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

PAUL R. DULBERG, individually and the)
PAUL R. DULBERG REVOCABLE TRUST,)

Plaintiffs,)

v.)

No. 2025 LA 000360

THOMAS W. GOOCH, SABINA SERSHON,)
EDWARD X. CLINTON, JULIA WILLIAMS,)
ALPHONSE TALARICO, GEORGE FLYNN,)
THOMAS J. POPOVICH, HANS MAST, THE)
GOOCH FIRM, CLINTON LAW FIRM, LLC,)
LAW OFFICE OF ALPHONSE A. TALARICO,)

Defendants.)

MOTION TO DISMISS

NOW COME Defendants, ALPHONSE TALARICO and LAW OFFICE OF ALPHONSE A. TALARICO, (“Talarico”), by and through their attorneys, STUDNICKA & POULAKIDAS, LLC, and pursuant to 735 ILCS 5/2-615, 735 ILCS 5/2-619 and 735 ILCS 5/2-619.1, move to dismiss plaintiff’s Complaint at Law filed on December 4, 2025, and in support thereof, state as follows:

I. INTRODUCTION

Plaintiff, Paul Dulberg, individually, and on behalf of the Paul R. Dulberg Revocable Trust (“Dulberg”) retained Talarico on or about October 20, 2020 to represent them in two separate legal malpractice cases—one against The Law Offices of Thomas Popovich and Hans Mast (“*Popovich*”) under McHenry case number 2017 LA 000377, and the other against Kelly Baudin, Law Offices of Baudin & Baudin, ADR Systems of America, LLC, and Allstate Property and Casualty Insurance Company, et al. (“*Baudin*”) under Cook County case number 2022 L 010905.

See *Exhibit 1*, Attorney-Client Agreement (to be provided to the Court for *in camera* review). In the instant matter, Dulberg now falsely claims that Talarico mishandled certain vague aspects of the *Popovich* and *Baudin* cases, respectively. However, due to the prolix nature of Dulberg's complaint and conclusory nature of Dulberg's allegations, Talarico cannot reasonably determine any specific conduct to which Dulberg objects or how any damages may have resulted therefrom. Similarly, Dulberg's enigmatic claims against Talarico regarding "smoking gun evidence" and allegedly forged documents do not set forth any proximate cause for damages. Accordingly, even if true, any such conduct was ultimately irrelevant or harmless. Talarico seeks dismissal with prejudice for Dulberg's failure to state a cause of action and for the failure to comply with Rule 2-603(a), which requires a plain and concise statement of the cause of action.

More importantly, Dulberg's Complaint references allegedly negligent conduct on the part of Talarico that occurred over two years before this case was filed on December 4, 2025. Accordingly, Dulberg's Complaint should be dismissed with prejudice because the instant lawsuit was not filed within two years of the date of the alleged acts of malpractice.

For all of the reasons stated here and that follow, Talarico moves the Court for dismissal of plaintiff's Complaint with prejudice.

II. STANDARD OF REVIEW

A § 2-615 motion to dismiss (735 ILCS 5/2-615 (West 2002)) challenges the legal sufficiency of a complaint based on defects apparent on its face. *Marshall v. Burger King Corp.*, 222 Ill.2d 422, 429 (Ill., 2006). In reviewing the sufficiency of a complaint, the Court shall accept as true all well-pleaded facts and all reasonable inferences that may be drawn from those facts. *Marshall* at 429. A cause of action should be dismissed pursuant to § 2-615 when it is clearly

apparent that no set of facts can be proven that would entitle the Plaintiff to recovery. *Marshall* at 429.

