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The Honorable Robert J. Bryan

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

Brian P. Carr,

Plaintiff,

v.

Sam Reed, in his official capacity as Secretary of the State of Washington, Wanda Briggs in her official capacity as Chair of the State of Washington Commission of Judicial Conduct, and Rob McKenna, in his official capacity as Attorney General of the State of Washington and, separately, as private individuals the Honorable Robert L. Harris, John F. Nichols, Barbara D. Johnson, Kenneth Eisland, Rich Melnick, John Hagensen, Kelli E. Osler, Joel Penoyar, (J.)C.C. Bridgewater, J. Robin Hunt, Gerry L. Alexander, Barbara Madsen, Mary E. Fairhurst, Susan Owens and James M. Johnson as well as other currently unnamed parties as determined by the Court,

Defendants.

NO. C07-5260RJB

DEFENDANT WANDA BRIGGS’
MOTION FOR SUMMARY
JUDGMENT AND DISMISSAL OF
PLAINTIFF’S AMENDED
COMPLAINT

**HEARING DATE:
Friday, October 19, 2007**

ORAL ARGUMENT REQUESTED

I. INTRODUCTION

Pursuant to Fed. R. Civ. P. 56, defendant Wanda Briggs, in her capacity as Chair of the Washington Commission on Judicial Conduct (“CJC”), moves for summary judgment and dismissal of Count VIII of plaintiff’s Amended Complaint, the only part of this case asserted against this defendant. Undisputed facts establish that defendant is entitled to judgment as a matter of law: (1) plaintiff lacks standing because there is no federal right to compel the CJC to pursue disciplinary proceedings requested by a member of the public against a state judge; (2) the CJC and its staff enjoy absolute immunity from suits arising out of the performance of their quasi-judicial or quasi-prosecutorial duties; (3) plaintiff cannot prove an actionable conspiracy to sustain his claims under 28 U.S.C. 1986; and (4) claims against the CJC and its Chair, in her official capacity, are barred by the Eleventh Amendment.

In deciding this Motion, the Court and the parties must bear in mind that judicial conduct is guided by the principles embodied in the Code of Judicial Conduct, which was enacted to establish “standards for ethical conduct” and to preserve “an independent, fair and competent judiciary.”

The Canons and Sections are rules of reason. They should be applied consistent with constitutional requirements, statutes, other court rules and decisional law and in the context of all relevant circumstances. The Code is to be construed so as not to impinge on the independence of judges which is essential in making judicial decisions.

Code of Judicial Conduct, Preamble.

II. STATEMENT OF FACTS

The facts underlying this Motion are taken from the Amended Complaint and pleadings pertinent to plaintiff’s litigation in state court.¹ State law provisions regarding the CJC, its function and activities, and its absolute discretion concerning the initiation of

¹ The Amended Complaint and pleadings are attached to the Clark Declaration of August 30, 2007, on file with this Court.

1 proceedings against state judicial officers, are taken from the Washington Constitution and
2 RCW 2.64.

3 **A. The Role of the CJC Re: Complaints Against Judges.**

4 Plaintiff Carr was involved in divorce proceedings in the Washington courts.
5 Amended Complaint ¶ 2. He disagreed with two orders issued by the Clark County Superior
6 Court judges and/or commissioners. *Id.* ¶¶ 2, 10, 11. He unsuccessfully appealed the
7 issuance of those orders to Division II of the State Court of Appeals. *Id.* ¶ 14. Then he
8 petitioned for review of the lower court rulings to the State Supreme Court. *Id.* ¶ 15. The
9 Supreme Court denied his Petition for Review on January 31, 2007. *Id.* Ex. D.

10 Plaintiff alleges he filed complaints against some or all of the state trial and appellate
11 judges with the CJC on July 9, August 12 and October 16, 2006. *Id.* ¶ 92. These judges also
12 are defendants in this case. The CJC allegedly declined to pursue the complaints. *Id.* ¶ 93.
13 Plaintiff has sued defendant Briggs in her official capacity, alleging that the inaction by the
14 CJC facilitated the commission of due process violations by the state judges involved with his
15 divorce proceedings. *Id.* ¶ 95. He claims that this failure to pursue his complaints against the
16 judges deprived him and “numerous other individuals’ Fourteenth Amendment rights to due
17 process.” *Id.* ¶ 96.

