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Court of Appeals Discusses Emotional Distress Damages for Legal Malpractice Claim

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In *Schmidt v. Coogan*, 181 Wn.2d 661, 671, 335 P.3d 424 (2014), the Supreme Court set broad outlines for emotional distress damages as a part of a legal malpractice claim:

We hold that the plaintiff in a legal malpractice case may recover emotional distress damages when significant emotional distress is foreseeable from the sensitive or personal nature of the representation or when the attorney's conduct is particularly egregious. However, simple malpractice resulting in pecuniary loss that causes emotional upset does not support emotional distress damages.

Division I of the Washington Court of Appeals in Seattle recently applied that standard in the context of asserted malpractice arising from bankruptcy representation. *Echols v. Lee*, 2024 WL 21406 (Wn. App. Jan. 2, 2024) (unpublished), involved the alleged failure to include real estate and related mortgages in a bankruptcy petition. Although the bankruptcy was later reopened by subsequent counsel to address the property involved, the client alleged his original lawyer had committed malpractice and the client had suffered emotional distress as a result. The trial court granted summary judgment on the emotional distress damages.

The Court of Appeals affirmed. In doing so, the Court of Appeals began—and largely ended—its analysis with the Supreme Court's standard from *Schmidt*

v. Coogan. The Court of Appeals noted that the bankruptcy involved real property and associated liens rather than anything “sensitive or personal.” The Court of Appeals also found that there was no evidence in the record of egregious or intentional conduct by the lawyer. Absent either trigger, the Court of Appeals agreed with the trial court that the emotional distress damages could not stand.

While not plowing any new legal ground, *Echols* offers both a useful survey of the law in this area and a pointed reminder of the relatively narrow circumstances when emotional distress damages may be included in a legal malpractice claim.

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

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