

provide accounting, disbursing, auditing, and other fiscal services for the Federal Judicial Center.

(Added Pub. L. 90-219, title I, §101, Dec. 20, 1967, 81 Stat. 667.)

§ 629. Federal Judicial Center Foundation

(a) There is established a private nonprofit corporation which shall be known as the Federal Judicial Center Foundation (hereafter in this section referred to as the "Foundation") and which shall be incorporated in the District of Columbia. The purpose of the Foundation shall be to have sole authority to accept and receive gifts of real and personal property and services made for the purpose of aiding or facilitating the work of the Federal Judicial Center. The Foundation shall not accept conditional or otherwise restricted gifts, except gifts that are designated for the support of specific projects previously approved by the Board of the Center may be accepted. The Foundation shall have no authority to administer or otherwise determine the use of gifts accepted under this section.

(b) The business of the Foundation shall be conducted by a Board that shall have seven members, including a chairman. Three members, including the chairman, shall be appointed by the Chief Justice of the United States, two by the President Pro Tempore of the Senate, and two by the Speaker of the House of Representatives. The term of office of each member of the Board shall be 5 years, except that the initial terms shall be 5 years for the chairman, one member appointed by the President Pro Tempore and one member appointed by the Speaker, 3 years for the other member appointed by the President Pro Tempore and the other member appointed by the Speaker, and two years for the two other members appointed by the Chief Justice. Members of the Board shall serve without compensation but, upon authorization of the Director of the Center, shall be reimbursed by the Federal Judicial Center for actual and necessary expenses incurred in the performance of their official duties. No person who is a Federal or State judge in regular active service or otherwise eligible to perform judicial duties shall be eligible for membership on the Board. The Center shall provide all administrative support and facilities necessary for the operation of the Board.

(c) The Federal Judicial Center is authorized to administer and use gifts received by the Foundation under this section. The gifts shall be used to further the goals of the Center as determined by the Board of the Center.

(d) Gifts of money and proceeds from sales of other property received as gifts shall be deposited in a separate fund in the Treasury of the United States and disbursed on the order of the Director of the Center, in accordance with policies established by the Board of the Center.

(e) The Board of the Foundation shall, not later than October 1 of each year, submit to the Committees on the Judiciary of the United States Senate and House of Representatives a report with respect to gifts received under this section during the preceding 12-month period, including the source of each such gift, the

amount 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

A prior section 629, added Pub. L. 90-219, title I, §101, Dec. 20, 1967, 81 Stat. 667, related to organization provisions for the Board, prior to repeal by Pub. L. 95-598, title II, §230(1), Nov. 6, 1978, 92 Stat. 2665, effective Nov. 6, 1978.

CHAPTER 43—UNITED STATES MAGISTRATE JUDGES

Sec.	
631.	Appointment and tenure.
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AMENDMENTS

1972—Pub. L. 92-239, §3, Mar. 1, 1972, 86 Stat. 47, substituted "Jurisdiction, powers, and temporary assignment" for "Jurisdiction and powers" in item 636.

1968—Pub. L. 90-578, title I, §101, Oct. 17, 1968, 82 Stat. 1108, substituted "MAGISTRATES" for "COMMISSIONERS" in chapter heading, and "Character of service" for "Park commissioners; jurisdiction and powers; procedure" in item 632, "Determination of number, locations, and salaries of magistrates" for "Fees and expenses" in item 633, "Compensation" for "Salaries of park commissioners; disposition of fees" in item 634, "Expenses" for "Park commissioners; residence" in item 635, "Jurisdiction and powers" for "Accounts" in item 636, "Training" for "Oaths, acknowledgments, affidavits and depositions" in item 637, "Dockets and forms; United States Code; seals" for "Seals" in item 638, and "Definitions" for "Dockets and forms; United States Code" in item 639.

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

CHANGE OF NAME

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

§ 631. Appointment and tenure

(a) The judges of each United States district court and the district courts of the Virgin Islands, Guam, and the Northern Mariana Islands shall appoint United States magistrate judges in such numbers and to serve at such locations within the judicial districts as the Judicial Conference may determine under this chapter. In the case of a magistrate judge appointed by the district court of the Virgin Islands, Guam, or

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

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

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

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

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

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

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

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

the Army, Navy, Air Force, Marine Corps, and Coast Guard, and members of the Army National Guard of the United States, the Air National Guard of the United States, and the Naval Militia and of the National Guard of a State, territory, or the District of Columbia, except the National Guard disbursing officers who are on a full-time salary basis, may be appointed and serve as United States magistrate judges.

