

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

FLORENCE WALLACE, et al	:	
	:	
Plaintiffs	:	3:09-CV-0286 (Caputo, J.)
	:	
vs.	:	
	:	
ROBERT J. POWELL, et al,	:	
	:	
Defendants	:	(Electronically Filed)

WILLIAM CONWAY, et al	:	
	:	
Plaintiffs	:	3:09-CV-0291
	:	
vs.	:	
	:	
MICHAEL T. CONAHAN, et al,	:	
	:	
Defendants	:	

H.T., et al	:	
	:	
Plaintiffs	:	3:09-CV-0357
	:	
vs.	:	
	:	
MARK A. CIAVARELLA, JR.,	:	
et al,	:	
	:	
Defendants	:	

SAMANTHA HUMANIK,	:	
	:	
Plaintiff	:	3:09-CV-0630
	:	
vs.	:	
	:	
MARK A. CIAVARELLA, JR.,	:	
et al,	:	
Defendants	:	

.....

**DEFENDANT MICHAEL T. CONAHAN’S MOTION PURSUANT TO
F.R.C.P. 12(b)(6) TO DISMISS PLAINTIFFS’ COMPLAINTS ON
THE BASIS OF JUDICIAL AND LEGISLATIVE IMMUNITY**

Defendant, Michael T. Conahan, by and through his attorneys, Briechle & Gelso, LLC, hereby moves this Honorable Court pursuant to Federal Rule of Civil Procedure 12(b)(6) and states as follows:

1. The above captioned civil actions were instituted by numerous Plaintiffs, arising from factual allegations closely analogous to each other, specifically alleging that Mark A. Ciavarella (hereinafter “Ciavarella”) and Michael T. Conahan (hereinafter “Conahan”), while acting in their positions as judges of the Court of Common Pleas of Luzerne County, conspired to deprive juveniles of their constitutional rights by accepting money, from private individuals and entities that owned juvenile detention centers, in return for sending said juveniles to the private facilities.

2. In that the four (4) separate civil cases rely upon analogous factual basis, this Court consolidated them by Order dated May 12, 2009 and ordered the filing of a Master Complaints by Plaintiffs.

3. On June 25, 2009, Plaintiffs in the matters of Wallace and Conway filed their Master Complaint - For Class Actions (Docket Entry 136) (hereinafter “Class Action Complaint”) and Plaintiffs in the matters of H.T. and Humanik filed their Individual Plaintiffs’ Master Long Form Complaint and Jury Demand (Docket Entry 134) (hereinafter “Individual Plaintiffs’ Complaint”).

4. Within the aforementioned Complaints, Plaintiffs allege that Conahan engaged in the following activities that makes him liable under 42 U.S.C. § 1983 and Racketeer Corrupt Organizations Act (RICO), 18 U.S.C. §§ 1961-1968:

- a. Conahan, as President Judge, signed a “secret ‘Placement Guarantee Agreement’”, with Pennsylvania Child Care, LLC, on behalf of the Court of Common Pleas of Luzerne County, in which the Court would exclusively place adjudicated juvenile delinquents at said facility. See Class Action Complaint at ¶ 652; See Individual Plaintiffs’ Complaint at ¶¶ 34 & 66;
- b. Conahan, as President Judge, “had final decision-making with regard to Defendant Luzerne County’s funding of the county-run

River Street juvenile detention center” and that he officially acted to end any funding for the county-run facility. See Class Action Complaint at ¶¶ 652 & 655; See Individual Plaintiffs’ Complaint at ¶¶ 34, 66 & 143;

