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January 22, 2025

Via email: RulesCommittee_Secretary@ao.uscourts.gov

H. Thomas Byron III, Esq.
Secretary, Standing Committee on Rules of Practice and Procedure
of the Judicial Conference of the United States
Administrative Office of the U.S. Courts
Office of the General Counsel – Rules Committee Staff
Washington, DC 20002

Re: Comment on Proposal to Adopt a Rule for Unified Bar Admission to All Federal District Courts, Submitted February 23, 2023, and Pending
Considered on January 7, 2025, at San Diego, CA

Dear Secretary Byron:

I request that the attached copy of Appellant's Opening Brief ("Opening Brief"), recently filed by the undersigned in *In Re Sykes*, No. 24-6477 (9th Cir.), be accepted as a Comment on the pending Proposal identified above ("Admissions Rules Proposal").

Specifically, I ask that the Opening Brief be accepted as a comment limited to the element of the Admissions Rules Proposal, at pp. 7-13, that requests the elimination of local bar membership requirements. I concur with that request, for the reasons summarized below.

For my part, I exclusively practice federal tax law state-wide in Washington State, with an office and residence located in the Western Judicial District of Washington ("WAWD"). I contend in the attached Opening Brief that the local admission requirement of WAWD LCR 83.1(b) is invalid, facially and as applied, for two independently sufficient reasons:

(a) The element of the WAWD admissions rule that requires me to be an enrolled member of the Washington State Bar, to be "eligible" for a WAWD bar membership, is unnecessary, irrational, and contrary to right and justice under *Frazier v. Heebe*, 482 U.S. 641 (1987), especially in view of: (i) the Washington state judiciary's rule (Washington Rule of Professional Conduct 5.5(d)(2) (1985)) authorizing me to conduct my dedicated federal tax practice throughout the state of Washington; (ii) my 19 good-standing state and federal bar memberships and my unblemished ethical record spread across four decades of intensely litigating federal tax cases; and (iii) my total lack of interest in practicing Washington state tax (or other) law.

(b) More importantly, the element of the WAWD admissions rule that requires me to be an enrolled member of the Washington State Bar, to be eligible for a WAWD admission, is a violation of Article III of the Constitution, as explicated by *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50 (1982), and a violation of

> 28 U.S.C. § 1654, originally enacted by § 35 of the Judiciary Act of 1789, 1 Stat. 73 (Sept. 24, 1789), to implement Article III. The requirement delegates to an arm of the Washington state judiciary, which would apply state substantive and procedural standards, a final adjudicative power over an Article III district court's quintessential and exclusively federal admissions decision. Article III and the Judiciary Act of 1789 prohibit a rule allowing the judiciary of the particular state in which the district court sits to act as a gatekeeper to that federal court's bar. (Opening Brief, at 36-48.)

Under the inscrutable LCR 83.1(d), I am ineligible for *pro hac vice* permission because I do not reside and have an office that is located *outside* of the Western Judicial District of Washington.

I believe that the painstakingly discussion in my Opening Brief raises issues of first impression. That is, neither the Article III/28 U.S.C. § 1654 infirmity, nor the significance of an authorization for a state-wide federal tax practice under a state judiciary's rule adopting the American Bar Association's Model Rule of Professional Conduct 5.5(d)(2) (1983), seems ever to have been addressed by any federal court in an admissions context. The Opening Brief in no way rehashes arguments found in the case law.

The Rules Enabling Act (1934) has no effect upon the demands of Article III (1789), as explicated by *Northern Pipeline* and its progeny – nor upon the demands of the Sixth Amendment's right to counsel (1791), the Seventh Amendment's right to jury trial (1791), or provisions of the Judiciary Act of 1789.[1]

A local rule that excludes from membership a lawyer with 19 good-standing state and federal bar admissions and an unblemished ethical record, who practices only federal tax law *and is authorized by the state judiciary to do so state-wide*, is self-evidently flawed. As explained in the Opening Brief (at 33-35), a rule of this type redounds to the detriment of citizens with a federal tax dispute and is contrary to the tri-forum regime enacted by Congress for the judicial resolution of federal tax disputes. It forces a state bar association to address a bar application that it has by rule eschewed. (Thirty-nine states have adopted some form of the ABA's Model Rule of Professional Conduct 5.5(d)(2).) It contravenes several provisions of the Constitution.

Curiously, no Answering Brief, due on or about January 2, 2025, has ever been filed, nor has an explanatory letter or a notice of appearance been filed. The Opening Brief's ground-breaking analysis stands unrebutted. Please let me know if more information would be useful.

Thank you.

Respectfully submitted,

Thomas D. Sykes

Thomas D. Sykes

Attachment as stated

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[1] *See* §§ 12, 35, 1 Stat. 73 (Sept. 24, 1789) (seminal removal provision and predecessor to 28 U.S.C. § 1654, respectively); THE FEDERALIST NO. 80, at 534 (Alexander Hamilton) (The Easton Press 1979) (discussing the sensitivity of suits between citizens of different states).

Attachment to Rules Suggestion

No. 24-6477

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

In Re Sykes,

Petitioner-Appellant,

On Appeal from the United States District Court
for the Western District of Washington
No. 2:24-mc-00041-DGE
Honorable David G. Estudillo

APPELLANT'S OPENING BRIEF

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INTRODUCTION

Appellant Thomas D. Sykes ("Sykes"), with 19 good-standing federal and state bar admissions and an unblemished ethical record compiled over four decades of litigating intensively in federal court, petitioned for a regular admission to the Bar of the U.S. District Court for the Western District of Washington ("District Court" or "court"). ER-19. He supported his Petition with a 22-page memorandum of law and argument, and a 14-page Declaration under penalty of perjury. ER-40-77. A solo practitioner in Redmond, Washington, Sykes conducts a federal tax-dispute practice that is *authorized in Washington* pursuant to a Washington Rule of Professional Conduct 5.5(d)(2) (hereinafter "Washington RPC 5.5(d)(2)"); authorized nationwide pursuant to U.S. Treasury Department rules and regulations; and authorized nationwide by Supreme Court precedent mandating the supremacy of Treasury Department rules and regulations. ER-66-67. He is not a member of the Washington State Bar, has never sought to become a member, and is not required to be a member to be eligible to conduct his fully authorized federal tax practice. ER-64. Washington RPC 5.5(a)(2), a rule of the Washington judiciary that authorizes Sykes's federal tax practice state-wide, subjects Sykes to the disciplinary jurisdiction of the Washington State Bar. ER-51.

In a nine-page Order issued after the Petition had been placed on the court's motion calendar, the court denied the Petition relying on the text of Rule 83.1(b) of

the Local Rules of the Western District of Washington (hereinafter "LCR 83.1(b)") that purports to require, among other things, a membership in good standing in the Washington State Bar. ER-4-14. The Order did not raise any question whether Sykes had successfully demonstrated, as a factual matter, that he possessed the competence and good moral character that made him fit for regular admission. ER-4-12. The court did not hold a hearing or request any factual supplementation of Sykes's submission. ER-79. Sykes has taken a timely appeal from the court's Order, a final decision in a standalone miscellaneous civil ("mc") action, Case No. 2:24-mc-0041-DGE. ER-14, -79.

JURISDICTIONAL STATEMENT

The District Court has inherent judicial power, and authorization under 28 U.S.C. § 1654, 28 U.S.C. § 2071, and Fed. R. Civ. P. 83(a)(1), to determine the admission of attorneys who wish to practice before it. LCR 83.1(b) authorizes the court to entertain petitions for regular admission. On June 14, 2024, Sykes petitioned for regular admission, supporting his Petition with a 14-page memorandum of law and a 22-page Declaration under penalty of perjury. ER-40-77. PACER reveals that the court "NOTED" Sykes's petition on the court's motion calendar on July 2, 2024, under Case No. 2:24-mc-0041-DGE. ER-79. Ninety days later, on September 30, 2024, the court denied admission in a nine-page Order entered by Chief Judge Estudillo. ER-4. After that, there was nothing left to do in

that case. The Petition was unrelated to any other pending case when filed, when placed on the motion calendar, and when decided. Sykes's Declaration (ER-75) stated that his Petition was neither unripe nor moot because (unidentified) taxpayers with (unidentified) pending cases had approached and retained him with the hope that he could gain admission and then represent them.

On October 18, 2024, Sykes filed a timely Notice of Civil Appeal with the District Court, identifying the appeal as going to the U.S. Court of Appeals for the Ninth Circuit. ER-14. On October 23, 2024, as revealed by PACER, the Ninth Circuit opened Case No. 24-6477 and established a Schedule Notice. ER-79. Under 28 U.S.C. § 1291, the Court of Appeals has subject-matter jurisdiction to entertain the appeal of an attorney who has been denied, in a final written decision in a standalone proceeding, a regular admission sought under LCR 83.1(b).[1] *See Frazier v. Heebe,* 788 F.3d 1049 (5th Cir. 1986) (treating standalone case as appealable), *rev'd on other grounds*, 482 U.S. 641 (1987) (accepting jurisdiction); *Russell v. Hug,* 275 F.3d 812 (9th Cir. 2002) (holding that 28 U.S.C. § 1291

[1] The Supreme Court has stated:

> The finality requirement in § 1291 evinces a legislative judgment that "[r]estricting appellate review to 'final decisions' prevents the debilitating effect on judicial administration caused by piecemeal appeal disposition of what is, in practical consequence, but a single controversy."

Coopers & Lybrand v. Livesay, 437 U.S. 463, 471 (1978) (citation omitted).

provides jurisdiction over an attorney's appeal, in a standalone suit, from a final order denying a right to practice as a member of the indigent defense panel in the Northern District of California based upon a lack of membership in the California Bar).

This Court also would have jurisdiction to address the timely notice of appeal under the All Writs Act, 28 U.S.C. § 1651(a), should the Court instead decide to treat this appeal as a petition for a writ mandamus. *Gallo v. U.S. Dist. Court for Dist. of Arizona*, 349 F.3d 1169, 1177 (9th Cir. 2003) (petition for admission filed as part of an existing case). Section 1651(a) also provides jurisdiction for this Court to exercise supervisory power over a district court's local rules governing attorney admissions. *See, e.g., Rand v. Rowland*, 154 F.3d 952 (9th Cir. 1998) (mandating a notice requirement under Fed. R. Civ. P. 56).

ISSUES PRESENTED

1. Whether the District Court's insistence that the indisputably qualified Sykes, authorized by the Washington State Bar to practice federal tax law in Washington, must, to be "eligible" for a regular admission to the court's bar, first become a formal member of the Washington State Bar, is an impermissible delegation and imposition of an inherent, quintessential, and final adjudicative responsibility of the court, in violation of Art. III of the U.S. Constitution, as

explicated in 28 U.S.C. § 1654 and in *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.,* 458 U.S. 50 (1982), and its progeny.

2. Whether, as the District Court held, waivable LCR 83.1(b) requires that the hyper-qualified Sykes be deemed ineligible for a regular admission to the bar of the District Court simply because he is not an enrolled member of the Washington State Bar – or, conversely, whether LCR 83.1(b), on its face and as applied to Sykes, is unnecessary and irrational, and contrary to right and justice, in contravention of the controlling but ignored standards set out in *Frazier v. Heebe*, 482 U.S. 641 (1987). This Issue 2 includes at least four prominent sub-issues:

a. Whether there is any significant merit to the District Court's conclusion that Washington RPC 5.5(d)(2), with its provision subjecting Sykes to the disciplinary jurisdiction of the Washington State Bar while providing Sykes with a safe harbor from an unauthorized practice of law (UPL) charge, is insufficient to be regarded as satisfying LCR 83.1(b)'s requirement of a good-standing membership in the Washington State Bar because Sykes purportedly lacks "any standing within the Washington State Bar." ER-10.

b. Whether the District Court's denial of Sykes's application for a regular admission based solely upon his a lack of a formal membership in the Washington State Bar unnecessarily and irrationally disrupts with a severe

discontinuity a Washington federal taxpayer's ability, in the wake of unsuccessful IRS administrative proceedings, to pursue or oppose federal tax litigation in the District Court while continuously being represented by an authorized and indisputably qualified federal tax lawyer of taxpayer's choice, thereby contravening the tri-forum regime established by Congress for resolving federal tax disputes, impinging upon a taxpayer's statutory right to a jury trial and, in a criminal case, her Sixth Amendment right to counsel. ER-71-72.

c. Whether there is any significant merit to the District Court's unspecific assertion that requiring a formal membership in the Washington State Bar is necessary to "strengthen[]" the court's purportedly "limited resources" to accomplish monitoring, investigating, and disciplining attorneys seeking or possessing a regular admission. ER-6-8.

d. Whether there is any significant merit to the District Court's undiscussed assumption that a Washington State Bar membership is necessary to confirm that a petitioner for a regular admission is competent to practice before the District Court. ER-6-7.

3. Whether this Court, in the exercise of its supervisory authority over the District Court's rules for a regular admission, should, as a matter of right and justice, direct the court either to: (a) modify the text of LCR 83.1(b) so that it

corresponds to Fed. R. App. P. 46(a)(1); or (b) modify LCR 83.1(b) to delete the requirement that an applicant for a regular admission possess a good-standing membership in the Washington State Bar, at least in circumstances in which an applicant has demonstrated competence and good moral character, or is permitted by Washington RPC 5.5(d)(2) to practice federal law throughout Washington, or both.

4. Whether appellate review of the Order, a final decision rendered in a standalone case, should proceed under 28 U.S.C. § 1291 or, less likely, as a petition for a writ of mandamus under the All Writs Act, 28 U.S.C. § 1651(a). Also, in the Court's discretion, whether the Court should exercise its supervisory power under 28 U.S.C. § 1651(a) to instruct a modification of LCR 83.1.

Pursuant to Rule 28-2.7, an Addendum is bound with this Opening Brief.

STATEMENT OF THE CASE

LCR 83.1(b) states that a lawyer petitioning for a regular admission to the District Court's bar, to be "eligible," must be "a member in good standing of the Washington State Bar." The Washington State Bar Association is an extension or arm of the Washington state judiciary, exercising a government function. *See* https://www.wsba.org/about-wsba/who-we-are (viewed Nov. 22, 2024). Among other activities, the Washington State Bar conducts investigations of lawyers

seeking admission and conducts investigations into, and recommends discipline for, lawyers who run afoul of applicable Washington Rules of Professional Conduct when practicing in Washington or representing Washington clients. *Id*.

