Ending the Attorney-Client Relationship

For Whom the Statute Tolls

By Peter J. Biging and Jason L. Ederer

You never know what that client who retained you 16 years ago thinks about your attorney-client relationship, so it makes sense to leave less up to chance.

A former client accuses his lawyer of legal malpractice and the lawyer is genuinely surprised because he concluded work on the matter in question so many years ago he believes the statute of limitations must have long since run out. However, when he pulls his file out of storage, he sees that he never sent or received a letter formally concluding the representation. The question arises, then, as to as whether there is a viable statute of limitations defense, or whether an argument can be made that the statute never began to run because the representation never actually terminated. With regard to the question of when the statute of limitations on legal malpractice claims begins to run where the relationship has arguably been severed but no formal termination has been documented, there have been a number of recent significant decisions, particularly in the New York State courts. While the issue can be somewhat nuanced, the fact is that when it comes to a legal malpractice claim, the perception of a severed relationship between attorney and client is often different from the reality. By the same token, a severed relationship in fact will not necessarily be trumped by the failure to provide documents—such as a letter from the client firing the attorney or a signed consent to change attorney form—confirming the severance.

The Basic Rules

The statute of limitations for a legal malpractice claim under New York law is three years measured from the date of the alleged malpractice. CPLR §214(6)); *Zorn v. Gilbert*, 8 N.Y.3d 933, 933–34 (N.Y. 2007); *McCoy v. Feinman*, 99 N.Y.2d 295, 301 (N.Y. 2002); *Shumsky v. Eisenstein*, 96 N.Y.2d 164, 166 (N.Y. 2001). In other states, the statute of limitations ranges from as little as one or two years, to as many as six. *See, e.g.,* Cal Code Civ Proc §340.6 (Bender 2014 (one year); *Estate of Jobe v. Berry*, No. 06-13-00056-CV, 2014 Tex. App. LEXIS 3773 (Tex. App. Texarkana Apr. 9, 2014) (citing Tex. Civ. Prac. & Rem. Code §16.003) (Bender 2013) (two years); Illinois Code of Civil Procedure §735 ILCS 5/13-214.3 (Bender 2013) (up to six years).

States have different interpretations of when a claim for legal malpractice may accrue. For instance, in New York and several other jurisdictions, the claim accrues upon commission of the alleged malpractice (*i.e.*, when the actual injury occurs) and not when it is discovered. *McCoy*, 99 N.Y.2d at 301 (citation omitted) ("What

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is important is when the malpractice was committed, not when the client discovered it"). *See also, e.g., Prakashpalan v. Engstrom, Lipscomb & Lack*, 223 Cal. App. 4th 1105, 1121 (Cal. App. 2d Dist. 2014) ("Actual injury occurs where the plaintiff suffers any loss or injury legally cognizable as damages based on the asserted errors or omissions of an attorney"); *Haskell v. Hastings*, No. CV-09-689, 2010 Me. Super. LEXIS 120 (Me. Super. Ct. Sept. 28, 2010) ("[T]he general rule…is that the statute of limitations for legal malpractice begins to run at the moment a negligent act takes place").

Other states use a dual accrual analysis, applying both an "occurrence" rule—which bases the running of the statute of limitations on the date the act or omission giving rise to the claim occurred—as well as a "damage" rule—under which "the statute of limitations begins to run from the date that the client in the legal-malpractice action sustains an injury or damage" in deciding whether a claim is time-barred—and use the latter of the dates identified. *Coilplus-Alabama, Inc. v. Vann*, 53 So. 3d 898, 905–07 (Ala. 2010).

In still other jurisdictions, they apply the "discovery" rule. Under the discovery rule, a cause of action for legal malpractice accrues when the plaintiff has "information sufficient to alert a reasonable person to the fact that he has a potential cause of action." *Christianson v. Conrad-Houston Ins.*, 318 P.3d 390, 396–97 (Alaska 2014); *Estate of Stiles v. Lilly*, C.A. No. 09C-07-198, 2011 Del. Super. LEXIS 454 (Del. Super. Ct. Oct. 27, 2011); *Thomas v. Kidani*, 126 Haw. 125, 132 (Haw. 2011); *See also, e.g. Burtoff v. Faris*, 935 A.2d 1086, 1088 (D.C. 2007) ("Under the discovery rule, the plaintiff does not have carte blanche to defer legal action indefinitely if she knows or should know that she may have suffered injury and that the defendant may have caused her harm").

