

CHAP. XX.—*An Act to establish the Judicial Courts of the United States.*(a)STATUTE I.  
Sept. 24, 1789.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the supreme court of the United States shall consist of a chief justice and five associate justices,(b) any four of whom shall be a quorum, and shall hold annually at the seat of government two sessions, the one commencing the first Monday of February, and the other the first Monday of August. That the associate justices shall have precedence according to the date of their commissions, or when the commissions of two or more of them bear date on the same day, according to their respective ages.

Supreme court to consist of a chief justice, and five associates.

Two sessions annually.  
Precedence.

SEC. 2. *And be it further enacted,* That the United States shall be, and they hereby are divided into thirteen districts, to be limited and called as follows, to wit: one to consist of that part of the State of Massachusetts which lies easterly of the State of New Hampshire, and to be called Maine District; one to consist of the State of New Hampshire, and to be called New Hampshire District;(c) one to consist of the remaining part of the State of Massachusetts, and to be called Massachusetts district; one to consist of the State of Connecticut, and to be called Connecticut District; one to consist of the State of New York, and to be called New York District; one to consist of the State of New Jersey, and to be called New Jersey District; one to consist of the State of Pennsylvania, and to be called Pennsylvania District; one to consist of the State of Delaware, and to be called Delaware District; one to consist of the State of Maryland, and to be called Maryland District; one to consist of the State of Virginia, except that part called the District of Kentucky, and to be called Virginia District; one to consist of the remaining part of the State of Virginia, and to be called Kentucky District; one to consist of the State of South Carolina, and to be called South Carolina District; and one to consist of the State of Georgia, and to be called Georgia District.

Thirteen districts.

Maine.  
N. Hampshire.  
Massachusetts.

Connecticut.

New York.

New Jersey.

Pennsylvania.

Delaware.

Maryland.

Virginia.

Kentucky.

South Carolina.  
Georgia.

SEC. 3. *And be it further enacted,* That there be a court called a District Court, in each of the afore mentioned districts, to consist of one judge, who shall reside in the district for which he is appointed, and shall be called a District Judge, and shall hold annually four

A district court in each district.

(a) The 3d article of the Constitution of the United States enables the judicial department to receive jurisdiction to the full extent of the constitution, laws and treaties of the United States, when any question respecting them shall assume such a form that the judicial power is capable of acting on it. That power is capable of acting only where the subject is submitted to it by a party who asserts his right in a form presented by law. It then becomes a case. *Osborn et al. v. The Bank of the United States*, 9 Wheat. 738; 5 Cond. Rep. 741.

(b) By the act of April 29, 1802, chap. 31, the Supreme Court was declared to consist of a Chief Justice and six associate Justices, and by the act of March 3, 1837, chap. 34, it was made to consist of a Chief Justice and eight associate Justices.

By the act of April 29, 1802, chap. 31, the provision of the act of September 24, 1789, requiring two annual sessions of the Supreme Court, was repealed, and the 2d section of that act required that the associate Justice of the fourth circuit should attend at Washington on the first Monday of August annually, to make all necessary rules and orders, touching suits and actions depending in the court. This section was repealed by the 7th section of the act of February 23, 1839, chap. 36.

By an act passed May 4, 1826, chap. 37, the sessions of the Supreme Court were directed to commence on the second Monday in January annually, instead of the first Monday in February; and by an act passed June 17, 1844, the sessions of the Supreme Court were directed to commence on the first Monday in December annually.

(c) The jurisdiction and powers of the District Courts have been declared and established by the following acts of Congress: Act of September 24, 1789; act of June 5, 1794, sec. 6; act of May 10, 1800; act of December 31, 1814; act of April 16, 1816; act of April 20, 1818; act of May 15, 1820; act of March 3, 1793.

The decisions of the Courts of the United States on the jurisdiction of the District Courts have been: *The Thomas Jefferson*, 10 Wheat. 428; 6 Cond. Rep. 173. *McDonough v. Danery*, 3 Dall. 188; 1 Cond. Rep. 94. *United States v. La Vengeance*, 3 Dall. 297; 1 Cond. Rep. 132. *Glass et al. v. The Betsey*, 3 Dall. 6; 1 Cond. Rep. 10. *The Alerta v. Blas Moran*, 9 Cranch. 359; 3 Cond. Rep. 425. *The Merino et al.*, 9 Wheat. 391; 5 Cond. Rep. 623. *The Josefa Segunda*, 10 Wheat. 312; 6 Cond. Rep. 111. *The Bolina*, 1 Gallis. C. C. R. 75. *The Robert Falton*, Paine's C. C. R. 620. *Jansen v. The Vrow Christina Magdalena*, Bee's D. C. R. 11. *Jennings v. Carson*, 4 Cranch, 2; 2 Cond. Rep. 2. *The Sarah*, 8 Wheat. 391; 5 Cond. Rep. 472. *Penhallow et al. v. Doane's Adm'rs.* 3 Dall. 54; 1 Cond. Rep. 21. *The United States v. Richard Peters*, 3 Dall. 121; 1 Cond. Rep. 60. *McLellan v. the United States*,

