

**IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS**

PAUL R. DULBERG, Individually and)
THE PAUL R. DULBERG REVOCABLE TRUST,)

Plaintiffs,)

vs.)

Case No. 25 LA000360

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.)

**POPOVICH DEFENDANTS' REPLY IN SUPPORT OF
MOTION TO DISMISS PLAINTIFFS' COMPLAINT**

Defendants Thomas J. Popovich and Hans Mast (collectively, the “Popovich Defendants”), by and through their undersigned attorneys, and for their Reply in Support of their Motion to Dismiss Plaintiffs’ Complaint (“Complaint”) state as follows:

INTRODUCTION

Plaintiff’s Response fails to demonstrate why the Complaint should survive dismissal.¹ First, Plaintiff claims Section 5/13-214.3(b) does not apply because this is not a legal malpractice action. But the statute’s plain language and case law confirm it applies to *all* actions against attorneys arising out of professional services—which this plainly is. Second, Plaintiff invokes fraudulent concealment as a tolling mechanism but ignores settled law that tolling does not apply where the plaintiff could have discovered the alleged concealment through ordinary diligence.

Plaintiff’s Response also adds conclusory allegations supporting his belief that adverse dispositions were obtained by fraud on the Court. But the judicially noticeable records from the

¹ To the extent that the Popovich Defendants restate or point to the Complaint’s allegations, they do not attest or admit to their veracity.

Personal Injury Case, Bankruptcy Case, Legal Malpractice Case, and 2022 Litigation prove Plaintiff cannot state a fraud-on-the-Court claim. Plaintiff had numerous opportunities to raise these arguments, and all his attempts to do so failed. Those failures resulted from the Court's correct application of facts to law, not fraud. (See Motion, at 3-8.)

Finally, Plaintiff fails to adequately plead a conspiracy or any underlying fraud on the Court. The Complaint should be dismissed with prejudice.

POPOVICH DEFENDANT'S 2-619 ARGUMENTS

I. PLAINTIFF'S RESPONSE FAILS TO IMPACT THE TIME-BAR ANALYSIS

The Response tries to avoid Section 5/13-214.3 by claiming Plaintiff has made a claim for “conspiracy, concealment, suppression, and coordinated acts.” (See Resp. at 1-2.) This distinction is irrelevant. Section 5/13-214.3 applies even when claims against a lawyer-defendant are “styled as malpractice **or fraud or conspiracy**.” *Schrock v. Ungaretti & Harris, Ltd.*, 2019 IL App (1st) 161698, ¶ 48 (emphasis added); *see also* Motion at 9-10. By its plain language, the statute applies to all claims “against an attorney arising out of an act or omission in the performance of professional services.” 735 ILCS 5/13-214.3(b)(i).

Next, Plaintiff invokes fraudulent concealment to avoid the time-bar. (See Resp. at 4). But the Popovich Defendants did not—and could not have—concealed the allegedly hidden information. Attorney Mast did not conceal *Tilschner v. Spangler*; Plaintiff admits Attorney Mast *provided* it to him. (Compl. ¶ 20.) Plaintiff discovered the October 22, 2012 settlement offer in 2019. (*Id.* ¶ 135.) He was present for Attorney Mast's July 2020 deposition, and Defendant Williams—not the Popovich Defendants—is the alleged “concealor” of that document, a concealment Plaintiff uncovered well before 2023. (*Id.* ¶¶ 135, 138.) Similarly, the Popovich Defendants were not the “concealor” of the “subpoena/response chain,” which Plaintiff discovered before 2023. (*Id.* ¶¶ 141-142, 167, 174, 178, 218(b).) The same applies to the “November 2022

document-suppression evidence”—a Williams-concealment discovered in 2022. (*See id.* ¶ 188.) Because the Popovich Defendants did not do the purported concealing, the doctrine cannot toll the limitations period. *See Serafin v. Seith*, 284 Ill. App. 3d 577, 590 (1st Dist. 1996); 735 ILCS 5/13-215 (fraudulent concealment tolls limitations only *against the concealor*).

Second, Plaintiff contends that “even if section 13-214.3 is considered, the face of the Complaint does not conclusively establish that Plaintiff knew or reasonably should have known all material facts necessary to bring Count VI more than two years before December 4, 2025.” (Resp. at 4.) This misstates the law. The issue is not when Plaintiff knew “all material facts” but when he “**discovers the fraudulent concealment, or should have discovered it through ordinary diligence.**” *Smith v. Cook County Hospital*, 164 Ill. App. 3d 857, 862 (1st Dist. 1987). The Complaint shows Plaintiff did discover the allegedly concealed information. (*See*, preceding Paragraph, *supra*) (listing Complaint paragraphs showing when Plaintiff discovered the purportedly concealed information, all occurring before 2023). Regardless, as the Complaint itself shows, Plaintiff plainly could have (and did) discovered (*e.g.*, by subpoena, public record review, discovery, etc.) the purportedly concealed information through ordinary diligence at any time; he does not (and cannot) allege the Popovich Defendants took affirmative action to prevent discovery.² *See DeLuna v. Burciaga*, 223 Ill. 2d 49, 76 (2006) (requiring affirmative acts designed to prevent discovery). Even under the most favorable construction, Plaintiff knew—or could have known through ordinary diligence—of the concealed information more than two years before December 4, 2025. The Complaint is time-barred.

