

CHIEF JUDGE WILLIAM H. PRYOR JR. AS CHIEF JUDGE

Hon. Ed Carnes

INTRODUCTION	1084
I. AS CHIEF JUDGE OF THE COURT OF APPEALS	1085
II. AS CHIEF JUDGE OF THE CIRCUIT	1087
III. AS A MEMBER OF THE JUDICIAL CONFERENCE OF THE UNITED STATES.....	1088
IV. AND LAST, BUT CERTAINLY NOT LEAST, AS A JUDGE	1089

CHIEF JUDGE WILLIAM H. PRYOR JR. AS CHIEF JUDGE

*Hon. Ed Carnes**

INTRODUCTION

On June 3, 2020, Judge William H. Pryor Jr. became the ninth Chief Judge of the Eleventh Circuit.¹ Because a circuit chief's tenure is capped at seven years, he is just past the mid-point of his term,² which is a good time to take a look at him as chief.

He who would be chief judge of a federal court of appeals, especially one with a heavy case load like the Eleventh Circuit's, had better subscribe to the philosophy of Teddy Roosevelt, who rejected "the doctrine of ignoble ease" in favor of "the strenuous life . . . of toil and effort."³ Roosevelt preached that the "highest form of success . . . comes not to the man who desires mere easy peace" but to one who embraces a challenge.⁴ Or, as Henry James confided to a friend, "I have in my own fashion learned the lesson that life is effort, unremittingly repeated."⁵ Chief Judge Pryor has not attempted a life of "ignoble ease,"⁶ nor has he sought an easy peace with the burdens of his office. He has instead embraced the toil and put in the unremitting effort required to be an outstanding chief judge. And what an effort the office requires.

When the title of the position was changed from "senior circuit judge" to "chief judge" in 1948, Congress explained that it was done "in recognition of the great increase in administrative duties of such judge."⁷ In the three-quarters of a century since then, the administrative duties of a chief circuit judge, as head of his own court, as head of the circuit, and as a member of the Judicial Conference of the United States, have increased even more. A look at those administrative duties along with his judicial output as a judge of his court shows the unrelenting industriousness of Chief Judge Pryor.

* Judge Ed Carnes, U.S. Court of Appeals for the Eleventh Circuit.

1. *Hon. William H. Pryor Jr.*, U.S. CT. OF APPEALS FOR THE ELEVENTH CIR., <https://www.ca11.uscourts.gov/judges/hon-william-h-pryor-jr> [<https://perma.cc/P5CD-WMVR>].

2. See 28 U.S.C. § 45(a)(3)(A).

3. Theodore Roosevelt, *The Doctrine of the Strenuous Life*, in THE PENGUIN BOOK OF TWENTIETH-CENTURY SPEECHES 1, 1 (Brian MacArthur ed., 1993).

4. *Id.*

5. Letter from Henry James to Charles Eliot Norton (Feb. 4, 1872), in 1 HENRY JAMES LETTERS, 1843–1875, at 271, 276 (Leon Edel ed., 1974).

6. Roosevelt, *supra* note 3.

7. 28 U.S.C. § 45 hist. n. (Revision Notes and Legislative Reports).

I. AS CHIEF JUDGE OF THE COURT OF APPEALS

The chief circuit judge's primary role, of course, is to serve as the chief judge of the court of appeals. His duties as the head of his own court are daunting and many. Recounting them all would exceed the allotted space for this Article, so some examples will have to do.

A circuit chief has the duty to oversee and guide the administrative functioning of his own court's personnel.⁸ For Chief Judge Pryor that involves more than 170 employees.⁹ Through a circuit executive, assistant circuit executives, and circuit unit executives, all of whom act under his leadership and direction, he is responsible for the operation of the court.¹⁰

He is also responsible for appointing judges of his court as chairs and members of a dozen standing committees, organized by subject matter, that are essential to court operations. And he does the same for any special committees as the need arises. He approves the agenda of the administrative meetings of the court, presides over those meetings, and is responsible for seeing that the operational, policy, and other decisions the court makes are carried out by its staff.

The chief judge has final say on matters involving admission to, and renewals of, membership in the court's bar when there is an issue calling for the exercise of his discretion. Those matters require Chief Judge Pryor's time and attention on dozens of occasions each year.

He also has duties when it is alleged that members of the court's bar have become incompetent or have engaged in unethical conduct that may warrant discipline.¹¹ He appoints members of the Committee on Lawyer Qualifications and Conduct and may refer matters to that committee for investigation.¹² The committee submits its reports to the chief,¹³ and the matter may be decided by him in a single-judge order or decided by three-judge panel; if by panel, he presides over it.¹⁴ These matters involve careful consideration, time, and attention.

