

"In criminal prosecutions the accused shall have the right to appear in person, or by counsel..."

The Constitution of the State of Washington Established, ordained and Ratified November 8, 1878, provides the safeguards for this inherent right at [Article] 5 §13 to wit:

"In all criminal proceedings, The accused shall have the right to appear and defend in person or by counsel..."

"The right to counsel at a criminal trial is deemed so fundamental to the interest of justice that denial thereof automatically violates any conviction obtained [The Automatic Reversal Rule.]

This is true even though there is no showing of any prejudice or unfairness in the proceedings, or even any need for counsel." Gideon V. Wainright, 372 U.S. 335.

"The court in: United States V. Padilla-Martinez, 762 F2d, 942 (11th cin. 1985) Held:

"The sixth Amendment provides that in all prosecutions, The accused shall enjoy the right... To have assistance of counsel for his defense." This guarantee of counsel has been interpreted to include four rights:

- (1.) The right to counsel. Powell V. Alabama, 287 U.S. 45 (1932)
- (2.) The right of effective assistance of counsel Glasser V. United States. 315 U.S. 60 (1942)
- (3.) The right to a preparation period sufficient to insure a minimal level of quality of counsel.
- (4.) The right to be represented by counsel of one's choice. Id at 70, 62 S.LT.464.

A denial of any one or more of these elements is a denial of counsel, The denial of due process.

"A conviction obtained where the accused was denied counsel is treated as void for all purposes" Burgett V. Texas, 389 U.S. 109.

"To determine whether or not the appellant's right to the assistance of counsel was violated."

"Each of the rights regarding counsel Identified in United States V. Padille-Martinez, "supra" must be analyzed as they apply to the appellant.

The safeguard of the [Article in] Amendment VI. Provides that the accused shall enjoy the right to as assistance of counsel, "Not Representation." Representation by an attorney is deemed by the court to make the accused a ward of the court.

"Clients are also called," "ward of the court". In regard to their relationship with their attorney ".
D.C. Spilker V. Hawkin, 188f. 2d. 35, 88U.S. APP. D.C.

Looking at Black's Law Dictionary 6th Edition, Pg. 1584, For the meaning of "ward of the court."

"Ward of the court;" Infants and person's of unsound mind placed by the court under the lore of a guardian, Davis Committee V. Loney 290 Ky. 644. 162 s.w. 2d.189, 190.

So it is clear, when a party is Represented by an attorney, The court deems that party either an infant or a person of unsound mind, Placed by the court under the care of a Guardian, in the person of an "attorney-at-law".

The term "Represent" means, according to Webster's Dictionary, to wit:

"To stand or act in place of, as an agent or substitute."

The term Counsel is defined as:

"Advise, opinion or instruction regarding the Judgement or conduct of another."

There is clearly an age difference between being assisted by counsel and being represented by an Attorney-at-law as a ward of the court.

The appellant has never knowingly voluntarily submitted to the court as a ward, nor has there been any finding of any court that the appellant is an "infant" or a person of unsound mind.

For the purpose of the appellant petition for review, the term "represent" or "representive" will mean assistance of counsel, and any relationship. The appellant may have with a attorney- at- law will be that of principal and agent. Not as a ward of the court and guardian.

Did the appellant enjoy the right to the assistance of counsel as interpreted in United States V. Pedilla-Martinez. "Supra"?

(1.) THE FIRST RIGHT IS THE RIGHT TO COUNSEL.

"Was there an attorney present with the appelant during every stage of the criminal proceeding's?"

"The right to counsel exist not only at the trial thereof, but also at every stage of a criminal proceeding where substantial rights of a criminal accused may be affected."

Mempa V. Rhay, 389 U.S. 128,

The record clearly show's that, in fact, an attorney-at-law, either in the capacity of counsel or standby counsel, was in fact, with the appellant during most of the criminal proceeding's. Assistance of counsel means more than the presence of an attorney in the court as herein more fully appears.

(2.) The second right is: The right to effective counsel.

"The sixth Amendment gives a criminal defendant The right to effective assistance of counsel" State V. White 80wn. app. 410, 907 p. 2d.310 (1985) reversal 129wn 2d. 1021 (1996). Effective assistance of counsel includes " a duty of loyalty " [and] " A duty to avoid conflicts of interest" Strickland V. Washington, 466U.S. 668, 688, 1045. Ct. 2052, 80 L.Ed. 2d.1193 (9th Cir, 1984)

"Right to conflict free representation" derives from the 6th Amendment as applied to States.

