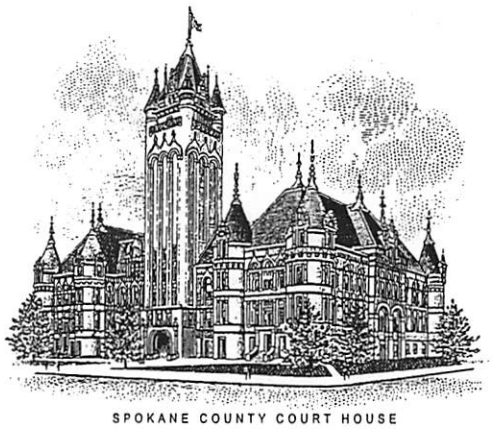

SPOKANE COUNTY COURT HOUSE

Superior Court of the State of Washington
for the County of Spokane

Department No. 9

John O. Cooney

Judge

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June 25, 2018

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Re: Eugster v. Washington State Bar Association, et al.
Case No. 2018-02-00542-1

Dear Counsel:

On June 22, 2018, the Defendants brought a motion to dismiss the Plaintiff's complaint. Due to time constraints, the Court took this matter under advisement. This letter serves as the Court's decision on the Defendants' motion.

In his complaint, filed February 12, 2018, the Plaintiff brought five causes of action: defamation, false light invasion of privacy, abuse of process, civil conspiracy, and a civil rights violation. The primary focus of the Plaintiff's causes of action arise from the Defendants alleged irrelevant and false (or misleading) information supplied to the court in the matter of Caruso v. Wash. State Bar Ass'n, No. C17-003 RSM, 2017 WL 1957077 (W.D. Wash. May 11, 2017). According to the Plaintiff, this false information not only constituted a fraud on the court, but has also defamed him. Further, according to the complaint, the Defendants have conspired against him. In their motion dismiss, the Defendants argue four grounds warranting dismissal of the complaint: absolute immunity, collateral estoppel, failure to state a claim upon which relief can be granted, and immunity under 42 U.S.C. § 1983.

"Allegedly libelous statements, spoken or written by a party or counsel in the course of a judicial proceeding, are absolutely privileged if they are pertinent or material..." McNeal v. Allen, 95 Wn.2d 265, 267, 621 P.2d 1285 (1980) (*citing* Gold Seal Chinchillas, Inc. v. State, 69 Wn.2d 828, 420 P.2d 698 (1966)). As such, this defense allows a defendant to avoid liability. Id. Even though the privilege is available, an attorney may not abuse it with impunity. Id. Indeed, CR 12(f), and the federal equivalent, Fed. R. Civ. P. 12(b)(6), allows for immaterial, impertinent or scandalous material to be stricken from the pleadings. Further, an abuse of the privilege could subject an attorney to sanctions under the Rules of Professional Conduct.

For absolute immunity to apply, the alleged defamatory statement(s) must have some relation to the judicial proceedings in which they were used and have any bearing upon the subject matter of the litigation. Johnston v. Schlarb, 7 Wn.2d 528, 540, 110 P.2d 190 (1941). Here, the statements complained of were used to provide the court with historical context. Although not necessary relevant, the historical context had at least "some relation" to the subject matter before the court. The Plaintiff also takes exception to many of the adjectives used by the WSBA such as "disgruntled," "meritless," and "frivolous." These terms were provided to enhance the Defendant's description of their perception of the historical issues pertinent to the case. The statements complained of by the Plaintiff are privileged under absolute immunity; the Defendants are immune from liability.

The controversial statements made by the Defendants were addressed by the United States Court of Appeals for the Ninth Circuit. Many of the statements complained of by the Plaintiff are contained in the Opening Brief of Appellant filed with the United States Court of Appeals for the Ninth District. The Court of Appeals, after considering this briefing, ruled, "We reject as without merit and unsupported by the record Eugster's contentions that he is entitled to sanctions, that defendants committed fraud on the court..." Eugster v. Wash. State Bar Ass'n, 716 Fed. App'x 645, 646 (9th Cir. 2018). The same issues presented in this case involving the same parties has previously been decided by another court.

The Plaintiff argues that even if absolute immunity safeguards the Defendants from liability, the motion to dismiss his claim of civil conspiracy must be denied. Dismissal of a claim for failure to state a claim upon which relief can be granted is appropriate where the plaintiff can prove no set of facts, consistent with the complaint, which would entitle the plaintiff to relief. Deegan v. Windermere Real Estate/Center-Isle, Inc., 197 Wn.App. 875, 884, 391 P.3d 582 (2017). When considering a CR 12(b)(6) motion, a plaintiff's allegations are presumed to be true and a court may consider hypothetical facts not included in the record. Hipple v. McFadden, 161 Wn.App. 550, 557, 255 P.3d 730 (2011), *review denied* 172 Wn.2d 1009, 259 P.3d 1108. Although the court must consider hypothetical facts when deciding a motion to dismiss under CR 12(b)(6), the crux of the inquiry is whether the plaintiff's claim is legally sufficient. Gorman v. Garlock, Inc., 155 Wn.2d 198, 215, 118 P.3d 311 (2005). If a claim remains legally insufficient even when hypothetical facts are considered, dismissal is appropriate. Id.

Although the Court considers the totality of the complaint, the primary facts proffered by the Plaintiff to support a claim of civil conspiracy can be found in the following paragraphs of his

complaint: 17-21, 26, 27, and 64-69. Even if the Court accepts all of these allegations as true (as well as the entirety of the complaint) the complaint fails to allege any facts supporting the Defendants engagement in unlawful conduct. Since the Plaintiff's claim remains legally insufficient, even when considering hypothetical facts, dismissal for failure to state a claim is warranted. Jackson v. Quality Loan Service Corp., 186 Wn.App. 838, 843-44, 347 P.3d 487 (2015), *review denied* 184 Wn.2d 1011, 360 P.3d 817.

For the foregoing reasons, the Court is granting the Defendants' motion to dismiss the entirety of the Plaintiff's complaint. Counsel for the Defendants is directed to prepare an order comporting with this letter decision. A presentment hearing is scheduled for Friday, July 13, 2018, at 8:30 a.m.

Sincerely,

John O. Cooney