

Yashua Amen Shekhem'El-Bey
c/o 1045 East 219 Street
Bronx, New York 10469
Ph: 212-252-2641

June 7, 2004

Re: Petition for review of the Judicial Council decision
dismissing Complaint, Docket No. 03-8556

Judicial Council of the Second Circuit
United States Court of Appeals
For the Second Circuit
Thurgood United States Courthouse
40 Centre Street
New York, New York 10007
Ph: 212-857-8500

Dear Ms Roseann B. MacKechnie, Clerk of Court:

I hereby petition the judicial council for review of the chief judge's order and/or decision dated May 13, 2004 denying me the appropriate relief as set forth in my second complaint of judicial misconduct against United States District Court Judge, John E. Sprizzo, pursuant to 28 U.S.C. § 351. See copy, Chief Judge Walker's decision/Order at Exhibit C.

Also, annexed hereto is a true and complete copy of two witness affidavits at Exhibit A (Affidavit of Kemitu Bey) and Exhibit B (Affidavit of Barbara Morse) in support of my second judicial misconduct complaint claim with respect to the United States District Court Judge John E. Sprizzo directing the district court reporter to not record my pre-motion hearing as he has previously done on numerous occasions in the past, making mockery of me during the proceedings, denying a legitimate statutory default and directing the Defendants Counsel to file a motion to dismiss my declaratory Judgment complaint that Defendants never answered, among other things, as set forth in my second complaint of judicial misconduct filed October 27, 2004. Also, this Judicial Council is directed to review the district court record for my Affidavit...of bias and prejudice...pursuant to 28 U.S.C. § 144 and my Declaration... in support of my Affidavit of bias and prejudice...pursuant to 28 U.S.C. § 144, both filed in the United States District Court for the Southern District of New York on September 2, 2003 with the copy of two witness affidavits at exhibit D (Affidavit of Kemitu Bey) and Exhibit E (Affidavit of Barbara Morse).

Both, my "Affidavit of Plaintiff's claim of bias and prejudice of John E. Sprizzo pursuant to 28 U.S.C. § 144" notarized on August 28, 2003 and "Declaration of Yashua Amen Shekhem'El-Bey in support of Affidavit of Plaintiff's claim of bias and prejudice of John E. Sprizzo pursuant to 28 U.S.C. § 144" dated August 27, 2003; were both filed in the United States District Court for the Southern District of New York on September 2, 2003 and is duly noted on the record.

Chief Judge John M. Walker, Jr. decision to dismissed my second complaint of judicial misconduct for a second time is broad, non-specific, unjust, unfair and in error for the following reasons:

On the first page of Chief Judge Walker's decision, under the side caption "Background", he mentions that my civil complaint (declaratory Judgment Complaint) was before a magistrate judge, who granted the defendants an extension of time to answer my civil complaint (declaratory

judgment complaint). That is absolutely not true. It was the Hon. judge Richard Conway Casey, U.S. District Court Judge that was assigned to the civil case, who the defendant's counsel asked for leave for an extension of time and was subsequently granted by Judge Casey and not by the Magistrate Judge. I never asked to proceed in my case under a magistrate judge. Also, it should be noted that Chief Judge Walker does not specify what Judge he is referring to nor does he even mention any Judge's name in his decision, instead, the only references he makes to a judge is "the judge" and magistrate. This is very misleading to any third party who reads this decision, as they would not know what Judge is being referred to here.

In any event, on the second page of Chief Judge Walker's decision, he asserts that in July 2003, "the Judge" (Judge John E. Sprizzo) denied a motion by Complainant "without prejudice to being renewed upon plaintiff pro se's requesting a pre-motion conference in accordance with the Court's individual rules and procedure" in which case I filed a response and subsequently this judicial misconduct complaint. What Chief Judge Walker does not specifically mention is that the motion was a default and summary judgment, a second motion regarding the default wherein the first was simply a motion for default judgment, as the Defendants never answered the declaratory judgment complaint involving a section of a state law, referred to as the "crimes exception" clause, which conflicts with the "Crime" clause provision of the Fifth Amendment (as purview through the Fourteenth Amendment) and the equal protection, due process and "privilege and immunity" clause of the Fourteenth Amendment, wherein the City of New York can hold any citizen employed by the City of New York, to be "held to answer for crimes without indictment" in a non-jury administrative executive proceeding (Office of Administrative Trials and Hearings of the City of New York - OATH) that is not under the unified court system of the State of New York nor legislatively enacted by the State legislature as a court of record pursuant to Article 6 of the New York State Constitution. Yet, such de facto court and the State's "crimes exception" clause of section 75 (4) CSL is being protected by rogue judicial officers to keep this statute concealed and/or hidden from judicial review or from being constitutionally questioned.

