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Hon. Ricardo S. Martinez

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

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 (2016-2017), *et al.*,

Defendants.

Case No.: 2:17-cv-00003-RSM

RESPONSE TO MOTION FOR PRE-FILING ORDER

INTRODUCTION

The Washington State Bar Association (WSBA) and its lawyers have perpetrated a fraud on the court and the trial judge, The Honorable Ricardo S. Martinez. The fraud was advanced in

Defendants' Motion to Dismiss and Opposition to Plaintiffs' Motions in for Summary Judgment and Preliminary Injunction. ELC # 16. The fraud was successful; so much so, Judge Martinez joined in the fraud and became an active participant in the fraud. He made the case his own.

The motion for pre-filing order motion is a continuation of the fraud. The motion builds on the fraud; it seeks to perpetuate a fraud.

STATEMENT OF FACTS

On September 1, 2017, the Washington Supreme Court adopted General Rule 12.2. The rule is titled "Washington State Bar Association: Purposes, Authorized Activities, and Prohibited Activities." On January 1, 2017, amendments to the Bylaws of the WSBA adopted by the WSBA Board of Governors on September 29-30, 2016, became effective.

STANDARDS

The court considers the following five substantive factors to determine "whether a party is a vexatious litigant and whether a pre-filing order will stop the vexatious litigation or if other sanctions are adequate":

> (1) the litigant's history of litigation and in particular whether it entailed vexatious, harassing or duplicative lawsuits; (2) the litigant's motive in pursuing the litigation, e.g., does the litigant have an objective good faith expectation of prevailing?; (3) whether the litigant is represented by counsel; (4) whether the litigant has caused needless expense to other parties or has posed an unnecessary burden on the courts and their personnel; and (5) whether other sanctions would be adequate to protect the courts and other parties.

Ringgold-Lockhart v. Cnty. of L. A., 761 F.3d 1057, 1062 (9th Cir., 2014).

DISCUSSION

I. Cases

The cases which the joint defendants discuss cannot are not frivolousness or harassing.

A. *Eugster v. Wash. State Bar Ass'n*, No. CV 09-357, 2010 WL 2926237 (E.D. Wash. July 23, 2010) *aff'd*, 474 F. App'x 624 (9th Cir. 2012) ("Eugster II").

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In this case, Eugster was being threatened with discipline by the WSBA. Eugster had concluded from his previous experience with WSBA Discipline System that it violated a lawyer's right to procedural due process of law under the Fifth and Fourteenth Amendments to the United States Constitution. The WSBA dismissed the grievance it was pursuing. The case became moot. It was dismissed.

B. *Eugster v. Wash. State Bar Ass'n*, No. C15-0375, 2015 WL 5175722 (W.D. Wash. Sept. 3, 2015) *aff'd*, 684 Fed. App'x 618 (9th Cir. 2017), *cert. denied*, 137 S. Ct. 2315 (2017) ("Eugster III");

In this case, Eugster asked the court to overrule *Lathrop v. Donohue*, 367 US 820 (1961). The trial court did not overrule the case. On appeal to the 9th Circuit, a panel of the court said it could not overrule the case because since it was a decision of the Supreme Court, only the Supreme Court could overrule *Lathrop v. Donohue.* Eugster timely filed a petition for writ of certiorari to the United States Supreme Court. The petition was denied.

Just after Eugster III was filed in March of 2015, the WSBA reinstituted investigation of a grievance which had already been investigated for several months by a WSBA discipline counsel. The investigation was over. Despite this, the WSBA sent out an investigator and replaced the previous discipline counsel with another. New discipline counsel in the fall indicated she was going to seek authority to gain an order from a Review Committee of the Disciplinary Board. Eugster IV was filed in state court; it was too early to file the case in District Court.

When the Discipline Counsel went to the Review Committee, Eugster filed Eugster V in District Court.

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Under the law, the state and district courts have concurrent jurisdiction. *AmerisourceBergen Corp. v. Roden,* 495 F.3d 1143, 1151 (9th Cir. 2007).

C. *Eugster v. Wash. State Bar Ass'n,* 198 Wash. App. 758 (2017) *rev. denied,* 189 Wash.2d 1018 (2017) ("Eugster IV");

The Spokane Superior Court dismissed the case because it said it did not have jurisdiction over a Civil Rights Action under 42 U.S.C. Section 1983. The order of dismissal was not a decision on the merits as required by res judicata standards.

D. *Eugster v. Littlewood,* No. 2:15-CV-0352, 2016 WL 3632711 (E.D. Wash. June 29, 2016) ("Eugster V");

In this case, the District Court dismissed the case on the basis of the order in Eugster V. The court had no business doing this. The order was not an order on the merits, as described above.

E. *Eugster v. Wash. State Bar Ass'n,* No. 2:16-cv-01765 (W.D. Wash. 2016) ("Eugster VI");

Eugster voluntarily dismissed this case on the basis a non-suit under Fed. R. Civ. P. 41(a)(1)(A).

