NOT RECOMMENDED FOR
FULL-TEXT PUBLICATION

No. 18-1486

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BEVERLEY R. NETTLES, Plaintiff-Appellant, v. MICHIGAN SUPREME COURT, et al., Defendants-Appellees.	ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MICHIGAN

ORDER

(Filed Jan. 14, 2019)

Before: KEITH, KETHLEDGE, and THAPAR, Circuit Judges.

Beverley R. Nettles, a Nevada resident proceeding pro se, appeals the district court's judgment dismissing her civil rights action brought pursuant to 42 U.S.C. §§ 1983 and 1985. Two defendants have moved for leave to file supplemental briefs. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a).

In 2008, the Michigan Supreme Court removed Nettles, a judge of the 30th Circuit Court for the County of Ingham, Michigan, from her position based on its determination that she had committed various

forms of misconduct. *See In re Nettles-Nickerson*, 750 N.W.2d 560 (Mich. 2008). In 2010, the State of Michigan Attorney Discipline Board ("ADB") suspended Nettles's law license based on overlapping findings of misconduct. Between 2013 and 2016, Nettles attempted to get her license reinstated, but she was ultimately unsuccessful.

In 2017, Nettles commenced the current action, alleging that various individuals committed misconduct in connection with the termination of her judgeship and the suspension of her law license. In an amended complaint, she named as defendants the following individuals and entities: the Michigan Supreme Court, Alan Gershel, Cynthia Bullington, Mark Armitage, John Van Bolt, Paul Fisher, Judge William Collette, the Ingham County Circuit Court, Angela Morgan, John McGlinchey, Judge Marvin Robertson, Daniel Nickerson, Richard Keusch, and Philip Thomas. She alleged that the defendants denied her due process and equal protection, defamed her, and engaged in a "miscarriage of justice." She requested declaratory and injunctive relief as well as compensatory and punitive damages. The defendants moved to dismiss Nettles's complaint. She, in turn, moved for partial summary judgment and for leave to file second and third amended complaints.

The district court denied Nettles's summary-judgment motion, denied her leave to file second and third amended complaints, and granted the defendants' motions to dismiss. The court found that no miscarriage-of-justice cause of action existed and that Nettles's remaining claims were time-barred, except for her

claims related to her reinstatement proceedings, which the court declined to allow to proceed, relying alternatively on abstention grounds and the doctrine announced in *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923), and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983). The court denied Nettles leave to amend on the basis that amendment would be futile.

On appeal, Nettles argues that the district court erred by: (1) declining to review the merits of her claims related to her reinstatement proceedings; (2) denying her leave to file second and third amended complaints; and (3) finding that no miscarriage-of-justice cause of action exists. She has abandoned review of all other issues, including the district court's timeliness ruling, by failing to make any argument with respect to those issues in her appellate brief. *See Geboy v. Brigano*, 489 F.3d 752, 767 (6th Cir. 2007).

We review de novo a district court's dismissal under Federal Rule of Civil Procedure 12(b)(6). *Total Benefits Planning Agency, Inc. v. Anthem Blue Cross & Blue Shield*, 552 F.3d 430, 433 (6th Cir. 2008). That rule provides that a complaint is subject to dismissal that fails "to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). In order to state a claim upon which relief can be granted, a complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). A complaint must plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "A claim has facial

plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). A complaint that offers "labels and conclusions," "formulaic recitation[s] of the elements of a cause of action," or "'naked assertion[s] devoid of further factual enhancement'" will not survive a motion to dismiss. *Id.* (second alteration in original) (quoting *Twombly*, 550 U.S. at 555, 557). Pro se pleadings are held to "less stringent standards" than the pleadings of attorneys, but "pro se plaintiffs are not automatically entitled to take every case to trial." *Pilgrim v. Littlefield*, 92 P.3d 413, 416 (6th Cir. 1996) (quoting *Estelle v. Gamble*, 429 U.S. 97, 106 (1976)).

I. Nettles's Claims Related to her Reinstatement Proceedings

Nettles maintains that the district court incorrectly applied the *Rooker-Feldman* doctrine and therefore erred in declining to review the merits of her claims related to her reinstatement proceedings.

As an initial matter, Nettles has effectively abandoned review of her reinstatement claims, insofar as they are not time-barred. The district court declined to review the merits of Nettles's claims on both abstention grounds and the ground of the *Rooker-Feldman* doctrine. On appeal, however, Nettles argues only that the district *court's Rooker-Feldman* holding was erroneous. Because Nettles has not raised any argument

with respect to the district court's abstention determination, she has abandoned review of the district court's conclusion that abstention was appropriate. *See Geboy*, 489 F.3d at 767. And because Nettles has abandoned review of one of the alternative bases for the district court's decision to decline to review the merits of her claims, she has abandoned review of that decision.

