

Missed the statute of limitations?

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One of the most common errors that litigation attorneys make is missing statutes of limitations. This error can be very consequential because the client can sue the attorney for legal malpractice and potentially recover as damages everything the client would have recovered from the third party had the lawsuit been filed timely. The damage potential can be in the millions. But missing a statute of limitations in and of itself does not always mean that an attorney will be found liable for legal malpractice. Indeed, there are circumstances where a statute is missed, but the client does not necessarily suffer damages as a result. Moreover, there are circumstances where an attorney misses the statute of limitations, and then the client misses the statute of limitations for suing the attorney for legal malpractice.

In a twist of irony, the attorney may be off the hook so to speak, due purely to a dispositive procedural error by the client in failing to timely pursue the lawsuit. While the best practice is for attorneys to always make sure the client is protected, which includes timely filing suit on the client's behalf, if the situation arises where the attorney misses the statute of limitations for any reason, that fact alone, without further inquiry, does not equal malpractice.

This article can be read in full at <https://www.dailyjournal.com>.

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