

PROFESSIONAL LIABILITY UPDATE

STATUTE OF LIMITATIONS

By Jennifer Becker

Flake v. Neumiller & Beardslee 2017 WL 839822

The Third District holds a client's receipt of a motion to withdraw stating the attorney is no longer providing legal services terminates the attorney-client relationship for statute of limitations analysis.

Stanley Flake and others were represented by Neumiller & Beardslee (Neumiller) in unsuccessful real estate litigation. Neumiller moved to withdraw after trial based on successor counsel's assumption of litigation duties. The unopposed motion was granted and Neumiller served the order on Flake.

One day short of the anniversary of the withdrawal order, Flake sued Neumiller for legal malpractice. Neumiller successfully argued on summary judgment the statute of limitations began to run on receipt of the motion to withdraw, when Flake understood that Neumiller no longer represented his interests. This was several weeks prior to the court's order, rendering the malpractice suit, filed more than a year after receipt of the motion, untimely.

The question on appeal was whether Neumiller continued to represent Flake until the formal grant of Neumiller's motion to withdraw. The Court of Appeal agreed with Neumiller that no reasonable client could objectively believe an attorney was still providing legal services after receiving a

motion to withdraw stating successor counsel was handling post-trial motions and the appeal.

The end of an attorney-client relationship is not always a bright line. When litigation remains pending, the court can exercise its discretion to deny a motion to withdraw to ensure a client is not harmed. Although it cannot be certain a court will allow withdrawal while a motion is pending, a formal order is not always necessary to trigger the clock on the legal malpractice statute of limitations.

Whether an attorney continues to represent a client is not based on a client's subjective belief. It is based on objective evidence of an ongoing mutual relationship and activities to further the relationship. The representation ends when the client actually has or reasonably should have no expectation that the attorney will provide further legal services. When a client has no reasonable expectation that an attorney will provide further legal services, the client is no longer hindered by potential disruption of the attorney-client relationship, no longer

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relies on the attorney's continuing representation, and there is no reason to continue to toll the running of the clock on the statute of limitations.

The substance of Neumiller's motion, that successor counsel had assumed all duties, would indicate to any objectively reasonable client that the representation was over. An objectively reasonable client would understand Neumiller had stopped working on the case, even if, as here, the successor counsel denied assuming all responsibilities. It was clear Neumiller was no longer providing legal services, and there was no longer any basis to toll the statute of limitations time period.

Comment: This is yet another example of how clarity in terminating representation is an important risk management tool.