LCR 83.3(a)(2) embraces Washington RPC 5.5(d)(2) when it states that "attorneys shall be familiar with and comply with" the Washington Rules of Professional Conduct. That provision of the Washington RPC permits a lawyer "admitted to another United States jurisdiction . . . and not disbarred or suspended from practice in any jurisdiction . . . to provide legal services in this jurisdiction that . . . are services that the lawyer is authorized by federal law or other law or rule to provide in this jurisdiction." The Washington RPC are approved by the Washington Supreme Court and enforced in disciplinary proceedings brought by the Washington State Bar. *See* https://www.wsba.org/for-legal-professionals/professional-discipline (viewed November 22, 2024).

Citing Washington RPC 8.5(a), Comment 19 to Washington RPC 5.5(d)(2) states that an attorney practicing in Washington pursuant to Washington RPC 5.5(d)(2) "is subject to the disciplinary authority of this jurisdiction." LCR 83.3(c)(5)(b) allows the District Court to make referrals of a grievance to the Washington State Bar "if, at any time during the evaluation of a grievance, the Chief Judge or the assigned judge determines that the grievance would be more appropriately addressed by the Washington State Bar Association or other

governing authority or administrative body which governs the practice of attorneys." In addition, the Internal Revenue Service ("IRS") has an Office of Professional Responsibility ("OPR") that administers published standards of conduct for federal tax practitioners and is authorized by Treasury Regulations to impose discipline. ER-66-67.

As demonstrated in a memorandum of Law and Argument and in a Declaration filed with his Petition for Admission (ER-41 through -77), Sykes is fully authorized, and has been since 1998 (when he entered private law-firm practice in Washington, D.C.), to practice federal tax law nationwide before the Treasury Department and the Internal Revenue Service. This authorization was provided by long-standing Treasury Regulations, as well as Supreme Court precedent decided under the Supremacy Clause. ER-42-43, -66-67. Practicing federal tax law in the Western Judicial District of Washington since early 2021 and residing in that District since late 2019 (with COVID intervening), Sykes has never applied for membership in the Washington State Bar. ER-64. He has, among his 19 good-standing bar memberships, memberships in the bars of the U.S. Tax Court, the (tax-oriented) Court of Federal Claims, and, as of last June, this Court. ER-64-65, -73-74, -16-17.

On June 14, 2024, Sykes applied for regular membership in the bar of the U.S. District Court for the Western District of Washington. ER-16. His Petition

for Admission was not filed in a pending case but was treated by the court as a " Civil Miscellaneous Case" with number 2:24-mc-00041. ER-79. In his filing, Sykes modified the standard Petition form on the court's website to show that his application did not rely upon a formal membership in the Washington State Bar. Instead, his application relied on an Addendum consisting of a 22-page memorandum of law and argument (ER-41-62); a 14-page Declaration from Sykes, made under penalty of perjury (ER-63-77); and two standard-form certifications from local members of the District Court's bar attesting to Sykes's "good moral character" and recommending his admission (ER-13, -19, -30).

In its nine-page Order Denying Petition for Admission to Practice ("Order") entered on September 30, 2024, Chief Judge Estudillo denied the Petition, stating in the introduction to the Order as well as in the Order's two-sentence Conclusion, that the Petition was denied because Sykes was "not a member of the Washington State Bar" and thus "not eligible for admission." ER-4, -11.

The Order did not question any of the facts set out in Sykes's Declaration, nor did it suggest that Sykes either lacked the competence or good moral character necessary for admission. ER-4 through -11. The court vaguely intimated, without promising anything, that Sykes should apply for *pro hac vice* permission under LCR 83.1(d), which does not include a requirement of membership in the Washington State Bar but, dubiously, requires the applicant to reside and have her

office *outside* of the Western District of Washington. The court observed that, under the Introduction to the Civil Rules, it would have authority to disregard this geographic requirement. ER-11.

The Order effectively requires Sykes, if he wishes to gain a regular admission to the bar of the Western District of Washington to apply for and obtain a formal membership in the Washington State Bar – even though the Washington judiciary has by its Washington RPC 5.5(d)(2) indisputably allowed Sykes to practice federal tax law throughout Washington as long as he is not disbarred or suspended in any other jurisdiction.

On October 18, 2024, Sykes filed a Notice of Civil Appeal. ER-14. In this appeal, Sykes seeks to have this Court reverse the District Court's order and direct that Sykes's well-supported Petition, setting out facts that have never been questioned, be granted. Sykes also suggests that the Court may wish to consider using its supervisory authority to instruct the District Court to revise Rule 83.1, which suffers from serious flaws respecting its regular and *pro hac vice* provisions, including two or three with a Constitutional dimension.

SUMMARY OF ARGUMENT

In the 40-page submission made with his petition for admission (at ER-19), Sykes made an overwhelming factual case for admission: he may fairly be said to

be "hyper-qualified" to practice federal tax law and litigation in both federal trial and appellate courts (15 appeals), having practiced extensively and almost exclusively in those courts across four decades, all without any blemish upon his ethical record. ER-68. Sykes's unquestioned 14-page *evidentiary showing* (*cf.* Fed. R. Civ. P. 56(c)(1)) extensively covered both his competence and his character, the two basic elements of fitness for admission. ER-63-77. He also referred to his law firm's elaborate public website (www.sykestaxlaw.com) for further relevant information. ER-63, -65.

As to competence, Sykes established, *inter alia*, that he has litigated federal tax cases almost exclusively since 1982 (ER-65), litigating or supervising perhaps 200 to 250 tax cases controlling an estimated $3 to $4 billion (ER-73). He is a member in good standing of the state bars of Wisconsin and Illinois, and of the bar of the District of Columbia (ER-64-65); and a member in good standing of 16 federal bars, including a June 2024 admission to the bar of this Court (ER-63-64). His active federal tax practice in Redmond, Washington, is conducted under the authority of Washington RPC 5.5(d)(2), reflecting internal fitness standards established by the Washington judiciary; and Treasury Regulations (likewise with fitness standards) that are controlling under U.S. Supreme Court precedent. ER-62-67. The Order sidestepped discussion of the competence issue. ER-62-63.

The Order (ER-4 through -12) did not suggest that there was any reason to question Sykes's moral character or competence. Instead, the court held that fitness issue would, under LCR 83.1(b), have to be resolved in one, and only one, way: with a membership in good standing of the Washington State Bar. ER-4, -12. Not having gained *this particular state-bar admission* (from the same state judicial authorities who by rule had authorized him to practice federal tax law state-wide), Sykes was, according to the District Court, not "eligible" under the text of LCR 83.1(b) for a regular admission. ER-4, -12. The court rejected the argument that Sykes's valuable status under Washington RPC 5.5(d)(2) should be regarded as a species of, or equivalent to, a good-standing membership in the Washington State Bar. ER-9. The court rejected Sykes's argument that requiring Sykes to obtain a formal admission to the Washington State Bar was an impermissible delegation of the court's inherent and quintessential authority over lawyer admissions that effectively gave state bar authorities a "preemptive veto power" over his regular admission to the court's bar. ER-46, -49, -62.

The court did not apply the provision of the Introduction to the Civil Rules allowing the LCR to be disregarded, interestingly brought up by the Court in discussing the dubious geographic exclusion set out in the *pro hac vice* element of LCR 83.1. ER-11.

Over the course of the 90 days while the Petition was formally pending, the court did not hold a hearing or request any supplemental submission from Sykes. ER-79. Of course, Sykes's 14-page Declaration (ER-63-77), and his solo practice's unusually elaborate website (www.sykestaxlaw.com), would have provided a convenient "springboard" for cross-examination, should the court have wanted to probe for more information or had doubts about Sykes's Declaration.

The Order did not dispute that Washington RPC 5.5(d)(2) permits Sykes to conduct a plenary federal tax practice throughout Washington State "subject to the disciplinary authority of this jurisdiction." See Comment 19 to Washington RPC 5.5(d)(2) (citing Washington RPC 8.5(a)). LCR 83.3(a)(2) expressly embraces the Washington RPC and does not specifically disapprove of Rule 5.5(d)(2). Washington State Bar application and investigative records are protected from disclosure by Rule 12.4(d)(2)(b) and (o) of the Washington State Court Rules, apparently blocking the District Court from routinely accessing those records.

The court ignored that requiring membership in the Washington State Bar inserts an impermissible and disadvantageous discontinuity into a federal taxpayer's choice of tax counsel and forum, because it is out of step with: (a) Washington RPC 5.5(d)(2); (b) the Treasury Department's regulations, met by Sykes, for an attorney to practice administratively before the IRS; (c) the basically similar admission requirements, met by Sykes, for the other two federal trial-court

forums provided by Congress for litigating federal tax disputes; and (d) uniform admission requirements, met by Sykes, for the 13 federal courts of appeal, including the Ninth Circuit. ER-66-68, -71-72.

The court ignored the substantial discussion in *Frazier v. Heebe*, emphasized by Sykes in his submission, that held that a *pro hac vice* permission is not a reasonable alternative to a regular admission.

The court ignored that a formal Washington State Bar membership by itself is of negligible value in assessing character -- and certainly less valuable than Sykes's 19 unblemished bar memberships, his decades of good standing with the IRS, and a notable first-chair federal tax-litigation practice spanning almost 40 years and controlling billions of dollars. A Washington State Bar membership may be many decades old and may be held by a lawyer who has been inactive or engaging in a practice that does not involve administrative or judicial tribunals. By contrast, Rule 5.5(d)(2), to be applicable, requires an attorney to be authorized to practice before a non-Washington tribunal and not currently disbarred or suspended *in any jurisdiction* – character-testing standards that are likely superior to simply possessing a good-standing membership in the Washington State Bar, gained recently, remotely, in somewhere in between.

The court never made any effort to apply, or even recite, the controlling legal standards set out in *Frazier v. Heebe*, 482 U.S. at 645, 649: that a federal-court bar admission rule must not be "unnecessary and irrational" or contrary to "right and justice." ER-43, -45, -49, -55, -59. The court ignored LCR 1(a) and disregarded its own observation that the court is permitted to ignore a local civil rule. Instead, the court's two-sentence discussion of *Frazier* merely distinguishes that seminal case, featured heavily in Sykes's submission, on its facts. ER-6. Instead of the standards in *Frazier v. Heebe*, the court seems to have applied an "exercise with great caution" standard found in the Order's up-front quote from an inapt lawyer-discipline case. ER-5. These obvious deficiencies establish that neither LCR 83.1(b) nor the Order should enjoy any presumption of regularity or correctness.

More important, LCR 83.1(b) delegates a quintessential power of an Art. III district court. It delegates to the Washington State Bar Association the right to make a final adjudication of whether Sykes was "eligible for admission" under LCR 83.1(b). This delegation, calling for the application of state standards to a reciprocal application, violates Art. III of the Constitution (1789) as interpreted by *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.,* 458 U.S. 50, and an implementing statute found in 28 U.S.C. § 1654. *See Frazier v. Heebe*, 482 U.S. at 654 (applying § 1654). Authorizing "rules of such [*originally* "said"] courts," § 1654's predecessor was contemporaneously enacted by the Judiciary Act of 1789.

The delegation contravenes federal-state judicial comity because it contravenes standards set out in Washington RPC 5.5(d)(2) and does not acknowledge that the Washington judiciary has no interest in receiving bar applications from attorneys authorized by Rule 5.5(d)(2) to practice state-wide.

In reality, Sykes was plainly fit for a regular admission on the basis of (a) the unquestioned facts set out in his Declaration; (b) two recommendations from local lawyers; (c) his unquestioned authorization, pursuant to Treasury Regulations, to practice before the IRS; (d) his unquestioned authorization from the Washington judiciary to conduct a state-wide federal tax practice pursuant to Washington RPC 5.5(d)(2); and (e) Art. III of the Constitution and the ancient 28 U.S.C. § 1654, neither of which allows a delegation of the "eligibility" question to a specific state bar and none other. *Pappas v. Philip Morris, Inc.*, 915 F.3d 889, 894-897 (2nd Cir. 2019) (examining § 1654 and rejecting a role for a Connecticut admissions statute).

STANDARD OF REVIEW

The District Court's refusal to grant Sykes's petition for regular admission to its bar is subject to de novo review, especially because the facts involved are undisputed. *In re North*, 383 F.3d 871, 874 (9th Cir. 2004); *Pappas v. Philip Morris, Inc.*, 915 F.3d 892. *Cf. Riordan v. State Farm Mutual Ins. Co.*, 589 F.3d 999, 1004 (9th Cir. 2009 (a district court's interpretation of the Federal Rules of Civil Procedure is subject to de novo review). To the extent that Court treats this

appeal as a petition for a writ of mandamus under 28 U.S.C. §1651(a), the standard of review on one level may be whether the court below made a clear error as a matter of law. *Gallo v. U.S. Dist. Court for Dist. of Arizona*, 349 F.3d at 1177. However, and in any event, constitutional issues are mixed questions of law and fact that are reviewed de novo. *In re Sheridan*, 362 F.3d 96, 106 (1st Cir. 2004) (novo review for an attorney-discipline question arising under Art. III); *Norris v. Risley*, 878 F.2d 1178, 1181 (9th Cir. 1989) (de novo review appropriate where a mixed question has a constitutional dimension).

The Court's exercise of its supervisory power over a local rule governing admissions should never be subject to the clear-error-of-law standard.

ARGUMENT

Introduction to Sequence. In Part V, *infra*, we will address LCR 83.1(b)'s infirmity under Art. III of the Constitution as explicated by *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.,* 458 U.S. 50, and its progeny. Before reaching that discussion, we will examine the unpersuasive justifications for the rule offered by the court in its Order, causing its holding to be unnecessary, unreasonable, and contrary to right and justice under *Frazier v. Heebe,* 482 U.S. 641 (1987). We will then suggest a respectable textual analysis that the court quite easily could have applied to avoid both types of these fatal infirmities. Finally, we will respectfully suggest that the Court consider using its supervisory power to

direct the District Court to revise its LCR 83.1 so that remarkably illogical results are avoided in future cases respecting both regular admissions and *pro hac vice* permissions.