- quehanna, Bradford, Tioga, Union, Northumberland, Columbia, Luzerne, and Lycoming, as they existed April 20, 1818. The eastern district includes the residue of said State.
- South Carolina.** SEC. 546. The State of South Carolina is divided into two districts, which shall be called the eastern and western districts of the district of South Carolina. The western district includes the counties of Lancaster, Chester, York, Union, Spartanburgh, Greenville, Pendleton, Abbeville, Edgefield, Newberry, Laurens, and Fairfield, as they existed February 21, 1823. The eastern district includes the residue of said State.
- Tennessee.** SEC. 547. The State of Tennessee is divided into three districts, which shall be called the eastern, western, and middle districts of Tennessee. The eastern district includes the counties of Anderson, Bledsoe, Blount, Bradley, Campbell, Carter, Claiborne, Cocke, Cumberland, Grainger, Greene, Hamilton, Hancock, Hawkins, Jefferson, Johnson, Knox, McMinn, Marion, Meigs, Monroe, Morgan, Polk, Rhea, Roane, Scott, Sevier, Sullivan, Union, and Washington, as they existed February 19, 1856. The western district includes the counties of Benton, Carroll, Henry, Obion, Dyer, Gibson, Lauderdale, Haywood, Tipton, Shelby, Fayette, Hardeman, McNairy, Hardin, Perry, Madison, Henderson, and Weakley, as they existed June 18, 1838. The middle district includes the residue of said State.
- Texas.** SEC. 548. The State of Texas is divided into two districts, which shall be called the eastern and western districts of Texas. The eastern district includes the counties of Newton, Jasper, Jefferson, Orange, Tyler, Polk, Liberty, Galveston, Harris, Montgomery, Austin, Fort Bend, Brazoria, Colorado, Wharton, Matagorda, Lavaca, Jackson, Calhoun, De Witt, Victoria, Goliad, Refugio, San Patricio, Nueces, Cameron, Starr, Webb, and Hidalgo, as they existed in eighteen hundred and fifty-two. The western district includes the residue of said State.
- Virginia.** SEC. 549. The State of Virginia is divided into two districts, which shall be called the eastern and western districts of Virginia. The western district includes the counties of Albemarle, Alleghany, Amherst, Appomattox, Augusta, Bath, Bedford, Bland, Botetourt, Buchanan, Buckingham, Campbell, Carroll, Charlotte, Clarke, Craig, Cumberland, Floyd, Franklin, Frederick, Fluvanna, Giles, Grayson, Greene, Halifax, Henry, Highland, Lee, Madison, Montgomery, Nelson, Patrick, Page, Pulaski, Pittsylvania, Rappahannock, Roanoke, Rockbridge, Rockingham, Russell, Scott, Smyth, Shenandoah, Tazewell, Washington, Wise, Wythe, and Warren. The eastern district includes the residue of said State.
- Wisconsin.** SEC. 550. The State of Wisconsin is divided into two districts, which shall be called the eastern and western districts of Wisconsin. The western district includes the counties of Rock, Jefferson, Dane, Green, Grant, Columbia, Iowa, La Fayette, Sauk, Richland, Crawford, Vernon, La Crosse, Monroe, Adams, Juneau, Buffalo, Chippewa, Dunn, Clark, Jackson, Eau Claire, Pepin, Marathon, Wood, Pierce, Polk, Portage, Saint Croix, Trempealeau, Douglas, Barron, Burnett, Ashland, and Bayfield. The eastern district includes the residue of said State.

## CHAPTER TWO.

## DISTRICT COURTS—ORGANIZATION.

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SEC. 551. A district judge shall be appointed for each district, except District judges, in the cases hereinafter provided. Every such judge shall reside in the appointment and district for which he is appointed, and for offending against this pro- residence. vision shall be deemed guilty of a high misdemeanor.

