

IN THE SUPREME COURT OF OHIO

MONA A. HAMILTON : On Appeal from the Warren County  
 : Court of Appeals, Twelfth  
 : Appellate District  
 Appellant :  
 :  
 -v- : 07-2363  
 :  
 :  
 JEFFREY KIRBY : Court of Appeals  
 : Case No. CA 2006-06-71  
 Appellee :

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MEMORANDUM IN SUPPORT OF JURISDICTION OF  
APPELLANT MONA A. HAMILTON

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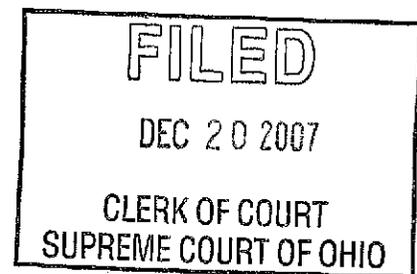


TABLE OF CONTENTS

	<u>Page</u>
EXPLANATION OF WHY THIS CASE IS A CASE OF PUBLIC OR GREAT GENERAL INTEREST AND INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION.....	1
STATEMENT OF THE CASE AND FACTS.....	1
ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW.....	2
<u>Proposition of Law No. I:</u> The statute of limitations is tolled when a first lawyer conceals evidence of malpractice and a second lawyer continues the concealment.....	2
<u>Proposition of Law No. II:</u> When the Ohio Supreme Court Disciplinary Counsel promises the public that complaints filed will be held confidential and the confidentiality is not waived by either side, the Supreme Court Counsel should not participate in depositions or other testimony against the citizen who has filed the complaint.....	8
CONCLUSION.....	10
PROOF OF SERVICE.....	10
APPENDIX:	<u>Appendix Page</u>
Opinion of the Warren County Court of Appeals (November 5, 2007).....	1
Judgment Entry of the Warren County Court of Appeals (November 5, 2007).....	9

EXPLANATION OF WHY THIS CASE IS A CASE OF  
PUBLIC OR GREAT GENERAL INTEREST AND  
INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION

This cause presents two critical issues for the general public represented by lawyers in the State of Ohio: (1) whether the statute of limitations is tolled when a first lawyer conceals evidence of malpractice and a second lawyer continues the concealment (2) whether the personnel and employees of the Ohio Supreme Court Disciplinary Counsel can participate in civil discovery, revealing confidential information and favoring one side of the litigation over the other. In this case not only did Mona Hamilton's first lawyer, Jeffrey Kirby, cover up evidence of his malpractice but a second lawyer, Karan Horan, continued to conceal the evidence of the malpractice from Mona Hamilton. Depositions were taken in the civil malpractice action and the Ohio Disciplinary Counsel, without asserting confidentiality or privilege, testified to the detriment of Mona Hamilton in favor of Jeffrey Kirby. The public is entitled to confidence in its lawyers and in the fairness and impartiality of the Disciplinary Counsel system set up by the Ohio Supreme Court.

STATEMENT OF THE CASE AND FACTS

Appellant, Mona A. Hamilton, *pro se*, filed a Complaint in the Warren County Court of Common Pleas on May 13, 2003 alleging a cause of action for legal malpractice against Karan M. Horan, attorney. On October 23, 2003, Appellant filed a motion to add additional defendant, Appellee Kirby. The trial court at first refused to grant leave to add the new party defendant. On December 29, 2003, the trial court did grant leave to add

Appellee as a party defendant. On January 8, 2004 Appellant obtained counsel to represent her. On January 16, 2004, Appellant filed a First Amended Complaint. On April 4, 2005, Appellee Kirby filed a Motion for Summary Judgment and a deposition from Ohio Disciplinary Counsel. On April 7, 2005, Plaintiff filed a memorandum in Opposition to Appellee Kirby's Motion for Summary Judgment. On December 13, 2005, the trial court granted Summary Judgment to Appellee Kirby. Final Judgment Entry was filed on June 1, 2006. This timely appeal was filed on June 13, 2006.