- c. Conahan suspended the transfer of juveniles to the county-run facility. See Class Action Complaint at ¶ 654; See Individual Plaintiffs’ Complaint at ¶¶ 34 & 66;
- d. Conahan, along with Ciavarella, instituted a zero tolerance policy toward juveniles that engaged in delinquent activity and for failure to pay court ordered fines. See Class Action Complaint at ¶¶ 676-680; See Individual Plaintiffs’ Complaint at ¶ 68.
- e. Conahan, along with Ciavarella, directed probation officers to increase the admissions of juveniles to the various detention centers in which they allegedly had a financial interest. See Class Action Complaint at ¶¶ 679; See Individual Plaintiffs’ Complaint at ¶ 68;
- f. Conahan failed to recuse himself from delinquency proceedings when he knew that he possessed an alleged financial interest in ensuring full occupancy at the named Defendant juvenile

detention centers. See Class Action Complaint at ¶¶ 652 & 655;
See Individual Plaintiffs' Complaint at ¶¶ 73 & 110;

- g. Conahan executed, or causing to be executed, a contract between Frank Vita, Ph.D., and the Luzerne County Department of Probation Services for the purpose of performing psychological evaluations on delinquent juveniles, resulting in a backlog which necessarily kept the delinquent juveniles in the private detention centers for a longer period of time. See Individual Plaintiffs' Complaint at ¶¶ 34 & 111;
- h. Conahan sealed the record and granted injunctive relief in a civil action in which Pennsylvania Child Care, LLC, was a party, thereby keeping the alleged scheme a secret. See Individual Plaintiffs' Complaint at ¶¶ 34 & 111; and
- i. Conahan created or acquiesced in the creation of a "Specialty Court". See Individual Plaintiffs' Complaint at ¶¶ 111, 125 & 137.

5. Federal Rule of Civil Procedure 12(b)(6) states: "a party may assert the following defenses by motion . . . failure to state a claim upon which relief can be granted." F.R.C.P. 12(b)(6).

6. A motion to dismiss pursuant to F.R.C.P. 12(b)(6) may be granted only if, accepting all well pleaded allegations in the complaint as true, and drawing all reasonable factual inferences in favor of the plaintiff, it appears beyond doubt that the plaintiff can prove no set of facts in support of the claim that would warrant relief. . . . In making this determination, [the Court] need not credit a complaint's "bald assertions" or "legal conclusions." California Public Employees' Retirement System v. Chubb Corp., 394 F.3d 126, 143 (3d Cir. 2004) (internal citations omitted). Similarly, legal conclusions draped in the guise of factual allegations may not benefit from the presumption of truthfulness. In re Rockefeller Center Properties, Inc., Securities Litigation, 311 F.3d 198, 216 (3d Cir. 2002).

7. Taking their allegations as true, Plaintiffs have failed to state a claim upon which relief can be granted based upon the doctrines of judicial and legislative immunity.

8. A judge is afforded judicial immunity when he acts in his capacity as a judge, *i.e.* judicial acts. Stump v. Sparkman, 435 U.S. 349, 362, 98 S.Ct. 1099, 1107 (1978).

9. Judicial immunity is "immunity from suit, not just from ultimate assessment of damages." Mireles v. Waco, 502 U.S. 9, 11, 112 S.Ct. 286, 288 (1991).

10. The doctrine of judicial immunity applies to actions brought pursuant to

42 U.S.C. § 1983, Stump v. Sparkman, 435 U.S. at 356, 98 S.Ct. at 1104, Civil RICO claims, Hollis-Arrington v. PHH Mortg. Corp., 205 Fed.Appx. 48, 52 (3d Cir. 2006), and conspiracy claims, McArdle v. Tronetti, 961 F.2d 1083, 1085 (3d Cir.1992).

11. Plaintiffs' averments, as summarized in paragraph 4, *supra*, as to Conahan's alleged conduct fall within judicial acts which are afforded judicial immunity as more succinctly explained in Conahan's Memorandum of Law accompanying this Motion.

12. In the alternative, as to Plaintiffs' allegations that Conahan eliminated funding for the county-run detention facility, sought funding for the private detention centers, executed an agreement effectuating the transfer of delinquent juveniles to the private detention centers, and executing, or facilitating the execution of a contract with Defendant Frank Vita, Ph.D., these activities constitute legitimate legislative functions afforded protection from suit by legislative immunity.

