

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

U. S. COURT OF APPEALS
FILED

OCT 08 2019

Docket Number: 05-19-90138

FIFTH CIRCUIT
LYLE W. GAYNE, CLERK

MEMORANDUM

Complainant, a former civil litigant, has filed a judicial misconduct complaint against the subject United States Circuit Judge, based on alleged conduct occurring while the subject judge was a United States District Judge.

Complainant asserts that during the pendency of his civil case, the judge offered to meet with complainant alone to discuss settlement. Although complainant initially declined the offer, complainant's attorney recommended that complainant meet with the judge, and he did so. The parties announced a settlement to the court four days later.

Complainant now alleges that "during the meeting with [the judge], [complainant] felt pressured in to settling his matter without claiming his Bad Faith issues." Complainant does not elaborate further on what he faults the judge for saying, but he includes an audio recording of the meeting. In the recording, although the judge expresses doubt about the strength of the bad faith claims, he states several times that he is not forcing complainant to settle, and that he is happy to try the case if that is what complainant wishes.

Complainant also attaches copies of text messages with his own counsel, which indicate both that his counsel urged him to attend the meeting, and that his counsel also doubted the strength of his bad faith claims.

Canon 3(A)(4)(d) of the Code of Judicial Conduct is one of the exceptions to Canon 3(A)(4), which generally disallows ex parte communications by a judge. It provides: "A judge may... with the consent of the parties, confer separately with the parties and their counsel in an effort to mediate or settle pending matters." The commentary to that section states: "A judge may encourage and seek to facilitate

settlement but should not act in a manner that coerces any party into surrendering the right to have the controversy resolved by the courts.”

Under Canon 3(A)(4)(d), the judge’s ex parte meeting with complainant was permissible. Complainant has provided no facts that would support a finding that the judge was improperly coercive; his mere statement that he “felt pressured” is not enough. Nor does anything on the audio recording evidence improper coercion. The complaint lacks sufficient evidence to raise an inference that misconduct has occurred and is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

An order dismissing the complaint is entered simultaneously herewith.

September 30, 2019



Carl E. Stewart
Chief Judge