

In the United States Court of Federal Claims

In re: COMPLAINT OF JUDICIAL MISCONDUCT

No. CL-17-90156

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 (“RJCP”), allow for any individual to complain about a federal judge, magistrate, or special master 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 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 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 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
- (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 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.

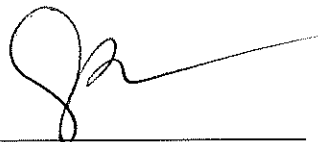
RJCP 11(c)(1).

Complainant first contends that the special master was predisposed to reject his vaccine claim. Complainant also alleges that the special master's negative comments during a status conference granted Respondent a "substantial advantage" in the litigation and caused Respondent's counsel to reject the possibility of settlement. Pursuant to RJCP 11(c)(1)(D), this court finds that these allegations lack sufficient evidence to raise an inference of judicial misconduct or disability. The allegation is therefore not meritorious, and must be dismissed.

To the extent that complainant challenges the special master's comments during the status conference, this court finds that the special master's conduct was neither prejudicial to the effective and expeditious administration of the business of the courts, nor indicative of a mental or physical disability resulting in the inability to discharge the duties of judicial office. RJCP 11(c)(1)(A).

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). Complainant's allegations do not indicate that the special master has a mental or physical disability resulting in the inability to discharge his or her duties, RJCP 11(c)(1)(A), and the allegations lack sufficient evidence to raise an inference of misconduct or disability. 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 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