Appellant, Mona A. Hamilton, filed a complaint for legal malpractice alleging various deviations from the standard of care by lawyer Karan M. Horan (Judgment was entered against Horan on March 30, 2006). Following receipt of discovery, Appellant added Appellee Kirby to the lawsuit. Kirby had initially represented appellant in the underlying divorce proceeding and then sought legal representation from Horan. Although Appellant was dissatisfied with the legal representation of Kirby, she was assured by Horan that Kirby had not committed any error. Horan continued to represent Appellant until a third attorney replaced her. A representative of the Ohio Supreme Court Disciplinary Counsel provided a deposition in the civil proceeding and revealed various filings and statements made by Mona A. Hamilton in confidence.

#### ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

**Proposition of Law No. 1: The statute of limitations is tolled when a first lawyer conceals evidence of malpractice and a second lawyer continues the concealment.**

Even though Horan contends that she took the case of Appellant for the purpose of determining whether a Rule 60 (B) motion was appropriate, (Horan depo. Page 13, L. 4-6). Horan made a determination that Kirby had not committed any wrongdoing and conveyed that message to Appellant. (Horan depo. Page 29, L. 20-25). Horan never entered into a written fee contract with Appellant. (Horan depo. Page 8, L. 12).

Appellant was always under the impression that the poor result in her divorce case would be undone by the system with the help of Kirby, Horan or any other lawyer who would help her. As Kirby states (Kirby depo. Page 46, L. 22) “Well, I assume, like me, she didn’t like the decision we got from the judge and was looking at different directions on how to try to get around that.”

Kirby took no actions to determine a date of termination. (Kirby depo. Page 41-42). Kirby further admits that he did not seriously consider that Appellant had terminated him as he continued in his representation without moving the court for a determination of his status. (Kirby depo. Page 50-52). Certainly, Kirby, in his fiduciary capacity, had the ability to terminate the lawyer client relationship, but he chose not to do so. Thomas Eagle, Appellant’s “third attorney,” states in his affidavit that Local D.R. Rule 1.12 “Withdrawal of Counsel” was in force at the time Kirby and Horan represented Appellant. In fact, Kirby freely acknowledges this fact in his deposition. (Kirby depo. Page 41-42). Kirby further admits that during the time he was representing Appellant he was very much concerned about her mental and emotional state. (Kirby depo. Page 38, L. 6-9). He further admits that being left homeless was a major concern for Appellant. (Kirby depo. Page 38, L. 18-21).

In legal malpractice cases, a client is often unclear as to whether or not the unfavorable outcome in her case was the result of her lawyer's negligence. In fact, Appellant's second lawyer, Karan Horan, kept informing her that Kirby had done no wrong. At the time of the divorce decree Appellant only knew she was unhappy with her lawyer and felt that her husband had tricked her. Although Appellant may have been upset that her lawyer, Kirby, had not introduced evidence that she had provided, had been too friendly with the other lawyer, had continued to represent her before the court after she thought she had taken away his authority to help the court make the divorce decree final, Appellant still felt that Kirby had a powerful tie with the trial judge, either through his golfing ventures (See Mona Hamilton affidavit) or his political connections. Further, Hamilton's lawyer was continuing to tell her that Kirby had done no wrong and Appellant, a person with mental and emotional instability according to Kirby, did not know what steps to take or whether to take additional steps to terminate her lawyer client relationship.

Even Judge Flannery jumped on the bandwagon to point out the emotional and mental frailties of Appellant:

"The court finds that wife [Mona Hamilton] is a rather sad individual who suffers from **obvious depression** which is compounded by this divorce." (emphasis added to Page 3 of Decision of April 19, 2001 in Case No. 00DR25221).

With everyone realizing that Appellant was incapable of making truly rational decisions, that she was desperate to save her marriage, that she had no understanding of why she lost everything in the divorce, that she was dependent upon Kirby and Horan to jointly modify the mess, there remains a very distinct factual question as to whether she

actually terminated the lawyer client relationship with Kirby until she sued him in October 2003.

