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7 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
8
9 IN AND FOR THE COUNTY OF SPOKANE

10 STEPHEN KERR EUGSTER,
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12 Petitioner,

13 v.

14 PAULA C. LITTLEWOOD, Executive
15 Director of the WASHINGTON STATE
16 BAR ASSOCIATION in her official
17 capacity, and the WASHINGTON STATE
18 BAR ASSOCIATION,

19 Respondents.

No. 17-2-04631-5

RESPONDENTS' MEMORANDUM
OF AUTHORITIES IN SUPPORT OF
MOTION FOR ATTORNEY FEES
AND EXPENSES

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I. INTRODUCTION

With this lawsuit, Petitioner Stephen Kerr Eugster (“Eugster”) sought to circumvent General Rule (“GR”) 12.4, the exclusive administrative channel for obtaining records from Respondent the Washington State Bar Association (“WSBA”). In doing so, Eugster ignored both the plain language of GR 12.4 and directly applicable Washington cases precluding his claims. He relied instead on foreign authorities and business statutes applicable to private corporations and shareholders rather than to an integrated bar association such as the WSBA. As such, this entire suit was frivolous from the outset. Pursuant to RCW 4.84.185, the WSBA

1 respectfully requests that this Court award the WSBA its attorney fees and expenses incurred in
2 defending against this frivolous suit.

3 **II. FACTS & PROCEDURAL HISTORY**

4 This lawsuit stems from Eugster's request for WSBA member information in his desired
5 format. Initially, Eugster submitted a request to the WSBA's public records officer for member-
6 related information "pursuant to GR 12.4(d)." App. to Mem. in Supp. Mot. to Dismiss ("App.")
7 at 1. The records officer explained to him that the information is available online and that under
8 GR 12.4, he has no right to compel the creation of records in his desired format. App. at 3, 9.
9 That decision was upheld on appeal, pursuant to the established procedures in GR 12.4. App. at
10 9-10, 41-42, 119.

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12 Unsatisfied with the result, Eugster then submitted a second request to the WSBA's
13 Executive Director seeking substantially the same information and in the same digital format, but
14 based on citation to a Pennsylvania case involving the records of a private corporation. App. at
15 120-22. In response, the Executive Director noted that Eugster's request was substantially the
16 same as his first request, which was completed and closed. App. at 123. The Executive Director
17 further explained that GR 12.4 alone governs access to WSBA records and directed Eugster to
18 submit any new request to the public records officer as required under the rule. App. at 123.

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20 Rather than doing so, or attempting an administrative appeal, Eugster filed this lawsuit,
21 attempting to compel the WSBA to adhere to his request. Shortly after filing this lawsuit,
22 Eugster filed a Motion for Summary Judgment. In his Petition and Motion, Eugster argued he
23 was entitled to relief based on the same Pennsylvania case cited in his request, other out-of-state
24 cases, old and convoluted English cases, and Washington statutes related to nonprofit and for-
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1 profit corporations. Pet. at 4, 6-7; Br. in Supp. of Mot. at 7-12. Eugster did not cite GR 12.4 or
2 rely on Washington case law regarding the right of access to organizational records.

3 The WSBA then notified Eugster of its intent to seek attorney fees under RCW 4.84.185
4 unless Eugster withdrew the lawsuit. See Decl. of Taki V. Flevaris in Supp. Mot. for Fees, Exs.
5 A-C. After Eugster refused, the WSBA moved to dismiss on three independent grounds: failure
6 to state a claim, failure to exhaust administrative remedies, and res judicata. See Mot. to
7 Dismiss. This Court granted the WSBA’s motion and dismissed Eugster’s Petition with
8 prejudice on June 15, 2018.

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10 The WSBA now seeks payment of its attorney fees and expenses for defending against
11 Eugster in this matter. In bringing this action, Eugster ignored binding Washington law and
12 relied on various inapplicable authorities that did not support his claims. As a result, the WSBA
13 was forced to expend substantial resources defending itself. Because this entire suit was
14 frivolous, and because the WSBA has timely filed its motion within 30 days of dismissal
15 pursuant to RCW 4.84.185, this Court should award the WSBA its fees and expenses.

