

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

PAUL R. DULBERG, et al.	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 2025 LA 360
	)	
THOMAS W. GOOCH, et al.,	)	
	)	
Defendants.	)	

TALARICO DEFENDANTS' REPLY IN SUPPORT OF MOTION TO DISMISS

Defendants Alphonse Talarico and Law Office of Alphonse A. Talarico ("Defendants"), through their attorneys of record, Kaplan & Gournis, P.C., for their reply in further support of their 2-619.1 motion to dismiss Plaintiff Paul R. Dulberg, individually and the Paul R. Dulberg Revocable Trust's ("Plaintiffs") complaint, state:

ARGUMENT

I. Plaintiffs' Complaint is Time-Barred (2-619(a)(5))

Plaintiffs' legal malpractice claims are barred by the two-year statute of limitations. While a malpractice claim generally accrues upon the entry of an adverse judgment, actual knowledge of the alleged malpractice is not necessary; rather, the statute begins to run when the injured party "has a reasonable belief that the injury was caused by wrongful conduct." *Blue Water Partners, Inc. v. Mason*, 2012 IL App (1st) 102165, ¶ 51; *Constr. Sys. v. FagelHaber, LLC*, 2019 IL App (1st) 172430, ¶ 20; *Lucey v. Law Offices of Pretzel & Stouffer, Chtd.*, 301 Ill. App. 3d 349, 355, 703 N.E.2d 473, 478 (1st Dist. 1998); *Dancor Int'l, Ltd. v. Friedman, Goldberg & Mintz*, 288 Ill. App. 3d 666, 672 (1st Dist. 1997).

Once a party knows or reasonably should know of the injury, then they are obligated to inquire further to determine if the injury was wrongfully caused and by whom. *Janousek v. Katten*

Muchin Rosenman LLP, 2015 IL App (1st) 142989, ¶ 13; *Carlson v. Fish*, 2015 IL App (1st) 140526, ¶ 23; *Castello v. Kalis*, 352 Ill. App. 3d 736, 745, 816 N.E.2d 782 (1st Dist. 2004). *see Nelson v. Padgitt*, 2016 IL App (1st) 160571, ¶ 14; *Estate of Bass v. Katten*, 375 Ill. App. 3d 62, 70, 871 N.E.2d 914, 924 (1st Dist. 2007); *Lucey*, 301 Ill. App. 3d at 355, 703 N.E.2d at 478.

Put another way, a malpractice claim accrues when the injury becomes “knowable” by the plaintiff. *Carlson*, 2015 IL App (1st) 140526, at ¶¶ 38-41; *Belden v. Emmerman*, 203 Ill. App. 3d 265, 270, 560 N.E.2d 1180, 1183 (1st Dist. 1990). However, it is clear that a malpractice claim accrues for statute of limitations purposes even when the client does not know that the alleged injury was caused by the attorney’s negligence. *Nelson*, 2016 IL App (1st) 160571, ¶ 17 (“Even if [the client] did not yet know that [his attorney] had been negligent . . . he was on notice of the problem and had a duty to inquire further.”)

Here, Plaintiffs have alleged certain conduct occurring well before 2023, including allegations going back to 2012. Plaintiffs allege that certain claims accrued in 2022 and 2023, well outside the limits for a legal malpractice claim. As a result, the court should dismiss the Complaint as time-barred pursuant to 2-619(a)(5).

II. Plaintiffs Fail to Plead Facts Establishing Legal Malpractice (2-615)

Even *assuming arguendo* that Plaintiffs’ legal malpractice claims are not barred by the statute of limitations, Plaintiffs have nevertheless failed to plead facts demonstrating legal malpractice claims against Defendants for myriad reasons. A legal malpractice plaintiff must plead facts establishing that: (1) an attorney-client relationship existed; (2) a duty arising from that relationship; (3) a breach of that duty; and (4) actual damages or injury proximately caused by that breach (the case within a case). *See, e.g., Northern Illinois Emergency Physicians v. Landau, Omahana & Kopka, Ltd.*, 216 Ill. 2d 294, 306 (2005).

A plaintiff must plead specific facts establishing “what the result would have been in the underlying action which was improperly litigated by the plaintiff’s former attorney.” *Eastman v. Messner*, 188 Ill. 2d 404, 411 (1999); *see Merrilees v. Merrilees*, 2013 IL App (1st) 121897, ¶ 57 (citing *Claire Associates by Livaditis v. Pontikes*, 151 Ill. App. 3d 116 (1986)).

Without factual underpinnings to establish proximate cause (case within a case) or damages related to the underlying case, a claim is speculative and must be dismissed. *Northern Illinois Emergency Physicians*, 216 Ill. 2d at 306; *Warnock*, 376 Ill. App. 3d at 369; *Lucey*, 301 Ill. App. 3d 349 at 355; *Glass v. Pitler*, 276 Ill. App. 3d 344, 354 (1st Dist. 1995) (legal malpractice claim cannot be premised on speculation).

Here, Plaintiffs’ Complaint is devoid of any facts establishing that Defendants’ actions/inactions caused any cognizable damage, the extent of any alleged damages, or the case-within-a-case element of a legal malpractice claim.

As a result, the court should dismiss the Complaint pursuant to 2-615 as legally insufficient.

III. Plaintiffs Fail to Plead Facts Establishing Their Other Claims (2-615)

Plaintiffs’ Complaint contains various claims/causes of action related to “willful and wanton” actions, fraud, fraud on the court, conspiracy, conspiracy to commit fraud, and fraudulent concealment against Defendants. However, Plaintiffs have utterly failed to plead any facts to establish any of these causes of action. The court should accordingly dismiss the Complaint as legally insufficient pursuant to 2-615.

WHEREFORE, Defendants Alphonse Talarico and the Law Office of Alphonse Talarico respectfully request that this Honorable Court dismiss Plaintiffs' Complaint with prejudice, and any other such further relief as this Honorable Court deems just and appropriate.

Respectfully submitted,

ALPHONSE TALARICO,
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TALARICO,

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