

THE JUDICIAL CODE
AND
RULES OF PROCEDURE
IN THE
FEDERAL COURTS

WITH EXCERPTS FROM THE CRIMINAL CODE

Compiled by
HENRY M. HART, JR.
AND
HERBERT WECHSLER

Students' Edition
1981 Revision
Foundation Press

THE JUDICIAL CODE
AND
RULES OF PROCEDURE
IN THE
FEDERAL COURTS

WITH EXCERPTS FROM THE CRIMINAL CODE

Compiled by

HENRY M. HART, JR.

Late Dane Professor of Law, Harvard University

and

HERBERT WECHSLER

Harlan Fiske Stone Professor of Constitutional Law Emeritus,
Columbia University

STUDENTS' EDITION

1981 REVISION

Mineola, New York
THE FOUNDATION PRESS, INC.

1981

COPYRIGHT © 1949, 1954, 1958, 1962, 1965, 1968, 1971, 1973, 1976, 1978
THE FOUNDATION PRESS, INC.

COPYRIGHT © 1981
By
THE FOUNDATION PRESS, INC.
All rights reserved

[No claim of copyright is made for official U.S. government statutes, rules or regulations.]

PREFATORY NOTE

When the late Professor Henry M. Hart, Jr., and I originally planned this compilation, we had in mind primarily the utility of such a supplement to our casebook on *The Federal Courts and the Federal System*. It was designed, however to meet a need that exists also in courses in judicial remedies and procedure which focus upon federal practice. Successive editions, of which the last appeared in 1978, have sought to keep pace with the rapid rate of change in this surprisingly dynamic field. The publication in 1973 of a second edition of the casebook, prepared by Professors Paul M. Bator, Paul J. Mishkin, David L. Shapiro and myself, with supplements in 1977 and 1981, affords a continuing incentive to keep this pamphlet up to date. There has been sufficient change upon important points within the last two years to call for a revision that will be available in 1981.

Statutes and regulations are useful principally for reference. But the good ordering of the basic materials on the federal courts—the Judicial Code and the rules of civil and criminal and appellate procedure—gives to each of them a further value not often achieved by enacted law: that of a connected and intelligible exposition which can be profitably read as a whole. Each of them, therefore, should be available to students as a whole, rather than distributed through a casebook in disjointed excerpts.

Partly to preserve this advantage and partly to make possible a compact and easily manageable volume, the code and the various rules have been printed as they stand from time to time, without annotation or parallel printing of previous versions.

The revised rules of the Supreme Court and representative rules of one district court have been included to round out the picture of the procedural provisions governing general litigation in the federal courts. The Supplemental Rules for Certain Admiralty and Maritime Claims, the Rules of Procedure for United States Magistrates, the new Rules of Procedure of the Judicial Panel on Multidistrict Litigation and the Supreme Court's Rules and Forms governing proceedings under 28 U.S.C. §§ 2254 and 2255 have also been included. As in the previous editions, however, the General Orders and Forms in Bankruptcy, and the rules of specialized courts, such as the Court of Claims, the Court of International Trade and the Court of Customs and Patent Appeals, have been omitted.

The present edition incorporates amendments to the statutes and the rules prior to December 31, 1980. It also includes the proposed Federal Court Jurisdiction Act of 1973, S.1876, 93d

PREFATORY NOTE

Cong., 1st Sess., deriving from the recommendations of the American Law Institute Study of the Division of Jurisdiction between State and Federal Courts, but with important changes. In addition, H.R. 9622, 95th Cong., 1st Sess., approved by the House of Representatives on February 28, 1978, which would have abolished the general jurisdiction of the District Courts based on diversity of citizenship, is set forth at the end of the pamphlet.

As was the case with the five previous editions, I am indebted to Doris Wechsler for bearing the major burdens of this revision of the compilation.