Conn., Del., Md., Mass., N. H., N. J., N. Y., Pa., Me., Va., Ky., 24 Sept., 1789, c. 20, s. 3, v. 1, p. 73; 18 Dec., 1812, c. 5, v. 2, p. 788. Ark., 15 June, 1836, c. 100, s. 4, v. 5, p. 51. Cal., 27 July, 1866, c. 280, s. 1, v. 14, p. 300. Fla., 3 Mar., 1845, c. 75, s. 3, v. 5, p. 788; 23 Feb., 1847, c. 20, s. 1, v. 9, p. 131. Ill., 3 Mar., 1819, c. 70, s. 2, v. 3, p. 502; 13 Feb., 1855, c. 96, s. 7, v. 10, p. 607. Ind., 3 Mar., 1817, c. 100, s. 2, v. 3, p. 390. Iowa, 3 Mar., 1845, c. 76, s. 2, v. 5, p. 789. Kans., 29 Jan., 1861, c. 20, s. 4, v. 12, p. 128. La., 27 July, 1866, c. 280, s. 1, v. 14, p. 300. Minn., 11 May, 1858, c. 31, s. 3, v. 11, p. 285. Mo., 16 Mar., 1822, c. 12, s. 2, v. 3, p. 653; 3 Mar., 1857, c. 100, s. 7, v. 11, p. 198. Mich., 1 July, 1836, c. 234, s. 2, v. 5, p. 62; 24 Feb., 1863, c. 54, s. 7, v. 12, p. 661. N. Y., 29 April, 1812, c. 71, s. 1, v. 2, p. 719; 9 April, 1814, c. 49, s. 2, v. 3, p. 120; 25 Feb., 1865, c. 54, s. 1, v. 13, p. 438. Nebr., 25 Mar., 1867, c. 7, s. 1, v. 15, p. 5. Nev., 27 Feb., 1865, c. 64, s. 1, v. 13, p. 440. N. C., 4 June, 1790, c. 17, s. 2, v. 1, p. 126; 29 April, 1802, c. 31, s. 7, v. 2, p. 162; 4 June, 1872, c. 282, s. 8, v. 17, p. 217. Ohio, 19 Feb., 1803, c. 7, s. 2, v. 2, p. 201; 10 Feb., 1855, c. 73, s. 7, v. 10, p. 605. Oreg., 3 Mar., 1857, c. 85, s. 2, v. 11, p. 437. Pa., 20 April, 1818, c. 108, ss. 2, 3, v. 3, p. 462; 26 May, 1824, c. 170, v. 4, p. 50. R. I., 23 June, 1790, c. 21, s. 2, v. 1, p. 128. Texas, 29 Dec., 1845, c. 1, s. 2, v. 9, p. 1; 21 Feb., 1857, c. 57, s. 5, v. 11, p. 165. Vt., 2 Mar., 1791, c. 12, s. 2, v. 1, p. 197. Va., 3 Feb., 1871, c. 25, s. 8, v. 16, p. 404. W. Va., 11 June, 1864, c. 120, s. 1, v. 13, p. 124. Wis., 6 Aug., 1846, c. 89, s. 4, v. 9, p. 57; 29 June, 1870, c. 175, s. 8, v. 16, p. 172.

SEC. 552. There shall be appointed in each of the States of Alabama, Georgia, Mississippi, South Carolina, and Tennessee, one district judge, Judges in Ala- bama, Georgia, who shall be district judge for each of the districts included in the State Mississippi, North Carolina, South Carolina, and Tennessee. And for offending against this provision, such judges shall be liable as in the preceding section.

24 Sept., 1789, c. 20, s. 3, v. 1, p. 73; 18 Dec., 1812, c. 5, v. 2, p. 788. Ala., 21 April, 1820, c. 47, s. 2, v. 3, p. 564; 6 Feb., 1839, c. 20, s. 2, v. 5, p. 315; 10 Mar., 1824, c. 28, s. 2, v. 4, p. 9; 7 Aug., 1848, c. 143, s. 1, v. 9, p. 274. Ga., 11 Aug., 1848, c. 151, s. 2, v. 9, p. 280. Miss., 3 April, 1818, c. 29, s. 2, v. 3, p. 413; 18 June, 1838, c. 115, s. 2, v. 5, p. 247. S. C., 21 Feb., 1823, c. 11, v. 3, p. 726. Tenn., 31 Jan., 1797, c. 2, s. 2, v. 1, p. 496; 18 June, 1838, c. 118, s. 3, v. 5, p. 250; 18 Jan., 1839, c. 3, s. 1, v. 5, p. 318.