F. *Caruso and Ferguson v. WSBA et al,* No. 2:17-cv-00003 (W.D. Wash. 2017).

The decisions in this case, the decision against Caruso and the decision against Stephen Kerr Eugster Pro se, are the product of a fraud on the court. See the draft complaint under Fed. R. Civ. P. 60 (d)(3). Thus, no matter what this court or the court of appeals may say, the decisions are void. They may be attacked under Rule 60 (d)(3) regardless of what the court of appeals might do or not do.

G. *Eugster v. Supreme Court of Wash.,* No. 17-2-00228-34 (Thurston Cnty. Super. Ct. 2017) ("Eugster VII").

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WSBA Defendants threatened Eugster with sanctions. Eugster took a non-suit. After Defendants moved to dismiss, Eugster took a non-suit under CR 41 (a) -- voluntarily dismissal.

H. *Eugster v. Littlewood*, No. CV-00392 (E.D. Wash. 2017) ("Eugster VIII");

This action is based on the WSBA as an integrated association of lawyers, limited practice officers, and limited license legal technicians. Such an organization is subject to strict constitutional scrutiny.

I. *Eugster v. Wash. State Bar Ass'n*, No. 18-2-00542-1 (Spok. Cnty. Super. Ct. 2018) ("Eugster IX");

This action seeks to have the Superior Court direct the WSBA to provide Eugster with the email addresses of the members of the WSBA so that he can communicate with them regarding WSBA matters. Eugster as a member has a right to such records under the common law of Washington.

J. *Eugster v. Littlewood*, No. 18-2-01360-34 (Thurston Cnty. Super. Ct. 2018) ("Eugster X");

This action seeks to test the constitutionality of the Supreme Court and its controlled WSBA all as outlined in General Rule 12.2 "Washington State Bar Association: Purposes, Authorized Activities, and Prohibited Activities."

K. *Eugster v. Wash. State Bar Ass'n*, No. 18-2-01561-2 (Spok. Cnty. Super. Ct. 2018) ("Eugster XI").

This is a personal injury action against the WSBA and others. Discovery is about to begin. A jury demand has been made. A status conference has been called by the judge assigned to the case. It will take place on May 18, 2018.

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II. De Long Standards

Before imposing such an order, the court must: (1) confirm the offending party has notice and an opportunity to be heard before the order is entered; (2) compile an adequate record for review; (3) make substantive findings of frivolousness or harassment; and (4) draft an order that is "narrowly tailored to closely fit the specific vice encountered." *De Long*, 912 F.2d at 1147-48; *Molski*, 500 F.3d at 1063-65.

III. Good Faith Expectation of Prevailing

Eugster has a good faith expectation of prevailing. Any integrated bar association which consists of lawyers, limited practice officers, and limited license legal technicians, infringes on the fundamental rights of a lawyer regarding the First, Fifth and Fourteenth Amendments to the United States Constitution. Such infringements will not be allowed if they fail to pass strict constitutional scrutiny.

IV. Pre-Filing Order

The pre-filing order is to "narrowly tailored to closely fit the specific vice encountered."

Their proposed order is as follows:

> Now, therefore, it is hereby ORDERED that Eugster is enjoined from filing any of the following without prior leave of this Court:
>
> (1) any lawsuit in federal court against the WSBA, its employees, or agents;
>
> (2) any lawsuit in state court challenging Washington's bar system; and
>
> (3) any claims in federal or state court arising from one of Eugster's prior federal suits challenging Washington's bar system.
>
> This injunction applies to Eugster as a party and in his role as an attorney.
>
> In the future, if Eugster wishes to obtain leave of this Court to file such a lawsuit, he must specify clearly, separately, and at the outset what distinguishes the contemplated suit from all of his prior suits. He must further

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present a short description of the legal basis for each claim to be pursued, with brief citation to legal authorities in support.

If Eugster fails to comply with the conditions of this pre-filing Order, he may be subject to further sanctions, including but not limited to, a requirement that he post adequate surety to indemnify opposing parties, monetary penalties, and punishment for contempt of court.

Comments

The following are too broad and ill-defined:

(1) any lawsuit in federal court against the WSBA, its employees, or agents;

(2) any lawsuit in state court challenging Washington's bar system; and

(3) any claims in federal or state court arising from one of Eugster's prior federal suits challenging Washington's bar system.

The following is too broad and ill-defined.

In the future, if Eugster wishes to obtain leave of this Court to file such a lawsuit, he must specify clearly, separately, and at the outset what distinguishes the contemplated suit from all of his prior suits. He must further present a short description of the legal basis for each claim to be pursued, with brief citation to legal authorities in support.

This language – "and at the outset what distinguishes the contemplated suit from all of his prior suits" is concerning. The court has shown a distinct lack of understanding of the standards and requirements of res judicata and claim preclusion.

