

Judicial Council of the
United States Court of Federal Claims
(Filed: May 2, 2019)

IN RE COMPLAINTS OF JUDICIAL
MISCONDUCT

Docket Nos. CL-18-90172, CL-18-90174

Before: The Judicial Council of the United States Court of Federal Claims¹

In the fall of 2018, the court received two reports alleging that an active senior judge of the United States Court of Federal Claims (“the subject judge”) engaged in judicial misconduct. See docket nos. CL-18-90172, CL-18-90174². In accordance with Rules 11(a)(4) and 11(f) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings (“RJCP”) (Sept. 17, 2015), the acting Chief Judge³ referred the complaints to the undersigned Special Committee for investigation and further proceedings.

In the spring of 2019, the subject judge retired, permanently and irrevocably relinquishing the judicial office of a senior judge of the United States Court of Federal Claims pursuant to 28 U.S.C. § 178(j)(4)(A)⁴.

The Judicial Conduct and Disability Act (“the Act”), codified as 28 U.S.C. §§ 351–64, and the RJCP, allow for any individual to complain about a federal judge who “has engaged in conduct prejudicial to the effective and expeditious administration of the

¹ Chief Judge Margaret M. Sweeney did not participate in the consideration of this matter.

² Complaint no. CL-18-90172 was initiated by a complainant pursuant to Rule 6 of the Rules for Judicial-Conduct and Judicial-Disability Proceedings (“RJCP”). Complaint no. CL-18-90174 was identified as a complaint by the Chief Judge pursuant to RJCP 5(a).

³ Pursuant to RJCP 25(f), Judge Thomas C. Wheeler is acting as Chief Judge as “the most senior active judge not disqualified.”

⁴ A judge who retires under 28 U.S.C. § 178(j)(4)(A) may not be recalled to service under 28 U.S.C. § 178(d).


business of the courts or is unable to discharge the duties of office because of mental or physical disability.” 28 U.S.C. § 351(a); RJCP 1. The Act is concerned with individuals who *currently* exercise the powers of the office of federal judge. Its emphasis is on the correction of conditions that interfere with the effective and expeditious administration of the business of the courts. Similarly, the RJCP provide that “[a] complaint under these Rules may concern the actions or capacity only of judges of the United States courts of appeals, judges of the United States district courts, judges of the United States bankruptcy courts, United States magistrate judges, and judges of the courts specified in 28 U.S.C. § 363” including the United States Court of Federal Claims. RJCP 4.

Where a former judge has fully resigned her judicial office, and can no longer perform any judicial duties, that former judge does not fall within the scope of persons who can be investigated under the Act. Accordingly, the Judicial Council must “conclude the proceeding because . . . intervening events have made the proceeding unnecessary.” RJCP 20(b)(1)(B); see also RJCP 11 cmt. (identifying “resignation from judicial office” as such an intervening event); In re Charge of Judicial Misconduct, No. 12-90069, at 2 (2d Cir. Jun. 20, 2013) (“Because Judge Martin has informed the president that he will retire from office the Judicial Council has decided that it should ‘conclude the proceeding because . . . intervening events have made the proceeding unnecessary.’” (quoting RJCP 20(b)(1)(B))); In re Charge of Judicial Misconduct, No. 17-90013, at 1 (2d Cir. Mar. 7, 2017) (“Because the subject judge resigned from office . . . ‘action on the complaint is no longer necessary because of intervening events’” (quoting 28 U.S.C. § 351(b)(3))); In re Charge of Judicial Misconduct, No. 13-90089, at 1 (2d Cir. Apr. 15, 2014) (same); In re

Complaint of Judicial Misconduct, 10 F.3d 99, 99-100 (3d Cir. 1993) (“Inasmuch as a judge who retired . . . by giving up his or her judicial office is no longer exercising judicial duties, he or she can no longer prejudice the ‘effective and expeditious administration of the business of the courts.’”).

In concluding these proceedings, the Judicial Council does not reach the merits of the complaints. For these reasons,

IT IS HEREBY ORDERED, that the above-referenced complaint proceedings are **CONCLUDED**. For the Council,



Thomas C. Wheeler
Acting Chief Judge