

§ 5. Salaries of justices.

The Chief Justice shall receive a salary of \$35,500 a year, and each associate justice shall receive a salary of \$35,000 a year. (June 25, 1948, ch. 646, 62 Stat. 870; Mar. 2, 1955, ch. 9, § 1 (a), 69 Stat. 9.)

LEGISLATIVE HISTORY

Reviser's Note.—Based on title 28, U. S. C., 1940 ed., § 324 (Mar. 3, 1911, ch. 231, § 218, 36 Stat. 1152; Dec. 13, 1928, ch. 6, § 1, 44 Stat. 919; July 31, 1946, ch. 704, § 1, 60 Stat. 716).

The provision "to be paid monthly" was omitted since the time of payment of salaries is a matter of administrative convenience. (See 20 Comp. Gen. 834.)

Minor changes in phraseology were made.

AMENDMENTS

1955—Act Mar. 2, 1955, amended section by increasing the salary of the Chief Justice from \$25,500 to \$35,500 and the salaries of the Associate Justices from \$25,000 to \$35,000 a year.

EFFECTIVE DATE OF 1955 AMENDMENT

Amendment to this section by act Mar. 2, 1955, as effective Mar. 1, 1955, see note under section 31 of Title 2, The Congress.

INCREASE OF SALARIES

Prior to June 25, 1948, salaries of justices were increased as follows:

The salary of the Chief Justice was increased from \$20,500 to \$25,500 a year, and the salaries of the associate justices were increased from \$20,000 to \$25,000 a year, by act July 31, 1946, ch. 704, § 1, 60 Stat. 716.

The salary of the Chief Justice was increased from \$15,000 to \$20,500 a year, and the salaries of the associate justices were increased from \$14,500 to \$20,000 a year, by act Dec. 13, 1928, ch. 6, § 1, 44 Stat. 919.

The salary of the Chief Justice was set at \$15,000 a year and the salaries of the associate justices were set at \$14,500 a year by the Judicial Code of 1911, act Mar. 3, 1911, ch. 231, § 1, 36 Stat. 1152.

CROSS REFERENCES

Compensation not to be diminished during continuance in office, see U. S. Const. Art. 3, § 1.

Payment of salaries by marshal of Supreme Court, see section 672 of this title.

Retirement of Justices, see sections 371 et seq. of this title.

Traveling and subsistence expenses of Justices, payment of, see section 458 of this title.

§ 6. Records of former court of appeals.

The records and proceedings of the court of appeals, appointed previous to the adoption of the Constitution, shall be kept until deposited with the National Archives of the United States in the office of the clerk of the Supreme Court, who shall furnish copies thereof to any person requiring and paying for them, in the manner provided by law for giving copies of the records and proceedings of the Supreme Court. Such copies shall have the same faith and credit as proceedings of the Supreme Court. (June 25, 1948, ch. 646, 62 Stat. 870; Oct. 25, 1951, ch. 562, § 4 (7), 65 Stat. 440.)

LEGISLATIVE HISTORY

Reviser's Note.—Based on title 28, U. S. C., 1940 ed., § 329 (Mar. 3, 1911, ch. 231, § 222, 36 Stat. 1153).

In a letter dated August 8, 1944, the clerk of the Supreme Court advised that many of the early records mentioned in this section were destroyed by fire. Others are on file in the Clerk's office.

Minor changes in phraseology were made.

AMENDMENTS

1951—Act Oct. 25, 1951, inserted "until deposited with the National Archives of the United States" in first sentence.

CROSS REFERENCES

Management and disposition of records, see chapters 10 and 11 of Title 44, Public Printing and Documents.

Chapter 3.—COURTS OF APPEALS

Sec.

41. Number and composition of circuits.

42. Allotment of Supreme Court justices to circuits.

43. Creation and composition of courts.

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

45. Chief judges; precedence of judges.

46. Assignment of judges; divisions; hearings; quorum.

47. Disqualification of trial judge to hear appeal.

48. Terms of court.

CROSS REFERENCES

Jurisdiction of courts of appeals, see sections 1291 et seq. of this title.

