

Judgment alone not enough to sustain claim

Imagine you are defending a client who is on trial and you fail to raise dispositive defenses resulting in a jury verdict of several hundred thousand dollars. To complicate matters, you also fail to file a timely notice of appeal from the judgment even though there were some rather debatable rulings by the trial court. Naturally, faced with this situation your client responds by filing a legal malpractice claim against you. Will you have to pay the client damages since it is clear you breached the standard of care? Not necessarily.

In legal malpractice claims, damages are never presumed and the client bears the burden of proving that he suffered an actual monetary injury because of the attorney's breach of duty. Even when it is apparent that an underlying judgment would not have been entered but for the attorney's negligence, there is still no award against the lawyer if the facts show the judgment was never collected and the client has no ability to pay.

Injuries resulting from legal malpractice claims are not personal injuries but pecuniary injuries to intangible property interest. Hence, a malpractice action by a client against an attorney has no basis unless the client has sustained an actual monetary loss as a result of the negligence of the lawyer. The case of *Chicago Red Top Cab Association v. Gaines*, 49 Ill.App.3d 332, 364 N.E.2d 328 (1977), is often cited in support of the actual monetary loss rule for legal malpractice claims in Illinois.

In many cases the actual monetary loss rule doesn't come into play. If the facts show that the attorney breached a duty to a client, the chances are the client suffered some monetary loss as a result, assuming proximate cause is not an issue. This is particularly true when it is shown that the attorney's negligence resulted in the loss of an underlying claim or defense. If the client's personal injury suit was unnecessarily barred as a result of a lawyer's negligence, all the client needs to show is that without the negligence, the client would have been able to recover against the underlying defendant. Most often the defendant has some assets, particularly in this age of mandatory auto insurance. Similarly, if the attorney's negligence resulted in an avoidable judgment being entered against the client, the issue of the client's solvency to pay the judgment often never arises.

When a judgment is entered against a client in an underlying case as a result of an attorney's negligence, Illinois courts have held that the judgment alone can provide evidence of damages "absent evidence to the contrary." *Gruse v. Belline*, 138 Ill.App.3d 689, 486 N.E.2d 399 (2d Dist. 1985). In *Gruse*, the Illinois Appellate Court allowed an unpaid judgment to serve as evidence of actual damages in a legal malpractice case because there was no "evidence to the contrary." In particular, there was no evidence in the record in *Gruse* that the judgment was uncollectible.

Unlike some courts outside of Illinois, the *Gruse* court did not hold that an unpaid judgment alone may support a jury award against the lawyer in the amount of the judgment. This is often referred to as the judgment rule. Courts commonly apply the judgment rule against insurers in bad-faith actions.

Legal malpractice

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Gruse appears to preclude adoption of the judgment rule for legal malpractice cases in Illinois.

What if the client in the above example was "judgment-proof"? Suppose a corporate entity sued a lawyer, claiming a large judgment was entered against the entity as a result of the lawyer's negligence at trial and failure to file a timely appeal. Discovery demonstrates that the corporation did not operate an existing business at the time of the judgment. In fact, the entity was a defunct, judgment-proof corporation that had no ongoing business or assets and had not filed any tax returns

until several years before the judgment. The facts also might show that the corporate entity hadn't paid any amount of the judgment, yet the judgment was still viable at the time of the malpractice claim. Under this scenario, the wisdom of the *Gruse* court's holding that a judgment alone is evidence of monetary loss absent "evidence to the contrary" becomes apparent.

Under *Gruse*, summary judgment in favor of the attorney in the above example is appropriate—despite the allegations of wrongdoing since there is no question the client did not and could not incur actual monetary harm as a result of the alleged negligence.

Under the judgment rule, the uncollected judgment could suffice to provide evidence of damages and support a jury award in the amount of the judgment even though the evidence also showed the judgment remained unpaid and could not be paid. This result would either cause a windfall for the client or result in the client serving as a mere conduit for the collection of the judgment by the underlying plaintiff against the lawyer. Either result is unacceptable, particularly the latter since it would amount to a de facto assignment of the legal malpractice claim to the judgment creditor, which is contrary to Illinois law.

At the opposite end of the spectrum from the judgment rule is the prepayment rule, which requires a plaintiff in a malpractice action to show actual payment of a judgment without regard to ability to pay in the future in order to sustain a verdict. The prepayment rule goes to the opposite extreme by requiring actual payment. This could result in aggravated harm to the client in a situation in which solvency is not even in issue. *Gruse* strikes a balance between the prepayment rule and the judgment rule.

By not adopting the judgment rule, the *Gruse* court upheld the requirement that a plaintiff in a legal malpractice action must demonstrate actual monetary loss. *Gruse* simply allows the judgment itself to serve as evidence of a monetary loss but also leaves the door open to the defense to demonstrate that the plaintiff could not incur a loss despite the judgment.

The *Gruse* rule also should limit the amount of any judgment against an attorney/defendant even when liability exists if the evidence shows the client has not and could not ever pay the full amount of the underlying award. In effect, *Gruse* ensures that any recovery by the client remains limited to the amount of the actual monetary loss.