APPENDIX 1

Rulings and Memorandum issued by the District and Appellate Courts.

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

WILLIAM SCHEIDLER, Plaintiff-Appellant, v. JAMES AVERY, individually and in his official capacity as Kitsap County's Assessor; et al., Defendants-Appellees.	No. 15-35945 D.C. No. 3:12-cv-05996-RBL MEMORANDUM* (Filed Aug. 14, 2017)

Appeal from the United States District Court
for the Western District of Washington
Ronald B. Leighton, District Judge, Presiding

Submitted August 9, 2017**

Before: SCHROEDER, TASHIMA, and M. SMITH, Circuit Judges.

William Scheidler appeals pro se from the district court's judgment dismissing with prejudice his action arising from the denial of a property tax exemption. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Hicks v. Small*, 69 F.3d 967, 969 (9th Cir. 1995)

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* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2). Scheidler's request for oral argument, set forth in his opening brief, is denied.

(dismissal for failure to state a claim under Fed. R. Civ. P. 12(b)(6)); *Stuewe v. Dep't of Revenue*, 991 P.2d 634, 636 (Wash. Ct. App. 2000) (proceedings before the Washington State Board of Tax Appeals). We affirm.

The district court properly denied Scheidler's state tax appeal because Scheidler failed to identify any error in the state tax agencies' decisions. *See* Wash. Rev. Code §§ 34.05.570(3) (circumstances under which court may grant relief from agency decision), 84.36.383(5) (definition of "disposable income").

The district court properly dismissed Scheidler's action because Scheidler failed to allege facts sufficient to state any plausible claim. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) ("To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." (citation and internal quotation marks omitted)).

The district court did not abuse its discretion in denying Scheidler leave to amend because amendment would have been futile. *See U.S. ex rel. Lee v. Corinthian Colleges*, 655 F.3d 984, 995 (9th Cir. 2011) (setting forth standard of review).

The district court did not abuse its discretion in denying Scheidler's motion for recusal of the district judge because Scheidler failed to identify a ground for recusal. *See* 28 U.S.C. §§ 144, 455; *Pesnell v. Arsenault*, 543 F.3d 1038, 1043 (9th Cir. 2008) (standard of review).

We reject as meritless Scheidler's contentions that the district court lacked authority to decide the motions to dismiss, that federal pleading standards are inapplicable, and that the district court failed to comply with this court's prior mandate.

We do not consider matters not specifically and distinctly raised and argued in the opening brief, or arguments and allegations raised for the first time on appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

To the extent Scheidler seeks reconsideration of this court's prior order denying his petition for a writ of mandamus, *see Scheidler v. U.S. Dist. Ct. for W. Dist. Of Wash., Tacoma*, No. 15-73135, his request is denied.

Appellees Avery, Miles, Haberly, and George's motion for sanctions (Docket No. 27) is denied. *See Glanzman v. Uniroyal, Inc.*, 892 F.2d 58, 61 (9th Cir. 1989) (decision to award sanctions under Rule 38 is discretionary).

Appellee Washington State Bar Association's motion to take judicial notice (Docket No. 31) is granted.

AFFIRMED.

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

WILLIAM SCHEIDLER, Plaintiff, v. JAMES AVERY, *et al.*, Defendants.	CASE NO. C12-5996 RBL ORDER (Filed Nov. 17, 2015) [Dkt. #s 68, 76, 77, 79 & 100]

THIS MATTER is before the Court on five Motions:

1. Plaintiff Scheidler's Motion to Amend his Complaint for a third time, by replacing the 34 page "RICO statement" appended to his Second Amended Complaint [Dkt. #58-11] with a new, 129 page RICO statement. [Dkt. #68]

2. Defendants Washington State Board of Tax Appeals (and its chair, Slonum's) Motion to Dismiss. [Dkt. #76]

3. County Defendants Avery, George, Haberly and Miles's Motion to Dismiss. [Dkt. #77]

4. Defendants Washington State Bar Association (and associates Congalton and Mosner's) Motion to Dismiss. [Dkt. #79] and

5. Clerk of the Court Defendants Carlson and Ponzoha's Motion to Dismiss. [Dkt. #100]

A. Procedural History.

Scheidler claims that he is a retired, disabled person eligible for a property tax exemption[1] under Chapter 84.36 RCW. That statute permits such relief in some cases, depending in part on the applicant's "disposable income" – which is his Adjusted Gross Income *plus* additional amounts listed in RCW 84.36.383(5). Generally, those with disposable incomes greater than $35,000 are not eligible for an exemption:

> A person who otherwise qualifies under this section and has a combined ***disposable income of thirty-five thousand dollars or less*** but greater than thirty thousand dollars ***is exempt*** from all regular property taxes on

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[1] The early part of this history is taken from Scheidler's original complaint [Dkt. #1-2] and the exhibits to it. Scheidler's subsequent filings admit he has been chasing this white whale since at least 1998. *See* Dkt. #58 at 9, 13, blaming "17 years" of "cascading unfortunate events" on the prior Kitsap County Assessor's failure to grant the property tax exemption he apparently sought at that time.

Scheidler also blames Scott Ellerby, an attorney who represented him in those earlier proceedings. *Id.* "This case and every event touching this case, has its beginning in the misrepresentations of Scott Ellerby, WSBA # 16277, and the lies he told[.]" [Dkt. # 89 at 11] Scheidler filed a bar complaint against Ellerby, which was dismissed.

In 2009, Scheidler sued Ellerby over his 1998 representation, and lost. Scheidler appealed, and Judge Hartman's dismissal of his claims on summary judgment was affirmed. *Scheidler v. Ellerby*, 2012 WL 2899730 [Dkt. # 102 at Ex. 1] The players in the *Ellerby* lawsuit (Judge Hartman, Ellerby, and his attorney, Jeff Downer) all appear in Scheidler's second amended complaint in this case [Dkt. #58], as well as his proposed amended RICO statement [Dkt. #68].

> the greater of fifty thousand dollars or thirty-five percent of the valuation of his or her residence, but not to exceed seventy thousand dollars of the valuation of his or her residence[.]

RCW 84.36.381(b)(i) (emphasis added).

Scheidler sued Assessor Avery in Kitsap County Superior Court in 2008, complaining that the Assessor's calculation of "disposable income" in connection with such exemptions was inconsistent with Washington law. [*See* Dkt. #1-2 at 5] Defendant attorney Miles represented Defendant Assessor Avery, and in January 2009, Defendant Judge Haberly dismissed Scheidler's complaint on Miles's Motion. Scheidler appealed, and in May, 2010, the Court of Appeals affirmed. It held that there was no justiciable controversy, because Scheidler had not yet actually applied for a property tax exemption. *See Scheidler v. Kitsap County Assessor*, 2010 WL 1972780[2].

In June, 2010, Scheidler filed property tax exemption applications for the 2007, 2008, 2009 and 2010 tax years, based on his income in each prior year. [Dkt. #1-2 at 38-45]. He sent the forms under a June 10 cover letter to Assessor Avery, explaining that he was forced to sign the forms "UNDER DURESS." [Dkt. #1-2 at 47] He continued to claim that Kitsap County's

[2] Scheidler's complaints all reference, discuss, and rely on his various prior lawsuits and their allegedly fraudulent, criminal and otherwise unlawful resolution. But not all of the referenced orders or opinions are included in his exhibits. The court takes judicial notice of the actual outcomes where they are available.

instructions for filling out the forms were contrary to the law (and an invasion of privacy), because they did not permit him to count some losses in determining his disposable income.

Scheidler claimed that his disposable income[3] in each relevant year was under the $35,000 limit:

YEAR	Disposable Income
2006	**$27,163**
2007	**$-136,045 less medical insurance payments and payments for medication**
2008	**$28,703**
2009	**$21,300**

[Dkt. 1-2 at 48] Scheidler attached a "Combined Disposable Income Worksheet" for each year. These worksheets showed that in 2006, Scheidler's "Total Combined Disposable Income Less Allowable Deductions" was $112,457. [Dkt. #1-2 at 39] For 2007, it was $75,190; for 2008, $51,495; and for 2009, $23,539. [*See* Dkt. #1-2 at 41, 43, and 45]

Avery denied Scheidler's exemption applications for 2007-2009, but agreed that he was at least partially exempt for 2010. In September, 2010, Scheidler appealed all four determinations to the Board of Equalization, by filing form "Taxpayer Petitions to the Kitsap County Board of Equalization for Review of Senior Citizen/Disabled Person Exemption or Deferral

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[3] William Scheidler alone is the *pro se* plaintiff, but the tax exemption applications that triggered this litigation were also filed on behalf of his wife, Mary.

Determination" for 2006, 2007, 2008 and 2009. [*See* Dkt. #1-2 at 33 to 36]. Scheidler claimed that his applications were "fraud" because they misstate the law. [Dkt. #1-2 at 6]

Scheidler's BOE appeal was denied, and he appealed to the Washington State Board of Tax Appeals[4]. On September 6, 2012, the Chair of the Board (Defendant Slonum) issued an Order Granting the Assessor's (Defendant Avery's) Motion for Summary Judgment, dismissing the four appeals. [Dkt. #1-2 at 52-55]. Slonum explained that BoTA did not have jurisdiction over Scheidler's "various[5] Causes of Action," and that it could address only Scheidler's appeal of his eligibility for the property tax exemptions. Slonum recognized that Scheidler disagreed with the disposable income calculation, but described his interpretation as "erroneous." Instead, she held that the Assessor's computations of Scheidler's disposable income were correct, and that there were no questions of fact in light of Scheidler's income tax returns:

> The plain language of RCW 84.36.383(5) and this Board's many interpretations of the statutory term make it clear that the Respondent is entitled to summary judgment on

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[4] Scheidler's original complaint "incorporates by reference" the "record on review in BoTA #11-507-510" [Dkt. #1-2 at 6], but only portions of that record are attached to his pleadings. Indeed, most of the Exhibits listed in Dkt. #1-2 are not attached to the complaint on the Court's electronic (CM/ECF) docket: A-1, A-5, parts of A-6, A-7 to A-27, and A31-A33 are not included.

[5] Scheidler sought declaratory relief and a jury trial from the BoTA. [Dkt. #1-2 at 6]

> all four appeals. The Appellants were approved for the maximum possible exemption for tax year 2010 (Docket No. 11-510), and the Board recently dismissed that appeal with prejudice. The Appellants' applications for tax years 2007, 2008, and 2009 (Docket Nos. 11-507 to 509) were correctly denied by the Respondent and the County Board because their combined disposable income for each of those years, as determined by the plain language of the exemption statute, exceeded the statutory maximum of $35,000.

[Dkt. #1-2 at 54]. Slonum denied the Assessor's request for Rule 11 sanctions, because (and only because) she did not have "the power of the superior court" to do so. *Id.*

Meanwhile, Scheidler filed a bar complaint against Miles, "based on his inconsistent legal arguments." Defendant WSBA dismissed the grievance. [Dkt. #1-2 at 7]

After the BoTA decision, Scheidler sought relief from Judge Haberly in the already-affirmed and -closed *Scheidler v. Kitsap County Assessor* (08-2-02882-0) case. Those efforts were denied, and Judge Haberly forced Scheidler to pay the Assessor's costs. [Dkt. #1-2 at 7; *citing* Exhibit A-30 thereto (which is not the cited Order).] Judge Haberly denied Scheidler's Motion for Reconsideration on September 21, 2012. [Dkt #1-2 at 57]

Two weeks later, Scheidler filed a lawsuit in Kitsap County against the four primary characters

who had recently advocated or decided against him: James Avery (the Kitsap County Assessor), Alan Miles (Avery's attorney, a Kitsap County Deputy Prosecutor), Karlynn Haberly (the Kitsap County Superior Court Judge) and Kay Slonum (the Board of Tax Appeals Chair). He broadly claimed that each had violated a long list of criminal statutes, engaged in fraud, and generally[6] infringed his constitutional rights. [Dkt. #1-2] Before he served his complaint, Scheidler filed an amended complaint [Dkt. # 1-3], though it is clear that he intended the amendment to supplement, rather than replace, the original. [*See* Dkt. # 1-3 at 2] Scheidler served his amended complaint, and the Defendants timely removed the case here. [Dkt. #s 1-2, 1-3].

Scheidler moved for remand (and for disqualification of the attorneys who removed the case on behalf of their clients) [Dkt. #9], and for disqualification of the court [Dkt. #11]. The Defendants moved to dismiss.

