15-35945

———————————————————————————————

UNITED STATES COURT OF APPEALS FOR THE NINTH FEDERAL CIRCUIT

———————————————————————————————

William Scheidler,
Plaintiff, Appellant
V
James Avery, individually and in his official capacity as Kitsap County's Assessor; Alan Miles, individually and in his official capacity as Kitsap County's deputy prosecutor; M. Karlynn Haberly, Individually and in her official capacity; Kay S. Slonim, Individually and in her official capacity; Felice Congalton, Susan Carlson, David Ponzoha, Zachary Mosner, Ione George individually and in her official capacity, the Washington State Board of Tax Appeals (BoTA),the Washington State Bar Association, and Jane and John Does, 1-100.
Defendants/Appellee.

———————————————————————————————

APPEAL FROM THE FEDERAL DISTRICT COURT, TACOMA, WA CASE 3:12-cv-05996-RBL

———————————————————————————————

INFORMAL BRIEF OF APPELLANT WILLIAM SCHEIDLER and AFFIDAVIT to the COURT per 18 U.S. Code § 4 - Misprision of felony: Washington State Bar operates in violation of Sherman Anti-Trust laws.

Bill Scheidler
Appellant/Plaintiff Pro Per
1515 Lidstrom Place E
Port Orchard, WA 98366
360-769-8531
billscheidler@outlook.com

Contents

I. STATEMENT OF JURISDICTION 10

II. STANDARD OF REVIEW 10

III. AFFIDAVIT TO THE COURT UNDER 18 U.S. CODE § 4 - MISPRISION OF FELONY, AND FOR ORAL ARGUMENT. 11

IV. PLAINTIFF'S STATEMENT OF THE GRIEVANCES PRESENTED FOR APPELLATE REVIEW 11

A. JUDGE LEIGHTON'S ORDERS ARE ISSUED IN VIOLATION OF 28 USC 455(A) AND (B) 12
B. JUDGE LEIGHTON'S ORDER, DKT 115, DOES NOT COMPLY WITH 28 USC 1652. 12
C. JUDGE LEIGHTON'S ORDERS, WHICH VIOLATE 28 USC 455 AND 28 USC 1652, CREATES AN "INSTITUTIONAL CONFLICT OF INTEREST IN ITS RESOLUTION" IN VIOLATION OF 28 USC 2072(B). 12
D. JUDGE LEIGHTON ALTERS RCW 84.36.383(5) IN VIOLATION OF RULES OF STATUTORY CONSTRUCTION? 12
E. JUDGE LEIGHTON'S ORDER DOES NOT COMPLY WITH THE MANDATE ISSUED BY THE 9TH CIRCUIT COURT NOR DUE PROCESS. 12
F. THE WASHINGTON STATE BAR IS AN UNCONSTITUTIONAL ENTITY; SCHEIDLER HAS STANDING. 12

V. STATEMENT OF THE CASE; COURSE OF PROCEEDINGS; AND THE DISPOSITION BELOW 12

1. Defendant, James Avery's FRAUD in which all other defendants are involved. [RP 25 §C] 13
2. Defendants WSBA, Zachary Mosner, and Felice Congalton's FRAUDs upon Scheidler. 17
3. Defendant, David Ponzoha's FRAUD upon Scheidler and the Court. 19
4. WSBA's, defendant Susan Carlson's FRAUD upon Scheidler and the Court. 22
5. The WSBA's Racketeering Enterprise [RP 43 §VIII] 23
6. WSBA associates violate RCW 2.48.180-2.48.230 with impunity. [RP 52-54] 24
7. Judge Leighton violates - laws that apply to judges, Scheidler's due process, and the 9th Circuit's MANDATE. 28

VI. STATEMENT OF FACTS RELEVANT TO THE ISSUES SUBMITTED FOR REVIEW WITH APPROPRIATE REFERENCES TO THE RECORD. [RP 22 §B] 38

VII. SUMMARY OF THE ARGUMENT. 43

A. JUDGE LEIGHTON'S ORDER IS ISSUED IN VIOLATION OF 28 USC 455(A) AND (B) 45
B. JUDGE LEIGHTON'S ORDER, DKT 115, DOES NOT COMPLY WITH 28 USC 1652. [RP 18 §5] 46
C. JUDGE LEIGHTON'S ORDERS, WHICH VIOLATE 28 USC 455 AND 28 USC 1652, CREATES AN "INSTITUTIONAL CONFLICT OF INTEREST" IN VIOLATION OF 28 USC 2072 49
D. JUDGE LEIGHTON ALTERS RCW 84.36.383(5) CONTRARY TO THE RULES OF STATUTORY CONSTRUCTION? 50
E. JUDGE LEIGHTON'S ORDER DOES NOT COMPLY WITH THE MANDATE ISSUED BY THE 9TH CIRCUIT COURT. 51
F. THE WSBA IS AN UNCONSTITUTIONAL ENTITY; SCHEIDLER HAS STANDING TO SUE? 52

VIII. ARGUMENT: 53

A. JUDGE LEIGHTON'S ORDERS ARE ISSUED IN VIOLATION OF 28 USC 455(A) AND (B). 53
B. JUDGE LEIGHTON'S ORDER, DKT 115, DOES NOT COMPLY WITH 28 USC 1652, OR RULES OF STATUTORY CONSTRUCTION. 57
C. JUDGE LEIGHTON'S ORDERS, WHICH VIOLATE 28 USC 455 AND USC 1652, CREATES AN "INSTITUTIONAL CONFLICT OF INTEREST" IN VIOLATION OF 28 USC 2072(B). 60
D. JUDGE LEIGHTON ALTERS RCW 84.36.383(5) WITHOUT ANY RATIONALE OR AUTHORITY TO MODIFY A STATUTE, NOR THE RULES OF STATUTORY CONSTRUCTION? 62
E. JUDGE LEIGHTON'S ORDER DOES NOT COMPLY WITH THE MANDATE ISSUED BY THE 9TH CIRCUIT COURT. 67
F. THE WSBA IS AN UNCONSTITUTIONAL ENTITY AND OPERATES IN AN UNCONSTITUTIONAL AND UNLAWFUL WAY; SCHEIDLER HAS STANDING TO SUE. 68
1. Scheidler has statutory and common law standing to sue the WSBA and its associates. See RCW 9.01.120 70
2. The WSBA is unconstitutional and creates an "institutional conflict of interest". 72
3. Defendants have NO immunities nor case law defenses. 73

IX. A SHORT CONCLUSION STATING THE PRECISE RELIEF SOUGHT; AND..... 74

X. CERTIFICATE OF COMPLIANCE, IF REQUIRED BY RULE 32(A)(7)..... 75

CASES

Batey v. Batey 35 Wn.2d 791, 799 (1950) 74

Bauman v. U.S. Dist. Court, 557 F.2d 650 (9th Cir. 1977) 36

Brackney v. Combustion Engineering, Inc., 674 F.2d 812, 816 (9th Cir. 1982) 52

Bravo v. Dolsen Companies 125 Wn.2d 745 (1995) 59

Bravo v. Dolsen Cos., 125 Wn.2d 745 (Wash. 1995) 52

Castro-Cortez v. INS, 239 F.3d 1037 (9th Cir. Wash. 2001) 56

City of New York v. Beretta U.S.A. Corp., 524 F.3d 384, 403 (2d Cir. 2008) 66

Comm'r of Internal Revenue v. Clark, 489 U.S. 726, 739, 109 S. Ct. 1455, 103 L. Ed. 2d 753 (1989) 66

Elec. Contractors Ass'n v. Riveland 138 Wn.2d 9, 11 73

Ellins v. City of Sierra Madre, 2013 U.S. App. LEXIS 19645 (9th Cir. Cal. Mar. 22, 2013) 72

Epstein v. Washington Energy Co., 83 F.3d 1136 (9th Cir. Wash. 1996) 42

Everest & Jennings, Inc. v. American Motorists Ins. Co., 23 F.3d 226, 228 (9th Cir. 1994) 11

Ferron v. Zoomego, Inc., 276 Fed. Appx. 473 (6th Cir. Ohio 2008). 11

Goldberg v Kelly, 397 U.S. 254 (1970) 66

Goldberg v. Kelly, 397 U.S. 254, 271, 25 L. Ed. 2d 287, 90 S. Ct. 1011 (1970) 56

Haberman v. WPPSS, 109 Wn.2d 107, 120, 744 P.2d 1032, 750 P.2d 254 (1987) 59

In RE Consolidated Cases 123 Wn.2d 530 73

in *Wash. State Labor Council v. Reed* 149 Wn.2d 48 (Apr. 2003).... 73

Johansen v E. I. Du Pont de Nemours & Co. (1985, ED Tex) 627 F Supp 968 61

Kohler v. Presidio Int'l, Inc., 782 F.3d 1064, 1070 (9th Cir. Cal. 2015)..... 68

Libas Ltd. v. Carillo, 329 F.3d 1128, 1130 (9th Cir. Cal. 2003) 11, 23, 75

Marciano v. Fahs (In re Marciano), 459 B.R. 27, 34 (B.A.P. 9th Cir. 2011)..... 11

Marincas v. Lewis, 92 F.3d 195, 204 (3d Cir. 1996) 56

McCurry v. Chevy Chase Bank, FSB, 169 Wn.2d 96 48

McRorie v. Shimoda, 75 F.2d 780, 786 (9th Cir. Haw. 1986) 56

McRorie v. Shimoda, 795 F.2d 780, 786 (9th Cir. Haw. 1986)...25, 27, 53, 58

N.C. State Bd. of Dental Exam'rs v. FTC, 135 S. Ct. 1101 (U.S. 2015) 71

Page v. Postmaster Gen. & Chief Exec. Officer of the United States Postal Serv., 493 Fed. Appx. 994 (11th Cir. Fla. 2012) 43

Sofie v. Fibreboard Corp. 112 Wn.2d 636, 771 P.2d 711, 780 P.2d 260..... 44

United States v. Pocklington, 792 F.3d 1036, 1041 (9th Cir. Cal. 2015)..... 51, 57, 67

United States v. Schales, 546 F.3d 965, 974 (9th Cir. 2008) 51

United States v. Watkins, 278 F.3d 961, 965 (9th Cir. 2002) 51

Vahora v. Holder, 641 F.3d 1038, 1048 (9th Cir. 2011)..... passim

STATUTES

18 USC 1961(5) 31

18 USC 4 11

18 USC Title 2 76

28 U.S. Code 1367 26

28 USC 1291..... 10

28 USC 1294..... 10

28 USC 2072..... passim

28 USC 2106..... 10

28 USC 455 ..... passim

28 USCS § 2072 62

29A.84.020 22

RCW 2.28.050..... 43

RCW 2.28.060..... 43

RCW 2.32.050.....20, 41

RCW 2.48.180..... 17, 47, 55

RCW 2.48.210.....17, 25, 34, 48

RCW 2.48.220..... 48

RCW 2.48.230.....33, 48

RCW 29A.56.260 22

RCW 29A.84.220 22

RCW 34.05 .....24, 25

RCW 4.36.070..... 32

RCW 4.48.010..... 47

RCW 42.20.080.....20, 33

RCW 84.36.379.....57, 66

RCW 9A.60.030 .....40, 51

RULES

Fed. R. Civ. P. 12(b)(6) 11

FRCP 12(b)(6) 12, 60, 68

RPC 8.3 13

CONSTITUTIONAL PROVISIONS

Article 1, Sec 21 45

Article 1, Section 1 ..... 45, 50, 58

ARTICLE 1, SECTION 1 46

ARTICLE 1, SECTION 10 47

ARTICLE 1, SECTION 12 47

ARTICLE 1, SECTION 21 ..... 31, 47

ARTICLE 1, SECTION 28 47

ARTICLE 1, SECTION 30 RIGHTS RESERVED 31

ARTICLE 1, SECTION 4 46

ARTICLE 1, SECTION 8 46

Article 12, Sec 22 70

ARTICLE 2, SECTION 28 47

ARTICLE 4, SECTION 17 69

Article 4, Section 9 40

Article 7, Section 10 ..... 14, 58, 67

ARTICLE 7, SECTION 10 47

I. STATEMENT OF JURISDICTION

The District Court's jurisdiction under 28 USC 1367 was previously determined by this Court. Appellate review is per 28 USC 1291, 28 USC 1294 and 28 USC 2106. Review is of final rulings, noted in Volume 1 attached, which are:

1. April 28, 2015; dkt 55; Judge Leighton's order upon remand from the 9th Circuit.

2. April 29, 2015; dkt 57; Judge Leighton's revised order, re dkt 55, and to Scheidler's motion to disqualify per 28 USC 455;

3. August 14, 2015; dkt 107; Judge Leighton's order denying motion to disqualify;

4. August 18, 2015; dkt 109; Judge Masha Pechman's order on review of Judge Leighton's refusal to disqualify; and

5. November 17, 2015; dkt 115; Judge Leighton's order of dismissal with prejudice to all Scheidler's claims against all defendants; affirming board of tax appeals ruling.

