

CLD-116

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 19-2094

LESLIE WILLIS,
Appellant

v.

THE HON. LAWRENCE J. O'TOOLE, Individually, and in his Official Capacity as Administrative Judge for the Court of Common Pleas of Allegheny County Orphans' Court Division; TIMOTHY FINNERTY, Individually, and in his Official Capacity as Assistant County Solicitor; MICHAEL MCGEEVER, Individually and in his Official Capacity as Director of Allegheny County Dept. of Court Records Wills/Orphans' Court Division; MELISSA DIESEL, Individually; WILLIAM TENNEY, Individually; JAMES UZIEL, Individually and in his Official Capacity as Deputy Records for Allegheny County Department of Real Estate; THE HON. JUDGE KATHLEEN A. DURKIN, Individually, and in her Official Capacity for the Court of Common Pleas Orphans' Court Division

On Appeal from the United States District Court
for the Western District of Pennsylvania
(D.C. Civil Action No. 2-18-cv-00290)
District Judge: Honorable David S. Cercone

Submitted on a Motion for Summary Action
Pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6
February 13, 2020

Before: JORDAN, KRAUSE and MATEY, Circuit Judges

(Opinion filed: March 2, 2020)

OPINION*

PER CURIAM.

Pro se appellant Leslie Willis appeals the District Court's order dismissing her amended complaint and denying leave to amend. Appellees have filed a motion to summarily affirm. For the reasons set forth below, we will grant the motion and summarily affirm the District Court's judgment. See 3d Cir. L.A.R. 27.4; 3d Cir. I.O.P. 10.6.

This action arises out of probate proceedings involving the estate of Willis's deceased grandmother, Annie Pearl Willis, in the Orphan's Court division of the Allegheny County Court of Common Pleas. In 2014, Willis filed a motion seeking to restrain the sale of real property belonging to the estate, which Judge Durkin denied, and the property was sold. Willis filed dozens of other documents in the probate matter, including several requests to proceed in forma pauperis (IFP). Judge Durkin denied those motions both in May 2014 and in April 2016. In April 2017, Judge Durkin issued a decree of distribution.

In 2018, Willis filed an action under 42 U.S.C. § 1983 in District Court. In her operative second amended complaint, she alleged that defendants—Judge O'Toole (the

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Administrative Judge of the Orphans Court), and three employees of that court's clerk's office—violated her right to access the court and challenge the sale of property by failing to docket documents that she attempted to file IFP. She alleged that this conduct began in July or August 2016. The defendants filed motions to dismiss. A Magistrate Judge recommended that the District Court grant those motions on the grounds that the defendants were immune, and the Court approved and adopted that report and recommendation.¹

Willis filed a timely notice of appeal. The appellees have filed a motion for summary affirmance. Willis has filed roughly 150 documents in this Court, ranging from copies of death certificates to legal descriptions of real property to documents she filed in the probate case.

We have jurisdiction under 28 U.S.C. § 1291. We exercise a plenary standard of review over the dismissal order. See Fleisher v. Standard Ins. Co., 679 F.3d 116, 120 (3d Cir. 2012). In reviewing a dismissal under Rule 12(b)(6), “we accept all factual allegations as true [and] construe the complaint in the light most favorable to the plaintiff.” Pinker v. Roche Holdings Ltd., 292 F.3d 361, 374 n.7 (3d Cir. 2002). “To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” Ashcroft v. Iqbal, 556

¹ Willis also filed a motion for reconsideration, which the District Court denied. Because Willis did not file a new or amended notice of appeal encompassing the order denying his motion for reconsideration, we lack jurisdiction to consider that order. See Fed. R. App. P. 4(a)(4)(B)(ii); Carrascosa v. McGuire, 520 F.3d 249, 253–54 (3d Cir. 2008).

U.S. 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). We review the District Court's denial of Willis's motion for leave to amend for abuse of discretion. See City of Cambridge Ret. Sys. v. Altisource Asset Mgmt. Corp., 908 F.3d 872, 878 (3d Cir. 2018). We will summarily affirm the District Court's decision if it determines that “no substantial question is presented” by the appeal. 3d Cir. L.A.R. 27.4.

We will grant the appellees' motion and summarily affirm the District Court's judgment. First, as the District Court explained, Willis's claims against Judge O'Toole fail because “[a] judicial officer in the performance of his duties has absolute immunity from suit and will not be liable for his judicial acts.” Azubuko v. Royal, 443 F.3d 302, 303 (3d Cir. 2006) (per curiam). Although “absolute judicial immunity extends only to claims for damages,” Larsen v. Senate of the Commonwealth, 152 F.3d 240, 249 (3d Cir. 1998), “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. Willis has not shown that this exception applies. See Azubuko, 443 F.3d at 303–04.

Willis's allegations against the clerk's office personnel are also meritless. To the extent that she complaints about these defendants' conduct in applying Judge Durkin's order denying her right to proceed IFP by refusing to docket her unauthorized IFP filings, “any public official acting pursuant to court directive is also immune from suit.”

Lockhart v. Hoenstine, 411 F.2d 455, 460 (3d Cir. 1969); see also Lundahl v. Zimmer, 296 F.3d 936, 939–40 (10th Cir. 2002). These defendants are also absolutely immune for

their role in helping the Court to “control its docket.” Rodriguez v. Weprin, 116 F.3d 62, 66 (2d Cir. 1997). Thus, these claims are also barred. See, e.g., Capogrosso v. Supreme Court of N.J., 588 F.3d 180, 185 (3d Cir. 2009); Montero v. Travis, 171 F.3d 757, 761 (2d Cir. 1999).

Moreover, even if Willis could allege some misconduct that would fall outside the clerk’s office defendants’ immunity, see generally Snyder v. Nolen, 380 F.3d 279, 288–89 (7th Cir. 2004), she has not stated a facially plausible claim, see Iqbal, 556 U.S. at 678. While she complains about a failure to docket her filings, the state docket reveals that she has filed numerous documents and that the state court has specifically denied her objections to the sale of the property and her request to proceed IFP. Further, she has not shown that she has “lost a chance to pursue a ‘nonfrivolous’ or ‘arguable’ underlying claim.” Monroe v. Beard, 536 F.3d 198, 205 (3d Cir. 2008) (per curiam) (quoting Christopher v. Harbury, 536 U.S. 403, 415 (2005)).

Nor did the District Court err in denying Willis’s request to file a third amended complaint. As the District Court explained, all her proposed amendments would have been futile. She sought to add additional clerk’s office employees and Judge Durkin as defendants, but those claims would fail for the reasons discussed above. Moreover, while she wished to sue the recorder of deeds for recording the transferred deed notwithstanding her (rejected) opposition to the underlying transfer, she has not shown that she possesses a plausible claim against this defendant. See generally Chesapeake Appalachia, LLC v. Golden, 35 A.3d 1277, 1281 (Pa. Commw. Ct. 2012) (“In short, the

Recorder is a ministerial officer charged with recording all documents presented to him.” (quotation marks omitted)).

Accordingly, we will grant the appellees’ motion and summarily affirm the District Court’s judgment. The numerous motions Willis has filed in this Court are denied.²

² In most of the motions, Willis seeks to expand the record to allow us to consider documents filed in the District Court. As the Clerk explained to Willis in a June 20, 2019 order, “any documents filed and accepted as part of the District Court record are part of this Court’s record, so the motion is unnecessary.”