I. The District Court Erroneously Relied on Six Reasons Set Out Out in Four Ninth Circuit Cases Arising Decades Ago in California and Arizona That Did Not Involve a Petitioner Authorized to Practice in the State Where the District Court Sits

The court's Order relied squarely upon four Ninth Circuit cases[2] arising more than two decades ago in Arizona and California that did not involve a hyper-qualified lawyer conducting an *authorized federal practice in the state where the federal court sits* pursuant to authority granted by the supreme court of that state, and pursuant to authority granted by Treasury Regulations supported by the Supremacy Clause of the Constitution.

The Order block-quoted from *Giannini v. Real*, 911 F.2d at 360, which listed six reasons why a California resident who had twice failed the California Bar and

[2]*Gallo v. U.S. Dist. Court for the Dist. of Arizona,* 349 F.3d 1169 (9th Cir. 2003); *Giannini v. Real,* 911 F.2d 354 (9th Cir. 1990); *In re North,* 383 F.3d 871 (9th Cir. 2004); and *Russell v. Hug,* 275 F.3d 812 (9th Cir. 2002).

was not authorized to practice law in California should not be admitted based on membership in the New Jersey and Pennsylvania bars:

> (1) the defendant district courts, having no relevant procedures of their own, rely on the California bar examination for determination of fitness to practice law; (2) questions of California substantive law permeate the range of cases over which the district courts have subject matter jurisdiction; (3) membership in the California bar provides the district courts assurance that the character, moral integrity and fitness of prospective admittees have been approved after investigation; (4) allegations of professional misconduct can be brought to the attention of the State Bar; (5) such membership helps screen applicants who are guilty of ethical misconduct in any other jurisdiction; and (6) attorneys who are members of the California and the district court bars will not choose the forum for litigation on the basis of their membership in the federal bar rather than the clients' interests.

Order, ER-7. The quotation is inapt. None of the first five stated reasons is relevant to the situation at hand, while the sixth supports Sykes. We will address these one by one.

Reason One: *Giannini*'s first reason is entirely inapt. The District Court has the inherent right to make determinations as to fitness for admission that traditionally focus upon the two elements that go into fitness: competence and good moral character. *See* LCR 83.1(c)(1). Fitness is elaborated upon in LCR 83.1(d)(1), respecting *pro hac vice* admissions, where a membership in the bar of any federal court or the highest court of a state is required and sufficient, provided that the applicant has not been disbarred or formally censured by a court or record or by a state bar association, and that no disciplinary proceedings are pending. The

court has inherent power to determine fitness. LCR 83.1(b)(2), addressing conditional admissions of a lawyer employed by an agency of the United States, describes fitness in terms of membership "in good standing of the bar of any state." Fed. R. App. P. 46(a)(1) defines fitness in terms of the applicant possessing "good moral character and [being] admitted to practice before the Supreme Court of the United States, the highest court a state, another United States court of appeals, or a United States district court . . . ." The submissions made with Sykes's petition for admission overwhelmingly meet these basic, widely accepted fitness standards. Washington state authorizes lawyers in Sykes's situation to practice in Washington under fitness standards set out in Washington RPC 5.5(d)(2).

Reason Two: For a Washington admission on motion (*i.e.*, "reciprocity"), Sykes would be able to rely on his good-standing, long-standing, unblemished memberships in the bars of Wisconsin, the District of Columbia, and Illinois. Admissions on motion to the Washington State Bar do not require a demonstration of knowledge of Washington state law. *See* https://www.wsba.org/ for-legal-professionals/join-the-legal-profession-in-wa/lawyers/admission-by-motion-reciprocity (viewed Nov. 22, 2024). The Washington Bar Exam does not appear to test knowledge of substantive federal law other than constitutional law, and certainly does not test federal tax law. *See* https://www.barbri.com/states/ washington-bar-exam/ (viewed Nov. 22, 2024). Nor do other prominent areas of

federal law appear to be tested, e.g., antitrust/FTC law, FDA law, FCC law, substantive criminal law under Title 18 (U.S.C.), patent and trademark law, and securities regulation. *See also* the website of the National Conference of Bar Examiners, which administers the Uniform Bar Exam (UBE), used by 39 states (including Washington) plus the District of Columbia. *See* https://www.ncbex.org (viewed Nov. 22, 2024). By contrast, California does not allow admissions based on reciprocity but requires all applicants to pass a bar examination of some sort.

Contra Giannini, questions of Washington state law are unlikely to "permeate the range" of federal tax cases, or even all cases, over which a federal district court has subject matter jurisdiction. Questions of Washington substantive law rarely would have importance in federal tax cases, absent some squarely presented, unavoidable conflict in a collection case over the ownership of, or rights to, property that the IRS proposes to seize and sell.

Reason Three: A good-standing, unblemished membership in the bar of a federal court or the highest court of a state is typically accepted as demonstrating fitness. Here, no reason has been identified to support the notion that memberships in bars other than the Washington State Bar, especially 19 bars, are insufficient to establish fitness. Many federal courts routinely admit lawyers to their respective bars based upon state-bar memberships in any of the 50 states or the District of

Columbia. Fed. R. App. P. 46(a)(1); Rule 200 of the U.S. Tax Court; and Rule 83.1(b)(1) of the Rules of the Court of Federal Claims; and Rule 5.1 of the U.S. Supreme Court (requiring an applicant to be a member of the highest court of a state for a period of at least three years immediately before the date of application; not to have been the subject of any adverse disciplinary action pronounced or in effect during that 3-year period; and to appear to the Court to be of good moral and professional character).

The LCR themselves *in places* supply indications of a proper substantive standard. Those standards resemble the standards applied by other federal courts.

Fitness under RPC 5.5(d)(2), *embraced by LCR 83.3(a)(2)*, should have been viewed as sufficient. It permits a lawyer, like Sykes, "admitted to another United States jurisdiction . . . and not disbarred or suspended from practice in any jurisdiction . . . to provide legal services in this jurisdiction that . . . are services that the lawyer is authorized by federal law or other law or rule to provide in this jurisdiction." Notice the internal standards that must be met *in the moment*.

Any questions about whether Sykes was actually fit to practice before the District Court were easily resolved by looking to his evidentiary presentation, i.e., his authority to practice in Washington State under Washington RPC 5.5(d)(2), his 19 unblemished bar memberships, and so on. The court never questioned in any

form or fashion that this evidence made Sykes fit to practice, holding merely that he was not "eligible" for admission *under the text of LCR 83.1(b)*, read narrowly, because he was not a good-standing, enrolled member of the Washington State Bar.

Reason Four: That point – about attorney discipline -- is completely misconceived, regardless of what may have prevailed decades ago in California state and federal courts:

- LCR 83.3(a)(2) embraces the standards of the Washington RPC, and Comment 19 to Washington RPC 5.5(d)(2) states that the Washington State Bar has jurisdiction to discipline a practitioner utilizing Rule 5.5(d)(2) (citing Washington RPC 8.5(a)). That disciplinary jurisdiction is *not* predicated on membership in the Washington State Bar. LCR 83.3(c)(1) and (c)(5)(B) provide that the court may refer a grievance to the Washington State Bar or any other governing administrative authority if, at any time during the evaluation of a grievance, the court determines a referral is "appropriate[]."

- General Rule 12.4(d)(2)(b), (o) of the Washington State Court Rules provide that the Washington State Bar's investigative and application records pertaining to lawyer admissions or discipline are exempt from disclosure. Apparently, the District Court will not be permitted to rely on

the Washington State Bar to share information developed during its investigation.

- LCR 83.3(a)(1), (b), and (c), over a span of *ten single-spaced pages*, provide the court with its own vast powers for conducting disciplinary investigations, including orders to show cause, and for imposing sanctions.

The Order underestimates the court's vast, comprehensive, and specific disciplinary authority over lawyers practicing before it. LCR 83.3(a) - (c).

As we have shown, under LCR 83.1 a good-standing Washington State Bar membership is not the *sine qua non* for authority to practice, i.e., for a conditional admission, for a *pro hac vice* permission, or for a Washington federal practice.

The court's supposed need for a Washington State Bar membership is wholly speculative in federal tax cases, where Sykes's opponent would always be vigorously represented by the U.S. Department of Justice's Tax Division. The Department of Justice, assisted by the IRS's resources, obviously has ample powers to detect misconduct and to move for disqualification. Any suspected misconduct that arose during IRS administrative proceedings could be referred to the IRS's Office of Professional Responsibility for investigation and enforcement

of IRS's rules governing tax-practitioner conduct -- and the court can impose discipline *based upon OPR's discipline*. LCR 83.3(c)(5)(B).

Reason Five: The court doubled down on its purportedly insufficient authority to impose discipline when it stated (ER-7-8), "[a]mong other things, the Washington State Bar's infrastructure for monitoring, investigating, and disciplining attorneys compliments and strengthens the court's limited resources in monitoring, investigating, and disciplining attorneys." But our bullet points, immediately above, establish that a formal Washington State Bar membership in good standing adds nothing that "strengthen[]" the court's vast, existing powers.

Washington RPC 5.5(d)(2) is set up to be primarily self-enforcing – *and the Washington State Bar regards it in that way*. Its internal standards require that an attorney availing herself of its safe-harbor protection from a charge of the unauthorized practice of law (UPL) "not [be] disbarred or suspended from practice in any jurisdiction or the equivalent thereof . . . ." Obviously, the prospect of a criminal charge of UPL or a Washington State Bar disciplinary action would have a powerful *in terrorem* impact on attorneys in Sykes's situation. This is the common-sense view reflected in Washington RPC 5.5(d)(2).

As mentioned, a formal admission to the Washington State Bar cannot be assumed to provide a non-negligible contribution to "screening" because it may be

several decades old, held by a lawyer who has not been practicing law, or who has not practiced in a competitive "crucible." RPC 5.5(d)(2) is more demanding: it requires, in the moment at the time of application, that the lawyer not be "disbarred or suspended from practice *in any juris*diction [i.e, not just in Washington]. . . ." while being "admitted in another United States jurisdiction . . . ."

The Order raises obvious concerns about comity between the court and the Washington judicial system (not to mention concerns about disrupting the operation of the system that Congress and the Treasury Department erected for resolving federal tax disputes, discussed below). Washington RPC 5.5(d)(2) *eschews* membership applications from lawyers in Sykes's situation.

LCR 83.3(a)(2) embraces RPC 5.5(d)(2); and its flush language points the court and attorneys to the American Bar Association's *Model Rules of Professional Conduct* for guidance. After long deliberation, Rule 5.5(d)(2) of the ABA's *Model Rules* was crafted and adopted to resolve, in situations like the one at hand, when a state-bar membership was needed or not. The District Court has proceeded in a way that disregards a broad, painstakingly achieved, and well-seasoned consensus -- for no good reason. *See Surrick v. Killion*, 449 F.3d 520, 530 (3rd. Cir. 2006) (stating that "the dictates of comity must never be ignored").

Reason Six: Blocking a lawyer from admission who is authorized by Washington RPC 5.5(d)(2), Supreme Court precedent, and Treasury Regulations to practice federal tax law throughout Washington, and who has good-standing memberships in the bars of 19 courts, actually has the potential to *create* conflicts of interest: it potentially prevents a taxpayer's selected counsel from accessing one of the three judicial forums provided for the resolution of federal tax disputes that are not resolved at the administrative level.

II. The District Court Incorrectly Held That an Authorization Under Washington RPC 5.5(d)(2) Conferred No "Standing" with the Washington State Bar

The court rejected Sykes's argument that the court could, especially under LCR 83.3(a) *and its embrace of Washington RPC and the ABA's Model Rules*, view Sykes's federal tax practice, authorized by Washington RPC 5.5(d)(2), as a species of, or the equivalent of, the specified "member[ship] in good standing of the Washington State Bar." ER-9-10. Surprisingly, the court pointedly stated that Sykes's status under Washington RPC 5.5(d)(2) "is not a species of good standing, bad standing, or any standing within the Washington State Bar." ER-10.

To the contrary, Washington RPC 5.5(d)(2), a safe harbor, gives Sykes "standing" to practice federal tax law state-wide in Washington without worrying about either a prosecution for the unauthorized practice of law (UPL) under Wash. Rev. Code § 2.48.180 (2003), or worrying about Washington State Bar disciplinary

proceedings alleging that his practice of federal law in Washington is UPL. ER-68-69.

This is powerful and reassuring, especially because Washington RPC 5.5(d)(2) was not hastily adopted and reflects internal fitness standards selected by the Washington judiciary.[3] Washington RPC 5.5(d)(2) was dispositive of the court's "standing" point, heavily emphasized.

Sykes's use of Washington RPC 5.5(d)(2) is predicated upon regulations of the Treasury Department, which authorize him to conduct a plenary tax practice before the IRS in any of the 50 states, without being a member of state bar in the location where he practices. *See* 31 C.F.R. § 10.2(a)(1), (4); § 10.3(a) (2024). (Indeed, non-attorneys, such as CPAs and enrolled agents, are also allowed by §§ 10.2 and 10.3 to conduct a tax practice before the IRS.) *See* Form 2848 (at

[3] Sykes's law firm maintains an elaborate website at www.sykestaxlaw.com. It has always prominently stated that Sykes, a federal tax lawyer, is not licensed to practice Washington state law. ER-63. With 42 years of concentrated federal tax and litigation experience, Sykes has no interest in practicing Washington state tax law.

www.irs.gov); *Sperry v. Florida*, 373 U.S. 379 (1963) (rejecting the Florida State Bar's position that a Florida Bar membership is required for a non-lawyer practitioner to practice patent law in Florida under regulations of the U.S. Patent and Trademark Office). Washington RPC 5.5(d)(2)'s safe harbor is a partial response to *Sperry*'s potentially more sweeping authorization. Sykes, although not a formal, enrolled member of the Washington State Bar, has sufficient "standing" with the Washington State Bar to be subject to its disciplinary rules and enforcement processes. LCR 83.3(a)(2); Washington RPC 5.5(d)(2), Comment 19 (referring to RPC 8.5(a)).