17 III. ARGUMENT

18 The WSBA should be awarded its attorney fees and expenses in this matter under RCW
19 4.84.185. That statute provides in pertinent part:

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21 In any civil action, the court . . . may, upon written findings by the judge that the
22 action . . . was frivolous and advanced without reasonable cause, require the
23 nonprevailing party to pay the prevailing party the reasonable expenses, including
24 fees of attorneys, incurred in opposing such action

25 RCW 4.84.185. The statute’s purpose is to “discourage frivolous lawsuits and to compensate the
26 targets of such lawsuits for fees and expenses incurred in fighting meritless cases.” *Kearney v.*
27 *Kearney*, 95 Wn. App. 405, 416, 974 P.2d 872 (1999) (internal quotes omitted). A lawsuit is
frivolous for this purpose and warrants a fee award if “there are no debatable issues . . . and there

1 is so little merit that the chance of reversal is slim.” *Id.* at 416. This requirement is satisfied
2 when a “plain reading” of applicable law establishes that the suit lacks merit, *id.* at 417 n.12;
3 when binding case law precludes the claims asserted, *see Highland Sch. Dist. No. 203 v. Racy*,
4 149 Wn. App. 307, 313-14, 202 P.3d 1024 (2009); or when a “reasonable inquiry” would
5 otherwise reveal that the plaintiff’s position is untenable, *Kearney*, 95 Wn. App. at 416-17. A
6 finding of “bad faith” or “bad motivation” is not required. *Highland*, 149 Wn. App. at 311-12.
7 When a plaintiff’s entire theory conflicts with binding authority, fees presumptively should be
8 awarded. *See Kearney*, 95 Wn. App. at 417 (trial court “abused its discretion by denying
9 attorney fees” under such circumstances).

11 Here, all of Eugster’s arguments were frivolous and a fee award is warranted for multiple
12 distinct reasons. First, as the WSBA explained in its motion to dismiss, a plain reading of GR
13 12.4 establishes that it is the exclusive remedy for obtaining WSBA records. In particular, the
14 rule states that it “governs the right of public access to Bar records” and that “*all* records
15 requests” for bar records “shall be submitted” to the WSBA’s public records officer. GR
16 12.4(b), (e)(1) (emphasis added). Eugster was aware of this rule, and even invoked it previously
17 to request the same records. App. at 1. His decision to simply ignore the rule demonstrates
18 frivolity and warrants a fee award here. *See Kearney*, 95 Wn. App. at 417 & n.12 (fee award was
19 warranted because plaintiff’s case was contrary to “plain reading” of applicable statute).

22 Second, Eugster’s theory of a common law right to inspect WSBA records is contrary to
23 binding precedent. As detailed in the WSBA’s motion to dismiss, Washington courts have
24 limited the common law right of inspection to ordinary corporations with shareholders, as
25 opposed to quasi-public entities subject to governmental supervision such as the WSBA. *See*
26 *State ex rel. Wicks v. Puget Sound Sav. & Loan Ass’n*, 8 Wn.2d 599, 602-03, 113 P.2d 70 (1941);
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1 *Save Columbia CU Comm. v. Columbia Cmty. Credit Union*, 134 Wn. App. 175, 193, 139 P.3d
2 386 (2006); Mem. at 9-10. This precedent directly foreclosed Eugster’s theory of the case,
3 further warranting a fee award here. *See Highland*, 149 Wn. App. at 313-14 (fee award was
4 warranted because binding case law precluded plaintiff’s legal theory “even if the context was
5 slightly different”).

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7 Third, any reasonable inquiry would have revealed to Eugster that the myriad foreign
8 cases and business statutes he relied upon were inapplicable to the WSBA. Those authorities
9 concern private stock corporations, shareholder meetings, and antiquated roles in old England
10 (such as a “burgess” or “alderman”)—not a mandatory bar association such as the WSBA. *See*
11 Mem. at 7-10. Eugster even relied on a treatise that expressly disclaims any applicability to bar
12 associations. *See Resp’ts’ Reply* at 3 (discussing 6 AM. JUR. 2D *Associations & Clubs* Summary
13 (2018)). A reasonable inquiry should have revealed to him that these authorities were
14 inapplicable and his claims were baseless. *See Kearney*, 95 Wn. App. at 416-17.

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16 In sum, Eugster advanced meritless claims contrary to the plain language of GR 12.4 and
17 directly applicable Washington case law, relying instead on inapplicable foreign cases and
18 business statutes. This forced the WSBA to waste substantial resources defending itself against
19 his meritless claims. To deter such litigation, and to compensate the WSBA for the costs it was
20 forced to incur, the WSBA should be awarded its fees and expenses pursuant to RCW 4.84.185.

21 **IV. CONCLUSION**

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23 Eugster’s advancement of meritless claims and his failure to conduct a reasonable inquiry
24 into the legal basis for those claims was in violation of RCW 4.84.185. As a sanction for this
25 misconduct and waste of judicial resources, and to compensate the WSBA for being forced to
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1 defend itself in this suit, the Court should award the WSBA its fees and expenses. The WSBA
2 respectfully requests leave to file a statement of such fees and expenses for the Court's review.

3 DATED this 13th day of July, 2018.
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6 PACIFICA LAW GROUP LLP

7
8 By  _____

Jessica A. Skelton, WSBA #36748

Taki V. Flevaris, WSBA #42555

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10 Attorneys for Respondents
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