§ 41. Number and composition of circuits.

The eleven judicial circuits of the United States are constituted as follows:

Circuits	Composition
District of Columbia..	District of Columbia.
First.....	Maine, Massachusetts, New Hampshire, Puerto Rico, Rhode Island.
Second.....	Connecticut, New York, Vermont.
Third.....	Delaware, New Jersey, Pennsylvania, Virgin Islands.
Fourth.....	Maryland, North Carolina, South Carolina, Virginia, West Virginia.
Fifth.....	Alabama, Canal Zone, Florida, Georgia, Louisiana, Mississippi, Texas.
Sixth.....	Kentucky, Michigan, Ohio, Tennessee.
Seventh.....	Illinois, Indiana, Wisconsin.
Eighth.....	Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, South Dakota.
Ninth.....	Alaska, Arizona, California, Idaho, Montana, Nevada, Oregon, Washington, Guam, Hawaii.
Tenth.....	Colorado, Kansas, New Mexico, Oklahoma, Utah, Wyoming.

(June 25, 1948, ch. 646, 62 Stat. 870; Oct. 31, 1951, ch. 655, § 34, 65 Stat. 723.)

LEGISLATIVE HISTORY

Reviser's Note.—Based on title 28, U. S. C. 1940 ed., § 211, and section 864 of title 48, U. S. C., 1940 ed., Territories and Insular Possessions (Apr. 12, 1900, ch. 191, § 35, 31 Stat. 85; Mar. 3, 1911, ch. 231, § 116, 36 Stat. 1131; Jan. 28, 1915, ch. 22, §§ 1, 2, 38 Stat. 803; Mar. 2, 1917, ch. 145, § 42, 39 Stat. 966; Feb. 13, 1925, ch. 229, §§ 1, 13, 43 Stat. 936, 942; Jan. 31, 1928, ch. 14, § 1, 45 Stat. 54; Feb. 28, 1929, ch. 363, § 1, 45 Stat. 1346; May 17, 1932, ch. 190, 47 Stat. 158).

Form of section was simplified.

The District of Columbia was added as a separate circuit. This is in accord with the decision of the Supreme Court of the United States which held the Court of Appeals for the District of Columbia to be a circuit court of appeals within the Transfer Act of Sept. 14, 1922, ch. 305, 42 Stat. 837, incorporated in the Judicial Code as § 238 (a), but repealed by act Feb. 13, 1925, ch. 229, § 13, 43 Stat. 942. (See Swift and Co. v. U. S., 1928, 48 S. Ct. 311, 276 U. S. 311, 72 L. Ed. 587.)

In recognizing the District of Columbia as a separate circuit, the Supreme Court recently used this language: " * * * the eleven circuits forming the single fed-

eral judicature * * *. *Comm'r. v. Bedford's Estate*, 65 S. Ct. 1157, at page 1160, 325 U. S. 283, 89 L. Ed. 611.

See section 17 of title 28, U. S. C., 1940 ed., providing, "For the purposes of sections 17—23 of this title, the District of Columbia shall be deemed to be a judicial circuit * * *," and act Dec. 23, 1944, ch. 724, 58 Stat. 925, which amended section 215 of title 28, U. S. C., 1940 ed., incorporated in section 42 of this title. Such amendment provided that for the purposes of said section 215 "the District of Columbia shall be deemed to be a judicial circuit."

Many other acts of Congress have recognized the District of Columbia as a separate circuit. (See the following acts: Aug. 24, 1937, ch. 754, 50 Stat. 751; Feb. 11, 1938, ch. 25, 52 Stat. 28; Aug. 5, 1939, ch. 493, 53 Stat. 1204; Aug. 7, 1939, ch. 501, 53 Stat. 1223; Dec. 29, 1942, ch. 835, 56 Stat. 1094; May 11, 1944, ch. 192, 53 Stat. 218; Dec. 23, 1944, ch. 724, 58 Stat. 925.)

