the Federal Rules of Civil Procedure. Changes were made in phraseology.

1949 ACT

This section corrects, in section 2322 of title 28, U.S.C., the reference to certain sections in title 49, U.S.C. The provisions which were formerly set out as section 49 of such title 49 are now set out as section 23 of such title.

Amendments

1995—Pub. L. 104–88 substituted "Surface Transportation Board" for "Interstate Commerce Commission" and substituted "the Board" for "the Commission" in two places.


1975—Pub. L. 93–584 struck out reference to the district courts and the Supreme Court of the United States upon appeal from the district courts as the courts in which the Attorney General can represent the United States in first par.
1949—Act May 24, 1949, substituted “20, 23, and 43” for “20, 43, and 49” in first par.

**Effective Date of 1995 Amendment**

Amendment by Pub. L. 104–88 effective Jan. 1, 1996, see section 2 of Pub. L. 104–88, set out as an Effective Date note under section 701 of Title 49, Transportation.

**Effective Date of 1975 Amendment**

Amendment by Pub. L. 93–584 not applicable to actions commenced on or before last day of first month beginning after Jan. 2, 1975, and actions to enjoin or suspend orders of Interstate Commerce Commission which are pending when this amendment becomes effective shall not be affected thereby, but shall proceed to final disposition under the law existing on the date they were commenced, see section 10 of Pub. L. 93–584, set out as a note under section 2321 of this title.


Section 2324, act June 25, 1948, ch. 646, 62 Stat. 970, related to power of court to restrain or suspend operation of orders of Interstate Commerce Commission pending final hearing and determination of action. Section 2325, act June 25, 1948, ch. 646, 62 Stat. 970, related to requirement of a three judge district court to hear and determine interlocutory or permanent injunctions restraining enforcement, operation or execution of orders of Interstate Commerce Commission.

**Effective Date of Repeal**

Repeal applicable to actions commenced on or before last day of first month beginning after Jan. 2, 1975, and actions to enjoin or suspend orders of Interstate Commerce Commission which are pending when this repeal becomes effective shall not be affected thereby, but shall proceed to final disposition under the law existing on the date they were commenced, see section 10 of Pub. L. 93–584, set out as an Effective Date of 1975 Amendment note under section 2321 of this title.

**CHAPTER 158—ORDERS OF FEDERAL AGENCIES; REVIEW**

Sec.
2341. Definitions.
2343. Venue.
2344. Review of orders; time; notice; contents of petition; service.
2345. Prehearing conference.
2346. Certification of record on review.
2347. Petitions to review; proceedings.
2348. Representation in proceeding; intervention.
2349. Jurisdiction of the proceeding.
2350. Review in Supreme Court on certiorari or certification.
2351. Enforcement of orders by district courts.

(2352, 2353. Repealed.)

**AMENDMENTS**


§ 2341. Definitions

As used in this chapter—

(1) “clerk” means the clerk of the court in which the petition for the review of an order, reviewable under this chapter, is filed;

(2) “petitioner” means the party or parties by whom a petition to review an order, reviewable under this chapter, is filed; and

(3) “agency” means—

(A) the Commission, when the order sought to be reviewed was entered by the Federal Communications Commission, the Federal Maritime Commission, or the Atomic Energy Commission, as the case may be;

(B) the Secretary, when the order was entered by the Secretary of Agriculture or the Secretary of Transportation;

(C) the Administration, when the order was entered by the Maritime Administration;

(D) the Secretary, when the order is under section 812 of the Fair Housing Act; and

(E) the Board, when the order was entered by the Surface Transportation Board.


**HISTORICAL AND REVISION NOTES**

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<tr>
<th>Derivation</th>
<th>U.S. Code</th>
<th>Revised Statutes and Statutes at Large</th>
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Subsection (a) of former section 1031 of title 5 is omitted as unnecessary because the term “court of appeals” as used in title 28 means a United States Court of Appeals and no additional definition is necessary.


**REFERENCES IN TEXT**

Section 812 of the Fair Housing Act, referred to in par. (3)(D), is classified to section 3612 of Title 42, The Public Health and Welfare.

**AMENDMENTS**


1992—Par. (3)(B), Pub. L. 102–365 inserted “or the Secretary of Transportation” after “Secretary of Agriculture”.


**Effective Date of 1995 Amendment**

Amendment by Pub. L. 104–88 effective Jan. 1, 1996, see section 2 of Pub. L. 104–88, set out as an Effective Date note under section 701 of Title 49, Transportation.

**Effective Date of 1988 Amendment**

Amendment by Pub. L. 100–430 effective on the 180th day beginning after Sept. 13, 1988, see section 13(a) of Pub. L. 100–430, set out as a note under section 3601 of Title 42, The Public Health and Welfare.

**Effective Date of 1975 Amendment**

Amendment by Pub. L. 93–584 not applicable to actions commenced on or before last day of first month beginning after Jan. 2, 1975, and actions to enjoin or
suspend orders of Interstate Commerce Commission which are pending when this amendment becomes effective shall not be affected thereby, and shall proceed to final disposition under the law existing on that date they were commenced, see section 10 of Pub. L. 93–584, set out as a note under section 2321 of this title.

TRANSFER OF FUNCTIONS

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of Title 42, The Public Health and Welfare. See, also, Transfer of Functions notes set out under those sections.

§ 2342. Jurisdiction of court of appeals

The court of appeals (other than the United States Court of Appeals for the Federal Circuit) has exclusive jurisdiction to enjoin, set aside, suspend (in whole or in part), or to determine the validity of—

(1) all final orders of the Federal Communication Commission made reviewable by section 402(a) of title 47;

(2) all final orders of the Secretary of Agriculture made under chapters 9 and 20A of title 7, except orders issued under sections 210(e), 217a, and 499(g)(a) of title 7;

(3) all rules, regulations, or final orders of—

(A) the Secretary of Transportation issued pursuant to section 50501, 50502, 50161–50164, or 57109 of title 49 or pursuant to part B or C of subtitle IV, subchapter III of chapter 311, chapter 313, or chapter 315 of title 49; and

(B) the Federal Maritime Commission issued pursuant to section 305, 41304, 41308, or 41309 or chapter 421 or 411 of title 46;

(4) all final orders of the Atomic Energy Commission made reviewable by section 2239 of title 42;

(5) all rules, regulations, or final orders of the Surface Transportation Board made reviewable by section 2229 of this title;

(6) all final orders under section 812 of the Fair Housing Act; and

(7) all final agency actions described in section 20114(c) of title 49.

Jurisdiction is invoked by filing a petition as provided by section 2344 of this title.

(Amended Pub. L. 89–554, § 4(e), Sept. 6, 1966, 80 Stat. 1129, provided by section 2344 of this title.

The words “have exclusive jurisdiction” are substituted for “shall have exclusive jurisdiction”.

In paragraph (1), the word “by” is substituted for “in accordance with”.

In paragraph (3), the word “now” is omitted as unnecessary. The word “under” is substituted for “pursuant to the provisions of”. Reference to “Federal Maritime Commission” is substituted for “Federal Maritime Board” on authority of 1961 Reorg. Plan No. 7, eff. Aug. 12, 1961, 75 Stat. 840. Reference to the United States Maritime Commission is omitted because that Commission was abolished by 1990 Reorg. Plan No. 21, § 306, eff. May 24, 1991, 64 Stat. 1277, and any existing rights are preserved by technical sections 7 and 8.

REFERENCES IN TEXT

Section 812 of the Fair Housing Act, referred to in par. (6), is classified to section 3612 of Title 42, The Public Health and Welfare.

AMENDMENTS


Par. (3)(B). Pub. L. 109–304, § 177(f)(3)(B), added subpar. (B) and struck out former subpar. (B) which read as follows:

“(B) the Federal Maritime Commission issued pursuant to—

“(i) section 19 of the Merchant Marine Act, 1920 (46 U.S.C. App. 876);

“(ii) section 14 or 17 of the Shipping Act of 1946 (46 U.S.C. App. 1713 or 1716); or

“(iii) section 2(d) or 3(d) of the Act of November 6, 1966 (46 U.S.C. App. 817d(a) or 817d(e))”.


Pub. L. 104–88, § 305(d)(5), substituted “or 41” for “41, or 43”.

Par. (3)(B). Pub. L. 104–88, § 305(d)(7), redesignated cls. (ii), (iv), and (v) as (i), (ii), and (iii), respectively, and struck out former cls. (i) and (iii) which read as follows:

“(i) section 23, 25, or 43 of the Shipping Act, 1916 (46 U.S.C. App. 822, 824, or 841a)

“(ii) section 3, 4, or 5 of the Intercoastal Shipping Act, 1933 (46 U.S.C. App. 845, 845a, or 845b)

“(iii) section 2, 3, or 4 of the Interstate Commerce Commission made reviewable by section 2221 of this title and all final orders of such Commission made reviewable under section 11901(j)(2) of title 49, United States Code”.


1992—Par. (7). Pub. L. 102–355, which directed the addition of par. (7) at end, was executed by adding par. (7) after par. (6) and before concluding provisions, to reflect the probable intent of Congress.


1986—Par. (5). Pub. L. 99–336 amended par. (3) generally. Prior to amendment, par. (3) read as follows: “such final orders of the Federal Maritime Commission or the Maritime Administration entered under chapters 23 and 2A of title 46 as are subject to judicial review under section 830 of title 46”.


1982—Pub. L. 97–164 inserted “other than the United States Court of Appeals for the Federal Circuit” after “court of appeals” in provisions preceding par. (1), and

HISTORICAL AND REVISION NOTES

Derivation | U.S. Code | Revised Statutes and Statutes at Large
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Page 554

TITLE 28—JUDICIARY AND JUDICIAL PROCEDURE
struck out par. (6) which had given the court of appeals jurisdiction in cases involving all final orders of the Merit Systems Protection Board except as provided for in section 703(b) of title 5. See section 1296(a)(8) of this title.


**Effective Date of 1996 Amendment**

Section 6(c) of Pub. L. 104–297 provided that the amendment made by that section is effective Dec. 29, 1995.

**Effective Date of 1995 Amendment**

Amendment by Pub. L. 104–88 effective Jan. 1, 1996, see section 2 of Pub. L. 104–88, set out as an Effective Date note under section 701 of Title 49, Transportation.

**Effective Date of 1988 Amendment**


**Effective Date of 1986 Amendment**


**Effective Date of 1985 Amendment**

Amendment by Pub. L. 93–584 effective 90 days after Pub. L. 93–584 is enacted, see section 2 of Pub. L. 93–584, set out as Effective Date note under section 11901(i)(2) of title 49, United States Code.

**Effective Date of 1978 Amendment**


**Effective Date of 1976 Amendment**


**Effective Date of 1975 Amendment**

Amendment by Pub. L. 93–584 not applicable to actions commenced on or before last day of first month beginning after Jan. 2, 1975, and actions to enjoin or suspend orders of Interstate Commerce Commission which are pending when this amendment becomes effective shall not be affected thereby, but shall proceed to final disposition under the law existing on the date they were commenced, see section 10 of Pub. L. 93–584, set out as a note under section 2321 of Title 28.

**Transfer of Functions**

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of Title 42, The Public Health and Welfare. See, also, Transfer of Functions notes set out under those sections.

**§ 2343. Venue**

The venue of a proceeding under this chapter is in the judicial circuit in which the petitioner resides or has its principal office, or in the United States Court of Appeals for the District of Columbia Circuit.

(Added Pub. L. 89–554, § 4(e), Sept. 6, 1966, 80 Stat. 622.)

**Historical and Revision Notes**

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<th>U.S. Code</th>
<th>Revised Statutes and Statutes at Large</th>
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The section is reorganized for clarity and conciseness. The word “is” is substituted for “shall be”. The word “petitioner” is substituted for “party or any of the parties filing the petition for review” in view of the definition of “petitioner” in section 2341 of this title.

**§ 2344. Review of orders; time; notice; contents of petition; service**

On the entry of a final order reviewable under this chapter, the agency shall promptly give notice thereof by service or publication in accordance with its rules. Any party aggrieved by the final order may, within 60 days after its entry, file a petition to review the order in the court of appeals wherein venue lies. The action shall be against the United States. The petition shall contain a concise statement of—

1. the nature of the proceedings as to which review is sought;
2. the facts on which venue is based;
3. the grounds on which relief is sought; and
4. the relief prayed.

The petitioner shall attach to the petition, as exhibits, copies of the order, report, or decision of the agency. The clerk shall serve a true copy of the petition on the agency and on the Attorney General by registered mail, with request for a return receipt.

(Added Pub. L. 89–554, § 4(e), Sept. 6, 1966, 80 Stat. 622.)

**Historical and Revision Notes**

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<th>Revised Statutes and Statutes at Large</th>
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The section is reorganized, with minor changes in phraseology. The words “of the United States” following “Attorney General” are omitted as unnecessary.

**§ 2345. Prehearing conference**

The court of appeals may hold a prehearing conference or direct a judge of the court to hold a prehearing conference.

(Added Pub. L. 89–554, § 4(e), Sept. 6, 1966, 80 Stat. 622.)

**Historical and Revision Notes**

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<th>U.S. Code</th>
<th>Revised Statutes and Statutes at Large</th>
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**§ 2346. Certification of record on review**

Unless the proceeding has been terminated on a motion to dismiss the petition, the agency shall file in the office of the clerk the record on review as provided by section 2112 of this title.

(Added Pub. L. 89–554, § 4(e), Sept. 6, 1966, 80 Stat. 623.)

**Historical and Revision Notes**

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<th>U.S. Code</th>
<th>Revised Statutes and Statutes at Large</th>
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§ 2347. Petitions to review; proceedings

(a) Unless determined on a motion to dismiss, petitions to review orders reviewable under this chapter are heard in the court of appeals on the record of the pleadings, evidence adduced, and proceedings before the agency, when the agency has held a hearing whether or not required to do so by law.

(b) When the agency has not held a hearing before taking the action of which review is sought by the petition, the court of appeals shall determine whether a hearing is required by law. After that determination, the court shall—

(1) remand the proceedings to the agency to hold a hearing, when a hearing is required by law;

(2) pass on the issues presented, when a hearing is not required by law and it appears from the pleadings and affidavits filed by the parties that no genuine issue of material fact is presented; or

(3) transfer the proceedings to a district court for the district in which the petitioner resides or has its principal office for a hearing and determination as if the proceedings were originally initiated in the district court, when a hearing is not required by law and a genuine issue of material fact is presented. The procedure in these cases in the district court is governed by the Federal Rules of Civil Procedure.

(c) If a party to a proceeding to review applies to the court of appeals in which the proceeding is pending for leave to adduce additional evidence and shows to the satisfaction of the court that—

(1) the additional evidence is material; and

(2) there were reasonable grounds for failure to adduce the evidence before the agency;

the court may order the additional evidence and any counterevidence the opposite party desires to offer to be taken by the agency. The agency may modify its findings of fact, or make new findings, by reason of the additional evidence so taken, and may modify or set aside its order, and shall file in the court the additional evidence, the modified findings or new findings, and the modified order or the order setting aside the original order.

(Added Pub. L. 89–554, §4(e), Sept. 6, 1966, 80 Stat. 623.)

§ 2348. Representation in proceeding; intervention

The Attorney General is responsible for and has control of the interests of the Government in all court proceedings under this chapter. The agency, and any party in interest in the proceeding before the agency whose interests will be affected if an order of the agency is or is not enjoined, set aside, or suspended, may appear as parties thereto of their own motion and as of right, and be represented by counsel in any proceeding to review the order. Communities and associations, corporations, firms, and individuals, whose interests are affected by the order of the agency, may intervene in any proceeding to review the order. The Attorney General may not dispose of or discontinue the proceeding to review over the objection of any party or intervenor, but any intervenor may prosecute, defend, or continue the proceeding unaffected by the action or inaction of the Attorney General.

(Amended Pub. L. 89–554, §4(e), Sept. 6, 1966, 80 Stat. 623.)
termining the validity of, and enjoining, setting aside, or suspending, in whole or in part, the order of the agency.

(b) The filing of the petition to review does not of itself stay or suspend the operation of the order of the agency, but the court of appeals in its discretion may restrain or suspend, in whole or in part, the operation of the order pending the final hearing and determination of the petition. When the petitioner makes application for an interlocutory injunction restraining or suspending the enforcement, operation, or execution of, or setting aside, in whole or in part, any order reviewable under this chapter, at least 5 days' notice of the hearing thereon shall be given to the agency and to the Attorney General. In a case in which irreparable damage would otherwise result to the petitioner, the court of appeals may, on hearing, after reasonable notice to the agency and to the Attorney General, order a temporary stay or suspension, in whole or in part, of the operation of the order of the agency for not more than 60 days from the date of the order pending the hearing on the application for the interlocutory injunction, in which case the order of the court of appeals shall contain a specific finding, based on evidence submitted to the court of appeals, and identified by reference thereto, that irreparable damage would result to the petitioner and specifying the nature of the damage. The court of appeals, at the time of hearing the application for an interlocutory injunction, on a like finding, may continue the temporary stay or suspension, in whole or in part, until decision on the application.


HISTORICAL AND REVISION NOTES

Derivation | U.S. Code | Revised Statutes and Statutes at Large
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The headnotes of the subsections are omitted as unnecessary and to conform to the style of title 28.

In subsection (a), the words "has jurisdiction" and "has exclusive jurisdiction" are substituted for "shall have jurisdiction" and "shall have exclusive jurisdiction", respectively. The words "previously granted" are substituted for "theretofore granted" as the preferred expression.

In subsection (b), the words "does not" are substituted for "shall not". The words "of the United States" following "Attorney General" are omitted as unnecessary. The words "in a case where" are substituted for "in cases where". The word "result" is substituted for "ensue". In the fourth sentence, the words "provided for above" following the last word "application" are omitted as unnecessary. In the last sentence, the word "applies" is substituted for "shall apply".

AMENDMENTS

1984—Subsec. (b). Pub. L. 98–620 struck out provisions that the hearing on an application for an interlocutory injunction be given preference and expedited and heard at the earliest practicable date after the expiration of the notice of hearing on the application, and that on the final hearing of any proceeding to review any order under this chapter, the same requirements as to precedence and expedition was to apply.

Effective Date of 1984 Amendment
Amendment by Pub. L. 98–620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98–620 set out as an Effective Date note under section 1657 of this title.

§ 2350. Review in Supreme Court on certiorari or certification

(a) An order granting or denying an interlocutory injunction under section 2349(b) of this title and a final judgment of the court of appeals in a proceeding to review under this chapter are subject to review by the Supreme Court on a writ of certiorari as provided by section 1254(1) of this title. Application for the writ shall be made within 45 days after entry of the order and within 90 days after entry of the judgment, as the case may be. The United States, the agency, or an aggrieved party may file a petition for a writ of certiorari.

(b) The provisions of section 1254(2) of this title, regarding certification, and of section 2101(f) of this title, regarding stays, also apply to proceedings under this chapter.


HISTORICAL AND REVISION NOTES

Derivation | U.S. Code | Revised Statutes and Statutes at Large
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The words "of the United States" following "Supreme Court" are omitted as unnecessary because the term "Supreme Court" as used in title 28 means the Supreme Court of the United States.

The words "section 2101(f) of this title" are substituted for "section 2101(e) of Title 28" on authority of the Act of May 24, 1949, ch. 139, § 106(b), 63 Stat. 104, which redesignated subsection (e) of section 2101 as subsection (f).

AMENDMENTS

1988—Subsec. (b). Pub. L. 100–352 substituted "1254(2)" for "1254(3)".

Effective Date of 1988 Amendment
Amendment by Pub. L. 100–352 effective ninety days after June 27, 1988, except that such amendment not to apply to cases pending in Supreme Court on such effective date or affect right to review or manner of reviewing judgment or decree of court which was entered before such effective date, see section 7 of Pub. L. 100–352, set out as a note under section 1254 of this title.

§ 2351. Enforcement of orders by district courts

The several district courts have jurisdiction specifically to enforce, and to enjoin and restrain any person from violating any order issued under section 193 of title 7.

(Added Pub. L. 89–554, § 4(e), Sept. 6, 1966, 80 Stat. 624.)

HISTORICAL AND REVISION NOTES

Derivation | U.S. Code | Revised Statutes and Statutes at Large
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The words "United States" preceding "district court" are omitted as unnecessary because the term
‘district court’ as used in title 28 means a United States district court. See section 451 of title 28, United States Code. The words ‘have jurisdiction’ are substituted for ‘are vested with jurisdiction’. The words ‘hereof or hereafter’ following ‘order’ are omitted as unnecessary and any existing rights and liabilities are preserved by technical sections 7 and 8.


Savings Provision Section 4 of Pub. L. 89–773 provided in part that the repeal of this section shall not operate to invalidate or repeal rules adopted under the authority of this section prior to the enactment of Pub. L. 89–773, which rules shall remain in effect until superseded by rules prescribed under authority of section 2072 of this title as amended by Pub. L. 89–773.


CHAPTER 159—INTERPLEADER

§ 2361. Process and procedure

In any civil action of interpleader or in the nature of interpleader under section 1335 of this title, a district court may issue its process for the United States as party generally.

In any civil action of interpleader or in the nature of interpleader, a district court may issue its process for the United States as party generally.

CHAPTER 161—UNITED STATES AS PARTY GENERALLY

Sec. 2401. Time for commencing action against United States.
2402. Jury trial in actions against United States.
2403. Intervention by United States or a State; constitutional question.
2404. Death of defendant in damage action.
2405. Garnishment.
2406. Credits in actions by United States; prior disallowance.
2407. Delinquents for public money; judgment at return term; continuance.
2408. Security not required of United States.
2409. Partition actions involving United States.
2409a. Real property quiet title actions.
2410. Actions affecting property on which United States has lien.
2411. Interest.
2412. Costs and fees.
2413. Executions in favor of United States.
2414. Payment of judgments and compromise settlements.
2415. Time for commencing actions brought by the United States.
2416. Time for commencing actions brought by the United States—Exclusions.

Historical and Revision Notes

1949 Act

This section amends the analysis of chapter 161 of title 28, U.S.C., to conform item 2411 therein with the catch line of section 2411 of such title as amended by another section of this bill.

Amendments


§ 2401. Time for commencing action against United States

(a) Except as provided by chapter 71 of title 41, every civil action commenced against the United States shall be forever barred unless the complaint is filed within six years after the right of action first accrues. The action of any person under legal disability or beyond the seas at the time the claim accrues may be commenced within three years after the disability ceases.

(b) A tort claim against the United States shall be forever barred unless it is presented in writing to the appropriate Federal agency within two years after such claim accrues or unless action is begun within six months after the date of mailing, by certified or registered mail, of notice of final denial of the claim by the agency to which it was presented.

(Historical and Revision Notes)


Section consolidates provisions in section 41(20) of title 28, U.S.C., 1940 ed., as to time limitation for bringing actions against the United States under section 1346(a) of this title, with section 942 of said title 28.

Words “or within one year after the date of enactment of this Act whichever is later”, in section 942 of title 28, U.S.C., 1940 ed., were omitted as executed.

Provisions of section 41(20) of title 28, U.S.C., 1940 ed., relating to jurisdiction of district courts and trial by jury of actions against the United States are the basis of sections 1346(a) and 2402 of this title.

Words in subsec. (a) of this revised section, “person under legal disability or beyond the seas at the time the claim accrues” were substituted for “claim of married women, first accrued during marriage, of persons under the age of twenty-one years, first accrued during minority, and of idiots, lunatics, insane persons, and persons beyond the seas at the time the claim accrued, entitled to the claim.” (See reviser’s note under section 2501 of this title.)

Words in section 41(20) of title 28, U.S.C., 1940 ed., “nor shall any of the said disabilities operate cumulatively” were omitted. (See reviser’s note under section 2501 of this title.)

A provision in section 41(20) of title 28, U.S.C., 1940 ed., that disabilities other than those specifically mentioned should not prevent any action from being barred was omitted as superfluous.

Subsection (b) of the revised section simplifies and restates said section 942 of title 28, U.S.C., 1940 ed., without change of substance.

Changes were made in phraseology.

Senate Revision Amendment

Subsection (b) amended in the Senate to insert the 1 year limitation on the bringing of tort actions and to include the limitation upon the time in which tort claims not exceeding $1000 must be presented to the appropriate Federal agencies for administrative disposition. 80th Congress Senate Report No. 1559, Amendment No. 48.

AMENDMENTS

1966—Subsec. (b). Pub. L. 89–508 struck out provisions dealing with a tort claim of $2,500 or under as a special category of tort claim requiring preliminary administrative action and substituted provisions requiring presentation of all tort claims to the appropriate Federal agency in writing within two years after the claim accrues and commencement of an action within six months of the date of mailing of notice of final denial of the claim by the agency to which it was presented for provisions requiring commencement of an action within two years after the claim accrues.

1959—Subsec. (b). Pub. L. 86–238 substituted “$2,500” for “$1,000” in two places.

1949—Subsec. (b). Act Apr. 25, 1949, the time limitation on bringing tort actions from 1 year to 2 years.

Effective Date of 1978 Amendment

Amendment by Pub. L. 95–563 effective with respect to contracts entered into 120 days after Nov. 1, 1978, and, at the election of the contractor, with respect to any claim pending at such time before the contracting officer or initiated thereafter, see section 16 of Pub. L. 95–563, Nov. 1, 1978, 92 Stat. 2391, formerly set out as an Effective Date note under section 301 of former Title 41, Public Contracts.

Effective Date of 1966 Amendment

Amendment by Pub. L. 89–508 applicable to claims accruing six months or more after July 18, 1966, see section 10 of Pub. L. 89–506, set out as a note under section 2672 of this title.

§ 2402. Jury trial in actions against United States

Subject to chapter 179 of this title, any action against the United States under section 1346 shall be tried by the court without a jury, except that any action against the United States under section 1346(a)(1) shall, at the request of either party to such action, be tried by the court with a jury.

(Historical and Revision Notes)


Section consolidates non-jury provisions of sections 41(20) and 931(a) of title 28, U.S.C., 1940 ed. For other provisions of said section 931(a) relating to tort claims, see Distribution Table.

Word “actions” was substituted for “suits”, in view of Rule 2 of the Federal Rules of Civil Procedure.

Provisions of title 28, U.S.C., 1940 ed., §41(20) relating to jurisdiction of district courts and time for bringing actions against the United States are the basis of sections 1346 and 2401 of this title.

AMENDMENTS

1996—Pub. L. 104–331 substituted “Subject to chapter 179 of this title, any action” for “Any action.”

1949—Act July 30, 1949, permitted a jury trial at the request of either party in actions under section 1346(a)(1) of this title.
§ 2403. Intervention by United States or a State; constitutional question

(a) In any action, suit or proceeding in a court of the United States to which the United States or any agency, officer or employee thereof is not a party, wherein the constitutionality of any Act of Congress affecting the public interest is drawn in question, the court shall certify such fact to the Attorney General, and shall permit the United States to intervene for presentation of evidence, if evidence is otherwise admissible in the case, and for argument on the question of constitutionality. The United States shall, subject to the applicable provisions of law, have all the rights of a party and be subject to all liabilities of a party as to court costs to the extent necessary for a proper presentation of the facts and law relating to the question of constitutionality.

(b) In any action, suit, or proceeding in a court of the United States to which a State or any agency, officer, or employee thereof is not a party, wherein the constitutionality of any statute of that State affecting the public interest is drawn in question, the court shall certify such fact to the attorney general of the State, and shall permit the State to intervene for presentation of evidence, if evidence is otherwise admissible in the case, and for argument on the question of constitutionality. The State shall, subject to the applicable provisions of law, have all the rights of a party as to court costs to the extent necessary for a proper presentation of the facts and law relating to the question of constitutionality.


HISTORICAL AND REVISION NOTES


Word “action” was added before “suit or proceeding”, in view of Rule 2 of the Federal Rules of Civil Procedure.

Since this section applies to all Federal courts, the word “suit” was not required to be deleted by such rule.

“Court of the United States” is defined in section 451 of this title. Direct appeal from decisions invalidating Acts of Congress is provided by section 1252 of this title.

Changes were made in phraseology.

AMENDMENTS

1976—Pub. L. 94–381, § (b), inserted “or a State” after “United States” in section catchline.

Subsecs. (a), (b). Pub. L. 94–381, § (a), designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–381 not applicable to any action commenced on or before Aug. 12, 1976, see section 7 of Pub. L. 94–381, set out as a note under section 2284 of this title.

§ 2404. Death of defendant in damage action

A civil action for damages commenced by or on behalf of the United States or in which it is interested shall not abate on the death of a defendant but shall survive and be enforceable against his estate as well as against surviving defendants.

(June 25, 1948, ch. 646, 62 Stat. 971.)

HISTORICAL AND REVISION NOTES


Word “action” was substituted for “suit”, in view of Rule 2 of the Federal Rules of Civil Procedure.
Section 774 of title 28, U.S.C., 1940 ed., provided that "no claim for a credit shall be admitted, upon trial", etc. This was changed to "evidence supporting the defendant’s claim for a credit shall not be admitted", to clarify the meaning of the section. The case of U.S. v. Heard, D.C.Va. 1940, 32 F.Supp. 39, reviews the conflicting decisions on the question whether compliance with the section must be pleaded, and offers persuasive argument that it need not be, and that the section was designed as a rule of evidence. The wording of the remainder of the section also supports this conclusion, as pointed out by Judge Learned Hand in U.S. v. Standard Aircraft Corp., D.C.N.Y. 1926, 16 F.2d 907, followed in the Heard case.

Changes in phraseology were made.

AMENDMENTS


§ 2407. Delinquents for public money; judgment at return term; continuance

In an action by the United States against any person accountable for public money who fails to pay into the Treasury the sum reported due, the court shall grant judgment upon motion unless a continuance is granted as specified in this section.

A continuance may be granted if the defendant, in open court and in the presence of the United States attorney, states under oath that he is equitably entitled to credits which have been disallowed by the Government Accountability Office prior to the commencement of the action, specifying each particular claim so rejected, and stating that he cannot safely come to trial.

A continuance may also be granted if such an action is commenced on a bond or other sealed instrument and the court requires the original instrument to be produced.


HISTORICAL AND REVISION NOTES


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

Words “court requires the original instrument to be produced” were substituted for “defendant pleads non est factum, verifying such plea or motion by his oath, and the court thereupon requires the production of the original bond, contract, or other paper certified in the affidavit”. The plea of non est factum is obsolete under Rule 7(c) of the Federal Rules of Civil Procedure. Furthermore, the words deleted are superfluous, since a court would not require the production of an original instrument unless the proper procedure were taken to require such production.

Changes were made in phraseology.

AMENDMENTS


§ 2408. Security not required of United States

Security for damages or costs shall not be required of the United States, any department or agency thereof or any party acting under the direction of any such department or agency on the issuance of process or the institution or prosecution of any proceeding.

Costs taxable, under other Acts of Congress, against the United States or any such department, agency or party shall be paid out of the contingent fund of the department or agency which directed the proceedings to be instituted.

(June 25, 1948, ch. 646, 62 Stat. 972.)

HISTORICAL AND REVISION NOTES


Section 870 of title 28, U.S.C., 1940 ed., applied only to the Supreme Court and district courts. The revised section applies to all courts.

Words “process or the institution or prosecution of any proceeding” were substituted for “appeal, or other process in law, admiralty, or equity.”

Word “agency” was substituted for “any corporation all the stock of which is beneficially owned by the United States, either directly or indirectly”, in view of the creation of many independent governmental agencies since the enactment of the original law on which this section is based.

Changes were made in phraseology.

§ 2409. Partition actions involving United States

Any civil action by any tenant in common or joint tenant owning an undivided interest in lands, where the United States is one of such tenants in common or joint tenants, against the United States alone or against the United States and any other of such owners, shall proceed, and be determined, in the same manner as would a similar action between private persons.

Whenever in such action the court orders a sale of the property or any part thereof the Attorney General may bid for the same in behalf of the United States. If the United States is the purchaser, the amount of the purchase money shall be paid from the Treasury upon a warrant drawn by the Secretary of the Treasury on the requisition of the Attorney General.

(June 25, 1948, ch. 646, 62 Stat. 972.)

HISTORICAL AND REVISION NOTES


Provisions relating to service or commencement of the action and duty of United States attorneys to appear, defend, and file answer were omitted as surplusage and covered by Rules 2, 3, and 4 of the Federal Rules of Civil Procedure and section 507 of this title.

Words “shall proceed, and be determined, in the same manner as would a similar action between private persons” were substituted for “shall proceed as other cases for partition by courts of equity, and in making such partition the court shall be governed by the same principles of equity that control courts of equity, in partition proceedings between private persons.” In view of Rule 2 of the Federal Rules of Civil Procedure.

Changes were made in phraseology.

§ 2409a. Real property quiet title actions

(a) The United States may be named as a party defendant in a civil action under this section to adjudicate a disputed title to real property in which the United States claims an interest, other than a security interest or water rights. This section does not apply to trust or restricted Indian lands, nor does it apply to or
affect actions which may be or could have been brought under sections 1346, 1347, 1491, or 2410 of this title, sections 7424, 7425, or 7426 of the Internal Revenue Code of 1986, as amended (26 U.S.C. 7424, 7425, and 7426), or section 208 of the Act of July 10, 1952 (43 U.S.C. 666).

(b) The United States shall not be disturbed in possession or control of any real property involved in any action under this section pending a final judgment or decree, the conclusion of any appeal therefrom, and sixty days; and if the final determination shall be adverse to the United States, the United States nevertheless may retain such possession or control of the real property or of any part thereof as it may elect, upon payment to the person determined to be entitled thereto of an amount which upon such election the district court in the same action shall determine to be just compensation for such possession or control.

(c) No preliminary injunction shall issue in any action brought under this section.

(d) The complaint shall set forth with particularity the nature of the interest which the plaintiff claims in the real property, the circumstances under which it was acquired, and the right, title, or interest claimed by the United States.

(e) If the United States disclaims all interest in the real property or interest therein adverse to the plaintiff at any time prior to the actual commencement of the trial, which disclaimer is confirmed by order of the court, the jurisdiction of the district court shall cease unless it has jurisdiction of the civil action or suit on ground other than and independent of the authority conferred by section 1346(f) of this title.

(f) A civil action against the United States under this section shall be tried by the court without a jury.

(g) Any civil action under this section, except for an action brought by a State, shall be barred unless it is commenced within twelve years of the date upon which it accrued. Such action shall be deemed to have accrued on the date the plaintiff or his predecessor in interest knew or should have known of the claim of the United States.

(h) No civil action may be maintained under this section by a State with respect to defense facilities (including land) of the United States so long as the lands at issue are being used or required by the United States for national defense purposes as determined by the head of the Federal agency with jurisdiction over the lands involved, if it is determined that the State action was brought more than twelve years after the State received notice of the Federal claims to the lands.

(i) A final determination in an action brought by a State under this section involving submerged or tide lands on which the United States or its lessee or right-of-way or easement grantee has made substantial improvements or substantial investments is adverse to the United States and it is determined that the State's action was brought more than twelve years after the State received notice of the Federal claim to the lands, the State shall take title to the lands subject to any existing lease, easement, or right-of-way. Any compensation due with respect to such lease, easement, or right-of-way shall be determined under existing law.

