

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

July 23, 2013

FRANK H. EASTERBROOK
Chief Judge

No. 07-13-90046

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

Complainant was among several lawyers representing a relator in a *qui tam* action. He contends that the magistrate judge who presided over a settlement conference committed misconduct.

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, to the extent that complainant believes the magistrate judge erred by recommending that complainant be sanctioned for pursuing a frivolous suit. A district judge imposed a substantial sanction, which the court of appeals later set aside after concluding that the *qui tam* suit is not frivolous. It is not clear what role the magistrate judge played in this process—but details do not matter in light of §352(b)(1)(A)(ii). Complainant is a lawyer, yet his complaint does not mention §352(b)(1)(A)(ii) or any other part of the 1980 Act or its implementing rules.

Complainant did not attend the settlement conference, which apparently was not transcribed. The complaint is based on others’ impressions, which were relayed to complainant. Rumor chains are notoriously unreliable. No matter. Although complainant does not say why he believes that what happened constitutes misconduct,

the narration raises two possibilities. First, the magistrate judge insulted him, which led the plaintiff to discharge him. Second, the judge suggested that a settlement would eliminate the possibility of sanctions if defendant would withdraw its motion for sanctions as part of a deal. Neither of these two events constitutes misconduct, so the complaint is dismissed to this extent under §352(b)(1)(A)(iii).

It is no surprise that the magistrate judge said unkind things about a lawyer who was penalized a six-figure sum for advancing claims that, in the judge's view, were frivolous. Section 352(b)(1)(A)(ii) protects the judge's substantive decision, and the language a judge uses to convey his conclusions cannot properly be described as misconduct.

As for the proposal of settlement: That's the goal of a settlement conference. If a defendant might be willing to withdraw the motion for sanctions in order to facilitate resolution of the litigation, a magistrate judge is entitled to ensure that everyone considers this possibility. Trying to bring the parties together by explaining all options cannot be described as misconduct. Perhaps defendant would not have been willing to give up on sanctions, but it is proper to explore that possibility. Global settlements are better than settlements limited to a subset of the pending issues or claims.