17-35202

---

UNITED STATES COURT OF APPEALS FOR THE NINTH FEDERAL CIRCUIT

---

William Scheidler,
Plaintiff/Appellant

v

State of Washington, and Kevin Hull, individually and in any official capacity; Jesse Young, individually and in any official capacity; Michelle Caldier, individually and in any official capacity; Jan Angel, individually and in any official capacity; and
Jane and John Does, 1-100.
Defendants/Appellees

---

APPEAL FROM THE FEDERAL DISTRICT COURT, TACOMA, WA
CASE 3:16-cv-06016-BHS

---

# BRIEF OF APPELLANT WILLIAM SCHEIDLER

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

CONTENTS

CASES

STATUTES

RULES



CONSTITUTIONAL PROVISIONS

## I. Statement of Jurisdiction

The District Court, improperly, assumed jurisdiction under 28 USC 1367 when Appellee (Hull) removed Appellant's state case to federal court under 28 USC 1441(a) and (c). Appellees State, Young, Caldier, Angel (State Appellees) did not "join in or consent" to Hull's removal as the law requires.

Appellate review of the following rulings is proper under 28 USC 1291, 28 USC 1294 and 28 USC 2106: Judge Benjamin Settle's, WSBA #4771, [28] order granting [8] Motion to Dismiss; denying [17] Motion for Default Judgment, Recusal, and to Strike; denying [38] reconsideration of Chief Deputy's [35] award of costs.

## II. Standard of review

### A. **Issues of Law are involved and reviewed de novo.**

Appellant, and in fact the People of Washington State, were *abridged* of their *nonabridgable* constitutional right of petition and assemblage by the denial of their *inviolate constitutional jury trial*; denied a disinterested judge; denied due process rights to the protections of state laws; denied due process right to challenge Appellees' conduct as unconstitutional and unjust in violation of Article 1, sec 1; and denied the due process right to have the *evidence*

*viewed in a light most favorable to Appellant's case*. Appellant's case was dismissed by Judge Settle, a disqualified judge, on the pleadings alone, under his claimed court rule authority solely for the benefit of Judge Settle's colleagues of the Bar and his colleagues in government office. Judge Settle ***altered*** every constitutional provision and ***redefined*** the role of government so this case is improperly left to judges-judging-judges under the rules made by judges.

Under this unlawful scheme judges determine for themselves the power they have, which violates 28 USC 455 and 28 USC 2072, and renders Washington's constitution and laws meaningless.

Appellant never waived his "inviolate right to a jury trial". It is by a "jury" through which the people exercise their plenary power over government they created. A jury is not available in an appellate court and this case must be remanded *to a jury* for trial.

"Questions of law are reviewed under the non-deferential, de novo standard. See, e.g., *United States v. One Twin Engine Beech Airplane*, 533 F.2d 1106, 1108 (9th Cir.1976); *Lundgren v. Freeman*, 307 F.2d 104, 115 (9th Cir.1962) … conclusions of law are subject to plenary or de novo review". *United States v. McConney* 728 F. 2d 1195 (1984).

B. **Dismissal under court rules is reviewed de novo.**

"Dismissal of a claim under CR 12(b)(6) is reviewed de novo. *Reid v. Pierce County*, 136 Wn.2d 195, 200-01, 961 P.2d 333 (1998). "Under CR 12(b)(6) a plaintiff states a claim on which relief can be granted if it is possible that facts could be established that would support relief." *McCurry v. Chevy Chase Bank, FSB*, 169 Wn.2d 96, 101, 233 P.3d 861 (2010). *Kumar v. Gate Gourmet, Inc*., 180 Wn.2d 481 (2014); "Dismissal is appropriate only if the complaint alleges no facts that would justify recovery. Id. The plaintiff's allegations are presumed to be true, ***and all reasonable inferences are drawn in the plaintiff's favor.*** Id. at 201." *Gorman v. City of Woodinville*, 175 Wn.2d 68 (2012); "When a district court dismisses a claim pursuant to a Rule 12(b)(6) motion, "we evaluate the complaint de novo to decide whether it states a claim upon which relief could be granted." *Gonzalez v. Metropolitan Transp. Auth*., 174 F.3d 1016, 1018 (9th Cir.1999). All factual allegations set forth in the complaint "are taken as true and construed in the light most favorable to [p]laintiffs." *Epstein v. Washington Energy Co*., 83 F.3d 1136, 1140 (9th Cir.1996).

A *de novo* review is conducted of the full record in accordance with the 10th amendment to the US Constitution; 28 USC 2072(b); 28

USC 1652; 28 USC 455. These federal laws lead to the controlling law in this case, RCW 4.04.010, which mandates the *common law must pass a 6 part test* to apply. The common law, *by law*, must be consistent with the United States (1) Constitution and (2) laws; Washington's (3) constitution and (4) laws; Washington's (5) institutions; and it must be consistent with (6) the conditions of society in Washington State. Otherwise the common law is *inapplicable, irrelevant, and impermissible*!

Furthermore, if a lawyer tries to pass off common law doctrines that do not meet the 6 part test, then that lawyer violates Washington laws, RCW 2.48.180 through RCW 2.48.230, and constitutes a crime under, but not only, RCW 42.20.080 and RCW 9A.80.010.

## III. Issues for Review.

A. Appellant was delegated a judicial task by a judicial regulatory agency - the Washington State Bar [WSBA]. Hull's retaliation is unlawful. State Defendants aid and abet in Hull's criminal conduct.

B. Judge Settle's orders, [dkts 28 and 38], are arbitrary.

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

D. Judge Settle's orders do not comply with 28 USC 1652.

E. Judge Settle's orders, which violate 28 USC 455 and 28 USC 1652, create an *institutional conflict of interest* in there resolution in violation of 28 USC 455 and 28 USC 2072 (b).

F. Judge Settle's order [dkt 28] violates 28 USC 2403(b) and FRCP 5.1(d).

## IV. Statement of the case; course of proceedings; and the disposition below

### A. Introduction

In the case at bar, judicial branch officials, a.k.a., Bar associates or 'officers of the court', i.e., Appellee Hull, caused Appellant's damages by violating numerous laws that apply to Bar associates. In a soup-to-nuts scheme – i.e., the Bar's customs, policies, practices and rules -- Bar Associates claim a unique privilege in being the cause of the damages, then acting as prosecutor, judge and jury concerning the controversy and damages they caused. This scheme, that only Bar associates can orchestrate, relies upon the perpetual violation of the laws and ethical obligations imposed upon 'officers of the court' as a way to circumvent constitutional and due process rights. No other person, corporation or association has the privilege in decide their own conduct and powers.

State Appellees are complicit in this unlawful scheme by **unconstitutionally and willfully** turning a blind eye to these unauthorized and invalid acts by judicial officials when they are

compelled by law to act in defense of Washington's constitution and laws, and obligated to protect Appellant's rights. Appellees, through their unique privileges are seeking to undermine Washington's laws so as to escape their misconduct. [CP 3-10]

Appellant submits the WSBA, the epicenter of government corruption, was created in violation of Article 2, section 28(6) and Article 12, section 22. The WSBA is an unconstitutional monopoly association to which lawyers must belong, and from which judges are selected. It is a private entity, a labor organization, an exclusive club, a chameleon entity that is whatever it claims it is to justify whatever it wants to justify. Bar associates unlawfully hold decision-making offices throughout all branches of government. This defeats the separation and independence in having three-branches of government as a 'check and balance' on each other. [CP 22-26]

Citizens of Washington are held hostage to the Bar's monopoly powers and by Bar associates holding decision-making offices. The Bar's monopoly creates a government that is "unaccountable" because it is self-regulated in being the decision-maker in all disputes. [CP 21-31] This monopoly in decision-making provides the means, motive and opportunity to exclude the People and prevent the People their plenary

powers[1], as a jury would provide[2]. Then the path is cleared for Bar associates to form associations-in-fact to obtain any outcome the association-in-fact desires. [See CP 30 @ 122-131] This self-regulation imbued to the Bar to decide their own powers is a 'privilege' no other entity, corporation, association or person enjoys. Such 'special privileges' are prohibited under Article 1, secs 8, 12, and 28 and Article 2, Sec 28(6 and 12) of the State Constitution, which provides in relevant part: 'privileges and immunities are prohibited'; 'corporate privileges' are prohibited and 'unauthorized or invalid acts by any official,' such as denying a jury trial, *must not be legalized*. (emphasis added) [CP 3 et. seq. to end]

This Court recognizes in "*United States v. Milovanovic*, 678 F.3d 713, 724 (9th Cir. Wash. 2012), "...maybe it is the federal government's business, because corruption may not be curable within the very governments that are corrupt." Appellant submits, this case is such a case in which demonstrates a corrupt state government.

B. **Case Summary**

[1] See Washington's Article 1, Sec 1.
[2] See Washington's Article 1, Sec 21.

Appellant hired Scott Ellerby, WSBA #16277, to represent him in his case against the Kitsap County Assessor, who was defrauding retired/disabled citizens. [CP 11-12, 139-141; Notice too, appeal #15-35945]

Ellerby represented Appellant for 6 months. Three days before trial, Ellerby submitted a memorandum of law that outlined the Assessor's unlawful conduct and the fraud. [CP 12]. Upon receipt of Ellerby's memorandum, Cassandra Noble, WSBA#12390, ("Noble") Kitsap County's prosecutor representing the Assessor, immediately threated Ellerby with losing his law license if he didn't withdraw from representing Appellant. Ellerby withdrew on the very evening of trial citing Noble's unlawful demand. [CP 12-14, Ex 1-3 @ CP 62-68]

This unlawful government action by Bar associate Noble created two problems for Appellant – (1) he lost his lawyer; and (2) the assessor's unlawful conduct still needed to be addressed but no lawyer would now take the case. [CP 26 @ §IX]. Appellant *was forced* to proceed *pro se*.

**1. The WSBA's scheme to defraud Appellant of $130,000**

Coincident with Appellant's claims against the assessor, Appellant filed a Bar grievance demanding Ellerby refund the money

he was paid to represent him. [CP 14] This Bar Grievance, #08-01646, was dismissed by Assistant Attorney General Zachary Mosner, WSBA #9566. However, the Bar's Disciplinary Board added a caveat to Mosner's dismissal that delegated back to Appellant the task of obtaining a "judicial finding of impropriety" in order to re-open the Bar grievance. [CP 14-16, Ex 11 @ CP 93-94]

The assessors case, #15-35945, along with this case concerning the Bar delegated 'judicial finding of impropriety', continues the pattern of racketeering involving the Bar and its associates in state decision-making roles.

Appellant, in pursuit of the delegated "judicial finding of impropriety," argued the facts to Kitsap County Judge Russell Hartman, WSBA #7104. This consumed nearly 7 years of Appellant's life because of the tactics of Ellerby's lawyers. Ellerby, through his counsel, Jeffrey Downer, WSBA #12625, deposed multiple individuals and subpoenaed medical records whether discoverable or not, [CP 78-84], which Hartman allowed. These tactics were intended to harass and increase the cost of litigation. [CP 16, Ex 8 @ CP 78-92]

Judge Hartman, despite a jury demand, [CP 15], under his claimed court rule authority, ruled in Ellerby's favor and imposed over

$130,000 in sanctions against Appellant.[CP 16] Hartman absued his discretion by ignoring the evidence and depositions that support Appellant's claims, including: Ellerby's Notice of Withdrawal citing the threat to Ellerby's Bar license by the Kitsap prosecutor, Noble; the letters to Appellant from Ellerby describing Noble's threat demanding his withdrawal; and the declarations of Ellerby in which he blamed Appellant for his withdrawal, not Noble. [CP 10-17, Ex @ CP 62-86, 93-94]. It was all a scheme concocted by Bar associates, involving Bar associates, and decided by Bar associates for the purpose of defeating justice, increasing costs, and protecting Bar associates who are part of the Bar's protection racket - the enterprise. [CP 3-231].

### 2. Appellee Hull's role in the WSBA scheme

Appellant appealed Hartman's rulings to Division II Court of Appeals [COA II]. During the 2-years in appeal, Judge Hartman prematurely retired. [CP 17-18] The COA II remanded the case back to Kitsap Superior Court - ruling Judge Hartman "abused his discretion". Appellant argued to a successor judge, Kevin Hull, WSBA #23994, for a new jury trial[3] and that Hull was disqualified under law,

[3] Public information. Case #09-2-00660-3 [Scheidler v Ellerby], dkt 21, filed 7-30-2009, Jury demand 12 person, $250.00.

RCW 2.28.030, from making any substantive rulings as he never sat as judge at any time during the case[4]. [CP 18-22]

Appellant further argued the case law of *Dann* precludes sanctions. [CP17, 21, 145-146, passim] (Appellant raised the law of *Dann* in his first State appeal but the appellate court did not addressed it. In the second appeal the clerk refused to file the brief. *Res Judicata,* even if it is a valid defense in Washington, which it is not, cannot be claimed.) According to *Dann,* it is the Bar associate, Ellerby, who bares the full consequences of his misrepresentations. [CP 17]. The entire "judicial finding of impropriety" the Bar delegated to Appellant was a consequence of Ellerby's misrepresentations. [Ex 1-7 @ CP 62-77] Hull, as Bar associates generally do, disregarded the laws that apply to judges by wrongfully (1) denying Appellant's new trial; (2) refusing to disqualify; (3) ignoring the law of *Dann*; and (4) re-imposed an unlawful $119,373.45 judgment against Appellant, to be paid to Ellerby! [CP 21]

---

https://dw.courts.wa.gov/index.cfm?fa=home.casesummary&crt_itl_nu=S18&casenumber=09-2-00660-3&searchtype=sName&token=7EDCDE8CCECDBDBD71B671F8AFD4CD1B&dt=7C01DFFA44CDBFDBA459BE5A07054969&courtClassCode=S&casekey=88690536&courtname=KITSAP%20SUPERIOR

[4] Ibid, at docket entry 235 et seq.

