

Not To Be Published:

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN-WATERLOO DIVISION**

ROOSEVELT MATLOCK,

Plaintiff,

vs.

THOMAS VILSACK, BLACK HAWK
COUNTY, and ANY AND ALL
UNNAMED PARTIES,

Defendants.

No. C04-2016-MWB

**ORDER REGARDING
MAGISTRATE’S REPORT AND
RECOMMENDATION ON
DEFENDANTS’ MOTIONS TO
DISMISS**

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I. INTRODUCTION AND BACKGROUND

On April 27, 2004, plaintiff Roosevelt Matlock (“Matlock”), an inmate currently confined at the Iowa State Penitentiary in Fort Madison, Iowa, filed a complaint under 42 U.S.C. § 1983 to redress an alleged deprivation of his rights. (Doc. No. 7). Matlock’s complaint sets forth the following statement of his claim:

I served one year and two months for a conviction that I was found innocent of. This conviction was overturned as a wrongful conviction, by the Iowa Supreme Court.

In so I or in this I resulted in a lot of emonial and mental angish and a lot of unnecessary stress.

Id. § V (spelling and punctuation as in original). In his statement of additional facts, Matlock further explains the grounds for his complaint as follows:

Black Hawk County wrongfully sent me to prison for this case no. LACV083437 in 2000.

And Iowa Supream Court over[-]turned the case no. 012066 the last of 2002. . . .

1. The judge and jury in 2000 wrongfully convicted and imprisoned me, case no. LACV083437.

2. They vilated my constitutional rights by inprisoning me for a crime that it takes an overed act for called Sexual Preditor and I had not. And Iowa Surpream Court over[-]turned the case and taged it’s case no. 012066 after I had been wrongfully inprisoned from the time of 2000 till 2003

(Doc. No. 5) (spelling and punctuation as in original).¹ In his prayer for relief, Matlock

¹Though Matlock refers to state court case number LACV083437 in which he was wrongfully convicted by a judge and jury, that case actually concerned civil commitment proceedings under Iowa Code Chapter 229A—Commitment of Sexually Violent Predators. *See In re Matlock*, LACV083437 (Black Hawk County Dist. Ct. 2001); *see also In re Matlock*, 662 N.W.2d 373 (Table), 2003 WL 288999 (Iowa Ct. App. 2003) (“*Matlock II*”). In those proceedings, the State petitioned to have Matlock declared to be a sexually

(continued...)

seeks \$2,000,000 in damages for mental anguish, \$2,000,000 in damages for emotional trauma, \$1,500,000 for wrongful imprisonment, and \$500,000 “or whatever the court’s deem app[ropriate]” for malicious prosecution. Doc No. 7 § VI.

On June 14, 2004, defendant Black Hawk County (“County”) filed a motion to dismiss pursuant to 28 U.S.C. § 1915(e)(2)(B),² and raised the following three grounds: (1) the complaint fails to state a claim upon which relief can be granted as the County is not a proper party to the action; (2) even if the County were a proper party to the action, the state actors are entitled to either absolute or qualified immunity; and (3) Matlock is not entitled to rely on a *respondeat superior* theory in making his claims against the County. (Doc. No. 16). Likewise, defendant Thomas Vilsack (“Vilsack”) filed a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) on June 25, 2004. (Doc. No. 20).

¹(...continued)

violent predator, such that he could be civilly committed following the discharge of his sentence for theft. *Matlock II*, 2003 WL 288999 at *1. A jury found him to be a sexually violent predator, and he was civilly committed. *Id.* On February 12, 2003, the Iowa Court of Appeals reversed the commitment order and remanded the matter to the district court for dismissal of the petition. *Id.*

²28 U.S.C. § 1915(e)(2)(B) provides:

(2) Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that— . . .

- (B) The action or appeal—
- (i) is frivolous or malicious;
 - (ii) fails to state a claim on which relief may be granted; or
 - (iii) seeks monetary relief against a defendant who is immune from such relief.

Id.

Vilsack's motion raises the following three grounds as to why dismissal of Matlock's complaint is appropriate: (1) the complaint fails to state a claim upon which relief can be granted because there are no allegations against, or involving, Vilsack; (2) any claim against Vilsack must be dismissed because neither the state nor a state official is a "person" susceptible to suit under 42 U.S.C. § 1983; (3) Vilsack is immune from suit for any tort action brought under state law; and (4) even if the court had jurisdiction over state tort claims, any such claims would be precluded by Iowa Code Chapter 669.

