

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA  
CIVIL DIVISION**

**JAMAL BENNETT, CHRISTOPHER  
WHITE, MALIKAH JOHNSON, QURAN  
GEDDY, CARLOS ACOSTA, TIREEK  
ROBINSON, RASHAUN FLEMING,  
MICHAEL BENSON, ANTHONY  
BACON, SHAHEED GINDRAW, DAVID  
LOPEZ, RAHNELL COTTON (and all  
Incarcerated men and women with  
Confidential informant cases past and  
Current, by the NEU)**  

**Plaintiffs**

**v.**

**CV-22-00040**

**LYCOMING COUNTY BAR ASSOC.  
of the COMMW., PA BAR ASSOC. of the  
COMMW, NANCY L. BUTTS,  
LYCOMING COUNTY NARCOTICS  
ENFORCEMENT UNIT, BRAD  
SHOEMAKER, RYAN BARNES, BRIAN  
BLUTH, RYAN GARDNER, PRISON  
BOARD,**  

**Defendants**

**FILED  
LYCOMING COUNTY  
2023 MAR 24 AM 10:48  
THOMAS D. HEAR  
PROTHONOTARY**

**MEMORANDUM AND ORDER**

Before the Court are Preliminary Objections of Defendants to Plaintiff’s Writ of Mandamus argued on March 13, 2023 via Zoom. Although Plaintiff Jamal Bennett appeared initially, he declined to participate in the oral argument, and the Court proceeded in his absence.

***Procedural Background***

This matter was originally filed under the original jurisdiction of the Commonwealth Court on October 27, 2021. On December 9, 2021, upon review of the Petition for Writ of Mandamus, the Court ruled that because the Petitioner had failed to name the Commonwealth government or an officer thereof so as to vest the Court with original jurisdiction, the matter was to be transmitted to the Prothonotary of the Court of Common Pleas of Lycoming County for further proceedings. Preliminary Objections, with a Notice to Plead, were filed on January 17, 2023 by Brian J. Bluth, Esq., on behalf of all Defendants except

for himself. Preliminary Objections were filed on behalf of Attorney Bluth by Attorney Kathryn L. Smith, Esq. on February 10, 2023. Despite the Notice to Plead, Plaintiff failed to respond to the Preliminary Objections as of the time of argument. Accordingly, we will deem the factual averments of Plaintiff's Preliminary Objections to be true as undenied.

***General Nature of the Relief Requested***

Petitioners seek relief in two fundamental areas: first, they seek the institution of a process and/or procedure whereby the identity and quality of confidential informants [CI's] in "controlled buy" illegal drug cases, including the "Informant Conditions Statement" of each CI utilized in establishing the probable cause at Magistrate Preliminary Hearings, be made available to each petitioner for preparation of his/her defense; and second, improved access to justice in the form of greater numbers, quality, and access of law library computers for inmates to conduct research.

***First Preliminary Objection in the Nature of a Demurrer (lack of service of process)***

Defendant's first objection consists of a demurrer based on the Plaintiff's failure to serve any of the Defendants with original process. Considering that the original Petition was filed in October, 2021, the plaintiffs have had more than enough time to serve the defendants based on the original jurisdiction of the Commonwealth Court. As noted by defendants, original process may only be served by the sheriff, and where proper service of original process has not occurred the court lacks personal jurisdiction over the defendants.

Defendant's first Preliminary Objection in the nature of a demurrer is SUSTAINED.

***Second Preliminary Objection in the Nature of a Motion to Strike (absence of signatures)***

Defendant's second preliminary objection in the nature of a Motion to Strike is grounded on the failure of any of the Plaintiffs to sign the Petition for Writ of Mandamus at the end of the factual averments. Pa.R.C.P. 1023.1 provides that every pleading where a party is not represented by an attorney shall be signed by the party and that such signature constitutes a certificate that the signatory has read the pleading and that to the best of his knowledge, information and belief the document is not presented for any improper purpose, the claims are warranted and nonfrivolous, and the factual allegations have evidentiary support.

With the Preliminary Objections having been filed in January, the plaintiffs have been on notice of their failure to sign the pleading to avoid noncompliance with Rule 1023.1, and the failure to correct the same is inexcusable.

Defendants second Preliminary Objection in the nature of a Motion to Strike is SUSTAINED.