"By due process clause of the fourteenth Amendment". Garcia V. Bunnell, 33 f 3d. 1193 (9th Cir 1984)

"According to the courts";

An actual conflict of interest exists, "When a defense attorney owes duties to a party whose interest are adverse to those of the defendant." White, 80 WN app. 411-R, Supra

"These principals apply equally to an attorney that a court has appointed as stand-by counsel." State V. Benn, 120 WN, 2d 631, 666, 845 P2d 289 (1993), Effective assistance of counsel analysis applies to stand-by counsel. Defined 510 U.S. 944 (1993) rule of professional conduct (R.P.C.) 1.7 (B).

The question is simple: Did the defense counsel. Attorney-at-Law, owe a duty to a party whose interests are adverse to those of the appellant?

" To answer that Question," one must examine the relationship between the plaintiff, "State of Washington", and the attorney-at-law serving either as defense counsel or stand-by counsel.

"In 1933," By an act of the legislature of the State of Washington, The Washington State Bar Association was established as a agency of the State to wit:

"There is hereby created as an agency of the State, for the purposes and with the powers hereinafter set fourth, an association to be known as the Washington State Bar Association, Hereinafter designated as the State Bar.

Which association shall have a common seal and may sue and be sued..."

WSL 1933 @ 94 §2 [RCW 2.44.010.]

"The courts affirm that the State Bar association is in fact, an agency of the Government."

"State bar association is an agency of the state and is a public rather than a private agency..."
Wash in Re Banister, 543. P2d. 237. 86 Wash .2d 176.

"A state bar is a government body and not a private corporation." Sams V. Olah, 169 s.e. 2d. 790, 255 GA. 497 cert, Denied) _____ S. ct _____, _____ U.S. _____, _____ L. ed _____. Wallace V. Wallace, 166 s.e. 2d. 718, 255 GA 102 Appeal After remand, _____ s.ct. _____ u.s. _____, _____ L.ed.2d _____; Miss-Board of com'RS Miss, State Bar V. Collin, 59 50, 2d. 351, 214 Miss 782.

"The attorney at law being a member of a state agency"... Is an officer of the court and as such, an officer and arm of the state," United States V. Virgin Island Bar Association V. denlh, D.C. Virgin Island 124 F sapp. 257.

"The law clearly shows that defense counsel is, in fact, an officer of the state and in this case the plaintiff whose interests are adverse to those of the appellatant." (STATE).

Corpus juris Sicandum 7; Attorney and client; Pg 801, and 802 provide an answer to wit;

"Thus an attorney occupies a dual position which imposes a dual obligation. His or her first duty is to the courts and the public (STATE) Not to the client conflict with those he owes as an officer of the court in the administration of justice. The former must yield the later."

"YES", The defense counsel as a member of the washington State Bar Association owes a duty "First to the plaintiff, state of Washington" whose interests adverse to those of the appellatant."

"The right to counsel Guaranteed by the sixth and fourteenth Amendment is a right to effective counsel." Herring V. Estell, 5th cir. 1974, 491 F. 2d. 125 Mckenna V. Ellis, 5th cir, 1960. 280 f.2d 592.

Effectiveness, however, is not a matter of professional competence alone as this court said in Porter V. United States, 5th cir 1962, 298 f. 2d. 461. 463:

"The constitution assures a defendant effective Representative by counsel... Such representation is lacking, however, if counsel, unknown to the accused and without knowledgeable assent, is in "Duplicatis "Position" where his or her full talent as vigorous advocate having the single aim of acquittal by all means fair and honorable are hobbled or fettered or restrained by commitments to others."

"In short, [W]e consider undivided loyalty of appointed counsel to client as essential to due process." Mckenna V. Ellis, 5th cir. 1960, 280 F. 2d. 592, 599.

"In this case the appellant is denied the right to effective counsel because an "actual conflict of interest exists." State V. White, supra

"It cannot be said that the judiciary of the state of Washington in the person of the presiding Judge. Prosecuting and defense counsel, were not aware of the conflict of interest of defense counsel by the operation of the Bar Act of the State of Washington, Rather, That Judiciary is presumed to have superior knowledge of the law.

