UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

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| JUDGE SHARON INGRAM | : | CIVIL ACTION NO: 3:16-CV-00515 |
| VERSUS | : | JUDGE HICKS |
| BRIAN E. CRAWFORD, LAWRENCE E. PETTIETTE, JR., JAMES D. "BUDDY" CALDWELL, JON K. GUICE, JUDGE CARL V. SHARP, JUDGE FREDERIC C. AMMAN, JUDGE J. WILSON RAMBO, JUDGE BENJAMIN JONES AND ALLYSON CAMPBELL | : | MAGISTRATE JUDGE PEREZ-MONTES |

**DEFENDANT JUDGES' MEMORANDUM IN SUPPORT OF MOTION TO DISMISS ORIGINAL AND SUPPLEMENTAL, AMENDED AND RESTATED COMPLAINTS**

**MAY IT PLEASE THE COURT**

## I. Preliminary Statement

The Honorable Sharon Ingram Marchman ("Plaintiff Judge Marchman") is a Louisiana district court judge serving together with 10 other judges in Louisiana's Fourth Judicial District Court comprising both Ouachita and Morehouse Parishes. Plaintiff Judge Marchman has named as defendants in this action: a law clerk, Allyson Campbell; several of her judicial colleagues, the Honorable Carl V. Sharp, the Honorable Frederic C. Amman, the Honorable J. Wilson Rambo and the Honorable Benjamin Jones ("Defendant Judges"); attorneys representing the law

clerk and judicial colleagues in state court proceedings, Brian E. Crawford, Lawrence W. Pettiette, Jr., Jon K. Guice and former Louisiana Attorney General, the Honorable James D. "Buddy" Caldwell. Plaintiff Judge Marchman seeks redress for alleged violations or conspiracy to violate her Free Speech and Equal Protection Rights under the U. S. Constitution. She seeks monetary damages, injunctive relief and declaratory judgment. This memorandum is submitted on behalf of the Defendant Judges in support of their motion to dismiss her complaints. [Doc. 1 and 22].

## II. Legal Standard and Evidence - Rule 12(b)(6) Motion

### A. Plausibility Pleading Standard

Before the facts are considered in this matter, a review of Rules 8 and 12 are necessary to put these facts into the appropriate context. In relevant part, Rule 8(a)(2) requires that a complaint contain a "short and plain statement of the claim showing that the pleader is entitled to relief." Rule 12(b), which governs a motion to dismiss, provides that a complaint can be dismissed for "failure to state a claim upon which relief can be granted."

In *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007) and *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009), the Supreme Court provided a framework for the factual allegations that a complaint must contain to survive a motion to dismiss under Rule 12(b)(6). See

*Johnson v. City of Shelby*, 135 S. Ct. 346, 347, 190 L. Ed. 2d 309 (2014). Pursuant to both the *Iqbal* and *Twombly* cases, a claim for relief under Rule 8 must provide enough facts to state a claim for relief that is "plausible on its face." *Iqbal*, 556 U.S. at 678; *Twombly*, 550 U.S. at 570; see also *Leal v. McHugh*, 731 F.3d 405, 410 (5th Cir. 2013). Determining if the claim is a "plausible claim," and has been well-pleaded is "context-specific, requiring the reviewing court to draw on its experience and common sense." *Iqbal*, 556 U.S. at 663-64. According to the Supreme Court, the plausibility standard is not the same as "probability requirement," but requires more than a "sheer possibility that a defendant has acted unlawfully." *Iqbal*, 556 U.S. at 678.

A "facial plausible" claim is one where the plaintiff pleads factual content that allows the Court to draw a "reasonable inference" that the defendants are liable for the misconduct alleged. *Iqbal*, 556 U.S. at 678. Generally, in the context of Rule 12(b)(6), a court must accept all well-pleaded facts in the complaint as true and view all facts in the "light most favorable to the plaintiff." *Dorsey v. Portfolio Equities, Inc.*, 540 F.3d 333, 338 (5th Cir. 2008) (supporting citations omitted). However, "threadbare recitals" of the elements of a cause of action that are supported by mere conclusory statements are not sufficient. *Iqbal*, 556 U.S. at 678. Instead, legal conclusions must be "supported by factual allegations." *Iqbal*, 556 U.S. at 679.

Therefore, a court should only "liberally construe" well-pleaded facts in favor of a plaintiff. *Collins v. Morgan Stanley Dean Witter*, 224 F.3d 496, 498 (5th Cir. 2000).

In sum, the Court's role under Rule 12(b)(6) is to evaluate whether Plaintiff Judge Marchman states a "legally cognizable claim that is plausible." See *Thompson v. City of Waco*, 764 F.3d 500, 503 (5th Cir. 2014).

**B. Four Corners and Extrinsic Evidence**

In determining a motion to dismiss under Rule 12(b)(6), the general rule is that a court may only consider factual allegations within the "four corners" of the complaint. *Morgan v. Swanson*, 659 F.3d 359, 401 (5th Cir. 2011). However, the Fifth Circuit has crafted an exception to the "four corners" rule. *Collins*, 224 F.3d at 498-99. Under the *Collins'* exception, a court may consider extrinsic documentary evidence in the context of a Rule 12(b)(6) motion if: (1) the document is attached to a defendant's motion to dismiss; (2) the document is referred to in the plaintiff's complaint; and (3) the document is "central" to the plaintiff's claims. *Collins*, 224 F.3d at 498-99.

**C. Judicial Notice**

Under Rule 201(b)(2) of the Federal Rules of Evidence ("FRE"), a court may take judicial notice of a fact that "is not subject to reasonable dispute because it can be accurately and readily determined from sources whose accuracy cannot reasonably

be questioned." The plain reading of FRE 201(d) supports such a result, as the rule states, "The court may take judicial notice at any stage of the proceeding." Applying the plain language of FRE 201(d), the Fifth Circuit has permitted lower courts to take judicial notice at the motion to dismiss stage of a proceeding. See, e.g., *Dorsey*, 540 F.3d at 338 (recognizing that a court is permitted to rely on "documents incorporated into the complaint by reference, and matters of which a court may take judicial notice").

## III. Statement of the Case[1]

Plaintiff Judge Marchman accuses a long-serving law clerk of a history of wrongdoing, and further accuses the Defendant Judges of covering up the same. [Doc. 22, ¶¶ 7 and 8]. The wrongdoing alleged is payroll fraud and destroying or concealing court documents. *Id*. Plaintiff Judge Marchman further asserts a list of alleged retaliatory actions taken against her by the Defendant Judges, and gives one example where she was "forced to resign" as the chair of the personnel committee. [Doc. 22, ¶ 10].