(j) Notice for the purposes of the accrual of an action brought by a State under this section shall be—

(1) by public communications with respect to the claimed lands which are sufficiently specific as to be reasonably calculated to put the claimant on notice of the Federal claim to the lands, or

(2) by the use, occupancy, or improvement of the claimed lands which, in the circumstances, is open and notorious.

(k) Nothing in this section shall be construed to permit suits against the United States based upon adverse possession.


REFERENCES IN TEXT
Section 208 of the Act of July 10, 1952, referred to in subsec. (a), is section 208(a) to (d) of act July 10, 1952, ch. 651, 66 Stat. 560. Section 208(a) to (c) is classified to section 666 of Title 43, Public Lands. Section 208(d) is not classified to the Code.

AMENDMENTS

Subsecs. (c) to (n). Pub. L. 99–598 added subsecs. (c) and (h) to (m), redesignated former subsecs. (c), (d), (e), (f), and (g) as (d), (e), (f), (g), and (n), respectively, and inserted "except for an action brought by a State," in subsec. (g).

SHORT TITLE
This section is popularly known as the "Quiet Title Act".
§ 2410. Actions affecting property on which United States has lien

(a) Under the conditions prescribed in this section and section 1444 of this title for the protection of the United States, the United States may be named a party in any civil action or suit in any district court, or in any State court having jurisdiction of the subject matter—

(1) to quiet title to,

(2) to foreclose a mortgage or other lien upon,

(3) to partition,

(4) to condemn, or

(5) of interpleader or in the nature of interpleader with respect to,

real or personal property on which the United States has or claims a mortgage or other lien.

(b) The complaint or pleading shall set forth with particularity the nature of the interest or lien of the United States. In actions or suits involving liens arising under the internal revenue laws, the complaint or pleading shall include the name and address of the taxpayer whose liability created the lien and, if a notice of the tax lien was filed, the identity of the internal revenue office which filed the notice, and the date and place such notice of lien was filed. In actions in the State courts service upon the United States shall be made by serving the process of the court with a copy of the complaint upon the United States attorney for the district in which the action is brought or upon an assistant United States attorney or clerical employee designated by the United States attorney in writing filed with the clerk of the court in which the action is brought and by sending copies of the process and complaint, by registered mail, or by certified mail, to the Attorney General of the United States at Washington, District of Columbia. In such actions the United States may appear and answer, plead or demur within sixty days after such service or such further time as the court may allow.

(c) A judgment or decree in such action or suit shall have the same effect respecting the discharge of the property from the mortgage or other lien held by the United States as may be provided with respect to such matters by the local law of the place where the court is situated. However, an action to foreclose a mortgage or other lien, naming the United States as a party under this section, must seek judicial sale. A sale to satisfy a lien inferior to one of the United States shall be made subject to and without disturbing the lien of the United States, unless the United States consents that the property may be sold free of its lien and the proceeds divided as the parties may be entitled. Where a sale of real estate is made to satisfy a lien prior to that of the United States, the United States shall have one year from the date of sale within which to redeem, except that with respect to a lien arising under the internal revenue laws the period shall be 120 days or the period allowable for redemption under State law, whichever is longer, and in any case in which, under the provisions of section 505 of the Housing Act of 1950, as amended (12 U.S.C. 1701k), and subsection (d) of section 3720 of title 38 of the United States Code, the right to redeem does not arise, there shall be no right of redemption. In any case where the debt owing the United States is due, the United States may ask, by way of affirmative relief, for the foreclosure of its own lien and where property is sold to satisfy a first lien held by the United States, the United States may bid at the sale such sum, not exceeding the amount of its claim with expenses of sale, as may be directed by the head (or his delegate) of the department or agency of the United States which has charge of the administration of the laws in respect to which the claim of the United States arises. In any case where the United States is a bidder at the judicial sale, it may credit the amount determined to be due it against the amount it bids at such sales.

(d) In any case in which the United States redeems real property under this section or section 7625 of the Internal Revenue Code of 1986, the amount to be paid for such property shall be the sum of—

(1) the actual amount paid by the purchaser at such sale (which, in the case of a purchaser who is the holder of the lien being foreclosed, shall include the amount of the obligation secured by such lien to the extent satisfied by reason of such sale),

(2) interest on the amount paid (as determined under paragraph (1)) at 6 percent per annum from the date of such sale, and

(3) the amount (if any) equal to the excess of the expenses necessarily incurred in connection with such property, over (B) the income from such property plus (to the extent such property is used by the purchaser) a reasonable rental value of such property.

(e) Whenever any person has a lien upon any real or personal property, duly recorded in the jurisdiction in which the property is located, and a junior lien, other than a tax lien, in favor of the United States attaches to such property, such person may make a written request to the officer charged with the administration of the laws in respect of which the lien of the United States arises, to have the same extinguished. If after appropriate investigation, it appears to such officer that the proceeds from the sale of the property would be insufficient to wholly or partly satisfy the lien of the United States, or that the claim of the United States has been satisfied or by lapse of time or otherwise has become unenforceable, such officer may issue a certificate releasing the property from such lien.

(Historical and Revision Notes)

1948 ACT


Changes were made in phraseology.

**1949 ACT**

This amendment conforms the language of section 2410(b) of title 29, U.S.C., with that of the prior law with respect to service of process and complaint upon the United States in suits brought in State courts. This is provided for by rule 4(d)(4) of the Federal Rules of Civil Procedure with respect to such suits in United States district courts.

**REFERENCES IN TEXT**

Section 7425 of the Internal Revenue Code of 1986, referred to in subsec. (d), is classified to section 7425 of Title 26, Internal Revenue Code.

**AMENDMENTS**

1996—Subsec. (e). Pub. L. 104–306 struck out “shall so report to the Comptroller General who” after “unenforceable, such officer” in second sentence.


1990—Subsec. (c). Pub. L. 101–647 inserted at end “In any case where the United States is a bidder at the judicial sale, it may credit the amount determined to be due it against the amount it bids at such sales.”


“(1) to quiet title to,”

“(2) to foreclose a mortgage or other lien upon,”

“(3) to partition,”

“(4) to condemn, or

“(5) of interpleader or in the nature of interpleader with respect to.”

for “subject matter, to quiet title to or for the foreclosure of a mortgage or other lien upon”.

Subsec. (b). Pub. L. 89–719 substituted “complaint or pleading shall set forth” for “complaint shall set forth”. and inserted sentence requiring the complaint or pleading, in actions or suits involving liens arising under the internal revenue laws, to include the name and address of the taxpayer whose liability created the lien and, if a notice of the tax lien was filed, the identity of the internal revenue office which filed the notice, and the date and place such notice of lien was filed.

Subsec. (c). Pub. L. 89–719 substituted “judgment or decree in such action” for “judicial sale in such action”.

“discharge of the property from the mortgage or other lien” for “discharge of the property from liens and encumbrances”, and “place where the court is situated” for “place where the property is situated”, and

inserted provisions requiring an action to foreclose a mortgage or other lien, in which the United States is named as a party under this section, to seek a judicial sale, providing that the period of redemption where a sale is made with respect to a lien arising under the internal revenue laws is 120 days or the period allowable for redemption under State law, whichever is longer, and

prohibiting the right of redemption in any case which

under the provisions of section 1701k of Title 12 and section 1820(d) of Title 38, the right to redeem does not arise.

Subsecs. (d), (e). Pub. L. 89–719 added subsec. (d) and redesignated former subsec. (d) as (e).

1960—Subsec. (b). Pub. L. 86–507 inserted “or by certified mail,” after “registered mail,”.


1949—Subsec. (b). Act May 24, 1949, conferred section with that of prior law with respect to service of process and complaint upon the United States in suits brought in State courts.

**EFFECTIVE DATE OF 1990 AMENDMENT**

Amendment by Pub. L. 101–647 effective 180 days after Nov. 29, 1990, see section 3631 of Pub. L. 101–647, set out as an Effective Date note under section 3001 of this title.

**EFFECTIVE DATE OF 1966 AMENDMENT**


**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. 3239, Jan. 3, 1958, 24 F.R. 81, 73 Stat. cl6, as required by sections 1 and 8(c) of Pub. L. 85–508, see notes set out under section 81A of this title and preceding section 21 of Title 48, Territories and Insular Possessions.

**§ 2411. Interest**

In any judgment of any court rendered (whether against the United States, a collector or deputy collector of internal revenue, a former collector or deputy collector, or the personal representative in case of death) for any overpayment in respect of any internal-revenue tax, interest shall be allowed at the overpayment rate established under section 6621 of the Internal Revenue Code of 1986 upon the amount of the overpayment, from the date of the payment or collection thereof to a date preceding the date of the refund check by not more than thirty days, such date to be determined by the Commissioner of Internal Revenue. The Commissioner is authorized to tender by check payment of any such judgment, with interest as herein provided, at any time after such judgment becomes final, whether or not a claim for such payment has been duly filed, and such tender shall stop the running of interest, whether or not such refund check is accepted by the judgment creditor.


**HISTORICAL AND REVISION NOTES**

**1948 ACT**


Section consolidates section 765 with provisions of sections 931(a) and 932, all of title 28, U.S.C., 1940 ed., relating to interest on judgments, the latter two sections being applicable to judgments in tort claims cases. For other provisions of said sections 931(a) and 932, see Distribution Table. Said section 932 made the provisions of said section 765 applicable to such judgments, therefore the provisions of said section 931(a) that “the United States shall not be liable for interest prior to judgment” was omitted as covered by the language of said
section 765 providing that interest shall be computed from the date of the judgment.

Provisions of section 765 of title 28, U.S.C., 1949 ed., that when the findings of fact and the law applicable thereto have been filed in any case as provided in “section 763” (764) of title 28, U.S.C., 1949 ed., and the judgment or decree is adverse to the Government, it shall be the duty of the district attorney to transmit to the Attorney General of the United States certified copies of all the papers filed in the cause, with a transcript of the testimony taken, the written findings of the court, and his written opinion as to the same, that, whereupon, the Attorney General shall determine and direct whether an appeal shall be taken or not, and that, when so directed, the district attorney shall cause an appeal to be perfected in accordance with the terms of the statutes and rules of practice governing the same were omitted as unnecessary and covered by section 507 of this title which provides for supervision of United States attorneys by the Attorney General.

Words of section 765 of title 28, U.S.C., 1949 ed., “Until the time when an appropriation is made for the payment of the judgment or decree” were omitted and words “up to, but not exceeding, thirty days after the date of approval of any appropriation act providing for payment of the judgment” were substituted. Substituted words clarify meaning and are in accord with congressional procedure in annual deficiency appropriation acts for payment of judgments against the United States. The substituted words will obviate necessity of repeating such provisions in appropriation acts.

Changes were made in phraseology.

1949 ACT

This section amends section 2411 of title 28, U.S.C., by restoring the provisions of section 177 of the former Judicial Code for the payment of interest on tax refunds.

REFERENCES IN TEXT

Section 6621 of the Internal Revenue Code of 1986, referred to in text, is classified to section 6621 of Title 26, Internal Revenue Code.

AMENDMENTS

1986—Pub. L. 99–514, §1511(c)(18), substituted “the overpayment rate established under section 6621” for “the annual rate established under section 6621”.


1982—Pub. L. 97–164 struck out “(a)” before “in any judgment” and struck out subsec. (b) which provided that, except as otherwise provided in subsection (a) of this section, on all final judgments rendered against the United States in actions instituted under section 1346 of this title, interest was to be computed at the rate of 4 per centum per annum from the date of the judgment up to, but not exceeding, thirty days after the date of approval of any appropriation Act providing for payment of the judgment.

1975—Subsec. (a), Pub. L. 93–625 substituted “an annual rate established under section 6621 of the Internal Revenue Code of 1944” for “the rate of 6 per centum per annum”.

1969—Act May 24, 1949, restored provisions relating to payment of interest on tax refunds.

EFFECTIVE DATE OF 1986 AMENDMENT


EFFECTIVE DATE OF 1982 AMENDMENT


§ 2412. Costs and fees

(a)(1) Except as otherwise specifically provided by statute, a judgment for costs, as enumerated in section 1920 of this title, but not including the fees and expenses of attorneys, may be awarded to the prevailing party in any civil action brought by or against the United States or any agency or any official of the United States acting in his or her official capacity in any court having jurisdiction of such action. A judgment for costs when taxed against the United States shall, in an amount established by statute, court rule, or order, be limited to reimbursing in whole or in part the prevailing party for the costs incurred by such party in the litigation.

(2) A judgment for costs, when awarded in favor of the United States in an action brought by the United States, may include an amount equal to the filing fee prescribed under section 1914(a) of this title. The preceding sentence shall not be construed as requiring the United States to pay any filing fee.

(b) Unless expressly prohibited by statute, a court may award reasonable fees and expenses of attorneys, in addition to the costs which may be awarded pursuant to subsection (a), to the prevailing party in any civil action brought against the United States or any agency or any official of the United States acting in his or her official capacity in any court having jurisdiction of such action. The United States shall be liable for such fees and expenses to the same extent that any other party would be liable under the common law or under the terms of any statute which specifically provides for such an award.

(3)(1) Any judgment against the United States or any agency or any official of the United States acting in his or her official capacity for costs pursuant to subsection (a) shall be paid as provided in sections 2414 and 2517 of this title and shall be in addition to any relief provided in the judgment.

(2) Any judgment against the United States or any agency and any official of the United States acting in his or her official capacity for fees and expenses of attorneys pursuant to subsection (a) shall be paid as provided in sections 2414 and 2517 of this title, except that if the basis for the award is a finding that the United States acted in bad faith, then the award shall be paid by any agency found to have acted in bad faith and shall be in addition to any relief provided in the judgment.

(d)(1)(A) Except as otherwise specifically provided by statute, a court shall award to a prevailing party other than the United States fees and other expenses, in addition to any costs awarded pursuant to subsection (a), incurred by that party in any civil action (other than cases sounding in tort), including proceedings for judicial review of agency action, brought by or against the United States in any court having jurisdiction of that action, unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust.

(B) A party seeking an award of fees and other expenses shall, within thirty days of final judgment in the action, submit to the court an application for fees and other expenses which shows that the party is a prevailing party and is eligible to receive an award under this subsection, and the amount sought, including an
itemized statement from any attorney or expert witness representing or appearing in behalf of the party stating the actual time expended and the rate at which fees and other expenses were computed. The party shall also allege that the position of the United States was not substantially justified. Whether or not the position of the United States was substantially justified shall be determined on the basis of the record (including the record with respect to the action or failure to act by the agency upon which the civil action is based) which is made in the civil action for which fees and other expenses are sought.

(C) The court, in its discretion, may reduce the amount to be awarded pursuant to this subsection, or deny an award, to the extent that the prevailing party during the course of the proceedings engaged in conduct which unduly and unreasonably protracted the final resolution of the matter in controversy.

(D) If, in a civil action brought by the United States or a proceeding for judicial review of an adversary adjudication described in section 504(a)(4) of title 5, the demand by the United States is substantially in excess of the judgment finally obtained by the United States and is unreasonable when compared with such judgment, under the facts and circumstances of the case, the court shall award to the party the fees and other expenses related to defending against the excessive demand, unless the party has committed a willful violation of law or otherwise acted in bad faith, or special circumstances make an award unjust. Fees and expenses awarded under this subparagraph shall be paid only as a consequence of appropriations provided in advance.

(2) For the purposes of this subsection—

(A) “fees and other expenses” includes the reasonable expenses of expert witnesses, the reasonable cost of any study, analysis, engineering report, test, or project which is found by the court to be necessary for the preparation of the party’s case, and reasonable attorney fees (The amount of fees awarded under this subsection shall be based upon prevailing market rates for the kind and quality of the services furnished, except that (i) no expert witness shall be compensated at a rate in excess of the highest rate of compensation for expert witnesses paid by the United States; and (ii) attorney fees shall not be awarded in excess of $125 per hour unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee.);

(B) “party” means (i) an individual whose net worth did not exceed $2,000,000 at the time the civil action was filed, or (ii) any owner of an unincorporated business, or any partnership, corporation, association, unit of local government, or organization, the net worth of which did not exceed $7,000,000 at the time the civil action was filed, and which had not more than 500 employees at the time the civil action was filed; except that an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)(3)) exempt from taxation under section 501(a) of such Code, or a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)), may be a party regard

less of the net worth of such organization or cooperative association or for purposes of subsection (d)(1)(D), a small entity as defined in section 601 of title 5;

(C) “United States” includes any agency and any official of the United States acting in his or her official capacity;

(D) “position of the United States” means, in addition to the position taken by the United States in the civil action, the action or failure to act by the agency upon which the civil action is based; except that fees and expenses may not be awarded to a party for any portion of the litigation in which the party has unreasonably protracted the proceedings;

(E) “civil action brought by or against the United States” includes an appeal by a party, other than the United States, from a decision of a contracting officer rendered pursuant to a disputes clause in a contract with the Government or pursuant to chapter 71 of title 47;

(F) “court” includes the United States Court of Federal Claims and the United States Court of Appeals for Veterans Claims;

(G) “final judgment” means a judgment that is final and not appealable, and includes an order of settlement;

(H) “prevailing party”, in the case of eminent domain proceedings, means a party who obtains a final judgment (other than by settlement), exclusive of interest, the amount of which is at least as close to the highest valuation of the property involved that is attested to at trial on behalf of the property owner as it is to the highest valuation of the property involved that is attested to at trial on behalf of the Government; and

(I) “demand” means the express demand of the United States which led to the adversary adjudication, but shall not include a recitation of the maximum statutory penalty (i) in the complaint, or (ii) elsewhere when accompanied by an express demand for a lesser amount.

(3) In awarding fees and other expenses under this subsection to a prevailing party in any action for judicial review of an adversary adjudication, as defined in subsection (b)(1)(C) of section 504 of title 5, United States Code, or an adversary adjudication subject to chapter 71 of title 41, the court shall include in that award fees and other expenses to the same extent authorized in subsection (a) of such section, unless the court finds that during such adversary adjudication the position of the United States was substantially justified, or that special circumstances make an award unjust.

(4) Fees and other expenses awarded under this subsection to a party shall be paid by any agency over which the party prevails from any funds made available to the agency by appropriation or otherwise.

(e) The provisions of this section shall not apply to any costs, fees, and other expenses in connection with any proceeding to which section 7430 of the Internal Revenue Code of 1986 applies (determined without regard to subsections (b) and (f) of such section). Nothing in the preceding sentence shall prevent the awarding
under subsection (a) of section 2412 of title 26, United States Code, of costs enumerated in section 1920 of such title (as in effect on October 1, 1981).

(i) The United States appeals an award of costs or fees and other expenses made against the United States under this section and the award is affirmed in whole or in part, interest shall be paid on the amount of the award as affirmed. Such interest shall be computed at the rate determined under section 1961(a) of this title, and shall run from the date of the award through the day before the date of the mandate of affirmance.


HISTORICAL AND REVISION NOTES


Section consolidates the last sentence of section 931(a) of title 28, U.S.C. 1940 ed., with section 258 of said title 28. For other provisions of said section 931(a), see Distribution Table.

Subsection (a) is new. It follows the well-known common-law rule that a sovereign is not liable for costs unless specific provision for such liability is made by law. This is a corollary to the rule that a sovereign cannot be sued without its consent. Many enactments of Congress relating to fees and costs contain specific exceptions as to the liability of the United States. (See, for example, section 548 of title 28, U.S.C., 1940 ed.) A uniform rule, embodied in this section, will make such specific exceptions unnecessary.

Subsection (b) incorporates section 238 of title 28, U.S.C., 1940 ed.

Subsection (c) incorporates the costs provisions of section 931(a) of title 28, U.S.C., 1940 ed.

Words “and for summoning the same,” after “witnesses,” were omitted from subsection (b) as covered by “those actually incurred for witnesses.” Changes were made in phraseology.

REFERENCES IN TEXT

Section 7409 of the Internal Revenue Code of 1986, referred to in subsec. (c), is classified to section 7409 of Title 26, Internal Revenue Code.

AMENDMENTS


Subsec. (d)(2)(B). Pub. L. 104–121, § 232(b)(2), inserted before semicolon at end “or for purposes of subsection (d)(1)(D), a small entity as defined in section 601 of title 5.”


1995—Subsec. (d)(5). Pub. L. 104–66 struck out par. (5) which read as follows: “The Attorney General shall report annually to the Congress on the amount of fees and other expenses awarded during the preceding fiscal year pursuant to this subsection. The report shall describe the number, nature, and amount of the awards, the claims involved in the controversy, and any other relevant information which may aid the Congress in evaluating the scope and impact of such awards.”

1992—Subsec. (a). Pub. L. 102–572, § 301(a), designated existing provisions as par. (1) and added par. (2).


Pub. L. 102–573, § 506(a), inserted before semicolon at end “and the United States Court of Veterans Appeals”.

Subsec. (d)(5). Pub. L. 102–572, § 502(b), substituted “The Attorney General shall report annually to the Congress on” for “The Director of the Administrative Office of the United States Courts shall include in the annual report prepared pursuant to section 604 of this title.”.


1985—Subsecs. (a), (b). Pub. L. 99–80, § 2(a)(1), substituted “or any agency or any official of the United States” for “or any agency and any official of the United States”.

Subsec. (d). Pub. L. 99–80, § 6, repealed amendment made by Pub. L. 96–481, § 204(c), and provided that subsec. (d) was effective on or after Aug. 5, 1985, as if it had not been repealed by section 204(c). See 1980 Amendment note and Revival of Previously Repealed Provisions note below.


Subsec. (d)(1)(B). Pub. L. 99–80, § 2(b), inserted provisions directing that whether or not the position of the United States was substantially justified must be determined on the basis of the record (including the record with respect to the action or failure to act by the agency upon which the civil action was based) which is made in the civil action for which fees and other expenses are sought.

Subsec. (d)(2)(B). Pub. L. 99–80, § 2(c)(1), substituted “$2,000,000” for “$1,000,000” in cl. (i), and substituted “or (ii) any owner of an unincorporated business, or any partnership, corporation, association, unit of local government, or organization, the net worth of which did not exceed $7,000,000 at the time the civil action was filed, and which had not more than 500 employees at the time the civil action was filed; except that an organization described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)(3)) exempt from taxation under section 501(a) of such Code, or a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1414(a)), may be a party regardless of the net worth of such organization or cooperative association;” for “(ii) a sole owner of an unincorporated business, or a partnership, corporation, association, or organization whose net worth did not exceed $5,000,000 at the time the civil action was filed, except that an organization described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)(3)) exempt from taxation under section 501(a) of the Code and a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1414(a)), a party regardless of the net worth of such organization or cooperative association; or (iii) a sole owner of an unincorporated business, or a partnership, corporation, association, or organization, the net worth of which did not exceed $5,000,000 at the time the civil action was filed,” and added par. (ii).
tion, having not more than 500 employees at the time the civil action was filed; and”.


Subsec. (d)(4). Pub. L. 99–80, §2(d), amended par. (4) generally. Prior to amendment, par. (4) read as follows: “(A) Fees and other expenses awarded under this subsection may be paid by any agency over which the party prevails from any funds made available to the agency, by appropriation or otherwise, for such purpose. If not paid by any agency, the fees and other expenses shall be paid in the same manner as the payment of final judgments is made in accordance with sections 2414 and 2517 of this title.

“(B) There is authorized to be appropriated to each agency for each of the fiscal years 1982, 1983, and 1984, such sums as may be necessary to pay fees and other expenses awarded pursuant to this subsection in such fiscal years.”


1980—Pub. L. 96–481, §204(a), designated existing provisions as subsec. (a), struck out provision that payment of a judgment for costs shall be as provided in section 2414 and section 2517 of this title for the payment of judgments against the United States, and added subsecs. (b) to (d). Pub. L. 96–481, §204(c), repealed subsec. (d) eff. Oct. 1, 1984. See Effective Date of 1980 Amendment note below.

1966—Pub. L. 89–507 empowered a court having jurisdiction to award judgment for costs, except as otherwise specifically provided by statute, to the prevailing party in any action brought by or against the United States or any agency or official of the United States acting in its official capacity, limited the judgment for costs when taxed against the Government to reimbursing in whole or in part the prevailing party for costs incurred by him in the litigation, required the payment of a judgment for costs to be as provided in section 2414 and section 2517 of this title for the payment of judgments against the United States and eliminated provisions which limited the liability of the United States for fees and costs to those cases in which liability was expressed provided for by Act of Congress, permitted the district court or the Court of Claims, in an action under section 1346(a) or 1491 of this title if the United States put in issue plaintiff’s right to recover, to allow under section 1346(b) of this title for the payment of judgments against the United States and to prior board of contracts appeals cases, see section 208 of Pub. L. 96–481, set out as a note under section 504 of Title 5, Government Organization and Employees.

Effective Date of 1980 Amendment

Amendment by Pub. L. 96–848 applicable to cases pending on or commenced on or after Aug. 5, 1985, but with provision for additional applicability to certain prior cases and to prior board of contracts appeals cases, see section 7 of Pub. L. 99–80, set out as a note under section 504 of Title 5, Government Organization and Employees.

Effective Date of 1982 Amendment

Amendment by Pub. L. 97–248 applicable to civil actions or proceedings commenced after Feb. 28, 1983, see section 202(e)(1) of Pub. L. 97–248, set out as an Effective Date note under section 7343 of Title 26, Internal Revenue Code.

Effective Date of 1980 Amendment

Amendment by section 204(a) of Pub. L. 96–481 effective Oct. 1, 1981, and applicable to any adversary adjudication, as defined in section 506(b)(1)(C) of Title 5, Government Organization and Employees, and any civil action or adversary adjudication described in this section which is pending on, or commenced on or after, such date, see section 208 of Pub. L. 96–481, set out as an Effective Date note under section 504 of Title 5.

Section 204(c) of Pub. L. 96–481 which provided in part that effective Oct. 1, 1984, subsec. (d) of this section is repealed, except that the provisions of subsec. (d) shall continue to apply through final disposition of any adversary adjudication initiated before the date of repeal, was repealed by Pub. L. 99–80, §6(b)(2), Aug. 5, 1985, 99 Stat. 186.

Effective Date of 1966 Amendment

Section 3 of Pub. L. 89–507 provided that: “These amendments (amending this section and section 2520 of this title) shall apply only to judgments entered in actions filed subsequent to the date of enactment of this Act [July 18, 1966]. These amendments shall not authorize the reopening or modification of judgments entered prior to the enactment of this Act.”

Revival of Previously Repelled Provisions

For revival of subsec. (d) of this section effective on or after Aug. 5, 1985, as if it had not been repealed by section 204(c) of Pub. L. 96–481, and repeal of section 204(c) of Pub. L. 96–481, see section 6 of Pub. L. 99–80, set out as a note under section 504 of Title 5, Government Organization and Employees.

Savings Provision

Section 206 of Pub. L. 96–481, as amended by Pub. L. 99–80, §3, Aug. 5, 1985, 99 Stat. 186, provided that: “(a) Except as provided in subsection (b), nothing in section 2412(d) of title 28, United States Code, as added by section 204(a) of this title, alters, modifies, repeals, invalidates, or supersedes any other provision of Federal law which authorizes an award of such fees and other expenses to any party other than the United States that prevails in any civil action brought by or against the United States.

“(b) Section 206(b) of the Social Security Act (42 U.S.C. section 1396(b)(1)) shall not prevent an award of fees and other expenses under section 2412(d) of title 28, United States Code. Section 206(b)(2) of the Social Security Act shall not apply with respect to any such award but, only if, where the claimant’s attorney receives fees for the same work under both section 206(b) of that Act and
section 2412(d) of title 28, United States Code, the claimant’s attorney refunds to the claimant the amount of the smaller fee.”

AUTHORITY OF COURT OF APPEALS FOR VETERANS CLAIMS TO AWARD FEES UNDER EQUAL ACCESS TO JUSTICE ACT FOR NON-ATTORNEY PRACTITIONERS

Pub. L. 107–330, title IV, § 493, Dec. 6, 2002, 116 Stat. 2833, provided that: “The authority of the United States Court of Appeals for Veterans Claims to award reasonable fees and expenses of attorneys under section 2412(d) of title 28, United States Code, shall include authority to award fees and expenses, in an amount determined appropriate by the United States Court of Appeals for Veterans Claims, of individuals admitted to practice before the Court as non-attorney practitioners under subsection (b) or (c) of Rule 46 of the Rules of Practice and Procedure of the United States Court of Appeals for Veterans Claims.”

NONLIABILITY OF JUDICIAL OFFICERS FOR COSTS

Pub. L. 104–317, title III, § 309(a), Oct. 19, 1996, 110 Stat. 3833, provided that: “Notwithstanding any other provision of law, no judicial officer shall be held liable for any costs, including attorney’s fees, in any action brought against such officer for an act or omission taken in such officer’s judicial capacity, unless such action was clearly in excess of such officer’s jurisdiction.”

FEES AGREEMENTS

Section 506(c) of Pub. L. 102–372 provided that: “Section 5904(d) of title 28, United States Code, shall not prevent an award of fees and other expenses under section 2412(d) of title 28, United States Code. Section 5904(d) of title 28, United States Code, shall not apply with respect to any such award but only if, where the claimant’s attorney receives fees for the same work under both section 5904 of title 28, United States Code, and section 2412(d) of title 28, United States Code, the claimant’s attorney refunds to the claimant the amount of the smaller fee.”

§ 2413. Executions in favor of United States

A writ of execution on a judgment obtained for the use of the United States in any court thereof shall be issued from and made returnable to the court which rendered the judgment, but may be executed in any other State, in any Territory, or in the District of Columbia.

(June 25, 1948, ch. 646, 62 Stat. 974.)

HISTORICAL AND REVISION NOTES


Similar provisions of section 226 of title 31, U.S.C., 1940 ed., relating to judgments of the court of claims are incorporated in section 2517 of this title.

The second paragraph was added to make clear that the payment of judgments not appealed may be expedited by certificate to that effect.

Changes were made in phrasology.

AMENDMENTS


1961—Pub. L. 87–187 provided for payment of final judgments rendered by the Court of International Trade against the United States on settlements by the General Accounting Office.


Effective Date of 1980 Amendment

Amendment by Pub. L. 96–417 effective Nov. 1, 1980, and applicable with respect to civil actions pending on or commenced on or after such date, see section 721(a) of Pub. L. 96–417, set out as a note under section 251 of this title.

Effective Date of 1978 Amendment

Amendment by Pub. L. 95–563 effective with respect to contracts entered into 120 days after Nov. 1, 1978, and, at the election of the contractor, with respect to any claim pending at such time before the contracting officer or initiated thereafter, see section 361 of former Title 41, Public Contracts.
§ 2415. Time for commencing actions brought by the United States

(a) Subject to the provisions of section 2416 of this title, and except as otherwise provided by Congress, every action for money damages brought by the United States or an officer or agency thereof which is founded upon any contract express or implied in law or fact, shall be barred unless the complaint is filed within six years after the right of action accrues or within one year after final decisions have been rendered in applicable administrative proceedings required by contract or by law, whichever is later: Provided, That in the event of later partial payment or written acknowledgment of debt, the right of action shall be deemed to accrue again at the time of each such payment or acknowledgment: Provided further, That an action for money damages brought by the United States for or on behalf of a recognized tribe, band or group of American Indians shall not be barred unless the complaint is filed more than six years and ninety days after the right of action accrued: Provided further, That an action for money damages which accrued on the date of enactment of this Act and in accordance with subsection (g) brought by the United States or on behalf of a recognized tribe, band, or group of American Indians, or on behalf of an individual Indian whose land is held in trust or restricted status, shall not be barred unless the complaint is filed sixty days after the date of publication of the list required by section 4(c) of the Indian Claims Limitation Act of 1982: Provided, That, for those claims that are on either of the two lists published pursuant to the Indian Claims Limitation Act of 1982, any right of action shall be barred unless the complaint is filed within six years after the right of action accrues: Provided, That, in the event of later partial payment or written acknowledgment of debt, the right of action shall be deemed to accrue again at the time of each such payment or acknowledgment.

(b) Subject to the provisions of section 2416 of this title, and except as otherwise provided by Congress, every action for money damages brought by the United States or an officer or agency thereof which is founded upon a tort shall be barred unless the complaint is filed within three years after the right of action first accrues: Provided, That an action to recover damages resulting from a trespass on lands of the United States; an action to recover damages resulting from fire to such lands; an action to recover for diversion of money paid under a grant program; and an action for conversion of property of the United States may be brought in an amount not to exceed the amount of the final decision has been rendered in applicable administrative proceedings required by contract or by law, whichever is later.

(c) Subject to the provisions of section 2416 of this title, an action for conversion of property of the United States may be brought within sixty days after the date of the publication of the list required by section 4(c) of the Indian Claims Limitation Act of 1982: Provided, That, for those claims that are on either of the two lists published pursuant to the Indian Claims Limitation Act of 1982, any right of action shall be barred unless the complaint is filed within one year after the publication of the list required by section 4(c) of the Indian Claims Limitation Act of 1982: Provided, That, for those claims that are on either of the two lists published pursuant to the Indian Claims Limitation Act of 1982, any right of action shall be barred unless the complaint is filed within one year after the Secretary of the Interior has published the Federal Register notice rejecting such claim or (2) three years after the Secretary of the Interior has submitted legislation or legislative report to Congress to resolve such claim.

(d) Subject to the provisions of section 2416 of this title and except as otherwise provided by Congress, every action for the recovery of money erroneously paid to or on behalf of any civilian employee of any agency of the United States or to or on behalf of any member or dependent of any member of the uniformed services of the United States, incident to the employment or services of such employee or member, shall be barred unless the complaint is filed within six years after the right of action accrues: Provided, That, in the event of later partial payment or written acknowledgment of debt, the right of action shall be deemed to accrue again at the time of each such payment or acknowledgment.

(e) In the event that any action to which this section applies is timely brought and is thereafter dismissed without prejudice, the action may be recommenced within one year after such dismissal, regardless of whether the action would otherwise then be barred by this section. In any action so recommenced the defendant shall not be barred from interposing any claim which would not have been barred in the original action.

(f) The provisions of this section shall not prevent the assertion, in an action against the United States or an officer or agency thereof for any claim of the United States or an officer or agency thereof against an opposing party, a coparty, or a third party that arises out of the transaction or occurrence that is the subject matter of the opposing party's claim. A claim of the United States or an officer or agency thereof that does not arise out of the transaction or occurrence that is the subject matter of the opposing party's claim may, if time-barred, be asserted only by way of offset and may be allowed in an amount not to exceed the amount of the opposing party's recovery.

(g) Any right of action subject to the provisions of this section which accrued prior to the date of enactment of this Act shall, for purposes of this section, be deemed to have accrued on the date of enactment of this Act.

(h) Nothing in this Act shall apply to actions brought under the Internal Revenue Code or incidental to the collection of taxes imposed by the United States.
(i) The provisions of this section shall not prevent the United States or an officer or agency thereof from collecting any claim of the United States by means of administrative offset, in accordance with section 3716 of title 31.


REFERENCES IN TEXT

The date of enactment of this Act, referred to in subsecs. (a), (b), and (g), means the date of enactment of Pub. L. 89–505, which was approved July 18, 1966.


This Act, referred to in subsec. (h), probably means Pub. L. 98–505, July 18, 1966, 80 Stat. 304, which enacted this section and section 2146 of this title. For complete classification of this Act to the Code, see Tables.

