

FILED

May 7, 2020

Lyle W. Cayce
Clerk

**JUDICIAL COUNCIL
FOR THE FIFTH CIRCUIT**

Complaint Number: 05-20-90063

M E M O R A N D U M

Complainant, a pro se litigant, alleges misconduct by the subject United States District Judge in a civil proceeding.

Complainant complains that during an initial conference, after complainant confirmed that he had received a right to sue letter from the Equal Employment Opportunity Commission [“EEOC”], the judge did not ask to see the EEOC paperwork. He further complains that instead of “rul[ing] in my favor because the defendant didn’t [appear],” the judge instructed him to file an amended complaint and a motion for default judgment.

Complainant also complains that when the defendant failed to appear at a status conference, the judge did not rule in his favor but instead asked whether complainant had filed a motion for default judgment. In addition, he protests that after telling the court that he refused to file any such motion, the judge “got upset and told me that he was denying my claims. Now that’s an abuse of power by law.”

A review of the audio-recording of the status conference shows that complainant was hostile and disrespectful throughout the proceeding, in the face of which conduct the judge was polite and patient. The judge explained that the court would not enter a judgment in complainant’s favor unless he filed a motion for default judgment and, after complainant declared that he would not do so, the judge calmly stated that he was dismissing the case for want of prosecution.

To the extent that these allegations relate directly to the merits of decisions or procedural rulings, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). To the extent complainant alleges that the judge displayed anger or annoyance during the status conference, the claim is clearly contradicted by the record and is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii). In other respects, the allegation of bias appears entirely derivative of the merits-related charges, but to the extent the allegation is separate, it is wholly unsupported, and is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii) as “lacking sufficient evidence to raise an inference that misconduct has occurred.”

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.



Priscilla R. Owen
Chief United States Circuit Judge

May 6, 2020