### 3. Actual damages

On January 16, 2015, Judge Hull entered his final "unlawful order" to strip Appellant of his property, $119,373.45, for the benefit of Ellerby despite Appellant's effort in securing a 'judicial finding of impropriety' required by the Bar. It was on that date, January 16, 2015 "actual harm occurred" and the statute of limitations begins to run. [CP 141, 227-228]

Evidence of Ellerby's perjury and lies was sanitized by Bar associates who serve as judges by leaving out of their opinions and orders any mention of the facts supported by exhibits filed in the case.

Appellant filed a *direct appeal* to the State Court of Appeals concerning Hull's retaliatory order that violated RCW 2.28.030 and the law of *Dann*[5]. However, the clerk for the COA refused to file Appellant's opening brief and then dismissed the appeal[6]. (*Res Judicata* cannot be claimed as the 'merits' of Appellant's appeal were never addressed due to the obstruction by the clerk.) Hull's conduct was

---

[5] Ibid, docket entry 282.

[6] Public information, case #454351, notation on 03-17-14 Appellants brief Not filed https://dw.courts.wa.gov/index.cfm?fa=home.casesummary&casenumber=454351&searchtype=aName&crt_itl_nu=form.CRT_ITL_NU&filingDate=2013-10-02%2000:00:00.0&courtClassCode=A&casekey=167050484&courtname=COA,%20Division%20II

sanitized by the clerk; and Appellant's due process right of appeal was denied.

Appellant appealed the clerk's dismissal but that appeal was dismissed by both the COA judges, and then dismissed by the clerk of the Washington Supreme Court. Appellant's direct appeals concerning Hull's unlawful orders was obstructed by judicial officials at every level; the merits have never been addressed. Note: the issue concerning clerks refusing to file papers and then dismissing appeals for not filing papers is also before this Court in #15-35945 as part of the pattern of racketeering activities by officers of the court. [CP 17-18]

These *multiple controversies* created by Bar associates and judicial officials have no 'impartial forum' to challenge their misconduct. They insulated themselves from accountability by holding decision-making roles throughout Washington's government. In other words, they have insured that their conduct is decided by one of their own. It is a scheme that violates the laws prohibiting conflict of interest and circumvents Washington's constitution.

### 4. State Appellees' aid and abet in Hull's role to defraud Appellant.

Appellant, in face-to-face meetings with his state legislators, Appellees Angel, Caldier and Young, and through emails, mailed documents, and phone conversations from 2014 through 2015, discussed this Bar scheme, and the unjust outcomes the Bar achieves by their schemes. [CP 9-12, 35-42, 44-60]. In fact, Young's campaign for state representative was, in part, a commentary on Washington's corrupt Supreme Court and their *McCleary* decision. Appellant, to aid Young in taking the proper action, drafted a *joint resolution* that addressed Hull's misconduct per WA Constitution Article 4, Sec 9, which Young agreed to submit to the legislature per Article 4, sec 9. [CP 113-121] But Young, after being re-elected, reneged in his promises and failed in his constitutional duty to pursue the matter. Angel simply ignored all Appellant provided – including a copy of the draft joint resolution. Caldier, also in receipt the information and draft joint resolution, claimed, under the advice of her lawyer, David Horton, WSBA #27123, it wasn't her responsibility to address judicial misconduct despite the duty and authority granted to legislators by Washington's constitution, Art 1, sec 1, and Art 4, sec 9, Article 5, etc. [CP 36-41]

## C. **Procedural History**

Appellant filed this lawsuit on November 18, 2016 in State Superior Court, #16-2-02139, as a *collateral attack* to address this soup-to-nuts Bar scheme that deprived Appellant of his lawyer and then punishes him for seeking a "judicial finding of impropriety" delegated to Appellant by the Bar. [CP 3-43]

In said complaint, Appellant demanded a jury, which is an *inviolate* right under Washington's constitution, Article 1, Sec 21 and further required by statute to address issues of fact, including Hull's jurisdiction to enter any order in Appellant's case, as RCW 4.40.060 and RCW 4.36.070 state respectively. Also the jury must decide Appellant's immunity under *Dann* and RCW 4.24. [CP 6, 10, 19, 122, 142, 183]. Appellant's complaint included an objection to having a Bar associate serve as judge – for obvious reasons – they are key players in the Bar's schemes. Having Bar associates occupy government decision-making roles is the means for their protections. [CP 3-6, 130, 136, 181]

Appellant claims in his complaint that the Bar's delegated task that required him to obtain a "judicial finding of impropriety" as a precondition to having a Bar grievance addressed was part of an

"unjust, unlawful" scheme. It is a scheme by which the Bar uses the courts and their associates who serve as judges, improperly, at taxpayer expense, to steal and punish individuals who file grievances against lawyers. [CP 23-28] Appellant claims this scheme violates the provision of law that govern courts, RCW Title 2, as a way to circumvent the laws and ultimately ends with judges-judging-judges, (i.e., the judicial branch deciding the scope of its own authority) rather than the People, as in a jury, deciding governments' 'just powers'. [CP 22-26]. Appellant noted the common law holdings, as RCW 4.04.010 requires, in support of his argument that judges-judging-judges is unlawful, citing the law of *Dann* and the Washington State Supreme Court opinions that prohibit 'self-regulation': *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". [CP 4-6, 24]

The WSBA is a "monopoly" created by RCW 2.48 in violation of Article 12, sec 22 of the State Constitution that prohibits 'monopolies'. Additionally, the enactment of RCW 2.48 improperly modified, essentially swallowing, Article 4, sec 17 by limiting voters' choices for judges to only Bar associates. [CP 22-24] Having Bar associates, who are members in the unconstitutional monopoly, occupy decision-making roles within government provides the means, opportunity and motive to engage in unlawful schemes – such as the scheme that shifts lawyer discipline to Appellant and taxpayers. As outlined herein, the Bar's scheme was able to steal $119,373.45 from Appellantr, clog the courts with more lawsuits, increase the cost of litigation … all for the benefit of their Bar associates.

The Bar's "self-regulation" (i.e., judges-judging-judges or, a.k.a., Bar associates-judging-Bar associates) is also a 'special privilege' that no other person or corporation enjoys, which is also unconstitutional and prohibited by Article 1, secs 8, 12 and 28 and Article 2, sec 28(12). In the alternative Appellant argues that he too is entitled to these

'privileges and immunities' as Article 1, sec 12 provides and the common law of *Dann* recognizes. [CP 6, 8, 35, 42]

Appellees Hull, Angel, Caldier and Young do not perform their legal obligations enjoined by Washington's constitution and laws. These Bar-schemes are illegal and misappropriate government funds. Appellees take an oath to uphold Washington's constitution and laws; not aid and abet in these violations. Appellant claims Appellees are all liable for the Bar's scheme to deprive Appellant of life, liberty and property as punishment for filing a Bar grievance against a lawyer. [CP 3-41]

Appellees Hull, Young, Caldier and Angel's "official conduct" is entirely defined by Washington's constitution and laws. In Washington, state officials who act contrary to the laws that regulate their office or engage in conduct that is unauthorized is a criminal violation[7]. These laws also apply to lawyers under RCW 2.48. It is by

---

[7] **RCW 42.20.080** Other violations by officers. 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; **RCW 9A.80.010** Official misconduct.
(1) A public servant is guilty of official misconduct if, with intent to obtain a benefit or to deprive another person of a lawful right or privilege:
(a) He or she intentionally commits an unauthorized act under color of law; or

these violations of Washington's laws that Appellant's due process rights are violated. [CP 3-41]

Appellant's *State case* became this *Federal case* when Hull removed it under 28 USC 1441(a) and (c). Appellees State, Caldier, Young and Angel (State) did not "join in" or "consent to removal" as required by 28 USC 1441(c)(2). [CP 135-136; 234-235]

Despite lack of jurisdiction due to improper removal, none of Appellees answered the allegations nor addressed the facts. Appellees didn't address the legal authorities Appellant cited in his complaint or responses. Nor have Appellees justified any of their conduct as authorized by the laws that regulate their duty. [Dkt 17, 17-1 @ CP 124-126]. These 'omissions' are violations of the laws that apply to lawyers whose duty under RCW 2.48.230 is to disclose all law and facts to the tribunal. Rather Appellees only response was to ask Judge Settle to dismiss the case based upon claims of 'absolute immunity,' 'res judicata,' and 'state sovereignty' under the 11th amendment.

---

(b) He or she intentionally refrains from performing a duty imposed upon him or her by law.
(2) Official misconduct is a gross misdemeanor.

Appellant responded to Appellees' legal claims citing statutes and prior holdings that rebut Appellees' claims for dismissal. [dkts 24, 24-1 to 24-3, 26 @ CP 133-232]. Again, Appellant demanded a jury to decide the "truth" in what Appellees claim. [CP 133]. Notably, Washington State waives 11th amendment immunity, as do 'elected officials,' under both Article 2, sec 26, and RCW 4.92 and RCW 4.96; and the "State", as RCW 4.92.090 states, shall be regarded as a "person or corporation" in civil actions. Additionally, the State's constitution prohibits immunity. Furthermore when all Appellees *properly*[8] "remove" a case they imply a waiver of personal and subject matter jurisdiction. Otherwise how do they have standing to remove a case, plead, or have the merits of their claims decided if they haven't agreed to jurisdiction? Judge Settle should have remanded the case to state court and sanction Appellees' counsels -- not dismiss the case! [CP 124-126; 235]

In sum, Appellees offered no support that their conduct was legal, authorized, just, or was performed so as to protect 'individual rights'

[8] Note: State defendants did not join nor consent to removal as required.

as Article 1, Sec 1, RCW 4.04.010, and RCW 2.48.180 through RCW 2.48.230 expressly require.

Despite Appellees' utter failure justify their conduct and legal defenses, Appellees' counsels, George and LiaBraaten, continued with their *policies* to misstate fact and law and claim 'absolute immunity' without any factual basis showing Appellees are performing any state function which would be "immune".

Judge Settle, too, ignored, in violation of 28 USC 1652, all Washington's constitutional and statutory authorities that govern the case and denied Appellant's motions for default; for sanctions; and to strike Appellees' unlawful pleadings. Judge Settle under his self-claimed powers dismissed Appellant's case without citing any Washington authority that would comply with RCW 4.04.010 to support Settle's (1) grant of 'immunity' upon all Appellees; (2) finding that Appellant's lawsuit is "identical" to a previous lawsuit dismissed by Judge Leighton; and (3) finding that Appellant is 'vexatious' and is 'clogging up the courts. Appellees, under the scheme devised by the WSBA, caused the harm and are the ones who removed Appellant's case from state court to Federal court.

Judge Settle's dismissal is based solely upon his declaration of rights based upon Settle's privately passed legislation, not the laws passed by Congress, nor Washington's legislature, nor the facts, nor the circumstances of this case as Washington's laws, such as RCW 4.04.010, RCW 2.48.180 through RCW 2.48.230, and 28 USC 1652, mandate.

## V. Facts.

### A. Evidence: See dkt 15 [CP 44-121]; dkt 24-1 [CP 158-208; dkt 24-2 [CP 209-225]; and dkt 24-3 [CP 226-228], incorporated by reference.

Of particular note:

- Ellerby's "Notice of Withdrawal" noting the Kitsap Prosecutor's threat for his withdrawal. [CP 63]

- Ellerby 'declarations' filed with Kitsap Superior Court claiming under oath his withdrawal was at Scheidler's request, *not* the prosecutor's demand as his "notice of withdrawal" stated. [CP 69-75]

- Email from Ellerby's supervisor, Larry Mills, WSBA #6129, who claims Ellerby 'never declined to represent you'. [CP 76-77]

- The WSBA's written 'contract' that tasks Scheidler with obtaining a 'judicial finding of impropriety' concerning Ellerby's lies. [CP 93-94]

- Emails that show Scheidler discussed Ellerby's and Hull's actions with Defendants Young, Caldier and Angel, assisted them with a 'draft resolution' per Article 4, sec 9, before Hull entered his final order – the date of harm. [CP 45-60, 113-121 and CP 226-228, respectively]

### B. Uncontested facts and admissions by Appellees' failure to answer the complaint. See Rule 8(b)(6).

For the Courts convenience, the allegations admitted by Appellees, per FRCP, Rule 8(b)(6) and specifically noted by dkt 1, pgs 27-29, 30-39 [CP 30-32, 33-42]; and dkt 24, pgs 20-23 [CP 152-155], are summarized below.