Additionally, the court has also shown a complete disregard of the transactional facts concept of res judicata. As far as the court has been concerned, there is no difference between the transactional facts of the cases; The basic different transactional facts found in the cases are:

(1) an integrated bar association,

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(2) an integrated "WSBA" as an association of lawyers, limited practice officers, and limited license legal technicians, and

(3) a GR 12.2 "WSBA" as an association of lawyers, limited practice officers, and limited license legal technicians.

The basic difference must be understood. One cannot have a discussion of res judicata or preclusion without such understanding.

Finally, Eugster will be filing a Fraud on the Court Complaint. A draft is attached. This complaint, the topic of the action, and the details thereof should not be subject to a pre-filing order.

CONCLUSION

The motion must be rejected in its entirety.

May 14, 2018

Respectfully submitted,

EUGSTER LAW OFFICE PSC

s/ Stephen Kerr Eugster
Stephen Kerr Eugster, WSBA #2003

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CERTIFICATE OF SERVICE

I hereby certify that on May 14, 2018, I electronically filed the foregoing with its attachment with the Clerk of the District Court using the CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the CM/ECF system. I also certify that on May 14, 2018, by previous agreement of counsel, I emailed, the preceding document with its attachment to counsel listed below at their respective e-mail addresses.

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May 14, 2018
s/Stephen Kerr Eugster
STEPHEN KERR EUGSTER

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ROUGH DRAFT OF COMPLAINT
Fed. R. Civ. P. 60 (d)(3)

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STEPHEN KERR EUGSTER, Plaintiff, VS. WASHINGTON STATE BAR ASSOCIATION, a legislatively created Washington association (WSBA); PAULA LITTLEWOOD, WSBA Executive Director; PAUL J. LAWRENCE; JESSICA A. SKELTON; TAKI V. FLEVARIS; and the HON. RICARDO S. MARTINEZ, Defendants.	Case No.: COMPLAINT Fed. R. Civ. P. 60 (d)(3)

Plaintiff alleges:

JURISDICTION AND VENUE

1. Plaintiff brings this action under Fed. R. Civ. P. 60 (d)(3) and also 60 (b) (3) and (3), (4), and (6).

2. The venue is proper in this Court under 28 U.S.C. § 1391(b) because it is the judicial district where Defendants reside, and "in which a substantial part of the events or omissions giving rise to the claim occurred." 28 U.S.C. §§ 1391(b), 128(a)(1).

PARTIES

3. Plaintiff, Stephen Kerr Eugster, (Eugster) is a resident of Spokane, Spokane County, Washington; he is a member of the Washington State Bar Association (WSBA) and has been practicing law in the state of Washington ever since the fall of 1970.
4. The Washington State Bar Association has offices in King County, Washington; it does business throughout Washington including especially Spokane County.
5. Defendant Paula Charis Littlewood (Littlewood), is a resident of King County, Washington and the Executive Director of the WSBA.
6. Defendant Paul J. Lawrence (Lawrence), is a resident of King County, Washington, and a lawyer representing WSBA defendants.
7. Defendant Jessica Anne Skelton (Skelton), is a resident of King County, Washington, and a lawyer representing WSBA defendants.
8. Defendant Taki V. Flevaris (Flevaris), is a resident of King County, Washington, and a lawyer representing WSBA defendants.
9. Defendant Ricardo S. Matinez is a judge of United States District Court Western District of Washington.

COMMON FACTS

10. In late 2016 early 2017, Plaintiff was retained by Robert E. Caruso and Sandra L. Ferguson to represent them in action against the Washington State Bar Association and others.
11. Action on their behalf was filed by Plaintiff, as the lawyer for Mr. Caruso and Ms. Ferguson.
12. Defendant Washington State Bar Association, when the action was commenced, was, despite its name an association of legal services providers which consisted of lawyers

admitted to the bar of the Supreme Court of Washington, limited practice officers, and limited license legal technicians.

13. Mr. Caruso and Ms. Ferguson claims were made under the Civil Rights Act for violation of their rights of freedom of association and non-association under the First and Fourteenth Amendments to the United States Constitution.

14. Mr. Caruso and Ms. Ferguson also made claims under the Civil Rights Act for violation of their rights of rights of procedural due process of law under the under the Fifth and Fourteenth Amendments to the United States Constitution.Defendants to the action were the Executive Director of the WSBA, Paula C. Littlewood and others.Ms. Littlewood and the other Defendants were represented by Paul J. Lawrence, Jessica A. Skelton, and Taki V. Flevaris, partners in Pacifica Law Group LLC.

15. On February 23, 2017, Plaintiff, as the lawyer for Mr. Caruso and Ms. Ferguson, conferred by telephone to discuss the case with the attorneys for Ms. Littlewood and the to the others.

