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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BRADLEY MARSHALL,)	Case No. CV-11-5319 SC
)	
Plaintiff,)	ORDER GRANTING MOTION FOR
)	<u>JUDGMENT ON THE PLEADINGS</u>
v.)	
)	
WASHINGTON STATE BAR ASSOCIATION,)	
et al.,)	
)	
Defendants.)	
)	
)	

I. INTRODUCTION

This case constitutes Plaintiff Bradley Marshall's ("Marshall") fourth attempt to challenge his disbarment by the Washington Supreme Court. Marshall, an African-American, alleges that his disbarment was motivated by racial prejudice on the part of the fifty-four defendants in this action, including Washington State, the Washington State Bar Association ("WSBA"), WSBA's Board of Governors, WSBA's Disciplinary Board, several individually named frontline actors, and the Washington Supreme Court and ten of its current and former justices (collectively, "Defendants"). Marshall alleged similar due process and equal protection violations in his disciplinary proceedings before the WSBA and in his disbarment hearing before the Washington Supreme Court. Marshall also raised (or could have raised) nearly identical issues in two prior collateral attacks filed in federal district court and bankruptcy

1 court, an appeal filed with the Ninth Circuit, and two petitions
2 for writs of certiorari filed with the United States Supreme Court.
3 Marshall has been unsuccessful in each and every one of these
4 actions. In fact, the Ninth Circuit characterized his last
5 collateral attack as "vexatious and frivolous." This court is the
6 seventh to address the alleged impropriety of Marshall's disbarment
7 proceedings.

8 Now before the Court are motions for judgment on the pleadings
9 brought by the WSBA Defendants and the State Defendants.¹ ECF Nos.
10 52 ("WSBA Defs.' Mot."); 53 ("State Defs.' Mot."). The Motions are
11 fully briefed. ECF Nos. 57 ("Opp'n"), 59 ("State Defs.' Reply"),
12 60 ("WSBA Reply").² The Court held hearings on this matter on
13 December 5, 2011 and May 7, 2012. ECF Nos. 50, 77. The Court
14 concludes that Marshall's claims fail as a matter of law. Marshall
15 is effectively asking the Court to review the final judgment of the
16 Washington Supreme Court. Under the Rooker-Feldman doctrine, the
17 Court lacks jurisdiction to do so. Indeed, as a number of other
18 courts have found that Marshall's prior collateral attacks were
19 also barred by Rooker-Feldman, the Court could not find otherwise.
20 The doctrine of res judicata requires that the Court respect the

21 _____
22 ¹ The "State Defendants" consist of Washington State, the
23 Washington Supreme Court, and the ten Washington Supreme Court
24 justices named in this action. The remaining defendants are the
25 "WSBA Defendants." The WSBA Defendants have joined in the legal
26 argument section of State Defendant's Motion. ECF No. 54.

27 ² Marshall also filed a surreply, ECF No. 61 ("Surreply"), sparking
28 the parties to file an impressive number of additional motions.
The State and WSBA Defendants filed an objection and motion to
strike the surreply. ECF Nos. 63, 65. Marshall filed a response
and a motion to strike Defendants' motion to strike. ECF No. 64,
66. Defendants filed an opposition to Marshall's motion to strike.
ECF No. 67. It appears that all the parties have violated various
local rules in filing this additional briefing. Nevertheless, the
Court has reviewed and considered all arguments submitted.

1 final judgments previously entered against Marshall in his two
2 prior collateral attacks. Accordingly, the Court GRANTS
3 Defendants' motions for judgment on the pleadings and DISMISSES
4 WITH PREJUDICE Marshall's claims in their entirety. To prevent
5 further wasteful and vexatious re-litigation of this matter, the
6 Court issues an injunction, as described in Section V infra,
7 requiring Marshall to submit a motion for leave to file before
8 initiating any future suits against Defendants.

9
10 **II. BACKGROUND**

11 **A. Marshall's Disbarment and Subsequent Appeal**

12 Marshall was admitted to practice law in Washington in 1986.
13 ECF No. 44 ("TAC"). Prior to his disbarment in 2009, Marshall had
14 been disciplined on three separate occasions. See In re
15 Disciplinary Proceeding Against Marshall ("In re Marshall"), 167
16 Wash. 2d 51, 83 (Wash. 2009). In 1989, he was admonished for
17 "failing to respond to the WSBA's requests for information." Id.
18 In 1998, he was reprimanded "for conduct involving dishonesty,
19 fraud, deceit, or misrepresentation." Id. And in 2007, he was
20 given an eighteen-month suspension for deceitful conduct, failing
21 to remit client funds, and failing to abide by his clients'
22 decisions, among other things. Id.

23 Marshall's disbarment proceedings commenced in 2006, when
24 Marshall's former clients complained and the WSBA charged Marshall
25 with twelve counts of violating the Washington Rules of
26 Professional Conduct. Id. at 58. Among other things, the WSBA
27 alleged that Marshall: demanded additional fees to continue a
28 lawsuit that was paid for on a flat fee basis; filed a lawsuit and

1 a lien against a client who refused to pay him additional fees;
2 engaged in a deceptive attempt to compel settlement; and failed to
3 obtain consent for a conflict of client interest. Id. In his
4 defense, Marshall argued that the disbarment proceedings
5 constituted a violation of his due process and equal protection
6 rights. RJN Ex. A ¶ 167.³ Marshall also argued that WSBA had
7 engaged in "selective prosecution." Id.

8 Initially, Teena Killian ("Killian") was appointed as hearing
9 officer for Marshall's disciplinary proceedings. In re Marshall,
10 167 Wash. 2d at 65. At some point after May 25, 2006, Killian
11 applied for a position as disciplinary counsel with the WSBA. Id.
12 On or about June 22, 2006, Killian recused and her previous orders
13 were vacated. Id. The next two hearing officers were removed
14 after challenges to their appointments. Id. Finally, on August
15 10, 2006, the chief hearing officer, James M. Danielson
16 ("Danielson"), appointed himself as hearing officer in Marshall's
17 case. Id. Marshall did not challenge Danielson's appointment
18 during the proceedings. Id. Sometime around March 2007, following
19 a seven-day hearing, Danielson made 175 findings of fact and
20 recommended that Marshall be disbarred. Id. at 58. The WSBA
21 Disciplinary Board unanimously agreed. Id.

