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IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF THURSTON

STEPHEN KERR EUGSTER, )

)

Plaintiff, )

vs. )

)

SUPREME COURT OF THE STATE OF )

WASHINGTON; AND JUSTICES )

MARY E. FAIRHURST, CHARLES W. )

JOHNSON, BARBARA A. MADSEN, )

SUSAN OWENS, DEBRA L. STEPHENS, )

CHARLES K. WIGGINS, STEVEN C. )

GONZÁLEZ, SHERYL GORDON )

MCCLLOUD, and MARY I. YU; )

)

WASHINGTON STATE BAR )

ASSOCIATION AND OFFICERS ROBIN )

L. HAYNES, President; PAULA C. )

LITTLEWOOD, Executive Director, and )

DOUGLAS J. ENDE, Chief Disciplinary )

Counsel, )

)

Defendants. )

)

No.

COMPLAINT FOR DECLARATORY  
DETERMINATIONS, JUDGMENTS AND  
INJUNCTIONS

(RCW Ch. 7.24)

(42 U.S.C. § 1983)

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**ABSTRACT**

**ISSUE PRESENTED:** Whether the Washington Supreme Court has authority to reject a Washington Bar Association member referendum petition calling for the reduction of license fees set by the WSBA Board of Governors.

The Washington State Bar Association, on September 30, 2016, was an integrated bar under the Washington Bar Act of 1933. As an integrated bar association it had the power (1) to regulate and discipline the members of the association and (2) to improve the quality of legal services.

At that September afternoon meeting of the WSBA Board of Governors the BOG amended the WSBA bylaws. In so doing the BOG reformed the association into an integrated association of lawyers, Limited Practice Officers and Limited License Legal Technicians. Also, the BOG made the changed association responsible for regulation and discipline of all of the members of the association, lawyers, LPOs and LLLTs.

These changes were primarily orchestrated by the joint efforts of the WSBA Executive Director, Chief Disciplinary Counsel and President. An essential part of these efforts was the advancement of a fiction Supreme Court has “inherent and plenary authority to regulate the practice of law in Washington”<sup>1</sup> and that this means the Court has “ultimate authority over the regulation of the Bar, the practice of law, and the WSBA itself—notwithstanding conflicting statutes.”<sup>2</sup>

This action asserts the Supreme Court does not have authority over the WSBA and the lawyers who are compelled to be members of and to pay dues to the WSBA in order to practice law in Washington.

There is a broader and more pervasive illegality to the WSBA created by the amendments to the WSBA bylaws. It is this: The WSBA Executive Director, Chief Disciplinary Counsel and President and the WSBA Board of Directors are intent on giving control of the WSBA to the Washington Supreme Court. The Supreme Court seeks the result and approves of the fiction the WSBA leadership has advanced.

The justices of the Supreme Court and the WSBA are wrong. The Court does not have the power it thinks it has as this case will show.

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<sup>1</sup> Proposed court rules GR 12 and GR 12.2.

<sup>2</sup> WSBA Governance Task Force Report and Recommendations June 2014.

1 **COMPLAINT**

2 Plaintiff, Stephen Kerr Eugster, alleges as follows:

3 **PARTIES, JURISDICTION, AND VENUE**

4 1. Plaintiff, Stephen Kerr Eugster, is a member in good standing of the Washington State Bar  
5 Association WSBA 1933 and WSBA 2017, see paragraph 6 below.

6 2. Defendant Supreme Court of the State of Washington is the court created by WASH. CONST.  
7 Art. IV, Section 2 and Section 2a (a special supreme court if the current supreme court has  
8 partiality, bias, concerns or appearances).

9 3. Defendants, Justices Mary E. Fairhurst, Charles W. Johnson, Barbara A. Madsen, Susan  
10 Owens, Debra L. Stephens, Charles K. Wiggins, Steven C. González, Sheryl Gordon Mccloud, and  
11 Mary I. Yu are the judges of the Supreme Court pursuant to Wash. Const. Art. IV, Section 3.

12 4. Defendant Justices are currently implementing and enforcing the unlawful and  
13 unconstitutional practices and policies complained of in this action. Each such Defendant is sued  
14 individually in his official capacity or her official capacity, as the case may be.

15 5. Defendant Washington State Bar Association is that “bar association” created or resulting  
16 from recent amendments to the bylaws of the Washington State Bar Association.

17 6. The WSBA prior to the amendments is sometimes referred to herein as WSBA 1933-2016;  
18 the WSBA [sic] as a result of the amendments is sometimes referred to herein as WSBA 2017.

19 7. Defendants Washington State Bar Association, President Robin L. Haynes, Executive  
20 Director Paula C. Littlewood, and Chief Disciplinary Counsel Douglas J. Ende, are currently  
21 implementing and enforcing the unlawful and unconstitutional practices and policies complained  
22 of in this action. Each such individual Defendant is sued in his official capacity or her official  
23 capacity, as the case may be.