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

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

¹ See References in Text note below.

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

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

(k) A United States magistrate judge appointed under this chapter shall be exempt from the provisions of subchapter I of chapter 63 of title 5.

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

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 28, U.S.C., 1940 ed., §§526 and 527, sections 27, 66, 80e, 100, 117e, 129, 172, 198e, 204e, 256d, 395e, 403c-5, 403h-5, 404c-5, and 408m of title 16, U.S.C., 1940 ed., Conservation, and section 863 of title 48, U.S.C., 1940 ed., Territories and Insular Possessions (May 27, 1894, ch. 72, §5, 28 Stat. 74; May 28, 1896, ch. 252, §§19, 20, 29 Stat. 184; Apr. 12, 1900, ch. 191, §34, 31 Stat. 84; Mar. 2, 1901, ch. 814, 31 Stat. 956; Mar. 3, 1911, ch. 231, §291, 36 Stat. 1167; Jan. 7, 1913, ch. 6, 37 Stat. 648; Aug. 22, 1914, ch. 264, §6, 38 Stat. 700; June 30, 1916, ch. 197, §6, 39 Stat.

245; Aug. 21, 1916, ch. 368, §6, 39 Stat. 523; Mar. 2, 1917, ch. 145, §41, 39 Stat. 965; June 2, 1920, ch. 218, §§7, 8, 41 Stat. 733; Mar. 4, 1921, ch. 161, §1, 41 Stat. 1412; Dec. 13, 1926, ch. 6, §1, 44 Stat. 919; Apr. 25, 1928, ch. 434, §6, 45 Stat. 460; Apr. 26, 1928, ch. 438, §6, 45 Stat. 464; Mar. 2, 1929, ch. 583, §6, 45 Stat. 1538; Apr. 19, 1930, ch. 200, §6, 46 Stat. 228; June 25, 1935, ch. 309, §1, 49 Stat. 422; Aug. 19, 1937, ch. 703, §5, 50 Stat. 702; Mar. 26, 1938, ch. 51, §2, 52 Stat. 118; June 25, 1938, ch. 684, §1, 52 Stat. 1164; June 28, 1938, ch. 778, §1, 52 Stat. 1213; Mar. 4, 1940, ch. 40, §2, 54 Stat. 43; Mar. 6, 1942, ch. 150, §5, 56 Stat. 134; Mar. 6, 1942, ch. 151, §5, 56 Stat. 137; Apr. 29, 1942, ch. 264, §5, 56 Stat. 260; June 5, 1942, ch. 341, §5, 56 Stat. 318; Dec. 28, 1945, ch. 592, 59 Stat. 659, 660; Apr. 23, 1946, ch. 202, §1, 60 Stat. 119, 120.)

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

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

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

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

Words "the Director of the Administrative Office of the United States Courts" were substituted for "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 527 of title 28, U.S.C., 1940 ed., prohibiting specified persons from acting as commissioners.

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

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

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

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

Changes in phraseology were made.

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

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

The provisions of sections 1a and 403c-9 of title 16, U.S.C., 1940 ed., relating to designation by the Sec-

retary of the Interior of some place of residence reasonably adjacent to the park was modified by making such designation subject to the approval of the appointing court.

SENATE REVISION AMENDMENT

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

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

1949 ACT

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

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

REFERENCES IN TEXT

Subsections (j) and (k) of this section, referred to in subsec. (e), probably mean subsecs. (j) and (k) prior to amendment by Pub. L. 103-353, §2(c)(1), (2), Oct. 13, 1994, 108 Stat. 3169, which redesignated subsec. (k) as (j) and struck out former subsec. (j).

AMENDMENTS

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

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

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

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

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

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

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

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

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

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

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

1982—Subsec. (b)(1). Pub. L. 97-230 substituted "He has been for at least five years a member in good 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. 96-82, §3(a), substituted "Where the conference deems it desirable, a magistrate may be designated to serve in one or more districts adjoining the district for which he is appointed" and "Such a designation shall be made by the concurrence of a majority of the judges of each of the district courts involved and shall specify the duties to be performed by the magistrate in the adjoining district or districts" for "Where an area under the administration of the National Park Service, or the United States Fish and Wildlife Service, or any other Federal agency, extends into two or more judicial districts and it is deemed desirable by the conference that the territorial jurisdiction of a magistrate's appointment include the entirety of such area, the appointment or reappointment shall be made by the concurrence of a majority of all judges of the district courts of the judicial districts involved, and where there is no such concurrence by the concurrence of the chief judges of such district courts".

