

In the United States Court of Federal Claims

(Filed: January 17, 2024)

In re: COMPLAINT OF JUDICIAL
MISCONDUCT

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Case No. 23-90373

MEMORANDUM AND ORDER

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

The Judicial Conduct and Disability Act (“the 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, the chief judge of the court—or, in the event of the chief judge’s disqualification, the most-senior active judge—reviews any complaint of judicial misconduct and disability and determines whether it should be dismissed or referred for further proceedings. *See* RJCP 11(a). RJCP 11(c)(1) requires that a complaint 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;

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). The identity of the judge(s) against whom the complaint is made is protected from disclosure if the complaint is dismissed under RJCP 11(c). *See* RJCP 24(a)(1). The identity of the complainant is also protected from disclosure. *See* RJCP 24(a)(5). Accordingly, the parties in this matter will not be identified and the context in which the complainant’s grievances arose will not be described with any specificity.

- (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).

This complaint is subject to dismissal under RJCP 11(c)(1). The complainant alleges that the subject judges improperly deprived him of time to file briefs during the pendency of his case, exhibited bias against him, and had an improper motive in reassigning his case from one judge to another. The allegations are not supported by sufficient evidence to raise an inference that misconduct has occurred. *See* RJCP 11(c)(1)(D).

With respect to the timing of the briefs, there were multiple motions, one of which was a dispositive motion, pending in his case. Under Rule 7.2 of the Rules of the Court of Federal Claims, the time to file responses to motions varies depending on the type of motion. The complainant has not shown any prejudice from the small delays in docketing his submissions; the delays were due to routine internal procedures used in pro se cases. The record also does not reflect any improper motive or bias in the transfer of his case from one judge to another. The result also fails to reflect bias against the complainant. If the complainant believes the result is legally incorrect, there is recourse through an appeal to the Court of Appeals for the Federal Circuit; a complaint under the Act is not a basis to obtain review of the result in the underlying case.

Accordingly, the complaint is **DISMISSED** because the complainant has not demonstrated that the named judges engaged in cognizable misconduct that is prejudicial to the effective and expeditious administration of the business of the courts. *See* RJCP 4(a).

If the complainant is dissatisfied with this conclusion, he has the right seek review of this decision by the entire Court by filing a petition for review. Such a petition for review must be filed within 42 days of the date of this Memorandum and Order. *See* RJCP 11(g)(3), 18(a)-18(b).



RICHARD A. HERTLING
Judge