#### 1. Appellee Hull admits, and State Appellees admit aiding and abetting Hull, to the following:

1. He is a Bar Associate and serves the private purposes of the unconstitutional Bar. Dkt 1-1, ¶74-93.

2. He and his judicial colleagues, Russell Hartman, Joel Penoyar and others, use their government office to hide perjury and false swearing by Ellerby (dkt 15, App 2.); impose an unlawful monetary sanction; misallocate public funds through the Bar's discipline scheme to shift lawyer disciple to a "judicial finding of impropriety". These are all criminal offenses ranging from gross misdemeanor to felony that constitute predicate acts under RICO. Id. §VII, esp. ¶35-39, ¶86-93; §XIII(B)(C)(D).

3. He legislates from the bench to modify RCW Title 2 – the laws that apply to judges and lawyers; to modify RCW 4.04.010 – the laws that protect Scheidler's 1st, 5th and 14th amendment rights; and to modify Washington's Constitution so as to abolish Article 1, Sec 1 and Article 1, Sec 21 – which are provisions that place people over the governments that serve them. Id., §VII(B); §VIII(C);

4. A jury is an 'inviolate right' guaranteed by Article 1, Sec 21 and by RCW 4.44.090 to decide the facts noted by the Exhibits (dkt 15) referenced by the complaint (dkt 1-1). Id., ¶53;

5. Exhibits (dkt 15), on their face, prove all Scheidler's allegations of corruption within the legal system and the aiding and abetting in Judge

Hull's criminal conduct by legislators Jesse Young, Michelle Caldier and Jan Angel and State.¶15, 25-27, 32, 40, 45, 52, 60, 70-93.

6. He was disqualified under RCW 2.28.030 to render any orders except to grant a jury trial, all of which he refused to do which denies Scheidler his due process rights. Id ¶62-67

7. He, on January 16, 2015 imposed a $119,373.45 judgement, in violation of RCW 2.28.030, against Scheidler, in violation of Scheidler's due process rights. Scheidler has due process immunity under RCW 4.04.010 – *In re DANN*. Id. ¶71-74

8. He violated Washington laws to carry out the Bar's private purposes, to include punishing Scheidler for seeking a "judicial finding of impropriety," as delegated to Scheidler by the Bar; and further admits he violates Scheidler's due process rights as part of protecting the Bar's fraudulent schemes. Id. §VIII(E); Id.¶136-138

9. He violated the laws that regulate his conduct, which renders all his rulings and judgements VOID for fraud upon the court. Id., §VII; §VIII.

10. His motive behind his unauthorized and invalid acts are to further his personal, financial, and political desires and to further the purposes of the Bar. Ibid.

11. It is the financial and political greed that motivates Defendants to covered-up crimes. A quid pro quo in trading office for favors so all their political goals are protected. Id., page 2; ¶4.

12. The most important element in covering-up crimes committed by public servants is to have Bar Associates in government decision-making positions and to use their self-prescribed powers to deny jury trials. Id., ¶46-49

13. He is guilty of each and every allegation made by the complaint. Id. ¶62-73; ¶135-186.

**2. Washington State, Jesse Young, Michelle Caldier and Jan Angel admit to the following:**

14. Negligence knowing that the Bar Act, RCW 2.48, effectively swallowed Article 4, Sec 17 and curtails voters choice for judges to

only Associates of the Bar. This violates voters' State and Federal constitutional freedom of choice and violates Article 1, SECTION 19 FREEDOM OF ELECTIONS. All Elections shall be free and equal, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage. Id. ¶77.

15. State admits its negligence knowing that Bar Associates who are "officer of the courts" for both State and Federal courts also occupy State Legislative office in violation of Article 2 SECTION 14 SAME, FEDERAL OR OTHER OFFICE.

16. State admits its negligence knowing Washington State Judges, particularly Kevin Hull, legislate from the bench to deprive Scheidler of his 1st, 5th and 14th amendment rights in ignoring the laws that pertain to judges. §VII(B); §VIII(C).

17. State admits its negligence knowing Washington State judges use their self-bestowed powers to deny jury trials as the means to engage in their criminal conduct, in violation of Article 1, Sec 21 and 7th amendment to the US Constitution. Id ¶46-49

18. State admits its negligence knowing Washington State judges unlawfully comment on facts, lie and render unjust rulings, as Scheidler's cases show, are in violation of Article 4, Sec 16 and Article 4, Sec 28 of Washington's constitution and RCW 2.08.080. Id §II

19. State admits its negligence knowing Washington judges have created a circular scheme by which judges-judge-judges in violation of RCW 2.28.030 and is a "privilege" no other person or corporation enjoys, a violation of Article 1, secs 8, 12 and 28 of Washington's constitution; and a violation of RCW 4.04.010 – The common law expressly prohibiting self-regulation is established in *In RE Consolidated Cases*; *Elec. Contractors Ass'n v. Riveland*; and in *Wash. State Labor Council v. Reed*. (supra) Id. Page 3; Id., §VIII.

20. State admits its negligence knowing Bar associates are self-regulating under the auspices of the Washington State Supreme Court and is a privilege no other citizen or corporation enjoys. Id. §I and VIII. Self-regulation violates Article 1, secs 8, 12 and 28; a violation of RCW 4.04.010 – The common law expressly prohibiting self-regulation is established in *In RE Consolidated Cases*; *Elec.*

*Contractors Ass'n v. Riveland*; and *Wash. State Labor Council v. Reed*, supra. Id. Page 3; Id., §VIII.

21. State admits its negligence in knowing that the crimes committed by public servants are covered up because Bar Associates, who have bestowed privileges and immunities upon themselves, occupy government decision-making positions that provides the means and unfettered opportunity to hide crimes and fix cases.

22. State, in knowing of these violations by judges/Bar associates, it is negligent in protecting citizens from a judicial system that is operating ultra vires and has cased harm to Scheidler specifically and poses a risk to all of society and undermines Washington constitution and laws. Id., ¶135-186

23. Defendant Legislators Jesse Young, Michelle Caldier and Jan Angel (Young, Caldier and Angel) admit that they profit financially and politically by having Judge Hull violate the laws of Washington State. Id §C.

24. Young, Caldier and Angel admit that they deliberately, with malice, aid and abet Judge Hull by refusing to address Hull's misconduct.

25. Young, Caldier and Angel admit that they have the power to submit a resolution, per Article 4, Sec 9, that would expose Judge Hull's misconduct to the full House of Representatives, but refused to do so.

26. Young admits he promised Scheidler, August 2014, he would address the corruption within the judicial branch. Id. ¶11

27. Young admits, in a face-to-face meeting, he told Scheidler that he agreed that Judge Hull was corrupt. Id. ¶11

28. Caldier admits she told Scheidler that the County's fraud upon retired/disabled citizens concerned her. Id. ¶12

29. Caldier admits, in a face-to-face meeting with Scheidler, that, according to her lawyer, David Horton, she believes, if re-elected, she could literally sit home and watching TV. Ibid.

30. Angel admits she provided appendix 4, which implicates the DOR/AG in defrauding retired/disabled citizens of Washington State. Id. ¶16

31. Young, Caldier and Angel admit to each and every allegation made by the complaint. Id. ¶135-186.

## VI. SUMMARY OF THE ARGUMENT.

The foregoing arguments raise questions under the 1st, 7th, 9th, 10th, and 14th amendments to the US Constitution.

### A. Appellant was delegated a judicial task by a judicial regulatory agency – the WSBA.

Appellant's effort to obtain a "judicial finding of impropriety," as delegated to him by the WSBA, is a contract. The contract's terms, and the laws that apply, shield Appellant from Appellee Hull's retaliation to strip Appellant of $119,373.45 for pursuing the WSBA's delegated task. Furthermore, Hull was disqualified under RCW 2.28.030 from making any substantive rulings against Appellant. Appellant has constitution and statutory protections -- particularly Article 1's declaration of rights; RCW 4.25.500 and 4.25.510 statutory immunity, and RCW 4.04.010, common law immunity under *Dann*.

Appellees Young, Caldier, Angel and State aid and abet in Hull's crimes[9]. Appellees trade their office for favors – a quid pro quo kickback scheme to look the other way when they all engage in official misconduct. Appellees have knowledge, *the affirmative duty*, and the authority to protect Appellant from Hull's illegal orders and retaliation. Appellees' refusal to perform their affirmative duty violates another constitutional provision imposed upon legislators by Art 2, sec 28(12) – which prohibits authorizing 'unauthorized or invalid' acts committed by Hull. State Appellees refusal to hold Hull to the law is tantamount to authorizing conduct that is prohibited.

B. **Judge Settle's order, dkt 28, is arbitrary.**

Appellees have ***utterly failed*** to address the facts, deny the allegations, or, as demanded by the 6 part test required by RCW 4.04.010, demonstrate their conduct, legal defenses, and opinions are "*consistent with the Constitution and laws of the United States, the state of Washington and are compatible with the institutions and condition of society in this state.*" These are the *fundamental*

[9] By law, RCW 9A.80.010 and RCW 42.20.080, Hull's unauthorized conduct is criminal.

*requirements* imposed upon Appellees under RCW 4.04.010 which they fail to meet.

Therefore the totality of the arguments entered by Appellees, their counsels, and judge are just plain arbitrary and without proper foundation. RCW 4.04.010 *does not permit a detour around Washington's constitution, laws, institutions and conditions of society,* under Appellees' arbitrary common law constructs.

### C. Judge Settle's order, dkt 28, is issued in violation of 28 USC 455 (a) and (b).

This case concerns a Bar created controversy – the Bar's delegated "judicial finding of impropriety" in which judges play a role. This case concerns the constitutionality of the Bar itself, in which judges are members. This case concerns the constitutional duty imposed upon all public officials, including judges, by Article 1, sec 1. And this case concerns the powers granted legislators under Article 4, sec 9 and Article 5 to 'remove corrupt judges' who violate the law.

A judge's impartiality can reasonably be questioned when it is *their association, their schemes, their rules, the laws that regulate their conduct, their monopoly powers, and their jobs* that are at risk. [CP 3-6, 129, 133, 229]. Judges are 'disqualified' under both prongs of 28 USC 455 (a) and (b)(4) and under RCW 2.28.030 because of their

direct interest and scope of their fiduciary duty this case will determine. [CP 3-6, 18-22]. The "Jury", as Article 1, sec 21 *requires*, must decide this case to avoid these inherent biases and conflicts.

### D. Judge Settle's order, dkt 28, does not comply with 28 USC 1652 and is in violation of the US 10th amendment.

Under the 10th amendment, and the fact that all causes of action are within the jurisdiction of Washington's courts and Appellees are Washington government officials regulated by Washington's constitution and laws, *State law shall be the rule of decisions* in federal courts as 28 USC 1652 demands. Therefore the controlling state law is RCW 4.04.010, which dictates, in part, the law of *Dann, supra,* and *Cudihee, infra,* control as *Dann* and *Cudihee* harmonize with the 6 part test the statute requires.

### E. Judge Settle's orders, dkt 28, which violate 28 USC 455, 28 USC 1652, and 28 USC 2072(b) creates an "institutional conflict of interest in its resolution" in violation of 28 USC 2072 (b) and 28 USC 455.

Judges[10] cannot devise a court rule scheme predicated upon judges violating law so their violations of law end with other judges-judging-judges. This circular court-rule scheme devised by judges to insure

[10] "Judge" means *justice, judge, or magistrate judge* in reference to 28 USC 455

only judges-judge-judges is based in the perpetual violation of 28 USC 455 and renders Washington's constitution and laws irrelevant in violation of 28 USC 2072. All judges are disqualified in judging-judges for both bias and conflict per 28 USC 455 (a) and (b), because it is judicial powers that will be "abridged, modified or enlarge" by the outcome in having judges-judging-judges with an inverse consequence imposed upon the People.

'Judges-judging-judges' is also prohibited by RCW 4.04.010 – *In RE Consolidated Cases*; *Elec. Contractors Ass'n v. Riveland*; *Wash. State Labor Council v. Reed*, [supra]. Judge Settle's orders are improper and unauthorized. A "JURY" must determine the merits of this case as it is the only certified "institution", per Article 1, sec 21, consistent with both Federal and State law.

### F. **Judge Settle's order violates 28 USC 2403(b) and FRCP 5.1(d). Appellant is denied his constitutional challenge.**

Appellant alleges the WSBA Act, RCW 2.48, is unconstitutional, because it creates a 'monopoly association,' in violation of Article 12, sec 22, which <u>*serves its own interest*</u>. [CP 23]. Furthermore the Bar Act unconstitutionally modifies Article 4, Sec 17 that require judges be admitted to the practice of law. The Bar Act swallowed Article 4, sec 17 by altering the qualification for judge. Said another way, to practice

law you must be a member of the monopoly association. Therefore *judges must be chosen from the monopoly as only members of the monopoly are permitted to practice law*. This curtails voters' choices for judge to only members of the monopoly as opposed to all qualified individuals who pass the bar.

Since Appellant's constitutional challenge goes unopposed[11] it must be assumed true[12]. Therefore it must also be true that no citizen in Washington State can rely upon the integrity of Washington State's judiciary when it is run by members of an unconstitutional 'monopoly' that admits it serves itself, regulates itself, and judges its own conduct.

Furthermore, 28 USC 2403(b) preserves a constitutional challenge and cannot be dismissed with prejudice. Judge Settle's orders must be reversed as the constitutionality of RCW 2.48 is a threshold matter which would bear upon all other issues raised by Appellant.

## VII. Argument:

### A. Appellant was delegated a judicial task by a judicial regulatory agency and has constitutional, statutory, and common law protections from Hull's retaliation and Judge Settle's dismissal.

---

[11] Note dkt 16 [CP 123]
[12] See Rule 8(b)(6) and *Epstein v. Washington Energy Co,* supra.

The WSBA, as the evidence shows [See Ex 11, CP 93-94; See also Exhibits 1-8 [CP 62-77; CP 11-17], required Appellant obtain a "judicial finding of impropriety" in pursuing his WSBA grievance against his lawyer, Scott Ellerby. This "judicial finding of impropriety" is the contract whose terms must control. "[I]t is elementary law, universally accepted, that the courts do not have the power, under the guise of interpretation, to rewrite contracts which the parties have deliberately made for themselves." *Chaffee v. Chaffee*, 19 Wn.2d 607, 625, 145 P.2d 244 (1943) (citing 12 AM. JUR. Contracts § 228, at 749)." *Panorama Vill. Condo. Owners Ass'n Bd. of Dirs. v. Allstate Ins. Co.*, 144 Wn.2d 130 (Wash. 2001).

The controlling statutes germane to the WSBA/Appellant's *contract* are Washington's constitution and laws, particularly Article 1, Secs 1, 4 and 21, and RCW 4.24.500-RCW 4.24.510, and RCW 4.04.010. The former are to guarantee Appellant's case goes to a jury; the latter statutes, including the law of *Dann* and *Cudihee*, are to protect Appellant from the harms in Appellees quid pro quo schemes. "[C]ourts may not modify or add to statutory language under the guise of interpretation" *State v. McAlpin*, 108 Wn.2d 458 (Wash. 1987)

In *Dann*, the Supreme Court, states, “We give "particularly great weight" to the question of the extent of injury involved due to the attorney's misconduct. *In re Discipline of Curran*, 115 Wn.2d 747, 772, 801 P.2d 962, 1 A.L.R.5th 1183 (1990). We do so to "maintain public confidence in our legal institutions with an eye toward enhancing respect for the law generally. We must therefore administer the rule in a manner which holds individuals accountable for the results, even unintended results, of their actions." *Curran*, 115 Wn.2d at 772 (emphasis added). *In re Disciplinary Proceeding Against Dann*, 136 Wn.2d 67 (Wash. 1998).

As *Dann* clearly states, “*public confidence in our legal institutions”,* is a matter of grave public importance. As such Appellant’s case is an Article 1, sec 4 issue of “public good” and cannot be dismissed by either Appellee Hull, nor Judge Settle. Additionally, the standard to be applied is also prescribed by *Dann;* it is the lawyer who is responsible for the consequences of his actions, even unintended consequences, to maintain the public’s confidence in our judicial institution. Appellee Hull has turned Article 1, sec 4 and the law of *Dann* inside out by punishing Appellant for Ellerby’s misconduct.

State Appellees aid and abet – a quid pro quo kickback scheme - in Hull's unlawful acts. They had the knowledge of Ellerby's lies and the Bar's delegated task that precipitated the lawsuit; and recognized the unlawful retaliation scheme used by Hull against Appellant for bringing the delegated lawsuit. All of which affect the public's confidence in the judiciary – an issue of public importance. [CP 17-18, 38-42, 45-60]. It should be no surprise that State Appellees have the affirmative duty, per Article 1, sec 1, and the constitutional power and means, per Art 4, sec 9 and Art 5, to address Hull's *unlawful* conduct *before harm occurred*. (Emphasis). These State Appellees, in trading "immunity for immunity" are all culpable in the harms Hull inflicted upon Appellant … indeed they have betrayed citizens.

In *Cudihee*, the Supreme Court recognizes, it is "The people, speaking in the manner provided by law, may discharge their public officers for any cause, or without any cause, as their laws may provide. Indeed, the people's rights are as complete in that respect as when they choose such officer. *In other words, as against the people, a public officer, their servant, has no rights whatever, so far as his possession of the office is concerned, which may not be ignored by the people speaking in a lawful manner*." *Cudihee v. Phelps*, 76 Wash. 314 (Wash.

1913). In *Cudihee*, Appellees, as public officials, have no rights whatever in their office. It is the *people* speaking via a *jury* per Article 1, sec 21, who must determine, as Article 1, sec 1 makes clear, what government may or may not do to maintain public confidence in our legal institutions, as Article 1, sec 4 clearly states. Id, RCW 4.04.010.

Notwithstanding the laws of *Dann, Cudihee and constitutional protections*, Hull, by law RCW 2.28.030, was disqualified as judge and prohibited from entering any substantive order because Hull never presided over the Ellerby case at any time. [CP 35]

Notwithstanding Hull's violation of RCW 2.28.030, Appellant has statutory immunity from Hull's retaliatory $119,373.45 sanction under RCW 4.24.500 – RCW 4.24.510. Appellant reported Ellerby to the WSBA, which is the proper state agency, which delegated the 'judicial finding task' back to Appellant. This process statutorily shields Appellant from Hull's retaliation. [CP 17 ¶56, 21 at ¶71, 33-36].

These constitutional, statutory and common law authorities, which Appellees and Judge ignore, all harmonize to insure Appellant's lawsuit of public importance isn't dismissed in a 'cover-up' scheme by 'officers of the court', nor the people excluded from exercising their

power. [CP 34]. Judge Settle's orders violate these controlling authorities and must be reversed.

### B. Judge Settle's order, dkt 28 and 38, are arbitrary – neither Appellees, their counsels, nor judge justified Appellees conduct as "authorized". The case must be remanded under the holdings of *Tukhowinich v. INS*

#### 1. Appellees removal of Appellant's case from state court to federal court was defective.

A threshold question remains unanswered as to Appellees' standing to plead in federal court. As noted, [CP 135-136], only Hull filed for removal under 28 USC 1441(a) and (c). State Appellees did not join in or consent to removal as §§1441(c)(2) and 1446(b)(2) expressly require. In fact State argued, dkt 8, pg 9, the Federal Court lacked jurisdiction as "Washington State has not waived its sovereign immunity, Eleventh Amendment immunity, against federal claims." That statement by State Appellees is not "joining in or consenting" to removal; it is the opposite.

Circuit courts have unanimously agreed "there must be some timely "written indication" of each served defendant,...showing that the defendant actually consented to such removal." See *Marshall v. Skydive America South*, 903 F. Supp. 1067 - Dist. Court, ED Texas

1995, citing *Getty Oil Corp. v. Insurance Co. of North America*, 841 F.2d at 1262, n. 11.

Judge Settle ignores this threshold issue and ignores State Appellees' argument, id., dkt 8, pg 9, in which they refuse to consent to federal jurisdiction. Judge Settle's ruling to dismiss Appellant's case, rather than REMANDING the case back to state court is arbitrary and unauthorized. If there is any ambiguity concerning these issues then "REMAND" is the proper action. See *Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100, 108-09, 61 S.Ct. 868, 85 L.Ed. 1214 (1941); *Duncan v. Stuetzle*, 76 F.3d 1480, 1485 (9th Cir.1996); *Harris v. Bankers Life and Cas. Co*., 425 F. 3d 689 (9th Cir. 2005).

**2. Judge Settle ignores 28 USC 1924 that costs be "necessarily incurred" in his ruling, dkt 38, [Order 9-10] awarding costs to Hull per FRCP 54.**

Notwithstanding improper removal, the removal procedure itself, per 28 USC 1441(a), is discretionary, not a "*necessity*" as §1924 requires for the award of costs. Furthermore the "necessity" element for the award of costs is a factual determination. Appellant demanded to know what facts constitute a 'necessity' when the statute is discretionary. The 'facts' remain undisclosed. Judge Settle simply "legislates" *rights* upon his government colleagues that absolve them

from explaining the *necessity* for removal. [O 10]. Government officials "*have no rights whatever"* as far as their office is concerned. See *Cudihee*, supra. Settle exceeds his judicial authority by legislating rights where there are none. Appellant incorporates dkts 33, 36 [CP 233-238] re the award of costs as if set forth in full.

By law and precedent, and lacking any factual justification, the award of costs to Hull was improper. [O 8-10]. Appellees' pleadings should have been stricken, the case remanded, and default judgment, as sanctions, should have been issued against Appellees in favor of Appellant for improper removal, lawyer misconduct, and the unnecessary delays that result. [CP 124-125, 135-136]. See *Moore v. Permanente Medical Group, Inc.*, 981 F. 2d 443 - Court of Appeals, 9th Circuit 1992, citing, "Willy v. Coastal Corp., ___ U.S. ___, ___, 112 S.Ct. 1076, 1080, 117 L.Ed.2d 280 (1992) (award of attorney's fees pursuant to Rule 11 permissible following an improper removal and remand); *White v. New Hampshire Dept. of Employment* Sec., 455 U.S. 445, 451-52, 102 S.Ct. 1162, 1166, 71 L.Ed.2d 325 (1982) (award of attorney's fees under 42 U.S.C. § 1988 is collateral to decision on the merits, and thus not subject to the 10-day limitation of a motion to amend or alter a judgment); *Greenberg v. Sala*, 822 F.2d 882, 885 (9th

Cir.1987) "The award of fees pursuant to section 1447(c) is collateral to the decision to remand. The district court retained jurisdiction after the remand to entertain Plaintiffs' motion for attorney's fees."

### 3. Judge Settle's ruling to dismiss is completely devoid of any rationale.

Judge Settle's order, Dkt 28 [O 1-7], is solely dictatorial. Controlling precedent in deciding immunity requires a factual determination. It is also a factual matter if Appellees owe Appellant a "fiduciary duty". Appellate courts have stated, "our cases make clear that the immunity is overcome in only two sets of circumstances. First, a judge is not immune from liability for nonjudicial actions, i. e., actions not taken in the judge's judicial capacity. *Forrester v. White*, 484 U. S., at 227-229; *Stump v. Sparkman*, 435 U. S., at 360. Second, a judge is not immune for actions, though judicial in nature, taken in the complete absence of all jurisdiction. Id., at 356-357; *Bradley v. Fisher*, 13 Wall., at 351." *Mireles v. Waco*, 502 US 9 - Supreme Court 1991.

Likewise, the *fiduciary duty* imposed upon Legislators by Article 1, Sec 1 "is within the province of the trier of fact to determine after hearing the evidence whether a fiduciary duty exists between the

parties". See *United States v. Milovanovic*, 678 F.3d 713, 724 (9th Cir. Wash. 2012). [CP 149]. Clearly, "fiduciary obligation" or "immunity", if it applies at all in Washington given Washington's prohibition in granting immunity, are fact-dependent issues as *Mireles* and *Milovanovic* make clear.

Further, Appellee Hull's refusal to obey RCW 2.28.030 and the $119,373.45 judgment[13] are fact-dependent issues. Facts are for a jury[14], as Washington laws make clear.

Nevertheless, the facts, which include the *evidence and admissions* to the allegations summarized in section V above, are to be "considered in a light most favorable to the nonmoving party. *Browning v. Ward*, 70 Wn.2d 45, 422 P.2d 12 (1966); *Trudeau v. Haubrick*, 65 Wn.2d 286, 396 P.2d 805 (1964); *Frasch v. Leedom*, 62 Wn.2d 410, 383 P.2d 307 (1963); *Jones v. Leon*, 3 Wn. App. 916, 478 P.2d 778 (1970)." *Shelby v. Keck*, 85 Wn.2d 911 (Wash. 1975).

Judge Settle ignores the facts and laws without any rationale or justification in how he can rule on matters that are 'fact-dependent'

---

[13] See RCW 4.36.070 In pleading a judgment the party pleading shall be bound to establish *on the trial the facts conferring jurisdiction*.
[14] See RCW 4.40.060 and RCW 4.44.090 … facts are for a jury to determine.

without addressing the facts. "In light of the district court's application of insufficient legal analysis to resolve the case, we substitute our own judgment on the law before us and reach a different conclusion. See *Horn v. C. L. Osborn Contracting Co*., 591 F.2d 318, 320 (5th Cir. 1979); *Kentucky Fried Chicken Corp. v. Diversified Packaging Corp*., 549 F.2d 368, 384 (5th Cir. 1977)". *Dernick v. Bralorne Resources, Ltd*., 639 F. 2d 196, 198 – (5th Circuit 1981). Or, "without prescribing any final result, we must remand such cases for proper consideration", *Tukhowinich v. INS*, 64 F. 3d 460, 464 (9th Circuit 1995). Other Circuits share this view. "insufficient legal analysis makes it impossible for a reviewing court to evaluate whether substantial evidence supports the ALJ's (court's) findings. See *Cook v. Heckler*, 783 F.2d 1168, 1173 (4th Cir.1986)," *Radford v. Colvin*, 734 F. 3d 288 (4th Circuit 2013).

Judge Settle's dismissal must be reversed and the case remanded for a Jury's determination of immunity, fiduciary duty, and judgment claims in light of the facts.

### C. Judge Settle's order, dkt 28, is issued in violation of 28 USC §455 (a) and (b). Appellant did not have an impartial decision-maker and the case must be remanded to a jury to avoid such biases and conflicts.