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

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

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

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

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

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

though the appointing court were a United States District Court.

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

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

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

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

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

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

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

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

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

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

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

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

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

CHANGE OF NAME

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

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

EFFECTIVE DATE OF 1988 AMENDMENT

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

EFFECTIVE DATE OF 1986 AMENDMENT

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

EFFECTIVE DATE OF 1979 AMENDMENT

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

EFFECTIVE DATE OF 1968 AMENDMENT

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

Section 1 of Pub. L. 90-578 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'."

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 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

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

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 within 90 days after the effective date of Pub. L. 96-82, which was approved Oct. 10, 1979, and to be completed and made available to Congress within 24 months thereafter respecting the future of the magistrate system.

AUTHORIZATION OF APPROPRIATIONS

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

Section 402 of Pub. L. 90-578 provided that:

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

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

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

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

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

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

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

JURISDICTIONAL LIMITATION OF COMMISSIONER HOLDING OFFICE ON JULY 9, 1952

Section 2 of act July 9, 1952, provided that the jurisdiction of the United States commissioner for the Great Smoky Mountains National Park on July 9, 1952, would be limited to the portion of the park situated in North Carolina.

§ 632. Character of service

(a) Full-time United States magistrate judges may not engage in the practice of law, and may

not engage in any other business, occupation, or employment inconsistent with the expeditious, proper, and impartial performance of their duties as judicial officers.

(b) Part-time United States magistrate judges shall render such service as judicial officers as is required by law. While so serving they may engage in the practice of law, but may not serve as counsel in any criminal action in any court of the United States, nor act in any capacity that is, under such regulations as the conference may establish, inconsistent with the proper discharge of their office. Within such restrictions, they may engage in any other business, occupation, or employment which is not inconsistent with the expeditious, proper, and impartial performance of their duties as judicial officers.

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

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

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

EFFECTIVE DATE OF 1968 AMENDMENT

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

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

(a) SURVEYS BY THE DIRECTOR.—

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

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

give consideration to suggestions from any interested parties, including district judges, United States magistrate judges or officers appointed under this chapter, United States 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, 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.

(June 25, 1948, ch. 646, 62 Stat. 916; Aug. 13, 1954, ch. 728, § 1(a), (b), 68 Stat. 704; Pub. L. 85-276, §§ 1, 2, Sept. 2, 1957, 71 Stat. 600; Pub. L. 90-578, title I, § 101, Oct. 17, 1968, 82 Stat. 1111; Pub. L. 96-82, § 4, Oct. 10, 1979, 93 Stat. 645; Pub. L. 99-651, title II, § 202(d), Nov. 14, 1986, 100 Stat. 3648; Pub. L. 101-650, title III, § 321, Dec. 1, 1990, 104 Stat. 5117.)

REFERENCES IN TEXT

Date of the enactment of the Federal Magistrates Act, referred to in subsec. (a)(1), means Oct. 17, 1968, the date of enactment of Pub. L. 90-578.

AMENDMENTS

1986—Subsec. (b). Pub. L. 99-651 substituted “section 634” for “section 643”.

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 \$10,500 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 office 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.

1954—Act Aug. 13, 1954, inserted "and expenses" after "Fees" in section catchline.

Subsec. (c). Act Aug. 13, 1954, added subsec. (c).

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

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

EFFECTIVE DATE OF 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 8344, 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 employed 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 87 (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.

(June 25, 1948, ch. 646, 62 Stat. 917; Pub. L. 90-578, title I, §101, Oct. 17, 1968, 82 Stat. 1112; Pub. L. 92-428, Sept. 21, 1972, 86 Stat. 721; Pub. L. 94-520, §1, Oct. 17, 1976, 90 Stat. 2458; Pub. L. 95-598, title II, §232, Nov. 6, 1978, 92 Stat. 2665; Pub. L. 96-82, §8(b), Oct. 10, 1979, 93 Stat. 647; Pub. L. 98-353, title I, §108(a), title II, §210, July 10, 1984, 98 Stat. 342, 351; Pub. L. 100-202, §101(a) [title IV, §408(b)], Dec. 22, 1987, 101 Stat. 1329, 1329-27; Pub. L. 100-702, title X, §1003(a)(4), Nov. 19, 1988, 102 Stat. 4665; Pub. L. 101-650, title III, §321, Dec. 1, 1990, 104 Stat. 5117.)

