

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

██████████ ██████████

Petitioner

v.

Judicial Conduct Board by and through
its agents and Chief Counsels;
Supreme Court of Pennsylvania
by and through its TBN agents
and employees;
Pennsylvania Superior Court and
Its Prothonotary by and through its
TBN agents and employees;
Pennsylvania Court of Common Pleas
by and through its TBN agents;
Montgomery County and its Sheriff;
Office of Attorney General
by and through its TBN agents
and employees Josh Shapiro,
Individually and in Official Capacity
Judge Paul Diamond, Individually and
in Official Capacity,¹ Judge Richard
Haaz, Individually and in Official
Capacity, Kelly Wall, Individually
and in Official Capacity,
Gail Weilheimer, Individually and in
Official Capacity Thomas Branca,
Individually and in Official Capacity
Robert Graci, Individually and in
Official Capacity, Mary Jane Bowes,
Individually and in Official Capacity
Kate Ford Elliott, Individually and in
Official Capacity,

Respondents

No. ██████████

OPINION NOT REPORTED

¹ By July 10, 2018 order, this Court granted ██████████ Praecipe to Remove Paul Diamond as a defendant, and discontinued the appeal against Judge Paul Diamond.

MEMORANDUM OPINION
PER CURIAM

FILED: January 14, 2019

Before the Court are the preliminary objections of the Judicial Conduct Board and its Chief Counsel Robert Graci (Chief Counsel Graci); the Pennsylvania Supreme Court; the Pennsylvania Superior Court and its Prothonotary; the Pennsylvania Court of Common Pleas, Judge Richard Haaz (Judge Haaz), Judge Kelly Wall (Judge Wall), Judge Gail Weilheimer (Judge Weilheimer), Judge Thomas Branca (Judge Branca), Judge Mary Jane Bowes (Judge Bowes), and Judge Kate Ford Elliott (Judge Ford Elliott) (collectively, Judicial Respondents); the Attorney General's Office and Attorney General Josh Shapiro (collectively, OAG); and Montgomery County and the Montgomery County Sheriff's Office (Sheriff's Office) (collectively, Montgomery County) to [REDACTED] pro se Amended Petition for Review (Petition) filed in this Court's original jurisdiction.

Facts²

[REDACTED] filed for divorce from her then-husband (Husband) in Montgomery County on June 4, 2007. At that time, the marital estate was solvent, the parties had excellent credit, and there were no alimony or custody demands. [REDACTED] main concern was obtaining a mortgage modification to preserve the family home until the divorce was resolved. In good faith, [REDACTED] cooperated in the sale of a secondary marital property located in Monroe County, Pennsylvania, with the stipulation that the proceeds be used to satisfy the couple's debts to maintain their excellent credit standing, and for the welfare of their children. According to

² The facts are as set forth in [REDACTED] Petition. See *Torres v. Beard*, 997 A.2d 1242, 1245 (Pa. Cmwlth. 2010) ("In ruling on preliminary objections, we must accept as true all well-pleaded material allegations in the petition for review[.]").

██████, the escrowed funds came under the courts' control, and the majority of the funds were paid to attorneys, resulting in unpaid marital bills and destruction of ██████ credit.

██████ arranged for a forbearance with the mortgagee, paid the mortgage for six months and, when the forbearance expired, the mortgagee demanded the delinquency be brought current. When it was not paid, the mortgagee instituted foreclosure proceedings against the family home. ██████ then arranged a mortgage modification, which Husband refused to sign. On December 23, 2008, ██████ filed an Emergency Petition for Special Relief seeking an order compelling Husband to execute the mortgage modification paperwork. The matter was deemed not to be an emergency, and the modification offer expired eight days later. A mortgage modification was subsequently obtained in February 2009. However, in 2013, a foreclosure complaint was filed against ██████ primary residence. ██████ appealed from the foreclosure. According to ██████ it was not until all of her assets were expended due to alleged collective judicial misconduct at all levels of the court system that a divorce decree was entered in December 2015, without ██████ ever having an equitable distribution trial. ██████ appeal notwithstanding, the family home was sold at Sheriff's sale on May 31, 2017.

On January 12, 2018, ██████ filed a petition for review in this Court's original jurisdiction. On April 25, 2018, the Judicial Respondents filed preliminary objections thereto. On May 9, 2018, ██████ filed the Petition, wherein she alleged that the Judicial Respondents, the OAG and Montgomery County

have individually and collectively acted brazenly above the law and in excess of their jurisdiction, causing severe financial and emotional damages to [██████]. They engaged in a continuing course of conduct in the divorce process that resulted in the extortion and conversion of

██████ assets over a period of ten years, which caused the loss of two homes, her business and savings, traumatized her children and their destruction of her credit perpetuated her unemployment.

Petition at 5. The Petition's Prayer for Relief states in relevant part:

[I]n consideration of the foregoing repugnant judicial conduct which includes acting in excess of their jurisdiction, official oppression and crimes committed under color of law against her, in violation of the [United States and] Pennsylvania Constitutions, ██████] claims monetary damages against the [Judicial Respondents, the OAG and Montgomery County] in an unliquidated amount to be determined at trial, and for any further relief that this hopefully Honorable Court determines necessary and appropriate.

Petition at 29.

On May 18, 2018, the Judicial Respondents filed preliminary objections to the Petition. On May 22, 2018, ██████ filed a motion to strike the Judicial Respondents' preliminary objections and to disqualify the Judicial Respondents' attorney Andrew Coal, Esquire. On May 23, 2018, the OAG filed preliminary objections to the Petition. On May 31, 2018, ██████ filed a response to the OAG's preliminary objections including (in the title only) a motion for declaratory and injunctive relief. On May 31, 2018, ██████ also filed a motion for declaratory and injunctive relief. By June 7, 2018 order, this Court: (1) denied ██████ motion to strike the Judicial Respondents' preliminary objections and to disqualify the Judicial Respondents' attorney; (2) directed ██████ to file a brief in response to the Judicial Respondents' preliminary objections; and, (3) denied ██████ motion for declaratory and injunctive relief (as there were no allegations pertaining thereto). On June 8, 2018, ██████ filed objections to the Court's order (Objections) and requested a jury trial. On June 13, 2018, ██████ filed a motion for

recusal (of Pennsylvania Commonwealth Court Judges P. Kevin Brobson (Judge Brobson) and Christine Fizzano-Cannon (Judge Fizzano-Cannon)) because they have recently served or currently serve on the Judicial Conduct Board, and she requested disclosures (by all presiding judges) as to any social, professional or financial exchanges with any of the parties. On June 18, 2018, Montgomery County filed preliminary objections to the Petition. By June 28, 2018 order, [REDACTED] was directed to file a brief in response to Montgomery County's preliminary objections. By July 3, 2018 order, this Court: (1) granted the recusal of Judge Brobson and Judge Fizzano-Cannon; and (2) denied [REDACTED] request for disclosures. By a second July 3, 2018 order, this Court denied [REDACTED] Objections and request for a jury trial. In a third order entered July 3, 2018, this Court denied [REDACTED] motion for declaratory and injunctive relief. Thus, now pending are three sets of preliminary objections.