***Third Preliminary Objection in the Nature of a Motion to Strike (absence of verification)***

Defendants third preliminary objection in the nature of a Motion to Strike is grounded on the failure of any of the plaintiffs to attach a verification as required by Pa.R.C.P. 1024. Such a verification states that the averments contained in the pleading are true upon the signer's personal knowledge or information and belief. Again, with the Preliminary Objections having been filed in January and the Plaintiffs having failed to correct their pleading, we find this violation of the rules to be inexcusable.

Defendants third Preliminary Objection in the nature of a Motion to Strike is SUSTAINED.

***Fourth Preliminary Objection in the Nature of a Motion to Strike (Class Action)***

Defendants next move to strike all elements of the Petition which regard the efforts of Petitioner Jamal Bennett to argue his request for relief on behalf of all members of a class of petitioners. The caption of the case lists 13 individual Petitioners but includes "all incarcerated men and women with confidential informant cases, past and current, by the NEU".

The class action is a procedural device designed to promote efficiency and fairness in the handling of large numbers of similar claims, while providing a forum for claims that would otherwise be too small to litigate. *Dunn v. Allegheny County Property Assessment Appeals and Review*, 794 A.2d 416, 423 (Pa.Cmwlth.2002). Pennsylvania Rule of Civil Procedure 1702 lists the prerequisites to a class action:

1. the class is so numerous that joinder of all members is impracticable [(Numerosity)];
2. there are questions of law or fact common to the class [(Commonality)];
3. the claims or defenses of the representative parties are typical of the claims or defenses of the class [(Typicality)];

4. the representative parties will fairly and adequately assert and protect the interest of the class under the criteria set forth in Rule 1709 [(Adequacy of Representation)]; and
5. a class action provides a fair and efficient method for adjudication of the controversy under the criteria set forth in Rule 1708 [(Fair and Efficient Method for Adjudication)].

The burden of proving each of these elements is on the proponent of class certification. While the class proponent's evidentiary burden is not heavy, more than mere conjecture or conclusory allegations are required. *Dunn*, 794 A.2d at 423. Once the class proponent has established each of the above elements, the class opponent carries the burden of proving, with contrary evidence, that class certification is not proper. *Id.* If there is an actual conflict on an essential fact, the proponent bears “the risk of non-persuasion.” *Samuel-Bassett*, 34 A.3d at 16.

The trial court enjoys broad discretion to define the class. *See Janicik*, 451 A.2d at 454. Therefore, an appellate court “may not disturb the trial court's order unless the court neglected to consider the requirements of the rules [of civil procedure] or abused its discretion in applying them.” *Hanson*, 679 A.2d at 788 (quotations omitted). *Doe I v. Franklin Cnty.*, 272 A.3d 1022, 1033 (*Pa. Commw. Ct.* 2022)

A class is sufficiently numerous when the number of potential plaintiffs would burden the court and unnecessarily drained the resources of litigants should plaintiffs sue individually. Where the class is so poorly defined that the court cannot discern the potential class members are, the numerosity requirement has not been met. In the instant case, Petitioner defines the class as all incarcerated men and women with confidential informant cases past and current. It is implied that each of these individual cases represent an instance where the Commonwealth has failed or refused to disclose the identities and qualifications of the confidential informants; however, the disclosure of such information would be important to the individual petitioner's defense. The disclosure of

confidential informant particulars by the office of the District Attorney is not, however, typically a matter of discretion. Indeed, the confidentiality of informants is essential to the recruitment and safety of each individual informant. In other words, confidentiality exists for a reason. Further, the testimony of an informant is frequently not an essential element of the Commonwealth's case. In that regard, the quality of the informant for truthfulness is not an issue in the case and is not relevant as a matter of discovery for each defendant. Finally, the need to disclose information regarding the confidential informant is a matter of consideration on a case-by-case basis, and if necessary, can be supplied "in camera" for protection of the informant. Based on the foregoing analysis, we feel that the "numerosity" and "commonality" elements of the class action cannot be met in this case.

It is well-established that an individual who is not a licensed attorney cannot represent other individuals in a lawsuit as the same would be the engagement in the unauthorized practice of law, a misdemeanor in the Commonwealth of Pennsylvania. *42 Pa.C.S. §2524*. Clearly, Mr. Bennett championed the cause of action by virtue of his signing the Certificate of Service and listed his address as the point of contact for service of all documents going forward. Accordingly, we strike all of the individual Petitioners other than Jamal Bennett as it would be necessary for each individual to present his own petition preferring his own personal facts which would warrant the relief requested.