13. "Absolute legislative immunity attaches to all actions taken 'in the sphere of legitimate legislative activity.'" Bogan v. Scott-Harris, 523 U.S. 44, 54, 118 S.Ct. 966, 972 (1998).

14. "Legislative immunity shields from suit not only legislators, but also public officials outside of the legislative branch when they perform legislative functions." Baraka v. McGreevey, 481 F.3d 187, 195-196 (3d Cir. 2007).

15. The creation of a budget, the submission of a budget by an independent judiciary to a legislative body, the negotiation for the terms of the budget by one branch of government with another, and the implementation of the budget are all quintessential legislative functions afforded protection by the doctrine of absolute legislative immunity. See Bogan v. Scott-Harris, 523 U.S. 44, 118 S.Ct. 966 (1998); Baraka v. McGreevey, 481 F.3d 187 (3d. Cir. 2007).

16. Conahan's actions, if true as pled by the Plaintiffs, clearly fall within quintessential legislative functions of creating, submitting, negotiating and implementing a budget, and are immune from liability pursuant to the legislative immunity doctrine, which is more succinctly explained in Conahan's Memorandum of Law accompanying this Motion.

17. Since Plaintiffs have failed to allege conduct by Conahan that falls outside the protection offered by judicial and legislative immunity, they fail to state a claim upon which relief can be granted.

WHEREFORE, Defendant, Michael T. Conahan, respectfully requests this Honorable Court grant his Motion to Dismiss pursuant to F.R.C.P. 12(b)(6) and dismiss Plaintiffs' Complaints.

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

FLORENCE WALLACE, et al	:	
	:	
Plaintiffs	:	3:09-CV-0286 (Caputo, J.)
	:	
vs.	:	
	:	
ROBERT J. POWELL, et al,	:	
	:	
Defendants	:	(Electronically Filed)

WILLIAM CONWAY, et al	:	
	:	
Plaintiffs	:	3:09-CV-0291
	:	
vs.	:	
	:	
MICHAEL T. CONAHAN, et al,	:	
	:	
Defendants	:	

H.T., et al	:	
	:	
Plaintiffs	:	3:09-CV-0357
	:	
vs.	:	
	:	
MARK A. CIAVARELLA, JR.,	:	
et al,	:	
	:	
Defendants	:	

SAMANTHA HUMANIK,	:	
	:	
Plaintiff	:	3:09-CV-0630
	:	
vs.	:	
	:	
MARK A. CIAVARELLA, JR.,	:	
et al,	:	
Defendants	:	

.....

CERTIFICATE OF NON-CONCURRENCE

On this date, undersigned counsel spoke to counsel for the Plaintiffs whereby they indicated that Plaintiffs do not concur in the foregoing motion.

BRIECHLE & GELSO, LLC

By: /s/ Philip Gelso, Esquire
 PHILIP GELSO (PA 81934)
 63 Pierce Street
 Kingston, PA 18704
 (570) 763-0006 | (570) 288-0243 (Fax)
philip.gelso@briechle-gelso.com

Dated: July 27, 2009 Counsel for Michael T. Conahan

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

FLORENCE WALLACE, et al	:	
	:	
Plaintiffs	:	3:09-CV-0286 (Caputo, J.)
	:	
vs.	:	
	:	
ROBERT J. POWELL, et al,	:	
	:	
Defendants	:	(Electronically Filed)

WILLIAM CONWAY, et al	:	
	:	
Plaintiffs	:	3:09-CV-0291
	:	
vs.	:	
	:	
MICHAEL T. CONAHAN, et al,	:	
	:	
Defendants	:	

H.T., et al	:	
	:	
Plaintiffs	:	3:09-CV-0357
	:	
vs.	:	
	:	
MARK A. CIAVARELLA, JR.,	:	
et al,	:	
	:	
Defendants	:	

SAMANTHA HUMANIK, :
 :
 Plaintiff : **3:09-CV-0630**
 :
 vs. :
 :
 MARK A. CIAVARELLA, JR., :
 et al, :
 Defendants :

.....