This Court denied the motions to remand and to recuse. It dismissed all of the claims with prejudice, and without leave to amend, because the claims Scheidler asserted and the "facts" they were based on were not viable or plausible as a matter of law – suing a superior court judge for deciding against you has never been a viable claim in this Circuit (or anywhere else). [*See* Dkt. #38]

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[6] Slonum counted 28 claims against her in Scheidler's amended complaint, the majority of them alleging violations of criminal statutes. [Dkt. #8 at 2-3]

Scheidler appealed. The Ninth Circuit affirmed the denial of Scheidler's motions to remand and recuse, and affirmed the dismissal of all of Scheidler's previously-asserted claims. But it held that the Court should have given Scheidler an opportunity to amend his complaint in an attempt to assert a viable claim. [Dkt. #51, *citing United States v. Corinthian Colleges*, 655 F.3d 984, 995 (9th Cir. 2011) ("Dismissal without leave to amend is improper unless it is clear, upon de novo review, that the complaint could not be saved by any amendment. . . . Here, we can conceive of additional facts that could, if formally alleged, support the claims that Corinthian made false statements[.]")]

The Ninth Circuit provided no guidance as to the facts or claims it conceived Scheidler might plausibly assert against the Judge, the Assessor, his attorney, or the chair of the non-party BoTA. Nevertheless, it remanded the case to give Scheidler an opportunity to try, and to pursue the BoTA appeal he "incorporated by reference" into his initial complaint.

In response[7], Scheidler filed a second amended[8] complaint. It is 60 pages long, with more than 200

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[7] Since remand, Scheidler has continued his efforts to disqualify this Court (and any other with a connection to the WSBA). Those efforts were consistently denied, but rather than seek an interlocutory appeal, Scheidler filed a "Writ of Mandamus" in the Ninth Circuit, which is apparently still pending. [Dkt. # 114] Such a filing does not deprive this Court of jurisdiction, and the pending Motions are ready for decision.

[8] The Clerk Defendants point out that Scheidler did not seek or obtain leave of Court to add new parties. [Dkt. #100] Leave to amend in lieu of dismissal under Fed. R. Civ. P. 12(b)(6) permits a

pages of exhibits. [Dkt. #58] Scheidler repeats many conclusory allegations and accusations about the original defendants' conduct, but he also adds seven new defendants and a host of new claims, based on entirely new factual allegations.

Scheidler now alleges a massive RICO conspiracy:

> This action is precedent setting. It involves the highest levels of the WA Judicial System and the self-policing WA State Bar association, including the Supreme Court Judges and other Judges, Prosecutors, and Private Attorney at Law, all tied together through the WA State Bar Association and committing crimes with impunity against victims in various combinations of legal abuse schemes utilizing the courts and other agencies controlled by WA State Bar lawyers to aid and abet.
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> The racketeering conspiracy and antitrust activity is witnessed and experienced first-hand by Plaintiff and countless other victims of this enterprise throughout the State of WA. It is masterminded at the highest levels of WA State Bar association. Bar associates-in-fact, coming from various public and private domains, have created a RICO enterprise that now dominates and controls the WA State Bar's disciplinary functions, which in turn controls the market for attorneys in WA

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plaintiff to cure deficiencies (usually factual) in his existing pleading; it is not an invitation to assert different claims against new parties arising out of wholly unrelated factual allegations.

> by taking attorneys out of the market who advocate 'unpopular' causes, which affect individuals, businesses and interstate commerce.
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> The extent of the Bar's criminal conduct includes, but is not limited to, insurance fraud through case fixing; kidnapping through case fixing under color of child protective services; human trafficking and even "murder by neglect" through case fixing under color of guardianships; Conspiracy; Extortion; and false imprisonment through case fixing.

[Dkt. #58 at 2] Scheidler also asserts:

- Section1983 claims for violations of "due process and conspiracy to interfere with civil rights" ($10,000,000 per defendant);
- Fraud claims (fraud, intrinsic fraud, and fraud upon the Court);
- Violations of state law criminal statutes regarding perjury, forgery and trading in public office;
- Violations of "criminal code and the anti-SLAPP statute (RCW 4.24.525)";
- Violations of criminal code Chapter 9.73 RCW ($3,000,000);
- Violations of the criminal profiteering statute (state RICO) (Chapter 9A.82 RCW) ($3,000,000);
- A ($3,000,000) damages claim under Chapter 7.56 RCW;

- Anti-trust violations under 15 U.S.C. §1 (the Sherman Act);
- Violations of the ADA ($1,000,000); and,
- An "Administrative Procedures Act" appeal under Chapter 34.05 RCW (what he describes as the property tax appeal).
- Various injunctions, including the creation of a $1 billion fund to reimburse those, like him, who have allegedly been forced to overpay property taxes.

[Dkt. #58] Each defendant seeks dismissal, and Scheidler seeks to amend his complaint to include a more expansive RICO statement. [Dkt. #68] In his responses to the defendants' motions, Scheidler seeks yet another opportunity to amend his complaint, to correct what he concedes might be "minor" "procedural" deficiencies. [Dkt. # 89 at 3, 14; #108]

B. Fed. R. Civ. P. 12(b)(6) Standard.

The adequacy of a pleading in the United States District Courts is governed by the Federal Rules of Civil Procedure[9]. Dismissal under Fed R. Civ. P. 12(b)(6)

[9] Scheidler argues that state law "pre-empts" the *Iqbal/Twombly* standard [Dkt. # 89 at 4], based on his reading of a Washington case holding that the federal standard does not apply to state court pleadings in state court cases under the Washington State Rules of Civil Procedure. *See McCurry v. Chevy Chase Bank, FSB*, 169 Wn.2d 96, 102 (2010) ("The Supreme Court's plausibility standard is predicated on policy determinations specific to the federal trial courts.")

may be based on either the lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990). A plaintiff's complaint must allege facts to state a claim for relief that is **plausible on its face**. *See Aschcroft* [sic] *v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (emphasis added). A claim has "facial plausibility" when the party seeking relief "pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* Although the Court must accept as true the complaint's well-pled facts, conclusory allegations of law and unwarranted inferences will not defeat a Rule 12 motion. *Vazquez v. L. A. County*, 487 F.3d 1246, 1249 (9th Cir. 2007); *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001) (emphasis added). "[A] plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than **labels and conclusions**, and a formulaic recitation of the elements of a cause of action will not do. Factual allegations must be enough to raise a right to relief above the speculative level." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citations and footnotes omitted) (emphasis added). This requires a plaintiff to plead more than "**an unadorned, the-defendant-unlawfully-harmed-me-accusation**." *Iqbal*, 129 S. Ct. at 1949 (citing *Twombly*) (emphasis added).

This is a federal trial court, and its jurisdiction is based on Scheidler's allegations of violations of myriad federal laws. Scheidler's reading of *McCurry* is simply wrong.

On a 12(b)(6) motion, "a district court should grant leave to amend even if no request to amend the pleading was made, unless it determines that the pleading could not possibly be cured by the allegation of other facts." *Cook, Perkiss & Liehe v. N. Cal. Collection Serv.*, 911 F.2d 242, 247 (9th Cir. 1990) (emphasis added). However, where the facts are not in dispute, and the sole issue is whether there is liability as a matter of substantive law, the court may deny leave to amend. *Albrecht v. Lund*, 845 F.2d 193, 195-96 (9th Cir. 1988).

C. Scheidler has not stated (and cannot plausibly state) a claim against the County Defendants.

Scheidler's second amended complaint does not meaningfully change the factual basis for his claims against the County Defendants: Assessor Avery; his attorney, Miles; and Judge Haberly, who dismissed Scheidler's 2008 case. Instead, it adds attorney Ione George, who represents these parties in *this* case. Scheidler alleges only that George removed the case, sought its dismissal, and refused to agree with his remand efforts. [*See* Dkt. #s 58, 77 at 4] These facts are not disputed.

In what can be recognized as a theme in Scheidler's submissions over time, he repeats his conclusory claims that those disagreeing with him in any context violated various laws, oaths and duties by refusing to agree with him. George opposed him and was

predictably named[10] in the next iteration of his complaint. This Court's dismissal of the prior claims (and its denial of Scheidler's motion to remand) has already been affirmed by the Ninth Circuit. These factual allegations do not support any of Scheidler's numerous claims against George.

Stripped of the conclusory accusations, each of Scheidler's complaints contains very little in the way of factual allegations related to any County Defendant. Scheidler simply but vehemently disagrees with the way the decision-makers (and their attorneys) read the property tax exemption statute and its calculation of "disposable income" *vis a vis* capital losses. From this, Scheidler infers and alleges a vast and growing conspiracy to defraud anyone who is not a WSBA member (or, as he alleges in his RICO statements, anyone who is a member but is an "enemy" of the organization).

Scheidler fundamentally misapprehends the duties of attorneys generally, and of those opposing him in this and prior cases. He claims that the defendants have "**statutory obligations to remedy Scheidler's pleadings**" [Dkt. # 89 at 2 (emphasis in original)], and he repeats that lawyers have a "fiduciary duty" to "take the case of" and "rescue" the "oppressed." [*Id.*] Thus, by labeling himself as "oppressed," he can unilaterally foist upon the defendants a fiduciary duty to protect him from whatever evils he can imagine. Scheidler

[10] If past is prologue, Scheidler's Response to the State Court Defendants' Motion suggests that their attorney will be his next target. [*See* Dkt. #108 at 2, 12 (claiming that Liabraaten is "in violation of her code" and that "she must be disbarred.")].

claims elsewhere that the defendants ***"must fix"*** any deficiencies in his complaint, and that the WSBA "delegated to Scheidler" the "TASK of documenting corruption of WSBA lawyers." [Dkt. #89 at 15 (emphasis in original); Dkt. #108 at 5 (emphasis in original)] These assertions do not accurately describe any attorney's duty.

Scheidler also claims that by removing the case, the original defendants and new defendant George engaged in unlawful "forum shopping," and that filing a Rule 12(b)(6) Motion to Dismiss is "on its face" a "limitation of Scheidler's civil action," and "in that regard is back-door legalization of 'unauthorized or invalid acts' of government officials." [Dkt. #89 at 7] These claims are baseless, and there is no conceivable additional fact that can be pled to make them cognizable or plausible.

Scheidler's §1983 claims, based on alleged violations of the Washington Constitution (or other state laws), are not viable as a matter of law, and cannot be made plausible by the allegation of additional or different facts. *See Peters v. Vinatieri*, 102 Wn. App. 641, 649 (2000), and other authority accurately summarized in Defendants' Motion to Dismiss [Dkt. # 77 at 5-6].

Similarly, Scheidler's claims that the County Defendants violated various criminal statutes are not cognizable under §1983 or any other vehicle, because none of those laws provide for a private right of action. *See Thompson v. Thompson*, 484 U.S. 174, 179 (1988); *see also Keenan v. McGrath*, 328 F.2d 610, 611 (1st

Cir.1964) (only the U.S. Attorney can initiate criminal proceedings in federal court.)

Scheidler claims that the County Defendants violated the United States Constitution, but other than naming constitutional provisions, he does not (and cannot) articulate or plead facts that would plausibly support such a claim. He does not address the various immunities that would preclude such claims. Judge Haberly, for example, was and is absolutely judicially immune from Scheidler's claims. *See Lallas v. Skagit County*, 167 Wn.2d 861, 865 (2009). Scheidler's constitutional claims against these defendants are nothing more than "unadorned, the-defendant-unlawfully-harmed-me-accusations," and they are not viable as a matter of law.

Scheidler's new RICO and other claims are similarly, fatally defective. Disagreeing with a taxpayer's analysis of the applicability of a statutory property tax exemption – or representing one who so disagrees – does not violate RICO, the Sherman Act, the ADA or any other federal or state statute giving rise to personal liability[11] to the taxpayer.

The facts are not in dispute, and there is no potential liability as a matter of substantive law. Scheidler cannot conceivably plead additional facts to make

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[11] Properly pled and pursued, an appeal of an adverse BoTA decision does not seek damages from the Assessor, his attorney, or the administrative decision-maker; it instead seeks a reversal of the property tax exemption *decision*. Scheidler's tax appeal is discussed below.

these claims viable or plausible. The County Defendants' Motion to Dismiss [Dkt. #77] is GRANTED, and all of Scheidler's claims against them are DISMISSED WITH PREJUDICE and WITHOUT LEAVE TO AMEND.

D. Scheidler has not stated (and cannot plausibly state) a claim against the WSBA Defendants.

Scheidler's second amended complaint adds the Washington State Bar Association and two of its agents. He claims the WSBA has a duty to ensure that its attorney members "protect and maintain Scheidler's individual rights," and that it is a "RICO enterprise" with the "common purpose of commandeering Washington's judicial branch," in order to protect "RICO associations in fact," so as to "defraud and extort citizens of their money, rights and property." [Dkt. #58 at 31]

Scheidler's primary factual support of this bold claim is a lengthy re-hashing of attorney disciplinary proceedings to which he was not a party, and which have already been resolved, coupled with conclusory accusations of dishonesty, corruption, criminal conduct, extortion, perjury, ethical violations, and the like. [Dkt. #s 58, 68, 89] His complaint appears to stem primarily from the WSBA's failure to discipline attorneys against whom he has previously filed grievances, and from his negative experiences with lawyers and courts generally.

