

**UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE**

BERT J. ALLEN III,

Plaintiff

v.

Civil No. 01-224-P-C

DANIEL DUBOIS, TAMMY LEGNARD,  
and LINDA LOCKE,

Defendants

Gene Carter, Senior District Judge

**ORDER DISMISSING OFFICIAL CAPACITY CLAIMS AGAINST ALL  
DEFENDANTS**

On March 21, 2005, the Court required the parties to brief the issue of whether Plaintiff may maintain official capacity claims against Defendants Dubois, Legnard, and Locke following the Court's dismissal of Plaintiff's claims against York County for failing to establish the existence of a municipal custom or policy as required by *Monell v. Dep't of Social Servs.*, 436 U.S. 658 (1978). Defendants filed their memorandum on March 29, 2005 (Docket Item No. 191), and Plaintiff filed his memorandum on March 31, 2005 (Docket Item No. 193). Having considered the parties' submissions and the applicable law, the Court concludes that the official capacity claims must be dismissed.

"A damages suit against an official in an official capacity is tantamount to a suit against the entity of which the official is an agent." *Burrell v. Hampshire County*, 307 F.3d 1, 7 (1st Cir. 2002). To prevail on an official capacity claim, the Plaintiff must

establish that Dubois, Legnard, and Locke acted in accordance with an unconstitutional policy or custom. *Id.*; *see also Gomes v. Univ. of Me. Sys.*, 304 F. Supp. 2d 117, 122 (D. Me. 2004) (“[a]n essential element of an official-capacity lawsuit is that the entity’s policy or custom must have played a part in the violation of federal law.”). Because the Court has already concluded that a cause of action does not lie against York County, *see* Recommended Decision on Motion for Judgment on the Pleadings (Docket Item No. 104) and Order Affirming the Recommended Decision (Docket Item No. 114), it follows that Plaintiff also cannot maintain an official capacity claim against any of the above-captioned defendants.

The Court having already dismissed the individual capacity claims against Defendant Locke as a result of her bankruptcy proceedings, *see* Order Granting in Part Defendant Linda Locke f/k/a Linda Mooers’ Motion to Dismiss (Docket Item No. 184), she will be dismissed from this case in all respects. Remaining for trial are Plaintiff’s claims against Defendants Dubois and Legnard in their individual capacity only.

It is **ORDERED** that the official capacity claims against Defendants Dubois, Legnard, and Locke be, and they are hereby, **DISMISSED**. The Clerk is instructed to enter judgment in favor of Defendant Locke on all counts.

/s/Gene Carter \_\_\_\_\_  
**GENE CARTER**  
United States Senior District Judge

Dated at Portland, Maine this 12th day of April, 2005.

**BERT J ALLEN, III**

represented by **BERT J ALLEN, III**  
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PRO SE

V.

**Defendant**

**YORK COUNTY JAIL**  
*TERMINATED: 03/11/2003*

represented by **MICHAEL J. SCHMIDT**  
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27 TEMPLE STREET  
P. O. BOX 376  
WATERVILLE, ME 04901  
873-7771  
Email:  
mschmidt@wheelerlegal.com  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Defendant**

**SCOTT**  
*YORK COUNTY JAIL INMATE*  
*TERMINATED: 12/27/2001*

**Defendant**

**RICHARD**  
*YORK COUNTY JAIL INMATE*  
*TERMINATED: 12/27/2001*

**Defendant**

**DANIEL DOUBOUS**  
*individually and in their official*  
*capabilities as officers of the York*  
*County Jail*

represented by **MICHAEL J. SCHMIDT**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Defendant**

**TAMMY LEONARD**  
*individually and in their official*

represented by **MICHAEL J. SCHMIDT**  
(See above for address)

*capabilities as officers of the York  
County Jail.*

*LEAD ATTORNEY  
ATTORNEY TO BE NOTICED*

**Defendant**

**SCOTT BARRIEAU**  
*TERMINATED: 06/11/2002*

**Defendant**

**RICHARD LOWELL**  
*TERMINATED: 06/11/2002*

**Defendant**

**LINDA MOOERS**  
*TERMINATED: 04/12/2005*

represented by **JAMES F. MOLLEUR**  
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