Appeal No. 12-17235

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NATALIA A. SIDIAKINA,

Plaintiff-Appellant,

v.

JAMES G. BERTOLI, JUDGE, et al.,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
HONORABLE JEFFREY S. WHITE
CASE NO. 3:10-CV-03157-JSW

APPELLEES' ANSWERING BRIEF

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GLOSSARY OF DEFINED TERMS

ABBREVIATION	DESCRIPTION
Access and Fairness Advisory Committee	A committee appointed by the Chief Justice to make recommendations to the Judicial Council for improving access to the judicial system and fairness in the courts.
ADA	Title II of the Americans with Disabilities Act, 42 U. S. C. §§ 12131-12165.
AOB	Appellant's Opening Brief, cited by page number.
ARJN	Appellees' Request for Judicial Notice, filed concurrently with this brief.
Court of Appeal	The California Court of Appeal, for the First Appellate District, as well as Presiding Justice Ignazio J. Ruvolo.
Court Personnel Pamphlet	A pamphlet entitled "Questions and Answers About Rule 1.100 for Court Personnel" issued by the Access and Fairness Advisory Committee in 2007.
Court Users Pamphlet	A pamphlet entitled "Questions and Answers About Rule 1.100 for Court Users" issued by the Access and Fairness Advisory Committee in 2007.
ECF No.	A district court filing, listed by docket number.
ER	Appellant's Excerpt of Record.
Judicial Council	Entity created by the California Constitution to promulgate the Rules of Court and to set the direction and provide leadership for California's court system.
Judicial Defendants	The Superior Court, the Court of Appeal and the Judicial Council.
Navid	Siamak Navid, the former husband of Dr. Sidiakina.
RJN	Appellant's Request to take Judicial Notice, Appellate ECF No. 17.

GLOSSARY OF DEFINED TERMS
(continued)

Rule 1.100	California Rule of Court prescribing the procedure by which disabled litigants and other users of court services may seek accommodations for their disabilities.
Dr. Sidiakina	Appellee Dr. Natalia A. Sidiakina.
Superior Court	The Superior Court of California, County of Sonoma, as well as then-Presiding Judge Robert S. Boyd and Judge James G. Bertoli.

INTRODUCTION

Five years into a hotly-contested dissolution proceeding with her former husband in California state court, Appellant Dr. Natalia A. Sidiakina filed suit in federal court, seeking review of various decisions entered in her state-court divorce case. Dr. Sidiakina, who alleges that she is indigent and cognitively disabled, claimed that the California state courts violated Title II of the Americans with Disabilities Act, 42 U.S.C. §§ 12131-12165 ("ADA"), by declining to appoint her free legal counsel, and that the federal court therefore should reverse all rulings made while she was unrepresented.

The district court dismissed Dr. Sidiakina's complaint under the *Rooker-Feldman* doctrine, which bars federal courts from sitting in review of state court rulings and judgments. On appeal, Dr. Sidiakina concedes that her complaint included a forbidden de facto appeal of numerous state court decisions in her dissolution proceeding. She argues, however, that her complaint should be construed to also include a facial challenge to a supposed "per se policy" that prohibits appointment of counsel as an accommodation for disability as established by California Rule of Court 1.100 and a pamphlet issued by the Judicial Council's Access and Fairness Advisory Committee.

Even if Dr. Sidiakina's complaint could be construed as raising a generalized challenge to a state court "per se policy," the district court's dismissal

should be affirmed for three reasons. *First*, the *Rooker-Feldman* doctrine bars Dr. Sidiakina's "generalized" challenge because it is inextricably intertwined with her prohibited de facto appeal. *Second*, Dr. Sidiakina lacks standing to maintain a purely prospective challenge to the California state courts' supposed "per se policy" because she fails to allege a real and immediate threat of repeated injury in the future. *Third*, Dr. Sidiakina's "generalized" challenge fails to state a claim under the ADA, in no small part because the pamphlet upon which Dr. Sidiakina so heavily relies confirms that the Access and Fairness Advisory Committee does not create *policy* at all:

> This pamphlet is the creation and responsibility of the Access and Fairness Advisory Committee of the Judicial Council of California. Points of view expressed herein do not necessarily represent the official positions or policies of the Judicial Council of California or the Administrative Office of the Courts.

The district court's judgment dismissing Dr. Sidiakina's third amended complaint accordingly should be affirmed in its entirety.

STATEMENT OF FACTS

A. Rules Of Court Issued By The Judicial Council Have The Force Of Law; Informational Pamphlets Issued By Advisory Committees Do Not Have The Force Of Law And Do Not Reflect Formal Policies Of The Judicial Council.

Established by Article VI, section 6 of the California Constitution, the Judicial Council of California ("Judicial Council") is "a state entity [that] sets the direction for improving the quality of justice and advancing the consistent, independent, impartial, and accessible administration of justice" in California. Cal. R. Ct. 10.1(a)(1); *see also* Cal. Const., art. VI, § 6; Cal. Gov't Code § 68070(b). In the main, this appeal involves the proper interpretation of California Rule of Court 1.100, which the Judicial Council promulgated pursuant to constitutional mandate. This appeal also involves the amount of deference, if any, courts should accord to pamphlets issued by the Judicial Council's Access and Fairness Advisory Committee, which lacks such a constitutional mandate. We provide a brief explanation of Rule 1.100 and the committee pamphlets before turning to the facts underlying Dr. Sidiakina's claims.

1. California Rule Of Court 1.100 Enunciates The Policy Of California Courts To Accommodate Individuals With Disabilities As Necessary To Provide Full And Equal Access To The Judicial System.

Among other responsibilities, Article VI, section 6(d) of the California Constitution empowers the Judicial Council to adopt statewide "rules for court administration, practice and procedure," so long as those rules are "not . . .

inconsistent with statute." Cal. Const., art. VI, § 6(d); *see also People v. Wright*, 30 Cal.3d 705, 712 (1982) ("The constitutional provision empowers the council without further legislative authorization to 'adopt rules for court administration, practice and procedure, not inconsistent with statute'"); Cal. Rs. Ct. 1.3 (Rules of Court "are adopted under the authority of Article VI section 6, of the California Constitution); 10.1(b)(4) (Judicial Council's constitutional duties include "Adopting rules for court administration and rules of practice and procedure that are not inconsistent with statute"). These rules, not surprisingly called the California Rules of Court, "'have the force of statute to the extent that they are not inconsistent with legislative enactments and constitutional provisions.'" *Silverbrand v. County of Los Angeles*, 46 Cal.4th 106, 125 (2009) (quoting *Sara M. v. Superior Court*, 36 Cal.4th 998, 1011 (2005)); *see also Murphy v. Krumm*, 21 Cal.2d 846, 849 (1943) (the rules of court have "the force of positive law" and must be followed).

a. Rule 1.100 Provides A Non-Exclusive List Of Possible Accommodations California Courts Might Provide To Individuals With Disabilities.

California Rule of Court 1.100 establishes the policy of California's courts to ensure that "persons with disabilities"[1] have "equal and full access to the judicial

[1] The term "persons with disabilities" means "individuals covered by California Civil Code section 51 *et seq.*; the Americans With Disabilities Act of 1990 (42 U.S.C. § 12101 *et seq.*); or other applicable state and federal laws. This

system." Cal. R. Ct. 1.100(b); *see Biscaro v. Stern*, 181 Cal.App.4th 702, 707 (2010) ("The purpose of rule 1.100 is to allow meaningful involvement by all participants in a legal proceeding to the fullest extent practicable."). It obligates each superior and appellate court in California, upon request, to provide "accommodations" designed to make "court services, programs, or activities . . . readily accessible to and usable by persons with disabilities." Cal. R. Ct. 1.100(a)(3). These accommodations may include, among other things:

> making reasonable modifications in policies, practices, and procedures; furnishing, at no charge, to persons with disabilities, auxiliary aids and services, equipment, devices, materials in alternative formats, readers, or certified interpreters for persons with hearing impairments; relocating services or programs to accessible facilities; or providing services at alternative sites.

Id.

Disabled individuals may apply for Rule 1.100 accommodations on an ex parte basis by using Judicial Council Form MC-410, or another written format, or orally. Cal. Rs. Ct. 1.100(c)(1) & (c)(3). The applications must include "a description of the accommodation being sought," as well as identify "the impairment that necessitates the accommodation." Cal. R. Ct. 1.100(c)(2). A court, in its discretion, may require the applicant to provide additional information about the impairment. *Id.*

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definition includes persons who have a physical or mental impairment that limits one or more of the major life activities, have a record of such an impairment, or are regarded as having such an impairment." Cal. R. Ct. 1.100(a)(1).

Courts must "rule on every properly presented request for accommodation." *Biscaro*, 181 Cal.App.4th at 707. Their rulings are to be informed by the provisions of California's Unruh Civil Rights Act, Cal. Civ. Code §§ 51 *et seq.*, the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 *et seq.*, "and other applicable state and federal laws." Cal. R. Ct. 1.100(e)(1). If an application is denied in whole or in part, the court's ruling must be in writing, Cal. R. Ct. 1.100(e)(2), and must provide the following additional information:

> (A) Whether the request for accommodation is granted or denied, in whole or in part, or an alternative accommodation is granted;
>
> (B) If the request for accommodation is denied, in whole or in part, the reason therefor;
>
> (C) The nature of any accommodation to be provided;
>
> (D) The duration of any accommodation to be provided; and
>
> (E) If the response is in writing, the date the response was delivered in person or sent to the applicant.

Cal. R. Ct. 1.100(e)(2).

Decisions by judicial officers granting or denying Rule 1.100 accommodation requests can be reviewed by California's appellate courts pursuant to a special writ of mandate. *See* Cal. Rs. Ct. 1.100(g)(2), 8.485–8.493, 8.930–8.936.

b. Applications For Accommodation Pursuant To Rule 1.100 Are Evaluated On A Case-By-Case Basis, And Can Only Be Denied In Limited Circumstances.

Despite Dr. Sidiakina's protestations to the contrary, Rule 1.100 does not create any type of "per se policy" mandating when an accommodation must be denied. To the contrary, "[t]he purpose of rule 1.100 is to allow meaningful involvement by all participants in a legal proceeding *to the fullest extent practicable*." *Biscaro*, 181 Cal.App.4th at 707 (emphasis added). By its terms, Rule 1.100 is not to be construed "to impose limitations or to invalidate the remedies, rights and procedures accorded to persons with disabilities under state or federal law." Cal. R. Ct. 1.100(b). Hence, an application for accommodation *must be granted* unless the court makes at least one of the following three findings:

> (1) The applicant has failed to satisfy the requirements of this rule;
>
> (2) The requested accommodation would create an undue financial or administrative burden on the court; or
>
> (3) The requested accommodation would fundamentally alter the nature of the service, program, or activity.

Cal. R. Ct. 1.100(f)(1)-(3); *see In re Marriage of James & Christine C.*, 158 Cal.App.4th 1261, 1274 & 1277 (2008) (courts have "no choice but to grant [a] request for an accommodation" unless they determine that the request should be denied for one of the three reasons listed in Rule 1.100(f)).

It is settled under the ADA, as well as the federal Rehabilitation Act, that "the determination of what constitutes reasonable modification is highly fact-

specific, requiring case-by-case inquiry." *Crowder v. Kitagawa*, 81 F.3d 1480, 1486 (9th Cir. 1996) (ADA); *Chalk v. United States Dist. Ct.*, 840 F.2d 701, 705 (9th Cir.1988) (Rehabilitation Act); *see generally PGA Tour, Inc. v. Martin*, 532 U.S. 661, 688 (2001) (under Title III of the ADA, "an individualized inquiry must be made to determine whether a specific modification for a particular person's disability would be reasonable under the circumstances as well as necessary for that person, and yet at the same time not work a fundamental alteration").