16. During the conference call, Plaintiff explained the case, which had then been amended, to Mr. Lawrence, Ms. Skelton, and Mr. Flevaris and made it a point to emphasize that the WSBA of the case was an association of lawyers, limited practice officers, and limited license legal technicians.

17. In response, Mr. Lawrence told Plaintiff, in the presence of Ms. Skelton, and Mr. Flevaris, that if Plaintiff proceeded with the action they would seek fees from him personally.

18.The lawyers in a day or two of the telephone conference agreed to a schedule for dispositive motions in the case.

19. Motions for Mr. Caruso and Ms. Ferguson were filed first as agreed. They consisted of a motion for summary judgment and a motion for preliminary injunction.

20. On behalf of the WSBA, Ms. Littlewood and others, attorneys Lawrence, Skelton, and Flevaris filed a "Motion to Dismiss and Opposition to Plaintiffs' Motions for Summary Judgment and Preliminary Injunction (herein "Motion to Dismiss and Opposition to Motions.").

21. At the beginning ("Introduction") of the Motion to Dismiss and Opposition to Motions the WSBA attorneys, Mr. Lawrence, Ms, Skelton, and Mr. Flevaris said this:

> In this lawsuit, a disgruntled lawyer who has been disciplined on multiple occasions for professional misconduct continues his meritless crusade against Washington's bar system. Within the past two years alone, Plaintiffs' counsel Stephen K. Eugster ("Eugster") has filed four prior pro se lawsuits against Defendant the Washington State Bar Association ("WSBA") and its officials; each such lawsuit was meritless and dismissed at the pleadings stage.1 This lawsuit is no different, even though this time Eugster has enlisted two other disciplined lawyers as named plaintiffs, in the effort to obtain yet another round of judicial review of his frivolous arguments. Many of the arguments Plaintiffs make here are exactly the same arguments that this Court already rejected as meritless when Eugster brought them on his own behalf.2 These arguments have no more merit when brought on behalf of others. This Court should reject Eugster's attempt to file another lawsuit alleging the same baseless claims. [Footnotes omitted.] Motion to Dismiss and Opposition to Motions at 1.

22. In the “Conclusion” of the Motion to Dismiss and Opposition to Motions, the WSBA lawyers said this:

> This case is one in a long line of frivolous attempts by Plaintiffs' counsel to upend Washington's bar system, including the Washington Supreme Court's disciplinary system. Enlisting other lawyers to serve as named plaintiffs does not change the outcome. As with counsel's prior suits, the claims presented are meritless and should be dismissed with prejudice. Motion to Dismiss and Opposition to Motions at 24

23. About 21 days after the Response to Defendants' Motion to Dismiss, the WSBA and its attorneys filed a motion seeking fees from Plaintiff Stephen Kerr Eugster.

24. The results of the preceding motions by the WSBA and their attorneys were a dismissal of the claims of Mr. Caruso and Ms. Ferguson and an award of fees more than $28,000.00 against Stephen Kerr Eugster, personally.

25. Plaintiff attorney for Mr. Caruso and Ms. Ferguson filed a notice of appeal to the 9th Circuit Court of Appeals. The appeal is pending on the basis of the filing of Petitions for Rehearing En Bank.

26. Ms. Ferguson withdrew from the appeal at the outset.

27. Mr. Caruso proceeds with the appeal. Plaintiff is his attorney.

28. Plaintiff, Stephen Kerr Eugster, pro se, filed an appeal regarding the fees order against him. This appeal is separate from the Caruso appeal.

FRAUD ON THE COURT

29. Fraud on the Court May Raised on Appeal. Fraud on the court may be raised for the first time on appeal. *Hendricks & Lewis PLLC v. Clinton*, 766 F.3d 991, 1000 (9th Cir. 2014) ("we are free to consider this argument for the first time on appeal").

30. Standards. Fraud on the court is fraud which defiles the court, so the court cannot perform its function impartially.

> Fraud upon the court should, we believe, embrace only that species of fraud which does or attempts to, defile the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery can not perform in the usual manner its impartial task of adjudging cases that are presented for adjudication.

7 J. Moore & J. Lucas, MOORE'S FEDERAL PRACTICE § 60.33 at 515 (2d ed.1978).

31. Fraud on the court consists of "conduct" which has the following elements:

1) [Conduct] on the part of an officer of the court; that 2) is directed to the judicial machinery itself; 3) is intentionally false, willfully blind to the truth, or is in reckless disregard of the truth; 4) is a positive averment or a

> concealment when one is under a duty to disclose; and 5) deceives the court. [Citations omitted.]

Johnson v. Bell, 605 F.3d 333, 339 (6th Cir. 2010). See also, Williamson v. Recovery Ltd. P'ship, 826 F.3d 297, 302 (6th Cir. 2016). One who seeks to establish fraud on the court has the burden of proving existence of fraud on the court by clear and convincing evidence. *Id.*

32. Beginning and Purpose of the Fraud. The purpose of the fraud on the court by the lawyers for the WSBA Defendants was to cause the Court to dismiss the case brought by Plaintiffs Robert E. Caruso and Sandra L. Ferguson and to cause the Court to order Pro se Eugster to pay substantial attorney fees to the WSBA.

