

This opinion was
filed for record
at 8:40am on Feb. 20, 2020
for Susan L. Carlson Deputy
Supreme Court Clerk

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

In the Matter of the Disciplinary
Proceeding Against

JOHN ROLFING MUENSTER,
Attorney at Law (Bar No. 6237)

No. 201,872-6

En Banc

Filed FEB 20 2020

WIGGINS, J.—The issue before this court is whether the Disciplinary Board (Board) of the Washington State Bar Association (WSBA) sustainably declined sua sponte review of the hearing officer's decision in this case. We affirm the Board's order declining sua sponte review, adopting the hearing officer's decision, and ordering that John Roling Muenster be disbarred and that he pay restitution with interest as set forth therein. See Administrative R. (AR) at 22 (Findings of Fact, Conclusions of Law and Hearing Officer's Recommendation).

FACTS AND PROCEDURAL HISTORY

Muenster was admitted to the practice of law in Washington in 1975. In 2016, he was subjected to disciplinary proceedings. These proceedings concerned his mismanagement and conversion of client funds.

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In common with many lawyers, Muenster maintained a trust account for processing collections, distributing funds, and other functions. AR at 8.¹ Muenster maintained the account himself, making bank deposits and withdrawing funds. *Id.* Significantly, Muenster's trust account contained funds belonging to several clients, as well as funds belonging to Muenster. *Id.* at 9.

The WSBA's Office of Disciplinary Counsel (ODC) brought a formal complaint against Muenster in July 2016, alleging six counts of violations of the Rules of Professional Conduct (RPCs). *Id.* at 1-3. The hearing took place on April 23-26, 2018. *Id.* at 5. The hearing included six counts brought by the ODC and six counts brought by Douglas Myser, one of Muenster's clients. *Id.*

The first six counts against Muenster stemmed from his management of client funds. From 2011 through 2015, Muenster "did not maintain individual client ledgers or equivalent records for each client that identified the purpose for which the client's funds were received, disbursed, or transferred," and other information. *Id.* at 8. Nor did he "reconcile his trust account check register balance to his bank statements on a monthly basis," and he "did not keep copies of his reconciliation reports" on the occasions when he *did* reconcile the check register with the bank statements. *Id.* at 9. He thus "did not, and could not, reconcile his check register to the total of the balances on his client ledgers because he did not maintain client ledgers for all his clients." *Id.* "As a result of

¹ The record before this court does not include materials the hearing officer used to make her decision—there are no transcripts, no exhibits, and so on. We therefore rely solely on the hearing officer's findings of fact to reconstruct the record, as "a hearing[] officer's unchallenged findings of fact are treated as verities on appeal." *In re Disciplinary Proceeding Against Conteh*, 187 Wn.2d 793, 800, 389 P.3d 591 (2017).

these deficiencies, [Muenster] could not always be certain that his trust account actually contained the amount of money reflected in his check register, and one could not readily identify whose funds were in the account at any given moment." *Id.* He also repeatedly withdrew funds from the trust account "as he needed the funds, e.g., to pay bills." *Id.* at 10. Over the course of one year, he appropriated approximately \$100,000 in this manner. *Id.*

The second six counts against Muenster stemmed from his interactions with his client Myser beginning in 2012. *Id.* at 10-11. Muenster entered into a fee agreement with Myser in early 2012. *Id.* at 11. "Because the agreement did not include the requirements set forth in RPC 1.5(f)(2), Myser's payments were not [Muenster's] property upon receipt." *Id.* Nor were they a retainer. *Id.* Rather, "[u]nder RPC 1.5(f), RPC 1.15A(c)(2) and (h)(3)[,] [Muenster] was required to deposit and hold Myser's payments [to Muenster as his attorney] in trust until the fees were earned and billed, or the expenses had been incurred." *Id.* This Muenster failed to do. *Id.* Instead, he deposited a number of Myser's checks not into the trust account, as required, but into his own bank account. *Id.* He did not keep track of Myser's funds and provided Myser with no notice whatsoever to inform Myser that he was withdrawing Myser's funds. *Id.* In total, between December 1, 2013 and November 30, 2014, Myser sent Muenster \$70,000 for fees—which Muenster had requested from him in excess of the \$45,000 maximum in their fee agreement—and \$28,000 for costs and expenses. *Id.* at 13-14. Yet at the end of that period, owing to Muenster's withdrawals, the trust account held only \$528.43. *Id.* Muenster never informed Myser of his withdrawal of Myser's funds. *Id.* at 14.

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Muenster did not ultimately keep every dollar he had received from Myser. Of the \$28,000 Myser had sent him for costs and expenses, Muenster appropriated \$20,000. *Id.* Muenster used \$1,330.14 for costs and expenses, while he returned to Myser a \$6,000 check Myser had written out to him. *Id.* He later mailed another \$1,558.09 check to Myser. *Id.* at 17.

The hearing officer issued her "Findings of Fact, Conclusions of Law and Hearing Officer's Recommendation" on December 4, 2018. The hearing officer concluded that the ODC proved all 12 counts by "a clear preponderance the evidence." *Id.* at 18. She also concluded that six aggravators were applicable in this case: "dishonest or selfish motive," "a pattern of misconduct," "multiple offenses," "refusal to acknowledge wrongful nature of conduct," "substantial experience in the practice of law," and "indifference making restitution." *Id.* at 21. The hearing officer found one applicable mitigating factor: the "absence of a prior disciplinary record." *Id.* The hearing officer recommended that "Muenster be disbarred, and that he be ordered to pay restitution in the amount of \$44,111.77,^[2] with 12% interest calculated from the date Myser terminated Respondent's services, i.e., March 23, 2015." *Id.* at 22.

Muenster filed a notice of appeal to the Board. *Id.* at 24. However, he failed to file a timely opening brief. *Id.* at 57 (WSBA Disciplinary Bd. Order Dismissing Appeal).

² The hearing officer explained this calculation in detail:

"The restitution is calculated as follows: (a) \$25,000 for fees paid over and above the \$45,000 required by the fee agreement; (b) \$28,000 advanced for costs and expenses, minus \$1,330.14 for expenses actually incurred and paid, minus \$6,000 for the uncashed check Respondent returned to Myser, minus the \$1,558.09 that Respondent returned to Myser in April 2016, leaving \$19,111.77 that should be refunded to Myser. Thus, \$25,000 + 19,111.77 = \$44,111.77 total restitution."

The ODC successfully moved to dismiss his appeal under ELC 11.9(b)(2), which states that “[f]ailure to file an opening brief within the required period constitutes an abandonment of the appeal.”

After the dismissal of the appeal for failure to timely file an opening brief, the matter next went to the Board. In this case, the Board declined sua sponte review and unanimously adopted the hearing officer's decision 8 to 0. AR at 59 (Disciplinary Bd. Order Declining Sua Sponte Review & Adopting Hr'g Officer's Decision).

Pursuant to ELC 13.9, the ODC also assessed costs and expenses against Muenster, in an amount of \$11,312.13. Order Assessing Costs and Expenses, *In re Muenster*, Pub. File No. 16#00008 (WSBA Disciplinary Bd. July 16, 2019).

Muenster filed a notice of appeal to this court on May 30, 2019. AR at 197.

STANDARD OF REVIEW

“This court has plenary authority to determine the nature of lawyer discipline.” *In re Disciplinary Proceeding Against Cramer*, 168 Wn.2d 220, 229, 225 P.3d 881 (2010). “This court bears the ultimate responsibility for lawyer discipline in Washington.” *In re Disciplinary Proceeding Against Vanderveen*, 166 Wn.2d 594, 604, 211 P.3d 1008 (2009). We have, however, “delegated specific responsibilities” of managing lawyer discipline to the WSBA. *Cramer*, 168 Wn.2d at 229.

We review conclusions of law de novo and uphold them if they are supported by findings of fact. *In re Disciplinary Proceeding Against Conteh*, 187 Wn.2d 793, 800, 389 P.3d 591 (2017) (quoting *Vanderveen*, 166 Wn.2d at 604). “This court also reviews sanction recommendations de novo, but will generally affirm the Board’s sanction recommendation unless the court can articulate a specific reason to reject it.” *Id.*

Nevertheless, "a hearing[] officer's unchallenged findings of fact are treated as verities on appeal." *Id.* (citing *In re Disciplinary Proceeding Against Marshall*, 167 Wn.2d 51, 66, 217 P.3d 291 (2009)). Further, we generally defer to the Board's decisions, especially when the Board's decision is unanimous. *Id.* (citing *Vanderveen*, 166 Wn.2d at 616).

ANALYSIS

I. The Board sustainably declined sua sponte review

In the past, when an attorney has appealed the Board's decision declining sua sponte review, we treated the sustainability of the Board's decision as the sole issue on appeal. *Id.*; see also *In re Disciplinary Proceeding Against Osborne*, 187 Wn.2d 188, 196, 386 P.3d 288 (2016) (same). We do the same here and treat the issue of whether the Board sustainably declined sua sponte review as the sole issue on appeal.

"The Board should order sua sponte review only in extraordinary circumstances to prevent substantial injustice or to correct a clear error." ELC 11.3(d). The attorney facing discipline has the burden of proving the sanction is erroneous. *Conteh*, 187 Wn.2d at 800 (citing *Vanderveen*, 166 Wn.2d at 616). Muenster does not meet this burden. He presents no argument why the Board erred in declining sua sponte review. He does not argue the circumstances are extraordinary or that review is necessary to prevent a substantial injustice or to correct a clear error. See ELC 11.3(d). Without any argument that sua sponte review was necessary, Muenster cannot prevail. See *Conteh*, 187 Wn.2d at 800 (citing *Vanderveen*, 166 Wn.2d at 616).

Muenster does *claim* to challenge the hearing officer's findings of fact. Pet'r/Appellant's Reply Br. at 9. However, he asserts, without explanation, only that the

"proposed findings are incorrect." *Id.* (boldface omitted). He also refers to "the contents of the Answer and Affirmative Defenses to the first amended complaint." *Id.* This document is not in the record. He asserts that "[t]estimony given by [Muenster] and Andi Knight and exhibits . . . should have been considered." *Id.* at 10. There is no indication of to what or to whom this refers, and no such document can be found in the record. In any event, "argument incorporated by reference to other briefing is not properly before this court." *State v. Gamble*, 168 Wn.2d 161, 180-81, 225 P.3d 973 (2010). Muenster's argument does not prove "substantial injustice" or "clear error." ELC 11.3(d).

Rather, "no error is apparent" in the Board's decision to decline sua sponte review. *Conteh*, 187 Wn.2d at 802. As in *Conteh*—and as the ODC correctly identifies—Muenster "makes no specific assignments of error and fails to identify any findings he disagrees with in his briefing." Answering Br. of ODC at 20 (quoting *Conteh*, 187 Wn.2d at 802). Thus, as in *Conteh*, the Board "complied with the directives of ELC 11.3(a)" when it declined sua sponte review. *Conteh*, 187 Wn.2d at 802. ELC 11.3(a) provides:

If neither the Respondent nor Disciplinary Counsel files a timely notice of appeal from a Decision recommending suspension or disbarment, the Decision shall be distributed to the Board members for consideration of whether to order sua sponte review and the matter shall be scheduled for consideration by the Board. The Decision shall be distributed to the Board within 30 days after the last day to file a notice of appeal. An order for sua sponte review shall set forth the issues to be reviewed. If the Board declines to order sua sponte review, the Board shall issue an order declining sua sponte review and adopting the Decision of the hearing officer.

While Muenster did file a timely notice of appeal, he failed to perfect his appeal by failing to file a timely brief. The Board's actions therefore accorded with what ELC

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11.3(a) demands: it "decline[d] to order sua sponte review" and "issue[d] an order declining sua sponte review and adopting the Decision of the hearing officer." The Board's actions were not erroneous, and it sustainably declined sua sponte review.

Muenster asserts, in his reply brief, that he did properly appeal the hearing officer's decision to the Board. Pet'r/Appellant's Reply Br. at 5. He refers us to what he calls his "brief/memorandum with his motion to dismiss for lack of jurisdiction," which, he says, he attached to his notice of appeal to the Board. *Id.* But this document was not a brief under ELC 11.9 because Muenster expressly stated it was not such a brief in the memorandum itself. He instead wrote that "[t]his memorandum is *not* submitted pursuant to the Rules for Enforcement of Lawyer Conduct," claiming that "[t]hose rules do not apply . . . because I am not a member of the WSBA." AR at 214 n.1. ELC 11.9(b)(1) requires an opening brief filed under its rules within 45 days. By stating that this memorandum was not filed under the ELCs, it cannot have been the required memorandum under ELC 11.9.

We hold that the Board sustainably declined sua sponte review.

II. We decline to reach Muenster's other arguments

Muenster makes several additional arguments regarding the lawfulness of the disciplinary proceedings. We do not consider them here. Following *Conteh* and *Osborne*, we treat as beyond the scope of review any question other than whether the Board sustainably declined sua sponte review. See *Conteh*, 187 Wn.2d at 799; *Osborne*, 187 Wn.2d at 196.

In any event, we are unconvinced by these arguments. Muenster primarily argues that he resigned from the practice of law in a letter he sent to the WSBA and

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then Chief Justice Mary Fairhurst in November 2018, before the hearing officer issued her recommendation, and, because of his purported resignation, he could not have been subjected to the ongoing disciplinary proceedings against him. Although Muenster's alleged resignation is not at issue, the proper method for an attorney subjected to disciplinary proceedings to resign is defined by ELC 9.3, "Resignation in Lieu of Discipline." Muenster provides no indication that he resigned pursuant to ELC 9.3.

