

VETERANS' PREFERENCE IN JUDICIAL BRANCH
APPOINTMENTS

Pub. L. 105-339, §4(d), Oct. 31, 1998, 112 Stat. 3186, provided that:

“(1) IN GENERAL.—Subject to paragraphs (2) and (3), the Judicial Conference of the United States shall prescribe procedures to provide for—

“(A) veterans' preference in the consideration of applicants for employment, and in the conduct of any reductions in force, within the judicial branch; and

“(B) redress for alleged violations of any rights provided for under subparagraph (A).

“(2) PROCEDURES.—Under the procedures, a preference eligible (as defined by section 2108 of title 5, United States Code) shall be afforded preferences in a manner and to the extent consistent with preferences afforded to preference eligibles in the executive branch.

“(3) EXCLUSIONS.—Nothing in the procedures shall apply with respect to an applicant or employee—

“(A) whose appointment is made by the President with the advice and consent of the Senate;

“(B) whose appointment is as a judicial officer;

“(C) whose appointment is required by statute to be made by or with the approval of a court or judicial officer; or

“(D) whose appointment is to a position, the duties of which are equivalent to those of a Senior Executive Service position (within the meaning of section 3132(a)(2) of title 5, United States Code).

“(4) DEFINITIONS.—For purposes of this subsection, the term ‘judicial officer’ means a justice, judge, or magistrate judge listed in subparagraph (A), (B), (F), or (G) of section 376(a)(1) of title 28, United States Code.

“(5) SUBMISSION TO CONGRESS; EFFECTIVE DATE.—

“(A) SUBMISSION TO CONGRESS.—Not later than 12 months after the date of enactment of this Act [Oct. 31, 1998], the Judicial Conference of the United States shall submit a copy of the procedures prescribed under this subsection to the Committee on Government Reform and Oversight [now Committee on Oversight and Reform] and the Committee on the Judiciary of the House of Representatives and the Committee on Governmental Affairs [now Committee on Homeland Security and Governmental Affairs] and the Committee on the Judiciary of the Senate.

“(B) EFFECTIVE DATE.—The procedures prescribed under this subsection shall take effect 13 months after the date of enactment of this Act.”

REFERENCE TO ASSISTANT DIRECTOR DEEMED
REFERENCE TO DEPUTY DIRECTOR

Pub. L. 86-370, §5(a)(4), Sept. 23, 1959, 73 Stat. 652, provided that: “Whenever the Assistant Director of the Administrative Office of the United States Courts is referred to in any other law, such reference shall be deemed to be to the Deputy Director of the Administrative Office of the United States Courts.”

CONTINUATION OF LAW EXISTING ON SEPT. 1, 1948

Act June 25, 1948, ch. 646, §2(b), 62 Stat. 985, provided that: “The provisions of title 28, Judiciary and Judicial Procedure, of the United States Code, set out in section 1 of this Act, with respect to the organization of each of the several courts therein provided for and of the Administrative Office of the United States Courts, shall be construed as continuations of existing law, and the tenure of the judges, officers, and employees thereof and of the United States attorneys and marshals and their deputies and assistants, in office on the effective date of this Act [Sept. 1, 1948], shall not be affected by its enactment, but each of them shall continue to serve in the same capacity under the appropriate provisions of title 28, as set out in section 1 of this Act, pursuant to his prior appointment: *Provided, however,* That each circuit court of appeals shall, as in said title 28 set out, hereafter be known as a United States court of appeals. No loss of rights, interruption of jurisdiction, or prejudice to matters pending in any of such courts on the effective date of this Act shall result from its enactment.”

§ 602. Employees

(a) The Director shall appoint and fix the compensation of necessary employees of the Administrative Office in accordance with the Administrative Office of the United States Courts Personnel Act of 1990.

(b) Notwithstanding any other law, the Director may appoint certified interpreters in accordance with section 604(a)(16)(B) of this title without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, relating to classification and General Schedule pay rates, but the compensation of any person appointed under this subsection shall not exceed the appropriate equivalent of the highest rate of pay payable for the highest grade established in the General Schedule, section 5332 of title 5.

(c) The Director may obtain personal services as authorized by section 3109 of title 5, at rates not to exceed the appropriate equivalent of the highest rate of pay payable for the highest grade established in the General Schedule, section 5332 of title 5.

(d) All functions of other officers and employees of the Administrative Office and all functions of organizational units of the Administrative Office are vested in the Director. The Director may delegate any of the Director's functions, powers, duties, and authority (except the authority to promulgate rules and regulations) to such officers and employees of the judicial branch of Government as the Director may designate, and subject to such terms and conditions as the Director may consider appropriate; and may authorize the successive redelegation of such functions, powers, duties, and authority as the Director may deem desirable. All official acts performed by such officers and employees shall have the same force and effect as though performed by the Director in person.

