

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

RICKY GARRETT, Plaintiff	:	CIVIL ACTION
	:	
v.	:	
	:	
J. ALLEN NESBITT, C. CAREY, D. HAGGERLY, SCOTT JEFFERY, C. MCMONAGLE, L. KELMAN, LISA DOUPLE, CALIFORNIA, LOS ANGELS COUNTY PUBLIC DEFENDER OFFICE, Defendants.	:	No. 97-7339

**MEMORANDUM AND ORDER**

Yohn, J. August , 1998

Ricky Garrett filed this pro se action on December 3, 1997, alleging violations of 42 U.S.C. § 1983. On March 23, 1998, defendants J. Allen Nesbitt, C. Carey, D. Haggerly [sic], Scott Jeffery, C. McMonagle [sic], L. Kelman, and Lisa Douple filed a motion to dismiss the complaint as against them, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. On March 31, 1998, defendant “Los Angels [sic] County Public Defender Office” filed a motion to dismiss the complaint as against it, pursuant to Rules 8(a), 9(f), 12(b)(6), and 12(e) of the Federal Rules of Civil Procedure. In an order, dated April 29, 1998, the court granted defendants' motions and dismissed Garrett's complaint without prejudice. See Garrett v. Nesbitt, No. 97-7339, Order, Apr. 29, 1998, at 1. On May 28, 1998, Garrett filed this motion for leave to amend his

complaint. For the reasons stated below, Garrett's motion will be denied.

## I. Standard of Review

Federal Rule of Civil Procedure 15(a) provides, in relevant part:

A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served . . . . Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires.

Fed. R. Civ. P. 15(a). The decision to grant or deny leave to amend is committed to the sound discretion of the district court. See Foman v. Davis, 371 U.S. 178, 182 (1962).

The court may deny leave to amend if there is undue delay in seeking the amendment, bad faith in seeking the amendment, or undue prejudice to the opposing party by virtue of allowing the amendment. See Foman, 371 U.S. at 182; Averbach v. Rival Mfg. Co., 879 F.2d 1196, 1203 (3d Cir. 1989). The court may also refuse to allow an amendment that fails to state a cause of action because it would not survive a motion to dismiss. See Adams v. Gould, Inc., 739 F.2d 858, 864 (3d Cir. 1984), cert. denied, 469 U.S. 1122 (1985); Harle v. Edward B. O'Reilly & Assocs., Inc., 1993 WL 39319, at \*1 (E.D. Pa. Jan. 12, 1993).

## II. Discussion

### A. Allegations Concerning Original Defendants

Although Garrett's original complaint was difficult to understand, it appeared that Garrett was asserting a § 1983 false imprisonment claim against defendants based on

an allegedly unlawful arrest. See Garrett v. Nesbitt, No. 97-7339, Order, Apr. 29, 1998, at 2 (citing Complaint, at 2-3). In order to state a claim for deprivation of rights under § 1983, a plaintiff must allege that the defendant: (1) acted under color of state law, and (2) caused an injury to the plaintiff's constitutional or federal rights. See Parrat v. Taylor, 451 U.S. 527, 535 (1981), overruled on other grounds by Daniels v. Williams, 474 U.S. 327 (1986).

1. Bucks County Correctional Facility Defendants

In its April 29, 1998 order, the court dismissed Garrett's § 1983 claims against J. Allen Nesbitt, C. Carey, and D. Haggerly [sic] (collectively, "the Bucks County Correctional Facility defendants") because the court concluded that "nowhere in the complaint does Garrett state that the Bucks County defendants violated any of his constitutional or federal rights." Garrett v. Nesbitt, No. 97-7339, Order, Apr. 29, 1998, at 3. The court explained that "[t]o the best that this court can discern, Garrett is alleging that he was mistakenly released from prison in 1981 and has now been required to serve the balance of his sentence. These allegations are insufficient to state a § 1983 claim for false imprisonment against the Bucks County Correctional Facility defendants." Id. at 3-4. In his amended complaint, Garrett states no new allegations concerning the Bucks County Correctional Facility defendants that would state a claim for relief under § 1983. See [Amended] Complaint ("Amended Complaint") ¶¶ 8-10. For this reason, the court will deny Garrett's motion to amend his complaint to state claims against the Bucks County Correctional Facility defendants.

