

RECEIVED  
SUPREME COURT  
STATE OF WASHINGTON

2006 SEP 14 P 3:09

BY C. J. MERRITT

  
CLERK

No. 200,388-5

---

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

---

IN THE MATTER OF THE  
DISABILITY PROCEEDINGS AGAINST

JOHN M. KEEFE

An Attorney at Law

Bar Number 18371

---

OPENING BRIEF OF RESPONDENT KEEFE

---

Attorney for Respondent Keefe

Kurt M. Bulmer, WSBA # 5559

Attorney at Law

740 Belmont Pl. E., # 3

Seattle, WA 98102

(206) 325-9949

**TABLE OF CONTENTS**

Table of Authorities .....3

Assignment of Error .....5

Issues Pertaining to Assignments of Error.....5

Statement of Case .....5

Argument ..... 10

    Standard of Review ..... 10

    Discussion ..... 12

Conclusion.....25

## TABLE OF AUTHORITIES

### Cases

<i>In re Disability Proceedings Against Diamondstone,</i> 153 Wn.2d 430, 105 P.3d 1 (2005) .....	12
<i>In re Disciplinary Proceeding Against</i> <i>Noble,</i> 100 Wn.2d 88, 667 P.2d 608 (1983) .....	12
<i>In re the Matter of Gordon McLean Campbell,</i> 74 Wn.2d 276, 444 P.2d 784 (1968) .....	22, 25
<i>In the Matter of Disciplinary Proceedings</i> <i>Against Jeffrey G. Poole,</i> 156 Wn.2d 196, 125 P.3d 954 (2006) .....	11
<i>In re Haley,</i> 156 Wn.2d 324, 126 P.3d 1262 (2006) .....	11
<i>In re Meade,</i> 103 Wn.2d 374, 693 P.2d 173 (1985) .....	19, 20, 21
<i>In re Ryan,</i> 97 Wn.2d 284, 644 P.2d 675 (1982) .....	18, 23, 25

### **Court Rules and Other Authorities**

ELC 8.2 .....	8
ELC 8.3 .....	8
ELC 8.3(a) .....	8, 18
ELC 8.3(b) .....	12
ELC 8.3(d)(2) .....	8, 15
ELC 8.3(d)(3) .....	8
ELC 8.3(d)(7) .....	13, 15

ELC 8.3(d)(7)(b).....	15
ELC 8.3(d)(8) .....	15
ELC 8.7.....	15
RPC 1.2 .....	8
American Bar Association’s Standards for Imposing Lawyer Sanctions (“ <u>ABA Standards</u> ”) (1991 ed. & Feb. 1992 Supp.) .....	12

This is an attorney disability proceeding case involving attorney John M. Keefe (Keefe). The Disciplinary Board, by a 9-3 vote, has recommended that Keefe be transferred to disability inactive status. Keefe appeals that recommendation to this court.

### **ASSIGNMENTS OF ERROR**

- The Board erred when it found that Keefe was not able to defend himself and was not able to adequately practice law.

### **ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

- Did the Board commit error when it found that the record supported a determination that Keefe could not defend himself in his disciplinary proceeding?

- Did the Board commit error when it found that the record supported a determination that Keefe could not adequately practice law?

- Did the Board committee error when it recommended that Keefe be transferred to disability status?

### **STATEMENT OF THE CASE**

Keefe is an attorney admitted to the practice of law in this state. FFCLA 6.<sup>1</sup> Keefe was subject to a disciplinary proceeding held in April 2003. Keefe represented himself in that proceeding. The Association was

represented in the proceeding by Special Disciplinary Counsel Lawrence Schwerin (Schwerin). Attorney Mark Baum was the hearing officer. FFCLA 6 and 12.

During the course of the discovery in the underlying case Keefe submitted interrogatories referencing “implanted ear” and “hearing devices,” asked about “mind scanning technology” and “mind scanning devices” as well asking about several individuals. Schwerin, testified in the supplemental proceedings that in his opinion there was little or no connection between this discovery and the case filed against Keefe. FFCLA 6 – 8.