Assuming that Nettles has not abandoned appellate review, we still uphold the district court's rejection of her claims because she failed to state a claim upon which relief may be granted. *See Angel v. Kentucky*, 314 F.3d 262, 264 (6th Cir. 2002) ("[W]e are free to affirm . . . on any basis supported by the record."). To the extent that her reinstatement claims are not time-barred, Nettles's complaint contained no allegations that supported her claims that she had been denied due process and equal protection, defamed, and subjected to a miscarriage of justice. The majority of Nettles's complaint addressed the alleged actions undertaken by the defendants in connection with the revocation of her judgeship and the subsequent suspension of her law license. With respect to her reinstatement proceedings, Nettles alleged only that she had been improperly served a copy of ADB's order denying her intermediate appeal, which is insufficient to state, for instance, a procedural due process violation. *See Howard v. Grinage*, 82 F.3d 1343, 1349-50 (6th Cir. 1996).

II. Nettles's Motions to Amend

Nettles contends that the district court abused its discretion when it denied her leave to amend because it failed to offer an adequate explanation for its decision.

We generally review a district court's denial of a motion to amend for an abuse of discretion, *Kovacevich v. Kent State Univ.*, 224 F.3d 806, 831 (6th Cir. 2000), but review a district court's determination that a purported amendment would be futile de novo, *Parry v. Mohawk Motors of Mich., Inc.*, 236 F.3d 299, 306 (6th Cir. 2000). A proposed amendment is futile when it would not withstand a motion to dismiss. *See Hahn v. Star Bank*, 190 F.3d 708, 716 (6th Cir. 1999).

The district court did not err in denying Nettles leave to amend. The court indicated that it was denying Nettles leave to amend because her proposed amendments would be futile. And that conclusion is supported by the record. Nettles's proposed second and third complaints added new allegations but failed to correct the previously identified problems with her first amended complaint—namely, that her allegations were untimely and otherwise failed to state a claim.

III. Nettles's Miscarriage-of-Justice Claim

Finally, Nettles argues that the district court incorrectly determined that no miscarriage-of-justice cause of action exists. Most directly, she alleges that she was attempting to raise an independent action in

equity to overturn one or more of the adverse judgments against her. *See Mitchell v. Rees*, 651 F.3d 593, 594-96 (6th Cir. 2011). The district court properly dismissed Nettles's claim. To the extent that Nettles attempted to raise an independent-action claim in her complaint, she failed to develop that claim in any meaningful way. Moreover, even assuming that Nettles's complaint can be fairly read to assert such a claim, federal courts may generally not overturn state-court judgments, and Nettles has provided no clear reason to believe that her case presents an exception to that rule. *See* 11 Charles Alan Wright et al., Federal Practice and Procedure § 2868 (3d ed. 2018).

For the foregoing reasons, we **AFFIRM** the district court's judgment and **DENY** all other outstanding motions as moot.

ENTERED BY ORDER
OF THE COURT

/s/ Deborah S. Hunt
Deborah S. Hunt, Clerk

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BEVERLY [sic] R. NETTLES,

Plaintiff,

v.

CYNTHIA C. BULLINGTON, *et al.*,

Defendants /

CASE NO. 1:17-CV-04

HON. ROBERT J. JONKER

OPINION

INTRODUCTION

Plaintiff Nettles is a former state court judge. In this case, she seeks to re-litigate events pre-dating her removal from judicial office in 2008, as well as the removal itself, along with the ensuing suspension of her law license. Her allegations, some of which are fragmentary and difficult to understand, also allude to earlier divorce proceedings, a dispute with a former employee, and other grievances. Based on a careful review of the record, and for the reasons detailed below, the Court now **DISMISSES** the case.

BACKGROUND

On June 13, 2008, the Michigan Supreme Court removed Plaintiff Nettles from her position as a judge of the 30th Circuit Court for the County of Ingham, State of Michigan. (ECF No. 40-3, PageID.536.) The

court found that Plaintiff had engaged in misconduct that included: (1) "twice mak[ing] false statements under oath in connection with her divorce proceeding[;]" (2) "mak[ing] and solicit[ing] other false statements while not under oath, including by submitting fabricated evidence to the Judicial Tenure Commission[;]" (3) "improperly list[ing] cases on the no-progress docket[;]" (4) excessive absenteeism and "belated commencement of proceedings, untimely adjournments, and improper docket management[;]" (5) "allow[ing] a social relationship to influence the release of a criminal defendant from probation[;]" and (6) "recklessly flaunt[ing] her judicial office." (*Id.*) In 2010, the State of Michigan Attorney Discipline Board ("ADB") suspended Plaintiff's license to practice law for two years and eleven months, based on the same misconduct. (ECF No. 7, PageID.121.)

Plaintiff petitioned for reinstatement of her license to practice law in September 2013. (*Id.*, PageID.122.) The ADB held a public hearing on the matter on February 13, 2014. (ECF No. 38-1, PageID.412.) The ADB issued an initial report in August 2014. One panel member stated that he would deny the petition for reinstatement, and the two other panel members invited Plaintiff to produce medical reports she had mentioned during the hearing, or any "other evidence that she is able to undertake the stress of practice, and that she does not have a substance abuse problem, as she indicated was alleged, and that she is otherwise physically and emotionally fit to practice law." (*Id.*) Plaintiff submitted additional evidence

to the ADB on September 24, 2014. (*Id.*, PageID.413.) The Grievance Administrator replied the next day, opining that the supplemental exhibits "raise rather than alleviate concern." (*Id.*) The ADB agreed, finding that "the information submitted creates more questions than it resolves, particularly considering the points made by the Grievance Administrator." (*Id.*) On November 13, 2014, the ADB denied Plaintiff's petition for reinstatement. (*Id.*)

