

04-670-CD  
HASSAN IDBARH vs. PENNSYLVANIA DEPARTMENT OF CORRECTIONS,  
etal.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL TRIAL DIVISION

HASSAN IDBARH,  
PLAINTIFF

CIVIL ACTION AT LAW  
AFFIDAVIT

V.

C.A. NO. 04-670-CJ

PENNSYLVANIA DEPARTMENT OF CORRECTIONS )  
GEORGE PATRICK, SCI HOUTZDALE, SUPERINT- )  
ENDENT, et al: DEFENDANTS )

Pa.R.C.P. RULE 240(a)(b)(f)(1)(2)  
(g)(h)

IN FORMA PAUPERIS

I am the Plaintiff, "Petitioner" Hassan Idbarh, in the above action and of my financial condition am unable to pay the fee and cost of prosecuting or defending the action.

I am unable to obtain funds from anyone, including family and associates, to pay the cost of litigation.

I represent that the the information below relating to my ability to pay the fees and costs is true and correct:

(a) Name: Hassan Iobarh, DV0578

(b) Address: SCI Houtzdale, P.O. Box 1000

Houtzdale, Pennsylvania 16698-1000

Social Security Number: \_\_\_\_\_

(b) Employment

If you are presently employed, state

Employer: \_\_\_\_\_

NONE

Address: \_\_\_\_\_

Salary or wages per month: \_\_\_\_\_

N.A.

Type of work: \_\_\_\_\_

If you are presently unemployed, state

Date of last employment: \_\_\_\_\_

NONE

Salary or wages per month: \_\_\_\_\_

Type of work: \_\_\_\_\_

FILED

MAY 13 2004

William A. Shaw  
Prothonotary/Clerk of Courts

IN FORMA PAUPERIS

(c) Other income within the past twelve months

Business or profession: NONE

Other self-employment:

Interest: NONE

Dividends: NONE

Pension and annuities: NONE

Social security benefits: NONE

Support benefits: NONE

Disability payments: NONE

Unemployment compensation and supplement  
benefits: NONE

Workman's compensation: \$50.00

public assistance: NONE

Other:

(d) Other contributions to household support

(Wife)(Husband) Name:

If your (wife)(husband is employed, state

Employer:

Salary or wages per month:

Type of work:

Contribution from children:

Contributions from parents:

Other contributions:

(e) Property owned

Cash: NONE

Checking account:

Savings account:

Certificates of deposit:

**IN FORMS PAUPERIS**

Real estate (including home): NONE

Motor vehicle: Make NONE, Year       

Stocks; bonds: NONE

Others: \_\_\_\_\_

(f) Debts and obligations

Mortgage: NO NE

Rent: NONE

Loans: NONE

Other: \_\_\_\_\_

(g) Persons dependent upon you for support

(Wife)(Husband)(Name): NONE

Children, if any:

(Name): \_\_\_\_\_ Age: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Other Persons:**

Name: NONIE

Relationship: \_\_\_\_\_

I Understand that I have a continuing obligation to inform the court of improvement in my financial circumstances which would permit me to pay the costs incurred herein.

I verify that the statement made in this affidavit are true and correct. I understand that false statements herein are subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

Date: 5/01/04

Petitioner, Plaintiff

68

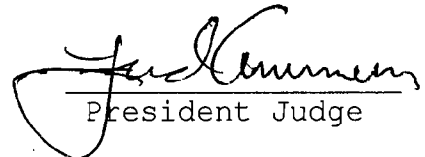
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

HASSAN IDBARH :  
vs. : No. 04-670-CD  
PENNSYLVANIA DEPARTMENT OF :  
CORRECTIONS, GEORGE PATRICK, :  
SCI-HOUTZDALE, SUPERINTENDENT:  
et al. :

**ORDER**

NOW, this 13<sup>th</sup> day of May, 2004, upon consideration of  
affidavit/application to proceed In Forma Pauperis (IFP)  
submitted by the Petitioner/Plaintiff Pro Se in the  
above-captioned matter, it is the ORDER of this Court  
that said request to proceed In Forma Pauperis (IFP) be  
and is hereby Granted <sup>FSA</sup> ~~denied~~.

BY THE COURT,

  
President Judge

**FILED**

**MAY 13 2004**

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL TRIAL DIVISION

HASSAN IDBARH,  
PLAINTIFF

v.

PENNSYLVANIA DEPARTMENT OF CORRECTIONS  
MIKE FISHER, OR ACTING ATT. GEN.,;  
GEORGE PATRICK, SCI HOU., SUPERINT-  
DENT; HENRY TATUM, SCI HOU., SUPERINT-  
DENT; JOHN THOMAS, DEPUTY SUPERINTEN-  
DENT; KENNETH CAMERON, MAJOR OF THE  
GUARD: DEFENDANTS

CIVIL ACTION AT LAW  
COMPLAINT

C.A. NO. 04-670-Q

**FILED**

**MAY 13 2004**

William A. Shaw  
Prothonotary/Clerk of Courts

**NOTICE**

You have been sued in court. If you wish to defend against the claim set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any money or property or other rights important to you.

**YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT LAWYER.**

**IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.**

\_\_\_\_\_  
(NAME)

\_\_\_\_\_  
(ADDRESS)

\_\_\_\_\_  
(TELEPHONE NUMBER)



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

HASSAN IDBARH,  
PLAINTIFF

CIVIL ACTION AT LAW  
COMPLAINT

v.

C.A. NO. \_\_\_\_\_

( )  
PENNSYLVANIA DEPARTMENT OF  
CORRECTIONS, SCI HOUTZDALE,  
GEORGE PATRICK, SUPERINTENDENT  
et al.; DEFENDANTS

42(Pa.C.S.A.)§ 8542(b)(3)  
42(Pa.C.S.A.)§ 8542(b)(7)  
42(Pa.C.S.A.)§ 8522(b)(4)

EXCEPTIONS TO GOVERNMENTAL IMMUNITY

Plaintiff asserts; his claims are redressed by Real Property  
Exceptions to Governmental immunity and Provides:

(b) Act which may impose liability. The following acts by  
a local agency or any of its employees may result in the imposi-  
tion of liability on a local agency.

(3) Real Property. The care, Custody or control of real  
property in the possession of the local agency, except that  
the local agency shall not be liable for damages on account  
of any injury sustained by a person intentionally trespassing  
on real property in the possession or control of the local agency.

(b)(7) Section 8542(b)(7) provides in pertinent part:

(b) Acts which may impose liability. The following acts by  
a local agency or any of its employees may result in the imposi-  
tion of liability on a local agency:

(7) Sidewalks. A dangerous condition of sidewalks within  
the right-of-way of street owned by local agency, except that  
the local agency had actual notice or could reasonably be charged  
with notice under the circumstances of the dangerous condition  
at a sufficient time prior to the event to have taken measures  
against the dangerous condition.



### EXCEPTIONS TO GOVERNMENTAL IMMUNITY

— (b)(4) Section(b)(4) provides in pertinent parts:

(b) Acts which may impose liability. The following acts by Commonwealth party may result in the imposition of liability on the Commonwealth and the defense of sovereign immunity shall not be raised to the claims for damages caused by:

(4) Commonwealth real estate, highways, and sidewalks. A dangerous condition of Commonwealth agency real estate and sidewalks.... 42 Pa.C.S.A. § 8522(b)(4).

### PLEADING

— 1. Plaintiff asserts: That the presence of a slippery substance on Pennsylvania Department of Corrections, SCI Houtzdale Culinary facility floor, service area caused Plaintiff's injuries by improper design and construction of the real estate itself.

2. Plaintiff asserts: That SCI Houtzdale negligence in the design and construction owned by Pennsylvania Department of Corrections impose liability on owned real property unsafe for the activities for which the Culinary Facility is regularly used and intended to be used or reasonably foreseen to be used.

3. Plaintiff alleges: That Defendants are negligent "in failing to install and/or allowing to exist a tile floor in the Culinary service area without non-slip properties."

4. Plaintiff alleges: That prison authorities provided the Culinary Facility where slippery substances and debris on Culinary area service floor was a necessary and inextricable part of design.

### PLEADING

5. Plaintiff alleges: That prison authorities constructed Culinary Facility at SCI Houtzdale service area knowing and **intending** that debris and slippery substance would accumulate on the floor where persons would have to walk or tread. As such the Culinary service area must have tiles with non-slip properties in order to be safe for its particular use, i.e., being stepped upon by persons preparing food on floor must have sufficient non-slip properties in order to be safe for its intended, specified use, i.e., to prepare food in the Culinary Facility for inmates or prisoner meals in the Dining Hall eating area.

### FACTS

1. Plaintiff alleges: That on Jan. 24, 2004, he slipped and fell in Culinary Facility at SCI Houtzdale real estate owned by Pennsylvania Department of Corrections . On accumulated food, gravy, and soda causing a slippery substance on Culinary service floor. Plaintiff **broke** his wrist and injured his hip.

2. Plaintiff alleges: That the medical department at SCI Houtzdale treated him for his injuries in the first instance with:

(i) empty bag for ice.

(ii) Medical P.A. wrapped Plaintiff's arm with an ace bandage the same day.

3. Plaintiff Alleges: That for three (3) days he walked a round SCI Houtzdale with a broken wrist.

(iii) Plaintiff asserts: That he had to put in a sick call Request slip to be seen by the doctor at SCI Houtzdale.

(iv) Plaintiff asserts: That he was finally treated on Jan. 27, 2004 by Dr. Hollander this is when Plaintiff learned he had a broken wrist.

(v) Plaintiff asserts: That he also told SCI Medical staff about his injured hip.

FACTS

(vi) Plaintiff asserts: That the injuries to his hip was not attended to unit Mar.2, 2004, at 11:00 a.m., P.a. Mrs. Leeya.

(vii) Plaintiff asserts: That he requested that Medical Provider's give him an ex-ray of his hip by bone specialist Doctor.

(viii) Plaintiff asserts: That he has been denied proper medical **tre-atment** by SCI Houtzdale Medical Providers and Staff and he has not had a ex-ray of his hip by Medical Provider's.

(ix) Plaintiff asserts: That Medical Provider's at SCI Houtzdale gives Plaintiff 600mg. of Motrin for pain.

EXHIBITS ATTACHED

Exhibits C.A. No. \_\_\_\_\_ (A) 1Pg.  
Grievance Number 74812, Date: 2/04/04


Exhibit C.A. No. \_\_\_\_\_ (B) 1Pg.  
Request to Superintendnet Datea: 2/17/04

Exhibit C.A. No. \_\_\_\_\_ (C) 1Pg.  
SUBject Appeal of Grievance # 74812

Exhibit C.A. No. \_\_\_\_\_ (D) 3Pg.

Wherefore Plaintiff request relief in the amount of \$200,000.00" for injuries ~~another~~---\$150,000.00 for "negligents" of of a non-slip surface on SCI Houtzdale Culinary Service area floor which created a foreseeable dangerous condition of SCI Houtzdale, Pennsylvania Department of Corrections, realty by failing to install a non-slip surface floor on prison Culinary Facility service area floor. Plaintiff request a jury trial.

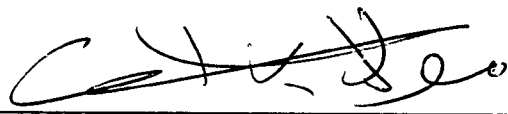
Date 05/01, 2004

  
\_\_\_\_\_  
Hassan Idbarh, DV0578  
SCI Hou., P.O. Box 1000  
Houtzdale, PA 16693-1000

VERIFICATION

I "Plaintiff" verify that the pleading contained in this Civil Action At Law, Complaint, are true and correct upon the personal knowledge and information and belief, of his injuries and the Torts Claims Law in which Pennsylvania local agencies can be held liable. I understand that any false statement made herein are subject to penalties of perjury, 18 Pa.C.S.A. § 4904, relating to unsworn falsification to **authorities**. This 01 day of May, 2004.

Date 5/01, 2004

  
Hassan Idbarh, DV0578  
SCI Hou., P.O. Box 1000  
Houtzdale, PA 16698-1000

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL TRIAL DIVISION

HASSAN IDBARH,  
PLAINTIFF

v.

PENNSYLVANIA DEPARTMENT OF  
CORRECTIONS, SCI HOUTZDALE,  
GEORGE PATRICK, SUPERINTENDENT  
et al. DEFENDANTS

CIVIL ACTION AT LAW  
COMPLAINT

C.A. NO. \_\_\_\_\_

42 Pa.C.S.A. § 8542(b)(3)  
42 Pa.C.S.A. § § 8542(b)(7)  
42 Pa.C.S.A. § 8522(b)(4)

CERTIFICATE OF SERVICE

I, Hassan Idbarh, "Plaintiff" hereby certify that I have  
this day of \_\_\_\_\_, 2004 served the foregoing  
document[s] Civil Action At Law, Complaint and Forma Pauperis  
Application to proceed in Forma Pauperis.

