

-CITE-

28 USC Sec. 45

01/19/04

-EXPCITE-

TITLE 28 - JUDICIARY AND JUDICIAL PROCEDURE
PART I - ORGANIZATION OF COURTS
CHAPTER 3 - COURTS OF APPEALS

-HEAD-

Sec. 45. Chief judges; precedence of judges

-STATUTE-

(a)(1) The chief judge of the circuit shall be the circuit judge in regular active service who is senior in commission of those judges who -

- (A) are sixty-four years of age or under;
- (B) have served for one year or more as a circuit judge; and
- (C) have not served previously as chief judge.

(2)(A) In any case in which no circuit judge meets the qualifications of paragraph (1), the youngest circuit judge in regular active service who is sixty-five years of age or over and who has served as circuit judge for one year or more shall act as the chief judge.

(B) In any case under subparagraph (A) in which there is no circuit judge in regular active service who has served as a circuit judge for one year or more, the circuit judge in regular active service who is senior in commission and who has not served previously as chief judge shall act as the chief judge.

(3)(A) Except as provided in subparagraph (C), the chief judge of the circuit appointed under paragraph (1) shall serve for a term of seven years and shall serve after expiration of such term until another judge is eligible under paragraph (1) to serve as chief judge of the circuit.

(B) Except as provided in subparagraph (C), a circuit judge acting as chief judge under subparagraph (A) or (B) of paragraph (2) shall serve until a judge has been appointed who meets the qualifications under paragraph (1).

(C) No circuit judge may serve or act as chief judge of the circuit after attaining the age of seventy years unless no other circuit judge is qualified to serve as chief judge of the circuit under paragraph (1) or is qualified to act as chief judge under paragraph (2).

(b) The chief judge shall have precedence and preside at any session of the court which he attends. Other circuit judges of the court in regular active service shall have precedence and preside according to the seniority of their commissions. Judges whose commissions bear the same date shall have precedence according to seniority in age. The circuit justice, however, shall have precedence over all the circuit judges and shall preside at any session which he attends.

(c) If the chief judge desires to be relieved of his duties as chief judge while retaining his active status as circuit judge, he may so certify to the Chief Justice of the United States, and thereafter the chief judge of the circuit shall be such other circuit judge who is qualified to serve or act as chief judge under subsection (a).

(d) If a chief judge is temporarily unable to perform his duties as such, they shall be performed by the circuit judge in active service, present in the circuit and able and qualified to act, who is next in precedence.

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(June 25, 1948, ch. 646, 62 Stat. 871; Oct. 31, 1951, ch. 655, Sec. 35, 65 Stat. 723; Pub. L. 85-593, Sec. 1, Aug. 6, 1958, 72 Stat. 497; Pub. L. 97-164, title II, Secs. 201, 204, Apr. 2, 1982, 96 Stat. 51, 53.)

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HISTORICAL AND REVISION NOTES

Based on sections 216 and 216a of title 28, U.S.C., 1940 ed. (Mar. 3, 1911, ch. 231, Sec. 120, 36 Stat. 1132; May 23, 1934, ch. 339, 48 Stat. 796).

Subsection (a), providing for "chief judge," is new. Such term is adopted to replace the term "senior circuit judge" in recognition of the great increase in administrative duties of such judge.

Subsection (b) conforms with section 4 of this title relating to precedence of associate justices of the Supreme Court, and consolidates the provisions of the second and third sentences of section 216 of title 28, U.S.C., 1940 ed. The designation when filed in the court of appeals will not only record the transfer of function from the relieved chief judge to his successor, but will also determine the question of willingness of the successor to serve.

Other provisions of section 216 of title 28, U.S.C., 1940 ed., are covered by section 47 of this title.

Subsection (c) is new.

Subsection (d) is based on section 216a of title 28, U.S.C., 1940 ed.

The official status of the Chief Justice of the Court of Appeals for the District of Columbia holding office on the effective date of the act is preserved by section 2 of the bill to enact revised Title 28.

Changes were made in phraseology.

AMENDMENTS

1982 - Subsec. (a). Pub. L. 97-164, Sec. 201(a), designated existing first sentence of subsec. (a) as par. (1), substituted "The chief judge of the circuit shall be the circuit judge in regular active service who is senior in commission of those judges who - (A) are sixty-four years of age or under; (B) have served for one year or more as a circuit judge; and (C) have not served previously as chief judge" for "The circuit judge in regular active service who is senior in commission and under seventy years of age shall be the chief judge of the circuit" in par. (1) as so designated, designated existing second sentence of subsec. (a) as par. (2)(A), substituted "In any case in which no circuit judge

meets the qualifications of paragraph (1), the youngest circuit judge in regular active service who is sixty-five years of age or over and who has served as circuit judge for one year or more shall act as the chief judge" for "If all the circuit judges in regular active service are seventy years of age or older the youngest shall act as chief judge until a judge has been appointed and qualified who is under seventy years of age, but a judge may not act as chief judge until he has served as a circuit judge for one year" in par. (2)(A) as so designated, and added pars. (2)(B) and (3).

