

The Honorable Thomas S. Zilly

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

BANK OF NEW YORK MELLON, a
Delaware corporation, as trustee for
Structured Asset Mortgage Investments II
Trust, Mortgage Pass-Through Certificates
Series 2005-AR2,

Plaintiff,

vs.

SCOTT STAFNE, an individual; TODD
STAFNE, an individual; and REAL TIME
RESOLUTIONS, Inc., a Texas corporation,

Defendant

Case No.: 2:16-cv-00077 TSZ

**DECLARATION OF SCOTT E. STAFNE
IN SUPPORT OF MOTION FOR
RECUSAL**

1. My name is Scott Stafne. I am over the age of majority. I am competent to make this declaration and do so on the basis of personal knowledge as more fully appears herein.
2. I am one of the defendants in this *in rem* action, which involves a disputed *res* of real property located within Twin Falls Rural Settlement community in Snohomish County,

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2 Washington. The other defendants are my brother, Todd Martin Stafne, who recently died
3 and Real Time Resolution, a corporation with a Texas citizenship.

- 4 3. Although I am participating in this case on my own behalf, I am licensed to practice law
5 before the United States Supreme Court, the Washington Supreme Court and all
6 Washington courts, the United States Ninth Circuit Court of Appeals, and both federal
7 district courts of the State of Washington. Because I am admitted to practice law I claim
8 for myself any rights and privileges which attorneys might have with regard to the
9 presentation of evidence, argument, and representing their clients. I am proceeding pro se
10 because I cannot afford to a lawyer to represent myself.
- 11 4. I intend to offer opinion testimony regarding this motion pursuant to Federal Rule of
12 Evidence 702.
- 13 5. I have scientific, technical, and/or other specialized knowledge that will help the trier of
14 fact understand the evidence in this case to determine fact issues and those issues which
15 arise pursuant to this motion to recuse or disqualify retired Judge Zilly. I have requested a
16 trial by jury and hereby request a jury with regard to resolution of factual issues where
17 such right exists.
- 18 6. I have specialized knowledge about the history regarding the ratification of the United
19 States Constitution and its structural components, *i.e.* the Separation of Powers of the
20 federal government and federalism. Federalism is the division of power between the
21 federal government and the governments of the States. I also have specialized knowledge
22 about the contents of various provisions of the Constitution and those considerations
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2 which were taken into account with regard to the ratification of the Constitution,
3 including those which articulate those attributes required to be an Article III Judge.

- 4 7. I also have specialized knowledge about the judicial branch of government, particularly
5 with regard its current and recent (during the course of my lifetime) functioning as an
6 adversary system. By “adversary system” I mean a legal system used in common law
7 countries where two advocates, usually lawyers, represent their party’s case or position
8 before an impartial person or group of people, usually a jury or judge, who based on the
9 lawyer’s arguments and evidence attempt to determine the truth and pass judgment
10 accordingly.
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- 12 8. I also have specialized knowledge about disabilities and how they may impact the trial
13 process.
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- 15 9. The basis of my specialized knowledge about these areas includes my training, education
16 and experience.
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- 18 10. My father and grandfather were both lawyers. My Mom and Dad always intended for me
19 to be a lawyer and thus my training in history and law started early; pretty much at birth.
20 While growing up my father often discussed the law and sometimes those legal principles
21 involved in cases he was working on at the time. Dad was the city attorney of Bettendorf,
22 Iowa while I was growing up and through college. Dad and Mom pushed me to take
23 elective courses throughout my middle school, high school and college education which
24 related to the study of law, history, and civics.
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- 26 11. I graduated from DePauw University, a Methodist affiliated school in 1971 summa cum
27 laude. I took mostly pre-law classes, which included some which included the study of
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2 political science and history. I also studied political science in London, England for a
3 semester my junior year in college. Part of these studies involved comparative political
4 and judicial systems between the United States and England.

5 12. I graduated summa cum laude from the University of Iowa Law School in 1974. I ranked
6 fourth in my class and was the recipient of the the Phi Delta Phi scholarship award that
7 year. Among those subjects I studied at law school was Constitutional law and Civil
8 Procedure. My professors in these areas were Arthur E. Bonfield and Allan D. Vestal.

9 13. I was inducted into the Order of the Coif in 1974. The Order of the Coif “is an honorary
10 scholastic society the purpose of which is to encourage excellence in legal education by
11 fostering a spirit of careful study, recognizing those who as law students attained a high
12 grade of scholarship, and honoring those who as lawyers, judges and teachers attained
13 high distinction for their scholarly or professional accomplishments.”