18 The CJC is a creature of Article IV, section 31 of Washington’s Constitution:

19 **§ 31 COMMISSION ON JUDICIAL CONDUCT.**

20 (1) There shall be a commission on judicial conduct, existing as an independent
21 agency of the judicial branch, and consisting of a judge selected by and from
22 the court of appeals judges, a judge selected by and from the superior court
23 judges, a judge selected by and from the district court judges, two persons
admitted to the practice of law in this state selected by the state bar association,
and six persons who are not attorneys appointed by the governor.

24 (2) Whenever the commission receives a complaint against a judge or justice,
25 or otherwise has reason to believe that a judge or justice should be
26 admonished, reprimanded, censured, suspended, removed, or retired, the
commission shall first investigate the complaint or belief and then conduct
initial proceedings for the purpose of determining whether probable cause
exists for conducting a public hearing or hearings to deal with the complaint or

1 belief. The investigation and initial proceedings shall be confidential. Upon
2 beginning an initial proceeding, the commission shall notify the judge or
justice of the existence of and basis for the initial proceeding.

3 RCW 2.64.010(3) also applies to the CJC and it states:

4 “Commission” means the commission on judicial conduct provided for in
5 Article IV, section 31 of the state Constitution, which is authorized to
6 recommend to the supreme court, after notice, and hearing, the suspension or
removal of a judge or justice for violating a rule of judicial conduct, or the
retirement of a judge or justice for disability.

7 RCW 2.64.080 provides for immunity for the CJC and defendant Briggs:

8 Members and employees of the commission, including any lawyers or special
9 masters temporarily employed by the commission, are absolutely privileged
10 from suit in any action, civil or criminal, based upon any disciplinary
11 proceedings or upon other official acts as members or employees of the
commission. Statements made to the commission or its investigators or other
employees are absolutely privileged in actions for defamation. This absolute
privilege does not apply to statements made in any other forum.

12 RCW 2.64.120 confirms that the CJC is an independent part of the judicial branch of
13 government. While the CJC may issue an admonishment, a reprimand or may censure a state
14 judge, the suspension or removal of a judge is expressly reserved to the State Supreme Court.

15 RCW 2.64.055.

16 The procedures for handling complaints and, if warranted, the disciplinary process
17 applicable to state judges are contained in formal state procedural rules for the CJC. Its
18 powers and duties are set forth in C.J.C.R.P. 3(d) and include:

19 (6) Reviewing the recommendations of the investigative officer and/or
20 disciplinary counsel after screening and a preliminary investigation, and either
21 authorizing a full investigation of a complaint against a respondent in initial
proceedings or dismissing the complaint;

22 . . .

23 (9) Where appropriate, making recommendations to the supreme court
for discipline pursuant to Rule 24; or

24 (10) Dismissing the case.

25 C.J.C.R.P. 6(b) enumerates the disciplinary measures the CJC may impose: the Commission
26 may admonish, reprimand or censure a judge, but suspension or removal are only advisory

1 recommendations that are left to the Supreme Court to affirm, reject or modify. Under
2 C.J.C.R.P. 25, any decision adverse to the judge is reviewable by the Supreme Court—even
3 the lesser sanctions—and the Court reviews the decision to sanction *de novo*.

4 If the Commission decides to pursue a complaint, the procedures for investigation,
5 discovery and the hearing are similar to those governing adversary proceedings in the courts.
6 See C.J.C.R.P. 17, 22 and 24. As the state constitution dictates that “the investigation and
7 initial proceedings shall be confidential,” C.J.C.R.P. 11 implements strict confidentiality
8 measures that bind the Commission.

