No. _____

In The

# Supreme Court of the United States

STEPHEN KERR EUGSTER,

*Petitioner,*

v.

WASHINGTON STATE BAR ASSOCIATION, et al.,

*Respondents.*

**On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit**

## PETITION FOR A WRIT OF CERTIORARI

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## QUESTION PRESENTED

Whether *Lathrop v. Donohue*, 367 U.S. 820 (1961) should be reconsidered and overruled.

## LIST OF PARTIES

Petitioner, who was the Plaintiff-Appellant in the court below, is Stephen Kerr Eugster.

Respondents, who were Defendants-Appellees in the court below are Washington State Bar Association, a Washington Association (WSBA); Anthony Gipe, President, WSBA, in his official capacity; William D. Hyslop, President-elect, WSBA, in his official capacity; Patrick A. Palace, Immediate Past President, WSBA, in his official capacity; and Paula Littlewood, Executive Director, WSBA, in her official capacity; Justices of the Washington Supreme Court, namely; Barbara Madsen, Chief Justice, in her official capacity; Charles Johnson, Associate Chief Justice, in his official capacity; Sheryl Gordon McCloud, Justice, in her official capacity; Charles Wiggins, Justice, in his official capacity; Steven González, Justice, in his official capacity; Mary Yu, Justice, in her official capacity; Mary Fairhurst, Justice, in her official capacity; Susan Owens, Justice, in her official capacity; and Debra Stephens, Justice, in her official capacity.

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## PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

## OPINIONS BELOW

The Ninth Circuit order affirming the district court is reproduced in the appendix (Pet. App. 1) along with the district court's order dismissing Petitioner's claims on the pleadings (Pet. App. 4 and 6).

## JURISDICTION

On March 21, 2017, the United States Court of Appeals for the Ninth Circuit entered its order, judgment and opinion affirming the district court's order of dismissal in *Eugster v. Washington State Bar Association, et al.* This petition has been timely filed within 90 days of that order. SUP. CT. R. 13.1. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). The district court had jurisdiction under 28 U.S.C. § 1331.

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- 42 U.S.C. § 1983.

The underlying action was brought by the Respondent under 42 U.S.C. § 1983, which provides as follows:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage of any State or Territory or the District of Columbia, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

- U.S. Const. Amend. I.

Respondents have violated Petitioner's right of non-association under the First Amendment to the United States Constitution, which provides:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of

speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

- Washington State Bar Act of 1933. (Pet. App. 30.)

## STATEMENT OF THE CASE

During the latter part of The Progressive Era 1910-1920, the American Judicature Society commenced a movement to integrate state bar organizations. Herbert Harley, secretary of the Judicature Society, made the first speech about bar integration on December 28, 1914 before the bar association of Lancaster County Nebraska. Herbert Harley, *A Lawyer's Trust*, 29 J. AM. JUD. SOC. 50, 57 (1945).

The first state to integrate was North Dakota in 1924. The state of Washington became the 7th in 1933 when the State Bar Act was passed. 1933 Wash. Sess. C 94. (Pet. App. 30.) The Bar Act was modeled on the Bar Association Act created and used by the American Judicature Society to promote bar integration. *Bar Act*, 2 J. AM. JUD. SOC. 111, 111-28 (1918-1919).

The national lawyer population in 1878 was 64,137. By 1915, the total nearly doubled to 122,000. Two years after the Washington State Bar Act (Bar Act) was passed, there were 160,000 lawyers in the United States. By 1961, the year *Lathrop v. Donohue*, 367 U.S. 820 (1961) was decided, there were 288,746 lawyers.

ABA NATIONAL LAWYER POPULATION SURVEY, HISTORICAL TREND IN TOTAL NATIONAL LAWYER POPULATION 1878-2017.

The WSBA has the following elements. These are common to integrated bar associations:

1. Lawyers are compelled to be members, pay dues, and be in good standing of the WSBA to practice law in Washington. Act § 13. (Pet. App. 34.) RCW[1] 2.48.170.

2. Lawyers are subject to regulation and discipline by the WSBA. Act § 8. (Pet. App. 33.) RCW 2.48.060.

3. The WSBA and its members are a state-created government monopoly over the practice of law in the State of Washington. Act § 13, § 14. (Pet. App. 34-35.) RCW 2.48.170, RCW 2.48.180.

There are 31 integrated bar associations in the United States including the District of Columbia. The integrations took place from 1921 to 1974. Twenty-five states integrated during 1921 to 1956. Six states and the District of Columbia integrated over the period of 1968 to 1974. Information Sheet – Integrated Bar Associations ("Information Sheet") (Pet. App. 37-38.).

*Lathrop v. Donohue* became an integrated bar by court order in 1956. At that time, there were 25 integrated bar associations. (Pet. App. 37-38.)

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[1] Revised Code of Washington.

Since the *Lathrop* decision in 1961, there have been dramatic changes concerning the practice of law.

The integrated bar serves two purposes, "regulation of the legal profession and 'improvement of the quality of legal services.'" *Keller v. State Bar of California*, 496 U.S. 1, 13-14 (1990) (internal quotation marks and citation omitted). The regulation of the legal profession is its main purpose and a critical feature in the state creation of the bar by legislation or court order or combination of the two.

The first purpose is the most important purpose of the integrated bar association.

States with voluntary bar associations are in states which have attorney regulation and discipline systems which have no relationship with bar associations. ABA, DIRECTORY OF LAWYER DISCIPLINARY AGENCIES (August 2013).[2]

Close to half of the integrated bar association states have separated the regulation and discipline function from the bar association. *Id.* Information Sheet (Pet. App. 37-38.).

As to the second purpose – "improvement of the quality of legal services" – it is no longer necessary that this be done by an integrated bar association. There

[2] http://www.americanbar.org/content/dam/aba/-administrative/-professional_responsibility/2014_-directory_disciplinary_agencies_online_092014.pdf-106k-2015-07 (Retrieved 2017-05-09).

are numerous volunteer organizations which fulfill this purpose.

The American Bar Association has about 400,000 dues paying members. This number is 35 percent of the total 1.3 million lawyers in the United States. It is one of the largest voluntary organizations in the world. http://www.americanbar.org.

Of the 39 counties in the state of Washington, there are 38 local bar associations. http://www.wsba.org/-legal-community/county-bar-associations.

The King County Bar Association in Seattle, Washington has over 5,000 members who pay annual dues of about $250. *See* http://www.kcba.org.

There are perhaps thousands of associations, organizations, businesses, and data services which fulfill the integrated bar purpose of "improvement of the quality of legal services."

The practice of law has changed dramatically since 1961. Then, lawyers were dependent upon typewriters. In July 1961, the IBM Selectric was introduced. It was the mainstay of every law firm in America until the advent of the word processing systems. In 1981, the IBM Personal Computer was introduced. It was soon replaced by the Apple II and later by personal computers using the Windows operating system.

Most legal research was done by use of the West key digest system and expensive database systems. Today, legal research database systems are available at reasonable cost, such Fastcase, Versus Law, Case

Maker, as well as Westlaw and Lexis-Nexis, and Google Scholar.

Internet use grew rapidly in the West from the mid-1990s and from the late 1990s in the developing world. "In the two decades since then, Internet use has grown 100-times, measured for the period of one year, to over one third of the world population." https://en.wikipedia.org/wiki/Internet (footnotes omitted) (Retrieved 2017-05-10).

And, of course, the practice of law has changed. As a result of *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977), lawyer advertising became permitted. Minimum fee schedules were deemed to be subject to regulation under the Sherman Act. *Goldfarb v. Virginia State Bar*, 421 U.S. 773 (1975).

The practice of law is no longer the province of single practitioners, small firms and larger firms of 40 to 100 lawyers. Law firms have become interstate and international with offices in multiple cities, states, countries, and continents. The halcyon days of the law circa 1970 are gone.

## REASONS FOR GRANTING THE PETITION

*Lathrop v. Donohue*, 367 U.S. 820 (1961) has become an anomaly.

*Lathrop v. Donohue* is contrary to the Supreme Court's First Amendment jurisprudence. Today, infringements of fundamental rights must be tested

under strict scrutiny. *Lathrop*'s infringements of a lawyer's fundamental First Amendment right of non-association fails under strict scrutiny.

The policy and principles of *stare decisis* lead to the conclusion that *Lathrop v. Donohue* should be reconsidered and overturned.

*Stare decisis* "is vital to the proper exercise of the judicial function." *Payne v. Tennessee*, 501 U.S. 808 (1991).

> The first essential of a lasting precedent is that the court or the majority that promulgates it be fully committed to its principle. That means such individual study of its background and antecedents, its draftsmanship and effects that at least when it is announced it represents not a mere acquiescence but a conviction of those who support it. Hon. Robert H. Jackson, *Decisional Law and Stare Decisis*, 30 A.B.A. J. 334, 335 (1944).

## I. First Amendment Jurisprudence Fifty-Five Years After *Lathrop*.

The *Lathrop* decision is not in keeping with the Court's decisions about fundamental rights under the First Amendment.

