



Hon. Carl E. Stewart

Chief Judge, U.S. Court of Appeals for the Fifth Circuit

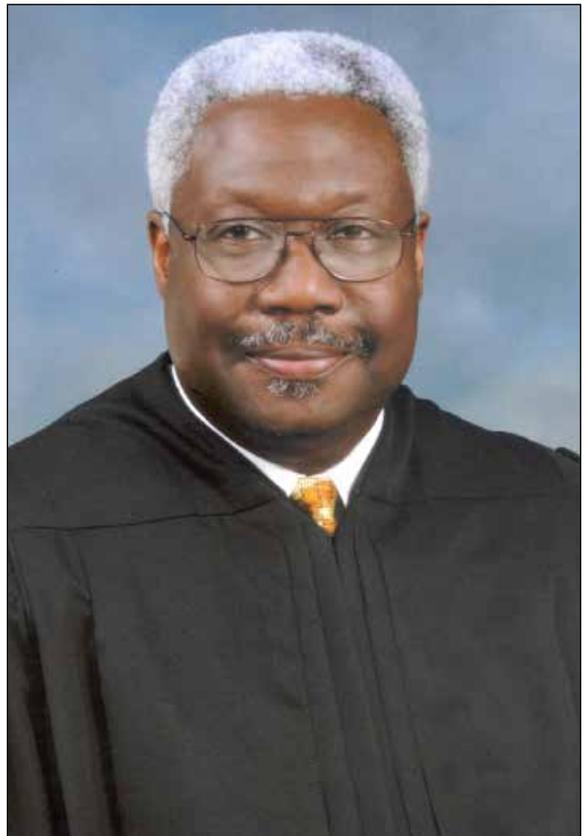
Judge Carl E. Stewart of Shreveport, La., began his term as chief judge of the U.S. Fifth Circuit Court of Appeals in October 2012. Chief Judge Stewart has served on the Fifth Circuit since 1994, when he was appointed by President Bill Clinton. He is the first African-American to serve as the Fifth Circuit's chief judge.

Chief Judge Stewart had a distinguished career as a state court judge before joining the Fifth Circuit. He served, first, as a district judge in the First Judicial District Court in Louisiana. Later, he was elected to serve on Louisiana's Second Circuit Court of Appeals.

I interviewed the chief judge in April 2013 and asked him about his time on the Fifth Circuit. I clerked for Judge Stewart from 1999 to 2000 and learned many valuable lessons from him that have benefitted me in my practice and career in academia. Chief Judge Stewart cultivates great relationships with his law clerks and holds reunions every five years. Some of my favorite times during my clerkship year were listening to the chief judge tell stories about his background and his career.

In our interview, I started by asking Chief Judge Stewart about the most important lessons he's learned in his 19 years on the Fifth Circuit. He said, "The most important thing I've learned is patience and to be thoroughly prepared on legal issues, but to be patient enough to listen to other views and other points by colleagues and lawyers. Being well prepared sensitizes you to be able to listen to other views. On a multi-judge court, it's very important to have the patience to listen to other viewpoints. Other viewpoints can enhance your own ideas."

In terms of listening to viewpoints of all of the members of the court, I was curious about how Chief Judge Stewart adjusts to new members and what has been the influence of the recent additions to the Fifth Circuit. In the past 10 years, seven new judges have joined the court. I asked the judge how the Fifth Circuit has changed since he's been a member.



"The more recent appointments on the court come from backgrounds where they are very technologically savvy. Nineteen years ago, we were a very paper-driven court. In some ways, it still is. The court still manually handles briefs and other documents. The judges who have come onto the court are very technologically geared up. Now, the electronic record is available. Now, every judge has access to the electronic record with the briefs. The technology has enhanced the ability of the court to be even better prepared for oral argument. It sharpens the inquiry at oral argument. It sharpens our focus on the

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issue and quickens decisions on the cases. Technology allows us to be able to turn out the opinions quicker, and it motivates you to uptick your skills. The law clerks are coming are from very good schools, and they are technologically sophisticated. This has been a big change, but a good change. It has enhanced our ability to get the information that we need and to be able to drill down into the cases.”