Further, Chief Judge Walker misstates my allegations on page 2 wherein he states "...he filed a 'Notice of Criminal Misconduct through Misrepresentation of [F]acts, Fraudulent Conversion, and Criminal Obstruction of Justice' that 'identified criminal misconduct and obstruction of justice' by defendants that was 'ignored by the judge'". The difference in what I stated as opposed to what Chief Judge Walker has stated is I did not say "...obstruction of justice by defendants that was ignored by the judge" I clearly stated "...obstruction of justice by Counsel Michael E. Peeples and Michael E. DeLarco representing the Defendant State and City of New York, et. al. & Notice of Default upon Defendant 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..."

On Page 3 of Chief Judge Walker's decision, he misstates my claim by not stating in his decision that it was Judge Richard Conway Casey that I requested that the case be remanded to, as set forth in my judicial misconduct complaint. Not "some other judge". continuing on page three (3) under the side caption "Disposition", Chief Judge Walker erroneously concludes that I failed to provide evidence of any judicial misconduct "prejudicial to the effective and expeditious administration of the business of the courts." referring to 28 U.S.C. § 351 (a); Local Rules 1(b) and 4 (c)(1). Chief Judge Walker also concludes that my allegations of "mockery, aiding and abetting criminal conduct, violating oaths and canons, and failure to act in good behavior are unsupported and... frivolous, referring to 28 U.S.C. § 352 (b)(1)(A)(iii); Local Rule 4 (c)(3)".

Chief Judge Walker's conclusions of my allegations being unsupported and frivolous is hereby being rebutted based on witness testimony as set forth in the second and third paragraph of this letter and the attach true and complete copy of the witness affidavits, the first from Kemitu Bey and the other from Barbara Morse, wherein their information where they could be contacted had already been provided in the second misconduct complaint under this docket and if there were any investigation by the Second Judicial Council, then why weren't they contacted? The same two copies of affidavits mentioned and attached herein are the same two (copies of) Affidavits exhibited in my court-filed Declaration...in support of affidavit of Plaintiff's claim of bias and prejudice of Judge John E. Sprizzo pursuant to 28 U.S.C. § 144 that was filed on September 2, 2003. Additionally, Chief Judge Walker fails to address in his decision and/or order my substantive claim against John E. Sprizzo regarding violation of his Oath of Office under 28 U.S.C. § 453 (and Article 6, Section 2); failing to act in good behavior under Article 3, Section 1; failing to adhere to and violating the first three (3) Cannons of the Judges Judicial Code of conduct in his obstructing Justice by blocking and preventing the "crimes exception" clause of Section 75 (4) of the Civil Service Law (Statute) affecting the public interest from being exposed and 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 permits the city government through its non-jury administrative executive tribunal or hearings (OATH) to hold subject, citizens who are city employees to be "held to answer for crimes without indictment of a Grand Jury" under the cloak or guise of misconduct. This gives way to government corruption to pursue undesirable employees motivated by discrimination.

As stated in my second complaint of judicial misconduct that Judge Sprizzo does not want the record to show or reflect that the "crimes exception" clause of Section 75 (4) CSL actually conflicts with the "crime" clause provision of the Fifth Amendment as purview through the Fourteenth Amendment to the United States Constitution, to include the equal protection, due process and the "privilege and immunity" clause of the Fourteenth Amendment. The New York State civil service law "crimes exception" clause also violates the "Crime" clause provision of Article 1, Section 6 of the New York State Constitution, as it parallel the "Crime" Clause provision of the Fifth Amendment with respect to being held to answer for a crimes without indictment.

