

The Legal Intelligencer

THE OLDEST LAW JOURNAL IN THE UNITED STATES 1843 - 2010

PHILADELPHIA, TUESDAY, JULY 13, 2010

VOL 242 • NO. 8 \$5.00 An **ALM** Publication

Luzerne Co. Dismissed From Kids-for-Cash Suits

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A federal judge has ruled that Luzerne County cannot be held liable in the kids-for-cash corruption scandal that has led to criminal charges against two of the county's ex-judges because no county officials with policymaking authority played any role in the alleged scheme.

In an opinion handed down on Friday, U.S. District Judge A. Richard Caputo concluded that Luzerne County must be dismissed from a spate of civil rights suits filed by juveniles who claim their custodial terms were tied to a bribery scheme in which former Judges Michael T. Conahan and Mark A. Ciavarella Jr. allegedly took payments in excess of \$2.8 million in return for promising to sentence juvenile offenders to for-profit detention centers.

Conahan has since pleaded guilty to one count of racketeering, but Ciavarella has maintained his innocence.

Caputo found that even though both of the disgraced judges at times served as president judge and therefore played a role in crafting



THE LUZERNE COUNTY COURTHOUSE

Photo by Jason Rearick

the county court's budget, they never became county officials in that process. Under Pennsylvania law, president judges merely make budget recommendations and have no power over county officials in the ultimate

decisions, Caputo found.

Under the separation of powers in Pennsylvania government, Caputo found, county judges are always considered state

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communications made to [the attorney] by his client," Bernstein said.

Bernstein cited heavily the Superior Court opinion in *Nationwide*, written by then-judge, now-Justice Seamus P. McCaffery and joined by now-Justice Debra Todd. Bernstein said the *Nationwide* case and others recognize the importance of privilege in our adversarial system, but also recognize that "having been codified, the privilege requires judicial restraint in interpretation because of respect for our co-equal branch of government and principles of statutory construction."

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actors, not county officials.

"The executive and administrative decisions made by a president judge as the 'head of the court' are made as a state actor," Caputo wrote in a nine-page opinion in *Wallace v. Powell*. "Even in employment matters, the authority of the president judge stems from his role as a state actor. ... Furthermore, the statutory language provides no explicit basis, powers, or duties to the president judge as a county official."

Caputo also rejected the plaintiffs' attempts to establish liability on the part of the county stemming from the conduct of others, such as the District Attorney's Office, the probation department and the public defenders' offices, who were alleged in the suit to have failed to prevent the violation of the juveniles' rights.

The ruling is a victory for Luzerne County's lawyers — Timothy T. Myers, John G. Dean, Deborah H. Simon and Gregory S. Voshell of Elliott Greenleaf & Siedzikowski.

Attorney Daniel Segal of Hanglely Aronchick Segal & Pudlin, one of the lead lawyers for the plaintiffs team, said he was disappointed by the ruling.

"We would have liked to keep Luzerne County in as a defendant, but we still feel very

well-armed going forward," Segal said. Court case in which a petition for allowance of appeal was pending before the Supreme Court. The *Marks* court ruled that the pending petition was irrelevant and that the Superior Court opinion was controlling until overturned by the Supreme Court.

Shortly after the plurality decision in *Nationwide*, the Supreme Court granted allocatur in a case dealing with the same issue, *Gillard v. AIG*.

Having another bite at the apple was good news for the slew of amici filers who came out against the Superior Court's *Nationwide* decision. Those filers include the Allegheny,

well-armed going forward," Segal said.

Remaining as defendants are Ciavarella and Conahan, as well as the owners, operators and builders of the two detention facilities — Robert Powell, Robert Mericle, Mericle Construction, Pennsylvania Child Care, or PACC, and Western Pennsylvania Child Care, or WPACC.

The suits allege that Conahan and Ciavarella conspired with the other defendants and used their influence as judicial officers to select PACC and WPACC as detention facilities, and that they intentionally filled those facilities with juveniles to earn the conspirators excessive profits.

Caputo had dropped strong hints, in rulings handed down in November 2009 and March 2010, that he intended to let Luzerne County out of the case when he ruled that the plaintiffs should not be allowed to amend the complaints in order to add allegations that would establish the county's liability.

Under civil rights laws, a county cannot be held liable unless the plaintiffs can show that the civil rights violation resulted from a county policy.

The plaintiffs' lawyers set out to satisfy that test by presenting evidence first that the judges had acted as county officials, and later that county prosecutors, public defenders and probation officers could have prevented the judges' corruption if they had been properly trained.

Richard C. Julie of Braverman Kaskey represented plaintiff Erik E. Kolar and Matthew A. Taylor of Duane Morris represented Preferred Unlimited in the case, which dealt with a dispute regarding various real estate partnerships. Both attorneys said it would be inappropriate to comment while the litigation is pending.

(Copies of the nine-page opinion in Kolar v. Preferred Unlimited Inc., PICS No. 10-2361, are available from The Legal Intelligencer. Please call the Pennsylvania Instant Case Service at 800-276-PICS to order or for information. Some cases are not available until 1 p.m.) •

Prosecution of juvenile cases is a specialized practice with its own set of rules and procedures, the suits allege, and the need for proper training and supervision of the assistant district attorneys appearing in juvenile court was obvious.

As a result, the suits alleged, the district attorney knew or should have known that the assistant district attorneys appearing in Ciavarella's courtroom were young and inexperienced.

But because of the lack of supervision and training for the assistant district attorneys, the suits alleged, they did not intervene and prevent the constitutional violations.

Caputo, however, rejected the premise of the plaintiffs' theory — that the district attorney was acting as a Luzerne County final policymaker when training and supervising the assistant district attorneys.

Instead, Caputo said, the district attorney, like the judges, must be considered a state actor and not a county official.

"In making direct prosecutorial decisions in the courtroom, and in training subordinates to do the same, a district attorney is a state actor," Caputo wrote.

(Copies of the nine-page opinion in Wallace v. Powell, PICS No. 10-2381, are available from The Legal Intelligencer. Please call the Pennsylvania Instant Case Service at 800-276-PICS to order or for information. Some cases are not available until 1 p.m.) •

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