

Honorable Ricardo S. Martinez

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ROBERT E. CARUSO and SANDRA L.  
FERGUSON,

Plaintiffs,

v.

WASHINGTON STATE BAR  
ASSOCIATION 1933, a legislatively created  
Washington association, State Bar Act (WSBA  
1933); WASHINGTON STATE BAR  
ASSOCIATION after September 30, 2016  
(WSBBA 2017); PAULA LITTLEWOOD,  
Executive Director, WSBA 1933 and WSBA  
2017, in her official capacity; ROBIN LYNN  
HAYNES is the President of the WSBA 1933  
and WSBA 2017, in her official capacity;  
DOUGLAS J. ENDE, Director of the WSBA  
1933 and WSBA 2017 Office of Disciplinary  
Counsel, in his official capacity; WSBA  
1933/WSBA 2017 BOARD OF  
GOVERNORS, namely: BRADFORD E.  
FURLONG-President-elect (2016-2017), *et al.*,

Defendants.

No. 2:17-cv-00003 RSM

DEFENDANTS’ MOTION FOR  
ATTORNEYS’ FEES AND EXPENSES

NOTE ON MOTION CALENDAR:

\_\_\_\_\_, 2017

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## I. INTRODUCTION

This lawsuit is part of one previously disciplined lawyer’s ongoing campaign against the Washington State Bar Association (“WSBA”). In response to multiple grievance investigations against him and resulting sanctions for established misconduct, Plaintiffs’ counsel Stephen K. Eugster (“Eugster”) has repeatedly advanced frivolous, meritless, and harassing claims against the WSBA in court. Just within the last three years, Eugster has filed five *pro se* suits against the WSBA and its officials. Four were dismissed at the pleadings stage; the fifth was recently initiated before the Thurston County Superior Court and is schedule for a dispositive motion hearing in May 2017. In this case, Eugster has enlisted two other disciplined lawyers as named plaintiffs, in order to submit his same frivolous arguments for yet another round of judicial review. The WSBA, for the first time amidst this seemingly endless series of lawsuits, requests payment of its fees and expenses for defending against Eugster.

Eugster should be required to pay the WSBA’s fees and expenses in this case on three independent grounds. First, in violation of Federal Rule of Civil Procedure (“Rule”) 11, Eugster has argued frivolous and harassing claims. Second, in violation of 28 U.S.C. § 1927, Eugster has unreasonably multiplied these proceedings. Third, pursuant to its inherent authority, this Court should award fees against Eugster to deter him from continuing to file frivolous lawsuits against the WSBA and in light of the judicial resources wasted by repeated review of his duplicative, meritless arguments.

Eugster’s meritless lawsuits force the WSBA to divert resources away from the regulation and improvement of legal services in this state to defending itself in court. This ongoing harassment by Eugster should not be allowed to continue unabated. The WSBA respectfully requests that the Court award the WSBA its fees and expenses in this matter.

## II. BACKGROUND AND PROCEDURAL HISTORY

As detailed in the WSBA's motion to dismiss, Eugster has filed numerous lawsuits against the WSBA in response to his involvement with Washington's lawyer discipline system. *See* Dkt. # 16 at 2-7. Eugster's prior lawsuits challenged two core issues: (1) the constitutionality of mandatory bar membership and license fees to practice law and (2) the validity of Washington's lawyer discipline system. *See Eugster v. Wash. State Bar Ass'n*, No. CV 09-357-SMM, 2010 WL 2926237 (E.D. Wash. July 23, 2010) ("*Eugster II*") (discipline system); *Eugster v. Wash. State Bar Ass'n*, No. C15-0375JLR, 2015 WL 5175722 (W.D. Wash. Sept. 3, 2015) ("*Eugster III*") (membership/fees), *aff'd*, No. 15-35743, Dkt. #18-1 (9th Cir. Mar. 21, 2017); *Eugster v. Wash. State Bar Ass'n*, No. 15204514-9 (Spok. Cnty. Super. Ct. 2015) ("*Eugster IV*") (discipline system); *Eugster v. Littlewood*, No. 2:15-CV-0352-TOR, 2016 WL 3632711 (E.D. Wash. June 29, 2016) ("*Eugster V*") (discipline system); *Eugster v. Wash. State Bar Ass'n*, No. 2:16-cv-01765 (W.D. Wash. 2016) ("*Eugster VI*") (membership/fees and discipline system). Each of these lawsuits was dismissed at the pleadings stage. *See* Dkt. # 16 at 2-7.