Appellant states in a document attached to her affidavit and dated January 8, 2004 what she meant by firing Kirby:

“May 15, 2001, I fired Jeff Kirby, telling him that he was not to sign anything without my knowledge, he filed June 4, 2001 Divorce decree without my knowledge.” Additionally, once Appellant discovered, in October 2001, the June 3, 2001 and the June 11, 2001 letters between Kirby and Flannery, she then filed her lawsuit against Kirby, first pro se and then with the assistance of counsel.

The date of a discharge letter is not necessarily determinative of the termination of an attorney-client relationship. Failure to properly forward files to subsequent counsel may delay discovery of malpractice. In the case at bar, there was a failure of both Kirby and Horan to provide Appellant with the June 2001 letters and Horan further concealed the malpractice of Kirby by informing Appellant that Kirby had done nothing wrong. *Monastra v. D’Amore*, 111 Ohio App.3d 296, 676 N.E.2d 132 (1996); *Okocha v. Fehrenbacher*, 101 Ohio App.3d 309, 655 N.E.2d 744 (1995). Unless there has been an unambiguous act by the attorney or the client terminating the relationship, the issue of when the relationship ended is to be determined by the jury. *Mobberly v. Hendricks*, 98 Ohio App.3d 839, 649 N.E.2d 1247 (1994).

Ohio Revised Code Section 2305.11(A) provides that a legal malpractice claim must be filed within one year after the cause of action accrued. A cause of action accrues upon a cognizable event whereby a client discovers or should have discovered that his injury was related to her attorney’s act or non-act and the client is put on notice of a need

to pursue his possible remedies against the attorney or when the attorney-client relationship for that particular transaction or undertaking terminates, whichever occurs later. A cognizable event is an event sufficient to alert a reasonable person that in the course of legal representation her attorney committed an improper act. *Crystal v. Wilsman*, 151 Ohio App.3d 512; 2003 Ohio 427; 784 N.E.2d 764; 2003 Ohio App. LEXIS 416.

In determining the cognizable event, the focus should be on what the client was aware of and not an extrinsic judicial determination. *Vagianos v. Halpern* (Dec. 14, 2000) Cuyahoga App. No. 76408, 2000 Ohio App. LEXIS 5856, quoting *McDade v. Spencer (1991)*, 75 Ohio App.3d 639, 600 N.E.2d 371; *Crystal v. Wilsman*, 151 Ohio App.3d 512; 2003 Ohio 427; 784 N.E.2d 764; 2003 Ohio App. LEXIS 416.

There is no question that Appellant was displeased with her lawyer, Kirby, and felt cheated and deceived by her husband, the other lawyer and the other actors in the court system. She also was displeased that Kirby had not presented some evidence that she wanted presented, but Horan represented to her that it was not error for Kirby to refuse to do that and that the decision would not have been different. It was not until the cognizable event of Appellant obtaining the June 3, 2001 and the June 11, 2001 letters between Kirby and the trial judge that Appellant made the connection between the inaction of her lawyer, Kirby and the unfavorable decision in her divorce case. (Hamilton affidavit paragraph 31).

Summary Judgment against a plaintiff based on the statute of limitations for legal malpractice is error where there is a question of fact as to when the cognizable event occurred. *Landis v. Hunt*, 80 Ohio App.3d 662, 610 N.E.2d 554 (1992). Plaintiff is

entitled to have the affidavit considered by the trial court, even though Kirby may argue that there is an inconsistency between her affidavit and deposition testimony. (Appellant does not see an inconsistency but Kirby is clearly grasping at this argument). Appellant was entitled to have any conflicting evidence construed in her favor. A factual dispute has been created as to at what point Appellant became aware of her injury to such an extent that a cognizable event occurred. *Kollmorgan v. Raghavan*, 2000 Ohio App. LEXIS 2120. Civ. R. 56 (C) clearly indicates that evidence must be construed in the light most favorable to the party defending against summary judgment. *Bowen v. Kil-Kare, Inc.* (1992), 63 Ohio St.3d 84, 88, 585 N.E.2d 384; *Fryberger v. Lake Cable Recreation Assn.* (1988), 40 Ohio St.3d 349, 350, 533 N.E.2d 738, 739.

