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-CITE-

28 USC CHAPTER 3 - COURTS OF APPEALS

01/03/05

-EXPCITE-

TITLE 28 - JUDICIARY AND JUDICIAL PROCEDURE
PART I - ORGANIZATION OF COURTS
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-HEAD-

CHAPTER 3 - COURTS OF APPEALS

-MISC1-

Sec.

41. Number and composition of circuits.
42. Allotment of Supreme Court justices to circuits.
43. Creation and composition of courts.
44. Appointment, tenure, residence and salary of circuit judges.
45. Chief judges; precedence of judges.
46. Assignment of judges; panels; hearings; quorum.
47. Disqualification of trial judge to hear appeal.
48. Terms of court.
49. Assignment of judges to division to appoint independent counsels.

AMENDMENTS

1983 - Pub. L. 97-409, Sec. 2(b)(2), Jan. 3, 1983, 96 Stat. 2039, substituted "independent counsels" for "special prosecutors" in item 49.

1978 - Pub. L. 95-521, title VI, Sec. 602(b), Oct. 26, 1978, 92 Stat. 1874, added item 49.

Pub. L. 95-486, Sec. 5(c), Oct. 20, 1978, 92 Stat. 1633, substituted "panels" for "divisions" in item 46.

-End-

-CITE-

28 USC Sec. 41

01/03/05

-EXPCITE-

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

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-HEAD-

Sec. 41. Number and composition of circuits

-STATUTE-

The thirteen judicial circuits of the United States are constituted as follows:

Circuits	Composition
District of Columbia	District of Columbia.
First	Maine, Massachusetts, New Hampshire, Puerto Rico, Rhode Island.
Second	Connecticut, New York, Vermont.
Third	Delaware, New Jersey, Pennsylvania, Virgin Islands.
Fourth	Maryland, North Carolina, South Carolina, Virginia, West Virginia.
Fifth	District of the Canal Zone, Louisiana, Mississippi, Texas.
Sixth	Kentucky, Michigan, Ohio, Tennessee.
Seventh	Illinois, Indiana, Wisconsin.
Eighth	Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, South Dakota.
Ninth	Alaska, Arizona, California, Idaho, Montana, Nevada, Oregon, Washington, Guam, Hawaii.
Tenth	Colorado, Kansas, New Mexico, Oklahoma, Utah, Wyoming.
Eleventh	Alabama, Florida, Georgia.
Federal	All Federal judicial districts.

-SOURCE-

(June 25, 1948, ch. 646, 62 Stat. 870; Oct. 31, 1951, ch. 655, Sec. 34, 65 Stat. 723; Pub. L. 96-452, Sec. 2, Oct. 14, 1980, 94 Stat. 1994; Pub. L. 97-164, title I, Sec. 101, Apr. 2, 1982, 96 Stat. 25.)

-MISC1-

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C. 1940 ed., Sec. 211, and section 864 of title 48, U.S.C., 1940 ed., Territories and Insular Possessions (Apr. 12, 1900, ch. 191, Sec. 35, 31 Stat. 85; Mar. 3, 1911, ch.

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231, Sec. 116, 36 Stat. 1131; Jan. 28, 1915, ch. 22, Secs. 1, 2, 38 Stat. 803; Mar. 2, 1917, ch. 145, Sec. 42, 39 Stat. 966; Feb. 13, 1925, ch. 229, Secs. 1, 13, 43 Stat. 936, 942; Jan. 31, 1928, ch. 14, Sec. 1, 45 Stat. 54; Feb. 28, 1929, ch. 363, Sec. 1, 45 Stat. 1346; May 17, 1932, ch. 190, 47 Stat. 158).

Form of section was simplified.

The District of Columbia was added as a separate circuit. This is in accord with the decision of the Supreme Court of the United States which held the Court of Appeals for the District of Columbia to be a circuit court of appeals within the Transfer Act of Sept. 14, 1922, ch. 305, 42 Stat. 837, incorporated in the Judicial Code as Sec. 238(a), but repealed by act Feb. 13, 1925, ch. 229, Sec. 13, 43 Stat. 942. (See *Swift and Co. v. U.S.*, 1928, 48 S.Ct. 311, 276 U.S. 311, 72 L.Ed. 587.)

In recognizing the District of Columbia as a separate circuit, the Supreme Court recently used this language: "* * * the eleven circuits forming the single federal judicature * * *". *Comm'r. v. Bedford's Estate*, 65 S.Ct. 1157, at page 1160, 325 U.S. 283, 89 L.Ed. 611.

See section 17 of title 28, U.S.C., 1940 ed., providing, "For the purposes of sections 17-23 of this title, the District of Columbia shall be deemed to be a judicial circuit * * *", and act Dec. 23, 1944, ch. 724, 58 Stat. 925, which amended section 215 of title 28, U.S.C., 1940 ed., incorporated in section 42 of this title. Such amendment provided that for the purposes of said section 215 "the District of Columbia shall be deemed to be a judicial circuit."

Many other acts of Congress have recognized the District of Columbia as a separate circuit. (See the following acts; Aug. 24, 1937, ch. 754, 50 Stat. 751; Feb. 11, 1938, ch. 25, 52 Stat. 28; Aug. 5, 1939, ch. 433, 53 Stat. 1204; Aug. 7, 1939, ch. 501, 53 Stat. 1223; Dec. 29, 1942, ch. 835, 56 Stat. 1094; May 11, 1944, ch. 192, 58 Stat. 218; Dec. 23, 1944, ch. 724, 58 Stat. 925.)

See also the following acts recognizing the Court of Appeals for the District of Columbia as a circuit court of appeals: Aug. 15, 1921, ch. 64, 42 Stat. 162; July 5, 1935, ch. 372, 49 Stat. 454; Aug. 24, 1937, ch. 754, 50 Stat. 751; Apr. 6, 1942, ch. 210, 56 Stat. 198; May 9, 1942, ch. 295, 56 Stat. 271. See also Rule 81(d) Federal Rules of Civil Procedure.

In the following cases the Supreme Court of the United States has recognized the status of the Court of Appeals of the District of Columbia as a permanent establishment within the federal judicial system: *O'Donoghue v. United States*, 1933, 53 S.Ct. 740, 289 U.S. 516, 77 L.Ed. 1356; *Federal Trade Commission v. Klesner*, 1927, 47 S.Ct. 557, 274 U.S. 145, 71 L.Ed. 972; *Claiborne-Annapolis Ferry v. United States*, 1932, 52 S.Ct. 440, 285 U.S. 382, 76 L.Ed. 808; *United States v. California Canneries*, 1929, 49 S.Ct. 423, 279 U.S.

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553, 73 L.Ed. 838.

Alaska, Canal Zone, and Virgin Islands were added to the 9th, 5th, and 3rd Circuits, respectively, to conform to section 1294 of this title.

Some of the provisions of section 864 of title 48, U.S.C., 1940 ed., have been retained in said title. For those which were incorporated in other sections of this revised title, see Distribution Table.

AMENDMENTS

1982 - Pub. L. 97-164 increased number of judicial circuits from twelve to thirteen through addition of Federal circuit composed of all Federal judicial districts.

1980 - Pub. L. 96-452 substituted "twelve" for "eleven" in text preceding table, substituted "District of the Canal Zone" for "Alabama, Canal Zone, Florida, Georgia" in item relating to fifth circuit, and added new item relating to eleventh circuit.

1951 - Act Oct. 31, 1951, inserted reference to Guam in that part relating to composition of Ninth judicial circuit.

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 1980 AMENDMENT

Section 12 of Pub. L. 96-452 provided that: "This Act and the amendments made by this Act [amending this section and sections 44 and 48 of this title, and enacting provisions set out as notes under this section] shall take effect on October 1, 1981."

-TRANS-

TERMINATION OF UNITED STATES DISTRICT COURT FOR THE DISTRICT OF THE CANAL ZONE

For termination of the United States District Court for the District of the Canal Zone at end of the "transition period", being the 30-month period beginning Oct. 1, 1979, and ending midnight Mar. 31, 1982, see Paragraph 5 of Article XI of the Panama Canal Treaty of 1977 and sections 2101 and 2201 to 2203 of Pub. L. 96-70, title II, Sept. 27, 1979, 93 Stat. 493, formerly classified to sections 3831 and 3841 to 3843, respectively, of Title 22, Foreign Relations and Intercourse.

-MISC2-

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COMMISSION ON STRUCTURAL ALTERNATIVES FOR THE FEDERAL COURTS
OF

APPEALS

Pub. L. 105-119, title III, Sec. 305, Nov. 26, 1997, 111 Stat. 2491, established Commission on Structural Alternatives for the Federal Courts of Appeals, directed Commission to study division of United States into judicial circuits, study structure and alignment of Federal Court of Appeals system, and report to President and Congress its recommendations of changes needed to expeditiously and effectively dispose of caseload of Federal Courts of Appeals, consistent with fundamental concepts of fairness and due process, provided for Commission's membership and compensation of members and staff, authorized appropriations, and provided for termination of Commission 90 days after submission of its report.

