

LAW CURRENTS

An informational newsletter from

Richard A. Klass, Esq.

Attorney Advertising

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How the “Continuous Representation” Doctrine Helps Injured Clients

IN legal matters, there is an attorney-client relationship from the moment that the attorney is consulted by the client until the matter concludes. If, during the term of this relationship, the attorney was negligent or commits malpractice in the matter, the client may have a claim against the attorney for legal malpractice. Sometimes, the malpractice is committed at the early stages of litigation and not at the conclusion; for instance, an action may have started in Year 1, malpractice was committed in Year 2, and the action concludes in Year 6. The question then becomes whether or not the client may pursue a claim against the attorney for the malpractice committed in Year 2, when the statute of limitations period may have already passed.

CPLR 214(6) provides that “an action to recover damages for malpractice, other than medical, dental or podiatric malpractice, regardless of whether the underlying theory is based in contract or tort” must be commenced within 3 years.

The cause of action for malpractice accrues at the time of the act, error or omission. See, *Julian v. Carrol*, 270 AD2d 457 [2d Dept. 2000]; *Goicoechea v. Law Offices of Stephen Kihl*, 234 AD2d 507 [2d Dept. 1996]; *Shumsky v. Eisenstein*, 96 NY2d 164 [2001].

In order to protect clients The Court of Appeals has held that a cause of action for legal malpractice accrues against the attorney when the statute of limitations

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expires on the underlying action for which the attorney was retained. See, *Shumsky v. Eisenstein*, supra.

The Continuous Representation Toll:

The accrual of the three-year statute of limitations is tolled during the period of the lawyer's continuous representation in the same matter out of which the malpractice arose under the theory that the client should not be expected to question the lawyer's advice while he is still representing the client. See, *Lamellen v. Kupplungbau GmbH v. Lerner*, 166 AD2d 505 [2d Dept. 1990]; *Shumsky v. Eisenstein*, supra. Under the continuous representation doctrine, there must be clear indicia of an ongoing, continuous, developing, and dependent relationship between the client and the lawyer. See, *Kanter v. Pieri*, 11 AD3d 912 [4 Dept. 2004]; *Lamellen v. Kupplungbau GmbH v. Lerner*, supra; *Clark v. Jacobsen*, 202 AD2d 466 [2 Dept. 1994].

— *Richard A. Klass, Esq.*

Richard A. Klass, Esq., maintains a law firm engaged in general civil practice at 16 Court Street, 29th Floor, Brooklyn Heights, New York. He may be reached by phone at (718) COURT-ST or e-mail at RichKlass@CourtStreetLaw.com with any questions. Prior results do not guarantee a similar outcome.

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Richard A. Klass, Esq.
Your Court Street LawyerSM

Richard A. Klass
Principal
Admitted: NY and NJ
E-ML: RichKlass@CourtStreetLaw.com

Stefano A. Filippazzo
Of counsel
Admitted: NY

Thomas Urgo
Of counsel
Admitted: NY

Eucline Spencer
Collections Manager
E-ML: EuclineSpencer@CourtStreetLaw.com

Address
16 Court Street, 29th Fl.
Brooklyn, NY 11241

Phone
(718) COURT-ST
(718) 643-6063

Fax
(718) 643-9788

E-Fax
(786) 513-8265

Website
www.CourtStreetLaw.com

