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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON**

ROBERT E. CARUSO and SANDRA L. FERGUSON,

Plaintiffs,

vs

WASHINGTON STATE BAR ASSOCIATION 1933, a legislatively created Washington association, State Bar Act (WSBA 1933); WASHINGTON STATE BAR ASSOCIATION after September 30, 2016 (WSBA 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, *et al.*,

Defendants.

No. 2:17-cv-00003-RSM

DECLARATION OF STEPHEN KERR EUGSTER, APRIL 6, 2017

1 Stephen Kerr Eugster, under penalty of perjury under the law of the state of
2 Washington declares as follows:

3 1. This declaration is made upon the basis of Declarant's personal knowledge.

4 2. Declarant is competent to be a witness in these proceedings.

5 3. Declarant's curricula vitae is as follows: BA, 1966, University of Denver; JD,
6 1969, University of Washington School of Law; Washington Law Review 1967-69,
7 Member and Managing Editor 1968-69; Order of the Coif (Class Rank 5); Safeco
8 Scholarship 1967-68, 1968-69; Member Washington State Bar Association since
9 1970. Practicing attorney in Spokane, Washington.

10
11
12 **The WSBA of the Bar Act (WSBA 1933)**

13 4. In 1933, the Washington State Legislature created a legal entity named the
14 Washington State Bar Association. It is an integrated bar association. Lawyers
15 have to be members and pay dues in order to practice law. Lawyers are subject to
16 regulation and discipline of the integrated association.

17
18 **The New WSBA January 1, 2017 (WSBA 2017)**

19 5. The new Washington State Bar Association came into being on January 1,
20 2017 when amendments to the Bylaws of WSBA 1933 went into effect. The new
21 WSBA 2017 purports to be an integrated association of lawyers, Limited Practice
22 Officers and Limited License Legal Technicians. The members of the association
23 are compelled to be members and are compelled to pay dues to the association. The
24 members are subject to regulation and discipline of the New WSBA 2017.

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28 **DECLARATION OF
STEPHEN KERR EUGSTER, APRIL 6, 2017 - 2**

1 **False and Improper Statements of about Declarant**

2 1. WSBA Defendants’ attorneys make a number of statements about Declarant,
3 which are improper and false. Dkt #16, Motion to Dismiss, Introduction, first
4 paragraph. They say:

5 a. **“In this lawsuit, a disgruntled lawyer who has been disciplined**
6 **on multiple occasions for professional misconduct. . . .”** I am not
7 disgruntled and to say I have been disciplined on multiple occasions is not
8 accurate. I have been disciplined once, and may be disciplined again as a result
9 of Defendants’ retaliation toward me because I filed a case contesting the
10 constitutionality of being compelled to be a member of the WSBA, at that time
11 the WSBA of the Bar Act of 1933. The case is *Eugster v. Wash. State Bar Ass’n*,
12 No. C15-0375JLR, 2015 WL 5175722 (W.D. Wash. Sept. 3, 2015) (“Eugster III”).
13 See below.
14
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17 To be disgruntled means “having a feeling that one has been wronged or
18 thwarted in one’s ambitions”, “aggrieved, discontent, discontented, displeased,
19 dissatisfied, malcontent.” MERRIAM WEBSTER.¹ I do not have such feelings. I am
20 merely a lawyer who has experienced and is experiencing unconstitutional
21 conduct by the WSBA 1933. And, I am taking steps to have the law correct the
22 situations of such conduct.
23

24 b. They say declarant “continues his meritless crusade against
25

26 ¹ <https://www.merriam-webster.com/thesaurus/disgruntled>.

