

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

AIB

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

**PLAINTIFF PAUL R. DULBERG'S AMENDED RESPONSE TO CLINTON
DEFENDANTS' MOTION TO DISMISS PURSUANT TO 735 ILCS 5/2-619.1 AND
735 ILCS 5/2-603**

Plaintiff Paul R. Dulberg, appearing pro se, respectfully submits this amended response to the Motion to Dismiss filed by Defendants Edward X. Clinton, Julia Williams, and Clinton Law Firm, LLC (collectively, the "Clinton Defendants"). For the reasons below, the Clinton Defendants' request for dismissal should be denied. Alternatively, if the Court finds any pleading deficiency, Plaintiff requests leave to amend rather than dismissal with prejudice.

I. INTRODUCTION

The Clinton Defendants seek dismissal under sections 2-619.1, 2-615, 2-619, and 2-603. Their motion raises seven principal arguments: limitations, proximate cause, superseding/intervening cause, legal-malpractice pleading, fraud pleading, civil-conspiracy pleading, and pleading form. The motion should be denied because it asks the Court to resolve disputed factual issues at the pleading stage. The Complaint alleges that Clinton and Williams, while representing Plaintiff in 17LA377, continued and preserved an erroneous limitations/accrual framing, failed to plead and use material facts from 12LA178 and BK 14-83578, suppressed or failed to use the Tilschner v. Spangler evidence, delayed and segmented document production, misdirected bankruptcy and ADR issues, failed to address deposition-certification irregularities, and participated in a broader concealment sequence that affected the dismissal and appellate posture of 17LA377. The Clinton Defendants' arguments depend on factual premises that Plaintiff disputes: when Plaintiff knew or reasonably should have known of a complete cause of action; when actual damages arose; whether Clinton and Williams concealed material facts; whether Talarico later

cured or instead continued and failed to correct the same damage mechanisms; whether the underlying 17LA377 claim was viable; and whether the alleged conspiracy and concealment are sufficiently pleaded. Those issues cannot be decided against Plaintiff on a motion to dismiss.

II. APPLICABLE STANDARDS

A combined motion under section 2-619.1 must be analyzed by its separate parts. A section 2-615 argument challenges pleading sufficiency. A section 2-619 argument raises affirmative matter and cannot be used to resolve disputed facts regarding accrual, discovery, concealment, proximate cause, damages, or conspiracy. If the grounds for a section 2-619 dismissal do not appear on the face of the pleading, the motion must be supported by affidavit. If a material factual dispute exists, dismissal under section 2-619 is improper.

The Clinton Defendants' motion blends pleading attacks with affirmative defenses. Plaintiff therefore responds by issue and requests that no factual inference be drawn against Plaintiff at the pleading stage.

To the extent the Clinton Defendants rely on section 2-603(a), that argument concerns pleading organization and clarity, not dismissal with prejudice where allegations can be made more concise by amendment. Section 2-603 requires pleadings to be plain, concise, separately counted, numbered, and organized. It does not authorize dismissal with prejudice of otherwise viable claims merely because the case involves complex facts, multiple prior cases, multiple attorneys, and a long chronology.

III. THE CLINTON DEFENDANTS' TIME-BAR ARGUMENT DOES NOT JUSTIFY DISMISSAL

The Clinton Defendants argue that the claims against them are time-barred because their representation occurred between November 2018 and July 27, 2020. That argument fails at the pleading stage.

First, the motion uses an incorrect filing premise. Plaintiff filed this action on December 4, 2025, not December 8, 2025. The Clinton Defendants acknowledge that their representation ended on July 27, 2020. A December 4, 2025 filing is within six years of that date for purposes of the attorney statute of repose. The Clinton Defendants therefore are not entitled to dismissal on

repose grounds based on their own pleaded end date.