Plaintiff moved for immediate rehearing or reconsideration. (ECF No. 38-2, PageID.416-418.) On January 27, 2015, the ADB granted Plaintiff's request for immediate consideration; found no error in the underlying decision denying reinstatement; and denied Plaintiff's request for reconsideration or rehearing. (*Id.*) In reaching this decision, the ADB noted explicitly:

> The original opinion articulated the panel's concerns regarding petitioner's reinstatement. Those concerns remain, unaddressed by petitioner. They relate to petitioner's competence to practice law at a level such that petitioner can be trusted with the legal matters entrusted to her. The allegations made in the Motion for Rehearing/Reconsideration do not allay those concerns – they emphasize them. They are confusing, disorganized, and miss the point of the panel's concerns completely.

(ECF No. 38-2, PageID.417.) After her unsuccessful motion for reconsideration, Plaintiff appealed the ADB order denying her petition for reinstatement. (ECF No. 40-2, PageID.528.) On November 5, 2015, the appellate

panel affirmed the decision to deny reinstatement (*Id.*) Plaintiff applied to the Michigan Supreme Court for leave to appeal. (ECF No. 38-5, PageID.427-29.) On March 3, 2016, the court denied the request as untimely. (*Id.*)

In the case before this Court, Plaintiff challenges not only the disciplinary and related proceedings that unfolded from 2008 – 2016, detailed above, but also other events pre-dating 2008. She alludes to the appointment in 2006 of "an informal fact-finder, Defendant Robinson [sic][1] 'to look into a dispute' between Plaintiff and then Chief Judge Collette 'regarding court administration in Ingham County.'" (ECF No. 7, PageID.118) She alleges that the Michigan Supreme Court "appointed an informal fact-finder to retaliate and remove Plaintiff from her elected position, for exercising her First Amendment right to file a civil complaint and later press conference against Judge Collette for interference in her courtroom as Chief Judge unlike the other judges. [sic]" (*Id.*, PageID.119.) She complains of an investigation that she says led Defendant Fisher to file a "Petition for Interim Suspension and Formal Complaint against Plaintiff, Wednesday, May 16, 2007. . . ." (*Id.*) She states that the Michigan Supreme Court did not allow an adequate response time and granted the petition prematurely, (*Id.*, PageID.119-20.) Some of Plaintiff's allegations focus on her former husband, Defendant Nickerson. (*Id.*, PageID.64-65.) She asserts that Mr. Nickerson, also a

[1] Plaintiff appears to be referring to Defendant Robertson.

lawyer, admitted committing perjury during their 2005-2006 divorce proceeding. (*Id.*, PageID.120, 122.) She states that she "was wrongfully removed from the bench for perjury Defendant Nickerson committed voluntarily or coerced." (*Id.* PageID.122.) Plaintiff brings claims against a lawyer who represented her in disciplinary proceedings. (*Id.*, PageID.121.) Plaintiff also names as defendants a person she employed during her tenure as a judge, which had ended by 2008, and a gas station owner who complained about her in 2006. (*Id.*; ECF No. 36-2, PageID.382.)

Plaintiff filed this lawsuit on January 3, 2017. She brings claims under 42 U.S.C. § 1983 for violations of the First Amendment and Fourteenth Amendments (Counts I and II); a claim for defamation (Count III); and a claim entitled "Miscarriage of Justice" (Count IV). Defendants seek dismissal of Plaintiff's claims. (ECF Nos. 15, 20, 23, 25, 32, 37, 39, 80,) Plaintiff seeks partial summary judgment and leave to file second and third amended complaints. (ECF Nos. 47, 68, 69).[2]

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[2] There is some ambiguity in the record about whether Plaintiff voluntarily dismisses certain defendants. Her amended complaint (ECF No. 7) drops from the caption some of the defendants specified in the original complaint, but the body of the amended complaint itself continues to refer to the defendants as if they remain parties in the case. Similarly, Plaintiff's Notice of Voluntary Dismissal (ECF No. 66) leaves open questions about the extent to which Plaintiff intends the dismissal to apply. In light of the ambiguity, the Court will enter Judgment as to all defendants, including those dropped from the original complaint and those specified in the Notice of Voluntary Dismissal.

LEGAL STANDARDS AND DISCUSSION

Federal Rule of Civil Procedure 8(a)(2) requires that a complaint contain a "short and plain statement of the claim showing that the pleader is entitled to relief." To survive a motion to dismiss under Fed. R. Civ. P. 12(b)(6), a plaintiff "must allege facts that, if accepted as true, are sufficient 'to raise a right to relief above a speculative level,' and to 'state a claim for relief that is plausible on its face.'" *Hensley Mfg. v. Pro-Pride, Inc.*, 579 F.3d 603, 609 (6th Cir. 2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 570 (2007) (internal citations omitted). "A claim has facial plausibility when the plaintiff pleads factual conduct that allows the court to draw a reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (*quoting Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)).