(June 25, 1948, ch. 646, 62 Stat. 913; Pub. L. 95-539, §5, Oct. 28, 1978, 92 Stat. 2044; Pub. L. 101-474, §5(a), (q), Oct. 30, 1990, 104 Stat. 1099, 1101; Pub. L. 101-650, title III, §325(b)(4), Dec. 1, 1990, 104 Stat. 5121.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §445 (Mar. 3, 1911, ch. 231, §303, as added Aug. 7, 1939, ch. 501, §1, 53 Stat. 1223).

This section contains provisions in section 445 of title 28, U.S.C., 1940 ed., for appointment of employees.

Words “with the approval of the Supreme Court” were omitted to relieve the court of the burden of approving appointments which in practice should properly be made by the Director under the supervision of the Judicial Conference of the United States.

The remainder of section 445 of title 28, U.S.C., 1940 ed., is incorporated in sections 603 and 607 of this title. Changes were made in phraseology.

Editorial Notes

REFERENCES IN TEXT

The Administrative Office of the United States Courts Personnel Act of 1990, referred to in subsec. (a), is Pub. L. 101-474, Oct. 30, 1990, 104 Stat. 1097, which amended this section and sections 603 and 604 of this title and sections 2301, 2302, 4301, 4501, 4701, 5102, 5108, 5349, 5595, 5596, 8331, 8347, 8401, and 8402 of Title 5, Government Organization and Employees, and enacted provisions set out below. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1990—Subsec. (a). Pub. L. 101-474, §5(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “The Director shall appoint and fix the compensation of necessary employees of the Administrative Office in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of title 5, relating to classification and General Schedule pay rates.”

Subsec. (b). Pub. L. 101-474, §5(q), and Pub. L. 101-650 amended subsec. (b) identically, substituting “604(a)(16)(B)” for “604(a)(15)(B)”.

1978—Pub. L. 95-539, among other changes, substituted provision authorizing the Director to appoint and fix the compensation of necessary employees in accordance with chapter 51 and subchapter III of chapter 53 of title 5 for provision authorizing the Director, subject to the provisions of the civil service laws, to appoint necessary employees for the Administrative Office and inserted provisions relating to appointing and fixing the compensation of certified interpreters, to obtaining personal services as authorized by section 3109 of title 5, and to transferring to the Director all of the functions of the officers and employees of the Administrative Office and all the functions of the organizational units of the Administrative Office with power in the Director to delegate his authority.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95-539, §10, Oct. 28, 1978, 92 Stat. 2045, provided that:

“(a) Except as provided in subsection (b), this Act [enacting section 1827 and 1828 of this title, amending this section and sections 603, 604, and 1920 of this title, enacting provisions set out as notes under this section and section 1 of this title, and repealing provisions set out as a note under this section] shall take effect on the date of the enactment of this Act [Oct. 28, 1978].

“(b) Section 2 of this Act [enacting sections 1827 and 1828 of this title] shall take effect ninety days after the date of the enactment of this Act [Oct. 28, 1978].”

REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of Title 5.

ADMINISTRATIVE OFFICE OF UNITED STATES COURTS PERSONNEL

Pub. L. 101-474, §§1-4, 6, Oct. 30, 1990, 104 Stat. 1097-1099, 1101, provided that:

“SECTION 1. SHORT TITLE.

“This Act [see References in Text note above and Tables for classification] may be cited as the ‘Administrative Office of the United States Courts Personnel Act of 1990’.

“SEC. 2. GENERAL PERSONNEL AUTHORITY.

“The Director of the Administrative Office of the United States Courts (hereinafter in this Act referred to as the ‘Director’) may appoint, fix the compensation of, assign, and direct such personnel as the Director determines necessary to discharge the duties and functions of the Administrative Office.

“SEC. 3. ESTABLISHMENT OF PERSONNEL MANAGEMENT SYSTEM.