AMENDMENTS


1982—Subsec. (a). Pub. L. 97–394, §2(a), substituted “sixty days after the date of publication of the list required by section 4(c) of the Indian Claims Act of 1982: Provided, That, for those claims that are on either of the two lists published pursuant to the Indian Claims Act of 1982, any right of action shall be barred unless the complaint is filed within (1) one year after the Secretary of the Interior has published in the Federal Register a notice rejecting such claim or (2) three years after the date the Secretary of the Interior has submitted additional information as may be needed to identify specific location of each claim and only such other additional information as may be needed to identify specifically such claims.

Subsec. (b). Pub. L. 97–394, §2(b), substituted “sixty days after the date of the publication of the list required by section 4(c) of the Indian Claims Act of 1982: Provided, That, for those claims that are on either of the two lists published pursuant to the Indian Claims Act of 1982, any right of action shall be barred unless the complaint is filed within (1) one year after the Secretary of the Interior has published in the Federal Register a notice rejecting such claim or (2) three years after the date the Secretary of the Interior has submitted legal or legislative report to Congress to resolve such claim” for “‘December 31, 1982’ in third proviso.


Subsec. (b). Pub. L. 96–217, §1(b), substituted “‘December 31, 1982’” for “‘April 1, 1980’”.

1979—Subsec. (a). Pub. L. 95–103, §1(a), substituted “‘after April 1, 1980’” for “‘after August 18, 1977’”.

Pub. L. 95–64, §1(a), substituted “unless the complaint is filed more than ten years after the right of action accrues” in proviso covering actions for or on behalf of recognized tribes, bands, or groups of American Indians, including actions related to allotted trust or restricted Indian lands, or on behalf of an individual Indian whose land is held in trust or restricted status based upon rights of action which accrued on July 18, 1966, in accordance with subsec. (g).

1972—Subsec. (a). Pub. L. 92–485, §1(a), inserted proviso relating to actions for money damages brought by the United States for or on behalf of a recognized tribe, band, or group of American Indians, or on behalf of an individual Indian whose land is held in trust or restricted status.

Pub. L. 92–353, §1(a), inserted proviso that an action for money damages brought by the United States on behalf of American Indians shall not be barred unless the complaint is filed more than six years and ninety days after the right of action accrued.

Subsec. (b). Pub. L. 92–485, §1(b), inserted exception relating to actions for or on behalf of a recognized tribe, band, or group of American Indians, including actions relating to allotted trust or restricted Indian lands, or on behalf of an individual Indian whose land is held in trust or restricted status.

Pub. L. 92–353, §1(b), increased the period of limitation to six years and ninety days for actions brought by the United States under the subsection for or on behalf of American Indians.

SHORT TITLE OF 1982 AMENDMENT


PUBLICATION OF LIST OF INDIAN CLAIMS; ADDITIONAL CLAIMS; TIME TO COMMENCE ACTION; REJECTION OF CLAIMS; CLAIMS RESOLVED BY LEGISLATION

Sections 3 to 6 of Pub. L. 97–394 provided that: “SEC. 3. (a) Within ninety days after the enactment of this Act [Dec. 30, 1982], the Secretary of the Interior (hereinafter referred to as the ‘Secretary’) shall publish in the Federal Register a list of all claims accruing to any tribe, band or group of Indians or individual on or before July 18, 1966, which have at any time been identified by or submitted to the Secretary under the ‘Statute of Limitation Project’ undertaken by the Department of the Interior and which, but for the provisions of this Act [see Short Title of 1982 Amendment note above], would be barred by the provisions of section 2415 of title 28, United States Code: Provided, That the Secretary shall have the discretion to exclude from such list any matter which was erroneously identified as a claim and which has no legal merit whatsoever.

(b) Such list shall group the claims on a reservation-by-reservation, tribe-by-tribe, or State-by-State basis, as appropriate, and shall state the nature and geographic location of each claim and only such other additional information as may be needed to identify specifically such claims.

(c) Within thirty days after the publication of this list, the Secretary shall provide a copy of the Indian Claims Limitation Act of 1982 [see Short Title of 1982 Amendment note above] and a copy of the Federal Register containing this list, or such parts as may be pertinent, to each Indian tribe, band or group whose rights are affected by the rights of whose members could be affected by the provisions of section 2415 of title 28, United States Code.
“SEC. 4. (a) Any tribe, band or group of Indians or any individual Indian shall have one hundred and eighty days after the date of the publication in the Federal Register of the list provided for in section 3 of this Act to submit to the Secretary any additional specific claim or claims which such tribe, band or group of Indians or individual Indian believes may be affected by section 2415 of title 28, United States Code, and desiring to have considered for litigation or legislation by the United States.

(b) Any such claim submitted to the Secretary shall be accompanied by a statement identifying the nature of the claim, the date when the right of action allegedly accrued, the names of the potential plaintiffs and defendants, if known, and such other information needed to identify and evaluate such claim.

(c) Not more than thirty days after the expiration of the one hundred and eighty day period provided for in subsection (a) of this section, the Secretary shall publish in the Federal Register a list containing the additional claims submitted during such period: Provided, That the Secretary shall have the discretion to exclude from such list any matter which has not been sufficiently identified as a claim.

“SEC. 5. (a) Any right of action shall be barred sixty days after the date of the publication of the list required by section 4(c) of this Act for those pre-1966 claims which, but for the provisions of this Act [see Short Title of 1982 Amendment note above], would have been barred by section 2415 of title 28, United States Code, unless such claims are included on either of the lists required by section 3 or 4(c) of this Act.

(b) If the Secretary decides to reject for litigation any of the claims or groups or categories of claims contained on either of the lists required by section 3 or 4(c) of this Act, he shall send a report to the appropriate tribe, band, or group of Indians, whose rights or the rights of whose members could be affected by such rejection, advising them of his decision. The report shall identify the nature and geographic location of each rejected claim and the name of the potential plaintiffs and defendants if they are known or can be reasonably ascertained and shall, briefly, state the reasons why such claim or claims were rejected for litigation. Where the Secretary knows or can reasonably ascertain the identity of any of the potential individual Indian plaintiffs and their present addresses, he shall provide them with written notice of such rejection. Upon the request of any Indian claimant, the Secretary shall, without undue delay, provide to such claimant any nonprivileged research materials or evidence gathered by the United States in the documentation of such claim.

(c) The Secretary, as soon as possible after providing the report required by subsection (b) of this section, shall publish a notice in the Federal Register identifying the claims covered in such report. With respect to any claim covered by such report, any right of action shall be barred unless the complaint is filed within one year after the date of publication in the Federal Register.

“SEC. 6. (a) If the Secretary determines that any claim or claims contained in either of the lists as provided in sections 3 or 4(c) of this Act is not appropriate for litigation, but determines that such claims may be appropriately resolved by legislation, he shall submit to the Congress legislation to resolve such claims or shall submit to Congress a report setting out options for legislative resolution of such claims.

(b) Any right of action on claims covered by such legislation or report shall be barred unless the complaint is filed within 3 years after the date of submission of such legislation or legislative report to Congress.”

LEGISLATIVE PROPOSALS RESPECTING APPROPRIATENESS OF RESOLUTION BY LITIGATION OF UNRESOLVED INDIAN CLAIMS

Section 2 of Pub. L. 96–217 provided that: “Not later than June 30, 1981, the Secretary of the Interior, after consultation with the Attorney General, shall submit to the Congress legislative proposals to resolve those Indian claims subject to the amendments made by the first section of this Act [amending this section] that the Secretary or the Attorney General believes are not appropriate to resolve by litigation.”

§ 2416. Time for commencing actions brought by the United States—Exclusions

For the purpose of computing the limitations periods established in section 2415, there shall be excluded all periods during which—

(a) the defendant or the res is outside the United States, its territories and possessions, the District of Columbia, or the Commonwealth of Puerto Rico; or

(b) the defendant is exempt from legal process because of infancy, mental incompetence, diplomatic immunity, or for any other reason;

(c) facts material to the right of action are not known and reasonably could not be known by an official of the United States charged with the responsibility to act in the circumstances;

(d) the United States is in a state of war declared pursuant to article I, section 8, of the Constitution of the United States.

(Amended Pub. L. 89–505, § 1, July 18, 1966, 80 Stat. 305.)

CHAPTER 163—FINES, PENALTIES AND FORFEITURES

Sec. 2461. Mode of recovery.

2462. Time for commencing proceedings.

2463. Property taken under revenue law not repleviable.

2464. Security; special bond.

2465. Return of property to claimant; liability for wrongful seizure; attorney fees, costs, and interest.

2466. Fugitive disentitlement.

2467. Enforcement of foreign judgment.

AMENDMENTS

2000—Pub. L. 106–185, §§ 4(b), 14(b), 15(b), Apr. 25, 2000, 114 Stat. 213, 219, 221, substituted “Return of property to claimant; liability for wrongful seizure; attorney fees, costs, and interest” for “Return of property to claimant; certificate of reasonable cause; liability for wrongful seizure” in item 2465 and added items 2466 and 2467.

§ 2461. Mode of recovery

(a) Whenever a civil fine, penalty or pecuniary forfeiture is prescribed for the violation of an Act of Congress without specifying the mode of recovery or enforcement thereof, it may be recovered in a civil action.

(b) Unless otherwise provided by Act of Congress, whenever a forfeiture of property is prescribed as a penalty for violation of an Act of Congress and the seizure takes place on the high seas or on navigable waters within the admiralty and maritime jurisdiction of the United States, such forfeiture may be enforced by libel in admiralty but in cases of seizures on land the forfeiture may be enforced by a proceeding by libel which shall conform as near as may be to proceedings in admiralty.

(c) If a person is charged in a criminal case with a violation of an Act of Congress for which
the civil or criminal forfeiture of property is authorized, the Government may include notice of the forfeiture in the indictment or information pursuant to the Federal Rules of Criminal Procedure. If the defendant is convicted of the offense giving rise to the forfeiture, the court shall order the forfeiture of the property as part of the sentence in the criminal case pursuant to section 3554 of title 18, United States Code. The procedures in section 413 of the Controlled Substances Act (21 U.S.C. 853) apply to all stages of a criminal forfeiture proceeding, except that subsection (d) of such section applies only in cases in which the defendant is convicted of a violation of such Act.

(June 25, 1948, ch. 646, § 16, 62 Stat. 974; Pub. L. 106–185, § 16, Apr. 25, 2000, 114 Stat. 221; Pub. L. 93–642, § 16, Apr. 25, 2000, 114 Stat. 221; Pub. L. 80–29, § 16, Aug. 15, 1949, 63 Stat. 557.) When the defendant is convicted of the offense giving rise to the forfeiture, the court shall order the forfeiture of the property in accordance with the procedures set forth in section 413 of the Controlled Substances Act (21 U.S.C. 853), other than subsection (d) of that section."

Subsection (b) is in conformity with Rule 21 of the Supreme Court Admiralty Rules. Enforcement of a libel may be filed for seizure for any breach of any enactment of Congress, whether on land or on the high seas or on navigable waters within the admiralty and maritime jurisdiction of the United States. Such rule also permits an information to be filed, but is rarely, if ever, used at present. Consequently, "information" has been omitted from the text and only "libel" is incorporated.

REFERENCES IN TEXT

The Federal Rules of Criminal Procedure, referred to in subsec. (c), are set out in the Appendix to Title 18, Crimes and Criminal Procedure.

The Controlled Substances Act, referred to in subsec. (c), is title II of Pub. L. 91–513, Oct. 27, 1970, 84 Stat. 1242, as amended, which is classified principally to subchapter I of chapter 3565 of Title 21, Drug Abuse and Drug and Alcohol Addiction Control, incorporated in section 413 of the Controlled Substances Act (21 U.S.C. 853), other than subsection (d) of that section.

2006—Subsec. (c). Pub. L. 109–177 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: "If a forfeiture of property is authorized in connection with a violation of an Act of Congress, and any person is charged in an indictment or information for such violation but no specific statutory provision is made for criminal forfeiture upon conviction, the Government may include the forfeiture in the indictment or information in accordance with the Federal Rules of Criminal Procedure, and upon conviction, the court shall order the forfeiture of the property in accordance with the procedures set forth in section 413 of the Controlled Substances Act (21 U.S.C. 853), other than subsection (d) of that section."

Effective Date of 2000 Amendment

Amendment by Pub. L. 106–185 applicable to any forfeiture proceeding commenced on or after the date that is 120 days after Apr. 25, 2000, see section 21 of Pub. L. 106–185, set out as a note under section 1324 of Title 8, Aliens and Nationality.

FEDERAL CIVIL PENALTIES INFLATION ADJUSTMENT


"SHORT TITLE

"SECTION 1. This Act may be cited as the 'Federal Civil Penalties Inflation Adjustment Act of 1990'."

"FINDINGS AND PURPOSE

"SEC. 2. (a) FINDINGS.—The Congress finds that—

"(1) the power of Federal agencies to impose civil monetary penalties for violations of Federal law and regulations plays an important role in deterring violations and furthering the policy goals embodied in such laws and regulations;"
§ 2462. TIME FOR COMMENCING PROCEEDINGS

Except as otherwise provided by Act of Congress, an action, suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise, shall not be entertained unless commenced within five years from the date when the claim first accrued if, within the same period, the offender or the property is found within the United States in order that proper service may be made thereon.

(June 25, 1948, ch. 646, 62 Stat. 974.)

§ 2463. PROPERTY TAKEN UNDER REVENUE LAW NOT REPLEVIBLE

All property taken or detained under any revenue law of the United States shall not be replevible, but shall be deemed to be in the custody of the law and subject only to the orders and decrees of the courts of the United States having jurisdiction thereof.

(June 25, 1948, ch. 646, 62 Stat. 974.)

§ 2464. SECURITY; SPECIAL BOND

(a) Except in cases of seizures for forfeiture under any law of the United States, whenever a warrant of arrest or other process in rem is issued in any admiralty case, the United States marshal shall stay the execution of such process, or discharge the property arrested if the process has been levied, on receiving from the respondent or claimant of the property a bond or stipulation in double the amount claimed by the libellant, with sufficient surety, to be approved by the judge of the district court where the case is pending, or, in his absence, by the collector of the port, conditioned to answer the decree of the

"(b) DEFINITION.—For purposes of subsection (a), the term ‘cost-of-living adjustment’ means the percentage (if any) for each civil monetary penalty by which—

"(1) the Consumer Price Index for the month of June of the calendar year preceding the adjustment, exceeds

"(2) the Consumer Price Index for the month of June of the calendar year in which the amount of such civil monetary penalty was last set or adjusted pursuant to law.

"SEC. 6. Any increase under this Act in a civil monetary penalty shall apply only to violations which occur after the date the increase takes effect."

court in such case. Such bond or stipulation shall be returned to the court, and judgment or decree thereon, against both the principal and sureties, may be secured at the time of rendering the decree in the original case. The owner of any surety may deliver to the marshal a bond or stipulation, with sufficient surety, to be approved by the judge of the district court, conditioned to answer the decree of such court in all or any cases that are brought thereafter in such court against the vessel. Thereupon the execution of all such process against such vessel shall be stayed so long as the amount secured by such bond or stipulation is at least double the aggregate amount claimed by libellants in such suits which are begun and pending against such vessel. Similar judgments or decrees and remedies may be had on such bond or stipulation as if a special bond or stipulation had been filed in each of such suits.

(b) The court may make necessary orders to carry this section into effect, particularly in giving proper notice of any such suit. Such bond or stipulation shall be indorsed by the clerk with a minute of the suits wherein process is so stayed. Further security may be required by the court at any time.

(c) If a special bond or stipulation in the particular case is given under this section, the liability as to said case on the general bond or stipulation shall cease. The parties may stipulate the amount of the bond or stipulation for the release of a vessel or other property to be not more than the amount claimed in the libel, with interest, plus an allowance for libellant's costs. In the event of the inability or refusal of the parties to so stipulate, the court shall fix the amount, but if not so fixed then a bond shall be required in the amount prescribed in this section.

(June 25, 1948, ch. 646, 62 Stat. 974.)

HISTORICAL AND Revision Notes


Changes were made in phraseology.

TRANSFER OF FUNCTIONS

All offices of collector of customs, comptroller of customs, surveyor of customs, and appraiser of merchandise of Bureau of Customs of Department of the Treasury to which appointments were required to be made by the President with the advice and consent of the Senate were ordered abolished, with such offices to be terminated not later than Dec. 31, 1966, by Reorg. Plan No. 1, of 1965, eff. May 25, 1965, 30 F.R. 7035, 79 Stat. 1317, set out in the Appendix to Title 5, Government Organization and Employees. All functions of the offices eliminated were already vested in the Secretary of the Treasury by Reorg. Plan No. 26 of 1950, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in the Appendix to Title 5.

§2465. Return of property to claimant; liability for wrongful seizure; attorney fees, costs, and interest

(a) Upon the entry of a judgment for the claimant in any proceeding to condemn or forfeit property seized or arrested under any provision of Federal law—

(1) such property shall be returned forthwith to the claimant or his agent; and

(2) if it appears that there was reasonable cause for the seizure or arrest, the court shall cause a proper certificate thereof to be entered and, in such case, neither the person who made the seizure or arrest nor the prosecutor shall be liable to suit on judgment on account of such suit or proceeding, nor shall the claimant be entitled to costs, except as provided in subsection (b).

(b)(1) Except as provided in paragraph (2), in any civil proceeding to forfeit property under any provision of Federal law in which the claimant substantially prevails, the United States shall be liable for—

(A) reasonable attorney fees and other litigation costs reasonably incurred by the claimant;

(B) post-judgment interest, as set forth in section 1961 of this title; and

(C) in cases involving currency, other negotiable instruments, or the proceeds of an interlocutory sale—

(i) interest actually paid to the United States from the date of seizure or arrest of the property that resulted from the investment of the property in an interest-bearing account or instrument; and

(ii) an imputed amount of interest that such currency, instruments, or proceeds would have earned at the rate applicable to the 30-day Treasury Bill, for any period during which no interest was paid (not including any period when the property reasonably was in use as evidence in an official proceeding or in conducting scientific tests for the purpose of collecting evidence), commencing 15 days after the property was seized by a Federal law enforcement agency, or was turned over to a Federal law enforcement agency by a State or local law enforcement agency.

(2)(A) The United States shall not be required to disgorge the value of any intangible benefits nor make any other payments to the claimant not specifically authorized by this subsection.

(B) The provisions of paragraph (1) shall not apply if the claimant is convicted of a crime for which the interest of the claimant in the property was subject to forfeiture under a Federal criminal forfeiture law.

(C) If there are multiple claims to the same property, the United States shall not be liable for costs and attorneys fees associated with any such claim if the United States—

(i) promptly recognizes such claim;

(ii) promptly returns the interest of the claimant in the property to the claimant, if the property can be divided without difficulty and there are no competing claims to that portion of the property;

(iii) does not cause the claimant to incur additional, reasonable costs or fees; and

(iv) prevails in obtaining forfeiture with respect to one or more of the other claims.

(D) If the court enters judgment in part for the claimant and in part for the Government, the court shall reduce the award of costs and attorneys fees accordingly.

amended Pub. L. 106–185, set out as a note under section 2132 of Title 8, Aliens and Nationality.

§ 2466. Fugitive disentitlement

(a) A judicial officer may disallow a person from using the resources of the courts of the United States in furtherance of a claim in any related civil forfeiture action or a claim in third party proceedings in any related criminal forfeiture action upon a finding that such person—

(1) after notice or knowledge of the fact that a warrant or process has been issued for his apprehension, in order to avoid criminal prosecution—

(A) purposely leaves the jurisdiction of the United States;

(B) declines to enter or reenter the United States to submit to its jurisdiction; or

(C) otherwise evades the jurisdiction of the court in which a criminal case is pending against the person; and

(2) is not confined or held in custody in any other jurisdiction for commission of criminal conduct in that jurisdiction.

(b) Subsection (a) may be applied to a claim filed by a corporation if any majority shareholder, or individual filing the claim on behalf of the corporation is a person to whom subsection (a) applies.

ment rendered is in force and is not subject to appeal; and

(D) such additional information and evidence as may be required by the Attorney General or the designee of the Attorney General.

(2) Certification of Request.—The Attorney General or the designee of the Attorney General shall determine whether, in the interest of justice, to certify the request, and such decision shall be final and not subject to either judicial review or review under subchapter II of chapter 5, or chapter 7, of title 5 (commonly known as the "Administrative Procedure Act").

(c) Jurisdiction and Venue.—

(1) In General. —If the Attorney General or the designee of the Attorney General certifies a request under subsection (b), the United States may file an application on behalf of a foreign nation in district court of the United States seeking to enforce the foreign forfeiture or confiscation judgment as if the judgment had been entered by a court in the United States.

(2) Proceedings. —In a proceeding filed under paragraph (1)—

(A) the United States shall be the applicant and the defendant or another person or entity affected by the forfeiture or confiscation judgment shall be the respondent;

(B) venue shall lie in the district court for the District of Columbia or in any other district in which the defendant or the property may be the basis for satisfaction of a judgment under this section may be found; and

(C) the district court shall have personal jurisdiction over a defendant residing outside of the United States if the defendant is served with process in accordance with rule 4 of the Federal Rules of Civil Procedure.

(d) Entry and Enforcement of Judgment.—

(1) In General. —The district court shall enter such orders as may be necessary to enforce the judgment on behalf of the foreign nation unless the court finds that—

(A) the judgment was rendered under a system that provides tribunals or procedures incompatible with the requirements of due process of law;

(B) the foreign court lacked personal jurisdiction over the defendant;

(C) the foreign court lacked jurisdiction over the subject matter;

(D) the foreign nation did not take steps, in accordance with the principles of due process, to give notice of the proceedings to a person with an interest in the property of the proceedings in sufficient time to enable him or her to defend; or

(E) the judgment was obtained by fraud.

(2) Process. —Process to enforce a judgment under this section shall be in accordance with rule 69(a) of the Federal Rules of Civil Procedure.

(3) Preservation of Property.—

(A) Restraining Orders.—

(i) In General. —To preserve the availability of property subject to civil or criminal forfeiture under foreign law, the Government may apply for, and the court may issue, a restraining order at any time before or after the initiation of forfeiture proceedings by a foreign nation.

(ii) Procedures.—

(I) In General. —A restraining order under this subparagraph shall be issued in a manner consistent with subparagraphs (A), (C), and (E) of paragraph (1) and the procedural due process protections for a restraining order under section 983(j) of title 18.

(B) Evidence. —The court, in issuing a restraining order under subparagraph (A)—

(i) may rely on information set forth in an affidavit describing the nature of the proceeding or investigation underway in the foreign country, and setting forth a reasonable basis to believe that the property to be restrained will be named in a judgment of forfeiture at the conclusion of such proceeding; or

(ii) may register and enforce a restraining order under subparagraph (A) on any ground that may be the basis for satisfaction of a judgment requiring the payment of a sum of money submitted for registration.

(C) Limit on grounds for objection.—No person may object to a restraining order under subparagraph (A) on any ground that is the subject of parallel litigation involving the same property that is pending in a foreign court.

(D) Finality of Foreign Findings.—In entering orders to enforce the judgment, the court shall be bound by the findings of fact to the extent that they are stated in the foreign forfeiture or confiscation judgment.

(E) Currency Conversion.—The rate of exchange in effect at the time the suit to enforce is filed by the foreign nation shall be used in calculating the amount stated in any forfeiture or confiscation judgment requiring the payment of a sum of money submitted for registration.


References in Text

The Federal Rules of Civil Procedure, referred to in subsecs. (c)(2)(C) and (d)(2), are set out in the Appendix to this title.
2501. Time for filing suit

Every claim of which the United States Court of Federal Claims has jurisdiction shall be barred unless the petition thereon is filed within six years after such claim first accrues.

Every claim under section 1497 of this title shall be barred unless the petition thereon is filed within two years after the termination of the river and harbor improvements operations on which the claim is based.

A petition on the claim of a person under legal disability or beyond the seas at the time the claim accrues may be filed within three years after the disability ceases.

A suit for the fees of an officer of the United States shall not be filed until his account for such fees has been finally acted upon, unless the Government Accountability Office fails to act within six months after receiving the account.

Section applicable to any forfeiture proceeding commenced on or after the date that is 120 days after Apr. 25, 2000, see section 21 of Pub. L. 106–185, set out as an Effective Date of 2000 Amendment note under section 1324 of Title 8, Aliens and Nationality.

CHAPTER 165—UNITED STATES COURT OF FEDERAL CLAIMS PROCEDURE

Sec.
2501. Time for filing suit.
2502. Aliens’ privilege to sue.
2504. Plaintiff’s testimony.
2505. Trial before judges.
2506. Interest of witness.
2507. Calls and discovery.
2508. Counterclaim or set-off.
2509. Congressional reference cases.
2510. Certification of judgments for appropriation.
2511. Accounts of officers, agents or contractors.
2512. Disbursing officers; relief.
2513. Unjust conviction and imprisonment.
2514. Forfeiture of fraudulent claims.
2515. New trial, stay of judgment.
2516. Interest on claims and judgments.
2517. Payment of judgments.
2518. Repealed.
2519. Conclusiveness of judgment.
2520. Repealed.
2521. Subpoenas and incidental powers.

AMENDMENTS

§ 2503. Proceedings generally

(a) Parties to any suit in the United States Court of Federal Claims may appear before a judge of that court in person or by attorney, produce evidence, and examine witnesses.

(b) The proceedings of the Court of Federal Claims shall be in accordance with such rules of practice and procedure (other than the rules of evidence) as the Court of Federal Claims may prescribe and in accordance with the Federal Rules of Evidence.

(c) The judges of the Court of Federal Claims shall fix times for trials, administer oaths or affirmations, examine witnesses, receive evidence, and enter dispositive judgments. Hearings shall, if convenient, be held in the counties where the witnesses reside.

(d) For the purpose of construing sections 1821, 1915, 1920, and 1927 of this title, the United States Court of Federal Claims shall be deemed to be a court of the United States.

(§ 2503)
to any suit in the Court of Claims may appear before a commissioner in person or by attorney, produce evidence and examine witnesses" and redesignated as subsec. (c) provisions that, in accordance with rules and orders of the court, commissioners would fix times for trials, administer oaths or affirmations to and examine witnesses, receive evidence and report findings of fact, that when directed by the court, commissioners would report their recommendations for conclusions of law in cases assigned to them, and that hearings would, if convenient, be held in the counties where the witnesses reside.

Subsec. (b). Pub. L. 97–164 substituted "The proceedings of the Claims Court shall be in accordance with such rules of practice and procedure (other than the rules of evidence) as the Claims Court may prescribe and in accordance with the Federal Rules of Evidence" for "The rules of the court shall provide for the filing in court of the commissioner's report of facts and recommendations for conclusions of law, and for opportunity for the parties to file exceptions thereto, and a hearing thereon before the court within a reasonable time" and struck out provision that this section did not prevent the court from passing upon all questions and findings regardless of whether exceptions were taken before a commissioner.

Subsec. (c). Pub. L. 97–164 redesignated provisions in second and third sentences of former subsec. (a) as (c) and substituted "The judges of the Claims Court" for "'In accordance with rules and orders of the court, commissioners' and "enter dispositive judgments" for "report findings of fact and, when directed by the court, their recommendations for conclusions of law in cases assigned to them'."

1954—Act Sept. 3, 1954, designated former first par. subsec. (a), and former second par. subsec. (b), and incorporated in one place provisions relating to function of Commissioners.

**Effective Date of 1992 Amendment**

**Effective Date of 1982 Amendment**

§ 2504. Plaintiff's testimony

The United States Court of Federal Claims may, at the instance of the Attorney General, order any plaintiff to appear, upon reasonable notice, before any judge of the court and be examined on oath as to all matters pertaining to his claim. Such examination shall be reduced to writing by the judge, and shall be returned to and filed in the court, and may, at the discretion of the attorneys for the United States, be read and used as evidence on the trial. If any plaintiff, after such order is made and due and reasonable notice thereof is given to him, fails to appear, or refuses to testify or answer fully as to all material matters within his knowledge, the court may order that the case shall not be tried until he fully complies with such order.

1954—Act Sept. 3, 1954, substituted "Trial before judges" for "Place of taking evidence" in section catchline and repealed second par. relating to taking of testimony.

**Effective Date of 1992 Amendment**

**Effective Date of 1982 Amendment**

§ 2505. Trial before judges

Any judge of the United States Court of Federal Claims may sit at any place within the United States to take evidence and enter judgment.

**Historical and Revision Notes**

**Amendments**

**Effective Date of 1992 Amendment**

**Effective Date of 1982 Amendment**
A provision that a witness should not be disqualified by color was omitted as obsolete and unnecessary, since no such disqualification could be invoked in absence of statutory authority.

A provision that the United States could examine any plaintiff or party interested is covered by the word “exempt” in the revised section, and by section 2504 of this title.

Changes were made in phraseology.

**AMENDMENTS**


1982—Pub. L. 97–164 substituted “United States Claims Court” for “Court of Claims”.

**Effective Date of 1992 Amendment**


**Effective Date of 1992 Amendment**


## § 2507. Calls and discovery

(a) The United States Court of Federal Claims may call upon any department or agency of the United States or upon any party for any information or papers, not privileged, for purposes of discovery or for use as evidence. The head of any department or agency may refuse to comply with a call issued pursuant to this subsection when, in his opinion, compliance will be injurious to the public interest.

(b) Without limitation on account of anything contained in subsection (a) of this section, the court may, in accordance with its rules, provide additional means for the discovery of any relevant facts, books, papers, documents or tangible things, not privileged.

(c) The Court of Federal Claims may use all recorded and printed reports made by the committees of the Senate or House of Representatives.

(1954—Act Sept. 3, 1954, substituted “United States Claims Court” for “Court of Claims”.


**Historical and Revision Notes**


Words “or agency” were added. (See reviser’s note under section 1345 of this title.)

Changes were made in phraseology.

**AMENDMENTS**


Subsec. (c). Pub. L. 102–572, § 902(a)(2), substituted “Court of Federal Claims” for “Claims Court”.


Subsec. (c). Pub. L. 97–164, § 139(f)(2), substituted “Claims Court” for “Court of Claims”.

1954—Act Sept. 3, 1954, substituted “Calls and discovery” for “Calls on departments for information” in section catchline, designated existing provisions as subsec. (a), and added subsecs. (b) and (c).

**Effective Date of 1992 Amendment**


**Effective Date of 1992 Amendment**


## § 2508. Counterclaim or set-off; registration of judgment

Upon the trial of any suit in the United States Court of Federal Claims in which any setoff, counterclaim, claim for damages, or other demand is set up on the part of the United States against any plaintiff making claim against the United States in said court, the court shall hear and determine such claim or demand both for and against the United States and plaintiff.

If upon the whole case it finds that the plaintiff is indebted to the United States it shall render judgment to that effect, and such judgment shall be final and reviewable.

The transcript of such judgment, filed in the clerk’s office of any district court, shall be entered upon the records and shall be enforceable as other judgments.

(1954—Act Sept. 3, 1954, substituted “United States Claims Court” for “Court of Claims”.


**Historical and Revision Notes**


Changes were made in phraseology.

**AMENDMENTS**


1982—Pub. L. 97–164 substituted “United States Claims Court” for “Court of Claims”.


1953—Act July 28, 1953, substituted “United States Court of Claims” for “Court of Claims” in first par., and substituted “shall be enforceable as other judgments” for “be a judgment of such district court and enforceable as such” in third par.

**Effective Date of 1992 Amendment**


**Effective Date of 1992 Amendment**


## § 2509. Congressional reference cases

(a) Whenever a bill, except a bill for a pension, is referred by either House of Congress to the chief judge of the United States Court of Federal Claims pursuant to section 1492 of this title, the chief judge shall designate a judge as hearing officer for the case and a panel of three judges of the court to serve as a reviewing body. One member of the review panel shall be designated as presiding officer of the panel.
(b) Proceedings in a congressional reference case shall be under rules and regulations prescribed for the purpose by the chief judge who is hereby authorized and directed to require the application of the pertinent rules of practice of the Court of Federal Claims insofar as feasible. Each hearing officer and each review panel shall have authority to do and perform any acts which may be necessary or proper for the efficient performance of their duties, including the power of subpoena and the power to administer oaths and affirmations. None of the rules, rulings, findings, or conclusions authorized by this section shall be subject to judicial review.

(c) The hearing officer to whom a congressional reference case is assigned by the chief judge shall proceed in accordance with the applicable rules to determine the facts, including facts relating to delay or laches, facts bearing upon the question whether the bar of any statute of limitation should be removed, or facts claimed to excuse the claimant for not having resorted to any established legal remedy. He shall append to his findings of fact conclusions sufficient to inform Congress whether the demand is a legal or equitable claim or a gratuity, and the amount, if any, legally or equitably due from the United States to the claimant.

(d) The findings and conclusions of the hearing officer shall be submitted by him, together with the record in the case, to the review panel for review by it pursuant to such rules as may be provided for the purpose, which shall include provision for submitting the report of the hearing officer a full statement of the circumstances shall be incorporated in the report of the panel. The panel, by majority vote, shall adopt or modify the findings or the conclusions of the hearing officer.

(e) The panel shall submit its report to the chief judge for transmission to the appropriate House of Congress.

(f) Any act or failure to act or other conduct by a party, a witness, or an attorney which would call for the imposition of sanctions under the rules of practice of the Court of Federal Claims shall be noted by the review panel and the hearing officer at the time of occurrence thereof and upon failure of the delinquent or offending party, witness, or attorney to make prompt compliance with the order of the panel or the hearing officer a full statement of the circumstances shall be incorporated in the report of the panel.

(g) The Court of Federal Claims is hereby authorized and directed, under such regulations as it may prescribe, to provide the facilities and personnel for the dispatch of Congressional reference cases. The Court may prescribe, to provide the facilities and personnel for the dispatch of Congressional reference cases.


A provision as to the court's power to render judgment on a referred claim and its duty to report thereon to Congress, was omitted from this section as covered by sections 781(c) and 1492 of this title.

Changes were made in phraseology.

AMENDMENTS


Subsec. (b), (f), (g), Pub. L. 102–572, § 902(a)(2), substituted “Court of Federal Claims” for “Claims Court”.

1982—Subsec. (a). Pub. L. 97–164, § 139(h)(1), substituted “chief judge” for “chief commissioner” wherever appearing, “United States Claims Court” for “Court of Claims”, “Judge as hearing officer” for “trial commissioner”, and “presiding officer” for “presiding commissioner”.

Subsec. (b). Pub. L. 97–164, § 139(h)(2)(A)–(C), substituted “chief judge” for “chief commissioner”, “Claims Court” for “Court of Claims”, and “hearing officer” for “trial commissioner”.

Subsec. (c). Pub. L. 97–164, § 139(h)(2)(A), (B), substituted “hearing officer” for “trial commissioner” and “chief judge” for “chief commissioner”.

Subsec. (d). Pub. L. 97–164, § 139(h)(2)(A), (D), substituted “hearing officer” for “trial commissioner” wherever appearing and struck out “of commissioners” after “review panel”.

Subsec. (e). Pub. L. 97–164, § 139(h)(2)(B), substituted “chief judge” for “chief commissioner”.

Subsec. (f). Pub. L. 97–164, § 139(h)(2)(A), (C), substituted “Claims Court” for “Court of Claims”, and “hearing officer” for “trial commissioner” wherever appearing.