A client may trust the advice of their lawyer without having their subsequent legal remedies prejudiced. The causes of legal problems and the effects of certain actions and strategies are not within the realm of the layman's knowledge. Otherwise, we would not need trained lawyers. The client may have suspicions about certain results, but the client will rely almost wholly on the advice and judgment of the lawyer, and under the usual circumstances of each case, is bound to do so. In this case, Appellant relied upon Karan Horan who told her in no uncertain terms that Kirby did nothing wrong in his representation. (See Horan deposition). If there is no cause of action, the statute of limitations cannot begin to run. What is so astounding in this case is that Horan had the June 2001 letters between Kirby and Flannery, but never bothered to consult with Appellant about those. *Christian v. McDonald*, 2000 Ohio App. LEXIS 3346. In the *McDonald* case, the cognizable event was the date upon which the new doctor informed the patient that he had an injury due to the surgery that was performed by the previous

doctor. Horan continually informed Appellant that Kirby had done absolutely nothing wrong.

The statute of limitations was tolled where the patient requested but did not receive medical records that would have alerted him to the appropriate malpractice claim. *McCulley v. Good Samaritan Hosp.*, 131 Ohio App.3d 341, 722 N.E.2d 563 (1998). By analogy the statute of limitations should be tolled in this case while Kirby's fellow colleague in law, Horan, continued to conceal from Appellant the Flannery letters.

A cognizable event has been defined as some noteworthy event, which does or should alert a reasonable person-client that an improper legal action or inaction has taken place. *Allenius v. Thomas* (1989) 42 Ohio St.3d 131, 134, 538 N.E.2d 93, 96. In the case of *Fugate v. Volck*, 79 Ohio App.3d 263; 607 N.E.2d 78; 1992 Ohio App. LEXIS 2053, the patient in a dental malpractice case was assured by a second dentist that the condition she was experiencing was not related to prior inappropriate treatment.

**Proposition of Law No. II: When the Ohio Supreme Court Disciplinary Counsel promises the public that complaints filed will be held confidential and either side does not waive the confidentiality, the Supreme Court Counsel should not participate in depositions or other testimony against the citizen who has filed the complaint.**

In the trial court's entry granting summary judgment to Appellee Kirby, the court stated that it was relying on the deposition and the complaint letters addressed by Appellant to the Ohio Disciplinary Counsel. (T.d. 142). The court relied upon these complaints over the objections of Appellant. Yet, when the case on behalf of the Appellant against Horan was going to trial the trial court quashed the Appellant's

subpoenas for some of the same information from Disciplinary Counsel that was admitted to support the granting of the Kirby Summary Judgment.

There is no indication in the record that Appellee Kirby, during the disciplinary proceedings ever waived any claim of confidentiality and there is no evidence that he ever agreed that the proceedings would be public rather than private. *Gov. Bar R. V*. The Supreme Court of Ohio has established that statements made in the course of an attorney disciplinary proceeding enjoy an absolute privilege against being used against the maker of the statements. *Hecht v. Levin*, 66 Ohio St.3d 458; 1993 Ohio 110; 613 N.E.2d 585; 1993 Ohio LEXIS 1308 (June 23, 1993). The court also held in the *Hecht* case that a complaint filed with a grievance committee or the disciplinary counsel is part of a judicial proceeding and the grievant, in this case, Appellant, is entitled to “absolute immunity.” Yet, the trial court has used the words of the Appellant against her in these proceedings.

The case of *Dylan Everage v. Elk and Elk*, 159 Ohio App.3d 220, 2004 Ohio 6186, 823 N.E.2d 516, 2004 Ohio App. LEXIS 5667 (November 22, 2004) was used as a basis to quash the subpoenas issued by Appellant for the information that the trial court used against the Appellant. In the *EVERAGE* case, just in the case at bar, there was no waiver of confidentiality of the proceedings under Gov. Bar R. V (11)(E)(1)(a)-(c). Of course, the trial court should not be able to in one instance contend that the right to privacy has been waived and then immediately determine that it has not been waived.