9 The Commission has the statutory discretion to pursue or dismiss a complaint.
10 Nothing in the constitution, state statutes or the C.J.C.R.P. states that CJC disciplinary
11 proceedings against a judge can or will impact court proceedings pending before, or decided
12 by, the judge who is subject to investigation or disciplinary proceedings. If the Commission
13 had pursued plaintiffs’ alleged complaints and recommended sanctions be imposed, the
14 proposed sanctions would still be subject to review by the State Supreme Court and the
15 ultimate outcome in the disciplinary proceedings, as a matter of law, could not alter the
16 conduct of the underlying state court proceeding and rulings plaintiff complains of in this
17 case.

18 No constitutional provision, statute or rule allows a complaining party to initiate
19 disciplinary proceedings against state judges, other than through the CJC. No laws or rules
20 allow plaintiff to appeal the CJC’s exercise of discretion about proceeding with, or dismissing,
21 a complaint lodged against a state judge.

22 **B. Nature of Claims Against CJC’s Chair and Relief Sought.**

23 The claims against defendant Briggs are contained in paragraphs 90 through 96 of the
24 Amended Complaint. The allegations pertain only to the CJC’s decision not to pursue his
25 complaints against the co-defendant judges which he claims could have prevented the
26 allegedly wrongful acts against him. According to the facts alleged by plaintiff, however, all

1 the judicial acts he complains about occurred months before he allegedly notified the CJC.
 2 The CJC could not have prevented acts that already had taken place.

3 The alleged basis for the claims against defendant Briggs is 42 U.S.C. 1986. The
 4 relief requested is on page 26, paragraph 19, which asks the Court to declare:

5 [T]hat the Washington State Commission of [sic] Judicial Conduct must
 6 initiate proceedings whenever there are allegations of violations of Washington
 7 state or United States statutes or constitutions which are related to a judge's
 8 official actions. In addition, any allegation that a judge interfered with the
 9 right of appeal or intentionally misconstrued or avoided addressing issues
 raised in an appeal which was before the judge, must be pursued. Further, if
 the allegations are substantiated the Commission must take some action against
 the offending judge.

10 These rulings would strip the Commission of the discretion with which state law
 11 empowers it, binding the CJC to initiate, pursue and impose sanctions, just because somebody
 12 "alleges" a violation of state or federal law. Plaintiff bases this intrusive remedy upon his
 13 claim that his "and numerous others' Fourteenth Amendment right to due process" have been
 14 infringed and his belief "that it is likely that Defendants [co-defendant judges] would have
 15 been required to comport" with state law "simply because of the high profile of the
 16 Commission's decisions." Amended Complaint ¶¶ 95-96.

17 III. LEGAL ARGUMENT

18 Plaintiffs' claims against defendant Briggs arise out of the alleged decision made by
 19 her agency, the State's CJC, not to pursue alleged complaints he lodged against the co-
 20 defendant State judges. Those claims all fail because plaintiff lacks standing, the CJC and its
 21 staff are absolutely immune from prosecution of these claims, plaintiff has failed to state, and
 22 has provided no facts to prove, an actionable "conspiracy" by defendants and plaintiff's
 23 claims are barred by the Eleventh Amendment.

24 A. Plaintiff Has No Federal Right to Compel the CJC to Pursue Disciplinary Proceedings Against the Co-Defendant Judges.

25 To establish a claim under the federal civil rights laws, a plaintiff must prove
 26 deprivation of a right or privilege secured by the U.S. Constitution or federal statute. *Dunham*

1 v. *Wadley*, 195 F.3d 1007, 1010 (8th Cir. 1999). While rights to liberty and property may be
2 protected, “statutes or policies that are only procedural, or that grant to a decision maker
3 discretionary authority in their implementation, in contrast, do not create protected property
4 interests.” *Id.* at 1009; *Jennings v. Lombardi*, 70 F.3d 994, 995-96 (8th Cir. 1995).

