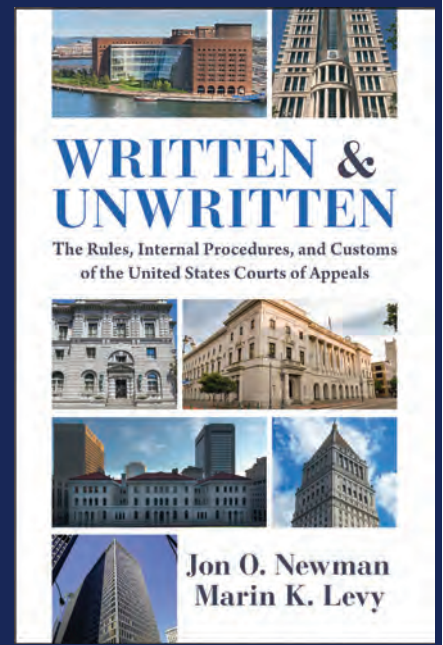


Book Excerpt

CHAPTER 2:
**ADMINISTRATIVE
STRUCTURE**

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THIS CHAPTER CONSIDERS the administrative structure of the circuits and the courts of appeals, including the administrative roles of the judges and senior staff.

Like all organizations, the courts of appeals face a range of administrative tasks distinct from the basic role to decide appeals from decisions of 94 district courts and numerous administrative agencies. These administrative tasks of the courts of appeals concern such matters as budgets, personnel, buildings, supplies, and security.

Some aspects of circuit administration are determined nationally by statutes, by the Judicial Conference of the United States, and by the federal judiciary's administrative agency, the Administrative Office of the U.S. Courts (AO). The 27-member Judicial Conference is headed by the Chief Justice of the United States and includes (1) the chief judges of the 13 circuits, serving for the duration of their chief judgeship, (2) one district judge from each of the 11 numbered circuits and the D.C. Circuit,¹ selected

by the circuit and district judges of these circuits at their circuit conferences and serving for terms of three to five years,² and (3) the chief judge of the Court of International Trade.³

Within this national administrative structure, the circuits vary in their circuit administrative structures. Heading these structures are the circuit chief judges. Circuit councils, composed of the chief judge and an equal number of other court of appeals judges and district court judges, determine some administrative matters affecting the circuit as a whole, including matters affecting the courts of appeals and the district courts within each circuit. Administrative matters affecting only the courts of appeals are determined by the judges of those courts serving on various committees and by the courts' management staff.

The courts of appeals vary in the judicial administrative structures that they have established. The largest circuit, the Ninth Circuit, with 29 active judges and 23 senior judges, has an

executive committee, in addition to 25 committees of the court and the Circuit Council. In contrast, the smallest circuit, the First Circuit, with just six active judges and five senior judges, has no judicial management structure (other than court committees).

The Ninth Circuit's Executive Committee acts on all administrative matters for the court, with some exceptions such as determining the number of sittings, size of calendars, rules, and major personnel decisions (though the Committee reviews and makes recommendations on these matters).⁴ The Executive Committee is composed of the chief judge, an active judge who is eligible to become chief judge during the term of the current chief judge (if there is more than one, the chief judge chooses the committee member), the three judges who head administrative units, a senior judge drawn by lot from among the senior judges willing to be considered, and three other active judges drawn by lot from those willing to be considered.⁵ Judges drawn by lot serve three-year ▶

Although all courts of appeals have similar administrative tasks, there is variation in how they are structured to perform those tasks. Moreover, the judges themselves assume major responsibilities for the administrative work of each circuit and court of appeals.

staggered terms.⁶ The committee generally meets four to six times a year.⁷

One other circuit has an executive committee. In the Third Circuit, the executive committee consists of the chief judge and the two previous chief judges. In the Second Circuit, the chief judge and the next two judges in line to become chief judge function as an informal management committee.

In most of the circuits, the chief judge appoints committees of judges with responsibility for supervision of various administrative units such as the clerk's office, the staff attorney's office, the office of information technology, and the library. Of note, in the Second Circuit, one judge is the clerk's office "committee." In the Fifth Circuit, the chief judge selects a number of judges to serve as "proctors," each responsible for supervising a different function of the court's operations. In the Ninth Circuit, there are no committees with responsibility for supervision of the administrative units; the chief judge and clerk work in tandem to supervise the overall operation of the court and go to the Executive Committee as needed.

All of the judges of each court of appeals meet together throughout the year. The frequency of these meetings varies. For example, in the Second Circuit, they are quarterly, in the Sixth Circuit, semiannually, in the Eleventh Circuit, three times a year.

Federal law permits any circuit with more than 15 active judges "to constitute itself into administrative units."⁸ Although the Fifth, Sixth, and Ninth Circuits have more than 15 active judges,⁹ only the Ninth Circuit has implemented this authority. The Ninth Circuit has established three administrative units: the Northern Unit, composed of the districts of

Alaska, Idaho, Montana, Oregon, and Eastern and Western Washington; the Middle Unit, composed of the districts of Arizona, Northern and Eastern California, Hawaii, Nevada, Guam, and the Northern Mariana Islands; and the Southern Unit, composed of the districts of Central and Southern California.¹⁰

In the Ninth Circuit, an administrative judge of a unit is the most senior active judge in the administrative unit who is willing to serve.¹¹ An administrative judge has a variety of duties including maintaining contact with circuit judges within the unit and reporting on their needs,¹² being attentive to court of appeals support services and facilities within the unit (including reviewing space needs, facility improvements, and security),¹³ and such other duties as requested by the chief judge or the court.¹⁴

As noted earlier, all circuits employ court administrators. The senior staff officer in most circuits is the circuit executive, authorized by statute to be appointed by the circuit council,¹⁵ but in practice usually appointed by the chief judge. Senior officers, authorized by statute to be appointed by the court of appeals, are the clerk,¹⁶ the senior staff attorney,¹⁷ and the librarian.¹⁸ The circuit executive, authorized to appoint necessary employees,¹⁹ typically appoints the heads of various circuit offices such as information technology, administrative services, budget, human resources, and space and facilities.

