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85TH CONGRESS, 2d Session | SENATE | REPORT No. 2309

DECLARING THE COURT OF CUSTOMS AND PATENT APPEALS TO BE A CONSTITUTIONAL COURT

AUGUST 9, 1958.—Filed under authority of the order of the Senate of August 8, 1958, and ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 7866]

The Committee on the Judiciary, to which was referred the bill (H. R. 7866) to amend title 28, United States Code, relating to the Court of Customs and Patent Appeals, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

AMENDMENT

On page 5, commencing with line 8, strike out all down to and including line 18 on page 6 and insert in lieu thereof the following:

> (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 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 assigned 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 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.

PURPOSE

The purpose of the proposed legislation, as amended, is to amend section 211 of title 28 of the United States Code so as to declare the United States Court of Customs and Patent Appeals to be a court established under article III of the Constitution of the United States.

It would also amend sections 291, 292, 293, 294, and 295 of title 28 of the United States Code which relate to the temporary assignment of circuit and district judges, both active and retired, who sit outside of their circuits and districts, by providing for their assignment, under specified conditions, of a circuit or district judge by the Chief Justice of the United States or a judge of the Customs Court by the chief judge of that court to serve temporarily on the Court of Customs and Patent Appeals. It would also authorize the Chief Justice of the United States to assign temporarily a judge of the Court of Customs and Patent Appeals, whether active or retired, under specified conditions, to perform duties in a court of appeals or a district court and the chief judge of the Court of Customs and Patent Appeals may assign a judge of that court to serve temporarily in the Customs Court. The bill also would permit the assignment of judges between the Court of Customs and Patent Appeals and the Court of Claims.

STATEMENT

The principal purpose of the bill, as amended, is to settle the status of the Court of Customs and Patent Appeals by declaring it to be a constitutional court. The court is now constituted under section 211 of title 28, United States Code, and is classified as a legislative court. Section 1 of the bill would amend section 211 so as specifically to declare the court "to be a court established under article III of the Constitution of the United States."

The cases over which the Court of Customs and Patent Appeals has jurisdiction come within the judicial power of the United States as set forth in article III, which provides that such judicial power shall extend to controversies to which the United States shall be a party. Prior to the creation of the court by the Tariff Act of 1909 the jurisdiction which it now exercises to review decisions of the Customs Court (until 1926 called the Board of General Appraisers) was exercised by

the former circuit courts of the United States under section 15 of the Customs Administrative Act of June 10, 1890 (ch. 407, 26 Stat. 138). The old circuit courts were, of course, constitutional courts. And prior to April 1, 1929, the jurisdiction which the court now exercises to review decisions of the Patent Office was exercised by the Court of Appeals for the District of Columbia, a constitutional court. See the act of March 2, 1929 (ch. 488, 45 Stat. 1476). Thus there can be no doubt that the Court of Customs and Patent Appeals should be a constitutional court.

Similar legislation was enacted by the 83d Congress establishing the Court of Claims as a constitutional court (act of July 28, 1953, ch. 253, 67 Stat. 226) and by the 84th Congress establishing the Customs Court as a constitutional court (act of July 14, 1956, ch. 589; 70 Stat. 532). There has never been any revisory power in the executive or legislative branches of the Government over the decisions of the Court of Customs and Patent Appeals. On the contrary its decisions are final, subject only to review by the Supreme Court of the United States. The bill will remove all doubt as to the status and source of authority of the court by making it explicitly clear that it is established under and derives its judicial power from article III of the Constitution.

