

No. 19-291

In The
Supreme Court of the United States

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ANNE BLOCK,

Petitioner,

v.

WASHINGTON STATE BAR ASSOCIATION, *et al.*,

Respondents.

—◆—
**On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit**

—◆—
**KING COUNTY'S AND DEPUTY COBLANTZ'S
BRIEF IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI**

—◆—
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QUESTIONS PRESENTED

1. Whether judges who are members of a state bar association may hear a case against the bar association, because mere membership in the bar association is not the type of interest that would reasonably call into question the judges' impartiality.
2. Whether Ms. Block's retaliation claim against King County and Deputy Coblantz was properly dismissed, because she failed to plead sufficient facts to state a plausible claim against them.
3. Whether Ms. Block's petition for a writ of certiorari is untimely, because it was neither dated nor served until two months after the 90-day deadline.

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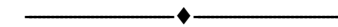
INTRODUCTION

The Court of Appeals and the District Court correctly decided that judges need not recuse themselves from a case involving a state bar association of which they are members, because mere membership in a bar association does not reasonably call into question a judge's impartiality.

Both courts also properly concluded that Petitioner Anne Block had not pleaded facts sufficient to state a plausible retaliation claim against King County or Deputy Coblantz.

Neither of these decisions, which involved application of specific facts to well-settled law, merit review by this Court.

Additionally, Ms. Block's petition should be denied on the basis that it is untimely.



DECISIONS BELOW

The Appendix submitted by Ms. Block is incomplete. The District Court's six orders denying her motions to disqualify District Court judges may be found at *Block v. Washington State Bar Ass'n*, No. 2:15-cv-02018-RSM, ECF Nos. 25, 34, 36, 68, 134, and 151.

The District Court's order dismissing Ms. Block's retaliation claim against King County and Deputy Coblantz may be found at *Block v. Washington State Bar Ass'n*, No. 2:15-cv-02018-RSM, ECF No. 122.

The Ninth Circuit Court of Appeals' order affirming the District Court on both issues is available at *Block v. Washington State Bar Ass'n*, 761 Fed. Appx. 729 (9th Cir. 2019).



JURISDICTION

The Court of Appeals entered judgment on February 11, 2019. Then on April 2, 2019, the Court of Appeals denied Ms. Block's petition for rehearing.

If Ms. Block's petition had been timely filed and served, this Court would have jurisdiction under 28 U.S.C. § 1254(1).



STATEMENT OF THE CASE

Ms. Block sued the Washington State Bar Association and more than 50 other governmental entities and private individuals she alleged were part of a widespread conspiracy to retaliate against her. (See *Block*, ECF No. 122 at 2; *Block*, ECF No. 134 at 1.)

Ms. Block then moved to disqualify all judges in the Western District of Washington, arguing they were biased because they were members of the bar association. (See *Block*, ECF No. 25 at 1.) Both District Court judges who considered this issue concluded mere membership in the bar association was not disqualifying, because it did not reasonably call into question the judges' impartiality. (See *Block*, ECF No. 151 at 1.)

King County and Deputy Coblantz moved to dismiss under Federal Rule of Civil Procedure 12(b)(6) on the grounds that Ms. Block’s Amended Complaint contained only conclusory and speculative allegations against them. (*See Block*, ECF No. 122 at 10–11.) The Amended Complaint did not connect King County or Deputy Coblantz to any retaliatory act and did not allege any facts from which it could be inferred that King County or Deputy Coblantz had a retaliatory motive. (*See id.* at 12–14.) The District Court dismissed Ms. Block’s retaliation claim against King County and Deputy Coblantz on this basis. (*Id.* at 16.)

In an unpublished order, the Ninth Circuit affirmed the District Court on both issues. (*Block*, 761 Fed. Appx. at 730–32.)



THE PETITION SHOULD BE DENIED

Ms. Block’s petition for a writ of certiorari should be denied, because there are no compelling reasons the Court should review the fact-specific decisions in this case. *See* Sup. Ct. R. 10. On the contrary, the Ninth Circuit’s unpublished order is in harmony with decisions of this Court and other Circuits. And this Court does not grant certiorari merely “to review evidence and discuss specific facts.” *United States v. Johnston*, 268 U.S. 220, 227 (1925).

I. Membership in a bar association does not require judges to recuse themselves from hearing a case involving the bar association, because mere membership does not reasonably call into question the judges' impartiality.

