

In the United States Court of Federal Claims

FILED
JUL 15 2008
U.S. COURT OF
FEDERAL CLAIMS

In re:

COMPLAINT OF JUDICIAL MISCONDUCT

No. CL-08-90006
(Filed May 22, 2008)

OPINION and MEMORANDUM

DAMICH, Chief Judge

The Court received a complaint alleging that a special master of this Court, presiding over a case in which the Complainant was a litigant, promised the Complainant that she would receive a settlement, but ultimately dismissed the case. Complainant appealed, and a judge of this Court upheld the decision of the special master. Complainant was eventually awarded attorneys fees and costs.¹

The Judicial Conduct and Disability Act, codified at 28 U.S.C. §§ 351-364, and the Rules for Judicial-Conduct and Judicial-Disability Proceedings (RJCP) allow for any individual to complain about a federal judge whom the individual 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. RJCP Rule 11(a). 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

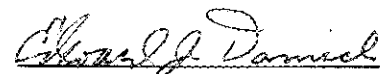
¹Title 28 U.S.C. § 372 and the Rules for Judicial-Conduct and Judicial-Disability Proceedings require the Court to issue a public opinion which describes the misconduct alleged and the basis of its decision. RJCP Rule 24(a). However, the identity of the judge is protected if the complaint is finally dismissed under Rule 11(c). RJCP Rule 24(1). The identity of the complainant is also protected. RJCP Rule 25(a)(5). Accordingly, the Court will not identify the parties herein, nor describe the context in which the complainant’s grievances arose with any degree of specificity.

lawyers or parties in cases in the absence of representatives of opposing parties, and other abuses of judicial office. RJCP Rule 3(h). It does not include making wrong decisions - even very wrong decisions - in cases.

The Complaint focuses on the merits of the decision-making process rather than any misconduct on the part of the special master. Complainant asserts that the special master promised her a settlement during a telephonic status conference, but failed to fulfill that promise. Upon limited inquiry, the Court finds that the special master may have suggested that a settlement was possible, but did not guarantee a settlement. Two months following the telephonic status conference, the special master issued an order, requiring the defendant to notify the law clerk within three weeks whether settlement would be offered. The defendant subsequently notified the clerk that settlement was not possible. The special master issued a decision subsequent to the defendant's notification. Based on this inquiry, the Court finds that the main of the Complaint is directly related to the decision-making process in the underlying case and is not a basis for a finding of judicial misconduct.

THEREFORE, IT IS ORDERED, as follows:

1. The Complaint is **DISMISSED** because the allegations are shown to be directly related to the merits of the decision-making process. RJCP Rule 11(c)(1)(B).
2. 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 Rules 18(b).


Edward J. Damich
Chief Judge