2. Bucks County Public Defender's Office Defendants

In its April 29, 1998 order, the court dismissed Garrett's claims against Lisa Douple, C. McMonagle [sic], L. Kelman, and Scott Jeffery (collectively, "the Bucks County Public Defender's Office defendants") because "[a] defense attorney, whether court-appointed or privately retained, represents only his client, and not the state." Garrett v. Nesbitt, No. 97-7339, Order, Apr. 29, 1998, at 3. As actions taken by a defense attorney on behalf of his client are not actions taken under the color of state law, the court concluded that Garrett had failed to state a § 1983 false imprisonment claim against the Bucks County Public Defender's Office defendants. See id.

In his amended complaint, Garrett reasserts his § 1983 claim against these defendants. In addition, he asserts several new claims against them. Specifically, he alleges that Douple and McMonagle violated 42 U.S.C. §§ 1981, 1985(3), and 1986, the First Amendment, and the Due Process Clause of the Fifth Amendment. See Amended Complaint ¶ 17. He alleges that Kelman violated 42 U.S.C. §§ 1981 and 1985(3), the First Amendment, and the Due Process Clause of the Fifth Amendment. See Amended Complaint ¶¶ 22, 24-25. He alleges that Jeffery violated 42 U.S.C. § 1985(3). See Amended Complaint ¶ 26. The court will address each of these alleged violations in turn.

(a) Section 1981

In order to state a claim under § 1981, a plaintiff must allege that: (1) the plaintiff is a member of a racial minority; (2) the defendant intended to discriminate on the basis

of race; and (3) the discrimination concerned one or more of the activities enumerated in the statute, which include the right to make and enforce contracts, to sue, to be parties, and to give evidence. See Yelverton v. Lehman, 1996 WL 296551, at \*7 (E.D. Pa. June 3, 1996).<sup>1</sup> Garrett has failed to state a claim under § 1981 against Douple, McMonagle, and Kelman. He has nowhere alleged facts sufficient to establish any of the three elements of a § 1981 claim.<sup>2</sup> For this reason, the court will deny Garrett's

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<sup>1</sup> Section 1981 provides, in relevant part:

All persons within the jurisdiction of the United States shall have the same right in every state and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

42 U.S.C. § 1981(a).

<sup>2</sup> Garrett makes the following allegations with respect to Lisa Douple and C. McMonagle:

17. Lisa Douple on 1-2-96 and C. McMonagle on 1-31-96, both lied to Plaintiff cover-up [sic] the fact there were records and a COURT ORDER, that support Plaintiff [sic] story about his release. These records would have helped plaintiff gain his freedom. Lisa Douple and C. McMonagle violated acts under 1981, 1983, 1985(e), and 1986, and under the First Amendment and the DUE PROCESS CLAUSE of the Fifth Amendment. Lisa Douple and C. McMonagle in [sic] conspiracy with Bucks County Prison officials and Bucks County District Attorne [sic] office.

Amended Complaint ¶ 17.

Garrett makes the following allegations with respect to Kelman:

22. After trying to get intouch [sic] with Scott Jeffery, public defender Lane Kelman answered my inmate request concerning my case. I showed him the court order, he said so what, you were released to take yourself to Gaudenzia House, and you didn'tgo [sic]. My reply you can't release a person with State Parole detainer to take himself to a Civil commitment program[.] The court order said transfer, not release. I ask Mr. Kelman to file a Habeas Corpus, his reply you didn't have any legal grounds to file Habeas Corpus.

motion to amend his complaint to state a § 1981 claim against these defendants.

(b) Section 1985(3)

In order to state a claim for violation of § 1985(3), a plaintiff must allege four elements: (1) a conspiracy; (2) for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; and (3) an act in furtherance of the conspiracy; (4) whereby a person is either injured in his person or property or deprived of any right or privilege of a citizen of the United States. See United Brotherhood of Carpenters and Joiners of Am. v. Scott, 463 U.S. 825, 828-29 (1983).<sup>3</sup> Although § 1985(3) reaches

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24. The court order dosen't [sic] prove a thing. It's not ground [sic] Habeas Corpus. Plaintiff reply State Parole closed my file 5-14-87. State Parole don't [sic] close files on fugitive. Mr. Kelman reply I'll check in your case. Never hear from Mr. kelman [sic] again. . . .

