

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

<b>RODNEY LEE WALTON,</b>	:	
	:	
<b>Plaintiff,</b>	:	
	:	<b>CIVIL ACTION</b>
<b>v.</b>	:	
	:	<b>NO. 05-5170</b>
<b>DALE R. DENLINGER,</b>	:	
	:	
<b>Defendant.</b>	:	

**MEMORANDUM AND ORDER**

**Tucker, J.**

**December \_\_\_\_, 2007**

Presently before this Court is Defendant’s Motion for Summary Judgment (Doc. 48). For the reasons set forth below, upon consideration of Defendant’s Motion, Plaintiff’s Response (Doc. 49), and Defendant’s Reply (Doc. 50), **this Court will deny Defendant’s Motion.**

**BACKGROUND**

From the evidence of record, taken in a light most favorable to the Plaintiff, the pertinent facts are as follows. At all times relevant to the above-captioned action, the policy and practice of the Lancaster County Clerk of Court’s Office provided that if a petitioner filed a notice of appeal without payment of the required filing fees and without moving to proceed in forma pauperis (“IFP”), the Clerk’s Office, as a courtesy to the filer, would send the documents to the trial judge and ask whether the judge would grant IFP status sua sponte. If the judge granted IFP status, the appeal was sent to the Pennsylvania Superior Court. If the judge refused IFP status, the appeal documents were returned to the petitioner with a notation that he or she needed to either pay the required filing fees or move for IFP status.

On February 12, 2003, Plaintiff filed a Notice of Appeal from the trial court’s denial of

his Petition under Pennsylvania's Post Conviction Relief Act ("PCRA") without the required fees and without a motion or application to proceed IFP. Per the aforementioned policy and practice of the Clerk's Office, Plaintiff's appeal was sent to the trial judge, Judge Michael J. Perezous, for him to consider granting IFP status sua sponte. Judge Perezous, via his secretary Ruth Schaeffer, advised the Clerk's Office staff that he was not going to act on the appeal and that Plaintiff's appeal should be placed in his file. The Clerk's Office then placed the appeal documents in Plaintiff's file. The Clerk's Office did not docket the filing, transmit it to the Superior Court for consideration, or return the appeal documents to Plaintiff with the customary notation.

In August 2003, the assistant district attorney who prosecuted Plaintiff's criminal case went to the Clerk's Office and inquired about the status of Plaintiff's appeal. In response, Defendant, along with two other employees, went to Judge Perezous's chambers to ascertain the status of Plaintiff's February 2003 appeal. Ms. Schaeffer, Judge Perezous's secretary, informed Defendant that Judge Perezous had told the Clerk's Office staff that he was not going to act on the appeal and to put the appeal back in Plaintiff's file. Defendant made no further inquiry.

On November 18, 2003 and November 3, 2004, Plaintiff filed subsequent Notices of Appeal. Each appeal was sent to Judge Perezous for his consideration of granting IFP status sua sponte. Upon receipt of each appeal, Judge Perezous informed the Clerk's Office that he would not act on the appeal and the appeal documents should be placed in Plaintiff's file. Thereafter, the Clerk's Office placed each appeal in Plaintiff's file and did not docket the appeal, forward it to the Superior Court for consideration, or inform Plaintiff that his appeal could not be processed without payment of the required filing fees or a motion to proceed IFP.

On September 29, 2005, Plaintiff filed suit against Defendant, alleging violations of his

rights to due process and access to the courts under the First and Fourteenth Amendments of the U.S. Constitution and Article I, sections 9 and 20 of the Pennsylvania Constitution.

On August 21, 2006, Judge Perzous issued an order granting Plaintiff IFP status sua sponte and ordering that Plaintiff's appeal be sent to the Superior Court nunc pro tunc. The Superior Court accepted the appeal, which is currently pending before that court.

### **LEGAL STANDARD**

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(C). An issue is "genuine" if the evidence is such that a reasonable jury could return a verdict for the non-moving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A factual dispute is "material" if it might affect the outcome of the case under governing law. Id.