Subsec. (g). Pub. L. 97–164, § 139(h)(2)(C), (E), substituted “Claims Court” for “Court of Claims” and “judges serving as hearing officers” for “commissioners serving as trial commissioners”.

1966—Pub. L. 89–681 substituted provisions for reference of bills to the chief commissioner of the Court of Claims pursuant to section 1492 of this title for provisions calling simply for reference to the Court of Claims, substituted provisions naming the trial commissioner to whom a reference case is assigned by the chief commissioner for provisions simply naming the Court of Claims as the agency by which findings and conclusions are made, and inserted provisions for the designation of a trial commissioner and reviewing body consisting of three other commissioners, the promulgation of rules and regulations for Congressional reference cases by the chief commissioner, the procedure to be followed, and the supplying of facilities and personnel for the dispatch of Congressional reference cases.

EFFECTIVE DATE OF 1992 AMENDMENT

EFFECTIVE DATE OF 1982 AMENDMENT

§ 2510. Referral of cases by Comptroller General

(a) The Comptroller General may transmit to the United States Court of Federal Claims for trial and adjudication any claim or matter of
which the Court of Federal Claims might take jurisdiction on the voluntary action of the claimant, together with all vouchers, papers, documents, and proofs pertaining thereto.

(b) The Court of Federal Claims shall proceed with the claims or matters so referred as in other cases pending in such Court and shall render judgment thereon.


HISTORICAL AND REVISION NOTES


Jurisdiction provisions of such section 254 appear in section 1495 of this title.

Changes were made in phraseology.

AMENDMENTS


1982—Pub. L. 97–164 substituted “Referral of cases by the Comptroller General” for “Referral of cases by the Comptroller General or the head of an executive department or agency” in section catchline.

Subsec. (a). Pub. L. 97–164 substituted “transmit to the United States Claims Court for trial and adjudication any claim or matter of which the Claims Court might take jurisdiction” for “transmit to the Court of Claims for trial and adjudication any claim or matter of which the Court of Claims might take jurisdiction” in first sentence of subsec. (a). The second sentence of subsec. (a) was redesignated (b).

Subsec. (b). Pub. L. 97–164 (designated as subsec. (b) the former second sentence of subsec. (a) and substituted “The Claims Court” for “The Court of Claims” and “Former subsec. (b)” which provided that the head of any executive department or agency could, with the prior approval of the Attorney General, refer to the Court of Claims for judicial review any final decision rendered by a board of contract appeals pursuant to the terms of any contract with the United States awarded by that department or agency which such head of such department or agency had concluded was not entitled to finality pursuant to the review standards specified in section 10(b) of the Contracts Disputes Act of 1978, with the head of each executive department or agency to make any referral under this section within 120 days of the receipt of a copy of the final appeal decision, that the Court of Claims was to review the matter referred in accordance with the standards specified in section 10(b) of the Contracts Disputes Act of 1978, and that the court was to proceed with judicial review on the administrative record made before the board of contract appeals on matters so referred as in other cases pending in such court, determine the issue of finality of the appeal decision, and render judgment thereon, take additional evidence, or remand the matter pursuant to the authority specified in section 1491 of this title was struck out.


1993—Act July 28, 1993, struck out provisions relating to procedure in connection with departmental reference cases provided for by former section 1493 of this title; and, in connection with trial and adjudication of cases referred by the Comptroller General, inserted provision for rendering judgment, and struck out requirement that such cases be transmitted through the Secretary of the Treasury.

EFFECTIVE DATE OF 1992 AMENDMENT


EFFECTIVE DATE OF 1982 AMENDMENT


EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–563 effective with respect to contracts entered into 120 days after Nov. 1, 1978, and, at the election of the contractor, with respect to any claim pending at such time before the contracting officer or initiated thereafter, see section 16 of Pub. L. 95–563, Nov. 1, 1978, 92 Stat. 2391, formerly set out as an Effective Date note under section 601 of former Title 41, Public Contracts.

§2511. Accounts of officers, agents or contractors

Notice of suit under section 1494 of this title shall be given to the Attorney General, to the Comptroller General, and to the head of the department requested to settle the account in question.

The judgment of the United States Court of Federal Claims in such suit shall be conclusive upon the parties, and payment of the amount found due shall discharge the obligation.

The transcript of such judgment, filed in the clerk’s office of any district court, shall be entered upon the records, and shall be enforceable as other judgments.


HISTORICAL AND REVISION NOTES


Words “The Attorney General shall represent the United States at the hearing of said cause” were omitted as covered by sections 309 and 310 of title 5, U.S.C., 1940 ed., Executive Departments and Government Officers and Employees.


A provision for continuances was omitted as unnecessary, in view of the inherent power of the court to grant continuances in any suit.

A provision in section 287 of title 28, U.S.C., 1940 ed., set out in text from 1940 ed., should apply to cases under such section 287 was omitted as covered by section 2504 of this title.

Changes were made in phraseology.

AMENDMENTS


1993—Act July 28, 1993, struck out provisions relating to procedure in connection with departmental reference cases provided for by former section 1493 of this title; and, in connection with trial and adjudication of cases referred by the Comptroller General, inserted provision for rendering judgment, and struck out requirement that such cases be transmitted through the Secretary of the Treasury.
such suit, or of the Supreme Court upon review, shall be conclusive'.

1953—Act July 28, 1953, inserted "to the Comptroller General," in first par., struck out third par., which provided for accrual to the United States of a right of action upon the judgment, with a limitation period extending to three years after judgment, and inserted provisions for filling and recording the transcript of such judgment in the clerk's office of any district court and for enforcement thereof.

Effective Date of 1992 Amendment

Effective Date of 1982 Amendment

§ 2512. Disbursing officers; relief

Whenever the United States Court of Federal Claims finds that any loss by a disbursing officer of the United States was without his fault or negligence, it shall render a judgment setting forth the amount thereof, and the Government Accountability Office shall allow the officer such amount as a credit in the settlement of his accounts.


Historical and Revision Notes

Words "paymaster, quartermaster, commissary of subsistence, or other" were omitted as covered by words "disbursing officer of the United States". (See reviser's note under section 1496 of this title.)

Changes were made in phraseology.

Amendments
1982—Pub. L. 97–164 substituted "United States Claims Court" for "Court of Claims".

Effective Date of 1992 Amendment

Effective Date of 1982 Amendment

§ 2513. Unjust conviction and imprisonment

(a) Any person suing under section 1495 of this title must allege and prove that:

(1) His conviction has been reversed or set aside on the ground that he is not guilty of the offense of which he was convicted, or on new trial or rehearing he was found not guilty of such offense, as appears from the record or certificate of the court setting aside or reversing such conviction, or that he has been pardoned upon the stated ground of innocence and unjust conviction and

(2) He did not commit any of the acts charged or his acts, deeds, or omissions in connection with such charge constituted no offense against the United States, or any State, Territory or the District of Columbia, and he did not by misconduct or neglect cause or bring about his own prosecution.

(b) Proof of the requisite facts shall be by a certificate of the court or pardon wherein such facts are alleged to appear, and other evidence thereof shall not be received.

(c) No pardon or certified copy of a pardon shall be considered by the United States Court of Federal Claims unless it contains recitals that the pardon was granted after applicant had exhausted all recourse to the courts and that the time for any court to exercise its jurisdiction had expired.

(d) The Court may permit the plaintiff to prosecute such action in forma pauperis.

(e) The amount of damages awarded shall not exceed $100,000 for each 12-month period of incarceration for any plaintiff who was unjustly sentenced to death and $50,000 for each 12-month period of incarceration for any other plaintiff.


Historical and Revision Notes

Sections 729–732 of title 18, U.S.C., 1940 ed., were consolidated and completely rewritten in order to clarify ambiguities which made the statute unworkable as enacted originally. Jurisdictional provisions of section 729 of title 18, U.S.C., 1940 ed., are incorporated in section 1495 of this title.

Changes were made in phraseology.

Amendments
2004—Subsec. (e). Pub. L. 108–405 substituted "exceed $100,000 for each 12-month period of incarceration for any plaintiff who was unjustly sentenced to death and $50,000 for each 12-month period of incarceration for any other plaintiff" for "exceed the sum of $5,000 for each 12-month period of incarceration for any plaintiff who was unjustly sentenced to death and $50,000 for each 12-month period of incarceration for any other plaintiff".
1954—Subsec. (c). Act Sept. 3, 1954, substituted "considered by" for "filed with".

Effective Date of 1992 Amendment

Effective Date of 1982 Amendment

§ 2514. Foreclosure of fraudulent claims

A claim against the United States shall be forfeited to the United States by any person who

HISTORICAL AND REVISION NOTES


A provision of section 279 of title 28, U.S.C., 1940 ed., that a judgment of forfeiture shall forever bar the prosecution of the claim was omitted as covered by section 2518 of this title.


A provision of section 280 of title 28, U.S.C., 1940 ed., barring allowance of fraudulent claims by Congress was omitted as unnecessary and superfluous.

Changes were made in phraseology.

AMENDMENTS

1922—Pub. L. 102–572 substituted “United States Court of Federal Claims” for “United States Claims Court”.


EFFECTIVE DATE OF 1992 AMENDMENT


EFFECTIVE DATE OF 1982 AMENDMENT


§ 2516. Interest on claims and judgments

(a) Interest on a claim against the United States shall be allowed in a judgment of the United States Court of Federal Claims only under a contract or Act of Congress expressly providing for payment thereof.


HISTORICAL AND REVISION NOTES

1948 ACT


Subdivision (b) of section 283 of title 28, U.S.C., 1940 ed., was omitted as covered by section 3771 of title 26, U.S.C., 1940 ed., Internal Revenue Code. Such omission required the exception in subdivision (a) of such section 284, reading: “except as provided in subdivision (b),” to be changed to read: “or Act of Congress expressly providing for payment thereof.”

Subsection (b) of this section is based on the last sentence of section 226 of title 31, U.S.C., 1940 ed., Money and Finance.

Changes were made in phraseology.

1982 ACT

Revised Section | Source (U.S. Code) | Source (Statutes at Large)
--- | --- | ---
28:2516(b) | 28:2516(b) last sentence words before “from the date”) | 28:2516(b) last sentence words before “from the date”) |

Section 2(g)(5) of the bill restates 28:2516(b) because the provisions in 28:2516(b) on the periods for computing interest were superseded by the source provisions restated in section 1304 of the revised title 31.

AMENDMENTS

2000—Subsec. (b). Pub. L. 106–554 substituted “the weekly average 1-year constant maturity Treasury
yield, as published by the Board of Governors of the Federal Reserve System, for the calendar week preceding" for "the coupon issue yield equivalent (as determined by the Secretary of the Treasury) of the average accepted auction price for the last auction of fifty-two week United States Treasury bills settled immediately before the enactment of this section, was repealed by Pub. L. 97–258, § 2(m)(3), Sept. 13, 1982, 96 Stat. 1062, eff. Oct. 1, 1982.

Sections 302(d), 402, effective Oct. 1, 1982, struck out "at the rate of four percent per annum" and all that follows through "affirmance" and inserted in lieu thereof "... from the date of the filing of the transcript of the judgment in the General Accounting Office to the date of the mandate of affirmance, at a rate of interest equal to the coupon issue yield equivalent (as determined by the Secretary of the Treasury) of the average accepted auction price for the last auction of fifty-two week United States Treasury bills settled immediately prior to the date of the judgment."

Section 225(b), Act Sept. 3, 1944, inserted "for any period" after "allowed" in last sentence.

Effective Date of 1992 Amendment


Effective Date of 1982 Amendment

Section 2(g)(5) of Pub. L. 97–258 provided that the amendment made by that section is effective Oct. 1, 1982.

Repeal


§ 2517. Payment of judgments

(a) Except as provided by chapter 71 of title 41, every final judgment rendered by the United States Court of Federal Claims against the United States shall be paid out of the matters involved in the case or controversy, unless the judgment is designated a partial judgment, in which event only the matters described therein shall be discharged.

(b) Payment of any such judgment and of interest thereon shall be a full discharge to the United States of all claims and demands arising out of the matters involved in the case or controversy, unless the judgment is designated a partial judgment, in which event only the matters described therein shall be discharged.

Historical and Revision Notes


Words "chief judge" were substituted for "the chief justice, or, in his absence, by the presiding judge of said court" in section 225 of title 31, U.S.C., 1940 ed., Money and Finance, in conformity with chapter 7 of this title.

Words "... on review, by the Supreme Court, where the same are affirmed in favor of the claimant" in section 225 of title 31, U.S.C., 1940 ed., were omitted as unnecessary.


Changes were made in phrasing.

Amendments


1982—Subsec. (a). Pub. L. 97–164, §139(j)(1), substituted "United States Claims Court" for "Court of Claims." Subsec. (b). Pub. L. 97–258 substituted provisions that interest on a judgment against the United States is paid at a rate equal to the coupon issue yield equivalent of the average accepted auction price for the last auction of fifty-two week United States Treasury bills settled immediately before the date of judgment for provisions that such interest would be paid at the rate of four percent per annum from the date of the filing of the transcript of the judgment in the Treasury Department to the date of mandate of affirmance by the Supreme Court and that the interest would not be allowed for any period after the term of the Supreme Court at which the judgment was affirmed, and repealed the amendment made by Pub. L. 97–164, §302(d), eff. Oct. 1, 1982. See, also, section 1304(b) of Title 31, Money and Finance.

Pub. L. 97–164, §§302(d), 402, effective Oct. 1, 1982, struck out "... from the date of the filing of the transcript of the judgment in the General Accounting Office to the date of the mandate of affirmance, at a rate of interest equal to the coupon issue yield equivalent (as determined by the Secretary of the Treasury) of the average accepted auction price for the last auction of fifty-two week United States Treasury bills settled immediately prior to the date of the judgment."

1942—Subsec. (a), (b). Pub. L. 97–164, §139(k)(1), substituted "United States Claims Court" for "Court of Claims."

§ 2519. Conclusiveness of judgment

A final judgment of the United States Court of Federal Claims against any plaintiff shall forever bar any further claim, suit, or demand against the United States arising out of the matters involved in the case or controversy.


HISTORICAL AND REVISION NOTES


Changes were made in phraseology.

AMENDMENTS


1982—Pub. L. 97–164 substituted “United States Claims Court” for “Court of Claims”.


§ 2521. Subpoenas and incidental powers

(a) Subpoenas requiring the attendance of parties or witnesses and subpoenas requiring the production of books, papers, documents or tangible things by any party or witness having custody or control thereof, may be issued for purposes of discovery or for use of the things produced as evidence in accordance with the rules and orders of the court. Such subpoenas shall be issued and served and compliance therewith shall be compelled as provided in the rules and orders of the court.

(b) The United States Court of Federal Claims shall have power to punish by fine or imprisonment, at its discretion, such contempt of its authority as—

(1) misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;

(2) misbehavior of any of its officers in their official transactions; or

(3) disobedience or resistance to its lawful writ, process, order, rule, decree, or command.

(c) The United States Court of Federal Claims shall have such assistance in the carrying out of its lawful writ, process, order, rule, decree, or command as is available to a court of the United States. The United States marshal for any district in which the Court of Federal Claims is sitting shall, when requested by the chief judge of the Court of Federal Claims, attend any session of the Court of Federal Claims in such district.


AMENDMENTS

1992—Pub. L. 102–572 inserted “and incidental powers” in section catchline, designated existing provisions as subsec. (a), and added subsecs. (b) and (c).

 EFFECTIVE DATE OF 1992 AMENDMENT


§ 2522. Notice of appeal

Review of a decision of the United States Court of Federal Claims shall be obtained by filing a notice of appeal with the clerk of the Court of Federal Claims within the time and in the manner prescribed for appeals to United States courts of appeals from the United States district courts.


AMENDMENTS

1992—Pub. L. 102–572 substituted “United States Court of Federal Claims” for “United States Claims Court” and “Court of Federal Claims” for “Claims Court”.

 EFFECTIVE DATE OF 1992 AMENDMENT


 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 167—REPEALED]

the Court of Customs and Patent Appeals to summon annually the judges of the court to a judicial conference for the purpose of considering the business of the court and improvements in the administration of justice of the court.

Effective Date of Repeal


CHAPTER 169—COURT OF INTERNATIONAL TRADE PROCEDURE

Sec.
2631. Persons entitled to commence a civil action.
2632. Commencement of a civil action.
2633. Procedure and fees.
2634. Notice.
2635. Filing of official documents.
2636. Time for commencement of action.
2637. Exhaustion of administrative remedies.
2638. New grounds in support of a civil action.
2639. Burden of proof; evidence of value.
2640. Scope and standard of review.
2641. Witnesses; inspection of documents.
2642. Analysis of imported merchandise.
2643. Relief.
2644. Interest.
2645. Decisions.
2646. Retrial or rehearing.
2647. Repealed.

Amendments


1979—Pub. L. 96–271, title I, § 123(e), June 2, 1979, 94 Stat. 292, substituted “Time for commencement of action” for “Appeal for reappraisement; assignment to single judge; hearing” in item 2631, “Customs Court procedures and fees” for “Notice” in item 2632, “Prece- dence of American manufacturer, producer, or wholesaler cases” for “Evidence of value, upon reappraise- ment; burden of proof” in item 2633, “Notice” for “Witnesses; inspection of documents” in item 2634, “Burden of proof; evidence of value” for “Decision of single judge in reappraisal appeal” in item 2635, “Analysis of imported merchandise” for “Review of single judge’s decision; disqualification of judges; remand; presumption” in item 2636, “Witnesses; inspection of documents” for “Review of decisions of divisions” in item 2637, “Decisions; findings of fact and conclusions of law; effect of opinions” for “Precedence of classifica- tion cases” in item 2638, and struck item 2640 “Rehearing or retrial” in item 2641.

Frivolous protest or appeal”, and item 2642 “Amend- ment of protests, appeals, and pleadings”.


§ 2631. Persons entitled to commence a civil action

(a) A civil action contesting the denial of a protest, in whole or in part, under section 515 of the Tariff Act of 1930 may be commenced in the Court of International Trade by the person who filed the protest pursuant to section 514 of such Act, or by a surety on the transaction which is the subject of the protest.

(b) A civil action contesting the denial of a petition under section 516 of the Tariff Act of 1930 may be commenced in the Court of International Trade by the person who filed such petition.

(c) A civil action contesting a determination listed in section 516A of the Tariff Act of 1930 may be commenced in the Court of International Trade by any interested party who was a party to the proceeding in connection with which the matter arose.

(d)(1) A civil action to review any final determin- ation of the Secretary of Labor under section 223 of the Trade Act of 1974 with respect to the eligibility of workers for adjustment assistance under such Act may be commenced in the Court of International Trade by a worker, group of workers, certified or recognized union, or authorized representative of such worker or group that applies for assistance under such Act and is aggrieved by such final determination.

(2) A civil action to review any final determin- ation of the Secretary of Commerce under section 251 of the Trade Act of 1974 with respect to the eligibility of a firm for adjustment assistance under such Act may be commenced in the Court of International Trade by a firm or its representative that applies for assistance under such Act and is aggrieved by such final determination, or by any other interested domestic party that is aggrieved by such final determination.

(3) A civil action to review any final determin- ation of the Secretary of Commerce under section 271 of the Trade Act of 1974 with respect to the eligibility of a community for adjustment assistance under such Act may be commenced in the Court of International Trade by a community that applies for assistance under such Act and is aggrieved by such final determination, or by any other interested domestic party that is aggrieved by such final determination.

(e) A civil action to review a final determina- tion made under section 305(b)(1) of the Trade Agreements Act of 1979 may be commenced in the Court of International Trade by any person who was a party-at-interest with respect to such determination.

(f) A civil action involving an application for the issuance of an order directing the administering authority or the International Trade Commission to make confidential information available under section 777(c)(2) of the Tariff Act of 1930 may be commenced in the Court of International Trade by any interested party whose application for disclosure of such confidential
information was denied under section 777(c)(1) of such Act.

(g)(1) A civil action to review any decision of the Secretary of the Treasury to deny a customs broker’s license under section 641(b)(2) or (3) of the Tariff Act of 1930, or to deny a customs broker’s permit under section 641(c)(1) of such Act, or to revoke such license or permit under section 641(b)(5) or (c)(2) of such Act, may be commenced in the Court of International Trade by the person whose license or permit was denied or revoked.

(2) A civil action to review any decision of the Secretary of the Treasury to revoke or suspend a customs broker’s license or permit or impose a monetary penalty in lieu thereof under section 641(d)(2)(B) of the Tariff Act of 1930 may be commenced in the Court of International Trade by the person against whom the decision was issued.

(3) A civil action to review any decision or order of the Customs Service to deny, suspend, or revoke accreditation of a private laboratory under section 499(b) of the Tariff Act of 1930 may be commenced in the Court of International Trade by the person whose accreditation was denied, suspended, or revoked.

(h) A civil action described in section 1581(b) of this title may be commenced in the Court of International Trade by the person who would have standing to bring a civil action under section 1581(a) of this title if he imported the goods involved and filed a protest which was denied, in whole or in part, under section 515 of the Tariff Act of 1930.

(i) Any civil action of which the Court of International Trade has jurisdiction, other than an action specified in subsections (a)–(h) of this section, may be commenced in the Court of International Trade by any person adversely affected or aggrieved by agency action within the meaning of section 702 of title 5.

(j)(1) Any person who would be adversely affected or aggrieved by a decision in a civil action pending in the Court of International Trade may, by leave of court, intervene in such action, except that—

(A) no person may intervene in a civil action under section 515 or 516 of the Tariff Act of 1930;

(B) in a civil action under section 516A of the Tariff Act of 1930, only an interested party who was a party to the proceeding in connection with which the matter arose may intervene, and such person may intervene as a matter of right; and

(C) in a civil action under section 777(c)(2) of the Tariff Act of 1930, only a person who was a party to the investigation may intervene, and such person may intervene as a matter of right.

(2) In those civil actions in which intervention is by leave of court, the Court of International Trade shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

(k) In this section—

(1) “interested party” has the meaning given such term in section 771(9) of the Tariff Act of 1930; and

(2) “party-at-interest” means—

(A) a foreign manufacturer, producer, or exporter, or a United States importer, of merchandise which is the subject of a final determination under section 305(b)(1) of the Trade Agreements Act of 1979;

(B) a manufacturer, producer, or wholesaler in the United States of a like product;

(C) United States members of a labor organization or other association of workers whose members are employed in the manufacture, production, or wholesale in the United States of a like product;

(D) a trade or business association a majority of whose members manufacture, produce, or wholesale a like product in the United States; and

(E) an association composed of members who represent parties-at-interest described in subparagraph (B), (C), or (D).


REFERENCES IN TEXT

Section 515 of the Tariff Act of 1930, referred to in subsections (a), (h), (j)(1)(A), is classified to section 515 of Title 19, Customs Duties.

Section 514 of the Tariff Act of 1930, referred to in subsection (a), is classified to section 514 of Title 19.

Section 515 of the Tariff Act of 1930, referred to in subsections (b), (j)(1)(A), is classified to section 515 of Title 19.

Section 516A of the Tariff Act of 1930, referred to in subsections (c), (j)(1)(B), is classified to section 516A of Title 19.

The Trade Act of 1974, referred to in subsection (d)(1) to (3), is Pub. L. 93–618, Jan. 3, 1975, 88 Stat. 980; amended, which is classified principally to chapter 12 of Title 19, Customs Duties.

The Trade Act of 1974 is classified to sections 223, 251, and 271 of the Trade Act of 1974 are classified to sections 2273, 2341, and 2371, respectively, of Title 19. Section 2371 of Title 19 was omitted from the Code as terminated Sept. 30, 1982. For complete classification of this Act to the Code, see References in Text note set out under section 2101 of Title 19 and Tables.

Section 305(b)(1) of the Trade Agreements Act of 1979, referred to in subsections (e), (g)(3)(A), is classified to section 2515(b)(1) of Title 19.

Section 777 of the Tariff Act of 1930, referred to in subsections (f), (j)(1)(C), is classified to section 1677f of Title 19.

Section 641 of the Tariff Act of 1930, referred to in subsection (g), is classified to section 1641 of Title 19.

Section 499(b) of the Tariff Act of 1930, referred to in subsection (g)(3), is classified to section 1596(b) of Title 19.

Section 771(9) of the Tariff Act of 1930, referred to in subsection (k)(1), is classified to section 1677(9) of Title 19.

PRIOR PROVISIONS


AMENDMENTS

1984—Subsec. (g)(3). Pub. L. 98–573, §212(b)(3), amended subsec. (g) generally. Prior to amendment, subsec. (g) read as follows:

1 So in original. The comma probably should be a semicolon.
§ 2632 TITLE 28—JUDICIARY AND JUDICIAL PROCEDURE

1930 shall be commenced by filing with the clerk of the court a summons or a summons and a complaint, as prescribed in such section, with the content and in the form, manner, and style prescribed by the rules of the court.

(d) The Court of International Trade may prescribe by rule that any summons, pleading, or other paper mailed by registered or certified mail properly addressed to the clerk of the court with the proper postage affixed and return receipt requested shall be deemed filed as of the date of mailing.


REFERENCES IN TEXT

Sections 515 and 516 of the Tariff Act of 1930, referred to in subsec. (b), are classified to sections 1515 and 1516, respectively, of Title 19, Customs Duties.

Section 516A of the Tariff Act of 1930, referred to in subsec. (c), is classified to section 1516a of Title 19.

PRIOR PROVISIONS


§ 2633. Procedure and fees

(a) A filing fee shall be payable to the clerk of the Court of International Trade upon the commencement of a civil action in such court. The amount of the fee shall be prescribed by the rules of the court, but shall not be less than $5 nor more than the filing fee for commencing a civil action in a district court of the United States. The court may fix all other fees to be charged by the clerk of the court.

(b) The Court of International Trade shall prescribe rules governing the summons, pleadings, and other papers, for their amendment, service, and filing, for consolidations, severances, suspensions of cases, and for other procedural matters.

(c) All summons, pleadings, and other papers filed in the Court of International Trade shall be served on all parties in accordance with rules prescribed by the court. When the United States, its agencies, or its officers are adverse parties, service of the summons shall be made upon the Attorney General and the head of the Government agency whose action is being contested. When injunctive relief is sought, the summons, pleadings, and other papers shall also be served upon the named officials sought to be enjoined.


PRIOR PROVISIONS

§ 2634. Notice

Reasonable notice of the time and place of trial or hearing before the Court of International Trade shall be given to all parties to any civil action, as prescribed by the rules of the court.


PRIOR PROVISIONS


§ 2635. Filing of official documents

(a) In any action commenced in the Court of International Trade contesting the denial of a protest under section 515 of the Tariff Act of 1930 or the denial of a petition under section 516 of such Act, the Customs Service, as prescribed by the rules of the court, shall file with the clerk of the court, as part of the official record, any official documents, as prescribed by the rules of the court. The record shall, unless otherwise stipulated, remain confidential, and may be examined only by the court, as prescribed by the rules of the court. The record shall be preserved in the civil action, but the court may examine the confidential information in camera and may make such information available under a protective order consistent with section 777(c)(2) of the Tariff Act of 1930.

(b)(1) In any civil action commenced in the Court of International Trade under section 516A of the Tariff Act of 1930, within forty days or within such other period of time as the court may specify, after the date of service of a complaint on the administering authority established to administer title VII of the Tariff Act of 1930 or the United States International Trade Commission, the administering authority or the Commission shall transmit to the clerk of the court the record of such action, as prescribed by the rules of the court. The record shall, unless otherwise stipulated by the parties, consist of—

(A) a copy of all information presented to or obtained by the administering authority or the Commission during the course of the administrative proceedings, including all governmental memoranda pertaining to the case and the record of ex parte meetings required to be maintained by section 777(a)(3) of the Tariff Act of 1930; and

(B)(i) a copy of the determination and the facts and conclusions of law upon which such determination was based; (ii) all transcripts or records of conferences or hearings, and (iii) all notices published in the Federal Register.

(2) The administering authority or the Commission shall identify and transmit under seal to the clerk of the court any document, comment, or other information that was obtained on a confidential basis and that is required to be transmitted to the clerk under paragraph (1) of this subsection. Any such document, comment, or other information shall include a nonconfidential description of the nature of the material being transmitted. The confidential or privileged status of such material shall be preserved in the civil action, but the court may examine the confidential or privileged material in camera and may make such material available under such terms and conditions as the court may order.

(c) Within fifteen days, or within such other period of time as the Court of International Trade may specify, after service of a summons and complaint in a civil action involving an application for an order directing the administering authority or the International Trade Commission to make confidential information available under section 777(c)(2) of the Tariff Act of 1930, the administering authority or the Commission shall transmit under seal to the clerk of the Court of International Trade, as prescribed by its rules, the confidential information involved, together with pertinent parts of the record. Such information shall be accompanied by a nonconfidential description of the nature of the information being transmitted. The confidential status of such information shall be preserved in the civil action, but the court may examine the confidential information in camera and may make such information available under a protective order consistent with section 777(c)(2) of the Tariff Act of 1930.

(d)(1) In any other civil action in the Court of International Trade in which judicial review is to proceed upon the basis of the record made before an agency, the agency shall, within forty days or within such other period of time as the court may specify, after the date of service of the summons and complaint upon the agency, transmit to the clerk of the court, as prescribed by its rules—

(A) a copy of the contested determination and the findings or report upon which such determination was based;

(B) a copy of any reported hearings or conferences conducted by the agency; and

(C) any documents, comments, or other papers filed by the public, interested parties, or governments with respect to the agency’s action.

(2) The agency shall identify and transmit under seal to the clerk of the court any document, comment, or other information that was obtained on a confidential basis and that is required to be transmitted to the clerk under paragraph (1) of this subsection. Any such document, comment, or information shall include a nonconfidential description of the nature of the material being transmitted. The confidential or privileged status of such material shall be preserved in the civil action, but the court may examine such material in camera and make such material available under such terms and conditions as the court may order.

(3) The parties may stipulate that fewer documents, comments, or other information than those specified in paragraph (1) of this subsection shall be transmitted to the clerk of the court.


REFERENCES IN TEXT

The Tariff Act of 1930, referred to in subsecs. (a), (b)(1), and (c), is act June 17, 1930, ch. 497, 46 Stat. 590.
as amended, Title VII of the Tariff Act of 1930 is classified generally to subtitle IV (§1671 et seq.) of chapter 4 of Title 19, Customs Duties. Sections 515, 516, 516A, and 777 of the Tariff Act of 1930 are classified to sections 1515, 1516, 1516A, and 1677f, respectively, of Title 19. For complete classification of this Act to the Code, see section 1563 of Title 19 and Tables.

PRIOR PROVISIONS


AMENDMENTS

1993—Subsec. (a). Pub. L. 103–182 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows:

"(1) Upon service of the summons on the Secretary of the Treasury in any civil action contesting the denial of a protest under section 515 of the Tariff Act of 1930 or the denial of a petition under section 516 of such Act, the appropriate customs officer shall forthwith transmit to the clerk of the Court of International Trade, as prescribed by its rules, and as a part of the official record—

"(A) the consumption or other entry and the entry summary;

"(B) the commercial invoice;

"(C) the special customs invoice;

"(D) a copy of the protest or petition;

"(E) a copy of the denial, in whole or in part, of the protest or petition;

"(F) the importer’s exhibits;

"(G) the official and other representative samples;

"(H) any official laboratory reports; and

"(I) a copy of any bond relating to the entry.

"(2) If any of the items listed in paragraph (1) of this subsection do not exist in a particular civil action, an affirmative statement to that effect shall be transmitted to the clerk of the court."

EFFECTIVE DATE

Section applicable with respect to civil actions commenced on or after Nov. 1, 1980, see section 701 (b)(1)(B) of Pub. L. 96–417, set out as an Effective Date of 1980 Amendment note under section 251 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 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.

§ 2636. Time for commencement of action

(a) A civil action contesting the denial, in whole or in part, of a protest under section 515 of the Tariff Act of 1930 is barred unless commenced in accordance with the rules of the Court of International Trade—

(1) within one hundred and eighty days after the date of mailing of notice of denial of a protest under section 515(a) of such Act; or

(2) within one hundred and eighty days after the date of denial of a protest by operation of law under the provisions of section 515(b) of such Act.

(b) A civil action contesting the denial of a petition under section 516 of the Tariff Act of 1930 is barred unless commenced in accordance with the rules of the Court of International Trade within thirty days after the date of mailing of a notice pursuant to section 516(c) of such Act.

(c) A civil action contesting a final determination listed in section 516A of the Tariff Act of 1930 is barred unless commenced in accordance with the rules of the Court of International Trade within the time specified in such section.

(d) A civil action contesting a final determination of the Secretary of Labor under section 223 of the Trade Act of 1974 or a final determination of the Secretary of Commerce under section 251 or section 271 of such Act is barred unless commenced in accordance with the rules of the Court of International Trade within thirty days after the date of the publication of such determination in the Federal Register.

(e) A civil action contesting a final determination made under section 305(b)(1) of the Trade Agreements Act of 1979 is barred unless commenced in accordance with the rules of the Court of International Trade within ten days after the date of the denial of the request for such confidential information.

(f) A civil action contesting the denial or revocation by the Secretary of the Treasury of a customs broker’s license or permit under subsection (b) or (c) of section 641 of the Tariff Act of 1930, or the revocation or suspension of such license or permit or the imposition of a monetary penalty in lieu thereof by such Secretary under section 641(d) of such Act, is barred unless commenced in accordance with the rules of the Court of International Trade within sixty days after the date of the entry of the decision or order of such Secretary.

§ 2636. Time for commencement of action

(a) A civil action contesting the denial, in whole or in part, of a protest under section 515 of the Tariff Act of 1930 is barred unless commenced in accordance with the rules of the Court of International Trade—

(1) within one hundred and eighty days after the date of mailing of notice of denial of a protest under section 515(a) of such Act; or

(2) within one hundred and eighty days after the date of denial of a protest by operation of law under the provisions of section 515(b) of such Act.

(b) A civil action contesting the denial of a petition under section 516 of the Tariff Act of 1930 is barred unless commenced in accordance with the rules of the Court of International Trade within thirty days after the date of mailing of a notice pursuant to section 516(c) of such Act.

(c) A civil action contesting a final determination listed in section 516A of the Tariff Act of 1930 is barred unless commenced in accordance with the rules of the Court of International Trade within the time specified in such section.

(d) A civil action contesting a final determination of the Secretary of Labor under section 223 of the Trade Act of 1974 or a final determination of the Secretary of Commerce under section 251 or section 271 of such Act is barred unless commenced in accordance with the rules of the Court of International Trade within thirty days after the date of the publication of such determination in the Federal Register.

(e) A civil action contesting a final determination made under section 305(b)(1) of the Trade Agreements Act of 1979 is barred unless commenced in accordance with the rules of the Court of International Trade within ten days after the date of the denial of the request for such confidential information.

(f) A civil action contesting the denial or revocation by the Secretary of the Treasury of a customs broker’s license or permit under subsection (b) or (c) of section 641 of the Tariff Act of 1930, or the revocation or suspension of such license or permit or the imposition of a monetary penalty in lieu thereof by such Secretary under section 641(d) of such Act, is barred unless commenced in accordance with the rules of the Court of International Trade within sixty days after the date of the entry of the decision or order of such Secretary.