Illinois law requires plaintiffs to plead facts to support each and every element of the cause of action; notice pleading is not sufficient. *Knox College v. Celotex Corp.*, 88 Ill.2d 407, 430 N.E.2d 976 (1981); *Lempa v. Finkle*, 278 Ill.App.3d 417, 663 N.E.2d 158 (2nd Dist. 1996); 735 ILCS 5/2-601, 603(a) (West 2016). While the plaintiff is not required to set forth evidence in the complaint, the plaintiff must allege facts sufficient to bring a claim within a legally recognized cause of action; conclusory statements are inadequate. *Marshall* at 429-30. Accordingly, plaintiff's Complaint must contain facts sufficient to inform defendants of the nature of the claims against them. *Stinson v. Physicians Immediate Care*, 269 Ill.App.3d 659, 646 N.E.2d 930 (2nd Dist. 1995). Under Illinois law, where a party elects to pursue litigation *pro se*, he must comply with the same rules and will be held to the same standards as licensed attorneys. *Steinbrecher v. Steinbrecher*, 197 Ill. 2d 514, 528, 759 N.E.2d 509, 517 (Ill., 2001). Moreover, Dulberg's Complaint must comply with § 2-603(a), which requires a plain and concise statement of the cause of action.

Additionally, § 13-214.3 of the Code of Civil Procedure (Code) provides in pertinent part: (b) an action for damages based on tort, contract, or otherwise (i) against an attorney arising out of an act or omission in the performance of professional services. . . must be commenced within two years from the time the person bringing the action knew or reasonably should have known of the injury for which damages are sought. *Deluna v. Burciaga*, 857 N.E.2d 229, 223 Ill.2d 49, 306 Ill.Dec. 136 (Ill., 2006).

In our case, dismissal is warranted under both § 2-615 and § 2-619(5) because plaintiff has not stated a cause of action for legal malpractice or any other theory labeled "at variance with

Illinois law,” “professional misconduct” or “conspiracy to commit fraud” and because Dulberg’s claims are time-barred.

III. ARGUMENT

A. Dulberg Fails to State a Cause of Action Pursuant to § 2-615 for Legal Malpractice

To set forth an action for legal malpractice, a plaintiff must plead: “(1) the existence of an attorney-client relationship which establishes a duty on the part of the attorney; (2) a negligent act or omission constituting a breach of that duty; (3) proximate cause establishing that ‘but for’ the attorney’s negligence, the plaintiff would have prevailed in the underlying action; and (4) damages.” *Timothy Whelan Law Associates v. Kruppe*, 409 Ill.App.3d 359, 363, 947 N.E.2d 366 (2nd Dist. 2011), citing *Ignarski v. Norbut*, 271 Ill.App.3d 522, 525 (1st Dist. 1995). The existence of any duty owed to plaintiff is a question of law. *Id.* 136 Ill.2d at 141-42, 554 N.E.2d at 227. “For purposes of a legal malpractice action, a client is not considered to be injured unless and until he [or she] has suffered a loss for which he [or she] may seek monetary damages.” *Northern Illinois Emergency Physicians v. Landau, Omahana & Kopka, Ltd.*, 216 Ill.2d 294, 306, 297 Ill.Dec. 319, 837 N.E.2d 99 (Ill., 2005).

Attorneys are liable for negligence only when they fail to exercise a reasonable degree of care and skill. *O’Brien & Associates, P.C. v. Tim Thompson, Inc.*, 653 N.E.2d 956, 961 (2nd Dist. 1995), citing *Barth v. Reagan* 139 Ill.2d 399, 406, (Ill., 1990)(summary judgment in favor of law firm affirmed on basis that alleged failure to join parties and advise clients of proposed zoning ordinances were matters left to the attorney’s judgment). The law distinguishes between mistaken judgments and errors of negligence. *O’Brien & Associates, P.C.* at 961. An attorney’s mere error of judgment does not subject an attorney to liability—even if that erroneous judgment leads to an unfavorable outcome for the client. *O’Brien & Associates, P.C.* at 962. The court’s

responsibilities “do not extend to protecting a party from its own failed trial strategy.” *Goldfine v. Barack, Ferrazzano, Kirschbaum & Perlman*, 18 N.E.3d 884, ¶ 27 (Ill., 2014), citing *Geise v. Phoenix Co. of Chicago, Inc.*, 159 Ill.2d 507, 514–15, 203 Ill.Dec. 454, 639 N.E.2d 1273 (Ill., 1994).