Pursuant to, Verification and Certificate of Service., upon  
the person[s]. In the manner listed below which satisfies the  
the requirements of Pa.R.C.P. Rule 400(a)(1)(2)(i) and Pa.R.C.P.  
Rule 422(a)(b)(1)(2)(3).

Mail

Service by United States

1. William Shaw, Prothonotary  
Office of the Prothonotary  
Courthouse, 230 E. Market St.,  
Clearfield, PA 16830

2. Hon., Fredric J. Ammerman  
(P.J.), Courthouse J. Chambers  
230 E. Market St.,  
Clearfield, PA 16830

3. George Patrick, Super.,  
SCI Hou., Office Of Super.,  
Houtzdale, PA 16698-1000

5. Henery Tatum, Deputy Super.  
SCI Hou., Pa.D.O.C.  
Houtzdale, PA 16698-1000

4. Mike Fisher, or Acting  
Ass. Gen., Comwlth. of PA.,  
16th Fl. Strawberry Sq.,  
Harrisburg, PA 17120

6. John Thomas, Deputy Super.,  
SCI Hou., Pa.D.O.C.  
Office of Deputy Super.,  
Hotzdale, PA 16698-1000

7. Kenneth Cameron,, Major  
of Guard, Office of the Guards,  
SCI Hou., Hou., PA 16698-1000

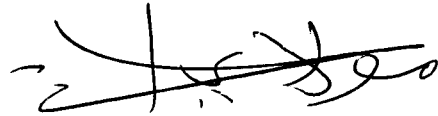
Date: 5/01/04

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XXXXXXXXXXXX

8. Plaintiff request for representation  
PAUL M. BENN, P.C.  
LAW OFFICES  
1617 JFK Boulevard  
Suite 1610  
Philadelphia, PA 19103  
(215) 557-9595

Date 05/01, 2004

  
Nassan Iqbal, DVC578  
SCI Hou., P.O. Box 1000  
Houtzdale, PA 16698-1000

DC-804  
Part 1COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF CORRECTIONS  
P.O. BOX 598  
CAMP HILL, PA 17001-0598

FOR OFFICIAL USE ONLY

74812

GRIEVANCE NUMBER

## OFFICIAL INMATE GRIEVANCE

TO: FACILITY GRIEVANCE COORDINATOR <i>MSCHANCHERICK</i>	FACILITY: <i>HOUTZDALE</i>	DATE: <i>2-4-04</i>
FROM: (INMATE NAME & NUMBER) <i>HASSAN Idbarn DV-0578</i>	SIGNATURE of INMATE: <i>DV 0578</i>	
WORK ASSIGNMENT: <i>P.M. Cook</i>	HOUSING ASSIGNMENT: <i>EB 13</i>	

## INSTRUCTIONS:

1. Refer to the DC-ADM 804 for procedures on the inmate grievance system.
2. State your grievance in Block A in a brief and understandable manner.
3. List in Block B any actions you may have taken to resolve this matter. Be sure to include the identity of staff members you have contacted.

A. Provide a brief, clear statement of your grievance. Additional paper may be used, maximum two pages.

*ON 1/24/04 I SLIPPED ON food, GRAVY AND soda I broke my wrist AND injured my hip. I WAS given a empty bag for ice - they wrapped my arm with an ACE bandage the same day I walked for 3 days with a broken wrist until I put in a sick call slip to see the doctor. I was finally seen on 1/27/04 by Dr. Hollander That was when I found out my wrist was broken I also told them about my hip I WAS never seen for that injury until 3/2/04 at 11:00 AM. I WAS seen PA. MS. LEAL, She said it was just a Bump I wanted an X-Ray and seen by a doctor. They gave me for pain MOTRIN 600 mg. Then They Switched to Naprasin. I have been denied proper medical attention and I would like this looked into.*

B. List actions taken and staff you have contacted, before submitting this grievance.

*I spoke to Mr. Rice on 1/27/04 and 2/4/04. My kitchen supervisor Mr. Thompson on 1/24/04 at 5:30 P.M. I spoke to CAP HUTTON 1200 AM on 2/4/04*


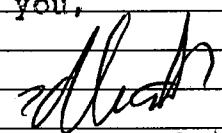
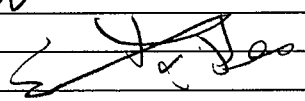
Your grievance has been received and will be processed in accordance with DC-ADM 804.

Signature of Facility Grievance Coordinator

Date

WHITE - Facility Grievance Coordinator Copy CANARY - File Copy PINK - Action Return Copy GOLDENROD - Inmate Copy

Revised

Form DC-135A		Commonwealth of Pennsylvania Department of Corrections	
INMATE'S REQUEST TO STAFF MEMBER		INSTRUCTIONS Complete items number 1-8. If you follow instructions in preparing your request, it can be responded to more promptly and intelligently.	
1. To: (Name and Title of Officer) INMATE GRIEVANCE APPEAL COMM.		2. Date: February 17, 2004	
3. By: (Print Inmate Name and Number) IDBARH / DV-0578  Inmate Signature		4. Counselor's Name Mr. Rice	
6. Work Assignment PM, KIT		5. Unit Manager's Name Mr. Garman	
8. Subject: State your request completely but briefly. Give details. Ref: Grievance No. 74812		7. Housing Assignment EB - Dorm	
Dear Sirs: I would like to appeal your decision of February 9th, 2004 denying my Grievance dated February 5th, 2004 on the following grounds: 1) I do not feel the Medical Department acted in my health interest by NOT allowing me to see a Doctor for three (3) days after my injury; a sling and an ice bag does not constitute Medical treatment. 2) The fact that the Medical Department allowed me to go back to work in the kitchen for three (3) days with a broken arm, and a fractured hip, shows negligence! 3) The fact that I was seen by a PA, (Physicians Assistant) after it had already been established that I had a broken arm, instead of seeing a Doctor, was again NOT in my Medical interest. A Doctor 9. Response: (This Section for Staff Response Only) has more experience and knowledge than a PA. Thank you,  			
To DC-14 CAR only <input type="checkbox"/>		To DC-14 CAR and DC-15 IRS <input type="checkbox"/>	

Staff Member Name \_\_\_\_\_ / \_\_\_\_\_ Date \_\_\_\_\_  
Print Sign



**COMMONWEALTH OF PENNSYLVANIA**  
**Department of Corrections**  
**State Correctional Institution at Houtzdale**  
Office of the Superintendent  
February 20, 2004

**SUBJECT:** Appeal of Grievance #74812

**TO:** Hassan Idbarh, DV0578  
EB-13

**FROM:**   
George N. Patrick  
Superintendent

You received medical treatment commensurate with current DOC medical policy. As described by the CHCA in her response to your initial grievance, you had no outward symptoms at the time of your assessment that strongly suggested a fracture.

You were scheduled for an X-ray at the earliest opportunity possible and when a fracture was confirmed, you were immediately treated by the doctor. Your prognosis is excellent.

Grievance appeal is denied.

GNP:mlb

c: Deputy Tatum  
Deputy Thomas  
Major Cameron  
Ms. Chencharick  
Ms. Greenleaf  
Case Record  
file

DC-804

Part 1

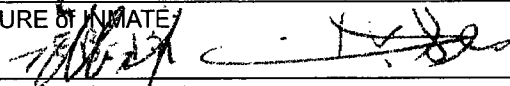
COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF CORRECTIONS  
P.O. BOX 598  
CAMP HILL, PA 17001-0598

FOR OFFICIAL USE ONLY

77662

GRIEVANCE NUMBER

## OFFICIAL INMATE GRIEVANCE

TO: FACILITY GRIEVANCE COORDINATOR <b>Ms. Chencharick and Sup. Patrick</b>	FACILITY: <b>Houtzdale</b>	DATE: <b>2-29-04</b>
FROM: (INMATE NAME & NUMBER) <b>Hassan Idbarrh DV-0578</b>	SIGNATURE OF INMATE: 	
WORK ASSIGNMENT: <b>PM. Cook</b>	HOUSING ASSIGNMENT: <b>EB-13</b>	

INSTRUCTIONS:

1. Refer to the DC-ADM 804 for procedures on the inmate grievance system.
2. State your grievance in Block A in a brief and understandable manner.
3. List in Block B any actions you may have taken to resolve this matter. Be sure to include the identity of staff members you have contacted.

A. Provide a brief, clear statement of your grievance. Additional paper may be used, maximum two pages.

PG. 1) On 1-24-04 I fell in the kitchen. I was taken to medical the same day 1-24-04. I was seen by a nurse named Mike Armstrong (who is not a doctor) and has no right to make any medical assessments. (He is not a doctor) A doctor is the only person who can give final say as to what prognosis and treatment is deemed necessary.

This is an appeal Grievance on Grievance number 74812. The response I received after filing Grievance 74812 was not professional. I wrote to the superintendent and still no help. A 150,000 dollar suit is being filed against this medical staff and department another 150,000 dollar suit is being filed against this kitchen and staff of this kitchen in addition to a 200,000 dollar suit against the Institution of Houtzdale for it's failure to adequately fulfill the proper procedure in medical Dept. kitchen and officials in charge of S.C.I. Houtzdale

(Also see attached paper work) PG 1 of 3

B. List actions taken and staff you have contacted, before submitting this grievance.

Your grievance has been received and will be processed in accordance with DC-ADM 804.

Signature of Facility Grievance Coordinator

Date

DC-804  
Part 1COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF CORRECTIONS  
P.O. BOX 598  
CAMP HILL, PA 17001-0598

FOR OFFICIAL USE ONLY

77662  
GRIEVANCE NUMBER

## OFFICIAL INMATE GRIEVANCE

TO: FACILITY GRIEVANCE COORDINATOR Ms. Chencharick and Sup Patrick	FACILITY: S.C.I Houtzdale	DATE: 2-29-04
FROM: (INMATE NAME & NUMBER) Hassan Id barch DV-0578	SIGNATURE OF INMATE: <i>[Signature]</i>	
WORK ASSIGNMENT: PM. Kitchen	HOUSING ASSIGNMENT: EB-13	
<p>INSTRUCTIONS:</p> <ol style="list-style-type: none"> <li>1. Refer to the DC-ADM 804 for procedures on the inmate grievance system.</li> <li>2. State your grievance in Block A in a brief and understandable manner.</li> <li>3. List in Block B any actions you may have taken to resolve this matter. Be sure to include the identity of staff members you have contacted.</li> </ol> <p>A. Provide a brief, clear statement of your grievance. Additional paper may be used, maximum two pages.</p> <p>PG. 2) (Part of appeal) Grievance number 74812</p> <p>The following staff are named in the law suit against the medical dept. Mike Armstrong (nurse) Dr. Hollander Leah Dinre (nurse) Norene P. Greenleaf (CHCA) Ms. Greenleaf also answered the Grievance number 74812 (Ms. Greenleaf is not a grievance coordinator)</p> <p>The following are named in this suit against the kitchen and staff. Mr. Sharp (Kitchen head supervisor) Mr. Thompson (supervisor) Mr. Wieszman (Instructor)</p> <p>The following are named in this suit against S.C.I Houtzdale Superintendent George N. Patrick, Deputy Tatum, Deputy Thomas, Major Cameron, Ms. Chencharick, Ms Greenleaf.</p> <p>(Also see attached paper work) PG. 2 of 3</p> <p>B. List actions taken and staff you have contacted, before submitting this grievance.</p>		

Your grievance has been received and will be processed in accordance with DC-ADM 804.

Signature of Facility Grievance Coordinator

Date

DC-804  
Part 1COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF CORRECTIONS  
P.O. BOX 598  
CAMP HILL, PA 17001-0598

FOR OFFICIAL USE ONLY

77662  
GRIEVANCE NUMBER

## OFFICIAL INMATE GRIEVANCE

TO: FACILITY GRIEVANCE COORDINATOR MS. Chencharick and Dep. Patrick	FACILITY: S.C.I. Houtzdale	DATE: 2-29-04
FROM: (INMATE NAME & NUMBER) Hassan Idbarh DV-0578	SIGNATURE OF INMATE: <i>[Signature]</i>	
WORK ASSIGNMENT: PM. Kitchen	HOUSING ASSIGNMENT: EB-13	

## INSTRUCTIONS:

1. Refer to the DC-ADM 804 for procedures on the inmate grievance system.
2. State your grievance in Block A in a brief and understandable manner.
3. List in Block B any actions you may have taken to resolve this matter. Be sure to include the identity of staff members you have contacted.

