

A Clean Break Nixed: Virginia's Continuous Representation Rule Resurrects Legal Malpractice Claim Against Attorney

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Attorneys who have withdrawn from representing a client, either at the client's request or for other reasons, may experience a lingering fear of later being the subject of a legal malpractice claim. In some states like Virginia, such a fear may be heightened if the "continuous representation rule" is found to apply. The recent case of *Moonlight Enterprises, LLC v. Mroz*, 2017 WL 1237947 (Va. Mar. 30, 2017), illustrates how this rule operates.

Facts of the Case

In 2008, Moonlight Enterprises, LLC ("Moonlight") hired attorney Francis Mroz to handle the purchase of three retail condo units. According to Moonlight, Mroz did not acquire a resale disclosure package (RDP) before closing, which would have revealed that (1) the property did not include 15 parking spaces; and (2) Moonlight had to pay for services such as parking and trash removal.

Two years later, Mroz filed a declaratory judgment action on Moonlight's behalf against the condo association, asking the court (among other things) to hold that Moonlight was not required to pay for the services. Before trial, however, the case was transferred to Stephen Zachary, another attorney from Mroz's firm. After a bench trial on January 12, 2012, the court entered judgment for the condo association, and a proposed final order was submitted.

Moonlight hired new counsel to handle its appeal, and Zachary sent an e-mail confirming the conclusion of the attorney-client relationship. But the proposed final order was apparently misplaced, and Zachary prepared another one on January 26. Before the second order was entered, the court's law clerk located the original order. Nevertheless, Zachary requested that the clerk use the second order, notified Moonlight's new attorney regarding the matter, and forwarded the second order to opposing counsel. The second order was entered on February 10, 2012.

On February 10, 2015, Moonlight sued Mroz and Zachary for legal malpractice regarding the 2010 litigation. The trial court agreed with the defendants that Virginia's three-year statute of limitations barred Moonlight's lawsuit and granted their motion to dismiss.

The Virginia Supreme Court Gets the Last Word

In Virginia, the general rule is that its three-year legal malpractice statute of limitations begins to run at the time the injury occurs. The exception to this rule is known as the "continuous representation rule," which tolls the statute of limitations until the attorney renders his or her last legal service in the matter.

Regarding Zachary, the Virginia Supreme Court reversed the lower court's decision and held that the statute of limitations was tolled until February 10, 2012, when the second order was entered. The court reasoned that the work related to the second order represented Zachary's last legal service in the matter. In particular, he prepared the second order, instructed the court clerk to use it instead of the first proposed order, and notified Moonlight's new counsel of the situation. Thus, the continuous representation rule applied, and Moonlight's lawsuit was not time-barred as against Zachary.

Mroz fared much better. The high court agreed with the trial court that Moonlight missed the deadline to bring a legal malpractice lawsuit against him. The continuous representation rule could not have any adverse effect against him, because his last legal service was rendered before August 2011, and the legal malpractice suit was filed in February 2015, several months beyond the three-year statute of limitations.

The Takeaway

In jurisdictions adopting it, the continuous representation rule applies when an attorney continues to provide legal services in a case despite having declared the conclusion of an attorney-client relationship. An attorney who has withdrawn from representing a client—whether in Virginia or elsewhere—may want to avoid taking any steps that could be construed as continuing to provide legal services to that client. A clean break, as in other types of relationships, may be best.