

Alerts

Attorney Representation Concludes When Client No Longer Has Reasonable Expectation of Representation

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Lawyers for the Profession® Alert

Hipple v. McFadden, et al., ___ P.3d ___, 2011 WL 1653194 (Wash. App. April 28, 2011)

Brief Summary

The Washington Court of Appeals held that an attorney's representation of a client regarding a specific matter concludes, for purposes of the statute of limitations, when the client has no reasonable expectation of representation or further legal services for the matter.

Complete Summary

A client was incarcerated as a result of being found in contempt for failing to comply with a child support order. He had a court-appointed lawyer, and another lawyer from the same office entered a special notice of appearance. The client claimed to have contacted both lawyers numerous times to no avail. One year later, a lawyer from another firm filed a special notice of appearance on behalf of the client and secured his release. The client then filed a claim of legal malpractice against the two initial attorneys. Defendant attorneys moved to dismiss, asserting that the statute of limitations had expired and that the client failed to show proximate cause.

The Washington Court of Appeals upheld the trial court's denial of the motion to dismiss. The Court held that whether the "continuous representation" rule tolled the statute of limitations is an issue appropriate for trial. Relying materially on Ronald E. Mallen and Jeffrey M. Smith's treatise on *Legal Malpractice*, the court looked to the client's reasonable expectations regarding an attorney's representation for the specific matter and held that a lawyer who is alleged to have unilaterally abandoned representation without the client's knowledge may still be "representing" the client during that time. Representation on a matter only will conclude when a client "actually has or reasonably should have no expectation that the attorney will provide further legal services."

Significance of Opinion

This opinion is the first in Washington to consider when an attorney's representation of a client regarding a specific matter continues or ceases for

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limitations purposes. The court stressed that its decision serves to prevent an attorney from "waiting out" an alleged malpractice claim, by incorporating the client's reasonable expectation of representation on a specific matter as the marker for purposes of the continuous representation rule.

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