Scheidler also sued Zachary Mosner (a WSBA "Conflicts Review Officer" volunteer, who allegedly failed to investigate Scheidler's bar compliant against his prior attorney, Ellerby), and – for the second time – Felice Congalton (a WSBA employee in the Office of Disciplinary Counsel, who dismissed Scheidler's prior grievances against other attorneys).

The WSBA Defendants seek dismissal with prejudice and without leave to amend. [Dkt. #79] They argue that Scheidler has no standing to complain about the results of his grievances and that this court accordingly does not have subject matter jurisdiction over these claims.

Scheidler must establish standing:

> The irreducible constitutional minimum of standing contains three elements. **First**, the plaintiff must have suffered an "injury in fact" – an invasion of a legally protected interest which is (a) concrete and particularized, and (b) "actual or imminent, not 'conjectural' or 'hypothetical.'" **Second**, there must be a causal connection between the injury and the conduct complained of – the injury has to be "fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court." **Third**, it must be "likely," as opposed to merely "speculative," that the injury will be "redressed by a favorable decision." The party invoking federal jurisdiction bears the burden of establishing these elements.

Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992) (emphasis added). He cannot meet this burden. Scheidler's complaint is not that the Bar did something to *him*, but that they failed to do something to *someone else* – the lawyers against whom he filed grievances. Like any other private citizen, Scheidler does not have standing to force a prosecutor to prosecute a third party:

> The Court's prior decisions consistently hold that a citizen lacks standing to contest the policies of the prosecuting authority when he himself is neither prosecuted nor threatened with prosecution. . . . [A]private citizen lacks a judicially cognizable interest in the prosecution or nonprosecution of another.

See Linda R.S. v. Richard D., 410 U.S. 614, 619 (1973); *see also Doyle v. Oklahoma Bar Ass'n*, 998 F.2d 1559, 1567 (10th Cir. 1993) (private plaintiff has standing because he has no right to compel disciplinary proceeding; the only person who stands to suffer direct injury is the lawyer involved). The WSBA cites numerous other cases for this same proposition. [Dkt. #79 at 8-9]

Scheidler's Response [Dkt. # 89] does not address his standing to sue under these authorities. He has not met his burden of establishing standing.

The WSBA defendants also argue that they are entitled to absolute quasi-judicial immunity – not just from damages, but from suit. *See Mireles v. Waco*, 502 U.S. 9 (1991); *Hirsh v. Justices of the Supreme Court of Cal.*, 67 F.3d 708, 715 (9th Cir. 1995) (bar judges and

prosecutors have quasi-judicial immunity); and cases discussed in the WSBA's Motion [Dkt. #79 at 10-12.] Indeed, this issue was squarely and recently addressed in the case from which Scheidler's complaint appears to draw its inspiration[12] – *Scannell v. Washington State Bar Association*, Western District of Washington Cause No. C12-0693 SJO. [*See* Order Granting Motion to Dismiss, Dkt. #94 in that case]

Scheidler argues that the Defendants' claimed immunity is "prohibited" under the Washington Constitution. He claims that "any holding by any court granting privileges and immunities to defendants is void under WA common law RCW 4.04.010[.]" [Dkt. # 89 at 6, *citing* Scheidler's second amended complaint, Dkt. #58].

This argument is not persuasive. The WSBA defendants are entitled to absolute quasi-judicial immunity as a matter of law.

The WSBA Defendants also argue that Scheidler's claims against them are barred by *res judicata*, because his prior, similar Kitsap County lawsuit against Congalton was dismissed with prejudice. *See Scheidler v. Callner*, Kitsap Superior Court Cause No. 14-2-00042-3

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[12] Scannell's disciplinary proceeding is discussed at length in Scheidler's RICO statement(s), and Scannell's subsequent (and since dismissed) RICO lawsuit bears a strong resemblance to Scheidler's proposed amended RICO statement. [*Cf.* Dkt. #68 in this case to Dkt. #74 in Scannell's]. Scannell, unlike Scheidler, was a disciplined attorney and he at least partly sought to vindicate his own alleged injuries. Nevertheless, his claim was dismissed and is on appeal.

[Dkt. #79-1 (complaint) and #79-2 and -3 (orders dismissing Congalton and Callner, respectively)]. Scheidler did not appeal.

The doctrine of *res judicata* precludes re-litigation of claims that were raised in a prior action, or which *could have been* raised in a prior action. *W. Radio Servs. Co. v. Glickman*, 123 F.3d 1189, 1192 (9th Cir. 1997) (emphasis added). An action is barred by *res judicata* when an earlier suit: (1) involved the same claim or cause of action as the later suit; (2) involved the same parties; and (3) reached a final judgment on the merits. *Mpoyo v. Litton Electro-Optical Sys.*, 430 F.3d 985, 987 (9th Cir. 2005).

Scheidler argues that the prior case is "VOID for fraud," and that there is no such thing as *res judicata* in any event: "Res Judicata can never be claimed as only a "jury verdict" terminates a case." [Dkt. # 89 at 12 (emphasis in original)] These arguments are unsupportable and frivolous. He already sued Congalton for the very conduct he alleges against her here, and lost. His attempt at a second, bigger bite at the apple is barred as a matter of law.

The WSBA's remaining arguments are similarly persuasive, and are to some extent addressed in the discussion of the other defendants' motions. Scheidler's §1983 claim is flawed because the WSBA is not a "person," and his Sherman Act claim is barred by the state action doctrine. [*See* Dkt. #s 79 and 92]

The flaws in Scheidler's claims against the WSBA Defendants are substantive, not procedural, and there

is no conceivable set of facts that he could plead to make them plausible or viable. The WSBA Defendants' Motion to Dismiss [Dkt. #79] is GRANTED and Scheidler's claims against them are DISMISSED WITH PREJUDICE and WITHOUT LEAVE TO AMEND.

E. Scheidler has not stated (and cannot plausibly state) a claim against the Court Clerk Defendants.

Scheidler's second amended complaint adds as new parties the Clerk of the Court of Appeals (David Ponzoha) and the Clerk of the Supreme Court (Susan Carlson). His complaint against these parties is long on labels and conclusions, but short on facts. He alleges that each defendant refused to accept his proposed appellate pleadings in prior cases, and that his appeals were dismissed as a result:

> 162. Circa 8-15-2011 re case #857164. CJC grievance filed circa 2012, Susan Carlson, clerk of the WA Supreme Court, refused to file pleadings plaintiff delivered to her in an appeal describing perjury and the subornation of perjury concerning rulings that favored WA State Bar associate Scott Ellerby. The pleading was a reply brief.
>
> 163. Circa 1-28-2014 RE CASE #454351. Grievance filed circa 2014. David Ponzoha, Clerk of the Court of Appeals II refused to file an opening brief

> plaintiff delivered to him describing perjury and the subornation of perjury concerning an appeal from a ruling awarding Scott.

Ellerby attorney fees as a sanction of $120k, by Judge Hull, a successor judge who never sat on the case at any time prior to this 'sanction." ***Appendix 8*** "Opening Brief" is attached for the courts convenience.

> 164. Then these two Clerks dismissed the respective appeal for not filing the briefs. The Clerk's reasons dismissing the respective appeals were complete fabrications and noted as fabrications in motions to 'Amend the Clerks rulings' – NONE of the Motions to amend were accepted by a reviewing panel of judges who are all Bar participants.

[Dkt. #58 at 32-33]

Scheidler claims that Carlson rejected his filing because he refused to pay the filing fee:

> c) With respect to Carlson's unlawful demand that Scheidler pay a filing fee for an appeal . . . The ONLY party Carlson could properly demand pay a fee is the "local governmental entity" and NOT Scheidler. Therefore the Supreme Court does not have "personal jurisdiction" of Scheidler with respect to this "fee" as he isn't the party statutorily required to pay the fee Carlson demanded. Again preclusion theories are inapplicable as personal

> jurisdiction is lacking. [Subject matter jurisdiction is also questioned below]

[Dkt. #108 at 4].

Scheidler claims that Ponzoha rejected his *Ellerby*[13] Brief because he (falsely) claimed it did not conform[14] to the Rules of Appellate Procedure. [*See* Dkt. #108 at 6; Dkt. #58-8 (Brief); Dkt. #102 Ex. 3 (Ponzoha's letter).]

The Court Defendants argue persuasively that Scheidler's claims are "an unshielded attempt at a *de facto* appeal of his State Court cases." [Dkt. #100 at 9] They argue that such an effort is flatly prohibited:

> The *Rooker-Feldman* doctrine precludes "cases brought by state-court losers complaining of injuries caused by state-court judgments . . . and inviting district court review and rejection of those judgments." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284, 125 S. Ct. 1517, 1521, 161 L. Ed. 2d 454 (2005).
>
> [W]hen a losing plaintiff in state court brings a suit in federal district court asserting as

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[13] The Court of Appeals affirmed the dismissal of Scheidler's claims against Ellerby in July 2012. It reversed the attorneys' fee award, and remanded for a revised award. On remand, Scheidler sought additional relief, which was denied, and he appealed again. Scheidler's claims against Ponzoha relate to this second *Ellerby* appeal.

[14] A review of Scheidler's proposed brief makes it clear that at least three of the five cited deficiencies existed. Scheidler did not file an amended brief, was sanctioned, and failed to pay the sanction. Scheidler's second appeal was dismissed. [*See* Dkt. #102 and Exhibits thereto].

> legal wrongs the allegedly erroneous legal rulings of the state court and seeks to vacate or set aside the judgment of that court, the federal suit is a forbidden de facto appeal. *Noel v. Hall*, 341 F.3d 1148, 1156 (9th Cir. 2003); *Carmona v. Carmona*, 603 F.3d 1041, 1050 (9th Cir. 2008); *see e.g. Giampa v. Duckworth*, 586 F. App'x 284 (9th Cir. 2014) (Affirming dismissal of claims against judges, court clerks, state agencies, and prosecutors; claim against clerks for refusing to accept filings was improper collateral challenge to state court orders under *Rooker-Feldman*).

[Dkt. # 100 at 9-10]. Scheidler argues that he is not seeking to *re*-litigate anything (and is instead suing these wrong-doers for the first time), and that *Rooker-Feldman* is no longer the rule after *Saudi Basic*. As to the latter, he is legally wrong. No authority permits this court to review and reverse state appellate court decisions.

And as to the former argument, Scheidler is factually wrong. He *does* claim that because Ponzoha breached various duties, the prior state court adjudication of his second *Ellerby* appeal is "void" – he seeks to undo it:

> **f) Fraud upon the Court removes Rooker-Feldman and res judicata preclusions.**
>
> The MOMENT David Ponzoha violated the law affecting the outcome of Scheidler's lawsuit by dismissing Scheidler's appeal without addressing the issues raised by Scheidler,

> Ponzoha committed a 'fraud upon the court'. The MOMENT David Ponzoha committed a fraud upon the court he violated Scheidler's right to a fair and impartial forum and the entire case is VOID for fraud the Ponzoha's conduct becomes a matter for trial.

[Dkt. #108 at 12] *See also* Scheidler's state court "Motion to Modify," similarly accusing Ponzoha of corruption, fraud and dishonesty, and seeking the same relief: "vacation" of the prior dismissal as a "fraud on the court." [Dkt. # 108-1, Ex. 3 at 9-15]

Rooker Feldman bars Scheidler's effort to obtain relief from or to overturn the prior adjudications. There are no conceivable additional or different facts that he could plead to make this claim plausible.

Scheidler's second set of claims – seeking millions in damages against the Court Defendants personally under §1983, RICO, the Sherman Act and other statutes – is also irrevocably flawed. The Clerks are entitled to quasi-judicial immunity from all such claims. *Mireles v. Waco*, 502 U.S. 9 (1991); *Ashelman v. Pope*, 793 F.2d 1072, 1074 (9th Cir. 1986); *Giampa*, *supra*, (clerk has quasi-judicial immunity).

To the extent Scheidler seeks retrospective relief for the conduct he alleges – money damages and other punishment as redress for past wrongs – the Clerks are also entitled to Eleventh Amendment immunity. *See Puerto Rico Aqueduct and Sewer Auth. V. Metcalf & Eddy, Inc.*, 506 U.S. 139, 146 (1993) (*Ex Parte Young* exception to Eleventh Amendment immunity is

narrow and applies only to purely prospective relief; does not permit judgments against state officers declaring that the [sic] violated federal law in the past.) *See also Ex Parte Young*, 209 U.S. 123 (1908), and cases cited and discussed in Defendants' Motion. [Dkt. #100 at 12-15]

Despite his current claims to the contrary, it is clear that the relief Scheidler seeks from these defendants is retrospective. *See* Dkt. #58 at 54-60. He does seek "injunctive relief," but the injunction he seeks is not *general*; he seeks an injunction to prevent recognition (or enforcement) of prior orders adverse to *him*. [*See* Dkt. #s 58, 108] Simply labeling the relief he seeks "prospective" does not defeat immunity.