“(a) The Director shall, by regulation, establish a personnel management system for the Administrative Office which provides for the appointment, pay, promotion, and assignment of all employees on the basis of merit, but without regard to the provisions of title 5,

United States Code, governing appointments and other personnel actions in the competitive service, or the provisions of chapter 51 and subchapter III of chapter 53 of such title, relating to classification and General Schedule pay rates. The system shall apply to all Administrative Office employees except those referred to in section 603 of title 28, United States Code, and shall, at a minimum—

“(1) provide for a schedule of pay rates applicable to all employees; except as provided in paragraph (10), the basic pay of any person appointed under this section shall not exceed the rate of basic pay for level V of the Executive Schedule;

“(2) incorporate pay comparability principles as set forth in section 5301(a) of title 5, United States Code;

“(3) provide for the adjustment of the pay of employees at the same time and in the same percentage amount as rates of basic pay are adjusted for General Schedule and prevailing rate employees, as appropriate;

“(4) establish procedures for employee evaluations, the granting of periodic pay adjustments, incentive awards, and resolution of employee grievances;

“(5) establish procedures for disciplinary actions, including reduction in grade or pay, suspension, and removal, based on unacceptable performance or misconduct, except that—

“(A) such procedures shall be consistent with—

“(i) section 4303 of title 5, United States Code, to the extent that they relate to adverse actions based on unacceptable performance; and

“(ii) chapter 75 of title 5, United States Code, to the extent that they relate to adverse actions covered by such chapter; and

“(B) the Director may exempt from these procedures positions of a confidential or policy-determining character, not to exceed 4 percent of the authorized positions of the Administrative Office;

“(6) establish procedures for premium pay (including overtime), except that the Director may at his discretion implement flexible and compressed work schedules and may exempt the hours constituting such schedules from premium pay to the extent he deems necessary to implement such schedules;

“(7) include the principles set forth in section 2301(b) of title 5, United States Code;

“(8) prohibit personnel practices prohibited under section 2302(b) of title 5, United States Code;

“(9) prohibit discrimination on the basis of race, color, religion, age, sex, national origin, political affiliation, marital status, or handicapping condition; the Director must promulgate regulations providing procedures for resolving complaints of discrimination by employees and applicants for employment;

“(10) provide for the basic pay of not more than 5 percent of the authorized positions of the Administrative Office (excluding the positions referred to in section 603 of title 28, United States Code) to be set at rates not to exceed the rate of basic pay for positions at level IV of the Executive Schedule; the aggregate pay (including basic pay and incentive awards) of any individual whose basic pay is set under this subsection may not exceed the salary of the Director; and

“(11) in the case of any individual who would be a preference eligible in the executive branch, provide preference for that individual in a manner and to an extent consistent with preference accorded to preference eligibles in the executive branch.

“(b) The Director may apply the provisions of sections 5723 and 6304(f) of title 5, United States Code, to the positions referred to in subsection (a)(10) and in section 603 of title 28, United States Code, including the Deputy Director.

“(c) The Director may provide for incentive awards for the positions referred to in section 603 of title 28, United States Code, including the Deputy Director, subject to the aggregate pay limitation in subsection (a)(10).

“(d) The Chief Justice of the United States or the Judicial Conference of the United States may grant in-

centive awards to the Director, except that the Director's aggregate pay for any fiscal year, including salary and incentive awards, may not exceed the salary of a United States circuit judge. The Chief Justice or the Judicial Conference may authorize application of section 5723 of title 5, United States Code, to the Director.

“(e) The Director may develop and conduct programs to meet the short- and long-range training needs of the agency.

“(f) Notwithstanding any other provision of law, an individual who is an employee of the Administrative Office on the day before the effective date of this section and who, as of that day, was entitled to—

“(1) appeal a reduction in grade or removal to the Merit Systems Protection Board under chapter 43 of title 5, United States Code,

“(2) appeal an adverse action to the Merit Systems Protection Board under chapter 75 of title 5, United States Code, or

“(3) file an appeal with the Equal Employment Opportunity Commission under part 1613 of title 29 of the Code of Federal Regulations,

shall continue to be entitled to file such appeal so long as the individual remains an employee of the Administrative Office, except that this provision shall not apply to employees in positions referred to in section 603 of title 28, United States Code, or in positions of a confidential or policy-determining character referred to in subsection (a)(10).

“(g) Nothing in this Act shall be construed to abolish or diminish any right or remedy granted to employees or for applicants for employment in the Administrative Office by any law prohibiting discrimination in Federal employment on the basis of race, color, religion, age, sex, national origin, political affiliation, marital status, or handicapping condition, except that, with respect to any such employees and applicants for employment, any authority granted under any such law to the Equal Employment Opportunity Commission, the Office of Personnel Management, the Merit Systems Protection Board, or any other agency in the executive branch, shall be exercised by the Administrative Office.

“SEC. 4. NONCOMPETITIVE APPOINTMENTS.

“(a) Notwithstanding any other provision of law, any employee of the Administrative Office who has completed at least 1 year of continuous service under a nontemporary appointment under the personnel system established pursuant to section 3 acquires a competitive status for appointment to any position in the competitive service for which the employee possesses the required qualifications.