A. Provide a brief, clear statement of your grievance. Additional paper may be used, maximum two pages.

PG-3 (Part of appeal Grievance number 74812)

Reason For medical and Staff. Not being sent to doctor, being assessed by a nurse or medical staff, not a licensed as a doctor, failure to do any follow up and not given proper medical treatment until issue was pushed.

Reason For Kitchen and Staff. Failure to have signs in place to warn inmates (people) to the hazardous floor conditions, failure of staff to adequately maintain a safe working environment for kitchen workers, failure on the head supervisor to make sure kitchen supervisor and kitchen instructor are taking all steps to provide a safe working area for everyone at all times, failure to provide proper shoes for hazardous areas.

Reason for Institution of Houtzdale and superiors. Each and every dept. and person in these suites are under the office of the superintendent and his staff, and because of the inadequacy of your medical and kitchen staffs of S.C.I. Houtzdale, and the Superintendent staff of S.C.I. Houtzdale (overseers) of the Institution you and they are just as much responsible for my falling and the poor medical treatment received. (Also see attached paper work) PG 3 of 3

B. List actions taken and staff you have contacted, before submitting this grievance.

Your grievance has been received and will be processed in accordance with DC-ADM 804.

\_\_\_\_\_  
Signature of Facility Grievance Coordinator

\_\_\_\_\_  
Date

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

HASSAN IDBARH,

Plaintiff,

vs.

PENNSYLVANIA DEPARTMENT OF  
CORRECTIONS, MIKE FISHER, OR  
ACTING ATTY. GEN., GEORGE  
PATRICK, SCI HOU.  
SUPERINTENDENT, HENRY TATUM,  
SCI HOU. SUPERINTENDENT, JOHN  
THOMAS, DEPUTY SUPERINTENDENT,  
KENNETH CAMERON, MAJOR OF THE  
GUARD,

Defendants.

CIVIL ACTION - LAW

No. 04-670 CD

**PRAECIPE FOR APPEARANCE**

Filed on behalf of Defendants:

Pennsylvania Department of  
Corrections, Mike Fisher, or  
Acting Atty. Gen., George  
Patrick, SCI Hou.  
Superintendent, Henry Tatum,  
SCI Hou. Superintendent, John  
Thomas, Deputy Superintendent,  
Kenneth Cameron, Major of the  
Guard

Counsel of Record for This  
Party:

Joseph F. McCarthy, III  
Deputy Attorney General  
Pa. I.D. #80328

Commonwealth of Pennsylvania  
Office of Attorney General  
Tort Litigation Unit  
Manor Complex  
564 Forbes Avenue  
Pittsburgh, PA 15219

**FILED**

**JUN 14 2004**

William A. Shaw  
Prothonotary/Clerk of Courts

PRAECIPE FOR APPEARANCE

TO THE PROTHONOTARY:

Please enter my appearance in the above-referenced case on behalf of the Defendants, Pennsylvania Department of Corrections, Mike Fisher, or Acting Atty. Gen., George Patrick, SCI Hou. Superintendent, Henry Tatum, SCI Hou. Superintendent, John Thomas, Deputy Superintendent, Kenneth Cameron, Major of the Guard. The Defendants, Pennsylvania Department of Corrections, Mike Fisher, or Acting Atty. Gen., George Patrick, SCI Hou. Superintendent, Henry Tatum, SCI Hou. Superintendent, John Thomas, Deputy Superintendent, Kenneth Cameron, Major of the Guard, hereby demand a trial by a jury of twelve.

Respectfully Submitted,

GERALD J. PAPPERT  
Acting Attorney General

BY: Joseph F. McCarthy III  
JOSEPH F. McCarthy, III  
Deputy Attorney General

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Praecipe for Appearance was served upon the following counsel of record, via first-class mail, postage pre-paid on June 8, 2004:

Hassan Idbarh, DV0578  
SCI Houtzdale  
P. O. Box 1000  
Houtzdale, PA 16698-1000

Respectfully Submitted,

GERALD J. PAPPERT  
Acting Attorney General

BY:

Joseph F. McCarthy III

JOSEPH F. McCarthy, III  
Deputy Attorney General

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

HASSAN IDBARH,

Plaintiff,

vs.

CIVIL ACTION - LAW

No. 04-670 CD

PENNSYLVANIA DEPARTMENT OF  
CORRECTIONS, MIKE FISHER, OR  
ACTING ATTY. GEN., GEORGE  
PATRICK, SCI HOU.  
SUPERINTENDENT, HENRY TATUM,  
SCI HOU. SUPERINTENDENT, JOHN  
THOMAS, DEPUTY SUPERINTENDENT,  
KENNETH CAMERON, MAJOR OF THE  
GUARD,

Defendants.

**PRELIMINARY OBJECTIONS**

Filed on behalf of Defendants:

Pennsylvania Department of  
Corrections, Mike Fisher, or  
Acting Atty. Gen., George  
Patrick, SCI Hou.  
Superintendent, Henry Tatum,  
SCI Hou. Superintendent, John  
Thomas, Deputy Superintendent,  
Kenneth Cameron, Major of the  
Guard

Counsel of Record for This  
Party:

Joseph F. McCarthy, III  
Deputy Attorney General  
Pa. I.D. #80328

Commonwealth of Pennsylvania  
Office of Attorney General  
Tort Litigation Unit  
Manor Complex  
564 Forbes Avenue  
Pittsburgh, PA 15219

**You are hereby notified to plead to the  
within pleading within twenty (20) days  
hereof or a default judgement may be  
entered against you.**

*Joseph F. McCarthy III*  
Attorney for Defendants

**FILED**

JUN 28 2004 *Fun*

*m/1:30/1*  
**William A. Shaw**  
**Prothonotary**

*no c/l*



### PRELIMINARY OBJECTIONS

AND NOW, come the Defendants, Pennsylvania Department of Corrections, Mike Fisher, or Acting Atty. Gen.; George Patrick, SCI Hou. Superintendent; Henry Tatum, SCI Hou. Superintendent; John Thomas, Deputy Superintendent; Kenneth Cameron, Major of the Guard; by the Attorney General of the Commonwealth of Pennsylvania, and file the within Preliminary Objections, averring in support thereof, as follows:

1. Plaintiff, Hassan Idbarh, filed a Complaint for a slip and fall personal injury action and a medical malpractice action which occurred on January 24, 2004 while Plaintiff was an inmate at SCI Houtzdale located in Clearfield County, Pennsylvania.

2. Plaintiff alleges that he slipped and fell on a wet floor in the kitchen/"culinary facility" of the prison and as a result of this fall incurred personal injuries.

3. Plaintiff also alleges a medical malpractice action for improper medical treatment as a result of said fall.

4. Plaintiff has brought suit against Defendants, Pennsylvania Department of Corrections, Mike Fisher, or Acting Atty. Gen.; George Patrick, SCI Hou. Superintendent; Henry Tatum, SCI Hou. Superintendent; John Thomas, Deputy Superintendent; and Kenneth Cameron, Major of the Guard.

5. Mike Fisher as Attorney General and Gerald Pappert as Acting Attorney General are public officials whom the Supreme

Court has held are protected by qualified immunity. DuBree v. Commonwealth, 393 A.2d 293 (Pa. 1978) and, as such, suit against them is barred by official immunity.

6. The Pennsylvania Supreme Court has held that:

Sovereign immunity is not waived for individuals who form policy on behalf of the Commonwealth institutions and who are not directly involved in the injury to plaintiff. Moser v. Heinstand, 681 A.2d 1322 (Pa. 1966).


7. Similarly, Superintendents, George Patrick, Henry Tatum, Deputy Superintendent John Thomas, and Major of the Guard Kenneth Cameron, are all employed in positions which formulate policy on behalf of SCI Houtzdale and, as such, based on Moser must be dismissed from the case, because they had no direct involvement in plaintiff's alleged injury.

WHEREFORE, the Commonwealth Defendants respectfully request this Honorable Court grant Defendants' Preliminary Objections and strike from the caption of Plaintiff's Complaint the following Defendants: Mike Fisher or Acting Attorney General; Superintendents, George Patrick and Henry Tatum; Deputy Superintendent John Thomas; and Major of the Guard Kenneth Cameron.

Respectfully Submitted,

GERALD J. PAPPERT  
Attorney General

BY:

  
JOSEPH F. McCarthy III  
Deputy Attorney General

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
HASSAN IDBARH, CIVIL ACTION - LAW  
Plaintiff, No. 04-670 CD  
vs.

PENNSYLVANIA DEPARTMENT OF  
CORRECTIONS, MIKE FISHER,  
OR ACTING ATTY. GEN.,  
GEORGE PATRICK, SCI HOU.  
SUPERINTENDENT, HENRY TATUM,  
SCI HOU. SUPERINTENDENT,  
JOHN THOMAS, DEPUTY  
SUPERINTENDENT, KENNETH  
CAMERON, MAJOR OF THE GUARD,

Defendants.

ORDER OF COURT

AND NOW, to-wit, this \_\_\_\_\_ day of \_\_\_\_\_, 2004,  
it is HEREBY ORDERED ADJUDGED AND DECREED that Defendants'  
Preliminary Objections are granted and the caption of Plaintiff's  
Complaint is amended to delete the following Defendants: Mike  
Fisher or Acting Attorney General; Superintendents, George  
Patrick and Henry Tatum; Deputy Superintendent John Thomas; and  
Major of the Guard Kenneth Cameron. In addition, the  
Commonwealth Defendants request Plaintiff comply with  
Pennsylvania Rule of Civil Procedure 1042.3 and file a  
Certificate of Merit.

BY THE COURT:

\_\_\_\_\_  
J.

CERTIFICATE OF SERVICE

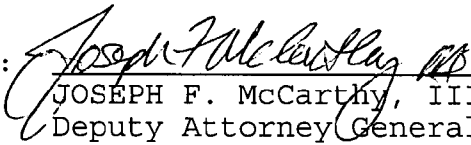
I hereby certify that a true and correct copy of the foregoing Preliminary Objections was served upon the following counsel of record, via first-class mail, postage pre-paid on June 24, 2004:

Hassan Idbarh, DV0578  
SCI Houtzdale  
P. O. Box 1000  
Houtzdale, PA 16698-1000

Respectfully Submitted,

GERALD J. PAPPERT  
Acting Attorney General

BY:

  
JOSEPH F. McCarthy, III  
Deputy Attorney General

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

HASSAN IDBARH :  
VS. : NO. 04-670-CD  
PENNSYLVANIA DEPARTMENT OF :  
CORRECTIONS, MIKE FISHER OR :  
ACTING ATTORNEY GENERAL, GEORGE :  
PATRICK, SCI - HOUTZDALE :  
SUPERINTENDENT, HENRY TATUM, :  
SCI - HOUTZDALE SUPERINTENDENT, :  
JOHN THOMAS, DEPUTY :  
SUPERINTENDENT, KENNETH CAMERON, :  
MAJOR OF THE GUARD :

FILED

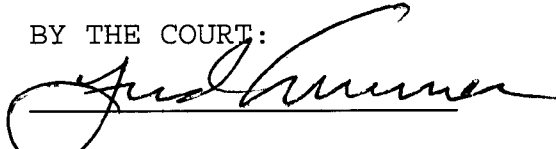
JUL 14 2004

William A. Shaw  
Prothonotary/Clerk of Courts

O R D E R

NOW, this 12th day of July, 2004, in consideration of the Preliminary Objections filed on June 28, 2004, on behalf of the below-listed Defendants, it is the ORDER of this Court that the Preliminary Objections be and are hereby granted. The caption of Plaintiff's complaint is amended to delete the following Defendants who are hereby dismissed from the action: Mike Fisher or Acting Attorney General; Superintendent George Patrick and Henry Tatum; Deputy Superintendent John Thomas; and Major of the Guard Kenneth Cameron. In addition, Plaintiff shall comply with Pennsylvania Rule of Civil Procedure 1042.3 and file a certificate of merit within no more than thirty (30) days from this date.

BY THE COURT:

  
President Judge

No action on This  
"Response" needs to be  
taken. put in file  
and sent file  
downstairs. F

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

HASSAN IDBARH,

Plaintiff,

vs.

CIVIL ACTION AT LAW

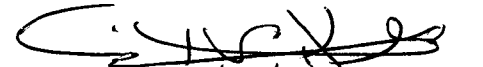
No. 04-670 CD

PENNSYLVANIA DEPARTMENT OF  
CORRECTIONS, MIKE FISHER, OR  
ACTING ATTY. GEN., GEORGE  
PATRICK, SCI HOU.  
SUPERINTENDENT, et al.

Defendants.

RESPONSE TO PRELIMINARY OBJECTION

YOU ARE HEREBY NOTIFIED TO PLEAD TO THE  
within pleading within twenty (20) days  
hereof or a default judgement may be  
entered against you.

