

COMPLAINT FORM

JUDICIAL COUNCIL OF THE SECOND CIRCUIT

COMPLAINT AGAINST JUDICIAL OFFICER
UNDER 28 U.S.C. § 351 et. seq.

INSTRUCTIONS:

- (a) All questions on this form must be answered.
- (b) A separate complaint form must be filled out for each judicial officer complained against.
- (c) Submit the correct number of copies of this form and the statement of facts.
For a complaint against:

a court of appeals judge -- original and 3 copies
a district court judge or magistrate judge -- original and 4 copies
a bankruptcy judge -- original and 5 copies

(For further information see Rule 2(e)).

- (d) Service on the judicial officer will be made by the Clerk's Office. (For further information See Rule 3(a)(1)).
- (e) Mail this form, the statement of facts and the appropriate number of copies to the Clerk, United States Court of Appeals, Thurgood Marshall U.S. Courthouse, 40 Foley Square, New York, NY 10007.

1. Complainant's Name: Yashua Amen Shekhem El-Bey
Address: 1045 East 219 Street
Bronx, New York 10469
Daytime Telephone No. (include area code): 212-252-2641

RECEIVED
2003 OCT 27 PM 1:36
U.S. COURT OF APPEALS

2. Judge or magistrate judge complained about:

Name: John E. Sprizzo, U.S.D.C.

Court: United States District Court Southern District of New York

3. Does this complaint concern the behavior of the judge or magistrate judge in a particular lawsuit or lawsuits?

Yes No

If "yes," give the following information about each lawsuit (use the reverse side if there is more than one): *See attach statement of facts*

Court: United States District Court Southern District of New York

Docket number: 03 Civ. 1050 (JES)

Docket numbers of any appeals to the Second Circuit:

N/A

Did a lawyer represent you?

Yes No

If "yes" give the name, address, and telephone number of your lawyer:

4. Have you previously filed any complaints of judicial misconduct or disability against any judge or magistrate judge?

Yes No

If "Yes," give the docket number of each complaint.

Judicial Conduct Complaint, Docket No. 02-8539

5. You should attach a statement of facts on which your complaint is based, see rule 2(b), and *See attach Statement of facts*

EITHER

- (1) check the box and sign the form. You do not need a notary public if you check this box.

[] I declare under penalty of perjury that:

- (i) I have read rules 1 and 2 of the Rules of the Judicial Council of the Second Circuit Governing Complaints of Judicial Misconduct or Disability, and
- (2) The statements made in this complaint and attached statement of facts are true and correct to the best of my knowledge.

(signature)

Executed on _____
(date)

OR

- (2) check the box below and sign this form in the presence of a notary public;

[] I ~~swear~~ (affirm) that--

- (i) I have read rules 1 and 2 of the Rules of the Judicial Council of the Second Circuit Governing Complaints of Judicial Misconduct or Disability, and

- (3) The statements made in this complaint and attached statement of facts are true and correct to the best of my knowledge.

Yoshua Amen Mitheni K-Bey
(signature)

Executed on 10/27/2003
(date)

Sworn and subscribed to before me
this 27th day of OCTOBER 2003

Shailesh A. Patel
(Notary Public)

My commission expires: **SHAILESH A. PATEL
NOTARY PUBLIC OF NEW YORK
BRONX COUNTY, #01PA6081382
MY COMMISSION EXPIRES
OCTOBER 7, 2006**

STATEMENT OF FACTS

(2nd Complaint)

28 U.S.C. § 372 (c) Complaint of Judicial Misconduct Against
United States District Court Judge John E. Sprizzo
By Affidavit of Yashua Amen Shekhem'El-Bey

United States of America)

The Republic) Scilicet

New York State/Republic)

RE: 03 Civ. 1050 (JES)

Previously O3 Civ. 1050 (RCC)(DF)

Yashua Amen Shekhem'El-Bey, being duly affirm, depose and say:

I am Yashua Amen Shekhem'El-Bey, a citizen of the United States of America and the Pro se Plaintiff, brings forth a second complaint of judicial misconduct by Statement of Facts against United States District Court Judge, John E. Sprizzo (herein after Judge Sprizzo).

