

United States General Accounting Office
Washington, DC 20548

Office of
General Counsel

In Reply
Refer to:

B-157469

The Honorable Warren H. Young
Judge, District Court of the
Virgin Islands of the United States
Post Office Box 3439
Christiansted, St. Croix
United States Virgin Islands 00820

JUN 29 1979

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Dear Judge Young:

This is in further response to your letter of January 12, 1979, concerning the retirement of territorial judges, and the particular problem you face personally. You say that you would like to retire at age 65, at which time you will have 10 years of service, and that you will then be qualified for retirement at a rate of 5/8 of your current salary. You presume that this will be possible only if you are not appointed for an additional 8-year term. You also indicate that you are not sure that you understand the rulings referred to in our letter of December 27, 1978, to the Director, Administrative Office of the United States Courts, in connection with service credit to a territorial judge for eligibility for retirement under the civil service retirement system.

Under the provisions of subsection 1614(a) of title 48, United States Code, a judge for the District Court of the Virgin Islands is appointed by the President with the advice and consent of the Senate for a term of 8 years and until a successor is chosen and qualified.

Section 373 of title 28, United States Code, provides that a judge of the District Court of the Virgin Islands who resigns after attaining 70 years of age with at least 10 years of service, or after attaining 65 years of age after serving at least 15 years of service shall continue during the remainder of his life to receive the salary he received when he relinquished office. Other provisions of the section authorize entitlement to pay for the remainder of his life following removal by the President of a judge because of mental or physical disability or failure of reappointment on a prorated basis if his service was less than 16 years and not less than 10 years and he has attained 65 years of age.

Thus, in your case it appears that to be eligible for the benefits of 28 U.S.C. 373, at age 65 with 10 years of service, it would be necessary for you to fail reappointment but have a period of 2 years elapse pending the choice and qualification of your successor.



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The rulings referred to in earlier correspondence B-157469, December 28, 1978, with the Director, Administrative Office of the United States Courts concerned participation by the territorial judges in the civil service retirement system. By letter dated February 16, 1977, the Civil Service Commission stated that territorial judges would be excluded in the future from coverage under the civil service retirement system by 5 U.S.C. 8331(1)(ii), since coverage under 28 U.S.C. 373 is considered to be coverage under another retirement system. This was concluded to be the case even though a territorial judge serving in his initial appointment would not be entitled to the benefits of 28 U.S.C. 373.

In our letter to the Director, Administrative Office of the United States Courts responding to questions on this matter, we noted that the Civil Service Commission (now Office of Personnel Management) is charged with the responsibility for administering the civil service retirement system by 5 U.S.C. 8347. We also pointed out that traditionally our Office has considered matters concerning creditable service under such system as within the jurisdiction of the Civil Service Commission. As a result we considered it inappropriate to offer substantive comment on the Commission's position.

Thus, it appears that a change in the appointment and retirement systems for territorial judges must be accomplished by legislative action.

We regret the delay in responding to your letter.

Sincerely yours,

Edwin J. Monsma

Edwin J. Monsma
Assistant General Counsel

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