Even after a claim for legal malpractice has accrued, it may be tolled for a number of reasons, including fraud and concealment of the malpractice. *Schifano v. Bank of N.Y. Co.*, No. CV125009097S, 2013 Conn. Super. LEXIS 722, 15–16 (Conn. Super. Ct. Apr. 1, 2013) (concealment); *DeLuna v. Burciaga*, 223 Ill. 2d 49, 81 (Ill. 2006) (citing *Barratt v. Goldberg*, 296 Ill. App. 3d 252, 258, 694 N.E.2d 604, 230 Ill. Dec. 635 (1998) (finding concealment and thus tolling where "defendant law firm in that case made continuous reassurances to the plaintiff, which delayed plaintiff's filing of her suit"). *See also* Cal Code Civ Proc §340.6 (a) (3) (an action against attorney for wrongful act or omission, other than fraud, shall be tolled where "[t]he attorney willfully conceals the facts constituting the wrongful act or omission when such facts are known to the attorney"). Additionally, the claim can be tolled where the lawyer or firm has continued to represent the client with regard to the legal matter at issue. *Champlin v. Pellegrin*, 974 N.Y.S.2d 379, 380 (App. Div. 1st Dep't 2013).

In many cases, the date of termination of representation is easily identified, with either the client sending a letter to the law firm firing the firm, the firm sending a letter to the client terminating the representation, or the issuance of a formal substitution of counsel by the client. However, in some instances the severance of the relationship is not necessarily so clearcut, with work by the firm and communications with the client instead gradually tapering off or coming to an apparent but not necessarily conclusive stop, and no formal recognition by lawyer or client of the cessation of the relationship. In these circumstances, even where representation appears to have effectively ceased for a lengthy period of time, plaintiffs' counsel have nonetheless argued, often successfully, that the relationship continued, and thus avoided a statute of limitations bar.

The question is what standards and indicia to apply in determining when representation has ceased in such murky circumstances. Several recent decisions have shed some light on this issue and are important to consider in circumstances where statute of limitations issues may not be clearcut.

The Continuous Representation Doctrine

When courts have applied the "continuous representation" doctrine to toll the statute of limitations, they have typically been quick to note or reaffirm that for this tolling to apply, there must be a "clear indicia of an ongoing, continuous, developing, and dependent relationship between the lawyer and client." *Priola v Fallon*, No. 484 CA 13-00391, 2014 N.Y. App. Div. LEXIS 3095, 1–2 (N.Y. App. Div. 4th Dep't May 2, 2014); *Champlin*, 974 N.Y.S.2d 379, 380 (App. Div. 1st Dep't 2013); *Laclette v. Galindo*, 184 Cal. App. 4th 919, 927 (Cal. App. 2d Dist. 2010); *Yang Enters. v. Georgalis*, 988 So. 2d 1180, 1183 (Fla. Dist. Ct. App. 1st Dist. 2008), or a "mutual understanding of need for further representation on the specific matter[s] underlying the malpractice claim." *Champlin*, 974 N.Y.S.2d at 380; *McCoy*, 99 N.Y.2d at 30. Tolling does not apply simply because the lawyer and client continued to communicate sporadically or the firm continued to keep possession of relevant records. *Getch v. Jeffrey T. Orndorff Co., L.P.A.*, No. NO. 2012-G-3120, 2013 Ohio App. LEXIS 4159, 9–18 (Ohio Ct. App., Geauga County Sept. 16, 2013).

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While arguments may be made that representation continues for tolling purposes in all instances in the absence of formal recognition of termination of same, courts considering the issue have largely rejected such contentions. *Ireland v. Schneider*, No. H038334, 2014 Cal. App. Unpub. LEXIS 470, at *28–32 (Cal. App. 6th Dist. Jan. 23, 2014); *Lockton v. O'Rourke*, 184 Cal. App. 4th 1051, 1064 (Cal. App. 2d Dist. 2010) (citing *Worthington v. Rusconi*, 29 Cal. App. 4th 1488, 1497 (Cal. App. 6th Dist. 1994)); *Leffler v. Mills*, 729 N.Y.S.2d 196, 199 (App. Div. 3d Dep't 2001) ("[T]hat relationship does not continue indefinitely simply because there has been no formal termination"); *Piliero v. Adler & Stavros*, 723 N.Y.S.2d 91, 92 (App. Div. 2d Dep't 2001) ("[T]he mere fact that the defendants did not sign a stipulation formally substituting incoming counsel as attorneys for the plaintiff" until a much later date, does "not establish that the representation was

continuous until that date"); *Robinson v. Gursten Koltonow Gursten Christensen & Raitt*, No. 311266, 2014 Mich. App. LEXIS 811, 8–9 (Mich. Ct. App. May 1, 2014) (no formal termination necessary where the attorney's last date of professional service in the underlying litigation, which ended in settlement, rendered more than two years statute of limitations for legal malpractice claim, and no evidence of any further professional services rendered thereafter). Thus, courts have held representation has been terminated where:

