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UNITED STATES COURT OF APPEALS FOR THE NINTH FEDERAL CIRCUIT

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IN RE ANNE BLOCK,

Petitioner

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ON PETITION OF A WRIT OF MANDAMUS TO UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON

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Real Parties in interest

Anne Block, Petitioner

v.

Snohomish County, The City of Gold Bar, Joe Beavers, Crystal Pennington, Florence Davi Martin, Christopher Michael Wright, Tamera Doherty, John Pennington, Aaron Reardon, Kevin Hulten, Christopher Schwartzen, Brian Parry, Jon Rudicil, Diana Rose, Washington State Bar Association, Linda Eide, Lin O'Dell, Mark Plivilech, Jennifer Dremousis, Julie Shankland, Kathryn Berger, Alison Sato, Stephanie Bloomfield, Marcia Lynn Damerow Fischer, Marc Silverman, Stephania Camp Denton, Michele Nina Carney, Todd R. Startzel, S. Nia Renei Cottrell, Michael Jon Myers, William Earl Davis, Keith Mason Black, Kevin Bank, Joseph Nappi Jr. William McGillin, Doug Ende, Ronald Schapps, Nadine Scott, Sherry Mehr, King County, Cary Coblantz, Port of Seattle, James Tuttle, City of Duvall, Lori Batiot, Crystal Hill Pennington, (nee Berg), Kenyon Disend, Michael Kenyon, Ann Marie Soto, Sandra Sullivan (nee Meadowcraft) Margaret King Sean Reay, Aaron Reardon, Kevin Hulten, Christopher Schwartzen, Brian Parry, Jon Rudicil, Diana Rose, Respondents

Civil Case No. 2:14-cv-00235-RAJ

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October 7, 2016

I. The relief sought.

Anne Block (Block) seeks an "extraordinary remedy" - a writ of mandamus from the Ninth Circuit Court of Appeals directing that all district judges of Washington, who are Washington State Bar Associates, be disqualified from hearing, any and all of her cases involving the Washington State Bar Association for the reasons set forth in this petition.

At the present time there are four such cases in the Western District of Washington: Civil Case # 2:14-cv-00235-RAJ, *Block v. Snohomish County et al*; Civil Case # 15-CV-02018 RSM, *Block v. Washington State Bar Association et al* , Civil Case # 16-RD-0066-JCC, *In re Anne Block* and proposed Civil Case #. _____ *Block v. Madsen* et al .

She also seeks, as part of her petition that all orders in any of the first three cases be vacated and all but the reciprocal discipline case be joined and heard by an out of state federal judge, who will try the cases together.

II. The Issues Presented:

1. Are all Federal Judges and Commissioners in Washington who belong to the Washington State Bar Association (WSBA) required to disqualify pursuant to 28 USC 455(a) and/or 28 USC 455(b)?

2. Under Washington Law, established by *Riss v Angel,* do members of the Washington State Bar Association who hold judicial office face individual liability

if Petitioner Block prevails in her Civil Rights/RICO/Sherman Anti-Trust suit against the WSBA?

3. Have Judges Richard Jones, Ronald Leighton, and Ricardo Martinez engaged in misconduct mandating their disqualification under either 28 USC 455(a) or 28 USC 455(b)?

4. Under Washington Law, do judges and Washington State Bar Association members who participate in prosecuting in the disciplinary process have any immunities?

5. If in fact the judges should have been disqualified, is the proper remedy to void the orders they issued and remand the case back with an out of state judge appointed to hear the case?

III. The facts necessary to understand the issue presented by the petition.

A. Background

1. In this case involving judicial disqualification, the petitioner requests this court to take judicial notice that the chief justice of the Ninth Circuit COA has already ruled in *Marshall v. WSBA* Western District of Washington case # 11-5319, *Pope v. WSBA*, Western District of Washington case # 11-05970, and *Scannell v. Washington State Bar Association, et al*, Western District of Washington case #

2:12-cv-00683, that their membership in the WSBA requires disqualification in a suit against the WSBA.[1]

2. This court should take judicial notice that the petitioner has filed Civil Rights, RICO and Sherman Anti-Trust Act actions against the County of Snohomish, the Washington State Bar Association, the City of Gold Bar in federal cases # 2:14-cv-00235-RAJ *Block v. Snohomish County et al* and # 15-CV-02018 RSM Block v. WSBA et al.[2]

3. These suits originated from actions beginning in December 2008, when the petitioner began making public disclosure requests to the respondents in connection with her role as co-owner and investigative reporter for the Gold Bar Reporter (GBR) an online news service.

4. Since the founding of the GBR, Anne Block has written numerous articles accusing the respondents of various crimes and other wrongdoing, including theft, misuse of taxpayer funds such as financing affairs and trips to brothels, bribery, racketeering, rape, extortion and assaults. She claims to carefully research each of the articles through public disclosure, hiring a private investigator firm and utilizing confidential sources. The number of articles are numerous and continue to be

[1] These rulings were made May 3, 2011, December 14, 2011, and June 20, 2012 by the then acting Chief Justice of Ninth Circuit, the honorable Judge Alex Kozinski.
[2] As will be argued later in this memorandum, the two suits should have been one, because they were unlawfully bifurcated by Judge Jones, who had a direct conflict of interest.

published up until the present day. She provides her targets an opportunity to respond, and most refuse to deny the allegations. She has never been sued for defamation. (Ex. B, Dkt. 96-2, p. 1-36, passim).

