

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

ROBERT OLENDER	:	
	:	CIVIL ACTION
Plaintiff	:	
	:	
v.	:	No. 96-8117
	:	
ALAN RUBENSTEIN, et al.	:	
	:	
Defendant.	:	

MEMORANDUM AND ORDER

Defendants Alan Rubenstein, District Attorney, and Troy Leitzel, Assistant District Attorney, have filed a motion to dismiss this action. I will grant the motion.

Absolute immunity protects a district attorney and an assistant district attorney from liability for their decisions relating to initiation of prosecution and designation of crimes to be charged, their discussions with a defendant's attorney, and their filing of petitions and conducting of preliminary hearings or trials. All of these actions are "performed in a 'quasi-judicial' role." Kulwicki v. Dawson, 969 F.2d 1454, 1463 (3d Cir. 1992).

Qualified immunity protects a district attorney for his actions in communicating to the media and to outside parties. Boykin v. Bloomsburg Univ. of Pennsylvania, et al., 893 F.Supp. 400, 407 (M.D.Pa. 1995), aff'd, 91 F.3d 122 (3d Cir. 1996), cert. denied, 117 S.Ct. 739, 136 L.Ed.2d 678 (1997) ("comments to the media are not necessarily a prosecutorial function, and they are

therefore entitled only to qualified immunity"); Buckley v. Fitzsimmons, 509 U.S. 259, 277-78, 113 S.Ct. 2606, 2617-18, 125 L.Ed.2d 209 (1993); Kulwicki, at 1466. Qualified immunity is overcome if it is shown that the district attorney's conduct "violate[d] clearly established statutory or constitutional rights of which a reasonable person would have known." Harlow v. Fitzgerald, 457 U.S. 800, 817-18, 102 S.Ct. 2727, 2738, 73 L.Ed.2d 396 (1982).

The first step on the way to deciding if a valid qualified immunity defense has been stated is to determine whether the defendant violated a constitutional right at all. Siegert v. Gilley, 500 U.S. 226, 233, 111 S.Ct. 1789, 1793, 114 L.Ed.2d 277 (1991). Defendant fails to allege any constitutional violation based upon statements made to the press and outside parties. At most, what is alleged is that the statements were defamatory. "Defamation, by itself, is a tort actionable under the laws of most states, but not a constitutional deprivation." Id. at 233, 111 S.Ct. at 1794. See also Paul v. Davis, 424 U.S. 693, 708-09, 96 S.Ct. 1155, 1164-65, 47 L.Ed.2d 405 (1976); Kulwicki, at 1467 n. 15 (defamation claim does not present a case for § 1983 relief).

The only remaining claims in the Complaint are the state claims based upon alleged communications to the media and outside parties. I decline to exercise supplemental jurisdiction and therefore will dismiss the Complaint as it relates to these defendants. 28 U.S.C. § 1367(c); Shaffer v. Bd. of School Directors, et al., 730 F.2d 910, 912 (3d Cir. 1984).

Accordingly, this _____ day of May, 1997, **IT IS ORDERED** that Defendants Rubenstein and Leitzel's Motion to Dismiss is **GRANTED**, and the Complaint is **DISMISSED** with prejudice insofar as it pertains to Defendants Alan Rubenstein and Troy Leitzel. Counsel is put on notice that 28 U.S.C. § 1367(d) provides as follows:

The period of limitations for any claim asserted under subsection (a), and for any other claim in the same action that is voluntarily dismissed at the same time as or after the dismissal of the claims under subsection (a), shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period.

BRODY, J.

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