Where fundamental rights are concerned *stare decisis* does not allow for a continuation of violation of those rights. "This Court has not hesitated to overrule decisions offensive to the First Amendment." *Citizens United v. Federal Election Commission*, 558 U.S. 310,

363 (2010) (quoting *F.E.C. v. Wisconsin Right to Life, Inc.*, 551 U.S. 449, 500 (2007) (Scalia, J., dissenting)). And if "a practice is unlawful, individuals' interest in its discontinuance clearly outweighs any 'entitlement' to its persistence." *Arizona v. Gant*, 556 U.S. 332, 349 (2009).

Ever since *NAACP v. Alabama*, 357 U.S. 449 (1958), freedom of association has been a fundamental right deserving of First Amendment protection. Correspondingly, "[f]reedom of association . . . plainly presupposes a freedom not to associate." *Roberts v. United States Jaycees*, 468 U.S. 609, 623 (1984).

The fundamental First Amendment right of association or non-association is not absolute: "Infringements on that right may be justified by regulations adopted to serve compelling state interests . . . that cannot be achieved through means significantly less restrictive of associational freedoms." *Id*. (Footnote omitted.)

A few years ago, this strict scrutiny test was described in *Knox v. Service Employees Intern. Union*, 132 S. Ct. 2277, 2289 (2012) ("mandatory associations are permissible only when they serve a 'compelling state interes[t] . . . that cannot be achieved through means significantly less restrictive of associational freedoms'").

The purposes of the integrated bar association are "regulation of the legal profession" and "improvement of the quality of legal services." *See* discussion *supra* beginning at page 5.

Though these purposes might serve a compelling state interest, they can be accomplished without a lawyer's forced membership in a state bar association. The regulation of the legal profession is achieved in states with voluntary bar associations by state-created regulation and lawyer discipline systems.

Indeed, even many integrated bar associations now have independent regulation and discipline systems. Information Sheet (Pet. App. 37-38.).

As for the purpose of "improvement of the quality of legal services," there exists today a multitude of businesses and voluntary organizations which fulfill the purpose. The American Bar Association, a voluntary association, is proof of this.

The fundamental right of non-association will be restored if the Court reconsiders *Lathrop* and overrules it.

## II. *Lathrop* Plurality Decision and *Stare Decisis.*

Plurality decisions have a weakness, and that is a lack of authority and a lack of decisiveness.

In *Lathrop*, when all of the opinions were filed, Justice Black, observed: "I do not believe that either the bench, the bar or the litigants will know what has been decided in this case – certainly I do not." *Lathrop* at 865 (Black, J., dissenting).

"A plurality decision may be binding on the parties in a case but, 'the lack of an agreement by a majority

of the Court on the principles of law involved prevents it from being an authoritative determination for other cases.'" *United States v. Pink*, 315 U.S. 203, 216 (1942) (citing *Hertz v. Woodman*, 218 U.S. 205, 213-14 (1910)).

In *Lathrop*, there was a "lack of agreement" and it was profound.

The agreement of the plurality did not pertain to "principles of law." Instead, it pertained to a single sentence in *Railway Employees' Dept. v. Hanson*, 351 U.S. 225 (1956), decided five years before *Lathrop*.

The crux of the plurality decision is found at a single page in *Lathrop* at 843 where the single sentence is quoted. Justice Brennan wrote:

> In our view the case presents a claim of impingement upon freedom of association no different from that which we decided in *Railway Employees' Dept. v. Hanson*, 351 U.S. 225.

In rejecting Hanson's claim of abridgment of his rights of freedom of association, we said:

> On the present record, there is no more an infringement or impairment of First Amendment rights than there would be in the case of a lawyer who by state law is required to be a member of an integrated bar. 351 U.S., at 238.

Justice Alito, writing for the majority in *Harris v. Quinn*, 134 S. Ct. 2618 (2014), observed: "[T]he *Hanson*

Court dismissed the objecting employees' First Amendment argument with a single sentence." (The sentence from *Hanson* quoted above.) *Id.* at 2629.

Justice Alito said the sentence "was remarkable" for two reasons.

> First, the Court had never previously held that compulsory membership in and the payment of dues to an integrated bar was constitutional, and the constitutionality of such a requirement was hardly a foregone conclusion.
>
> Indeed, that issue did not reach the Court until five years later, and it produced a plurality opinion and four separate writings. *See Lathrop v. Donohue*, 367 U.S. 820, 81 S. Ct. 1826, 6 L. Ed. 2d 1191 (1961) (plurality opinion).
>
> Second, in his *Lathrop* dissent, Justice Douglas, the author of *Hanson*, came to the conclusion that the First Amendment *did not permit* compulsory membership in an integrated bar. *See* 367 U.S., at 878-880, 81 S. Ct. 1826. The analogy drawn in *Hanson*, he wrote, fails. "Once we approve this measure," he warned, "we sanction a device where men and women in almost any profession or calling can be at least partially regimented behind causes which they oppose." 367 U.S., at 884, 81 S. Ct. 1826.

He continued:

> "I look on the *Hanson* case as a narrow exception to be closely confined. Unless we so treat it, we practically give *carte blanche* to any legislature to put at least professional people into goose-stepping brigades. Those brigades are not compatible with the First Amendment." *Id.*, at 884-885, 81 S. Ct. 1826 (footnote omitted).

*Harris v. Quinn*, *supra*, at 2629.

In addition to the foregoing, the *Hanson* sentence was not a worthwhile basis for the court's decision, it was dictum. *Stare decisis* respects legal precedent, dictum is not legal precedent.

"The problem of the distinction between holding and dictum is a sub-aspect of the problem of the referent of decisis. Under rule *stare decisis*, *decisis* refers only to those precedential rules of law labeled 'holdings' (or 'rationes decidendi') not to those labeled 'dicta.'" James Hardisty, *Reflections on Stare Decisis*, 55 IND. L.J. 41, 57 (1979-1980) (footnotes omitted).

As a general rule, dictum is not authority or a precedent within the rule of *stare decisis*. 21 CJS Courts § 190 (1940), updated (1990). *Compare Virginia v. Black*, 538 U.S. 343, 374 n. 4 (2003); and *Gillespie v. United States Steel Corporation*, 379 U.S. 148, 159-60 (1964) (Goldberg, J., dissenting); *see also*, *Staten v. State*, 191 Tenn. 157, 232 S.W.2d 18, 27 Beeler 157 (Tenn. 1950).

Not only was the single sentence in *Hanson* dictum, it included an erroneous statement about bar integration. As Justice Alito said, "the Court had never previously held that compulsory membership in and the payment of dues to an integrated bar was constitutional." *Harris* at 2629.

## III. *Stare Decisis* and Underpinnings and Changed Factual Circumstances.

Two principles of *stare decisis* come together in the consideration of whether *Lathrop* should be reconsidered and perhaps overturned. They are whether the underpinnings of *Lathrop* have changed and whether factual circumstances have changed to the degree the underpinnings are no long viable.

### A. Underpinnings

The consideration of "underpinnings" has to do with the foundations for the integrated bar association. "[S]tare decisis does not compel adherence to a decision whose 'underpinnings' have been 'eroded' by subsequent developments of constitutional law." *United States v. Gaudin*, 515 U.S. 506, 521 (1995) ("*[S]tare decisis* cannot possibly be controlling when, in addition to those factors, the decision in question has been proved manifestly erroneous, and its underpinnings eroded, by subsequent decisions of this Court.") (Citations omitted.) *See also*, *Hurst v. Florida*, 136 S. Ct. 616, 624 (2016).

The underpinnings of the plurality opinion in *Lathrop v. Donohue* have been not only eroded they have been lost. It is no longer necessary, if it ever was, to compel lawyers to be members of an integrated bar association to "improve the quality of the legal profession." And, it is no longer necessary to have an integrated bar association perform the state function of regulation and discipline of the members of the bar.

### B. Changes in Factual Circumstances

The many changes in factual circumstances of *Lathrop* since its decision in 1961 call for its reconsideration and overturning.

Justice Scalia, writing the opinion of the court in *Fed. Commc'ns Comm'n v. Fox Television Stations, Inc.*, 556 U.S. 502, 534-35 (2009) discusses the impact of changed factual circumstances as part of the principles and policy of *stare decisis*. He said "dramatic changes in factual circumstances might well support a departure from precedent under the prevailing approach to *stare decisis*," citing *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833, 855 (1992) (asking "whether facts have so changed, or come to be seen so differently, as to have robbed the old rule of significant application or justification").

There have been many changes regarding the basic facts and circumstances of *Lathrop v. Donohue*. Some of these changes are described in the Statement of the Case, *supra* at 5.

## IV. Integrated Bar is a Government Monopoly Over the Practice of Law: Does Not Meet Strict Scrutiny.

The Washington Bar Act created a government sponsored monopoly over the practice of law in the state of Washington. "No person shall practice law in this state . . . unless he shall be an active member [of the WSBA]." Bar Act § 13 (Pet. App. 34); RCW 2.48.170. The monopoly is controlled by the Washington State Bar Association and it is assisted by the Supreme Court of Washington.

The plurality in *Lathrop* did not say anything about the government monopoly nor did any of the other opinions in the case.

In the state of Washington, the creation of this government monopoly was a primary reason for the Washington Bar Act.

