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

MARTIN A. DICKERSON,	:	CIVIL ACTION
Plaintiff	:	
	:	
v.	:	
	:	NO. 04-cv-4454
MONTGOMERY COUNTY	:	
DISTRICT ATTORNEY'S OFFICE	:	
et al,	:	
Defendant	:	

MEMORANDUM

Baylson, J. **December 10, 2004**

I. Introduction

Presently before this Court are Motions to Dismiss, pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) filed by Defendant Senior Judge Lawrence A. Brown and Defendant Montgomery County District Attorney's Office. For the reasons set forth below, the Motions to Dismiss the Complaint will be granted.

II. Procedural Background

On September 21, 2004, Martin A. Dickerson ("Plaintiff"), appearing pro se, filed a Complaint against the "Montgomery County District Attorney's Office, et al." Montgomery County Court of Common Pleas Senior Judge Lawrence A. Brown was added as a party on October 13, 2004. In his Complaint, Plaintiff alleges that Defendants violated his constitutional rights when he was arrested and convicted for various Pennsylvania criminal offenses in February 1998. On October 19, 2004, Defendant Brown filed this Motion to Dismiss. On October 26, 2004, Defendant Montgomery County District Attorney's Office filed a Motion to

Dismiss. Plaintiff filed a Response on November 3, 2004.

III. Legal Standard

When deciding a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), the court may grant the motion only if, accepting all well-pleaded allegations in the complaint as true, and viewing them in the light most favorable to plaintiff, the plaintiff is not entitled to relief. Doug Grant, Inc. V. Greate Bay Casino Corp., 232 F.3d 173, 183 (3d Cir. 2000). Accordingly, a federal court may dismiss a complaint for failure to state a claim only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations. Doe v. Delie, 257 F.3d 309, 313 (3d Cir. 2001).

IV. Discussion

A. Defendant Brown's Motion to Dismiss

1. Allegations

Defendant Brown's argument in support of the Motion to Dismiss is three-fold. First, Defendant Brown argues that pursuant to 28 U.S.C. § 1257 and the Rooker-Feldman doctrine, this court lacks subject matter jurisdiction to review this case. Second, Defendant argues that the doctrine of judicial immunity is an absolute bar to any damage claims against him. Finally, Defendant argues that in the absence of any allegation that Plaintiff's criminal proceedings concluded in his favor, he may not sue for damages based upon the rulings therein. (Defendant's Memorandum in Support of Motion to Dismiss at 1-7). Because the court finds that Defendant Brown is entitled to judicial immunity, the court need not rule on his other arguments.

2. Analysis

It is well-settled that judges defending against § 1983 actions enjoy absolute immunity

from damages liability for acts performed in their judicial capacities. Dennis v. Sparks, 449 U.S. 24, 27 (1980) (affirming grant of judicial immunity because judge was immune from liability in §1983 suit). The doctrine is also recognized by the Supreme Court of Pennsylvania. See Matter of XYP, 567 A.2d 1036, 1039 (Pa. 1989) ("Judicial immunity rests upon recognition of preserving an independent judiciary, and reflects a belief that judges should not be hampered by fear of vexatious suits and personal liability. . . . A judge must be free to administer the law without fear of consequences.").

Judges are immune from liability when 1) the judge has jurisdiction over the subject matter before him; and 2) he is performing a judicial act. Mireles v. Waco, 502 U.S. 9, 112 (1991) (reversing court of appeals and granting immunity to judge). Whether the act is judicial depends upon 1) whether it is a function normally performed by a judge and 2) whether the parties dealt with the judge in his judicial capacity. Stump v. Sparkman, 435 U.S. 349, 361-62 (1978) (reversing court of appeals decision, which reversed district court's decision that judge was entitled to judicial immunity in § 1983 claim).