  
Plaintiff Pro se for him-self

Filed on behalf of Plaintiff:

Hassan Idbarh, DV0578, Inmate  
SCI Hou., P.O. Box 1000  
Houtzdale, PA 16698-1000

Counsel of Record for This  
party:

Hassan Idbarh, Pro se, Litigant  
DV0578, P.O. Box 1000  
Houtzdale, PA 16698-1000

FILED

AUG 11 2004

m/l:30/a  
William A. Shaw

Prothonotary/Clerk of Courts

SENT TO COURT  
P. 11/11

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

HASSAN IDBARE,

CIVIL ACTION AT LAW

Plaintiff,

No. 04-670 CD

vs.

PENNSYLVANIA DEPARTMENT OF  
CORRECTIONS, MIKE FISHER,  
OR ACTING ATTY. GEN.,  
GEORGE PATRICK, SCI HOU.,  
SUPERINTENDENT: et al  
Defendants.

ORDER

AND NOW, This \_\_\_\_\_ day of \_\_\_\_\_, 2004,  
it is HEREBY ORDERED ADJUDGED AND DECREED THAT DEFENDANTS"  
Preliminary Objections are over ruled and grant Plaintiff default  
as a matter of law. As Defendant has not raised a defense to  
Plaintiff Complaint in the timely manner according Pa.R.C.P.  
1018.1 and Pa.R.C.P. Rule 1028(a)(2)(3)(4), and has not Complied  
to Pa.R.C.P. 1029 (a)(b)(c), (e)(1)(2)(3), Effect of Failure  
to Deny, as a matter of law Defendants has admitted that injury  
did occur. And as law, this Court grant default Judgement or  
in the alterative **Summary Judgement** , as Commonwealth Parties  
can not raise the defense of sovereign immunity, pursuant to  
42 Pa.C.S. § 8522(b)(4). Commonwealth local agencies are liable  
Pursuant to: Exceptions to Sovereign Immunity 42 Pa.C.S. §§  
8542 (b)(3)(4)(7), IT IS SO ORDERED.

BY THE COURT:

\_\_\_\_\_  
J.



## RESPONSE TO PRELIMINARY OBJECTIONS

AND NOW, Come the Plaintiff Hassan Idbarh, Inmate at SCI in Response to the Preliminary Objections of Pennsylvania Department of Corrections, Mike Fisher, Acting Atty. Gen.,; George Patrick, SCI Hou., Superintendent; Henry Tatum, SCI Houtzdale Superintendent; John Thomas, Deputy Superintendent; Kenneth Cameron, Major of the Guard: By Plaintiff an inmate at SCI Houtzdale and file the within Response To Preliminary Objections, and Answer in the Affirmative or in the Negative in-whole or inpart to each averment in support thereof, as following:

1. Plaintiff, Answer inpart Affirmative and inpart Negative to ¶ One (1) of Defendants averment:

(a). Plaintiff, answer in the Affirmative: That he Filed a Complaint for a slip and fall which was work related as Plaintiff was on work assignment in the culinary Food Service area preparing meals for SCI Houtzdale inmates.

(b). Plaintiff answer in the Negative: That he has filed a medical malpractice suit and that all issues raised to this injury and the facts pursuant to the medical service Department was to verify that the injury did occur.

(c). Plaintiff, answer in the Affirmative: That while he was was working assigned work detail in the Food Service area, Culinary area he slipped on a non-slip surface Culinary floor where soda and food particials had accumulated on the food service area Culinary floor which should have a non-slip surface for its intended use, January 24, 2004.

2. Plaintiff, answer inpart Affirmative and inpart Negative to ¶ Two (2), of Defendants averment:

(a). Plaintiff, answer in the Affirmative: That he fell on Food Service, Culinary area Floor, which is defective in its design and contruction and has been constructed without non-slip properties and is a fore-seeable dangerous condition for which it was intended to be used for and because of the negligents and imporper design and construction by Official Prison **Authorities** political and **Official** "proprietary", negligence in the design and construction a defective non-slip surface floor has caused Plaintiff injuries sustained.

## RESPONSE TO PRELIMINARY OBJECTIONS

(b). Plaintiff answer in the Negative: That it was a wet floor that cause Plaintiff fall. But negligents of Culinary Food Service Floor design and construction a defect in not having a non-slip surface.

3. Plaintiff answer inpart Affirmative and inpart Negative to ¶ Three (3), of Defendants AVERMENT:

(a). Plaintiff answer in the Affirmative: That SCI Hou., Medical Department treated Plaintiff injuries in the instance they were sustained and did not do a proper evaluation by exray of his injuries but this information was only to verify that injury occurred on real property owned and controlled by and managed by Pennsylvania Department of Corrections and its Prison Officials are the proprietary for design construction care and maintenance of real property.

(b). Plaintiff answer inpart Negative: That he raised a medical malpractice action for improper treatment as a result of said fall. And have not raised a claim under 42 Pa.C.S.A. § 8522(b)(2). Se[e] Complaint.

4. Plaintiff answer inpart Affirmative and inpart Negative to ¶ Four (4), of Defendants averment:

(a). Plaintiff answer inpart Affirmative: That he brought suit against Defendants, of Pennsylvania Department of Corrections, et al., as proprietaries/of Real Porperty at SCI Houtzdale.

(b). Plaintiff answer inpart Negative: That Commonwealth Parties have sovereign immunity from suit action., as Officials of Pennsylvania Department of Corrections.

5. Plaintiff answer inpart Affirmative and inpart Negative to ¶ Five (5), Of Defendants averment:

(a). Plaintiff answer in the Affirmative: That Mike Fisher as Attorney General or Paperty as Acting Attorney General whom are Public Prison Officials who appropriates prisons and approve the design and construction of all prisons in the Commonwealth of Pennsylvania owned by the Department of Corrections. Are liable for real property, real estate owned by the Department of Corrections as Officials incharge of design and Construction of and care and maintentance of Pennsylvania real property in their possession and control.

(b). Plaintiff answer in the Negative to ¶¶ Six (6) and Seven (7), to any of the Commonwealth Officials have Sovereign Immunity granted by Supreme Court in DuBree v. Commonwealth, 393 A.2d 293(Pa.1978), and that the Supreme Court in the same year (1978) deciede two cases Ayale and Mayle, both Supreme decisions. In Mayle v. Pennsylvania Department of Highways, 388 A.2c 709, sovereign immunity was abolished. **Pa. S. Const.** Art. 1, § 11. Also Opinion of **the Court** by Justice Roberts, at 388 A.2c 709-10-11-12-13-14-15-16-17-18-19-20, the Court held that Article I, section 11 of the Pa.Const. does not preclude their Court from abrogating the doctrine of sovereign immunity. Thus DuBree supra. Is in Compliance with Ayale and Mayle, cited supra. 42 Pa.C.S.A. §§ 8542 and 8522, superceded doctrine of sovereingn immunity as discribed in 42 Pa.C.S.A. § 8542(b)and

### RESPONSE TO PRELIMINARY OBJECTIONS

8522(b). For Acts which may impose liability on a local Agency or its employees.

6. As a result of these Supreme Court's decisions in these two cases:

Both the Commonwealth and local agencies were subject to liability by the decisions in these two cases, both the Commonwealth and local agencies were subject to the common law doctrines of liability from which their immunity had previously shielded them. This is what DuBree verifies and the Dissenting Opinion is nothing more than a suggestion or conclusion of law not binding on any Court as well as this Honorable Court. At common law there is two type of liability which could be imposed. The first, primary liability is imposed on a party who is directly negligent. Se[e] Vattimo v. Lower Buck Hospital, Inc., 464 A.2d 1231 (1983). Primary liability flow from the duty imposed on a individual or entity who owns or controls property. An example is the duty imposed upon a property owner to keep the sidewalk in front of his property in good repair. As in this Complaint the Commonwealth has a duty to design and construct a floor with the proper properties to make it safe for its intended use.

Se[e] Bradley v. Franklin County Prison, 674 A.2d at [7-8], 366-7, Plaintiff asserted or claimed liability may be imposed where Plaintiff plead and proves that a substance on Government Real Property was the cause by improper design and construction, deterioration or inherent defect of real property itself.

Se[e] Singer v. School District of Phila., 513 A.2d 1108 and Pa.R.C.P. Rule 1035.2 (1)(2), pursuant to Exhibits presented that injury occurred. Defendants have not disputed the material facts and have not raised a defense according Pa.r.c.p. 1037 (a)(b) according Bradley v. Franklin County Prison, 674 A.2d at 366-7..

**Plaintiff** has raised and alleged inter alia, that Defendants were negligent in failing to install or allowing to exist a tile floor which is intended to be used for, such intended use as designed to be used the Culinary floor at SCI Hou., present dangerous condition and is improperly designed for its intended purpose. Conversely, the secondary liability rest upon a defendant is imputed or constructive only, being based on some legal relationship between the parties, or arising from **positive** rule of common or statutory law or because of a failure to discover or correct a defect or remedy a dangerous condition caused by the act of one primarily responsible. Builders Supply V. McCabe, 77 A.2d 363, 371 (1951).

### RESPONSE TO PRELIMINARY OBJECTIONS

Commonwealth Parties the "Defendants" have not given a Response Pleading according Pa.R.C.P. 1029 (a)(b)(d) and PLEAD Sovereign Immunity according 42 Pa.C.S.A. § 8522(b)(2) which has not been Plead by Plaintiff as a Exception to Sovereign Immunity. Therefore Commonwealth Defendants has not given a defense. Se[e] Monongahela Navigation Co. v. Coons, 6 Watts § 101 (Pa. 1843). Conversely the immunity of a local agency was never absolute; rather, liability existed (a) for failure to maintain roads, bridges, and sidewalks; (b) in action based upon improper management and use of Municipal Property: in cases in which the local agency function was determined to be "proprietary" as distinguished from "governmental." Se[e] Marshall v. Port Authority of Allegheny County, 585 A.2d 931, 937 (1990) (Papadako J. Dissenting); Plaintiff move this Honorable Court for Default Judgement because Defendants has not Plead a defense and have had an extension of time of over 85 (85) days, see foot N.3, Sherman v. City of Philadelphia, 745 A.2d 95 (pa Comwelth 2000). In the alternative Summary Judgement; Shield v. Pittsburgh School District 408 Pa. 388. If the local agency was engaged in proprietary functions, then is liability was not different than that of a private citizen. See Hanaman v. v. city of Philadelphia, 322 Pa. 535 (1936). Se[e] Singer supra. The present Action as in Singer provide that the area where food is prepared for inmates was a necessary and inextricable part of design and prison Officials Constructed SCI Hou., Food Service, area knowing and intending that substances would necessarily accumulate on the culinary floor where shoes would and workers would have to treated as a kitchen. worker assigned to culinary duty, worker has to prepare and carry food and utensils to culinate the food in treated area. As such Plaintiff case is analogous to Singer in that Food Service culinary area floor, must have tile floor with a non-slip properties in order to be safe from slip and falls,. Just as a school gymnasium floor must have sufficient matting protection, Id. at Bradley v. Franklin County Prison, 764 A.2d 363, at 367, in order to be safe for its intended, specific use, i.e. gymnastic activities of its students. Se[e] Plaintiff Complaint at Pleading ¶¶ One (1), Two (2), Three (3), Four (4), and Five (5), and also the Facts at ¶ One (1).

Wherefore, Plaintiff, request respectfully that this Honorable Court reverse its Order for certificate of Merit Statement for Malpractice claim which has not been raised anywhere in Complaint and reverse dismissal of Defendants from this Captioned Action, as Commonwealth Parties. Plaintiff also request this Honorable Court to grant Default Judgement as a matter of law because Defendants has not raised a defense after over 80 days and in the alternative Summary Judgement as a matter of law as defendants has admitted that injury did occur on real property of SCI Hou.,...