See also the following acts recognizing the Court of Appeals for the District of Columbia as a circuit court of appeals: Aug. 15, 1921, ch. 64, 42 Stat. 162; July 5, 1935, ch. 372, 49 Stat. 454; Aug. 24, 1937, ch. 754, 50 Stat. 751; Apr. 6, 1942, ch. 210, 56 Stat. 198; May 9, 1942, ch. 295, 56 Stat. 271. See also Rule 81 (d) Federal Rules of Civil Procedure.

In the following cases the Supreme Court of the United States has recognized the status of the Court of Appeals of the District of Columbia as a permanent establishment within the federal judicial system: *O'Donoghue v. United States*, 1933, 53 S. Ct. 740, 289 U. S. 516, 77 L. Ed. 1356; *Federal Trade Commission v. Kleener*, 1927, 47 S. Ct. 557, 274 U. S. 145, 71 L. Ed. 972; *Claiborne-Annapolis Ferry v. United States*, 1932, 52 S. Ct. 440, 285 U. S. 382, 76 L. Ed. 803; *United States v. California Canneries*, 1929, 49 S. Ct. 423, 279 U. S. 553, 73 L. Ed. 838.

Alaska, Canal Zone, and Virgin Islands were added to the 9th, 5th, and 3rd Circuits, respectively, to conform to section 1294 of this title.

Some of the provisions of section 864 of title 48, U. S. C., 1940 ed., have been retained in said title. For those which were incorporated in other sections of this revised title, see Distribution Table.

AMENDMENTS

1951—Act Oct. 31, 1951, amended section by inserting a reference to Guam in that part relating to composition of the Ninth judicial circuit.

CONTINUATION OF ORGANIZATION OF COURT

Section 2 (b) of act June 25, 1948, ch. 646, 62 Stat. 869, 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.

PUERTO RICO

The name of the island of "Porto Rico" was changed to "Puerto Rico" by act May 17, 1932, ch. 190, 47 Stat. 158.

TENTH JUDICIAL CIRCUIT

Act Feb. 28, 1929, ch. 363, § 1, 45 Stat. 1346, divided the eighth judicial circuit and created the tenth judicial circuit. Prior to such division the eighth judicial circuit included, in addition, the States now constituting the tenth judicial circuit.

CROSS REFERENCES

Circuits in which decisions are reviewable, see section 1294 of this title.

§ 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.)

LEGISLATIVE HISTORY

Reviser's Note.—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 active service. The circuit justice and justices or judges designated or assigned shall also be competent to sit as judges of the court. (June 25, 1948, ch. 646, 62 Stat. 870.)

LEGISLATIVE HISTORY

Reviser's Note.—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.

CHANGE OF NAME OF COURT

Section 2 (b) of act June 25, 1948, 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.

CROSS REFERENCES

Assignment of circuit judges and judges of Court of Claims to other circuits or courts, see sections 291 et seq. of this title.

Authority to create courts inferior to Supreme Court, see U. S. Const., Art. 3, § 1.

§ 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:

<i>Circuits</i>	<i>Number of Judges</i>
District of Columbia.....	Nine
First.....	Three
Second.....	Six
Third.....	Seven
Fourth.....	Three
Fifth.....	Seven
Sixth.....	Six
Seventh.....	Six
Eighth.....	Seven
Ninth.....	Nine
Tenth.....	Five

(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.

(d) Each circuit judge shall receive a salary of \$25,500 a year. (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.)

LEGISLATIVE HISTORY

Reviser's Note.—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, 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, 53 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 ed., for payment of salaries in monthly installments were

omitted, since time of payment is a matter of administrative convenience (20 Comp. Gen. 834).