24 8. Venue of the action is proper in Thurston County, Washington.

25 9. The court has authority under RCW Ch. 7.24, Uniform Declaratory Judgments Act, to  
26 render Declaratory Judgments concerning important issues, which require decision and has  
27 authority to implement its Declaratory Judgments. (RCW Ch. 7.24).

28 10. This is also an action under the Civil Rights Act of 1871, specifically, 42 U.S.C. § 1983, to  
redress the deprivation, under color of state law, of rights, privileges, and immunities secured to

1 Plaintiff Eugster by the Constitution of the United States and the First, Fifth and Fourteenth  
2 Amendments thereto. The jurisdiction of this Court, therefore, is also invoked under 28 U.S.C. §  
3 1343(a)(3), (4).

4 11. This is also a case of actual controversy between Plaintiff Eugster and Defendants  
5 because Plaintiff Eugster is seeking a declaration of his rights under the Constitution of the United  
6 States which are currently under siege by the Defendants and under RCW 7.24, this Court may  
7 declare the rights of Plaintiff Eugster and grant further necessary and proper relief, including  
8 preliminary and permanent injunctive relief.

### 9 **CONSTITUTIONAL STANDARDS**

10 12. Under 42 U.S.C. § 1983, every person who, under color of state law, subjects any citizen  
11 of the United States to the deprivation of "rights, privileges, or immunities secured by the  
12 Constitution and laws," shall be liable to the injured party.

13 13. The First and Fourteenth Amendments to the United States Constitution protect not only  
14 Plaintiff Eugster's freedom to associate, but his freedom not to associate; and protects not only  
15 his freedom of speech, but his freedom not to speak and to not subsidize group speech with which  
16 an he disagrees.

17 14. The Fifth and Fourteenth Amendments to the United States Constitution protect Plaintiff  
18 Eugster's the right of due process of law.

19 15. The doctrines of constitutional strict or exacting scrutiny (or other scrutiny) ensure that  
20 the fundamental rights of Plaintiff Eugster may only be infringed under certain circumstances.  
21 Plaintiff Eugster's fundamental constitutional rights prevail and thus defeat the conduct of  
22 Defendants, and each of them described herein.

### 23 **GENERAL FACTS**

#### 24 **WSBA 1933-2016 and WSBA 2017**

25 16. The Washington State Bar Association was created by the State Bar Act of 1933. Wash.  
26 Laws 1933 ch. 94. (WSBA 1933-2016).

1 17. The Bar Act was a part of the Integrated Bar Movement of the early part of the 20<sup>th</sup>  
2 Century.<sup>3</sup>

3 18. The characteristics of the integrated bar are as follows:

4 a. Every lawyer admitted in state to practice law must be a member of the bar  
5 association. Only lawyers can be members of the bar association.

6 b. The bar association performs admission, regulation and discipline functions.

7 c. The purposes of the integrated bar are (a) regulating the legal profession and (b)  
8 improving the quality of legal services. *Keller v. State Bar of Cal.*, 496 US 1, 13 (1990).  
9

10 19. The WSBA of the Bar Act of 1933 (WSBA 1933-2016) came to an end during the  
11 afternoon of September 30, 2016, at a regularly called meeting of the WSBA Board of Governors  
12 in Seattle.

13 20. At that time, the Board of Governors made significant amendments to the bylaws of the  
14 WSBA 1933.

15 21. The amendments became effective on January 1, 2017 (WSBA 2017).

16 22. The amended bylaws bring WSBA 1933-2016 to and end because:

17 a. Instead of an integrated bar association, that is a compelled association of lawyers,  
18 WSBA 2017 is a compelled association of (a) lawyers admitted to the bar of the Washington  
19 Supreme Court, (b) Limited Practice Officers (LPO's) (APR<sup>4</sup> 12) and (c) Limited License Legal  
20 Technicians (LLLT's) (APR 28).

21 b. The amended bylaws provide that the WSBA 2017 is to operate a discipline system  
22 for all of compelled members, namely; lawyers, Limited Practice Officers and Limited License  
23 Legal Technicians.  
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28 <sup>3</sup> Herbert Harley initiated the integrated movement in this country in an address to  
Lancaster County, Neb. Bar Ass'n, Dec. 28, 1914. 5. See Winters, *Integration of the Bar-You Can't  
Lose*, 39 J. AM. JUD. SOC'Y 140, 141 (1956).

<sup>4</sup> Washington Admission and Practice Rules.

1 c. The amended bylaws keep the name “Washington State Bar Association” for WSBA  
2 2017, but the name is a misnomer because the association is now made of lawyers, Limited  
3 Practice Officers and Limited License Legal Technicians.

#### 4 **WSBA Governance Task Force**

5 23. The history of WSBA 2017 began in 2012 when the Board of Governors created a  
6 Governance Task Force.

7 24. The Task Force generated its final report in 2014.

