



member of the State Bar of Georgia.

4.

Parian Injury Law, LLC (the “Parian Firm”) is a law firm and a domestic limited liability partnership organized under the laws of Georgia, with its principal place of business and/or registered office at 1201 West Peachtree Street, Suite 2342, Atlanta, Georgia, 30309.

5.

At all times relevant to this action, Parian was acting as an agent for and/or an employee of the Parian Firm. All of the acts and omissions of Parian which are asserted in this Complaint occurred within the scope of Parian’s agency for and/or employment with the Parian Firm. The Parian Firm is jointly and severally liable to Plaintiff for all of the acts and omissions of Parian. Parian may be served personally and on behalf of the Parian Firm at 1201 West Peachtree Street, Suite 2342, Atlanta, Georgia, 30309. Parian and the Parian Firm are collectively referred to as the “Parian Defendants.”

6.

Brian Wesley Craig (“Craig”) is a Georgia citizen, a resident of Fulton County and a member of the State Bar of Georgia.

7.

Upon information and belief, Wood Craig & Avery, LLC is a successor entity to Wood Craig, LLC. Wood Craig & Avery, LLC (“Wood Craig”) is a law firm and a domestic limited liability company organized under the laws of Georgia, with its principal place of business 1201 West Peachtree Street, Suite 1700, Atlanta, Georgia, 30309.

8.

At all times relevant to this action, Craig was acting as an agent for and/or an employee of

the Wood Craig. All of the acts and omissions of Craig which are asserted in this Complaint occurred within the scope of his agency for and/or employment with the Wood Craig. Wood Craig is jointly and severally liable to Plaintiff for all of the acts and omissions of Craig. Craig may be served personally and on behalf of Wood Craig at 1201 West Peachtree Street, Suite 1700, Atlanta, Georgia, 30309. Wood Craig and Craig are collectively referred to as the “Wood Craig Defendants.”

#### JURISDICTION AND VENUE

9.

This Court has jurisdiction over the subject matter of this action.

10.

This Court has personal jurisdiction over all of the parties to this action.

11.

Venue is proper in this Court.

#### FACTS

12.

Plaintiff served as a care-giver/assistant for an elderly woman who lived in a second-floor apartment at a complex located at 246 Chestnut Hill Road, Marietta, Georgia 30064. The complex was owned by 246 Chestnut Hill Asset Investors, L.L.C.

13.

On or about October 10, 2011, Plaintiff slipped on leaves which had collected at the top of an exterior stairway and were covering the stairs and the landing to the second floor.

14.

As he slipped, Plaintiff stepped backwards onto a lower step, but that wooden step was rotted and broke underneath him causing him to fall.

15.

Plaintiff suffered severe physical injuries as a result of the fall.

16.

Plaintiff initially retained an attorney named Ryan T. Strickland to represent him in a personal injury action, to wit, *David Mitchell v. 246 Chestnut Hill Asset Investors, L.L.C. et al.*, State Court of Fulton County, State of Georgia, Civil Action File No. 13EV018315, filed October 3, 2013.

17.

That action was dismissed without prejudice.

18.

Plaintiff subsequently engaged the Parian Defendants to represent him in a renewal action.

19.

The Parian Defendants referred Plaintiff's case to the Wood Craig Defendants without informing Plaintiff.

20.

Over the next two years, Plaintiff communicated with the Parian Defendants in an effort to obtain information regarding his case. The Parian Defendants assured Plaintiff that his case had been filed and was "chugging along."

21.

Unbeknownst to Plaintiff, his case had been taken over by attorneys with whom he had never met and with whom he had never spoken.

22.

Without consulting Plaintiff, the Wood Craig Defendants filed a civil action on his behalf styled *David Mitchell v. 246 Chestnut Hill Asset Investors L.L.C. et al.*, State Court of Fulton County, State of Georgia, Civil Action File No. 15EV000527 (hereinafter the “Slip-and-Fall Case”).

23.

