

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.

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.

AMENDMENTS

1996—Subsec. (c). Pub. L. 104-175, in last sentence, inserted “(1)” after “eligible” and “, (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, §103(a), substituted “panels” for “divisions”.

Subsec. (b). Pub. L. 97-164, §103(b), substituted “panels” for “divisions” wherever appearing and inserted provisions 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, §§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, §103(d), substituted “panel” for “division”.

1978—Pub. L. 95-486, §5(b), substituted “panels” for “divisions” in section catchline.

Subsec. (c). Pub. L. 95-486, §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.

§ 47. Disqualification of trial judge to hear appeal

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

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

HISTORICAL AND REVISION NOTES

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

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.

§ 48. Terms of court

(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 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