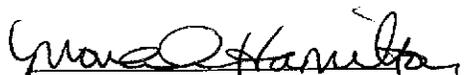
Appellant still contends that the termination rule has not been met in determining that the statute of limitations has expired. The trial court would have had no basis for even stretching an argument to support the position that more than one year had expired from the time of termination of Kirby’s representation of Appellant and the filing of the

lawsuit, had it not been for the improper use of the correspondence of Appellant to the Disciplinary Counsel.

**CONCLUSION**

Appellant filed her action against Appellee Kirby within the applicable statute of Limitations. Plaintiff requests that this Court reverse the Summary Judgment entered by the trial court and affirmed by the Court of Appeals and remand this matter for trial on the remaining issues as to Appellee Kirby.

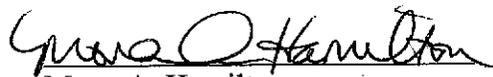
Respectfully Submitted,

  
Mona A. Hamilton, pro se

**CERTIFICATION OF SERVICE**

I hereby certify that a copy of the foregoing Memorandum was sent to the following counsel for Appellee by ordinary U.S. Mail postage prepaid on December 18, 2007:

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IN THE SUPREME COURT OF OHIO

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Appellant	:	
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	:	
JEFFREY KIRBY	:	Court of Appeals
	:	Case No. CA 2006-06-71
Appellees	:	

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APPENDIX

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APPENDIX:

Appendix Page

Opinion of the Warren County Court of Appeals (November 5, 2007).....	1
Judgment Entry of the Warren County Court of Appeals (November 5, 2007).....	9

IN THE COURT OF APPEALS OF OHIO  
TWELFTH APPELLATE DISTRICT  
WARREN COUNTY

COURT OF APPEALS  
WARREN COUNTY  
FILED

NOV - 5 2007

*James L. Spaeth, Clerk*  
LEBANON OHIO

MONA A. HAMILTON, :  
 :  
Plaintiff-Appellant, : CASE NO. CA2006-06-071  
 :  
- vs - : OPINION  
 : 11/5/2007  
JEFFREY KIRBY, :  
 :  
Defendant-Appellee. :

CIVIL APPEAL FROM WARREN COUNTY COURT OF COMMON PLEAS  
Case No. 03CV60932

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.....  
**FAIN, J.**

{¶1} Plaintiff-appellant, Mona Hamilton, appeals from a summary judgment rendered against her on her legal malpractice claim against defendant-appellee, Jeffrey T. Kirby. Hamilton contends that the record demonstrates the existence of issues of fact with regard to whether she filed suit after the expiration of the applicable statute of limitations. She further contends that the trial court erred by considering, as evidence, statements made by her with regard to a grievance against Kirby she filed with the Ohio Disciplinary Counsel.

{¶2} We conclude that the record demonstrates that reasonable minds could only



conclude that Hamilton's malpractice suit against Kirby was filed outside of the one-year statute of limitations, so that the trial court did not err by rendering summary judgment. We further conclude that the trial court did not abuse its discretion by considering the contents of the grievance filed by Hamilton as evidence in the instant case. Accordingly, the judgment of the trial court is affirmed.

I

{¶3} In late 2000, Hamilton retained Kirby to represent her with regard to a divorce action filed by her husband. Hamilton, who did not want a divorce, requested Kirby to oppose the action. A hearing was held in April 2001, following which the trial court rendered a decision granting Mr. Hamilton's complaint for divorce.

{¶4} Some time in May 2001, Hamilton retained attorney Karan Horan to represent her with regard to pursuing relief from the trial court's decision. Thereafter, on May 15, during a telephone call, Hamilton discharged Kirby. On May 22, 2001 Hamilton executed a release, which stated: "I, Mona Hamilton, hereby request that all my files, documents, paperwork, etc., regarding my legal separation/divorce be released to my present attorney, Karan M. Horan."

{¶5} Thereafter, Kirby reviewed the proposed divorce decree prepared by Mr. Hamilton's attorney. On June 3, 2001, Kirby sent a letter to the trial judge indicating some disagreements with the proposed decree. The divorce decree was filed on June 4, 2001.