Scheidler's claims against the Court Defendants seek to overturn (or preclude enforcement of) past court decisions adverse to him, or to hold the decision-makers personally liable for ruling against him. Such relief is not available as a matter of law, and there are no conceivable additional facts or claims that he could plead that would change that conclusion.

The State Court Defendants' Motion to Dismiss [Dkt. #100] is GRANTED and all of Scheidler's claims against them are DISMISSED WITH PREJUDICE and WITHOUT LEAVE TO AMEND.

F. Scheidler has not stated (and cannot plausibly state) a claim against the BoTA Defendants.

Scheidler's second amended complaint reiterates his claims against Kay Slonum (the Board of Tax Appeals Chair), and it also asserts all of his new claims against her. But he adds no material factual support for his claims. Scheidler also adds the BoTA as a defendant, though it is not clear that he seeks more from it than a reversal of its property tax exemption decision. BoTA does not read Scheidler's second amended complaint as asserting a RICO claim against it.

Other than the fact they are "defendants" – Scheidler broadly accuses "the defendants" of §1983, RICO, Sherman Act, ADA and numerous criminal violations – his second amended complaint [Dkt. #58] and his Response to the Motion [Dkt #89] contain very little in the way of factual allegations against BoTA or Slonum.

The BoTA Defendants seek dismissal of all Scheidler's claims against them. They argue that his allegations of criminal violations have already been dismissed, and repeating or revising them does not change the fact that none of the cited criminal statues [sic] give rise to a civil tort claim. This is correct; Scheidler cannot prosecute the alleged crimes as a private person.

The BOTA Defendants also argue that the civil claims against them – §1983, RICO, Sherman Act, ADA – have no factual support. This too is correct.

Scheidler does not actually allege that BoTA did anything other than have Slonum as its chair. And it alleges only that Slonum decided against him[15], that she "supported" Avery and she is a RICO defendant in "an association-in fact with the Bar Defendants and Avery." [Dkt. #58 at 3]

Scheidler has failed to articulate any plausible connection between these defendants and any of his claims for relief. Instead, they claim, Scheidler's complaint is akin to the one dismissed in *McHenry v. Renne*, 84 F.3d 1172, 1179 (9th Cir. 1996): It contains nothing more than "narrative ramblings and political griping." They accurately cite *McHenry* for the proposition that "prolix, confusing complaints such as the ones plaintiffs filed in this case impose unfair burdens on litigants and judges." *Id.*

Scheidler's Response does not address these arguments, and the Court agrees that the claims are without merit. Scheidler's efforts to hold Slonum personally liable for her alleged failure to properly handle his BOE appeal to the BoTA were, and are, without merit. And there are no conceivable additional or different facts (or claims) that Scheidler could assert against the BoTA defendants that would change this conclusion.

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[15] Scheidler repeatedly claims that Slonum "dismissed his appeal for lack of jurisdiction," [*See, e.g.*, Dkt. # 1-2 at 7] but that is demonstrably untrue. She considered and denied the appeal *on the merits* because Scheidler's reading of the statute and the Assessor's form was wrong. She did not consider his "*other*" causes of action because the BoTA lacked of [sic] jurisdiction over them.

The BoTA Defendants' Motion to Dismiss [Dkt. # 76] is GRANTED, and Scheidler's claims against them are DISMISSED WITH PREJUDICE and WITHOUT LEAVE TO AMEND.

G. Scheidler's motion to amend his complaint a fourth (or fifth) time is denied.

Scheidler seeks leave to amend his complaint to incorporate an expanded RICO statement [Dkt. #68]. In response to the defendants' motions to dismiss, he seeks an additional opportunity to amend. [Dkt. #s 89 and 108] He has already filed three complaints and a fourth proposed amended complaint, in this case. [Dkt. #s 1-2, 1-3, 58, and 68]

Leave to amend a complaint under Rule 15(a) "shall be freely given when justice so requires." *Carvalho v. Equifax Info. Services, LLC*, 629 F.3d 876, 892 (9th Cir. 2010) (citing *Forman v. Davis*, 371 U.S. 178, 182 (1962)). This policy is "to be applied with extreme liberality." *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir. 2003) (citations omitted). In determining whether to grant leave under Rule 15, courts consider five factors: "**bad faith**, undue **delay**, **prejudice** to the opposing party, **futility** of amendment, and whether the plaintiff has **previously amended** the complaint." *United States v. Corinthian Colleges*, 655 F.3d 984, 995 (9th Cir. 2011) (emphasis added). Among these factors, prejudice to the opposing party carries the greatest weight. *Eminence Capital*, 316 F.3d at 1052.

A proposed amendment is futile "if no set of facts can be proved under the amendment to the pleadings that would constitute a valid and sufficient claim or defense." *Gaskill v. Travelers Ins. Co.*, No. 11-cv-05847-RJB, 2012 WL 1605221, at *2 (W.D. Wash. May 8, 2012) (citing *Sweaney v. Ada County, Idaho*, 119 F.3d 1385, 1393 (9th Cir.1997)).

Scheidler's motions for leave to amend fail under each of these considerations.

Scheidler's proposed amended RICO statement is a 129-page narrative wholly unrelated to the property tax exemption appeal, or to the conduct of any of the original defendants. It appears instead to be a long list of lawyers who faced (or who Scheidler claims should have faced) disciplinary proceedings in this state. These disciplinary proceedings facially have nothing to do with Scheidler, the named defendants, or this case. Indeed, many of the allegations appear to be copied from some other document or pleading, filed on behalf of some other party in some other proceeding.

The proposed amendment would not cure the deficiencies discussed above, and it is futile as a matter of law. Scheidler's attempts to re-litigate completed disciplinary proceedings to which he is not a party face at least the following insurmountable hurdles: Scheidler has no standing to pursue claims against or on behalf of these non-parties. He has no ability as a non-attorney *pro se* litigant to represent these entities, and even if he were an attorney, there is no evidence any of these attorneys consented to his representation.

Scheidler cannot prosecute alleged criminal violations as a private citizen. Only the U.S. Attorney can initiate criminal proceedings in federal court. *See Keenan v. McGrath*, 328 F.2d 610, 611 (1st Cir.1964). Private parties cannot pursue charges for violations of criminal provisions; only prosecutors can. *Fritcher v. USDA Forest Serv.*, No. 1:12-CV-02033-LJO, 2013 WL 593688, at *3 (E.D. Cal. Feb. 14, 2013).

Scheidler's attempts to re-litigate prior adjudications are also barred by *res judicata* or collateral estoppel. And despite what appears to be a conscious effort to not date the events, it is clear that most of them occurred many years ago, and are time-barred in any event:

> J. Grant Anderson sought and received the aid of the enterprise who failed to prosecute him for unethical activities involving a client's trust account.
>
> K. Bobbe Bridges enlisted the aid of the enterprise in avoiding drunk driving charges being brought against her as a bar violation
>
> L. Christine Grey, headed the prosecution of Douglas Schafer, covering for Grant Anderson, made a retaliatory prosecution of Jeffery Poole, who was eventually disbarred Linda Eide, headed the prosecution of Grunstein, proceeded to charge and convict without jurisdiction, destroyed evidence.
>
> 18. It is a custom and practice for WSBA to retaliate against individuals who expose government corruption. See this RICO

> Statement re the Bar's retaliation against Anne Block and her law license for exposing the city of Gold Bar's Director of Emergency Services, John Pennington, who is likely responsible, at least in part, for the 43 deaths from a landslide in Oso, WA. See RICO statement concerning retaliation against Schaffer for exposing, corrupt judge. See RICO statement concerning John Scannell for exposing bar violations by AG for blowing 517 million on Beckman case.

[Dkt. #68 at 6, 16]

This court does not have jurisdiction to review state court proceedings under *Rooker-Feldman*. A district court must give full faith and credit to state court judgments, even if the state court erred by refusing to consider a party's federal claims. *See Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280, 293 (2005).

Scheidler's second amended complaint and his proposed third amended complaint do not articulate any claim (no matter how liberally construed) that any defendant could fairly be expected to reasonably answer. It is therefore prejudicial to them. It would be prejudicial to make any party re-litigate the details of every disciplinary proceeding that Scheidler claims should have been resolved differently. None of the defendants can, or should be required to, address Scheidler's wide-ranging, wild conspiracy allegations on behalf of, or against, non-parties.

Furthermore, the Court cannot conclude that Scheidler is litigating in good faith. A plain-vanilla 1998 property tax dispute has exploded into a RICO conspiracy involving every lawyer and judge in the state. Scheidler does not appear to believe in reasonable disagreements; if someone decides against him, or advocates against him on behalf of her client, she is corrupt and criminal, and promptly sued. He has no reasonable expectation of a billion dollar judgment, but he must realize that responding to hundreds of pages of accusations costs time and money – his lawsuits are, themselves, a form of punishment for those he repeatedly sues.

Finally, Scheidler has had ample opportunity to state a viable, plausible claim, and has repeatedly failed to do so. He has filed three complaints so far in this case, and he has filed at least as many cases in other courts against the same parties, for the same conduct, over the years. Scheidler's proposed amendments do not address the many fatal flaws in his claims, and a *fifth* opportunity to amend in this case would be prejudicial, and futile. It is not warranted as a matter of law. Scheidler's Motion to Amend [Dkt. #68] is DENIED, and his general request for leave to amend *again* (contained in his responses [Dkt. #s 89 and 108]) is DENIED.

H. Scheidler's property tax appeal is denied, and the BoTA's determination is affirmed.

The remaining, original issue is Scheidler's appeal of the BoTA's decision that Avery correctly determined that he is not entitled to a property tax exemption for 2007-2010, based on his "disposable income" for the preceding years.

Slonum argued in her first Motion to Dismiss [Dkt. #8] – which was granted [Dkt. #38], and affirmed [Dkt. #51] – that she was not a proper defendant for an appeal of an adverse property tax decision, and that an "APA (Chapter 34.05 RCW) claim" seeking damages from her (or Avery) personally, for real or perceived errors, was not a viable route to the property tax relief Scheidler sought. Instead, as she pointed out, the statutory authority for judicial review of a BoTA decision is RCW 82.03.180. These claims are correct, and Scheidler's claims on these bases are dismissed with prejudice above.

Scheidler [sic] second amended complaint repeats these claims, reiterates his claim for relief against the defendants personally under the APA, and does not mention RCW 82.03.180. Instead he argues that "the core" of his claim is that Avery committed fraud (and crimes) by forced [sic] him to sign his property tax exemption applications "under duress." [Dkt. #58 at 27; *see also* Dkt. #15-12 (same).] This claim is spurious.

Avery's current Motion to Dismiss seeks dismissal of the APA claim, calling it "nothing more than a tort claim or claim for declaratory relief labeled as an

'administrative appeal.'" [Dkt. #77 at 8] This characterization is not unfair: Scheidler is seemingly incapable of separating his (potentially viable) claim for property tax relief from his (irrevocably flawed) claims that the decision-makers were not just legally wrong, but also dishonest, corrupt, criminals personally liable to him.

Nevertheless, Scheidler's "Ninth Cause of Action: Administrative Appeal Per 34.50" does seek an "award of his rightful property tax reduction." [Dkt. #58 at 54] The Court will address the merits of the [sic] Scheidler's effort to overturn the denial of his property tax exemption applications, based on the arguments and documents[16] in this case.

Retired or disabled Washington taxpayers with disposable incomes less than $35,000 are entitled to a property tax exemption. RCW 84.36.381; *see* Chapter 84.36 RCW. The statute describes how to determine "disposable income" in detail:

> (5) "Disposable income" means *adjusted gross income* as defined in the federal internal revenue code[] ***plus*** *all of the following* items *to the extent* they are ***not included in*** **or** ***have been deducted from*** adjusted gross income:

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[16] These include (but are not limited to) Scheidler's original complaint, with attachments [Dkt. #1-2]; his Response to Avery's first Motion to Dismiss, with attachments [Dkt. #15]; his second amended complaint, with attachments [Dkt. #58]; and his Response to Avery's second Motion Dismiss [Dkt. #89].

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

(b) *Amounts deducted for loss*;

(c) *Amounts deducted for depreciation*;

(d) Pension and annuity receipts;

(e) Military pay and benefits other than attendant-care and medical-aid payments;

(f) Veterans benefits, other than:

(i) Attendant-care payments;

(ii) Medical-aid payments;

(iii) Disability compensation, as defined in Title 38, part 3, section 3.4 of the code of federal regulations, as of January 1, 2008; and

(iv) Dependency and indemnity compensation, as defined in Title 38, part 3, section 3.5 of the code of federal regulations, as of January 1, 2008;

(g) Federal social security act and railroad retirement benefits;

(h) Dividend receipts; and

(i) Interest received on state and municipal bonds.

RCW 84.36.383(5) (emphasis added).

