

**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS**

Katherine M. Keefe
Clerk of the Circuit Court
Electronically Filed
Transaction ID: 17111173529
17LA000377
07/05/2018
McHenry County, Illinois
22nd Judicial Circuit

PAUL DULBERG,

Plaintiff,

vs.

THE LAW OFFICES OF THOMAS J.
POPOVICH, P.C., and HANS MAST,

Defendants.

No. 17LA000377

DEFENDANTS' MOTION TO DISMISS

Defendants, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, by and through their attorneys, GEORGE K. FLYNN, and CLAUSEN MILLER P.C., pursuant to 735 ILCS 5/2-615, move to dismiss Plaintiff's First Amended Complaint at Law, and state as follows:

1. The Plaintiff Paul Dulberg ("Dulberg") retained defendants The Law Offices of Thomas J. Popovich P.C. ("Popovich") to prosecute a personal injury claim on his behalf against his next door neighbors, Carolyn and Bill McGuire and their adult son (Dulberg's lifelong friend), David Gagnon ("Gagnon")). Hans Mast ("Mast") handled the case for the firm. This legal malpractice case arises out of that underlying personal injury case.

2. It is clearly established that Illinois is a fact pleading jurisdiction, requiring the plaintiff to present a legally and factually sufficient complaint. *Winfrey v. Chicago Park Dist.*, 274 Ill. App. 3d 939, 942 (1st Dist. 1995). A plaintiff must allege facts sufficient to bring his or her claim within the cause of action asserted. *Jackson vs. South Holland Dodge*, 197 Ill. 2d 39 (2001).

3. In Illinois, to establish a legal malpractice claim, a plaintiff must plead and prove the existence of an attorney client relationship; a duty arising from that relationship; a breach of that duty, the proximate causal relationship between the breach of duty and the damage sustained; and actual damages. *Glass v. Pitler*, 276 Ill. App. 3d 344, 349 (1st Dist. 1995).

4. The plaintiff in a legal malpractice claim must plead a case within the case. *Ignarski v. Norbut*, 271 Ill. App. 3d 522 (1st Dist. 1995).

5. Dulberg fails to allege requisite facts in support of a legal malpractice claim, including each and every element of the “underlying” case or “case within the case” against the McGuires.

6. Dulberg’s complaint must be dismissed pursuant to 735 ILCS 5/2-615.

WHEREFORE, Defendants, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, pursuant to 735 ILCS 5/2-615, respectfully request this Honorable Court dismiss Plaintiff’s First Amended Complaint at Law with prejudice, and for any further relief this Court deems fair and proper.

/s/ George K. Flynn

GEORGE K. FLYNN
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was caused to be served by Email on the 5th day of July, 2018, addressed to counsel of record as follows:

Mr. Thomas W. Gooch, III
The Gooch Firm
209 S. Main Street
Wauconda, IL 60084
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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this Certificate of Service are true and correct.