22 The case proceeded to the Washington Supreme Court, where
23 Marshall disputed Danielson's factual findings and argued that his
24 due process rights had been violated because Danielson was biased.
25 Id. at 66. Specifically, Marshall argued that: (1) Danielson knew
26 that Killian had applied for a job with the WSBA, (2) Danielson

27 _____
28 ³ The WSBA Defendants filed a Request for Judicial Notice ("RJN")
in support of their motion for judgment on the pleadings and their
reply papers, attaching a number of exhibits. ECF No. 51 ("RJN").

1 received an annual salary from the WSBA and participated in WSBA
2 committees, and (3) Danielson refused some of Marshall's requests
3 for discovery and testimony. Id. at 68.

4 On October 1, 2009, the Washington Supreme Court issued a
5 final unanimous ruling, rejecting each of Marshall's complaints
6 against Danielson. Id. at 69. The court found that: Marshall's
7 complaint concerning Killian was "unfounded" since Killian had
8 recused and her orders had been vacated; Danielson's WSBA salary
9 "d[id] not bias him any more than the salary paid to any judge who
10 hears cases brought by the State of Washington"; and Marshall
11 "fail[ed] to make a compelling argument that any of Mr. Danielson's
12 adverse rulings were the result of bias or prejudice." Id. The
13 court ultimately decided to disbar Marshall, finding that he
14 "committed a number of different violations, which individually
15 would have warranted disbarment." Id. at 58. On December 23,
16 2009, the court denied Marshall's request for a rehearing. In re
17 Marshall, 2009 Wash. LEXIS 1191 (Dec. 23, 2009).

18 Subsequently, Marshall appealed his disbarment, filing a
19 petition for writ of certiorari with the United States Supreme
20 Court. Petition for a Writ of Certiorari, Marshall v. WSBA, No.
21 09-1357 ("Cert Pet."), 2010 U.S. S. Ct. Briefs LEXIS 1765. Among
22 other things, Marshall argued that Washington's disciplinary system
23 was "structurally and operationally dysfunctional," that his
24 disbarment proceedings had been conducted in "bad faith," and that
25 his due process rights had been violated. See id. at **40-43.
26 Again, Marshall complained that Danielson knew about Killian's job
27 application with the WSBA, that Danielson was biased because of his
28 involvement with the WSBA, and that Danielson unfairly ruled

1 against Marshall's discovery requests. Id. at 40-41. The United
2 States Supreme Court denied Marshall's petition. Marshall v. WSBA,
3 130 S. Ct. 3480 (2010).

4 **B. Marshall's First Collateral Attack**

5 While his disciplinary proceedings were still pending in
6 Washington state court, Marshall filed two unsuccessful collateral
7 attacks in federal court. First, on May 15, 2008, Marshall filed
8 suit against the WSBA and the State of Washington in the federal
9 district court for the Western District of Washington. RJN Ex. D.
10 The case was assigned to Judge James L. Robart ("Judge Robart").
11 Marshall sued under 42 U.S.C. § 1983, alleging violations of
12 substantive due process, procedural due process, equal protection,
13 his First Amendment rights, his right to counsel, and the duty of
14 fair representation. Id. Once again, Marshall complained of
15 Danielson and Killian's involvement with his disciplinary
16 proceedings. See, e.g., id. at 11-13. Marshall also argued that
17 "the attorney disciplinary system in the State of Washington is
18 fraught with racial discrimination" and that the WSBA
19 "discriminates against ethnic minorities in investigations,
20 charging, prosecuting, and sanctioning attorneys" Id. at
21 38. Marshall suggested that he had been singled out for selective
22 enforcement because he is an African-American.⁴ Id. at 39.

23 Marshall relied on four ABA studies as evidence of structural
24

25 ⁴ As evidence of racial discrimination, Marshall pointed out that
26 the three other attorneys who worked with him on one of the matters
27 for which he was sanctioned had not been subject to disciplinary
28 proceedings. RJN Ex. D at 39. Two of these attorneys were
Caucasian, the other, Wheeler, was African-American. Id. Marshall
alleged that "the only known factor distinguishing Wheeler and
Marshall is that Wheeler had been a WSBA hearing officer and was
known by the WSBA staff." Id.

1 deficiencies in Washington's disciplinary system: (1) the 1970
2 "Clark Report," which found that few lawyers serving within the
3 disciplinary system were minorities; (2) the 1992 "McKay Report,"
4 which recommended that all disciplinary prosecutors be independent
5 of the WSBA and an appropriate number of adjudicators should be
6 minority members; (3) the "1993 ABA report," which recommended that
7 Washington's disciplinary system be made independent from the WSBA;
8 and (4) the "2006 ABA Report," which called for "hearing officers,
9 review committees, and the Disciplinary Board to be subject to
10 oversight by an independent administrative committee, while
11 disciplinary counsel would be subject to primary oversight by the
12 Washington Supreme Court." Id. at 5-7.

13 Judge Robart dismissed the case with prejudice, finding that
14 he lacked jurisdiction to intervene in a disciplinary action. RJN
15 Ex. E at 5. Judge Robart also stated that Marshall could challenge
16 the findings of the disciplinary board in Washington state courts
17 and, after a final decision by the Washington Supreme Court,
18 Marshall could seek review in the United States Supreme Court. Id.

19 **C. Marshall's Second Collateral Attack**

20 Marshall's second collateral attack was filed in federal
21 bankruptcy court. On May 1, 2009, one week after Marshall's oral
22 argument in his disbarment hearings before the Washington Supreme
23 Court, Marshall filed a voluntary bankruptcy petition. RJN Ex. H.
24 Then on October 27, 2009, almost one month after the Washington
25 Supreme Court issued its disbarment order, Marshall filed an
26 adversary complaint against Washington State and the WSBA in
27 bankruptcy court, again alleging due process, equal protection, and
28 fair representation violations in connection with his disbarment

1 proceedings. RJN Ex. L at 61-65. The case was assigned to Judge
2 Philip H. Brandt ("Judge Brandt"). Marshall amended his complaint
3 once as a matter of right, adding eight new defendants, all of whom
4 are named in the instant action. RJN Ex. M. As in prior
5 proceedings, Marshall alleged structural deficiencies and racial
6 bias in the Washington disciplinary system, citing the same four
7 ABA reports. See id. at 6-10. Once again, Marshall alleged that
8 his rights to a fair and impartial hearing were violated because
9 Danielson and Killian were biased. See id. at 17-32. Though the
10 issue was not raised in Marshall's amended complaint, later motion
11 practice and appeals revealed that Marshall's aim was to avail
12 himself of the automatic stay imposed under the Bankruptcy Code to
13 prevent the Washington Supreme Court from disbaring him.⁵ See RJN
14 Ex. R at 3-4.