HERBERT WECHSLER

New York City
March 5, 1981

TABLE OF CONTENTS

	Page
PREFATORY NOTE	iii
JUDICIAL CODE (TITLE 28, UNITED STATES CODE) ..	1
PART I—ORGANIZATION OF COURTS	3
Chapter	
1. Supreme Court	4
3. Courts of Appeals	5
5. District Courts	9
6. Bankruptcy Courts	13
7. Court of Claims	14
9. Court of Customs and Patent Appeals	15
11. Court of International Trade	16
13. Assignment of Judges to Other Courts	18
15. Conferences and Councils of Judges	22
17. Resignation and Retirement of Justices and Judges	28
19. Distribution of Reports and Digests	35
21. General Provisions Applicable to Courts and Judges	36
PART II—DEPARTMENT OF JUSTICE	41
Chapter	
31. The Attorney General	41
33. Federal Bureau of Investigation	49
35. United States Attorneys	51
37. United States Marshals	53
39. United States Trustees	56
39. Special Prosecutor	59
PART III—COURT OFFICERS AND EMPLOYEES	66
Chapter	
41. Administrative Office of United States Courts	66
42. Federal Judicial Center	73
43. United States Magistrates	78
45. Supreme Court	89
47. Courts of Appeals	92
49. District Courts	93
51. Court of Claims	98
53. Court of Customs and Patent Appeals	99
55. Court of International Trade	101
57. General Provisions Applicable to Court Officers and Employees	102

TABLE OF CONTENTS

JUDICIAL CODE (TITLE 28, UNITED STATES CODE)

—Continued

	Page
PART IV—JURISDICTION AND VENUE	104
Chapter	
81. Supreme Court	104
83. Courts of Appeals	106
85. District Courts; Jurisdiction	108
87. District Courts; Venue	120
89. District Courts; Removal of Cases from State Courts	126
91. Court of Claims	132
93. Court of Customs and Patent Appeals	137
95. Court of International Trade	138
97. Jurisdictional Immunities of Foreign States ...	141
PART V—PROCEDURE	148
Chapter	
111. General Provisions	148
113. Process	150
115. Evidence; Documentary	151
117. Evidence; Depositions	157
119. Evidence; Witnesses	159
121. Juries; Trial by Jury	165
123. Fees and Costs	180
125. Pending Actions and Judgments	186
127. Executions and Judicial Sales	188
129. Moneys Paid into Court	190
131. Rules of Courts	191
133. Review—Miscellaneous Provisions	193
PART VI—PARTICULAR PROCEEDINGS	198
Chapter	
151. Declaratory Judgments	198
153. Habeas Corpus	199
155. Injunctions; Three-Judge Courts	205
157. Interstate Commerce Commission Orders; En- forcement and Review	206
158. Orders of Federal Agencies; Review	207
159. Interpleader	212
161. United States as Party Generally	212
163. Fines, Penalties and Forfeitures	223
165. Court of Claims Procedure	225
167. Court of Customs and Patent Appeals Procedure	232
169. Court of International Trade Procedure	233

TABLE OF CONTENTS

	Page
FEDERAL RULES OF CRIMINAL PROCEDURE	512
Table of Rules	515
Appendix of Forms	523
 RULES AND FORMS GOVERNING PROCEEDINGS IN THE UNITED STATES DISTRICT COURTS UNDER SECTION 2254 AND SECTION 2255 OF TITLE 28, UNITED STATES CODE	 596
Table of Contents	597
Rules Governing Section 2254 Cases	597
Model Form for Use in Applications for Habeas Corpus Under 28 U.S.C. § 2254	 603
Model Form for Use in 28 U.S.C. § 2254 Cases Involving a Rule 9 Issue	 614
Rules Governing Section 2255 Proceedings for the United States District Courts	 617
Model Form for Motions Under 28 U.S.C. § 2255	622
Model Form for Use in 28 U.S.C. § 2255 Cases Involving a Rule 9 Issue	 632
 RULES OF PROCEDURE FOR THE TRIAL OF MISDE- MEANORS BEFORE UNITED STATES MAGIS- TRATES	 636
 LOCAL RULES OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS	 642
Table of Rules	642
Appendix A	674
 FEDERAL RULES OF APPELLATE PROCEDURE	676
Table of Rules	676
Appendix of Forms	718
 RULES OF THE SUPREME COURT OF THE UNITED STATES	 721
Table of Rules	721
Index to Rules of Supreme Court of the United States	775
 PROPOSED FEDERAL COURT JURISDICTION ACT OF 1973	 783
 PROPOSED ACT TO ABOLISH GENERAL DIVERSITY OF CITIZENSHIP JURISDICTION	 816