Respectfully submitted,

  
\_\_\_\_\_

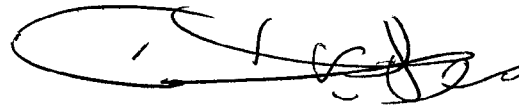
EXHIBIT-S ATTACHED

EXHIBIT C.A. NO: 04-670 CD (F)  
COMMONWEALTH OF PENNSYLVANIA  
OFFICE OF ATTORNEY GENERAL  
JUNE 8, 2004  
REQUEST FOR EXTENTION OF TIME TO FILE PLEADING  
BY: COUNSEL, JOSEPH F. MCCARTHY, III  
DEPUTY ATTONEY GENERAL

EXHIBIT C.A. NO: 04-670 CD (G)  
COMMONWEALTH OF PEENNSYLVANIA  
DEPARTMENT OF CORRECTIONS  
2520 LISBURN ROAD, P.O. BOX 598  
JULY 12, 2004  
THE SECRETARY'S OFFICE OF  
INMATE GRIEVANCE AND APPEALS  
RE: DC ADM 804-FINAL REVIEW  
GRIEVANCE No. 74812

EXHIBITS C.A. NO: 04-670 CD (H)  
ORDER OF THE COURT  
JULY 14, 2004  
BY: /S/ JUDGE, FREDRIC J. AMMERMAN

Date: 07/28, 2004



---

Hassan Idbarh, DV-0578  
SCI Hou., P.O. Box 1000  
Houtzdale, PA 16698-1000

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing response to Preliminary Objections was served upon the following counsel of record, via first-class mail, postage pre-paid on 07/28, 2004:

Joseph F. McCarthy, III  
Deputy Attorney General  
PAA. ID. #80328

Commonwealth of Pennsylvania  
Office of Attorney General  
Tort Litigation Unit  
Manor Complex  
Pittsburg, PA 15219

William Shaw, Prothonotary  
Office of the Prothonotary  
Courthouse; 230 E. Market St.  
Clearfield, PA 16830

Respectfully Submitted,

Nassen Iqbalh, DV0573  
Inmate SCI Hou., P.O. Box  
-1000, Mountdale PA 16830-1000

By: 

Nassen Iqbalh, DV0573



COMMONWEALTH OF PENNSYLVANIA  
OFFICE OF ATTORNEY GENERAL

June 8, 2004

Gerald J. Pappert  
Attorney General

Tort Litigation Unit  
Manor Complex  
564 Forbes Avenue  
Pittsburgh, PA 15219

Hassan Idbarh, DV0578  
SCI Houtzdale  
P. O. Box 1000  
Houtzdale, PA 16698-1000

Re: Idbarh v. Corrections, et. al.  
No. 04-670 CD/Clearfield

Dear Mr. Idbarh:

The above-captioned case has been assigned to me for handling.

Due to the delay occasioned by the necessity of forwarding pleadings to the appropriate persons, I am herewith requesting a reasonable extension of time in which to answer or otherwise plead on behalf of Defendants, Pennsylvania Department of Corrections, Mike Fisher, or Acting Atty. Gen., George Patrick, SCI Hou. Superintendent, Henry Tatum, SCI Hou. Superintendent, John Thomas, Deputy Superintendent, Kenneth Cameron, Major of the Guard to the Complaint filed by you. Unless I hear from you to the contrary, I will assume that you are agreeable to this.

Your cooperation in this regard is appreciated.

Very truly yours,

*Joseph F. McCarthy III*

Joseph F. McCarthy, III  
Deputy Attorney General

JFM/ck

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF CORRECTIONS  
2520 LISBURN ROAD, P.O. BOX 598  
CAMP HILL, PA 17001-0598

THE SECRETARY'S OFFICE OF  
INMATE GRIEVANCES AND APPEALS

July 12, 2004

Hassan Idbarh, DV-0578  
SCI Houtzdale

Re: DC-ADM 804 - Final Review  
Grievance No. 74812

Dear Mr. Idbarh:

This is to acknowledge receipt of your appeal to final review of the above numbered grievance.

In accordance with the provisions of DC-ADM 804, effective May 1, 2002, I have reviewed the entire record of this grievance; including your initial grievance, the grievance officer's response, your appeal from initial review and the superintendent's response. I have also carefully reviewed the issues you raise to final review with the Bureau of Health Care Services.

Upon completion of this review, it is the decision of this office to uphold the responses provided by staff at the institutional level. On April 23, 2004, this office notified you that final review would be delayed pending legal review of the issues you raised by the Office of Chief Counsel. In that letter, we also advised you that upon completion of the review by the Office of Chief Counsel, we would complete final review of your grievance and provide you with a written response. During the course of their review, the Office of Chief Counsel discovered that you have already filed a suit regarding this matter and has decided to let the courts rule in this matter. In the future, it would behoove you to follow the directions provided to you by our office and wait for our response before you take any further action.

Sincerely,



Sharon M. Burks  
Chief Grievance Officer

SMB/ms

cc: Superintendent Patrick  
DC-15

Grievance Office  
Central File



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

HASSAN IDBARH :  
VS. : NO. 04-670-CD  
PENNSYLVANIA DEPARTMENT OF :  
CORRECTIONS, MIKE FISHER OR :  
ACTING ATTORNEY GENERAL, GEORGE :  
PATRICK, SCI - HOUTZDALE :  
SUPERINTENDENT, HENRY TATUM, :  
SCI - HOUTZDALE SUPERINTENDENT, :  
JOHN THOMAS, DEPUTY :  
SUPERINTENDENT, KENNETH CAMERON, :  
MAJOR OF THE GUARD :

I hereby certify this to be a true  
and attested copy of the original  
statement filed in this case.

JUL 14 2004

Attest.

*William A. Shaw*  
Prothonotary/  
Clerk of Courts

O R D E R

NOW, this 12th day of July, 2004, in consideration of the Preliminary Objections filed on June 28, 2004, on behalf of the below-listed Defendants, it is the ORDER of this Court that the Preliminary Objections be and are hereby granted. The caption of Plaintiff's complaint is amended to delete the following Defendants who are hereby dismissed from the action: Mike Fisher or Acting Attorney General; Superintendent George Patrick and Henry Tatum; Deputy Superintendent John Thomas; and Major of the Guard Kenneth Cameron. In addition, Plaintiff shall comply with Pennsylvania Rule of Civil Procedure 1042.3 and file a certificate of merit within no more than thirty (30) days from this date.

BY THE COURT:  
/s/ Fredric J. Ammerman

\_\_\_\_\_  
President Judge

# EXHIBIT-C.A. NO: 04-670 CD-(I)

Form DC-135A

## INMATE'S REQUEST TO STAFF MEMBER

Commonwealth of Pennsylvania  
Department of Corrections

### INSTRUCTIONS

Complete items number 1-8. If you follow instructions in preparing your request, it can be responded to more promptly and intelligently.

1. To: (Name and Title of Officer)

Mr. Garman / EB Unit Manager

2. Date:

8/2/04

REC'D  
8/4/04  
CF

3. By: (Print Inmate Name and Number)

Hassan Idbarh DV0578

4. Counselor's Name

Mr. Rice

5. Unit Manager's Name

Mr. Garman

6. Work Assignment

P.M. Kitchen  
Medical Leave / COOK

7. Housing Assignment

EB # 02 cell.

8. Subject: State your request completely but briefly. Give details.

In reference to a Court Order granted on July 14, 2004

I am requesting Approval to be Examined by a Private Chiropractor and would require transportation to and From appointment when Scheduled.

- The Library does not Supply inmates with a telephone Book any longer. IF I had use of a phone Book, I could

Schedule an appt.- Can Houtzdale Kindly Arrange For this Chiropractor, in compliance with the Court order, and in Reference to Rule of Civil Procedure: 104.2 / cc: Superintendent Counselor Rice-

(Thank you)

9. Response: (This Section for Staff Response Only)

DV0578 IDBARK,

I DO NOT READ WHERE I AM DIRECTED BY THE COURT TO SCHEDULE YOU FOR A PRIVATE CHIROPRACTIC APPOINTMENT; HOWEVER, I WILL FORWARD YOUR REQUEST TO THE SUPERINTENDENT'S ASSISTANT AND THE HEALTH CARE ADMINISTRATOR FOR THEIR REVIEW.

CC: Ms. CHENCHARICK  
Ms. GREENLEAF

To DC-14 CAR only ☐

To DC-14 CAR and DC-15 IRS ☐

Staff Member Name

C. GARMAN, um  
Print

Sign

Date

8/4/04

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

HASSAN IDBARH,

Plaintiff,

vs.

PENNSYLVANIA DEPARTMENT OF  
CORRECTIONS,

Defendant.

CIVIL ACTION - LAW

No. 04-670 CD

**MOTION FOR NON PROS**

Filed on behalf of Defendant:

Pennsylvania Department of  
Corrections

Counsel of Record for This  
Party:

Joseph F. McCarthy, III  
Deputy Attorney General  
Pa. I.D. #80328

Commonwealth of Pennsylvania  
Office of Attorney General  
Tort Litigation Unit  
Manor Complex  
564 Forbes Avenue  
Pittsburgh, PA 15219

**FILED** *No CC*

*m/3:58/61*  
**AUG 25 2004**

*WAS*  
William A. Shaw  
Prothonotary/Clerk of Courts

**MOTION FOR NON PROS**

AND NOW, comes the Defendant, Pennsylvania Department of Corrections, by the Attorney General of the Commonwealth of Pennsylvania, and files the within Motion for Non Pros, averring in support thereof, as follows:

1. Pro se Plaintiff, Hassan Idbarh, filed a Complaint for a slip and fall personal injury action and a medical malpractice action which occurred on January 24, 2004, while Plaintiff was an inmate at SCI-Houtzdale located in Clearfield County, Pennsylvania.

2. On June 24, 2004 the Commonwealth Defendants filed Preliminary Objections requesting that Plaintiff file a Certificate of Merit pursuant to Pennsylvania Rule of Civil Procedure 1042.3 with regard to Plaintiff's medical malpractice claim.

3. By Order of Court dated July 12, 2004 the Honorable Frederic J. Ammerman ordered Plaintiff to file a Certificate of Merit within thirty (30) days from the date of the Order.  
(Exhibit "A")

4. Plaintiff has failed to file a Certificate of Merit within the time set forth in said Order.

5. Accordingly, a Judgment of Non Pros is warranted pursuant to Pennsylvania Rule of Civil Procedure 1042.6.

WHEREFORE, the Commonwealth Defendant respectfully requests this Honorable Court grant its Motion for Non Pros with regard to Plaintiff's medical malpractice claim.

Respectfully Submitted,

GERALD J. PAPPERT  
Attorney General

BY:

  
JOSEPH F. McCarthy, III  
Deputy Attorney General

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

HASSAN IDBARH :  
VS. : NO. 04-670-CD  
PENNSYLVANIA DEPARTMENT OF :  
CORRECTIONS, MIKE FISHER OR :  
ACTING ATTORNEY GENERAL, GEORGE :  
PATRICK, SCI - HOUTZDALE :  
SUPERINTENDENT, HENRY TATUM, :  
SCI - HOUTZDALE SUPERINTENDENT, :  
JOHN THOMAS, DEPUTY :  
SUPERINTENDENT, KENNETH CAMERON, :  
MAJOR OF THE GUARD :

I hereby certify this to be a true  
and attested copy of the original  
statement filed in this case.

JUL 14 2004

Attest.

*William D. Blum*  
Prothonotary/  
Clerk of Courts

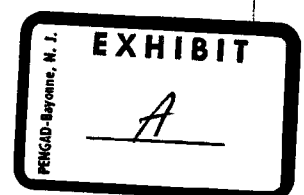
O R D E R

NOW, this 12th day of July, 2004, in consideration of the Preliminary Objections filed on June 28, 2004, on behalf of the below-listed Defendants, it is the ORDER of this Court that the Preliminary Objections be and are hereby granted. The caption of Plaintiff's complaint is amended to delete the following Defendants who are hereby dismissed from the action: Mike Fisher or Acting Attorney General; Superintendent George Patrick and Henry Tatum; Deputy Superintendent John Thomas; and Major of the Guard Kenneth Cameron. In addition, Plaintiff shall comply with Pennsylvania Rule of Civil Procedure 1042.3 and file a certificate of merit within no more than thirty (30) days from this date.

BY THE COURT:

/s/ Fredric J. Ammerman

President Judge



CERTIFICATE OF SERVICE


I hereby certify that a true and correct copy of the foregoing Motion for Non Pros Was served upon the following counsel of record, via first-class mail, postage pre-paid on August 23, 2004:

Hassan Idbarh, DV0578  
SCI Houtzdale  
P. O. Box 1000  
Houtzdale, PA 16698-1000

Respectfully Submitted,

GERALD J. PAPPERT  
Attorney General

BY:

  
JOSEPH F. McCarthy, III  
Deputy Attorney General

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

HASSAN IDBARH,

CIVIL ACTION - LAW

Plaintiff,

No. 04-670 CD

vs.

PENNSYLVANIA DEPARTMENT OF  
CORRECTIONS,

Defendant.

**ORDER OF COURT**

AND NOW, to-wit, this \_\_\_\_ day of \_\_\_\_\_, 2004,  
it is HEREBY ORDERED ADJUDGED AND DECREED that the Pennsylvania  
Department of Corrections' Motion for Non Pros with regard to  
Plaintiff's medical malpractice claim is granted and Prothonotary  
is directed to enter the non-pros as stated herein.

BY THE COURT:

---

J.



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

HASSAN IDBARH,

Plaintiff,

vs.

PENNSYLVANIA DEPARTMENT OF  
CORRECTIONS,

Defendant.