According to Plaintiff Judge Marchman, her problems began with a work

[1]This is the sixth motion to dismiss filed in this matter [Docs. 10, 26, 31, 35 and 37]. Therefore, we will be brief in our statement of the facts and procedural history of the case, focusing only on allegations directed to the Defendant Judges.

attendance issue by the law clerk in 2010[2]. [Doc. 22, ¶ 19]. By 2014, Plaintiff Judge Marchman had been part of an investigation which allegedly found irregularities between the law clerk's reported time reports and electronic records concerning entry into the building. [Doc. 22, ¶ 26]. The court met en banc, and accepted the recommendation of Plaintiff Judge Marchman and the investigating committee concerning action to be taken. [Doc. 22, ¶ 34].

The allegations of document destruction are comprised in a number of paragraphs of the complaint, but can be summarized as follows. There was one complaint from 2012 that the law clerk allegedly shredded a "proposed judgment" submitted by an attorney in a matter pending before one of the Defendant Judges. According to Plaintiff Judge Marchman's own pleadings, the Defendant Judge, who was supervising the law clerk at the time, addressed the situation with the law clerk and removed her from working on cases involving the same lawyer. Although Plaintiff Judge Marchman implies that the Defendant Judges should have informed

[2]Plaintiff Judge Marchman alleges that she brought this to the attention of Defendant Judges Amman and Rambo, who had supervisory authority over the law clerk at the time. [Doc. 22, ¶ 19]. This would have appeared to be in line with the Fourth Judicial District's Standing Policies. Exhibit 1, attached hereto, is a portion of the policy manual styled, "Chain of Command," where it states that, "The Court as a whole, and the individual judges with regard to their personal staff, have always retained the sole right to [hire, fire and discipline employees] within the department of the Judges' Office." The statement goes on to provide, "All suggestions or problems that arise should first be directed to the employee's immediate supervisor." Following that, the policy does provide for a way to move through the "chain of command" if the issue is not properly addressed by the immediate supervisor.

her about the situation, Plaintiff Judge Marchman had no such authority[3] over the judge actually supervising the law clerk at the time. [Doc. 22, ¶¶ 20-23]. There was a second allegation raised in 2014, actually by one of Plaintiff Judge Marchman's own lawyers, about documents allegedly missing from a court record in another matter, but the Court found none to be missing. [Doc. 22, ¶¶ 40 and 41].

Another issue arose where the law clerk was alleged to have been dilatory in the handling of some cases assigned to her. [Doc. 22, ¶¶ 34, 35 and 36]. The court met again en banc and took action, supported by her supervising judges, which Plaintiff Judge Marchman believed should have been more severe. [Doc. 22, ¶ 43].

Plaintiff Judge Marchman's continued efforts to remove this law clerk from service by the court, apparently came to a head at a March 13, 2015, en banc meeting, where she moved for the law clerk's dismissal, but allegedly could not gain a second for her motion from any of the other 10 members of the bench. [Doc. 22, ¶ 51].

The remaining "factual" allegations of Plaintiff Judge Marchman involve attempts by parties outside the court to obtain copies of the law clerk's personnel file. [Doc. 22, ¶¶ 53-58]. Plaintiff Judge Marchman appears to disagree with the decision

[3]See footnote immediately proceeding this one. There does not appear to be any duty on the part of Defendant Judge Sharp to have to report to Plaintiff Judge Marchman investigations or disciplinary actions he took while he was directly supervising the law clerk.

of an ad hoc judge to keep the law clerk's personnel file confidential, as well as the decision by Chief Judge Winters, made on advice of counsel and approved by a vote of the Court, to seek a ruling from an ad hoc judge on what parts, if any, of the law clerk's personnel file were confidential. [Doc. 22, ¶ 59].

In the memorandum filed on behalf of Defendant Attorney Crawford, this subject gets extensive treatment. [Doc. 40-1, pp. 7-17]. The Defendant Judges only seek to highlight for this Court that the decision to seek an ad hoc judge's review was made by the Court en banc, and that the ad hoc judge elected to review the documents in dispute "in camera," before rendering a decision. Plaintiff Judge Marchman's claim that Defendant Judges improperly kept certain file materials from the ad hoc judge is out from whole cloth.[4]

In addition to the above and forgoing conflicts that Plaintiff Judge Marchman had with her judicial colleagues, including the four Defendant Judges, six other judges not named as defendants, and one ad hoc judge also not named as a defendant in reference to this specific law clerk, Plaintiff Judge Marchman makes the following unsubstantiated assertions against specific judges which she claims rise to the level of Constitutional violations:

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[4]Although the metaphoric origin of this phrase is obscure, its meaning is clear–"a story invented with no basis in fact; a complete fiction." William Safire, *On Language; Out of the Whole Cloth*, N.Y. Times, July 19, 1998.

- As to Defendant Judge Amman, Plaintiff Judge Marchman contends he moved to require en banc approval for videos or photographs in the court room, in an effort to retaliate against her and "keep her from having any positive press." [Doc. 22, ¶ 81]. Further, that he "screamed" at Plaintiff Judge Marchman after she lost the vote to fire the law clerk. [Doc. 22, ¶ 51].

- As to Defendant Judge Sharp, Plaintiff Judge Marchman contends that he refused in writing to work with her on any committee and disseminated the writing to court staff to "undermine [her] authority and standing as a duly-elected judge." [Doc. 22, ¶ 83]. Further, that Defendant Judge Sharp sought to "admonish" her in relation to her response to a subpoena duces tecum related to the production of the law clerk's personnel file. [Doc. 22, ¶ 70].

- As to Defendant Judge Rambo, Plaintiff Judge Marchman contends that he "glared at her" and "walked into" her, while exiting a courthouse elevator. [Doc. 22, ¶ 71].

- As to Defendant Judge Jones, Plaintiff Judge Marchman contends that he (together with Chief Judge Winters) "pressured her to recuse herself from the investigation of a certain employee who had requested her recusal." [Doc. 22, ¶60].

Aside from the above, Plaintiff Judge Marchman only makes vague and nebulous assertions, such as claiming Defendant Judges are interfering with her ability to discharge her duties as a judge, undermining her authority in the eyes of the public, turned her into a virtual pariah, ignored her and made her feel uncomfortable. [Doc. 22, ¶¶ 95, 89, 85]. Plaintiff Judge Marchman does claim that she was forced out of her position on the personnel committee, but at the same time, alleges that she voluntarily resigned. [Doc. 22, ¶ 86].

