

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

PAUL R. DULBERG, INDIVIDUALLY AND)
THE PAUL R. DULBERG REVOCABLE TRUST,)

Plaintiffs,)

v.)

CASE 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.)

**CLINTON DEFENDANTS' REPLY IN SUPPORT OF THEIR MOTION TO DISMISS
PURSUANT TO 735 ILCS 5/2-619.1 AND 735 ILCS 5/2-603**

Defendants, EDWARD X. CLINTON, JULIA WILLIAMS, and CLINTON LAW FIRM, LLC., ("Clinton Defendants"), by and through their attorneys, Hinshaw & Culbertson, LLP, respectfully submit this Reply in Support of their Motion to Dismiss Plaintiff's Complaint, pursuant to Section 5/2-615, Section 5/2-619, and Section 5/2-603 of the Illinois Code of Civil Procedure:

I. INTRODUCTION

Plaintiff's Amended Response does not remedy the fundamental defects identified in the Motion. Plaintiff merely repackages the same conclusory allegations under the banner of "disputed facts." Indeed, nothing in the Response changes the legal outcome: (1) Plaintiff's claims are inherently time-barred under the two-year limitations period of 735 ILCS 5/13-214.3(b); (2) Plaintiff cannot establish proximate cause because the underlying malpractice claim was already time-barred before the Clinton Defendants were retained; (3) the retention of successor counsel

constituted a superseding cause as a matter of law; (4) the Complaint otherwise fails to state claims for legal malpractice, fraud, or civil conspiracy; and (5) the Complaint violates the plain-and-concise pleading requirement of Section 2-603. Despite Plaintiff's request for leave to amend regarding pleading deficiencies this Court should find, doing so would be futile at this juncture. No amount of repleading can change the date on which Plaintiff knew or should have known of his alleged injury, nor can it resurrect an underlying malpractice claim that was time-barred before the Clinton Defendants were ever retained. The proximate-cause deficiency is also incurable. Plaintiff cannot plead a viable "case within a case" because the underlying case against Popovich and Mast was already extinguished by the statute of limitations. These are legal bars, not just pleading deficiencies susceptible to amendment. The Clinton Defendants' Motion should therefore be granted, and Counts III, IV, and VI should undoubtedly be dismissed *with prejudice*.

II. ARGUMENTS UNDER 735 ILCS 5/2-619

A. Plaintiff's Claims Remain Barred Under the Two-Year Statute of Limitations Period Regardless of the Filing Date.

Plaintiff devotes considerable effort to arguing that his Complaint was filed on December 4, 2025, rather than December 8, 2025. The Clinton Defendants do not contest that the earlier date may apply for purposes of this Motion. However, this distinction is immaterial because the claims are untimely under either date.

Plaintiff fundamentally conflates the two-year statute of limitations with the six-year statute of repose. The two-year limitations period of Section 13-214.3(b) governs, running from when Plaintiff "knew or reasonably should have known of the injury for which damages are sought." 735 ILCS 5/13-214.3(b). The six-year repose period is a ceiling. It does not extend the limitations period, nor does it serve as a substitute for timely filing within the two-year window. See *Evanston Insurance Co. v. Riseborough*, 2014 IL 114271, ¶ 22.

Critically, Plaintiff's own allegations defeat his argument. The Complaint alleges that Plaintiff repeatedly confronted the Clinton Defendants about their purported errors *during the representation*, including disputes over the limitations/accrual theory, the *Tilschner v. Spangler* evidence, document production issues, and the adequacy of representation, between 2018 and July 2020. See **Ex. A** to Clinton Defendants' Opening Motion, ¶¶108-68. These allegations establish Plaintiff knew or reasonably should have known of the alleged injury no later than the Clinton Defendants' resignation on July 27, 2020. A Complaint filed more than five years later, whether on December 4 or December 8, 2025, is still untimely under the two-year limitations period. Most notably, even if this Court were to accept Plaintiff's most generous proposed accrual date, the February 1, 2023 dismissal of Case No. 2017 LA 000377, a December 2025 filing date is still approximately ten months beyond the two-year deadline. Plaintiff's Complaint against the Clinton Defendants should be dismissed *with prejudice* for this reason alone.

B. Fraudulent Concealment is Inadequately Plead and Cannot Toll the Limitations Period.

Plaintiff's Response invokes the fraudulent-concealment tolling provision of 735 ILCS 5/13-215, arguing that the Clinton Defendants affirmatively concealed their wrongdoing, but this argument also fails. Section 13-215 provides, "if a person liable to an action fraudulently conceals the cause of such action from the knowledge of the person entitled hereto, the action may be commenced at any time within 5 years after the person entitled to bring the same discovers that he or she has such cause of action, and not afterwards." 735 ILCS 5/13-215 (West 2010).