California courts apply the same case-by-case inquiry in ruling on Rule 1.100 accommodation applications. For example, in *In re Marriage of James & Christine C.*, 158 Cal.App.4th 1261, the wife in a marital dissolution case asked for a trial continuance after being hospitalized as a result of her mental illnesses. The trial court denied her request, reasoning in part that a mid-trial continuance would fundamentally alter the court's programs and services. *Id.* at 1270. The Court of Appeal reversed, holding that the requested continuance would *not* have fundamentally altered the court's services, and that "none of the grounds listed in California Rules of Court, rule 1.100(f) for denying an ADA request for accommodation" had been established. *Id.* at 1277. The Court of Appeal then opined that, on remand, appointment of counsel might be an appropriate accommodation, depending on the circumstances:

> The question remains of what to do to prevent this scenario from recurring, to ensure the parties' justified needs are met, and to resolve the matter justly and expeditiously. *One possible solution is to make sure Christine is represented by counsel.* The enormous disparity in income and resources between Christine and James is obvious from the record. A pendente lite needs-based attorney fees award to Christine under Family Code section 2030 might be justified under the circumstances. Also, depending on Christine's condition, it might be necessary to address again the issue of appointing a guardian ad litem. *These options are not an exclusive list of possible future actions*.

Id. at 1277 (emphasis added).

It is at least difficult to understand how the Court of Appeal could recommend that "a possible solution is to make sure Christine is represented by counsel," if California's judiciary has a "per se policy" against appointment of counsel. Unpublished Court of Appeal decisions applying Rule 1.100 to requests for appointment of counsel are in accord with this case-by-case approach as well.[2]

[2] *E.g.*, *Langsam v. Cal. Dep't of Trans.*, 2012 Cal.App.Unpub. LEXIS 3930, at *13-14 & 14 n.4 (May 24, 2012) (denying Rule 1.100 request for appointment of counsel based upon a lack of substantial evidence of disability, but leaving open possibility that appointment of counsel might not work a fundamental alteration of court services); *Stanley v. Dorn, Platz & Co.*, 2009 Cal.App.Unpub. LEXIS 44, at *13 (Jan. 6, 2009) ("we take no position on whether appointed counsel could ever be a reasonable accommodation in an appropriate case where an individual's disability effectively means the pro se appearance deprives the litigant of meaningful access to the court. We simply find that Stanley did not present sufficient evidence to warrant appointed counsel in this particular case").

2. The Access And Fairness Advisory Committee's Question And Answer Pamphlets Do Not Establish Policy.

a. Advisory Committees *Advise* The Judicial Council; They Do Not Have Independent Authority To Establish Policy.

The Government Code and Rules of Court empower the Chief Justice of California, as Chair of the Judicial Council, to appoint "Advisory Committees" that are composed of "official court reporters, judges, retired judges, attorneys and experts in specialized fields, or any combination thereof." Cal. Gov't Code § 68501. Using "the individual and collective experience, opinions, and wisdom of their members," these Committees "provide policy recommendations and advice to the council on topics the Chief Justice or the council specifies." Cal. R. Ct. 10.30(b)(1).

The Government Code and Rules of Court make clear that Advisory Committees are established to *advise* the Judicial Council, and that they do *not* have independent authority to establish policy on behalf of the Judicial Branch. Hence, Government Code section 68502 provides:

> The committees may assemble information and make recommendations to the Judicial Council, *but shall not exercise any of the powers vested in the council*.

Cal. Gov't Code § 68502 (emphasis added); *see also* Cal. Rs. Ct. 10.30(b)(3) & (4) (Advisory Committees "[g]enerally do not implement policy" in the absence of a specific assignment by the Judicial Council, and "do not speak or act for the

council except when formally given such authority for specific and time-limited purposes").

b. The Access And Fairness Advisory Committee's Question And Answer Pamphlets Are Not Official Statements Of Policy On Behalf Of The Judicial Council.

First appointed in 1994, the "Access and Fairness Advisory Committee" makes recommendations "for improving access to the judicial system and fairness in the courts," and makes proposals "to the Center for Judicial Education and Research . . . for the education and training of judicial officers and court staff." Cal. Rs. Ct. 10.55(a) & (b). The Access and Fairness Committee was responsible for drafting the procedures by which courts accommodate individuals with disabilities who seek to use court services in California, as required by the ADA. These procedures were first adopted by the Judicial Council as former Rule of Court 989.3 effective January 1, 1996, and were amended and renumbered as current Rule 1.100 effective January 1, 2010. *See* Cal. R. Ct. 1.100 advisory committee's cmt.

In 2007, the Access and Fairness Advisory Committee issued *two* pamphlets regarding Rule 1.100. The first pamphlet is entitled "Responding to Requests for Accommodations by Persons with Disabilities: Questions and Answers About Rule

of Court 1.100 for Court Personnel."[3] ARJN, Exh. A. The "Court Personnel Pamphlet" acknowledges that the ADA requires "courts to accommodate the needs of persons with disabilities who participate in court activities, programs and services"; that "Accommodations must address diverse disabilities, which can vary in nature and degree from person to person"; and that courts must furnish "auxiliary aids and services where necessary to afford individuals with disabilities an equal opportunity to participate in, and enjoy the benefits of, a service, program or activity conducted by a public entity." *Id.* at 2. The Court Personnel Pamphlet does *not* mention or purport to establish a "per se policy" against appointment of counsel.

The second pamphlet is entitled, "Questions and Answers About Rule 1.100 for Court Users." ARJN, Exh. B. This "Court Users Pamphlet" accurately describes the Rule 1.100 accommodation process, explaining that "Accommodations can be provided in a variety of ways. Because people and

[3] Dr. Sidiakina argues in her Motion for Judicial Notice that this Court should judicially notice the Court Users Pamphlet because it is available on the California Courts' website, and because its contents are "not subject to reasonable dispute . . . ." ECF No. 17 at 2 (quoting Fed. R. Evid. 201(b)). As explained in Appellees' Request for Judicial Notice filed concurrently with this Answering Brief, we agree that this Court can judicially notice the Court Users Pamphlet pursuant to Rule 201(b), and request that this Court judicially notice the Court Personnel Pamphlet for the same reason. We provide both documents as Exhibits A and B to the ARJN for the Court's convenience. To be clear, however, neither document constitutes a "policy" – per se or otherwise – of California's courts, as we explain below.

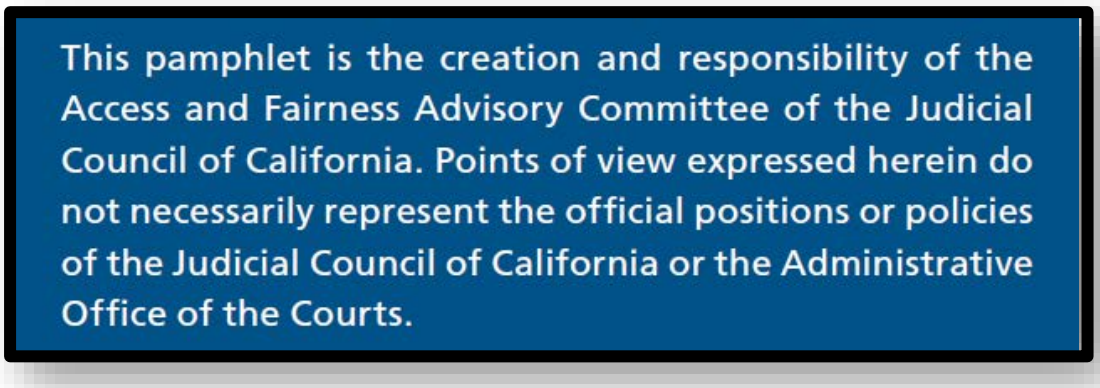
disabilities are unique, the courts and persons with disabilities must interactively discuss each person's needs and the effective accommodations that the court can provide." *Id.* at 2.

One paragraph of the Court Users Pamphlet states that courts "cannot exceed the law in granting a request for an accommodation," and then provides the Advisory Committee's interpretation of what "the law" does and does not require:

> The court, however, cannot exceed the law in granting a request for an accommodation. For example, the court cannot extend the statute of limitations for filing an action because someone claims that he or she could not make it to the court on time because of a disability. Additionally, the court cannot provide free legal counsel as a medical accommodation. (For specific cases, free legal counsel is mandated by law to provide legal assistance, but it is not an accommodation for a disability.)

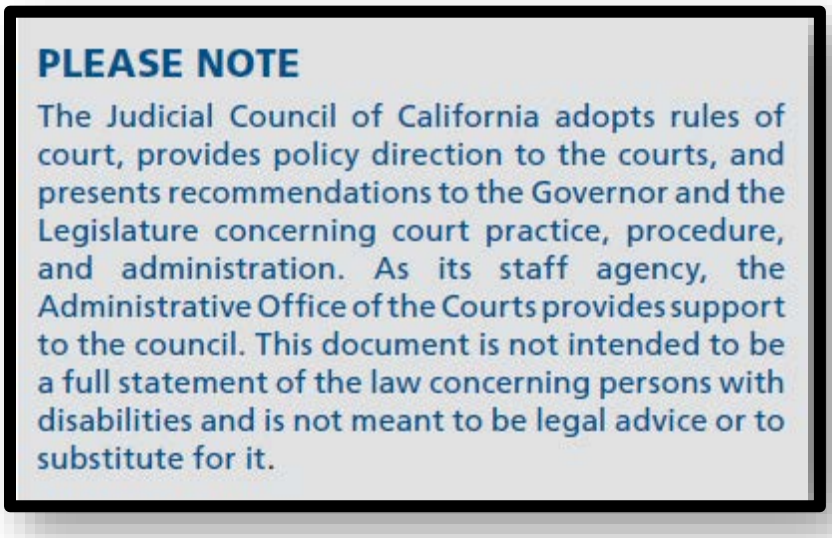
Id. at 2.

Critically, however, the Court Users and Court Personnel Pamphlets confirm that they are *not* official statements of policy on behalf of California's judiciary. To the contrary, the pamphlets both conspicuously provide:



Id. Exh. A at 1; Exh. B at 1.

The pamphlets also carefully explain that they are *not* meant to be legal advice and are *not* intended to be a complete statement of the law:



Id.

With that as background, we turn to the facts relating to Dr. Sidiakina's Rule 1.100 request.

B. Overview Of Dr. Sidiakina's State Court Divorce Proceedings.

At the heart of this appeal lies a marital dissolution action between Dr. Sidiakina and her former husband, Siamak Navid, which was filed in the Superior Court of California, County of Sonoma ("Sonoma Superior Court"). To put it mildly, this was not a simple divorce case. It lasted for more than seven years and involved two separate appeals, two writ petitions and multiple motions in the California Court of Appeal, First Appellate District ("First District Court of Appeal"); four petitions for review in the California Supreme Court; one petition

for certiorari to the United States Supreme Court; and the filing of multiple disqualification and other motions that ultimately led both the Sonoma Superior Court and First District Court of Appeal to conclude that Dr. Sidiakina is a "vexatious litigant" as that term is defined in California Code of Civil Procedure section 391(b)(1). *In re Marriage of Natalia A. Sidiakina & Siamak Navid*, 2012 Cal.App.Unpub. LEXIS 6906, at *24-27 (Sept. 24, 2012), *cert. denied*, 133 S. Ct. 2826 (2013).

1. Dr. Sidiakina Was Represented By Paid Counsel Until She Agreed To Bear Her Own Attorney's Fees And Costs As Part Of A Marital Settlement Agreement.

