

Hearing Date: March 2, 2018 at 9:00 am
Notice: Wednesday before Hearing Date
Presiding: Honorable Michael P. Price
Place: Department 5
Address: Spokane County Court House
1116 W. Broadway Avenue
Spokane, WA 99260

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

STEPHEN KERR EUGSTER,

Petitioner,

vs

WASHINGTON STATE BAR
ASSOCIATION (WSBA) (a legal entity
under RCW 2.48.010); and PAULA C.
LITTLEWOOD, WSBA Executive Director,

Respondents.

Case No.: 17-2-04631-5

PETITIONER'S REPLY-RESPONSE TO
RESPONDENTS' MEMORANDUM OF
AUTHORITIES

FACTS

The WSBA was “created as an agency of the state, for the purpose and with the powers hereinafter set forth, an association to be known as the Washington State Bar Association.” RCW 2.48.010. The WSBA is a legal entity “[the] association shall have a common seal and may sue and be sued, and which may, for the purpose of carrying into effect and promoting the objects of said association, enter into contracts and acquire, hold, encumber and dispose of such real and personal property as is necessary thereto.” *Id.*

Association members own the assets of the WSBA. *See, e.g., Associations and Clubs*, 6 AM JUR 2d § 23, 448 (1963). On liquidation, the net assets of the WSBA would pass to the individual members of the association.

Petitioner has a right to run for elected offices of the WSBA. *See, e.g., RCW 2.48.030*. Petitioner has the right to vote for members of the Board of Governors of the WSBA. *Id.* Petitioner along with other members has a right of referendum RCW 2.48.021 (“Any such rule may be modified or rescinded, or a new rule adopted, by a vote of the active members under rules to be prescribed by the board of governors.”)

These rights of membership are personal. They cannot be taken without due process of law. These rights also require “equal protection of the law” under the Fourteenth Amendment, Section 1, to the United States Constitution.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

ARGUMENT IN REPLY- IN RESPONSE

This brief is in reply or response to Respondents’ “Memorandum of Authorities in Support of Motion to Dismiss and in Opposition to Motion for Summary Judgment.”

Respondents’ memorandum is, in fact, a “memorandum of points and authorities.”

The Argument in will address each point the Respondents make and the authority or lack thereof for the point.

A. WSBA Access to Records GR 12.4

As their first point, Respondents' say the petition must fail because Petitioner could only get the records sought by using the WSBA Public Records Procedure of GR 12.4 in making his request. They say the WSBA Public Records Procedure is the exclusive way to get the records if you can. The authority given is a single source, to wit, GR 12.4.

The proof of what they say is the is the same as what they say. This is a tautology, a fallacy of logic. "Tautology in formal logic refers to a statement that must be true in every interpretation by its very construction. In rhetorical logic, it is an argument that utilizes circular reasoning, which means that the conclusion is also its premise." THE SKEPTIC'S GUIDE TO THE UNIVERSE.¹

B. Common Law Does Not Apply

The second point respondents' make is this: "Eugster's Petition fails for the simple reason that it relies on an alleged 'common law right to records' as the basis for compelling disclosure." Memorandum at 6, line 20. "Again, GR 12.4 is the exclusive remedy for obtaining bar records." *Id.*

a. *McClintock v. Young Republicans of Philadelphia*, 210 Pa. 115, 59 A. 691 (1904).

Eugster's Petition claims that he is entitled to relief under *McClintock*, a 1904 Pennsylvania case concerning a member's common law right to obtain an existing membership list from a private corporate association. Pet. at 4 (citing *McClintock*, 210 Pa. 115). This argument fails, for multiple reasons. Most importantly, whereas GR 12.4 is the exclusive remedy for obtaining WSBA records, there was no such exclusive remedy in *McClintock*. In fact, the *McClintock*

¹ <https://www.theskepticsguide.org/resources/logical-fallacies>, Retrieved February 19, 2018.

court specifically noted the absence of any special requirements or procedures for obtaining records from the corporation at issue. *See* 210 Pa. at 119. Moreover, *McClintock* involved a member's request to a private corporation for an existing record. *Id.* at 119-20." Memorandum 7.

Respondents say, "[h]ere, in contrast, the WSBA is a public entity rather than a private corporation, and Eugster is demanding the creation of a new record formatted to his liking. *See, e.g.,* RCW 2.48.010; App. at 122. "Eugster has no right to such relief under *McClintock*." *Id.*

What the Respondents are saying is that the common law of access expressed in *McClintock* does not apply because WSBA is a public entity and the entity in *McClintock* was a private entity.

b. Additional Out of State Authorities

The Respondents concluded that none of the cases cite in this part apply because "[m]uch like *McClintock*, three of the cases concern a member's request to a private corporation to inspect an existing record or place." Respondents say: "Here, however, Eugster is not a stockholder, the WSBA is not a private corporation, and Eugster is demanding the creation of a record to his specifications." Memorandum 7, line 16 and following.

c. "Other Out-of-State Authorities"

Petitioner identified other out-of-state authorities regarding common law and access. Respondents said, "[t]he other out-of-state authorities Eugster relies upon are equally inapposite, involving requests made to private social clubs, by members with ownership interests, to inspect existing records." Memorandum 8. Next, Respondents say "[h]ere, in contrast, the WSBA is a public entity in which Eugster has no ownership interest, and he is demanding the creation of a new record as a matter of convenience rather than the production of an existing record. And again, an exclusive remedy exists and applies here." Memorandum 8 line 3 and following.