II. STANDARD OF REVIEW

Scheidler was denied his jury trial, oral argument, any ability to cross-examine defendants or witnesses, or to present expert testimony. This case was dismissed under court rule authority, and on the pleadings alone, and is reviewed "de novo" based in the following case law.

"…the district court's 12(b)(6) dismissal of Libas' Bivens claim de novo. See *Everest & Jennings, Inc. v. American Motorists Ins. Co.*, 23

F.3d 226, 228 (9th Cir. 1994). We determine whether, assuming all facts ***and inferences*** in favor of the nonmoving party, it appears beyond doubt that Libas can prove no set of facts to support its claims. Id. *Libas Ltd. v. Carillo*, 329 F.3d 1128, 1130 (9th Cir. Cal. 2003). "jurisdiction is a question of law subject to de novo review." *Marciano v. Fahs (In re Marciano)*, 459 B.R. 27, 34 (B.A.P. 9th Cir. 2011); "a motion for judgment on the pleadings under Fed. R. Civ. P. 12(c) by the same de novo standard applicable to a review of a motion to dismiss under Fed. R. Civ. P. 12(b)(6). In reviewing either motion, the court must construe the complaint in the light most favorable to the plaintiff, accept all of the complaint's factual allegations as true, and determine whether the plaintiff undoubtedly can prove no set of facts in support of his claim that would entitle him to relief." *Ferron v. Zoomego, Inc.*, 276 Fed. Appx. 473 (6th Cir. Ohio 2008).

III. AFFIDAVIT TO THE COURT UNDER 18 U.S. CODE § 4 - MISPRISION OF FELONY, AND FOR ORAL ARGUMENT.

Scheidler requests oral argument and to offer his sworn statement to a "judge" under 18 USC 4[1] that what is stated herein is true and offered with probable cause of felony crimes committed by all defendants and their counsels.

IV. PLAINTIFF'S STATEMENT OF THE GRIEVANCES PRESENTED FOR APPELLATE REVIEW.

Judge Leighton is a Washington State Bar (WSBA) associate who has declared that each of his WSBA colleagues, *defendants*, who hold

---

[1] Whoever, having knowledge of the actual commission of a felony cognizable by a court of the United States, conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority under the United States, shall be fined under this title or imprisoned not more than three years, or both.

decision-making offices in Washington State governments, *are immune from suit* and *Scheidler cannot present any fact that would bring his WSBA colleagues before a Washington State jury*. Based in this claim, Judge Leighton dismissed with prejudice Scheidler's complaint. Scheidler raises the following issues:

A. Judge Leighton's orders are issued in violation of 28 USC 455(a) and (b)
B. Judge Leighton's order, dkt 115, does not comply with 28 USC 1652.
C. Judge Leighton's orders, which violate 28 USC 455 and 28 USC 1652, creates an "institutional conflict of interest in its resolution" in violation of 28 USC 2072(b).
D. Judge Leighton alters RCW 84.36.383(5) in violation of rules of statutory construction?
E. Judge Leighton's order does not comply with the mandate issued by the 9th Circuit Court.
F. The Washington State Bar is an unconstitutional entity; Scheidler has standing.

Each issue raised is of substantial public importance and matters addressing the common good under Washington's Constitution,

Article 1, Section 4, infra.

V. STATEMENT OF THE CASE; COURSE OF PROCEEDINGS; AND THE DISPOSITION BELOW

This case is in appeal for a second time from Judge Leighton's FRCP 12(b)(6) dismissals. The 9th Circuit *reversed and remanded* Judge Leighton's first 12(b)(6) dismissal - case #13-35119. This Court is asked to take judicial notice of the pleadings, issues and facts

Scheidler presented in that appeal – including Rooker-Feldman abstention and "immunity doctrines,' (Particularly *SER* pp 242-392. '*SER'* designates filings in #13-35119), which led that panel of the 9th Circuit to reverse and remand Judge Leighton's first FRCP 12(b)(6) dismissal.

To briefly refresh the Courts memory. At the vortex of Scheidler's lawsuit concerns an *on-going* crime.

1. Defendant, James Avery's FRAUD in which all other defendants are involved. [RP 25 §C]

James Avery, with the aid of WSBA associates in various government decision-making positions (aka, defendants) is defrauding Scheidler of his property by assessing an unlawful tax. Furthermore, Scheidler has been denied his due process right to redress this 'unlawful tax' because WSBA associates are not held to their constitutional nor statutory duty by the WSBA nor other WSBA associates[2]. Rather WSBA associates use their monopoly power and

---

[2] ABA Rule 8.3 REPORTING PROFESSIONAL MISCONDUCT
(a) A lawyer who knows that another lawyer or LLLT has committed a violation of the applicable Rules of Professional Conduct …should inform the appropriate professional authority.
(b) A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct … should inform the appropriate authority.

government offices to aid and abet this unlawful tax and use their unregulated tactics to deny Scheidler's constitutional rights of redress and deny his jury trial under color of law.

This *FRAUD* at the vortex of Scheidler's case is accomplished by defendants[3] changing words, leaving out words and by adding words to a statute, RCW 84.36.383(5) – which is a *formula* for a calculation of disposable income – a determining factor for a constitutional tax exemption granted by Article 7, Section 10.

By changing words, leaving out words and by adding words, the *formula* is changed by leaving out numbers, adding in other numbers and rearranging how the numbers are computed. This can be symbolized as follows.

(Statute) .... **A** + **(-B)** = **C** Where **C** is disposable income

(Avery) .... **C** + **B** + **A** + **D** = **F** Where **F** is *fictional* income.

Because defendants alter the law in their published documents, an application and instructions, doc 58-3 [RP 111-116], people are misdirected in how to perform their *lawful* income calculation by the *unlawful* directions of defendants. In this way retired/disabled citizens

[3] [RP 15 @A lists defendants who are statutorily liable for implementing, protecting and allowing this FRAUD.

are unknowingly deprived of their constitutional rights and pay an unlawful tax by being deceived into miscalculating their income. This is FRAUD and it is executed through the mail and over the wires. This FRAUD constitutes a prohibited activity under 18 USC Ch. 96!

Scheidler compared defendants' version of the law to the law itself and discovered their FRAUD. This FRAUD is at the vortex of all Scheidler's lawsuits, Bar grievances and CJC complaints.

Despite Scheidler knowing defendants' fraud, Scheidler was forced to follow defendants' version of RCW 84.36.383(5) and not the law itself, and further forced to sign Avery's documents – the application -- as *true*. [RP 119-124]. This is EXTORTION – violations of the Hobbs Act and state laws. (RCW 9A.56; RCW 9A.60) These are Felony crimes and prohibited activities under 18 USC Ch 96!

This created a riddle without a solution. Scheidler would be denied his rights for not signing defendant's fraudulent documents. Or Scheidler would be denied his rights for not following defendant's version of the law. Or Scheidler would be denied his rights if he followed the actual law – which would violate Avery's unlawful instructions and risk retaliation by Avery.

Scheidler did the following. He filed a declaratory case to resolve the FRAUD before becoming of victim of it. Defendants, unlawfully,

defeated that statutory remedy. Scheidler then followed the law as the legislature wrote the law. His calculations were rejected by Avery. Then Avery re-calculated Scheidler's results by *double-counting* amounts already included in Scheidler's legal result. Scheidler was then forced to sign Avery's unlawful results as *true*. Scheidler, without options signed Avery's fraudulent documents "under duress", dkt 58-5 [RP 119-124]. An unlawful tax was assessed and collected. Scheidler is now a victim of defendants' unlawful conduct.

Scheidler appealed this FRAUD up through the Washington State Board of Tax appeals. In each administrative proceeding defendants argued the Boards or Courts 'lacked jurisdiction' to address the FRAUD. Scheidler, frustrated by defendants unending obstructions to address this FRAUD, filed his cause of action in *State Court* under both his appeal rights – if any, and as a civil action for violations of rights. That case became this case when defendants removed it to *Federal Court*.

All of this was presented to the 9th Circuit in appeal #13-35119[4]. The 9th Circuit found Scheidler's arguments meritorious and

[4] Scheidler repeated these facts in his amended complaint, Dkt 58, [RP 21 ¶36; RP 25-31 and passim]

REVERSED and REMANDED Judge Leighton's first dismissal for ***abuses*** of discretion.

All Defendants,[5] predominately WSBA associates, *are not* performing their constitutional nor statutory duty, RCW 2.48.180-230, infra, that require WSBA associates *"support the constitution"* and *"protect and maintain individual rights."* Instead WSBA defendants are abusing their government office to aid and abet the FRAUD and to frustrate Scheidler's attempts to seek his lawful remedy.

2. Defendants WSBA, Zachary Mosner, and Felice Congalton's FRAUDs upon Scheidler.

There was an exception ... one WSBA associate to come to Scheidler's rescue, as ***RCW 2.48.210 mandates***, was Scott Ellerby, WSBA #16277. Scheidler approached Ellerby in 1998. Ellerby agreed with Scheidler that the Kitsap County Assessor was not following the law and thereby defrauding Scheidler and all county retired/disabled citizens of their rights; and he took Scheidler's case.

When Ellerby submitted his MEMORANDUM to the Assessor outlining the Assessor's criminal conduct, he was *extorted* from

[5] [See RP 15-16 @A and B]

Scheidler's case by Cassandra Noble, WSBA #12390, Kitsap Prosecutor. Noble threatened Ellerby with his Bar license unless he withdrew as Scheidler's lawyer. [RP 26-27, 79-84, 195-248] This occurred within three days of the scheduled administrative hearing to address Assessor's fraud and after more than 6 months since Ellerby filed his "notice of appearance" in that case. Id. RP 79-84.

Ellerby, despite his *legal* obligations to Scheidler and no statutory obligations to Noble, abruptly withdrew on the very eve of the administrative hearing under this threat to his law license by Noble. [RP 79]. This extortion scheme by Cassandra Noble against Ellerby's WSBA license, [RP pp 202-221], made Scheidler's case against the Assessor a *toxic case* that no other WSBA Associate would take for fear of losing their law license. Dkt 58 [RP pp 25-55]. Scheidler has been forced to proceed 'pro se' thereafter.

This WSBA extortion scheme to limit Scheidler's choices for lawyers – as the Ellerby case shows -- violates state felony laws and the Sherman Anti-Trust and Hobbs Acts -- prohibited activities under 18 USC Ch 96, dkt 58 [RP 24, 29, 36, 37, 55, 60-61]; dkt 68-1 [RP passim].

After Ellerby withdrew he began using various *and untrue* excuses for his withdrawal. Dkt 58-2, [RP pp 79-110]; [RP pp 32-34;

RP pp 85-93]. This created a new dispute between Scheidler and Ellerby, about which Scheidler filed a WSBA grievance in 2008.

