

The Judicial Council

FOR THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of

Judicial Council Complaint No. DC-18-90021

A Charge of Judicial Misconduct or Disability

Before: GARLAND, *Chief Judge*.

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.

The Circuit Executive 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

Date: 10/26/18

MEMORANDUM

The complainant has filed a complaint of judicial misconduct against a judge of the United States District Court for the District of Columbia. For the following reasons, the misconduct complaint will be dismissed.

The complainant filed a mandamus petition in district court, which was assigned to the subject judge. The judge denied the complainant's motion to proceed in forma pauperis under the Prison Litigation Reform Act's three-strikes provision, *see* 28 U.S.C. § 1915(g), and certified that an appeal of the order would not be taken in good faith. Accordingly, the judge dismissed the complainant's civil action without prejudice. The complainant then moved to vacate the judge's order. Another district judge, to whom the motion to vacate was assigned, denied the motion. The complainant did not appeal that order. Instead, he filed a petition for a writ of mandamus against the subject judge, in which he asked the United States Court of Appeals for the D.C. Circuit to vacate the judge's order because, he argued, the district court lacked jurisdiction to enter it.

The court of appeals ordered the complainant to show cause why he should not be required to pay the full fee before the court considered his petition. The complainant responded that the question of the district court's jurisdiction raised in the mandamus petition must be decided before the fee issue. The court of appeals discharged the order to show cause and denied the request to proceed in forma pauperis. The court further noted that, because the complainant had been denied leave to proceed in forma pauperis,

he was not entitled to a decision on the jurisdictional issue raised in his mandamus petition before first paying the docketing fee.

The complainant has now filed a judicial misconduct complaint against the subject judge. The substance of the complaint states that the “Judge lacked jurisdiction of my pro-se suit. (See all research w/ this court) . . . (for brevity/redundancy).” Because this contention is “directly related to the merits” of the judge’s order denying the complainant in forma pauperis status and dismissing the action, the allegations do not constitute “cognizable misconduct” under the Judicial-Conduct Rules. JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS, RULES 3(h)(3)(A). The complaint must therefore be dismissed. JUDICIAL-CONDUCT RULE 11(c)(1)(B); *see* 28 U.S.C. § 352(b)(1)(A)(ii).¹

¹ Pursuant to 28 U.S.C. § 352(c) and Judicial-Conduct Rule 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 Circuit Executive for the D.C. Circuit within 42 days after the date of the dismissal order. JUDICIAL-CONDUCT RULE 18(b).