A party seeking summary judgment always bears the initial responsibility for informing the district court of the basis of its motion and identifying those portions of the record that it believes demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). Where the non-moving party bears the burden of proof on a particular issue at trial, the movant's initial Celotex burden can be met simply by "pointing out to the district court that there is an absence of evidence to support the non-moving party's case." Id. at 325. After the moving party has met its initial burden, "the adverse party's response, by affidavits or otherwise as provided in this rule, must set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e). That is, summary judgment is appropriate if the

non-moving party fails to rebut by making a factual showing “sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial.” Celotex, 477 U.S. at 322. “[I]f the opponent [of summary judgment] has exceeded the ‘mere scintilla’ [of evidence] threshold and has offered a genuine issue of material fact, then the court cannot credit the movant’s version of events against opponent, even if the quality of the movant’s evidence far outweighs that of its opponent.” Big Apple BMW, Inc. v. BMW of N. Am., Inc., 974 F.2d 1358, 1363 (3d Cir. 1992). Under Rule 56, the Court must view the evidence presented on the motion in the light most favorable to the opposing party. Anderson, 477 U.S. at 25.

## **DISCUSSION**

Defendant **maintains that summary judgment is appropriate because: (1) Defendant is entitled to quasi-judicial or qualified immunity, (2) Plaintiff cannot establish liability under 42 U.S.C. § 1983, and (3) Plaintiff has not suffered an injury.** This Court will deny Defendant’s Motion.

### **1. Immunity**

#### **a. Quasi-judicial Immunity**

Defendant argues that he is entitled to quasi-judicial immunity because he acted at the direction of Judge Perezous. Those who perform functions closely associated with the judicial process, such as court clerks and prothonotaries, enjoy quasi-judicial immunity when performing a function directly related to the court’s decision-making activities or carrying out a judicial order. Lockhart v. Hoenstine, 411 F.2d 455, 460 (3d Cir. 1969); McKnight v. Baker, 415 F. Supp. 2d 559, 563 (E.D. Pa. 2006) (citations omitted). Quasi-judicial immunity does not extend

to a court employee's performance of ministerial or non-discretionary tasks, such as docketing of filings. See, e.g., Tucker v. I'Jama, 173 Fed. Appx. 970, 971-72 (3d Cir. 2006) (denying immunity to court clerk due to non-discretionary duty to docket all papers presented for filing or to notify the filer of a deficiency); Allen v. Dorsey, 463 F. Supp. 44, 47 (E.D. Pa. 1978) (“Although the Clerk of the Court and his agents have important duties in the judicial process, their duties, such as docketing and filing papers with the court, are ministerial and mandatory acts which do not merit insulation from liability for damages by a grant of absolute ‘quasi judicial’ immunity.”); Brightwell v. Miller, No. 92-2649, 1993 U.S. Dist. LEXIS 14965, at \*2 (E.D. Pa. Oct. 21, 1993) (denying quasi-judicial immunity to a court clerk because he “exercises no discretion in the performance of the duties of docketing and filing papers”).

With respect to notices of appeal, the Pennsylvania Rules of Appellate Procedure make clear that an initial failure to pay the filing fee or move for IFP status does not render an appeal invalid. First Union Nat'l Bank v. F.A. Realty Investors Corp., 812 A.2d 719, 723 (Pa. Super. Ct. 2002) (discussing PA. R. APP. P. 902, 903, 905). Instead, the Clerk's Office may docket the appeal and forward same to the Superior Court for its consideration. See id. (stating that the Superior Court has discretion whether to consider an appeal where the petitioner initially failed to pay the required filing fee) (citing PA. R. APP. P. 902).

Here, Defendant argues that he was carrying out Judge Perezous's order by not processing Plaintiff's notices of appeal. Plaintiff counters that Defendant did not act at Judge Perezous's explicit direction but relied on an ambiguous statement in determining that Plaintiff's appeal should not be docketed, forwarded to the Superior Court, or returned to Plaintiff with notice of the perceived deficiency. **Given Defendant's failure to seek clarification from Judge Perezous,**

his duty to docket filings, and the established policy and practice of the Clerks' Office to notify the petitioner of any perceived deficiency in a notice of appeal filing, this Court finds that there is a genuine issue of material fact as to whether Defendant was acting at the direction of the court.