### 1. Judge Settle cites 9th Circuit re 28 USC §455.

Judge Settle, citing to the 9th Circuit Court of Appeals opinion re Judge Leighton's disqualification in cause #13-35119, dictates the laws that apply to judges are 'frivolous' and can be ignored. [O 2].

Settle, by citing to Judge Leighton, who cited to Judge Pechman, confirms the circular and unlawful self-serving rulings inherent in judges-judging-judges concerning the laws that apply to judges. Such self-serving rulings is what 28 USC 455 is intended to prevent.

### 2. Judge Settle chastises Appellant for the controversies Settle's Bar colleagues create.

Judge Settle labels Appellant *vexatious and wastes judicial resources,* and threatens him if any more lawsuits are filed against government officials *sever sanctions may be imposed for clogging up the courts*. [Order 5-6]

These statements show clear bias as the controversy before the court was created by two Bar associates, Ellerby and Noble [CP 17 et seq]; was delegated to the courts, *and taxpayers*, by the Bar Association's disciplinary board's required "judicial finding of impropriety" [CP 15 et seq]; languished in state courts because Bar associates, back in 2009, refused, unconstitutionally, to allow a jury (a.k.a., the People) decide the facts that would have ended the

controversy in 2009[15]. Then Hull, a Bar associate, who is disqualified by law, RCW 2.28.030 [CP 19, passim] retaliated against Appellant in violation of *Dann* [CP 16 and passim.]; in violation of Article 1, sec 4 [CP 34 and passim]; and in violation of RCW 4.24.500 [CP 10, 34, passim]. And most egregiously Bar associates, LiaBraaten and George, violated the laws that regulate their conduct, RCW 2.48.230 [dkt 26, CP 229-232] by: arguing case law that fails the 6 part test demanded by RCW 4.04.010; engaging in 'forum shopping' by removing (improperly) this case from state court to Federal court for its 'advantages'; and seeking costs for 'discretionary' acts without disclosing what facts constitute the 'necessity' of their actions. [Dkts 33 and 36; CP 233-238].

If 'limited judicial resources' motivate judicial decisions, the courts would be best served, citizens too, if judges and lawyers obey the laws that apply to judges and lawyers – not abridge a citizen of his constitutional right of petition, nor deny the People their plenary powers they exercise through a jury.

---

[15] This Court should note that throughout this period judicial officials obstructed appeals. [ref: Appeal #15-35945]

Judge Settle has no basis in fact nor law to 'chastise Appellant' for what Settle's government colleagues *perpetrate* upon Washington's citizens.

Both the 6th and the 10th Circuits recognize "It is conceivable that persons, either individually or acting in concert might so use the state judicial process as to deprive a person of his property without due process of law, or of equal protection of the laws", *McShane v. Moldovan*, 172 F.2d 1016 (6th Cir. 1949), citing, *Bottone v. Lindsley*, 170 F.2d 705 (10th Cir. 1948). "Judges-judge-judges" is the means to render the laws that apply to judges irrelevant so as to deprive the people of their plenary powers shows clear bias and duplicity that must be taken as using official office to engage in judicial malpractice. WSBA associates cannot be the cause of the controversy, the only allowed 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 Appellant! This commandeering of our judicial institutions by Bar associates is an unconstitutional privilege no other person or corporation enjoys and it re-writes Washington's Article 1, sec 1.

### 3. Judge Settle is an associate in the very entity, the WSBA, being challenged as unconstitutional.

Judge Settle simply says Appellant keeps complaining about the constitutionality of the Bar Association which "waste the courts resources." [O 6]. But to date not one judge has addressed Appellant's arguments concerning the legislation that created a monopoly, the Bar, which is prohibited by Washington's constitution Article 12, sec 22. This is a complete denial of Appellant's due process right of petition. "[I]t will not do for a court to be compelled to guess at the theory underlying the agency's[court's] action; nor can a court be expected to chisel that which must be precise from what the agency has left vague and indecisive." *SEC v. Chenery Corp*., 332 U.S. 194, 196-97, 67 S.Ct. 1575, 91 L.Ed. 1995 (1947). And the Washington State Supreme Court holds similarly, "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)). For the reasons just stated, we reverse both the trial court's grant of a CR 12(b)(6) motion, and the Court of Appeals' approval of that grant. *Bravo v. Dolsen Cos*., 125 Wn.2d 745 (Wash. 1995).

Judge Settle's dismissal of a constitutional challenge concerning the association in which he belongs is unlawful.

**4. Judge Settle has a proven record of repugnant decision-making**

This Court should take note of 14-35689 Clyde Spencer v. Sharon Krause. In that case Judge Settle ruled that a police officer who believes a defendant is guilty *is justified in fabricating evidence to gain the defendant's conviction*. Had not the 9th Circuit reversed this obscene ruling, 14-35689 and 14-35737, there is little doubt the district court judges of Washington would be citing Judge Settle's ruling as stare decisis law going forward. Settle's ruling would have been another feather-in-the-cap of the BAR's "protection" racket and its attack on constitutional principles.

It comes as no surprise that in this case, Judge Settle refused to honor the laws that apply to judges or to hold his Bar colleagues, Ione George, WSBA #18236, and Suzanne LiaBraaten, WSBA #39382, to their statutory duty to "truth and honor" and to 'present all facts and law even if adverse to their clients position', per RCW 2.48.180 – RCW 2.48.230 and RCW 4.04.010. [CP 229-238]

Appellant has a constitutional right to the fair and speedy administration of justice; an *inviolate* right to a jury trial; the statutory right to *honest lawyers*; and a statutory right to an impartial judge. This Court states in *Castro-Cortez v. INS*, 239 F.3d 1037 (9th Cir. Wash. 2001) "A neutral judge is one of the most basic due process protections." "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).

The acts, statements, and obscene rulings by Judge Settle demonstrate clear bias *against* legal principles, if not absolute corruption in using his office to hide government misconduct.

### D. Judge Settle's order, dkt 28, does not comply with 28 USC §1652 and is in violation of the US 10th amendment..

#### 1. Appellees' are bound by State Law and therefore Washington State Law must be the benchmark by which Appellees' conduct, a factual matter, is measured. This case must be remanded under the holding of Gorman and Bravo v. Dolsen Cos.

Under 28 USC §1652, *'state law shall be the rule of decisions in Federal Court'.*

This case concerns, solely, the conduct of Washington's government officials. State laws must control. Otherwise the 10th

amendment to the US Constitution and 28 USC 1652 are meaningless. The principles of construction of the constitutional and statutory laws that define Appellees conduct and obligations is fundamental to Appellant's ***color of law*** due process claims, and mandated by 28 USC 1652.

Neither Judge Settle, nor Appellees, address Washington's laws that collide with their claims that *Appellees are immune from suit; answerer to no laws;* that the *legislature is immune from its legislative acts*; and *Appellant did not and cannot present any fact that would bring Settle's WSBA colleagues or Appellant's elected representatives before a Washington State jury.*

Appellant incorporates dockets 24, 24-1, 24-2, 24-3, [CP 133-228] as if set forth in full that addressed these issues, which Judge Settle deliberately ignores.

To summarize dkts 24 through 24-3, Hull acted in an unauthorized manner in violation of RCW 2.28.030 – he was disqualified as judge. He refused to apply RCW 4.04.010, which mandated the law of *Dann* controls. And he sanctioned Appellant $119,373.45 when Appellant was constitutionally, statutorily, and by common law, immune from

such sanctions, because Ellerby bears the consequences of his misconduct.

Further, Appellant demanded a jury trial. Hull unconstitutionally refused to allow a jury trial and violated an inviolate right guaranteed by Article 1, sec 21. When Hull unlawfully assumed the role of "jury, prosecutor, fact-finder and judge" it's a foregone conclusion Hull violates Article 4, SECTION 16 "Judges shall not charge juries with respect to matters of fact, *nor comment thereon*, but shall declare the law." Hull acts without jurisdiction to deny due process in excess of his authority. Hull has no immunity, even if immunity applies in Washington, for acts in excess of jurisdiction and is subject to suit. See *Mireles v Waco*, supra.

State Appellees acquiesced to Hull's 'unauthorized and invalid' acts, which they are obligated to remedy as Article 1, sec 1 mandates. Therefore State Appellees are liable to the same extent as Hull. And state law RCW ch. 4.92 outlines the procedures to sue "elected officials ... for damages ... from acts ***or omissions***" in state superior court, RCW 4.92.010. [CP 134-135; 158-208]

Furthermore, Appellant's action to address this *unauthorized or invalid conduct* and the harm inflicted *cannot be limited* as Art 2, sec

28(17) expressly states. Judge Settle offers no rationale squaring his dismissal of the action – which is a 'limitation' of absolute affect, with these statutes that collide with his dismissal.

A case directly on point that supports Appellant's claims that the legislature can be sued for ***failing to act*** comes from the Supreme Court in *McCleary v. State* 173 Wn.2d 477, 269 P.3rd 227 (2014). According to the Court in that case, the legislature, which has the power granted to it by Article 7 (Taxation), failed to TAX enough to uphold Article 9, sec 1 (to adequately funding public schools). The Court imposed a $100,000/day contempt charge upon the state for the legislature's failure to fund a public institution – the public schools.

In this case Appellant alleges the legislature, which has the power granted to it by Article 4, Sec 9 and Article 5 (the power to remove corrupt judges), has failed to uphold Article 1, Sec 1 (to protect individual rights), by refusing to hold judges to the laws that apply to judges. Appellant's case is even more compelling as the legislature's failure to protect an individual from harm, a direct consequence of legislators Young, Caldier and Angel's failure to hold Hull to the law, resulted in 'direct harm' to Appellant – his loss of life, liberty and property – the loss of $119,373.45, the time and sacrifice pursuing the

Bar's delegated "judicial finding of impropriety". The individual plaintiff in the *McCleary* case suffered no harm whatever[16].

### 2. Iqbal/Twombly pleading standards are inapplicable in Washington as they 'abridge' Article 1, sec 4's right of petition.

Neither Judge Settle, nor Appellees, addressed the correct pleading standard in Washington controlled by both RCW Ch 4.36, RCW Ch 4.32 that define "pleadings" and the remedy for "pleading deficiencies". These laws are substantive rights of the Appellant and are in compliance with Article 1, sec 4.

RCW 4.36.170 requires only a material allegation. In other words, a bare allegation is sufficient to maintain a civil action in Washington State, and that complies with Article 1, sec 4.

Both RCW 4.32.250 and RCW 4.36.240 require *the court* to remedy defects "which shall not affect the substantial rights of the adverse party"[17]. As *Cudihee* makes clear, Appellees as far as their

---

[16] This Court should notice appeals #13-35119 and in 15-3594. Scheidler's declaratory case was dismissed because Kitsap's prosecutor Alan Miles, together with judge Harberly ruled Scheidler didn't have standing to challenge the Assessors fraudulent documents provided county residents until he became the fraud's victim.

[17] "[A]mended by the court" is further described by RCW 2.48.230 and the rules for professional conduct.

office is concerned, which is what this case is about, *have no rights whatever*. Therefore the *court* as these laws mandate, is obligated to remedy any pleading deficiency to insure Appellant's right of petition, and the people's right to address the petition, are not abridged. These laws are consistent with both Article 1, sec 1, and Article 1, sec 4.

Furthermore, Washington State's Supreme court rejected adopting *Twombly* and *Iqbal* standards of pleading in *McCurry v. Chevy Chase Bank, FSB*, 169 Wn.2d 96. [CP 147]. Under to US 10th amendment, state law[18] controls this case and this Court must declare *Twombly/Iqbal* pleading standards collide with RCW 4.04.010, and do not apply.

"If a trial court has tenable grounds for a decision but applies the wrong law, it errs as a matter of law. Moreover, whatever its stated reasons under the inapplicable standard, these reasons are no longer reasonable under the controlling legal standard." *Estate of Stalkup v. Vancouver Clinic, Inc., PS*, 145 Wn. App. 572 (Wash. Ct. App. 2008)

[18] See 28 USC 1652

### 3. Bar Associates are regulated by law

The correct laws governing the conduct of all Bar Associates [a.k.a., judges and lawyers], in addition to the State's constitution, are RCW title 2, particularly, RCW 2.48.180 through RCW 2.48.230, demanding they *uphold the constitutions and laws*, are *honest*; *never seek to mislead the judge or jury by any artifice or false statement of fact or law;* and *to protect Appellant's rights*. Bar associates who are judges are further limited by Article 4, particularly sec 16, supra.

These constitutional and statutory *mandates* are to safeguard the people from judges and lawyers, [*officers of the court*], overstepping their authority. These laws are also intended to operate in federal courts by the enactment of 28 USC 2072(b), which prohibits federal judges from using court rules, e.g., FRCP 12(b)(6), to "modify, enlarge or abridge" substantive rights. When *officers of the court* devise schemes by which their conduct is judged by *officers of the court*, rather than the *governed* as Article 1, sec 1 demands, the scheme *abridges* Article 1, sec 1, and is in violation of 28 USC 2072(b).

In Washington, judges and lawyers who violate the laws that *regulate lawyers and judges* commit ***gross misdemeanor violations*** under, but not limited to, RCW 42.20.080, RCW 9.91.010(2), and

felonies under RCW 9A.08.010 et. seq. Committing crimes to deny rights is neither a judicial act, nor lawyer privilege, nor a legislative act – it is criminal, and it deprives Appellant of his constitutional and statutory due process protections.

