UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13-5365
(C.A. No. 12-1916)

BRET D. LANDRITH, *et al.*, Appellants,

v.

CHIEF JUSTICE JOHN G. ROBERTS, JR., Appellee.

MOTION FOR SUMMARY AFFIRMANCE

Appellee, the John G. Roberts, Jr., Chief Justice of the United States, through undersigned counsel, respectfully moves this Court for summary affirmance of the November 4, 2013, Order and Memorandum Opinion by the Honorable Amy Berman Jackson, granting the government's motion to dismiss. Summary disposition is appropriate in this case because the merits of this appeal are so clear as to make summary affirmance proper. *Walker v. Washington*, 627 F.2d 541, 545 (D.C. Cir.) (per curiam), *cert. denied sub nom., Walker v. Barry*, 449 U.S. 994 (1980); *accord Taxpayers Watchdog, Inc. v. Stanley*, 819 F.2d 294, 297-98 (D.C. Cir. 1987) (per curiam); *Ambach v. Bell*, 686 F.2d 974, 979-80 (D.C. Cir. 1982).

Background

Appellants Bret D. Landrith (Landrith) and Samuel K. Lipari (Lipari) filed a pro se Complaint in this case, seeking injunctive and declaratory relief against the

Chief Justice of the United States in his capacity as administrator of the Judicial Conference of the United States. R. 11 (Amended Complaint ("Am. Compl.")) at 2-3). The Amended Complaint lists numerous claims of unfair treatment that Landrith and Lipari allegedly received in a number of federal courts whose judges, according to them, engaged in "damaging tactic[s]" and "scurrilous attacks" toward them. *Id.* ¶¶ 30-31. They aver that they have been the victims of "criminal retaliation" and "extrinsic fraud" because of their prior litigation. R. 8 at 2 (¶ 1), 4 (¶¶ 12 and 14), and 6 (¶ 17). They seek generalized injunctive relief against the Chief Justice for his alleged failure to oversee the federal judiciary in connection with his role as administrator of the Judicial Conference of the United States. R.11 Am. Compl. ¶¶ 12-13. They liken the Chief Justice to a "Walmart store manager" who has failed to serve the store's community by permitting shoplifting, embezzlement and injuries to its customers. *Id.* ¶¶ 72-73.

Specifically, Landrith and Lipari seek injunctive relief from alleged infringements of their "First Amendment and Due Process rights under the Constitution" (Counts I and II), and suggest that Lipari was being denied his right to counsel (Count II). *See* R. 11 at 40-50. They aver that the Chief Justice has failed to administer the federal judiciary by permitting "inappropriate" decisions and violations of their civil rights. *Id.* ¶¶ 25-33, 48 (allegations in connection primarily

with antitrust litigation filed by Lipari) and, *id.* ¶¶ 44-47, 49-51, 56 (allegations in connection with the reciprocal discipline of disbarment of Landrith based on his disbarment in Kansas and Missouri). They also complain that both state and federal officials have denied them their civil rights for a variety of other actions taken, including dismissals of their civil actions on grounds such as lack of subject matter jurisdiction and absolute immunity of federal judges. *Id.* ¶¶ 56, 66-69. They believe that they have been "vilified by federal judges" with no recourse. *Id.* at 34-38.

They also allege their harm is as a result of a "Code of Silence" among federal and state judges" that is "sometimes called the Blue Shield, Blue Wall, Curtain, Veil." *Id.* ¶ 7. Based on this, they seek a prospective injunction against the Chief Justice "in his administrative and executive functions to stop federal court judges from unlawfully furthering a Code of Silence through ineffective judicial ethics enforcement and ineffective appellate review[.]" *Id.* ¶ 12. They believe that this relief is available based on *Stump v. Sparkman*, 435 U.S. 349, 362-63 (1978), and *Pullman v. Allen*, 466 U.S. 522 (1984), because, they assert, the Chief Justice's failure to control the federal judiciary is ministerial and nonjudicial and, therefore, he is not entitled to absolute immunity. *See id.* ¶¶ 20, 68.

