UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BRET D. LANDRITH, and SAMUEL K. LIPARI,	)	
Plaintiffs, *pro se*,	)	
v.	)	**Civil Action No. 1:12-cv-01916 (ABJ)**
HON. JOHN G. ROBERTS, JR., Chief Justice of the United States,	)	
Defendant.	)	

DEFENDANT'S RENEWED AND SUPPLEMENTAL MOTION TO DISMISS

Defendant, Hon. John G. Roberts, Jr., Chief Justice of the United States ("Chief Justice"), through undersigned counsel, hereby renews his motion to dismiss, with supporting memorandum, filed on March 11, 2013 [ECF No. #9] and incorporates it herein in response to Plaintiffs' Amended Complaint filed on April 1, 2013, and in support of dismissal pursuant to Fed. R. Civ. P. 12(b)(1) and (6). In addition, the Court is respectfully referred to the attached supplemental memorandum which addresses the new averments in the Amended Complaint which relate primarily to a new claim of post-complaint abuse of process. *See* ECF No. 11 at pp. 1-2 and Paragraphs 20.1-21, 74-132, 41-42, 43 (Specific Injunctive Relief), 45 (2nd and last paragraph), 46, 47-48, 50-53 (Specific Declaratory Relief) and Count III.[1]

[1] Because Plaintiffs are proceeding *pro se*, they are informed that failure to respond to a dispositive motion may result in the district court granting the motion and dismissing the case. Fox v. Strickland, 837 F.2d 507, 509 (D.C. Cir. 1988). Should the Court dismiss the action under Rule 12(b)(6) after viewing it as a motion for summary judgment, plaintiffs should take notice that any factual assertions contained herein may be accepted by the Court as true unless the plaintiffs submit affidavit or other documentary evidence contradicting the assertions in the documents on which defendants rely. Fed. R. Civ. P. 56 (e), provides as follows:

A Proposed Order consistent with this Motion is attached hereto.

Respectfully submitted,

RONALD C. MACHEN JR.
UNITED STATES ATTORNEY
D.C. BAR NUMBER 447889

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(e) Form of Affidavits; Further Testimony; Defense Required. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

UNITED STATES DISTRICT COURT
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Plaintiffs, *pro se*,	)	**Civil Action No. 1:12-cv-01916 (ABJ)**
v.	)	
HON. JOHN G. ROBERTS, JR., Chief Justice of the United States,	)	
Defendant.	)	

DEFENDANT'S SUPPLEMENTAL MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

INTRODUCTION

Defendant, Hon. John G. Roberts, Jr., Chief Justice of the United States ("Chief Justice"), through undersigned counsel, incorporates herein his memorandum of points and authorities in support of Defendant's Motion to Dismiss for lack of subject matter jurisdiction and failure to state a claim, filed on March 1, 2013. ECF No. 9 at 3-13. The instant memorandum addresses new averments in the Amended Complaint which relate primarily to a claim that there has been an "abuse of process" by the Chief Justice, his agents and employees with regard to their conduct after Plaintiffs' complaint was filed ("post-complaint" claim). *See* ECF No. 11 (Amended Complaint) at 1-2 (opening paragraph), *see also id.* at Paragraphs 20.1-21, 74-132, 41-42, 43 (Specific Injunctive Relief), 45 (2nd and last paragraph), 46, 47-48, 50-53 (Specific Declaratory Relief) and Count III.

A. SUMMARY OF CHANGES IN AMENDED COMPLAINT

For the Court's convenience, Defendant provides a brief summary of the averments in Plaintiffs' Amended Complaint that were not found in the original complaint. *Compare* ECF Nos. 1, 11. They relate primarily to a new claim of post-complaint abuse of process. *See infra* at II. The only changes to Plaintiffs' pre-complaint averments and claims relate to the relief sought. Defendant relies on its Motion to Dismiss and supporting documents filed on March 1, 2013 [ECF No. 9], to support dismissal of these claims pursuant to Fed. R. Civ. 12(b)(1) and (b) and requests that said filing be incorporated into this filing as if restated here. As explained below, there appears to be an expansion of the relief sought in the original complaint and one new averment that is barred by the *Rooker-Feldman* doctrine. *See* below at 3 and n. 1.

