

CHAPTER 1022  
JUDGES AND MAGISTRATES

H. F. 54

AN ACT relating to district associate judges and judicial magistrates.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. Section forty-six point sixteen (46.16), Code 1979, is amended to read as follows:

46.16 TERMS OF JUDGES.

1. Subject to the provisions of sections 605.24 and 605.25 and to removal for cause:

± a. The initial term of office of judges of the supreme court, court of appeals and district court shall be for one year after appointment and until January 1 following the next judicial election after expiration of such year; and

2 b. The regular term of office of judges of the supreme court retained at a judicial election shall be eight years, and of judges of the court of appeals and district court so retained shall be six years, from the expiration of their initial or previous regular term as the case may be.

For the purpose of initial appointments to the court of appeals, two of the judges appointed shall serve an irregular term ending December 30 thirty-first of the fourth year after expiration of the initial term prescribed in subsection 1 and two of the judges appointed shall serve an irregular term ending December 30 thirty-first of the fifth year after expiration of the initial term prescribed in subsection 1. Expiration of irregular terms shall be deemed expiration of regular terms for all purposes.

2. Subject to removal for cause, the initial term of office of a district associate judge shall be for one year after appointment and until January first following the next judicial election after expiration of such year, and the regular term of office of a district associate judge retained at a judicial election shall be four years from the expiration of the initial or previous regular term, as the case may be.

Sec. 2. Section forty-six point twenty (46.20), Code 1979, is amended to read as follows:

46.20 DECLARATION OF CANDIDACY. At least ninety days prior to the judicial election preceding expiration of his or her initial or regular term of office, a judge of the supreme court, court of appeals or district court including district associate judges may file a declaration of candidacy with the state commissioner of elections, whereupon such judge shall stand for retention or rejection at that election. If a judge fails to file such declaration, his or her office shall be vacant at the end of his or her term. District associate judges filing such a declaration shall stand for retention in the county judicial election district of their residence.

Sec. 3. Section two hundred thirty-one point three (231.3), unnumbered paragraph one (1), Code 1979, is amended to read as follows:

The chief judge of the district shall designate one or more of the district judges, or district associate judges, ~~judicial magistrates serving pursuant to section 602.51,~~ or any thereof, to act as judge or judges of the juvenile court in any county or counties.

Sec. 4. Section six hundred two point four (602.4), Code 1979, is amended to read as follows:

602.4 DISTRICT JUDGES. Iowa district judges shall possess the full jurisdiction of the Iowa district court, including the jurisdiction respective jurisdictions of district associate judges and judicial magistrates. While exercising the jurisdiction possessed by judicial magistrates, district judges shall employ judicial magistrates' practice and procedure, and may hold court at any place where a judicial magistrate may do so.

Sec. 5. Section six hundred two point twenty-eight (602.28), Code 1979, is amended to read as follows:

602.28 DISTRICT ASSOCIATE JUDGES.

1. The regular judges of the municipal courts of Iowa who are in office on June 30, 1973, and who are less than seventy-two years of age on July 1, 1973, and who have not been appointed district court judges shall become district associate judges on the latter date. Those retained in office at the judicial election in 1978 shall stand for retention in office at the judicial election in 1982 and every fourth year thereafter.

2. Judicial magistrates who were appointed for terms of office pursuant to either section six hundred two point fifty-one (602.51) or section six hundred two point fifty-nine (602.59) of the Code, and who are in office on January 1, 1981, and who meet the qualifications for appointment to the office of district associate judge, shall become district associate judges on January 1, 1981. Alternates who are appointed pursuant to section six hundred two point seventy-one (602.71) of the Code, and who are in office on January 1, 1981, and who meet the qualifications for appointment to the office of district associate judge, shall become alternate district associate judges on January 1, 1981, and shall be subject to section twelve (12) of this Act.

3. Judicial magistrates and alternate judicial magistrates who become district associate judges by virtue of subsection two (2) of this section shall stand for retention in office at the judicial election in 1982. Irrespective of the existing terms of office to which they were appointed, these magistrates shall serve as district associate judges until January 1, 1983. Those who are retained in office at the judicial election in 1982 shall begin the regular four-year term of office for district associate judges on January 1, 1983. Those who are not retained in office at the judicial election in 1982 shall cease to hold office on January 1, 1983.

