

Federal Employee Rights Training (excerpt from Rick Seymour materials):

1. The Situation

You represent a federal employee. The agency accepts the charge, has done an investigation, and has found reasonable cause. You're sitting on top of the world. The agency conciliator calls you and tells you the respondent has offered \$50,000 and that the EEOC has determined this is full relief. Your client does not want reinstatement, so that part is okay, but you really do not want to negotiate through any agency. You want to be in court. You tell the agency you're rejecting the amount, you see no point in responding to the agency's and EEOC's questions about why the relief is not adequate, and you refuse to make a counter-offer. In due course, the agency dismisses the charge and sends the suit notice. The judge then dismisses the case for failure to exhaust, and it's affirmed on appeal.

2. The Problem

The EEOC has a regulation governing Federal applicants and employees that allows the dismissal of a charge if the charging party refuses an offer of full relief. 29 C.F.R. § 1614.107(h).

a. Favorable Decision

Long v. Ringling Brothers-Barnum & Bailey Combined Shows, Inc., 9 F.3d 340 (4th Cir. 1993) (private-sector charging parties are not required to exhaust administrative remedies in the same manner as Federal-sector, and the private employer's protection is not through dismissal but through Rule 68).

b. Unfavorable Decisions

Wrenn v. Secretary, Department of Veterans Affairs, 918 F.2d 1073, 1078–79, 54 FEP Cases 664, 55 E.P.D. ¶ 40,390 (2d Cir. 1990), cert. denied, 499 U.S. 977 (1991), stated: The purpose of the good faith participation requirement is to give the administrative process an opportunity to work and to enhance the chances of administrative resolution. It follows that a claimant who is offered full relief in the administrative process must either accept the relief offered or abandon the claim. To allow claimants such as Wrenn to continue to pursue claims that have been fully remedied during the administrative process would frustrate the congressional policy favoring administrative resolution of complaints for no discernible reason. Continued pursuit of such claims consumes judicial and other resources, resulting in a dead-weight social loss except for giving satisfaction to litigants who prefer court proceedings to administrative relief. However, litigation is not a sport in which the hunter may release a trapped quarry for the thrill of further chase. (Footnote omitted.) *Francis v. Brown*, 58 F.3d 191, 193, 68 FEP Cases 555, 67 E.P.D. ¶ 43,754 (5th Cir. 1995) (“Because the agency's settlement offer constituted full relief, we conclude that Francis failed to exhaust his administrative remedies. The district court properly granted summary judgment for the agency.”). *Briley v. Carlin*, 172 F.3d 567, 572 (8th Cir. 2001) (“Plainly stated, a claimant who rejects an offer of full relief is not entitled to maintain a federal lawsuit.”).

3. How to Avoid the Problem

If an offer of full relief is made, accept it. If there are solid grounds to assert that it is not full relief, explain to the agency and the EEOC why the relief is not adequate. If this is not successful, and if the respondent is a Federal agency, weigh carefully the risk of getting nothing if a court disagrees as to the completeness of the relief, and explain the high degree of risk to the client. In a close case, the offer should be accepted.