Discussion

Initially,

[i]n ruling on preliminary objections, we must accept as true all well-pleaded material allegations in the petition for review, as well as all inferences reasonably deduced therefrom. The Court need not accept as true conclusions of law, unwarranted inferences from facts, argumentative allegations, or expressions of opinion. In order to sustain preliminary objections, it must appear with certainty that the law will not permit recovery, and any doubt should be resolved by a refusal to sustain them.

A preliminary objection in the nature of a demurrer admits every well-pleaded fact in the complaint and all inferences reasonably deducible therefrom. It tests the legal sufficiency of the challenged pleadings and will be sustained only in cases where the pleader has clearly failed to state a claim for which relief can be granted. When

ruling on a demurrer, a court must confine its analysis to the complaint.

Torres v. Beard, 997 A.2d 1242, 1245 (Pa. Cmwlth. 2010) (citations omitted).

Further,

under the Pennsylvania Rules of Civil Procedure, immunity from suit is an affirmative defense that must be pled in a responsive pleading under the heading new matter, not as a preliminary objection. We recognize that courts have permitted limited exception to this rule and have allowed parties to raise the affirmative defense of immunity as a preliminary objection. The affirmative defense, however, must be clearly applicable on the face of the complaint. Where the plaintiff does not object to the improper procedure, courts have ruled on the affirmative defense of immunity raised by preliminary objections.

Smolsky v. Pa. Gen. Assembly, 34 A.3d 316, 321 n.7 (Pa. Cmwlth. 2011), *aff'd*, 50 A.3d 1255 (Pa. 2012) (citations omitted).

The Judicial Respondents' Preliminary Objections

The Judicial Respondents raise ten preliminary objections: (1) the Petition does not comply with Pennsylvania Rule of Civil Procedure No. (Rule) 1033; (2) sovereign immunity bars [REDACTED] state law claims; (3) Section 2106 of the Judicial Code, 42 Pa.C.S. § 2106, bars [REDACTED] state law claims against Chief Counsel Graci and the Judicial Conduct Board; (4) judicial immunity bars this suit against Judges Haaz, Wall, Weilheimer, Branca, Bowes, and Ford Elliott; (5) quasi-judicial immunity bars this suit against the Superior Court's Prothonotary; (6) Chief Counsel Graci is entitled to prosecutorial immunity and quasi-judicial immunity; (7) [REDACTED] federal claims against the Judicial Respondents in their official capacities are barred because they are not persons subject to suit; (8) [REDACTED] failed to state a

claim under Section 1985 of the United States Code, 42 U.S.C. § 1985 (Section 1985); (9) [REDACTED] prior lawsuits preclude many of her current claims; and, (10) [REDACTED] failed to allege facts to support her claims.

1. Rule 1033

Rule 1033(a) provides, in relevant part: “A party, **either by filed consent** of the adverse party **or by leave of court**, may at any time change the form of action, add a person as a party, correct the name of a party, or otherwise amend the pleading.” Pa.R.C.P. No. 1033(a) (emphasis added). Judicial Respondents contend that the Petition should be dismissed for failure to comply with Rule 1033 because [REDACTED] did not obtain the consent of the adverse parties or leave of court before filing the Petition. However, Rule 1028(c)(1) provides: “A party may file an amended pleading as of course within twenty days after service of a copy of preliminary objections. If a party has filed an amended pleading as of course, the preliminary objections to the original pleading shall be deemed moot.” Pa.R.C.P. No. 1028(c)(1). Here, [REDACTED] filed the Petition 14 days after the Judicial Respondents filed their first set of preliminary objections. As she was permitted to file the Petition “as of course,” this preliminary objection is overruled. *Id.*

2. Sovereign Immunity - state law claims³

Section 2310 of the Statutory Construction Act of 1972 (SCA), states in pertinent part:

³ [REDACTED] did not object to the Judicial Respondents raising the affirmative defense of immunity in their preliminary objections.

[I]t is hereby declared to be the intent of the General Assembly that the Commonwealth, and its officials and employees acting within the scope of their duties, shall continue to enjoy sovereign immunity and official immunity and remain immune from suit except as the General Assembly shall specifically waive the immunity.

1 Pa.C.S. § 2310. Further, Section 8521(a) of the Judicial Code states: “Except as otherwise provided in this subchapter, no provision of this title shall constitute a waiver of sovereign immunity for the purpose of [Section 2310 of the SCA] (relating to sovereign immunity reaffirmed; specific waiver) or otherwise.” 42 Pa.C.S. § 8521. Section 8522(a) of the Judicial Code provides:

The General Assembly, pursuant to [S]ection 11 of Article I of the Constitution of Pennsylvania, does hereby waive, in the instances set forth in subsection (b) . . . , sovereign immunity as a bar to an action against Commonwealth parties, for damages arising out of a negligent act where the damages would be recoverable under the common law or a statute creating a cause of action if the injury were caused by a person not having available the defense of sovereign immunity.

42 Pa.C.S. § 8522(a). This Court has summarized:

The nine exceptions to sovereign immunity, as provided by [Section 8522(b) of the Judicial Code], are: (1) vehicle liability; (2) medical-professional liability; (3) **care, custody or control of personal property**; (4) Commonwealth real estate, highways and sidewalks; (5) potholes and other dangerous conditions; (6) care, custody and control of animals; (7) liquor store sales; (8) National Guard activities; and (9) toxoids and vaccines.

Heicklen v. Hoffman, 761 A.2d 207, 209 n.7 (Pa. Cmwlth. 2000) (emphasis added).

██████ maintains that her claims against the Judicial Respondents include negligence. Specifically, she contends that the Judicial Conduct Board and Judge Wall were negligent, and their negligence falls within the care, custody or

control of personal property exception which excludes the defense of sovereign immunity for damages caused by “[t]he care, custody or control of personal property in the possession or control of Commonwealth parties, including . . . property of persons held by a Commonwealth agency[.]” 42 Pa.C.S. § 8522(b)(3). In the Petition, ██████ alleged: “[E]scrowed funds came under the control of the courts, and the majority of the funds were delved out to attorneys who protracted the case for that reason, resulting in unpaid marital bills and destruction of ██████ credit.” Petition at ¶7.

██████ asserts that the Judicial Respondents were responsible for the care, custody and control of ██████ seized property.⁴ ██████ argues that the Judicial Respondents’ negligent care and custody of her personal property directly resulted in her loss. Particularly, ██████ explains:

The [c]ourt had access to my escrow account, and instead of using it for my family, they were issuing orders to give it out to attorneys The gross negligence with which my marital estate was treated while I was trapped in contract under [the Divorce Code⁵] was revolting.