Chief Judge Stewart grew up in a close-knit family in Shreveport, La. He has said in the past that his personal role model growing up was his father, Richard Stewart. Chief Judge Stewart is also a history buff and enjoys reading and studying history’s greatest lawyers and judges, like Charles Hamilton Houston and Thurgood Marshall. Knowing his interest in historical legacy and role models, I asked him who, in his time as a judge, have been some of his greatest influences? He said, “In my second year of law school, there was an employment case that was tried at the law school. Judge Alvin Rubin came down from Baton Rouge. He heard all of the witnesses right there at the law school. At the end of the trial, Judge Rubin recounted orally what all of the testimony had been from memory and then he rendered a verdict. It was mind boggling because I had never seen a judge articulate the facts so clearly. It was also a perfect memorandum of law. It was an example of what a judge should be. It was quick, and the parties got what they needed. Seeing Judge Rubin and his style was important. He was meticulously prepared, very even handed, and even tempered. As an assistant U.S. attorney, I practiced a lot in front of Judge Stagg, and he had a similar style to Judge Rubin. I still think it’s a good model to be prepared and even tempered.”

Chief Judge Stewart is also known for his devotion to his family and the community. He and his wife Joanne Stewart have three children and three grandchildren. He is also active in his church, the Boy Scouts of America, and the Inns of Court (for which he serves as national vice president of the Inns of Court Foundation). He is also an avid photographer. He displays books full of photographs

in his office. When he came to my wedding, in 2005, he took beautiful pictures of the ceremony and reception. Many times, when I am struggling to find time for my work and all of my community and family activities, I think of Chief Judge Stewart as an example of how to maintain that balance.

I asked Chief Judge Stewart what advice he would give to young lawyers about finding time to devote to work, family, and fun. “As important as the job is, family and personal well being have to be at the top of the list. You can’t be the best at your job if you aren’t in good health or if you are stressed out. I love photography, and I’ve had a couple of exhibitions. I’ve gone out to local schools and talked about photography. It’s important to have a release outside

of the job. I have three kids and three grandchildren. It’s impossible to be stressed about work when you’re with your grandchildren. A lot of it is time management and carving out downtime. You have to carve out time to take pictures or travel. You have to be intentional. When I go on vacation I lock up my iPhone in the safe in the room. That way I’m not tempted to look at it. I’ve found that to be very therapeutic. Ninety-nine times out of 100 there are no emergency messages on it. You have to be intentional about it. If you don’t schedule time to take a day off or take your spouse out, the work will swallow you up. Judge Leon Higginbotham once said, ‘No one said from their sick bed that they wished they had one more day to go to work.’ On Sunday morning, I am not at the courthouse. I go to Sunday school, I go to church, and I go home. Maintaining those kinds of habits makes you physical, mentally, and spiritually healthy.” ☺

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“else wants to bite” —is working with the courts to reduce what he terms the outrageous costs of patent litigation, which he finds largely attributable to discovery expenses. A survey released in 2011 by the American Intellectual Property Law Association indicates that Judge Essex has reason to be concerned. For infringement litigation with potential damages of less than \$1 million, the mean cost of litigation is \$490,000. For cases involving damages in excess of \$1 million, the mean costs are \$916,000, with the highest third being more than a million. Litigation expenses—for patent cases with damages of \$1 million to \$25 million—average between \$1.6 million and \$2 million in the D.C. area. “Intellectual property owners are becoming

increasingly worried,” he observes, “that they can no longer afford a remedy for infringement, the costs of which are among the highest in any kind of American litigation. We must act to reign in those costs if we are to offer justice to those who have done the hard work and now rely upon the courts to protect the fruits of their labors.”

As I have heard Judge Essex say on more than one occasion, we must not only do justice, we must be seen to do justice. And who better than an accomplished intellectual property judge, international lecturer, and advocate for consistent intellectual property laws and reasonable litigation costs to try to make that hope a reality? ☺