The exception in subsection (c) extends to circuit judges in the District of Columbia the effect of the recent decision in *U. S. ex rel. Laughlin v. Elcher*, D. C. 1944, 56 F. Supp. 972, holding that residence requirement of section 1 of title 28, U. S. C., 1940 ed., did not apply to district judges in the District of Columbia. (See Reviser's Note under section 134 of this title.)

The provision in section 213 of the title 28, U. S. C., 1940 ed., that "it shall be the duty of each circuit judge in each circuit to sit as one of the judges of the circuit court of appeals in that circuit from time to time according to law," was omitted as unnecessary since the duty to serve is implied by the creation and composition of the court in section 43 of this title.

Last sentence, providing that nothing in section 213 of title 28, U. S. C., 1940 ed., should prevent a circuit judge from holding district court as provided by law, was omitted as unnecessary. (See section 291 of this title authorizing assignments to district courts.)

Subsection (b) was added in conformity with the U. S. Constitution, art. 8.

Changes were made in phraseology.

AMENDMENTS

1955—Subsec. (d) amended by act Mar. 2, 1955, which increased the salary of circuit judges from "\$17,500" a year to "\$25,500".

1954—Subsec. (a) amended by act Feb. 10, 1954, which increased the number of circuit judges in the Fifth Circuit from six to seven, and in the Ninth Circuit from seven to nine.

1949—Subsec. (a) amended by act Aug. 3, 1949, which increased the number of circuit judges for the District of Columbia from six to nine, for the third circuit from six to seven, for the seventh circuit from five to six, and for the tenth circuit from four to five.

EFFECTIVE DATE OF 1955 AMENDMENT

Amendment to this section by act Mar. 2, 1955, as effective Mar. 1, 1955, see note under section 31 of Title 2, The Congress.

INCREASE OF SALARIES

Prior to June 25, 1948, salaries of circuit judges were increased as follows:

The salaries of the circuit judges were increased from \$12,500 to \$17,500 a year by act July 31, 1946, ch. 704, § 1, 60 Stat. 716.

The salaries of the circuit judges were increased from \$3,500 to \$12,500 a year by act Dec. 13, 1926, ch. 6, § 1, 44 Stat. 919.

The salaries of the circuit judges were increased from \$7,000 to \$8,500 a year by act Feb. 25, 1919, ch. 29, § 1, 40 Stat. 1156.

Salaries of circuit court judges had been set at \$7,000 a year by the Judicial Code of 1911, act Mar. 3, 1911, ch. 231, § 1, 36 Stat. 1131.

ADDITIONAL JUDGES

Since 1926, the appointment of additional judges was authorized by the following acts:

Second circuit. Act May 31, 1938, ch. 290, § 1, 52 Stat. 584.

Third circuit. Act Aug. 3, 1949, ch. 387, § 1, 63 Stat. 493; act Dec. 7, 1944, ch. 521, § 1, 58 Stat. 796; act June 10, 1930, ch. 438, 46 Stat. 538.

Act June 24, 1936, ch. 735, § 1, 49 Stat. 1903, repealed by act May 31, 1938, ch. 290, § 3, 52 Stat. 585.

Fifth circuit. Act Dec. 14, 1942, ch. 731, 56 Stat. 1050; act May 31, 1938, ch. 290, § 1, 52 Stat. 584; act June 10, 1930, ch. 437, 46 Stat. 538.

Sixth circuit. Act May 24, 1940, ch. 209, § 1, 54 Stat. 219; act May 31, 1938, ch. 290, § 1, 52 Stat. 584.

Seventh circuit. Act Aug. 3, 1949, ch. 387, § 1, 63 Stat. 493; act May 31, 1938, ch. 290, § 1, 52 Stat. 584.

Eighth circuit. Act May 24, 1940, ch. 209, § 1, 54 Stat. 219; act Mar. 3, 1925, ch. 436, 43 Stat. 1116.

Ninth circuit. Act Apr. 14, 1937, ch. 80, 50 Stat. 64; act Aug. 2, 1935, ch. 425, § 1, 49 Stat. 503; act June 16, 1933, ch. 102, 48 Stat. 310 (removing limitation on filling of vacancy); act Mar. 1, 1929, ch. 413, 45 Stat. 1414.