Gochin Amended Br. at 18-19. Gochin maintains:

The state actors took my property and used it to pay themselves, their cronies and to launder to politicians, by continual creation of attorneys[’] fees- who[se] law firms litter the internet with spreadsheets of millions of dollars in campaign contributions to the former law firms of judges that partake in this quid pro quo.

Id. at 20. “It is well[-]established that the exceptions to sovereign immunity are to be strictly and narrowly construed. In addition, we have held that the personal

⁴ Although it is unclear from the Petition whether the escrowed funds were actually in the courts’ care, custody or control, out of an abundance of caution, this Court will treat them as such for the purpose of this objection.

⁵ 23 Pa.C.S. §§ 3101-3904.

property exception may only be applied to those cases where the property itself is alleged to have caused the injury.” *Sugalski v. Commonwealth*, 569 A.2d 1017, 1019 (Pa. Cmwlth. 1990) (citation omitted).

In *Sugalski*, pursuant to search warrants, the Pennsylvania State Police searched the petitioners’ homes and a safe deposit box. Approximately \$550,000.00 in cash was seized during those searches as suspected derivative proceeds of an illegal gambling operation. Following several hearings, the trial court held that the Commonwealth had failed to meet its burden of proving that the majority of the money constituted derivative proceeds and ordered most of it returned to petitioners. Despite the petitioners’ requests that it be placed in an interest-bearing account during the pendency of those proceedings, the money was held both at the State Police Barracks at Limerick, Pennsylvania and in a safety deposit box in Bala Cynwyd, Pennsylvania. While the money was being held, the petitioners received a notice of levy from the Internal Revenue Service (IRS), with a demand to surrender the seized funds to the United States. The Commonwealth of Pennsylvania (Commonwealth) did not comply with the first or two subsequent levy notices. Ultimately, IRS agents and the Commonwealth agreed that the Commonwealth would retain possession of the cash. The petitioners filed a complaint against the Commonwealth seeking damages on two general grounds: (1) the Commonwealth’s failure to place the seized funds in an interest-bearing account between the time of seizure and the time of return; and (2) failure to comply with the IRS’ levy notice, which resulted in the imposition of approximately \$60,000.00 in fines and penalties against the petitioners.

The petitioners argued that the action fell under the care, custody or control of personal property exception to sovereign immunity. The trial court

sustained a demurrer to the complaint based on sovereign immunity. On appeal, this Court held “it was not the property held by the [Commonwealth] – the money itself – which caused [the petitioners’] harm. Rather, it was the [Commonwealth’s] failure to handle the funds as [the petitioners] would have wished which resulted in [the petitioners’] claimed injury.” *Sugalski*, 569 A.2d at 1019. Thus, “the injury complained of was not caused by the property in the custody of [the Commonwealth].” *Id.*; see also *Pyeritz v. Commonwealth*, 32 A.3d 687, 696 (Pa. 2011) (“It was not the property itself, but rather the alleged mismanagement of the property that caused the injury complained of; thus, the personal property exception to sovereign immunity does not apply.”).

Similarly, here, it was not the escrowed money that caused [REDACTED] harm; it was the Judicial Respondents’ “failure to handle the funds as [REDACTED] would have wished which resulted in [REDACTED] claimed injury.” *Id.* at 177. Because the care, custody or control of personal property exception to sovereign immunity does not apply in the instant matter, the Judicial Respondents are immune from [REDACTED] state law claims. Accordingly, this preliminary objection is sustained.

3. Section 2106 of the Judicial Code – state law claims against Judicial Conduct Board and Chief Counsel Graci

Section 2106 of the Judicial Code provides:

Members of the Judicial Conduct Board and its chief counsel and staff shall be absolutely immune from suit for all conduct in the course of their official duties. No civil action or disciplinary complaint predicated upon the filing of a complaint or other documents with the [Judicial Conduct B]oard or testimony before the [Judicial Conduct B]oard may be maintained against any complainant, witness or counsel.

42 Pa.C.S. § 2106; *see also* Pa. Const. art. 5 § 18(a)(10). Because [REDACTED] sued the Judicial Conduct Board and Chief Counsel Graci in relation to their official duties, and the Petition does not contain any allegations to the contrary, they are immune from [REDACTED] state law claims. Accordingly, this preliminary objection is sustained.

4. Judicial Immunity

It is well settled that judges have absolute immunity for their ‘judicial acts, even if their actions are in error or performed with malice, provided there is not a clear absence of all jurisdiction over subject matter and person.’ *Beam v. Daihl*, 767 A.2d 585, 586 (Pa. Super. 2001); *see Guarrasi v. Scott*, 25 A.3d 394, 405 n.11 (Pa. Cmwlth. 2011).

Barren v. Pa. State Police, 148 A.3d 486, 491 (Pa. Cmwlth. 2016). Further,

the scope of the judge’s jurisdiction must be construed broadly where the issue is the immunity of the judge. A judge will not be deprived of immunity because the action he took was in 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 v. Sparkman, 435 U.S. 349, 357 (1978) (quoting *Bradley v. Fisher*, 13 Wall. 335, 351, 20 L.Ed. 646 (1872)).

[REDACTED] alleged that the Judicial Respondents acted in “excess of their jurisdiction.” Petition at 5, ¶22, ¶37, ¶48, 28.

[T]he [United States Supreme] Court illustrated the distinction between lack of jurisdiction and excess of jurisdiction with the following examples: if a probate judge, with jurisdiction over only wills and estates, should try a criminal case, he would be acting in the clear absence of jurisdiction and would not be immune from liability for

his action; on the other hand, if a judge of a criminal court should convict a defendant of a nonexistent crime, he would merely be acting in excess of his jurisdiction and would be immune.

Stump, 435 U.S. at 357 n.7. Here, because [REDACTED] averred that the Judicial Respondents acted in excess of their jurisdiction, rather than in the absence of jurisdiction, the Judicial Respondents are entitled to judicial immunity. Accordingly, this preliminary objection is sustained.

5. Quasi-Judicial Immunity - Superior Court's Prothonotary

The Petition contains no specific allegation against the Superior Court's Prothonotary, but rather only an inference in the Count I heading, which states:

COUNT I - Against Pennsylvania Supreme Court and its Subsidiaries [sic] of the Court of Common Pleas and the Superior Court – for Conversion, Breach of Contract, Negligence, Abuse of Process, Official Oppression, Discrimination and in violation of [the Divorce Code], the U[nited] S[tates] [and] Pennsylvania Constitutions and [Sections 1983 and 1985 of the United States Code (Section 1983 and Section 1985),] 42 U[.]S[.]C[.] §[§] 1983[,] 1985

Petition at 9. In addition, the Petition's caption includes: "Pennsylvania Superior Court and Its Prothonotary by and through its TBN [to be named] agents and employees[.]" Petition at 1. However, no express allegation with respect to any agents or employees of the Superior Court's Prothonotary appears in the Petition.

