

# In the United States Court of Federal Claims

In re:

COMPLAINT OF JUDICIAL MISCONDUCT

No. CL-09-900017

## OPINION AND MEMORANDUM

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

The Judicial Conduct and Disability Act, codified as 28 U.S.C. §§ 351-64, and the Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules or RJCP), allow for any individual to complain about a federal judge the individual believes “has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts.” RJCP 1. The Rules provide guidance as to what constitutes “prejudicial” conduct. “[C]onduct prejudicial to the effective and expeditious administration of the business of the courts” is not a precise phrase; 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. See RJCP 3(h).

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 Rules provide 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;

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<sup>1</sup> The Rules for Judicial-Conduct and Judicial-Disability Proceedings (RJCP) 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 is protected if the complaint is finally dismissed under RJCP 11(c). RJCP 24(a)(1). The identity of the complainant is also protected. 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.

- (F) has been filed in the wrong circuit under Rule 7; or
- (G) is otherwise not appropriate for consideration under the Act.

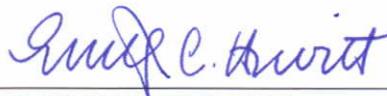
RJCP 11(c)(1).

Review of the complaint has not demonstrated that the judge engaged in conduct prejudicial to the effective and expeditious administration of the business of the court. First, complainant alleges that the judge's decision-making process was flawed. Pursuant to RJCP 11(c)(1)(B), cited above, a complaint that is "directly related to the merits of a decision" is not covered by these Rules. 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, which this complainant has done. However, he may not broaden his appellate rights through the judicial misconduct process.

Second, claimant's allegations that the judge engaged in other prejudicial misconduct are conclusory in nature, and are not supported by "sufficient evidence to raise an inference that misconduct has occurred." Thus, the complaint must be dismissed pursuant to RJCP 11(c)(1)(D), cited above. For these reasons:

IT IS ORDERED that the complaint is DISMISSED because the judge did not engage in conduct prejudicial to the administration of the business of the court, RJCP 3(h)(1); the allegations made are directly related to the merits of the judge's decision, RJCP 11(c)(1)(B); and, the allegations made regarding other judicial misconduct are not supported by sufficient evidence, RJCP 11(c)(1)(D).

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 thirty-five (35) days of the date on the clerk of court's letter transmitting this Order. RJCP 11(g)(3), 18(b).



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EMILY C. HEWITT  
Chief Judge