SEC. 553. The district judge for the southern district of Florida shall District judge of southern district of Florida. reside at Key West.

23 Feb., 1847, c. 20, s. 1, v. 9, p. 131.

SEC. 554. District judges are entitled to receive yearly salaries at the Salaries of dis- following rates, payable quarterly from the Treasury: The judge of the trict judges. district of California five thousand dollars; the judge of the district of Louisiana four thousand five hundred dollars; the judges of the district of Massachusetts; the northern, southern, and eastern districts of New York; the eastern and western districts of Pennsylvania; the district of New Jersey; the district of Maryland; the southern district of Ohio, and the northern district of Illinois, four thousand dollars. The judges of all other districts three thousand five hundred dollars. No other allowance or payment shall be made to them for travel, expenses, or otherwise. [See §§ 597, 618.]

404. Ark., 3 Mar., 1871, c. 106, s. 5, v. 16, p. 472. N. C., 4 June, 1872, c. 282, s. 8, v. 17, p. 217. 18 Feb., 1875, c. 83, v. 18, p. 329.

SEC. 555. A clerk shall be appointed for each district court by the Clerk. uge thereof, except in cases otherwise provided for by law.

20, s. 7, v. 1, p. 76. 10 April, 1869, c. 22, s. 2, v. 16, p. 45. 20 June, 1874, c. 328, v. 18, p. 109.

SEC. 556. [In the western district of Arkansas there shall be appointed two clerks of the district court thereof; one of whom shall reside and keep his office at Fort Smith, and the other shall reside and keep his office at Helena.] Arkansas, east- In the eastern district of Arkansas, there shall be appointed two clerks of ern district; clerks. the district court thereof, one of whom shall reside and keep his office at Little Rock, and the other shall reside and keep his office at Helena.] 3 Mar., 1851, c. 24, s. 4, v. 9, p. 595. 3 Mar., 1871, c. 106, s. 4, v. 16, p. 472. 31 Jan., 1877, c. 41, v. 19, p. 230.

SEC. 557. In the district of Kentucky a clerk of the district court shall be appointed at each place of holding the court, in the same manner and subject to the same duties and responsibilities which are, or may be, provided concerning clerks in independent districts.

Kentucky; clerks. 15 May, 1862, c. 71, s. 7, v. 12, p. 387. 10 April, 1869, c. 22, s. 3, v. 16, p. 45.

Act of April  
10, 1812, ch. 55.

Act of Feb. 28,  
1795, ch. 36.

expense incurred, or to be incurred, under an act, entitled "An act to authorize a detachment from the militia of the United States," passed the tenth day of April, one thousand eight hundred and twelve; and also, under an act, entitled "An act for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions, and to repeal the act now in force for those purposes," passed the twenty-eighth day of February, one thousand seven hundred and ninety-five, to be paid out of any monies in the treasury not otherwise appropriated.

APPROVED, December 12, 1812.

#### STATUTE II.

Dec. 12, 1812.

[Obsolete.]

Act of March  
3, 1815, ch. 79.

CHAP. IV.—*An Act increasing the pay of the non-commissioned officers, musicians, privates, and others of the Army, and for other purposes.*

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That from and after the thirty-first day of December, eighteen hundred and twelve, the monthly pay of the non-commissioned officers, musicians, privates, drivers, bombardiers, matrosses, sappers, miners, artificers, saddlers, farriers, and blacksmiths, who have enlisted or shall hereafter enlist in the service of the United States, shall, during the continuance of the war between the United States of America and their territories, and the United Kingdom of Great Britain and Ireland and the dependencies thereof, be as follows, to wit: To each sergeant major and quartermaster sergeant, twelve dollars; to each sergeant and principal musician, eleven dollars; to each corporal, ten dollars; to each musician, nine dollars; to each private, driver, bombardier, matross, sapper, and miner, eight dollars; to each artificer, saddler, farrier, and blacksmith, not attached to the quartermaster general's and ordnance department, thirteen dollars.

Monthly pay  
after Dec. 31,  
1812.

Non-commissioned officers,  
soldiers, &c. &c.  
free from arrest  
for debt.

Recruits to  
have an option  
to serve till the  
end of the war,  
or for five years.