To the extent [REDACTED] averred that the Superior Court's Prothonotary is liable to her for actions in connection with the alleged court actions, because "the Prothonotary was acting at the direction of the court, . . . in so acting [the Prothonotary] was wrapped in the cloak of immunity." *Lockhart v. Hoenstine*, 411 F.2d 455, 460 (3d Cir. 1969); *see also Schneller v. Prothonotary* (Pa. Cmwlth. No.

1316 C.D. 2016, filed September 12, 2017), slip op. at 13 n.10⁶ (“[C]onstitutional tort law claims under [S]ection 1983, . . . or state law intentional tort claims . . . are barred by the doctrine of quasi-judicial immunity . . . [when the Prothonotary’s actions are] clearly done in connection with [] official duties as an officer of the court[.]”). Because the Petition does not contain any allegation that the Superior Court’s Prothonotary was acting outside his official duties or contrary to the direction of the Superior Court, this preliminary objection is sustained.

6. Chief Counsel Graci - Prosecutorial Immunity and Quasi-Judicial Immunity

In the Petition, [REDACTED] alleged:

[REDACTED] [Chief Counsel Graci], removed Judge Wall from the case on or about September 2013, (although it pretentiously remains confidential), after [REDACTED] had met with members of the [Judicial Conduct] Board.

[REDACTED] The [Judicial] Conduct Board failed to apply appropriate punishment against Judge Wall; her biased orders were allowed to stand, she was allowed to continue to enjoy her salary and influenced the subsequent judge to drive [REDACTED] home into default.

[REDACTED] [REDACTED] had been informed by [Chief Counsel Graci] there was no restitution process available by the [Judicial] Conduct Board for damages.

⁶ This Court’s unreported memorandum opinions may be cited “for [their] persuasive value, but not as a binding precedent.” Section 414(a) of the Commonwealth Court’s Internal Operating Procedures, 210 Pa. Code § 69.414(a).

Petition at ¶¶16, 17, 18. Judicial Respondents argue that [REDACTED] allegations arise out of Chief Counsel Graci's handling [REDACTED] complaints.

As the Judicial Conduct Board's Chief Counsel, under Section 2106 of the Judicial Code, Chief Counsel Graci is "absolutely immune from suit for all conduct in the course of [his] official duties." 42 Pa.C.S. § 2106; *see also* Pa. Const. art. 5 § 18(a)(10). The Judicial Conduct Board and/or its Chief Counsel "possess[es] functions similar to that of prosecuting attorneys in the criminal justice system. The investigation and prosecution of complaints of judicial misconduct are its assigned task within the defined structure described in [Article 5, Section 18 of the Pennsylvania Constitution]." *Commonwealth ex rel. Judicial Conduct Bd. v. Griffin*, 918 A.2d 87, 94 (Pa. 2007). The law is well-settled that prosecutors enjoy absolute immunity under Section 1983. *Imbler v. Pachtman*, 424 U.S. 409 (1976); *see also Schneller v. Judicial Conduct Bd.* (Pa. Cmwlth. No. 239 M.D. 2014, filed December 11, 2014), slip op. at 8 (Judicial Conduct Board's decision to investigate judges is discretionary; thus, suit "barred by sovereign immunity."). Because Chief Counsel Graci was acting as a prosecutor and a member of the judicial system when addressing [REDACTED] complaints, and the Petition does not contain any allegations to the contrary, this preliminary objection is sustained.

7. Federal Claims - Judicial Respondents are not persons subject to suit.

[REDACTED]'s federal claims against the Judicial Respondents are framed as

violation[s] of . . . [Sections 1983 and 1985⁷ of the United States Code][.]” Petition at 9, 12, 14, 17, 19.⁸

Section 1983 provides, in pertinent part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any [s]tate . . . , subjects, or causes to be subjected, any citizen of the United States . . . 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.

42 U.S.C. § 1983. Section 1985 states, in relevant part:

(2) Obstructing justice; intimidating party, witness, or juror

If two or more **persons** in any [s]tate . . . conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more **persons** conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any [s]tate or [t]erritory, with intent to deny to any citizen the equal

⁷ [REDACTED] did not specify on which provision(s) of Section 1985 she based her claims. However, it appears the only possible claims in light of her allegations would be violations of Section 1985(2) and (3). See Petition at 9, ¶¶23-24, 19, ¶42.

⁸ Importantly, these claims are referenced only in the Petition’s Count headings; the Petition contains no specific allegations concerning the same.

protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

(3) Depriving persons of rights or privileges

If two or more **persons** in any [s]tate . . . conspire . . . , for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any [s]tate . . . from giving or securing to all persons within such [s]tate . . . the equal protection of the laws; . . . in any case of conspiracy set forth in this section, if one or more **persons** engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

42 U.S.C. § 1985 (bold text emphasis added). The Judicial Respondents assert that [REDACTED] cannot bring these claims against the Judicial Respondents in their official capacities because they are not persons subject to suit.

“The United States Supreme Court has held that ‘neither a [s]tate nor its officials acting in their official capacities are ‘persons’ under [Section] 1983.’ *Will v. Michigan [Dep’t] of State Police*, 491 U.S. 58, 71 . . . (1989)[.]” *Flagg v. Int’l Union, Sec., Police, Fire Prof’ls of Am., Local 506*, 146 A.3d 300, 305 (Pa. Cmwlt. 2016). Further,

the district courts repeatedly have held that all components of the judicial branch of the Pennsylvania government are state entities and thus are not persons for [S]ection 1983 purposes. *See Pokrandt v. Shields*, 773 F. Supp. 758 [(E.D. Pa. 1991)]; *Mattas v. Supreme Court of [Pa.]*, 576 F. Supp. 1178 (W.D. Pa. 1983); *Delgado v. McTighe*, 442

F. Supp. 725 (E.D. Pa. 1977); [*Cty.*] of *Lancaster v. Phila[.] Elec. Co.*, 386 F. Supp. 934 (E.D. Pa. 1975).

Callahan v. City of Phila., 207 F.3d 668, 674 (3d Cir. 2000). The same holds true for claims under Section 1985. *See Waits v. McGowan*, 516 F.2d 203 (3d Cir. 1975). Because [REDACTED] alleged in her Petition that Judicial Respondents were acting in their official capacities,⁹ they are not persons under Sections 1983 and 1985. Accordingly, this preliminary objection is sustained.