25. Defendant, Lane Kelman at all relevent [sic] times, he acting [sic] in such capacity as the agent servant and employee of defendant County of Bucks. Defendant, Lane Kelman is not being sued individually and in his official capacity as a Public Defender, but is being sued as Private citizen in a conspiracy with officials of the Bucks County Prison to deprive Plaintiff of his constitutional rights.

Amended Complaint ¶¶ 22, 24-25.

<sup>3</sup> Section 1985(3) provides, in relevant part:

If two or more persons in any State or Territory conspire . . . for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws . . . ; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of

“purely private” conspiracies, no cause of action exists when the private conspiracy interferes with rights that may only be abridged by state action. See Bray v. Alexandria Women's Health Clinic, 506 U.S. 263, 268 (1993) (citing Carpenters, 463 U.S. at 833 (1983)). In addition, in order to prove a private conspiracy under § 1985(3), the plaintiff must show that “some racial, or perhaps otherwise class-based, invidiously discriminatory animus [lay] behind the conspirators' action.” Id. (quoting Griffin v. Breckenridge, 403 U.S. 88, 102 (1971)). There is no presumption of discriminatory purpose, and a plaintiff must clearly show intentional discrimination. See De Botton v. Marple Township, 689 F.Supp. 477, 482 (E.D. Pa.1988).

Garrett has failed to allege facts sufficient to state a § 1985(3) claim against the Bucks County Public Defender's Office defendants. Garrett contends that these defendants entered into a “conspiracy with officials of the Bucks County Prison to deprive Plaintiff of his constitutional rights [i.e. his rights under the First Amendment, the Due Process Clause of the Fifth Amendment, and the Fourteenth Amendment].” Amended Complaint ¶ 25; see also id. ¶¶ 17, 26.<sup>4</sup> However, these defendants are

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having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against one or more of the conspirators.  
42 U.S.C. § 1985(3).

<sup>4</sup> Garrett makes the following allegations with respect to Scott Jeffery: 26. Defendant, Scott Jeffery at all relevent [sic] times, he was acting in scuh [sic] capacity as the agent servant and employee of defendant County of Bucks. Defendant, Scott Jefferey is not being sued individually and in his official capacity as a Public Defender, but is being sued as Private citizen in a conspiracy with officials of the Bucks County Prison to deprive Plaintiff of his constitutional rights guaranted [sic] by the FOURTEEN [sic] AMENDMENT.

private individuals; they are neither state nor federal actors, and thus cannot, by themselves, violate the First, Fifth, or Fourteenth Amendments. Because Garrett cannot state a § 1985(3) claim against the Bucks County Public Defender's Office defendants for these alleged constitutional violations, the court will deny Garrett's motion to amend his complaint to assert such a claim against them.

(c) Section 1986

Section 1986 is a companion statute to § 1985. It provides a plaintiff with a cause of action against any person who, knowing that a violation of § 1985 is about to be committed and possessing power to prevent its occurrence, fails to take action to frustrate its execution.<sup>5</sup> Because transgressions of § 1986 by definition depend on a

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27. Plaintiff was interviewed by Mr. Jefferey after sending two inmate request for legal help. I inform Mr. Jefferey that the warrant were [sic] invalid, and that was never in gaudenzia [sic] house program, was released by mistake in 1981 of January and State Parole closed my file 5-14-87. State Parole don't [sic] close files on figitives [sic]. Defendant reply I'll check into your case and see if there any [sic] in the court file to support your story. Never hear from the Defendant again. If Defendant Scott Jefferey checked the court records, he knew Bucks County Prison made a mistake in my release in January of 1981.

Amended Complaint ¶¶ 26-27.

<sup>5</sup> Section 1986 provides, in relevant part:

Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed; and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case . . . . But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued.

preexisting violation of § 1985, if the claimant does not set forth a cause of action under the latter, his claim under the former necessarily must fail also. See Rogin v. Bensalem Township, 616 F.2d 680, 696 (3d Cir. 1980). Because the court has concluded that Garrett has failed to allege facts sufficient to state a claim under § 1985, the court will deny his motion to amend his complaint to add a § 1986 claim against Double and McMonagle.

(d) Section 1983

As explained above and in the court's April 29, 1998 order, Garrett cannot state a claim against the Bucks County Public Defender's Office defendants for violations of § 1983 because he cannot show that they acted under color of state law. See Discussion, supra Part II.A.2; Garrett v. Nesbitt, No. 97-7339, Order, Apr. 29, 1998, at 3. The court will therefore deny Garrett's motion to amend his complaint to reassert this claim.