There are a number of documents which this Court can and should consider in all of the motions to dismiss filed in this matter. These were attached to the memorandum filed on behalf of Defendant Attorney Crawford, and which are adopted herein by reference.

Further, Defendant Attorney Crawford's memorandum sets forth a history comprising four different lawsuits all focused one way or another upon this particular law clerk, by either Plaintiff Judge Marchman or her former clients, Stanley Palowsky, Jr. and his son. Also, the more than curious observation is that both Mr. Palowsky and Plaintiff Judge Marchman are represented by the same counsel. The Defendant Judges will not burden this Court with a complete recitation of those facts, but would simply observe that there appears to be a long history of Plaintiff Judge Marchman's counsel making broad and unsubstantiated claims not only against this law clerk, but later the Defendant Judges, and other judges not named in this current lawsuit, like Chief Judge Winters for example, as well as attorneys representing opposing parties, for what appears to be disagreeing with them or their clients.

For whatever reason, Mr. Palowsky, Plaintiff Judge Marchman, and their attorneys do not like this law clerk. Further, Plaintiff Judge Marchman is unhappy with her judicial colleagues' decisions concerning the law clerk, even to the point where Plaintiff Judge Marchman moved for discharge of employment, and none of

the other 10 members of the bench would allegedly second her motion. Was Plaintiff Judge Marchman's anger justified? Was Plaintiff Judge Marchman's anger because the law clerk was soliciting an opponent against her? Was Plaintiff Judge Marchman's anger because her judicial colleagues simply did not agree with her? While intriguing, none of those questions are before this Court for resolution.

## IV. Issues Presented

What is before this Court is the question of whether Plaintiff Judge Marchman has made a "facial plausible" claim under §§ 1983, 1985 or 1986 for violations of her First Amendment and Fourteenth Amendment rights, based upon the pled factual content in her complaints that allows this Court to draw a "reasonable inference" that the Defendant Judges are liable for the Constitutional misconduct alleged. The second question before this Court is that of judicial immunity, and whether Plaintiff Judge Marchman's claims against four of her 10 colleagues fail regardless of their merit, or lack thereof, because of judicial immunity.

## V. Argument

### A. Three Statutes and Two Constitutional Provisions

Plaintiff Judge Marchman asserts: (1) a civil action for deprivation of rights under §1983; (2) a conspiracy to interfere with civil rights under §1985; and (3) an action for neglect to prevent conspiracy under §1986. All these are in reference to a

law clerk, her judicial colleagues and lawyers representing them, that violated, conspired to violate or neglected to prevent the conspiracy to violate Plaintiff Judge Marchman's Constitutional Rights under the First[5] and Fourteenth[6] Amendments. It is hard to even imagine any set of facts, which would make such a claim by one elected judge against other elected judges serving as equals "plausible" under any circumstances, and when Plaintiff Judge Marchman's allegations are reviewed, as pled in this case, they are truly implausible.

The elements of a claim for deprivation of the right to free speech or retaliation therefor were recently set forth by the Fifth Circuit in *Nixon v. City of Houston*, 511 F.3d 494, 497 (5th Cir. 2007), "[t]o establish a § 1983 claim for employment retaliation related to speech, a plaintiff-employee must show: (1) he suffered an adverse employment action; (2) he spoke as a citizen on a matter of public concern; (3) his interest in the speech outweighs the government's interest in the efficient provision of public services; and (4) the speech precipitated the adverse employment

[5]"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." USCS Const. Amend. 1.

[6]"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." USCS Const. Amend. 14, , USCS Const. Amend. 14, § 1

action." (Internal citations omitted).

The §1985 "conspiracy" statute was fully discussed in the memorandum filed by Attorney Defendant Guice. [Doc. 37-1, pp. 19-21]. He correctly notes that § 1985 is divided into three parts. As to part one, Plaintiff Judge Marchman has not alleged she was holding a position as a United States officer, nor was there some conspiracy to interfere with proceedings in a federal court. He also correctly points out that Plaintiff Judge Marchman's complaints fail to allege race or class-based animus claims, subparts (2) and (3) would not apply. See also *Newberry v. E. Texas State Univ.*, 161 F.3d 276, 281 n.2 (5th Cir. 1998), where the Fifth Circuit has limited allegations of conspiracies only to those which are based in racial animus. The same is true for the failure to prevent conspiracies under §1986. If there were no "wrongs conspired to be done," then there is no action available under this statute either. See, e.g, *Broyles v. Texas*, 643 F. Supp. 2d 894 (S.D. Tex. 2009) and *Barstad v. Murray Cty.*, 420 F.3d 880, 887 (8th Cir. 2005)(dismissing plaintiffs § 1986 claim because his § 1985 claim fails).

**B. Plausibility**

As previously noted, in relevant part, Rule 8(a)(2) requires that a complaint contain a "short and plain statement of the claim showing that the pleader is entitled to relief." Plaintiff Judge Marchman's complaints are neither short nor plain. The

original complaint comprises 117 paragraphs over 31 pages, while the supplemental complaint balloons to 126 paragraphs over 35 pages. However, nowhere in these astonishing 243 paragraphs is one facially plausible claim for a Constitutional violation by the Defendant Judges.

This Court is charged to draw on its experience and common sense in considering Plaintiff Judge Marchman's claims. *Iqbal*, 556 U.S. at 663-64. Common sense is what is seriously lacking in Plaintiff Judge Marchman's pleadings. The Honorable Jerome J. Barbera, III, sitting Ad Hoc, in Mr. Palowsky's suit against the law clerk and the Defendant Judges (in addition to Judge Winters who is not sued herein), made the following observation:

> What this petition says is that ... a law clerk to the judges of this district, an employee of the court, caused harm to the [Mr. Palowsky] by her actions in concealing, destroying, removing, withholding, and improperly handling, and I'm not quoting that verbatim, in improperly handling pleadings and court documents pertaining to civil litigation filed in this district by plaintiff against his former business associate .... The petition also says that the named defendant judges are liable for damages as a result of their aiding and abetting [the law clerk] and conspiring to conceal her actions. So, that's my summary of what this lawsuit is about.

[Doc. 33-6, pg. 9]. In the pleadings before this Court, Plaintiff Judge Marchman, also a judge on the state court, stakes out her position that she continually tried to "out" the supposed wrongdoing of this law clerk, but was prevented from doing so by the

Defendant Judges. However, that assertion is simply not "plausible."

