No. 23-

IN THE

Supreme Court of the United States

LUCINDA JONES,

Petitioner,

v.

JUDGE DAVID W. MCKEAGUE;
UNITED STATES OF AMERICA,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

The Declaratory Judgment Act: § 2201 of Title 28 of the United States Code *Section 2201* authorizes "any court of the United States . . . [to] declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. The Sixth Circuit affirmed the district court ruling that it lacked jurisdiction over Petitioner's due process-retaliation claim; notwithstanding (a) Congress' purpose in enacting declaratory law is to declare the right and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought, anhd (b) because acknowledgement of *28 U.S.C. § 2201* would advance the statutory purpose of the law."

Two questions are presented:

I. Does the Declaratory Act of *28 U.S.C. § 2201* afford jurisdiction over non-merit claims for due process violations?

II. Does *28 U.S.C. § 2201* compel district court judges to make findings of fact and conclusions of the law in non-merit cases, where facts are material to awarding sanctions, and are appellate court judges compelled to review the record to determine whether or not to support the trial court's ruling?

LIST OF PARTIES

The parties below are listed in the caption.

CORPORATE DISCLOSURE STATEMENT

The Petitioner is an individual. She has no parent corporation.

STATEMENT OF RELATED CASES

Jones v. Hamilton County, et al., No. 1:22-cv-134, U. S. District Court for the Southern District of Ohio. Judgment entered November 30, 2022.

Lucinda Jones v. Judge David McKeague, No. 23-3002, U.S. Court of Appeals for the Sixth Circuit. Judgment entered November 8, 2023.

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OPINION BELOW

The Report and Recommendation of the Magistrate Court recommending sanctions against the Petitioner (*Jones v. Hamilton County, et al.*, Case No. 1:22-cv-00134, Doc. 21, filed September 2, 2022) is unreported and is reproduced in in the Appendix at 14a – 41a. The Order of the district court (*Jones v. Hamilton County, et al.*, Case No. 1:22-cv-00134, Doc. 24, filed November 30, 2022) is unreported and is reproduced in the Appendix at 9a – 13a. The Order of the Court of Appeals for the Sixth Circuit affirming the sanctions against Petitioner (*Jones v. McKeague*, Order Case No. 23-3002, Doc. 29-2, filed November 8,2023) is unreported and is reproduced in in the Appendix at 1a – 8a.

STATEMENT OF JURISDICTION

This Court's jurisdiction is invoked under 28 U.S.C. §1254. The Sixth Circuit's opinion was rendered on November 8, 2023.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Title United States Code, Section 2201.

Declaration of actual controversy.

In a case of actual controversy within its jurisdiction, except with respect to Federal taxes other than actions brought under section 7428 of the Internal Revenue Code of 1986, a proceeding under section 505 or 1146 of title 11, or in any civil action involving an antidumping or

countervailing duty proceeding regarding a class or kind of merchandise of a free trade area country (as defined in section 516A(f)(9) of the Tariff Act of 1930), as determined by the administering authority, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

INTRODUCTION

The Judicial Conduct and Disability Act of 1980, 28 U.S.C. §§ 351–364 explains that judicial misconduct is a non-merit claim when an allegation attacks the propriety of arriving at rulings with an illicit or improper motive. Rules for Judicial-Conduct and Judicial-Disability Proceedings, Chapter 3, p. 9. Under Rule 3(h)(1)(D) of the Act, a judge treating litigants, attorneys, or others in a demonstrably egregious and hostile manner may constitute cognizable misconduct. Similarly, under Rule 3(h)(1)(G) a judge's efforts to retaliate against any person for his or her involvement in the complaint process may constitute cognizable misconduct. Such an allegation attacks the propriety of arriving at rulings with an illicit or improper motive and is not merits-based, even though it "relates" to a ruling in a colloquial sense. Rule 3 Commentary at 9. *See In re Judicial Misconduct*, 517 F.3d 558 (D.C. Cir. 2008), for the proposition that a judge failing to

provide reasons for his decisions may constitute cognizable misconduct. *Id.* at 559.

STATEMENT OF THE CASE

The instant lawsuit stems from Petitioner appealing the Tennessee district court's 1927 sanctions against her for allegedly filing a frivolous, time-barred, lawsuit, on behalf of plaintiffs Demetri Faulkner and Katoria Williams. On March 12, 2020, Judges David McKeague, Julia S. Gibbons, and Helene N. White ("the panel"), affirmed the district court.[1] Subsequently, defendant Marjorie Douglas filed a motion for additional attorney fees. The panel denied the motion. In the panel's May 28, 2020 Per Curiam Opinion (the "Opinion") denying Douglas, the panel also wrote Petitioner's "conduct" for challenging the Tennessee District Court's decision was "unprofessional." The Opinion was made public.

On March 28, 2022, Petitioner filed a non-merit, non-money declaratory lawsuit against Judge McKeague, Respondent, for violating her life and liberty interests

1. In their order affirming the Tennessee court sanctions, the panel penned the following: "Demetri Faulkner is Williams's co-plaintiff, but because their allegations are not materially different we refer to them collectively as "Williams." Pursuant to F.R.C.P. 201, Petitioner asks this Court to take judicial notice of the statement, found at *Williams v. Shelby Cty. Sch. Sys.*, Case No. 19-5238/5789, fn. at 1. Plaintiff also asks this court to take judicial notice of two other statements that the panel penned in their March 28, 2020 Per Curiam Opinion: (One) that Petitioner's "conduct" was "unprofessional." Case No. 19-5238, Katoria *Williams, et al v. Shelby County School System, et al.*, originating Case No.: 2:17-cv-02284, at 6, and (Two) "Some of Petitioner's conduct is "mitigated by the posture of the appeal," and that she "raised three semi-colorable arguments." *Id.* at 6.

and free speech rights, under the First and Fifth Amendments. Petitioner alleged Respondent retaliated against her because she appealed the Tennessee district court sanctions. The publication of the panel calling Petitioner's "conduct" "unprofessional" resulted in defamation of her legal professional reputation, and it placed her in false light, the impact of which has affected the quality of her life practicing law, and continues to stigmatize her as being unethical. Petitioner also alleged Respondent failed to review the facts of Demetri Faulkner, individually, which were material to the issue of being time-barred, and to the court's review to determine if it would support the Tennessee court findings. The bases of Petitioner's request for declaratory relief is: (a) that she (and future litigants) has due process and free speech rights to complain and not be retaliated against; (b) that she (and future litigants) has the right to have the facts in her lawsuit reviewed; (c) that the damage to her reputation is oppressive to her and is continuing; (d) that a declaration is necessary to protect her due process, and the due process of future litigants, and (e) to salvage her legal professional reputation and to bring her some emotional closure. The District Court of Ohio had jurisdiction under 28 U.S.C. §§1331, 1343 and 2201.

Respondent moved to dismiss Petitioner's complaint on various grounds: including lack of subject-matter jurisdiction, standing, failure to file *rehearing en banc* or appeal to the United States Supreme Court. (App. C at 18); (App. B at 4). Additionally, the Magistrate Court Judge, *sua sponte*, recommended sanctions against Petitioner under its inherent powers, 28 U.S.C. §1927, and Rule 11. (App. C at 20). Relevant here, the magistrate court ordered Petitioner to pay $5,000.00, as a sanction for allegedly

"filing and continuing to file a frivolous lawsuit." (*Id.*) The district court adopted the ruling. (App B at 4). The Sixth Circuit affirmed the district court's ruling, adding that Petitioner "unreasonably and vexatiously multiplied the proceedings," in that she could have pursued a petition for *rehearing en banc* or a *petition for a writ of certiorari* before the Supreme Court (App. A at 6).

The district court did not adjudicate Petitioner's due process claim. It outright dismissed the due process allegations in her amended complaint and failed to make findings of fact and conclusions of the law. The Sixth Circuit affirmed the district court's ruling.

REASONS FOR ALLOWANCE OF THE WRIT

I. REVIEW IS NECESSARY TO CLARIFY THE FUNCTION OF 28 U.S.C. § 2201 DECLARATORY ACT IN A NON-MERIT LAWSUIT.

A. The District Court Failed To Review The Uncontroverted Evidence Supporting Standing; the Sixth Circuit Affirmed.

Article III of the United States Constitution empowers federal courts to adjudicate lawsuits under the Declaratory Act, when an actual controversy exists, whether or not further relief is available. Rule 57 of the Federal Rules of Civil Procedure, citing *Hasselbring v. Koepke*, 263 Mich. 466, 248 N.W. 869, 874 (1933). The Supreme Court reiterated the requirements for Article III standing, holding a plaintiff must show 'injury in fact,' causation, and redressability. In *Friends of the Earth Inc. v. Laidlaw Environmental Serv.*, 528 U.S. 167, 120

S. Ct. 693, 145 L.Ed.2d 610 (2000). However, the Supreme Court cautioned: "(standing 'often turns on the nature and source of the claim asserted, 'but it 'in no way depends on the merits of the claim)." *Ariz. State Legis. v. Ariz. Indep. Redistricting Comm'n*, 576 U.S. 787, 800, 135 S. Ct. 2652, 2663, 192 L.Ed.2d 704, (2015).

The Petitioner's non-merit complaint sufficiently averred facts to support standing. The problem is that the district court did not adjudicate the due process claim. It dismissed the factual averments that support Petitioner's claim. Respectfully, the district court should have known, as a reasonable trier of the facts would have known, that awarding sanctions without supporting facts, would impute bad faith to the Petitioner. *New Alaska Dev. Corp. v. Guetschow,* 869 F.2d 1298, 1306 (9th Cir. 1989) (holding bad faith is required to award section 1927 sanctions). This is a serious stain on Petitioner's professional legal reputation and on her as an individual.