CLD-116

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 19-2094

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THE HON. LAWRENCE J. O'TOOLE, Individually, and in his Official Capacity as Administrative Judge for the Court of Common Pleas of Allegheny County Orphans' Court Division; TIMOTHY FINNERTY, Individually, and in his Official Capacity as Assistant County Solicitor; MICHAEL MCGEEVER, Individually and in his Official Capacity as Director of Allegheny County Dept. of Court Records Wills/Orphans' Court Division; MELISSA DIESEL, Individually; WILLIAM TENNEY, Individually; JAMES UZIEL, Individually and in his Official Capacity as Deputy Records for Allegheny County Department of Real Estate; THE HON. JUDGE KATHLEEN A. DURKIN, Individually, and in her Official Capacity for the Court of Common Pleas Orphans' Court Division

On Appeal from the United States District Court
for the Western District of Pennsylvania
(D.C. Civil Action No. 2-18-cv-00290)
District Judge: Honorable David S. Cercone

Submitted on a Motion for Summary Action
Pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6
February 13, 2020

Before: JORDAN, KRAUSE and MATEY, Circuit Judges

JUDGMENT

This cause came to be considered on the record from the United States District Court for the Western District of Pennsylvania and was submitted for possible summary action pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6 on February 13, 2020. On consideration whereof, it is now hereby

ORDERED and ADJUDGED by this Court that the judgment of the District Court entered April 12, 2019, be and the same hereby is affirmed. All of the above in accordance with the opinion of this Court.

ATTEST:

s/ Patricia S. Dodszuweit
Clerk

DATED: March 2, 2020

OFFICE OF THE CLERK
PATRICIA S. DODSZUWEIT
CLERK



UNITED STATES COURT OF APPEALS
21400 UNITED STATES COURTHOUSE
601 MARKET STREET
PHILADELPHIA, PA 19106-1790
Website: www.ca3.uscourts.gov

TELEPHONE
215-597-2995

March 2, 2020

Lee M. Dellecker
Office of Allegheny County
Law Department
445 Fort Pitt Boulevard
300 Fort Pitt Commons Building
Pittsburgh, PA 15219

Caroline P. Liebenguth
Supreme Court of Pennsylvania
Administrative Office of Pennsylvania Courts
1515 Market Street
Suite 1414
Philadelphia, PA 19102

Leslie Willis
P.O. Box 1153
Bowie, MD 20718

RE: Leslie Willis v. Lawrence O'Toole, et al
Case Number: 19-2094
District Court Case Number: 2-18-cv-00290

ENTRY OF JUDGMENT

Today, **March 02, 2020** the Court entered its judgment in the above-captioned matter pursuant to Fed. R. App. P. 36.

If you wish to seek review of the Court's decision, you may file a petition for rehearing. The procedures for filing a petition for rehearing are set forth in Fed. R. App. P. 35 and 40, 3rd Cir. LAR 35 and 40, and summarized below.

Time for Filing:

14 days after entry of judgment.
45 days after entry of judgment in a civil case if the United States is a party.

Form Limits:

3900 words if produced by a computer, with a certificate of compliance pursuant to Fed. R. App. P. 32(g).
15 pages if hand or type written.

Attachments:

A copy of the panel's opinion and judgment only.

Certificate of service.

Certificate of compliance if petition is produced by a computer.

No other attachments are permitted without first obtaining leave from the Court.

Unless the petition specifies that the petition seeks only panel rehearing, the petition will be construed as requesting both panel and en banc rehearing. Pursuant to Fed. R. App. P. 35(b)(3), if separate petitions for panel rehearing and rehearing en banc are submitted, they will be treated as a single document and will be subject to the form limits as set forth in Fed. R. App. P. 35(b)(2). If only panel rehearing is sought, the Court's rules do not provide for the subsequent filing of a petition for rehearing en banc in the event that the petition seeking only panel rehearing is denied.

A party who is entitled to costs pursuant to Fed.R.App.P. 39 must file an itemized and verified bill of costs within 14 days from the entry of judgment. The bill of costs must be submitted on the proper form which is available on the court's website.

A mandate will be issued at the appropriate time in accordance with the Fed. R. App. P. 41.

Please consult the Rules of the Supreme Court of the United States regarding the timing and requirements for filing a petition for writ of certiorari.

Very truly yours,
Patricia S. Dodszuweit, Clerk

By: s/ Caitlyn
Case Manager
267-299-4956

UNITED STATES COURT OF APPEALS
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of Allegheny County Dept. of Court Records Wills/Orphans' Court Division;
MELISSA DIESEL, Individually; WILLIAM TENNEY, Individually;
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KATHLEEN A. DURKIN, Individually, and in her Official Capacity for the Court
of Common Pleas Orphans' Court Division

On Appeal from the United States District Court
for the Western District of Pennsylvania
(D.C. No. 2-18-cv-00290)
District Judge: Hon. David S. Cercone

SUR PETITION FOR REHEARING

The petition for rehearing filed by Appellant in the above-entitled case having
been submitted to the judges who participated in the decision of this Court and to all the
other available circuit judges of the circuit in regular active service, and no judge who
concurred in the decision having asked for rehearing, and a majority of the judges of the
circuit in regular service not having voted for rehearing, the petition for rehearing by the
panel and the Court en banc, is denied.

BY THE COURT,

s/ Cheryl Ann Krause
Circuit Judge

Dated: December 2, 2020
CJG/cc: Leslie Willis
Caroline P. Liebenguth, Esq.
Lee M. Dellecker, Esq.

Present: SMITH, *Chief Judge*, McKEE, AMBRO, CHAGARES, JORDAN,
HARDIMAN, GREENAWAY, JR., SHWARTZ, KRAUSE, RESTREPO, BIBAS,
PORTER, MATEY, and PHIPPS, *Circuit Judges*

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(W.D. Pa. No. 2-18-cv-00290)

Present: KRAUSE, Circuit Judge

1. Motion by Appellant for Extension of Time to File Petition for Rehearing Until November 27, 2020
2. Supplemental Motion by Appellant for Extension of Time to File Petition for Rehearing Until November 27, 2020, with Exhibits

Respectfully,
Clerk/CJG

ORDER

The foregoing motions are denied as moot.

By the Court,

s/ Cheryl Ann Krause
Circuit Judge

CLD-116

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ATTEST:

s/ Patricia S. Dodszuweit
Clerk

DATED: March 2, 2020



Certified copy and issued in lieu
of a formal mandate on December 10, 2020

Teste: *Patricia S. Dodszuweit*
Clerk, U.S. Court of Appeals for the Third Circuit

CLD-116

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¹ Willis also filed a motion for reconsideration, which the District Court denied. Because Willis did not file a new or amended notice of appeal encompassing the order denying his motion for reconsideration, we lack jurisdiction to consider that order. See Fed. R. App. P. 4(a)(4)(B)(ii); Carrascosa v. McGuire, 520 F.3d 249, 253–54 (3d Cir. 2008).

U.S. 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). We review the District Court's denial of Willis's motion for leave to amend for abuse of discretion. See City of Cambridge Ret. Sys. v. Altisource Asset Mgmt. Corp., 908 F.3d 872, 878 (3d Cir. 2018). We will summarily affirm the District Court's decision if it determines that “no substantial question is presented” by the appeal. 3d Cir. L.A.R. 27.4.

We will grant the appellees' motion and summarily affirm the District Court's judgment. First, as the District Court explained, Willis's claims against Judge O'Toole fail because “[a] judicial officer in the performance of his duties has absolute immunity from suit and will not be liable for his judicial acts.” Azubuko v. Royal, 443 F.3d 302, 303 (3d Cir. 2006) (per curiam). Although “absolute judicial immunity extends only to claims for damages,” Larsen v. Senate of the Commonwealth, 152 F.3d 240, 249 (3d Cir. 1998), “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. Willis has not shown that this exception applies. See Azubuko, 443 F.3d at 303–04.

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Moreover, even if Willis could allege some misconduct that would fall outside the clerk’s office defendants’ immunity, see generally Snyder v. Nolen, 380 F.3d 279, 288–89 (7th Cir. 2004), she has not stated a facially plausible claim, see Iqbal, 556 U.S. at 678. While she complains about a failure to docket her filings, the state docket reveals that she has filed numerous documents and that the state court has specifically denied her objections to the sale of the property and her request to proceed IFP. Further, she has not shown that she has “lost a chance to pursue a ‘nonfrivolous’ or ‘arguable’ underlying claim.” Monroe v. Beard, 536 F.3d 198, 205 (3d Cir. 2008) (per curiam) (quoting Christopher v. Harbury, 536 U.S. 403, 415 (2005)).