8. Section 1985 - Generally

Judicial Respondents assert that [REDACTED] did not allege a conspiracy based on racial or class-based discriminatory animus and, thus, failed to state a Section 1985 claim. The United States Supreme Court has explained:

Our precedents establish that in order to prove a private conspiracy in violation of the first clause of [Section] 1985(3), a plaintiff must show, *inter alia*, (1) that ‘some racial, or perhaps otherwise class-based, invidiously[-]discriminatory animus [lay] behind the conspirators’ action,’ *Griffin v. Breckenridge*, 403 U.S. 88, 102 . . . (1971), and (2) that the conspiracy ‘aimed at interfering with rights’ that are ‘protected against private, as well as official, encroachment,’ *Carpenters v. Scott*, 463 U.S. 825, 833 . . . (1983).

Bray v. Alexandria Women’s Health Clinic, 506 U.S. 263, 267-68 (1993) (footnote omitted).¹⁰

⁹ Although the Petition’s caption names all of the Judicial Respondents in both their individual and official capacities, all allegations reference only their actions as sitting judges. Thus, there are no specific averments against the Judicial Respondents in their individual capacities.

¹⁰ “The second clause of [Section] 1985(2) and [Section] 1985(3) prohibit conspiracies designed to deprive persons of equal protection of the law. The Supreme Court has held that a requisite element of both sections is class-based, invidiously[-]discriminatory animus.” *Diulus v. Churchill Valley Country Club*, 601 F. Supp. 677, 681 (W.D. Pa. 1985).

In the Petition, [REDACTED] alleged: “Demands for justice to the Pennsylvania Supreme Court have been treated with bias and discrimination against pro se and indigent litigants to the point that not one allocator can be found for anyone self-represented.” Petition at ¶1. However, the United States Supreme Court has held: “We [] cannot construe [Section] 1985(3) to reach conspiracies motivated by economic or commercial animus.” *United Bhd. of Carpenters & Joiners of Am., Local 610, AFL-CIO v. Scott*, 463 U.S. 825, 838 (1983); *see also Eitel v. Holland*, 787 F.2d 995, 1000 (5th Cir. 1986) (“Based on th[e] construction of [Section] 1985(3), we hold that pro se plaintiffs do not constitute a class for whose members [Section] 1985(3) provides a remedy.”); *Scheib v. Butcher*, 602 F. App’x 67, 68 n.1 (2015) (Non-lawyer pro se litigants are “not a cognizable class under [Section 1985(3)].”).

The only other allegation against the Judicial Respondents, specifically Judge Branca, that mentioned discrimination, is the following:

The mortgage was modified on or about February 2009, however it was done contrary to the [Uniform Commercial Code¹¹] UCC, the banking laws and the restrictions imposed by the federal lawsuit against the mortgage industry that same year. **This included discrimination with a high interest rate because the male[,] i.e.,] spouse on the deed, would not sign.**

Petition at ¶35 (emphasis added). “This allegation fails to satisfy the stringent factual pleading requirements for maintenance of a civil rights action under Section 1985.” *Simmons v. Twp. of Moon*, 601 A.2d 425, 432 (Pa. Cmwlth. 1991). Accordingly, because [REDACTED] Section 1985 claims against the Judicial

¹¹ 13 Pa.C.S. §§ 1101-9507.

Respondents did not allege a conspiracy based on racial or class-based discriminatory animus, this preliminary objection is sustained.

9. Res Judicata/Collateral Estoppel¹²

Judicial Respondents contend: “[REDACTED] has unsuccessfully sued multiple [Judicial] Respondents in multiple federal lawsuits involving the same claims and issues as she brings here. For this reason, the doctrines of res judicata and collateral estoppel bar much of the instant matter.” Judicial Respondents’ Br. at 13-14. Specifically, Judicial Respondents maintain that [REDACTED] v. *Judge Kelly C. Wall, Arthur Tilson, Mindy Harris, Esquire, Montgomery County Common Pleas Court, Montgomery County, Patricia A. Coacher, Esquire and John/Jane Doe 1-5* (U.S. Dist. E.D. Pa. No. 2:13-cv-[REDACTED]-PD), and [REDACTED] v. *Judge Richard Haaz, Paul Troy, Esquire, Randy Feldman, Esquire, Montgomery County, Judge William J. Furber, Montgomery County Common Pleas Court, Pennsylvania Supreme Court and John/Jane Does* (U.S. Dist. E.D. Pa. No. 2:16-cv-[REDACTED]-PD), bar the instant matter. Because the only Judicial Respondents named in the federal suits are Judge Wall, Judge Haaz and the Pennsylvania Supreme Court, and this Court has already determined that Judge Wall and Judge Haaz are immune from suit, *see supra*. pp. 12-13, and the only allegation against the Supreme Court fails to satisfy the

¹² This Court acknowledges that

res judicata and collateral estoppel are affirmative defenses which should not be raised by preliminary objection. . . . [T]he procedural irregularity may be waived by failing to formally challenge it by filing preliminary objections to the preliminary objections. Because [REDACTED] did not formally challenge the procedure by which these issues were raised, [s]he waived this [] argument.

Stilp v. Commonwealth, 910 A.2d 775, 784 (Pa. Cmwlth. 2006), *aff’d*, 974 A.2d 491 (Pa. 2009) (citation omitted).

stringent factual pleading requirements for maintenance of a civil rights action under Section 1985, *see supra*. pp. 18-20, the Court need not address this preliminary objection.

10. Insufficient Facts

Judicial Respondents assert:

[REDACTED] does not specify any allegations whatsoever against the Prothonotary of the Superior Court, and her allegations against [Chief Counsel Graci] ([Petition at] ¶¶16-18) do not amount to a cause of action. . . . [REDACTED] also fails to state a breach of contract claim because she does not adequately allege the existence of a contract between her and any of the [Judicial] Respondents. Finally, [REDACTED] insinuates rampant misconduct, negligence, and harassment, but she does not allege these claims with sufficient facts or specificity to state a claim upon which relief can be granted.

Judicial Respondents' Br. at 16. "Pennsylvania is a fact-pleading jurisdiction; consequently, a pleading must not only apprise the opposing party of the asserted claim, 'it must also formulate the issues by summarizing those facts essential to support the claim.'" *Richardson v. Wetzel*, 74 A.3d 353, 356-57 (Pa. Cmwlth. 2013) (quoting *Sevin v. Kelshaw*, 611 A.2d 1232, 1235 (Pa. Super. 1992)).

First, Judicial Respondents are correct that there are no specific allegations regarding the Superior Court Prothonotary in the Petition. *See* Petition at 9-11 (Count I); *see also supra*. p.13. In addition, with respect to Chief Counsel Graci, [REDACTED] set forth in her Petition only the following averments:

[] [Chief Counsel Graci] removed Judge Wall from the case on or about September 2013, (although it pretentiously remains confidential), after [REDACTED] had met with members of the [Judicial Conduct] Board.

....

[] [REDACTED] had been informed by [Chief Counsel Graci] there was no restitution process available by the [Judicial] Conduct Board for damages.

