

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

WILLIAM KEISLING

Plaintiff

v.

JUDGE RICHARD RENN, *et al.*,

Defendants

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CIVIL ACTION

NO. 1:09-CV-2181

HON. JOHN E. JONES, III

ELECTRONICALLY FILED

**BRIEF/MEMORANDUM OF LAW IN SUPPORT OF
MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT
FILED ON BEHALF OF
THE HONORABLE RONALD CASTILLE, CHIEF JUSTICE,
THE SUPREME COURT OF PENNSYLVANIA,
THE HONORABLE RICHARD RENN,
THE HONORABLE JOHN S. KENNEDY,
THE HONORABLE SHERYL ANN DORNEY,
THE HONORABLE MARIA MUSTI COOK,
YORK COUNTY COURT ADMINISTRATOR J. ROBERT CHUK
AND YORK COUNTY JUDICIAL DISTRICT COURT**

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**IN THE UNITED STATES DISTRICT COURT
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WILLIAM KEISLING	:	
	:	CIVIL ACTION
<i>Plaintiff</i>	:	NO. 1:09-CV-2181
v.	:	
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JUDGE RICHARD RENN, <i>et al.</i> ,	:	HON. JOHN E. JONES, III
	:	
<i>Defendants</i>	:	<i>ELECTRONICALLY FILED</i>

**BRIEF/MEMORANDUM OF LAW IN SUPPORT OF MOTION TO
DISMISS PLAINTIFF'S AMENDED COMPLAINT FILED ON BEHALF
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OF PENNSYLVANIA, THE HONORABLE RICHARD RENN, THE
HONORABLE JOHN S. KENNEDY, THE HONORABLE SHERYL ANN
DORNEY, THE HONORABLE MARIA MUSTI COOK,
YORK COUNTY COURT ADMINISTRATOR J. ROBERT CHUK
AND YORK COUNTY JUDICIAL DISTRICT COURT**

I. PROCEDURAL HISTORY OF THE CASE

Plaintiff brings an action under 42 U.S.C. § 1983 alleging violations of his First and Fourteenth Amendment rights. (Pl.'s Am. Compl. at ¶¶ 5, 10.) He names numerous defendants including the Honorable Ronald Castille, the Supreme Court of Pennsylvania, the Honorable Richard Renn, the Honorable John S. Kennedy, the Honorable Sheryl Ann Dorney, the Honorable Maria Musti Cook, Court Administrator J. Robert Chuk and the York County Judicial District Court ("Court Defendants"). Court Defendants filed a Motion to Dismiss Plaintiff's Complaint. Plaintiff filed an Amended Complaint adding the Honorable Ronald Castille and

the Pennsylvania Supreme Court. Court Defendants move to dismiss the Amended Complaint with prejudice.

II. STATEMENT OF FACTS

The Honorable Richard Renn is the President Judge of the Court of Common Pleas of York County. The Honorable John S. Kennedy, the Honorable Sheryl Ann Dorney and the Honorable Maria Musti Cook are judges of the Court of Common Pleas of York County. Defendant J. Robert Chuk is the District Court Administrator for the Court of Common Pleas of York County. The York County Judicial District Court presumably refers to the Court of Common Pleas of York County. The Honorable Ronald Castille is the Chief Justice of the Supreme Court of Pennsylvania.

Plaintiff asserts Court Defendants “unlawfully retaliated” against him when he “rightly rejected, complained about, and sought an investigation of what [Plaintiff] perceived to be extortion, kick-back, and/or influence peddling demands” involving Court Defendants. (Pl.’s Am. Compl. at ¶ 17.) Plaintiff describes through numerous paragraphs his custody dispute with his ex-wife, which began in 1998. (Pl.’s Am. Compl. at ¶¶ 18-82.) Defendant President Judge Renn was the judge assigned to hear the matter. (Pl.’s Am. Compl. at ¶ 31.) Plaintiff asserts Defendant President Judge Renn violated the Pennsylvania Judicial Canons and engaged in “subterfuge and chicanery” when he allegedly failed to

disclose a “secret private business relationship.” (Pl.’s Am. Compl. at ¶¶ 55-59, 72, 80.)