5 The federal courts uniformly have rejected claims that an individual’s right to due
6 process allows him or her to compel a state disciplinary agency to institute or pursue citizen
7 complaints. For example, in *Saier v. State Bar of Michigan*, 293 F.2d 756 (6th Cir. 1961),
8 plaintiff sued officers of the state bar association because the bar declined to pursue
9 complaints against four lawyers for alleged unethical and criminal conduct. The court first
10 analyzed whether plaintiff had standing to invoke a federal court’s jurisdiction: whether he
11 had a federal right to compel disciplinary proceedings. The court determined that no such
12 right exists and that the bar association’s dismissal of plaintiff’s complaints did not deprive
13 him of life, liberty or property in violation of the federal constitution’s Fourteenth
14 Amendment:

15 We find no authority and none has been cited to us to support the appellant’s
16 contention that he has a right under the Federal Constitution to require the State
17 Bar of Michigan to process his complaint. The regulation of the practice of
18 law, including the procedure of disbarment and discipline of members of the
profession, is a function of state government. Consequently, there has been no
deprivation of right which would give rise to a cause of action under
section 1983, Title 42 U.S.C.A.

19 *Id.* at 759-60. The same result was mandated in *Doyle v. Oklahoma Bar Ass’n*, 998 F.2d 1559
20 (10th Cir. 1993). In that case, an Australian attorney demanded the state bar association bring
21 disciplinary proceedings against his ex-wife’s attorney. When it rejected his complaints,
22 plaintiff filed suit under the federal civil rights laws claiming violations of his due process
23 rights. The court reviewed the various state law provisions governing the bar’s powers to
24 commence investigations, to decline to do so without further action and its procedures for
25 handling the adversary process from complaint to imposition of sanctions. (All of these
26 aspects of the Oklahoma disciplinary process are found in the CJC procedures under attack in

1 this case.) As in Washington, Oklahoma’s Supreme Court retained ultimate decision-making
 2 over serious sanctions.

3 The *Doyle* court flatly rejected plaintiff’s alleged standing:

4 Doyle’s complaint demonstrates on its face that he lacks standing. Essentially,
 5 he wanted a lawyer disciplined or at least greatly inconvenienced at the state
 6 level, and to use the result to somehow mount a collateral attack on a state
 7 court judgment. His complaint for damages rests on a core assertion that he
 8 was unconstitutionally deprived of these aims. As indicated above, the PRC
 9 acts in a prosecutorial capacity. *Tweedy*, 624 P.2d at 1052. As such it has full
discretion to investigate, reinvestigate, weigh and reweigh actual or likely
evidence, charge or not charge, and to reconsider and reverse or modify any
decisions with respect to any of the foregoing at any time during the process.
Id. at 1054-55. The sole discretion whether or not to file a formal complaint
against a lawyer lies with the prosecutor, the PRC.

10 998 F.2d at 1566 (emphasis added). Holding that “a private citizen lacks a judicially
 11 cognizable interest in the prosecution or non-prosecution of another,” the court ruled that the
 12 public does not have either substantive or procedural due process rights to “compel the state to
 13 take punitive action against another person.” *Id.* at 1568-69. “The fact that [plaintiff] filed a
 14 grievance guaranteed him nothing under state law by way of a certain outcome with respect to
 15 the discipline or lack of discipline of another person.” *Id.* at 1570. The court further observed
 16 that the underlying court rulings that plaintiff was aggrieved by would in no way be changed
 17 by the outcome of the disciplinary complaints. *Id.*²

18 The same result holds under state law. *E.g.*, *In the Matter of A Request for*
 19 *Investigation of an Attorney*, 449 Mass. 1013, 1014, 867 N.E.2d 323, 324, 25 (2007)
 20 (Individual who files a complaint with Board of Bar Overseers lacks standing to challenge in
 21 court the Board’s decision not to prosecute complaint); and *Akinaka v. Disciplinary Bd. Of*
 22 *Hawaii Supreme Court*, 91 Haw. 51, 59, 979 P.2d 1077, 1085 (1999) (Complainant has no
 23 right to dictate the course of an investigation or even compel Commission to take action on
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25 _____
 26 ² For a more detailed discussion of the topic “Private Citizens Do Not Have Standing to Initiate or
 Participate in Attorney Disciplinary Hearings,” see 26 J. Legal Prof. 279, “Attorney Disciplinary Proceedings:
 Who Has Standing.” (2002).