Further evidence of Sykes's consequential standing with the Washington State Bar is that his law firm maintains, as required by Washington authorities, an IOLTA trust account that periodically pays over interest earned to the Legal Foundation of Washington (LFW). *See* https://legalfoundation.org/iolta/ (viewed Nov. 22, 2024). That entity was created in 1984 by the Washington Supreme Court to manage the Interest on Lawyers' Trust Accounts (IOLTA) program. *Id.* The IOLTA program allows interest to be earned on some deposits held in client trust accounts to be remitted directly to LFW for distribution to civil legal aid programs. *Id*. *See* Washington State Bar Opinion 959 (1986) at https://ao.wsba.org/print.aspx?ID=70 ("[I]f trust funds accrue as a result of a lawyer's practice under his Washington license, then those funds should be handled pursuant to the

Washington rules"). IOLTA payments, regularly made by Sykes's firm, are a concrete benefit to the objectives of the Washington Supreme Court.

Washington RPC 5.5(d)(2) thus confers upon Sykes, in several respects, a highly consequential "standing" with the Washington State Bar.

III. The District Court Apparently Misunderstood the Legal Standard That a Local Rule Must Meet for Validity

At the outset of the Order's legal analysis (ER-3, p. 2), the court set out the following block quote:

> "[A] federal court has the power to control admission to its bar and to discipline attorneys who appear before it. While this power 'ought to be exercised with great caution,' it is nevertheless 'incidental to all Courts.'" *Chambers v. Masco, Inc.*, 501 U.S. 32, 43 (1991) (quoting *Ex parte Burr*, 9 Wheat. 529, 531, 6 L.Ed. 152 (1824)).

The Order appears to use the quote to establish that the power to grant admissions "ought to be exercised with great caution." But the "great caution" standard is incorrect and unsupported by a review of the two cited cases: both dealt with the imposition of sanctions, not with admissions; admissions was mentioned only in passing. Further, none of the four Ninth Circuit cases upon which the court relied (n.2, *supra*) applied or mentioned the purported "great caution" test, applicable only to whether disciplinary sanctions should be imposed.

Admitting a lawyer to the court's bar, pursuant to LCR 83.1(b), based on a recent or remote Washington State Bar admission, whether obtained through a bar

examination or based on reciprocity, surely does not reflect "great caution." Nor does admitting an employee of a federal agency based on one *recent or remote* bar admission of any state. LCR 83.1(c)(2).

Ignored by the Order is any discussion of the controlling legal standards set out in *Frazier v. Heebe*, 482 U.S. at 649: that a bar-admission rule is invalid if it is "unnecessary and irrational" or contrary to "right and justice." That these standards were not discussed suggests that the court relied upon the irrelevant legal standard it set out up front in the block quote from *Chambers v. Masco, Inc*. *Giannini v. Real,* decided in 1990 in a state with a mandatory bar examination (California) and the source of the six-reason block quote applied by the court, at least gave lip service to *Frazier v. Heebe* and correctly made no mention of *Chambers v. Masco, Inc*., 911 F.2d at 361.

Beyond the standard set out in *Frazier v. Heebe,* a local rule is not permitted to reflect a final adjudicatory delegation of a quintessential power of an Art. III district court; and considerations of federal-state judicial comity may never be ignored. These points will be discussed in detail below in Part V.

IV. The District Court's Unwarranted Interpretation Imposes Severe Detriments upon Taxpayers Residing in Washington Who Have Been Unable to Resolve a Dispute with the IRS at the Administrative Level, Thereby Disrupting the Tri-Forum Regime Created for the Judicial Resolution of Federal Tax Disputes

The court's unwarranted view of LCR 83.1(b) redounds to the concrete detriment of residents of Washington who wish to have their litigation against the IRS handled efficiently and economically, using *one lawyer* who has undisputed expertise handling federal tax disputes in the trial-court forums provided by Congress. A *pro hac vice* permission would require that a client pay two lawyers. (A *pro hac vice* motion by Sykes also would come up against obviously irrational, unnecessary, and inscrutable geographic bar set out in LCR 83.1(d).)

This rigidity disrupts a Washington resident's path from administrative proceedings before the IRS or the Department of Justice (in criminal investigations); to and through the District Court; and then to the Ninth Circuit. That disruption is inconsistent with the tri-forum *statutory scheme established by Congress* to give taxpayers a choice of forum among the U.S. Tax Court, a federal district court, and the Court of Federal Claims. *See generally*, Vol 1, R. Cavanagh & G.A. Kafka, *Litigation of Federal Civil Tax Controversies*, Chs.1, 15, (Warren, Gorham & Lamont, 2nd ed.); Vol. 2, *id.,* Ch. 20. Sometimes a taxpayer does not have any option to go to U.S. Tax Court or the Court of Federal claims, e.g., when the Department of Justice files a civil or criminal case in District Court against the

taxpayer. The court's unwarranted rigidity would block Sykes, practicing solo, from continuing a fully authorized representation. *Contra* the Order, *Sperry* has key relevance.

A vivid example of the disruption and unfairness visited by LCR 83.1(b) upon a federal taxpayer is illustrative. If a taxpayer has failed to resolve a collection dispute with the IRS administratively and the IRS wishes to seize a taxpayer's primary residence, that seizure can be accomplished only with permission from a federal district court. 26 U.S.C. § 6334(e)(1). A well-qualified tax lawyer who represented the taxpayer at the administrative level should not have to hurriedly plead for the court to override the irrational and unnecessary text of its regular-admission and *pro hac vice* rules to secure the right to continue with the representation, which could scarcely be more *critical* to a beleaguered taxpayer.

A taxpayer facing civil litigation or criminal charges in the District Court, and opposed by the expert tax litigators at the U.S. Department of Justice's Tax Division or by the U.S. Attorney, is fully justified in seeking and securing representation from a highly qualified federal tax lawyer. The imagined risks are not fanciful. The Internal Revenue Code of 1986 (26 U.S.C.) and its Treasury Regulations (26 C.F.R.) together amount to about 80,000 pages. The only courts located in Washington that are authorized to handle disputes arising under the IRC are the District Courts for the Eastern and Western Districts of Washington. A

Washington State Bar membership is properly regarded by "stressed" federal taxpayers, facing an experience in the District Court for the Western District of Washington, as completely irrelevant to fitness. "[T]he rules of federal courts concerning admission have long recognized that experts in federal law should be permitted, when appropriate, to conduct litigation in the federal courts regardless of whether they have been admitted to practice in the state in which the court sits." *Spanos v. Skouras Theatres Corp*., 364 F.2d 161, 166 (2nd Cir. 1966).

Only a district court affords a right to jury trials in tax cases (*see* 28 U.S.C. §§ 1346(a)(1) and 2402). A Seventh Amendment right to jury trial (1791) may be jeopardized. *SEC v. Jarkesy*, 603 U.S. ____, (No. 22-859, Jun. 27, 2024), recently allowing a jury trial in a penalty matter commenced by the government before the SEC, may have the effect of requiring jury trials in additional matters in which the IRS is pursuing a penalty. In a criminal tax case, LCR 83.1's impingement on the taxpayer's choice of counsel has a Sixth Amendment dimension. *United States v. Bergamo*, 154 F.2d 31, 35 (3rd Cir. 1946) ("To hold that defendants in a criminal trial may not be defended by out-of-the-district counsel selected by them is to vitiate the guarantees of the Sixth Amendment"). LCR 83.1 should not be read to impinge upon a taxpayer's exercise of Constitutional or statutory rights under the tri-forum judicial regime established by Congress.

V. To the Detriment of Washington Taxpayers Engaged in a Dispute with the IRS, LCR 83.1(b) Impermissibly Delegates a Final Adjudicative Decision Respecting Sykes's Inherently Federal Admission to a Particular State Bar Association that Would Apply State Standards

A. LCR 83.1(b)'s Delegation Violated Art. III

The court, in denying Sykes's Petition, would require Sykes to seek a membership from the Washington State Bar under elaborate Washington state admission-on-motion standards. But going through that process would effectively confer upon the Washington judiciary a right, *using Washington standards*, to make an unappealable, *final* adjudication of an inherently federal issue.[4] Under the Order, this Washington adjudication would be conclusive on whether Sykes was "eligible" for admission under LCR 83.1(b). The court has thus delegated to Washington bar authorities a quintessential, long-established responsibility possessed by an Art. III court alone. *See In re Poole*, 222 F.3d 618, 620 (9th Cir.

[4] LCR 83.1(c)(1), governing *pro hac vice* permission, ruled out a petition from Sykes because he did not both reside and have an office outside the 19 counties comprising the Western District of Washington. Even if that permission were not categorically unavailable, permission is evaluated on a case-by-case basis, leaving a taxpayer in limbo at a point when time may be of the essence. Here, the court took 107 days to rule.

2000) ("Admission to practice law before a state's courts and admission to practice before the federal courts in that state are separate, independent privileges"); *Pappas v. Philip Morris, Inc*., 915 F.3d at 895 ("The ability of federal courts to regulate those who appear before them cannot be controlled by state law"). *Incongruously*, the Order states in the sentence immediately before its conclusion that "this Court retains authority to determine who may practice before it and will not delegate its authority to other courts." ER-11. *But see* LCR 83.1(b).

The authority that the court assumes it possesses to exclude Sykes from admission unless he is "eligible" as a member in good standing of the Washington State Bar does not exist under 28 U.S.C. § 1654. *Frazier v. Heebe*, 482 U.S. at 654 (identifying § 1654, implementing Art. III, as the original and still operative statutory source for local rules and admissions); *Pappas v. Philip Morris, Inc*., 915 F.3d at 894-897 (same); *Brown v. McGarr,* 774 F.2nd 777, 781 (7th Cir. 1985) (same).

The court's delegation to Washington state – actually, a "bounce back" *imposition* of authority previously eschewed by Washington – is impermissible: the Washington state bar-admissions apparatus is not an Art. III court under the Constitution. *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. at 87 (holding that Congress could not confer Art. III functions upon Art. I bankruptcy courts); *Stern v. Marshall*, 564 U.S. 462 , 494-495 (2011) (similar

holding); *Gomez v. United States,* 490 U.S. 858, 864 (1989) (in a case involving jury selection, construing the Federal Magistrates Act in a way that avoids an issue under Art. III). *Cf. Sperry v. Florida,* 373 U.S. 379 (prohibiting the Florida Bar from enjoining non-lawyers practicing patent law under federal authority because the injunction would interfere with a regime established by federal law).

In Sykes's situation, the Order indisputably confers a delegation of a "preemptive veto power" (ER-46, -49, -62) over Sykes's admission. If Washington RPC 5.5(d)(2) had been honored under a holistic view of the LCR and Sykes had been granted a regular admission, there would be no improper delegation, at least not in Sykes's matter. Sykes's 40-page Addendum to his Petition gave the court a technical, analytical pathway to achieve the constitutionally required result. The Order's delegation to the Washington State Bar of a final, adjudicatory power that resides exclusively in an Art. III district court was indisputably impermissible under Art. III.[5]

[5] We believe that Sykes's challenge to LCR 83.1(b) and its interpretation represents an issue of first impression. An Art. III challenge to a local rule delegating to a *particular state judiciary* a preemptive veto power over a federal court admission seems never to have been precisely addressed in any case. Perhaps this dearth of precise case law is not surprising given: (a) that most

The case presenting an Art. III issue that comes closest to the one that we raise here invalidated the imposition of sanctions upon an attorney involved in a bankruptcy case. *In re Sheridan*, 362 F.3d at 110-112, vacated a sanctions order by the non-Art. III Bankruptcy Appellate Panel. Instead, the sanctions order would have to be presented by that in-house tribunal as a report and recommendation subject to a final, plenary review by the Art. III district court. (The Third Circuit stated that the issue before it was "appropriate" for de novo review at review because it "unquestionably is one of constitutional import." 362 F.3d at 106 (footnote omitted).) *Pappas v. Philip Morris, Inc*., 915 F.3d at 894-895, focusing on the ancient § 1654, also comes close; there, the Second Circuit held that a *pro se* litigant was not barred by a Connecticut statute from representing her husband's estate in a diversity case in a district court sitting in Connecticut.

The Order's delegation is especially egregious because it contravenes the rights of taxpayers wishing to continue to retain for federal tax litigation, without

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lawyers practicing federal law have happened to practice in a state where they are licensed; (b) the general availability of *pro hac vice* permission (not allowed here); and (c) that aspects of the *Northern Pipeline* holding were still being debated in the Supreme Court as late as 2011.

encountering delay, a lawyer who was indisputably permitted by the Washington judiciary and by Treasury Regulations to manage their dispute at the IRS administrative level. This delegation contravened federal-state judicial comity because the Washington judiciary previously, with its practice authorization set out in RPC 5.5(d)(2), *eschewed* a bar application from lawyers in Sykes's situation. It also contravenes federal judicial-Congressional comity because it does not respect the tri-forum regime for resolving federal tax disputes. Comity with the Treasury Department/IRS is also not respected. *See Surrick v. Killion*, 449 F.3d at 530 (stating that "the dictates of comity must never be ignored").

The delegation here is a far more serious affront to Art. III than Congress's creation of "in house" Art. I bankruptcy courts for administering the Bankruptcy Code. Here, we have a delegation to an arm of the Washington state judiciary that will apply both *state substantive and procedural standards* to its final adjudication.

Astonishingly, the Order responded by stating "LCR 83.1(b) does not delegate [a preemptive veto power] to the Washington State Bar[]" (ER-8), pointing out in a non-sequitur that applicants failing into *some categories* of LCR 83.1 do not have to possess a good-standing membership in the Washington State Bar. ER-8. Those other categories were not at issue; it was Sykes's distinct situation, addressed in his Petition for Admission, that was before the court. LCR

83.1(b) indisputably makes a delegation. Accordingly, the court simply declined to come to grips with the limits on its own Art. III powers. ER-46, -49, -71, -75.