Tenth circuit. Act Aug. 3, 1949, ch. 387, § 1, 63 Stat. 493.

District of Columbia Court of Appeals. Act Aug. 3, 1949, ch. 387, § 1, 63 Stat. 493; act May 31, 1938, ch. 290, § 2, 52 Stat. 584; act June 19, 1930, ch. 538, 46 Stat. 785.

Act Feb. 28, 1929, ch. 363, § 2, 45 Stat. 1346, 1347 provided that "There shall be in the sixth, seventh, and tenth circuits, respectively, four circuit judges; and in the second and eighth circuits, respectively, five circuit judges; and, in each of the other circuits three circuit judges, to be appointed by the President, by and with the advice and consent of the Senate."

APPOINTMENT OF JUDGES

Another part of section 1 of act Feb. 10, 1954, which amended subsec. (a) of this section, provided for the appointment by the President, by and with the advice and consent of the Senate, of the additional judges for the Fifth and Ninth Circuits, provided for in such amendment.

CROSS REFERENCES

Assignment of circuit judges to other circuits or courts, see sections 291 et seq. of this title.

Compensation not to be diminished during continuance in office, see U. S. Const., Art. 3, § 1.

Judges to hold office during good behavior, see U. S. Const., Art. 3, § 1.

Oath of judge, see section 453 of this title.

Official station of circuit judges, see section 456 of this title.

Payment of salaries by United States marshal, see section 550 of this title.

Retirement of judges, see sections 371 et seq. of this title.

§ 45. Chief judges; precedence of judges.

(a) The circuit judge in regular active service who is senior in commission and under seventy years of age shall be the chief judge of the circuit. If all the circuit judges in regular active service are seventy years of age or older the youngest shall act as chief judge until a judge has been appointed and qualified who is under seventy years of age, but a judge may not act as chief judge until he has served as a circuit judge for one year.

(b) The chief judge shall have precedence and preside at any session of the court which he attends. Other circuit judges shall have precedence and preside according to the seniority of their commissions. Judges whose commissions bear the same date shall have precedence according to seniority in age. The circuit justice, however, shall have precedence over all the circuit judges and shall preside at any session which he attends.

(c) If the chief judge desires to be relieved of his duties as chief judge while retaining his active status as circuit judge, he may so certify to the Chief Justice of the United States, and thereafter the circuit judge in active service next in precedence and willing to serve shall be designated by the Chief Justice as the chief judge of the circuit.

(d) If a chief judge is temporarily unable to perform his duties as such, they shall be performed by the circuit judge in active service, present in the circuit and able and qualified to act, who is next in precedence. (June 25, 1948, ch. 646, 62 Stat. 871; Oct. 31, 1951, ch. 655, § 35, 65 Stat. 723; Aug. 6, 1958, Pub. L. 85-593, § 1, 72 Stat. 497.)

LEGISLATIVE HISTORY

Reviser's Note.—Based on sections 216 and 216a of title 28, U. S. C., 1940 ed. (Mar. 3, 1911, ch. 231, § 120, 36 Stat. 1132; May 23, 1934, ch. 339, 48 Stat. 796).

Subsection (a), providing for "chief judge," is new. Such term is adopted to replace the term "senior circuit judge" in recognition of the great increase in administrative duties of such judge.

Subsection (b) conforms with section 4 of this title relating to precedence of associate justices of the Supreme Court, and consolidates the provisions of the second and third sentences of section 216 of title 28, U. S. C., 1940 ed. The designation when filed in the court of appeals will not only record the transfer of function from the relieved chief judge to his successor, but will also determine the question of willingness of the successor to serve.

Other provisions of section 216 of title 28, U. S. C., 1940 ed., are covered by section 47 of this title.

Subsection (c) is new.

Subsection (d) is based on section 216a of title 28, U. S. C., 1940 ed.

