

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

PAUL R. DULBERG	)	
	)	
Plaintiff,	)	
vs.	)	CASE NO. 25LA360
THOMAS W. GOOCH, <i>et al.</i> ,	)	
Defendants,	)	

**PLAINTIFF’S RESPONSE AND PRELIMINARY OBJECTION TO DEFENDANTS
THOMAS J. POPOVICH AND HANS MAST’S FILED MOTION TO DISMISS
PLAINTIFF’S COMPLAINT
(2025LA000360--2026-02-13--MOTDIM_0419)**

1. Plaintiff responds to the filed Motion to Dismiss identified as 2025LA000360--2026-02-13--MOTDIM_0419 (“MOTDIM_0419”) and preliminarily objects that, as filed, the motion is procedurally insufficient and should be denied without prejudice, or stricken without prejudice if the Court prefers, before any merits analysis is reached.
2. Plaintiff responds only to the motion actually filed and accepted by the Clerk. Any longer emailed draft, unfiled memorandum, or non-file-stamped version is not the motion presently before the Court.
3. As filed, MOTDIM_0419 consists of a single introductory page followed immediately by “Exhibit 1” on page 2 of the accepted filing. It contains no separately labeled section 2-615 part, no separately labeled section 2-619(a)(5) part, no separately labeled section 2-619(a)(9) part, no identification of specific pleading defects, and no identified affirmative matter tied to any particular part of the motion.
4. Under 735 ILCS 5/2-615(a) and (b), a motion attacking a pleading must point out specifically the defects complained of and must specify wherein the pleading is insufficient. Under 735 ILCS 5/2-619.1, a combined motion must be in parts, and each part must be limited to and specify the section under which it is brought. Under 735 ILCS 5/2-619(a), if the asserted grounds do not appear on the face of the pleading attacked, the motion shall be supported by affidavit.
5. The filed motion does not comply with those requirements. It gives the Court rhetoric and a footnote, then shifts immediately into exhibits. A mass of attachments cannot substitute for a

compliant motion that states its grounds with specificity.

6. Nor may Defendants cure the filed motion's omission of actual parts and grounds by asking the Court to infer arguments from historical exhibits drawn from other cases. If Defendants seek dismissal under sections 2-615, 2-619(a)(5), or 2-619(a)(9), they must actually state the grounds of the motion now before the Court.

7. MOTDIM_0419 should therefore be denied as procedurally insufficient. At minimum, it should be denied without prejudice rather than used as a vehicle to dismiss the Complaint on grounds never properly set out in the filed motion itself.

8. Without waiving the threshold objection above, Plaintiff states in the alternative that even if the Court looks past the defects of MOTDIM_0419 and attempts to infer timeliness, preclusion, or pleading arguments from the footnote and attached historical materials, dismissal still is improper.

9. As a threshold clarification, Plaintiff does not seek, as to Popovich and Mast, to revive the same legal-malpractice claim litigated in 17LA377 arising from Popovich and Mast's 2012-2015 representation in 12LA178. Popovich and Mast were defendants, not Plaintiff's counsel, in 17LA377.

10. As to Popovich and Mast, the present action is limited to later intentional concealment, suppression, misrepresentation, document irregularity, and coordinated conduct alleged to have occurred during and after 17LA377, together with later-discovered facts that were not adjudicated there. To the extent any paragraph of the Complaint can be read more broadly, Plaintiff disclaims any such broader theory as to Popovich and Mast and requests leave to amend to make that limitation express.

11. The Complaint pleads concrete later events supporting that narrowed theory, including Plaintiff's April 18, 2019 written notice concerning Tilschner / section 318 and Mast's legal-research materials (**Exhibits* C6³, C7⁴, C8⁵**), Flynn's July 2, 2020 supplemental discovery focused on when Plaintiff supposedly discovered his "injury" (**Exhibit* E1¹⁰**), the November

* See Endnotes on page 7 for Docket Numbers of Exhibits.

4, 2022 hearing concerning the Mast deposition / Exhibit 12 problem (**Exhibit* C20**⁶), Flynn’s November 30, 2022 answer minimizing that problem (**Exhibit* C21**⁷), the defective “Legal Research” Exhibit 12 materials themselves (**Exhibit* K18**¹³), and the November 9, 2022 document-suppression evidence and file-tree materials (**Exhibits* DW**⁹, **ED-2**¹¹, **ED-3**¹²). See also Complaint ¶¶ 135-145, 188.