As noted by Plaintiff Judge Marchman herself, she headed the 2014 "investigation" into the law clerk's work hours and time slips. Plaintiff Judge Marchman has a law license, and has been a sitting state court judge for over a decade. The action of the court was at her recommendation, and she did not recommend referral of the payroll issue to any law enforcement or prosecuting authority for investigation or prosecution.[7] If Plaintiff Judge Marchman believed a crime had occurred, why did she not report the same? The truth of the matter is that neither Plaintiff Judge Marchman, the four Defendant Judges, or any of the other six judicial colleagues considered a crime had occurred.[8]

The rest of her factual allegations show that Plaintiff Judge Marchman disagreed with her judicial colleagues on the handling of employment issues with this particular law clerk, especially after Plaintiff Judge Marchman believed the law clerk was seeking an opponent to take on Plaintiff Judge Marchman in her re-election to the bench. Because of this bias, it was Plaintiff Judge Marchman who voluntarily removed herself from further investigations of the law clerk. Despite the bias, she

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[7]As noted in Doc. 33-1, a 2016 investigation was under taken at the request of D. A. Jerry Jones. The Office of the Inspector General and the Louisiana State Police found insufficient cause to believe that a crime had been committed and closed their file.

[8]Apparently, neither did the State Inspector General nor the State Police in reviewing the matter two years later. [Doc. 33-1].

continued to voice her disagreement with the results of any further investigations and to vote on decisions on discipline.

This reached its pinnacle when none of her judicial colleagues would allegedly even second her motion to fire the law clerk. Plaintiff Judge Marchman may truly be a pariah, or an outcast among her peers, but that status appears to be of her own making, and not the actions of the Defendant Judges. Plaintiff Judge Marchman's claims concerning her lot among her colleagues are not the fault of the Defendant Judges.[9]

Regardless, there is no "plausible" factual basis that the Defendant Judges violated either Plaintiff Judge Marchman's Free Speech or Equal Protection rights.

**C. Free Speech and Retaliation**

**"**Speech by citizens on matters of public concern lies at the heart of the First Amendment, which 'was fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people.'" *Lane v. Franks*, 134 S. Ct. 2369, 2377 (2014), citing *Roth v. United States*, 354 U. S. 476,

[9]In the memoranda filed on behalf of the Attorney Defendants, Messrs. Crawford and Guice, they present a further explanation for Plaintiff Judge Marchman's position among her judicial colleagues. It is the Defendant Attorneys' assertion here and in the State court that Plaintiff Judge Marchman disclosed confidential personnel information from the law clerk's file to Mr. Palowsky's attorneys, who used the same in crafting their pleadings, and specifically intended to rely upon Plaintiff Judge Marchman's testimony in connection with a motion pending before the State court.

484, 77 S. Ct. 1304, 1 L. Ed. 2d 1498 (1957). "The interest at stake is as much the public's interest in receiving informed opinion as it is the employee's own right to disseminate it." *San Diego v. Roe*, 543 U. S. 77, 82, 125 S. Ct. 521, 160 L. Ed. 2d 410 (2004). However, there is a countervailing interest, when the speech is that of a public employee, such as Plaintiff Judge Marchman.

> Our precedents have also acknowledged the government's countervailing interest in controlling the operation of its workplaces. See, e.g., *Pickering*, 391 U. S., at 568, 88 S. Ct. 1731, 20 L. Ed. 2d 811. "Government employers, like private employers, need a significant degree of control over their employees' words and actions; without it, there would be little chance for the efficient provision of public services." *Garcetti*, 547 U. S., at 418, 126 S. Ct. 1951, 164 L. Ed. 2d 689.

*Lane*, 134 S. Ct. at 2377.

The Fifth Circuit recently addressed this issue, relying on *Lane*, by stating, "To establish a prima facie First Amendment retaliation claim, a public employee must show, inter alia, that he spoke as a citizen, and not as a public employee." *Paske v. Fitzgerald*, 785 F.3d 977, 983-84 (5th Cir. 2015). The Fifth Circuit went on to note:

> In deciding whether a public employee speaks as a citizen or as a public employee, [t]he critical question . . . is whether the speech at issue is itself ordinarily within the scope of an employee's duties, not whether it merely concerns those duties. When speech-related [a]ctivities [are] required by one's position or undertaken in the course of performing one's job[ ], they are within the scope of the employee's duties... In contrast, if the speech-related activities are "the kind . . . engaged in by citizens who do not work for the government, they are protected."

*Id*. (internal quotation marks and citations omitted).

Plaintiff Judge Marchman, as a State court judge sitting in a section of the Fourth Judicial District, along with 10 other judges, is clearly a public employee. By her own factual assertions, personnel investigations, recommendations and employment actions were and are within the scope of her duties as one of the district judges. Private citizens do not generally have the right to participate in closed-door en banc meetings of state district judges. Any speech Plaintiff Judge Marchman made concerning this law clerk arose from her exercising her special right to be in these en banc meetings arising from her position as a public employee, i.e, state district judge. As Plaintiff Judge Marchman's speech concerning this law clerk, she was at all times a public employee and not citizen, her speech is not protected by the First Amendment. Having failed to establish a First Amendment violation, Plaintiff Judge Marchman failed to establish a case for a § 1983 claim of retaliation for the exercise of free speech.

**D. The Fourteenth Amendment**

To state a claim under the Equal Protection Clause, § 1983, Plaintiff Judge Marchman must either allege that (1) "a state actor [the Defendant Judges] intentionally discriminated against [her] because of membership in a protected class[,]" *Williams v. Bramer*, 180 F.3d 699, 705 (5th Cir. 1999) (citation omitted);

or (2) that she has been "intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment." *Vill. of Willowbrook v. Olech*, 528 U.S. 562, 564, 120 S. Ct. 1073, 145 L. Ed. 2d 1060 (2000). Plaintiff Judge Marchman makes no allegations that she was intentionally discriminated against because she was a member of a protected class.[10] Instead, Plaintiff Judge Marchman appears to be making a claim as a "class-of-one."