ASSIGNMENT OF JUDGES AND PROCEDURE FOR ADMINISTRATION OF
PENDING

CASES WITH REGARD TO REORGANIZATION OF THE FIFTH CIRCUIT COURT OF
APPEALS

Sections 5 to 10 of Pub. L. 96-452 provided that:

"Sec. 5. Each circuit judge in regular active service of the former fifth circuit whose official station on the day before the effective date of this Act [Oct. 1, 1981] -

"(1) is in Louisiana, Mississippi, or Texas is assigned as a circuit judge of the new fifth circuit; and

"(2) is in Alabama, Florida, or Georgia is assigned as a circuit judge of the eleventh circuit.

"Sec. 6. Each judge who is a senior judge of the former fifth circuit on the day before the effective date of this Act [Oct. 1, 1981] may elect to be assigned to the new fifth circuit or to the eleventh circuit and shall notify the Director of the Administrative Office of the United States Courts of such election.

"Sec. 7. The seniority of each judge -

"(1) who is assigned under section 5 of this Act; or

"(2) who elects to be assigned under section 6 of this Act; shall run from the date of commission of such judge as a judge of the former fifth circuit.

"Sec. 8. The eleventh circuit is authorized to hold terms or sessions of court at New Orleans, Louisiana, until such time as adequate facilities for such court are provided in Atlanta, Georgia.

"Sec. 9. The provisions of the following paragraphs of this section apply to any case in which, on the day before the effective date of this Act [Oct. 1, 1981], an appeal or other proceeding has been filed with the former fifth circuit:

"(1) If the matter has been submitted for decision, further

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proceedings in respect of the matter shall be had in the same manner and with the same effect as if this Act [amending sections 41, 44, and 48 of this title, and enacting provisions set out as notes under this section] had not been enacted.

"(2) If the matter has not been submitted for decision, the appeal or proceeding, together with the original papers, printed records, and record entries duly certified, shall, by appropriate orders, be transferred to the court to which it would have gone had this Act been in full force and effect at the time such appeal was taken or other proceeding commenced, and further proceedings in respect of the case shall be had in the same manner and with the same effect as if the appeal or other proceeding had been filed in such court.

"(3) A petition for rehearing or a petition for rehearing en banc in a matter decided before the effective date of this Act [Oct. 1, 1981], or submitted before the effective date of this Act and decided on or after the effective date as provided in paragraph (1) of this section, shall be treated in the same manner and with the same effect as though this Act had not been enacted. If a petition for rehearing en banc is granted, the matter shall be reheard by a court comprised as though this Act had not been enacted.

"Sec. 10. As used in sections 5, 6, 7, 8, and 9 of this Act, the term -

"(1) 'former fifth circuit' means the fifth judicial circuit of the United States as in existence on the day before the effective date of this Act [Oct. 1, 1981];

"(2) the term 'new fifth circuit' means the fifth judicial circuit of the United States established by the amendment made by section 2(2) of this Act [amending item relating to the fifth circuit in this section]; and

"(3) the term 'eleventh circuit' means the eleventh judicial circuit of the United States established by the amendment made by section 2(3) of this Act [adding item relating to the eleventh circuit in this section]."

ADMINISTRATIVE ACTION BY FIFTH CIRCUIT COURT OF APPEALS; TERMINATION OF COURT

Section 11 of Pub. L. 96-452 provided that: "The court of appeals for the fifth circuit as constituted on the day before the effective date of this Act [Oct. 1, 1981] may take such administrative action as may be required to carry out this Act [amending sections 41, 44, and 48 of this title, and enacting provisions set out as notes under this section]. Such court shall cease to exist for administrative purposes on July 1, 1984."

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APPEALS COURT ADMINISTRATIVE UNITS

Pub. L. 95-486, Sec. 6, Oct. 20, 1978, 92 Stat. 1633, provided that: "Any court of appeals having more than 15 active judges may constitute itself into administrative units complete with such facilities and staff as may be prescribed by the Administrative Office of the United States Courts, and may perform its en banc function by such number of members of its en banc courts as may be prescribed by rule of the court of appeals."

NORTHERN MARIANA ISLANDS

Pub. L. 95-157, Sec. 1(a), Nov. 8, 1977, 91 Stat. 1265, provided that the Northern Mariana Islands be part of the same judicial circuit as Guam, i.e., the Ninth Circuit. See section 1694(a) of Title 48, Territories and Insular Possessions.

COMMISSION ON REVISION OF THE FEDERAL APPELLATE SYSTEM

Pub. L. 92-489, Oct. 13, 1972, 86 Stat. 807, as amended by Pub. L. 93-420, Sept. 19, 1974, 88 Stat. 1153, provided for the establishment, membership, travel expenses, personnel, experts and consultants, administrative and research services, cooperation of other governmental agencies, and appropriations of not to exceed \$606,000 of a Commission on Revision of the Federal Court Appellate System which Commission was to study the geographical division of the judicial circuits and the structure and internal procedures of the appellate court system and to report to the President, Congress, and the Chief Justice its recommendations for changes in the geographical boundaries of the circuits to expedite disposition of judicial business and for changes in the appellate court structure to expedite disposition of the appellate courts caseload in a manner consistent with fundamental concepts of fairness and due process. The Commission was to cease existence ninety days after submission of its final report, which report was submitted June 20, 1975.

CONTINUATION OF ORGANIZATION OF COURT

Section 2(b) of act June 25, 1948, ch. 646, 62 Stat. 985, provided in part that the provisions of this title as set out in section 1 of act June 25, 1948, with respect to the organization of each of the several courts therein provided, shall be construed as continuations of existing law, and the tenure of the judges, officers, and employees thereof and of the United States attorneys and marshals and their deputies and assistants, in office on Sept. 1, 1948, shall not be affected by its enactment, but each of them shall continue to serve in the same capacity under the appropriate provisions of this title, pursuant to his prior appointment.

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28 USC Sec. 42

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-EXPCITE-

TITLE 28 - JUDICIARY AND JUDICIAL PROCEDURE
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-HEAD-

Sec. 42. Allotment of Supreme Court justices to circuits

-STATUTE-

The Chief Justice of the United States and the associate justices of the Supreme Court shall from time to time be allotted as circuit justices among the circuits by order of the Supreme Court. The Chief Justice may make such allotments in vacation.

A justice may be assigned to more than one circuit, and two or more justices may be assigned to the same circuit.

-SOURCE-

(June 25, 1948, ch. 646, 62 Stat. 870.)

-MISC1-

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., Sec. 215 (Mar. 3, 1911, ch. 231, Sec. 119, 36 Stat. 1131; Dec. 23, 1944, ch. 724, 58 Stat. 925).

The authority of the Chief Justice in vacation to assign a circuit justice to more than one circuit was extended by omitting the phrase "whenever by reason of death or resignation, no Justice is allotted to a circuit."

The provision in section 215 of Title 28, U.S.C., 1940 ed., that, for the purposes of said section, the "District of Columbia shall be deemed to be a judicial circuit," was omitted, since the District of Columbia is made a judicial circuit by section 41 of this title.

The last paragraph was added to make clear the intent of Congress that the powers of the Court to assign the justices among the several circuits should be completely flexible.

Changes were made in phraseology.

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-CITE-

28 USC Sec. 43

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-EXPCITE-

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

-HEAD-

Sec. 43. Creation and composition of courts

-STATUTE-

(a) There shall be in each circuit a court of appeals, which shall be a court of record, known as the United States Court of Appeals for the circuit.

(b) Each court of appeals shall consist of the circuit judges of the circuit in regular active service. The circuit justice and justices or judges designated or assigned shall be competent to sit as judges of the court.

-SOURCE-

(June 25, 1948, ch. 646, 62 Stat. 870; Pub. L. 88-176, Sec. 1(a), Nov. 13, 1963, 77 Stat. 331.)

-MISC1-

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., Sec. 212 (Mar. 3, 1911, ch. 231, Sec. 117, 36 Stat. 1131).

The provision in section 212 of title 28, U.S.C., 1940 ed., for a three-judge court of appeals was permissive and did not limit the power of the court to sit in banc. Thus, subsection (b) reflects present status of law, namely, that court is composed of not only circuit judges of the circuit in active service, of whom there may be more than three, but the circuit justice or justices and judges who may be assigned or designated to the court. (See *Textile Mills Securities Corporation v. Commissioner of Internal Revenue*, 1942, 62 S.Ct. 272, 314 U.S. 326, 86 L.Ed. 249 and Reviser's Notes under section 46 of this title.)

Words "with appellate jurisdiction, as hereinafter limited and established" were omitted as covered by section 1291 et seq. of this title, conferring appellate jurisdiction on the courts of

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appeals.

The term "court of appeals" was substituted in this section and throughout this title for the term "circuit court of appeals."

Provision for a quorum of the court is now covered by section 46(d) of this title.

AMENDMENTS

1963 - Subsec. (b). Pub. L. 88-176 inserted "regular" before "active service".

