

CHAPTER 13—ASSIGNMENT OF JUDGES TO OTHER COURTS

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291.	Circuit judges.
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AMENDMENTS

1988—Pub. L. 100-702, title X, §1022(2), Nov. 19, 1988, 102 Stat. 4673, added item 297.

1982—Pub. L. 97-164, title I, §110(c), Apr. 2, 1982, 96 Stat. 29, substituted “the Court of International Trade” for “other courts” in item 293.

1958—Pub. L. 85-755, §8, Aug. 25, 1958, 72 Stat. 850, substituted “Judges of other courts” for “Circuit or district judges to Court of Customs and Patent Appeals” in item 293.

§ 291. Circuit judges

(a) The Chief Justice of the United States may, in the public interest, designate and assign temporarily any circuit judge to act as circuit judge in another circuit upon request by the chief judge or circuit justice of such circuit.

(b) The chief judge of a circuit or the circuit justice may, in the public interest, designate and assign temporarily any circuit judge within the circuit, including a judge designated and assigned to temporary duty therein, to hold a district court in any district within the circuit.

(June 25, 1948, ch. 646, 62 Stat. 900; July 28, 1953, ch. 253, §2, 67 Stat. 226; Sept. 3, 1954, ch. 1263, §39(b), 68 Stat. 1240; July 9, 1956, ch. 517, §1(a), 70 Stat. 497; Pub. L. 85-755, §2, Aug. 25, 1958, 72 Stat. 848; Pub. L. 95-598, title II, §202, Nov. 6, 1978, 92 Stat. 2660; Pub. L. 97-164, title I, §108, Apr. 2, 1982, 96 Stat. 28; Pub. L. 102-572, title I, §104, Oct. 29, 1992, 106 Stat. 4507.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§17, 22 (Mar. 3, 1911, ch. 231, §§13, 18, 36 Stat. 1089; Oct. 3, 1913, ch. 18, 38 Stat. 203; Sept. 14, 1922, ch. 306, §§3, 5, 42 Stat. 839; Mar. 2, 1929, ch. 488, §1, 45 Stat. 1475; June 7, 1934, ch. 426, 48 Stat. 926; June 25, 1936, ch. 804, 49 Stat. 1921; Aug. 24, 1937, ch. 754, §4, 50 Stat. 753; Dec. 29, 1942, ch. 835, §1, 56 Stat. 1094).

Section consolidates all provisions of sections 17 and 22 of title 28, U.S.C., 1940 ed., relating to designation and assignment of circuit judges.

The revised section omits a reference to the Chief Justice contained in said section 22, since in exercising the powers under subsection (b), he acts as a circuit justice.

Paragraph (d) of said section 17, making the section applicable to the United States Court of Appeals for the District of Columbia, is omitted since such court is included in this revision because the District of Columbia is made a separate circuit. (See section 41 of this title.)

Provisions of said sections 17 and 22 authorizing the senior Associate Justice to act in the absence of the Chief Justice of the United States were omitted as surplusage in view of specific authority to so act in section 3 of this title.

The words in said section 17 “for such time as the business of such district court may require,” were

¹Section catchline amended by Pub. L. 85-755 without corresponding amendment of analysis.

omitted as inconsistent with the language of said section 22 of title 28, U.S.C., 1940 ed., which employed the words “the public interest requires” and “from time to time and until he shall otherwise direct.” The revised section and sections 294 and 296 of this title make clear the power to make designation and assignment without any limitation of time, to revoke such designation and assignment and to make, from time to time, new designations and assignments.

The term “chief judge” of the circuit was substituted for “senior circuit judge.” (See reviser’s note under section 136 of this title.)

References in said sections 17 and 22 to retired judges were omitted as covered by section 294 of this title.

Other provisions of said section 17 of title 28, U.S.C., 1940 ed., are incorporated in sections 292, 295 and 296 of this title.

Other provisions of said section 22 of title 28, U.S.C., 1940 ed., are incorporated in section 296 of this title.

Changes were made in phraseology and arrangement.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102-572 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “The Chief Justice of the United States may designate and assign temporarily any circuit judge to act as circuit judge in another circuit upon presentation of a certificate of necessity by the chief judge or circuit justice of the circuit where the need arises.”

