

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

U. S. COURT OF APPEALS
FILED

JUN 27 2019

FIFTH CIRCUIT
LYLE W. GAYCE, CLERK

Complaint Number: 05-19-90087

MEMORANDUM

Complainant, a pro se litigant, alleges that the subject United States District Judge engaged in biased conduct and made “disparaging comments” during a February 2019 scheduling hearing.

Complainant complains that the judge commented “that she was not sure about my case” and he protests “[i]t was appalling to hear this [judge] state that she was not sure about this discrimination claim, and my constitutional rights being violated.” He further objects that the judge’s “main concern [was] whether I have a lawyer.” Complainant also asserts that the judge “showed favor to” defense counsel because “[w]hen I mentioned that the rules have already been violated by [three] defendants” who failed to file answers to his complaint, the judge asked, “[D]id you expect [the Chairman of the state agency] to call me [sic] personally?” In addition, he contends that the judge’s questions about the relief he was seeking, her explanation that he might be frustrated because the federal court was likely not the right forum to obtain such relief, and her suggestion that he might consider looking into alternative or “administrative” remedies, were “biased and prejudiced.”


To the extent, if any, that the allegations relate directly to the merits of the judge’s decisions to address complainant’s motion to appoint counsel and to discuss the relief he was seeking, and to her determination that certain defendants did not fail to file timely answers to his claims, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). To the extent that complainant is alleging that the judge made “disparaging comments”,

a review of the audio-recording demonstrates that the judge was unfailingly patient and courteous, and those allegations are therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii). In other respects, the allegations of bias and prejudice appear entirely derivative of the merits-related charges, but to the extent the allegations are separate, they are wholly unsupported, and are therefore also subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

Judicial misconduct proceedings are not a substitute for the normal appellate review process, nor may they be used to obtain reversal of a decision or a new trial.

An order dismissing the complaint is entered simultaneously herewith.

June 23, 2019



Carl E. Stewart
Chief Judge