Nor did the District Court err in denying Willis’s request to file a third amended complaint. As the District Court explained, all her proposed amendments would have been futile. She sought to add additional clerk’s office employees and Judge Durkin as defendants, but those claims would fail for the reasons discussed above. Moreover, while she wished to sue the recorder of deeds for recording the transferred deed notwithstanding her (rejected) opposition to the underlying transfer, she has not shown that she possesses a plausible claim against this defendant. See generally Chesapeake Appalachia, LLC v. Golden, 35 A.3d 1277, 1281 (Pa. Commw. Ct. 2012) (“In short, the

Recorder is a ministerial officer charged with recording all documents presented to him.” (quotation marks omitted)).

Accordingly, we will grant the appellees’ motion and summarily affirm the District Court’s judgment. The numerous motions Willis has filed in this Court are denied.²

² In most of the motions, Willis seeks to expand the record to allow us to consider documents filed in the District Court. As the Clerk explained to Willis in a June 20, 2019 order, “any documents filed and accepted as part of the District Court record are part of this Court’s record, so the motion is unnecessary.”

OFFICE OF THE CLERK

PATRICIA S. DODSZUWEIT

CLERK



UNITED STATES COURT OF APPEALS

21400 UNITED STATES COURTHOUSE
601 MARKET STREET
PHILADELPHIA, PA 19106-1790

Website: www.ca3.uscourts.gov

TELEPHONE
215-597-2995

December 10, 2020

Mr. Joshua Lewis
United States District Court for the Western District of Pennsylvania
Joseph F. Weis Jr. United States Courthouse
700 Grant Street
Pittsburgh, PA 15219

RE: Leslie Willis v. Lawrence O'Toole, et al

Case Number: 19-2094

District Court Case Number: 2-18-cv-00290

Dear Mr. Lewis,

Enclosed herewith is the certified judgment together with copy of the opinion or certified copy of the order in the above-captioned case(s). The certified judgment or order is issued in lieu of a formal mandate and is to be treated in all respects as a mandate.

Counsel are advised of the issuance of the mandate by copy of this letter. The certified judgment or order is also enclosed showing costs taxed, if any.

Very truly yours,
Patricia S. Dodszuweit, Clerk

By: s/ Caitlyn
Case Manager
267-299-4956

Cc: Lee M. Dellecker
Caroline P. Liebenguth
Leslie Willis

IN THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

CASE NO.: 19-2094

LESLIE WILLIS,

Appellant

v.

THE HON. LAWRENCE O'TOOLE, ET AL.¹

Appellees.

On appeal from the United States District Court for the Western District of Pennsylvania, Civil Action No. 2:18-CV-00290 (The Hon. District Judge David S. Cercone)

EMERGENCY MOTION TO QUASH

/s/Leslie Willis, Appellant (Pro Se)

Send Service/Notice/Corro to:

jwillis222@yahoo.com

(No Telephone No. Available);

PACFile Registered; CM/ECF (Registered)²

¹ RE: List of Appellees in the docket heading: See Appellant's Objections at ECF No. 158 and ECF No. 176 re: Second Amended Complaint; and Appellants Objections (ECF No. 206 ¶¶V, VI, and VII (p. 7-9)) to the Report and Recommendation (ECF No. 202).

² Appellant is domiciled in Maryland. However, at this time, Appellant is in Pittsburgh. Appellant will not receive any court documents/ correspondence/Notice at the Maryland address (which is no longer current at this time). Email is Appellant's primary means of communicating. Appellant requests Court documents or correspondence and Notice via the Court CM/ECF electronic filing system.

IN THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

LESLIE WILLIS,) Case No. 19-2094

Appellant)

v.)

THE HON. JUDGE KATHLEEN A. DURKIN, et. al.) EMERGENCY MOTION TO

QUASH)

Appellees)

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3. On April 21, 2020, this Court entered an Order stating that, "The foregoing motion for extension is granted through June 15, 2020, *subject to further extension upon motion of Appellant if necessitated by continuing library closures*. Krause, Authoring Judge. (Emphasis Added).

4. On October 13, 2020, Appellant filed an 'Emergency Motion for Extension of Time to File Petition for Rehearing' (ECF No. 204).⁴

5. As of October 27, 2020, the due date for the Petition, a decision on the 'Emergency Motion for Extension of Time' was still pending. Therefore, Petitioner filed an incomplete Petition for Re-hearing.

6. On December 2, 2020, this Court denied Appellant's Petition for Rehearing (ECF No. 210), and denied Appellant's 'Emergency Motion for Extension of Time to File Petition for Rehearing' (ECF No. 204) as Moot.

7. Appellant Avers that the Order Denying her 'Emergency Motion for Extension of Time to File Petition for Rehearing' (ECF No. 204) as Moot is manifest unreasonable judgment.

8. Appellant Avers that the Order Denying her 'Emergency Motion for Extension of Time to File Petition for Rehearing' (ECF No. 204) as Moot is manifest injustice.

⁴ On October 13, 2020, Appellant filed an 'Emergency Motion for Extension of Time' (ECF NO. 204) to file her Petition for Rehearing by Panel and En Banc Court. On October 28, 2020, Petitioner filed a Supplemental 'Emergency Extension of Time' (ECF No. 206), with Exhibits (ECF Nos. 207, 208, 209).

WHEREFORE, Appellant, Leslie Willis, requests that this Court **QUASH** the December 2, 2020 Orders ECF No. 210 and ECF No. 211, and ECF No. 212 and **GRANT**, Appellant 30-days to file an Amended Petition for Re-hearing.⁵

Respectfully,

/s/Leslie Willis, Appellant (Pro Se)

Send Service/Notice/Corro to:

lwillis222@yahoo.com; No Tele # Avail.
CM/ECF; PACFile (Registered)

⁵ Appellant, otherwise, reserves any right to file post-judgment motions, including a motion to Void the Judgments entered (e.g. Rule 60 (d) or other Post-judgment Motion).

VERIFICATION/AFFADAVIT

I, LESLIE WILLIS, CERTIFY, being duly sworn according to law, depose and say that I am the Appellant in the foregoing 'Emergency Motion Rule 60(b)(6) to Quash and that the facts set forth therein are true and correct to the best of my knowledge, information and belief, formed after inquiry reasonable under the circumstances: (1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) The claims, defenses, and other legal contentions are warranted by existing law or by a non-frivolous argument for extending, modifying, or reversing existing law or for establishing new law; (3) The factual contentions have evidentiary support or, if specifically so identified, after a reasonable opportunity for further information or discovery; and (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based upon belief or lack of information. I understand that false statements herein are made subject to the penalties of 18 Pa. C. S. paragraph 4904, relating to unsworn falsification to authorities

April 22, 2021

Respectfully,

/s/Leslie Willis, Appellant (Pro Se)
Send Service/Notice/Corro to:
lwillis222@yahoo.com
CM/ECF; PACFile (Registered)
(No Telephone No. Available)

NOTICE TO PLEAD

Respondents are hereby notified to plead to this 'Emergency Motion Rule 60(b)(6) to Quash' within fourteen (14) days from service hereof or a default judgment may be entered against you.

