Minnesota Legal Malpractice Trends

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Two Recent Legal Malpractice Decisions Emphasize that Details Matter

Two recent cases confirm that the devil is in the details, at least for plaintiffs in Minnesota legal malpractice actions.

Banken v. Hoke, 2009 WL 366279 (Minn.App. Feb. 17, 2009).

The Minnesota Court of Appeals affirmed the district court's dismissal of a legal malpractice action based on the insufficiency of the expert affidavit required by Minn. § Stat. § 544.42, subd. 4. The affidavit, which was served six days after the 180-day time period had ended, contained the identification of the expert, stated that the evidence relied upon included the documents drafted and the advice given by the defendant attorney, the contents of the demand letter, and the complaint, and stated that the expert's opinion was "that Defendants deviated from the applicable standard of care and by that action caused injury to Plaintiffs." Finding the facts of the case to be "remarkably similar" to those in Brown-Wilbert, Inc. v. Copeland Buhl & Co., 732 N.W.2d 209 (Minn. 2007), the Court of Appeals applied the standard set out in Brown-Wilbert to the expert affidavit and found it failed to specifically articulate either the standard of care or how the attorney had deviated from it. Based on the insufficiency and the untimeliness of the affidavit, the Court of Appeals affirmed summary judgment for the defendants.

The request for application of the 60-day "safe harbor" provision of Minn.Stat. § 544.42, subd. 6(c) was also denied. The Court of Appeals held that the safe harbor provision, which allows a plaintiff additional time to comply with the statutory requirements, applied only when an expert affidavit which fulfilled the statutory requirements had been timely filed, and did not apply in this situation since the affidavit was late and clearly insufficient. "[W]hile the full reach of the safe-harbor provision may yet to be defined, caselaw amply supports the district court's conclusion that the safe-harbor provision does not permit a party the opportunity for a complete do-over."

Practice Tip:
Minnesota courts will strictly enforce the expert affidavit requirements of Minn. Stat. § 544.42, subd. 4, and the safe-harbor provision will not give a malpractice plaintiff the opportunity for "a complete do-over" of an expert affidavit.

Revestors Group 1, LLC v. Severson, 2009 WL 438269 (Minn.App. Feb. 24, 2009).

In this case, the Court of Appeals held that legal malpractice claims may be subject to an arbitration clause contained in an engagement letter. A malpractice claim was brought by a corporate client which had retained the attorney on a number of matters. One of the engagement letters provided that "any dispute about the quality or nature of our services or our billing, will be submitted to binding arbitration." A subsequent engagement letter did not mention arbitration. Although the district court held that the subsequent letter governed the dispute because it was in effect at the time the claim arose, the Court of Appeals reversed because the billing invoices issued under the earlier letter specifically referenced the leases which were central to the dispute. Since it was reasonably debatable that the arbitration clause applied to the dispute, the plaintiff had not met its burden of proof and the matter was referred to arbitration. The language of the arbitration clause was held to be broad enough to include any question of legal malpractice.

Practice Tip:
Arbitration clauses contained in retainer agreements or engagement letters will be enforced against legal malpractice claims if (a) the claim is within the scope of the terms of the arbitration clause; and (b) the retainer agreement covers the disputed claims.

This legal malpractice update was written by Diane Odeen. Visit our web site to learn more about Diane and our other Lommen Abdo professional liability attorneys.

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