HISTORICAL AND REVISION NOTES

Based on sections 29, 72, 74, 80h, 103, 104, 117h, 117j, 132, 132a, 133, 175, 176, 198h, 198j, 204h, 204j, 256f, 256h, 379, 380, 395h, 395j, 403c-9, 403c-11, 403h-7, 403h-9, 404c-7, 404c-9, 408o, and 408q of title 16, U.S.C., 1940 ed., Conservation (May 7, 1894, ch. 72, §7, 28 Stat. 75; Apr. 17, 1900, ch. 192, §1, 31 Stat. 133; Apr. 20, 1904, ch. 1400, §§9, 11, 33 Stat. 189; Mar. 2, 1907, ch. 2516, §2, 34 Stat. 1218; Mar. 3, 1911, ch. 231, §291, 36 Stat. 1167; Aug. 22, 1914, ch. 264, §§9, 11, 38 Stat. 701; June 30, 1916, ch. 197, §§9, 11, 39 Stat. 246; Aug. 21, 1916, ch. 368, §§9, 11, 39 Stat. 523, 524; June 2, 1920, ch. 218, §§11, 13, 41 Stat. 734; Mar. 4, 1923, ch. 295, 42 Stat. 1560; Apr. 25, 1928, ch. 434, §§9, 11, 45 Stat. 461; Apr. 26, 1928, ch. 438, §§9, 11, 45 Stat. 465; Mar. 2, 1929, ch. 583, §§9, 11, 45 Stat. 1539; Apr. 19, 1930, ch. 200, §§9, 11, 46 Stat. 229; June 25, 1935, ch. 309, §§2, 3, 49 Stat. 422; Aug. 19, 1937, ch. 703, §§9, 11, 50 Stat. 702, 703; June 25, 1938, ch. 684, §2, 52 Stat. 1164; June 28, 1938, ch. 778, §1, 52 Stat. 1213; Mar. 4, 1940, ch. 40, §2, 54 Stat. 43; Mar. 6, 1942, ch. 150, §§7, 9, 56 Stat. 135; Mar. 6, 1942, ch. 151, §§7, 9, 56 Stat. 137; Apr. 29, 1942, ch. 264, §§7, 9, 56 Stat. 260, 261; June 5, 1942, ch. 341, §§7, 9, 56 Stat. 319; Apr. 23, 1946, ch. 202, §4, 60 Stat. 120; June 24, 1946, ch. 463, §5, 60 Stat. 303).

Section consolidates provisions of sections 29, 72, 74, 80h, 103, 104, 117h, 117j, 132, 132a, 133, 175, 176, 198h, 198j, 204h, 204j, 256f, 256h, 379, 380, 395h, 395j, 403c-9, 403c-11,

403h-7, 403h-9, 404c-7, 404c-9, 408o 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 shall 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.

SENATE REVISION AMENDMENT

As finally enacted, section 158d of title 16, U.S.C., which was derived from act May 15, 1947, ch. 55, § 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. 1559.

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."

1987—Subsec. (a). Pub. L. 100-202 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."

1984—Subsec. (a). Pub. L. 98-353, §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 40a of the Bankruptcy Act (11 U.S.C. 68(a)), as amended,"

Subsec. (c). Pub. L. 98-353, §210, substituted "subchapter III" for "subsection III".

1979—Subsec. (c). Pub. L. 96-82 inserted reference to legal assistants.

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 40a of the Bankruptcy Act (11 U.S.C. 68(a)), as amended," which amendment did not become effective pursuant to section 402(b) of Pub. L. 95-598, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

1976—Subsec. (a). Pub. L. 94-520 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 nor more than \$15,000 per annum and that the salary of a full-time United States magistrate shall not exceed 75 per cent 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 subsecs. (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 321 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 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."

[Section 108(b) of Pub. L. 98-353 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 of the circuits, 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.