-CHANGE-

CHANGE OF NAME OF COURT

Section 2(b) of act June 25, 1948, provided in part that each circuit court of appeals should, after Sept. 1, 1948, be known as a United States Court of Appeals, but that the enactment of act June 25, 1948 should in no way entail any loss of rights, interruption of jurisdiction, or prejudice to matters pending in any such courts on Sept. 1, 1948.

-End-

-CITE-

28 USC Sec. 44

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-EXPCITE-

**TITLE 28 - JUDICIARY AND JUDICIAL PROCEDURE
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-HEAD-

Sec. 44. Appointment, tenure, residence and salary of circuit judges

-STATUTE-

(a) The President shall appoint, by and with the advice and consent of the Senate, circuit judges for the several circuits as follows:

Circuits	Number of Judges

District of Columbia	12
First	6

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Second	13
Third	14
Fourth	15
Fifth	17
Sixth	16
Seventh	11
Eighth	11
Ninth	28
Tenth	12
Eleventh	12
Federal	12.

(b) Circuit judges shall hold office during good behavior.

(c) Except in the District of Columbia, each circuit judge shall be a resident of the circuit for which appointed at the time of his appointment and thereafter while in active service. While in active service, each circuit judge of the Federal judicial circuit appointed after the effective date of the Federal Courts Improvement Act of 1982, and the chief judge of the Federal judicial circuit, whenever appointed, shall reside within fifty miles of the District of Columbia. In each circuit (other than the Federal judicial circuit) there shall be at least one circuit judge in regular active service appointed from the residents of each state (!1) in that circuit.

(d) Each circuit judge shall receive a salary at an annual rate determined under section 225 of the Federal Salary Act of 1967 (2 U.S.C. 351-361), as adjusted by section 461 of this title.

-SOURCE-

(June 25, 1948, ch. 646, 62 Stat. 871; Aug. 3, 1949, ch. 387, Sec. 1, 63 Stat. 493; Feb. 10, 1954, ch. 6, Sec. 1, 68 Stat. 8; Mar. 2, 1955, ch. 9, Sec. 1(b), 69 Stat. 10; Pub. L. 87-36, Sec. 1(b), May 19, 1961, 75 Stat. 80; Pub. L. 88-426, title IV, Sec. 403(b), Aug. 14, 1964, 78 Stat. 434; Pub. L. 89-372, Sec. 1(b), Mar. 18, 1966, 80 Stat. 75; Pub. L. 90-347, Sec. 3, June 18, 1968, 82 Stat. 184; Pub. L. 94-82, title II, Sec. 205(b)(2), Aug. 9, 1975, 89 Stat. 422; Pub. L. 95-486, Sec. 3(b), Oct. 20, 1978, 92 Stat. 1632; Pub. L. 96-452, Sec. 3, Oct. 14, 1980, 94 Stat. 1994; Pub. L. 97-164, title I, Sec. 102, Apr. 2, 1982, 96 Stat. 25; Pub. L. 98-353, title II, Sec. 201(b), July 10, 1984, 98 Stat. 346; Pub. L. 101-650, title II, Sec. 202(b), Dec. 1, 1990, 104 Stat. 5099; Pub. L. 102-198, Sec. 10(c), Dec. 9, 1991, 105 Stat. 1626; Pub. L. 105-119, title III, Sec. 307, Nov. 26, 1997, 111 Stat. 2493.)

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-MISC1-

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., Sec. 213, and sections 11-201, 11-202, District of Columbia Code, 1940 ed. (Feb. 9, 1893, ch. 74, Sec. 1, 27 Stat. 434; Mar. 3, 1901, ch. 854, Secs. 221, 222, 31 Stat. 1224; Mar. 3, 1911, ch. 231, Sec. 118, 36 Stat. 1131; Jan. 13, 1912, ch. 9, 37 Stat. 52; Feb. 25, 1919, ch. 29, Sec. 2, 40 Stat. 1156; Sept. 14, 1922, ch. 306, Sec. 6, 42 Stat. 840; Mar. 3, 1925, ch. 437, 43 Stat. 1116; Dec. 13, 1926, ch. 6, Sec. 1, 44 Stat. 919; Feb. 28, 1929, ch. 363, Sec. 2, 45 Stat. 1347; Mar. 1, 1929, ch. 413, Secs. 1, 2, 45 Stat. 1414; June 10, 1930, ch. 437, 46 Stat. 538; June 10, 1930, ch. 438, 46 Stat. 538; June 19, 1930, ch. 538, 46 Stat. 785; June 16, 1933, ch. 102, 48 Stat. 310; Aug. 2, 1935, ch. 425, Sec. 1, 49 Stat. 508; June 24, 1936, ch. 735, Sec. 1, 49 Stat. 1903; Apr. 14, 1937, ch. 80, 50 Stat. 64; May 31, 1938, ch. 290, Secs. 1, 3, 52 Stat. 584, 585; May 24, 1940, ch. 209, Sec. 1, 54 Stat. 219; Dec. 14, 1942, ch. 731, 56 Stat. 1050; Dec. 7, 1944, ch. 521, Sec. 1, 58 Stat. 796; July 31, 1946, ch. 704, Sec. 1, 60 Stat. 716).

This section includes the members of the United States Court of Appeals for the District of Columbia and designates them as "judges" rather than as "justices", thus harmonizing it with the provisions of section 41 of this title, which specifically designates the District of Columbia as a judicial circuit of the United States. In doing so it consolidates sections 11-201, 11-202 of the District of Columbia Code, 1940 ed., which provided for one "chief justice" and five associate "justices."

Act February 9, 1893, established a court of appeals for the District of Columbia to consist of one chief justice and two associate justices whose jurisdiction was almost entirely to review the judgments of the Supreme Court of the District of Columbia, the name of which was changed in 1936 to the District Court of the United States for the District of Columbia. Circuit courts were established by the first Judiciary Act of September 24, 1789, Sec. 4, and R.S. Sec. 608, enacted June 22, 1874. R.S. Sec. 605 provided that the words "circuit justice" and "justice of a circuit" should designate the justice of the Supreme Court of the United States allotted to any circuit; that "judge" when applied to any circuit included such justice.

The Judiciary Appropriation Act, 1945, Act June 26, 1944, ch. 277, Sec. 202, 58 Stat. 358, provided that as used in that Act, "the term 'circuit court of appeals' includes the United States Court of Appeals for the District of Columbia; the term 'senior circuit judge' includes the Chief Justice of the United States Court of Appeals for the District of Columbia; and the term

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'circuit judge' includes associate justice of the United States Court of Appeals for the District of Columbia; and the term 'judge' includes justice."

Provisions in section 11-202 of the District of Columbia Code, 1940 ed., and section 213 of title 28, U.S.C., 1940 ed., for payment of salaries in monthly installments were omitted, since time of payment is a matter of administrative convenience (20 Comp. Gen. 834).

The exception in subsection (c) extends to circuit judges in the District of Columbia the effect of the recent decision in *U.S. ex rel. Laughlin v. Eicher*, D.C. 1944, 56 F.Supp. 972, holding that residence requirement of section 1 of title 28, U.S.C., 1940 ed., did not apply to district judges in the District of Columbia. (See Reviser's Note under section 134 of this title.)

The provision in section 213 of the title 28, U.S.C., 1940 ed., that "it shall be the duty of each circuit judge in each circuit to sit as one of the judges of the circuit court of appeals in that circuit from time to time according to law," was omitted as unnecessary since the duty to serve is implied by the creation and composition of the court in section 43 of this title.

Last sentence, providing that nothing in section 213 of title 28, U.S.C., 1940 ed., should prevent a circuit judge from holding district court as provided by law, was omitted as unnecessary. (See section 291 of this title authorizing assignments to district courts.)

Subsection (b) was added in conformity with the U.S. Constitution, art. 3.

Changes were made in phraseology.

-REFTEXT-

REFERENCES IN TEXT

The effective date of the Federal Courts Improvement Act of 1982, referred to in subsec. (c), is the effective date of Pub. L. 97-164, Oct. 1, 1982. See Effective Date of 1982 Amendment note set out under section 171 of this title.

Section 225 of the Federal Salary Act of 1967, referred to in subsec. (d), is section 225 of Pub. L. 90-206, Dec. 16, 1967, 81 Stat. 642, as amended, which is classified to chapter 11 (Sec. 351 et seq.) of Title 2, The Congress.

-MISC2-

AMENDMENTS

1997 - Subsec. (c). Pub. L. 105-119 inserted at end "In each circuit (other than the Federal judicial circuit) there shall be at least one circuit judge in regular active service appointed from

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the residents of each state in that circuit."

1991 - Subsec. (c). Pub. L. 102-198 substituted "the Federal Courts Improvement Act of 1982" for "this Act".

