



United States Tax Court
WASHINGTON, DC 20217

In the Matter of

A CHARGE OF JUDICIAL
MISCONDUCT OR DISABILITY,

No. TC-24-90001

ORDER

On January 22, 2024, the Court received a complaint alleging that a judge of the United States Tax Court engaged in judicial misconduct. By letter dated January 31, 2024, the Court acknowledged receipt of the complaint.

After reviewing a complaint, the Chief Judge must determine whether it should be: (1) dismissed, (2) concluded on the ground that voluntary corrective action has been taken, (3) concluded because intervening events have made action on the complaint no longer necessary, or (4) referred to a special committee, Rule 11(a), Rules for Judicial Conduct and Disability Proceedings for the United States Tax Court (USTC Rules for Judicial Conduct). The Chief Judge must appoint a special committee to investigate the complaint if some or all the complaint is not dismissed or concluded. Rule 11(f), USTC Rules for Judicial Conduct.

Upon due consideration, and for cause, it is

ORDERED that a special committee is appointed to investigate the allegation of ex parte communication. The members of the special committee are Chief Judge Kathleen Kerrigan, Judge Mary Ann Cohen, and Judge Joseph W. Nega. The allegations of bias and prejudice and complainants' request for recusal of the subject judge were dismissed under separate order. It is further

ORDERED that a copy of this Order shall be served on the complainants, the subject judge, and the Committee on Judicial Conduct and Disability. It is further

Served 03/22/24

ORDERED that this Order provides written notice of complainants' rights in investigation, as outlined in Rule 16 of the Rules of Judicial Conduct and Disability Proceedings for the United States Tax Court. A copy of Rule 16 must be attached to the copy of the Order served on the complainants.

(Signed) Kathleen Kerrigan
Chief Judge

RULES FOR JUDICIAL CONDUCT AND DISABILITY
PROCEEDINGS FOR THE UNITED STATES TAX COURT

ARTICLE I. GENERAL PROVISIONS

1. Scope

These Rules govern proceedings under the Judicial Conduct and Disability Act (the Act), 28 U.S.C. §§ 351–364, made applicable to the United States Tax Court (Tax Court) by 26 U.S.C. § 7466, to determine whether a judge or special trial judge of the Tax Court has engaged in conduct prejudicial to the effective and expeditious administration of the business of the Tax Court or is unable to discharge the duties of office because of mental or physical disability.

2. Effect and Construction

(a) Generally. These Rules are mandatory.

(b) Exception. A Rule will not apply if, when performing duties authorized by the Act, the Chief Judge, a special committee, or the Judicial Disability and Conduct Council expressly finds that exceptional circumstances render application of that Rule in a particular proceeding manifestly unjust or contrary to the purposes of the Act or these Rules.¹

3. Definitions

(a) Chief Judge. “Chief Judge” means the Chief Judge of the Tax Court.

(b) Clerk. The “Clerk” means the Clerk of the Tax Court.

¹Rule 2(b) as adopted by the Judicial Conference of the United States (the Judicial Conference) also applies this Rule to the Committee on Judicial Conduct and Disability and the Judicial Conference.

(b) Special Committee Report. The subject judge must be sent a copy of the special committee's report when it is filed with the Judicial Conduct and Disability Council.

(c) Presentation of Evidence. At any hearing held under Rule 14, the subject judge has the right to present evidence, to compel the attendance of witnesses, and to compel the production of documents. At the request of the subject judge, the Chief Judge or the judge's designee must direct the Clerk to issue a subpoena to a witness under 28 U.S.C. § 332(d)(1). The subject judge must be given the opportunity to cross-examine special committee witnesses, in person or by counsel.

(d) Presentation of Argument. The subject judge may submit written argument to the special committee and must be given a reasonable opportunity to present oral argument at an appropriate stage of the investigation.

(e) Attendance at Hearings. The subject judge has the right to attend any hearing held under Rule 14 and to receive copies of the transcript, of any documents introduced, and of any written arguments submitted by the complainant to the special committee.

(f) Representation by Counsel. The subject judge may choose to be represented by counsel in the exercise of any right enumerated in this Rule. As provided in Rule 20(e), the United States may bear the costs of the representation.

16. Complainant's Rights in Investigation

(a) Notice. The complainant must receive written notice of the investigation as provided in Rule 11(g)(1). When the special committee's report to the Judicial Conduct and Disability Council is filed, the complainant must be notified of the filing. The Judicial Conduct and Disability Council may, in its discretion, provide a copy of the report of a special committee to the complainant.

(b) Opportunity to Provide Evidence. If the complainant knows of relevant evidence not already before the special committee, the complainant may

briefly explain in writing the basis of that knowledge and the nature of that evidence. If the special committee determines that the complainant has information not already known to the committee that would assist in the committee's investigation, a representative of the committee must interview the complainant.

(c) **Presentation of Argument.** The complainant may submit written argument to the special committee. In its discretion, the special committee may permit the complainant to offer oral argument.

(d) **Representation by Counsel.** A complainant may submit written argument through counsel and, if permitted to offer oral argument, may do so through counsel.

(e) **Cooperation.** In exercising its discretion under this Rule, the special committee may take into account the degree of the complainant's cooperation in preserving the confidentiality of the proceedings, including the identity of the subject judge.

17. Special Committee Report

The special committee must file with the Judicial Conduct and Disability Council a comprehensive report of its investigation, including findings and recommendations for council action. The report must be accompanied by a statement of the vote by which it was adopted, any separate or dissenting statements of special committee members, and the record of any hearings held under Rule 14. In addition to being sent to the subject judge under Rule 15(b), a copy of the report and any accompanying statements and documents must be sent to the Committee on Judicial Conduct and Disability.

ARTICLE V. REVIEW BY JUDICIAL CONDUCT AND DISABILITY COUNCIL

17.1. Composition of the Judicial Conduct and Disability Council

(a) The Judicial Conduct and Disability Council has seven (7) members determined as follows: