APPENDIX A-1

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OHIO

JAMES WILLIAM HALL
PLAINTIFF

CASE NO. 5.23 CV49

JUDGE-PEARSON

V.

MAGISTRATE

DORAIN DAVIS
DEFENDANTS

JUDGE KNAPP

MOTION FOR
EXTENSION OF TIME
TO RESPOND TO
PLAINTIFF COMPLAINT
AND (MOTION) FOR
DEFAULT JUDGEMENT

PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 6 DEFENDANT MORIAH K CHEATHAMS WILLIAMS (CHEAT WILLIAM) RESPECTFULLY SUBMITTED THIS MOTION FOR EXTENSION OF TIME TO RESPOND TO PLAINTIFFS COMPLAINT AND (MOTION) FOR DEFAULT JUDGEMENT CHEATHAM WILLIAMS SEEK AN EXTENSION OF TWENTY-ONE (21) DAYS UNTIL TUESDAY, MARCH 14, 2023

AS SET FORTH BELOW GOOD CAUSE EXISTS FOR THIS REQUEST. PRO-SE PLAINTIFF JAMES WILLIAM HALL FILED) HIS COMPLAINT ON JANUARY, 10 2023, ASSERTING VARIOUS CLAIMS AGAINST CHEATHAM WILLIAMS AS WELL AS OTHER DEFENDANTS IN CONNECTION WITH AN UNDER LYING CASE, SUMMIT COUNTY COURT OF COMMON PLEAS CASE NO. CV- 2022-09-3235 SEE

PLAINTIFFS COMPLAINT (DOC #1) ON JANUARY 10, 2023 PLAINTIFF SENT A COPY OF THE SUMMONS, COMPLAINT AND MAGISTRATE CONSENT FORM VIA CERTIFIED U.S. MAIL TO CHEATHAM WILLIAM EMPLOYER. SEE SUMMONS (DOC #2)

PLAINTIFF FAILED TO PROPERLY SERVE CHEATHAM WILLIAMS PURSUANT TO FED. R. CIV. P.4 CROMETY V. ELKTON FED. CORR. INST. N.D. OHIO NO. 4:05 CV60 518 2006 U.S. DIST. LEXIS 11912, AT 11 (MAR 22, 2006 CITING ECCLESTIACAL ORDER OF THE ISM OF AM 845 F:2D AT 116) (DELIVERY ON AN EMPLOYER DOES NOT CONSTITUTE PROPER, SERVICE ON THE EMPLOYEE WHO HAS BEEN SUED IN HIS INDIVIDUAL CAPACITY)

DESPITE INSUFFICIENT SERVICE ONCE CHEATHAM WILLIAMS WAS PUT ON NOTICE OF THE PENDING COMPLAINT AND MOTION FOR DEFAULT, THE MATTER WAS SENT TO GENERAL COUNSEL TO DETERMINE WHICH INSURANCE CARRIER SHOULD PROVIDE A DEFENSE OF THE MATTER.

CHEATHAM WILLIAMS HAS RECENTLY TRANSITIONED TO A NEW LAW FIRM AND PROPER TENDER OF THE MATTER WAS UNCLEAR. THOSE ISSUES ARE CURRENTLY BEING VETTED AND ARE EXPECTED TO RESOLVE SOON.

BASED ON THE FOREGOING, CHEATHAM WILLIAMS SEEK AN EXTENSION FROM THIS HONORABLE COURT OF TWENTY-ONE (21) DAYS FROM THE FILING OF THIS (MOTION) UNTIL TUESDAY MARCH 14, 2023 T RESPOND TO PLAINTIFF COMPLAINT AND (MOTION) FOR DEFAULT JUDGEMENT.

CHEATHAM WILLIAMS REQUESTED EXTENSION CANNOT POSSIBLY PREJUDICE PLAINTIFF. CHEATHAM WILLIAMS IS PREPARED TO MEET WHATEVER DEADLINES THE COURT MAY SET IN ORDER TO ADJUDICATE THIS MATTER. THE REQUESTED EXTENSION OF TIME TO RESPOND WILL NOT DELAY THE RESOLUTION OF THIS CASE

RESPECTFULLY SUBMITTED

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APPENDIX A-2
CASE NO: 5:23-CV-00049-BYP
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

JAMES WILLIAM HALL
PLAINTIFF

JUDGE BENITA Y. PEARSON

V.

ORDER RESOLVING

DORAIN DAVIS
DEFENDANT

PENDING IS DEFENDANT MORIAH K CHEATHAM WILLIAMS (MOTION) FOR EXTENSION OF TIME TO RESPOND TO PLAINTIFF COMPLAINT AND (MOTION0 FOR DEFAULT JUDGEMENT ECE NO. 8.

PRO-SE PLAINTIFF JAMES WILLIAM HALL FILED THE ABOVE ENTITLED ACTION ON JANUARY 10, 2023. THE COURT IS PERMITTED TO CONDUCT A LIMITED SCREENING PROCEDURE AND TO DISMISS (SUA SPONTE, A FEE-PAID COMPLAINT FILED BY A (NON-PRISONER) IF IT APPEARS THAT THE ALLEGATIONS ARE TOTALLY IMPLAUSIBLE, ATTENUATED UNSUBSTANTIAL, FRIVOLOUS, DEVOID OF MERIT OR NO LONGER OPEN TO DISCUSSION (APPLE V GLENN 183 F.3D 477, 479 (6TH CIR. 1999) (PER CURIAM) (CITING HAGANS V. LAVINE 415 U.S. 528 536- 37(1974) DISMISSAL ON A SUA SPONTE BASIS IS ALSO AUTHORIZED WHEN THE ASSERTED CLAIMS LACK AN ARGUABLE BASIS IN LAW, OR IF THE COURT LACKS SUBJECT MATTER JURISDICTION OVER THE MATTER. ID AT 480 SEE ALSO NEITZKE V. WILLIAMS 590 U.S. 319

(1989 SISTRUNK V. CITY OF STRONGSVILLE 99 F.3D 194 197 (6TH CIR. 1996) LAWLER V MARSHALL, 898 F.2D 1196 (6TH CIR. 1990

CURRENTLY, THE COURTS SCREENING OF THE PLAINTIFFS COMPLAINT IS PENDING. FOR GOOD CAUSE SHOWN, DEFENDANT MORIAH K CHEATHAM WILLIAMS (MOTION) FOR EXTENSION OF TIME TO RESPOND TO PLAINTIFFS COMPLAINT AND (MOTION) FOR DEFAULT JUDGEMENT (ECF NO 8 IS GRANTED UNTIL MARCH 14, 2023.

IT IS SO ORDERED.

MARCH 1, 2023 /S/ BENITA Y. PEARSON

DATE BENITA Y PEARSON
UNITED STATES DISTRICT
JUDGE

NO: 5:23-CV-00049

APPENDIX A-3
CASE NO: 5:23-CV-00049
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

JAMES WILLIAM HALL
PLAINTIFF

JUDGE BENITA Y. PEARSON

V.

MEMORANDUM OF OPINION AND (ORDER)

DORAIN DAVIS ET. AL
DEFENDANT

PRO-SE PLAINTIFF JAMES WILLIAM HALL FILED THIS CIVIL RIGHTS ACTION AGAINST DORAIN DAVIS RASHAUNDA BOARD DAVIS, JUDGE ALISON M. BREAUX AND MORIAH K CHEATHAM WILLIAMS (ECF NO.1) FOR THE REASONS THAT FOLLOW THIS CASE IS DISMISSED

I. BACKGROUND

ON JANUARY 10, 2023 PLAINTIFF FILED THIS COMPLAINT CONTAINING CONCLUSORY ALLEGATIONS AND CONFUSING FACTUAL DETAILS. THE COMPLAINT APPEARS TO CONCERN A STATE COURTS DISMISSAL OF CIVIL PROCEEDINGS PLAINTIFF INITIATED IN SUMMIT COUNTY COURT OF COMMON PLEAS CASE NO. CV-2022-09-3235

ACCORDING TO THE STATE COURTS ORDER ATTACHED TO PLAINTIFFS COMPLAINT, PLAINTIFF FILED A PETITION FOR CIVIL STALKING ORDER AFTER DEFENDANT DORAIN DAVIS THREATENED TO SHOOT PLAINTIFF ID HE

MESSED WITH HIS CHILDREN WHICH PROCEEDED TO A HEARING. DURING THAT HEARING DEFENDANT DORAIN DAVIS AND HIS WITNESS WIFE RASHAUNDA BOARD DAVIS, ALLEGEDLY PERJURED THEMSELVES.

THEREAFTER PLAINTIFF FILED THE UNDERLYING STATE ACTION AGAINST DORAIN DAVIS IN WHICH HE ALLEGED HE SUFFERS FROM FEAR, STRESS, AND SLEEPLESS NIGHTS AS A RESULT OF THE ALLEGED THREATS. SEE ECF NO. 1-2.

IN THE UNDERLYING ACTION, JUDGE BREAUX CONSTRUED PLAINTIFFS ALLEGATIONS AS A CLAIM FOR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS DETERMINED THAT PLAINTIFF HAD FAILED TO PLEAD SUFFICIENT OPERATIVE FACTS TO SUPPORT A RECOVERY UNDER THAT CLAIM AND GRANTED THE DEFENDANT'S MOTION TO DISMISS.

JUDGE BREAUX ALSO STATED THAT TO THE EXTEND PLAINTIFF WAS ATTEMPTING TO APPEAL THE DECISION RENDERED REGARDING HIS PETITION FOR A CIVIL STALKING (ORDER) THE SUMMIT COUNTY COMMON PLEAS COURT WAS NOT THE CORRECT FORUM ECF NO. 1-2.

IN HIS FEDERAL COMPLAINT, PLAINTIFF ONCE AGAIN ALLEGES THAT DEFENDANT DORAIN DAVIS THREATENED TO SHOOT HIM AND THAT DEFENDANT DAVIS AND HIS WITNESS/WIFE, RASHAUNDA BOARD DAVIS PERJURED THEMSELVES IN THE HEARING ON THE PROTECTION (ORDER) HE CLAIMS THAT HE WAS DENIED A FAIR TRIAL. HE ALSO CLAIMS THAT

NO: 5:23-CV-00049

DEFENDANT CHEATHAM WILLIAMS AN ATTORNEY VIOLATED THE OHIO CODE OF PROFESSIONAL RESPONSIBILITY AND 32 C.F.R. SECTION 776-26 WHEN SHE FAILED TO DISCLOSE THAT SHE WAS RELATED TO DEFENDANT DORAIN'S WITNESS/WIFE.

AS A BASIS FOR JURISDICTION PLAINTIFF CITES TO 18 U.S.C SECTION 241 (CONSPIRACY 242 (DEPRIVATION OF RIGHTS UNDER COLOR OF LAW) AND 1512 (TAMPERING WITH A WITNESS.

HE ALSO LISTS RULE 37 (FAILURE TO DISCLOSE COOPERATE IN DISCOVERY) AND RULE 9(B) FRAUD) OF THE FEDERAL RULES OF CIVIL PROCEDURE AS WELL AS 28 U.S.C. SECTION 1654 (APPEARANCE PERSONALLY OR BY COUNSEL.

ALL DEFENDANTS HAVE FILED MOTIONS TO DISMISS PURSUANT TO RULE 12(B)(1) AND/OR 12(B)(6) OF FEDERAL RULES OF CIVIL PROCEDURE (E.C.F. NO 3.4 AND (16) AND PLAINTIFF FILED A MOTION TO NOT DISMISS (ECF NO. 5 AND RESPONSES IN OPPOSITION TO DEFENDANT MOTION PLAINTIFF HAS ALSO FILED A MOTION TO AMEND/CORRECT DOCKET. ECF NO. 7

II. Standard of Review

Under Federal Rule of Civil Procedure 12(b)(1), a defendant may move to dismiss claims for lack of subject matter jurisdiction. Fed. R. Civ. P. 12(b)(1). The defendant may make either a facial or a factual attack on subject matter jurisdiction under Rule 12(b)(1). Ohio Nat'l Life Ins. v. United States, 922 F.2d 320, 325 (6th Cir. 1990). The plaintiff bears the burden of establishing that jurisdiction exists. Taylor v. KeyCorp, 680 F.3d 609, 615 (6th Cir. 2012) (citing Nichols v. Muskingum Coll., 318 F.3d 674, 677 (6th Cir. 2003)).

Under Federal Rule of Civil Procedure 12(b)(6), a party may move for a dismissal of claims when the claimant has failed to "state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). When deciding a motion to dismiss under this rule, the function of the Court is to test the legal sufficiency of the complaint. See Mayer v. Mylod, 988 F.2d 635, 638 (6th Cir. 1993). And in reviewing the complaint, the Court must construe the pleading in the light most favorable to the plaintiff, accept all factual allegations as true, and determine whether the complaint contains "enough facts to state a claim to relief that is plausible on its face." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007); Ashcroft v. Iqbal, 556 U.S. 662, 679 (2009). Legal conclusions and unwarranted factual inferences, however, are not entitled to a presumption of truth. Twombly, 550 U.S. at 555; see also Papasan v. Allain, 478 U.S. 265, 286 (1986) (The Court is "not bound to accept as true a legal conclusion couched as a factual allegation.").

Additionally, courts must read Rule 12(b)(6) in conjunction with Federal Civil Procedure Rule 8(a)(2)'s requirement that a plaintiff need offer "only 'a short and plain statement of the claim showing that the pleader is

entitled to relief.'" Erickson v. Pardus, 551 U.S. 89, 93 (2007) (citing Twombly, 550 U.S. at 596). Although specific facts are not required, to meet the basic minimum notice pleading requirements of Rule 8, Plaintiff's complaint must give Defendants fair notice of what his legal claims are and the factual grounds upon which they rest. Basset v. National Collegiate Athletic Ass'n, 528 F.3d 426, 437 (6th Cir. 2008). Plaintiff's obligation to provide the grounds for relief "requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Twombly, 550 U.S. at 555. Factual allegations "must be enough to raise a right to relief above the speculative level." Id.