1982—Subsecs. (b), (c). Pub. L. 97-164 redesignated subsec. (c) as (b). Former subsec. (b), which authorized the Chief Justice of the United States to designate and temporarily assign any circuit judge to serve as a judge of the Court of Claims or the Court of Customs and Patent Appeals upon presentation to him of a certificate of necessity by the chief judge of the court in which the need arose, was struck out.

1978—Subsec. (c). Pub. L. 95-598 directed the amendment of subsec. (c) by inserting “or bankruptcy” after “to hold a district”, which amendment did not become effective pursuant to section 402(b) of Pub. L. 95-598, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

1958—Subsec. (a). Pub. L. 85-755 struck out provision for assignment of any judge of the Court of Claims to serve as circuit judge in any circuit. See section 293(a) of this title.

Subsec. (b). Pub. L. 85-755 redesignated subsec. (c) as (b) and incorporated in it provision for assignment of circuit judges to Court of Customs and Patent Appeals formerly contained in section 293 of this title. Former subsec. (b), which provided for assignment of judges of the Court of Customs and Patent Appeals to serve as judges of the Court of Appeals or the District Court for the District of Columbia, was struck out. See section 293(a) of this title.

Subsecs. (c), (d). Pub. L. 85-755 redesignated subsec. (d) as (c). Former subsec. (c) redesignated (b).

1956—Subsec. (a). Act July 9, 1956, inserted “or any judge of the Court of Claims to serve as a circuit judge in any circuit”.

1954—Subsec. (c). Act Sept. 3, 1954, struck out “United States” from name of Court of Claims.

1953—Subsecs. (c), (d). Act July 28, 1953, added subsec. (c) and redesignated former subsec. (c) as (d).

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

JURISDICTION OF UNITED STATES COURT OF CUSTOMS AND PATENT APPEALS

Pub. L. 85-755, §7, Aug. 25, 1958, 72 Stat. 850, provided that: “Nothing contained in this Act [amending this

section and sections 211 and 292 to 295 of this title] shall be construed in any way to limit or alter the jurisdiction heretofore conferred upon the United States Court of Customs and Patent Appeals [now United States Court of Appeals for the Federal Circuit] by any provision of law.”

§ 292. District judges

(a) The chief judge of a circuit may designate and assign one or more district judges within the circuit to sit upon the court of appeals or a division thereof whenever the business of that court so requires. Such designations or assignments shall be in conformity with the rules or orders of the court of appeals of the circuit.

(b) The chief judge of a circuit may, in the public interest, designate and assign temporarily any district judge of the circuit to hold a district court in any district within the circuit.

(c) The chief judge of the United States Court of Appeals for the District of Columbia Circuit may, upon presentation of a certificate of necessity by the chief judge of the Superior Court of the District of Columbia pursuant to section 11-908(c) of the District of Columbia Code, designate and assign temporarily any district judge of the circuit to serve as a judge of such Superior Court, if such assignment (1) is approved by the Attorney General of the United States following a determination by him to the effect that such assignment is necessary to meet the ends of justice, and (2) is approved by the chief judge of the United States District Court for the District of Columbia.

(d) The Chief Justice of the United States may designate and assign temporarily a district judge of one circuit for service in another circuit, either in a district court or court of appeals, upon presentation of a certificate of necessity by the chief judge or circuit justice of the circuit wherein the need arises.

(e) The Chief Justice of the United States may designate and assign temporarily any district judge to serve as a judge of the Court of International Trade upon presentation to him of a certificate of necessity by the chief judge of the court.

(June 25, 1948, ch. 646, 62 Stat. 901; July 28, 1953, ch. 253, § 3, 67 Stat. 226; Sept. 3, 1954, ch. 1263, § 39(c), 68 Stat. 1240; July 9, 1956, ch. 517, § 1(b), 70 Stat. 497; July 14, 1956, ch. 589, § 2, 70 Stat. 532; Pub. L. 85-755, § 3, Aug. 25, 1958, 72 Stat. 848; Pub. L. 91-358, title I, § 172(e), July 29, 1970, 84 Stat. 591; Pub. L. 95-598, title II, §§ 203, 204, Nov. 6, 1978, 92 Stat. 2660; Pub. L. 96-417, title V, § 501(7), Oct. 10, 1980, 94 Stat. 1742; Pub. L. 97-164, title I, § 109, Apr. 2, 1982, 96 Stat. 28.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 17, 21 and 216 (Mar. 3, 1911, ch. 231, §§ 13, 17, 120, 36 Stat. 1089, 1132; Sept. 14, 1922, ch. 306, § 3, 42 Stat. 839; Aug. 24, 1937, ch. 754, § 4, 50 Stat. 753; Dec. 29, 1942, ch. 835, § 1, 56 Stat. 1094).

