

PROFESSIONAL LIABILITY UPDATE

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STATUTE OF LIMITATIONS

California Law

By Ann L. Strayer

Klug v. Klug (2005) 130 Cal. App. 4th 1389

The Third District holds that a legal malpractice settlement is separate property because the cause of action accrued after separation.

Prior to separation, Donald Klug retained the services of attorney Craig Christensen to set up a limited partnership to protect his and his wife's assets from potential litigation involving Donald's medical practice. Donald then withdrew funds from the limited partnership's brokerage account and deposited them into a foreign trust account.

The couple separated and Donald filed a petition for dissolution of marriage. During separation, Donald sold community assets and, with Christensen's assistance, transferred them to himself in overseas trusts. Lynn filed a lawsuit against Christensen alleging legal malpractice and breach of fiduciary related to his involvement in the transfers of the community property. Two years after signing a marital settlement agreement that did not list the Christiansen lawsuit, Lynn settled her claim. Donald filed a motion for division of the "omitted asset" claiming that he would not have signed the

agreement had he known about the lawsuit.

The trial court denied Donald's motion finding that Christensen's assistance with the post-separation transfers formed the basis for the lawsuit. Thus, the cause of action against Christiansen did not accrue until after the parties separated.

In determining whether the settlement was community property, the Third District Court of Appeal focused on whether the legal malpractice cause of action arose before or after separation. The court noted that the trial court and the parties confused and interchangeably used the terms 'arose' and 'accrued'. For statute of limitations purposes, the time for filing a lawsuit begins to run on the date the cause of action accrues, that is when the attorney breaches his or her professional duty of care to the client, thereby causing damages, and the plaintiff discovers, or through the use of reasonable diligence should have discovered, the wrongful act or omission.

Although two elements of Lynn's cause of action (duty and breach) had occurred during the marriage, Lynn did not sustain damages until after the separation, when Donald transferred the community funds offshore.

Comment: This case reinforces legal malpractice case law holding that the statute of limitations does not start to run until the client sustains damage. This may not occur until years after the service is rendered.