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## **Idaho Supreme Court Reaffirms Breach of Fiduciary Duty and Consumer Protection Act Claims Against Lawyers**

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When we hear the phrase “claim against a lawyer,” most of us understandably think of negligence-based legal malpractice claims. The Idaho Supreme Court recently provided a reminder that lawyers there are also subject to breach of fiduciary duty and Consumer Protection Act claims. *Estate of Kalinski v. Murphy Law Office, PLLC*, \_\_ Idaho \_\_, 2026 WL 1216976 (Idaho 2026), involved claims against a lawyer over the handling of an estate. Although framed under different theories, all of the claims shared the central thread alleging the lawyer had been negligent. The trial court dismissed all of the claims on summary judgment. The client appealed two: unjust enrichment, which the client argued was akin to breach of fiduciary duty; and violation of the Idaho Consumer Protection Act. The Idaho Supreme Court upheld the dismissals. In doing so, however, it reaffirmed relatively recent decisions recognizing breach of fiduciary duty and Consumer Protection Act claims against lawyers.

On the former, the Idaho Supreme Court recognized breach of fiduciary duty as a claim distinct from legal malpractice in *Parkinson v. Bevis*, 165 Idaho 599, 448 P.3d 1027 (2019). *Parkinson* involved a breach of the duty of confidentiality. There, the Idaho Supreme Court found that the gravamen of a breach of fiduciary duty claim went to—as the term implies—a breach of a

lawyer's fiduciary duties to a client rather than negligence and also found that fee disgorgement was an available remedy for that kind of claim. The Idaho Supreme Court in *Estate of Kalinski* reaffirmed *Parkinson* in disguising unjust enrichment from breach of fiduciary duty (and then concluded unjust enrichment did not apply on its facts to the case at hand). Idaho's approach on breach of fiduciary duty claims is generally similar to Washington as reflected in decisions such as *Eriks v. Denver*, 118 Wn.2d 451, 824 P.2d 1207 (1992), and *Benke v. Ahrens*, 172 Wn. App. 281, 294 P.3d 729 (2012).

On the latter, the Idaho Supreme Court recognized that the business aspects of law practice could be subject to the Idaho Consumer Protection Act in *Lister Frost Injury Lawyers, PLLC v. Idaho Injury Law Group, PLLC*, 171 Idaho 1, 518 P.3d 1 (Idaho 2022). *Lister* involved misrepresentation in the client intake process about a law firm's fee agreement. The Idaho Supreme Court in *Lister* found that the misrepresentation constituted a deceptive act under the Idaho Consumer Protection Act. The Idaho Consumer Protection Act includes rescission and damages among its potential remedies and allows a private right of action in addition to enforcement by the Idaho Attorney General. Although the Idaho Supreme Court in *Estate of Kalinski* found that the facts didn't support a Consumer Protection Act claim, the court reaffirmed the general viability of such

claims in appropriate circumstances under *Lister*. Again, Idaho's approach generally mirrors Washington under *Short v. Demopolis*, 103 Wn.2d 52, 691 P.2d 163 (1984).

While not plowing any new ground itself, *Estate of Kalinski* makes plain that neither *Parkinson* nor *Lister* were aberrations and that both breach of fiduciary and Consumer Protection Act claims are available against lawyers in appropriate circumstances in Idaho.

#### **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 was 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 taught legal ethics for over a decade as an adjunct for the University of Oregon School of Law. 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.