- the attorney or firm has unequivocally informed the client he or it would not proceed with the client's case or action generally (*see, e.g., Riley v Segan, Nemerov & Singer, P.C.*, 918 N.Y.S.2d 488, 488 (App. Div. 1st Dep't 2011)) ("By letter dated August 25, 2004, defendants unequivocally informed plaintiffs they would not proceed with plaintiffs' case, thereby severing the attorney-client relationship…[thus], the continuous representation doctrine ceased to be applicable and the toll of the statute of limitations came to an end");
- the attorney or firm has, via email exchange, accepted the client's advice that the representation is terminated (*see, e.g., Sturman v. Wagner Davis, P.C.*, No. 650767/2010, 2011 NY Slip Op 33759(U), at *5 (N.Y. Sup. Ct. Sept. 13, 2011) ("Despite arguing that nothing in the email exchange between Plaintiff and the Defendant Firm revealed, specifically, that the relationship had been terminated, Plaintiffs submitted no evidence that Sturman sought to continue the relationship after receiving Wagner's email. Thus, on June 26, 2007, the continuous representation doctrine was no longer applicable and the toll ended"); and
- the client has died (even though the estate's rights have still yet to be fully adjudicated). *See, e.g., Albukerk v. Horwitz* (*In re Estate of Horwitz*), 371 Ill. App. 3d 625, 631 (Ill. App. Ct. 1st Dist. 2007) ("Generally, when a client dies, the attorney-client relationship terminates, and thereafter, the attorney must obtain authorization from the decedent's personal representative in order to pursue the interests of the decedent"); *Bec Constr. Corp. v. Gonzalez*, 383 So. 2d 1093, 1094 (Fla. Dist. Ct. App. 1st Dist. 1980) ("Death of a client terminates the relationship that exists between an attorney and his client and the attorney's authority to act by virtue thereof is extinguished…Accordingly, unless there has been a substitution of parties, e. g., a personal representative appointed for the estate of the deceased, a claim for benefits on behalf of a client who is dead is a nullity").

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Indeed, state statutes and case decisions on the subject of continuous representation have noted representation on a particular matter can be deemed to have terminated even where representation has continued on other matters. *See, e.g.*, Cal Code Civ Proc §340.6 (a)(2) (Statute of limitations tolled where "[t]he attorney continues to represent the plaintiff regarding the *specific subject matter* in which the alleged wrongful act or omission occurred.") (emphasis added); *Aponte v. Platinum Mortgage, LLC*, No. CV126030583S, 2014 Conn. Super. LEXIS 394 (Conn. Super. Ct. Feb. 19, 2014) ("[A] plaintiff may invoke the [continuous representation] doctrine, and thus toll the statute of limitations, when the plaintiff can show…that the defendant continued to represent him with regard to the *same underlying matter…*") (emphasis added). A client's actions can also result in a finding that representation has concluded, even in the absence of a clear, unequivocal, confirmation of same where, for example, the client has surreptitiously removed his file from the attorney's offices, *Aseel v. Jonathan E. Kroll & Assocs., PLLC*, 966 N.Y.S.2d 202, 204 (App. Div. 2d Dep't 2013) ("[b]y so removing the file, the plaintiff evinced his lack of trust and confidence in the parties' relationship, and his intention to discharge the defendants as his attorneys."), or where the client has proffered a consent to change attorney form to the firm that has been signed and returned, even though the client has not necessarily executed it. *Fleyshman v Suckle & Schlesinger, PLLC*, 937 N.Y.S.2d 92, 93 (App. Div. 2d Dep't 2012); *Sommers v. Cohen*, 790 N.Y.S.2d 141, 143 (App. Div. 2d Dep't 2005).

However, an "ongoing relationship" sufficient to establish "continuous representation" remains a concept with no absolute boundaries or borders. As a consequence, it is important to look closely at decisional law on this issue as it continues to evolve. Several recent decisions are particularly interesting and instructive.