14 14. I practiced law from 1976 to 1978 in Indianapolis, Indiana at the law firm of Baker and
15 Daniels. My practice at that law firm included mostly discrimination law, particularly in
16 the context of class actions. Baker and Daniels was a large law firm when I was recruited
17 to it. Law firms back then had not yet evolved into the legal cabals they are today. Like
18 most large law firms, Baker and Daniels evolved over the years into a much larger firm.
19 Today it is known as Faegre Baker Daniels, LLP, and appears to be a little larger than
20 than DWT, both in terms of revenue and number of offices.

21 15. I left Baker and Daniels because my heart was not into working for large corporations
22 against the little guy. I questioned whether I liked the practice of law at all and at the
23 suggestion of a friend decided to apply to the University of Washington Law School
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2 LLM program in Law and Marine Affairs. At that time (and likely today) the University
3 of Washington's LLM program was one of the most prestigious in the nation. The
4 program at that time was chaired by Professor William T. Burke, who was a leading
5 expert with regard to the Law of the Sea and the Public Order of the Oceans and
6 Professor Ralph W. Johnson, a well known expert on Indian Law.

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8 16. I obtained an LLM in Law and Marine Affairs from the University of Washington in
9 1977.

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11 17. After graduation I formed a law firm with Sara Hemphill. The law firm was known as
12 Stafne Hemphill. From 1977 until approximately 1980 our office mostly represented
13 organizations composed of fisher persons and/or processors before courts and regional
14 fishery management councils. The implementation of the Fisheries Conservation and
15 Management Act invoked consideration of both separation of powers and federalism
16 issues, which I participated in litigating. These issues and some of the litigations related
17 to them are discussed in my declaration to stay this court's orders which was filed with
18 the Ninth Circuit, as Dkt Entry 5-3. This declaration is attached as Exhibit 1 and
19 incorporated herein in its entirety.

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21 18. In 1978 I was counsel in a case where federal Judge Donald L Voorhees determined an
22 agreement by the executive branch with Canada to allow Canadian trollers to fish off the
23 coast of Washington violated the Fishery Conservation and Management Act and
24 therefore violated the separation of powers. As a result of this representation, I was
25 requested to, and did offer testimony, before the Committee on Commerce, Science, and
26 Transportation United States Senate, Ninety fifth Congress on the "Reciprocal Fisheries

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2 Agreement for 1978 between the United States and Canada.” The transcript of these
3 hearings are available at

4 http://njlaw.rutgers.edu/collections/gdoc/hearings/7/78602906/78602906_1.pdf .

5 19. As the Fisheries Conservation and Management Act began to be fleshed in by
6 administrative and judicial decisions, I became more involved with admiralty cases,
7 including those arising under the Jones Act and the Longshoremen and Harborworkers
8 Compensation Act and third party litigation related to the LHWCA. I also started
9 litigating medical malpractice actions on behalf of plaintiffs. During this period I also
10 litigated numerous actions on behalf of personal injury plaintiffs suffering various
11 injuries, maladies, and disabilities. This required me to develop expertise in appreciating
12 the consequences of various injuries and medical disabilities so that I could understand
13 how they affected my clients and explain those effects to fact finders.
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15 20. I developed significant medical problems in the early nineties. I was found to be
16 permanently totally disabled in approximately 1993 by the Social Security
17 Administration. I gave up the active practice of law then, but still continued to litigate
18 some matters I felt strongly about.

19 21. Shortly before or after I closed down my formal law practice I studied for and obtained
20 through examination certification from ACE® Fitness Certifications. Information about
21 ACE certifications is available at:

22 [https://www.acefitness.org/default.aspx?adpos=1t1&creative=116220297204&device=c](https://www.acefitness.org/default.aspx?adpos=1t1&creative=116220297204&device=c&matchtype=b&network=g&gclid=CIXj96iihNQCFU5ufgodoE4GHw)
23 [&matchtype=b&network=g&gclid=CIXj96iihNQCFU5ufgodoE4GHw](https://www.acefitness.org/default.aspx?adpos=1t1&creative=116220297204&device=c&matchtype=b&network=g&gclid=CIXj96iihNQCFU5ufgodoE4GHw)
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2 22. My motivation was not so much to obtain certification, but to learn how to identify
3 health issues as well as achieve better health (both physical and mental) through exercise
4 and fitness regimes. Although I have not renewed my ACE certification, the education
5 and training it provided, along with my experience in evaluating the consequences of
6 injuries and disabilities for purposes of practicing law, contributes to my overall expertise
7 related to disabilities generally and the impact of court procedures in proximately causing
8 or exacerbating patent and invisible disabilities.

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10 23. I returned to the practice of law in the mid 2000s. I did so incrementally. I was able to do
11 this because much of my practice has always involved referral work from other attorneys.
12 So when lawyers asked if I would work on cases after my demise did not materialize I
13 agreed to do some of the work offered.