He avers there are “ongoing criminal activities involving employees at the York County Courthouse including, but not limited to, influence peddling, case fixing, kickbacks, murder, reckless endangerment of children, prostitution, human trafficking, sex with juvenile minors, unlawful electioneering in the courthouse.” (Pl.’s Am. Compl. at ¶ 87.) Plaintiff argues the Defendant Judges participated in and concealed the alleged activities and retaliated against those who complained or reported it. (Pl.’s Am. Compl. at ¶ 89.)

Following the custody dispute, Plaintiff’s house was subject to a mortgage foreclosure action brought by some of the Defendants in this action. (Pl.’s Am. Compl. at ¶ 108.) He asserts Defendant Chuk assigned the matter to Defendant Judge Dorney on August 8, 2002. (Pl.’s Am. Compl. at ¶¶ 111, 120.) Plaintiff alleges Defendant Judge Dorney consulted with Defendant President Judge Renn and stated that “she would not rule in favor of [Plaintiff] on any motion or court proceeding [sic].” (Pl.’s Am. Compl. at ¶ 112.) He avers these alleged statements by Defendant Judge Dorney were in retaliation for his “journalistic and whistle blowing activities.” (Pl.’s Am. Compl. at ¶ 114.)

Plaintiff states that on February 13, 2003, Defendant Judge Dorney was assigned the Motion for Summary Judgment in the mortgage foreclosure action.

(Pl.'s Am. Compl. at ¶ 126.) Following this assignment Plaintiff sent Defendant Judge Dorney a "letter of journalistic inquiry" and then asked for her recusal.

(Pl.'s Am. Compl. at ¶¶ 127, 132.) Plaintiff asserts his requests for discovery were denied by both Defendant Judge Dorney and Defendant Judge Kennedy. (Pl.'s Am. Compl. at ¶¶ 138-140.) Further, he avers that the Defendant Judges "had no intention of fulfilling their obligations to the law by granting [him] due process or a fair trial" in his foreclosure case. (Pl.'s Am. Compl. at ¶ 151.) Thus, on July 1, 2003, Plaintiff states he filed for bankruptcy in federal court and has come in and out of bankruptcy several times over the last few years. (Pl.'s Am. Compl. at ¶¶ 152, 173.) He complains Defendant Judge Kennedy failed to recuse himself and in a "blatantly capricious and arbitrary manner" granted a motion for summary judgment in the foreclosure action. (Pl.'s Am. Compl. at ¶¶ 155, 162 - 163, 169 - 170.)

A defamation action was filed by some of the Defendants against Plaintiff in York County. (Pl.'s Am. Compl. at ¶ 210.) Plaintiff asserts Defendant Chuk failed to notify him about the reassignment of the matter to Defendant Judge Cook and about "unlawful" discovery motions. (Pl.'s Am. Compl. at ¶¶ 210, 217-219.) He avers Defendant Judge Cook granted the discovery motions *ex parte* because she was favoring a client of her judicial election campaign chairman. (Pl.'s Am. Compl. at ¶¶ 219 - 221.) He appealed Defendant Judge Cook's order and the

Superior Court of Pennsylvania reversed and remanded the matter to the York County Court of Common Pleas. (Pl.'s Am. Compl. at ¶¶ 228 – 230.)

Plaintiff complains about Defendant President Judge Renn's failure to recuse himself in a suit involving Plaintiff's book. (Pl.'s Am. Compl. at ¶¶ 237- 249.) He asserts Defendant President Judge Renn retaliated against him for writing the book. (Pl.'s Am. Compl. at ¶ 247.)

In his Amended Complaint Plaintiff adds the Supreme Court of Pennsylvania and the Honorable Ronald Castille, Chief Justice, as Defendants. He asserts the Supreme Court harmed him by failing to investigate his complaints about the judiciary in York County. (Pl.'s Am. Compl. at ¶¶ 265-267.) Plaintiff alleges that Defendant Chief Justice Castille "chilled all court criticisms in Pennsylvania" when he made a statement to the press in May 2008 regarding a federal case brought by the League of Women Voters against former Chief Justice Ralph Cappy. (Pl.'s Am. Compl. at ¶¶ 272-274.)

Plaintiff seeks damages for pain and suffering and emotional distress, punitive damages, and fees, costs and attorneys' fees. (Pl.'s Am. Compl. at Wherefore clause.)