Pro se pleadings are liberally construed. Boag v. MacDougall, 454 U.S. 364, 365 (1982) (per curiam); Haines v. Kerner, 404 U.S. 519, 520 (1972). The Court holds a pro se complaint to a less stringent standard than one drafted by an attorney. Spotts v. United States, 429 F.3d 248, 250 (6th Cir. 2005) (citing Haines, 404 U.S. at 520). The Court is not required, however, to conjure unpleaded facts or construct claims on Plaintiff's behalf. See Grinter v. Knight, 532 F.3d 567, 577 (6th Cir. 2008) (citation omitted); Beaudett v. City of Hampton, 775 F.2d 1274, 1277-78 (4th Cir. 1985).

III. Analysis

A. Criminal Statuses

As an initial matter, Plaintiff lists multiple federal statues as a "basis for jurisdiction," including 18 U.S.C. section 241 (conspiracy), 242 (deprivation of rights under color of law), and 1512 (tampering with a witness). To the extent Plaintiff is attempting to assert claims under these statues, Plaintiff lacks standing to do so. Sections 241, 242, and 1512 are all criminal statutes. Only the

United States Attorney can initiate criminal charges in federal court. (28 U.S.C. section 547; Fed. R. Crim. P. 7(c); Miller-El v. Ohio, No. 1:22 CV 686, 2022 U.S Dist. LEXIS 137392, at *6 (N.D. Ohio Aug. 2, 2022). A private citizen has no authority to initiate a federal criminal prosecution. Williams v. Luttrell, 99 F. App'x 705, 707 (6th Cir. 2004) (citing among authority Diamond v. Charles, 476 U.S. 54, 64-65 (1986)); Poole v. CitiMortgage, Inc., Civil Action No. 14-CV-10512, 2014 U.S. Dist. LEXIS 135488, 2014 WL 4772177, at *5 (E.D. Mich. Sept. 24, 2014) (a private citizen lacks standing to initiate criminal proceedings) (citing among authority Linda R.S. v. Richard D., 410 U.S. 614, 619 (1973)).

Moreover, these statutes do not provide a private right of action in a civil case. Booth v. Henson, 290 F. App'x 919, 2009 WL 4093498, at *1 (6th Cir. 2008); United States v. Oguaju, 76 F. App'x. 579, 2003 WL 21580657, *2 (6th Cir. 2003); Robinson v. Overseas Military Sales Corp., 21 F.3d 502, 511 (2d Cir. 1994); Miller-El, No. 1:22 CV 686, 2022 U.S. Dist. LEXIS 137392, at *6; Doss v. Beshear, No. 15-83-GFVT, 2016 U.S. Dist. LEXIS 66410, at *6 n.2 (E.D. Ky. May 20, 2016).

B. Rooker-Feldman Doctrine

Federal district courts do not have jurisdiction over challenges to state court decisions even if those decisions are unconstitutional. See D.C. Ct. of App. v. Feldman, 460 U.S. 462, 483 n. 16 (1983); Rooker v. Fidelity Trust Co., 263 U.S. 413, 415-16 (1923). Therefore, to the extent that Plaintiff is asking this Court to review state court decisions concerning the Summit County Court of Common Pleas Case no. CV-2022-09-3235 and to declare them void, this Court cannot do so. Federal appellate review of state court judgments

can only occur in the United States Supreme Court. See Kovacic v. Cuyahoga Cnty. Dep't of Children & Fam. Servs., 606 F.3d 301, 308-09 (6th Cir. 2010) (citations omitted).

This principle, known as the Rooker-Feldman Doctrine, states that a party losing his case in state court is barred from seeking what in substance would be federal appellate review of the state judgment. Johnson v. De Grandy, 512 U.S. 997, 1005-1006 (1994). Federal jurisdiction cannot be invoked merely by couching the claim in terms of a civil rights action. Lavrack v. City of Oak Park, No. 98-1142, 1999 U.S. App. LEXIS 24340, 1999 WL 801562, at *2 (6th Cir. Sept. 28, 1999).

Two elements must be satisfied in order for the Rooker- Feldman Doctrine to apply to bar a claim in federal district court. First, the issue before the federal court must be inextricably intertwined with the claim asserted in state court. (Catz v. Chalker, 142 F.3d 279, 293 (6th Cir. 1998), overruled on other grounds as stated in Chevalier v. Estate of Barnhart, 803 F.3d 789, 795 (6th Cir. 2015). "Where federal relief can only be predicated upon a conviction that the state court was wrong, it is difficult to conceive the federal proceeding as, in substance, anything other than a prohibited appeal of the states-court judgment." Id. at 293 (quoting Pennzoil Co. v. Texaco, Inc., 481 U.S. 1, 25 (1987) (Marshall, J., concurring)). Second, the claim must be a specific grievance that the law was invalidly or unconstitutionally applied in Plaintiff's particular case as opposed to a general constitutional challenge to the law applied in the state action. Id. Accordingly, the Rooker-Feldman Doctrine applies to "state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and

rejection of those judgments." Exxon Mobil Corp. v. Saudi Basic Industries Corp., 544 U.S. 280, 284 (2005).

Here, Plaintiff asks this Court to declare state court rulings in the underlying Summit County case void. Under the Rooker-Feldman Doctrine, this Court lacks subject matter jurisdiction to do so.

C. Res Judicata

To the extent Plaintiff is attempting to litigate his state court claims again in federal court in an effort to achieve a different result, he is barred from doing so.

Plaintiff cannot file an action in federal court to relitigate matters that were already decided in state court proceedings. Federal courts must give the same preclusive effect to a state-court judgment as that judgment receives in the rendering state. 28 U.S.C. section 1738; Abbot v. Michigan, 474 F.3d 324, 330 (6th Cir. 2007); Young v. Twp. of Green Oak, 471 F.3d 674, 680 (6th Cir. 2006). To determine the preclusive effect that a prior state court judgment would have on the present federal action, the Court must apply the law of preclusion of the state in which the prior judgment was rendered. Migra v. Warren City School District Board of Educ., 465 U.S. 75, 81 (1984).

In Ohio, the doctrine of res judicata encompasses the two related concepts of claim preclusion and issue preclusion. State ex rel. Davis v. Pub. Emp. Ret.

Bd., 120 Ohio St. 3d 386, 392, 2008 Ohio 6254, 899 N.E.2d 975 (2008). "Claim preclusion prevents subsequent actions, by the same parties or their privies, based on any claim arising out of a transaction that was the subject matter of a previous action." Grava v.

Parkman Twp., 73 Ohio St. 3d 379, 382, 1995 Ohio 331, 653 N.E.2d 226 (1995). Claim preclusion also bars subsequent actions whose claims "could have been litigated in the previous suit." Id. By contrast, issue preclusion, or collateral estoppel, prevents the "relitigation of any fact or point that was determined by a court of competent jurisdiction in a previous action between the same parties or their privies," even if the causes of action differ. Id. Issue preclusion applies when a fact or issue "(1) was actually and directly litigated in the prior action; (2) was passed upon and determined by a court of competent jurisdiction; and (3) when the party against whom [issue preclusion] is asserted was a party in privity with a party to the prior action." Thompson v. Wing, 70 Ohio St.3d 176, 183, 1994 Ohio 358, 637 N.E.2d 917 (1994).

Here, it appears that plaintiff is challenging the validity of the state court's consideration of his claims concerning the alleged threat by Dorain Davis. Because this issue has already been considered and decided by a state court, res judicata bars Plaintiff's claims. And even if the cause of action in this federal court action is new, the facts necessary to support this claim were previously determined by the state court. Moreover, any additional claims in this action could have been litigated in the prior state action. This Court must give full faith and credit to the state court judgment. Plaintiff is therefore barred from relitigating those matters in this court.

D. Judicial Immunity

Even if Plaintiff could proceed with a civil rights action, he cannot maintain such an action against Judge Breaux.

It is well established that judges are generally entitled to absolute immunity from civil suits for money damages. Mireles v. Waco, 502 U.S. 9, 9 (1991); Barnes v. Winchell, 105 F.3d 1111, 1115 (6th Cir. 1997). They are accorded this broad protection to ensure that the independent and impartial exercise of their judgment in a case is not impaired by the exposure to damages by dissatisfied litigants. Barnes, 105 F.3d at 1115. For this reason, absolute immunity is overcome only when (1) the conduct alleged is performed at a time when the defendant is not acting as a judge; or (2) the conduct alleged, although judicial in nature, is taken in complete absence of all subject matter jurisdiction of the court over which he or she presides. Mireles, 502 U.S. at 11-12; Barnes, 105 F.3d at 1116. A judge will be not deprived of immunity even if the action at issue was performed in error, done maliciously, or was in excess of his or her authority. Stump v. Sparkman, 435 U.S. 349, 356 (1978); Sevier v. Turner, 742 F.2d 262, 271 (6th Cir. 1984) (merely acting in excess of authority does not preclude immunity).

Here, Plaintiff gives no indication that Judge Breaux was acting in any capacity other than that of a judge when the conduct alleged in the complaint occurred. Furthermore, Plaintiff appears to object to decisions that Judge Breaux made in connection with the civil proceedings Plaintiff filed in the Summit County Court of Common Pleas. Decisions concerning pending motions and the dismissal of civil proceedings are actions typically performed by judges. Plaintiff has therefore not established that Judge Breaux acted clearly outside of the subject matter jurisdiction of the court over which the judge presides. Judge Breaux is therefore absolutely immune from damages in this action.

E. Defendant Cheatham Williams

In a conclusory fashion, Plaintiff appears to allege that Defendant Cheatham Williams, an attorney, violated the Ohio Code of Professional Conduct Rule 1.7 when she did not disclose the fact that she was related to the witness in the state court case, who is also Defendant Davis's wife. See ECF No. 1 at PageID #: 6.

Plaintiff, however, lacks standing to raise such a claim because the Ohio Code of Professional Conduct "'does not, in itself, create a private cause of action.'" Kafele v. Frank & Woolridge Co., 108 F.App'x 307, 309 (6th Cir. 2004) (quoting Fred Siegel Co., L.P.A. v. Arter & Hadden, 85 Ohio St. 3d 171, 707 N.E.2d 853, 859 (Ohio 1999)). Moreover, jurisdiction to rule on alleged disciplinary violations lies exclusively with the Ohio Supreme Court. Rodojev v.

Sound Com Corp., No. 1:10CV1535, 2010 U.S. Dist. LEXIS 141668, at *17 (N.D. Ohio Dec. 30, 2010) (citing Fred Siegel Co., 85 Ohio St.3d at 178, 707 N.E.2d at 860).

Plaintiff also appears to allege that Defendant Cheatham Williams violated 32 C.F.R. section 776.26 which provides that "a covered attorney shall not represent a client if the representation of that client involves a concurrent conflict of interest." A "covered attorney" as defined by these federal regulations are U.S. government attorneys. 32 C.F.R. section 776.2. There are no allegations in the Complaint suggesting Defendant Cheatham Williams is a government attorney. Plaintiff therefore fails to state a cognizable claim against this defendant.

IV. Conclusion

For all of the foregoing reasons, Defendants' Motions to Dismiss (ECF Nos. 3, 4, and 16) are granted, and Plaintiff's "Motion to Not Dismiss" (ECF No. 5) is denied. Plaintiff's Motion to Amend/Correct Docket (ECF No. 7) is denied as moot. This action is hereby dismissed.

IT IS SO ORDERED.

March 31, 2023
Date

/s/ Benita Y. Pearson
Benita Y. Pearson
United States District Judge

NO. 23-3307

APPENDIX A-4

NO. 23-3307
APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JAMES WILLIAM HALL PLAINTIFF / APPELANT V. DORAIN DAVIS RASHAUNDA BOARD JUDGE ALLISON M. BREAUX MORIAH K. CHEATHAM WILLIAM DEFENDANTS	ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO.

ORDER

Before Clay, Gibbons, and Larsen Circuit Judges.

James William Hall, a pro se Ohio resident, appeals the district court's judgment dismissing his civil complaint. 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). For the following reasons, we affirm.

In June 2022, Hall filed a petition for a civil stalking protection order in the Summit County Court of Common Pleas against Dorain Davis, claiming that Davis had threatened to shoot him several weeks earlier. A magistrate denied Hall's petition after an evidentiary hearing, at which Davis and his wife, Rashaunda, allegedly provided perjured testimony.

In September 2022, Hall sued Davis for intentional infliction of emotional distress in state court, seeking monetary damages. On Davis's motion, Summit County Common Pleas Judge Alison Breaux dismissed Hall's complaint for failure to state a claim upon which relief may be granted.

In January 2023, Hall filed this federal lawsuit against Dorain and Rashaunda Davis; Moriah Cheatham Williams, Davis's state-court lawyer; and Judge Breaux. Hall's complaint is difficult to decipher, but, liberally construed, it alleged that the defendants violated his federal rights in his state-court lawsuit. Specifically, Hall alleged that the Davises committed perjury and that Cheatham Williams violated Ohio Code of Professional Conduct Rule 1.7 and 32 C.F.R. § 776.26 by failing to disclose that she was related to Rashaunda Davis. He also alleged that, by dismissing his complaint at the pleading stage, Judge Breaux deprived him of his rights to discovery, a trial, and cross-examination Finally, Hall alleged that the defendants violated his rights under certain federal criminal statutes. He sought compensatory and punitive damages.

Thereafter, the Davises and Judge Breaux separately moved to dismiss Hall's complaint for lack of subject-matter jurisdiction or failure to state a claim upon which relief may be granted. *See* Fed. R. Civ. P. 12(b)(1), (b)(6). Hall opposed those motions to dismiss and moved for default judgment against Cheatham Williams on the ground that she failed to respond to his complaint within 21 days, as required by Federal Rule of Civil Procedure 12(a)(1)(A). Once Cheatham Williams received notice of Hall's pending complaint and motion for default judgment, she moved for an extension of time under Federal Rule of Civil Procedure 6(b), requesting an additional 21 days to respond to Hall's complaint. She argued that such an extension was warranted, in part, because Hall had failed to properly serve her with a copy

of the complaint. The district court granted Cheatham Williams's requested extension, finding that she had shown "good cause" for her failure to file a timely responsive pleading. Cheatham Williams subsequently moved to dismiss Hall's complaint for failure to state a claim, which Hall also opposed.

The district court granted the defendants' motions to dismiss, concluding that (1) neither the Ohio Code of Professional Conduct nor the federal criminal statutes cited in Hall's complaint provide for a private cause of action; (2) to the extent that Hall sought to relitigate his state-court claims or review of Judge Breaux's dismissal order, the doctrine of res judicata and the *Rooker-Feldman* doctrine barred him from doing so; and (3) his claims against Judge Breaux are barred by absolute judicial immunity.

On appeal, Hall challenges the district court's orders granting Cheatham Williams's time-extension motion and the defendants' motions to dismiss.

We review de novo a district court's decision to dismiss a complaint for lack of subject-matter jurisdiction under Rule 12(b)(1) or for failure to state a claim under Rule 12(b)(6). See *Thompson v. Bank of Am., N.A.*, 773 F.3d 741, 750 (6th Cir. 2024); *In re Carter*, 553 F.3d 979, 984 (6th Cir. 2009). Under Rule 12(b)(1), a challenge to the sufficiency of the pleadings is a "facial attack" on the existence of subject-matter jurisdiction, and the plaintiff bears the burden of establishing that subject-matter jurisdiction exists. *Cartwright v. Garner*, 751 F.3d 752, 759 (6th Cir. 2014). The plaintiff's allegations are taken as true. *See DLX, Inc. v. Kentucky*, 381 F.3d 511, 516 (6th Cir. 2004). To avoid dismissal for failure to state a claim under Rule 12(b)(6), "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). The

plaintiff must plead "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* We may affirm on any basis supported by the record. *Murphy v. Nat'l City Bank*, 560 F.3d 530, 535 (6th Cir. 2009). As a pro se litigant, Hall is entitled to a more liberal construction of his pleadings than if he were represented by counsel. *See Haines v. Kerner,* 404 U.S. 519, 520-21 (1972) (per curiam).

As a preliminary matter, federal courts have subject-matter jurisdiction over "all civil actions arising under the Constitution, law, or treaties of the United States." 28 U.S.C. § 1331. Hall's asserted bases for federal question jurisdiction include 18 U.S.C. §§ 241, 242, and 1512, which are criminal statutes that do not confer jurisdiction in this civil lawsuit. See *Booth v. Henson,* 290 F. App'x 919, 920- 21 (6th Cir. 2008) ("[A] private citizen lacks a judicially cognizable interest in the prosecution or nonprosecution of another." (quoting Linda R.S. v. Richard D., 410 U.S. 614, 619 (1973))); *see also United States v. Oguaju,* 76 F. App'x 579, 581 (6th Cir. 2003). Hall also seems to invoke 28 U.S.C. § 1654 and Federal Rules of Civil Procedure 9(b) and 37 as bases for subject-matter jurisdiction. None confers jurisdiction. See 28 U.S.C. § 1654 (providing that parties may proceed in federal court pro se or represented by counsel); *Palkow v. CSX Transp., Inc.,* 431 F.3d 543, 555 (6th Cir. 2005) ("Merely invoking the Federal Rules of Civil Procedure is not sufficient grounds to establish federal question jurisdiction.").

