

110k217 Issuance.

Prior to officer exercising power of issuing criminal process he must personally examine complaint with regard to both information contained in complaint and source of that information. Fed.Rules Crim.Proc. rules 3, 4, 18 U.S.C.A.; U.S.C.A.Const. Amend. 4.

[5] Civil Rights ⇨ 1326(10)

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- 78III Federal Remedies in General
- 78k1323 Color of Law
- 78k1326 Particular Cases and Contexts
- 78k1326(10) Attorneys and Witnesses.

(Formerly 78k198(9), 78k13.5(5), 78k1)

Actions of an individual attorney are not carried out under "color of law" within meaning of statute relating to deprivation of rights under color of law. 18 U.S.C.A. §§ 241, 242; 28 U.S.C.A. § 1915(d).

[6] Criminal Law ⇨ 213

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- 110XII Pretrial Proceedings
- 110k208 Preliminary Complaint or Affidavit
- 110k213 Defects and Objections.

Determination that document by which was sought the arrest of complainant's defense counsel failed to meet requirements of rules for valid prearrest complaint was not similar to a sua sponte dismissal of a civil rights complaint, and therefore it was not necessary to determine that complaint was frivolous or malicious. 18 U.S.C.A. §§ 241, 242; Fed.Rules Crim.Proc. rules 3, 4, 18 U.S.C.A.

***208 MEMORANDUM AND ORDER**

McCUNE, District Judge.

Joseph Brown, an inmate of the State Correctional Institution at Graterford, Pennsylvania, (FN1) has addressed two documents to this Court. One is captioned 'Criminal Complaint' and the other is a Petition to Proceed in Forma Pauperis. The 'Criminal Complaint' alleges that the complainant's defense counsel and the District Attorney of Allegheny County conspired to obtain complainant's conviction. Complainant asks for relief in the form of the arrest of his former defense attorney, service

of a summons on the District Attorney and lastly, \$5,000.00 damages. The authority cited by the complainant as the basis for jurisdiction is 18 U.S.C.A. §§ 241, 242. (FN2)

*209 [1] Although the inclusion of the prayer for money damages clouds the issue, we conclude that what is before us is an attempt to initiate a criminal proceeding. We will disregard the prayer for money damages since the cited sections do not allow for civil recovery. (FN3) Complainant's inclusion of this prayer can be viewed as an understandable error.

All-HA [2] Commencement of a criminal proceeding is governed by Rules 3 and 4 of the Federal Rules of Criminal Procedure. Rule 3 sets forth the requirements for a valid pre-arrest complaint. (FN4) Rule 4 describes the circumstances under which a warrant or summons shall issue. (FN5) The document here submitted falls short of the Rule 3 requirements for a valid complaint. It does not state the 'essential facts constituting the offense charged' (FN6) and though it is sworn to, the oath was administered by a notary public not by an 'officer empowered to commit persons charged with offenses against the United States.' (FN7)

[3][4] The interpretation to be given Criminal Rules 3 and 4 was set out by the Supreme Court in Giordenello v. United States, 357 U.S. 480, 485-486, 78 S.Ct. 1245, 2 L.Ed.2d 1503 (1958). There the Court pointed out that Rules 3 and 4 were to be read so as to afford Fourth Amendment protection. (FN8) Bearing this in mind, we hold that the requirements of Rules 3 and 4 must be strictly complied with so as to preclude the mischief which would result if arrest warrants were issued upon less than substantial grounds. Casual accusations cannot be the basis for a person's being deprived of his liberty. The criminal process of the courts shall be invoked only if the complaining party goes before an officer having power to order persons committed for offenses against the United States. Before such an officer the complainant shall swear to the allegations of his complaint. The importance *210.7 of personal appearance is apparent both from the Fourth Amendment and Rule 4. The officer receiving the complaint must make a determination of probable cause, and in the event he finds probable cause he is required under Rule 4 to issue criminal process, i.e., to order the person of the accused seized. (FN9) Prior to his exercising this power, the issuing officer is required

Exhibit-B