85TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 2484

ASSIGNMENT OF RETIRED JUDGES TO ACTIVE DUTY

AUGUST 6, 1958.—Referred to the House Calendar and ordered to be printed

Mr. ROGERS of Colorado, from the Committee on Judiciary submitted the following

REPORT

[To accompany H. R. 12292]

The Committee on the Judiciary, to whom was referred the bill (H. R. 12292) to amend subsections (b), (c), and (d) of section 294 of title 28, United States Code, relating to the assignment of retired judges to active duty, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE

The purpose of the legislation is to amend subsections (b), (c), and (d) of section 294 of title 28, United States Code, relating to the assignment of retired judges of the United States to active duty. The bill clarifies the procedure under subsection (d) in respect to the assignment and designation by the Chief Justice of the United States of judges from the Roster of Senior Judges and to coordinate and unify all the provisions of section 294 of title 28 which relate to the designation and assignment of retired judges to active duty.

THE NEED FOR THE LEGISLATION

Shortly after the present subsection (d) of section 294 of title 28 was added by the act of August 29, 1957, Public Law 85–219, there developed a certain confusion resulting from its application. The new subsection provided that the Chief Justice of the United States may designate and assign any retired judge whose name appears upon the Roster of Senior Judges to perform such judicial duties as he is willing to undertake in any court of the United States other than the Supreme Court, upon the presentation of a certificate of necessity by the chief judge of such court. Many of the retired judges expressed their willingness to serve at the invitation of the Chief Justice but limited their service primarily to the courts within their own circuit.

The uncertainty in respect to subsection (d) arises from the fact that subsection (b) of the same section provides for the assignment of retired circuit and district judges to perform such judicial duties as they are willing to undertake within their own circuits under assignment by the chief judge or the judicial council of the circuit. Obviously, therefore, there is an overlapping of jurisdiction in the authority to assign these judges to serve within their own respective circuits. This proposal obviates this overlapping and clarifies the authority to assign and designate these judges.

GENERAL STATEMENT

This legislation was introduced at the request of the Judicial Conference of the United States pursuant to a letter of April 25, 1958, addressed to the Speaker of the House of Representatives from the Administrative Office of the United States Courts. A copy of that letter is attached hereto and made a part of this report. Under chapters 13 and 15 of title 28, United States Code, matters of judicial administration which arise wholly within a particular circuit, including the assignment and designation of judges to serve outside their own courts but within that circuit, are the administrative responsibility of the chief judge and the judicial council of the circuit. Under the proposed legislation, this policy will be continued and implemented by providing that the assignment of retired judges who are willing to serve their own circuits will be solely the responsibility of the chief judge of that circuit or of the judicial council of that circuit.

As to those retired judges who are willing to serve outside of their own circuits, the proposal provides that the Roster of Senior Judges shall be limited to those retired judges who are willing and able to perform judicial services outside of their circuits upon the assignment and designation of the Chief Justice of the United States.

The bill also provides that retired judges who continue to perform judicial service shall be designated and known as "senior judges" so as to distinguish them from retired judges who are no longer willing and able to perform judicial services.

Accordingly, the bill revises and rearranges the subject matter of the present subsections (b), (c), and (d) of section 294 of title 28. Revised subsection (b) would provide that all judges retired from regular active service under section 371 (b) and 372 (a) shall be known as senior judges and shall be eligible to perform such judicial duties as they are willing and able to undertake when designated and assigned, as provided in subsections (c) and (d).

Revised subsection (c) provides that any retired circuit or district judge may be assigned within his own circuit by the chief judge or judicial council of the circuit and also any retired judge of one of the special courts to his court by the chief judge of that court.

Revised subsection (d) would cover all assignments of retired judges outside of their circuits or special courts. Those judges who are willing to accept such assignments would have their names placed on the roster of senior judges which will be maintained by the Chief Justice of the United States. The assignment of such judge to duty would be made by the Chief Justice only upon the request of the chief judge or circuit judge of the circuit in case of an assignment to a circuit, or in case of assignment to a special court, by the chief judge

of that special court. In each instance, the chief judge requesting the help would file with the Chief Justice a certificate of necessity.

It is the opinion of your committee that this revision and simplification of these three subsections of section 294 is in the public interest, by encouraging and making more available judicial service by retired judges. This will be of tremendous help in view of the congested condition of court calendars of so many of the Federal courts. Therefore, your committee recommends favorable consideration of the proposal.

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS,
Washington, D. C., April 25, 1958.

Hon. SAM RAYBURN,
Speaker of the House of Representatives,
House Office Building, Washington, D. C.

DEAR MR. SPEAKER: On behalf of the Judicial Conference of the United States I transmit to you herewith a draft of a bill, approved by the Conference, to amend subsections (b), (c), and (d) of section 294 of title 28, United States Code, relating to the assignment of retired judges of the United States to active duty. The purpose of the bill is to clarify the procedure under subsection (d) in respect to the assignment and designation by the Chief Justice of the United States of judges from the Roster of Senior Judges and to coordinate and unify all of the provisions of section 294, title 28, with respect to the designation and assignment to active duty of retired judges of the United States.