Petition at ¶¶16, 18. Clearly, these allegations do not “summarize[e] [] facts essential to support the claim[s]” against Chief Counsel Graci for breach of contract, negligence or discrimination as Count II specifies. *Richardson*, 74 A.3d at 357 (quoting *Sevin*, 611 A.2d at 1235).

Next, “[t]o support a claim for breach of contract, a plaintiff must allege: (1) the existence of a contract between the plaintiff and defendant, including its essential terms; (2) a breach of duty imposed by the contract; and (3) damages resulting from that breach of duty.” *Boyd v. Rockwood Area Sch. Dist.*, 907 A.2d 1157, 1165 (Pa. Cmwlth. 2006). Thus, the issue currently before this Court is whether [REDACTED] can establish the existence of a contract and a duty owed by any of the Judicial Respondents and the breach thereof. This Court agrees with the Judicial Respondents that the Petition fails to meet this standard.

Further, with respect to [REDACTED] claims of rampant misconduct and negligence,

[i]n order to prove willful misconduct, [REDACTED] must establish that the [Judicial Respondents] desired to bring about the result that followed or at least the result was substantially certain to follow, so that such desire can be implied. Willful misconduct must be carried out with the intention of achieving exactly that wrongful purpose.

Jones v. City of Phila., 893 A.2d 837, 843 (Pa. Cmwlth. 2006) (citation omitted). “[I]n the context of a negligence action, it is fundamental that [REDACTED] establish the duty owed by (the [Judicial Respondents]), the breach of which might give rise to injuries alleged to be suffered by [REDACTED] *Pike Cty. Hotels Corp. v. Kiefer*, 396

A.2d 677, 681 (Pa. Super. 1978) (quoting *Otto v. Am. Mut. Ins. Co.*, 361 A.2d 815, 818-19 (Pa. Super. 1976)). Because [REDACTED] did not specifically allege that the Judicial Respondents had any desire to bring about the outcome or a duty owed that was breached by any of the Judicial Respondents, she did not “summarize[e] [] facts essential to support the claim[s]” against the Judicial Respondents for misconduct and negligence. *Richardson*, 74 A.3d at 357 (quoting *Sevin*, 611 A.2d at 1235). Accordingly, this preliminary objection is sustained.

Conclusion - Judicial Respondents

Because (1) [REDACTED]’s state law claims against all Judicial Respondents are barred by sovereign immunity; (2) Section 2106 of the Judicial Code bars [REDACTED] state law claims against Chief Counsel Graci and the Judicial Conduct Board; (3) judicial immunity bars this suit against Judge Haaz, Judge Wall, Judge Weilheimer, Judge Branca, Judge Bowes, and Judge Ford Elliott; (4) quasi-judicial immunity bars this suit against the Superior Court’s Prothonotary; (5) Chief Counsel Graci is entitled to prosecutorial immunity and quasi-judicial immunity; (6) [REDACTED] federal claims against all Judicial Respondents in their official capacities are barred because they are not persons subject to suit; (7) [REDACTED] failed to state a claim under Section 1985 against any of the Judicial Respondents; and (8) [REDACTED] failed to allege facts to support her claims against any of the Judicial Respondents; there are no cognizable claims against any Judicial Respondents. Accordingly, the claims against the Judicial Respondents are dismissed.

OAG's Preliminary Objections

██████ alleged in her Petition the following claims against the OAG: "Count VIII Against the [OAG] for Conversion, Breach of Contract, Negligence, Abuse of Process, Official Oppression, Discrimination and in violation of [the Divorce Code], the U[nited] S[tates] [and] Pennsylvania Constitutions and [Sections]1983 and []1985[.]" Petition at 25. The OAG raises six preliminary objections: (1) improper service; (2) insufficient specificity of pleading; (3) failure to state a claim under Section 1983; (4) failure to state a claim under Section 1985; (5) state law claims fail as a matter of law; and (6) ██████ has no standing.

1. Improper Service

The OAG asserts improper service under the Pennsylvania Rules of Civil Procedure. However, the Petition is a petition for review which was filed in this Court's original jurisdiction. Thus, the Pennsylvania Rules of Appellate Procedure apply. Pennsylvania Rule of Appellate Procedure (Pa.R.A.P.) 1514(c) provides, in relevant part: "A copy of the petition for review shall be served by the petitioner in person or by certified mail on the government unit that made the determination sought to be reviewed. In matters involving the Commonwealth, the petitioner shall similarly serve a copy upon the Attorney General of Pennsylvania." Pa.R.A.P. 1514(c).

The OAG contends that because ██████ served the Petition on the Deputy Attorney General by electronic filing on May 18, 2018, service was improper. ██████ rejoins that, because of ██████ *in forma pauperis* status, the OAG and this Court's Prothonotary cannot agree whether ██████ or the Court was required to serve the Petition. See ██████ Response to OAG POs at ¶8.

Notwithstanding, the OAG asserts: “An appropriate remedy for improper service is for the court to strike service rather than dismiss the complaint (*see Trzcinski v. Prudential Prop. & Cas. Ins. Co.*, 597 A.2d 687, 689 (Pa. Super. Ct. 1991)[.]” OAG POs at ¶17. Moreover, “this Court held that a failure to comply with Pa.R.A.P. 1514(c) is an amendable defect.” *Awkakewakeyes v. Dep’t of Corr.*, 597 A.2d 210, 211 (Pa. Cmwlth. 1991). Accordingly, under the circumstances presented here, this Court will not dismiss the Petition as to the OAG on this basis, and this preliminary objection is overruled.¹³

2. Rule 1028(a)(3) - Insufficient specificity of pleadings

█████ averred that she “filed a criminal complaint with the Attorney General’s Office, which [it] prejudicially failed to investigate[;]” Agent Jeffrey Wright “was ordered to halt” the investigation by Deputy Attorney General Nicole Forzato (Forzato); and █████ was not “provide[d] relief” from the 66 million dollar settlement between the Attorney General and the federal government. Petition at ¶¶60, 61, 64.

The pertinent question under Rule 1028(a)(3) is whether the complaint is sufficiently clear to enable the defendant to prepare his defense, or whether the plaintiff’s complaint informs the defendant with accuracy and completeness of the specific basis on which recovery is sought so that he may know without question upon what grounds to make his defense.

¹³ This Court acknowledges that the OAG requested the Court to order █████ to properly serve the Petition, *see* OAG POs at 5. However, the OAG also requested this Court to “[s]ustain [its] Preliminary Objections and dismiss the [Petition] with Prejudice[.]” OAG POs at 19; *see also* OAG POs at 1.