The Supreme Court has recognized a "class-of-one" equal protection claim when an individual has "been intentionally treated differently from others similarly situated and . . . there is no rational basis for the difference in treatment." *Engquist v. Or. Dep't of Agric.*, 553 U.S. 591, 601, 128 S. Ct. 2146, 170 L. Ed. 2d 975 (2008). However, class-of-one claims have been held not to apply in cases of public employment. As the *Engquist* court found, ""[T]he class-of-one theory of equal protection—which presupposes that like individuals should be treated alike, and that

[10]The reference to Plaintiff Judge Marchman pleading to the dispute between her and the law clerk being a "cat fight," also does not sufficiently plead membership in a protected class being motivation for being singled out for disparate treatment. Even if it were, such language would not even pass muster in the Title VII context. See *Trahan v. LaSalle Hosp. Serv. Dist. No. 1*, No. 11-1507, 2014 U.S. Dist. LEXIS 39473 (W.D. La. Mar. 24, 2014), where the plaintiff alleges her co-workers laughed at her, ignored her, talked while she was trying to give reports and made "cat fight noises." (pg. 14). Referencing language from another Western District of Louisiana case, *McClinton v. Sam's E., Inc.*, No. 11-cv-2156, 2012 U.S. Dist. LEXIS 141013 (W.D. La. Sep. 28, 2012), the District Court noted, "The Fifth Circuit has established that 'because Title VII is not a general workplace civility code, the legal threshold for an abusive work environment is high.'"

to treat them differently is to classify them in a way that must survive at least rationality review—is simply a poor fit in the public employment context." 553 U.S. at 603-06. The Fifth Circuit recently came to the same decision in finding that the claims of a university professor that his Equal Protection rights were violated in a denial of tenure were not cognizable under a class-of-one theory. "Because Klingler attempts to assert a 'class-of-one' claim in the context of public employment, his claim fails as a matter of law. *Klingler v. Univ. of S. Miss.*, 612 F. App'x 222, 232 (5th Cir. 2015).

Plaintiff Judge Marchman, as a public employee, does not have a claim under the Fourteenth Amendment under either the protected class or class-of-one theories. She has not sufficiently alleged that she was singled out for disparate treatment due to being a member of a protected class. Nor, as a public employee, can she assert, as a matter of law, a class-of-one claim. Even if she could, her vague statements about being a pariah or being made to feel uncomfortable, simply do not rise to the level of having sustained an actionable injury.[11]

[11]Plaintiff Judge Marchman is not an employee of the Defendant Judges, but rather an one among equals. This fact makes this claim peculiar if not bizarre or ridiculous. On the point of there being no actionable adverse employment actions alleged, we would simply refer to the Court the Memorandum filed on behalf of Attorney Defendant Guice, where the issue was accurately discussed in detail. [Doc. 37-1, pp. 11-13].

**E. Judicial Immunity**

The Supreme Court has cited with favor lower court rulings and commentary which assert that a motion to dismiss is appropriate where an applicable affirmative defense is clear from the pleadings.

> Whether a particular ground for opposing a claim may be the basis for dismissal for failure to state a claim depends on whether the allegations in the complaint suffice to establish that ground, not on the nature of the ground in the abstract. See *Leveto v. Lapina*, 258 F.3d 156, 161 (CA3 2001) "[A] complaint may be subject to dismissal under Rule 12(b)(6) when an affirmative defense . . . appears on its face" (internal quotation marks omitted)). See also *Lopez-Gonzalez v. Comerio*, 404 F.3d 548, 551 (CA1 2005) (dismissing a complaint barred by the statute of limitations under Rule 12(b)(6)); *Pani v. Empire Blue Cross Blue Shield*, 152 F.3d 67, 74-75 (CA2 1998) (dismissing a complaint barred by official immunity under Rule 12(b)(6)). See also 5B C. Wright & A. Miller, Federal Practice and Procedure § 1357, pp 708-710, 721-729 (3d ed. 2004).

*Jones v. Bock*, 549 U.S. 199, 215, 127 S. Ct. 910, 921 (2007). As to the Defendant Judges, the affirmative defense of judicial immunity is clear from the pleadings. In fact, Plaintiff Judge Marchman expressly anticipated the same when she alleged as to each of the Defendant Judges that they are "not entitled to judicial immunity for the claims asserted herein." [Doc. 22 , ¶ 5(F)-(I)]. However, her assertion is incorrect.

The concept of absolute judicial immunity is one that is well established. See e.g. *Pierson v. Ray*, 386 U.S. 547, 554, 87 S.Ct. 1213, 1217-18, 18 L.Ed.2d 288

(1967); *Stump v. Sparkman*, 435 U.S. 349, 357, 98 S.Ct. 1099, 1105, 55 L.Ed.2d 331 (1978); *Mireles v. Waco*, 502 U.S. 9, 11, 112 S.Ct. 286, 288, 116 L.Ed.2d 9 (1991). In *Stump*, the Supreme Court stated:

> The governing principle of law is well established and is not questioned by the parties. As early as 1872, the Court recognized that it was "a general principle of the highest importance to the proper administration of justice that a judicial officer, in exercising the authority vested in him, [should] be free to act upon his own convictions, without apprehension of personal consequences to himself." *Bradley v. Fisher*, supra, at 347. For that reason the Court held that "judges of courts of superior or general jurisdiction are not liable to civil actions for their judicial acts, even when such acts are in excess of their jurisdiction, and are alleged to have been done maliciously or corruptly." 13 Wall., at 351. Later we held that this doctrine of judicial immunity was applicable in suits under § 1 of the Civil Rights Act of 1871, 42 U.S.C. § 1983, for the legislative record gave no indication that Congress intended to abolish this long-established principle. *Pierson v. Ray*, 386 U.S. 547 (1967).

435 U.S. at 355-56.

Judicial immunity is a complete immunity from civil litigation, not just from assessment of damages. *Mireles*, 502 U.S. at 11. Absolute judicial immunity fails only when a judge acts in the clear absence of jurisdiction. "'[F]ew doctrines were more solidly established at common law than the immunity of judges from liability for damages for acts committed within their judicial jurisdiction.'" *Cleavinger v. Saxner*, 474 U.S. 193, 199, 106 S.Ct. 496, 499, 88 L.Ed.2d 507 (1985) (quoting, *Pierson*, 386 U.S. at 553-54).

In *Stump*, the United States Supreme Court established a two-prong test for determining whether an action is "judicial" for purposes of absolute judicial immunity. *Stump*, 435 U.S. at 362. Simply put, the inquiry for determining whether the conduct giving rise to a lawsuit is judicial in nature asks whether the challenged act was performed by the judge in his capacity as a judicial officer, or whether it was simply an action performed by a person who happened to be a judge. The test therefore focuses on the function that the challenged action serves and not on the title or identity of the actor. See *Forrester v. White*, 484 U.S. 219, 227, 108 S.Ct. 538, 544, 98 L.Ed.2d 555 (1988). This "functional approach" examines the "nature" and "function" of the act, not the act itself. *Mireles*, 502 U.S. at 13 (Internal citations omitted). Under the second prong, when judicial immunity for an act is asserted, the court must determine whether that act is a function normally performed by a judge[.]" *Stump*, 435 U.S. at 357.