A plaintiff seeking to avail itself of this provision to toll the statute of limitations must show that the defendant engaged in affirmative acts or representations designed to prevent discovery of the cause of action or to induce the plaintiff into delaying the filing of its claim. *Dancor International, Ltd. v. Friedman, Goldberg & Mintz*, 288 Ill. App. 3d 666, 675, (1997).

However, Illinois courts have declined to apply section 13-215 to toll the statute of limitations where “the claimant discovers the fraudulent concealment, or should have discovered it through ordinary diligence, and a reasonable time remains within the remaining limitations period.” *Turner v. Nama*, 294 Ill. App. 3d 19, 27 (1997) (quoting *Smith v. Cook County Hospital*, 164 Ill. App. 3d 857, 862 (1987)); see *Witt v. Jones & Jones Law Offices, P.C.*, 269 Ill. App. 3d 540, 544-45, (1995) (plaintiffs could not avail themselves of fraudulent concealment doctrine where, notwithstanding the possibility of fraudulent concealment, plaintiffs had knowledge of their cause of action within the statutory time frame).

Again, however, Plaintiff’s own allegations and Response undermine any concealment theory. He specifically alleges he personally identified and objected to the very conduct he now characterizes as concealed, including the accrual theory, the *Tilschner v. Spangler* issue, and the document production deficiencies, during the course of the representation. See Plaintiff’s Response at p. 4; see also Clinton Defendants’ **Ex. A** at ¶¶135-36, 82. A plaintiff who alleges that he confronted his attorneys about their errors cannot simultaneously claim those errors were concealed from him. The 5-year limitations period would therefore be inapplicable.

In addition, tolling under Section 13-215 is unavailable where the plaintiff already knew or, through ordinary diligence, could have discovered the claim within the limitations period. Plaintiff’s allegations of real-time knowledge and contemporaneous objection to the Clinton Defendants’ representation tactics establish that no tolling can apply either.

C. The Underlying Malpractice Claim was Otherwise Untimely Prior to Retention of the Clinton Defendants.

As stated in Defendants’ Opening Motion, a plaintiff must plead and prove the “case within a case,” that is, that he would have prevailed in the underlying action but for the attorney’s negligence. *Ignarski v. Norbut*, 271 Ill. App. 3d 522 (1995); *Claire Associates v. Pontikes*, 151 Ill.

App. 3d 116, 122 (1st Dist. 1986). Plaintiff's Response asserts that the Court cannot decide, at the pleading stage, whether the underlying claim had merit. However, this argument ignores that the underlying claim's viability is a *legal* question where the only disputed issue is whether it was time-barred.

Plaintiff's own allegations establish a fatal timeline. The personal injury action (Case No. 2012 LA 000178) was initiated on May 15, 2012, and a final dismissal order was entered on December 12, 2016. Plaintiff's malpractice claim against Popovich and Mast accrued, at the latest, by the time Plaintiff filed Chapter 7 bankruptcy on November 24, 2014—when Plaintiff knew or should have known of any alleged deficiencies in Popovich and Mast's representation. Yet Plaintiff did not contact Gooch to initiate the malpractice claim until December 16, 2016—more than two years after accrual and well beyond the limitations period of 735 ILCS 5/13-214.3(b). An invalid, time-barred claim in December 2016 would still be invalid when the Clinton Defendants were retained in November 2018. No act or omission by the Clinton Defendants could have resurrected a claim that was already extinguished by operation of law. The fact that Case No. 2017 LA 000377 was ultimately dismissed on statute-of-limitations grounds confirms there was no viable underlying claim for the Clinton Defendants to “collapse.” Clinton Defendants' **Ex. A**, ¶ 189. Plaintiff cannot hold the Clinton Defendants liable for the loss of a claim that was already lost.

D. To the Extent Plaintiff had a Viable Legal Malpractice Claim against Popovich and Mast, Discharge of the Clinton Defendants and Retention of Successor Counsel was Still a Superseding and Intervening Cause of Damages.

Under Illinois law, an attorney who withdraws or is discharged before the client's rights and remedies are irretrievably lost cannot be the proximate cause of the client's subsequent damages. *Land v. Greenwood*, 133 Ill. App. 3d 537 (1985); *Lopez v. Clifford Law Offices*, 362 Ill.