1. *Claims under 42 U.S.C. § 1983*

To determine the timeliness of claims under 42 U.S.C. § 1983, courts apply state statutes of limitations and tolling principles. *Wilson v. Garcia*, 471 U.S. 261, 268-69 (1985). A three-year statute of limitations applies to section 1983 claims filed in Michigan. *See* MICH. COMP. L. 5805(10) (establishing three-year statute of limitations for "all actions to recover damages for the death of a person, or for injury to a person or property" except as otherwise provided); *Carroll v. Wilkerson*, 782 F.2d 44 (6th Cir. 1986) (per curiam).[3]

[3] 28 U.S.C. § 1658 created a "catch-all" limitations period of four years for civil actions arising under federal statutes enacted

Accrual of a claim for relief, however, is a question of federal law. *Collyer v. Darling*, 98 F.3d 211, 220 (6th Cir. 1996); *Sevier v. Turner*, 742 F.2d 262, 271 (6th Cir. 1984). The statute of limitations begins to run when the aggrieved party knows or has reason to know of the injury that gives rise to her action. *Id.* at 220.

Plaintiff Nettles filed this lawsuit on January 3, 2017. To the extent she premises her section 1983 claims on events that occurred before January 3, 2014, the statute of limitations has expired. Accordingly, Plaintiff's section 1983 claims based on the Judicial Tenure Commission proceedings, which ended in 2008, are time-barred. Plaintiff's section 1983 claims based on the suspension of her law license are also time-barred.

Only Plaintiff's section 1983 claims based on the denial of her reinstatement petition are arguably timely, but they fail on other grounds. The licensure and reinstatement process are in essence state court proceedings with a state review process leading ultimately to the Michigan Supreme Court. The Court doubts its subject matter jurisdiction, based on the *Rooker-Feldman* doctrine, The *Rooker-Feldman* doctrine prevents "a party losing in state court . . . from seeking what in substance would be appellate review of the state judgment [in federal district court] based

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after December 1, 1990. The Supreme Court's decision in *Jones v. R.R. Donnelly & Sons Co.*, 541 U.S. 369 (2004), which applied this federal four-year limitations period to a suit alleging racial discrimination under § 1981, does not apply to the claims Plaintiff asserts in this case, which were not "made possible" by amendment of § 1983.

on the losing party's claim that the state judgment itself violates the loser's federal rights." *Johnson v. DeGrandy*, 512 U.S. 997, 1005-06 (1994); *see also Tropf v. Fidelity Nat'l Title Ins. Co.*, 289 F.3d 929, 936 (6th Cir. 2002) (quoting *Johnson*). *Rooker-Feldman* is a narrow doctrine, "confined to . . . cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before district court proceedings commenced and inviting district court review and rejection of those judgments." *Exxon Mobile* [sic] *Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005). The Court notes that Plaintiff already has the ability even now to apply again for reinstatement, since more than a year has passed since the denial. Even if *Rocker-Feldman* does not apply, the Court believes abstention in favor of the heavily-regulated and unexhausted state process is appropriate.

2. *State Law Claims*

Plaintiff asserts a claim entitled "Miscarriage of Justice." No such cause of action exists, and the Court dismisses the claim. Plaintiff's other state law claim is for defamation. A one-year statute of limitations applies to this claim. MICH. COMP. L. 600.5805(9). Plaintiff has not alleged any injury that occurred after January 3, 2016 and would give rise to a defamation claim. Her defamation claim is time-barred.[4]

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[4] Plaintiff's federal and state law claims fail on multiple other grounds, but the Court finds it unnecessary to address these additional grounds.

3. Plaintiff's Motions to File Amended Complaints

Plaintiff seeks leave to file second and third amended complaints (ECF Nos. 68, 69) to add parties and elaborate claims. FED. R. CIV. P. 15(a)(2) governs Plaintiff's request. Under the rule, Plaintiff "may amend [her] pleading only with the opposing party's written consent or the court's leave." Defendants do not consent to Plaintiff's request. The Court has reviewed Plaintiff's proposed second and third amended complaints finds no basis to grant Plaintiff's request. The amendments would add verbiage, but not change the basic legal problems with the claims. Any proposed amendment would be futile.

CONCLUSION

For these reasons, the Court concludes that the case must be dismissed. An order of dismissal and judgment will enter separately.

Dated: March 26, 2018

/s/ Robert J. Jonker
ROBERT J. JONKER
CHIEF UNITED STATES
DISTRICT JUDGE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BEVERLY R. NETTLES,

Plaintiff,

v.

CYNTHIA C. BULLINGTON, *et al.*,

Defendants /

CASE NO. 1:17-CV-04

HON. ROBERT J. JONKER

ORDER

1. Plaintiff's claims based on the denial of her petition for reinstatement are **DISMISSED** without prejudice for lack of subject matter jurisdiction.

2. All of Plaintiff's remaining claims are **DISMISSED** with prejudice.

3. Plaintiff's Motion for Partial Summary Judgment (ECF No. 47) is **DENIED**.

4. Plaintiff's Motions for Leave to File Second and Third Amended Complaints (ECF Nos. 68, 69) are **DENIED**.

5. Plaintiff's Motion for Leave to File *Ex Parte* Motion (ECF No. 28), Amended Motion for Order (ECF No. 31), Motion for Extension of Time (ECF No. 49, and Motion for Leave to Supplement Exhibit 11 of Proposed Third Amended Complaint (ECF No. 79) are **DISMISSED AS MOOT**.

