Calendar No. 2361

85TH CONGRESS
2D SESSION

H. R. 7866

[Report No. 2309]

IN THE SENATE OF THE UNITED STATES

AUGUST 5, 1958
Read twice and referred to the Committee on the Judiciary

AUGUST 9, 1958
Reported, under authority of the order of the Senate of August 8, 1958, by Mr. EASTLAND, with an amendment

[Omit the part struck through and insert the part printed in italic]

AN ACT

To amend title 28, United States Code, relating to the Court of Customs and Patent Appeals.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 211 of title 28 of the United States Code is amended by inserting after the first sentence thereof a new sentence as follows: "Such court is hereby declared to be a court established under article III of the Constitution of the United States."

SEC. 2. Section 291 of title 28 of the United States Code, as amended, is amended to read as follows:

"§ 291. Circuit judges

"(a) The Chief Justice of the United States may desig-

I

nate 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 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 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."

SEC. 3. Section 292 of title 28 of the United States Code, as amended, is amended to read as follows:

"§ 292. District judges

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

"(b) The chief judge of a circuit may, in the public

interest, designate and assign temporarily any district judge of the circuit to hold a district court in any district within the circuit.

"(c) The Chief 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 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."

SEC. 4. Section 293 of title 28 of the United States Code, as amended, is amended to read as follows:

"§ 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 serve, respectively, as a judge of the Court of Customs and Patent Appeals or the Court of Claims upon presentation of a certificate of necessity by the chief judge of the court wherein the need arises, or 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."

SEC. 5. Section 294 of title 28 of the United States Code, as amended, is amended to read as follows:

"§ 294. Assignment of retired Justices or judges to active duty

"(a) Any retired Chief Justice of the United States or 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.~~

~~"(c) Any retired judge of the Court of Claims, the Court of Customs and Patent Appeals, or the Customs Court may be designated and assigned by the chief judge of such court to perform such judicial duties therein as he is willing to undertake or 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.~~

~~"(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.~~

"(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.

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

SEC. 6. The first paragraph of section 295 of title 28 of the United States Code, as amended, is amended to read as follows:

"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."

SEC. 7. Item 293 in the analysis of chapter 13 of title 28 of the United States Code, immediately preceding section 291 of such title, is amended to read as follows:

"293. Judges of other courts."

Passed the House of Representatives August 4, 1958.

Attest: RALPH R. ROBERTS,

Clerk.

Calendar No. 2361

85TH CONGRESS
2D SESSION

H. R. 7866

[Report No. 2309]

AN ACT

To amend title 28, United States Code, relating to the Court of Customs and Patent Appeals.

AUGUST 5, 1958

Read twice and referred to the Committee on the Judiciary

AUGUST 9, 1958

Reported with an amendment

29