The Ohio Appeals Court summed it up well:

> "Bad faith is not simply bad judgment. It is not merely negligence. It imports a dishonest purpose or some moral obliquity. It implies conscious doing of wrong. It means a breach of a known duty through some motive of interest or ill will. It partakes of the nature of fraud. *** It means with actual intent to mislead or deceive another." *Law Office of Natalie F. Grubb v. Bolan*, 11th Dist. Geauga No. 2010-G-2965, 2011-Ohio-4302, ¶32.

Under the circumstances, the district court should have concluded, as a reasonable trier of the facts would

have concluded, that Petitioner's lawsuit is non-merit, and it is not a collateral attack on the panel's March 12, 2020 ruling. But rather, it is a defense of her legal professional reputation and reputation in general, which she had a right to defend. A reasonable trier of the facts would find that Petitioner demonstrated standing.

II. REVIEW IS NECESSARY TO CLARIFY: (A) WHETHER 28 U.S.C. § 2201 COMPELS A JUDGE TO REVIEW THE RECORD AND MAKE FINDINGS OF FACT AND CONCLUSIONS OF THE LAW IN A NON-MERIT LAWSUIT, PRIOR TO AWARDING SANCTIONS, AND (B) WHETHER THE CIRCUIT JUDGE IS REQUIRED TO REVIEW THE RECORD TO DETERMINE WHETHER TO SUPPORT THE TRIAL JUDGE'S FINDINGS.

A. The Court Denied Petitioner Due Process When It Failed To Review Petitioner's Non-Merit Claim Prior To Awarding Sanctions (Under The Court's Inherent Powers, Section 1927 and Rule 11)

Early on, due process implications of sanctions for misconduct of litigation were discussed in *Societe Internationale v. Rogers*, 357 U.S. 197, 209, 78 S. Ct. 1087, 1093-1095, 2 L.Ed.2d 1255 (1958). There, the Court opined awarding sanctions must be read in light of constitutional provisions that prohibit due process violations. *Id.* at 209. In 1980, the Supreme Court reiterated due process requirement in *Roadway Express, Inc v. Piper*, 447 U.S. 752, 767, 100 S. Ct. 2455, 2465, 65 L.Ed.2d 488 (1980), holding "the trial court did not make a specific finding as

to whether counsel's conduct in this case constituted or was tantamount to bad faith, a finding that would have to precede any sanction under the court's *inherent powers*." *Id.*

Since *Societe Internationale*, sister circuits have followed the rule of law. In *Yagman v. Republic Ins.*, 987 F.2d 622, 628 (9th Cir.1993), the Ninth Circuit vacated the imposition of sanctions where there was no evidence that the attorney had "acted in bad faith"; *In re Keegan Mgmt. Co., Sec. Litig.*, 78 F.3d 431, 436 (9th Cir. 1995) (finding the district court never made the required finding of bad faith); *Big Yank Corp. v. Liberty Mut. Fire Ins. Co.*, 125 F.3d 308, 314, 315 (6th Cir. 1997) (finding the district court never held any hearings, referred to any evidence supporting its belief; remanding the matter with instructions that the district court "make findings of fact as to whether Big Yank's claims were meritless..."); *Fink v. Gomez*, 239 F.3d 989, 992 (9th Cir. 2001) (writing "specific finding of bad faith . . . must precede any sanction under the court's inherent powers'"); *BDT Prods. Inc. v. Lexmark Intern. Inc.*, 602 F.3d 742, 752 (6th Cir. 2010) (espousing a "find[ing] of bad faith or of conduct 'tantamount to bad faith."); *United States v. Romero–López,* 661 F.3d 106, 108 (1st Cir. 2011) (stating "when a court is considering invoking its *inherent* power to sanction, the much better practice is for the court to hear from the offending attorney before imposing any sanctions."). The Sixth Circuit did not hear Petitioner, although she requested oral arguments.

Neither did the court present "bad faith" facts to support the 1927 sanction. *Section 1927* bad faith is present when an attorney acts with recklessness or intentionally misleads the court in arguing a claim solely for the purpose

of harassing the opposition. *New Alaska Dev. Corp. v. Guetschow,* 869 F.2d 1298, 1306 (9th Cir. 1989), defining bad faith as "when an attorney knowingly or recklessly raises a frivolous argument or argues a meritorious claim for the purpose of harassing an opponent."; *Wavetronix, LLC v. Myers,* 704 F. App'x 696, 698 (9th Cir. 2017), requiring bad faith with recklessness, frivolousness or with the intent to mislead the court. The averments in Petitioner's amended complaint clearly demonstrate a good faith reason for her filing the lawsuit.

Prior to awarding *Rule 11 Sanctions*, findings of fact and conclusions of law should be included in an order granting or denying sanctions in order to allow appellate review. *Sholar Bus. Assocs., Inc. v. Davis*, 138 N.C. App. 298, 303, 531 S.E.2d 236, 240 (2000); *Lozano v. Cabrera*, No. 22-55273, 2023 U.S. App. LEXIS 5394, at *5 (9th Cir. Mar. 7, 2023) (finding the district court did not demonstrate that the facts surrounding the pleadings filed warranted Rule 11 sanctions). The district court's order is devoid of findings of facts to substantiate this sanction against Petitioner.

The *Roadway* court cautioned that due process concerns posed by an outright dismissal are plainly greater than those presented by assessing counsel fees against lawyers, echoing the Supreme Court in *Societe Internationale. Roadway, Inc.*, 477 U.S. at 767, n.14. This is an especially poignant point. The district court's dismissal of a due process lawsuit could, potentially, quiet the plaintiff forever. The trial court's order, omitting relevant and material facts, wholly contributes to the court's dismissal. Often, appellate reviews are read within the four corners of the district court's written narrative, and not within the four corners of the complaint. And, even

if the plaintiff files a *writ of certiorari* with the Supreme Court, there is no guarantee the Court would select her case to be reviewed. As here, the district court's order did not include a finding that Petitioner's complaint averred non-merit allegations. The Sixth Circuit's order was silent, as well. Both courts failed to weigh relevant and material facts. Take, for example, the panel's March 28, 2020 Opinion, where the judges wrote that the Petitioner made a colorable argument in her March 12, 2020 appeal. (App. C at 5.) It was critical that the district court and Sixth Circuit weighed this statement, because it is relevant and material to Petitioner's state of mind regarding frivolousness in the instant case.

On plausibility, "[t]he Supreme Court has explained that a complaint should be dismissed as frivolous only if it lacks an arguable basis in law or fact." *Brown v. Bargery,* 207 F.3d 863, 866 (6th Cir. 2000), citing *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). The district court was required to accept Petitioner's complaint allegations as true and determine whether she can prove no set of facts in support of her claim that would entitle her to relief. *In re DeLorean Motor Co.*, 991 F.2d 1236, 1240 (6th Cir. 1993). The courts, in the instant case, did not follow the rule of law.

In instances where the district court did not follow the rule of law, circuit courts asked for accountability. For example, the Fifth Circuit suggested that when the district court's order does not clarify which facts the plaintiff might be able to prove: "We can either scour the record and determine what facts the plaintiff may be able to prove at trial and proceed to resolve the legal issues, or remand so that the trial court can clarify the order." *Thompson v. Upshur Cty*, 245 F.3d 447, 456 (5th

Cir. 2001). The Sixth Circuit itself called for remand in *Big Yank Corp.*, 125 F.3d at 315, finding the district court did not hold any hearings and did not refer to any evidence supporting its sanction award.

In a nutshell, if the Sixth Circuit decision is allowed to stand, it would set a dangerous precedent. It would reduce the due process requirements to nothingness. It would give the right-of-way to judges to evade their duty to review the record and make the appropriate findings and conclusions, in non-merit lawsuits. Therefore, a declaratory judgment is necessary to declare Petitioner's due process and the due process of future litigants. Accordingly, the sanctions against Petitioner should be overturned.

CONCLUSION

For all the foregoing reasons, petitioner respectfully requests that the Supreme Court grant review of this matter.

Respectfully submitted,

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APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT, FILED NOVEMBER 8, 2023

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 23-3002

LUCINDA JONES,

Plaintiff-Appellant,

v.

HAMILTON COUNTY, OHIO, *et al.*,

Defendants,

DAVID W. MCKEAGUE, IN HIS INDIVIDUAL CAPACITY AS A SENIOR JUDGE OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT; UNITED STATES OF AMERICA,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO

OPINION

Before: SILER, LARSEN, and READLER, Circuit Judges.

Appendix A

PER CURIAM. Lucinda Jones, an attorney proceeding pro se, appeals the district court's judgment that dismissed her amended complaint against Circuit Judge David W. McKeague, denied her motion for leave to file a second amended complaint, and imposed $5,000 in sanctions against her. As set forth below, we **AFFIRM** the district court's judgment.

