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IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

  
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In re

MATTHEW F. PFEFER,

Lawyer (Bar No. 31166)

Supreme Court No. 201,327-9

ODC'S RESPONSE TO  
PFEFER'S REQUEST FOR  
JUDICIAL NOTICE

Lawyer Matthew F. Pfefer (Pfefer) filed a "Request for Judicial Notice of Distance between the Office of David Heller and the Location of the Disciplinary Hearing" on or about August 11, 2014. He seeks to provide evidence outside the record on appeal in order to challenge a mileage cost reimbursed to Heller by the Washington State Bar Association (Association) that was assessed against Pfefer in a cost order entered in this matter under Rule 13.9(e) of the Rules for Enforcement of Lawyer Conduct (ELC). The Court should reject Pfefer's request because this evidence was not timely presented to, or considered by, the Chair of the Disciplinary Board, who entered the cost order.

ODC filed a statement of costs and expenses in this matter before the Disciplinary Board on May 6, 2014, under ELC 13.9(d). Bar File (BF) 97. Pfefer had 20 days from service of the statement of costs and expenses to file exceptions, i.e., by May 29, 2014. ELC 13.9(d)(4). On May 27, 2014, Pfefer filed a blanket exception to "all costs stated by disciplinary counsel" on the ground that "no documentation supports any of these costs." BF 98 at 1. He

did not raise an issue about the distance from David Heller's office to the offices of the Washington State Bar Association. ODC had ten days to reply, i.e., by June 9, 2014, and did so by filing documentation supporting the claimed costs and expenses. BF 100. ELC 13.9 does not provide for the filing of further exceptions or replies.

Ten days later, on June 19, 2014, the Chair of the Disciplinary Board entered a cost order under ELC 13.9(e). BF 101. After that, on June 20, 2014, Pfefer filed supplemental objections and exceptions to the costs and exceptions, which included an exception for paying mileage and parking fees to Heller. BF 102. The Chair of the Disciplinary Board did not consider Pfefer's supplemental exceptions or the factual issues raised therein.

Pfefer waited until the end of the 20-day period for excepting to file his initial blanket exception to the costs and expenses sought, then did not file his supplemental exceptions until after the Cost Order was entered. By doing so, he effectively gave himself a 24-day extension of time to file exceptions to the costs and expenses claimed by ODC, and did so without any authorization from the Chair. Since his exception to the Heller cost was not timely raised before or considered by the Chair and not allowed by rule or order, the Court should decline to consider the issue and deny the request for judicial notice. Associated General Contractors of Washington v. King County, 124 Wn.2d 855, 864, 881 P.2d 996 (1994) ("we generally decline to

reach issues not raised below, even issues of constitutional dimension.”).

If the Court wishes to consider untimely costs and expenses issues raised by Pfefer, it should remand those issues to the Chair for further proceedings.

In the alternative, if the Court grants Pfefer’s request for judicial notice, ODC requests leave to present additional outside-the-record evidence as well, which would show that Pfefer’s argument against assessment of the Heller cost is irrelevant and speculative. As an offer of proof, Heller would testify that he was subpoenaed to appear for the disciplinary hearing, picked up Grievant Anna Ortiz at her location, drove them both to the hearing, was then released from his subpoena by disciplinary counsel prior to testifying, and drove back to his office. Evidence already in the record shows that Ms. Ortiz testified at the hearing, then took a taxi home.

The request for judicial notice should be denied.

DATED this 25th day of August, 2014.

Respectfully submitted,

OFFICE OF DISCIPLINARY COUNSEL



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M Craig Bray, Bar No. 20821  
Disciplinary Counsel  
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Seattle, WA 98101-2539  
(206) 239-2110

RECEIVED  
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STATE OF WASHINGTON  
Aug 25, 2014, 12:50 pm  
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RECEIVED BY E-MAIL

**IN THE SUPREME COURT OF THE STATE OF WASHINGTON**

In re

Supreme Court No. 201,327-9

MATTHEW F. PFEFER,

DECLARATION OF  
SERVICE BY MAIL

Lawyer (Bar No. 31166)

The undersigned Disciplinary Counsel of the Washington State Bar Association declares that he caused a copy of the ODC's Response to Respondent's Request for Judicial Notice to be mailed by first class mail with postage prepaid on August 25, 2014 to:

Matthew F. Pfefer  
Attorney at Law  
10417 E 4th Ave Apt 10  
Spokane Valley, WA 99206-3638

The undersigned declares under penalty of perjury under the laws of the state of Washington that the foregoing declaration is true and correct.

8/25/2014; Seattle, WA  
Date and Place

  
M Craig Bray, Bar No. 20821  
Disciplinary Counsel  
Washington State Bar Association  
1325 4th Avenue – Suite 600  
Seattle, WA 98101-2539  
(206) 239-2110

ORIGINAL

## OFFICE RECEPTIONIST, CLERK

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**To:** Craig Bray  
**Subject:** RE: In re Pfefer, Supreme Court No. 201,327-9

Received 8-25-14

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:** Craig Bray [mailto:craigb@wsba.org]  
**Sent:** Monday, August 25, 2014 12:49 PM  
**To:** OFFICE RECEPTIONIST, CLERK  
**Cc:** Matthew F. Pfefer; Allison Sato  
**Subject:** In re Pfefer, Supreme Court No. 201,327-9

Dear Clerk:

Attached for filing in the above-captioned matter is ODC's Response to Pfefer's Request for Judicial Notice and a Declaration of Mail Service. Thank you.

Craig Bray  
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Washington State Bar Association  
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