



---

## Client Did Not Sustain “Actual Injury” Until Court Ruled on Trust Documents

July 11, 2012

[Shifren v. Spiro, 206 Cal. App. 4th 481, 141 Cal. Rptr. 3d 764 \(May 24, 2012\)](#)

### Brief Summary

The Second District Court of Appeals of California held that a client suffered “actual injury” to trigger the legal malpractice statute of limitations when a divorce court determined that subject trust documents prepared by his attorneys did not invalidate a transmutation agreement, not when the client first incurred attorneys’ fees in the divorce proceedings contesting the effect of the trust documents.

### Complete Summary

Plaintiff client filed a legal malpractice action in 2009 against defendants, a law firm and lawyers in it, after a court determined in the client’s divorce proceedings that the trust documents that defendants had prepared failed to ensure that the client’s mother’s gift of real property would be characterized as his separate property. The divorce court concluded that the trust documents did not terminate and revoke an agreement between the client and his wife stating that all property acquired during the marriage would be characterized as community property (the transmutation agreement).

Defendants obtained summary judgment based on the argument that the client’s complaint was time-barred. Defendants argued that the client suffered actual injury for purposes of the accrual of the statute of limitations as early as 2001 when the trust documents were prepared, but at the latest in 2007 when the client incurred attorneys’ fees in the divorce proceedings to resolve the dispute over the trust documents’ validity.

The resolution of the issue on appeal hinged upon whether the client suffered actual injury one year before he filed his legal malpractice action. The appellate court focused on defendants’ argument that the client suffered actual injury in 2007, when he incurred attorneys’ fees in the divorce proceedings to litigate the validity of the 2001 trust documents. Applying the actual injury analysis set forth by the California Supreme Court in *Jordache Enterprises, Inc. v. Brobeck, Phleger & Harrison*, 18 Cal. 4th 739, 76 Cal. Rptr. 2d 749, 958 P.2d 1062 (1998), the court concluded that the client did not suffer actual injury in 2007. Rather, he suffered actual injury in 2009 upon the judicial determination in the divorce court that the 2001 trust did not revoke and terminate the transmutation agreement.

Relying on the rationale in *Jordache*, defendants argued that the resolution of the divorce proceedings that determined that the 2001 trust did not terminate the transmutation agreement only affected the amount of damages that the client might recover, not actual injury. The client contended the judicial



resolution determined his actual injury. Thus, the issue was when was the first actualization of injury upon which the client suffered cognizable damages recoverable in a legal malpractice action.

The court rejected defendants' contention that the client suffered actual injury when he hired counsel in the divorce proceedings, long before the court determined that the 2001 trust did not terminate the transmutation agreement. The court found that the client had no cognizable damages recoverable in a legal malpractice action at that point because the parties merely disputed the terms of the 2001 trust. The client could have prevailed, and defendants would have been vindicated. The court thus concluded that the client did not suffer any actual injury until the divorce court ruled in 2009.

### **Significance of Opinion**

This decision is significant because it addresses when and how a client may suffer actual injury to trigger the legal malpractice statute of limitations. In some circumstances, actual injury may be found when the client is forced to incur unnecessary attorneys' fees to litigate an issue caused by the attorney's work, while in other circumstances, actual injury will not be found until the court actually adjudicates the contested issue.

For further information, please contact [Terrence P. McAvoy](#).

---

*Hinshaw & Culbertson LLP prepares this publication to provide information on recent legal developments of interest to our readers. This publication is not intended to provide legal advice for a specific situation or to create an attorney-client relationship. We would be pleased to provide such legal assistance as you require on these and other subjects if you contact an editor of this publication or the firm.*

*Copyright © 2012 Hinshaw & Culbertson LLP. All Rights Reserved. No articles may be reprinted without the written permission of Hinshaw & Culbertson LLP, except that permission is hereby granted to subscriber law firms or companies to photocopy solely for internal use by their attorneys and staff.*

*ATTORNEY ADVERTISING pursuant to New York RPC 7.1. The choice of a lawyer is an important decision and should not be based solely upon advertisements.*