Ben H. Kizer was an advocate of bar integration. He was a past president of the voluntary Washington Bar Association. In a law review article, Mr. Kizer advocated integration because it would expand the services a lawyer would be able to perform. Mr. Kizer's article was published in two journals, one of which was the Journal of the organization behind the integrated bar association movement. B. H. Kizer, *A Program of Growth for Our Bar Association*, 4 WASH. L. REV. 172, 172-75 (1929). B. H. Kizer, *A Program of Growth for Our Bar Association*, 13 J. AM. JUD. SOC. 170 (1929-1930). The phrase "Growth of Our Bar" in the title to the article meant turning the voluntary Washington

Bar Association into a government monopoly over the practice of law under the aegis of the Washington State Bar Association.

The monopoly of the practice of law is perhaps the most significant element of the three elements of the integrated bar.

Within the principles of *stare decisis* there should be no hesitation to consider monopoly aspects of the integrated bar. The issue pertains to the Sherman Act. The Act involves the practice of law. *See Goldfarb v. Virginia State Bar*, 421 U.S. 773 (1975); *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977).

Integrated bar associations have found anti-trust to be a concern which has been elevated by the decision in *North Carolina State Bd. of Dental Examiners v. FTC*, 135 S. Ct. 1101 (2015).

The Washington State Bar Association plans to avoid the application of *North Carolina State Bd. of Dental Examiners*. Here is what Paula Littlewood, Executive Director, Washington State Bar Association, said not long ago in an address reported in GOVERNANCE IN THE PUBLIC INTEREST TASK FORCE REPORT, CALIFORNIA STATE BAR 2016:

> And post *North Carolina*, that's going to be really huge, right? You're not going to want any of your Board of Governors doing anything that could be construed as regulatory.

Lawyers understand there are concerns about "access to justice." The problem is better described as "Access to *Affordable* Justice." Neil M. Gorsuch, *Access to Affordable Justice: A Challenge to the Bench, Bar, and Academy*, 100 JUDICATURE 46, 53 (2016).

The Washington State Bar Association and the Washington Supreme Court are dealing with the access issue by including legal services providers of certain categories into the definition of "the practice of law." Two such limited practices – Limited Practice Officers, real estate transactions, Admission and Practice Rules (APR 12), and Limited License Legal Technicians (domestic relations and soon trusts and estates) APR 28. Giving licenses to these legal service providers does not solve the anti-trust problems of the Washington State Bar Association. Expanding the definition does not change the fact of monopoly. The bar remains a monopoly over the practice of law.

*In the end, the matter* before the court is whether the monopoly of the WSBA and its members can withstand strict scrutiny. Surely it is to be applied because the monopoly infringes on a lawyer's right of non-association and freedom of speech and expression under the First Amendment. It would suffice for the purposes here, to cause this test to be applied.

This test may be used in these circumstances because the Sherman Act is not a constitutional pronouncement as to the practice of law, it is "common law" not at all deserving of *stare decisis* treatment. *Soc. of Professional Engineers v. United States*, 435 U.S.

679, 688 (1978); *see also*, *Northwest Airlines, Inc. v. Transport Workers Union*, 451 U.S. 77, 98 n. 42 (1981) ("In antitrust, the federal courts . . . act more as common-law courts than in other areas governed by federal statute.").

## V. "Special Justification" to Overrule.

"[A]ny departure from the doctrine of *stare decisis* demands special justification." *Arizona v. Rumsey*, 461 U.S. 203, 212 (1984).

Justice Sotomayor discussed the special justification principle in *Alleyne v. United States*, 133 S. Ct. 2151, 2164 (2013) (Sotomayor, J., concurring, citations omitted).

At the outset of her opinion she reminds us, "*stare decisis* is not an 'inexorable command' . . . it is 'a basic self-governing principle within the Judicial Branch, which is entrusted with the sensitive and difficult task of fashioning and preserving a jurisprudential system that is not based upon "an arbitrary discretion."'" *Id.*

There is "special justification" which today, 55 years later, justifies overruling *Lathrop v. Donohue.*

Special justification "is not just any sort of reason or justification for overruling a precedent . . . it requires more than the conviction that the challenged precedent was wrongly decided. Instead, under the 'special justification' approach, the decision to overrule a precedent must be justified by the unworkability of the precedent, the subsequent development of case law,

or changed facts and circumstances." Emery G. Lee III, *Overruling Rhetoric: The Court's New Approach to Stare Decisis in Constitutional Cases*, 33 U. TOL. L. REV. 581, 582 (2002).

## NO RELIANCE CONCERNS

The prudential values of *stare decisis* cannot "outweigh the countervailing interest that all individuals share in having their constitutional rights fully protected." *Arizona v. Gant*, 556 U.S. 332, 349 (2009). If "a practice is unlawful, individuals' interest in its discontinuance clearly outweighs any 'entitlement' to its persistence." *Id*. (Citation omitted.)

At present, there is no reliance on continuing *Lathrop v. Donohue.* Integrated bar associations, many of them, no longer include a lawyer discipline system. The systems which once were, have been shifted to systems independent of the association. Information Sheet, Pet. App. 37-38. Reliance cannot be claimed with respect of the government monopoly aspects of the integrated bar. Anti-trust law is treated as common law. *Northwest Airlines, Inc. v. Transport Workers Union*, *supra*.

Common law is developing law; it is the mind of man being made. It is not law which has a constitutional claim. No one has a vested interest in the stages of common law development.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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| STEPHEN KERR EUGSTER,<br>Plaintiff-Appellant,<br>v.<br>WASHINGTON STATE BAR ASSOCIATION, a Washington association; et al.<br>Defendants-Appellees. | No. 15-35743<br>D.C. No. 2:15-cv-00375-JLR<br>MEMORANDUM*<br>(Filed Mar. 21, 2017) |

Appeal from the United States District Court
for the Western District of Washington
James L. Robart, District Judge, Presiding

Submitted March 8, 2017**

Before: LEAVY, W. FLETCHER, and OWENS, Circuit Judges.

Stephen Kerr Eugster, an attorney and member of the Washington State Bar Association ("WSBA"), appeals pro se the district court's judgment dismissing his 42 U.S.C. § 1983 action alleging freedom of speech and association claims under the First and Fourteenth Amendments. We have jurisdiction under 28 U.S.C.

* 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).

§ 1291. We review de novo a district court's dismissal under Federal Rule of Civil Procedure 12(b)(6), *Lacey v. Maricopa County*, 693 F.3d 896, 911 (9th Cir. 2012) (en banc), and we affirm.

The district court properly dismissed Eugster's claims relating to his compulsory membership in the WSBA because an attorney's mandatory membership with a state bar association is constitutional. *See Keller v. State Bar of Cal.*, 496 U.S. 1, 13 (1990) ("[T]he compelled association and integrated bar are justified by the State's interest in regulating the legal profession and improving the quality of legal services."); *Lathrop v. Donohue*, 367 U.S. 820, 843 (1961) (Brennan, J., plurality opinion) (state bar association may constitutionally require compulsory membership and payment of dues without impinging on protected rights of association). Contrary to Eugster's contentions, this court cannot overrule binding authority because "[a] decision of the Supreme Court will control that corner of the law unless and until the Supreme Court itself overrules or modifies it." *Hart v. Massanari*, 266 F.3d 1155, 1171 (9th Cir. 2001).

The district court properly dismissed Eugster's claim that the WSBA improperly funds certain activities because Eugster failed to allege facts sufficient to show an improper use of his mandatory annual WSBA bar dues. *See Keller*, 496 U.S. at 14 (state bar may spend its members' dues "for the purpose of regulating

the legal profession or improving the quality of the legal service available to the people of the State" (citation and internal quotation marks omitted)).

**AFFIRMED.**

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

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| STEPHEN KERR EUGSTER,<br>Plaintiff,<br>v.<br>WASHINGTON STATE BAR ASSOCIATION (WSBA), et al.,<br>Defendants. | CASE NO. C15-0375JLR<br>ORDER DISMISSING WITH PREJUDICE |

On September 3, 2015, the court dismissed Plaintiff Stephen Eugster's amended complaint (Dkt # 13). (*See* Order (Dkt. # 23) at 21.) The court determined that amendment would be futile with respect to Mr. Eugster's claim regarding mandatory bar membership and dismissed that claim with prejudice. (*Id.* at 18.) However, the court concluded that his claim regarding mandatory bar dues could conceivably be remedied with additional factual allegations. (*See id.* at 19.) The court accordingly dismissed that claim but granted Mr. Eugster ten days to amend the complaint. (*See id.* at 2, 21.)

Mr. Eugster's ten-day window in which he had the court's leave to amend concluded on September 13, 2015. Mr. Eugster has filed no responsive pleading. (*See generally* Did.) Accordingly, the court ORDERS that this action and all claims asserted herein be DISMISSED with prejudice and without costs to any party.

Dated this 5th day of September, 2015.