III. STATEMENT OF QUESTIONS INVOLVED

- A. Whether Eleventh Amendment immunity bars Plaintiff's Complaint against Court Defendants.

Suggested Answer: Yes.

- B. Whether Court Defendants are a "person" who can be sued under 42 U.S.C. § 1983.

Suggested Answer: No.

- C. Whether Plaintiff has standing to assert a First Amendment claim against the Chief Justice when he has failed to state an injury in fact.

Suggested Answer: No.

- D. Whether this Honorable Court should abstain from on-going state court actions pursuant to the Younger abstention doctrine.

Suggested Answer: Yes.

- E. Whether the Rooker-Feldman doctrine bars Plaintiff's claims as his requested relief is inextricably intertwined with his state court action.

Suggested Answer: Yes.

- F. Whether any claim for damages against Court Defendants is wholly barred by the doctrine of judicial immunity.

Suggested Answer: Yes.

- G. Whether the Court Administrator and Chief Justice are entitled to qualified immunity.

Suggested Answer: Yes.

- H. Whether Plaintiff's claim is time-barred by the two-year statute of limitations for § 1983 actions in Pennsylvania.

Suggested Answer: Yes.

IV. ARGUMENT

A. PLAINTIFF FAILS TO STATE A CLAIM OVER WHICH THIS HONORABLE COURT MAY TAKE JURISDICTION.

1. Plaintiff's claims against Defendant court entities, the Supreme Court of Pennsylvania and the York County Judicial District Court, are barred by the Eleventh Amendment and a state court entity is not a "person" subject to suit under 42 U.S.C. § 1983.

The Supreme Court of Pennsylvania and the York County Judicial District Court are not "persons" subject to suit under 42 U.S.C. § 1983 and are protected by Eleventh Amendment immunity. A state is immune from suits by its own citizens in federal court as well as by citizens of other states, unless the state has consented to such suits. Port Auth. Trans-Hudson Corp. v. Feeney, 495 U.S. 299, 304 (1990). This immunity is available to an "arm of the state," as well as to the state itself. Mt. Healthy City Sch. Dist. Bd. of Edu. v. Doyle, 429 U.S. 274, 280 (1977). This immunity applies "regardless of the nature of the relief sought." Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89, 100 (1984). In addition, while the Eleventh Amendment's scope is not the same as the scope of 42 U.S.C. § 1983 ("Section 1983"), the Supreme Court of the United States has held that Congress did not intend for Section 1983 to overcome the sovereign immunity of states embodied in the Eleventh Amendment. Will v. Michigan

Dep't of State Police, 491 U.S. 58, 66-67 (1989). Therefore, states and their arms are not "persons" who can be held liable under Section 1983.¹ Id. at 67.

Plaintiff names the Supreme Court of Pennsylvania as a Defendant in his Amended Complaint. The Supreme Court is an arm of the state of Pennsylvania and is entitled to Eleventh Amendment immunity. Plaintiff also names the York County Judicial District Court. Presumably, he is referring to the York County Court of Common Pleas. The York County Court of Common Pleas is a court entity of the Unified Judicial System of Pennsylvania and, as such, is an arm of the state of Pennsylvania protected by the Eleventh Amendment. See Callahan v. City of Philadelphia, 207 F.3d 668, 672 (3d Cir. 2000) (noting that "[a]ll courts and agencies of the unified judicial system" are part of the Commonwealth government). In Benn v. First Judicial District, the Third Circuit Court of Appeals definitively ruled that Pennsylvania's Court entities (there, the Philadelphia Court of Common Pleas) are Commonwealth entities entitled to federal Eleventh Amendment immunity. 426 F.3d 233 (3d Cir. 2005). Given this protection, a Pennsylvania Court entity could only be sued in federal court if it or the state

¹ Plaintiff asserts York County has waived its Eleventh Amendment immunity and cites Haybarger v. Lawrence County Adult Probation and Parole, et al, 551 F.3d 193 (3d Cir. 2008) as the rationale. (Pl's. Am. Compl. at ¶ 250.) However, Haybarger is inapplicable because it did not address claims under Section 1983. Rather, the waiver of Eleventh Amendment immunity occurred under the Rehabilitation Act due to the receipt of federal funding. 551 F.3d at 195. States remain protected by immunity and cannot be held liable under 42 U.S.C. §1983.