Podolak v. Tobyhanna Twp. Bd. of Supervisors, 37 A.3d 1283, 1288 (Pa. Cmwlth. 2012) (quoting *Rambo v. Greene*, 906 A.2d 1232, 1236 (Pa. Super. 2006)). As [REDACTED] did not allege “the specific basis on which recovery is sought so that [the OAG] may know without question upon what grounds to make [its] defense[,]” this preliminary objection is sustained. *Id.*

3. Rule 1028(a)(4) - Demurrer; Section 1983 claim

In determining whether plaintiffs have stated a cause of action under Section 1983, the inquiry must focus on whether the two essential elements of the action are present: (1) whether the conduct complained of was committed by a person acting under color of state law; and (2) whether this conduct deprived a person of rights, privileges, or immunities secured by the Constitution or the laws of the United States. A plaintiff pursuing a cause of action under Section 1983 must plead the facts that give rise to the claimed deprivation of civil liberties and specifically avoid vague and conclusory allegations.

Palmer v. Bartosh, 959 A.2d 508, 514 (Pa. Cmwlth. 2008) (citation omitted). Here, [REDACTED] did not specify of which “rights, privileges, or immunities secured by the Constitution or the laws of the United States[,]” she has been deprived. *Id.*

Further,

a defendant in a civil rights action must have personal involvement in the alleged wrongs and that liability cannot be predicated on the operation of *respondeat superior*. . . . [P]ersonal involvement can be shown through allegations of personal direction or actual knowledge and acquiescence, but the allegations must be made with appropriate particularity.

Bush v. Veatch, 1 A.3d 981, 986 (Pa. Cmwlth. 2010). In this case, [REDACTED] alleged that Forzato ordered the investigation of [REDACTED] complaint stopped, but she did

not assert any “personal direction or actual knowledge and acquiescence” by the Attorney General. *Id.* Because [REDACTED] failed to sufficiently state a valid Section 1983 claim against the OAG, this preliminary objection is sustained.

4. Rule 1028(a)(4) - Demurrer; Section 1985 claim

The OAG argues that [REDACTED] has failed to state a Section 1985 claim because she did not allege that her complaint was not investigated due to any discriminatory practices. “[T]he language in [Section] 1985(3) requiring ‘intent to deprive of equal protection, or equal privileges and immunities, means there must be some *racial* or perhaps otherwise *class-based* invidious discriminating animus behind the conspirator’s action.’” *Faust v. Dep’t of Revenue*, 592 A.2d 835, 839 (Pa. Cmwlth. 1991) (quoting *Griffin v. Breckenridge*, 403 U.S. 88, 102 (1971)).

[REDACTED] averred conflicts of interest within the Attorney General’s Office which she implied is the reason for the OAG’s actions. However, she did not allege any “invidious discriminating animus behind the conspirator’s action.” *Id.* Because [REDACTED] failed to sufficiently state a Section 1985 claim against the OAG, this preliminary objection is sustained.

5. Rule 1028(a)(4) - Demurrer; State-based claims

“To maintain a cause of action for conversion against [the OAG], [REDACTED] was required to plead that [the OAG] deprived [REDACTED] of the use or possession of [her] property without [REDACTED] consent and without lawful justification.” *Pratter v. Penn Treaty Am. Corp.*, 11 A.3d 550, 560 (Pa. Cmwlth. 2010). As [REDACTED] included no such allegations in the Petition, this claim fails. Further, [REDACTED] did not allege either a contract between [REDACTED] and the OAG, or the

OAG's duty and breach of that duty. Thus, the purported breach of contract claim must fail. *Boyd*. Similarly, because [REDACTED] did not specify "the [d]uty owed by (the [OAG]), the breach of which might give rise to injuries alleged to be suffered by [REDACTED] she failed to set forth a valid negligence action. *Pikes Cty. Hotels Corp*, 396 A.2d at 681.

"In order to state a cause of action for abuse of process it must be alleged that the defendant used a legal process to accomplish a purpose for which the process was not designed." *Orange Stones Co. v. City of Reading*, 87 A.3d 1014, 1024 (Pa. Cmwlth. 2014) (quoting *Al Hamilton Contracting Co. v. Cowder*, 644 A.2d 191 (Pa. Super 1994)). "There must be an act or threat not authorized by the process, or the process must be used for an illegitimate aim such as extortion, blackmail, or to coerce or compel the plaintiff to take some collateral action." *Orange Stones Co.*, 87 A.3d at 1024-25 (quoting *Al Hamilton*, 644 A.2d at 192). [REDACTED] made no such allegations in the Petition; hence, her abuse of process claim also fails. Further, "official oppression is a state criminal offense. *See* 18 Pa.C.S. § 5301. Pennsylvania's official oppression statute does not give rise to a private cause of action." *Wilson v. Marrow*, 917 A.2d 357, 365 n.9 (Pa. Cmwlth. 2007). Finally, [REDACTED] asserted no discrimination claim against the OAG in the Petition. Consequently, [REDACTED] state law claims are legally insufficient.

Moreover, the OAG argues that if [REDACTED] had properly pleaded state law claims, the claims would be barred by sovereign immunity. "[I]nasmuch as the [OAG] acted within the scope of [its] employment and [REDACTED] claims do not fall within any category in which sovereign immunity is waived, [the OAG] is protected by immunity from the imposition of liability in this matter." *La Frankie v. Miklich*,

618 A.2d 1145, 1149 (Pa. Cmwlth. 1992). Accordingly, this preliminary objection is sustained.¹⁴

Conclusion - OAG

Because (1) [REDACTED] failed to state facts to support her claims; (2) did not state a claim under Section 1983; (3) failed to state a claim under Section 1985; and (4) [REDACTED] state law claims fail as a matter of law; there are no remaining claims against the OAG. Accordingly, the claims against the OAG are dismissed.

Montgomery County's Preliminary Objections

In her Petition, [REDACTED] asserted the following claims against Montgomery County: "Count VII Against [Montgomery County] for Conversion, Official Oppression, Discrimination and in violation of [the Divorce Code], the U[nited] S[tates] [and] Pennsylvania Constitutions and [Sections] 1983 and [1985[.]" Petition at 23. [REDACTED] alleged: (1) her home was sold at Sheriff's sale while the foreclosure appeal was pending and the Pennsylvania Supreme Court would not review her mandamus request; (2) Montgomery County Court publicly announced a 5,000-case backlog; and (3) the announcement was a cover-up for the family court's conversion of assets. *See* Petition at ¶¶53, 54, 55. Montgomery County raises four preliminary objections: (1) legal insufficiency of pleading against Montgomery County; (2) legal insufficiency of pleading against the Sheriff's Office; (3) jurisdiction; and (4) improper service.

¹⁴ Because there are no remaining claims against the OAG, this Court need not reach the OAG's objection to [REDACTED] standing.

