APPENDIX 1

Decisions of the District Court

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE
ANNE K BLOCK,
Plaintiff,
v.
WASHINGTON STATE BAR
ASSOCIATION, et al.,
Defendants.

CASE NO. C15-2018 RSM

ORDER ON MOTION TO
DISQUALIFY ALL WASHINGTON
STATE BAR ASSOCIATION
MEMBERS FROM HEARING THIS
CASE

I. INTRODUCTION

THIS MATTER comes before the Court on Plaintiff's Motion to Disqualify All Washington State Bar Association Members from Hearing This Case Including But Not Limted [sic] to Judge Ricardo Martinez Citing 9th Circuit Precedent. Dkt. #9. Defendants Snohomish County, et al. have opposed the motion, joined by a number of other Defendants. Dkts. #12, #13 and #15. For the reasons set forth herein, the Court now DENIES Plaintiff's motion.

II. DISCUSSION

Plaintiff has filed a Complaint alleging a widespread

conspiracy to deprive her of her constitutional rights, motivated by a desire to stop her from uncovering and reporting on malfeasance and corruption at many levels of government, including the Washington State Bar Association ("WSBA"). Dkts. #1 and #19. It is part of the legal theory of her case that all judges in the State of Washington, by virtue of their membership in the WSBA, "have an inherent conflict of interest that prevents them from hearing this case." Dkt. #19 at 24, ¶ 3.1.

Pursuant to 28 U.S.C. § 455(a), a judge of the United States shall disqualify himself in any proceeding in which his impartiality "might reasonably be questioned." Federal judges also shall disqualify themselves in circumstances where they have a personal bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceeding. 28 U.S.C. § 455(b)(1).

Under both 28 U.S.C. §144 and 28 U.S.C. § 455, recusal of a federal judge is appropriate if "a reasonable person with knowledge of all the facts would conclude that the judge's impartiality might reasonably be questioned." *Yagman v. Republic Insurance*, 987 F.2d 622, 626 (9th Cir.1993). This is an objective inquiry concerned with whether there is the appearance of bias, not whether there is bias in fact. *Preston v. United States*, 923 F.2d 731, 734 (9th Cir.1992); *United States v. Conforte*, 624 F.2d 869, 881 (9th Cir.1980). In *Liteky v. United States*, 510 U.S. 540 (1994), the United States Supreme Court further explained the narrow basis for recusal: [J]udicial rulings alone almost never constitute a valid basis for a bias or partiality motion. . . . [O]pinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not

constitute a basis for a bias or partiality motion unless they display a deep seated favoritism or antagonism that would make fair judgment impossible. Thus, judicial remarks during the course of a trial that are critical or disapproving of, or even hostile to, counsel, the parties, or their cases, ordinarily do not support a bias or partiality challenge. *Id.* at 555.

In the instant motion, Plaintiff fails to even allege that any behavior by the Court during the (brief) course of this case has demonstrated bias towards her. She argues that this Court's membership in the WSBA, coupled with other historical factual allegations (which will be addressed below), is sufficient to demonstrate the requisite conflict of interest. The Court disagrees. Simple joinder of a bar association in a party's complaint "does not require recusal of judges who are members of that bar association." *Denardo v. Municipality of Anchorage*, 974 F.2d 1200, 1201 (9th Cir. 1992) (citing *Pilla v. American Bar Assoc.*, 542 F.2d 56, 57-58 (8th Cir. 1976). There are a string of cases holding that just belonging to a bar association is not the kind of relationship which gives rise to a reasonable doubt about a judge's ability to preside impartially over a case in which the bar association is a party.[1] In fact, it is unreasonable to assume that a judge's membership in a state bar association in any way foretells the kind of "deep-seated favoritism or antagonism" that requires recusal. *See King v.*

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[1] *See Hu v. American Bar Assoc.*, 334 F.Appx 17, 19 (7th Cir. 2009) (citing *Hirsh v. Justices of the Sup. Ct. of Cal.*, 67 F.3d 708, 715 (9th Cir. 1995)); *In re City of Houston*, 745 F.2d 925, 930 n.8 (5th Cir. 1984); *Plechner v. Widener College, Inc.*, 569 F.2d 1250, 1262 n.7 (3rd Cir. 1977); *also Parrish v. Bd. Of Comm'rs of Alabama State Bar*, 527 F.2d 98, 104 (5th Cir. 1975).

