

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

FLORENCE WALLACE, ET AL. : CONSOLIDATED TO:
: :
Plaintiffs, : : CIVIL ACTION NO. 3:09-cv-0286
v. : :
: : (JUDGE CAPUTO)
ROBERT J. POWELL, ET AL. : :
: :
Defendants, : :

**FILED
SCRANTON**

JUL 27 2009

.....
IN THE UNITED STATES DISTRICT COURT PER
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

Amo
DEPUTY CLERK

WILLIAM CONWAY, ET AL. : :
: : CIVIL ACTION NO. 3:09-cv-0291
Plaintiffs, : :
v. : : (JUDGE CAPUTO)
: :
JUDGE MICHAEL T. CONAHAN, : :
ET AL. : :
: :
Defendants, : :

.....
IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

H.T., ET AL. : :
: :
Plaintiffs, : : NO. 3: 09-CV-00357
vs. : :
: : (JUDGE CAPUTO)
MARK A. CIAVARELLA, JR., et al. : :
: :
Defendants : :

.....

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

SAMANTHA HUMANIK, :
 : CIVIL ACTION NO. 3:09-cv-0630
 :
 Plaintiffs, :
 :
 :
 v. : (JUDGE CAPUTO)
 :
 :
 MARK A. CIAVARELLA, JR., :
 ET AL. :
 :
 :
 Defendants

.....

**MOTION OF DEFENDANT MARK A. CIAVARELLA, JR.
TO DISMISS PLAINTIFFS' COMPLAINT PURSUANT TO
FEDERAL RULE OF CIVIL PROCEDURE 12(b)(6)**

INTRODUCTORY PARAGRAPH

AND NOW, comes the Defendant Mark A. Ciavarella, Jr., pro se, and moves this Honorable Court, for the dismissal of the Plaintiffs' Complaints in their entirety, averring in support thereof the following:

1. These Complaints filed by numerous minor individuals and their families who were adjudicated as juveniles by Mark A. Ciavarella, Jr., spanning the years between 2003 and 2008 assert claims brought under 42 U.S.C. §1983 for the redress of rights secured by the United States Constitution and under 18 U.S.C. §1964 for civil violates of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §1961-1868 ("RICO").

2. The essence of the Plaintiffs' Complaints are that Ciavarella had a financial interest in placing youth in detention¹ and that the adjudication of every juvenile found delinquent or referred for placement by him from February of 2003 through May of 2008 was tainted (Complaint at ¶ 553).

3. The Complaints allege that each adjudication which occurred during these years as well as cases which had been adjudicated prior to February 2003, but which resulted in dispositions or placements subsequent to February 2003, also violated each minor Plaintiff's constitutional right to be adjudicated by an impartial tribunal.

4. Plaintiffs have alleged that among the constitutional rights violated include the right to appear before an impartial tribunal, the right to counsel and the right to be advised of the consequences of waiving counsel or entering a guilty plea such that waivers and pleas are knowing, intelligent, and voluntary consistent with due process (Complaint at ¶ 554).

5. All of the alleged unconstitutional treatment of minor Plaintiffs listed in the Complaints was undertaken by Ciavarella in his capacity as Judge of the Court of Common Pleas of Luzerne County.

6. The Defendant moves to dismiss Plaintiffs' Complaints in their entirety,

¹ Although not germane for this Motion, Ciavarella denies that any adjudication of any juvenile was entered on a "*quid pro quo*" basis.

both with respect to the claims brought under 42 U.S.C. §1983 as well as the claims brought under 18 U.S.C. § 1961-1968 based upon the doctrine of judicial immunity. Since 1872, the United States Supreme Court has held that “judges of courts of superior or general jurisdiction are not liable to civil actions for their judicial acts, even when such acts are in excess of their jurisdiction, and are alleged to have been done maliciously or corruptly”. Bradley v. Fisher, 13 WALL. 335, 351, 20 L.Ed. 646 (1872). Moreover, subsequent to the broad holding in Bradley, the Supreme Court held that the doctrine of judicial immunity was applicable in suits under Section 1 of the Civil Rights Act of 1871, 42 U.S.C. §1983, as it is clear that the legislative record developed during the adoption of that statute gave no indication that Congress intended to abolish this long-established principle. Pierson v. Ray, 386 U.S. 587, 87 S.Ct. 1213, 18 L.Ed. 2d. 288 (1967).

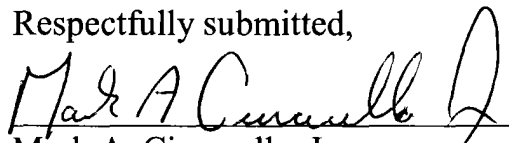
7. The defense of judicial immunity has also been held applicable in this Circuit to claims brought against judges under 18 U.S.C.A. § 1961(“RICO”), Purpura v. Buskin, Gaims, Gains, Jonas and Stream, slip copy, 2008 WL 4951324 (D.N.J. 2008).