Undeterred, Eugster filed this lawsuit on behalf of Plaintiffs Robert E. Caruso and Sandra L. Ferguson who, like Eugster, have been disciplined for professional misconduct as lawyers. *See* Dkt. # 4. Once again, Eugster argues against (1) requiring bar membership and payment of license fees in order to practice law and (2) Washington's lawyer discipline system. *See* Dkt. # 4 at 32-36. In the meantime, Eugster has filed yet another *pro se* lawsuit against the WSBA and its officials, addressing similar issues, in Thurston County Superior Court. *Eugster v. Supreme Court of the State of Wash., et al.*, Case No. 17-2-00228-34 (Thurston Cnty. Super. Ct. 2017) ("*Eugster VIII*").

1 Eugster initially filed this lawsuit on January 3, 2017, as a putative class action on behalf  
2 of all WSBA members. *See* Dkt. # 1. On February 21, 2017, Eugster then filed an amended  
3 complaint, abandoning the class claims and asserting only individual claims on behalf of the  
4 named Plaintiffs. *See* Dkt. #4. The parties then proceeded to file dispositive motions pursuant to  
5 an agreed briefing schedule. *See* Dkt. # 14. On March 1, 2017, Eugster filed a Motion for  
6 Summary Judgment on behalf of the Plaintiffs. *See* Dkt. # 8. Two days later, without  
7 explanation, Eugster filed a Motion for Preliminary Injunction that simply repeated many of the  
8 same arguments. *See* Dkt. # 15. On March 21, 2017, the WSBA requested that this Court deny  
9 Plaintiffs' motions and dismiss the amended complaint with prejudice. *See* Dkt #16. On April 5,  
10 2017, the WSBA served this Motion on Eugster, 21 days in advance of filing the Motion in  
11 compliance with Rule 11(c)(2). *See* attached Certificate of Service.  
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### 13 **III. STATEMENT OF ISSUES**

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15 1. Whether Eugster violated Rule 11 by presenting claims that are contrary to  
16 governing precedent and unsupported by authority, by advancing arguments that multiple courts  
17 already have rejected in his prior lawsuits, and by filing yet another lawsuit against the WSBA  
18 challenging bar membership, license fees, and the lawyer discipline system.

19 2. Whether Eugster violated 28 U.S.C. § 1927 by filing this lawsuit as a class action,  
20 with a lengthy complaint including extensive quotes and recitations of law, subsequently  
21 amending the complaint to include only individual claims, and then filing two overlapping  
22 motions, all in pursuit of meritless claims.

23  
24 3. Whether this Court should use its inherent authority to require Eugster to pay the  
25 WSBA's fees and expenses for filing yet another lawsuit against the WSBA addressing the same  
26 issues he has already unsuccessfully challenged in four prior lawsuits.  
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#### IV. ARGUMENT

**A. Eugster’s Arguments Regarding Bar Requirements and the Lawyer Discipline System Are Frivolous and Harassing in Violation of Rule 11.**

Eugster has violated Rule 11 in this case. Rule 11 seeks to address two problems: frivolous filings and the improper use of judicial procedures as a tool for harassment. *Stewart v. Am. Int’l Oil & Gas Co.*, 845 F.2d 196, 201 (9th Cir. 1988). To that end, the rule requires an attorney to ensure that his clients’ “claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for [changing] existing law,” Rule 11(b)(2), and that his pleadings and written motions are “not being presented for any improper purpose, such as to harass,” Rule 11(b)(1). The court may require an attorney to pay fees and other expenses resulting from a violation of these provisions. Rule 11(c)(1), (4). Here, Eugster’s arguments are both frivolous *and* harassing.