/s/ James L. Robart
JAMES L. ROBART
United States District Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

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| STEPHEN KERR EUGSTER,<br>Plaintiff,<br>v.<br>WASHINGTON STATE BAR ASSOCIATION (WSBA), et al.,<br>Defendants. | CASE NO. C15-0375JLR<br>ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTIONS TO DISMISS AND STRIKING PLAINTIFF'S SURREPLY |

## I. INTRODUCTION

Before the court is a motion for judgment on the pleadings (Jud. Mot. (Dkt. # 9)) by Defendants Chief Justice Barbara Madsen, Associate Chief Justice Charles Johnson, and Justices Sheryl Gordon McCloud, Charles Wiggins, Steven González, Mary Yu, Mary Fairhurst, Susan Owens, and Debra Stephens, all of whom are of the Supreme Court of the State of Washington (collectively, "Judicial Defendants"). Also before the court is a motion to dismiss (WSBA Mot. (Dkt. # 10)) by Defendants Washington State Bar Association ("WSBA"), President Anthony Gipe, President-elect William D. Hyslop, Immediate Past President Patrick A. Palace, and Executive Director Paula Littlewood, all of whom are of the WSBA (collectively, "WSBA Defendants"). Mr. Eugster opposes both motions. (Resp. (Dkt. # 14).)[1]

[1] Mr. Eugster has also filed a surreply (Dkt. # 18-1). A surreply "must be filed within five days of the filing of the reply

Having reviewed the submissions of the parties, the relevant portions of the record, and the applicable law,[2] the court GRANTS in part and DENIES in part both motions. The court dismisses with prejudice Mr. Eugster's claim regarding compulsory membership in the WSBA, without leave to amend. The court also dismisses Mr. Eugster's claim regarding misuse of compulsory bar dues but grants him leave to file an amended complaint with respect to that claim, except that the WSBA is dismissed with prejudice as a defendant to that claim. Mr. Eugster has the court's leave to amend his complaint in a manner that cures the deficiencies identified herein within ten (10) days of the entry of this order. Failure to do so will result in dismissal with prejudice of that claim as well.

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brief," "shall be strictly limited to" a request to strike material in the reply brief, and "shall not exceed three pages." Local Rules W.D. Wash. LCR 7(g)(2)-(3). Mr. Eugster filed his surreply 11 days after Defendants' reply briefs. (*See* Surreply.) It contains argument only about the substantive merits of the case and totals 15 pages. (*See id.*) Mr. Eugster's surreply is thus in complete contravention of the local rules, and the court STRIKES it. The court hereby warns Mr. Eugster that further disregard for the local rules may result in sanctions.

[2] Mr. Eugster requests oral argument. (Resp. at 1.) The court deems oral argument to be unnecessary for the disposition of these motions. *See* Local Rules W.D. Wash. LCR 7(b)(4).

## II. BACKGROUND

Plaintiff Stephen K. Eugster is a licensed attorney and a member of the WSBA. (Am. Compl. (Dkt. # 13) ¶ 11). The WSBA is an "integrated" bar association, meaning membership and payment of dues are mandatory in order to practice law in the State of Washington. (*Id.* ¶¶ 11, 17); RCW 2.48.130, .140. Since being admitted to the WSBA in 1970, Mr. Eugster has paid these mandatory dues. (Am. Compl. ¶ 13.) The WSBA is organized under the State Bar Act, RCW 2.48.010 *et seq.*, but the Supreme Court enjoys the inherent power to "admit, enroll, disbar and discipline" members of the Washington bar. *Matter of Wash. State Bar Ass'n*, 548 P.2d 310, 315-16 (Wash. 1976) (en banc). Thus, although the State Bar Act purports to define some of the WSBA's activities and purposes, it is subject to the Washington Supreme Court's "right of control of the bar and its functions." *Id.* at 316.

The WSBA sets annual bar dues for its members. *Keller Compliance Option for the Year 2015*, Washington State Bar Association, http://www.wsba.org/Licensing-and-Lawyer-Conduct/Annual-License-Renewal/Keller-Deduction (hereinafter, "*Keller Compliance Website*").[3]

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[3] At the motion to dismiss stage, the court may properly treat a website quoted and cited in the complaint as incorporated by reference. *Daniels-Hall v. Nat'l Educ. Ass'n*, 629 F.3d 992, 998 (9th Cir. 2010) (citing *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007). In his first complaint, Mr. Eugster cites to and quotes extensively from the Keller Compliance Website to make the argument that the WSBA uses mandatory fees in contravention of the Constitution. (*See* Compl. (Dkt. # 1) ¶ 48.) In the operative complaint, Mr. Eugster retains the quoted language

It spends some portion of those dues on political or ideological activities and is constitutionally compelled to reimburse that spending to bar members who so request. *Id.* Rather than calculate exactly the money spent on nonchargeable activities, for convenience's sake the WSBA uses the prior year's line item for "political or ideological" activities to calculate the reimbursement available in the current year. *Id.* For instance, in 2015, members paying the full $325.00 in annual bar dues had the option to retain the $4.40 that the WSBA spent on such "nonchargeable" activities. *Id.* The WSBA's remaining activities are funded, at least in part, by compulsory bar dues paid by its members. *Id.* WSBA members can contest the classification of an activity as chargeable or nonchargeable by requesting binding arbitration before a neutral arbitrator chosen by the Chief Justice of the Washington Supreme Court. *Id.* All members are provided notice of the right to opt out and challenge an activity's classification as chargeable or nonchargeable, and that information is also available on the WSBA's website. *Id.*

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from the Keller Compliance Website but removes the citation. (*See* Am. Compl. ¶ 52.) Even if the court were inclined to let this omission of citation dictate what it can reference at this stage, any webpages from which Mr. Eugster "directly quoted" can be treated as incorporated. *Daniels-Hall*, 629 F.3d at 998. Because the direct quote from the Keller Compliance Website remains in the amended complaint – citation or not – the court deems the Keller Compliance Website incorporated by reference in the amended complaint, and can therefore consider it at this stage. *See United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003).

Mr. Eugster brought suit against WSBA Defendants and – because the WSBA derives its power from the Supreme Court of Washington – also named the Supreme Court and its justices as defendants. (*See id.*) He has since dismissed his claims against the Supreme Court itself, but retains his claims against Judicial Defendants and WSBA Defendants. (Not. (Dkt. # 12.).) Mr. Eugster seeks declaratory and injunctive relief from compulsory WSBA membership and compulsory payment of bar dues. (Am. Compl. ¶ 2.) He asserts these claims under 42 U.S.C. § 1983, which provides injunctive remedies for constitutional violations committed by individuals acting under color of law. (*See* Am. Compl. at 11-21.) Mr. Eugster has two claims: 1) that mandatory WSBA membership violates his First and Fourteenth Amendment freedoms by compelling association with that group; and 2) that mandatory WSBA dues and the way in which they are spent violate his First and Fourteenth Amendment freedoms by compelling speech and association. (*See generally id.*) He seeks declaratory and injunctive relief redressing these alleged constitutional harms. (*See id.*) Judicial Defendants and WSBA Defendants contend that he has failed to state a claim and seek dismissal of this case with prejudice.

## III. ANALYSIS

### A. Legal Standard

1. Motion to Dismiss for Lack of Standing

Judicial Defendants move to dismiss for lack of Article III standing. (See Jud. Mot. at 5-11.) First, they assert that the Washington Supreme Court is immune from liability under 42 U.S.C. § 1983. (Jud. Mot. at 5-7.) This issue is moot because Mr. Eugster subsequently dismissed the Washington Supreme Court as a party. (*See* Not.) However, Judicial Defendants make a more general argument that Mr. Eugster cannot show the required likelihood of future harm to establish standing for declaratory relief under Article III of the United States Constitution. (*See* Jud. Mot. at 9-11.) If he lacks Article III standing, this court must dismiss under Federal Rule of Civil Procedure 12(b)(1) for lack of subject matter jurisdiction. *See Oregon v. Legal Serv.'s Corp.*, 552 F.3d 965, 974 (9th Cir. 2009); *Warren v. Fox Family Worldwide, Inc.*, 328 F.3d 1136, 1140 (9th Cir. 2003). To defeat that motion, Mr. Eugster must show that "the facts alleged, if proved, would confer standing upon him." *Id.*

To demonstrate Article III standing, Mr. Eugster must show that (1) he has suffered an "injury in fact" that is concrete, particularized, actual, and imminent, as opposed to conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to speculative, that the requested relief would redress the injury. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61

(1992). More concisely, these requirements are known as injury, causation, and redressability. *See Massachusetts v. E.P.A.*, 549 U.S. 497, 540 (Roberts, C.J., dissenting). Because Mr. Eugster seeks "declaratory and injunctive relief only, there is a further requirement that [he] show a very significant possibility of future harm; it is insufficient for [him] to demonstrate only a past injury." *San Diego Cty. Gun Rights Comm. v. Reno*, 98 F.3d 1121, 1126 (9th Cir. 1996).