Regarding the adequacy of representation element, a black letter requirement for the court's approval and certification of a class is that the proponent individual must assure the court that he will fairly and adequately assert and protect the interests of the class under the criteria set forth in Pa.R.C.P. 1709. Imprisoned individuals proceeding without aid of counsel cannot fairly and adequately protect the interests of the class as required for certification. *Mobley v. Coleman*, 65 A.3d 1048 (Pa.Cmwlth.2013) A *pro se* prisoner without formal training in the law would not be able to adequately represent the interests of the class and maintain the suit as a class action. *Caputo v. Fauver*, 800 F.Supp. 168, 170 (D.N.J.1992), *aff'd*, 995 F.2d 216 (3d Cir.1993) (stating that "[e]very court that has considered the

issue has held that a prisoner proceeding *pro se* is inadequate to represent the interests of his fellow inmates in a class action.”

Accordingly, Defendant’s fourth Preliminary Objection in the nature of a Motion to Strike the class action designation is SUSTAINED.

***Fifth Preliminary Objection in the Nature of a Demurrer (Lack of Specificity)***

Defendants next argue that Petitioner’s Writ of Mandamus “vaguely alleges that the defendants withheld the identity of confidential informants from criminal defendants and unspecified criminal cases; the defendants generally would use unreliable confidential informants and unspecified criminal cases; and, the defendants generally failed to provide “Informants Conditions Statement” to unspecified criminal defendants in unspecified criminal cases.” Further, they argue that the Writ of Mandamus “alleges that inmates of Lycoming County Prison are not allowed to attend the Prison law library if they are represented by an attorney and that the materials available in the Prison law library are outdated.” It is concluded that the foregoing averments failed to contain sufficient facts to permit the defendants to adequately understand and defend any claims purportedly raised by Petitioner’s Writ of Mandamus, and petitioners could arguably assert new causes of action or theories of liability after the statute of limitations has expired under the guise of merely amplifying such open-ended and generalized averments.

Regarding lack of specificity objections we must recognize the limitations often observed in *pro se* pleadings. First, “[t]he allegations of a *pro se* complainant are held to a less stringent standard than that applied to pleadings filed by attorneys.” *Danysh v. Dep’t of Corr.*, 845 A.2d 260, 262-63 (Pa. Cmwlth. 2004). Second, Pennsylvania is a “fact pleading” jurisdiction under which courts are presumed to know the law, and petitioners need only plead facts constituting the cause of action, and the courts will take judicial notice of the statute [or constitutional provision]

involved. Accordingly, a petitioner filing a complaint in the courts of this Commonwealth is not required to specify the legal theory or theories underlying the complaint. He or she may merely allege the material facts which form the basis of a cause of action. *Heinly v. Com.*, 621 A.2d 1212, 1215 n.5 (Pa. Cmwlth. 1993). To that end, “[w]here the elements to a cause of action are adequately set forth, a *pro se* complaint will not be dismissed just because it is not artfully drafted.” *Williams v. Syed*, 782 A.2d 1090, 1095 (Pa. Cmwlth. 2001). *Sigman v. Dep’t of Corr.*, 253 A.3d 849 (Pa. Commw. Ct. 2021)

With these points in mind, we conclude that prison law library allegations may be reasonably interpreted as alleging that the law library's inadequacies have impinged upon Bennett's ability to access the courts, a right that is secured by both the Constitution of the United States and the Pennsylvania Constitution. *See Christopher v. Harbury*, 536 U.S. 403, 415 n.12 (2002).

We believe at the same time, however, that the confidential informant allegations can only be viewed on a case-by-case basis. The District Attorney enjoys broad discretion in the manner in which a criminal case is presented to the court. Not every case where a confidential informant is utilized merits the use of the informant's testimony to provide proof beyond a reasonable doubt of the criminal acts alleged to have been committed by a defendant. To bolster the probable cause determination of the magistrate in a search warrant or at a Preliminary Hearing is a matter which can be attacked by the defendant or defense counsel through habeas corpus proceedings as dictated by the existence or lack of existence of material evidence gleaned from the informant.

Defendant's fifth preliminary objection in the nature of a demurrer for a more specific pleading is DENIED.

***Sixth Preliminary Objection in the Nature of a Demurrer (Mandamus Relief)***

Defendants next demurre to the Petition for Writ of Mandamus on the basis that the pleading fails to state a claim upon which relief may be granted because it does not demonstrate: (1) a clear legal right in the petition; (2) a corresponding duty in the respondent; and (3) the absence of any other appropriate or adequate remedy.