Kansas, No. 09-4117- JAR, 2009 WL 2912475, at *1 (D. Kan. Sept. 9, 2009). Importantly, none of Plaintiff's factual allegations demonstrate "a personal bias against [her] or in favor of any adverse party." Her allegation that the Court is "a personal friend to WSBA Defendant in this case, Doug Ende," is not true. The fact that Mr. Ende and the Court served on a CLE workshop panel in September 2014 (the only fact she cites in support of this allegation; *see* Dkt. #9, Ex. A) is proof of nothing more than that the two men were in the same room at a point in time. Plaintiff produces no other evidence of any kind of personal relationship with Mr. Ende, or how that would demonstrate bias against her.

Plaintiff further cites the undersigned Judge's involvement on the Board of the Washington Leadership Institute, a joint effort of the University of Washington School of Law and the WSBA to solicit greater participation by underrepresented portions of the legal community. *See* Dkt. #9, Ex. B. She characterizes this activity as "active member[ship] of a WSBA Board," but presents no evidence of a relationship between the Leadership Institute and the WSBA that would lend itself to reasonable assumptions of bias, nor any legal authority that simply serving on the board of an organization co-founded by a state bar association is sufficient to constitute *per se* prejudice.

Finally, Plaintiff cites the fact that the undersigned Judge formerly served as a King County Superior Court judge. What she fails to do is to present any evidence of how a prior term as a state judge constitutes proof of bias against her or in favor of the WSBA (or even gives rise to a reasonable question that bias might be present) or any legal authority previously holding this to be the case. Although Plaintiff

claims to provide "binding" Ninth Circuit precedent that "anytime the WSBA is a defendant, since all Washington State judges are mandated to hold WSBA licenses, all WSBA members must remove themselves from these cases," Dkt. #9 at 4, a closer examination of her legal authority reveals no such mandatory language. Indeed, in support of her assertion that "[t]he Ninth circuit (*sic*) held as members of the Washington State Bar Association, could become liable for its wrongdoing, and therefore are indirect defendants in the case" Plaintiff cites the case of *Riss v. Angel*, 131 Wn.2d 612 (1997). The case is neither on point (involving the denial of a building application to a nonprofit unincorporated homeowners association) nor is it from the Ninth Circuit. It is inapplicable to this issue.

Plaintiff also points to three prior instances in this District where judges from outside the district were brought in on local cases, but none of the cases involved appellate opinions by the Ninth Circuit related to issues of prejudice based on WSBA membership. The appointment orders concerning those cases[2] do not discuss judicial membership in WSBA, do not discuss the existence of a conflict of interest and do not stand for the propositions asserted by Plaintiff.

Other than the mere fact that an outside judge was brought in, Plaintiff points to no holding that mere judicial membership in the WSBA creates a potentially disqualifying conflict. This Court finds that there is none.

III. CONCLUSION

Plaintiff has presented neither factual nor legal evidence justifying her request that this Court recuse itself, and the Court declines to do so. In conformity with LCR 3(e), the Chief Judge refers any order in which he or she has declined to recuse to "the active judge with the highest

seniority;" in this District. Accordingly the Court hereby finds and ORDERS:

1. Plaintiff's Motion to Disqualify (Dkt. #9) is DENIED.
2. In accordance with LCR 3(e), that this Order is referred to the Honorable Ronald B. Leighton, the senior active judge in this District, for review of this decision.
3. The Clerk is directed to provide copies of this Order to U.S. District Judge Ronald B. Leighton.

Dated this 24 day of February, 2016.