4. A judicial magistrate who was appointed pursuant to section six hundred two point fifty-one (602.51), six hundred two point fifty-nine (602.59) or six hundred two point seventy-one (602.71) of the Code, and who is in office on January 1, 1981, but who does not meet the qualifications for

appointment to the office of district associate judge, shall continue to serve as a judicial magistrate until the expiration of the term to which the person was appointed or until the person otherwise leaves office. Upon the person's leaving office, the vacancy shall be filled as provided in section eleven (11) of this Act.

Sec. 6. Section six hundred two point twenty-nine (602.29), Code 1979, is amended to read as follows:

602.29 TERM, RETENTION, QUALIFICATIONS.

1. District associate judges shall serve initial terms and shall stand for retention in office within the county judicial election district of their residence at the judicial election in 1974 1982 and every four years thereafter, under sections 46.17 to 46.24. The term of office of the judges who are retained in office at the judicial election shall extend for four years after January 1 next following the election, and the term of office of the judges who are not retained in office at such a judicial election shall extend until January 1 next following such election. District associate judges shall cease to hold office upon attaining age seventy-two.

2. A person shall not qualify for appointment to the office of district associate judge unless the person is at the time of application a resident of the county in which the vacancy exists, and unless the person is licensed to practice law in Iowa, and unless the person will be able, measured by his or her age at the time of appointment, to complete the initial term of office plus a four-year term of office prior to reaching age seventy-two.

3. A district associate judge shall be a resident of the county in which the office is held during his or her entire term. A district associate judge shall cease to hold office at age seventy-two.

Sec. 7. Section six hundred two point thirty (602.30), Code 1979, is amended to read as follows:

602.30 VACANCIES. ~~A vacancy in the office of district associate judge after June 30, 1973, shall not be filled and~~ Whenever a district associate judge leaves office, all funds, dockets and records relating to the office so vacated shall be promptly deposited by the district associate judge with the clerk of court who issued the docket.

Sec. 8. Section six hundred two point thirty-one (602.31), Code 1979, as amended by Acts of the Sixty-eighth General Assembly, 1979 Session, chapter two (2), section thirteen (13) is amended to read as follows:

602.31 SALARY, EXPENSES, RETIREMENT. The annual salary of each district associate judge, payable from the general fund of the state of Iowa, shall be a sum set by the general assembly. District associate judges shall also receive from the state their actual and necessary expenses in the performance of their duties away from the city of their residence, in accordance with section 605.2. District associate judges who were municipal court judges prior to July 1, 1973, and who are members of the judicial retirement system under chapter 605A shall remain members thereof; but the state of Iowa, instead of the city and county, shall deduct four percent from their salaries for the judicial retirement fund and shall contribute the public's portion to the judicial retirement fund. A person who becomes a district associate judge on the effective date of this Act by virtue of section five (5) of this

Act or who is appointed to the office of district associate judge after the effective date of this Act shall be a member of the Iowa public employees' retirement system as long as the person continues to hold office as a district associate judge.

Sec. 9. Section six hundred two point thirty-two (602.32), unnumbered paragraph one (1), Code 1979, is amended to read as follows:

District associate judges shall have the jurisdiction provided in section 602.60~~----~~District--associate--judges for judicial magistrates, and when exercising that jurisdiction shall hold court as directed at any place within the judicial district that a judicial magistrate may do so, and shall employ judicial magistrates' practice and procedure. In addition, district associate judges shall have jurisdiction in civil actions for money judgments where the amount in controversy does not exceed three thousand dollars, jurisdiction of indictable misdemeanors, and the jurisdiction provided for in section 231.3 when designated as a judge of the juvenile court; and while ~~exercising the additional jurisdiction granted herein,~~ presiding over any of those subject matters the district associate judge shall employ district judges' practice and procedure. When a district ~~court~~ judge is unable to serve as a result of temporary incapacity, a district associate judge may, by order of the chief judge of the district enrolled in the records of the clerk of the district court, temporarily exercise any ~~of~~ judicial authority within the jurisdiction of a district judge during the time of incapacity and--as with respect to the specific matters or classes of matters specified in that order. District associate judges shall have power to act at any place within their respective judicial districts, and venue shall be the same as in other district court proceedings.