CIVIL ACTION - LAW

No. 04-670 CD

**OBJECTIONS TO PLAINTIFF'S  
RESPONSE TO PRELIMINARY  
OBJECTIONS**

Filed on behalf of Defendant:

Pennsylvania Department of  
Corrections

Counsel of Record for This  
Party:

Joseph F. McCarthy, III  
Deputy Attorney General  
Pa. I.D. #80328

Commonwealth of Pennsylvania  
Office of Attorney General  
Tort Litigation Unit  
Manor Complex  
564 Forbes Avenue  
Pittsburgh, PA 15219

**FILED** *Mo CC*  
*m/3:58*  
**AUG 25 2004**

*WAS*  
William A. Shaw  
Prothonotary/Clerk of Courts

**OBJECTIONS TO PLAINTIFF'S RESPONSE TO PRELIMINARY OBJECTIONS**

AND NOW, comes the Defendant, Pennsylvania Department of Corrections, by the Attorney General of the Commonwealth of Pennsylvania, and files the within Motion to Strike Plaintiff's Response to Preliminary Objections, averring in support thereof, as follows:

1. Pro se Plaintiff, Hassan Idbarh, filed a Complaint for a slip and fall personal injury action and a medical malpractice action which occurred on January 24, 2004, while Plaintiff was an inmate at SCI-Houtzdale located in Clearfield County, Pennsylvania.

2. Plaintiff brought suit against Defendants, Pennsylvania Department of Corrections, Mike Fisher, or Acting Atty. Gen., George Patrick, SCI Hou. Superintendent, Henry Tatum, SCI Hou. Superintendent, John Thomas, Deputy Superintendent, Kenneth Cameron, Major of the Guard.

3. On June 24, 2004 the Commonwealth Defendants filed Preliminary Objections averring Attorney General Mike Fisher and Acting Attorney General Pappert be stricken from the caption of the Complaint on the grounds of official immunity.

4. The Commonwealth Defendants also averred that Superintendent George Patrick, Superintendent Henry Tatum, Deputy Superintendent John Thomas and Major of the Guard Kenneth Cameron should be stricken from the Complaint on the grounds of administrative immunity.

5. By Order of Court dated July 12, 2004, the Honorable Fredric J. Ammerman granted the Commonwealth Defendants

Preliminary Objections. (Exhibit "A", Order of Court dated July 12, 2004)

6. On August 12, 2004, Plaintiff filed a "Response to Preliminary Objections".


7. The Commonwealth Defendant avers Plaintiff's response is untimely. If Plaintiff is opposing the Commonwealth Defendants' Preliminary Objections the time to oppose those Preliminary Objections was before the judgment granting the Preliminary Objections was entered not after judgment was entered.

8. If Plaintiff is filing an appeal (which cannot be determined from the caption of the Plaintiff's document) then pursuant to Pennsylvania Rules of Appellate Procedure Rule 311(a)(1) because the Order granting the Commonwealth Defendants' Preliminary Objections is interlocutory, Plaintiff cannot file an appeal until each claim for relief has been disposed of.

WHEREFORE, the Defendant, Pennsylvania Department of Corrections, respectfully requests this Honorable Court as described above.

Respectfully Submitted,

GERALD J. PAPPERT  
Attorney General

BY:   
JOSEPH F. McCarthy, III  
Deputy Attorney General

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

HASSAN IDBARH :  
VS. : NO. 04-670-CD  
PENNSYLVANIA DEPARTMENT OF :  
CORRECTIONS, MIKE FISHER OR :  
ACTING ATTORNEY GENERAL, GEORGE :  
PATRICK, SCI - HOUTZDALE :  
SUPERINTENDENT, HENRY TATUM, :  
SCI - HOUTZDALE SUPERINTENDENT, :  
JOHN THOMAS, DEPUTY :  
SUPERINTENDENT, KENNETH CAMERON, :  
MAJOR OF THE GUARD :

I hereby certify this to be a true  
and attested copy of the original  
statement filed in this case.

JUL 14 2004

Attest.

*William D. Shaw*  
Prothonotary/  
Clerk of Courts

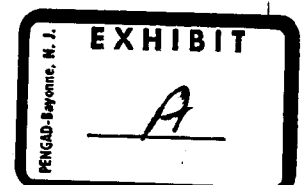
ORDER

NOW, this 12th day of July, 2004, in consideration of the Preliminary Objections filed on June 28, 2004, on behalf of the below-listed Defendants, it is the ORDER of this Court that the Preliminary Objections be and are hereby granted. The caption of Plaintiff's complaint is amended to delete the following Defendants who are hereby dismissed from the action: Mike Fisher or Acting Attorney General; Superintendent George Patrick and Henry Tatum; Deputy Superintendent John Thomas; and Major of the Guard Kenneth Cameron. In addition, Plaintiff shall comply with Pennsylvania Rule of Civil Procedure 1042.3 and file a certificate of merit within no more than thirty (30) days from this date.

BY THE COURT:

/s/ Fredric J. Ammerman

President Judge



CERTIFICATE OF SERVICE


I hereby certify that a true and correct copy of the foregoing Objections to Plaintiff's Response to Preliminary Objections was served upon the following counsel of record, via first-class mail, postage pre-paid on August 23, 2004:

Hassan Idbarh, DV0578  
SCI Houtzdale  
P. O. Box 1000  
Houtzdale, PA 16698-1000

Respectfully Submitted,

GERALD J. PAPPERT  
Attorney General

BY:

  
JOSEPH F. McCarthy, III  
Deputy Attorney General

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

HASSAN IDBARH,

CIVIL ACTION - LAW

Plaintiff,

No. 04-670 CD

vs.

PENNSYLVANIA DEPARTMENT OF  
CORRECTIONS,

Defendant.

**ORDER OF COURT**

AND NOW, to-wit, this \_\_\_\_\_ day of \_\_\_\_\_, 2004,  
it is HEREBY ORDERED ADJUDGED AND DECREED that the Pennsylvania  
Department of Corrections' Objections to Plaintiff's Response to  
Preliminary Objections based on the law as described above is  
granted.

BY THE COURT:

\_\_\_\_\_  
J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

HASSAN IDBARH,

Plaintiff,

vs.

PENNSYLVANIA DEPARTMENT OF  
CORRECTIONS, MIKE FISHER, OR  
ACTING ATTY. GEN., GEORGE  
PATRICK, SCI HOU.  
SUPERINTENDENT, HENRY TATUM,  
SCI HOU. SUPERINTENDENT, JOHN  
THOMAS, DEPUTY SUPERINTENDENT,  
KENNETH CAMERON, MAJOR OF THE  
GUARD,

Defendants.

CIVIL ACTION - LAW

No. 04-670 CD

**BRIEF IN SUPPORT OF  
PRELIMINARY OBJECTIONS**

Filed on behalf of Defendants:

Pennsylvania Department of  
Corrections, Mike Fisher, or  
Acting Atty. Gen., George  
Patrick, SCI Hou.  
Superintendent, Henry Tatum,  
SCI Hou. Superintendent, John  
Thomas, Deputy Superintendent,  
Kenneth Cameron, Major of the  
Guard

Counsel of Record for This  
Party:

Joseph F. McCarthy, III  
Deputy Attorney General  
Pa. I.D. #80328

Commonwealth of Pennsylvania  
Office of Attorney General  
Tort Litigation Unit  
Manor Complex  
564 Forbes Avenue  
Pittsburgh, PA 15219

**RECEIVED**

**JUN 28 2004**

**COURT ADMINISTRATORS  
OFFICE.**

**BRIEF IN SUPPORT OF PRELIMINARY OBJECTIONS**

AND NOW, come the Defendants, Pennsylvania Department of Corrections, Mike Fisher, or Acting Atty. Gen., George Patrick, SCI Hou. Superintendent, Henry Tatum, SCI Hou. Superintendent, John Thomas, Deputy Superintendent, Kenneth Cameron, Major of the Guard, by the Attorney General of the Commonwealth of Pennsylvania, and file the within Brief in Support of Preliminary Objections, averring in support thereof, as follows:

**Facts**

Plaintiff, Hassan Idbarh, filed a Complaint for a slip and fall personal injury action and a medical malpractice action which occurred on January 24, 2004 while Plaintiff was an inmate at SCI Houtzdale located in Clearfield County, Pennsylvania.

Plaintiff alleges that he slipped and fell on a wet floor in the kitchen/"culinary facility" of the prison and as a result of this fall incurred personal injuries.

Plaintiff also alleges a medical malpractice action for improper medical treatment as a result of said fall.

Plaintiff has brought suit against Defendants, Pennsylvania Department of Corrections, Mike Fisher, or Acting Atty. Gen., George Patrick, SCI Hou. Superintendent, Henry Tatum, SCI Hou. Superintendent, John Thomas, Deputy Superintendent, and Kenneth Cameron, Major of the Guard.



## Issue I

### A. OFFICIAL IMMUNITY

The Pennsylvania Supreme Court in DuBree v. Commonwealth, 393 A.2d 293 (Pa. 1978) held that Commonwealth officials are protected by. qualified immunity.

The trial court in DuBree held that since the official had not engaged in actionable conduct and that if there was negligence it could only be attributed to him because it was committed by someone in his chain of command. The official was protected by official immunity. Similarly, in the present case, Mike Fisher and/or the Acting Attorney General (Gerald Pappert) would be held liable solely based on their position in the chain of command and, therefore, as in DuBree, suit against them is barred by official immunity and their names should be stricken from the caption of the Complaint.

### B. IMMUNITY OF ADMINISTRATORS

The Pennsylvania Supreme Court has held that the statute waiving sovereign immunity waiving suit against institutions for negligence on the part of employee and its agents, does not extend to alleged individuals acting as administrators of an institution who are active solely in an administrative capacity who were not directly involved in the Plaintiff's injury. Moser v. Heinstand, 681 A.2d 1322 (Pa. 1966).

In Moser, plaintiff brought suit for improper surgery. Plaintiff filed a complaint for negligent treatment against Dr. Heiston, Ashland State Hospital and the Department of Public

Welfare. Plaintiff sought recovery against the Commonwealth defendants based on ostensible agency liability, vicarious liability and corporate liability. Ashland State Hospital and the Department of Public Welfare filed preliminary objections in the nature of a demurrer, alleging that plaintiff failed to state a cause of action that fell within any of the statutory exceptions to sovereign immunity. The Court of Common Pleas sustained the preliminary objections and dismissed the complaint. The Commonwealth Court affirmed and plaintiff appealed. The Supreme Court upheld the Commonwealth Court based on the reasoning cited above.

Similarly, in the present case, Plaintiff suit against the administrators of SCI-Houtzdale should be dismissed based on the holding in Moser because Defendants, George Patrick, SCI Hou. Superintendent, Henry Tatum, SCI Hou. Superintendent, John Thomas, Deputy Superintendent, and Kenneth Cameron, Major of the Guard, had no direct involvement in Plaintiff's injury.

#### Conclusion

Wherefore, the Commonwealth Defendants respectfully request this Honorable Court grant Defendants' Preliminary Objections and strike from the caption of Plaintiff's Complaint the following Defendants: Mike Fisher or Acting Attorney General; Superintendents, George Patrick and Henry Tatum; Deputy

Superintendent John Thomas; and Major of the Guard Kenneth  
Cameron.

Respectfully Submitted,

GERALD J. PAPPERT  
Attorney General

BY:   
JOSEPH F. McCarthy III  
Deputy Attorney General

CERTIFICATE OF SERVICE


I hereby certify that a true and correct copy of the foregoing Brief in Support of Preliminary Objections was served upon the following counsel of record, via first-class mail, postage pre-paid on June 24, 2004:

Hassan Idbarh, DV0578  
SCI Houtzdale  
P. O. Box 1000  
Houtzdale, PA 16698-1000

Respectfully Submitted,

GERALD J. PAPPERT  
Acting Attorney General

BY:

  
JOSEPH F. McCarthy III  
Deputy Attorney General

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

HASSAN IDBARH,  
PLAINTIFF,

v.

PENNSYLVANIA DEPARTMENT  
OF CORRECTIONS,  
DEFENDANT.

No. 04-670-CD

ORDER

AND NOW, this 31<sup>st</sup> day of August 2004 it is the ORDER of the Court that the Pennsylvania Department of Correction's Motion for Non Pros in regard to Hassan Idbarh (Plaintiff)'s medical negligence claim is HEREBY GRANTED.

Plaintiff has repeatedly failed to file a Certificate of Merit as is required by Pa.R.C.P. 1042.3, despite his having more than sufficient time to do so. Specifically, Plaintiff has had the sixty (60) day period mandated by Pa.R.C.P. 1042.3, as well as an additional thirty (30) days granted him by leave of the Court in its July 12, 2004 Order Granting Defendant's Preliminary Objections.