Ultimately, on December 19, 2003, the hearing officer in the disciplinary proceeding recommended a suspension be imposed. Keefe appealed that recommendation to the Disciplinary Board and filed briefing and a declaration in support of that appeal. Exhibit 15. In that motion and declaration Keefe asserted:

- Ten minutes into the disciplinary proceeding during Keefe’s opening statement, the hearing officer said “You see Susie Matyas smiling.” Matyas was a person Keefe attended school with from kindergarten through high school.
- Later in the day, after the Association had presented its first witness, Keefe stated in a low voice he thought would not be heard

---

<sup>1</sup> The Hearing Officer’s Findings of Fact, Conclusions of Law and Hearing Officer’s Recommendation (Amended) are referred to as FFCLA and are found at the Clerk’s Decision Papers, pages 31 through 39.

that “This case, this entire proceeding is fixed.” Moments later the hearing officer said “It is, it’s the Christian Right mafia.”

- After a video deposition of Tom Cacciola was presented the hearing officer asserted that “Tom Cacciola is dead.”
- When reviewing declarations of witnesses submitted by Keefe, Keefe asserted that the witnesses had been intimidated and the hearing officer said in what appeared to be low voice, “They are. It’s Butler Shaffer and Cathey Carpenter. It’s her.”
- At the end of the day, while preparing to leave, Schwerin said “I am going to destroy John Dippold for referring the case to me.” Dippold is a lawyer at Carney Badley Spellman. Keefe asserted that Dippold had, over the years, interrupted phone conversations on a number of occasions and on one occasion, July 28, 2003, Dippold had asserted that he would destroy those who stood in front of him and that when needing a million dollars he would “[J]ust go to Microsoft, I’m the devil.” Keefe asserted in his brief that the Carney Badley law firm is part of the Christian Right mafia.
- At the end of the hearing Schwerin stated to Keefe “Submit, and we’ll go easy on you.” In his brief Keefe argued that a “submitted lawyer” is a term having special significance because it means “submission to the policies and principles of the Christian Right, a dominant religious coalition in the United States that, as respondent has described in his declaration, controls the courts and bar associations in almost every geographical area in the country.” (Exhibit 15, page 29).
- When following up on issues after the hearing Keefe talked with someone who asserted he was Larry Schwerin but was not and that this same person had participated as Larry Schwerin in earlier telephone depositions and motions.
- In a later call, when discussing the case with the person who claimed to be Schwerin but was not, the person asserted that “You know, Smith Carney is running this.” Keefe understood the reference to be to Carney Badley & Spellman

At the supplemental disability proceedings Schwerin, Dippold and Baum denied the assertions attributed to them by Keefe.

Based on the brief and declaration, the Washington State Bar Association (WSBA or Association), pursuant to ELC 8.3, began the present supplemental disability proceedings against Keefe. FFCLA 3-4. Supplemental proceedings were order by the Chief Hearing Officer under ELC 8.3(a). Resolution of the underlying proceedings were deferred pending resolution of the disability allegations. ELC 8.2(d)(2). Consistent with ELC 8.3(d)(3) counsel was appointed for Keefe. The supplemental proceedings were held October 24 and 25, 2005. Keefe did not appear and his counsel, for reasons stated on the record, did not participate. FFCLA 5 and RP 7 -20.<sup>2</sup>

At the supplemental proceedings a Dr. Brain Grant was called to testify. He had not conducted an IME and never met Keefe. Nonetheless, based solely on the documents he had received he offered the opinion that Keefe did not have a grasp of reality, was “clearly delusional,” that

---

<sup>2</sup> The below signing counsel recognizes that his actions were of some controversy before the Disciplinary Board and are discussed in both the majority and dissenting opinions. Counsel explained his actions on the record as cited above and while that decision was difficult for him, he continues to believe that having reached the conclusion that he could not properly seek appointment of a guardian that his actions were consistent with his duties under RPC 1.2 (lawyer shall abide by a client’s decisions concerning the objectives of representation). As should be apparent from this briefing Keefe has now given new

Keefe's most likely diagnosis was paranoid schizophrenia and that his "suggested diagnosis" would cause him to conclude that there was a strong likelihood of impairment leading to inability to practice law...."