B. New Averments relating to Pre-Complaint Allegations – Relief Sought.

In Plaintiffs' initial complaint, they sought a "prospective injunction" against the Chief Justice "in his administrative and executive functions [as chief executive] to stop federal court judges from unlawfully furthering a Code of Silence through ineffective judicial ethics enforcement and ineffective appellate review[.]" ECF No. 1 at 1 and ¶¶ 12-13. In their new "Amended Complaint," Plaintiffs expand this relief to include the following:

> They request that an injunction be imposed
>
> To have the defendant Chief Justice Hon. JOHN G. ROBERTS, JR. change the official policy of the National Judicial Conference so that parties ethics complaints against judicial branch officials are posted online with the name of the judicial branch official against whom the complaint is made for the purpose of other litigants and their representatives to better evaluate patterns of where a judicial branch official deviates from "black letter law" in their decisions and determinations.

Amended Complaint at 43 (Specific Injunctive Relief Sought). They also request that the Court strike Defendant's Motion to Dismiss (Doc. # 9), to direct Defendant to answer the Amended Complaint, and enjoin Defendant from misrepresenting legal authority or factual basis for his pleadings. ECF No. 11 at 52 (Specific Injunctive Relief Sought).

They also request:

> . . . to have the court declare that vilifying parties for bringing actions under the Civil Rights Acts including 42 USC §1981; the Sherman Antitrust Act 15 U.S.C. §§ 1 et seq., and RICO 18 U.S.C. §1961 et seq. before any discovery has been permitted violates their rights [sic]. [and]
>
> . . . to have the court declare that the Constitution under the Supremacy Clause requires a state court's discipline or disbarment action against an attorney for bringing federal actions under the Civil Rights Acts including 42 USC §1981; the Sherman Antitrust Act 15 U.S.C. §§ 1 et seq., and RICO 18 U.S.C. § 1961 et seq. or federal claims in state court under federal statutory law is subject to an evidentiary hearing in a US District Court when requested to retain or obtain admission in a US District or Appeals Court.

ECF No. 11 at 50 (Specific Declaratory Relief Sought). Except for the above-mentioned claim that the Chief Justice declare that the Constitution requires that a state court attorney disciplinary proceeding include an evidentiary hearing, these claims have already been addressed in Defendant's Motion to Dismiss and Defendant relies on its supporting memorandum there in support of dismissal of these averments in the Amended Complaint. ECF No. 9 at 3-13.

As to any request that Defendant dictate the manner in which a state court bar proceeding is conducted, such actions are precluded by the *Rooker-Feldman* doctrine.[1]

[1] Under the *Rooker-Feldman* doctrine, federal courts lack jurisdiction to review decisions of state courts or any claim "inextricably intertwined" with claims decided by a state court. *See District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 476 (1983) and *Rooker v.Fidelity Trust Co.*, 263 U.S. 413, 415–16 (1923).

C. New Averments (Abuse of Process) relating to Post-Complaint Allegations.

In their Amended Complaint, Plaintiffs allege that Defendant, his agents and employees have engaged in an abuse of process post filing of their legal action. The facts relied on to support their abuse of process claim are contained in 58 new paragraphs. ECF No. 11 at ¶¶ 74-132. Without discussing each factual averment, Defendant notes that they commence at the filing stage [*id*. at ¶ 75], and conclude with a statement that neither the Chief Justice or undersigned counsel have been brought before an ethics investigator for violations of the D.C. Rules of Professional Conduct. [*id.* at ¶¶ 132-133].

Several of the averments relate to the litigation process during the law suit and Plaintiffs' suspicions that they have been being targeted as individuals. For instance, Plaintiffs aver that they were "forced to attempt to voluntarily dismiss their cause" and made settlement offers which were not accepted or rejected [*id*. at ¶¶ 76-80, 87-89]; that their cell phones were shut off [*id.* at ¶¶ 81-82]; that Plaintiff Lipari's nephew had problems with his home internet connection and allegedly observed FBI "surveillance" equipment in the vicinity of his home [*id.* at ¶¶ 85-86]; that emails to Lipari's email address of ten years were compromised, *i.e.*, emails were returned as undeliverable [*id.* at ¶90]; and, that Defendant's motion to extend time to answer was granted without their objection noted [*id.* at ¶¶ 92-95].