April 22, 2021

Respectfully,
/s/Leslie Willis, Appellant (Pro Se)
Send Service/Notice/Corro to:
lwillis222@yahoo.com
CM/ECF; PACFile (Registered)
(No Telephone No. Available)

CERTIFICATE OF SERVICE

I, HEREBY, CERTIFY that I, Leslie Willis, served NOTICE via U. S. Marshal, Service of Process, Sheriff, First Class Mail, E-mail, Certified Mail, via CM/ECF (Pursuant to Fed. R. Civ. Proc. Rule 5 (b) (3)) a copy or courtesy copy of the 'Emergency Motion Rule 60(b)(6) to Quash on the 22 April 2021 upon:

Lawrence J. O'Toole	Judge Kathleen A. Durkin
Administrative Judge	Orphans' Court, Allegheny County
Orphans' Court, Allegheny County	Frick Bldg. 17th Floor
Frick Bldg. 17 th Floor	437 Grant, Suite 1700
437 Grant, Suite 1700	Pittsburgh, PA 15219
Pittsburgh, PA 15219	(412) 350-5652
(412) 350-5550	

Lee Dellecker (for County Respondents) (VIA CM/ECF)	Caroline P. Liebenguth ⁶ (VIA CM/ECF)
Assistant County Solicitor (Pa. I.D. #314672)	(Attorney for the Hon. Judge Durkin; and
Allegheny County Law Department	the Hon. Judge O'Toole)
300 Fort Pitt Commons Building	Administrative Office of PA Courts (AOPC)
445 Fort Pitt Boulevard	437 Grant Street
Pittsburgh, PA 15219	Suite 416
(412) 350-1167	Pittsburgh, PA 15219-6003
	(412) 565-5032

/s/ Leslie Willis, Appellant (Pro Se)

Send Service/Notice To: lesliewillis2@hotmail.com; or lwillis222@yahoo.com;

Or via Court Electronic Service

(No telephone # is available); PACFile registered; CM/ECF Registered

⁶Pursuant to Fed. R. Civ. Proc. Rule 5 (b) (1): Service: How Made: (1) Serving an Attorney. If a party is represented by an attorney, service under this rule must be made on the attorney unless the court orders service on the party.

IN THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

LESLIE WILLIS,) Case No. 19-2094
)
Appellant)
v.) EMERGENCY MOTION TO
THE HON. JUDGE KATHLEEN A. DURKIN, et. al.) QUASH
)
Appellees)
)

ORDER

AND NOW, this ____ day of _____, 2020, upon consideration of Appellant, Leslie Willis's 'Emergency Motion Rule 60(b)(6) to Quash the Motion is, hereby, GRANTED. the December 2, 2020 Orders ECF No. 210 and ECF No. 211, and ECF No. 212 are QUASHED. Appellant is GRANTED 30-days to file an Amended Petition for Re-hearing.

BY THE COURT

_____, J

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

LESLIE WILLIS,

Plaintiff,

v.

THE HON. JUDGE LAWRENCE J. O'
TOOLE, INDIVIDUALLY, AND IN HIS
OFFICIAL CAPACITY AS
ADMINISTRATIVE JUDGE FOR THE
COURT OF COMMON PLEAS OF
ALLEGHENY COUNTY ORPHANS'
COURT DIVISION; MICHAEL
MCGEEVER, INDIVIDUALLY AND IN
HIS OFFICIAL CAPACITY AS DIRECTOR
OF ALLEGHENY COUNTY DEPT. OF
COURT RECORDS WILLS/ORPHANS'
COURT DIVISION; MELISSA DIESEL,
INDIVIDUALLY; AND WILLIAM
TENNEY, INDIVIDUALLY;

Defendants.

2:18-CV-00290

**DISTRICT JUDGE CERCONE
MAGISTRATE JUDGE LENIHAN**

**ECF NOS. 139, 141, 158, 176, 178, 189, 190,
191, 194, 195 & 202**

MEMORANDUM ORDER

This civil action was commenced on March 7, 2018 when Plaintiff Leslie Willis filed a Motion for Leave to Proceed in Forma Pauperis. (ECF No. 1.) That motion was granted and the Complaint (ECF No. 3) was docketed on March 14, 2018. The case was referred to United States Magistrate Judge Lisa Pupo Lenihan for pretrial proceedings in accordance with the Magistrate Judges Act, 28 U.S.C. §636(b)(1), and Local Rules of Court 72.C and 72.D.

The Magistrate Judge's Report and Recommendation (ECF No. 202), filed on March 8, 2019, recommended that the Motion to Dismiss by Defendants Melissa Diesel, Timothy Finnerty, Michael McGeever, William Tenney and James Uziel (ECF No. 139) be granted. It was further recommended that the Motion to Dismiss filed by Defendant Lawrence J. O'Toole (ECF No. 141) be granted. It was also recommended that Plaintiff Leslie Willis' Motions to

Amend (ECF Nos. 178, 194, & 195) and Motions for Joinder (ECF Nos. 189, 190, & 191) be denied. The parties were informed that in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1)(B) and (C), and Rule 72.D.2 of the Local Rules of Court, that they had fourteen (14) days to file any objections. Plaintiff filed Objections to the Report and Recommendation on April 5, 2019, and Amended Objections on April 8, 2019.

After review of the pleadings and documents in the case, together with the Report and Recommendation and Plaintiff's Objections, the following Order is entered:

AND NOW, this 11th day of April, 2019,

IT IS HEREBY ORDERED that the Motion to Dismiss filed by Defendants Melissa Diesel, Timothy Finnerty, Michael McGeever, William Tenney and James Uziel (ECF No. 139) is **GRANTED**.

IT IS FURTHER ORDERED that the Motion to Dismiss filed by Defendant Lawrence J. O'Toole (ECF No. 141) is **GRANTED**.

IT IS FURTHER ORDERED that Plaintiff Leslie Willis' Motions to Amend (ECF Nos. 178, 194, & 195) and Motions for Joinder (ECF Nos. 189, 190, & 191) are **DENIED**.

IT IS FURTHER ORDERED that the Report and Recommendation (ECF No. 202) of Magistrate Judge Lenihan, dated March 8, 2019, is adopted as the opinion of the Court.

IT IS FURTHER ORDERED that this Court construes ECF No. 158 (Plaintiff's Objections to Magistrate Judge Memorandum Opinion (ECF No. 144)), and ECF No. 176 (Plaintiff's Objections to Magistrate Judge Order re (Amended) Objections to Magistrate Judge Memorandum Opinion (ECF No. 147) Amending ECF No. 161, Objections to non-dispositive Magistrate Judge Order), as appeals from the Magistrate Judge's Orders and are **DISMISSED AS MOOT** as a consequence of this Court's adoption of the Report and Recommendation.

IT IS FURTHER ORDERED that the Clerk shall mark the case **CLOSED**.

DS Cercone

David Stewart Cercone
Senior United States District Judge

cc: Leslie Willis
P. O. Box 1153
Bowie, MD 20718
(*Via First Class Mail*)

Lee M. Dellecker, Esquire
(*Via CM/ECF Electronic Mail*)

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

LESLIE WILLIS,

Plaintiff,

v.

THE HON. JUDGE LAWRENCE J. O'
TOOLE, INDIVIDUALLY, AND IN HIS
OFFICIAL CAPACITY AS
ADMINISTRATIVE JUDGE FOR THE
COURT OF COMMON PLEAS OF
ALLEGHENY COUNTY ORPHANS'
COURT DIVISION; MICHAEL
MCGEEVER, INDIVIDUALLY AND IN
HIS OFFICIAL CAPACITY AS DIRECTOR
OF ALLEGHENY COUNTY DEPT. OF
COURT RECORDS WILLS/ORPHANS'
COURT DIVISION; MELISSA DIESEL,
INDIVIDUALLY; AND WILLIAM
TENNEY, INDIVIDUALLY;

Defendants.

)
2:18-CV-00290-DSC
MJ LENIHAN
ECF NOS. 139, 141, 178, 189, 190, 191,
194 & 195

REPORT AND RECOMMENDATION

I. RECOMMENDATION

It is respectfully recommended that the Motion to Dismiss filed by Defendants Melissa Diesel, Timothy Finnerty, Michael McGeever, William Tenney and James Uziel (ECF No. 139) be granted. It is also recommended that the Motion to Dismiss filed by Defendant Lawrence J. O'Toole (ECF No. 141) be granted.

It is further recommended that Plaintiff's Motions to Amend (ECF Nos. 178, 194, & 195) and Motions for Joinder (ECF Nos. 189, 190, & 191) be denied.

II. REPORT

A. FACTUAL ALLEGATIONS

This civil rights action involves underlying probate proceedings opened in January 2011 involving the estate of Plaintiff Willis' deceased grandmother in the Orphans' Court division of the Court of Common Pleas of Allegheny County ("estate case"). ((Amended) Amended/Second Amended Complaint¹, ECF No. 125 ¶ 4.) The docket sheet reflects that the administration of the estate was completed on December 20, 2017. (ECF No. 140-1 at 3.) The docket sheet further reflects that Plaintiff has attempted to appeal the matter to the Pennsylvania Supreme Court but it does not appear that the Supreme Court granted allocatur. (ECF No. 140-1 at 2.)