generally has consented to such suits. See 42 Pa.C.S.A. § 8521(b) ("nothing contained in this subchapter [Actions Against Commonwealth Parties] shall be construed to waive the immunity of the Commonwealth from suit in Federal courts guaranteed by the Eleventh Amendment to the Constitution of the United States"); Laskaris v. Thornburgh, 661 F.2d 23, 25 (3d Cir. 1981) ("[b]y statute, Pennsylvania has specifically withheld consent" to suit in federal court) (citing 42 Pa.C.S.A. § 8521(b)). The York County Court of Common Pleas has not given such consent.

The Supreme Court of Pennsylvania and the York County Court of Common Pleas as part of Pennsylvania's Unified Judiciary are an instrumentality of the Commonwealth. The Pennsylvania Constitution, Article V § 1 states:

"The judicial power of the Commonwealth shall be vested in a unified judicial system consisting of the Supreme Court, . . . courts of common pleas, . . . All courts . . . shall be in this unified judicial system."

In addition, 42 Pa. C.S.A. § 102 provides that, "the government of the Commonwealth [includes] the courts and other offices and agencies of the unified judicial system . . ." Mattas v. Supreme Court of Pennsylvania, 576 F.Supp. 1178, 1182 (W.D. Pa. 1983).

Therefore, Defendants the Supreme Court of Pennsylvania and the York County Judicial District Court are entitled to full Eleventh Amendment immunity under the law where sovereign immunity has not been abrogated. The Defendant

court entities are not a "person" under § 1983 and thus cannot be sued under it. A state entity cannot be sued directly regardless of the relief sought; for this reason, all of Plaintiff's claims must be dismissed as to Defendants the Supreme Court of Pennsylvania and the York County Judicial District Court.

2. Eleventh Amendment immunity bars Plaintiff's Complaint against Court Defendants in their official capacity.

The Commonwealth of Pennsylvania has not waived its Eleventh Amendment immunity, Laskaris v. Thornburgh, 661 F.2d 23, 25 (3d Cir. 1981), and all state entities are entitled to immunity under the Eleventh Amendment. 1 Pa.C.S. § 2310 provides that "the Commonwealth and its officials and employees acting within the scope of their duties, shall continue to enjoy sovereign and official immunity and remain immune from suit except as the General Assembly shall specifically waive the immunity." See also, 42 Pa.C.S. § 8521. The term "Commonwealth government" includes "the courts and other officers or agencies of the unified judicial system." 42 Pa.C.S.A. § 102. County-level court administrators are state judicial personnel. 42 Pa.C.S.A. § 1905(a).

A suit against a state official in his official capacity is deemed a suit against the state. Kentucky v. Graham, 473 U.S. 159, 166 (1985). When a state official is sued in an official capacity, the real party in interest is the government entity of which the official is an agent. Hafer v. Melo, 502 U.S. 21, 26 (1991). As stated previously, the York County Court of Common Pleas is an arm of the state, entitled

to federal Eleventh Amendment immunity. Benn, 426 F.3d 233; Callahan, 207 F.3d at 672. Thus it is immune from liability under 42 U.S.C. § 1983.

Defendant Chuk is the York County Court Administrator. The Court of Common Pleas of York County is part of the Unified Judicial System of Pennsylvania, 42 Pa.C.S.A. § 301(4), which is a part of the Commonwealth government. 42 Pa.C.S.A. § 102. County-level court administrators are state judicial personnel. 42 Pa.C.S.A. §1905(a). As such, Defendant Chuk is an employee of the Commonwealth government.

At all times identified in his Complaint, Plaintiff dealt with Defendant Chuk in his official capacity as the York County Court Administrator. Plaintiff alleges Defendant Chuk failed to notify him of judicial assignments in his underlying cases. None of Plaintiff's claims fall within the exceptions to sovereign immunity in 42 Pa.C.S. §§ 8521-22, and the Commonwealth has not waived immunity for any of Plaintiff's claims.