Second, accrual is not the same as awareness of alleged attorney error. In litigation-malpractice cases, Illinois law distinguishes between knowledge of possible error and the existence of actual, compensable injury. The Complaint alleges that the relevant litigation injury occurred through the adverse February 1, 2023 final order in 17LA377 and the later appeal process, which was dismissed on December 4, 2023. Plaintiff further pleads that the wrongful cause of that injury was obscured by concealment, delayed production, and misrepresentation.

Third, the Complaint pleads concealment and delayed discovery. Plaintiff alleges, among other things, suppression of Tilschner evidence; delayed and segmented production of thousands of pages of documents; misdirection concerning bankruptcy relevance, trustee authority, and the binding mediation / ADR issues; concealment of deposition-certification irregularities; and later discovery, including the November 9, 2022 evidence of a document-suppression system.

Complaint paragraphs 108 through 168 and related paragraphs allege Clinton/Williams conduct in chronological order, while paragraphs 188 through 189 and Count VI allege later concealment and coordinated conduct. See **Complaint paragraphs 108-168, 188-189, 216-217, 221, 225-226; Exhibits 107** (Docket No. 0117), **K18** (Docket No. 0138), **K21** (Docket No. 0137), **K22** (Docket No. 0136), **K23** (Docket No. 0135), **K24** (Docket No. 0134), **K25** (Docket No. 0130), **C20** (Docket No. 0261), **C21** (Docket No. 0260), **DW** (Docket No. 0168), **ED-2** (Docket No. 0155), **ED-3** (Docket No. 0154).

Fourth, fraudulent concealment under 735 ILCS 5/13-215 is pleaded. Plaintiff alleges that Clinton and Williams, as fiduciary attorneys, had a duty to disclose material facts and not mislead Plaintiff or the Court. Plaintiff alleges they instead concealed material facts, delayed production, omitted central evidence, and helped preserve a defective limitations/accrual narrative. Those allegations raise factual questions concerning discovery, diligence, concealment, and accrual. At minimum, the face of the Complaint does not conclusively establish that the claims against the Clinton Defendants are untimely. The time-bar argument therefore should be denied.

IV. THE COMPLAINT PLEADS PROXIMATE CAUSE AND A VIABLE CASE-WITHIN-A-CASE THEORY

The Clinton Defendants argue they were not the proximate cause of Plaintiff's damages. That argument asks the Court to resolve the case-within-a-case merits and successor-counsel causation at the pleading stage.

Plaintiff pleads the elements of legal malpractice: an attorney-client relationship, breach, proximate cause, and damages. The attorney-client relationship between Plaintiff and the Clinton Defendants is not in genuine dispute. The Complaint pleads breaches by Clinton and Williams, including but not limited to:

1. carrying forward and preserving an erroneous limitations/accrual theory in 17LA377;
2. failing to plead and litigate the full case-within-a-case theory based on 12LA178, BK 14-83578, and the resulting malpractice action against Popovich and Mast;
3. failing to use or disclose material evidence concerning the McGuire defendants, Gagnon, the October 22, 2013 settlement offer, and the November 20, 2013 Tilschner meeting;
4. suppressing, failing to Bates-stamp, failing to produce, or failing to use Tilschner v. Spangler despite repeated notice from Plaintiff and Thomas Kost;
5. delaying and segmenting production of documents, including Barch subpoena materials and other file materials;
6. failing to properly address bankruptcy/ADR issues, including trustee authority, the \$300,000 upper cap, and the binding mediation agreement;
7. failing to address deposition-certification irregularities and related record problems; and
8. leaving successor counsel and the Court with a distorted litigation record.

These allegations are pleaded in **Complaint paragraphs 108-168, 188-189, 216-217, 221, and 225-226**, and are supported by exhibits including **Exhibits 65** (Docket No. 0096), **107** (Docket No. 0117), **K18** (Docket No. 0138), **K21** (Docket No. 0137), **K22** (Docket No. 0136), **K23** (Docket No. 0135), **K24** (Docket No. 0134), **K25** (Docket No. 0130), **C20** (Docket No. 0261), **C21** (Docket

No. 0260), **DW** (Docket No. 0168), **ED-2** (Docket No. 0155), **ED-3** (Docket No. 0154), **DP** (Docket No. 0275), **DQ-1** (Docket No. 0274), and **DQ-2** (Docket No. 0273).