This action arose from prior litigation in which Jones and her co-counsel filed an employment discrimination complaint in the United States District Court for the Western District of Tennessee. That complaint was filed on behalf of Katoria Williams and Demetri Faulkner against the Shelby County (Tennessee) School System and Marjorie Douglas. The district court granted Douglas's motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), concluding that the plaintiffs' claims against her were untimely or failed to state a claim. Douglas moved for her attorney fees and expenses. The district court granted Douglas's motion in part, holding that Jones and her co-counsel were personally liable to Douglas for $39,842.92 as sanctions under 28 U.S.C. § 1927 and that the plaintiffs were liable to Douglas for $7,968.58 under Tennessee law. Jones and her co-counsel appealed the sanctions order; the plaintiffs, then represented by different counsel, also appealed the sanctions order, but their notice of appeal was untimely. This court, with Judge McKeague writing on behalf of the panel, dismissed the plaintiffs' appeal as untimely and affirmed the sanctions order as to Jones and her co-counsel. *Williams v. Shelby Cnty. Sch. Sys.*, Nos. 19-5238/5789, 2020 WL 1190433 (6th Cir. Mar. 12, 2020). Douglas moved for her attorney fees and expenses as sanctions against the plaintiffs and their attorneys

for filing the appeal. This court denied Douglas's motion. *Williams v. Shelby Cnty. Sch. Sys.*, 815 F. App'x 842 (6th Cir. 2020) (per curiam). Judge McKeague dissented, stating that he would have awarded monetary sanctions against Jones and her co-counsel under § 1927.

Jones filed this civil rights action, purportedly under 42 U.S.C. § 1983, in the United States District Court for the Southern District of Ohio against Judge McKeague, the Sixth Circuit Judicial Council, and Hamilton County, Ohio. Jones later did not oppose the dismissal of her claims against the Judicial Council and Hamilton County. In her amended complaint, Jones claimed that Judge McKeague (1) violated her right to due process by disregarding the facts presented in the prior litigation and by denying her request for oral argument and (2) "engaged in wrongful disciplinary action" against her in retaliation for exercising her right to free speech by asserting judicial misconduct in her appellate brief. As relief, Jones requested a declaration that Judge McKeague's actions violated her rights to due process and free speech, a declaration that this court's mandate in the prior litigation violated her rights to due process and free speech, and an award of her attorney fees, expenses, and costs as authorized under 42 U.S.C. § 1988 as well as any additional legal and equitable relief to which she might be entitled.

Judge McKeague moved to dismiss Jones's amended complaint for lack of subject-matter jurisdiction under Rule 12(b)(1) and for failure to state a claim under Rule 12(b)(6). Jones opposed Judge McKeague's motion and moved for leave to file a second amended complaint to remove as defendants the Judicial Council and Hamilton

County, to add as defendants the other judges who served on this court's panel with Judge McKeague (Circuit Judges Julia S. Gibbons and Helene N. White), and to seek "injunctive relief finding that [this court's] ruling [in the prior litigation] is null and void."

A magistrate judge recommended that the district court grant Judge McKeague's motion and dismiss the case without prejudice for lack of subject-matter jurisdiction or, alternatively, with prejudice for failure to state a claim. The magistrate judge further recommended that Jones's motion for leave to file a second amended complaint be denied as futile. Finally, the magistrate judge recommended that the district court sua sponte impose a monetary sanction of $5,000 on Jones or, alternatively, issue an order directing her to show cause why the court should not impose a monetary sanction and a pre-filing restriction. Over Jones's objections, the district court adopted the magistrate judge's report and recommendation and dismissed the case without prejudice. The district court granted Judge McKeague's motion to dismiss, concluding that it lacked jurisdiction to enter the relief sought by Jones and that her claims against Judge McKeague were otherwise barred by judicial immunity. The district court denied Jones's motion for leave to file a second amended complaint because her proposed amendment did not cure any of these defects and because any claims against Judges Gibbons and White would fail for the same reasons that her claims against Judge McKeague failed. The district court sua sponte imposed a monetary sanction of $5,000 on Jones under § 1927 and under its inherent authority "for filing this frivolous case in an attempt to continue litigating a case that she

previously lost on appeal," for opposing Judge McKeague's motion to dismiss, and for moving "to further amend her frivolous complaint." This timely appeal followed.

"We review de novo the district court's decision to dismiss [a] case for lack of subject-matter jurisdiction." *Lindke v. Tomlinson*, 31 F.4th 487, 490 (6th Cir. 2022). "[I]t seems axiomatic that a lower court may not order the judges or officers of a higher court to take an action." *Panko v. Rodak*, 606 F.2d 168, 171 n.6 (7th Cir. 1979). And Jones does not point to any authority allowing "'reverse review' of a ruling of the court of appeals by a district court." *Mullis v. U.S. Bankr. Ct. for Dist. of Nev.*, 828 F.2d 1385, 1393 (9th Cir. 1987). The district court properly held that it lacked jurisdiction over any of Jones's claims seeking to review this court's decision affirming the sanctions order or to declare that order to be void or in violation of Jones's constitutional rights. *See Klayman v. Rao*, 49 F.4th 550, 552-53 (D.C. Cir. 2022) (per curiam).

Jones lacks standing to seek any other forms of relief here. To establish Article III standing, Jones "must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338, 136 S. Ct. 1540, 194 L. Ed. 2d 635 (2016). "In the context of claims for injunctive or declaratory relief, a plaintiff must show that he is under threat of suffering injury in fact that is concrete and particularized, and that threat must be actual and imminent, not conjectural or hypothetical." *Sumpter v. Wayne County*, 868 F.3d 473, 491 (6th Cir. 2017) (cleaned up). "'Past exposure to illegal conduct' is

insufficient to demonstrate an injury in fact that warrants declaratory or injunctive relief unless the past injury is accompanied by 'continuing, present adverse effects.'" *Sullivan v. Benningfield*, 920 F.3d 401, 408 (6th Cir. 2019) (quoting *O'Shea v. Littleton*, 414 U.S. 488, 495-96, 94 S. Ct. 669, 38 L. Ed. 2d 674 (1974)).

Jones alleged that Judge McKeague violated her constitutional rights, "resulting in injuries to her that are continuing." But Jones failed to plausibly allege any facts to support the conclusory allegation that she continues to suffer injuries from Judge McKeague's past actions. *See Glennborough Homeowners Ass'n v. U.S. Postal Serv.*, 21 F.4th 410, 414 (6th Cir. 2021) (recognizing that a plaintiff "cannot rely on general or conclusory allegations in support of its standing, but instead must assert a plausible claim for why it has standing to pursue" a claim). Jones therefore failed to establish standing to seek declaratory relief for Judge McKeague's alleged violation of her constitutional rights.

We review de novo the district court's denial of Jones's motion for leave to file a second amended complaint on the basis that her proposed amendment was futile—that is, it "could not withstand a motion to dismiss." *Doe v. Mich. St. Univ.*, 989 F.3d 418, 424 (6th Cir. 2021) (quoting *Boulton v. Swanson*, 795 F.3d 526, 537 (6th Cir. 2015)). As Jones conceded in her motion, her allegations in her proposed second amended complaint were "materially the same" as the allegations in her amended complaint. Jones sought to add Judges Gibbons and White as defendants, asserting that their "actions mirror Judge McKeague's." Judges Gibbons and White would therefore be entitled to

dismissal for the same reasons that Judge McKeague was entitled to dismissal. Jones also sought to add a request for "injunctive relief finding that [this court's] ruling is null and void," confirming that she was attempting to bring an improper collateral attack on this court's decision affirming the sanctions order. The district court properly denied Jones's motion for leave to file a second amended complaint as futile.

We review for an abuse of discretion the district court's decision to impose sanctions on Jones under § 1927 and under its inherent authority. *Jones v. Ill. Cent. R.R. Co.*, 617 F.3d 843, 850 (6th Cir. 2010). "A court abuses its discretion when it commits a clear error of judgment, such as applying the incorrect legal standard, misapplying the correct legal standard, or relying upon clearly erroneous findings of fact." *Id.* (quoting *In re Ferro Corp. Derivative Litig.*, 511 F.3d 611, 623 (6th Cir. 2008)).

Under § 1927, "any attorney . . . who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct." Subjective bad faith is not required to impose sanctions under § 1927; rather, "an attorney is sanctionable when [she] intentionally abuses the judicial process or knowingly disregards the risk that [her] actions will needlessly multiply proceedings," *Red Carpet Studios Div. of Source Advantage, Ltd. v. Sater*, 465 F.3d 642, 646 (6th Cir. 2006), or when she "knows or reasonably should know that a claim pursued is frivolous," *Hogan v. Jacobson*, 823 F.3d 872, 886 (6th Cir. 2016) (quoting *Scherer v. JP Morgan Chase & Co.*, 508 F. App'x

429, 439 (6th Cir. 2012)). "In contrast, the imposition of inherent power sanctions requires a finding of bad faith." *First Bank of Marietta v. Hartford Underwriters Ins. Co.*, 307 F.3d 501, 517 (6th Cir. 2002).

Regardless of whether Jones acted in bad faith, the district court acted within its discretion in imposing a monetary sanction under § 1927. As the district court pointed out, if Jones believed that this court's decision affirming the sanctions order was in error, she could have pursued a petition for rehearing en banc before this court or a petition for a writ of certiorari before the Supreme Court. Jones instead brought this action in an improper attempt to collaterally attack this court's decision. In doing so, Jones unreasonably and vexatiously multiplied the proceedings. Jones's claims against Judge McKeague were erroneously brought under § 1983 and were barred by judicial immunity. Even after Judge McKeague's motion to dismiss explained these deficiencies, Jones persisted in maintaining this frivolous lawsuit and moved for leave to file a second amended complaint, which did not address the deficiencies and instead compounded them by seeking to add Judges Gibbons and White as defendants and to request an injunction rendering this court's decision in the prior appeal "null and void." Under these circumstances, the district court did not abuse its discretion in imposing a monetary sanction of $5,000 on Jones under § 1927.

For these reasons, we **AFFIRM** the district court's judgment.

APPENDIX B — OPINION OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO, WESTERN DIVISION – CINCINNATI, FILED NOVEMBER 30, 2022

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION – CINCINNATI

Case No. 1:22-cv-134
Judge Matthew W. McFarland

LUCINDA JONES,

Plaintiff,

v.

HAMILTON COUNTY, *et al.*,

Defendants.

ORDER ADOPTING REPORT AND RECOMMENDATION (DOC. 21)

This matter is before the Court upon the Report and Recommendation ("Report") of United States Magistrate Judge Stephanie K. Bowman (Doc. 21), to whom this case is referred pursuant to 28 U.S.C. § 636(b). In the Report, the Magistrate Judge recommends that Defendants' motions to dismiss (Does. 10, 14) be granted, with this case to be dismissed without prejudice. Additionally, the Magistrate Judge recommends that Plaintiff's Motion for Leave to Amend Complaint (Doc. 16) be denied. Lastly, the Magistrate Judge recommends that the Court *sua sponte* impose a monetary sanction of $5,000.00 upon Plaintiff or, alternatively, issue an order directing Plaintiff to

show cause why the Court should not impose a monetary sanction and an additional pre-filing restriction. Plaintiff filed an Objection to the Report (Doc. 22), to which Defendants have filed a Response (Doc. 23). Thus, the matter is ripe for the Court's review.

Plaintiff objects to the Report for several reasons. First, Plaintiff argues that her claims against U.S. Senior Circuit Judge David McKeague should not be dismissed, as she has shown a proper cause of action in the correct jurisdiction. Plaintiff additionally argues that her request for leave to file a second amended complaint is not frivolous. In consideration of the foregoing, Plaintiff argues that an additional sanction should not be imposed against her. Plaintiff otherwise concedes to the Magistrate Judge's recommendation to dismiss the claims against Hamilton County, Ohio and the Sixth Circuit Judicial Council.

As an initial matter, "[i]t seems axiomatic that a lower court may not order the judges or officers of a higher court to take an action." *Panko v. Rodak*, 606 F.2d 168, 171 n.6 (7th Cir. 1979). To hold otherwise would "permit, in effect, a 'horizontal appeal' from one district court to another or even a 'reverse review' of a ruling of the court of appeals by a district court." *Olita v. McCalla*, No. 2:21-cv-2763, 2022 U.S. Dist. LEXIS 92912, 2022 WL 1644627, at *22 (W.D. Tenn. May 24, 2022) (quoting *Mullis v. U.S. Bankr. Ct. for Dist. Of Nev.*, 828 F.2d 1385, 1392-93 (9th Cir. 1987)). Plaintiff argues that this case "is a non-merits-related challenge to the Judges' motive for the adjudications." (Objections, Doc. 22, Pg. ID 213.) The Court disagrees. Rather, the ultimate thrust behind Plaintiff's lawsuit is her "disagreement with the Sixth

Circuit's affirmance of a Tennessee district court's award of monetary sanctions against her for filing a frivolous time-barred lawsuit." (Report, Doc. 21, Pg. ID 190.) Plaintiff's underlying intentions have been demonstrated throughout this lawsuit—such as her specific request that this Court vacate the Sixth Circuit's decision. (Response to Defendants' Motion to Dismiss, Doc. 15, Pg. ID 122.) As the Magistrate Judge squarely put it, "a federal district court lacks the jurisdiction and authority to issue injunctive, declaratory, or mandamus relief to a federal court of appeals or its officers." (Report, Doc. 21, Pg. ID 190.)

Moreover, the claims brought against Judge McKeague are otherwise barred by judicial immunity. Plaintiff attempts to argue that Judge McKeague's affirmation of the lower court's ruling is not a protected judicial act because it was done "with knowledge [that] the complaint was not time-barred," which in turn "stigmatized [Plaintiff] as unprofessional and unethical." (Objection, Doc. 22, Pg. ID 211.) Plaintiff's assertion, however, directly contradicts extensive caselaw holding that the issuance of judicial decisions is a core judicial act. *See, e.g., Hertel v. Krueger*, No. 2:18-cv-179, 2018 U.S. Dist. LEXIS 111896, 2018 WL 3321433, at *3 (S.D. Ohio July 5, 2018) ("Issuing orders ... is an action normally performed by trial court judges, and issuing opinions reviewing those orders is an action normally performed by appellate judges."). Thus, Plaintiff's argument is not well taken.

Plaintiff's Motion for Leave to Amend Complaint (Doc. 16) does not address any of these concerns and should, consequently, be denied. The only adjustment Plaintiff

proposes to make to her Amended Complaint is to remove Hamilton County and the Judicial Council as Defendants, and replace them with the two Sixth Circuit judges who served on the panel alongside Judge McKeague. Of course, any claims against the Sixth Circuit judges would be similarly barred for the same reasons such claims are barred against Judge McKeague.

In consideration of the extensive time and resources exhausted by the judicial system in reviewing this frivolous lawsuit, the Court shall impose an additional sanction of $5,000.00 upon Plaintiff *sua sponte* under its inherent authority and pursuant to 28 U.S.C. § 1927. *See, e.g. Dubuc v. Green Oak Twp.*, 482 F. App'x 128, 134 (6th Cir. 2012) (holding that a sanction for $5,000.00 was appropriate against an attorney who pursued a meritless claim). As the Magistrate Judge explained, "[r]ather than pursing rehearing en banc or an appeal to the U.S. Supreme Court to the extent she believed that the Sixth Circuit's March 12, 2020 decision was in error, [Plaintiff] initiated new litigation in this Court, requiring this Court to expend additional judicial resources reviewing both the new pleadings and the prior proceedings." (Report, Doc. 21, Pg. ID 197.) By "filing this additional frivolous lawsuit without any basis for a viable claim . . . Plaintiff [] has multiplied judicial proceedings unreasonably and vexatiously, betraying the Sixth Circuit's faith in the deterrent value of the prior sanction." (*Id.* at Pg. ID 198.)

As required by 28 U.S.C. § 636(b) and Federal Rule of Civil Procedure 72(b), the Court has made a de novo review of the record in this case. Plaintiff's Objections (Doc. 22) are not well taken and, therefore,

OVERRULED. Accordingly, the Court **ADOPTS** the Report and Recommendation (Doc. 21) and **ORDERS** the following:

(1) Defendants' motions to dismiss (Does. 10, 14) are **GRANTED**. This case is **DISMISSED WITHOUT PREJUDICE** for lack of subject matter jurisdiction pursuant to Rule 12(b)(1) and for failure to state any claim pursuant to Rule 12(b)(6);

(2) Plaintiff's Motion for Leave to Amend Complaint (Doc. 16) is **DENIED**;

(3) The Court **ORDERS** a monetary sanction of $5,000.00 upon Plaintiff *sua sponte* under its inherent authority and under 28 U.S.C. § 1927 for filing this frivolous case in an attempt to continue litigating a case that she previously lost on appeal, as well as for her opposition to Defendants' motions to dismiss and motion to further amend her frivolous complaint; and

(4) This case is **TERMINATED** from the Court's docket.

IT IS SO ORDERED.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO

By: /s/ Matthew W. McFarland
JUDGE MATTHEW W. McFARLAND

APPENDIX C — REPORT AND RECOMMENDATIONS OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO, WESTERN DIVISION, FILED SEPTEMBER 2, 2022

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Case No. 1:22-cv-134

McFarland, J.
Bowman, M.J.

LUCINDA JONES,

Plaintiff,

v.

HAMILTON COUNTY, *et al.*,

Defendant.

REPORT AND RECOMMENDATION

Plaintiff Lucinda Jones, having paid the requisite $400.00 filing fee and proceeding *pro se*, initiated this litigation on March 11, 2022. (Doc. 1). On March 28, 2022, Plaintiff filed an amended complaint.[1] (Doc. 7). Currently pending are two motions to dismiss this case and Plaintiff's motion to further amend her complaint. This case has been referred to the undersigned magistrate judge for all pretrial proceedings, including a Report and

1. Plaintiff filed her first amended complaint pursuant to Rule 15(a)(1), Fed. R. Civ. P.

Recommendation on any dispositive motions. (Doc. 19). For the reasons that follow, Defendants' motions to dismiss should be granted, and Plaintiff's motion for leave to file a second amended complaint should be denied. In addition, the undersigned recommends that the Court impose a monetary sanction upon Plaintiff *sua sponte* for filing and continuing to litigate this frivolous lawsuit.

I. Procedural Background

Plaintiff's amended complaint identifies three Defendants: Hamilton County, Hon. David McKeague, and the Judicial Counsel for the U.S. Court of Appeals for the Sixth Circuit. (Doc. 7). On April 13, 2022, Defendant Hamilton County filed a motion to dismiss the complaint for failure to state a claim. (Doc. 10). On June 28, 2022, the two federal Defendants filed a separate motion to dismiss based upon a lack of jurisdiction, and because Plaintiff's claims are barred by absolute judicial immunity and sovereign immunity. (Doc 14). Plaintiff has filed responses to both motions, along with a motion seeking leave to file a second amended complaint in order to name additional federal judges as defendants.

Plaintiff Jones states she is a licensed attorney against whom sanctions were levied after a federal district court in Tennessee determined that she had filed a frivolous lawsuit outside of the statute of limitations. (Doc. 7 at ¶¶1, 22-24). In the above-captioned lawsuit, Plaintiff challenges a March 2020 decision by the Court of Appeals for the Sixth Circuit that affirmed the Tennessee court's sanctions award.

