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Court of Appeals Highlights Importance of Written Fee Agreements

By Mark J. Fucile
Fucile & Reising LLP

A recent decision by Division I of the Washington Court of Appeals highlights the importance of a written fee agreement. *Davis Wright Tremaine LLP v. Peterson*, 2017 WL 1593009 (Wn. App. May 1, 2017) (unpublished), was a fee collection case by a law firm against a client. The law firm had represented the client in commercial litigation before withdrawing. After the underlying case resolved, the law firm sued the client for unpaid fees and related expenses that the law firm had advanced. The client argued that the fees sought were unreasonable and the fee agreement involved was “void as against public policy.” The trial court awarded the firm both a significant portion of the unpaid receivable remaining from the underlying litigation and \$90,000 in fees and costs as the prevailing party in the subsequent collection case. The client appealed. The Court of Appeals affirmed.

The Court of Appeals’ decision focuses on two primary areas.

First, it concluded that there was substantial evidence in the record to support the trial court’s findings on the nature and reasonableness of the fees awarded in the underlying litigation. This portion of the opinion necessarily involved a very fact-specific review of the services provided, the rates charged

and the results obtained. The Court of Appeals affirmed the fees awarded on the receivable as reasonable under the circumstances.

Second, the Court of Appeals reviewed the fee agreement involved and concluded that it provided the client with adequate notice of the terms involved—including an attorney fee provision in the event of collection. The fee agreement at issue had two components: a letter tailored to the specific representation and a standard-form supplement outlining general terms that was incorporated into the letter. Both were provided to the client at the outset of the representation and the Court of Appeals noted that the client had not objected to either one. Having concluded that the client was appropriately advised in advance of the law firm's terms, the Court of Appeals affirmed the award of fees in the collection case based on the collection provision.

RPC 1.5(c)(1) only requires that contingent fee agreements be in writing. Comment 2 to RPC 1.5 recommends—but does not require—that fee agreements be in writing outside the contingent fee context. *Peterson*, however, is a good illustration of the practical utility of written fee agreements. A thorough written fee agreement makes it very difficult for a client to claim later that he or she did not understand the financial aspects of the representation. Similarly, if a firm wishes to at least retain the option of seeking fees under RCW 4.84.330 in a

subsequent collection case, the written fee agreement will provide the necessary contractual predicate.

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.