Dr. Grant acknowledged that he had not meet with Keefe, that this was unusual, that such meetings are customary and that it was "appropriate in my field, that it is ideal and proper to evaluate a person face to face, and not render an opinion on somebody that one has not evaluated and seen." He admitted that his motivations in rendering an opinion was to be of service to his client (the WSBA) so despite his prior statements about what was appropriate in his profession he "came up with an assessment." RP 117 – 118.

On January 9, 2006, the hearing officer filed his findings and conclusions finding that due to mental or physical incapacity Keefe was unable to defend himself in disciplinary proceedings without assistance of counsel and was not able to practice law because of mental or physical incapacity. He recommended that Keefe be transferred to disability status. FFCLA 13 -14.

The Disciplinary Board reviewed the matter and filed its opinions on May 3, 2006. Nine members of the Board found that due process had

---

instructions to counsel. If the court wishes, and upon its request, counsel will provide additional briefing on this issue.

occurred in connection with how appointed counsel had acted and that the process was fair; that the failure to take an IME would by itself justify transfer to disability status; that the record justified the recommendation; and that Keefe having asserted that the case should be transferred to other jurisdictions were a “flight of fancy.” Based on its conclusions, the majority recommended that Keefe be transferred to disability status. One member concurred stating that there was a clear preponderance of the evidence supporting the hearing officer’s recommendation and that Keefe can “clarify his mental capacity” by submitting to an IME.

Three members dissented recommending that the matter be remanded for further proceeding. The dissent questioned the proceeding since the mental health professional never met, let alone examined Keefe, that there had been the absence of adversarial proceedings and that while there was evidence of mental illness that does not automatically mean Keefe was incapable of representing clients.

This matter now comes before this court for review.

## **ARGUMENT**

### **Standard for Review**

The standard for review before this court is established law. The standard is:

This court exercises plenary authority in matters of attorney discipline. *In re Disciplinary Proceeding Against Carmick*, 146 Wn.2d 582, 593, 48 P.3d 311 (2002). We give considerable weight to the hearing officer's findings of fact, especially with regard to the credibility of witnesses, and we will uphold those findings so long as they are supported by 'substantial evidence.' See *In re Disciplinary Proceeding Against Guarnero*, 152 Wn.2d 51, 58, 93 P.3d 166 (2004) (citing ELC 11.12(b)). 'In reviewing these findings, we look at the entire record. However, 'we ordinarily will not disturb the findings of fact made upon conflicting evidence.'" *In re Disciplinary Proceeding Against Huddleston*, 137 Wn.2d 560, 568, 974 P.2d 325 (1999) (citation omitted) (quoting *In re Disciplinary Proceeding Against Miller*, 95 Wn.2d 453, 457, 625 P.2d 701 (1981)). [Additional language omitted.]

We review conclusions of law de novo which must be supported by the factual findings. See *Guarnero*, 152 Wn.2d at 59; see also ELC 11.12(b). In so doing, we give "serious consideration" to the Board's recommended sanction and generally affirm it "unless {the} court can articulate a specific reason to reject the recommendation." *Guarnero*, 152 Wn.2d at 59 (quoting *In re Disciplinary Proceeding Against McLeod*, 104 Wn.2d 859, 865, 711 P.2d 310 (1985)).

*In the Matter of Disciplinary Proceedings Against Jeffrey G. Poole*, 156 Wn.2d 196, 208, - 209, 125 P.3d 954 (2006). In accord is: *In the Matter of Disciplinary Proceedings Against Haley*, 156 Wn.2d 324, 333, 126 P.3d 1262 (2006)):

When a lawyer discipline decision by the Board is appealed, this court has 'plenary authority' on review. *In re Disciplinary Proceeding Against Whitt*, 149 Wn.2d 707, 716, 72 P.3d 173 (2003). While we 'do{} not lightly depart from the Board's recommendation,' we are 'not bound by it.'

*In re Disciplinary Proceeding Against Tasker*, 141 Wn.2d 557, 565, 9 P.3d 822 (2000). The court reviews conclusions of law de novo. *Whitt*, 149 Wn.2d at 716-17. We have 'the inherent power to promulgate rules of discipline, to interpret them, and to enforce them.' *In re Disciplinary Proceeding Against Stroh*, 97 Wn.2d 289, 294, 644 P.2d 1161 (1982) (emphasis added); see also ELC 2.1 (recognizing this court's 'inherent power to maintain appropriate standards of professional conduct').