5. Her initial targets were the respondents from Gold Bar Washington, who refused to respond to public disclosure requests after she began running a story about a city employee Karl Majerle (Majerle) who was fired for poisoning the City's water supply and stealing gasoline using a city petrol card. In her articles the petitioner alleged city officials failed to report Majerle's crimes because he was extorting them over misconduct committed by the officials. According to Block, when she requested all records regarding Majerle using Washington's Public Records Act (PRA), Gold Bar officials removed the records from the city offices, transferred the records to a private party, and made them inaccessible to the public in violation of the PRA.[3] (Ex. B, Dkt 96-2, p. 10)

6. According to her suits, another of her targets was respondent Aaron Reardon (Reardon), the chief executive of Snohomish County. In a series of exposes, Block published articles documenting how Reardon used taxpayer funds to carry on an affair with two employees in Europe. After Anne Block broke the story

[3] According to Block, after years of delay, the records were finally released recently after her suits were dismissed, which denied the petitioner valuable evidence she needed to make her claims more plausible.

in GBR, and another paper document subsequent harassment, Reardon had to resign in disgrace. (Ex. A, Dkt 62, p. 37-38)

7. Another target of Block's exposes was Respondent John Pennington (Pennington) who was head of emergency services and the third highest paid official in Snohomish County. She published over fifty articles about respondent Pennington's incompetence, lack of credentials to head the Department of Emergency Management for Snohomish County, and criminal history of assaulting women. (Ex. B, Dkt 1, p28-29, Dkt 96-2, p. 2-35)

8. Petitioner Block named Pennington as the one primarily responsible for the Oso mudslide disaster which killed 43 people in 2014. According to Block, Pennington had advance knowledge from his own experts that the area was unstable, yet recommended the remaining houses be built, rather than condemning the ones already there. As a salaried official, it was his responsibility to be on hand when the disaster struck. Instead, he was on the East Coast, working on other business. When the mudslide hit, he ordered his staff to stand down, delaying the response to Oso by over two days. (Ex. B, Dkt 96-2, p. 22-23)(Exhibit D, p. 14-15)

9. The suits also made detailed allegations of meetings of the respondents in furtherance of a scheme to deny the petitioner these records and sully her reputation with unlawful disbarment proceedings in retaliation for her news reporting activities. There were allegations of assaults and intimidation of Block supporters at

political gatherings as well as a thinly veiled threat by the head of the Gold Bar City Council to murder Anne Block if she showed up to city council meetings. (Ex. A, Dkt 62, p. 11-42).(Ex. B, Dkt 96-2, P. 6-32)

10. In September 2015, Block alleges the Washington Coalition for Open Government honored the plaintiff for her contributions in reporting by ranking her in the top three of Washington State news reporters. (Exhibit D, P. 8, 9)

11. On November 15, 2013, in response to a bar complaint filed by Pennington, respondent Linda Eide (Eide) issued a subpoena to Block for documents relating to articles published in the Gold Bar Reporter over a three year period (Ex. B, Dkt. 96-3).

12. On December 2, 2013, the WSBA alleged that Block sent the Bar Association a resignation letter, claiming there were no "disciplinary investigation or proceeding against me". At the bottom of the form, she altered the language on the form, where it stated that "one cannot resign with a pending grievance" to include the words "so long as the issue is pertains to a former client". (Ex. B, Dkt. 96-6, p. 3).

13. The WSBA claims that its bylaws prevent an attorney from resigning as long as there is some kind of disciplinary investigation pending. (Ex. B, Dkt. 96-6, p. 3).

14. On December 3, 2013, Block sent Eide a letter objecting to the deposition on First Amendment grounds, Media Shield laws (RCW 5.68.010), and the constitutional rights of all Washingtonians " to be left alone in their private affairs." She also raised the defense that the Bar Association had no jurisdiction. (Ex. B, Dkt. 96-4) and that she could not attend because she was out of state. (Ex. D, Proposed Complaint p. 14)

15. On December 6, 2013, without attempting to have any of the objections adjudicated by the Chief Hearing Officer, Eide attempted to hold the deposition without Block (Ex. B, Dkt. 96-2, p. 26, 27, Dkt. 96-6, p. 4).

16. The petitioner alleges that the rule used by Eide was unconstitutional because it provided no method for contesting it. After the constitutionality of the rule had been questioned by a federal judge in the Scannell case, the Washington State Supreme court amended the rule to allow for objections. Block alleges Eide refused to allow for a continuance to allow Block to come back into the state because the WSBA could not hold the deposition under the new rule, which went into effect, Jan. 1, 2014. (Ex. D Proposed Complaint, p. 14, 24).

17. Block then alleged that Eide and her paralegal denied Block due process, first, by holding ex parte conferences with the hearing officer, then prevented from participating in her hearing by breaking connection and/or disrupting a telephone line used by Block to participate in the hearing. Finally, Eide refused to present

Block's exhibits to the board, so she could present argument for an appeal. (Ex. D, Proposed Complaint, p. 14-17)

18. On September 6, 2014, Hearing Officer O'Dell, issued her findings which recommended disbarment. (Exhibit B, Dkt. 96-7). While she makes a finding that Block intentionally and knowingly did not show up to a deposition, she makes no finding as to how the deposition could take place when there were objections pending. (Exhibit B, Dkt. 96-7) how the Bar Association had jurisdiction to regulate the contents of a newspaper. (Exhibit B, Dkt. 96-7) or the issue of whether Block had a constitutional right to disassociate from the WSBA under the Fourth and Fourteenth Amendments.[4]

19. Finally O'Dell made several findings of misconduct, for which she was never charged, including harming the Penningtons, and misconduct in the way she conducted her case.[5]

20. After Block filed objections and asked for oral argument under ELC 11.2. (Ex. B, Dkt. 96-2, p. 27).on October 30, 2014, the Disciplinary Board held an ex parte hearing which was videotaped. The video tape shows numerous ex parte

[4] In *Harris v. Quinn*, 134 S. Ct 2618, (2014) Justice Alioto, writing for the majority, ruled that the issue of whether mandatory membership violated the constitution was not before the court and had not been decided yet in previous cases. He pointed out the only previous case addressing the issue produced a plurality opinion which did not establish precedence on the issue.

conversations between John Pennington, Julie Shankland, and Disciplinary Board member Kevin Bank. (Ex B, Dkt. 96-2, p. 28). At the time of the hearing, Block was hospitalized for ear surgery. The board refused to accommodate her disability by granting a continuance.