Judge Sprizzo is denying me meaning access to the Courts by not adhering to the Federal Rules of Civil Procedure with respect to default judgments and by prohibiting recordings of the proceedings before him as a means to conceal his misconduct and to not allow me to make statements or arguments for and on the record, as he has prevented me from being properly heard regarding the subject matter of the case.

Judge Sprizzo was informed by letter dated June 16, 2003 that counsel was engaged in gross dilatory tactics to not answer the amended declaratory judgment complaint originally appearing as 03 Civ. 1050 (RCC)(DF) and that Defendants were in statutory default as a matter of law, as they had failed to answer or move in the case by April 28, 2003 in violation of United States District Court Judge Richard Conway Casey's Order which granted the Defendants an enlargement of time until April 28, 2003 and well over a month had pass since that date. The June 16, 2003 letter also requested a pre-motion hearing for a default Judgment.

The June 16, 2003 letter and the Default Judgment documents were submitted separately on June 16, 2003 under Civil Docket # 03 Civ. 1050 (JES). The letter was submitted to the Pro Se's Office and the Default Judgment documents were submitted to the Judgment Clerk. Please refer to Plaintiff's filed Declaration in Support of Affidavit of Bias and Prejudice (28 U.S.C. § 144), dated August 27, 2003 and filed September 2, 2003 under civil docket # 03 Civ. 1050 (JES) with copy of letter dated June 16, 2003 annexed thereto at Exhibit A; and a copy of endorsed "Certificate of Default" dated June 13, 2003 annexed thereto at Exhibit B.

Under Rule 55 Fed.R.Civ.P., I submitted to the Judgment Clerk, a default Judgment, the Clerk's Certificate of Default, which the Judgment Clerk endorsed on June 13, 2003; the Affirmation in support with attach copy of the Summons and Complaint, Proof of Service and the Certified Master docket sheet, all submitted to the Judgment Clerk on June 16, 2003 for submission to Judge Sprizzo for his endorsement, in which case a pre-motion hearing was requested for June 20, 2003 or as to such earliest time to be determine by the Court, as requested by my June 16, 2003 letter to Judge Sprizzo, which he evidently ignored in favor of the City and State Defendants. Please refer to Plaintiff's filed Declaration in Support of Affidavit of Bias and Prejudice (28 U.S.C. § 144), dated August 27, 2003 and filed September 2, 2003 (03 Civ. 1050 (JES)); see copy of June 16, 2003 letter and June 13, 2003 Clerk's Certificate of Default annexed thereto at Exhibit A and B, respectively.

On June 23, 2003 I submitted to the Pro Se's office a "Notice of Criminal Misconduct through Misrepresentation of facts, Fraudulent Conversion and Criminal Obstruction of Justice by Counsel Michael E. Peoples and Michael E. DeLarco representing Defendant State and City of New York, et. al. & Notice of Default upon Defendants by Affidavit of Yashua Amen Shekhem'El-Bey (herein after "the June 23, 2003 Notice"). The June 23, 2003 Notice was filed in the Pro Se's Office to be submitted to Judge Sprizzo's chambers and was subsequently ignored by him. Please refer to Plaintiff's Filed

Declaration dated August 27, 2003 and filed September 2, 2003 (03 Civ. 1050 (JES)) with copy of the June 23, 2003 Notice, annexed thereto at Exhibit C.