1 Washington's bar system." My efforts are not meritless, and they are not part of
2 a crusade. That "each such lawsuit was meritless and dismissed at the
3 pleadings stage." Apart from Case III, which is hardly meritless, each of the
4 cases were dismissed on the basis of jurisdiction (improperly so) not merit. (It is
5 axiomatic, there is no res judicata arising from orders dismissing cases on the
6 basis of jurisdiction.).
7

8 c. That "[t]his lawsuit is no different, even though this time Eugster has
9 enlisted two other disciplined lawyers as named plaintiffs, in the effort to obtain
10 yet another round of judicial review of his frivolous arguments." This action is
11 decidedly different from the cases I have brought. First and foremost this action
12 involves a New Washington State Bar Association which came into existence on
13 January 1, 2017, which has multiple members who are compelled to be members
14 and pay dues to the association. It is also an association which purports to
15 discipline all members. Furthermore, the New Association has not been created
16 by action of the Washington State Legislature or Supreme Court.
17
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19 This case is not about the WSBA 1933. It is about the New WSBA 2017. In
20 this case, lawyers are forced to be members and pay dues to the New WSBA 2017,
21 an association of lawyers, limited practice officers, and limited license legal
22 technicians. In this case, the New WSBA 2017 does not have the constitutional
23 authority to conduct disciplinary actions against lawyers.
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26 Eugster Cases

27 DECLARATION OF
28 STEPHEN KERR EUGSTER, APRIL 6, 2017 - 4

1 2. In this action, the WSBA Defendants make statements about “Eugster”
2 actions, which are false or incorrect, or misleading. I will explain in the paragraphs
3 which follow.
4

5 3. *In re Disciplinary Proceeding Against Eugster, 166 Wn.2d 293 (2009)*
6 (“Eugster I”). In 2004 -5 the WSBA 1933 began a disciplinary action against
7 Eugster. At this time, Eugster had been practicing law in Washington since the fall
8 of 1970. In his 33 years of practice, Eugster had never had a discipline action
9 brought against him. Eugster had never been involved WSBA Washington Lawyer
10 Discipline System. Not only had he not experienced the system he had the
11 impression the System was fair and that the representatives of the system would be
12 fair. Eugster learned otherwise from his six-year first-hand experience with the
13 WSBA 1933. Eugster had no knowledge or awareness of the constitutional
14 infirmities of the Discipline System. He had no previous experience with the
15 System.
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18 4. *Eugster v. Washington State Bar Association, No. CV 09-357-SMM*
19 (Dist. Court, ED Wash. 2010) (Eugster II).
20

21 While Eugster was serving out his suspension in *In re Disciplinary Proceeding*
22 *Eugster, 166 Wn.2d 293, 209 P.3d 435 (2009)*, he became aware the WSBA
23 prosecutor who brought the discipline action, Jonathan Henry Burke, was
24 beginning another investigation against him. Eugster believed Mr. Burke would
25 commence another discipline action against him.
26

27 DECLARATION OF
28 STEPHEN KERR EUGSTER, APRIL 6, 2017 - 5

1 In light of the threat, on December 2, 2009, Eugster started an action in United
2 States District Court, Eastern District of Washington. *Eugster v. Washington State*
3 *Bar Association*, No. CV 09-357-SMM (Dist. Court, ED Wash. 2010) (Eugster II).
4 The case was a Civil Rights Action asserting that the WSBA Washington Lawyer
5 Discipline System violated Eugster's constitutional rights of procedural due process
6 of law under the Fifth and Fourteenth Amendments to the United States
7 Constitution. Eugster asserted that the court had U.S. Art. III jurisdiction because
8 the circumstances placed Eugster in imminent threat of having his constitutional
9 rights denied him.
10
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12 Mr. Burke thereupon dismissed the grievance he was pursuing on. Knowing
13 that the dismissal would make his case moot, Eugster amended his complaint
14 January 21, 2010. In it, Eugster alleged that the District Court had jurisdiction
15 over the case because Eugster had been admonished by the Mr. Burke and WSBA in
16 the dismissal letter sent to the grievant. Eugster contended that this admonishment
17 was not appropriate because, under the Washington Rules of Enforcement of
18 Lawyer Conduct (ELC), Eugster was to have a right to challenge the
19 admonishment. As a basis for this, Eugster cited *Miller v. Washington State Bar*
20 *Association*, 679 F.2d 1313 (9th Cir. 1982).
21
22

23 The District Court did not agree with Eugster's assertion of standing under *Miller*. The
24 court dismissed the case for lack of Article III standing. Eugster then appealed to 9th
25 Circuit Court of Appeals. The Court affirmed the lower court decision on the basis that
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DECLARATION OF
STEPHEN KERR EUGSTER, APRIL 6, 2017 - 6

1 Eugster did not have standing. The court did not address Eugster's argument regarding
2 the *Miller* case. *Id.*

3
4 5. *Eugster v. Wash. State Bar Ass'n*, No. C15-0375JLR, 2015 WL 5175722
5 (W.D. Wash. Sept. 3, 2015), *affirmed*, 9th Circuit 15-35743 ("Eugster III").