1 his complaint.); Code of Judicial Conduct Preamble (2006) (The Code is not intended as a
2 basis for civil liability or criminal prosecution.).

3 Under these authorities, plaintiff Carr has no standing to complain that the CJC failed
4 to do his bidding. This Court lacks jurisdiction to hear the claim. Count VII is subject to
5 dismissal for that reason.

6 **B. Alternatively, the CJC and Its Staff Are Absolutely Immune from Suit Over**
7 **Disciplinary Activities.**

8 The co-defendant judges have all moved for dismissal because they are absolutely
9 immune from suit based upon rulings they made adverse to plaintiff in underlying court
10 proceedings within the jurisdiction of their courts. (State Defendants' Motion for Summary
11 Judgment of August 30, 2007 at Part C, pp. 9-11). The CJC and its staff are also absolutely
12 immune to lawsuits over decisions or actions taken by them in the course of performing quasi-
13 judicial/prosecutorial duties.

14 Thus, in *Clark v. State of Washington*, 366 F.2d 678 (9th Cir. 1966), the court affirmed
15 dismissal of the Washington Bar Association and its employees due to the immunity the Bar
16 enjoyed regarding suits arising out of its decision to disbar an attorney. The court extended
17 immunity to those who exercise "prosecuting functions" or acted as "an integral part of the
18 judicial process" and dismissed plaintiff's claims. 366 F.2d at 681. The same rationale was
19 applied to reject a lawsuit against California's Bar Association in *Hirsh v. Justices of the*
20 *Supreme Court of California*, 67 F.3d 708, 715 (9th Cir. 1995) (Bar court judges and
21 prosecutors are protected by quasi-judicial immunity.) In applying quasi-judicial immunity to
22 staff of the courts, the Ninth Circuit ruled as follows:

23 ...[W]e follow the reasoning adopted by the Second Circuit in *Oliva v. Heller*,
24 839 F.2d 37 (2nd Cir. 1988). The concern for the integrity of the judicial
25 process that underlies the absolute immunity of judges is reflected in the
26 extension of absolute immunity to "certain others who perform functions
closely associated with the judicial process." *Id.* at 39 (quoting *Clevenger v.*
Saner, 474 U.S. 193, 200, 106 S.Ct. 496, 500, 88 L.Ed.2d 508 (1985)). Under
this functional approach, immunity flows from the nature of the responsibilities
of the individual official *Id.*

1 *Moore v. Brewster*, 96 F.3d 1240, 1244-45 (9th Cir. 1996). The same rationale should apply to
 2 the CJC's decisions to pursue, or not pursue, citizen complaints.

3 Quasi-judicial or prosecutorial immunity applies to other agencies that perform
 4 investigatory or judicial-like functions. In *Buckles v. King County*, 191 F.3d 1127, 1133-34
 5 (9th Cir. 1999), the court upheld dismissal of a civil rights action against the Washington
 6 Growth Management Board arising out of zoning rulings made by the Board. Noting that
 7 immunity had been upheld as to claims asserted against state gaming commissions and parole
 8 boards, the court noted:

9 In determining whether judicial immunity should attend to officials other than
 10 judges, like the Board members, the Supreme Court reminds us that [t]he
 11 doctrine of judicial immunity is supported by a long-settled understanding that
 12 the independent and impartial exercise of judgment vital to the judiciary might
 13 be impaired by exposure to potential damages liability. Accordingly, the
 14 "touchstone" for the doctrine's applicability has been "performance of the
 15 function of resolving disputes between parties, or of authoritatively
 16 adjudicating private rights." When judicial immunity is extended to officials
 17 other than judges, it is because their judgments are "functional[ly]
 18 comparab[le] to those of judges—that is, because they, too, "exercise a
 19 discretionary judgment" as part of their function.

15 *Antoine v. Byers & Anderson, Inc.*, 508 U.S. 429, 435-36, 113 S.Ct. 2167, 124
 16 L.Ed.2d 391 (1993) (internal citations omitted).

