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Court of Appeals Finds Fee Dispute Alone Doesn't Support Consumer Protection Act Claim

**By Mark J. Fucile
Fucile & Reising LLP**

Since *Short v. Demopolis*, 103 Wn.2d 52, 691 P.2d 163 (1984), the business aspects of law practice have been subject to the Washington Consumer Protection Act. RCW 19.86.020 prohibits “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce[.]” RCW 19.86.090, in turn, creates a private right of action for CPA violations and includes both attorney fees and treble damages (to \$25,000 beyond actual damages) remedies for a successful claimant.

At the same time, a plaintiff in a CPA claim is required to show that the practice at issue affects, or at least has the potential to affect, the public interest (see generally *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 105 Wn.2d 778, 787-92, 719 P.2d 531 (1986) (discussing elements of a CPA claim). Historically, this limited the application of the CPA where a dispute was a purely private one between a client and a lawyer (see, e.g., *Bertelsen v. Harris*, 459 F. Supp.2d 1055, 1063 (E.D. Wash. 2006), *aff'd*, 537 F.3d 1047 (9th Cir. 2008)). The Legislature amended the CPA in 2009 to broaden the “public interest” requirement to specifically include under RCW 19.86.020(3)(c) practices have “the capacity to injure other persons.”

A recent decision from the Court of Appeals, however, illustrates that some fee disputes will still not meet the “public interest” requirement. *Tomchak v. Greenberg*, 2016 WL 4081194 (Wn. App. Aug. 1, 2016) (unpublished), involved a dispute between a client and law firm over the fee for handling a contract matter. The dispute did not involve the fee agreement directly, but, rather, focused on the amount billed and the associated services performed on a specific matter. The by-then former client sued the firm under the CPA. The trial court granted summary judgment for the firm and Division I affirmed.

In doing so, the Court of Appeals noted pointedly that the former client “failed to establish any acts or practices that had the capacity to deceive other members of the public.” 2016 WL 4081194 at *3. The Court of Appeals, therefore, concluded that the plaintiff could not meet the “public interest” requirement and affirmed the dismissal. *Tomchak* highlights that even in an era of “standardized” billing practices and related web-based advertising about those practices, a narrow dispute over individual lawyer billing entries and the particular services they reflect may still have difficulty meeting the “public interest” requirement.

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.