CERTIFICATE OF SERVICE

I, Philip Gelso, Esquire, of Briechle & Gelso, LLC., hereby certify that I served a copy of the foregoing on July 27, 2009 by electronic delivery and where indicated by first class regular mail:

By U.S. Mail:

Mark A. Ciavarella, Jr.
585 Rutter Avenue
Kingston, PA 18704

By electronic delivery:

<p>Donna L. Adelsberger Howard Wishnoff Donna Adelsberger & Associates, P.C. 6 Royal Avenue PO Box 530 Glenside, PA 19038 dadelsberger@dlalawyers.com hwishnoff@dlalawyers.com</p> <p><i>Representing Defendants Mid Atlantic Youth Services Corp. and Gregory Zappala</i></p>	<p>Nathan J. Andrisani Alison T. Dante Matthew J.D. Hogan Eric Kraeutler Joseph B.G. Fay Morgan, Lewis & Bockius LLP 1701 Market Street Philadelphia, PA 19103 nandrisani@morganlewis.com adante@morganlewis.com mjd Hogan@morganlewis.com ekraeutler@morganlewis.com</p> <p><i>Representing Defendants Mericle Construction, Inc. and Robert K Mericle</i></p>
<p>Kimberly D. Borland Ruth S. Borland Borland & Borland, L.L.P. 69 Public Square Suite 1100 Wilkes-Barre, PA 18701 borlandk@borlaw.com borlandr@borlaw.com</p> <p><i>Representing Defendants Mericle Construction, Inc. and Robert K. Mericle</i></p>	<p>Thomas Edward Brenner Goldberg Katzman, PC 320E Market St., Strawberry Square P.O. Box 1268 Harrisburg, PA 17108-1268 teb@goldbergkatzman.com</p> <p><i>Representing Defendant Perseus House, Inc.</i></p>

<p>John G. Dean Elliott Greenleaf & Siedzikowski, P.C. 201 Penn Avenue Suite 202 Scranton, PA 18503 jgd@elliottgreenleaf.com</p> <p><i>Representing Defendant Luzerne County</i></p>	<p>John Flounlacker Scott D. McCarroll Thomas, Thomas & Hafer 305 North Front Street, P.O. Box 999 Harrisburg, PA 17108-0999 jflounlacker@tthlaw.com smccarroll@tthlaw.com</p> <p><i>Representing Defendant Sandra Brulo</i></p>
<p>James A. Swetz Cramer, Swetz & Mcmanus , P.c. 711 Sarah Street Stroudsburg, PA 18360 jaswetz@csmlawyer.com</p> <p><i>Representing Defendant Frank Vita, Ph.D.</i></p>	<p>Suzanne McDonough Holsten & Associates One Olive Street Media, PA 19091 smcdonough@holstenassoc.com</p> <p><i>Representing Defendants Sandra Brulo, Maureen Loughney, Michael Loughney</i></p>
<p>Edward P. McNelis 21 East Broad Street Hazleton, PA 18201 mcnelislaw@intergrafix.net</p> <p><i>Representing Defendants Barbara Conahan and Cindy Ciavarella</i></p>	<p>Timothy T. Myers Deborah Hart Simon Elliott, Greenleaf & Siedzikowski Union Meeting Corporate Center V. 925 Harvest Drive Blue Bell, PA 19422 ttm@elliottgreenleaf.com dhs@elliottgreenleaf.com</p> <p><i>Representing Defendant Luzerne County</i></p>

