

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

Circuits	Number of Judges
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 state¹ 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.

(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."

¹ So in original. Probably should be capitalized.