During her dissolution proceedings, Dr. Sidiakina was represented by five different lawyers. ARJN, Exh. C at 4, 6, 12, 14, 25.[4] Until October 2006, these lawyers were paid pursuant to California Family Code section 2030, which allows the court to order that one party to a dissolution proceeding pay the attorney's fees of the opposing party to "ensure that each party has access to legal representation." Cal. Fam. Code § 2030(a)(1); *see* ARJN, Exh. C at 8 (7/11/2006 Order), 12 (9/14/2006 Order).

[4] The Register of Actions (or docket sheet) reflecting the filings in Dr. Sidiakina's dissolution case before the Superior Court is attached as Exhibit "C" to Appellees' Request for Judicial Notice. A docket sheet contains the kind of facts that are appropriate for judicial notice under Federal Rule of Evidence 201. *See White v. Martel*, 601 F.3d 882, 885 (9th Cir. 2010); *Roberson v. City of Los Angeles*, 220 Fed. Appx. 522, 523 (9th Cir. 2007).

Between October and November 2006—while she was represented by counsel—Dr. Sidiakina and Navid negotiated a settlement of all issues arising from the dissolution proceedings, with the assistance of a Sonoma Superior Court judge. The settlement was orally entered on the record on November 1, 2006; a conforming stipulated judgment was later entered on February 2, 2007. *Navid*, 2012 Cal.App.Unpub. LEXIS 6906 at *1-2; *see also* ARJN, Exh. C at 14-16. Among other things, the settlement obligated Dr. Sidiakina and Navid to bear their own attorney's fees and to waive the right to seek future spousal support. ARJN, Exh. C at 14 (10/11/2006 Order).

2. Dr. Sidiakina Unsuccessfully Attempted To Set Aside The Stipulated Judgment Based Upon Her Marital Settlement Agreement.

In December 2006, Dr. Sidiakina, who was then proceeding pro se, moved to set aside the settlement and related judgment. *Navid*, 2012 Cal.App.Unpub. LEXIS 6906, at *1-2; ARJN, Exh. C at 17. The motion was assigned to Sonoma Superior Court Judge James G. Bertoli. ARJN, Exh. C at 20. After several continuances, Judge Bertoli denied the motion to set aside on September 14, 2007. ARJN, Exh. C at 24; *Navid*, 2012 Cal.App.Unpub. LEXIS 6906, at *2.

Dr. Sidiakina appealed the denial of her set-aside motion to the First District Court of Appeal. The Court of Appeal affirmed the Sonoma Superior Court's judgment in an unpublished opinion on August 19, 2009. *In re Natalia A.*

Sidiakina & Siamak Navid, 2009 Cal.App.Unpub. LEXIS 6731 (Aug. 19, 2009), and the California Supreme Court denied Dr. Sidiakina's petition for review. *In re Marriage of Sidiakina*, 2009 Cal. LEXIS 11692 (Nov. 10, 2009).

On remand, Navid moved for enforcement of the stipulated judgment, for attorney's fees he incurred on the appeal, and for a finding that Dr. Sidiakina was a vexatious litigant. *Navid*, 2012 BL 244974, at *1-2; ARJN, Exh. C at 33.

3. Dr. Sidiakina's Rule 1.100 Request Asked For Nine Different Accommodations; The Superior Court Complied With Rule 1.100(e)(2) By Providing A Written Response To Each Request, But Declined To Appoint Free Legal Counsel.

On February 18, 2010—one week before the Sonoma Superior Court was scheduled to hear Navid's motions—Dr. Sidiakina filed a request for accommodation under California Rule of Court 1.100, requesting a number of accommodations. ER 64.

On February 23, 2010, the Sonoma Superior Court responded in writing to Dr. Sidiakina's Rule 1.100 request, as required by Rule of Court 1.100(e)(2). The court granted some of Dr. Sidiakina's accommodation requests, deferred decision on others, and denied several others. ARJN, Exh. D at 1-2. In particular, the Court continued Navid's costs and fees motion to July 2010; authorized Dr. Sidiakina to appear telephonically, to be accompanied by a disability advocate and to record

court proceedings; denied without prejudice her requests for breaks and judicial sensitivity; and declined to change venue. *Id.*

The Sonoma Superior Court also denied Dr. Sidiakina's request to appoint free legal counsel to represent her in her divorce case. However, the record does *not* suggest that the court did so based upon an alleged "per se policy" against appointment of counsel. Similarly, the record does *not* suggest that the court read or relied upon the Court Personnel Pamphlet, let alone the Court Users Pamphlet. Instead, relying on *Blatch v. Hernandez*, 360 F. Supp. 2d 595 (S.D.N.Y. 2005), and the Department of Justice's personal services regulation at 28 C.F.R. § 35.135, the Sonoma Superior Court ruled as follows:

> *2. Appointment of Counsel*
>
> The Court denies your request for legal counsel. The ADA does not require a public entity to provide advisory services of a personal nature. 28 C.F.R. 35.135; *Batch v. Hernandez* (S.D.N.Y. 2005) 360 F.Supp.2d 595.

Id.

4. The Court Of Appeal Denied Dr. Sidiakina's Writ Of Mandate Based On The Cost And Nature Of Appointed Counsel Under The Circumstances.

On March 12, 2012, Dr. Sidiakina challenged the Sonoma Superior Court's decision refusing to appoint free counsel by filing a Rule of Court 1.100(g)(2) petition for writ of mandate with the First District Court of Appeal. ER 116. The docket sheet for this writ proceeding confirms that Dr. Sidiakina's petition was

filed under seal; that Dr. Sidiakina provided an "an estimate of the cost of retaining an attorney to represent her" pursuant to the First District Court of Appeal's request; and that the Sonoma Superior Court filed a written response to Dr. Sidiakina's petition, also pursuant to the Court of Appeal's request. ARJN, Exh. E.

On May 12, 2010, the First District Court of Appeal denied Dr. Sidiakina's petition. As was the case in the trial court, the appellate court did not cite or rely on any "per se policy" against appointment of free counsel, and did not cite or refer to the Court Users Pamphlet. Rather, the First District Court of Appeal denied Dr. Sidiakina's petition based upon the circumstances presented by her request:

> The petition for writ of mandate is denied. Petitioner's request for accommodations (appointment of counsel and change of venue/judicial officer) would create an undue financial burden and administrative burden on the court, and fundamentally alter the nature of court services. (Cal. Rules of Court, rule 1.100(f)(2) and (3).)

ER 116.

Dr. Sidiakina could have, but chose not to, further appeal the denial of her writ petition. ER 30.

STATEMENT OF THE CASE

A. Dr. Sidiakina Filed This Action To Reverse All Rulings Against Her In State Court While She Was Unrepresented.

Two months after the First District Court of Appeal denied her request for appointment of free legal counsel, Dr. Sidiakina, and a second plaintiff, Sherryl Baeckel, filed this action in the United States District Court for the Northern District of California. ER 138. Dr. Sidiakina named as defendants the Sonoma Superior Court and several superior court judges, including then-presiding Judge Robert Boyd and Judge Bertoli, the First District Court of Appeal and two of its judges, Justices Ignazio Ruvolo and Timothy Reardon, California Supreme Court Chief Justice Ronald George, the Judicial Council, the State of California, and the "Judicial Branch of California Government." *Id.*

Even a cursory reading of her original complaint confirms that Dr. Sidiakina asked the district court to review and reverse virtually all decisions entered in her dissolution proceedings. *See* ER 160-162. As relevant here, Dr. Sidiakina alleged that she was indigent and cognitively disabled; that she asked the Superior Court to appoint free legal counsel to represent her; and that the request was denied. ER 140, 144-145. She alleged that denial of her request for free legal counsel violated her due process rights as well as the ADA (ER 155-156), and asked that all state-court rulings against her while she was unrepresented be "reversed" (ER 160).

After amending her complaint twice, Dr. Sidiakina filed a motion for temporary restraining order, again demonstrating that she expected the district court to sit in review of her state-court divorce proceedings. This time, she asked the district court to enjoin the Sonoma Superior Court from enforcing the dissolution stipulation she signed that authorized the transfer of possession of the couple's residence to Navid. ER 21; ECF No. 23 at 2. The district court declined to issue the TRO, finding that Dr. Sidiakina's allegations "arise from judicial acts that occurred during the course of the state court proceedings." ECF No. 22 at 3.

On July 19, 2011, the district court issued an order to show cause why the case should not be dismissed for failure to prosecute. ECF No. 27. Because plaintiff Baeckel failed to respond, the district court dismissed her claims with leave to amend. ECF No. 34.

B. Dr. Sidiakina Alleged In Her Third Amended Complaint That Defendants Violated Her Rights By Refusing To Appoint Free Legal Counsel; She Again Prayed That All Rulings Against Her While She Was Unrepresented Be Reversed.

Dr. Sidiakina filed her Third Amended Complaint ("TAC") on March 16, 2012, naming a slightly different group of defendants who are the Appellees in this appeal, including: (a) Sonoma Superior Court, and Judges Bertoli and Boyd of that

court ("Superior Court"); (b) the First District Court of Appeal and Justice Ruvolo ("Court of Appeal"); and (c) the Judicial Council of California.[5] ER 110.

While the allegations in the TAC are longer and somewhat more refined than those of its predecessors, the gist of the TAC remains unchanged: it asks the district court to review and reverse virtually all decisions entered against Dr. Sidiakina while she was unrepresented in her divorce case. As is relevant to denial of her request for appointment of counsel, the TAC alleges:

- "Due to lack of funds and her disabilities," Dr. Sidiakina was "self-represented during the most part" of her dissolution proceedings (ER 112);
- Dr. Sidiakina advised the Superior Court "that she had cognitive disabilities and requested accommodations under the ADA Title II, including assistance of appointed counsel," both orally and in writing (ER 112-113);
- The Superior Court denied Dr. Sidiakina's requests (ER 115);
- She "appealed under the California Rules of Court, Rule 1.100, the denial of reasonable accommodations," which the Court of Appeal affirmed because appointment of counsel "would create an undue financial burden and administrative burden on the court, and fundamentally alter the nature of court services" (ER 116);
- "It is unconscionable, immoral, and abusive" for California judges to deny "appointed counsel to a cognitively disabled indigent party under the California Rules of Court, Rule 1.100" (ER 117); and

[5] The TAC also purports to name as an additional defendant the "Judicial Branch of California Government." However, Dr. Sidiakina later acknowledged that she "found out that legal entity 'Judicial Branch of California Government' does not exist." ECF 51 at 2. We do not further refer to the "Judicial Branch of the State of California" for this reason.

- The "denial of a [*sic*] indigent cognitively disabled litigant's request for accommodation, such as representation by appointed legal counsel, under the ADA Title II, 42 U.S.C. 12131 *et seq*. effectively denies that indigent cognitively disabled litigant his/her constitutional right to due process of law." ER 122.

The "Causes of Action" and "Relief" sections of the TAC further confirm that Dr. Sidiakina expected the district court to sit in review of her state-court dissolution proceedings. The TAC alleges that Superior Court Judge Bertoli and Court of Appeal Justice Ruvolo discriminated against Dr. Sidiakina by denying her accommodation requests and by excluding her from the benefits of the court system in violation of the ADA and her due process rights. ER 124-125. The TAC's prayer for relief then asked the district court to "reverse" all rulings against Dr. Sidiakina while she was unrepresented:

> 2. Render a ruling that during the court processes in Superior Court of Sonoma County and California Court of Appeal, First Appellate District, Division Four, during which plaintiff Sidiakina was denied requested accommodations and had to represent herself, her due process rights were violated and that all rulings made as a result of such court processes are reversed.

ER 127 (emphasis added).