21. On November 15, 2015, the Disciplinary Board recommended disbarment again refusing to address the same issues that O'Dell had failed to address.

22. The Clerk of the Washington State Supreme Court refused to process her appeal after cashing her filing fee. (Ex. B, Dkt. 96-2, p. 32). Although the clerk claims that the reason for the denial was that Block failed to attach the order being appealed, Block specifically denied this was true under oath. There is nothing in the record in terms of evidence that it was not attached. Block was disbarred as a result. (Ex. D, Proposed Complaint p. 26.)

23.

B. Factual allegations concerning the disqualifications sought in this action.

1. On June 12, 2014, Anne Block notifies the court she will be amending the suit to bring in the WSBA. (Ex. A, Dkt. 30, p. 2). On July 23, the respondents bring a motion for the court to order the plaintiff to cease abusive conduct. (Ex. A, Dkt. 40). After the petitioner files an anti-SLAPP motion on July 29, 2014, Judge Jones

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[5] (Ex. B, Dkt. 96-7,p. 9, l. 9-7, p10, l. 5-8, all findings on p. 11, 12, 13, 14, l. 3-11, 17-28, 15, l. 1-7). Block alleges these findings violated constitutional due process requirements established in *In Re Rufallo*, 390 US 544.

strikes her motion and issues a stay without giving her an opportunity to respond to the respondent's motion. (Ex. A, Dkt 44, 46). When she brings a motion to disqualify the Judge based upon his membership in the WSBA, Judge Jones strikes the motion. (Ex. A, Dkt. 52, Dkt.46). He claims to have forwarded his order to the ninth circuit, but there is nothing in the record that shows the chief justice received it or acted upon it. (Ex. A, Dkt. 55)

2. On February 14, 2016, Anne Block brought a motion to disqualify Judge Martinez in the second case, (Ex. B, Dkt. 9) again citing to *Marshall*, *Pope*, and *Scannell*, *Riss v. Angel*, *supra.* Martinez only cursorily analyzed *Riss v. Angel* ignoring its central finding that Washington follows the common law holding that individual members of an association are responsible for its debts, unless it is a non-business, nonprofit organization. (Ex. B, Dkt. 25). He passed it on to Judge Leighton, who Block immediately challenged as having the same conflict of interest. (Ex. B, Dkt. 27). Leighton denied her motion by saying a disqualification was a waste of time because her complaint was "frivolous". He did this before any briefings or arguments had been made. (Ex. B, Dkt. 34). Eventually he upheld Martinez's denial of the disqualification motion. (Ex. B, Dkt. 68).

3. Defendant Kenyon Diesend filed a motion for sanctions on March 3, 2016 (Ex. B, Dkt. 47, Dkt 50). Nowhere in its motion nor in the proposed order did Kenyon seek a finding that the plaintiff was a vexatious litigant. Instead, they

referred to other suits where Block had been unsuccessful, and also to previous litigation in federal court involving Judge Jones.

4. On March 31, 2016, Anne Block responded to the motion for sanctions, requesting the court to strike the evidence of previous cases as being violative of ER 404 (character evidence not allowed). (Ex B, Dkt. 83).

5. The defendants never responded to her motion to strike on the basis of character evidence, other than to submit more character evidence on reply which they claim demonstrate her character, ignoring Block's complaint about character evidence being inadmissible. (Ex. B, Dkt. 91).

6. On April 13, 2016, Judge Martinez did not address the motion to strike as being in violation of ER 404. Instead, without notice to the plaintiff, the court issued a vexatious litigant order, falsely claiming that the plaintiff had been given notice that such a motion was being contemplated. (Ex. B, Dkt. 122).[6]

7. On August 11, 2016, in a response to a show cause order by the United States District Court, Western District of Washington, Anne Block brought a motion to disqualify all judges in Washington, citing to *Marshall*, *Pope*, and *Scannell*, *Riss v. Angel*, *supra.*(Ex. C, Dkt 4). On August 25, 2016, Judge John C.

[6] Under this order, Block cannot contest her disbarment in federal court, because it would first have to be pre-approved by Judge Martinez who has already refused to disqualify himself.

Coughenour denied the motion to disqualify, and issued an order of reciprocal discipline. (Ex. C, Dkt. 8).

IV. Reasons why a writ should issue in this case.

A. Introduction

This Court weighs five factors in determining whether to grant a writ of mandamus under the All Writs Act, 28 U.S.C. § 1651: (1) The party seeking the writ has no other adequate means, such as a direct appeal, to attain the relief he or she desires. (2) The petitioner will be damaged or prejudiced in a way not correctable on appeal. (3) The district court's order is clearly erroneous as a matter of law. (4) The district court's order is an oft-repeated error, or manifests a persistent disregard of the federal rules. (5) The district court's order raises new and important problems, or issues of law of first impression. *Douglas v. U.S. Dist. Court*, 495 F.3d 1062, 1065-66 (9th Cir. 2007) (quoting *Bauman v. U.S. Dist. Court*, 557 F.2d 650, 654-55 (9th Cir. 1977)) (internal quotation marks omitted). Not every element of the mandamus standard must be satisfied in order to warrant a writ. *Valenzuela–Gonzalez v. U.S. Dist. Court*, 915 F.2d 1276, 1279 (9th Cir. 1990) ("all five factors need not be satisfied at once"). "Exercise of [the Court's] supervisory mandamus authority is particularly appropriate when an important question of law

would repeatedly evade review because of the collateral nature of the issue." *In re Cement Antitrust Litig.* 688 F.2d 1297, 1304 (9th Cir. 1982). [7]

B. All four judges have pre-existing conflicts of interest which require their disqualification.

In Block's motion for disqualification against Judge Jones, she cited to *Marshall v. WSBA* Western District of Washington case #11-5319, *Pope v. WSBA*, Western District of Washington case #11-05970, and *Scannell v. Washington State Bar Association, et al*, Western District of Washington case #2:12-cv-00683, where

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[7] The Supreme Court has held that the sole purpose of the All Writs Act is to "fill the interstices of federal judicial power." *Pennsylvania Bureau of Corrections v. United States Marshals Service*, 474 U.S. 34, 41 (1985).

