

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

<b>NORMA CHASE,</b>	:	
	:	
<b>Plaintiff</b>	:	
	:	<b>No. 1:05-CV-2375</b>
<b>v.</b>	:	
	:	<b>Judge Kane</b>
<b>PUBLIC UTILITY COMMISSION</b>	:	
<b>OF PENNSYLVANIA,</b>	:	<b>Document Electronically Filed</b>
<b>COMMONWEALTH REPORTING</b>	:	
<b>COMPANY, SARGENT’S COURT</b>	:	
<b>REPORTING SERVICE, INC., and</b>	:	
<b>PRECISION REPORTING, INC.,</b>	:	
<b>Defendants</b>	:	

**BRIEF IN SUPPORT OF DEFENDANT’S MOTION TO DISMISS THE  
AMENDED COMPLAINT**

**STATEMENT OF THE CASE**

This is a civil action for declaratory relief as well as costs of suit and counsel fees brought pursuant to the Civil rights Act of 1871, 42 U.S.C. § 1983. Plaintiff, attorney Norma Chase, is representing herself. The defendants are the Public Utility Commission of Pennsylvania (PUC) and several court reporting services:

Commonwealth Reporting Company, Sargent's Court Reporting Company, and Precision Reporting, Inc. Plaintiff has filed an amended complaint adding defendants Wendell F. Holland, James H. Cawley, Bill Shane, Kim Pizzingrilli, and Terrence J. Fitzpatrick in their official capacity.

Plaintiff alleges that the PUC's policy concerning public meeting transcripts violates her constitutional rights under the First Amendment. Under this policy, individuals are allowed to inspect transcripts and take notes but they are not furnished with transcript copies at cost of copying or otherwise. Plaintiff claims that this policy, under which those seeking transcripts are directed to purchase them from the appropriate reporting service, is in violation of her right to acquire and disseminate information about governmental proceedings. Plaintiff further alleges that the defendants joined under the amended complaint are responsible for PUC policies, and for ensuring that those policies are constitutional and legal.

Plaintiff filed her Complaint on November 16, 2005. On January 17, 2006, the PUC filed a motion to dismiss the complaint pursuant to F.R.C.P. 12(b)(6). Plaintiff then filed an Amended Complaint on February 9, 2006, in which she named as additional defendants Commissioners Kim Pizzingrilli, Bill Shane and Terrence Fitzpatrick, Commission Chairman Wendell F. Holland and Commission Vice-Chairman James H. Cawley, in their official capacities. Plaintiff then filed a Second Amended Complaint on February 27, 2006, naming the commissioners as

defendants in their personal capacity. Defendant PUC and its commissioners have filed three motions to dismiss in response to plaintiff's series of complaints/amended complaints. This brief is in Support of Defendants PUC and the PUC Commissioners' motion to dismiss plaintiff's Second Amended Complaint.

### **QUESTION PRESENTED**

- I. Whether plaintiff fails to state a claim under § 1983 as to the Public Utility Commission of Pennsylvania and the individual defendants in their official and individual capacity?**
  
- II. Whether plaintiff fails to state a claim for which relief may be granted because Pennsylvania Courts have held the PUC's policy to be reasonable.**

### **ARGUMENT**

- I. Plaintiff fails to state a claim under § 1983 as to the Public Utility Commission of Pennsylvania and the individual defendants in their official and individual capacity?**

Plaintiff's § 1983 claim against the PUC is barred by the Eleventh Amendment to the Constitution of the United States. The Supreme Court of the United States has held that "States are not 'persons' within the meaning of § 1983 and, therefore, cannot be among those held liable for violations of the civil rights statute." Blanciak v. Allegheny Ludlum Corp., 77 F.3d 690, 697 (3d Cir., 1995), citing Will v. Michigan Dept. of State Police, 491 U.S. 58, 66(1989). Additionally,

in Will, the Supreme Court specifically held that state agencies and officials acting in their official capacity are not “persons” under § 1983. Will, 491 U.S. at 70-71. As state agencies and officials acting in their official capacity do not fall with the definition of “persons” and therefore cannot be sued pursuant to § 1983, plaintiff fails to state § 1983 claims upon which relief can be granted. Therefore, judgment should be entered in favor of the defendants on plaintiff’s § 1983 claim.

Moreover, in order to recover under § 1983, a plaintiff must plead and prove that the defendant had personal involvement in the alleged wrongful conduct. Rode v. Dellarciprete, 845 F.2d 1195, 1207-1208 (3d Cir. 1988). Every defendant against whom a suit is brought must be shown to have been involved in the conduct that is the subject of the complaint. Rizzo v. Goode, 423 U.S. 362 (1976). Liability under § 1983 cannot be based on a theory of *respondeat superior* in any context. Personal involvement can be shown through allegations of personal direction or actual knowledge and acquiescence. Parrat at 537. Furthermore, allegations of participation or actual knowledge and acquiescence must be made with appropriate particularity. Id. At no point in his complaint does plaintiff describe actions taken by the individual commissioners. Plaintiff has failed to allege any specific conduct on the part of these defendants. Absent specific allegations against these individuals, § 1983 liability is unavailable.

In the case at hand, plaintiff first brought suit against the PUC. When it was shown that that avenue of attack was not available, the individual commissioners were added in their official capacity. Following the PUC's second motion to dismiss, plaintiff again amended her complaint so as to include the individual commissioners in their personal capacity. In light of these pleadings and due to the nature of the suit as well as the relief sought, it is clear that plaintiff's suit against the commissioners in their individual capacity is merely a veiled attempt to have the commission, and therefore the Commonwealth, bend to her will. As a suit against the Commonwealth is barred by the Eleventh Amendment, so should plaintiff's claims against the commissioners, since the Commonwealth is the true target here. Therefore, judgment should be entered in favor of these defendants and against plaintiff on her § 1983 claims.

**II. Plaintiff has failed to state a claim upon which relief may be granted because Pennsylvania Courts have held the PUC's policy to be reasonable.**

The issue of whether the PUC, or indeed any state agency must, provide copies of public meeting transcripts at cost of copying has already been settled by Pennsylvania courts. This very issue came before the Commonwealth Court of Pennsylvania in Sierra Club v. Pennsylvania Public Utility Commission, 702 A.2d 1131 (Pa. Cmwlth. 1997) *aff'd*, 557 Pa. 11, 731 A.2d 133 (1999). That case

concerned review of the PUC's denial of a request for copies of transcripts at cost of copying. The Commonwealth Court held that, with respect to litigants able to pay, the PUC's policy of denying a requests for transcript copies at cost of copying, and directing individuals to obtain copies at the price charged by the court reporting firm with which PUC had contracted, was reasonable and satisfied requirements of Right-to-Know Act. Sierra Club, 702 A.2d at 1136. Plaintiff puts forth the identical case. The policy is still reasonable. Additionally, plaintiff has not claimed that she is unable to pay the cost as required under the PUC policy and she still has the right to examine the transcripts at her convenience, free of cost. Therefore, judgment should be entered against plaintiff on her § 1983 claims.

### **CONCLUSION**

For the foregoing reasons, the Court should dismiss the complaint/amended complaint.

Respectfully submitted,

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Date: April 7, 2006

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