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## **Court of Appeals Discusses Interplay Between RPC 1.16 and CR 71 on Withdrawal**

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Division III of the Court of Appeals recently addressed the interplay between RPC 1.16 and CR 71 on withdrawal in *Schibel v. Eymann*, \_\_\_ Wn. App. \_\_\_, \_\_\_ P.3d \_\_\_, 2016 WL 1639567 (Apr. 26, 2016). *Schibel* is a legal malpractice case that grew out of commercial lease and related mold exposure litigation. Disagreements over strategy in the underlying case led the lawyers to seek leave to withdraw. Because the trial was approaching rapidly, the lawyers also filed a motion to continue. The trial court allowed the withdrawal but denied the continuance. When the clients—who were then *pro se*—did not appear for trial, the trial court dismissed their claims with prejudice and the Court of Appeals affirmed in *Schibel v. Johnson*, 2012 WL 2326992 (Wn. App. June 19, 2012) (unpublished). The clients later sued the lawyers for legal malpractice, alleging that the lawyers' withdrawal was improper that close to trial. In the legal malpractice case, the lawyers moved for summary judgment—arguing that the clients were precluded from challenging their withdrawal because it had been allowed by the trial court and affirmed on appeal. The trial court in the legal malpractice case denied the motion, concluding that the subsequent action was not barred by issue preclusion. On discretionary review, Division III agreed and remanded the legal malpractice case for further proceedings.

In doing so, the Court of Appeals drew a distinction on withdrawal between RPC 1.16 and CR 71. The Court of Appeals noted that although RPC 1.16 sets out the ethical grounds for withdrawal, CR 71 governs the procedural aspects of withdrawal in civil litigation. The Court of Appeals put it this way (at \*5):

“CR 71 essentially is divorced from an attorney’s ethical obligations to his client. While the ethical considerations found in RPC 1.16 may inform a trial court’s decision on a contested motion to withdraw, those considerations do not dictate the trial court’s CR 71 ruling. As comment 3 to RPC 1.16 suggests, an attorney’s statement that professional considerations require withdrawal permits a trial court to accept that rationale without determining that it is a correct statement of the factual circumstances. In other words, the court is permitted to accept counsel’s assertion without actually determining that withdrawal is required by the rule.”

The Court of Appeals noted that the client had requested an *in camera* chambers conference in the underlying case so that the disagreements with counsel leading to the lawyers’ motion to withdraw would not be aired in front of the opposing party and his lawyer. The trial court had denied the request. Accordingly, the details of the dispute leading to the lawyers’ motion to withdraw were not before the trial court when it allowed their motion. The Court of Appeals concluded, therefore, that the trial court had not—in the vernacular of collateral

estoppel—“necessarily” decided whether the lawyers had an appropriate basis to withdraw under RPC 1.16 in granting their motion under CR 71.

### **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.