

FILED

JUN 30 2015

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

No. 34345-6-III

COURT OF APPEALS, DIVISION III
STATE OF WASHINGTON

STEPHEN KERR EUGSTER,

Appellant,

vs.

WASHINGTON STATE BAR ASSOCIATION, *ET AL.*

Respondents.

BRIEF OF APPELLANT

Stephen K. Eugster
WSBA #2003
Attorney for Appellant

EUGSTER LAW OFFICE PSC
2418 W Pacific Avenue
Spokane, WA 99201-6422
(509) 624-5566
eugster@eugsterlaw.com

TABLE OF CONTENTS

I. INTRODUCTION 1

II. ASSIGNMENTS OF ERROR..... 2

 A. Assignments of Error. 2

 B. Issues Presented...... 2

III. STATEMENT OF THE CASE 3

IV. STANDARDS OF REVIEW 6

 A. Dismissal under CR 12(b)(1). 6

 B. Dismissal under CR 12(b)(6). 6

V. SUMMARY OF ARGUMENT 7

VI. ARGUMENT 8

 A. Civil Rights Act Claims of Appellant. 8

 B. The Crux of Eugster’s Action: Right of Procedural Due Process of Law. 10

 C. The State of Washington Court System...... 13

 1. *Supreme Court Jurisdiction.* 13

 2. *Superior Court Jurisdiction.* 15

D.	<u>WSBA and the WSBA Washington Lawyer Discipline System.</u>	16
	1. <i>Washington State Bar Association is an Integrated Bar Association.</i>	16
	2. <i>The WSBA Is a Monopoly.</i>	17
	3. <i>Primary Purpose of the WSBA to Discipline Lawyers.</i>	18
	4. <i>The WSBA Lawyer Discipline System.</i>	19
E.	<u>Eugster’s Civil Rights Action and Declaratory Judgment Action Have Not Been, and Are Not, Vested in WSBA Washington Lawyer Discipline System.</u>	20
	1. <i>Supreme Court Authority Over the WSBA.</i>	22
F.	<u>Vesting of Lawyer Civil Rights Action Claims Against WSBA in the WSBA Discipline System is Prohibited and Impossible.</u>	23
	1. <i>One Cannot Be a Judge in His Own Case.</i>	23
	2. <i>Special Legislation.</i>	24
	3. <i>WSBA’s Monopoly Power over the Practice of Law.</i>	24

G.	<u>Trial Court Dismissal under</u>	
	<u>CR 12(b)(6)</u>	25
VII.	CONCLUSION.....	26

TABLE OF AUTHORITIES

Cases

<i>Burton v. Lehman</i> , 153 Wash. 2d 416, 422, 103 P.3d 1230 (2005)	7
<i>Crosby v. County of Spokane</i> , 137 Wash. 2d 296, 301, 971 P.2d 32 (1999)	6
<i>FutureSelect Portfolio Mgmt., Inc. v. Tremont Grp. Holdings, Inc.</i> , 180 Wash. 2d 954, 962, 331 P.3d 29 (2014)	7
<i>Girard v. Klopfenstein</i> , 930 F.2d 738 (9 th Cir. 1991).	11, 12
<i>Goldberg v. Kelly</i> , 397 U.S. 254, 271, [] (1970)	12
<i>Gorman v. Garlock, Inc.</i> , 155 Wash. 2d 198, 215, 118 P.3d 311 (2005)	7
<i>In re Murchison</i> , 349 U.S. 133, 136, [] (1955)	12
<i>North Carolina State Board of Dental Examiners v. Federal Trade Commission</i> , 547 U.S. ___, 135 S. Ct. 1101 (2015).	17, 24
<i>Robinson v. City of Seattle</i> , 119 Wash. 2d 34, 57-63, 830 P.2d 318 (1992)	1, 9
<i>Rogoski v. Hammond</i> , 9 Wash. App. 500, 513 P.2d 285 (1973)	12
<i>State ex rel. Burleigh v. Johnson</i> , 31 Wash. App. 704, 708, 644 P.2d 732 (1982)	12

Tenore v. AT & T Wireless Servs.,
136 Wash. 2d 322, 330, 962 P.2d 104 (1998) 7

Wright v. Colville Tribal Enterprise Corp.,
127 Wash. App. 644, 111 P.3d 1244 (2005) 6