33. The beginning of the "conduct" of the fraud is found the "Motion to Dismiss Plaintiffs' Claims and Opposition to Plaintiffs' Motions for Summary Judgment and Preliminary Injunction." ER 518, Dkt. # 16. The lawyers for the WSBA Defendants and the Court and its Trial Judge refer to the motion as "Defendants' Motion to Dismiss" or "Motion to Dismiss." The conduct of the fraud is the subject of Defendants the "Motion to Dismiss." The lawyers for the WSBA Defendants introduce the fraud in the Introduction to the motion first paragraph.

34. The lawyers and the WSBA Defendants, by virtue of the fraud, (1) obtained dismissal of all Appellant Caruso's claims, and (2) obtained Orders against Pro se Eugster for significant attorney's fees.

35. Two of the parts of the Conduct making up the fraud will be discussed in this part. The are "3) [Conduct which] is intentionally false, willfully blind to the truth, or is in reckless disregard of the truth" and "4) [Conduct which] is a positive averment or a concealment when one is under a duty to disclose." See Elements 3 and 4 supra at page 14.

36. These two conduct elements are addressed here:

> [1] In this lawsuit, a disgruntled lawyer who has been disciplined on multiple occasions for professional misconduct continues his meritless crusade against Washington's bar system.

The purpose of the foregoing is that the lawyers for and of the WSBA is to paint Pro se Eugster in a bad light, as an enemy of the WSBA, who is engaging meritless crusade against the WSBA "bar system." The lawyers hope to play on notions that a lawyer who has been disciplined on "multiple occasions" which is not true, it was only twice, and each time the discipline process used against Pro se Eugster was in violation of Eugster's right to due process of law under the Fifth and Fourteenth Amendments.

37. The lawyers suggest to the court that Pro se Eugster is a materialist and that his material purpose is to "upend" the WSBA and the WSBA discipline system. This is grossly wrong. Pro Se Eugster did not bring the actions for purposes of destruction of the WSBA. They were brought for the purposes of advancing his fundamental constitutional rights; they were brought for the purposes of justice.

38. The cases were not brought for the gratification of a mean materialist purpose. Absolutely not, they were brought because such efforts are what Pro se Eugster has always tried to do, to fulfill the responsibilities of a Washington lawyer.

39. Pro se Eugster has devoted a substantial part of his career and his personal income and assets to the efforts to advance and preserve public interests, the public trust, and the advancement of his duties as an officer of the court. Eugster Law Office, Some of Steve Eugster's Past Efforts and Involvements.http://eugsterlaw.com/?page_id=38

40. The lawyers of the WSBA Defendants led by WSBA Executive Director, also a lawyer, have defamed Pro se Eugster. Indeed, they defamed not only Pro se Eugster,

they, by their conduct, have defamed the practice of law in Washington. They profane the lofty purposes and ideals of the WSBA itself.

41. [2] Within the past two years alone, Plaintiffs' counsel Stephen K. Eugster ("Eugster") has filed four prior pro se lawsuits against Defendant the Washington State Bar Association (“WSBA") and its officials; each such lawsuit was meritless and dismissed at the pleadings stage. [Footnote omitted.]

42. The lawyers spend a section in the motion on Pro se Eugster’s prior lawsuits involving the WSBA. They fail to mention the WSBA, at the time of the lawsuits and still today, in those lawsuits, is an integrated bar association whose only members are lawyers admitted to the bar of the Supreme Court of Washington. It was this sort of bar association, an integrated bar association which the subject of Lathrop v. Donohue, 367 U.S. 820 (1961).

43. The four prior suits filed in the last two years the court is talking about – the lawsuits which they say were “meritless and dismissed at the pleadings stage,” are discussed below.

44. It is a great fraud on the court and defamation of Pro se Eugster for the lawyers for WSBA Defendants to claim the were dismissed at the pleading stages of the actions and that the issues which were raised were held by the court to be without merit. The lawsuits though “dismissed at the pleading stage” were not dismissed because they were meritless, but instead dismissed on jurisdictional grounds of each court. The dismissals were not based on merit, they were based on non-merit reasons, jurisdiction, and false res judicata conclusions.

45. a. Eugster III. Eugster v. Wash. State Bar Ass’n,

46. No. C15-0375JLR, 2015 WL 5175722

47. (W.D. Wash. Sept. 3, 2015) This case was not meritless and it was not dismissed because it was meritless. It was dismissed because but because Pro se Eugster's request to overrule Lathrop v. Donohue, supra, was denied. Pro Se Eugster advanced, in essence, that Lathrop had been over time, overruled. The argument advanced was similar to that advanced in Levine v. Heffernan, 864 F.2d 457 (7th Cir. 1989). This Court said it could not overrule Lathrop because it was a decision by the Supreme Court and that the Court could not overrule the Supreme Court. Pro se Eugster petitioned the Supreme Court for a writ of certiorari. ER 1, continuing at 14. The writ was not granted.