B. Allegations Concerning New Defendants

1. Bucks County District Attorney's Office Defendants

Garrett seeks to amend his complaint to add the Bucks County District Attorney's Office as well as District Attorneys Terry Hauck and Ethan O'Shea as defendants (collectively, "the Bucks County District Attorney's Office defendants"). Garrett makes no allegations regarding the District Attorney's Office, itself. With respect to Hauck,

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42 U.S.C. § 1986.

Garrett makes the following allegations:

Terry Hauck is not entitled to prosecutorial [sic] immunity for allegedly lying and filing [sic] a false affidavit. Buck [sic] County probation dept., and Terry Hauck conspire [sic] to use of legal process to accomplish an unlawful purpose not intended by the law. The defendant Terry Hauck acted under the color of law and pursuant to his authority as District Attorney.

Amended Complaint ¶ 11.

With respect to O'Shea, Garrett makes the following allegations:

Defendant[] District Attorney Etan [sic] O'shea . . . at all relevant time . . . was acting in such capacity as the agent[], servant[] and employee of defendant County of Bucks. Etan [sic] O'shea is sued individually and in his official capacity. . . . On 12-19-95 the amending of 9-9-87 bench for probation [sic] violation to read escape.

Amended Complaint ¶ 12.

The court construes these allegations as asserting claims under §§ 1983 and 1985(3). However, even holding Garrett's amended complaint to less stringent pleading standards applicable to pro se plaintiffs, see Haines v. Kerner, 404 U.S. 519, (1972), the court concludes that Garrett has nowhere alleged that the Bucks County District Attorney's Office defendants violated any of his constitutional or federal rights. Without making this allegation, Garrett cannot state a claim under § 1983. See Parrat v. Taylor, 451 U.S. at 535.<sup>6</sup>

Garrett has also failed to allege facts sufficient to state a § 1983(5) claim against the Bucks County District Attorney's Office defendants. Specifically, he has failed to

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<sup>6</sup> Moreover, even if Garrett were to allege such constitutional violations, Hauck and O'Shea would be immune from suit in their individual capacities to the extent that their allegedly unconstitutional actions were "intimately associated with the judicial phase of the criminal process." Imbler v. Pachtman, 424 U.S. 409, 430 (1976).

identify any specific acts taken by these defendants in furtherance of the alleged conspiracy; any injuries to his person or property or deprivations to his rights or privileges; and any discriminatory animus on the part of these defendants. For these reasons, the court will deny Garrett's motion to amend his complaint to state claims under § 1983 and § 1985(3) against the Bucks County District Attorney's Office defendants.

2. Bucks County Probation Department, Bucks County Prison, and the Director of Bucks County Prison

Garrett seeks to amend his complaint to add the Bucks County Probation Department, the Bucks County Prison, and the Director of the Bucks County Prison, Arthur Wellenstein, as defendants in this action. Garrett makes the following allegations with respect to the Bucks County Probation Department:

11. . . . The Probation [sic] Dept., is sued in its official capacity as a conspirer in its part in the 9-4-87 hearing in front of judge Clark, before whom the proceeding is brought had no jurisdiction, or that the indictment or complaint upon which the prosecution was based lacked certain items. Because of my inadvertent [sic] release by prison authorities, I was never officialy [sic] on Probation. There no [sic] evidence in the Court files support a probation violation. . . . Buck [sic] County probation dept., and Terry Hauck conspire to use of legal process to accomplish an unlawful purpose not intended by the law.

Amended Complaint ¶ 11.

Garrett alleges that the Bucks County Prison conspired to deprive him of his rights guaranteed by the Fourteenth Amendment. See Amended Complaint ¶ 18.

Garrett makes the following allegations with respect to Prison Director Wellenstein:

8. . . . The Director of Bucks County Prison Arthur M. Wellenstein and C. Cary filled [sic] a complaint in D.A. office on 1-18-81 that I, Ricky Garrett had

split program by trying to make it look like Plaintiff had escaped. Defendants lied to cover-up there [sic] inadvertent release by the Bucks County authorities.