Constitutional Provisions

42 U.S.C. § 1983 1, 2, 7-9, 23

Wash. Const. art. I, § 43 (10) 14

Wash. Const. art. II, § 28 24

Wash. Const. art. IV, § 1 13

Wash. Const. art. IV, § 30 13

Wash. Const. art. IV, § 4 14

Wash. Const. art. IV, § 6 9, 15, 20, 21, 26

Wash. Const. article IV, § 11 20, 21

Wash. Const. article IV, § 12 20

Statutes

RCW 19.86.040 18, 24

RCW 2.04.010 14

RCW 2.04.020 14

RCW 2.06.010 13

RCW 2.06.030 13

RCW 2.08.010.....	15, 26
RCW 2.08.030.....	15
RCW 2.48.010.....	16
RCW 2.48.060.....	18
RCW 2.48.160.....	17
RCW 2.48.170.....	17
RCW 7.24.010.....	9
RCW Ch. 24	1
RCW Ch. 7.24.....	9

Rules and Regulations

CR 12(b)(1)	1, 2, 6
CR 12(b)(6)	1, 2, 6, 25
ELC 1.2.....	19
GR 12.3.....	25
RPC 8.5©	19

Other Authorities

1933 Wash. Sess. Laws 94.....	16
Henry J. Friendly, <i>Some Kind of Hearing</i> , 123 U. PA. L. REV. 1267, 1279 (1975)	10

James Madison, FEDERALIST NO. 10
(November 23, 1787) 10

John V. Orth, DUE PROCESS OF LAW, A BRIEF HISTORY
13-32 (University Press of Kansas, 2003) 10

Martin H. Redish and Lawrence C. Marshall, *Adjudicatory
Independence and the Values of Procedural Due Process*,
95 YALE L.J. 455, 504-05 (1985-1986) 11

I. INTRODUCTION

Stephen Kerr Eugster commenced this Civil Rights Act, 42 U.S.C. § 1983 action and Washington Declaratory Judgments Act action in the Spokane County Superior Court in and for the State of Washington. The court has jurisdiction of the action (a) Civil Rights (*Robinson v. City of Seattle*, 119 Wash .2d 34, 57-63, 830 P.2d 318 (1992)) and (b) declaratory judgments (RCW Ch. 24).

The court dismissed the case against defendants as to a damages claim under CR 12(b)(6) - failure to state a claim. But then, the court dismissed the remainder of the claims under CR 12(b)(1) - lack of subject matter jurisdiction. In doing so, the court was of the view the Washington State Bar Association (WSBA) Washington Lawyer Discipline System¹ had exclusive jurisdiction of Eugster's claims.

The crux of Eugster's complaint is the Discipline System, in and of itself, is unconstitutional under the Fifth and

¹ Sometimes referred to as "Discipline System" or "WSBA Lawyer Discipline System."

Fourteenth Amendments to the United States Constitution and the Civil Rights Act, because it violates Eugster's right to procedural due process of law.

II. ASSIGNMENTS OF ERROR

A. Assignments of Error.

No. 1 Eugster assigns error to the decision of the trial court under CR 12(b)(1) dismissing his Civil Rights Action in Superior Court for lack of jurisdiction over the subject matter.

No. 2 Eugster also assigns error to the decision of the trial court under CR 12(b)(6) which dismissed his Civil Rights Action for damages for failure to state a claim.

B. Issues Presented.

Issue 1 Whether the jurisdiction of a lawyer's Civil Rights action under 42 U.S.C. § 1983 and the Washington Constitution against the WSBA are within the exclusive jurisdiction of the WSBA Washington Discipline System.

Issue 2 Whether, if so, such exclusive jurisdiction violates the lawyer's Civil Rights under 42 U.S.C. § 1983, the Washington Constitution and other laws of the state of Washington.

