

§ 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 [28 USCS § § 631 et seq.]. In the case of a magistrate judge appointed by the district court of the Virgin Islands, Guam, or the Northern Mariana Islands, this chapter [28 USCS § § 631 et seq.] 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 [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 [magistrate judge] in the adjoining district or districts.

(b) No individual may be appointed or reappointed to serve as a magistrate [magistrate judge] under this chapter [28 USCS § § 631 et seq.] 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 [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 [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 [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 of a court of the United States may be appointed and serve as a part-time United States magistrate [magistrate judge], but the conference shall fix the aggregate amount of compensation to be received for performing the duties of part-time magistrate [magistrate judge] and part-time referee in bankruptcy, and 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 magistrates [magistrate judges].

(d) Except as otherwise provided in sections 375 and 636(h) of this title [28 USCS § § 375 and 636(h)], no individual may serve under this chapter [28 USCS § § 631 et seq.] 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's [magistrate judge's] attaining age seventy and upon each subsequent anniversary thereof, a magistrate [magistrate judge] who has attained the age of seventy years may continue to serve and may be reappointed under this chapter [28 USCS § § 631 et seq.].

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

- (1) the expiration of the absent magistrate's [magistrate judge's] term,
- (2) the reinstatement of the absent magistrate [magistrate judge] in regular service in office as a magistrate [magistrate judge],
- (3) the failure of the absent magistrate [magistrate judge] to make timely application under subsection (j) of this section for reinstatement in regular service in office as a magistrate [magistrate judge] after discharge or release from military service,
- (4) the death or resignation of the absent magistrate [magistrate judge], or
- (5) the removal from office of the absent magistrate [magistrate judge] pursuant to subsection (i) of this section,

which ever may first occur.

(f) Upon the expiration of his term, a magistrate [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's [magistrate judge's] term, whichever is earlier.

(g) Each individual appointed as a magistrate [magistrate judge] under this section shall take the oath or affirmation prescribed by section 453 of this title [28 USCS § 453] 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 [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's [magistrate judge's] office shall be terminated if the conference determines that the services performed by his office are no longer needed. Removal shall be by the judges of the district court for the judicial district in which the magistrate [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 [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 [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 [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 [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 [magistrate judge] entitled to such relief under chapter 43 of title 38 [38 USCS § § 4301 et seq.], such court or courts may proceed to appoint, in the manner specified in subsection (a) of this section, another magistrate [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 [magistrate judge] appointed under this chapter [28 USCS § § 631 et seq.] shall be exempt from the provisions of subchapter I of chapter 63 of title 5 [5 USCS § § 6301 et seq.].

**HISTORY:**

(June 25, 1948, ch 646, § 1, 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; Oct. 17, 1968, P.L. 90-578, Title I, § 101, 82 Stat. 1108; Oct. 17, 1976, P.L. 94-520, § 2, 90 Stat. 2458; Nov. 6, 1978, P.L. 95-598, Title II, § 231, 92 Stat. 2665; Oct. 10, 1979, P.L. 96-82, § 3(a)-(d), 93 Stat. 644; Aug. 6, 1982, P.L. 97-230, 96 Stat. 255; Nov. 14, 1986, P.L. 99-651, Title II, § 201(a)(1), 100 Stat. 3646; Nov. 15, 1988, P.L. 100-659, § 5, 102 Stat. 3918; Nov. 19, 1988, P.L. 100-702, Title X, § 1003(a)(1), 102 Stat. 4665; June 30, 1989, P.L. 101-45, Title II, Ch. I, § 104, 103 Stat. 122 Dec. 1, 1990, P.L. 101-650, Title III, § 308(b), 104 Stat. 5112; Oct. 13, 1994, P.L. 103-353, § 2(c), 108 Stat. 3169; Nov. 13, 2000, P.L. 106-518, Title II, § 201, 114 Stat. 2412.)