

The Judicial Council

FOR THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of

Judicial Council Complaint No. DC-13-90028

**A Charge of Judicial
Misconduct or Disability**

Before: GARLAND, Chief Judge of the Circuit

ORDER

Upon consideration of the complaint herein, filed against a judge of the United States District Court for the District of Columbia, it is

ORDERED that the complaint be dismissed for the reasons stated in the attached Memorandum. *See* 28 U.S.C. § 352(b)(1)(A)(ii) & (iii); JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS 11(c)(1)(B) & (D).

The Clerk is directed to send copies of this Order and accompanying Memorandum to the complainant, the subject judge, and the Judicial Conference Committee on Judicial Conduct and Disability. *See* 28 U.S.C. § 352(b); JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS 11(g)(2).



Merrick B. Garland, Chief Judge
District of Columbia Circuit

Date: 9/27/13

MEMORANDUM

The complainant alleges that a judge of the United States District Court for the District of Columbia engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts. The complainant's allegations arise out of a civil suit that he and other pro se plaintiffs filed in the district court, where the case was assigned to the subject judge. For the following reasons, the allegations do not warrant action against the judge.

The first allegation is that the subject judge "refused to allow" the plaintiffs' motion for a temporary restraining order or preliminary injunction "to be filed or docketed," and that the judge "falsely allege[d]" that the plaintiffs "asked for Leave to file" the motion. According to the complainant, the plaintiffs "did not ask for LEAVE as LEAVE is not required for a Emergency TRO/PI." Although the complainant is correct that the plaintiffs did not ask for leave to file, the judge determined that leave to file was required and denied such leave. The complainant's allegations constitute a challenge to the merits of that determination, and a judicial misconduct proceeding is not the appropriate avenue to obtain relief from an allegedly erroneous ruling. *See* 28 U.S.C. § 352(b)(1)(A)(ii) (providing for dismissal of a complaint that is "directly related to the merits of a decision or procedural ruling"); JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS 11(c)(1)(B) ("A complaint must be dismissed in whole or in part to the extent that the chief judge concludes that the complaint . . . is directly related to the merits of a decision or procedural ruling."). One

appropriate avenue may be a petition for writ of mandamus, which the complainant has filed and is pending before the court of appeals.

The complainant's second allegation challenges the judge's order denying leave to file a motion for a default judgment, a motion for reconsideration, and a draft amended complaint. The complainant challenges the grounds for the judge's order, which were: that the motion for default judgment related to a party as to which no summons had been issued; that the motion for reconsideration lacked a valid certificate of service; and that the draft amended complaint required leave to amend because the plaintiffs had neither sought leave to file their amended complaint outside of the time period provided by Federal Rule of Civil Procedure 15(a)(1), nor obtained written consent from the defendants. Once again, the challenge to the judge's decision to deny leave is a direct challenge to the merits of the judge's decision and thus an inappropriate ground for consideration in a judicial misconduct complaint. *Id.* The complainant has filed a mandamus petition with the court of appeals in which he raises the same allegations.

Third, the complainant argues that, by denying leave to file the amended complaint just days before the complainant's response to the motion to dismiss was due, the subject judge interfered with the complainant's ability to respond to the motion to dismiss. This argument is without merit: the judge cannot be faulted for the complainant's mistaken belief that he did not need to respond to the motion to dismiss because of his pending motion to amend the complaint. In any event, the judge

dismissed the case on the merits and not because the complainant had failed to respond to the motion to dismiss. This allegation therefore fails to provide specific evidence of wrongdoing on the part of the subject judge and thus lacks sufficient evidence to raise an inference that judicial misconduct occurred. *See* U.S.C. § 352(b)(1)(A)(iii); JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS 11(c)(1)(D).

Fourth, the complainant alleges that the judge dismissed the plaintiffs' civil complaint in retaliation for the complainant filing a petition for a writ of mandamus with the court of appeals. As evidence of retaliation, the complainant states that "the District Court entered an order, apparently after finding about Plaintiffs' Petition for Writ of Mandamus to the Court of Appeals." The mere fact that the dismissal order was subsequent in time to the complainant's filing of the petition for mandamus is insufficient to demonstrate judicial misconduct. *Id.*

Finally, the complainant claims that the subject judge must be biased because "over 70% of Plaintiffs' motions have been refused by the Judge." The fact that the judge determined that a substantial number of the plaintiffs' motions were without merit is not alone sufficient evidence for a finding of judicial misconduct. *Id.*

Accordingly, because the complainant's allegations are directly related to the merits of the subject judge's decisions and lack sufficient evidence to raise an inference that misconduct has occurred, the complaint must be dismissed.¹

¹ Pursuant to 28 U.S.C. § 352(c) and JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL -DISABILITY PROCEEDINGS 18(a), the complainant may file a petition for review by the Judicial Council for the District of Columbia Circuit. Any petition must be filed in the Office of the Clerk of the Court of Appeals within 35 days of the date of the Clerk's letter transmitting the dismissal Order and this Memorandum. *Id.* R. 18(b).