Nor are we persuaded by Muenster's arguments that mandatory bar membership is unconstitutional under the First, Fourteenth, and Thirteenth Amendments to the federal constitution. As to the First and Fourteenth Amendments, he relies primarily on a case in which a petition for certiorari has been docketed but not yet granted or decided in his favor. Pet'r/Appellant's Reply Br. at 24-25 (citing *Fleck v. Wetch*, 937 F.3d 1112, 1115-16 (8th Cir. 2019) *petition for cert. filed*, No. 19-670 (U.S. Nov. 21, 2019)). An undecided case cannot help him. As to the Thirteenth Amendment, courts have consistently rejected the argument that the burdens imposed on attorneys as part of their bar membership violate the Thirteenth Amendment. *E.g.*, *United States v. Bertoli*, 994 F.2d 1002, 1022 (3d Cir. 1993) ("A requirement that an attorney perform uncompensated service after entering an appearance in a criminal matter does not evoke in our minds the burdens endured by the African slaves in the cotton fields or kitchens of the antebellum south" and, thus, does not violate the Thirteenth Amendment.); *Verner v. Colorado*, 533 F. Supp. 1109, 1118-19 (D. Colo. 1982) (rejecting the argument that requiring lawyers and judges to take CLEs to maintain

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good standing violated the Thirteenth Amendment), *aff'd*, 716 F.2d 1352 (10th Cir. 1983) (not addressing this issue expressly).

In any event, those issues are beyond the scope of Muenster's appeal.

CONCLUSION

We hold that the Board sustainably declined sua sponte review. We affirm the Board's order, adopt the hearing officer's decision, and order Muenster disbarred and required to pay \$44,111.77 plus 12 percent interest in restitution to Myser calculated from March 23, 2015, the date Myser terminated Muenster's services. We also affirm the Order Assessing Costs & Expenses, *In re Muenster, supra* (WSBA Disciplinary Bd. July 16, 2019), in the amount of \$11,312.13 in costs and expenses against Muenster. Muenster's challenges to that order repeat the arguments he made regarding the constitutionality of the bar association and his status as an attorney. As these arguments do not bear on the amount of costs and expenses awarded against him and those costs and expenses were duly awarded pursuant to ELC 13.9, we uphold the award of costs and expenses against Muenster.

Wiggins, J.

WE CONCUR.

Stephens, C.J.
Plum
Madsen, J.
Davis, J.

Gonzalez, J.
Winkler, J.
Korsmo, J.P.T.
Jr, J.

THE SUPREME COURT OF WASHINGTON

In re John Rolfig Muenster, Lawyer
(Bar No. 6237)

ORDER ON MOTIONS

No. 201,872-6

On March 9, 2020, this Court received "PETITIONER/APPELLANT'S MOTION FOR RECONSIDERATION", "PETITIONER-APPELLANT'S MOTION TO TRANSMIT PETITIONER'S ANSWER AND AFFIRMATIVE DEFENSES, DKT. NO. 23.00, TO SUPREME COURT" and "PETITIONER - APPELLANT'S MOTION TO UPDATE CASE CAPTION" in the above matter.

Now, therefore, it is hereby

ORDERED:

The motion for reconsideration and motion to supplement the record are both denied. Pursuant to RAP 3.4, the motion to update the case caption is granted only to the extent that the case title will be changed to the same title as used by the WSBA Disciplinary Board, which is: In re John Rolfig Muenster, Lawyer (Bar No. 6237).

DATED at Olympia, Washington this 26th day of March, 2020.


CHIEF JUSTICE

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THE SUPREME COURT OF WASHINGTON

In re John Rolfig Muenster, Lawyer
(Bar No. 6237)

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CERTIFICATE OF FINALITY

No. 201,872-6

The opinion of the Supreme Court of the State of Washington was filed on February 20, 2020. The opinion became final on March 26, 2020, upon entry of the order denying motion for reconsideration.



IN TESTIMONY WHEREOF, I have hereunto
set my hand and affixed the seal of this Court
at Olympia, Washington on April 1, 2020.

SUSAN L. CARLSON
Clerk of the Supreme Court
State of Washington

cc: John Rolfig Muenster
Joanne S. Abelson
Scott G. Busby
Reporter of Decisions

PA 13a

FILED

May 02 2019

Disciplinary
Board

Docket # 127

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

Proceeding No. 16#00008

In re

JOHN ROLFING MUENSTER,

Lawyer (WSBA No.6237)

DISCIPLINARY BOARD ORDER
DECLINING *SUA SPONTE* REVIEW AND
ADOPTING HEARING OFFICER'S
DECISION

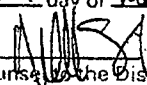
This matter came before the Disciplinary Board for consideration of *sua sponte* review pursuant to ELC 11.3(a). On April 5, 2019, the Clerk distributed the attached decision to the Board.

IT IS HEREBY ORDERED THAT the Board declines *sua sponte* review and adopts the Hearing Officer's decision¹.

Dated this 2nd day of April, 2019.


Janice Sue Wang
Disciplinary Board Vice Chair

I certify that I caused a copy of the DD ORDER DECLINING *SUA SPONTE* REVIEW & ADOPTING HOS DECISION
to be delivered to the Office of Disciplinary Counsel and to be mailed
to JOHN MUENSTER Respondent/Respondent's Counsel
a 140 SUMMIT ST NE BAINBRIDGE WA 98105 Certified/first class mail
postage prepaid on the 2nd day of May, 2019


Clerk/Counsel to the Disciplinary Board

¹ The vote on this matter was 8-0. The following Board members voted: Wang, Voves, Doyle, Rawlings, Louvier, Halwe, Value, and Sattler.

Board Order Declining *Sua Sponte* Review and
Adopting Decision
Page 1 of 1

WASHINGTON STATE BAR ASSOCIATION
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Attachment V

FILED

Nov 19 2018

Disciplinary
Board

MUENSTER & KOENIG
ATTORNEYS AT LAW

Docket # 098

JOHN R. MUENSTER
Attorney at Law

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KIM D. KOENIG
Attorney at Law
In Memoriam
(1956-2018)

EMAIL: jmkk1613@aol.com

November 18, 2018

Via email

Honorable Mary Fairhurst
Chief Justice, Washington Supreme Court
Temple of Justice, PO Box 40929
Olympia, WA 98504-0929
c/o Cindy.Phillips@courts.wa.gov

Re: Closing my practice

Dear Chief Justice Fairhurst,

After my graduation from Harvard Law School in 1975, I was admitted to practice in Washington courts. During the intervening years, I have had the privilege and honor of appearing before some excellent federal and state court judges and some discerning, thoughtful and dedicated juries.

My judges and juries have helped me accomplish the following:

- (1) Along with my former partner (Mark Mestel of Everett), I recovered more than \$10 million in settlements and judgements in civil rights cases we filed against cities and counties whose police officers killed, assaulted and maimed innocent people.
- (2) I defended accused citizens facing approximately 30 homicide charges. Approximately two thirds of those charges resulted in acquittals or dismissals. I successfully conducted a number of other criminal trials, jury and non-jury, which resulted in the exoneration of my clients.

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Letter to Chief Justice Fairhurst

November 18, 2018

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(3) I successfully challenged the constitutionality of several laws, including the Seattle "wandering or prowling" vagrancy ordinance and the Seattle "disorderly conduct" ordinance. I defended female UW students who were charged with sunbathing topless in the Arboretum; the court ruled that the ordinance prohibiting female toplessness violated the state Equal Rights Amendment.

(4) I successfully challenged the constitutionality of many searches and seizures conducted by police in a number of jurisdictions. One of my landmark search cases in this Court is *State v. Young*, 123 Wash.2d 173, 867 P.2d 593 (1994) (the use of an infrared thermal detection device to perform warrantless surveillance on a home violated Const. art. I, section 7 and the Fourth Amendment).

(5) Other cases I argued to this Court that made law include: *Bainbridge Island Police Guild v. Kim Koenig and City of Puyallup*, 172 Wash. 2d 358, 259 P.3d 190 (2011); *State v. Krall*, 125 Wash. 2d 146, 881 P.2d 1040 (1994); and *State v. Caldwell*, 94 Wash. 2d 614, 618 P.2d 508 (1980).

Along the way, I served as chair of the WSBA Criminal Law Section, as a member of the 1987-88 WPIC subcommittee, and as co-chair of the WPI subcommittee on jury instructions for civil rights cases. I taught CLEs on police misconduct for approximately a decade, and addressed the 1996 ATLA National Convention in Boston on settling police misconduct cases.

I would like to give special recognition to two judges who exemplify the greatness of our court system, William L. Dwyer and Anna M. Laurie.

Judge Dwyer presided over *The Estate of Robin Marie Pratt v. Snohomish County and the City of Lynnwood* (1992-1994), a tragic case in which an innocent 25-year-old Everett housewife and mother was killed by police during a series of four SWAT raids against her family, all of whom were completely innocent. My former partner and I represented the family. Judge Dwyer, whom I revere, showed me that justice can truly be achieved, that civility can triumph over anger, and that the promise of the Constitution remains for us all.

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Letter to Chief Justice Fairhurst

November 18, 2018

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Judge Laurie, a Kitsap County Superior Court judge, presided over the 2002 trial of Aaron Williams, a young black man I defended who got drunk on his 21st birthday, went out to a Bremerton park, and wound up shooting a police dog before getting shot in the chest himself. The incident became a cause in the police community. The elected prosecutor, Russ Hauge, tried the case himself, charging Mr. Williams with attempted first-degree murder. But the evidence wasn't there. The forensic evidence showed Mr. Williams did not fire at the officer. Judge Laurie took the case under advisement.

When I arrived at the courtroom in Port Orchard to hear Judge Laurie's decision, I found the courtroom packed with police officers in black uniforms.¹ It was standing room only. She looked out from the chambers doorway, saw the crowd, and closed the door. A minute or two later, she took the bench and delivered an excellent, thoughtful and courageous opinion acquitting Mr. Williams of attempted first degree murder, attempted second degree murder, and first-degree assault. She found Mr. Williams guilty of second-degree assault and sentenced him to about 10 years in prison. It was a defining moment. A moment of great bravery.

That was not enough for the police. The judge was excoriated by citizens, the cops and the prosecutor in the newspaper for weeks. She drew opponents in the next election, and defeated them in the primary. She was reelected twice more.

When she retired in 2015, Judge Laurie was asked about the Williams case by the *Kitsap Sun*: "Laurie said to this day she stands by her ruling — 'No doubt in my mind. None' — and said she was glad to have faced the controversy early in her judicial career. 'I know I've seen what the worst is,' she said." If a *Profiles in Courage* is written about judges, Judge Laurie should have a chapter.

¹ Black was the color of the Nazi SS. In my opinion, American police who wear black uniforms disrespect those who served our country in World War II.

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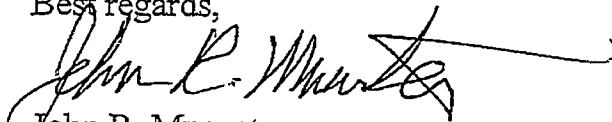
Letter to Chief Justice Fairhurst
November 18, 2018
Page four

Like Judge Laurie in 2015, I feel it is time. At this point, I have accomplished all that I dreamed of doing as a lawyer. 43 years is long enough. There may be more battles worth fighting. Others will have to fight them. I have seen the best, but like Judge Laurie I have also seen the worst. I have decided to leave the profession completely, to stop being a lawyer altogether.

I hereby close my practice, secede from my position as a lawyer admitted to practice before this Court, and exit the profession, effective immediately.

Thank you for your attention. The best of luck to you and the other judges of Washington, state and federal.

Best regards,


John R. Muenster

Cc: Susan L. Carlson
Clerk of the Supreme Court
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AA 18a

The Supreme Court
State of Washington

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December 19, 2018

John R. Muenster
Muenster and Koenig
14940 Sunrise Drive NE
Bainbridge Island, WA 98110

Re: Thank you for your service

Dear Mr. Muenster:

Thank you for your recent letter advising that after practicing law for 43 years that you decided to close your practice. On behalf of the justices of the Supreme Court, I want to thank you for your many, many years of service to your clients and to the Washington State Bar Association and to the administration of justice.

I enjoyed reading your letter highlighting some of your many accomplishments. I am proud that you chose to be in the legal profession and to use your talent and abilities to help people who truly need help. I am glad that you have accomplished all that you dreamed of doing as a lawyer. Thank you for writing, and best of luck to you in all of your future endeavors.

Very truly yours,

A handwritten signature in black ink that reads "Mary E. Fairhurst".

MARY E. FAIRHURST
Chief Justice

cc: Justices

DA 18aa

FILED

Dec 26 2018

Disciplinary
Board

Docket # 117

BEFORE THE DISCIPLINARY BOARD
OF THE WASHINGTON STATE BAR ASSOCIATION

OFFICE OF DISCIPLINARY
COUNSEL ("ODC"),

v.

JOHN R. MUENSTER.

NO. 16#00008

JOHN MUENSTER'S
MEMORANDUM URGING
DISMISSAL OF THIS
PROCEEDING

I. INTRODUCTION.

This memorandum follows up on my letter to Chief Justice Fairhurst and my letters to the hearing officer, attached hereto as exhibits A, B and C. As these letters indicate, I have closed my practice, exited the profession, and disavowed any membership in the WSBA ("Washington State Bar Association"). The WSBA has no jurisdiction in this matter. This memorandum is submitted to make a further record of the reasons for dismissal of this proceeding.¹

¹ This memorandum is *not* submitted pursuant to the Rules for Enforcement of Lawyer Conduct (ELC). Those rules do not apply to the undersigned because I am not a member of the WSBA. In addition, the compulsory proceedings described in the ELC are unconstitutional under the First and Fourteenth Amendments. See *Janus v. AFSCME, Council 31*, 583 U.S.--, 138 S.Ct. 2448,

JOHN MUENSTER'S MEMORANDUM
URGING DISMISSAL OF THIS
PROCEEDING- 1

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II. MOTION TO DISMISS FOR LACK OF JURISDICTION

The "Office of Disciplinary Counsel" ("ODC") does not have jurisdiction over persons who are not members of the WSBA. The undersigned is not a member. This matter must be dismissed for lack of jurisdiction.

The ODC claims:

- (1) membership in the WSBA is compulsory;
- (2) a lawyer can be forced to pay WSBA dues under threat of suspension;
- (3) a lawyer can be forced to subsidize WSBA personnel, programs and activities with which he/she disagrees;
- (4) a lawyer can be forced to participate in the WSBA's unconstitutional "disciplinary system" even if the lawyer is not a WSBA member;
- (5) a lawyer cannot quit the WSBA without permission from the organization. See Exhibits D and E.