It is true, as appellate counsel posits, that the "Causes of Action" and "Prayer" portions of the TAC also refer to the Court Users Pamphlet and Rule of Court 1.100, and that the TAC asks the district court to rule that both "are in violation of Title II" of the ADA. ER 128. However, a fair reading of the TAC

confirms these allegations are inextricably intertwined with the rest of Dr. Sidiakina's allegations against the judicial defendants. As noted above, the TAC does not contain any class action allegations, and only seeks relief on behalf of Dr. Sidiakina. In addition, the TAC alleges that Rule 1.100 and the Court Users Pamphlet discriminated *against Dr. Sidiakina* by making it impossible *for her* to obtain a free lawyer, and that they violate Title II for this reason. Dr. Sidiakina's "cause of action" allegation makes this clear:

> (g) That Judicial Council of California have discriminated against the plaintiff, Natalia A. Sidiakina, by knowingly creating The Rules of Court, including, but not limited to, Rule 1.100, pamphlet called "For Persons with Disabilities Requesting Accommodations" of 2007, and Rule 8.204, that make it physically impossible for indigent plaintiffs with cognitive disabilities to meaningfully participate in, and/or have equal and meaningful access to and the benefits of, the services of the court system and due process in violation of 42 U.S.C. 12132 et seq.

ER 125-26.[6]

[6] California Rule of Court 8.204 governs the form and contents of briefs that are filed in the California Court of Appeal. *See generally*, Cal. Rs. Ct. 8.200 – 8.224. Dr. Sidiakina cites to Rule of Court 8.204 because the Court of Appeal held in Dr. Sidiakina's 2009 appeal that her briefs were in "dramatic noncompliance with appellate procedures" generally, and Rule 8.204 in particular. *In re Natalia A. Sidiakina & Siamak Navid*, 2009 Cal.App.Unpub. LEXIS 6731, at *2 (Aug. 19, 2009).

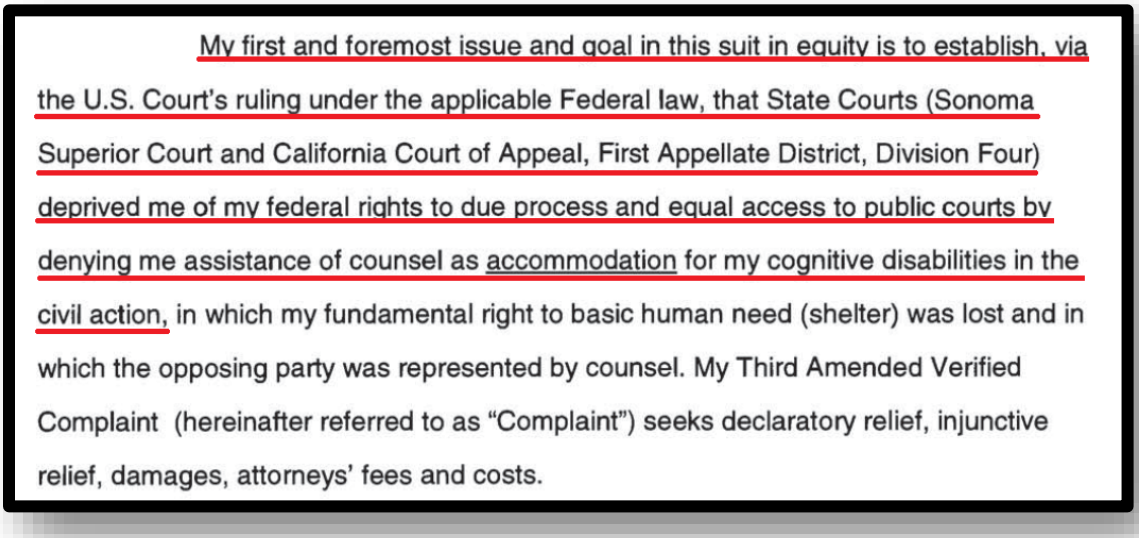
Put simply, Dr. Sidiakina quoted from the Court Users Pamphlet in order to prove that *she* was the victim of discrimination – and not to assert greater rights on behalf of a non-existent class. *See also* ER 128 (asking the district court to rule that Rule 1.100 and the Court Users Pamphlet violate the ADA).

C. In Opposing Defendants' Motion To Dismiss, Dr. Sidiakina Confirmed That She Wanted The Federal Court To Overturn State Court Rulings Against Her While She Was Unrepresented, And To Hold That The Judicial Council Discriminated Against Her By Promulgating The Court Users Pamphlet.

On May 11, 2013, the Superior Court, the Court of Appeal, and the Judicial Council ("Judicial Defendants") moved to dismiss the TAC on several grounds, including *Rooker-Feldman*, res judicata, judicial immunity, and for failure to state a claim. ER 77-101. As is relevant to this appeal, the Judicial Defendants noted that "nearly every single item of relief requested [in the TAC] seeks to overturn a prior state court ruling," and that the TAC amounted to an impermissible de facto appeal of state court judgments, which is prohibited by the *Rooker-Feldman* doctrine. ER 88, 96. With respect to the Court Users Pamphlet, the Judicial Defendants acknowledged that Dr. Sidiakina sought to hold the Judicial Council liable for creating the pamphlet, but that she did not explain "why said pamphlet is improper." ER 93.

In opposing the motion to dismiss, Dr. Sidiakina confirmed that all of her claims related to her state-court dissolution proceedings, making no reference to a

request for more "generalized relief" on behalf of a non-existent class. For example, at page one of her opposition, Dr. Sidiakina confirmed that her "first and foremost issue and goal" was to demonstrate that the Superior Court and the Court of Appeal violated federal law by declining *her* requests for counsel:



My first and foremost issue and goal in this suit in equity is to establish, via the U.S. Court's ruling under the applicable Federal law, that State Courts (Sonoma Superior Court and California Court of Appeal, First Appellate District, Division Four) deprived me of my federal rights to due process and equal access to public courts by denying me assistance of counsel as accommodation for my cognitive disabilities in the civil action, in which my fundamental right to basic human need (shelter) was lost and in which the opposing party was represented by counsel. My Third Amended Verified Complaint (hereinafter referred to as "Complaint") seeks declaratory relief, injunctive relief, damages, attorneys' fees and costs.

ER 28; *see also* ER 41 ("I am cognitively disabled, I cannot meaningfully represent myself and cannot have equal access to courts and due process without assistance of counsel. Because I am cognitively disabled, I cannot be employed, live on Disability Insurance of $821 per month, and, obviously, cannot retain a private counsel").

Dr. Sidiakina continued by confirming that *all* of the actions about which she complained occurred during *her* divorce proceedings in state court:

> All Defendants' actions, about which I complain, occurred in the period from 2005 to 2011 either in the courthouse of Sonoma County or in the courthouse of the California Court of Appeal, First Appellate District during my dissolution of marriage proceedings. During the entire proceedings, my ex-husband was represented by 3 prominent attorneys, 2 of whom were family law specialists. Due to lack of funds to retain a legal counsel and impossibility to earn money because of my disabilities, I was self-represented during the most part of the litigation.

ER 29; *see also id.* (noting that both Judge Bertoli and Justice Ruvolo denied Dr. Sidiakina's requests for "assistance of counsel").

With regard to the Court Users Pamphlet, Dr. Sidiakina clarified that she sought to hold the Judicial Council liable for the statement that "legal counsel cannot be an accommodation for a disability." ER 47. Dr. Sidiakina asked that the district court find that this statement violates the ADA and another federal law. *Id.* But as her declaration makes clear, Dr. Sidiakina sought only to hold the Judicial Council liable for discriminating *against her*, again making no request for "generalized relief" on behalf of a non-existent class:

> 4) State of California and its political subdivisions Sonoma County, Judicial Council of California, Superior Court of Sonoma County, the California Court of Appeal, First Appellate District, Division Four, and certain their officers and/or employees discriminated against me as a cognitively disabled person by denying me reasonable accommodations, including assistance of counsel as accommodation.

ER 57 (emphasis in original); *see also id.* at 30-31 (alleging that the Judicial Defendants violated Dr. Sidiakina's rights "[b]y reason of my cognitive disabilities and as a result of denial of reasonable accommodations, including assistance of counsel"); 33 ("my claims under the ADA Title II that Defendants the State of California, its political subdivisions, courthouses, and officers and/or employees denied me reasonable accommodations and, thus, denied *me* 'due process' and 'access to courts' and cause *me* 'pain and suffering' are NOT barred by the Eleventh Amendment"); 37 ("In the present case, the California Courts, as government actors, denied *me* of my due process rights . . . .") (emphasis added).

D. The District Court Dismissed Dr. Sidiakina's Complaint Under *Rooker-Feldman* And For Failure To State A Claim.

On September 7, 2012, the district court granted the Judicial Defendants' motion to dismiss. With respect to Dr. Sidiakina's Rule 1.100 claims, the district court dismissed on two alternative grounds. First, the district court concluded that it "lacked jurisdiction" to hear Dr. Sidiakina's claims under the *Rooker-Feldman* doctrine, both because the TAC sought reversal of all state court rulings against her while she was unrepresented, and because all of Dr. Sidiakina's failure-to-appoint-free-counsel claims were inextricably intertwined with those state court rulings. *See* ER 10 ("In order to grant Sidiakina the relief she seeks, this Court would have to reach the conclusion that the decisions rendered below were in error.").

Second, the court alternatively held that, even if Dr. Sidiakina's claims were not barred by *Rooker-Feldman*, the TAC failed to state a claim under the ADA. The district court implicitly recognized the important distinction between a legally enforceable Rule of Court and an unenforceable legal interpretation issued by a Judicial Council advisory committee, explaining that Rule 1.100 "does not expressly preclude appointment of counsel." ER 13.

Dr. Sidiakina timely appealed the district court's order and judgment dismissing the TAC.

STANDARD OF REVIEW

This Court reviews dismissals based on the *Rooker-Feldman* doctrine de novo. *Maldonado v. Harris*, 370 F.3d 945, 949 (9th Cir. 2004). A dismissal for failure to state a claim also is reviewed de novo. *See Knievel v. ESPN*, 393 F.3d 1068, 1072 (9th Cir. 2005). This Court may affirm a dismissal on any basis supported by the record, even if the district court relied on different grounds or reasoning. *Maldonado*, 370 F.3d at 949.

SUMMARY OF ARGUMENT

Dr. Sidiakina does not dispute that the vast majority of her TAC is barred by the *Rooker-Feldman* doctrine because it asks a federal court to reverse a number of decisions made in her state court dissolution proceedings. As framed by Dr. Sidiakina's appellate counsel, the limited issue presented is whether *Rooker-*

Feldman applies to Dr. Sidiakina's "generalized" theory that the California state courts have an unlawful "per se policy" against appointing free legal counsel as an accommodation for disability. Even assuming that Dr. Sidiakina's complaint can be construed as containing a facial challenge to some supposed "per se policy," the district court should be affirmed for three basic reasons.

1. Dr. Sidiakina's "generalized" challenge is barred by the *Rooker-Feldman* doctrine because it is inextricably intertwined with her de facto appeal of decisions made in her dissolution proceedings. Where, as here, a federal action contains a forbidden de facto appeal, the *Rooker-Feldman* doctrine bars the de facto appeal *and* any claim that is "inextricably intertwined" with it. This Court has held on numerous occasions that *Rooker-Feldman* bars cases, like this one, where a litigant claims both to directly challenge the correctness of a state court decision and to assert a general, facial challenge to the state rule underlying the state court decision.

2. If, as Dr. Sidiakina now claims, she is not attempting to set aside the state court rulings against her, then she lacks standing to assert "generalized" claims against California state courts' supposed policy of denying free legal counsel. Plaintiffs who seek prospective injunctive relief against future actions must sufficiently allege a real and immediate threat of repeated injury. Dr. Sidiakina's complaint fails to demonstrate any real chance that she will find herself

in California state court again, let alone that she will be subjected to a non-existent "per se policy," or that a state court would deny a hypothetical future request for appointment of free legal counsel.

