

**RULES OF PRACTICE IN THE UNITED STATES  
CIRCUIT COURT OF APPEALS FOR THE  
THIRD CIRCUIT AND IN THE UNITED  
STATES DISTRICT COURT FOR THE MIDDLE  
DISTRICT OF PENNSYLVANIA AT LAW AND  
IN BANKRUPTCY WITH ANNOTATIONS**

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Rules of Practice in the United States Circuit Court of Appeals for the Third Circuit and in the United States District Court for the Middle District of Pennsylvania at Law and in Bankruptcy with Annotations by R. W. Archibald

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**R. W. ARCHIBALD**

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*U.S. Circuit court of Appeals (3d Cir.)*

FEDERAL COURT RULES ANNOTATED

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RULES OF PRACTICE

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With Annotations

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BY

o R. W. ARCHBALD

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SONEY & SAGE

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MIDDLE DISTRICT OF PENNSYLVANIA, SS.

ORDERED, that the Rules of Court of the Middle District of Pennsylvania, including the Rules in Bankruptcy, as printed by Soney & Sage, are hereby adopted as the authorized edition of the Rules of Court of this District.

October 1, 1912.

CHARLES B. WITMER,

*District Judge.*



## INTRODUCTION.

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The Circuit Court of Appeals of each circuit consists of three judges, of whom two constitute a quorum (*a*); and is to be made up from the Justice of the Supreme Court assigned to the circuit, the Circuit Judges, and the several District Judges of the circuit (*b*). The judges of the Commerce Court may also be assigned as Circuit Judges to the Court of Appeals of any circuit for service (*c*).

There are now four Circuit Judges in the second, seventh and eighth circuits; three in the first, third, fifth, sixth and ninth; and two in the fourth. The attendance of the District Judges on the Court of Appeals of their respective circuits is conditioned by the statute on whether a full Court is made up without them by the attendance of the Supreme Court Justice assigned to the Circuit and the Circuit Judges, and may be regulated by general or particular assignment. It is governed in the fifth circuit by a standing order (*d*); as it is also in practice in the third circuit; and possibly in the others. The freedom with which the composition of the court may be adjusted to meet any emergency is one of the great merits of the system. It is competent for three District Judges, duly designated, to hold a Circuit Court of Appeals (*e*). No judge may sit in a case in which he sat in the Court below, and if he does it vitiates the judgment (*f*).

The Third Judicial Circuit of the United States is made up of the Eastern, Western, and Middle Districts of Pennsylvania, the District of New Jersey and the District of Delaware (*g*); and the Court of Appeals of the Circuit sits at Philadelphia (*h*). There are two terms of court in each year, beginning on the first Tuesday of March and the first Tuesday of October.

The Circuit Judges in commission in the Third Circuit at this time are Hon. George Gray of Wilmington, Delaware, appointed by President McKinley in 1899; Hon. Joseph Buffington of Pittsburg, Pennsylvania, appointed by President

Roosevelt in 1906; and Hon. John B. McPherson of Philadelphia, Pennsylvania, appointed by President Taft in 1912.\*

The District Judges, in the order of their appointment, are as follows: Hon. Edward G. Bradford, of the District of Delaware, appointed by President McKinley in 1897; Hon. James B. Holland, of the Eastern District of Pennsylvania, appointed by President Roosevelt in 1904; Hon. Joseph Cross of the District of New Jersey, appointed by President Roosevelt in 1905; Hon. James S. Young, of the Western District of Pennsylvania, appointed by President Roosevelt in 1908; Hon. Charles P. Orr, of the Western District of Pennsylvania, appointed by President Taft in 1909; Hon. John Rellstab, of the District of New Jersey, appointed by President Taft in 1909; Hon. Charles B. Witmer, of the Middle District of Pennsylvania, appointed by President Taft in 1911; and Hon. J. Whitaker Thompson of the Eastern District of Pennsylvania, appointed by President Taft in 1912.

(a) Act March 3, 1911, Sect. 117. 36 Stat., 1131.

(b) Act March 3, 1891, Sect. 3. 26 Stat., 827. Act March 3, 1911, Sect. 121. 36 Stat., 1132.

(c) Act March 3, 1911, Sect. 205. 36 Stat., 1148.

(d) 150 Fed. lxxxv.

(e) *Peters v. Hanger*, 134 Fed., 586. 136 Fed., 181. See also *McKnight v. Cramer Furniture Co.*, 189 Fed., 48. *Kreplik v. Couch Patents Co.*, 190 Fed., 565.

(f) *American Construction Co. v. Jacksonville Railway*, 148 U. S., 372. *Moran v. Dillingham*, 174 U. S., 153.

(g) Act March 3, 1911, Sect. 116. 36 Stat., 1131.

(h) *Ibid.*, Sect. 126. 36 Stat., 1132.

\* Hon. William M. Lanning, of Trenton, New Jersey, appointed by President Taft in 1909, who was in office when the following Rules of Court were adopted, died February 16, 1912, pending their preparation for publication.

RULES (a)

OF THE

United States Circuit Court of Appeals

FOR THE

THIRD CIRCUIT.

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Adopted in Open Court, June 16, 1891.  
Revised January 31, 1910, to Take Effect  
March 1, 1910.

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(a) The right to make rules of practice inheres in every Court. 8 Amer. & Eng. Encycl. Law, 2 Ed., p. 29. 11 Cycl., 740. 1 Rose Fed. Proced., Sect. 801. The Circuit Courts of Appeal are also given the specific power by statute. Act March 3, 1891, Sect. 2. 26 Stat., 826. Act March 3, 1911, Sect. 122. 36 Stat., 1132. In pursuance of this authority a set of rules applicable to all the circuits was originally promulgated. 150 Fed., xxv-xxxvi; and these form the basis of those which are now in force in the various circuits with certain modifications. 150 Fed., xxxvii-cxxxviii. 188 Fed., v-xxviii. 193 Fed., i-xx. 2 Rose Fed. Proced., p. 1872-2040. 3 Foster's Fed. Prac., 2465-2507. They are largely predicated upon the Rules of the Supreme Court, to be found in 222 U. S., appendix. See also 2 Rose Fed. Proced., 1761-1778. 3 Foster's Fed. Prac., 2448-2464. As so promulgated they have the force and effect of law to the extent that they are applicable. American Graphophone Co. v. National Phonograph Co., 127 Fed., 349. United States v. Barber Lumber Co., 169 Fed., 184. The Rules of the Third Circuit, which make up the present collection, went into effect March 1, 1910, and have been revised down to the date of this publication. Their arrangement under heads does not necessarily control their construction. United States v. Cigars, 138 Fed., 166. The titles are as fixed by the Court, except as otherwise indicated.