A taxpayer's "disposable income" for purposes of the state property tax exemption is therefore often *greater than* the "AGI" he calculated for purposes of paying federal income tax. If the taxpayer was able to avoid including *capital gains* in his AGI, those gains are *added* to the AGI in calculating his disposable income. Similarly, if the taxpayer was able to reduce his AGI calculation by deducting losses (or depreciation), those amounts are included – they are added back into – the state law disposable income calculation, used to determine his eligibility for a property tax exemption. However, if the AGI already includes the capital gains (or if the losses were not used to reduce the AGI), then they are not added back for purposes of the disposable income calculation.

RCW 84.36.383(4) also permits a taxpayer to then subtract from his "disposable income" three specific categories of expenses often incurred by the retired or disabled:

> (a) Drugs supplied by prescription of a medical practitioner authorized by the laws of this state or another jurisdiction to issue prescriptions;
>
> (b) The treatment or care of either person received in the home or in a nursing home, assisted living facility, or adult family home; and
>
> (c) Health care insurance premiums for medicare under Title XVIII of the social security act.

RCW 84.36.383(4).

In simple terms, a taxpayer's "disposable income" is: his AGI, *plus* certain kinds of "income" *not already included* in the AGI, *plus* certain deductions which *were included* in the AGI, *minus* a limited class of expenses.

The genesis for Scheidler's various lawsuits over the past two decades is his belief that the Kitsap County Assessor's form for determining disposable income (specifically, its instructions) is contrary to this statute. Scheidler has prepared a side-by-side comparison that he claims demonstrates the error:

TABLE OF PERTINENT LANGUAGE
illustrating the substantive difference
between Exhibit 1 and controlling law.

EXHIBIT 1: THE "APPLICATION" Defendant **James Avery's version of the law**, Page 3, top paragraph of the application states this instruction:	**RCW 84.36.383(5)** The **Controlling law** that this "application/ instruction" is purported to carryout [sic] states the opposite.
"If you file a tax return with the IRS and your return included any deductions for the following items or if any of these items were not included in your adjusted gross income, they must be reported on your application for	RCW 84.36.383(5) ***"Disposable income" means adjusted gross income as defined in the federal internal revenue code***, as amended prior to January 1, 1989, or such subsequent date as the director may provide by rule consistent with the purpose of this section,

purposes of this exemption program: Capital gains (**cannot offset with losses**) . . .	***plus all of the following items to the extent they are not included in or have been deducted from adjusted gross income*:**

This difference between defendant James Avery's version of the law and the "True" law results in an improper treatment of the items that follow the instruction.

> **Defendant Avery says**, "the following amounts on your IRS return must be added to adjusted gross income."
>
> **The Controlling law says**, "the following amounts on your IRS return must be included IF THEY HAVE NOT ALREADY BEEN INCLUDED in adjusted gross income.

Defendant Avery's instruction leaves out the "conditional analysis – if not already included" and in that way "DOUBLE COUNTS" those amounts that "have already been included." This instruction by Avery "IMPROPERLY INCREASES" a persons presumed income – and income is a critical element in obtaining the class's "constitutional rights."

[Dkt. #15 at 9. Scheidler includes an exemplar exemption application packet at Dkt. #15-1]

As an initial matter, Scheidler's claim that the instructions "leave out the conditional analysis" is simply not correct. The very first word of the disputed

instructions is "If." The Kitsap County form correctly instructs that *if* certain income was excluded from the AGI calculation, or *if* various deductions were included in it, *then* those amounts "must be reported on your application for purposes of this exemption program." [*See* Dkt. #15-1 at 4, mirroring the list in RCW 84.36.383(5).]

Scheidler's second claim – that this statutory scheme "INCREASES a person's presumed income" – is absolutely correct. That is the point. Eligibility for the state property tax exemption is not based on the taxpayer's AGI; it is based on his "disposable income." The statutory scheme reflects a conscious policy decision to count as "disposable income" some capital gains and other receipts that the IRS does not require the taxpayer to include in his AGI. It similarly disallows deductions for losses or depreciation that the IRS does allow the taxpayer to deduct from his AGI. It specifically does not permit a property tax payer to offset capital gains with other losses.

Scheidler's submissions include an undated and untitled document that he claims is evidence that the Department of Revenue is "involved in the Assessor's fraud." [Dkt. # 58-4] The source of this document is unknown, but it appears to be a handout from a state Assessors' "administrative workshop," intended to address the question raised by Scheidler here: "why can't losses offset gains?":

> During the Admin workshop in Moses Lake, Scott Furman, Okanogan County Assessor,

requested some "language" that can be used when responding to those questions about why we cannot use losses to offset gains. The language I normally use is actually a paraphrase from a BTA case – Docket #55692, Other docket numbers for reference are #56336 and #55067. Here's a sample:

The general rules pertaining to property tax exemptions require that the statutory language be construed strictly, though fairly. Taxation is the rule and exemption is the exception. The Legislature has set specific criteria for exempting property from property taxes because exemptions create a "shift" of the tax burden, causing other taxpayers in the taxing district to actually pay higher property taxes.

* * *

The State law governing property tax exemption is independent of the federal income tax statutes and the federal "adjusted gross income" figure is only the starting point for calculating "disposable income."

* * *

Although I am sympathetic to your situation and understand your thoughts on the matter, the laws and rules governing the Senior and Disabled Persons Exemption program are very clear. In the calculation of income for this program, losses must be excluded, whether or not they can be used to offset taxable income for federal income tax purposes. We cannot

> ask other taxpayers to subsidize the personal losses of someone else.

[Dkt. #58-4] This analysis is not evidence of some fraud or conspiracy; it is additional evidence that Scheidler's position is wrong. It too is exactly consistent with the statutory scheme, and to the extent it accurately reflects the Department of Revenue's position, the DOR is correct.

Scheidler's June 2010 letter to Avery suggests that even he realizes that his dispute is not really with the Kitsap County Assessor's form, but with the 35-year-old state statute that expressly makes the distinctions he complains about. That letter acknowledges that the property tax exemption is based on a measure of "income" that is different than the income upon which the taxpayer must pay federal income tax:

- The County's instructions begin with AGI but then "excludes" amounts that went into calculating AGI. For example, AGI includes amounts deducted for loss. Yet the County "excludes" all losses without any rational [sic] and in opposition to the conditions explicitly expressed in .383(5), which states amounts deducted for loss must be included in AGI if those amounts have not yet been included. IRS AGI "includes" amounts deducted for loss.
- The county, by arbitrarily excluding losses that are included in the calculation of AGI, creates a structural error in the calculation of Disposable Income. This

> structural error artificially increases disposable income, which determines the amount of TAX, or the denial of the benefit.

[Dkt. #15-2 at 2] The "rationale" for not permitting the taxpayer to use losses to offset gains for purposes of determining his "disposable income" – even though the IRS allows such an offset – is to avoid having other property tax payers subsidize those losses. And it is the legislature's rationale, not Avery's.

This issue has been correctly determined by prior Kitsap County Assessor, Assessor Avery, the Board of Equalization, and the Washington State Board of Tax Appeals. Kitsap County's property tax exemption form (like Pierce[17] County's and King County's) expressly and correctly does not permit a taxpayer to use losses to offset capital gains. That is the law in this state. RCW 84.36.383(5).

Scheidler's appeal of the Board of Tax Appeal's September 6, 2012 decision [Dkt. #1-2 at 54] is DENIED and that decision is AFFIRMED.

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[17] Pierce and King County's property tax exemption application forms are available online, through these links:

https://www.co.pierce.wa.us/index.aspx?nid=702

http://www.kingcounty.gov/depts/assessor/Forms.aspx

Like Kitsap's, each county's instructions specifically and consistently do not permit the applicant to offset income with losses in calculating his disposable income.

CONCLUSION

All of Scheidler's claims against all defendants are baseless and they cannot be saved by additional amendment. They are DISMISSED with prejudice and without leave to amend. The BoTA's decision denying Scheidler's property tax exemption applications for 2007-2010 is AFFIRMED. Scheidler's BoTA appeal is DISMISSED with prejudice and without leave to amend. IT IS SO ORDERED.

Dated this 17th day of November

/s/ Ronald B. Leighton
Ronald B. Leighton
United States District Judge

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

WILLIAM SCHEIDLER, Plaintiff-Appellant, v. JAMES AVERY, individually and in his official capacity as Kitsap County's Assessor; et al., Defendants-Appellees.	No. 13-35119 D.C. No. 3:12-cv-05996-RBL MEMORANDUM* (Filed Mar. 30, 2015)

Appeal from the United States District Court
for the Western District of Washington
Ronald B. Leighton, District Judge, Presiding

Submitted March 10, 2015**

Before: FARRIS, WARDLAW, and PAEZ, Circuit Judges.

William Scheidler appeals pro se from the district court's judgment dismissing his action arising from the denial of a property tax exemption. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Hicks v. Small*, 69 F.3d 967, 969 (9th Cir. 1995) (dismissal for

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument and therefore denies Scheidler's request for oral argument, set forth in his opening brief. *See* Fed. R. App. P. 34(a)(2).

failure to state a claim under Fed. R. Civ. P. 12(b)(6)). We affirm in part, reverse in part, and remand.

The district court properly determined that Scheidler is not entitled to relief under the federal criminal statutes he cited. *See Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980) (18 U.S.C. §§ 241 and 242 provide no basis for civil liability).

The district court also properly determined that Scheidler's first amended complaint failed to state a federal constitutional claim, or a state criminal or constitutional claim, upon which relief could be granted. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) ("To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." (internal citations and quotation marks omitted)).

However, the district court abused its discretion in dismissing the first amended complaint without leave to amend. *See U.S. v. Corinthian Colleges*, 655 F.3d 984, 995 ("[D]ismissal without leave to amend is improper unless it is clear, upon de novo review, that the complaint could not be saved by any amendment." (internal citation and quotation marks omitted)). *See Akhtar v. Mesa*, 698 F.3d 1202, 1212 (9th Cir. 2012) ("A district court should not dismiss a pro se complaint unless it is absolutely clear that the deficiencies of the complaint could not be cured by amendment." (citation and internal quotation marks omitted)). We therefore reverse and remand to allow Scheidler an opportunity to amend his complaint.

Moreover, the district court did not address the merits of Scheidler's petition for review of the Board of Tax Appeal's September 6, 2012 decision, which Scheidler incorporated by reference into his amended complaint. Nor did the district court decline to exercise supplemental jurisdiction. *See City of Chicago v. Int'l Coll. of Surgeons*, 522 U.S. 156, 168-69 (1997) (supplemental jurisdiction under 28 U.S.C. § 1367 extends to review of state administrative agency determinations). We therefore reverse and remand for review of the agency decision.

The district court properly denied Scheidler's motion to remand because Scheidler's complaint alleged federal causes of action over which the district court had original jurisdiction, and the notice of removal was timely. *See* 28 U.S.C. §§ 1441, 1443, 1446; *Hawaii ex. rel. Louis v. HSBC Bank Nevada, N.A.*, 761 F.3d 1027, 1034 (9th Cir. 2014) (standard of review).

The district court did not abuse its discretion by denying Scheidler's motion for appointment of counsel because he failed to demonstrate exceptional circumstances. *See Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009) (setting forth standard of review and discussing the "exceptional circumstances" requirement).

The district court did not abuse its discretion in denying Scheidler's motion for recusal of the district court judge because Scheidler failed to identify a ground for recusal. *See* 28 U.S.C. §§ 144, 455; *Pesnell v. Arsenault*, 543 F.3d 1038, 1043 (9th Cir. 2008) (standard of review).

Each party shall bear its own costs on appeal.

AFFIRMED in part, REVERSED in part, and REMANDED.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

WILLIAM SCHEIDLER, Plaintiff-Appellant, v. JAMES AVERY, individually and in his official capacity as Kitsap County's Assessor; et al., Defendants-Appellees.	No. 15-35945 D.C. No. 3:12-cv-05996-RBL Western District of Washington, Tacoma ORDER (Filed Jan. 29, 2018)

Before: SCHROEDER, TASHIMA, and M. SMITH, Circuit Judges.

Amicus curiae Block and Scannell's motion to file a late brief (Docket Entry No. 49) is granted. Block and Scannell's motion to become amicus curiae (Docket Entry No. 48) is granted. The Clerk shall file the amicus curie brief submitted on September 7, 2017 (Docket Entry No. 48).

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App. P. 35.

Scheidler's petition for rehearing en banc (Docket Entry No. 47) is denied.

No further filings will be entertained in this closed case.

APPENDIX 2

Table of Relevant Constitutional and Statutory Authorities.

TABLE OF STATUTES

U.S. 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.

U.S. 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.

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.

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.

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.

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.

RULES OF FEDERAL COURTS

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.

FRAP 46. Attorneys

(a) Admission to the Bar.