2. Motion to Dismiss for Failure to State a Claim and Motion for Judgment on the Pleadings

In the alternative to their standing argument, WSBA Defendants move to dismiss Mr. Eugster's claims pursuant to Rule 12(b)(6) (*see generally* WSBA Mot.), and Judicial Defendants move for judgment on the pleadings pursuant to Rule 12(c), also asserting that Mr. Eugster fails to state a claim under Rule 12(b)(6) (*see generally* Jud. Mot.).[4] Under Rule 12(c), "[a]fter the pleadings are closed – but early enough not to delay trial – a party may move for judgment on the pleadings." Fed. R. Civ. P. 12(c). However, because

[4] Although Judicial Defendants and WSBA Defendants filed their motions before Mr. Eugster filed his amended complaint, the court can properly consider the motions as applied to his amended complaint because Mr. Eugster's "claims, factual allegations, and legal arguments did not change in any material way" from his first complaint to his amended complaint. *McQuiston v. City of L.A.*, 564 Fed. App'x 303, 305 (9th Cir. 2014). It would be a mere formality, and a waste of resources, to require re-filing of both motions simply to change reference to Mr. Eugster's amended complaint. *See id.*

Judicial Defendants had not yet filed an answer in the case, the pleadings were not closed and filing a motion for judgment on the pleadings was premature. *See Doe v. United States*, 419 F.3d 1058, 1061 (9th Cir. 2005). Viewing Judicial Defendants' Rule 12(c) motion as such, the court would have no choice but to deny the motion. *Id.*

The court instead construes the Rule 12(c) motion as a Rule 12(b)(6) motion. District courts in this circuit can construe improperly filed motions to dismiss as motions for judgment on the pleadings. *See Aldabe v. Aldabe*, 616 F.2d 1089, 1093 (9th Cir. 1980). In this case the opposite occurred – Judicial Defendants improperly filed a motion for judgment on the pleadings – but the court sees no reason not to construe Judicial Defendants' motion as one to dismiss under Rule 12(b)(6). Although it is rarer, this court and others in the Ninth Circuit have recast improper Rule 12(c) motions as Rule 12(b)(6) motions. *See Young v. Washington*, No. C06-1687JCC, 2008 WL 2705587, at *3 (W.D. Wash. July 8, 2008) ("Because the standard applied to decide a Rule 12(c) motion is the same as the standard used in a Rule 12(b)(6) motion, no prejudice to any party results from treating a Rule 12(c) motion as a 12(b)(6) motion.") (internal citations omitted), *aff'd in part, vacated in part*, 374 Fed. App'x 746 (9th Cir. 2010) (vacating only that the case was dismissed with prejudice); *Young v. Spokane Cty.*, No. 14-cv-98-RMP, 2014 WL 2893260, at *1 (E.D. Wash. June 25, 2014); *Skinner v. Mountain Lion Acquisitions, Inc.*, No. 13-cv-00704 NC, 2014 WL 3853424, at *3 (N.D. Cal. Aug. 1, 2014);

*Spring Telephony PCS, L.P. v. Cty. of San Diego*, 311 F. Supp. 2d 898, 902-03 (S.D. Cal. 2004). The thrust of Judicial Defendants' motion is that Mr. Eugster has failed to state a claim under which relief can be granted. (*See* Jud. Mot.) Moreover, the same standard governs a Rule 12(c) motion and a Rule 12(b)(6) motion. *See Dworkin v. Hustler Magazine, Inc.*, 867 F.2d 1188, 1192 (9th Cir. 1989). In sum, no party suffers prejudice from recasting the mislabeled Judicial Defendants' motion. Thus, because it is procedurally defective as a Rule 12(c) motion, the court construes Judicial Defendants' motion for judgment on the pleadings as a Rule 12(b)(6) motion to dismiss for failure to state a claim.

Motions to dismiss under Federal Rule of Civil Procedure 12(b)(6) test the legal sufficiency of a claim. *Conservation Force v. Salazar*, 646 F.3d 1240, 1241-42 (9th Cir. 2011). To avoid dismissal, "a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). A claim is plausible on its face "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* Dismissal for failure to state a claim "is proper if there is a lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory." *Conservation Force*, 646 F.3d at 1242. In considering a motion to dismiss, a court must accept all well-pleaded allegations of material fact as true and draw all reasonable inferences in favor of the

plaintiff. *See Wyler Summit P'ship v. Turner Broad. Sys., Inc.*, 135 F.3d 658, 661 (9th Cir. 1998). A court, however, need not accept as true a legal conclusion presented as a factual allegation. *Iqbal*, 556 U.S. at 678. A court may consider only the pleadings, documents attached to or incorporated by reference in the pleadings, and matters of judicial notice. *Ritchie*, 342 F.3d at 908.

**B. Standing**

Article III standing is a prerequisite to this court's capacity to make a substantive determination in this case. *See Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 93 (1998). Accordingly, the court first analyzes Judicial Defendants' motion to dismiss for lack of standing under Rule 12(b)(1). To demonstrate that he has standing to sue for declaratory and injunctive relief, Mr. Eugster must demonstrate probability of future injury, causation, and redressability. *Lujan*, 504 U.S. at 560-61; *San Diego Cty.*, 98 F.3d at 1126.

Judicial Defendants argue that Mr. Eugster lacks standing to challenge the constitutionality of Washington's attorney disciplinary system because there is no "imminent prospect of harm to Eugster" from that system. (Jud. Mot. at 9-11.) This may be accurate – indeed, Mr. Eugster's direct challenges to the WSBA's attorney disciplinary system have previously been dismissed for lack of standing, *Eugster v. Wash. State Bar Ass'n*, Case No. 09-CV-0357SMM, 2010 WL 2926237, at *11 (E.D. Wash. July 23, 2010) – but it is irrelevant. Mr. Eugster does not challenge the attorney disciplinary system in

this case; rather, he argues that compulsory WSBA membership and dues violate his constitutional freedoms of association and speech. (*See generally* Am. Compl.) As Mr. Eugster clarifies in his amended complaint, disdain for the structure of the disciplinary system is merely an example of the harm Mr. Eugster alleges is caused by compelled membership in the WSBA. (*Id.* ¶ 44.)

Mr. Eugster successfully demonstrates a genuine threat of imminent future harm. *See San Diego Cty.*, 98 F.3d at 1126. The WSBA uncontrovertibly assesses compulsory bar dues and requires membership in order to practice law in Washington. RCW 2.48.130, .170. These restrict and compel speech and association in ways that Mr. Eugster alleges are unconstitutional. He has thus alleged concrete and particularized harm. *Lujan*, 504 U.S. at 560. Moreover, these alleged constitutional violations are sure to persist unless the law is changed or enforcement is enjoined. *San Diego Cty.*, 98 F.3d at 1126. This satisfies the injury element of standing.

The parties do not dispute that enforcement of the State Bar Act causes the alleged burden on Mr. Eugster's constitutional rights, and that enjoining its enforcement would redress those alleged constitutional harms. This establishes causation and redressability, the final two elements of standing. *Massachusetts v. E.P.A.*, 549 U.S. at 540. Accordingly, the court finds that Mr. Eugster has standing to sue in this case, and denies that grounds for dismissal.

**C. Failure to State a Claim**

Judicial Defendants and WSBA Defendants (collectively, "Defendants") move to dismiss for failure to state a claim. (*See* Jud. Mot.; WSBA Mot.) Defendants contend that compelled state bar membership is constitutional under binding case law in the Ninth Circuit and that Mr. Eugster has failed to point to any fact supporting his allegation that the WSBA misuses mandatory dues; thus, Defendants contend, they are entitled to dismissal on both of the purported constitutional violations. The court agrees.

1. Compulsory Membership

Mr. Eugster claims that mandatory membership in the WSBA "constitute[s] compelled speech and association" in violation of his First and Fourteenth Amendment rights. (Am. Compl. ¶ 40.) Acknowledging that this matter has long been considered settled under Supreme Court and Ninth Circuit precedent, Mr. Eugster argues that *Harris v. Quinn*, ___ U.S. ___, 134 S. Ct. 2618 (2014), upended more than a half-century of that law. (Am. Compl. ¶ 41.) Specifically, Mr. Eugster references a passage written by the *Harris* majority, which he includes in his amended complaint as follows:

> Justice Samuel Alito, writing for the majority, said, "[T]he Court [has] never previously held that compulsory membership in and the payment of dues to an integrated bar was constitutional, and the constitutionality of such a

> requirement was hardly a foregone conclusion" (Emphasis added.).

(*Id.* ¶ 41 (alterations, emphasis, and errors in original).) This quotation grossly misstates the Supreme Court's language and meaning. Justice Alito's actual language is, "[T]he Court *had* never previously held" as much. *Harris*, 134 S. Ct. at 2629 (emphasis added). In the context of the opinion, the meaning of this is: "[When *Hanson* was decided in 1956,] the Court had never previously held [as much.]" *Harris*, 134 S. Ct. at 2629 (citing *Railway Emps.' Dept. v. Hanson*, 351 U.S. 225, 238 (1956)). In the almost sixty years that have passed since the *Hanson* decision, however, the Supreme Court and Ninth Circuit have held as much several times, and in no uncertain terms. In other words, by substituting "has" for "had," Mr. Eugster misconstrued the clear meaning of the opinion.

Notwithstanding Mr. Eugster's mischaracterization of case law, several binding decisions govern his case. In *Lathrop v. Donohue*, the Supreme Court upheld Wisconsin's integrated state bar on the bases that (1) the only "compelled association" was the payment of dues, which was insufficient on its own to comprise a constitutional violation, and (2) the purpose of integrating the bar was to "'promote high standards of practice and the economical and speedy enforcement of legal rights.'" 367 U.S. 820, 827-28, 832-33 (1961) (quoting *In re: Integration of the Bar*, 77 N.W.2d 602, 603 (Wis. 1956)). Although *Lathrop* was a plurality opinion, *Keller v. State Bar of California* clarified that

"lawyers admitted to practice in the State may be required to join and pay dues to the State Bar." 496 U.S. 1, 4 (1990). "[T]he compelled association and integrated bar are justified by the State's interest in regulating the legal profession and improving the quality of legal services." *Id.* at 13. Accordingly, the Ninth Circuit has held that "a state may constitutionally condition the right of its attorneys to practice law upon the payment of membership dues to an integrated bar." *O'Connor v. State of Nev.*, 27 F.3d 357, 361 (9th Cir. 1994) (citing *Lathrop*, 367 U.S. at 843; *Keller*, 496 U.S. at 4); *see also Gardner v. State Bar of Nev.*, 284 F.3d 1040, 1042 (9th Cir. 2002) (treating it as a given that integrated bars can charge mandatory dues), *Morrow v. State Bar of Cal.*, 188 F.3d 1174, 1177 (9th Cir. 1999) (treating *Lathrop* as holding that "the regulatory function of the bar justified compelled membership").

