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Hon. Ricardo S. Martinez

7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 ROBERT E. CARUSO AND SANDRA L.  
11 FERGUSON

Case No.: 2:17-cv-00003-RSM

12 Plaintiffs,

MOTION TO DISQUALIFY HON.  
RICARDO S. MARTINEZ -

13 vs.

14 WASHINGTON STATE BAR ASSOCIATION  
15 1933, a legislatively created Washington  
16 Association, State Bar Act (WSBA 1933);  
17 WASHINGTON STATE BAR ASSOCIATION  
18 after September 30, 2016 (WSBA 2017):  
19 PAULA LITTLEWOOD, Executive Director,  
20 WSBA 1933 and WSBA 2017, in her official  
21 capacity; ROBIN LYNN HAYNES is the  
22 President of the WSBA 1933 and WSBA 2017,  
23 in her official capacity; DOUGLAS J. ENDE,  
24 Director of the WSBA 1933 and WSBA 2017  
25 Office Of Disciplinary Counsel, in his official  
26 capacity; WSBA 1933/WSBA 2017 BOARD  
27 OF GOVERNORS, namely: BRADFORD E.  
28 FURLONG-President-Elect (2016-2017), *et al.*,

Defendants.

Plaintiff moves to disqualify The Honorable Ricardo S. Martinez.

Judge Martinez and the court were the victims of fraud. Judge Martinez went a step further and became a knowing participant in the fraud.

MOTION TO DISQUALIFY HON. RICARDO S. MARTINEZ - 1  
CASE NO. 2:17-CV-00003

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1           These matters were brought to the attention of the 9<sup>th</sup> Circuit Court of Appeals. Though a  
2 three-judge panel has affirmed the trial court decision, Eugster, and his client, Robert Caruso has  
3 each filed Petitions for Rehearing Enbanc<sup>2</sup>. The petitions remain pending.  
4

5           If the petition is not granted, litigation will proceed. Despite the failure to act on the part  
6 of the 9<sup>th</sup> Circuit, Eugster has right to seek to overturn the decision under Fed. R. Civ. P. 60  
7 (d)(3). Also, Fed. R. Civ. P. 60(b)(4) and (6) may come into play. Judge Martinez will be a  
8 party to the action. His conduct will not be subject to immunity because it is in excess of his  
9 judicial authority.  
10

11           Judge Martinez does not have immunity for his acts of complicity and making the case  
12 his own. Such actions were not within his judicial role. *Gregory v. Thompson*, 500 F.2d 59 (9<sup>th</sup>  
13 *Cir.* 1974).

14           In *Gregory v. Thompson*, the Ninth Circuit elucidated what is meant by a judge's judicial  
15 role and which is not his judicial role. The Court said:

16                   [w]hen courts have spoken of immunity for acts within the jurisdiction of a  
17 judge, they have declared that the doctrine insulates judges from civil liability  
18 'for acts committed within their judicial jurisdiction,' or 'for acts within (their)  
19 judicial role,' *Pierson v. Ray*, 386 U.S. at 554, 87 S. Ct. at 1218, or for 'their  
20 judicial acts.' *Bradley v. Fisher*, 80 U.S. (13 Wall.) at 351. Thus judicial  
21 immunity does not automatically attach to all categories of conduct in which a  
22 judge may properly engage, but only to those acts that are of a judicial nature.  
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1 Judge Martinez does not have jurisdiction under 28 U.S.C. § 455. Under Roman law,  
2 judicial liability was created by a quasi-delict termed the *iudex qui litem suam facit*, which  
3 translates as a judge who "make[s] a case his own." [citations omitted.]<sup>1</sup>  
4

5 This "quasi-delict" is subsumed in 28 U.S.C. § 455(a). Under § 455(a), recusal is  
6 mandatory in "any proceeding in which his impartiality might reasonably be questioned." Under  
7 28 U.S.C. § 455(b), a judge is expected to disqualify himself whenever any of the five  
8 statutorily-prescribed criteria can be shown to exist in fact; even if no motion or affidavit seeking  
9 such relief has been filed, and regardless of whether a reasonable person would question the  
10 judge's impartiality.  
11

12 In 1994, the U.S. Supreme Court held that "[d]isqualification is required if an objective  
13 observer would entertain reasonable questions about the judge's impartiality. If a judge's attitude  
14 or state of mind leads a detached observer to conclude that a fair and impartial hearing is  
15 unlikely, the judge must be disqualified." [Emphasis added]. *Litek v. U.S.*, 510 U.S. 540, 564  
16 (1994).  
17

18 Courts have repeatedly held that positive proof of the partiality of a judge is not a  
19 requirement, only the appearance of partiality. *Liljeberg v. Health Services Acquisition Corp.*,  
20 486 U.S. 847 (1988) (what matters is not the reality of bias or prejudice but its appearance).  
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25 <sup>1</sup> See Marie Adornetto Monahan, *The Problem of the Judge Who Makes the Case His Own: Notions of Judicial Immunity and Judicial Liability in Ancient Rome*, 49 CATH. U. L. REV. 429,  
26 440 (2000).  
27  
28

1 In *U.S. v. Brandau*, 578 F.3d 1064, 1070 (9th Cir., 2009) this court said:

2 Although we do not suggest that there is any actual bias on the part of the judges,  
3 our ethics rules require recusal where a judge's impartiality "might reasonably  
4 be questioned." 28 U.S.C. § 455(a); *see also Liljeberg v. Health Services*  
5 *Acquisition Corp.*, 486 U.S. 847, 860, 108 S.Ct. 2194, 100 L.Ed.2d 855  
6 (1988) (noting 28 U.S.C. § 455(a)'s purpose of "promot[ing] public confidence  
7 in the integrity of the judicial process"). Here, the circumstances surrounding  
8 adoption of these orders suggest that an objective observer might reasonably  
9 question the impartiality of the judges. [Emphasis added].

### 10 CONCLUSION

11 Judge Martinez must disqualify himself. Indeed, in light of the preceding, he is  
12 disqualified. "Here, the circumstances . . . suggest that an objective observer might reasonably  
13 question the impartiality of the judge[ ]." *Id.*

14 May 14, 2018.

15 Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on May 14, 2018, I electronically filed the foregoing with the Clerk of the District Court using the CM/ECF system.

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

I also certify that on May 14, 2018, by previous agreement of counsel, I emailed, the preceding document to counsel listed below at their respective e-mail addresses.

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May 14, 2018  
s/Stephen Kerr Eugster  
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