The ODC is incorrect on each of these points. See *Janus v. AFSCME, Council 31*, *supra*; *Fleck v. Wetch (North Dakota State Bar Association)*, *supra*. *Janus* and *Fleck* provide us with the following guidance:

- The free speech and association rights of Washington lawyers are

201 L.Ed.2d 924 (2018); *Fleck v. Wetch (North Dakota State Bar Association)*, --U.S.--, 2018 U.S. LEXIS 7092, 2018 WL 6272044 (U.S.S.Ct., December 3, 2018). All objections to this proceeding are preserved. The filing of this memorandum does not waive or substitute for any right of action which the undersigned or other persons or entities similarly situated may have against any individual or entity under state or federal law.

JOHN MUENSTER'S MEMORANDUM
URGING DISMISSAL OF THIS
PROCEEDING- 2

JOHN R. MUENSTER
14940 SUNRISE DRIVE NE
BAINBRIDGE ISLAND, WASHINGTON 98110
(206) 501-9565
EMAIL: JMKK1613@AOL.COM

PA 20 a

000099

1 violated by the compulsory funding, program and membership
2 requirements of the WSBA. *Janus*, 138 S.Ct. at 2459-2461; 138 S.
3 Ct. at 2463-64.

- 4 • Public-sector agency-shop arrangements (like the WSBA system)
5 violate the First Amendment. *See Janus*, 138 S.Ct. at 2478.
- 6 • Prior decisions in favor of bar associations on these issues must be
7 reconsidered in light of *Janus*. *See Fleck v. Wetch (North Dakota*
8 *Bar Association)*, *supra*, 2018 U.S. LEXIS 7092, (U.S.S.Ct., 12-3-
9 2018) (granting certiorari, vacating 8th Circuit decision in favor of
10 bar association, and remanding to the circuit for further
11 consideration in light of *Janus*).
12

13
14 The Chief Justice recently sent a letter (Exhibit F) to the Board of
15 Governors and others dated September 21, 2018 which reads in pertinent part:

16 "In light of pending lawsuits regarding the legal
17 status of bar associations around the country as well
18 as recent case law, the Court has decided
19 unanimously to undertake a comprehensive review
20 of the structure of the Bar."

21 It appears that the Court has concluded that the WSBA as currently structured
22 is illegal. *See Janus v. AFSCME, Council 31, supra*. I agree. I am opposed to many
23 actions of the WSBA, including the requirements of mandatory membership,
24 mandatory dues payments, and other matters.

25 In this matter, the WSBA, an illegally-constituted organization under *Janus*, is
26 pursuing someone who is not a member. To do so, the WSBA is spending
27 dues/resources obtained through compulsion, in violation of the First Amendment
28

JOHN MUENSTER'S MEMORANDUM
URGING DISMISSAL OF THIS
PROCEEDING- 3

JOHN R. MUENSTER
14940 SUNRISE DRIVE NE
BAINBRIDGE ISLAND, WASHINGTON 98110
(206) 501-9565
EMAIL: JMKK1613@AOL.COM

DA 21a
000100

1 under *Janus*. It is in the best interests of the WSBA to comply with the rulings of
2 the United States Supreme Court. The WSBA should dismiss this matter for lack
3 of jurisdiction.

4
5 **III. OTHER ISSUES PRESENTED.**

6 **A. The disciplinary system is unconstitutional.**

7 Prior to my secession from membership in and disavowal of the WSBA, I
8 challenged the constitutionality of these proceedings in a memorandum filed last
9 spring.

10 The current disciplinary system shares the hallmarks of the criminal law
11 system.² Those hallmarks trigger the protections of the Fourth, Fifth, Sixth
12 Amendments, as well as the Due Process Clause of the Fourteenth
13 Amendment.³ Accordingly, constitutionally-required provisions and
14 protections should be in place in the WSBA system, among them the following:
15 (a) trial by jury; (b) a unanimous verdict, (c) proof beyond a reasonable doubt;
16 (d) the presumption of innocence; (e) application of the Washington Rules of
17 Evidence (ER); (f) the protections of the Sixth and Fourteenth Amendment
18 rights to confrontation, compulsory process and presentation of a defense; and
19 (g) the protection of the rule of statutory construction that penal laws (whether
20

21
22 ² Under the current ELC rules, a "respondent lawyer" is required to be present
23 at the proceedings, just as a criminal defendant is required to be personally present
24 at criminal hearings.

25 ³ See *Respondent's Answer and Affirmative Defenses E, F, G, H and I*, filed 5-
26 18-2017.

1 "criminal" or "non-criminal") are strictly construed against the prosecuting
2 authority and liberally construed in favor of the respondent.⁴

3 The constitutional protections listed above are available to a citizen
4 charged with a minor misdemeanor or "criminal traffic" offense. The penalties
5 in a proceeding under the current ELC system are significantly more serious.
6 Common sense as well as the Constitution counsel us that the protections
7 available to a "respondent citizen" charged with a minor misdemeanor offense
8 should likewise be available to a "respondent lawyer" charged in the ELC
9 system.

10
11 **B. Fee agreement disputes should be adjudicated in Superior Court**
12 **under Washington contract law where litigation has been instituted, not in**
13 **the WSBA system.**

14 The undersigned and a former client are opponents in a Superior Court
15 lawsuit over fees. There is a written, signed fee agreement that the undersigned
16 relies on.

17 In construing a contract, the court is to follow these rules:

18
19 "When interpreting a contract our primary goal is to
20 discern the intent of the parties, and such intent must
21 be discovered from viewing the contract as a whole."
22 [footnote citation omitted].

23 ⁴ "Where two possible constructions are permissible, the rule of lenity requires
24 us to construe the statute strictly against the State in favor of the accused." *State*
25 *v. Gore*, 101 Wn.2d 481, 485-86, 681 P.2d 227, 39 A.L.R.4th 975 (1984);
26 *Staats v. Brown*, 139 Wash.2d 757, 769, 991 P.2d 615 (2000). In this matter, it
27 appears that the opposite occurred.

28 JOHN MUENSTER'S MEMORANDUM
URGING DISMISSAL OF THIS
PROCEEDING- 5

JOHN R. MUENSTER
14940 SUNRISE DRIVE NE
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(206) 501-9565
EMAIL: JMCK1613@AOL.COM

DA 230
000102

1 Washington follows the "objective manifestation theory of
2 contracts" to determine the parties' intent. [footnote citation
3 omitted].

4 Courts focus on the "objective manifestations of the agreement,
5 rather than on the unexpressed subjective intent of the parties."
6 [footnote citation omitted].

7 "[W]hen interpreting contracts, the subjective intent
8 of the parties is generally irrelevant if the intent can
9 be determined from the actual words used." [footnote
10 citation omitted]

11 This court does not "interpret what was intended to be written
12 but what was written." [footnote citation omitted].

13 *Washington Federal v. Gentry*, 179 Wash.App. 470, 490, 319 P.3d 823
14 (Division One, 2014), review granted, 180 Wash. 2d 1021, affirmed and
15 remanded, *Wash. Fed. v. Harvey*, 182 Wash.2d 335, 340 P.3d 846 (2015). The
16 cases cited in the footnotes above in *Gentry*, 179 Wash.App. at 490, are
17 incorporated by reference herein as though fully set forth.

18 Rewriting the terms of an agreement between the parties is beyond the
19 trial court's authority. *Gentry, supra*; *Butler v. Caldwell*, No. 48931-3-I, 2002
20 Wash.App. LEXIS 622, *1, *11 (Division One, 2002).

21 In the proposed findings in this matter, the ODC counsel and the hearing
22 officer rewrote the fee agreement. In doing so, they violated the foregoing
23 contract law rules. Through their actions, they impaired the obligations of the
24 contract entered into by the parties.

25 The ODC counsel and ODC hearing officer had been advised of the
26 pending Superior Court proceedings. They were urged to defer the ODC
27

28 JOHN MUENSTER'S MEMORANDUM
URGING DISMISSAL OF THIS
PROCEEDING- 6

JOHN R. MUENSTER
14940 SUNRISE DRIVE NE
BAINBRIDGE ISLAND, WASHINGTON 98110
(206) 501-9565
EMAIL: JMCK1613@AOL.COM

000103

PA 249

1 proceedings until resolution of the Superior Court matter. They were advised of
2 the state Supreme Court's preference for deferral as expressed in *In re the*
3 *Disciplinary Proceeding Against Gillingham*, 126 Wash.2d 454, 458 fn.3, 896
4 P.2d 656, 1995 Wash. LEXIS 166 (1995). Unfortunately, these reasonable
5 norms were not followed.

6 The only apparent reason for the ODC personnel to press forward with
7 their version of the matter would be to assist the former client in the Superior
8 Court case. This is not appropriate. WSBA proceedings are not conducted by a
9 judge. They are not guided by the rules of evidence, the rules of civil procedure
10 or constitutional law. Parallel proceedings conducted under different rules can
11 lead to conflicting results between the two forums.

12 WSBA member resources should not be used to advance the interests of
13 a private party in a private lawsuit. It was wrong to do so here. This could
14 have been avoided through principled, timely action by the ODC actors.

15
16
17 **C. The proposed findings are incorrect.**

18 Without waiving any objections to jurisdiction, the undersigned
19 respectfully objects to the proposed findings propounded by the ODC counsel
20 and ODC hearing officer in this matter. In place of those findings, the contents
21 of the Answer and Affirmative Defenses to the first amended complaint filed by
22 the undersigned in 2017 should be substituted. Testimony given by the
23 undersigned and Andi Knight and exhibits submitted by the undersigned should
24 have been considered. These materials should have formed the basis for the
25 findings and conclusions in this matter.

26
27
28 JOHN MUENSTER'S MEMORANDUM
URGING DISMISSAL OF THIS
PROCEEDING- 7

JOHN R. MUENSTER
14940 SUNRISE DRIVE NE
BAINBRIDGE ISLAND, WASHINGTON 98110
(206) 501-9565
EMAIL: JMKK1613@AOL.COM

DA 250
000104

1 DATED this the 21st day of December, 2018.

2 Respectfully submitted,

3 By: S/ John R. Muenster
4 John R. Muenster
5

6
7 **CERTIFICATE OF SERVICE**

8 I certify that on or about the date set forth below, I filed the foregoing
9 document with the Clerk to the Disciplinary Board, WSBA, 1325 Fourth
10 Avenue, Suite 600, Seattle, WA 98101-2539 via online filing. On or about the
11 same date, I delivered a copy to the Hearing Officer via email. On or about the
12 same date I served counsel for the plaintiff via email.

13 DATED this the 21st day of December, 2018, at Bainbridge Island,
14 Washington.

15 S/ John R. Muenster
16 John R. Muenster
17
18
19
20
21
22
23
24
25
26
27

PA 26a

28 JOHN MUENSTER'S MEMORANDUM
URGING DISMISSAL OF THIS
PROCEEDING- 8

JOHN R. MUENSTER
14940 SUNRISE DRIVE NE
BAINBRIDGE ISLAND, WASHINGTON 98110
(206) 501-9565
EMAIL: JMKK1613@AOL.COM

Exhibit A

PA 27a

From: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
To: 'John Muenster' <jmkk1613@aol.com>
Subject: RE: Letter to Chief Justice Fairhurst
Date: Mon, Nov 19, 2018 8:18 am

Received 11-19-18

From: John Muenster [<mailto:jmkk1613@aol.com>]
Sent: Sunday, November 18, 2018 4:46 PM
To: Phillips, Cindy <Cindy.Phillips@courts.wa.gov>
Cc: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Letter to Chief Justice Fairhurst

Ladies and Gentlemen:

Please see attached.

John Muenster
Muenster and Koenig
14940 Sunrise Drive NE
Bainbridge Island, WA 98110
206-501-9565

PA 28a

MUENSTER & KOENIG
ATTORNEYS AT LAW

JOHN R. MUENSTER
Attorney at Law

KIM D. KOENIG
Attorney at Law
In Memoriam
(1956-2018)

14940 SUNRISE DRIVE NE
BAINBRIDGE ISLAND, WASHINGTON 98110

TELEPHONE: 206)501-9565

EMAIL: jmkk1613@aol.com

~~November 18, 2018~~

Via email

Honorable Mary Fairhurst
Chief Justice, Washington Supreme Court
Temple of Justice, PO Box 40929
Olympia, WA 98504-0929
c/o Cindy.Phillips@courts.wa.gov

Re: Closing my practice

Dear Chief Justice Fairhurst,

After my graduation from Harvard Law School in 1975, I was admitted to practice in Washington courts. During the intervening years, I have had the privilege and honor of appearing before some excellent federal and state court judges and some discerning, thoughtful and dedicated juries.

My judges and juries have helped me accomplish the following:

- (1) Along with my former partner (Mark Mestel of Everett), I recovered more than \$10 million in settlements and judgements in civil rights cases we filed against cities and counties whose police officers killed, assaulted and maimed innocent people.
- (2) I defended accused citizens facing approximately 30 homicide charges. Approximately two thirds of those charges resulted in acquittals or dismissals. I successfully conducted a number of other criminal trials, jury and non-jury, which resulted in the exoneration of my clients.

DA 29a

Letter to Chief Justice Fairhurst
November 18, 2018
Page two

(3) I successfully challenged the constitutionality of several laws, including the Seattle "wandering or prowling" vagrancy ordinance and the Seattle "disorderly conduct" ordinance. I defended female UW students who were charged with sunbathing topless in the Arboretum; the court ruled that the ordinance prohibiting female toplessness violated the state Equal Rights Amendment.

(4) I successfully challenged the constitutionality of many searches and seizures conducted by police in a number of jurisdictions. One of my landmark search cases in this Court is *State v. Young*, 123 Wash.2d 173, 867 P.2d 593 (1994) (the use of an infrared thermal detection device to perform warrantless surveillance on a home violated Const. art. I, section 7 and the Fourth Amendment).