**4. Appellees, and their counsels, as 'government actors,' are duty bound by the following Washington State authorities.**

It is a foregone conclusion when judges and lawyers devise schemes to by-pass a jury when a jury is demanded, as in this case, they *selfishly* deprive Appellant and the People of their constitutional rights and powers – *that is criminal*.

ARTICLE 1, SECTION 1 imposes an affirmative duty upon Appellees – "to protect individual rights" (i.e., Appellant) -- and limits Appellees' conduct to only "just powers" (i.e., Hull's conduct) exercised by "the consent of the governed" (i.e., a jury). Not one Appellee nor judge has argued Appellees conduct meets the fundamental criteria of Art 1, sec 1. Therefore Appellees have no defenses. Any other standard that permits Appellees to circumvent their most basic obligation would contravene Art 1, sec 1.

ARTICLE 1, SECTION 4 provides Appellant, **and the people**, with an ***unabridged right of petition*** for the ***common good.*** The

Supreme Court, in *Dann,* acknowledges lawyer deceit adversely affects the public's trust in our legal institution. Appellant's lawsuit, notwithstanding it was a delegated task by the Bar, is a consequence of lawyer deceit – Ellerby's deceit and Hull's violations. According to the Supreme Court, this is a matter concerning the common good and must **not be abridged**. Judge Settle, by dismissing Appellant's case, has disregarded Washington's Art 1, sec 4, protecting petitions concerning the public good and denied the people their place at the table.

ARTICLE 1, SECTION 8, ARTICLE 1, SECTION 12, ARTICLE 1, SECTION 28, and ARTICLE 2 SECTION 28(12 and 17) all harmonize with Appellant's common law citations and collide with Appellees claims of immunity. There are no hereditary emoluments, privileges, or powers, in this state. 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. These authorities *prohibit* Judge Settle from granting Appellees privileges and immunities by dismissing the lawsuit against them.

ARTICLE 1, SECTION 10 requires justice in all cases shall be administered openly, and ***without unnecessary delay***. In this case Bar

associates create the controversy, use their tactics, apply their rules, and deny jury demands so they judge the controversy they created. If lawyers and judges were held to the law a jury would have ended this case in 2009! Appellant's life, liberty, (8 years pursuing a "judicial finding of impropriety"), and property ($119,373.45) has been confiscated by "officers of the court" and the motives and facts behind their acts must be "openly" determined to justify the delay. See *Washington State Labor Council v Reed*, supra.

ARTICLE 1, SECTION 21 establishes an ***'inviolate'*** right to a TRIAL BY JURY; and ARTICLE 4, SECTION 16, Judges shall not charge juries with respect to matters of fact, *nor comment thereon*, but shall declare the law. These two Constitutional provisions harmonize perfectly with Art 1, secs 1 and 4 … all political power is in the people and they may "petition and assemble" for the common good. For these reasons, a JURY is *an essential element* in having a "Court" as a JURY is the only institution within the judicial branch through which the *people assemble* to exercise their *Article 1, sec 1, powers* and *comment on the facts*.

State statues underscore these constitutional provisions 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. (Emphasis).

Therefore the rulings by judge Settle and Appellee Hull, when a JURY is demanded but denied, is a ruling issued by a judge -- NOT a COURT, NOT BY LAW, NOT by the People as a jury provides, and is in excess of judicial authority and must be ruled VOID.

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."

The same rationale in '*having a continued interest…in Article 1, Sec 21, Jury'*, as in *Sofie*, must hold true for Appellant's continuing interest in every other constitutional right, privilege and protection too.

Title 2 defines the *powers and duties* of Judges, Lawyers, Clerks and Courts. They cannot sit in judgment of their own compliance with these statutes as it renders these particular words irrelevant: "*all*

*political power is in the people* … governments *derive their just* powers *by the consent of the governed* … for the *protection of individual rights*". When judges and lawyers define their own conduct by obstructing a jury from presiding over trials they "define" their powers and the People's rights; a role they are prohibited from playing as RCW 2.28.030 clearly states – a judge shall disqualify for direct interest. See *Washington State Labor Council v Reed*, supra. In other words, when a judge denies a jury trial when a jury trial is demanded the judge has decided that he has all the "political power" to directly decide the matter to obtain the outcome he wants.

These authorities define what constitutes "due process of law" in Washington State. Judge Settle, under the guise of court rule authority, alters statutory and constitutional mandates. This is prohibited by 28 USC 2072(b) and deprives Appellant of his due process rights, and deprives the People of their powers. "[w]hen a court misapprehends or fails to apply the law with respect to underlying issues, it abuses its discretion." *Gunnells v. Healthplan Servs. Inc.*, 348 F.3d 417, 446 (4th Cir.2003); *see also United States v. Brown*, 415 F.3d 1257, 1266 (11th Cir.2005) ("An abuse of discretion can occur where the district court applies the wrong law…."). And it should go without saying that a court

manifestly abuses its discretion when it does not even realize it has any. *See* *United States v. Roberson,* 517 F.3d 990, 995 (8th Cir.2008)

Judge Settle legislates from the bench by ignoring, or in creating exceptions to Washington's general policies, noted above. This runs counter to 28 USC 2072(b) and 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)."

"Holding that the trial court applied the wrong law ...the court reverses the judgment and remands the case for further proceedings." *Noble v. A&R Envtl. Servs., LLC,* 140 Wn. App. 29 (Wash. Ct. App. 2007); "a trial court abuses its discretion when it applies the wrong law. See, e.g., *State v. Lord*, 161 Wn.2d 276, 284, 165 P.3d 1251 (2007) (a trial court abuses its discretion when it applies the wrong legal

standard); *Gillett v. Conner*, 132 Wn. App. 818, 822, 133 P.3d 960 (2006).

Judge Settle's orders must be reversed because it shreds Washington's constitution and unlawfully grants rights to a government official who has no rights as far as his official duties are concerned. See *Cudihee,* supra.

### E. **Judge Settle's orders, which violate 28 USC 455 and USC 1652, creates an "institutional conflict of interest" in violation of 28 USC 455(a) and (b) and 28 USC 2072 (b).**

Judge Settle, in making arbitrary rulings by refusing to apply RCW 4.04.010, by denying a jury their powers, in refusing to disqualify for bias and fiduciary conflict, in refusing to hold lawyers to their statutory duty, by refusing to view the evidence in favor of Appellant … has created an unlawful circular scheme – *an institutional conflict* -- in which judges-judge-judges to decide their own powers and the means to "abridge, modify or enlarge" substantive rights – a violation of both 28 USC 455 and 28 USC 2072(b).

Clearly a judge's *abuse of discretion* or *clear error* are labels confirming judges are judging judges. Under 28 USC 455, all judges share the same fiduciary duties under the law and *must disqualify* in matters concerning a judges duties or powers. [CP 29] This scheme of

euphemisms is the proof of the 'institutional conflict' and the evidence that 28 USC 455, 28 USC 1652 and 28 USC 2072 and RCW 2.48.180 through RCW 2.48.230 are perpetually violated. An 'abuse of discretion' doesn't occur in a vacuum. Since judges and lawyers share the same fiduciary duty under the law and codes of conduct – an equivalence relation exist. Therefore it must be true that lawyers exceed their authorized powers every time a judge 'abuses his discretion'.

The scheme in judges-judging-judges, in itself, a*bridges or modifies,* substantive rights. It is the *"governed"*, as Art 1, sec 1 clearly states, who must give their *consent* to *governments' powers* and insure they are exercised in a *just* manner. These laws were enacted to prevent judges and lawyers from abridging the power of the people by creating an 'institutional conflict of interest'. Judges-judging-judges is a fraud upon society.

This Court in *Ellins v. City of Sierra Madre*, 2013 U.S. App. LEXIS 19645 (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 Appellant's rights v the claimed

powers of 'officers of the court' 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) objectives' – NOT for Appellant's protections*. This argument goes unopposed by appellees and must be accepted as true under Rule 8(b)(6); *Epstein*, supra.

This "institutional conflict" is also an implied premise in the cases cited above, *In RE Consolidated Cases* 123 Wn.2d 530; *Elec. Contractors Ass'n v. Riveland* 138 Wn.2d 9, 11; 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"***. (Emphasis is mine.)

Judges-judging-judges violates RCW 2.28.030 and 28 USC 455, 28 USC 2072(b), and RCW 4.04.010 per *Elec. Contractors Ass'n* and *Reed*, supra.

"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 USC 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."

### F. **Judge Settle's order violates 28 USC 2403(b) and FRCP 5.1(d). Appellant is denied his constitutional challenges**

The WSBA is an unconstitutional entity and operates in an unconstitutional and unlawful way; Appellant has standing to sue because he is a victim of the WSBA's unconstitutional privileges.

When the WSBA was created by legislation in 1933 it swallowed Article 4, Sec 17, adopted in 1889, that defined the 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, as only Bar associates are admitted to the practice of law in this state. "In the present situation the state laws place burdens on two different, although overlapping, kinds of

rights—the right of individuals to associate for the advancement of political beliefs, and the right of qualified voters, regardless of their political persuasion, to cast their votes effectively. Both of these rights, of course, rank among our most precious freedoms." *Williams v. Rhodes*, 393 US 23, 30 (1968). The Bar Act created a Hobson choice for voters in their choice for judges – a Bar associate or no one.

Furthermore, The WSBA Act was never envisioned by the delegates who drafted Art 4, Sec 17 of Washington's constitution. In fact the delegates where highly fearful of "monopolies"[19, 20] as being responsible for government corruption. Noble's unlawful threat against Ellerby's Bar license clearly shows the WSBA engages in Sherman anti-trust activities[21] that affects the market place for attorneys from which voters must select judges!

When there is a "constitutional challenge … left unanswered" this Court vacates and remands for a determination, as it did in *Brackney v.*

---

[19] "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*

[20] See Article 12, Sec 22.

[21] See also Appellant's RICO statement in appeal 15-35945, where the Bar disbars those associates that take cases adverse to the WSBA's *objectives* – ref: the Poole, Scannell, Block cases.

*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.

## VIII. CONCLUSION

Hull's $119,373.45 sanction upon Appellant was unlawful, unauthorized, invalid and deprived Appellant of his due process rights. Furthermore, the Bar's theft scheme, in which Hull orchestrates (CP 226-228), is a predicate act under 18 USC 1961(1)(A) that is chargeable under state law, RCW 9A.56 - Felony Theft. State Appellees had the knowledge, the power and the affirmative duty to protect Appellant from Hull's role in the Bar's scheme but they refused and are co-conspirators in Hull's crimes and due process violations.

Appellant demands the following relief:

If a jury is not an element in 'due process of law' then this Court, based upon the pleadings and evidence viewed most favorable to the Appellant must find appellees/defendants guilty of the crimes committed against Appellant, pronounce a sentence they shall serve for

Felony Theft, and find in favor of Appellant as to the following: (See *Dernick v. Bralorne Resources, Ltd.*, 639 F. 2d 196, 198 – (5th Circuit 1981), supra.)

1) Declare the WSBA is an unconstitutional monopoly engaged in racketeering;
2) Declare Appellees are an 'association-in-fact' in the Bar's racketeering enterprise;
3) Declare Appellees' removal was defective;
4) Declare Judge Settle's orders, dkt 28, are invalid;
5) Reverse the award of costs, dkts 35 and 36;
6) Grant Appellant default judgment, dkt 17, 17-1, against all Appellees; and
7) Grant Appellant sanctions against Appellees' counsels for their misconduct in an equivalent amount as the default judgment.

Otherwise,

8) Remand for a *jury* trial so the *People* can decide the extent of Appellees, and their Counsels, *just powers*, as Washington's constitution and laws demand.

## IX. Related Cases:

*Scheidler v James Avery, et al.*, Appeal # 15-35945

William Scheidler, plaintiff/appellant pro se, all rights reserved.