Furthermore, Defendant Chief Justice Castille and Judges Renn, Kennedy, Dorney and Cook are entitled to Eleventh Amendment immunity in their official capacity. As previously discussed, the Pennsylvania Supreme Court and the York County Court of Common Pleas, in which the named judges sit, are an arm of the state. Benn, 426 F.3d 233. Thus the court entities and judges, in their official capacity, are entitled to Eleventh Amendment immunity.

Pennsylvania has not consented to suit in this instance, and its courts are entitled to sovereign and Eleventh Amendment immunity. Accordingly, Plaintiff cannot maintain any claim against Court Defendants in their official capacity as such a suit is, in reality, a suit against the Supreme Court of Pennsylvania and the York County Court of Common Pleas.

3. Court Defendants, acting in their official capacity, are not a "person" who can be sued under 42 U.S.C. § 1983.

Plaintiff bases his federal claims on § 1983. A claim under § 1983 must allege that a "person" committed a violation. A defendant sued in an official capacity is not a "person" under § 1983 and cannot be held liable for damages. Will v. Michigan Department of State Police, 491 U.S. 58, 63 (1989). When a state official is sued in an official capacity, the real party in interest is the government entity of which the official is an agent. Hafer v. Melo, 502 U.S. 21, 26 (1991).

As discussed above, the Supreme Court of Pennsylvania and the York County Court of Common Pleas are a part of the Unified Judicial System of Pennsylvania, and, as such, are a state entity. State entities are not "persons" under § 1983 and cannot be sued under that statute. See, Callahan, 207 F.3d 668 (Warrant Division and Eviction Unit of the Court of Common Pleas and the Municipal Court Eviction Unit of the First Judicial District are state government entities which did not constitute "persons" under 42 U.S.C. § 1983). The court

entities in which the named judges sit as judicial officers and where Defendant Chuk is the Court Administrator, are "not a person" under § 1983. Accordingly, Plaintiff cannot maintain any claims against Court Defendants in their official capacity.

4. Plaintiff lacks standing to raise claims against Chief Justice Castille.

Plaintiff fails to state a cognizable case or controversy as to Defendant Chief Justice Castille because he has failed to show an "injury in fact". The U.S. Supreme Court in Lujan v. Defenders of Wildlife, described the three elements necessary for standing:

First, the plaintiff must have suffered an "injury in fact" -- an invasion of a legally protected interest which is (a) concrete and particularized, and (b) "actual or imminent, not 'conjectural' or 'hypothetical,'" Second, there must be a causal connection between the injury and the conduct complained of - - the injury has to be "fairly . . . trace[able] to the challenged action of the defendant, and not . . . the result [of] the independent action of some third party not before the court." Third, it must be "likely," as opposed to merely "speculative," that the injury will be "redressed by a favorable decision."

504 U.S. 555, 560-1, 112 S. Ct. 2130, 2136 (1992) (citations omitted). Plaintiff has the burden to establish these three elements. Id. at 561.

Plaintiff has not established an "injury in fact". He has not shown a concrete and particularized injury which is more than merely 'conjectural' or 'hypothetical'. He alleges the statement made by Defendant Chief Justice Castille has chilled

criticism of the courts in Pennsylvania, yet he has filed the herein matter. (Pl.'s Am. Compl. at ¶ 274.) Further he asserts it has "made it impossible for citizens like [Plaintiff] to find a [sic] attorney to bring their cases to court." (Id.) Plaintiff fails to provide any evidence that he sought an attorney or that an attorney refused to handle this matter for fear of Defendant Chief Justice Castille or disciplinary action.

Further, there is no causal connection between the alleged injury Plaintiff complains of and the conduct by Defendant Chief Justice Castille. This Honorable Court did not find a nexus between Chief Justice Castille's statement and the plaintiffs in the League of Women Voters v. Cappy case; certainly there can be no causal connection between the herein Plaintiff and Defendant Chief Justice Castille. No. 1:08-CV-0971, 2009 U.S. Dist. LEXIS 54705 at *8 n.4 (M.D.Pa. June 26, 2009). Finally, there is no likelihood that Plaintiff's alleged injury would be redressed by a favorable decision in this matter. As Plaintiff has failed to establish the three elements required for standing, this Honorable Court lacks subject matter jurisdiction to hear the matter as to Defendant Chief Justice Castille.