The chief judge of a federal appeals court also has the authority to issue general administrative orders in the name of his court when required, especially, but not exclusively, in emergencies.¹⁵ During Chief Judge Pryor's tenure, he has

8. Marin K. Levy & Jon O. Newman, *The Office of the Chief Circuit Judge*, 169 U. PA. L. REV. 2425, 2440–41 (2021).

9. Statistics compiled by the author.

10. *See Office of the Circuit Executive*, U.S. CT. OF APPEALS FOR THE ELEVENTH CIR., <https://www.ca11.uscourts.gov/circuit-executive-office> [<https://perma.cc/2AD6-PE84>].

11. *See* 11TH CIR. R. add. 8.

12. *See id.* R. 2.A–C, 8.A.

13. *See id.* R. 3.

14. *See id.* R. 3.F.

15. *See, e.g.*, General Order No. 44: Restrictions on Visitors to the Court and Temporary Suspension of Paper Filing Requirements (2020), <https://www.ca11.uscourts.gov/sites/default/files/courtdocs/clk/>

issued a general order and an amended order concerning “Procedures for the Filing, Service, and Management of Highly Sensitive Documents.”¹⁶ He has also issued orders responding to the COVID-19 pandemic, including some dealing with audio or teleconferencing of oral arguments and restrictions on entry into the Tuttle Courthouse and the Godbold Federal Building.¹⁷

And, of course, in addition to the business of courts as ongoing operations, there is the purpose for which courts exist—deciding cases. The Code provides: “The chief judge shall have precedence and preside at any session of the court which he attends.”¹⁸ As first among equals on the court, Chief Judge Pryor has the center seat on the bench during all oral arguments he hears, and he presides in the courtroom and in the conference following the arguments. When in the majority, which is almost always the case, he selects the writing judge.

When an active judge on the court holds the mandate in a case and the ensuing exchange of memoranda results in a call for an en banc poll,¹⁹ the chief judge circulates the ballots.²⁰ If the vote is for en banc rehearing, he appoints case managers to recommend briefing instructions and any special page limitations or argument time.²¹

The selection of visiting judges also requires his time and attention. Every federal appellate court is authorized to use visiting judges from district courts or other federal appellate courts to fill out oral argument panels in appropriate circumstances, the primary one of which is the borrowing court’s caseload.²²

GeneralOrder44.pdf [https://perma.cc/7FM2-KWCS] (implementing court protocols during COVID-19 pandemic).

16. General Order No. 48: Procedures for the Filing, Service, and Management of Highly Sensitive Documents (2021), https://www.ca11.uscourts.gov/sites/default/files/courtdocs/clk/General_Order_48_Filed_1-13-21.pdf [https://perma.cc/S8S4-AEU2]; Amended General Order No. 48: Procedures for the Filing, Service, and Management of Highly Sensitive Documents (2021), <https://www.ca11.uscourts.gov/sites/default/files/courtdocs/clk/Amended%20General%20Order%2048%20C%20Filed%202-26-21.pdf> [https://perma.cc/85RP-HXX9].

17. Amended General Order No. 45: Oral Arguments by Audio or Video Conferencing (2020), <https://www.ca11.uscourts.gov/sites/default/files/courtdocs/clk/GeneralOrder45Amended.pdf> [https://perma.cc/9BVW-6B8G]; General Order No. 46: Requirements to Enter Court Facilities and Temporary Suspension of Paper Filing Requirements (2020), <https://www.ca11.uscourts.gov/sites/default/files/courtdocs/clk/GeneralOrder46r1.pdf> [https://perma.cc/7VLP-GFH6]; General Order No. 49: Requirements to Enter Court Facilities (2021), <https://www.ca11.uscourts.gov/sites/default/files/courtdocs/clk/GeneralOrder49.pdf> [https://perma.cc/TFG5-XDZH]; General Order No. 50: Requirements to Enter Court Facilities (2021), https://www.ca11.uscourts.gov/sites/default/files/courtdocs/clk/GeneralOrder50_0.pdf [https://perma.cc/JTZ6-X6NL]; General Order No. 51: Supplemental Requirements to Enter Court Facilities (2021), https://www.ca11.uscourts.gov/sites/default/files/courtdocs/general/General_Order_No_51.pdf [https://perma.cc/WJ3H-93VU]; Amended General Order No. 51: Supplemental Requirements to Enter Court Facilities (2021), <https://www.ca11.uscourts.gov/sites/default/files/courtdocs/clk/AmendedGeneralOrder51.pdf> [https://perma.cc/7RXS-AZ2G].