3. Even if Dr. Sidiakina's claims were justiciable, the district court's dismissal should be affirmed on the basis of its alternative holding that the TAC fails to state a claim under the ADA. Dr. Sidiakina's theory that California state courts have a "per se policy" of denying free legal counsel is predicated entirely on the Court Users Pamphlet which does not and cannot establish state policy. Judicial Council advisory committees cannot bind state courts and any state court judge could disregard the pamphlet entirely if she believed it fails to accurately state the law.

Finally, this case does not present the type of exceptional circumstances that would warrant ordering the district court to request counsel on remand under 28 U.S.C. § 1915.

ARGUMENT

I. THE DISTRICT COURT PROPERLY DETERMINED THAT IT LACKED SUBJECT MATTER JURISDICTION OVER THE THIRD AMENDED COMPLAINT PURSUANT TO THE *ROOKER-FELDMAN* DOCTRINE.

A. The *Rooker-Feldman* Doctrine Bars Federal Courts From Sitting in Review of State Court Decisions.

The *Rooker-Feldman* doctrine, which takes its name from *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923), and *District of Columbia Court of Appeals v.*

Feldman, 460 U.S. 462 (1983), recognizes that federal courts exercise limited jurisdiction; that the Supreme Court has exclusive authority to review state supreme court decisions for alleged errors of federal law; and that federal district courts lack subject matter jurisdiction to sit in review of state court decisions. *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005); *Rooker*, 263 U.S. at 416; *Feldman*, 460 U.S. at 476; *see also Dubinka v. Judges of Sup. Ct.*, 23 F.3d 218, 221 (9th Cir. 1994) ("Federal district courts may exercise only original jurisdiction; they may not exercise appellate jurisdiction over state court decisions"); 28 U.S.C. § 1257.

As most recently formulated by the Supreme Court, the doctrine precludes federal district courts from hearing "cases brought by state-court losers . . . inviting district court review and rejection of [the state court's] judgments." *Skinner v. Switzer*, 131 S. Ct. 1289, 1297 (2011) (quoting *Exxon Mobil Corp.*, 544 U.S. at 284). The *Rooker-Feldman* doctrine applies not only to final state court orders and judgments, but also to interlocutory orders and non-final judgments issued by a state court. *Doe & Assocs. Law Offices v. Napolitano*, 252 F.3d 1026, 1030 (9th Cir. 2001); *Worldwide Church of God v. McNair*, 805 F.2d 888, 893 n.3 (9th Cir. 1986). This Court applies the *Rooker-Feldman* doctrine in two distinct steps, which we address separately below.

1. The District Court Properly Found That Dr. Sidiakina's Complaint Amounted To An Impermissible "De Facto Appeal" Prohibited By *Rooker-Feldman*.

To determine whether a federal action is barred by *Rooker-Feldman*, federal courts first pay "close attention to the relief sought by the federal-court plaintiff," *Cooper v. Ramos*, 704 F.3d 772, 778 (9th Cir. 2012), and ask whether the complaint contains a forbidden "de facto appeal" of a state court decision. *E.g.*, *Noel v. Hall*, 341 F.3d 1148, 1158 (9th Cir. 2003); *Bianchi v. Rylaarsdam*, 334 F.3d 895, 900 (9th Cir. 2003). As this Court explained in *Bell v. City of Boise*, 709 F.3d 890 (9th Cir. 2013):

> A de facto appeal exists when a federal plaintiff asserts as a legal wrong an allegedly erroneous decision by a state court, and seeks relief from a state court judgment based on that decision. In contrast, if a federal plaintiff asserts as a legal wrong an allegedly illegal act or omission by an adverse party, *Rooker-Feldman* does not bar jurisdiction.

Id. at 897 (citations and quotations omitted); *see also Noel*, 341 F.3d at 1158.

Dr. Sidiakina does not contest that the TAC contains a forbidden de facto appeal. AOB 10. Nor could she: Dr. Sidiakina did not sue Navid or some other party to her divorce proceedings. Instead, she sued the state courts themselves, alleging that the Judicial Defendants violated the ADA by refusing to appoint free legal counsel to represent her in her divorce case, and requesting that all decisions issued against her while she was unrepresented "be reversed." ER 122, 127; *see also* ECF No. 37 at 7 (acknowledging in Case Management Statement that "[t]he

claims asserted by Plaintiffs in this case … arose out of State Courts' actions in several civil cases," including Dr. Sidiakina's dissolution proceedings).

Dr. Sidiakina's allegations fall squarely within the ambit of those cases from which the *Rooker-Feldman* doctrine acquired its name: "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Exxon Mobil Corp.*, 544 U.S. at 281. Thus, the district court's finding that the TAC contains "a de facto appeal from a state court judgment" should be affirmed. ER 8 (quoting *Wolfe v. Strankman*, 392 F.3d 358, 363 (9th Cir. 2004)).

2. The District Court Properly Found That Dr. Sidiakina's Remaining Claims Were "Inextricably Intertwined" With Her Prohibited De Facto Appeal.

It is settled that, in the absence of a de facto appeal, *Rooker-Feldman* does not apply when a federal plaintiff asserts claims that are "similar or even identical to" issues previously aired in state court proceedings. *Cooper*, 704 F.3d at 778; *Mothershed v. Justices*, 410 F.3d 602, 606 (9th Cir. 2005); *Wolfe*, 392 F.3d at 364. However, it is also settled that where, as here, a federal action *does* contain a forbidden de facto appeal, *Rooker-Feldman* applies to *any* claim that is "inextricably intertwined" with the issues presented by the de facto appeal. *See*

Feldman, 460 U.S. at 482 n.16; *Kougasian v. TMSL, Inc.*, 359 F.3d 1136, 1142 (9th Cir. 2004).

Claims asserted in a federal action are "inextricably intertwined" with a forbidden de facto appeal when "the district court must hold that the state court was wrong in order to find in favor of the plaintiff." *Doe*, 252 F.3d 1026, 1030 (9th Cir. 2001); *see also Reusser v. Wachovia Bank, N.A.*, 525 F.3d 855, 859 (9th Cir. 2008) (claims are "inextricably intertwined" if "the adjudication of the federal claims would undercut the state ruling or require the district court to interpret the application of state laws or procedural rules") (internal quotation marks and citation omitted).

Under this standard, the district court properly concluded that *Rooker-Feldman* bars Dr. Sidiakina's claim that the Judicial Defendants violated the ADA by denying her requests for appointment of free legal counsel. As Justice Marshall explained in *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1 (1987), "[w]here federal relief can only be predicated upon a conviction that the state court was wrong, it is difficult to conceive the federal proceeding as, in substance, anything other than a prohibited appeal of the state-court judgment." *Id.* at 25 (Marshall, J., concurring). To conclude that the Judicial Defendants violated the ADA by denying Dr. Sidiakina's request for appointment of free counsel, the district court "would effectively [have to] reverse the state court decision or void its ruling," in

contravention of *Rooker-Feldman*. *Fontana Empire Ctr., LLC v. City of Fontana*, 307 F.3d 987, 992 (9th Cir. 2002).

The same conclusion applies to the TAC's claims regarding the Judicial Council's alleged policy of denying appointment of counsel, as reflected in the Court Users Pamphlet. To be sure, the Court Users Pamphlet's disclaimers, and the individualized analysis of Dr. Sidiakina's claims by the state courts in this case, negate any suggestion that such a policy exists in California. *See Cooper*, 704 F.3d at 781 (*Rooker-Feldman* barred prisoner's "general constitutional attack" on state statute that purportedly foreclosed access to DNA testing because nothing in text of statute foreclosed access, "and the Superior Court's decision eschewed any categorical holding regarding the adequacy of tampering allegations").

But assuming *arguendo* that such a policy did exist and was applied to deny Dr. Sidiakina's Rule 1.100 request for appointment of counsel, the TAC's claims still would be barred. *Rooker-Feldman* bars a plaintiff from seeking "a declaratory judgment invalidating the state court rule on which the state court decision relied," because a "'request for declaratory relief [is] inextricably intertwined with his request to vacate and to set aside the [state court] judgment.'" *Noel*, 341 F.3d at 1158 (quoting *Facio v. Jones*, 929 F.2d 541, 543 (10th Cir. 1991)). To render a ruling that the Judicial Council discriminated against Dr. Sidiakina by creating Rule 1.100 and the Court Users Pamphlet (*see* ER 125, 128), "would undercut the

state ruling or require the district court to interpret the application of state laws or procedural rules," which *Rooker-Feldman* does not permit. *Bianchi*, 334 F.3d at 898.

B. The TAC Does Not Assert A Facial Challenge Regarding An Alleged Policy Of Refusing To Appoint Counsel As An Accommodation To Cognitively Impaired Litigants.

Dr. Sidiakina's appellate counsel posits that *Rooker-Feldman* does not bar a "generalized challenge" to the alleged "per se policy" against appointing free legal counsel as an accommodation, because this "generalized challenge does not require the district court to review the state courts' application in prior proceedings." AOB 11-12. This argument must be rejected for two reasons.

First, this "generalized challenge" argument ignores the TAC's allegations. As explained above, Dr. Sidiakina did *not* challenge the validity of the Court Users Pamphlet *per se.* Instead, she relied on this purported Judicial Council policy to demonstrate that the Judicial Defendants discriminated *against her* in violation of the ADA by refusing to appoint free legal counsel to represent her in her divorce case. ER 125-26. *Rooker-Feldman* applies for this reason. *See also Henrichs v. Valley View Dev.*, 474 F.3d 609, 616 (9th Cir. 2007) ("*Rooker-Feldman* applies because the legal injuries Henrichs alleges arise from the state court's purportedly erroneous judgment. . . . . Without the state court judgment, Valley View and Timcor would not have caused injury to Henrichs at all").

Second, counsel's "generalized challenge" argument ignores *Feldman*'s "inextricably intertwined" test. Federal courts routinely reject attempts to rewrite or re-characterize complaints on appeal in order to avoid application of *Rooker-Feldman*, and repeatedly apply the "inextricably intertwined" rule in cases like this one, in which a litigant claims to both directly challenge the correctness of a state court decision and assert a general, facial challenge to a state rule. *Exxon Mobil Corp.*, 544 U.S. at 292; *Noel*, 341 F.3d at 1148; *Manufactured Home Cmtys., Inc. v. City of San Jose*, 420 F.3d 1022, 1030 (9th Cir. 2005).

For example, in *Bianchi v. Rylaarsdam*, 334 F.3d at 895, Bianchi unsuccessfully pursued claims against Bank of America in California state court. After the jury returned a defense verdict, Bianchi invoked a statute permitting automatic disqualification of Judge William Rylaarsdam from adjudicating post-trial motions. *Id.* at 897. By the time Bianchi appealed the jury verdict, Judge Rylaarsdam was Justice Rylaarsdam, and Justice Rylaarsdam was assigned to the appellate panel. *Id.* After unsuccessfully challenging Justice Rylaasdam's presence on the panel in state court, Bianchi filed suit in federal court claiming his due process rights were violated. *Id.* Bianchi requested an injunction requiring the state courts to reset his case for argument and decision before a different appellate court, and also sought a declaration that the Constitution precludes a judge

previously disqualified as a trial court judge from sitting in judgment of the same matter as an appellate judge. *Id.* at 897-88.