The June 23, 2003 Notice identified criminal misconduct and obstruction of justice by counsel Michael E. Peeples and Michael E. DeLarco, representing the State and City, respectively; and that the Court was to take judicial notice thereof, as the Defendants' counsel was committing fraud upon the court by deliberately misstating my declaratory judgment argument as a totally different argument asserting a damage claim under 42 U.S.C. § 1983, among other things, in order to set in motion a sham "Res Judicata" and "Rooker-Feldman" attack on my case. Further, the June 23, 2003 Notice (Affidavit) explained that the amended declaratory judgment complaint was originally before United States District Court Judge Richard Conway Casey and that both counsel under false pretense and fraud perpetrated upon the court, had steered and transferred the amended declaratory judgment complaint away from Judge Casey to Judge Sprizzo, so as to not answer the amended declaratory judgment complaint (03 Civ. 1050 (RCC)(DF)) in violation of Rule 7 (a) and 12 (a)(1)(A) of Fed.R.Civ.P. as a last ditch effort to not answer the declaratory judgment complaint, as it was three days before their answer was due. Nevertheless, the case was reassigned to Judge Sprizzo. Please refer to Plaintiff's Filed Declaration dated August 27, 2003 and filed September 2, 2003 (03 Civ. 1050 (JES)) with copy of the June 23, 2003 Notice, annexed thereto at Exhibit C.

On June 26, 2003 Counsel Michael E. Peeples and Michael E. DeLarco did not appear at the pre-motion hearing. However, there were two presumed Attorneys' who had appeared in their behalf, but there was no notice of appearance to identify these Attorneys. Also, Judge Sprizzo did not permit the Southern District Court Reporter, who was present in the Courtroom, to record or stenograph my pre-motion and I was in objection to this. However, the District Court reporter was allowed to record the prior cases as well as the cases following my case. I was the only individual in the Court room who was subjected to a pre-motion hearing of no record and my default judgment was flagrantly denied without any legal grounds and on the "second guessing" premise doctrine that the Second Circuit Court frowns on default judgments and further stating that he is not going to sign a default judgment that is going to be kicked back to him from the Second Circuit, and that the Second Circuit would only consider a default if the responding party did not answer for up to a whole year among other things.

Having prepared a brief to be read on the record regarding my legal issues in my declaratory judgment action and realizing that the Southern District Court Reporter was not recording my pre-motion hearing, I asked Judge Sprizzo why the Court Reporter was not recording the proceeding, as I wanted to make record of my arguments. Judge Sprizzo asserted that it wasn't necessary and that his law clerk takes good notes. I did not notice the law clerk taking down any notes. The cases that were heard on June 26, 2003 that were recorded by the Southern District Court reporter except mines were heard in the following order:

- | | | | |
|-----|----------------------------|---------------------|------|
| 1. | Recorded by Court Reporter | 03 Civ. 4348 (JES) | PMC |
| 2. | Recorded by Court Reporter | 02 Civ. 10376 (JES) | ARB |
| 3.* | Not Recorded: | 03 Civ. 1050 (JES)* | PMC* |
| 4. | Recorded by Court Reporter | 02 Civ. 9913 (JES) | ARB |

The third case heard before Judge Sprizzo, indicated by the asterisk, is Shekhem'El-Bey v. State of New York, et. al. 03 Civ. 1050 (JES). Further, on June 26, 2003 Judge Sprizzo was practicing law from the bench by assisting counsel, the names of whom I don't have that were standing in for Michael E. Peeples and Michael E. DeLarco by assisting them in the form of questions saying "when are you going to file your motion to dismiss" as though urging them to pursue a dismissal motion, essentially directing counsel to file a motion to dismiss my case. Judge Sprizzo was not responsive to my statutory default and treated as if it did not exist. When I kept bringing the issue of default to his attention, Judge Sprizzo in an angry tone denied my default judgment.