Another purpose of the bill is to authorize the judges of the Court of Customs and Patent Appeals to be assigned temporarily to any United States court of appeals or district court needing such assistance. Under the present law they may be assigned only to the Court of Appeals and District Court of the District of Columbia. The bill also would authorize judges of the Court of Customs and Patent Appeals to be assigned to the Customs Court and vice versa. The assignment of Fedefal judges to temporary duty in other courts is now provided for by chapter 13 (sec. 291 to 296) of title 28, U. S. Code. The recent legislation relating to the Court of Claims and the Customs Court made various amendments to these sections to authorize assignment of judges between those courts and the United States courts of appeals and district courts. Since the Court of Customs and Patent Appeals is the last of these special courts to be thus fully integrated into the Federal judicial system it is appropriate that both the old and new assignment provisions relating to it should, so far as possible, be placed in the appropriate sections of chapter 13 of title 28 in the form of general provisions applicable to all three special courts. This necessitates, in the interest of clarity and uniformity, the transfer of some existing provisions from one section to another. This is all accomplished by sections 2 to 7 of the bill. A detailed explanation of the effect of each section follows.

Section 2 amends section 291 of title 28, United States Code, which relates to the assignment of circuit judges. In the interest of clarity and uniformity the present provisions of section 293 for the assignment of circuit judges to the Court of Customs and Patent Appeals are transferred to section 291 where they properly belong and are consolidated with the present provisions of that section for the assignment of circuit judges to the Court of Claims, constituting new subsection (b). The present provisions of subsection (a) of section 291 for the assignment of judges of the Court of Claims to serve as circuit judges in the circuits and of subsection (b) for the assignment of judges of the Court of Customs and Patent Appeals

or the District Court of the District of Columbia do not properly belong in section 291, and accordingly are transferred by sections 2 and 4 of the bill to section 293 of title 28 as subsection (a) thereof in the interest of clarity and are made uniformly all-inclusive. Thus section 291, which is headlined "Circuit judges," will deal exclusively with the assignment of circuit judges and will cover their assignment to all courts, including the Court of Claims and the Court of Customs and Patent Appeals.

Section 3 amends section 292 of title 28, United States Code, which relates to the assignment of district judges. In the interest of clarity and uniformity the present provisions of section 293 for the assignment of district judges to the Court of Customs and Patent Appeals are transferred to section 292 where they properly belong. Section 292 now contains in subsections (d) and (f) provisions for the assignment of district judges to the Court of Claims and the Customs Court. These similar provisions for all three courts are by section 3 of the bill consolidated in subsection (d) of section 292.

The present provisions of subsection (e) of section 292 for the assignment of judges of the Court of Claims to district courts do not properly belong in section 292 and accordingly are transferred by sections 3 and 4 of the bill to section 293 of title 28 and including in subsection (a) of that section in the interest of clarity, and uniformity. Thus section 292, which is headlined "District judges," will deal exclusively with the assignment of district judges and will cover their assignment to all courts, including the Court of Claims, the Court of Customs and Patent Appeals, and the Customs Court.

Sections 4 and 7 amend section 293 of title 28, United States Code, by changing its headline to read: "Judges of other courts," by designating as subsection (b) the present second paragraph of that section relating to the assignment of judges of the Customs Court to serve in district courts, by substituting for the present first paragraph of the section a new subsection (a), and by adding a new subsection (c). The bill transfers to and includes in the new subsection (a) of section 293 the present provisions of sections 291 and 292 for the assignment of judges of the Court of Claims and the Court of Customs and Patent Appeals to perform judicial duties in the courts of appeals and district courts. But in the case of the Court of Customs and Patent Appeals these provisions, which now authorize such assignment only to the courts of the District of Columbia, are broadened to authorize the assignment of the judges of that court "to perform judicial duties in any circuit either in a court of appeals or district court" and the same broad language is used in the case of the judges of the Court of Claims. Subsection (c) authorizes the chief judge of the Court of Customs and Patent Appeals to make temporary assignments of judges from the Court of Customs and Patent Appeals to the Customs Court and vice versa, when the public interest requires it. The authority thus vested in the chief judge is analogous to that vested in the chief judge of a circuit with respect to the assignment of circuit and district judges within his circuit. Thus section 293, which will be headlined "Judges of other courts," will deal with the assignment of judges of the three special courts, i. e., the Court of Claims, the Court of Customs and Patent Appeals and the Cusoms Court, to the courts of appeals and district courts.

