

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

April 16, 2008

FRANK H. EASTERBROOK
Chief Judge

No. 08-7-352-14

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

The complainant, a plaintiff in pending employment-discrimination litigation, contends that the magistrate judge assigned to handle discovery and settlement discussions in her suit engaged in *ex parte* discussions with defense counsel and threatened her with trial by a racially biased jury, notwithstanding the court's ability (and duty) to ensure that any trial is conducted without bias. If these things happened, they were "contrary to the effective and expeditious administration of the business of the courts". 28 U.S.C. §351(a).

I have written to the subject judge, who denies these allegations. At my direction, the Circuit Executive spoke with defense counsel, who likewise related that no *ex parte* discussions occurred and that during the settlement conference the magistrate judge did not make the statements that complainant imputes to him.

Because the discussion was not recorded or transcribed, however, the conflicting statements of persons involved create a material dispute. After the preliminary review required by 28 U.S.C. §352(a), I conclude that the complaint cannot be dismissed summarily. There is no basis on which I could declare that the allegations are "plainly untrue" (§352(a)(2)). Nor may the complaint be dismissed as "conclusively refuted by objective evidence" (§352(b)(1)(B)). The allegations are not related to the merits of any judicial decision (§352(a)(1)(A)(ii)), and none of the other grounds of summary dismissal is applicable.

The merit of the complaint depends on who is telling the truth. "The chief judge shall not undertake to make findings of fact about any matter that is reasonably in dispute." 28 U.S.C. §352(a). See also Rule 11(b) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings. Under the circumstances, therefore, the creation of a special committee to investigate and report to the Judicial Council of the Seventh Circuit is mandatory. See 28 U.S.C. §353(a); Rule 11(f); *Implementation of the Judicial Conduct and Disability Act of 1980: A Report to the Chief Justice* 16-17, 84 (2006).

A special committee is an investigative body. My conclusion that the statute requires the creation of a special committee does not imply any view about where the truth lies or what action would be appropriate if the complainant's charges can be substantiated. Those decisions are reserved to the Council after the committee has conducted its investigation and reported to the Council.