

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

ROBERT HARRIS	:	CIVIL ACTION
	:	
Plaintiff	:	
	:	
v.	:	
	:	
SETH GRANT & PUBLIC DEFENDER	:	
OF MONTGOMERY CO.	:	NO. 03-1676
	:	
Defendants	:	
	:	

Newcomer, S.J.

April , 2003

O P I N I O N

Presently before the Court is Defendants' Motion to Dismiss Plaintiff's Amended Complaint and the Plaintiff's response. For the reasons set forth in the following, Defendants' Motion is granted, in part, and denied, in part.

BACKGROUND

Plaintiff brought suit against Defendants Seth Grant and the Public Defender of Montgomery County, in the Court of Common Pleas, Philadelphia County, Pennsylvania, for alleged inadequate representation while detained and awaiting trial for criminal charges pending against him. The Defendants removed the matter to this Court and subsequently filed a motion to dismiss pursuant to Fed.R.Civ.P. 12(b)(6). The Plaintiff answered that motion by amending its claim and adding a claim for "negligence, misfeasance." This Court denied Defendant's Motion as moot and

turned its attention to the instant Motion which was filed shortly after the Plaintiff filed his Amended Complaint. The Court should note that the substance of Plaintiff's counsel's response to the Defendants' Motion can be summed up in two sentences taken from the Plaintiff's Answer. They are as follows, "[h]aving reviewed the case law cited by the Defendants, Plaintiff's counsel agrees that Plaintiff has not stated a Federal cause of action. However, there is nothing to indicate that the Defendants may not be sued under state law for negligent representation of the Plaintiff." Plaintiff's counsel goes on to encourage this Court to remand the matter to the state court.

DISCUSSION

I. Civil Rights Claim Against Seth Grant

In the first Count of his Amended Complaint, Plaintiff elicits a civil rights claim against his Montgomery County Defender, Seth Grant. The Plaintiff and Defendants are in agreement that the claim outlined in Count I fails. This is the case because public defenders are not considered state actors in their representation of clients. Polk County v. Dodson, 454 U.S. 312, 325 (1981). Accordingly, Count I must be dismissed.

II. Civil Rights Claim Against Public Defender of Montgomery Co.

The second count contained in Plaintiff's Amended

Complaint alleges that the Public Defender of Montgomery County violated the Plaintiff's civil rights by, among other things, "develop[ing], maintain[ing] and permitt[ing] to exist policies or customs which resulted in the deprivation of the Plaintiff's constitutional rights...." Such a claim differs significantly from that alleged in Plaintiff's Count I. While the Supreme Court has found that lawyers hired to represent the interests of a defendant are not functioning as a state actor, it has never held that city or county department heads of public defender's offices are to be treated in the same manner. In fact, the Ninth Circuit recently found that department heads are state actors when acting in such a capacity. Miranda v. Clark County, Nevada, 319 F.3d 465, 469 (9th Cir. 2003). The Miranda Court reasoned that a claim against a department head differs from a claim against an individual public defender representing a defendant because the department head "[is] not acting under any of the ethical standards of the lawyer-client relationship." Id. The "nature and function of [the department head's] function [is] administrative." Id. In this administrative capacity the department head is concerned with, among other things, department policies and allocation of resources. Thus, unlike the individual defender who acts at the behest of his client (the defendant), the department head is an actor of the state, taking his or her direction from forces higher up in the governmental

structure.

Despite Plaintiff's counsel's and Defendants' claims to the contrary, for the reasons set forth above, Plaintiff's claims set forth a valid federal claim. Furthermore, the Defendants' assertions that dismissal is proper because the Plaintiff has failed to outline specific customs and policies giving rise to the alleged civil rights violations is without merit. In addition, the Defendants' contention that the Plaintiff has merely brought forth allegations concerning the conduct of the public defender in representing the plaintiff in the criminal proceeding is incorrect. For these reasons, as well as those outlined above, Defendant's Motion to Dismiss Plaintiff's Count II is denied.

III. Motion for a More Definite Statement

Defendant's Motion for a More Definite Statement as it pertains to Plaintiff's surviving claims is granted. Clearly, Plaintiff needs to take some steps to clarify his Amended Complaint. To merely allege that the Defendants have committed a "violation of 42 U.S.C.A [sic]" is unacceptable. Plaintiff should have enough knowledge at this point in the proceedings to indicate which sections of the act are implicated here. Furthermore, while this Court acknowledges that it is early in the proceedings, the Plaintiff is encouraged to amend his Amended

Complaint at the earliest possible time to delineate which policies, procedures, customs, etc. Plaintiff refers to in his Amended Complaint. Finally, plaintiff is directed to clarify the pleadings with regard to Counts III and IV. It is unclear to this Court as to whether Plaintiff has properly plead the requisite elements of negligence.

IV. Plaintiff's Request for Remand

Plaintiff's suggestion that this matter be remanded to the Court of Common Pleas in Philadelphia County is without merit. Because Plaintiff has a valid pending federal claim (Count II) this court retains jurisdiction over both federal and state claims associated with this matter through supplemental jurisdiction. 28 U.S.C. § 1367.

AN APPROPRIATE ORDER SHALL FOLLOW.

Clarence C. Newcomer, S.J.

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O R D E R

AND NOW, this day of April, 2003, upon consideration of Defendants' Motion to Dismiss Plaintiff's Amended Complaint (Document 9) and Plaintiff's response, it is hereby ORDERED that said Motion is GRANTED, in part, and DENIED, in part as explained in the accompanying Opinion.

AND IT IS SO ORDERED.

Clarence C. Newcomer, S.J.