The facts and circumstances giving rise to the case at bar involve the state court's denial of Plaintiff's repeated demands that her in forma pauperis petitions, pleadings, and legal papers be filed. (ECF No. 125 ¶¶ 5-6.)² Plaintiff alleges that Defendants violated her Fourteenth Amendment equal protection, substantive and procedural due process and First Amendment rights in denying her a hearing on her petition for leave to proceed in forma pauperis; in denying her access to the courts; in denying her right to appeal; and in denying her "legitimate right" of entitlement to object to a sale of the real estate in her grandmother's estate and to protect the title to that real estate to avoid sale. She seeks declaratory relief in the form of a declaration that her constitutional rights were violated by denying her a hearing on her in forma pauperis petition; denying her access to the courts; denying her right of appeal; and denying her the right to object

¹ Plaintiff has filed multiple motions to amend the Complaint, (ECF Nos. 178, 194 & 195) but as will be discussed at Part III. *infra*, the Court finds that Plaintiff's attempts to amend would be futile.

² Plaintiff raises many of the same issues and claims here that she raised before this Court in *Willis v. Barkman*, 2:16-cv-00075-DSC-LPL. This civil action was voluntarily dismissed without prejudice after this Court issued a Report and Recommendation recommending its dismissal. Although some of the party defendants have changed and certain factual allegations are omitted from the case at bar, the Court reiterates many of its analyses here where applicable.

to the sale of property in the estate and to protect the title of the property in issue. It is not clear what injunctive relief she seeks.

B. LEGAL STANDARDS

Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6)

Recently, the United States Court of Appeals for the Third Circuit aptly summarized the standard to be applied in deciding motions to dismiss filed pursuant to Rule 12(b)(6):

Under the “notice pleading” standard embodied in Rule 8 of the Federal Rules of Civil Procedure, a plaintiff must come forward with “a short and plain statement of the claim showing that the pleader is entitled to relief.” As explicated in *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009), a claimant must state a “plausible” claim for relief, and “[a] claim has facial plausibility when the pleaded factual content allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” Although “[f]actual allegations must be enough to raise a right to relief above the speculative level,” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007), a plaintiff “need only put forth allegations that raise a reasonable expectation that discovery will reveal evidence of the necessary element.” *Fowler v. UPMC Shadyside*, 578 F.3d [203,] 213 [(3d Cir. 2009)] (quotation marks and citations omitted); *see also Covington v. Int'l Ass'n of Approved Basketball Officials*, 710 F.3d 114, 117–18 (3d Cir. 2013).

Thompson v. Real Estate Mortg. Network, 748 F.3d 142, 147 (3d Cir. 2014).

In addition to the complaint, courts may consider matters of public record and other matters of which a court may take judicial notice, court orders, and exhibits attached to the complaint when adjudicating a motion to dismiss under Rule 12(b)(6). *Oshiver v. Levin, Fishbein, Sedran & Berman*, 38 F.3d 1380, 1384 n.2 (3d Cir. 1994) (citing 5A Wright and Miller, *Federal Practice and Procedure: Civil* 2d, § 1357; *Chester Cnty. Intermediate Unit v. Pennsylvania Blue Shield*, 896 F.2d 808, 812 (3d Cir. 1990)).

Importantly, the Court must liberally construe the factual allegations of the complaint because pleadings filed by pro se plaintiffs are held to a less stringent standard than formal

pleadings drafted by lawyers. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007). Therefore, if the Court “can reasonably read [the] pleadings to state a valid claim on which [plaintiff] could prevail, it should do so despite failure to cite proper legal authority, confusion of legal theories, poor syntax and sentence construction, or [plaintiff’s] unfamiliarity with pleading requirements.” *Wilberger v. Ziegler*, No. 08-54, 2009 WL 734728, at *3 (W.D. Pa. March 19, 2009) (citing *Boag v. MacDougall*, 454 U.S. 364 (1982) (*per curiam*)).

C. ANALYSIS

1. Motion to Dismiss filed by Defendants Finnerty, McGeever, Diesel, Tenney, and Uziel

As to these Defendants, Plaintiff alleges that they violated her First and Fourteenth Amendment rights by denying her the opportunity to object to the sale of real estate in her grandmother’s estate case. Plaintiff further alleges that Defendants McGeever, Diesel and Tenney, the Director of the Allegheny County Department of Court Records and court clerks respectively, refused to docket her legal filings in the estate case between July 2016 and August 2016, and that subsequently, they also refused to docket her notices of appeal and related legal documents. (ECF No. 125 ¶¶ 5-6, 9, 11-13, 15-16.)³

These Defendants are protected from suit by the doctrine of quasi-judicial immunity. Quasi-judicial immunity prevents Willis from suing these Defendants in their individual capacities because the actions they took fell within their judicial-related activities. There is a

³ Per this Court’s Order of November 30, 2018 (ECF No. 129), the Honorable Kathleen A. Durkin, Timothy Finnerty, and James Uziel were terminated as party defendants when Plaintiff filed a proposed (Amended)Second Amended Complaint indicating her intention to remove Durkin, Finnerty and Uziel as parties and to pursue her claims against them in state court. Because Plaintiff has expressed her intention to re-add Durkin, Finnerty, and Uziel to this civil action, the moving Defendants filed their Motion to Dismiss on behalf of Defendants Finnerty and Uziel out of an abundance of caution. (ECF No. 140 at 2 n.1.)

“recognized immunity enjoyed by . . . quasi[-]judicial officers.” *Lockhart v. Hoenstine*, 411 F.2d 455, 460 (3d Cir. 1969) (Aldisert, J.). Immunity from suit applies when:

[t]he official’s action in question involves the exercise of discretionary judgment, *Antoine v. Byers & Anderson, Inc.*, 508 U.S. 429, 435[–]36 (1993), performance of a function under the direction of a judge, *Waits v. McGowan*, 516 F.2d 203, 205[–]06 (3d Cir. 1975), performance of a ministerial duty pursuant to a statute, *see Smith v. Rosenbaum*, 460 F.2d 1019, 1020 (3d Cir. 1972), or performance of a function otherwise closely allied with the judicial process. *Waits v. McGowan*, 516 F.2d 203, 206 (3d Cir. 1975).

Grine v. Colburn’s Air Conditioning and Refrigeration, No. 09-11 Erie, 2009 WL 2634179, *9 (W.D. Pa. Aug. 25, 2009), *aff’d*, 382 F. App’x 203 (3d Cir. 2010).

The effect of Willis’s lawsuit is to force the Department of Court Records employees to disobey Judge Durkin’s ruling to *not* waive filing fees for all documents she could submit in the underlying dispute. Obeying judicial rulings is a function closely allied with the judicial process. *Waits*, 516 F.2d at 206. Because Willis is suing Department of Court Records employees McGeever, Diesel, and Tenney for following Judge Durkin’s ruling by denying Willis fee-free filing on all documents in the underlying dispute, her claims against them fail due to quasi-judicial immunity and should be dismissed with prejudice.

As to Plaintiff’s claims against any of these Defendants in their official capacities, Plaintiff’s claims must also fail. Because official capacity claims are just another way of pleading an action against the government entity of which the individual employees are agents, claims against the moving Defendants in their official capacities are in essence claims against Allegheny County. *See Kentucky v. Graham*, 473 U.S. 159, 165-66 (1985).

