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Legal Malpractice in Ohio: A New Horizon?

by Monica A. Sansalone

THE LEADING NATIONAL TREATISE ON LEGAL MALPRACTICE put it unequivocally: "In Ohio, causation needs clarification by the state's supreme court." 4 Mallen & Smith, Legal Malpractice 688 (2007 ed.), Section 30:52. This comment, prompted by the 1997 Supreme Court of Ohio decision in *Vahila v. Hall*, 77 Ohio St.3d 421, 1997-Ohio-259, came in the wake of confusing and contradictory decisions over the last decade by Ohio lower courts grappling with the standard of proof in legal malpractice cases.

The decision in *Vahila* made some sense based upon its particular facts but proved to be difficult in illuminating other corners of the legal malpractice terrain. The door was wide open for plaintiffs' lawyers and courts to distill *Vahila* into a single broad proposition: The "case-within-a-case" rule in Ohio no longer exists. The result was a chaotic "free-for-all" where cases which should have been dismissed by trial courts were instead put into the hands of jurors with nearly free rein to follow their impulses unconstrained by coherent jury instructions.

Taking a look at *Vahila*, the alleged malpractice there stemmed from the failure of the lawyer defendants to properly disclose potential consequences flowing from plea bargains entered into by their clients. Given the allegations, the Vahilas arguably sustained damage or loss regardless of whether they would have been successful in the underlying matter. As a result, the Supreme Court of Ohio rejected the blanket proposition that a legal malpractice plaintiff must, in *every instance*, prove that he would have prevailed in the underlying case in order to prove causation. In some cases, it may be enough for a legal malpractice plaintiff to prove merely that he lost the opportunity to realize a better outcome.

Specifically, the problems spawned by *Vahila* came from dicta that a plaintiff "may be required, depending on the situation, to provide *some evidence* of the evidence of the merits of the underlying claim," without proving that he probably would have actually prevailed. Id. 77 Ohio St.3d at 428 (emphasis added).

Lawyers prosecuting malpractice claims seized on the "some evidence" language advocating that the "case-within-the-case doctrine" was no longer law in Ohio in any circumstance. They argued that a legal malpractice plaintiff need only to demonstrate "some evidence" of the merits of the underlying claim in order to prevail, regardless of the nature of the claimed malpractice. As the Supreme Court would later clarify, this was never the intention of the *Vahila* decision. Specifically, the Supreme Court has disavowed absurd results flowing from *Vahila* in two recent cases.

The Paterek Case

This erroneous reading of *Vahila* was illustrated most profoundly by the Eleventh District Court of Appeals in *Paterek v. Peterson & Ibold*, 11th Dist. No. 2005-G-2624, 2006-Ohio-4179. In that case, the Court of Appeals, relying on *Vahila*, held that a legal malpractice plaintiff could recover an amount greater than the maximum amount that the parties stipulated would have been collectible from the underlying tortfeasor had the attorney malpractice not occurred. The Eleventh District concluded that collectibility of the underlying judgment is irrelevant in a subsequent legal malpractice case because a plaintiff is no longer required to prove the "case-within-the-case" pursuant to its interpretation of *Vahila*.

The Eleventh District holding would have resulted in a windfall to the plaintiff, who would have benefitted from his attorney's malpractice in that he would have recovered more money from his attorney than could have been collected from the underlying tortfeasor. After exercising discretionary jurisdiction, the Supreme Court of Ohio unanimously reversed, holding "that in an attorney-malpractice case, proof of the collectibility of the judgment due to the malpractice is an element of the plaintiff's claim against the negligent attorney." *Paterek v. Peterson & Ibold*, 2008-Ohio-2790, ¶ 1. In writing for the Court, Justice Pfeifer relied on *Vahila* for the decision.

With *Paterek*, it became clear that the Supreme Court of Ohio was on the road to clarifying legal malpractice law in Ohio without abandoning *Vahila*.

The *Environmental Network* Case

On the heels of *Paterek* came *Environmental Network Corp. v. Goodman Weiss Miller, L.L.P.*, 2008-Ohio-3833, which specifically clarified the standard of proof required in legal malpractice actions in Ohio, affirming that the "case-within-the-case doctrine" is still a central part of Ohio legal malpractice jurisprudence.