The disqualification of federal judges is governed by 28 U.S.C. §455 (1982), which provides in part:

> (a) Any justice, judge, or magistrate 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:
> …
> (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 person:
> (i) Is a party to the proceeding. . . .
>
> (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 states of litigation. . .

the chief justice had disqualified the Western District Judges by appointing out of Washington State federal judges, based upon their membership in the Washington State Bar Association.

These rulings are consistent with the case of *Riss v. Angel*, 934 P.2d 669, 131 Wash.2d 612 (Wash. 04/10/1997)[8], which indicates that individual members of an association like the WSBA are individually liable for suits against the organization as a whole.

The WSBA may try and argue, as it did in *Block v. WSBA*, Court of Appeals case #16-35274, that the WSBA is not really an association, just because it has the word association in its name and that in fact, (without citing to any authority) it is an exception to the common law because it is a "mandatory licensing and regulatory agency" (Dkt. 16-1, p. 16, 17.)

The Washington State Bar Act RCW 2.48.010 defines the WSBA as an association, using the word association three times when establishing it:

The Code of Judicial Conduct, from which the statute's language derives contains quite similar provisions. See CJC Canon 3 (C)(1)(c).

[8] That case in turn, cited *Nolan v. McNamee*, 82 Wash. 585, 144 P. 904 (1914), which pointed out that in Washington, at common law, members of unincorporated associations have been held jointly and severally liable for all debts of the association. While *Riss* allowed for a narrow exception for "non-business, non-profit" associations, where only members who participated in the decision could be held liable, this exception has never been applied to a business related non-profit such as the bar association. There also has been no exception for judges who participate in making the decision by making judicial decisions.

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

The court should not attach any special significance to the fact that the Act also describes the association as "an agency of the state." In *North Carolina State Board of Dental Examiners v. Federal Trade Commission* No. 15-534, 547 U.S. ___ (2015), the United States Supreme Court had no problem finding that the Board could be held separately liable under Sherman Anti-Trust even though North Carolina's Dental Practice Act (Act) provides that the North Carolina State Board of Dental Examiners (Board) is "the agency of the State for the regulation of the practice of dentistry."

Judge Jones, rather than ruling on the disqualification motion, struck it, claiming it violated a stay that he imposed on a case. He indicated in the order where he struck the motion, that this was not a suit against the WSBA, even though he knew she intended to amend it. His reasoning appears to be because he had beaten her to the punch by forbidding her to amend in the WSBA, that somehow made it okay.

This ignores the principle that when a party has made a motion pursuant to §455 and the challenged judge is aware of legally sufficient grounds for

disqualification under that section he ordinarily has no choice but to recuse. *U.S. v. Sibla*, 624 F.2d 864 (9th Cir. 1980).[9]

The petitioner questions the stay, as well the lifting of the stay, as it shows a clear intent by Judge Jones to prejudge the case and deny her substantive rights.

Neither the defendants nor the judge have cited to any authority that allows a judge to issue a sanction that prevents a complaint from being amended, when those amendments are to be freely granted under FRCP 15. Neither the judge nor the

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[9] The situation is similar to a sixth circuit the case of *Aetna Casualty & Surety Co.*, 919 F.2d 1136 (6th Cir. 1990). There, the court sitting en banc, reversed a trial judge who originally recused himself from a case where seven claims against an insurance company were consolidated for trial because his daughter's law firm represented four of the defendants. The judge later separated the cases and planned to try the three claims in which his daughter's firm was not involved. On mandamus, the court reversed because the cases remained intimately connected: A decision on the merits of any important issue in any of the seven cases could constitute the law of the case in all of them. or involve collateral estoppel, or might be highly persuasive as precedent. The court did not specify whether it based its decision on 455(a) or section 455(b)(5)(ii) but when sitting en banc, the court was joined by seven other judges who emphasized that there was an actual conflict of interest pursuant to section 455(b)(5) as well as an appearance of impartiality under 455(a).

The same is true here. The issues in the Snohomish county case were intimately connected to the issues that were going to be raised in the WSBA causes of action. Block had cited to a concerted effort over several years by the Snohomish County and Gold Bar defendants to have the plaintiff disbarred for exercising her first amendment rights in the Gold Bar Reporter. It should have been no surprise to Judge Jones that a favorable ruling for the defendants in that case would be immensely helpful to the Washington State Bar Association, who was later sued for joining the effort to disbar Block.

In fact, this court can take judicial notice that this is exactly what happened after the case was split. Judge Martinez eventually sanctions the plaintiff, and refuses to give her any opportunity to correct her complaint, with the clear

defendants have cited to any authority that allows a judge to circumvent a disqualification motion by striking it and then refusing to allow it to be brought in later.

