

In the United States Court of Federal Claims

FILED

MAR 13 2009

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

In re:

COMPLAINT OF JUDICIAL MISCONDUCT

No. CL-09-90006

OPINION and MEMORANDUM

HEWITT, Chief Judge

The Court received a Judicial Misconduct Complaint Alleging that a judge of this court “ . . . jumped to conclusions without first establishing all the facts of the case.”¹

The Judicial Improvement Act, codified at 28 U.S.C. §§ 351-364, and the Rules of Judicial-Conduct and Judicial-Disability Proceedings (RJCP, Rules) 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.” RJCP 1. Under the Rules, 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. RJCP 11(a). The governing statute and rules expressly provide that a complaint must be dismissed by the Chief Judge, without further review, if the Chief Judge concludes that the complaint is directly related to the merits of a decision or procedural ruling. RJCP 11(c)(1)(B).

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

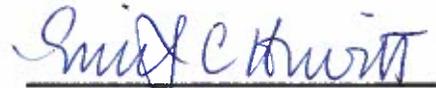
¹ Title 28 U.S.C. § 372 and the Judicial Misconduct Rules require the court to issue a public opinion which describes the misconduct alleged and the basis of its decision. RJCP 24(a). However, the identity of the complainant and the judge are protected. RJCP 24 (1) and 24(a)(5). Accordingly, the court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

complainant provides, in place of allegations of inappropriate conduct on the part of the judge, a retelling of the facts of the underlying case and offers reasons why the agency in question followed incorrect and illegal procedures. The only allegation directed to the judge in question is that he “jumped to conclusions without first establishing all the facts.” The Court finds the complainant’s allegations to be directly related to the decision-making process in the underlying case and not a basis for a finding of judicial misconduct.

If, after a decision is rendered, a complainant believes that a judge did not fairly consider his allegations and/or did not apply the correct law to his claims and dismisses his case on an erroneous basis, he is able to seek relief, as this complainant did, from the United States Court of Appeals for the Federal Circuit. 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 complainant’s allegations are shown to be directly related to the merits of the decision-making process. RJCP 11(c)(1)(B).
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).



Emily C. Hewitt
Chief Judge