The WSBA delegated Scheidler's grievance to Defendant Zachary Mosner, a WSBA associate holding office in the Attorney General's Office (AGO). The AGO is instrumental in devising and protecting Avery's fraud, as emails [*SER* 319] to the AGO's, Brett Durbin and Cam Comfort, will validate - a clear conflict of interest, Dkt 58 [RP 30-34]. The WSBA/AGO's Mosner dismissed Scheidler's grievance against Ellerby. The WSBA issued the caveat the grievance would be reopened upon a "*judicial finding of impropriety*" [RP 110].

Scheidler then sued Ellerby to obtain a "*judicial finding of impropriety*" so as to reopen the grievance. A jury was demanded. That case too was dismissed by a WSBA associate Kevin Hull, Kitsap County Judge, who then retaliated against Scheidler imposing a **$120,000 sanction** (including interest) – payable to Ellerby [RP 237-241] – for seeking a "*judicial finding of impropriety*" - a task delegated to Scheidler by the WSBA. [RP 32 ¶3; 110].

3. Defendant, David Ponzoha's FRAUD upon Scheidler and the Court.

Scheidler appealed WSBA Hull's $120,000 sanction and the denial of his jury trial to the Washington State Court of Appeals II

(COA II) for doing what the WSBA delegated to him – i.e., seeking '*a judicial finding of impropriety*'. However, defendant David Ponzoha, clerk of the COA II, *refused* to file Scheidler's opening brief in that appeal and then dismissed the appeal for not filing an opening brief. Ponzoha's refusal to file Scheidler's brief is a violation of law, RCW 2.32.050(4), "it is the duty of the clerk… *4) To file all papers delivered to him or her for that purpose in any action or proceeding*…" It is also a violation of substantive due process to dismiss a *de novo* appeal. Dkt 58 [RP 16, 24, 44-46]; dkt 58-8 [RP 194 et seq]; dkt 68-1 [RP 247, 287 and passim]; dkt 89 [RP 397 et seq].

When Ponzoha refused to file Scheidler's brief and then dismissed the appeal, Ponzoha violated the provisions of law that regulates his office, RCW 2.32.050(4), supra, which is a gross misdemeanor under RCW 42.20.080, and misdemeanor under RCW 42.20.100, respectively.

> "Every officer or other person mentioned in RCW 42.20.070, who shall willfully disobey any provision of law regulating his or her official conduct in cases other than those specified in said section, shall be guilty of a gross misdemeanor." And
>
> Whenever any duty is enjoined by law upon any public officer or other person holding any public trust or employment, their willful neglect to perform such duty, except where otherwise specially provided for, shall be a misdemeanor."

Scheidler filed a criminal complaint against Ponzoha with both the County Sheriff and Kitsap District Court under CrCLJ 2.1(c). Dkt 58-7 [RP 129-130].

Here again, a WSBA associate, Stephen Holman, Kitsap district court judge, without requiring Ponzoha to answer the allegations, dismissed these complaints *sua sponte*. [RP 46-47, 51]

When WSBA associate Holman dismissed Scheidler's criminal complaint he effectively granted Ponzoha immunity for violating state laws – which violates Article 1, Secs 8 and 12 and Article 2, sections 28(12 and 17), which prohibits *privileges and immunities*, and prohibits *legalizing the unauthorized or invalid act* of any officer, and prohibits *limiting civil or criminal actions*. These constitutional violations by WSBA associate, Holman, *for the benefit of Ponzoha*, are gross misdemeanor crimes under RCW 42.20, and violations of Holman's oath of office to support Washington's constitution – ***not eviscerate it***!

For these reasons Scheidler filed for the RECALL of Stephen Holman under Article 1, Sec 33.

4. WSBA's, defendant Susan Carlson's FRAUD upon Scheidler and the Court.

Here too Scheidler's constitutional right of RECALL was then obstructed by defendant and WSBA associate, Susan Carlson, clerk of the Supreme Court.

Clerk Carlson, like clerk Ponzoha, dismissed Scheidler's statutory appeal mandated by RCW 29A.56.260 – "Appellate review of a decision of any superior court shall be begun and perfected within fifteen days *after its decision in a recall election* case and *shall be considered an emergency matter of public concern by the supreme court, and heard and determined within thirty days after the decision of the superior court."* Dkt 58 [RP 16, 44-47, 52]; dkt 58-1 [RP 76]; dkt 68-1 [RP 257, 288 and passim]; dkt 108 [RP 429-432, 440 et seq.].

When WSBA associate Carlson dismissed Scheidler's statutory appeal, for the benefit of her WSBA colleague, Holman, she too committed gross misdemeanor violations under RCW 42.20, supra, and under RCW 29A.84.220 and RCW 29A.84.020, respectively.

> "Every officer who willfully violates RCW 29A.56.110 through 29A.56.270, for the violation of which no penalty is prescribed in this title or who willfully fails to comply with the provisions of RCW 29A.56.110 through 29A.56.270 is guilty of a gross misdemeanor." And
>
> " Every person is guilty of a gross misdemeanor, who:… (5) By any other corrupt means or practice or by threats or intimidation

interferes with or attempts to interfere with the right of any legal voter to sign or not to sign any recall petition or to vote for or against any recall;"

5. The WSBA's Racketeering Enterprise [RP 43 §VIII]

Scheidler illustrates the WSBA's complex racketeering enterprise in dkt 58-1 [RP pp 73-76]. It diagrams how WSBA associates who hold various decision-making positions in judicial, legislative and executive roles enables these FRAUDs upon Scheidler and society as a whole.

As noted in appeal #13-35119, there are WITNESSES who agree with Scheidler, Cynthia Massa, WSBA #25422, Catherine Clark WSBA #25422, Melody Retallack, WSBA #40871, Jeffrey Stier, WSBA #6911. The testimony (i.e., offers of proof) from these lawyers, and others noted by name and by WSBA grievance numbers in dkt 58 [RP pp 18, 53-54], must be viewed in support of Scheidler's claims per *Libas Ltd. v. Carillo*, 329 F.3d 1128, 1130 (9th Cir. Cal. 2003), supra.

When WSBA associates in government office devise frauds and schemes such as the *"judicial findings of impropriety"* scam; changing statutory language to deny constitutional rights; obstructing appeals and RECALL petitions…, it is government OPPRESSION – it is ***institutional*** oppression emanating from the Washington State Bar Association itself by having its associates in government decision-making positions to carry through, and protect, these FRAUDs.

6. WSBA associates violate RCW 2.48.180-2.48.230 with impunity. [RP 52-54]

As this Court may remember from #13-35119, on October 2, 2012, Scheidler filed his Complaint and First Amended complaint in Kitsap Superior Court Case 12-2-02161-1, as part of his administrative appeal under RCW 34.05.

November 20, 2012, defendants, *without answering* Scheidler's state court complaint, engaged in forum shopping. Defendants, including the Attorney General (AGO) removed Scheidler's case to Federal Court. [See appeal 13-35119: dkts 1-1 (Summons), 1-2 (Complaint), 1-3(First amended complaint)].

District Court Judge Ronald B. Leighton, a WSBA associate, was assigned the case. Defendants *immediately* motioned for dismissal. [See appeal 13-35119: Dkts 8 and 17;].

Scheidler responded to defendants' motions and re-filed for jury trial[6]. In a REMOVED case in which all claims centered on his statutory state administrative appeal raises an issue of *exhaustion of state remedies* under Rooker-Feldman -- ***REMAND is required*** – ***NOT DISMISSAL***. Scheidler also motioned for the disqualification of Judge

[6] [See appeal 13-35119: dkt 1-4 and dkt 19 (Jury demand); courtesy copies RP 673-676]

Leighton, a WSBA associate, whose wife, a WSBA associate, was professionally involved with Kitsap County's risk pool – Kitsap County is financially liable for Avery's crimes. [See appeal 13-35119 - dkts 9, 11, 15, 27]; dkt 58 [RP 17-18].

Judge Leighton, in an incomprehensible order denied all Scheidler's motions; and *refused* to ***REMAND*** any portion of Scheidler's case, contrary to 28 USC 1441(c)(2), or per Rooker-Feldman. Leighton dismissed the case with prejudice. This left Scheidler without a forum to plead any of his claims including his rightful administrative appeal under RCW 34.05.

Defendants and judges, all WSBA associates, are legally required to protect Scheidler's rights under the laws governing WSBA associates. See RCW 2.48.210 infra. Neither judge nor defendants have ever explained how their conduct in their dealing with Scheidler served to uphold Article 1, Sec 1 - "*to protect and maintain individual (Scheidler's) rights*", or satisfy any other lawful duty imposed upon them.

These WSBA associates acting contrary to "*protecting individual (Scheidler's) rights*" under color of law, is a due process violation. This Court in *McRorie v. Shimoda*, 795 F.2d 780, 786 (9th Cir. Haw. 1986) states, "As we held in *Rutherford*: "Because the substantive due

process is violated at the moment the harm occurs, the existence of a post deprivation state remedy should not have any bearing on whether a cause of action exists under § 1983." 780 F.2d at 1447."

Scheidler appealed Judge Leighton's unjust dismissal to this Court. [#13-35119].

It was then that the Clerk for the 9th Circuit, also confused by the proceedings below, sent a letter, dkt 49, to Judge Leighton concerning the status of Scheidler's "motion for reconsideration" [dkt 42]. Judge Leighton responded stating that the clerks letter was a "*type of remand*", that Scheidler's motion was "*frivolous on its face*", that "*vitriol was not a substitute for logic*", and the "*motion was denied*". [dkt 50; RP p 1-2]

Judge Leighton was thereafter REVERSED and the case REMANDED to District Court, dkt 51. This Court found Judge Leighton ***abused his discretion*** based upon three grounds: *the District Court took jurisdiction of all claims under 28 USC 1367*[7] (Defendants

[7] 28 U.S. Code 1367 - Supplemental jurisdiction ... (a) Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.

defeated Scheidler's Rooker-Feldman abstention argument claiming the Administrative Boards "lacked jurisdiction" to address the FRAUD.); *Scheidler can amend his state pleadings* (thus Scheidler has *standing*); *and ordered the District Court address Scheidler's administrative matter to which all his other state and federal claims are related*.

Clearly, reversing a judge's dismissal is per se a substantive due process finding that a constitutional right of petition for redress was unlawfully obstructed and delayed. Defendants' clearly intended *to mislead the judge using false statements of fact or law* to obtain Judge Leighton's unlawful dismissal. Defendants have therefore violated RCW 2.48.180 – 2.48.230, infra, by failing to conduct themselves with 'truth and honor' which are gross misdemeanor crimes under RCW 42.20. Id., *McRorie v. Shimoda*, 795 F.2d 780, 786 (9th Cir. Haw. 1986), supra.]

In that appeal defendants' claims of immunity and factual insufficiencies under their various and convoluted theories, such as, no one has jurisdiction to address their FRAUD, pleading deficiencies

---

Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.

under *Iqbal/Twombly*, and privilege, were fully argued and rejected by the 9th Circuit.

7. Judge Leighton violates - laws that apply to judges, Scheidler's due process, and the 9th Circuit's MANDATE.

Upon remand, Judge Leighton gave Scheidler 21 days to amend his 84-page state pleadings or the *whole* case would be dismissed. Judge Leighton's order provided no direction as to what deficiencies, if any, needed to be addressed nor why the administrative appeal, mandated by this Court, would suffer dismissal.

Furthermore Judge Leighton's order, [dkt 55: RP 3-4], ***eliminated his WSBA colleague defendants***, leaving James Avery as the only defendant. Judge Leighton also required Scheidler do other things to have his administrative appeal heard – a matter expressly remanded for hearing by this Court.

Scheidler objected to Judge Leighton's order on these points, [dkt 56: RP pp 5-8]. Judge Leighton immediately issued a second order [dkt 57: RP pp 9-12] that added back in the WSBA defendants. He also noted the 9th Circuit's mandate to hear the administrative appeal ***if Scheidler so requested***; and copied a 'clip' of a section of Scheidler's state pleading for unknown purposes.

