

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

<b>JENNIFER REYNOLDS, ASHLEY</b>	:	<b>NO. 1:07-CV-01688-CCC</b>
<b>McCORMICK, HERBERT CARTER,</b>	:	
<b>and DEVON SHEPARD, both individually:</b>	:	<b>(Complaint filed 9/16/07)</b>
<b>and on behalf of a class of others similarly</b>	:	
<b>situated,</b>	:	
<b>Plaintiffs</b>	:	<b>Judge Thomas I. Vanaskie</b>
	:	
<b>v.</b>	:	<b>CIVIL ACTION – LAW</b>
	:	
<b>THE COUNTY OF DAUPHIN,</b>	:	<b>JURY TRIAL DEMANDED</b>
<b>Defendant</b>	:	

**DEFENDANT DAUPHIN COUNTY’S MOTION TO DISMISS AMENDED  
COMPLAINT**

AND NOW, comes Defendant, Dauphin County, by and through its attorneys, Lavery, Faherty, Young & Patterson, P.C. and McNeese, Wallace & Nurick LLC, hereby files this Motion to Dismiss Amended Complaint, and in support thereof avers as follows:

1. Plaintiffs, Jennifer Reynolds, Ashley McCormick, Herbert Carter, and Devon Sheppard, both individually and on behalf of a class of others similarly

situated, initiated this class action lawsuit with the filing of a civil complaint on September 18, 2007. (Doc. 1).

2. Plaintiffs served their complaint upon Defendant on September 21, 2007.

3. On October 11, 2007, Defendant filed a Motion to Dismiss in response to Plaintiffs' complaint. (Doc. 12).

4. On October 25, 2007, Defendant filed a brief in support of its Motion to Dismiss. (Doc. 16).

5. On November 20, 2007, Plaintiffs filed an Amended Complaint. (Doc. 24).

6. Plaintiffs' amended complaint alleges, *inter alia*, that Dauphin County Prison (hereinafter "Prison") has a written and/or *de facto* policy of strip-searching all individuals who enter the Prison regardless of the crime upon which they are charged and without the presence of reasonable suspicion to believe that the individuals are concealing a weapon or contraband. (Id. at ¶ 25).

7. The class that Plaintiffs seek to represent is the following:

All persons who have been or will be placed into the custody of the Dauphin County Prison after being charged with misdemeanors, summary offenses, violations of probation or parole, civil commitments, or minor crimes and were or will be strip searched upon their entry into the Dauphin County Prison pursuant to the policy, custom and practice of the County of Dauphin. The class period commences on September 16, 2005 and extends to the date

on which Dauphin County is enjoined from, or otherwise ceases, enforcing their unconstitutional policy, practice and custom of conducting strip searches absent reasonable suspicion. Specifically excluded from the class are Defendants and any and all of their respective affiliates, legal representatives, heirs, successors, employees or assignees.

(Id. at ¶ 9).

8. Plaintiffs seek class certification pursuant to Rules (23)(b)(2) and 23(b)(3), Federal Rules of Civil Procedure. (Id. at ¶¶ 18, 19).

9. Named Plaintiffs allege that they each were arrested and subsequently strip searched at the Prison. (Id. at ¶¶ 36, 37).

10. Plaintiffs allege in their amended complaint that the strip searches of named Plaintiffs and unnamed members of the purported class violated the Fourth Amendment of the United States Constitution. (Id. at ¶¶ 42, 43).

11. Plaintiffs request in the sole cause of action of their amended complaint, *inter alia*, that this Honorable Court declare that the policy, custom, and practice of Defendant is unconstitutional in that the correctional officers of the Prison are directing/conducting strip searches of all individuals placed into the Prison without any particularized suspicion that the individuals have either contraband or weapons. (Id. at ¶¶ 47, 51).

12. Plaintiffs also seek seeking preliminary and permanent injunctive relief, enjoining Defendant from strip searching individuals placed into custody of the

Prison absent any particularized suspicion that the individuals have either contraband or weapons. (Id. at ¶¶ 50).

13. As a result of the alleged constitutional violation, Plaintiffs seek an order certifying this action as a class action, a judgment against Defendant awarding compensatory damages to each named Plaintiff and each member of the purported class, a declaratory judgment declaring that the Defendant's policy, practice and custom of strip searching all detainees is unconstitutional, a preliminary and permanent injunction seeking to enjoin Defendant from continuing to strip search individuals without reasonable suspicion that such individuals are concealing weapons and/or contraband, and attorney's fees. (Id. at p. 14).

14. The standard to be applied in consideration of a motion to dismiss pursuant to Rule 12(b)(6) is well established in our jurisprudence. The court is to accept as true all factual allegations in the complaint and draw all reasonable inferences in the light most favorable to the Plaintiff. Board of Trustees of Bricklayers and Allied Craftsmen Local 6 of New Jersey v. Wettlin Assoc. Inc., 237 F.3d 270, 272 (3d Cir. 2001).

15. The question before the court on a motion to dismiss is whether the Plaintiff can prove any set of facts in support of his claim that entitles the Plaintiff to relief. Hartford Fire Insurance Company v. California, 113 S. Ct. 2811, 2817 (1993), Ramadan v. Chase Manhattan Corp., 229 F.3d 194-195-96 (3d Cir. 2000).

