

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

Pub. L. 96-452, §11, Oct. 14, 1980, 94 Stat. 1996, 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 struc-

ture 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

Act June 25, 1948, ch. 646, §2(b), 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.)

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 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 OF NAME OF COURT

Act June 25, 1948, ch. 646, §2(b), 62 Stat. 985, 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.

**§ 44. Appointment, tenure, residence and salary of circuit judges**

(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 .....	11
First .....	6
Second .....	13
Third .....	14
Fourth .....	15
Fifth .....	17
Sixth .....	16
Seventh .....	11
Eighth .....	11
Ninth .....	29
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<sup>1</sup> in that circuit.

<sup>1</sup> So in original. Probably should be capitalized.

(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.

(June 25, 1948, ch. 646, 62 Stat. 871; Aug. 3, 1949, ch. 387, §1, 63 Stat. 493; Feb. 10, 1954, ch. 6, §1, 68 Stat. 8; Mar. 2, 1955, ch. 9, §1(b), 69 Stat. 10; Pub. L. 87-36, §1(b), May 19, 1961, 75 Stat. 80; Pub. L. 88-426, title IV, §403(b), Aug. 14, 1964, 78 Stat. 434; Pub. L. 89-372, §1(b), Mar. 18, 1966, 80 Stat. 75; Pub. L. 90-347, §3, June 18, 1968, 82 Stat. 184; Pub. L. 94-82, title II, §205(b)(2), Aug. 9, 1975, 89 Stat. 422; Pub. L. 95-486, §3(b), Oct. 20, 1978, 92 Stat. 1632; Pub. L. 96-452, §3, Oct. 14, 1980, 94 Stat. 1994; Pub. L. 97-164, title I, §102, Apr. 2, 1982, 96 Stat. 25; Pub. L. 98-353, title II, §201(b), July 10, 1984, 98 Stat. 346; Pub. L. 101-650, title II, §202(b), Dec. 1, 1990, 104 Stat. 5099; Pub. L. 102-198, §10(c), Dec. 9, 1991, 105 Stat. 1626; Pub. L. 105-119, title III, §307, Nov. 26, 1997, 111 Stat. 2493; Pub. L. 110-177, title V, §509(a), Jan. 7, 2008, 121 Stat. 2543.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §213, and sections 11-201, 11-202, District of Columbia Code, 1940 ed. (Feb. 9, 1893, ch. 74, §1, 27 Stat. 434; Mar. 3, 1901, ch. 854, §§221, 222, 31 Stat. 1224; Mar. 3, 1911, ch. 231, §118, 36 Stat. 1131; Jan. 13, 1912, ch. 9, 37 Stat. 52; Feb. 25, 1919, ch. 29, §2, 40 Stat. 1156; Sept. 14, 1922, ch. 306, §6, 42 Stat. 840; Mar. 3, 1925, ch. 437, 43 Stat. 1116; Dec. 13, 1926, ch. 6, §1, 44 Stat. 919; Feb. 28, 1929, ch. 363, §2, 45 Stat. 1347; Mar. 1, 1929, ch. 413, §§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, §1, 49 Stat. 508; June 24, 1936, ch. 735, §1, 49 Stat. 1903; Apr. 14, 1937, ch. 80, 50 Stat. 64; May 31, 1938, ch. 290, §§1, 3, 52 Stat. 584, 585; May 24, 1940, ch. 209, §1, 54 Stat. 219; Dec. 14, 1942, ch. 731, 56 Stat. 1050; Dec. 7, 1944, ch. 521, §1, 58 Stat. 796; July 31, 1946, ch. 704, §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, §4, and R.S. §608, enacted June 22, 1874. R.S. §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, §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 '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