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Court of Appeals Affirms Dismissal of Legal Malpractice Claim on Lack of Causation

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Unsurprisingly, a plaintiff in a legal malpractice claim must show that the defendant lawyer caused the plaintiff's injury. Courts describe this element of a legal malpractice claim as "proximate cause" and generally look to two related questions—cause in fact and legal causation. The former essentially asks: would the plaintiff's injury have occurred but for the lawyer's conduct? The later reflects a policy notion: how far should the consequences of an act stretch? Division III of the Washington Court of Appeals in Spokane recently examined these concepts in affirming the dismissal of a legal malpractice claim.

Flanigan v. Herman, 2024 WL 124745 (Wn. App. Jan. 11, 2024) (unpublished), involved a lawyer who defended three businesspeople in a case involving their alleged breach of a commercial lease. The lawyer eventually sought to withdraw and, because one of the clients objected under CR 71(c), the court reviewed and ultimately granted the lawyer's withdrawal. When the lawyer withdrew, he provided copies of the case schedule to the former clients. One, Flanigan, later alleged he had not received the schedule even though it had been mailed to his business. The other two defendants settled their respective portions of the lease dispute but the landlord took a default against Flanigan

when he did not appear for trial. Flanigan eventually settled as well and then sued the lawyer for malpractice over his failure to receive the case schedule.

The trial court dismissed on lack of causation and the Court of Appeals affirmed. The Court of Appeals noted that even if there was "cause in fact," the thread between the lawyer's conduct and Flanigan's injury was so attenuated that there was no "legal causation." In doing so, the Court of Appeals noted that Flanigan was a sophisticated businessperson, knew he would be the primary person financially response in the lease dispute, knew that his lawyer had withdrawn, and knew he should find substitute counsel. Under those circumstances, the Court of Appeals concluded that the asserted failure to receive the case schedule was too remote to assign liability to the lawyer.

Although causation is inherently fact-driven and often disputed, *Flanigan* is a reminder that sometimes the link between a lawyer's asserted negligence and a claimant's injury is too indistinct to find liability.

ABOUT THE AUTHOR

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