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Federal Court Finds No Private Right of Action for Unauthorized Practice

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The federal district court in Tacoma recently ruled that there is no private right of action for the unauthorized practice of law under RCW 2.48.180. *Wise v. Eskow*, 2023 WL 3456815 (W.D. Wash. May 15, 2023) (unpublished), involved a variety of claims by a Washington dentist against a Massachusetts lawyer flowing from the dentist's purchase of a practice in Longview. The dentist claimed that the lawyer's work on the transaction was deficient. In addition to a negligence-based legal malpractice claim, the dentist also brought a claim for unauthorized practice under RCW 2.48.180 because lawyer was not licensed in Washington and had not associated Washington counsel to assist.

The dentist moved for partial summary judgment on the unauthorized practice claim. The court denied the motion. The court concluded that RCW 2.48.180 is framed in terms of criminal penalties and injunctive relief and does not include a private right of action for monetary damages.

The court noted, however, that lack of licensure may be evidence of a lawyer's unfamiliarity with Washington substantive law. This has long been a staple of legal malpractice case law nationally. *Viner v. Sweet*, 70 P.3d 1046 (Cal. 2003), for example, involved a Washington, D.C., lawyer handling a

business transaction for a friend in Los Angeles who missed a key aspect of California statutory law.

The court also found that RCW 2.48.180 would not, standing alone, support associated fee disgorgement. Again, however, unauthorized practice has figured prominently in national case law on fees. *Birbrower, Montalbano, Condon & Frank, P.C. v. Superior Court*, 949 P.2d 1 (Cal. 1998), is perhaps the seminal case nationally—with the fee agreement at the center of a \$1 million fee dispute held unenforceable as against public policy because the New York lawyers handling an arbitration in California for a California client were not licensed there.

As the court in *Wise* observed, while RCW 2.48.180 may not create a private right of action, lack of a Washington license may still be relevant to other central aspects of a dispute between a Washington client and an out-of-state lawyer handling a transaction here without associating Washington counsel.

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

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