(h) A civil action contesting the denial, suspension, or revocation by the Customs Service of a private laboratory’s accreditation under section 499(b) of the Tariff Act of 1930 is barred unless commenced in accordance with the rules of the Court of International Trade within 60 days after the date of the decision or order of the Customs Service.

(i) A civil action of which the Court of International Trade has jurisdiction under section 1581 of this title, other than an action specified in subsections (a)–(h) of this section, is barred unless commenced in accordance with the rules of the court within two years after the cause of action first accrues.


REFERENCES IN TEXT

Section 515 of the Tariff Act of 1930, referred to in subsec. (a), is classified to section 1515 of Title 19, Customs Duties.

Section 516 of the Tariff Act of 1930, referred to in subsec. (b), is classified to section 1516 of Title 19.
Section 515A of the Tariff Act of 1930, referred to in subsec. (c), is classified to section 1515a of Title 19.

Sections 223, 251, and 271 of the Trade Act of 1974, referred to in subsec. (d), are classified to sections 2273, 2341, and 2371, respectively, of Title 19, Customs Duties.

Section 2371 of Title 19 was omitted from the Code as terminated Sept. 30, 1962.

Section 306(b)(1) of the Trade Agreements Act of 1979, referred to in subsec. (e), is classified to section 2315(b)(1) of Title 19.

Section 771(c)(2) of the Tariff Act of 1930, referred to in subsec. (f), is classified to section 1677(c)(2) of Title 19.

Section 641 of the Tariff Act of 1930, referred to in subsec. (g), is classified to section 1641 of Title 19.

Section 490(b) of the Tariff Act of 1930, referred to in subsec. (h), is classified to section 1499(b) of Title 19.

Prior Provisions


Amendments

1993—Subsecs. (h), (i). Pub. L. 103–182 added subsec. (h) and redesignated former subsec. (h) as (i).

1984—Subsec. (c). Pub. L. 98–573, § 623(b)(1)(A), amended subsec. (c) generally, striking out “other than a determination under section 708(b), 703(c), 733(b), or 735(c) of such Act,” and substituting “within the time specified in such section” for “within thirty days after the date of the publication of such determination in the Federal Register”.

Subsec. (d). Pub. L. 98–573, § 623(b)(1)(B), redesignated subsec. (e) as (d). Former subsec. (d), which provided that civil actions contesting certain determinations by the administering authority under sections 708(b), 703(c), 733(b), or 735(c) of such Act, and substituting “within the time specified in such section” for “within thirty days after the date of the publication of such determination in the Federal Register”, was struck out.

Subsecs. (e) to (g). Pub. L. 98–573, § 623(b)(1)(B), redesignated subsecs. (f) to (h) as (e) to (g), respectively. Former subsec. (e) redesignated (d).


Pub. L. 98–573, § 212(b)(4), amended subsec. (h) generally, substituting “customs broker’s license or permit under subsection (b) or (c) of section 641 of the Tariff Act of 1930, or the revocation or suspension of such license or permit or the imposition of a monetary penalty in lieu thereof by such Secretary under section 641(d) of such Act,” for “customhouse broker’s license under section 641(a) of the Tariff Act of 1930 or the revocation or suspension by such Secretary of a customhouse broker’s license under section 641(b) of such Act”.


Effective Date of 1984 Amendment

Amendment by section 212(b)(4) of Pub. L. 98–573 effective on close of 180th day after Oct. 31, 1984, see section 214(d) of Pub. L. 98–573, set out as a note under section 1304 of Title 19, Customs Duties.

Amendment by section 623(b)(1) of Pub. L. 98–573 applicable with respect to civil actions pending on, or filed on or after, Oct. 31, 1984, see section 626(b)(2) of Pub. L. 98–573, set out as a note under section 1671 of Title 19.

Effective Date

Section applicable with respect to civil actions commenced on or after Nov. 1, 1980, see section 701(b)(1)(B) of Pub. L. 96–417, set out as an Effective Date of 1980 Amendment note under section 251 of this title.

Application of 1993 Amendment

For purposes of applying amendment by Pub. L. 103–182, any decision or order of Customs Service denying, suspending, or revoking accreditation of a private laboratory on or after Dec. 8, 1993, that are regulations to implement 19 U.S.C. 1999(b) are issued to be treated as having been denied, suspended, or revoked under such section 1999(b), see section 684(b) of Pub. L. 103–182, set out as a note under section 1361 of this title.

Transfer of Functions

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 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.

§ 2637. Exhaustion of administrative remedies

(a) A civil action contesting the denial of a protest under section 515 of the Tariff Act of 1930 may be commenced in the Court of International Trade only if all liquidated duties, charges, or exactions have been paid at the time the action is commenced, except that a surety’s obligation to pay such liquidated duties, charges, or exactions is limited to the sum of any bond related to each entry included in the denied protest.

(b) A civil action contesting the denial of a petition under section 516 of the Tariff Act of 1930 may be commenced in the Court of International Trade only by a person who has first exhausted the procedures set forth in such section.

(c) A civil action described in section 1581(h) of this title may be commenced in the Court of International Trade prior to the exhaustion of administrative remedies if the person commencing the action makes the demonstration required by such section.

(d) In any civil action not specified in this section, the Court of International Trade shall, where appropriate, require the exhaustion of administrative remedies.

§ 2639. Burden of proof; evidence of value

(a)(1) Except as provided in paragraph (2) of this subsection, in any civil action commenced in the Court of International Trade under section 515, 516, or 516A of the Tariff Act of 1930, the decision of the Secretary of the Treasury, the administering authority, or the International Trade Commission is presumed to be correct. The burden of proving otherwise shall rest upon the party challenging such decision.

(2) The provisions of paragraph (1) of this subsection shall not apply to any civil action commenced in the Court of International Trade under section 1582 of this title.

(b) In any civil action described in section 1581(h) of this title, the person commencing the action shall have the burden of making the demonstration required by such section by clear and convincing evidence.

(c) Where the value of merchandise or any of its components is in issue in any civil action in the Court of International Trade—

(1) reports or depositions of consuls, customs officers, and other officers of the United States, and depositions and affidavits of other persons whose attendance cannot reasonably be had, may be admitted into evidence when served upon the opposing party as prescribed by the rules of the court; and

(2) price lists and catalogs may be admitted in evidence when duly authenticated, relevant, and material.


REFERENCES IN TEXT

Sections 515, 516, and 516A of the Tariff Act of 1930, referred to in subsec. (a)(1), are classified to sections 1515, 1516, and 1516a, respectively, of Title 19, Customs Duties.
Section 516 of the Tariff Act of 1930, referred to in subsec. (a)(2), is classified to section 1516 of Title 19. 
Section 3551(b)(1) of the Trade Agreements Act of 1979, referred to in subsec. (a)(3), is classified to section 2315(a)(1)(B) of Title 19. 
Section 777(c)(2) of the Tariff Act of 1930, referred to in subsec. (a)(4), is classified to section 1677(c)(2) of Title 19. 
Section 641 of the Tariff Act of 1930, referred to in subsec. (a)(5), is classified to section 1641 of Title 19. 

PRIOR PROVISIONS
A prior section 2640, act June 25, 1948, ch. 646, 62 Stat. 982, authorized the division which had decided a case or the single judge who had decided an appeal for a reappraisal of that case on original or rehearing or retrial, prior to repeal by Pub. L. 91–271, title I, §121, June 2, 1970, 84 Stat. 281. See section 2646 of this title.

AMENDMENTS
1993—Subsecs. (d), (e), Pub. L. 103–182 added subsec. (d) and redesignated former subsec. (d) as (e).
1984—Subsec. (a)(5), Pub. L. 98–573 amended par. (5) generally, substituting “under section 641 of the Tariff Act of 1930, with the exception of decisions under section 641(d)(2)(B), which shall be governed by subdivision (d) of this section” for “to deny or revoke a customs broker’s license under section 641(a) of the Tariff Act of 1930”.

EFFECTIVE DATE OF 1984 AMENDMENT
Amendment by Pub. L. 98–573 effective on close of 180th day after Oct. 30, 1984, see section 214(d) of Pub. L. 98–573, set out as a note under section 1581 of Title 19, Customs Duties.

EFFECTIVE DATE
Subsecs. (a)(5), (c), and (d) of this section applicable with respect to civil actions commenced on or after Nov. 1, 1990, see section 701(b)(1)(B) of Pub. L. 96–417, set out as an Effective Date of 1980 Amendment note under section 251 of this title.
Subsec. (a)(6) of this section applicable with respect to civil actions commenced on or after the 90th day after Nov. 1, 1990, see section 701(c)(3)(A) of Pub. L. 96–417.

APPLICATION OF 1993 AMENDMENT
For purposes of applying amendment by Pub. L. 103–182, any decision or order of Customs Service denying, suspending, or revoking accreditation of a private laboratory on or after Dec. 8, 1993, and before regulations to implement 19 U.S.C. 1499(b) are issued to be treated as having been denied, suspended, or revoked under such section 1499(b), see section 684(b) of Pub. L. 103–182, set out as a note under section 1581 of this title.

TRANSFER OF FUNCTIONS
For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 2031, 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.

§ 2641. Witnesses; inspection of documents
(a) Except as otherwise provided by law, in any civil action in the Court of International Trade, each party and its counsel shall have an opportunity to introduce evidence, to hear and cross-examine the witnesses of the other party, and to inspect all samples and papers admitted or offered as evidence, as prescribed by the rules of the court. Except as provided in section 2639 of this title, subsection (b) of this section, or the rules of the court, the Federal Rules of Evidence shall apply to all civil actions in the Court of International Trade.
(b) The Court of International Trade may order that trade secrets and commercial or financial information which is privileged and confidential, or any information provided to the United States by any foreign government or foreign person, may be disclosed to a party, its counsel, or any other person under such terms and conditions as the court may order.


REFERENCES IN TEXT
The Federal Rules of Evidence, referred to in subsec. (a), are set out in the Appendix to this title.

PRIOR PROVISIONS
A prior section 2641, act June 25, 1948, ch. 646, 62 Stat. 982, authorized the Customs Court to assess a penalty of not less than $5 nor more than $250 against any person filing a frivolous protest or appeal, prior to repeal by Pub. L. 91–271, title I, §121, June 2, 1970, 84 Stat. 281.

§ 2642. Analysis of imported merchandise
The Court of International Trade may order an analysis of imported merchandise and reports thereon by laboratories or agencies of the United States or laboratories accredited by the Customs Service under section 499(b) of the Tariff Act of 1930.


REFERENCES IN TEXT
Section 499(b) of the Tariff Act of 1930, referred to in this text, is classified to section 1499(b) of Title 19, Customs Duties.

PRIOR PROVISIONS
A prior section 2642, act May 24, 1949, ch. 139, §123, 63 Stat. 106, authorized the Customs Court under its rules and in its discretion to permit the amendment of protests, appeals and pleadings, prior to repeal by Pub. L. 91–271, title I, §121, June 2, 1970, 84 Stat. 281. See section 2633(b) of this title.

AMENDMENTS
1993—Pub. L. 103–182 inserted before period at end “or laboratories accredited by the Customs Service under section 499(b) of the Tariff Act of 1930”.

APPLICATION OF 1993 AMENDMENT
For purposes of applying amendment by Pub. L. 103–182, any decision or order of Customs Service denying, suspending, or revoking accreditation of a private laboratory on or after Dec. 8, 1993, and before regulations to implement 19 U.S.C. 1499(b) are issued to be treated as having been denied, suspended, or revoked under such section 1499(b), see section 684(b) of Pub. L. 103–182, set out as a note under section 1581 of this title.

TRANSFER OF FUNCTIONS
For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the
Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 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.

§ 2643. Relief

(a) The Court of International Trade may enter a money judgment—

(1) for or against the United States in any civil action commenced under section 1581 or 1582 of this title; and

(2) for or against the United States or any other party in any counterclaim, cross-claim, or third-party action under section 1583 of this title.

(b) If the Court of International Trade is unable to determine the correct decision on the basis of the evidence presented in any civil action, the court may order a retrial or rehearing for all purposes, or may order such further administrative or adjudicative procedures as the court considers necessary to enable it to reach the correct decision.

(c)(1) Except as provided in paragraphs (2), (3), (4), and (5) of this subsection, the Court of International Trade, in addition to the orders specified in subsections (a) and (b) of this section, order any other form of relief that is appropriate in a civil action, including, but not limited to, declaratory judgments, orders of remand, injunctions, and writs of mandamus and prohibition.

(2) The Court of International Trade may not grant an injunction or issue a writ of mandamus in any civil action commenced to review any final determination of the Secretary of Labor under section 223 of the Trade Act of 1974, or any final determination of the Secretary of Commerce under section 251 or section 271 of such Act.

(3) In any civil action involving an application for the issuance of an order directing the administering authority or the International Trade Commission to make confidential information available under section 777(c)(2) of the Tariff Act of 1930, the Court of International Trade may issue an order of disclosure only with respect to the information specified in such section.

(4) In any civil action described in section 1581(h) of this title, the Court of International Trade may only order the appropriate declaratory relief.

(5) In any civil action involving an antidumping or countervailing duty proceeding regarding a class or kind of merchandise of a free trade area country (as defined in section 516A(f)(19) of the Tariff Act of 1930), as determined by the administering authority, the Court of International Trade may not order declaratory relief.

(d) If a surety commences a civil action in the Court of International Trade, such surety shall recover only the amount of the liquidated duties, charges, or exactions paid on the entries included in such action. The excess amount of any recovery shall be paid to the importer of record.

(e) In any proceeding involving assessment or collection of a monetary penalty under section 641(b)(6) or 641(d)(2)(A) of the Tariff Act of 1930, the court may not render judgment in an amount greater than that sought in the initial pleading of the United States, and may render judgment in such lesser amount as shall seem proper and just to the court.


REFERENCES IN TEXT

Sections 223, 251, and 271 of the Trade Act of 1974, referred to in subsec. (c)(2), are classified to sections 2273, 2341, and 2371, respectively, of Title 19, Customs Duties. Section 2371 of Title 19 was omitted from the Code as terminated Sept. 30, 1982.

Section 777(c)(2) of the Tariff Act of 1930, referred to in subsec. (c)(3), is classified to section 1677f(c)(2) of Title 19.

Section 516A(f)(10) of the Tariff Act of 1930, referred to in subsec. (c)(5), is classified to section 1516a(f)(10) of Title 19.

Section 641 of the Tariff Act of 1930, referred to in subsec. (e), is classified to section 1641 of Title 19.

AMENDMENTS

1993—Subsec. (c)(5). Pub. L. 103–182 substituted “merchandise of a free trade area country (as defined in section 516A(f)(19) of the Tariff Act of 1930)” for “Canadian merchandise”.

1988—Subsec. (c). Pub. L. 100–449 substituted “(4), and (5)” for “and (4)” in par. (1) and added par. (5).


EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–182 effective on the date the North American Free Trade Agreement enters into force with respect to the United States [Jan. 1, 1994], but not applicable to any final determination described in section 1516a(a)(1)(B) or (2)(B)(i), (ii), or (iii) of Title 19, Customs Duties, notice of which is published in the Federal Register before such date, or to a determination described in section 1516a(a)(2)(B)(vi) of Title 19, notice of which is received by the Government of Canada or Mexico before such date, or to any binational panel review under the United States-Canada Free-Trade Agreement, or to any extraordinary challenge arising out of any such review that was commenced before such date, see section 416 of Pub. L. 103–182, set out as an Effective Date note under section 3431 of Title 19.

EFFECTIVE AND TERMINATION DATES OF 1988 AMENDMENT

Amendment by Pub. L. 100–449 effective on date United States-Canada Free-Trade Agreement enters into force (Jan. 1, 1989), and to cease to have effect on date Agreement ceases to be in force, see section 501(a), (c) of Pub. L. 100–449, set out in a note under section 2112 of Title 19, Customs Duties.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–573 effective on close of 180th day after Oct. 30, 1984, see section 214(d) of Pub. L. 98–573, set out as a note under section 1304 of Title 19, Customs Duties.

EFFECTIVE DATE

Subsecs. (a) and (c)(2), (4) of this section applicable with respect to civil actions commenced on or after Nov. 1, 1980, see section 701(b)(1) of Pub. L. 99–30 for Pub. L. 99–30 set out as an Effective Date of 1980 Amendment note under section 251 of this title.
EFFECT OF TERMINATION OF NAFTA COUNTRY STATUS
For provisions relating to effect of termination of NAFTA country status on sections 401 to 416 of Pub. L. 103–182, see section 3451 of Title 19, Customs Duties.

§ 2644. Interest
If, in a civil action in the Court of International Trade under section 515 of the Tariff Act of 1930, the plaintiff obtains monetary relief by a judgment or under a stipulation agreement, interest shall be allowed at an annual rate established under section 6621 of the Internal Revenue Code of 1986. Such interest shall be calculated from the date of the filing of the summons in such action to the date of the refund.


REFERENCES IN TEXT
Section 515 of the Tariff Act of 1930, referred to in text, is classified to section 171 of Title 19, Customs Duties.

Section 6621 of the Internal Revenue Code of 1986, referred to in text, is classified to section 6621 of Title 26, Internal Revenue Code.

AMENDMENTS

EFFECTIVE DATE
Section applicable with respect to civil actions commenced on or after Nov. 1, 1980, see section 701(b)(1)(B) of Pub. L. 96–417, set out as an Effective Date of 1980 Amendment note under section 251 of this title.

§ 2645. Decisions
(a) A final decision of the Court of International Trade in a contested civil action or a decision granting or refusing a preliminary injunction shall be supported by—
(1) a statement of findings of fact and conclusions of law; or
(2) an opinion stating the reasons and facts upon which the decision is based.

(b) After the Court of International Trade has rendered a judgment, the court may, upon the motion of a party or upon its own motion, grant a retrial or rehearing, as the case may be. A motion of a party or the court shall be made not later than thirty days after the date of entry of the judgment.

(c) A decision of the Court of International Trade is final and conclusive, unless a retrial or rehearing is granted pursuant to subsection (a) or (b) or an appeal is taken to the Court of Appeals for the Federal Circuit by filing a notice of appeal with the clerk of the Court of International Trade within the time and in the manner prescribed for appeals to United States courts of appeals from the United States district courts.


AMENDMENTS
1982—Subsec. (c). Pub. L. 97–164 substituted “is taken to the Court of Appeals for the Federal Circuit by filing

a notice of appeal with the clerk of the Court of International Trade within the time and in the manner prescribed for appeals to United States courts of appeals from the United States district courts” for “is taken to the Court of Customs and Patent Appeals within the time and in the manner provided in section 2601 of this title”.

EFFECTIVE DATE OF 1982 AMENDMENT

§ 2646. Retrial or rehearing
After the Court of International Trade has rendered a judgment or order, the court may, upon the motion of a party or upon its own motion, grant a retrial or rehearing, as the case may be. A motion of a party or the court shall be made not later than thirty days after the date of entry of the judgment or order.


EFFECTIVE DATE OF REPEAL
Repeal not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98–620, set out as an Effective Date note under section 1657 of this title.

CHAPTER 171—TORT CLAIMS PROCEDURE

Sec. 2671. Definitions.
2672. Administrative adjustment of claims.
2673. Reports to Congress.
2674. Liability of United States.
2675. Disposition by federal agency as prerequisite; evidence.
2676. Judgment as bar.
2677. Compromise.
2678. Attorney fees; penalty.
2679. Exclusiveness of remedy.
2680. Exceptions.

SENATE REVISION AMENDMENT
As printed in this report, this chapter should have read “173” and not “171”. It was properly numbered “173” in the bill. However, the chapter was renumbered “171”, without change in its section numbers, by Senate amendment. See 80th Congress Senate Report No. 1559.

AMENDMENTS

1959—Pub. L. 86–238, § 1(2), Sept. 8, 1959, 73 Stat. 472, substituted “$2,500” for “$1,000” in item 2672.

§ 2671. Definitions
As used in this chapter and sections 1346(b) and 2401(b) of this title, the term “Federal agency” includes the executive departments, the judicial and legislative branches, the military departments, independent establishments of the United States, and corporations primarily acting as instrumentalities or agencies of the
United States, but does not include any contractor with the United States.

"Employee of the government" includes (1) officers or employees of any federal agency, members of the military or naval forces of the United States, members of the National Guard while engaged in training or duty under section 115, 316, 502, 503, 504, or 505 of title 32, and persons acting on behalf of a federal agency in an official capacity, temporarily or permanently in the service of the United States, whether with or without compensation, and (2) any officer or employee of a Federal public defender organization, except when such officer or employee performs professional services in the course of providing representation under section 3006A of title 18.

"Acting within the scope of his office or employment", in the case of a member of the military or naval forces of the United States or a member of the National Guard as defined in such section 101(3) of title 32, means acting in line of duty.


Historical and Revision Notes
1948 Act

Changes were made in phraseology.

1949 Act
This section corrects a typographical error in section 2671 of title 28, U.S.C.

Amendments

Pub. L. 106–506 expanded definition of "Federal agency" to include military departments.

1949—Act May 24, 1949, corrected spelling of "office".

Effective Date of 2000 Amendment
Pub. L. 106–398, §1 [[div. A], title VI, §65(e)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–169, provided that: "The amendment made by subsection (b) [amending this section] shall apply with respect to acts and omissions occurring before, on, or after the date of the enactment of this Act [Oct. 30, 2000]."

Effective Date of 1988 Amendment
Amendment by Pub. L. 106–506 effective Nov. 18, 1988, and applicable to all claims, civil actions, and proceedings pending on, or filed on or after, Nov. 18, 1988, see section 8 of Pub. L. 106–694, set out as a note under section 2679 of this title.

Effective Date of 1981 Amendment
Amendment by Pub. L. 97–124 applicable only with respect to claims arising on or after Dec. 29, 1981, see section 4 of Pub. L. 97–124, set out as a note under section 1069 of Title 10, Armed Forces.

Effective Date of 1966 Amendment
Amendment by Pub. L. 89–506 applicable to claims accruing six months or more after July 18, 1966, see section 10 of Pub. L. 89–506, set out as a note under section 2672 of this title.

Short Title
This chapter is popularly known as the Federal Tort Claims Act. The Federal Tort Claims Act was previously the official short title of title IV of act Aug. 2, 1946, ch. 753, 60 Stat. 842, which was classified principally to chapter 20 (§§921, 922, 931–934, 941–946) of former Title 29, Judicial Code and Judiciary. Title IV of act Aug. 2, 1946, was substantially repealed and reenacted as sections 1346(b) and 2671 et seq. of this title by act June 25, 1948, ch. 646, 62 Stat. 962, the first section of which enacted this title. For complete classification of title IV of this title to the Code, see Tables. For distribution of former sections of Title 28 into this title, see Table at the beginning of this title.

Severability
Section 7 of Pub. L. 106–518 provided that: "If any provision of this Act [see Short Title of 1988 Amendment note under section 1 of this title] or the amendments made by this Act or the application of this Act or any person or circumstance is held invalid, the remainder of this Act and such amendments and the application of the provision to any other person or circumstance shall not be affected by that invalidation."

Law Enforcement Officer Acting Within Scope of Office or Employment

"(a) Definitions.—In this section—

"(1) the term 'crime of violence' has the meaning given that term in section 16 of title 18, United States Code; and

"(2) the term 'law enforcement officer' means any employee described in subparagraph (A), (B), or (C) of section 419 of this title, any special agent in the Diplomatic Security Service of the Department of State, any special agent of the Federal Bureau of Investigation, or any special agent of the Passport Office of the Department of State.

"(b) Rule of Construction.—Effective on the date of the enactment of this Act [Oct. 21, 1998] and thereafter, and notwithstanding any other provision of law, for purposes of chapter 171 of title 28, United States Code, or any other provision of law relating to tort liability, a law enforcement officer shall be construed to be acting within the scope of his or her office or employment, if the officer takes reasonable action, including the use of force, to—

"(1) protect an individual in the presence of the officer from a crime of violence; or

"(2) provide immediate assistance to an individual who has suffered or who is threatened with bodily harm; or

"(3) prevent the escape of any individual who the officer reasonably believes to have committed in the presence of the officer a crime of violence."

Congressional Findings and Purposes
Pub. L. 106–694, §2, Nov. 18, 1998, 102 Stat. 4563, provided that:

"(a) Findings.—The Congress finds and declares the following:
“(1) For more than 40 years the Federal Tort Claims Act [see Short Title note above] has been the legal mechanism for compensating persons injured by negligent or wrongful acts of Federal employees committed within the scope of their employment.

“(2) The United States, through the Federal Tort Claims Act, is responsible to injured persons for the common law torts of its employees in the same manner in which the common law historically has recognized the responsibility of an employer for torts committed by its employees within the scope of their employment.

“(3) Because Federal employees for many years have been protected from personal common law tort liability by a broad based immunity, the Federal Tort Claims Act has served as the sole means for compensating persons injured by the tortious conduct of Federal employees.

“(4) Recent judicial decisions, and particularly the decision of the United States Supreme Court in Westfall v. Erwin, have seriously eroded the common law tort immunity previously available to Federal employees.

“(5) This erosion of immunity of Federal employees from common law tort liability has created an immediate crisis involving the prospect of personal liability and the threat of protracted personal tort litigation for the entire Federal workforce.

“(6) The prospect of such liability will seriously undermine the morale and well being of Federal employees, impede the ability of agencies to carry out their missions, and diminish the vitality of the Federal Tort Claims Act as the proper remedy for Federal employee torts.

“(7) In its opinion in Westfall v. Erwin, the Supreme Court indicated that the Congress is in the best position to determine the extent to which Federal employees should be personally liable for common law torts, and that legislative consideration of this matter would be useful.

“(b) PURPOSE.—It is the purpose of this Act [see Short Title of 1988 Amendment note under section 1 of this title] to protect Federal employees from personal liability for common law torts committed within the scope of their employment, while providing persons injured by the common law torts of Federal employees with an appropriate remedy against the United States.”

§ 2672. Administrative adjustment of claims

The head of each Federal agency or his designee, in accordance with regulations prescribed by the Attorney General, may consider, ascertain, adjust, determine, compromise, and settle any claim for money damages against the United States for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the agency while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred: Provided, That any award, compromise, or settlement in excess of $25,000 shall be effected only with the prior written approval of the Attorney General or his designee. Notwithstanding the proviso contained in the preceding sentence, any award, compromise, or settlement may be effected without the prior written approval of the Attorney General if the compensation to be paid or awarded would be less than $2,500.

The head of each Federal agency may use arbitration, or any other means prescribed by the Attorney General, as a means of settling any claim for money damages against the United States for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the agency while acting within the scope of his office or employment.

Any award, compromise, or settlement in an amount in excess of $2,500 made pursuant to this section shall be paid by the head of the Federal agency concerned out of appropriations available to that agency. Payment of any award, compromise, or settlement in an amount in excess of $2,500 made pursuant to this section or made by the Attorney General in any amount pursuant to section 2677 of this title shall be paid in a manner similar to judgments and compromises in lieu of compensation to be paid in lieu of damages.

The acceptance by the claimant of any such award, compromise, or settlement shall be final and conclusive on all officers of the Government, except when procured by means of fraud.

Any award, compromise, or settlement in an amount in excess of $2,500 made pursuant to this section or made by the Attorney General in any amount pursuant to section 2677 of this title shall be paid in a manner similar to judgments and compromises in lieu of compensation to be paid in lieu of damages.

The phrase “accruing on and after January 1, 1945” was omitted because executed as of the date of the enactment of this revised title.

Changes were made in phraseology.

1949 ACT

This section corrects a typographical error in section 2672 of title 28, U.S.C. (Nov. 15, 1937, 55 Stat. 2331, § 2547. Revised title passed the House of Representatives July 10, 1940, and the Senate July 16, 1940, and was enrolled for Transmittal July 20, 1940.)
§ 2674. Liability of United States

The United States shall be liable, respecting the provisions of this title relating to tort claims, in the same manner and to the same extent as a private individual under like circumstances, but shall not be liable for interest prior to judgment or for punitive damages.

If, however, in any case wherein death was caused, the law of the place where the act or omission complained of occurred provides, or has been construed to provide, for damages only punitive in nature, the United States shall be liable for actual or compensatory damages, measured by the pecuniary injuries resulting from such death to the persons respectively, for whose benefit the action was brought, in lieu thereof.

With respect to any claim under this chapter, the United States shall be entitled to assert any defense based upon judicial or legislative immunity which otherwise would have been available to the employee of the United States whose act or omission gave rise to the claim, as well as any other defenses to which the United States is entitled.

With respect to any claim to which this section applies, the Tennessee Valley Authority shall be entitled to assert any defense which otherwise would have been available to the employee based upon judicial or legislative immunity, which otherwise would have been available to the employee of the Tennessee Valley Authority whose act or omission gave rise to the claim as well as any other defenses to which the Tennessee Valley Authority is entitled under this chapter.

Section 2673. Reports to Congress

The head of each federal agency shall report annually to Congress all claims paid by it under section 2672 of this title, stating the name of each claimant, the amount claimed, the amount awarded, and a brief description of the claim.

(June 25, 1948, ch. 646, 62 Stat. 983.)

Repeal

Section 1(1) of Pub. L. 89–348, Nov. 8, 1965, 79 Stat. 1310, repealed the requirement that an annual report to Congress be made of the administrative adjustment of tort claims of $2,500 or less, stating the name of each claimant, the amount claimed, the amount awarded, and a brief description of the claim.

Historical and Revision Notes


Changes were made in phraseology.
§ 2675. Disposition by federal agency as prerequisite; evidence

(a) An action shall not be instituted upon a claim against the United States for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, unless the claimant shall have first presented the claim to the appropriate Federal agency and his claim shall have been finally denied by the agency in writing and sent by certified or registered mail. The failure of an agency to make final disposition of a claim within six months after it is filed shall, at the option of the claimant any time thereafter, be deemed a final denial of the claim for purposes of this section. The provisions of this subsection shall not apply to such claims as may be asserted under the Federal Rules of Civil Procedure by third party complaint, cross-claim, or counterclaim.

(b) Action under this section shall not be instituted for any sum in excess of the amount of the claim presented to the federal agency, except where the increased amount is based upon newly discovered evidence not reasonably discoverable at the time of presenting the claim to the federal agency, or upon allegation and proof of intervening facts, relating to the amount of the claim.

(c) Disposition of any claim by the Attorney General or other head of a federal agency shall not be competent evidence of liability or amount of damages.


HISTORICAL AND REVISION NOTES

1948 ACT
Section constitutes all of section 931(b), except the first sentence, of title 28, U.S.C., 1940 ed. The remainder of such section 931(b) is incorporated in section 2677 of this title.
Changes were made in phraseology.

1949 ACT
This section corrects a typographical error in section 2675(b) of title 28, U.S.C.

REFERENCES IN TEXT
The Federal Rules of Civil Procedure, referred to in subsec. (a), are set out in the Appendix to this title.

AMENDMENTS
1966—Subsec. (a). Pub. L. 89–506, § 2(a), required that all administrative claims be filed with the agency or department and finally denied by the agency and sent by certified or registered mail prior to the filing of a court action against the United States, provided that the claimant be given the option of considering the claim to have been denied if the agency fails to make final disposition of the claim within six months of presentation of the claim to the agency, and provided that the requirements of the subsection would not apply to claims asserted under the Federal Rules of Civil Procedure by third party complaint, cross-claim, or counterclaim.

Subsec. (b). Pub. L. 89–506, § 2(b), struck out provisions under which a claimant could, upon 15 days writen notice, withdraw a claim from the agency and institute an action thereon.

1949—Subsec. (b). Act May 24, 1949, substituted “section” for “subsection”.

EFFECTIVE DATE OF 1966 AMENDMENT
Amendment by Pub. L. 89–506 applicable to claims accruing six months or more after July 18, 1966, see section 10 of Pub. L. 89–506, set out as a note under section 2672 of this title.

§ 2676. Judgment as bar

The judgment in an action under section 1346(b) of this title shall constitute a complete bar to any action by the claimant, by reason of the same subject matter, against the employee of the government whose act or omission gave rise to the claim.

(June 25, 1948, ch. 646, 62 Stat. 984.)

HISTORICAL AND REVISION NOTES

Section constitutes the first sentence of section 931(b) of title 28, U.S.C., 1940 ed. Other provisions of such section 931(b) are incorporated in section 2675 of this title.
Changes were made in phraseology.

SENATE REVISION AMENDMENT
This section was eliminated by Senate amendment. See 80th Congress Senate Report No. 1559.

§ 2677. Compromise

The Attorney General or his designee may arbitrate, compromise, or settle any claim cognizable under section 1346(b) of this title, after the commencement of an action thereon.


HISTORICAL AND REVISION NOTES

Changes were made in phraseology.

SENATE REVISION AMENDMENT
This section was renumbered “2676” by Senate amendment. See 80th Congress Senate Report No. 1559.

AMENDMENTS
1966—Pub. L. 89–506 struck out provision requiring that approval of court be obtained before Attorney General could arbitrate, compromise, or settle a claim after commencement of an action thereon.

EFFECTIVE DATE OF 1966 AMENDMENT
Amendment by Pub. L. 89–506 applicable to claims accruing six months or more after July 18, 1966, see section 10 of Pub. L. 89–506, set out as a note under section 2672 of this title.

§ 2678. Attorney fees; penalty

No attorney shall charge, demand, receive, or collect for services rendered, fees in excess of 25 per centum of any judgment rendered pursuant to section 1346(b) of this title or any settlement made pursuant to section 2677 of this title, or in excess of 20 per centum of any award, compromise, or settlement made pursuant to section 2672 of this title.

Any attorney who charges, demands, receives, or collects for services rendered in connection
with such claim any amount in excess of that allowed under this section, if recovery be had, shall be fined not more than $2,000 or imprisoned not more than one year, or both.


HISTORICAL AND REVISION NOTES


Words “shall be guilty of a misdemeanor” and “shall, upon conviction thereof”, in the second sentence, were omitted in conformity with revised title 18, U.S.C., Crimes and Criminal Procedure (H.R. 1600, 80th Cong.).

See sections 1 and 2 of said revised title 18.

Changes were made in phraseology.

SENATE REVISION AMENDMENT

This section was renumbered “2677” by Senate amendment. See 80th Congress Senate Report No. 1559.

AMENDMENTS

1966—Pub. L. 89–506 raised the limitations on allowable attorneys fees from 10 to 20 percent for administrative settlements and from 20 to 30 percent for fees in cases after suit is filed and removed the requirement of fees.

Effective Date of 1966 Amendment

Amendment by Pub. L. 89–506 applicable to claims accruing six months or more after July 18, 1966, see section 10 of Pub. L. 89–506, set out as a note under section 2672 of this title.

§ 2679. Exclusiveness of remedy

(a) The authority of any federal agency to sue and be sued in its own name shall not be construed to authorize suits against such federal agency on claims which are cognizable under section 1346(b) of this title, and the remedies provided by this title in such cases shall be exclusive.

(b)(1) The remedy against the United States provided by sections 1346(b) and 2672 of this title for injury or loss of property, or personal injury or death arising or resulting from the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment is exclusive of any other civil action or proceeding for money damages by reason of the same subject matter against the employee whose act or omission gave rise to the claim or against the estate of such employee. Any other civil action or proceeding for money damages arising out of or relating to the same subject matter against the employee or the employee’s estate is precluded without regard to when the act or omission occurred.

