

**WSBA NWSidebar**

**Posted: October 16, 2023**

## **Idaho Adopts “Entire File” Approach When Withdrawing**

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

Under ABA Model Rule 1.16(d), when a lawyer withdraws, the lawyer is to “surrender . . . papers and property to which the client is entitled[.]” Neither the ABA Model Rule nor most state counterparts (including Washington RPC 1.16), however, include a definition of what constitutes “papers and property” in this context. The ABA noted in Formal Opinion 471 (2015) that states have generally adopted two approaches through state bar ethics opinions in the wake of this ambiguity. Most that have addressed the issue take the “entire file” approach under which the lawyer must generally provide the client with all materials in the lawyer’s file (whether in paper or electronic form) typically subject to a relatively narrow band of exceptions. A minority, by contrast, take the “end product” approach—with the lawyer only needing to provide the client with the final product generated and not intermediate items like drafts or notes.

In an order posted on the Idaho State Bar web site on September 21, 2023, the Idaho Supreme Court adopted the “entire file” approach. Because Idaho does not have a state bar ethics committee equivalent to the WSBA Committee on Professional Ethics, the Idaho State Bar does not have a standing mechanism to issue ethics opinions. Therefore, the Idaho State Bar asked the Idaho Supreme Court to address this issue within a disciplinary case involving a

dispute over a lawyer's file under Idaho RPC 1.16(d)—which, like Washington, is patterned on the ABA Model Rule. The Supreme Court did so in an order that redacted the lawyer's name and focused primarily on the competing “entire file” and “end product” approaches. While it adopted the “entire file” approach, the Supreme Court directed the Idaho State Bar to propose a comment to RPC 1.16 for the court's consideration essentially codifying this standard, discussing its application to civil and criminal matters, and proposing any exceptions.

In adopting the “entire file” approach, regionally Idaho joins Washington (WSBA Advisory Op. 181 (amended 2009)), Oregon (OSB Formal Op. 2017-192 (2017)), and Alaska (Alaska Bar Ethics Op. 2003-3 (2003)).

## **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.