Section consolidates and simplifies all provisions of sections 17, 21 and 216 of title 28, U.S.C., 1940 ed., relating to designation and assignment of district judges.

Term “chief judge” was substituted for “senior circuit judge.” (See Reviser’s Note under section 136 of this title.)

Sections 17 and 21 of title 28, U.S.C., 1940 ed., were inconsistent insofar as the words “or in his absence, the

circuit judges thereof,” appearing in said section 17 were not in section 21, and the words “senior circuit judge then present in the circuit,” appearing in section 21 were not in section 17. The revised section omits all such words and leaves designation of assignment to the chief judge of the circuit. If the chief judge is unable to perform his duties they devolve, under section 45 of this title, upon the circuit judge next in seniority of commission.

The provision of said section 17, that designation of a district judge to another circuit should be from an adjacent circuit if practicable, was omitted as an unnecessary restriction on the discretion of the Chief Justice.

Section 19 of title 28, U.S.C., 1940 ed., is omitted as unnecessary. It authorized the Chief Justice of the United States to designate and assign any district judge to a district upon receiving a certificate from the clerk of the district that all circuit judges and the circuit justice were absent from the circuit, or were unable to appoint a substitute judge for the district, or where the district judge actually designated was disabled or neglected to hold court.

For omission of reference in said section 17 to senior Associate Justice, see reviser’s note under section 291 of this title.

Reference in said section 17 to retired judges were omitted as covered by section 294 of this title.

Other provisions of said section 17 of title 28, U.S.C., 1940 ed., are incorporated in sections 291, 295, and 296 of this title. Other provisions of said section 216 of such title are incorporated in sections 45 and 47 of this title.

Words “either in a district court or court of appeals” were inserted in subsection (c) as suggested by Hon. Learned Hand, Senior Circuit Judge of the Second Circuit. The revised section permits a district judge to be assigned directly to the circuit court of appeals of another circuit. Under existing law it has been assumed that he must be assigned to serve as a district judge on the other circuit and then designated to serve on the circuit court of appeals by that court in which his services are required.

Many changes were made in phraseology.

AMENDMENTS

1982—Subsec. (e). Pub. L. 97-164 struck out “the Court of Claims, the Court of Customs and Patent Appeals or” after “to serve as a judge of” and “in which the need arises” after “chief judge of the court”.

1980—Subsec. (e). Pub. L. 96-417 redesignated the Customs Court as the Court of International Trade.

1978—Subsecs. (b), (d). Pub. L. 95-598 directed the amendment of subsec. (b) by substituting “to hold a district court or a bankruptcy court” for “to hold a district court” and the amendment of subsec. (d) by substituting “in a bankruptcy court, district court, or court of appeals” for “either in a district court or court of appeals”, which amendments did not become effective pursuant to section 402(b) of Pub. L. 95-598, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

1970—Subsecs. (c) to (e). Pub. L. 91-358 added subsec. (c) and redesignated former subsecs. (c) and (d) as (d) and (e), respectively.

1958—Subsecs. (a) to (c). Pub. L. 85-755 reenacted subsecs. (a) to (c) without change.

Subsec. (d). Pub. L. 85-755 incorporated provisions for assignment of district judges to the Court of Customs and Patent Appeals and the Customs Court, formerly contained in section 293 of this title and subsec. (f) of this section.

Subsec. (e). Pub. L. 85-755 struck out subsec. (e) which provided for assignment of judges of the Court of Claims to district courts. See section 293(a) of this title.

Subsec. (f). Pub. L. 85-755 struck out subsec. (f) which provided for assignment of district judges to the Customs Court. See subsec. (d) of this section.

1956—Subsec. (e). Act July 9, 1956, added subsec. (e).

Subsec. (f). Act July 14, 1956, added subsec. (f).