Mr. Eugster argues, however, that the plurality decision in *Lathrop*, the subsequent clarification in *Keller*, and those cases' Ninth Circuit progeny are all misunderstood. (Resp. at 6-17.) He contends that *Keller*'s declaration that "the compelled association and integrated bar are justified by the State's interest" is "wrong" because "earlier in the opinion the court made it clear that *Lathrop* was a plurality decision." (Resp. at 10.) The conclusion one must reach, according to Mr. Eugster, is that "the Court in *Keller* did not decide the issue of compulsory membership in a bar association." (*Id.*) This argument is nonsensical. To the extent the holding of the split *Lathrop* court was unclear, the unanimous Supreme Court in *Keller* had every right to

clarify it in manner that binds this court and the Ninth Circuit. Put differently, even if *Lathrop* had never been decided, *Keller* binds this court to the determination that "lawyers admitted to practice in the State may be required to join and pay dues to the State Bar." *Keller*, 496 U.S. at 4. Thus, absent a state bar that differs appreciably from those at issue in *Lathrop* and *Keller*, compelled membership in a state bar association is constitutional. *Morrow*, 188 F.3d at 1177. Mr. Eugster has provided no such differentiation of the WSBA. *Lathrop* and *Keller* control his claim.

The court therefore determines Mr. Eugster has failed to state a claim under which he is entitled to relief. The court accordingly dismisses his claim regarding compulsory membership in the WSBA.

2. Compulsory Dues

Mr. Eugster also contends that the WSBA infringes upon his First and Fourteenth Amendment rights by spending compulsory dues on improper activities without providing adequate procedure to evaluate and challenge that spending. (Am. Compl. ¶¶ 49-72.) Compulsory membership in a state bar association is justified by the state's interest in "regulating the legal profession and improving the quality of legal services." *Keller*, 496 U.S. at 13. A state bar association is accordingly only constitutionally entitled to use such dues to fund activities "germane to those goals." *Id.* at 14. Conversely, state bar associations cannot use such mandatory dues to fund "those activities having political or

ideological coloration which are not reasonably related to the advancement of such goals." *Keller*, 496 U.S. at 15. The Supreme Court concedes that differentiating between proper spending and "political or ideological" spending will be difficult at times. *Id.*

The WSBA has established a procedure called the "Keller Deduction," by which members choose whether to allow their bar dues to be used for "nonchargeable" – in other words, political or ideological – activities. *Keller Compliance Website.* The procedure for calculation and objection employed by the WSBA is based on the procedures for labor unions that the Supreme Court approved in *Chicago Teacher's Union, Local No. 1, AFT, AFL-CIO v. Hudson*. 475 U.S. 292 (1986). In that case, the Court required a labor union's agency fees to include "an adequate explanation of the basis for the fee, a reasonably prompt opportunity to challenge the amount of the fee before an impartial decisionmaker, and an escrow for the amounts reasonably in dispute while such challenges are pending." *Id.* at 310. The WSBA provides its members annual notice of the fee, a description of how it is calculated, and the ability to receive either a refund or a deduction for the portion of dues used for nonchargeable purposes. *Keller Compliance Website.* A neutral arbitrator, appointed by the Chief Justice of the Washington Supreme Court, hears timely challenges to that amount. *Id.* In the meantime, parties retain disputed funds. *Id.* Parties can present evidence and argument at the arbitration hearing, after which the arbitrator issues a written, binding ruling. *Id.*

All newly admitted members are provided notice of this procedure, and it is easily accessed and prevalently displayed on the WSBA's website. *Id.* The WSBA uses the prior year's legislative budget as a proxy to calculate what is "not reasonably related to the regulation of the legal profession or improving the quality of legal services," and thus subject to exemption. *Id.* This amount becomes the current year deduction for WSBA members that choose not to pay nonchargeable moneys. *Id.* The Supreme Court has validated this prior-year calculation process in the union dues context. *See Hudson*, 475 U.S. at 307 n.18. In other words, the WSBA provides robust procedural safeguards to ensure compliance with *Keller*, many of them responding directly to Supreme Court precedent.

Aside from procedure, Mr. Eugster identifies several activities that the WSBA funds without reimbursement, which he contends should be classified as nonchargeable under *Keller*. (Am. Compl. ¶ 69.) Importantly, his bare assertion that the activities are nonchargeable is legally conclusory and thus insufficient; he must plead "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft*, 556 U.S. at 678. Applying that standard to this case, Mr. Eugster must plead facts that give rise to a reasonable inference that the unreimbursed activities paid for with mandatory dues are unrelated to "regulating the legal profession and improving the quality of legal services." *Keller*, 496 U.S. at 13. He fails to do so in his amended complaint.

The first activity he specifies is "Supreme Court mandated activities and boards [with] funding and staffing to be provided by the WSBA," including the disciplinary board, the mandatory continuing legal education board, the limited practice board, the access to justice board, the practice of law board, and the limited license legal technician board. (*Id.* ¶ 69(a).) All of these boards appear geared toward regulating the profession and improving the quality of legal services, and there is no suggestion that their names are misleading. Nowhere does Mr. Eugster provide a description of these boards or a rationale as to why they should be deemed nonchargeable. (*See generally id.*) The other specific activities Mr. Eugster lists,[5] again without any explanation as to why they should be nonchargeable, are "mindfulness programs, the WSBA NWLawyer, and conventions." (*Id.* ¶ 69(c)-(e).) It strains credulity to argue that these undertakings are not geared toward regulating the legal profession or improving the quality of legal services. *See Keller*, 496 U.S. at 13. Of course, with factual allegations that these names are misleading as to the programs' true purpose, Mr. Eugster could overcome dismissal. *Iqbal*, 556 U.S. at 678. Instead, Mr. Eugster makes no argument that any of the underlying activities are nonchargeable, nor can

[5] In Mr. Eugster's amended complaint, the second item in the list of allegedly nonchargeable activities provides the language from the WSBA's website regarding the Keller Deduction. (Am. Compl. ¶ 69(b).) Because Mr. Eugster cites this information earlier (*id.* ¶ 52), and it is a complete nonsequitur, the court takes this to be a typographical error and proceeds to analyze the rest of the purported nonchargeable programs.

the court reasonably infer anything of the sort from the mere mention of these three WSBA activities. This is insufficient to avoid dismissal. *See Iqbal*, 556 U.S. at 678. Finally, Mr. Eugster lists as nonchargeable "[o]ther programs and activities which will become known and understood" after he has the chance to audit a WSBA budget. (Am. Compl. ¶ 69(f).) Given that he has failed to specify facts that give rise to a plausible inference that any of the WSBA activities he lists are nonchargeable, this final catchall amounts to an aspirational assertion. The "absence of sufficient facts alleged under a cognizable legal theory" leads the court to conclude that Mr. Eugster's claim fails as a matter of law. *Conservation Force*, 646 F.3d at 1242.

In sum, Mr. Eugster alleges no facts supporting an inference that the WSBA's procedural safeguards and substantive definition of chargeable dues infringes on his constitutional rights to free association and speech. The court therefore determines Mr. Eugster has failed to state a claim under which he is entitled to relief.

**D. Leave to Amend**

As a general rule, when a court grants a motion to dismiss, the court should dismiss the complaint with leave to amend. *See Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051-52 (9th Cir. 2003) (citing Fed. R. Civ. P. 15(a)). "Dismissal with prejudice and without leave to amend is not appropriate unless it is clear on de novo review that the complaint could not be saved by amendment." *Id.* at 1052. In determining whether

dismissal without leave to amend is appropriate, courts consider such factors as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, and futility of amendment. *Foman v. Davis*, 371 U.S. 178, 182 (1962). Of these factors, "prejudice to the opposing party . . . carries the greatest weight."[6] *Eminence Capital*, 316 F.3d at 1052.