Plaintiff also pleads the underlying viability of the case within the case. The Complaint alleges facts supporting the personal-injury claim in 12LA178, the bankruptcy and mediation consequences in BK 14-83578, and the malpractice claim against Popovich and Mast in 17LA377. These include the McGuire/Gagnon liability facts, the cross-claim/contribution/default issues, the October 22, 2013 offer to settle the McGuire claim, the November 20, 2013 Tilschner explanation, bankruptcy-estate and ADR authority issues, and the way those facts allegedly affected the limitations/accrual theory used to defeat 17LA377.

The Clinton Defendants' motion asks the Court to decide that Plaintiff would not have succeeded in the underlying matters. That is not appropriate on the pleadings. Plaintiff need not prove ultimate success at this stage. He must plead facts that, if proven, support viability, breach, causation, and damages. He has done so.

V. SUCCESSOR COUNSEL DOES NOT AUTOMATICALLY BREAK CAUSATION

The Clinton Defendants argue that Plaintiff's retention of Talarico automatically severed proximate cause. Illinois law does not impose such an automatic rule. Later counsel may be relevant to causation, but successor counsel does not defeat proximate cause as a matter of law where Plaintiff pleads that later counsel did not cure the existing defects, or where later conduct continued, concealed, or failed to correct the same damage mechanisms.

Plaintiff does not plead that Talarico merely failed to fix an otherwise intact case. Plaintiff pleads that Talarico continued, failed to correct, or concealed the same damage mechanisms that Clinton and Williams allegedly created or preserved. Whether successor counsel had a full and fair opportunity to cure, and whether later conduct was independent or superseding, cannot be resolved against Plaintiff on the pleadings.

The Complaint alleges that Talarico received notice of key issues and evidence, including Judge Meyer/Popovich conflict evidence, the Tilschner and Exhibit 12 issues, signature/certification irregularities, document-suppression evidence, bankruptcy/ADR issues, and proposed amended-

complaint issues. The Complaint further alleges that Talarico did not cure those defects, did not correct the record, did not adequately preserve appeal issues, and later made statements Plaintiff alleges were false or misleading in related proceedings.

Those allegations matter because the Clinton Defendants' superseding-cause argument assumes that Talarico inherited a fully viable, intact claim and had a clear opportunity to cure any Clinton/Williams error. Plaintiff pleads the opposite. Plaintiff pleads that Clinton and Williams had already shaped the record, pleadings, discovery posture, and limitations/accrual theory in a way that successor counsel inherited, and that successor counsel did not sever the causal chain. Proximate cause, foreseeability, and superseding cause ordinarily present factual questions. On the facts pleaded here, reasonable inferences can be drawn in Plaintiff's favor. The Clinton Defendants' successor-counsel argument should be denied.

VI. THE COMPLAINT PLEADS LEGAL MALPRACTICE WITH SUFFICIENT FACTUAL DETAIL

The Clinton Defendants argue that Plaintiff failed to plead sufficient predicate facts for legal malpractice. That argument ignores the detailed chronology in Complaint paragraphs 108 through 168 and the related common-fact allegations.

The Complaint pleads specific acts and omissions by Clinton and Williams during 17LA377, including:

1. knowingly preserving the same limitations/accrual theory that Plaintiff alleges had been wrongfully used by prior counsel;
2. failing to use the 12LA178 record and BK 14-83578 record to establish the proper underlying case-within-a-case facts;
3. failing to disclose or use the Gagnon/McGuire liability evidence, including the cross-claim/contribution/default issues;
4. suppressing or failing to use the Tilschner v. Spangler evidence, despite Plaintiff's repeated insistence that it was central to the McGuire-liability and Popovich/Mast-fraud issues;
5. failing to properly disclose and use the October 22, 2013 settlement-offer evidence,

which Plaintiff alleges showed that Mast and Popovich had offered to settle the McGuire claim before Mast later gave Plaintiff the Tilschner explanation;

6. withholding or delaying production of documents, including Barch subpoena documents and other materials produced late in the representation;
7. failing to properly address the bankruptcy, trustee, ADR, binding mediation, and \$300,000 upper-cap issues;
8. failing to address deposition-certification irregularities and related record issues; and
9. withdrawing after the record had allegedly been materially compromised.