“(b) A period of continuous service performed as a nontemporary employee of the Administrative Office immediately before the personnel system under section 3 takes effect shall, for purposes of subsection (a), be treated as if it had been performed under such system.

“SEC. 6. AUTHORIZATION.

“There are authorized to be appropriated for fiscal year 1990 and for each fiscal year thereafter such sums as may be necessary to carry out the provisions of this Act.”

CONTRACT LIMITATIONS

Pub. L. 95-539, §11, Oct. 28, 1978, 92 Stat. 2045, provided that: “Any contracts entered into under this Act or any of the amendments made by this Act [enacting sections 1827 and 1828 of this title, amending this section and sections 603, 604, and 1920 of this title, enacting provisions set out as notes under this section and section 1 of this title, and repealing provisions set out as a note under this section] shall be limited to such extent or in such amounts as are provided in advance in appropriation Acts.”

EMPLOYMENT OF EXPERTS OR CONSULTANTS; RATES

Pub. L. 86-370, §5(b), Sept. 23, 1959, 73 Stat. 652, authorized the Director of the Administrative Office of the United States Courts to procure the temporary or

intermittent services of experts or consultants, prior to repeal by Pub. L. 95-539, §8, Oct. 28, 1978, 92 Stat. 2044.

§ 603. Salaries

The salary of the Director shall be the same as the salary of a district judge. Notwithstanding any other provision of law, the Director shall not be deemed to be an “employee” for the purpose of subchapter I of chapter 63 of title 5. The salary of the Deputy Director shall be 92 percent of the salary of the Director. The salaries of six additional positions shall be fixed by the Director at rates not to exceed the annual rate of basic pay for positions at level IV of the Executive Schedule under section 5315 of title 5.

(June 25, 1948, ch. 646, 62 Stat. 913; Oct. 15, 1949, ch. 695, §§5(b), 6(b), 63 Stat. 881; Oct. 31, 1951, ch. 655, §43(b), 65 Stat. 725; Pub. L. 86-370, §5(a)(1), Sept. 23, 1959, 73 Stat. 652; Pub. L. 88-426, title IV, §403(g), Aug. 14, 1964, 78 Stat. 434; Pub. L. 90-206, title II, §213(d), Dec. 16, 1967, 81 Stat. 635; Pub. L. 95-539, §6, Oct. 28, 1978, 92 Stat. 2044; Pub. L. 100-202, §101(a) [title IV, §409], Dec. 22, 1987, 101 Stat. 1329, 1329-27; Pub. L. 100-459, title IV, §406, Oct. 1, 1988, 102 Stat. 2213; Pub. L. 101-474, §5(b), Oct. 30, 1990, 104 Stat. 1099.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§444, 445 (Mar. 3, 1911, ch. 231, §§302, 303, as added Aug. 7, 1939, ch. 501, §1, 53 Stat. 1223).

This section consolidates parts of title 28, U.S.C., 1940 ed., §§444, 445. The remainder of said sections are incorporated in sections 601, 602, 606, 607, and 608 of this title.

The figure “\$9,376.50” was substituted for “\$7,500” as the salary of the Assistant Director in conformity with section 934 of title 5, U.S.C., 1940 ed., Executive Departments and Government Officers and Employees.

Changes were made in phraseology.

SENATE REVISION AMENDMENT

The [former] figure, “\$7,500,” with respect to salary of the Assistant Director, was restored by Senate amendment. See 80th Congress Senate Report No. 1559, amendments Nos. 15 and 65.

Editorial Notes

AMENDMENTS

1990—Pub. L. 101-474 inserted after first sentence “Notwithstanding any other provision of law, the Director shall not be deemed to be an ‘employee’ for the purpose of subchapter I of chapter 63 of title 5. The salary of the Deputy Director shall be 92 percent of the salary of the Director.” and struck out “of the Deputy Director and” after “The salaries”.

1988—Pub. L. 100-459 substituted “six” for “three”.

1987—Pub. L. 100-202 substituted “The salaries of the Deputy Director and of three additional positions shall be fixed by the Director at rates not to exceed the annual rate of basic pay for positions at level IV of the Executive Schedule under section 5315 of title 5” for “The salary of the Deputy Director shall be in the same amount as the annual rate of basic pay for positions at level V of the Executive Schedule under section 5316 of title 5”.

1978—Pub. L. 95-539 struck out provision authorizing the Director to fix the compensation of Administrative Office employees in accordance with the Classification Act of 1949.

1967—Pub. L. 90-206 increased salaries of Director and Deputy Director from \$27,000 and \$26,000 per year to a salary equivalent to a United States district judge and the same amount of basic pay for positions at level V of the Executive Schedule under section 5316 of title 5, respectively.