

United States Court of Federal Claims

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CHAMBERS OF
CHIEF JUDGE
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John Vittone, Chair
Committee on Adjudication
Administrative Conference of the United States
1120 20th St., NW
Suite 706 South
Washington, DC 20036

Via Email: awilliams@acus.gov

Dear Mr. Vittone:

It is our understanding that the Committee on Adjudication is currently considering a research project and April 29, 2016 report on the subject of “aggregate agency adjudication.” The court regrets that we missed the window to provide comments directly back to the authors of the report—Michael Sant’ Ambrogio and Adam Zimmerman—however, with this letter, the court is ensuring that our comments and corrections are considered by your committee and the Administrative Conference of the United States as the agency moves forward on this topic.

The court’s major concern is how the work of the United States Court of Federal Claims (“the court”) and its Office of Special Masters (“OSM”) is framed by the authors. In the April 29, 2016 report titled “Aggregate Agency Adjudication,” the court’s adjudication of claims under the National Childhood Vaccine Injury Act of 1986, 42 U.S.C. §§ 300aa-1-34 (“Vaccine Act”), is treated as an example of “agency adjudication” or “administrative adjudication.” This treatment is incorrect. The adjudication of claims pursuant to the National Vaccine Injury Compensation Program (“NVICP”) is, in fact, court adjudication entrusted to an Article I court of the United States.

The Vaccine Act assigns the adjudication of cases under the NVICP to the United States Court of Federal Claims. 42 U.S.C. § 300aa-11(a)(1). When enacted, the statute directed the court to appoint a new class of judicial officers within that court, the special masters. 42 U.S.C. § 300aa-12(c)(1). A case alleging that an individual has suffered a vaccine injury is initiated with the filing of a petition to the court, not by filing a “claim for compensation with the Department of Health and Human Services (HHS)” as asserted by the report. Michael Sant’ Ambrosio & Adam Zimmerman, *Aggregate Agency*

Adjudication, April 29, 2016, at 38. The petitioner names the Secretary of HHS as the defendant in its petition. Special masters hear and decide these cases, 42 U.S.C. § 300aa-12(c) & (d), and their decisions are final unless appealed to a judge of the court. 42 U.S.C. § 300aa-12(e). Regardless of whether a special master's decision is appealed, the case ends with the court's issuance of a judgment. 42 U.S.C. § 300aa-12(e)(3).

Therefore, at base, it is incorrect to state or imply that the adjudication of cases under the NVICP is a form of "agency adjudication" or "administrative adjudication." The Office of Special Masters is not a component of the HHS or of any agency of the Executive Branch. Nor is it a "federal agency." Rather, it is a component of the United States Court of Federal Claims in the Judicial Branch. The role of the agency in question—the Department of Health and Human Services—is merely as a party to a vaccine injury case brought in federal court.

For these reasons, it is more apt to compare special masters to federal magistrate judges than agency adjudicators.

Turning to the specifics of the April 29, 2016 report, we note, for example, that both the Abstract and the Introduction to the Report sections begin with the words "federal agencies," implying that the research project has focused only on federal "agencies." *See Aggregate Agency Adjudication* at Abstract & 5. In both the Abstract and at pages 6 through 7 of the report, the NVICP is described as an "administrative program" with no mention of the United States Court of Federal Claims.

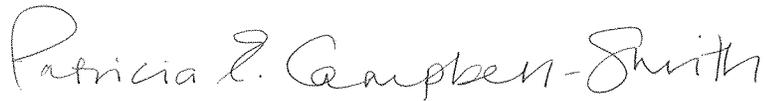
Similarly, at pages 11 through 15, the report discusses the use of aggregate adjudication in "federal courts." Then, framed as being in contrast to adjudication in "federal courts," the NVICP is discussed as an example of "aggregate agency adjudication." *See id.* at pp. 27, 38-44. As elucidated above, the work of the Office of Special Masters and the NVICP is, in fact, an example of federal court adjudication rather than agency adjudication.

As one final example of the language in the report that causes us concern, at page 38, the second sentence does not mention the United States Court of Federal Claims at all, making it appear that the Office of Special Masters is a component of HHS rather than a statutory component of a federal court.

Again, we at the court apologize that we did not have a timely opportunity to share these comments directly with the authors of the April 29, 2016 report. However, given the importance of the report to this ACUS research project, we must take this opportunity to correct the public regarding the work of the United States Court of Federal Claims and its Office of Special Masters.

If you or the authors of the report have any additional questions, please do not hesitate to get in touch with me or Chief Special Master Nora Beth Dorsey. We can both be reached by calling the United States Court of Federal Claims Clerk's Office at (202) 357-6406.

Sincerely,

A handwritten signature in cursive script that reads "Patricia E. Campbell-Smith". The signature is written in black ink and is positioned above the typed name.

Patricia E. Campbell-Smith, Chief Judge

cc: Nora Beth Dorsey, Chief Special Master, Office of Special Masters
George Hastings, Special Master
Lisa Reyes, Acting Clerk of Court
Meredith G. Miller, Senior Staff Attorney
Amber G. Williams, Staff Counsel, Committee on Adjudication
Michael Sant' Ambrogio, Michigan State University College of Law
Adam Zimmerman, Loyola Law School, Los Angeles