

Public Law 100-702
100th Congress

An Act

Nov. 19, 1988
[H.R. 4807]

To amend title 28, United States Code, to make certain improvements with respect to the Federal judiciary, and for other purposes.

Judicial
Improvements
and Access to
Justice Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Judicial Improvements and Access to Justice Act".

28 USC 1 note.

SEC. 2. REFERENCE TO TITLE 28, UNITED STATES CODE.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed as an amendment to or repeal of a section or other provision, the reference shall be considered to be made to a section or other provision of title 28, United States Code.

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"629. Federal Judicial Center Foundation."

SEC. 302. AUTHORITY TO IMPLEMENT HISTORY PROGRAM.

Section 623(a) is amended—

- (1) by striking out "and" at the end of paragraph (5);
- (2) by striking out the period at the end of paragraph (6) and inserting in lieu thereof "; and"; and
- (3) by adding at the end the following new paragraph:
 "(7) conduct, coordinate, and encourage programs relating to the history of the judicial branch of the United States Government."

SEC. 303. AUTHORITY TO PROVIDE FOR TRAINING FOR PERSONS OUTSIDE THE JUDICIAL BRANCH.

Section 620(b)(3) is amended to read as follows:

"(3) to stimulate, create, develop, and conduct programs of continuing education and training for personnel of the judicial branch of the Government and other persons whose participation in such programs would improve the operation of the judicial branch, including, but not limited to, judges, United States magistrates, clerks of court, probation officers, and persons serving as mediators and arbitrators;"

SEC. 304. APPOINTMENT AND COMPENSATION OF THE DEPUTY DIRECTOR OF THE CENTER.

(a) **APPOINTMENT BY THE BOARD.**—Section 624(1) is amended by inserting "and the Deputy Director" after "Director".

(b) **COMPENSATION.**—

(1) Section 626 is amended—

(A) by adding at the end the following new sentence: "The compensation of the Deputy Director of the Federal Judicial Center shall be the same as that of the Deputy Director of the Administrative Office of the United States Courts."; and

(B) by amending the section heading to read as follows:

"§ 626. Compensation of the Director and Deputy Director".

(2) The item relating to section 626 in the table of sections for chapter 42 is amended to read as follows:

"626. Compensation of the Director and Deputy Director."

28 USC 626 note.

(c) **BUDGET ACT COMPLIANCE.**—The amendment made by subsection (b) shall be effective for fiscal years beginning on or after October 1, 1988.

TITLE IV—RULES ENABLING ACT

SEC. 401. RULES ENABLING ACT AMENDMENTS.

(a) **IN GENERAL.**—Chapter 131 is amended by striking out section 2072 and inserting in lieu thereof the following:

"§ 2072. Rules of procedure and evidence; power to prescribe

"(a) The Supreme Court shall have the power to prescribe general rules of practice and procedure and rules of evidence for cases in the United States district courts (including proceedings before magistrates thereof) and courts of appeals.

“(b) Such rules shall not abridge, enlarge or modify any substantive right. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.

“§ 2073. Rules of procedure and evidence; method of prescribing

“(a)(1) The Judicial Conference shall prescribe and publish the procedures for the consideration of proposed rules under this section.

“(2) The Judicial Conference may authorize the appointment of committees to assist the Conference by recommending rules to be prescribed under section 2072 of this title. Each such committee shall consist of members of the bench and the professional bar, and trial and appellate judges.

“(b) The Judicial Conference shall authorize the appointment of a standing committee on rules of practice, procedure, and evidence under subsection (a) of this section. Such standing committee shall review each recommendation of any other committees so appointed and recommend to the Judicial Conference rules of practice, procedure, and evidence and such changes in rules proposed by a committee appointed under subsection (a)(2) of this section as may be necessary to maintain consistency and otherwise promote the interest of justice.

“(c)(1) Each meeting for the transaction of business under this chapter by any committee appointed under this section shall be open to the public, except when the committee so meeting, in open session and with a majority present, determines that it is in the public interest that all or part of the remainder of the meeting on that day shall be closed to the public, and states the reason for so closing the meeting. Minutes of each meeting for the transaction of business under this chapter shall be maintained by the committee and made available to the public, except that any portion of such minutes, relating to a closed meeting and made available to the public, may contain such deletions as may be necessary to avoid frustrating the purposes of closing the meeting.

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information.

“(2) Any meeting for the transaction of business under this chapter, by a committee appointed under this section, shall be preceded by sufficient notice to enable all interested persons to attend.

“(d) In making a recommendation under this section or under section 2072, the body making that recommendation shall provide a proposed rule, an explanatory note on the rule, and a written report explaining the body's action, including any minority or other separate views.

Reports.

“(e) Failure to comply with this section does not invalidate a rule prescribed under section 2072 of this title.