8 25. At its regular meeting on September 29-30, 2016, the Board of Governors amended the  
9 bylaws of WSBA 1933.

10 26. The Task Force Report was based upon a particular view of the power of the Washington  
11 State Supreme Court expressed in the Task Force final Report.

12 27. This view is this:

13 [the] Supreme Court has made it clear, based on separation of powers, that  
14 it holds ultimate authority over the regulation of the Bar, the practice of  
15 law, and the WSBA itself—notwithstanding conflicting statutes.

16 WSBA Governance Task Force Report, June 2014 at page 23.

17 28. This view is contrary to the law of Washington and the Washington Constitution, it is a  
18 fiction.

19 29. Defendants Haynes, Littlefield and Ende support this fiction and have caused the WSBA  
20 Board of Governors, and the Defendant Justices of the Supreme Court to subscribe to this fiction.

#### 21 **Instances of Supreme Court Assertion of Power**

22 30. There are many instances where the Defendants, and the Court assert power over the  
23 Washington State Bar Association and the members of the bar association.

24 31. **Boards and Committees.** Pursuant to GR 12.2 Washington State Bar Association  
25 Administration of Supreme Court-created Boards and Committees

26 [T]he Supreme Court has delegated to the Washington State Bar Association  
27 the authority and responsibility to administer certain boards and  
28 committees established by court rule or order. This delegation of authority  
includes providing and managing staff, overseeing the boards and

1 committees to monitor their compliance with the rules and orders that  
2 authorize and regulate them, paying expenses reasonably and necessarily  
3 incurred pursuant to a budget approved by the Board of Governors,  
4 performing other functions and taking other actions as provided in court  
5 rule or order or delegated by the Supreme Court, or taking other actions as  
6 are necessary and proper to enable the board or committee to carry out its  
7 duties or functions.

8 **32. Limited Practice Officers.** APR 12 is the Limited Practice Rule for Limited Practice  
9 Officers. It provides in relevant part:

10 (3) Expenses of the Board. Members of the Board shall not be compensated  
11 for their services. For their actual and necessary expenses incurred in the  
12 performance of their duties, they shall be reimbursed by the Board in a  
13 manner consistent with its rules. All such expenses shall be paid pursuant  
14 to a budget submitted to and approved by the Washington State Bar  
15 Association on an annual basis. Funds accumulated from examination fees,  
16 annual fees, and other revenues shall be used to defray all expenses of the  
17 Board. The administrative support to the Board shall be provided by the  
18 Washington State Bar Association. [Emphasis added.]

19 **33. Limited License Legal Technicians.** APR 28 is the Limited Practice Rule for Limited  
20 License Legal Technicians. It provides in relevant part:

21 (4) Administration and Expenses of the Board. The Washington State Bar  
22 Association shall provide reasonably necessary administrative support for  
23 the Board. Members of the Board shall not be compensated for their  
24 services but shall be reimbursed for actual and necessary expenses incurred  
25 in the performance of their duties according to the Washington State Bar  
26 Association's expense policies. Funds accumulated from examination fees,  
27 annual fees, and other revenues shall be used to defray the expenses of the  
28 Board. All anticipated expenses and anticipated revenues shall be  
submitted on a proposed budget for approval by the Washington State Bar  
Association's Board of Governors. [Emphasis added.]

34. Plaintiff Eugster and the other lawyer members of WSBA 2017 must pay for these  
undertakings imposed on WSBA 2017 by the Defendants Court and Justices of the Court.

35. If Plaintiff Eugster does not pay dues to the WSBA to support these undertakings, he will  
be suspended from the practice of law and may be disbarred.

### **Proposed Rules, GR 12**

36. Defendants WSBA, Haynes, Littlewood and Ende have proposed changes to GR 12.

1 37. The proposed changes were submitted to the Supreme Court on or about October 17,  
2 2016.

3 38. The proposed changes submitted by Defendants WSBA, Haynes, Littlewood and Ende to  
4 GR 12 are as follows:

5 a. RULE 12. REGULATION OF THE PRACTICE OF LAW

6 The Washington Supreme Court has inherent and plenary  
7 authority to regulate the practice of law in Washington. The legal  
8 profession serves clients, courts, and the public, and has special  
9 responsibilities for the quality of justice administered in our legal  
10 system. The Court ensures the integrity of the legal profession  
11 and protects the public by adopting rules for the regulation of  
12 the practice of law and actively supervising persons and entities  
13 acting under the Supreme Court's authority.

[Underlining in original showing the language Is proposed.]