(5) Other cases I argued to this Court that made law include: *Bainbridge Island Police Guild v. Kim Koenig and City of Puyallup*, 172 Wash. 2d 358, 259 P.3d 190 (2011); *State v. Krall*, 125 Wash. 2d 146, 881 P.2d 1040 (1994); and *State v. Caldwell*, 94 Wash. 2d 614, 618 P.2d 508 (1980).

Along the way, I served as chair of the WSBA Criminal Law Section, as a member of the 1987-88 WPIC subcommittee, and as co-chair of the WPI subcommittee on jury instructions for civil rights cases. I taught CLEs on police misconduct for approximately a decade, and addressed the 1996 ATLA National Convention in Boston on settling police misconduct cases.

I would like to give special recognition to two judges who exemplify the greatness of our court system, William L. Dwyer and Anna M. Laurie.

Judge Dwyer presided over *The Estate of Robin Marie Pratt v. Snohomish County and the City of Lynnwood* (1992-1994), a tragic case in which an innocent 25-year-old Everett housewife and mother was killed by police during a series of four SWAT raids against her family, all of whom were completely innocent. My former partner and I represented the family. Judge Dwyer, whom I revere, showed me that justice can truly be achieved, that civility can triumph over anger, and that the promise of the Constitution remains for us all.

Letter to Chief Justice Fairhurst
November 18, 2018
Page three

Judge Laurie, a Kitsap County Superior Court judge, presided over the 2002 trial of Aaron Williams, a young black man I defended who got drunk on his 21st birthday, went out to a Bremerton park, and wound up shooting a police dog before getting shot in the chest himself. The incident became a cause in the police community. The elected prosecutor, Russ Hauge, tried the case himself, charging Mr. Williams with attempted first-degree murder. But the evidence wasn't there. The forensic evidence showed Mr. Williams did not fire at the officer. Judge Laurie took the case under advisement.

When I arrived at the courtroom in Port Orchard to hear Judge Laurie's decision, I found the courtroom packed with police officers in black uniforms.¹ It was standing room only. She looked out from the chambers doorway, saw the crowd, and closed the door. A minute or two later, she took the bench and delivered an excellent, thoughtful and courageous opinion acquitting Mr. Williams of attempted first degree murder, attempted second degree murder, and first-degree assault. She found Mr. Williams guilty of second-degree assault and sentenced him to about 10 years in prison. It was a defining moment. A moment of great bravery.

That was not enough for the police. The judge was excoriated by citizens, the cops and the prosecutor in the newspaper for weeks. She drew opponents in the next election, and defeated them in the primary. She was reelected twice more.

When she retired in 2015, Judge Laurie was asked about the Williams case by the *Kitsap Sun*: "Laurie said to this day she stands by her ruling — 'No doubt in my mind. None' — and said she was glad to have faced the controversy early in her judicial career. 'I know I've seen what the worst is,' she said." If a *Profiles in Courage* is written about judges, Judge Laurie should have a chapter.

¹ Black was the color of the Nazi SS. In my opinion, American police who wear black uniforms disrespect those who served our country in World War II.

DA 31a

Letter to Chief Justice Fairhurst

November 18, 2018

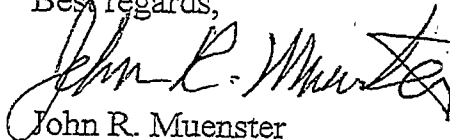
Page four

Like Judge Laurie in 2015, I feel it is time. At this point, I have accomplished all that I dreamed of doing as a lawyer. 43 years is long enough. There may be more battles worth fighting. Others will have to fight them. I have seen the best, but like Judge Laurie I have also seen the worst. I have decided to leave the profession completely, to stop being a lawyer altogether.

I hereby close my practice, secede from my position as a lawyer admitted to practice before this Court, and exit the profession, effective immediately.

Thank you for your attention. The best of luck to you and the other judges of Washington, state and federal.

Best regards,



John R. Muenster

Cc: Susan L. Carlson
Clerk of the Supreme Court
Supreme@courts.wa.gov

DA 32a

Exhibit B

WA 33a

JOHN MUENSTER
14940 SUNRISE DRIVE NE
BAINBRIDGE ISLAND, WASHINGTON 98110
TELEPHONE: 206-501-9565
EMAIL: jmk1613@aol.com

November 18, 2018

Via email

Terri Rae Luken
Hearing Officer
P.O. Box 15606
Seattle, WA 98115

Re: ODC matter #1600008; letter to Chief Justice Fairhurst closing practice

Dear Ms. Luken,

Attached please find a copy of my letter to Chief Justice Fairhurst dated November 18, 2018. On page four, my letter reads in pertinent part: "I hereby close my practice, secede from my position as a lawyer admitted to practice before this Court, and exit the profession, effective immediately."

As you know, the Chief Justice recently sent a letter to the Board of Governors and others dated September 21, 2018 which reads in pertinent part:

"In light of pending lawsuits regarding the legal status of bar associations around the country as well as recent case law, the Court has decided unanimously to undertake a comprehensive review of the structure of the Bar."

It appears that the Court has concluded that the WSBA as currently structured is illegal. *See Janus v. AFSCME, Council 31*, --U.S.--, 138 S. Ct. 2448, 201 L.Ed.2d 924 (2018). I agree. I am opposed to many actions of the WSBA, including the requirements of mandatory membership, mandatory

DA 34a

Letter to Terri Luken
November 18, 2018
Page two

dues payments, and other matters. And as you know, I have challenged the constitutionality of these proceedings.

Under *Janus*, it appears that I would not be required to pay dues or belong to the WSBA as it is presently constituted.

As my letter indicates, I have closed my practice. I have exited the profession. Effective immediately, I disavow any membership in the WSBA. The ODC does not have jurisdiction in this matter. Dismissal is required.

Thank you for your attention.

S/ John Muenster
John Muenster

PA 35a

Exhibit C

PA 36a

JOHN MUENSTER
14940 SUNRISE DRIVE NE
BAINBRIDGE ISLAND, WASHINGTON 98110
TELEPHONE: 206-501-9565
EMAIL: jmkk1613@aol.com

November 21, 2018

Via email
Terri Rae Luken
Hearing Officer
P.O Box 15606
Seattle, WA 98115

Re: ODC matter #1600008, response to Skvir letter

Dear Ms. Luken,

This letter follows up on my letter to you dated November 18, 2018 (copy attached) and my letter to Chief Justice Fairhurst, which was enclosed. As these letters indicate, I have closed my practice, exited the profession, and disavowed any membership in the WSBA.

In her letter to you dated 11-21-2018, Ms. Skvir states: "This matter is governed by the WSBA Bylaws, Section 3(H), and ELC 9.3, which do not require dismissal." Ms. Skvir is mistaken. Neither of these provisions are apposite in this matter.

ELC 9.3 (b) provides that a "respondent lawyer" who wants to "resign" is compelled to sign a statement under oath containing content prepared by disciplinary counsel, including various admissions, undertakings, and promises to pay costs. This rule on its face does not apply me. I am not a "respondent-lawyer". I do not "seek permission" to "resign". I have closed my practice and exited the profession. I am within my rights to do so.

PA 37a

Letter to Terri Luken
November 21, 2018
Page two

As noted in my 11-18-2018 letter to you, it appears that the Supreme Court has concluded that the WSBA as currently structured is illegal. *See Janus v. AFSCME, Council 31*, --U.S.--, 138 S.Ct. 2448, 201 L.Ed.2d 924 (2018). The case suggests that the mandatory compelled statement and involuntary payment of costs provisions of ELC 9.3 are invalid.

I have attached a copy of *Janus* for you. Your attention is invited to the discussion at the following points:

- (a) 138 S.Ct. at 2459-60 (headnote 1);
- (b) 138 S.Ct. at 2463-64 (headnotes 4 and 5);
- (c) 138 S.Ct. at 2478 (headnote 15) ("For the reasons given above, we conclude that public-sector agency-shop arrangements violate the First Amendment, and *Abood* erred in concluding otherwise.); and
- (d) 138 S.Ct. at 2486 (headnote 20).

This matter is not governed by ELC 9.3 or bylaws section 3(H). Ms. Skvir is incorrect.

Ms. Skvir's apparent motive in pressing you to enter findings, even though I have left the profession, is to assist Mr. Myser in his private civil case in Superior Court.

Enclosed with this letter is a copy of a "motion to change trial date" filed 10-16-2018 by Mr. Myser in his Superior Court case. Your attention is invited to paragraph 4. A reasonable inference to be drawn is that Ms. Skvir is consulting with Mr. Myser. They apparently want you to enter findings that they (erroneously) believe could be used in the civil case. This is an improper use of WSBA resources to further a private party's private goals.

PA 38a

Letter to Terri Luken
November 21, 2018
Page three

It goes against *In re Gillingham*, discussed in my 10-12-2018 letter to you. The following excerpt from that letter is provided for your convenience:

"My request [previous request for stay of ODC proceeding] is based on *In re Gillingham*. In the *Gillingham* case, the Supreme Court stated:

As a general rule, the bar association does not take action on disciplinary matters when a civil proceeding is pending addressing the same issues. It is not at all clear why the bar association departed from this sensible policy in view of the direct interest Lawrence had in testifying against Gillingham at the disciplinary proceeding. . . . The bar's policy prevents this kind of imbroglio, and also conserves the bar's limited resources.

In re the Disciplinary Proceeding Against Gillingham, 126 Wash.2d 454, 458 fn.3, 896 P.2d 656, 1995 Wash.LEXIS 166 (1995) (italics added). In *Gillingham*, as here, the complainant initiated both the civil suit and the bar complaint. *Gillingham*, 126 Wash.2d at 458. The problems the Supreme Court saw in *Gillingham* can be prevented if my request is granted.

This process should avoid the appearance of impropriety as well as actual impropriety. That can be achieved by letting the Court resolve the dispute. This proceeding should not be used as the stalking horse for private litigation."

DA 39a

Letter to Terri Luken
November 21, 2018
Page four

In summary: (1) The Supreme Court appears to have concluded that the WSBA as presently structured is illegal, in light of *Janus* and other developments referenced in the Chief Justice's 9-21-2018 letter. (2) I have closed my practice and exited the profession. (3) You should reject Ms. Skvir's apparent attempt to use your position to assist a private litigant in a civil case. This matter must be dismissed.

Thank you for your attention, and Happy Thanksgiving.

Respectfully submitted,

S/ John R. Muenster

John R. Muenster

Attachments: (1) *Janus v. AFSCME, Council 31*, 138 S.Ct. 2448 (2018);
(2) Motion to change trial date, 10-16-2018, *Myser v.*
Muenster, King Co #17-2-32881-2SEA.

DA 40a

Exhibit D

DA 41a

From: John Muenster <jmkk1613@aol.com>

To: statuschanges <statuschanges@wsba.org>

Subject: Practice closure letter to Chief Justice Fairhurst

Date: Sun, Nov 18, 2018 6:30 pm

Attachments: Secession letter, 11-18-2018.pdf (185K)

Dear Status Changes section,

Attached please find a copy of my letter to Chief Justice Fairhurst dated November 18, 2018. On page four, my letter reads in pertinent part: "I hereby close my practice, secede from my position as a lawyer admitted to practice before this Court, and exit the profession, effective immediately."

The Chief Justice recently sent a letter to the Board of Governors and others dated September 21, 2018 which reads in pertinent part:

"In light of pending lawsuits regarding the legal status of bar associations around the country as well as recent case law, the Court has decided unanimously to undertake a comprehensive review of the structure of the Bar."

My view is that the Court has concluded that WSBA as currently structured is illegal. *See Janus v. AFSCME, Council 31*, --U.S.--, 138 S.Ct. 2448, 201 L.Ed.2d 924 (2018). I agree. I am opposed to many actions of the WSBA, including the requirements of mandatory membership, mandatory dues payments, and other matters.

I am disavowing any membership in the WSBA, effective immediately. Please refund my 2018 dues on a pro rata basis. Thank you for your attention.

John Muenster
14940 Sunrise Drive NE
Bainbridge Island, WA 98110
206-501-9565

PA 42a

Exhibit E

ST-10

ST-10

DA 43a

From: John Muenster <jmkk1613@aol.com>
To: statuschanges <statuschanges@wsba.org>
Subject: Re: Practice closure letter to Chief Justice Fairhurst
Date: Mon, Nov 26, 2018 2:21 pm

Received. Thank you for your prompt response.

John Muenster
14940 Sunrise Drive NE
Bainbridge Island, WA 98110
206-501-9565

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

From: Membership Changes <statuschanges@wsba.org>
To: John Muenster <jmkk1613@aol.com>
Sent: Mon, Nov 26, 2018 1:32 pm
Subject: RE: Practice closure letter to Chief Justice Fairhurst

Hi there. Please pardon my error. Typically when I receive emails regarding the closure of a practice or exiting of the profession what follows is information regarding the resignation of the membership. Anyway, I have read your letter and have noted in your profile that you are disavowing your membership in the WSBA per your statement further down the email thread.

I understand that this may not apply to you, per the information you provided below, but please note that after the February 1st deadline there will be a late fee attached to the license fee. 60 days following that the suspension of the license will occur.

Unfortunately, we do not give refunds on a pro rata basis.

Have a good one, myke

From: John Muenster [mailto:jmkk1613@aol.com]
Sent: Sunday, November 25, 2018 3:35 PM
To: Membership Changes
Subject: Re: Practice closure letter to Chief Justice Fairhurst

Hi Mr. or Ms. Gettle,

See attached letter.

John Muenster
14940 Sunrise Drive NE
Bainbridge Island, WA 98110
206-501-9565

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

From: Membership Changes <statuschanges@wsba.org>
To: John Muenster <jmkk1613@aol.com>
Sent: Wed, Nov 21, 2018 8:40 am

PA 4/4 a

JOHN MUENSTER
14940 SUNRISE DRIVE NE
BAINBRIDGE ISLAND, WASHINGTON 98110
TELEPHONE: 206-501-9565
EMAIL: jmk1613@aol.com

November 25, 2018

Via email
Myke Gettle
c/o WSBA member services

Re: Your letter dated 11-21-2018

Dear Mr. or Ms. Gettle,

I received your 11-21-2018 letter. You are mistaken. I did not "request to resign" from the WSBA as you assert in your letter.