Sec. 10. Section six hundred two point thirty-three (602.33), Code 1979, is amended to read as follows:

602.33 REPORTERS. Each district associate judge ~~and judicial magistrate appointed pursuant to section 602.51~~ may appoint a shorthand reporter subject to the approval of the chief judge of the district. All shorthand reporters appointed are reporters for the judicial district and their compensation shall be in accordance with section 605.8.

Sec. 11. Chapter six hundred two (602), Code 1979, is amended by adding the following new section as section six hundred two point thirty-seven (602.37):

602.37 NEW SECTION. NUMBER AND APPORTIONMENT OF DISTRICT ASSOCIATE JUDGES.

1. There shall be one district associate judge in counties having a population, according to the most recent federal decennial census, of more than thirty-five thousand and less than eighty thousand; two in counties having a population of more than eighty thousand and less than one hundred twenty-five thousand; three in counties having a population of more than one hundred twenty-five thousand and less than two hundred thousand; and four in counties having a population of two hundred thousand or above. A district associate judge appointed pursuant to section six hundred two point fifty-nine (602.59) of the Code shall not be counted for the purposes of this subsection.

2. The district associate judges authorized by this section and section six hundred two point fifty-nine (602.59) of the Code shall be appointed by the district judges of the judicial election district from persons nominated by the county judicial magistrate appointing commission.

3. In November of any year in which an impending vacancy is created because a district associate judge is not retained in office pursuant to a judicial election, the county judicial magistrate appointing commission shall publicize notice of the vacancy in at least two publications in the official county newspaper. The commission shall accept applications for consideration for nomination as district associate judge for a minimum of fifteen days prior to certifying nominations. The commission shall consider the applications and shall, by majority vote, certify to the chief judge of the judicial district not later than December fifteenth of that year the names of three applicants who are nominated by the commission for the vacancy. If there are three or fewer applicants the commission shall certify all applicants who meet the statutory qualifications. Nominees shall be chosen solely on the basis of the qualifications of the applicants, and political affiliation shall not be considered.

4. Within thirty days after a county judicial magistrate appointing commission receives notification of an actual or impending vacancy in the office of district associate judge, other than a vacancy referred to in subsection three (3) of this section, the commission shall certify to the chief judge of the judicial district the names of three applicants who are nominated by the commission for the vacancy. The commission shall publicize notice of the vacancy in at least two publications in the official county newspaper. The commission shall accept applications for consideration for nomination as district associate judge for a minimum of fifteen days prior to certifying nominations. The commission shall consider the applications and shall, by majority vote, certify to the chief judge of the judicial district the names of three applicants who are nominated by the commission for the vacancy. If there are three or fewer applicants the commission shall certify all applicants who meet the statutory qualifications. Nominees shall be chosen solely on the basis of the qualifications of the applicants, and political affiliation shall not be considered. As used in this subsection, a vacancy may be created by the death, retirement, resignation or removal of an existing district associate judge, or an increase in the number of positions authorized.

5. Within fifteen days after the chief judge of a judicial district has received the list of nominees to fill a vacancy in the office of district associate judge, the district judges in the election district shall, by majority vote, appoint one of those nominees to fill the vacancy.

6. The supreme court may adopt administrative rules establishing procedures to be used by judicial magistrate appointing commissions when exercising the duties specified in this section.

Sec. 12. Chapter six hundred two (602), Code 1979, is amended by inserting the following new section as section six hundred two point thirty-eight (602.38):

602.38 NEW SECTION. ALTERNATE DISTRICT ASSOCIATE JUDGE.

1. In a county having only one district associate judge, the county judicial magistrate appointing commission, by majority vote, may authorize that an alternate district associate judge be selected.

2. The procedures for selecting an alternate shall be those provided in section eleven (11) of this Act for selection of a district associate judge, but a person appointed under this section shall be designated as an alternate and shall be subject to the provisions of this section.

3. An alternate district associate judge shall have the same qualifications, and when serving, the same jurisdiction, obligations and liabilities as a regularly appointed district associate judge. An alternate shall serve initial and regular terms and shall stand for retention in office in the same manner as regular district associate judges. However, a vacancy in the office of alternate district associate judge shall not be filled unless the conditions of subsection one (1) of this section are satisfied after the vacancy occurs.