Appendix C

The underlying proceedings began in April 2017, when Jones and co-counsel Valerie Vie (not a party herein) filed an employment discrimination suit on behalf of their former clients, Katoria Williams and Demetri Faulkner, against both the Tennessee School System and a supervisor, Marjorie Douglas. *See Williams v. Shelby County School System*, Case No. 2:17-cv-2284 (W.D. Tenn.) (hereinafter "*Williams* suit"). No one challenged the *Williams* plaintiffs' right to file suit against the Shelby County School System, but the court ultimately imposed sanctions after dismissing plaintiffs' time-barred claims against a former supervisor, Douglas.

Initially, the *Williams* suit was assigned to Senior U.S. District Judge Jon McCalla. Douglas's motion to dismiss was not ruled on by Judge McCalla but was granted by U.S. District Judge Thomas Parker on May 2, 2018, following transfer of the case to his docket. Judge Parker held that all of plaintiffs' claims fell outside any applicable statutes of limitations. *See Williams*, Case No. 2:17-cv-2284-TLP-cgc (ECF Doc. 108); *see also Williams v. Shelby Cnty. School System*, 2020 U.S. App. LEXIS 8008, 2020 WL 1190433, at *1 (6th Cir. March 12, 2020) (summarizing the underlying procedural background).

The Tennessee court rejected counsel's "continuing violation" theory under 42 U.S.C. §1983 and held that a one-year limitations period applied to those claims. *See Williams*, Case No. 2:17-cv-2284-TLP-cgc (ECF Doc. 108, PageID 1113). The court held that any state law claims for emotional distress were also subject to a one-year period, though the court pointed out that the third

amended complaint failed to state a claim "for any kind of emotional distress." *Id.* Judge Parker allowed that a three-year period *might* apply to a single claim for inducement to breach a contract filed *solely by Williams* (and not by Faulkner), but reasoned that even if the longer period applied to that single claim, it was still time-barred.[2] (*Id.*, PageID 1115). Judge Parker noted that Faulkner's separate claim "for wrongful termination of a tenured teacher is confusing, at best." (*Id.*, PageID 1116). After pointing out flaws in Faulkner's legal theory, including that "any conceivable claims would be against... Defendant Shelby County Board of Education" rather than Douglas, the court explained that any claim by Faulkner was subject to a 30-day limitations period. (*Id.*, PageID 1116).

Following entry of judgment in favor of Douglas, Williams and Faulkner voluntarily dismissed their § 1983 claims against the Shelby County Board of Education. (*Id.*, Doc. 123). On August 29, 2018, Williams and Faulkner settled their sole remaining Title VII claims against the Shelby County Board of Education. (*Id.*, Doc. 140).

After the court's May 2, 2018 grant of her motion to dismiss, Douglas moved for an award of sanctions. On February 7, 2019, the Tennessee district court partially granted that motion. Judge Parker held Williams and Faulkner liable for $7,968.58 in fees under Tenn. Code. Ann. § 29-20-113(a), a statute that permits fee-shifting for state law claims filed against Douglas in her individual

2. The court suggested in a footnote that the statute of limitations for inducement to breach a contract might be only one year. (Doc. 108 at 12, n.5).

capacity. The court denied the plaintiffs' motion to certify a constitutional challenge to that statute to the Tennessee Supreme Court. In addition, Judge Parker held that plaintiffs' attorneys, Jones and Vie, were *personally* liable for an additional $39,842.92 in fees under federal law, specifically 28 U.S.C. § 1927, for "multipl[ying] the proceedings in any case unreasonably and vexatiously." *Williams v. Shelby Cnty. School System*, Case No. 2:17-cv-02284, ECF Doc. 163, 2019 U.S. Dist. LEXIS 20004, 2019 WL 490354 at *6 (W.D. Tenn. Feb. 7, 2019).

Jones and Vie promptly appealed the February 7, 2019 sanctions award. Months later, Williams and Faulkner filed a separate appeal concerning the constitutionality of Tenn. Code Ann. § 29-20-113(a). In an unpublished opinion authored by U.S. Senior Circuit Judge David McKeague, the Sixth Circuit rejected the appeal filed by Williams and Faulkner[3] as untimely. *See Williams v. Shelby Cnty. School System*, 2020 U.S. App. LEXIS 8008, 2020 WL 1190433, at *1 (6th Cir. March 12, 2020) (recounting procedural history and rejecting the plaintiffs' appeal as untimely "because, unlike [their] attorneys, [Williams and Faulkner] didn't file a notice of appeal within thirty days of the district court's February 7 order.").

The Sixth Circuit went on to consider counsel's timely appeal of the sanctions award against them. The appellate court upheld that award under 28 U.S.C. § 1927, reasoning that the filing of a time-barred suit is a "classic example" of

3. The Sixth Circuit referred to Williams and Faulkner collectively as "Williams." *Id.*, 2020 U.S. App. LEXIS 8008, 2020 WL 1190433 at *1 n.1.

sanctionable conduct and describing counsel's "continuing violations" argument as "leaky at best, frivolous at worst." *Id.* at *2 (internal quotation and citation omitted). The Sixth Circuit also criticized counsel's argument that the trial court's alleged "delay" in ruling on Douglas's motion to dismiss racked up the amount of attorney's fees. "If Jones and Vie wanted to avoid hefty sanctions, they should have dismissed the lawsuit themselves or moved to withdraw soon after Douglas filed her motion to dismiss. They - not the district court - were responsible for defense counsel's rising fees." *Id.* at *3.

After the Sixth Circuit affirmed the sanctions award on March 12, 2020, Douglas filed a new motion seeking additional fees for having to defend on appeal. On May 28, 2020 in a *per curiam* opinion, the Sixth Circuit panel denied that motion, despite noting that the issue merited "close[] scrutiny." *Williams v. Shelby Cnty. School System*, 815 Fed. Appx. 842, 846, 380 Ed. Law Rep. 191 (6th Cir. 2020). The majority described counsel's conduct on appeal as follows:

> [Counsel] filed time-barred claims and then, on appeal, sought to lay responsibility at the feet of the district court. *Williams*, 2020 U.S. App. LEXIS 8008, 2020 WL 1190433 at *2-3. Jones and Vie should have known that blaming the district court and repeating their most meritless arguments would fail.
>
> Some of Jones and Vie's conduct is mitigated by the posture of their appeal. They did not

challenge the merits of the district court's holding that the claims were time barred. They instead challenged the district court's order sanctioning them for filing the claims in the first place. That is, Jones and Vie argued the reasonableness of their views - not whether those views were, in fact, correct - and challenged the district court's analysis. In doing so, they raised three semi-colorable arguments. First, Jones and Vie maintained that the claim for inducement to breach of contract was arguably subject to a six-year statute of limitations. Second, they challenged the district court's finding that the litigation was meant to "grind down" Douglas, highlighting the limited nature of their discovery requests and motions practice. Finally, they argued that the district court failed to make the necessary findings of discrete acts of vexatious conduct, citing caselaw to support their argument. Although the law was "solidly against these new arguments," they at least evidence some bases upon which Jones and Vie might have believed that their appeal would gain traction. *Friedler v. Equitable Life Assurance Soc'y*, 86 F. App'x 50, 57 (6th Cir. 2003).

We exercise our discretion not to sanction Jones and Vie. Although their conduct was unprofessional and serious enough to meet the standard for imposing sanctions, the deterrent and compensatory purpose of sanctions is

> adequately served by the nearly $40,000 judgment against them in the district court. This is especially so given that Douglas would have had to defend the sanctions order anyway in Williams and Faulkner's appeal. We believe that further sanctions would serve no useful purpose. And when "no useful purpose" would be served by imposing additional sanctions, we may "decline to impose" them.... We thus decline to impose them here.

Id., 815 Fed. Appx. at 846-847 (citations omitted).

Judge McKeague dissented, explaining that he would have imposed additional sanctions for continuing the litigation through a frivolous appeal.

> I would... award monetary sanctions against Jones and Vie under 28 U.S.C. § 1927. No doubt the district court's sanctions order, our opinion affirming that order, and the majority's opinion denying further sanctions have sent a strong message to Jones and Vie. But there's still a "useful purpose" in making them pay Douglas's fees on appeal. *Flaherty v. Gas Research Inst.*, 31 F.3d 451, 459 (7th Cir. 1994). Namely, their conduct wasn't victimless: someone has to pay Douglas's lawyers for hours billed on this frivolous appeal. If it's the Shelby County School System - really, the public - that pays, those thousands of taxpayer dollars are better spent on students, teachers, and schools. The

> equitable thing to do would be to shield these innocent stakeholders from the expense of Jones and Vie's frivolous appeal. *See Hamilton v. Boise Cascade Exp.*, 519 F.3d 1197, 1205 (10th Cir. 2008) ("[T]he text of § 1927 ... indicates a purpose to compensate victims of abusive litigation practices, not to deter and punish offenders."). If it's Douglas - the public servant - who pays, then she too deserves to be spared. *See id.*

Williams v. Shelby Cnty. School System, 815 Fed. Appx. at 847.

Attorneys Jones and her co-counsel did not seek reconsideration *en banc* of the March 12, 2020 decision, nor did Attorney Jones file a petition for writ of certiorari in the United States Supreme Court. Instead, Jones filed a complaint of judicial misconduct against both U.S. Circuit Judge McKeague and U.S. District Judge McCalla.[4] (Doc. 7 at 2). When the Sixth Circuit Judicial Council did not immediately rule on her misconduct complaint, Jones[5] initiated this new federal lawsuit, naming as Defendants

4. As she did in her prior appeal of the Williams suit, Plaintiff alleges in the above-captioned case that Judge McCalla was prejudiced against Plaintiff and her client and delayed ruling on the motion to dismiss as punishment. (Doc. 7 at ¶¶ 35-36). As discussed, Douglas's motion to dismiss remained pending until the case was transferred to the docket of Judge Parker, who granted the motion.