III. STATEMENT OF THE CASE

Eugster, on September 11, 2014, was retained by Verdelle G. O'Neill, a resident of Spokane Valley, Washington. CP 124. On September 23, 2014, Cheryl Rampley, a niece-in-law of Verdelle G. O'Neill, filed a grievance with the WSBA against Plaintiff. *Id.* Eugster received the grievance from the WSBA on October 1, 2014. *Id.* On October 27, 2014, Plaintiff responded to the grievance. *Id.*

On November 21, 2014, Plaintiff received a letter dated November 18, 2014 from Kevin Bank, Managing Disciplinary Counsel, that he had "been assigned to complete this investigation." That same day, November 21, 2014, Plaintiff received a copy of Ms. Rampley's response to Plaintiff's response of October 27, 2014. Plaintiff responded to the Rampley response on November 23, 2014. By letter dated December 18, 2014, Kevin Bank, Managing Disciplinary Counsel, forwarded correspondence dated December 8, 2014 from Ms. Rampley. CP 124.

On December 25, 2014, Plaintiff responded to the Rampley correspondence of December 8, 2014. The Defendant's

complaints about Eugster's conduct related to matters which all related to the materials previously furnished to the WSBA and materials provided to the WSBA in Eugster's letter of December 25, 2014. CP 125.

In addition, Eugster in his letter of December 25, 2014, asked Kevin Bank to tell him what he was doing wrong so that matters could be corrected. *Id.*

On March 12, 2015, Eugster commenced an action in United States District Court for the Western District of Washington against WSBA and various officers and the justices of the Washington Supreme Court, No. 2:15-cv-00375-JLR. The subject of the action is the constitutionality of the Integrated Bar, the WSBA, under the First and Fourteenth Amendments to the United States Constitution or, stated another way, whether Eugster's fundamental right not to associate was being violated by his compelled membership in the WSBA and that Eugster's freedom of speech rights were being violated by his compelled dues to the WSBA. CP 125.

Shortly after the filing of the complaint, on April 3, 2015, Vanessa Norman, an investigator for the WSBA, informed

Plaintiff that she had been assigned to investigate the Rampley grievance. Plaintiff recalls meeting with Ms. Norman at his office on or about April 13, 2015. CP 125 - 126.

By letter dated April 21, 2015, Francesca D'Angelo, Disciplinary Counsel, advised Eugster she had been assigned to complete the investigation of the Rampley grievance. CP 126. On April 22, 2015, Eugster, via email, provided further materials which were requested by Ms. D'Angelo concerning his representation of Verdelle G. O'Neill. Further requests were made and timely responded to.

Eugster provided Kevin Bank with considerable material concerning Plaintiff's efforts for Mrs. O'Neill on December 25, 2014.

Verdelle G. O'Neill died in Spokane, Washington on August 18, 2015.

On November 5, 2015, by letter dated November 3, 2015, Eugster was notified by Defendant D'Angelo that she was going to ask a Review Committee to order the matter (Rampley grievance) to hearing. By the time this action was filed, Defendant D'Angelo had asked the Review Committee to order

the matter to hearing asserting various RPC violations by Eugster. The violations all had to do with matters which the WSBA and Kevin Bank knew about as a result of Eugster's grievance responses provided before December 25, 2014, as a result of materials sent that day which also covered the time before December 25, 2104. CP 127.

Defendant D'Angelo's claims of ethics violations by Eugster relate to matters the WSBA and Defendant D'Angelo were aware of by the time of Eugster's response to Kevin Bank on December 25, 2014. CP 127.

IV. STANDARDS OF REVIEW

A. Dismissal under CR 12(b)(1).

CR 12(b)(1) provides for dismissal of an action due to lack of subject matter jurisdiction. A trial court's decision that it lacked subject matter jurisdiction is a question of law that the court reviews de novo. *Crosby v. County of Spokane*, 137 Wash. 2d 296, 301, 971 P.2d 32 (1999); *Wright v. Colville Tribal Enterprise Corp.*, 127 Wash. App. 644, 111 P.3d 1244 (2005).

B. Dismissal under CR 12(b)(6).

The court conducts de novo review of dismissals under CR

12(b)(6). *FutureSelect Portfolio Mgmt., Inc. v. Tremont Grp. Holdings, Inc.*, 180 Wash. 2d 954, 962, 331 P.3d 29 (2014).