Consequently, a filing of a non pros is warranted. Pa.R.C.P. 1042.6; Koken v. Lederman, 840 A.2d 446 (Pa.Cmwlt. 2004). Counsel for the Pennsylvania Department of Corrections is directed to file a praecipe with the Clearfield County Prothonotary pursuant to Pa.R.C.P. 1042.6, at which time the Prothonotary shall enter a judgment of non pros in regard to Plaintiff's medical negligence claim.

By the Court

**FILED**

AUG 31 2004

*o/y:oolm*

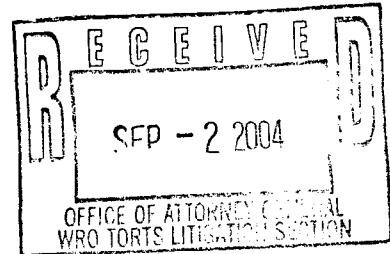
William A. Shaw  
Prothonotary

Clerk to Plff + Defn

*[Signature]*  
President Judge

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION



HASSAN IDBARH,  
PLAINTIFF,

v.

PENNSYLVANIA DEPARTMENT  
OF CORRECTIONS,  
DEFENDANT.

No. 04-670-CD

ORDER

AND NOW, this 31<sup>st</sup> day of August 2004 it is the ORDER of the Court that the Pennsylvania Department of Correction's Motion for Non Pros in regard to Hassan Idbarh (Plaintiff)'s medical negligence claim is HEREBY GRANTED.

Plaintiff has repeatedly failed to file a Certificate of Merit as is required by Pa.R.C.P. 1042.3, despite his having more than sufficient time to do so. Specifically, Plaintiff has had the sixty (60) day period mandated by Pa.R.C.P. 1042.3, as well as an additional thirty (30) days granted him by leave of the Court in its July 12, 2004 Order Granting Defendant's Preliminary Objections.

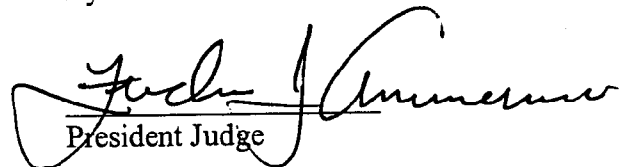
Consequently, a filing of a non pros is warranted. Pa.R.C.P. 1042.6; Koken v. Lederman, 840 A.2d 446 (Pa.Cmwlth. 2004). Counsel for the Pennsylvania Department of Corrections is directed to file a praecipe with the Clearfield County Prothonotary pursuant to Pa.R.C.P. 1042.6, at which time the Prothonotary shall enter a judgment of non pros in regard to Plaintiff's medical negligence claim.

By the Court

**FILED**

AUG 31 2004


William A. Shaw  
Prothonotary

  
President Judge

I hereby certify this to be a true  
and attested copy of the original  
statement filed in this case.

AUG 31 2004

Attest.

  
Prothonotary/  
Clerk of Courts

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Praecipe for Judgment of Non Pros was served upon the following counsel of record, via first-class mail, postage pre-paid on September 3, 2004:

Hassan Idbarh, DV0578  
SCI Houtzdale  
P. O. Box 1000  
Houtzdale, PA 16698-1000

Respectfully Submitted,

GERALD J. PAPPERT  
Attorney General

BY: Joseph F. McCarthy III  
JOSEPH F. McCarthy, III  
Deputy Attorney General

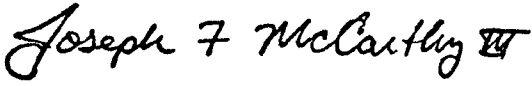
**PRAECIPE FOR JUDGMENT OF NON PROS**

TO THE PROTHONOTARY:

Please enter Judgment of Non Pros against the plaintiff, Hassan Idbarh, and in favor of defendant, Pennsylvania Department of Corrections, pursuant to Order of Court entered on August 31, 2004 in regard to plaintiff's medical negligence claim. Copy of Order of Court attached hereto.

Respectfully Submitted,

GERALD J. PAPPERT  
Attorney General

BY:   
\_\_\_\_\_  
JOSEPH F. McCarthy, III  
Deputy Attorney General



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

HASSAN IDBARH,

Plaintiff,

vs.

PENNSYLVANIA DEPARTMENT OF  
CORRECTIONS,

Defendant.

CIVIL ACTION - LAW

No. 04-670 CD

**PRAECIPE FOR JUDGMENT OF NON  
PROS**


Filed on behalf of Defendant:

Pennsylvania Department of  
Corrections

Counsel of Record for This  
Party:

Joseph F. McCarthy, III  
Deputy Attorney General  
Pa. I.D. #80328

Commonwealth of Pennsylvania  
Office of Attorney General  
Tort Litigation Unit  
Manor Complex  
564 Forbes Avenue  
Pittsburgh, PA 15219

  
**FILED** *1cc* *Notice*  
*m/1:40 PM to Def.*  
**SEP 07 2004** *Att. pd.*  
*20.00*  
William A Shaw  
Prothonotary/Clerk of Courts

COPY

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

HASSAN IDBARH,

Plaintiff,

vs.

PENNSYLVANIA DEPARTMENT OF  
CORRECTIONS,

Defendant.

CIVIL ACTION - LAW

No. 04-670 CD

NOTICE OF JUDGMENT OF NON PROS

Filed on behalf of Defendant:

Pennsylvania Department of  
Corrections

Counsel of Record for This  
Party:

Joseph F. McCarthy, III  
Deputy Attorney General  
Pa. I.D. #80328

Commonwealth of Pennsylvania  
Office of Attorney General  
Tort Litigation Unit  
Manor Complex  
564 Forbes Avenue  
Pittsburgh, PA 15219

**NOTICE OF JUDGMENT**

Notice is hereby given that a Judgment of Non Pros in the above captioned matter has been entered against you and in favor of defendant, Pennsylvania Department of Corrections, pursuant to Order of Court entered on August 31, 2004 in regard to plaintiff's medical negligence claim.

PROTHONOTARY, CLEARFIELD COUNTY

9/7/04

CP

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

HASSAN IDBARH,  
Plaintiff

vs.

\*  
\*  
\*  
\*  
\*

No. 2004-670-C.D.

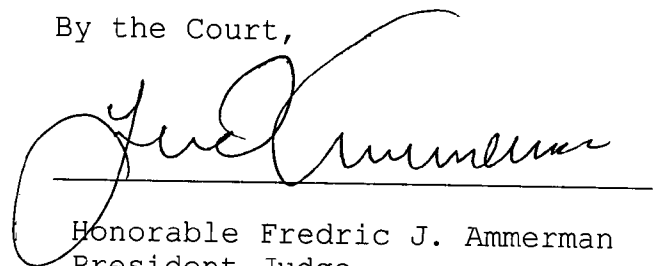
PENNSYLVANIA DEPARTMENT OF  
CORRECTIONS, DEFENDANTS,  
ET AL.,  
Defendant

\*  
\*

**O R D E R**

NOW, this 10<sup>th</sup> day of November, 2004, the Court being in receipt of the Motion to Proceed to Discovery filed by the Plaintiff, Pro Se on October 29, 2004; the Court noting that Judgment of Non-Pros was entered in the case on September 7, 2004 and that the case is over; accordingly, it is the Order of this Court that the Motion to Proceed to Discovery be and is hereby dismissed.

By the Court,



Honorable Fredric J. Ammerman  
President Judge

**FILED**

NOV 12 2004  
0/12/2004  
William A. Shaw  
Prothonotary/Clerk of Courts

(sent to Clerk +  
Dorothy A/C

(R)

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY  
CIVIL DIVISION

:

HASSAN IDBARH,

:

PLAINTIFF,

VS.

NO.04-670-CD

PENNSYLVANIA DEPARTMENT OF  
CORRECTIONS, DEFENDANTS, ET AL.,

:

JURY TRIAL DEMANDED

DEFENDANTS

:

ORDER

AND NOW, this day \_\_\_\_\_, \_\_\_\_\_, 2004,  
upon presentation and consideration of Petitioner's "Motion  
To Proceed To Discovery" It is hereby ORDERED AND DECREED  
GRANTED.

BY THE COURT:

\_\_\_\_\_  
J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY  
CIVIL DIVISION

HASSAN IDBARH,

PLAINTIFF,

VS.

PENNSYLVANIA DEPARTMENT OF CORRECTIONS,  
DEFENDANTS, ET AL.,

DEFENDANTS,

:

NO.04-670-CD

:

JURY TRIAL DEMANDED

:

CIVIL ACTION-LAW

:

:

MOTION TO PROCEED TO DISCOVERY

AND NOW COMES, the Petitioner, by and through Pro-Se representation  
and respectfully represents the following,

1. That discovery is relevant in showing the defendant's liability,
2. That Petitioner/Plaintiff avers that the discovery is relevant to the subject matter involved in the pending action.

**FILED**

OCT 29 2004

William A. Shaw  
Prothonotary

WHEREFORE, Plaintiff respectfully request this Court to grant an Order enjoining the commencement of discovery in the above-captioned action.

BY: 

CERTIFICATE OF SERVICE

I, Hassan Idbarh, Plaintiff, hereby certify that I have caused to be mailed a true and correct copy of the foregoing "Motion To Proceed To Discovery" on this 28th day of October 2004, by first class mail as follows;

JOSEPH F. MCCARTHY, III  
DEPUTY ATTORNEY GENERAL  
COMMONWEALTH OF PENNSYLVANIA  
TORT LITIGATION UNIT  
MOANOR COMPLEX  
564 FORBES AVENUE  
PITTSBURG, PA. 15219

BY: 

HASSAN IDBARH, PLAINTIFF

Hassan Idbarh vs. Pennsylvania Department of Corrections

## Civil Other

Date		Judge
5/13/2004	Petition to Proceed In Forma Pauperis filed by Plff. 1 CC to Plff.	No Judge
	Order granting Application to proceed In Forma Pauperis. S/FJA 1 CC to Plff.	No Judge
	Exceptions To Governmental Immunity. filed by, s/Hassan Idbarh Verification Certificate of Service Request for Representation 1 cc Plff	No Judge
6/14/2004	Praecipe for Appearance, on behalf of Defendants Pennsylvania Dept. of Corrections, Mike Fisher or acting Attorney General George Patrick, SCI Houtzdale Superintendent, Henry Tatum, SCI Houtzdale Superintendent John Thomas, Deputy Superintendent, Kenneth Cameron, Major of the Guard, filed by s/Joseph F. McCarthy, III, Deputy Attorney General No CC	No Judge
6/28/2004	Preliminary Objections, filed by A/G no cert. copies.	No Judge
7/14/2004	Order, NOW, this 12th day of July, 2004, in consideration of the Preliminary Objections filed on June 28, 2004, on behalf of the below-listed Defendants, Order that the Preliminary Objections be and are hereby granted. The caption of Plaintiff's complaint is amended to delete the following Defendants who are hereby dismissed from the action: Mike Fisher, Attorney General; Superintendent George Patrick and Henry Tatum; Deputy Superintendent John Thomas; and Major of the Guard Kenneth Cameron. In addition, Plaintiff shall comply with Pennsylvania Rule of Civil Procedure 1042.3 and file a certificate of merit within no more than thirty days from this date. BY THE COURT: /s/Fredric J. Ammerman, P.J. Two CC Plaintiff (SCI Houtzdale, DV 0578) Two CC Attorney McCarthy	No Judge
8/11/2004	Response to Preliminary Objections, filed by Plaintiff 1 cert. to Plaintiff.	No Judge
8/25/2004	Motion for Non Pros, filed by s/Joseph F. McCarthy, III No CC	No Judge
	Objections to Plaintiff's Response to Preliminary Objections, filed by s/Joseph F. McCarthy, III No CC	No Judge
9/1/2004	ORDER filed. cert. to Plaintiff & Defendant AND NOW, this 31st, day of August, 2004, Motion for Judgment of Non Pros is granted and Defendant is directed to Praecipe for Judgment of Non Pros.	Fredric Joseph Ammerman
9/7/2004	Filing: Praecipe for Judgment of Non Pros Paid by: McCarthy, Joseph F. III (attorney for Pennsylvania Department of Corrections) Receipt number: 1886019 Dated: 09/07/2004 Amount: \$20.00 (Check) Judgment of Non Pros entered against the Plaintiff. Notice to Plaintiff.	No Judge
10/29/2004	Motion to Proceed to Discovery, filed 1 Cert. to Plaintiff.	No Judge



IN THE COURT OF COMMON PLEAS OF CLEARFIELD  
COUNTY

FILED <sup>no cc</sup>  
M/10:59 AM  
DEC 01 2004

William A. Shaw  
Prothonotary/Clerk of Courts

HASSAN IDBARH,

:

PLAINTIFF,

NO.04-670-CD

VS.

