



YOUR CLIENT'S WORST ENEMY IS THEIR OWN ATTORNEY

OHIO'S FOUR-YEAR STATUTE OF REPOSE, THE CLAIMS IT KILLS IN SILENCE, AND THE ONES HIDING IN YOUR OWN FILES

BY MARK M. MIKHAIEL

S ometime this year, a lawyer is going to call me in a panic. He did everything he was trained to do: he knew the one-year malpractice limitations period, the discovery rule, the termination rule. What he missed was a second clock, Ohio's four-year statute of repose. None of it matters once four years pass from the underlying act. The claim is dead, and the client never knew it was alive. I have handled roughly fifty of these over thirteen years, almost always for the plaintiff. Other lawyers now call me about this statute; once, so did disciplinary counsel. I am writing to keep you off that panicked call, on either end of it.

Legal malpractice is not an exotic specialty. It is a diagnostic skill, and the diagnosis often sits in a file you already have open. The trick is spotting it before the clock runs out.

Repose is not limitations

Until 2021, Ohio had no statute of repose for legal malpractice. Claims rose and fell on the one-year period in R.C. 2305.11(A), which, under *Zimmie v. Calfee, Halter & Griswold* (1989), starts at the later of two events: the day the representation ends or the "cognizable event" when the client should have known of the error. A diligent client could file years after the work.

Senate Bill 13 ended that. The OSBA's Senior Lawyers Section pushed it during COVID, so estate planners would not answer for a defective will decades later. R.C. 2305.11(B) now bars any malpractice action brought more than four years after the act or omission. Four years, and the lawyer is free. Of the client's suit, at least; a disciplinary grievance keeps no such clock. The clock runs from the conduct, not the client's discovery or a decedent's death; it starts at the work, not the blowup. And unlike a limitations period, repose does not toll: after *Elliot v. Durrani* (2022-Ohio-4190) held that absconding tolls it, House Bill 179 amended R.C. 2305.15 in 2024 to confirm that fleeing buys nothing.

The lone off-ramp is narrow. A claimant who could not have discovered the injury

within three years may sue within one year of discovery, on clear and convincing proof (R.C. 2305.117(C)). It is a keyhole, not a door. The bar even reaches backward: courts uphold applying it to acts predating the statute by borrowing *Antoon v. Cleveland Clinic*, where the Supreme Court held a true repose bars even a vested claim, though it has not blessed the legal version and one judge has balked (*Owens v. Purcel; Tarahfields, LLC v. Wilson*).

Ohio's strict-privacy rule sets its own trap: the disappointed heirs of a botched estate plan cannot sue the drafter. I argued that very question to the Supreme Court of Ohio, and the rule held: only the personal representative can sue, and repose runs from the day the instrument was signed, not the death that exposes it decades later. The estate lawyer who spots the flaw in administration takes it to the fiduciary, not the heirs.

The silent clock

Finality has a simple logic: no lawyer should answer for a thirty-year-old file. But someone pays for it, usually the client who never learned. Under Prof. Cond. R. 1.4, a lawyer must keep the client reasonably informed, and ABA Formal Opinion 481 outlines the obligation to tell a current client about a material error. But it runs to current clients only. Finish the matter, say nothing, and once the representation ends, you owe a former client no disclosure, while the clock keeps running. A lawyer can lawfully outlast his own client's claim by staying quiet. That is the worst enemy in the title and an ethics problem, not just a calendaring one. From your chair, the tell is a client who says a prior lawyer "handled it" or stopped returning calls. That silence is both a red flag and a clock you cannot see, so date it from the work, not the conversation.

And no, the client cannot rescue the claim by recasting the concealment as fraud. In Ohio, a fraud claim arising from the representation is treated as malpractice and runs on the same four-year clock (*Gaffin v. Haslam*, 2024-Ohio-

2117), and the Tenth District will not toll repose for concealment. As one judge put it, the statute makes no exception for the lawyer who conceals and is rewarded, by the passage of time, with the claim extinguished.

Spotting one in your files

If a wronged client ever learns the truth, it will not come from the lawyer who erred. It comes from whoever opens the file next. That could be you. What does a live claim look like? Across my matters, conflicts and communication failures lead, not the blown deadline everyone fears. A missed limitations date on a case with real merit. An entity never formed, or a lien never perfected. A will or trust that failed to carry out the plan. An undisclosed conflict in a multi-party deal. And the quiet one: a client who never learned of the error, because no one told them.

I had a trust dispute worth millions where the lawyer went on leave with no one covering the file. Requests for admission went unanswered until deemed admitted, and summary judgment followed. The client did nothing wrong and lost everything.

Another came to me, sued by the firm that had been advising him and his partners at once, with no conflict waiver. When one lawyer represents everyone, ask who signed a waiver. Usually, no one did.

Two questions decide it: what was the underlying case worth, and could the original defendant have paid? It is only as good as the case lost and as collectible as that defendant. A multimillion-dollar claim can sit in a closed file, unknown to client and counsel.

Staying off the docket

The flip side is staying off the docket yourself. The lawyers I have sued were seldom the worst; they were the ones who could not prove what they had done. Put in writing who you represent and who you do not (R. 1.7), and your settlement posture (R. 1.4). Send a closing

letter when the work ends; I once beat a defense because no one did (R. 1.16). Keep files for five years. If a claim lands, build a chronology; do not argue. None of this is glamorous, and I make my living on the lawyers who skip it. I would rather make less.

You don't have to litigate it

You may never try one of these; your job is to spot it, not prove it. These turn on duty, breach, causation, and damages; causation is where they are won or lost: the defense insists the client had to prove he would have won the underlying matter, the punishing "case within a case" of *Environmental Network Corp. v. Goodman Weiss Miller, L.L.P.* (2008), a Cleveland case our Eighth District decided before the Supreme Court did. The Tenth District relaxed exactly

that this February in *Reece v. Davis-Williams* (2026-Ohio-328), letting a client whose lawyer's neglect destroyed the proof lean on the lighter "some evidence" standard of *Vahila v. Hall* (1997). That shifts more than liability; it moves settlement value by reallocating the risk of a trial that never happened. The lesson is not the doctrine: a problem you notice today is likelier than ever to be a real claim. I have co-counseled these with lawyers across many specialties. Get it in front of someone who does this before the four years run.

The point

The title is not a stunt. A client's worst enemy really can be the lawyer they trusted, and the harm compounds in silence until the clock runs out for good. The lawyer who calls me next year

in a panic will be calling about a date, not a doctrine: four years and a day, and a client who never knew. Calendar that date, keep your own house clean, and learn to read the file in front of you. Somewhere, a clock is already running on a claim no one has noticed. Be the lawyer who hears it, not the one it runs out on.



Mark M. Mikhael is a partner at Schneider Bell, where his practice spans commercial and probate litigation and non-medical professional malpractice. In 2023, he became the youngest lawyer to win a 7-0 civil reversal at the Supreme Court of Ohio. A CMBA member since 2014, he can be reached at (216) 472-2401 or mark@mysblaw.com.