The court concludes that amendment of Mr. Eugster's complaint regarding mandatory bar membership would be futile, and thus dismisses that claim with prejudice. *See Bonin v. Calderon*, 59 F.3d 815, 845 (9th Cir. 1995) ("Futility of amendment can, by itself, justify the denial of a motion for leave to amend."). Defendants' motions put Mr. Eugster on notice of the legal deficiencies in his initial complaint, and in response he filed the operative, amended complaint that the court now considers. (*Compare* Compl. *with* Am. Compl.) With respect to his claim regarding compelled membership in the Washington bar, Mr. Eugster's amended

[6] The Ninth Circuit has further instructed that a district court should not dismiss a pro se complaint without leave to amend unless "it is absolutely clear that the deficiencies of the complaint could not be cured by amendment." *Akhtar v. Mesa*, 698 F.3d 1202, 1212 (9th Cir. 2012) (quoting *Schucker v. Rockwood*, 846 F.2d 1202, 1203 (9th Cir. 1988)). However, "a pro se lawyer is entitled to no special consideration." *Godlove v. Bamberger, Foreman, Oswald, & Hahn*, 903 F.2d 1145, 1148 (7th Cir. 1990). The court accordingly treats Mr. Eugster's pleadings with no special solicitousness.

complaint suffers the same deficiencies that Defendants identified – it misinterprets and misconstrues binding precedent that governs the court's decision in this case. *See supra* Part III.C.1. This continued reliance on a flawed understanding of case law illustrates the futility of the claim and Mr. Eugster's inability to cure it. Put simply, mandatory membership in a state bar association is constitutional. *See Keller*, 496 U.S. at 4. Unequivocal precedent makes it "clear . . . that the [claim] could not be saved by amendment." *Eminence Capital*, 316 F.3d at 1052. Accordingly, the court dismisses with prejudice Mr. Eugster's claim that Washington's integrated bar is unconstitutional. *See Bonin*, 59 F.3d at 845.

On the other hand, the court grants Mr. Eugster leave to amend his claim regarding nonchargeable bar dues. His initial complaint included no factual allegations about mis-categorized nonchargeable activities. (*See* Compl.) Both Judicial Defendants (Jud. Mot at 9), and WSBA Defendants (WSBA Mot. at 10), indicate this lack of factual specificity in their motions to dismiss. In response, Mr. Eugster amended his complaint to include a section purporting to designate specific unreimbursed WSBA spending that violates *Keller*. (*See* Am. Compl. ¶ 69.) These allegations attempt to address the lack of specificity in his original complaint, as identified in Defendants' motions. (*See id.*) Although the court determines these allegations in the amended complaint are insufficient, *see supra* Part III.C.2., the factual development since the original complaint leads the court to conclude that it is conceivable that Mr.

Eugster could re-amend the amended complaint to contain "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678. Thus, the court does not find amendment futile, nor does it see any undue delay, bad faith, or undue prejudice present. *See Foman*, 371 U.S. at 182. Accordingly, the court dismisses Mr. Schreib's constitutional claim regarding compulsory bar dues but grants him leave to amend.

**E. Immunity**

Even if Mr. Eugster had succeeded in stating a claim under which relief could be granted, or succeeds in doing so upon re-amendment of his complaint, the WSBA is immune from suit. The Eleventh Amendment bars suits against a state and its agencies. *See Lake Cty. Est., Inc. v. Tahoe Reg'l Planning Agency*, 440 U.S. 391, 400-01 (1979). The Ninth Circuit treats state bar associations as an "arm of the state" and thus immune from suit. *Ginter v. State Bar of Nev.*, 625 F.2d 829, 830 (9th Cir. 1980); *see also Hirsh v. Justices of the Supreme Court of the State of Cal.*, 67 F.3d 708, 715 (9th Cir. 1995); *Lupert v. Cal. State Bar*, 761 F.2d 1325, 1327 (9th Cir. 1985). The Ninth Circuit's reason for treating bar associations as state agencies is that they operate as the "investigative arm" of the state high court. *O'Connor*, 686 F.2d at 750. There is nothing on the record to meaningfully differentiate Washington's bar association from those that the Ninth Circuit has expressly declared immune under the Eleventh

Amendment. *See, e.g.*, *id.* (Nevada); *Hirsh*, 67 F.3d at 715 (California). Indeed, its power to regulate and punish lawyers makes clear that the WSBA does operate as the "investigative arm" of the Washington Supreme Court. *See O'Connor*, 686 F.2d at 750. Thus, as a federal court in this state has already apprised Mr. Eugster, the WSBA is a state agency immunized from suit by the Eleventh Amendment. *See Eugster*, 2010 WL 2926237, at *8. Accordingly, Mr. Eugster's claims against the WSBA are dismissed with prejudice.[7]

## IV. CONCLUSION

For the foregoing reasons, the court GRANTS in part Judicial Defendants' motion to dismiss (Dkt. #9) and WSBA Defendants' motion to dismiss (Dkt. #10). Mr. Eugster's claim regarding mandatory bar membership is DISMISSED WITH PREJUDICE with respect to all defendants. His claim regarding mandatory bar dues is DISMISSED WITH PREJUDICE with respect to the WSBA and DISMISSED WITHOUT PREJUDICE with respect to all other defendants. The court GRANTS Mr. Eugster leave to amend his complaint regarding mandatory bar dues within 10 (ten) days of this order. Failure to amend in that time will result in dismissal with prejudice. The court STRIKES Mr. Eugster's surreply (Dkt. #18).

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[7] This means that although Mr. Eugster has the court's leave to amend his complaint as it relates to nonchargeable bar dues, the WSBA is dismissed with prejudice as a party to that claim.

Dated this 2nd day of September, 2015.

/s/ James Robart
JAMES L. ROBART
United States District Judge

CHAPTER 94.

[H. B. 239.]

CREATING WASHINGTON STATE BAR ASSOCIATION.

AN ACT to create an association to be known as the "Washington State Bar Association;" to provide for its organization, government, membership and powers; to regulate the practice of law and to provide penalties for the violation of said act and repealing all acts or parts of acts in conflict therewith.

*Be it enacted by the Legislature of the State of Washington:*

SECTION 1. *Title of Act.* This act may be known and cited as the state bar act.

SEC. 2. *Objects and Powers.* There is hereby created as an agency of the state, for the purpose and with the powers hereinafter set forth, 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, and which may, for the purpose of carrying into effect and promoting the objects of said association, enter into contracts and acquire, hold, encumber and dispose of such real and personal property as is necessary thereto.

SEC. 3. *First Members.* The first members of the Washington State Bar Association shall be all persons now entitled to practice law in this state.

SEC. 4. *New Members.* After the organization of the state bar, as herein provided, all persons who are admitted to practice in accordance with the provisions of this act, except judges of courts of record, shall become by that fact active members of the state bar.

SEC. 5. *Board of Governors.* There is hereby constituted a board of governors of the state bar, which shall consist of the president of the state bar, as an ex-officio member, and of one member elected by secret ballot by mail by the active members residing in each congressional district now or hereafter existing in the state. The members of the board of governors shall hold office for three (3) years and until their successors are elected and qualified: *Provided, however*, That the members of the board of governors elected to constitute the first board shall, at their first meeting so classify themselves by lot that two members thereof shall hold office for one year only and two others for two years only and until their successors are elected and qualified. Vacancies in said board of governors shall be filled by the continuing members of the board until the next district election, held in accordance with the rules hereinafter provided for.

SEC. 6. *State Bar Governed by Board of Governors.* The state bar shall be governed by the board of governors which shall be charged with the executive functions of the state bar and the enforcement of the provisions of this act and all rules adopted in pursuance thereof. The members of the board of governors shall receive no salary by virtue of their office.

SEC. 7. *Powers of Governors.* The said board of governors shall have power, in its discretion, from time to time to adopt rules

(a) Concerning membership and the classification thereof into active, inactive and honorary members ; and

(b) Concerning the enrollment and privileges of membership ; and

(c) Defining the other officers of the state bar, the time, place and method of their selection, and their respective powers, duties, terms of office and compensation ; and

(d) Concerning annual and special meetings ; and

(e) Concerning the collection, the deposit and the disbursement of the membership and admission fees, penalties, and all other funds ; and

(f) Providing for the organization and government of district and/or other local subdivisions of the state bar ; and

(g) Providing for all other matters, whether similar to the foregoing or not, affecting in any way whatsoever, the organization and functioning of the state bar. Any such rule may be modified, or rescinded, or a new rule adopted, by a vote of the active members under rules to be prescribed by the board of governors.

SEC. 8. *Admission and Disbarment.* The said board of governors shall likewise have power, in its discretion, from time to time to adopt rules, subject to the approval of the supreme court, fixing the qualifications, requirements and procedure for admission to the practice of law; and, with such approval, to establish from time to time and enforce rules of professional conduct for all members of the state bar; and, with such approval, to appoint boards or committees to examine applicants for admission; and, to investigate, prosecute and hear all causes involving discipline, disbarment, suspension or reinstatement, and make recommendations thereon to the supreme court; and, with such approval, to prescribe rules establishing the procedure for the investigation and hearing of such matters, and establishing county or district agencies to assist therein to the extent provided by such rules: *Provided, however*, That no person who shall have participated in the investigation or prosecution of any such cause shall sit as a member of any board or committee hearing the same.

SEC. 9. *Active Members' Fees.* The annual membership fee for active members shall be the sum of five dollars ($5.00) payable on or before February first of each year: *Provided*, That the membership fee for the year 1933 shall be payable not later than ninety days after the effective date of this act. The board of governors shall have power before January first of any year to increase such fee to a sum not exceeding ten dollars ($10.00).

SEC. 10. *Inactive Members' Fees.* The annual membership fee for inactive members shall be the sum of two dollars ($2.00), payable on or before the first day of February of each *year: Provided*, That the membership fee for the year 1933 shall be payable not later than ninety days after the effective date of this act.

SEC. 11. *Admission Fees.* Applicants for admission to the bar upon accredited certificates or upon examination, not having been admitted to the bar in another state or territory, shall pay a fee of twenty-five dollars ($25.00) and all other applicants a fee of fifty dollars ($50.00). Said admission fees shall be used to pay the expenses incurred in connection with examining and admitting applicants to the bar, including salaries of examiners, and any balance remaining at the close of each biennium shall be paid to the state treasurer and be by him credited to the general fund.