1990 - Subsec. (a). Pub. L. 101-650 altered number of permanent circuit judgeships in named circuits as follows:

Circuits	Former	New
Third	12	14
Fourth	11	15
Fifth	16	17
Sixth	15	16
Eighth	10	11
Tenth	10	12

1984 - Subsec. (a). Pub. L. 98-353 altered number of permanent circuit judgeships in named circuits as follows:

Circuits	Former	New
District of Columbia		11 12
First	4	6
Second	11	13
Third	10	12
Fourth	10	11
Fifth	14	16
Sixth	11	15
Seventh	9	11
Eighth	9	10
Ninth	23	28
Tenth	8	10
Eleventh	12	12
Federal	12	12

1982 - Subsec. (a). Pub. L. 97-164, Sec. 102(a), inserted item relating to Federal circuit with 12 judges.

Subsec. (c). Pub. L. 97-164, Sec. 102(b), inserted provision relating to requirement that judges of Federal judicial circuit reside within fifty miles of the District of Columbia.

1980 - Subsec. (a). Pub. L. 96-452 substituted "14" for "26" in item relating to fifth circuit, and added item relating to eleventh circuit.

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1978 - Subsec. (a). Pub. L. 95-486 altered number of permanent circuit judgeships in the named circuits as follows:

Circuits	Former	New
District of Columbia	9	11
First	3	4
Second	9	11
Third	9	10
Fourth	7	10
Fifth	15	26
Sixth	9	11
Seventh	8	9
Eighth	8	9
Ninth	13	23
Tenth	7	8

1975 - Subsec. (d). Pub. L. 94-82 substituted provision that each circuit judge shall receive a salary at an annual rate determined under section 225 of the Federal Salary Act of 1967, as adjusted by section 461 of this title, for provision that each circuit judge shall receive a salary of \$33,000 a year.

1968 - Subsec. (a). Pub. L. 90-347 increased the number of circuit judges in the enumerated circuits as follows: Third Circuit, eight to nine; Fifth Circuit, nine to fifteen; Sixth Circuit, eight to nine; Ninth Circuit, nine to thirteen, and Tenth Circuit, six to seven.

1966 - Subsec. (a). Pub. L. 89-372 increased the number of circuit judges in the enumerated circuits as follows: Fourth Circuit, five to seven; Sixth Circuit, six to eight; Seventh Circuit, seven to eight; Eighth Circuit, seven to eight.

1964 - Subsec. (d). Pub. L. 88-426 increased the salary of the circuit judges from \$25,500 to \$33,000.

1961 - Subsec. (a). Pub. L. 87-36 increased the number of circuit judges in the enumerated circuits, as follows: Second Circuit, six to nine; Third Circuit, seven to eight; Fourth Circuit, three to five; Fifth Circuit, seven to nine; Seventh Circuit, six to seven; and Tenth Circuit, five to six.

1955 - Subsec. (d). Act Mar. 2, 1955, increased the salary of circuit judges from "\$17,500" a year to "\$25,500".

1954 - Subsec. (a). Act Feb. 10, 1954, increased the number of circuit judges in the Fifth Circuit from six to seven, and in the Ninth Circuit from seven to nine.

1949 - Subsec. (a). Act Aug. 3, 1949, increased the number of

To look up a section, use this format: **28 USC Sec. #**

circuit judges for the District of Columbia from six to nine, for the third circuit from six to seven, for the seventh circuit from five to six, and for the tenth circuit from four to five.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 206 of title II of Pub. L. 101-650 provided that: "This title [amending this section and section 133 of this title and enacting provisions set out as notes under this section and sections 133 and 331 of this title] shall take effect on the date of the enactment of this title [Dec. 1, 1990]."

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 1980 AMENDMENT

Amendment by Pub. L. 96-452 effective Oct. 1, 1981, see section 12 of Pub. L. 96-452, set out as a note under section 41 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88-426 effective on first day of first pay period which begins on or after July 1, 1964, except to extent provided in section 501(c) of Pub. L. 88-426, see section 501 of Pub. L. 88-426.

EFFECTIVE DATE OF 1955 AMENDMENT

Amendment by act Mar. 2, 1955, effective Mar. 1, 1955, see section 5 of act Mar. 2, 1955, set out as a note under section 31 of Title 2, The Congress.

NOMINATION TO FEDERAL JUDGESHIP ON NONDISCRIMINATORY BASIS

Section 211 of Pub. L. 98-353 provided that: "It is the sense of the Congress that the President, in selecting individuals for nomination to the Federal judgeships created by this Act [see Short Title of 1984 Amendment note set out under section 151 of this title], shall give due consideration to qualified individuals without regard to race, color, sex, religion, or national origin."

CONTINUED SERVICE OF JUDGES

Section 165 of Pub. L. 97-164 provided that judges of United States Court of Claims and of United States Court of Customs and Patent Appeals in regular active service on Oct. 1, 1982, would continue in office as judges of United States Court of Appeals for the Federal Circuit and senior judges of United States Court of

To look up a section, use this format: **28 USC Sec. #**

Claims and of United States Court of Customs and Patent Appeals on Oct. 1, 1982, would continue in office as senior judges of United States Court of Appeals for the Federal Circuit.

CONGRESSIONAL STATEMENT REGARDING APPOINTMENT OF JUDGES

Section 168 of Pub. L. 97-164 provided that: "The Congress -

"(1) takes notice of the fact that the quality of the Federal judiciary is determined by the competence and experience of its judges; and

"(2) suggests that the President, in nominating individuals to judgeships on the United States Court of Appeals for the Federal Circuit and the United States Claims Court [now United States Court of Federal Claims], select from a broad range of qualified individuals."

SALARY INCREASES

2005 - Salaries of circuit judges increased to \$171,800 per annum, effective on first day of first pay period beginning on or after Jan. 1, 2005, by Ex. Ord. No. 13368, Dec. 30, 2004, 70 F.R. 1147, set out as a note under section 5332 of Title 5, Government Organization and Employees.

2004 - Salaries of circuit judges increased to \$167,600 per annum, effective on first day of first pay period beginning on or after Jan. 1, 2004, by Ex. Ord. No. 13332, Mar. 3, 2004, 69 F.R. 10891, formerly set out as a note under section 5332 of Title 5.

Salaries of circuit judges increased to \$166,500 per annum, effective on first day of first pay period beginning on or after Jan. 1, 2004, by Ex. Ord. No. 13322, Dec. 30, 2003, 69 F.R. 231.

2003 - Salaries of circuit judges increased to \$164,000 per annum, effective on first day of first pay period beginning on or after Jan. 1, 2003, by Ex. Ord. No. 13282, Dec. 31, 2002, 68 F.R. 1133, as amended by Ex. Ord. No. 13291, Sec. 3, Mar. 21, 2003, 68 F.R. 14525, formerly set out as a note under section 5332 of Title 5.

2002 - Salaries of circuit judges increased to \$159,100 per annum, effective on first day of first pay period beginning on or after Jan. 1, 2002, by Ex. Ord. No. 13249, Dec. 28, 2001, 67 F.R. 639, formerly set out as a note under section 5332 of Title 5.

2001 - Salaries of circuit judges increased to \$153,900 per annum, effective on first day of first pay period beginning on or after Jan. 1, 2001, by Ex. Ord. No. 13182, Dec. 23, 2000, 65 F.R. 82879, 66 F.R. 10057, formerly set out as a note under section 5332 of Title 5.

2000 - Salaries of circuit judges increased to \$149,900 per annum, effective on first day of first pay period beginning on or after Jan. 1, 2000, by Ex. Ord. No. 13144, Dec. 21, 1999, 64 F.R.

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72237, formerly set out as a note under section 5332 of Title 5.

1999 - Salaries of circuit judges continued at \$145,000 per annum, by Ex. Ord. No. 13106, Dec. 7, 1998, 63 F.R. 68151, formerly set out as a note under section 5332 of Title 5.

1998 - Salaries of circuit judges increased to \$145,000 per annum, effective on first day of first pay period beginning on or after Jan. 1, 1998, by Ex. Ord. No. 13071, Dec. 29, 1997, 62 F.R. 68521, formerly set out as a note under section 5332 of Title 5.

1997 - Salaries of circuit judges continued at \$141,700 per annum, by Ex. Ord. No. 13033, Dec. 27, 1996, 61 F.R. 68987, formerly set out as a note under section 5332 of Title 5.

1996 - Salaries of circuit judges continued at \$141,700 per annum, by Ex. Ord. No. 12984, Dec. 28, 1995, 61 F.R. 237, formerly set out as a note under section 5332 of Title 5.

1995 - Salaries of circuit judges continued at \$141,700 per annum, by Ex. Ord. No. 12944, Dec. 28, 1994, 60 F.R. 309, formerly set out as a note under section 5332 of Title 5.

1993 - Salaries of circuit judges increased to \$141,700 per annum, effective on first day of first pay period beginning on or after Jan. 1, 1993, by Ex. Ord. No. 12826, Dec. 30, 1992, 57 F.R. 62909, formerly set out as a note under section 5332 of Title 5.