d. “Old English Cases”

Respondents look to the old english cases cited and seeing they involve situations of ownership the conclude “Eugster has no ownership interest in the WSBA or in the information he has requested.” Of course, this is wrong. Eugster does have ownership of the assets of the WSBA. *See, e.g., Associations and Clubs*, 6 AM JUR 2d § 23, 448 (1963).

e. “Binding” Washington Case Law

Lastly, Respondents cite *State ex rel. Wicks v. Puget Sound Savings & Loan Ass’n*, 8 Wn.2d 599, 113 P.2d 70 (1941) and they say “the Washington Supreme Court held that the common law right of inspection does not apply to savings and loan associations, because both the associations and their members are “ ‘different in character from ordinary stock companies’ and shareholders.’ *Id.* at 602.” Memorandum 9.

Respondents say the case does not apply because the WSBA “because it is not an ordinary stock company.” *Id.* 9, line 14.

f. Washington Statutes

Petitioner mentioned some Washington statutes about access to records. These statutes were cited because they express a present understanding of the common law right of access. In fact, the statutes are a product of the common law. Obviously, the statutes substantiate the existence of the common law of access.

C. Mailing List Policy: Due Process and Equal Protection

Although irrelevant to his claims in this case, Eugster’s briefing also discusses at length the WSBA’s specialized policy for creating mailing lists for qualifying requesters. *See* Br. at 13- 17; App. at 26-27. This discussion is irrelevant because Eugster has not invoked the policy or alleged that it entitles him to any given records he has been denied.

In the past, Eugster has indeed attempted to invoke the policy. App. 3 – 10.

Petitioner tried in the past to gain the records he sought by using the Mailing List Policy. Petitioner tried to gain the records as a part of the WSBA Records. Petitioner's rights as member of the association are being denied arbitrarily. These active member voting rights are personal rights. Fifth and Fourteenth Amendments to the United States Constitution. ("nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.")

Eugster has a right to what others can gain under the Mailing List Policy. He is entitled because not to entitle him is a violation of equal protection of the law under the Fourteenth Amendment.

D. Exhaustion of Remedies

Respondents say Petitioner has failed to exhaust his administrative remedies.

Memorandum 12, line 6.

In this case, Eugster failed to exhaust his administrative remedies in at least two respects. First, he failed to submit his request to the WSBA's PRO as required under GR 12.4(e)(1). App. at 120-22. Second, he did not attempt to lodge an administrative appeal, as would have been required under GR 12.4(h) had his request been procedurally proper. Memorandum 13, line 4.

But this is not true. Petitioner did attempt to invoke the GR 12.4, and the attempt was denied.

Petitioner took the next step of appealing the decision in which the petitioner's request was denied.

App. 001-123.

CONCLUSION

In light of the reasons expressed above, the court should grant the relief requested of Petitioner.

February 19, 2018.

Respectfully submitted,

s/Stephen Kerr Eugster

Stephen Kerr Eugster
WSBA # 2003

APPENDIX

Petitioner Hereby Uses the Appendix to Respondents' Memorandum of Authorities as the Appendix to Petitioner's Reply, Response

APPENDIX

DATE	DESCRIPTION	PAGE
07/10/2016	Request for Public Bar Records (<i>WSBA form</i>) from Stephen K. Eugster	APP. 001-002
07/18/2016	Letter from Nicole Gustine, Public Records Officer WSBA to Stephen K. Eugster	APP. 003
07/19/2016	Email from Stephen Eugster to publicrecords@wsba.org	APP. 004-005
07/25/2016	Letter from Nicole Gustine, Public Records Officer WSBA to Stephen K. Eugster	APP. 006
07/19/2016	Request for Review of Public Bar Records Decisions (<i>WSBA form</i>) from Stephen K. Eugster to WSBA	APP. 007-008
08/04/2016	Letter from Paula C. Littlewood, Executive Director, WSBA to Stephen K. Eugster	APP. 009-010
08/23/2016	Request for Review of Public Bar Records Decisions (<i>WSBA form</i>) from Stephen K. Eugster to WSBA	APP. 011-012
08/23/2016	Public Records Appeal submitted by Stephen K. Eugster	APP. 013-036
11/22/2016	WSBA Records Request Appeal Officer's Decision	APP. 037-042
12/05/2016	Stephen K. Eugster's Request for Discretionary Review by the Washington State Supreme Court	APP. 043-118
04/21/2017	Letter from Susan L. Carlson, Washington State Supreme Court Clerk to Stephen K. Eugster	APP. 119
11/12/2017	Letter from Stephen K. Eugster to Paula C. Littlewood, Executive Director, WSBA	APP. 120-122
11/17/2017	Letter from Paula C. Littlewood, Executive Director, WSBA to Stephen K. Eugster	APP. 123

CERTIFICATE OF SERVICE

I certify on February 19, 2018, by previous agreement of counsel, I emailed the preceding pleading together with its appendix to the attorneys for Respondents to their email addresses as set forth below.

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Signed February 19, 2018 at Spokane, WA.

s/ Stephen Kerr Eugster
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