



Superior Court of the State of Washington  
for the County of Spokane

Department No. 6

Salvatore J. Cozza

Judge

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Re: Eugster v. WSBA, *et al*, Spokane County Superior Court # 15-2-04614-9.

Dear Counsel:

Thank you for your presentation of oral argument on this matter. I hope that my opportunity to write out my decisions here will be of assistance to you in preparing final Findings and Conclusions in this case. A reviewing court may also find my comments here helpful.

Let me say at the outset that the Plaintiff has advanced some substantive issues here that are by no means frivolous. The larger issue of the existence of integrated Bar Associations rests on some uncertain grounds. *Lathrop v. Donohue*, 367 U.S. 820 (1961) is 55 years old and is a confusing plurality opinion. Whether that decision will survive in view of *Harris v. Quinn* 573 U.S. \_\_\_\_ (2014) remains to be seen.

However, the issue in this case is a smaller subset of the integrated bar issue. The real question before me is really based on the procedural vehicle that Plaintiff seeks to use to advance the substantive issue of the constitutionality of the bar disciplinary system used in Washington. Let me set out my decision in two parts:

***Damages***

This particular aspect of the case is a little bit clearer to this court than the later aspect to be discussed herein. The ultimate grounds that is dispositive on the question of damages rests on court rule:

### GR 12.3 Immunity

All boards, committees, or other entities, and their members and personnel, and all personnel and employees of the Washington State Bar Association, acting on behalf of the Supreme Court under the Admission to Practice Rules, the rules for Enforcement of Lawyer Conduct, and the Disciplinary Rules for Limited Practice Officers, shall enjoy quasi-judicial immunity if the Supreme Court would have immunity in performing the same functions.

This court is bound to operate on the assumption that court rules are presumed to be constitutional. Based on the court rule, the Plaintiff cannot pursue damages and that part of his suit must be dismissed under CR 12(b)(6).

### *Constitutionality and Procedure*

In my view, this is really the heart of the case. Plaintiff asserts that his action is properly before the Superior Court under a grant of general jurisdiction under the grant of equity jurisdiction in RCW 2.08.010. However, this grant has to be looked at in the context of other provisions. Among the provisions supporting the concept of exclusive jurisdiction in the Supreme Court are RCW 2.48.060 (The State Bar Act) and ELC 2.1, which provides:

#### ELC 2.1 SUPREME COURT

The Washington Supreme Court has exclusive responsibility in the state to administer the lawyer discipline and disability system and has inherent power to maintain appropriate standards of professional conduct and to dispose of individual cases of lawyer discipline and disability. Persons carrying out the functions set forth in these rules act under the Supreme Court's authority.

Neither does the State Constitution give such a broad grant of jurisdiction to the Superior Courts to defeat the statutes and court rules on this subject. Wash. Const. Art. IV. *See generally, State ex rel Schwab v. State Bar Assn.*, 80 Wn. 2d 266 (1972), *Discipline of Sanai*, 177 Wn. 2d 743 (2013).

While multiple grounds are argued by Defendant WSBA in support of its motion to dismiss, one is the simplest and most direct consideration in this case. The Supreme Court has set up a system of lawyer discipline in which the ultimate step is review before the Supreme Court. ELC Title 12. Recent cases also reveal that constitutional consideration have previously been heard in connection with discipline cases. *Discipline of Blanchard*, 158 Wn. 2d 317 (2006); *Discipline of Scannell*, 169 Wn. 2d 723 (2010). It appears to this court that Plaintiff had the opportunity to take his constitutional concerns to the Washington Supreme Court in his prior discipline case. This is not to say that he may not have an opportunity to raise these concerns in federal court. However, state court collateral attack in Superior Court is not available under current precedent which this court is bound to follow.

Thus, for the reasons stated herein, Defendants are entitled to a dismissal of Plaintiff's claims with prejudice pursuant to CR 12 (b)(1) and (6).

This court asks for preparation of a written order consistent with this analysis and presentment of same.

Sincerely,

A handwritten signature in black ink, appearing to be 'SFC', written over the word 'Sincerely,'.

Judge Salvatore F. Cozza

cc: Court file