15 Judge Brandt dismissed the action with prejudice, finding,
16 among other things, that Marshall's claims were barred by the
17 Rooker-Feldman doctrine and that the WSBA Defendants were immune
18 from suit. RJN Exs. P, Q at 5-7. Judge Brandt also denied
19 Marshall's motion to file a second amended complaint -- the
20 complaint would have added as defendants members of the WSBA Board
21 of Governors and the justices of the Washington Supreme Court. See
22 RJN Ex. Q at 20.

23 Marshall then appealed the bankruptcy court's decision to the
24 federal district court for the Western District of Washington and
25 then to the Ninth Circuit Court of Appeals. Both appeals were
26 denied. The federal district court judge, Judge John C. Coughenour

27 _____
28 ⁵ Marshall raised a similar issue in his first petition for a writ
of certiorari before the United States Supreme Court.

1 ("Judge Coughenour"), concluded that Marshall's due process claims
2 had been "conclusively adjudicated and decided by the Washington
3 Supreme Court, and [Marshall] is barred from re-litigating those
4 questions under the Rooker-Feldman doctrine, and from litigating
5 the claims he could have brought before that court by claim
6 preclusion." RJN Ex. R. at 7. Judge Coughenour also remarked:
7 "There could be no more iconic case where Rooker-Feldman must
8 apply." Id. The Ninth Circuit affirmed, concluding that it lacked
9 jurisdiction to review Marshall's disbarment under Rooker-Feldman
10 and that Marshall's "conjectured constitutional 'violations' . . .
11 are simply attempts to relitigate due process arguments
12 conclusively decided by the Supreme Court of Washington during his
13 disbarment proceedings." Marshall v. Wash. State Bar Ass'n, 448
14 Fed. Appx. 661, 662 (9th Cir. 2011). The Ninth Circuit also upheld
15 the lower courts' decision to deny Marshall leave to amend: "Adding
16 additional members of the Bar Association or the Justices of the
17 Supreme Court of Washington as defendants would be futile under
18 Rooker-Feldman and the principles of absolute immunity, in addition
19 to needlessly prolonging this vexatious and wasteful litigation."
20 Id. at 663.

21 Marshall once again filed a petition for a writ of certiorari
22 with the United States Supreme Court. That petition was denied on
23 April 16, 2012. ECF No. 76.

24 **D. Marshall's Third Collateral Attack -- The Instant Action**

25 On April 22, 2011, Marshall filed the instant action pro se,
26 his third collateral attack on the proceedings that culminated in
27 his disbarment. Marshall's Third Amended Complaint ("TAC"), the
28 operative complaint in the action, looks much like the complaints

1 he filed in his previous collateral attacks. Compare TAC with RJN
2 Exs. D, L, M. Once again, Marshall targets the structure of the
3 Washington disciplinary system (again citing the Clark and 1993 and
4 2006 ABA Reports), and the alleged bias of Danielson and Killian.
5 See TAC ¶¶ 17, 36, 55-76.

6 Marshall explicitly alleges that his disbarment and previous
7 suspensions were the result of racial discrimination. See, e.g.,
8 id. ¶¶ 21-31. As in his first collateral attack and his disbarment
9 proceedings, Marshall alleges that Defendants selectively enforced
10 Washington's ethics rules, refusing to take action against white
11 lawyers while selectively targeting African-American attorneys for
12 disciplinary action. See, e.g., id. ¶¶ 31, 37-41. Marshall also
13 suggests that he was singled out for prosecution because he brought
14 discrimination claims against Defendants. See id. ¶ 82.

15 For the first time, Marshall alleges various ex parte
16 communications among Danielson, the WSBA, and the justices of
17 Washington Supreme Court during various WSBA meetings. See, e.g.,
18 id. ¶¶ 71, 73, 78-81, 83, 85. For example, Marshall alleges:

19 [O]n March 28, 2007, on the very night before defendant
20 Danielson issued his decision in the Marshall case, a
21 meeting of the discipline committee task force #2 of the
22 [WSBA] Board of Governors was held in which Danielson was
23 a member. While defendant Danielson was not present, he
24 was immediately notified of the results of the meeting by
25 e-mail. Included in this meeting were two members of the
26 Board of Governors and one member of the Disciplinary
27 Counsel's Office. These undisclosed ex parte contacts
28 fraudulently corrupted the legal process by influencing
judges and members of the Disciplinary Board.

27 Id. at 71. Marshall does not specifically allege what was
28 discussed during this meeting or any of the other meetings

1 referenced in the TAC.

2 Unlike the previous actions, Marshall's current suit frames
3 Defendants' alleged wrongdoing as employment discrimination,
4 alleging violations of the Title VII of the Civil Rights Act of
5 1964, 42 U.S.C. § 1981, and Section 49.60.030 of the Revised Code
6 of Washington.⁶ See TAC ¶¶ 42, 53, 55. However, Marshall's goal
7 appears to be the same: he seeks damages and injunctive relief in
8 connection with his disciplinary proceedings.

9

10 **III. LEGAL STANDARD**

11 "After the pleadings are closed -- but early enough not to
12 delay trial -- a party may move for judgment on the pleadings."
13 Fed. R. Civ. P. 12(c). "Judgment on the pleadings is proper when
14 the moving party clearly establishes on the face of the pleadings
15 that no material issue of fact remains to be resolved and that it
16 is entitled to judgment as a matter of law." Hal Roach Studios,
17 Inc. v. Feiner & Co., Inc., 896 F.2d 1542, 1550 (9th Cir. 1989).
18 Moreover, a motion for judgment on the pleadings is subject to the
19 same standard of review as a motion to dismiss, and thus the
20 pleading must contain sufficient factual matter, accepted as true,
21 to state a claim to relief that is plausible on its face. Johnson
22 v. Rowley, 569 F.3d 40, 44 (2d Cir. 2009); see also Cafasso, U.S.
23 ex rel. v. General Dynamics C4 Systems, Inc., 637 F.3d 1047, 1055
24 n.4 (9th Cir. 2011) (citing Johnson with approval). A claim is
25 plausible on its face when the plaintiff pleads "factual content

26

27 ⁶ Marshall filed an intake questionnaire with the Equal Employment
28 Opportunity Commission ("EEOC") on September 30, 2009 and the EEOC
issued Marshall a Notice of Right to Sue on January 24, 2011. RJN
Exs. W, X, Z.