The Fifth Circuit has specifically held that absolute judicial immunity may not be voided by allegations of a conspiracy between the judge and a staff member or the judge and an outside party. *Mitchell v. McBryde*, 944 F.2d 229, 230 (5th Cir. 1991); *Holloway v. Walker*, 765 F.2d 517, 522 (5th Cir. 1985). In *Mitchell*, the allegations were that a judge acted maliciously, and therefore, should not have absolute judicial immunity. However, the Fifth Circuit held, "The fact that it is alleged that the judge

acted pursuant to a conspiracy and committed grave procedural errors is not sufficient to avoid absolute judicial immunity." 944 F.2d at 230.

No doubt counsel for Plaintiff Judge Marchman are keenly aware of this immunity, for they presented the same arguments against immunity for their other client, Mr. Palowsky. [Doc. 33-6]. In the State case, Judge Barbara properly granted the Defendant Judge's exception of no cause of action which raised an affirmative defense of judicial immunity. In doing so, he clearly focused on the two prongs of judicial function and jurisdiction.

> So if there's a complaint that a judge failed to supervise or conspired in supervision or in concealing wrongful acts of a law clerk the question is not whether the judge's actions taken him or her out of immunity because you don't examine the act itself. You examine the nature and function of it, and that is the contact between the judge and the law clerk which is a judicial function. [*Id*. at 19].
>
> We generally talk about jurisdiction as being maybe geographical and maybe being monetary in some cases and in some cases it has to do with the constitution says is what this judge does and doesn't do. It's the definition of the scope of responsibility and authority that a judge has, but in the context of judicial immunity the judge's jurisdiction can go beyond that and as applied to this case of course it does .... There is no question in my mind that supervision and control of a law clerk employed by a district court is something that would be within the jurisdiction of a district court judge. [*Id.* at 17].

Just as Judge Barbara has correctly applied judicial immunity to dismiss Mr. Palowsky's state court case, this Court should apply the same analysis to Plaintiff

Judge Marchman's federal court case.

Plaintiff Judge Marchman's claims are that she was and is being retaliated against in violation of her free speech rights and is otherwise not being treated fairly by her judicial colleagues, and that this somehow rises to the level of a civil rights action. Even if she is correct (which is at all times denied), the alleged actions of the Defendant Judges were all taken while exercising their functions as state court judges either in supervising the law clerk or in running the Fourth Judicial District Court, the very court which forms the basis of their geographical jurisdiction. Both prongs of the *Stump* test are satisfied, and the judicial immunity of the Defendant Judges is crystal clear.

Expanding on *Stump*, the Fifth Circuit applies a four-part test to determine whether a challenged action is judicial in nature.

(1) whether the act complained of is a normal judicial function;

(2) whether the events occurred in the judge's court or chambers;

(3) whether the controversy centered around a case then pending before the judge; and

(4) whether the confrontation arose directly and immediately out of a "visit" to the judge in his judicial capacity.

*McAlester v. Brown*, 469 F.2d 1280-82 (5th Cir. 1972).

In *Adams v. McIlhany*, 764 F.2d 294, 297 (5th Cir. 1985), the Fifth Circuit

clarified that the four-factor test set forth in *McAlester* "should be broadly construed in favor of immunity," and that "there are situations in which immunity must be afforded even though one or more of the *McAlester* factors fails to obtain." The Fifth Circuit further held that none of the four *McAlester* factors should be given equal weight in any given case, and that "they should be construed in each case generously to the holder of the immunity and in the light of the policies underlying judicial immunity." *Id*.

In the state court claim by Mr. Palowsky, the Defendant Judges claimed judicial immunity from any lawsuit arising from those acts set forth therein, including the following: (1) the investigation by Defendant Judge Jones of the alleged destruction of documents filed in plaintiff's pending lawsuit against his former business partner; (2) the allegedly improper recusal hearing conducted by Defendant Judge Sharp in plaintiff's pending lawsuit against his former business partner; and (3) the Defendant Judges' alleged improper supervision of a law clerk during her brief involvement in plaintiff's pending lawsuit against his former business partner.

For the purpose of this federal action by Plaintiff Judge Marchman, the Defendant Judges would add a fourth claim for judicial immunity for any alleged deprivations of constitutional rights which arose from the exercise of their judicial functions, which Plaintiff Judge Marchman alleges caused her harm. Applying the

*McAlester* factors discussed above, all these alleged actions are sufficiently judicial in nature to warrant the extension of absolute judicial immunity to defendants.

All of the alleged conduct by the Defendant Judges was part of their normal judicial function. In her claims for relief, Plaintiff Judge Marchman seeks damages, injunctions and declaratory judgment relief relative to an alleged refusal of the Defendant Judges to end a supposed cover up of payroll fraud and document destruction, and of retaliating against her when she tried to expose the same. The alleged cover-up allegations are the most egregious, as Plaintiff Judge Marchman is accusing the Defendant Judges of what constitutes essentially corruption. Although not specifically pled, there is also an undercurrent of implied malice, when Plaintiff Judge Marchman asserts her retaliation charge. However, acts of corruption or malice, even if true, do not affect absolute judicial immunity. *Price v. Porter*, 351 Fed. Appx. 925, 927 (5th Cir. 2009), citing *Mireles v. Waco*, 502 U.S. 9, 10, 112 S. Ct. 286, 116 L. Ed. 2d 9 (1991).

Turning to the specific allegations, it is clear that all arose from the exercise of a judicial function. As to the activities concerning the law clerk, Defendant Judge Sharp is alleged to have covered up or not informed Plaintiff Judge Marchman of the alleged destruction of a proposed judgment in 2012. Defendant Judge Jones is accused of covering up another destruction of court records by the law clerk in 2014.

Defendant Judges Amman, Rambo and Sharp are accused of falsifying time sheets for a law clerk under their supervision. Finally, there are also claims that documents from the law clerk's personnel file were withheld from an ad hoc judge considering privacy claims, and of false statements being made in various investigations arising from the supervision of this law clerk.

