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Effectively Wielding the Statute of Limitations in Legal Malpractice Cases

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While the applicable statute of limitations can be a powerful weapon for defendants in any case, it is especially potent in defending against legal malpractice cases in Illinois. For starters, Illinois law provides a two-year statute of limitations for legal malpractice claims. 735 ILCS 5/13-214.3(b) (the "Attorney Statute"). Illinois also recognizes the "discovery rule," which means that the Attorney Statute does not begin to run until the "the plaintiff knows or reasonably should know that she was injured and that the injury was wrongfully caused." *E.g.*, *Morris v. Margulis*, 197 Ill. 2d 28, 36 (2001).

Plaintiffs frequently think that the discovery rule is a "get out of jail free card," and that the Attorney Statute does not begin to run until they learned that they may have suffered damages as a result of their attorney's negligence. But Illinois courts interpreting the Attorney Statute and the discovery rule have consistently interpreted them more narrowly, holding that the phrase "wrongfully caused" does not mean knowledge of the lawyer's negligent conduct or the existence of a legal malpractice claim. Rather, a plaintiff knows or should know an injury is "wrongfully caused" when he or she has sufficient information *to put a reasonable person on inquiry* to determine whether they might have a malpractice claim. At that point, the would-be-plaintiff bears the burden to determine whether they want to file suit -- within two years.

A recent opinion from the Illinois Appellate Court reaffirmed Illinois precedent that the statute of limitations for legal malpractice cases can begin to run before the plaintiff knows that he may have a claim against his attorney. In *Rosenberger v. Meltzer*, 2021 IL App (1st) 200414-U, the First District affirmed the trial court's finding that the plaintiff's legal malpractice claim was barred by the Attorney Statute.

In 2011 and 2012, Plaintiff Terrance Rosenberger invested in a local bank that then hired him to serve as its chief lending officer. Rosenberger's attorneys -- the law firm of Meltzer, Purtill & Stelle LLC (the "Meltzer Firm") -- represented him in connection with his negotiation of an employment agreement with the bank. The agreement provided that Rosenberger would receive a $200,000 annual salary, other benefits, and the right to receive a severance payment twice his salary if the bank terminated him for any reasons other than for cause. But the agreement also contained a clause that excused the bank's obligation to pay the severance if it was determined that doing so would not comply with certain federal regulations (the "Excused Severance Provision").

In November 2013, the bank terminated Rosenberger and refused to pay him the severance. In March 2014, while represented by new counsel, Rosenberger sued the bank for breach of contract for failing to pay him severance. In September 2014, the bank filed its answer and affirmative defenses claiming, among other things, that the bank was not obligated to make the severance payment because of the Excused Severance Provision.

In August 2016, Rosenberger sued the Meltzer Firm for legal malpractice, alleging that his attorneys had failed to explain or obtain his consent to include the Excused Severance Provision in his employment agreement. The Meltzer Firm eventually filed a motion for summary judgment, arguing that Rosenberger's claim was barred by the statute of limitations because it was filed more than two years after March 2014, when Rosenberger filed suit against the bank. Rosenberger argued that the limitations did not begin to run until September 2014, when the bank first alleged that its performance was excused by the Excused Severance Provision.

The trial court agreed with the Meltzer firm and granted its motion for summary judgment. On appeal, the First District affirmed. The Court noted that by March 2014, Rosenberger "had consulted with multiple attorneys and filed a lawsuit against [the bank] asserting that he was entitled to a severance payment under the terms of the employment agreement" which indicated that "he was clearly on inquiry notice by that date of the fact that he was injured . . . and the possibility that his injury had a wrongful cause." When Rosenberger learned that he might have claim against the Meltzer firm was not determinative – the Court held that he was under an obligation to make that determination no later than March 2014.

Both the trial and appellate courts relied on *Nelson v. Padgitt*, 2016 IL App (1st) 160571, *Janousek v. Katten Muchin Rosenman LLP*, 2015 IL App (1st) 142989, and *Carlson v. Fish*, 2015 IL App (1st) 140526. Pursuant to the holdings of those cases, the "discovery rule" provides that the Attorney Statute begins to run when a plaintiff knows or reasonably should know that she was injured and that the injury was wrongfully caused. In that regard, the phrase "wrongfully caused" does not mean "knowledge of a specific defendant's negligent conduct or knowledge of the existence of a cause of action" for legal malpractice. *Carlson*, 2015 IL App (1st) 140526, ¶ 23;

accord Nelson, 2016 IL App (1st) 160571, ¶ 12. Rather, a plaintiff knows or should know an injury is "wrongfully caused" when he has sufficient information "to put a reasonable person on inquiry to determine whether actionable conduct is involved." *Carlson*, 2015 IL App (1st) 140526, ¶ 23. At that point, "the burden is upon the injured person to inquire further as to the existence of a cause of action." *Id.* It is not necessary for a plaintiff to know the full extent of its injury in order for the statute to begin to run; all that is necessary is that compensable damages have occurred. *E.g.*, *Nelson*, 2016 IL App (1st) 160571, ¶ 12; *Carlson*, 2015 IL App (1st) 40526, ¶¶ 23, 39.

Although Rosenberger originally believed that his injury had been caused by the bank, rather than the Meltzer Firm, the First District found that the "holdings of *Nelson*, *Janousek*, and *Carlson* make clear that he was charged by this time with a duty of inquiry into ***any other potentially wrongful causes*** of this injury . . . ." That "include[ed] whether the defendants had negligently failed to obtain advance regulatory approval for a severance payment or to ensure his employment agreement's terms actually provided for him to receive a severance payment if he was terminated without cause."

The holdings from these cases offer attorney defendants a blueprint for the kind of discovery they should seek to adduce when defending against legal malpractice claims. When did the plaintiff know or should have known that they suffered an injury? Even if they believed the injury may have been caused by a third party, the Attorney Statute may still bar their claim.

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