{¶6} On April 4, 2002, Hamilton filed a grievance against Kirby with the Office of Disciplinary Counsel of the Supreme Court of Ohio. In the grievance, Hamilton alleged that she had been rendered homeless due to Kirby's failure to "adequately" represent her interests. She further alleged that Kirby failed to present certain evidence to the trial court regarding her marital finances, and that he failed to file a motion for contempt after she had asked him to do so. She also claimed that Kirby failed to obtain necessary records prior to

the divorce hearing. Hamilton stated, in the grievance, that she had terminated Kirby's representation on May 15, 2001. In a letter dated May 20, 2002, which Hamilton filed with Disciplinary Counsel, Hamilton stated that she consulted a third attorney who, after reviewing her file, advised her to file a malpractice suit against both Horan and Kirby.

{¶7} On May 13, 2003, Hamilton, acting pro se, filed a complaint for malpractice against Horan, in which she alleged that Horan had promised, but failed, to file a motion for a new trial in the divorce action. On October 23, 2003, she filed a motion seeking to add Kirby as a defendant to the suit. On December 29, 2003, the trial court issued an order giving Hamilton 21 days in which to add Kirby as a defendant. Hamilton then retained counsel, who filed an amended complaint against both Horan and Kirby on January 16, 2004.

{¶8} Following discovery, Hamilton and Kirby filed motions for summary judgment. Of relevance to this appeal, Kirby argued that Hamilton's complaint against him was not filed within the statutory time limit of one year.

{¶9} The trial court, in rendering summary judgment against Hamilton, found that the attorney-client relationship between Hamilton and Kirby had been terminated in May 2001, and that Hamilton had been aware of the existence of her malpractice claims as early as May 2002. Thus, the trial court concluded that Hamilton's suit, which was not filed until January 2004, was barred by the statute of limitations set forth in R.C. 2305.11.

{¶10} From this judgment, Hamilton appeals. The appeal was argued to this court on May 1, 2007. During the argument, it was noted that a transcript of Hamilton's deposition had been filed of record, but was missing from the record. This court asked counsel for the parties to take steps to supplement the record with a copy of the deposition.

{¶11} On June 15, 2007, Kirby filed a motion to affirm the judgment of the trial court. The motion is based upon the claim that Hamilton has failed to provide a complete record of the proceedings below, and that she has refused to stipulate to the authenticity of Kirby's

copy of the deposition. Thereafter, Hamilton filed a motion "for extension of time to provide complete and accurate copy of deposition." In the motion, Hamilton intimates that the original deposition has been deliberately removed from the record by either Kirby or another officer of the court. The motion states that Hamilton "is willing to stipulate a copy." However, the motion also states that Hamilton "moves this Court for an Order requiring that [a] copy of the deposition be deposited with the Clerk." These motions have been overruled by separate order as moot given that the parties filed a copy of the deposition.

II

{¶12} Hamilton's sole assignment of error states as follows:

{¶13} "THE TRIAL COURT ERRED BY GRANTING SUMMARY JUDGMENT TO APPELLEE, JEFFREY T. KIRBY."

{¶14} Hamilton contends that the trial court erred in rendering summary judgment against her. Specifically, she claims that the trial court erred by determining that she had terminated the attorney-client relationship with Kirby and by concluding that a cognizable event had occurred that alerted her to the need to file suit. She further claims that the trial court erred by considering statements contained in a grievance she filed against Kirby with the Ohio Disciplinary Counsel.

{¶15} A court may properly render summary judgment when: (1) there is no genuine issue as to any material fact; (2) the moving party is entitled to judgment as a matter of law; and (3) reasonable minds can come to only one conclusion, and that conclusion is adverse to the nonmoving party, who is entitled to have the evidence construed most strongly in his or her favor. Civ.R. 56.