The theory underlying a cause of action for legal malpractice is that the plaintiff-client would have been compensated for an injury caused by a third party, absent negligence on the part of the client’s attorney. If the underlying action never reached trial because of the attorney’s alleged negligence, the plaintiff is required to prove that but for the attorney’s negligence, the plaintiff would have been successful in that underlying action; a legal malpractice plaintiff must therefore litigate a “case within a case.” *Tri-G, Inc. v. Burke, Bosselman & Weaver*, 222 Ill. 2d 218, 305 Ill.Dec. 584, 856 N.E.2d 389, 395 (Ill., 2006).

In this case, Dulberg has failed to articulate how any conduct on the part of Talarico caused the underlying *Popovich* and *Baudin* actions to be dismissed. Setting aside Dulberg’s unrealistic expectations regarding the viability of the underlying cases, Dulberg has not alleged the “case within a case” element of any legal malpractice claim. Dulberg has not alleged—and will never be able to prove—that he would have prevailed at trial and/or recovered a single penny if Talarico had handled the *Popovich* and *Baudin* cases differently. What Dulberg has retrospectively characterized as “legal misconduct” was nothing more than Talarico offering Dulberg a patently realistic view of the potential risks of litigation. Just because a lawsuit is dismissed by way of dispositive motion does not automatically mean that any legal work done in the pursuit of that case was improper, plaintiff must adequately allege each element necessary to prove a case of legal malpractice. *Timothy Whelan Law Associates* at 363.

Moreover, any allegation by Dulberg that they would have proven the underlying respective defendants had acted negligently in the *Popovich* or *Baudin* cases, or that he should have recovered a monetary award in either case, is asking this Court to engage in impermissible speculation. Circumstances must justify a reasonable inference of a *probability* of negligence, as distinguished from a mere possibility. *Gyllin v College Craft Enterprises, Ltd.*, 260 Ill.App.3d 707, 714, 633 N.E.2d 111, 117 (2d Dist. 1994); *Leavitt v. Farwell Tower, Ltd. Partnership*, 252 Ill.App.3d 260, 625 N.E.2d 48 (1st Dist. 1993), emphasis added.

Dulberg's disappointment with the outcome of the *Popovich* and *Baudin* cases simply does not equate to any cognizable legal malpractice cause of action. Dulberg has not sufficiently pled that any decision or action on the part of Talarico was anything other than a strategic measure. For these reasons, Talarico's § 2-615 motion to dismiss the Complaint should be granted with prejudice.

B. Dulberg's Cause of Action is Barred by the Statute of Limitations Pursuant to § 2-619(5)

A § 2-619(5) motion to dismiss provides for the involuntary dismissal of an action not commenced within the time limited by law. (735 ILCS 5/2-619(5) (West 1992).) *Halleck v. County of Cook*, 264 Ill.App.3d 887, 890 (1st Dist. 1994). Section 13-214.3 of the Code of Civil Procedure (Code) provides in pertinent part: (b) an action for damages based on tort, contract, or otherwise (i) against an attorney arising out of an act or omission in the performance of professional services. . . must be commenced within two years from the time the person bringing the action knew or reasonably should have known of the injury for which damages are sought. *Deluna v. Burciaga*, 857 N.E.2d 229, 223 Ill.2d 49, 306 Ill.Dec. 136 (Ill., 2006).