Section 5 is directed to section 294 of title 28, United States Code, which provides for the assignment of retired judges to active duty. It amends subsections (b) and (c) of that section by transferring to subsection (c) and extending to the judges of the Court of Customs and Patent Appeals and the Customs Court the provisions of the second paragraph of subsection (b) that a retired judge of the Court of Claims may be assigned by the Chief Justice of the United States to perform such judicial duties in any circuit as he is willing to undertake or may be called upon by the chief judge of his court to perform such judicial duties therein as he is willing to undertake. As amended subsection (c) will accordingly provide that any retired judge of the Court of Claims, the Court of Customs and Patent Appeals or the Customs Court may be assigned by the chief judge of his court to perform such judicial duties in his own court as he is willing to undertake or may be assigned by the Chief Justice of the United States to perform such judicial duties in any judicial circuit as he is willing to undertake.

Section 6. This section amends the first paragraph of section 295 of title 28, United States Code, so as to extend to other courts of the United States, including the Court of Customs and Patent Appeals, the present provision of the second sentence of the paragraph that no assignment of a judge of the Customs Court in active service shall be made without the consent of the chief judge of his court. Section 295 now provides that no assignment of a circuit or district judge in active service shall be made without the consent of the chief judge or judicial council of his circuit.

Subsections (b), (c) and (d) of section 5 of the proposed legislation have been amended in accordance with the views of the Judicial Conference of the United States, as submitted in a letter from Judge Albert B. Maris to Hon. James O. Eastland, chairman of the Committee on the Judiciary, United States Senate. The reasons for the changes are expressed in said letter, which is hereto attached and made a part of this report.

To summarize, the purpose and effect of the bill, as amended, is to integrate the Court of Customs and Patent Appeals into the constitutional system of Federal courts and to make its judges, both active and retired, available for assignment when and as their services are needed to meet congested calendars in other courts just as has already been done in the case of the Court of Claims and the Customs Court. Thus the bill will round out and complete the legislation making it possible for the overall manpower of the Federal judiciary to be utilized from time to time to meet congested calendars in particular courts.

The committee, after a review of all of the facts in relation to this matter, together with the proposed amendments thereto, believes that the legislation, as amended, is meritorious. It is, therefore, recommended that the bill, H. R. 7866, as amended, be favorably considered.

In addition to the letter from Judge Maris, hereinbefore referred to, reports from the General Counsel of Commerce; the Department of Justice, and the Administrative Office of the United States Courts are attached hereto and made a part of this report.

UNITED STATES COURT OF APPEALS,
FOR THE THIRD CIRCUIT,
Philadelphia, Pa., August 4, 1958.

Hon. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.

DEAR SENATOR EASTLAND: It appears that the House of Representatives is likely very soon to pass H. R. 7866, the bill to make the Court of Customs and Patent Appeals a constitutional court and in connection therewith to amend the sections of title 28 which relate to the temporary assignment of judges to other courts so as to authorize such assignment of judges to and from the Customs and Patent Appeals Courts when needed. Among the sections which the bill necessarily amends in this connection is section 294 of title 28 which covers the assignment of retired judges to active duty. This section was recently amended by the act of August 29, 1957, Public Law 85–219, so as to provide for a roster of retired judges who are willing to undertake duty, to be known as the roster of senior judges, and this amendatory act has been incorporated in H. R. 7866.

After H. R. 7866 was reported by the Committee on the Judiciary of the House of Representatives, that committee favorably reported another bill, H. R. 12292, which would further revise section 294 of title 28 with respect to the assignment of retired judges to active duty and the roster of senior judges. H. R. 12292 was proposed by the Judicial Conference of the United States at its session in March 1958 and on behalf of the Judicial Conference, of whose Committee on Revision of the Laws I am chairman, I desire to request that the amendments to subsections (b), (c), and (d) of section 294 of title 28 proposed by H. R. 12292 be added by your committee to H. R. 7866 by way of amendment to section 5 of that bill which is the section which presently amends and reenacts section 294.

