

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

NO. 06-3014

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IN RE: VIVIAN R. CLARKE,  
Petitioner

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On a Petition for Writ of Mandamus from the  
United States District Court for the District of Delaware  
(Related to D. Del. No. 05-cv-00647)

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Submitted Under Rule 21, Fed. R. App. P.  
July 14, 2006

Before: CHIEF JUDGE SCIRICA, WEIS AND GARTH, CIRCUIT JUDGES  
Filed: August 8, 2006

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OPINION

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PER CURIAM

Pro se petitioner Vivian R. Clarke filed a petition for writ of mandamus. Clarke seeks review of the order entered by the United States District Court for the District of Delaware denying his motion to appoint counsel and dismissing his complaint without prejudice. We will deny the mandamus petition.

In 2005, Clarke filed a *pro se* civil rights action pursuant to 42 U.S.C. § 1981(a) and § 1985(3). The District Court dismissed Clarke's complaint without prejudice on December 15, 2005, and gave Clarke until January 17, 2006 to file an amended complaint. Instead of filing an amended complaint, Clarke filed a document

entitled “Emergency Motion” on January 19, 2006, which the District Court docketed as a Notice of Appeal. On June 12, 2006, this Court issued a briefing notice in that appeal. See C.A. No. 06-1431. Prior to receiving our briefing notice, Clarke filed the instant mandamus petition on June 7, 2006. See C.A. 06-3014.

The remedy of mandamus is reserved for the most extraordinary of circumstances. DeMasi v. Weiss, 669 F.2d 114, 117 (3d Cir. 1982). In order to ensure that mandamus is sparingly granted, a petitioner seeking a writ of mandamus must demonstrate that no other adequate means are available to obtain the desired relief, and that the right to issuance of the writ is “clear and indisputable.” Allied Chem. Corp. v. Daiflon, Inc., 449 U.S. 33, 35, 101 S. Ct.188, 190 (1980) (per curiam) (quotation omitted). A mandamus petition is not a substitute for an appeal; if a petitioner can obtain relief by an ordinary appeal, a court will not issue the writ. See In re Ford Motor Co., 110 F.3d 954, 957 (3d Cir. 1997).

Here, Clarke has an alternative means of challenging the District Court’s order: the appeal which is already pending before this Court. In any event, Clarke’s petition provides no basis on which to grant mandamus relief. Accordingly, the petition for a writ of mandamus is denied.