(June 25, 1948, ch. 646, 62 Stat. 917; Pub. L. 90-578, title I, §101, Oct. 17, 1968, 82 Stat. 1112; Pub. L. 96-82, §8(a), Oct. 10, 1979, 93 Stat. 646; Pub. L. 101-650, title III, §321, Dec. 1, 1990, 104 Stat. 5117.)

HISTORICAL AND REVISION NOTES

Prior section 663.—Based on title 28, U.S.C., 1940 ed., §§597, 597a, 597b, 597c (May 28, 1896, ch. 252, §§21, 24, 29 Stat. 184, 186; Aug. 1, 1946, ch. 721, §§1-4, 60 Stat. 752, 753).

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, Puerto Rico, and District of Columbia but omits Alaska, 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 Judi-

cial 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 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.

§ 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 as 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 acknowledgements, 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 rec-

ommendations for the disposition, by a judge of the court, of any motion excepted in subparagraph (A), of applications for posttrial¹ 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 ten 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 jurisdiction, 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

¹ So in original. Probably should be "post-trial".

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 exceeding those set forth in paragraph (5) of this subsection,

(ii) the act that constitutes a criminal contempt occurs 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 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 certified. 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 sub-

section (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 judges 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 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 accordance with regulations promulgated by the Judicial Conference, subject to the restrictions on the payment of an annuity set forth in section 377 of this title or in subchapter III of chapter 83, and chapter 84, of title 5 which are applicable to such magistrate judge. The requirements set forth in subsections (a), (b)(3), and (d) of section 631, and paragraph (1) of subsection (b) of such section to the extent such paragraph requires membership of the bar of the location 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.

(June 25, 1948, ch. 646, 62 Stat. 917; Pub. L. 90-578, title I, § 101, Oct. 17, 1968, 82 Stat. 1113; Pub. L. 92-239, §§ 1, 2, Mar. 1, 1972, 86 Stat. 47; Pub. L. 94-577, § 1, Oct. 21, 1976, 90 Stat. 2729; Pub. L. 95-144, § 2, Oct. 28, 1977, 91 Stat. 1220; Pub. L. 96-82, § 2, Oct. 10, 1979, 93 Stat. 643; Pub. L. 98-473, title II, § 208, Oct. 12, 1984, 98 Stat. 1986; Pub. L. 98-620, title IV, § 402(29)(B), Nov. 8, 1984, 98 Stat.

3359; Pub. L. 99-651, title II, §201(a)(2), Nov. 14, 1986, 100 Stat. 3647; Pub. L. 100-659, §4(c), Nov. 15, 1988, 102 Stat. 3918; Pub. L. 100-690, title VII, §7322, Nov. 18, 1988, 102 Stat. 4467; Pub. L. 100-702, title IV, §404(b)(1), title X, §1014, Nov. 19, 1988, 102 Stat. 4651, 4669; Pub. L. 101-650, title III, §§308(a), 321, Dec. 1, 1990, 104 Stat. 5112, 5117; Pub. L. 104-317, title II, §§201, 202(b), 207, Oct. 19, 1996, 110 Stat. 3848-3850; Pub. L. 106-518, title II, §§202, 203(b), Nov. 13, 2000, 114 Stat. 2412, 2414; Pub. L. 107-273, div. B, title III, §3002(b), Nov. 2, 2002, 116 Stat. 1805; Pub. L. 109-63, §2(d), Sept. 9, 2005, 119 Stat. 1995.)