In *Monell v. New York City Dep’t of Social Servs.*, 436 U.S. 658 (1978), the United States Supreme Court held that municipalities and other local governmental units are “persons” subject to liability under 42 U.S.C. § 1983. In so ruling, however, the Court declared that municipal

liability may not be premised on the mere fact that the governmental unit employed the offending official, that is, through application of the doctrine of respondeat superior. Instead, the Court concluded that a governmental unit may be liable under § 1983 only when 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*, 436 U.S. at 694. The “official policy” requirement distinguishes acts of the municipality from acts of employees of the municipality, thereby limiting liability to action for which the municipality is actually responsible. *Id.*

In finding municipal liability pursuant to § 1983, the plaintiff must identify the policy, custom or practice of the municipal defendant that results in the constitutional violation. *Id.* at 690-91. A municipal policy is made when a decision-maker issues an official proclamation or decision. *Pembaur v. City of Cincinnati*, 475 U.S. 469, 481 (1986), quoted in, *Andrews v. City of Philadelphia*, 895 F.2d 1469, 1480 (3d Cir. 1990). A custom or practice, however, may consist of a course of conduct so permanent and widespread that it has the force of law. *Andrews*, 895 F.2d at 1480. To establish municipal liability based upon a custom or practice, the plaintiff must demonstrate that the decision-maker had notice that a constitutional violation could occur and that the decision-maker acted with deliberate indifference to this risk. *Berg v. County of Allegheny*, 219 F.3d 261, 276 (3d Cir. 2000). Finally, Plaintiff must show a causal connection between the custom or policy and the violation of the constitutional right. *Bielevicz v. Dubinon*, 915 F.2d 845, 850-51 (3d Cir. 1990). That is, a plaintiff must demonstrate an “affirmative link” or “plausible nexus” between the custom or practice and the alleged constitutional deprivation. *Bielevicz*, 915 F.2d at 850-51.

Here, taking all of Plaintiff’s allegations as true and affording her every favorable inference as the Court must on a motion to dismiss, Plaintiff is unable to allege a custom or

practice of Allegheny County in refusing to file documents of pro se litigants. Plaintiff only alleges that Judge Durkin/Judge O'Toole failed to grant her petitions for in forma pauperis status, and that as a result, court employees, in adhering to that Order, refused to docket her pleadings and other submissions. Therefore, it is respectfully recommended that Plaintiff's claims against these moving Defendants in their official capacities be dismissed.

2. Motion to Dismiss filed by Defendant O'Toole

Defendant O'Toole, Administrative Judge of the Allegheny County Court of Common Pleas, Orphans Court Division, moves to dismiss Plaintiff's claims on the basis of Eleventh Amendment and absolute judicial immunity. Plaintiff alleges that Judge O'Toole failed to docket and adjudicate various pleadings she filed or attempted to file, including an in forma pauperis petition. The Court must dismiss the claims against O'Toole in his official and individual capacities.

The claims against Judge O'Toole in his official capacity are barred by the Eleventh Amendment to the United States Constitution. A suit against an official in his official capacity is, in fact, a suit against the entity of which an officer is an agent. *Kentucky v. Graham*, 473 U.S. 159, 166 (1985). The Eleventh Amendment bars civil rights suits against a state in federal court by private parties where the state has not consented to such action. *Laskaris v. Thornburgh*, 661 F.2d 23, 25 (3d Cir. 1981) (citing *Alabama v. Pugh*, 438 U.S. 781 (1978)). This immunity applies even to claims seeking injunctive relief. *Laskaris*, 661 F.2d at 25; *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 100 (1984) (holding Eleventh Amendment immunity applies "regardless of the nature of the relief sought.") (citation omitted). Pennsylvania, by statute, has specifically withheld consent to suit in federal court. 42 PA. CONS. STAT. ANN. § 8521(b); *Laskaris*, 661 F.2d at 25. Pennsylvania's Eleventh Amendment immunity extends to

suits against “arms of the state,” *i.e.*, departments or agencies of the state having no existence separate from the state. *Laskaris*, 661 F.2d at 25 (citing *Mt. Healthy City Bd. of Educ. v. Doyle*, 429 U.S. 274, 280 (1977)). This immunity also extends to the court of common pleas. Under Pennsylvania law, the term “Commonwealth government” includes the “courts and other officers or agencies of the unified judicial system, 42 Pa. Cons. Stat. Ann. § 102. *See also Callahan v. City of Philadelphia*, 207 F.3d 668, 673 (3d Cir. 2000) (“All courts and agencies of the unified judicial system . . . are part of ‘Commonwealth government’ and thus are state rather than local agencies.”) (citations omitted). Accordingly, the court of common pleas and its departments are entitled to Eleventh Amendment immunity. *See Haybarger v. Lawrence Cnty. Adult Probation and Parole*, 551 F.3d 193, 198 (3d Cir. 2008) (citations omitted).

Moreover, the Supreme Court has determined that Congress did not intend for § 1983 to overcome the sovereign immunity of states embodied in the Eleventh Amendment. *Will v. Mich. Dep’t of State Police*, 491 U.S. 58, 66-67 (1989). Therefore, states, as well as entities of the state, such as the Fifth Judicial District is not a “person” who can be subject to liability under § 1983. *Id.* at 71. As such, Judge O’Toole is protected by Eleventh Amendment immunity, and therefore, this Court lacks subject matter jurisdiction over this Defendant.

Plaintiff attempts to invoke the doctrine of *Ex Parte Young*, 209 U.S. 123, 159-60 (1908), in order to state a claim against Judge O’Toole in his official capacity by alleging that her request for injunctive relief is prospective to enjoin an ongoing violation of federal law. The doctrine is inapplicable here. Plaintiff alleges that Defendant O’Toole failed or refused to docket her in forma pauperis petitions and pleadings pursuant to 231 Pa. Code, Rule 240 (c) (1) (i). That is, she alleges that Defendant violated state law, and as a consequence, her federal constitutional rights were violated. *Ex Parte Young* is inapplicable where a plaintiff claims a

violation of state law. *Pennhurst v. State Sch. and Hosp. v. Halderman*, 465 U.S. 89, 106 (1984) (“[I]t is difficult to think of a greater intrusion on state sovereignty than when a federal court instructs state officials on how to conform their conduct to state law[.]”). Therefore, the doctrine of *Ex Parte Young* is inapplicable here, and Plaintiff’s claims against Judge O’Toole are barred by the Eleventh Amendment.

The claims against Judge O’Toole in his individual capacity are barred by absolute judicial immunity. Under that doctrine, a judicial officer has absolute immunity from suit for actions taken in his or her judicial capacity. *See Mireles v. Waco*, 502 U.S. 9, 12 (1991); *Azubuko v. Royal*, 443 F.3d 302, 303 (3d Cir. 2006) (citing *Mireles*, 502 U.S. at 12). Whether a judicial official has acted in his or her judicial capacity in any particular case is a functional inquiry. *See Forrester v. White*, 484 U.S. 219, 227 (1988) (“[I]mmunity is justified and defined by the functions it protects and serves, not by the person to whom it attaches.”). Thus, a judge is not afforded judicial immunity for those actions the judge has taken in an administrative or executive capacity. *See, e.g., Forrester*, 484 U.S. at 229–30 (holding that a state court judge’s act of demoting a probation officer was done in his administrative capacity, and thus, the judge was not immune from suit); *Supreme Court of Va. v. Consumers Union of the United States*, 446 U.S. 719, 736–37 (1980) (holding that “immunity does not shield the Virginia Court and its chief justice from suit” when the judge was acting as a prosecutor to enforce the bar code).

When a judge acts in his or her judicial capacity, as opposed to an executive or administrative capacity, he or she is entitled to absolute immunity from damage claims even when his or her action was erroneous, done maliciously, or exceeded his or her authority. *Stump v. Sparkman*, 435 U.S. 349, 356–57 (1978). It is only when an action, while judicial in nature, was pursued in “complete absence of all jurisdiction” that a judge will not be entitled to absolute

immunity. *Mireles*, 502 U.S. at 12 (citing *Stump*, 435 U.S. at 356–57); *Gallas v. Supreme Court of Pa.*, 211 F.3d 760, 768 (3d Cir. 2000). This is an especially stringent standard, as it is generally held that, in light of the broad judicial immunity afforded to judges, “where a court has some subject matter jurisdiction, there is sufficient jurisdiction for immunity purposes.” *Figueroa v. Blackburn*, 208 F.3d 435, 443–44 (3d Cir. 2000) (citing *Barnes v. Winchell*, 105 F.3d 1111, 1122 (6th Cir. 1997)).