14 b. RULE 12.1. REGULATORY OBJECTIVES

15 Legal services providers must be regulated in the public interest.  
16 In regulating the practice of law in Washington, the Washington  
17 Supreme Court's objectives include:

18 A. Protection of the public;

19 B. Advancement of the administration of justice and the rule  
20 of law;

21 C. Meaningful access to justice and information about the  
22 law, legal issues, and the civil and criminal justice systems;

23 D. Transparency regarding the nature and scope of legal  
24 services to be provided, the credentials of those who provide  
25 them, and the availability of regulatory protections;

26 E. Delivery of affordable and accessible legal services;

27 F. Efficient, competent, and ethical delivery of legal services;

28 G. Protection of privileged and confidential information;

H. Independence of professional judgment;

I. Accessible civil remedies for negligence and breach of other  
duties owed, disciplinary sanctions for misconduct, and  
advancement of appropriate preventive or wellness programs;



1 J. Diversity and inclusion among legal services providers and  
2 freedom from discrimination for those receiving legal services  
3 and in the justice system.

4 [Underlining in original showing that the language is proposed.]

5 c. RULE 12.2. WASHINGTON STATE BAR ASSOCIATION: PURPOSES,  
6 AUTHORIZED ACTIVITIES, AND PROHIBITED ACTIVITIES

7 The Washington State Bar Association was created in 1933 by  
8 the State Bar Act (RCW 2.48.010) as an agency of the state. In  
9 the exercise of its inherent and plenary authority to regulate the  
10 practice of law in Washington, the Supreme Court authorizes and  
11 supervises the Washington State Bar Association's activities. The  
12 Washington State Bar Association carries out the administrative  
13 responsibilities and functions expressly delegated to it by this  
14 rule and other Supreme Court rules and orders enacted or  
15 adopted to regulate the practice of law, including the purposes  
16 and authorized activities set forth below. . . .

17 [Underlining in original showing that the language proposed.]

18 **Supreme Court Order of January 5, 2017**

19 39. On January 5, 2017, the Defendant Justices of the Supreme Court, by Chief Justice  
20 Barbara Madsen, entered the Order attached hereto, Exhibit A.

21 40. The Defendants Justices ordered:

22 (a) That the lawyer license fees approved by the WSBA Board of Governors  
23 for the years 2018,2019, and 2020 are reasonable.

24 (b) That the lawyer license fees proposed by the license fee rollback  
25 petition, if the petition were to pass, would not be reasonable both as to  
26 the level of fees that it proposes and as to the requirement that future  
27 license fee increases be tied to the consumer price index.

28 41. Defendants Justices and Defendant WSBA 2017 and Defendants Littlewood and Ende say  
the Court has the power to make and enter the Order under General Rule (GR) 12.1(b)(22) which  
provides:

(b) Specific Activities Authorized. In pursuit of these purposes, the  
Washington State Bar Association may:

(22) Establish the amount of all license, application, investigation, and other  
related fees, as well as charges for services provided by the Washington

1 State Bar Association, and collect, allocate, invest, and disburse funds so  
2 that its mission, purposes and activities may be effectively and efficiently  
3 discharged.

4 The amount of any license fee is subject to review by the Supreme Court for  
5 reasonableness and may be modified by order of the Court if the Court  
6 determines that it is not reasonable.

### 7 **Referendum: License Fee Rollback**

8 42. The WSBA Bylaws provide that, within 90 days of a final decision of the Board of  
9 Governors, any active member may file a referendum to reverse or modify that decision.

10 43. A license fee rollback petition was timely filed by active members of the WSBA with the  
11 Executive Director of the WSBA.

12 44. The petition seeks to reject the 2018-2020 fees approved by the Board of Governors and  
13 require that the fee amount for a given year not be increased by a greater percentage than the  
14 consumer price index (CPI) increased during the calendar year ending 12 months previous to the  
15 effective date of the increase.

16 45. There are 2,180 WSBA member signatories to the petition.

17 46. Only 1,604 (5% of active membership) were needed to qualify the petition.

18 47. Plaintiff Eugster was one of the signatories of the petition.

19 48. Plaintiff Eugster wants, and has the right, to have the petition acted upon by Defendant  
20 WSBA and Defendants Littlewood and Ende.

### 21 **COUNT ONE**

#### 22 **Court Should Make Declaratory Judgments**

23 49. The foregoing paragraphs and the following paragraphs in the Counts set out below are  
24 incorporated herein by this reference and are restated here.

25 50. This action is brought under and pursuant to the Washington Uniform Declaratory  
26 Judgments Act. RCW Ch. 7.24 (Declaratory Judgments Act).

27 51. RCW 7.24.020 (Rights and status under written instruments, statutes, ordinances)  
28 provides:

A person interested under a deed, will, written contract or other writings  
constituting a contract, or whose rights, status or other legal relations are

1 affected by a statute, municipal ordinance, contract or franchise, may have  
2 determined any question of construction or validity arising under the instrument,  
3 statute, ordinance, contract or franchise and obtain a declaration of rights, status  
or other legal relations thereunder.

4 52. RCW 7.24.050 (General powers not restricted by express enumeration) provides:

5 The enumeration in RCW 7.24.020 and 7.24.030 does not limit or restrict  
6 the exercise of the general powers conferred in RCW 7.24.010, in any  
7 proceeding where declaratory relief is sought, in which a judgment or  
decree will terminate the controversy or remove an uncertainty.

