



Newsletters

Lawyers' Professional Liability Update - June 2010

June 23, 2010

Evidence

Narrow Interpretation of Spoliation of Evidence Tort Offset by Potential Ethical, Criminal and Other Civil Liability

Kearney v. Foley & Lardner, LLP, 582 F.3d 896 (9th Cir. 2009)

In summary, although alleged suppression of evidence will not necessarily establish a viable spoliation of evidence tort claim, lawyers who help clients suppress material evidence could nonetheless be subject to potential ethical or criminal charges, or subject to other civil liability despite the immunities contained in the Noerr-Pennington doctrine and anti-SLAPP statutes.

Fees / Fee Agreements

Discharged Firm May Still Collect Contingency Fee

DeLapaz v. Selectbuild Construction, Inc., 394 Ill. App. 3d 969, 917 N.E.2d 93 (1st Dist. 2009)

In summary, a lawyer did much of the work on a contingency fee matter prior to his employment being terminated by his law firm, and took the client's case with him and settled it shortly thereafter. It was within the trial court's discretion to award the original law firm the contingency fee, less the amount of a *quantum meruit* payment to the lawyer for the value of the work after the discharge.

Conflicts

New Jersey Supreme Court Sets Clear Conditions That Would Allow a Company to Pay Attorney Fees for Employees Who Are Targets and Potential Witnesses in a Grand Jury Proceeding

In re State Grand Jury Investigation, 200 N.J. 481, 983 A.2d 1097 (N.J. 2009)

In summary, the New Jersey Supreme Court held that the corporate target of a grand jury investigation may ethically pay for legal representation of employees who are targets and potential grand jury witnesses, provided six conditions are met.

Duty

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Attorney Owes Duty to Children in Wrongful Death Action

Perez v. Stern, 279 Neb. 187, 777 N.W.2d 545 (2010)

A Nebraska lawyer was hired to prosecute a wrongful death action on behalf of a mother and her two minor children, but the complaint was not served timely. The mother consequently filed legal malpractice claims against the lawyer on behalf of herself, the two children, and the estate of the subject deceased. The lawyer raised the two-year statute of limitations as a defense, and the mother dismissed her claim. The trial court ruled that the estate's claim was time-barred. Although tolled by their minority, the children's claim was rejected based on lack of standing to sue because under the wrongful death statute, the action could not have been brought in their name.

Statute of Limitations / Repose

Statutes of Repose Do Not Shorten Bankruptcy Trustee's Period to Pursue Legal Malpractice

Stanley v. Trinchard, 579 F.3d 515, 51 Bankr. Ct. Dec. 278 (5th Cir. 2009)

In summary, bankruptcy trustees who wish to pursue causes of action on behalf of debtors' estates are not governed by a state's shorter statute of repose, but rather by the federal bankruptcy law's two-year period. Bankruptcy trustee Stanley (Trustee) brought a legal malpractice claim on behalf of a bankruptcy debtor's estate against a law firm, Trinchard & Trinchard LLC, 13 months after the debtor knew or should have known of his legal injury. The district court granted Trinchard & Trinchard's motion for summary judgment because the Trustee's claim was barred by Louisiana's one-year peremptive period, which is the civil law equivalent of a statute of repose in a common law jurisdiction.

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