May I make a brief explanation of the purpose of and need for these amendments. At present subsection (b) provides for the assignment of retired circuit and district judges to perform such judicial duties as they are willing to undertake in any circuit. Assignment within the retired judge's own circuit is by the chief judge or judicial council of the circuit. Assignment elsewhere is by the Chief Justice. The subsection also authorizes the assignment of retired judges of the Court of Claims to that court by its chief judge and to any circuit by the Chief Justice, a provision which H. R. 7866 proposes to place in subsection (c).

Subsection (c) now provides that any retired judge of any other court of the United States (e. g., the Court of Customs and Patent Appeals and the Customs Court) may be called upon to perform judicial duties in his court by its chief judge and as proposed to be amended by H. R. 7866 would also give the Chief Justice power to assign the retired judges of those courts to perform judicial duties in any circuit.

Subsection (d) was the provision added by the act of August 29, 1957, Public Law 85–219. It now provides for a roster of senior judges to be maintained by the Chief Justice. Retired judges who are willing and able to undertake special judicial duties so inform the Chief Justice, are placed on the roster by him, and are to be known as senior judges. They may be assigned by the Chief Justice to perform

such judicial duty as they are willing to undertake in any court of the United States, other than the Supreme Court, upon request of the chief judge of such court.

It has been found that these provisions are somewhat overlapping and inconsistent in practice. Thus both the chief judge or judicial council of a circuit and the Chief Justice of the United States may assign a retired judge whose name is on the roster of senior judges to duty in his own circuit. It is the view of the Chief Justice that this intracircuit assignment power should be lodged solely in the chief judge and judicial council of the circuit concerned and that the Chief Justice should not be concerned with it. Moreover it is believed to be better administration to require that requests for the assignment of a retired judge to a circuit other than his own should come from the chief judge of the requesting circuit, who is by law responsible for the assignment of judicial manpower within his circuit, rather than directly from the particular court needing the assistance, as is now authorized by subsection (d). Also it is believed to be better to apply the descriptive phrase "senior judge" to all judges who retire from regular active service, while retaining their commissions, under sections 371 (b) and 372 (a) of title 28 rather than merely to those who ask to be placed on the Chief Justice's roster. In this way retired judges serving in their own circuit or court would be known as "senior judges" as well as those serving elsewhere. Moreover the use of the term "senior judge" is much more apt to describe such judges who are still in commission rather than "retired judge" since they are not retired in the usual sense of having been separated from the service.

Accordingly the amendment proposed by H. R. 12292 and which we are asking you to insert in H. R. 7866 would revise and rearrange the subject matter of present subsections (b), (c) and (d) of section 294 as follows:

Revised subsection (b) would provide that all judges retiring from regular, active service under sections 371 (b) or 372 (a) of title 28, United States Code, 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) would provide 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 any retired judge of one of the special courts to his court by the chief judge of the court.

Revised subsection (d) would cover all assignments of retired judges beyond their circuits or special courts. Judges willing to accept such assignments would be placed on the Chief Justice's roster of senior judges and would be assignable to such duty by him only upon the request of the chief judge or circuit justice of the circuit, in case of assignment to a circuit, or the request of the chief judge of a special court in the case of assignment to such a court.

The Judicial Conference believes that the proposed revision and simplification of these three subsections of section 294 will be in the public interest in encouraging and making more available judicial service by retired judges which will be of real help in view of the congested condition of the calendars of so many of the Federal courts at present. We urge, therefore, that in the interest of saving con-

gressional time the amendments proposed by H. R. 12292 be incorporated into H. R. 7866 by striking out section 294 of title 28 as contained in section 5 of the bill paragraphs (b), (c) and (d) and inserting in lieu thereof the following (comprising H. R. 12292):

"(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 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 assigned 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 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."

With kindest regards, I am

Sincerely yours,

ALBERT B. MARIS.

THE GENERAL COUNSEL OF COMMERCE,
Washington, D. C., August 20, 1957.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D. C.

DEAR MR. CHAIRMAN: This letter is in reply to your request of July 8, 1957, for the views of this Department with respect to H. R. 7866, a bill to amend title 28, United States Code, relating to the Court of Customs and Patent Appeals.