TABLE OF CONTENTS

JUDICIAL CODE (TITLE 28, UNITED STATES CODE)

—Continued

	Pa
171. Tort Claims Procedure	244
173. Attachment in Postal Suits	249
175. Civil Commitment and Rehabilitation of Nar- cotic Addicts	251

CRIMINAL CODE (TITLE 18, UNITED STATES CODE)

PART I—CRIMES	256
---------------------	-----

Chapter

119. Wire Interception and Interception of Oral Communications	256
---	-----

PART II—CRIMINAL PROCEDURE	271
----------------------------------	-----

Chapter

201. General Provisions	272
203. Arrest and Commitment	279
205. Searches and Seizures	286
207. Release	289
208. Speedy Trial	297
209. Extradition	312
211. Jurisdiction and Venue	317
215. Grand Jury	321
216. Special Grand Jury	322
217. Indictment and Information	325
219. Trial by United States Magistrates	326
221. Arraignment, Pleas and Trial	327
223. Witnesses and Evidence	329
225. Verdict	339
227. Sentence, Judgment and Execution	339
231. Probation	347
233. Contempts	351
235. Appeal	352
237. Rules of Criminal Procedure	353

PART V—IMMUNITY OF WITNESSES	354
------------------------------------	-----

FEDERAL RULES OF CIVIL PROCEDURE	358
--	-----

Table of Rules	360
----------------------	-----

Appendix of Forms	463
-------------------------	-----

SUPPLEMENTAL RULES FOR CERTAIN ADMIRALTY AND MARITIME CLAIMS	489
---	-----

RULES OF PROCEDURE OF THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION	500
---	-----

Table of Rules	500
----------------------	-----

TABLE OF CONTENTS

JUDICIAL CODE (TITLE 28, UNITED STATES CODE)	
—Continued	Page
171. Tort Claims Procedure	244
173. Attachment in Postal Suits	249
175. Civil Commitment and Rehabilitation of Nar- cotic Addicts	251
CRIMINAL CODE (TITLE 18, UNITED STATES CODE)	
PART I—CRIMES	256
Chapter	
119. Wire Interception and Interception of Oral Communications	256
PART II—CRIMINAL PROCEDURE	271
Chapter	
201. General Provisions	272
203. Arrest and Commitment	279
205. Searches and Seizures	286
207. Release	289
208. Speedy Trial	297
209. Extradition	312
211. Jurisdiction and Venue	317
215. Grand Jury	321
216. Special Grand Jury	322
217. Indictment and Information	325
219. Trial by United States Magistrates	326
221. Arraignment, Pleas and Trial	327
223. Witnesses and Evidence	329
225. Verdict	339
227. Sentence, Judgment and Execution	339
231. Probation	347
233. Contempts	351
235. Appeal	352
237. Rules of Criminal Procedure	353
PART V—IMMUNITY OF WITNESSES	354
FEDERAL RULES OF CIVIL PROCEDURE	358
Table of Rules	360
Appendix of Forms	463
SUPPLEMENTAL RULES FOR CERTAIN ADMIRALTY AND MARITIME CLAIMS	489
RULES OF PROCEDURE OF THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION	500
Table of Rules	500

TITLE 28

UNITED STATES CODE

(As enacted in Public Law 773, 80th Congress, Second Session,
and as amended to December 31, 1980)

Editorial Note:

Revised Title 28 of the United States Code, Judiciary and Judicial Procedure, approved June 25, 1948 and effective September 1, 1948, is the fourth comprehensive revision of the statutes relating to the federal courts. It is the third of the four revisions to be formally enacted into law.