Finally, Plaintiff admits he “does not dispute that ordinary malpractice allegations based only on Popovich and Mast’s former representation in 12LA178 face a statute-of-repose

² Notably, any duty the Popovich Defendants owed Plaintiff ceased when they stopped representing Plaintiff.

argument” and offers allegations about their “2012-2015 representation” as background only. (Resp. at 5.) Yet the Complaint uses those allegations as substantive support. By Plaintiff’s own admission, these acts/omissions cannot support his claims because the repose period expired, at the latest, in 2023. The Complaint should be dismissed with prejudice.

II. SUCCESSOR COUNSEL DOCTRINE APPLIES

Plaintiff’s protestations that this is not a legal malpractice action are belied by the allegations themselves. (See, Mot. at pp. 9-10). Further, Plaintiff lays out purported omissions by the Popovich Defendants that allegedly cost Plaintiff valuable claims. (See, e.g., Compl., ¶225). But, the Popovich Defendants’ representation of Plaintiff ceased well before any such claim was lost and thus those claim(s) remained viable, thereby extinguishing any potential liability for the Popovich Defendants here. See *Mitchell v. Schain, Fursel & Burney, Ltd.*, 332 Ill. App. 3d 618, 621-22 (1st Dist. 2002) (“[S]uccessor counsel had a duty to preserve his client’s cause of action.”).

III. RES JUDICATA BARS THE COMPLAINT ALLEGATIONS AGAINST THE POPOVICH DEFENDANTS BASED ON THE UNDERLYING CASES.

Plaintiff misunderstands *res judicata*, which prevents “a party from being unjustly burdened from having to relitigate the same case.” *Cooney v. Rossiter*, 2012 IL 113227, ¶ 35. As shown above and in the Motion (Mot. at 7-8, 11-12), Plaintiff seeks to relitigate the same operative facts from the Legal Malpractice Case and the 2022 Litigation. He has raised these issues before and should not get another opportunity. (See Mot. at 5-7, 11.) His repeated denials that he is trying to relitigate matters are belied by the records from those cases. Having presented no legitimate response to the *res judicata* arguments, the Complaint fails.

IV. COLLATERAL ESTOPPEL BARS COUNT VI BASED ON THE UNDERLYING CASES.

Plaintiff’s Response tries to distinguish the issues litigated in the Underlying Cases, yet merely points to his deficient allegations. (See Resp. at 7.) He does not—and cannot—dispute that

he is relitigating issues adjudicated in the Legal Malpractice Case. (See Mot. at 5-6, 9-10.) Plaintiff points to **other Defendants'** conduct to save his Complaint. See Resp. at 7 (“The prior court did not actually and necessarily decide ... whether Exhibit 12 was defective or manipulative...”); cf. Compl. ¶¶ 128, 137 (alleging Defendant Julia Williams “never turned over” *Tilschner v. Spangler* to “opposing counsel” and was not included as Exhibit 12 to Hans Mast’s deposition around June 25, 2020). Neither Popovich Defendant had anything to do with Williams’ purported conduct, and thus no legitimate response to the collateral estoppel argument has been lodged.

POPOVICH DEFENDANT’S 2-615 ARGUMENTS

Like his Complaint, Plaintiff’s response is a lengthy document that is devoid of any substance that would tend to explain how or why Plaintiff has a legitimate claim against the Popovich Defendants. Rather, Plaintiff merely describes the Popovich Defendants’ purported conduct, and makes conclusions about its purported interplay with conduct of other defendants. A “mere characterization[s] of a combination of acts as a conspiracy” is insufficient, yet this is all Plaintiff offers. *Benton v. Little League Baseball, Inc.*, 2020 IL App (1st) 190549, ¶92. Sheer volume of conclusory and legally erroneous allegations does not equate to a pleading that can withstand scrutiny. Finally, the Popovich Defendants reiterate that the Motion affirmatively proves that Plaintiff cannot state a claim for fraud on the Court. Consistent with that, the Response wholly fails to provide any color to Plaintiff’s claim in this regard and, therefore, the Complaint wholly fails to clear the high bar required to plead such a claim, and this should result in a dismissal with prejudice.

WHEREFORE Defendants Thomas J. Popovich and Hans Mast request this Court enter an ORDER: (1) granting Defendants Thomas J. Popovich and Hans Mast’s Motion to Dismiss; (2) dismissing the Complaint, with prejudice, under 5/2-619(a)(5),(a)(9) or alternatively under 5/2-615; and (3) granting any other appropriate relief.

Respectfully submitted,
**Thomas J. Popovich and
Hans Mast**

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CERTIFICATE OF SERVICE

I certify that on this 2nd day of July, 2026, service of a true and complete copy of the above and foregoing was made via upon the following via e-mail:

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