4. The chief judge of the judicial district may order that the alternate temporarily sit in place of the district associate judge while the latter is unable to act. The words "unable to act" mean a temporary absence from court duties, including a reasonable vacation period. An alternate may practice as an attorney except when serving as a district associate judge. When serving as a district associate judge an alternate shall be subject to section six hundred five point seventeen (605.17) of the Code.

5. An alternate district associate judge shall be compensated by the state at the rate of forty dollars per day for each day of actual duty, and for actual expenses incurred in the performance of duties, upon certification to the comptroller by the chief judge of the days of duty and the expenses incurred. An alternate shall not be a member of the Iowa public employees' retirement system or the judicial retirement system.

6. The appointment of an alternate district associate judge shall not affect the rights, duties or remuneration of the regularly-appointed district associate judge, and the appointment of an alternate shall not affect the number or apportionment of district associate judges authorized by this chapter.

Sec. 13. Section six hundred two point forty-seven (602.47), Code 1979, is amended to read as follows:

602.47 NO MEMBER OF COMMISSION TO BE APPOINTED MAGISTRATE TO OFFICE. No ~~person while--a~~ member of ~~the~~ a county judicial magistrate appointing commission shall be appointed to the office of judicial magistrate, nor shall a member be nominated for or appointed to the office of district associate judge.

Sec. 14. Section six hundred two point fifty-two (602.52), Code 1979, is amended to read as follows:

602.52 QUALIFICATIONS, AGE. A judicial magistrate ~~shall~~ must be an elector of the county of appointment during his or her term of office. A person ~~shall--not--be~~ is not qualified for appointment ~~and--shall--not--be~~ appointed as a judicial magistrate unless that the person can complete prior ~~to--his--or--her--reaching--the--age--of--seventy--two--years~~ the entire ~~two-year--or~~

~~four-year term of office of judicial magistrate for which nomination and appointment is being made prior to reaching age seventy-two. A judicial magistrate appointed pursuant to section 602.50 may be licensed to practice law in Iowa, and the commission in selecting persons for those positions shall first consider for appointment applicants so licensed. After July 1, 1973, a judicial magistrate nominated and appointed pursuant to section 602.51 shall be licensed to practice law in Iowa.~~

Sec. 15. Section six hundred two point fifty-three (602.53), subsection two (2), Code 1979, is amended to read as follows:

2. If a judicial magistrate appears as counsel for a client in a matter that is within the jurisdiction of a magistrate, that matter shall be heard only by a district judge, or a district associate judge, ~~or a judicial magistrate appointed pursuant to section 602.51~~. A disqualification under this section shall be had upon motion of the judicial magistrate or of any party, either orally or in writing, and the clerk shall be advised to reassign the matter to a proper judicial officer.

Sec. 16. Section six hundred two point fifty-four (602.54), Code 1979, as amended by Acts of the Sixty-eighth General Assembly, 1979 Session, chapter two (2), section fourteen (14), is amended to read as follows:

602.54 SALARY, EXPENSES. Each judicial magistrate shall receive a salary payable from the general fund of the state, and also his or her actual and necessary expenses in the performance of his or her duties while away from the city of his or her residence, in accordance with section 605.2. The salary of judicial magistrates, except as otherwise provided herein in section six hundred two point fifty-eight (602.58) of the Code, shall be the sum set by the general assembly. ~~The judicial magistrates serving pursuant to section 602.51 shall receive an annual salary in an amount set by the general assembly. Judicial magistrates appointed pursuant to section 602.51 except district associate judges shall be members of the Iowa public employees' retirement system.~~ Judicial magistrates appointed pursuant to either section 602.50 or section 602.58 may elect to be members of the Iowa public employees' retirement system upon filing notice in writing with the Iowa department of job service and the court administrator of the judicial department.