The Environmental Network plaintiffs claimed that their attorneys coerced them into accepting a settlement on the second day of trial in the underlying case. They argued that, but for their attorneys' breach of duty in coercing the settlement, they would have tried their case to conclusion and obtained a better result. At the legal malpractice trial, the Environmental Network plaintiffs did not attempt to prove that they would have achieved a better result had the underlying case been tried to a verdict. The trial court instructed the jury that they could find for the plaintiffs if the plaintiffs presented merely "some evidence" of the merit of the underlying case, an instruction based on *Vahila*. The jury returned a verdict for plaintiffs. On appeal, the Eighth District Court of Appeals affirmed the verdict, agreeing with the trial court that the Environmental Network plaintiffs were required only to present "some evidence" of the merits of their claim in the underlying case.

In arguments made to the Supreme Court of Ohio, the example of the A/B settlement demonstrated

the problems with the "some evidence" standard:

> Following an arms' length reasonable settlement of litigation between A and B, both A and B could each sue their respective attorneys for malpractice in connection with the settlement, and both A and B could recover from the attorneys the value of all relief sought in the litigation, even though it is literally impossible that both A and B could have prevailed had the case been tried to a conclusion.

In reversing the Eighth District, Justice O'Connor, writing for the majority, stated that the "case-within-the-case doctrine" is the appropriate tool to analyze the claim where the plaintiff's sole theory for recovery is that if the underlying matter had been tried to conclusion, he would have received a more favorable outcome than he obtained in settlement. The Supreme Court did not overrule *Vahila*, but clarified it by stating:

> ***in holding that not *every* malpractice case will require that the plaintiff establish that he would have succeeded in the underlying matter, the Vahila court necessarily implied that there are *some* cases in which the plaintiff must so establish. This is one such case." Id. at ¶ 17. (Emphasis in original.)

The Syllabus of the Court states:

> When a plaintiff premises a legal-malpractice claim on the theory that he would have received a better outcome if his attorney had tried the underlying matter to conclusion rather than settled it, the plaintiff must establish that he would have prevailed in the underlying matter and that the outcome would have been better than the outcome provided by the settlement. *Vahila v. Hall* (1997), 77 Ohio St.3d 421, 674 N.E.2d 1164, clarified.

Looking Ahead: What Does The Future Hold For Ohio Legal Malpractice Cases?

In the past year, the Supreme Court made important strides in clarifying legal malpractice law in Ohio. With *Paterek* and *Environmental Network*, the standard of proof required in legal malpractice cases has again been raised to a level consistent with better-reasoned decisions in a majority of states in the union.

Before *Vahila*, the law was clear that the "case-within-the-case" standard of proof for proximate causation was applicable to legal malpractice cases of virtually every stripe. The *Vahila* Court recognized the doctrine as having utility when applicable, but sought to emphasize that the doctrine was not to be applied in every instance, and that exceptions to the rule did exist. However, after *Vahila*, plaintiffs' advocates, seizing on the *Vahila's* "some evidence" language, declared the doctrine dead in Ohio. In many instances, these advocates convinced lower courts to apply the "some evidence" standard in cases where recoverability of the claimed damage should rightly have required proof that the outcome in the underlying case would have been better had the malpractice not occurred.

The sound reasoning in *Environmental Network* and *Paterek* has swung the pendulum back to a well-balanced center, restoring Ohio to its rightful place among those states whose legal malpractice jurisprudence is respected around the country. Plaintiffs' advocates will have to contend with the "case-within-the-case" doctrine again, and they will be required to prove collectibility as part of their case-in-chief on proximate cause and damages.

As a final note, there appear to be more developments in legal malpractice law on the horizon in Ohio. In September 2008, the Supreme Court of Ohio agreed to resolve an unsettled question of state law in a case certified to it by the Sixth Federal Circuit Court of Appeals. The question, of significant interest to lawyers in Ohio, is:

Under Ohio law, can a legal malpractice claim be maintained directly against a law firm when all of the relevant principals and employees have either been dismissed from the lawsuit or were never sued in the first instance?

> See *National Union Fire Insurance Company of Pittsburgh, PA v. Wuerth*, No. 08-1334.

How the Supreme Court answers the question presented in *Wuerth* will have further significant impact on how lawyer malpractice cases are prosecuted and defended in Ohio. ■

Monica Sansalone is a partner with Gallagher Sharp. She can be reached at (216) 522-1154 or msansalone@gallaghersharp.com.