5. Plaintiff's claims are barred by the Younger abstention doctrine.

The Younger abstention doctrine provides that a federal court must abstain from proceeding if the following three conditions are met: 1) the existence of an on-going state court proceeding; 2) the state proceeding implicates important state

interests; and 3) the state proceeding affords an adequate opportunity to raise federal claims. Anthony v. Council, 316 F.3d 412, 418 (3d Cir. 2003).

Here, there are clearly on-going state proceedings, and they involve important state interests. Plaintiff admits to filing numerous appeals to the underlying state matters. (Pl.'s Am. Compl. at ¶¶ 171, 194, 197, 223.) Some of these appeals are still pending. Plaintiff has the opportunity to raise his federal claims in the on-going state court proceedings and in-fact has done so. (Pl.'s Am. Compl. at ¶ 172.) Therefore this Honorable Court should abstain pursuant to the Younger abstention doctrine for any claims relating to Plaintiff's on-going state actions.

6. Plaintiff's claims are barred by the Rooker-Feldman doctrine.

Some of Plaintiff's cases have gone through the appellate process and Plaintiff has raised his federal issues. (Pl.'s Am. Compl. at ¶ 223-230.) These claims are barred by the Rooker-Feldman doctrine. It is well settled that federal courts lack jurisdiction to review state court judgments where the relief sought is in the nature of appellate review. District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983); Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923). Under the long-established Rooker-Feldman doctrine, a federal district court has no authority to review judgments of a state court where the losing state court party complains of injuries from the state court ruling. Gary v. Braddock Cemetery, 517 F.3d 195, 201 (3d Cir. 2008). Because jurisdiction to review a state court's decision rests solely

in the United States Supreme Court, federal district courts lack subject matter jurisdiction over challenges that are the functional equivalent of an appeal of a state court judgment. See, 28 U.S.C. § 1257; Marran v. Marran, 376 F.3d 143, 149 (3d Cir. 2004). The Rooker-Feldman doctrine applies to claims actually raised in state court and to claims that were not raised in state court but are “inextricably intertwined” with the state court adjudication. See Moncrief v. Chase Manhattan Mortg. Corp., 275 Fed.Appx. 149, 152-53 (3d Cir. 2009).

Plaintiff alleges in his Complaint violations of his First Amendment and Fourteenth Amendment federal constitutional rights. (Pl.'s Am. Compl. at ¶ 5.) He seeks compensatory and punitive damages for these violations. (Pl.'s Am. Compl. at ¶ 9.) However, in order to award this relief, this Honorable Court would have to review and overrule the state court orders of the Defendant Judges. The Rooker-Feldman doctrine prohibits this type of review. Therefore, pursuant to the Rooker-Feldman doctrine, this Honorable Court lacks subject matter jurisdiction over Plaintiff's claims with final state court judgments.

B. PLAINTIFF FAILS TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED.

1. Plaintiff's suit is barred by the doctrine of absolute judicial immunity.

Plaintiff's claims for monetary damages are barred by the doctrine of absolute judicial immunity. A judge is immune from liability for all acts taken in

his judicial capacity. Stump v. Sparkman, 435 U.S. 349, 356, 98 S.Ct. 1099, 1104 (1978). Further, a "judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority." Id. at 356, 98 S.Ct. at 1105. The only time a judge will be subject to liability is for actions taken "in the clear absence of all jurisdiction." Id. (citing Bradley v. Fisher, 13 Wall. 335, 351 (1872)). The Supreme Court in Stump explained the difference between no jurisdiction and excess jurisdiction by looking to Bradley. Id. at 357, 98 S.Ct. at 1105, n.7 (citing Bradley, 13 Wall. at 352). Specifically, the Court noted "if a judge of a criminal court should convict a defendant of a nonexistent crime, he would merely be acting in excess of his jurisdiction and would be immune." Id.

For purposes of determining immunity, jurisdiction is not limited to jurisdiction over a single case, but to the jurisdictional parameters of the judge's court, here the general subject matter jurisdiction of Courts of Common Pleas in Pennsylvania. The courts of common pleas are courts of general jurisdiction. 42 Pa. C.S.A. § 931(a) provides in relevant part:

- a. General rule ... the courts of common pleas shall have unlimited original jurisdiction of all actions and proceedings ...