14 24. I was asked by another lawyer who represented the family of a man who had died in the
15 Thirty Mile Fire to help litigate that case. It is my recollection that my work on that case
16 pretty much started my return to the full time practice of law, as thereafter I began
17 accepting more referrals and taking on cases which were brought to me by my own
18 clients.

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20 25. Partly as a result of my own experience in dealing with banks (who we now know were
21 acting as servicers, not bankers, when collecting payments) and because of the gravity of
22 the personal harm dual tracking (not yet then commonly identified as a creditor scam)
23 was causing to people, I took on several cases where I believed the foreclosures were set
24 up by servicers in order to steal people's homes. When I began representing people
25 against banks and servicers I believed that under general principles of tort law those who

were injured by negligent or intentional misconduct proximately caused by banks would be able to recover damages through jury trials.

26. This month I became certified as a Level I ADA Advocate by the John Jay College of Criminal Justice after completing that institution’s training course.. In addition to this specialized education I also have significant experience with regard to representing, interacting with, and recognising clients suffering from both patent and invisible disabilities, and how they are affected from abusive and arbitrary judicial proceedings.

27. I have relied on certain materials in formulating my opinions with regard to this motion. These materials include this Court’s docket as well as the docket of the Ninth Circuit Court of Appeals. Further, I have relied on the materials referenced in my brief to recuse or disqualify Judge Zilly. For the Court’s convenience I have reproduced every reference linked in that motion as an exhibit hereto. The following chart documents the number of the exhibit with the reference cited.

Exhibit 2	CBS News Watch, The Growing Danger to Elderly Americans , (January 28, 2015)
Exhibit 3	Harada, Caroline N., Marissa C. Natelson Love, and Kristen Triebel. “ Normal Cognitive Aging .” <i>Clinics in geriatric medicine</i> 29.4 (2013): 737–752. PMC. Web. 24 May 2017.
Exhibit 4	Valencia, Milton J., The Boston Globe,

	‘Senior status’ lets federal judges keep working — for free (December 12, 2014) (US Senior District Judge Mark L. Wolf quoted as stating: “I love it [Article III judging].
Exhibit 5	United States Courts, FAQs Federal Judges ,
Exhibit 6	“ THE OLDEST BENCH EVER, Extreme Aging in the Federal Judiciary ” (January 18, 2011.)
Exhibit 7	“ The Judge Law Clerk Relationship - More than Just a Job ”
Exhibit 8	University of Wisconsin Law School, Judicial Clerkship Handbook
Exhibit 9	The Columbia School of Law, “ What Does it Mean to be a Judicial Clerk? ”
Exhibit 10	Maintaining the Public Trust for Law Clerks (2011)
Exhibit 11	Code of Conduct for Judicial

	<u>Employees,</u>
Exhibit 12	<u>Lawyerist.com, Measuring the Access-to-Justice Gap: Nearly 70% of All Civil Defendants Aren't Represented (2016)</u>
Exhibit 13	<u>ABA Journal, Can the access-to-justice gap be closed? These recommendations might make it possible (2016)</u>
Exhibit 14	<u>Washington State 2015 Civil Legal Needs Study Update; Center for American Progress, The Justice Gap: Civil Legal Assistance Today and Tomorrow (2011)</u>
Exhibit 15	<u>Legal services Corporation: Documenting the Justice Gap In America The Current Unmet Civil Legal Needs of Low-Income Americans (2009)</u>
Exhibit 16	<u>Gillian K. Hadfield, Higher Demand, Lower Supply? A Comparative Assessment of the Legal Resource Landscape for Ordinary Americans, 37 Fordham Urb. L.J. 129 (2009)</u>
Exhibit 17	<u>Washington State 2003 Civil Legal Needs Study Update.</u>
Exhibit 18	<u>Entin, Jonathan L., "Getting What You Pay For: Judicial Compensation and Judicial Independence" (2011)</u>

28. While I agree Article III, § 1 was designed to promote a strong and independent judiciary, it is my opinion that purpose is not served by allowing retired federal judges over 80 (who have chosen to retire and no longer receive a salary) to exercise judicial power at their discretion when it is well know that persons over that age are likely to

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2 suffer significant medical and mental infirmities which will likely hinder their ability to
3 judge. My opinion in this regard is based on the fact that our founders anticipated the
4 judiciary would be the weakest branch of government and that its legitimacy would
5 depend on the good sense of the judgments made by Article III judges. The “good
6 conduct” tenure and “compensation clause” of Article III, § 1 reflect this purpose.
7 Allowing retired judges, likely to be cognitively impaired as a result of the aging process
8 which affects us all, decide to act as judges (for free) when they desire to do so does not
9 promote the goal of a an impartial, independent judiciary that Article III, § 1 was
10 intended to promote. Indeed, arguing that Article III, § 1 was intended to preserve the
11 right of mentally compromised retired judges to exercise judicial power at their own
12 whim seems more contrary to the demonstrated purposes of this Constitutional provision.

