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Court of Appeals Outlines Contours of “Continuous Representation Rule” in Legal Malpractice

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Division I of the Court of Appeals recently outlined the contours of the “continuous representation rule” for effectively extending the limitation period for legal malpractice claims in *Beck v. Grafe*, 2015 WL 9097702 (Wn. App. Dec. 14, 2015) (unpublished). The limitation period for legal malpractice claims is three years under RCW 4.16.080. The three-year period is subject to a “discovery rule” and, therefore, does not begin to run until a claimant discovered—or, using reasonable diligence, should have discovered—the facts giving rise to a claim.

In *Janicki Logging & Const. Co., Inc. v. Schwabe, Williamson & Wyatt, P.C.*, 109 Wn. App. 655, 37 P.3d 309 (2001), the Court of Appeals applied the “continuous representation rule” to legal malpractice claims. Under that rule, the statute of limitation is tolled while the lawyer or law firm involved continues to represent the client in the matter giving rise to the asserted malpractice. The principal policy reasons for the rule are to avoid disrupting an ongoing attorney-client relationship and to give attorneys the chance to “fix” alleged errors (subject to appropriate conflict waivers). The Court of Appeals emphasized that the “continuous representation” is limited to the matter involving the asserted malpractice in *Cawdrey v. Hanson Baker Ludlow Drumheller, P.S.*, 129 Wn. App. 810, 120 P.3d 605 (2005), and defined the end of an attorney-client relationship

for purposes of the rule in *Hipple v. McFadden*, 161 Wn. App. 550, 255 P.3d 730 (2011).

Beck involved a claim against an individual lawyer based on his work while at a law firm. The asserted malpractice occurred in the early 2000s during contract litigation. The lawyer was an associate at a small firm at the time but left the firm in 2003. The firm continued to handle the litigation until the principal died in 2008 and the firm dissolved. The client's new lawyer resolved the contract litigation, advised the client of a potential claim against the former associate and sued the former associate for malpractice in 2010. The former associate raised the statute of limitation, arguing his work for the client had concluded in 2003. The client, in turn, contended that the continuous representation rule tolled the limitation period because the since-dissolved firm had continued to represent the client until the principal's death in 2008. The Court of Appeals disagreed, holding that the former associate's work on the matter had ended with his departure from the firm in 2003 and, therefore, the continuous representation rule did not toll the limitation period against him. In a twist, however, the Court of Appeals also concluded that the client could not have discovered the asserted error until 2008 and the claim was timely filed in 2010.

ABOUT THE AUTHOR

Mark J. Fucile of Fucile & Reising LLP handles professional responsibility, regulatory and attorney-client privilege issues for lawyers, law firms and corporate and governmental legal departments throughout the Northwest. Mark has chaired both the WSBA Committee on Professional Ethics and its predecessor, the WSBA Rules of Professional Conduct Committee. Mark is also a former member of the Oregon State Bar Legal Ethics Committee and is a current member of the Idaho State Bar Section on Professionalism & Ethics. Mark writes the monthly Ethics Focus column for the Multnomah (Portland) Bar's *Multnomah Lawyer*, the quarterly Ethics & the Law column for the WSBA *NWLawyer* and is a regular contributor on legal ethics to the WSBA *NWSidebar* blog. Mark is a contributing author/editor for the current editions of the OSB *Ethical Oregon Lawyer*, the WSBA *Legal Ethics Deskbook* and the WSBA *Law of Lawyering in Washington*. Before co-founding Fucile & Reising LLP in 2005, Mark was a partner and in-house ethics counsel for a large Northwest regional firm. He also teaches legal ethics as an adjunct for the University of Oregon School of Law at its Portland campus. Mark is admitted in Oregon, Washington, Idaho, Alaska and the District of Columbia. He is a graduate of the UCLA School of Law. Mark's telephone and email are 503.224.4895 and Mark@frllp.com.