Thus, the subject matter jurisdiction of the court of common pleas is very broad.

Plaintiff's factual allegations are devoted solely to the judicial actions of the Defendant Judges. Plaintiff asserts violations of his constitutional rights in the

rulings made by Court Defendants while sitting as judicial officers in the underlying custody, mortgage foreclosure and defamation matters. (Pl.'s Am. Compl. at ¶¶ 111, 126, 132, 138, 140, 153, 162-164, 169-172, 219, 227, 237-238, 247, 261.) Further, Plaintiff fails to make any factual allegations whatsoever involving non-judicial actions against Defendant Judges Renn, Kennedy, Dorney and Cook even though he attempts to categorize them as "administrative actions and non-actions" involving "personal conflicts of interest." (Pl.'s Am. Compl. at ¶2.)

Plaintiff cannot maintain a suit against a judge for his judicial actions. Nothing in the Plaintiff's Complaint can be interpreted as an allegation that the named Judges acted outside of their judicial functions or in the clear absence of jurisdiction when ruling in the underlying matters. As judges of the court of common pleas they had jurisdiction to hear the custody, foreclosure and defamation matters, to deny recusal, and to rule on the various motions. Even if the rulings were in error or in excess of authority, it was still done with appropriate jurisdiction. Therefore, the doctrine of judicial immunity applies to bar Plaintiff's claims for monetary damages against Defendant Judges Renn, Kennedy, Dorney and Cook.

2. Defendants Chief Justice Castille and Court Administrator Chuk in their individual capacity are entitled to qualified immunity.

A public official's actions are protected by qualified immunity if he can show that the "offending" conduct did not violate "clearly established statutory or constitutional rights which a reasonable person should have known." Andrews v. Philadelphia, 895 F.2d 1469, 1479 (3d Cir 1990). Qualified immunity is intended to protect officials from the potential consequences of suit, including distraction from official duties, inhibition of discretionary action, and deterrence of able people from public service. Mitchell v. Forsyth, 472 U.S. 511, 526(1985). "[E]ven such pretrial matters as discovery are to be avoided if possible, as '[i]nquiries of this kind can be peculiarly disruptive of effective government.'" Harlow v. Fitzgerald, 457 U.S. 800, 817, (1982).

Plaintiff's Complaint establishes no clear statutory or constitutional right. In fact, Defendant Chuk is not even sure what rights Plaintiff alleges he violated. Plaintiff asserts that Defendant Chuk failed to notify him of the judicial assignment in his underlying matters and this somehow violated his due process rights. (Pl.'s Am. Compl. at ¶¶ 166, 210, 211, 217-219.) However, Plaintiff does not explain how this violates his due process rights. Parties are not permitted to choose the judicial officer who presides over their cases. Further, Plaintiff's motions have been heard by the assigned judicial officer in a timely fashion. Plaintiff however is

unhappy with the results and has filed numerous appeals in state court as well as the herein federal action. As Plaintiff has failed to assert a clearly established statutory or constitutional right which Defendant Chuk violated, Defendant is entitled to qualified immunity.

As to Defendant Chief Justice Castille, Plaintiff once again fails to show a clear statutory or constitutional right. He asserts that a statement made by the Chief Justice to the press, regarding a case in which Plaintiff was not involved, chilled Plaintiff's free speech. (Pl.'s Am. Compl. at ¶¶ 272-274.) This Honorable Court in League of Women Voters, the case which Defendant Chief Justice Castille was speaking about, found that plaintiffs there failed to establish a nexus between disciplinary sanctions and the statement made by the Chief Justice. 2009 U.S. Dist. LEXIS 54705 at *8 n.4. If League plaintiffs failed to show a nexus, it is impossible for Plaintiff here to show there was a clear statutory or constitutional right. Therefore, Defendant Chief Justice Castille is entitled to qualified immunity.

Moreover, the Third Circuit Court of Appeals has held that a defendant is entitled to enough facts from a plaintiff to assert a qualified immunity defense at the 12 (b) motion stage, stating:

Even when a defendant does not formally move for a more definite statement, the district court has the discretion to demand more specific factual allegations in order to protect the substance of the qualified immunity defense and avoid subjecting government officials who may be immune from suit to needless discovery and the other burdens of litigation.