As recognized by the Fifth Circuit, "[l]aw clerks are not merely the judge's errand runners. They are sounding boards for tentative opinions and legal researchers who seek the authorities that affect decisions." *Hall v. Small Bus. Admin.*, 695 F.2d 175, 179 (5th Cir.1983). As further recognized by the United States Second Circuit, ". . . a law clerk is probably the one participant in the judicial process whose duties and responsibilities are most intimately connected with the judge's own exercise of the judicial function." *Oliva v. Heller*, 839 F.2d 37, 40 (2d Cir. 1988). The document destruction allegations address directly cases pending in the Fourth Judicial District, and therefore, there is a direct connection to the activities and investigations were carried out concerning this law clerk, not only by the Defendant Judges, but also by other unnamed judges, including Chief Judge Winters, who was sued in the state court action, but not in this case. As for the suit for declaratory judgment concerning the personnel file, it is clear that Chief Judge Winters, although acting on behalf of the entire court, was the party to bring that action. The Defendant Judges contend the

ad hoc judge received and reviewed all documents noted as in dispute by the parties and their counsel to the declaratory judgment action.

It is particularly difficult to understand what Plaintiff Judge Marchman considers "retaliation." Ostracism by co-workers is usually not considered retaliation. See *Brazoria Cty. v. EEOC*, 391 F.3d 685, 697 (5th Cir. 2004), citing *Manatt v. Bank of America*, 339 F.3d 792, 803 (9th Cir. 2003); *Scusa v. Nestle U.S.A. Co., Inc.*, 181 F.3d 958, 969, (8th Cir. 1999); and *Parkins v. Civil Constructors of Illinois Inc.*, 163 F.3d 1027, 1039 (7th Cir. 1998). Defendant Judge Amman's alleged motion in a judges' meeting to require en banc approval for news cameras in the courtroom to keep Plaintiff Judge Marchman from getting good press, or his alleged screaming at her after a vote at a judges' meeting, both clearly arose in the context of his exercising a judicial function by acting in the very context of a meeting of all the judges. As to Defendant Judge Sharp, the allegations that he refused to serve on any judicial committee with her, and sought an agenda item for the en banc judges' meeting that they consider admonition against Plaintiff Judge Marchman, where also exercising his judicial functions. Deciding on what committees he would serve and with whom, and whether to discuss and possibly sanction a fellow judge as part of the Fourth Judicial District are clearly judicial functions. Plaintiff Judge Marchman's claim that she was allegedly bumped into and glared at by Defendant Judge Rambo in the

courthouse elevator, likewise raises judicial functions as they were both in the courthouse and either on the way to courtrooms or their chambers. Finally, Chief Judge Winters' and Defendant Judge Jones' alleged pressure on Plaintiff Judge Marchman to step out of an investigation of a courthouse employee, even if true, would also represent Chief Judge Winters exercising a judicial function as Chief Judge of the court, by requiring that Defendant Judge Jones be included in all witness interviews.

The next factor involves whether the alleged activities took place in the courtroom or sufficient adjunct spaces. While it remains the "function" and not the "location" which is the critical element[12], the investigations, the signing of time sheets, the participation in en banc meetings, and even the use of computers in chambers to send an email or riding the elevator at the courthouse, all are sufficient adjunct spaces to meet this element.

The question of whether the alleged conduct arises from Plaintiff Judge Marchman's derivative lawsuit is interesting. Even though the third *McAlester* factor is certainly satisfied in the present lawsuit, it is not necessary to the Defendant

[12]For example, in *Adams*, 764 F.2d at 298, n. 2, the Fifth Circuit gave an example of how a court should focus more on the authority a judge has to act rather than on the place he has acted while applying the *McAlester* factors. The *Adams* court recognized that a judge who cites a "person raising a disturbance immediately outside a courtroom window for contempt" is performing a judicial act, even though the second part of the *McAlester* test may not be satisfied under the specific circumstances. *Id.*

Judges' defense of absolute judicial immunity that there be a case pending before the Court. In *Davis v. Tarrant County Tex.*, 565 F.3d 214, 221-22 (5th Cir. 2009), the United States Fifth Circuit went so far as to recognize that there are many times when a judge's claim to immunity is not the result of a "paradigmatic" act committed while resolving a dispute between parties over which he has subject matter jurisdiction. There, the plaintiff, an attorney, sued several judges for excluding him from a list of attorneys who were eligible to be appointed in felony cases for indigent defendants. *Id*. at 216-17. The district court held that the judges were entitled to claim absolute judicial immunity, because they were acting within their judicial capacities at the time in question.

The Fifth Circuit agreed, but struggled with how to apply *McAlester's* "pending case" requirement to the plaintiff's allegations since they did not revolve around a particular judge's involvement in a pending lawsuit. *Id*. at 223-26. It ultimately concluded that the "underlying purpose of the judicial immunity doctrine required it to conclude that the judges' selecting eligible attorneys for inclusion on a list for court appointments" was "inextricably linked to and cannot be separated from the act of appointing counsel in a particular case." *Id*. at 225-26. The court explained that "[a]lthough the selection decision is not made in the context of a specific suit, the decision will presumably be based upon an attorney's conduct in other cases before

the court." *Id*.

The connection to Plaintiff Judge Marchman's claims and the underlying Palowsky litigation, involving her former client are palpable, in the sense that they are so intense to almost be touched or felt. Defendant Attorney Crawford's memorandum shows that Plaintiff Judge Marchman was to be the star witness in Mr. Palowsky's case, and was to testify as to the alleged misdeeds of both the law clerk and the entire Fourth Judicial District Court, which were allegedly so egregious that only an en banc recusal could give Mr. Palowsky a fair hearing. It is from this diseased root system of a state court action that Plaintiff Judge Marchman's civil rights' lawsuit arises, with even the same gardeners, in the form of Mr. Palowsky's own attorneys seeking to tend the same noxious vines in this federal action.

Like the conduct at issue in *Davis*, the alleged conduct of the Defendant Judges herein was inextricably linked to their adjudicatory roles. First, the Defendant Judges were exercising their duties under Louisiana law to control the proceedings in Mr. Palowsky's pending lawsuit and to ensure the integrity of the judicial decision making process. Further, Mr. Palowsky pled a nexus between defendant's actions and delays and other damages allegedly incurred in his pending lawsuit. Based on his allegations, the Defendant Judges' alleged conduct clearly satisfies the third *McAlester* factor.