1992 - Salaries of circuit judges increased to \$137,300 per annum, effective on first day of first pay period beginning on or after Jan. 1, 1992, by Ex. Ord. No. 12786, Dec. 26, 1991, 56 F.R. 67453, formerly set out as a note under section 5332 of Title 5.

1991 - Salaries of circuit judges increased to \$132,700 per annum, effective on first day of first pay period beginning on or after Jan. 1, 1991, by Ex. Ord. No. 12736, Dec. 12, 1990, 55 F.R. 51385, formerly set out as a note under section 5332 of Title 5.

1990 - Salaries of circuit judges continued at \$95,000 per annum, and increased to \$102,500, effective on first day of first pay period beginning on or after Jan. 31, 1990, by Ex. Ord. No. 12698, Dec. 23, 1989, 54 F.R. 53473, formerly set out as a note under section 5332 of Title 5.

1989 - Salaries of circuit judges increased in the amount of 25 percent of their rates (as last in effect before the increase), effective Jan. 1, 1991, see Pub. L. 101-194, title VII, Sec. 703(a)(3), Nov. 30, 1989, 103 Stat. 1768, set out as a note under section 5318 of Title 5.

Salaries of circuit judges continued at \$95,000 per annum by Ex. Ord. No. 12663, Jan. 6, 1989, 54 F.R. 791, formerly set out as a note under section 5332 of Title 5.

1988 - Salaries of circuit judges continued at \$95,000 per annum by Ex. Ord. No. 12622, Dec. 31, 1987, 53 F.R. 222, formerly set out as a note under section 5332 of Title 5.

1987 - Salaries of circuit judges increased to \$95,000 per annum,

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on recommendation of the President of the United States, see note set out under section 358 of Title 2, The Congress.

Salaries of circuit judges increased to \$85,700 effective on first day of first pay period beginning on or after Jan. 1, 1987, by Ex. Ord. No. 12578, Dec. 31, 1986, 55 F.R. 505, formerly set out as a note under section 5332 of Title 5, Government Organization and Employees.

1985 - Salaries of circuit judges increased to \$83,200 effective on first day of first pay period beginning on or after Jan. 1, 1985, by Ex. Ord. No. 12496, Dec. 28, 1984, 50 F.R. 211, as amended by Ex. Ord. No. 12540, Dec. 30, 1985, 51 F.R. 577, formerly set out as a note under section 5332 of Title 5.

1984 - Salaries of circuit judges increased to \$80,400 effective on first day of first pay period beginning on or after Jan. 1, 1984, by Ex. Ord. No. 12456, Dec. 30, 1983, 49 F.R. 347, as amended Ex. Ord. No. 12477, May 23, 1984, 49 F.R. 22041; Ex. Ord. No. 12487, Sept. 14, 1984, 49 F.R. 36493, formerly set out as a note under section 5332 of Title 5.

1982 - Salaries of circuit judges increased to \$77,300 effective on first day of first pay period beginning on or after Oct. 1, 1982, by Ex. Ord. No. 12387, Oct. 8, 1982, 47 F.R. 44981, formerly set out as a note under section 5332 of Title 5. Ex. Ord. No. 12387 further provided that pursuant to section 140 of Pub. L. 97-92 funds are not available to pay a salary at a rate which exceeds the rate in effect on Dec. 15, 1981, which was \$74,300.

Maximum rate payable after Dec. 17, 1982, increased from \$74,300 to \$77,300, see Pub. L. 97-377, title I, Sec. 129(b)-(d), Dec. 21, 1982, 96 Stat. 1914, set out as a note under section 5318 of Title 5.

Limitations on use of funds for fiscal year ending Sept. 30, 1983, appropriated by any Act to pay the salary or pay of any individual in legislative, executive, or judicial branch in position equal to or above level V of the Executive Schedule, see section 101(e) of Pub. L. 97-276, as amended, set out as a note under section 5318 of Title 5.

1981 - Salaries of circuit judges increased to \$74,300 effective on first day of first pay period beginning on or after Oct. 1, 1981, by Ex. Ord. No. 12330, Oct. 15, 1981, 46 F.R. 50921, formerly set out as a note under section 5332 of Title 5.

Limitations on use of funds for fiscal year ending Sept. 30, 1982, appropriated by any Act to pay the salary or pay of any individual in legislative, executive, or judicial branch in position equal to or above level V of the Executive Schedule, see sections 101(g) and 141 of Pub. L. 97-92, set out as a note under section 5318 of Title 5.

1980 - Salaries of circuit judges increased to \$70,900 effective

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on first day of first pay period beginning on or after Oct. 1, 1980, by Ex. Ord. No. 12248, Oct. 16, 1980, 45 F.R. 69199, formerly set out as a note under section 5332 of Title 5. Ex. Ord. No. 12248 further provided that pursuant to Pub. L. 96-369 funds are not available to pay a salary at a rate which exceeds the rate in effect on Sept. 30, 1980, which was \$60,662.50.

Limitations on use of funds for fiscal year ending Sept. 30, 1981, appropriated by any Act to pay the salary or pay of any individual in legislative, executive, or judicial branch in position equal to or above level V of the Executive Schedule, see section 101(c) of Pub. L. 96-536, as amended, set out as a note under section 5318 of Title 5.

1979 - Salaries of circuit judges increased to \$65,000 effective on first day of first applicable pay period beginning on or after Oct. 1, 1979, by Ex. Ord. No. 12165, Oct. 9, 1979, 44 F.R. 58671, as amended by Ex. Ord. No. 12200, Mar. 12, 1980, 45 F.R. 16443, formerly set out as a note under section 5332 of Title 5. Ex. Ord. No. 12165 further provided that pursuant to Pub. L. 96-86 funds appropriated for fiscal year 1980 may not be used to pay a salary at a rate which exceeds an increase of 5.5 percent over the applicable rate payable for such position or office in effect on Sept. 30, 1978, which was \$60,662.50 for circuit judges.

Applicability to funds appropriated by any Act for fiscal year ending Sept. 30, 1980, of limitation of section 304 of Pub. L. 95-391 on use of funds to pay the salary or pay of any individual in legislative, executive, or judicial branch in position equal to or above Level V of the Executive Schedule, see section 101 of Pub. L. 96-86, set out as a note under section 5318 of Title 5.

1978 - Salaries of circuit judges increased to \$60,700 effective on first day of first pay period beginning on or after Oct. 1, 1978, by Ex. Ord. No. 12087, Oct. 7, 1978, 43 F.R. 46823, formerly set out as a note under section 5332 of Title 5. Ex. Ord. No. 12087 further provided that pursuant to the Legislative Branch Appropriation Act, 1979 [Pub. L. 95-391, title III, Sec. 304, Sept. 30, 1978, 92 Stat. 788, set out as a note under section 5318 of Title 5], funds are not available to pay a salary at a rate which exceeds the rate in effect on Sept. 30, 1978, which was \$57,500.

1977 - Salaries of circuit judges increased to \$57,500 per annum, on recommendation of the President of the United States, see note set out under section 358 of Title 2, The Congress.

1976 - Salaries of circuit judges increased to \$46,800 effective on first day of first pay period beginning on or after Oct. 1, 1976, by Ex. Ord. No. 11941, Oct. 1, 1976, 41 F.R. 43889, formerly set out as a note under section 5332 of Title 5, Government Organization and Employees. Ex. Ord. No. 11941 further provided that pursuant to Legislative Branch Appropriation Act, 1977, funds

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are not available to pay a salary at a rate which exceeds rate in effect on Sept. 30, 1976, which was \$44,600.

1975 - Salaries of circuit judges increased to \$44,600 effective on first day of first pay period beginning on or after Oct. 1, 1975, by Ex. Ord. No. 11883, Oct. 6, 1975, 40 F.R. 47091, formerly set out as a note under section 5332 of Title 5.

1969 - Salary of circuit judge increased from \$33,000 to \$42,500 per annum, commencing Feb. 14, 1969, on recommendation of President of United States, see note set out under section 358 of Title 2, The Congress.

1946 - Salaries of circuit judges increased from \$12,500 to \$17,500 a year by act July 31, 1946, ch. 704, Sec. 1, 60 Stat. 716.

1926 - Salaries of circuit judges increased from \$8,500 to \$12,500 a year by act Dec. 13, 1926, ch. 6, Sec. 1, 44 Stat. 919.

1919 - Salaries of circuit judges increased from \$7,000 to \$8,500 a year by act Feb. 25, 1919, ch. 29, Sec. 1, 40 Stat. 1156.

1911 - Salaries of circuit court judges set at \$7,000 a year by the Judicial Code of 1911, act Mar. 3, 1911, ch. 231, Sec. 1, 36 Stat. 1131.

ADDITIONAL JUDGES

Since 1925, the appointment of additional judges was authorized by the following acts:

Second circuit. Act May 31, 1938, ch. 290, Sec. 1, 52 Stat. 584.

