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## **Timing Is Everything: Motion to Withdraw with Pending Summary Judgment Denied**

**By Mark J. Fucile**  
**Fucile & Reising LLP**

A recent decision by the federal court in Seattle underscored that when attempting to withdraw from litigation, timing can be critical. In *3M Company v. AIME LLC*, 2023 WL 1863517 (W.D. Wash. Feb. 9, 2023) (unpublished), the defendants' out-of-state lead attorney and their local counsel both moved to withdraw. Both cited a variety of grounds supporting their motions—many of which would ordinarily be sufficient under the “withdrawal rule,” RPC 1.16. Although many of their reasons had existed for a substantial period, the lawyers waited until the plaintiff's motion for summary judgment was pending to seek court permission to withdraw. Given the timing, the Court denied their motions.

Washington RPC 1.16(c) makes withdrawal in litigation contingent on any required court permission:

A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue to representation notwithstanding good cause for terminating the representation.

The Court in *3M* noted that the lawyers had stated grounds that would normally require or permit withdrawal under, respectively RPC 1.16(a) (withdrawal required) and 1.16(b) (withdrawal permitted). The Court, however, essentially found that the lawyers waited too long before seeking leave to

withdrawal and, citing RPC 1.16(c), required them to stay on the case. Although it appeared the lawyers were no longer being paid, the Court ordered the lawyers to remain at least through summary judgment before the Court would consider renewed motions. The Court's order implicitly recognized that opposing parties and the court itself are impacted if lawyers wait until significant case events are already in play before seeking court permission to withdraw.

*3M* doesn't plow any new legal ground. It is, however, a pointed reminder that lawyers need to carefully consider when to seek leave to withdraw if they are in litigation. Waiting too long can put lawyers at risk of having withdrawal denied and being ordered to continue on case—potentially without being paid.

## **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 has served on the Oregon State Bar Legal Ethics Committee and is a member of 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

Page 3

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.