12. Those later events occurred years after Popovich and Mast’s representation of Plaintiff ended. Accordingly, the filed motion cannot eliminate the narrowed claims merely by pointing to March 2015 as the date the former representation ceased.

13. Even assuming arguendo that section 13-214.3 applies, dismissal still is improper. Illinois law makes clear that the “injury” in a legal-malpractice action is an actual pecuniary loss, not the attorney’s act itself, and in litigation-based malpractice the accrual analysis ordinarily turns on realized loss, not abstract awareness of attorney error. See *Northern Illinois Emergency Physicians v. Landau, Omahana & Kopka, Ltd.*, 216 Ill. 2d 294, 306-07 (2005); *Tri-G, Inc. v. Burke, Bosselman & Weaver*, 222 Ill. 2d 218, 226 (2006); *Suburban Real Estate Servs., Inc. v. Carlson*, 2022 IL 126935, ¶¶ 17-19, 31-33. Plaintiff also pleads fraudulent concealment under 735 ILCS 5/13-215.

14. The Complaint pleads later discovery of material facts, including the later-produced October 22, 2013 settlement-offer document first seen in 2019 (**Exhibit* 65**¹), the Tilschner / legal-research materials later placed at issue in the Mast deposition process (**Exhibits* 107**², **C6**³, **C7**⁴, **C8**⁵, **K18**¹³), the subpoena and response chain concerning the Mast deposition and Exhibit 12 (**Exhibits* DG**⁸, **K21**¹⁴, **K22**¹⁵, **K23**¹⁶, **K24**¹⁷, **K25**¹⁸), and the November 9, 2022 suppression-file evidence (**Exhibits* DW**⁹, **ED-2**¹¹, **ED-3**¹²).

15. On those allegations, the face of the Complaint does not conclusively establish untimeliness as to the narrowed claims now asserted against Popovich and Mast. At minimum, the issues of accrual, concealment, diligence, and the effect of later 17LA377-era conduct require factual development and cannot be resolved against Plaintiff on the pleadings.

* See Endnotes on page 7 for Docket Numbers of Exhibits.

16. To the extent the Court infers a res judicata argument from the filed materials, that argument also fails. The prior action, 17LA377, adjudicated the old malpractice claim arising from Popovich and Mast’s former representation of Plaintiff in 12LA178. The present action, as narrowed here, is directed instead to later conduct during and after 17LA377 itself.

17. Different time periods, different procedural roles, different acts, and different injuries are involved. The old claim concerned attorney conduct while Popovich and Mast represented Plaintiff in 12LA178. The narrowed current claim concerns later conduct while Popovich and Mast were adverse parties in 17LA377.

18. Even the additional historical filings and orders attached as rejected Exhibits 21-29, if later deemed filed, only underscore what the old case litigated and decided. They do not adjudicate the later Exhibit 12, suppression, notice, and denial issues now alleged in this case. Nor would any Rule 9 filing-date relief cure MOTDIM_0419’s independent failure, as filed, to state its dismissal grounds in the separate, specific manner required by sections 2-615, 2-619, and 2-619.1.

19. Collateral estoppel likewise does not apply. The issue decided in 17LA377 was whether the earlier malpractice claim against Popovich and Mast—arising from their former representation in 12LA178—was timely and legally sufficient. The present action, as narrowed, concerns whether they later engaged in independent acts of concealment, suppression, document irregularity, misrepresentation, or coordinated conduct during and after 17LA377, when they were adverse parties.

20. Those are not the same issues, were not actually litigated in 17LA377, and were not necessary to the prior judgment there. Accordingly, collateral estoppel does not apply.

21. To the extent the Court infers a section 2-615 challenge from the filed motion, the Complaint is legally sufficient. Plaintiff is not asserting a free-standing claim for “fraud on the court” untethered to recognized Illinois causes of action, nor is Plaintiff asking this Court to sit as a reviewing court over 17LA377. As to Popovich and Mast, the Complaint pleads later fraudulent concealment, common-law fraud, and civil conspiracy based on specific later acts.