The only agency in the Department of Commerce that might in any way be concerned with any provisions of the bill would appear to be the Patent Office, whose decisions in patent and trademark matters are subject to review by the Court of Customs and Patent Appeals under title 35, United States Code, section 141 and title 15, United States Code, section 1071. However, none of the changes in the law proposed in the bill involving that court would seem to affect

its operations. Accordingly, this Department would defer to the views of those agencies more directly interested in the bill.

Sincerely yours,

FREDERICK C. NASH, *General Counsel.*

OCTOBER 11, 1957.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives; Washington, D. C.

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice concerning the bill (H. R. 7866) to amend title 28, United States Code, relating to the Court of Customs and Patent Appeals.

The bill would amend section 211 of title 28, United States Code, so as to declare the United States Court of Customs and Patent Appeals to be a court established under article III of the constitution of the United States.

Whether the bill should be enacted involves a question of policy concerning which this Department prefers to make no recommendation.

The Bureau of the Budget has advised that there is no objection to the submission of this report.

Sincerely,

WILLIAM P. ROGERS,
Deputy Attorney General.

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS,
Washington, D. C., July 10, 1957.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D. C.

DEAR CONGRESSMAN CELLER: The bill about which you inquired of Mr. Whitehurst on June 28, 1957 (H. R. 7866), would amend provisions of title 28 of the United States Code relating to the United States Court of Customs and Patent Appeals. It would amend section 211 providing for the appointment of judges of the court by adding a provision declaring it to be a court "established under article III of the Constitution of the United States." It would amend sections 291, 292, 293, 294, and 295 of title 28 which now provide for the temporary assignment of circuit and district judges, both active and retired, to sit outside of their circuits and districts by providing for the assignment under specified conditions of a circuit or district judge by the Chief Justice of the United States or a judge of the Customs Court by the chief judge of that court to serve temporarily as a judge of the Court of Customs and Patent Appeals. Also it would authorize the Chief Justice of the United States to assign temporarily a judge of the Court of Customs and Patent Appeals, whether active or retired, under specified conditions to perform judicial duties in a court of appeals or district court and the chief judge of the Court of Customs and Patent Appeals to assign a judge of that court to serve temporarily in the Customs Court.

A somewhat similar bill, although differing in form, was introduced in the 83d Congress as H. R. 7864. The Judicial Conference of the United States at its annual meeting in September 1954 upon a report of its Committee on Revision of the Laws, of which Circuit Judge Albert B. Maris, of Pennsylvania, is the Chairman, approved that bill with a reservation that it expressed no view on the question whether the declaration that the United States Court of Customs and Patent Appeals was a court established under article III of the Constitution of the United States would be constitutionally effective. The committee stated that it regarded that as a judicial question for determination by the Federal courts if it arose and not within the competence of the Judicial Conference or its committees (pp. 27–28 of the September 1954 report of the Judicial Conference). The pending bill may therefore be regarded as meeting the approval of the Judicial Conference of the United States with the reservation that no opinion is expressed concerning the effect of the amendment of section 211 of title 28 declaring the court to be a court established under article III of the Federal Constitution.

Sincerely yours,

W. L. ELLIS, *Acting Director.*

CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 211, TITLE 28, UNITED STATES CODE

§ 211. Appointment and number of judges.

The President shall appoint, by and with the advice and consent of the Senate, a chief judge and four associate judges who shall constitute a court of record known as the United States Court of Customs and Patent Appeals. *Such court is hereby declared to be a court established under article III of the Constitution of the United States.*

SECTION 291, TITLE 28, UNITED STATES CODE

§ 291. Circuit judges.

[(a) The Chief Justice of the United States may designate and assign temporarily any circuit judge to act as circuit judge in another circuit, or any judge of the Court of Claims to serve as a circuit judge in any circuit, upon presentation of a certificate of necessity by the chief judge or circuit justice of the circuit wherein the need arises.]

(a) 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.

[(b) The Chief Justice of the United States may designate and assign temporarily a judge of the Court of Customs and Patent Appeals to serve as a judge of the Court of Appeals or the District Court for

the District of Columbia when requested by the chief judge of the court in need of such assistance.]

