

## **Appellate Division Rules that Expert Cannot be Sued Over Opinion Expressed in Legal Malpractice Case**

The New Jersey Appellate Division has held that a legal malpractice claim cannot be maintained against an expert who served in an unsuccessful malpractice action against another lawyer. In this matter, Malcolm Blum served as the attorney for Paramus Jewelers, which was owned by Yeghoutiel Rabbani, George Fahmy and Burhan Aras. Under their operating agreement, a right of first refusal was given to the business in the event that another owner sought to sell his interest in the business. In 2001 Aras sold his interest to Fahmy without first advising Rabbani. A lawsuit was then filed by Rabbani against Fahmy and Aras. During the litigation, Rabbani obtained an expert report from Michael Ambrosio who opined that Blum had committed legal malpractice. Ambrosio found that Blum's representation of Paramus Jewelers and Fahmy violated ethics rules, constituted a breach of his duty owed to the company and committed legal malpractice. Blum was subsequently sued. In February 2008, summary judgment was entered dismissing the malpractice claim brought against Blum.

Blum's malpractice carrier refused to provide coverage. As such, Blum retained the law firm of Reilly, Supple and Wischusen to represent him in the malpractice lawsuit. After obtaining summary judgment, the total fee for legal services rendered totaled \$102,000. A fee dispute occurred and Reilly filed suit against Blum to recover their fees. Blum in turn filed a third party complaint against Ambrosio alleging legal malpractice.

Blum's third party complaint alleged that Ambrosio's opinions in the underlying action "were negligently prepared and constituted malpractice." Ambrosio moved to dismiss the third party complaint. In his opinion dismissing the third party complaint, Judge Wertheimer (the trial judge) noted that "the questions presented are whether [Blum] has a cause of action for malpractice against an attorney who served as an expert witness for his opponent, and whether [Blum's] daughter, an attorney, can provide the affidavit of merit for this case." Judge Wertheimer found that the litigation privilege barred Blum's cause of action against Ambrosio and dismissed the third party complaint.

Ambrosio then filed an application for monetary sanctions against Blum (he alleged that his defense costs totaled \$25,000). Blum filed a cross application for reconsideration of the court's dismissal of his third party complaint. Judge Wertheimer denied Ambrosio's application for sanctions and Blum's request for reconsideration.

The Appellate Division found that "in addition to the litigation privilege, which clearly bars Blum's claim against Ambrosio, Ambrosio did not owe a duty to Blum in the underlying litigation." It further noted that "attorneys may be held to owe a duty to 'non-clients when the attorneys know, or should know, that non-clients will rely on the attorneys' representations and the non-clients are not too remote from the attorneys to be entitled to protection.'" Accordingly, the Appellate Division upheld the dismissal of Blum's action and the trial court's refusal to grant Ambrosio's request for sanctions.

Interestingly, the Appellate Division did not reach the issue of whether the Affidavit of Merit was valid. The Affidavit of Merit statute provides that the expert issuing the Affidavit certify that they have no financial interest in the matter they are offering an opinion. In this case, Jennifer Blum issued the Affidavit of Merit. She is not only the daughter of Blum, but a member of the same firm