48. b. Eugster IV.Eugster v. Wash. State Bar Ass'n,

49. No. 15204514-9 (Spok. Cnty. Super. Ct. 2015) Eugster IV was not meritless and was not dismissed because it was meritless. ER 81, Notice of Appeal with Order. Eugster IV was dismissed because the Trial Judge said the court did not have jurisdiction. See the Order ER 83-86.

50. This case is not over. It was appealed to Division III of the Court of Appeals. The court held the Superior Court had jurisdiction. Eugster v WSBA, # 34345-6-III, May 2, 2017. A Petition for Discretionary Review to the Washington Supreme Court has been filed concerning other actions of the Court of Appeals on a point which was in excess of the court's appellate jurisdiction.

51. c. Eugster V.Eugster v. Littlewood,

52. No. 2:15-CV-0352-TOR, 2016 WL 3632711

53. (E.D. Wash. June 29, 2016) Eugster V was not meritless and it was not dismissed because it was meritless. ER 88, Notice of Appeal and Order. Eugster V was dismissed

because the Trial Judge took it upon himself to say, using the order of dismissal in Eugster IV. Id. at ER 91.

54. d. Eugster VI.Eugster v. Wash. State Bar Ass'n,

55. No. 2:16-cv-01765 (W.D. Wash.) This case was certainly not meritless. The court did not say it was meritless. They say it was dismissed at the pleadings stage. But, that is not true. It was not dismissed; Pro se Eugster filed a non-suit. The non-suit was filed pursuant to Rule 41(a)(1)(A)(I) ("Voluntary Dismissal" "without court order" with "notice of dismissal before the opposing party serves either an answer or motion for summary judgment"). The Trial Judge does not decide anything regarding the notice of dismissal. The non-suit was not subject to a trial judge act.

56. [3] This lawsuit is no different, even though this time Eugster has enlisted two other disciplined lawyers as named plaintiffs, in the effort to obtain yet another round of judicial review of his frivolous arguments.

This is false. There is nothing in the record which says Pro se Eugster enlisted the Plaintiffs so that they were "named plaintiffs" for Pro se Eugster. This has been denied in declarations by Pro se Eugster, Plaintiff Caruso and Plaintiff Ferguson. Respectively, ER 625, Dkt. # 24, ER 635, Dkt. # 25 and ER 637, Dkt. # 26.

57. [4] "Many of the arguments Plaintiffs make here are exactly the same arguments that this Court already rejected as meritless when Eugster brought them on his own behalf."

The arguments Pro se Eugster made and Plaintiffs have made are not "exactly the same arguments the Court previously rejected as meritless." This is false and obviously absurd. The arguments are not the same. ER 184, Dkt. # 1, Complaint, and ER 234, Dkt.

4, Amended Complaint. They are not the same because the arguments in the instant case are directed to the WSBA as an integrated association of lawyer, Limited Practice Officers and Limited License Legal Technicians. In the Pro Se Eugster cases, defendant was the WSBA, which was then an integrated association of lawyers only.

58. [5] These arguments have no more merit when brought on behalf of others. The arguments are not the same. The case at hand is one addressing the constitutionality of a "bar association" which is not a single member association. It is a multi-member association. The arguments are not the same because the facts are not the same.

59. [6] This Court should reject Eugster's attempt to file another lawsuit alleging the same baseless claims. [Footnotes omitted.] Dkt. # 16 at 1.

This is false; what is alleged in this case are claims which are not the same. In addition, the claims in the Pro Se Eugster cases were not meritless. They were not dismissed because the claims lacked merit. The were dismissed because the courts said the court did not have jurisdiction. See discussion above.

Conclusion of the Motion to Dismiss

60. [7] "This case is one in a long line of frivolous attempts by Plaintiffs' counsel to upend Washington's bar system, including the Washington Supreme Court's disciplinary system."

See the discussion above beginning a page ____

61.[8] "Enlisting other lawyers to serve as named plaintiffs does not change the outcome."

It is a lie to say Pro se Eugster enlisted other lawyers. See ___ above.

62. [9] "As with counsel's prior suits, the claims presented are meritless and should be dismissed with prejudice."

This is certainly not true. The Complaint and Amended Complaint establish the claims presented in this case are not meritless. See [4] above.

63. Elements of Fraud on Court Are Met. Fraud on the court consists of "conduct" which has the following elements:

64. "1) [Conduct] on the part of an officer of the court."

The lawyers for, and of the WSBA, are officers of the court.

65."2) is directed to the judicial machinery itself."