The government moved to dismiss, arguing lack of jurisdiction, lack of a case or controversy, lack of standing and failure to state a claim. Landrith and Lipari opposed the motion, asserting that the Chief Justice, the federal judiciary, the state judiciary, undersigned counsel and others have "violat[ed] 18 USC §§ 241 [Conspiracy against rights], 242 [Deprivation of rights under color of law], and 245 [Federally protected activities]." *See e.g.,* R. 11 (Am. Compl.) at 5, ¶ 12; R. 15 (Plaintiff's Response) at 16, *see also* 20-21. They claim that these entities have joined in a conspiracy against them to impede their search for justice. They want the "code of silence" broken, and they believe that the Chief Justice has the power to order the remedies they seek pursuant to 28 U.S.C. § 360. They also moved for sanctions against undersigned counsel and for leave to file a second amended complaint arguing that the conduct of the Chief Justice, his agents and employees, after the filing of their Complaint, which they claim evidences an "abuse of process." *See* R. 18 (Motion for Sanctions); R. 17 (Second Amended Complaint) at 1-2 (opening paragraph), *see also id.* at Paragraphs 20.1-21, 74-132, at 41-42, 43 (Specific Injunctive Relief), 45 (2nd and last paragraph), 46, 47-48, 50-53 (Specific Declaratory Relief) and Count III.

The District Court granted the government's motion to dismiss. R. 26 (Order) and R. 27 (Memorandum Opinion). The Court also denied the motion for

leave to amend the complaint for a second time, as futile (R. 17); denied the motion for sanctions (R. 18), and denied the motions for a CM/ECF password, as moot (R. 5, 7, 17-1).

With regard to the underlying claims, the District Court dismissed Counts I and II because Landrith and Lipari lacked standing for their Constitutional claims and, because the dismissal of Counts I and II rendered Count III moot, the Court dismissed that claim as well. R. 26 and R. 27 at 8-13. The District Court found that Landrith and Lipari had not met the elements for constitutional standing, i.e., that a party must allege "(1) a concrete and particularized injury, (2) that is 'fairly traceable' to the defendant, and (3) that a favorable ruling by the court is capable of redressing." R. 27 at 8 (citation omitted). As to the first and second element, the District Court noted that "Plaintiffs have not shown that it is 'substantially probable' that the Chief Justice caused any of the injuries they allege in Counts I or II, all of which are attributed to third-party officials. "Therefore, their injuries are not 'fairly traceable' to the Chief Justice." *Id.* at 11. The Constitution does not mandate Chief Justice to be the "manager" of other judges and officials. *Id.* As the District Court observed:

> The Chief Justice cannot control the use of Rule 12(b)(6) by another federal judge in any given case, nor can he dictate the language of another judge's opinion. This means he also cannot restrain judges from participating in a

"Code of Silence" through their opinions.

Id. The Court further observed:

> The Chief Justice and Judicial Conference also do not usually receive ethics complaints, nor do they oversee federal bar admission policies. The chief judge and judicial council of a given circuit, not the Judicial Conference, are charged with enforcing judicial ethics. [] [E]thics complaints against attorneys are handled by the relevant state or federal bar, not the Judicial Conference. Finally, each federal court, not the Judicial Conference, determines whether a given attorney should be admitted to its bar. [].

Id. at 11-12. As to the third element for constitutional standing, *i.e.,* that a favorable ruling by the court is capable of redressing the injury, the District Court concluded that Landrith and Lipari could not establish this element for constitutional standing for Counts I and II, finding that:

> [T]he Chief Justice cannot control the actions of independent and life tenured judges, neither can this Court. Plaintiffs have therefore not met the redressability requirement because it is "entirely conjectural" whether any of the remedies they seek would meaningfully address the injuries they assert.

Id. at 12-13 (citations omitted). Accordingly, the District Court dismissed Counts I and II.