{¶16} R.C. 2305.11(A) provides, in relevant part: "[a]n action for malpractice other than an action upon a medical, dental, optometric, or chiropractic claim, \* \* \* shall be commenced within one year after the cause of action accrued \* \* \*." The Ohio Supreme

Court has stated that "\* \* \* an action for legal malpractice accrues and the statute of limitations begins to run when there is a cognizable event whereby the client discovers or should have discovered that his injury was related to his attorney's act or non-act and the client is put on notice of a need to pursue his possible remedies against the attorney or when the attorney-client relationship for that particular transaction or undertaking terminates, whichever occurs later." *Zimmie v. Calfee, Halter & Griswold* (1989), 43 Ohio St.3d 54, 58. A cognizable event is defined as an event that is sufficient to "alert a reasonable person that in the course of legal representation his attorney committed an improper act." *Spencer v. McGill* (1993), 87 Ohio App.3d 267, 278. "Knowledge of a potential problem starts the statute to run, even when one does not know all the details." *Halliwell v. Bruner* (Dec. 14, 2000), Cuyahoga App. No. 76933, \*6. "[C]onsulting with an attorney itself indicates a cognizable event." *Id.* at \*7.

{¶17} We begin with the issue of termination. Hamilton contends that Kirby's representation was never terminated. She claims that the May 15, 2001 phone call to Kirby did not terminate that attorney-client relationship. She claims that the purpose of the call was merely to inform Kirby that he should not sign any documents without first consulting with her. She further notes that Kirby did not file a notice of termination of representation, as required by the Warren County Common Pleas Local Rules.

{¶18} We note that the record is replete with evidence that Hamilton did terminate the attorney-client relationship. First, throughout her statements to the Disciplinary Counsel, Hamilton refers to the fact that she had terminated Kirby's representation and that she had employed Horan as counsel. Additionally, Hamilton issued a release to Kirby seeking to transfer to Horan all documents relating to the divorce. In the release, Hamilton referred to Horan as her "present attorney." During this time, Hamilton was consulting with two other attorneys regarding her belief that Kirby had failed to properly represent her interests.

Finally, in the amended complaint, Hamilton alleged that "Kirby continued to hold himself out as [her] legal representative after [she] had terminated his services." Based upon this evidence, we conclude that a reasonable juror would be compelled to find that the attorney-client relationship was terminated as of May 15, 2001.

{¶19} We next turn to the issue of whether there was a cognizable event alerting Hamilton to the need to pursue relief against Kirby. Hamilton contends that there was not. Specifically, she argues that she had no knowledge of a potential malpractice claim against Kirby. In support, she claims that Horan had assured her that Kirby had not acted improperly. She further claims that her first knowledge of Kirby's alleged negligence came in October 2003, when she discovered Kirby's June 2001 letter to the domestic relations judge and the judge's letter in response thereto. She contends that Kirby concealed these letters, and that this concealment tolled the running of the statute of limitations.

{¶20} We disagree with Hamilton's assessment of the facts. Again, we note that in her grievance filed with Disciplinary Counsel, Hamilton specifically states that she lost her home due to Kirby's failure to represent her adequately. She further claims that Kirby had failed to present relevant evidence and file motions, despite her directions to do so. She also states that a third attorney whom she consulted had advised her to file a malpractice action against Kirby.

{¶21} Furthermore, there is no evidence to support Hamilton's conclusory assertion that Kirby concealed the June 2001 letters between himself and the trial court. Indeed, it appears that the letters were provided to Horan and were in Horan's possession following the execution of the release by Hamilton. Regardless of whether Horan improperly concluded that Kirby did not act negligently or failed to disclose the June letters after receiving Hamilton's documents file from Kirby, we conclude that the statements contained in Hamilton's grievance demonstrate that Hamilton was on notice of a potential problem with

Kirby's representation of her. Based upon this record, we conclude that a reasonable juror could reach only one conclusion – that Hamilton was aware of her potential claims as early as April 2002.

{¶22} Finally, Hamilton cites *Hecht v. Levin*, 66 Ohio St. 3d 458, 1993-Ohio-110, for the proposition that the trial court erred by considering the statements contained in her grievance. We find no merit to this claim. In *Hecht*, the Supreme Court held that statements made in a grievance proceeding against an attorney could not later be used by the attorney as a basis for filing a libel and slander action against the complainant. *Id.* This holding was based upon the established principle that: "A statement made in a judicial proceeding enjoys an absolute privilege against a defamation action as long as the allegedly defamatory statement is reasonably related to the proceedings in which it appears. *Surace v. Wuliger* (1986), 25 Ohio St.3d 229, 25 OBR 288, 495 N.E.2d 939, syllabus." *Id.* at 460.