8 53. RCW 7.24.080 (Further relief.)

9 Further relief based on a declaratory judgment or decree may be granted  
10 whenever necessary or proper. The application therefor shall be by petition  
11 to a court having jurisdiction to grant the relief. When the application is  
12 deemed sufficient, the court shall, on reasonable notice, require any  
13 adverse party whose rights have been adjudicated by the declaratory  
14 judgment or decree, to show cause why further relief should not be granted  
forthwith.

15 54. RCW 7.24.090 (Determination of issues of fact) provides:

16 When a proceeding under this chapter involves the determination of an  
17 issue of fact, such issue may be tried and determined in the same manner  
18 as issues of fact are tried and determined in other civil actions, in the court  
in which the proceeding is pending.

19 55. RCW 7.24.120 (Construction of chapter) provides:

20 This chapter is declared to be remedial; its purpose is to settle and to afford  
21 relief from uncertainty and insecurity with respect to rights, status and  
22 other legal relations; and is to be liberally construed and administered.

23 56. Plaintiff Eugster has standing under the Declaratory Judgments Act:

24 a. First, the interest he seek to be protected is "arguably within the zone of interests  
25 to be protected or regulated by the statute or constitutional guarantee in question."

26 b. Second, the challenged action will have to have caused the challenger an injury in  
27 fact, economic or otherwise including damage to his fundamental rights protected by the  
28 First and Fifth Amendments to the United States Constitution.

57. A justiciable controversy between the Plaintiff and the Defendants: (1) There is an actual,  
present and existing dispute, or the mature seeds of one, as distinguished from a possible,

1 dormant, hypothetical, speculative, or moot disagreement, (2) between parties having genuine  
2 and opposing interests, (3) which involves interests that must be direct and substantial, rather  
3 than potential, theoretical, abstract or academic, and (4) a judicial determination of which will be  
4 final and conclusive."

5 58. Last, the Court can utilize its powers not only to settle disputes but also has the power  
6 judicial determination of which will be final and conclusive

7 59. Plaintiff is entitled to declaratory and permanent injunctive relief. RCW Ch. 7.24.

8 **COUNT TWO**

9 **Last Paragraph of GR 12.1(b)(22)**

10 60. The foregoing paragraphs and the following paragraphs in the Counts set out below are  
11 incorporated herein by this reference and are restated here.

12 61. GR 12.1 Washington State Bar Association: Purposes provides in pertinent part:

13 (b) Specific Activities Authorized. In pursuit of these purposes, the  
14 Washington State Bar Association may:

15 (22) Establish the amount of all license, application, investigation, and other  
16 related fees, as well as charges for services provided by the Washington  
17 State Bar Association, and collect, allocate, invest, and disburse funds so  
18 that its mission, purposes and activities may be effectively and efficiently  
19 discharged.

20 The amount of any license fee is subject to review by the Supreme Court for  
reasonableness and may be modified by order of the Court if the Court  
determines that it is not reasonable. [Emphasis added.]

21 62. The language in the last paragraph of (22) is not an authorization and were it to be, it is  
22 a power given to the Supreme Court by the Supreme Court.

23 63. This paragraph does not fit the overall purpose of GR 12.1.

24 64. The paragraph is not a regulation, it is a self professed power to force the WSBA to pass  
25 license fees determination such that the WSBA will finance and administer Court created  
26 programs, programs which the Court as created by legislation.

27 65. This paragraph does something else which is more sinister. It allows the court to impose  
28 its will arbitrarily on the on the BOG, and the members of the bar association.

1 **COUNT THREE**

2 **Power to Regulate and the Power to Appropriate**

3 66. The foregoing paragraphs and the following paragraphs in the Counts set out below are  
4 incorporated herein by this reference and are restated here.

5 67. The issue of concern here is whether the term tax is, or can be included, in the meaning  
6 of the Court’s “inherent and plenary authority to regulate the practice of law.”

7 68. The term regulate, a verb, means “to govern or direct according to rule.”<sup>5</sup>

8 69. The term regulate does not include the power to tax.

9 70. The term regulate does not include the power of the one creating the regulation to  
10 create or reserve a power of nullification and new decision in the regulator, in this case the  
11 Supreme Court so as to force WSBA members to pay for the Court’s programs.

12 71. The power to tax is defined as “a governmental assessment (charge) upon property  
13 value, transactions (transfers and sales), licenses granting a right, and/or income.”<sup>6</sup>

14 72. Plaintiff is entitled to declaratory and permanent injunctive relief. RCW Ch. 7.24.

15 **COUNT FOUR**

16 **Washington Supreme Court Decisions and Power of the Court**

17 73. The foregoing paragraphs and the following paragraphs in the Counts set out below are  
18 incorporated herein by this reference and are restated here.

