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MEMORANDUM TO CHIEF JUDGE CLARK

SUBJECT: Circuit Judicial Councils

This is in response to your request for some factual background for your reply to Judge Lay's November 7, 1990, letter. At the Director's request, Bill Burchill is writing a detailed analysis on this subject which should be finished later today or tomorrow. I will send you Bill's memorandum as soon as it is completed. Some of my comments will assuredly duplicate his.

The Executive Committee considered the subject of the composition of circuit councils at the August 15-16 meeting in Pebble Beach. Because a hearing on "Title III" of the Biden Bill was scheduled for a few days prior to the Conference's September 12 session, the Executive Committee took a number of actions on the Conference's behalf. As requested by the Judicial Improvements Committee, the Executive Committee, without dissent, voted to recommend that Title III include an amendment to 28 U.S.C. 332 to impose equal representation of district and circuit judges as members of circuit judicial councils, in addition to the chief judge of the circuit as council chairman. My recollection is that the district judge representatives on the Executive Committee were very supportive of this proposal, as was Chief Judge Sam Ervin, a former member of the Judicial Improvements Committee. You did not actively participate in the discussion. No actual language for implementation of the recommendation was before the Committee.

As is customary, the minutes of the August 15-16 meeting, which reflect the Executive Committee's actions, were attached to the Executive Committee's report to the September 1990 Judicial Conference. In addition, the item was highlighted, along with perhaps a dozen other interim Executive Committee actions, on page 2 of the Executive Committee's report itself. The matter was not on either calendar for the Conference, as it had been

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finally decided by the Executive Committee. Of course, any Conference member may request reconsideration of any Executive Committee decision taken on the Conference's behalf. My guess is that in preparing for the Conference, Judge Lay simply overlooked this item.

Bill Burchill has asked that I advise you that he discussed this matter at length with Judge Lay subsequent to receipt of his copy of the November 7 letter and that Judge Lay is no longer as concerned as he was. As you know, Judge Lay's concerns were two-fold: first, he was upset because the language of the amendment allows district judges to participate in the determination of the size of the circuit judicial councils; and second, he interpreted the provision to require district judges to participate in the selection of the circuit judges to serve. As I read his letter, he is less concerned with the former than the latter. However, the latter concern arises through an error in the language of section 323 of the Biden Bill which, we hope, will be corrected in the enrolled bill and, if not, by a subsequent technical amendment. This is because in the last clause of new 28 U.S.C. 332(a)(1), the word "member" should have read "number" (see attachment). Bob Feidler has been working with the enrolling clerk to have this corrected and, hopefully, the enrolled bill (which has not yet been received in the Administrative Office, although the bill went to the President on the 20th) will resolve it.



Karen K. Siegel

Attachment

SEC. 121. CHANGE OF NAME OF UNITED STATES MAGISTRATE.

After the enactment of this Act, 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.

SEC. 122. LENGTH OF SERVICE REQUIRED FOR ELIGIBILITY UNDER THE JUDICIAL SURVIVORS' ANNUITIES ACT.

(a) ELIGIBILITY IN CASE OF DEATH BY ASSASSINATION.—Section 376(h)(1) of title 28, United States Code, is amended—

(1) in the matter preceding subparagraph (A)—

(A) by inserting "(A)" before "after having completed"; and

(B) by inserting after "have actually been made" the following: ", or (B) if the death of such judicial official was by assassination, before having satisfied the requirements of clause (A) if, for the period of such service, the deductions provided by subsection (b) or, in lieu thereof, the deposits required by subsection (d) have actually been made";

(2) by redesignating existing subparagraph (A) as clause (i);

(3) in existing subparagraph (B)—

(A) by striking out "(B)" and inserting in lieu thereof "(ii)";

(B) by striking out "(i)" and inserting in lieu thereof "(I)"; and

(C) by striking out "(ii)" and inserting in lieu thereof "(II)";

(4) in existing subparagraph (C)—

(A) by striking out "(C)" and inserting in lieu thereof "(iii)";

(B) in clause (i)—

(i) by striking out "(i)" and inserting in lieu thereof "(I)";

(ii) by striking out "subparagraph (1)(A) of this subsection" and inserting in lieu thereof "clause (i) of this paragraph";

(iii) by striking out "(ii)" and inserting in lieu thereof "(II)"; and

(iv) by striking out "(iii)" and inserting in lieu thereof "(III)"; and

(5) by adding at the end of subsection (h) the following:

"(6) In the case of the survivor or survivors of a judicial official to whom paragraph (1)(B) applies, there shall be deducted from the annuities otherwise payable under this section an amount equal to the amount of salary deductions that would have been made if such deductions had been made for 18 months prior to the judicial official's death."

(b) DEFINITION OF ASSASSINATION.—Section 376(a) of title 28, United States Code, is amended—

(1) in paragraph (5)(C) by striking out "and" after the semicolon;

(2) in paragraph (6) by striking out the period and inserting in lieu thereof ", and"; and

(3) by inserting at the end the following new paragraph:

"(7) 'assassinated' and 'assassination' mean the killing of a judicial official described in paragraph (1) (A), (B), (F), or (G) of this section that is motivated by the performance by that judicial official of his or her official duties."

(c) DETERMINATION OF ASSASSINATION BY DIRECTOR.—Section 376(d) of title 28, United States Code, is amended—

(1) by inserting "(1)" after "(i)", and

(2) by adding at the end thereof the following:

"2) The Director of the Administrative Office of the United States Courts shall determine whether the killing of a judicial official was an assassination, subject to review only by the Judicial Conference of the United States. The head of any Federal agency that investigates the killing of a judicial official shall provide information to the Director that would assist the Director in making such determination."