For your convenience, my 11-18-2018 email to the "Status Changes" section of the WSBA is reproduced below:

Dear Status Changes section,

Attached please find a copy of my letter to Chief Justice Fairhurst dated November 18, 2018. On page four, my letter reads in pertinent part: "I hereby close my practice, secede from my position as a lawyer admitted to practice before this Court, and exit the profession, effective immediately."

The Chief Justice recently sent a letter to the Board of Governors and others dated September 21, 2018 which reads in pertinent part:

"In light of pending lawsuits regarding the legal status of bar associations around the country as well

PA 45a

Letter to Myke Gettles
November 25, 2018
Page two

as recent case law, the Court has decided unanimously to undertake a comprehensive review of the structure of the Bar."

My view is that the Court has concluded that WSBA as currently structured is illegal. *See Janus v. AFSCME, Council 31*, --U.S.--, 138 S.Ct. 2448, 201 L.Ed.2d 924 (2018). I agree. I am opposed to many actions of the WSBA, including the requirements of mandatory membership, mandatory dues payments, and other matters.

I am disavowing any membership in the WSBA, effective immediately. Please refund my 2018 dues on a pro rata basis. Thank you for your attention.

John Muenster

As you can see, the words "request" and "resign" are not in my email. The WSBA bylaw you cite does not apply. I did not "seek permission" to "resign". I have closed my practice and exited the profession. I am within my rights to do so.

The *Janus* case cited above suggests that the bylaw you cite is invalid. Under the First Amendment as discussed in *Janus*, the WSBA as currently structured may not compel a lawyer to join it or pay dues. Similarly, the WSBA could not prohibit me from exiting the organization as I have done.

Thank you for your attention.

S/ John R. Muenster
John R. Muenster

PA 4/6a

Exhibit F

PA 47a

The Supreme Court
State of Washington

MARY E. FAIRHURST
CHIEF JUSTICE
TEMPLE OF JUSTICE
POST OFFICE BOX 40929
OLYMPIA, WASHINGTON
360-409-2929



(360) 357-2053
E-MAIL: MARY.FAIRHURST@COURTS.WA.GOV

September 21, 2018

Washington State Bar Association
1325 Fourth Ave., Ste. 600
Seattle, WA 98101-2539

VIA E-MAIL ONLY

William D. Pickett, President
Rajeev Majumdar, President-Elect
William D. Hyslop, Immediate Past President
Paula Littlewood, Executive Director and Secretary
G. Kim Risenmay, Governor
Carla J. Higginson, Governor
Kyle Sciuchetti, Governor
Daniel D. Clark, Governor
Angela M. Hayes, Governor
Brian Tollefson, Governor
Paul Swegle, Governor
James K. Doane, Governor
Kim Hunter, Governor
Dan W. Bridges, Governor
Christina A. Meserve, Governor
Athan P. Papailiou, Governor, At-Large
Jean Y. Kang, Governor, At-Large
Alec Stephens, Governor, At-Large

Dear President Pickett, President-Elect Majumdar, Past-President Hyslop, Executive Director/Secretary Paula Littlewood, and Governors of the Washington State Bar Board of Governors:

I am writing to advise you that the Court has made several important decisions that affect the Bar. In light of pending lawsuits regarding the legal status of bar associations around the country as well as recent case law, the Court has decided unanimously to undertake a comprehensive review of the structure of the Bar. Because our review will include governance, the Court by a majority vote has decided that all Board action on proposed bylaw amendments should be deferred until further notice from the Court. Thus, the Court is directing that no action be taken on any proposed by-law amendments at this time.

In addition, we have received extensive communications regarding the role of the Executive Director. It is critical that the integrity of all Bar Discipline matters be protected at all times and that the Executive Director be allowed to oversee these functions without interference. In light of these communications and concerns, we felt that it was important to communicate to

DA 489

you that the Court by a majority vote supports the Executive Director as the principal administrative officer of the Bar.

Finally, and most important, it is imperative that everyone, each Governor, each volunteer, each employee, including the Executive Director, be treated with respect. The ongoing interactions among the Governors and the Governors' interaction with staff are of concern to us. The WSBA must be a safe and healthy environment in which to work and govern. To the extent that there are not policies dealing with harassment and retaliation to cover all possible interactions by persons involved in Bar activities and Bar governance, the Court by a majority vote directs that such policies be adopted as soon as possible.

I plan to attend your September 27-28 Board meeting and, in accordance with prior practice, I will swear in the new officers and governors at the 2018 APEX Awards Dinner.

Very truly yours,

Mary E. Faihurst

MARY E. FAIHURST
Chief Justice

cc: Justices

PA 4/9a
2

FILED

Apr 12 2019

Disciplinary
Board

Docket # 125

BEFORE THE DISCIPLINARY BOARD
OF THE WASHINGTON STATE BAR ASSOCIATION

OFFICE OF DISCIPLINARY
COUNSEL ("ODC"),

v.

JOHN R. MUENSTER.

NO. 16#00008

DESIGNATION OF CLERK'S
PAPERS AND NOTICE RE
BRIEFING, LACK OF WSBA
JURISDICTION

John R. Muenster hereby designates the following documents for review
by the Disciplinary Board in this matter.¹

¹ This document is *not* submitted pursuant to the Rules for Enforcement of Lawyer Conduct (ELC). Those rules do not apply to the undersigned because I am not a member of the WSBA. In addition, the compulsory proceedings described in the ELC are unconstitutional under the First and Fourteenth Amendments. *See Janus v. AFSCME, Council 31*, 583 U.S.--, 138 S.Ct. 2448, 201 L.Ed.2d 924 (2018); *Fleck v. Wetch (North Dakota State Bar Association)*, --U.S.--, 2018 U.S. LEXIS 7092, 2018 WL 6272044 (U.S.S.Ct., December 3, 2018).

All objections to this proceeding are preserved. The filing of this document does not waive or substitute for any right of action which the undersigned or other persons or entities similarly situated may have against any individual or entity under state or federal law.

DESIGNATION OF CLERK'S PAPERS
AND NOTICE RE BRIEFING, LACK OF
WSBA JURISDICTION- 1.

JOHN R. MUENSTER
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BAINBRIDGE ISLAND, WASHINGTON 98110
(206) 501-9565
EMAIL: JMKK1613@AOL.COM

000129

PA 50a

Docket #	Document Description	Date of Filing
78.00	Respondent's Hearing Memorandum	4-18-2018
98.00	Muenster 11-18-2018 letter to Chief Justice Fairhurst	11-19-2018
117.00	John Muenster's Memorandum Urging Dismissal of this Proceeding	12-26-2018
118.00	Notice of Appeal	12-28-2018
-----	Renewed Notice of Lack of WSBA Jurisdiction	4-12-2019

My briefing for this matter at this level consists of the briefing contained in Docket #117 (filed 12-26-2018), Docket #118 (filed 12-28-2019) and the Renewed Notice of Lack of WSBA Jurisdiction, Docket # ____, filed this date.

DATED this the 12th day of April, 2019.

Respectfully submitted,

By: S/ John R. Muenster
John R. Muenster

CERTIFICATE OF SERVICE

I certify that on or about the date set forth below, I filed the foregoing document with the Clerk to the Disciplinary Board, WSBA, 1325 Fourth Avenue, Suite 600, Seattle, WA 98101-2539 via online filing. I request service on the members of the Disciplinary Board by the Clerk. On or about the same date I served counsel for the plaintiff via email.

DATED this the 12th day of April, 2019, at Bainbridge Island, Washington.

S/ John R. Muenster
John R. Muenster

DESIGNATION OF CLERK'S PAPERS
AND NOTICE RE BRIEFING, LACK OF
WSBA JURISDICTION- 2

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PA 519
000130

FILED

Apr 12 2019

Disciplinary
Board

Docket # 126

BEFORE THE DISCIPLINARY BOARD
OF THE WASHINGTON STATE BAR ASSOCIATION

OFFICE OF DISCIPLINARY
COUNSEL ("ODC"),

NO. 16#00008

v.

RENEWED NOTICE OF LACK
OF WSBA JURISDICTION

JOHN R. MUENSTER.

John R. Muenster hereby renews his objection to WSBA jurisdiction in this matter.

This proceeding should be dismissed. The undersigned is not a member of the Washington State Bar Association (WSBA). I filed my letters terminating my membership with the WSBA and with the Chief Justice on or about November 19, 2018. See Docket #98.00. The undersigned respectfully objects to the jurisdiction of the WSBA, including the Disciplinary Board and the office of disciplinary counsel.

A copy of the undersigned's memorandum urging dismissal of this proceeding due to lack of jurisdiction, filed in this matter on or about December 21, 2018, Docket #117.00, is attached hereto and by this reference incorporated herein as though fully set forth.

A copy of the undersigned's notice of appeal challenging the WSBA's jurisdiction, filed in this matter on or about December 28, 2018, Docket

RENEWED NOTICE OF LACK OF WSBA
JURISDICTION- 1

JOHN R. MUENSTER

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(206) 501-9565

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000131

PA 52a

1 #118.00, is attached hereto and by this reference incorporated herein as though
2 fully set forth.

3 The issue of jurisdiction was timely raised during this proceeding. Further,
4 my objection to the WSBA's jurisdiction may be raised at any time. *See, e.g.,*
5 *Skagit Surveyors & Eng'rs, L.L.C. v. Friends of Skagit County*, 135 Wash.2d
6 542, 556, 958 P.2d 962 (1998); RAP 2.5(a)(1) My challenge to the
7 constitutionality of the disciplinary system was likewise timely raised during
8 this proceeding, most recently in the motion to dismiss and in the notice of
9 appeal, Docket ## 117.00 and 118.00; *see also* Docket #98.00, Section VIII,
10 pp. 10-12. My constitutional challenge to the disciplinary system can likewise
11 be raised at any time. *See, e.g., State v. Leach*, 113 Wash.2d 679, 691, 782 P.2d
12 552 (1989); *see* RAP 2.5(a).

13 DATED this the 12th day of April, 2019.

14 Respectfully submitted,

15 By: S/ John R. Muenster
16 John R. Muenster
17

18 **CERTIFICATE OF SERVICE**

19 I certify that on or about the date set forth below, I filed the foregoing
20 document with the Clerk to the Disciplinary Board, WSBA, 1325 Fourth
21 Avenue, Suite 600, Seattle, WA 98101-2539 via online filing. I request service
22 on the members of the Disciplinary Board by the Clerk. On or about the same
23 date I served counsel for the plaintiff via email.

24 DATED this the 12th day of April, 2019, at Bainbridge Island,
25 Washington.

26 S/ John R. Muenster
27 John R. Muenster

28 RENEWED NOTICE OF LACK OF WSBA
JURISDICTION- 2

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PA 532

000132

BEFORE THE DISCIPLINARY BOARD
OF THE WASHINGTON STATE BAR ASSOCIATION

OFFICE OF DISCIPLINARY
COUNSEL ("ODC"),

v.

JOHN R. MUENSTER.

NO. 16#00008

JOHN MUENSTER'S
MEMORANDUM URGING
DISMISSAL OF THIS
PROCEEDING

I. INTRODUCTION.

This memorandum follows up on my letter to Chief Justice Fairhurst and my letters to the hearing officer, attached hereto as exhibits A, B and C. As these letters indicate, I have closed my practice, exited the profession, and disavowed any membership in the WSBA ("Washington State Bar Association"). The WSBA has no jurisdiction in this matter. This memorandum is submitted to make a further record of the reasons for dismissal of this proceeding.¹

¹ This memorandum is *not* submitted pursuant to the Rules for Enforcement of Lawyer Conduct (ELC). Those rules do not apply to the undersigned because I am not a member of the WSBA. In addition, the compulsory proceedings described in the ELC are unconstitutional under the First and Fourteenth Amendments. *See Janus v. AFSCME, Council 31*, 583 U.S.--, 138 S.Ct. 2448,

JOHN MUENSTER'S MEMORANDUM
URGING DISMISSAL OF THIS
PROCEEDING- 1

JOHN R. MUENSTER
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II. MOTION TO DISMISS FOR LACK OF JURISDICTION

The "Office of Disciplinary Counsel" ("ODC") does not have jurisdiction over persons who are not members of the WSBA. The undersigned is not a member. This matter must be dismissed for lack of jurisdiction.

The ODC claims:

- (1) membership in the WSBA is compulsory;
- (2) a lawyer can be forced to pay WSBA dues under threat of suspension;
- (3) a lawyer can be forced to subsidize WSBA personnel, programs and activities with which he/she disagrees;
- (4) a lawyer can be forced to participate in the WSBA's unconstitutional "disciplinary system" even if the lawyer is not a WSBA member;
- (5) a lawyer cannot quit the WSBA without permission from the organization. See Exhibits D and E.

The ODC is incorrect on each of these points. See *Janus v. AFSCME, Council 31*, *supra*; *Fleck v. Wetch (North Dakota State Bar Association)*, *supra*. *Janus* and *Fleck* provide us with the following guidance:

- The free speech and association rights of Washington lawyers are

201 L.Ed.2d 924 (2018); *Fleck v. Wetch (North Dakota State Bar Association)*, --U.S.--, 2018 U.S. LEXIS 7092, 2018 WL 6272044 (U.S.S.Ct., December 3, 2018). All objections to this proceeding are preserved. The filing of this memorandum does not waive or substitute for any right of action which the undersigned or other persons or entities similarly situated may have against any individual or entity under state or federal law.