The court dismissed Sykes's reliance on *In re Poole*, 2222 F.3d at 618, which upheld the right of an attorney not admitted to practice in the state in which the district court sits to receive fees in a bankruptcy case. The Order stated that *In re Poole* "did not involve a Court's [sic] authority to set admission requirements . . . ." ER-9. Again, as with the court's treatment of *Frazier v. Heebe*, the District Court brushes aside legal standards by distinguishing a case upon its facts. *In re Poole*'s rationale deserved better from an Art. III court.

B. LCR 83.1(b)'s Delegation, Impermissible under Art. III, Is Also Impermissible Under the Contemporaneously Enacted 28 U.S.C. § 1654

As noted, § 1654 was enacted to implement Art. III of the new Constitution. *Pappas v. Philip Morris, Inc.*, 915 F.3d at 894-895. Section 1654 was originally enacted on September 24, 1789, as § 35 of the Judiciary Act, contemporaneously with the ratification of the Constitution on June 21, 1788. Ch. 20, 1 Stat. 73, 92. *Brown v. McGarr,* 774 F.2nd at 781. It cannot properly be construed in a way that contravenes Art. III as explicated by *Northern Pipeline* and its progeny.

Section 1654 allowed and allows a party to appear by "counsel" pursuant to rules "to manage and conduct causes." (A "transcript" of the Act is set out at https://www.archives. gov/milestone-documents/federal-judiciary-act (viewed Nov.

22, 2024).) *Frazier v. Heebe*, 482 U.S. at 654, cited this ancient statute as the seminal authority for a district court to adopt local civil and criminal rules governing admission.

1. The Historical Context Giving Rise to Art. III and the Predecessor to § 1654. We notice the effort of the Constitution's Framers to form a unified nation out of the 13 states, after the insufficiently unifying Articles of Confederation (effective March 1, 1781) had failed. John A. Garraty & Mark C. Carnes, Vol. 1, *The American Nation*, 137, 141-142, 147 (10th ed. 2000); THE FEDERALIST NO. 78, at 519 (Alexander Hamilton) (The Easton Press 1979).

The Judiciary Act of 1789, implementing Art. III, promoted that unification by, *inter alia*, providing for removal, to federal court *from state court*, "a suit . . . commenced in any state court . . . by a citizen of the state in which the suit is brought against a citizen of another state," if the amount in dispute exceeded $500. The Act also provided original "diversity" jurisdiction over cases with that pattern.

In the drive to knit the states together into a functioning *nation*, the Framers never intended to allow a federal court rule to insist that a non-resident defendant in an original or removed diversity suit could be represented only by a lawyer admitted to practice in the state where the federal court sits. THE FEDERALIST NO. 80, at 534 (Alexander Hamilton) (The Easton Press 1979) is on point: "The

power of determining causes between two States, between one State and the citizens of another, and between citizens of different States, is perhaps not less essential to the peace of the Union than [disputes with foreign citizens or disputes that involve national questions]." Proper rules of admission were and are *critical*.

Amend. VI to the Constitution (1791) provides that in a criminal case the defendant shall have the right "to have the assistance of *counsel* for his defense." (Emphasis added.) The Framers enacting § 1654 (applicable to criminal as well as civil rules) never would have imagined that a criminal defendant, with so much at stake, could be denied, by a mere court rule, the power to engage an out-of-state counsel who lacked a membership in the particular bar of the state in which the federal court sits.[6] As it happened, the federal courts have interpreted the Sixth

[6] *Pro hac vice* permission appears not to have been a feature of the newly created federal judiciary, a branch of government which never existed under the Articles of Confederation (1781). As it happened, *pro hac vice* permission did not become a general feature of the nation's judiciary until almost 90 years later, at the earliest. *Cooper v. Hutchinson*, 184 F.2d 119 (3rd Cir. 1950) ("The custom of permitting the appearance of out-of-state lawyers had become 'general' and 'uniform' *as early as* 1876") (emphasis added; footnote omitted).

Amendment right to "counsel" as allowing a criminal defendant to select his own lawyer. *United States v. Bergamo,* 134 F.2d at 35 ("To hold that defendants in a criminal trial may not be defended by out-of-the-district counsel selected by them is to vitiate the guarantees of the Sixth Amendment"). Section 1654 cannot properly be viewed as somehow in tension with Art. III, for it was designed to *implement* Art. III; it is *subordinate* to Art. III.

In short, the Framers enacting § 1654's predecessor had no reason to imagine that it should be permissible, despite Art. III, the Sixth Amendment, and the urgent need to knit the nation together (another war with Britain was in the cards), to authorize a rule allowing a state judiciary of the state where the federal court sits to act as a gatekeeper to the federal courthouse, especially when the state eschewed that role. (Here, the Washington judiciary has eschewed that role.)

As discussed below, "counsel" *by definition* refers to a lawyer who has obtained a bar membership *somewhere.* As it happened, it has been held that federal courts should not block lawyers with expertise in federal law from practicing before them. *Spanos v. Skounas Theatres Corp*., 364 F.2nd at 166.

The authorization set out in the ancient 28 U.S.C. § 1654 (1789), designed to implement Art. III (1789), must be given its best meaning, which requires that it be harmonized with and treated as subordinate to the requirements of the Art. III and

the Sixth Amendment (1791). Discussing the provisions of the Constitution, THE FEDERALIST NO. 78 at 524 (Alexander Hamilton) (The Easton Press 1979) states:

> [T]he prior act of a superior ought to be preferred to the subsequent act of an inferior and subordinate authority; and that accordingly, whenever a particular statute contravenes the Constitution, it will be the duty of the judicial tribunals to adhere to the latter and disregard the former.

"It goes without saying that 'the fact that a given law or procedure is efficient, convenient, and useful in facilitating functions of the government, standing alone, will not save it if it is contrary to the Constitution.'" *Stern v. Marshall*, 564 U.S. at 501 (citation omitted).

"It is our settled policy to avoid an interpretation of a federal statute that engenders constitutional issues if a reasonable alternative interpretation poses no constitutional question." *Gomez v. United States,* 490 U.S. at 864. The Order plainly did not do that. Having declined to interpret LCR 83.1(b) in a way that does not violate Art. III, the Order consciously chose a path that plainly renders LCR 83.1(b)'s "eligibility" demand invalid.[7]

[7] Section 1654 permits, through its use of the word "counsel," a federal court to require by rule that a lawyer, to obtain a regular admission, be a member in

A local rule that allows an applicant to rely on either a state or a federal bar membership would not run afoul of Art. III. That applicant is given a choice: she can rely on a federal admission, and is not *required* to submit herself to a final adjudication by a *particular* state judiciary. Sykes's situation as very different from a case in which a federal court requires for admission that an applicant be a member of *some* state or federal bar, as opposed to being a member of the particular state bar where the district court sits.

2. The Term "Counsel" in § 1654 and Amendment VI. Under the terms of § 1654 and the Sixth Amendment to the U.S. Constitution, a bar membership *in one (unspecified) jurisdiction or another* is necessary for one to

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good standing of *some* (i.e., any) state or federal bar. The federal judiciary created in 1789 would not have a "stable" of federally admitted counsel from which to draw. The Framers knew that most litigation in the new nation would be conducted in state courts, and the new Constitution embodied an attempt to create a nation out of the 13 states. But it is a very different and entirely inadmissible notion that the framers meant to authorize a rule allowing the state judiciary in the state where the federal court sits to block a civil or criminal litigant from being represented by counsel of her choice, indisputably fit.

properly be viewed as "counsel" or a lawyer. That membership is part of the definition of what it takes to be counted as "counsel." It is not, however, necessary to be a member of a *particular* state bar to be viewed as "counsel" within the ordinary understanding of that term. To begin with, the traditionally definitive *Webster's New Int'l. Dictionary* 606 (2nd ed. 1957) defines "counsel" for purposes of law as, "[o]ne who gives advice, esp. in legal matters; one professionally engaged in the trial or management of a cause in court . . . ." For example, Sykes, with his various state and federal bar memberships, is indisputably "counsel" when advising on federal tax law in Washington even though he is not a member of the Washington State Bar. His other bar memberships, or even one, suffice to bring him within the ordinary meaning of "counsel." The same considerations in the 1780s would have required, say, John Adams of Massachusetts (October 30, 1735 – July 4, 1826) to be regarded as "counsel" if he were retained to manage a matter in, say, Virginia. "The enlightened patriots who framed our constitution, and the people who adopted it, must be understood to have employed words in their natural sense and to have intended what they have said." *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1, 71 (1824).

In sum, a local rule that requires membership *in the state bar of a particular state* contravenes: the ordinary meaning of "counsel" -- the term used in § 1654 and Amend. VI; the context in which the U.S. Constitution was drafted and

adopted; the requirements of the Sixth Amendment's right to "counsel;" and the *critical* demands of diversity and removal jurisdiction set out in the Judiciary Act of 1789 (also enacting the predecessor to § 1654). A local rule requiring membership in the state bar of the particular state in which the district court sits cannot stand under Art. III as interpreted by *Northern Pipeline* and its progeny (in addition to being invalid under the distinct standards set out in *Frazier v. Heebe*).

VI. There Is An Insufficient Textual Basis in the LCR, When Interpreted Holistically Using Applicable Rules of Statutory Interpretation, for Sykes to Have Been Denied a Regular Admission

There was an ample textual basis for the court to interpret LCR 83.1(b) as not blocking the regular admission of Sykes, especially when construed in the face of the controlling legal standards of *Frazier v. Heebe,* the whole-text canon, the requirements of Article III and § 1654, and the rule of *Gomez v. United States*:

- LCR 83.3(a)(2) embraces the Washington RPC, including RPC 5.5(d)(2) – which has a built-in character test, confers disciplinary authority upon the Washington State Bar, and *eschews* membership applications from attorneys who exclusively practice before non-Washington tribunals;

- LCR 83.1(c)(1) requires two recommendations from local members of the court's bar to attest to the "good moral character" of an applicant for regular admission – recommendations that Sykes supplied (ER-19, -30);

- LCR 83.1 does not regard a membership in the Washington State Bar as a *sine qua non* for admission (under LCR 83.1(c)(2)) or for *pro hac vice* permission (under LCR 83.1(d)). Those provisions rely instead upon membership in the bar of *any state* (or, in the case of a *pro hac vice* petition, the bar of any state or any "court of the United States");

- LCR 83.1(d)(1), pertaining to *pro hac vice* admissions, textually excludes from consideration lawyers in Sykes's geographic situation;

- LCR 83.1(d)(1), (2) require a lawyer who obtains *pro hac vice* permission to be assisted by a second lawyer who is admitted to the court's bar – driving up the cost for a represented taxpayer;

- LCR 83.3(a)(1), (b), and (c), confirm the court's inherent authority to discipline attorneys appearing before it, and to make grievance referrals to the Washington State Bar – in a process described elaborately across ten single-spaced pages;

- The Introduction to the Civil Rules allowed the court to disregard a Local Civil Rule, as acknowledged in the Order (ER-11); and

- LCR 1(a) states that the LCR "should be interpreted to as to be consistent with the Federal Rules and to promote the just, efficient, speedy, and economical determination of every action and proceeding."

Further, the court's rigid interpretive position interferes with a federal taxpayer's choice of tax-litigation counsel (whether bringing or defending a federal tax suit in District Court) under the federal statutes allowing a taxpayer to choose, depending upon the nature of the dispute, among the non-identical but sometimes overlapping jurisdictions of the Tax Court, the Court of Federal Claims, and district courts.

Then we have this, *from the Washington State Bar itself*, establishing that a Washington State Bar membership is of negligible value in federal district court litigation: (a) knowledge of Washington law is not required for admission to the Washington State Bar, particularly under its admission-on-motion procedure; and (b) the Washington bar examination does not examine an applicant's competence in matters of federal law, including federal tax law. Membership in the Washington State Bar, gained recently or remotely, is unlikely to assure competence in the matters with which a federal district court is concerned, especially in matters focusing on federal tax law.

Nowhere does the court dispute, in an Order that took 107 days to issue, Sykes's point that his admission is supported by comity because the Washington State Bar has eschewed formal membership applications from attorneys who practice exclusively before a federal tribunal and who meet the fitness standards internal to RPC 5.5(d)(2). The Washington Supreme Court sees no need for a

Washington State Bar membership, so it is impossible to see why the LCR 83.1(b) should be interpreted to require that, especially in view of the District Court's authority under LCR 83.3(c)(5)(B) to make grievance referrals to the Washington State Bar and IRS's OPR.

In short, there is ample space in the text and structure of court's own rules to hold that Sykes's federal tax practice, authorized by Washington RPC 5.5(d)(2), is a species of, or the equivalent of, a "member[ship] in good standing of the Washington State Bar." The whole-text canon applies. A. Scalia and B. Garner, *Reading Law: The Interpretation of Legal Texts*, p. 167 (Thomson/West 2012) ("The text must be construed as a whole" (emphasis omitted)). Analysis of the text and structure of the LCR must be evaluated against the substantive effects that foreseeably flow from that analysis. *Koons Buick Pontiac GMC, Inc. v. Nigh,* 543 U.S. 50, 60 (2004); *United States v. Cleveland Indians Baseball Co.*, 532 U.S. 200, 217-18 (2001). "The provisions of a text should be interpreted in a way that renders them compatible, not contradictory." A. Scalia and B. Garner, *Reading Law: The Interpretation of Legal Texts*, p. 180. (emphasis omitted).

VII. For No Good Reason, Requiring Sykes to Obtain and Maintain a Formal Membership in the Washington State Bar Imposes a Substantial Current and Continuing Burden upon the Indisputably Qualified Sykes

As discussed in the Declaration filed with Sykes's Petition (ER-66-67), the predicate for Sykes's use of RPC 5.5(d)(2) as a safe harbor is his federal authorization to practice federal tax law state-wide in Washington and nationwide. This federal authorization bears consideration. Treasury Regulations authorize him to give advice to taxpayers and represent federal taxpayers before the IRS, no matter where a U.S. taxpayer is located and no matter where Sykes conducts his practice. ER-66. For that purpose, he has a so-called CAF number from the IRS. *Id.* He has three good-standing bar admissions in Wisconsin, the District of Columbia, and Illinois (ER-64-65) but only one good-standing membership is required – *see* IRS Form 2848, available at www.irs.gov. Further, upon an annual application, Sykes is authorized to prepare and file federal tax returns as a registered return preparer holding a Preparer Tax Identification Number (PTIN), in any state where he might be located. ER-66. Sykes's so-called CAF registration with, and his PTIN from, the Treasury Department/IRS together authorize Sykes to conduct a plenary practice of federal tax law. *Id.* *See* 31 C.F.R. § 10.2(a)(1), (4) (describing practice by attorneys before the Internal Revenue Service) and § 10.3(f)(1)-(3) (describing activities in which a registered return preparer may

engage). Sykes also is authorized to file so-called FBARs, under the Bank Secrecy Act, with the FinCEN unit of the Treasury Department. ER-66.