Judges Martinez and Judge Leighton are even more blatant in their bias, in refusing to recuse, because the WSBA is already part of the suit. Judge Martinez begins by citing to a number of cases, which have no applicability here. [10]

Those cases didn't apply, because they do not address the issue of a member of an association being liable for the debts of the association as in Washington State.[11]

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implication that Block should never have filed the suit, given the ruling of Judge Jones

[10] Martinez in Dkt. 25 cites to *Denardo v. Municipality of Anchorage*, 974 F.2d 1200, 1201 (9th Cir. 1992) (citing *Pilla v. American Bar Assoc.*, 542 F.2d 56, 57-58 (8th Cir. 1976), *Hu v. American Bar Assoc.*, 334 F.Appx 17, 19 (7th Cir. 2009) (citing *Hirsh v. Justices of the Sup. Ct. of Cal.*, 67 F.3d 708, 715 (9th Cir. 1995)); *In re City of Houston*, 745 F.2d 925, 930 n.8 (5th Cir. 1984); *Plechner v. Widener College, Inc.*, 569 F.2d 1250, 1262 n.7 (3rd Cir. 1977); *also Parrish v. Bd. Of Comm'rs of Alabama State Bar*, 527 F.2d 98, 104 (5th Cir. 1975).

[11] In fact, one case cited by Martinez, *Plechner v. Widener College, Inc.*, 569 F.2d 1250, 1262 n. 7 (3d Cir.1977), supports Block. That case ruled that the amenability of an unincorporated association to suit is governed by the law of the state in which the court sits. *Underwood v. Maloney*, 256 F.2d 334 (3d Cir. 1957), cert. denied, 358 U.S. 864, 3 L. Ed. 2d 97, 79 S. Ct. 93 (1958); See Fed. R. Civ. P. 17(b). In *Plechner*, the forum state was Pennsylvania, which, allows suit to be brought against an unincorporated association either in its own name or that of an officer as trustee ad litem. Pa. R. Civ. P. 2153. A judgment entered against an association alone in Pennsylvania, will support execution upon its property but not that of an individual member. Pa. R. Civ. P. 2158. 6 GOODRICHAMRAM 2d, STANDARD PENNSYLVANIA PRACTICE § 2158.1 (1977). That is not the case in Washington, where the common law prevails, which make all Washington federal

Judge Leighton avoided analyzing *Riss v. Angel*, *supra*, by not addressing the issue of liability of federal judges for judgments against the bar and then declaring her suit frivolous, before there had been any briefing.

The reasoning behind the need for disqualification is explained by an age-old proposition derived from the civil law: "Nemo debet esse judex in propria causa.[12]"[13]

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judges liable should Block win. No reasonable person would allow a judge to sit on a case where he is responsible for a judgment that could awarded to one of the parties.

[12] Latin, and a fundamental principle of natural justice which states that no person can judge a case in which he or she is party or in which he/she has an interest. The principles of natural justice were derived from the Romans who believed that some legal principles were "natural" or self-evident and did not require a statutory basis.

[13] While the common law judicial disqualification standard initially advanced by Bracton included disqualification for bias, this notion was ultimately rejected into the English jurisprudence by scholars such as Blackstone. 3 Blackstone, Commentaries 361. However, even though under the common law, bias was not a basis for disqualification, a judge would be disqualified for possessing a direct financial interest in the cause before him. See, e.g *The Queen v. Justices of Herefordshire*, 6 Q.B.753, 115 Eng. Rep. 284(1845). Cf, *Mustafoski v. State*, 867 P.2d824, 832(Alaska App. 1994) As to such matters, Lord Coke set the standard for his time with his admonition that “no man shall be a judge in his own case” See 1 Lord Coke, Institutes, *141a, an edict that ultimately became one of the guiding precepts of Anglo-American Jurisprudence. See Frank, Disqualification of Judges, 56 Yale L.J. 605, 610, (1947)

In pre-Revolutionary American Colonies, as in England, the only accepted ground for disqualifying a judge was pecuniary interest in a pending cause; See e.g. *In Re Dodge Mfg. Co*. 77 N.Y. 101, 33Am St. Rep. 579(1879) For years following independence, American Law, like that of the mother nation, there were few other grounds for disqualifying a judge other than having a pecuniary interest. *Idaho v. Freeman*, 507 F. Supp. 706 (D. Idaho 1981)

The initial (1792) version of the original federal judicial disqualification statute authorized disqualification only when the challenged judge was “concerned in interest”, had acted in the cause,” or had been “of counsel” Act of May 8, 1792, ch. 36 §11, 1 Stat. 278. Congress subsequently amended that statute on multiple

Judge Coughenour, used the same reasoning as Jones, that since the WSBA was not a party to the action for reciprocal disbarment, it was not necessary for him to recuse. Block argues that The Bar Association was an integral part of the disbarment proceedings. The Supreme Court gives great deference to the findings of both the hearing officer[14] and the disciplinary board recommendations[15]. Judge Coughenour should have realized by recognizing the Supreme court rulings, he

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occasions - enlarging the grounds for seeking disqualification every time, but at no time restricting the requirement to disqualify because of a financial interest. See Act of Mar. 3, 1821, ch. 51, 2 Stat. 643 (disqualifying a judge so related to, or connected with a party as to render it improper, in the judge's opinion, for him to sit): Act of Mar. 3, 1891, ch. 517, §3, Stat. 826 (a judge may not hear appeal in case he tried), *codified as amended at* 29 USC §47 (1982); Act of Mar. 3, 1911, ch. 23, §20, 36 Stat. 1090 (providing a procedure to require a judge to disqualify himself upon application of either party); Act of Mar. 3, 1911ch. 23 §20, 36 Stat. 1090 (providing a procedure to require a judge to disqualify himself upon application of either party); Act of Mar. 3, 1911ch. 23 §21, 36 Stat. 1090 (disqualifying a judge where, *inter alia,* her impartiality might reasonably be questioned). These acts have been codified, as amended, at 28 USC 144, 455 (1982). *See generally* Idaho v. Freeman, 507 F. Supp. 706 (D. Idaho1981).

