

***Wang v. Nesse, 2022 DJDAR 7680***

In a statute-of-limitations dispute, there was a triable issue of fact as to when an attorney's representation ended when he sent equivocal emails regarding his intent to withdraw and signed subsequent documents that identified him as the client's representation.

**FACTS/PROCEDURE**

In November 2013, Dana Wang ("Plaintiff") retained Paul Nesse ("Nesse") to represent her in her marital dissolution action her husband, Job Lawrence. In October 2014, Lawrence's counsel contacted Nesse to request Plaintiff agree to allow their children to travel with Lawrence out of state for the upcoming holidays. Nesse emailed Plaintiff on October 30 regarding several issues related to her representation that they needed to discuss. Between October 30 and December 15, 2014, Nesse emailed Plaintiff eight times without receiving a response.

On December 3, Nesse emailed Plaintiff and implored her to contact him regarding urgent case updates and unpaid attorney's fees. Otherwise, he would be forced to withdraw as her counsel. On December 10, Nesse informed Plaintiff his firm had been served an ex-parte application pertaining to her children's travel. Additionally, Nesse requested Plaintiff sign and return the attached Substitution of Attorney form and further stated he would not be responding to the ex-parte unless he was paid in-full.

On December 17, Nesse signed a stipulation sent by Lawrence's counsel, which identified him as Plaintiff's "respective attorney." Plaintiff did not consult Nesse regarding the agreement. On December 22, Plaintiff informed Nesse that she would return the completed attorney substitution form within the next day. Both parties signed the form on December 23. An amended version was filed with the court on December 30.

Plaintiff filed the initial complaint against Nesse on December 21, 2015, alleging professional malpractice. Following Nesse's death in December 2017, Nesse's estate ("Respondent") moved for summary judgment on the grounds that Plaintiff's complaint was barred by the one-year statute of limitations in Code of Civil Procedure Section 340.6. The trial court granted the motion, concluding that although a Substitution of Attorney form had been filed on December 30, 2014, Nesse's representation of Plaintiff had ended on December 3 or December 17, 2014, at the latest, when Plaintiff discharged Nesse or consented to his withdrawal. Thus, Plaintiff's December 21, 2015, complaint fell outside the applicable statute of limitations. Plaintiff appealed.

**HOLDING/DISCUSSION**

The California Court of Appeal for the Sixth Appellate District reversed. The issue on appeal was whether the evidence established as a matter of law that Nesse no longer represented Wang on December 21, 2014, so that Wang's lawsuit was barred by Section 340.6's statute of limitations. The Section 340.6 one-year statute of limitations is tolled where the "attorney continues to represent the plaintiff regarding the specific subject matter in which the alleged wrongful act or omission occurred." Generally, an attorney's representation ends "when the client discharges the attorney or consents to a withdrawal, or upon completion of the tasks for which the client retained the attorney." (*Nguyen v. Ford* (2020) 49 Cal.App.5th 1, 13.) However, an attorney may withdraw from representation even absent a client's consent if the client actually has or reasonably should have no expectation that the attorney will provide further legal services. (*Flake v. Neumiller & Beardslee* (2017) 9 Cal.App.5th 223, 231.)

Here, the Court concluded there was a triable issue of material fact as to whether Plaintiff discharged Nesse or consented to his withdrawal prior to December 21, 2014. Although it was conceivable that Nesse's December 3 - December 15, 2014, emails to Plaintiff constituted withdrawal, another reasonable inference was that Nesse merely solicited a response from his client, threatened to withdraw, and indicated his future intention to withdraw. The conditional and prospective language in the emails was equivocal as to when withdrawal would occur. Further, Nesse also signed a stipulation on December 17, 2014, as Plaintiff's attorney, which a trier of fact could determine led Plaintiff to reasonably believe Nesse still represented her.

Finally, neither Plaintiff's failure to respond to Nesse's communications or her undertaking certain legal actions on her own behalf established that as a matter of law, she could no longer reasonably expect her attorney would provide further legal services to her. Thus, there was a triable issue of material fact as to whether tolling based on continued representation had ended more than one year before Plaintiff filed her complaint. Therefore, the trial court erred in granting summary judgment and the order was **reversed**.