The IRS maintains practice standards for federal tax practitioners (including non-attorneys, such as CPAs and enrolled agents), known as Circular 230, promulgated under 31 U.S.C. § 330. Through OPR, the Treasury Department/IRS has authority to impose discipline upon federal tax practitioners, including suspension or disbarment from IRS practice. 31 C.F.R. § 10.1(a)(1).

These regulations authorize Sykes to practice federal tax law nationwide. *See Sperry v. Florida*, 373 U.S. 379 (holding that a *non-lawyer* practicing patent law in Florida before the United States Patent Office, pursuant to regulations issued by the Commissioner of Patents and the Secretary of Commerce, was not subject to an injunction sought by Florida Bar authorities contending that this federally authorized practice of patent law constituted the unauthorized practice of law (UPL) for Florida state purposes); IRS Form 2848. Rule 5.5(d)(2) of the RPC and the ABA's *Model Rules of Professional Conduct* are, broadly speaking, a recognition of *Sperry*'s holding, rendered under the Supremacy Clause to the Constitution, as the Order itself recognizes. ER-8.

Against this backdrop, Sykes does not wish to become a member of the Washington State Bar. First, there is no good reason for the District Court to insist

that he do so, especially given his indisputable fitness, that he practices federal law, and that RPC 5.5(d)(2) provides that he is already subject to the jurisdiction of the Washington State Bar for disciplinary purposes. Second, applying for and maintaining a membership (required for *continuing* membership in the bar of the District Court: *see* LCR 83.3(b)) will require the expenditure of substantial effort and money, both now and in the future, for no good reason. *See* https://wsba.org/for-legal-professionals/join-the-legal-profession-in-wa/lawyers/admission-by-motion-reciprocity (viewed Nov. 22, 2024). Again, a Washington State Bar membership, recent or remote, provides no non-negligible assurance of fitness to practice in federal district court, at least none that approaches the assurances of fitness provided by (a) Sykes's undisputed 19 good-standing bar memberships, (b) his undisputed practice authorization from Treasury/IRS, and (c) his authorization under Washington RPC 5.5(d)(2). *Cf.* LCR 83.1(c)(2) (in a selective extension of comity to a federal agency, allowing admission to attorneys possessing one good-standing, recent or remote, state-bar admission if they are and remain employed by a federal agency).

In short, requiring Sykes to have a Washington State Bar membership to be "eligible" to represent, and continue to represent, taxpayers in District Court litigation is irrational and unnecessary, and contrary to right and justice – the controlling but ignored standards set out in *Frazier v. Heebe*.

VIII. A *Pro Hac Vice* Admission, Even If Assumed to Be Available Notwithstanding the Dubious Geographic Bar Appearing on the Face of LCR 83.1(d)(1), Is Not a Reasonable Alternative to a Regular Admission

The District Court's Order acknowledges that the geographic bar found in the *pro hac vice* rule (83.1(d)(1)) would bar Sykes from gaining permission. ER-11. Incongruously with the Order's core point that a formal Washington State Bar membership is required for character assessment and discipline purposes, the court raises the point that *pro hac vice* permission, not requiring a Washington State Bar membership, might be awarded to Sykes in a particular case if the presiding judge would decide to disregard or waive its strange and impermissible geographic bar. ER-11. The court emphasizes a sentence found in the court's Introduction to the Civil Rules.

The court makes no effort to reconcile its indefinite embrace of a *pro hac vice* permission with the Supreme Court's emphatic critique of a similar point argued by the Louisiana bar in *Frazier v. Heebe*, 482 U.S. at 650-651 & nn.12-13. Emphasizing the financial and administrative burdens associated with the requirement of two attorneys, the Supreme Court held that a *pro hac* admission was not a "reasonable alternative" to a general admission. *Id.* LCR 83.1(d) requires that the lawyer be assisted by "local counsel" – a costly requirement that will deter most taxpayers from selecting a tax attorney for litigation who is

permitted to practice only by way of the inscrutable *pro hac vice* rule. Sykes, possessing four decades of federal tax litigation experience, does not need the assistance of local counsel. (This brief is entirely his work.) The court's mention of the *pro hac vice* provision is contravenes *Frazier v. Heebe*'s observations.

The geographic bar of the *pro hac vice* rule is more egregious and unwarranted than the Louisiana district court's rule addressed in *Frazier v. Heebe*: it does not permit a lawyer who is authorized by Washington State Bar to practice state-wide in Washington to obtain *pro hac vice* permission if the lawyer *practices or resides in the Western District of Washington*, where the District Court sits. We find it interesting that the court emphasized that Sykes might be able to obtain a waiver of the geographic bar but makes no mention of the availability of a waiver from the irrational requirement, for a regular admission, of a good-standing Washington State Bar membership. Without being textually required to do so, the court interpreted LCR 83.1(b)'s regular-admission provision strictly and rigidly against the hyper-qualified Sykes -- for no reason other than the *text*, improperly read in isolation. That failure to ignore LCR 83.1(b)'s text requiring a formal membership in the Washington State Bar was irrational, unnecessary, contrary to right and justice, and contrary to LCR 1(a) and 83.3(a)(2).

IX. In Any Event, the Standards for a Writ of Mandamus Are Met

If the Court decides to treat the notice of appeal as a petition for a writ of mandamus, the standards for granting the Writ clearly are met. *Cheney v. United States Dist. Court*, 542 U.S. 367, 380-81 (2004), stated as follows about the "*conditions* that must be satisfied" (emphasis added; citations omitted):

> As the writ is one of "the most potent weapons in the judicial arsenal," three *conditions* must be satisfied before it may issue. First, "the party seeking issuance of the writ [must] have no other adequate means to attain the relief he desires," — a *condition* designed to ensure that the writ will not be used as a substitute for the regular appeals process. Second, the petitioner must satisfy "'the burden of showing that [his] right to issuance of the writ is "clear and indisputable."' Third, even if the first two prerequisites have been met, the issuing court, in the exercise of its discretion, must be satisfied that the writ is appropriate under the circumstances. These hurdles, however demanding, are not insuperable. This Court has issued the writ to restrain a lower court when its actions *would threaten the separation of powers by "embarrass[ing] the executive arm of the Government," or result in the "intrusion by the federal judiciary on a delicate area of federal-state relations."*

Cf. Gallo v. U.S. Dist. Court for Dist. of Arizona, 349 F.3d at 1177 (describing five issues to be "consider[ed]"). We submit, however, that the standard of review should be de novo because a substantial issue exists under the Constitution. *Norris v. Risley*, 878 F.2d at 1181; *In re Sheridan*, 362 F.3d at 106.

X. Under Its Supervisory Authority, the Court of Appeals May Conclude That It Is Appropriate to Direct the District Court to Amend LCR 83.1

The court took an astonishingly rigid approach to interpreting LCR 83.1(b), especially in view of Sykes's powerful evidentiary presentation of fitness and on-

point legal arguments. It oddly ignored the possibility of ignoring the formal Washington State Bar-membership requirement. The court's Order relied upon two notions: (a) that the court would need assistance from the Washington State Bar in an attorney-misconduct matter; and (b) that a good-standing membership in the Washington State Bar is necessary for the Washington State Bar to have disciplinary *jurisdiction*. Both notions are flawed. The court disregarded the Washington State Bar's view that Sykes should be allowed to practice state-wide in Washington. The court's refusal seriously to consider Sykes's unquestioned evidentiary showing that he hyper-qualified for admission, and the court's surprising rigidity vis-à-vis a waiver of LCR 83.1(b), perhaps suggests that a change to that rule's unwarranted and impermissible text should be imposed.

The Court may decide, in the exercise of its supervisory power, to direct the District Court to modify its LCR 83.1(b) so that it mirrors Fed. R. App. P. 46(a)(1), applicable to all 13 of the federal circuits. *See, e.g., LaBuy v. Howes Leather Co*., 352 U.S. 249, 259-260 (1957); *Gallo v. U.S. Dist. Court for the Dist. of Arizona*, 349 F.3d 1169, 1187 (9th Cir. 2003) (citing *Frazier*, 482 U.S. at 645-46). Or, more narrowly, the Court perhaps may decide to direct the District Court to modify LCR 83.1(b) to provide that the court is not permitted to deny an petition for admission because that attorney is not a member in good standing of the Washington State Bar if that attorney has stated in a Declaration made under penalty of perjury that

she (a) is admitted to and in good standing with at least one federal or state bar; (b) is authorized by a RPC 5.5(d)(2) to conduct her law practice in the State of Washington; or (c) is authorized by the IRS to practice federal tax law administratively.

LCR 83.1(d), governing *pro hac vice* permission and discussed in the Order, is flawed as well. It allows permission only for lawyers who reside and have their office outside of the Western District of Washington. The geographic exclusion is inscrutable and plainly impermissible under *Frazier v. Heebe,* 482 U.S. 641 (1987) (invalidating an arbitrary, unnecessary, and irrational boundary-line distinction). The court's rigidity cannot be assumed away in connection with future applications for *pro hac vice* permission.

Further, in line with the other unwarranted "local tilt" boundaries seen in LCR 83.1, its sub-paragraph (c)(1) requires that a petition for regular admission be supported by "certificates of two *reputable members of the bar of this court* attesting to the petitioner's good moral character . . . *who either reside or maintain an office for the practice of law in the Western District of Washington*." (Emphasis added.) The two-recommendation requirement (with which Sykes fully complied: ER-19, -30) with its emphasis upon local attestations is troubling because it gives an unfair advantage in admissions to attorneys moving from outside Washington to take a position with an established Washington law firm regularly engaged in

federal litigation. (It might be an understatement to say that Washington's established federal litigators are unenthusiastic about providing a recommendation for a newly arrived federal litigator who is not affiliated with their firm, especially if that attorney is obviously hyper-qualified.) It denies solo and small practitioners equal protection of the law – even those with superb qualifications who have practiced for years in the Western District of Washington – when their practices focus upon matters before federal agencies. The two-local-recommendations feature (with which Sykes complied after three years of active practice in Washington) is another species of geographic discrimination that is invalid under *Frazier v. Heebe*. Moreover, as a "screening" device it is redundant.

In sum, LCR 83.1 repeatedly displays an unjustified "tilt" against lawyers, like Sykes, who are not "fixtures" in the Western District of Washington. Whatever the original motivation, that outmoded rule hinders lawyer mobility and allowing clients with federal issues to select an expert lawyer of their choice who focuses upon matters before the relevant federal agency (generally headquartered in Washington, D.C., where respected lawyers of that type often spend the early parts of their legal careers). The tilt is imprudent given the remarkable domestic and international dynamism of the economy in the Western District of Washington; modern communications and mobility; and the need for counsel with sophisticated federal practices necessary to serve well their sophisticated clients operating in that

dynamic economy. This tilt is plainly contrary to the lawyer-mobility promoted by both the consensus-driven Rule 5.5(d)(2) of the ABA's *Model Rules of Professional Conduct* (1983) and by its early follow-on, Washington RPC 5.5(d)(2) (1985). See LCR 83.3(a)(3). The District Court has already clarified whether or not it will adjust its views to the requirements of Supreme Court case law and the modern consensus about the need for rules that allow multijurisdictional practice.

Change seems overdue, and instructions may be warranted.

CONCLUSION

The Order should be reversed and remanded with an instruction to grant a regular admission to Sykes. Further, the Court may view it as appropriate to exercise its supervisory authority to direct a repair of the flaws in LCR 83.1's regular-admission and *pro hac vice* provisions.

Dated: November 29, 2024

Respectfully submitted,

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Appellant Appearing Pro Se

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Form 17. Statement of Related Cases Pursuant to Circuit Rule 28-2.6

9th Cir. Case Number(s) 24-6477

The undersigned attorney or self-represented party states the following:

[**X**] I am unaware of any related cases currently pending in this court.

[ ] I am unaware of any related cases currently pending in this court other than the case(s) identified in the initial brief(s) filed by the other party or parties.

[ ] I am aware of one or more related cases currently pending in this court. The case number and name of each related case and its relationship to this case are:

Signature s/Thomas D. Sykes **Date** November 29, 2024

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Form 8. Certificate of Compliance for Briefs

9th Cir. Case Number(s) 24-6477

I am the attorney or self-represented party.

This brief contains 13,970 words, including **0** words manually counted in any visual images, and excluding the items exempted by FRAP 32(f). The brief's type size and typeface comply with FRAP 32(a)(5) and (6).

I certify that this brief *(select only one)*:

[**X**] complies with the word limit of Cir. R. 32-1.

[ ] is a **cross-appeal** brief and complies with the word limit of Cir. R. 28.1-1.

[ ] is an **amicus** brief and complies with the word limit of FRAP 29(a)(5), Cir. R. 29-2(c)(2), or Cir. R. 29-2(c)(3).

[ ] is for a **death penalty** case and complies with the word limit of Cir. R. 32-4.

[ ] complies with the longer length limit permitted by Cir. R. 32-2(b) because *(select only one)*:
- [ ] it is a joint brief submitted by separately represented parties.
- [ ] a party or parties are filing a single brief in response to multiple briefs.
- [ ] a party or parties are filing a single brief in response to a longer joint brief.

[ ] complies with the length limit designated by court order dated _____.

[ ] is accompanied by a motion to file a longer brief pursuant to Cir. R. 32-2(a).

Signature: s/Thomas D. Sykes **Date:** November 29, 2024

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Representation Statement

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Thomas D. Sykes is registered for Electronic Filing in the 9th Circuit.

Appellee: None.