:

PENNSYLVANIA DEPARTMENT OF  
CORRECTIONS,

MOTION FOR  
RECONSIDERATION

DEFENDANTS,

:

:

PLAINTIFF'S MOTION FOR RECONSIDERATION  
OF ORDER DATED SEPTEMBER 7, 2004

AND NOW COMES, the Plaintiff, by and through Pro-Se  
representation and respectfully represents the following and  
avers,

1. See attached exhibit "A" (Copy of Order issued on  
08-31-04).  
Plaintiff's understanding of the order filed by the  
court as evidenced in exhibit "a" is/was that the  
order specifically dismissed the "medical negligent  
claim" which was out of two claims filed by the  
plaintiff. As evidenced in exhibit "A", the court made  
no reference to plaintiff's "Slip and Fall Claim" which  
was the basis for plaintiff's filing of default motion.

2. Plaintiff avers, that had the court referred to the  
"Slip and Fall Claim in its' attached order then the  
plaintiff would have filed a Certificate of Merit  
relevant to the "Slip and Fall Claim". But this court  
in its' order dated August 31, 2004, only made  
reference to the "medical negligence claim" which gave  
the impression that plaintiff's "Slip and Fall Claim"  
was still active.

WHEREFORE, For the reasons stated in the above, plaintiff  
respectfully request this court to reconsider its order  
dated August 31, 2004, and allow plaintiff to file a  
Certificate of Merit relevant to his slip and fall claim.

BY: 

CERTIFICATE OF SERVICE

I, Hassan Idbarh, Plaintiff, hereby certify that I have caused to be mailed a true and correct copy of the foregoing "Motion For Reconsideration" by first class mail on this 24th day of November 2004, at follow;

JOSEPH F. McCARTHY, III  
DEPUTY ATTORNEY GENERAL  
COMMONWEALTH OF PENNSYLVANIA  
TORT LITIGATION UNIT  
MOANOR COMPLEX  
564 FORBES AVENUE  
PITTSBURG, PA. 15219

BY: \_\_\_\_\_

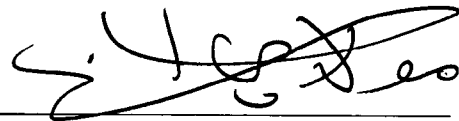
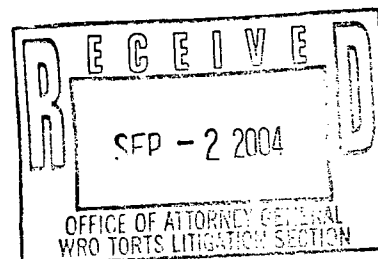
A handwritten signature in black ink, appearing to read "H. Idbarh", is written over a horizontal line.

Exhibit "A"

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION



HASSAN IDBARH,  
PLAINTIFF,

v.

PENNSYLVANIA DEPARTMENT  
OF CORRECTIONS,  
DEFENDANT.

No. 04-670-CD

ORDER

AND NOW, this 31<sup>st</sup> day of August 2004 it is the ORDER of the Court that the Pennsylvania Department of Correction's Motion for Non Pros in regard to Hassan Idbarh (Plaintiff)'s medical negligence claim is HEREBY GRANTED.

Plaintiff has repeatedly failed to file a Certificate of Merit as is required by Pa.R.C.P. 1042.3, despite his having more than sufficient time to do so. Specifically, Plaintiff has had the sixty (60) day period mandated by Pa.R.C.P. 1042.3, as well as an additional thirty (30) days granted him by leave of the Court in its July 12, 2004 Order Granting Defendant's Preliminary Objections.

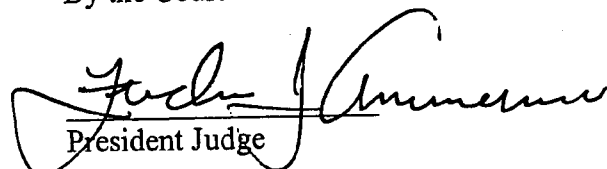
Consequently, a filing of a non pros is warranted. Pa.R.C.P. 1042.6; Koken v. Lederman, 840 A.2d 446 (Pa.Cmwth. 2004). Counsel for the Pennsylvania Department of Corrections is directed to file a praecipe with the Clearfield County Prothonotary pursuant to Pa.R.C.P. 1042.6, at which time the Prothonotary shall enter a judgment of non pros in regard to Plaintiff's medical negligence claim.

By the Court

**FILED**

AUG 31 2004

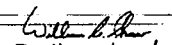
William A. Shaw  
Prothonotary

  
President Judge

I hereby certify this to be a true  
and attested copy of the original  
statement filed in this case.

AUG 31 2004

Attest

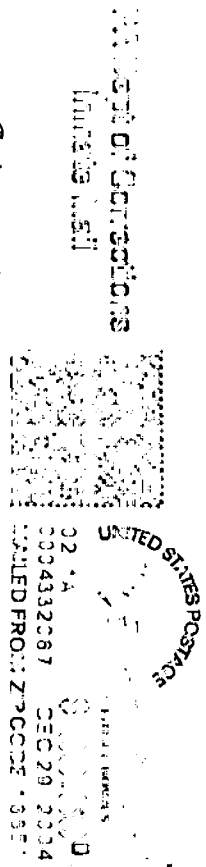
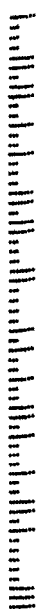
  
Prothonotary/  
Clerk of Courts

NAME Hassan Ishaq  
NUMBER NY-0578  
P.O. BOX 1000  
HOUTDALE PA 16698-1000

Inmate Mail  
PA Department of Corrections

William Shaw  
Clerk of Court  
P.O. Box 549  
Clearfield, Pa. 16830

16630+0549 05



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA CIVIL DIVISION

HASSAN IDBARH,

PLAINTIFF,

VS.

PENNSYLVANIA DEPARTMENT OF  
CORRECTION ,ET AL,

DEFENDANTS

No.2004-670-C.D.

**FILED**

DEC 30 2004

W. A. Shaw  
William A. Shaw  
Prothonotary

CERT TO COMMONWEALTH  
COURT

NOTICE OF APPEAL/NUNC PRO TUNC

Notice is hereby given that Hassan Idbarh, plaintiff above named,  
hereby appeals to the Commonwealth Court of Pennsylvania from  
the order entered in this matter on the 12th day of November 2004  
This order has been entered in the docket as evidenced by the  
attached copy of the docket entry.

(s)



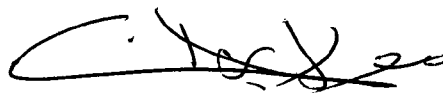
Hassan Idbarh, Plaintiff  
P.O.Box 1000  
Houtzdale, Pa. 16698-1000

CERTIFICATE OF SERVICE

I, Hassan Idbarh, hereby certify that I have caused to be mailed a true and correct copy of the foregoing document entitled "Notice of Appeal" on this 28th day of November 2004, via first class mail as follow;

CLERK OF COURT  
P.O.BOX 549  
CLEARFIELD, PA.16830

COMMONWEALTH OF PENNSYLVANIA  
[OFFICE OF ATTORNEY GENERAL  
TORT LITIGATION UNIT  
JOSEPH F.McCARTY,  
564 FORBES AVE.  
PITTSBURGH, PA.15219



---

HASSAN IDBARH, DV0578  
P.O.BOX 1000  
HOUTZDALE, PA.16698

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

HASSAN IDBARH,  
Plaintiff

vs.

PENNSYLVANIA DEPARTMENT OF  
CORRECTIONS, DEFENDANTS,  
ET AL.,  
Defendant

\*  
\*  
\*  
\*  
\*

No. 2004-670-C.D.

\*  
\*

**ORDER**

NOW, this 10<sup>th</sup> day of November, 2004, the Court being in receipt of the Motion to Proceed to Discovery filed by the Plaintiff, Pro Se on October 29, 2004; the Court noting that Judgment of Non-Pros was entered in the case on September 7, 2004 and that the case is over; accordingly, it is the Order of this Court that the Motion to Proceed to Discovery be and is hereby dismissed.

By the Court,

/s/ Fredric J. Ammerman

---

Honorable Fredric J. Ammerman  
President Judge

I hereby certify this to be a true  
and attested copy of the original  
statement filed in this case

NOV 12 2004

Attest

\_\_\_\_\_  
Clerk of Courts

# Fax

COMMONWEALTH COURT

To: ATTN: JEFF	From: William A. Shaw
Fax: 717-787-9559	Date: 1-3-05
Phone:	Pages: 2
Re: 2004-670-10	CC:

☒ Urgent    ☐ For Review    ☐ Please Comment    ☐ Please Reply    ☐ Please Recycle

•Comments:



## Civil Other

Date		Judge
05/13/2004	Petition to Proceed In Forma Pauperis filed by Plff. 1 CC to Plff.	No Judge
	Order granting Application to proceed In Forma Pauperis. S/FJA 1 CC to Plff.	No Judge
	Exceptions To Governmental Immunity. filed by, s/Hassan Idbarh Verification Certificate of Service Request for Representation 1 cc Plff	No Judge
06/14/2004	Praeipe for Appearance, on behalf of Defendants Pennsylvania Dept. of Corrections, Mike Fisher or acting Attorney General George Patrick, SCI Houtzdale Superintendent, Henry Tatum, SCI Houtzdale Superintendent John Thomas, Deputy Superintendent, Kenneth Cameron, Major of the Guard, filed by s/Joseph F. McCarthy, III, Deputy Attorney General No CC	No Judge
06/28/2004	Preliminary Objections, filed by A/G no cert. copies.	No Judge
07/14/2004	Order, NOW, this 12th day of July, 2004, in consideration of the Preliminary Objections filed on June 28, 2004, on behalf of the below-listed Defendants, Order that the Preliminary Objections be and are hereby granted. The caption of Plaintiff's complaint is amended to delete the following Defendants who are hereby dismissed from the action: Mike Fisher, Attorney General; Superintendent George Patrick and Henry Tatum; Deputy Superintendent John Thomas; and Major of the Guard Kenneth Cameron. In addition, Plaintiff shall comply with Pennsylvania Rule of Civil Procedure 1042.3 and file a certificate of merit within no more than thirty days from this date. BY THE COURT: /s/Fredric J. Ammerman, P.J. Two CC Plaintiff (SCI Houtzdale, DV 0578) Two CC Attorney McCarthy	No Judge
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08/25/2004	Motion for Non Pros, filed by s/Joseph F. McCarthy, III No CC	No Judge
	Objections to Plaintiff's Response to Preliminary Objections, filed by s/Joseph F. McCarthy, III No CC	No Judge
09/01/2004	ORDER filed. cert. to Plaintiff & Defendant AND NOW, this 31st, day of August, 2004, Motion for Judgment of Non Pros is granted and Defendant is directed to Praeipe for Judgment of Non Pros.	Fredric Joseph Ammerman
09/07/2004	Filing: Praeipe for Judgment of Non Pros Paid by: McCarthy, Joseph F. III (attorney for Pennsylvania Department of Corrections) Receipt number: 1886019 Dated: 09/07/2004 Amount: \$20.00 (Check) Judgment of Non Pros entered against the Plaintiff. Notice to Plaintiff.	No Judge
10/29/2004	Motion to Proceed to Discovery, filed 1 Cert. to Plaintiff.	No Judge
11/12/2004	Order, filed cert. to Plaintiff & Deputy A/G NOW, this 10th day of Nov. , 2004, RE: Motion to Discovery be and is hereby dismissed.	Fredric Joseph Ammerman
12/01/2004	Plaintiff's Motion for Reconsideration of Order Dated September 7, 2004, filed by s/Hassan Idbarh No CC	No Judge
12/30/2004	Notice of Appeal, filed by Plaintiff 1 Cert. to Commonwealth Court.	No Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

04-670-CD

Hassan Idbarh,

Appellant

v.

Pennsylvania Department  
of Corrections, et al.

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No. 2759 C.D. 2004

**PER CURIAM**

**ORDER**

NOW, January 4, 2005, upon consideration of the above appeal, and it appearing that the trial court's final order was entered on September 7, 2004, and that the last day to file an appeal therefrom was October 7, 2004, and that the above appeal was filed December 30, 2004, the above appeal is hereby quashed as untimely filed. See Pa. R.A.P. 903(a). The Notice of Appeal is also untimely with reference to the trial court's November 12, 2004 order, which dismissed appellant's motion for discovery and is not a final appealable order.

**Certified from the Record**

**JAN 5 2005**

**and Order Filed**

**FILED** *mc*  
*64 m/127/ST*  
**JAN 10 2005**

William A. Shaw  
Prothonotary/Clerk of Courts