Third circuit. Act Aug. 3, 1949, ch. 387, Sec. 1, 63 Stat. 493; act Dec. 7, 1944, ch. 521, Sec. 1, 58 Stat. 796; act June 10, 1930, ch. 438, 46 Stat. 538; act June 24, 1936, ch. 735, Sec. 1, 49 Stat. 1903, repealed by act May 31, 1938, ch. 290, Sec. 3, 52 Stat. 585.

Fifth circuit. Act Dec. 14, 1942, ch. 731, 56 Stat. 1050; act May 31, 1938, ch. 290, Sec. 1, 52 Stat. 584; act June 10, 1930, ch. 437, 46 Stat. 538.

Sixth circuit. Act May 24, 1940, ch. 209, Sec. 1, 54 Stat. 219; act May 31, 1938, ch. 290, Sec. 1, 52 Stat. 584.

Seventh circuit. Act Aug. 3, 1949, ch. 387, Sec. 1, 63 Stat. 493; act May 31, 1938, ch. 290, Sec. 1, 52 Stat. 584.

Eighth circuit. Act May 24, 1940, ch. 209, Sec. 1, 54 Stat. 219; act Mar. 3, 1925, ch. 436, 43 Stat. 1116.

Ninth circuit. Act Apr. 14, 1937, ch. 80, 50 Stat. 64; act Aug. 2, 1935, ch. 425, Sec. 1, 49 Stat. 508; act June 16, 1933, ch. 102, 48 Stat. 310 (removing limitation on filling of vacancy); act Mar. 1, 1929, ch. 413, 45 Stat. 1414.

Tenth circuit. Act Aug. 3, 1949, ch. 387, Sec. 1, 63 Stat. 493.

District of Columbia Court of Appeals. Act Aug. 3, 1949, ch. 387, Sec. 1, 63 Stat. 493; act May 31, 1938, ch. 290, Sec. 2, 52 Stat. 584; act June 19, 1930, ch. 538, 46 Stat. 785.

Act Feb. 28, 1929, ch. 363, Sec. 2, 45 Stat. 1346, 1347 provided

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that "There shall be in the sixth, seventh, and tenth circuits, respectively, four circuit judges; and in the second and eighth circuits, respectively, five circuit judges; and, in each of the other circuits three circuit judges, to be appointed by the President, by and with the advice and consent of the Senate."

Another part of section 1 of act Feb. 10, 1954, which amended subsec. (a) of this section, provided for the appointment by the President, by and with the advice and consent of the Senate, of the additional judges for the Fifth and Ninth Circuits, provided for in such amendment.

Section 1(a) of Pub. L. 87-36 provided that: "The President shall appoint, by and with the advice and consent of the Senate, three additional circuit judges for the second circuit, one additional circuit judge for the third circuit, two additional circuit judges for the fourth circuit, two additional circuit judges for the fifth circuit, one additional circuit judge for the seventh circuit, and one additional circuit judge for the tenth circuit."

Section 1(a) of Pub. L. 89-372 provided that: "The President shall appoint, by and with the advice and consent of the Senate, two additional circuit judges for the fourth circuit, two additional circuit judges for the sixth circuit, one additional circuit judge for the seventh circuit, and one additional circuit judge for the eighth circuit."

Section 1(c) of Pub. L. 89-372, as amended by Pub. L. 90-347, Sec. 2, June 18, 1968, 82 Stat. 183, provided that: "The President shall appoint, by and with the advice and consent of the Senate, four additional circuit judges for the fifth circuit." The second sentence of section 1(c) of Pub. L. 89-372 which provided that the first four vacancies occurring in the office of circuit judge in the fifth circuit shall not be filled was deleted by section 2 of Pub. L. 90-347, which also made those judgeships permanent and further provided that the present incumbents of such judgeships shall henceforth hold their offices under this section.

Section 1 of Pub. L. 90-347 provided: "That the President shall appoint, by and with the advice and consent of the Senate, one additional circuit judge for the third circuit, two additional circuit judges for the fifth circuit, one additional circuit judge for the sixth circuit, four additional circuit judges for the ninth circuit, and one additional circuit judge for the tenth circuit."

Section 3(a) of Pub. L. 95-486 provided that: "The President shall appoint, by and with the advice and consent of the Senate, one additional circuit judgeship for the first circuit, two additional circuit judgeships for the second circuit, one additional circuit judgeship for the third circuit, three additional circuit judgeships for the fourth circuit, eleven additional circuit judgeships for the fifth circuit, two additional

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circuit judgeships for the sixth circuit, one additional circuit judgeship for the seventh circuit, one additional circuit judgeship for the eighth circuit, ten additional circuit judgeships for the ninth circuit, one additional circuit judgeship for the tenth circuit, and two additional circuit judgeships for the District of Columbia."

Section 201(a) of Pub. L. 98-353 provided that:

"(1) Subject to the provisions of paragraph (2), the President shall appoint, by and with the advice and consent of the Senate, two additional circuit judges for the first circuit court of appeals, two additional circuit judges for the second circuit court of appeals, two additional circuit judges for the third circuit court of appeals, one additional circuit judge for the fourth circuit court of appeals, two additional circuit judges for the fifth circuit court of appeals, four additional circuit judges for the sixth circuit court of appeals, two additional circuit judges for the seventh circuit court of appeals, one additional circuit judge for the eighth circuit court of appeals, five additional circuit judges for the ninth circuit court of appeals, two additional circuit judges for the tenth circuit court of appeals, and one additional circuit judge for the District of Columbia circuit court of appeals.

"(2) The President shall appoint, by and with the advice and consent of the Senate, no more than 11 of such judges prior to January 21, 1985."

Section 202(a) of Pub. L. 101-650 provided that: "The President shall appoint, by and with the advice and consent of the Senate -

"(1) 2 additional circuit judges for the third circuit court of appeals;

"(2) 4 additional circuit judges for the fourth circuit court of appeals;

"(3) 1 additional circuit judge for the fifth circuit court of appeals;

"(4) 1 additional circuit judge for the sixth circuit court of appeals;

"(5) 1 additional circuit judge for the eighth circuit court of appeals; and

"(6) 2 additional circuit judges for the tenth circuit court of appeals."

-EXEC-

EXECUTIVE ORDER NO. 11972

Ex. Ord. No. 11972, Feb. 14, 1977, 42 F.R. 9659, as amended by Ex. Ord. No. 11993, May 24, 1977, 42 F.R. 27197, which related to the United States Circuit Judge Nominating Commission, was revoked

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by Ex. Ord. No. 12059, May 11, 1978, 43 F.R. 20949, formerly set out below.

EXECUTIVE ORDER NO. 12059

Ex. Ord. No. 12059, May 11, 1978, 43 F.R. 20949, as amended by Ex. Ord. No. 12097, Nov. 8, 1978, 43 F.R. 52455, which established the United States Circuit Judge Nominating Commission and provided for its membership, functions, etc., was revoked by Ex. Ord. No. 12305, May 5, 1981, 46 F.R. 25421, set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

EX. ORD. NO. 13300. FACILITATING THE ADMINISTRATION OF JUSTICE IN THE FEDERAL COURTS

Ex. Ord. No. 13300, May 9, 2003, 68 F.R. 25807, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to promote the prompt appointment of judges to the Federal courts, it is hereby ordered as follows:

Section 1. Policy. The Federal courts play a central role in the American justice system. For the Federal courts to function effectively, judicial vacancies in those courts must be filled in a timely manner with well-qualified candidates.

Sec. 2. Plan. The presidential plan announced on October 30, 2002, calls for timely consideration of judicial nominees, with the President submitting a nomination to fill a vacancy in United States courts of appeals and district courts within 180 days after the President receives notice of a vacancy or intended retirement, absent extraordinary circumstances.

Sec. 3. Responsibilities. The Counsel to the President shall take all appropriate steps to ensure that the President is in a position to make timely nominations for judicial vacancies consistent with this plan. All Federal departments and agencies shall assist, as requested and permitted by law, in the implementation of this order.

Sec. 4. Reservation of Authority. Nothing in this order shall be construed to affect the authority of the President to fill vacancies under clause 3 of section 2 of article II of the Constitution.

Sec. 5. Judicial Review. This order is intended only to improve the internal management of the Federal Government and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its departments, agencies, instrumentalities or entities, its officers or employees, or any other person.

George W. Bush.

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-FOOTNOTE-

(1) So in original. Probably should be capitalized.

-End-

-CITE-

28 USC Sec. 45

01/03/05

-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

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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.

-SOURCE-

(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.)

-MISC1-

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

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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

To look up a section, use this format: **28 USC Sec. #**

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

To look up a section, use this format: **28 USC Sec. #**

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.

-End-

-CITE-

28 USC Sec. 46

01/03/05

-EXPCITE-

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 unavailability of a judge of the court because of illness. Such panels shall sit at the times and places and hear the cases and controversies assigned as the court directs. The United States Court of Appeals for the Federal Circuit shall determine by rule a procedure for the rotation of judges from panel to panel to ensure that all of the judges sit on a representative cross section of the cases heard and, notwithstanding the first sentence of this subsection, may determine by rule the number of judges, not less

To look up a section, use this format: **28 USC Sec. #**

than three, who constitute a panel.

