

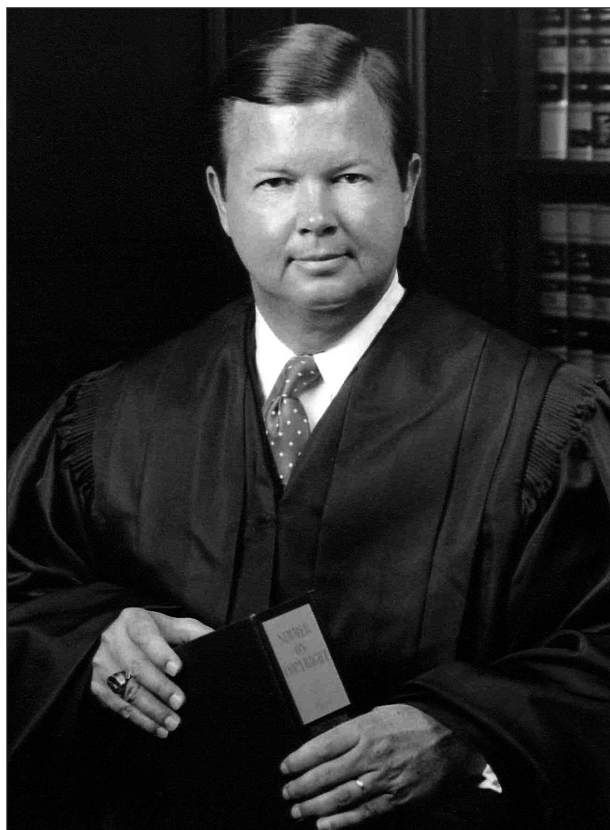
## Judicial Profile

JENNIFER M. RUBIN

### Hon. Stanley F. Birch Jr. U.S. Circuit Judge, Eleventh Circuit Court of Appeals

HON. STANLEY F. BIRCH JR. has served as a judge on the U.S. Court of Appeals for the Eleventh Circuit since being sworn in on June 12, 1990. He is a graduate and active alumnus of the University of Virginia, from which he received a B.A. in history in 1967, and of Emory University Law School, from which he received his J.D. in 1970 and an LL.M. in taxation in 1976. He served as a first lieutenant in the U.S. Army from 1970 to 1972 and as a clerk for Chief Judge Sidney O. Smith Jr. of the Northern District of Georgia from 1972 to 1974. (Judge Birch's co-clerk was Hon. J.L. Edmondson, now the chief judge of the Eleventh Circuit.)

Judge Birch was an experienced litigator prior to joining the federal bench. His specialty as a litigator was in copyright law; he served as counsel to Xavier Roberts, the creator and copyright holder of the "Cabbage Patch Kids" dolls, in addition to actively litigating many cases involving software copyrights. Judge Birch frequently speaks on the subject of copyright; in 2006, he presented the 36th Annual Donald C. Brace Lecture on copyright law at New York University Law School in 2006 at the invitation of the Copyright Society of the U.S.A. (His presentation is reprinted on page 44 of this issue.) He has also written articles on the subject of copyright law, including a well-regarded article he co-authored with Professor L. Ray Patterson, "Copyright and Free Speech Rights," which appeared in the *Journal of Intellectual Property Law* 4 (1996). Judge Birch has also written many of the best known copyright decisions in the Eleventh Circuit, including *SunTrust Bank v. Houghton Mifflin Co.*, 268 F.3d 1257 (11th Cir. 2001) (involving a copyright dispute between the holder of the copyright of *Gone With the Wind* and the publisher of *The Wind Done Gone*); *Warren Publishing Inc. v. Microdos Data Corp.*, 115 F.3d 1509 (11th Cir. 1997) (en banc); *Bateman v. Mnemonics Inc.*, 79 F.3d 1532 (11th Cir. 1996); *BellSouth Advertising &*



*Publishing Corp. v. Donnelly Information Publishing*, 999 F.2d 1436 (11th Cir. 1993) (en banc); and *In re Capital Cities/ABC Inc.*, 918 F.2d 140 (11th Cir. 1990). Among Judge Birch's many other opinions is a special concurrence in *Schiavo ex rel. Schindler v. Schiavo*, 404 F.3d 1270 (11th Cir. 2005) (en banc), which received a great deal of attention for its discussion of the proper role of the courts and of Congress in dealing with decisions related to a person's end of life.