Scheidler, to the best of his ability amended his state pleadings without any idea what deficiencies, if any, he needed to address. See dkt 58, w/app 58-1, 58-2, 58-3, 58-4, 58-5, 58-6, 58-7, 58-8, 58-9, 58-10 [RP pp 13-253]. Scheidler, as Judge Leighton demanded, re-noted his administrative appeal for hearing. [RP 13, 66]. Scheidler repeated his causes of action under 42 USC 1983, plus Damages from Racketeering and Criminal Profiteering – both RICO and RCW 9A.82, Damages from unlawfully exercising a public office (RCW 7.56.090), Hobbs Act, and Sherman Anti-Trust violations, etc. [RP 55-66]

Scheidler also added additional defendants [RP 15-17] - due to related events occurring while the case was in appeal - authorized by 28 USC 1367, supra.

Some of these intertwined controversies (see dkt 58 §VII, ¶A, "In a nutshell" [RP pp 21-22]) showing how the WSBA's protection racket operates throughout Washington State Government, so frauds noted above occur, are …

- Extortion scheme to remove Ellerby from Scheidler's case by threatening his Bar license. [See above; and also RP pp 202-212]

- The WSBA's delegated task to Scheidler to obtain "*a judicial finding of impropriety*" so as to scam another $120,000 from Scheidler. [RP 110].
- The denial of Scheidler's appeal rights by David Ponzoha, Clerk COA II, who unlawfully refused to file papers concerning the WSBA's delegated "*judicial finding of impropriety*". Dkt 58 [RP 24, 44-52, 62]; dkt 58-8 [RP 194-248]; dkt 68-1 [RP 257, 286-287]; dkt 108 [RP 429-440]; dkt 108-1;
- Susan Carlson's obstruction of Scheidler's voting rights and Article 1, Section 33 right of RECALL [RP p 47, ¶175-177; RP p 257, 288, 441-452] by dismissing an appeal required by statute. That appeal stems from Ponzoha's refusal to file papers concerning the "*judicial finding of impropriety*".

All of these controversies involving Scheidler are created by WSBA associates, who also hold decision-making positions over their created controversies!

The WSBA is a racketeering enterprise using our courts and public office to perpetuate controversy after controversy under their unconstitutional monopoly powers and self-granted privileges and immunities for their own protection, power and wealth.

Scheidler, in support of his RICO claims, noted the intention to file a supplemental RICO statement that would show the WSBA's "pattern of racketeering activity" involving *other victims* in order to meet 18 USC 1961(5). This motion to file the RICO statement was DENIED by WSBA, Judge Leighton. Dkts 68 and 68-1 [RP 254-416.] and dkt 115, [Vol 1].

Defendants, *without answering the amended complaint nor administrative appeal,* again motioned for dismissal upon the same arguments they made in appeal 13-35119 – the 9th Circuit's REMAND answers those stale claims!

Defendants' re-argued the "court cannot grant the relief requested" without citing any statutory nor constitutional authority. This too must fail, if for no other reason, ARTICLE 1, SECTION 30[8], reserves to the People, represented by a JURY under ARTICLE 1, SECTION 21, the power to fashion a remedy, as ALL POLITICAL POWER resides with the People under Article 1, sec 1. A REMEDY is an issue of POLITICAL POWER, and the PEOPLE, solely the PEOPLE, have that power.

---

[8] "The enumeration in this Constitution of certain rights shall not be construed to deny others retained by the people."

If there remains a question of jurisdiction, and there is none because the 9th Circuit's REMAND under 28 USC 1367, supra, disposes that issue, then state law governs and it becomes a matter for trial per RCW 4.36.070, Pleading judgments.

> "In pleading a judgment or other determination of a court or office of special jurisdiction, it shall not be necessary to state the facts conferring jurisdiction, but such judgment or determination may be stated to have been duly given or made. If such allegation be controverted, ***the party pleading shall be bound to establish on the trial the facts[9] conferring jurisdiction.***

Nevertheless, defendants only sought dismissal *without answering* Scheidler's amended Federal complaint.

Scheidler responded to defendants' motions to dismiss, dkts 89, 94, 108 [RP 390-413, 417-419, 429-452].

Scheidler argued there is no fair forum to address the unlawful policies and practices of the self-policing WSBA because WSBA associates sit as decision-makers - a facially apparent conflict in WSBA associates judging the tactics of WSBA associates. Dkt 58 [RP 20 §VI]

Scheidler also argued defendants' claims of immunity collide with constitutional and statutory provisions that prohibit privileges and

---

[9] RCW 4.44.090 - Questions of fact for jury.

immunities. [RP 391-396]. The use of court rules in the way defendants intend by their arguments of immunity would abridge, modify or enlarge substantive rights, which is prohibited by 28 USC 2072(b). Dkt 89 [RP 390-413] and dkt 108 [RP 429-452].

Scheidler also noted the MANDATE issued by the 9th Circuit that the administrative matter was to be heard – not dismissed for a second time, [RP 398 et seq.]. Scheidler requested oral argument for all these motions.

Defendants replied to Scheidler's response by ignoring evidence and omitting relevant laws – intending to mislead Judge Leighton for a second time - continuing their violations of RCW 2.48.180- RCW 2.48.230.

WSBA defendants also raised new arguments by their reply [dkt 92], a tactic disfavored under local court rules. This 'tactic' in violating rules is a violation of RCW 2.48.230 and a gross misdemeanor crime under RCW 42.20.080, supra.

Scheidler filed a SURREPLY to WSBA's breaches of rules, laws and ethical obligations. Dkt 94-1 [RP 417-419]. WSBA's Judge Leighton ignored the unlawful conduct of his WSBA colleagues, which is per se a violation 28 USC 1652, supra, as Washington's Constitution,

Art 2, sec 28(12), PROHIBITS the 'legalizing of unauthorized acts' by officials.

This validates Scheidler's complaint that WSBA associates, contrary to their statutory and ethical mandates to conduct themselves with "truth and honor"[10], use their self-policing privileges to grant themselves the unlawful tactics of lying, misstating facts, ignoring applicable laws, ignoring their own rules, and falsely recasting events, so as *to obtain unjust outcomes*. These tactics have become the modus operandi of the WSBA's RICO associates-in-fact in their case-fixing schemes.

The authorities which Scheidler argued in his responses to defendants' motions are found generally in dkt 89 §II and III [RP 390-413; and in dkt 108 §II and III [RP 429-452].

Upon REMAND Scheidler sought Judge Leighton's disqualification, per 28 USC 455 (a) and (b), based in this Court's finding Leighton *abused his discretion* by his first dismissal. Dkts 86, 91, 99 [RP 383-389, 414-416, 420-428]. Judge Leighton conducted a hearing over which Judge Leighton presided. Dkts 107, 107-1, 107-2

---

[10] See RCW 2.48.210, infra.

[Vol 1; RP 480-496]. In other words, Judge Leighton judged his own *abuses* – a facial violation of 28 USC 455 as 'judging your own *abuses*' is prone to bias and conflict.

Naturally Judge Leighton, again, refused to disqualify, [Vol 1, dkt 107], and submitted the matter to Chief Judge Marsha Pechman, another WSBA associate [Vol 1, dkt 109]. Again a judge-judging-judges, and worse – a WSBA judge-judging-a-WSBA-judge concerning the laws that apply to WSBA judges is just another facial violation of 28 USC 455. The matter is for a jury; not for judges to define the scope of their own authority, otherwise we have tyranny! Id., dkt 58-1.

Scheidler immediately sought a WRIT of mandamus from this Court on the whole scheme in which 'justices, judges or magistrate judges' are deciding facts concerning their own compliance with the very laws that pertain to 'justices, judges and magistrate judges'. Dkts 114-1 to 114-3 [RP 500-652], It is a blatant fraud upon society committed by judges to enlarge the power of judges – this judges-judging-judges creates an "institutional conflict of interest" without an impartial forum for a remedy! See WRIT, dkt 114-1 footnote 3, [RP 506]

Scheidler also argued 'justices, judges and magistrate judges' are improperly using court rules to modify 28 USC 455, by getting other

judges, as Judge Leighton got Judge Pechman, to rubber-stamp his 28 USC 455 ruling, which is prohibited by 28 USC 2072(b) in using court rules to modify substantive law – i.e. modifying the laws that govern judicial conduct. Dkts 114-1 [RP 500-525], dkts 114-2, 114-3 [RP 526-672].

Scheidler also provided this Court with over 100 signatures of people [RP 624-629] who recognize the hypocrisy in judges-judging-judges as a violation of 28 USC 455. Follow this link:

https://www.causes.com/actions/1780277-sign-the-petition-to-this-complaint-will-be-filed-by-me-with-supporting-signature-with-the-federal-ninth-circuit-court-of-appeals-per-28-usc

The WRIT was "denied" by W. FLETCHER, N.R. SMITH, and OWENS, in one sentence,

> "Petitioner has not demonstrated that this case warrants the intervention of this court by means of the extraordinary remedy of mandamus. See *Bauman v. U.S. Dist. Court*, 557 F.2d 650 (9th Cir. 1977)".

Notwithstanding the hypocrisy of it all, the *Bauman* case has no factual similarities with Scheidler's situation nor the fact that Judge Leighton was previously reversed in the present case by the 9th Circuit, for *abuses (more than one abuse) of discretion*. Nor did these justices explain the fact Judge Leighton, upon REMAND, issued no substantive orders to appeal as in *Bauman*. These justices, W. FLETCHER, N.R.

SMITH, and OWENS' denial is simply arbitrary and capricious without any rational discussion of any of the facts and arguments that differentiate Scheidler's petition from *Bauman*, or by addressing the view by over 100 people who conclude judges don't obey the laws that apply to judges!

Coincident with the 9th Circuits refusal to grant the WRIT, Judge Leighton entered ORDER [dkt 115] granting all defendants motions to dismiss with prejudice as to all Scheidler's claims, and denying all Scheidler's motions and his request for oral argument.

Judge Leighton for a second time refused to REMAND any portion of Scheidler's case that was REMOVED by defendants from State Court.

However, Judge Leighton, apparently to meet the 9th Circuit's mandate in deciding Scheidler's administrative appeal, simply 'affirmed' the Board of Tax Appeals finding without defendants ever answering Scheidler's pleadings filed in that appeal, or allowing Scheidler to present oral argument or to cross-examine witnesses.

It is unclear how Judge Leighton ruled on the 'administrative issue' when ***defendants only motioned for dismissal***.

Thus this second appeal.

VI. STATEMENT OF FACTS RELEVANT TO THE ISSUES SUBMITTED FOR REVIEW WITH APPROPRIATE REFERENCES TO THE RECORD. [RP 22 §B]

The evidence noted below and included as Appendixes to Scheidler's amended complaint, dkt 58, went unaddressed by defendants – defendants chose to seek dismissal and not respond to the evidence.

See Doc 58-1: [RP 73-76] Three Illustrations in how WA State's legal enterprise devolved into tyranny via the Bar Act that gives unaccountable, *and unconstitutional*, power to the WA State Bar whose associates fully occupy judicial roles, and hold office in legislative, executive, administrative offices and on Boards. ***Washington State government is becoming an extension of the WSBA.***

See Doc 58-2: [RP pp 194-248] Set of 11 Exhibits, on their face, show WSBA associates, Scott Ellerby, Cassandra Noble, Jeffrey Downer, engaged in **PERJURY** (a false declaration blaming Scheidler when Ellerby *withdrew* under threat from Noble) – a class B felony; engaged in **FRAUD**; **INVASION OF PRIVACY** in obtaining privilege records by fraud; **SUBORNATION OF PERJURY** and **EXTORTION** by using the tools-of-the-RICO-trade --- unlimited lies. By their unlawful tactics they obtained a $120,000 (One Hundred Twenty

Thousand (including interest @12%)) sanction against Scheidler. [RP 206-211].