(2) Paragraph (1) does not extend or apply to a civil action against an employee of the Government—

(A) which is brought for a violation of the Constitution of the United States, or

(B) which is brought for a violation of a statute of the United States under which such action against an individual is otherwise authorized.

(c) The Attorney General shall defend any civil action or proceeding brought in any court against any employee of the Government or his estate for any such damage or injury. The employee against whom such civil action or proceeding is brought shall deliver within such time after date of service or knowledge of service as determined by the Attorney General, all process served upon him and an attested true copy thereof to his immediate superior or to whomever was designated by the head of his department to receive such papers and such person shall promptly furnish copies of the pleadings and process therein to the United States attorney for the district embracing the place wherein the proceeding is brought, to the Attorney General, and to the head of his employing Federal agency.

(d)(1) Upon certification by the Attorney General that the defendant employee was acting within the scope of his office or employment at the time of the incident out of which the claim arose, any civil action or proceeding commenced upon such claim in a United States district court shall be deemed an action against the United States under the provisions of this title and all references thereto, and the United States shall be substituted as the party defendant.

(2) Upon certification by the Attorney General that the defendant employee was acting within the scope of his office or employment at the time of the incident out of which the claim arose, any civil action or proceeding commenced upon such claim in a State court shall be removed without bond at any time before trial by the Attorney General to the district court of the United States for the district and division embracing the place in which the action or proceeding is pending. Such action or proceeding shall be deemed to be an action or proceeding brought against the United States under the provisions of this title and all references thereto, and the United States shall be substituted as the party defendant. This certification of the Attorney General shall conclusively establish scope of office or employment for purposes of removal.

(3) In the event that the Attorney General has refused to certify scope of office or employment under this section, the employee may at any time before trial petition the court to find and certify that the employee was acting within the scope of his office or employment. Upon such certification by the court, such action or proceeding shall be deemed to be an action or proceeding brought against the United States under the provisions of this title and all references thereto, and the United States shall be substituted as the party defendant. A copy of the petition shall be served upon the United States in accordance with the provisions of Rule 4(d)(4) of the Federal Rules of Civil Procedure. In the event the petition is filed in a civil action or proceeding pending in a State court, the action or proceeding may be removed without bond by the Attorney General to the district court of the United States for the district and division embracing the place in which it is pending. If, in considering the petition, the district court determines that the employee was not acting within the scope of his office or employment, the action or proceeding shall be remanded to the State court.

(H.R. 1600, 80th Cong.)
ceed in the same manner as any action against the United States filed pursuant to section 1346(b) of this title and shall be subject to the limitations and exceptions applicable to those actions.

(3) Whenever an action or proceeding in which the United States is substituted as the party defendant under this subsection is dismissed for failure first to present a claim pursuant to section 2675(a) of this title, such a claim shall be deemed to be timely presented under section 2401(b) of this title if—

(A) the claim would have been timely had it been filed on the date the underlying civil action was commenced, and

(B) the claim is presented to the appropriate Federal agency within 60 days after dismissal of the civil action.

(e) The Attorney General may compromise or settle any claim asserted in such civil action or proceeding in the manner provided in section 2677, and with the same effect.


HISTORICAL AND REVISION NOTES


SENATE REVISION AMENDMENT

The catchline and text of this section were changed and the section was renumbered ‘‘2787’’ by Senate amendment. See 80th Congress Senate Report No. 1559.

REFERENCES IN TEXT


AMENDMENTS

1966—Pub. L. 87–258 designated existing provisions as subsec. (a) and added subsecs. (b) to (e).

EFFECTIVE DATE OF 1988 AMENDMENT

Section 8 of Pub. L. 100–694 provided that:

‘‘(a) General Rule.—This Act and the amendments made by this Act [enacting section 831c–2 of Title 16, Conservation, amending this section and sections 2671 and 2674 of this title, and enacting provisions set out as notes under this section and section 2671 of this title] shall take effect on the date of the enactment of this Act [Nov. 18, 1988].

‘‘(b) Applicability to Proceedings.—The amendments made by this Act [amending this section and sections 2671 and 2674 of this title] shall apply to all claims, civil actions, and proceedings pending on, or filed on or after, the date of the enactment of this Act.

‘‘(c) Pending State Proceedings.—With respect to any civil action or proceeding pending in a State court to which the amendments made by this Act apply, and as to which the period for removal under section 2679(d) of title 28, United States Code (as amended by section 6 of this Act), has expired, the Attorney General shall have 60 days after the date of the enactment of this Act during which to seek removal under such section 2679(d).

‘‘(d) Claims Accruing Before Enactment.—With respect to any civil action or proceeding to which the amendments made by this Act apply in which the claim accrued before the date of the enactment of this Act, the period during which the claim shall be deemed to be timely presented under section 2679(d)(6) of title 28, United States Code (as amended by section 6 of this Act) shall be that period within which the claim could have been timely filed under applicable State law, but in no event shall such period exceed two years from the date of the enactment of this Act.’’

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–506 applicable to claims accruing six months or more after July 18, 1966, see section 10 of Pub. L. 89–506, set out as a note under section 2672 of this title.

EFFECTIVE DATE OF 1961 AMENDMENT

Section 2 of Pub. L. 87–258 provided that: ‘‘The amendments made by this Act [amending this section] shall be deemed to be in effect six months after the enactment hereof [Sept. 21, 1961] but any rights or liabilities then existing shall not be affected.’’

§ 2680. Exceptions

The provisions of this chapter and section 1346(b) of this title shall not apply to—

(a) Any claim based upon an act or omission of an employee of the Government, exercising due care, in the execution of a statute or regulation, whether or not such statute or regulation be valid, or based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the Government, whether or not the discretion involved be abused.

(b) Any claim arising out of the loss, miscarriage, or negligent transmission of letters or postal matter.

(c) Any claim arising in respect of the assessment or collection of any tax or customs duty, or the detention of any goods, merchandise, or other property by any officer of customs or excise or any other law enforcement officer, except that the provisions of this chapter and section 1346(b) of this title shall apply to any claim based on injury or loss of goods, merchandise, or other property, while in the possession of any officer...
of customs or excise or any other law enforcement officer, if—

   (1) the property was seized for the purpose of forfeiture under any provision of Federal law providing for the forfeiture of property other than the property; and a sentence imposed upon conviction of a criminal offense;

   (2) the interest of the claimant was not forfeited;

   (3) the interest of the claimant was not remitted or mitigated (if the property was subject to forfeiture); and

   (4) the claimant was not convicted of a crime for which the interest of the claimant in the property was subject to forfeiture under a Federal criminal forfeiture law. 1

   (d) Any claim for which a remedy is provided by chapter 309 or 311 of title 46 relating to claims or suits in admiralty against the United States shall apply to any claim arising, on or after the date that is 120 days after Apr. 25, 2000, see section 21 of Pub. L. 106–185, § 3(a), Apr. 25, 2000, 114 Stat. 211; Pub. L. 93–253, § 2, Mar. 16, 1974, 88 Stat. 50; Pub. L. 86–168, effective Jan. 1, 1960, see section 203(c) of Pub. L. 86–168.

1 So in original.
and appurtenances related thereto, see section 14 of act Sept. 26, 1950.

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.

Coast Guard transferred to Department of Transportation and all functions, powers, and duties, relating to Coast Guard, of Secretary of the Treasury and of all other offices and officers of Department of the Treasury transferred to Secretary of Transportation by Pub. L. 89–760, §6(b)(1), Oct. 15, 1966, 80 Stat. 938. Section 6(b)(2) of Pub. L. 89–760, however, provided that notwithstanding such transfer of functions, Coast Guard shall operate as part of Navy in time of war or when President directs as provided in section 3 of Title 14, Coast Guard. See section 108 of Title 49, Transportation.

For transfer of certain functions relating to claims and litigation, insofar as they pertain to the Air Force, from Secretary of the Army to Secretary of the Air Force, see Secretary of Defense Transfer Order No. 34 (§1a(2)(4)), eff. July 1, 1949.

NORTHERN MARIANA ISLANDS—APPLICABILITY OF SUBSEC. (k)

Pub. L. 97–357, title II, §204, Oct. 19, 1982, 96 Stat. 1708, provided: "That the Northern Mariana Islands shall not be considered a foreign country for purposes of subsection (k) of section 2388 of title 28, United States Code, with respect to claims which accrued no more than two years prior to the effective date of this Act [Oct. 19, 1982]."

TERMINATION OF NATIONAL EMERGENCY

Declaration of national emergency in effect on Sept. 14, 1976, was terminated two years from that date by section 1601 of Title 50, War and National Defense.

APPLICABILITY OF SUBSEC. (j)

Joint Res. July 3, 1952, ch. 570, §1(a)(32), 66 Stat. 333, as amended by Joint Res. Mar. 31, 1953, ch. 13, §1, 67 Stat. 18, and Joint Res. June 30, 1953, ch. 172, 67 Stat. 132, provided that subsec. (j) of this section, in addition to coming into full force and effect in time of war, shall continue in force until six months after the termination of the national emergency proclaimed by the President on Dec. 16, 1950 by 1950 Proc. No. 2914, 15 F.R. 9029, set out as a note preceding section 1 of Title 50 Appendix, War and National Defense, or such earlier date or dates as may be provided for by Congress, but in no event beyond Aug. 1, 1953. Section 7 of Joint Res. July 3, 1952, provided that it should become effective June 16, 1952.


CHAPTER 173—ATTACHMENT IN POSTAL SUITS

Right of attachment.

Application for warrant.

Issue of warrant.

Trial of ownership of property.

Investment of proceeds of attached property.

§2710. Right of attachment

(a) Where debts are due from a defaulting or delinquent postmaster, contractor, or other officer, agent or employee of the Post Office Department, a warrant of attachment may issue against all property and legal and equitable rights belonging to him, and his sureties, or either of them, where he—

(1) is a nonresident of the district where he was appointed, or has departed from that district for the purpose of permanently residing outside thereof, or of avoiding the service of civil process; and

(2) has conveyed away, or is about to convey away any of his property, or has removed or is about to remove the same from the district wherein it is situated, with intent to defraud the United States.

(b) When the property has been removed, the marshal of the district into which it has been removed, upon receipt of certified copies of the warrant, may seize the property and convey it to a convenient place within the jurisdiction of the court which issued the warrant. Alias warrants may be issued upon due application. The warrant first issued remains valid until the return day thereof.


CODIFICATION

Section was derived from R.S. §924, which was originally classified to section 737 of former Title 28. Following the general revision and enactment of Title 28 by act June 25, 1948, R.S. §924 was reclassified to section 837 of Title 39. R.S. §924 was repealed by section 12(c) of Pub. L. 86–682 (section 1 of which revised and enacted Title 39), and reenacted by section 9 thereof as section 2710 of this title.

CHANGE OF NAME

References to Post Office Department, Postal Service, Postal Field Service, Field Postal Service, or Departmental Service or Departmental Headquarters of Post Office Department to be considered references to United States Postal Service pursuant to Pub. L. 91–375, §6(o), Aug. 12, 1970, 84 Stat. 783, set out as a Cross Reference note preceding section 101 of Title 39, Postal Service.

EFFECTIVE DATE

Chapter effective Sept. 1, 1960, see section 11 of Pub. L. 86–682.

§2711. Application for warrant

A United States attorney or assistant United States attorney or a person authorized by the Attorney General—

(1) upon his own affidavit or that of another credible person, stating the existence of either of the grounds of attachments enumerated in section 2710 of this title and

(2) upon production of legal evidence of the debt

may apply for a warrant of attachment to a judge, or, in his absence, to the clerk of any
§ 2712. Issue of warrant

Upon an order of a judge of a court, or, in his absence and upon the clerk's own initiative, the clerk shall issue a warrant for the attachment of the property belonging to the person specified in the affidavit. The marshal shall execute the warrant forthwith and take the property attached, if personal, in his custody, subject to the interlocutory or final orders of the court.


CODIFICATION

Section was derived from R.S. § 926, which was originally classified to section 738 of former Title 28. Following the general revision and enactment of Title 28 by act June 25, 1948, R.S. § 926 was reclassified to section 839 of Title 39, R.S. § 926 was repealed by section 12(c) of Pub. L. 86-682 (section 1 of which revised and enacted Title 39), and reenacted by section 9 thereof as section 2712 of this title.

§ 2713. Trial of ownership of property

Not later than twenty days before the return day of a warrant issued under section 2712 of this title, the party whose property is attached, on notice to the United States Attorney, may file a plea in abatement, denying the allegations of the affidavit, or denying ownership in the defendant of the property attached. The court, upon application of either party, shall order a trial by jury of the issues. Where the parties, by consent, waive a trial by jury, the court shall decide the issues. A party claiming ownership of the property attached and seeking its return is limited to the remedy afforded by this section, but his right to an action of trespass, or other action for damages, is not impaired.


CODIFICATION

Section was derived from R.S. § 927, which was originally classified to section 739 of former Title 28. Following the general revision and enactment of Title 28 by act June 25, 1948, R.S. § 927 was reclassified to section 840 of Title 39, R.S. § 927 was repealed by section 12(c) of Pub. L. 86-682 (section 1 of which revised and enacted Title 39), and reenacted by section 9 thereof as section 2713 of this title.

§ 2714. Investment of proceeds of attached property

When the property attached is sold on an interlocutory order or is producing revenue, the money arising from the sale or revenue shall be invested, under the order of the court, in securities of the United States. The accretions therefrom are subject to the order of the court.


CODIFICATION

Section was derived from R.S. § 928, which was originally classified to section 740 of former Title 28. Following the general revision and enactment of Title 28 by act June 25, 1948, R.S. § 928 was reclassified to section 841 of Title 39, R.S. § 928 was repealed by section 12(c) of Pub. L. 86-682 (section 1 of which revised and enacted Title 39), and reenacted by section 9 thereof as section 2714 of this title.

§ 2715. Publication

The marshal shall cause publication of an executed warrant of attachment—

(1) for two months in case of an absconding debtor, and

(2) for four months in case of a nonresident debtor

in a newspaper published in the district where the property is situated pursuant to the details of the order under which the warrant is issued.


CODIFICATION

Section was derived from R.S. § 929, which was originally classified to section 742 of former Title 28. Following the general revision and enactment of Title 28 by act June 25, 1948, R.S. § 929 was reclassified to section 842 of Title 39, R.S. § 929 was repealed by section 12(c) of Pub. L. 86-682 (section 1 of which revised and enacted Title 39), and reenacted by section 9 thereof as section 2715 of this title.

§ 2716. Personal notice

After the first publication of the notice of attachment, a person indebted to, or having possession of property of a defendant and having knowledge of the notice, shall answer for the amount of his debt or the value of the property. Any disposal or attempted disposal of the property, to the injury of the United States, is unlawful. When the person indebted to, or having possession of the property of a defendant, is known to the United States attorney or marshal, the officer shall cause a personal notice of the attachment to be served upon him, but the lack of the notice does not invalidate the attachment.


CODIFICATION

Section was derived from R.S. § 930, which was originally classified to section 743 of former Title 28. Following the general revision and enactment of Title 28 by act June 25, 1948, R.S. § 930 was reclassified to section 843 of Title 39, R.S. § 930 was repealed by section 12(c) of Pub. L. 86-682 (section 1 of which revised and enacted Title 39), and reenacted by section 9 thereof as section 2716 of this title.

§ 2717. Discharge

The court, or a judge thereof, upon—

(1) application of the party when property has been attached and
(2) execution to the United States of a penal bond, approved by a judge, in double the value of the property attached and conditioned upon the return of the property or the payment of any judgment rendered by the court may discharge the warrant of attachment as to the property of the applicant.


**CODIFICATION**

Section was derived from R.S. § 931, which was originally classified to section 844 of former Title 28. Following the general revision and enactment of Title 28 by act June 25, 1948, R.S. § 931 was reclassified to section 846 of Title 39. R.S. § 964 was repealed by section 12(c) of Pub. L. 86–682 (section 1 of which revised and enacted Title 39), and reenacted by section 9 thereof as section 2717 of this title.

§ 2718. Interest on balances due department

In suits for balances due the Post Office Department may recover interest at the rate of 6 per centum per year from the time of default.


**CODIFICATION**

Section was derived from R.S. § 964, which was originally classified to section 788 of former Title 28. Following the general revision and enactment of Title 28 by act June 25, 1948, R.S. § 964 was reclassified to section 846 of Title 39. R.S. § 964 was repealed by section 12(c) of Pub. L. 86–682 (section 1 of which revised and enacted Title 39), and reenacted by section 9 thereof as section 2717 of this title.

**CHANGE OF NAME**

References to Post Office Department, Postal Service, Postal Field Service, Field Postal Service, or Departmental Service or Departmental Headquarters of Post Office Department to be considered references to United States Postal Service pursuant to Pub. L. 91–375, § 6(e), Aug. 12, 1970, 84 Stat. 783, set out as a Cross References note preceding section 101 of Title 39, Postal Service.

[CHAPTER 175—REPEALED]


**CHAPTER 176—FEDERAL DEBT COLLECTION PROCEDURE**

**SUBCHAPTER A—DEFINITIONS AND GENERAL PROVISIONS**

Sec. 1

A. Definitions and general provisions ........ 3001
B. Prejudgment remedies .......................... 3002
C. Postjudgment remedies .......................... 3003
D. Fraudulent transfers ............................. 3004

**CHARGE OF NAME**


§ 3001. Applicability of chapter

(a) In general.—Except as provided in subsection (b), the 1 chapter provides the exclusive civil procedures for the United States—

(1) to recover a judgment on a debt; or

(2) to obtain, before judgment on a claim for a debt, a remedy in connection with such claim.

(b) Limitation.—To the extent that another Federal law specifies procedures for recovering on a claim or a judgment for a debt arising under such law, those procedures shall apply to such claim or judgment to the extent those procedures are inconsistent with this chapter.

(c) Amounts owing other than debts.—This chapter shall not apply with respect to an amount owing that is not a debt or to a claim for an amount owing that is not a debt.


**EFFECTIVE DATE**

Section 3631 of title XXXVI of Pub. L. 101–647 provided that:

“(a) Except as provided in subsection (b), this Act [probably should be “title”, meaning title XXXVI of Pub. L. 101–647, which enacted this chapter and section 2944 of this title, amended sections 550, 1962, 1963, and

1Editorially supplied.

2So in original. Does not conform to subchapter heading.

3So in original. Probably should be “this”.}
2044 of this title, amended sections 550, 1962, 1963, and 2410 of this title, section 523 of Title 11, Bankruptcy, and sections 3132 and 3552 of Title 18, Crimes and Criminal Procedure, and enacted provisions set out as a note under section 1 of this title] and the amendments made by this Act [title] shall take effect 180 days after the date of the enactment of this Act [Nov. 29, 1990].

(b) The amendments made by title I of this Act [probably should be “subtitle A of this title”], meaning subtitle A (§§3611, 3302 (3612)) of title XXXVI of Pub. L. 101-647, which enacted this chapter] shall apply with respect to actions pending on the effective date of this Act [probably should be title XXXVI of Pub. L. 101-647] in any court on—

(A) a claim for a debt; or

(B) a judgment for a debt.

“(2) All notices, writs, orders, and judgments in effect in such actions shall continue in effect until superseded or modified in an action under chapter 170 of title 28 of the United States Code, as added by title 1 of this Act [subtitle A of this title].

“(3) For purposes of this subsection—

(A) the term ‘court’ means a Federal, State, or local court, and

(B) the term ‘debt’ has the meaning given such term in section and [sic] 3002(3) of such chapter.”

§ 3002. Definitions

As used in this chapter:

(1) “Counsel for the United States” means—

(A) a United States attorney, an assistant United States attorney designated to act on behalf of the United States attorney, or an attorney with the United States Department of Justice or with a Federal agency who has litigation authority; and

(B) any private attorney authorized by contract made in accordance with section 3718 of title 31 to conduct litigation for collection of debts on behalf of the United States.

(2) “Court” means any court created by the Congress of the United States, excluding the United States Tax Court.

(3) “Debt” means—

(A) an amount that is owing to the United States on account of a direct loan, or loan insured or guaranteed, by the United States; or

(B) an amount that is owing to the United States on account of a fee, duty, lease, rent, service, sale of real or personal property, overpayment, fine, assessment, penalty, restitution, damages, interest, tax, bail bond forfeiture, reimbursement, recovery of a cost incurred by the United States, or other source of indebtedness to the United States, but that is not owing under the terms of a contract originally entered into by only persons other than the United States;

and includes any amount owing to the United States for the benefit of an Indian tribe or individual Indian, but excludes any amount to which the United States is entitled under section 3011(a).

(4) “Debtor” means a person who is liable for a debt or against whom there is a claim for a debt.

(5) “Disposable earnings” means that part of earnings remaining after all deductions required by law have been withheld.

(6) “Earnings” means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program.

(7) “Garnishee” means a person (other than the debtor) who has, or is reasonably thought to have, possession, custody, or control of any property in which the debtor has a substantial nonexempt interest, including any obligation due the debtor or to become due the debtor, and against whom a garnishment under section 3104 or 3205 is issued by a court.

(8) “Judgment” means a judgment, order, or decree entered in favor of the United States in a court and arising from a civil or criminal proceeding regarding a debt.

(9) “Nonexempt disposable earnings” means 25 percent of disposable earnings, subject to section 303 of the Consumer Credit Protection Act.

(10) “Person” includes a natural person (including an individual Indian), a corporation, a partnership, an unincorporated association, a trust, or an estate, including a State or local government or an Indian tribe.

(11) “Prejudgment remedy” means the remedy of attachment, receivership, garnishment, or sequestration authorized by this chapter to be granted before judgment on the merits of a claim for a debt.

(12) “Property” includes any present or future interest, whether legal or equitable, in real, personal (including choses in action), or mixed property, tangible or intangible, vested or contingent, wherever located and however held (including community property and property held in trust (including spendthrift and pension trusts)), but excludes—

(A) property held in trust by the United States for the benefit of an Indian tribe or individual Indian; and

(B) Indian lands subject to restrictions against alienation imposed by the United States.

(13) “Security agreement” means an agreement that creates or provides for a lien.

(14) “State” means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Marianas, or any territory or possession of the United States.

(15) “United States” means—

(A) a Federal corporation;

(B) an agency, department, commission, board, or other entity of the United States; or

(C) an instrumentality of the United States.

(16) “United States marshal” means a United States marshal, a deputy marshal, or an official of the United States Marshals Service designated under section 564.


References in Text

Section 303 of the Consumer Credit Protection Act, referred to in par. (9), is classified to section 1673 of Title 15, Commerce and Trade.

§ 3003. Rules of construction

(a) Terms.—For purposes of this chapter—
(1) the terms "includes" and "including" are not limiting;
(2) the term "or" is not exclusive; and
(3) the singular includes the plural.

(b) EFFECT ON RIGHTS OF THE UNITED STATES.—This chapter shall not be construed to curtail or limit the right of the United States under any other Federal law or any State law.

1. to collect taxes or to collect any other amount collectible in the same manner as a tax;
2. to collect any fine, penalty, assessment, restitution, or forfeiture arising in a criminal case;
3. to appoint or seek the appointment of a receiver; or
4. to enforce a security agreement.

(c) EFFECT ON OTHER LAWS.—This chapter shall not be construed to supersede or modify the operation of—

1. title 11;
2. admiralty law;
3. section 3713 of title 31;
4. section 303 of the Consumer Credit Protection Act (15 U.S.C. 1673);
5. a statute of limitation applicable to a criminal proceeding;
6. the common law or statutory rights to set-off or recoupment;
7. any Federal law authorizing, or any inherent authority of a court to provide, injunctive relief;
8. the authority of a court—
   (A) to impose a sanction under the Federal Rules of Civil Procedure;
   (B) to appoint a receiver to effectuate its order; or
   (C) to exercise the power of contempt under any Federal law;
9. any law authorizing the United States to obtain partition, or to recover possession, of property in which the United States holds title; or
10. any provision of any other chapter of this title, except to the extent such provision is inconsistent with this chapter.

(d) PREEMPTION.—This chapter shall preempt State law to the extent such law is inconsistent with a provision of this chapter.

(e) EFFECT ON RIGHTS OF THE UNITED STATES UNDER FOREIGN AND INTERNATIONAL LAW.—This chapter shall not be construed to curtail or limit the rights of the United States under foreign law, under a treaty or an international agreement, or otherwise under international law.

(f) APPLICABILITY OF FEDERAL RULES OF CIVIL PROCEDURE.—Except as provided otherwise in this chapter, the Federal Rules of Civil Procedure shall apply with respect to actions and proceedings under this chapter.


REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (a), are set out in the Appendix to this title.

§ 3004. Service of process; enforcement; notice

(a) MANNER OF SERVICE.—A complaint, notice, writ, or other process required to be served in an action or proceeding under this chapter shall be served in accordance with the Federal Rules of Civil Procedure unless otherwise provided in this chapter.

(b) NATIONWIDE ENFORCEMENT.—(1) Except as provided in paragraph (2)—

(A) any writ, order, judgment, or other process, including a summons and complaint, filed under this chapter may be served in any State; and

(B) such writ, order, judgment may be enforced by the court issuing the writ, order, or process, regardless of where the person is served with the writ, order, or process.

(2) If the debtor so requests, within 20 days after receiving the notice described in section 3101(d) or 3202(b), the action or proceeding in which the writ, order, or judgment was issued shall be transferred to the district court for the district in which the debtor resides.

(c) NOTICE AND OTHER PROCESS.—At such time as counsel for the United States considers appropriate, but not later than the time a prejudgment or postjudgment remedy is put into effect under this chapter, counsel for the United States shall exercise reasonable diligence to serve upon the debtor and any person who the United States believes, after exercising due diligence, has possession, custody, or control of the property, a copy of the application for such remedy, the order granting such remedy, and the notice required by section 3101(d) or 3202(b).


REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (a), are set out in the Appendix to this title.

§ 3005. Application of chapter to judgments

This chapter shall not apply with respect to a judgment on a debt if such judgment is entered more than 10 years before the effective date of this chapter.


REFERENCES IN TEXT

For effective date of this chapter, referred to in text, see section 3631 of Pub. L. 101–947, set out as an Effective Date note under section 3001 of this title.

§ 3006. Affidavit requirements

Any affidavit required of the United States by this chapter may be made on information and belief, if reliable and reasonably necessary, establishing with particularity to the court's satisfaction, facts supporting the claim of the United States.


§ 3007. Perishable personal property

(a) AUTHORITY TO SELL.—If at any time during any action or proceeding under this chapter the
court determines on its own initiative or upon motion of any party, that any seized or detained personal property is likely to perish, waste, or be destroyed, or otherwise substantially depreciate in value during the pendency of the proceeding, the court shall order a commercially reasonable sale of such property.

(b) Deposit of Sale Proceeds.—Within 5 days after such sale, the proceeds shall be deposited with the clerk of the court, accompanied by a statement in writing and signed by the United States marshal, to be filed in the action or proceeding, stating the time and place of sale, the name of the purchaser, the amount received, and an itemized account of expenses.

(c) Presumption.—For purposes of liability on the part of the United States, there shall be a presumption that the price paid at a sale under subsection (a) is the fair market value of the property or portion.


§ 3008. Proceedings before United States magistrate judges

A district court of the United States may assign its duties in proceedings under this chapter to a United States magistrate judge to the extent not inconsistent with the Constitution and laws of the United States.


§ 3009. United States marshals’ authority to designate keeper

Whenever a United States marshal is authorized to seize property pursuant to this chapter, the United States marshal may designate another person or Federal agency to hold for safekeeping such property seized.


§ 3010. Co-owned property

(a) Limitation.—The remedies available to the United States under this chapter may be enforced against property which is co-owned by a debtor and any other person only to the extent allowed by the law of the State where the property is located. This section shall not be construed to limit any right or interest of a debtor or co-owner in a retirement system for Federal military or civilian personnel established by the United States or any agency thereof or in a qualified retirement arrangement.

(b) Definitions.—For purposes of subsection (a)—

(1) the term “retirement system for Federal military or civilian personnel” means a pension or annuity system for Federal military or civilian personnel of more than one agency, or for some or all of such personnel of a single agency, established by statute or by regulation pursuant to statutory authority; and

(2) the term “qualified retirement arrangement” means a plan qualified under section 401(a), 403(a), or 409 of the Internal Revenue Code of 1986 or a plan that is subject to the requirements of section 205 of the Employee Retirement Income Security Act of 1974.


§ 3011. Assessment of surcharge on a debt

(a) Surcharge Authorized.—In an action or proceeding under subchapter B or C, and subject to subsection (b), the United States is entitled to recover a surcharge of 10 percent of the amount of the debt in connection with the recovery of the debt, to cover the cost of processing and handling the litigation and enforcement under this chapter of the claim for such debt.

(b) Limitation.—Subsection (a) shall not apply if—

(1) the United States receives an attorney’s fee in connection with the enforcement of the claim; or

(2) the law pursuant to which the action on the claim is based provides any other amount to cover such costs.


§ 3012. Joinder of additional defendant

The United States or the debtor may join as an additional defendant in an action or proceeding under this chapter any person reasonably believed to owe money (including money owed on account of a requirement to provide goods or services pursuant to a loan or loan guarantee extended under Federal law) to the debtor arising out of the transaction or occurrence giving rise to a debt.


§ 3013. Modification or protective order; supervision of enforcement

The court may at any time on its own initiative or the motion of any interested person, and after such notice as it may require, make an order denying, limiting, conditioning, extending, or modifying the use of any enforcement procedure under this chapter.


§ 3014. Exempt property

(a) Election To Exempt Property.—An individual debtor may, in an action or proceeding
under this chapter, elect to exempt property listed in either paragraph (1) or, in the alternative, paragraph (2). If such action or proceeding is against debtors who are husband and wife, one debtor may not elect to exempt property listed in paragraph (1) and the other debtor elect a to exempt property listed in paragraph (2). If the debtors cannot agree on the alternative to be elected, they shall be deemed to elect paragraph (1). Such property is either—

(1) property that is specified in section 522(d) of title 11, as amended from time to time; or

(2) (A) any property that is exempt under Federal law, other than paragraph (1), or State or local law that is applicable on the date of the filing of the application for a remedy under this chapter at the place in which the debtor’s domicile has been located for the 180 days immediately preceding the date of the filing of such application, or for a longer portion of such 180-day period than in any other place; and

(B) any interest in property in which the debtor had, immediately before the filing of such application, an interest as a tenant by the entirety or joint tenant, or an interest in a community estate, to the extent that such interest is exempt from process under applicable nonbankruptcy law.

(b) EFFECT ON ASSERTION AND MANNER OF DETERMINATION.—

(1) STATEMENT.—A court may order the debtor to file a statement with regard to any claimed exemption. A copy of such statement shall be served on counsel for the United States. Such statement shall be under oath and shall describe each item of property for which exemption is claimed, the value and the basis for such valuation, and the nature of the debtor’s ownership interest.

(2) HEARING.—The United States or the debtor, by application to the court in which an action or proceeding under this chapter is pending, may request a hearing on the applicability of any exemption claimed by the debtor. The court shall determine the extent (if any) to which the exemption applies. Unless it is reasonably evident that the exemption applies, the debtor shall bear the burden of persuasion.

(3) STAY OF DISPOSITION.—Assertion of an exemption shall prevent the United States from selling or otherwise disposing of the property for which such exemption is claimed until the court determines whether the debtor has a substantial nonexempt interest in such property. The United States may not take possession of, dispose of, sell, or otherwise interfere with the debtor’s normal use and enjoyment of an interest in property the United States knows or has reason to know is exempt.

(c) DEBTORS IN JOINT CASES.—Subject to the limitation in subsection (a), this section shall apply separately with respect to each debtor in a joint case.


§ 3015. Discovery as to debtor's financial condition

(a) IN GENERAL.—Except as provided in subsection (b), in an action or proceeding under subchapter B or C, the United States may have discovery regarding the financial condition of the debtor in the manner in which discovery is authorized by the Federal Rules of Civil Procedure in an action on a claim for a debt.

(b) LIMITATION.—Subsection (a) shall not apply with respect to an action or proceeding under subchapter B unless there is a reasonable likelihood that the debt involved exceeds $50,000.


REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (a), are set out in the Appendix to this title.

SUBCHAPTER B—PREJUDGMENT REMEDIES

§ 3101. Prejudgment remedies

(a) APPLICATION.—(1) The United States may, in a proceeding in conjunction with the complaint or at any time after the filing of a civil action on a claim for a debt, make application under oath to a court to issue any prejudgment remedy.

(2) Such application shall be filed with the court and shall set forth the factual and legal basis for each prejudgment remedy sought.

(3) Such application shall—

(A) state that the debtor against whom the prejudgment remedy is sought shall be afforded an opportunity for a hearing; and

(B) set forth with particularity that all statutory requirements under this chapter for the issuance of the prejudgment remedy sought have been satisfied.

(b) GROUNDS.—Subject to section 3102, 3103, 3104, or 3105, a prejudgment remedy may be granted by any court if the United States shows reasonable cause to believe that—

(1) the debtor—

(A) is about to leave the jurisdiction of the United States with the effect of hindering, delaying, or defrauding the United States in its effort to recover a debt;

(B) has or is about to assign, dispose, remove, conceal, ill-treat, waste, or destroy property with the effect of hindering, delaying, or defrauding the United States;

(C) has or is about to convert the debtor’s property into money, securities, or evidence of debt in a manner prejudicial to the United States with the effect of hindering, delaying, or defrauding the United States; or

(D) has evaded service of process by concealing himself or has temporarily withdrawn from the jurisdiction of the United States with the effect of hindering, delaying, or defrauding the United States; or

(2) a prejudgment remedy is required to obtain jurisdiction within the United States and
§ 3101  TITLE 28—JUDICIARY AND JUDICIAL PROCEDURE  Page 612

the prejudgment remedy sought will result in obtaining such jurisdiction.

(c) AFFIDAVIT.—(1) The application under subsection (a) shall include an affidavit establishing with particularity to the court's satisfaction facts supporting the probable validity of the claim for a debt and the right of the United States to recover what is demanded in the application.

(2) The affidavit shall state—
(A) specifically the amount of the debt claimed by the United States and any interest or costs attributable to such debt;
(B) one or more of the grounds specified in subsection (b); and
(C) the requirements of section 3102(b), 3103(a), 3104(a), or 3105(b), as the case may be.

(3) No bond is required of the United States.

(d) NOTICE AND HEARING.—(1) On filing an application by the United States as provided in this section, the counsel for the United States shall prepare, and the clerk shall issue, a notice for service on the debtor against whom the prejudgment remedy is sought and on any other person whom the United States reasonably believes, after exercising due diligence, has possession, custody, or control of property affected by such remedy. Three copies of the notice shall be served on each such person. The form and content of such notice shall be approved jointly by a majority of the chief judges of the Federal districts in the State in which the court is located and shall be in substantially the following form:

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NOTICE
You are hereby notified that this [property] is being taken by the United States Government [the Government], which says that [name of debtor] owes it a debt of $ [amount] for [reason for debt] and has filed a lawsuit to collect this debt. The Government says it must take this property at this time because [recite the pertinent ground or grounds from section 3101(b)]. The Government wants to make sure [name of debtor] will pay if the court determines that this money is owed.