Ordinarily, if misconduct is found, after applying the ABA Standards to discern the presumptive sanction and applying any relevant aggravating or mitigating factors, the court considers the revised *Noble* factors (*In re Disciplinary Proceeding Against Noble*, 100 Wn.2d 88, 95-96, 667 P.2d 608 (1983)), of "proportionally" and "degree of unanimity" in assessing the appropriateness of a given sanction. *Poole, supra*. But in this case the issue is not whether a sanction should be applied but rather whether the findings concerning Keefe's mental status should be affirmed. In making this decision the court looks to the "sufficiency of the evidence." *In re Disability Proceedings Against Diamondstone*, 153 Wn.2d 430, 437, 105 P.3d 1 (2005).

### **Discussion**

The rules covering disability proceedings are not completely clear in all of its aspects. The test to be applied is found at ELC 8.3(b):

In a supplemental proceeding, the hearing officer or panel determines if the respondent:

(1) is incapable of defending himself or herself in the disciplinary proceedings because of mental or physical incapacity;

(2) is incapable, because of mental or physical incapacity, of defending against the disciplinary charges without the assistance of counsel; or

(3) is currently unable to practice law because of mental or physical incapacity.

Pursuant to ELC 8.3(d)(7) the hearing officer determines:

(A) Capacity To Defend and Practice Law. If the hearing officer or panel finds that the respondent is capable of defending himself or herself and has the mental and physical capacity to practice law, the disciplinary proceedings resume.

(B) Capacity To Defend with Counsel. If the hearing officer or panel finds that the respondent is not capable of defending himself or herself in the disciplinary proceedings but is capable of adequately assisting counsel in the defense, the supplemental proceedings are dismissed and the disciplinary proceedings resume. If counsel does not appear on behalf of the respondent within 20 days of service of the hearing officer's decision, the Chair must appoint a member of the Association as counsel for the respondent in the disciplinary proceeding.

(C) Finding of Incapacity. If the hearing officer or panel finds that the respondent either does not have the mental or physical capacity to practice law, or is incapable of assisting counsel in properly defending a disciplinary proceeding because of mental or physical incapacity, the hearing officer or panel must recommend that the respondent be transferred to disability inactive status. The

procedures for appeal and review of suspension recommendations apply to recommendations for transfer to disability inactive status.

Accordingly, it appears the options open to the hearing officer in regards to the underlying proceeding was to find Keefe capable of defending the underlying case himself, not capable of defending the underlying case himself but capable of doing so with the assistance of counsel or not capable of defending the case even with assistance of counsel. If the hearing officer found him capable of defending himself or defending with the assistance of counsel then the supplemental proceedings are dismissed and the underlying case apparently proceeds. If the determination is that the respondent is not capable of defending himself but can with the assistance of counsel and counsel does not appear on behalf of the respondent within 20-days of the decision in that regards, counsel is then appointed to represent the respondent in the underlying case.

It appears, however, that parallel with that resumption of the underlying case, if the hearing officer in the supplemental proceedings finds that because of mental or physical incapacity the respondent is not capable of defending without the assistance of counsel or does not have the mental or physical capacity to practice law, the hearing officer must

recommend that the respondent be transferred to disability inactive status.

At that point the usual rules for review apply. ELC 8.3(d)(7)(c).

If upon Board Review, the Board determines the respondent is not capable of practicing law, then an immediate suspension is sought and is effective upon service of the order. ELC 8.3(d)(8). That is what has occurred in this case. It is unclear under the rules as to whether the underlying proceedings are also supposed to be going forward at this time, *See* ELC 8.3(d)(2) but compare with ELC 8.3(d)(7)(B), but in any case that has not happened.

Keefe challenges the finding that he is not capable of defending himself and that he is not able to practice law. The proof and/or the lack of proof in this regard are same so they are discussed jointly below. In this case, since the Association was asserting the lack of capacity, it had the burden of proof and must establish it by a preponderance of the evidence. ELC 8.7.

Keefe does not challenge that he submitted the interrogatories and made the assertions found in his brief and declaration, (Exhibit 15), or that Schwerin, Dippold and Baum denied the events attributed to them.