(d) COMPUTATION OF WIDOW'S AND WIDOWER'S ANNUITY.—Section 376(i)(1)(ii) of title 28, United States Code, is amended by striking out "but more than eighteen months,"

(e) REFUND OF CONTRIBUTIONS TO FUND.—Section 376(o) of title 28, United States Code, is amended—

(1) by inserting "(1)" after "(o)";

(2) by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C), respectively;

(3) in subparagraph (A) as so redesignated, by inserting "subject to paragraph (2) of this subsection," before "before having completed"; and

(4) by adding at the end thereof the following new paragraph:

"(2) In cases in which a judicial official dies as a result of assassination and leaves a survivor or survivors who are entitled to receive the annuity benefits provided by subsection (h) or (l) of this section, paragraph (1)(A) of this subsection shall not apply."

(f) OTHER BENEFITS.—Section 376 of title 28, United States Code, is amended by adding at the end thereof the following:

"(u) In the case of a judicial official who is assassinated, an annuity shall be paid under this section notwithstanding a survivor's eligibility for or receipt of benefits under chapter 81 of title 5, except that the annuity for which a surviving spouse is eligible under this section shall be reduced to the extent that the total benefits paid under this section and chapter 81 of title 5 for any year would exceed the current salary for that year of the office of the judicial official."

(g) EFFECTIVE DATE AND TRANSITION.—

(1) EFFECTIVE DATE.—Subject to paragraph (2), the amendments made by this Act shall apply to all judicial officials assassinated on or after May 28, 1979.

(2) RULES FOR RETROACTIVE APPLICATION.—

(A) In the case of a judicial official who was assassinated on or after May 28, 1979, and before the date of the enactment of this Act, if the salary deductions provided by subsection (b) of section 376 of title 28, United States Code, or the deposits required by subsection (d) of such section, have been withdrawn pursuant to subsection (o) of such section, there shall be deducted from the annuities otherwise payable to the survivor or survivors of such judicial official, and the payment authorized by subparagraph (C) of this paragraph, an amount equal to the amount so withdrawn, with interest on the amount withdrawn at 3 percent per annum compounded on December 31 of each year.

(B) In the case of the survivor or survivors of a judicial official to whom this paragraph applies who had less than 18 months of service before being assassinated, there shall be deducted from the annuities otherwise payable to the survivor or survivors of such judicial official, and the payment authorized by subparagraph (C) of this paragraph, an amount equal to the amount of salary deductions that would have been made if such deductions had been made for 18 months before the judicial official's death, plus interest as described in subparagraph (A).

(C) Subject to subparagraphs (A) and (B), the survivor or survivors of a judicial official to whom this paragraph applies shall be entitled to the payment of annuities they would have received under section 376 of title 28, United States Code, for the period beginning on the date such judicial official was assassinated and ending the date of the enactment of this Act. The Secretary of the Treasury shall pay into the Judicial Survivors' Annuities fund, out of any money in the Treasury not otherwise appropriated, the amount of the annuities to which the survivor or survivors are entitled under this subparagraph.

(3) DEFINITION.—For purposes of this subsection, the term—

(A) "assassinated" and "assassination" have the meanings given those terms in section 376(a)(7) of title 28, United States Code, as added by this section; and

(B) "judicial official" has the meaning given that term in section 376(a)(1)(A) and (B) of title 28, United States Code.

(g) CONFORMING AMENDMENTS.—Section 376 of title 28, United States Code, is amended as follows:

(1) Subsection (h) is amended—

(A) in paragraph (2) by striking out "subparagraphs (1)(A) or (1)(B)" and inserting in lieu thereof "clause (i) or (ii) of paragraph (1)";

(B) in paragraph (3) by striking out "subparagraph" each place it appears and inserting in each such place "paragraph";

(C) in paragraph (4)—

(i) by striking out "subparagraph (1)(B)" each place it appears and inserting in each such place "paragraph (1)(ii)"; and

(ii) by striking out "subparagraph (1)(C)" and inserting in lieu thereof "paragraph (1)(iii)";

(2) Subsection (a)(5)(C) is amended by striking out "subparagraph" and inserting in lieu thereof "paragraph".

SEC. 323. COMPOSITION OF JUDICIAL COUNCILS.

(a) COMPOSITION OF COUNCILS.—Section 332(a)(1) of title 28, United States Code, is amended to read as follows:

"(a)(1) The chief judge of each judicial circuit shall call, at least twice in each year and at such places as he or she may designate, a meeting of the judicial council of the circuit, consisting of the chief judge of the circuit, who shall preside, and an equal number of circuit judges and district judges of the circuit, as such number is determined by majority vote of all such judges of the circuit in regular active services."

(b) CONFORMING AMENDMENT.—Section 332(a) of title 28, United States Code, is amended by striking out paragraph (3) and redesignating paragraphs (4) through (7) as paragraphs (3) through (6), respectively.

SEC. 324. MISCELLANEOUS PROVISIONS.

(a) PLACE OF HOLDING COURT.—(1) Section 108 of title 28, United States Code, is amended by striking out "and Reno" in the last sentence and inserting in lieu thereof "Reno, Ely and Lovelock".

(2) Section 112(a) of title 28, United States Code, is amended by striking out "and Utica" in the last sentence and inserting in lieu thereof "Utica, and Watertown".

(b) REVISION OF DIVISIONS OF SOUTH DAKOTA JUDICIAL DISTRICT.—Section 122 of title 28, United States Code, is amended—

(1) in paragraph (3), by striking out "Jackson", and

(2) by paragraph (4)—

(A) by inserting "Jackson" after "Harding", and

(B) by striking out "Shannon, Washbaugh, and Washington" and inserting in lieu thereof "and Shannon".