19 74. The Court and the Justices subscribe to the following:

20 But the Supreme Court has made it clear, based on separation of powers,  
21 that it holds ultimate authority over the regulation of the Bar, the practice  
22 of law, and the WSBA itself—notwithstanding conflicting statutes.

23 WSBA Governance Task Force Report, June 2014<sup>7</sup> at page 23.

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26 <sup>5</sup> Webster's Third New International Dictionary, Unabridged, s.v. “regulate,” accessed  
January 12, 2017, <http://unabridged.merriam-webster.com>.

27 <sup>6</sup> Burton’s Legal Thesaurus, 4E. S.v. "tax." Retrieved January 12 2017 from  
28 <http://legal-dictionary.thefreedictionary.com/tax>

<sup>7</sup> <http://www.wsba.org/~media/Files/Legal%20Community/Bylaws%-20Work%20Group/WSBA%20Governance%20Task%20Force%20Report%20and%20Recommendations%20-%20FINAL.ashx>, retrieved January 10, 2017.

1 75. The foregoing statement is said to be based on the following cases: *State ex rel. Schwab*  
2 *v. Wash. State Bar Ass'n*, 80 Wn.2d 266, 272, 493 P.2d 1237 (1972); *Graham v. State Bar*  
3 *Association*, 86 Wn.2d 624 (1976); and, *WSBA v. State of Washington*, 125 Wn.2d 901 (1995).

4 76. These cases do not support the position “[that] based on separation of powers, [the  
5 Supreme Court] holds ultimate authority over the regulation of the Bar, the practice of law, and  
6 the WSBA itself—notwithstanding conflicting statutes.”

7 77. The Court has also enacted a number of rules governing admission to practice, discipline  
8 of attorneys, and related matters. Importantly, the Court enacted GR 12.1 which outlines  
9 permissible, required, and impermissible activities of the WSBA. WSBA Governance Task Force  
10 Report, June 2014<sup>8</sup> at page 23.

11 78. “WSBA itself—notwithstanding conflicting statutes.” This statement is not an accurate  
12 statement. The conflicting statutes are the provisions of the Bar Act of 1933. These statutes  
13 continue to exist and stand for what they say unless and until it is determined otherwise. It is not  
14 a given that the statutes have been said to have been superceded by the power of the Supreme  
15 Court. WSBA Governance Task Force Report, June 2014<sup>9</sup> at page 23.

16 79. The law of Washington does not give the Supreme Court the inherent power to tax or  
17 other wise expropriate funds of the treasury of WSBA 1933 or WSBA 2017.

18 80. The court should declare that the Order January 5, 2017 is void.

## 19 **COUNT FIVE**

### 20 **Inherent Power and Power to Appropriate Bar Funds**

21 81. The foregoing paragraphs and the following paragraphs in the Counts set out below are  
22 incorporated herein by this reference and are restated here.

23 82. The Court and the Justices of the Court, Defendants all, do not have the power of  
24 appropriation under the Washington Constitution.

25 83. Compelling the WSBA 2017 to pay for the costs administration of the Limited Practice  
26 Officer program, the Limited License Legal Technician program and to pay for and administer the

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27 <sup>8</sup> <http://www.wsba.org/~media/Files/Legal%20Community/Bylaws%20Work%20Group/WSBA%20Governance%20Task%20Force%20Report%20and%20Recommendations%20-%20FINAL.ashx>, retrieved January 10, 2017.

28 <sup>9</sup> <http://www.wsba.org/~media/Files/Legal%20Community/Bylaws%20Work%20Group/WSBA%20Governance%20Task%20Force%20Report%20and%20Recommendations%20-%20FINAL.ashx>, retrieved January 10, 2017.

1 various court boards amounts to an appropriation of funds of the WSBA 2107 and the  
2 appropriation of dues paid by lawyers including but not limited to Plaintiff Eugster.

3 84. Plaintiff is entitled to declaratory and permanent injunctive relief. RCW Ch. 7.24

4 **COUNT SIX**

5 **Fundamental Rights: Right of Non-association**

6 85. The foregoing paragraphs and the following paragraphs in the Counts set out below are  
7 incorporated herein by this reference and are restated here.

8 86. The Plaintiffs and other class members cannot be compelled to pay dues to the WSBA  
9 2017: Compulsory dues violate Plaintiffs' and other class members right of freedom of speech,  
10 including the freedom not to speak and to not be forced to finance speech, Plaintiffs and class  
11 members do not consent to finance in the exercise of their rights under the First and Fourteenth  
12 Amendments to the United States Constitution.

13 87. This civil rights class action seeks immediate injunctive and declaratory relief to redress  
14 and prevent the deprivation of Plaintiffs' rights, and the rights of the class members he seeks to  
15 represent, against compelled speech and compelled association protected by the First and  
16 Fourteenth Amendments to the United States Constitution by practices and policies of Defendants  
17 acting under color of state law.