The fourth and final *McAlester* factor is whether the alleged confrontations arose out of Plaintiff Judge Marchman's visits with the Defendant Judges in their judicial capacities. Again, the *Adams* case proves informative in considering this final factor. In that case, the mother of a defendant wrote letters to the judge stating that the only reason her son was punished and treated unfairly was because they didn't have the money to bribe the judge. 764 F.2d at 296. The judge held a hearing and found the mother in contempt. *Id*. The mother responded with a § 1983 claim against the judge. On appeal, the Fifth Circuit affirmed the district court's decision. In reaching its decision, the court found that the judge's complained of actions were judicial acts, as determined by an application of the *McAlester* factors. *Id*. at 297-8. The analysis of the fourth factor announced in *McAlester* is of particular importance in the present lawsuit. In its reasoning, the *Adams* court recognized that there was no singular "confrontation" giving rise to the lawsuit. *Id*. at 298. The court determined plaintiff's appearance before the court on the contempt citation was the most "closely analogous event" to a visit in the case. However, the Fifth Circuit continued to reason that the letters written by plaintiff to the judge could arguably be "the proper analogue to the *McAlester* 'visit.'" *Id*.

*McAlester* "visit" analogues are present in each of Plaintiff Judge Marchman's allegations against the Defendant Judges. The allegations all arise from meetings

which occurred in the courthouse between her and each of the Defendant Judges. Whether it involved the Defendant Judges' alleged "pressure" to step down from an investigation, or another's alleged "glare" in the elevator, each would be an analogous "visit" under *McAlester*.

Plaintiff Judge Marchman's assertions that the activities of the Defendant Judges were "administrative," shows a complete lack of understanding of what is meant by "jurisdiction" in the context of judicial immunity. The term "jurisdiction" has a somewhat special meaning in the context of absolute judicial immunity. *Adams*, 764 F.2d at 298. In determining whether an act was clearly outside a judge's jurisdiction for judicial immunity purposes, the focus is not on whether the judge's specific act was proper or improper, but on whether the judge had the jurisdiction necessary to perform an act of that kind in the case. See *Mireles*, 502 U.S. at 9 (judge allegedly acted in excess of his authority by authorizing and ratifying police officers' use of excessive force to bring an attorney to judge's courtroom; however, these actions were still not committed in the absence of jurisdiction because the judge had jurisdiction to secure attorney's presence before him); See also *Malina v. Gonzales*, 994 F.2d 1121, 1124 (5th Cir. 1993) (because the judge had power to cite for contempt and to sentence, where a judge cited a motorist for contempt and sentenced him to jail, these acts were within his jurisdiction, even though the judge had acted

improperly in stopping the motorist himself, privately using an officer to"summon" the motorist to court and charging the motorist himself). Even the commission of "grave procedural errors" does not deprive a judge of jurisdiction, as that term is broadly defined in the context of absolute judicial immunity. *Stump*, 435 U.S. at 359.

Under this analysis, the question before the Court in the present lawsuit is not whether the Defendant Judges acted improperly in their alleged actions, but whether they had the jurisdiction necessary to take those actions. The Fourth Judicial District Court is vested with original jurisdiction over all civil and criminal matters. La. Const. art. V, § 16 (A)(1). Because it is a court of general jurisdiction, the Fourth Judicial District Court had jurisdiction over the Palowsky lawsuit, as well as running of the court. See *Lloyd v. Shady Lake Nursing Home, Inc.*, 47,025, p. 4 (La. App. 2 Cir. 5/9/12), 92 So.3d 560, 564, writ denied, 12-1318 (La. 9/28/12), 98 So.3d 844.

As the Honorable Judges presiding over the Court, the Defendant Judges were generally empowered to conduct the legal proceeding and take the associated judicial acts in the running of the court complained of by Plaintiff Judge Marchman. See La. C.C.P. arts. 191 and 1631. For instance, Defendant Judge Sharp was vested with both subject matter jurisdiction over the Palowsky's lawsuit and the inherent power and authority to control the course of the legal proceedings. As a result, the Defendant Judge was well within his jurisdiction to conduct the hearing on a litigant's motion

to recuse the Fourth Judicial District en banc and issue a ruling in the matter.

Likewise, the Defendant Judges, as well as all the other judges not sued, acted within their jurisdiction in supervising the law clerk and investigating her alleged actions as they pertained to the Palowsky lawsuit. "A district court judge elected with general authority has the power to adjudicate all civil and criminal matters within his district . . . The fact that certain types of cases are assigned to other divisions does not result in a district court judge losing any aspect of his general jurisdiction." *State v. Cooper*, 10-2344, p. 10 (La. 11/16/10), 50 So.3d 115, 133-4.

As to Plaintiff Judge Marchman's alleged actions against the Defendant Judges, whether they sent an email on the computer system about not wanting to serve with her, or added an agenda item to an en banc court agenda to admonish her, each was acting within his "jurisdiction," meaning that he had the authority as a duly elected member of the Fourth Judicial District Court to do so.

## VI. Conclusion

Whether it is true or not that Plaintiff Judge Marchman is a "virtual pariah," or that she has been ostracized by the alleged actions of the Defendant Judges or by her own conduct, may be a debatable question. However, what is clear is that Plaintiff Judge Marchman's allegations as contained in Docs. 1 and 22 do not rise to the level of a civil rights action and must be dismissed. Despite 243 paragraphs attempting to

detail her disputes with not only the attorneys defending a case against her former client, a law clerk, the Defendant Judges, as well as Chief Judge Winters and other judges not named in this action, there is no facially plausible claim for a Constitutional violation. Even if there were, Plaintiff Judge Marchman does not enjoy Free Speech protection for speaking out other than as an ordinary citizen. In this matter, her particular and unique knowledge of the alleged actions of the law clerk and the alleged "cover up," by the way one possessed by no one other than her, Mr. Palowsky, and their shared attorneys, arises from her position as a public employee, not a citizen. Also, as a public employee, Plaintiff Judge Marchman cannot successfully bring an equal protection claim, assuming one even existed.

Finally, if this Court would somehow after putting all its experience and common sense aside, find some viable constitutional claim, then the Defendant Judges are still entitled to a dismissal due to judicial immunity, as each action complained of by Plaintiff Judge Marchman against her colleagues arose from their exercise of a judicial function acting within their jurisdictional authority.

The Defendant Judges pray, that after due proceedings, that this Court grant this motion, dismissing Plaintiff Judge Marchman's claims against them with prejudice, and at her cost.

Respectfully submitted,

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*s/Brian D. Landry*

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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a copy of the above and foregoing Memorandum was filed with the Clerk of Court by using the CM/ECF system which will send notice of electronic filing to all counsel of record unless otherwise indicated, on this the 20th day of June, 2016.

*s/Brian D. Landry*

_____

Of Counsel