In addition, you are hereby notified that there are exemptions under the law which may protect some of this property from being taken by the Government if [name of debtor] can show that the exemptions apply. Below is a summary of the major exemptions which apply in most situations in the State of [State where property is located]:

[A statement summarizing in plain and understandable English the election available with respect to such State under section 3014 and the types of property that may be exempted under each of the alternatives specified in paragraphs (1) and (2) of section 3014(a), and a statement that different property may be so exempted with respect to the State in which the debtor resides.]

If you are [name of debtor] and you disagree with the reason the Government gives for taking your property now, or if you think you do not owe the money to the Government that it says you do, or if you think the property the Government is taking qualifies under one of the above exemptions, you have a right to ask the court to return your property to you.

If you want a hearing, you must promptly notify the court. You must make your request in writing, and either mail it or deliver it in person to the clerk of the court at [address]. If you wish, you may use this notice to request the hearing by checking the box below and mailing this notice to the court clerk. You must also send a copy of your request to the Government at [address], so the Government will know you want a hearing. The hearing will take place within 5 days after the clerk receives your request, if you ask for it to take place that quickly, or as soon after that as possible.

At the hearing you may explain to the judge why you think you do not owe the money to the Government, why you disagree with the reason the Government says it must take your property at this time, or why you believe the property the Government has taken is exempt or belongs to someone else. You may make any or all of these explanations as you see fit.

If you think you live outside the Federal judicial district in which the court is located, you may request, not later than 20 days after you receive this notice, that this proceeding to take your property be transferred by the court to the Federal judicial district in which you reside.

You must make your request in writing, and either mail it or deliver it in person to the clerk of the court at [address]. You must also send a copy of your request to the Government at [address], so the Government will know you want the proceeding to be transferred.

Be sure to keep a copy of this notice for your own records. If you have any questions about your rights or about this procedure, you should contact a lawyer, an office of public legal assistance, or the clerk of the court. The clerk is not permitted to give legal advice, but can refer you to other sources of information."

2 By requesting, at any time before judgment on the claim for a debt, the court to hold a hearing, the debtor may move to quash the order granting such remedy. The court shall hold a hearing on such motion as soon as practicable, or, if requested by the debtor, within 5 days after receiving the request for a hearing or as soon thereafter as possible. The issues at such hearing shall be limited to—

(A) the probable validity of the claim for the debt for which such remedy was granted and of any defense or claim of exemption asserted by such person;
(B) compliance with any statutory requirement for the issuance of the prejudgment remedy granted;
(C) the existence of any ground set forth in subsection (b); and
(D) the inadequacy of alternative remedies (if any) to protect the interests of the United States.

(e) ISSUANCE OF WRIT.—On the court's determination that the requirements of subsections (a), (b), and (c) have been met, the court shall issue all process sufficient to put into effect the prejudgment remedy sought.

§ 3102. Attachment

(a) Property Subject to Attachment.—(1) Any property in the possession, custody, or control of the debtor and in which the debtor has a substantial nonexempt interest, except earnings, may be attached pursuant to a writ of attachment in an action or proceeding against a debtor on a claim for a debt and may be held as security to satisfy such judgment, and interest and costs, as the United States may recover on such claim.

(2) The value of property attached shall not exceed the amount by which the sum of the amount of the debt claimed by the United States and the amount of interest and costs reasonably likely to be assessed against the debtor by the court exceeds the aggregate value of the nonexempt interest of the debtor in any—

(A) property securing the debt; and
(B) property garnished or in receivership, or income sequestered, under this subchapter.

(b) Availability of Attachment.—If the requirements of subsection (a) are satisfied, a court shall issue a writ authorizing the United States to attach property in which the debtor has a substantial nonexempt interest, as security for such judgment (and interest and costs) as the United States may recover on a claim for a debt—

(1) in an action on a contract, express or implied, against the debtor for payment of money, only if the United States shows reasonable cause to believe that—

(A) the contract is not fully secured by real or personal property; or
(B) the value of the original security is substantially diminished, without any act of the United States or the person to whom the security was given, below the amount of the debt;

(2) in an action against the debtor for damages in tort;

(3) if the debtor resides outside the jurisdiction of the United States; or

(4) in an action to recover a fine, penalty, or tax.

(c) Issuance of Writ; Contents.—(1) Subject to subsections (a) and (b), a writ of attachment shall be issued by the court directing the United States marshal of the district where property described in subsection (a) is located to attach the property.

(2) Several writs of attachment may be issued at the same time, or in succession, and sent to different judicial districts until sufficient property is attached.

(3) The writ of attachment shall contain—

(A) the date of the issuance of the writ;
(B) the identity of the court, the docket number of the action, and the identity of the cause of action;
(C) the name and last known address of the debtor;
(D) the amount to be secured by the attachment; and
(E) a reasonable description of the property to be attached.

(d) Levy of Attachment.—(1) The United States marshal receiving the writ shall proceed without delay to levy upon the property specified for attachment if found within the district. The marshal may not sell property unless ordered by the court.

(2) If the property levied on is attached, or attached thereto and signed by the marshal, to the court from which it was issued, within 5 days after the date of the levy.

(3) If the property levied on is claimed, replevied under subsection (1)(2), or sold under section 3007 after the return, the United States shall deliver the replevin bond to the clerk of the court to be filed in the action.

(4) If personal property is repleived, the United States marshal shall deliver the replevin bond to the clerk of the court to be filed in the action.

(f) Levy on personal property is made by taking possession of it. Levy on personal property not easily taken into possession or which cannot be taken into possession without great inconvenience or expense may be made by affixing a copy of the writ and notice of levy on it or in a conspicuous place in the vicinity of it describing the notice of levy the property by quantity and with sufficient detail to identify the property levied on.

(g) Levy on real property is made by directing the United States marshal to do so or upon specific order of the court.

(h) Levy on personal property is made by taking possession of it. Levy on personal property not easily taken into possession or which cannot be taken into possession without great inconvenience or expense may be made by affixing a copy of the writ and notice of levy on it or in a conspicuous place in the vicinity of it describing the notice of levy the property by quantity and with sufficient detail to identify the property levied on.

(i) Levy on real property is made by directing the United States marshal to do so or upon specific order of the court.

(j) Levy on personal property is made by taking possession of it. Levy on personal property not easily taken into possession or which cannot be taken into possession without great inconvenience or expense may be made by affixing a copy of the writ and notice of levy on it or in a conspicuous place in the vicinity of it describing the notice of levy the property by quantity and with sufficient detail to identify the property levied on.

(k) Levy on real property is made by directing the United States marshal to do so or upon specific order of the court.

(l) Levy on personal property is made by taking possession of it. Levy on personal property not easily taken into possession or which cannot be taken into possession without great inconvenience or expense may be made by affixing a copy of the writ and notice of levy on it or in a conspicuous place in the vicinity of it describing the notice of levy the property by quantity and with sufficient detail to identify the property levied on.

(m) Levy on real property is made by directing the United States marshal to do so or upon specific order of the court.

(n) Levy on personal property is made by taking possession of it. Levy on personal property not easily taken into possession or which cannot be taken into possession without great inconvenience or expense may be made by affixing a copy of the writ and notice of levy on it or in a conspicuous place in the vicinity of it describing the notice of levy the property by quantity and with sufficient detail to identify the property levied on.

(o) Levy on real property is made by directing the United States marshal to do so or upon specific order of the court.

(p) Levy on personal property is made by taking possession of it. Levy on personal property not easily taken into possession or which cannot be taken into possession without great inconvenience or expense may be made by affixing a copy of the writ and notice of levy on it or in a conspicuous place in the vicinity of it describing the notice of levy the property by quantity and with sufficient detail to identify the property levied on.

(q) Levy on real property is made by directing the United States marshal to do so or upon specific order of the court.

(r) Levy on personal property is made by taking possession of it. Levy on personal property not easily taken into possession or which cannot be taken into possession without great inconvenience or expense may be made by affixing a copy of the writ and notice of levy on it or in a conspicuous place in the vicinity of it describing the notice of levy the property by quantity and with sufficient detail to identify the property levied on.

(s) Levy on real property is made by directing the United States marshal to do so or upon specific order of the court.

(t) Levy on personal property is made by taking possession of it. Levy on personal property not easily taken into possession or which cannot be taken into possession without great inconvenience or expense may be made by affixing a copy of the writ and notice of levy on it or in a conspicuous place in the vicinity of it describing the notice of levy the property by quantity and with sufficient detail to identify the property levied on.

(u) Levy on real property is made by directing the United States marshal to do so or upon specific order of the court.

(v) Levy on personal property is made by taking possession of it. Levy on personal property not easily taken into possession or which cannot be taken into possession without great inconvenience or expense may be made by affixing a copy of the writ and notice of levy on it or in a conspicuous place in the vicinity of it describing the notice of levy the property by quantity and with sufficient detail to identify the property levied on.

(w) Levy on real property is made by directing the United States marshal to do so or upon specific order of the court.

(x) Levy on personal property is made by taking possession of it. Levy on personal property not easily taken into possession or which cannot be taken into possession without great inconvenience or expense may be made by affixing a copy of the writ and notice of levy on it or in a conspicuous place in the vicinity of it describing the notice of levy the property by quantity and with sufficient detail to identify the property levied on.

(y) Levy on real property is made by directing the United States marshal to do so or upon specific order of the court.

(z) Levy on personal property is made by taking possession of it. Levy on personal property not easily taken into possession or which cannot be taken into possession without great inconvenience or expense may be made by affixing a copy of the writ and notice of levy on it or in a conspicuous place in the vicinity of it describing the notice of levy the property by quantity and with sufficient detail to identify the property levied on.
tion is obtained or denied, or the action is otherwise dismissed. The death of the debtor whose property is attached does not terminate the attachment lien. Upon issuance of a judgment in the action and registration under this chapter, the judgment lien so created relates back to the time of levy.

(g) REDUCTION OR DISSOLUTION OF ATTACHMENT.—(1) If an excessive or unreasonable attachment is made, the debtor may submit a motion to the court for a reduction of the amount of the attachment or its dissolution. Notice of such motion shall be served on the United States.

(2) The court shall order a part of the property to be released, if after a hearing the court finds that the amount of the attachment is excessive or unreasonable or if the attachment is for an amount larger than the sum of the liquidated or ascertainable amount of the debt and the amount of interest and costs likely to be taxed.

(3) The court shall dissolve the attachment if the amount of the debt is unliquidated and unascertainable by calculation.

(4) If any property claimed to be exempt is levied on, the debtor may, at any time after such levy, request that the court vacate such levy. If it appears to the court that the property so levied upon is exempt, the court shall order the levy vacated and the property returned to the debtor.

(h) REPLEVIN OF ATTACHED PROPERTY BY DEBTOR; BOND.—If attached property is not sold before judgment, the debtor may replevy such property or any part thereof by giving a bond approved by counsel for the United States or the court and payable to the United States in double the reasonable value of the property to be replevied or double the value of the claim, whichever is less.

(1) PRESERVATION OF PERSONAL PROPERTY UNDER ATTACHMENT.—If personal property in custody of the United States marshal under a writ of attachment is not replevied, claimed, or sold, the court may make such order for its preservation or use as appears to be in the interest of the parties.

(2) JUDGMENT AND DISPOSITION OF ATTACHED PROPERTY.—

(1) JUDGMENT FOR THE UNITED STATES.—On entry of judgment for the United States, the court shall order the property, or proceeds of perishable property sold under section 3007, restored to the debtor and shall exonerate any replevin bond.

(2) PERSONAL PROPERTY REPLEVIED OR DOUBLE THE VALUE OF THE CLAIM, OR OTHER PROFESSIONAL PERSONS.

(a) APPOINTMENT OF A RECEIVER.—If the requirements of section 3101 are satisfied, a court may appoint a receiver for property in which the debtor has a substantial nonexempt interest if the United States shows reasonable cause to believe that there is a substantial danger that the property will be removed from the jurisdiction of the court, lost, concealed, materially injured or damaged, or mismanaged.

(b) POWERS OF RECEIVER.—(1) The appointing court may authorize a receiver—

(A) to take possession of real and personal property and sue for, collect, and sell obligations upon such conditions and for such purposes as the court shall direct; and

(B) to administer, collect, improve, lease, repair or sell pursuant to section 3007 such real and personal property as the court shall direct.

A receiver appointed to manage residential or commercial property shall have demonstrable expertise in the management of these types of property.

(2) Unless expressly authorized by order of the court, a receiver shall have no power to employ attorneys, accountants, appraisers, auctioneers, or other professional persons.

(c) DURATION OF RECEIVERSHIP.—A receivership shall not continue past the entry of judgment, or the conclusion of an appeal of such judgment, unless the court orders it continued under section 3203(e) or unless the court otherwise directs its continuation.

(d) ACCOUNTS; REQUIREMENT TO REPORT.—A receiver shall keep written accounts itemizing receipts and expenditures, describing the property and naming the depository of receivership funds. The receiver’s accounts shall be open to inspection by any person having an apparent interest in the property. The receiver shall file reports at regular intervals as directed by the court and shall serve the debtor and the United States with a copy thereof.

(e) MODIFICATION OF POWERS; REMOVAL.—On motion of the receiver or on its own initiative, the court which appointed the receiver may remove the receiver or modify the receiver’s powers at any time.

(f) PRIORITY.—If more than one court appoints a receiver for particular property, the receiver first qualifying under law shall be entitled to take possession, control, or custody of the property.

(g) COMPENSATION OF RECEIVERS.—(1) A receiver is entitled to such commissions, not exceeding 5 percent of the sums received and disbursed by him, as the court allows unless the court otherwise directs.

(2) If, at the termination of a receivership, there are no funds in the hands of a receiver, the court may fix the compensation of the receiver in accordance with the services rendered and
may direct the party who moved for the appointment of the receiver to pay such compensation in addition to the necessary expenditures incurred by the receiver which remain unpaid.

(3) At the termination of a receivership, the receiver shall file a final accounting of the receipts and disbursements and apply for compensation setting forth the amount sought and the services rendered by the receiver.


§ 3104. Garnishment

(a) IN GENERAL.—If the requirements of section 3101 are satisfied, a court may issue a writ of garnishment against property (excluding earnings) in which the debtor has a substantial nonexempt interest and which is in the possession, custody, or control of a person other than the debtor in order to satisfy a claim for a debt. Co-owned property shall be subject to garnishment to the same extent as co-owned property is subject to garnishment under the law of the State in which such property is located. A court may issue simultaneous separate writs of garnishment to different garnishees. A writ of garnishment issued under this subsection shall be issued at the same time, or in succession, and sent to different judicial districts until sufficient income is sequestered.

(b) WRIT.—(1) Subsections (b)(2) and (c) of section 3205 shall apply with respect to garnishment issued under this subsection, except that for purposes of this section—

(A) earnings of the debtor shall not be subject to garnishment; and

(B) a reference in such subsections to a judgment debtor shall be deemed to be a reference to a debtor.

(2) The United States shall include in its application for a writ of garnishment—

(A) the amount of the claim asserted by the United States for a debt; and

(B) the date the writ is issued.

(c) LIMITATION.—The value of property garnished shall not exceed the amount by which the sum of the amount of the debt claimed by the United States and the amount of interest and costs reasonably likely to be assessed against the debtor by the court exceeds the aggregate value of the nonexempt interest of the debtor in any—

(1) property securing the debt; and

(2) property attached or in receivership, or income sequestered, under this subchapter.


§ 3105. Sequestration

(a) PROPERTY SUBJECT TO SEQUESTRATION.—(1) Any income from property in which the debtor has a substantial nonexempt interest may be sequestered pursuant to a writ of sequestration in an action or proceeding against a debtor on a claim for a debt and may be held as security to satisfy such judgment, and interest and costs, as the United States may recover on such claim.

(2) The amount of income sequestered shall not exceed the amount by which the sum of the amount of the debt claimed by the United States and the amount of interest and costs reasonably likely to be assessed against the debtor by the court exceeds the aggregate value of the nonexempt interest of the debtor in any—

(A) property securing the debt; and

(B) property attached, garnished, or in receivership under this subchapter.

(b) AVAILABILITY OF SEQUESTRATION.—If the requirements of section 3101 are satisfied, a court shall issue a writ authorizing the United States to sequester income from property in which the debtor has a substantial nonexempt interest, as security for such judgment (and interest and costs) as the United States may recover on a claim for a debt—

(1) in an action on a contract, express or implied, against the debtor for payment of money, only if the United States shows reasonable cause to believe that—

(A) the contract is not fully secured by real or personal property; or

(B) the value of the original security is substantially diminished, without any act of the United States or the person to whom the security was given, below the amount of the debt;

(2) in an action against the debtor for damages in tort;

(3) if the debtor resides outside the jurisdiction of the United States; or

(4) in an action to recover a fine, penalty, or tax.

(c) ISSUANCE OF WRIT; CONTENTS.—(1) Subject to subsections (a) and (b), a writ of sequestration shall be issued by the court directing the United States marshal of the district where income described in subsection (a) is located to sequester the income.

(2) Several writs of sequestration may be issued at the same time, or in succession, and sent to different judicial districts until sufficient income is sequestered.

(3) The writ of sequestration shall contain—

(A) the date of the issuance of the writ;

(B) the identity of the court, the docket number of the action, and the identity of the cause of action;

(C) the name and last known address of the debtor;

(D) the amount to be secured by the sequestration; and

(E) a reasonable description of the income to be sequestered.

(d) EXECUTION OF WRIT.—(1) The United States marshal receiving the writ shall proceed without delay to execute the writ.

(2) The United States marshal shall file a copy of the notice of sequestration in the same manner as provided for judgments in section 3201(a)(1). The United States marshal shall serve a copy of the writ and notice of sequestration on—

(A) the debtor against whom the writ is issued; and

(B) the person who has possession of the income subject to the writ;

in the same manner that a summons is served in a civil action and make the return thereof.

(e) DEPOSIT OF SEQUESTERED INCOME.—A person who has possession of the income subject to
a writ of sequestration shall deposit such income with the clerk of the court, accompanied by a statement in writing stating the person's name, the name of the debtor, the amount of such income, the property from which such income is produced, and the period during which such income is produced.

(f) RETURN OF WRIT; DUTIES OF MARSHAL; FURTHER RETURN.—(1) A United States marshal executing a writ of sequestration shall return the writ with the marshal's action endorsed thereon or attached thereto and signed by the marshal, to the court from which it was issued, within 5 days after the date of the execution.

(2) The return shall describe the income sequestered with sufficient certainty to identify it and shall state the location where it was sequestered, and the date and time it was sequestered. If no income was sequestered, the return shall so state.

(3) If sequestered income is claimed after the return, the United States marshal shall immediately make a further return to the clerk of the court showing the disposition of the income.

(g) REDUCTION OR DISSOLUTION OF SEQUESTRATION.—(1) If an excessive or unreasonable sequestration is made, the debtor may submit a motion to the court for a reduction of the amount of the sequestration or its dissolution. Notice of such motion shall be served on the United States.

(2) The court shall order a part of the income to be released, if after a hearing the court finds that the amount of the sequestration is excessive or unreasonable or if the sequestration is for an amount larger than the sum of the liquidated or ascertainable amount of the debt and the amount of interest and costs likely to be taxed.

(3) The court shall dissolve the sequestration if the amount of the debt is unliquidated and unascertainable by calculation.

(h) PRESERVATION OF INCOME UNDER SEQUESTRATION.—If personal property in custody of the United States marshal under a writ of sequestration is not claimed, the court may make such order for its preservation or use as appears to be in the interest of the parties.

(i) JUDGMENT AND DISPOSITION OF SEQUESTERED INCOME.—

(1) JUDGMENT FOR THE UNITED STATES.—On entry of judgment for the United States, the court shall order the sequestered income to be applied to the satisfaction of the judgment.

(2) RESTORATION OF INCOME.—If the sequestration is vacated or if the judgment on the claim for the debt is for the person against whom the writ of sequestration is issued, the court shall order the income restored to the debtor.


SUBCHAPTER C—POSTJUDGMENT REMEDIES

§ 3201. Judgment liens

(a) CREATION.—A judgment in a civil action shall create a lien on all real property of a judgment debtor on filing a certified copy of the abstract of the judgment in the manner in which a notice of tax lien would be filed under paragraphs (1) and (2) of section 6323(f) of the Internal Revenue Code of 1986. A lien created under this paragraph is for the amount necessary to satisfy the judgment, including costs and interest.

(b) PRIORITY OF LIEN.—A lien created under subsection (a) shall have priority over any other lien or encumbrance which is perfected later in time.

(c) DURATION OF LIEN; RENEWAL.—(1) Except as provided in paragraph (2), a lien created under subsection (a) is effective, unless satisfied, for a period of 20 years.

(2) Such lien may be renewed for one additional period of 20 years upon filing a notice of renewal in the same manner as the judgment is filed and shall relate back to the date the judgment is filed if—

(A) the notice of renewal is filed before the expiration of the 20-year period to prevent the expiration of the lien; and

(B) the court approves the renewal of such lien under this paragraph.

(d) RELEASE OF JUDGMENT LIEN.—A judgment lien shall be released on the filing of a satisfaction of judgment or release of lien in the same manner as the judgment is filed to obtain the lien.

(e) EFFECT OF LIEN ON ELIGIBILITY FOR FEDERAL GRANTS, LOANS OR PROGRAMS.—A debtor who has a judgment lien against the debtor's property for a debt to the United States shall not be eligible to receive any grant or loan which is made, insured, guaranteed, or financed directly or indirectly by the United States or to receive funds directly from the Federal Government in any program, except funds to which the debtor is entitled as beneficiary, until the judgment is paid in full or otherwise satisfied.

The agency of the United States that is responsible for such grants and loans may promulgate regulations to allow for waiver of this restriction on eligibility for such grants, loans, and funds.

(f) SALE OF PROPERTY SUBJECT TO JUDGMENT LIEN.—(1) On proper application to a court, the court may order the United States to sell, in accordance with sections 2001 and 2002, any real property subject to a judgment lien in effect under this section.

(2) This subsection shall not preclude the United States from using an execution sale pursuant to section 3203(g) to sell real property subject to a judgment lien.


REFERENCES IN TEXT

Section 6323(f) of the Internal Revenue Code of 1986, referred to in subsec. (a), is classified to section 6323(f) of Title 26, Internal Revenue Code.

§ 3202. Enforcement of judgments

(a) ENFORCEMENT REMEDIES.—A judgment may be enforced by any of the remedies set forth in
this subchapter. A court may issue other writs pursuant to section 1651 of title 28, United States Code, as necessary to support such remedies, subject to rule 81(b) of the Federal Rules of Civil Procedure.

(b) Notice.—On the commencement by the United States of an action or proceeding under this subchapter to obtain a remedy, the counsel for the United States shall prepare, and clerk of the court shall issue, a notice in substantially the following form:

"Notice"

"You are hereby notified that this [property] is being taken by the United States Government, which has a court judgment in [case docket number and jurisdiction of court] of $[amount] for [reason of debt].

"In addition, you are hereby notified that there are exemptions under the law which may protect some of this property from being taken by the United States Government if [name of judgment debtor] can show that the exemptions apply. Below is a summary of the major exemptions which apply in most situations in the State of [State where property is located]:

"[A statement summarizing in plain and understandable English the election available with respect to such State under section 3014 and the types of property that may be exempted under each of the alternatives specified in paragraphs (1) and (2) of section 3014(a) and a statement that different property may be so exempted with respect to the State in which the debtor resides.]

"If you are [name of judgment debtor], you have a right to ask the court to return your property to you if you think the property the Government is taking qualifies under one of the above exemptions [For a default judgment:] or if you think you do not owe the money to the United States Government that it says you do.

"If you want a hearing, you must notify the court within 20 days after you receive this notice. You must make your request in writing, and either mail it or deliver it in person to the clerk of the court at [address]. If you wish, you may use this notice to request the hearing by checking the box below and mailing this notice to the court clerk. You must also send a copy of your request to the Government at [address].

"At the hearing you may explain to the judge why you believe the property the Government has taken is exempt [For a default judgment:] or why you think you do not owe the money to the Government. [For a writ of execution:] If you do not request a hearing within 20 days of receiving this notice, your [property] may be sold by public auction and the payment used toward the money you owe the Government.

"If you think you live outside the Federal judicial district in which the court is located, you may request, not later than 20 days after your receipt of this notice, that this proceeding to take your property be transferred by the court to the Federal judicial district in which you reside.

You must make your request in writing, and either mail it or deliver it in person to the clerk of the court at [address]. You must also send a copy of your request to the Government at [address], so the Government will know you want the proceeding to be transferred.

"Be sure to keep a copy of this notice for your own records. If you have any questions about your rights or about this procedure, you should contact a lawyer, an office of public legal assistance, or the clerk of the court. The clerk is not permitted to give legal advice, but can refer you to other sources of information."

(c) Service.—A copy of the notice and a copy of the application for granting a remedy under this subchapter shall be served by counsel for the United States on the judgment debtor against whom such remedy is sought and on each person whom the United States, after diligent inquiry, has reasonable cause to believe has an interest in property to which the remedy is directed.

(d) Hearing.—By requesting, within 20 days after receiving the notice described in section 3202(b), the court to hold a hearing, the judgment debtor may move to quash the order granting such remedy. The court that issued such order shall hold a hearing on such motion as soon as practicable, or, if so requested by the judgment debtor, within 5 days after receiving the request or as soon thereafter as possible.

The issues at such hearing shall be limited—

(1) to the probable validity of any claim of exemption by the judgment debtor;

(2) to compliance with any statutory requirement for the issuance of the post-judgment remedy granted; and

(3) if the judgment is by default and only to the extent that the Constitution or another law of the United States provides a right to a hearing on the issue, to—

(A) the probable validity of the claim for the debt which is merged in the judgment; and

(B) the existence of good cause for setting aside such judgment.

This subparagraph shall not be construed to afford the judgment debtor the right to more than one such hearing except to the extent that the Constitution or another law of the United States provides a right to more than one such hearing.

(e) Sale of Property.—The property of a judgment debtor which is subject to sale to satisfy the judgment may be sold by judicial sale, pursuant to sections 2001, 2002, and 2004 or by execution sale pursuant to section 3203(g). If a hearing is requested pursuant to subsection (d), a property with respect to which the request relates shall not be sold before such hearing.


References in Text

The Federal Rules of Civil Procedure, referred to in subsec. (a), are set out in the Appendix to this title.
§ 3203. Execution

(a) Property Subject to Execution.—All property in which the judgment debtor has a substantial nonexempt interest shall be subject to levy pursuant to a writ of execution. The debtor's earnings shall not be subject to execution while in the possession, custody, or control of the debtor's employer. Co-owned property shall be subject to execution to the extent such property is subject to execution under the law of the State in which it is located.

(b) Creation of Execution Lien.—A lien shall be created in favor of the United States on all property levied on under a writ of execution and shall date from the time of the levy. Such lien shall have priority over all subsequent liens and shall be for the aggregate amount of the judgment, costs, and interest. The execution lien on any real property as to which the United States has a judgment lien shall relate back to the judgment lien date.

(c) Writ of Execution.—

(1) Issuance.—On written application of counsel for the United States, the court may issue a writ of execution. Multiple writs may issue simultaneously, and successive writs may issue before the return date of a writ previously issued.

(2) Form of Writ.—

(A) General Contents.—A writ of execution shall specify the date that the judgment is entered, the court in which it is entered, the amount of the judgment if for money, the amount of the costs, the amount of interest due, the sum due as of the date the writ is issued, the rate of postjudgment interest, the name of the judgment debtor, and the judgment debtor's last known address.

(B) Additional Contents.—(i) Except as provided in clauses (ii) and (iii), the writ shall direct the United States marshal to satisfy the judgment by levying on and selling property in which the judgment debtor has a substantial nonexempt interest, but not to exceed property reasonably equivalent in value to the aggregate amount of the judgment, costs, and interest.

(ii) A writ of execution issued on a judgment for the delivery to the United States of the possession of personal property, or for the delivery of the possession of real property, shall particularly describe the property, and shall require the marshal to deliver the possession of the property to the United States.

(iii) A writ of execution on a judgment for the recovery of personal property or its value shall direct the marshal, in case a delivery of the specific property cannot be had, to levy and collect such value out of any property in which the judgment debtor has a substantial nonexempt interest.

(d) Levy of Execution.—

(1) In General.— Levy on property pursuant to a writ of execution issued under this section shall be made in the same manner as levy on property is made pursuant to a writ of attachment issued under section 3102(d).

(2) Death of Judgment Debtor.—The death of the judgment debtor after a writ of execution is issued stays the execution proceedings, but any lien acquired by levy of the writ shall be recognized and enforced by the court for the district in which the estate of the deceased is located. The execution lien may be enforced—

(A) against the executor, administrator, or personal representative of the estate of the deceased; or

(B) if there be none, against the deceased's property coming to the heirs or devisees or at their option against cash in their possession, but only to the extent of the value of the property coming to them.

(3) Records of United States Marshal.—(A) A United States marshal receiving a writ of execution shall endorse thereon the exact hour and date of receipt.

(B) The United States marshal shall make a written record of every levy, specify the property on which levy is made, the date on which levy is made, and the marshal's costs, expenses, and fees.

(C) The United States marshal shall make a written return to the court on each writ of execution stating concisely what is done pursuant to the writ and shall deliver a copy to counsel for the United States who requests the writ. The writ shall be returned not more than—

(i) 90 days after the date of issuance if levy is not made; or

(ii) 10 days after the date of sale of property on which levy is made.

(e) Appointment of Receiver.—Pending the levy of execution, the court may appoint a receiver to manage property described in such writ if there is a substantial danger that the property will be removed from the jurisdiction of the court, lost, materially injured or damaged, or mismanaged.

(f) Replevy; Redemption.—

(1) Before Execution Sale.—(A) Before execution sale, the United States marshal may return property to the judgment debtor any personal property taken in execution, on—

(i) satisfaction of the judgment, interest, and costs, and any costs incurred in connection with scheduling the sale; or

(ii) receipt from the judgment debtor of a bond—

(I) payable to the United States, with 2 or more good and sufficient sureties to be approved by the marshal, conditioned on the delivery of the property to the marshal at the time and place named in the bond to be sold under subsection (g); or

(II) for the payment to the marshal of a fair value thereof which shall be stated in the bond.

(B) A judgment debtor who sells or disposes of property replevied under subparagraph (A) shall pay the United States marshal the stipulated value of such property.

(C) If the judgment debtor fails to deliver such property to the United States marshal pursuant to the terms of the delivery de-
scribed in subparagraph (A)(ii)(I) and fails to pay the United States marshal the stipulated value of such property, the United States marshal shall endorse the bond “forfeited” and return it to the court from which the writ of execution issued. If the judgment is not fully satisfied, the court shall issue a writ of execution against the judgment debtor and the sureties on the bond for the amount due, not exceeding the stipulated value of the property, on which execution no delivery bond shall be taken, which instruction shall be endorsed on the writ.

(2) AFTER EXECUTION SALE.—The judgment debtor shall not be entitled to redeem the property after the execution sale.

(g) EXECUTION SALE.—

(1) GENERAL PROCEDURES.—An execution sale under this section shall be conducted in a commercially reasonable manner—

(A) SALE OF REAL PROPERTY.—

(i) In general.—Except as provided in clause (ii), real property, or any interest therein, shall be sold, after the expiration of the 90-day period beginning on the date of levy under subsection (d), for cash at public auction at the courthouse of the county, parish, or city in which the greater part of the property is located or on the premises or some parcel thereof.

(ii) The court may order the sale of any real property after the expiration of the 30-day period beginning on the date of levy under subsection (d) if the court determines that such property is likely to perish, waste, be destroyed, or otherwise substantially depreciate in value during the 90-day period beginning on the date of levy.

(iii) The time and place of sale of real property, or any interest therein, under execution shall be advertised by the United States marshal, by publication of notice, once a week for at least 3 weeks prior to the sale, in at least one newspaper of general circulation in the county or parish where the property is located. The first publication shall appear not less than 25 days preceding the day of sale. The notice shall contain a statement of the authority by which the sale is to be made, the time of levy, the time and place of sale, and a brief description of the property to be sold, sufficient to identify the property (such as a street address for urban property and the survey identification and location for rural property), but it shall not be necessary for the notice to contain field notes. Such property shall be open for inspection and appraisal, subject to the judgment debtor’s reasonable objections, for a reasonable period before the day of sale.

(iv) The United States marshal shall serve written notice of public sale by personal delivery, or certified or registered mail, to each person whom the marshal has reasonable cause to believe, after a title search is conducted by the United States, has an interest in property under execution, including lienholders, co-owners, and tenants, at least 25 days before the day of sale, to the last known address of each such person.

(ii) SALE OF CITY LOTS.—If the real property consists of several lots, tracts, or parcels in a city or town, each lot, tract, or parcel shall be offered for sale separately, unless not susceptible to separate sale because of the character of improvements.

(iii) SALE OF RURAL PROPERTY.—If the real property is not located in a city or town, the judgment debtor may—

(I) divide the property into lots of not less than 50 acres or in such greater or lesser amounts as ordered by the court;

(II) furnish a survey of such prepared by a registered surveyor; and

(III) designate the order in which those lots shall be sold.

When a sufficient number of lots are sold to satisfy the amount of the execution and costs of sale, the marshal shall stop the sale.

(B) SALE OF PERSONAL PROPERTY.—(i) Personal property levied on shall be offered for sale on the premises where it is located at the time of levy, at the courthouse of the county, parish or city wherein it is located, or at another location if ordered by the court. Personal property susceptible of being exhibited shall not be sold unless it is present and subject to the view of those attending the sale unless—

(I) the property consists of shares of stock in corporations;

(II) by reason of the nature of the property, it is impractical to exhibit it; or

(III) the debtor’s interest in the property does not include the right to the exclusive possession.

(ii) Except as provided in subclause (II), personal property, or any interest therein, shall be sold after the expiration of the 30-day period beginning on the date of levy under subsection (d).

(II) The court may order the sale of any personal property before the expiration of such 30-day period if the court determines that such property is likely to perish, waste, be destroyed, or otherwise substantially depreciate in value during such 30-day period.

(iii) Notice of the time and place of the sale of personal property shall be given by the United States marshal by posting notice thereof for not less than 10 days successively immediately before the day of sale at the courthouse of any county, parish, or city, and at the place where the sale is to be made.

(iv) The United States marshal shall serve written notice of public sale by personal delivery, or registered or certified mail at their last known addresses, on the judgment debtor and other persons who the marshal has reasonable cause to believe, after diligent inquiry, have a substantial interest in the property.

(2) POSTPONEMENT OF SALE.—The United States marshal may postpone an execution sale from time to time by continuing the re-
§ 3204. Installment payment order

(a) AUTHORITY TO ISSUE ORDER.—Subject to subsection (c), if it is shown that the judgment debtor—

(1) is receiving or will receive substantial nonexempt disposable earnings from self-employment that are not subject to garnishment; or

(2) is diverting or concealing substantial earnings from any source, or property received in lieu of earnings;

then upon motion of the United States and notice to the judgment debtor, the court may, if appropriate, order that the judgment debtor make specified installment payments to the United States. Notice of the motion shall be served on the judgment debtor in the same manner as a summons or by registered or certified mail, return receipt requested. In fixing the amount of the payments, the court shall take into consideration after a hearing, the income, resources, and reasonable requirements of the judgment debtor and the judgment debtor’s dependents, any other payments to be made in satisfaction of judgments against the judgment debtor, and the amount due on the judgment in favor of the United States.

