

to personally examine the complainant with regard to both the information contained in the complaint and the source of that information. (FN10)

[5] Inquiry into the question of probable cause (Rule 4) is not really necessary under the instant complaint, for as noted above it does not state the essential facts constituting a violation of 18 U.S.C.A. §§ 241, 242. The complaint states that the various defendants conspired to obtain complainant's conviction, but there are no factual allegations to support this accusation. The complaint does state some facts but these all relate to the complainant's former defense counsel. It is alleged that defense counsel caused the complainant to plead guilty by telling him that the District Attorney had eye witnesses to the crime when in fact there were no eye witnesses. There is no allegation that the District Attorney was a party to this representation. From these allegations we conclude that although the District Attorney is named as a defendant, the complaint accuses defense counsel alone. We hold further that the actions of an individual attorney are not carried out under the color of law. (FN11)

Our requirement that the complainant meet the requirements of Criminal Rules 3 and 4 is not unreasonable. The Fourth Amendment rights of attorneys and public prosecutors are entitled to the same degree of protection as the rights of other persons. To enable convicted persons to cause arrest warrants to issue against prosecutors and defense counsel on loosely drafted complaints creates obvious dangers. If investigation is required, a complaint should be addressed to the United States Attorney who is charged with the duty of investigating bona fide criminal activity. (FN12)

[6] We do not believe our action in this case is similar to a sua sponte dismissal of a Civil Rights Complaint. It is therefore not necessary for us to make a determination that the complaint is frivolous or malicious, 28 U.S.C.A. § 1915(d). The petition to proceed in forma pauperis is denied and the complaint is ordered dismissed. (FN13)

It is so ordered.

(FN1.) We retain the petition for action since the incidents alleged in the complaint occurred in this jurisdiction.

(FN2.) 18 U.S.C.A. § 241 Conspiracy against

rights of citizens.

'If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, \* \* \* they shall be fined not more than \$10,000 or imprisoned not more than ten years, or both . . .'

§ 242 Deprivation of rights under color of law.

'Whoever, under color of any law, statute, ordinance, regulation, or custom, wilfully subjects an inhabitant of any State, \* \* \* to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than \$1,000 or imprisoned not more than one year, or both . . .' 18 U.S.C.A. §§ 241, 242.

(FN3.) Among the more recent cases holding that these sections establish no basis for a civil cause of action are, Brzozowski v. Randall, 281 F.Supp. 306, 310 (E.D.Pa.1968) and Pugliano v. Staziak, 231 F.Supp. 347, 348-49 n. 2 (W.D.Pa.1964), aff'd, 345 F.2d 797 (3d Cir. 1965).

(FN4.) Rule 3, The Complaint. 'The Complaint is a written statement of the essential facts constituting the offense charged. It shall be made upon oath before a commissioner or other officer empowered to commit persons charged with offenses against the United States.'

(FN5.) Rule 4, Warrant or Summons Upon Complaint. '(a) Issuance. If it appears from the complaint or from an affidavit or affidavits filed with the complaint that there is probable cause to believe that an offense has been committed and that the defendant has committed it, a warrant for the arrest of the defendant shall issue to any officer authorized by law to execute it. Upon the request of the attorney for the government a summons instead of a warrant shall issue. More than one warrant or summons may issue on the same complaint. If a defendant fails to appear in response to the summons, a warrant shall issue.'

\*210 (FN6.) Fed.R. of Crim.P. 3.