These are factual allegations tied to dates, litigation steps, complaint paragraphs, and exhibits. They are not merely labels or conclusions. They are sufficient to state a claim for legal malpractice and to require factual development.

VII. THE COMPLAINT PLEADS FRAUD WITH SUFFICIENT PARTICULARITY OR, AT MINIMUM, CAN BE AMENDED

The Clinton Defendants argue that Plaintiff's fraud allegations are conclusory, especially concerning the \$300,000 upper cap and related bankruptcy/ADR issues. Plaintiff disagrees. The fraud allegations are not limited to one statement. The Complaint identifies specific alleged misrepresentations and omissions by Clinton and Williams, including:

1. statute-of-limitations / accrual framing carried into the Second Amended Complaint and 17LA377 litigation;
2. statements and omissions concerning the \$300,000 upper cap and bankruptcy/ADR authority;
3. suppression or non-use of Tilschner despite repeated notice from Plaintiff and Thomas Kost;
4. delayed or segmented production of Barch subpoena materials and other documents;
5. statements or omissions concerning bankruptcy trustee Megan Heeg and subpoena availability;

6. failure to disclose or address deposition-certification irregularities;
7. failure to disclose the effect of Gagnon/McGuire liability evidence and bankruptcy-estate control on the case-within-a-case analysis; and
8. conduct surrounding the production and non-production of materials that Plaintiff alleges were necessary to expose Popovich/Mast fraud and the true limitations/accrual facts.

The related exhibit record includes, among others, the Tilschner materials, the Mast deposition Exhibit 12 materials, subpoena-response materials, document-suppression/file-tree materials, and the 17LA377 dismissal record. See **Exhibits 107** (Docket No. 0117), **K18** (Docket No. 0138), **K21** (Docket No. 0137), **K22** (Docket No. 0136), **K23** (Docket No. 0135), **K24** (Docket No. 0134), **K25** (Docket No. 0130), **C20** (Docket No. 0261), **C21** (Docket No. 0260), **DW** (Docket No. 0168), **ED-2** (Docket No. 0155), **ED-3** (Docket No. 0154), **DP** (Docket No. 0275), **DQ-1** (Docket No. 0274), and **DQ-2** (Docket No. 0273).

Complaint paragraphs 108 through 168, 216 through 217, 221, and 225 through 226 identify the Clinton/Williams conduct and the claimed consequences. Plaintiff alleges reliance because Clinton and Williams were his retained attorneys in 17LA377. Plaintiff relied on them to disclose material facts, plead the proper theory, produce material evidence, obtain and use subpoena materials, correct the record, and accurately represent the legal and factual basis of the case. Plaintiff alleges damages through the dismissal and loss of 17LA377, the appeal consequences, and the need for later proceedings to uncover the concealed facts.

If the Court finds that any fraud allegation should be stated with greater particularity, Plaintiff requests leave to amend. Plaintiff can amend to set out a chart identifying the date, speaker, statement or omission, recipient, why the statement or omission was false or misleading, reliance, and resulting damage. Dismissal with prejudice is not warranted.

VIII. THE COMPLAINT PLEADS CIVIL CONSPIRACY OR, AT MINIMUM, SUPPORTS LEAVE TO AMEND

The Clinton Defendants argue that the civil-conspiracy allegations are based only on parallel conduct and lack facts showing agreement or overt acts. That argument is premature.

