

In the United States Court of Federal Claims

In re: COMPLAINT OF JUDICIAL MISCONDUCT

No. CL-18-90171

OPINION AND MEMORANDUM

In the fall of 2018, the court received a complaint alleging that a senior judge of the United States Court of Federal Claims had engaged in judicial misconduct. In the spring of 2019, the subject judge retired, permanently and irrevocably relinquishing judicial office pursuant to 28 U.S.C. § 178(j)(4)(A)¹.

The Judicial Conduct and Disability Act (“the Act”), codified as 28 U.S.C. §§ 351–64, and the Rules for Judicial-Conduct and Judicial-Disability Proceedings (Sept. 17, 2015) (“RJCP”), permit an individual to complain about a federal judge who “has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts or is unable to discharge the duties of office because of mental or physical disability.” RJCP 1. Pursuant to RJCP 11(a), the chief judge reviews complaints of judicial misconduct and disability and determines whether they should be dismissed or referred for further proceedings. Rule 11(e) provides that “[t]he chief judge may conclude a complaint proceeding in whole or in part upon determining that intervening events render some or all of the allegations moot or remedial action impossible.”

The Act is concerned with individuals who *currently* exercise the powers of the office of federal judge. 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,” which includes the U.S. Court of Federal Claims. RJCP 4 (emphasis added). When a former judge fully resigns the judicial office, and can no longer perform judicial duties, that former judge no longer falls within the scope of persons who can be investigated under the Act. 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.’”).

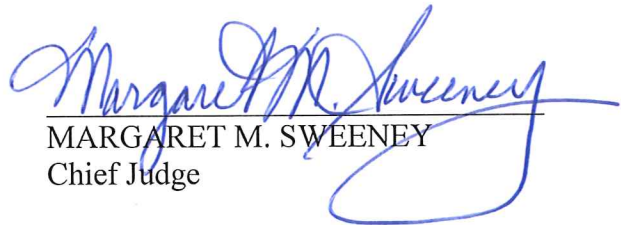
Because the subject judge of this complaint has resigned from office, “action on the complaint is no longer necessary.” RJCP 11 cmt. at 17 (“Rule 11(e) implements Section 352(b)(2) of the Act, which permits the chief judge to ‘conclude the proceeding’

¹ 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).

if ‘action on the complaint is no longer necessary because of intervening events,’ such as resignation from judicial office.”); see also In re Charge of Judicial Misconduct, No. 17-90013, at 1 (2d Cir. Mar. 7, 2017) (quoting 28 U.S.C. § 352(b)(2)); In re Charge of Judicial Misconduct, No. 13-90089, at 1 (2d Cir. Apr. 15, 2014) (same). Therefore,

IT IS ORDERED that the complaint be dismissed pursuant to RJCP 11(e).

IT IS FURTHER ORDERED that the complainant has the right to file a petition for review of this decision by the entire court. Any petition for review must be filed within forty-two (42) days after the date of this Opinion and Memorandum. RJCP 11(g)(3), 18(a)-(b).


MARGARET M. SWEENEY
Chief Judge