Keefe does challenge the sufficiency of the evidence in regards to the testimony of Dr. Grant. No credence can be given to testimony the

doctor himself acknowledged that he had not met with the respondent and that the standard in his profession is to not render an opinion on somebody that one has not evaluated and seen. Furthermore, he admitted that all he was doing was trying to make a client (the WSBA) happy so he “came up with an assessment.” He was not a detached expert rendering an opinion but rather considered the WSBA to be his client so in order to accommodate them he came up with an assessment, which absent meeting face-to-face with Keefe, can best be summarized as a guess.

In addition to testifying about his guess as to Keefe’s mental condition, Dr. Grant testified that he believed that Keefe was not capable of practicing law. There was no foundation laid for this and no evidence presented as to what Dr. Grant understood was required in order for someone to practice law. He did not review any standard presented to him and he did not testify that he had any understanding as to what comprised the practice of law. There was no other expert testimony regarding Keefe’s mental condition or his ability to practice law.

The Disciplinary Board essentially asserts that since Keefe did not appear for the ordered IME he is not in the position to contest Dr. Grant’s testimony and should have been suspended for not attending the IME. The simple fact is that the Association has not sought to suspend

Keefe for not appearing. That is entirely different proceeding and was not presented as a basis for suspension in the hearing. The Disciplinary Board cannot prop up an otherwise inadequate recommendation for transfer to disability status by asserting what could or should have happened elsewhere in the proceeding.

As for Keefe not being able to contest Dr. Grant's testimony because he did not show up for the IME – while it is possible there could be other consequences for this, such failure does not add validity to Dr. Grant's testimony.

Dr. Grant's guess as to Keefe's mental condition and his unfounded conclusions about his ability to practice of law are not sufficient evidence to prove either of these points and is to be disregarded as evidence. Without such evidence there is no evidence to support the findings except what others see as bizarre and unusual behavior.

Keefe has a belief system in which he feels there is a Christian Right which exerts control over much of the judicial system. He also believes that he heard certain statements being made during his case and that an impersonator was on phone calls. What was not presented in any form was any evidence that other than asserting these beliefs in his own defense that these beliefs in anyway interfered in his ability to represent

others, i.e. to practice law. There was not one shred of evidence that any of his belief systems improperly impacted his practice or that he claimed to have heard voices or other matters in any cases handled on the behalf of clients.

In short, the Bar may have demonstrated that Keefe heard voices and had beliefs about actions involving himself that were delusional but it did not demonstrate any nexus between these matters and his ability to represent others. *In re Ryan*, 97 Wn.2d 284, 644 P.2d 675 (1982). There is nothing in the record, other than speculation by the Disciplinary Board majority, to support any finding that Keefe is not able to practice law. There is not sufficient evidence to support such finding.

Nor is there sufficient evidence to show that Keefe could not defend himself in the underlying disciplinary proceeding. Other than the proof that he made the assertions he did, the Bar did not put on proof that he was not capable of defending himself. The evidence showed that Keefe presented a defense in the underlying case and no allegation was made that he had failed to do so adequately. In fact, if it appeared he was not capable of doing so the hearing officer had a duty to stop the proceedings and start supplemental proceedings. ELC 8.3(a) (hearing officer must order supplemental proceedings when there is reasonable cause to believe

respondent not capable of defending because of mental incapacity.) [Emphasis added]. See also, *In re Meade*, 103 Wn.2d 374, 693 P.2d 173 (1985). The hearing officer did not do so.

It was only when Keefe submitted his motion and declaration in the appeal process that the Association proceeded with this disability process. Essentially, the Bar says "Keefe makes arguments based on delusional facts, therefore, he is not capable of representing himself." They did not establish what it meant under the rules to be able to adequately represent himself and no testimony was presented as to what the standard might be. There is only one published disciplinary case in Washington on the issue of what being able to properly defend a disciplinary proceeding means. *In re Meade*, 103 Wn.2d 374, 693 P.2d 173 (1985). In that case the court held at page 381, in regards to the standard to be applied in questions regarding an attorney's ability to defend that:

We apply the standard used to determine whether a criminal defendant is competent to stand trial to determine whether an attorney is competent to appear in bar disciplinary proceedings. That standard requires that the person is (1) "capable of properly understanding the nature of the proceedings against him . . ." and (2) "capable of rationally assisting his legal counsel in the defense of his cause." *State v. Gwaltney*, 77 Wn.2d 906, 907, 468 P.2d 433 (1970); See also *State v. Wicklund*, 96 Wn.2d 798, 800, 638 P.2d 1241 (1982).

