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PROFESSIONAL LIABILITY BLOG

Missouri Court Rules Legal Malpractice Claim Survives Death of the Client and Reaffirms Objective Standard for Reporting Claims to a Malpractice Insurer

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In a recent holding, the Missouri Court of Appeals, Eastern District confirmed several important issues involving a claim for legal malpractice.

In the underlying case, the client asserted a medical malpractice lawsuit against Dr. Pastrana through attorney Steib. The client entered into a 537.065 agreement with Dr. Pastrana resulting in a $750,000 judgment in favor of the client and an agreement by the client that he would only collect from Dr. Pastrana's insurance carrier, Intermed. Intermed filed a declaratory judgment action against the client and moved for a summary judgment holding it owed no obligation to pay the judgment. Steib improperly responded to the statements of fact in support of the summary judgment motion, and as a result, the trial court deemed the facts admitted and granted the insurer summary judgment. This ruling was affirmed on appeal. The client passed away shortly thereafter.

Several months later Steib renewed his malpractice insurance with the Bar Plan. Steib affirmatively denied knowledge of any incident that may give rise to a claim against him.

Eleven months later, the client's estate filed a legal malpractice lawsuit against Steib. Steib notified the Bar Plan of the claim, who eventually denied coverage for the claim. Steib then entered into a 537.065 agreement with the client's estate, consenting to judgment against him of $750,000 in return for the estate's agreement to only pursue the Bar Plan for payment. The estate filed an equitable garnishment claim against the Bar Plan.

In the quitable garnishment action, the trial court granted the Bar Plan summary judgment finding Steib's failure to disclose the potential claim at the time of the policy's renewal foreclosed coverage for the claim against Steib. On appeal, the Missouri Court of Appeals, Eastern District affirmed. The Court first confirmed whether Steib should have reported the claim was judged by an objective standard—an objectively reasonable attorney. The Court then determined because the trial court and the appellate court had made it clear Steib's error in responding to the summary judgment statements of fact led to the judgment in favor of Intermed, a reasonable attorney would have suspected this incident would lead to a claim and the claim should have been reported to the Bar Plan. The Court stressed the importance of notice for a claims-made policy, such as this one, and affirmed judgment in favor of the Bar Plan because there was no coverage under the policy.

The estate also argued Steib was not obligated to report the claim because it was allegedly unclear under the law at that time whether a legal malpractice claim could have survived death of the client. The Court reviewed the status of the law in this area and determined the claim survived the death of the client and Steib was not excused from reporting the potential claim because of the client's death. The Court affirmed judgement for the Bar Plan.

This case stresses the importance of reporting claims and potential claims to malpractice insurance carriers. All professionals carrying claims-made policies should be aware of his or her obligation under the policy to timely report claims and potential claims, even if the professional does not believe a viable claim can be asserted; the failure to do so could have disastrous consequences.

Citation: *Ruiz v. Bar Plan Mut. Ins. Co.,* 590 S.W.3d 333 (Mo.App. E.D. 2019)