** FILED ** Env: 38506457
McHenry County, Illinois
2025LA000360
Date: 6/10/2026 6:45 PM
Katherine M. Keefe
Clerk of the Circuit Court

AIB

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

PAUL R. DULBERG, *et al.,* Plaintiffs,	)	
vs.	)	CASE NO. **25LA360**
THOMAS W. GOOCH, *et al.,* Defendants,	)	

PLAINTIFF'S RESPONSE TO DEFENDANTS THOMAS W. GOOCH, SABINA SERSHON, AND THE GOOCH FIRM'S JOINT COMBINED MOTION TO DISMISS

Plaintiff Paul R. Dulberg, appearing pro se, respectfully submits this response to Defendants Thomas W. Gooch, Sabina Sershon, and The Gooch Firm's Joint Combined Motion to Dismiss. For the reasons below, the motion should be denied. Alternatively, if the Court finds any pleading deficiency, Plaintiff requests leave to amend rather than dismissal with prejudice.

I. INTRODUCTION

Defendants ask the Court to dismiss Counts I and II with prejudice by treating every allegation as ordinary legal malpractice arising only from Defendants' 2016-2018 representation and by treating the six-year attorney repose period as an absolute bar. Plaintiff does not ask the Court to ignore the limitations and repose issues. Plaintiff recognizes those issues are important. But Defendants' motion goes too far at the pleading stage.

The Complaint alleges more than negligent professional judgment. It alleges that Gooch and Sershon knowingly filed legally insufficient pleadings in 17LA377, repeatedly failed to plead the underlying case-within-a-case facts despite being told of those facts, omitted the bankruptcy and binding-mediation facts, omitted the Gagnon/cross-claim facts, omitted the Tilschner v. Spangler evidence, placed a false "high-low agreement was executed by Dulberg" statement in the court record, and misadvised Plaintiff about accrual and limitations. **Complaint paragraphs 61-105**, **214-215**; **Exhibits 106** (Docket No. 0118), **107** (Docket No. 0117), **108** (Docket No. 0116), **109** (Docket No. 0115), **111** (Docket No. 0114), **112** (Docket No. 0113), **113** (Docket No. 0112), **114** (Docket No. 0111), **115** (Docket No. 0110), **116** (Docket No. 0109), **117** (Docket No. 0108), **118** (Docket No. 0107), **120** (Docket No. 0106), **122** (Docket No. 0105), **123** (Docket No. 0104), **193**

Received 06-10-2026 07:37 PM / Circuit Clerk Accepted on 06-10-2026 07:42 PM / Transaction #38506457 / Case #2025LA000360

(Docket No. 0309), **253** (Docket No. 0295).

The motion asks the Court to decide disputed issues about discovery, concealment, accrual, proximate cause, successor counsel, and whether the fraud allegations are separable from ordinary negligence. Those issues are not appropriate for dismissal with prejudice on the current pleading. If the Court concludes that some allegations are barred or insufficiently separated from malpractice, Plaintiff should be allowed to amend and plead separate counts for legal malpractice, fraud/fraudulent concealment, and any conspiracy-related concealment theory.

II. APPLICABLE STANDARDS

Defendants bring a combined motion under 735 ILCS 5/2-619.1. A combined motion must be divided into parts, and each part must specify whether it is brought under section 2-615, 2-619, or 2-1005. 735 ILCS 5/2-619.1.

A section 2-615 motion challenges the legal sufficiency of the pleading. The Court accepts well-pleaded facts as true, draws reasonable inferences in Plaintiff's favor, and asks whether the complaint states a legally recognized claim. A section 2-615 motion must identify the specific pleading defects complained of. 735 ILCS 5/2-615.

A section 2-619 motion admits the legal sufficiency of the pleading but raises an affirmative matter that defeats the claim. If the grounds do not appear on the face of the pleading, the motion must be supported by affidavit. 735 ILCS 5/2-619. Limitations, repose, proximate cause, successor counsel, concealment, and diligence issues should not be resolved against Plaintiff unless the affirmative defense is apparent on the face of the complaint and no material facts are disputed.

III. THE LIMITATIONS ARGUMENT DOES NOT JUSTIFY DISMISSAL WITH PREJUDICE AT THIS STAGE

Defendants first argue that Plaintiff knew or should have known of his claims no later than October 12, 2018, February 1, 2023, or November 8, 2023. They rely on Plaintiff's meeting with successor counsel, the 17LA377 summary-judgment order, and the ARDC complaint against Gooch and Sershon. That argument does not conclusively defeat the Complaint.