(b) MODIFICATION OF ORDER.—On motion of the United States or the judgment debtor, and upon a showing that the judgment debtor’s financial circumstances have changed or that assets not previously disclosed by the judgment debtor have been discovered, the court may modify the amount of payments, alter their frequency, or require full payment.

(c) LIMITATION.—(1) An order may not be issued under subsection (a), and if so issued shall have no force or effect, against a judgment debtor with respect to whom there is in effect a writ of garnishment of earnings issued under this chapter and based on the same debt.

(2) An order may not be issued under subsection (a) with respect to any earnings of the debtor except nonexempt disposable earnings.

§ 3205. Garnishment

(a) IN GENERAL.—A court may issue a writ of garnishment against property (including non-exempt property) of a judgment debtor, if—

(1) is receiving or will receive substantial nonexempt disposable earnings from self-employment that are not subject to garnishment; or

(2) is diverting or concealing substantial earnings from any source, or property received in lieu of earnings;
exempt disposable earnings) in which the debtor has a substantial nonexempt interest and which is in the possession, custody, or control of a person other than the debtor, in order to satisfy the judgment against the debtor. Co-owned property shall be subject to garnishment to the same extent as co-owned property is subject to garnishment under the law of the State in which such property is located. A court may issue simultaneous separate writs of garnishment to several garnishees. A writ of garnishment issued under this subsection shall be continuing and shall terminate only as provided in subsection (c)(10).

(b) WRIT.—
(1) GENERAL REQUIREMENTS.—The United States shall include in its application for a writ of garnishment:
(A) the judgment debtor’s name, social security number (if known), and last known address;
(B) the nature and amount of the debt owed and the facts that not less than 30 days has elapsed since demand on the debtor for payment of the debt was made and the judgment debtor has not paid the amount due; and
(C) that the garnishee is believed to have possession of property (including nonexempt disposable earnings) in which the debtor has a substantial nonexempt interest.

(2) PROPER GARNISHEE FOR PARTICULAR PROPERTY.—
(A) If the property consists of a right to or share in the stock of an association or corporation, or interests or profits therein, for which a certificate of stock or other negotiable instrument is not outstanding, the corporation, or the president or treasurer of the association shall be the garnishee.

(B) If the property consists of an interest in a partnership interest, any partner other than the debtor shall be the garnishee on behalf of the partnership.

(C) If the property or a debt is evidenced by a negotiable instrument for the payment of money, a negotiable document of title or a certificate of stock of an association or corporation, the instrument, document, or certificate shall be treated as property capable of delivery and the person holding it shall be the garnishee, except that—
(i) subject to clause (ii), in the case of a security which is transferable in the manner set forth in State law, the entity that carries on its books an account in the name of the debtor in which is reflected such security shall be the garnishee; and
(ii) notwithstanding clause (i), the pledgee shall be the garnishee if such security is pledged.

(c) PROCEDURES APPLICABLE TO WRIT.—
(1) COURT DETERMINATION.—If the court determines that the requirements of this section are satisfied, the court shall issue an appropriate writ of garnishment.

(2) FORM OF WRIT.—The writ shall state—
(A) The nature and amount of the debt, and any cost and interest owed with respect to the debt.
(B) The name and address of the garnishee.
(C) The name and address of counsel for the United States.
(D) The last known address of the judgment debtor.
(E) That the garnishee shall answer the writ within 10 days of service of the writ.
(F) That the garnishee shall withhold and retain any property in which the debtor has a substantial nonexempt interest and for which the garnishee is or may become indebted to the judgment debtor pending further order of the court.

(3) SERVICE OF WRIT.—The United States shall serve the garnishee and the judgment debtor with a copy of the writ of garnishment and shall certify to the court that this service was made. The writ shall be accompanied by—
(A) an instruction explaining the requirement that the garnishee submit a written answer to the writ; and
(B) instructions to the judgment debtor for objecting to the answer of the garnishee.

(4) ANSWER OF THE GARNISHEE.—In its written answer to the writ of garnishment, the garnishee shall state under oath—
(A) whether the garnishee has custody, control or possession of such property;
(B) a description of such property and the value of such interest;
(C) a description of any previous garnishments to which such property is subject and the extent to which any remaining property is not exempt; and
(D) the amount of the debt the garnishee anticipates owing to the judgment debtor in the future and whether the period for payment will be weekly or another specified period.

The garnishee shall file the original answer with the court issuing the writ and serve a copy on the debtor and counsel for the United States.

(5) OBJECTIONS TO ANSWER.—Within 20 days after receipt of the answer, the judgment debtor or the United States may file a written objection to the answer and request a hearing. The party objecting shall state the grounds for the objection and bear the burden of proving such grounds. A copy of the objection and request for a hearing shall be served on the garnishee and all other parties. The court shall hold a hearing within 10 days after the date the request is received by the court, or as soon thereafter as is practicable, and give notice of the hearing date to all the parties.

(6) GARNISHEE’S FAILURE TO ANSWER OR PAY.—If a garnishee fails to answer the writ of garnishment or to withhold property in accordance with the writ, the United States may petition the court for an order requiring the garnishee to appear before the court to answer the writ and to so withhold property before the appearance date. If the garnishee fails to appear, or appears and fails to show good cause why the garnishee failed to comply with the writ, the court shall enter judgment against the garnishee for the value of the judgment debtor’s nonexempt interest in such property (including nonexempt disposable earnings)
§ 3206. Discharge

A person who pursuant to an execution or order issued under this chapter by a court pays or delivers to the United States, a United States marshal, or a receiver, money or other personal property in which a judgment debtor has or will have an interest, or so pays a debt such person owes the judgment debtor, is discharged from such debt to the judgment debtor to the extent of the payment or delivery.


SUBCHAPTER D—FRAUDULENT TRANSFERS INVOLVING DEBTS

§ 3301. Definitions

As used in this subchapter:

(1) "Affiliate" means—

(A) a person who directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than a person who holds the securities—

(i) as a fiduciary or agent without sole discretionary power to vote the securities; or

(ii) solely to secure a debt, if the person has not exercised the power to vote;

(B) a corporation 20 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor or a person who directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than the person who holds securities—

(i) as a fiduciary or agent without sole power to vote the securities; or

(ii) solely to secure a debt, if the person has not in fact exercised the power to vote;

(C) a person whose business is operated by the debtor under a lease or other agreement, or a person substantially all of whose assets are controlled by the debtor; or

(D) a person who operates the debtor’s business under a lease or other agreement or controls substantially all of the debtor’s assets.

(2) "Asset" means property of a debtor, but does not include—

(A) property to the extent it is encumbered by a valid lien;

(B) property to the extent it is generally exempt under nonbankruptcy law; or

(C) an interest in real property held in tenancy by the entirety, or as part of a community estate, to extent such interest is not subject to process by the United States holding a claim against only one tenant or co-owner.

(3) "Claim" means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.


§ 3302. Insolvency

§ 3303. Value for a transfer or obligation.

§ 3304. Transfer fraudulent as to a debt to the United States.

§ 3305. When transfer is made or obligation is incurred.

§ 3306. Remedies of the United States.

§ 3307. Defenses, liability and protection of transferee.

§ 3308. Supplementary provision.


§ 3206. Discharge

An order issued under this chapter by a court pays or delivers to the United States, a United States marshal, or a receiver, money or other personal property in which a judgment debtor has or will have an interest, or so pays a debt such person owes the judgment debtor, is discharged from such debt to the judgment debtor to the extent of the payment or delivery.


§ 3301. Definitions

As used in this subchapter:

(1) "Affiliate" means—

(A) a person who directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than a person who holds the securities—

(i) as a fiduciary or agent without sole discretionary power to vote the securities; or

(ii) solely to secure a debt, if the person has not exercised the power to vote;

(B) a corporation 20 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor or a person who directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than the person who holds securities—

(i) as a fiduciary or agent without sole power to vote the securities; or

(ii) solely to secure a debt, if the person has not in fact exercised the power to vote;

(C) a person whose business is operated by the debtor under a lease or other agreement, or a person substantially all of whose assets are controlled by the debtor; or

(D) a person who operates the debtor’s business under a lease or other agreement or controls substantially all of the debtor’s assets.

(2) "Asset" means property of a debtor, but does not include—

(A) property to the extent it is encumbered by a valid lien;

(B) property to the extent it is generally exempt under nonbankruptcy law; or

(C) an interest in real property held in tenancy by the entirety, or as part of a community estate, to extent such interest is not subject to process by the United States holding a claim against only one tenant or co-owner.

(3) "Claim" means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.


§ 3302. Insolvency

§ 3303. Value for a transfer or obligation.

§ 3304. Transfer fraudulent as to a debt to the United States.

§ 3305. When transfer is made or obligation is incurred.

§ 3306. Remedies of the United States.

§ 3307. Defenses, liability and protection of transferee.

§ 3308. Supplementary provision.


§ 3206. Discharge

A person who pursuant to an execution or order issued under this chapter by a court pays or delivers to the United States, a United States marshal, or a receiver, money or other personal property in which a judgment debtor has or will have an interest, or so pays a debt such person owes the judgment debtor, is discharged from such debt to the judgment debtor to the extent of the payment or delivery.


§ 3301. Definitions

As used in this subchapter:

(1) "Affiliate" means—

(A) a person who directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than a person who holds the securities—

(i) as a fiduciary or agent without sole discretionary power to vote the securities; or

(ii) solely to secure a debt, if the person has not exercised the power to vote;

(B) a corporation 20 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor or a person who directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than the person who holds securities—

(i) as a fiduciary or agent without sole power to vote the securities; or

(ii) solely to secure a debt, if the person has not in fact exercised the power to vote;

(C) a person whose business is operated by the debtor under a lease or other agreement, or a person substantially all of whose assets are controlled by the debtor; or

(D) a person who operates the debtor’s business under a lease or other agreement or controls substantially all of the debtor’s assets.

(2) "Asset" means property of a debtor, but does not include—

(A) property to the extent it is encumbered by a valid lien;

(B) property to the extent it is generally exempt under nonbankruptcy law; or

(C) an interest in real property held in tenancy by the entirety, or as part of a community estate, to extent such interest is not subject to process by the United States holding a claim against only one tenant or co-owner.

(3) "Claim" means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.


§ 3302. Insolvency

§ 3303. Value for a transfer or obligation.

§ 3304. Transfer fraudulent as to a debt to the United States.

§ 3305. When transfer is made or obligation is incurred.

§ 3306. Remedies of the United States.

§ 3307. Defenses, liability and protection of transferee.

§ 3308. Supplementary provision.
§ 3302. Insolvency

(a) IN GENERAL.—Except as provided in subsection (c), a debtor is insolvent if the sum of the debtor’s debts is greater than all of the debtor’s assets at a fair valuation.

(b) PRESUMPTION.—A debtor who is generally not paying debts as they become due is presumed to be insolvent.

(c) CALCULATION.—A partnership is insolvent under subsection (a) if the sum of the partnership’s debts is greater than the aggregate, at a fair valuation, of—

(1) all of the partnership’s assets; and

(2) the sum of the excess of the value of each general partner’s non-partnership assets over the partner’s non-partnership debts.

(d) ASSETS.—For purposes of this section, assets do not include property that is transferred, concealed, or removed with intent to hinder, delay, or defraud creditors or that has been transferred in a manner making the transfer voidable under this subchapter.

(e) DEBTS.—For purposes of this section, debts do not include an obligation to the extent such obligation is secured by a valid lien on property of the debtor not included as an asset.


§ 3304. Transfer fraudulent as to a debt to the United States

(a) DEBT ARISING BEFORE TRANSFER.—Except as provided in section 3307, a transfer made or obligation incurred by a debtor is fraudulent as to a debt to the United States which arises before the transfer is made or the obligation is incurred if—

(1)(A) the debtor makes the transfer or incurs the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation; and

(B) the debtor is insolvent at that time or the debtor becomes insolvent as a result of the transfer or obligation; or

(2)(A) the transfer was made to an insider for an antecedent debt, the debtor was insolvent at the time; and

(2)(B) if the debtor is a partnership—

(i) a relative of the debtor or of a general partner of the debtor;

(ii) a relative of a general partner in, a partner of the debtor;

(iii) another partnership in which the debtor is a general partner;

(iv) a general partner in a partnership described in clause (iii); or

(v) a person in control of the debtor;

(B) if the debtor is a corporation—

(i) a director of the debtor;

(ii) a general partner in the debtor;

(iii) another corporation in which the debtor is a general partner;

(iv) a corporation of which the debtor is a director, officer, or person in control of the corporation; or

(v) a person in control of the corporation; and

(C) if the debtor is an individual—

(i) a relative of the debtor or of a general partner of the debtor;

(ii) a person in control of the debtor;

(iii) a general partner of the debtor;

(iv) a general partner in a partnership described in clause (iii); or

(v) a person in control of the partnership.

§ 3305
TITLE 28—JUDICIARY AND JUDICIAL PROCEDURE
Page 624

(B) the insider had reasonable cause to believe that the debtor was insolvent.

(b) TRANSFERS WITHOUT REGARD TO DATE OF JUDGMENT.—(1) Except as provided in section 3307, a transfer made or obligation incurred by a debtor is fraudulent as to a debt to the United States, whether such debt arises before or after the transfer is made or the obligation is incurred, if the debtor makes the transfer or incurs the obligation—

(A) with actual intent to hinder, delay, or defraud a creditor; or

(B) without receiving a reasonably equivalent value in exchange for the transfer or obligation if the debtor—

(i) was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

(ii) intended to incur, or believed or reasonably should have believed that he would incur, debts beyond his ability to pay as they became due.

(2) In determining actual intent under paragraph (1), consideration may be given, among other factors, to whether—

(A) the transfer or obligation was to an insider;

(B) the debtor retained possession or control of the property transferred after the transfer;

(C) the transfer or obligation was disclosed or concealed;

(D) before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;

(E) the transfer was of substantially all the debtor’s assets;

(F) the debtor absconded;

(G) the debtor removed or concealed assets;

(H) the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;

(I) the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;

(J) the transfer occurred shortly before or shortly after a substantial debt was incurred; and

(K) the debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor.


§ 3306. Remedies of the United States

(a) IN GENERAL.—In an action or proceeding under this subchapter for relief against a transferee or obligation, the United States, subject to section 3307 and to applicable principles of equity and in accordance with the Federal Rules of Civil Procedure, may obtain—

(1) avoidance of the transfer or obligation to the extent necessary to satisfy the debt to the United States;

(2) a remedy under this chapter against the asset transferred or other property of the transferee; and

(3) any other relief the circumstances may require.

(b) LIMITATION.—A claim for relief with respect to a fraudulent transfer or obligation under this subchapter is extinguished unless action is brought—

(1) under section 3304(b)(1)(A) within 6 years after the transfer was made or the obligation was incurred or, if later, within 2 years after the transfer or obligation was or could reasonably have been discovered by the claimant; or

(2) under subsection (a)(1) or (b)(1)(B) of section 3304 within 6 years after the transfer was made or the obligation was incurred; or

(3) under section 3304(a)(2) within 2 years after the transfer was made or the obligation was incurred.


REFERENCES IN TEXT
The Federal Rules of Civil Procedure, referred to in subsec. (a), are set out in the Appendix to this title.

§ 3307. Defenses, liability, and protection of transferee

(a) GOOD FAITH TRANSFER.—A transfer or obligation is not voidable under section 3304(b) with
respect to a person who took in good faith and for a reasonably equivalent value or against any transferee or obligee subsequent to such person.

(b) LIMITATION.—Except as provided in subsection (d), to the extent a transfer is voidable in an action or proceeding by the United States under section 3306(a)(1), the United States may recover judgment for the value of the asset transferred, but not to exceed the judgment on a debt. The judgment may be entered against—

(1) the first transferee of the asset or the person for whose benefit the transfer was made; or

(2) any subsequent transferee, other than a good faith transferee who took for value or any subsequent transferee of such good-faith transferee.

(c) VALUE OF ASSET.—For purposes of subsection (b), the value of the asset is the value of the asset at the time of the transfer, subject to adjustment as the equities may require.

(d) RIGHTS OF GOOD FAITH TRANSFEREES AND OBLIGEES.—Notwithstanding voidability of a transfer or an obligation under this subchapter, a good-faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation, to—

(1) a lien on or a right to retain any interest in the asset transferred;

(2) enforcement of any obligation incurred; or

(3) a reduction in the amount of the liability on the judgment.

(e) EXCEPTIONS.—A transfer is not voidable under section 3304(a) or section 3304(b)(2) if the transfer results from—

(1) termination of a lease upon default by the debtor when the termination is pursuant to the lease and applicable law; or

(2) enforcement of a security interest in compliance with article 9 of the Uniform Commercial Code or its equivalent in effect in the State where the property is located.

(f) LIMITATION OF VOIDABILITY.—A transfer is not voidable under section 3304(a)(2)—

(1) to the extent the insider gives new value to or for the benefit of the debtor after the transfer is made unless the new value is secured by a valid lien;

(2) if made in the ordinary course of business or financial affairs of the debtor and the insider; or

(3) if made pursuant to a good-faith effort to rehabilitate the debtor and the transfer secured both present value given for that purpose and an antecedent debt of the debtor.


§ 3308. Supplementary provision

Except as provided in this subchapter, the principles of law and equity, including the law merchant and the law relating to principal and agent, estoppel, laches, fraud, misrepresentation, duress, coercion, mistake, insolvency, or other validating or invalidating cause shall apply to actions and proceedings under this subchapter.


CHAPTER 178—PROFESSIONAL AND AMATEUR SPORTS PROTECTION

Sec. 3701. Definitions.

3702. Unlawful sports gambling.

3703. Injunctions.

3704. Applicability.

§ 3701. Definitions

For purposes of this chapter—

(1) the term “amateur sports organization” means—

(A) a person or governmental entity that sponsors, organizes, schedules, or conducts a competitive game in which one or more amateur athletes participate, or

(B) a league or association of persons or governmental entities described in subparagraph (A);

(2) the term “governmental entity” means a State, a political subdivision of a State, or an entity or organization, including an entity or organization described in section 4(5) of the Indian Gaming Regulatory Act (25 U.S.C. 2703(5)), that has governmental authority within the territorial boundaries of the United States, including on lands described in section 4(4) of such Act (25 U.S.C. 2703(4));

(3) the term “professional sports organization” means—

(A) a person or governmental entity that sponsors, organizes, schedules, or conducts a competitive game in which one or more professional athletes participate, or

(B) a league or association of persons or governmental entities described in subparagraph (A);

(4) the term “person” has the meaning given such term in section 1 of title 1, and

(5) the term “State” means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Palau, or any territory or possession of the United States.


EFFECTIVE DATE

Section 3 of Pub. L. 102–559 provided that: “This Act [enacting this chapter and provisions set out as a note under section 1 of this title] shall take effect on January 1, 1993.”

§ 3702. Unlawful sports gambling

It shall be unlawful for—

(1) a governmental entity to sponsor, operate, advertise, promote, license, or authorize by law or compact, or

(2) a person to sponsor, operate, advertise, or promote, pursuant to the law or compact of a governmental entity, a lottery, sweepstakes, or other betting, gambling, or wagering scheme based, directly or indirectly (through the use of geographical references or otherwise), on one or more competitive games in which amateur or professional athletes participate, or are intended to participate, or on one or more performances of such athletes in such games.
§ 3703. Injunctions

A civil action to enjoin a violation of section 3702 may be commenced in an appropriate district court of the United States by the Attorney General of the United States, or by a professional sports organization or amateur sports organization whose competitive game is alleged to be the basis of such violation.


§ 3704. Applicability

(a) Section 3702 shall not apply to—

(1) a lottery, sweepstakes, or other betting, gambling, or wagering scheme in operation in a State or other governmental entity, to the extent that the scheme was conducted by that State or other governmental entity at any time during the period beginning January 1, 1976, and ending August 31, 1990;

(2) a lottery, sweepstakes, or other betting, gambling, or wagering scheme in operation in a State or other governmental entity where both—

(A) such scheme was authorized by a statute as in effect on October 2, 1991; and

(B) a scheme described in section 3702 (other than one based on pari-mutuel animal racing or jai-alai games) actually was conducted in that State or other governmental entity at any time during the period beginning September 1, 1989, and ending October 2, 1991, pursuant to the law of that State or other governmental entity;

(3) a betting, gambling, or wagering scheme, other than a lottery described in paragraph (1), conducted exclusively in casinos located in a municipality, but only to the extent that—

(A) such scheme or a similar scheme was authorized, not later than one year after the effective date of this chapter, to be operated in that municipality; and

(B) any commercial casino gaming scheme was in operation in such municipality throughout the 10-year period ending on such effective date pursuant to a comprehensive system of State regulation authorized by that State's constitution and applicable solely to such municipality; or

(4) pari-mutuel animal racing or jai-alai games.

(b) Except as provided in subsection (a), section 3702 shall apply on lands described in section 4(a) of the Indian Gaming Regulatory Act (25 U.S.C. 2703(4)).


REFERENCES IN TEXT

The effective date of this chapter, referred to in subsec. (a)(3)(A), is Jan. 1, 1993, see section 3 of Pub. L. 102–559, set out as an Effective Date note under section 3701 of this title.

CHAPTER 179—JUDICIAL REVIEW OF CERTAIN ACTIONS BY PRESIDENTIAL OFFICES

Sec. 3901. Civil actions.

§ 3901. Civil actions

(a) Parties.—In an action under section 1346(g) of this title, the defendant shall be the employing office alleged to have committed the violation involved.

(b) Jury trial.—In an action described in subsection (a), any party may demand a jury trial where a jury trial would be available in an action against a private defendant under the relevant law made applicable by chapter 5 of title 3. In any case in which a violation of section 411 of title 3 is alleged, the court shall not inform the jury of the maximum amount of compensatory damages available under section 411(b)(1) or 411(b)(3) of title 3.


§ 3902. Judicial review of regulations

In any proceeding under section 1296 or 1346(g) of this title in which the application of a regulation issued under chapter 5 of title 3 is at issue, the court may review the validity of the regulation in accordance with the provisions of subparagraphs (A) through (D) of section 706(2) of title 5. If the court determines that the regulation is invalid, the court shall apply, to the extent necessary and appropriate, the most relevant substantive executive agency regulation promulgated to implement the statutory provisions with respect to which the invalid regulation was issued. Except as provided in this section, the validity of regulations issued under this chapter is not subject to judicial review.


§ 3903. Effect of failure to issue regulations

In any proceeding under section 1296 or 1346(g) of this title, if the President, the designee of the President, or the Federal Labor Relations Authority has not issued a regulation on a matter for which chapter 5 of title 3 requires a regulation to be issued, the court shall apply, to the extent necessary and appropriate, the most relevant substantive executive agency regulation promulgated to implement the statutory provisions at issue in the proceeding.


§ 3904. Expedited review of certain appeals

(a) General.—An appeal may be taken directly to the Supreme Court of the United States from any interlocutory or final judgment, decree, or order of a court upon the con-
stitutionality of any provision of chapter 5 of title 3.

(b) JURISDICTION.—The Supreme Court shall, if it has not previously ruled on the question, accept jurisdiction over the appeal referred to in subsection (a), advance the appeal on the docket, and expedite the appeal to the greatest extent possible.


§ 3905. Attorney’s fees and interest

(a) ATTORNEY’S FEES.—If a covered employee, with respect to any claim under chapter 5 of title 3, or a qualified person with a disability, with respect to any claim under section 421 of title 3, is a prevailing party in any proceeding under section 1296 or section 1346(g), the court may award attorney’s fees, expert fees, and any other costs as would be appropriate if awarded under section 706(k) of the Civil Rights Act of 1964.

(b) INTEREST.—In any proceeding under section 1296 or section 1346(g), the same interest to compensate for delay in payment shall be made available as would be appropriate if awarded under section 717(d) of the Civil Rights Act of 1964.

(c) PUNITIVE DAMAGES.—Except as otherwise provided in chapter 5 of title 3, no punitive damages may be awarded with respect to any claim under chapter 5 of title 3.


REFERENCES IN TEXT

Sections 706 and 717 of the Civil Rights Act of 1964, referred to in subsecs. (a) and (b), are classified to sections 2000e–5 and 2000e–16, respectively, of Title 42, The Public Health and Welfare.

§ 3906. Payments

A judgment, award, or compromise settlement against the United States under this chapter (including any interest and costs) shall be paid—

(1) under section 3304 of title 31, if it arises out of an action commenced in a district court of the United States (or any appeal therefrom); or

(2) out of amounts otherwise appropriated or available to the office involved, if it arises out of an appeal from an administrative proceeding under chapter 5 of title 3.


§ 3907. Other judicial review prohibited

Except as expressly authorized by this chapter and chapter 5 of title 3, the compliance or noncompliance with the provisions of chapter 5 of title 3, and any action taken pursuant to chapter 5 of title 3, shall not be subject to judicial review.


§ 3908. Definitions

For purposes of applying this chapter, the terms “employing office” and “covered employee” have the meanings given those terms in section 401 of title 3.


CHAPTER 180—ASSUMPTION OF CERTAIN CONTRACTUAL OBLIGATIONS

Sec. 4001. Assumption of contractual obligations related to transfers of rights in motion pictures

(a) ASSUMPTION OF OBLIGATIONS.—(1) In the case of a transfer of copyright ownership under United States law in a motion picture (as the terms “transfer of copyright ownership” and “motion picture” are defined in section 101 of title 17) that is produced subject to 1 or more collective bargaining agreements negotiated under the laws of the United States, if the transferee is executed on or after the effective date of this chapter and is not limited to public performance rights, the transfer instrument shall be deemed to incorporate the assumption agreements applicable to the copyright ownership being transferred that are required by the applicable collective bargaining agreement, and the transferee shall be subject to the obligations under each such assumption agreement to make residual payments and provide related notices, accruing after the effective date of the transfer and applicable to the exploitation of the rights transferred, and any remedies under each such assumption agreement for breach of those obligations, as those obligations and remedies are set forth in the applicable collective bargaining agreement, if—

(A) the transferee knows or has reason to know at the time of the transfer that such collective bargaining agreement was or will be applicable to the motion picture; or

(B) in the event of a court order confirming an arbitration award against the transferor under the collective bargaining agreement, the transferor does not have the financial ability to satisfy the award within 90 days after the order is issued.

(2) For purposes of paragraph (1)(A), “knows or has reason to know” means any of the following:

(A) Actual knowledge that the collective bargaining agreement was or will be applicable to the motion picture.

(B)(i) Constructive knowledge that the collective bargaining agreement was or will be applicable to the motion picture, arising from recordation of a document pertaining to copyright in the motion picture under section 205 of title 17 or from publication, at a site available to the public on-line that is operated by the relevant union, of information that identifies the motion picture as subject to a collective bargaining agreement with that union, if the site permits commercially reasonable verification of the date on which the information was available for access.

(ii) Clause (I) applies only if the transfer referred to in subsection (a)(1) occurs—

(I) after the motion picture is completed, or
(II) before the motion picture is completed and—
   (aa) within 18 months before the filing of an application for copyright registration for the motion picture under section 408 of title 17, or
   (bb) if no such application is filed, within 18 months before the first publication of the motion picture in the United States.

(C) Awareness of other facts and circumstances pertaining to a particular transfer from which it is apparent that the collective bargaining agreement was or will be applicable to the motion picture.

(b) Scope of exclusion of transfers of public performance rights.—For purposes of this section, the exclusion under subsection (a) of transfers of copyright ownership in a motion picture that are limited to public performance rights includes transfers to a terrestrial broadcast station, cable system, or programmer to the extent that the station, system, or programmer is functioning as an exhibitor of the motion picture, either by exhibiting the motion picture on its own network, system, service, or station, or by initiating the transmission of an exhibition that is carried on another network, system, service, or station. When a terrestrial broadcast station, cable system, or programmer, or other transferee, is also functioning otherwise as a distributor or as a producer of the motion picture, the public performance exclusion does not affect any obligations imposed on the transferee to the extent that it is engaging in such functions.

(c) Exclusion for grants of security interests.—Subsection (a) shall not apply to—
   (1) a transfer of copyright ownership consisting solely of a mortgage, hypothecation, or other security interest; or
   (2) a subsequent transfer of the copyright ownership secured by the security interest described in paragraph (1) by or under the authority of the secured party, including a transfer through the exercise of the secured party’s rights or remedies as a secured party, or by a subsequent transferee.

The exclusion under this subsection shall not affect any rights or remedies under law or contract.

(d) Deferral pending resolution of bona fide dispute.—A transferee on which obligations are imposed under subsection (a) by virtue of paragraph (1) of that subsection may elect to defer performance of such obligations that are subject to a bona fide dispute between a union and a prior transferee until that dispute is resolved, except that such deferral shall not stay accrual of any union claims due under an applicable collective bargaining agreement.

(e) Scope of obligations determined by private agreement.—Nothing in this section shall expand or diminish the rights, obligations, or remedies of any person under the collective bargaining agreements or assumption agreements referred to in this section.

(f) Failure to notify.—If the transferee under subsection (a) fails to notify the transferee under subsection (a) of applicable collective bargaining obligations before the execution of the transfer instrument, and subsection (a) is made applicable to the transferee solely by virtue of subsection (a)(1)(B), the transferee shall be liable to the transferee for any damages suffered by the transferee as a result of the failure to notify.

(g) Determination of disputes and claims.—Any dispute concerning the application of subsections (a) through (f) shall be determined by an action in United States district court, and the court in its discretion may allow the recovery of full costs by or against any party and may also award a reasonable attorney’s fee to the prevailing party as part of the costs.

(h) Study.—The Comptroller General, in consultation with the Register of Copyrights, shall conduct a study of the conditions in the motion picture industry that gave rise to this section, and the impact of this section on the motion picture industry. The Comptroller General shall report the findings of the study to the Congress within 2 years after the effective date of this chapter.


REFERENCES IN TEXT

The effective date of this chapter, referred to in subsecs. (a) and (h), is Oct. 28, 1998. See Effective Date of 1998 Amendment note set out under section 108 of Title 17, Copyrights.

CHAPTER 181—FOREIGN JUDGMENTS

§ 4101. Definitions

In this chapter:

(1) Defamation.—The term ‘‘defamation’’ means any action or other proceeding for defamation, libel, slander, or similar claim alleging that forms of speech are false, have caused damage to reputation or emotional distress, have presented any person in a false light, or have resulted in criticism, dishonor, or condemnation of any person.

(2) Domestic court.—The term ‘‘domestic court’’ means a Federal court or a court of any State.

(3) Foreign court.—The term ‘‘foreign court’’ means a court, administrative body, or other tribunal of a foreign country.

(4) Foreign judgment.—The term ‘‘foreign judgment’’ means a final judgment rendered by a foreign court.

(5) State.—The term ‘‘State’’ means each of the several States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

(6) United States person.—The term ‘‘United States person’’ means—
   (A) a United States citizen;
   (B) an alien lawfully admitted for permanent residence to the United States; or
   (C) an alien lawfully residing in the United States at the time that the speech that is

1 So in original. Does not conform to section catchline.
§ 4102. Recognition of foreign defamation judgments

(a) First Amendment Considerations.—

(1) In general.—Notwithstanding any other provision of Federal or State law, a domestic court shall not recognize or enforce a foreign judgment for defamation unless the domestic court determines that—

(A) the defamation law applied in the foreign court’s adjudication provided at least as much protection for freedom of speech and press in that case as would be provided by the first amendment to the Constitution of the United States and by the constitution and law of the State in which the domestic court is located;

(B) even if the defamation law applied in the foreign court’s adjudication did not provide as much protection for freedom of speech and press as the first amendment to the Constitution of the United States and the constitution and law of the State, the party opposing recognition or enforcement of that foreign judgment would have been found liable for defamation by a domestic court applying the first amendment to the Constitution of the United States and the constitution and law of the State in which the domestic court is located.

(2) Burden of Establishing Application of Defamation Laws.—The party seeking recognition or enforcement of the foreign judgment shall bear the burden of making the showings required under subparagraph (A) or (B).

(b) Jurisdictional Considerations.—

(1) In general.—Notwithstanding any other provision of Federal or State law, a domestic court shall not recognize or enforce a foreign judgment for defamation unless the domestic court determines that the exercise of personal jurisdiction by the foreign court comport with the due process requirements that are imposed on domestic courts by the Constitution of the United States.

(2) Burden of Establishing Exercise of Jurisdiction.—The party seeking recognition or enforcement of the foreign judgment shall bear the burden of making the showing that the foreign court’s exercise of personal jurisdiction comport with the due process requirements that are imposed on domestic courts by the Constitution of the United States.

(c) Judgment Against Provider of Interactive Computer Service.—

(1) In general.—Notwithstanding any other provision of Federal or State law, a domestic court shall not recognize or enforce a foreign judgment for defamation against the provider of an interactive computer service, as defined in section 230 of the Communications Act of 1934 (47 U.S.C. 230) unless the domestic court determines that the judgment would be consistent with section 230 if the information that is the subject of such judgment had been provided in the United States.

(2) Burden of Establishing Consistency of Judgment.—The party seeking recognition or enforcement of the foreign judgment shall bear the burden of establishing that the judgment is consistent with section 230.

(d) Appearances Not a Bar.—An appearance by a party in a foreign court rendering a foreign judgment to which this section applies shall not deprive such party of the right to oppose the recognition or enforcement of the judgment under this section, or represent a waiver of any jurisdictional claims.

(e) Rule of Construction.—Nothing in this section shall be construed to—

(1) affect the enforceability of any foreign judgment other than a foreign judgment for defamation; or

(2) limit the applicability of section 230 of the Communications Act of 1934 (47 U.S.C. 230) to causes of action for defamation.

court to enforce a foreign judgment for defamation in which—

(1) any plaintiff is a citizen of a State different from any defendant;
(2) any plaintiff is a foreign state or a citizen or subject of a foreign state and any defendant is a citizen of a State; or
(3) any plaintiff is a citizen of a State and any defendant is a foreign state or citizen or subject of a foreign state,

may be removed by any defendant to the district court of the United States for the district and division embracing the place where such action is pending without regard to the amount in controversy between the parties.


§ 4104. Declaratory judgments

(a) CAUSE OF ACTION.—

(1) IN GENERAL.—Any United States person against whom a foreign judgment is entered on the basis of the content of any writing, utterance, or other speech by that person that has been published, may bring an action in district court, under section 2201(a), for a declaration that the foreign judgment is repugnant to the Constitution or laws of the United States. For the purposes of this paragraph, a judgment is repugnant to the Constitution or laws of the United States if it would not be enforceable under section 4102(a), (b), or (c).

(2) BURDEN OF ESTABLISHING UNENFORCEABILITY OF JUDGMENT.—The party bringing an action under paragraph (1) shall bear the burden of establishing that the foreign judgment would not be enforceable under section 4102(a), (b), or (c).

(b) NATIONWIDE SERVICE OF PROCESS.—Where an action under this section is brought in a district court of the United States, process may be served in the judicial district where the case is brought or any other judicial district of the United States where the defendant may be found, resides, has an agent, or transacts business.


§ 4105. Attorneys’ fees

In any action brought in a domestic court to enforce a foreign judgment for defamation, including any such action removed from State court to Federal court, the domestic court shall, absent exceptional circumstances, allow the party opposing recognition or enforcement of the judgment a reasonable attorney’s fee if such party prevails in the action on a ground specified in section 4102(a), (b), or (c).