

THE JUDICIAL COUNCIL OF THE FIFTH CIRCUIT

Before: STEWART, Chief Judge, OWEN, DAVIS, JONES, SMITH,
DENNIS, ELROD, HAYNES, COSTA, LEMELLE, DICK,
HICKS, DAVIDSON, JORDAN, LYNN, HINOJOSA, CLARK,
and MARTINEZ

DOCKET NO. 05-14-90121

IN RE: Complaint of Judicial Misconduct Against United States District Judge
Harry Lee Hudspeth, Under the Judicial Improvements Act of 2002

ORDER AND MEMORANDUM OF REASONS

A complaint of judicial misconduct was lodged in September 2014 against United States District Judge Harry Lee Hudspeth of the Western District of Texas, in effect alleging that he did not properly respond to a court employee's claim that United States District Judge Walter S. Smith, Jr. had made inappropriate and unwanted sexual advances toward the employee. The complaint was held in abeyance pending resolution of the judicial misconduct proceeding against Judge Smith.

Prior to the conclusion of the judicial misconduct proceeding against Judge Smith, Judge Hudspeth retired from judicial office under 28 U.S.C. § 371(a).

A judge who retires from office under § 371(a) is “no longer a judicial officer,” and is “no longer subject to the disciplinary procedures of Section 372(c) [now 28 U.S.C. § 351 et seq.] and the remedies they prescribe.” In re Charge of Judicial Misconduct, 91 F.3d 90, 91 (9th Cir. Judicial Council 1996), citing In re Complaint of Judicial Misconduct, 10 F.3d 99, 100 (3d Cir. Judicial Council 1994); see also In re Complaint of Judicial Misconduct, No. 13-02 (Judicial Conference of the United States 2014) (noting that after Judge Boyce Martin's retirement from office, the Second Circuit Judicial Council found that “the retirement was an intervening event that had made further proceedings unnecessary” per Rules for Judicial-Conduct and Judicial-Disability Proceedings Rule 20(b)(1)(B)).

In the light of Judge Hudspeth's retirement from office, the Judicial Council is no longer able to impose any sanction under 28 U.S.C. § 354(a)(2)(A) or (B). Moreover, even assuming the allegations of the complaint are true, the Council

concludes that they would not warrant recommending the extraordinary step of attempting the impeachment of a judge who is no longer on the bench.¹

Pursuant to the Rules for Judicial-Conduct and Judicial-Disability Proceedings Rule 20(b)(1)(B), the Judicial Council concludes this proceeding because the intervening event of Judge Hudspeth's retirement from office has made further action unnecessary.

This order will be available immediately in the public record, consistent with the requirements of 28 U.S.C. § 360(b), and will be placed on the website of the Fifth Circuit Court of Appeals. Pursuant to Rules for Judicial-Conduct and Judicial-Disability Proceedings Rule 24(a)(2) and (a)(5), it is ordered that the names of the subject judge and the complainant shall be disclosed.

For the Council:

Date: October 21, 2016


Carl E. Stewart
Chief Judge

¹ The Committee considered whether impeachment and conviction after retirement would affect a judge's annuity under 28 U.S.C. § 371(a). The text of the Constitution (Article I, section 3, clause 7 states that "Judgment in Cases of Impeachment" extends only to removal from office and disqualification from further office) and the statute (a judge who has retired under § 371(a) "shall" receive the annuity, with no stated exceptions) indicate that impeachment after retirement would not result in loss of the annuity. See also Johnson v. United States, 79 F.Supp. 208, 210-11 (Ct. Cl. 1948) (the statutory right to salary [now annuity] after retirement is a property right likely subject to the protection of the Fifth Amendment). The Council further finds that the likelihood that Judge Hudspeth will attain public office in the future is minimal, certainly not such as would warrant the significant additional expenditure and drain on judicial and Congressional resources that completing this proceeding and attempting impeachment would entail.