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PROFESSIONAL LIABILITY BLOG

Defending a Malpractice Action in Missouri? Don't Forget to Check the Statute of Limitations

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Introduction

When defending a legal malpractice action, the first item on any attorney's checklist should be whether the plaintiff has satisfied the statute of limitations. Under Section 516.120 RSMo, the statute of limitations for claims of legal malpractice is five years. And Section 516.100 provides "that for the purposes of sections 516.100 to 516.370," a cause of action for legal malpractice shall be deemed to accrue "when the damage resulting therefrom is sustained and is capable of ascertainment." But when is damage "sustained and capable of ascertainment"?

Articulating a Standard: The Powel Decision

In the seminal case of *Powel v. Chaminade College Preparatory, Inc.*, the Supreme Court of Missouri analyzed "decisions from the last 40 years" to articulate a test for courts to use when considering the "capable of ascertainment" standard: "*the statute of limitations begins to run when the evidence was such to place a* reasonably prudent person on notice of a potentially *actionable injury*. At that point, damages would be sustained and capable of ascertainment as an objective matter." 197 S.W.3d 576, 582 (Mo. banc 2006) (internal citation and quotation marks omitted) (bold and underlining added). In other words, "until plaintiff has sufficient knowledge to be put on '*inquiry notice*' of the wrong and damages, that standard is not met." *Id*. at 583 (emphasis added). *Powel* was not a professional malpractice case. But three years after the Powel decision, the Missouri Court of Appeals in *Wright v. Campbell*, 277 S.W.3d 771, 774 (Mo. App. 2009)—which was a legal malpractice case—emphasized the same quotations from *Powel* noted above. The *Wright* court then explained that in a layman/expert relationship, the layman does not have a duty to double-check the expert's work. *Id*. at 775. The *Wright* court, however, still emphasized the "inquiry notice" concept explained in *Powel*. Specifically, the court explained as follows:

[A] plaintiff does not have a duty to double-check the work of a professional that the plaintiff has hired so long as the professional relationship continued. A cause of action for professional malpractice cannot begin to run *until the plaintiff knew or should have known [of] any reason to question the professional's work*.

Id. (bold and underlining added). Thus, in a legal malpractice case, the statute of limitations accrues when a reasonably prudent person in the plaintiff's position knew or should have known of any reason to question the attorney's work—or in other words, when a reasonably prudent person in the plaintiff's position was on "inquiry notice" of a potentially actionable injury. How do these principles work in practice?

Applying the Standard: The Wright Decision

In *Wright*, the plaintiff wanted to sue a Kansas grocery store, but the attorney the plaintiff hired thought the plaintiff got hurt in a Missouri grocery store. 277 S.W.3d at 772. Missouri and Kansas have different statutes of limitations. *Id*. Unfortunately for the attorney and his client, the deadline that was calendared was based on Missouri's longer statute of limitations. The Kansas statute of limitations expired on May 8, 2001. The attorney informed the plaintiff in August 2001 that he had missed the statute of limitations.

In the subsequent legal malpractice action, a dispute arose over the legal malpractice statute of limitations. *Id*. at 773. The plaintiff raised her legal malpractice claim on May 9, 2006. Id. She argued the statute of limitations began running in August 2001, when the attorney informed her that he had missed the statute of limitations. *Id* . at 776. The attorney disagreed, arguing the statute of limitations began running on May 8, 2001—the day the Kansas statute of limitations expired in the underlying suit. *Id*.

In particular, the attorney argued that the plaintiff should have independently checked state and federal courthouses in Kansas on or after May 8, 2001, to verify that a petition had been filed on her behalf. *Id*. The court disagreed and explained that "nothing … would have put [the plaintiff] *on inquiry*" that anything had occurred (or not occurred) in Kansas on the day when the statute of limitations expired on her underlying personal injury claim. *Id*. (emphasis added). Thus, the legal malpractice suit proceeded. The date the defendant attorney wanted to use was not a date when the plaintiff had inquiry notice of a potentially actionable claim.

The Takeaway

For counsel defending legal malpractice claims, the lesson of *Powel* and *Wright* is to ensure he or she critically analyzes the facts surrounding when the plaintiff learned of his or her claim. If the plaintiff was on inquiry notice of a potentially actionable claim for longer than five years from when the plaintiff raised his or her claim, a statute of limitations defense may be available.

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