Recent Decisions Providing Further Definition

In *Louzoun v. Kroll Moss & Kroll, LLP*, No. 2013-03034, 2014 N.Y. App. Div. LEXIS 95 (App. Div. 2d Dep't Jan. 8, 2014), the defendant law firm, Kroll Moss and Kroll, LLP (the "Firm"), represented the plaintiff at a matrimonial trial concluding on February 21, 2008 that resulted in the execution of a related visitation stipulation dated May 9, 2008. On August 9, 2011, Plaintiff commenced an action against the law firm and several of its individual attorneys alleging the firm committed "various acts of professional malpractice during the course of its representation." *Id.* at *1–2. The defendants moved to dismiss the complaint, arguing that the action was commenced beyond the three year statute of limitations measured from the termination of the attorney-client relationship. The defendants supported the motion to dismiss by attaching an email message from the plaintiff dated August 7, 2008, in which the plaintiff expressed dissatisfaction with the Firm, accused the Firm of malpractice, disputed fees, and demanded the return of her legal file. *Id.* The defendants argued that this email ended the "trust and confidence" required to continue an attorney-client relationship, rendering the action commenced on August 9, 2011 untimely. In opposition, the plaintiff argued that her action was timely, as the defendants' rep-

resentation of her continued until August 19, 2008, the date on which she executed a formal Consent to Change Attorney form. *Id.* at *2.

At the trial court level, the motion was denied, and the decision was subsequently affirmed on appeal to the Appellate Division, Second Department. In affirming the decision, the appellate court noted that despite the firm's protestations to the contrary, the email message proffered as evidence of the end of the relationship—in which the plaintiff stated that "without the judgment being signed, [she had] no money with which to pay"—suggested the *need for further legal work to be performed*. The email also made reference to the parties' attendance of the same synagogue, stating that "it [would] be a pity to have bad blood between [them.]. *Id.* This, the court said, did *not* necessarily or unequivocally terminate the parties' attorney-client relationship and, as such, the firm had failed to conclusively establish that the attorney-client relationship did not continue until the latter date. *Id.*

In *Champlin v. Pellegrin*, 974 N.Y.S.2d 379 (App. Div. 1st Dep't 2013), the New York Appellate Division, First Department decided a case that addressed the issue of when the lack of communication between lawyer and client is sufficient to constitute the "constructive" end of the relationship. In this case, the job the plaintiff had retained the defendant firm to do was not specified. After acknowledging that the statute of limitations on a cause of action for legal malpractice is three years, the court stated that the plaintiff's claims accrued on October 7, 1997 at the latest—three years after the underlying action the defendant had handled for the plaintiff had been marked by the court as "disposed." *Id.* at 279–80. The plaintiff had waited 16 years after disposition of his case to sue for malpractice, but argued the claim was tolled by the continuous representation doctrine because he hadn't been put on notice of the fact he was no longer represented by the defendant. *Id.*

In rejecting this argument, the court noted that, while it may have been true that formal notice of the cessation of the representation had never been given, the parties did not dispute that "there were no communications between them from 1994 until 2011, when plaintiff suddenly purported to discharge defendant from representing him." *Id.* at 280. In rejecting plaintiff's tolling argument, the Court concluded "[t]he more than 16-year lapse in communications from defendant was sufficient to constitute reasonable notice to plaintiff that defendant was no longer representing him." *Id.*

In *Landow v. Snow Becker Krauss, P.C.*, 975 N.Y.S.2d 119 (App. Div. 2d Dep't 2013), the plaintiff alleged that in March of 2003, he had relied on a negligently prepared opinion letter that his proposed sale of certain property would not result in the loss of his tax deferment status. *Id.* at 119–20. In 2007, the IRS notified the plaintiff that its determination was to the contrary and directed him to remit back taxes, along with penalties and interest, totaling approximately $5 million. *Id.* The IRS determination was made on March 31, 2009, and the plaintiff discharged counsel a month later, retained new counsel, and filed a petition with the United States Tax Court challenging the determination. *Id.* After this challenge failed, the plaintiff commenced an action alleging legal malpractice against the defendants on December 29, 2011. At the trial court level, the defendant law firms successfully moved to dismiss the malpractice claims as time barred because the alleged malpractice had occurred in March 2003—over eight years prior—when the opinion letter was issued. *Id.*

