

In the United States Court of Federal Claims

(Filed: September 12, 2023)

In re: COMPLAINT OF JUDICIAL
MISCONDUCT

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Case No. 23-90368

MEMORANDUM AND ORDER

The Court received a complaint alleging that a judge of the United States Court of Federal Claims engaged in judicial misconduct.¹

The Judicial Conduct and Disability Act, codified as 28 U.S.C. §§ 351-64, and the Rules for Judicial-Conduct and Judicial-Disability Proceedings (Mar. 12, 2019) (“RJCP”) provide that any individual may file a written complaint alleging that a federal judge “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(a). “Prejudicial” conduct includes such actions as a judge’s use of 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 complaints of judicial misconduct and disability and determines whether they should be dismissed or referred for further proceedings. *See* RJCP 11(a). RJCP 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

¹ The Rules for Judicial-Conduct and Judicial-Disability Proceedings (“RJCP”) require the Court to issue a public opinion that describes the misconduct alleged and the basis of its decision. *See* RJCP 24(a). However, the identity of the judge is protected if the complaint is finally dismissed under RJCP 11(c). *See* RJCP 24(a)(1). The identity of the complainant is also protected. *See* RJCP 24(a)(5). Accordingly, the Court will not identify the parties in this matter, nor describe the context in which the complainant’s grievances arose with any degree of specificity.

(G) is otherwise not appropriate for consideration under the Act.

RJCP 11(c)(1).

Upon review of this complaint, the undersigned concludes that it is subject to dismissal under RJCP 11(c)(1). Complainant's allegations of misconduct—namely, that the subject judge's dismissal of complainant's civil case arose from a retaliatory or otherwise improper motive—are not supported by sufficient evidence to raise an inference that misconduct has occurred or that a disability exists and, in any event, are directly related to the merits of a decision or procedural ruling. *See* RJCP 11(c)(1)(B), (D).

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 effective and expeditious administration of the business of the courts. *See* RJCP 4(a).

IT IS FURTHER ORDERED that the complainant has the right to file a petition for review of this decision by the entire court. The deadline for filing such a petition is within forty-two (42) days after the date of this Memorandum and Order. *See* RJCP 11(g)(3), 18(a)-18(b).



ELAINE D. KAPLAN
Chief Judge