

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

WILLIAM PARKER: KIRBY	:	CIVIL ACTION
	:	
v.	:	
	:	
LOUIS C. BECHTLE, et al.	:	NO. 97-4236

MEMORANDUM-ORDER

AND NOW, this 24th day of April, 1998, upon consideration of the motion by defendants Michael Palazzo, Michael Kraft, John J. Bell, John Kurtz, Robert Brennan, Joseph J. Ziembra, Peter J. Matthews, Dorian Shawcross, and Charles Flesch (“the first group of defendants”) to dismiss under Federal Rules of Civil Procedure 12(b)(1), 12(b)(2), 12(b)(5), and 12(b)(6) (Document No. 36), and the motion to dismiss by defendants Louis C. Bechtle, Edwin E. Naythons, Clarence C. Newcomer, Richard P. Conaboy, William J. Nealon, Jr., Tullio Gene Leomporra, Peter F. Vaira, Joseph M. Gontram, James G. Sheehan, Edward F. Borden, Jr., and Stephen J. Paulmeno (“the second group of defendants”) to dismiss under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) (Document No. 37), there being no response by plaintiff William Parker: Kirby (“Kirby”) to either motion, and having found and concluded that:

1. Kirby filed a complaint in this Court on June 24, 1997, claiming various violations of his constitutional rights under various provisions of the United States Constitution, federal statutes, and the Federal Rules of Civil Procedure. Even given a liberal reading, as a pro se complaint should be given, the twenty-six paragraphs of the complaint contain vague, ambiguous, and generally incomprehensible allegations, most of which do not indicate to which defendant the allegation is directed, and end with a prayer for monetary relief, which according to Kirby in his subsequent praecipe for entry of default judgment,¹

¹ Kirby sought default judgment by praecipe (Document No. 35) on September 8, 1997. This Court granted all of the defendants’ motions for enlargement of time to respond to the complaint in Orders dated August 13, 1997 (Document No. 32) and March 23, 1998 nunc pro tunc as of September 4, 1997 (Document No. 38). Thus, the motions before the Court are timely.

totals \$139,750,000.00.

Essentially this is a tax protestor case; after Kirby was found guilty of conspiracy to defraud the function of the IRS in 1983, he failed to file tax returns as ordered by the court, was sentenced to three years in prison, and was sued by the United States in December of 1996 in a civil action to, among other things, reduce to judgment certain income tax, interest and penalty assessments made against him. To the extent that this Court can decipher the allegations in the complaint, Kirby purports to bring claims against these government officials for their actions in prosecuting and bringing civil action against Kirby in connection with his failure to pay taxes;

2. The first group of defendants are all employees of the Internal Revenue Service, with the exception of Charles Flesch, who is an attorney with the Department of Justice who was representing the United States in the civil action pending against Kirby at the time this motion was filed. The second group of defendants are all judges or assistant United States Attorneys, with the exception of Stephen J. Palermo, who is a retired United States Probation Officer;

3. To the extent that the allegations in the complaint may be construed as claims against these defendants in their official capacity, the claims are barred by the doctrine of sovereign immunity. See U.S. v. Mitchell, 463 U.S. 206, 213 (1983). Kirby does not allege that the United States has waived its immunity in this case, and thus, the complaint is dismissed against all the defendants in their official capacities;

4. Although sovereign immunity does not bar actions against federal officials in their individual capacities for violations of an individual's constitutional rights, known as Bivens actions, "courts will not create a damage remedy for the violation of a constitutional right when Congress has created explicit remedies or when a court created remedy would interfere with the effective functioning of the government." Schiff v. Balas, No. 90-2007, 1991 WL 330204 (W.D. Pa.) (dismissing a case brought against IRS officials by a tax protestor), aff'd, 961 F.2d 1568 (3d Cir. 1992). Thus, to the extent that the allegations in the complaint may be construed as claims against the defendants in their individual capacities, those claims as to the tax officials in the first group of defendants are barred;

5. Judges have absolute immunity against allegations based on their judicial activities. See Stump v. Sparkman, 435 U.S. 349, 355-56 (1978). Similarly, federal prosecutors are absolutely immune from suit for any activities concerning their representation of the United States and any activities intimately associated with the judicial process. See Yaselli v. Goff, 275 U.S. 503 (1927). Federal probation officers are also absolutely immune from suit if the conduct was intimately related to the judicial process. See Thompson v. Burke, 556 F.2d 231, 236 (3d Cir. 1977). Thus, to the extent that the allegations in the complaint may be construed as claims against the defendants in their individual capacities, those

claims as to the second group of defendants and Charles Flesch are barred;

6. In addition, this Court concludes that it lacks jurisdiction over this case because the complaint is wholly insubstantial and frivolous, and the allegations are so incomprehensible that they do not state a cause of action. See Hagans v. Lavine, 415 U.S. 528, 536-37 (1974) (noting that federal courts lack power to entertain claims that are “so attenuated and unsubstantial as to be absolutely devoid of merit”);

it is hereby **ORDERED** that the motion is **GRANTED** and the complaint is **DISMISSED**.

LOWELL A. REED, JR., J.