The Appellate Division, Second Department affirmed, rejecting the plaintiff's argument that the claims should be tolled through the end of the firm's representation. *Id.* In finding the continuous representation doctrine did not toll the statute of limitations, the appellate court found that during the time between the issuance of the opinion letter and the plaintiff's alleged retention of the defendants in July 2007, during which no further legal representation was undertaken with respect to the subject matter of the opinion letter, the parties did not contemplate any further representation was needed. *Id.* (citing *McCoy*, 99 N.Y.2d at 306). As such, the court determined that this four-year period was enough "notice" to the plaintiff of the termination of the representation, and the lower court properly dismissed the action as time-barred. *Id.*

Moving outside New York, in a recent California State court decision, *Ireland v. Schneider*, No. H038334, 2014 Cal. App. Unpub. LEXIS 470 (Cal. App. 6th Dist. Jan. 23, 2014), the court considered the continuous representation question in a case brought two decades after the alleged malpractice occurred. Under California law, "the continuous relationship tolling provision [regarding a claim for legal malpractice] applies only so long as representation continues 'regarding the specific subject matter in which the alleged wrongful act or omission occurred.'" *Lockton v. O'Rourke*, 184 Cal. App. 4th 1051, 1062 (Cal. App. 2d Dist. 2010). Further, as the *Lockton* court noted, "[t]he test for whether the attorney has continued to represent a client on the same specific subject matter is objective, and ordinarily the representation is on the same specific subject matter until the agreed tasks have been completed or events inherent in the representation have occurred." *Id.* at 1063. Where the attorney unilaterally withdraws or abandons the client, "the representation ends when the client actually has or reasonably should have no expectation that the attorney will provide further legal services." *Gonzalez v. Kalu*, 140 Cal.App.4th 21, 30 (Cal. App. 2d Dist. 2006). "After a client has no reasonable expectation that the attorney will provide further legal services… the client is no longer hindered by a potential disruption of the attorney-client relationship and no longer relies on the attorney's continuing representation, so the tolling should end." *Id.* at 28. Further, the *Gonzalez* court opined, "[t]hat may occur upon the attorney's express notification to the client…,

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or, if the attorney remains silent, may be inferred from the circumstances." *Id.* at 30–31.

In the *Ireland* case, a general partnership agreement was prepared for the plaintiff by the defendant law firm in 1986. *Ireland*, 2014 Cal. App. Unpub. LEXIS 470, at *2–5. In 2007, one of the capital contributors to the agreement sought declaratory relief in which the monetary value of her capital contribution was at issue because the partnership agreement did not specify a monetary value. *Id.* There was no evidence of any contact between the plaintiff and defendant regarding the partnership agreement from 1986 until 2008. *Id.* In mid-2008, the plaintiff had a meeting with the defendant because he "was concerned at that time that [the defendant] may have erred somehow in drafting the Partnership Agreement…." *Id.* During the meeting, the attorney allegedly "shook his head" to confirm the plaintiff's recollection that the net capital contribution in question "equaled zero." *Id.* The attorney also responded that this was his recollection of what the intent was between the partners. The plaintiff then asked the defendant if he had the file regarding the agreement, and the defendant said he was unsure but would look for it and get back to the plaintiff. *Id.* Thereafter, the plaintiff stated, the defendant did not get back to him. There was no evidence of any further contact between the plaintiff and the defendant after 2008. The plaintiff filed his legal malpractice complaint in 2010. *Id.*

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In deciding that the continuous representation doctrine did not apply, the Court held that even though the defendant attorney had stated he would get back to the plaintiff, such evidence was insufficient to create a triable issue of material fact and that the silence for two years after the meeting in 2008, coupled with the plaintiff's failure to follow-up, created a reasonable inference that no further legal services would be provided after that meeting. *Id.* at *29–31 (Termination "may occur upon the attorney's express notification to the client that the attorney will perform no further services, or, if the attorney remains silent, may be inferred from the circumstances").

