

JUDICIAL COUNCIL OF THE
SECOND CIRCUIT

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In re

CHARGE OF JUDICIAL MISCONDUCT

Docket No. 12-90069-jm

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Before: The Judicial Council of the Second Circuit.

On July 31, 2012, the Chief Judge of the Sixth Circuit identified a complaint pursuant to the Judicial Conduct and Disability Act of 1980, 28 U.S.C. § 351 (2006), and Rule 5(a) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings (2008), against Circuit Judge Boyce F. Martin, Jr., of the Sixth Circuit. The complaint concerned what the Chief Judge characterized as "questionable travel reimbursement requests." On August 2, 2012, the Chief Justice transferred the proceeding to the Second Circuit Judicial Council. See Rule 26.

On September 10, 2012, Chief Judge Dennis Jacobs

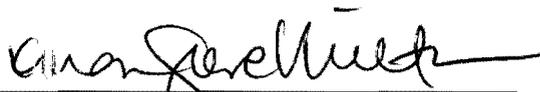
appointed a special committee to investigate the facts and allegations in the complaint. See 28 U.S.C. § 353(a); Rule 11. Outside counsel was appointed, and an investigation ensued. On April 23, 2013, the special committee directed that Judge Martin testify under oath at a hearing on May 30, 2013. On May 6, 2013, the special committee sent Judge Martin a Notice of Potential Areas of Inquiry at the hearing. Two weeks before the hearing date, in a letter dated May 14, 2013, Judge Martin informed the President that he would retire from office on August 16, 2013, pursuant to 28 U.S.C. § 371(a). Shortly thereafter, Judge Martin offered to repay the federal government all travel reimbursements he had received from January 1, 2008, to August 2, 2012, approximately \$138,500. These dates bracketed the period under investigation, ending with the date of the Chief Justice's transfer of the proceeding.

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." Rule 20(b)(1)(B); see In re Charge of Judicial Misconduct, 91 F.3d 90 (9th Cir. Jud. Council 1996) (dismissing complaint as moot

when judge retired from office under 28 U.S.C. § 371(a) after appointment of special committee); cf. Rule 11(e) (permitting chief judge to conclude proceeding "upon determining that intervening events render some or all of the allegations moot"); Rule 11 cmt. (identifying "resignation from judicial office" as such an intervening event). The complaint is therefore dismissed. See 28 U.S.C. § 354(a)(1)(B).

A rule of confidentiality generally applies to misconduct proceedings. See 28 U.S.C. § 360(a); Rule 23(a). But Rule 24(a)(2) provides that "if the complaint is concluded because of intervening events, or dismissed at any time after a special committee is appointed, the judicial council must determine whether the name of the subject judge should be disclosed." The commentary to this Rule provides: "In such a case, no final decision has been rendered on the merits, but it may be in the public interest--particularly if a judicial officer resigns in the course of an investigation--to make the identity of the judge known." (Emphasis added.) Pursuant to these provisions, the Judicial Council has determined that it is in the public interest to disclose the name of the subject judge.

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED
AND DECREED that the above-referenced complaint proceeding is
DISMISSED and that this Order shall be referred to the Public
Integrity Section of the Department of Justice for such
action, if any, as may be appropriate.



Karen Greve Milton,
Circuit Executive & Secretary
of the Judicial Council

Signed: New York, New York
June 20, 2013