5. Ms. Vie withdrew from representation in the *Williams* suit on June 30, 2018, and did not join in this lawsuit. (*See Williams*, *supra*, at Doc. 129).

Hamilton County, Ohio and Judge McKeague, as well as the Judicial Council of the U.S. Court of Appeals for the Sixth Circuit. Plaintiff appears to have filed suit in the Southern District of Ohio based upon the fact that the Sixth Circuit is based in the Potter Stewart U.S. Courthouse in Cincinnati, Ohio.

In the above-captioned lawsuit, Jones generally alleges that Judge McKeague and the Judicial Council violated her "due process" rights and that Judge McKeague committed "judicial misconduct." (Doc. 7 at 1-3, PageID 63-65). Citing to 42 U.S.C. §1983, she sets forth two claims each against both federal Defendants: (Count I) a deprivation of due process (¶¶ 41-54); and (Count II) a violation of her First Amendment right to free speech (¶¶ 55-73).

II. Analysis

A. Hamilton County's Motion to Dismiss

Unsurprisingly given that the complaint contains almost no mention of Defendant Hamilton County, Hamilton County has moved to dismiss on grounds that Jones has failed to identify either actions by the County or any rights that were violated by Hamilton County.[6] In addition, Hamilton County is not *sui juris*. In her response, Plaintiff "does not oppose Hamilton County's Motion to Dismiss." (Doc. 11). Accordingly, for the reasons

6. The complaint erroneously identifies Judge McKeague as a judge "of the United States Court of Appeal, Hamilton County, Ohio." (Doc. 7 at ¶3). The Sixth Circuit Court of Appeals is a federal court and is not associated with the state court system.

stated in Hamilton County's motion, all claims against that Defendant should be dismissed.

B. Federal Defendants' Motion to Dismiss

The two federal Defendants filed a joint motion to dismiss in which they challenge this Court's subject matter jurisdiction under Rule 12(b)(1) and further argue that Plaintiff has failed to state any claim under Rule 12(b)(6). Defendants' motion should be granted. Plaintiff's failure to state any remotely plausible claim underscores the lack of subject matter jurisdiction over the complaint.

In her response to the federal Defendants' motion, Plaintiff states that she "is not continuing her claim against the Judicial Council."[7] (Doc. 15 at 4 n. 6, PageID 122*; see also id.* at 12, n.9, PageID 130 (suggesting that she is "voluntarily dismissing her claims against the Judicial Council."). However, Plaintiff has not filed a formal motion under Rule 41. Therefore, the undersigned recommends granting the joint motion of Defendants in full.

1. Lack of Subject Matter Jurisdiction Under Rule 12(b)(1)

Federal courts are courts of limited jurisdiction. Plaintiff alleges jurisdiction under both 28 U.S.C. § 1331 and 28 US.C. § 1332. (Doc. 7 at ¶6). Defendants' motion raises both facial and factual challenges to Plaintiff's

7. Plaintiff asserts that "Chief Judge Jeffrey S. Sutton signed an Order dismissing the judicial complaint" on July 6, 2022. (Doc. 16 at 3, n. 2, PageID 135).

assertion of subject matter jurisdiction. "When a Rule 12(b)(1) motion attacks the factual basis for jurisdiction, the district court must weigh the evidence and the plaintiff has the burden of proving that the court has jurisdiction over the subject matter." *Golden v. Gorno Bros., Inc.*, 410 F.3d 879, 881 (6th Cir. 2005) (additional citation omitted). Plaintiff has failed to carry that burden.

a. The Lack of Federal Question Jurisdiction

The statute creating federal question jurisdiction states that "district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331. In her amended complaint, Plaintiff alleges a violation of her civil rights under 42 U.S.C. § 1983 as providing the basis for federal question jurisdiction. However, "[t]wo elements are essential to a claim under §1983 - the conduct complained of must be committed under color of state law and the conduct must have deprived the claimant of a right, privilege or immunity protected by the United States Constitution or statutes." *Ana Leon T. v. Federal Reserve Bank of Chicago*, 823 F.2d 928, 931 (6th Cir. 1987). Here, Plaintiff has failed to state a plausible claim under § 1983 against Judge McKeague because, as a federal judicial officer, he acts "under color of federal, and not state, law." *Id.*; *Haines v. Fed. Motor Carrier Safety Admin.*, 814 F.3d 417, 429 (6th Cir. 2016) ("[A]s a general matter, '[t]he federal government and its officials are not subject to suit under [§ 1983]'"). The Sixth Circuit Judicial Council likewise is a federal entity that is not subject to suit under 42 U.S.C. § 1983.

Plaintiff's reference to attorney's fees under 42 U.S.C. § 1988 similarly provides no basis for the exercise of federal question jurisdiction. Plaintiff is entitled to fees under § 1988 only if she prevails on her civil rights claim under § 1983. Since she cannot state a plausible claim under §1983 as a matter of law, she likewise cannot state a claim under § 1988. In addition, pro se litigants simply are not entitled to fees under Civil Rights Attorney's Fees Awards Act, even where the litigant is a lawyer. *See Kay v. Ehrler*, 499 U.S. 432, 111 S. Ct. 1435, 113 L. Ed. 2d 486 (1991).

b. The Lack of Diversity Jurisdiction

Plaintiff also alleges that diversity jurisdiction exists under 28 U.S.C. § 1332. However, a foundational prerequisite for the exercise of diversity jurisdiction is diverse citizenship of the parties, which Plaintiff alleges solely on "information and belief" in her amended complaint and deletes entirely from her tendered second amended complaint.[8] Apart from that factual issue, however, Plaintiff must demonstrate that the amount in controversy exceeds $75,000 in order to establish diversity jurisdiction. *See* 28 U.S.C. § 1332(a)(1). Here, the only monetary damages Plaintiff seeks are attorney's fees

8. Plaintiff, a resident of Wayne County Michigan, alleges "[u]pon information and belief" that "Judge McKeague is a citizen and resident of Hamilton County." (Doc. 7 at ¶¶1, 3). Plaintiff's belief is in error. Although the Sixth Circuit holds oral arguments in Cincinnati, Ohio, Judge McKeague has long resided in Michigan. Plaintiff acknowledges as much by omitting her erroneous allegation from her tendered amended complaint. (*See* Doc. 16-1).

and costs under 42 U.S.C. §1988, for which no claim is stated. Even if she had instead sought fees under state law, "[a]s a general rule, attorneys' fees are excludable in determining the amount in controversy for purposes of diversity, unless the fees are provided for by contract or where a statute mandates or expressly allows the payment of such fees." *Williamson v. Aetna Life Ins. Co.*, 481 F.3d 369, 376 (6th Cir. 2007). Accordingly, Plaintiff has failed to state a basis for the exercise of diversity jurisdiction.

c. The Lack of Alternative Grounds for Jurisdiction

In another attempt to establish jurisdiction, Plaintiff cites to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. However, that Act does not provide an independent source of federal jurisdiction where federal jurisdiction does not otherwise exist. *Louisville & Nashville R. Co. v. Donovan*, 713 F.2d 1243 (6th Cir.1983).

Last but not least, this Court lacks subject matter jurisdiction to enter any of the relief that Plaintiff seeks. At the heart of this lawsuit is Plaintiff's disagreement with the Sixth Circuit's affirmance of a Tennessee district court's award of monetary sanctions against her for filing a frivolous time-barred lawsuit. Incredibly, Jones now asks this district court to vacate the Sixth Circuit's decision in the *Williams* suit. (Doc. 15 at 4, PageID 122, citing Amended Complaint at ¶¶ 1-7, and stating "Plaintiff asks this Court to: (1) declare the Panel violated her Fourteenth Amendment due process rights and her First Amendment right; (2) issue an injunction

rendering the March 12, 2020, ruling null and void, and (3) award her attorneys' fees, expenses, and costs."; *see also* Doc. 16 at PageID 135, explaining that Plaintiff seeks "nullification/voidance of the Panel's March 12, 2020 ruling that Plaintiff filed a time-barred lawsuit and ordering sanctions against her."). As Defendants put it: "It is axiomatic that a federal district court lacks the jurisdiction and authority to issue injunctive, declaratory, or mandamus relief to a federal court of appeals or its officers." (Doc. 14 at 15, PageID 116, collecting cases); *see also Panko v. Rodah*, 606 F.2d 168, 171 n. 6 (7th Cir. 1979). Allowing such injunctive relief "would be to permit, in effect, a 'horizontal appeal' from one district court to another or even a 'reverse review' of a ruling of the court of appeals by a district court." *Olita v. McCalla*, 2022 U.S. Dist. LEXIS 92912, 2022 WL 1644627 at *7 (W.D. Tenn. May 24, 2022) (citing *Mullis v. U.S. Bankr. Ct. for Dist. of Nev.*, 828 F.2d 1385, 1392-93 (9th Cir. 1987)). "Such collateral attacks on the judgments, orders, decrees or decisions of federal courts are improper." *Mullis*, 828 F.2d at 1393. Thus, federal courts have consistently refused to entertain such claims. *See, e.g., Schmier v. U.S. Court of Appeals for the Ninth Circuit*, 136 F.Supp.2d. 1048, 1050-51 (N.D.Cal. 2001) (noting "the dubious status" of a district court's "jurisdiction to evaluate the validity of a higher court's rules"). In short, this Court lacks subject matter jurisdiction over any of the claims asserted in this lawsuit.