**b. Qualified Immunity**

In the alternative to quasi-judicial immunity, Defendant argues that he is entitled to qualified immunity. It is well-established that government officials are entitled to qualified immunity if their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.<sup>1</sup> McGreevy v. Stroup, 413 F.3d 359, 364 (3d Cir. 2005) (citing Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982)). In a § 1983 action, the court is required to examine the issue of qualified immunity before reaching the underlying merits of the plaintiff's claims. Gruenke v. Seip, 225 F.3d 290, 298-99 (3d Cir. 2000); cf. Curley v. Klem, 499 F.3d 199, 211 (3d Cir. 2007) (stating that qualified immunity is a question of law for the court). In determining whether the defendant is entitled to qualified immunity, the threshold inquiry is whether the facts alleged by the plaintiff show a constitutional violation, and if so, whether the right was so clearly established that a reasonable person would have known of it. Saucier v. Katz, 533 U.S. 194, 201 (2001). To determine whether a right was clearly established the question is whether the government official reasonably believed his or her conduct was lawful in light of the information possessed at the time. Id. at 202; see also McGreevy, 413 F.3d

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<sup>1</sup> The Harlow Court limited the doctrine of qualified immunity to government officials performing discretionary functions. 457 U.S. at 818. However, the doctrine has evolved to encompass all actions of government officials who have acted competently and within their lawful authority. See Wallace v. Abell, 217 Fed. Appx. 124, 127 (3d Cir. 2007) (citing Malley v. Briggs, 475 U.S. 335, 341 (1986)).

at 364 (stating that the defendant is entitled to qualified immunity only if the constitutional or statutory violation alleged is not clearly established). Here, Plaintiff alleges that Defendant's failure to docket his appeal lead to constitutional violations, namely deprivation of due process and denial of access to the courts. Defendant asserts his belief that PA. R. APP. P. 905 required Plaintiff to pay the filing fee or obtain IFP status before his appeal could be sent to the Superior Court.<sup>2</sup>

While Defendant may have believed that PA. R. APP. P. 905 required such action, this Court cannot conclude that his actions, or rather inaction was objectively reasonable in light of the information Defendant possessed in August 2003. At that time, Defendant certainly knew that Plaintiff had a right to an appeal and was well aware of the policy and practice of the Clerk's Office to return the notice of appeal to the filer if there was a perceived deficiency. Defendant's failure to act in accordance with the established policy and practice of the Clerk's Office was not objectively reasonable and therefore Defendant is not entitled to qualified immunity.<sup>3</sup>

## **2. Liability**

**Defendant argues that because he had little personal involvement with Plaintiff's appeals,**

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<sup>2</sup> Defendant cites to Jacobs v. Jacobs, 884 A.2d 301, 305 (Pa. Super. 2005) for the proposition that “[a]n appeal is perfected upon the timely filing in the Prothonotary’s Office, and payment of the applicable fees.” Defendant ignores the Jacobs Court’s contextual statement that the Superior Court has discretion to accept appeals which are procedurally deficient. See id. (stating that it would not reject petitioner’s appeal for failure to follow an appellate procedural rule, and noting generally that it would address the merits of an appeal despite a “failure to comply with the rules of appellate procedure” provided that doing so “does not impede review of the issues or prejudice the parties”) (citing PA. R. APP. P. 905 and 902; White v. Owens-Corning Fiberglas Corp., 668 A.2d 136, 141 (Pa. Super. 1995)); see also First Union Nat’l Bank, 812 A.2d at 721 (noting that an initial failure to pay filing fee or move for IFP status does not necessarily render an appeal invalid as the Superior Court has discretion to accept the appeal as timely despite the initial procedural defeat).

<sup>3</sup> This Court’s finding as to qualified immunity does not affect the unresolved issue of quasi-judicial immunity—i.e., whether Defendant acted at the direction of the court in failing to take action on Plaintiff’s appeal.

Plaintiff cannot establish liability under 42 U.S.C. § 1983.<sup>4</sup> To establish liability under § 1983, a plaintiff must prove that the defendant deprived him of his federal constitutional or statutory rights while acting under color of state law. Adickes v. S.H. Kress & Co., 398 U.S. 144, 150 (1970). The defendant must have personal involvement in the alleged wrongs; liability cannot be established liability solely via respondeat superior. Rode v. Dellarciprete, 845 F.2d 1195, 1207 (3d Cir. 1988). Personal involvement requires a showing of personal direction or of actual knowledge and acquiescence by the defendant. Id.

Here, Defendant, had knowledge of and acquiesced in the event's giving rise to Plaintiff's claims of deprivation of due process and denial of access to courts, rights which are secured by the U.S. Constitution. U.S. Const. Amend. I, XIV; see also Christopher v. Harbury, 536 U.S. 403, 415 n.2 (2002). In August 2003, Defendant went to Judge Perezous's chambers to inquire about the status of Plaintiff's appeal. He learned from Judge Perezous's secretary, Ms. Schaeffer, that Judge Perezous was not going to act on Plaintiff's appeal. Defendant also learned that Plaintiff's appeal had been placed in his file without being returned to him with a customary notation. After speaking with Ms. Schaeffer, Defendant took no further action. Defendant did not seek clarification of Judge Perezous's statement, docket the appeal, forward it to the Superior Court for consideration, or follow the established policy and practice of the Clerk's Office by

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<sup>4</sup> 42 U.S.C. § 1983 states:

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 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.

returning the appeal to Plaintiff with notice of the perceived procedural deficiency. Because Defendant knew and acquiesced in the events that lead to the delay in processing Plaintiff's appeal, he may be held liable under § 1983.

