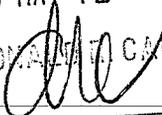


RECEIVED
SUPREME COURT
STATE OF WASHINGTON

2008 MAY 12 A 7:58

BY RONALD W. CARPENTER



CLERK

Case No.: 200,566-7

SUPREME COURT OF THE STATE OF WASHINGTON

**In re Stephen K. Eugster,
an Attorney at Law
WSBA No. 2003**

RESPONSE TO MOTION TO STRIKE

Attorneys for Appellant

**Kris J. Sundberg
WSBA 14549
Sundberg Law Office
P.O. Box 1577
3023 – 80th Ave., S.E. #200
Mercer Island, WA 98040
PH: 206.230.0210
FAX: 206.236.0525**

**Shawn Timothy Newman
WSBA 14193
Attorney at Law, Inc.
2507 Crestline Dr., N.W.
Olympia, WA 98502
PH: 360.866.2322
FAX: 866.800.9941**

INTRODUCTION:

Under ELC 7.2(a)(2),

When the Board enters a decision recommending disbarment, disciplinary counsel must file a petition for the respondent's suspension during the remainder of the proceedings. The respondent must be suspended absent an affirmative showing that the respondent's continued practice of law will not be detrimental to the integrity and standing of the bar and the administration of justice, or be contrary to the public interest.

The Bar's Petition for Interim Suspension is based on the Disciplinary Board Order [attached as Appendix A to the Petition]; the Findings of Fact, Conclusions of Law [attached as Ex. B to the Petition]; and the Guardian Ad Litem Report [Attached as Appendix C to the Petition]. The Petition summarizes the Board's 4 recommendations and discusses the "Nature of the Misconduct Warranting Suspension" citing the FOF.

The Bar moves¹ pursuant to RAP 17 to strike virtually all² of Eugster's response, including his statement of facts citing the FOF [attached as Appendix A], and argument which responds to the four recommendations discussed in the Bar's motion.

ARGUMENT:

The Bar's motion should be denied for the following reasons:

1. RAP 17.1 refers to the party filing a motion. Eugster is not the party filing the motion at issue [Bar's Petition for Suspension]. Contrary to the Bar's reliance on RAP 17.1, Eugster is not asking the court to rule on the merits underlying the Bar's case.³ He is simply responding to statements made by the Bar in its petition.
2. Under ELC 7.2(a)(2), Eugster must make an "affirmative showing" that his "continued practice of law will not be detrimental to the integrity and standing of the bar and the

¹Note, the motion has the wrong cause number. The Order to Show Cause is under No. 200,566-7 not 200,568-3.

²The Bar moves to strike pages 4-19 but not the 50+ declarations submitted in support of Eugster.

³The Bar's concern that the Court may "prematurely decide the issues on appeal" is unwarranted. Motion at 3.

administration of justice, or contrary to the public interest.” This case is based on single act authorized by RPC 1.13⁴ and protected by state law⁵: filing a guardianship action. Because the Bar cites that one act⁶ as the basis for its petition and attaches the GAL Report to support its petition, Eugster should be entitled as a matter of fundamental due process to respond. This is especially true since Eugster has no prior disciplinary history.

⁴RPC 1.13 CLIENT UNDER A DISABILITY: (a) When a client’s ability to make adequately considered decisions in connection with the representation is impaired, whether because of minority, mental disability or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client. (b) When the lawyer reasonably believes that the client cannot adequately act in the client’s own interest, a lawyer may seek the appointment of a guardian or take other protective action with respect to a client. [Emphasis added]. This was the rule in effect at the time of Eugster’s filing of the guardianship.

⁵State law provides that a “any person” may petition for the appointment of a guardian of an incapacitated person” and that there will be “no liability for filing a petition” so long as the petitioner is “acting in good faith and upon a reasonable basis.” RCW 11.88.030.

⁶This is unlike other disciplinary cases where the Bar recommended suspension and disbarment where the attorney had a history of “numerous ethical and criminal violations.” See, e.g. *In re Disciplinary Proceeding Against Kuvara*, 149 Wn.2d 237, 66 P.3d 1057 (2003). *In re Disciplinary Proceeding Against Burtch*, 112 Wn.2d 19, 26-28, 770 P.2d 174 (1989), this Court imposed a 45-day suspension based on a pattern of neglect, failure to communicate with clients, failure to properly handle fee arrangements, lack of diligence, violation of trust account requirements, and failure to cooperate with a WSBA investigation.