Dismissal under CR 12(b)(6) is appropriate only if it "appears beyond doubt" that the plaintiff cannot prove any set of facts that would justify recovery. *Burton v. Lehman*, 153 Wash. 2d 416, 422, 103 P.3d 1230 (2005) (quoting *Tenore v. AT & T Wireless Servs.*, 136 Wash. 2d 322, 330, 962 P.2d 104 (1998)). The court accepts all facts alleged in the complaint as true, and we "may consider hypothetical facts not included in the record." *Burton* at 422, (quoting *Tenore*, 136 Wn.2d at 330). But "[i]f a plaintiff's claim remains legally insufficient even under his or her proffered hypothetical facts, dismissal pursuant to CR 12(b)(6) is appropriate." *Gorman v. Garlock, Inc.*, 155 Wash. 2d 198, 215, 118 P.3d 311 (2005).

V. SUMMARY OF ARGUMENT

The Spokane County Superior Court has jurisdiction over the claims by lawyer Stephen K. Eugster.

The WSBA Discipline System does not have jurisdiction to decide claims by a lawyer against it for claimed violations of the Civil Rights Act, 42 U.S.C. § 1983. Such jurisdiction is not

provided for under the Rules for the Enforcement of Lawyer Conduct (ELC). Nor can it be.

Jurisdiction of such claims is within the original jurisdiction of the superior court of Washington. The superior court jurisdiction as to such Civil Rights Act, 42 U.S.C. § 1983 claims has not been “vested by law” in the WSBA Discipline System and cannot be so vested because the WSBA Discipline System is not a “court.”

VI. ARGUMENT

A. **Civil Rights Act Claims of Appellant; Jurisdiction of the Superior Court of the State of Washington.**

Eugster’s action against Defendant WSBA and others (collectively WSBA) is an action under the United States Civil Rights Act, 42 U.S.C. § 1983, (Civil Rights Act) for violation of Eugster’s right to procedural due process of law under the Fifth and Fourteenth Amendments to the United States Constitution, and for the violation of his rights under the Washington State Constitution and laws of the state of Washington.

In the action, Eugster seeks declaratory judgment of his rights, injunction and damages. The declaratory judgments are sought pursuant to the Washington Uniform Declaratory

Judgments Act, RCW Ch. 7.24.

The action was brought in the Spokane County Superior Court because the court has original jurisdiction over the matter. Wash. Const. art. IV, § 6.

The court's original jurisdiction includes jurisdiction of an action under 42 U.S.C. § 1983 because this is an action for deprivation of rights, privileges, and immunities secured by the United States Constitution. *See Robinson v. City of Seattle, supra*, (noting state courts have jurisdiction in actions brought under 42 U.S.C. § 1983).

The court also has jurisdiction of the declaratory judgments action under RCW Ch. 7.24 and specifically, RCW 7.24.010, which provides:

Courts of record within their respective jurisdictions shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed. An action or proceeding shall not be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment or decree. [Emphasis added.]

///

///

B. The Crux of Eugster's Action: Right of Procedural Due Process of Law.

Procedural due process requires a number of procedural safeguards, or perhaps steps – notice, hearing, right to counsel, and so on. These are important. But overall, the most important element of procedural due process is a “fair hearing” and “impartial tribunal.”

In an oft cited article “*Some Kind of Hearing*,” Judge Friendly of the Second Circuit lists the elements of a fair hearing, the first and most basic is the right of an impartial decision maker. Henry J. Friendly, *Some Kind of Hearing*, 123 U. PA. L. REV. 1267, 1279 (1975).

The essence and meaning of procedural due process is to be found in the history of a legal maxim that no one can be a judge in his own case.²

This core principal is included in James Madison, FEDERALIST NO. 10 (November 23, 1787).

No man is allowed to be a judge in his own cause, because his interest would certainly bias his judgment, and, not improbably, corrupt his

² John V. Orth, DUE PROCESS OF LAW, A BRIEF HISTORY 13-32 (University Press of Kansas, 2003).

integrity.

With equal, nay with greater reason, a body of men are unfit to be both judges and parties at the same time.

Professor Martin H. Redish and (now professor) Lawrence

C. Marshall discuss this basic requirement in *Adjudicatory*

Independence and the Values of Procedural Due Process, 95 YALE

L.J. 455, 504-05 (1985-1986). In their conclusion, they tell what

they have learned:

We have been unable to envision even one situation in which the values of due process can be achieved without the participation of an independent adjudicator. . . . Once such an adjudicator is given power to implement procedures that she finds necessary, the Court can rest a bit more assured that the values of procedural due process will be protected. *Id.* at 504.