HISTORICAL AND REVISION NOTES

Prior jurisdiction, powers, and procedure provisions in section 632.—Based on sections 27, 66, 67, 68, 80f, 100, 117e, 129, 172, 181b, 204e, 256d, 376, 395e, 403c-5, 403c-6, 403h-5, 404c-5, and 408m of title 16, U.S.C., 1940 ed., Conservation (May 7, 1894, ch. 72, §5, 28 Stat. 74; Apr. 20, 1904, ch. 1400, §6, 33 Stat. 188; Mar. 2, 1907, ch. 2516, §§1, 2, 34 Stat. 1218; Mar. 3, 1911, ch. 230, 36 Stat. 1086; Mar. 3, 1911, ch. 231, §291, 36 Stat. 1167; Aug. 22, 1914, ch. 264, §6, 38 Stat. 700; June 30, 1916, ch. 197, §6, 39 Stat. 245; Aug. 21, 1916, ch. 368, §6, 39 Stat. 523; June 2, 1920, ch. 218, §§7, 8, 41 Stat. 733; Apr. 25, 1928, ch. 434, §6, 45 Stat. 460; Apr. 26, 1928, ch. 438, §6, 45 Stat. 464; Apr. 19, 1930, ch. 200, §6, 4 Stat. 228; May 2, 1932, ch. 155, §3, 47 Stat. 145; June 25, 1935, ch. 309, §1, 49 Stat. 422; Aug. 19, 1937, ch. 703, §§5, 6, 50 Stat. 702; June 25, 1938, ch. 684, §1, 52 Stat. 1164; June 28, 1938, ch. 778, §1, 52 Stat. 1213; Mar. 4, 1940, ch. 40, §2, 54 Stat. 43; Mar. 6, 1942, ch. 150, §5, 56 Stat. 134; Mar. 6, 1942, ch. 151, §5, 56 Stat. 137; Apr. 29, 1942, ch. 264, §5, 56 Stat. 260; June 5, 1942, ch. 341, §5, 56 Stat. 318; Apr. 23, 1946, ch. 202, §2, 60 Stat. 120; June 24, 1946, ch. 463, §2, 60 Stat. 303).

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 and 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 and 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 3041 and 3141 of revised title 18 (H.R. 1600, 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 and 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 3054 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 depositions provisions in section 637.—Based on title 28, U.S.C.,

1940 ed., §§525, 758 (R.S. §945; May 28, 1896, ch. 252, §19, 29 Stat. 184; Mar. 2, 1901, ch. 814, 31 Stat. 956; Mar. 3, 1911, ch. 231, §291, 36 Stat. 1167).

This section consolidates part of section 525 with section 758 of title 28, U.S.C., 1940 ed. The provision of said section 525 empowering clerks and deputy clerks to administer oaths is incorporated in section 953 of this title. 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.

The exception as to Alaska, provided in section 591 of title 28, U.S.C., 1940 ed., and referred to in section 525 of title 28, U.S.C., 1940 ed., was omitted as unnecessary since section 108 of title 48, U.S.C., 1940 ed., Territories and Insular Possessions, and section 1119 of the Compiled Laws of Alaska, 1933, give commissioners all powers of notaries public. See also reviser's notes to sections 631 and 633 of this title.

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 subsecs. (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

2005—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.

2002—Subsec. (e)(2). Pub. L. 107-273, §3002(b)(1), inserted "or both," after "fine or imprisonment".

Subsec. (e)(3). Pub. L. 107-273, §3002(b)(2), inserted "or both," after "fine or imprisonment".

2000—Subsec. (a)(4), (5). Pub. L. 106-518, §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. (e). Pub. L. 106-518, §202, amended subsec. (e) generally. Prior to amendment, subsec. (e) specified conduct before a magistrate judge which constituted contempt of court and prescribed procedure for adjudicating and punishing contempts.

1996—Subsec. (a)(3). Pub. L. 104-317, §202(b)(1), substituted a semicolon for "and" at end.

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."

1988—Subsec. (a)(4). Pub. L. 100-690 added par. (4).

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 a verbatim record. Notwithstanding the magistrate's determination, (A) the proceeding shall be taken down by a court reporter if any party so requests, (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.

1986—Subsec. (h). Pub. L. 99-651 added subsec. (h).

1984—Subsec. (a)(2). Pub. L. 98-473 substituted "issue orders pursuant to section 3142 of title 18 concerning release or detention of persons pending trial" for "impose conditions of release under section 3146 of title 18".

Subsec. (c)(4). Pub. L. 98-620 struck out "expeditious and" before "inexpensive".

1979—Subsec. (c). Pub. L. 96-82, §2(2), added subsec. (c). Former subsec. (c) redesignated (d).

Subsecs. (d) to (g). Pub. L. 96-82, §2(1), redesignated former subsecs. (c) to (f) as (d) to (g), respectively.

1977—Subsec. (f). Pub. L. 95-144 added subsec. (f).

1976—Subsec. (b). Pub. L. 94-577 completely revised provisions under which additional duties may be assigned to a United States Magistrate by allowing, among other additional duties, the assignment of pre-trial matters, dispositive motions, and service as a special master.

1972—Pub. L. 92-239, §2, substituted "Jurisdiction, powers, and temporary assignment" for "Jurisdiction and powers" in section catchline.

Subsec. (e). Pub. L. 92-239, §1, added subsec. (e).