{¶23} In the case before us, Kirby is not suing Hamilton for defamation, and so the fact that Hamilton's statements to Disciplinary Counsel may be privileged from liability for defamation is immaterial. These statements are not being offered to establish an action for defamation, but to show Hamilton's state of mind and knowledge with respect to Kirby's representation of her. For that purpose, they are admissible.

{¶24} We conclude that the evidence establishes that the attorney-client relationship between Hamilton and Kirby was terminated in 2001. We further conclude that the evidence demonstrates, as a matter of law, that Hamilton was aware of her potential malpractice claims as of April 2002. Given that Hamilton failed to file her action against Kirby until January 2004, we conclude that she failed to take action within the time limitation set forth in R.C. 2305.11(A). Accordingly, we conclude that the trial court did not err by rendering summary judgment against Hamilton.

{¶25} Hamilton's sole assignment of error is overruled.

III

{¶26} Hamilton's sole assignment of error having been overruled, the judgment of the trial court is affirmed.

WOLFF, J., and BROGAN, J., concur.

(Fain, J., Wolff, J., and Brogan, J., of the Second District Court of Appeals, sitting by assignment of the Chief Justice of Ohio, pursuant to Section 5(A)(3), Article IV, of the Ohio Constitution.)

This opinion or decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: <http://www.sconet.state.oh.us/ROD/documents/>. Final versions of decisions are also available on the Twelfth District's web site at: <http://www.twelfth.courts.state.oh.us/search.asp>

COURT OF APPEALS  
WARREN COUNTY  
FILED

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*James P. Spoth, Clerk*  
LEBANON OHIO

IN THE COURT OF APPEALS OF OHIO  
TWELFTH APPELLATE DISTRICT  
WARREN COUNTY

MONA A. HAMILTON

*Appellant*

v.

JEFFREY KIRBY

*Appellee*

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Trial Court Case No. 03CV60932

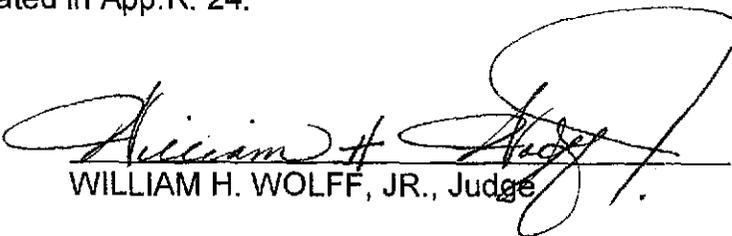
**JUDGMENT ENTRY**

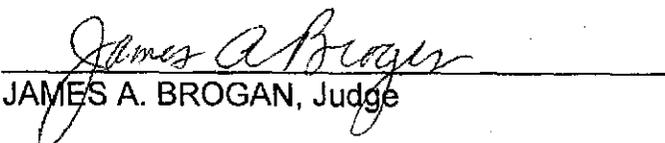
.....

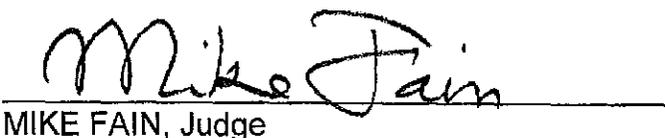
The assignment of error properly before this court having been ruled upon as heretofore set forth, it is the order of this court that the judgment or final entry herein appealed from be, and the same hereby is affirmed.

It is further ordered that a mandate be sent to the Warren County Court of Common Pleas for execution upon this judgment and that a certified copy of this Judgment Entry shall constitute the mandate pursuant to App.R. 27.

Costs to be paid as stated in App.R. 24.

  
WILLIAM H. WOLFF, JR., Judge

  
JAMES A. BROGAN, Judge

  
MIKE FAIN, Judge



\* W C 0 3 3 - 2 0 0 6 - 0 6 - 0 7 1 \*