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14 29. When the Constitution was written the average life expectancy was less than 40 years
15 old. Surely, no one who ratified the Constitution at that time would have contemplated
16 that these provisions which were designed to attract competent people as judges would
17 someday be argued to protect retiree judges of questionable competence from serving as
18 part time judges for free. Most people back then would have been more than a little
19 concerned that judges working for free would be deciding disputes between them because
20 “no one works for free.” Most always there are payoffs, even if not monetary.

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22 30. In my judgment the recognized process of exercising judicial power pursuant to Article
23 III has the following components:

24 (a) litigants initiate the disputes;

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2 (b) the disputes are put through an adversarial system, which is presided over by an
3 Article III judge;

4 (c) judgments must be supported by a rationale¹;

5 (d) judgments must be grounded in the law; and

6 (e) judges must be impartial.

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8 31. My experience throughout this case has led me to believe that DWT retired Judge Zilly is
9 not impartial. In my opinion retired Judge Zilly is biased towards DWT and/or against
10 *pro se* litigants. For example, his first order was to excuse DWT's Rule 11 violation.
11 Then when I refused Burnside's demand to give deposition testimony with regards to the
12 merits, I received the minute order denying my challenge to subject matter jurisdiction
13 almost instantly (appearing as if Burnside had simply asked that an order be issued.).
14 Even though Burnside's testimony that I filed a motion on behalf of Robertson (when he
15 was in fact *pro se*) was demonstrably false, retired Judge Zilly accepted this lie without
16 hesitation as a basis for not considering Constitutional objection to DWT's representation
17 and standing on behalf of the BNY Mellon entities.. Finally, in his most recent minute
18 order retired Judge Zilly misrepresents to the Court of Appeals that DWT filed a motion
19 to amend the judgment before the appeal was filed.
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25 ¹ Congress can legislate without justification; but courts legitimize themselves by providing reasons for their
26 decisions. Federalist Paper No. 78. Justice Kennedy once observed, "We are the only branch of the government that
27 must give reasons for what we do. They are in the opinions." Tony Mauro, Courtside: When Planets Collide,
28 LEGAL TIMES, Mar. 29, 2004, at 10, available at 2004 WLNR 23406968

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2 32. I have reviewed the factual allegations of set forth in the section of my motion entitled
3 “*Judge Zilly has violated the most basic tenets of judging so as to make probability of*
4 *bias in favor of DWT and/or against Pro Se Stafne too high to to be constitutionally*
5 *tolerable*” and affirm that they are true and correct to the best of my information and
6 belief.

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8 33. Of course, it is not my position that erroneous decisions alone are grounds for
9 disqualification. However, I do assert that retired Judge Zilly relieving DWT and its
10 lawyers from their responsibility for complying with those rules of civil procedure,
11 without explanation, which are imposed on other litigants, is indicative of bias in favor of
12 DWT. It is also my opinion that the misrepresentations retired Judge Zilly made to the
13 Court of Appeals in favor of DWT amending his order so as to allow the sheriff to sell
14 my property is indicative of bias. It is also my opinion retired Judge Zilly’s failure to
15 consider whether DWT has standing to represent BNY Mellon entities, despite its
16 Constitutional obligation to do so, is indicative of bias. It is also my opinion that retired
17 Judge Zilly’s refusal to document those reasons substantiating that the presumption
18 against jurisdiction had been rebutted is indicative of bias in favor of DWT because this
19 is a fundamental duty of the Court which retired Judge Zilly has continually ignored so as
20 to allow DWT proceed to the merits before the Constitution allows.

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22 34. It is also my opinion retired Judge Zilly’s failure to rule on my motion for a protective
23 order is indicative of bias against *pro se* litigants generally, and those who suffer from
24 disabilities specifically. See Dkt 51. Further, it is my judgement that most reasonable
25 persons would interpret retired Judge Zilly’s lack of concern to insure protection of *pro*
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2 *se* litigants against abusive litigation tactics, targeting disabilities, is an indication of bias
3 which most reasonable persons would understand.
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8 I declare under the penalty of perjury that the foregoing is true and correct to the
9 best of my information and my belief.
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12 DATED this 26th day of May 2017 at Arlington, Washington.
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15 BY: /s Scott E. Stafne

16 **STAFNE LAW FIRM**

17 239 N Olympic Avenue
18 Arlington, WA 98223
19 (360) 403 - 8700
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