RICARDO S. MARTINEZ
CHIEF UNITED STATES DISTRICT JUDGE

APPENDIX 2

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
ANNE BLOCK, Esquire, an individual,
Plaintiff-Appellant,
v.
WASHINGTON STATE BAR ASSOCIATION; et al.,
Defendants-Appellees,
WILLIAM SCHEIDLER,
Intervenor-Appellee.
No. 16-35461
D.C. No. 2:15-cv-02018-RSM
MEMORANDUM* and ORDER
Appeal from the United States District Court for the Western District of Washington Ricardo S. Martinez, Chief Judge, Presiding
Submitted February 7, 2019** Seattle, Washington
FILED
FEB 11 2019
MOLLY C. DWYER, CLERK U.S. COURT OF APPEALS

* 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).
Case: 16-35461, 02/11/2019, ID: 11185115,
DktEntry: 197-1, Page 1 of 6
Before: IKUTA and CHRISTEN, Circuit Judges, and FREUDENTHAL,*** District Judge.

Plaintiff-appellant Anne Block appeals the district court's orders dismissing her amended complaint against defendants-appellees City of Gold Bar, Washington State Bar Association (WSBA), Snohomish County, Kenyon Disend, Sky Valley, City of Duvall, Port of Seattle, King County, and various individuals. She also appeals a vexatious litigant pre-filing order and orders awarding attorneys' fees to Kenyon Disend, Snohomish County, and City of Gold Bar. We have jurisdiction pursuant to 28 U.S.C. § 1291. We affirm in part and vacate and remand in part.

1. Block's motion for judicial notice is DENIED. WSBA's motion to strike the brief of proposed intervenor William Scheidler is GRANTED. Block's motions to strike are DENIED.

2. The district court did not abuse its discretion by denying Block's motions to disqualify because Block failed to identify any grounds for recusal. See 28 U.S.C. §§ 144, 455; DeNardo v. Municipality of Anchorage, 974 F.2d 1200, 1201

(9th Cir. 1992) ("The fact that a plaintiff sues a bar association does not require recusal of judges who are members of that bar association."). We therefore affirm the orders denying Block's motions to disqualify.

* * * The Honorable Nancy D. Freudenthal, United States District Judge for the District of Wyoming, sitting by designation.

3. The district court had discretion to award attorneys' fees to Kenyon Disend, Snohomish County, and City of Gold Bar pursuant to Federal Rule of Civil Procedure 11 and 42 U.S.C. § 1988 if it determined that Block's complaint was frivolous. See Peloza v. Capistrano Unified Sch. Dist., 37 F.3d 517, 524 (9th Cir. 1994) (per curiam) (observing that fee awards pursuant to Rule 11 and § 1988 are warranted in response to frivolous actions). The district court concluded that Block's claims were frivolous, and Block fails to demonstrate on appeal that the district court erred in so concluding. We therefore affirm the fee awards.

4. Block argues that the district court abused

its discretion when it imposed a vexatious litigant pre-filing order. Before imposing such an order, a district court must:

(1) give litigants notice and "an opportunity to oppose the order before it [is] entered"; (2) compile an adequate record for appellate review, including "a listing of all the cases and motions that led the district court to conclude that a vexatious litigant order was needed"; (3) make substantive findings of frivolousness or harassment; and (4) tailor the order narrowly so as "to closely fit the specific vice encountered."

Ringgold-Lockhart v. Cty. of Los Angeles, 761 F.3d 1057, 1062 (9th Cir. 2014) (quoting De Long v. Hennessey, 912 F.2d 1144, 1147–48 (9th Cir. 1990)). We strictly enforce these four requirements because this type of order affects a litigant's fundamental right to access the courts. See id. at 1061.

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The district court imposed its pre-filing order sua sponte in response to Kenyon Disend's motion for Rule 11 sanctions. There is no indication that Block had notice of the pre-filing order or an

opportunity to oppose it. We therefore conclude that the district court abused its discretion by issuing the pre-filing order without appropriate notice and opportunity to oppose. We vacate the order and remand for further proceedings in accordance with the four requirements set forth in De Long.

