NOT FOR PUBLICATION

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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ROBERT E. CARUSO, Plaintiff, STEPHEN KERR EUGSTER, Appellant, *sub nom.* v. WASHINGTON STATE BAR ASSOCIATION 1933, a legislatively created Washington association, State Bar Act (WSBA 1933); et al., Defendants-Appellees.	No. 18-35557 D.C. No. 2:17-cv-00003-RSM MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
Ricardo S. Martinez, Chief Judge, Presiding

Submitted March 12, 2019**

Before: LEAVY, BEA, and N.R. SMITH, Circuit Judges.

Stephen Kerr Eugster, attorney for plaintiff Robert E. Caruso, appeals pro se

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

from the district court's order imposing pre-filing restrictions on Eugster as a vexatious litigant. We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion. *Molski v. Evergreen Dynasty Corp.*, 500 F.3d 1047, 1056 (9th Cir. 2007). We vacate and remand.

The district court gave Eugster notice and an opportunity to be heard, created an adequate record for review, and made substantive findings as to the frivolous or harassing nature of Eugster's prior actions. However, the district court's order is not narrowly tailored to Eugster's abuses because it imposes pre-filing restrictions on lawsuits "against the WSBA, its employees, or agents" and facial challenges to "Washington State's attorney bar system," without limiting the types of claims or challenges to those that Eugster had been filing vexatiously. *See Ringgold–Lockhart v. County of Los Angeles*, 761 F.3d 1057, 1061-67 (9th Cir. 2014) (discussing procedural and substantive standards for a federal pre-filing order based on a vexatious litigant determination). We vacate entry of the pre-filing order and remand for the district court to enter a pre-filing order that is narrowly tailored to the claims that Eugster has previously brought.

We do not consider the district court's order denying disqualification of Judge Martinez because the order is outside the scope of this appeal. *See* Fed. R. App. P. 3(c) (required contents of notice of appeal); *Havensight Capital LLC v. Nike, Inc.*, 891 F.3d 1167, 1171 (9th Cir. 2018) (factors to consider when a party

seeks to argue the merits of an order that does not appear on the face of the notice of appeal).

We reject as without merit Eugster's contention that the district court committed fraud by entering the pre-filing order.

Eugster's request for judicial notice (Docket Entry No. 15) is denied. Eugster's request for oral argument, set forth in the opening brief, is denied.

The parties shall bear their own costs on appeal.

VACATED and REMANDED.