First, Defendants treat knowledge of a possible attorney error as the same thing as knowledge of

Received 06-10-2026 07:37 PM / Circuit Clerk Accepted on 06-10-2026 07:42 PM / Transaction #38506457 / Case #2025LA000360

a complete, compensable, wrongfully caused injury. Illinois legal-malpractice accrual is not that simple. The injury in a legal-malpractice action is not merely the attorney's act itself; it is a pecuniary injury. See *Northern Illinois Emergency Physicians v. Landau, Omahana & Kopka, Ltd., 216 Ill. 2d 294, 306-07 (2005)*. Plaintiff alleges that 17LA377 did not come to rest when Gooch withdrew in 2018. The case continued through Clinton/Williams, then Talarico, then the February 1, 2023 dismissal and later appellate events. Whether Plaintiff knew enough to sue Gooch and Sershon earlier, and whether concealment prevented full discovery, are fact questions.

Second, Defendants' October 2018 theory incorrectly assumes that meeting successor counsel automatically starts the limitations period. Plaintiff alleges he fired Gooch because the pleadings were not being accepted and because Gooch resisted Plaintiff's efforts to correct the pleadings. But Plaintiff also alleges that material facts were concealed or omitted, including the Gagnon admission/cross-claim issue, bankruptcy and binding-mediation facts, Tilschner, and the true role of the "upper cap." **Complaint paragraphs 61-105**, **214**; **Exhibits 106** (Docket No. 0118), **107** (Docket No. 0117), **112** (Docket No. 0113), **123** (Docket No. 0104). Those allegations prevent the Court from finding, as a matter of law, that all claims necessarily accrued in October 2018.

Third, Defendants' reliance on the November 8, 2023 ARDC complaint does not justify dismissal. An ARDC complaint is not a civil complaint for damages and does not establish, as a matter of law, that all facts necessary for a civil fraud/concealment claim were known and no tolling applies. More importantly, the present Complaint alleges fraudulent concealment. Under 735 ILCS 5/13-215, where a person liable to an action fraudulently conceals the cause of action from the person entitled to sue, the action may be filed within five years after discovery. *DeLuna v. Burciaga, 223 Ill. 2d 49 (2006)*, recognizes that fraudulent concealment can prevent a legal-malpractice defendant from invoking the repose bar where properly pleaded and proven.

Fourth, Defendants' own motion shows why dismissal with prejudice is premature. They argue that the fraud claims are time-barred because they arise from professional services. That may be a legal issue the Court must address, but it does not mean all intentional-fraud, concealment, or equitable-tolling allegations (fraudulent-concealment and timeliness allegations) disappear

Received 06-10-2026 07:37 PM / Circuit Clerk Accepted on 06-10-2026 07:42 PM / Transaction #38506457 / Case #2025LA000360

at the pleading stage. At minimum, Plaintiff should be allowed to amend to separate ordinary malpractice allegations from fraudulent-concealment allegations and to plead with greater particularity the facts supporting section 13-215.

IV. THE STATUTE OF REPOSE ARGUMENT DOES NOT JUSTIFY DISMISSAL OF ALL CLAIMS WITH PREJUDICE AT THE PLEADING STAGE

Defendants argue that Plaintiff's claims are barred by the six-year statute of repose because Plaintiff retained the Gooch Firm on or about December 16, 2016, terminated the representation on or about October 8, 2018, and the Court granted withdrawal on or about October 15, 2018. Defendants then treat every allegation against Gooch, Sershon, and The Gooch Firm as an ordinary professional-negligence claim arising only from that representation.

Plaintiff does not concede that dismissal under the statute of repose is proper on the current pleadings; Plaintiff acknowledges only that Defendants' repose argument requires careful, issue-specific analysis.

The repose argument does not justify wholesale dismissal with prejudice at the pleading stage. The Complaint alleges more than a simple disagreement with litigation strategy or ordinary attorney negligence. Plaintiff alleges that Gooch and Sershon failed to plead and preserve the case-within-a-case facts, failed to address the McGuire duty and breach theory, failed to properly use the Gagnon contribution/default issues, failed to plead the bankruptcy/ADR consequences, and failed to address facts and documents that later became central to the limitations and concealment issues in 17LA377. Plaintiff also alleges that later discovery revealed additional concealment and document-suppression facts that were not fully known when Gooch and Sershon withdrew.