The First Judiciary Act of 1789, 1 Stat. 73, provided a framework around which successive enactments affecting the federal courts might have been systematically arranged. But in this as in other matters Congress followed a practice of piecemeal legislation. New provisions were occasionally enacted as amendments to the Judiciary Act but more often as independent measures or as parts of statutes changing the substantive law. Thus the statutes affecting the federal courts, like all federal statutes, rapidly became a formless and confused mass.

The Revised Statutes of 1873 were the first great effort to deal with this problem. Enacted in 1874, they codified all laws of a general and permanent nature in force on December 1, 1873, and repealed prior statutes outright. This was not only the first but the last occasion on which Congress has thus enacted as law a revision of all the permanent statutes of the United States. The judiciary title of the Revised Statutes was Title XIII, comprising 563 sections.

The judiciary title of the Revised Statutes was in turn revised, and the revision enacted into law, by the Judicial Code of 1911, 36 Stat. 1087. This revision was the work of a commission which had originally been appointed in 1897 to revise and codify the criminal and penal laws of the United States. The duties of the Commission were extended in 1899 to include the laws concerning the jurisdiction and practice of United States courts, and in 1901 to include all laws of a general and permanent nature. Having enacted the Criminal Code in 1909, 35 Stat. 1089, and the Judicial Code in 1911, Congress, however, rejected the rest of the Commission's work.

The next great effort at comprehensive revision of the federal statutes culminated in the adoption of the United States Code on June 30, 1926, 44 Stat. 1. Warned by the numerous errors discovered in previous codifications, Congress this time refused to enact the Code as law. Section 1 declares the intention of Congress "to embrace the laws of the United States, general and permanent in their nature," in a single volume. But Section 2 says that the matter set forth in the Code "shall establish *prima facie*" what such laws are, "but nothing in this Act shall be construed as repealing or amending any such law, or as enacting as new law any matter contained in the Code." Successive supplements to the Code have included the same provision. Thus Title 28 of the original Code, the judiciary title, never acquired the statutory force of the Revised Statutes and the Judicial Code.

In the 1948 revision Congress again singled out the judiciary title (and at the same time, Title 18, the Criminal Code) for special treatment. The revision is enacted as law and includes a comprehensive schedule of prior enactments which are repealed.

The progress of codification has never put an end to the practice of Congress of enacting, on occasion, provisions relating to the courts as parts of statutes changing the substantive law rather than as amendments to the Judicial Code. Nor have the revisers ever succeeded in extracting all these provisions from the general body of the statutes and incorporating them in the Code. For example, Chapter 83 of the present revision, dealing with the jurisdiction of the courts of appeals, includes none of the numerous provisions for review in these courts of the orders of various federal administrative agencies. Similarly, Chapter 85, dealing with the jurisdiction of the District Courts, does not incorporate many specific jurisdictional provisions enacted in the course of legislating on particular subjects, which may narrow or enlarge jurisdiction that would otherwise obtain under § 1331. To be sure of finding all the applicable statutes on jurisdiction and procedure in a federal case, therefore, it remains necessary to examine not only Revised Title 28 but the substantive statutes involved.

Revised Title 28 was embodied in Public Law 773, 80th Congress, Second Session, approved June 25, 1948, which also includes additional material reprinted here. The revised title (together with Revised Title 18) was extensively amended to correct minor errors by Public Law 72, 81st Congress, First Session, approved May 24, 1949, and has been further amended from time to time since. As amended up to December 31, 1980 it is reproduced here in its entirety, with the exception only of Sections 81

to 131, inclusive, of Chapter 5, which divide the several states into judicial districts and many of the districts in turn into divisions, and § 376, dealing with Judges' survivors' annuities.

The Bankruptcy Reform Act of 1978 (Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2549) includes substantial amendments to Title 28, some of which took effect on October 1, 1979, but many of which do not take effect until April 1, 1984. Only those amendments which have taken effect are included in this edition.

AN ACT*

To revise, codify, and enact into law title 28 of the United States Code entitled "Judicial Code and Judiciary".