App. 3d 969, 980 (1st Dist. 2005). The client and successor counsel bear responsibility for pursuing viable claims that remain available after the former attorney's withdrawal.

Plaintiff's own Response confirms this doctrine applies. Plaintiff concedes he retained Defendant Talarico in October 2020 to continue pursuing Case No. 2017 LA 000377, specifically to raise newly discovered "overwhelming evidence," and to file a Third Amended Complaint. Clinton Defendants' **Ex. A**, ¶ 169. The pleadings further allege the case remained pending for more than two years after the Clinton Defendants' departure during which time successor counsel had every opportunity to cure any alleged deficiencies. Clinton Defendants' **Ex. A**, ¶ 188.

Plaintiff's Response also argues that Illinois has "no automatic rule" that successor counsel breaks causation, but this is wholly incorrect. Section 452 of the Restatement (Second) of Torts states in pertinent part:

"Because the duty, and hence the entire responsibility for the situation, has been shifted to a third person, the original actor is relieved of liability for the result which follows from the operation of his own negligence. The shifted responsibility means in effect that the duty, or obligation, of the original actor in the matter has terminated, and has been replaced by that of the third person."

See Restatement (Second) of Torts § 452, Comment *d* (1965).

Accordingly, even if the Clinton Defendants' representation breached the standard of care (which it didn't), Plaintiff's retention of successor counsel would have relieved the Clinton Defendants from any liability and shifted any duties from them to Talarico. Whether Talarico failed in his obligations is a matter between Plaintiff and Talarico. It does not preserve a causal chain running back to the Clinton Defendants. *See Lopez*, 362 Ill. App. 3d at 980. Based on the foregoing, it is undisputed Plaintiff's Complaint should be dismissed *with prejudice*.

III. ARGUMENTS UNDER 735 ILCS 5/2-615

E. Plaintiff Still Cannot Properly Plead a Claim for Legal Malpractice: No Well-Pled Facts to Establish "But-For" Causation.

Plaintiff's Response points to paragraphs 108 through 168 of the Complaint, asserting they plead "specific acts/omissions with dates, steps, and exhibits." But volume is not synonymous with sufficiency. Under Section 2-615, a complaint must allege *facts*, not conclusions, sufficient to state a cause of action. *Napleton v. Village of Hinsdale*, 229 Ill. 2d 296, 305 (2008). Conclusions unsupported by specific facts are disregarded. *Cummings v. City of Waterloo*, 289 Ill. App. 3d 474, 479 (1997).

Despite their length, paragraphs 108–168 describe alleged acts and omissions but nowhere allege facts showing that, *but for* the Clinton Defendants' conduct, Plaintiff would have prevailed against Popovich and Mast in the underlying malpractice action. Plaintiff concedes that the Second Amended Complaint filed by the Clinton Defendants was accepted by the court, and that the case was later dismissed on a limitations defense raised by opposing counsel and decided by the court. Plaintiff still does not plead how a different approach to the limitations calculation or any other litigation strategy would have changed the outcome of the underlying case. This is fatal to a legal malpractice claim. *Ignarski*, 271 Ill. App. 3d at 522. Plaintiff's legal malpractice claim thus fails as a matter of law and should be dismissed.

F. Plaintiff Still Cannot Properly Plead a Claim for Fraud.

Under Illinois law, a fraud claim must allege: (1) a false statement of material fact; (2) knowledge or belief of the speaker that the statement was false; (3) an intent to induce reliance; (4) actual reliance by the party claiming fraud; and (5) resulting damage. *Redarowicz v. Ohlendorf*, 92 Ill. 2d 171 (1982). Fraud must be pleaded with particularity, and a heightened standard that requires a plaintiff to identify the *specific* misrepresentations alleged, including who made them, when, to whom, and how they were false.

Plaintiff's allegation that the Clinton Defendants "deliberately placed factually incorrect statements" about a \$300,000 upper cap (Clinton Defendants' **Ex. A**, ¶ 216) is conclusory. It does not identify what specific statement was false, does not allege that the Clinton Defendants knew the statement was false at the time it was made, and does not allege an intent to induce reliance as opposed to, for example, a good-faith legal judgment regarding the appropriate demand. Plaintiff's assertion that reliance is presumed because the Clinton Defendants were retained counsel improperly conflates the attorney-client relationship with the independent element of justifiable reliance required for fraud. Plaintiff's claim for fraud inherently fails at the second element and should be dismissed.

