

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.”

APPEALS COURT ADMINISTRATIVE UNITS

Pub. L. 95-486, § 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, § 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.

§ 42. Allotment of Supreme Court justices to circuits

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.

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

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 215 (Mar. 3, 1911, ch. 231, § 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.

§ 43. Creation and composition of courts

(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.

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

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 212 (Mar. 3, 1911, ch. 231, § 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.)