

In the United States Court of Federal Claims

(Filed: September 21, 2022)

In re: COMPLAINT OF JUDICIAL
MISCONDUCT

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Case No. 22-90300

MEMORANDUM AND ORDER

The court received a complaint alleging that a senior judge of the United States Court of Federal Claims engaged in judicial misconduct.

The Judicial Conduct and Disability Act, codified as 28 U.S.C. §§ 351–64, and the Rules for Judicial-Conduct and Judicial-Disability Proceedings (Sept. 17, 2015) (“RJCP”), allow for any individual to complain about a federal judge who “has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts or is unable to discharge the duties of office because of mental or physical disability.” RJCP 1. “Prejudicial” conduct includes such things as use of the judge’s office to obtain special treatment for friends and relatives, acceptance of bribes, treating litigants or others in a demonstrably egregious and hostile manner, and other abuses of judicial office. See RJCP 4(a).

Under the RJCP, a chief judge reviews each complaint of judicial misconduct and disability and determines whether it should be dismissed or referred for further proceedings. See RJCP 11(a). Rule 11(c)(1) provides that a complaint must be dismissed without further review if the presiding judge concludes that the complaint:

- (A) alleges conduct that, even if true, is not prejudicial to the effective and expeditious administration of the business of the courts and does not indicate a mental or physical disability resulting in the inability to discharge the duties of judicial office;
- (B) is directly related to the merits of a decision or procedural ruling;
- (C) is frivolous;
- (D) is based on allegations lacking sufficient evidence to raise an inference that misconduct has occurred or that a disability exists;
- (E) is based on allegations that are incapable of being established through investigation;
- (F) has been filed in the wrong circuit under Rule 7; or
- (G) is otherwise not appropriate for consideration under the Act.

RJCP 11(c)(1).

Upon review of this complaint, the undersigned concludes that the complaint is subject to

dismissal under RJCP 11(c)(1). Complainant's first three allegations—that the subject judge discriminated against him based on disability, treated him in a demonstrably egregious manner, and engaged in improper *ex parte* communication with defense counsel—lack sufficient evidence to raise an inference that misconduct has occurred or that a disability exists. RJCP 11(c)(1)(D). Complainant's fourth allegation—that the subject judge committed procedural bias by taking six months to file a formal ruling, ignoring complainant's motion, and citing invalid case law and unknown rules of law—is directly related to the merits of a decision or procedural ruling. RJCP 11(c)(1)(B). Therefore,

IT IS ORDERED that the complaint is DISMISSED because the complainant has not demonstrated that the named judge engaged in cognizable misconduct that is prejudicial to the administration of the business of the court. See RJCP 3(h)(1).

IT IS FURTHER ORDERED that the complainant has the right to file a petition for review of this decision by the entire court. Any petition for review must be filed within forty-two (42) days after the date of this Opinion and Memorandum. RJCP 11(g)(3), 18(a)-(b).



ELAINE D. KAPLAN
Chief Judge