6. Defendants' Motions to Dismiss (ECF Nos. 15, 20, 23, 25, 32, 37, 39, 80) are **GRANTED** to the extent consistent with the Court's Opinion and **DISMISSED AS MOOT** in all other respects.

Dated: March 26, 2018

/s/ Robert J. Jonker
ROBERT J. JONKER
CHIEF UNITED STATES
DISTRICT JUDGE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BEVERLY R. NETTLES,

Plaintiff,

v.

CYNTHIA C. BULLINGTON, *et al.*,

Defendants /

CASE NO. 1:17-CV-04

HON. ROBERT J. JONKER

JUDGMENT

In accordance with the Opinion and Order entered this day, Plaintiff Nettle's claims premised on the denial of her petition for reinstatement of her license to practice law are dismissed without prejudice based on lack of subject matter jurisdiction. Judgment as to all other claims is entered against Plaintiff Beverly R. Nettles and in favor of of [sic] Defendants Michigan Supreme Court; Alan. M. Gershel; Cynthia C. Bullington; Mark A. Armitage; John F. Van Bolt; Paul F. Fisher; William E. Collette; Angela Morgan; John R. McGlinchey; Ingham County Circuit Court; Marvin Robertson; Daniel E. Nickerson, Jr.; Richard Keusch; Philip J. Thomas; Michigan Supreme Court Clerk; Larry S. Royster; Michigan Attorney Grievance Commission; Attorney Discipline Board; and Judicial Tenure Commission.

Dated: March 26, 2018

/s/ Robert J. Jonker
ROBERT J. JONKER
CHIEF UNITED STATES
DISTRICT JUDGE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BEVERLY R. NETTLES,

Plaintiff,

v.

CYNTHIA C. BULLINGTON, *et al.*,

Defendants. /

CASE NO. 1:17-CV-04

HON. ROBERT J. JONKER

ORDER

Plaintiff Beverly R. Nettles brought claims against defendants based on events pre-dating her removal from judicial office in 2008; the removal itself; and the suspension of her license to practice law in Michigan. The Court dismissed Plaintiff's claims for a series of different reasons. (ECF Nos. 85-87.) Plaintiff has appealed the Court's decision to the United States Court of Appeals for the Sixth Circuit. (ECF Nos. 94, 97.)[1]

[1] The appeal has been docketed as Case No. 18-1456, *Beverly Nettles v. Michigan Supreme Court*, et al. (ECF No. 97) and has not been decided as of the date of this Order. Despite the appeal, the Court retains jurisdiction to decide the motions for sanctions. *See, e.g., Cooler & Gell v. Hartmarx Corp.*, 496 U.S. 384, 395-96 (1990); *Mahone v. Ray*, 326 F.3d 1176, 1150-81 (11th Cir. 2003). *See also United States v. Holloway*, 740 F.2d 1373, 1382 (6th Cir. 1984) (recognizing that after an appeal is filed, a district court may enter "remedial orders not affecting the merits of the appeal").

Defendant Paul Fischer, who was the Executive Director of the Judicial Tenure Commission when events underlying Plaintiff's complaint occurred, now seeks sanctions under FED. R. CIV. P. 11 (ECF No. 88.) Defendant Nickerson concurs in the motion. (ECF No. 96.) Defendants Fischer and Nickerson seek reasonable expenses, including attorney's fees, incurred in defending against the lawsuit and moving for sanctions. (ECF No. 89, PageID.1411; ECF No. 96, PageID.1495.)

FED. R. CIV. P. 11(b) requires an attorney, or an unrepresented party, to conduct a reasonable inquiry before presenting a pleading, written motion, or other paper to the court, to confirm, among other things, that the submission "is not being presented for any improper purpose" and that the "legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law." FED. R. CIV. P. 11(b)(1), (2). Rule 11(c) permits the Court, in its discretion, to "impose an appropriate sanction on any attorney, law firm, or party that has violated [Rule 11(b)] or is responsible for the violation." FED. R. CIV. P. 11(c)(1). A court may not impose sanctions under Rule 11 unless the conduct for which sanctions are sought was unreasonable under the circumstances. *Salkil v. Mount Sterling Twp. Police Dept.*, 458 F.3d 520, 528 (6th Cir. 2006). A Rule 11 sanction "must be limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated." FED. R. CIV. P. (11)(d).

The Court does not find Rule 11 sanctions warranted in this case. The defendants won, and in the Court's view they deserved to win. But the Court also believes that a person who loses a license to practice law, as well as a judgeship; who takes multiple hits to her reputation and standing; and who obviously believes that she has been wronged – no matter how distorted her sense of reality may be – deserves some leeway in attempting to state her claims.[2] In judging the propriety of sanctions under any theory, a party's purpose is a relevant consideration, and the Court discerns no bad faith or improper purpose in Plaintiff's filings.

