



2021 Decisions Expanding Tolling Provisions Under The Legal Malpractice Statute Of Limitations

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In 2021, two appellate decisions expanded the generally strict one-year statute of limitations for legal malpractice cases under Cal. Code of Civil Procedure (“CCP”) § 340.6. *Knapp v. Ginsberg* (2021) 67 Cal.App.5th 504 and *Michaels v. Greenberg Traurig, LLP* (2021) 62 Cal.App.5th 512 both offer the potentially tardy filer of legal malpractice claims the potential to survive summary judgment, as set out below. *Knapp* addressed the actual injury requirement, and *Michaels* addressed tolling under the continuous representation rule.

Knapp v. Ginsberg

Knapp v. Ginsberg discusses the rule that tolls the statute of limitations for legal malpractice until the plaintiff suffers actual injury, found in CCP § 340.6(a)(1). Knapp brought a legal malpractice claim against her counsel, Ginsberg, claiming that Ginsberg should have been aware that a premarital agreement executed with her late husband was invalid, due to her husband not having counsel, under Family Code § 1615. The claim was dismissed on a motion for summary judgment in the trial court based on the statute of limitations.

By way of background, the premarital agreement at issue was drafted in 2004. Knapp’s late husband passed away in 2016. Thereafter, litigation ensued regarding the estate of Knapp’s late husband involving the property addressed in the premarital agreement. Knapp grew concerned during that litigation that the premarital agreement was invalid, and even approached Ginsberg to seek a tolling agreement on the premarital agreement during that pending litigation. Knapp settled the litigation regarding her late husband’s estate, but she received less than she would have had the premarital agreement been valid.

Ginsberg asserted that Knapp’s malpractice claim was time-barred, because the premarital agreement was drafted in 2004 and the claim for legal malpractice was filed in 2019. The malpractice claim specifically sought relief based on a term within the premarital agreement that granted a lien on certain real property. Ginsberg claimed that the malpractice cause of action accrued at any one of the following junctures:

- (1) when the premarital agreement was executed, as her late husband was obviously unrepresented;
- (2) when Knapp was forced to pay off the mortgage on that real property, rather than her late husband’s estate, because a tangible financial injury occurred; or
- (3) when litigation was filed against Knapp relating to property that was the subject of the premarital agreement.



The Court did not accept any of these dates, instead finding that the injury occurred when Knapp's late husband's estate refused to honor her creditor's claim in the probate court arising from the lien granted by the premarital agreement. *Knapp*, supra, 67 Cal.App.5th at 536. The Court strictly applied the actual injury doctrine requiring the injury to relate directly to the alleged malpractice.

Michaels v. Greenberg Traurig, LLP

Michaels v. Greenberg Traurig, LLP addressed the "continuous representation rule" under CCP § 340.6(a)(2), which tolls the statute of limitation while the defendant law firm continues to represent the plaintiff. In *Michaels*, the trial court granted summary adjudication on statute of limitations grounds. Jillian Michaels was represented by Greenberg Traurig in relation to the creation of multiple entertainment related contracts. The alleged malpractice arose out of concurrently drafting two of those contracts that contained contradictory terms. Litigation ensued in which Greenberg Traurig represented Michaels, but Greenberg Traurig eventually substituted out of the litigation. Greenberg Traurig took the position that the continuous representation tolling ended when Greenberg Traurig substituted out of the litigation, because "that usually terminates the attorney/client relationship." *Michaels*, supra, 62 Cal.App.5th at 536. The appellate court disagreed. Rather, because Greenberg Traurig had "communicated and worked" on the file providing advice relating to the litigation, they were arguably continuing to represent Michaels in relation to the contracts that were the basis of the malpractice claims. As such, there was sufficient evidence to constitute a triable issue of material fact regarding continuous representation, requiring the court to overturn the summary adjudication finding.

The Takeaway

While the legal malpractice statute of limitations is often interpreted strictly by the courts, the *Knapp* and *Michaels* cases show that the Courts will also apply the tolling provisions of CCP § 340.6(a) when appropriate to protect clients. Both cases allowed malpractice cases to survive summary judgment, despite a first blush reading suggesting the cases were filed too late. As such, any practitioner in the legal malpractice arena must become familiar with the reasoning applied in both *Knapp* and *Michaels* as both will surely be cited and relied upon by plaintiffs lawyers and trial courts when the statute of limitations is invoked.



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