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Federal Court Looks to Choice-of-Law Provision in Legal Malpractice Case

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The federal district court in Seattle recently looked to a choice-of-law provision in an engagement agreement in denying summary judgment on the statute of limitations in a legal malpractice case. *U.S. Bank, N.A. v. The Glogowski Law Firm*, 2021 WL 3375942 (W.D. Wash. Aug. 3, 2021) (unpublished), involved legal malpractice claims by the plaintiff bank against the defendant law firm for work in Washington and Oregon. A choice-of-law provision in the engagement agreement involved, however, designated Minnesota law as controlling because the bank is headquartered there.

Minnesota has a six-year statute of limitations for legal malpractice claims. Washington and Oregon, by contrast, are considerably shorter at, respectively, three and two years. The law firm moved for summary judgment under the Washington and Oregon limitation periods. The Court denied the motion.

In doing so, the Court noted preliminarily that a federal court sitting in diversity applies the choice-of-law rules of the forum state. The Court found that in a professional negligence case a choice-of-law provision in an engagement agreement is a “consideration” under Washington’s “most significant relationship test” for resolving choice-of-law issues. The Court then concluded Minnesota law applied because “[f]irst and most importantly, this is consistent with the

engagement letter.” (*Id.* at *2.) The Court also noted that both parties were “sophisticated” and should, in essence, be held to their agreement.

The Court described the parties’ agreement as “U.S. Bank’s engagement letter” that “Defendants signed”—implying that this was a bank-generated template. (*Id.* at *1.) This underscores that law firms should closely evaluate the non-financial terms of corporate client-generated engagement agreements and, if appropriate, attempt to negotiate over non-financial terms of that kind.

ABOUT THE AUTHOR

Mark J. Fucile of Fucile & Reising LLP advises lawyers, law firms and legal departments throughout the Northwest on professional responsibility and risk management. 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 and the editor-in-chief for the WSBA *Legal Ethics Deskbook* and is a contributing author and principal editor for the OSB *Ethical Oregon Lawyer* 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.