1. Legal insufficiency - Montgomery County

“To maintain a cause of action for conversion against [Montgomery County], [REDACTED] was required to plead that [Montgomery County] deprived [REDACTED] of the use or possession of [her] property without [REDACTED] consent and **without lawful justification.**” *Pratter*, 11 A.3d at 560 (Pa. Cmwlth. 2010) (emphasis added). Here, the Sheriff’s sale of [REDACTED] home was the result of a foreclosure complaint, which [REDACTED] claimed to have appealed. *See* Petition at ¶53. Because the sale was in response to a foreclosure, Montgomery County had lawful justification for the sale of [REDACTED] property; therefore, this claim must fail. With respect to official oppression, it is a state criminal offense. *See* 18 Pa.C.S. § 5301. “Pennsylvania’s official oppression statute does not give rise to a private cause of action.” *Wilson*, 917 A.2d at 365 n.9. Further, although listing “[d]iscrimination” in the Count IV heading, Petition at 23, [REDACTED] asserted no claim of discrimination against Montgomery County in her Petition.

Relative to the claim “in violation of [the Divorce Code],” [REDACTED] alleged:

Due to the course of action, they directly caused severe financial and emotional damages to the Plaintiff and her children, in actions repugnant to [the Divorce Code]: (a) Policy. --The family is the basic unit in society and the protection and preservation of the family is of paramount public concern. Therefore, it is the policy of the Commonwealth to (4) Mitigate the harm to the spouses and their children caused by the legal dissolution of the marriage.

Petition at ¶52. [REDACTED] Petition contains no specific allegations as to any Montgomery County Divorce Code violation. Thus, this claim also fails. Consequently, [REDACTED] state law claims are legally insufficient.

With respect to [REDACTED] Section 1983 claim:

A local government may be liable under [Section] 1983 when the execution of its ‘policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury.’ *Monell v. Dep’t of Soc. Servs. of the City of New York*, 436 U.S. 658, 694 . . . (1978). . . . To establish liability under a *Monell* theory of governmental policy or custom, **a plaintiff must ‘identify the challenged policy, attribute it to the city itself, and show a causal link between the execution of the policy and the injury suffered.’** *Losch v. Borough of Parkesburg*, 736 F.2d 903, 910 (3d Cir. 1984) (citing *Bennett v. City of Slidell*, 728 F.2d 762, 767 (5th Cir. 1984)).

Watson v. Methacton Sch. Dist., 513 F. Supp. 2d 360, 378-79 (E.D. Pa. 2007) (emphasis added). Here, because [REDACTED] did not allege in her Petition a “policy, attribute it to [Montgomery County] itself, [or allege] a causal link between the execution of the policy and the injury suffered,” this claim must fail. *Id.* Finally, because [REDACTED] did not allege any discrimination or conspiracy by Montgomery County, her Section 1985 claim must also fail. *Bray*. Consequently, [REDACTED] Section 1983 and 1985 claims are legally insufficient. Accordingly, this preliminary objection is sustained.

2. Legal insufficiency - Sheriff’s Office

The Pennsylvania Rules of Civil Procedure provide that ‘[a]n action shall be brought by or against a political subdivision in its name.’ Pa.R.C.P. No. 2102(b). A political subdivision is defined as ‘any county, city, borough, incorporated town, township, school district, vocational school district, county institution district or municipal or other local authority.’ Pa.R.C.P. No. 76.

Monastra v. Del. Cty. Sheriff's Office, 49 A.3d 556, 558 (Pa. Cmwlth. 2012). “Because the . . . Sheriff’s Office [is] not [a] legal entit[y] separate from [its] political subdivision[], the . . . Sheriff’s Office [is] not [a] proper part[y] to this action.” *Id.* Accordingly, this preliminary objection is sustained.¹⁵

Conclusion - Montgomery County

Because the claims against Montgomery County are legally insufficient, they are dismissed.

Conclusion

For all of the above reasons, the Judicial Respondents’ second, third, fourth, fifth, sixth, seventh, eighth and tenth preliminary objections are sustained; the OAG’s second, third, fourth and fifth preliminary objections are sustained; and Montgomery County’s first and second preliminary objections are sustained. The Judicial Respondents’ first preliminary objection is overruled; and the OAG’s first preliminary objection is overruled.¹⁶ Because there are no remaining claims against any party, [REDACTED] Petition is dismissed with prejudice.

¹⁵ Because there are no remaining claims against Montgomery County, this Court need not reach Montgomery County’s jurisdiction and improper service objections.

¹⁶ Given the aforementioned preliminary objection rulings, this Court did not need to address the Judicial Respondents’ ninth preliminary objection, the OAG’s sixth preliminary objection, and Montgomery County’s third and fourth preliminary objections.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

[REDACTED]

Petitioner

v.

Judicial Conduct Board by and through
its agents and Chief Counsels;
Supreme Court of Pennsylvania
by and through its TBN agents
and employees;
Pennsylvania Superior Court and
Its Prothonotary by and through its
TBN agents and employees;
Pennsylvania Court of Common Pleas
by and through its TBN agents;
Montgomery County and its Sheriff;
Office of Attorney General
by and through its TBN agents
and employees Josh Shapiro,
Individually and in Official Capacity
Judge Paul Diamond, Individually and
in Official Capacity, Judge Richard
Haaz, Individually and in Official
Capacity, Kelly Wall, Individually
and in Official Capacity,
Gail Weilheimer, Individually and in
Official Capacity Thomas Branca,
Individually and in Official Capacity
Robert Graci, Individually and in
Official Capacity, Mary Jane Bowes,
Individually and in Official Capacity
Kate Ford Elliott, Individually and in
Official Capacity,

Respondents

No. [REDACTED]

PER CURIAM

ORDER

AND NOW, this 14th day of January, 2019, the second, third, fourth, fifth, sixth, seventh, eighth and tenth preliminary objections of the Judicial Conduct

Board and its Chief Counsel Robert Graci, the Pennsylvania Supreme Court, the Pennsylvania Superior Court and its Prothonotary, the Pennsylvania Court of Common Pleas, Judge Richard Haaz, Judge Kelly Wall, Judge Gail Weilheimer, Judge Thomas Branca, Judge Mary Jane Bowes, and Judge Kate Ford Elliott (collectively, Judicial Respondents); the second, third, fourth and fifth preliminary objections of the Attorney General's Office and Attorney General Josh Shapiro (collectively, OAG); and, the first and second preliminary objections of Montgomery County and the Montgomery County Sherriff's Office (collectively, Montgomery County) are SUSTAINED. The Judicial Respondents' first preliminary objection; and the OAG's first preliminary objection are OVERRULED.¹⁷ Because there are no remaining claims against any party, [REDACTED] Amended Petition for Review is DISMISSED with Prejudice.

Certified from the Record

JAN 14 2019

And Order Exit

¹⁷ Given the aforementioned preliminary objection rulings, this Court did not address the Judicial Respondents' ninth preliminary objection, the OAG's sixth preliminary objection, or Montgomery County's third and fourth preliminary objections.