Following the grant of an initial request for an extension of time in which to respond to the motions to dismiss, Matlock's counsel filed a Motion to Enlarge Time to Respond to Motion to Dismiss or Amend Pleadings. (Doc. No. 24). In support of this motion, counsel stated, in relevant part, as follows:

1. That Plaintiff's underlying claim against the Defendants is based upon the Iowa Court of Appeals decision of February 12, 2004 reversing Plaintiff's civil commitment under Iowa Code Chapter 229A after he spend [sic] approximately 3 years confined in the sexual predator's [sic] [unit] after he discharged his theft conviction.
2. Iowa Code Section . . . 663A.6 provides for liquidated damages of \$50.00 per day Umbrella Policy to \$25,000.00 per year for time spent confined in a prison following a criminal conviction. Counsel can find no similar provision that [applies] as a result of a wrongful civil commitment. If a right exists for compensation under Iowa law, it would appear to be a State remedy and not based on a federal civil right.
3. With regard to the current Defendants, there is no cause of action against the governor or the county under 42 U.S.C. Section 1983. Section 1983 requires that the defendants be sued in their individual capacities. Plaintiff may not maintain a cause of action against the current defendants as they [are] not proper parties that were associated with the alleged actions

nor is there an allegation of a custom or practice against them.

4. That with regard to the potential “state actors”, the presiding (or committing judge) and the prosecutor responsible for prosecuting the Iowa Code Chapter 229A proceeding are both protected under the doctrine of absolute immunity.

5. That other potential actors would appear to be protected under qualified immunity as the law was not clearly developed until after Plaintiff’s case was decided by the Iowa Court of Appeals.

6. That counsel is unable to re-plead or respond to the motion to dismiss to conform with Federal Rule of Civil Procedure 11 at this time.

7. That Plaintiff does not wish to dismiss his case and desires the opportunity to make a pro se argument to the court in resistance to the pending motion[s].

Id. The court granted the motion, and ordered Matlock to file his *pro se* resistance by September 16, 2004. (Doc. No. 25).

On September 16, 2004, Matlock filed a document entitled “Amendment/Resistance ‘To Defendant’s Motion to Dismiss.’” (Doc. No. 27). In this pleading, Matlock seeks to amend his complaint to: (1) add “John/Jane Doe” as additional defendants “in order to preserve his cause of action while attempting to identify the defendant or defendants” *Id.* ¶ 2; and (2) add claims for malicious prosecution and abuse of process. *Id.* ¶ 3. Matlock additionally argues:

Wherefore, I hope ‘the Court’ understands that because I do not know whether or not [counsel] is on the (same) path as I am, it’s best that I do not say too much until, I’m able to [consult] with counsel, or [new] counsel, if it becomes necessary to request appointment of ‘different’ representation. . . . Put simply, although I ‘loath’ airing dirty laundry, counsel wrote to me expressing that “he -- could not find any

law that would allow me to make a § 1983 complaint for illegal or unlawful restraint under a [civil] custody,” i.e., that such could only be done if the illegal custody was under a [criminal] cause of action. Of course, [*Sarvold*], disproves that mistaken information. Counsel (also) expressed that “he -- could not see how I could take § 1983 against the present defendants.” Naturally, DePugh, disproves that erroneous concept . . . Wherefrom, admittedly, counsel may well have been unaware of these (other) available options thus, we, more likely than not, will be able to get on the (same) track, and work-out the mis-communication issue.

But, since the upcoming [dead-line] is so close, I cannot take the chance -- unknowingly -- that counsel [has] found the (same) footing. To so do would be stupid-of-me, notwithstanding the fact that [counsel] should have contacted [me] by now -- thus, if he [holds] to his last letter, coupled with “what I have discovered on my own,” the Court should be well aware that appointment of [new] counsel -- is more than necessary!!

Accordingly, since to date, I have no idea what counsel is thinking or planning on filing, nor do I have time to wait until the last instance thus, depriving myself of the “necessary” option to Amend-and-Resist, I have to ‘defend-and-protect’ my cause of action -- now!!

Therefore, I pray the Court will give my [on-point] case law authorities “serious” consideration and, if counsel files a “negative” reply, answer or resistance, I further hope the Court will appoint [new counsel] to represent me in this cause of action because, “I have a genuine issue of material fact, i.e., abuse of process and/or malicious prosecution, and I can claim preservation of my cause of action while attempting to identify the defendant, i.e., John/Jane Doe,” if those ‘presently’ identified are not viable.