8. It is well-settled that the necessary inquiry in determining whether a defendant judge is immune from suit is whether at the time he took the challenged action he had jurisdiction over the subject matter before him. Stump v. Sparkman,

435 U.S. 349, 98 S.Ct. 1099, 55 L.Ed. 2d 331 (1978). Furthermore, the scope of a judge's jurisdiction must be construed broadly where the issue is the immunity of the judge. Stump, *supra*, 435 U.S. at 356. "A judge will not be deprived of immunity because the action he took was an error, was done maliciously, or was in excess of his authority; rather, he will be subject to liability only when he has acted in the 'clear absence of all jurisdiction' ". Stump, *supra*, 435 U.S. at 356, 357, citing Bradley v. Fisher, 13 WALL. at 351.

9. Reading the Complaints and their allegations in the light most favorable to the Plaintiffs establishes that all of the alleged injurious acts taken by Ciavarella against each Plaintiff were performed in his capacity as judge of the Court of Common Pleas of Luzerne County and, therefore, under the well-settled test adopted by the United States Supreme Court he is entitled to absolute immunity from civil suits for damages arising out of the adjudications and detentions alleged by the Plaintiffs.

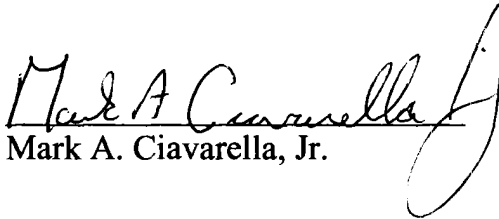
Respectfully submitted,


Mark A. Ciavarella, Jr., pro se

CERTIFICATE OF NON-CONCURRENCE

I, Mark A. Ciavarella, Jr., pro se, hereby certify that opposing counsel does not concur in the filing of this motion.

Date: July 27, 2009


Mark A. Ciavarella, Jr.

CERTIFICATE OF SERVICE

I, Mark A. Ciavarella, Jr., pro se, hereby certify that on 27 day of July, 2009,

I served a true and correct copy of the foregoing Motion to Dismiss of Defendant

Mark Ciavarella upon the following individuals, by the means indicated below:

First Class Mail, Postage Prepaid

Marsha Levick, Esquire
Lourdes Rosado, Esquire
Juvenile Law Center
The Philadelphia Bldg., 4th Fl.
1315 Walnut Street
lrosado@jlc.org
mlevick@jlc.org

Daniel Segal, Esquire
Rebecca L. Santoro, Esquire
Hangley, Aronchick, Segal & Pudlin
One Logan Square, 27th Floor
Philadelphia, PA 19103-6933
dsegal@hangley.com
rsantoro@hangley.com

David S. Senoff, Esquire
Lauren C. Fantini, Esquire
Richard C. DeFrancesco, Esquire
Caroselli, Beachler, McTiernan & Conaboy
1500 Walnut Street, Ste. 507
dsenoff@cbmclaw.com
lfantini@cbmclaw.com
rdefrancesco@cbrnclaw.com

William R. Caroselli, Esquire
Caroselli, Beachler, McTiernan & Conaboy
20 Stanwix St., 7th Floor
Pittsburgh, PA 15222
wcaroselli@cbmclaw.com

Michael J. Cefalo, Esquire
Cefalo & Associates
309 Wyoming Avenue
West Pittston, PA 18643
info@cefaloandassociates.com

Adrienne Walvoord, Esquire
Amber M. Racine, Esquire
Sol H. Weiss, Esquire
Anapol Schwartz Weiss, Cohan,
Feldman & Smalley, P.C.
1710 Spruce Street
Philadelphia, PA 19103
awalvoord@anapolschwartz.com
aracine@anapolschwartz.com
sweiss@anapolschwartz.com

Barry H. Dyller, Esquire
Law Office of Barry H. Dyller
88 North Franklin Street
Gettysburg House
Wilkes-Barre, PA 18701
barry.dyller@dyllerlawfirm.com

Johanna L. Gelb, Esquire
Gelb Law Firm
538 Spruce Street
Suite 600
Scranton, PA 18503
jgelb7@aol.com

Daniel E. Kleiner, Esquire
Metzger & Kleiner
Two Penn Center, Suite 1204
15th Street & JFK Blvd.
Philadelphia, PA 19102
dkleiner@comcast.net

Richard G. Freeman, Esquire
924 Cherry Street, 4th Floor
Philadelphia, PA 19107
rgfirm@aol.com

Alison T. Dante, Esquire
Eric Kraeutler, Esquire
Matthew J.D. Hogan, Esquire
Nathan J. Andrisani, Esquire
Joseph B.G. Fay, Esquire
Morgan, Lewis & Bockius, LLP
1701 Market Street
Philadelphia, PA 19103
adante@morganlewis.com
mjdhogan@morganlewis.com
jfay@morganlewis.com