[14] We give "considerable weight to the hearing officer's findings of fact, especially with regard to the credibility of the witnesses, and we will uphold those findings so long as they are supported by 'substantial evidence.'" In re Disciplinary Proceeding Against Poole, 156 Wn.2d 196, 208, 125 P.3d 954 (2006) (citing In re Disciplinary Proceeding Against Guarnero, 152 Wn.2d 51, 58, 93 P.3d 166 (2004)). "We give great weight to a hearing officer's determination of an attorney's state of mind because it is a factual finding." In re Disciplinary Proceeding Against Trejo, 163 Wn.2d 701, 722, 185 P.3d 1160 (2008) (citing In re Disciplinary Proceeding Against Longacre, 155 Wn.2d 723, 744, 122 P.3d 710 (2005)).

[15] We afford great deference to the Board's recommended sanction but retain the ultimate authority for determining the appropriate sanction for an attorney's misconduct. *In re Disciplinary Proceeding Against Wickersham*, 178 Wn.2d 653, 664, [184 Wn.2d 23] 310 P.3d 1237 (2013). We generally adopt the sanction recommended by a unanimous Board unless there is a clear reason for departure. Id.

would be giving persuasive authority to the legitimacy of the Bar association's actions that triggered the disbarment. Thus, he should be disqualified for the same reason as Jones. See *Aetna Casualty & Surety Co. supra.*

C. The rulings of Judges Jones, Martinez, and Leighton demonstrate bias requiring disqualification.

Though a judge's adverse in-court comments regarding an individual are ordinarily not considered to be disqualifying per se, the fact that a judge's remarks have been made in a judicial context does not insulate them from scrutiny;[16] The most fundamental exception is that a judge may not make comments that reflect actual bias[17] - either for or against a party[18]. A logical basis for inferring bias may exist when a judge's remarks, though uttered in a judicial capacity[19], connote a "fixed opinion"[20] or "closed mind"[21] with respect to the merits of a case.[22] This is

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[16] See *in re Chevron USA Inc.*, 121 F.3d 163, 166 (5th Cir. 1997); *Loranger v. Stierman*, 10 F.3d 776, 780 (11th Cir. 1994).

[17] See *Gardiner v. A.H. Robins Co., Inc.* 747 F.2d 1180 (8th Cir. 1984)(a finding of bias is not precluded merely because a judge's remarks are made in a judicial context.)

[18] *Parliament Ins.Co. v. Hanson*, 676 F.2d 1069(5th Cir. 1982)

[19] *Liteky v. U.S.* 114 S. Ct. 1147, 1157 (1994)

[20] Cf. *Cleveland Bar Assn. v. Clearly*, 93 Ohio St.3d 191, 200-201, 754 N.E.2d 235 (2001)(noting that the term "bias or prejudice" implies "a hostile feeling or spirit of ill will or undue friendship or favoritism toward one of the litigants or his attorney, with the formation of a fixed anticipatory judgment" on the judge's part as opposed to "an open state of mind which will be governed by the law and the facts.)

[21] See *U.S. v. Cohen*, 644 F. Supp. 113, 116 (E.D. Mich. 1986); *Riverside Mar. Remanufacturers, Inc. v. Booth*, 2005 Ark. App. LEXIS 767, *6-7 (2005)(in making certain comments, the trial judge, although recognizing that Riverside had yet to present its case, gave the appearance of having a mindset that that could not be

particularly true where such comments are made at a state of the proceeding when a judge would not normally be expected to have formed a fixed opinion about the dispositive facts.[23].

Where a judge makes comments reflecting an intention to deprive a party of a legal right - judicial disqualification,[24], or at least a hearing to determine if disqualification is warranted, may be mandated.[25]

On July 29, 2014, Judge Jones prejudged a motion, and denied the plaintiff at least three substantive rights, by taking action after hearing only one side of the story. First, he denied her the right to amend her complaint to include the bar. Second he denied her the right to bring a motion for disqualification. Finally, he denied her the right to bring a motion under Washington's Anti-Slapp statute. All this was done because she was not civil to opposing counsel, and threatened to sue them if they continued harassment. This occurred at a stage of the proceeding where there had been no briefing on the complaint, yet he assumed, without basis, that the suit was "spiraling out of control." This shows clear bias on the part of Jones

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reconciled with the proposition that that he was committed to hear all relevant evidence and arrive at a judicious result.)

[22] See *Mitchell v. Maynard*, 80 F.3d 1433, 1450(10th Cir. 1996) (finding an appearance of bias where the judge said plaintiff's claims were frivolous and "a waste of the of the jury's time")

[23] Cf. *Wright v. State*, 628 So. 2d 1071, 1073 (Ala. Crim. App. 193)("in situations where premature remarks are made, a red flag is raised".).

[24] See *Pastrana v. Charter*, 917 F. Supp. 103, 108(D.P.R. 1996)

[25] See Goldberger v. Goldberger, 96 Md. App. 313, 624 A.2d 1328, 1332(1993)

because he had already had demonstrated a fixed opinion and closed mind on many issues before he had even heard opposing testimony or briefing on the complaint. It is clear that he denied the plaintiff substantive rights including the right to bring a disqualification motion or an anti-SLAPP motion, without due process and by prejudging the case.

Leighton also demonstrates clear bias. In his ruling on March 3, 2016 (Dkt 34) he declared the petitioner's complaint "frivolous" and a "waste of the court's and taxpayers' time and money" before there had been any briefing or argument on the complaint. See *Mitchell v. Maynard, supra.*

Finally, Judge Martinez demonstrates clear bias by restricting the petitioner's access to the courts without due process by not allowing her to even argue against such a pre-filing order. [26]

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[26] Restricting access to the courts is, a serious matter. " [T]he right of access to the courts is a fundamental right protected by the Constitution." *Delew v. Wagner*,143 F.3d 1219, 1222 (9th Cir. 1998). The First Amendment " right of the people . . . to petition the Government for a redress of grievances," which secures the right to access the courts, has been termed " one of the most precious of the liberties safeguarded by the Bill of Rights." *BE & K Const. Co. v. NLRB*,536 U.S. 516, 524-25,122 S.Ct. 2390, 153 L.Ed.2d 499 (2002) (internal quotation marks omitted, alteration in original); *see also Christopher v. Harbury*,536 U.S. 403, 415 n.12,122 S.Ct.2179, 153 L.Ed.2d 413 (2002) (noting that the Supreme Court has located the court access right in the Privileges and Immunities clause, the First Amendment petition clause, the Fifth Amendment due process clause, and the Fourteenth Amendment equal protection clause).