9. . . . I have enclosed a letter Director Arthur M. Wellenstein wrote to the sentencing Judge for the record. the Court can see that defendants was [sic] aware of State Parole detainer and wanted Plaintiff to be re-comitment [sic] back to a State Institution.

Addition to Motion to Amend, ¶¶ 8-9.

The court construes these allegations as asserting claims under § 1983 and § 1985(3). Garrett's § 1983 claims against the Bucks County Probation Department and Wellenstein fail because Garrett nowhere alleges that these defendants violated any of his constitutional or federal rights. See Parrat v. Taylor, 451 U.S. at 535. Garrett's § 1983 claim against the Bucks County Prison fails because it is a county agency, and counties and their agencies may be sued directly under § 1983 only when the alleged unconstitutional action implements a policy or governmental custom that is so well settled as to have the force of law. See Monell v. Dep't of Social Services, 436 U.S. 658, 690 (1978). An action arising under this section must be dismissed when the plaintiff fails to establish in his pleadings that the unconstitutional actions allegedly taken by the county agency were the product of official policy or custom. See id.; Iseley v. Bucks County, 549 F. Supp. 160, 168 (E.D. Pa. 1982). As Garrett has failed to allege that an official policy or custom of the Bucks County Prison resulted in the alleged deprivation of his Fourteenth Amendment rights, he has failed to state a § 1983 claim against the Bucks County Prison.

Garrett has also failed to allege facts sufficient to state claims against these defendants pursuant to § 1985(3). Specifically, he has failed to identify any specific

acts taken by these defendants in furtherance of the alleged conspiracy; any injuries to his person or property or deprivations to his rights or privileges; and any discriminatory animus on the part of these defendants. For these reasons, the court will deny Garrett's motion to amend his complaint to assert claims under § 1983 and § 1985(3) against the Bucks County Probation Department, the Bucks County Prison, and Wellenstein.

3. Court of Common Pleas Judge R. Barry McAndrews

Garrett seeks to amend his complaint to add the Honorable R. Barry McAndrews of the Court of Common Pleas of Bucks County as a defendant. He makes the following allegations with respect to Judge McAndrews:

12. . . . R. Barry McAndrews is sued individually [sic] and in his official capacity. On 12-19-95 the amending of 9-9-87 bench for probation [sic] violation to read escape.

13. . . . The 9-9-87 invalid in its filing [sic], making any warrant amended off [sic] it also invalid. This is not the only reason the 12-19-95 invalid. By law you can not Amend a probation violation to the offense Escape. . . . The bench warrant for a no-show on a probation violation by law is a none commencement warrant. These's warrants come under statue [sic] in there [sic] indictment and information in there [sic] filing [sic]. Judge R. Barry McAndrews and Etan [sic] O'shea conspire to use of a legal process to accomplish an unlawful purpose not intended by law. Defendant R. Barry McAndrews acted under the color of law and pursuant to his authority as a Judge. . . .

Amended Complaint ¶¶ 12-13.

The court construes these allegations as asserting claims under §§ 1983 and 1985(3) against Judge McAndrews in both his individual and official capacities.

However, these claims are barred by two different immunity doctrines. Insofar as

Garrett brings these claims against Judge McAndrews in his individual capacity, the claims are barred by the doctrine of absolute immunity. Judges are absolutely immune from suit for actions taken in their judicial capacities. See Mireles v. Waco, 502 U.S. 9 (1991); Stump v. Sparkman, 435 U.S. 349 (1978); Jackson v. Common Pleas Court, 1998 WL 334234, at \*1 (E.D. Pa. June 24, 1998). They may be sued only if they acted “in the clear absence of all jurisdiction.” Stump, 435 U.S. at 356-57. If the acts complained of are of the kind normally performed by a judge, and if the plaintiff was dealing with the judge in his judicial capacity, then the suit cannot be entertained. See Dellenbach v. Letsinger, 889 F.3d 755, 759 (7th Cir. 1989). Garrett clearly states that he seeks to bring claims against Judge McAndrews for actions taken “pursuant to his authority as a Judge”--in other words, for actions allegedly taken in his judicial capacity. See Amended Complaint ¶ 13. Judge McAndrews is thus absolutely immune from Garrett's §§ 1983 and 1985(3) claims.