The official status of the Chief Justice of the Court of Appeals for the District of Columbia holding office on the effective date of the act is preserved by section 2 of the bill to enact revised Title 28.

Changes were made in phraseology.

AMENDMENTS

1958—Subsec. (a) amended by Pub. L. 85-593, which provided that chief judges of circuit courts cease to serve as such upon reaching the age of seventy, that the youngest circuit judge act as chief judge where all circuit judges in regular active service are seventy years or older until a judge under seventy has been appointed and qualified, and that circuit judge must have served one year before acting as chief judge.

1951—Subsec. (a) amended by act Oct. 31, 1951, which inserted "in active service who is".

EFFECTIVE DATE OF 1958 AMENDMENT

Section 3 of Pub. L. 85-593 provided that: "The amendments to sections 45 and 136 of title 28 of the United States Code [this section and section 136 of this title], made by this Act shall take effect at the expiration of one year from the date of enactment [August 6, 1958], of this Act, except that the amendment made by section 136 shall not be effective with respect to any district having two judges in regular active service so long as the district judge holding the position of chief judge of any such district on such date of enactment continues to hold such position."

CHIEF JUDGE OF COURT OF APPEALS FOR DISTRICT OF COLUMBIA

Section 2 (a) of act June 25, 1948, provided in part that the Chief Justice of the Court of Appeals for the District of Columbia in office on Sept. 1, 1948, shall thereafter be known as the Chief Judge.

§ 46. Assignment of judges; divisions; hearings; quorum.

(a) Circuit judges shall sit on the court and its divisions in such order and at such times as the court directs.

(b) In each circuit the court may authorize the hearing and determination of cases and controversies by separate divisions, each consisting of three judges. Such divisions shall sit at the times and places and hear the cases and controversies assigned as the court directs.

(c) Cases and controversies shall be heard and determined by a court or division of not more than three judges, unless a hearing or rehearing before the court in banc is ordered by a majority of the circuit judges of the circuit who are in active service. A court in banc shall consist of all active circuit judges of the circuit.

(d) A majority of the number of judges authorized to constitute a court or division thereof, as provided in paragraph (c), shall constitute a quorum. (June 25, 1948, ch. 646, 62 Stat. 871.)

LEGISLATIVE HISTORY

Reviser's Note.—Based in part on title 23, U. S. C., 1940 ed., § 212 (Mar. 3, 1911, ch. 231, § 117, 36 Stat. 1131).

Subsections (a)—(c) authorize the establishment of divisions of the court and provide for the assignment of circuit judges for hearings and rehearings in banc.

The Supreme Court of the United States has ruled that, notwithstanding the three-judge provision of section 212 of title 28, U. S. C., 1940 ed., a court of appeals might lawfully consist of a greater number of judges, and that the five active circuit judges of the third circuit might sit in banc for the determination of an appeal. (See *Textile Mills Securities Corporation v. Commissioner of Internal Revenue*, 1941, 62 S. Ct. 272, 314 U. S. 326, 86 L. Ed. 249.)

The Supreme Court in upholding the unanimous view of the five judges as to their right to sit in banc, notwithstanding the contrary opinion in *Langs Estate v. Commissioner of Internal Revenue*, 1938, 97 F. 2d 867, said in the *Textile Mills* case: "There are numerous functions of the court, as a 'court of record, with appellate jurisdiction', other than hearing and deciding appeals. Under the Judicial Code these embrace: prescribing the form of writs and other process and the form and style of its seal (28 U. S. C., § 219); the making of rules and regulations (28 U. S. C., § 219); the appointment of a clerk (28 U. S. C., § 221) and the approval of the appointment and removal of deputy clerks (28 U. S. C., § 222); and the fixing of the 'times' when court shall be held (28 U. S. C., § 223). Furthermore, those various sections of the Judicial Code provide that each of these functions shall be performed by the court."

This section preserves the interpretation established by the *Textile Mills* case but provides in subsection (c) 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.