Among all other citizens, [the vexatious litigant] is to be restricted in his right of access to the courts. . . . We cannot predict what harm might come to him as a result, and he should not be forced to predict it either. What he does know is that a

Out of regard for the constitutional underpinnings of the right to court access, " pre-filing orders should rarely be filed," and only if courts comply with certain procedural and substantive requirements. *De Long v. Hennessey*,912 F.2s 1144, 1147. When district courts seek to impose pre-filing restrictions, they must: (1) give litigants notice and " an opportunity to oppose the order before it [is] entered" ; (2) compile an adequate record for appellate review, including " a listing of all the cases and motions that led the district court to conclude that a vexatious litigant order was needed" ; (3) make substantive findings of frivolousness or harassment; and (4) tailor the order narrowly so as " to closely fit the specific vice encountered." *Id*. at 1147-48.

Here, Judge Martinez never even began to meet the first requirement. He never gave her notice that such an order was even being contemplated. He did not give her a list of cases upon which the order was to based. In his order, one case he cited as a basis for her being vexatious on was one in which she was counsel, which clearly violates this circuit's holding in *Weissman v. Quail Lodge Inc*., 179 F.3d 1194 (9th Cir. 1999), where it was held that an attorney could not be held to be vexatious as an attorney, because she was appearing on behalf of a client.

Sword of Damocles hangs over his hopes for federal access for the foreseeable future." *Moy v. United States*, 906 F.2d 467, 470 (9th Cir. 1990).

All three judges exhibited bias in another demonstrable way. They refused to address her argument on Washington's constitutional prohibition against immunities. In her complaint, she raised Article I, Section12 of Washington's constitution as a basis for liability of all the players, including judges and prosecutors.

The Washington State Supreme court ruled for the first time in 2004, that this Washington State constitutional provision require an independent analysis from the United States constitution.[27] So far, the Washington State Supreme court has never dealt specifically with the issue before this court, which is whether Washington's prohibition against immunities extends to prosecutorial immunity or judicial immunity.

The defendants never even addressed the issue in their motions to dismiss, and none of the judges addressed it in their rulings.[28] "When an area of the law

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[27] In *Grant County Fire Protection District No. 5 v. City of Moses Lake*, 83 P.3d 419 (Wash. 2004), the Washington Supreme Court held for the first time that the state's privileges or immunities clause requires a separate and independent constitutional analysis from the United States Constitution. This was followed by four other cases which had similar results. *Andersen v. King County*, 138 P.3d 963 (Wash. 2006), *Madison v. State*, 163 P.3d 757 (Wash. 2007), *Ventenbergs v. City of Seattle*, 178 P.3d 960 (Wash. 2008), and *American Legion Post # 149 v. Washington State Department of Health*, 192 P.3d 306, 312 (Wash. 2008).

[28] This court can take judicial notice that at least in the Scheidler case Western District case #12-cv-05996-RBL the Washington State Attorney General's Office attempted to at least address the subject in a reply brief. There it was argued that Article I, Section 12 does not apply because judges and prosecutors receive immunities through common law, and federal common law. However, Washington

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." *Bravo v. Dolsen Companies,* 125 Wn.2d 745 (1995) *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)).

D. The actions of the four judges in this case are an oft-repeated error in this district which requires immediate attention.

The petitioner would like the court to take judicial notice of two cases in this district which demonstrate that this is an oft-repeated error, which also manifests a persistent disregard of the federal rules and state statutes.

First, on July 21, 2014, in the case of *Ryggs v. WSBA et al*, Western District Case #14-237, plaintiff Craig Dilworth moved for the ninth circuit to assign an out of state judge, as was done in *Marshall*, *Pope*, and *Scannell*, *supra*. Since the motion premised on the fact that no Washington state federal judge could hear the case because of their membership in the WSBA, it was, in essence a motion to disqualify all Washington judges. (Ex. E, Dkt 63) At the time the motion was filed, only 3 of the 33 defendants had filed a motion to dismiss. (Ex. E, Docket p. 13). On

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never adopted common law immunities because it conflicts with its constitution (See RCW 4.04.010) and federal common law that conflicts with state law was abolished in *Erie Railroad Co. v. Tompkins*, 304 U.S. 64 (1938),

September 16, 2014, Judge Coughenour recused himself from the case. (Ex E, Docket p. 18)

On October 6, 2014, Judge Pechman dismissed the Rygg case, declaring both plaintiffs to be vexatious, and sanctioning them $10,000. She never did rule on the motion to disqualify, simply declaring it to be moot. (Ex. E, Docket p. 18, Dkt 113, p. 19). In doing so, she was even more blatant in denying Carolyn Rygg and her son due process. As stated before, once the motion to disqualify was made, she had no choice but to disqualify. *U.S. v. Sibla, supra.* Obviously, there is no authority for the proposition that a judge can avoid a motion to disqualify by delaying ruling until the case is dismissed and then declaring it moot.