In her response, Plaintiff suggests that the Sixth Circuit should have considered her argument on the merits that "the statute of limitations for Williams and Faulkner ... was three years." (Doc. 15 at 5, PageID

123). By asserting that a three-year limitations period in Tenn. St. § 28-3-109(a)(3) applied to some unspecified claim(s) filed on *Faulkner*'s behalf, Jones speculates that the Sixth Circuit "disregarded ...Faulkner's July 2014 termination date." (*Id.*) But Jones' premise — that the appellate court should have re-examined the ruling that Williams' and Faulkner's claims were time-barred — is wrong. Neither Jones nor anyone else filed an appeal of the May 2, 2018 dismissal of all claims against Douglas as time-barred.[9] The sole issue before the Sixth Circuit on appeal was whether the Tennessee trial court had abused its discretion by imposing sanctions against counsel on February 7, 2019. In fact, two of three judges on the Sixth Circuit panel elected not to impose *additional* sanctions for the otherwise frivolous appeal in part because of their favorable view that Jones had not "challenge[d] the merits of the district court's holding that the claims were time barred," and instead challenged only the "reasonableness of" counsel's legal views as opposed to "whether those views were, in fact, correct...." *Williams*, 815 Fed. Appx. at 846.

9. In its May 2018 dismissal of Williams' and Faulkner's claims against Douglas, the district court explained that Tenn. Code Ann. § 28-3-109 (the statute that Plaintiff cites herein) was miscited by counsel and did not apply to any of Faulkner's claims. (*Williams*, Case No. 2:17-cv-02284, ECF Doc. 108, PageID 1116 n. 6; *see also id.* at PageID 1115, n.5). Plaintiff does not bother to specify how that state statute would apply, or to which of Faulkner's claims it might apply. However, her lack of specificity herein is irrelevant because the unappealed May 2018 ruling is the law of the case.

2. Failure to State a Claim Under Rule 12(b)(6)

In addition to a lack of subject matter jurisdiction, Defendants seek dismissal based upon Plaintiff's failure to state any cognizable claims against them under Rule 12(b)(6). The Defendants' well-taken argument underscores this Court's lack of subject matter jurisdiction.

a. Absolute Judicial Immunity

For example, Judge McKeague is entitled to absolute judicial immunity from the above-captioned lawsuit. The immunity offered judicial officers in the performance of judicial duties is not overcome by allegations that they acted in "bad faith," maliciously, corruptly or even "in excess of ... authority." *See Mireles v. Waco*, 502 U.S. 9, 11, 112 S. Ct. 286, 116 L. Ed. 2d 9 (1991) (per curiam). Judges retain absolute immunity from liability as long as they are performing judicial acts and have jurisdiction over the subject matter giving rise to the suit against them. *Id.*, 502 U.S. at 11-12; *Stump v. Sparkman*, 435 U.S. 349, 356-57, 98 S. Ct. 1099, 55 L. Ed. 2d 331 (1978); *Stern v. Mascio*, 262 F.3d 600, 607 (6th Cir.2001). "In the Sixth Circuit, absolute immunity against federal judges extends to requests for injunctive and other forms of equitable relief as well as to claims for damages." *Ward v. United States Dist. Court for the Western Dist. of Tenn.*, No. 14–2707–T–DKV, 2015 U.S. Dist. LEXIS 1912, 2015 WL 137204, at *1 (W.D. Tenn. Jan. 8, 2015) (citing *Kipen v. Lawson*, 57 Fed. Appx. 691, 691 (6th Cir. 2003); *Newsome v. Merz*, 17 Fed. Appx. 343, 345 (6th Cir. 2001)); see also *Easterling v. Rudduck*, No. 1:14-cv-876, 2015 U.S. Dist. LEXIS 44867, 2015 WL 1567844, at *5 (S.D. Ohio Apr. 6,

2015) (Litkovitz, M.J.) (Report & Recommendation) ("That plaintiff seeks only equitable or injunctive relief has no bearing on the" dismissal of a complaint against a state judge entitled to absolute immunity from suit), *adopted at* 2015 U.S. Dist. LEXIS 66547, 2015 WL 2452437 (S.D. Ohio May 21, 2015) (Dlott, J.).

Plaintiff's claims against Judge McKeague are based upon his authorship of the March 12, 2020 majority opinion affirming an award of sanctions against counsel, together with his related dissenting opinion on May 28, 2020. Plaintiff alleges that in affirming the district court's award of sanctions, Judge McKeague disregarded Faulkner's termination date, denied Plaintiff's request for oral argument, and engaged in "wrongful disciplinary action." (Doc. 7 at ¶¶ 44, 57). However, all of the alleged actions by Judge McKeague were undertaken in his role as a federal appellate judge.

In order to overcome judicial immunity, a plaintiff must demonstrate: (1) that the judge was not functioning in a judicial capacity, or (2) the judge acted in the "complete absence of all jurisdiction." *Mireles*, 502 U.S. at 11-12. In conclusory fashion, Plaintiff asserts that Judge McKeague and the other two appellate judges "departed from their judicial function and were in the absence of all jurisdiction" because "they disregarded Faulkner's [termination date]" that Plaintiff now claims would have supported some unspecified claim.[10] (Doc. 15 at 10).

10. Again, Ms. Jones did not appeal the trial court's May 2018 dismissal of all claims on statute of limitations grounds. Her appeal was limited to challenging the trial court's exercise of discretion to imposed sanctions on February 7, 2019.

Plaintiff's assertion is frankly ludicrous. The panel's March 12, 2020 affirmance was undeniably a judicial decision and embodies the essence of a judicial function. "Issuing decisions and presiding over hearings, including sanctions hearings, are functions typically performed by a judge." *Cooper v. Rapp*, No. 2:16-CV-00163, 2016 U.S. Dist. LEXIS 174938, 2016 WL 7337521 at *8 (S.D. Ohio Dec. 19, 2016), *aff'd*, 702 Fed. Appx. 328 (6th Cir. 2017). "Grave procedural errors, including those involving due process, do not deprive an act of its essentially judicial nature." *Robertson v. City of Grand Rapids*, No. 1:06-CV-451, 2008 U.S. Dist. LEXIS 42119, 2008 WL 2224173 at *5 (W.D. Mich. May 27, 2008) (citing *Stump v. Sparkman*, 435 U.S. 349, 359, 98 S. Ct. 1099, 55 L. Ed. 2d 331 (1978), and *Stern v. Mascio*, 262 F.3d at 606-08). In fact, when counsel appealed the district court's sanctions order to the Sixth Circuit, she acknowledged that the appellate court had jurisdiction.

The handful of cases cited by Plaintiff in opposition to dismissal are all easily distinguishable. For example, in *Barrett v. Harrington*, 130 F.3d 246, 255 (6th Cir. 1997), a judge engaged in interviews with the media, accusing a former litigant who had appeared before her of stalking her. *Id.* at 260-261. Those separate media communications were outside of the judicial function because they "further[ed] no official act or sanction" *Id.* at 261.[11] *Accord Harris v. Harvey*, 605 F.2d 330 (6th Cir.1979)

11. *See also King v. Love*, 766 F.2d 962 (6th Cir. 1985) (holding that state court magistrate was not entitled to judicial immunity for falsely telling officers to arrest King on a warrant for another person, because deliberately misleading police officers about the identity of

(judge not entitled to judicial immunity for extra-judicial communications to the press and city officials wherein he described the plaintiff as a fixer, a briber, and a sycophant). Here, by contrast, Judge McKeague did not speak to the media about Ms. Jones at any time and did nothing more than file the panel's decision of record.[12]

In an attempt to circumvent the judicial immunity to which Judge McKeague is clearly entitled, Plaintiff cites to *Pulliam v. Allen*, 466 U.S. 522, 104 S. Ct. 1970, 80 L. Ed. 2d 565 (1984), a case filed under 42 U.S.C. § 1983 prior to amendment of that civil rights statute. *Pulliam* has no application here. As discussed above, §1983 does not apply to Judge McKeague or to any federal official or entity. Moreover, even in *Pulliam*, the Supreme Court held that in order to obtain equitable relief against a judge, a plaintiff must demonstrate that she has no adequate remedy at law and that she faces a "serious risk of irreparable harm." *Pulliam*, 466 U.S. at 537. Here, Plaintiff had an adequate remedy at law because she could have: (1) requested reconsideration *en banc* by the full Court of Appeals; or (2) filed a petition for writ of certiorari to seek further review by the Supreme Court. Plaintiff did neither.[13] "A new

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the person sought in an arrest warrant well *after* the warrant has been issued was not a judicial act).

12. Although Plaintiff repeatedly refers to the March 12, 2020 opinion as "published," it was merely filed of record and is not a formally "published" Sixth Circuit opinion.