Doc. No. 27, at 2-3 (punctuation as in original).

On October 1, 2004, the County filed a reply to Matlock's resistance, which asserted in pertinent part:

2. [The County] does not contest that a plaintiff may sue "John Doe" defendants under 42 USC § 1483 [sic] in order to preserve his cause of action while attempting to identify defendants; however, the pending Motions to Dismiss are raised by identified parties and relate to whether Plaintiff has any claim against such parties upon which relief can be granted.

3. That, as noted by the decision of the Iowa Court of Appeals in Mr. Matlock's case, entitled *In Re the Detention of Roosevelt Matlock*, No. 2-357/01-1094, filed February 12, 2003, a jury found Mr. Matlock to be a sexually violent predator, and, thereafter, he was civilly committed. Although the Iowa Court of Appeals held that the application of the sexually-violent predator statute was unconstitutionally applied to Mr. Matlock because his most recent confinement had been for a nonsexual offense, the proper application of Iowa Code Chapter 229A was subject to good-faith disagreement at the time of Mr. Matlock's civil commitment. That is, even if Mr. Matlock identifies a suable defendant, there is no required "malice" which would support Mr. Matlock's allegation of malicious prosecution and/or abuse of process. *See Sarvold v. Dodson*, 237 N.W.2d 447, 448 (Iowa 1976) (the case cited by Mr. Matlock).

Doc. No. 28, at ¶¶ 2-3.

The motion to dismiss was referred to United States Magistrate Judge Paul A. Zoss pursuant to 28 U.S.C. § 636(b)(1)(B). On October 6, 2004, Judge Zoss filed his Report and Recommendation, which recommended that both the County's and Vilsack's motions to dismiss be granted:

As Matlock's appointed counsel indicated in his August 6, 2004, motion for an extension of time, Matlock is unable to

pursue a 42 U.S.C. § 1983 action against the named defendants, or any identified but unnamed defendants. In his *pro se* resistance, Matlock did not address the arguments raised by the defendants in their motions to dismiss, nor did he offer any authority that would suggest dismissal of the named defendants from this case would be improper. Matlock's reliance on *DePugh* and *Sarvold* to support the proposition that he should be allowed to pursue his action is misplaced; neither case supports Matlock's argument. Because they are properly supported and essentially unresisted, the defendants' motions to dismiss should be granted. *See* Fed. R. Civ. P. 12(b)(6) (stating dismissal is appropriate when party fails to state a claim upon which relief can be granted); 28 U.S.C. § 1915(e)(2)(B) (same).

Moreover, dismissal of the Complaint is appropriate because Matlock has failed to identify any additional defendants, *see DePugh*, 888 F. Supp. at 965 n.3, and has failed to allege any facts that support his claims, including any malicious prosecution and/or abuse of process claim, *see Sarvold*, 237 N.W.2d at 448. Stated differently, Matlock's Complaint should be dismissed because it fails to state a claim upon which relief can be granted. *See* Fed. R. Civ. P. 12(b)(6); 28 U.S.C. § 1915(e)(2)(B).

Report and Recommendation on Motions to Dismiss, Doc. No. 29, at 7-8. On October 20, 2004, Matlock filed his objections to the Report and Recommendation. (Doc. No. 32). The County filed a response to Matlock's objections on October 26, 2004. (Doc. No. 33). In turn, Matlock filed a reply to the County's response to his objections on November 4, 2004. (Doc. No. 34). The matter is now fully submitted and the court will now undertake the necessary review of Judge Zoss's Report and Recommendation.

II. ANALYSIS

A. Standard Of Review

Pursuant to statute, this court's standard of review for a magistrate judge's Report and Recommendation is as follows:

A judge of the court shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate [judge].

28 U.S.C. § 636(b)(1). Similarly, Federal Rule of Civil Procedure 72(b) provides for review of a magistrate judge's Report and Recommendation on dispositive motions and prisoner petitions, where objections are made, as follows:

The district judge to whom the case is assigned shall make a *de novo* determination upon the record, or after additional evidence, of any portion of the magistrate judge's disposition to which specific written objection has been made in accordance with this rule. The district judge may accept, reject, or modify the recommended decision, receive further evidence, or recommit the matter to the magistrate judge with instructions.

FED. R. CIV. P. 72(b).