(c) Cases and controversies shall be heard and determined by a court or panel of not more than three judges (except that the United States Court of Appeals for the Federal Circuit may sit in panels of more than three judges if its rules so provide), unless a hearing or rehearing before the court in banc is ordered by a majority of the circuit judges of the circuit who are in regular active service. A court in banc shall consist of all circuit judges in regular active service, or such number of judges as may be prescribed in accordance with section 6 of Public Law 95-486 (92 Stat. 1633), except that any senior circuit judge of the circuit shall be eligible (1) to participate, at his election and upon designation and assignment pursuant to section 294(c) of this title and the rules of the circuit, as a member of an in banc court reviewing a decision of a panel of which such judge was a member, or (2) to continue to participate in the decision of a case or controversy that was heard or reheard by the court in banc at a time when such judge was in regular active service.

(d) A majority of the number of judges authorized to constitute a court or panel thereof, as provided in paragraph (c), shall constitute a quorum.

-SOURCE-

(June 25, 1948, ch. 646, 62 Stat. 871; Pub. L. 88-176, Sec. 1(b), Nov. 13, 1963, 77 Stat. 331; Pub. L. 95-486, Sec. 5(a), (b), Oct. 20, 1978, 92 Stat. 1633; Pub. L. 97-164, title I, Sec. 103, title II, Sec. 205, Apr. 2, 1982, 96 Stat. 25, 53; Pub. L. 104-175, Sec. 1, Aug. 6, 1996, 110 Stat. 1556.)

-MISC1-

HISTORICAL AND REVISION NOTES

Based in part on title 28, U.S.C., 1940 ed., Sec. 212 (Mar. 3, 1911, ch. 231, Sec. 117, 36 Stat. 1131).

Subsections (a)-(c) authorize the establishment of divisions of the court and provide for the assignment of circuit judges for hearings and rehearsals in banc.

The Supreme Court of the United States has ruled that, notwithstanding the three-judge provision of section 212 of title 28, U.S.C., 1940 ed., a court of appeals might lawfully consist of a greater number of judges, and that the five active circuit judges of the third circuit might sit in banc for the determination of an appeal. (See *Textile Mills Securities Corporation v. Commissioner of Internal Revenue*, 1941, 62 S.Ct. 272, 314 U.S. 326, 86 L.Ed. 249.)

The Supreme Court in upholding the unanimous view of the five

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judges as to their right to sit in banc, notwithstanding the contrary opinion in *Langs Estate v. Commissioner of Internal Revenue*, 1938, 97 F.2d 867, said in the *Textile Mills* case: "There are numerous functions of the court, as a 'court of record, with appellate jurisdiction', other than hearing and deciding appeals. Under the Judicial Code these embrace: prescribing the form of writs and other process and the form and style of its seal (28 U.S.C., Sec. 219); the making of rules and regulations (28 U.S.C., Sec. 219); the appointment of a clerk (28 U.S.C., Sec. 221) and the approval of the appointment and removal of deputy clerks (28 U.S.C., Sec. 222); and the fixing of the 'times' when court shall be held (28 U.S.C., Sec. 223). Furthermore, those various sections of the Judicial Code provide that each of these functions shall be performed by the court."

This section preserves the interpretation established by the *Textile Mills* case but provides in subsection (c) that cases shall be heard by a court of not more than three judges unless the court has provided for hearing in banc. This provision continues the tradition of a three-judge appellate court and makes the decision of a division, the decision of the court, unless rehearing in banc is ordered. It makes judges available for other assignments, and permits a rotation of judges in such manner as to give to each a maximum of time for the preparation of opinions.

Whether divisions should sit simultaneously at the same or different places in the circuit is a matter for each court to determine.

-REFTEXT-

REFERENCES IN TEXT

Section 6 of Public Law 95-486 (92 Stat. 1633), referred to in subsec. (c), is section 6 of Pub. L. 95-486, Oct. 20, 1978, 92 Stat. 1633, which is set out as an Appeals Court Administrative Units note under section 41 of this title.

-MISC2-

AMENDMENTS

1996 - Subsec. (c). Pub. L. 104-175, in last sentence, inserted "(1)" after "eligible" and ", or (2) to continue to participate in the decision of a case or controversy that was heard or reheard by the court in banc at a time when such judge was in regular active service" before period at end.

1982 - Subsec. (a). Pub. L. 97-164, Sec. 103(a), substituted "panels" for "divisions".

Subsec. (b). Pub. L. 97-164, Sec. 103(b), substituted "panels" for "divisions" wherever appearing and inserted provisions

To look up a section, use this format: **28 USC Sec. #**

requiring that at least a majority of the panels of each circuit 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 unavailability of a judge of the court because of illness, and that the United States Court of Appeals for the Federal Circuit determine by rule a procedure for the rotation of judges from panel to panel to ensure that all of the judges sit on a representative cross section of the cases heard and determine by rule the number of judges, not less than three, who constitute a panel.

Subsec. (c). Pub. L. 97-164, Secs. 103(c), 205, inserted provision that the United States Court of Appeals for the Federal Circuit may sit in panels of more than three judges if its rules so provide and that, as an alternative to the requirement that a court in banc consist of all circuit judges in regular active service, such a court may consist of such number of judges as may be prescribed in accordance with section 6 of Public Law 95-486 (92 Stat. 1633), except that any senior circuit judge of the circuit shall be eligible to participate, at his election and upon designation and assignment pursuant to section 294(c) of this title and the rules of the circuit, as a member of an in banc court reviewing a decision of a panel of which such judge was a member.

Subsec. (d). Pub. L. 97-164, Sec. 103(d), substituted "panel" for "division".

1978 - Pub. L. 95-486, Sec. 5(b), substituted "panels" for "divisions" in section catchline.

Subsec. (c). Pub. L. 95-486, Sec. 5(a), substituted "panel" for "division" and struck out provision authorizing a retired circuit judge to sit as a judge of the court in banc in the rehearing of a case if he sat in the court or division in the original hearing of such case.

1963 - Subsec. (c). Pub. L. 88-176 inserted "regular" before "active service" wherever appearing, and provided that a retired circuit judge shall be competent to sit as a judge of the court in banc, in a rehearing if he sat in at the original hearing.

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.

-End-

-CITE-

To look up a section, use this format: **28 USC Sec. #**

28 USC Sec. 47

01/03/05

-EXPCITE-

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

-HEAD-

Sec. 47. Disqualification of trial judge to hear appeal

-STATUTE-

No judge shall hear or determine an appeal from the decision of a case or issue tried by him.

-SOURCE-

(June 25, 1948, ch. 646, 62 Stat. 872.)

-MISC1-

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., Sec. 216, and District of Columbia Code, 1940 ed., Sec. 11-205 (Feb. 9, 1893, ch. 74, Sec. 6, 27 Stat. 435; July 30, 1894, ch. 172, Sec. 2, 28 Stat. 161; Mar. 3, 1901, ch. 854, Sec. 225, 31 Stat. 1225; Mar. 3, 1911, ch. 231, Sec. 120, 36 Stat. 1132).

The provision in section 11-205 of the District of Columbia Code, 1940 ed., that a justice of the district court while on the bench of the Court of Appeals in the District of Columbia shall not sit in review of judgment, order, or decree rendered by him below, was consolidated with a similar provision of section 216 of title 28, U.S.C., 1940 ed. The consolidation simplifies the language without change of substance.

References in said section 11-205 to the power to prescribe rules, requisites of record on appeal, forms of bills of exception, and procedure on appeal, were omitted as covered by Rules 73, 75, 76, of the Federal Rules of Civil Procedure and by Rule 51 of the Federal Rules of Criminal Procedure.

Said section 11-205 contained a provision that on a divided opinion by the Court of Appeals for the District of Columbia the decision of the lower court should stand affirmed. This was omitted as unnecessary as merely expressing a well-established rule of law.

Other provisions of said section 11-205 are incorporated in section 48 of this title.

The provision of section 216 of title 28, U.S.C., 1940 ed., with respect to the competency of justices and judges to sit, was omitted as covered by section 43 of this title.

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Specific reference in said section 216 to the Chief Justice of the United States was likewise omitted inasmuch as he sits as a circuit justice.

The provision of said section 216 with respect to assignment of district judges was omitted as covered by section 291 et seq. of this title.

Provision of said section 216 relating to presiding judge was omitted as covered by section 44 of this title.

-End-

-CITE-

28 USC Sec. 48

01/03/05

-EXPCITE-

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

-HEAD-

Sec. 48. Terms of court

-STATUTE-

(a) The courts of appeals shall hold regular sessions at the places listed below, and at such other places within the respective circuit as each court may designate by rule.

Circuits	Places

District of Columbia	Washington.
First	Boston.
Second	New York.
Third	Philadelphia.
Fourth	Richmond, Asheville.
Fifth	New Orleans, Fort Worth, Jackson.
Sixth	Cincinnati.
Seventh	Chicago.
Eighth	St. Louis, Kansas City, Omaha, St. Paul.
Ninth	San Francisco, Los Angeles, Portland, Seattle.
Tenth	Denver, Wichita, Oklahoma City.
Eleventh	Atlanta, Jacksonville, Montgomery.
Federal	District of Columbia, and in any other

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place listed above as the court by rule directs.