The circuit executive's duties typically include assisting the chief judge with all of the court's external activities, that is, those not concerned with the adjudication of cases. These activities include assisting the chief judge with preparation for the semiannual meetings of the U.S. Judicial Conference and the work of its various committees, and relation-

ships with the community and state and local bar associations. The circuit executive also has non-case-related internal responsibilities concerning such matters as the internal allotment of money for court operations after the circuit's budget has been determined by the AO.²⁰

By statute, the court of appeals for the Federal Circuit is authorized to appoint either a circuit executive or a clerk, but not both, or may appoint a combined circuit executive/clerk,²¹ as the court currently does.

The clerk of court supervises several case managers whose primary task is docketing (noting on the court's records) the content of the large number of documents filed by litigants each day on paper and electronically. The docket for a single appeal might include more than 100 entries, and there might be thousands of appeals pending in a court of appeals at any one time. The case managers also endeavor to assist lawyers and especially parties without counsel in complying with the often detailed requirements for filing an appeal and processing it through the appellate process.

The staff attorney's office (called "Legal Division" or "Office of Legal Affairs" in some circuits and "Office of General Counsel" in the Federal Circuit)

has several lawyers, often recent law school graduates, who review motions and other matters, recommend dispositions, and sometimes draft orders. The librarian, assisted by a staff, manages the library of the court of appeals and supervises several branch libraries serving district courts throughout the circuit. Similarly, the director of the office of information technology, assisted by a staff, provides services for the hundreds of computers and other electronic devices of the court of appeals and the district courts of the circuit. Some circuits have staff officers in addition to these standard positions. The Ninth Circuit in 1994 created the position of appellate commissioner, appointed by the court, who is authorized to rule on and make recommendations on a variety of non-dispositive matters, such as an application for appointed counsel under the Criminal Justice Act, and to serve as a special master; the court considers the position analogous to a magistrate judge in a district court.²² In the D.C. Circuit, there is a special assistant to the chief judge.²³ The Federal Circuit is authorized to appoint a "senior technical assistant."²⁴

As can be seen, although all courts of appeals have similar administrative tasks, there is variation in how they

are structured to perform those tasks. Moreover, the judges themselves assume major responsibilities for the administrative work of each circuit and court of appeals. For many judges, these tasks are not at all what they expected would occupy a fair amount of their time, although a few came to their court with valuable administrative experience and skills acquired in law firms, government offices, and law schools. Fortunately, judges, ably assisted by extremely competent staff, keep the administrative machinery of the circuits and the courts of appeals running smoothly.



MARIN K. LEVY

is a professor of law at Duke Law School and faculty director of the Bolch Judicial Institute.

JON O.

NEWMAN is a senior judge of the U.S. Court of Appeals for the Second Circuit, now in his 48th year as a federal judge. He was chief judge from 1993 to 1997.



¹ The Federal Circuit, which can hear appeals (within its specialized subject matter jurisdiction, see 28 U.S.C. § 1295) from every district court, has no district court representative on the Judicial Conference.

² 28 U.S.C. § 331. The district judge members of the Judicial Conference may be active or senior judges (a distinction considered in Chapter 13). The length of the term (between three and five years) of a district judge member of the Judicial Conference is determined by majority vote of the circuit and district judges of the judge's circuit. *Id.*

³ *Id.* The nine-member Court of International Trade is an Article III trial court, *id.* § 251, with jurisdiction over many matters arising under the Tariff Act of 1930 and many tariff and customs decisions of the Secretary of the Treasury

and the Customs Service, *id.* § 1581.

⁴ 9th Cir. Gen. Ord. 10.1(b).

⁵ *Id.* Gen. Ord. 10.1(a).

⁶ *Id.*

⁷ *Id.* Gen. Ord. 10.1(c).

⁸ 28 U.S.C. § 41, Historical and Statutory Notes, Appeals Court Administrative Units; Act of Oct. 20, 1978, Pub. L. 95-486, § 6, 92 Stat. 1629, 1633.

⁹ 28 U.S.C. § 44.

¹⁰ 9th Cir. Gen. Ord. 1.11.

¹¹ *Id.* Gen. Ord. 1.5(a).

¹² *Id.* Gen. Ord. 11.1(8).

¹³ *Id.* Gen. Ord. 11.1(4).

¹⁴ *Id.* Gen. Ord. 11.1(15).

¹⁵ 28 U.S.C. § 332(e).

¹⁶ *Id.* § 711(a).

¹⁷ *Id.* § 715(a).

¹⁸ *Id.* § 713(a).

¹⁹ *Id.* § 332(f)(3).

²⁰ In the Ninth Circuit, all the court units operate with a single budget and a chief financial officer, and the circuit executive and clerk have joint authority over it.

²¹ 28 U.S.C. § 332(h)(5).

²² 9th Cir. R. Court Structure and Procedures (C)(2); *id.* Gen. Ord. 1.8.

²³ D.C. Cir. website, "Site Map" link, "Resources & Contacts" heading, "Special Assistant to the Chief Judge," www.cadc.uscourts.gov/internet/home.nsf/Content/VL+-+Human+Resources+-+Special+Assistant+to+the+Chief+Judge.

²⁴ 28 U.S.C. § 715(c).