(b) The Chief Justice of the United States may designate and assign temporarily 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 arises.

[(c) The Chief Justice of the United States may, upon presentation to him by the chief judge of the Court of Claims of a certificate of necessity, designate and assign temporarily any circuit judge to serve as a judge of the Court of Claims.]

(c) 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.

[(d) 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.]

SECTION 292, TITLE 28, UNITED STATES CODE

§ 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.]

(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.]

(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 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.]

(c) 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.

[(d) The Chief Justice of the United States may upon presentation to him by the chief judge of the Court of Claims of a certificate of necessity, designate and assign temporarily any district judge to serve as a judge of the Court of Claims.]

(d) The Chief Justice of the United States may designate and assign temporarily any district judge to serve as a judge of the Court of Claims, the Court of Customs and Patent Appeals or the Customs Court upon presentation to him of a certificate of necessity by the chief judge of the court in which the need arises.

SECTION 293, TITLE 28, UNITED STATES CODE

[§ 293. Circuit or district judges to Court of Customs and Patent appeals.

[The Chief Justice of the United States may, upon presentation to him by the chief judge of the Court of Customs and Patent Appeals of a certificate of necessity, designate and assign temporarily any circuit or district judge to perform such duties as judge of the Court of Customs and Patent Appeals as he is willing to undertake.

The Chief Justice of the United States may designate and assign temporarily a judge of the Customs Court to perform judicial duties in a district court in any circuit upon presentation of a certificate of necessity by the chief judge or circuit justice of the circuit wherein the need arises.]

§ 293. Judges of other courts

(a) The Chief Justice of the United States may designate and assign temporarily any judge of the Court of Claims or the Court of Customs and Patent Appeals to perform judicial duties in any circuit, either in a court of appeals or district court, upon presentation of a certificate of necessity by the chief judge or circuit justice of the circuit wherein the need arises.

(b) The Chief Justice of the United States may designate and assign temporarily any judge of the Customs Court to perform judicial duties in a district court in any circuit upon presentation of a certificate of necessity by the chief judge or circuit justice of the circuit wherein the need arises.

(c) The chief judge of the Court of Customs and Patent Appeals may, upon presentation to him by the chief judge of the Customs Court of a certificate of necessity, designate and assign temporarily any judge of the Court of Customs and Patent Appeals to serve as a judge of the Customs Court.

(d) The chief judge of the Customs Court may, upon presentation to him by the chief judge of the Court of Customs and Patent Appeals of a certificate of necessity, designate and assign temporarily any judge of the Customs Court to serve as a judge of the Court of Customs and Patent Appeals.

SECTION 294, TITLE 28, UNITED STATES CODE

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

(a) Any retired Chief Justice of the United States or [associate justice] *Associate Justice* of the Supreme Court may be designated and assigned by the Chief Justice of the United States to perform such judicial duties in any circuit, including those of a circuit justice, as he is willing to undertake.

[(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.]

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

[(d) No retired justice or judge shall perform judicial duties except when designated and assigned.]

(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 hiw 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) No retired Justice or judge shall perform judicial duties except when designated and assigned.

SECTION 295, TITLE 28, UNITED STATES CODE

§ 295. Conditions upon designation and assignment.

[No designation and assignment of a circuit or district judge in active service shall be made without the consent of the chief judge or judicial council of the circuit from which the judge is to be designated and assigned.]

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No designation and assignment of a circuit or district judge in active service shall be made without the consent of the chief judge or judicial council of the circuit from which the judge is to be designated and assigned. No designation and assignment of a judge of any other court of the United States in active service shall be made without the consent of the chief judge of such court.

TITLE 28. UNITED STATES CODE

CHAPTER 13.—ASSIGNMENT OF JUDGES TO OTHER COURTS

Sec.

291. Circuit judges.
292. District judges.
[293. Circuit or district judges to Court of Customs and Patent Appeals.]
293. Judges of other courts.
294. Assignment of retired justices or judges to active duty.
295. Conditions upon designation and assignment.
296. Powers upon designation and assignment.

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