JOHN MUENSTER'S MEMORANDUM
URGING DISMISSAL OF THIS
PROCEEDING- 2

JOHN R. MUENSTER
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PA 55a
000134

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4 BEFORE THE DISCIPLINARY BOARD
5 OF THE WASHINGTON STATE BAR ASSOCIATION

6 OFFICE OF DISCIPLINARY
7 COUNSEL ("ODC"),

8 v.
9

10 JOHN R. MUENSTER.
11

NO. 16#00008

NOTICE OF APPEAL BY JOHN
MUENSTER

12
13 John R. Muenster hereby appeals from the findings of fact, conclusions of
14 law, and recommendation of the hearing officer, filed on or about December 3,
15 2018. This proceeding should be dismissed. The undersigned is not a member
16 of the Washington State Bar Association (WSBA). The undersigned
17 respectfully objects to the jurisdiction of the WSBA, including the Disciplinary
18 Board and the office of disciplinary counsel.

19 A copy of the undersigned's memorandum urging dismissal of this
20 proceeding, filed on or about December 21, 2018, is attached hereto and by this
21 reference incorporated herein as though fully set forth.

22 DATED this the 28th day of December, 2018.

23 Respectfully submitted,

24
25 By: S/ John R. Muenster
26 John R. Muenster
27

28 NOTICE OF APPEAL BY JOHN
MUENSTER- 1

JOHN R. MUENSTER
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DA 57a
000164

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CERTIFICATE OF SERVICE

I certify that on or about the date set forth below, I filed the foregoing document with the Clerk to the Disciplinary Board, WSBA, 1325 Fourth Avenue, Suite 600, Seattle, WA 98101-2539 via online filing. On or about the same date, I delivered a copy to the Hearing Officer via email. On or about the same date I served counsel for the plaintiff via email.

DATED this the 28th day of December, 2018, at Bainbridge Island, Washington.

S/ John R. Muenster
John R. Muenster

NOTICE OF APPEAL BY JOHN
MUENSTER- 2

DA58a

JOHN R. MUENSTER
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000165

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6 BEFORE THE DISCIPLINARY BOARD
7 OF THE WASHINGTON STATE BAR ASSOCIATION

8 OFFICE OF DISCIPLINARY
9 COUNSEL ("ODC"),

10 v.

11 JOHN R. MUENSTER.
12

NO. 16#00008

JOHN MUENSTER'S
MEMORANDUM URGING
DISMISSAL OF THIS
PROCEEDING

13
14 **I. INTRODUCTION.**

15 This memorandum follows up on my letter to Chief Justice Fairhurst and
16 my letters to the hearing officer, attached hereto as exhibits A, B and C. As
17 these letters indicate, I have closed my practice, exited the profession, and
18 disavowed any membership in the WSBA ("Washington State Bar
19 Association"). The WSBA has no jurisdiction in this matter. This
20 memorandum is submitted to make a further record of the reasons for dismissal
21 of this proceeding.¹
22

23
24 ¹ This memorandum is *not* submitted pursuant to the Rules for Enforcement of
25 Lawyer Conduct (ELC). Those rules do not apply to the undersigned because I
26 am not a member of the WSBA. In addition, the compulsory proceedings
27 described in the ELC are unconstitutional under the First and Fourteenth
28 Amendments. *See Janus v. AFSCME, Council 31*, 583 U.S.--, 138 S.Ct. 2448,

JOHN MUENSTER'S MEMORANDUM
URGING DISMISSAL OF THIS
PROCEEDING- 1

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II. MOTION TO DISMISS FOR LACK OF JURISDICTION

The "Office of Disciplinary Counsel" ("ODC") does not have jurisdiction over persons who are not members of the WSBA. The undersigned is not a member. This matter must be dismissed for lack of jurisdiction.

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- (1) membership in the WSBA is compulsory;
- (2) a lawyer can be forced to pay WSBA dues under threat of suspension;
- (3) a lawyer can be forced to subsidize WSBA personnel, programs and activities with which he/she disagrees;
- (4) a lawyer can be forced to participate in the WSBA's unconstitutional "disciplinary system" even if the lawyer is not a WSBA member;
- (5) a lawyer cannot quit the WSBA without permission from the organization. See Exhibits D and E.

The ODC is incorrect on each of these points. *See Janus v. AFSCME, Council 31, supra; Fleck v. Wetch (North Dakota State Bar Association), supra.* *Janus* and *Fleck* provide us with the following guidance:

- The free speech and association rights of Washington lawyers are

201 L.Ed.2d 924 (2018); *Fleck v. Wetch (North Dakota State Bar Association)*, --U.S.--, 2018 U.S. LEXIS 7092, 2018 WL 6272044 (U.S.S.Ct., December 3, 2018). All objections to this proceeding are preserved. The filing of this memorandum does not waive or substitute for any right of action which the undersigned or other persons or entities similarly situated may have against any individual or entity under state or federal law.

JOHN MUENSTER'S MEMORANDUM
URGING DISMISSAL OF THIS
PROCEEDING- 2

PA 600a

JOHN R. MUENSTER
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1 violated by the compulsory funding, program and membership
2 requirements of the WSBA. *Janus*, 138 S.Ct. at 2459-2461; 138 S.
3 Ct. at 2463-64.

- 4 • Public-sector agency-shop arrangements (like the WSBA system)
5 violate the First Amendment. *See Janus*, 138 S.Ct. at 2478.
- 6 • Prior decisions in favor of bar associations on these issues must be
7 reconsidered in light of *Janus*. *See Fleck v. Wetch (North Dakota*
8 *Bar Association)*, *supra*, 2018 U.S. LEXIS 7092, (U.S.S.Ct., 12-3-
9 2018) (granting certiorari, vacating 8th Circuit decision in favor of
10 bar association, and remanding to the circuit for further
11 consideration in light of *Janus*).

12
13
14 The Chief Justice recently sent a letter (Exhibit F) to the Board of
15 Governors and others dated September 21, 2018 which reads in pertinent part:

16 "In light of pending lawsuits regarding the legal
17 status of bar associations around the country as well
18 as recent case law, the Court has decided
19 unanimously to undertake a comprehensive review
20 of the structure of the Bar."

21 It appears that the Court has concluded that the WSBA as currently structured
22 is illegal. *See Janus v. AFSCME, Council 31, supra*. I agree. I am opposed to many
23 actions of the WSBA, including the requirements of mandatory membership,
24 mandatory dues payments, and other matters.

25 In this matter, the WSBA, an illegally-constituted organization under *Janus*, is
26 pursuing someone who is not a member. To do so, the WSBA is spending
27 dues/resources obtained through compulsion, in violation of the First Amendment

28 JOHN MUENSTER'S MEMORANDUM
URGING DISMISSAL OF THIS
PROCEEDING- 3

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DA 61a
000168

under *Janus*. It is in the best interests of the WSBA to comply with the rulings of the United States Supreme Court. The WSBA should dismiss this matter for lack of jurisdiction.

III. OTHER ISSUES PRESENTED.

A. The disciplinary system is unconstitutional.

Prior to my secession from membership in and disavowal of the WSBA, I challenged the constitutionality of these proceedings in a memorandum filed last spring.

The current disciplinary system shares the hallmarks of the criminal law system.² Those hallmarks trigger the protections of the Fourth, Fifth, Sixth Amendments, as well as the Due Process Clause of the Fourteenth Amendment.³ Accordingly, constitutionally-required provisions and protections should be in place in the WSBA system, among them the following: (a) trial by jury; (b) a unanimous verdict, (c) proof beyond a reasonable doubt; (d) the presumption of innocence; (e) application of the Washington Rules of Evidence (ER); (f) the protections of the Sixth and Fourteenth Amendment rights to confrontation, compulsory process and presentation of a defense; and (g) the protection of the rule of statutory construction that penal laws (whether

² Under the current ELC rules, a "respondent lawyer" is required to be present at the proceedings, just as a criminal defendant is required to be personally present at criminal hearings.

³ See *Respondent's Answer and Affirmative Defenses E, F, G, H and I*, filed 5-18-2017.

1 "criminal" or "non-criminal") are strictly construed against the prosecuting
2 authority and liberally construed in favor of the respondent.⁴

3 The constitutional protections listed above are available to a citizen
4 charged with a minor misdemeanor or "criminal traffic" offense. The penalties
5 in a proceeding under the current ELC system are significantly more serious.
6 Common sense as well as the Constitution counsel us that the protections
7 available to a "respondent citizen" charged with a minor misdemeanor offense
8 should likewise be available to a "respondent lawyer" charged in the ELC
9 system.

10
11 **B. Fee agreement disputes should be adjudicated in Superior Court**
12 **under Washington contract law where litigation has been instituted, not in**
13 **the WSBA system.**

14 The undersigned and a former client are opponents in a Superior Court
15 lawsuit over fees. There is a written, signed fee agreement that the undersigned
16 relies on.

17 In construing a contract, the court is to follow these rules:

18
19 "When interpreting a contract our primary goal is to
20 discern the intent of the parties, and such intent must
21 be discovered from viewing the contract as a whole."
22 [footnote citation omitted].

23 ⁴ "Where two possible constructions are permissible, the rule of lenity requires
24 us to construe the statute strictly against the State in favor of the accused." *State*
25 *v. Gore*, 101 Wn.2d 481, 485-86, 681 P.2d 227, 39 A.L.R.4th 975 (1984);
26 *Staats v. Brown*, 139 Wash.2d 757, 769, 991 P.2d 615 (2000). In this matter, it
27 appears that the opposite occurred.

28 JOHN MUENSTER'S MEMORANDUM
URGING DISMISSAL OF THIS
PROCEEDING- 5

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DA 63a

000170

1 Washington follows the "objective manifestation theory of
2 contracts" to determine the parties' intent. [footnote citation
3 omitted].

4 Courts focus on the "objective manifestations of the agreement,
5 rather than on the unexpressed subjective intent of the parties."
6 [footnote citation omitted].

7 "[W]hen interpreting contracts, the subjective intent
8 of the parties is generally irrelevant if the intent can
9 be determined from the actual words used." [footnote
10 citation omitted]

11 This court does not "interpret what was intended to be written
12 but what was written." [footnote citation omitted].

13 *Washington Federal v. Gentry*, 179 Wash.App. 470, 490, 319 P.3d 823
14 (Division One, 2014), *review granted*, 180 Wash. 2d 1021, *affirmed and*
15 *remanded*, *Wash. Fed. v. Harvey*, 182 Wash.2d 335, 340 P.3d 846 (2015). The
16 cases cited in the footnotes above in *Gentry*, 179 Wash.App. at 490, are
17 incorporated by reference herein as though fully set forth.

18 Rewriting the terms of an agreement between the parties is beyond the
19 trial court's authority. *Gentry, supra*; *Butler v. Caldwell*, No. 48931-3-I, 2002
20 Wash.App. LEXIS 622, *1, *11 (Division One, 2002).

21 In the proposed findings in this matter, the ODC counsel and the hearing
22 officer rewrote the fee agreement. In doing so, they violated the foregoing
23 contract law rules. Through their actions, they impaired the obligations of the
24 contract entered into by the parties.

25 The ODC counsel and ODC hearing officer had been advised of the
26 pending Superior Court proceedings. They were urged to defer the ODC
27

28 JOHN MUENSTER'S MEMORANDUM
URGING DISMISSAL OF THIS
PROCEEDING- 6

JOHN R. MUENSTER
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000171

DA 64a

1 proceedings until resolution of the Superior Court matter. They were advised of
2 the state Supreme Court's preference for deferral as expressed in *In re the*
3 *Disciplinary Proceeding Against Gillingham*, 126 Wash.2d 454, 458 fn.3, 896
4 P.2d 656, 1995 Wash. LEXIS 166 (1995). Unfortunately, these reasonable
5 norms were not followed.

6 The only apparent reason for the ODC personnel to press forward with
7 their version of the matter would be to assist the former client in the Superior
8 Court case. This is not appropriate. WSBA proceedings are not conducted by a
9 judge. They are not guided by the rules of evidence, the rules of civil procedure
10 or constitutional law. Parallel proceedings conducted under different rules can
11 lead to conflicting results between the two forums.

12 WSBA member resources should not be used to advance the interests of
13 a private party in a private lawsuit. It was wrong to do so here. This could
14 have been avoided through principled, timely action by the ODC actors.
15

16
17 **C. The proposed findings are incorrect.**

18 Without waiving any objections to jurisdiction, the undersigned
19 respectfully objects to the proposed findings propounded by the ODC counsel
20 and ODC hearing officer in this matter. In place of those findings, the contents
21 of the Answer and Affirmative Defenses to the first amended complaint filed by
22 the undersigned in 2017 should be substituted. Testimony given by the
23 undersigned and Andi Knight and exhibits submitted by the undersigned should
24 have been considered. These materials should have formed the basis for the
25 findings and conclusions in this matter.
26

27
28 JOHN MUENSTER'S MEMORANDUM
URGING DISMISSAL OF THIS
PROCEEDING- 7

JOHN R. MUENSTER
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1 DATED this the 21st day of December, 2018.

2 Respectfully submitted,

3 By: S/ John R. Muenster
4 John R. Muenster

5
6
7 **CERTIFICATE OF SERVICE**

8 I certify that on or about the date set forth below, I filed the foregoing
9 document with the Clerk to the Disciplinary Board, WSBA, 1325 Fourth
10 Avenue, Suite 600, Seattle, WA 98101-2539 via online filing. On or about the
11 same date, I delivered a copy to the Hearing Officer via email. On or about the
12 same date I served counsel for the plaintiff via email.

13 DATED this the 21st day of December, 2018, at Bainbridge Island,
14 Washington.

15 S/ John R. Muenster
16 John R. Muenster

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28 JOHN MUENSTER'S MEMORANDUM
URGING DISMISSAL OF THIS
PROCEEDING- 8

JOHN R. MUENSTER
14940 SUNRISE DRIVE NE
BAINBRIDGE ISLAND, WASHINGTON 98110
(206) 501-9565
EMAIL: JMKK1613@AOL.COM

WASHINGTON STATE BAR ASSOCIATION

Regulatory Services Department

November 21, 2018

John Muenster
14940 Sunrise Drive NE
Bainbridge Island, WA 98110

RE: Resignation from WSBA #6237

Dear John Muenster:

Your request to resign from the Washington State Bar Association has been denied at this time because there is a disciplinary investigation or proceeding pending in the Office of Disciplinary Counsel. The WSBA Bylaws, Sec. III.H, provide:

H. VOLUNTARY RESIGNATION.

Voluntary resignation may apply in any situation in which a member does not want to continue practicing law in Washington for any reason (including retirement from practice) and for that reason does not want to continue membership in the Bar. A member may voluntarily resign from the Bar by submitting a written request for voluntary resignation to the Executive Director. If there is a disciplinary investigation or proceeding then pending against the member, or if the member had knowledge that the filing of a grievance of substance against such member was imminent, resignation is permitted only under the provisions of the Rules for Enforcement of Lawyer Conduct. A member who resigns from the WSBA cannot practice law in Washington in any manner. A member seeking reinstatement after resignation must comply with these bylaws.