17 191 F.3d at 1133-34.³ Numerous other courts have applied quasi-judicial or prosecutorial
 18 immunity to state regulatory boards or disciplinary agencies governing a variety of
 19 professions. *See Dunham v. Wadley, supra*, 195 F.3d at 1010-11 (State Veterinary Examining
 20 Board performed quasi-judicial functions in determining competency and ethical matters and
 21 was absolutely immune from suit.); *Kissell v. Breskow*, 579 F.2d 425, 429-30 (7th Cir. 1978)
 22 (Executive secretary of attorney discipline committee enjoyed absolute quasi-judicial
 23 immunity that prosecutors enjoy.); *Akins v. Deptford Township*, 813 F. Supp. 1098 (D.N.J.
 24 1993) (County construction board of appeals entitled to absolute immunity because officials'
 25 zoning decisions are integrally related to the judicial process and involve exercise of

26 ³ Quasi-judicial immunity, like judicial immunity, bars declaratory and injunctive relief in addition to
 damages claims. 42 U.S.C. 1983.

1 discretion comparable to that of a judge.); *Eston v. Van Bolt*, 728 F. Supp. 1336 (E.D. Mich.
 2 1990) (Grievance administrator was acting in prosecutorial capacity in deciding whether to
 3 initiate disciplinary proceedings and was entitled to absolute immunity from liability for
 4 alleged civil rights violations.); *Tracy v. Robbins*, 40 F.R.D. 108 (D.S.C. 1966) (No federal
 5 action against town mayor or town attorney who were absolutely immune as quasi-judicial
 6 officers performing their official duties).

7 The claims against the Chair of the CJC are defective because they arise out of the
 8 alleged dismissal of complaints lodged with the CJC. Under state law, the CJC and its staff
 9 perform quasi-judicial and prosecutorial functions. The Commission and staff have unlimited
 10 discretion to pursue or dismiss citizen complaints against judges. The rejection and dismissal
 11 of his complaints, as alleged by plaintiff, occurred because of the discretion vested by law in
 12 the CJC. Absolute immunity defeats plaintiff's claims in Count VIII.

13 **C. Plaintiff Has Not Alleged or Proven Facts to Justify a Claim Under 42 U.S.C.**
 14 **1986.**

15 Unlike the claims asserted against defendant judges, plaintiff's claims against
 16 defendant Briggs arise under 42 U.S.C. 1986, which provides, in pertinent part:

17 **§ 1986. Action for neglect to prevent**

18 Every person who, having knowledge that any of the wrongs conspired
 19 to be done, and mentioned in section 1985 of this title, are about to be
 20 committed, and having power to prevent or aid in preventing the commission
 21 of the same, neglects or refuses so to do, if such wrongful act be committed,
 shall be liable to the party injured, or his legal representatives, for all damages
 caused by such wrongful act, which such person by reasonable diligence could
 have prevented.

22 This statute establishes certain prerequisites to a cause of action.⁴ First, § 1986 claims
 23 are entirely derivative of § 1985 conspiracy claims; if plaintiff fails to allege and prove an

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 25 ⁴ Fed. R. Civ. P. 56 requires plaintiff to show there are genuine and material fact issues to defeat
 26 summary judgment. Plaintiff must prove a *prima facie* case as to each element of his § 1986 cause of action; he
 must produce admissible evidence and cannot meet his burden by offering "plausible scenarios" to support his
 claim. See *Celotex Corp. v. Cetrett*, 477 U.S. 317 (1986); *Al-Zubaidy v. Tek Indus. Inc.*, 406 F.3d 1030, 1036 (8th
 Cir. 2005); *Swanson v. Leggett & Platt, Inc.*, 154 F.3d 730, 733 (7th Cir. 1998).

1 actionable conspiracy under § 1985, there is no claim under § 1986. *Park v. City of Atlanta*,
2 120 F.3d 1157, 1159-60 (11th Cir. 1997); *Wilson v. Moore*, 270 F. Supp. 2d 1328; 1354 (N.D.
3 Fla. 2003). Next, by its terms, the statute requires plaintiff to prove “knowledge” by
4 Ms. Briggs of “wrongs conspired to be done [that] are about to be committed, and having
5 power to prevent or aid in preventing of the same, neglects or refuses to do so.” Finally, the
6 statute contemplates liability in damages, but does not provide for injunctive or declaratory
7 relief.