During the June 26, 2003 pre-motion hearing of no record, Judge Sprizzo made mockery of me regarding why I did not bring in my flags into the Court room, referring to my flag of the United States and my Moorish National flag, in which case I respectfully replied, “in my heart”, at which time he and other court staff present in the Courtroom began to laugh. Judge Sprizzo also made mockery of my religious beliefs when he was deciding what would be the appropriate return date to come back to court on the Defendants motion to dismiss, wherein Judge Sprizzo mentioned in a sarcastic tone to the effect of ‘you don’t want it on a Friday, because that’s your holy day, is that right?’ I believe that Judge Sprizzo is acting out of retaliation for my having filed a previous complaint of judicial misconduct (Judicial complaint docket # 02-8539) and an Affidavit of Bias and Prejudice under 28 U.S.C. § 144 (dated April 25, 2003 and filed the same day) with respect to Judge Sprizzo placing my previous Title VII and 42 U.S.C. § 1983 Civil damage claim Case (00 Civ. 9260 (JES)) on hold pending my Article 78 state case decision wherein Judge Sprizzo clearly violated a U.S. Supreme Court case precedent under Moses Cone Hospital v. Mercury Construction Corp., 460 U.S. 1, 74 LEd2d 765, 103 SCt 927 (1983) [“Fact that a state lawsuit on an issue is pending is not generally a bar to a federal suit on same issue”]. It should also be noted that Judge Sprizzo, as a practice, has not permitted recordings of my arguments, thereby prejudicing me from making an appropriate appeal when he intends to dismiss my cases, as he has tainted my case through his unlawful tactics.

Judge Sprizzo has clearly ignored my June 16, 2003 letter, Default Judgment documents and my June 23, 2003 Notice (Affidavit). This also include my “default and summary judgment that was filed July 21, 2003 (03 Civ. 1050 (JES)). Judge Sprizzo has demonstrated that he is an acting participant and party to the egregious criminal misconduct, aiding and abetting counsel Michael E. Peeples and Michael E. DeLarco, as they do not want the particular section of the New York State statute affecting the public interest to be exposed, placed on the record and brought into question regarding its constitutionality, as it would clearly show to a reasonable minded person that the “crime exception clause” of Section 75 (4) of the Civil Service law (CSL) permits the city government through its non-jury administrative tribunal or hearings [(Office of Administrative Trials and Hearings of the City of New York)] to “hold subject, citizens to answer for crimes without presentment or indictment of a Grand Jury” under the cloak or guise of misconduct. Judge Sprizzo does not want the record to show that the “crime exception clause” of Section 75 (4) CSL conflicts with the “Crime Clause” provision of the Fifth amendment as purview through the Fourteenth Amendment to the U.S. Constitution, as well as the “crime clause” provision of Article 1 Section 6 of the New York State Constitution.

There were five (5) witnesses to the June 26, 2003 pre-motion hearing that was conduct without record and only two (2) of the five witnesses provided Affidavits of what they observed and heard. Please refer to Plaintiff’s Filed Declaration dated August 27, 2003 and flied September 2, 2003 (03 Civ. 1050 (JES)) with copy of Affidavit of Kemitu Bey and Affidavit of Barbara Morse annexed thereto at Exhibit D and E, respectively; and the names of the witnesses are as follows:

- | | | |
|----|-------------------------|--------------------------------------------------------------------------------------------|
| 1. | Kemitu Bey | 13 East Prospect Ave., Mount Vernon, N.Y. 10550
Ph: 914-655-4013 |
| 2. | Nubia El | Same as Above |
| 3. | Barbara Morse | 210 East Broadway, New York, N.Y. 10002
Ph: 212-982-6671 |
| 4. | Chaplin, Francis Cobian | Church of God Children, 127 Dreiser Loop, Coop City
Bronx, N.Y. 10475; Ph: 718-790-9120 |
| 5. | Carla Coles | Information not available at this time |

In the first week of July of 2003 I received an Order from the chambers of Judge Sprizzo, dated June 27, 2003 referencing the June 26, 2003 pre-motion hearing, wherein there were no records of the


proceeding that provided among other things, a denial of my default judgment and granting the State and City Defendants to pursue their motion to dismiss my declaratory judgment complaint in spite of the statutory default on the record. Please refer to Plaintiff's Filed Declaration dated August 27, 2003 and filed September 2, 2003 (03 Civ. 1050 (JES)) with copy of Judge Sprizzo's Order dated June 27, 2003 annexed thereto at Exhibit F.