It is self-evident -- WSBA associates *create the controversies* which they then resolve for their own benefit and steal money from citizens either directly, as Ellerby took Scheidler's money and then withdrew under the WSBA's extortion scheme, or indirectly as a *sanction* for seeking a delegated "*judicial finding of impropriety*". [RP 110]

See Doc 58-3: [RP 111-116] Exhibit - Kitsap County's 2008 application PROVES, on page 3, first paragraph, that James Avery alters the controlling law the application it is supposed to cite - Ellerby was hired to address this fraud in 1998 but did not as that story goes.

All other defendants are aiders and abettors, because all other defendants ARE REQUIRED by law to cure the Avery fraud – NOT sweep it under the rug AND PUNISH and FRUSTRATE SCHEIDLER EVERY WHICH WAY THEY CAN from addressing this FRAUD.

See Doc 58-4: [RP 117-118] Exhibit - Dept of Revenue memo to WA State Assessors that PROVES the fraud originates with the DOR and is statewide. Defendants (BoTA and Slonim) purposely ignore these documents, dkts 58-3 and 58-4, to the harm of Scheidler, which

is contrary to their lawful duty. They aid and abet the Avery Fraud claiming they lack *jurisdiction*.

See Doc 58-5: [RP 119-124] Exhibits – Scheidler was forced to sign defendants' 'fraudulent applications', under duress – a Class-C Felony under RCW 9A.60.030 - Obtaining a signature by deception or duress.

"(1) A person is guilty of obtaining a signature by deception or duress if by deception or duress and with intent to defraud or deprive he or she causes another person to sign or execute a written instrument. (2) Obtaining a signature by deception or duress is a class C felony."

This class-C Felony, cannot be legalized either directly nor by limiting civil or criminal actions addressing this Felony. Article 2, Section 28(12, 17) prohibits the legalizing of unauthorized or invalid acts and prohibits limiting civil or criminal actions that address these unlawful acts.

See Doc 58-6: [RP 125-128] Email to Senator Jan Angel showing how WSBA associates misdirect Angel from her obligations and powers. WSBA associates tell our elected representatives to stay out of the issues concerning government corruption occurring in the judicial branch despite a legislator's Article 4, Section 9 removal powers.

See Dkt 58-7: [RP 129-193] Emails to Sergeant McDonough, Kitsap County Sheriff, re the criminal complaint against Ponzoha,

shows how Bar associates intimidate law enforcement from protecting Scheidler's' rights when WSBA associates are involved in those crimes.

See Doc 58-8: [RP 194-248] Exhibit - David Ponzoha, Clerk of COA II, refused to file this *Opening Brief*. An act prohibited by RCW 2.32.050(4), supra. Ponzoha denies Scheidler's substantive due process. Ponzoha demanded Scheidler pay a money "sanction" before he would file the "brief", which is "extortion" – a *felony* violation of state law.

The *Brief* was the product of the WSBA's delegated task to Scheidler to obtain a "*judicial finding of impropriety*" in the Ellerby case. [RP 109-110].

Then Ponzoha, unilaterally, dismissed the entire appeal – #454351 - yet another act of obstruction [RP 430-452].

Ponzoha's self-established policies and practices terminated a de novo appeal. Scheidler did not abandon his case; all records and transcripts were filed to allow the de novo review to proceed - irrespective of briefs. Scheidler was obstructed and frustrated in prosecuting his case by the unlawful actions of Ponzoha.

Ponzoha's unlawful conduct must not be legalized, nor civil actions limited to address it.

See Doc 58-9: [249-251] Law firms and Insurance companies, through entities as the *Federation of Defense & Corporate Counsel* and *Marsh and McLennan* who lobby, teach, and develop strategies used across the United States. The *defense strategies* they teach are not approved by any regulatory body for compliance with laws, but rather are based in utilizing *court rules* to obtain outcomes.

See Doc 58-10: [RP 252-253] Exhibit – Congalton's form-letter dismissals proving the WSBA is a protection racket which claims it 'doesn't have the resources' to do its job, and delegates lawyer discipline to a '*judicial finding of impropriety'*. Scheidler's injuries stem from the WSBA's unlawful policies and practices.

With respect to these EXHIBITS and the allegations derived from these exhibits: "All allegations of material fact are taken as true and construed in the light most favorable to Plaintiff", *Epstein v. Washington Energy Co.*, 83 F.3d 1136 (9th Cir. Wash. 1996). "To survive a motion to dismiss, a plaintiff must plead only enough facts to state a claim to relief that is plausible on its face. The allegations in the complaint must be accepted as true, and the facts must be construed in the light most favorable to the plaintiff. Exhibits attached to the complaint are treated as part of the complaint for Rule 12(b)(6)

purposes." *Page v. Postmaster Gen. & Chief Exec. Officer of the United States Postal Serv.*, 493 Fed. Appx. 994 (11th Cir. Fla. 2012).

VII. SUMMARY OF THE ARGUMENT.

The foregoing arguments raise questions under the 1st, 7th, 9th and 14th Amendments to the US Constitution.

The 'parties' in this case *distinguishes* this case from those cases, and consequent case law, that are between a *citizen v citizen*; or between a *citizen v corporation* (such as *Twombly* and *Rooker*); or between a *terrorist v Federal security agency* (such as *Iqbal*); or between an *licensee v the licensor* (such as *Feldman*); and so on.

This case is between a *Washington State citizen v the Wahsington State government officials* who serve him, the people, and the constitution of Washington State, and owe them all a fiduciary duty prescribed by law. Based in this relationship, the people of Washington ***NEVER*** lose their *jurisdiction* over Washington state government officials until a ***JURY*** renders its verdict – otherwise Washington's laws are meaningless!

A JURY is *an essential element* in having a "Court," [RP 74]. Judges are NEVER the Court and only have <u>*statutory powers*</u>. By the words of RCW 2.28.050 and RCW 2.28.060 -- A judge is distinguished from court, and powers of judicial officers *are only* by statute.

> "A judge may exercise out of court all the powers expressly conferred upon a judge as contradistinguished from a court ***and not otherwise***." … "Every judicial officer has power: … imposed upon him or her ***by law***" (Emphasis).

Therefore a ruling by a judge in a civil case where a JURY was demanded, but denied, is a ruling issued by a judge -- NOT a COURT and NOT BY LAW. There is no law empowering a judge to deny a constitutional right to a jury trial. Every argument by defendants that "res judicata" bars Scheidler's claims is baseless because every ruling was issued without statutory authority and solely by a judge – NOT a COURT as a JURY is a necessary element to have a COURT! [RP 19; this issue was raised by the pleadings; never addressed by judge nor defendants and remand is required under *Bravo v Dolsen*, infra, and *Brackney v. Combustion Engineering, Inc*., infra.]

A JURY was and is demanded; but unconstitutionally and unlawfully denied in every action Scheidler filed against WSBA associates. Therefore Scheidler's interest in a jury continues and these WSBA judges who deny a jury trial act beyond their statutory powers.

The Washington State Supreme Court states in *Sofie v. Fibreboard Corp*. 112 Wn.2d 636, 771 P.2d 711, 780 P.2d 260,

> "Because of the constitutional nature of the right to jury trial, litigants have a continued interest in it - it simply cannot be removed by legislative action. As long as the cause of action continues to exist and the litigants have access to a jury, that right

> of access remains as long as the cause of action does. Otherwise, article 1, section 21 means nothing." See dkt 89, [RP 401]

The same rationale in '*having a continued interest…in Article 1, Sec 21, Jury'*, as in *Sofie*, must hold true for Scheidler's continuing interest in Article 2, Sec 28(12 and 17) and Article 1, Section 1, which respectively state the "unauthorized or invalid act of any officer" can *never* be legalized, nor can there be a "*limitation of civil or criminal actions*." Scheidler's civil actions were to address the unauthorized or invalid acts of defendants. Furthermore the 'people,' who have plenary powers over the governments they created, must have *their interest* in governments' *just powers* protected. Clearly Scheidler and the people of Washington, as in a jury, have a continued interest in these constitutional provisions, just as in his Article 1, Sec 21 jury interest addressed in *Sofie*.

A. Judge Leighton's order is issued in violation of 28 USC 455(a) and (b)

Judge Leighton, a WSBA associate, declared for a second time, his WSBA colleagues, defendants [RP 14-17], who hold decision-making positions within Washington State government, are "immune from suit" and "no set of facts" could bring them before a jury. Dkt 115, [Vol 1].

Judge Leighton is bound by the same statutory and fiduciary obligations he shares with defendants at issue in this case. Scheidler sought Judge Leighton's "disqualification" for bias and conflict in fiduciary duty based in 28 USC 455 (a) and (b), dkt 86 and 107-2 [RP 383-389; RP 486-496]; and by WRIT to this Court, Dkt 114-1 to 114-3 [RP 500-672]. Scheidler cited facts, laws and relevant case law proving disqualification.

B. **Judge Leighton's order, dkt 115, does not comply with 28 USC 1652. [RP 18 §5]**

Under 28 USC 1652, *'state law shall be the rule of decisions in Federal Court'* the following State constitutional and statutory authorities must be applied in determining if defendants' have the power they claim over citizens or citizens have plenary authority over defendants as Scheidler claims.

ARTICLE 1, SECTION 1 POLITICAL POWER. All political power is inherent in the people, and ***governments derive their just powers*** from the consent of the governed, and are established ***to protect and maintain individual rights***",

ARTICLE 1, SECTION 4 RIGHT OF PETITION AND ASSEMBLAGE. The right of petition and of the people peaceably to assemble for the ***common good shall never be abridged.***

ARTICLE 1, SECTION 8 IRREVOCABLE PRIVILEGE, FRANCHISE OR IMMUNITY PROHIBITED. No law granting irrevocably any privilege, franchise or immunity, shall be passed by the legislature.

ARTICLE 1, SECTION 10 ADMINISTRATION OF JUSTICE. Justice in all cases shall be administered openly, and ***without unnecessary delay***.

ARTICLE 1, SECTION 12 SPECIAL PRIVILEGES AND IMMUNITIES PROHIBITED. ***No law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities*** which upon the same terms shall not equally belong to all citizens, or corporations.

ARTICLE 1, SECTION 21 TRIAL BY JURY. ***The right of trial by jury shall remain inviolate,*** the legislature shall provide … for waiving of the jury in civil cases where the *consent of the parties interested is given thereto*.

ARTICLE 1, SECTION 28 HEREDITARY PRIVILEGES ABOLISHED. ***No hereditary emoluments, privileges, or powers, shall be granted*** or conferred in this state.

ARTICLE 2, SECTION 28 SPECIAL LEGISLATION. ***The legislature is prohibited*** from enacting any private or special laws in the following cases: …
12. Legalizing, except as against the state, the unauthorized or invalid act of any officer…
17. For limitation of civil or criminal actions.

ARTICLE 7, SECTION 10 RETIRED PERSONS PROPERTY TAX EXEMPTION. Notwithstanding the provisions of Article 7, section 1 (Amendment 14) and Article 7, section 2 (Amendment 17), ***the following tax exemption shall be allowed as to real property***: The legislature shall have the power, by appropriate legislation, to grant to retired property owners relief from the property tax on the real property occupied as a residence by those owners. The legislature may place such restrictions and conditions upon the granting of such relief as it shall deem proper. Such restrictions and conditions may include, but are not limited to, the limiting of the relief to those property owners below a specific level of income and those fulfilling certain minimum residential requirements.

RCW Complete Title 2 - COURTS OF RECORD – Powers and duties of Judges, Clerks and Courts.

RCW 2.48.010 (in pertinent part) “Hereby created as an agency of the state… the Washington State Bar …may sue and be sued.”

RCW 2.48.180 (in pertinent part)
Unprofessional conduct
(6) A violation of this section is cause for discipline and constitutes unprofessional conduct … ***Conduct that constitutes a violation of this section is unprofessional conduct in violation of RCW 18.130.180***.