Civil conspiracy may be pleaded and proven through circumstantial evidence. A direct written agreement is rarely available at the pleading stage. Plaintiff pleads coordinated conduct, shared litigation positions, repeated suppression or non-use of the same material evidence, and later continuation of the same defective record and limitations/accrual theory.

Plaintiff does not rely solely on parallel conduct. Plaintiff pleads and identifies coordinated litigation conduct and communications concerning the Mast deposition, Exhibit 12, Tilschner, subpoena responses, document production, and production to both Plaintiff's counsel and opposing counsel Flynn. Those allegations support, at minimum, an inference of coordinated conduct sufficient to defeat dismissal at the pleading stage. See **Complaint paragraphs 141-145, 188-189, 221-226; Exhibits K18** (Docket No. 0138), **K21** (Docket No. 0137), **K22** (Docket No. 0136), **K23** (Docket No. 0135), **K24** (Docket No. 0134), **K25** (Docket No. 0130), **C20** (Docket No. 0261), **C21** (Docket No. 0260), **DW** (Docket No. 0168), **ED-2** (Docket No. 0155), **ED-3** (Docket No. 0154).

The Complaint alleges that Gooch/Sershon first advanced the defective accrual framing, Clinton/Williams carried the same framing forward into amended pleadings and litigation positions, and successor counsel later failed to correct or concealed the same issues. The Complaint also alleges that Clinton/Williams delayed or segmented document production, did not properly disclose or use Tilschner, did not properly use the Barch subpoena materials, and did not correct the bankruptcy/ADR record. Count VI alleges that these acts were part of a broader coordinated effort to preserve a false or incomplete record and obtain dismissal of 17LA377.

Plaintiff is not asking the Court to infer conspiracy from ordinary litigation communications alone. The communications and productions are pleaded as part of the context showing document handling, record distortion, and alleged coordinated concealment. If the Court requires more specificity, Plaintiff can amend to add an overt-act chart identifying each Clinton/Williams act by date, actor, document, recipient, and connection to Count VI. Dismissal with prejudice is not the proper remedy.

IX. FRAUD-ON-THE-COURT FACTS ARE PLEADED AS PART OF MALPRACTICE, CONCEALMENT, CONSPIRACY, ACCRUAL, AND LEAVE-TO-AMEND

ANALYSIS

Plaintiff is not asking the Court to recognize a free-standing damages tort for every alleged act of litigation misconduct. Plaintiff pleads fraud-on-the-court facts as part of the alleged malpractice, fraudulent concealment, conspiracy, accrual, proximate-cause, and leave-to-amend analysis.

The point is not simply that Plaintiff disagrees with prior rulings. Plaintiff alleges that the record presented to the 17LA377 court was materially affected by suppression, omission, delayed production, misrepresentation, and coordinated use of a distorted factual and legal record. Those allegations are relevant to accrual, fraudulent concealment, proximate cause, and the sufficiency of Counts III, IV, and VI.

If the Court concludes that the fraud-on-the-court language should be clarified, narrowed, or separated from the damages claims, Plaintiff requests leave to amend. That issue does not justify dismissal with prejudice of the substantive malpractice, fraud, and conspiracy allegations.

X. SECTION 2-603 DOES NOT JUSTIFY DISMISSAL WITH PREJUDICE

The Clinton Defendants argue that the Complaint is too long, narrative, and confusing under section 2-603. That argument does not justify dismissal with prejudice.

The Complaint is organized into numbered paragraphs, separate sections, and separate counts. It includes common facts from 12LA178 and BK 14-83578; facts from 17LA377; separate chronological sections for the Gooch/Sershon period, the Clinton/Williams period, and the Talarico period; and separate counts identifying the defendant groups and legal theories.

The factual detail is necessary because this case involves multiple underlying court proceedings, multiple successive counsel, a bankruptcy estate, binding mediation/ADR issues, discovery and document-production disputes, deposition-certification issues, an appeal, and alleged later concealment. A complex factual history is not itself a basis for dismissal with prejudice.

