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## **Washington Supreme Court Holds Unauthorized Practice of Law Strict Liability Offense**

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When lawyers hear the phrase “unauthorized practice,” they usually think of RPC 5.5(a): “A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.” In addition to the professional rule, however, the unauthorized practice of law is also a crime in Washington under RCW 2.48.180. The Washington Supreme Court recently addressed this statute in *State v. Yishmael*, \_\_\_ Wn.2d \_\_\_, 456 P.3d 1172 (2020). In doing so, the Supreme Court held that the most common variant of unauthorized practice—RCW 2.48.180(2)(a), which prohibits nonlawyers from practicing law or holding themselves out as entitled to practice law—is a strict liability offense.

The defendant in *Yishmael* had never been admitted to practice law in any jurisdiction. Nonetheless, he advised several “clients” that that they could occupy and eventually take title to abandoned homes. The defendant charged the clients several thousand dollars for his advice. Acting on the defendant’s advice, the clients occupied several abandoned homes and spent thousands repairing and improving them. Nonetheless, they did not acquire title by adverse possession as the defendant had advised. Instead, they were arrested for trespass and lost their investments.

The defendant, in turn, was convicted of misdemeanor unauthorized practice. On appeal, he contended that the jury had been improperly instructed that unauthorized practice was a strict liability offense—arguing that the prosecution should have been required to show that he “knowingly” engaged in unauthorized practice. The Court of Appeals affirmed his conviction, as did the Supreme Court.

The Supreme Court noted that the “practice of law” is defined broadly by GR 24(a) as “the application of legal principles and judgment with regard to the circumstances or objectives of another entity or person(s) which require the knowledge and skill of a person trained in law.” As noted earlier, RCW 2.48.180(2)(a) prohibits unauthorized practice by a nonlawyer. Reflecting Washington’s licensing of lawyers, LLLTs and LPOs, RCW 2.48.180(1)(b) defines “nonlawyer” as “a person to whom the Washington supreme court has granted a limited authorization to practice law but who practices law outside that authorization, and a person who is not an active member in good standing of the state bar, including persons who are disbarred or suspended from membership[.]”

The Supreme Court began its analysis with the text of the statute. Although other portions of RCW 2.48.180 do contain a “knowledge” element

(such as a nonlawyer as defined by the statute knowingly holding an ownership interest in a law firm under RCW 2.48.180(2)(c)), RCW 2.48.180(2)(a) does not. The Supreme Court then reviewed the history and public policy reasons behind the prohibition at length. The Supreme Court concluded that, on balance, “knowledge” was not required and affirmed the conviction.

*Yishmael* illuminates a corner of the law of lawyering in Washington with few comprehensive opinions. On its facts, the outcome in *Yishmael* is not surprising because the conduct fit squarely within the prohibition’s traditional consumer protection focus. It remains to be seen, however, how *Yishmael* impacts emerging models for the delivery of legal services by providers that are not law firms.

## **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 a member of the Oregon State Bar Legal Ethics Committee and the Idaho State Bar Section on Professionalism & Ethics. Mark writes the Ethics Focus column for the Multnomah (Portland) Bar’s *Multnomah Lawyer*, the Ethics & the Law column for the WSBA *Bar News* 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

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