You may contact caa@wsba.org if you have any questions.

Sincerely,
Myke Gettle
WSBA Regulatory Services



1325 4th Avenue | Suite 600 | Seattle, WA 98101-2539
800-945-WSBA | 206-443-WSBA | questions@wsba.org | www.wsba.org
206-239-2131 | 206-727-8313 (fax) | statuschanges@wsba.org

SCA 3 PA 67a

FILED
SUPREME COURT
STATE OF WASHINGTON
8/28/2019 3:28 PM
BY SUSAN L. CARLSON
CLERK

No. 201,872-6

IN THE SUPREME COURT OF THE STATE OF
WASHINGTON

JOHN R. MUENSTER,
Petitioner/Appellant,

v.

WASHINGTON STATE BAR ASSOCIATION,
Respondent.

APPEAL FROM PROCEEDINGS INSTITUTED BY
RESPONDENT AGAINST PETITIONER IN
CONNECTION WITH WSBA NO. 16#00008

PETITIONER/APPELLANT'S OPENING BRIEF

JOHN R. MUENSTER
P.O. Box 30108
Seattle, WA 98113
Telephone: (206)501-9565
Email: jmkk1613@aol.com
Petitioner/Appellant

PA 68a

WSBA. The case is moot. The WSBA lacks jurisdiction. The WSBA cannot force petitioner to pay 2019 dues. The contents of Sections IV.B, IV.C and IV.D of this brief are incorporated herein by reference as though fully set forth.

In addition to the foregoing, petitioner challenges jurisdiction because Washington's mandatory bar association laws⁶ are unconstitutional under the First and Fourteenth Amendments to the Constitution of the United States. A challenge to the constitutionality of North Dakota's mandatory bar association laws was recently considered by the United States Supreme Court. *See Fleck v. Wetch (North Dakota State Bar Association)*, --U.S.--, 139 S. Ct. 590, 202 L.Ed.2d 423 (2018) (petition for certiorari challenging mandatory bar membership requirement; *cert. granted and case remanded* for consideration under *Janus*). The petition for certiorari in *Fleck* may be found at:

https://www.supremecourt.gov > 0171215163209925_Fleck Petition. Should the United States Supreme Court hold mandatory bar associations unconstitutional, petitioner seeks to apply the ruling in this case.

Finally, forcing petitioner to pay bar fees and remain a bar member after he has quit would appear to run afoul of the Thirteenth Amendment. The Amendment prohibits slavery

⁶ See RCW 2.48 et.seq., RCW 2.48.170.

PA 69a

and “involuntary servitude”. For purposes of constitutional law, the Amendment codifies the right to quit. One federal statute that was enacted to enforce the Amendment is the Trafficking Victims Protection Act (“TVPA”), Title 18, United States Code , Section 1595.

The statute prohibits obtaining labor via threats of financial harm. *See United States v. Dann*, 652 F.3d 1160, 1163-66 (9th Cir. 2011). “Congress in 2000 ‘intended to reach cases in which persons are held in a condition of servitude through nonviolent coercion.’ ” *Dann*, 652 F3d at 1169; *Tanedo v. East Baton Rouge School Board*, 2012 U.S.Dist. LEXIS 157725, *8-10 (C.D.Calif 2012). In *Tanedo*, the defendants recruited Filipino nationals to work as teachers in Louisiana schools. The defendants required the teachers to pay fees in order to obtain visas and get U.S. employment. After arrival in Louisiana, the Filipino teachers were required to pay more fees in order to hold their jobs and avoid deportation. In the ensuing class action, the California federal court held that this conduct fell within the scope of the TVPA prohibition against non-violent servitude. *See Tanedo*, 2012 U.S.Dist.LEXIS 157725, *7-*16.

Petitioner has not located another case in which a state bar association sought to force a lawyer to remain on the rolls

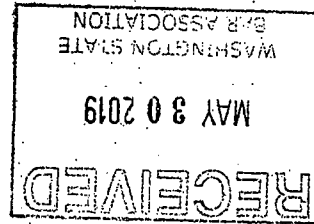
DA 70a

FILED

May 30 2019

Disciplinary
Board

Docket # 128



BEFORE THE DISCIPLINARY BOARD
OF THE WASHINGTON STATE BAR ASSOCIATION

OFFICE OF DISCIPLINARY
COUNSEL ("ODC"),

v.

JOHN R. MUENSTER.

NO. 16#00008

NOTICE OF APPEAL BY JOHN
MUENSTER TO THE
WASHINGTON SUPREME
COURT

John R. Muenster hereby appeals to the Supreme Court of Washington from the failure of the Disciplinary Board to dismiss this matter for lack of jurisdiction, as described below. In this appeal, this Court should hold under *Janus v. AFSCME, Council 31* that the undersigned can quit the profession, that the WSBA cannot control non-members who have quit, and that this matter should be dismissed.

(1) Via letter to the Chief Justice dated November 18, 2018, I exercised my constitutional right under the First and Fourteenth Amendments to close my practice, exit the profession and cancel my membership in the Washington State Bar Association ("WSBA"). See *Janus v. AFSCME, Council 31*, 583 U.S.--, 138 S.Ct. 2448, 201 L.Ed.2d 924 (2018); *Fleck v. Wetch (North Dakota State Bar Association)*, --U.S.--, 139 S.Ct. 590, 202 L.Ed.2d 423 (2018). A copy of

NOTICE OF APPEAL BY JOHN
MUENSTER TO THE WASHINGTON
SUPREME COURT- 1

JOHN R. MUENSTER
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you that the Court by a majority vote supports the Executive Director as the principal administrative officer of the Bar.

Finally, and most important, it is imperative that everyone, each Governor, each volunteer, each employee, including the Executive Director, be treated with respect. The ongoing interactions among the Governors and the Governors' interaction with staff are of concern to us. The WSBA must be a safe and healthy environment in which to work and govern. To the extent that there are not policies dealing with harassment and retaliation to cover all possible interactions by persons involved in Bar activities and Bar governance, the Court by a majority vote directs that such policies be adopted as soon as possible.

I plan to attend your September 27-28 Board meeting and, in accordance with prior practice, I will swear in the new officers and governors at the 2018 APEX Awards Dinner.

Very truly yours,

Mary E. Faihurst

MARY E. FAIHURST
Chief Justice

cc: Justices

1 my letter to the Chief Justice is reproduced as Exhibit A of Attachment I to this
2 notice and by this reference incorporated herein for the record of this appeal.

3 (2) Via letter to the Status Changes section of the WSBA dated 11-18-
4 2018, I cancelled my membership. I enclosed a copy of my 11-18-2018 letter
5 to the Chief Justice. I requested a refund of my 2018 dues on a pro rata basis. A
6 copy of my 11-18-2019 letter to the WSBA Status Changes section is
7 reproduced as Exhibit B of Attachment I to this notice and by this reference
8 incorporated herein for the record of this appeal.

9 (3) On December 28th, 2018, I timely filed and served a notice of appeal
10 to the Disciplinary Board ("Board") from the ruling of the hearing officer in this
11 matter. In my notice of appeal, I sought dismissal of the proceeding for lack of
12 jurisdiction. I am not a WSBA member. My previously-filed memorandum
13 for dismissal for lack of jurisdiction under *Janus*, attached to my notice of
14 appeal, served as my brief before the Board. A copy of my notice of appeal to
15 the Board with the memorandum/brief is reproduced as Attachment II to this
16 notice and by this reference incorporated herein for the record of this appeal.

17 (4) On April 12, 2019, I filed and served on the Board a Renewed
18 Notice of Lack of WSBA Jurisdiction. The notice included another copy of my
19 notice of appeal to the Board and another copy of my memorandum/brief in
20 support of dismissal. In my transmittal email to the WSBA clerk, I requested
21 that the renewed notice, the notice of appeal and my memorandum/brief be
22 forwarded to the members of the Board. Copies of my transmittal email, the
23 Renewed Notice of Lack of WSBA Jurisdiction, and the above-described
24 supporting documents (notice of appeal and my memorandum/brief) are
25
26
27
28

NOTICE OF APPEAL BY JOHN
MUENSTER TO THE WASHINGTON
SUPREME COURT- 2

JOHN R. MUENSTER
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000198

PA 729

1 reproduced as Attachment III to this notice and by this reference incorporated
2 herein for the record of this appeal.

3 (5) Also on April 12, I served and filed my Designation of Clerk's
4 Papers and Notice re Briefing, Lack of WSBA Jurisdiction. This document
5 designated the previously filed briefing (docket nos. 117.00, 118.00 and the
6 Renewed Notice of Lack of Jurisdiction) as my briefing for the Board to
7 review. Copies of my transmittal email and the Designation are reproduced as
8 Attachment IV to this notice and by this reference incorporated herein for the
9 record of this appeal.

10 (6) The issue of jurisdiction was repeatedly raised during this
11 proceeding in the documents discussed above. Further, my objection to the
12 WSBA's jurisdiction may be raised at any time. *See, e.g., Skagit Surveyors &*
13 *Eng'rs, L.L.C. v. Friends of Skagit County*, 135 Wash.2d 542, 556, 958 P.2d
14 962 (1998); RAP 2.5(a)(1).

15 (7) The Board did not grant any relief. On appeal, this Court should
16 hold under *Janus* that the undersigned can quit the profession, that the WSBA
17 cannot control non-members who have quit, and that this matter should be
18 dismissed.

19 (8) The only document filed by the Board in this matter (that the
20 undersigned has seen) was an "order declining sua sponte review", dated May
21 2, 2019. A copy of this document is reproduced as Attachment V.
22

23 DATED this the 30th day of May, 2019.

24 Respectfully submitted,

25 By: S/ John R. Muenster
26 * John R. Muenster

27
28 NOTICE OF APPEAL BY JOHN
MUNSTER TO THE WASHINGTON
SUPREME COURT- 3

JOHN R. MUENSTER
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(206) 501-9565
EMAIL: JMKK1613@AOL.COM

PA 73a

000199

Attachment I

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CERTIFICATE OF SERVICE

I certify that on or about the date set forth below, I filed the foregoing document with the Clerk to the Disciplinary Board, WSBA, 1325 Fourth Avenue, Suite 600, Seattle, WA 98101-2539 via online filing. On or about the same date, I delivered a hard copy to the Clerk at the WSBA office along with the filing fee check for the Supreme Court. On or about the same date I served counsel for the plaintiff via email.

DATED this the 30th day of May, 2019, at Bainbridge Island, Washington.

S/ John R. Muenster
John R. Muenster

NOTICE OF APPEAL BY JOHN
MUENSTER TO THE WASHINGTON
SUPREME COURT- 4

JOHN R. MUENSTER
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DA 749

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6 BEFORE THE DISCIPLINARY BOARD
7 OF THE WASHINGTON STATE BAR ASSOCIATION

8 OFFICE OF DISCIPLINARY
9 COUNSEL ("ODC"),

10 v.

11 JOHN R. MUENSTER.
12

NO. 16#00008

JOHN MUENSTER'S
MEMORANDUM URGING
DISMISSAL OF THIS
PROCEEDING

13
14 **I. INTRODUCTION.**

15 This memorandum follows up on my letter to Chief Justice Fairhurst and
16 my letters to the hearing officer, attached hereto as exhibits A, B and C. As
17 these letters indicate, I have closed my practice, exited the profession, and
18 disavowed any membership in the WSBA ("Washington State Bar
19 Association"). The WSBA has no jurisdiction in this matter. This
20 memorandum is submitted to make a further record of the reasons for dismissal
21 of this proceeding.¹
22

23
24 ¹ This memorandum is *not* submitted pursuant to the Rules for Enforcement of
25 Lawyer Conduct (ELC). Those rules do not apply to the undersigned because I
26 am not a member of the WSBA. ~~In addition, the compulsory proceedings~~
27 ~~described in the ELC are unconstitutional under the First and Fourteenth~~
28 ~~Amendments. See Janus v. AFSCME, Council 31, 583 U.S.--, 138 S.Ct. 2448,~~

JOHN MUENSTER'S MEMORANDUM
URGING DISMISSAL OF THIS
PROCEEDING- 1

JOHN R. MUENSTER
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DA 75e

000214

1
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3 **II. MOTION TO DISMISS FOR LACK OF JURISDICTION**

4 The "Office of Disciplinary Counsel" ("ODC") does not have jurisdiction
5 over persons who are not members of the WSBA. The undersigned is not a
6 member. This matter must be dismissed for lack of jurisdiction.

7 The ODC claims:

- 8 (1) membership in the WSBA is compulsory;
9 (2) a lawyer can be forced to pay WSBA dues under threat of
10 suspension;
11 (3) a lawyer can be forced to subsidize WSBA personnel, programs and
12 activities with which he/she disagrees;
13 (4) a lawyer can be forced to participate in the WSBA's unconstitutional
14 "disciplinary system" even if the lawyer is not a WSBA member;
15 (5) a lawyer cannot quit the WSBA without permission from the
16 organization. See Exhibits D and E.

17 The ODC is incorrect on each of these points. See *Janus v. AFSCME*,
18 *Council 31, supra*; *Fleck v. Wetch (North Dakota State Bar Association)*,
19 *supra*. *Janus* and *Fleck* provide us with the following guidance:

- 20 • The free speech and association rights of Washington lawyers are

21
22 201 L.Ed.2d 924 (2018); *Fleck v. Wetch (North Dakota State Bar Association)*,
23 --U.S.--, 2018 U.S. LEXIS 7092, 2018 WL 6272044 (U.S.S.Ct., December 3,
24 2018). All objections to this proceeding are preserved. The filing of this
25 memorandum does not waive or substitute for any right of action which the
26 undersigned or other persons or entities similarly situated may have against any
27 individual or entity under state or federal law.