Every defendant has a Constitutional Right to assistance of an attorney unhindered by conflict of interest." Holloway V. Arkansas, 435 u.s. 475, 483, 551. ed. 2d. 426, 98 s. cir. 1173 (1978).

When the ineffectiveness of counsel is predicated on a conflict of interest and trial court is made aware of the conflict, Prejudice is presumed if the "attorney." ["Actually Representing conflicting interest."] Strickland V. Washington. 466 u.s. 688. 692. 104 s.ct. 2052, 2067, 80 L.Ed. 1708, 1719, 64 l. Ed. 2d. 333 (1980).

Even if the trial court is not notified at the time of the conflict, the motion is still not required to make the full showing of prejudice usually required under Strickland.

("I.E. That it is more likely than not that the outcome of the proceeding would have been different had the attorney acted properly.") But needs only show that an "actual conflict" of interest adversely affected his lawyer's performance. "Strickland V. Washington, 466u.s. at 692. 104 s.ct. 2067; United States V.Horton, 845 F. 2d. 1414, 1418 [7th cir. 1988]; Walberg V. Israel, 766 F. 2d. 1071. 1075 (7th cir. 1985).

"Since the State Judicial endorses and enforces the Bar Act, The court is well aware of the conflict of interest.

Prejudice against the right to effective counsel is presumed, and the judiciary is a willing party to that prejudice."

"The possibility of the conflict of interest was brought home to the court. But instead of jealously Guarding [appellant's] rights, The court may fairly be said to be responsible in the impairment of those right's." Glasser V. United States, 315 u.s. 60, 71, 62 s.ct 456, 457, 86 L.Ed. 680 (1942).

"The purpose of the right to the assistance of effective counsel is to safeguard the Rights of the accused." As presented in; State V. McDonald, 96 WN. 2d 506 (2001).

"The sixth Amendment gives a criminal defendant the right to effective assistance of counsel." State V. White. 80 Wn. 2d 406, 510, 907, P. 2d. 310 (1996). When a defendant alleges a violation of this right, we conduct a De-Novo review based on the entire record. State V. Mcfarland, 127 Wn. 2d. 322, 335, 899 P. 2d. 1251 (1995).

"We cannot over-Emphasize the primary importance of the right to counsel: [0] F all the rights that an accused person has. The right to be represented by counsel is by far the most pervasive, for it effects his ability to assert any other right he or she may have."

Schaefer, Federlim and state criminal Procedure, .70 Harv. L. Rev. 1,8 (1956). Over 65 years ago, United States Supreme Court Justice wrote: ID AT 316.

"The right to be heard would be, in many cases, of little avail if it did not comprise the right to be heard by counsel."

"Even the intelligent and educated layman has small and sometimes no skill in the science of law."

"If charged with a crime, he is incapable, generally, of determining for himself whether the "(Indictment is good or bad)". He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without the proper charges, and convicted upon incompetent evidence, or evidence irrelevant to the issue or other wise inadmissible.

He or she lack's both skill and knowledge adequately to prepare his defense, even though he may have a perfect one. He or she requires the guiding hand of counsel at every step in the proceedings against him, Without it, Though he may not be guilty, he faces the danger of conviction.

"Because he or she does not know how to establish, his or her innocence. How much more true is it of the ignorant or illiterate, or those of feeble intellect."

"If in any case, civil or criminal, a state or federal Court were Arbitrarily to refuse to hear a party by counsel, employed by and appearing for him, it reasonably may not be doubted that such a refusal would be a denial of a hearing, and therefore, of due process in the - Constitutional sense." Powell V. Alabama, 787 u.s. 45, 68-69. 53 s.ct. 55. 77L. EDL 158 (1932).

The court recognized that unless the accused has counsel with undivided loyalty, a risk of injustice will result:

"Unless a defendant charged with a serious offense has counsel able to invoke the procedural and substance safeguards that "Distinguish our system of justice," a serious risk of injustice infected the trial itself. "Cayler V. Sullivan, 446 u.s. AT 345-350, 100 s.ct. the court in Cayler also held"... That prejudice is presumed when counsel is burdened by an actual conflict of interest, in those circumstances, counsel." ID AT s. ct. 2067.