Assuming that Hall intended to bring his claims under 42 U.S.C. § 1983, which allows a private citizen to sue for violations of his federal civil rights, we conclude that his complaint was subject to dismissal for failure to state a claim. To state a § 1983 claim, a plaintiff must allege that (1) a right secured by the Constitution or a federal statute has been violated and (2) the violation

was committed by a person acting under color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988). Hall failed to allege facts supporting an interference that Cheatham Williams and the Davises, who are private actors, are subject to liability under § 1983. *See West*, 487 U.S. at 49; *see also Polk County v. Dodson*, 454 U.S. 312, 318 (1981) ("[A] lawyer representing a client is not, by virtue of being an officer of the court, a state actor 'under color of state law' within the meaning of § 1983.") And to the extent that Hall's complaint can be liberally construed as alleging that Cheatham Williams and the Davises conspired with a state official (ie., Judge Breaux) to violate his federal rights, see *Dennis v. Sparks*, 449 U.S. 24, 27-28 (1980), his allegations are too vague and conclusory to state a conspiracy claim, *see Spadafore v. Gardner,* 330 F.3d 849, 854 (6th Cir. 2003).

As for Hall's claims against Judge Breaux, the district court properly concluded that they are barred by judicial immunity. "It is a well-entrenched principle in our system of jurisprudence that judges are generally absolutely immune from civil suits for money damages." *Barnes v. Winchell,* 105 F.3d 1111, 1115 (6th Cir. 1997). "Immunity from a § 1983 suit for money damages is no exception." *Id.* (citing *Pierson v. Ray,* 386 U.S. 547, 554 (1967)). The Supreme Court has held that judicial immunity is overcome in only two circumstances: (1) "nonjudicial actions, i.e., actions not taken in the judge's judicial capacity" and (2) "actions, though judicial in nature, taken in the complete absence of all jurisdiction." *Mireles v. Waco,* 502 U.S. 9, 11-12 (1991) (per curiam). Because Hall did not allege, and the record does not otherwise show, that Judge Breaux acted in a non-judicial capacity or in the complete absence of all jurisdiction, she is entitled to absolute judicial immunity.

Finally, Hall argues that the district court erred by granting Cheatham Williams an extension of time to file a responsive pleading, a decision we review for abuse

of discretion. S*ee Morgan v. Gandalf, Ltd.*, 165 F. App'x 425, 428 (6th Cir. 2006). Rule 12(a)(1)(A) requires a defendant to respond to the plaintiff's complaint within 21 days after service of process. However, Rule 6(b)(1)(B) provides that, "[w]hen an act may or must be done within a specific time, the court may, for good cause, extend the time . . . on motion made after the time has expired if the party failed to act because of excusable neglect." Courts balance the following factors in making the excusable-neglect determinations: "(1) the danger of prejudice to the nonmoving party, (2) the length of the delay and its potential impact on judicial proceedings, (3) the reason for the delay, (4) whether the delay was within the reasonable control of the moving party, and (5) whether the late-filing party acted in good faith." *Nafziger v. McDermott Int'l, Inc.* 467 F3d 514, 522 (6th Cir. 2006).

In moving for an extension of time to respond to Hill's complaint, Cheatham Williams asserted, in part, that Hill had failed to properly serve her with a copy of the complaint. The record reflects that Hill attempted to serve Cheatham Williams by certified mail at her former law firm in Akron, Ohio. Cheatham Williams responded that service was insufficient because she recently transitioned to her new law firm. Cheatham Williams's lack of bad faith, Hill's failure to assert any prejudice resulting from Cheatham Williams's delay in responding to his complaint, and the short duration of the delay, all weighed in favor of finding excusable neglect. Further, if the district court had denied Cheatham Williams's time-extension motion and entered a default judgment against her, Cheatham Williams "almost certainly would have been entitled to have the default set aside given" her possible defenses "and the strong policy favoring adjudication on the merits." Morgan, 165 F. App'x at 430 (citing *Shepard Claims Serv., Inc. v. William Darrah & Assocs.*, 796 F.2d 190, 194 (6th Cir. 1986)). Under these circumstances, we discern no abuse of discretion in the

district court's granting of Cheatham Williams's motion for an extension of time to respond to Hill's complaint.

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

ENTERED BY ORDER OF THE COURT
/s/ Kelly L. Stephens
Kelly L. Stephens, Clerk

NO. 23-3307

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 23-3307

JAMES WILLIAM HALL,
Plaintiff-Appellant,

v.

DORAIN DAVIS;
RASHAUNDA BOARD DAVIS;
JUDGE ALISON M. BREAUX;
MORIAH K. CHEATHAM,

Defendants-Appellees.

FILED
Nov 17, 2023
KELLY L.
STEPHENS, Clerk

Before: CLAY, GIBBONS, and LARSEN, Circuit Judges.

JUDGMENT
On Appeal from the United States District Court for the Northern District of Ohio at Akron.

THIS CAUSE was heard on the record from the district court and was submitted on the briefs without oral argument.

IN CONSIDERATION THEREOF, it is ORDERED that the judgment of the district court is AFFIRMED.

ENTERED BY ORDER OF THE COURT

/S/ Kelly L. Stephens
-Kelly L. Stephens, Clerk