Shortly after the present subsection (d) became effective there developed a certain confusion resulting from its application. The subsection provides that the Chief Justice of the United States may designate and assign any retired judge whose name appears upon the Roster of Senior Judges to perform such judicial duties as he is willing to undertake in any court of the United States (other than the Supreme Court), upon the presentation of a certificate of necessity by the chief judge of such court. Many retired judges invited by the Chief Justice of the United States to have their names placed upon the Roster of Senior Judges indicated their willingness to do so, but expressed a desire to serve primarily the courts within their own circuit.

The uncertainty in respect to subsection (d), particularly in regard to the judges on the Roster of Senior Judges who desire to serve in their own circuits, arises from the language of subsection (b) which provides that the designation and assignment of a retired circuit or district judge for service within his circuit shall be made by the chief judge or judicial council of the circuit.

In the legislative scheme of chapters 13 and 15 of title 28, United States Code, matters of judicial administration arising wholly within a particular circuit, including the assignment of judges to serve outside their own courts but within the circuit, are the administrative responsibility of the chief judge and the judicial council of the circuit. However section 294 (d) seemingly varies from this plan to the extent it vests in the Chief Justice the responsibility for the assignment and designation of retired senior judges to serve within their own circuits.

It is the view of the judicial conference of the United States that all administrative problems arising wholly within a circuit should

continue to be in the first instance the responsibility of the chief judge and judicial council of the circuit and that this should be clearly reflected in the statute.

The proposed bill provides that retired judges who continue to perform judicial service may be known as senior judges, but limits the Roster of Senior Judges to those retired judges who are willing and able to perform judicial service outside of their circuits upon the assignment and designation by the Chief Justice of the United States. Also, the bill would consolidate the responsibility for administering the business of the respective circuits in the chief judges and judicial councils of the circuits by requiring that such designation and assignment to a court of appeals or district court be made only upon the presentation of a certificate of necessity by the chief judge or circuit justice of the circuit wherein the need arises.

I hope that the bill may be introduced in the House of Representatives and referred to the appropriate committee and I shall be glad to furnish whatever additional information the committee may desire.

Yours sincerely,

WARREN OLNEY III, *Director.*

CHANGES IN EXISTING LAW

In compliance with clause 3 of rule XIII of the House of Representatives, there is printed below in roman existing law in which no change is proposed, with matter proposed to be stricken out enclosed in black brackets, and new matter proposed to be added shown in italic:

SECTION 294, TITLE 28, UNITED STATES CODE

§ 294. Assignment of retired justices or judges to active duty.

(a) * * *

[(b) Any retired circuit or district judge may be designated and assigned to perform such judicial duties in any circuit as he is willing to undertake. Designation and assignment of such judge for service within his circuit shall be made by the chief judge or judicial council of the circuit. Designation and assignment for service elsewhere shall be made by the Chief Justice of the United States.

Any retired judge of the Court of Claims (1) may be designated and assigned by the Chief Justice of the United States to perform such judicial duties in any circuit as he is willing to undertake, and (2) may be called upon by the chief judge of the Court of Claims to perform such judicial duties in such court as he is willing to undertake.]

(b) Any judge of the United States who has retired from regular active service under section 371 (b) or 372 (a) of this title shall be known and designated as a senior judge and may continue to perform such judicial duties as he is willing and able to undertake, when designated and assigned as provided in subsections (c) and (d).

[(c) Any retired judge of any other court of the United States may be called upon by the chief judge of such court to perform such judicial duties in such court as he is willing to undertake.]

(c) Any retired circuit or district judge may be designated and assigned by the chief judge or judicial council of his circuit to perform such judicial duties within the circuit as he is willing and able to undertake. Any other retired judge of the United States may be designated and as-

signed by the chief judge of his court to perform such judicial duties in such court as he is willing and able to undertake.

[(d) The Chief Justice of the United States shall maintain a roster of judges who have retired from regular active service but who are willing and able to undertake special judicial duties from time to time, which roster shall be known as the Roster of Senior Judges. Any judge of the United States who has retired from regular active service under section 371 (b) or 372 (a) of this title but is willing and able to undertake special judicial duties from time to time either in a particular court or courts specified by him or generally in any court may so indicate by requesting the Chief Justice of the United States to place his name upon the Roster of Senior Judges as available for such duty. The Chief Justice shall remove from the Roster of Senior Judges the name of any such judge who is no longer willing or able to perform any judicial duties. Any retired judge whose name appears upon the Roster of Senior Judges shall be known as a senior judge, and may be designated and assigned by the Chief Justice of the United States to perform such judicial duties as he is willing to undertake in any court of the United States other than the Supreme Court, upon presentation of a certificate of necessity by the chief judge of such court.]

(d) The Chief Justice of the United States shall maintain a roster of retired judges of the United States who are willing and able to undertake special judicial duties from time to time outside their own circuit, in the case of a retired circuit or district judge, or in a court other than their own, in the case of other retired judges, which roster shall be known as the roster of senior judges. Any such retired judge of the United States may be designated and assigned by the Chief Justice to perform such judicial duties as he is willing and able to undertake in a court outside his own circuit, in the case of a retired circuit or district judge, or in a court other than his own, in the case of any other retired judge of the United States. Such designation and assignment to a court of appeals or district court shall be made upon the presentation of a certificate of necessity by the chief judge or circuit justice of the circuit wherein the need arises and to any other court of the United States upon the presentation of a certificate of necessity by the chief judge of such court. No such designation or assignment shall be made to the Supreme Court.

(e) * * *

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