Kimberly D. Borland, Esquire
Borland & Borland
69 Public Square, 11th Floor
Wilkes-Barre, PA 18701
borlandk@borlaw.com

Bernard M. Schneider, Esquire
Bucker, Schneider & Porter
300 Weyman Road, Suite 320
Pittsburgh, PA 15236
bmschn@aol.com

Jonathan Vipond, III, Esquire
Buchanan Ingersoll
208 North Third Street
P.O. Box 12023, Suite 300
Harrisburg, PA 17108-2023

Donna L. Adelsberger, Esquire
Howard Wishnoff, Esquire
Donna L. Adelsberger & Associates
6 Royal Avenue, P.O. Box 530
Glenside, PA 19038
dadelsberger@dlalawyers.com
hwishnoff@dlalawyers.com

Bernard M. Schneider, Esquire
Bucker, Schneider & Porter
300 Weyman Road, Suite 320
Pittsburgh, PA 15236
bmschn@aol.com

Philip Gelso, Esquire

Briechle & Gelso
63 Pierce Street
Kingston, PA 18704
philip.gelso@briechle-gelso.com

Jeffrey S. Feldman, Esquire
Jessica R. Birk, Esquire
Mark B. Sheppard, Esquire
Montgomery, McCracken, Walker & Rhodes, LLP
123 S. Broad Street, 24th Floor
Philadelphia, PA 19109
jfeldman@mmwr.com
jbirk@mmwr.com
mshppard@mmwr.com

Deborah Hart Simon, Esquire
Timothy T. Meyers, Esquire
Elliott, Greenleaf & Siedzikowski
Union Meeting Corporate Center V
925 Harvest Drive, Suite 3010
Blue Bell, PA 19422
dhs@elliottgreanleaf.com
ttm@elliottgreanleaf.com

John G. Dean, Esquire
Elliott, Greenleaf & Siedzikowski
201 Penn Avenue, Suite 202
Scranton, PA 18503
jgd@elliottgreanleaf.com

Mark W. Bufalino, Esquire
225 Wyoming Avenue
West Pittston, PA 18643
mbuflaw@netzero.com

John Flounlacker, Esquire
Scott D. McCarroll, Esquire
Thomas, Thomas & Hafer
305 North Front Street
P.O. Box 999
Harrisburg, PA 17108-0999
jflounlacker@tthlaw.com
smccarroll@tthlaw.com

Suzanne McDonough, Esquire

Holsten & Associates
One Olive Street
Media, PA 19091
smcdonough@holstenassoc.com

Stephen A. Seach, Esquire
The Powell Law Group
123 Warren Street
West Hazleton, PA 18201
sseach@powell-group.com

James A. Swetz, Esquire
Cramer, Swetz & McManus
711 Sarah Street
Stroudsburg, PA 18360
jaswetz@csmlawyer.com

Thomas E. Brenner, Esquire
Goldberg, Katzman, P.C.
320 E. Market Street
Strawberry Square
P.O. Box 1268
Harrisburg, PA 17108-1268
teb@goldbergkatzman.com

Edward P. McNelis, Esquire
Stephen D. Rhoades, Esquire
21 East Broad Street
Hazleton, PA 18201
mcnelislaw@intergrafix.net
rhoadeslegal@hotmail.com

OBJECTORS – Plymouth Borough & Wright Twp.

Michael R. Kostelansky, Esquire
340 Market Street
Kingston, PA 18704
mkostelansky@cardoni.com

Plains Twp.
Stephen A. Menn, Esquire
225 Wyoming Avenue
West Pittston, PA 18643
sdlmen@yahoo.com

Fairview Twp.

Donald H. Brobst, Esquire
Thomas J. Campenni, Esquire
Rosenn, Jenkins & Greenwald
15 South Franklin Street
Wilkes-Barre, PA 18711
dbrobst@rjglaw.com
tcampenni@rjglaw.com

Hanover Twp.

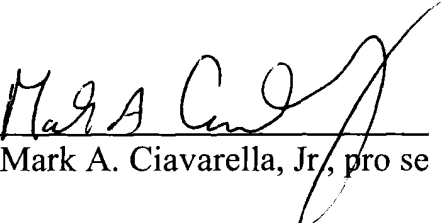
Robert V. Davison, Esquire
480 Pierce Street, Ste. 216
Kingston, PA 18704
rdavison@epix.net

MISCELLANEOUS PARTY – Kingston Borough Police Department

Harry P. Mattern, Esquire
777 Wyoming Avenue
Kingston, PA 18704
mattern@epix.net

INTERVENOR – Rice Twp.

William E. Vinsko, Jr., Esquire
Vinsko & Associates
253 S. Franklin Street
Wilkes-Barre, PA 18701
wvinsko@vinsko.com


Mark A. Ciavarella, Jr., pro se