6 On March 12, 2015, Eugster commenced an action in US District Court for the
7 Western District of Washington (Eugster III) in which he asserted that the
8 Washington State Bar Association could not compel him to be a member because to
9 do so was a violation of his First and Fourteenth Amendment rights. Eugster
10 asserted the plurality opinion in *Lathrop v. Donohue*, 367 U.S. 820 (1961) (that such
11 compelled membership was constitutional) must be reconsidered in light of present
12 circumstances. The District Court dismissed the case.
13

14
15 On appeal, Eugster contended the plurality decision of *Lathrop v. Donohue*,
16 under principles of due process and stare decisis, should be overruled -- that the
17 Washington State Bar Association cannot compel Eugster to be a member of the
18 organization under the First and Fourteenth Amendments. The 9th Circuit
19 dismissed the appeal saying it did not have authority to rule and that only the
20 United States Supreme Court could overturn *Lathrop v. Donohue*. Memorandum,
21 March 21, 2017, attached as **Exhibit A**.
22

23
24 6. *Eugster v. Wash. State Bar Ass'n*, No. 15204514-9 (Spok. Cnty. Super. Ct. 2015)
25 ("*Eugster IV*"), on appeal to Washington Court of Appeals Division III, Case
26 #343456.

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28 DECLARATION OF
STEPHEN KERR EUGSTER, APRIL 6, 2017 - 7

1 Within days of filing and serving *Eugster v. Wash. State Bar Ass'n*, No.
2 C15-0375JLR, 2015 WL 5175722 (W.D. Wash. Sept. 3, 2015) (“Eugster III”),
3 WSBA disciplinary counsel reactivated an investigation of a false grievance against
4 Eugster that had been filed on September 23, 2014.

5
6 Eugster began doing legal and other work for Verdelle G. O’Neill on September
7 11, 2014. *Id.* Within a few days, Cheryl Rampley, a niece of Mrs. O’Neill’s deceased
8 husband, began making claims about Eugster which were false. Eugster provided
9 extensive information and documents to Kevin Banks, WSBA disciplinary counsel
10 assigned to the grievance. On December 25, 2014, Eugster provided more
11 information. To Eugster, it looked as though the grievance would be dismissed.
12 However, apparently prompted by the action Eugster filed against the WSBA on
13 March 12, 2015, Francesca D’Angelo, a WSBA disciplinary counsel, informed
14 Eugster that the grievance would be investigated and that she was taking over from
15 Mr. Banks.

16
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18 The bar investigator talked with Eugster and others commencing the first part of
19 April 2015. Eugster was asked for more information, and he promptly complied. *Id.*
20 On August 18, 2015, Eugster’s client Verdelle G. O’Neill died. *Id.* at 49. In
21 November 2015, Ms. D’Angelo indicated that she was going to seek to have the
22 grievance filed against Eugster be ordered to hearing by the Review Committee of
23 the WSBA Disciplinary Board. *Id.* Eugster, believed that under 9th Circuit case
24 authority and his experience that he might not have standing at that time to
25
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28 DECLARATION OF
STEPHEN KERR EUGSTER, APRIL 6, 2017 - 8

1 commence an action against the Bar Association contesting the constitutionality of
2 the WSBA discipline system in Federal Court.

3 Eugster brought an action in the Superior Court for the state of Washington in
4 Spokane County. *Eugster v. Wash. State Bar Ass'n*, No. 15204514-9 (Spok. Cnty. Super.
5 Ct. 2015) ("*Eugster IV*"). Eugster contended that the Superior Court had original
6 jurisdiction over the civil rights action by virtue of prior Washington case law and
7 by Washington State Constitution Art. IV, § 6 which provides that the superior
8 court has original jurisdiction in equity and law. Wash. Const. Art IV, § 6:
9

10
11 Superior courts and district courts have concurrent jurisdiction in
12 cases in equity. The superior court shall have original jurisdiction in
13 all cases at law The superior court shall also have original
14 jurisdiction in all cases and of all proceedings in which jurisdiction
15 shall not have been by law vested exclusively in some other court.

