

In the United States Court of Federal Claims

FILED

MAY 09 2011

U.S. COURT OF
FEDERAL CLAIMS

In re:

COMPLAINT OF JUDICIAL MISCONDUCT

No. CL-11-900045

OPINION AND MEMORANDUM

The court received a complaint alleging that a special master 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). A special master of the Court of Federal Claims is a judge within the meaning of the RJCP. RJCP 3(g), 4. 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.

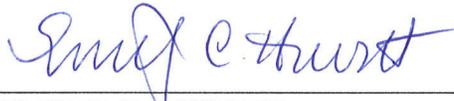
RJCP 11(c)(1).

The complaint alleges that the special master wrongfully entered a procedural order and improperly failed to recuse herself, but pursuant to RJCP 11(c)(1)(B), complaints “directly related to the merits of a decision or procedural ruling,” including a failure to recuse, are not covered by these Rules. RJCP 3(h)(3).

Complainant also asserts that the special master treated her in a “demonstrably egregious and hostile manner,” specifically referring to certain orders and status conferences. The court has undertaken a limited inquiry pursuant to RJCP 11(b), and has reviewed the cited orders, along with transcripts and audio recordings of the status conferences. After this limited inquiry, the court concludes that the allegations in the complaint are conclusively refuted by objective evidence.

IT IS ORDERED that the complaint is DISMISSED because the special master 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 special master’s decision, RJCP 11(c)(1)(B); and, after limited inquiry, the allegations lack sufficient evidence to raise an inference that misconduct has occurred. 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).



EMILY C. HEWITT
Chief Judge