First, Eugster’s arguments are not warranted by existing law and are frivolous. *See* Rule 11(b); *Stewart*, 845 F.2d at 201 (frivolity turns on “whether a pleading states an arguable claim” or whether it is “groundless”). As explained in the WSBA’s motion to dismiss, Eugster’s arguments against bar membership and fees are directly contrary to abundant binding precedent. *See* Dkt. # 16 at 10-12 (citing cases). Moreover, this Court and the Ninth Circuit both recently rejected the very same arguments in *Eugster III*. *See* 2015 WL 5175722, at \*1; No. 15-35743, Dkt. #18-1. Eugster’s procedural arguments against the lawyer discipline system are also contrary to binding precedent and unreasonably abstract. *See* Dkt. # 16 at 15-17 (citing cases). Again, a court already found Eugster’s challenge to be unripe. *See Eugster II*, 2010 WL 2926237, at \*8. Multiple courts have also informed Eugster that the WSBA is immune from suit, yet once again he has named it as a defendant. *See id.* at \*8-9; *Eugster III*, 2015 WL

1 5175722, at \*9. Nothing has changed since these decisions were made that would warrant  
2 Eugster presenting the same rejected arguments.

3 The only new argument Eugster makes in this case is that the recent amendments to the  
4 WSBA's bylaws created a new organization without the authority to discipline Washington  
5 lawyers. *See, e.g.*, Dkt. # 8 at 8. But this argument is also clearly frivolous—mere amendments  
6 to the WSBA's bylaws do not transform it into a new organization stripped of its statutory  
7 authority to administer lawyer discipline. *See* Dkt. # 16 at 12-16. Indeed, Eugster cites to no  
8 legal authority in support of his strained assertions to the contrary. *See, e.g.*, Dkt. # 8 at 8.

9  
10 When an attorney advances legally groundless arguments, and has previously advanced  
11 the same arguments in other lawsuits without success, Rule 11 sanctions are appropriate. *See,*  
12 *e.g., Knipe v. United States*, 151 F.R.D. 24, 25 (N.D.N.Y. 1993), *aff'd*, 19 F.3d 72, 77 (2d Cir.  
13 1994). In *Knipe*, an attorney filed a complaint challenging the enforcement authority of the  
14 Federal Aviation Administration (FAA). 151 F.R.D. at 25. The lawsuit violated Rule 11  
15 because it advanced legally baseless arguments already rejected in two previous lawsuits counsel  
16 had filed, and appeared to be a “back door attempt to further his personal agenda against the  
17 FAA.” *Id.* at 25-26. As in *Knipe*, the arguments advanced by Eugster here are legally  
18 groundless, have been rejected by other courts in Eugster's past actions, and appear to be a back  
19 door attempt to further his personal agenda against the WSBA. This frivolity warrants a fee  
20 award under Rule 11.  
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23 Second, Eugster's pursuit of this serial lawsuit also constitutes harassment. The Ninth  
24 Circuit has recognized that “[w]ithout question, successive complaints based upon propositions  
25 of law previously rejected may constitute harassment under Rule 11.” *Zaldivar v. City of Los*  
26 *Angeles*, 780 F.2d 823, 832 (9th Cir.1986), *abrogated on other grounds, Cooter & Gell v.*  
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1 *Hartmarx Corp.*, 496 U.S. 384, 405 (1990); *see also Cook v. Peter Kiewit Sons Co.*, 775 F.2d  
2 1030, 1032-33, 1036 (9th Cir. 1985). In *Cook*, an employee harassed his employer by pursuing  
3 the same meritless breach of contract argument already rejected in his two prior lawsuits against  
4 the employer. 775 F.2d at 1032-33, 1036. Here, Eugster has already unsuccessfully raised his  
5 arguments against the WSBA in at least *four* prior lawsuits, yet he continues to file new suits on  
6 the same issues. The WSBA should not be forced to waste any more resources defending against  
7 this serial litigation.  
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9 That Eugster has raised an argument regarding the WSBA's recent bylaws amendment in  
10 this case does not make this lawsuit any less harassing. As discussed above, Eugster's bylaws  
11 argument is frivolous. Regardless, pursuing repeated lawsuits with minor changes remains a  
12 form of harassment. *See Knipe*, 151 F.R.D. at 25-26 (counsel's second action challenging FAA  
13 authority differed slightly from his first two actions but still sought to relitigate many of the same  
14 issues and was filed for an improper, harassing purpose in violation of Rule 11).  
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16 That Eugster filed this case on behalf of the Plaintiffs, rather than himself, also does not  
17 lessen the harassing nature of the action. The WSBA is still required to defend itself against the  
18 same meritless arguments. If he is not deterred from continuing to pursue his serial litigation,  
19 Eugster could try to recruit other disciplined attorneys in order to advance his frivolous  
20 arguments against the WSBA in perpetuity. When an attorney "cycles" through plaintiffs in this  
21 manner, in serial lawsuits based on the same meritless legal arguments, it qualifies as harassment  
22 under Rule 11. *See Welk v. GMAC Mortg., LLC*, 850 F. Supp. 2d 976, 1000, 1003 (D. Minn.  
23 2012), *aff'd*, 720 F.3d 736 (8th Cir. 2013) (attorney acted with improper purpose in filing series  
24 of cases on behalf of numerous clients based on a legal argument previously rejected by  
25 numerous courts).  
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1 In sum, this lawsuit is part of a series of meritless lawsuits Eugster has brought against  
2 the WSBA. This time, Eugster simply has substituted the Plaintiffs for himself, in order to  
3 litigate the same issues that have already been rejected by this Court and others. In light of the  
4 frivolity of his arguments and the harassing nature of this suit, Eugster should be required to pay  
5 the WSBA's reasonable attorney fees and other expenses. Rule 11(c)(1), (4).