The district court dismissed Bianchi's complaint under *Rooker-Feldman*, and this Court affirmed. Notwithstanding that Bianchi raised both a particularized and more general challenge to California appellate procedure, this Court held that *Rooker-Feldman* applied because "[f]ar from bringing a general constitutional challenge that is not 'inextricably intertwined' with the state court decision, Bianchi essentially asked the federal court to review 'the state court's denial in a judicial proceeding,' and to afford him the same individual remedy he was denied in state court." *Bianchi*, 334 F.3d at 898 (citation omitted).

Similarly, in *Worldwide Church of God*, the plaintiffs sued a California state court, contending that a state court jury verdict against them for defamation was unconstitutional because it was based on expressions of religious belief protected by the First Amendment. 805 F.2d at 889. This Court held that the federal suit was barred by *Rooker-Feldman*. To the extent the federal plaintiffs sought to bring a direct challenge to the correctness of the decision of the state court, this was a forbidden de facto appeal. *Id.* at 892-93. To the extent they sought in the same suit to bring a more general constitutional challenge, that challenge was "inextricably intertwined" with the forbidden direct appeal because "the California Superior Court considered and rejected the plaintiff's argument that the allegedly

defamatory statements constitutionally were protected," and it therefore "would be impossible for the federal court to review in the abstract the plaintiffs' constitutional challenge to the defamation verdict." *Id.* at 892; *see also Cooper*, 704 F.3d at 779-80 (rejecting prisoner's attempt to "recast his complaint as a general constitutional attack" on state DNA testing statute as interpreted by California courts; *Rooker-Feldman* barred claim because complaint "in fact challenges the particular outcome in his state case").

As in *Bianchi*, *Worldwide Church of God*, and *Cooper*, Dr. Sidiakina's artificial attempt to isolate "generalized" allegations from her complaint and sever them from the unambiguous attack on her state court dissolution proceedings should be rejected. Dr. Sidiakina purports to raise a "generalized" challenge to California Rule of Court 1.100 under the ADA (*see* ER 128), but the Superior Court and Court of Appeal both considered and rejected Dr. Sidiakina's argument that counsel must be appointed to mentally disabled civil litigants under the ADA. It would be impossible for the district court below to put that context out of mind, and review in the abstract Dr. Sidiakina's ADA challenge. Dr. Sidiakina's challenge to her dissolution proceedings and her more general challenge to Rule 1.100 as applied by the California courts, to the extent it can be discerned from the TAC at all, are inextricably intertwined, and the district court should not be ordered to pretend otherwise.

C. The Cases Upon Which Dr. Sidiakina Relies For Her "Generalized Challenge" Argument Are Inapposite.

Without addressing this Court's "inextricably intertwined" cases, Dr. Sidiakina argues (AOB 9-11), that the district court has jurisdiction over her "generalized" challenge pursuant to *Dubinka*, 23 F.3d 218, and *Wolfe*, 392 F.3d 358. However, both cases are inapposite.

In *Wolfe*, the plaintiff sought a declaratory judgment that California's Vexatious Litigant Statute is unconstitutional. 392 F.3d at 360. This Court reversed the district court's dismissal under *Rooker-Feldman*, finding that the plaintiff's complaint did not contain a prohibited de facto appeal, because the state court had not adjudged him to be a vexatious litigant prior to the time he filed his lawsuit in federal court. Because the plaintiff's complaint *only* sought relief against the threatened future enforcement of the law, *Rooker-Feldman* did not apply. *Id.* at 363-64. Put somewhat differently, the plaintiff's declaratory relief claims were not barred by *Rooker-Feldman* because his complaint did not contain a de facto appeal with which his declaratory relief claims could be inextricably intertwined. *Manufactured Home Cmtys.*, 420 F.3d at 1030 ("claims are dismissed as 'inextricably inter-twined' only when an improper appeal under *Rooker-Feldman* is already before the district court"); *Noel* 341 F.3d at 1157-58. Conversely, Dr. Sidiakina's TAC *does* contain a forbidden de facto appeal; to the

extent Dr. Sidiakina also seeks to challenge Rule 1.100 on a going-forward basis, that challenge cannot reasonably be teased apart from her retrospective claims.

Dr. Sidiakina's reliance on *Dubinka* is misplaced for similar reasons. In *Dubinka*, defendants in pending state court criminal prosecutions filed suit in federal court to challenge the constitutionality of a ballot initiative requiring reciprocal discovery. 23 F.3d at 219. The Court acknowledged that "[i]n analyzing whether federal district courts have jurisdiction to hear a particular constitutional challenge, we must determine whether the constitutional claims are 'inextricably intertwined' with the state court's rulings in a particular plaintiff's case." *Id.* at 221 (citation omitted). The Court held, under the circumstances, that *Rooker-Feldman* did not apply because a district court could easily analyze the claim that compelled disclosure of information regarding defense witnesses violates the Fifth and Sixth Amendments "without resorting to the state trial courts' discovery orders in the appellants' pending cases." *Id.* at 222.

The critical distinction between this case and *Dubinka* is that the California state courts in that case apparently did not consider the precise issue asserted in the federal litigation. Thus, a federal court could analyze the plaintiffs' constitutional claims without entangling itself in orders issued by the state courts. Here, by contrast, the California state courts already have considered, and rejected, Dr. Sidiakina's claim that her mental disability warrants appointment of counsel under

the ADA. According to Dr. Sidiakina, the California courts denied her request for free legal counsel in her dissolution proceedings pursuant to a "per se policy" of refusing appointment of counsel as an ADA accommodation. *See* AOB 4. While Dr. Sidiakina is wrong that any such "per se policy" exists (*see infra.* at Part III.A), her assertion that California courts have already considered the matter dooms her complaint. She may challenge that supposed determination by appealing through the California state court system and, ultimately, to the United States Supreme Court. What she may not do, under this Court's well-established precedent, is challenge the California state courts' rulings through a de facto appeal to federal district court.

II. DR. SIDIAKINA LACKS STANDING TO CHALLENGE CALIFORNIA STATE COURTS' ACCOMMODATION POLICY IF DIVORCED FROM HER STATE COURT JUDGMENT.

Another way to look at Dr. Sidiakina's claims—and one that leads to the same result—is through the doctrine of standing. If, as Dr. Sidiakina contends on appeal, she is not attempting to set aside the state court rulings against her, then she lacks standing to assert her "generalized" claims. This is so because unless her state court rulings are overturned, Dr. Sidiakina's only interest in this case is prospective and hypothetical in nature.[7]

[7] Because Dr. Sidiakina has attempted to re-cast her complaint as one seeking "generalized" relief for the first time on appeal, the district court did not consider the issue of standing. Nonetheless, "every federal appellate court has a

Article III of the United States Constitution confines the jurisdiction of federal courts to justiciable cases and controversies. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 559-60 (1992). Justiciable cases and controversies include only those claims that allege some "injury in fact" redressable by a favorable judgment. *Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1, 12 (2004). To seek prospective injunctive relief against future actions—which is all Dr. Sidiakina can request if she is not challenging the California state court rulings pertaining to her—Dr. Sidiakina's complaint must sufficiently allege a "real and immediate threat of repeated injury" in the future. *Chapman v. Pier 1 Imports (U.S.) Inc.*, 631 F.3d 939, 946 (9th Cir. 2011) (quoting *O'Shea v. Littleton*, 414 U.S. 488, 496 (1974)). Under this formulation, the key issue is whether the plaintiff is "likely to suffer future injury." *City of Los Angeles v. Lyons*, 461 U.S. 95, 105 (1983); *see also id.* at 101-02 (holding that the threat must be "real and immediate" as opposed to "conjectural or hypothetical").

In addition to satisfying Article III standing requirements, Dr. Sidiakina must stay within "prudential limitations" on the exercise of federal court jurisdiction. *See Warth v. Seldin*, 422 U.S. 490, 498 (1975). One such limitation is a rule that parties "generally must assert [their] own legal rights and interests, and

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special obligation to 'satisfy itself not only of its own jurisdiction, but also that of the lower courts.'" *Arizonans for Official English v. Arizona*, 520 U.S. 43, 73 (1997) (quoting *Mitchell v. Maurer*, 293 U.S. 237, 244 (1934)).

cannot rest [their] claim to relief on the legal rights or interests of third parties." *Id.* at 499. The federal courts of appeals are unanimous that a claim's conformity with the strictures of the *Rooker-Feldman* doctrine does not absolve a litigant from establishing proper standing. *Grendell v. Ohio Supreme Court*, 252 F.3d 828, 837 (6th Cir. 2001) (citing cases).

Even if Dr. Sidiakina's "generalized" allegations could be severed from the remainder of her complaint, she lacks standing to maintain a facial challenge against them for several reasons. First, inasmuch as her divorce is now final and she has moved out of her residence in Santa Rosa, Dr. Sidiakina cannot demonstrate any real chance of being subjected to any type of "per se policy" in the future. *See* ER 29 ("All Defendants' actions, about which I complain, occurred in the period from 2005 to 2011").

Second and relatedly, the record in this case rather painfully demonstrates both that California courts evaluate Rule 1.100 accommodation requests on a case-by-case basis, and that they have *not* adopted the type of "per se policy" about which Dr. Sidiakina complains. ER 116; ARJN, Exhs. D & E; *In re Marriage of James & Christine C.*, 158 Cal.App.4th at 1277.

This Court reached the same conclusion in *Bianchi v. Rylaarsdam*, where the plaintiff challenged, as a general matter, an appellate judge's practice of hearing cases on appeal in which he was disqualified as a trial judge. 334 F.3d at 897-98.

This Court held that, to the extent Bianchi attempted to save his generalized challenge from dismissal under *Rooker-Feldman*, he lacked standing to bring a general constitutional challenge because unless the state court judgment were overturned, Bianchi's "only interest in [the state's] procedures is prospective and hypothetical in nature." *Id.* at 900 n.3 (quoting *Facio v. Jones*, 929 F.2d 541, 543 (10th Cir. 1991)).

Facio v. Jones, 929 F.2d 541, the Tenth Circuit case upon which this Court relied in *Bianchi*, also is instructive. In that case, the plaintiff (Facio) wrote a bad check, but sent a money order to cover the debt and expenses after he was notified. *Facio*, 929 F.2d at 542. Nonetheless, a debt collector sued Facio in Utah state court and obtained a default judgment against Facio because he failed to answer. *Id.* Facio filed a motion in Utah state court to set aside the default judgment pursuant to the Utah Rules of Civil Procedure, but that motion was denied for failure to present proof of a meritorious defense. *Id.* Facio then sued in federal court to set aside the default judgment and to obtain a declaration that the Utah Rules of Civil Procedure are unconstitutional. *Id.* at 543.

The Tenth Circuit held that Facio's direct challenge to the state court judgment plainly was barred as a de facto appeal by *Rooker-Feldman*. *Id.* at 543. The court held that Facio's generalized challenge also was barred because it was inextricably intertwined with the state court judgment; "the two forms of relief are

so intertwined, in fact, that if Mr. Facio is not able to set aside the default judgment against him, he would lack standing to assert … that the federal court declare Utah's default judgment procedures unconstitutional." *Id.* The court explained that Facio lacked standing to assert a generalized claim because "[h]e has not demonstrated any real chance of being subjected in the future to Utah's procedures for reversing default judgments." *Id.* at 544.

Like the plaintiffs in *Bianchi* and *Facio*, Dr. Sidiakina has not demonstrated any real chance that she will find herself in California state court again, let alone that she would be subjected to a non-existent "per se policy," or that a state court would deny a hypothetical future request for appointment of free legal counsel. *See also Mosby v. Ligon*, 418 F.3d 927, 933 (8th Cir. 2005) (holding that plaintiff lacked standing to the extent she challenged attorney disciplinary rules without challenging disciplinary committee's ruling as to her); *Landers Seed Co. v. Champaign Nat'l Bank*, 15 F.3d 729, 732 (7th Cir. 1994) (plaintiff suing Illinois Supreme Court lacked standing to challenge rule of court if prior application in state court proceeding were ignored); *Grendell*, 252 F.3d at 837-38 (plaintiff lacked standing to challenge sanctions rule where sanctions were not presently threatened).