Insofar as Garrett asserts these claims against Judge McAndrews in his official capacity, the claims are barred by the Eleventh Amendment because Judge McAndrews is a state court judge, and the Eleventh Amendment bars suits for money damages against state officials acting in their official capacities. See Edelman v. Jordan, 415 U.S. 651, 663-67 (1974); Faust v. Commonwealth of Pennsylvania Dep't of Revenue, 1989 WL 156311, at \*1 (E.D. Pa. Dec. 22, 1989).<sup>7</sup> For these reasons, the

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<sup>7</sup> State officials are not immune from actions in federal court that seek declaratory or injunctive relief. However, the court construes Garrett's complaint as asserting claims for money damages only. See Addition to Motion to Amend, at 6 (“Plaintiff requests [sic] this Honorable Court to enter an ORDER awarding . . . Compensatory damages to Plaintiff in an amount in excess of One Hundred Thousand Dollars (\$100,000.00) . . . [and] punitive damages . . . in an amount in excess of Three

court will deny Garrett's motion to amend his complaint to add Judge McAndrews as a defendant.

4. The Court of Common Pleas of Bucks County, the Court of Common Pleas Clerk's Office, and the Court of Common Pleas Deputy Court Administrator

Garrett seeks to assert §§ 1983 and 1985(3) claims against the Court of Common Pleas of Bucks County (“the Court of Common Pleas”), the Court of Common Pleas Clerk's Office (“the Clerk's Office”), and the Court of Common Pleas Deputy Court Administrator, Douglas R. Praul (“Praul”). Garrett makes the following allegations with respect to the Court of Common Pleas and the Clerk's Office:

20. Plaintiff request all court records concerning case 80/002428 on record. In March of 1996 I received a copy of what believe was the complete file. There was no mention of ORDER COURT on the court docket sheet and no court in the file sent to me by the court clerk office. After checking the court records myself decoverthat [sic] the court order signed by judge Issac S. Garb was in the court file[.] This court [sic] was the main pieces of evidence, that said I had State parole detainer and to be Transferred Forth, not release to take himself, like Bucks County prison officials like you to believe. . . Without this court order it was my word against the Bucks County prison officials. Without evidence no one would believe [sic] over the Prison official.

21. After being imprison [sic] for more than a year, I could only hope Michael Kimpl, could help me and he did he sent me a cope [sic] of 12-22-80 Court Order. At this point it was clear there was CONSPIRACY PLOT to cover-up the mistake in my release 17 years ago. The Court Clerk office and the other Defendant mention [sic] in this Civil Action played apart [sic] in the conspiracy.

Amended Complaint ¶¶ 20-21.

Garrett makes the following allegations with respect to Praul:

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Million Dollars (\$3,000,000.00)).

18. Defendant, Douglas R. Praul, at all relevant times, he was acting in such capacity as the agents, servants and employee of defendant County of Bucks. Douglas R. Praul is sued individually and in his official capacity. Denied Plaintiff the right to represent [sic] himself after the Public Defender office refused help [sic] Plaintiff. Douglas R. Praul Denied Plaintiff his First, Fourth, Fifth, Eighth and Fourteenth Amendments to the Constitution of the United States. Court administrator [sic] Douglas R. Praul conspire with Bucks County Prison and Public Defender office in grievous Deprivation of rights guaranteed [sic] by the FOURTEENTH AMENDMENT [sic] of the UNITED STATES CONSTITUTION as a result of interference [sic] of DUE PROCESS on 5-8-97, after filing a HABEAS CORPUS on 4-25-97.

Amended Complaint ¶ 18.

Garrett cannot bring these claims against the Court of Common Pleas and the Clerk's Office because these defendants are state agencies. It is well settled that, in the absence of consent, the Eleventh Amendment bars suits in federal court in which state agencies are named as defendants. See Papasan v. Allain, 478 U.S. 265, 276 (1986). The Court of Common Pleas and the Clerk's Office have not consented to this action. For this reason, Garrett's claims against them are barred by the Eleventh Amendment.<sup>8</sup>

The Eleventh Amendment also bars suits for money damages against state officials acting in their official capacities. See Edelman v. Jordan, 415 U.S. 651, 663-67 (1974). Insofar as Garrett brings §§ 1983 and 1985(3) claims against Praul in the latter's official capacity, these claims are barred by the Eleventh Amendment.