(1) Eligibility. An attorney is eligible for admission to the bar of a court of appeals if that attorney is of good moral and professional character and is admitted to practice before the Supreme Court of the United States, the highest court of a state, another United States court of appeals, or a United States district court (including the district courts for Guam, the Northern Mariana Islands, and the Virgin Islands).

(2) Application. An applicant must file an application for admission, on a form approved by the court that contains the applicant's personal statement showing eligibility for membership. The applicant must subscribe to the following oath or affirmation: "I, ___, do solemnly swear [or affirm] that I will conduct myself as an attorney and counselor of this court, uprightly and according to law; and that I will support the Constitution of the United States."

(3) Admission Procedures. On written or oral motion of a member of the court's bar, the court will act on the

application. An applicant may be admitted by oral motion in open court. But, unless the court orders otherwise, an applicant need not appear before the court to be admitted. Upon admission, an applicant must pay the clerk the fee prescribed by local rule or court order.

(b) Suspension or Disbarment.

(1) Standard. A member of the court's bar is subject to suspension or disbarment by the court if the member:

(A) has been suspended or disbarred from practice in any other court; or

(B) is guilty of conduct unbecoming a member of the court's bar.

(2) Procedure. The member must be given an opportunity to show good cause, within the time prescribed by the court, why the member should not be suspended or disbarred.

(3) Order. The court must enter an appropriate order after the member responds and a hearing is held, if requested, or after the time prescribed for a response expires, if no response is made.

(c) Discipline. A court of appeals may discipline an attorney who practices before it for conduct unbecoming a member of the bar or for failure to comply with any court rule. First, however, the court must afford the attorney reasonable notice, an opportunity to show cause to the contrary, and, if requested, a hearing.

Circuit Rule 46-2. Attorney Suspension, Disbarment or Other Discipline

(a) Conduct Subject to Discipline. This Court may impose discipline on any attorney practicing before this Court who engages in conduct violating applicable rules of professional conduct, or who fails to comply with rules or orders of this Court. The discipline may consist of disbarment, suspension, reprimand, counseling, education, a monetary penalty, restitution, or any other action that the Court deems appropriate and just.

(b) Initiation of Disciplinary Proceedings Based on Conduct Before This Court. The Chief Judge or a panel of judges may initiate disciplinary proceedings based on conduct before this Court by issuing an order to show cause under this rule that identifies the basis for imposing discipline.

(c) Reciprocal Discipline. An attorney who practices before this Court shall provide the Clerk of this Court with a copy of any order or other official notification that the attorney has been subjected to suspension or disbarment in another jurisdiction. When this Court learns that a member of the bar of this Court has been disbarred or suspended from the practice of law by any court or other competent authority or resigns during the pendency of disciplinary proceedings, the Clerk shall issue an order to show cause why the attorney should not be suspended or disbarred from practice in this Court.

(d) Response. An attorney against whom an order to show cause is issued shall have 28 days from the date of the order in which to file a response. The attorney may include in the response a request for a hearing pursuant to FRAP 46(c). The failure to request a hearing will be deemed a waiver of any right to a hearing. The failure to file a timely response may result in the imposition of discipline without further notice. (Rev. 12/1/09)

(e) Hearings on Disciplinary Charges. If requested, the Court will hold a hearing on the disciplinary charges, at which the attorney may be represented by counsel. In a matter based on an order to show cause why reciprocal discipline should not be imposed, an appellate commissioner will conduct the hearing. In a matter based on an order to show cause based on conduct before this Court, the Court may refer the matter to an appellate commissioner or other judicial officer to conduct the hearing. In appropriate cases, the Court may appoint an attorney to prosecute charges of misconduct. (Rev. 1/1/12)

(f) Report and Recommendation. If the matter is referred to an appellate commissioner or other judicial officer, that judicial officer shall prepare a report and recommendation. The report and recommendation shall be served on the attorney, and the attorney shall have 21 days from the date of the order within which to file a response. The report and recommendation together with any response shall be presented to a three-judge panel. (Rev. 12/1/09)

(g) Final Disciplinary Action. The final order in a disciplinary proceeding shall be issued by a three-judge panel. If the Court disbars or suspends the attorney, a copy of the final order shall be furnished to the appropriate courts and state disciplinary agencies. If the order imposes a sanction of $1,000 or more, the Court may furnish a copy of the order to the appropriate courts and state disciplinary agencies. If a copy of the final order is distributed to other courts or state disciplinary agencies, the order will inform the attorney of that distribution.

(h) Reinstatement. A suspended or disbarred attorney may file a petition for reinstatement with the Clerk. The petition shall contain a concise statement of the circumstances of the disciplinary proceedings, the discipline imposed by this Court, and the grounds that justify reinstatement of the attorney.

(i) Monetary Sanctions. Nothing in the rule limits the Court's power to impose monetary sanctions as authorized under other existing authority. (New 1/1/02)

LCR 83.3 STANDARDS OF PROFESSIONAL CONDUCT; CONTINUING ELIGIBILITY TO PRACTICE; ATTORNEY DISCIPLINE

(a) Standards of Professional Conduct

In order to maintain the effective administration of justice and the integrity of the court, attorneys appearing in this district shall be familiar with and comply with the following materials ("Materials"):

(1) The local rules of this district, including the local rules that address attorney conduct and discipline;

(2) The Washington Rules of Professional Conduct (the "RPC"), as promulgated, amended, and interpreted by the Washington State Supreme Court, unless such amendments or additions are specifically disapproved by the court, and the decisions of any court applicable thereto;

(3) The Federal Rules of Civil and Criminal Procedure;

(4) The General Orders of the court.

In applying and construing these Materials, the court may also consider the published decisions and formal and informal ethics opinions of the Washington State Bar Association, the Model Rules of Professional Conduct of the American Bar Association and Ethics Opinions issued pursuant to those Model Rules, and the decisional law of the state and federal courts.

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 26 SUITS AGAINST THE STATE. The legislature shall direct by law, in what manner, and in what courts, suits may be brought against the state.

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 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 19 JUDGES MAY NOT PRACTICE LAW. No judge of a court of record shall practice law in any court of this state during his continuance in office.

ARTICLE 7, SECTION 10 RETIRED PERSONS PROPERTY TAX EXEMPTION. Notwithstanding the provisions of Article 7, section 1 (Amendment 14) and Article 7, section 2 (Amendment 17), the following tax exemption shall be allowed as to real property: The legislature shall have the power, by appropriate legislation, to grant to retired property owners relief from the property tax on the real property occupied as a residence by those owners. The legislature may place such restrictions and conditions upon the granting of such relief as it shall deem proper. Such restrictions and conditions may include, but are not limited to, the limiting of the relief to those property owners below a specific level of income and those fulfilling certain minimum residential requirements. [AMENDMENT 47,

1965 ex.s. House Joint Resolution No. 7, p 2821. Approved November 8, 1966.]

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.

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 2.28.060 Judicial 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 2.48.180

Definitions – Unlawful practice a crime – Cause for discipline – Unprofessional conduct – Defense – Injunction – Remedies – Costs – Attorneys' fees – Time limit for action.

(1) As used in this section:

(a) "Legal provider" means an active member in good standing of the state bar, and any other person authorized by the Washington state supreme court to engage in full or limited practice of law;

(b) "Nonlawyer" means a person to whom the Washington supreme court has granted a limited authorization to practice law but who practices law outside that authorization, and a person who is not an active member in good standing of the state bar, including persons who are disbarred or suspended from membership;

(c) "Ownership interest" means the right to control the affairs of a business, or the right to share in the profits of a business, and includes a loan to the business when the interest on the loan is based upon the income of the business or the loan carries more than a commercially reasonable rate of interest.

(2) The following constitutes unlawful practice of law:

(a) A nonlawyer practices law, or holds himself or herself out as entitled to practice law;

(b) A legal provider holds an investment or ownership interest in a business primarily engaged in the

practice of law, knowing that a nonlawyer holds an investment or ownership interest in the business;

(c) A nonlawyer knowingly holds an investment or ownership interest in a business primarily engaged in the practice of law;

(d) A legal provider works for a business that is primarily engaged in the practice of law, knowing that a nonlawyer holds an investment or ownership interest in the business; or

(e) A nonlawyer shares legal fees with a legal provider.

(3)(a) Unlawful practice of law is a crime. A single violation of this section is a gross misdemeanor. (b) Each subsequent violation of this section, whether alleged in the same or in subsequent prosecutions, is a class C felony punishable according to chapter ***9A.20*** RCW.

(4) Nothing contained in this section affects the power of the courts to grant injunctive or other equitable relief or to punish as for contempt.

(5) Whenever a legal provider or a person licensed by the state in a business or profession is convicted, enjoined, or found liable for damages or a civil penalty or other equitable relief under this section, the plaintiff's attorney shall provide written notification of the judgment to the appropriate regulatory or disciplinary body or agency.

(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*.

(7) In a proceeding under this section it is a defense if proven by the defendant by a preponderance of the evidence that, at the time of the offense, the conduct alleged was authorized by the rules of professional conduct or the admission to practice rules, or Washington business and professions licensing statutes or rules.

(8) Independent of authority granted to the attorney general, the prosecuting attorney may petition the superior court for an injunction against a person who has violated this chapter. Remedies in an injunctive action brought by a prosecuting attorney are limited to an order enjoining, restraining, or preventing the doing of any act or practice that constitutes a violation of this chapter and imposing a civil penalty of up to five thousand dollars for each violation. The prevailing party in the action may, in the discretion of the court, recover its reasonable investigative costs and the costs of the action including a reasonable attorney's fee. The degree of proof required in an action brought under this subsection is a preponderance of the evidence. An action under this subsection must be brought within three years after the violation of this chapter occurred.

RCW 2.48.210 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 am a citizen of the United States and owe my allegiance thereto;

I will support the Constitution of the United States and the Constitution of the state of Washington;

I will maintain the respect due to courts of justice and judicial officers;

I will not counsel or maintain any suit or proceeding which shall appear to me to be unjust, nor any defense except such as I believe to be honestly debatable under the law of the land, unless it be in defense of a person charged with a public offense; 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 maintain the confidence and preserve inviolate the secrets of my client, and will accept no compensation in connection with his or her business except from him or her or with his or her knowledge and approval;

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 2.48.230 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.

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.

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.

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.

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.

RCW 4.92.010 Where brought – Change of venue.

Any person or corporation having any claim against the state of Washington shall have a right of action against the state in the superior court.

The venue for such actions shall be as follows:

(1) The county of the residence or principal place of business of one or more of the plaintiffs;

(2) The county where the cause of action arose;

(3) The county in which the real property that is the subject of the action is situated;

(4) The county where the action may be properly commenced by reason of the joinder of an additional defendant; or

(5) Thurston county.

Actions shall be subject to change of venue in accordance with statute, rules of court, and the common law as the same now exist or may hereafter be amended, adopted, or altered.

Actions shall be tried in the county in which they have been commenced in the absence of a seasonable motion by or in behalf of the state to change the venue of the action.

RCW 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 4.92.060 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.

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.

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.

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 84.36.383 Residences – Definitions.

As used in RCW 84.36.381 through 84.36.389, except where the context clearly indicates a different meaning:

(1) The term "residence" means a single-family dwelling unit whether such unit be separate or part of a multiunit dwelling, including the land on which such dwelling stands not to exceed one acre, except that a residence includes any additional property up to a total of five acres that comprises the residential parcel if this larger parcel size is required under land use regulations. The term also includes a share ownership in a cooperative housing association, corporation, or partnership if the person claiming exemption can establish that his or her share represents the specific unit or

portion of such structure in which he or she resides. The term also includes a single-family dwelling situated upon lands the fee of which is vested in the United States or any instrumentality thereof including an Indian tribe or in the state of Washington, and notwithstanding the provisions of RCW 84.04.080 and 84.04.090, such a residence is deemed real property.

(2) The term "real property" also includes a mobile home which has substantially lost its identity as a mobile unit by virtue of its being fixed in location upon land owned or leased by the owner of the mobile home and placed on a foundation (posts or blocks) with fixed pipe, connections with sewer, water, or other utilities. A mobile home located on land leased by the owner of the mobile home is subject, for tax billing, payment, and collection purposes, only to the personal property provisions of chapter 84.56 RCW and RCW 84.60.040.

(3) "Department" means the state department of revenue.

(4) "Combined disposable income" means the disposable income of the person claiming the exemption, plus the disposable income of his or her spouse or domestic partner, and the disposable income of each cotenant occupying the residence for the assessment year, less amounts paid by the person claiming the exemption or his or her spouse or domestic partner during the assessment year for:

(a) Drugs supplied by prescription of a medical practitioner authorized by the laws of this state or another jurisdiction to issue prescriptions;

(b) The treatment or care of either person received in the home or in a nursing home, assisted living facility, or adult family home; and

(c) Health care insurance premiums for medicare under Title XVIII of the social security act.