Mandamus is chiefly employed to compel the performance (when refused) of a ministerial duty, or to compel action (when refused) in matters involving judgment and discretion. *It is not used to direct the exercise of judgment or discretion in a particular way, nor to direct the retraction or reversal of an action already taken.* Mandamus is a device that is available in our system to compel a tribunal or administrative agency to act when that tribunal or agency has been “sitting on its hands.” *Pennsylvania Dental Association v. Insurance Department*, 512 Pa. 217, 227–28, 516 A.2d 647, 652 (1986) (emphasis added) (citations omitted). *Seeton v. Adams*, 50 A.3d 268, 277 (Pa. Commw. Ct. 2012).

In the instant case Petitioners arguably plead that they find the prison law library in the Lycoming County Prison to be inadequate as to access, quality, and the provision of assistance for lay operators. They plead that prisoners who are represented by counsel are denied access to the law library.

As stated previously, there is a clear legal constitutional right of access to the courts which is manifested in the provision of legal research materials for prison inmates. There is a corresponding duty on the part of prison officials to ensure that the right goes unbridged. We do not deem under the circumstances plead by Petitioners that there is another appropriate or adequate remedy than to ensure that the prison officials carry out their duty.

Defendants sixth preliminary objection in the nature of a demurrer (mandamus relief) is DENIED.



***Seventh Preliminary Objection in the Nature of a Demurrer (Mootness)***

Defendants next argue that the case should be dismissed inasmuch as the principal complainant, Jamal Bennett, is no longer incarcerated in the Lycoming County Prison and that his release to a state correctional institution make moot's claims for injunctive relief regarding conditions of confinement.

While we agree that this particular Petitioner, Jamal Bennett, is no longer incarcerated in the Lycoming County Prison, there are certainly other inmates who face the same access to the courts issue as Bennett. An exception to the mootness rule is that a particular issue may be deemed capable of repetition, yet evading review. The "capable of repetition" doctrine is a narrow exception to the mootness principle and is limited to cases presenting two elements: "(1) the challenged action was in its duration too short to be fully litigated prior to its cessation or expiration, *and* (2) there [is] a reasonable likelihood that the same complaining party *would* be subjected to the same action again." *Id.* at 149, 96 S.Ct. at 349 (emphasis added). *Abdul-Akbar v. Watson*, 4 F.3d 195, 206 (3d Cir. 1993).

Here, the issue of access to the courts by denial of meaningful legal research opportunity was in existence during the incarceration of Jamal Bennett, and although these proceedings were commenced during his incarceration the matter is only at the preliminary objections stage. While Bennett is currently incarcerated in a State Correctional Institution, it is possible that he will be returned to Lycoming County for appeal or Post Conviction Relief Act purposes.

Defendant's seventh preliminary objection in the nature of a demurrer (mootness) is DENIED.

***Eighth Preliminary Objection in the Nature of a Demurrer (Access to Courts)***

Defendants next argue that the Petition for Writ of Mandamus would be better suited as a Section 1983 civil rights claim. As outlined previously, we believe that the Prison Board has a duty to facilitate computer and research access to inmates in compliance with the Sixth Amendment. A civil damages claim would not help Bennett or any other incarcerated inmate once they have been convicted and lost the opportunity to adequately present a defense.

Defendant's eighth preliminary objection the nature of a demurrer (access to courts) is DENIED.

***Ninth Preliminary Objection in the Nature of a Demurrer (Lycoming Law Association-No State Action)***

Defendants next demurre to the allegations against the Lycoming Law Association and that the Petitioner's "only theory of liability appears to be his allegation that the Law Association was "well aware of the matter" (which is not defined or explained that all in connection with this allegation) as the Law Association administers oaths to attorneys and holds annual public meetings with President Judge Butts. Defendants note that Petitioners failed to allege that the law Association has exercised any power that is traditionally the exclusive prerogative of the state. Finally, defendants allege that the law satiation is not a state actor for purposes of a Section 1983 action.

Respecting the Writ of Mandamus action, we agree that the Lycoming Law Association is not in a position to exercise discretion or any action, for that matter, regarding the prison law library or the prosecutorial discretion regarding the use of confidential informants.

Defendants ninth preliminary objection in the nature of a demurrer (Lycoming Law Association) is SUSTAINED.

***Tenth Preliminary Objection in the Nature of a Demurrer (Lycoming Law Association-Failure to State a Claim)***

For the reasons set forth in the foregoing objection, the tenth preliminary objection in the nature of a demurrer (Lycoming Law Association-failure to state a claim) is SUSTAINED.