16 The superior court refused to exercise its jurisdiction under the constitution and
17 dismissed the case with prejudice. The court "reasoned" the Washington Supreme
18 Court and the Washington Discipline System "had exclusive authority" over
19 Eugster's Civil Rights Action. Conclusions and Order Granting Defendants' Motion
20 to Dismiss. The order dismissing the case was not an order on the merits, it was an
21 order saying the court did not have jurisdiction. Such orders do not serve as bases
22 for res judicata purposes.

23 **7. *Eugster v. Littlewood*, No. 2:15-CV-0352-TOR, 2016 WL 3632711 (E.D.
24 Wash. June 29, 2016) ("*Eugster V*"), on appeal to the 9th Circuit # 16, 35542.**

25 On December 22, 2015, Eugster filed his civil rights action in the District Court
26

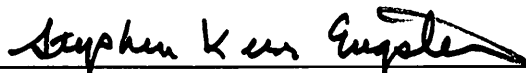
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28 DECLARATION OF
STEPHEN KERR EUGSTER, APRIL 6, 2017 - 9

1 for the Eastern District of Washington. The Complaint was amended and restated.
2 Case V, *Eugster v. Paula Littlewood [WSBA Executive Director]*, District Court
3 Eastern District of Washington. Eugster did so because just before that time, the
4 Review Committee of the Washington State Bar Association Disciplinary Board had
5 ordered that the Rampley grievance go to a hearing. Of course, in light of that,
6 Eugster had a small window of opportunity to hopefully gain the jurisdiction of the
7 District Court because Eugster faced an imminent threat of prosecution by the
8 Washington State Bar Association.
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11 In this case, the District Court used the Order of Dismissal in Eugster IV as a
12 basis for res judicata purposes and dismissed Eugster V, The dismissal did not does
13 not meet the primary requirement of res judicata, which is a decision on the merits.
14 Eugster V is on appeal to the 9th Circuit.
15

16 8. WSBA Defendants assert Eugster can bring his constitutional claims under
17 the Civil Rights Act, 42 U.S.C. § 1983 in the discipline proceedings. This is not
18 true; the Washington Lawyer Discipline System does not allow it. Eugster has
19 recently tried to get the System to deal with his Civil Rights Act concerns about the
20 System but has been thwarted in every effort to have the proceedings recognize and
21 address such claims..
22

23 Signed at Spokane, Washington on April 6, 2017.
24

25 

26 Stephen Kerr Eugster
27

28 DECLARATION OF
STEPHEN KERR EUGSTER, APRIL 6, 2017 - 10

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States District Court Western District of Washington trial court CM/ECF system on date below I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the trial court CM/ECF system.

I further certify that on the date below, by previous agreement of counsel, I emailed, the foregoing document, including its appendix to counsel listed below at their respective e-mail addresses:

Paul J. Lawrence
Pacifica Law Group LLP
1191 2nd Ave Ste 2000
Seattle, WA 98101-3404
paul.lawrence@pacificalaw-group.com
Attorney for Defendants

Jessica Anne Skelton
Pacifica Law Group LLP
1191 2nd Ave Ste 2000
Seattle, WA 98101-3404
jessica.skelton@pacificalaw-group.com
Attorney for Defendants

Taki V. Flevaris
Pacifica Law Group LLP
1191 2nd Ave Ste 2000
Seattle, WA 98101-3404
taki.flevaris@pacificalawgroup.com
Attorney Defendants

April 6, 2017



Stephen Kerr Eugster

DECLARATION OF
STEPHEN KERR EUGSTER, APRIL 6, 2017 - 11

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAR 21 2017

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

STEPHEN KERR EUGSTER,

No. 15-35743

Plaintiff-Appellant,

D.C. No. 2:15-cv-00375-JLR

v.

MEMORANDUM*

WASHINGTON STATE BAR
ASSOCIATION, a Washington association;
et al.

Defendants-Appellees.

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

* 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).

EXHIBIT A

the First and Fourteenth Amendments. We have jurisdiction under 28 U.S.C. § 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.