3. Although the Bar's Petition goes into detail regarding the "Nature of the Misconduct Warranting Interim Suspension," it seeks to strike Eugster rebuttal statement of facts [App. A to Response]. The Bar's selective rendition of the "misconduct warranting interim suspension" is based on findings which the Board determined were "as a whole were so confusing that the modifications were necessary to prevent confusion." [Petition App. A at 3:3-4]. Eugster's "Statement of the Case" is "the fact section from his appellate brief."⁷ Nevertheless, the Bar argues that "The sole purpose of these materials is to contradict findings of fact that were affirmed by a unanimous Board."⁸ This ignores the fact that the Board itself "determined that the Findings as a whole were so confusing that the modifications were necessary to prevent confusion."⁹ Evidently, the Bar seeks to perpetuate the confusion for its own strategic advantage by asking the Court to

⁷Bar Motion at 2.

⁸*Id.*

⁹Disciplinary Board Order at 2:2-4.

ignore the fact that the FOF are confusing and erroneous and suspend Eugster. The Bar has made no showing of prejudice or that Eugster's "Statement of the Case" is false, misleading, confusing or argumentative. Eugster attempts to do what the Board attempted to do: clear up the confusion by citing to the confusing FOF and record. To allow the poison of confusing and erroneous findings to go unchallenged¹⁰ would contravene Eugster's right and obligation to make an "affirmative showing" why he should not be suspended.

4. The argument section of the response [4-19] responds to the 4 grounds for disbarment stated in the Bar's Petition at 1-2.¹¹ It is unfair to allow the bar to state the reasons interim suspension is necessary and deny Eugster the opportunity to respond to the reasons cited by the Bar in its petition.

¹⁰See, e.g. *State v. Wade*, 138 Wn.2d 460, 979 P.2d 850 (1999) "A trial court's judgment is presumed to be correct and should be sustained absent an affirmative showing of error. *Smith v. Shannon*, 100 Wn.2d 26, 35, 666 P.2d 351 (1983); *Mattice v. Dunden*, 193 Wash. 447, 450, 75 P.2d 1014 (1938)."

¹¹See Answer at p. 4, fn. 11.

5. The Bar does not object to the 50+ declarations in support of Eugster's character and fitness even though they reference the charges. These declarations are from renowned attorneys and citizens across this state and beyond, including: Joseph P. Delay, past President of the Washington State Bar Association.

6. There is no showing of actual prejudice to the Bar or the public¹² - but there would be to Eugster. Given the hearing on the Bar's Motion to Strike is set for the same day as argument on the merits of the Petition, complaints about the scope of Eugster's reply are either moot or harmless. The Court can weigh the arguments and determine what to consider in ruling on the motion. It would be prejudicial to Eugster to deny him the full opportunity to exercise his right to make an affirmative showing that suspension is unwarranted.

¹²By analogy, a party seeking injunctive relief must establish (1) he has a clear legal or equitable right; (2) he has a well-grounded fear of immediate invasion of that right by the entity against which he seeks the injunction; and (3) the acts about which he complains are either resulting or will result in actual and substantial injury to him. *Tyler Pipe Indus. v. Dep't of Revenue*, 96 Wn.2d 785, 792, 638 P.2d 1213 (1982).

CONCLUSION:

This case is a manifest example of out-of-control contagious hysteria, starting with the grievant and going on to the hearing officer and disciplinary board. The Bar seeks to continue to stoke those fires by now asking the court to ignore the applicable ethical rule,¹³ the governing law which grants guardianship petitioners qualified immunity¹⁴ or the truly benign facts and circumstances that form the core of this case.¹⁵

The Bar's petition for interim suspension must be put into context with the alleged misconduct of the attorney who has never been disciplined in 36 years. Obviously, the more outrageous (and

¹³The Formal Complaint filed by Disciplinary Counsel completely fails to cite the applicable RPC 1.13. See Petition Ex. B Findings of Fact, Conclusions of Law and Hearing Officer's Recommendation at 1 [Summarizing the Formal Complaint].

¹⁴RCW 11.88.030

¹⁵This is similar to the wrongful termination case involving former UW football coach Rick Neuheisel for betting in March Madness basketball pools. The NCAA and UW applied the wrong rules resulting in a \$4.5 million settlement in favor of Neuheisel. See http://seattletimes.nwsourc.com/html/huskies/2002199496_webneuheisel07.html

protracted) the attorney's behavior, the more warranted would be an immediate or interim suspension for the public good.

