In the United States Court of Federal Claims

FILED
FEB 07 2011
U.S. COURT OF
FEDERAL CLAIMS

In re:

COMPLAINT OF JUDICIAL MISCONDUCT No. CL-11-900040

OPINION AND MEMORANDUM

The court received a complaint alleging that a judge of the United States Court of Federal Claims engaged in judicial misconduct.[1]

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

---

[1] 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.

RJCP 11(c)(1).

The complaint does not demonstrate that the judge engaged in conduct prejudicial to the effective and expeditious administration of the business of the court. Complainant questions the correctness of official actions of the judge, but such complaints are not cognizable as judicial misconduct. RJCP 3(h)(3)(A). Thus, these allegations must be dismissed pursuant to RJCP 11(c)(1)(D).

IT IS ORDERED that the complaint made against the judge of the United States Court of Federal Claims is DISMISSED because the judge did not engage in conduct prejudicial to the administration of the business of the court, RJCP 3(h)(1); and the allegations made are directly related to the merits of the judge's decision, RJCP 11(c)(1)(B).

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).

Emily C. Hewitt

EMILY C. HEWITT
Chief Judge