SEC. 12. *Suspension for Non-payment of Fees.* Any member failing to pay any fees after the same become due, and after two months' written notice of his delinquency, must be, suspended from membership in the state bar, but may be reinstated upon payment of accrued fees and such penalties as may be imposed by the board of governors, not exceeding double the amount of the delinquent fee.

SEC. 13. *Only Active Members May Practice Law.* No person shall practice law in this state subsequent to the first meeting of the state bar unless he shall be an active member thereof as hereinbefore defined: *Provided*, That a member of the bar in good standing in

any other state or jurisdiction shall be entitled to appear in the courts of this state under such rules as the board of governors may prescribe.

SEC. 14. *Unlawful Practice a Misdemeanor.* Any person who, not being an active member of the state bar, or who after he has been disbarred or while suspended from membership in the state bar, as by this act provided, shall practice law, or hold himself out as entitled to practice law, shall be guilty of a misdemeanor: *Provided, however*, Nothing herein contained shall be held to in any way affect the power of the courts to grant injunctive relief or to punish as for contempt.

SEC. 15. *State Bar Commission.* Five members of the bar qualified for active membership in the state bar, shall within ten days after the effective date of this act, be appointed by the chief justice of the supreme court to constitute a commission which shall within ninety days thereafter organize the state bar, and take such steps and adopt such rules and regulations for the time being, as it may deem necessary to complete the organization thereof as herein provided, after which organization, the said commission shall be deemed abolished.

SEC. 16. *Repeal.* All acts and parts of acts in conflict with this act, or with any rule adopted hereunder, are from the effective date of this act or of any such rule, hereby repealed.

SEC. 17. *Legislative Intent.* If any section, subsection, sentence, clause or phrase of this act or of any rule

adopted hereunder, is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act nor of any other rule adopted hereunder. The legislature hereby declares that it would have passed this act, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, dailies or phrases be declared unconstitutional.

Passed the House February 13, 1933.

Passed the Senate March 1, 1933.

Approved by the Governor March 13, 1933.

| | **Information Sheet – Integrated Bar Associations** | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | **Date** | **Lawyers** | **Lawyers** | **Discipline System** | | | | | | | |
| | | **Integrated** | **2017** | **2017** | **Separate** | | | | | **Integrated Bar Association Dates** | | |
| | | | **USA** | ***Integrated Bar*** | ***Integrated Bar*** | | | | | | | |
| 1 | Alabama | 1923 | 14,717 | 14,717 | | | | | 1 | North Dakota | 1921 | |
| 2 | Alaska | 1955 | 2,402 | 2,402 | | | | | 2 | Alabama | 1923 | |
| 3 | Arizona | 1933 | 14,960 | 14,960 | | | | | 3 | Idaho | 1923 | |
| 4 | California | 1927 | 168,746 | 168,746 | 1 | 168,746 | | | 4 | New Mexico | 1925 | |
| | Colorado | | 22,164 | | | | | | 5 | California | 1927 | |
| | Connecticut | | 21,341 | | | | | | 6 | Nevada | 1928 | |
| | Delaware | | 2,978 | | | | | | 7 | Utah | 1931 | |
| 5 | Florida | 1950 | 77,008 | 77,008 | | 77,008 | | | 8 | South Dakota | 1931 | |
| 7 | Hawaii | 1969 | 4,236 | 4,236 | 1 | 4,236 | | | 9 | Mississippi | 1932 | |
| 8 | Idaho | 1923 | 3,836 | 3,836 | | | | | 10 | Washington | 1933 | |
| | Illinois | | 62,782 | | | | | | 11 | Arizona | 1933 | |
| | Indiana | | 15,826 | | | | | | 12 | North Carolina | 1933 | |
| | Iowa | | 7,523 | | | | | | 13 | Kentucky | 1934 | |
| | Kansas | | 8,218 | | | | | | 14 | Michigan | 1935 | |
| 9 | Kentucky | 1934 | 13,509 | 13,509 | | | | | 15 | Oregon | 1935 | |
| 10 | Louisiana | 1941 | 19,307 | 19,307 | | | | | 16 | Nebraska | 1937 | |
| | Maine | | 3,940 | | | | | | 17 | Wyoming | 1939 | |
| | Maryland | | 38,800 | | | | | | 18 | Texas | 1939 | |
| | Massachusetts | | 43,442 | | | | | | 19 | Oklahoma | 1939 | |
| 11 | Michigan | 1935 | 35,236 | 35,236 | 1 | 35,236 | | | 20 | Louisiana | 1941 | |
| | Minnesota | | 25,483 | | | | | | 21 | Missouri | 1946 | |
| 12 | Mississippi | 1932 | 7,067 | 7,067 | | | | | 22 | West Virginia | 1947 | |
| 13 | Missouri | 1946 | 24,787 | 24,787 | 1 | 24,787 | | | 23 | Florida | 1950 | |
| 14 | Montana | 1974 | 3,159 | 3,159 | | | | | 24 | Alaska | 1955 | |
| 15 | Nebraska | 1937 | 5,545 | 5,545 | 1 | 5,545 | | | 25 | Wisconsin | 1956 | |
| 16 | Nevada | 1928 | 7,281 | 7,281 | | | | | 26 | South Carolina | 1968 | |
| 17 | New Hampshire | 1972 | 3,507 | 3,507 | | | | | 27 | Hawaii | 1969 | |
| | New Jersey | | 41,168 | | | | | | 28 | District of Columbia | 1970 | |
| 18 | New Mexico | 1925 | 5,524 | 5,424 | 1 | 5424 | | | 29 | New Hampshire | 1972 | |
| | New York | | 177,035 | | | | | | 30 | Rhode Island | 1973 | |
| 19 | North Carolina | 1938 | 23,694 | 23,694 | | | | | 31 | Montana | 1974 | |
| 20 | North Dakota | 1921 | 1,698 | 1,698 | 1 | 1,698 | | | | | | |
| | Ohio | | 38,623 | | | | | | | | | |

| | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 21 | Oklahoma | 1939 | 13,470 | 13,470 | | | | | | | | |
| | Oregon | 1935 | 12,227 | 12,227 | | | | | | | | |
| | Pennsylvania | | 49,406 | | | | | | | | | |
| 22 | Rhode Island | 1973 | 4,167 | 4,167 | 1 | 4,167 | | | | | | |
| 23 | South Carolina | 1968 | 10,316 | 10,316 | 1 | 10,316 | | | | | | |
| 24 | South Dakota | 1931 | 1,933 | 1,933 | | | | | | | | |
| | Tennessee | | 18,461 | | | | | | | | | |
| 25 | Texas | 1939 | 89,361 | 89,361 | | | | | | | | |
| 26 | Utah | 1931 | 8,204 | 8,204 | | | | | | | | |
| | Vermont | | 2,326 | | | | | | | | | |
| | Virginia | | 24,249 | | | | | | | | | |
| 27 | Washington | 1933 | 25,786 | 25,786 | | | | | | | | |
| 28 | West Virginia | 1947 | 4,862 | 4,862 | | | | | | | | |
| 29 | Wisconsin | 1956 | 15,549 | 15,549 | 1 | 15,549 | | | | | | |
| 30 | Wyoming | 1939 | 1,776 | 1,776 | | | | | | | | |
| 31 | District of Columbia | 1970 | 54,692 | 54,692 | 1 | 54,692 | | | | | | |
| | | Totals | 1,282,327 | 678,462 | 11 | 401,980 | | | | | | |
| | | | | | **States** | | **Lawyers** | | | | | |
| | | | | | 51 | 1,282,327 | 25,144 | All States | | | | |
| | | | | | 31 | 678,462 | 21,886 | Integrated Bar States | | | | |
| | | | | | 11 | 401,980 | 36,544 | Integrated Bar States with Separate Discipline Systems | | | | |
| | | | | | 20 | 276,482 | 13,824 | Remainder of Integrated Bar States with Texas | | | | |
| | Totals | | | | 19 | 190,121 | 10,006 | Excludes Texas – 89,361 | | | | |
| | | | | | | | | | | | | |
| | **Sources:** | | | | | | | | | | | |
| | **ABA National Lawyer Population Survey, Historical Trend in Total National Lawyer Population 1878-2017** | | | | | | | | | | | |
| | | http:/www.americanbar.org – use the search box on the site | | | | | | | | | | |
| | **ABA Center for Professional Responsibility Directory of Lawyer Disciplinary Agencies, October 2016** | | | | | | | | | | | |
| | | http:/www.americanbar.org – use the search box on the site | | | | | | | | | | |
| | **ABA National Lawyer Population Survey 10-Year Trend in Lawyer Population by State Year 2017** | | | | | | | | | | | |
| | | http:/www.americanbar.org – use the search box on the site | | | | | | | | | | |
| | **ABA CLE Short History of the Disorganized, Organized, and Mandatory Bar** | | | | | | | | | | | |
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| | **Washington Report on the Lawyer Regulation System American Bar Association Standing Committee on Professional Discipline August 2006** | | | | | | | | | | | |
| | | http:/www.wsba.org – use search box on the site | | | | | | | | | | |