Here, Judge O’Toole’s actions all fall within his judicial capacity. Plaintiff alleges that her claims relate to the underlying action involving her grandmother’s estate in the Allegheny County Court of Common Pleas, Orphans Court Division. Therefore, he is protected by judicial immunity even if his rulings were in error or in excess of authority because his orders (or failure to issue orders) were issued with appropriate jurisdiction and in his judicial capacity. Judge O’Toole’s alleged failure to docket and adjudicate certain pleadings fall within the scope of his judicial duties. Plaintiff’s claims against Judge O’Toole in his individual capacity are barred by absolute judicial immunity.

Generally, a plaintiff cannot successfully request injunctive relief when suing a judge. The Federal Courts Improvement Act of 1996 (FCIA) extends the reach of judicial immunity to injunctive relief as well as to damages. That is “injunctive relief shall not be granted” in an action brought against “a judicial officer for an act or omission taken in such officer’s judicial capacity . . . unless a declaratory decree was violated or declaratory relief was unavailable.” 42 U.S.C. § 1983; *Azubuko*, 443 F.3d at 304. After the issuance of this Court’s Report and Recommendation in *Willis v. Barkman*, Civil Action No. 16-75, Plaintiff seizes upon the phrase “declaratory relief was unavailable”⁴ in support of her argument that injunctive relief against the

⁴ In her proposed (Amended) Third Amended Complaint, Plaintiff states that “declaratory relief is/may be unavailable in the state [c]ourt.” (ECF No. 195 ¶ 3 n.3.)

judicial officers in this case is appropriate. Plaintiff alleges no facts to support this assertion and the underlying docket sheet reflects no efforts to obtain declaratory relief. Nor has Plaintiff alleged facts to suggest that she is likely to suffer *future* injury as a result of actions of a named defendant. As noted above, Plaintiff seeks a declaration that Judge O'Toole previously violated her rights. This is not the proper use of a declaratory judgment, which is meant to define the legal rights and obligations of the named defendants in anticipation of future conduct, not to proclaim their liability for past actions. *Corliss v. O'Brien*, 200 F. App'x 80, 84-85 (3d Cir. 2006); *see e.g.*, *Utah Animal Rights Coal. v. Salt Lake City Corp.*, 371 F.3d 1248, 1266 (10th Cir. 2004), *cited in*, *O'Callaghan v. Hon. X*, 661 F. App'x 179, 182 (3d Cir. 2016). Therefore, Plaintiff's claims for injunctive and declaratory relief must be dismissed with prejudice.

3. Futility of Amendment (Motions to Amend—ECF Nos. 178, 194 & 195)

Plaintiff seeks leave of Court to amend her Complaint for a third time (ECF No. 178) to re-add Defendants Uziel, Durkin, and Finnerty.⁵ She also seeks to add Patricia Capozoli, whom she identifies as a Division Manager in the Allegheny County Court of Common Pleas, Department of Court Records, Wills/Orphans' Court Division, in her individual capacity. (Proposed (Amended)Third Amended Complaint, ECF No. 195 ¶ 6 n.18.) Finally, Plaintiff seeks to amend her Complaint by adding a conspiracy claim against the defendants named in the proposed (Amended)Third Amended Complaint alleging that they conspired/collaborated to deny Plaintiff's constitutional rights. (ECF No. 195 ¶¶ 30-33.)

The court must permit amendment by a § 1983 civil rights plaintiff before dismissing a complaint pursuant to Rule 12(b)(6), even if not requested, unless doing so would be "inequitable or futile." *Fletcher-Harlee Corp. v. Pote Concrete Contractors, Inc.*, 482 F.3d 247,

⁵ It also appears that Plaintiff attempts to use Federal Rules of Civil Procedure 19 & 20 relating to joinder to include these Defendants in her current civil action. *See* ECF Nos. 189, 190, & 191.

251 (3d Cir. 2007); *see also Alston v. Parker*, 363 F.3d 229, 235 (3d Cir. 2004) (asserting that where a complaint is vulnerable to dismissal pursuant to 12(b)(6), the district court must offer the opportunity to amend unless it would be inequitable or futile). The Court is cognizant of these holdings, but finds that allowing Plaintiff to amend would be futile. A careful review of the record commands that Plaintiff, even garnering all the liberalities that accompany her pro se status, fails to state any claims under § 1983 for which relief may be granted.

a. Finnerty

Plaintiff identifies Timothy Finnerty as Assistant County Solicitor for the Allegheny County Department of Court Records Wills/Orphans' Court Division. In her most recent version of her proposed amended complaint (ECF No. 195), Plaintiff alleges that Finnerty refused to docket Petitioner's *in forma pauperis* petitions, pleadings and other legal papers in the estate case. (ECF No. 195 ¶ 6.)

As discussed at Section II.C.1., *supra*, Finnerty is protected by quasi-judicial immunity for these alleged acts.

Therefore, it is respectfully recommended that Plaintiff's motions to amend (ECF Nos. 178, 194 & 195) and motion for joinder (ECF No. 190) as they relate to Defendant Finnerty be denied.

b. Durkin

As discussed at Part II.C.2., *supra*, relating to Judge O'Toole, Willis' 42 U.S.C. § 1983 claims against Judge Durkin are likewise barred by Eleventh Amendment and absolute judicial immunity.

Here, Plaintiff's allegations relating to Judge Durkin fall under her judicial capacity. In her proposed (Amended) Third Amended Complaint, Willis alleges that Judge Durkin failed to

adjudicate/hold hearings on Willis’ in forma pauperis petitions and pleadings. (ECF No. 195 ¶¶ 29-31.) The decisions to deny in forma pauperis status and to not have hearings are all within the purview of a judge’s judicial capacity. Even if Judge Durkin’s decisions were in error, she is absolutely immune from Willis’ individual capacity claims because the decisions Willis complains of were within Judge Durkin’s judicial capacity. *Stump*, 435 U.S. at 356–57 (1978).

Judge Durkin’s actions were also not taken in the “complete absence of all jurisdiction.” At all relevant times, Judge Durkin was a judge in the Orphans’ Court division of the Allegheny County Court. The Allegheny County Court is a court of general jurisdiction. *See* 42 PA. CONS. STAT. ANN. § 931(a) (“the courts of common pleas shall have unlimited original jurisdiction of all actions and proceedings, including all actions and proceedings heretofore cognizable by law or usage in the courts of common pleas”). Where, as here, a court has subject matter jurisdiction over a matter in some way, that court generally has jurisdiction sufficient for immunity purposes. *Figueroa v. Blackburn*, 208 F.3d 435, 443–44 (3d Cir. 2000) (citing *Barnes v. Winchell*, 105 F.3d 1111, 1122 (6th Cir. 1997)). Judge Durkin had subject matter jurisdiction over the underlying dispute, which Plaintiff characterized as a probate matter disposing of her grandmother’s estate. Judge Durkin thus acted within the Allegheny County Court’s jurisdiction.

Willis’s request for injunctive and declaratory relief to counter Judge Durkin’s actions also fails for the same reasons relating to Judge O’Toole at Part II.C.2., *supra*. Likewise, any attempt to sue Judge Durkin in her official capacity is precluded by Eleventh Amendment immunity.

Consequently, the Court finds that any attempt to amend and re-add Plaintiff’s claims against Durkin would be futile. Therefore, it is respectfully recommended that Plaintiff’s

Motions to Amend (ECF Nos. 178, 194 & 195) and Motion for Joinder (ECF No. 189) as they relate to Durkin be denied.

c. Uziel

Willis' factual averments do not state a Fourteenth Amendment claim for which relief can be granted against Defendant Uziel, an employee of the Department of Real Estate. Under Pennsylvania law, Uziel is required by statute to record deeds as they are presented to him:

All deeds, conveyances, contracts, and other instruments of writing wherein it shall be the intention of the parties executing the same to grant, bargain, sell, and convey any lands, tenements, or hereditaments situate in this Commonwealth, upon being acknowledged by the parties executing the same or proved in the manner provided by the laws of this Commonwealth, *shall be recorded* in the office for the recording of deeds in the county where such lands, tenements, and hereditaments are situate

21 PA. CONS. STAT. § 351 (emphasis added). The United States District Court for the Middle District of Pennsylvania further described the duty of a recorder of deeds (and, by extension, employees of the Department of Real Estate):

[T]he Recorder is a ministerial officer charged with recording all documents presented to him. The only situations in which a Recorder may refuse to record a document presented to him are where the appropriate fee is not paid, where the document is not of the type that is statutorily entitled to recording . . . and where the document on its face lacks a proper acknowledgement. The Recorder is truly just a custodian of documents.

