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Fine Print:
**Federal District Court Distinguishes Disciplinary
and Malpractice Defense in Coverage Decision**

By Mark J. Fucile
Fucile & Reising LLP

Professional liability policies for lawyers and law firms often distinguish between disciplinary and malpractice defense. Some don't cover disciplinary defense or, if they do, include a much lower coverage limit. A recent decision from the federal district court in Seattle underscored the practical impact of the distinction between disciplinary and malpractice coverage.

Chochrane v. American Guarantee & Liability Insurance Company, 2020 WL 3798928 (W.D. Wash. July 7, 2020) (unpublished), was a coverage action by a lawyer against her carrier. The lawyer's professional liability policy included coverage for disciplinary matters—but the limit was only \$10,000. A grievance had been filed against the lawyer. No separate litigation for malpractice, however, was involved. Although the disciplinary matter was eventually dismissed, the lawyer incurred substantially more than the \$10,000 limit in fees and costs in her defense. Because a part of the grievance included allegations of malpractice, the lawyer argued that her carrier should cover the expenses above the \$10,000 limit. The carrier declined and the lawyer brought a coverage case against the carrier.

The court granted the carrier summary judgment. The court noted that the definition of "claim" in the policy was distinct from the definition of "disciplinary proceedings." The court also noted that although a portion of the grievance suggested malpractice, no monetary damages were sought. The court,

therefore, concluded that coverage was limited to \$10,000 and dismissed the case.

The decision is a stark reminder both that disciplinary defense can be expensive and that lawyers and their firms should take that into account from a risk management perspective when structuring their insurance coverage.

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 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.