Background and allegations:

In February 2003, I filed a civil complaint seeking a declaratory judgment under 28 U.S.C. §§ 2201 and 2202 regarding the constitutionality of a section of State law adversely affecting the public interest known as the "crime exception" clause of Section 75 (4) of the Civil Service law (CSL), wherein there exist a conflict of law with respect to the "Crime" clause provision of the Fifth Amendment, as purview through the Fourteenth Amendment, equal protection, due process and privilege and immunity clause of the Constitution for the United States of America in that citizens working as city employees can be held to answer for crimes without indictment in a non-jury executive administrative tribunal. Essentially, the "crime exception" clause of section 75 (4) CSL provides the exception or exclusionary provision to the Crime clause provision of the Fifth Amendment of the United States Constitution and Article 1 Section 6 of the New York State Constitution, wherein the indictment provision of both federal and state constitutions are excluded or prohibited under Section 75 (4) of the Civil Service law when citizens are held to answer for crimes under the presumption of guilt without indictment through the cloak or guise of misconduct under civil service law. So, the provision of Section 75 (4) CSL, which provides in pertinent part

that such misconduct "...would, if proved in a court of appropriate jurisdiction constitute a crime" creates a presumption of guilt and a pre-conviction of a supposed crime that was never proved beyond a reasonable doubt at OATH or any other court. The "would, if proved" scenario of Section 75 (4), is engineered to circumvent and undermine the Federal and State Constitutional protections and guarantees under its "Crime" provision clause, which Judge Sprizzo in his Court refuses to recognize, as though he has some vested interest in seeing that such issues does not appear on the record, as well as protecting the City of New York from the ramifications or implications that may result.

By letter dated March 25, 2003 (memo endorsed March 28, 2003), Defendants' counsel requested Hon. Richard Conway Casey for an extension of time of 30 days in which to answer my declaratory judgment complaint under docket 03 Civ. 1050 (RCC)(DF), which I had opposed. Defendants' Counsel request for an extension of time to answer my complaint that was granted, merely served as a ruse and a dilatory tactic for Defendants' Counsel to buy time to have my declaratory judgment complaint transferred to Judge John E. Sprizzo, who acts favorably towards the municipal Defendants and counsel, in which case. Following the case reassignment/transfer to Judge Sprizzo, Counsel deliberately did not answer at all. A previous complaint of judicial misconduct was filed with the Judicial Council of the Second Circuit, which has been dismissed by Chief Judge John M. Walker, Jr. and now for a second time, dismisses my second complaint of judicial misconduct against Judge John E. Sprizzo, despite the evidence on the record.

On June 26, 2003 while at my pre-motion hearing, which I requested with respect to my request to file a default judgment; Judge Sprizzo directed the United States District Court Reporter to not record the proceedings. However, the other cases proceeding and following my case had the benefit of being recorded by the district court reporter present in Judge John E. Sprizzo's courtroom. During the time of my pre-motion hearing, none of what I've stated nor the misconduct or misbehavior of Judge John E. Sprizzo were recorded and thus kept off the record wherein I was denied access to the Court, as I am unable to obtain a transcript of the June 26, 2003 pre-motion hearing. It was at this pre-motion hearing when Judge John E. Sprizzo denied my motion for a default judgment and directed the Defendants' Counsel to file a motion to dismiss my declaratory judgment complaint, thus practicing law from the bench. As previously mentioned in my complaint of judicial misconduct, Judge John E. Sprizzo made mockery of me regarding my nationality, as well as spoke to me in an angry and sarcastic tone, which stems from my previous complaint of judicial misconduct that I filed against him. As I previously mentioned in my second complaint of Judicial misconduct, there are a total of five (5) witnesses, two of whom provided sworn affidavits (attached herein) depicting Judge Sprizzo's bias and prejudicial behavior in support of my second complaint of judicial misconduct against him, and a true and complete copy of the two witness affidavits are attach herein as reference, at Exhibit A and B.

Following the pre-motion hearing, Judge John E. Sprizzo issued his written July 2003 order denying my legitimate motion for default judgment and granting leave for the municipal Defendants to file their motion to dismiss, and scheduled oral argument for December 2003. In July 2003 I requested a pre-motion hearing for leave to file a "Default and Summary Judgment", which was denied "without prejudice to being renewed upon plaintiff pro se's" requesting a pre-motion hearing in accordance with the Court's individual rules and procedure". I then filed a response, and later filed the second judicial misconduct complaint, at bar. Chief Judge Walker's decision does not mention the witnesses at the June 26, 2003 pre-motion hearing. Instead, they are omitted.

