

1980

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J. Rich Leonard

Campbell University School of Law, leonardjr@campbell.edu

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Recommended Citation

J. Rich Leonard, *Congressional Action Changes Federal Practice*, *Barnotes*, November-December, 1980, at 10.

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Congressional Action Changes Federal Practice

By J. Richard Leonard

A variety of federal statutory and rule changes at the national and local levels affected federal practice and procedure during the past 12 months. This article, the first of three, highlights Congressional actions of interest to federal practitioners. A second article will deal with civil, criminal and appellate rule changes, while a third will cover changes in practice and procedure of the three federal courts within the state.

The Federal Magistrate Act of 1979 has greatly expanded the consensual jurisdiction of federal magistrates by authorizing civil and criminal misdemeanor trials, jury and non-jury, before magistrates upon consent of the parties. The Act also requires the court to utilize merit selection panels in appointment and re-appointment of magistrates.

Congress has redrawn the line between the Middle and Western Districts by shifting Alleghany, Ashe, Watauga and Wilkes Counties from the Middle into the Western District. The same act also moved the portion of Durham County in which is located in Federal Correctional Facility at Butner into the Eastern District. These changes become effective October 1, 1981.

After years of discussion, the Fifth Circuit has finally been split. Effective October 1, 1981, the Fifth Circuit will consist of Louisiana, Mississippi, Texas and the Canal Zone, with headquarters in New Orleans. The Eleventh Circuit will consist of Alabama, Florida, and Georgia, with headquarters in Atlanta.

On October 1, Congress enacted a bill entitling certain individuals, small businesses and other organizations to an award of attorney's fees if they prevail in a suit brought by the United States that is not "substantially justified."

Congress has effectively nullified the Supreme Court's decision in *Zurcher v. Stanford Daily* by prohibiting federal, state and local authorities from making unauthorized third-party searches of news organizations unless the organization itself is suspected of criminal conduct.

Last May Congress gave the Attorney General of the United States a sweeping new grant of authority with the Civil Rights of Institutionalized Persons Act. The Act authorizes suits against any state or political subdivision to vindicate the civil rights of any

persons institutionalized in prisons, jails, mental hospitals or other custodial institutions.

The House and Senate have finally resolved their controversy over judicial discipline and enacted legislation that retains impeachment as the sole method of removal but sets up a three-tiered review mechanism for dealing with complaints and imposing disciplinary measures less severe than removal. Complaints go to the Chief Judge of the Circuit,

then to a committee of the Judicial Council for the circuit, with final action taken by the Judicial Conference of the United States.

Two Congressional enactments dealing with federal judges remain under constitutional attack, with both cases now before the Supreme Court. The first deals with the amount of salary federal judges are to receive; the issue was whether Congress unconstitutionally diminished the compensation of sitting judges by includ-

ing them in a statute limiting pay increases to 5.5 percent several days after a 12.9 percent increase allegedly took effect.

The second case deals with the constitutionality of the Congressional requirement, under the Ethics in Government Act, that federal judges annually file personal financial statements that are public records. The Fifth Circuit has upheld the constitutionality of the provision, but stayed its decision pending Supreme Court review.

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