### **3. Plaintiff's Injury**

Defendant argues that Plaintiff is unable to show that he has suffered an injury as a result of the delay in processing his appeal, and therefore, he has no denial of access cause of action.<sup>5</sup> The right of access to the courts is grounded in the First and Fourteenth Amendments to the U.S. Constitution. Christopher v. Harbury, 536 U.S. 403, 415 n.12 (2002). There are generally two categories of denial of access claims. See id. at 412-13 & 414 n.11. In the first category are forward-looking cases in which action undertaken by a government official currently prevents the plaintiff from filing a lawsuit. Id. at 413. In the second category are backward-looking cases in which a government official's past wrongful conduct hindered plaintiff's filing of a lawsuit. Id.

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<sup>5</sup> In addition to his argument for dismissal of Plaintiff's federal denial of access claim, Defendant contends that Plaintiff cannot recover damages in a private right of action under the Pennsylvania Constitution. Plaintiff brings claims for monetary damages and declaratory relief under Article I, sections 9 and 20 of the Pennsylvania Constitution. In support of his position to dismiss the monetary damages claim, Defendant cites to Ryan v. Gen. Mach. Prods., 277 F. Supp. 2d 585, 595 (E.D. Pa. 2003) (no private cause of action for monetary damages under Article I, section 28 of Pennsylvania Constitution); Douris v. Schweiker, 229 F. Supp. 2d 391, 405 (E.D. Pa. 2003) (noting the then-existing agreement of the district courts in this circuit that no private cause of action existed under the Pennsylvania Constitution); and DiBartolo v. City of Phila., 159 F. Supp. 2d 795 (E.D. Pa. 2001) (no private cause of action under Pennsylvania Constitution, Article I, Sections 1, 7, 11, and 26). While Defendant suggests that the district courts in Pennsylvania are in agreement, this Court's review of cases in this circuit reveals that the district courts are in fact split on the issue of whether there exists a private right of action for damages under the Pennsylvania Constitution. Patton v. SEPTA, No. 06-707, 2007 U.S. Dist. LEXIS 5806, at \*22 (E.D. Pa. Jan. 26, 2007). Further, the Pennsylvania Supreme Court has yet to rule on this issue. Id. Beyond citing the aforementioned cases, Defendant has not set forth an argument to support his position. Because this Court cannot grant summary judgment on the mere assertion of legal conclusions, Defendant's Motion is denied as to Plaintiff's state constitutional claim for monetary damages. See, e.g., Heintz v. Fayette County Area Voc. Tech. Sch., No. 07-1174, 2007 U.S. Dist. LEXIS 82974, at \*6 (W.D. Pa. Nov. 7, 2007).

Regardless of the category of case, a “prisoner plaintiff must allege that he or she has been actually injured in his or her access to the courts, i.e., that he or she has been hindered in an effort to pursue a nonfrivolous legal claim.” Jones v. Brown, 461 F.3d 353, 359 (3d Cir. 2006) (citing Casey, 518 U.S. at 349-53). Here, Plaintiff alleges a three and a half year delay in the processing of his notice of appeal. This Court finds this substantial delay to be a sufficient injury for purposes of Plaintiff’s denial of access claim.

### **CONCLUSION**

For the foregoing reasons, this Court will deny Defendant’s Motion for Summary Judgment. An appropriate order follows.

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

**RODNEY LEE WALTON,**

**Plaintiff,**

v.

**DALE R. DENLINGER,**

**Defendant.**

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**CIVIL ACTION**

**NO. 05-5170**

**ORDER**

**AND NOW**, this \_\_\_\_ day of December 2007, upon consideration of Defendant's Motion for Summary Judgment (Doc. 48), Plaintiff's Response (Doc. 49), and Defendant's Reply (Doc. 50), **IT IS HEREBY ORDERED** and **DECREED** that Defendant's Motion is **DENIED**.

**BY THE COURT:**

/s/ **Petrese B. Tucker**

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**Hon. Petrese B. Tucker, U.S.D.J.**