We conclude that Meade was not competent under this standard at the time of the original hearings. Although testimony indicates that he intellectually understood the nature of the disciplinary proceedings, his psychiatrist testified that his mental condition at the time of the disciplinary hearings interfered with his understanding of the underlying situation and made it impossible for him to respond appropriately or to raise legitimate defenses. These are not mere mistakes in judgment, as argued by bar counsel. These symptoms of mental illness may affect an attorney's legal competence to appear in a disciplinary hearing.

However, even if Meade was in fact competent to appear under this standard, it does not follow that he was capable of defending himself, pro se, in the disciplinary proceedings. Analogously, a finding that a criminal defendant is competent to stand trial is not equivalent to a finding that a criminal defendant is competent to appear pro se. *Westbrook v. Arizona*, 384 U.S. 150, 150-51, 16 L. Ed. 2d 429, 86 S. Ct. 1320 (1966). We extend this rule to attorneys appearing in disciplinary proceedings.

The court in *Meade* points out that being able to appear is not the same as being able to defend pro se. It found that based on the expert testimony of the psychiatrist that Meade's mental condition at the time of the disciplinary hearings interfered with his understanding of the underlying situation and made it impossible for him to respond appropriately or to raise legitimate defenses. As the party asserting incapacity, the Association had the burden of proving that Keefe was not able to defend himself pro se. While there was adequate proof of this in the *Meade* case there as no such proof in this case. Not even Dr. Grant presumed to testified what Keefe understood

about the underlying situation or on whether Keefe, even if he was delusional, was capable of responding appropriately or raising legitimate defenses.

There is no evidence to show that Keefe does not understand the nature of the underlying situation – in fact, his defenses and presentations show that he does understand the allegations against him in the underlying case. Nor was there any proof that he lacked the understanding to respond appropriately or to raise legitimate defenses. The Bar asserts that asserting disillusioned facts and raising them as a defense shows that he is not capable of responding appropriately, but under *Meade* that is not the test. The test is what legitimate defenses was he not capable of raising because of a mental incapacity. The Bar presented none.

In fact, Keefe raised other arguments and defense in his brief and declaration. He only asserts the alleged delusional facts in support of a much broader argument that the hearing officer and the system denied him due process because of bias. The *Meade* test does not establish that a lawyer cannot appear pro se where the lawyer actually raises defenses, even unusual ones, but rather only where the lawyer's mental condition leaves him in the position of leaving legitimate issues totally unraised. The Bar has not proven there are any such unraised defenses.

Unusual defenses or factual assertions can be dealt with by the Association by denial. If a lawyer has to risk facing disability proceedings because he brings up arguments and make factual assertions that others find bizarre and unusual, the lawyer's right to defend fully and completely will be chilled. Keefe is being punished with the threat of being transferred to disability status because of his belief system and his beliefs as to the facts in his own case are unusual.

The court has addressed the issue of assertions of an unusual belief system as the grounds for transfer to disability status in two cases. The first was *In re the Matter of Gordon McLean Campbell*, 74 Wn.2d 276, 278, 444 P.2d 784 (1968). Campbell believed that "the air is a living, intelligent person of considerable power which speaks to him and is "probably" God." The court found at page 279 that "What Mr. Campbell believes and what he hears (or what he says he believes he believes and hears) have not been considered in reaching our decision..." The court found that it was not the role of the hearing panel to make determinations on such issues nor was it in the competence of the court to do so. *Supra*, 279.

Instead, the court held that Campbell was to be placed on the inactive roll of attorneys because of Campbell's efforts to implement his

belief that he has a constitutional right to be employed and that a person from whom he seeks employment must employ him if he is financially able to do so. Apparently, Campbell had brought four lawsuits against different lawyers and their wives asserting that they were required to hire him. *Supra*, 278 and 279. Keefe has not brought any such suits.