18 88. Specifically, those rights have been violated by Defendants' imposition of mandatory  
19 dues as a condition of membership to the Washington State Bar Association (WSBA), which is a  
20 prerequisite to the ability to practice law in the State of Washington.

21 89. Accordingly, Defendants currently maintain and actively enforce a set of laws, customs,  
22 practices, and policies under color of state law that deprive Plaintiffs and other class members of  
23 rights, privileges and/or immunities secured by the First and Fourteenth Amendments, and,  
24 therefore, Defendants are liable to Plaintiffs and other class members under 42 U.S.C. § 1983.

25 90. Plaintiff is entitled to declaratory and permanent injunctive relief. RCW Ch. 7.24.

26 **COUNT SEVEN**

27 **Freedom of Speech, First and Fourteenth Amendments**

28 91. The foregoing paragraphs and the following paragraphs in the Counts set out below are  
incorporated herein by this reference and are restated here.

1 92. Compulsory dues violate Plaintiffs' and other class members right of freedom of speech,  
2 including the freedom not to speak and to not be forced to finance speech, Plaintiffs and class  
3 members do not consent to finance in the exercise of their rights under the First and Fourteenth  
4 Amendments to the United States Constitution.

5 93. This civil rights class action seeks immediate injunctive and declaratory relief to redress  
6 and prevent the deprivation of Plaintiffs' rights, and the rights of the class members he seeks to  
7 represent, against compelled speech and compelled association protected by the First and  
8 Fourteenth Amendments to the United States Constitution by practices and policies of Defendants  
9 acting under color of state law.

10 94. Specifically, those rights have been violated by Defendants' imposition of mandatory  
11 dues as a condition of membership to the Washington State Bar Association (WSBA), which is a  
12 prerequisite to the ability to practice law in the State of Washington.

13 95. Accordingly, Defendants currently maintain and actively enforce a set of laws, customs,  
14 practices, and policies under color of state law that deprive Plaintiffs and other class members of  
15 rights, privileges and/or immunities secured by the First and Fourteenth Amendments, and,  
16 therefore, Defendants are liable to Plaintiffs and other class members under 42 U.S.C. § 1983.

17 96. Plaintiffs and other class members have no adequate legal remedy by which to prevent  
18 or minimize the continuing irreparable harm to their constitutional rights.

19 97. Plaintiff is entitled to declaratory and permanent injunctive relief. RCW Ch. 7.24.

## 20 **COUNT EIGHT**

### 21 **Fundamental Rights: Due Process of Law**

22 98. The foregoing paragraphs and the following paragraphs in the Counts set out below are  
23 incorporated herein by this reference and are restated here.

24 99. The Fifth and Fourteenth Amendments guarantee to Plaintiff Eugster due process of law.

25  
26 100. Accordingly, Defendants currently maintain and actively enforce a set of laws, customs,  
27 practices, and policies under color of state law that deprive Plaintiff his rights, privileges and/or  
28 immunities secured by the Fifth and Fourteenth Amendments, and, therefore, Defendants are  
liable to Plaintiffs and other class members under 42 U.S.C. § 1983.



1 101. Plaintiff is entitled to declaratory and permanent injunctive relief. RCW Ch. 7.24.

2  
3 **COUNT NINE**  
4 **Constitutional Scrutiny**

5 102. The foregoing paragraphs and the following paragraphs in the Counts set out below are  
6 incorporated herein by this reference and are restated here.

7 103. The Doctrine of Constitutional Scrutiny (includes various levels of scrutiny): Strict  
8 scrutiny is described in the following:

9 The words 'strict judicial scrutiny' appear nowhere in the U.S. Constitution.  
10 Neither is there any textual basis, nor any foundation in the Constitution's  
11 original understanding, for the modern test under which legislation will be  
12 upheld against constitutional challenge only if 'necessary' or 'narrowly  
13 tailored' to promote a 'compelling' governmental interest. Nonetheless,  
14 strict scrutiny - a judicially crafted formula for implementing constitutional  
15 values - ranks among the most important doctrinal elements in  
16 constitutional law.

17 Richard H. Fallon, Jr., *Strict Judicial Scrutiny*, 54 UCLA L. REV. 1267, 1268 (2007).

18 104. There are certain facts which establish that the infringements of Plaintiffs' and class  
19 members' fundamental constitutional rights under the doctrine of constitutional scrutiny cannot  
20 be permitted.

21 105. The infringements of the discipline system to Plaintiff's fundamental rights cannot be  
22 supported under constitutional scrutiny - whether strict or exacting scrutiny.

23 106. Plaintiffs' fundamental rights of procedural due process under the Fifth and Fourteenth  
24 Amendments to the United States Constitution are also affected by the actions of Defendants.

25 107. There is no compelling state interest which justifies the infringement of Plaintiff  
26 Eugster's rights under the law and the First and Fifth Amendments to the United States  
27 Constitution.