If the Court finds that any section is too lengthy, unclear, or should be separated further, the proper remedy is leave to amend, repleading, or limited striking of surplusage. It is not dismissal with prejudice where the Clinton Defendants have been able to identify and brief their arguments in detail.

XI. ANY ISSUE WITH ATTORNEY'S FEES OR PRAYER FOR RELIEF DOES NOT WARRANT DISMISSAL OF THE CLAIMS

If the Court determines that any request for attorney's fees or other relief is not presently supported, that issue concerns the prayer for relief, not the legal sufficiency of Counts III, IV, or VI. The Court may strike or limit any improper prayer without dismissing the substantive claims. Plaintiff requests all relief permitted by law, including recoverable costs and any other relief the Court deems just.

XII. THE TRUST-PLAINTIFF ISSUE IS MOOT OR, AT MOST, DOES NOT JUSTIFY DISMISSAL OF PLAINTIFF'S INDIVIDUAL CLAIMS

To the extent the Clinton Defendants seek dismissal of the Complaint as to The Paul R. Dulberg Revocable Trust, that issue is moot or limited to the Trust only.

On February 17, 2026, Plaintiff filed a Notice of Voluntary Dismissal as to Co-Plaintiff The Paul R. Dulberg Revocable Trust Only (Docket No. 0422), pursuant to 735 ILCS 5/2-1009. That Notice states that Plaintiff voluntarily dismissed, without prejudice, all claims asserted in this action by co-plaintiff The Paul R. Dulberg Revocable Trust. The Notice further states that the dismissal applies solely to the Trust and does not affect the claims asserted by Plaintiff Paul R. Dulberg, individually.

Accordingly, any Trust issue is not a basis to dismiss Counts III, IV, or VI as to Plaintiff Paul R. Dulberg individually. To the extent no separate order has yet been entered on Plaintiff's February 17, 2026 Notice, Plaintiff asks the Court to enter that order and allow this matter to proceed with Paul R. Dulberg individually as the sole plaintiff.

XIII. LEAVE TO AMEND SHOULD BE GRANTED IF THE COURT FINDS ANY DEFECT

Dismissal with prejudice is disfavored where amendment may cure the defect. If the Court finds any portion of Counts III, IV, or VI insufficiently pleaded, Plaintiff requests leave to amend.

An amended pleading can, if necessary, provide greater specificity by separating malpractice, fraud, fraudulent concealment, and civil-conspiracy allegations; identifying each alleged misrepresentation or omission by date, actor, document, recipient, reliance, and damages;

identifying each overt act supporting civil conspiracy; narrowing any fraud-on-the-court language; clarifying any attorney-fee prayer; and clarifying the Trust's dismissal.

Because the Clinton Defendants' arguments are directed largely to pleading specificity, organization, and disputed factual issues, dismissal with prejudice is not warranted.

XIV. CONCLUSION

WHEREFORE, Plaintiff Paul R. Dulberg respectfully requests that this Court deny the Clinton Defendants' Motion to Dismiss.

Alternatively, if the Court finds any portion of Counts III, IV, or VI insufficiently pleaded, Plaintiff requests leave to amend rather than dismissal with prejudice.

Plaintiff further requests that, to the extent no separate order has yet been entered on Plaintiff's February 17, 2026 Notice of Voluntary Dismissal as to Co-Plaintiff The Paul R. Dulberg Revocable Trust Only, the Court enter an order dismissing The Paul R. Dulberg Revocable Trust as a party plaintiff without prejudice and allow this matter to proceed with Paul R. Dulberg individually as the sole plaintiff.

Plaintiff further requests such other and further relief as the Court deems just.

Submitted by: /s/ Paul R. Dulberg

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CERTIFICATE OF SERVICE

I certify that on **June 10, 2026**, I served a true and correct copy of the foregoing document upon all counsel and parties of record via eFileIL/EFSP electronic service to the extent available, and by email to any party not served through electronic service.

/s/ Paul R. Dulberg Date: **June 10, 2026**