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7 **B. Eugster Acted in Bad Faith by Unreasonably Multiplying these Proceedings in  
8 Violation of 28 U.S.C. § 1927.**

9 Eugster also improperly multiplied these proceedings in violation of 28 U.S.C. § 1927  
10 (“Section 1927”). Section 1927 permits a court to impose fees against an attorney who  
11 “multiplies the proceedings in any case unreasonably and vexatiously . . . .” 28 U.S.C. § 1927.  
12 This rule is concerned with limiting the abuse of court proceedings. *See Roadway Exp., Inc. v.*  
13 *Piper*, 447 U.S. 752, 762 (1980). The imposition of fees under Section 1927 is appropriate  
14 “when an attorney knowingly or recklessly raises a frivolous argument, or argues a [] claim for  
15 the purpose of harassing an opponent,” which qualifies as bad faith. *W. Coast Theater Corp. v.*  
16 *City of Portland*, 897 F.2d 1519, 1528 (9th Cir. 1990). In such cases, the Court may award “the  
17 excess costs, expenses, and attorneys’ fees reasonably incurred because of” the unreasonable and  
18 vexatious multiplication of proceedings. 28 U.S.C. § 1927.

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20 Eugster improperly multiplied court proceedings during this frivolous and harassing  
21 lawsuit. He first filed a lengthy, putative class action on behalf of all WSBA members. *See* Dkt.  
22 #1 at 11. He then filed an equally lengthy amended complaint abandoning the class claims and  
23 asserting individual claims only. *See* Dkt. #4. After the parties agreed on a briefing schedule, he  
24 filed a Motion for Summary Judgment and then another, duplicative Motion for Preliminary  
25 Injunction. *See* Dkt. # 8; Dkt. # 15. In response to each of these filings, the WSBA had to  
26 review Eugster’s assertions (including extensive quotes and recitations of law), and then research  
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1 and prepare responses to Eugster’s meritless arguments. Eugster’s multiplication of the  
2 proceedings thus caused the WSBA to incur additional, needless costs.

3 In *Welk*, the court concluded that it was appropriate to impose fees pursuant to Section  
4 1927 in addition to Rule 11, because an attorney advanced frivolous arguments in opposing  
5 defendants’ motions to dismiss and in an initial motion to remand. 850 F. Supp. 2d at 1005. The  
6 court explained that these filings improperly multiplied the length of the proceedings and forced  
7 the attorney’s opponents to expend resources in response. *Id.*

8 Here, Eugster has multiplied the length of these proceedings by filing two lengthy  
9 complaints, opposing the WSBA’s motion to dismiss, and submitting duplicative motions, all of  
10 which has forced the WSBA to expend additional resources on this dispute. This abuse of the  
11 judicial process is precisely what Section 1927 seeks to prevent. *See Roadway Exp., Inc.*, 447  
12 U.S. at 762. The WSBA thus requests that this Court also award fees pursuant to Section 1927.

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14 **C. This Court Should Award Fees Pursuant to Its Inherent Authority to Deter Eugster  
15 from Filing Further Frivolous Suits.**

16 In addition to filing frivolous and harassing claims in violation of Rule 11 and improperly  
17 multiplying these proceedings in violation of Section 1927, Eugster has wasted the resources of  
18 multiple courts in Washington by filing repeated lawsuits containing the same arguments. This  
19 Court should impose fees pursuant to its inherent authority in order to deter Eugster from further  
20 wasting judicial resources.

