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Court of Appeals Affirms Disqualification for Former Client Conflict

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Division II of the Washington Court of Appeals in Tacoma recently affirmed the disqualification of a law firm in two related cases that were consolidated on appeal. *Day v. Tacoma RV Center, Inc.*, 2025 WL 2910726 (Wn. App. Oct. 14, 2025) (unpublished), arose on relatively simple facts. In each case, a law firm was pursuing claims against a recreational vehicle dealer and a manufacturer. Although each varied somewhat, they were both oriented around asserted sales practices at the dealer framed as alleged violations of the Washington Consumer Protection Act. A lawyer who had been defending the dealer joined the plaintiffs' law firm. Although lateral-hire screening is permitted in Washington under RPC 1.10(e), the trial court found (and Court of Appeals agreed) that the law firm failed to meet the requirements of the rule. Therefore, to the extent the new lawyer had a conflict under the former client conflict rule—RPC 1.9—it would be imputed to the hiring law firm as a whole under RPC 1.10(a) that generally imputes a law firm lawyer's conflicts to the entire firm.

When the defendants learned of the former defense lawyer's new position, they moved to disqualify the law firm from the two cases. Following a number of procedural twists at the trial court, the law firm was eventually disqualified. The Court of Appeals affirmed.

Page 2

The Court of Appeals noted that the leading case in Washington interpreting RPC 1.9 is *Plein v. USAA Casualty Insurance Company*, 195 Wn.2d 677, 453 P.3d 728 (2020)—which was also a disqualification case. In *Plein*, the Supreme Court parsed the phrase “same or substantially related matter” that is the benchmark for determining a former client conflict under RPC 1.9. In *Plein*, the Supreme Court found that the case at issue was factually different from those the law firm had handled earlier and that the law firm’s knowledge of the former clients’ general business practices was not, in and of itself, sufficient to trigger a conflict. By contrast, the Court of Appeals in *Day* found that the cases involved were “nearly identical” and focused specifically on the same asserted sales practices. The Court of Appeals, therefore, concluded that the law firm had a former client conflict and affirmed its disqualification.

Day highlights both the importance of adequate screening to avoid lateral-hire conflicts in the first place and how the information that a lawyer has acquired in an earlier representation for a former client may be sufficiently relevant to a new matter to trigger a former client conflict.

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 503.860.2163 and Mark@frllp.com.