The specific averments concerning their abuse of process claim appear to relate to their views that Defendant, in his Motion to Dismiss [ECF No. 9], has misrepresented facts and the law. *Id.* at ¶¶ 97-100. They argue, *inter alia*, that *McBryde v. Committee to Rev. Cir. Council Conduct*, 83 F.Supp.2d 135, 149 (D.D.C. 1999), provides a vehicle for jurisdiction in this Court and that the Chief Justice can be sued for his ministerial acts as head of the National Judicial Conference which are, in their views, too lax. *Id.* at ¶¶ 101-102, 106-108. They suggest that the

Chief Justice has shirked his legal obligation to address and resolve the numerous unprecedented acts of vilification of Plaintiff Landrith by District Judge Murguia who entered an order in favor of multiple defendants in *Landrith v. Kansas Attorney General Derek Schmidt, et al,* Case No. 12-3161-CM (D. Kan. November 2, 2012). *See* attached Memorandum and Order. *Id.* at ¶¶ 110-111. They also aver that there has been "extrinsic fraud" against them. *Id.* at ¶¶ 114-131. Although not altogether clear, these factual allegations seem to suggest that Plaintiffs believe they are victims of obstruction of justice on the part of the Defendant and the other governmental entities. *See e.g., id.* at ¶¶ 114-118, 131.

In the new Count III, Plaintiffs' allege that the Chief Justice, his agents and employees "have an ulterior motive," to "further vilify the plaintiffs for the purpose of inviting the trial judge to participate in the fraud on her court and obstruct justice for the plaintiffs without fear of attention from a reviewing court." ECF No. 11 at 51. Defendant submits that as with Plaintiffs' pre-complaint allegations, they have failed to establish a jurisdictional basis for their law suit and failed to state a claim for relief.

II. STANDARD OF REVIEW

A. Lack of Subject-Matter Jurisdiction

To maintain an action in the federal district court, Plaintiffs must establish that they have presented a jurisdictional basis for their cause of action. *See e.g., Monument Realty LLC v. Wash. Metro. Area Transit Auth.* 535 F.Supp. 2d 60, 67 (D.D.C. 2008). When a motion for dismissal is filed challenging subject-matter jurisdiction under Rule 12(b)(1), the proponent of jurisdiction bears the burden of proving that it exists. *Khadr v. United States*, 529 F.3d 1112, 1115 (D.C.Cir.2008), The Court has an "affirmative obligation to ensure that it is acting within the scope of its jurisdictional authority," *Grand Lodge of Fraternal Order of Police v. Ashcroft*,

185 F. Supp. 2d 9, 13 (D.D.C. 2001), and in doing so may "consider such materials outside the pleadings as it deems appropriate to resolve the question whether it has jurisdiction to hear the case," *Sweeney v. Am. Registry of Pathology*, 287 F. Supp. 2d 1, 3 (D.D.C. 2003) (construing *Herbert* and quoting *Scolaro v. Dist. of Columbia Bd. of Elections & Ethics*, 104 F. Supp. 2d 18, 22 (D.D.C. 2000)). "[A]ll of the factual allegations in the complaint [must be accepted] as true." *Jerome Stevens Pharm., Inc. v. FDA*, 402 F.3d 1249, 1253 (D.C.Cir.2005) (citations and internal quotation marks omitted).

B. Failure to State a Claim upon Which Relief Can Be Granted

When considering a motion to dismiss for failure to state a claim upon which relief can be granted under Rule 12(b)(6), the Court must decide whether there are "enough facts to state a claim for relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007), abrogating *Conley v. Gibson*, 355 U.S. 41 (1957). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009). To withstand a Rule 12(b)(6) motion to dismiss, a plaintiff must furnish "more than labels and conclusions" or "a formulaic recitation of the elements of a cause of action." *Martin v. Arc of Dist. of Columbia*, 541 F. Supp. 2d 77, 81 (D.D.C. 2008) (quoting *Twombly*, 550 U.S. at 555). The facts alleged in the complaint "must be enough to raise a right to relief above the speculative level," or must be sufficient "to state a claim for relief that is plausible on its face." Id. "Determining whether a complaint states a plausible claim for relief will . . . be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Iqbal*, 129 S. Ct. at 1950. The court "need not accept inferences unsupported by facts in

the complaint, nor must the court accept [Plaintiff's] legal conclusions." Id. (citing *Kowal v. MCI Comm'cns Corp.,* 16 F.3d 1271, 1276 (D.C. Cir. 1994)).