The Eighth Circuit Court of Appeals has repeatedly held that it is reversible error for the district court to fail to conduct a *de novo* review of a magistrate judge's report where such review is required. *See, e.g., Hosna v. Goose*, 80 F.3d 298, 306 (8th Cir.) (citing 28 U.S.C. § 636(b)(1)), *cert. denied*, 519 U.S. 860 (1996); *Grinder v. Gammon*, 73 F.3d 793, 795 (8th Cir. 1996) (citing *Belk v. Purkett*, 15 F.3d 803, 815 (8th Cir. 1994)); *Hudson v. Gammon*, 46 F.3d 785, 786 (8th Cir. 1995) (also citing *Belk*). Because objections have been filed in this case, the court must conduct a *de novo* review. With

these standards in mind, the court turns first to a brief consideration of the motion to dismiss standards, and then to plaintiff Matlock's objections to Judge Zoss's Report and Recommendation.

B. Motion To Dismiss Standards

To establish his claim under 42 U.S.C. § 1983 against the defendants, Matlock must show that the defendants' conduct caused a constitutional violation, and that the challenged conduct was performed under color of state law. *Reeve v. Oliver*, 41 F.3d 381, 383 (8th Cir. 1994) (citing *Alexander v. Peffer*, 993 F.2d 1348, 1349 (8th Cir. 1993)); *see also West v. Atkins*, 487 U.S. 42, 48, 108 S. Ct. 2250, 2254-55, 101 L. Ed. 2d 40 (1988); *Meyer v. City of Joplin*, 281 F.3d 759, 760-61 (8th Cir. 2002). In evaluating a Rule 12(b)(6) motion to dismiss, a complaint should be dismissed only where it appears that the plaintiff can prove no set of facts in support of its claim which would entitle it to relief. *Hishon v. King & Spalding*, 467 U.S. 69, 73, 104 S. Ct. 2229, 81 L. Ed. 2d 59 (1984); *Knapp v. Hanson*, 183 F.3d 786, 788 (8th Cir. 1999) ("A motion to dismiss should be granted only if 'it appears beyond doubt that the plaintiff can prove no set of facts which would entitle him to relief.'") (quoting *Morton v. Becker*, 793 F.2d 185, 187 (8th Cir. 1986), and citing *Conley v. Gibson*, 355 U.S. 41, 45- 46, 78 S. Ct. 99, 2 L. Ed. 2d 80 (1957)). In applying this standard, the court must presume all factual allegations in the complaint as true and draw all reasonable inferences in favor of the non-moving party. *E.g.*, *Whitmore v. Harrington*, 204 F.3d 784, 784 (8th Cir. 2000); *accord Cruz v. Beto*, 405 U.S. 319, 322 (1972); *Anderson v. Franklin County, Mo.*, 192 F.3d 1125, 1131 (8th Cir. 1999); *Gross v. Weber*, 186 F.3d 1089, 1090 (8th Cir. 1999); *Midwestern Mach., Inc. v. Northwest Airlines, Inc.*, 167 F.3d 439, 441 (8th Cir. 1999); *Valiant-Bey v. Morris*, 829 F.2d 1441, 1443 (8th Cir. 1987). The court need not, however, accord the

presumption of truthfulness to any legal conclusions, opinions or deductions, even if they are couched as factual allegations. *Silver v. H & R Block, Inc.*, 105 F.3d 394, 397 (8th Cir. 1997) (citing *In re Syntex Corp. Securities Lit.*, 95 F.3d 922, 926 (9th Cir. 1996)); *Westcott v. City of Omaha*, 901 F.2d 1486, 1488 (8th Cir. 1990) (the court “do[es] not, however, blindly accept the legal conclusions drawn by the pleader from the facts,” citing *Morgan v. Church’s Fried Chicken*, 829 F.2d 10, 12 (6th Cir. 1987), and 5 Charles A. Wright *et al.*, FEDERAL PRACTICE AND PROCEDURE § 1357, at 595-97 (1969)); *see also LRL Props. v. Portage Metro Hous. Auth.*, 55 F.3d 1097, 1103 (6th Cir. 1995) (the court “need not accept as true legal conclusions or unwarranted factual inferences,” quoting *Morgan*, 829 F.2d at 12).