<p>Stephen D. Rhoades Law Offices of Edward McNeels 19 East Broad St Hazleton, PA 18201 rhoadeslegal@hotmail.com</p> <p><i>Representing Defendants Barbara Conahan and Cindy Ciavarella</i></p>	<p>Bernard M Schneider Brucker Schneider & Porter 300 Weyman Road , Suite 320 Pittsburgh, PA 15236 bmschn@aol.com</p> <p><i>Representing Defendants Mid Atlantic Youth Services Corp., PA Child Care, LLC, W. PA Child Care, LLC, and Gregory Zappala</i></p>
<p>Stephen A. Seach The Powell Law Group 123 Warren Street West Hazelton, PA 18201 sseach@powell-group.com</p> <p><i>Representing Defendants Powell Law Group, P.C. , Vision Holdings, LLC</i></p>	<p>Mark B. Sheppard Jessica Richman Birk Jeffrey S. Feldman Montgomery McCracken Walker & Rhoads 123 S. Broad Street Philadelphia, PA 19109 msheppard@mmwr.com jbirk@mmwr.com jfeldman@mmwr.com</p> <p><i>Representing Defendant Robert J. Powell</i></p>
<p>William R. Caroselli Caroselli, Beachler, McTiernan & Conboy 20 Stanwix Street, 7th Floor Pittsburgh, PA 15222 wcaroselli@cbmclaw.com</p> <p><i>Representing Plaintiffs</i></p>	<p>Michael J. Cefalo Cefalo & Associates 309 Wyoming Avenue West Pittston, PA 18643 info@cefaloandassociates.com</p> <p><i>Representing Plaintiffs</i></p>

<p>Richard C. DeFrancesco Lauren C. Fantini David S. Senoff Caroselli Beachler McTiernan & Conboy 1500 Walnut Street , Suite 507 Philadelphia, PA 19102 rdefrancesco@cbmclaw.com lfantini@cbmclaw.com dsenoff@cbmclaw.com</p> <p><i>Representing Plaintiffs</i></p>	<p>Barry H. Dyller Law Office of Barry H. Dyller 88 North Franklin St. Gettysburg House Wilkes-Barre, PA 18701 barry.dyller@dyllerlawfirm.com</p> <p><i>Representing Plaintiffs</i></p>
--	---

<p>Richard G. Freeman 924 Cherry Street 4th floor Philadelphia, PA 19107 rgfrim@aol.com</p> <p><i>Representing Plaintiff Humanik</i></p>	<p>Johanna L. Gelb Gelb Law Firm 538 Spruce Street Suite 600 Scranton, PA 18503 jgelb7@aol.com</p> <p><i>Representing Plaintiffs</i></p>
---	--

<p>Daniel E. Kleiner Metzger & Kleiner Two Penn Center, Suite 1204 15th Street & JFK Blvd. Philadelphia, PA 19102 dkleiner@comcast.net</p> <p><i>Representing Plaintiff Humanik</i></p>	<p>Marsha L. Levick Lourdes M. Rosado Juvenile Law Center 1315 Walnut Street, 4th Floor Philadelphia, PA 19107 mlevick@jlc.org lrosado@jlc.org</p> <p><i>Representing Plaintiffs</i></p>
---	--

<p>Amber M. Racine Adrienne Walvoord Sol H. Weiss Anapol, Schwartz, Weiss, Cohan, Feldman & Smalley PC 1710 Spruce Street Philadelphia, PA 19103 aracine@anapolschwartz.com awalvoord@anapolschwartz.com sweiss@anapolschwartz.com</p> <p><i>Representing Plaintiffs</i></p>	<p>Rebecca L. Santoro Daniel Segal Hangley Aronchick Segal & Pudlin One Logan Square 27th Floor Philadelphia, PA 19103 rsantoro@hangley.com dsegal@hangley.com</p> <p><i>Representing Plaintiffs</i></p>
<p>Samuel A. Falcone, Jr. Saporito, Saporito & Falcone 490 North Main Street, Suite 202 Pittston PA 18640 sfalcone@saporitofalcone.com</p> <p><i>Representing Luzerne County Court of Common Pleas Probation Dept., Forty Fort Borough, City of Pittston (interested parties)</i></p>	<p>William T. Finnegan, Jr. Pugliese, Finnegan, and Shaffrer LLC 575 Pierce Street, Site 500 Kingston, PA 18704</p> <p><i>Representing City of Nanticoke and Edwardsville Borough (interested party)</i></p>
<p>Frank P. Barletta Assistant District Attorney 200 North River Street Wilkes-Barre, PA 18711-1001 fpbarletta@comcast.net</p> <p><i>Representing Luzerne County District Attorney's Office (interested party)</i></p>	<p>Michael R. Kostelansky 340 Market St. Kingston, PA 18704 mkostelansky@cardoni.com</p> <p><i>Representing Plymouth Borough and Wright Township (objector)</i></p>