SEC. 2. *And be it further enacted,* That during the continuance of the war with Great Britain, no non-commissioned officer, musician, private, driver, bombardier, matross, sapper, miner, artificer, saddler, farrier, or blacksmith, enlisted in the service of the United States, during his continuance in service shall be arrested, or subject to arrest, or to be taken in execution for any debt contracted before or after enlistment.

SEC. 3. *And be it further enacted,* That every non-commissioned officer, musician, and private, who shall, after the promulgation of this act, be recruited in the regular army of the United States, may, at his option, to be made at the time of enlistment, engage to serve during the present war with Great Britain, instead of the term of five years; and shall, in case he makes such option, be entitled to the same bounty in money and land, and to all other allowances, and be subject to the same rules and regulations, as if he had enlisted for the term of five years.

APPROVED, December 12, 1812.

#### STATUTE II.

Dec. 18, 1812.

District and  
territorial  
judges to reside  
within their dis-  
tricts and not to  
exercise the  
profession of  
counsel or at-  
torney, or to be  
engaged in the  
practice of the  
law.

CHAP. V. *An Act concerning the District and Territorial Judges of the United States.*

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That hereafter it shall be incumbent upon the district and territorial judges of the United States, to reside within the districts and territories respectively for which they are appointed, and that it shall not be lawful for any judge appointed under the authority of the United States, to exercise the profession or employment of counsel or attorney, or to be engaged in the practice of the law. And any person offending against the injunction or prohibition of this act, shall be deemed guilty of a high misdemeanor.

APPROVED, December 18, 1812.

# 1940 EDITION

## TITLE 28.—JUDICIAL CODE AND JUDICIARY

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### Part I.—JUDICIAL CODE

#### Chapter 1.—DISTRICT COURTS; ORGANIZATION

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#### Sec.

25.	Affidavit of personal bias or prejudice of judge.
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27.	Districts with more than one judge; division of business.

#### § 1. (Judicial Code, section 1.) District Courts; judges; appointments and residence.

In each of the districts described in chapter five of this title there shall be a court called a district court, for which there shall be appointed one judge, to be called a district judge, except that in the District of Arizona, the District of Connecticut, the Southern District of Illinois, the Eastern District of Illinois, the Eastern District of Louisiana, the Western District of Louisiana, the District of Maryland, the Eastern District of Missouri, the Western District of Missouri, the District of Montana, the District of Nebraska, the Northern District of New York, the Western District of New York, the District of Oregon, the Middle District of Pennsylvania, the Eastern District of Tennessee, the Southern District of Texas, the Western District of Texas, the Eastern District of Virginia, the Western District of Virginia, and the Western District of Washington there shall be an additional district judge in each; in the Southern District of Florida, the District of Massachusetts, the Northern District of Ohio, the Southern District of Ohio, the Western District of Pennsylvania and the Northern District of Texas, there shall be two additional judges in each; in the Northern District of California, the District of Minnesota, the District of New Jersey, and the Eastern District of Pennsylvania, there shall be three additional judges in each; in the Eastern District of Michigan there shall be four additional judges; in the Northern District of Illinois and the Eastern District of New York there shall be five additional judges in each; in the Southern District of California there shall be seven additional judges; and in the Southern District of New York there shall be eleven additional judges. In addition to those enumerated there shall be one district judge for the Eastern and Western Districts of Arkansas, one district judge for the Eastern and Western Districts of Kentucky, one district judge for the Eastern and Western Districts of Missouri, one district judge for the Northern, Eastern and Western Districts of Oklahoma, one district judge for the Eastern and Western Districts of South Carolina, and one district judge for the Eastern and Western Districts of Washington.

Every district judge shall reside in the district or one of the districts for which he is appointed, and for offending against this provision shall be deemed guilty of a high misdemeanor. (Mar. 3, 1911, ch. 231, § 1, 36 Stat. 1087 as amended July 30, 1914, ch. 216, 38 Stat. 580 and supplemented Mar. 3, 1915, ch. 100, § 1, 38 Stat. 961; Apr. 11, 1916, ch. 64, § 1, 39

vided for by section 133 of title 28 of the United States Code, shall hereafter be a district judgeship for the western district of Washington only, and the present incumbent of such judgeship shall henceforth hold his office under section 133, as amended by this Act."

Section 2(c) of Pub. L. 87-36 provided that: "The existing district judgeship for the eastern and western districts of Washington, heretofore provided for by section 133 of title 28 of the United States Code, shall hereafter be a district judgeship for the western district of Washington only, and the present incumbent of such judgeship shall henceforth hold his office under section 133, as amended by this Act [Pub. L. 87-36]."

