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**Posted: June 9, 2022**

## **Court of Appeals: New Management Entitled to Law Firm File**

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Division I of the Washington Court of Appeals in Seattle recently held that new management of an entity is entitled to a law firm's file involving work prepared for the entity under prior management. Although the case does not plow any new conceptual ground, it offers Washington support for this general proposition with specific reference to RPC 1.13(a)—the “entity client” rule.

*Law Office of James P. Grifo, LLC v. American Federation of State, County & Municipal Employees*, 2022 WL 1763662 (Wn. App. May 31, 2022) (unpublished), arose on unusual facts. Two union locals sued their national union. After that case was dismissed, the national union took over one of the locals in the functional equivalent of a receivership. The new administrator of the local asked for the files of two law firms that had represented the local in the earlier litigation. The law firms filed an interpleader action asking the trial court to determine ownership of the files. The trial court concluded that the administrator was not entitled to the files. The Court of Appeals reversed.

In doing so, the Court of Appeals first noted that, consistent with RPC 1.13(a), the law firms had represented the local as an entity. Citing national law on privilege (*Commodity Futures Trading Com'n v. Weintraub*, 471 U.S. 343, 105 S. Ct. 1986, 85 L. Ed.2d 372 (1985)), the Court of Appeals then found that

“[w]hen control over an organization changes, the organization’s lawyer must answer to the new officers, not the former officers.” 2022 WL 1763662 at \*5. The Court of Appeals, therefore, concluded that while ownership of the files remained with the local, control passed to the new administrator. Because fact issues remained over whether two of the local’s former officers had also been clients of the law firms as individuals in the earlier litigation and, if so, whether they had waived any resulting joint privilege, the Court of Appeals remanded the case to the trial court for further examination of these issues.

The *Weintraub* decision cited by the Court of Appeals involved a bankruptcy trustee. Earlier authority from the U.S. Supreme Court (*In re Fuller*, 262 U.S. 91, 43 S. Ct. 496, 67 L. Ed. 881 (1923)) in the bankruptcy context recognized the analogous principle that a trustee controls the files of a bankrupt entity. *Grifo*, therefore, is not a novel result. Instead, it reaches a result consistent with national authority and with specific reference to RPC 1.13(a).

## **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

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