RCW 2.48.210 (in pertinent part)
Every person before being admitted to practice law in this state shall take and subscribe the following oath:
I do solemnly swear: …
I will support the Constitution of the United States and the Constitution of the state of Washington***; I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement of fact or law; ..***
… ***I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay any person's cause for lucre or malice. So help me God.***

RCW 2.48.220 (in pertinent part)
Grounds of disbarment or suspension.
(3) Violation of his or her oath as an attorney, or of his or her duties as an attorney and counselor.

RCW 2.48.230
The code of ethics of the American Bar Association shall be the standard of ethics for the members of the bar of this state.

RCW 4.04.010 Extent to which common law prevails.
The common law, so far as it is not inconsistent with the Constitution and laws of the United States, or of the state of Washington nor incompatible with the institutions and condition of society in this state, shall be the rule of decision in all the courts of this state.

Pleading Standards. The WA State Supreme court rejected adopting *Twombly* and *Iqbal* standards of pleading in *McCurry v. Chevy Chase Bank, FSB*, 169 Wn.2d 96. [RP 393]. Therefore, *Twombly/Iqbal*

pleading standards do not apply in this case. Yet defendants and judge continue to apply *Twombly/Iqbal* standards to justify their dismissal. This issue was raised by Scheidler and ignored by defendants and judge. [RP 390-391, 393, 514].

Judge Leighton does not apply Washington State law mandated by 28 USC 1652.

Judge Leighton either ignores or creates exceptions to Washington's general policies, noted above. This runs counter to this Court's holding in *Vahora v. Holder*, 641 F.3d 1038, 1048 (9th Cir. 2011), dissent, Chief Judge Alex Kozinski.

> "the Supreme Court's instruction that when "construing provisions . . . in which a general statement of policy is qualified by an exception, [we] read the [*1049] exception narrowly in order to preserve the primary operation of the provision." [**30] Knight v. Comm'r, 552 U.S. 181, 190, 128 S. Ct. 782, 169 L. Ed. 2d 652 (2008) (omission in original) (quoting Comm'r v. Clark, 489 U.S. 726, 739, 109 S. Ct. 1455, 103 L. Ed. 2d 753 (1989)) (internal quotation mark omitted)."

C. Judge Leighton's orders, which violate 28 USC 455 and 28 USC 1652, creates an "institutional conflict of interest" in violation of 28 USC 2072

Judge Leighton and Government defendants argue court rules and common law defenses so their unauthorized and invalid acts, described above, escape accountability. These arguments collide with, at a minimum, Article 1, Section 1; Art 2, Section 28(12 and 17) and

Article 1, Section 4. Under these Constitutional provision the unauthorized or invalid acts of officials shall never be legalized; nor shall civil or criminal actions be limited intended to address defendants' unauthorized or invalid acts.

Defendants' arguments rely upon judges making or changing substantive laws under color of court rule authority. For example: denying Scheidler his JURY trial – which is an INVIOLATE RIGHT under Art 1, sec 21, supra, is a violation of 28 USC 2072(b).

D. Judge Leighton alters RCW 84.36.383(5) contrary to the rules of statutory construction?

Scheidler argued to state officials, dkt 58 [RP pp 23-32], that defendants, without authority, changed the law – RCW 84.36.383(5), by adding words, rearranging words, omitting words of this statute defendants publish in official documents, dkt 58-3 [RP 111-116]. And force Scheidler sign these fraudulent documents as "true", dkt 58-5 [RP 119-124] or forgo his constitutional right. This is "FRAUD" and "EXTORTION", class C Felonies under RCW 9A.60.030, supra. [RP pp 29, 37, 55, 120-121].

Judge Leighton, [at dkt 115, pg 31], without explanation or citing any authority or receiving any rebuttal argument to Scheidler's analysis, simply adopts – cuts-n-pastes -- the 'false narrative' based in

an altered version of the law devised by the DOR. The pamphlet from which Leighton cuts-n-pasted is dkt 58-4 [RP 117-118]. The *unidentified author* of this 'false narrative' is a *witness*, not any of defendants. Scheidler was denied any opportunity to cross-examine this *witness*.

This Court, in *United States v. Pocklington*, 792 F.3d 1036, 1041 (9th Cir. Cal. 2015), states,

> —a cardinal sin of statutory interpretation. "We decline to 'read words into a statute that are not there.'" *United States v. Schales*, 546 F.3d 965, 974 (9th Cir. 2008) (quoting *United States v. Watkins*, 278 F.3d 961, 965 (9th Cir. 2002))

Clearly Judge Leighton commits the "cardinal sin" of statutory construction by adopting a *witness's* version of the law that *omits* words to save his WSBA colleagues. Judge Leighton denies Scheidler any opportunity to *cross-examine* defendants or witnesses, in violation of *Goldberg v Kelly*, infra.

E. **Judge Leighton's order does not comply with the mandate issued by the 9th Circuit Court.**

Issues of "Rooker-Feldman abstention", "standing", "jurisdiction" and the "factual sufficiency" were all issues that have been resolved by the previous panel of the 9th Circuit (law of the case, RP 398, 446]. Defendants' are re-litigating these settled issues and it is improper.

F. **The WSBA is an unconstitutional entity; Scheidler has standing to sue?**

The WSBA claims privileges and immunities in violation of Article 1, Section 8 and 12, which prohibits "privileges and immunities" and renders the words of Article 1, section 1, "just powers" irrelevant. This constitutional issue is one of *substantial public importance* and Scheidler has an *unabridged right of petition* for its redress. See Art 1, Sec 4, supra. This issue was raised by Scheidler in his complaint, dkt 58 [RP 35, 48-50, 71] and in his responses, dkts 89 and 108 [RP 395-396 and 430-431]. Defendants and Judge ignored this issue.

When there is a "constitutional challenge … left unanswered" this Court vacates and remands for a determination, as it did in *Brackney v. Combustion Engineering, Inc.*, 674 F.2d 812, 816 (9th Cir. 1982) "In light of the constitutional challenge to these types of statutes left unanswered in *Searle*, we vacate the district court finding on this issue and remand the case for a threshold determination of these statutes' validity under the Commerce Clause." See also *Bravo v. Dolsen Cos.*, 125 Wn.2d 745 (Wash. 1995), infra, and in dkt 89 [RP 393- 404] and in dkt 108 by reference per FRCP 10(c), [RP 430].

VIII. ARGUMENT:

A. Judge Leighton's orders are issued in violation of 28 USC 455(a) and (b).

See also Scheidler's petition for WRIT of Mandamus [RP 500-672].

28 USC 455, applies to "justices, judges and magistrate judges" ***mandating*** their disqualification for bias or conflicts of interest.

- Scheidler cited Leighton's proven bias - the 9th Circuit's reversal and remand of Leighton's first dismissal is per se a violation of substantive due process, dkt 58, [RP 17]; (See *McRorie v. Shimoda*, 795 F.2d 780, 786 (9th Cir. Haw. 1986), supra.)
- Scheidler cited cases from other circuits which held *sua sponte* disqualification is appropriate for a judge who is reversed for an 'abuse of discretion'. [RP 471];
- Scheidler cited cases that held 'judge shopping' is an element of bias [RP 472, 489-490]. Defendants REMOVAL action is seeking a biased forum;
- Scheidler cited cases that held it improper for opposing party to oppose a motion for disqualification, as defendants did in this

case. In essence the opposing party becomes the de facto advocate for the judge. [RP 421, 489-490]

- Scheidler cited Judge Leighton's unwarranted comments in response to the Clerk, dkt 50 [RP 1-2], saying Scheidler is 'vitriolic and not logical' his issues are "without merit" and are "frivolous on its face", dkt 86 [RP 384]. These comments were completely rebuked by the 9th Circuit's reversal and remand;
- Scheidler noted prior District cases where non-WSBA Associates were brought in as judge when the WSBA was defendant; [RP 385-386; 486];
- Scheidler noted Judge Leighton's wife, Sally B. Leighton, was involved with Kitsap County's insurance coverage which created a conflict in an averse verdict against Kitsap County; [RP 17 @ 15];
- Scheidler noted cases that held members of an association are liable for the association's debts. Judge Leighton is potentially liable as an associate of the WSBA [RP 385 @13(b); RP 486];
- Scheidler noted Judge Leighton's conflict in fiduciary duties – RCW 2.48.180-230 are laws that apply to all WSBA associates, including defendants and Leighton, which are at issue in this case [RP 486-488]; and

- Scheidler argues WSBA associates who are judges are granting themselves and their colleagues immunities and privileges, which is prohibited under Article 1, Secs 8 and 12, supra, and Article 2 sec 28(12 and 17) supra, an unconstitutional use of power.

The 9th Circuit characterized Judge Leighton's first dismissal of Scheidler's law suit as an *abuse of discretion*. The very word "abuse" is inconsistent with "truth and honor" that is demanded of all WSBA associates under RCW 2.48.180 to 2.48.230, supra. Judge Leighton has clearly modified RCW 2.48.180-2.48.230 making "truth and honor" equivalent to an "abuse of discretion" so as to sweep the unauthorized and invalid acts of his WSBA colleagues, in which he plays a role, under the rug and deprive Scheidler of his civil action – both of which violated Article 2, Section 28(12 and 17), supra.

This Court should adopt the holding of *Parham v Johnson* (1998, WD Pa) 7 F Supp 2d 595, when a judge is reversed for an abuse of discretion.

> "Court recuses itself upon remand of inmate's § 1983 action due to court's abuse of discretion ... because court's "impartiality might reasonably be questioned" in future by counsel or party." [RP 420]

Defendants and judge are bound by the same laws and share a fiduciary duty to Scheidler under these law. The have both violate Washington's laws and Scheidler's due process rights by the first dismissal. Under this Court's holding in *McRorie v. Shimoda*, 75 F.2d 780, 786 (9th Cir. Haw. 1986), supra, "due process is violated the moment harm occurs."

For this due process violation, Judge Leighton is included in the WSBA's associations-in-fact and the crimes these defendants commit under the protection they have in their WSBA associates holding decision-making roles in government. [RP 17]. Leighton's first dismissal proves bias.

Scheidler has a right to the fair and speedy administration of justice and the right to a jury and an impartial judge – not a judge who behaves as his colleagues in *abusing* their powers. This Court states in *Castro-Cortez v. INS*, 239 F.3d 1037 (9th Cir. Wash. 2001)

> "The right to an impartial decision maker is a fundamental right which requires due process of law before it is denied. See *Goldberg v. Kelly*, 397 U.S. 254, 271, 25 L. Ed. 2d 287, 90 S. Ct. 1011 (1970). This Court in *Castro-Cortez v. INS*, 239 F.3d 1037, 1049 (9th Cir. Wash. 2001) "A neutral judge is one of the most basic due process protections. *Marincas v. Lewis*, 92 F.3d 195, 204 (3d Cir. 1996). … the use of Asylum Officers rather than IJs to adjudicate asylum applications made by stowaways deprives the applicants of due process. Id. In light of *Marincas*, we have serious doubt whether the use of Immigration Officers to determine whether to reinstate removal orders comports with due process."

WSBA associates cannot be the witnesses, the fact-finder, the judges, the decision-makers when it is their conduct, their tactics, their rules, and the laws that apply to them that are being misused against Scheidler!

B. Judge Leighton's order, dkt 115, does not comply with 28 USC 1652, or rules of statutory construction.

The moment defendants – officials in Washington's governments' – change the words of RCW 84.36.383(5), they CHALLENGE Scheidler, the people, and challenge the extent of their *just powers* derived by the *consent of the governed*. They also Challenge this courts holding in *United States v. Pocklington*, 792 F.3d 1036, 1041 (9th Cir. Cal. 2015) and in *Vahora v. Holder*, 641 F.3d 1038, 1048 (9th Cir. 2011), supra, that prohibits "reading words into" (or deleting words) of a statute; or when interpreting exemptions to a general rule all ambiguities must be resolved in favor of the general policy. In this case - resolved to insure the Article 7, Section 10 rights are granted, as the legislature provided by RCW 84.36.379.

