



Alerts

Continuous Representation Rule Does Not Apply Merely Because Attorney Remains Counsel of Record

June 28, 2017

Lawyers for the Profession®

Moonlight Enterprise, LLC v. Mroz, 2017 WL 1237947 (Va. March 30, 2017)

Brief Summary

The Virginia Supreme Court held that the continuous representation rule does not apply to an attorney who ceases to perform legal services, even if he remains the attorney of record.

Complete Summary

Plaintiff retained defendant to provide services in 2008 for a condo purchase and in 2010 for litigation against the condo association. Defendant himself performed services for the 2008 condo purchase. Another attorney, Zachary, of defendant's firm, performed the legal services for the 2010 litigation with defendant. Defendant did not perform legal services for plaintiff after August 2011.

Plaintiff filed a malpractice suit against defendant and Zachary in 2013. The court dismissed the case against defendant in connection with the condo purchase on statute of limitations grounds. Plaintiff then nonsuited the malpractice claim against Zachary pertaining to the 2010 litigation.

In 2015, plaintiff filed a second malpractice suit against defendant and Zachary in connection with the 2010 litigation. Both defendants filed a motion to dismiss based upon the three-year statute of limitations applicable to oral contracts in Virginia. To determine when the statute of limitations began to run, the court reviewed the continuous representation rule. In effect, this rule tolls the statute of limitations until an attorney's services rendered in connection with a particular undertaking have terminated.

In determining whether defendant's services were rendered within the statute of limitations period, the court relied heavily on *Keller v. Denny*, 232 Va. 512 (1987). The *Keller* court found that the continuous representation rule applies only when a continuous or recurring course of professional services relating to a particular undertaking is shown to have taken place over a period of time. *Id.* at 518.

Attorneys

Terrence P. McAvoy

Service Areas

Lawyers for the Profession®



In this case, the lower court found that the "last legal action" of defendant or Zachary occurred on January 19, 2012 or January 26, 2012, both of which were outside of the statute of limitations. The Virginia Supreme Court reversed this opinion in part, and found that Zachary did continue to work on the matter within the statute of limitations time period.

The court affirmed the circuit court in finding defendant's legal work was outside of the statute of limitations. The court held that although he remained the counsel of record, defendant did not perform any legal work on the underlying litigation within the applicable statute of limitations. The court reasoned that in determining whether the continuous representation rule applies, the proper inquiry is not whether a general attorney-client relationship existed, but instead, whether an attorney's work on a particular matter has ended.

Significance of Opinion

This decision is significant because the court addressed the issue of whether an attorney is exposed to malpractice claims long after he performed his last legal service. This court holds that an attorney is not exposed to malpractice if his last legal service was performed outside of the statute of limitations, even if he remained counsel of record within the limitations period.