Subsec. (b). Pub. L. 97-164, Sec. 204, inserted "of the court in regular active service" after "circuit judges" in second sentence.

Subsec. (c). Pub. L. 97-164, Sec. 201(b), amended subsec. (c) generally, substituting "the chief judge of the circuit shall be such other circuit judge who is qualified to serve or act as chief judge under subsection (a)" for "the circuit judge in active service next in precedence and willing to serve shall be designated by the Chief Justice as the chief judge of the circuit".

1958 - Subsec. (a). Pub. L. 85-593 provided that chief judges of circuit courts cease to serve as such upon reaching the age of seventy, that the youngest circuit judge act as chief judge where all circuit judges in regular active service are seventy years or older until a judge under seventy has been appointed and qualified, and that circuit judge must have served one year before acting as chief judge.

1951 - Subsec. (a). Act Oct. 31, 1951, inserted "in active service who is".

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-164 effective Oct. 1, 1982, see section 402 of Pub. L. 97-164, set out as a note under section 171 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Section 3 of Pub. L. 85-593, as amended by Pub. L. 95-486, Sec. 4, Oct. 20, 1978, 92 Stat. 1632, provided that: "The amendments to sections 45 and 136 of title 28 of the United States Code made by this Act shall take effect at the expiration of one year from the

date of enactment of this Act [Aug. 6, 1958]."

SAVINGS PROVISION

Section 203 of part A of title II of Pub. L. 97-164 provided that:

"(a) The amendments to section 45 of title 28, United States Code, and to section 136 of such title, made by sections 201 and 202 of this Act, shall not apply to or affect any person serving as chief judge on the effective date of this Act [Oct. 1, 1982].

"(b) The provisions of section 45(a) of title 28, United States Code, as in effect on the day before the effective date of this Act [Oct. 1, 1982], shall apply to the chief judge of a circuit serving on such effective date. The provisions of section 136(a) of title 28, United States Code, as in effect on the day before the effective date of this part [Oct. 1, 1982], shall apply to the chief judge of a district court serving on such effective date."

APPOINTMENT OF CHIEF JUDGE OF COURT OF APPEALS FOR THE FEDERAL

CIRCUIT

Section 166 of Pub. L. 97-164 provided that: "Notwithstanding the provisions of section 45(a) of title 28, United States Code, the first chief judge of the United States Court of Appeals for the Federal Circuit shall be the Chief Judge of the United States Court of Claims or the Chief Judge of the United States Court of Customs and Patent Appeals, whoever has served longer as chief judge of his court. Notwithstanding section 45 of title 28, United States Code, whichever of the two chief judges does not become the first chief judge of the United States Court of Appeals for the Federal Circuit under the preceding sentence shall, while in active service, have precedence and be deemed senior in commission over all the circuit judges of the United States Court of Appeals for the Federal Circuit (other than the first chief judge of that circuit). When the person who first serves as chief judge of the United States Court of Appeals for the Federal Circuit vacates that position, the position shall be filled in accordance with section 45(a) of title 28, United States Code, as modified by the preceding sentence of

this section."

CHIEF JUDGE OF COURT OF APPEALS FOR DISTRICT OF
COLUMBIA

Section 2(a) of act June 25, 1948, provided in part that the
Chief Justice of the Court of Appeals for the District of Columbia
in office on Sept. 1, 1948, shall thereafter be known as the Chief
Judge.

-SECRETF-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 353, 372 of this title.

-End-

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28 USC Sec. 46

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TITLE 28 - JUDICIARY AND JUDICIAL PROCEDURE
PART I - ORGANIZATION OF COURTS
CHAPTER 3 - COURTS OF APPEALS

-HEAD-

Sec. 46. Assignment of judges; panels; hearings; quorum

-STATUTE-

(a) Circuit judges shall sit on the court and its panels in such
order and at such times as the court directs.

(b) In each circuit the court may authorize the hearing and
determination of cases and controversies by separate panels, each
consisting of three judges, at least a majority of whom shall be
judges of that court, unless such judges cannot sit because recused
or disqualified, or unless the chief judge of that court certifies
that there is an emergency including, but not limited to, the