The District Court further noted that without Counts I and II, Landrith and Lapari could not meet the "case or controversy" requirement of Article II, section 2, and therefore dismissed Count III (abuse of process of the Chief Justice and his agents) as "the underlying controversy is gone, and there is nothing further that this

Court might direct the Chief Justice to do." R. 27 at 13-14. Accordingly, the District Court dismissed Count III as moot. *Id.*

In addition, the District Court evaluated Landrith and Lipari's motion for leave to file a second amended complaint which would add the Attorney General as a defendant and two new claims (Counts IV and V) involving only restatements of existing claims, "albeit with more vigor," and "patently insubstantial" claims with no "federal question" jurisdiction, and, found that these amendments were outside the Court's jurisdiction. R. 27 at 16-19. Thus, the District Court denied their motion as futile. The District Court also denied Landrith and Lipari's motions for sanctions against the Chief Justice and his counsel, and their motion for CM/ECF Password. It determined that the motion for sanctions was meritless, and the motion for a ECF password was moot. *Id.* at 20. Specifically, with regard to the motion for sanctions, the District Court found no bad faith in the representations made by the government and concluded that the other claims were only bare allegations about disruption to email, Internet and cell phone service and, in any event, not within the scope of Rule 11. *Id.*

Argument

A. Landrith and Lipari Lacked Standing.

The District Court correctly concluded that Landrith and Lipari lacked standing to pursue their claims. First, the Chief Justice did not cause any injury to them. They claimed that the Chief Justice is responsible for their alleged injuries because, as the administrator of the Judicial Conference, he negligently allowed federal judges to dismiss their claims under Rule 12(b)(6) "with scurrilous attacks" on them, negligently failed to protect plaintiffs from a judicial "Code of Silence," negligently failed to enforce canons of judicial ethics, and deprived Landith of an opportunity to present evidence when he applies for admission to practice in the federal courts. *See* R.11 (Am. Compl.) at 41-42. But, Landrith and Lipari failed to establish that it was "substantially probable" that the Chief Justice, and "not of some absent third party" – i.e., other judges and officials – caused their injuries. *See Fla. Audubon Soc'y v. Bentsen*, 94 F.3d 658, 663 (D.C. Cir. 1996). Federal judges have life tenure during good behavior and are not the Chief Justice's "employees." *See* U.S. Const. art. III, § 1. The District Court noted that "[t]he Chief Justice cannot control the use of Rule 12(b)(6) by another federal judge in any given case, nor can he dictate the language of another judge's opinion. This means he also cannot restrain judges from participating in a 'Code of Silence' through their opinions." R.

27 (Mem. Op.) at 11. Furthermore, the Chief Justice and the Judicial Conference do not usually receive ethics complaints, nor do they oversee federal bar admission policies. *Id.* Landrith and Lipari cannot show causation and therefore they lack standing.

Second, Landrith and Lipari's alleged injuries cannot be redressed by a ruling in this case. The District Court and this Court lack subject matter jurisdiction over any effort to compel the Supreme Court to act:

> We are aware of no authority for the proposition that a lower court may compel the Clerk of the Supreme Court to take any action. . . [S]upervisory responsibility is exclusive to the Supreme Court and . . . neither a district court nor a circuit court of appeals has jurisdiction to interfere with it by mandamus or otherwise.

In re Marin, 956 F.2d 339, 340 (D.C. Cir. 1992) (internal citations and quotation marks omitted); *Griffin v. Higgins*, No. 99-1576, 1999 WL 10290177 at *1 (D.D.C. June 18, 1999) ("This Court lacks subject matter jurisdiction to review any decision of the Supreme Court or its Clerk."). The District Court and this Court similarly lack the power to direct the actions of other life-tenured judges. Even if, moreover, this Court or the District Court had the power to order the relief that Landrith and Lipari seek, that relief would not redress their alleged injuries. The District Court noted that:

> Even if this Court had the power to command the Chief Justice and Judicial Conference to allow public posting of judicial ethics complaints on the internet, as plaintiffs request . . . , that injunction would hardly address the myriad injuries plaintiffs describe in their fifty-four page amended complaint. Likewise, even if this Court issued the generalized declarations of law that plaintiffs request in Count II . . . , the impact would be speculative at best; just as the Chief Justice cannot control the actions of independent and life tenured judges, neither can this Court. . . . [I]t is "entirely conjectural" whether any of the remedies they seek would meaningfully address the injuries they assert.

