

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

HEZEKIAH NICKELSON : CIVIL ACTION
 :
 v. :
 :
 UNITED STATES OF AMERICA, :
 A LAND OF THE PEOPLE, :
 FOR THE PEOPLE, BY THE PEOPLE, :
 GOVERNED BY ITS LAWS :
 and :
 JUDGE LOWELL A. REED, JR. : NO. 99-2219

MEMORANDUM

Dalzell, J.

May 4, 1999

Pro se plaintiff Hezekiah Nickelson ("Nickelson") has filed a complaint against defendants "United States Of America, a land of the people, for the people, by the people" ("United States") and the Honorable Lowell A. Reed, Jr. ("Judge Reed").¹ Nickelson, who calls himself a "whistle-blower," seeks to "stop the on-going crime of businesses avoiding the payment of taxes on profits as mandated by Congress by following the misdirections of the Financial Accounting Standards Board (FASB)." Complaint at unnumbered ¶ 1. Along with his complaint, Nickelson has filed a "Motion for a Mandamus Order for the President [of the United States] to Stop and Correct [the] On-Going Crime", presumably of following FASB "misdirections." See Motion attached to Complaint.

Upon a review of Nickelson's prior filings with our Court, we take judicial notice of the following pertinent history:

- On September 28, 1994, Nickelson filed a nearly identical civil action against President Clinton, Attorney General

¹ Nickelson has paid the filing fee of \$150.00.

Janet Reno, former Treasury Secretary Lloyd Bentsen, and the Internal Revenue Service, see Nickelson v. Clinton, Civ. No. 94-5896, which was assigned to the Honorable John P. Fullam.

- On May 30, 1995, on defendants' motion, Judge Fullam dismissed the complaint for failure to state a claim upon which relief can be granted, see Nickelson v. Clinton, Civ. No. 94-5896 (E.D. Pa. May 30, 1995), which our Court of Appeals affirmed on January 18, 1996.

- One month after Judge Fullam was affirmed, on February 20, 1996, Nickelson filed virtually the same action, this time suing the United States of America, President Clinton, Attorney General Janet Reno, Secretary of the Treasury Robert Rubin, Peggy Richardson (the Commissioner of the IRS), as well as Judge Fullam. See Nickelson v. United States of America, Civ. No. 96-1243.

- On May 13, 1996, on defendants' motion, Judge Edmund V. Ludwig dismissed that case, see Nickelson v. United States of America, Civ. No. 96-1243 (May 13, 1996), and Nickelson again appealed.

- On October 22, 1996, our Court of Appeals dismissed Nickelson's appeal for lack of jurisdiction because the notice of appeal was untimely filed. See Nickelson v. United States, C.A. No. 96-1743 (3d Cir. Oct. 22, 1996).

- On June 10, 1997, Nickelson once again filed nearly the same complaint, this time suing the United States of America, President Clinton, Attorney General Janet Reno, Secretary

of the Treasury Robert Rubin, Peggy Richardson, as well as Judge Fullam, Judge Ludwig, and every member of our Court of Appeals. See Nickelson v. United States, Civ. No. 97-3942.

- On June 26, 1997, Judge Lowell A. Reed, Jr. ordered all named defendants who had been served with the complaint to "file and serve a motion testing the jurisdiction of the Court and the legal efficacy of the Complaint." See Nickelson v. United States, Civ. No. 97-3942 (E.D. Pa. Jun. 26, 1997).

- On January 8, 1998, Judge Reed dismissed that complaint, see Nickelson v. United States, Civ. No. 97-3942 (E.D. Pa. Jan. 8, 1998), and Nickelson once again appealed.²

- On March 31, 1999, Nickelson filed three nearly-identical complaints: the first against the United States of America and Third Circuit Judges Rendell and Weis, and the late Judge Seitz of that Court, see Nickelson v. United States, Civ. No. 99-1619; the second against the United States of America and Chief Justice William H. Rehnquist, see Nickelson v. United States, Civ. No. 99-1620; and the third against the United States and Judge Reed, see Nickelson v. United States, Civ. No. 99-1621.

- On April 2, 1999, Judge Reed denied Nickelson's motion to proceed in forma pauperis in all three cases, dismissed all three cases pursuant to 28 U.S.C. § 1915(e)(B)(i-iii), and ordered plaintiff "not to file any further motion, petition or paper with regard to this case except for papers to appeal this

² Nickelson's appeal in that case apparently remains pending in the Court of Appeals.