The Court is not persuaded that a Rule 11 sanction would be especially meaningful anyway. The First Amendment articulates a general right to petition the government, including the courts, and in the Court's view, litigants are entitled to a broad swath of First Amendment protection. It is hard to imagine a sanction that would reasonably deter a filing akin to Plaintiff's without being so draconian as to be an undue burden on the First Amendment rights of a troubled, now pro se litigant. Defendant Fischer and Nickerson's suggestion of cost-shifting is not well-taken, because sanctions under Rule 11 are supposed "to deter rather

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[2] To the extent Defendant Fischer argues that it should have been obvious to Plaintiff that he was entitled to absolute immunity from suit for actions taken in his role as Executive Director of the Michigan Judicial Tenure Commission under the doctrine of quasi-judicial immunity, the Court notes that the doctrine of quasi-judicial immunity can be more complex than it first appears. *See Flying Dog Brewery LLLP v. Mich. Liquor Control Comm'n*, 597 F. App'x 342 (6th Cir. 2015).

than to compensate." FED. R. CIV. P. 1993 Amendments Advisory Committee Notes. Only in "unusual circumstances" is it appropriate to direct that "some or all of [a monetary sanction] be made to those injured by the violation." *Id.* The Court finds no such circumstances present here.

For these reasons, the Court declines to impose sanctions under Rule 11.[3]

ACCORDINGLY, IT IS ORDERED:

1. Defendant Fischer's Motion for Sanctions (ECF No. 88) is **DENIED**.

2. Defendant Nickerson's request for sanctions (ECF No. 96) is **DENIED**.

3. The Proposed Stipulation and Order (ECF No. 102) is **DISMISSED AS MOOT**.

4. Plaintiff's Motion for Leave to File Supplement (ECF No. 105) is **GRANTED** to the extent Plaintiff seeks leave to file and is **DENIED** in all other respects.

Dated: September 7, 2018

/s/ Robert J. Jonker
ROBERT J. JONKER
CHIEF UNITED STATES
DISTRICT JUDGE

[3] To the extent Plaintiff requests that the Court impose sanctions against Defendants Fischer and Nickerson based on its inherent authority (ECF No. 105), the Court finds that sanctions are not warranted and **DENIES** the request.

APPENDIX 4

MICHIGAN SUPREME COURT

CLIFFORD W. TAYLOR
CHIEF JUSTICE

925 WEST OTTAWA
LANSING, MICHIGAN 48915
PHONE (517) 373-3635

January 27, 2006

Hon. William E. Collette
Chief Judge, 30th Circuit Court
3rd Floor Courthouse
Mason, MI 48854

Hon. Beverley Nettles-Nickerson
Judge, 30th Circuit Court
313 E. Kalamazoo Street
P.O. Box 40771
Lansing, MI 48901

Dear Chief Judge Collette and Judge Nettles-Nickerson:

I have been authorized by the Court to use retired Judge Marvin Robertson as an informal fact-finder to look into the dispute that exists concerning court administration in Ingham County. You should expect to be contacted by Judge Robertson who will discuss this matter with you and others involved and then informally report back to the Court. Thank you for your cooperation.

Very truly yours,

/s/ Clifford W. Taylor
Clifford W. Taylor
Chief Justice

cc: Carl L. Gromek, State Court Administrator
Michigan Supreme Court Justices
Judge Marvin Robertson

APPENDIX 5

[SEAL]

Michigan Supreme Court
State Court Administrative Office
Michigan Hall of Justice
P.O. Box 30048
Lansing, Michigan 48909
Phone (517) 373-0130

Carl L. Gromek Chief of Staff
State Court Administrator

March 8, 2006

Mr. Paul J. Fischer
Executive Director and General Counsel
Judicial Tenure Commission
Cadillac Place
3034 W. Grand Blvd., Ste. 8-450
Detroit, MI 48202

Dear Mr. Fischer:

On January 18, 2006. Judge Beverly [sic] Nettles-Nickerson filed a complaint with the Michigan Department of Civil Rights. In it, Judge Nettles-Nickerson claimed that Chief Judge William E. Collette subjected her to "discriminatory interference" and "undue scrutiny and oversight" because of her race. A week later, she withdrew the complaint.

In her Civil Rights complaint, and in related media coverage, Judge Nettles-Nickerson maintained that Chief Judge Collette's treatment of her was racially motivated. Chief Judge Collette maintained that his actions were not racially motivated and that he was responding to concerns about Judge

Nettles-Nickerson's trial scheduling, work hours, and erratic behavior.

In a letter dated January 27, 2006, Chief Justice Clifford W. Taylor of the Michigan Supreme Court informed Chief Judge Collate and Judge Nettles-Nickerson that the Supreme Court had designated retired Judge Marvin Robertson to act as an informal fact finder. Over the weeks that followed, Judge Robertson interviewed both judges, as well as current members of the Ingham County bench. He interviewed numerous other witnesses, including retired judges and local attorneys. Because of witnesses' concerns about confidentiality, Judge Robertson reported only to the Justices of the Michigan Supreme Court and the State Court Administrator. Judge Robertson found no evidence of racism on Judge Collette's part.

Although the allegation of racism has been disposed of, complaints exist about Judge Nettles-Nickerson's behavior and judgment. Pursuant to MCR § 113(B)(4), I request that you investigate this matter. As Judge Nettles-Nickerson drew a great deal of public attention to the race issue, I ask that you expedite your investigation to the extent possible.

Sincerely,

/s/ Carl L. Gromek
Carl L. Gromek

cc: Hon. Beverly [sic] Nettles-Nickerson

AFFIDAVIT OF DENNIS DUBUC

I swear the following to be true to the best of my knowledge and belief and I am able and willing to testify to the same if called to do so.