28 JOHN MUENSTER'S MEMORANDUM
URGING DISMISSAL OF THIS
PROCEEDING- 2

JOHN R. MUENSTER
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1 violated by the compulsory funding, program and membership
2 requirements of the WSBA. *Janus*, 138 S.Ct. at 2459-2461; 138 S.
3 Ct. at 2463-64.

- 4 • Public-sector agency-shop arrangements (like the WSBA system)
5 violate the First Amendment. *See Janus*, 138 S.Ct. at 2478.
- 6 • Prior decisions in favor of bar associations on these issues must be
7 reconsidered in light of *Janus*. *See Fleck v. Wetch (North Dakota*
8 *Bar Association)*, *supra*, 2018 U.S. LEXIS 7092, (U.S.S.Ct., 12-3-
9 2018) (granting certiorari, vacating 8th Circuit decision in favor of
10 bar association, and remanding to the circuit for further
11 consideration in light of *Janus*).

12
13 The Chief Justice recently sent a letter (Exhibit F) to the Board of
14 Governors and others dated September 21, 2018 which reads in pertinent part:

15 "In light of pending lawsuits regarding the legal
16 status of bar associations around the country as well
17 as recent case law, the Court has decided
18 unanimously to undertake a comprehensive review
19 of the structure of the Bar."

20 It appears that the Court has concluded that the WSBA as currently structured
21 is illegal. *See Janus v. AFSCME, Council 31, supra*. I agree. I am opposed to many
22 actions of the WSBA, including the requirements of mandatory membership,
23 mandatory dues payments, and other matters.

24 In this matter, the WSBA, an illegally-constituted organization under *Janus*, is
25 pursuing someone who is not a member. To do so, the WSBA is spending
26 dues/resources obtained through compulsion, in violation of the First Amendment
27

28 JOHN MUENSTER'S MEMORANDUM
URGING DISMISSAL OF THIS
PROCEEDING- 3

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DA 77a

1 under *Janus*. It is in the best interests of the WSBA to comply with the rulings of
2 the United States Supreme Court. The WSBA should dismiss this matter for lack
3 of jurisdiction.

4
5 **III. OTHER ISSUES PRESENTED.**

6 **A. The disciplinary system is unconstitutional.**

7 Prior to my secession from membership in and disavowal of the WSBA, I
8 challenged the constitutionality of these proceedings in a memorandum filed last
9 spring.

10 The current disciplinary system shares the hallmarks of the criminal law
11 system.² Those hallmarks trigger the protections of the Fourth, Fifth, Sixth
12 Amendments, as well as the Due Process Clause of the Fourteenth
13 Amendment.³ Accordingly, constitutionally-required provisions and
14 protections should be in place in the WSBA system, among them the following:
15 (a) trial by jury; (b) a unanimous verdict, (c) proof beyond a reasonable doubt;
16 (d) the presumption of innocence; (e) application of the Washington Rules of
17 Evidence (ER); (f) the protections of the Sixth and Fourteenth Amendment
18 rights to confrontation, compulsory process and presentation of a defense; and
19 (g) the protection of the rule of statutory construction that penal laws (whether
20

21
22 ² Under the current ELC rules, a "respondent lawyer" is required to be present
23 at the proceedings, just as a criminal defendant is required to be personally present
24 at criminal hearings.

25 ³ See *Respondent's Answer and Affirmative Defenses E, F, G, H and I*, filed 5-
26 18-2017.

27
28 JOHN MUENSTER'S MEMORANDUM
URGING DISMISSAL OF THIS
PROCEEDING- 4

JOHN R. MUENSTER
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1 "criminal" or "non-criminal") are strictly construed against the prosecuting
2 authority and liberally construed in favor of the respondent.⁴

3 The constitutional protections listed above are available to a citizen
4 charged with a minor misdemeanor or "criminal traffic" offense. The penalties
5 in a proceeding under the current ELC system are significantly more serious.
6 Common sense as well as the Constitution counsel us that the protections
7 available to a "respondent citizen" charged with a minor misdemeanor offense
8 should likewise be available to a "respondent lawyer" charged in the ELC
9 system.

10
11 **B. Fee agreement disputes should be adjudicated in Superior Court**
12 **under Washington contract law where litigation has been instituted, not in**
13 **the WSBA system.**

14 The undersigned and a former client are opponents in a Superior Court
15 lawsuit over fees. There is a written, signed fee agreement that the undersigned
16 relies on.

17 In construing a contract, the court is to follow these rules:

18
19 "When interpreting a contract our primary goal is to
20 discern the intent of the parties, and such intent must
21 be discovered from viewing the contract as a whole."
22 [footnote citation omitted].

23 ⁴ "Where two possible constructions are permissible, the rule of lenity requires
24 us to construe the statute strictly against the State in favor of the accused." *State*
25 *v. Gore*, 101 Wn.2d 481, 485-86, 681 P.2d 227, 39 A.L.R.4th 975 (1984);
26 *Staats v. Brown*, 139 Wash.2d 757, 769, 991 P.2d 615 (2000). In this matter, it
27 appears that the opposite occurred.

28 JOHN MUENSTER'S MEMORANDUM
URGING DISMISSAL OF THIS
PROCEEDING- 5

JOHN R. MUENSTER
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1 Washington follows the "objective manifestation theory of
2 contracts" to determine the parties' intent. [footnote citation
3 omitted].

4 Courts focus on the "objective manifestations of the agreement,
5 rather than on the unexpressed subjective intent of the parties."
6 [footnote citation omitted].

7 "[W]hen interpreting contracts, the subjective intent
8 of the parties is generally irrelevant if the intent can
9 be determined from the actual words used." [footnote
10 citation omitted]

11 This court does not "interpret what was intended to be written
12 but what was written." [footnote citation omitted].

13 *Washington Federal v. Gentry*, 179 Wash.App. 470, 490, 319 P.3d 823
14 (Division One, 2014), review granted, 180 Wash. 2d 1021, affirmed and
15 remanded, *Wash. Fed. v. Harvey*, 182 Wash.2d 335, 340 P.3d 846 (2015). The
16 cases cited in the footnotes above in *Gentry*, 179 Wash.App. at 490, are
17 incorporated by reference herein as though fully set forth.

18 Rewriting the terms of an agreement between the parties is beyond the
19 trial court's authority. *Gentry, supra*; *Butler v. Caldwell*, No. 48931-3-I, 2002
20 Wash.App. LEXIS 622, *1, *11 (Division One, 2002).

21 In the proposed findings in this matter, the ODC counsel and the hearing
22 officer rewrote the fee agreement. In doing so, they violated the foregoing
23 contract law rules. Through their actions, they impaired the obligations of the
24 contract entered into by the parties.

25 The ODC counsel and ODC hearing officer had been advised of the
26 pending Superior Court proceedings. They were urged to defer the ODC

27
28 JOHN MUENSTER'S MEMORANDUM
URGING DISMISSAL OF THIS
PROCEEDING- 6

JOHN R. MUENSTER
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BAINBRIDGE ISLAND, WASHINGTON 98110
(206) 501-9565
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1 proceedings until resolution of the Superior Court matter. They were advised of
2 the state Supreme Court's preference for deferral as expressed in *In re the*
3 *Disciplinary Proceeding Against Gillingham*, 126 Wash.2d 454, 458 fn.3, 896
4 P.2d 656, 1995 Wash. LEXIS 166 (1995). Unfortunately, these reasonable
5 norms were not followed.

6 The only apparent reason for the ODC personnel to press forward with
7 their version of the matter would be to assist the former client in the Superior
8 Court case. This is not appropriate. WSBA proceedings are not conducted by a
9 judge. They are not guided by the rules of evidence, the rules of civil procedure
10 or constitutional law. Parallel proceedings conducted under different rules can
11 lead to conflicting results between the two forums.

12 WSBA member resources should not be used to advance the interests of
13 a private party in a private lawsuit. It was wrong to do so here. This could
14 have been avoided through principled, timely action by the ODC actors.
15

16
17 **C. The proposed findings are incorrect.**

18 Without waiving any objections to jurisdiction, the undersigned
19 respectfully objects to the proposed findings propounded by the ODC counsel
20 and ODC hearing officer in this matter. In place of those findings, the contents
21 of the Answer and Affirmative Defenses to the first amended complaint filed by
22 the undersigned in 2017 should be substituted. Testimony given by the
23 undersigned and Andi Knight and exhibits submitted by the undersigned should
24 have been considered. These materials should have formed the basis for the
25 findings and conclusions in this matter.
26
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JOHN MUENSTER'S MEMORANDUM
URGING DISMISSAL OF THIS
PROCEEDING- 7

JOHN R. MUENSTER
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BAINBRIDGE ISLAND, WASHINGTON 98110
(206) 501-9565
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PA 81a

1 DATED this the 21st day of December, 2018.

2 Respectfully submitted,

3 By: S/ John R. Muenster
4 John R. Muenster

5
6
7 **CERTIFICATE OF SERVICE**

8 I certify that on or about the date set forth below, I filed the foregoing
9 document with the Clerk to the Disciplinary Board, WSBA, 1325 Fourth
10 Avenue, Suite 600, Seattle, WA 98101-2539 via online filing. On or about the
11 same date, I delivered a copy to the Hearing Officer via email. On or about the
12 same date I served counsel for the plaintiff via email.

13 DATED this the 21st day of December, 2018, at Bainbridge Island,
14 Washington.

15 S/ John R. Muenster
16 John R. Muenster

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28 JOHN MUENSTER'S MEMORANDUM
URGING DISMISSAL OF THIS
PROCEEDING- 8

JOHN R. MUENSTER
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II. REPLY TO ODC "COUNTERSTATEMENT OF THE CASE"

A. Petitioner's brief/memorandum urging dismissal, and other material filings challenging the ODC prosecution, appear to have been overlooked in the ODC brief.

Respondent's description of the record is inaccurate. Petitioner's filings are important to the issues in this appeal. Unfortunately, it appears that most if not all of petitioner's filings with the ODC disciplinary clerk/ disciplinary board, discussed below, were not discussed in respondent's description of the record.¹

(1) Via letter to the Chief Justice dated November 18, 2018, Petitioner exercised his constitutional right under the First and Fourteenth Amendments to close his practice, exit the profession and cancel his membership in the Washington State Bar Association ("WSBA"). CP 94-97, 197-198. The letter is a pivotal document in the view of the undersigned. The ODC brief does not appear to address it.

¹ It appears that the disciplinary board did not file a response to the documents, discussed herein, that petitioner filed during the proceedings below.

PA 83a

I. INTRODUCTION

Via letters to the Chief Justice and to respondent Washington State Bar Association (“WSBA”) dated November 18, 2018, Petitioner permanently cancelled and terminated his membership in the Washington bar.

Petitioner notified the Western and Eastern District Courts of Washington of his departure from the state bar. He permanently cancelled and withdrew from his membership in the bar of those courts. In response, the federal courts entered orders acknowledging receipt, updating their records to reflect the cancellation, and closing petitioner’s file.

This case can be resolved via the entry of an order like the federal court orders referenced above. A proposed order is included for the Court’s convenience in the Appendix to petitioner/appellant’s opening brief.

Respondent WSBA and its disciplinary board erred by failing to dismiss WSBA case no. 16#00008 and failing to close Petitioner’s file after he cancelled and terminated his bar membership and closed his practice in November, 2018. Respondent Office of Disciplinary Counsel (“ODC”) opposes relief in its filing. This reply brief is submitted in rebuttal.

<https://www.supremecourt.gov> > 0171215163209925_Fleck
Petition. Should the United States Supreme Court hold
mandatory bar associations unconstitutional, petitioner seeks
to apply the ruling in this case.

Finally, forcing petitioner to pay bar fees and remain a
bar member after he has quit would appear to run afoul of the
Thirteenth Amendment. The Amendment prohibits slavery
and “involuntary servitude”. For purposes of constitutional
law, the Amendment codifies the right to quit. One federal
statute that was enacted to enforce the Amendment is the
Trafficking Victims Protection Act (“TVPA”), Title 18,
United States Code , Section 1595.

The statute prohibits obtaining labor via threats of
financial harm. *See United States v. Dann*, 652 F.3d 1160,
1163-66 (9th Cir. 2011). “Congress in 2000 ‘intended to reach
cases in which persons are held in a condition of servitude
through nonviolent coercion.’ ” *Dann*, 652 F3d at 1169;
Tanedo v. East Baton Rouge School Board, 2012 U.S. Dist.
LEXIS 157725, *8-10 (C.D. Calif 2012). In *Tanedo*, the
defendants recruited Filipino nationals to work as teachers in
Louisiana schools. The defendants required the teachers to
pay fees in order to obtain visas and get U.S. employment.
After arrival in Louisiana, the Filipino teachers were required
to pay more fees in order to hold their jobs and avoid

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deportation. In the ensuing class action, the California federal court held that this conduct fell within the scope of the TVPA prohibition against non-violent servitude. *See Tanedo*, 2012 U.S. Dist. LEXIS 157725, *7-*16.

Petitioner has not located another case in which a state bar association sought to force a lawyer to remain on the rolls and pay dues after he quit the profession. Perhaps the WSBA is the only bar association in the country to attempt this.

The WSBA cannot force petitioner to remain a member after he quit. The Court should acknowledge petitioner's cancellation and termination of his membership, dismiss case no. 16#00008, and close the file.

F. WSBA Lack of Standing. The WSBA lacks standing to oppose petitioner's departure from the profession.

When petitioner quit his membership, respondent sent a letter purporting to "deny" what it termed a "request to resign", citing a WSBA Bylaw, Sec. III.H. SCP 3. That provision attempts to prohibit a "voluntary resignation" if a disciplinary matter is pending. The bylaw does not apply because petitioner did not submit a "written request for voluntary resignation". Instead, Petitioner terminated and cancelled his membership as he had the right to do. His letter

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