. . . amidst all of the debate about what interests trigger due process, courts and commentators have ignored the fact that without prophylactic protection of adjudicatory independence, the Constitution's majestic guarantee of due process of law may in reality be no more than a deceptive facade. *Id.* at 505. [Emphasis added.]

In *Girard v. Klopfenstein*, 930 F.2d 738 (9th Cir. 1991), the court addressed concerns about persons facing certain ASCS [Agricultural Stabilization and Conservation Service] debarment proceedings. The court said: "The concept of fundamental

fairness includes the right to an impartial decision maker. See *Goldberg v. Kelly*, 397 U.S. 254, 271, [] (1970) ('an impartial decision maker is essential'); *In re Murchison*, 349 U.S. 133, 136, [] (1955) ('no man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome')." The court concluded that "[t]he requirement of fundamental fairness guarantees a fair hearing before an impartial trier of fact to persons facing . . . debarment proceedings." *Girard v. Klopfenstein*, 930 F.2d at 743.

And, in Washington, we find this in *State ex rel. Burleigh v. Johnson*, 31 Wash. App. 704, 708, 644 P.2d 732 (1982):

In *Rogoski v. Hammond*, 9 Wash. App. 500, 513 P.2d 285 (1973), the court approved the use of show cause proceedings in prejudgment attachment cases so long as due process requirements were satisfied. The opinion states at 506, 513 P.2d 285:

The minimum requirements are these:

- (1) timely and adequate notice of hearing on the probable validity of the creditor's claim which states the basis for the claim and allows the debtor adequate time to prepare for the hearing;
- (2) an independent and impartial decision maker;
- (3) the right to appear personally at the hearing, with or without retained counsel;
- (4) the right at the hearing to confront and cross-examine any adverse witness and to present

evidence and oral argument in support of his claim or defense;

(5) the right to a decision based on applicable legal rules and evidence adduced at the hearing.” [Emphasis added.]

C. The State of Washington Court System.

The Washington system of courts and their jurisdiction is specifically provided for in the Washington Constitution, Article IV, The Judiciary.

Wash. Const. art. IV, § 1 Judicial Power, Where Vested. The judicial power of the state shall be vested in a supreme court, superior courts, justices of the peace, and such inferior courts as the legislature may provide.

In addition, the judicial power is also vested in the court of appeals, Wash. Const. art. IV, § 30, Court of Appeals. “In addition to the courts authorized in section 1 of this article, judicial power is vested in a court of appeals, which shall be established by statute.”

See RCW 2.06.030 (General powers and authority—Transfers of cases—Appellate jurisdiction, exceptions—Appeals); *and see* RCW 2.06.010 “ There is hereby established a court of appeals as a court of record. . . .”

1. *Supreme Court Jurisdiction.*

Jurisdiction of the Washington Supreme Court is provided for

under Wash. Const. art. IV, § 4.

Section 4 Jurisdiction. The supreme court shall have original jurisdiction in habeas corpus, and quo warranto and mandamus as to all state officers, and appellate jurisdiction in all actions and proceedings, excepting that its appellate jurisdiction shall not extend to civil actions at law for the recovery of money or personal property when the original amount in controversy, or the value of the property does not exceed the sum of two hundred dollars (\$200) unless the action involves the legality of a tax, impost, assessment, toll, municipal fine, or the validity of a statute. The supreme court shall also have power to issue writs of mandamus, review, prohibition, habeas corpus, certiorari and all other writs necessary and proper to the complete exercise of its appellate and revisory jurisdiction. Each of the judges shall have power to issue writs of habeas corpus to any part of the state upon petition by or on behalf of any person held in actual custody, and may make such writs returnable before himself, or before the supreme court, or before any superior court of the state or any judge thereof.

In addition, the Supreme Court has original jurisdiction in matters of redistricting under Wash. Const. art. I, § 43 (10):

(10) The supreme court has original jurisdiction to hear and decide all cases involving congressional and legislative redistricting.

The jurisdiction of the Supreme Court is also legislatively set out and confirmed in RCW 2.04.010. That the Supreme Court is a court of record is found in RCW 2.04.020:

The supreme court shall be a court of record, and shall

be vested with all power and authority necessary to carry into complete execution all its judgments, decrees and determinations in all matters within its jurisdiction, according to the rules and principles of the common law, and the Constitution and laws of this state.

