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Court of Appeals Affirms Denial of Withdrawal with Sanctions Pending

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Knowing when to withdraw is often a difficult exercise. A recent decision by Division I of the Washington Court of Appeals in Seattle, however, underscored the risks of waiting too long. In *Atlas Debt Holdings, LLC v. Seafood Express, LLC*, 2024 WL 3650246 (Wn. App. Aug. 5, 2024) (unpublished), a law firm was careful not to publicly reveal client confidential information in seeking leave to withdraw so we don't know the private backstory. However, by the time the law firm sought court permission to withdraw, the attorney-client relationship had unspooled, the trial court had entered a contempt order against the client, and sanctions were also pending against the law firm.

Atlas was set against an unusual procedural backdrop. *Atlas* had filed a debt collection action against *Seafood Express* and an individual it alleged was a guarantor, *Tavaglione*. *Seafood Express* was, as the Court of Appeals described it, "defunct" and, therefore, the focus on the case was on the guarantor. *Tavaglione* obtained summary judgment and roughly \$29,000 in attorney fees against *Atlas* under RCW 4.84.330 that governs fee awards in contract cases.

Atlas did not pay the attorney fees by a court-imposed deadline and, a few days later, its law firm filed a notice of intent to withdraw under CR 71. *Tavaglione* objected because that would leave *Atlas* unrepresented. Under CR

71, therefore, the law firm was required to obtain court approval to withdraw. Meanwhile, the trial court found Atlas in contempt for failing to pay the ordered attorney fees and imposed a daily \$250 sanction until it complied. When Atlas failed to attend a show cause hearing, the court increased the daily sanction to \$500. The trial court also found the law firm in contempt for failing to comply with a related order and awarded Tavaglione attorney fees and costs against the law firm as well.

While these events were unfolding, the law firm filed a motion to withdraw. The trial court denied the motion. The law firm appealed both the denial of the withdrawal and the earlier fee award. The Court of Appeals affirmed the denial of withdrawal and most of the fee award.

Focusing on the withdrawal, the Court of Appeals noted that reversal is only appropriate for abuse of discretion and found none here. The Court of Appeals stressed that when the trial court had the motion to withdraw before it, the law firm was already the subject of an oral contempt finding with related monetary sanctions yet to be determined. While not directly related to the law firm's conduct, the Court of Appeals also acknowledged the trial judge's concern that the law firm's client had already been unresponsive and allowing the firm to

withdraw would leave Atlas unrepresented (and corporations are generally prohibited from appearing *pro se*).

Atlas is a pointed reminder that if there are reasons to withdraw, it is usually better to do it sooner rather than later. Waiting puts a firm at risk of having events overtake the reasons for withdrawal and, as a practical matter, can make it more difficult for the client concerned to obtain substitute counsel.

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.