The second case involving an unusual belief system is *In re Ryan*, 97 Wn.2d 284, 644 P.2d 675 (1982). He believed that family, friends and other attorneys were referring cases to him which on their face appeared to be ordinary legal disputes but that these were actually “bogus suits.” He filed two pro se lawsuits asserting these issues as well as asserting that others wanted to drug, gas and otherwise harass him, that there was a conspiracy to tamper with products he purchased, that others sought to expose him to painful and debilitating gasses, placed foreign substances in his water supply and place listening devices in his apartment. He claimed that filed matters were improperly filed and that the cases did not involve actual controversies. Ryan testified that he could not tell reality from fantasy. His actions involved the cases of his clients and his beliefs spread into how he practiced law. There was also the apparently uncontested testimony of one doctor that Ryan has “full blown paranoid delusion.” *Supra*, 286 -287.

None of the proof points raised in *Ryan* are present in Keefe's case. There is no proof of any allegedly delusional arguments or facts in any other case. Keefe has not admitted that he has a hard time telling real from fraudulent cases. He has not filed concocted cases, sued clients, co-counsel or opposing counsel. There was no evidence from any friends, clients or other counsel that Keefe's beliefs have impacted any other aspect of his practice.

Additionally, there is no unconditional expert testimony that Keefe is suffering from a "full blown" mental disorder. Although Dr. Grant testified as an "accommodation" to the WSBA about his assessment of the situation, he could not offer a definitive opinion since he did not ever meet Keefe. The Bar made its best efforts to get "reasonable degree of medical certainty" testimony from him but Dr. Grant did not make a diagnosis: "Q: Would it be fair to say that you are not opining on a diagnosis for Mr. Keefe specifically? A: I am not sure about that. I think I am opining about a set of potential diagnosis...)." RP 121, Lines 19 – 22. "Q: Do you have an opinion, again, to a reasonable degree of medical certainty, whether or not Mr. Keefe's ability to distinguish fantasy from reality is impaired? A: Yes. It appears that he does have impairment in his ability to establish facts, distinguish fantasy from reality." RP 123, Lines 9

Lines 9 – 14 [Emphasis added.] Dr. Grant did not make a diagnosis and could only offer what he thought appeared to be happening with Keefe.

The *Campbell* and *Ryan* cases show that before the a lawyer will be transferred to disability status based on his belief system, there must be very strong evidence showing not only that the attorney has a mental disorder but also that this disorder has impacted his practice. The Disciplinary Board raised the issue that Keefe has claimed jurisdiction for his matters rests elsewhere. This was not an argument presented below and is not part of that record. In addition, the Board does not cite to which documents it relies upon nor does it present any legal basis for the conclusion that these assertions can only be the product of a delusional mind. There are many attorneys who have mental disorders who are allowed to practice law – it is only when that disorder presents a danger to clients and others in the legal system that a lawyer can be suspended for having that disorder. There is no such proof in this case.

### **CONCLUSION**

Keefe is being punished in this matter because his beliefs seem strange. The only place he has raised them is in his own defense. There is no proof that he is not capable of defending himself or that his continued practice will result in a danger to the public. We respectfully ask that this

court overrule the Disciplinary Board and find the Bar has not proven that Keefe cannot defend himself in the underlying matter and that the Bar has not proven that he is not able to practice law.

Dated this 14<sup>th</sup> day of September, 2006.

FILED AS ATTACHMENT  
TO E-MAIL

---

Kurt M. Bulmer, WSBA # 5559  
Attorney for Respondent Keefe

Rec. 9-14-06

-----Original Message-----

**From:** Kurt Bulmer [mailto:[kbulmer@comcast.net](mailto:kbulmer@comcast.net)]  
**Sent:** Thursday, September 14, 2006 3:01 PM  
**To:** Marsha Matsumoto; OFFICE RECEPTIONIST, CLERK  
**Subject:** In Re Keefe

Attached for filing is the opening brief in this matter.

Kurt M. Bulmer  
Attorney at Law  
740 Belmont Pl. E. # 3  
Seattle, WA 98102  
(206) 325-9949 - Phone  
(206) 325-9953 - Fax  
[kbulmer@comcast.net](mailto:kbulmer@comcast.net)