



**UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

CHAMBERS OF
EDITH H. JONES
CHIEF JUDGE

12505 U.S. Courthouse
515 Rusk Avenue
Houston, TX 77002
Telephone (713) 250-5484

May 27, 2009

Judge Samuel B. Kent
c/o Mr. Dick DeGuerin
DeGuerin & Dickson
Seventh Floor, The Republic Building
1018 Preston Avenue
Houston, Texas 77002

Dear Mr. DeGuerin:

Your client, Judge Samuel B. Kent, has requested that I certify him to the President as disabled pursuant to 28 U.S.C. § 372(a). It is my understanding from press reports that even though such certification would entitle him to be treated as a retired judge, and therefore technically able to continue to hear cases, Judge Kent has foresworn any desire or intent ever to sit as a federal judge again.

In order to evaluate this request, I have considered numerous medical, psychological, and psychiatric reports concerning Judge Kent. I have spoken with nearly all of the doctors who prepared those reports. I received a personal briefing in a meeting with you. I have independently undertaken a review of his case dispositions, based on statistics provided by you and the clerk's office, for more than two years before he ceased handling cases in February 2009. Finally, I have sought legal advice from the General Counsel of the Administrative Office of the United States Courts because of the novelty of the circumstances underlying this request.

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The medical reports paint a picture of a man who has had psychological problems in dealing with the high authority inherent in his position, with those whom he viewed as subordinates, and with women. Further, he suffers from alcoholism and diabetes, both of which may have contributed to his mental instability. In particular, abuse of alcohol seems to have been a catalyst of his serious misconduct toward Ms. McBroom and Ms. Wilkerson. Finally, certain past experiences, including the multi-year illness and ultimate death of his first wife, have shadowed him. I do not doubt the sincerity or reasonableness of the conclusions of all the professionals that Judge Kent, who now requires various psychotropic medications to control depression, is currently unable to perform his duties as a federal judge. It should be added, however, that these professionals differ in their opinions of the extent to which the disability is a permanent condition.

The other side of the picture is that until he was criminally indicted, Judge Kent continued to handle a high volume of cases expeditiously. In 2007, accounting for the commencement of judicial misconduct proceedings in May and the fact that Judge Kent was required to withdraw from handling any cases from September through December by order of the Fifth Circuit Judicial Council, his annualized rate of case dispositions still equalled that of his peers in the Southern District. He actually closed 172 cases following his return to the bench in January 2008 despite the ongoing federal criminal investigation and his remaining recused from cases involving either the United States as a party or allegations of sexual misconduct. (The first indictment was entered in August 2008.) Judge Kent also advises that he ceased drinking alcoholic beverages as of late March 2007. His case disposition rate prior to that time was not affected by the consumption of alcohol and was consistently high compared to the rates of many of his peers. Taken together, these facts do not show that Judge Kent's performance of his professional duties was affected by mental instability or alcoholism before he was criminally investigated and indicted.

The inescapable conclusion must be that the criminal investigation, indictment, and the attendant publicity and shame have triggered Judge Kent's current inability to function

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professionally. None of the medical professionals have opined otherwise. Although they point to his systemic and possibly lifelong psychological problems, and most of them believe that Judge Kent's disability may be permanent, they do not express firm medical opinions that his present disability did not arise from, or was not significantly exacerbated by, the criminal proceedings.

Because Judge Kent's present disability is interrelated with the consequences of criminal prosecution culminating in the guilty plea, federal law does not permit him to retire on disability under 28 U.S.C. § 372(a). The General Counsel of the Administrative Office has written a formal opinion letter noting that the combined effect of 28 U.S.C. §§ 372(a) and 294(b) place a disabled judge on senior status, still eligible to perform such work as he is capable of." Despite Judge Kent's denial that he would ever attempt to return to the bench, these statutes assume that a judge on disability retirement remains in good standing as a federal judge. Judge Kent has forfeited his claim to such status by pleading guilty to a felony, an impeachable offense. The General Counsel's letter adds that the purpose of Section 372(a), irrespective of its express language, confirms that a disability assessment can hinge on the cause rather than the fact of an impairment--at least when that cause is impeachable criminal misconduct. Further, the interpretation of 28 U.S.C. § 372(a) must be influenced by public policy that a claimant should not profit from his own wrongdoing, by engaging in criminal misconduct and then collecting a federal retirement salary for the disability related to the prosecution.

For these reasons, I deny the request to certify Judge Kent as disabled pursuant to 28 U.S.C. § 372(a).

* See 28 U.S.C. § 294(b): "Any judge of the United States who has retired from regular active service under section 371(b) or 372(a) of this title shall be known and designated as a senior judge and may continue to perform such judicial duties as he is willing and able to undertake, when designated and assigned"

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After checking, I have found no prohibition against publicizing this letter. The novelty of the request by Judge Kent and the intense public interest in the criminal case create a unique need to advise the public of the reasons for this decision. In doing so, I have endeavored not to dwell on the specific details of Judge Kent's medical or psychological condition.

Very truly yours,



Edith H. Jones

EHJ/pw

cc: President Barack Obama
Chief Judge Hayden Head, Southern District of Texas
Mr. William Burchill, General Counsel,
Administrative Office of the United States Courts