<p>William E. Vinsko, Jr. Vinsko & Associates 253 South Franklin Street Wilkes-Barre, PA 18701 wvinsko@vinsko.com</p> <p><i>Representing Rice Township (intervenor)</i></p>	<p>Stephen A. Menn 225 Wyoming Avenue West Pittston, PA 18643 buflaw@aol.com</p> <p><i>Representing Luzerne County Domestic Relations (interested party)</i></p>
<p>Charles Bufalino 225 Wyoming Avenue West Pittston, PA 18643 buflaw@aol.com</p> <p><i>Representing West Pittston Borough (interested party)</i></p>	

BRIECHLE & GELSO, LLC

By: /s/ Philip Gelso, Esquire
PHILIP GELSO (PA 81934)
63 Pierce Street
Kingston, PA 18704
(570) 763-0006 | (570) 288-0243 (Fax)
philip.gelso@briechle-gelso.com

Dated: July 27, 2009 Counsel for Michael T. Conahan

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

FLORENCE WALLACE, et al	:	
	:	
Plaintiffs	:	3:09-CV-0286 (Caputo, J.)
	:	
vs.	:	
	:	
ROBERT J. POWELL, et al,	:	
	:	
Defendants	:	(Electronically Filed)

WILLIAM CONWAY, et al	:	
	:	
Plaintiffs	:	3:09-CV-0291
	:	
vs.	:	
	:	
MICHAEL T. CONAHAN, et al,	:	
	:	
Defendants	:	

H.T., et al	:	
	:	
Plaintiffs	:	3:09-CV-0357
	:	
vs.	:	
	:	
MARK A. CIAVARELLA, JR., et al,	:	
	:	
Defendants	:	

<p>SAMANTHA HUMANIK,</p> <p style="text-align: center;">Plaintiff</p> <p>vs.</p> <p>MARK A. CIAVARELLA, JR., et al,</p> <p style="text-align: center;">Defendants</p>	<p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p>	<p>3:09-CV-0630</p>
---	--	----------------------------

.....

ORDER

AND NOW, this _____ day of _____, 2009,
upon consideration of *Defendant Michael T. Conahan’s Motion Pursuant to F.R.C.P. 12(b)(6) to Dismiss Plaintiffs’ Complaints on the Basis of Judicial and Legislative Immunity*, any responses, briefs, and arguments related thereto, IT IS
HEREBY ORDERED that:

1. *Defendant Michael T. Conahan’s Motion Pursuant to F.R.C.P. 12(b)(6) to Dismiss Plaintiffs’ Complaints on the Basis of Judicial and Legislative Immunity* is hereby GRANTED.
2. Plaintiffs’ claims against Defendant Michael T. Conahan as alleged in the *Master Complaint - For Class Actions* (Docket Entry 136) are hereby DISMISSED with PREJUDICE; and
3. Plaintiffs’ claims against Defendant Michael T. Conahan as alleged in

the *Master Long Form Complaint and Jury Demand* (Docket Entry 134) are hereby DISMISSED with PREJUDICE.

BY THE COURT:

A. Richard Caputo
United States District Judge