1 that allows the court to draw the reasonable inference that the
2 defendant is liable for the misconduct alleged." Ashcroft v.
3 Iqbal, 129 S. Ct. 1937, 1949 (2009) (citing Bell Atl. Corp. v.
4 Twombly, 550 U.S. 544, 556 (2007)).

5
6 **IV. DISCUSSION**

7 **A. The Court Takes Judicial Notice of Filings in Other Cases**
8 **Related to Marshall's Disbarment**

9 As a preliminary matter, the Court addresses the parties'
10 arguments regarding judicial notice. Defendants have requested
11 that the Court take judicial notice of pleadings, orders, opinions,
12 and other filings related to Marshall's disciplinary proceedings,
13 Marshall's previous attempts to litigate the propriety of his
14 disbarment, and Marshall's filings with the EEOC. The Ninth
15 Circuit has held that courts may properly take judicial notice of
16 proceedings in other courts, court filings, and other matters of
17 public record.⁷ See Reyn's Pasta Bella, LLC v. Visa USA, Inc., 442
18 F.3d 741, 746 n.6 (9th Cir. 2006); United States ex rel. Robinson
19 Rancheria Citizens Council v. Borneo, Inc., 971 F.2d 244, 248 (9th
20 Cir. 1992). Accordingly, Defendants' request for judicial notice
21 is GRANTED.

22 Marshall objects to Defendants' request for judicial notice on
23 the grounds that Defendants "have not shown or even proffered that
24 these proposed documents are relevant to this case." Surreply at
25 10. This argument lacks merit. The documents attached to the RJN
26 are clearly relevant to the issue of whether Marshall has had a

27
28 ⁷ The Ninth Circuit has also held that judicial notice of EEOC
filings is proper. Cunningham v. Litton Indus., 413 F.2d 887, 889
(9th Cir. 1969).

1 full and fair opportunity to litigate this matter in prior federal
2 and state proceedings. Marshall also argues that relying on facts
3 outside the pleadings would violate the "longstanding precedent
4 that directs the Court to construe the Complaint in the light most
5 favorable to the non-moving party." Id. at 11. This argument is
6 also unavailing. A court does not automatically transform a motion
7 for judgment on the pleadings into a motion for summary judgment by
8 relying on court pleadings, filings, and decisions to determine
9 whether a claim has already been litigated. See Reyn's Pasta
10 Bella, 442 F.3d at 746 n.6 (taking judicial notice of court filings
11 "[t]o determine what issues were actually litigated" in a prior
12 action).

13 **B. Marshall's Claims Are Barred By Rooker-Feldman**

14 Defendants argue that Marshall's current collateral attack,
15 like his two prior collateral attacks, is barred by the Rooker-
16 Feldman doctrine. WSBA Defs.' Mot. at 14-18; State Defs.' Mot at
17 18-19. The Court agrees.

18 Rooker-Feldman is derived from two Supreme Court cases: Rooker
19 v. Fidelity Trust Co., 263 U.S. 413 (1923), and District of
20 Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983). "It
21 stands for the relatively straightforward principle that federal
22 district courts do not have jurisdiction to hear de facto appeals
23 from state-court judgments." Carmona v. Carmona, 603 F.3d 1041,
24 1050 (9th Cir. 2010), cert. denied, 131 S. Ct. 1492 (2011). A suit
25 constitutes a forbidden de facto appeal when "a federal plaintiff
26 asserts as a legal wrong an allegedly erroneous decision by a state
27 court, and seeks relief from a state court judgment based on that
28 decision." Id. (internal quotations and citation omitted). Put

1 another way: "If claims raised in the federal court action are
2 'inextricably intertwined' with the state court's decision such
3 that the adjudication of the federal claims would undercut the
4 state ruling . . . , then the federal complaint must be dismissed
5 for lack of subject matter jurisdiction." Bianchi v. Rylaarsdam,
6 334 F.3d 895, 898 (9th Cir. 2003).

7 This case presents facts similar to others which have been
8 dismissed under Rooker-Feldman, including Feldman, one of the cases
9 from which the doctrine takes its name. In Feldman, the District
10 of Columbia's highest court denied the plaintiff's applications for
11 admission to the bar of the District of Columbia. 460 U.S. at 468.
12 Instead of appealing to the United States Supreme Court, the
13 plaintiff filed suit in federal district court, alleging violations
14 of the Fifth Amendment and Sherman Act and seeking an order
15 requiring the defendants to grant the plaintiff immediate admission
16 to the District of Columbia bar. Id. The district court found
17 that it lacked jurisdiction. Id. at 470. The United States
18 Supreme Court agreed, finding that district courts "do not have
19 jurisdiction . . . over challenges to state court decisions in
20 particular cases arising out of judicial proceedings, even if those
21 challenges allege that the state court's action was
22 unconstitutional." Id. at 486.

23 Likewise, the Ninth Circuit has applied Rooker-Feldman to bar
24 federal lawsuits which challenged state attorney disciplinary
25 proceedings. For example, in Mothershed v. Justices of the Supreme
26 Court, 410 F.3d 602, 605 (9th Cir. 2005), the plaintiff was
27 licensed to practice in Oklahoma but lived and practiced in
28 Arizona. The Supreme Court of Arizona censured the plaintiff for

1 the unauthorized practice of law and, subsequently, the Supreme
2 Court of Oklahoma disbarred him. Mothershed, 410 F.3d at 605. The
3 plaintiff filed suit against the disciplinary commissions and
4 supreme courts of Arizona and Oklahoma in federal district court,
5 asserting claims under 42 U.S.C. § 1983 for due process and other
6 constitutional violations, as well as various common law claims.
7 Id. The Ninth Circuit upheld the district court's conclusion that
8 it lacked subject matter jurisdiction to review the plaintiff's
9 disciplinary proceedings under Rooker-Feldman. Id. at 607.