§ 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.)

LEGISLATIVE HISTORY

Reviser's Note.—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.

Terms or sessions of courts of appeals shall be held annually at the places listed below, and at such other places within the respective circuits as may be designated by rule of court. Each court of appeals may hold special terms at any place within its circuit.

Circuits	Places
District of Columbia.....	Washington.
First.....	Boston.
Second.....	New York.
Third.....	Philadelphia.
Fourth.....	Richmond, Asheville.
Fifth.....	New Orleans, Atlanta, Fort Worth, Jackson- ville, Montgomery.
Sixth.....	Cincinnati.
Seventh.....	Chicago.
Eighth.....	St. Louis, Kansas City, Omaha, St. Paul.
Ninth.....	San Francisco, Los An- geles, Portland, Seattle.
Tenth.....	Denver, Wichita, Okla- homa City.

Any court of appeals may, with the consent of the Judicial Conference of the United States, pretermitt any regular term or session of the court at any place for insufficient business or other good cause. (June 25, 1948, ch. 646, 62 Stat. 872; Oct. 31, 1951, ch. 655, § 36, 65 Stat. 723.)

LEGISLATIVE HISTORY

Reviser's Note.—Based on title 28, U. S. C., 1940 ed., § 223 and § 11-205 District of Columbia Code, 1940 ed. (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, § 126, 36 Stat. 1132; July 17, 1916, ch. 246, 39 Stat. 385; Jan. 8, 1925, ch. 57, 43 Stat. 729; July 3, 1926, ch. 735, 44 Stat. 809; Feb. 28, 1929, ch. 363, § 3, 45 Stat. 1347; May 17, 1932, ch. 190, 47 Stat. 158).

This section consolidates section 223 of title 28, U. S. C., 1940 ed., with part of section 11-205 of the District of Columbia Code.

Reference to San Juan as a place for holding court in the First Circuit was omitted. The revised section will permit the holding of terms at San Juan when the public interest requires.

The phrase "and at such other places within the respective circuits as may be designated by rule of court" was added to enable each court of appeals to hold such additional regular terms as changing circumstances might require.

The provisions of such section 223, for furnishing suitable rooms and accommodation at Oakland City, were omitted as obsolete since the erection of a new Federal building there.

The provisions as to fixed times for holding court in the Fifth Circuit was omitted as inconsistent with the practice in the other circuits. Words "San Francisco, Los Angeles, Portland, Seattle" were substituted for "San Francisco and two other places designated by the court" to conform with the practice in the Ninth Circuit.

Changes were made in phraseology.

SENATE REVISION AMENDMENT

By Senate amendment, Jacksonville (Fla.) was added as a place for holding a regular session of the Court of Appeals for the Fifth Circuit. See 80th Congress Senate Report No. 1559.

AMENDMENTS

1951—Act Oct. 31, 1951, amended section by adding last paragraph.