1968—Pub. L. 90-578 substituted provisions declaratory of jurisdiction and powers of United States mag-

istrates for prior provisions respecting rendition of accounts by United States commissioners.

CHANGE OF NAME

Words "magistrate judge", "magistrate judge's", and "magistrate judges" substituted for "magistrate", "magistrate's", 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 1988 AMENDMENTS

Amendment by section 404(b)(1) 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 bankruptcy judges and magistrate judges retiring on or after July 31, 1987, see section 9 of Pub. L. 100-659, as amended, set out as an Effective Date note under section 377 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

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

EFFECTIVE DATE OF 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 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.

§ 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.

(June 25, 1948, ch. 646, 62 Stat. 917; Pub. L. 90-578, title I, §101, Oct. 17, 1968, 82 Stat. 1114; Pub. L. 101-650, title III, §321, Dec. 1, 1990, 104 Stat. 5117.)

AMENDMENTS

1968—Pub. L. 90-578 substituted provisions for periodic training programs and seminars for United States magistrates for prior authorization of United States commissioners to administer oaths and take bail, acknowledgements, affidavits, and depositions, now incorporated in section 636(a)(2) of this title.

CHANGE OF NAME

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

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-578 effective Oct. 17, 1968, except when a later effective date is applicable, which is the earlier of date when implementation of amendment by appointment of magistrates [now United States magistrate judges] and assumption of office takes place or third anniversary of enactment of Pub.

L. 90-578 on Oct. 17, 1968, see section 403 of Pub. L. 90-578, set out as a note under section 631 of this title.

§ 638. Dockets and forms; United States Code; seals

(a) The Director shall furnish to United States magistrate judges adequate docket books and forms prescribed by the Director. The Director shall also furnish to each such officer a copy of the current edition of the United States Code.

(b) All property furnished to any such officer shall remain the property of the United States and, upon the termination of his term of office, shall be transmitted to his successor in office or otherwise disposed of as the Director orders.

(c) The Director shall furnish to each United States magistrate judge appointed under this chapter an official impression seal in a form prescribed by the conference. Each such officer shall affix his seal to every jurat or certificate of his official acts without fee.

(June 25, 1948, ch. 646, 62 Stat. 917; Pub. L. 90-578, title I, § 101, Oct. 17, 1968, 82 Stat. 1114; Pub. L. 101-650, title III, § 321, Dec. 1, 1990, 104 Stat. 5117.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 528, 528a (June 28, 1906, ch. 3573, 34 Stat. 546; July 10, 1946, ch. 548, 60 Stat. 525).

Section consolidates section 528 and part of section 528a of title 28, U.S.C., 1940 ed., with changes in phraseology necessary to effect consolidation.

Provisions of section 528a of title 28, U.S.C., 1940 ed., relating to dockets and forms, are incorporated in section 639 of this title.

Words "Director of the Administrative Office of the United States Courts" were substituted for "Attorney General", contained in section 528 of title 28, U.S.C., 1940 ed., in view of Act Aug. 7, 1939, ch. 501, § 6, 53 Stat. 1226, 28 U.S.C., 1940 ed., following § 446, giving the Directors supervision of court administrative matters.

Changes in phraseology were made.

AMENDMENTS

1968—Subsec. (a). Pub. L. 90-578 incorporated in provisions designated as subsec. (a) provisions of first par. of former section 639 of this title, substituting "United States magistrates" for prior designation as "United States Commissioners", specifying that the copy of the United States Code be a current edition, and dispensing with approval by the chief judge of the district court for a copy of such Code.

Subsec. (b). Pub. L. 90-578 incorporated in provisions designated as subsec. (b) provisions of the second par. of former section 639 of this title.

Subsec. (c). Pub. L. 90-578 designated existing provisions as subsec. (c), and substituted "United States magistrate" for "United States commissioner", provision 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 amend-

ment 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.

(June 25, 1948, ch. 646, 62 Stat. 917; Pub. L. 90-578, title I, § 101, Oct. 17, 1968, 82 Stat. 1114; Pub. L. 101-650, title III, § 321, Dec. 1, 1990, 104 Stat. 5117.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 528a (July 10, 1946, ch. 548, 60 Stat. 525).

Provisions of section 528a of title 28, U.S.C., 1940 ed., for furnishing seal is included in section 638 of this title.

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.
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655.	Arbitrators.
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