Garrett's claims are not barred by the Eleventh Amendment insofar as Garrett

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<sup>8</sup> The court notes that Congress, acting in the exercise of its enforcement authority under § 5 of the Fourteenth Amendment may abrogate the states' Eleventh Amendment immunity through a clear and unmistakable statement to this effect in a statute. See Dellmuth v. Muth, 109 S. Ct. 2397, 2400 (1989). However, the Supreme Court has held that no such intent exists in § 1983. See Quern v. Jordan, 440 U.S. 332, 341 (1979).

asserts them against Praul in his individual capacity. However, the court concludes that Garrett has failed to allege facts sufficient to state these claims. Specifically, Garrett has failed to explain in what way Praul allegedly violated his rights under the First, Fourth, Fifth, Eighth, and Fourteenth Amendments. Garrett does not even indicate which rights were allegedly violated. Rather, Garrett simply makes the conclusory assertion that Praul violated these amendments. This assertion is insufficient to state a claim pursuant to § 1983. See, e.g., Bailey v. Commonwealth of Pennsylvania, 1994 WL 112218, at \*2 (E.D. Pa. Mar. 25, 1994) (dismissing plaintiffs' claims concerning the First Amendment because “plaintiffs . . . failed to allege facts in the Complaint to support any violation of First Amendment rights” and noting that the complaint did “not even suggest which rights of the First Amendment may have been implicated in th[e] case”).

Garrett has also failed to allege facts sufficient to state a § 1985(3) individual capacity claim against Praul. Specifically, Garrett has failed to identify specific acts taken in furtherance of the alleged conspiracy and has failed to identify how he has been injured in his person or property or deprived of a right or privilege as a citizen of the United States.

The court will therefore deny Garrett's motion to amend his complaint to assert claims against the Court of Common Pleas, the Court of Common Pleas Clerk's Office, and Praul pursuant to §§ 1983 and § 1985(3).

5. Los Angeles County Sheriff's Department, Los Angeles County Prison, Los Angeles County Police Department, and Los Angeles County Court Administrator

Garrett seeks to amend his complaint to add the Los Angeles County Sheriff's Department ("L.A. Sheriff's Department"), the Los Angeles County Prison ("L.A. County Prison"), the Los Angeles County Police Department ("L.A. County Police Department"), and Los Angeles County Court Administrator, Frederick Ohlrich ("Ohlrich"), as defendants in this action.<sup>9</sup> He makes the following allegations with respect to the L.A. Sheriff's Department and the L.A. County Prison:

14. Defendants Los Angeles County sheriff dept [sic] and Los Angeles county prison, at all relevant times, they was [sic] acting in such capacity as the agents, servants and employee [sic] of defendant County of Los Angeles. The Defendant are [sic] being sued in there [sic] official capacity. Arrested in Los Angeles California on 12-13-95, without a warrant held in Los Angeles County prison for 6 days until probation violation warrant was amend [sic] to read escape, from 12-13-95 to 12-19-95.

15. . . . Los Angeles County sheriff held I Ricky Garett illegal in Los Angeles County prison for 6 days. At time I signed the extradition waiver there was no warrant charging me with the commission of a felony, item (1) on the extradition waiver, making the extradition waiver invalid. Los Angeles County sheriff acted under the color of law and pursuant [sic] to there [sic] authority as Los Angeles County Sheriff. Los Angeles County Sheriff in violation of the Interstate agreement on Detainer (9101 et seq [sic] of this title) and uniform Criminal Extradition Act are Constitutional and compact with requirement of [sic] DUE PROCESS Prisoner's action under CIVIL RIGHTS ACT (42 U.S.C.A. 1983).

Amended Complaint ¶¶ 14-15.

Garrett makes the following allegations with respect to the L.A. County Police Department:

The Los Angeles police dept. [sic] arrested Plaintiff in Los Angeles California on 12-13-95, without a warrant, held Plaintiff in Los Angeles County Prison for

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<sup>9</sup> It is not entirely clear which court employs Ohlrich. Because Garrett alleges that Ohlrich acted as the "agent, servant and employee of defendant County of Los Angeles," the court assumes that Ohlrich is the Court Administrator of Los Angeles County Court. See Addition to Motion to Amend ¶ 28.

6 days until a probation violation bench warrant could be amended to read escape on 12-19-95. Los Angeles police dept. allegedly lied in filling [sic] a false affidavit or false information to get judge Ahraham Khan to to [sic] sign the waiver of extradition. [sic]

Addition to Motion to Amend ¶ 14.