Allegations:

1. Violation of Article 3, Section 1 of the Constitution for the United States of America.
2. Depraved indifference, Disregard and violation of the federal rules of civil procedure.
3. Violation of First Amendment Right of access to the courts by denying a record of the proceedings to conceal and/or cover up material facts and judicial bad behavior.
4. Practicing law from the bench by directing Defendants Counsel to file a motion to dismiss my complaint.
5. Violation of sworn Oath of Office under 28 U.S.C. § 453.
6. Violation of Article VI, Section 3 of the Constitution for the United States of America.
7. Violation of the first three Cannons of the Judges Judicial Code of Conduct.
8. Conspiracy by unknown Court staff/personnel in support of John E. Sprizzo by falsifying the Court Records by creating a false docket entry of June 16, 2003 when the proceeding occurred on June 26, 2003 in order to make it appear that complainants submission of papers occurred after a pre-motion hearing giving rise to criminal fraud.

Based upon the foregoing, it appears that Chief Judge Walker has misrepresented the facts, with respect to my second judicial complaint of misconduct, as delineated above. Its profoundly clear from my second judicial misconduct complaint and the two attach witness affidavits that Judge Sprizzo was and is protecting the City of New York through its municipal Defendants Counsel who are employed by the Corporation Council of the City of New York from a legitimate statutory default after the case was inappropriately transferred to Judge John E. Sprizzo, who is protecting and shielding the City of New York through its municipal Defendants' Counsel.

28 U.S.C. § 351

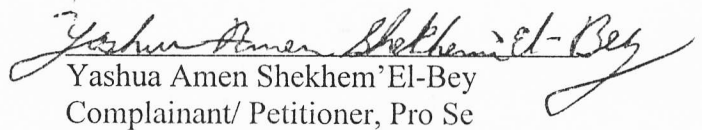
My complaint of judicial misconduct, as supported by witness evidence, should without a doubt fall within the purview of the above underlined statute, and if it doesn't, then the question becomes whether the statute is adequately structured and/or engineered to address and cognize Judicial officers of the United States who engages in bad behavior, which is a violation of Oath of Office pursuant to 28 U.S.C. § 453, include conduct that would violate the first three cannons of the Judicial code of conduct. If, for whatever reason the Judges actions does not fall within 28 U.S.C. § 351, then it is flawed and of no use to citizens when their rights are violated by these judicial officers, as was myself which is continuing, particularly when such Judicial Officers can flagrantly molester my rights and engage in misbehavior that is not recognized under the federal statute shown above. Simply put, Judges have absolute judicial immunity that is not granted by the Constitution, nevertheless acts with impunity making them virtually GOD ALL MIGHTY on the bench and as long as judicial officers act within their judicial discretion whether or not they abuse such discretion, they can get away with about anything that would just be an abuse of discretion! Put

another way, this machination becomes a device to robbed the people of their remedy at law or in equity against judicial officers.

Conclusion:

Pursuant to 28 U.S.C. § 351 (a); Local Rules 1(b) and 4 (c)(1), the evidence, which includes my sworn affidavit of complaint under 28 U.S.C. § 351 is sufficient to show judicial misconduct that is “prejudicial to the effective and expeditious administration of the business of the courts”. That Chief Judge Walker’s decision to dismiss my complaint of judicial misconduct for the second time is in gross error in failing to apply the standards of *Ashcroft v. Free Speech Coalition*, 535 U.S. ___, 122 S.Ct. 1389 (2002) and American Library Association, Inc., requiring specific analysis that is brought on when a claim of frivolous is used to address a claim, as my complaint of judicial misconduct against Judge John E. Sprizzo is asserted as frivolous by Chief Judge Walker, without analysis or showing how it is frivolous. Besides, there were no investigation with respect to the witnesses, as they were never contacted by the Judicial Council of the Second Circuit.

Respectfully submitted,


Yashua Amen Shekhem'El-Bey
Complainant/ Petitioner, Pro Se

Attachment to this letter and Enclosure:

1. Annexed hereto a true and complete copy of Affidavit of Kemitu Bey at Exhibit A.
2. Annexed hereto a true and complete copy of Affidavit of Barbara Morse at Exhibit B.
3. Annexed hereto a true and complete copy of the Chief Judges decision/order, dated May 13, 2004 at Exhibit C.

Copies to:

United States Senator Charles Schumer & Hillary Rodham Clinton

Center for Constitutional Rights

Center for Human Rights and Constitutional Law

Center for Judicial Accountability, Inc.

Judge Watch

ACLU