The fraud is found a critical pleading filed as part of an agreement by the court and the parties to consider dispositive motions. The WSBA's pleading was Defendants' Motion to Dismiss Plaintiffs' Claims and Opposition to Plaintiffs' Motion for Summary Judgment and Preliminary Injunction. Further, the Trial Judge of the Court further assisted in advancing the fraud.

66."3) is intentionally false, willfully blind to the truth, or is in reckless disregard of the truth"

See above beginning at page 17 and following.

67. "4) is a positive averment or a concealment when one is under a duty to disclose"

See above beginning at page 17 and following.

68."5) deceives the court"

The conduct deceived the Court. The actions of the lawyers and the

Trial Judge serve as a basis for the orders issued by the court.

Actions of the Trial Judge Compound and Establish the Extent of the Fraud. Some of the actions the Trial Judge took in this regard are discussed in the following paragraphs.

69. Isolation of Motion to Dismiss Plaintiffs' Claims and Opposition to Plaintiffs' Motions for Summary Judgment and Preliminary Injunction. The Trial Judge

erroneously isolated the WSBA Motion to Dismiss, considered it "first." ER 639, Dkt. # 28 at 3, lines 8-9. And, then the judge ignored the Plaintiffs' Motions which were scheduled for hearing on the same day as the Motion to Dismiss, all part of the scheduling order plan. ER 492, Dkt. # 14. See further discussion of this at 36, infra.

70. Next, after ruling on the Motion, he "denied" Plaintiffs' Motion for Summary Judgment and Motion for Preliminary Injunction, saying (only saying, as there was no analysis or reckoning with the motions and their related supporting materials), the motions were "moot." ER 639, Dkt. 281 and 9.

71. The judge, in effect, dismissed the motions. The dismissals worked to the advantage the WSBA and its lawyers. As we shall see below, the dismissals were in error. See discussion at 41.

72. b. Order Granting Motion to Dismiss, May 11, 2017. The Trial Judge's Order Granting Motion to Dismiss is replete with evidence the fraud deceived the Court.

73. c. "Motion to Dismiss?" The Court uses the term "Motion to Dismiss" for the motion. It failed to tell us the motion was not simply a motion to dismiss. The name of the motion is this: "Motion to Dismiss Plaintiffs' Claims and Opposition to Plaintiffs' Motions for Summary Judgment and Preliminary Injunction."

74. d. Legal Standard Used. The Trial Judge used standards for a Rule 12(b)(6) motion. ER 638, Dkt. # 28 at 3. This was quite an advantage to the WSBA Defendants. The standards which should have been used are those for summary judgment. The Court has no right to use Rule 12(b)(6) standards because the Trial Judge selected to consider the Motion to Dismiss Plaintiffs Claims and Motions. There was no intention to apply any other standards such as those applicable to summary judgments and motions for

preliminary injunction. After all, the court said the Motion to Dismiss would be considered "first."

75. The standards were those for summary judgment. All the motions were heard at the same time. The motion to dismiss was not a discrete motion to dismiss as the judge would have us believe. It was opposition to the Plaintiffs' Motion for Summary Judgment and Motion for Preliminary Injunction. All of the motions were before the court for hearing.

76. Court Refused to Consider Plaintiffs' Response to Defendants' Motion to Dismiss. The judge did not consider the Plaintiffs' response to statements about Pro se Eugster in the WSBA's Motion to Dismiss, etc. The judge wrote:

The Court will not address tangential facts and arguments raised by the parties and will focus instead on the key legal questions in Defendants' entirely dispositive Motion to Dismiss. [Emphasis added.]

77. The Trial Judge ignores what Pro se Eugster said in Plaintiffs' Response to the Motion to Dismiss. The judge shows he is not going to let considerations and argument on the points rise to his consciousness because the "tangential issues" so called were the very grounds upon which the judge was making his decisions.

78. The fact of the matter is this: The Plaintiffs clearly and with significant specificity described at length in their Complaint and Amended Complaint, the unfairness of the discipline system. ER 184, Dkt. # 1, ER 234, Dkt. # 4.. Furthermore, there was significant discussion of the law of strict scrutiny and how it applied to the various infringements of Plaintiffs' fundamental constitutional rights. See, e.g., Amended Complaint.

79. These matters were also discussed in the Motion for Summary Judgment and Motion for Preliminary injunction. ER 274, Dkt. # 8.

80. What the foregoing establishes is that the trial judge was assisting in the fraud of the court perpetuated by WSBA and its lawyers. The foregoing also shows the trial judge was "making the case his own case" – that his involvement was personal toward Pro se Eugster. More of this personal involvement is seen in the judges orders directed against Pro se Eugster.

81. Order on Fees, May 23, 2017. In the "Background" section of the Order, the judge said:

The Court was able to dismiss all of Plaintiffs' claims based on these arguments without further analysis. See Id. As to Plaintiffs' remaining claims that Defendants' actions violated procedural due process and constitutional scrutiny, the Court found that "Plaintiffs' due process and constitutional scrutiny claims fail under the law cited by Defendants," that "Plaintiffs make no effort to argue otherwise," and that instead Plaintiffs devoted "nearly all of their brief to addressing tangential issues raised by Defendants."

