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Federal Court Surveys Need for Expert to Support Legal Malpractice Claim

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The federal district court in Spokane recently surveyed Washington law on the need for an expert to support a legal malpractice claim. *Peterson v. Best*, 2023 WL 8791674 (E.D. Wash. Dec. 19, 2023) (unpublished), grew out of complex federal *qui tam* litigation. The defendant lawyer had represented the plaintiff in a related set of *qui tam* claims in the Eastern District. The claims were eventually dismissed and the target of the claims was later awarded over \$100,000 in attorney fees. The plaintiff then sued his lawyer for malpractice—arguing that the lawyer had insufficiently investigated the *qui tam* claims. Despite the complexity of the underlying *qui tam* litigation, the plaintiff did not disclose an expert on the standard of care before the discovery deadline in the malpractice case. The defendant lawyer, therefore, moved for summary judgment—contending that the plaintiff’s legal malpractice claim failed for want of an expert on the standard of care. The court agreed and dismissed the case.

In doing so, the court discussed both the general rule in Washington requiring a standard of care expert when the underlying matter is complex and the exception when the nature of the error is readily understood by a lay jury. In this instance, the court noted the complicated nature of the *qui tam* claims both factually and legally. The court, therefore, had no trouble distinguishing the case

at hand from, for example, a simple calendaring error leading to a missed statute of limitation. The court also rejected the plaintiff's late proffer of an expert in opposition to the defendant's summary judgment motion and struck the late disclosure.

While not plowing any new legal ground, *Peterson* is a useful summary of Washington law on the general need for an expert to support a legal malpractice claim and a pointed reminder of the result if one is not timely disclosed.

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 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.