*West Virginia.*—Section 2 of Pub. L. 97-471 provided that:

"(a) The existing district judgeship for the Southern District of West Virginia, authorized by section 2 of the Act entitled 'An Act to provide for the appointment of additional district and circuit judges and for other purposes', approved October 20, 1978 [Pub. L. 95-486] (92 Stat. 1632; 28 U.S.C. 133 note), shall, as of the date of enactment of this Act [Jan. 14, 1983], be authorized under section 133 of title 28 of the United States Code as a district judgeship for the Northern District of West Virginia, and the incumbent of that office shall henceforth hold office under section 133, as amended by this Act."

"(b) The existing district judgeship for the Northern and Southern Districts of West Virginia shall be authorized as the district judgeship for the Southern District."

The additional judgeship for the northern and southern districts, which was authorized by act June 22, 1936, ch. 695, 49 Stat. 1805, was made permanent by section 2(a)(2) of act Feb. 10, 1954, which by section 2(b)(12) of act Feb. 10, 1954, provided that the incumbent of the judgeship created by act June 22, 1936, should henceforth hold his office under this section, as amended by act Feb. 10, 1954, § 2(a)(3).

*Wisconsin.*—Section 5(c) of Pub. L. 89-372, Mar. 18, 1966, 80 Stat. 78, which authorized the appointment of an additional district judge for the district of Wisconsin and which provided that the first vacancy occurring in the office of district judge in such district not be filled was repealed by section 1(c) of Pub. L. 91-272, June 2, 1970, 84 Stat. 294, which provided, in part, that such judgeship be a permanent judgeship and that the present incumbent henceforth hold his office under this section, as amended by section 1(d) of Pub. L. 91-272.

#### NOMINATION OF WOMEN AND BLACKS TO FEDERAL JUDGESHIPS

Section 8 of Pub. L. 95-486 provided that: "The Congress—

"(1) takes notice of the fact that only 1 percent of Federal judges are women and only 4 percent are blacks; and

"(2) suggests that the President, in selecting individuals for nomination to the Federal judgeships created by this Act [for classification see Effective Date of 1978 Amendment note above], give due consideration to qualified individuals regardless of race, color, sex, religion, or national origin."

#### RESIDENCE OF ADDITIONAL JUDGE FOR KANSAS

Section 2(b)(2) act Aug. 3, 1949, provided that: "The judge first appointed for the district of Kansas under the authority contained in subsection (a) [amending this section] shall reside at Wichita."

#### EXECUTIVE ORDER NO. 12084

Ex. Ord. No. 12084, Sept. 27, 1978, 43 F.R. 44815, as amended by Ex. Ord. No. 12097, Nov. 8, 1978, 43 F.R. 52455, which established the Judicial Nominating Commission for the District of Puerto Rico and provided for its membership, functions, etc., was revoked by Ex. Ord. No. 12305, May 5, 1981, 46 F.R. 25421, set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

#### EXECUTIVE ORDER NO. 12097

Ex. Ord. No. 12097, Nov. 8, 1978, 43 F.R. 52455, which provided standards and guidelines for the selection of nominees for United States district court judgeships, was revoked by Ex. Ord. No. 12553, Feb. 25, 1986, 51 F.R. 7237.

#### § 134. Tenure and residence of district judges

(a) The district judges shall hold office during good behavior.

(b) Each district judge, except in the District of Columbia, the Southern District of New York, and the Eastern District of New York, shall reside in the district or one of the districts for which he is appointed. Each district judge of the Southern District of New York and the Eastern District of New York may reside within 20 miles of the district to which he or she is appointed.

(c) If the public interest and the nature of the business of a district court require that a district judge should maintain his abode at or near a particular place for holding court in the district or within a particular part of the district the judicial council of the circuit may so declare and may make an appropriate order. If the district judges of such a district are unable to agree as to which of them shall maintain his abode at or near the place or within the area specified in such an order the judicial council of the circuit may decide which of them shall do so.

(June 25, 1948, ch. 646, 62 Stat. 896; Aug. 3, 1949, ch. 387, § 2(b)(1), 63 Stat. 495; Feb. 10, 1954, ch. 6, § 2(b)(13)(a), 68 Stat. 12; Pub. L. 86-3, § 9(c), Mar. 18, 1959, 73 Stat. 8; Pub. L. 87-36, § 2(e)(3), May 19, 1961, 75 Stat. 83; Pub. L. 89-571, § 1, Sept. 12, 1966, 80 Stat. 764; Pub. L. 92-208, § 3(e), Dec. 18, 1971, 85 Stat. 742; Pub. L. 104-317, title VI, § 607, Oct. 19, 1996, 110 Stat. 3860.)

#### HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 1 and section 863 of title 48, U.S.C., 1940 ed., Territories and Insular Possessions (Apr. 12, 1900, ch. 191, § 34, 31 Stat. 84; Mar. 3, 1911, ch. 231, § 1, 36 Stat. 1087; Jan. 7, 1913, ch. 6, 37 Stat. 648; July 30, 1914, ch. 216, 38 Stat. 580; Mar. 2, 1917, ch. 145, § 41, 39 Stat. 965; Mar. 4, 1921, ch. 161, § 1, 41 Stat. 1412; Sept. 14, 1922, ch. 306, § 1, 42 Stat. 837; Mar. 26, 1938, ch. 51, § 2, 52 Stat. 118).

Section consolidates the last paragraph of section 1 of title 28, U.S.C., 1940 ed., with portions of section 863 of title 48, U.S.C., 1940 ed., with changes in phraseology necessary to effect consolidation.

Provisions of section 1 of title 28, U.S.C., 1940 ed., relating to the number of judges in the various districts are incorporated in section 133 of this title.

A portion of section 863 of title 48, U.S.C., 1940 ed., is retained in said title 48. For remainder of section 863, see Distribution Table.

The exception in subsection (b) "except in the District of Columbia" conforms with the recent decision in *U.S. ex. rel. Laughlin v. Eicher*, 1944, 56 F.Supp. 972, holding that residence requirement of section 1 of title 28, U.S.C., 1940 ed., did not apply to district judges in the District of Columbia. (See reviser's note under section 44 of this title.)

The clause in said last paragraph of section 1 of title 28 providing that any district judge, who violates the residence requirement, shall be deemed guilty of a high misdemeanor, was omitted. This penalty provision was attached to the residence requirement at the time of compilation of the Revised Statutes of 1878, although it is apparent that Congress only intended that the penalty should be invoked upon the unauthorized practice

of law. See *U.S. ex. rel. Laughlin v. Eicher*, supra, in which an outline of the history of said section 1 of title 28 is given.

#### AMENDMENTS

1996—Subsec. (b). Pub. L. 104-317 inserted “the Southern District of New York, and the Eastern District of New York,” after “the District of Columbia,” and inserted “Each district judge of the Southern District of New York and the Eastern District of New York may reside within 20 miles of the district to which he or she is appointed.” at end.

1971—Subsec. (c). Pub. L. 92-208 struck out provision requiring that one of the district judges for the Eastern District of Louisiana reside in East Baton Rouge Parish, Louisiana.

1966—Subsec. (a). Pub. L. 89-571 struck out provisions which excepted district judges in Puerto Rico from tenure during good behavior and which instead set eight-year terms for them to be served until their successors were appointed and qualified.

1961—Subsec. (c). Pub. L. 87-36 required the residence of one of the district judges for the Eastern District of Louisiana to be in East Baton Rouge Parish, Louisiana.

1959—Subsec. (a). Pub. L. 86-3 struck out provisions which limited district judges in Hawaii to a term of six years.

1954—Subsecs. (a) and (b) reenacted without change by act Feb. 10, 1954.

Subsec. (c). Act Feb. 10, 1954, substituted entirely new provisions giving the judicial council of the circuit the authority to determine residence of district judges when it is in the public interest and the nature of the business of the district court necessitates the presence of a judge at or near a particular place for holding court in the district or within a particular part of the district, for former provisions relating to residence of one of the district judges for the District of Kansas.

Subsecs. (d), (e). Act Feb. 10, 1954, struck out subsecs. (d) and (e) which related to residence of one of the district judges for the Southern District of California and one of the district judges for the Southern District of Texas.

1949—Subsecs. (c) to (e). Act Aug. 3, 1949, added subsecs. (c) to (e).

#### EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92-208 effective 120 days after Dec. 18, 1971, see section 3(f) of Pub. L. 92-208, set out as a note under section 98 of this title.

#### EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86-3 effective on admission of Hawaii into the Union, see Effective Date of 1959 Amendment note set out under section 133 of this title. Admission of Hawaii into the Union was accomplished Aug. 21, 1959, upon issuance of Proc. No. 3309, Aug. 21, 1959, 25 F.R. 6868, 73 Stat. c74, as required by sections 1 and 7(c) of Pub. L. 86-3, Mar. 18, 1959, 73 Stat. 4, set out as notes preceding section 491 of Title 48, Territories and Insular Possessions.