## X. Appendix of Authorities

Table



US CONSTITUTION:

TENTH AMENDMENT

The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

US Code

28 U.S. Code § 455 - Disqualification of justice, judge, or magistrate judge

(a) Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

(b) He shall also disqualify himself in the following circumstances:

(1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(2) Where in private practice he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law

served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;
(3) Where he has served in governmental employment and in such capacity participated as counsel, adviser or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy;
(4) He knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;
(5) He or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:
(i) Is a party to the proceeding, or an officer, director, or trustee of a party;
(ii) Is acting as a lawyer in the proceeding;
(iii) Is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;
(iv) Is to the judge's knowledge likely to be a material witness in the proceeding.
(c) A judge should inform himself about his personal and fiduciary financial interests, and make a reasonable effort to inform himself about the personal financial interests of his spouse and minor children residing in his household.
(d) For the purposes of this section the following words or phrases shall have the meaning indicated:
(1) "proceeding" includes pretrial, trial, appellate review, or other stages of litigation;
(2) the degree of relationship is calculated according to the civil law system;
(3) "fiduciary" includes such relationships as executor, administrator, trustee, and guardian;
(4) "financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, adviser, or other active participant in the affairs of a party, except that:
(i) Ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the judge participates in the management of the fund;

(ii) An office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization;
(iii) The proprietary interest of a policyholder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest;
(iv) Ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.
(e) No justice, judge, or magistrate judge shall accept from the parties to the proceeding a waiver of any ground for disqualification enumerated in subsection (b). Where the ground for disqualification arises only under subsection (a), waiver may be accepted provided it is preceded by a full disclosure on the record of the basis for disqualification.
(f) Notwithstanding the preceding provisions of this section, if any justice, judge, magistrate judge, or bankruptcy judge to whom a matter has been assigned would be disqualified, after substantial judicial time has been devoted to the matter, because of the appearance or discovery, after the matter was assigned to him or her, that he or she individually or as a fiduciary, or his or her spouse or minor child residing in his or her household, has a financial interest in a party (other than an interest that could be substantially affected by the outcome), disqualification is not required if the justice, judge, magistrate judge, bankruptcy judge, spouse or minor child, as the case may be, divests himself or herself of the interest that provides the grounds for the disqualification.
(June 25, 1948, ch. 646, 62 Stat. 908; Pub. L. 93–512, § 1, Dec. 5, 1974, 88 Stat. 1609; Pub. L. 95–598, title II, § 214(a), (b), Nov. 6, 1978, 92 Stat. 2661; Pub. L. 100–702, title X, § 1007, Nov. 19, 1988, 102 Stat. 4667; Pub. L. 101–650, title III, § 321, Dec. 1, 1990, 104 Stat. 5117.)

28 U.S. Code § 1441 - Removal of civil actions
(a)Generally.—
Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the

United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.

(b)Removal Based on Diversity of Citizenship.—

(1) In determining whether a civil action is removable on the basis of the jurisdiction under section 1332(a) of this title, the citizenship of defendants sued under fictitious names shall be disregarded.

(2) A civil action otherwise removable solely on the basis of the jurisdiction under section 1332(a) of this title may not be removed if any of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.

(c)Joinder of Federal Law Claims and State Law Claims.—

(1) If a civil action includes—

(A) a claim arising under the Constitution, laws, or treaties of the United States (within the meaning of section 1331 of this title), and

(B) a claim not within the original or supplemental jurisdiction of the district court or a claim that has been made nonremovable by statute, the entire action may be removed if the action would be removable without the inclusion of the claim described in subparagraph (B).

(2) Upon removal of an action described in paragraph (1), the district court shall sever from the action all claims described in paragraph (1)(B) and shall remand the severed claims to the State court from which the action was removed. Only defendants against whom a claim described in paragraph (1)(A) has been asserted are required to join in or consent to the removal under paragraph (1).

(d)Actions Against Foreign States.—

Any civil action brought in a State court against a foreign state as defined in section 1603(a) of this title may be removed by the foreign state to the district court of the United States for the district and division embracing the place where such action is pending. Upon removal the action shall be tried by the court without jury. Where removal is based upon this subsection, the time limitations of section 1446(b) of this chapter may be enlarged at any time for cause shown.

(e)Multiparty, Multiforum Jurisdiction.—

(1) Notwithstanding the provisions of subsection (b) of this section, a defendant in a civil action in a State court may remove the action to the district court of the United States for the district and division embracing the place where the action is pending if—

(A) the action could have been brought in a United States district court under section 1369 of this title; or
(B) the defendant is a party to an action which is or could have been brought, in whole or in part, under section 1369 in a United States district court and arises from the same accident as the action in State court, even if the action to be removed could not have been brought in a district court as an original matter.
The removal of an action under this subsection shall be made in accordance with section 1446 of this title, except that a notice of removal may also be filed before trial of the action in State court within 30 days after the date on which the defendant first becomes a party to an action under section 1369 in a United States district court that arises from the same accident as the action in State court, or at a later time with leave of the district court.
(2) Whenever an action is removed under this subsection and the district court to which it is removed or transferred under section 1407(j) [1] has made a liability determination requiring further proceedings as to damages, the district court shall remand the action to the State court from which it had been removed for the determination of damages, unless the court finds that, for the convenience of parties and witnesses and in the interest of justice, the action should be retained for the determination of damages.
(3) Any remand under paragraph (2) shall not be effective until 60 days after the district court has issued an order determining liability and has certified its intention to remand the removed action for the determination of damages. An appeal with respect to the liability determination of the district court may be taken during that 60-day period to the court of appeals with appellate jurisdiction over the district court. In the event a party files such an appeal, the remand shall not be effective until the appeal has been finally disposed of. Once the remand has become effective, the liability determination shall not be subject to further review by appeal or otherwise.
(4) Any decision under this subsection concerning remand for the determination of damages shall not be reviewable by appeal or otherwise.
(5) An action removed under this subsection shall be deemed to be an action under section 1369 and an action in which jurisdiction is based on section 1369 of this title for purposes of this section and sections 1407, 1697, and 1785 of this title.

(6) Nothing in this subsection shall restrict the authority of the district court to transfer or dismiss an action on the ground of inconvenient forum.
(f)Derivative Removal Jurisdiction.—
The court to which a civil action is removed under this section is not precluded from hearing and determining any claim in such civil action because the State court from which such civil action is removed did not have jurisdiction over that claim.
(June 25, 1948, ch. 646, 62 Stat. 937; Pub. L. 94–583, § 6, Oct. 21, 1976, 90 Stat. 2898; Pub. L. 99–336, § 3(a), June 19, 1986, 100 Stat. 637; Pub. L. 100–702, title X, § 1016(a), Nov. 19, 1988, 102 Stat. 4669; Pub. L. 101–650, title III, § 312, Dec. 1, 1990, 104 Stat. 5114; Pub. L. 102–198, § 4, Dec. 9, 1991, 105 Stat. 1623; Pub. L. 107–273, div. C, title I, § 11020(b)(3), Nov. 2, 2002, 116 Stat. 1827; Pub. L. 112–63, title I, § 103(a), Dec. 7, 2011, 125 Stat. 759.)

28 U.S. Code § 1652 - State laws as rules of decision
The laws of the several states, except where the Constitution or treaties of the United States or Acts of Congress otherwise require or provide, shall be regarded as rules of decision in civil actions in the courts of the United States, in cases where they apply.
(June 25, 1948, ch. 646, 62 Stat. 944.)

28 U.S. Code § 2072 - Rules of procedure and evidence; power to prescribe
(a) The Supreme Court shall have the power to prescribe general rules of practice and procedure and rules of evidence for cases in the United States district courts (including proceedings before magistrate judges thereof) and courts of appeals.
(b) Such rules shall not abridge, enlarge or modify any substantive right. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.
(c) Such rules may define when a ruling of a district court is final for the purposes of appeal under section 1291 of this title.
(Added Pub. L. 100–702, title IV, § 401(a), Nov. 19, 1988, 102 Stat. 4648; amended Pub. L. 101–650, title III, §§ 315, 321, Dec. 1, 1990, 104 Stat. 5115, 5117.)

28 U.S. Code § 2106 - Determination

The Supreme Court or any other court of appellate jurisdiction may affirm, modify, vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances.
(June 25, 1948, ch. 646, 62 Stat. 963.)

28 U.S. Code § 2201 - Creation of remedy
(a) In a case of actual controversy within its jurisdiction, except with respect to Federal taxes other than actions brought under section 7428 of the Internal Revenue Code of 1986, a proceeding under section 505 or 1146 of title 11, or in any civil action involving an antidumping or countervailing duty proceeding regarding a class or kind of merchandise of a free trade area country (as defined in section 516A(f)(10) of the Tariff Act of 1930), as determined by the administering authority, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.
(b) For limitations on actions brought with respect to drug patents see section 505 or 512 of the Federal Food, Drug, and Cosmetic Act, or section 351 of the Public Health Service Act.

28 U.S. Code § 2202 - Further relief
Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment.

28 U.S. Code § 2403 - Intervention by United States or a State; constitutional question
(a) In any action, suit or proceeding in a court of the United States to which the United States or any agency, officer or employee thereof is not a party, wherein the constitutionality of any Act of Congress affecting the public interest is drawn in question, the court shall certify such fact to the Attorney General, and shall permit the United States to intervene for presentation of evidence, if evidence is

otherwise admissible in the case, and for argument on the question of constitutionality. The United States shall, subject to the applicable provisions of law, have all the rights of a party and be subject to all liabilities of a party as to court costs to the extent necessary for a proper presentation of the facts and law relating to the question of constitutionality.

(b) In any action, suit, or proceeding in a court of the United States to which a State or any agency, officer, or employee thereof is not a party, wherein the constitutionality of any statute of that State affecting the public interest is drawn in question, the court shall certify such fact to the attorney general of the State, and shall permit the State to intervene for presentation of evidence, if evidence is otherwise admissible in the case, and for argument on the question of constitutionality. The State shall, subject to the applicable provisions of law, have all the rights of a party and be subject to all liabilities of a party as to court costs to the extent necessary for a proper presentation of the facts and law relating to the question of constitutionality.

(June 25, 1948, ch. 646, 62 Stat. 971; Pub. L. 94–381, § 5, Aug. 12, 1976, 90 Stat. 1120.)

WASHINGTON STATE CONSTITUTION:

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 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, but the legislature may provide for a jury of any number less than twelve in courts not of record, and for a verdict by nine or more jurors in civil cases in any court of record, and 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 14 SAME, FEDERAL OR OTHER OFFICE. No person, being a member of congress, or holding any civil or military office under the United States or any other power, shall be eligible to be a member of the legislature; and if any person after his election as a member of the legislature, shall be elected to congress or be appointed to any other office, civil or military, under the government of the United States, or any other power, his acceptance thereof shall vacate his seat, provided, that officers in the militia of the state who receive no annual salary, local officers and postmasters, whose compensation does not exceed three hundred dollars per annum, shall not be ineligible.

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

ARTICLE 4, SECTION 9 REMOVAL OF JUDGES, ATTORNEY GENERAL, ETC. Any judge of any court of record, the attorney general, or any prosecuting attorney may be removed from office by joint resolution of the legislature, in which three-fourths of the members elected to each house shall concur, for incompetency, corruption, malfeasance, or delinquency in office, or other sufficient cause stated in such resolution. But no removal shall be made unless the officer complained of shall have been served with a copy of the

charges against him as the ground of removal, and shall have an opportunity of being heard in his defense. Such resolution shall be entered at length on the journal of both houses and on the question of removal the ayes and nays shall also be entered on the journal.

Removal, censure, suspension, or retirement of judges or justices: Art. 4 Section 31.

ARTICLE 4, SECTION 16 CHARGING JURIES. Judges shall not charge juries with respect to matters of fact, nor comment thereon, but shall declare the law.

ARTICLE 4, SECTION 17 ELIGIBILITY OF JUDGES. 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.

ARTICLE 5, SECTION 1 IMPEACHMENT - POWER OF AND PROCEDURE. The house of representatives shall have the sole power of impeachment. The concurrence of a majority of all the members shall be necessary to an impeachment. All impeachments shall be tried by the senate, and, when sitting for that purpose, the senators shall be upon oath or affirmation to do justice according to law and evidence. When the governor or lieutenant governor is on trial, the chief justice of the supreme court shall preside. No person shall be convicted without a concurrence of two-thirds of the senators elected.

ARTICLE 5, SECTION 2 OFFICERS LIABLE TO. The governor and other state and judicial officers, except judges and justices of courts not of record, shall be liable to impeachment for high crimes or misdemeanors, or malfeasance in office, but judgment in such cases shall extend only to removal from office and disqualification to hold any office of honor, trust or profit, in the state. The party, whether convicted or acquitted, shall, nevertheless, be liable to prosecution, trial, judgment and punishment according to law.

ARTICLE 5, SECTION 3 REMOVAL FROM OFFICE. All officers not liable to impeachment shall be subject to removal for misconduct or malfeasance in office, in such manner as may be provided by law.

Washington State Statutes

RCW 2.28.030
Judicial officer defined—When disqualified.
A judicial officer is a person authorized to act as a judge in a court of justice. Such officer shall not act as such in a court of which he or she is a member in any of the following cases:
(1) In an action, suit, or proceeding to which he or she is a party, or in which he or she is directly interested.
(2) When he or she was not present and sitting as a member of the court at the hearing of a matter submitted for its decision.
(3) When he or she is related to either party by consanguinity or affinity within the third degree. The degree shall be ascertained and computed by ascending from the judge to the common ancestor and descending to the party, counting a degree for each person in both lines, including the judge and party and excluding the common ancestor.
(4) When he or she has been attorney in the action, suit, or proceeding in question for either party; but this section does not apply to an application to change the place of trial, or the regulation of the order of business in court.
In the cases specified in subsections (3) and (4) of this section, the disqualification may be waived by the parties, and except in the supreme court and the court of appeals shall be deemed to be waived unless an application for a change of the place of trial be made as provided by law.
[ 2011 c 336 § 39; 1971 c 81 § 11; 1895 c 39 § 1; 1891 c 54 § 3; RRS § 54.]

RCW 2.28.050
Judge distinguished from court.

A judge may exercise out of court all the powers expressly conferred upon a judge as contradistinguished from a court and not otherwise.RCW Complete Title 2 - COURTS OF RECORD – Powers and duties of Judges, Clerks and Courts.

