

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS**

**FILED**

**MAR 06 2009**

**U.S. COURT OF  
FEDERAL CLAIMS**

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In re:

COMPLAINT OF JUDICIAL MISCONDUCT

No. CL-09-90005

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**OPINION and MEMORANDUM**

**DAMICH, Chief Judge**

The Court received a Judicial Misconduct Complaint alleging that a judge of this court ruled on his case without the constitutional authority to do so and that the judge should have been disqualified from the case.<sup>1</sup> Complainant requests, in addition, that the case be reassigned to a constitutional judge.

The Judicial Improvement Act, codified at 28 U.S.C. §§ 351-364, and the Rules of Judicial-Conduct and Judicial-Disability Proceedings (RJCP) provide a way for any person to complain about a federal judge who the person believes “has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts.” Under the RJCP 11(a), the Chief Judge reviews complaints of judicial misconduct that are filed with the court and determines whether they should be dismissed or referred for further proceedings. Further, RJCP 11(c) provides that a complaint must be dismissed by the Chief Judge, without further review, if the Chief 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 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 which are incapable of being established through investigation;
- (F) has been filed in the wrong circuit under Rule 7; or
- (G) otherwise not appropriate for consideration under the Act.

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<sup>1</sup> Title 28 U.S.C. § 372 and the Rules of Judicial-Conduct and Judicial-Disability Proceedings require the court to issue a public opinion which describes the misconduct alleged and the basis of its decision. RJCP 24(a). However, the identity of the complainant and the judge are protected. RJCP 24 (1) and 24(a)(5). Accordingly, the court will not identify the parties herein, nor describe the context in which the complainant’s grievances arose with any degree of specificity.

In addition, the Rules provide guidance as to what constitutes prejudicial conduct. Conduct prejudicial to the effective and expeditious administration of the business of the courts is not a precise term. It includes such things as use of the judge's office to obtain special treatment for friends and relatives, acceptance of bribes, improperly engaging in discussions with lawyers or parties in cases in the absence of representatives of opposing parties, and other abuses of judicial office. RJCP 3(h). It does not include making wrong decisions - even very wrong decisions - in cases.

Review of complainant's charges has not demonstrated that the judge engaged in conduct prejudicial to the effective and expeditious administration of the business of the court. The complainant requested removal of the judge because she was "being paid by the non United States defendant's [sic]" which rendered her without authority to proceed in his case. In addition, complainant alleges that because the judge did not recuse herself, her Orders in the case are to be considered "utterly void, null, and of no effect." Complainant alleges that the judge, under a Florida statute and 28 U.S.C. § 455, was obligated to have the case reassigned to a "constitutional judge."

The Court finds these allegations to be frivolous, evincing no basis in reality. The Court cannot begin to ascertain what is meant by "... being paid by the non United States defendant's." In addition to the claim that the judge is not a constitutional judge, complainant alleges that because the judge in question did not recuse herself and dismissed his case, that she participated in the "grand theft of [complainant's name omitted], his assigns, money for self profit in violation of English Common Law, of robbery, Spanish Common Law, Federal Law Title 18 § 241, § 242. Title 42 § 1983, § 1988." These are nonsensical allegations. The judge in question sits as a duly appointed and confirmed judge of the United States Court of Federal Claims in accordance with 28 U.S.C. § 171. The court finds no basis for a finding of judicial misconduct and no reason to consider reassigning a case that has been appealed and properly closed.

When, a complainant believes that a judge did not fairly consider his allegations and/or did not apply the correct law to his claims and dismissed his case on an erroneous basis, he is able to seek relief from the United States Court of Appeals for the Federal Circuit - as was done in this case. However, he may not broaden his appellate rights through the judicial misconduct process.

**THEREFORE, IT IS ORDERED**, as follows:

1. The complaint is **DISMISSED** because the alleged facts are found to be frivolous accusations, RJCP 11(c)(1)(C);
2. The request for re-assignment of the case is deemed moot;
2. 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 thirty-five (35) days from the day of the Clerk's letter transmitting this Order. RJCP 18(b).

  
EDWARD J. DAMICH  
Chief Judge