18. 28 U.S.C. § 45(b).

19. *See* FED. R. APP. P. 35; 11TH CIR. I.O.P. 3.

20. 11TH CIR. I.O.P. 6.

21. *See id.* at I.O.P. 9.

22. 28 U.S.C. §§ 291–92.

During the 2022–2023 court year, the Eleventh Circuit “borrowed” twenty-two judges, all of whom were district court judges from within our circuit.²³ Chief Judge Pryor selected and invited them.

II. AS CHIEF JUDGE OF THE CIRCUIT

In addition to the role he plays as the head of his own court, a chief circuit judge also plays an important role as head of the circuit as a whole. For example, he can authorize circuit judges to sit as district court judges²⁴ and can authorize district judges within the circuit to sit in districts other than their own.²⁵

He has the authority and responsibility to select and designate: a judge to serve in a transferee district on a multidistrict litigation case;²⁶ two of the three judges to decide challenges to the apportionment of congressional districts or of any statewide legislative body;²⁷ three judges to decide a three-judge voting rights case filed by the United States;²⁸ a judge to hear an employment discrimination case filed by the Attorney General;²⁹ and a judge to conduct bankruptcy proceedings when the debtor is a municipality or, in some cases, when the debtor is a county.³⁰

The chief circuit judge has many other circuit-wide responsibilities, some of which involve the circuit judicial council. The Eleventh Circuit Judicial Council consists of the chief circuit judge plus the nine most senior active judges of the court of appeals along with the chief judge of each of the nine district courts.³¹ A circuit judicial council has important legal and administrative powers; it has the broad authority and duty to “make all necessary and appropriate orders for the effective and expeditious administration of justice within its circuit.”³² The chief circuit judge is the presiding judge on the council and is responsible for seeing that its policies are carried out.³³

As part of his circuit-wide duties, the circuit chief is also in charge of judicial misconduct and disability matters and proceedings for the whole circuit.³⁴ There are approximately 250 Article I and III judges in active or senior status in our circuit.³⁵ It is an uncommon occurrence for federal judges to engage in

23. Statistics compiled by the author.

24. 28 U.S.C. § 291(b).

25. *Id.* § 292(b).

26. *Id.* § 1407(b).

27. *Id.* § 2284(b)(1).

28. 52 U.S.C. § 10101(g).

29. 42 U.S.C. § 2000e-5(f)(4).

30. See 11 U.S.C. § 109(b), (c); see generally, e.g., ALA. CODE § 11-81-3 (authorizing Alabama counties to file for bankruptcy).

31. See generally 28 U.S.C. § 332(a)(1), (3); FED. R. APP. P. 47; 11TH CIR. I.O.P. 7.

32. 28 U.S.C. § 332(d)(1).

33. See *id.* § 332(a).

34. See *id.* § 352(a).

35. Statistics compiled by the author.

unethical behavior or other misconduct or to attempt to remain on the bench after becoming mentally impaired. But the filing of complaints alleging that a judge has engaged in misconduct or has become disabled is common. The vast majority of the complaints are frivolous ones filed by disgruntled litigants seeking to relitigate their cases.³⁶ But all of them must be addressed, and that requires time and effort.

The misconduct and disability complaints that are not frivolous require the chief judge's careful consideration. It is his responsibility, after reviewing a complaint, to decide whether it should be dismissed, concluded because voluntary corrective action has been taken, concluded because intervening events have made further action unnecessary, or referred to a special committee.³⁷ If a hearing is required, the chief circuit judge presides over it.³⁸

On a less solemn note, Chief Judge Pryor convenes and presides at the Eleventh Circuit biennial conference of judges and attorneys, which is held to consider the business of the courts and recommend ways to improve the administration of justice in the circuit.³⁹ He works with the chief district judge of the hosting district, the judicial council, the circuit executive, and the conference planning committee, which he appoints, to plan the program for the conference, and he supervises the entire process to ensure its success.

