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Court of Appeals Affirms Dismissal of Legal Malpractice Claim on Statute of Limitation

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Division III of the Washington Court of Appeals in Spokane recently affirmed the dismissal of a legal malpractice claim as time-barred in *Wood v. Dunn & Black, P.S.*, 2024 WL 4234248 (Wn. App. Sept. 19, 2024) (unpublished). While not treading any new legal ground, *Wood* is an interesting illustration of how a client's criticism of a law firm's work can factor into the statute of limitation if the client doesn't timely move forward with a formal claim.

The law firm in *Wood* had represented a couple for over two years in construction litigation before eventually withdrawing. In response to the law firm's notice of intent to withdraw in March 2019, the clients wrote the law firm a lengthy letter a few days later detailing the clients' criticism of the law firm. Three years later, the by-then former clients filed a malpractice claim against the law firm echoing the same criticisms included in their letter. The limitation period for legal malpractice claims in Washington is three years and generally begins to run when the attorney-client relationship comes to an end. The trial court found that the Woods' malpractice claim was just beyond the limitation period and dismissed their claim. The Court of Appeals affirmed.

In doing so, the Court of Appeals noted the statute of limitation for legal malpractice has a "discovery rule" that can extend the three-year period if the

client does not learn of facts supporting a claim until beyond the three years.

The Court of Appeals explained, however, that even taking the discovery rule into account, the limitation period begins to run when a client learns facts giving rise to a claim—not necessarily all of the details or the full extent of damage. The Court of Appeals attached the Woods’ letter as an appendix to its opinion and pointed to its detailed critique of the law firm’s work as easily meeting this standard for beginning the limitation period. In short, if a client criticizes a law firm’s work, that may be enough to start the three-year clock for a legal malpractice claim once their relationship terminates.

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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