2. *Superior Court Jurisdiction.*

The jurisdiction of the Superior Court is provided under Wash. Const. art. IV, § 6.

Section 6. Jurisdiction of Superior Courts. Superior courts and district courts have concurrent jurisdiction in cases in equity. The superior court shall have original jurisdiction in all cases at law which involve . . . and for such special cases and proceedings as are not otherwise provided for. The superior court shall also have original jurisdiction in all cases and of all proceedings in which jurisdiction shall not have been by law vested exclusively in some other court;

Superior Court jurisdiction is also provided for and limited by RCW 2.08.010.

That the superior court is a court of record is provided in RCW 2.08.030:

The superior courts are courts of record, and shall be always open, except on nonjudicial days. They shall hold their sessions at the county seats of the several counties, respectively, and at such other places within the county as are designated by the judge or judges thereof with the approval of the chief justice of the supreme court of this state and of the governing body of the county. They shall hold regular and special sessions in the several counties of this state at such

times as may be prescribed by the judge or judges thereof.

D. WSBA and the WSBA Washington Lawyer Discipline System.

To understand why there has not been, and can be no vesting of jurisdiction of Eugster's action against the WSBA and associated Defendants in the WSBA Discipline System requires an understanding of the WSBA.

1. *Washington State Bar Association is an Integrated Bar Association.*

The WSBA is an agency of the state created by the State Bar Act. 1933 Wash. Sess. Laws 94. RCW 2.48.010 provides:

There is hereby 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, hereinafter designated as the state bar, which 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.

The WSBA is an "integrated bar association." As such, every lawyer who desires to practice law in the state of Washington must be admitted to the bar of the Washington State Supreme Court, must be a member of the association, and must

pay annual dues to the association. RCW 2.48.160.³

2. *The WSBA Is a Monopoly.*

The WSBA is also a monopoly. It has complete authority over the practice of law in the state of Washington. Only active members of the WSBA have the right to practice law.

RCW 2.48.170 provides:

No person shall practice law in this state subsequent to the first meeting of the state bar unless he or she shall be an active member thereof as hereinbefore defined: PROVIDED, That a member of the bar in good standing in any other state or jurisdiction shall be entitled to appear in the courts of this state under such rules as the board of governors may prescribe.

See also, RCW 2.48.160.

As to whether this monopoly has an impact concerning the legality of the WSBA is a question for another time, perhaps.

See, North Carolina State Board of Dental Examiners v. Federal

³ This section provides:

(Suspension for nonpayment of fees.)
Any member failing to pay any fees after the same become due, and after two months' written notice of his or her delinquency, must be suspended from membership in the state bar, but may be reinstated upon payment of accrued fees and such penalties as may be imposed by the board of governors, not exceeding double the amount of the delinquent fee.

Trade Commission, 547 U.S. ___, 135 S. Ct. 1101 (2015); *see also*, RCW 19.86.040 (“It shall be unlawful for any person to monopolize, or attempt to monopolize or combine or conspire with any other person or persons to monopolize any part of trade or commerce”).

3. *Primary Purpose of the WSBA to Discipline Lawyers.*

The primary purpose of the WSBA is to discipline lawyers who practice law in the state of Washington. RCW 2.48.060 provides:

The said board of governors shall likewise have power, in its discretion, from time to time to adopt rules, subject to the approval of the supreme court, fixing the qualifications, requirements and procedure for admission to the practice of law; and, with such approval, to establish from time to time and enforce rules of professional conduct for all members of the state bar; and, with such approval, to appoint boards or committees to examine applicants for admission; and, to investigate, prosecute and hear all causes involving discipline, disbarment, suspension or reinstatement, and make recommendations thereon to the supreme court; and, with such approval, to prescribe rules establishing the procedure for the investigation and hearing of such matters, and establishing county or district agencies to assist therein to the extent provided by such rules: PROVIDED, HOWEVER, That no person who shall have participated in the investigation or prosecution of any such cause shall sit as a member of any board or committee hearing the same.

The WSBA Discipline System is the primary purpose of the WSBA. Over 48 percent of dues revenues go to operations of the discipline system. The discipline system is conducted in the premises of the WSBA in Seattle, Washington. CP 92 - 93.