“§ 2074. Rules of procedure and evidence; submission to Congress; effective date

“(a) The Supreme Court shall transmit to the Congress not later than May 1 of the year in which a rule prescribed under section 2072 is to become effective a copy of the proposed rule. Such rule shall take effect no earlier than December 1 of the year in which such rule is so transmitted unless otherwise provided by law. The Supreme Court may fix the extent such rule shall apply to proceedings then pending, except that the Supreme Court shall not require the application of such rule to further proceedings then pending to the extent that, in the opinion of the court in which such proceedings are pending, the application of such rule in such proceedings

would not be feasible or would work injustice, in which event the former rule applies.

“(b) Any such rule creating, abolishing, or modifying an evidentiary privilege shall have no force or effect unless approved by Act of Congress.”.

(b) **ADVISORY COMMITTEES FOR COURTS.**—Section 2077(b) is amended—

(1) by striking out “of appeals” the first place it appears and inserting in lieu thereof “, except the Supreme Court, that is authorized to prescribe rules of the conduct of such court’s business under section 2071 of this title”; and

(2) by striking out “the court of appeals” and inserting in lieu thereof “such court”.

(c) **REPEALER.**—Section 2076 is repealed.

(d) **CLERICAL AMENDMENT.**—The table of sections at the beginning of chapter 131 is amended by striking out the item relating to section 2072 and all that follows through the item relating to section 2076 and inserting in lieu thereof the following:

“2072. Rules of procedure and evidence; power to prescribe.

“2073. Rules of procedure and evidence; method of prescribing.

“2074. Rules of procedure and evidence; submission to Congress; effective date.

“2075. Bankruptcy rules.”.

SEC. 402. COMPILATION AND REVIEW OF LOCAL RULES.

(a) **COMPILATION.**—Section 604(a) is amended—

(1) by redesignating paragraph (18) as paragraph (23); and

(2) by inserting after paragraph (18) the following:

“(19) Periodically compile—

“(A) the rules which are prescribed under section 2071 of this title by courts other than the Supreme Court;

“(B) the rules which are prescribed under section 372(c)(11) of this title; and

“(C) the orders which are required to be publicly available under section 372(c)(15) of this title;

so as to provide a current record of such rules and orders;”.

(b) **REVIEW.**—Section 331 is amended by inserting after the fifth paragraph the following:

“The Judicial Conference shall review rules prescribed under section 2071 of this title by the courts, other than the Supreme Court and the district courts, for consistency with Federal law. The Judicial Conference may modify or abrogate any such rule so reviewed found inconsistent in the course of such a review.”.

SEC. 403. RULES BY CERTAIN COURTS AND ORDERS BY CIRCUIT JUDICIAL COUNCILS AND THE JUDICIAL CONFERENCE.

(a) **RULES BY CERTAIN COURTS.**—(1) Section 2071 is amended—

(A) by inserting “(a)” before “The”;

(B) by striking out “by the Supreme Court” and inserting in lieu thereof “under section 2072 of this title”; and

(C) by adding at the end the following:

“(b) Any rule prescribed by a court, other than the Supreme Court, under subsection (a) shall be prescribed only after giving appropriate public notice and an opportunity for comment. Such rule shall take effect upon the date specified by the prescribing court and shall have such effect on pending proceedings as the prescribing court may order.

Records.

Public
information.

“(c)(1) A rule of a district court prescribed under subsection (a) shall remain in effect unless modified or abrogated by the judicial council of the relevant circuit.

“(2) Any other rule prescribed by a court other than the Supreme Court under subsection (a) shall remain in effect unless modified or abrogated by the Judicial Conference.

“(d) Copies of rules prescribed under subsection (a) by a district court shall be furnished to the judicial council, and copies of all rules prescribed by a court other than the Supreme Court under subsection (a) shall be furnished to the Director of the Administrative Office of the United States Courts and made available to the public.

Public
information

“(e) If the prescribing court determines that there is an immediate need for a rule, such court may proceed under this section without public notice and opportunity for comment, but such court shall promptly thereafter afford such notice and opportunity for comment.

“(f) No rule may be prescribed by a district court other than under this section.”

(2) Section 332(d) is amended by adding at the end the following new paragraph:

“(4) Each judicial council shall periodically review the rules which are prescribed under section 2071 of this title by district courts within its circuit for consistency with rules prescribed under section 2072 of this title. Each council may modify or abrogate any such rule found inconsistent in the course of such a review.”

(b) **ORDERS BY CIRCUIT JUDICIAL COUNCILS.**—Section 332(d)(1) is amended by inserting after the first sentence the following new sentence: “Any general order relating to practice and procedure shall be made or amended only after giving appropriate public notice and an opportunity for comment. Any such order so relating shall take effect upon the date specified by such judicial council. Copies of such orders so relating shall be furnished to the Judicial Conference and the Administrative Office of the United States Courts and be made available to the public.”

