

In the United States Court of Federal Claims

In re: COMPLAINT OF JUDICIAL MISCONDUCT

No. CL-17-90149

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 (“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 or is unable to discharge the duties of office because of mental or physical disability.” 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). A “disability” is defined as, “a temporary or permanent impairment, physical or mental, rendering a judge unable to discharge the duties of the particular judicial office.” RJCP 3(e).

Under the RJCP, a chief judge reviews complaints of judicial misconduct and disability that are filed and determines whether they should be dismissed or referred for further proceedings. RJCP 11(a). RJCP 11(c)(1) provides that a complaint must be dismissed without further review if the presiding 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 the 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 that are incapable of being established through investigation;
- (F) has been filed in the wrong circuit under Rule 7; or

¹ The Rules for Judicial-Conduct and Judicial-Disability Proceedings (“RJCP”) require the court to issue a public opinion that 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 Rule 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.

(G) is otherwise not appropriate for consideration under the Act.

RJCP 11(c)(1).

Upon review, the undersigned concludes that the complaint is subject to dismissal under RJCP 11(c)(1). Complainant's first allegation of misconduct—that the judge unreasonably construed a new motion as a reply brief to a pending motion—is directly related to the merits of a procedural ruling and lacks sufficient evidence to raise an inference that misconduct has occurred. *See* RJCP 11(c)(1)(B), 11(c)(1)(D). Complainant's second allegation of misconduct—that the judge returned a motion unfiled—is also directly related to the merits of a procedural ruling and lacking sufficient evidence to raise an inference that misconduct has occurred. *See id.* Therefore,

IT IS ORDERED that the complaint is DISMISSED because the complainant has not demonstrated that the named judge engaged in cognizable misconduct that is prejudicial to the administration of the business of the court. *See* RJCP 3(h)(1).

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 a petition is within forty-two (42) days after the date of this Opinion and Memorandum. RJCP 11(g)(3), 18(a)-(b).



SUSAN G. BRADEN
Chief Judge