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New WSBA Advisory Opinion on “Quadripartite” Relationships

By Mark J. Fucile
Fucile & Reising LLP

The WSBA Committee on Professional Ethics recently released a new advisory opinion—No. 201802—addressing “quadripartite” relationships. “Tripartite” relationships among an insurer, the insured and defense counsel have been delineated extensively in both court decisions and advisory opinions. “Quadripartite” relationships, by contrast, are a fairly new development and remain comparatively unplumbed. The term generally describes situations where a fourth party is added to the traditional three-cornered insurance defense relationship—such as an independent claims administrator or an employer that paid for the insurance covering its employee. The opinion assumes that, consistent with general Washington practice, insurance defense counsel in this new scenario represents the insured only.

The new advisory opinion focuses primarily on one element of this new arrangement: the extent to which insurance defense counsel can share information with the fourth party. Advisory Opinion 201802 takes a relatively similar approach to the new relationship as earlier authorities did with the more traditional tripartite relationship. It concludes that—with client consent—a defense lawyer can share confidential information with the fourth party if doing so is in the client’s interest and will not jeopardize the attorney-client privilege or

work product protection. The opinion does not evaluate privilege or work product issues—which are controlled by substantive law and typically turn on the application of “common interest” principles. The opinion also counsels that a given situation may not remain static and should be re-evaluated if circumstances change and adversity arises between the client and the other parties to the arrangement.

Advisory Opinion 201802 is available on the WSBA web site.

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.