To the extent Defendants contend that every claim is barred because it arises from professional services, that argument improperly collapses all theories into one ordinary-malpractice theory. Plaintiff's position is that Defendants are not entitled to dismissal with prejudice before Plaintiff is allowed to clarify the fraudulent-concealment allegations under 735 ILCS 5/13-215 and to separate professional-negligence allegations from intentional concealment allegations with greater clarity.

Received 06-10-2026 07:37 PM / Circuit Clerk Accepted on 06-10-2026 07:42 PM / Transaction #38506457 / Case #2025LA000360

If the Court concludes that some ordinary attorney-malpractice allegations are barred by the attorney statute of repose, the proper result should be a narrow ruling directed only to the barred allegations, not dismissal with prejudice of the entire action against Gooch, Sershon, and The Gooch Firm. Plaintiff should be given leave to amend to clarify which allegations concern professional negligence, which allegations concern intentional concealment or fraud, which facts are alleged as background, and which facts support timeliness, discovery, accrual, and causation. Dismissal with prejudice is especially inappropriate where the alleged defects can be addressed by amendment. Plaintiff can amend to plead the dates, actors, statements, omissions, documents, reliance, and damages with greater specificity and to separate the professional-negligence theory from any intentional-fraud or fraudulent-concealment theory. For that reason, the repose argument should not be used to terminate all claims with prejudice at this stage.

V. SUCCESSOR COUNSEL DOES NOT DEFEAT PROXIMATE CAUSE AS A MATTER OF LAW

Defendants argue that Plaintiff's later retention of Clinton/Williams and Talarico automatically breaks proximate cause. That argument oversimplifies the pleaded facts.

Plaintiff alleges that Gooch and Sershon created the defective litigation foundation in 17LA377. The original Complaint and First Amended Complaint allegedly failed to plead the underlying case-within-a-case facts despite the defense identifying that defect. The filings allegedly omitted Gagnon, the McGuire duty/breach facts, bankruptcy, the binding-mediation/upper-cap issue, and Tilschner. **Complaint paragraphs 78-92**, **214**; **Exhibits 111** (Docket No. 0114), **113** (Docket No. 0112), **115** (Docket No. 0110), **117** (Docket No. 0108), **118** (Docket No. 0107), **120** (Docket No. 0106). Plaintiff also alleges that Clinton/Williams later continued and extended the same defective theory instead of curing it, and that Talarico later failed to correct the concealed issues. *Land v. Greenwood* and *Lopez v. Clifford Law Offices* do not create automatic immunity for a discharged attorney whenever successor counsel appears. Those cases address situations where the client's rights remained viable and later counsel had a fair opportunity to cure. Here, Plaintiff alleges that successor counsel did not cure but continued or concealed the same defects. Whether later counsel had a fair opportunity to cure, whether the defects were discoverable, whether

Received 06-10-2026 07:37 PM / Circuit Clerk Accepted on 06-10-2026 07:42 PM / Transaction #38506457 / Case #2025LA000360

Defendants' omissions remained a cause-in-fact of the loss, and whether later counsel's conduct was a superseding cause are fact questions.

Defendants' proximate-cause argument also depends on accepting their version of the underlying malpractice case. Plaintiff alleges the Gooch/Sershon omissions affected the entire structure of 17LA377. The fact that later attorneys also contributed to the loss does not, at the pleading stage, eliminate Gooch/Sershon's alleged causal role. Multiple actors may contribute to the same injury. Proximate cause should not be resolved on this motion.

VI. PLAINTIFF PLEADS A CASE-WITHIN-A-CASE THEORY SUFFICIENT TO DEFEAT A SECTION 2-615 DISMISSAL

Defendants argue that Plaintiff fails to plead a viable legal-malpractice claim because he does not plead breach, proximate cause, case within a case, or damages. The Complaint pleads those facts. The attorney-client relationship and duty are pleaded through the December 16, 2016 retainer agreement. **Complaint paragraphs 73-76**; **Exhibit 109** (Docket No. 0115). The retainer also states that no proceedings would be filed without Plaintiff's prior knowledge and consent unless necessary to protect his interests. **Complaint paragraph 76**. Plaintiff alleges Gooch filed the original 17LA377 complaint without allowing Plaintiff to review it first. **Complaint paragraph 78**.