Woodward v. Bowers, 630 F. Supp. 1205, 1207 (M.D. Pa. 1986) (emphasis omitted) (internal quotation marks omitted).

Despite the obvious implication from both case and statutory law that employees in the Department of Real Estate must record all documents received complying with the requirements to record, Willis claims that Uziel knew that there was no order authorizing the sale of real estate associated with the underlying dispute but allowed deeds to be arbitrarily recorded in a sale of

real estate in the estate to a third party. (ECF No. 195 ¶¶ 20-21.) But according to the law, even if Uziel knew that there was no order from the Orphans' Court to sell real estate in the underlying dispute, it is not his job to prevent that sale from occurring. 21 PA. CONS. STAT. § 351; *Woodward*, 630 F. Supp. at 1207.

Willis also appears to confuse the effect of recording a deed with transferring an interest in property. “*Delivery* [of a deed] is all that is necessary to pass title [in real property], *recording* is only essential to protect by constructive notice any subsequent purchasers, mortgagees and new judgment creditors.” *Malamed v. Sedelsky*, 80 A.2d 853, 856 (Pa. 1951) (citation omitted). By recording a deed for real estate in the underlying dispute, Uziel did not change the owner of that property. Uziel’s act of recording the deed alters none of Willis’ legal rights to the real estate in the underlying dispute, and thus, could not have deprived her of procedural and substantive due process rights related to that property. Based on Willis’ factual averments, Uziel’s job duties, and the legal effect of Uziel’s actions, Willis is unable to state a claim against Uziel for which relief can be granted. And it would be futile to allow Willis to amend her complaint in an attempt to state a Fourteenth Amendment claim against Uziel, since recording a deed does not alter Willis’ legal right to the real estate in the underlying dispute. Consequently, the Court finds that any attempt to amend and re-add Plaintiff’s claims against Uziel would be futile. Therefore, it is respectfully recommended that Plaintiff’s Motions to Amend (ECF Nos. 178, 194 & 195) and Motion for Joinder (ECF No. 191) as they relate to Defendant Uziel be denied.

d. Patricia Capozoli and Hugh Mulvey

In her Motions to Amend, Plaintiff attempts to add Patricia Capozoli and Hugh Mulvey to her Complaint. *See* ECF Nos. 194 & 195. In her latest version of the proposed “(Amended)

Third Amended Complaint,” Plaintiff identifies Capozoli as a Division Manager in the Allegheny County Court of Common Pleas, Department of Court Records, Will/Orphans’ Court Division. (ECF No. 195 ¶ 6 n.18.) Plaintiff alleges that Capozoli refused to docket Plaintiff’s in forma pauperis petitions, pleadings, and legal papers. (ECF No. 195 ¶ 6.)

Plaintiff identifies Hugh Mulvey as a motions clerk for the Allegheny County Court of Common Pleas, Orphans’ Court Division. (ECF No. 195 ¶ 3 n.4.) Plaintiff alleges that Mulvey failed to docket Plaintiff’s in forma pauperis petitions, pleadings, and legal papers. (ECF No. 195 ¶ 24.)

As discussed at Section II.C.1., *supra*, these individuals are protected by quasi-judicial immunity. Therefore, it is respectfully recommended that Plaintiff’s Motions to Amend (ECF Nos. 178, 194 & 195) as they relate to these individuals should be denied.

e. Conspiracy

Finally, it appears that Plaintiff seeks to add a claim for conspiracy against the named defendants in her proposed (Amended) Third Amended Complaint. (ECF No. 195 ¶¶ 30-33.)

In order to state a claim for conspiracy, Plaintiff is required to show ““a combination of two or more persons to do a criminal act, or to do a lawful act by unlawful means or for an unlawful purpose.”” *Panayotides v. Rabenold*, 35 F. Supp. 2d 411, 419 (E.D. Pa. 1999) (quoting *Hammond v. Creative Fin. Planning*, 800 F. Supp. 1244, 1248 (E.D. Pa. 1992)). *See also Spencer v. Steinman*, 968 F. Supp. 1011, 1020 (E.D. Pa. 1997) (citing *Ammlung v. City of Chester*, 494 F.2d 811, 814 (3d Cir. 1974)). A conspiracy claim requires specific allegations “which are particularized, such as those addressing the period of the conspiracy, the object of the conspiracy, and certain other action of the alleged conspirators taken to achieve that purpose.” *Panayotides*, 35 F. Supp. 2d at 419 (citations omitted). “It is not enough that the end result of

the parties' independent conduct caused plaintiff harm or even that the alleged perpetrators of the harm acted in conscious parallelism." *Spencer*, 968 F. Supp. at 1020. Rather, there must be a showing that the alleged conspirators "directed themselves toward an unconstitutional action by virtue of a mutual understanding or agreement." *Chicarelli v. Plymouth Garden Apartments*, 551 F. Supp. 532, 539 (E.D. Pa. 1982) (citing *Tarkowski v. Bartlett Realty Co.*, 644 F.2d 1204 (7th Cir. 1980)). The United States Court of Appeals for the Third Circuit has made clear that in light of *Twombly* and its progeny, there must be "enough factual matter (taken as true) to suggest that an agreement was made,' in other words, 'plausible grounds to infer an agreement.'" *Great Western Mining & Mineral Co. v. Fox Rothschild LLP*, 615 F.3d 159, 178 (3d Cir. 2010) (quoting *Twombly*, 550 U.S. at 556). The facts alleged must raise "a suggestion of a preceding agreement, not merely parallel conduct that could just as well be independent action." *Twombly*, 550 U.S. at 557.

Here, while Plaintiff appears to allege conspiratorial or collaborative conduct among Defendants, claiming that they acted in concert at various times and at various locations in order to prevent the adjudication and docketing of her in forma pauperis petitions, pleadings, and other legal papers, her averments are pure speculation and do not amount to sufficient facts from which this Court could infer conspiracy. Plaintiff does not direct the Court to facts that suggest a preceding agreement. Instead, the proposed (Amended) Third Amended Complaint offers only that Defendants were engaged in their respective duties as court employees or judicial officials. Plaintiff's alleged conspiracy is based only on sheer possibility or speculation. *See Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 556-57). Therefore, it is respectfully recommended that Plaintiff's Motions to Amend (ECF Nos. 178, 194 & 195) as they relate to the addition of a conspiracy claim should be denied.

III. CONCLUSION

For the above reasons, it is respectfully recommended that the Motion to Dismiss filed by Defendants Melissa Diesel, Timothy Finnerty, Michael McGeever, William Tenney and James Uziel (ECF No. 139) be granted. It is also recommended that the Motion to Dismiss filed by Defendant Lawrence J. O'Toole (ECF No. 141) be granted.

It is further recommended that Plaintiff's Motions to Amend (ECF Nos. 178, 194, & 195) and Motions for Joinder (ECF Nos. 189, 190, & 191) be denied.

In accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1)(B) and (C), and Rule 72.D.2 of the Local Rules of Court, the parties are allowed fourteen (14) days from the date of service of a copy of this Report and Recommendation to file objections. Any party opposing the objections shall have fourteen (14) days from the date of service of objections to respond thereto. Failure to file timely objections will constitute a waiver of any appellate rights.

Dated: March 8, 2019

BY THE COURT

s/ Lisa Pupo Lenihan
LISA PUPO LENIHAN
United States Magistrate Judge