III. AS A MEMBER OF THE JUDICIAL CONFERENCE OF THE UNITED STATES

On the national scene, by virtue of his office, Chief Judge Pryor has duties and responsibilities as a member of the Judicial Conference of the United States. The Chief Justice presides over that body whose twenty-six members include the chief judges of each judicial circuit as well as a district court judge selected from each circuit.⁴⁰

The Judicial Conference of the United States "is the principal policymaking body for the federal courts."⁴¹ It formally meets two times a year.⁴² The Conference has an important role in the rulemaking process, with the responsibility of recommending to the Supreme Court additions or changes to the federal rules "to promote simplicity in procedure, fairness in administration, the just determination of litigation, and the elimination of unjustifiable expense

36. See *Judicial Conduct & Disability*, U.S. CT. OF APPEALS FOR THE ELEVENTH CIR., <https://www.ca11.uscourts.gov/judicial-conduct-disability> [<https://perma.cc/7VLJ-6WLD>].

37. See 28 U.S.C. §§ 352(b), 353(a); R. JUDICIAL-CONDUCT & JUDICIAL-DISABILITY PROC. 11(c)-(f) [hereinafter JUDICIAL-CONDUCT RULES].

38. See 28 U.S.C. § 353(a)(1); JUDICIAL-CONDUCT RULES 12(a), 14.

39. 28 U.S.C. § 333; 11TH CIR. R. add. 1.

40. See 28 U.S.C. § 331.

41. *In re Sony BMG Music Ent.*, 564 F.3d 1, 6 (1st Cir. 2009); see also 28 U.S.C. § 331.

42. *About the Judicial Conference*, U.S. CTS., <https://www.uscourts.gov/about-federal-courts/governance-judicial-conference/about-judicial-conference> [<https://perma.cc/D7UF-JN94>].

and delay.”⁴³ The Conference also makes recommendations to Congress about proposed legislation affecting the courts.⁴⁴ It consults with the Director of the United States Marshals Service “on a continuing basis regarding the security requirements for the [federal] judicial branch.”⁴⁵ The Conference’s Committee on Judicial Conduct and Disability can act on referrals and certifications from the circuit judicial councils about particular misconduct or disability proceedings against judges.⁴⁶ The Judicial Conference, and Chief Judge Pryor as a member of it, is involved in many other aspects relating to the operation and mission of the federal judiciary.

IV. AND LAST, BUT CERTAINLY NOT LEAST, AS A JUDGE

Given all of the extra duties that he has as Chief Judge of the Eleventh Circuit Court of Appeals, as Chief Judge of the Eleventh Circuit as a whole, and as a member of the Judicial Conference of the United States, Chief Judge Pryor could be expected to let up some on the regular, case-related duties of a judge in active service on his court. Or he could be expected to fall behind on some of that work. But he has not eased up on his case work and has not fallen behind in completing it.

Chief Judge Pryor has not just defied any expectations that his judicial work would be affected by his many extra-judicial duties, he has done so to an extraordinary degree. During the nearly four years that he has had all of the extra work as chief judge, he wrote six of the twenty-three en banc opinions the court issued, more than any other judge on the court.⁴⁷ During that time, he wrote 133 published opinions, the most of any judge on the court.⁴⁸ That is fifty-seven more than the judge who wrote the second largest number of published opinions (seventy-six).⁴⁹ And during that time, if unpublished ones are counted, Chief Judge Pryor wrote a total of 485 opinions, again the largest number of any judge on the court.⁵⁰ Teddy Roosevelt and Henry James would have been proud of him.

But what, you may ask, would Justice Oliver Wendell Holmes, Jr. have thought of our chief judge who—one would never guess given all of his energy—is sixty-one years old? We know what Holmes would have thought because he confided to a friend his measure of success for a judge in his sixties:

43. 28 U.S.C. § 331.

44. *See id.*

45. *Id.*

46. *See* JUDICIAL-CONDUCT RULE 20.

47. Statistics compiled by the author.

48. *Id.*

49. *Id.*

50. *Id.*

I passed sixty-eight the other day. I think one doesn't feel it as the approach of the end but as the finish of a race. If one can keep the pace, do one's job in the superlative degree, and keep out of the Insolvency, Divorce, and Criminal Courts until one retires on a pension I call it a success.⁵¹

Chief Judge Pryor has more than kept the pace, he has done his job in the superlative degree, and he has managed to keep out of the insolvency, divorce, and criminal courts. Like Teddy Roosevelt and Henry James, Justice Holmes would have been proud of our chief judge.

And so are we.

51. Letter from Oliver Wendell Holmes, Jr., to Lewis Einstein (Mar. 26, 1909), *in* THE HOLMES-EINSTEIN LETTERS: CORRESPONDENCE OF MR. JUSTICE HOLMES AND LEWIS EINSTEIN, 1903-1935, at 46 (St. Martin's Press Second Printing 1965).