TERMS OF COURT

Act Feb. 28, 1929, ch. 363, § 3, 45 Stat. 1347, amended Judicial Code 1911, § 126, to provide as follows: "A term shall be held annually by the circuit courts of appeals in the several judicial circuits at the following places, and at such times as may be fixed by said courts, respectively: In the first circuit, in Boston, and when in its judgment the public interests require in San Juan, Porto Rico; in the second circuit, in New York; in the third circuit, in Philadelphia; in the fourth circuit, in Richmond and in Asheville, North Carolina; in the fifth circuit, in New Orleans, Atlanta, Fort Worth, and Montgomery; in the sixth circuit, in Cincinnati; in the seventh circuit, in Chicago; in the eighth circuit, in Saint Louis, Kansas City, Omaha, and Saint Paul; in the ninth circuit, in San Francisco, and each year in two other places in said circuit to be designated by the judges of said court; in the tenth circuit, in Denver, Wichita, and Oklahoma City, provided that suitable rooms and accommodations for holding court at Oklahoma City are furnished free of expense to the United States; and in each of the above circuits terms may be held at such other times and in such other places as said courts, respectively, may from time to time designate, except that terms shall be held in Atlanta on the first Monday in October, in Fort Worth on the first Monday in November, and in Montgomery on the third Monday in October. All appeals and other appellate proceedings which may be taken or prosecuted from the district courts of the United States in the State of Georgia, in the State of Texas, and in the State of Alabama, to the circuit court of appeals for the fifth judicial circuit shall be heard and disposed of, respectively, by said court at the terms held in Atlanta, in Fort Worth, and in Montgomery, except that appeals in cases of injunctions and in all other cases which, under the statutes and rules, or in the opinion of the court, are entitled to be brought to a speedy hearing, may be heard and disposed of wherever said court may be sitting. All appeals and other appellate proceedings which may be taken or prosecuted from the district court of the United States at Beaumont, Texas, to the circuit court of appeals for the fifth circuit, shall be heard and disposed of by the said circuit court of appeals at the terms of court held at New Orleans, except that appeals in cases of injunctions and in all other cases which, under the statutes and rules, or in the opinion of the court, are entitled to be brought to a speedy hearing, may be heard and disposed of wherever said court may be sitting."

Act July 3, 1926, ch. 735, 44 Stat. 809, provided for an annual term of the United States Circuit Court of Appeals for the eighth circuit at Oklahoma City at such times as might be fixed by the court, provided that suitable rooms and accommodations were furnished free of expense to the United States.

PUERTO RICO

Act May 17, 1932, ch. 190, 47 Stat. 158, changed the name of the island of "Porto Rico" to "Puerto Rico."

Act Jan. 8, 1925, ch. 57, 43 Stat. 729, provided that the Court of Appeals for the first circuit shall, when in its judgment the public interests require, hold a sitting of such court at San Juan, Porto Rico.

CROSS REFERENCES

Courts always open, see section 452 of this title.

Chapter 5.—DISTRICT COURTS

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81. Alabama.
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83. Arkansas.
84. California.
85. Colorado.
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Sec.

94. Indiana.
95. Iowa.
96. Kansas.
97. Kentucky.
98. Louisiana.
99. Maine.
100. Maryland.
101. Massachusetts.
102. Michigan.
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104. Mississippi.
105. Missouri.
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108. Nevada.
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116. Oklahoma.
117. Oregon.
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126. Vermont.
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129. West Virginia.
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131. Wyoming.
132. Creation and composition of district courts.
133. Appointment and number of district judges.
134. Tenure and residence of district judges.
135. Salaries of district judges.
136. Chief judges; precedence of district judges.
137. Division of business among district judges.
138. Times for holding regular terms.
139. Term continued until terminated.
140. Adjournment.
141. Special terms; places; notice.
142. Accommodations at places for holding court.
143. Vacant judgeship as affecting proceedings.
144. Bias or prejudice of judge.

LEGISLATIVE HISTORY

Reviser's Note.—Sections 81—131 of this chapter show the territorial composition of districts and divisions by counties as of January 1, 1945. All references to dates were omitted as unnecessary.

All references to fixed terms of holding court were also omitted in order to vest in each district court a wider discretion and greater flexibility in the disposition of its business. Such times will now be determined by rule of court rather than by statute. See sections 138 and 141 of this title.

AMENDMENTS

1958—Analysis of sections amended by Pub. L. 85-508, § 12 (a), July 7, 1958, 72 Stat. 348, which added item 81A.

CROSS REFERENCES

Guam and Virgin Islands district courts, see sections 1424, 1424b and 1611 et seq. of Title 48, Territories and Insular Possessions.

Jurisdiction and venue of district courts, see sections 1331 et seq. and 1391 et seq. of this title.

Temporary judicial districts in newly acquired territories, see section 1453a of Title 48, Territories and Insular Possessions.

Three-judge courts, composition, see section 2284 of this title.

FEDERAL RULES OF CIVIL PROCEDURE

See Appendix to this title.