

In the United States Court of Federal Claims

FILED
MAY 21 2008
U.S. COURT OF
FEDERAL CLAIMS

In re:

COMPLAINT OF JUDICIAL MISCONDUCT

No. CL-08-90003
(Complaint Filed May 1, 2008)

OPINION and MEMORANDUM

DAMICH, Chief Judge

The Court received a Judicial Misconduct Complaint brought pursuant to RCFC 40.3, and the Rules of the United States Court of Federal Claims Governing Complaints of Judicial Misconduct and Disability (Judicial Misconduct Rules). The complainant alleges that a judge of this court, presiding over a case in which the complainant is a litigant, has prevented the effective administration of justice by the intentional “significant and harmful omissions” in the judge’s decision to dismiss the complaint.¹

In addition, the complainant makes accusations about an attorney representing the United States. Those allegations are inappropriate for consideration under the Judicial Improvement Act, 28 U.S. §§ 351; Rules for Judicial-Conduct and Judicial-Disability Proceedings (RJCP), Rule 11(c)(1)(B).

The Judicial Improvement Act, codified at 28 U.S.C. §§ 351-364 and the Rules for Judicial-Conduct and Judicial-Disability Proceedings provide a way for any person to complain about a federal judge who the person believes “has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts.” RJCP Rule 1. 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. The governing statute and rules expressly provide that a complaint must be dismissed by the Chief Judge, without further review, if the Chief Judge concludes that the complaint is directly related to the merits of a decision or procedural ruling. RJCP Rule 11(c)(1)(B).

In addition, the Rules provide guidance as to what constitutes prejudicial conduct. Conduct prejudicial to the effective and expeditious administration of the business of the courts is not a precise term. It 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. RJCP Rule

¹ Title 28 U.S.C. §372 and the Rules of Judicial-Conduct and Judicial Disability Proceedings require the court to issue a public opinion which describes the misconduct alleged and the basis of its decision. RJCP Rules 23 and 24. Pursuant to those rules, the court will not identify the parties herein, nor describe the context in which the complainant’s grievances arose with any degree of specificity.

3(h). It does not include making wrong decisions - even very wrong decisions - in cases.

Review of complainant's charges has not demonstrated that the judge engaged in conduct prejudicial to the effective and expeditious administration of the business of the court. The complainant's allegations include that the judge refused to include certain claims in his opinion, that the judge omitted any reference to the complainant's two amended complaints, and that the judge erroneously stated he had no jurisdiction to address the claims before him. Complainant alleges that because of these reasons an appearance of impropriety was created and makes an unsupported allegation that the judge was "covering for friends" in the Internal Revenue Service. In addition, complainant makes a claim that the judge in question had "consultation with the government agents to circumvent the congressional statutes that provide the requested relief for the Plaintiff." Complainant provides no support for such claims, but rather relies on innuendo and incredulous conclusory statements. The Court finds the complainant's allegations to be directly related to the decision-making process in the underlying case and not a basis for a finding of judicial misconduct.

If, after a decision is rendered, a complainant believes that a judge did not fairly consider his allegations and/or did not apply the correct law to his claims and dismisses his case on an erroneous basis, he is able to seek relief from the United States Court of Appeals for the Federal Circuit. However, he may not broaden his appellate rights through the judicial misconduct process.

THEREFORE, IT IS ORDERED, as follows:

1. The complaint is **DISMISSED** because the alleged facts are shown to be directly related to the merits of the decision-making process. RJCP Rule 11(c) (1)(B).
2. The allegations against the Department of Justice attorney are **DISMISSED** as not appropriate for consideration. RJCP Rule 11(c)(1)(G);
3. 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 thirty-five (35) days from the day of the Clerk's letter transmitting this Order. RJCP Rule 18 (b).


EDWARD J. DAMICH
Chief Judge