1) I am an attorney and the sole practitioner of Essex Park Law Office in Green Oak Township.

2) March 19, 2007 I was retained by Honorable Beverley Nettles-Nickerson to represent her with regard to a Michigan Judicial Tenure Commission (JTC) investigation of her conduct.

3) On Wednesday, May 16, 2007 the JTC filed a formal complaint and request for interim suspension with the Michigan Supreme Court concerning honorable Judge Beverley Nickerson.

4) The Michigan Court Rules address the method by which a formal complaint and/or request for interim suspension must be served on a judge as follows:

> *MCR 9.206: SERVICE*
>
> *Judge. When provision is made under these rules for serving a complaint or other document on a judge, the service must be made in person or by registered or certified mail to the judge's judicial office or last known residence. If an attorney has appeared for a judge, service may be on the attorney in lieu of service on the judge.*

5) The JTC did not serve the complaint or the request for interim suspension as required by MCR 9.206.

6) The Michigan Court Rules provide for a response time of 14 days to any Respondent who has been properly served with a petition for interim suspension as follows:

> *MCR 9.219 INTERIM SUSPENSION*
>
> *(C) Service; Answer, A copy of the petition and supporting documents must be served on the respondent, who may file an answer to the petition within 14 days after service of the petition. The commission must be served with a copy of the answer.*

7) Friday May 18, 2007 (two days after the JTC filed its' request for interim suspension of Judge Nickerson). The JTC filed a motion with the Supreme Court asking for immediate consideration of its' petition for interim suspension.

8) The manner of service required by the Michigan Court Rules in MCR 9.206 was not followed by the JTC in the filing of its' Motion for Immediate Consideration. Instead, the JTC had the Motion for Immediate Consideration taped to the front office door of the Essex Park Law Office.

9) Friday, May 18, 2007 at approximately 11:30 a.m. I received a call on my cell phone from the secretary of the Michigan Supreme Court (Mr. Corbin Davis) who informed me that the

request for immediate consideration had been taped to the door of the Essex Park Law Office.

10) I acknowledged the information and indicated that the JTC Motion would be responded to within 14 days pursuant to the Michigan Court Rules.

11) Mr. Corbin Davis then stated that he had been directed by the Michigan Supreme Court to tell me that both the petition for interim suspension and the motion for immediate consideration must be answered by 1:00 p.m. that day. That demand by the Michigan Supreme Court left only 90 minutes to respond to the motions.

12) When I arrived at my office there was a Motion for Immediate Consideration taped to the door and a phone message from Mr. Corbin Davis stating the same demand that had been given to me on my cell phone (see attached transcript of Corbin Davis's phone call, **Exhibit A**).

13) Upon information and belief the Michigan Supreme Court was informed that the demand could not be met. The court then allowed one week for Judge Nickerson to respond. However, that reprieve was conditioned on her leaving the Bench immediately.

June 28, 2007 /s/ Dennis B. Dubuc
Date Dennis B. Dubuc

Dennis B. Dubuc personally appeared before me and the foregoing instrument was acknowledged before me this 28 day of June, 2007,

by /s/ Dennis B. Dubuc

/s/ Mary Elizabeth Couch _____ *County, Michigan*
Notary Public

MARY ELIZABETH COUCH
Notary Public, Livingston County, MI
My Commission Expires June 2, 2011

Acting in Oakland County

My commission expires _____

In RE: Beverley Nettles-Nickerson May 18, 2007
Deposition of

* * *

(The following has been transcribed from a telephone message left on the voicemail for 248-486-5508.)

"RECORDED VOICE: Sent Friday, May 18, 10:59 a.m.

MR. DAVIS: This call is for Mr. Dubuc. This is Corbin Davis, Clerk of the Supreme Court. I'm calling about the matter of the Complaint against Beverley Nettles-Nickerson.

We have received this morning a motion for the immediate consideration of the Petition for Interim Suspension. The Court has directed me to request of Mr. Dubuc that he make a response to that motion and to the Petition for Suspension no later than 1:00 p.m. today, May 18.

If he has any questions regarding this, I would happy to talk to him. I am in Lansing at 517-373-9579. My name, again, is Corbin Davis. D-A-V-I-S. Thank you.

RECORDED VOICE: End of message."

AFFIDAVIT OF FREDERICK J. BLACKMOND

STATE OF MICHIGAN)
) ss.
COUNTY OF INGHAM)

FREDERICK J. BLACKMOND, being first duly sworn, under oath, deposes and states as follows:

1. That he is the attorney of record in the matter of **People** v **Bruce Kent Brown**, Ingham County Circuit Court File No. 07-45-FC.

2. That, on May 17, 2007, I appeared, together with the Assistant Ingham County Prosecutor, before the Honorable Beverly [sic] Nettles-Nickerson in regards to the continuation of this Defendant's Trial in light of the recently received publication of the allegations against the Honorable Beverly [sic] Nettles-Nickerson.

3. That, as a result of my discussions with my client, the Defendant insisted that Affiant request of Honorable Beverly [sic] Nettles-Nickerson to grant a mistrial and/or reassignment of said matter to another Circuit Court Judge for Trial.

