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Posted: August 8, 2018

Supreme Court Holds No Double Jeopardy for Lawyer Discipline

By Mark J. Fucile
Fucile & Reising LLP

In a case of first impression in Washington, the Supreme Court held recently that the double jeopardy provisions of the United States and Washington Constitutions do not apply to lawyer discipline proceedings. *In re Waechter*, ___ Wn.2d ___, 419 P.3d 827, 2018 WL 2977072 (June 14, 2018), involved a lawyer who had allegedly converted client funds from his trust account.

The lawyer was charged with multiple RPC violations stemming from the same conduct—ranging from RPC 8.4(b) (professional misconduct to commit a criminal act that reflects adversely on the lawyer’s honesty) to RPC 1.15A(b) (prohibiting unauthorized use of client property). The lawyer argued that charging multiple RPC violations for the same conduct violated the double jeopardy provisions of the federal and state Constitutions by punishing him more than once for the same conduct. While acknowledging that an accused lawyer has due process rights in discipline proceedings, the Supreme Court held that double jeopardy protection was not one of them. In doing so, the Supreme Court looked to other jurisdictions that had considered the issue and concluded that discipline proceedings are not sufficiently similar to criminal proceedings to invoke double jeopardy protections. Those out-of-state decisions generally distinguished the sanctions available in the professional licensing context—such

as suspension or disbarment—from typical criminal sanctions such as fines or imprisonment.

On the facts before it, the Supreme Court in *Waechter* did not expressly consider the related issue of whether a lawyer charged with violating the RPCs could rely on double jeopardy provisions if the lawyer had earlier been subject to criminal prosecution for the same conduct. However, the out-of-state cases the Washington Supreme Court relied on in *Waechter* arose from that context—suggesting that a lawyer in that scenario could expect the same result as the attorney in *Waechter*.

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,

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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.