28 108. Exacting scrutiny was described not long ago in *Knox v. Service Employees Intern. Union*,  
132 S. Ct. 2277 (2012). The Nebraska Supreme Court *In Re Petition for a Rule Change*, 286 Neb.  
1018, 841 N.W.2d 167, 177 (Neb. 2013) discussed the scrutiny test follows:

We made it clear that compulsory subsidies for private speech are subject  
to exacting First Amendment scrutiny and cannot be sustained unless two  
criteria are met.

First, there must be a comprehensive regulatory scheme involving a  
"mandated association" among those who are required to pay the subsidy.

. . . Such situations are exceedingly rare because, as we have stated

1 elsewhere, mandatory associations are permissible only when they serve a  
2 “compelling state interes[t] . . . that cannot be achieved through means  
3 significantly less restrictive of associational freedoms . . . .

4 Second, even in the rare case where a mandatory association can be  
5 justified, compulsory fees can be levied only insofar as they are a “necessary  
6 incident” of the “larger regulatory purpose which justified the required  
7 association.”

8 109. The *Knox* exacting scrutiny test can be rephrased as follows:

- 9 a. There must be a "comprehensive regulatory scheme."
- 10 b. The comprehensive scheme must involve a "mandated association" among those  
11 required to pay the subsidy.
- 12 c. The comprehensive scheme must serve a compelling state interest.
- 13 d. The compelling state interest cannot be achieved through means significantly less  
14 restrictive of associational freedoms.
- 15 e. The compulsory fees can only be levied if they are "necessary incident" of the "larger  
16 regulatory purpose which justified the required association." They are not.

17 110. Plaintiff is entitled to declaratory and permanent injunctive relief. RCW Ch. 7.24.

## 18 **COUNT TEN**

### 19 **Accounting and Reimbursement**

20 111. The foregoing paragraphs and the following paragraphs in the Counts set out below are  
21 incorporated herein by this reference and are restated here.

22 **112.** As stated previously, the Defendants have caused the Court to impose the costs of and  
23 efforts of management, administration, employees necessary to fund the LPO program APR  
24 12(b)(3), the LLLT program APR 28 [C.] (4) and various Boards and Commissions GR 12.2.

25 **113.** The court did not have the power to impose these costs and responsibilities on the  
26 WSBA.

27 114. An accounting should be undertaken to determine how much the WSBA has expended.

28 115. The amount of the expenditures should be reimbursed to the WSBA.

### 29 **PRAYER FOR RELIEF**

30 Plaintiff Eugster asks the court to do the following:

31 1. Declare that under the laws and Constitution of the State of Washington the Court does  
32 not have inherent and plenary to dictate to the Washington Bar Association and its members they

1 must fulfill and pay for the programs and undertakings of the Supreme Court and Justices of the  
2 Court.

3 2. Declare that even if the Court has inherent power, such power does not eclipse the power  
4 of the state or legislature to legislate and appropriate.

5 3. Entry of judgment that Court violates the law by forcing the bar association to use its  
6 resources to pay for the programs the court has created and is forcing the association to pay for  
7 and maintain.

8 4. Entry of judgment that the Order of January 5, 2017 violates Plaintiff's rights, privileges,  
9 and/or immunities secured to him by the First and Fourteenth Amendments and under 42 U.S.C.  
10 § 1983;

11 5. Entry of judgment that the Order of January 5, 2017 violates Plaintiff's rights, privileges,  
12 and/or immunities secured to him by the Fifth and Fourteenth Amendment and under 42 U.S.C.  
13 § 1983;

14 6. Declare that the Order of January 5, 2017 is void.

15 7. Determine the amount of undertakings and expenses the WSBA has incurred in order to  
16 comply with the undertakings by the court which have been passed on to the WSBA and enter  
17 judgments jointly and severally against Defendants for the WSBA.

18 8. Entry of preliminary and permanent injunctions against Defendants prohibiting the use  
19 of the WSBA Washington Lawyer Discipline System unless and until it is changed to properly  
20 safeguard the First, Fifth and Fourteenth Amendment rights of Plaintiff;

21 9. This Court should grant such "further relief based on the judgments herein as necessary  
22 and/or proper to enforce its declaratory judgments and determinations";

23 10. Award Plaintiff Eugster his costs, expenses, and attorneys' fees in accordance with law,  
24 including 42 U.S.C. § 1988;

25 11. Award Plaintiff Eugster a attorneys fees under equitable grounds for the recovery of  
26 amounts from Defendants to be paid to the WSBA.  
27  
28

1 12. Award Plaintiff such further relief as is just and equitable.

2 January 15, 2017

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5 EUGSTER LAW OFFICE PSC

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9 \_\_\_\_\_  
10 Stephen K. Eugster, WSBA #2003  
11 2418 West Pacific Avenue  
12 Spokane, Washington 99201-6422  
13 (509) 624-5566 / eugster@eugsterlaw.com  
14  
15  
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