4. That Affiant indicated to Defendant that, if it was his desire for me to make such a request, Defendant would have to knowingly waive his double jeopardy concerns guaranteed by the United States Constitution and Michigan State Constitution.

5. That, despite said protection, Defendant knowingly agreed to waive his double jeopardy rights.

6. That the request to the Court, on behalf of my client, in no way reflected my belief us to her ability as an Ingham County Circuit Judge, capable of presiding over this Trial.

7. That, upon information and belief, Affiant believes, as indicated to Affiant Chambers with the presence of the Assistant Prosecutor, that she would grant this relief on behalf of this Defendant to ensure that this Defendant would be afforded a Trial to guarantee all of his Constitutional Rights without the distraction of the pending allegations against her.

8. That Affiant believes that this decision by this Court, at the request of the defense, was in the best interests of this Defendant.

Further Affiant sayeth not

/s/ Frederick J. Blackmond
FREDERICK J. BLACKMOND

Subscribed and sworn to before me
this 18th day of May, 2007.

/s/ Sharon L. Osypczuk
SHARON L. OSYPCZUK, Notary Public
Eaton County, Michigan
Acting in Ingham County, Michigan
My Commission Expires: 11-2-2011

APPENDIX 8

AFFIDAVIT OF ETHAN VINSON

STATE OF MICHIGAN)
)SS
COUNTY OF WAYNE)

ETHAN VINSON, being duly sworn, deposes and states the following:

1. My name is Ethan Vinson and I am licensed to practice law in the State of Michigan.

2. That on March 5, 2007, I was retained by the Michigan Municipal Risk Management Authority to represent Beverly [sic] Nettles-Nickerson in the lawsuit of Angela Morgan v County of Ingham, Beverly [sic] Nettles-Nickerson, and Ingham County Circuit Court.

3. That I was retained to represent Ms. Nettles-Nickerson because the attorney for the County and Ingham County Circuit Court felt it was conflict of interest for him to represent her as well and the County and the Circuit Court.

4. That prior to entering my Appearance, I had conversations with the attorney for the County and was advised that settlement discussions were being Conducted. In fact, I was advised that it would be considered an act of hostility if an Answer were filed.

5. That on March 14th, I entered an Appearance in the above-referenced matter.

6. That on March 15th, met with Judge Nettles-Nickerson to obtain background information in which

to prepare an Answer to the Complaint. During the course of our meeting I told Judge Nettles-Nickerson that I had been advised that the County was engaged in settlement talks but did not know the status of said talks since I was not a part of them.

7. That on March 15, 2007, I contacted the attorney for the County and the Circuit Court and was advised that the case had in fact been settled.

8. That I had no input in the settlement discussions nor was I consulted on behalf of my client.

9. That I have not received a copy of the Settlement Agreement or Order of Dismissal even though I have entered an Appearance in the matter.

Further, Affiant sayeth not.

/s/ Ethan Vinson
ETHAN VINSON

Subscribed and sworn to before me
this 10th day of April, 2007

/s/ Brenda R. Jefferson
BRENDA R. JEFFERSON
NOTARY PUBLIC, Wayne County, MI
My Commission Expires: 5/21/07

AFFIDAVIT OF HONORABLE JAMES R. GIDDINGS

I swear the following to be true to the best of my knowledge and belief and I am able and willing to testify to the same if called to do so.

1. I am currently a judge in the 30th Circuit State Court for the State of Michigan and have been a judge for over 30 years.

2. I am aware of conflict in late 2005, between Chief Judge William E. Collette and Judge Beverly [sic] Nickerson over the operation of her court.

3. That conflict is in part reflected in a memo from Judge Collette to Judge Nickerson dated December 1, 2005.

4. Because I believed that the position being taken by Judge Collette might affect my courtroom operation, I sent a memo to Judge Collette on January 3, 2006, a copy of which is attached hereto.

5. I believed at the time that the conflict between Judge Collette and Judge Nickerson could have been resolved at a meeting of our fellow judges.

6. To that end I requested Judge Collette to meet with Judge Nickerson and our colleagues to resolve the Issues.

7. Judge Collette made clear to me that he did not Intend to discuss the Matter with the

other judges and would not place the matter on a judge's meeting agenda.

8. Although I did not and do not believe that Judge Collette's actions were motivated by racial animus, Judge Beverly [sic] Nickerson expressed to me her belief that she was being treated differently than other judges by Judge Collette.

9. Judge Beverly [sic] Nickerson thereafter filed a civil rights complaint.

10. When I became aware of the civil rights complaint, I told Judge Nickerson that the filing of the civil rights complaint was counter productive and I urged her to withdraw it.

11. Shortly thereafter, Judge Nickerson withdrew her civil rights complaint.

12. I am aware that there is a Judicial Tenure Commission investigation arising in part from the above matters.

Date: /s/ James R. Giddings
Judge James R. Giddings

Judge James R. Giddings personally appeared before me and the foregoing instrument was acknowledged before me this 4th day of April, 2007

by /s/ Melita Cogburn

/s/ Melita Cogburn _____ *County, Michigan*
Notary Public

MELITA COGBURN
NOTARY PUBLIC, STATE OF MICHIGAN
COUNTY OF INGRAM
My Commission Expires Jan. 20, 2009
Acting in County of Ingram