

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

IN RE:

The Complaint of Ty Clevenger Against United States District Judge
Walter S. Smith Jr., Western District of Texas, Under the Judicial
Improvements Act of 2002.

Complaint Number: 05-16-90014

O R D E R

Attorney Ty Clevenger complains that United States District Judge Walter S. Smith, Jr. failed to disclose to parties and counsel appearing before him in several matters that he had an attorney-client relationship with one of the attorneys of record in those matters. Clevenger also complains that Judge Smith “may have received free legal services” from his attorney, that “if there was a *quid pro quo* in exchange for free legal services, the violation is not merely civil but criminal, that “[i]f Judge Smith received free legal services from [his attorney] and failed to report the gift in his annual financial disclosures, that too could be a criminal violation,” and that “if [the attorney] and Judge Smith colluded while making misrepresentations” in connection with another complaint against Judge Smith, “then they could be prosecuted for fraud.”

By order of December 3, 2015, entered in connection with Complaint Number 05-14-90120, the Judicial Council of the Fifth Circuit addressed the first issue complained of here. In that order, Judge Smith was directed to follow formal recusal procedures and to recuse himself in defined classes of current and future cases.

The remaining allegations are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii) because they lack sufficient evidence to raise an inference that misconduct has occurred.

Moreover, Judge Smith retired from judicial office pursuant to 28 U.S.C. § 371(a) as of September 14, 2016. 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)). Judge Smith’s retirement is an intervening event that makes action on the complaint unnecessary, and the complaint against him is therefore concluded pursuant to 28 U.S.C. § 352(b)(2).

Pursuant to the September 28, 2016 order entered in connection with Complaint Number 05-14-90120, 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 the September 28, 2016 order and the 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.



Carl E. Stewart
Chief Judge

Date: September 29, 2016