Order or to notify this Court of appellate action. It is further Ordered that the Clerk of Court shall refuse to issue a summons or receive or file any further papers in this case from plaintiff except as described above."

- On April 16, 1999, Nickelson filed a notice of appeal in all three cases.

Based upon the foregoing, we will dismiss Nickelson's latest complaint sua sponte for three reasons.³

First, this latest complaint fails to name parties upon which relief can be granted because judicial immunity would bar any suit against Judge Reed, see, e.g., Mireles v. Waco, 502 U.S. 9 (1991), and defendant "United States of America, a land of the people, for the people, by the people governed by its laws" is

³ A district court "may on its own initiative enter an order dismissing the action provided that the complaint affords a sufficient basis for the court's action." Bryson v. Brand Insulations, Inc., 621 F.2d 556, 559 (3d Cir. 1980). Certain protections, however, are guaranteed to the plaintiff: all the allegations in the Complaint must be taken as true, inferences favorable to the plaintiff must be drawn from those allegations, and there must be no set of facts which could be adduced to support plaintiff's claim for relief. See id.; see also Joe Hand Promotions, Inc. v. Rennard Street Enterprises, Inc., 954 F. Supp. 1046, 1055 (E.D. Pa. 1997). As this is the seventh iteration of essentially the same baseless claim -- and one that has been subject to three prior motions to dismiss -- it is clear that the federal judiciary long ago passed the point of affording plaintiff maximal judicial grace.

In addition, under Fed. R. Civ. P. 12(b)(1), we may grant a dismissal based on the legal insufficiency of a claim, and we may exercise this power on our own initiative. See Meritcare Inc. v. St. Paul Mercury Ins. Co., 166 F.3d 214, 217 (3d Cir. 1999) ("A federal court has the obligation to address a question of subject matter jurisdiction sua sponte"). Dismissal is proper only when the claim clearly appears to be either immaterial and solely for the purpose of obtaining jurisdiction, or is wholly insubstantial and frivolous. See Kehr Packages, Inc. v. Fidelcor, Inc., 926 F.2d 1406, 1408-09 (3d Cir. 1991).

entitled to sovereign immunity except to the extent that Congress has, by statute, expressly waived such immunity. See, e.g., United States v. Testan, 424 U.S. 392, 399 (1976).⁴

Second, Nickelson does not have standing to assert such a generalized taxpayer grievance as he seems to be making. See, e.g., Warth v. Seldin, 422 U.S. 490, 499 (1975); Frothingham v. Mellon, 262 U.S. 447 (1923). Whatever the merits in general of Nickelson's objections to the FASB's handiwork, at least as the Internal Revenue Service may accept the application of those standards to corporate tax returns, he has suffered no "injury in fact" any different from other American citizens.

Finally, we will not reward Nickelson's attempt to circumvent the judicial process by refileing virtually the same complaint every time he receives an adverse decision by a district court or a panel of our Court of Appeals. He has now wasted the time of four district court judges, at least six Court of Appeals judges, and perhaps even someone on behalf of The Chief Justice of the United States. The time has come for the judiciary to say enough is enough.⁵

⁴ Even if we had jurisdiction over the subject matter of plaintiff's claim, dismissal would still be required because Nickelson has failed to state a claim under 28 U.S.C. § 1361. Mandamus is a drastic remedy which may be invoked only under extraordinary circumstances not even remotely present here. See Allied Chemical Corp. v. Daiflon, Inc., 449 U.S. 33, 34 (1980).

⁵ We hasten to add that, although Nickelson does not have standing to seek judicial redress, he may as a citizen bring his concerns to the attention of his United States legislators, including his Representative, The Honorable Robert A. Brady, 1907 South Broad Street, Philadelphia, PA 19148 and his two United States Senators, The Honorable Arlen Specter, 9400 Green Federal

Accordingly, we will dismiss Nickelson's Complaint and place Nickelson on notice that should he continue to file frivolous claims against immune parties he will subject himself to a permanent injunction against the abuse of this Court's process. See Abdul-Akbar v. Watson, 901 F.2d 329, 332 (3d Cir. 1990) (recognizing the power of the district court to condition further filings upon the litigant obtaining prior approval of the district court); In re Matter of Packer Avenue Associates, 884 F.2d 745, 747 (3d Cir. 1989).

An Order follows.

Building, 600 Arch Street, Philadelphia, PA 19106 and The Honorable Rick Santorum, One South Penn Square, Suite 960, Philadelphia, PA 19107.

