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 Sept. 19, 2017) (unpublished), was a commercial case.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.

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