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

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

(b) Amounts deducted for loss;

(c) Amounts deducted for depreciation;

(d) Pension and annuity receipts;

(e) Military pay and benefits other than attendant-care and medical-aid payments;

(f) Veterans benefits, other than:

(i) Attendant-care payments;

(ii) Medical-aid payments;

(iii) Disability compensation, as defined in Title 38, part 3, section 3.4 of the code of federal regulations, as of January 1, 2008; and

(iv) Dependency and indemnity compensation, as defined in Title 38, part 3, section 3.5 of the code of federal regulations, as of January 1, 2008;

(g) Federal social security act and railroad retirement benefits;

(h) Dividend receipts; and

(i) Interest received on state and municipal bonds.

(6) "Cotenant" means a person who resides with the person claiming the exemption and who has an ownership interest in the residence.

(7) "Disability" has the same meaning as provided in 42 U.S.C. Sec. 423(d)(1)(A) as amended prior to January 1, 2005, or such subsequent date as the department may provide by rule consistent with the purpose of this section.

RCW 84.36.385

Residences - Claim for exemption - Forms - Change of status - Publication and notice of qualifications and manner of making claims.

(1) A claim for exemption under RCW 84.36.381 as now or hereafter amended, may be made and filed at any time during the year for exemption from taxes payable the following year and thereafter and solely upon forms as prescribed and furnished by the department

of revenue. However, an exemption from tax under RCW 84.36.381 continues for no more than six years unless a renewal application is filed as provided in subsection (3) of this section.

(2) A person granted an exemption under RCW 84.36.381 must inform the county assessor of any change in status affecting the person's entitlement to the exemption on forms prescribed and furnished by the department of revenue.

(3) Each person exempt from taxes under RCW 84.36.381 in 1993 and thereafter, must file with the county assessor a renewal application not later than December 31 of the year the assessor notifies such person of the requirement to file the renewal application. Renewal applications must be on forms prescribed and furnished by the department of revenue.

(4) At least once every six years, the county assessor must notify those persons receiving an exemption from taxes under RCW 84.36.381 of the requirement to file a renewal application. The county assessor may also require a renewal application following an amendment of the income requirements set forth in RCW 84.36.381.

(5) If the assessor finds that the applicant does not meet the qualifications as set forth in RCW 84.36.381, as now or hereafter amended, the claim or exemption must be denied but such denial is subject to appeal under the provisions of RCW 84.48.010 and in accordance with the provisions of RCW 84.40.038. If the applicant had received exemption in prior years based on

erroneous information, the taxes must be collected subject to penalties as provided in RCW 84.40.130 for a period of not to exceed five years.

(6) The department and each local assessor is hereby directed to publicize the qualifications and manner of making claims under RCW 84.36.381 through 84.36.389, through communications media, including such paid advertisements or notices as it deems appropriate. Notice of the qualifications, method of making applications, the penalties for not reporting a change in status, and availability of further information must be included on or with property tax statements and revaluation notices for all residential property including mobile homes, except rental properties.

Instructions for Completing Section 5 (Income) of the Application

Eligibility in this program is determined by the combined disposable income of the applicant during the assessment year. RCW 84.36.383 describes how to calculate combined disposable income. All income for the applicant, his/her spouse, and any co-tenants must be reported. Co-tenant means a person who resides with the claimant and who jointly owns the residence. **If you file a tax return with the IRS and your return included any deductions for the following items or if any of these items were not included in your adjusted gross income, they must be reported on your application for purposes of this exemption program**:

- Capital gains (cannot offset with losses)
- Dividends
- Interest on state and municipal bonds (non-taxable interest)
- Social Security benefits
- Pensions & annuity receipts
- Veterans benefits
- Railroad retirement benefits
- Military pay & benefits
- Amounts deducted for loss
- Amounts deducted for depreciation

Income Deductions

1) Capital gains you receive from the sale of your principal residence, **IF** the gain is reinvested in a replacement principal residence,

2) Insurance premiums for Medicare under Title XVIII of the Social Security Act may be deducted from income,

3) Non-reimbursed prescription drug expenses may be deducted from gross income,

4) Non-reimbursed nursing home, boarding home, or adult family home expenses incurred by the claimant, his/her spouse, or co-tenants, and

5) Non-reimbursed amounts paid for the care or treatment of the claimant, his/her spouse, or co-tenants in the home.

In-home care or assistance means medical treatment or care received in the home, including medical treatment, physical therapy, Meals on Wheels (or similar meal delivery service), and household and personal care, including assistance with preparing meals, getting dressed, eating, taking medications, or areas of personal hygiene; Also included are special needs furniture and equipment, such as wheelchairs, hospital beds and oxygen.

Payments for in-home care must be reasonable and at a rate comparable to those paid for similar services in the same area. The person providing the care or treatment does not have to be specially licensed.

Exceptions

If the person claiming the exemption was retired for two months or more of the assessment year, the income

is calculated by multiplying the average monthly income (during the months such person was retired) by twelve.

If the income of the applicant is reduced for two or more months of the assessment year because of death of their spouse, or when a substantial change in income occurs that will continue indefinitely, the income is calculated by multiplying the average monthly combined disposable income after the occurrences by twelve.

You may contact the county assessor for assistance on reporting instructions.

Documentation

Documentation of all income receipts must be provided to the Assessor. To the extent your return includes any of the following forms or schedules, a copy must be included with your application.

- IRS Form 1040
- IRS Form 1040A
- IRS Form 1040EZ

Continued on back

APPENDIX 4

Dept of Revenue memo to WA State Assessors. Compare the DOR's version of RCW 84.36.383(5) to the word-for-word language of RCW 84.36.383(5) as passed by Washington's legislature.

During the Admin workshop in Moses Lake, Scott Furman, Okanogan County Assessor, requested some "language" that can be used when responding to those questions about why we cannot use losses to offset gains. The language I normally use is actually a paraphrase from a BTA case – Docket #55692. Other docket numbers for reference are #56336 and #55067. Here's a sample:

The general rules pertaining to property tax exemptions require that the statutory language be construed strictly, though fairly. Taxation is the rule and exemption is the exception. The Legislature has set specific criteria for exempting property from property taxes because exemptions create a "shift" of the tax burden, causing other taxpayers in the taxing district to actually pay higher property taxes.

The methods established by the federal government for determining "taxable income" are not the same as those used to establish "disposable income" for the State of Washington Property Tax Exemption Program. RCW (Revised Code of Washington) 84.36.379 was enacted by the Legislature in 1980. The intent section declares that the property tax exemption authorized in our State Constitution should be available on the basis of a retired person's ability to pay property tax and that a person's disposable income is the best measure of that ability. For purposes of the property tax exemption, it is not left to the Assessor to decide what constitutes "disposable income". The term was given a specific definition by the Legislature and the

income thresholds were established with consideration for household operating expenses.

The State law governing property tax exemption is independent of the federal income tax statutes and the federal "adjusted gross income" figure is only the starting point for calculating "disposable income."

RCW 84.36.383(5) defines "disposable income" as adjusted gross income, as defined in the federal internal revenue code, plus all of the following items to the extent they were included in or excluded from adjusted gross income:

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

(b) Amounts deducted for loss;

(c) Amounts deducted for depreciation;

(d) Pension and annuity receipts;

(e) Military pay and benefits other than attendant-care and medical-aid payments;

(f) Veterans benefits other than attendant-care and medical-aid payments;

(g) Federal social security act and railroad retirement benefits;

(h) Dividend receipts; and

(i) Interest received on state and municipal bonds.

Although I am sympathetic to your situation and understand your thoughts on the matter, the laws and rules governing the Senior and Disabled Persons Exemption program are very clear. In the calculation of income for this program, losses must be excluded, whether or not they can be used to offset taxable income for federal income tax purposes. We cannot ask other taxpayers to subsidize the personal losses of someone else.

APPENDIX 5

Documents Scheidler was forced to sign, i.e., defendants' fraudulent applications, under duress – a Class-C Felony under RCW 9A.60.030 – Obtaining a signature by deception or duress.

William Scheidler
1515 Lidstrom Place E
Port Orchard, WA

June 10, 2010

Mr. James Avery
Kitsap County Assessor
614 Division Street
Port Orchard, WA 98366

Dear Mr. Avery,

I am submitting my application for the Senior Citizen/ Disabled person property tax exemption, RCW 84.36.379-389, for the years 2007-2010, signed UNDER DURESS. The reasons are:

1) The Court of Appeals II decision requires I must be a victim of unlawful acts before I have standing to challenge those unlawful acts;

2) Kitsap County's instructions do not conform to the statutory language the instructions are meant to carryout. Specifically, in part, Kitsap's instructions fail to implement the income calculation required by RCW 84.36.383.

   - The County's instructions fail to apply the conditions set forth in RCW 84.36.383(5) in determining whether the items that follow, (a) through (i), require adding to IRS Adjusted Gross Income (AGI). The WA legislature requires IRS AGI as the beginning point in determining Disposable Income.

   - The County's instructions begin with AGI but then "excludes" amounts that went into calculating AGI. For example, AGI includes

amounts deducted for loss. Yet the County "excludes" all losses without any rational and in opposition to the conditions explicitly expressed in .383(5), which states amounts deducted for loss must be included in AGI if those amounts have not yet been included. IRS AGI "includes" amounts deducted for loss.

- The county, by arbitrarily excluding losses that are included in the calculation of AGI, creates a structural error in the calculation of Disposable Income. This structural error artificially increases disposable income, which determines the amount of TAX, or the denial of the benefit.

See RCW 9A.80.010 and RCW 9A.60.030; U.S.C. 1983; ADA Title II, all other rights reserved.

3) Kitsap County then invades the financial privacy of the individual far beyond what would be needed had Kitsap County applied the law rather than using their home-grown income calculation scheme. Because the County's instructions require 'excluding' amounts that go into the calculation of AGI they require documentation to support (audit) those figures. If the County followed the law, then they could be assured that the reported AGI was true because it is validated by the IRS. Therefore NO documentation except, at the most, the first page of a person's IRS return, Form 1040, is all that would be needed.

See 9.73.060 Violating right of privacy – Civil action – Liability for damages. All other rights reserved.

Because Kitsap County demands compliance with their instructions and not the law, and unlawfully invades my privacy, I am signing the application UNDER DURESS.

For the record, I would, under the law, report RCW 84.36.383 calculated disposable income as follows:

YEAR	Disposable Income
2006	$27,163
2007	$-136,045 less medical insurance payments and payments for medication
2008	$28,703 "
2009	$21,300 "

Signed under the penalty of perjury. All rights reserved.

/s/ William Scheidler 6-10-2010
William Scheidler Date

SENIOR CITIZEN OR DISABLED PERSONS EXEMPTION FROM REAL PROPERTY TAXES
Chapter 84.36 RCW

TAX YEAR 2010

[redacted]

1. Name & Address			
Scheidler, William C			[Omitted]
↑Claimant's Name (last, first, middle)			↑Date of Birth
Scheidler, Mary, M			[Omitted]
↑Spouse/Domestic Partner or Co-tenant (last, first, middle)			↑Date of Birth
1515 Lidstrom Pl. E.	Port Orchard	WA	98366
↑Mailing Address	City	State	Zip
360-769-8531	BillScheidler@wavecable.com		
↑Telephone Number	Email Address		
Note: A change in residence requires a new application to be filed.			

2. I, or each of us (if joint owners are filing) apply for a property tax exemption on the property described below and certify the following: (Please check appropriate box(es).)

☐ I am 61 years of age or older on or before December 31, 2009.

☒ I am disabled and retired from regular gainful employment by reason of such disability.
☐ I am a veteran with a 100% service connected disability.
☐ I am the surviving spouse/domestic partner of a person who was approved for this exemption and I am at least 57 years old.

3. Ownership – Check all that apply:

☒ Owner (in total, or by mortgage or contract purchase) ☐ Lease for Life ☐ Life Estate (must be created by deed) ☐ Revocable Trust (Must attach copy of Trust Agreement) ☐ Irrevocable Trust (Must have Life Estate)

Date Property Purchased/Acquired: 10-30-89
Date Home Occupied: 10-30-89

☐ Yes ☒ No: I have sold property in 2009.

☐ Yes ☒ No: I own other real property _____

☐ Yes ☒ No: I am Receiving/Have Received a property tax exemption on another property _____

4. Description of Property

My residence is a ☒ Single family dwelling
☐ Cooperative housing
☐ One unit of a multi-unit dwelling (duplex/condominium)
☐ Mobile Home (on leased land or mobile home park)
Mobile home park and space: _____

Parcel or Account Number: 302402-2-082-2007

Physical Address:
1515 Lidstrom, Pl. E Port Orchard, WA 98366

This property includes (check all that apply):

☒ My principal residence and up to one acre of land
The total parcel or lot size is: 0.8 Acre(s)

☐ More than one acre of land

☐ More than one residence and/or additional improvements that are not normally part of a residence (i.e. commercial buildings, rental units, cabins, mother-in-law units, additional homes/mobile homes, other accessory dwellings – barns, detached garages, pole buildings, etc.)

