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 June 19, 2012) (unpublished).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

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