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## **Federal Court Decision Highlights Importance of Engagement Agreements**

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A recent disqualification decision by the federal district court in Spokane highlights the importance of engagement agreements in defining who is—and who is not—the client. *Cox v. Alliant Insurance Services, Inc.*, 2017 WL 4640452 (E.D. Wash. Sept. 19, 2017) (unpublished), was a commercial case. The plaintiffs were seeking a declaratory judgment that a non-compete was void. Shortly after the defendants answered, the plaintiffs filed a motion to disqualify defense counsel. Although the motion had several facets—all of which were denied—one is particularly instructive.

One of the plaintiffs argued that he was a former client of the defense firm on a substantially related matter and contended that the law firm had a conflict under the former client conflict rule—RPC 1.9. The court noted that although the particular plaintiff had interfaced with the law firm, the contact was as a representative for a corporation (which was not a plaintiff) rather than as a client in his own right. The court concluded, therefore, that no attorney-client relationship had ever existed between the individual plaintiff and the law firm on the matter involved. Accordingly, the court found that no disqualifying former conflict existed as a matter of law.

In doing so, the court relied primarily on a written engagement agreement that identified the corporation (and not the individual) as the client in the matter at issue. The court also determined that no evidence had been presented that this relationship had been expanded to include the individual.

Engagement agreements serve many important roles, but one of the most significant is defining the client for a particular matter. As *Cox* illustrates, carefully defining the client in an engagement agreement (and then proceeding consistent with that agreement) can effectively shield a firm from later conflict assertions by others who were merely in the background context of the matter involved.

## **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

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