(b) Each court of appeals may hold special sessions at any place within its circuit as the nature of the business may require, and upon such notice as the court orders. The court may transact any business at a special session which it might transact at a regular session.

(c) Any court of appeals may pretermitt any regular session of court at any place for insufficient business or other good cause.

(d) The times and places of the sessions of the Court of Appeals for the Federal Circuit shall be prescribed with a view to securing reasonable opportunity to citizens to appear before the court with as little inconvenience and expense to citizens as is practicable.

-SOURCE-

(June 25, 1948, ch. 646, 62 Stat. 872; Oct. 31, 1951, ch. 655, Sec. 36, 65 Stat. 723; Pub. L. 96-452, Sec. 4, Oct. 14, 1980, 94 Stat. 1994; Pub. L. 97-164, title I, Sec. 104, Apr. 2, 1982, 96 Stat. 26; Pub. L. 102-572, title V, Sec. 501, Oct. 29, 1992, 106 Stat. 4512.)

-MISC1-

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., Sec. 223 and Sec. 11-205 District of Columbia Code, 1940 ed. (Feb. 9, 1893, ch. 74, Sec. 6, 27 Stat. 435; July 30, 1894, ch. 172, Sec. 2, 28 Stat. 161; Mar. 3, 1901, ch. 854, Sec. 225, 31 Stat. 1225; Mar. 3, 1911, ch. 231, Sec. 126, 36 Stat. 1132; July 17, 1916, ch. 246, 39 Stat. 385; Jan. 8, 1925, ch. 57, 43 Stat. 729; July 3, 1926, ch. 735, 44 Stat. 809; Feb. 28, 1929, ch. 363, Sec. 3, 45 Stat. 1347; May 17, 1932, ch. 190, 47 Stat. 158).

This section consolidates section 223 of title 28, U.S.C., 1940 ed., with part of section 11-205 of the District of Columbia Code.

Reference to San Juan as a place for holding court in the First Circuit was omitted. The revised section will permit the holding of terms at San Juan when the public interest requires.

The phrase "and at such other places within the respective circuits as may be designated by rule of court" was added to enable each court of appeals to hold such additional regular terms as changing circumstances might require.

The provisions of such section 223, for furnishing suitable rooms and accommodation at Oakland City, were omitted as obsolete since the erection of a new Federal building there.

The provisions as to fixed times for holding court in the Fifth

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Circuit was omitted as inconsistent with the practice in the other circuits. Words "San Francisco, Los Angeles, Portland, Seattle" were substituted for "San Francisco and two other places designated by the court" to conform with the practice in the Ninth Circuit. Changes were made in phraseology.

SENATE REVISION AMENDMENT

By Senate amendment, Jacksonville (Fla.) was added as a place for holding a regular session of the Court of Appeals for the Fifth Circuit. See 80th Congress Senate Report No. 1559.

AMENDMENTS

1992 - Subsec. (c). Pub. L. 102-572 struck out ", with the consent of the Judicial Conference of the United States," after "pretermite".

1982 - Subsec. (a). Pub. L. 97-164, Sec. 104(a), (b), designated introductory provisions and table of circuits as subsec. (a) and substituted provisions directing the courts of appeals to hold regular sessions at the places listed in the table and at such other places within the circuits as each court might designate by rule, for provisions which directed that terms or sessions of courts of appeals be held annually at the places listed in the table and at such other places as the courts might designate by rule and authorized each court of appeals to hold special terms at any place within its circuit, and added to the table an item for the Federal circuit, with sessions to be held in the District of Columbia and in any other place listed elsewhere in the table as the Federal circuit court might by rule direct.

Subsec. (b). Pub. L. 97-164, Sec. 104(c), added subsec. (b).

Subsec. (c). Pub. L. 97-164, Sec. 104(c), designated existing provisions following table of circuits as subsec. (c) and substituted "regular session" for "regular term or session".

Subsec. (d). Pub. L. 97-164, Sec. 104(c), added subsec. (d).

1980 - Pub. L. 96-452 substituted "New Orleans, Fort Worth, Jackson" for "New Orleans, Atlanta, Fort Worth, Jacksonville, Montgomery" in item relating to fifth circuit, and added item relating to eleventh circuit.

1951 - Act Oct. 31, 1951, inserted last par.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-572 effective Jan. 1, 1993, see section 1101(a) of Pub. L. 102-572, set out as a note under section 905 of Title 2, The Congress.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-164 effective Oct. 1, 1982, see section

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402 of Pub. L. 97-164, set out as a note under section 171 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-452 effective Oct. 1, 1981, see section 12 of Pub. L. 96-452, set out as a note under section 41 of this title.

SURVEY OF JUDICIAL BUSINESS IN ALASKA

Section 23(a) of Pub. L. 86-70, June 25, 1959, 73 Stat. 147, provided that: "The Judicial Conference of the United States, with the assistance of the Administrative Office of the United States Courts, shall conduct a study, including a field survey, of the Federal judicial business arising in the State of Alaska with a view toward directing the United States Court of Appeals for the Ninth Circuit to hold such terms of court in Anchorage or such other Alaskan cities as may be necessary for the prompt and efficient administration of justice."

-End-

-CITE-

28 USC Sec. 49

01/03/05

-EXPCITE-

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

-HEAD-

Sec. 49. Assignment of judges to division to appoint independent counsels

-STATUTE-

(a) Beginning with the two-year period commencing on the date of the enactment of this section, three judges or justices shall be assigned for each successive two-year period to a division of the United States Court of Appeals for the District of Columbia to be the division of the court for the purpose of appointing independent counsels. The Clerk of the United States Court of Appeals for the District of Columbia Circuit shall serve as the clerk of such division of the court and shall provide such services as are needed by such division of the court.

(b) Except as provided under subsection (f) of this section,

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assignment to such division of the court shall not be a bar to other judicial assignments during the term of such division.

(c) In assigning judges or justices to sit on such division of the court, priority shall be given to senior circuit judges and retired justices.

(d) The Chief Justice of the United States shall designate and assign three circuit court judges or justices, one of whom shall be a judge of the United States Court of Appeals for the District of Columbia, to such division of the court. Not more than one judge or justice or senior or retired judge or justice may be named to such division from a particular court.

(e) Any vacancy in such division of the court shall be filled only for the remainder of the two-year period in which such vacancy occurs and in the same manner as initial assignments to such division were made.

(f) Except as otherwise provided in chapter 40 of this title, no member of such division of the court who participated in a function conferred on the division under chapter 40 of this title involving an independent counsel shall be eligible to participate in any judicial proceeding concerning a matter which involves such independent counsel while such independent counsel is serving in that office or which involves the exercise of such independent counsel's official duties, regardless of whether such independent counsel is still serving in that office.

-SOURCE-

(Added Pub. L. 95-521, title VI, Sec. 602(a), Oct. 26, 1978, 92 Stat. 1873; amended Pub. L. 97-409, Sec. 2(b)(1), Jan. 3, 1983, 96 Stat. 2039; Pub. L. 99-554, title I, Sec. 144(g)(3), Oct. 27, 1986, 100 Stat. 3097; Pub. L. 100-191, Secs. 4, 5(a), Dec. 15, 1987, 101 Stat. 1307.)

-REFTEXT-

REFERENCES IN TEXT

The date of enactment of this section, referred to in subsec. (a), is Oct. 26, 1978.

-MISC1-

AMENDMENTS

1987 - Subsec. (a). Pub. L. 100-191, Sec. 4, inserted at end:
"The Clerk of the United States Court of Appeals for the District of Columbia Circuit shall serve as the clerk of such division of the court and shall provide such services as are needed by such division of the court."

Subsec. (f). Pub. L. 100-191, Sec. 5(a), substituted "involving

To look up a section, use this format: **28 USC Sec. #**

an independent counsel" for "involving a independent counsel".

1986 - Subsec. (f). Pub. L. 99-554 substituted "chapter 40" for "chapter 39" in two places.

1983 - Pub. L. 97-409, Sec. 2(b)(1)(B), substituted "independent counsels" for "special prosecutors" in section catchline.

Subsec. (a). Pub. L. 97-409, Sec. 2(b)(1)(B), substituted "independent counsels" for "special prosecutors".

Subsec. (f). Pub. L. 97-409, Sec. 2(b)(1)(A), (C), substituted "independent counsel" for "special prosecutor" wherever appearing and "independent counsel's" for "special prosecutor's".

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-554 effective 30 days after Oct. 27, 1986, see section 302(a) of Pub. L. 99-554, set out as a note under section 581 of this title.

EFFECTIVE DATE

Section effective Oct. 26, 1978, see section 604 of Pub. L. 95-521, set out as a note under section 591 of this title.

-End-