RCW 2.28.060Judicial officers—Powers.
Every judicial officer has power:

(1) To preserve and enforce order in his or her immediate presence and in the proceedings before him or her, when he or she is engaged in the performance of a duty imposed upon him or her by law;
(2) To compel obedience to his or her lawful orders as provided by law;
(3) To compel the attendance of persons to testify in a proceeding pending before him or her, in the cases and manner provided by law;
(4) To administer oaths to persons in a proceeding pending before him or her, and in all other cases where it may be necessary in the exercise of his or her powers and the performance of his or her duties.

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)
Definitions—Unlawful practice a crime—Cause for discipline—Unprofessional conduct—Defense—Injunction—Remedies—Costs—Attorneys' fees—Time limit for action.
(6) A violation of this section is cause for discipline and constitutes unprofessional conduct that could result in any regulatory penalty provided by law, including refusal, revocation, or suspension of a business or professional license, or right or admission to practice. 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)
Oath on admission.
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 abstain from all offensive personality, and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged; 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.
An attorney or counselor may be disbarred or suspended for any of the following causes arising after his or her admission to practice:
(2) Willful disobedience or violation of an order of the court requiring him or her to do or forbear an act connected with, or in the course of, his or her profession, which he or she ought in good faith to do or forbear.
(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
Code of ethics.
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.
[1891 c 17 § 1; Code 1881 § 1; 1877 p 3 § 1; 1862 p 83 § 1; RRS § 143. Formerly RCW 1.12.030.]

RCW 4.24.500
Good faith communication to government agency—Legislative findings—Purpose.
Information provided by citizens concerning potential wrongdoing is vital to effective law enforcement and the efficient operation of government. The legislature finds that the threat of a civil action for damages can act as a deterrent to citizens who wish to report information to federal, state, or local agencies. The costs of defending against such suits can be severely burdensome. The purpose of RCW 4.24.500 through 4.24.520 is to protect individuals who make good-faith reports to appropriate governmental bodies.
[ 1989 c 234 § 1.]

RCW 4.24.510
Communication to government agency or self-regulatory organization—Immunity from civil liability.
A person who communicates a complaint or information to any branch or agency of federal, state, or local government, or to any self-regulatory organization that regulates persons involved in the securities or futures business and that has been delegated authority by a federal, state, or local government agency and is subject to oversight by the delegating agency, is immune from civil liability for claims based upon the communication to the agency or organization regarding any matter reasonably of concern to that agency or organization. A person prevailing upon the defense provided for in this section is entitled to recover expenses and reasonable attorneys' fees incurred in establishing the defense and in addition shall receive statutory damages of ten thousand dollars. Statutory damages may be denied if the court finds that the complaint or information was communicated in bad faith.
[ 2002 c 232 § 2; 1999 c 54 § 1; 1989 c 234 § 2.]

RCW 4.32.250
Effect of minor defects in pleading.
A notice or other paper is valid and effectual though the title of the action in which it is made is omitted, or it is defective either in respect to the court or parties, if it intelligently refers to such action or proceedings; and in furtherance of justice upon proper terms, any other defect or error in any notice or other paper or proceeding may be amended by the court, and any mischance, omission or defect relieved within one year thereafter; and the court may enlarge or extend the time, for good cause shown, within which by statute any act is to be done, proceeding had or taken, notice or paper filed or served, or may, on such terms as are just, permit the same to be done or supplied after the time therefor has expired.
[ 1988 c 202 § 2; 1893 c 127 § 24; RRS § 250.]

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 conferring jurisdiction.

RCW 4.36.170
Material allegation defined.
A material allegation in a pleading is one essential to the claim or defense, and which could not be stricken from the pleading without leaving it insufficient.
[Code 1881 § 104; 1877 p 22 § 104; 1854 p 143 § 65; RRS § 298.]

RCW 4.36.240
Harmless error disregarded.
The court shall, in every stage of an action, disregard any error or defect in pleadings or proceedings which shall not affect the substantial rights of the adverse party, and no judgment shall be reversed or affected by reason of such error or defect.

RCW 4.40.060
Trial of certain issues of fact—Jury.
An issue of fact, in an action for the recovery of money only, or of specific real or personal property shall be tried by a jury, unless a jury is waived, as provided by law, or a reference ordered, as provided by statute relating to referees.
[ 1893 c 127 § 33; Code 1881 § 204; 1877 p 42 § 208; 1873 p 52 § 206; 1869 p 50 § 208; 1854 p 164 § 183; RRS § 314.]

RCW 4.44.090
Questions of fact for jury.
All questions of fact other than those mentioned in RCW 4.44.080, shall be decided by the jury, and all evidence thereon addressed to them.
[Code 1881 § 224; 1877 p 47 § 228; 1869 p 56 § 228; RRS § 343.]

RCW 4.48.010
Reference by consent—Right to jury trial—Referee may not preside—Parties' written consent constitutes waiver of right.
The court shall order all or any of the issues in a civil action, whether of fact or law, or both, referred to a referee upon the written consent of the parties which is filed with the clerk. Any party shall have the

right in an action at law, upon an issue of fact, to demand a trial by jury. No referee appointed under this chapter may preside over a jury trial. The written consent of the parties constitutes a waiver of the right of trial by jury by any party having the right.
[ 1984 c 258 § 512; Code 1881 § 248; 1854 p 168 § 206; RRS § 369. Formerly RCW 4.44.100, part, and 4.48.010.]

4.92.060
Action against state officers, employees, volunteers, or foster parents—Request for defense.
Whenever an action or proceeding for damages shall be instituted against any state officer, including state elected officials, employee, volunteer, or foster parent licensed in accordance with chapter 74.15 RCW, arising from acts or omissions while performing, or in good faith purporting to perform, official duties, or, in the case of a foster parent, arising from the good faith provision of foster care services, such officer, employee, volunteer, or foster parent may request the attorney general to authorize the defense of said action or proceeding at the expense of the state.
[ 1989 c 403 § 2; 1986 c 126 § 5; 1985 c 217 § 1; 1975 1st ex.s. c 126 § 1; 1975 c 40 § 1; 1921 c 79 § 1; RRS § 890-1.]

4.92.090
Tortious conduct of state—Liability for damages.
The state of Washington, whether acting in its governmental or proprietary capacity, shall be liable for damages arising out of its tortious conduct to the same extent as if it were a private person or corporation.

RCW 4.96.010
Tortious conduct of local governmental entities—Liability for damages.
(1) All local governmental entities, whether acting in a governmental or proprietary capacity, shall be liable for damages arising out of their tortious conduct, or the tortious conduct of their past or present officers, employees, or volunteers while performing or in good faith purporting to perform their official duties, to the same extent as if they were a private person or corporation. Filing a claim for damages within the time allowed by law shall be a condition precedent to the commencement of any action claiming damages. The laws specifying

the content for such claims shall be liberally construed so that substantial compliance therewith will be deemed satisfactory.
(2) Unless the context clearly requires otherwise, for the purposes of this chapter, "local governmental entity" means a county, city, town, special district, municipal corporation as defined in RCW 39.50.010, quasi-municipal corporation, any joint municipal utility services authority, any entity created by public agencies under RCW 39.34.030, or public hospital.
(3) For the purposes of this chapter, "volunteer" is defined according to RCW 51.12.035.

RCW 9A.08.020
Liability for conduct of another—Complicity.
(1) A person is guilty of a crime if it is committed by the conduct of another person for which he or she is legally accountable.
(2) A person is legally accountable for the conduct of another person when:
(a) Acting with the kind of culpability that is sufficient for the commission of the crime, he or she causes an innocent or irresponsible person to engage in such conduct; or
(b) He or she is made accountable for the conduct of such other person by this title or by the law defining the crime; or
(c) He or she is an accomplice of such other person in the commission of the crime.
(3) A person is an accomplice of another person in the commission of a crime if:
(a) With knowledge that it will promote or facilitate the commission of the crime, he or she:
(i) Solicits, commands, encourages, or requests such other person to commit it; or
(ii) Aids or agrees to aid such other person in planning or committing it; or
(b) His or her conduct is expressly declared by law to establish his or her complicity.
(4) A person who is legally incapable of committing a particular crime himself or herself may be guilty thereof if it is committed by the conduct of another person for which he or she is legally accountable, unless such liability is inconsistent with the purpose of the provision establishing his or her incapacity.

(5) Unless otherwise provided by this title or by the law defining the crime, a person is not an accomplice in a crime committed by another person if:
(a) He or she is a victim of that crime; or
(b) He or she terminates his or her complicity prior to the commission of the crime, and either gives timely warning to the law enforcement authorities or otherwise makes a good faith effort to prevent the commission of the crime.
(6) A person legally accountable for the conduct of another person may be convicted on proof of the commission of the crime and of his or her complicity therein, though the person claimed to have committed the crime has not been prosecuted or convicted or has been convicted of a different crime or degree of crime or has an immunity to prosecution or conviction or has been acquitted.
[ 2011 c 336 § 351; 1975-'76 2nd ex.s. c 38 § 1; 1975 1st ex.s. c 260 § 9A.08.020.]

RCW 9A.80.010
Official misconduct.
(1) A public servant is guilty of official misconduct if, with intent to obtain a benefit or to deprive another person of a lawful right or privilege:
(a) He or she intentionally commits an unauthorized act under color of law; or
(b) He or she intentionally refrains from performing a duty imposed upon him or her by law.
(2) Official misconduct is a gross misdemeanor.
[ 2011 c 336 § 408; 1975-'76 2nd ex.s. c 38 § 17; 1975 1st ex.s. c 260 § 9A.80.010.]

RCW 42.20.080
Other violations by officers.
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.
[ 2012 c 117 § 116; 1909 c 249 § 318; RRS § 2570.]

Federal Rules of Civil Procedure: Rule 8(b)(6) Effect of Failing to Deny. An allegation—other than one relating to the amount of

damages—is admitted if a responsive pleading is required and the allegation is not denied. If a responsive pleading is not required, an allegation is considered denied or avoided. (

9th Circuit Case Number(s) 17-35202

**NOTE:** To secure your input, you should print the filled-in form to PDF (File > Print > *PDF Printer/Creator*).

**********

## CERTIFICATE OF SERVICE
## When All Case Participants are Registered for the Appellate CM/ECF System

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on (date) 7/16/2017 .

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Signature (use "s/" format) "s/William Scheidler"

**********

## CERTIFICATE OF SERVICE
## When Not All Case Participants are Registered for the Appellate CM/ECF System

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on (date) .

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within 3 calendar days to the following non-CM/ECF participants:

Signature (use "s/" format)

**Form 8. Certificate of Compliance Pursuant to 9th Circuit Rules 28.1-1(f), 29-2(c)(2) and (3), 32-1, 32-2 or 32-4 for Case Number** 17-35202

Note: This form must be signed by the attorney or unrepresented litigant *and attached to the end of the brief.*

I certify that (*check appropriate option*):

☐ This brief complies with the length limits permitted by Ninth Circuit Rule 28.1-1.
The brief is [ ] words or [ ] pages, excluding the portions exempted by Fed. R. App. P. 32(f), if applicable. The brief's type size and type face comply with Fed. R. App. P. 32(a)(5) and (6).

☒ This brief complies with the length limits permitted by Ninth Circuit Rule 32-1.
The brief is [13,837] words or [ ] pages, excluding the portions exempted by Fed. R. App. P. 32(f), if applicable. The brief's type size and type face comply with Fed. R. App. P. 32(a)(5) and (6).

☐ This brief complies with the length limits permitted by Ninth Circuit Rule 32-2(b).
The brief is [ ] words or [ ] pages, excluding the portions exempted by Fed. R. App. P. 32(f), if applicable, and is filed by (1) ☐ separately represented parties; (2) ☐ a party or parties filing a single brief in response to multiple briefs; or (3) ☐ a party or parties filing a single brief in response to a longer joint brief filed under Rule 32-2(b). The brief's type size and type face comply with Fed. R. App. P. 32(a)(5) and (6).

☐ This brief complies with the longer length limit authorized by court order dated [ ]
The brief's type size and type face comply with Fed. R. App. P. 32(a)(5) and (6). The brief is [ ] words or [ ] pages, excluding the portions exempted by Fed. R. App. P. 32(f), if applicable.

☐ This brief is accompanied by a motion for leave to file a longer brief pursuant to Ninth Circuit Rule 32-2 (a) and is [ ] words or [ ] pages, excluding the portions exempted by Fed. R. App. P. 32 (f), if applicable. The brief's type size and type face comply with Fed. R .App. P. 32(a)(5) and (6).

☐ This brief is accompanied by a motion for leave to file a longer brief pursuant to Ninth Circuit Rule 29-2 (c)(2) or (3) and is [ ] words or [ ] pages, excluding the portions exempted by Fed. R. App. P. 32(f), if applicable. The brief's type size and type face comply with Fed. R. App. P. 32(a)(5) and (6).

☐ This brief complies with the length limits set forth at Ninth Circuit Rule 32-4.
The brief is [ ] words or [ ] pages, excluding the portions exempted by Fed. R. App. P. 32(f), if applicable. The brief's type size and type face comply with Fed. R. App. P. 32(a)(5) and (6).

Signature of Attorney or Unrepresented Litigant ["s/" William Scheidler] Date [7/16/2017]

("s/" plus typed name is acceptable for electronically-filed documents)