10 The Court finds that Marshall's claims in the instant action
11 are precisely the type of collateral attack on state judicial
12 proceedings that are barred under Rooker-Feldman. Marshall seeks
13 to directly and indirectly challenge the final decision of the
14 Washington Supreme Court to disbar and suspend him, asserting those
15 decisions were erroneous, unlawful, and discriminatory. This Court
16 lacks jurisdiction to do so. Even if Marshall is not seeking to
17 directly overturn his disbarment order, his claims are still barred
18 since all of his alleged injuries and damages flow from that
19 order.⁸ See TAC ¶¶ 47 ("In disciplining [Marshall], the Defendants
20 treated [him] in a disparate and racially discriminatory fashion

21 ⁸ Marshall has taken inconsistent positions on the nature of the
22 injunctive relief he seeks. The TAC is silent on the matter. At
23 the Court's December 5, 2011 hearing, Marshall stated that he
24 wanted the Court to "enjoin the disbarment order." ECF No. 50
25 ("Dec. 5, 2011 Hearing Transcript") at 24. At the May 7, 2012
26 hearing, Marshall initially indicated that, under Rooker-Feldman,
27 the Court does not have the power to overturn the Washington
28 Supreme Court's disbarment order and that he was only seeking
systemic reforms to the WSBA disciplinary system. Later in the
hearing, he changed course and again indicated that he was seeking
to enjoin the disbarment order. The Court assumes that Marshall's
first and last statements on the issue are accurate. In any event,
Marshall lacks standing to ask the Court to reform the WSBA
disciplinary system as he is no longer a member of the bar. See
City of Los Angeles v. Lyons, 461 U.S. 95, 105 (1983)

1 [in violation of Title VII]"), 53 ("The actions of the
2 Defendants in suspending . . . and then disbaring [Marshall] . .
3 . constitute racial discrimination . . . in violation of 42 USC §
4 1981[.]"), 55 ("In suspending [Marshall] . . . and later disbaring
5 him . . . the Defendants practiced racial discrimination in
6 violation of RCW 49.60[.]"). Accordingly, his claims are
7 inextricably intertwined with the Washington Supreme Court's
8 decision and the Court cannot rule on them without undercutting
9 that ruling.⁹

10 Even if the Court had some doubt about its lack of
11 jurisdiction (and it does not), res judicata would require the
12 Court to apply Rooker-Feldman. As discussed in more detail in
13 Section IV.C infra, the instant action raises the same claims that
14 were brought or could have been brought in Marshall's two prior
15 collateral attacks in federal court. Both of these previous
16 collateral attacks were dismissed with prejudice on Rooker-Feldman
17 grounds. Accordingly, the Court could not possibly reach a
18 different conclusion here.

19 Marshall argues that Rooker-Feldman should not apply in the
20 instant action because he did not have an opportunity to present
21 his claims for racial discrimination in state court. Opp'n at 17-
22 18. This argument is predicated on the Eleventh Circuit's decision
23

24 ⁹ At the Court's May 7, 2012 hearing, Marshall indicated that he is
25 also bringing a claim for breach of contract, based on some kind of
26 implied contract between himself and the WSBA. Marshall explained
27 that the WSBA breached this contract when it disciplined and
28 disbarred him in a racially discriminatory manner. This claim
fails as it is not pled in the TAC. Even if it was, the claim
would be barred by Rooker-Feldman as it is inextricably intertwined
with the Washington Supreme Court's disbarment order. Accordingly,
granting Marshall leave to amend his complaint for a third time
would be futile.

1 in Wood v. Orange, 715 F.2d 1543 (11th Cir. 1983). That case is
2 inapposite. In Wood, a state court entered liens against the
3 plaintiffs, without providing them notice or an opportunity to
4 participate in the lien proceedings. Wood, 715 F.2d at 1545. The
5 plaintiffs subsequently filed suit in federal district court
6 alleging due process violations. Id. at 1545. On appeal, the
7 Eleventh Circuit found that the "crucial issue" in determining
8 whether Rooker-Feldman should apply was "whether plaintiffs had a
9 reasonable opportunity to raise their objections in the proceedings
10 where the judgment creating the liens was entered and affirmed."
11 Id. at 1547. The court held that the plaintiffs were denied such
12 an opportunity because they did not learn of the liens until their
13 creditors called, "well after the time for filing an appeal had
14 elapsed." Id. at 1548.

15 Unlike the plaintiffs in Wood, Marshall was well aware of the
16 disciplinary charges brought against him and fully participated in
17 the disciplinary proceedings. Further, Marshall admits that he
18 filed an EEOC complaint for racial discrimination in connection
19 with his May 2007 suspension in May 2008 and that he learned of the
20 alleged misconduct in his disbarment proceedings in August 2008.¹⁰
21 Opp'n at 17, n.1. Accordingly, Marshall had a reasonable
22 opportunity to present his allegations of racial discrimination and
23 bias to the Washington Supreme Court -- both during his disbarment
24 hearing and in his petition for rehearing -- as well as to the

25 _____
26 ¹⁰ The Court notes that Marshall could have advanced his current
27 theories of racial discrimination even before May 2008. Marshall's
28 charges of racial discrimination are predicated upon allegations
that the WSBA has a history of selectively enforcing ethics
violations. Evidence of this alleged selective enforcement was
presumably available to Marshall at the outset of his disciplinary
proceedings.

1 United States Supreme Court in his first petition for a writ of
2 certiorari. Indeed, the Washington Supreme Court addressed and
3 rejected Marshall's charges of bias in its disbarment order. In re
4 Marshall, 167 Wash. 2d at 69. Marshall suggests that the fact that
5 the Washington Supreme Court never discussed "racial
6 discrimination" in its order somehow precludes application of
7 Rooker-Feldman in the instant action. Opp'n at 18-19. Also, at
8 the May 7, 2012 hearing, Marshall argued that Rooker-Feldman should
9 not apply since he did not become aware of the full extent of
10 Defendants' alleged misconduct until recently. But that is not the
11 law. The pertinent inquiry is whether Marshall had a reasonable
12 opportunity to raise objections in the state court proceedings. He
13 did have such an opportunity and did in fact raise objections. As
14 such, his claim is barred under Rooker-Feldman.

