

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-217270

DATE: October 28, 1985

MATTER OF: Larry P. Polansky - Executive Officer
of the D.C. Courts - Annual Leave

DIGEST:

District of Columbia (D.C.) Courts question whether Executive Officer is entitled to leave benefits of D.C. judges as well as compensation and retirement benefits which are specifically provided by statute. Since the Executive Officer of the D.C. Courts is no longer subject to the Annual and Sick Leave Act, 5 U.S.C. §§ 6301-6312, the leave entitlement of the Executive Officer is subject to administrative determination by the District of Columbia Courts. Due to legislative changes, 52 Comp. Gen. 111 (1972) will no longer be followed.

ISSUE

The issue in this case involves whether the Executive Officer of the District of Columbia (D.C.) Courts is subject to judicial leave procedures and how his prior leave balances should be handled. We hold that, in view of statutory amendments, the leave entitlement of the Executive Officer is no longer subject to the Annual and Sick Leave Act, 5 U.S.C. §§ 6301-6312, but it is subject to administrative determination by the D.C. Courts.

BACKGROUND

This decision is in response to a request from the Honorable William C. Pryor, Chief Judge, D.C. Court of Appeals, who is also the Chairman of the Joint Committee on Judicial Administration, D.C. Courts. The request involves the leave procedures applicable to the Executive Officer of the D.C. Courts, Mr. Larry P. Polansky.

By way of background, we note that the position of Executive Officer of the D.C. Courts was created under the District of Columbia Court Reform and Criminal Procedure Act

of 1970, Public Law 91-358, 84 Stat. 510, D.C. Code § 11-1703 (1981). The Executive Officer is responsible for the administration of the D.C. Court system, subject to the supervision of the Joint Committee on Judicial Administration and the chief judges of the D.C. Court of Appeals and the D.C. Superior Court. The Executive Officer is selected by and subject to removal by the Joint Committee with the concurrence of the chief judges and, pursuant to Public Law 91-358, the Executive Officer shall receive the same compensation as an associate judge of the Superior Court. Section 11-1703(c) of the D.C. Code (1981).

Our decision in 52 Comp. Gen. 111 (1972) interpreted the term "compensation" for the Executive Officer and held that it was limited to the "pay" or "salary" of an associate judge and not the leave or retirement provisions applicable to the judges of the D.C. courts. 52 Comp. Gen. 111, 113. The decision stated that we saw no reason why the Executive Officer would be excluded from the provisions of the Annual and Sick Leave Act, 5 U.S.C. §§ 6301-6312.

With the enactment of the District of Columbia Retired Judge Service Act, Public Law 98-598, 98 Stat. 3142, October 30, 1984, the language of section 11-1703 of the D.C. Code was amended to provide that the Executive Officer shall receive the same compensation "including retirement benefits" as an associate judge of the Superior Court. The legislative history of this provision contains many references to our prior decision and to the fact that the Congress was clarifying its original intent that the Executive Officer participate in the judicial retirement program.^{1/} However, neither the language of the amendments nor the legislative history makes any reference to leave benefits for the Executive Officer.

^{1/} H. R. Rep No. 98-910, 98th Cong., 2d Sess. 2 (1984); Cong. Rec. S12398-99 (daily ed. Sept. 28, 1984) (statement of Sen. Mathias); Cong. Rec. H7994-96 (daily ed. July 30, 1984) (statements of Reps. Dellums, Dymally, and McKinney).

The request from Judge Pryor states that the Joint Committee believes the Executive Officer's annual leave is now controlled by section 11-1505(a) of the D.C. Code, which provides annual vacation leave up to 30 calendar days for D.C. judges but with no provision for carryover into the next year. Since the Executive Officer accumulated annual leave in prior years under the Civil Service Retirement and Leave Programs, Judge Pryor asks how the accumulated annual leave balance should be handled--by lump-sum payment or by holding the leave in abeyance until the Executive Officer is separated from employment with the D.C. Courts.

OPINION

The 1984 Act clearly amends the D.C. Code and specifically provides that the Executive Officer shall receive the same retirement benefits as are accorded to judges of the D.C. Courts. Therefore, our prior decision in 52 Comp. Gen. 111 will no longer be followed as to retirement benefits.

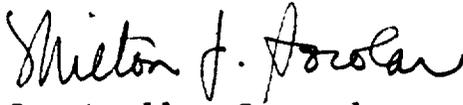
As to whether the Executive Officer of the D.C. Courts is entitled to judicial leave benefits, we note that neither the 1984 statute nor the legislative history makes any reference to leave benefits. However, we need not decide whether the Congress intended to provide the Executive Officer with the judicial leave benefits since, in our opinion, the Executive Officer of the D.C. Courts has been removed from coverage under the Annual and Sick Leave Act, 5 U.S.C. §§ 6301-6312 (1982).

Prior to 1980, the Executive Officer of the D.C. Courts was included within the coverage of the Annual and Sick Leave Act, which also governs Federal employees. See 5 U.S.C § 6301(2)(B) (1976). Although this section of title 5, United States Code, has not been amended, the Executive Officer of the D.C. Courts and other District of Columbia employees are no longer subject to this leave authority due to the District of Columbia Self-Government and Governmental Reorganization Act.^{2/} Under this

^{2/} Public Law No. 93-198, 87 Stat. 774 (1973).

"home rule" authority the D.C. government established a comprehensive merit personnel system.^{3/} By D.C. Law 3-109, the D.C. Council provided that all employees of the District of Columbia, including nonjudicial employees of the D.C. Courts such as the Executive Officer, were removed from coverage under specific provisions of title 5, United States Code, including section 6301(2)(B) (coverage under the leave act).^{4/} We believe the effect of this legislation is that the Executive Officer of the D.C. Courts is no longer subject to the leave provisions in title 5, United States Code.

Judges and nonjudicial employees of the D.C. Courts are subject to the Comprehensive Merit Personnel Act, but the courts are deemed to be an "independent agency" not subject to the administrative control of the Mayor. §§ 1-602.1, 1-603.1(13) of the D.C. Code (1981). Therefore, we conclude that it is within the administrative discretion of the D.C. Courts to decide what leave procedures apply to the Executive Officer. We have been informally advised that the Court's personnel policies generally follow the provisions of title 5, United States Code. However, since it is within the discretion of the D.C. Courts to determine personnel practices, we conclude that the Courts may also decide what leave benefits accrue to the Executive Officer of the Courts. In addition, the D.C. Courts may also determine how Mr. Polansky's prior leave accrual may be handled. Because of these legislative changes, our prior decision in 52 Comp. Gen. 111 will no longer be followed.

for 
Comptroller General
of the United States

^{3/} D.C. Laws 2-139 and 3-109, contained in section 1-633.2 of the D.C. Code (1981).

^{4/} See § 1-633.2, D.C. Code (1981), and proposed rules by the Office of Personnel Management, 50 Fed. Reg. 7922 (1985).