If your residential parcel is larger than one (1) acre and your local zoning and land use regulations require more than one (1) acre per residence in the area where you live, you may be eligible for an exemption for your entire parcel, up to five (5) acres.

5. Check boxes for acknowledgement & Sign Application. Must be witnessed by Assessor OR by two other witnesses.

☑ I have completed the income section on page 2 of this form and the required documentation is included.

☑ I understand that any exemption granted through erroneous information shall be subject to the correct tax being assessed for the last three years, plus a 100 percent penalty. I declare under the penalties of perjury that the information provided in this application packet is true and complete.

/s/ William Scheidler under duress _____
Signature of Claimant Date Witness

/s/ Lori McPhee	
Assessor or Deputy	Witness

IMPORTANT NOTE: Eligibility in this program is determined by the age or disability, ownership, and residency of the claimant and the combined disposable income of the claimant, spouse, domestic partner and/or any co-tenant(s) during the application year – the year prior to the exemption. Proof of income is required.

SENIOR CITIZEN OR DISABLED PERSONS EXEMPTION FROM REAL PROPERTY TAXES
Chapter 84.36 RCW

TAX YEAR 2007

County Use Only
B/Yrs _____
Transfer _____
A/D D/A O/B
ZONING: _____
APPROVED/DENIED
Comb./Seg.
A *B* *C*
Processed by _____

1. Name & Address			
Scheidler William C			[Omitted]
↑Claimant's Name (last, first, middle)			↑Date of Birth
Scheidler Mary M			[Omitted]
↑Spouse/Domestic Partner or Co-tenant (last, first, middle)			↑Date of Birth
1515 Lidstrom Pl. E	Port Orchard	WA	98366
↑Mailing Address	City	State	Zip

360-769-8531	BillScheidler@wavecable.com
↑Telephone Number	Email Address

Note: A change in residence requires a new application to be filed.

2. I, or each of us (if joint owners are filing) apply for a property tax exemption on the property described below and certify the following: (Please check appropriate box(es).)

☐ I am 61 years of age or older on or before December 31, 2006.

☒ I am disabled and retired from regular gainful employment by reason of such disability.

☐ I am a veteran with a 100% service connected disability.

☐ I am the surviving spouse/domestic partner of a person who was approved for this exemption and I am at least 57 years old.

3. Ownership – Check all that apply:

☒ Owner (in total, or by mortgage or contract purchase) ☐ Lease for Life ☐ Life Estate (must be created by deed) ☐ Revocable Trust (Must attach copy of Trust Agreement) ☐ Irrevocable Trust (Must have Life Estate)

Date Property Purchased/Acquired: 10-30-89
Date Home Occupied: 10-30-89

☐ Yes ☒ No: I have sold property in 2006.

☐ Yes ☒ No: I own other real property _____

☐ Yes ☒ No: I am Receiving/Have Received a property tax exemption on another property _____

4. Description of Property

My residence is a ☒ Single family dwelling
☐ Cooperative housing
☐ One unit of a multi-unit dwelling (duplex/condominium)
☐ Mobile Home (on leased land or mobile home park)
Mobile home park and space: _____

Parcel or Account Number: 302402-2-082-2007

Physical Address:
1515 Lidstrom, Pl. E Port Orchard, WA 98366

This property includes (check all that apply):

☒ My principal residence and up to one acre of land
The total parcel or lot size is: 0.8 Acre(s)

☐ More than one acre of land

☐ More than one residence and/or additional improvements that are not normally part of a residence (i.e. commercial buildings, rental units, cabins, mother-in-law units, additional homes/mobile homes, other accessory dwellings – barns, detached garages, pole buildings, etc.)

If your residential parcel is larger than one (1) acre and your local zoning and land use regulations require more than one (1) acre per residence in the area where you live, you may be eligible for an exemption for your entire parcel, up to five (5) acres.

5. Check boxes for acknowledgement & Sign Application. Must be witnessed by Assessor OR by two other witnesses.

☑ I have completed the income section on page 2 of this form and the required documentation is included.

☑ I understand that any exemption granted through erroneous information shall be subject to the correct tax being assessed for the last three years, plus a 100 percent penalty. I declare under the penalties of perjury that the information provided in this application packet is true and complete.

/s/ William Scheidler under duress _____
Signature of Claimant Date Witness

/s/ Lori McPhee _____
Assessor or Deputy Witness

IMPORTANT NOTE: Eligibility in this program is determined by the age or disability, ownership, and residency of the claimant and the combined disposable income of the claimant, spouse, domestic partner and/or any co-tenant(s) during the application year – the year prior to the exemption. Proof of income is required.

SENIOR CITIZEN OR DISABLED PERSONS EXEMPTION FROM REAL PROPERTY TAXES
Chapter 84.36 RCW

TAX YEAR 2009

County Use Only
B/Yrs _____
Transfer _____
A/D D/A O/B
ZONING: _____
APPROVED/DENIED
Comb./Seg.
A *B* *C*
Processed by _____

1. Name & Address	
Scheidler, William, C	[Omitted]
†Claimant's Name (last, first, middle)	†Date of Birth
Scheidler, Mary, M	[Omitted]
†Spouse/Domestic Partner or Co-tenant (last, first, middle)	†Date of Birth
1515 Lidstrom Pl. E. Port Orchard WA 98366	
†Mailing Address City State Zip	
360-769-8531 BillScheidler@wavecable.com	
†Telephone Number Email Address	
Note: A change in residence requires a new application to be filed.	

2. I, or each of us (if joint owners are filing) apply for a property tax exemption on the property described below and certify the following: (Please check appropriate box(es).)

☐ I am 61 years of age or older on or before December 31, 2008.

☒ I am disabled and retired from regular gainful employment by reason of such disability.
☐ I am a veteran with a 100% service connected disability.
☐ I am the surviving spouse/domestic partner of a person who was approved for this exemption and I am at least 57 years old.

3. Ownership – Check all that apply:

☒ Owner (in total, or by mortgage or contract purchase) ☐ Lease for Life ☐ Life Estate (must be created by deed) ☐ Revocable Trust (Must attach copy of Trust Agreement) ☐ Irrevocable Trust (Must have Life Estate)

Date Property Purchased/Acquired: 10-30-89
Date Home Occupied: 10-30-89

☐ Yes ☒ No: I have sold property in 2008.

☐ Yes ☒ No: I own other real property _____

☐ Yes ☒ No: I am Receiving/Have Received a property tax exemption on another property _____

4. Description of Property

My residence is a ☒ Single family dwelling
☐ Cooperative housing
☐ One unit of a multi-unit dwelling (duplex/condominium)
☐ Mobile Home (on leased land or mobile home park)
Mobile home park and space: _____

Parcel or Account Number: 302402-2-082-2007

Physical Address:
1515 Lidstrom, Pl. E Port Orchard, WA 98366

This property includes (check all that apply):

☒ My principal residence and up to one acre of land
The total parcel or lot size is: 0.8 Acre(s)

☐ More than one acre of land

☐ More than one residence and/or additional improvements that are not normally part of a residence (i.e. commercial buildings, rental units, cabins, mother-in-law units, additional homes/mobile homes, other accessory dwellings – barns, detached garages, pole buildings, etc.)

If your residential parcel is larger than one (1) acre and your local zoning and land use regulations require more than one (1) acre per residence in the area where you live, you may be eligible for an exemption for your entire parcel, up to five (5) acres.

5. Check boxes for acknowledgement & Sign Application. Must be witnessed by Assessor OR by two other witnesses.

☑ I have completed the income section on page 2 of this form and the required documentation is included.

☑ I understand that any exemption granted through erroneous information shall be subject to the correct tax being assessed for the last three years, plus a 100 percent penalty. I declare under the penalties of perjury that the information provided in this application packet is true and complete.

/s/ William Scheidler under duress _____
Signature of Claimant Date Witness

/s/ Lori McPhee	
Assessor or Deputy	Witness

IMPORTANT NOTE: Eligibility in this program is determined by the age or disability, ownership, and residency of the claimant and the combined disposable income of the claimant, spouse, domestic partner and/or any co-tenant(s) during the application year – the year prior to the exemption. Proof of income is required.

APPENDIX 6

The letters and emails that prove Scheidler's lawyer was extorted from his case by the Kitsap County Prosecutor.

BEFORE THE BOARD OF TAX APPEALS
STATE OF WASHINGTON

WILLIAM C. SCHEIDLER and MARY M. SCHEIDLER, husband and wife, Appellants, v. CAROL BELAS, KITSAP COUNTY ASSESSOR, Respondent.	Case No. BE-592-97 NOTICE OF WITHDRAWAL

TO: THE CLERK OF THE COURT;

AND TO: ALL PARTIES OF RECORD.

YOU ARE HEREBY NOTIFIED that, effective immediately, the undersigned attorney Scott M. Ellerby hereby withdraws as counsel for appellants at the request of the Kitsap County Prosecuting Attorney's Office based on the allegation of a conflict of interest raised for the first time on November 17, 1998.

DATED this 17th day of November, 1998.

MILLS MEYERS SWARTLING
Attorneys for Appellants

By /s/ Scott M. Ellerby
Scott M. Ellerby

LAW OFFICES OF
MILLS MEYERS SWARTLING
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TELEPHONE
(206) 382-1000

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(206) 386-7343

November 16, 1998

VIA FACSIMILE AND REGULAR MAIL

Ms. Cassandra Noble
Kitsap County Prosecuting Attorney's Office
614 Division Street, Mail Stop 35
Port Orchard, WA 98366

Re: Scheidler Appeal to Board of Tax Appeals

Dear Ms. Noble:

This letter follows up our telephone conversation this morning in which you informed me of your office's belief that this firm has a conflict of interest in representing the Scheidlers in the above-entitled appeal. As we discussed, the hearing on this appeal is scheduled to commence at 9:00 a.m. in two days, November 18, 1998, in Olympia, Washington. This is the first notice we have had from your office regarding this conflict issue.

You have noted that David Swartling in my firm defended claims against the Kitsap County Sheriff's

Department in which the plaintiffs asserted civil rights and other state claims. Those matters concluded well before our representation of the Scheidlers in the above-entitled action began.

When the Scheidlers first approached me regarding representation, I consulted with Mr. Swartling and we concluded that there was no conflict of interest because the Scheidlers' appeal to the Board of Tax Appeals was not related in any manner to the issues involved in the Sheriff's Department litigation. Therefore, we concluded that the Scheidler appeal was not a "substantially related matter" as set forth in RPC 1.9(a). We had also concluded that there was no potential for using confidences or secrets from our defense of Kitsap County in the Sheriff's Department cases in the Scheidler appeal given the dissimilarity of issues and the different county departments involved.

Although we originally concluded, and still believe, that no conflicts of interest exist requiring our withdrawal pursuant to RPC 1.9, we ask that Kitsap County waive any arguable conflicts of interest to allow our continued representation of the Scheidlers.

Because of the timing of this matter, I ask that you respond by noon or Tuesday, November 17, 1998 to

allow time to contact the Board of Tax Appeals regarding this matter.

Very truly yours,

MILLS MEYERS SWARTLING

/s/ Scott M. Ellerby
Scott M. Ellerby

SME:jr
cc: William and Mary Scheidler

Bill:

I have attempted to attach my fax letter to Cassandra Noble sent yesterday afternoon. I am sensitive to your anxiety over the County's attempt to force my withdrawal from the case. But I think you must examine this development as a possible gift from above: the BTA will look with disdain upon the County's dirty pool tactic and that will poison the water for the County (mixing my metaphors!). The most that I could achieve during the hearing is to walk the BTA through the documents we submitted, and the only documents that I would use are the letters between you and the Assessor. I have real doubts about the cost effectiveness of your paying me at my hourly rate for most of a day with travel time to go through that limited exercise ($120 per hour x at least 6 hours). We have made our case with our memo of authorities, our notice of appeal, and the documents submitted. If you or Mary do not feel able to walk the BTA through the letters in chronological order, one of you could merely tell the BTA that you have been deprived the assistance of counsel by the Assessor's last minute allegation of a conflict of interest (when they had our pleading for nearly a year and were fully aware of our identity), that you cannot afford to have the hearing continued, and that you are willing to base your presentation on the documents and pleadings submitted. As we discussed, because of the BTA's lack of authority to award atty. fees, losing at the administrative level may not be the worst possible outcome.

If the County does not respond to my letter or refuses to waive the conflict, I would be forced to withdraw. If they waive, the decision is entirely yours whether you believe it is worth the investment to have me travel to Olypiia with you. As you can tell, I have severe doubts that the investment is worthwhile given the memo we filed with the BTA and the likelihood that I could not add a great deal at the hearing. There is also the consideration of the inabililty to recover atty. fees at the BTA. Please call ASAP to discuss in more detail.

Scott