22. Plaintiff’s later-conduct theory is not abstract. Plaintiff alleges that he later discovered in 2019

an October 22, 2013 settlement offer to the McGuires for \$7,500 made in Plaintiff's name that Plaintiff alleges he had never seen or authorized (**Exhibit* 65**¹); that on April 18, 2019 Plaintiff sent Julia Williams written notice of the Tilschner / section 318 materials and the legal research from Mast's file (**Exhibits* C6**³, **C7**⁴, **C8**⁵); that the June 25, 2020 Mast deposition proceeded with the disputed Exhibit 12 / "Legal Research" materials later challenged in court (**Exhibit* K18**¹³; see also **Exhibits* C20**⁶, **C21**⁷); and that on November 9, 2022 Plaintiff obtained and forwarded documentary evidence of a suppression-file structure bearing directly on the same issues (**Exhibits* DW**⁹, **ED-2**¹¹, **ED-3**¹²). Those facts identify the substance of the concealment, the approximate dates, the actors involved, the persons to whom notice was given, and why the concealment mattered to the defeat of 17LA377.

23. The same later-conduct facts also support the agreement-and-overt-act component of Plaintiff's conspiracy theory. After repeated notice concerning Tilschner and Exhibit 12, the record reflects continued use of the same accrual / discovery narrative, continued focus on Plaintiff's alleged knowledge date, continued minimization of the Exhibit 12 irregularity, and later suppression-file evidence bearing on the same issues. From that sequence of repeated notice, continued use of the same discovery / accrual narrative, continued minimization of the Exhibit 12 defect, and later suppression-file evidence, an agreement or common design may reasonably be inferred at the pleading stage.

24. To the extent the Court concludes that any individual allegation is stated too broadly, rests in part on privileged litigation advocacy, or requires still greater specificity, the appropriate remedy is to strike, narrow, or permit amendment as to that allegation—not to dismiss the entire action with prejudice.

25. Finally, if the Court concludes that any prayer for attorney's fees is improper as to Popovich and Mast absent an independent statutory or contractual basis, that prayer can be stricken without dismissal of the substantive counts.

26. For all of these reasons, MOTDIM_0419 should be denied. In the alternative, if the Court

* See Endnotes on page 7 for Docket Numbers of Exhibits.

concludes that any claim against Popovich and Mast is stated too broadly or insufficiently clearly, Plaintiff respectfully requests leave to amend rather than dismissal with prejudice.

WHEREFORE, Plaintiff respectfully requests that the Court deny Defendants Thomas J.

Popovich and Hans Mast's filed Motion to Dismiss as procedurally insufficient, or alternatively strike it without prejudice and require any renewed motion to comply with sections 2-615, 2-619, and 2-619.1; and, if the Court nevertheless reaches the merits of MOTDIM_0419, deny dismissal on the grounds stated above; or alternatively grant Plaintiff leave to amend, and award such other relief as is just and proper.

Submitted by: /s/ Paul R. Dulberg

Paul R. Dulberg (pro se)

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VERIFICATION BY CERTIFICATION PURSUANT TO SECTION 1-109

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 instrument and its exhibits are true and correct, except as to matters therein stated to be on information and belief, and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

/s/ Paul R. Dulberg Date: **3/16/2026**

Paul R. Dulberg

CERTIFICATE OF SERVICE

I certify that on **3/16/2026**, I served this document on all counsel/parties of record via eFileIL/EFSP electronic service to the extent available, and by email to any party not on eFile service.

/s/ Paul R. Dulberg Date: **3/16/2026**

ENDNOTES:

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| 1 Exhibit 65 Docket No. 0096 | 10 Exhibit E1 Docket No. 0164 |
| 2 Exhibit 107 Docket No. 0117 | 11 Exhibit ED-2 .. Docket No. 0155 |
| 3 Exhibit C6 Docket No. 0180 | 12 Exhibit ED-3 .. Docket No. 0154 |
| 4 Exhibit C7 Docket No. 0179 | 13 Exhibit K18 ... Docket No. 0138 |
| 5 Exhibit C8 Docket No. 0178 | 14 Exhibit K21 ... Docket No. 0137 |
| 6 Exhibit C20 Docket No. 0261 | 15 Exhibit K22 ... Docket No. 0136 |
| 7 Exhibit C21 Docket No. 0260 | 16 Exhibit K23 ... Docket No. 0135 |
| 8 Exhibit DG Docket No. 0266 | 17 Exhibit K24 ... Docket No. 0134 |
| 9 Exhibit DW Docket No. 0168 | 18 Exhibit K25 ... Docket No. 0130 |