A Settlement "Agreement" Equals No Subsequent Legal Malpractice Claim, Right? Not So Fast!

Posted on: 2/20/2012

Jordan S. Tafflin, Esquire

A common thought among most attorneys upon receiving settlement authority from their client and subsequently entering into a settlement agreement on that client's behalf is to move on to the next case and not appreciate the possibility of that same client suing for legal malpractice. However, these events are becoming all too common, especially now with the country experiencing difficult economic times.

Surprisingly, an increasingly common legal malpractice case is being brought by a client who now has second thoughts and wishes he or she had never listened to his or her lawyer's recommendation to settle. The most common types of cases where these allegations are made involve personal injury, employment and real estate matters. The allegations made by these litigants run the gamut of "Why didn't I get more money in the settlement?" to "I was pressured by my attorney to accept a settlement." In exploring a possible legal malpractice suit against his or her former attorney, the litigant often claims he or she would not have agreed to a settlement if his or her lawyer had fully explained the ramifications of agreeing to settle the matter and/or the litigant believes his or her lawyer just simply wanted to get paid.

A widely held definition of legal malpractice is negligence, breach of fiduciary duty or breach of contract by an attorney that causes harm to his or her client. In order to rise to an actionable level of negligence, the injured party must show that the attorney's acts were not merely the result of poor strategy, but they were the result of errors no reasonable attorney would make.

There is common law support for not holding an attorney liable for negligence in connection with a settlement, despite the fact negligent advice by the attorney may have induced said settlement. This argument suggests it is important to prohibit these types of legal malpractice suits as a matter of public policy. However, the majority of courts hold that the fact a party received a settlement that was "fair and equitable does not necessarily mean the party's attorney was competent or that the party would not have received a more favorable settlement had the party's incompetent attorney been competent." *See e.g. Puder v. Buechel*, 183 N.J. 428 (2005). In other words, unless the malpractice plaintiff is to be equitably estopped from prosecuting his or her malpractice claim, the existence of a prior settlement is not a bar to the prosecution of a legal malpractice claim arising from such a settlement. *See Guido v. Duane Morris et al.*, 202 N.J. 79 (2010).

Guidelines and Recommendations

An attorney may face a malpractice claim even where the appropriate standards and guidelines were precisely followed. Ultimately, the client should reasonably expect his or her attorney's analysis of the relevant facts and the attorney's recommendations throughout his or her representation to be within the appropriate standard of care. Depending on the circumstances of the situation, a litigant may have to make a quick decision whether to accept a settlement offer. Even slight delays in moving forward with a settlement could result in the loss of an opportunity to settle. Accordingly, the legal malpractice "reasonableness" standard varies from case to case. However, the potential for a claim remains.

The Rules of Professional Conduct offer some guidance on what is expected of an attorney, and specifically how he/she should conduct himself/herself in situations such as the ones described above. *See* e.g. R.P.C. 1.3 and 1.4. Both in a practical and general sense, an attorney is expected to have and apply the requisite legal skill and knowledge that is ordinarily possessed by members of the profession. As a result, it is of the utmost importance to keep your client reasonably informed on the progress and status of all matters, and especially those related to possible settlement.

In order to increase your chances of avoiding a potential legal malpractice claim against you in terms of being "second guessed," reasonable efforts should be made to advise the client of the advantages and disadvantages of agreeing to a settlement. Further, the possible results of not agreeing to a settlement must be discussed as well. As such, settlements discussions and negotiations with your client should be memorialized whenever possible. Additionally, in times of high stress (such as a trial), numerous courts have advised that many malpractice claims could be averted if settlements were explained as a matter of record in open court in proceedings reflecting the understanding and assent of the parties.