21 A federal court’s inherent powers include the power “to fashion an appropriate sanction  
22 for conduct which abuses the judicial process,” including the assessment of attorney fees.  
23 *Chambers v. NASCO, Inc.*, 501 U.S. 32, 44-45 (1991). A court has the inherent power to assess  
24 attorney fees “when a party has acted in bad faith, vexatiously, wantonly, or for oppressive  
25 reasons.” *Id.* at 45-46 (internal quotations omitted). Specifically, when an attorney has  
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1 presented frivolous arguments already rejected by numerous courts, an award of fees pursuant to  
2 the court’s inherent authority is appropriate as a “deterrent to future frivolous suits.” *Callow v.*  
3 *Amerace Corp.*, 681 F.2d 1242, 1242 (9th Cir. 1982).

4 As explained above, Eugster has presented frivolous arguments in this case that already  
5 have been rejected by numerous courts. This lawsuit is the most recent iteration of many similar  
6 lawsuits Eugster has filed against the WSBA. He has pursued appeals in these frivolous cases,  
7 further draining limited judicial resources. *See Eugster IV*, No. 34345-6-III (Wash. Ct. App.);  
8 *Eugster V*, No. 16-35542 (9th Cir.). Absent intervention, Eugster will continue his serial  
9 litigation. The WSBA thus requests an award of its fees and expenses incurred in responding to  
10 this lawsuit as “an appropriate deterrent to future frivolous suits.” *Callow*, 681 F.2d at 1243.

#### 11 12 V. CONCLUSION

13 In this case, Eugster brought a frivolous, harassing lawsuit; filed a series of lengthy  
14 complaints and duplicative motions; and furthered his broader ongoing strategy—an unending  
15 series of baseless suits against the WSBA in courts across Washington State. The imposition of  
16 fees and expenses pursuant to Rule 11, Section 1927, and the court’s inherent authority would  
17 appropriately sanction and deter this conduct. The WSBA thus respectfully requests that this  
18 Court order Eugster to pay the WSBA’s reasonable attorney fees and expenses incurred in  
19 defending this lawsuit and that the Court grant the WSBA leave to file a statement of its attorney  
20 reasonable fees and costs incurred in this matter.  
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1 DATED this \_\_\_\_\_ day of April, 2017.

2  
3 PACIFICA LAW GROUP, LLP

4 By *s/ Paul J. Lawrence* \_\_\_\_\_  
5 Paul J. Lawrence, WSBA #13557  
6 Jessica A. Skelton, WSBA #36748  
7 Taki V. Flevaris, WSBA #42555  
8 Attorneys for Defendants  
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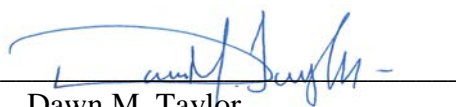
**CERTIFICATE OF SERVICE**

I hereby certify that on this 6<sup>th</sup> day of April, 2017, I served the foregoing document by electronic mail by agreement between the parties on:

Stephen Kerr Eugster  
Eugster Law Office PSC  
2418 West Pacific Avenue  
Spokane, WA 99201-6422  
Phone: 509.624.5566  
Fax: 866.565.2341  
Email: [eugster@eugsterlaw.com](mailto:eugster@eugsterlaw.com)

*Plaintiff*

Signed at Seattle, Washington this 6<sup>th</sup> day of April, 2017.

  
Dawn M. Taylor

I further hereby certify that on this \_\_\_\_ day of \_\_\_\_\_, 2017, I electronically filed the foregoing document with the United States District Court ECF system, which will send notification of such filing to the following:

Stephen Kerr Eugster  
Eugster Law Office PSC  
2418 West Pacific Avenue  
Spokane, WA 99201-6422  
Phone: 509.624.5566  
Fax: 866.565.2341  
Email: [eugster@eugsterlaw.com](mailto:eugster@eugsterlaw.com)

*Plaintiff*

Signed at Seattle, Washington this \_\_\_\_ day of \_\_\_\_\_ April, 2017.

\_\_\_\_\_  
Dawn M. Taylor