Garrett makes the following allegations with respect to Ohlrich:

Defendant Frederick Ohlrich Court Administrator at all relevant times, he acting in such capacity as the agent, servant and employee of defendant County of Los Angeles. Frederick Ohlrich is sued individually [sic] and in there [sic] official capacity. Defendant in conspiracy with Los Angeles police dept. Divison 30 who was in charge of Plaintiff extradition. Defendant set-up [sic] a for [sic] extradition hearing under false pretense for none existing felony warrant. Defendant used a legal process to accomplish unlawful purpose not intended by law, based on false pretense. . . .

Addition to Motion to Amend ¶ 28.

The court construes these allegations as asserting a § 1983 claim for false imprisonment based on an allegedly unlawful arrest. When arresting police officers lack probable cause to make an arrest, the arrestee has a claim under § 1983 for false imprisonment based on a detention pursuant to that arrest. Such a claim is grounded on the Fourth Amendment's guarantee against unreasonable seizures. See Groman v. Township of Manalapan, 47 F.3d 628, 636 (3d Cir. 1995) (citing Barna v. City of Perth Amboy, 42 F.3d 809, 820 (3d Cir. 1994)).

Garrett has not alleged facts sufficient to state a § 1983 false imprisonment claim against the L.A. County Sheriff's Office, the L.A. County Prison, or Ohlrich. As the court explained in its previous order, “[t]o the best that this court can discern, Garrett is alleging that he was mistakenly released from prison in 1981 and has now been required to serve the balance of his sentence.” Garrett v. Nesbitt, No. 97-7339, Order, Apr. 29, 1998, at 3. Such allegations are insufficient to state § 1983 false imprisonment

claims against these defendants.

Garrett has also failed to allege sufficient facts to state a § 1983 false imprisonment claim against the L.A. Police Department. Because this defendant is a county agency, Garrett can state a § 1983 claim against it only if he alleges that its alleged unconstitutional violations were the product of official policy or custom. See Monell, 436 U.S. at 690. He has made no such allegation. For these reasons, the court will deny Garrett's motion to amend his complaint to add these defendants.

6. Los Angeles County Public Defender's Office Defendants

Garrett seeks to amend his complaint to add a § 1983 claim against "Michael Judge and co-worker." See Addition to Motion to Amend ¶ 15. From Garrett's submissions, it appears that these individuals work for the Los Angeles County Public Defender's Office. See id. Garrett's § 1983 claims against these individuals fail for the same reason that his § 1983 claims against the Bucks County Public Defender's Office defendants failed. See Garrett v. Nesbitt, No. 97-7339, Order, Apr. 29, 1998, at 3. Defense attorneys, whether court-appointed or privately retained, represent only their clients, and not the state. See Polk County v. Dodson, 454 U.S. 312, 318 (1981); Black v. Bayer, 672 F.2d 309, 314 (3d Cir.), cert. denied, 459 U.S. 916 (1982). Actions taken by defense attorneys on behalf of their clients are not actions taken under the color of state law. See id. For this reason, Garrett cannot state a § 1983 claim against Michael Judge and his co-workers in the Los Angeles County Public Defender's Office. The court will therefore deny Garrett's motion to amend his complaint to assert such a claim.

An appropriate order follows.

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

RICKY GARRETT,	:	
Plaintiff	:	CIVIL ACTION
	:	
	:	
v.	:	
	:	
	:	
J. ALLEN NESBITT, C. CAREY,	:	
D. HAGGERLY, SCOTT JEFFERY,	:	
C. MCMONAGLE, L. KELMAN,	:	
LISA DOUPLE, CALIFORNIA,	:	
LOS ANGELS COUNTY PUBLIC	:	No. 97-7339
DEFENDER OFFICE,	:	
Defendants.	:	

**ORDER**

AND NOW, this        day of August, 1998, upon consideration of plaintiff's motion to amend his complaint, defendants J. Allen Nesbitt, C. Carey, D. Haggerly [sic], Scott Jeffery, C. McMonagle [sic], L. Kelman, and Lisa Douple's response thereto, and plaintiff's "Addition to Motion to Amend," IT IS HEREBY ORDERED that plaintiff's motion is DENIED WITH PREJUDICE.

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William H. Yohn, Jr., Judge