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That:

Title 28 of the United States Code, entitled "Judicial Code and Judiciary" is hereby revised, codified, and enacted into law, and may be cited as "Title 28, United States Code, section —", as follows:

TITLE 28

JUDICIARY AND JUDICIAL PROCEDURE

Part	Sec.
I. ORGANIZATION OF COURTS	I
II. DEPARTMENT OF JUSTICE	501
III. COURT OFFICERS AND EMPLOYEES	601
IV. JURISDICTION AND VENUE	1251
V. PROCEDURE	1651
VI. PARTICULAR PROCEEDINGS	2201

PART I—ORGANIZATION OF COURTS

Chapter	Sec.
1. Supreme Court	I
3. Courts of appeals	41
5. District courts	81
7. Court of Claims	171
9. Court of Customs and Patent Appeals	211
11. Court of International Trade	251
13. Assignment of judges to other courts	291
15. Conferences and councils of judges	331
17. Resignation and retirement of justices and judges	371
19. Distribution of reports and digests	411
21. General provisions applicable to courts and judges	451

CHAPTER 1—SUPREME COURT**Sec.**

1. Number of justices; quorum.
2. Terms of court.
3. Vacancy in office of Chief Justice; disability.
4. Precedence of associate justices.
5. Salaries of justices.
6. Records of former court of appeals.

§ 1. Number of justices; quorum

The Supreme Court of the United States shall consist of a Chief Justice of the United States and eight associate justices, any six of whom shall constitute a quorum.

§ 2. Terms of court

The Supreme Court shall hold at the seat of government a term of court commencing on the first Monday in October of each year and may hold such adjourned or special terms as may be necessary.

§ 3. Vacancy in office of Chief Justice; disability

Whenever the Chief Justice is unable to perform the duties of his office or the office is vacant, his powers and duties shall devolve upon the associate justice next in precedence who is able to act, until such disability is removed or another Chief Justice is appointed and duly qualified.

§ 4. Precedence of associate justices

Associate justices shall have precedence according to the seniority of their commissions. Justices whose commissions bear the same date shall have precedence according to seniority in age.

§ 5. Salaries of justices

The Chief Justice and each associate justice shall each receive a salary at annual rates determined under section 225 of the Federal Salary Act of 1967 (2 U.S.C. §§ 351–361), as adjusted by section 461 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.

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; panels; hearings; quorum.
47. Disqualification of trial judge to hear appeal.
48. Terms of court.
49. Assignment of judges to division to appoint special prosecutors.

§ 41. Number and composition of circuits

The * twelve 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, Vir- gin Islands.
Fourth	Maryland, North Carolina, South Carolina, Virginia, West Virginia.
Fifth	District of the Canal Zone, Louisiana, Mis- sissippi, Texas.
Sixth	Kentucky, Michigan, Ohio, Tennessee.
Seventh	Illinois, Indiana, Wisconsin.
Eighth	Arkansas, Iowa, Minnesota, Missouri, Ne- braska, North Dakota, South Dakota.
Ninth	Alaska, Arizona, California, Idaho, Mon- tana, Nevada, Oregon, Washington, Guam, Hawaii.
Tenth	Colorado, Kansas, New Mexico, Oklaho- ma, Utah, Wyoming.
* Eleventh	Alabama, Florida, Georgia.

§ 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.

* Effective October 1, 1981. For the provisions in force until that date, see the 1978 edition of this pamphlet, at p. 5.

§ 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 regular active service. The circuit justice and justices or judges designated or assigned shall also be competent to sit as judges of the court.

§ 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:

Circuits	Number of Judges
District of Columbia	11
First	4
Second	11
Third	10
Fourth	10
Fifth	14
Sixth	11
Seventh	9
Eighth	9
Ninth	23
Tenth	8
* Eleventh	12

(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 at an annual rate determined under section 225 of the Federal Salary Act of 1967 (2 U.S.C.A. §§ 351-361), as adjusted by section 461 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

* Effective October 1, 1981. For the provisions in force until that date, see the 1978 edition of this pamphlet, at p. 6.

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.

§ 46. Assignment of judges; panels; 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 panel 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 regular active service. A court in banc shall consist of all circuit judges in regular active service.

(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.

§ 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.

§ 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, Fort Worth, Jackson.
Sixth	Cincinnati.