13. In a footnote, Plaintiff asserts that she "was stricken with COVID in March 2020," (Doc. 15 at PageID 127). Even if such facts were verifiable and could be considered, a reported period of personal

federal court action... is decidedly not a substitute for a forgone appeal." *Olita v. McCalla*, 2022 U.S. Dist. LEXIS 92912, 2022 WL 1644627, at *8; *see also*, *Newsome v. Merz*, 17 Fed. Appx. 343, 345 (6th Cir. 2001) (Plaintiff had no claim for injunctive relief because he had an adequate remedy at law by way of appeal); *Flip v. Flanagan*, 729 F. Supp. 1149, 1153-54 (N.D. Ohio 1989) (Plaintiff could not obtain equitable relief because he had adequate remedies at law, like appeal or habeas corpus relief).

b. Sovereign Immunity

Just as Judge McKeague is entitled to judicial immunity, the Judicial Circuit is entitled to sovereign immunity. "[J]udicial councils and other bodies comprised of federal judges and courts are entitled to sovereign immunity." *Sanai v. Kozinski*, 2021 U.S. Dist. LEXIS 69596, 2021 WL 1339072, at *5 (N.D. Cal., April 9, 2021). The exercise of jurisdiction over a governmental entity that is entitled to sovereign immunity "requires a clear statement from the United States waiving sovereign immunity . . . together with a claim falling within the terms of the waiver." *United States v. White Mountain Apache Tribe*, 537 U.S. 465, 472, 123 S. Ct. 1126, 155 L. Ed. 2d 40 (2003); *see also Reetz v. United States*, 224 F.3d 794, 795 (6th Cir. 2000) (holding that in the absence of a waiver of sovereign immunity, plaintiff's claim must be dismissed on jurisdictional grounds);

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illness in March 2020 does not negate the availability of her legal remedy. Plaintiff could have moved for an extension of time if needed or retained counsel to act on her behalf.

Plaintiff has failed to show the existence of any such waiver of sovereign immunity. Certainly, § 1983 contains no such waiver and does not apply to the federal Defendants. *See also Sanai*, 2021 U.S. Dist. LEXIS 69596, 2021 WL 1339072 at *5-6 (discussing cases that hold that judicial councils and judges sued in their official capacity are entitled to sovereign immunity); *Shemonsky v. Vanaskie*, 2005 U.S. Dist. LEXIS 49673, 2005 WL 2031140, at *4 (M.D. Pa. Aug. 16, 2005) (plaintiff's suit against the Third Circuit Judicial Council was barred because plaintiff failed to identify an applicable waiver of sovereign immunity).

C. Plaintiff's Motion for Leave to File a Second Amended Complaint

Plaintiff seeks leave to file a second amended complaint under Rule 15(a)(2), Fed. R. Civ. P.[14] (Doc. 16). In her tendered second amended complaint, Plaintiff eliminates Hamilton County and the Judicial Council as Defendants, but seeks to add two additional Sixth Circuit judges who served on the panel with Judge McKeague. She continues to cite to 42 U.S.C. § 1983 as the basis for her claims.

Plaintiff's motion to amend should be denied as futile because it would not survive a motion to dismiss. "A court need not grant leave to amend... where amendment would be 'futile.'" *Miller v. Calhoun County*, 408 F.3d 803, 817 (6th Cir. 2005) (citing *Foman v. Davis*, 371 U.S. 178, 182,

14. Although Plaintiff also cites to amendment as of right under Rule 15(a)(1), that provision does not apply on the record presented.

83 S. Ct. 227, 9 L. Ed. 2d 222 (1962)). As Plaintiff herself points out, the allegations in the tendered second amended complaint are "materially the same" as the allegations set forth in her first amended complaint. (Doc. 16 at PageID 137). For all of the reasons discussed above, no amendment can salvage the fundamental frivolousness of Plaintiff's claims or establish jurisdiction in this Court.[15]

D. This Court Should Impose Additional Sanctions

In addition to granting Defendants' motions to dismiss and denying Plaintiff leave to further amend, the undersigned recommends that the Court impose additional sanctions upon Plaintiff *sua sponte* under its inherent authority, under 28 U.S.C. § 1927, and/or under Rule 11, for filing and continuing to pursue this entirely frivolous lawsuit. *See generally, Chambers v. NASCO, Inc.*, 501 U.S. 32, 111 S. Ct. 2123, 115 L. Ed. 2d 27 (1991). Plaintiff filed this lawsuit for an improper purpose - to evade monetary sanctions imposed against her by a different federal district court, and the affirmance of that award by the Sixth Circuit Court of Appeals. Rather

15. In her reply memorandum, Plaintiff argues (for the first time) that her claims should be construed under *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388, 91 S. Ct. 1999, 29 L. Ed. 2d 619 (1971) rather than under 42 U.S.C. § 1983. However, federal judges are entitled to absolute immunity in *Bivens* actions even for injunctive and other forms of equitable relief. *Kipen v. Lawson*, 57 Fed. Appx. 691 (6th Cir. 2003) (federal judges' absolute immunity "has also been extended to requests for injunctive relief"); *Newsome v. Merz*, 17 Fed. Appx. at 345 (noting that "federal judges are immune from *Bivens* suits for equitable relief"); *Olita v. McCalla*, Case No. 2:21-CV-2763, 2022 U.S. Dist. LEXIS 92912, 2022 WL 1644627 at *7 (same).

than pursuing rehearing en banc or an appeal to the U.S. Supreme Court to the extent she believed that the Sixth Circuit's March 12, 2020 decision was in error, she initiated new litigation in this Court, requiring this Court to expend additional judicial resources reviewing both the new pleadings and the prior proceedings.

The original sanctions award was imposed in the *Williams* suit after the Tennessee district court determined that counsel had multiplied the proceedings "unreasonably and vexatiously" in violation of 28 U.S.C. § 1927. The Sixth Circuit affirmed. However, in a split decision, the appellate court denied a subsequent motion by Douglas seeking additional sanctions for the frivolous appeal. Notably, the majority agreed that the appeal of the sanctions award was frivolous, but declined to impose additional sanctions in part because counsel had not challenged the trial court's earlier (2018) ruling that the Williams and Faulkner claims were time-barred. The Sixth Circuit also concluded that the existing sanctions award of nearly $40,000 should prove a sufficient deterrent to persuade counsel not to engage in future sanctionable conduct. By filing this additional frivolous lawsuit without any basis for a viable claim and by opposing the Defendants' motions to dismiss and filing a motion to file a second amended complaint, Plaintiff Jones has once again multiplied judicial proceedings unreasonably and vexatiously, betraying the Sixth Circuit's faith in the deterrent value of the prior sanction. As a practicing attorney, Plaintiff knew better.[16]

16. Plaintiff's references to a wholly inapplicable "continuing violations" legal theory in *this* lawsuit are nearly identical in nature to her prior arguments in the *Williams* suit, which the Sixth Circuit

Appendix C

In addition to the Court's inherent authority to impose sanctions and its statutory authority under 28 U.S.C. §1927, Rule 11 of the Federal Rules of Civil Procedure exists as a check on the filing of even a single frivolous lawsuit. Rule 11(b) of the Federal Rules of Civil Procedure applies to pro se litigants and attorneys alike, and states that by filing a pleading, the party

> certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:
>
> (1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
>
> (2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;
>
> (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery....

Id.

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then described as "leaky at best, frivolous at worst." At this point in time, Plaintiff's arguments can only be described as frivolous.

When a pro se litigant fails to comply with Rule 11 by filing a complaint in which no claims are warranted by existing law or any nonfrivolous argument, a court "may impose an appropriate sanction." Rule 11(c). Specifically, under Rule 11(c)(3) a court may impose sanctions on its own initiative, after directing the party "to show cause why conduct specifically described in the order has not violated Rule 11(b)."[17] Any sanction "must be limited to what suffices to deter repetition of the conduct" and "may include nonmonetary directives [or] an order to pay a penalty into court." Rule 11(c)(4). Based upon Plaintiff's filing of this frivolous lawsuit, the undersigned recommends the issuance of an order to "show cause" why a monetary penalty should not be paid into this Court under Rule 11. In addition, the Court should consider a non-monetary penalty, such as requiring Plaintiff to obtain the certification of another attorney before initiating any future pro se case in this Court.

III. Conclusion and Recommendations

Accordingly, **IT IS RECOMMENDED THAT**:

(1) Defendants' motions to dismiss (Docs. 10, 14) should be **GRANTED**, with this case to be dismissed without prejudice for lack of subject matter jurisdiction under Rule 12(b)(1), or alternatively, to be dismissed with prejudice for failure to state any claim under Rule 12(b)(6);

17. A court may not impose a monetary sanction prior to issuing a show-cause order. Rule 11(c)(5).

(2) Plaintiff's motion to further amend her complaint (Doc. 16) should be **DENIED**;

(3) The Court should impose a monetary sanction of $5,000.00 upon Plaintiff *sua sponte* under its inherent authority and/or under 28 U.S.C. § 1927 for filing this frivolous case in an attempt to continue litigating a case that she previously lost on appeal, as well as for her opposition to Defendants' motions to dismiss and motion to further amend her frivolous complaint;

(4) Alternatively, the Court should issue an order directing Plaintiff Jones to **show cause** why the filing of the above-captioned complaint does not constitute a violation of Rule 11(b), and why this Court should not impose both a monetary sanction of $5,000 and a pre-filing restriction that no further pro se complaint be accepted by Plaintiff for filing in the Southern District of Ohio which has not first been certified as non-frivolous by an attorney in good standing in this Court or the jurisdiction in which he or she is admitted.

/s/ Stephanie K. Bowman
Stephanie K. Bowman
United States Magistrate Judge

Appendix C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

NOTICE

Pursuant to Fed. R. Civ. P 72(b), any party may serve and file specific, written objections to this Report and Recommendation ("R&R") within **FOURTEEN (14) DAYS** of the filing date of this R&R. That period may be extended further by the Court on timely motion by either side for an extension of time. All objections shall specify the portion(s) of the R&R objected to, and shall be accompanied by a memorandum of law in support of the objections. A party shall respond to an opponent's objections within **FOURTEEN (14) DAYS** after being served with a copy of those objections. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See Thomas v. Arn,* 474 U.S. 140 (1985); *United States v. Walters,* 638 F.2d 947 (6th Cir. 1981).