

# ORIGINAL

## In the United States Court of Federal Claims

FILED

MAR 31 1995

U. S. COURT OF  
FEDERAL CLAIMS

In re:

COMPLAINT OF JUDICIAL MISCONDUCT

No. 30

Filed: March 31, 1995

### OPINION

#### Facts

This complaint of judicial misconduct is brought pursuant to 28 U.S.C. §372(c)(1) and the Rules of the United States Court of Federal Claims Governing Complaints of Judicial Misconduct and Disability (Judicial Misconduct Rules). Complainant charges a judge of this court with judicial misconduct through the court's actions in the complainant's case.

The complainant filed an action in the United States Court of Federal Claims, seeking damages for injuries caused by the actions of the United States of America, which she alleged had deprived her of access to the federal courts and had violated her constitutional rights. This court entered an order in which it noted that it had reviewed the complaint and could discern no statement of a claim that arguably could be within its jurisdiction. The judge directed that the complaint be dismissed. The complainant filed a complaint for judicial misconduct, in which she claimed that by dismissing her complaint prior to the filing of an answer by the defendant, the judge had taken over the defendant's case and had shown the court's bias and prejudice by ruling against her. She reasoned that the actions of the judge amounted to judicial misconduct.

#### Discussion

Any person "alleging that a judge of this court has engaged in conduct prejudicial to the effective and expeditious administration of the business of the court" may file a complaint for judicial misconduct. Judicial Misconduct Rule 1 and 28 U.S.C. §372 (c)(1) & (18). It is the responsibility of the Chief Judge to examine such a complaint and determine whether it is appropriate to refer the matter for further proceedings. Judicial Misconduct Rule 4(a).

It is clear, however, that a complaint may not be filed to address the merits of a case or to correct alleged errors that may be reviewed on appeal. In re Complaint of Judicial Misconduct No. 4, 8 Cl.Ct. 523, 524 (1985). The rules and statute direct that a complaint shall be dismissed if it is directly related to the merits of a decision or procedural ruling. 28 U.S.C. § 372(c)(3)(A)(ii), Judicial Misconduct Rule 4(c)(2). Such a complaint may not be grounded merely on a litigant's dissatisfaction with a judge's handling of a particular case. In re Complaint of Judicial Misconduct No. 1, 2 Cl.Ct. 255, 259 (1983). The court's misconduct complaint procedure is not the appropriate means for correcting whatever error the complainant perceives was committed by the judge who handled the case.

The complainant is now seeking relief that cannot and should not be given, i.e. that the Chief Judge vacate the prior decision by the judge in question and reassign the case to another judge for consideration on the merits. If the complainant believes that the judge to whom the case was assigned erred in dismissing her complaint, the proper and sole avenue for relief was an appeal to the United States Court of Appeals for the Federal Circuit. In re Complaint of Judicial Misconduct No. 8, 12 Cl. Ct. 763, 764 (1987). The complainant may not seek relief on the merits of her suit through the filing of a judicial misconduct complaint, which personally attacks a judge's integrity.

This complaint of judicial misconduct is without merit. It is directly related to the judge's decision on the merits of the underlying case. Judicial Misconduct Rule 4(c)(2).

Moreover, the judicial misconduct complaint is frivolous on its face and should be dismissed on that ground alone. 28 U.S.C. §372(c)(3)(A)(iii), Judicial Misconduct Rule 4(c)(3). The judge to whom the case was assigned did not act improperly by entering the order dismissing the case prior to the filing of any pleading by the defendant. It is contrary to the most basic principles of our legal system to challenge a judge's legal conclusions or findings of fact by impugning his or her character. Id.

The Clerk is directed to dismiss this complaint of judicial misconduct. Judicial Misconduct Rule 4(c)(2) and (3).



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LOREN A. SMITH  
Chief Judge