G. Plaintiff Still Fails to Properly Plead a Claim for Civil Conspiracy.

As already stated in Defendants' Opening Motion, civil conspiracy in Illinois requires: (1) an agreement between two or more persons; (2) to participate in an unlawful act or a lawful act in an unlawful manner; and (3) an overt tortious act in furtherance of the agreement that causes injury. *Adcock v. Brakegate, Ltd.*, 164 Ill. 2d 54, 62–64 (1994). Conspiracy, standing alone, is separate and distinct tort in Illinois. See *Weber v. Cueto*, 253 Ill. App. 3d 509, 518 (1993). It is the underlying tort performed pursuant to the agreement that gave rise to the claim for civil conspiracy. *Mauvais-Jarvis v. Wong*, 2013 IL App (1st) 120070, ¶ 110. Therefore, if the plaintiff fails to state a cause of action for the underlying tort, the claim for conspiracy likewise fails. *Merrilees v. Merrilees*, 2013 IL App (1st) 121897, ¶ 29.

Here, Plaintiff has not only failed to plead sufficient facts of *any* underlying tort, but he has also failed to plead sufficient facts to meet Illinois' pleading standard for a claim for civil conspiracy. Although Plaintiff's Complaint advances sweeping allegations of "coordinated actions" and "parallel conduct" among defendants, it is entirely devoid of any specific factual

allegations demonstrating that Clinton and Williams actually entered into an agreement (express or implied) with any other defendant to harm Plaintiff. Conclusory assertions that defendants worked toward a “common purpose” or engaged in a “systematic scheme” are insufficient to satisfy the pleading requirement of an actual agreement.

Furthermore, Illinois courts have held that parallel conduct is insufficient, by itself, to establish the existence of an agreement to commit the civil conspiracy. See *McClure v. Owens Corning Fiberglas Corporation*, 188 Ill. 2d 102, 135 (1999). Plaintiff’s reliance on similar litigation positions taken by separately represented attorneys in parallel proceedings is precisely the “parallel conduct” theory that Illinois courts reject. As such Plaintiff’s claim for civil conspiracy must be dismissed.

IV. ARGUMENTS UNDER 735 ILCS 5/2-603

H. Plaintiff’s Complaint Still Independently Violates Illinois Pleading Standards.

Plaintiff does not meaningfully dispute that his 88-page, 226-paragraph Complaint violates the “plain and concise” requirement of Section 2-603(a). His sole response is that “complexity is not a basis for dismissal with prejudice” and the “proper remedy is leave to amend or striking surplusage.” But Section 2-603 is not directed at “complexity.” It requires that pleadings be stated in a “plain and concise” manner so that the parties and the Court can identify the specific claims and defenses at issue. The Complaint’s sprawling narrative of irrelevant anecdotes, redundant allegations, and overlapping theories, which span multiple decades and incorporate claims against numerous defendants without differentiation, violates this mandate.

WHEREFORE, Defendants, EDWARD X. CLINTON, JULIA WILLIAMS, and CLINTON LAW FIRM, LLC., respectfully request this Court dismiss Plaintiff’s Complaint in its entirety and *with prejudice*, and for an award of costs as permitted by law.

Respectfully Submitted,

Edward X. Clinton, Julia Williams, and Clinton
Law Firm, LLC

/s/Camille D. Evans
One of Their Attorneys

Katherine G. Schnake 6306934
kschnake@hinshawlaw.com
Camille D. Evans 6335844
cevens@hinshawlaw.com
Hinshaw & Culbertson LLP
151 North Franklin Street
Suite 2500
Chicago, IL 60606
Phone: 312-704-3000
Fax: 312-704-3001

CERTIFICATE OF SERVICE

I, the undersigned attorney, certify that on July 2, 2026, a copy of the **aforementioned document(s)** was served via email and electronically filed with the Clerk of Court using Odyssey eFileIL which will send notifications to all counsel of record.

Paul R. Dulberg
4606 Hayden Court
McHenry, Illinois 60051
Paul_Dulberg@comcast.net

Kimberly Blair |
Kimberly.blair@wilsonelser.com
Robert Merlo | Robert.merlo@wilsonelser.com
Kavi Modi | Kavi.modi@wilsonelser.com
Wilson Elser
161 North Clark Street, Suite 4500
Chicago, IL 60601

[X] Under penalties as provided by law pursuant to 735 ILCS
5/1-109, I certify that the statements set forth herein are
true and correct.

/s/ Camille D. Evans