The moment Judge Leighton grants defendants motion to dismiss he has legalized Avery's fraud; Ponzoha's unlawful refusal to file Scheidler's papers and then dismiss a de novo appeal; Carlson's unlawful dismissal of a Supreme Court Appeal owed to Scheidler; and

legalizes the WSBA's extortion schemes involving Ellerby and the $120,000 sanction. All these actions by defendants are contrary to the laws that apply to them as noted in §VII(b) above.

Defendants and judge, by their conduct, their tactics, their rules, their self-claimed immunities, challenge both the people and Scheidler as to Scheidler's "individual rights" and defendants' "just powers". At that moment a cause of action under 42 USC 1983 accrues regardless of "post deprivation state remedies". See *McRorie v. Shimoda*, 795 F.2d 780, 786 (9th Cir. Haw. 1986), supra.

As mandated by 28 USC 1652, which states, *"state law shall rule decisions in Federal Courts"*, this case requires a jury trial, as Washington's Constitution Article 1, Section 21 mandates, to decide governments' *"just powers"* as the words of Article 1, Section 1 clearly state, "*governments derive* ***<u>their just powers</u>*** *from the consent of the governed*".

Defendants' have not cited statutory defenses, only common law defenses. In Washington common law must conform to *the constitution the laws and institutions and conditions of society*, as RCW 4.04.010 expressly states.

By the words used in RCW 4.04.010, supra, and interpreted in light of *Vahora v. Holder*, 641 F.3d 1038, 1048 (9th Cir. 2011), supra,

ONLY the *people* may decide *governments' just powers and common law application* – NOT a public official or judge as it would render irrelevant the words in Article 1, Sec 1, which clearly state, "by the consent of the ***governed***" and improperly place all political power with a judge when it properly resides with the people. Common law defenses must be ascertained by a jury to be consistent with governments' "just powers".

This issue of substantial public importance was raised by Scheidler [RP 391-396] but ignored by defendants and disregarded as "not persuasive" by Leighton, dkt 115 p 16. The Washington Supreme Court contradicts Judge Leighton in *Bravo v. Dolsen Companies* 125 Wn.2d 745 (1995), "When an area of the law involved is in the process of development, courts are reluctant to dismiss an action on the pleadings alone by way of a CR 12(b)(6) motion. *Haberman v. WPPSS*, 109 Wn.2d 107, 120, 744 P.2d 1032, 750 P.2d 254 (1987) (citing 3A Lewis H. Orland, Wash. Prac., Rules Practice § 5152 (3d ed. 1980))."

Judge Leighton's dismissal violates 28 USC 1652 because he doesn't apply state law, nor does his rulings harmonize with broad public policy. Scheidler's case MUST go to a jury trial based in the stated authorities above.

C. Judge Leighton's orders, which violate 28 USC 455 and USC 1652, creates an "institutional conflict of interest" in violation of 28 USC 2072(b).

Judge Leighton judged his own conduct in violation of 28 USC 455 and disregarded Washington State's constitutional and statutory authorities in violation of 28 USC 1652. He does so under the courts self-established rules in violation of 28 USC 2072(b).

This leaves Scheidler case, not with a jury, but with "judges-judging-judges" and them deciding the laws that apply to judges and the rules judges make - a facial violation of the laws that apply to judges. Clearly this "institutional conflict of interest" is designed to render the words – "*All political power is inherent in the people*", irrelevant.

Scheidler argued in dockets 89 [RP 390-413]; 108 [RP 429-452]; 110 {RP 453-461]; 110-1 [RP 462-496]; and 111 [RP 497-499], there is a "quid pro quo" relationship between citizens and the government citizens created. The act of increasing or decreasing power on one side of this constitutional relationship has an opposite effect on the other side of this constitutional relationship. This is illustrated by Scheidler in dkt 58-1 [RP 74] and can be expressed as an equilibrium relationship.

Citizens ↔ Government (aka. WSBA)

Judge Leighton, by his order of dismissals under his claimed FRCP 12(b)(6) powers, in breach of 28 USC 455 and 28 USC 1652, has reformulated the citizen-government constitutional relationship to mean the following.

WSBA and WSBA Judges > citizens

This "reformulating" a constitutional relationship, under court rule schemes orchestrated by WSBA associates in decision-making positions violates 28 USC 2072(b). Furthermore it *validates* Scheidler's argument – illustrated by dkt 58-1 [RP 75]-- that the WSBA, a state agency, has commandeered Washington State's governments under their *monopoly powers and self-granted immunities* – **a privilege no citizen has**. This violates Article 1, Sections 8 and 12 – the prohibition in granting privileges and immunities.

WSBA associates act in an unconstitutional manner by legalizing and limiting civil and criminal actions taken against *officials* whose acts are unauthorized and invalid, such as the Avery, Ponzoha, WSBA, and Carlson frauds discussed above.

"Only where there is direct collision between federal rule and state law is court required to determine whether federal rule is within scope of 28 USCS § 2072. *Johansen v E. I. Du Pont de Nemours & Co*. (1985, ED Tex) 627 F Supp 968, affd in part and vacated in part,

remanded (1987, CA5 Tex) 810 F2d 1377, 7 FR Serv 3d 1468, 3 UCCRS2d 142, 100 ALR Fed 871, cert den (1987) 484 US 849, 98 L Ed 2d 104, 108 S Ct 148."

D. Judge Leighton alters RCW 84.36.383(5) without any rationale or authority to modify a statute, nor the rules of statutory construction?

There are three versions of RCW 84.36.383(5), which include the statute as passed by the legislature; the altered version of the statute published by James Avery in his Application, see Dkt 58-3 [RP 111-116]; and the DOR's altered version of the statute, with its *false narrative* disseminated to Assessors noted by Dkt 58-4 [RP 117 – 118]. These three versions create an issue of fact and a basis for a lawsuit as the 9th Circuit's Reversal makes clear!

The pertinent language of RCW 84.36.383(5), passed by the legislature, being misstated by Avery, the DOR and Judge Leighton is bolded and underlined:

"(5) "Disposable income" means adjusted gross income as defined in the federal internal revenue code, as amended prior to January 1, 1989, or such subsequent date as the director may provide by rule consistent with the purpose of this section**, plus all of the following items to the extent they are not included in or have been deducted from adjusted gross income:**

(a) Capital gains, other than gain excluded from income under section 121 of the federal internal revenue code to the extent it is reinvested in a new principal residence;

(b) Amounts deducted for loss;

(c) Amounts deducted for depreciation;

(d) Pension and annuity receipts;
(e) Military pay and benefits other than attendant-care and medical-aid payments;
(f) Veterans benefits, other than: …"

Defendants' version published in James Avery's application for Retired/Disabled citizens, dkt 58-3, page 3, first paragraph [RP 114] is bolded and underlined:

"RCW 84.36.383 describes how to calculate combined disposable income. All income for the applicant, his/her spouse, and any co-tenants must be reported. Co-tenant means a person who resides with the claimant and who jointly owns the residence. If you file a tax return with the IRS **and [if] your return *included any deductions for the following items or if any of these items were not included in your adjusted gross income*, they must be reported on your application for purposes of this exemption program:**
• Capital gains (*cannot offset with losses*)
• Dividends
• Interest on state and municipal bonds
(non-taxable interest)
• Social Security benefits
• Pensions & annuity receipts …"

And lastly, the DOR's version of RCW 84.36.383(5) as disseminated to assessors, dkt 58-4, fifth paragraph [RP 118]. The offending language is bolded and underlined.

"Disposable income" means adjusted gross income as defined in the federal internal revenue code **plus all of the following items to the extent they were *included in or excluded from* adjusted gross income:**
(a) Capital gains, other than gain excluded from income under section 121 of the federal internal revenue code to the extent it is reinvested in a new principal residence;
(b) Amounts deducted for loss;
(c) Amounts deducted for depreciation;

(d) Pension and annuity receipts;
(e) Military pay and benefits other than attendant-care and medical-aid payments; …"

Judge Leighton claims, Dkt 115, pp 28 and 30, respectively

"In simple terms, a taxpayer's "disposable income" is: his AGI, plus certain kinds of "income" not already included in the AGI, *plus certain deductions* <u>*which were included in the AGI*</u>, minus a limited class of expense" … "The Kitsap County form correctly instructs that if certain income was excluded from the AGI calculation, or <u>*if various deductions were included in it*</u>, then those amounts "must be reported on your application for purposes of this exemption program."

Judge Leighton's version of the law, RCW 84.36.383(5), stating,

> *"if certain deductions which were include in the AGI … if various deductions were included in it (AGI)",*

re-arranges words and omits words of this law. The statue states, *"(if) deducted* <u>***FROM***</u> *Adjusted Gross Income*" and "*to the extent* <u>***NOT***</u> *included in AGI*". Judge Leighton does NOT quote the law, he invents new law by substituting and rearranging words of the statute.

Judge Leighton notes Avery's computation of Scheidler's disposable income. Dtk 115, page 4.

> "Scheidler's "Total Combined Disposable Income Less Allowable Deductions" was $112,457. [Dkt. #1-2 at 39] For 2007, it was $75,190; for 2008, $51,495; and for 2009, $23,539. [See Dkt. #1-2 at 41, 43, and 45]"

These amounts are disputed by Scheidler as amounts calculated upon defendants re-wording of the law and not the law itself.

Scheidler's calculations of disposable income[11], which Leighton notes at dkt 115, pg 3 are: "$27,000; $-136,045; $28,703; and $21,300."

The *differences* between Avery and Scheidler are huge: $85,294; $211,045; $22,792; $2,239. Neither judge nor defendants analyze these differences or the various versions of the law being published and how changing words clearly affect the calculation these words refer. Scheidler's written analysis of defendants re-wording of the law, which is the ONLY analysis by a party in the record, dkt 58-5 [RP 120-121, see also record #13-35119, SER 271, 277-281] must be accepted as true under the holding of *Epstein v. Washington Energy Co*., 83 F.3d 1136 (9th Cir. Wash. 1996), supra..

Then Avery requires Scheidler sign Avery's values certifying that they are true when they are not true. dkt 58-5, supra.

The statutes, RCW 84.36.380-389, are "exceptions" to the general provision of Article 7, sec 10 granted by the legislature in RCW 84.36.379.

"the Supreme Court's instruction that when "construing provisions . . . in which a general statement of policy is qualified by an exception, [we] read the [*1049] exception narrowly in order to preserve the primary operation of the provision." [**30] Knight v. Comm'r, 552 U.S. 181, 190, 128 S. Ct. 782, 169 L. Ed. 2d 652 (2008) (omission in original) (quoting Comm'r v. Clark, 489 U.S. 726, 739, 109 S. Ct. 1455,

[11] The threshold limit is $30,000/yr in disposable income.

103 L. Ed. 2d 753 (1989)) (internal quotation mark omitted).” *Vahora v. Holder*, 641 F.3d 1038, 1048 (9th Cir. 2011), dissent, Chief Judge Alex Kozinski.

“Because this is a scheme whereby a default rule is subject to an exception, we are guided by the interpretive principle that exceptions to a general proposition should be construed narrowly. See *Comm'r of Internal Revenue v. Clark*, 489 U.S. 726, 739, 109 S. Ct. 1455, 103 L. Ed. 2d 753 (1989) ("In construing [statutes] in which a general statement of policy is qualified by an exception, we usually read the exception narrowly in order to preserve the primary operation of the provision."); *City of New York v. Beretta U.S.A. Corp*., 524 F.3d 384, 403 (2d Cir. 2008) (following the "interpretive principle that statutory exceptions are to be construed narrowly in order to preserve the primary operation of the [general provision]" (quoting Nussle v. Willette, 224 F.3d 95, 99 (2d Cir. 2000)) (internal quotation marks omitted)); see also United States v. Fort, 472 F.3d 1106, 1123 (9th Cir. 2007) (Fletcher, J., dissenting) ("[An] exception must be construed 'narrowly in order to preserve the primary operation of the provision.'" (quoting Clark, 489 U.S. at 739)); [**26] 2A Norman J. Singer, Statutes and Statutory Construction § 47:11, at 246-47 (6th ed. 2000) ("Subsidiary clauses which limit the generality of a rule are narrowly construed, as they are considered exceptions."); cf. Singer, supra, § 47:11, at 250-51 ("[W]here a general provision in a statute has certain limited exceptions, all doubts should be resolved in favor of the general provision rather than the exceptions."). *First Nat’l Bank v. Woods* (In re Woods), 743 F.3d 689 (10th Cir. 2014)

These three versions of RCW 84.36.383(5) and the manner in which they are utilized against citizens Article 7, Section 10 rights presents an issue of first impression of constitutional magnitude.