This case, however, is not one where an out-of-control attorney is stealing from clients, gambling with client trust funds, having sex with clients and/or selling drugs or guns from his office so as to warrant immediate action by the court. Rather, the attorney in this case filed a guardianship petition for the benefit of a person he had known for years. The attorney reasonably believed that person was impaired to the point that she was unable to act in her own interests. In so doing, the attorney acted ethically and legally in full compliance with the governing RPC and RCW.¹⁶

It is self evident that the purpose of any disciplinary suspension is to protect the public, not deprive the public of the services of an ethical attorney. Wrongfully turning an ethical attorney into an unethical attorney deprives the public of such attorney's services.

¹⁶RPC 1.13 and RCW 11.88.030

If the purpose of the rule of law is to protect and insulate the accused from the influences of popular hysteria, then it is about time some sober reflection is brought to bear on the truly shameful miscarriage of justice that has happened to a fine and distinguished member of the bar.

Date 5/12/08



Kris J. Sundberg
WSBA 14549
Sundberg Law Office
P.O. Box 1577
3023 - 80th Ave., S.E. #200
Mercer Island, WA 98404
PH: 206.230.0210
FAX: 206.236.0525



Shawn Newman
WSBA 14193
Attorney at Law, Inc.
2507 Crestline DrNW
Olympia, WA 98502
PH: 360.866.2322
FAX: 866.800.9941

**FILED AS ATTACHMENT
TO E-MAIL**

1 RECEIVED
2 SUPREME COURT
3 STATE OF WASHINGTON

4 2008 MAY 12 A 7:58

5 BY RONALD R. CARPENTER

6 SUPREME COURT OF THE STATE OF WASHINGTON

7
8 In re Stephen K. Eugster,
9 an Attorney at Law
10 WSBA No. 2003

11) Case No.: 200,566-7
12)
13) DECLARATION OF SERVICE OF
14) EUGSTER'S ANSWER TO
15) ASSOCIATION'S MOTION TO STRIKE

16 I declare under penalty of perjury under the laws of the State
17 of Washington that:

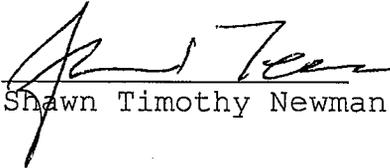
- 18 1. I am over 18 and competent to testify.
19 2. I had served copies of Eugster's Response to the
20 Association's Motion to Strike via email to all counsel:

21 Jonathan H. Burke, WSBA Disciplinary Counsel,
22 1325 - 4th Ave., Suite 600, Seattle, WA 98101-2539

23 Kris J. Sundberg, Sundberg Law Office, P.O. Box
24 1577, 3023 - 80th Ave., S.E., #200, Mercer Island,
25 WA 98040-1577.

26 Stephen Eugster, 2418 W. Pacific Ave., Spokane,
27 WA 99304-1122

28 Dated: 5/12/08
29 Olympia, WA

30 
31 Shawn Timothy Newman

32 **FILED AS ATTACHMENT
TO E-MAIL**

33 Declaration
34 of Service

35 1

36 Shawn Timothy Newman
37 Attorney for Plaintiff
38 Attorney at Law, Inc., P.S.
39 WSBA 14193
40 2507 Crestline Dr., N.W.
41 Olympia, WA 98502
42 PH: (360)866-2322
43 FAX: (360)866-2304

OFFICE RECEPTIONIST, CLERK

To: Shawn Newman
Cc: jonb@wsba.org; 'Kris J. Sundberg'
Subject: RE: In re Stephen K. Eugster, No. 200,566-7: Response to Motion to Strike

Rec. 5-12-08

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Shawn Newman [mailto:newmanlaw@comcast.net]
Sent: Sunday, May 11, 2008 10:47 AM
To: OFFICE RECEPTIONIST, CLERK
Cc: jonb@wsba.org; 'Kris J. Sundberg'
Subject: In re Stephen K. Eugster, No. 200,566-7: Response to Motion to Strike

Pursuant to the Supreme Court Clerk's letter dated May 9, please find attached to this email Eugster's response to the Bar Association's Motion to Strike.

Please call if you have any questions.

Shawn Timothy Newman

Shawn Timothy Newman
Attorney at Law, Inc.
2507 Crestline Dr., N.W.
Olympia, WA 98502
Ph: 360.866.2322
Fax: 866.800.9941
www.Newmanlaw.us

