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Court of Appeals Affirms Order Prohibiting Pro Se Party from Contacting Represented Opponent

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Division II of the Washington Court of Appeals in Tacoma recently affirmed an unusual order prohibiting a *pro se* party from contacting a represented opponent in *Ryan v. Timmerman*, 2024 WL 800259 (Wn. App. Feb. 27, 2024) (unpublished). The plaintiff had been injured as a minor when a car she was riding in was rear-ended by the defendant. She sued the defendant driver and his employer 14 years later after becoming an adult. The driver and the employer were represented by insurance defense counsel. The plaintiff was *pro se*.

During the litigation both the plaintiff and her father, who was a chiropractor, repeatedly contacted the represented driver and his employer despite requests by driver, the employer, and their lawyer to channel all communication through the lawyer. Eventually, the defendants sought a court order prohibiting direct contact. Although the trial court acknowledged that RPC 4.2—the "no contact" rule—did not apply to either the plaintiff or her father because they were not lawyers, it nonetheless entered an order prohibiting contact under its inherent case management authority. When the contact continued, the trial court prohibited the plaintiff's chiropractor-father from

testifying as a sanction. The trial court also entered monetary sanctions against the plaintiff for other pretrial conduct.

At trial, the jury awarded the plaintiff $3,289 for medical bills but nothing on her $1.4 million claim for general damages. The earlier monetary sanctions resulted in a net judgment for the defendants of approximately $9,000. The plaintiff appealed, arguing in relevant part that the prohibition on direct contact and the associated exclusion of her father's testimony was error. The Court of Appeals disagreed and affirmed the trial court.

In doing so, the Court of Appeals found that RPC 4.2 did not apply directly to either the plaintiff or her father because they were not lawyers. Nonetheless, it concluded that the trial court could order the equivalent prohibition under its broad case management authority. Similarly, it concluded that the father's willful violation of the trial court's order warranted precluding his testimony. Again, the Court of Appeals found that the sanction was within the trial court's discretion under its inherent case management authority.

In most instances, represented clients are allowed to continue to contact each other even during litigation because, as noted, RPC 4.2 applies to lawyers rather than their clients. *Ryan*, however, is an unusual application of the court's inherent case management authority to reach functionally the same result.

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.