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Court of Appeals Cites “End of Engagement” Letter in Dismissing Claim Against Law Firm

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Division I of the Washington Court of Appeals recently relied on a law firm’s “end of engagement” letter to a former client in dismissing a claim by the former client against the firm as time barred. The law firm in *Lagow v. Hagens Berman Sobol Shapiro LLP*, 2023 WL 7490078 (Wn. App. Nov. 13, 2023) (unpublished), represented the former client in two lawsuits in Texas. The last of the two lawsuits settled in 2014. At that time, the law firm sent the client an end of engagement letter reading: “With this payment, our representation of you under the existing retainer agreement has come to an end[.]”

The former client sued the law firm in 2022, alleging a variety of claims stemming from the Texas lawsuits that concluded in 2014. Washington has a three-year statute of limitation for malpractice and related claims. The law firm moved to dismiss the former client’s claims as time-barred. The trial court granted the motion as to all of the claims except an unjust enrichment claim that also had a three-year limitation period. On the latter, following discovery, the trial court granted summary judgment to the law firm—ruling that the remaining claim was also time-barred.

The former client only appealed the dismissal of the unjust enrichment claim. Notwithstanding the 2014 end of engagement letter, the former client

argued on appeal that the law firm continued to represent him because he had sent the firm an email in 2019 proposing a new lawsuit—which the firm rejected.

The Court of Appeals affirmed the trial court’s dismissal. In doing so, it first noted that although there is a subjective prong to the test for the existence of an attorney-client relationship under the Washington Supreme Court’s leading decision on this point—*Bohn v. Cody*, 119 Wn.2d 357, 363, 832 P.2d 71 (1992)—a putative client must meet an objective prong as well. The Court of Appeals concluded that the end of engagement letter was conclusive on the objective prong and that the relationship had ended in 2014. The Court of Appeals also found that the later correspondence did not reopen the original representation (or a create a new one) and, therefore, the former client’s claim was time-barred.

Although *Lagow* does not plow any new ground legally, it provides a useful illustration of the practical importance to overall law firm risk management of routinely sending end of engagement letters.

ABOUT THE AUTHOR

Mark J. Fucile of Fucile & Reising LLP advises lawyers, law firms and legal departments throughout the Northwest on professional responsibility and risk management. Mark has chaired both the WSBA Committee on Professional Ethics and its predecessor, the WSBA Rules of Professional Conduct Committee. Mark has served on the Oregon State Bar Legal Ethics Committee

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