Breach is pleaded in detail. Plaintiff alleges the original Complaint at Law in 17LA377 contained no meaningful allegations regarding the McGuires' duty of care or breach, no Gagnon allegations, no bankruptcy allegations, no Tilschner allegations, and a factually incorrect high-low/executed-agreement statement. **Complaint paragraphs 78-82**. When Popovich/Mast moved to dismiss and specifically argued that Plaintiff failed to plead the underlying case or case within a case, Gooch responded by defending the complaint as sufficient instead of pleading the missing facts. **Complaint paragraphs 83-86**; **Exhibits 113** (Docket No. 0112), **114** (Docket No. 0111), **115** (Docket No. 0110). After the Court granted the 2-615 dismissal with leave to amend, the First Amended Complaint allegedly repeated the same core defects. **Complaint paragraphs 88-92**; **Exhibits 116** (Docket No. 0109), **117** (Docket No. 0108), **118** (Docket No. 0107), **120** (Docket No. 0106).

Received 06-10-2026 07:37 PM / Circuit Clerk Accepted on 06-10-2026 07:42 PM / Transaction #38506457 / Case #2025LA000360

The case-within-a-case facts are also pleaded. Plaintiff alleges that Gagnon failed to answer the McGuire cross-claim accusing him of negligence for the chainsaw injury. **Complaint paragraphs 82**, **95**, **214(c)**; **Exhibit 112** (Docket No. 0113). Plaintiff alleges the McGuires owned the property, supplied or controlled the chainsaw context, and had duty/breach facts that should have been pleaded. **Complaint paragraphs 82-92**, **98**. Plaintiff alleges Mast used Tilschner and Restatement section 318 to explain why the McGuires supposedly were not liable, and that this was material to proving the underlying McGuire-liability theory and the malpractice claim against Popovich/Mast. **Complaint paragraphs 62**, **79**, **98**, **214(f)**; **Exhibits 72** (Docket No. 0122), **107** (Docket No. 0117), **123** (Docket No. 0104).

Damages are pleaded. Plaintiff alleges that 17LA377 was dismissed, that the loss of 17LA377 flowed from defective pleadings and continued concealment, and that Plaintiff suffered monetary loss, including the loss of the ability to recover in the malpractice action, fees paid, and related damages. **Complaint paragraphs 102**, **214-215**, and prayer for relief.

Whether Plaintiff can prove those allegations is not the question on a section 2-615 motion. The Complaint states the theory sufficiently to survive dismissal or, at minimum, to permit amendment.

VII. PLAINTIFF PLEADS FRAUD AND CONCEALMENT WITH ENOUGH PARTICULARITY OR SHOULD BE GIVEN LEAVE TO AMEND

Defendants argue that the fraud allegations are conclusory. Plaintiff disagrees.

The Complaint identifies who made the alleged misrepresentations and omissions: Gooch and Sershon. It identifies when they occurred: during the December 16, 2016 first meeting, during the 2017-2018 preparation and filing of the original and amended complaints, during the May 2018 Sershon meeting, and during the October 2018 communications about the second amended complaint. It identifies what was false or concealed: the statute-of-limitations/accrual theory, the legal sufficiency of the complaints, the omission of Gagnon, the omission of the bankruptcy and binding-mediation facts, the omission of Tilschner, and the statement that a high-low agreement was executed by Dulberg. **Complaint paragraphs 61-105**, **214-215**.

Plaintiff alleges reliance and damage. Plaintiff relied on Gooch and Sershon as his attorneys to

Received 06-10-2026 07:37 PM / Circuit Clerk Accepted on 06-10-2026 07:42 PM / Transaction #38506457 / Case #2025LA000360

prepare legally sufficient pleadings, accurately advise him about limitations/accrual, and present material facts to the court. Plaintiff alleges that the resulting defective record and pleadings contributed to the dismissal of 17LA377 and the loss of Plaintiff's claims.

If the Court finds the fraud allegations should be separated more cleanly from the professional-negligence allegations, Plaintiff requests leave to amend. Plaintiff can amend to identify each alleged fraudulent statement or omission by date, speaker, recipient, document, reason it was false, reliance, and damage. Dismissal with prejudice is not warranted.

