
In re:

COMPLAINT OF JUDICIAL MISCONDUCT

No. CL-09-900010

OPINION and MEMORANDUM

HEWITT, Chief Judge

The Court received a series of motions from a petitioner complaining about a special master and the attorneys in a vaccine case. Those motions shall be deemed together as a Complaint of Judicial Misconduct. In this decision, the court will not consider any complaints made against the attorneys as they are not subject to review under the Rules of Judicial-Conduct and Judicial-Disability Proceedings. Complainant, in addition to the many complaints and allegations discussed below, requests that the proceeding be suspended due to serious mental and physical illness in order to appeal the decision at some future indefinite time.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.

¹ 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 judge and complainant are protected. RJCP 24(a)(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.

The complaints and allegations against the special master include:

- the issuance of an unfair, unjust, and very delinquent decision, sabotaged by an incorrect fact ruling in which the special master did not see the final reports of four doctors;
- accusations the special master and the attorneys for defendant and petitioner, by forceful and threatening conduct, did not allow the petitioner child's grandfather into a hearing where another witness was testifying;
- false swearing and untrue testimony used in the decision;
- the truthful meaning of the medical testimony of one of the doctors was hidden.

The vast majority of complainant's allegations are directly related to the decision making process in the underlying case. The court undertook a limited inquiry into the only allegation that may have risen to a conduct issue as described in RJCP 1. The special master was accused of threatening the father of the complainant when refusing to have him enter a hearing where another witness was testifying. The complainant did not specify what the alleged threat was but did indicate a demeanor that, if true, would be improper under the Rules. The court has determined that the behavior of the special master was clearly not as described in the allegations. As a matter of fact, the court's limited inquiry revealed that the special master behaved in a courteous manner throughout the process and kept his composure under very trying situations. The court finds this allegation is lacking sufficient evidence to raise an inference of misconduct and dismisses this part of the complaint on that basis. RJCP 11(c)(1)(D).

The Court finds complainant's remaining allegations to be directly related to the decision-making process in the underlying case and not a basis for a finding of judicial misconduct.

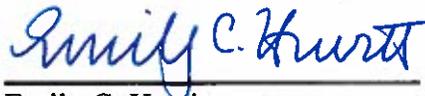
If, after a decision is rendered, a complainant believes that a special master did not fairly consider his allegations and/or did not apply the correct law to his claims and dismisses his case on an erroneous basis, he is able to seek relief, as this complainant did, by a filing of a motion for reconsideration. In addition, the petitioner has the right to file a petition for review of the decision of the special master before the United States Court of Federal Claims within 30 days of the date of the special master's decision. Rules of the Court of Federal Claims, Appendix B, Vaccine Rule 13. Complainant did not file a timely petition for review of the special master's decision and has, therefore, waived his right to a review of that decision. He may not broaden his appellate rights through the judicial misconduct process.

Complainant's motion for time to appeal the decision of the special master is denied as moot.

THEREFORE, IT IS ORDERED, as follows:

1. The complaint of threats against a potential witness are dismissed because it is based on allegations lacking sufficient evidence to raise an inference that misconduct has occurred or that a disability exists. RCJP 11(c)(1)(D).
2. The remainder of 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).

3. 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