15 Next, Marshall contends that there is a general exception to
16 Rooker-Feldman, whereby lower federal courts may review state court
17 judgments that are procured by fraud, deception, or mistake. Opp'n
18 at 18. Marshall contends that the WSBA engaged in "fraud,
19 deception, and malicious ethical violations" in order to procure
20 his disbarment by assigning biased hearing officers, i.e., Killian
21 and Danielson, to his disciplinary proceedings. Id. at 19. He
22 further contends that high-ranking bar officials and Washington
23 Supreme Court justices turned a blind eye to this alleged
24 misconduct. Id.

25 This argument fails for a number of reasons. First, the Ninth
26 Circuit has never recognized such an exception to Rooker-Feldman.
27 Second, the authority on which Marshall relies, In re Sun Valley
28 Foods Co., 801 F.2d 186 (6th Cir. 1986), is inapposite. In Sun

1 Valley, the Sixth Circuit said of Rooker-Feldman: "A federal court
2 'may entertain a collateral attack on a state court judgment which
3 is alleged to have been procured through fraud, deception,
4 accident, or mistake" 801 F.2d at 189 (quoting Resolute
5 Ins. Co. v. State of N. Carolina, 397 F.2d 586, 589 (4th Cir.
6 1968)). The language the Sixth Circuit quotes from Resolute
7 Insurance concerns an exception to res judicata, not Rooker-
8 Feldman. Accordingly, the Court declines to follow Sun Valley.
9 See West v. Evergreen Highlands Ass'n, 213 Fed. Appx. 670, 674
10 (10th Cir. 2007) (stating "there is good reason to balk" at the
11 Rooker-Feldman exception enunciated in Sun Valley). Third, even if
12 Sun Valley was controlling law, it would not save Marshall's
13 claims. The Sun Valley exception depends on the improper
14 procurement of a judgment, for example, where a party "deceived the
15 Court into a wrong decree." Sun Valley, 801 F.2d at 189 (internal
16 quotations omitted). Marshall does not allege that the Washington
17 Supreme Court was "deceived" into disbaring him. Rather, Marshall
18 claims that the Washington Supreme Court "justices were aware of
19 the wrongdoing but refused to stop it." Opp'n at 19. Further,
20 Marshall's argument is circular. "He claims in effect that the
21 Rooker-Feldman doctrine barring federal review of state decisions
22 does not apply if, by engaging in the very review the doctrine
23 prohibits, a federal court concludes that a state court erred.
24 Such a self-justifying exception would swallow the Rooker-Feldman
25 doctrine whole." West, 213 Fed. Appx. at 674. Accordingly, the
26 "procurement by fraud" exception, to the extent that it exists,
27 does not apply here.

28 At the Court's May 7, 2012 hearing, Marshall also argued that

1 the Washington Supreme Court's decision is not entitled to
2 deference since it was not reached through a judicial process.
3 Marshall complained that there is no "separation of powers" in the
4 Washington disciplinary system: The WSBA hires the hearing officers
5 and the prosecutors; the Washington Supreme Court justices who
6 review the WSBA hearing officers' findings have served as
7 presidents of the WSBA; and the hearing officers, prosecutors, and
8 Washington Supreme Court justices hold administrative meetings
9 that, according to Marshall, amount to ex parte contacts. Marshall
10 also faults the Washington Supreme Court for failing to make its
11 own factual findings during his disbarment proceedings.

12 The Court has a number of concerns with the merits of
13 Marshall's position. However, the Court need not reach the merits.
14 These arguments were raised and rejected in Marshall's prior
15 collateral attacks. In his first collateral attack, Marshall also
16 complained about the structure of the WSBA disciplinary system,
17 including the independence of its various branches. See, e.g., RJN
18 Ex. D ¶¶ 3.14-3.15. Judge Robart dismissed the action stating that
19 Marshall should "avail[] himself of the Washington state courts to
20 challenge the finding of the disciplinary board." RJN Ex. E at 5.
21 In his second collateral attack, Marshall made almost identical
22 allegations. RJN Ex. M ¶¶ 4.11-4.24. Again his claims were
23 dismissed, this time expressly on Rooker-Feldman grounds. RJN Ex.
24 P at 2. Accordingly, the Court cannot and will not revisit these
25 issues here.

26 Like Judge Robart, Judge Brandt, Judge Coughenour, and the
27 Ninth Circuit, the Court finds that it lacks jurisdiction over this
28 action under Rooker-Feldman.

1 **C. Marshall's Claims Are Also Barred By Res Judicata**

2 Even if Marshall's claims were not barred by Rooker-Feldman,
3 they would fail under res judicata. Marshall has already raised
4 substantially similar claims before the Washington Supreme Court,
5 Judge Robart, Judge Brandt, Judge Coughenour, the Ninth Circuit,
6 and the United States Supreme Court. In each and every case,
7 Marshall's claims have been rejected. Marshall's employment
8 discrimination claims are simply another attempt to relitigate his
9 previous claims. Marshall is not entitled to yet another bite at
10 the apple.

11 Res judicata, also known as claim preclusion, bars
12 relitigation of a claim that has been determined by a final
13 judgment. Williams v. Leone & Keeble, Inc., 171 Wash. 2d 726, 730
14 (Wash. 2011). Res judicata also bars plaintiffs from recasting
15 their claims under a different theory so that they may sue again.
16 Feminist Women's Health Ctr. v. Codispoti, 63 F.3d 863, 867 (9th
17 Cir. 1995). "All issues which might have been raised and
18 determined [in prior litigation] are precluded." Id. (internal
19 citations and quotations omitted). "Res judicata applies where the
20 subsequent action involves (1) the same subject matter, (2) the
21 same cause of action, (3) the same persons or parties, and (4) the
22 same quality of persons for or against whom the decision is made as
23 did a prior adjudication." Williams, 171 Wash. 2d at 730. The
24 Court finds that all elements of res judicata have been satisfied
25 here.

26 First, a final judgment was rendered in Marshall's disbarment
27 proceedings, In re Marshall, 167 Wash. 2d at 89, as well as in his
28 two prior collateral attacks, which were dismissed with prejudice,

1 RJN Exs. E at 6, P at 2. Marshall contends that his first
2 collateral attack was "dismissed without prejudice" and "[no]
3 judgment on the merits was ever entered." Opp'n at 22. Marshall
4 misstates the facts.