In his Complaint, Plaintiff asserts that Defendant Brown was "in conspiracy with Erik Shmukler, D.A." to violate his constitutional rights. (Compl. at 4). Plaintiff makes no other allegations against Defendant Brown. Importantly, Plaintiff does not plead any facts that suggest Defendant Brown acted outside of his judicial capacity or "beyond the normal course of court business." Feingold v. Hill, 521 A.2d 33, 36 (Pa. Super. 1983) (affirming trial court's dismissal of tort claims against judge on grounds of judicial immunity). Thus, Plaintiff has failed to plead sufficient facts to state a claim against Defendant Brown. Because Defendant Brown is entitled to judicial immunity, the court will grant his Motion to Dismiss and the Complaint against him

will be dismissed with prejudice.

B. Defendant Montgomery County District Attorney's Office Motion to Dismiss

1. Allegations

The Montgomery County District Attorney's Office also makes three arguments in support of its Motion to Dismiss. First, Defendant argues that there is no authority under Pennsylvania law permitting a department or agency of county government, such as the Montgomery County District Attorney's Office, to be sued for damages as a separate legal entity. Second, Defendant argues that Plaintiff's Complaint violates Rule 10 of the Federal Rules of Civil Procedure because 1) it does not specifically name the individual Defendants to be sued; 2) the allegations are not made in numbered paragraphs; and 3) the claims are not made in separate counts. (Def's Memorandum in Support of Motion to Dismiss at 5-6). Finally, Defendant argues that Plaintiff's efforts to name District Attorney Bruce Castor, Assistant District Attorney Erik Shmuckler, Assistant Public Defender Daniel Glammer, and Judge Lawrence Brown without amending the Complaint is a nullity. Id. 1-3.

2. Analysis

A. Montgomery County District Attorney's Office as Defendant

Defendant Montgomery County District Attorney's Office argues that it is not a "person" to be sued under 42 U.S.C. §1983[1] and that there is no authority under Pennsylvania law

[1] 42 U.S.C. §1983 states, in pertinent part:

> § 1983. Civil action for deprivation of rights
>
> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or

permitting a department or agency of county government to be sued for money damages as a separate legal entity. (Def's Motion at 4).

In federal court, the capacity of a party to be sued is "determined by the law of the state in which the district court is held." Fed. R. Civ. P. 17(b). A review of the relevant Pennsylvania state law reveals that there is no authority permitting Plaintiff to continue this suit against the Montgomery County District Attorney's Office.

The Third Circuit specifically addressed this issue in Reitz v. County of Bucks, 125 F.3d 139, 144 (3d Cir., 1997) (affirming district court's grant of summary judgment in favor of defendant district attorney's office on plaintiffs' 42 U.S.C. § 1983 claim). In Reitz, the Third Circuit recognized that Pennsylvania law extends to counties the legal capacity to sue or be sued. See 16 P.S. § 3202 (2). The Court noted:

> A public entity such as Bucks County may be held liable for the violation of a constitutional right under 42 U.S.C. § 1983 only when the alleged unconstitutional action executes or implements policy or a decision officially adopted or promulgated by those whose acts may fairly be said to represent official policy. Monell v. New York City Dep't of Social Svcs., 436 U.S. 658, 690-91, 56 L. Ed. 2d 611, 98 S. Ct. 2018 (1978).

Reitz, 125 F.3d at 144. However, even though the county could be sued, the court held that the District Attorney's Office is not an entity for purposes of § 1983 liability. Reitz, 125 F.3d at 148.

> other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.

(Emphasis added).

Thus, Defendant Montgomery County District Attorney's Motion to Dismiss will be granted and all claims against it will be dismissed with prejudice.

B. Plaintiff's Attempt to Name Additional Individual Defendants

The court also agrees with Defendant that Plaintiff's Complaint fails to comply with Rule 10 of the Federal Rules of Civil Procedure.[2] First, the court notes that Plaintiff fails to make all of his averments in numbered paragraphs and fails to make his claims in separate counts, thereby violating Rule 10(b) of the Federal Rules of Civil Procedure.

More importantly, the court notes that the caption of Plaintiff's Complaint names "Montgomery County District Attorney's Office, et al" as the only defendant. Because Rule 10(a) requires the title of the Complaint to include the names of all the parties, Plaintiff cannot simply use the term "et al" to add defendants to the suit.