Judge Birch has many qualities that make him a fine judge and an excellent boss to many law clerks, including the author of this profile. Foremost is the fact that he is truly open-minded; for example, if a litigant can persuade him that the facts and the law compel a ruling in favor of that litigant, the judge *will* vote for that litigant. Like the other judges in the Eleventh Circuit, Judge Birch reads all the briefs in the cases that come before him and takes whatever steps—such as reviewing portions of the record or reading pertinent



cases—that he considers necessary for him to be fully prepared. As that level of preparation may indicate, Judge Birch can be a very active questioner, particularly if the case in question involves one of his favorite areas of law, such as copyright, tax, or expert testimony issues. Judge Birch’s questions generally provide a good window to his thinking, and a perceptive arguer can learn from Judge Birch’s questions what issues concern him most. His interest is in substance—not rhetorical flourishes—and the better logical argument, premised on law and fact, is the one that will persuade him. The same can be said about his approach to writing briefs: overstating a case or adding rhetorical filler will not improve a lawyer’s chances of success with Judge Birch, but a clear, well-researched brief will. (More information about Judge Birch’s thoughts on brief-writing and appellate argument can be found at [howappealing.law.com/20q/2003\\_10\\_01\\_20q-appellateblog\\_archive.html](http://howappealing.law.com/20q/2003_10_01_20q-appellateblog_archive.html) and [www.floridabar.org/DIVPGM/PU/FCPCSurvey.nsf/0/1e66637fa3065b2685256c32005a98a0/\\$FILE/Attachment%201.pdf](http://www.floridabar.org/DIVPGM/PU/FCPCSurvey.nsf/0/1e66637fa3065b2685256c32005a98a0/$FILE/Attachment%201.pdf).) Judge Birch also believes very strongly in collegiality between members of the court, between litigants and the judges, and between the litigants themselves. He appreciates a vigorous, well-done argument but not an argument that consists of attacking the other participants in the case.

From a law clerk’s perspective, one of Judge Birch’s finest qualities is that he truly cares about the education and development of young attorneys, as he has shown through his work with Emory and through numerous bar associations in Georgia. As much as possible, Judge Birch seeks to ensure that his law clerks get an opportunity to work on cases that fit their interests. His editing of his clerks’ work products is thoughtful and designed not only to improve that work product but also to teach clerks to be better writers. Judge Birch also makes sure that his clerks get the opportunity to watch arguments and participate in other educational opportunities. He is always available to give advice to his clerks and regularly holds lunches and

other events to give his former clerks the chance to visit with him and the rest of the current members of his staff.

Judge Birch encourages each of his clerks to be involved in the bar, with their schools, and in their communities. In this effort, he leads by example, having served at various times on the regional selection committee for the Jefferson Scholarship Program at the University of Virginia, as president of the Emory Law School Alumni Association, as a member of the Board of Governors of the State Bar of Georgia, as a member of the Boards of Directors of the Georgia Legal Services Program and Federal Defender Program for the Northern District of Georgia, and as a member of the Georgia Supreme Court Indigent Defense Commission. Judge Birch has also been a fellow of the Georgia Bar Foundation.

The judge also cares greatly about his clerks’ families, keeping a bulletin board filled with the latest pictures of his many “grandclerks”—a habit that reflects his love and enjoyment of his own family, including his wife, two children, and two grandchildren. When Judge Birch isn’t working or participating in the organizations noted above, he can often be found spending time with his family, traveling with them, visiting his grandchildren, or actively supporting his children’s many extracurricular activities and volunteer work. In this way he is able to achieve the balance among work, public life, and home that he advises young lawyers to seek. **TFL**

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*Jennifer M. Rubin, an associate at the law firm of Sutherland, Asbill & Brennan LLP in Atlanta, served as a clerk for Judge Birch from 1999 to 2000 and previously for Judge David H. Coar of the U.S. District Court for the Northern District of Illinois from 1997 to 1999. She received her J.D. from the University of Chicago in 1997.*