5 Second, the subject matter of this case is identical to the
6 subject matter involved in Marshall's state disciplinary
7 proceedings and his two collateral attacks: the propriety of
8 Marshall's prior state disciplinary proceedings and disbarment.
9 Marshall argues, without further explanation, that his claims are
10 not barred because they arose after October 1, 2009 -- the date of
11 the Washington Supreme Court's disbarment order. Opp'n at 22.
12 This argument lacks merit. All of the relevant conduct alleged in
13 the TAC occurred before Marshall's disbarment.¹¹ Further, in his
14 EEOC Intake Questionnaire, Marshall concedes that the last
15 allegedly discriminatory act occurred on October 1, 2009. See RJN
16 Ex. W.

17 Third, the causes of action in this case are identical to
18 those that were asserted or could have been asserted in Marshall's
19 prior actions. Marshall argues that his state and federal
20 employment discrimination claims are not barred because they were
21 never alleged, considered, or rejected in his previous actions.
22 Opp'n at 23. However, a party cannot avoid res judicata merely by
23 recasting its previous claims as a new legal theory, by raising new

24 ¹¹ Marshall does allege: "From 2002 to the present, [Marshall]
25 requested, but Defendants discriminated against Plaintiff by
26 denying . . . services and otherwise affected the terms,
27 conditions, or privileges of [Marshall]'s employment because of his
28 race." TAC at 2. However, it is unclear why WSBA would have a
duty to provide services, such as "bar materials, continuing legal
education courses, [or] law office management counseling" to a
disbarred attorney. See id.

1 claims that could have been brought in a prior action, or by
2 alleging conduct not alleged previously. See Costantini v. Trans
3 World Airlines, 681 F.2d 1199, 1201 (9th Cir. 1982). That is
4 precisely what Marshall is attempting to do here.

5 The Ninth Circuit applies several criteria to determine
6 whether successive lawsuits involve a single cause of action:

7 (1) whether rights or interests established in the prior
8 judgment would be destroyed or impaired by prosecution of
9 the second action; (2) whether substantially the same
10 evidence is presented in the two actions; (3) whether the
11 two suits involve infringement of the same right; and (4)
whether the two suits arise out of the same transactional
nucleus of facts.

12 Id. at 1201-1202 (internal quotations and citations omitted). The
13 fourth, "most important," criterion is satisfied here. See id. at
14 120. All of Marshall's actions arose out of the same transactional
15 nucleus of facts: the proceedings that culminated in his
16 disbarment. The other criteria are also satisfied. The Court
17 cannot award the injunctive and declaratory relief requested by
18 Marshall without impairing the Washington Supreme Court's
19 disbarment order or Judge Robart, Judge Brandt, Judge Coughenour,
20 and the Ninth Circuit's findings that Marshall's collateral attacks
21 are barred under Rooker-Feldman. Marshall intends to rely on the
22 same evidence in the instant action that he has cited in prior
23 complaints and petitions, including Killian's job application,
24 Danielson's WSBA salary, the Clark Report, the McKay Report, and
25 the 1993 and 2006 ABA reports. Additionally, as in his disbarment
26 proceedings and his first collateral attack, Marshall now alleges
27 that he was singled out for selective enforcement because he is
28 African American. Compare TAC ¶¶ 31, 37-41, with RJN Exs. A ¶ 167,

1 D at 39. Finally, Marshall asserts the same rights here that he
2 previously asserted in his state and federal court actions,
3 including his rights to due process and equal protection in his
4 disbarment proceedings. Compare TAC ¶¶ 17, 19, 38, 49 with RJN
5 Exs. A ¶ 167, D at 43-44, M at 45-50.

6 Fourth, the parties in this action are identical to, or in
7 privity with, the parties to Marshall's prior state disbarment
8 proceedings or the parties to Marshall's prior collateral attacks.
9 Although the Washington Supreme Court justices were named as
10 Defendants for the first time in the instant action, Marshall has
11 previously attempted to sue them in connection with his disbarment.
12 In his second collateral attack, Judge Brandt denied Marshall leave
13 to amend his complaint so as to add the justices as defendants.
14 See RJN Ex. P. Judge Coughenour affirmed finding that amendment
15 would have been "futile" under Rooker-Feldman. Id. The Ninth
16 Circuit also affirmed, concluding that adding more defendants would
17 only "prolong[] this vexatious and wasteful litigation."¹²
18 Marshall, 448 Fed. Appx. at 663.

19 The final element of res judicata "simply requires a
20 determination of which parties in the second suit are bound by the
21 judgment in the first suit." Ensley v. Pitcher, 152 Wash. App.
22 891, 905 (Wash. Ct. App. 2009). Here, Marshall's prior collateral
23 attacks named the WSBA and the State of Washington, as does this
24 one. All of the WSBA Defendants named in this case are in privity
25 with the WSBA. The Washington Supreme Court is also bound by its
26

27 ¹² Even if the Washington Supreme Court was not involved in the
28 prior actions, its justices are entitled to judicial immunity. See
Section IV.D infra.

1 order disbaring Marshall. Further, Marshall defended the prior
2 state disbarment proceeding and filed the prior collateral attacks
3 challenging the disbarment proceedings. Accordingly, all elements
4 of res judicata are met.¹³

5 **D. Marshall's Claims Could Be Dismissed on a Number of**
6 **Other Grounds**

7 As Marshall's claims are barred by Rooker-Feldman and res
8 judicata, the Court need not review all of the other grounds for
9 dismissal claimed by Defendants. However, having considered the
10 parties' other arguments, the Court notes that, even if it did have
11 jurisdiction, Marshall's claims would likely fail for a number of
12 other reasons. As the Court has already determined that it lacks
13 jurisdiction, it does not review these issues in significant length
14 or detail.

15 Judicial Immunity: Marshall's claims against the WSBA and
16 State Defendants are also barred under the doctrine of judicial
17 immunity. Judicial and quasi-judicial immunity are not only
18 available to judges but also to others who have a sufficiently
19 close nexus to the adjudicative process, including prosecutors,
20 administrative law judges, and agency officials performing
21 functions analogous to those of a prosecutor. See Hirsch v.
22 Justices of the Supreme Court, 67 F.3d 708, 715 (9th Cir. 1995).
23 Several cases have applied the doctrine in circumstances such as
24 this, where a plaintiff attorney sues in connection with
25 disciplinary proceedings. See id.; Clark v. Washington, 366 F.2d

26 _____
27 ¹³ Defendants also argue that Marshall's claims are barred by
28 collateral estoppel. The merits of this argument are less clear.
As Marshall's claims are clearly barred by Rooker-Feldman and res
judicata, the Court does not address the issue.