Mindful of the teaching that pleadings filed by a litigant proceeding pro se must

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[2]Rule 10 of the Federal Rules of Civil Procedure states, in relevant part:

> Rule 10. Form of Pleadings
>
> (a) Caption; Names of Parties. Every pleading shall contain a caption setting forth the name of the court, the title of the action, the file number, and a designation as in Rule 7(a). In the complaint the title of the action shall include the names of all the parties, but in other pleadings it is sufficient to state the name of the first party on each side with an appropriate indication of other parties.
>
> (b) Paragraphs; Separate Statements. All averments of claim or defense shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances; and a paragraph may be referred to by number in all succeeding pleadings. Each claim founded upon a separate transaction or occurrence and each defense other than denials shall be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth.

> be evaluated using less stringent standards than those applied to pleadings drafted by members of the bar, Haines v. Kerner, 404 U.S. 520 (1972), the court must nonetheless insist that pro se litigants observe certain minimal pleading requirements as set forth in the Federal Rules of Civil Procedure. Among these minimal requirements is a complaint on which the caption indicates plainly all parties against whom a plaintiff seeks to proceed. Putative defendants should not be required to speculate as to whether or not they are parties to a lawsuit.

Savacool v. Fitzgerald Mercy Catholic Medical Ctr., No. 92-CV-2142, 1992 WL 185611, *2 (E.D. Pa. July 21, 1992) (dismissing plaintiff's amended complaint for failure to comply with Fed. R. Civ. P. 10(a)). Further, Plaintiff's attempts to add the individual defendants District Attorney Bruce Castor, Assistant District Attorney Erik Shmuckler, and Assistant Public Defender Daniel Glammer, by typing their names and the words "Amended Complaint" on the summons, or announcing his intention to sue them in his Response to Defendants' Motions to Dismiss, are insufficient. In order to properly add parties, Plaintiff must file an amended Complaint including the names of all the parties he intends to sue in the caption.

The Court notes that even if Plaintiff amends his Complaint to name these additional individual defendants, who served as prosecutors or defense counsel in regard to the prosecution of Plaintiff, it is likely that the individuals will be entitled to absolute immunity. See Reitz, 125 F.3d at 146 (affirming district court's grant of absolute immunity to defendant individual prosecutors as it related to their conduct during the judicial process).

V. Conclusion

Because Defendant Brown is entitled to judicial immunity, the Complaint against him must be dismissed with prejudice. Further, the Montgomery County District Attorney's Office is not a "person" under 42 U.S.C. § 1983. Thus, Plaintiff has also failed to state a claim against

Montgomery County District Attorney's Office. Finally, Plaintiff's attempts to name additional defendants is insufficient. Accordingly, the Defendants' Motions to Dismiss will be granted. Plaintiff's Complaint will be dismissed with prejudice as to Defendants Brown and Montgomery County District Attorney's Office. Plaintiff is granted leave to file an amended complaint, within thirty (30) days of the date of this order, bearing a caption that names each and every individual defendant against whom he seeks to proceed, and with allegations in accordance with the Federal Rules of Civil Procedure.

An appropriate Order follows.

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v.	:	
	:	NO. 04-cv-4454
MONTGOMERY COUNTY	:	
DISTRICT ATTORNEY'S OFFICE	:	
et al,	:	
Defendant	:	

ORDER

AND NOW, this 10th day of December, 2004, based on the foregoing memorandum and upon consideration of the pleadings and briefs, it is hereby ORDERED that Defendants' Motions to Dismiss Pursuant to Fed.R.Civ.P. 12(b)(1) and (6) (Doc. No. 3 and 4) be GRANTED. Plaintiff's Complaint is hereby DISMISSED with prejudice with regard to Defendants Brown and Montgomery County District Attorney's Office. Plaintiff is granted leave to file an amended complaint, within thirty (30) days of the date of this order, bearing a caption that names each and every individual defendant against whom he seeks to proceed, and with allegations in accordance with the Federal Rules of Civil Procedure.

BY THE COURT:

/s/ Michael M. Baylson

MICHAEL M. BAYLSON, U.S.D.J.

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