#### TENURE AND SALARY RIGHTS OF JUDGES IN PUERTO RICO IN OFFICE ON SEPTEMBER 12, 1966

Section 4 of Pub. L. 89-571 provided that: “The amendments made by this section to sections 134 and 373 of title 28, United States Code, shall not affect the tenure of office or right to continue to receive salary after resignation, retirement, or failure of reappointment of any district judge for the district of Puerto Rico who is in office on the date of enactment of this Act [Sept. 12, 1966].”

#### APPLICABILITY OF ORDERS UNDER 1954 AMENDMENT

Section 2(b)(13)(b) of act Feb. 10, 1954, provided: “Orders made by the judicial councils of the circuits under the second sentence of subsection (c) of section 134 of Title 28, as amended by this section, determining that a specified district judge shall maintain his abode at or

near a place or within an area which the council has theretofore designated for the abode of a district judge under the first sentence of such subsection, shall be applicable only to district judges appointed after the enactment of this act [Feb. 10, 1954].”

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 992 of this title.

### § 135. Salaries of district judges

Each judge of a district court of the United States shall receive a salary at an annual rate determined under section 225 of the Federal Salary Act of 1967 (2 U.S.C. 351-361), as adjusted by section 461 of this title.

(June 25, 1948, ch. 646, 62 Stat. 897; Mar. 2, 1955, ch. 9, §1(c), 69 Stat. 10; Pub. L. 88-426, title IV, §403(c), Aug. 14, 1964, 78 Stat. 434; Pub. L. 94-82, title II, §205(b)(3), Aug. 9, 1975, 89 Stat. 422.)

#### HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §5, and District of Columbia Code, 1940 ed., §11-302 (Mar. 3, 1911, ch. 231, §2, 36 Stat. 1087; Feb. 25, 1919, ch. 29, §1, 40 Stat. 1156; Dec. 13, 1926, ch. 6, 44 Stat. 919; May 17, 1932, ch. 190, 47 Stat. 158; July 31, 1946, ch. 704, §1, 60 Stat. 716).

Section consolidates section 5 of title 28, U.S.C., 1940 ed., and section 11-302 of the District of Columbia Code, 1940 ed.

“Chief judge,” in the District of Columbia, was substituted for “Chief Justice” which appeared in section 11-302 of the District of Columbia Code. (See reviser’s note under section 136 of this title.)

Words “to be paid in monthly installments” were omitted, since the time of payment is a matter of administrative convenience. See 20 Comp. Gen. 834.

The provision of section 5 of title 28, U.S.C., 1940 ed., for salaries of judges of the district court of Alaska was omitted as covered by section 101 of Title 48, U.S.C., 1940 ed., Territories and Insular Possessions, as amended by a separate section in the bill to enact this revised title. The provision of said section for salary of the Virgin Islands district judge was omitted as covered by section 5a of title 28, U.S.C., 1940 ed., as amended by a separate section in the bill to enact this revised title. Such section 5a is recommended for transfer to title 48, U.S.C., 1940 ed., because of the dual nature of the Virgin Islands district court.

For salary of the district judge of Canal Zone district court, see section 1348 of title 48, U.S.C., 1940 ed., Territories and Insular Possessions.

Changes were made in phraseology.

#### REFERENCES IN TEXT

Section 225 of the Federal Salary Act of 1967, referred to in text, is section 225 of Pub. L. 90-206, Dec. 16, 1967, 81 Stat. 642, as amended, which is classified to chapter 11 (§351 et seq.) of Title 2, The Congress.

#### AMENDMENTS

1975—Pub. L. 94-82 substituted provision that each judge of a district court shall receive a salary at an annual rate determined under section 225 of the Federal Salary Act of 1967, as adjusted by section 461 of this title, for provision that each such judge receive a salary of \$30,000.

1964—Pub. L. 88-426 increased the salary of the district court judges from \$22,500 to \$30,000, and that of the chief judge of the District Court for the District of Columbia from \$23,000 to \$30,500.

1955—Act Mar. 2, 1955, increased the salaries of the district court judges from \$15,000 to \$22,500 a year and increased the salary of the chief judge of the District Court for the District of Columbia from \$15,500 to \$23,000 a year.

#### EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88-426 effective on the first day of the first pay period which begins on or after