Name of Counsel: Unknown. None at District Court. Timely notice of appeal was presumably served by the District Court Clerk, as required. No appearance has been entered in the 9th Circuit. Presumably, the U.S. Department of Justice will appear to defend Appellant's challenge to a Local Civil Rule (W.D. Wash.) and the District Court's Order interpreting and applying it. Appellant has by mail served Appellant's Opening Brief, filed electronically via the Court's ACMS system, upon the Attorney General of the United States and upon the United States Attorney for W.D. Wash. See the attached Certificate of Service. Also, any counsel who makes an appearance via ACMS will presumably be served automatically.

Form 8

CERTIFICATE OF SERVICE

Appellant hereby certifies that on November 29, 2024, he personally mailed Appellant's Opening Brief (including Addendum, *infra*) and Appellant's Excerpts of Record (separately bound), to the following addressees, presumably having responsibilities, via United States Postal Service Priority Mail, postage prepaid:

1. Attorney General of the United States
   U.S. Department of Justice
   950 Pennsylvania Ave., NW
   Washington, DC 20530

2. United States Attorney
   U.S. Department of Justice
   United States Attorney's Office
   700 Stewart Street, Suite 5220
   Seattle, WA 98101-1271

First-class mail was unavailable for a package with the weight of this one. Priority Mail is advertised to arrive in one to three days.

In addition, these two documents were electronically filed in this matter via the Court's ACMS system, automatically effecting service upon any counsel who may have entered an appearance. No counsel has entered an appearance to date.

s/ Thomas D. Sykes
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ADDENDUM PURSUANT TO RULE 28-2.7 AND CIRCUIT ADVISORY COMMITTEE NOTE (12/1/21)

Except for the following, all applicable statutes, etc., are contained in the Brief or this Addendum.

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Art. III, U.S. Constitution (1789)

Article III

Section. 1.

The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Section. 2.

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;— between a State and Citizens of another State,— between Citizens of different States,—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

Section. 3.

Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be

convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

Amend. VI, U.S. Constitution (1791)

Amend. VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Judiciary Act of 1789, Ch. 20, 1 Stat. 73, 92 (Sept. 24, 1789) (excerpts)

* * * * * *

And be it further enacted, That it shall be the duty of circuit courts, in causes in equity and of admiralty and maritime jurisdiction, to cause the facts on which they found their sentence or decree, fully to appear upon the record either from the pleadings and decree itself, or a state of the case agreed by the parties, or their **counsel**, or if they disagree by a stating of the case by the court.

(Emphasis added.)

* * * * * *

And be it further enacted, That the circuit courts shall have **original cognizance**, concurrent with the courts of the several States, of all suits of a civil nature at common law or in equity, where the matter in dispute exceeds, exclusive of costs, the sum or value of five hundred dollars, and the United States are plaintiffs, or petitioners; or an alien is a party, **or the suit is between a citizen of the State where the suit is brought, and a citizen of another State.**

(Emphasis added.)

* * * * * *

And be it further enacted, That if a suit be commenced in any state court against an alien, **or by a citizen of the state in which the suit is brought against a citizen of another state**, and the matter in dispute exceeds the aforesaid sum or value of five hundred dollars, exclusive of costs, to be made to appear to the satisfaction of the court; and the defendant shall, at the time of entering his appearance in such state court, file **a petition for the removal of the cause** for trial into the next circuit court, to be held in the district where the suit is pending, or if in the district of Maine to the district court next to be holden therein, or if in Kentucky district to the district court next to be holden therein, and offer good and sufficient surety for his entering in such court, on the first day of its session, copies of said process against him, and also for his there appearing and entering special bail in the cause, if special bail was originally requisite therein, it shall then be the duty of the state court to accept the surety, and proceed no further in the cause, and any bail that

may have been originally taken shall be discharged, and the said copies being entered as aforesaid, in such court of the United States, the cause shall there proceed in the same manner as if it had been brought there by original process. And any attachment of the goods or estate of the defendant by the original process, shall hold the goods or estate so attached, to answer the final judgment in the same manner as by the laws of such state they would have been holden to answer final judgment, had it been rendered by the court in which the suit commenced. And if in any action commenced in a state court, the title of land be concerned, and the parties are citizens of the same state, and the matter in dispute exceeds the sum or value of five hundred dollars, exclusive of costs, the sum or value being made to appear to the satisfaction of the court, either party, before the trial, shall state to the court and make affidavit if they require it, that he claims and shall rely upon a right or title to the land, under a grant from a state other than that in which the suit is pending, and produce the original grant or an exemplification of it, except where the loss of public records shall put it out of his power, and shall move that the adverse party inform the court, whether he claims a right or title to the land under a grant from the state in which the suit is pending; the said adverse [party] shall give such information, or otherwise not be allowed to plead such grant, or give it in evidence upon the trial, and if he informs that he does claim under such grant, the party claiming under the grant first mentioned may then, on motion, remove the cause for trial to the next circuit court to be holden in such district, or if in the district of Maine, to the court next to be holden therein; or if in Kentucky district, to the district court next to be holden therein; but if he is the defendant, shall do it under the same regulations as in the before-mentioned case of the removal of a cause into such court by an alien; and neither party removing the cause, shall be allowed to plead or give evidence of any other title than that by him stated as aforesaid, as the ground of his claim; and the trial of issues in fact in the circuit courts shall, in all suits, except those of equity, and of admiralty, and maritime jurisdiction, be by jury.

(Emphasis added.)

* * * * * *

And be it further enacted, That in all courts of the United States, the parties may plead and manage their own causes personally or by **assistance of such counsel** or

attorneys at law as by the rules of the said courts respectively shall be permitted to manage and conduct causes therein.

(Emphasis added.)

* * * * * *

28 U.S.C. § 1654

Appearance personally or by counsel

In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein.

(June 25, 1948, ch. 646, 62 Stat. 944; May 24, 1949, ch. 139, § 91, 63 Stat. 103.)

Appellant's Note: This statute appears nearly verbatim in the Judiciary Act of 1789.

Local Civil Rule 1(a) (W.D. Wash.)

LCR 1

SCOPE AND PURPOSE; DEFINITIONS; PROHIBITION OF BIAS

(a) Purpose

These rules should be interpreted so as to be consistent with the Federal Rules and to promote the just, efficient, speedy, and economical determination of every action and proceeding.

* * * * * *

Local Civil Rule 83.1 (W.D. Wash.)

LCR 83.1

ATTORNEYS; ADMISSION TO PRACTICE

(a) The Bar of this Court

The bar of this court consists of those who have been admitted to practice before this court.

(b) Eligibility

An attorney is eligible for admission to the bar of this court if he or she is (1) a member in good standing of the Washington State Bar, or (2) a member in good standing of the bar of any state and employed by the United States or one of its agencies in a professional capacity and who, while being so employed may have occasion to appear in this court on behalf of the United States or one of its agencies.

(c) Procedure for Admission

(1) *Admissions.* With the exception of applicants for conditional admission, each applicant for admission to the bar of this court shall file with the clerk a Petition for Admission to Practice. The petition must include the certificates of two reputable members of the bar of this court attesting to the petitioner's good moral character. The certificates must be completed by members of this court's bar who either reside or maintain an office for the practice of law in the Western District of Washington. The petition form and instructions are available at www.wawd.uscourts.gov . The clerk will examine the petition and if in compliance with this rule, the petition for admission will be granted.

(2) *Conditional Admission.* In the case of an attorney for the United States or one of its agencies who is not a member of the Washington State Bar, he or she must file a Petition for Conditional Admission to Practice, which can be downloaded from the court's website, and state the department or agency by which he or she is employed and the

circumstances justifying the proposed admission to the bar of this court. The right of such an attorney to practice before this court is conditioned upon his or her continuing to be so employed. If a conditionally admitted attorney ceases to be employed as an attorney for the United States or one of its agencies, the conditional admission will be revoked and the attorney must file a petition for admission as set forth in LCR 83.1(c)(1) and pay the applicable fee.

(d) Permission to Participate in a Particular Case *Pro Hac Vice*; Responsibilities of Local Counsel

(1) *Admission Pro Hac Vice.* Any member in good standing of the bar of any court of the United States, or of the highest court of any state, or of any organized territory of the United States, and who neither resides nor maintains an office for the practice of law in the Western District of Washington normally will be permitted upon application and upon a showing of particular need to appear and participate in a particular case *pro hac vice*. The party must also be represented by local counsel, who shall fulfill the responsibilities

set forth below. Attorneys who are admitted to the bar of this court but reside outside the district need not associate with local counsel.

An application for leave to appear *pro hac vice* shall be promptly filed with the clerk and shall set forth: (1) the name and address of the applicant's law firm; (2) the basis upon which "particular need" is claimed; (3) a statement that the applicant understands that he or she is charged with knowing and complying with all applicable local rules; (4) a statement that the applicant has not been disbarred or formally censured by a court of record or by a state bar association; and (5) a statement that there are no pending disciplinary proceedings against the applicant. This application, which can be downloaded from the court's website, must be filed electronically by local counsel. Applications filed under this rule will be approved or disapproved by the clerk.

(2) *Responsibilities of Local Counsel.* To qualify to serve as local counsel, an attorney must have a physical office within the geographic boundaries

of the Western District of Washington and be admitted to practice before this court.

Local counsel must review, sign, and electronically file the applicant's *pro hac vice* application. By agreeing to serve as local counsel and by signing the *pro hac vice* application, local counsel attests that he or she is authorized and will be prepared to handle the matter in the event the applicant is unable to be present on any date scheduled by the court.

Unless waived by the court in addition to those responsibilities and any assigned by the court, local counsel must review and sign all motions and other filings, ensure that all filings comply with all local rules of this court, and remind *pro hac vice* counsel of the court's commitment to maintaining a high degree of professionalism and civility from the lawyers practicing before this court as set forth in the Introduction to the Civil Rules.

Local Civil Rule 83.3 (W.D. Wash.)

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.

(b) Continuing Eligibility and Maintenance of Good Standing

(1) Representation of Continuing Eligibility. By signing any document filed with the court or otherwise participating in any matter before the court, an attorney certifies that he or she is currently eligible to practice before this court. Should the status of an attorney change so that he or she no longer meets the requirements of LCR 83.1(b), he or she shall notify the Clerk of Court in writing no later than 10 days after the change in status.

(2) If the change in status is due to a disciplinary proceeding or criminal conviction, the provisions of LCR 83.3(c) shall apply. Otherwise, upon receipt of a notification of change of status, the Chief Judge, or other district judge who may be assigned to the matter, may issue an Order to Show Cause why the court should not suspend or revoke the attorney's admittance to practice before the court. The Order to Show Cause shall contain:

(A) a reference to the notification of the change of status;

(B) an order directing the attorney to show cause within 30 days why the attorney's admission to practice before this court should not be suspended or revoked;

(C) notification that failure by the attorney to file a timely response to the Order to Show Civil Rules Cause may be deemed to be acquiescence to suspend or revoke the attorney's admission to practice before the court.

(3) If the attorney files a response stating that he or she does not contest the suspension or revocation of his or her admission to practice before this court or the attorney does not respond to the Order to Show Cause within the time specified, then the Chief Judge or other judge assigned to the matter may issue an order suspending or revoking the attorney's admission to practice before this court.

(4) If the attorney files a written response to the Order to Show Cause within the time specified, stating that he or she contests the entry of an order suspending or revoking his or her admission to practice, then the Chief Judge, or other district judge who may be assigned, shall determine whether such an order shall be entered. The judge shall impose an order suspending or revoking the attorney's admission to practice unless the attorney demonstrates by clear and convincing evidence that one or more of the following elements have been shown from the record:

(A) the procedure in the other jurisdiction was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;

(B) there was such an infirmity of proof establishing the reasons underlying the change in status in the other jurisdiction as to give rise to a clear conviction that the court should not accept as final the other jurisdiction's conclusion(s) on that subject;

(C) the imposition of suspension or revocation would result in a grave injustice; or

(D) other substantial reasons exist so as to justify not suspending or revoking the attorney's admission to practice.

(c) Attorney Discipline

(1) Jurisdiction. *Any attorney admitted to practice before this court, admitted for a particular proceeding and/or who appears before this court is subject to the disciplinary jurisdiction of this court.*

(2) Powers of an Individual Judge to Deal with Contempt or Other Misconduct Not Affected. Nothing contained in this Rule shall be construed to limit or deny the court the powers necessary to maintain control over proceedings before it, including the contempt powers. Nothing contained in this Rule precludes the court from imposing sanctions for violations of the Local Rules, the Federal Rules of Civil and Criminal Procedure, or other applicable statutes and rules.

(3) Grounds for Discipline. *An attorney may be subject to disciplinary action for any of the following:*

(A) violations of the Standards of Professional Conduct stated in subsection (a) above;

(B) disbarment, suspension, sanctions or other attorney discipline imposed by any federal Civil Rules or state court, bar association or other governing authority of any state, territory, possession, or the District of Columbia, or any other governing authority or administrative body which regulates the practice of attorneys;

(C) conviction of any felony or a misdemeanor involving dishonesty or corruption, including, but not limited to, those matters listed in Rule 7.1(a)(2)(B)-(c) of the Washington Rules of Enforcement of Lawyer Conduct ("ELC");

(D) misrepresentation or concealment of a material fact made in an application for admission to the Bar of this court or in a pro hac vice or reinstatement application;

(E) violation of this court's Oath of Attorney.

(4) Types of Discipline. Discipline may consist of one or more of the following:

(A) disbarment from the practice of law before this court.

(B) suspension from the practice of law before this court for a specified period;

(C) interim suspension from the practice of law before this court, defined as the temporary suspension of a lawyer from the practice of law

pending imposition of final discipline. Examples of situations in which the court will consider interim suspension include:

(i) suspension upon conviction of a serious crime;

(ii) suspension when the lawyer's continuing conduct is likely to cause immediate and serious injury to a client or the public; or

(iii) inability to practice.

