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Federal Court Orders Lawyer to Turn Over File to Former Client

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The federal district court in Seattle recently had to order a lawyer to turn over a client's file to the former client involved. Before withdrawing in the face of a disqualification motion, the lawyer had formerly represented the plaintiff in *HTP, Inc. v. First Merit Group Holdings, Inc.*, 2024 WL 4121866 (W.D. Wash. Aug. 6, 2024) (unpublished). Replacement counsel asked the lawyer for the client's file. The lawyer refused unless subpoenaed and attempted to attach conditions—such as payment for copying costs—to his response. Replacement counsel issued the subpoena, but refused to agree to the lawyer's conditions. The lawyer then objected to the subpoena and refused to produce the file. A motion to compel followed.

The court granted the motion to compel. In doing so, the court noted pointedly that the release of the file was governed by Washington RPC 1.16(d) that addresses assisting a client on withdrawal rather than the federal subpoena rule. The court then cited WSBA Advisory Opinion 181 (rev. 2009) on file transition in holding that unless a lawyer and client agree otherwise, the file belongs to the client—not the lawyer—and the lawyer is obliged to provide the file at the client's request on withdrawal. The court also noted that under WSBA Advisory Opinion 181, absent other arrangements between the lawyer and the

client, if the lawyer wishes to keep a copy, the cost is for the lawyer rather than client.

The court ordered the file to be produced within five judicial days. Presumably, failure to follow the court's order at that point would expose the lawyer to court-imposed sanctions.

WSBA Advisory Opinion 181 was recently supplemented by Advisory Opinion 202401 (2024). Both are available on the WSBA website and are very practical tools for lawyers in understanding their file obligations under RPC 1.16(d) when withdrawing.

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

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