Thomas v. Independence Twp., 463 F.3d 285, 289 (3d Cir. 2006).

Defendants Chief Justice Castille and Court Administrator Chuk are entitled to qualified immunity. Alternatively, Defendants move this Honorable Court for a more definite statement to determine whether qualified immunity is fully applicable. Should this Court believe that additional facts are warranted to determine whether the defense of qualified immunity is applicable, the Court is respectfully requested, under Thomas v. Independence, to direct that Plaintiff file an Amended Complaint specifically setting forth such facts.

3. Plaintiff's claims are barred by the Statute of Limitations.

Plaintiff's claims against Judicial Defendants are barred by the statute of limitations. A claim under 42 U.S.C. § 1983 for federal civil rights violations relies on the statute of limitations for a state's personal injury actions. Lake v. Arnold, 232 F.3d 360, 368 (3d Cir. 2000). Thus, for a § 1983 action arising in Pennsylvania, the applicable statute of limitations is two years. Id.; 42 Pa.C.S.A. § 5524.

Plaintiff admits in his Complaint that the custody action took place in 1998 and 1999. (Pl.'s Compl. at ¶¶ 28-79.) The foreclosure action began in 2003. (Pl.'s Am. Compl. at ¶ 138.) He filed the herein action on November 6, 2009. Most of the alleged violations of Plaintiff's constitutional rights occurred more than two years prior to the November 6, 2009, filing date. All of Plaintiff's factual

allegations against Defendants the Supreme Court of Pennsylvania, Judge Dorney, Judge Kennedy and Court Administrator Chuk clearly occurred before the filing date. (Pl.'s Am. Compl. at ¶¶ 11 – 219.) Plaintiff knew or should have known of these alleged constitutional violations prior to the November 6, 2009. Therefore, most, if not all, of Plaintiff's claims are clearly time-barred by the two year statute of limitation for § 1983 matters in Pennsylvania. Certainly all claims against Defendants the Supreme Court of Pennsylvania, Judge Dorney, Judge Kennedy and Court Administrator Chuk should be dismissed as time-barred.

V. CONCLUSION

For all the foregoing reasons, Court Defendants requests this Honorable Court to dismiss Plaintiff's claims, with prejudice.

Respectfully submitted,

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**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

WILLIAM KEISLING

Plaintiff

v.

JUDGE RICHARD RENN, *et al.*,

Defendants

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CIVIL ACTION

NO. 1:09-CV-2181

HON. JOHN E. JONES, III

ELECTRONICALLY FILED

CERTIFICATE OF COMPLIANCE

I, Geri Romanello St. Joseph, Counsel for Court Defendants, hereby certify pursuant to Local Rule 7.8(b)(2) for the Middle District of Pennsylvania that Court Defendants' Brief complies with the word-count limit. Certification is reliant on the word count of a word-processing system used to prepare the Brief.

Court Defendants' Brief contains 4,909 words.

s/Geri Romanello St. Joseph
GERI ROMANELLO ST. JOSEPH, ESQ.

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

WILLIAM KEISLING	:	
	:	CIVIL ACTION
<i>Plaintiff</i>	:	
	:	NO. 1:09-CV-2181
v.	:	
	:	
JUDGE RICHARD RENN, <i>et al.</i> ,	:	HON. JOHN E. JONES, III
	:	
<i>Defendants</i>	:	<i>ELECTRONICALLY FILED</i>

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that on January 6, 2010, she personally caused to be served upon the following a true and correct copy of the foregoing *Brief in Support of Motion to Dismiss Plaintiff's Amended Claims*, filed on behalf of Court Defendants, by ECF Electronic Service and to Plaintiff by mailing same first class, postage pre-paid, U.S. mail:

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Lead Attorney for Judicial Defendants

**IN THE UNITED STATES DISTRICT COURT
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WILLIAM KEISLING

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CIVIL ACTION

NO. 1:09-CV-2181

HON. JOHN E. JONES, III

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CERTIFICATE OF NONCONCURRENCE

In accordance with the Rules of the Middle District, undersigned counsel verifies that she contacted William Keisling, pro se Plaintiff, and he does not concur in the within Motion to Dismiss.

Respectfully submitted,

s/Geri Romanello St. Joseph

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