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Court of Appeals Distinguishes "Injury" from "Damages" in Holding Malpractice Claim Time-Barred

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Division II of the Washington Court of Appeals recently underscored the subtle, but important, difference between "injury" and "damages" in assessing whether a legal malpractice claim is timely. In *Gill v. Hillier, Scheibmeir, Kelly & Satterfield, P.S.*, 2024 WL 334235 (Wn. App. Jan. 30, 2024) (unpublished), the plaintiff used the defendant law firm to handle the sale of his business. The law firm structured the sale so that the seller could foreclose on the stock of the business in the event of nonpayment to quickly regain control of the business as a whole. As a result, the individual assets of the business were not secured. Later, the buyer was engulfed in financial problems, including series of federal tax liens totaling $1.2 million starting in 2015, and eventually stopped making payments on the purchase in 2019. The seller did not wish to pursue foreclosure on the stock because that would include all of the accumulated liabilities. The seller instead sued the purchaser for nonpayment, but the seller went into bankruptcy in 2022. At that point, the seller sued the law firm for malpractice—arguing that it should have reserved a separate ability to foreclose on individual equipment.

The statute of limitation for legal malpractice in Washington is three years. The law firm argued that the seller knew, or reasonably should have known, that

it had been injured when the federal tax liens surfaced starting in 2015 and, therefore, the three-year limitation period had run. The seller contended that it could not have known its ultimate damages until the bankruptcy in 2022. The trial court agreed with the law firm and dismissed the lawsuit.

The Court of Appeals affirmed. In doing so, the Court of Appeals noted that Washington law draws a distinction between "injury" and "damages" when examining whether a legal malpractice claim is time-barred—essentially holding that the clock begins to run when a party is injured even if they do know yet know the full extent of their claimed damages.

Although the limitation period is tolled under the "continuous representation rule" while a law firm continues to represent the client in the matter involved, the Court of Appeals held that it would not consider that argument in this instance because it had not been made in the trial court.

While not plowing any new legal ground, *Gill* includes a useful summary of the law in this area and is an important reminder that clients need to act with reasonable speed if they believe they have been injured through a lawyer's negligence.

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.