VIII. THE ARDC MATERIALS DO NOT SUPPORT DISMISSAL

Defendants argue that Plaintiff improperly attached ARDC materials and that the ARDC complaint contains similar allegations. That is not a basis to dismiss this civil action with prejudice.

Plaintiff does not rely on the ARDC process as a substitute for this Court's adjudication. The ARDC materials are used as chronology, notice, and documentary context. The fact that Plaintiff complained to the ARDC does not prove that the civil claims are untimely, does not prove that Defendants did not conceal material facts, and does not prove that Plaintiff cannot amend any pleading deficiency.

If the Court believes ARDC materials are unnecessary or improper as exhibits, the Court can disregard, strike, or limit those materials. That would not justify dismissal with prejudice of Counts I and II.

IX. THE GOOCH FIRM SHOULD NOT BE DISMISSED WITH PREJUDICE BASED ON COUNT-LABELING OR DERIVATIVE-LIABILITY ISSUES

The Joint Motion is brought by Gooch, Sershon, and The Gooch Firm. Defendants' own motion states that Sershon was an associate at The Gooch Firm at the time Plaintiff retained the firm, and the Complaint alleges that Plaintiff entered into an attorney-client relationship with Gooch and the law firm then known as Gauthier and Gooch. **Complaint paragraphs 73-76**, **215**.

To the extent Defendants argue The Gooch Firm is not separately pleaded with enough clarity, that is a pleading-organization issue, not a basis for dismissal with prejudice. Plaintiff alleges that Gooch and Sershon acted while providing legal services through the firm and that the firm's

Received 06-10-2026 07:37 PM / Circuit Clerk Accepted on 06-10-2026 07:42 PM / Transaction #38506457 / Case #2025LA000360

attorneys owed professional duties to Plaintiff. If the Court finds that The Gooch Firm must be pleaded in a separate count or that its derivative or respondeat superior liability must be stated more directly, Plaintiff requests leave to amend to clarify the firm-liability allegations.

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

To the extent any Defendant argues that The Paul R. Dulberg Revocable Trust should not remain as a plaintiff, that issue does not support dismissal of Paul R. Dulberg's individual claims.

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 Paul R. Dulberg individually.

Accordingly, any Trust issue is moot or limited to the Trust only. It is not a basis to dismiss Counts I and II as to Paul R. Dulberg individually. To the extent no separate order has yet been entered on the 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.

XI. ATTORNEY-FEE LANGUAGE SHOULD NOT RESULT IN DISMISSAL OF COUNTS I AND II

If Defendants contend that Plaintiff has not pleaded a basis for attorney's fees, that issue concerns the prayer for relief, not the legal sufficiency of the substantive claims. If the Court determines that attorney-fee language is improper, the Court can strike or limit that portion of the prayer for relief without dismissing Counts I and II.

XII. LEAVE TO AMEND SHOULD BE GRANTED BEFORE ANY DISMISSAL WITH PREJUDICE

Defendants request dismissal with prejudice. That request should be denied.

If the Court finds any pleading defect, Plaintiff requests leave to amend. An amended complaint can separate ordinary legal-malpractice allegations from fraud and fraudulent-concealment

Received 06-10-2026 07:37 PM / Circuit Clerk Accepted on 06-10-2026 07:42 PM / Transaction #38506457 / Case #2025LA000360

allegations; identify each alleged misrepresentation or omission by date, actor, document, reliance, and damage; clarify the applicability of 735 ILCS 5/13-215 and *DeLuna*; clarify the case-within-a-case allegations; clarify damages; and remove or revise any improper prayer for attorney's fees.

Plaintiff has pleaded extensive facts and identified numerous exhibits. Any defect is curable by amendment. Dismissal with prejudice would be premature.

XIII. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that this Court deny Defendants Thomas W. Gooch, Sabina Sershon, and The Gooch Firm's Joint Combined Motion to Dismiss. Alternatively, if the Court finds any portion of Counts I or II 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.

Submitted by: /s/ Paul R. Dulberg
Paul R. Dulberg (pro se)
4606 Hayden Ct. McHenry, IL. 60051
(847) 497-4250
Paul_Dulberg@comcast.net

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**

Received 06-10-2026 07:37 PM / Circuit Clerk Accepted on 06-10-2026 07:42 PM / Transaction #38506457 / Case #2025LA000360