5. The district court did not abuse its discretion by denying Block's requests for extensions of time because Block failed to demonstrate good cause. See Fed. R. Civ. P. 6(b)(1). Block did not seek extensions in advance of the time her oppositions were due (in violation of the local rules), and she filed multiple motions of her own during the period in which she claimed she was unable to file oppositions. We therefore affirm the district court's orders denying extensions of time.

6. Because Block fails to coherently argue that the district court erred by granting defendants' motions to dismiss on res judicata grounds, we affirm the district court's order. Greenwood v. FAA, 28 F.3d 971, 977 (9th Cir. 1994) ("We will not manufacture arguments for an appellant, and a bare assertion does not

preserve a claim, particularly when, as here, a host of other issues are presented for review.").1

7. The district court did not err by dismissing Block's remaining claims against the WSBA, City of Duvall, Sky Valley, Port of Seattle, and King County, and various individual defendants. The district court correctly dismissed Block's suit against the WSBA and WSBA individual defendants on Eleventh Amendment and quasi-judicial immunity grounds. See Hirsh v. Justices of Supreme Court of Cal., 67 F.3d 708, 715 (9th Cir. 1995) (per curiam) (discussing immunity of a state bar and state bar judges and prosecutors); Clark v. Washington, 366 F.2d 678, 681 (9th Cir. 1966) (concluding the Washington State Bar Association is "an agency of the state" and not subject to liability under 42 U.S.C. § 1983).

With respect to City of Duvall, Sky Valley, Port of Seattle, King County, and the related individual defendants, we conclude that the district court did not err by dismissing Block's defamation, civil RICO, and retaliation claims. Block does not argue that her defamation claim was

adequately pleaded for purposes of Federal Rule of Civil Procedure 12(b)(6). Moreover, Block fails to demonstrate

1 We deem Block to have waived all other claims that were dismissed by the district court and not distinctly raised on appeal, such as Block's claim that the defendants violated the Americans with Disabilities Act. See Greenwood, 28 F.3d at 977.

that she satisfied her burden for alleging retaliation and civil RICO claims. See, e.g., Arizona Students' Ass'n v. Arizona Bd. of Regents, 824 F.3d 858, 867 (9th Cir. 2016) (discussing requirements for retaliation claim); Grimmett v. Brown, 75 F.3d 506, 510 (9th Cir. 1996) (discussing requirements for civil RICO claim). Accordingly, we affirm the orders dismissing Block's claims.

VACATED AND REMANDED IN PART, AFFIRMED IN PART.

Each party to bear its own costs on appeal.

APPENDIX 3

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
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D.C. No. 2:15-cv-02018-RSM
Western District of Washington,
Seattle
ORDER
Before: IKUTA and CHRISTEN, Circuit Judges, and
FREUDENTHAL,* District
Judge.
The panel has unanimously voted to deny
Plaintiff-Appellant's petition for
panel rehearing. Judges Ikuta and Christen have
voted to deny the petition for

rehearing en banc, and Judge Freudenthal has so recommended.

The full court has been advised of Plaintiff-Appellant's petition for rehearing en banc, and no judge of the court has requested a vote on the petition for rehearing en banc. Fed. R. App. P. 35.

*The Honorable Nancy D. Freudenthal, United States District Judge for the District of Wyoming, sitting by designation.

The petition for rehearing and the petition for rehearing en banc are DENIED.

APPENDIX 4

NOT FOR PUBLICATION

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FOR THE NINTH CIRCUIT

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No. 16-35461

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Submitted February 7, 2019**

Seattle, Washington

FILED

FEB 11 2019

MOLLY C. DWYER, CLERK

U.S. COURT OF APPEALS

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the brief of proposed intervenor William Scheidler is GRANTED. Block's motions to strike are DENIED.

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6. Because Block fails to coherently argue that the district court erred by granting defendants' motions to dismiss on res judicata grounds, we affirm the district court's order. *Greenwood v. FAA*, 28 F.3d 971, 977 (9th Cir. 1994) ("We will not manufacture arguments for an appellant, and a bare assertion does not

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5

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Accordingly, we affirm the orders dismissing Block's claims.

VACATED AND REMANDED IN PART, AFFIRMED IN PART.

Each party to bear its own costs on appeal.

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