4. *The WSBA Lawyer Discipline System.*

The jurisdiction of the discipline system is defined by the Rules for the Enforcement of Lawyer Conduct (ELC). The system's disciplinary authority is set forth in ELC 1.2:

Except as provided in RPC 8.5©^[4] any lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction and these Rules for Enforcement of Lawyer Conduct, regardless of where the lawyer's conduct occurs."

Thus, the subject matter jurisdiction of the system is lawyer discipline. The personam jurisdiction is the lawyer admitted to practice in "this jurisdiction." No further jurisdiction is provided.

The WSBA Discipline System is not a "court" as that term is used in the Washington Constitution. A court can only exist if the legislature says it exists.

⁴ RPC 8.5(c) currently does not exist as far as this author can find.

Wash. Const. article IV, § 11 Courts of Record.

The supreme court and the superior courts shall be courts of record, and the legislature shall have power to provide that any of the courts of this state, excepting justices of the peace, shall be courts of record.

Wash. Const. article IV, § 12 Inferior Courts.

The legislature shall prescribe by law the jurisdiction and powers of any of the inferior courts which may be established in pursuance of this Constitution.

The legislature has not “prescribed by law the jurisdiction and powers of an inferior court” in regards to the WSBA Washington Lawyer Discipline System.

Not only is the WSBA not a “court” because legislation has not created it as such, it cannot be said to be a court because the Supreme Court’s estimation of its authority over the discipline of lawyers.

Such is expression is not a vesting by law (Wash. Const. art. IV, § 6) and it is not a creation of a court by the legislature under Wash. Const. art. IV, § 12.

E. Eugster’s Civil Rights Action and Declaratory Judgment Action Have Not Been, and Are Not, Vested in WSBA Washington Lawyer Discipline System.

Here, there is no vesting of jurisdiction over a lawyer’s Civil Rights Action and declaratory judgment action in the

WSBA Discipline System. Wash. Const. art. IV, § 6 makes certain that “The superior court shall also have original jurisdiction in all cases and of all proceedings in which jurisdiction shall not have been by law vested exclusively in some other court.”

The WSBA Discipline System is specifically limited to lawyer discipline.

The term “court” means a court of record. Wash. Const. art. IV, § 11. “The supreme court and the superior courts shall be courts of record, and the legislature shall have power to provide that any of the courts of this state, excepting justices of the peace, shall be courts of record.”

Is the WSBA Discipline System a “court” as that term is used in the state constitution? Next, if it is, have Eugster’s claims “been by law vested” in that court?

The WSBA Discipline System is not a “court.” The constitution refers to “some other court.” The WSBA Discipline System is not a court. It has not been by law made into a court. It was not a court within the meaning of the constitution.

Not only is the system not a court, there has been no

“vesting by law” of Eugster’s claims in the fictitious court. There is no law in Washington which has vested such cases in the WSBA.

The bar will reason that the vesting was accomplished somewhere along the line of cases where the supreme court opined as to its relation to the WSBA. But, any such argument fails for several reasons which will be discussed later in this brief.

1. *Supreme Court Authority Over the WSBA.*

Counsel for the WSBA and other Defendants claim the Supreme Court says it has authority over the WSBA and that means the WSBA Lawyer Discipline System has exclusive jurisdiction over Eugster’s Civil Rights Action claims. There is no logic to this. Of course the court has final authority as to whether a lawyer is admitted to the bar of the Supreme Court. It does not mean that the WSBA Discipline System has jurisdiction over Civil Rights Action claims.

Further, there has been no vesting by law of jurisdiction in the Discipline System. Vesting by law means a legislative action. The Supreme Court does not have authority to enact a law which vests jurisdiction in the WSBA discipline

System.

Another reason why there is no vesting by law is due to the fact the Discipline System is not a court. Courts are defined in the constitution. The Discipline System is not a court. It does not have the wherewithal to bind the litigants to anything other than lawyer discipline. Such a decision does not create a judgment of any kind which can be enforced by a court. There is nothing which allows a decision to be registered with a court, the superior court.

F. Vesting of Lawyer Civil Rights Action Claims Against WSBA in the WSBA Discipline System is Prohibited and Impossible.

Assuming for the sake of argument the court concludes Eugster's **Claims under 42 U.S.C. § 1983** are vested in the WSBA Lawyer Discipline System; such vesting would be in error for a number of reasons.