In the case of *Scheidler v. Avery*, Case no. 12-05996, on June 11, 2015, William Scheidler brought a motion to disqualify Judge Leighton, citing *Riss v. Angel*, *supra*, as well as the three Western District cases of *Marshall supra*, *Pope, supra*, and *Scannell supra*. (Ex. F, Dkt 86, p. 3,4)

Judge Leighton summarily denied the motion without ever once addressing the issue raised by *Riss v. Angel*… i. e. how can he be considered qualified when he is individually liable if William Scheidler wins? (Ex. F, Dkt 107)

Judge Leighton then passed the motion on to Judge Pechman, who not only did not address *Riss v. Angel*, *Marshall supra*, *Pope, supra*, and *Scannell supra,* but

in her decision wrongfully claimed that Scheidler never even cited those in his motion. (Ex. F, Dkt 109).

It is generally agreed that disqualification is warranted, in accordance with 455(a), whenever the moving party can demonstrate that a reasonable person, who is fully informed of all the relevant facts and circumstances[29], would question the judge's impartiality. Here, the chief justice of the ninth Circuit, the honorable justice Alex Kozinski, has questioned the ability of any Washington judge to sit impartially in a case involving the Washington Bar Association. None of the judges have given any reasons as to why they think judge Kozinski is not a reasonable person.

VI. Mandamus is the appropriate remedy for voiding the orders

Virtually every federal circuit has concluded that mandamus is available to review a federal district court's judicial disqualification in an appropriate situation[30], and that, in such a case, the writ may be employed to compel disqualification.[31]

The Court of Appeals for the Second Circuit, has long taken the position there are few situations more appropriate for use of the mandamus power than a judge's clearly wrongful refusal to disqualify himself. See *Rosen v. Sugarman*, 357 F.2d

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[29] *Union Carbide Corp. v. U.S. Cutting Serv. Inc*. 782 F.2d 710, 727-728
[30] *See e.g. Nichols v. Alley*, 71 F.3ed 347, 352(10th Cir. 1995)
[31] *See e.g. In re Cement and Concrete Antit. Litig*(MDI. No.296), 673 F.2d1020(9th Cir. 1981), *cause dismissed sub nom. Ariz. v. U.S. Dist. Court,* 459 U.S. 961 (1982)

797(2nd Cir.1966). Other federal circuits - including the First,[32] Third,[33], Fifth[34], Eighth[35], Ninth[36], and Tenth Circuit[37] Courts of Appeal, have followed suit.[38]

Appellate courts have only occasionally discussed what actions a substitute judge may properly take upon remand after reversal of a final judgment due to his predecessor's refusal to disqualify himself in circumstances where such a course was mandated. Some courts have held, in this circumstance, that the prior proceedings and the disposition are a complete "nullity"[39] and have remanded the case for a new trial.[40]

Others have suggested that the new judge may review the totality of the record before deciding whether to retry the case or endorse the disqualified judge's prior rulings.[41]

In this case, Block argues that the court should remand back to completely start over with new motions to dismiss. First, the cases should be declared a nullity

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[32] *See e.g. In re Cooper,* 821 F.2d 833, 834, (1st Cir., 1987)
[33] *Moody v. Simmons*, 858 F.2d 137, 143, (3rd Cir. 1988)
[34] *See In re Placid Oil Co.*, 802 F.2d 783, 786, (5th Cir. 1986)
[35] *Scarrella v. Midwest Fed. Sav. And Loan,* 536 F.2d1207 (8th Cir. 1976), Cert denied, 429 U.S. 885.
[36] See e.g. *U.S. v. State of Wash.* , 98 F.3d 1159, 1164, (9th Cir. 1996), Kozinski, A
[37] *Bell v. Chandler*, 569 F.2d 556, 559(10th Cir. 1078)
[38] *In re Barry*, 946 F.2d 913, 914(D.C. Cir. 1991)
[39] See e.g. Mixon v. U.S., 620 F.2d 486 (5th Cir. 1980)
[40] *U.S. v. Amerine*, 411 F.2d1130, 1133 (6th Cir. 1969)
[41] *See e.g. Ransom v. S&S Food Center, Inc,* 700 F.2d 670, 673 (11th Cir. 1983)(where a judge recused himself after entering summary judgment as to liability and the substitute judge

because of the disqualifications. Even if the court decides the disqualifications are not enough to nullify the proceedings, it should start with new motions because a review of the totality of the record of the first two cases would show she was prevented from making arguments on the second case that the alleged facts were more plausible based upon what happened in the first case because the facts were already wrongly decided against her in the first case.

In the event the court, for some reason, decides not to disqualify Washington judges or void the decisions, then at a minimum, because of the aforementioned misconduct, the court should reassign to different judges. (See *Inst. of Cetacean Research v. Sea Shepherd Conservation Soc.*, 725 F.3d 940, 947-48 (9th Cir. 2013)

VII. Conclusion

Petitioner Block has easily met all five criteria for establishing disqualification via mandamus. First, the party seeking the writ has no other adequate means, such as a direct appeal, to attain the relief he or she desires because she is being prevented from contesting her disbarment by a judge who has already demonstrated impermissible bias. A delay of two or three years on appeal will prejudice her because she will not be able to practice law in the meantime, with proving damages being very difficult. The district court's orders are clearly erroneous because no reasonable person would allow a judge to sit on a case in which he is liable if one of the parties wins. The petitioner has also demonstrated the

district orders are an oft repeated error by the judges in Block's cases as well as Judge Pechman. Finally district court's orders raise new and important problems, or issues of law of first impression including whether the liability a judge faces by being a member of the bar association is automatically disqualifying and whether any prosecutors or judges in Washington State have any immunity not enjoyed by all citizens of the State.

For these reasons, the requested relief should be granted.

Dated this 12th day of October, 2016,

/s *John Scannell*
John Scannell
Attorney for Anne Block

CERTIFICATE OF COMPLIANCE

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Dated this 12th day of October, 2016,

/S/ *John R. Scannell*
John R. Scannell

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No. 2:16-rd-00066-WTM, *In re Anne Block*
No. 2:14-cv-00235-RAJ, *Block v. Snohomish County*

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