Sec. 17. Section six hundred two point fifty-nine (602.59), Code 1979, is amended to read as follows:

602.59 SUBSTITUTION FOR APPORTIONMENT.

1. ~~APPLICABILITY.~~ In any county having an apportionment of three or more judicial magistrates ~~appointable pursuant to section 602.50,~~ the chief judge of the district, subject to the limitations of this section, may designate by order that ~~magistrates appointed pursuant to this section be utilized~~ a district associate judge be appointed pursuant to this section in lieu of magistrates appointed pursuant to section 602.50. The order of substitution may be made only upon the affirmative vote of a majority of the district judges in that judicial election district that the substitution be made, and only upon a finding by a majority of those district judges that a substitution would provide more speedy and efficient dispatch of judicial business within that judicial election district. An order of substitution ~~is~~

~~renewable--for-successive-terms-upon-the-vote-of-the-judges,-but-shall-not-be effective-for-any-term~~ shall not take effect unless a copy of the order is received by the chairman of the county judicial magistrate appointing commission not later than the thirty-first day of March of the year in which the substitution is to take effect. A copy of the order also shall be sent to the supreme court administrator.

~~The-district-judges-of-a-judicial-election-district-may-determine,-for-the year-1974,-that-a-substitution-be--made--pursuant--to--this--section,-by--an affirmative--vote--of--a--majority--rendered--and-with-written-notice--thereof delivered-to-the--chairman--of--the--county--judicial--magistrate--appointing commission--not--later--than--June--17--1974.--A-magistrate-appointed-in-1974 pursuant-to-this-subsection-shall-be-subject-to-all-of-the-provisions-of-this section,-except-that-the-term-of-office-shall--be--an--irregular--one--for--a period-of-five-years-from-July-17-1974-~~

2. ~~REDUCTION--IN--APPOINTMENTS-~~ For any county in which such an a substitution order is in effect, the number of magistrates actually appointed pursuant to section 602.50 shall be reduced by three for each magistrate district associate judge substituted under the provisions of this section.

Upon any subsequent reduction in the apportionment of magistrates to the county, ~~either~~ the commission shall further reduce the number of magistrates appointed, ~~or-the-chief-judge-shall-revoke-an-order-of-substitution.~~

3. ~~APPOINTMENT-~~ A judicial-magistrate district associate judge ordered pursuant to this section shall be nominated and appointed in the same manner, and shall have the same qualifications, rights, salary, duties, responsibilities, liabilities, authority and jurisdiction, ~~--the-same~~ as a magistrate district associate judge authorized by ~~paragraph--(1)--of~~ section 602.51 eleven (11) of this Act.

4. ~~LIMITATIONS-~~

a. Except as provided in subsections 1 and 2, a substitution shall not increase or decrease the number of judicial magistrates authorized by this chapter.

b. A substitution ~~or-reversion~~ pursuant to this section shall not ~~take effect-during-the-term-of-office-of-any-magistrate~~ be made if the effect would be to remove a magistrate from office prior to the expiration of his or her term.

c. A substitution shall not be made ~~or-maintained~~ where the apportionment to a county is insufficient to permit the full reduction in appointments of magistrates as required by subsection 2.

5. ~~REVERSION-~~ If an apportionment by the supreme court administrator pursuant to section 602.57 reduces the number of judicial magistrate offices in the county to less than three, or a majority of the district judges in that judicial election district determines that a substitution is no longer desirable, then the substituted office shall ~~not-be-renewed-for-a--successive term~~ be terminated. However, a reversion pursuant to this subsection, irrespective of cause, shall not take effect until the substitute district associate judge fails to be retained in office at a judicial election or otherwise leaves office, whether voluntarily or involuntarily. At-the-end--of the--term Upon the terminaton\* of office of that district associate judge,

\*According to enrolled Act



appointments shall be made pursuant to section 602.50 as necessary to reestablish terms of office as provided in subsection four (4) of that section.

Sec. 18. Section six hundred two point sixty (602.60), unnumbered paragraph one (1), Code 1979, is amended to read as follows:

Judicial magistrates shall have jurisdiction of simple misdemeanors, including traffic and ordinance violations, preliminary hearings, search warrant proceedings, and small claims. They shall also have jurisdiction to exercise the powers specified in sections 644.2 and 644.12 and the power to hear complaints, or preliminary informations, issue warrants, order arrests, make commitments and take bail. They shall have power to act any place within the judicial district as directed, and venue shall be the same as in other district court proceedings. ~~In--addition,---judicial---magistrates appointed--pursuant--to--section-602-51-shall-have-jurisdiction-of-indictable misdemeanors,--the-jurisdiction-provided-for-in-section-231-3-when--designated a--judge--of--the--juvenile-court,--and-jurisdiction-in-civil-actions-for-money judgments--where-the-amount-in-controversy--does--not--exceed--three--thousand dollars--and--while--exercising-that-jurisdiction,--judicial-magistrates-shall employ-district-judges'-practice-and-procedure-~~