On July 8, 2003 I discovered a false entry made on the Certified Master Docket sheet (03 Civ. 1050 (JES)), which indicated that the pre-motion hearing was held on June 16, 2003 instead of June 26, 2003. There was absolutely no pre-motion hearing held on June 16, 2003. It should be carefully noted that based upon the "fixed" certified master docket sheet dated July 8, 2003 would make it appear as though Judge Sprizzo received my June 16, 2003 letter, Default documents and June 23, 2003 Notice (Affidavit) after the indicated June 16, 2003 pre-motion hearing had taken place, as indicated on the certified master docket sheet, when in fact the Pre-motion hearing took place on June 26, 2003. In other words, Judge Sprizzo and his accomplices is trying to make it appear on the record that he did not receive my documents, which includes my June 16, 2003 letter, Default documents and the June 23, 2003 Notice (Affidavit), until after the pre-motion hearing, when in fact he received my documents before the pre-motion hearing. And by him not allowing me to be on the record of the Pre-motion hearing that occurred on June 26, 2003 is an act of criminal fraud and criminal obstruction of justice. Please refer to Plaintiff's Filed Declaration dated August 27, 2003 and filed September 2, 2003 (03 Civ. 1050 (JES)) with copy of Certified Master Docket Sheet dated July 8, 2003 annexed thereto at Exhibit G.

Judge Sprizzo denied my summary judgment (03 Civ. 1050 (JES)) by order dated July 22, 2003 that was mailed to me almost ten days later in an envelope post dated July 31, 2003, effectively denying me the opportunity to proceed in an interlocutory process. Please refer to Plaintiff's Filed Declaration dated August 27, 2003 and filed September 2, 2003 (03 Civ. 1050 (JES)) with copy of Judge Sprizzo's Order dated July 22, 2003 and Envelope post dated July 31, 2003 annexed thereto at Exhibit H and I, respectively.

Judge Sprizzo is in clear violation of his Oath as a Judicial officer of the United States and failed to act in good behavior as required under Article III, Section 1 of the U.S. Constitution and is in violation of the First three Cannons of the Judges Judicial Code of Ethics.

Wherefore, the Judicial Counsel of the Second Circuit is hereby requested to intervene in this matter and to proscribe the appropriate remedy in this case. To include remanding this case back to U.S. District Judge Richard Conway Casey and for an Order that a Default Judgment be issued and that all other papers and proceedings of Judge Sprizzo be invalidated.


Yashua Amen Shekhem'El-Bey
citizen of the United States (of America)
Plaintiff, Pro Se (Petitioner)

On This 27th day of OCTOBER, 2003 before me Personally came
Yashua Amen Shekhem'El-Bey known, and known to me to be the individual
described in and who executed the foregoing, and who acknowledge to me that he executed same


NOTARY PUBLIC

SHAILESH A. PATEL
NOTARY PUBLIC OF NEW YORK
BRONX COUNTY, #01PA6081382
MY COMMISSION EXPIRES
OCTOBER 7, 2006

My Commission Expires on: _____

TO: Supreme Court of the United States
Honorable William H. Rehnquist,
Chief Justice of the United States
U.S. SUPREME COURT BUILDING
1 FIRST ST. N.E.
WASHINGTON, DC 20543
C.R.R. # 7099 3400 0010 5001 9110

United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510
C.R.R. # 7099 3400 0010 5001 9165

U.S. Senator, Charles Schumer
313 Hart Senate Office Building
Washington, DC 20510
C.R.R. # 7099 3400 0010 5001 9134

U.S. Senator, Hillary Clinton
476 Russell Senate Office Building
Washington, DC 20510
C.R.R. # 7099 3400 0010 5001 9172

Center for Judicial Accountability
Box 69, Gedney Station
White Plains, N.Y. 10605
Ph: 914-421-1200
www.judgewatch.org

The Center for Constitutional Rights
666 Broadway
New York, N.Y. 10012
Ph: 212-614-6464
www.ccr-ny.org

Center for Human Rights and Constitutional Law
256 S. Occidental Blvd.
Los Angeles, CA 90057
Ph: 213-388-8693
www.centerforhumanrights.org

American Civil Liberties Union
125 Broad Street, 17th Floor
New York, N.Y. 10004
Ph: 212-344-3005

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