***Eleventh Preliminary Objection in the Nature of a Demurrer (Prosecutorial Immunity)***

Defendant next argues that inasmuch as the Defendant, Ryan Gardner, is the sitting Dist. Atty. for Lycoming County he enjoys absolute immunity from liability as relates to Petitioner's Writ of Mandamus. The elements of the Petition regard the utilization of Confidential Informants which, as we have previously indicated, must be dealt with on a case-by-case basis. Each criminal defendant enjoys the opportunity to challenge the evidence presented by the district attorney and the manner in which it is obtained. To the extent that the Dist. Atty. has improperly exercised discretion, the Court in its review of the criminal case can suppress evidence when and where warranted. Prosecutorial immunity extends to the preparation necessary to present a case, and this includes the obtaining, reviewing, and evaluation of evidence.

The eleventh preliminary objection in the nature of a demurrer (prosecutorial immunity) is SUSTAINED.

***Twelfth Preliminary Objection in the Nature of a Demurrer (Judicial Immunity)***

Finally, defendants demurre to the claims made against Nancy L. Butts, the President Judge of Lycoming County, on the basis that she enjoys judicial immunity.

Petitioner's limited allegation as to the personal involvement warrants President Judge Butts states that she, along with DA Gardner, the NEU, and several other parties not named as defendants, deliberately withheld information regarding "any agreement, contracts, favorable treatment, deals, immunity, [and] criminal history" of confidential informants from criminal defendants in certain unspecified cases. *See Writ of Mandamus, p.5.*

It is well-settled that judges are absolutely immune from suit where they have jurisdiction of the subject matter before them and are performing a judicial act. *Beam v. Daihl, 767 A.2d 585 (Pa.2001)*. It is axiomatic that a judge cannot be ordered to exercise discretion favoring one litigant or another as part of the judicial process and the independent nature of the judiciary.

Petitioners additionally allege that President Judge Butts states by virtue of her office as a member of the Prison Board. There is no specification of an allegation that Judge Butts has personal involvement in any claim for conduct in her role as a member of that Board.

Defendants twelfth preliminary objection in the nature of a demurrer (judicial immunity) is SUSTAINED.

Finally, the Preliminary Objections in the nature of a demurrer as to Brian Bluth raise the question of allegations of his involvement in the conduct alleged by Petitioner's to warrant mandamus where it is merely stated that he, as attorney for the prison, "is well aware of this matter."

As solicitor for either the Prison Warden or the Prison Board, Attorney Bluth has no vote or discretion as to what his clients will ultimately pursue in regard to the prison library. Accordingly, mandamus is not actionable in supplying a remedy to Petitioners.

The preliminary objections in the nature of a demurrer as to Attorney Brian Bluth are  
SUSTAINED.

We enter the following order.

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA  
CIVIL DIVISION**

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WHITE, MALIKAH JOHNSON, QURAN  
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**CV-22-00040**

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**ORDER**

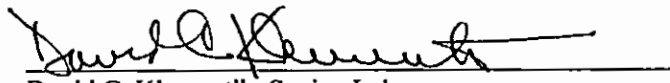
AND NOW, this 23<sup>rd</sup> day of March, 2023, consistent with the Court's analysis set forth in the foregoing Memorandum, it is ordered as follows:

1. The class action certification is DENIED, provided, however, the cause of action may be pursued by Jamal Bennett as an individual. All Petitioners other than Jamal Bennett shall be removed from the caption of the case.
2. The demurrers presented by the Lycoming County Bar Association, the Pennsylvania Bar Association, President Judge Nancy L 'Butts, Lycoming County Narcotics Enforcement Unit, Brad

Shoemaker, Ryan Barnes, Brian Bluth, and Ryan Gardner are SUSTAINED, and they are dismissed from the caption and the proceeding.

3. The defendant, Prison Board, shall remain a Defendant/Respondent in this proceeding.
4. Petitioner, Jamal Bennett, shall properly serve the Prison Board with an Amended Petition in accordance with the Rules of Civil Procedure within 60 days.
5. Petitioner, Jamal Bennett, shall file an Amended Petition for Writ of Mandamus with his signature affixed as to a party and as a verification in accordance with the Rules of Civil Procedure within 60 days.
6. The Amended Petition for Writ of Mandamus versus the Prison Board shall address solely the issue of the prison law library and inmate access to justice in accordance with the Memorandum.

BY THE COURT

  
David C. Klementik, Senior Judge  
Specially Presiding

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