Judges should recuse themselves when they have a personal interest in a matter or when the judge's "impartiality might reasonably be questioned." 28 U.S.C. § 455(a). For more than forty years, however, every federal circuit to consider the issue has held that membership in a bar association is not the type of interest that would require judges to recuse themselves from hearing a case involving the bar association. *See Hu v. Am. Bar Ass'n*, 334 Fed. Appx. 17, 19 (7th Cir. 2009) ("a judge's membership in a bar association . . . does not create the type of relationship that would cause us to doubt his ability to preside impartially over a case in which the bar association is a party"); *Lawrence v. Chabot*, 182 Fed. Appx. 442, 449 (6th Cir. 2006) ("after more than thirty years from the date of the disqualification statute's enactment, no case, at least of which we are aware, has held that judges who are members of a state bar may not hear cases concerning that state bar"); *Denardo v. 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."); *Plechner v. Widener Coll., Inc.*, 569 F.2d 1250, 1262 (3d Cir. 1977) ("membership in the American Bar Association is not a financial interest which requires that a judge disqualify himself where the ABA is a party").

Consistent with this well-settled rule, the Ninth Circuit and the District Court correctly decided that mere membership in the Washington State Bar Association did not reasonably call into question the impartiality of judges presiding over this action.

Ms. Block's reliance on *Riss v. Angel*, 934 P.2d 669 (Wash. 1997), is misplaced. That was a state-court decision that limited joint-and-several liability for a decision by an unincorporated homeowners' association "to those members who violated the covenants by participating in or ratifying the unreasonable, arbitrary decision." *Id.* at 683. The case has nothing to do with potential liability of members of a bar association or recusal of judges.

Therefore, the Ninth Circuit correctly affirmed the District Court judges' decisions not to recuse themselves. And the lower courts' application of these specific facts to well-settled law does not merit review by this Court.

II. Ms. Block's retaliation claim against King County and Deputy Coblantz was properly dismissed, because she failed to plead sufficient facts to state a plausible claim against them.

The Federal Rules of Civil Procedure require that a complaint contain a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). A complaint does not satisfy this standard if it contains only "labels and conclusions" or

a “formulaic recitation of the elements of a cause of action.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Instead, 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.’” *Id.* (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

A claim has facial plausibility “when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678. This requires more than a “sheer possibility” that the defendant is liable, and the plausibility standard is not satisfied by pleading facts that are “merely consistent with” the defendant’s liability. *Id.*

A court should apply a two-step approach when evaluating whether claims have been adequately pleaded. *Id.* at 679. First, the court should identify and disregard all legal conclusions, as they are not entitled to an assumption of truth. *Id.* Second, the court should determine whether the factual allegations, which must be assumed to be true, “plausibly give rise to an entitlement to relief.” *Id.*

In this case, the District Court and the Ninth Circuit correctly decided that Ms. Block’s Amended Complaint alleged no facts from which it could be reasonably inferred that King County, Deputy Coblantz, or any other defendant retaliated against her. Indeed, Ms. Block conceded that her retaliation claim against King

County was insufficiently pleaded. (*See Block*, ECF No. 122 at 16.)

Furthermore, a determination that a plaintiff failed to allege sufficient facts to meet the pleading standard is not generally the type of issue that merits review by this Court. *See N.L.R.B. v. Pittsburgh S.S. Co.*, 340 U.S. 498, 503 (1951) (“This is not the place to review a conflict of evidence nor to reverse a Court of Appeals because were we in its place we would find the record tilting one way rather than the other, though fair-minded judges could find it tilting either way.”).

III. Ms. Block’s petition for a writ of certiorari is untimely, because it was neither dated nor served until nearly two months after the 90-day deadline.

A petition for a writ of certiorari must be filed within 90 days from either entry of judgment or denial of a petition for rehearing. *See* Sup. Ct. R. 13. The petition must be accompanied by proof of service, and the petitioner must notify the other parties “promptly” of the filing. Sup. Ct. R. 12.3.

Ms. Block’s motion for rehearing was denied by the Court of Appeals on April 2, 2019. (Pet. App. at 14–15.) So her petition was due by July 1.

Although the docket indicates Ms. Block’s petition was filed on July 1, it is unclear what document was received by the Court that day, because the petition is actually dated August 30. Moreover, King County and

Deputy Coblantz were not served with a copy of the petition or otherwise informed of the filing until September 4.

Because Ms. Block's petition was neither dated nor served until nearly two months after the 90-day deadline, it is untimely. This is an additional reason the petition should be denied.

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CONCLUSION

This case was correctly decided by application of specific facts to well-settled law, and there are no compelling reasons the Court should grant review. Additionally, Ms. Block's petition was not timely. For each of these independent reasons, the Court should deny Ms. Block's petition for a writ of certiorari.

Respectfully submitted,

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