Significantly, actual knowledge of alleged malpractice is not a necessary condition to trigger the running of the statute of limitations. *SK Partners I, LP v. Metro Consultants, Inc.*, 408

Ill.App.3d 127, 130, 944 N.E.2d 414 (1st Dist. 2011). The statute of limitations begins to run when the purportedly injured party “has a reasonable belief that the injury was caused by wrongful conduct, thereby creating an obligation to inquire further on that issue.” *Dancor International, Ltd. v. Friedman, Goldberg & Mintz*, 288 Ill.App.3d 666, 673, 681 N.E.2d 617 (1st Dist. 1997). Knowledge that an injury has been wrongfully caused “does not mean knowledge of a specific defendant's negligent conduct or knowledge of the existence of a cause of action.” *Castello v. Kalis*, 352 Ill.App.3d 736, 744, 287 Ill.Dec. 815, 816 N.E.2d 782 (1st Dist. 2004). The law is well settled that once a party knows or reasonably should know both of his injury and that it was wrongfully caused, “the burden is upon the injured person to inquire further as to the existence of a cause of action.” *Castello* at 745.

In Dulberg’s Complaint, all acts of alleged negligence complained of occurred in 2024 or earlier and references to conduct going back to at least 2012 are scattered throughout the Complaint. Accordingly, assuming *arguendo* there was “legal misconduct” or that Talarico somehow committed “conspiracy to commit fraud,” no such conduct occurring after 2023 is referenced in either Count 5 or Count 6 of Dulberg’s Complaint.

Finally, to the extent Dulberg claims they only recently “discovered” any wrongdoing in an effort to extend the two-year statute of limitations, Dulberg has failed to show how or why such information was not known to Dulberg when any such conduct allegedly occurred. Additionally, the law is clear that Plaintiff was dutybound to explore potential redress for his claims of ignoring “smoking gun evidence,” addressing “forged” signatures, and otherwise in 2022 and 2023 as alleged in Counts 5 and 6 of Dulberg’s Complaint. Here, Dulberg’s actual knowledge of any alleged wrongdoing is immaterial.

For these reasons, Dulberg's Complaint should be dismissed in its entirety for failure to comply with the applicable statute of limitations.

C. Dulberg has Not Adequately Alleged any Other Cause of Action

"Illinois is a fact-pleading jurisdiction" and "conclusions of fact are insufficient to state a cause of action regardless of whether they generally inform the defendant of the nature of the claim." *Coghlán v. Beck*, 2013 IL App (1st) 120891, 368 Ill.Dec. 407, 984 N.E.2d 132, ¶ 22. In Illinois, the complainant "is required to set out ultimate facts that support his or her cause of action." *Id.* at ¶ 22.

Here, Dulberg's Complaint contains vague claims of intentional acts, legal misconduct, and conspiracy. Each of these putative allegations is conclusory and has not been adequately supported with facts and/or documentation to corroborate Dulberg's claims. Moreover, Dulberg has failed to allege how any damages proximate resulted from any "variance with Illinois law," "professional misconduct," "conspiracy to commit fraud," "smoking gun evidence" or any allegedly "forged documents." Quite simply, Dulberg's Complaint does not contain facts sufficient to inform Talarico (or any of the other defendants) of the nature of the claims against them. *Stinson* at 661. For this reason and those stated above, Dulberg's Complaint should be dismissed with prejudice.

IV. CONCLUSION

Dulberg's Complaint is vague, incohesive, and fails to state a cause of action against Talarico. Furthermore, Dulberg's claims against Talarico are time-barred.

WHEREFORE, Defendants, ALPHONSE TALARICO and LAW OFFICE OF ALPHONSE A. TALARICO, respectfully request that this Honorable Court dismiss Dulberg's Complaint, in its entirety and with prejudice, for failure to state a cause of action and/or for failure

to file within the applicable statute of limitations. Defendants, ALPHONSE TALARICO and LAW OFFICE OF ALPHONSE A. TALARICO further pray that this Court find that there is no just reason to delay enforcement or appeal from such order pursuant to Supreme Court Rule 304(a), and further for any additional relief this court deems just.

Respectfully Submitted,

STUDNICKA & POULAKIDAS, LLC

/s/ James R. Studnicka

By _____
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