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information.

(c) **RULES BY JUDICIAL CONFERENCE AND CIRCUIT JUDICIAL COUNCILS.**—Section 372(c)(11) is amended by inserting before “Any rule promulgated” the following new sentence: “Any such rule shall be made or amended only after giving appropriate public notice and an opportunity for comment.”

SEC. 404. CONFORMING AND OTHER TECHNICAL AMENDMENTS.

(a) **CONFORMING REPEAL OF CRIMINAL RULES ENABLING PROVISIONS.**—(1) Chapter 237 of title 18, United States Code, and the item relating to chapter 237 in the table of chapters for part II of such title, are repealed.

(b) **CONFORMING AMENDMENTS RELATING TO MAGISTRATES.**—(1) Section 636(d) is amended by striking out “section 3402 of title 18, United States Code” and inserting in lieu thereof “section 2072 of this title”.

(2) Section 3402 of title 18, United States Code, is amended by striking out the second paragraph.

(c) **CROSS REFERENCE TECHNICAL AMENDMENT.**—Section 9 of the Act entitled “An Act to provide an adequate basis for the administration of the Lake Mead National Recreation Area, Arizona and Nevada, and for other purposes” approved October 8, 1964 (Public

Law 88-639; 16 U.S.C. 460n-8) is amended by striking out the sentence beginning "The provisions of title 18, section 3402".

28 USC 2071
note.

SEC. 405. TAX COURT RULE MAKING NOT AFFECTED.

The amendments made by this title shall not affect the authority of the Tax Court to prescribe rules under section 7453 of the Internal Revenue Code of 1986.

28 USC 2071
note.

SEC. 406. SAVINGS PROVISION.

The rules prescribed in accordance with law before the effective date of this title and in effect on the date of such effective date shall remain in force until changed pursuant to the law as amended by this title.

28 USC 2071
note.

SEC. 407. EFFECTIVE DATE.

This title shall take effect on December 1, 1988.

TITLE V—JURISDICTION OF THE FEDERAL CIRCUIT

SEC. 501. INTERLOCUTORY APPEALS.

Section 1292(d) is amended by adding at the end the following new paragraph:

Territories, U.S.

"(4)(A) The United States Court of Appeals for the Federal Circuit shall have exclusive jurisdiction of an appeal from an interlocutory order of a district court of the United States, the District Court of Guam, the District Court of the Virgin Islands, or the District Court for the Northern Mariana Islands, granting or denying, in whole or in part, a motion to transfer an action to the United States Claims Court under section 1631 of this title.

"(B) When a motion to transfer an action to the Claims Court is filed in a district court, no further proceedings shall be taken in the district court until 60 days after the court has ruled upon the motion. If an appeal is taken from the district court's grant or denial of the motion, proceedings shall be further stayed until the appeal has been decided by the Court of Appeals for the Federal Circuit. The stay of proceedings in the district court shall not bar the granting of preliminary or injunctive relief, where appropriate and where expedition is reasonably necessary. However, during the period in which proceedings are stayed as provided in this subparagraph, no transfer to the Claims Court pursuant to the motion shall be carried out."

28 USC 1292
note.

SEC. 502. EFFECTIVE DATE.

The amendment made by section 501 shall apply to any action commenced in the district court on or after the date of enactment of this title.

TITLE VI—STATE JUSTICE INSTITUTE AMENDMENTS

SEC. 601. RULE MAKING.

Section 203(f) of the State Justice Institute Act of 1984 (42 U.S.C. 10702(f)) is amended—

assigned, to serve temporarily as a judge of any duly constituted court of the freely associated compact states whenever an official duly authorized by the laws of the respective compact state requests such assignment and such assignment is necessary for the proper dispatch of the business of the respective court.

“(b) The Congress consents to the acceptance and retention by any judge so authorized of reimbursement from the countries referred to in subsection (a) of all necessary travel expenses, including transportation, and of subsistence, or of a reasonable per diem allowance in lieu of subsistence. The judge shall report to the Administrative Office of the United States Courts any amount received pursuant to this subsection.”; and

Reports.

(2) amending the table of sections by adding at the end thereof the following:

“297. Assignment of judges to courts of the freely associated compact states.”.

SEC. 1023. SALARIES OF UNITED STATES CLAIMS COURT JUDGES.

Section 172(b) is amended to read as follows:

“(b) Each judge shall receive a salary at the rate of pay, and in the same manner, as judges of the district courts of the United States.”.

Approved November 19, 1988.

LEGISLATIVE HISTORY—H.R. 4807:

HOUSE REPORTS: No. 100-889, Pt. 1 (Comm. on the Judiciary).

CONGRESSIONAL RECORD, Vol. 134 (1988):

Sept. 13, considered and passed House.

Oct. 14, considered and passed Senate, amended.

Oct. 19, House concurred in Senate amendment.