



## Alerts

### Lawyer Unsuccessfully Attempts to Invoke Statute of Limitations Defense in Malpractice Claim Alleging He Missed Statute of Limitations on Underlying Claims

May 2, 2022

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*Koumjian v. Mudd Law Offices P.C., et al.*, 21-cv-3455 (N.D. Ill. Feb. 4, 2022)

#### Brief Summary

Plaintiff, Michael Koumjian (plaintiff), claims he was harassed on the job for his ethnicity and fired when he complained to his employer. When he hired an attorney (defendant) to represent him in a lawsuit against his former employer, defendant took little action in pursuit of plaintiff's rights. Ultimately, defendant never filed a complaint, and the statute of limitations for plaintiff's potential claims lapsed. Defendant then dropped plaintiff as a client, and plaintiff subsequently sued him for legal malpractice. Defendant moved to dismiss, arguing that plaintiff waited too long to sue him. The court noted: "[t]he lawyer who botched the statute of limitations invokes the statute of limitations to dismiss a claim about botching the statute of limitations." Defendant's motion was denied.

#### Complete Summary

Plaintiff worked as a pilot for an airline. During his training in early 2018, he allegedly experienced ethnic discrimination and harassment from a fellow pilot. After plaintiff complained, the airline fired him. Plaintiff sought legal assistance from defendant, asking for advice on bringing a wrongful discharge claim in federal court. Defendant advised against a wrongful discharge claim, and suggested a defamation claim instead. The statute of limitations had not yet expired on either claim.

After plaintiff formally retained defendant, months passed without any progress in the case. "By April 2019, defendant had done nothing," and the statute of limitations for both defamation and filing a charge of discrimination with the EEOC had expired. Defendant never told plaintiff about this, instead suggesting that plaintiff bring a claim for tortious interference and providing a rough draft of a complaint. For almost a year and a half thereafter, "[d]efendant did little or nothing except evidently evaluate the claims." Eventually, defendant withdrew because plaintiff could not pay him more.

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Plaintiff then sued defendant for malpractice in state court, and defendant removed the case to federal court. Plaintiff asserted that defendant breached the retainer agreement and violated the standard of care in multiple ways, including missing the statute of limitations for the discrimination and defamation claims. Defendant moved to dismiss on the basis that the statute of limitations on plaintiff's claim for legal malpractice had expired, and—because Illinois does not recognize a claim for tortious interference (according to defendant)—plaintiff could not sue him for failure to bring that claim.

In denying defendant's motion, the court explained that the discovery rule applies to Illinois' two-year statute of limitations for legal malpractice. Thus, the limitations period begins to run "once an injured party has a reasonable belief that the injury was caused by wrongful conduct thereby creating an obligation to inquire further on that issue" and not at the moment of "the attorney's misapplication of his legal expertise." Moreover, "there is nothing inherently obvious about the lapse of a statute of limitations, especially for a layperson." In this case, plaintiff did not allege any facts showing that he knew or should have known of the injury more than two years before he filed suit against defendant. Thus, the statute of limitations could not have lapsed.

As to defendant's assertion that he could not be faulted for failing to bring a claim for tortious interference because no such claim exists in Illinois, the court rejected defendant's argument because such a claim does in fact exist in Illinois. If such a claim did not exist, "one wonders why defendant sent plaintiff a draft complaint with a tortious interference claim" in the first place. Whether or not the claim was sustainable, plaintiff did not sue defendant for failing to file it, but for "fixating on tortious interference when the facts didn't support it, and when other claims were more promising." The court therefore denied defendant's motion.

## Significance of Decision

When analyzing the statute of limitations governing claims against attorneys, one must always consider the discovery rule. A legal malpractice action generally accrues when the plaintiff knew or reasonably should have known he or she suffered wrongfully caused injuries.