Lastly, in an Ohio decision on the issue rendered in 2013, an appellate court found an attorney-client relationship was terminated for the purposes of the statute of limitations upon the date a client provided her attorney her last check payment for services rendered, calling it a "de facto termination letter." In *Getch v. Jeffrey T. Orndorff Co., L.P.A.*, No. 2012-G-3120, 2013 Ohio App. LEXIS 4159, at *9–18 (Ohio Ct. App., Geauga County Sept. 16, 2013), the appellate court upheld a holding in favor of the defendant attorney, who was granted summary judgment on his argument that the plaintiff's legal malpractice claims were time-barred because the termination had occurred more than one year prior to the commencement of the lawsuit. There, the plaintiff, following the death of her husband in July 2009, retained the defendant to represent her as executrix in the administration of her deceased husband's estate. *Id.* The plaintiff testified that after a few months, her family became worried about the defendant's performance and questioned his competence. *Id.* The plaintiff further testified that her brother-in-law called the defendant "on her behalf" and told him she was terminating their relationship. On January 21, 2010, she wrote the defendant a check for $2,000 for his services, believing she owed him money for same. At that time, she demanded her records and a copy of her file. *Id.* On January 26, 2010, the plaintiff and her son went to the defendant's office together and collected the materials she had previously given him, along with a copy of her file. *Id.* On March 29, 2010, the Probate Court granted the defendant's motion to withdraw, which had been filed on January 28, 2010. Interestingly, the defendant never cashed the check the plaintiff gave him.

On January 26, 2011, the plaintiff filed a complaint against the defendant in the Cuyahoga County Court of Common Pleas alleging legal malpractice, breach of contract, breach of fiduciary duty, and breach of confidentiality. She demanded an unspecified amount of damages in excess of $25,000 for each claim. *Id.* After a transfer of venue to the Cuyahoga County Court, the defendant filed an answer asserting various affirmative defenses, including the plaintiff's failure to file her complaint within the applicable one-year statute of limitations, and made a motion for summary judgment at the conclusion of discovery. *Id.* The trial court granted the motion, finding that the one-year statute of limitations began running on or before January 22, 2010, when she wrote and delivered the check to the defendant; she had decided he was not performing his services adequately *before* she even wrote the check. *Id.* (emphasis added). Thus, the court found that because the plaintiff filed her complaint on January 26, 2011, the complaint was time-barred because the one-year statute of limitations had passed. *Id.* The plaintiff appealed, and the decision was affirmed.

In affirming, the appellate court noted under Ohio case law, the termination of the attorney-client relationship depends on an affirmative act by either party that signals the end of the relationship. *Id.* (citing *Mastran v. Marks*, C.A. No. 14270, 1990 Ohio App. LEXIS 1219, at *9-10 (Ohio Ct. App., Summit County Mar. 28, 1990); *Savage v. Kucharski*, No. 2005-L-141, 2006-Ohio-5165, P23–P24 (Ohio Ct. App., Lake County Sept. 29, 2006); *Trickett v. Krugliak, Wilkins, Griffiths & Dougherty Co., L.P.A.*, No. 2000-P-0105, 2001 Ohio App. LEXIS 4806, at *7–8 (Ohio Ct. App., Portage County Oct. 26, 2001). But the court also noted that "the attorney-client relationship may terminate by a communication that the relationship has ended" (*Merkosky v. Wilson*, No. 2008-L-017, 2008-Ohio-3252, P24 (Ohio Ct. App., Lake County June 27, 2008)), and this communication can be written (as in a termination letter) or oral (*id.* at P24–P30). Here, the appellate court stated: "[b]ecause [the plaintiff] said she wrote the check because she was letting [the defendant] go and told him his services were no longer required when she gave it to him, her check was the functional equivalent of a termination letter [and]…that, by these acts, [the plaintiff

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clearly] and unambiguously terminated the attorney-client relationship on January 22, 2010." *Id.*

Conclusion

Not all states will consider a tolling argument in claims for legal malpractice. However, in reviewing cases where tolling has been considered, several conclusions can be drawn. First, it remains extremely important that attorneys and firms keep track of their communications with clients. If you are terminating a relationship, absent a signed consent to change attorney form, there is no better evidentiary support than something on firm letterhead formally ending the relationship with the client. As can be seen above, the gradual end to the attorney-client relationship can create uncertainties that can be exploited to argue for a toll to apply. Additionally, if there is any uncertainty about whether you have been effectively terminated from a matter, it may be best to confirm the termination of the relationship in writing so that there is no question that the clock is going to start running. You never know what that client who retained you 16 years ago thinks about your attorney-client relationship, so it makes sense to leave less up to chance in an area that continues to be rife with disagreements about the termination of relationships for which the statute tolls. Because the truth is, to paraphrase the great poet John Donne, one should "never [chance] to know for whom the [statute] tolls; it [just may] toll for thee."