

THE JUDICIAL COUNCIL OF THE SEVENTH CIRCUIT
219 South Dearborn Street
Chicago, Illinois 60604

September 25, 2009

FRANK H. EASTERBROOK
Chief Judge

No. 07-09-90090

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

Plaintiff filed a civil suit for employment discrimination. Although he demanded damages of one decillion dollars, which is many orders of magnitude greater than the entire world's wealth, he settled for \$20,000. (A decillion is 10 to the 33d power.) Later he expressed regret over this decision, which he blamed on coercion by the magistrate judge who conducted the settlement conference. The district court enforced the settlement and the court of appeals affirmed, ordering complainant to pay sanctions for a frivolous appeal. (The appeal was deemed frivolous because complainant did not advance any intelligible argument, even one based on supposed coercion by the magistrate judge.) Now complainant accuses the magistrate judge of fraud and duress. He seeks, as a remedy, that his suit be reinstated and the defendants ordered to pay him a decillion dollars.

Any complaint that is "directly related to the merits of a decision or procedural ruling" must be dismissed. 28 U.S.C. §352(b)(1)(A)(ii). See also Rule 11(c)(1)(B) of the Rules for Judicial-Conduct and Judicial-Disability proceedings. "Any allegation that calls into question the correctness of an official action of a judge ... is merits related." Standard 2 for Assessing Compliance with the Act, *Implementation of the Judicial Conduct and Disability Act of 1980: A Report to the Chief Justice* 145 (2006). The allegations of this complaint fit that description. Complainant explicitly seeks review of the decisions enforcing the settlement; the 1980 Act does not allow that review.

Misconduct during a settlement conference could in principle be independent of any judicial decision. A judge might, for example, coerce a settlement by misrepresenting the risks and stakes of litigation. It is common in settlement discussions for a judge to remind each side of the weaknesses of its own position and the strengths of the opponent's views, and the normal settlement range of similar cases. But if, say, a magistrate judge exaggerated the weaknesses of one side while ignoring the weaknesses of the other, and thus put a thumb on the scale, this could be an

objectionable strong-arm tactic. Likewise if the judge told the plaintiff that similar cases regularly settle for \$10,000 while telling the defendant that they settle for \$100,000. That would certainly improve the chance of settlement (each side would think \$40,000 a triumph), but at the expense of fraud.

Complainant charges the magistrate judge with fraud for representing that similar cases settle for \$15,000 to \$25,000. But the complaint does not offer any reason to think that the magistrate judge misrepresented the facts. An empirical study of settlements or jury verdicts might supply such proof (though to call an error “fraud” it would be necessary to show that the magistrate judge *knew* the range to differ from the one stated at the conference). Complainant does not suggest that any data, or even any anecdotes, call the magistrate judge’s estimates into question; instead he seems to think that *any* number, true or false, is objectionable. There is nothing wrong with providing litigants with accurate assessments. As the district judge told complainant, every litigant is helped by knowing the facts. A plaintiff who gets \$20,000 in hand is much better off than one who receives nothing after a jury concludes that a person who claims to have lost more than the entire wealth of the world’s 6.8 billion people cannot be taken seriously. This aspect of the complaint is dismissed under §352(b)(1)(A)(iii) because it lacks evidence sufficient to raise an inference that misconduct has occurred.