Scheidler was denied his rights to present oral argument, to present expert testimony or cross-examine defendants and witnesses – which are basic due process prerequisites established by *Goldberg v Kelly,* 397 U.S. 254 (1970). “the recipient must be provided ... an

effective opportunity to defend *by confronting adverse witnesses* and by presenting his own arguments and *evidence orally before the decisionmaker*. Pp. 397 U. S. 266-270."

Defendants' and Judge Leighton create "new law" and deny basic due process. In doing these things they have exceeded their authority and violated this Courts holding in *United States v. Pocklington*, 792 F.3d 1036, 1041 (9th Cir. Cal. 2015), which prohibits adding words (or deleting words) of a statute. Furthermore, Article 2, Section 28(12), supra, states "the unauthorized or invalid act of any officer" SHALL NEVER BE LEGALIZED. Adding words to a statute is an "invalid act" and cannot be legalized. Also, *Vahora v. Holder*, 641 F.3d 1038, 1048 (9th Cir. 2011), interpretation of laws must not contradict a general policy.

E. **Judge Leighton's order does not comply with the mandate issued by the 9th Circuit Court.**

The principle of *stare decisis* would seem to preclude a second FRCP 12(b)(6) dismissal for the same reasons, by the same judge, by the same arguments by defendants, that "no set of facts can be pleaded by plaintiff" as defendants are "privileged from suit" and the court "lacks jurisdiction." Those claims were clearly rejected by the panel of the 9th Circuit in appeal #13-35119. ***Hence defendants are not***

privileged from suit. Scheidler has standing. There are facts supporting state and federal causes of action. And jurisdiction lies with the District Court under 28 USC 1367. (Emphasis)

This Court stated in *Kohler v. Presidio Int'l, Inc.*, 782 F.3d 1064, 1070 (9th Cir. Cal. 2015), "We will not overrule the decision of a prior panel of our court absent an en banc proceeding, or a demonstrable change in the underlying law. See *In re Watts*, 298 F.3d 1077, 1083—84 (9th Cir. 2002) (O'Scannlain, J., concurring)"

F. **The WSBA is an unconstitutional entity and operates in an unconstitutional and unlawful way; Scheidler has standing to sue.**

The WSBA Act, created by legislation in 1933, states:

> RCW 2.48.010 Objects and powers. *There is hereby created as an agency of the state,* for the purpose and with the powers hereinafter set forth, an association to be known as the Washington State Bar Association, hereinafter designated as the state bar, which association shall have a common seal *and may sue and be sued,* and which may, *for the purpose of carrying into effect and promoting the objects of said association*, enter into contracts and acquire, hold, encumber and dispose of such real and personal property as is necessary thereto.

When the WSBA was created it swallowed ARTICLE 4, SECTION 17 ELIGIBILITY OF JUDGES, which states,

> "No person shall be eligible to the office of judge of the supreme court, or judge of a superior court, *unless he shall have been admitted to practice in the courts of record of this state, or of the Territory of Washington*."

The WSBA Act has effectively changed Art 4, Sec 17 to say,

> "No person shall be eligible to the office of judge of the supreme court, or judge of a superior court, *unless he is an associate of the WSBA*."

The WSBA Act is unconstitutional in that it limits choices for judges to only WSBA associates who have their *own objectives* in play.

The WSBA was never envisioned by those who drafted Art 4, Sec 17. In fact the delegates where highly fearful of "monopolies"[12, 13] as being responsible for government corruption.

Furthermore the WSBA's Sherman anti-trust activities limits choices for judges by disbarring those associates that take cases adverse to the WSBA's *objectives* - as the cases noted in RICO statement show [Dkt 68-1] - re the Block, Marshall, Scannell and Pope disbarment cases!

---

[12] "Monopolies and trusts are contrary to the best interest of free governments, and shall never be allowed in this state,…" *THE JOURNAL OF THE WASHINGTON STATE CONSTITUTIONAL CONVENTION 1889, pp 263 and passim. http://lib.law.washington.edu/waconst/Sources/Rosenow.pdf*

[13] See Article 12, Sec 22, "Monopolies and trusts ***shall never be allowed in this state***, ***and no*** incorporated company, copartnership, or ***association of persons*** in this state shall directly or indirectly combine or make any contract with any other incorporated company,

1. Scheidler has statutory and common law standing to sue the WSBA and its associates. See RCW 9.01.120[14]

The WSBA delegated to Scheidler the task of obtaining a "*judicial finding of impropriety*" for which he was then sanctioned $120,000 by WSBA, Kevin Hull. Scheidler has a right to challenge the 'unjust powers' of these WSBA associates that enables them to take his property without his due process right to a jury. These are "just powers and right to jury" issues under Article 1, Secs 1 and 21, supra.

i. Statutory authority to sue the WSBA.

The WSBA Act, RCW 2.48, supra, specifically states the WSBA "*may sue and be sued,* and which may, for *the purpose of carrying into effect and promoting the objects of said association,* enter into contracts and acquire, hold, encumber and dispose of such real and personal property as is necessary thereto.

Under 1 USC 1, in any Act of Congress, the word "person" includes … *associations*. The WSBA, an *association,* is a person authorized to hold property as noted by RCW 2.48.010 above and can

---

[14] RCW 9.01.120 Civil remedies preserved. The omission to specify or affirm in this act any liability to any damages, penalty, forfeiture or other remedy, imposed by law, and allowed to be recovered or enforced in any civil action or proceeding, for any act or omission declared punishable herein, shall not affect any right to recover or enforce the same.

be sued under 18 USC Ch. 96 and under 15 USC §15. It is NOT IMMUNE.

ii. Common law authority to sue the WSBA.

The WSBA is managed by "WSBA associates" *'to carry into effect and promote its objectives*. Id. RCW 2.48.010. The WSBA's *objective* is to commandeer the judicial branch by controlling the market-place for attorneys and judges. And its *objective* is implemented by having its members in key government decision-making positions who act beyond their authority as noted above.

The WSBA is subject to suit for the same reasons described by US Supreme Court in *N.C. State Bd. of Dental Exam'rs v. FTC*, 135 S. Ct. 1101 (U.S. 2015), see dkt 86 [RP 413-418]

"The Sherman Act, 26 Stat. 209, … empowers the States and provides their citizens with opportunities to pursue their own and *the public's welfare*. See *FTC v. Ticor Title Ins. Co.*, 504 U. S. 621, 632 (1992) … See *Parker*, supra, at 351 ("[A] state does not give immunity to those who violate the Sherman Act by authorizing them to violate it, or by declaring that their action is lawful")…State agencies are not simply by their governmental character sovereign actors for purposes of state-action immunity. See *Goldfarb v. Virginia State Bar*, 421 U. S. 773, 791 (1975) ("The fact that the State Bar is a state agency for some limited purposes does not create an antitrust shield that allows it to foster anticompetitive practices for the benefit of its members"). Immunity for state agencies, therefore, requires more than a mere facade of state involvement, for it is necessary in light of Parker's rationale to ensure the States accept political accountability for anticompetitive conduct they permit and control. See *Ticor*, 504 U. S., at 636."

The WSBA and its associates are subject to suit under 42 USC 1983, 15 U.S. Code §15 and 18 USC Ch. 96, §1964.

2. The WSBA is unconstitutional and creates an "institutional conflict of interest".

Employees, officers, and judges of the WSBA who as WSBA associates "*carry into effect and promote its objectives*"[15], have the WSBA's *objective*s as their purpose – NOT Scheidler's or the people's well-being. Scheidler raised this conflict issue in his pleadings and in motions to disqualify. [RP 35, 48-50, 70]. It was ignored by defendants and dismissed by judge.

This court in *Ellins v. City of Sierra Madre*, 2013 U.S. App. LEXIS 19645 (9th Cir. Cal. Mar. 22, 2013), states "Given the *inherent institutional conflict of interest* between an *employer and its employees' union*…" there was a collision with constitutional freedoms in that case. Here too there is an equivalent collision between Scheidler's rights v the claimed powers of WSBA associates who employ their rules, their tactics, regardless of the laws that apply to WSBA associates, so as to '*carry into effect and promote its (WSBA's)*

[15] Id, RCW 2.48.010, supra.

objectives' – NOT for SCHEIDLER's protections. Nor have defendants ever argued that their conduct protected Scheidler's rights.

This "institutional conflict" is also an implied premise in *In RE Consolidated Cases* 123 Wn.2d 530 and *Elec. Contractors Ass'n v. Riveland* 138 Wn.2d 9, 11 "we do not defer to an agency the power to determine the scope of its own authority" and "An administrative agency may not determine the scope of its own authority"; and in *Wash. State Labor Council v. Reed* 149 Wn.2d 48 (Apr. 2003) "To permit branches to measure their own authority would quickly subvert the principle that state governments, while governments of general powers, must govern by the consent of the people as expressed by the constitution".

WSBA associates are disqualified to sit as judge under RCW 2.28.030 and 28 USC 455, and Id., *Elec. Contractors Ass'n* and *Reed*, in any of Scheidler's cases involving the WSBA and the conduct of its associates.

3. Defendants have NO immunities nor case law defenses.

Defendants argue their conduct, rulings, opinions, orders, etc., are NOT REVIEWABLE – they claim they are 'privileged and immune' from citizen oversight.

Notwithstanding Defendants' claims collide with the Constitutional provisions and laws discussed above - "it is doubtless true that fraud vitiates everything tainted by it, even to the most solemn *determinations of courts of justice*," *Batey v. Batey* 35 Wn.2d 791, 799 (1950). At the center of this case is a "fraud", the FRAUD upon retired/disabled citizens by defendants, and it has touched everything and every defendant is involved in protecting that FRAUD.

Therefore there are NO prior "*determinations of courts of justice*" that escape vitiation for FRAUD under the holding in *Batey v Batey*. Every prior case, as discussed above, is tainted by the aiding and abetting in the assessor's FRAUD with subsequent FRAUDS upon the Court.

The WSBA's modus operandi uses the courts to commit crimes under unconstitutional grants of privileges and immunities and by denying jury trials. Every case Scheidler filed was decided unlawfully and is a *'fraud upon the court'* and therefore VOID!

IX. A SHORT CONCLUSION STATING THE PRECISE RELIEF SOUGHT; AND

Judge Leighton resolves all matters of fact, statutes, constitutional provisions and common law to serve his and his WSBA colleagues self-interests, not in furtherance of the constitutional

policies of Washington. This runs contrary to this Court's holding in both *Libas Ltd. v. Carillo*, 329 F.3d 1128, 1130 (9th Cir. Cal. 2003), supra, and in *Vahora v. Holder*, 641 F.3d 1038, 1048 (9th Cir. 2011), supra.

Judge Leighton's grant of immunity – either directly or indirectly by limiting civil or criminal actions, or by ignoring issues of substantial public importance, or in legalizing the unauthorized or invalid act of any officer, or by denying a jury trial, is granted NOT BY LAW but by the WSBA's unconstitutional monopoly powers they unlawfully exert over citizens CONTRARY to the authorities noted above.

Scheidler demands the following relief:

1) Reverse Judge Leighton's orders dkt 115; and

2) Remand for a *jury* trial to decide the extent of defendants' *just powers*.

X. CERTIFICATE OF COMPLIANCE, IF REQUIRED BY RULE 32(A)(7).

I, William Scheidler, certify that this Informal Brief is of an expanded font of 14 point Times New Roman and contains less than 14,000 words.