

## Pants Judge Could Be on His Last Leg

Roy Pearson Jr.'s \$54 million lawsuit was 'another straw added to the others' in a bumpy career.

BY BRENDAN SMITH

Administrative Law Judge Roy Pearson Jr. became the poster boy for frivolous lawsuits with his unsuccessful \$54 million lawsuit against a dry cleaner over a lost pair of pants. But questions about his temperament and demeanor as an administrative law judge had surfaced long before a media firestorm engulfed him this year.

Since his initial two-year term expired in May, Pearson has been sidelined from the bench and is still earning his \$100,512 salary working as an attorney adviser at the D.C. Office of Administrative Hearings. A commission that reappoints administrative law judges at the OAH is expected to vote on Aug. 6 on the first step toward denying his appointment to a full 10-year term.

Chief Administrative Law Judge Tyrone Butler has complicated that process by offering shifting recommendations of neutral, positive, and finally negative about Pearson's reappointment, according to internal documents obtained by *Legal Times*.

Given their past history, it's hard to imagine why Butler would have anything positive to say about Pearson. Less than three months after starting work in May 2005, Pearson sent a 14-page letter to then-Mayor Anthony Williams urging him "to inquire into whether corrupt ethics, demonstrably poor judgment and failed leadership constitute 'good cause' to remove Chief Judge Butler."

Pearson's scathing letter—which also accused Butler of "physical intimidation" and a "Mafioso-style of 'leadership'"—was triggered by a minor misunderstanding over the starting date and length of Pearson's two-year term. The mayor took no action against Butler.

In February 2006, Pearson went a step further and submitted 33 pages of written testimony for an OAH oversight hearing held by D.C. Council member Phil Mendelson, chairman of the Council's Judiciary Committee. "The chief judge has unilaterally taken hundreds of cases from administrative law judges who will not rule as he directs and has reassigned those cases to



**CLEANED OUT?** After his controversial lawsuit, Roy Pearson Jr. (above) faces a tough battle to keep his job as a D.C. administrative law judge.

administrative law judges who will agree to rule as they are instructed," Pearson wrote.

Mendelson says that although he appreciates input from D.C. employees, Pearson "is not an administrative law judge I have looked to for insight into the agency."

### SHIFTING OPINIONS

Despite Pearson's combative history, Butler issued a neutral recommendation for Pearson's reappointment in a March 2 letter, but he then switched to a positive recommendation six days later after commissioners reminded him that there was no neutral category.

Butler changed his mind a third time in a May 22 letter and recommended that Pearson not be reappointed after his trousers lawsuit had "received vast media attention, and OAH has had to divert its already overtaxed resources to answer scores of media inquiries from national and international news organizations," the letter states.

Butler wrote that Pearson's behavior on and off the bench "brings discredit to the judiciary" and that "he has not lived up to the ethical canons that govern the judiciary."

In an interview last week with *Legal Times*, Butler said that Pearson “is an annoyance like a mosquito bite.”

“The pants lawsuit was actually not unexpected, knowing the personality. Up to that time, I was still pretty sure he was not going to make a good judge,” Butler says. “That’s almost like another straw added to the others.”

Pearson lost his lawsuit in D.C. Superior Court in June after a two-day bench trial where he broke down and cried over his missing pants, but he is appealing the judge’s decision and whether he must pay court costs and attorney fees to the South Korean family who owns Custom Cleaners in Northeast Washington.

In 2001, the D.C. Council created the OAH to centralize administrative appeals from various D.C. agencies because former in-house arbitrators often were considered unqualified or not objective. After an organizational period, the OAH began hearing cases in 2004.

Butler, a former 25-year veteran of the New York Police Department, says he initially gave Pearson a positive recommendation because he wanted to give him a second chance. “I thought I wouldn’t condemn him, knowing full well what not being reappointed would mean to his career,” Butler says.

Butler says Pearson’s accusation that he unilaterally transferred hundreds of cases is off-base. Defective notices were issued in those cases, so they had to be dismissed, but Pearson wanted to rule on them anyway, Butler says.

Butler wasn’t the only one having problems with Pearson, who usually heard appeals over littering fines or violations issued by the Department of Public Works. That department filed its first-ever complaint against an administrative law judge and urged the commission to not reappoint Pearson.

“Pearson’s demeanor, analysis and the quality of his written decisions demonstrate that he lacks the necessary skills for this position,” stated the Dec. 5 letter from Christine Davis, the department’s general counsel. One public works inspector described Pearson as “condescending and unwilling to listen to litigants,” while another inspector said Pearson was “often argumentative and hostile,” according to the letter.

Pearson didn’t respond to requests for comment last week.

## THE NEXT STEP

The Commission on Selection and Tenure of Administrative Law Judges met last week to discuss the reappointment of Pearson and 10 other administrative law judges.

The commission will meet again on Aug. 6, when it is expected that a letter will be issued notifying Pearson that the may not be reappointed, the first step in ending his ten-

ure as an administrative law judge. If that letter is issued, Pearson will have 15 days to respond with any written comments, and he may choose to appear at the commission’s next meeting in September to present evidence or other witnesses. The commission would then vote up or down on his appointment to a full 10-year term.

Butler has never given a negative recommendation before Pearson’s case, and the commission has never refused to reappoint an administrative law judge, so Pearson could be breaking new ground. The three voting commissioners are Chairman Robert Rigsby and Anita Josey-Herring, both D.C. Superior Court judges, and Peter Willner, a senior policy analyst at the nonprofit Council for Court Excellence. Butler and a representative of the D.C. Attorney General’s Office are nonvoting members.

“This is not a disciplinary proceeding. It’s a personnel proceeding,” Rigsby says about Pearson’s case. “We want to be able to thoroughly review qualifications for such an important appointment in the District of Columbia.”

Josey-Herring and Willner both declined to comment last week on Pearson’s case.

Butler says part of the reason for his final negative recommendation was an e-mail that Pearson sent to all of the administrative law judges on March 9, just one day after Butler’s positive recommendation.

“You certainly take a risk at OAH when you stand on principle and expose wrongdoing, and you can certainly expect retaliation,” Pearson wrote. “But if you compile a record that makes a retaliatory motive obvious, you can at least make it difficult for Chief Judge Butler to knife you.”

Even though both Pearson and Butler are African-American, Pearson compared his feud with Butler to the civil rights movement.

“As an African-American, however, I am conscious that the ‘risks’ I take pale in comparison with the life and death consequences my forbearers [*sic*] in struggle faced in speaking truth to power,” Pearson stated in his e-mail. “If they could risk losing their lives, I can’t justify being paralyzed by fear of losing a paycheck.”

Despite the intense media coverage of Pearson and his lawsuit, Butler doesn’t think the reputation of the OAH has suffered, because the 32 other administrative law judges are, he says, “the cream of the crop.”

“His name has been plastered all over the place,” Butler says. “It’s more humorous than it is sad for him. It’s his 15 minutes. It’s not ours.”

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