

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

JARAY PELIER,

Plaintiff,

v.

JOSEPH PAUL KALINOWSKI, *et al.*,

Defendants.

NO. 3:16-CV-02095  
(JUDGE CAPUTO)

(MAGISTRATE JUDGE MEHALCHICK)

ORDER

NOW, this 19<sup>th</sup> day of June, 2017, upon review of the Report and Recommendation of Magistrate Judge Mehalchick (Doc. 13) for plain error or manifest injustice, **IT IS HEREBY ORDERED** that:

- (1) Magistrate Judge Mehalchick's Report and Recommendation (Doc. 13), screening Plaintiff Jaray Pelier's civil rights complaint brought *in forma pauperis*, is **ADOPTED in its entirety**;
- (2) Claims for relief against Joseph Kalinowski predicated upon 42 U.S.C. § 1983 are **DISMISSED WITH PREJUDICE**, as Kalinowski is not a state actor for § 1983 purposes;
- (3) Claims for relief against the Lackawanna County Office of the Public Defender ("OPD") predicated upon § 1983 are **DISMISSED WITH PREJUDICE**, as the OPD is not a state actor for § 1983 purposes;
- (4) Claims for relief against Lackawanna County are **DISMISSED WITHOUT PREJUDICE**, as Plaintiff has failed to identify a policy or custom sufficient for relief under *Monell v. Dep't of Social Servs.*, 436 U.S. 658, 691 (1978). Further, to the extent that Plaintiff's claim is that the systemic underfunding of the OPD by Lackawanna County caused Plaintiff to receive ineffective assistance of counsel, his claim is likewise **DISMISSED**;
- (5) Plaintiff has **twenty-one days (21) days** from the date of entry of this Order

to file an amended complaint consistent with the adopted Report and Recommendation (Doc. 13); and

- (6) The matter is **RECOMMITTED** to Magistrate Judge Mehalchick for further proceedings.

A handwritten signature in cursive script, appearing to read "A. Richard Caputo".

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A. Richard Caputo  
United States District Judge