Apropos is the Supreme Court's observation in *O'Shea v. Littleton*, 414 US 488 (1974), that "attempting to anticipate whether and when respondents will be

charged with crime . . . takes us into the area of speculation and conjecture." *Id*. at 497. The speculative nature of predicting whether Dr. Sidiakina will be involved in another civil case in California state court where she will request appointment of counsel as an accommodation leads inexorably to the conclusion that the record does not establish a real or immediate threat of repeated injury. Accordingly, Dr. Sidiakina lacks standing to pursue the "generalized" relief that she seeks.[8]

III. IN THE ALTERNATIVE, DR. SIDIAKINA FAILS TO STATE A CLAIM UNDER THE AMERICANS WITH DISABILITIES ACT.

The district court held that, even if it was not barred by *Rooker-Feldman*, the TAC failed to state a claim against the Judicial Defendants. ER 11-14. Given the limited nature of this appeal, Dr. Sidiakina challenges only that portion of the district court's ruling she characterizes as dismissing her "challenge to the State's per se policy refusing appointment of counsel as an accommodation for qualified

[8] We briefly note that the district court's decision dismissing this action should be affirmed pursuant to the doctrine of equitable abstention, even if this Court were to conclude that *Rooker-Feldman* does not apply and that Dr. Sidiakina had standing to bring her "generalized claim." *See O'Shea*, 414 U.S. at 500 ("an injunction aimed at controlling or preventing the occurrence of specific events that *might* take place in the course of *future* state criminal trials" amounts to "nothing less than an ongoing federal audit of state criminal proceedings which would indirectly accomplish the kind of interference that *Younger* . . . sought to prevent") (emphasis added); *E.T. v. Cantil-Sakauye*, 682 F.3d 1121, 1124 (9th Cir. 2011) ("We should be very reluctant to grant relief that would entail heavy federal interference in such sensitive state activities as administration of the judicial system") (quoting *L.A. County Bar Ass'n v. Eu*, 979 F.2d 697, 703 (9th Cir. 1992)).

individuals with disabilities."[9] AOB 7. She advances two related arguments in this regard. First, Dr. Sidiakina argues that the district court got it wrong by holding that Rule 1.100 "does not expressly preclude appointment of counsel." AOB 13. Second, Dr. Sidiakina argues that a "per se policy" against appointment of counsel violates the ADA. AOB 14-24. Dr. Sidiakina's arguments fail for a number of related reasons.

A. The Court Users Pamphlet Does Not Reflect Or Create A "Per Se Policy" Against Providing Accommodations For Disabled Litigants.

First and foremost, the district court properly limited its ruling to the terms of Rule 1.100 itself, as opposed to a paragraph from the Court Users Pamphlet. As explained above, the Rules of Court have the positive force of law. *See* Cal. Const., art. VI, § 6(d); *Sara M.*, 36 Cal.4th at 1012. To be clear, the terms of the Court Users Pamphlet were before the district court at the time it ruled on Dr. Sidiakina's motion to dismiss. ER 125-26; 128 (TAC); 93 (motion to dismiss); ECF 51 at 4 (opposition to motion to dismiss). However, the Court Users Pamphlet obviously is not a Rule of Court, and is entitled to considerably less deference for this reason alone. *See Sara M.*, 36 Cal. 4th at 1012-13 ("Because an

[9] Dr. Sidiakina does not challenge the district court's conclusions that: (1) Dr. Sidiakina fails to state a claim under 42 U.S.C. § 1983 (ER 13-14); and (2) Dr. Sidiakina cannot hold any of the judges liable under the ADA in either their individual or official capacities (ER 11-12).

interpretation is an agency's *legal opinion* however 'expert,' rather than the exercise of a delegated legislative power to make law, it commands a commensurably lesser degree of judicial deference") (emphasis in original; citation omitted).

More importantly, the district court properly could disregard the Court Users Pamphlet in its entirety, because the Pamphlet explicitly provides that "**Points of view expressed herein do not necessarily represent the official positions or policies of the Judicial Council**" and that "**This document is not intended to be a full statement of the law concerning persons with disabilities and is not meant to be legal advice or to substitute for it.**" ARJN, Exh. B at 1. *E.g.*, *Miller v. Bank of America, NT & SA*, 46 Cal.4th 630, 644 n.7 (2009) (noting that agency interpretations of law, including "interpretations contained in policy statements, agency manuals, and enforcement guidelines, all of which lack the force of law—do not warrant … deference") (internal quotations omitted); *Zapara v. County of Orange*, 26 Cal.App.4th 464, 470 n.4 (1994) (giving *no* deference to State Board of Equalization opinion letter, because "[a] staff letter is not the equivalent of an administrative agency's contemporaneous interpretation and application of the law. The regulations promulgated by an agency to implement the statutes are, however. . . . The letter is no more than a staff attorney's interpretation of the law. It states it is only advisory, and not binding upon the assessor").

B. The District Court Properly Held That The Rules Of Court Do Not Preclude Appointment Of Counsel.

Second, the district court properly concluded that there is no rule prohibiting appointment of counsel as an accommodation to disabled California litigants. As explained above, Rule of Court 1.100(e)(1) incorporates and must be interpreted in conformity with the ADA, which generally requires public entities to consider accommodation requests on a case-by-case basis. *Crowder*, 81 F.3d at 1486; *Chalk*, 840 F.2d at 705. In addition, California's appellate courts have held that Rule 1.100 requires a case-by-case evaluation of accommodation requests. *E.g.*, Cal. Rs. Ct. 1.100(a)(3), 1.100(b) & 1.100(f)(1)-(3); *Biscaro*, 181 Cal.App.4th at 707; *In re Marriage of James & Christine C.*, 158 Cal.App.4th at 1277; *Stanley*, 2009 Cal.App.Unpub. LEXIS 44, at *13.

And while it is true that the Superior Court and Court of Appeal ultimately denied Dr. Sidiakina's request for appointment of free legal counsel, neither court cited or relied on the purported "per se policy" about which Dr. Sidiakina now complains. Denial of a motion in a particular case does not a judicial policy make. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (where, as here, "a complaint pleads facts that are 'merely consistent with' a defendant's liability, it 'stops short of the line between possibility and plausibility of entitlement to relief'") (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 557 (2007)).

C. Dr. Sidiakina Cannot Rewrite Her Federal Complaint On Appeal To Assert A "Generalized ADA Claim" Against The Purported "Per Se Policy."

Third, even if there were a "per se policy" against appointing free legal counsel to indigent and cognitively disabled plaintiffs – there is *not* – this case certainly does not provide the appropriate vehicle to challenge it.

As explained above, Dr. Sidiakina did *not* assert a "generalized ADA claim" in the TAC. Instead, she explicitly narrowed the focus of her challenge to conduct occurring "in the period from 2005 to 2011 either in the courthouse of Sonoma County or in the courthouse of the California Court of Appeal, First Appellate District, *during my dissolution of marriage proceedings.*" ER 28. In addition, she specifically alleged that the "Judicial Council of California have [*sic*] discriminated *against the plaintiff*, Natalia A. Sidiakina, by knowingly creating The Rules of Court, including, but not limited to, Rule 1.100, pamphlet called 'For Persons with Disabilities Requesting Accommodations' of 2007 . . . ." ER 125-126 (emphasis added). Dr. Sidiakina also alleged that Rule 1.100 and the Court Users Pamphlet make it physically impossible for disabled litigants to participate in legal proceedings. *Id.*; *see also* ER 128 (asking the district court to rule that Rule 1.100 and the Court Users Pamphlet violate the ADA). However, Dr. Sidiakina makes these allegations in order to prove that *she* was the victim of discrimination, and not to assert greater rights on behalf of a non-existent class.

Counsel for Dr. Sidiakina seeks reversal because the district court failed to consider whether Dr. Sidiakina might proceed on a theory that California courts have a "per se policy" against the appointment of counsel. But the district court's dismissal cannot be reversed on the basis of a legal theory Dr. Sidiakina neither pled nor presented to the district court in opposing dismissal. *See Chisholm Bros. Farm Equip. Co. v. Int'l Harvester Co.*, 498 F.2d 1137, 1139 n.3 (9th Cir. 1974) (declining to consider theory of liability asserted in appellate briefs that "was included neither within appellant's amended complaint … nor within pretrial memoranda"); *see also Zadrozny v. Bank of N.Y. Mellon*, 720 F.3d 1163, 1169-70 (9th Cir. 2013); *Sateriale v. R.J. Reynolds Tobacco Co.*, 697 F.3d 777, 793 n.10 (9th Cir. 2012). The district court's alternative judgment dismissing the TAC should be affirmed accordingly.

D. Dr. Sidiakina's Legal Arguments In Support Of Her "Generalized ADA Claim" Are Beside The Point.

Dr. Sidiakina devotes considerable ink to the proposition that a "per se policy" prohibiting appointment of counsel violates the ADA by unlawfully relieving state court judges of the obligation to consider accommodation cases on a case-by-case basis. AOB 14-24. Dr. Sidiakina's arguments ignore or badly misconstrue settled law.[10] However, this Court need not consider them here,

[10] Among other reasons, a prima facie case of discrimination "solely by reason of disability" cannot be established by a disabled litigant who is

inasmuch as there is *no* "per se policy," and Dr. Sidiakina offers *no* evidence that such a policy was applied to her.

* * * * *

Even though pro se pleadings are to be liberally construed, a plaintiff must present factual allegations sufficient to state a plausible claim for relief. *Hebbe v. Pliler*, 627 F.3d 338, 341-42 (9th Cir. 2010); *see generally Twombly*, 550 U.S. at 570 (complaints must allege "enough facts to state a claim to relief that is plausible on its face"); *Lucas v. Dep't of Corr.*, 66 F.3d 245, 248 (9th Cir. 1995) (dismissal of a pro se complaint is proper if the deficiencies in the complaint cannot be cured by amendment). In this case, Dr. Sidiakina has not "nudged [her]

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unrepresented due to a lack of funds. *See Weinreich v. Los Angeles Cnty. Metropolitan Trans. Auth.*, 114 F.3d 976, 978-79 (9th Cir. 1997) (quoting *John Does 1-5 v. Chandler*, 83 F.3d 1150, 1155 (9th Cir. 1996)). In addition, appointed counsel do far more than facilitate communication between the court and disabled clients. Instead, they act as fiduciaries, provide legal advice, formulate and advocate legal and factual arguments and provide other services of a unique and personal nature that the ADA does not require. *See Blatch*, 360 F. Supp. 2d at 630; *DiNapoli v. City of New York*, 2008 U.S.Dist. LEXIS 49550 (S.D.N.Y. June 30, 2008); 28 C.F.R. § 35.135. It is also likely that appointment of counsel might fundamentally alter the nature of court services, *see* 28 C.F.R. § 35.164. California courts simply cannot appoint and pay for counsel without statutory authorization, *County of Santa Clara v. Superior Court*, 2 Cal.App.4th 1686, 1694 (1992), and cannot compel an attorney to provide free legal services to indigent litigants, *Cunningham v. Superior Court*, 177 Cal.App.3d 336, 338 (1986). And while certain California statutes establish a right to counsel for indigent litigants in certain civil cases *and* provide a method for payment (*see* Cal. Gov't Code § 68651), it would fundamentally alter California's court services to impose on them an obligation to appoint free legal counsel without any attached funding. *See Townsend v. Quasim*, 328 F.3d 511, 518 (9th Cir. 2003).

claims across the line from conceivable to plausible," *Twombly*, 550 U.S. at 570, especially because the Court Personnel and Court Users Pamphlets expressly disclaim that they reflect a generalized policy of California's courts. *See* *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001) ("The court need not, however, accept as true allegations that contradict matters properly subject to judicial notice or by exhibit"). The district court's alternative judgment dismissing the TAC for failure to state a claim should be affirmed.