Even though prejudice is presumed, it should be noted that the appellant's right to challenge the sufficiency of the charging instrument and that challenge the presumption of the court's subject matter, and jurisdiction over the parties, was prejudiced by the ineffectiveness of counsel.

"In Jackson V. Seattle," The court held that "The defendant had the right to challenge the irregularity or sufficiency of the complaint. By entering a plea the defendant waived his right." "Jackson V. Seattle, 70 Wash. 2d. 733, 425, P 2d. 385 (1967).

"Illegality in the service of process by which jurisdiction is to be obtained is not waived by the special appearance of the defendant to move that service be set aside; nor after such a motion is denied, by his answering to the merits; Such illegality is waived only when, Without having insisted upon it, he pleads in the first instance to the merits. Harkness V. Hyde, 98 u.s. 476.

"Jurisdiction must be raised before making any plea to the merit, if at all, when it arises, from formal defects in the process, or when there is a want of jurisdiction over the person." Smith V. Curtis, 7 cal. 584; Bohn V. Devlin, 28 How 541.

"An arraignment is a critical stage in a criminal proceeding which the accused, under Federal Constitutional Law, is entitled to counsel and if the accused is without counsel at the arraignment, he may obtain relief from his conviction without showing that he suffered a disadvantage from such denial." Hamilton V. Alabama, 368 u.s. 52. 7L. Ed. 2d. 114, 82 s. ct. 157 (1990) "Also see;" White V. Maryland, 373 u.s. 59. 10 L.Ed. 2d. 193, 83 s.ct. 799, 1050 (1963); United States V. Hammonds, 425 F. 2d. 597 (D.C. cir. 1990).

Even the session Law of Washington provides that the right to challenge the sufficiency of the charging instrument is a pre-plea issue, in the form of a Demur Motion, WSL 1891 c.28 Et seg, specifically §§ 50, 52, 55, and 60 [RCW 10.40 Et seg.)

"The record clearly shows that the appellant's right to raise the due process issue raised in Grounds 1,2, and 3 of the appellant is clearly prejudiced by lack of effective counsel. There is no evidence in the record that the appellant ever waived the right to effective counsel as required by the rules of professional conduct (R.P.C.) 1.7 (B).

It is a matter of law that no one can waive any right unless such waiver is with knowledge, voluntary, and with a complete understanding of the consequences of such a waiver.

There is no evidence in the record that the appellant ever at any time, voluntarily waived any right, including, but not limited to, the right to challenge the sufficiency of the charging instrument. The right to effective assistance of counsel is denied to the appellant, and thus due process is denied.

"A defendant was entitled to reversal of conviction when ever some showing of possible conflict of interest or prejudice, however remote, was made." Cayler V. Sullivan, 446 u.s. 335, At 341, 64L. Ed. 2d. 333. 100 s.ct, 1708.

The third element to the right to assistance of counsel as interpreted in United States V. Padilla-Martinez, supra.

(3.) THE RIGHT TO A PREPARATION PERIOD SUFFICIENT TO INSURE A MINIMAL LEVEL OF QUALITY OF COUNSEL.

The preparation period issue prsumes that the accused has effective counsel "who does not owe a duty to the adverse party."

The denial of the second element to the right of assistance of counsel, that being "The right to effective assistance of counsel," works to violate the third element, untill the accused is afforded effective assistance of counsel. The accused cannot properly prepare a meaningful defense no matter how much time for preparation is allowed by the court. The right to a preparation period, with the assistance of effective counsel, sufficient to insure a minimal level of quality of counsel is denied and, thus, due process is denied.

(4.) The right to be represented by counsel of one's choice. Id At 70.62 s.ct 464.

"In order for the accused to effectively exercise the right to be represented by counsel of choice, the accused is to be fully informed as to the nature of the conflict of interest, and that the attorney-at-law, as a member of the Bar Association, has a PRE-EMTIVE DUTY to the interest of the plaintiff State of Washington over the interest of the accused."

This is mandated by the rules of proffessional conduct (R.P.C.) 1.7 as applied to this case 1.7. (B).