In this case, the plaintiff is acting *pro se*. “In the context of a motion to dismiss for failure to state a claim under [Rule 12(b)(6)], a *pro se* complaint must be liberally construed.” *Blomberg v. Schneiderheinz*, 632 F.2d 698, 699 (8th Cir. 1980); *see also Smith v. St. Bernards Reg. Med. Ctr.*, 19 F.3d 1254, 1255 (8th Cir. 1994). “[A] court should not dismiss [a *pro se*] complaint unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” *Valiant-Bey v. Morris*, 829 F.2d 1441, 1443 (8th Cir. 1987)(quotes and citation omitted). Further, as the Federal Rules contemplate a “liberal system of notice pleading,” to survive a motion to dismiss, the plaintiff is required only to plead a factual basis from which inferences supporting the legal conclusions the complaint seeks can arise. *Kohl v. Casson*, 5 F.3d 1141, 1148 (8th Cir. 1993); *Simpson v. Iowa Health Sys.*, 2001 WL 34008480 at *5 (N.D. Iowa Aug. 22, 2001). With these principles in mind, the court now turns to Matlock’s objections to Judge Zoss’s Report and Recommendation, followed by an analysis of those objections.

C. Matlock's Objections

Matlock lodges a series of objections to Judge Zoss's Report and Recommendation. First, Matlock requests the addition of the following defendants previously identified as John Doe's: "Thomas Vilsack, Gary O. Maynard (D.O.C.), Thomas J. Miller (Atty. Gen.), 'John Doe'[s] Prosecutor Review Committee; Multidisciplinary Team; Sheriff/Deputies of Black Hawk County." Objection—To 'Magistrate judge's October 6, 2004' Report and Recommendation On Motions To Dismiss, Doc. No. 32, at 1 ("Objections"). Matlock then lodges the following specific objections to the Report and Recommendation. First, Matlock claims he should have been allowed to file a reply to the County's response to Matlock's resistance to the Motions to Dismiss. Second, Matlock was never alerted that the court, Judge Zoss in particular, was considering the motions to dismiss as motions for summary judgment. Finally, Matlock contends that the Report and Recommendation erroneously adopted the defendants' position that Matlock's abuse of process claim required malice, yet an abuse of process claim has no such malice requirement. Further, Matlock contends that the defendants made a conscious choice to misuse Iowa Code Chapter 229A by failing to follow the procedures imposed by Chapter 229A in seeking civil commitment of Matlock as a sexually violent predator. Ultimately, Matlock contends that this misuse of Chapter 229A constituted an abuse of process—as discussed in *Sarvold v. Dodson*, 237 N.W.2d 447 (Iowa 1976).

D. Analysis

Matlock seemingly bases the heart of his objections to the Report and Recommendation on Judge Zoss's alleged misinterpretation of *Sarvold*. Setting aside, for the moment, the fact that Matlock failed to file a proper resistance to the motions to dismiss—a fact which alone, as Judge Zoss recognized, would warrant granting the

motions to dismiss—other grounds warrant the dismissal of Matlock’s claims. Under Iowa law,

[a]buse of process is “the use of legal process, whether criminal or civil, against another primarily to accomplish a purpose for which it was not designed.” *Fuller v. Local Union No. 106*, 567 N.W.2d 419, 421 (Iowa 1997). An abuse-of-process claim has three elements: (1) the use of a legal process (2) in an improper or unauthorized manner (3) that causes the plaintiff to suffer damages as a result of that abuse. *Id.*

Gibson v. ITT Hartford Ins. Co., 621 N.W.2d 388, 398 (Iowa 2001); *see Thomas v. Marion County*, 652 N.W.2d 183, 186 (Iowa 2002) (reciting the elements of an abuse of process claim); *Fuller v. Local Union No. 106 of United Brothers of Carpenters and Joiners of Am.*, 567 N.W.2d 419, 421-22 (Iowa 1997) (reciting elements). In *Sarvold*, the Iowa Supreme Court recognized that “the initiation and maintenance of . . . proceedings [under Chapter 229A] is sufficient to constitute ‘process’” in the context of an abuse of process claim—therefore establishing the first element. *Sarvold*, 237 N.W.2d at 449-50. *Sarvold* also analyzed the distinction between malicious use of process and malicious abuse of process claims—noting that absence of probable cause and favorable termination of prosecution were not essential elements of an abuse of process claim. *Id.* at 449. As to the second element, the plaintiff carries a high burden of demonstrating that “the defendant used the legal process *primarily* for an impermissible or illegal motive.” *Wilson v. Hayes*, 464 N.W.2d 250, 266 (Iowa 1990); *see Fuller*, 567 N.W.2d at 421 (“Normally the improper purpose sought is an attempt to secure from another some collateral advantage not properly includable in the process itself.”); *Johnson v. Farm Bureau Mut. Ins. Co.*, 533 N.W.2d 203, 209 (Iowa 1995) (“The second element is difficult to establish.”). While the commencement of civil commitment proceedings under Chapter 229A did constitute a ‘process’ per *Sarvold*, Matlock has alleged no facts in any of his filings which would