1. One Cannot Be a Judge in His Own Case.

The primary constitutional point Eugster is making is that he has a right under the Fifth and Fourteenth Amendments to an impartial tribunal. Allowing the WSBA to be a judge in its own case as to Eugster's claims would be an obvious violation of

such right, and an egregious one at that.

2. Special Legislation.

Wash. Const. art. II, § 28 prohibits special legislation.

Were the court to say a lawyer's Civil Rights action against the WSBA and others would amount to special legislation in that the decision would mean that a lawyers Civil Rights Action against the WSBA would be limited; that is, limited to the WSBA's Lawyer Discipline System.

Wash. Const. art. II, § 28 provides:

The legislature is prohibited from enacting any private or special laws in the following cases:

...

17. For limitation of civil or criminal actions.

3. WSBA's Monopoly Power over the Practice of Law.

The WSBA may be determined to be an illegal monopoly sometime soon. *See, North Carolina State Board of Dental Examiners v. Federal Trade Commission*, 547 U.S. ___, 135 S. Ct. 1101 (2015); *and see*, RCW 19.86.040 (It shall be unlawful for any person to monopolize, or attempt to monopolize or combine or conspire with any other person or persons to monopolize any part of trade or commerce.)

In any event, it is a monopoly now. This monopoly power would be increased substantially if the WSBA is given the right to adjudicate on its own whether it is violating a lawyer's civil rights by compelling litigation of the rights in its own forum.

It would seem that any action which closed off the right of a lawyer to question the propriety of the WSBA Discipline System would in essence completely insulate the WSBA from questioning its Discipline System.

G. Trial Court Dismissal under CR 12(b)(6).

The trial court said the Defendants had immunity. The court referred to GR 12.3 Immunity:

All boards, committees, or other entities, and their members and personnel, and all personnel and employees of the Washington State Bar Association, acting on behalf of the Supreme Court under the Admission to Practice Rules, the rules for Enforcement of Lawyer Conduct, and the Disciplinary Rules for Limited Practice Officers, shall enjoy quasi-judicial immunity if the Supreme Court would have immunity in performing the same functions.

This section does not create immunity in WSBA and the other Defendants. GR 12.3 Immunity only applies as to quasi-judicial immunity of the Supreme Court. The Defendants do not have immunity because no judicial immunity applies. The Supreme

Court does not perform prosecutorial functions.

Also, if the trial court was of the opinion it did not have jurisdiction, it could not have exercised jurisdiction to dismiss the damages claim under the Civil Rights Act.

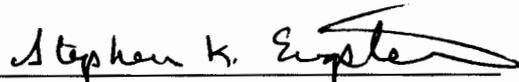
VII. CONCLUSION

The Superior Court of the State of Washington in and for Spokane County has jurisdiction of the action commenced by Eugster against the WSBA and the other Defendants. Such jurisdiction has not been “vested by law in another court.” Wash. Const. art. IV, § 6 and RCW 2.08.010.

The decisions of the trial court should be overruled and the case remanded.

Respectfully submitted this 17th day of June, 2016.

EUGSTER LAW OFFICE PSC

By 
Stephen K. Eugster, WSBA #2003
Attorney for Appellant

PROOF OF SERVICE

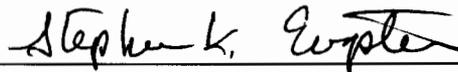
I hereby certify that on June 17, 2016, I emailed the foregoing document (Brief of Appellant) to the attorneys for the Defendants in these proceedings at their email addresses below and as previously agreed by the attorneys in this action for service.

Paul J. Lawrence
Pacifica Law Group LLP
1191 2nd Ave Ste 2000
Seattle, WA 98101-3404
paul.lawrence@pacificalawgroup.com

Jessica Anne Skelton
Pacifica Law Group LLP
1191 2nd Ave Ste 2000
Seattle, WA 98101-3404
jessica.skelton@pacificalaw-
group.com

Taki V. Flevaris
Pacifica Law Group LLP
1191 2nd Ave Ste 2000
Seattle, WA 98101-3404
taki.flevaris@pacificalawgroup.com

June 17, 2016



Stephen K. Eugster, WSBA # 2003

\\SPOKANEMAIN\Wip\A_A_Eugster\Case II\Appeal\2016_06_17_Brief of Appellant.wpd