82.ER 631, Dkt. # 33 at 4.

83.23. The Court found that dismissal with prejudice was warranted because "Plaintiffs have given the Court no reason to believe they are capable of alleging facts sufficient under the law, given that Plaintiffs have previously amended their Complaint and given their counsel's familiarity with the law surrounding this issue." Id.

84.24. The judge took it upon himself to say he "was able to dismiss all of Plaintiffs' claims without further argument." This shows a bias toward Pro se Eugster. Id.

That "Plaintiffs make no effort to argue otherwise," and that instead Plaintiffs devoted "nearly all of their brief to addressing tangential issues raised by Defendants."Id.

85. Order of June 19, 2017.

86. The assertions in the Motion to Dismiss were picked up in this order. The court simply agreed with what the WSBA and its lawyers said about Pro se Eugster in their Motion. These statements were not true then and they are not true in the order. The court said it was ignoring them, but it was not; it had adopted them and considered Pro se Eugster's response to be irrelevant. ER 730, Dkt. # 46.

TRIAL JUDGE PARTICIPATED IN THE FRAUD: TURNED THE CASE INTO HIS OWN CASE

Perhaps the most disturbing aspect of this case is this: The Trial Judge allowed, accepted, and expanded the defamatory statements. The Trial Judge then made the statements his own. The facts establish after that the trial judge made the case against Pro se Eugster his own case.

87. The Trial Judge, Ricardo S. Martinez, was complicit in the wrongdoing of the WSBA and its lawyers. Furthermore, the judge made the case against Pro se Eugster into his own case, and as a result, went beyond his jurisdiction. His actions also violated 28 U.S.C. § 455(a). The judge's conduct of complicity began soon after WSBA Defendants' lawyers filed Defendants' Motion to Dismiss Plaintiffs' Claims and Opposition to Plaintiffs Motions for Summary Judgment and Preliminary Injunction.

Trial Judge Does Not Have Immunity for His Actions.

88. The Trial Judge does not have immunity for his acts of complicity and making the case his own. Such actions were not within his judicial role. Gregory v. Thompson, 500 F.2d 59 (9th Cir. 1974).

89. In Gregory v. Thompson, the Ninth Circuit elucidated what is meant by a judge's judicial role and which is not his judicial role. The Court said:

90. [w]hen courts have spoken of immunity for acts within the jurisdiction of a judge, they have declared that the doctrine insulates judges from civil liability 'for acts committed within their judicial jurisdiction,' or 'for acts within (their) judicial role,' Pierson v. Ray, 386 U.S. at 554, 87 S. Ct. at 1218, or for 'their judicial acts.' Bradley v. Fisher, 80 U.S. (13 Wall.) at 351. Thus judicial immunity does not automatically attach to all categories of conduct in which a judge may properly engage, but only to those acts that are of a judicial nature.

Trial Judge Complicity and Making the Case His Own.

91. The Trial Judge undertook certain actions in the unique setting of this case which were not judicial actions. Rather, they were actions personal to the judge. These actions also establish that the Court acted upon the fraud perpetrated by the lawyers for the WSBA Defendants, thus meeting the 5th element for the determination of whether a fraud has been committed. See discussion above beginning at page 25.

92. The Trial Judge Did Not Have Jurisdiction 28 U.S.C. § 455. Under § 455(a), recusal is mandatory in "any proceeding in which his impartiality might reasonably be questioned."

93. Under 28 U.S.C. § 455(b), a judge is expected to disqualify himself whenever any of the five statutorily-prescribed criteria can be shown to exist in fact; even if no motion

or affidavit seeking such relief has been filed, and regardless of whether a reasonable person would question the judge's impartiality.

94. In 1994, the U.S. Supreme Court held that "Disqualification is required if an objective observer would entertain reasonable questions about the judge's impartiality. If a judge's attitude or state of mind leads a detached observer to conclude that a fair and impartial hearing is unlikely, the judge must be disqualified." [Emphasis added]. Liteky v. U.S., 510 U.S. 540, 564 (1994).

95. Courts have repeatedly held that positive proof of the partiality of a judge is not a requirement, only the appearance of partiality. Liljeberg v. Health Services Acquisition Corp., 486 U.S. 847 (1988) (what matters is not the reality of bias or prejudice but its appearance). **PRAYER FOR RELIEF**

Plaintiff requests that

1. The court declare the decision in the case to be void ab initio.
2. Award Plaintiff his costs.
3. Award Plaintiff his attorneys feed if such are allowed for actions of this kind.
4. Grant such other relief which to the court deems proper or authorized by law.

May 14, 2018

Respectfully submitted,

s/ Stephen Kerr Eugster
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