1.7 (B) " A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or third person, or by the lawyer own interest unless:

(1.) The lawyer reasonably believes the representation will not be adversely affected;

AND

(2.) The client consents in writing after consultation and full disclosure of the material facts

(Following authorization from the other client to make such disclosure). When representation of multiple clients in a single matter is undertaken, The consultation shall include explanation of the implications of the common representation and the advantages and rights involved."

There is no evidence in the record of the trial court that the appellant provided such written consent.

The fact of the matter, even with disclosure, is that the provisions of the Bar Act of Washington prevents a party from choosing anyone for assistance of counsel who is not a member of the Washington State Bar Association, limiting the choice to only attorneys who have a conflict of interest due to their respective Association on the state Bar.

The right to be represented by counsel of one's choice incorporates the right to contract, The right to associate, and the right to equal protection of the Law, Among other rights.

"Applying the Bar Act, the right of the accused to freely contract for counsel of one's own choosing to associate with said course and have an equal right to be assisted or even represented by counsel who does not owe a duty to the adverse party, in this case State of Washington is violated under color of state law." P 1689

Necessity mandates the accused make one of two choices. Either accept assistance of a member of **The Washington State Bar Association**, who has a duty, first to the interest of the plaintiff "State of Washington," over the interests of the accused or stand alone without counsel.

Either choice is a denial of the assistance of effective counsel under color of state law. Either choice works to bridge the right of the accused to Freely contract with anyone except a member of the Washington State Bar Association; To freely associate with anyone as counsel who is not a member of the Washington State Bar Association, and enjoy the right of equal protection of law by being represented by counsel who does not have a conflict of interest.

By imposing the threat of sanctions on anyone by whom the accused may choose to be represented, who does not happen to be a member of the Washington State Bar Association, violates the rights of the accused to be represented by counsel of choice. The accused's only choice is to be represented by the Washington Bar Association in the person of its member or by no one. "That is hardly a choice."

In this case, the right guaranteed by [Article] In Amendment XIV to "equal protection of the law" is systematically violated by the judiciary of the "State of Washington." By forcing the accused to choose only a member of the "Washington State Bar Association" who is inherently hindered by a dual obligation, thus denying effective assistance of counsel.

The plaintiff "State of Washington" has counsel of the Washington State Bar Association. In the person of the prosecuting attorney, who does not have a conflict of interest.

The judiciary of the "State of Washington." Who is also a member of the "Washington State Bar Association," in the person of the presiding Judge, has willfully and knowingly deprived the accused of the due process right to the assistance of counsel of choice, effective assistance of counsel, and equal protection of the law by forcing the accused to either be represented by counsel who has a conflict or by no one.

The fact that the "Washington State Bar Association" exclusively controls all three elements of the court, (i.e. The prosecution, judiciary and defense) establishes a "star chamber court" devoid of any lawful due process. Without the ability of the accused to be represented by counsel of choice outside the Washington State Bar Association, the rights of the accused to be represented by counsel of choice is violated, and thus due process is violated.

"The court held that" denial of right to counsel of choice is reversible error regardless of whether prejudice is shown. "Bland V. California Department of Corrections". 20 F. 3d. 1469 (9th cir. 1994).

After analyzing "the four elements of the right to assistance of counsel." Established by United States V. Padilla-Martinez, supra. It is clear that the appellant has been denied the right of counsel guaranteed by the constitution of the United States of America, and thus denied due process of law.

The judiciary of the "State of Washington" in the person of the presiding judges, counsel, (Both prosecutor and defense) by proceeding without insuring the accused had effective assistance of counsel of choice, as required by Article VI Clause 2+B to the constitution of the United States of America, violated the appellants essential due process; Right to associate with counsel of choice; And right to equal protection of law guaranteed by [Article in] Amendment 1,5,6,10 and 14 as well as Article 1§10 to the constitution of the United States of America.

The judiciary of the State of Washington did knowingly and willfully violate the appellant's right to due process of law, equal protection of law guaranteed by Article 5+14 in Amendment to the constitution of the United States of America, and binding on the judiciary of the "State of Washington."

At Article 6 Clause 2+3 to the constitution of the United States of America and knowingly and willfully entered a judgement and Sentence of conviction, and a warrant of confinement upon which the plaintiff relies which the judiciary of the "State of Washington" knows is null and void for lack of subject matter and personal jurisdiction in violation of due process of law.