III. ARGUMENT

A. Pre-Complaint Claims.

As noted above, Defendant relies on its Motion to Dismiss and supporting documents [ECF No. 9] and incorporates it herein. To the extent that Plaintiffs argue that the holding in *McBryde v. Committee to Rev. Cir. Council Conduct*, has been misrepresented by Defendant, and, indeed under that precedent, Plaintiffs have established jurisdiction in this Court, it is for this Court to decide based on the allegations of the amended complaint. Unlike the facts here, the plaintiff in *McBryde* presented facts showing an arguable basis for relief. *See Klayman v. Honorable Colleen Kollar-Kotelly, et al.,* 892 F.Supp.2d 261, 264 (citing *Alec L. v. Jackson,* 863 F.Supp.2d 11, 14 (D.D.C. 2012) ("[w]hen determining whether a district court has federal question jurisdiction . . ., the jurisdictional inquiry depends entirely upon the allegations in the complaint). Here, Plaintiffs point to no statute providing them with a jurisdictional basis for their law suits and no facts showing injury by the Chief Justice. Simply stated, Plaintiffs have failed to establish federal question jurisdiction based on the allegations in the complaint and amended complaint. Although their constitutional claims appear to be based on due process issues, they cite no law demonstrating that the injuries they allege equate to constitutional violations. Finally, as noted in Defendant's Motion to Dismiss [ECF No. 9], there is no independent basis for relief under the Declaratory Judgment Act. *See* ECF No. 9-1 at 5-9. Thus, Plaintiffs have failed to establish jurisdiction and failed to state a claim in this law suit.

B. Post-Complaint Claim of Abuse of Process.

Plaintiffs attempt to establish a new claim of abuse of process. Under District of Columbia law, abuse of process occurs when "process has been used to accomplish some end which is without the regular purview of the process, or which compels the party against whom it is used to do some collateral thing which he could not legally and regularly be required to do." *Houlahan v. World Wide Ass'n of Specialty Programs and Schools*, 677 F.Supp.2d 195, 199 (D.D.C.,2010) (citing *Morowitz v. Marvel*, 423 A.2d 196, 198 (D.C.1980) (quoting *Jacobson v. Thrifty Paper Boxes, Inc.*, 230 A.2d 710, 711 (D.C.1967)).

There are two essential elements to an abuse of process claim: "(1) the existence of an ulterior motive; and (2) an act in the use of process other than such as would be proper in the regular prosecution of the charge." *Id*. (citing *Hall v. Hollywood Credit Clothing Co.*, 147 A.2d 866, 868 (D.C.1959); *see also Brown v. Hamilton*, 601 A.2d 1074, 1080 n. 14 (D.C.1992), *Nader v. Democratic Nat'l Comm.*, 555 F.Supp.2d 137, 160-61 (D.D.C.2008), aff'd on other grounds, *Nader v. Democratic Nat'l Comm.*, 567 F.3d 692 (D.C.Cir.2009), *Bannum v. Citizens for a Safe Ward Five, Inc.*, 383 F.Supp.2d 32, 46 n. 10 (D.D.C.2005), *Harrison v. Howard Univ.*, 846 F.Supp. 1, 2-3, n. 3 (D.D.C.1993).

Plaintiffs have failed to establish the elements of a cause of action for abuse of process. Plaintiffs use the term "ulterior motive" to describe the actions of Defendant in defending against their claims by filing a motion to dismiss. ECF No. 11 at Count III at (1). But, that bare allegation falls far short of establishing that the Defendant and his agents took steps to deceive the Court into believing that Plaintiffs have no viable cause of action. In fact, as Plaintiffs have shown that they were well aware of the widespread use of Fed. R. Civ. P. Rule 12(b) by federal judges to dismiss complaints. ECF No. 11 (Amended Complaint) at ¶¶27-28. Moreover, the

conduct that they rely on, the filing of a motion to dismiss containing arguments that they don't agree with, is not an act outside of "the regular prosecution of the charge." Indeed, the facts they relied on provide no vehicle for relief, whatsoever, as the Chief Justice is not even remotely involved in any of the law suits that Plaintiffs complain are the result of the "code of silence" in the federal judiciary. The Chief Justice's power is direct federal judges is limited to presiding over matters before the Judicial Conference of the United States as set forth in 28 U.S.C. §§ 331-32; *see also* 28 U.S.C. §§ 351-355.

In sum, Plaintiffs point to no act that would serve as a basis for their abuse of process claim. In fact, the relief they seek is for the Chief Justice to assert more control of the Federal Judiciary. However, his power is limited by statute. *Id.*

CONCLUSION

For the foregoing reasons, Defendant asks the Court to dismiss the Amended Complaint.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on this 22nd day of April, 2013, a true copy of the foregoing motion to extend time was transmitted to Plaintiffs by first class mail, postage pre-paid, to:

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A courtesy copy has been sent to Plaintiffs by email.

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