8 Plaintiff Carr has failed to allege and, therefore, cannot meet his burden of proving all
9 these elements of a § 1986 claim. As a preliminary matter, he claims he lodged complaints
10 with the CJC in July, August and October, 2006. Amended Complaint ¶ 92. However, the
11 orders he complains of were issued or rejected in 2004 and early 2005. Clark Decl. of
12 8/30/07, Ex. D, pp. 2-4. The Court of Appeals’ consideration of his appeals from these
13 rulings terminated on May 9, 2006. Clearly, then, the CJC’s allegedly wrongful conduct came
14 *after* the allegedly wrongful judicial conduct. The judicial acts the CJC was supposed to
15 prevent were not acts “about to be committed,” as § 1986 requires. The CJC cannot be faulted
16 for failing to prevent judicial acts that already had occurred by the time plaintiff supposedly
17 complained about them.

18 Next, plaintiff has not alleged a § 1985 “conspiracy” by the co-defendant judges. By
19 definition, such a conspiracy requires proof of a “meeting of the minds” of the alleged
20 conspirators to deprive someone of their civil rights that is accompanied by racial or other
21 invidious discriminating animus. *Roger v. Bruntrager*, 841 F.2d 853, 856 (8th Cir. 1988);
22 *Friends of Falun Gong v. Pacific Cultural Enterprises, Inc.*, 288 F. Supp. 2d 273 (E.D.N.Y.
23 2003), *aff’d* 109 Fed. Appx. 442 (2004); *Caldwell v. Green*, 451 F. Supp. 2d 811 (E.D. Va.
24 2006). Carr makes no such allegation. Nor could he prove such a “conspiracy” as the trial
25 and appellate judges, by Carr’s pleaded allegations, acted separately and, if they harmed him,
26 did so independently and at different times. There are no facts that prove that the CJC was

1 aware of, and could have prevented, these separate judicial actions. There are no facts that
2 prove a “conspiracy” of any kind.

3 Finally, even if plaintiff had otherwise pleaded an actionable claim, the absolute
4 immunity of judicial or quasi-judicial and prosecutorial officials, acting in their official
5 capacities, defeats § 1985 and § 1986 claims. *Snelling v. Westhoff*, 972 F.2d 199, 200 (8th Cir.
6 1992); *Agnew v. Moody*, 330 F.2d 868 (9th Cir. 1964); *Tracy, supra*, 40 F.R.D. at 112.

7 **D. The Eleventh Amendment Bars Claims Against the CJC and Defendant Briggs.**

8 As a state agency and independent arm of the State Supreme Court, claims against the
9 CJC and its Chair, Wanda Briggs, in her “official capacity,” are barred by the Eleventh
10 Amendment. The authorities so holding are discussed in State Defendants’ Motion for
11 Dismissal of August 30, 2007 and are incorporated by reference herein.

12 **CONCLUSION**

13 The CJC exists to preserve the integrity and the independence of the Washington
14 judiciary. Its Chair is sued by plaintiff because his complaints against co-defendant judges
15 were dismissed as lacking merit.

16 Plaintiff’s entire lawsuit is an attempt to punish and intimidate a legal system he freely
17 invoked when it suited his purposes. Once the CJC exercised its unfettered discretion in a
18 way he disliked, he added defendant Briggs to his vendetta.

19 The CJC and its chair are not required to pursue judges simply because they are asked
20 to. A disappointed complainant has no federal right to compel proceedings or to dictate their
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1 outcome. Moreover, the CJC and its Chair are absolutely immune. The Court must dismiss
2 Count VIII with prejudice.

3 DATED this _____ day of September, 2007.

4 ROB MCKENNA
5 Attorney General

6
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CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of September, 2007, I electronically filed the foregoing **Defendant Wanda Briggs' Motion for Summary Judgment and Dismissal of Plaintiff's Amended Complaint** with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following CM/ECF participants:

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