Sec. 19. Chapter six hundred two (602), Code 1979, is amended by adding the following new section:

NEW SECTION. JUDICIAL MAGISTRATE DEFINED. As used in this chapter, "judicial magistrate" and "magistrate" mean only those persons appointed to office under the authority of sections six hundred two point fifty (602.50) and six hundred two point fifty-eight (602.58) of the Code.

Sec. 20. Section six hundred five point fifteen (605.15), Code 1979, is amended to read as follows:

605.15 PRACTICE PROHIBITED. ~~During-the-time-that~~ While holding office, a supreme court judge, court of appeals judge, district judge, or district associate judge, ~~or-judicial-magistrate-appointed-pursuant-to-section--602-51 is--holding--such-office-~~ he shall not practice as an attorney or counselor or give advice in relation to any action pending or about to be brought in any of the courts of the state.

Sec. 21. Section six hundred five point seventeen (605.17), Code 1979, is amended to read as follows:

605.17 WHEN JUDGE DISQUALIFIED. A supreme court judge, judge of the court of appeals, district judge, district associate judge or magistrate is disqualified from acting ~~as-such,~~ except by mutual consent of parties, in any case wherein he the judge or magistrate or any member of any corporation, partnership, firm or association with which he or she may be associated is a party or interested, or where he the judge or magistrate is related to either party by consanguinity or affinity within the fourth degree, or where he the judge or magistrate or any member of any ~~firm,--partnership~~ corporation, partnership, firm or association with which he or she may be associated has been attorney for either party in the action or proceeding. This section shall not prevent him a judge or magistrate from disposing of any preliminary matter not affecting the merits of the case.

Sec. 22. Section eight hundred thirteen point three (813.3), rule fifty-four (54), subsection one (1), Code 1979, is amended to read as follows:

1. NOTICE OF APPEAL. An appeal may be taken by the plaintiff only upon a finding of invalidity of an ordinance or statute. In all other cases, an appeal may only be taken by the defendant and only upon a judgment of conviction. Execution of the judgment shall be stayed upon the filing with the clerk of the district court an appeal bond with surety approved by the clerk, in the sum specified in the judgment. The defendant may take an appeal, by giving notice orally to the magistrate that he or she appeals, or by delivering to the magistrate not later than ten days thereafter, a written notice of the defendant's appeal, and in either case the magistrate must make an entry on its docket of the giving of such notice. Payment of fine or service of a sentence of imprisonment does not waive the right to appeal, nor render the appeal moot. When an appeal is taken, the magistrate shall forward to the appropriate district court clerk a copy of the docket entries in the magistrate's court, together with copies of the complaint, warrant, motions, pleadings, the magistrate's minutes of the witness' testimony and the exhibits or copies thereof and all other papers in the case. A district judge shall promptly hear the appeal upon the record thus filed without further evidence if the original action was tried by a district judge, or district associate judge, ~~ex-magistrate-appointed-under--sections--602-51--or 602-59~~ unless the district ~~court~~ judge hearing the appeal either upon application of any party or on the district judge's own motion orders the appeal heard de novo on the grounds the record is inadequate. If the original action was tried by a judicial magistrate ~~appointed--under--sections 602-50--or-602-58~~, the district judge shall promptly hear the appeal de novo. Within ten days after an appeal is taken, unless extended by order of a district judge or by stipulation of the parties, any party may file with the clerk, as a part of the record, a transcript of the official report, if any, and, in the event the report was made electronically, the tape or other medium on which the proceedings were preserved. If the original action was tried before a district judge acting as a judicial magistrate, the appeal shall be to a different district judge. The judge shall decide the appeal without regard to technicalities or defects. Judgment shall be rendered as though the case were being originally tried. The right to further appeal is governed by division XIV, section 1406.

Sec. 23. Sections six hundred two point fifty-one (602.51) and six hundred two point seventy-one (602.71), Code 1979, are repealed.

Sec. 24. This Act shall take effect January 1, 1981.

Approved May 26, 1980