support a finding that any of the defendants used Chapter 229A “*primarily* for an impermissible or illegal motive” as there is no allegation that the defendants used Chapter 229A for any “immediate purpose other than that for which it was designed and intended.” *Wilson*, 464 N.W.2d at 266, 267. The mere fact that Matlock’s civil commitment under Chapter 229A was ultimately overturned by the Iowa Court of Appeals does not mean that Chapter 229A was originally used for an improper purpose or illegal motive. *See id.* Further, neither the County nor Vilsack were even involved in instituting the Chapter 229A civil commitment proceedings against Matlock.

Further, even apart from failure to allege facts that would support the elements of his abuse of process claim—Matlock cannot allege a claim upon which relief can be granted against the County, Vilsack, or the unnamed defendants under § 1983. Turning first to the County, none of its agents, representatives, or employees had any authority to supercede the order of the Iowa District Court in ordering Matlock’s commitment pursuant to Chapter 229A, and in following the orders of the Iowa District Court did not violate any of Matlock’s established constitutional rights—thereby rendering them immune from liability. *See Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S. Ct. 2727, 73 L. Ed. 2d 396 (1982); *Young v. Harrison*, 284 F.3d 863, 866 (8th Cir. 2002). Further, Matlock’s claims against the County are not predicated upon an unconstitutional custom or policy—a requirement of a proper civil-rights claim under 42 U.S.C. § 1983. *See Monell v. Department of Social Servs. of City of New York*, 436 U.S. 658, 691, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978) (“the language of § 1983 . . . compels the conclusion that Congress did not intend municipalities to be held liable unless action pursuant to official municipal policy of some nature caused a constitutional tort.”). Further, as Matlock’s claim against Vilsack is against Vilsack in his official capacity as Governor of the State of Iowa, “it is no different from a suit against the State itself.” *Will v. Michigan Department of State*

Police, 491 U.S. 58, 71, 109 S. Ct. 2304, 105 L. Ed. 2d 45 (1989). Since, “neither a State nor its officials acting in their official capacities are ‘persons’ under § 1983,” Matlock’s § 1983 claim against Vilsack must also be dismissed. *Id.*

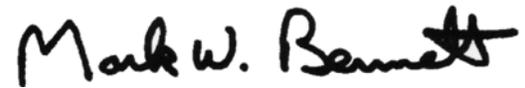
Matlock’s request to add and/or name additional defendants is not a proper objection and is denied. Matlock is free to file suit against those other defendants, should he choose to do so, in a separate litigation—however, the court would caution him that to the extent that any other potential defendants are state actors, such a suit would likely be fruitless as they would be either improper parties to a § 1983 action or cloaked with immunity. *See Pierson v. Ray*, 386 U.S. 547, 553-54, 87 S. Ct. 1213, 18 L. Ed. 2d 288 (1967) (holding that judges are immune for “liability for damages for acts committed within their judicial jurisdiction”—even where “the judge is accused of acting maliciously and corruptly”); *Beck v. Phillips*, 685 N.W.2d 637, 643 (Iowa 2004) (recognizing that the decision to bring criminal charges is “intimately associated with the judicial phase of the criminal process,” such that prosecutors are granted “absolute immunity for deciding whether to do so.”); *c.f. DePugh v. Penning*, 888 F. Supp. 959, 965 n.3 (N.D. Iowa 1995). Also an improper objection is Matlock’s contention that he was not notified that the motions to dismiss were treated as motions for summary judgment—as the matter was clearly treated as a motion to dismiss by Judge Zoss.

III. CONCLUSION

Matlock’s objections to Judge Zoss’s Report and Recommendation are **overruled**. The court **accepts** Judge Zoss’s Report and Recommendation. Accordingly, the County’s and Vilsack’s motions to dismiss are **granted**. (Doc. Nos. 16 & 20).

IT IS SO ORDERED.

DATED this 10th day of March, 2005.

Handwritten signature of Mark W. Bennett in black ink.

MARK W. BENNETT
CHIEF JUDGE, U. S. DISTRICT COURT
NORTHERN DISTRICT OF IOWA