16. If it is clear from the pleading that a defendant cannot be held liable, then dismissal of all claims against that defendant is appropriate. Labov v. Lalley, 809 F.2d 270 (3d Cir. 1987).

17. On its face and as a matter of law, Plaintiffs' Complaint fails to set forth a claim upon which relief can be granted because the proposed class is overbroad and includes purported members who cannot recover based upon the claims as alleged, i.e. individuals for whom there existed a reasonable suspicion that he/she possessed weapons, possessed drugs, and/or had a criminal history at the time he/she was strip searched.

18. Named Plaintiffs Jennifer Reynolds, Herbert Carter, and Devon Shepard, and purported class members, lack standing to seek declaratory and injunctive relief because they have not alleged that there is a likelihood that they will be subjected to the complained of conduct in the future.

WHEREFORE, for the reasons set forth hereinabove, Defendant, Dauphin County, hereby requests that this Honorable grant its Motion to Dismiss Amended Complaint and enter the accompanying order.

Respectfully submitted,

Lavery, Faherty, Young & Patterson, P.C.

Date: December 5, 2007

By: /s/ Frank J. Lavery, Jr.

Frank J. Lavery, Jr., Esquire

Atty No. PA42370

flavery@laverylaw.com

Date: December 5, 2007

By: /s/ Robert G. Hanna, Jr.

Robert G. Hanna, Jr., Esquire

Atty No. PA17890

rhanna@laverylaw.com

Date: December 5, 2007

By: /s/ Devon M. Jacob

Devon M. Jacob, Esquire

Atty No. PA89182

djacob@laverylaw.com

225 Market Street, Suite 304

P.O. Box 1245

Harrisburg, PA 17108-1245

(717) 233-6633 (telephone)

(717) 233-7003 (facsimile)

Co-counsel for Defendant

McNEES, WALLACE & NURICK LLC

Date: December 5, 2007

By: /s/ David E. Lehman

David E. Lehman, Esquire

Atty No. PA15243

[dlehman@mwn.com](mailto:dlehman@mwn.com)

Date: December 5, 2007

By: /s/ James P. DeAngelo  
James P. DeAngelo, Esquire  
Atty No. PA62377  
jdeangelo@mwn.com

Date: December 5, 2007

By: /s/ Carol Steinour Young  
Carol Steinour Young, Esquire  
Atty No. PA55969  
csteinour@mwn.com

Date: December 5, 2007

By: /s/ Devin Chwastyk  
Devin J. Chwastyk, Esquire  
Atty No. PA91852  
dchwastyk@mwn.com

100 Pine Street  
P.O. Box 1166  
Harrisburg, PA 17108  
(717) 232-8000  
Co-counsel for Defendant

**CERTIFICATE OF CONCURRENCE/NON-CONCURRENCE**

I, Frank J. Lavery, Jr., Esquire, hereby certify that I am counsel for the Defendant and that I contacted Robert Keach, III, Esquire, lead counsel for Plaintiffs, to seek Plaintiffs' concurrence with the foregoing Motion to Dismiss. Mr. Keach advised that Plaintiffs do not concur in the foregoing motion.

Respectfully submitted,

Lavery, Faherty, Young & Patterson, P.C.

By: s/ Frank J. Lavery, Jr.

Frank J. Lavery, Jr., Esquire  
225 Market Street, Suite 304  
P.O. Box 1245  
Harrisburg, PA 17108-1245  
(717) 233-6633 (telephone)  
(717) 233-7003 (facsimile)  
Atty No. PA42370  
flavery@laverylaw.com  
Attys for Defendant

Date: December 5, 2007



## CERTIFICATE OF SERVICE

I, Megan L. Renno, an employee with the law firm of Lavery, Faherty, Young & Patterson, P.C., do hereby certify that on this 5th day of December, 2007, I served a true and correct copy of the foregoing **Motion to Dismiss Amended Complaint** via U.S. Middle District Court's Electronic Case Filing System, addressed as follows:

Alan M. Ross, Esquire  
Email: amresquire@aol.com

James P. DeAngelo, Esquire  
jdeangelo@mwn.com

Charles J. LaDuca, Esquire  
Email: charlesl@cuneolaw.com

Carol Steinour Young, Esquire  
csteinour@mwn.com

Daniel C. Levin, Esquire  
Email: dlevin@lfsblaw.com

Devin J. Chwastyk, Esquire  
dchwastyk@mwn.com

Elmer Robert Keach, III, Esquire  
Email: bobkeach@keachlawfirm.com

David E. Lehman, Esquire  
dlehman@mwn.com

Gary E. Mason, Esquire  
Email: gmason@masonlawdc.com

Alexandra C. Warren, Esquire  
Email: awarren@cuneolaw.com

/s/ Megan L. Renno

Megan L. Renno, Legal Secretary to  
Frank J. Lavery, Jr., Esquire,  
Robert G. Hanna, Jr., Esquire, and  
Devon M. Jacob, Esquire

This document has also been electronically filed and is available for viewing and downloading from the ECF system.