IV. THE DISTRICT COURT PROPERLY EXERCISED ITS DISCRETION IN DENYING APPOINTMENT OF COUNSEL.

Dr. Sidiakina argues that, in the event this matter is remanded to the district court, counsel should be appointed to represent her pursuant to 28 U.S.C. § 1915(e)(1). AOB 25-27. Dr. Sidiakina's request is unwarranted for two reasons.

First, federal courts have the discretion to request appointment of counsel only in truly "exceptional circumstances," and only after evaluating the likelihood of success on the merits and the plaintiff's ability to articulate her claims in light of the complexity of the legal issues involved. *E.g.*, *Agyeman v. Corrections Corp. of Am.*, 390 F.3d 1101, 1103 (9th Cir. 2004); *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986); *Franklin v. Murphy*, 745 F.2d 1221, 1236 (9th Cir. 1984). For reasons explained above, it is entirely unlikely that Dr. Sidiakina will prevail on her claims. *See Wilborn*, 789 F.2d at 1331. Indeed, we respectfully submit that remand is entirely unnecessary to begin with.

In addition, even a cursory review of Dr. Sidiakina's voluminous filings demonstrates that she is more than capable of articulating her position. This case is but a misguided attempt by Dr. Sidiakina to overturn a dissolution settlement to which she agreed. The problem is not that Dr. Sidiakina lacks the ability to articulate her claims; she has done it, and done it forcefully, on numerous occasions. *See Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991); *Gruenberg v. Gempeler*, 697 F.3d 573, 581-82 (7th Cir. 2012).

Second, and more technically, section 1915 "does not authorize appointment of counsel to involuntary service"; it merely authorizes courts to *request* counsel for indigents. *United States v. 30.64 Acres of Land*, 795 F.2d 796, 801 (9th Cir. 1986); *see also Mallard v. U.S. Dist. Court for the S. Dist. of Iowa*, 490 U.S. 296, 300 (1989) (same). Such counsel are not entitled to payment, as § 1915 makes no provision for paying appointed counsel. *See 30.64 Acres of Land*, 795 F.2d at 801. Hence, even if the Court were inclined to grant relief under § 1915, the proper remedy would be an order that the district court *request* counsel to represent Dr. Sidiakina. *See Hughes v. Joliet Corr. Ctr.*, 931 F.2d 425, 429 (7th Cir. 1991) ("in a civil case involving an indigent party who desires representation the court's power is limited to requesting a lawyer to represent that party").

CONCLUSION

For the foregoing reasons, the district court's order of dismissal should be affirmed in its entirety.

Dated: October 9, 2013.

Respectfully submitted,

JONES DAY

By: /s/ Robert A. Naeve
Robert A. Naeve
Attorneys for Defendants-Appellees JUDGE JAMES G. BERTOLI; JUDGE ROBERT S. BOYD; SUPERIOR COURT OF CALIFORNIA, COUNTY OF SONOMA; COURT OF APPEAL, FIRST APPELLATE DISTRICT; PRESIDING JUSTICE IGNAZIO J. RUVOLO; JUDICIAL COUNCIL OF CALIFORNIA

STATEMENT OF RELATED CASES

Defendants-Appellees are aware of no related cases pending before the Court.

CERTIFICATE OF COMPLIANCE PURSUANT TO FED. R. APP. 32(a)(7)(C) AND CIRCUIT RULE 32-1

Pursuant to Fed. R. App. 32(a)(7)(C) and Ninth Circuit Rule 32-1, I certify that the attached brief is proportionately spaced, has a typeface of 14 points and contains 12,833 words.

Dated: October 9, 2013.

By: /s/ Robert A. Naeve
Robert A. Naeve
Attorneys for Defendants-Appellees JUDGE JAMES G. BERTOLI; JUDGE ROBERT S. BOYD; SUPERIOR COURT OF CALIFORNIA, COUNTY OF SONOMA; COURT OF APPEAL, FIRST APPELLATE DISTRICT; PRESIDING JUSTICE IGNAZIO J. RUVOLO; JUDICIAL COUNCIL OF CALIFORNIA

ADDENDUM

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Pursuant to Ninth Circuit Rule 28-2.7, Superior Court provides verbatim text of pertinent state-law constitutional, statutory and regulatory authorities cited in this brief.

Cal. Const. Art. I, § VI(6).

§ 6. Judicial Council

(a) The Judicial Council consists of the Chief Justice and one other judge of the Supreme Court, three judges of courts of appeal, 10 judges of superior courts, two nonvoting court administrators, and any other nonvoting members as determined by the voting membership of the council, each appointed by the Chief Justice for a three-year term pursuant to procedures established by the council; four members of the State Bar appointed by its governing body for three-year terms; and one member of each house of the Legislature appointed as provided by the house.

(b) Council membership terminates if a member ceases to hold the position that qualified the member for appointment. A vacancy shall be filled by the appointing power for the remainder of the term.

(c) The council may appoint an Administrative Director of the Courts, who serves at its pleasure and performs functions delegated by the council or the Chief Justice, other than adopting rules of court administration, practice and procedure.

(d) To improve the administration of justice the council shall survey judicial business and make recommendations to the courts, make recommendations annually to the Governor and Legislature, adopt rules for court administration, practice and procedure, and perform other functions prescribed by statute. The rules adopted shall not be inconsistent with statute.

(e) The Chief Justice shall seek to expedite judicial business and to equalize the work of judges. The Chief Justice may provide for the assignment of any judge to another court but only with the judge's consent if the court is of lower jurisdiction. A retired judge who consents may be assigned to any court.

(f) Judges shall report to the council as the Chief Justice directs concerning the condition of judicial business in their courts. They shall cooperate with the council and hold court as assigned.

Cal. R. Ct. 1.100.

Rule 1.100. Requests for accommodations by persons with disabilities

(a) **Definitions**

As used in this rule:

(1) "Persons with disabilities" means individuals covered by California Civil Code section 51 et seq.; the Americans With Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.); or other applicable state and federal laws. This definition includes persons who have a physical or mental impairment that limits one or more of the major life activities, have a record of such an impairment, or are regarded as having such an impairment.

(2) "Applicant" means any lawyer, party, witness, juror, or other person with an interest in attending any proceeding before any court of this state.

(3) "Accommodations" means actions that result in court services, programs, or activities being readily accessible to and usable by persons with disabilities. Accommodations may include making reasonable modifications in policies, practices, and procedures; furnishing, at no charge, to persons with disabilities, auxiliary aids and services, equipment, devices, materials in alternative formats, readers, or certified interpreters for persons with hearing impairments; relocating services or programs to accessible facilities; or providing services at alternative sites. Although not required where other actions are effective in providing access to court services, programs, or activities, alteration of existing facilities by the responsible entity may be an accommodation.

(b) Policy

It is the policy of the courts of this state to ensure that persons with disabilities have equal and full access to the judicial system. To ensure access to the courts for persons with disabilities, each superior and appellate court must delegate at least one person to be the ADA coordinator, also known as the access coordinator, or designee to address requests for

accommodations. This rule is not intended to impose limitations or to invalidate the remedies, rights, and procedures accorded to persons with disabilities under state or federal law.

(c) Process for requesting accommodations

The process for requesting accommodations is as follows:

(1) Requests for accommodations under this rule may be presented ex parte on a form approved by the Judicial Council, in another written format, or orally. Requests must be forwarded to the ADA coordinator, also known as the access coordinator, or designee, within the time frame provided in (c)(3).

(2) Requests for accommodations must include a description of the accommodation sought, along with a statement of the impairment that necessitates the accommodation. The court, in its discretion, may require the applicant to provide additional information about the impairment.

(3) Requests for accommodations must be made as far in advance as possible, and in any event must be made no fewer than 5 court days before the requested implementation date. The court may, in its discretion, waive this requirement.

(4) The court must keep confidential all information of the applicant concerning the request for accommodation, unless confidentiality is waived in writing by the applicant or disclosure is required by law. The applicant's identity and confidential information may not be disclosed to the public or to persons other than those involved in the accommodation process. Confidential information includes all medical information pertaining to the applicant, and all oral or written communication from the applicant concerning the request for accommodation.

(d) Permitted communication

Communications under this rule must address only the accommodation requested by the applicant and must not address, in any manner, the subject matter or merits of the proceedings before the court.

(e) Response to accommodation request

The court must respond to a request for accommodation as follows:

(1) In determining whether to grant an accommodation request or provide an appropriate alternative accommodation, the court must consider, but is not limited by, California Civil Code section 51 et seq., the provisions of the Americans With Disabilities Act of 1990 (42 U.S.C. § 12101, et seq.), and other applicable state and federal laws.

(2) The court must promptly inform the applicant of the determination to grant or deny an accommodation request. If the accommodation request is denied in whole or in part, the response must be in writing. On request of the applicant, the court may also provide an additional response in an alternative format. The response to the applicant must indicate:

(A) Whether the request for accommodation is granted or denied, in whole or in part, or an alternative accommodation is granted;

(B) If the request for accommodation is denied, in whole or in part, the reason therefor;

(C) The nature of any accommodation to be provided;

(D) The duration of any accommodation to be provided; and

(E) If the response is in writing, the date the response was delivered in person or sent to the applicant.

(f) Denial of accommodation request

A request for accommodation may be denied only when the court determines that:

(1) The applicant has failed to satisfy the requirements of this rule;

(2) The requested accommodation would create an undue financial or administrative burden on the court; or

(3) The requested accommodation would fundamentally alter the nature of the service, program, or activity.

(g) Review procedure

(1) If the determination to grant or deny a request for accommodation is made by nonjudicial court personnel, an applicant or any participant in the proceeding may submit a written request for review of that determination to the presiding judge or designated judicial officer. The request for review must be submitted within 10 days of the date the response under (e)(2) was delivered in person or sent.

(2) If the determination to grant or deny a request for accommodation is made by a presiding judge or another judicial officer, an applicant or any participant in the proceeding may file a petition for a writ of mandate under rules 8.485-8.493 or 8.930-8.936 in the appropriate reviewing court. The petition must be filed within 10 days of the date the response under (e)(2) was delivered in person or sent to the petitioner. For purposes of this rule, only those participants in the proceeding who were notified by the court of the determination to grant or deny the request for accommodation are considered real parties in interest in a writ proceeding. The petition for the writ must be served on the respondent court and any real party in interest as defined in this rule.

(3) The confidentiality of all information of the applicant concerning the request for accommodation and review under (g)(1) or (2) must be maintained as required under (c)(4).

(h) Duration of accommodations

The accommodation by the court must be provided for the duration indicated in the response to the request for accommodation and must remain in effect for the period specified. The court may provide an accommodation for an indefinite period of time, for a limited period of time, or for a particular matter or appearance.

9th Circuit Case Number(s) 12-17235

NOTE: To secure your input, you should print the filled-in form to PDF (File > Print > *PDF Printer/Creator*).

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CERTIFICATE OF SERVICE
When All Case Participants are Registered for the Appellate CM/ECF System

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on (date) Oct 9, 2013 .

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Signature (use "s/" format) s/ Nathaniel P. Garrett

****

CERTIFICATE OF SERVICE
When Not All Case Participants are Registered for the Appellate CM/ECF System

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on (date) .

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

I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within 3 calendar days to the following non-CM/ECF participants:

Signature (use "s/" format)