1 678, 681 (9th Cir. 1966). Marshall does not adequately address or
2 distinguish any of these cases.

3 Title VII: Marshall's Title VII claims fail for a variety of
4 reasons. As an initial matter, Marshall's claim is time barred
5 under 42 U.S.C. § 20000e-5(e)(1) since the last alleged unlawful
6 employment practice alleged by Marshall occurred on October 1,
7 2009, the date of his disbarment, over a year before Marshall filed
8 his complaint in the instant action. Further, Marshall cannot
9 bring a Title VII claim for employment discrimination against
10 Defendants because he was never employed by them. See Camacho v.
11 Puerto Rico Ports Auth., 369 F.3d 570, 577-78 (1st Cir. 2004).
12 Relying on the D.C. Circuit's decision in Sibley Memorial Hospital
13 v. Wilson, 488 F.2d 1338 (D.C. Cir. 1973), Marshall contends that
14 Title VII is applicable because his disbarment interfered with his
15 employment prospects. However, this interference theory only
16 applies where the defendant has a "highly visible nexus" with the
17 creation and continuance of direct employment relationships,
18 Sibley, 488 F.2d at 1342, or where the defendant exercises a degree
19 of control over the third-party employer. See, e.g., Ass'n of
20 Mexican-Am. Educators v. State of California, 231 F.3d 572, 581
21 (9th Cir. 2000) (applying interference theory where "state's
22 involvement is not limited to general legislative oversight but,
23 rather, affects the day-to-day operations of [the third-party
24 employer]"). No such relationship exists here. Further, a number
25 of courts have rejected the notion that agencies which regulate
26 professional licenses may be held liable under such a theory. See,
27 e.g., Fields v. Hallsville Indep. Sch. Dist., 906 F.2d 1017, 1021
28 (5th Cir. 1991).

1 **E. Marshall Is a Vexatious Litigant**

2 The WSBA Defendants have asked the Court to declare Marshall a
3 vexatious litigant and to enter a pre-filing order concerning any
4 future claims filed in connection with Marshall's disbarment. WSBA
5 Defs.' Mot. at 43. Before a court may file such pre-filing
6 restrictions, the court must apply the following four guidelines:
7 (1) the litigant must be "provided with adequate notice and a
8 chance to be heard before the order [is] filed"; (2) the court must
9 create a record of review which includes a "listing of all the
10 cases and motions that led the district court to conclude that a
11 vexatious litigant order was needed"; (3) the court must make
12 "substantive findings as to the frivolous or harassing nature of
13 the litigant's actions"; and (4) "the[] order[] must be narrowly
14 tailored to closely fit the specific vice encountered." De Long v.
15 Hennessey, 912 F.2d 1144, 1147-48 (9th Cir. 1990).

16 The Court finds that there is adequate justification for
17 finding that Marshall is a vexatious litigant and for entering a
18 pre-filing order against him. First, Marshall was provided with
19 adequate notice. The WSBA Defendants requested a pre-filing order
20 in their moving papers and Marshall had an opportunity to address
21 that request in his opposition papers, in his surreply, and at the
22 Court's May 7, 2012 hearing. Marshall declined to do so. Second,
23 the Court has listed all of Marshall's previous cases and filings
24 in Section II supra. Third, the record in this case amply supports
25 a finding that Marshall is a vexatious litigant and that a pre-
26 filing order is necessary to prevent further abuse of the judicial
27 process. Marshall's allegations in the instant action are similar
28 or identical to those he asserted or could have asserted before the

1 Washington Supreme Court, the United States Supreme Court (in two
2 separate cert petitions), Judge Robart, Judge Brandt, Judge
3 Coughenour, and the Ninth Circuit. Each of these six courts
4 rejected Marshall's allegations. Even before Marshall filed the
5 instant action, the Ninth Circuit went so far as to deem his second
6 collateral attack "vexatious and wasteful." Marshall, 448 Fed.
7 Appx. at 663. Thus, Marshall was on notice that his claims in the
8 instant action were barred by Rooker-Feldman and res judicata.
9 Nevertheless, he proceeded to bring yet another suit against fifty-
10 four defendants, alleging the same claims that have been raised and
11 rejected before.¹⁴ Fourth, the Court finds that the restrictions
12 set forth in the conclusion below are narrowly tailored to address
13 and prevent Marshall's vexatious and wasteful re-litigation and
14 collateral attack of his disbarment while not infringing upon
15 Marshall's right of access to the courts.

16

17 **V. CONCLUSION**

18 For the reasons set forth above, the Court GRANTS Defendants'
19 motions for judgment on the pleadings. Bradley Marshall's claims
20 in this matter are hereby DISMISSED WITH PREJUDICE in their
21 entirety. The Court also enters the following pre-filing order:
22 Should Marshall wish to file any future claims in this District
23 against any Defendant in this action, whether individually or in

24

25 ¹⁴ At the December 5, 2011 hearing, when there were only fifty-one
26 defendants in the case, Marshall represented to the Court that he
27 would endeavor to voluntarily dismiss "people that shouldn't be in
28 the case." Dec. 5, 2011 Hearing Transcript at 25. Marshall has
yet to dismiss a single defendant. Instead, he amended his
complaint again to name additional parties. At the May 7, 2012
hearing, Marshall conceded that a number of these fifty-four
defendants should be dismissed as they had a tenuous connection to
the case.

1 any combination thereof, each filing shall be preceded by a Motion
2 for Leave. The Motion for Leave shall contain a certification
3 under Federal Rule of Civil Procedure 11 providing the factual and
4 legal basis for the claim and the specific reason(s) why it falls
5 outside the scope of this Order, and shall be accompanied by a copy
6 of the pleading or document Marshall seeks leave to file. Such
7 future claims shall not be deemed "filed," for purposes of tolling
8 the statute of limitations or otherwise, and shall not be served
9 until and unless the Court grants the Motion for Leave. This pre-
10 filing order shall apply only to future claims that are directly or
11 indirectly related to Marshall's disbarment or the disciplinary
12 proceedings described above.

13

14 IT IS SO ORDERED.

15

16 Dated: May 23, 2012

17


UNITED STATES DISTRICT JUDGE

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