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Court of Appeals Reiterates No CPA Claims for Asserted Malpractice Alone

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Since the Washington Supreme Court's decision in *Short v. Demopolis*, 103 Wn.2d 52, 691 P.2d 163 (1984), the business aspects of law practice have been subject to the Consumer Protection Act, RCW Chapter 19.86. The CPA generally prohibits "unfair or deceptive acts or practices" in "trade or commerce" under RCW 19.86.020. Remedies under RCW 19.86.090 include both treble damages (to \$25,000) and attorney fees. The Supreme Court in *Short* defined the business aspects of law practice that fall within the CPA (assuming the other statutory requisites are met) to include "how the price of legal services is determined, billed, and collected and the way a law firm obtains, retains, and dismisses clients." 103 Wn.2d at 61. By contrast, the Supreme Court in *Short* concluded that asserted negligence in how legal services were provided was not within the purview of the CPA. Division I of the Court of Appeals recently reiterated this last point in *Muñoz v. Bean*, 2016 WL 885043 (Wn. App. Mar. 7, 2016) (unpublished).

The plaintiff in *Muñoz* raised a variety of claims against her former lawyer—including a CPA claim. The trial court entered summary judgment for the defendant lawyer and the Court of Appeals affirmed. In doing so, both the trial court and the Court of Appeals found that the plaintiff's CPA claim was

directed to how the legal services involved were provided, not the business aspects of law practice. As the Court of Appeals put it—quoting *Short*. “In an action for legal malpractice and/or negligence where the ‘claims are not chiefly concerned with the entrepreneurial aspects of legal practice,’ but with the ‘actual practice of law,’ the CPA does not apply.” *Id.* at *9.

Although *Muñoz* doesn’t plow any new ground, it is a useful reminder of when a CPA claim is—and is not—available as a potential remedy in the law firm context.

ABOUT THE AUTHOR

Mark J. Fucile of Fucile & Reising LLP handles professional responsibility, regulatory and attorney-client privilege issues for lawyers, law firms and corporate and governmental legal departments throughout the Northwest. Mark has chaired both the WSBA Committee on Professional Ethics and its predecessor, the WSBA Rules of Professional Conduct Committee. Mark is also a former member of the Oregon State Bar Legal Ethics Committee and is a current member of the Idaho State Bar Section on Professionalism & Ethics. Mark writes the monthly Ethics Focus column for the Multnomah (Portland) Bar’s *Multnomah Lawyer*, the quarterly Ethics & the Law column for the WSBA *NWLawyer* and is a regular contributor on legal ethics to the WSBA *NWSidebar* blog. Mark is a contributing author/editor for the current editions of the OSB Ethical Oregon Lawyer, the WSBA *Legal Ethics Deskbook* and the WSBA *Law of Lawyering in Washington*. Before co-founding Fucile & Reising LLP in 2005, Mark was a partner and in-house ethics counsel for a large Northwest regional firm. He also teaches legal ethics as an adjunct for the University of Oregon School of Law at its Portland campus. Mark is admitted in Oregon, Washington, Idaho, Alaska and the District of Columbia. He is a graduate of the UCLA School of Law. Mark’s telephone and email are 503.224.4895 and Mark@frllp.com.