R. 27 (Mem. Op.) at 12-13. Accordingly, Landrith and Lipari lack standing because they fail to establish both causation and redressability.

B. Landrith and Lipari Failed To State A Claim.

In addition, Landrith and Lipari failed to state a claim upon which relief may be granted. *See* Fed. R. Civ. P. 12(b)(6). Even liberally construed, their amended complaint failed utterly to provide any meaningful description of the factual basis for any of the claims. *See, e.g., Erickson v. Pardus*, 551 U.S. 89 (2007). They alleged – in conclusory fashion, and without any supporting facts whatsoever – that the Chief Justice condoned certain allegedly objectionable conduct by life-tenured lower court judges. Such conclusory allegations fell far short of their obligation to plead "enough facts to state a claim for relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). To the extent, moreover, that they alleged that the Chief Justice acted negligently, such allegations were correctly

dismissed because the Chief Justice enjoys absolute immunity for all actions taken in his judicial capacity. *See, e.g., Sindram v. Suda*, 986 F.2d 1459, 1460 (D.C. Cir. 1993).

C. Count III Was Moot.

The District Court correctly ruled that Count III of Landrith and Lipari's Amended Complaint was moot. In Count III, they alleged that the Chief Justice and his counsel have committed "Abuse of Process designed to deprive the plaintiffs of Due Process" by allegedly misrepresenting facts and the law and interfering with a website in violation of the First Amendment. See R. 11 (Am. Compl.) at 51-52. They requested that the District Court strike the motion to dismiss, direct the Chief Justice to answer the Amended Complaint, and enjoin him from making further alleged misrepresentations. Count III was moot because the District Court lacked jurisdiction over Counts I and II. *See Clarke v. United States*, 915 F.2d 699, 701 (D.C. Cir. 1990).

D. The District Court Correctly Denied Landrith and Lipari's Motion To Amend As Futile.

The District Court correctly denied Landrith and Lipari's motion to amend because any amendment would have been futile. Proposed Count IV alleged that the Chief Justice permitted government attorneys to prosecute them in violation of

the Due Process Clause. This count was futile because it "merely restate[d] the allegations of the amended complaint in different terms." R. 27 (Mem. Op.) at 16. Proposed Count V alleged that Justice Department officials engaged in misconduct. The District Court correctly held that proposed Count V presented "no federal question suitable for decision" and was therefore "futile because it would not survive a motion to dismiss for lack of subject matter jurisdiction." *Id.* at 18.

E. The District Court Correctly Denied Landrith and Lipari's Motion For Sanctions And For An ECF Password.

Finally, the District court correctly denied Landrith and Lipari's motion for Rule 11 sanctions. They alleged that the Chief Justice and his counsel misrepresented their claims and the facts. There is no basis whatsoever for the assertion that the Chief Justice or his counsel misrepresented facts or claims in his pleadings. "[R]ather," as the District Court held, "the Chief Justice has made good-faith arguments with which plaintiffs simply disagree." *Id.* at 20. The District Court correctly dismissed Landrith and Lipari's action in its entirety, and therefore their motion to receive a CM/ECF password was moot.

Conclusion

For the foregoing reasons, the government respectfully requests that the judgment below be summarily affirmed.

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/s/ *Claire Whitaker*
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CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of March, 2014, the foregoing Appellee's Motion for Summary Affirmance has been served via First Class Mail and this Court's Electronic Case Filing System, and by first class mail addressed to:

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