



*Lawler v. Marshall*, 898 F.2d 1196 (6th Cir. 1990); *Sistrunk v. City of Strongsville*, 99 F.3d 194, 197 (6th Cir. 1996).

Defendant Judge Matia is absolutely immune from liability for actions taken within the scope of his official duties. *Pierson v. Ray*, 387 U.S. 547 (1967). There is no reasonable suggestion in the complaint that he acted outside the scope of those duties in this case. Further, a criminal defense attorney who acts in that capacity on behalf of a criminal defendant does not act under color of state law for purposes of a 42 U.S.C. § 1983 action. *Polk County v. Dodson*, 454 U.S. 312 (1981); *Deas v. Potts*, 547 F.2d 800 (4th Cir. 1976). Thus, attorney Sheperd is not subject to liability for the asserted violation of plaintiff's civil rights.<sup>2</sup>

Accordingly, this action is dismissed under section 1915(e). Further, the court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith.

IT IS SO ORDERED.

  
DONALD C. NUGENT  
UNITED STATES DISTRICT JUDGE

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<sup>2</sup> As a result of this lawsuit, Judge Matia has recused himself from plaintiff's still pending criminal case, and Attorney Shepard was removed as defense counsel. *State of Ohio v. Barber-Roach*, Cuy. Cty. Com. Pls. No. CR-11-554-504.  
See [http://cpdocket.cp.cuyahogacounty.us/p\\_CR\\_Docket.aspx](http://cpdocket.cp.cuyahogacounty.us/p_CR_Docket.aspx)