(D) reprimand, defined as a form of public discipline which declares the conduct of the lawyer improper, but does not limit the lawyer's right to practice before this court;

(E) admonition, defined as a form of non-public discipline which declares the conduct of the lawyer improper, but does not limit the lawyer's right to practice before this court;

(F) The following types of discipline may be imposed alone or in conjunction with other types of discipline. If imposed alone or in conjunction with a reprimand, these other types of discipline need not be made public by the court:

(i) probation, with or without conditions;

(ii) restitution;

(iii) fines and/or assessment of costs; and

(iv) referral to another appropriate disciplinary authority.

Any discipline imposed may be subject to specific conditions, which may include, but are not limited to, continuing legal education requirements, counseling and/or supervision of practice.

(5) Discipline Initiated by the Court.

(A) Authority of the Court. The court has the inherent authority to govern the conduct of attorneys practicing law before it.

(B) Initiation of a Grievance. A United States District Court Judge, Bankruptcy Judge, or Magistrate Judge may present to the Chief Judge *a written grievance alleging that an attorney has violated any of the standards of conduct specified in this Rule and recommending the imposition of discipline against that attorney.* The Chief Judge shall review the grievance and determine whether the grievance should be dismissed or pursued further. If the Chief Judge determines that the grievance should be pursued, he or she may refer it to another judge who shall review the record and evaluate the evidence. If the Chief Judge initiates the grievance, he or she must refer it to another judge. *If, at any time during the evaluation of a grievance, the Chief Judge or the assigned judge determines that the grievance would be more*

appropriately addressed by the Washington State Bar Association or other governing authority or administrative body which governs the practice of attorneys, the Chief Judge and the judge who referred the grievance may refer the matter to another authority or dismiss the grievance.

(C) Notice and Hearing.

(i) If, after reviewing the record, the assigned judge determines that the matter should not be pursued, he or she will inform the Chief Judge. *If the assigned judge concludes that a disciplinary proceeding should be conducted, he or she will issue an order to show cause to the respondent attorney explaining the alleged misconduct and inviting the attorney to show cause why he or she should not be disciplined*. The notice shall be sufficiently clear and specific to inform the respondent attorney of the alleged misconduct. The order to show must also state that the failure to file a timely response may be deemed acquiescence to the imposition of discipline. The order to show cause shall be emailed and mailed to the attorney at the last known addresses the attorney provided to the court.

(ii) The attorney will be afforded at least thirty days to present any objections and show cause why discipline should not be imposed, and the order to show cause must include the deadline.

(iii) The attorney may request a hearing and choose to be represented by counsel at his or her own expense. There is no right to court appointed counsel or to a jury at the disciplinary proceeding.

(iv) During the hearing, if one is requested, or in the attorney's response to the order to show cause, the respondent attorney may submit any evidence or statements to rebut the grievance. The court may impose disciplinary sanctions only after the respondent attorney is afforded the opportunity to present evidence and argument in rebuttal and/or mitigation.

(v) If the attorney fails to file a timely response to the order to show cause, the assigned judge will review the record and determine whether the imposition of discipline is warranted.

(D) Confidentiality. During the pendency of the disciplinary proceedings, the allegations and other records of the proceeding will remain confidential and will not be made a part of the public record.

(E) Recommendation to the Chief Judge. Within a reasonable time after the hearing, if one has been requested, or after receiving the attorney's response to the order to show cause, the assigned judge shall make findings of fact and conclusions of law and recommend the disciplinary action, if any, to be taken. The assigned judge will

transmit his or her findings of fact and conclusions of law, recommendation, and the record to the Chief Judge.
(F) Imposition of Discipline. The Chief Judge will review the documents transmitted by the assigned judge under subparagraph (E) and determine whether discipline should be imposed and if so, the appropriate discipline. If the Chief Judge initiated the grievance, then the matter shall be referred to the judge who is next in seniority for review and a determination. The appropriate disciplinary sanction to be imposed is within the court's discretion. However, in determining the proper disciplinary sanction, the court may refer to the American Bar Association Standards for Imposing Lawyer Sanctions. In addition, the court may, in its discretion, use as a guide any federal or state case law the court deems helpful.

(6) Reciprocal Discipline.

(A) *For purposes of this section, "discipline by any other jurisdiction" refers to discipline imposed by any federal or state court, bar association or other governing authority of any state, territory, possession, or the District of Columbia, or any other governing authority or administrative body which regulates the practice of attorneys.*
(B) For purposes of this section, "discipline by any other jurisdiction" refers only to suspension, disbarment or other disciplinary action which temporarily or permanently deprives an attorney of the right to practice law.
(C) Upon receipt of a copy of an order or other official notification that he or she has been subjected to discipline by any other jurisdiction, an attorney who is also subject to the disciplinary jurisdiction of this court shall provide the Clerk of Court with a copy of such disciplinary letter, notice or order.
(D) Any attorney subject to the disciplinary jurisdiction of this court who resigns from the Bar of any other jurisdiction while disciplinary proceedings are pending against the attorney in that jurisdiction shall promptly notify the Clerk of Court of such resignation.
(E) Upon receipt of reliable information that an attorney subject to the disciplinary jurisdiction of this court has been subjected to discipline by any other jurisdiction, or has resigned from the Bar of any other jurisdiction while an investigation or proceeding for discipline was pending, *the Chief Judge, or other district judge who may be assigned to the matter, may issue an Order to Show Cause why reciprocal discipline should not be imposed by this court.* The Order to Show Cause shall contain:

(i) a reference to the order or other official notification from the other jurisdiction;
(ii) an order directing the attorney to show cause within 30 days why reciprocal discipline should not be imposed by this court;
(iii) an order directing that if the attorney chooses to respond to the order and to contest the imposition of reciprocal discipline, he or she must produce a certified copy of the entire record from the other jurisdiction or persuade the court that less than the entire record will suffice;
(iv) notification that failure by the attorney to file a timely response to the Order to Show Cause may be deemed to be acquiescence to reciprocal discipline.

(F) If the attorney files a response stating that he or she does not contest the imposition of reciprocal discipline from this court, or if the attorney does not respond to the Order to Show Cause within the time specified, then the court may issue an order of reciprocal discipline. In fashioning the sanction to be imposed, the court may be guided by the discipline imposed by the other jurisdiction. The order imposing reciprocal discipline shall be issued by the Chief Judge or other district judge who may be assigned to the matter.

(G) If the attorney files a written response to the Order to Show Cause within the time specified, stating that he or she contests the entry of an order of reciprocal discipline, then the Chief Judge, or other district judge who may be assigned, shall determine whether an order of reciprocal discipline shall be entered. The judge shall impose an order of reciprocal discipline, unless the attorney demonstrates by clear and convincing evidence that one or more of the following elements appear from the record on which the original discipline is predicated;

(i) the procedure in the other jurisdiction was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;
(ii) there was such an infirmity of proof establishing the misconduct as to give rise to a clear conviction that the court should not accept as final the other jurisdiction's conclusion(s) on that subject;
(iii) the imposition of like discipline would result in a grave injustice; or
(iv) other substantial reasons exist so as to justify not accepting the other jurisdiction's conclusion(s).

(7) Discipline Based Upon a Criminal Conviction.

(A) Any attorney subject to the disciplinary jurisdiction of this court shall promptly notify the Clerk of Court of the attorney's conviction of any felony or a misdemeanor involving dishonesty or corruption, including, but not limited to, those matters listed in Rule 7.1(a)(2)(B)-(c) of the ELC (hereafter, "crime" or "criminal conviction").

(B) Upon receipt of reliable proof that an attorney has been convicted of any of those matters identified in paragraph A above, the court shall enter an order of interim suspension, suspending the attorney from engaging in the practice of law in this court pending further order. Upon good cause shown, the court may set aside such suspension where it appears to be in the interest of justice to do so.

(C) The court shall forthwith issue an order to the subject attorney directing the attorney to show cause why the conviction or the facts underlying the conviction do not affect the attorney's fitness to practice law and why the attorney should not be subject to discipline based upon the conviction. The Order to Show Cause shall contain:

(i) a copy of or a reference to the notification to the court that the attorney has been convicted of a crime;

(ii) an order directing the attorney to show cause within 30 days why the criminal conviction or underlying facts do not affect the attorney's fitness to practice law, and why discipline should not be imposed by this court;

(iii) notification that failure by the attorney to file a timely response to the Order to Show Cause may be deemed acquiescence to discipline based upon the criminal conviction.

(D) If the attorney files a response stating that he or she does not contest the imposition of discipline by this court based upon the criminal conviction, or if the attorney does not respond to the Order to Show Cause within the time specified, then the court may issue an order of discipline.

(E) If the attorney files a written response to the Order to Show Cause within the time specified, stating that the criminal conviction or its underlying facts do not affect the attorney's fitness to practice law or stating that he or she contests the entry of an order of discipline, then the court shall determine whether discipline should be imposed.

(F) The discipline to be imposed shall be within the court's discretion. The court may consider the underlying facts of the criminal conviction, the sentence imposed on the attorney, the gravity of the criminal offense, whether the crime involved dishonesty or corruption, the effect of the crime

on the attorney's ability and fitness to practice law, and any other element the court deems relevant to its determination.

(G) Upon the court's receipt of reliable proof demonstrating that the underlying criminal conviction has been reversed or vacated, any suspension order entered under subparagraph (7)(B) and any other discipline imposed solely as a result of the conviction may be vacated.

(8) Disciplinary Orders and Notices.

(A) Any order of discipline, except for non-public forms of discipline, as stated in subparagraph (4)(E)-(F) herein, shall be a public record.

(B) The court shall cause copies of all orders and notices of discipline, except for an admonition, to be given to the Clerk of Court, the Clerk of the United States District Court for the Eastern District of Washington, the Clerk of the United States Bankruptcy Court for the Western District of Washington, the Clerk of the United States Court of Appeals for the Ninth Circuit, the Washington State Bar Association, and the appropriate disciplinary bodies in the jurisdictions in which the court knows the disciplined attorney is admitted to practice.

(9) Reinstatement.

(A) No attorney who has been suspended or disbarred from practice before this court may resume practice before the court until reinstated by order of the court.

(B) Any attorney who has been suspended or disbarred from practice before this court may not apply for reinstatement until the expiration of such period of time as the court shall have specified in the order of suspension or disbarment.

(C) Any attorney who has been disbarred or suspended from practice pursuant to the provisions of subparagraph (6) (reciprocal discipline) may apply for reinstatement based upon a change of the attorney's status in the jurisdiction whose imposition of discipline upon the attorney was the basis for the imposition of reciprocal discipline by the court.

(D) Any attorney whose admission to practice before this court was suspended or revoked pursuant to LCR 83.3(b) may apply for reinstatement if the attorney becomes eligible again under LCR 83.1.

(E) Petitions for reinstatement shall be filed with the Clerk of Court, who will transmit the petition to the Chief Judge. The petition must include a copy of this court's prior order of suspension or disbarment, a copy of an

> order of reinstatement from another jurisdiction if the petitioner is seeking reinstatement based on such an order, and a concise statement of facts claimed to justify reinstatement. Petitioners for reinstatement after disbarment must also file a Petition for Admission to Practice before this court and pay the applicable fee. Upon receipt of a petition for reinstatement, the Chief Judge shall consider the matter or refer it to another designated judge. The petitioner shall have the burden of demonstrating that he or she is qualified and able to practice law before this court and that the circumstances that led to the suspension or disbarment have changed. After consideration, the court shall enter an appropriate order.
>
> (F) Expenses incurred in the investigation and proceedings for reinstatement may be assessed by the court against the petitioning attorney, regardless of the outcome of the proceedings.

(Emphasis added.)

Rule 5.5(d)(2) of the Washington Rules of Professional Conduct

RPC 5.5
UNAUTHORIZED PRACTICE OF LAW;
MULTIJURISDICTIONAL PRACTICE OF LAW

(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

(b) A lawyer who is not admitted to practice in this jurisdiction shall not:

(1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or

(2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

* * * * *

(d) A lawyer admitted in another United States jurisdiction or in a foreign jurisdiction, and not disbarred or suspended from practice in any jurisdiction or the equivalent thereof, may provide legal services in this jurisdiction that:

* * * * *

(2) are services that the lawyer is authorized by federal law or other law or rule to provide in this jurisdiction.

* * * * *

[Official] Comments

[15] [**Washington revision**] Paragraph (d)(1) identifies another circumstance in which a lawyer who is admitted to practice in another United States or a foreign jurisdiction, and is not disbarred or suspended from practice in any jurisdiction, or the equivalent thereof, may provide legal services on a temporary basis i.e., as "in-house counsel" for an employer. Paragraph (d)(2) identifies a circumstance in which such a lawyer may establish an office or other systematic and continuous presence in this jurisdiction for the practice of law. Except as provided in

paragraphs (d)(2), a lawyer who is admitted to practice law in another United States or foreign jurisdiction and who establishes an office or other systematic or continuous presence in this jurisdiction must become admitted to practice law generally in this jurisdiction or as house counsel under APR 8(f). The Washington version of this comment has been amended to take account of the requirement that in-house counsel wishing to engage in nontemporary practice in Washington must either be generally admitted to practice under APR 3 or obtain a limited license to practice law as in-house counsel under APR 8(f)

[Comment 15 adopted effective September 1, 2006; Amended January 1, 2014; August 20, 2013; September 1, 2016.]

* * * * *

[19] A lawyer who practices law in this jurisdiction pursuant to paragraphs (c) or (d) or otherwise is subject to the disciplinary authority of this jurisdiction. See Rule 8.5(a).

[Comment 19 adopted effective September 1, 2006.]

* * * * *

CERTIFICATE OF SERVICE

Appellant hereby certifies that on November 29, 2024, he personally mailed Appellant's Opening Brief (including Addendum, *infra*) and Appellant's Excerpts of Record (separately bound), to the following addressees, presumably having responsibilities, via United States Postal Service Priority Mail, postage prepaid:

1. Attorney General of the United States
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2. United States Attorney
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   700 Stewart Street, Suite 5220
   Seattle, WA 98101-1271

First-class mail was unavailable for a package with the weight of this one. Priority Mail is advertised to arrive in one to three days.

In addition, these two documents were electronically filed in this matter via the Court's ACMS system, automatically effecting service upon any counsel who may have entered an appearance. No counsel has entered an appearance to date.

s/ Thomas D. Sykes
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