

What Judges Really Want: Reasonable Litigants

June 6, 2013 | [Employment Discrimination, Labor And Employment](#)

Recently, a paralegal sued the law firm that she had been working for in New York City. She alleged that the firm's named partner had sexually harassed her in violation of New York's anti-discrimination laws by implying that she should engage in a sexual relationship with him, by demanding that she feed him with chopsticks at an Asian restaurant, by chasing after her when she left the restaurant, and by eventually firing her for rebutting his advances. She also alleged that the firm failed to pay all of the wages that it owed her in violation of the Fair Labor Standards Act. In the settlement demand that she sent to the firm, she suggested that she would settle the case for \$750,000.

The facts of the paralegal's sexual harassment claim are not particularly lurid. Indeed, they are fairly tame. And she had only worked for the firm for a brief period of time – just two months. So one might wonder why she thought her case was worth so much.

The district court judge did. At the case's initial pretrial conference, he advised the paralegal that she "really ought to spend some time and effort to try to resolve this matter." He also stated, "If I can give you some advice...this case is not worth a million dollars." Not a good start for the paralegal.

The paralegal's allegations and the judge's advice are not noteworthy because they illustrate some interesting or novel point of law. They don't. What they do, however, is demonstrate something that plaintiffs and defendants sometimes tend to forget: That judges are unbiased and that they want the parties to act reasonably. They also want cases that should settle to be settled. When they see a plaintiff make an absurdly high settlement demand or a defendant make an unrealistically low counteroffer, they become frustrated because they see the case as a waste of their time and the parties' too.

Remember that the next time one of your employees sues you and the Court orders the parties to attend a settlement conference. It's tough not to feel angry and betrayed when you have been sued. But if you act rationally and have tenable reasons for the decisions that you make, the judge will notice. That won't win a case for you that you should lose, but it likely will keep the judge from letting you – and your opponent – know that your claims and/or defenses are not nearly as good as you think they are!

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