"SUMMARY"

It is established that, in this country, sovereignty is inherent in the people and that the sovereignty is delegated to the government by the sovereign people.

That delegation is in the form of a constitution. The Supreme Court clearly addresses the matter in Carter V. Carter Coal Company at AL. 56 s.ct 855, 801. Ed. 1160, 298 u.s. 238 (1936).

"... The Constitution itself is in every real sense a law-- the law matter being the people themselves, in whom under our system all political power and sovereignty primarily resides, and through whom such power and sovereignty primarily speaks.

"It is by that law," and not otherwise, that the Legislative, Executive, and Judicial agencies created and exercised such political authority as they have been permitted to possess.

The Constitution speaks for itself in terms so plain that to Mis-understand their import is not rationally possible. "We the people of the United States," it say's, "Do ordain and establish this Constitution." Ordain and Establish!

These are definite words of Enactment, and without more would stamp what follow with the Dignity and character of law. The framers of the Constitution, however were not content to let the matter rest here, but provided explicitly- "This Constitution, and the laws of the United States which shall be made in pursuance thereof;

... Shall the Supreme Law of the land. (Const. Art. 6 cl.2) The supremacy of the Constitution as law is thus declared without qualification.

That supremacy is absolute; The supremacy of a statute enacted by congress is not absolute but is conditional upon it's being made in pursuance of the Constitution, and a judicial tribunal, clothed by that instrument with complete Judicial Power, and therefore, by the very power,- required to ascertain and apply the law to the facts in every case which is proceeding properly and brought for adjudication, and must apply the supreme law and reject the inferior statute whenever two conflict, in discharge of that duty.

The opinion of the Law makers that a statute passed by them is valid must be given great weight, Adkins V. Childrens Hospital. 261 u.s. 525, 544, 43 s.ct. 394, 67 L. Ed. 785, 24 A.L.R. 947.

The mandate of Article 6 Clause 2+3 of the Constitution of the United States of America that "The judges in every state shall be bound thereby, anything in the Constitution or Laws of any state to the contrary not with standing," is explained more fully in Ace Autobody & Towing LTD City of New York, 171 F. 3d. 769 (2nd cir 1999).

"Under Supremacy clause, Federal law pre--empts state law either by express provision, by implication, or by conflict between federal and state law." "And," "state may not, in the name of local control over local Laws and practice, Give courts the power to violate the supreme Law of the Land."

Kalb V. Feverstein, 308 u.s. 433, At 439, 84 L. Ed. 370, at 374, 60 s.ct. 343, 41 Am, banked, rep. u.s. 501 (Wis 1940).

To insure that the Supreme Law would safeguard the rights of the sovereign people, including appellant, to be vindicated under color of any provision of the Consttution, Laws, Ordinances, Regulations, or custom of policy of the State of Wasington Article 6 Clause 3 of the Constitution of the United States of America Requires that the state judges to be bound by oath or affirmation, to support the Constitution.

The mandate of the Supreme Law of the law makes it the duty of the judiciary of the State of Washington, and each judge individually, to personally Guard the people against the enforcement of any provision of the State Constitution, or of Law, that would abridge any right, privilege or immunity.

When a right, privilege, or immunity, of any of the peoples secured by the Constitution, Laws and treaties for the United States of America.

- Is violated under the application and enforcement of any State Constitution, Provisions, Laws, Ordinances, Rules, Regulations, Customs, Policies, or otherwise. The state judiciary stands in violation of duty imposed by Article 6 Clause 2+3 to the Constitution for the United States of America.

The judiciary of the State of Washington, has willfully and knowingly violated that duty with regard to the appellant's rights, privileges, and immunities as an American, Citizen, guaranteed by the Constitution, Laws and treaties for the United States of America. Would not be abridged under color of state Law and / or office resulting in the unlawful confinement of the appellant by the plaintiff.

Wherefore: The court should grant the appellant's petition for review to vacate Judgement and Sentence without delay.

I, Oliver W. Weaver, Herein after appellant, declares under Penalty of perjury under the Laws of the United States of America and the Laws of the people of the State of Washington that the appellant is of the age of Majority, of sound mind and competent to testify, and the facts stated herein are true and correct to the best of the appellant's knowledge, Understanding and belief.

RESPECTFULLY SUBMITTED, This _____th Day of _____ 2007.