

# In the United States Court of Federal Claims

FILED  
APR. 29, 2020  
U.S. COURT OF  
FEDERAL CLAIMS

In re: COMPLAINT OF JUDICIAL MISCONDUCT

No. CL-20-90218

## 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.<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 (“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 4(a).

Under the RJCP, 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.

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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 that describes the misconduct alleged and the basis of its decision. RJCP 24(a). However, the identity of the accused 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).

Upon review of this complaint, the undersigned concludes that the complaint is subject to dismissal under RJCP 11(c). Complainant's allegations of misconduct—that the special master's issuance of a show cause order is evidence of bias, and that the special master's requirements for proof of vaccine causation are excessive—are directly related to the merits of a decision or procedural ruling and lack sufficient evidence to raise an inference that misconduct has occurred or that a disability exists. *See* RJCP 11(c)(1)(B), RJCP 11(c)(1)(D). Therefore:

IT IS ORDERED that the complaint is DISMISSED because the complainant has not demonstrated that the special master engaged in cognizable misconduct that is prejudicial to the effective and expeditious administration of the business of the court. *See* RJCP 1(a).

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).

  
MARGARET M. SWEENEY  
Chief Judge