The Wood Craig Defendants’ failure to consult with Plaintiff led to the filing of a complaint, the allegations of which bore little resemblance to the facts of Plaintiff’s actual situation. Indeed, it appears that the Wood Craig Defendants simply filled in the Plaintiff’s name and the Defendant’s name on a Complaint used in another case without bothering to change the allegations.

24.

During the pendency of the case, Plaintiff repeatedly contacted the Parian Defendants asking for information regarding the status of his case.

25.

At no time during these communications did the Parian Defendants inform him that the Wood Craig Defendants were participating in the representation.

26.

The Wood Craig Defendants failed to obtain accurate contact information for Plaintiff from the Parian Defendants or any other available means.

27.

Due to the failure of both the Parian Defendants and the Wood Craig Defendants to communicate with Plaintiff, Plaintiff was unaware that his deposition had been noticed on multiple occasions.

28.

Unaware that his deposition had been noticed, Plaintiff failed to appear for the deposition.

29.

The defendants in the Slip-and-Fall Case filed a Motion to Compel and a Motion for Sanctions. Defendants did not inform Plaintiff that these Motions had been filed.

30.

As a result, Plaintiff's pleadings were stricken, and his case was dismissed with prejudice.

31.

Defendants' failures to communicate with Plaintiff cost him the chance to recover for his injuries.

32.

Defendants' errors and omissions in the handling of Plaintiff's case constitutes legal malpractice.

33.

Plaintiff was damaged by Defendants' legal malpractice and mishandling of his case.

#### STANDARD OF CARE

34.

In Georgia, the law imposes upon persons performing professional services, including attorneys, the duty to exercise a reasonable degree of skill and care as determined by the degree of

skill and care ordinarily employed by members of their respective professions under similar conditions and like surrounding circumstances (the “minimum requisite standard of care”). The Georgia Rules of Professional Responsibility are relevant to determining whether the acts or omissions of an attorney deviate from the minimum requisite standard of care. Due to the existence of the attorney-client relationship, Defendants were obligated to ensure that their representation of Plaintiff met the minimum requisite standard of care.

35.

Additionally, Defendants owed fiduciary duties to Plaintiff.

36.

Plaintiff was entitled to repose trust and confidence in Defendants.

37.

The State Bar of Georgia has adopted the Georgia Rules of Professional Conduct (hereinafter “Rules of Conduct”), which were effective during January 2015 to May 2015, and which help to articulate the minimum requisite standard of care.

38.

The Rules of Conduct state, among other things, that:

A lawyer shall provide competent representation. Competent representation as used in this Rule means that a lawyer shall not handle a matter which the lawyer knows or should know to be beyond the lawyer’s level of competence . . . Competence requires the legal knowledge, skill, thoroughness, and preparation necessary for representation.

*See*, Rule 1.1.

39.

The Rules of Conduct state, among other things, that:

A lawyer shall act with reasonable diligence and promptness in representing a client. Reasonable diligence as used in this Rule means that a lawyer shall not

without just cause to the detriment of the client in effect willfully abandon or willfully disregard a legal matter entrusted to the lawyer.

*See*, Rule 1.3.

40.

The Rules of Conduct state, among other things, that:

(a) A lawyer shall:

[ . . . ]

(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;

(3) keep the client reasonably informed about the status of the matter;

(4) promptly comply with reasonable requests for information[.]

[ . . . ]

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

*See*, Rule 1.4.

41.

Defendants violated each of the foregoing Rules of Conduct, and their conduct fell below the minimum requisite standard of care.

42.

Among other things, Defendants' representation fell below the minimum requisite standard of care owed by a Georgia attorney to a client under similar conditions and like surrounding circumstances in the following respects:

(a) The Parian Defendants willfully abandoned Plaintiff's case by referring it to the Wood Craig Defendants without notifying Plaintiff;

(b) The Parian Defendants failed to keep Plaintiff informed regarding the status of his case;

- (c) The Wood Craig Defendants failed to communicate with Plaintiff regarding his case;
- (d) The Wood Craig Defendants filed an inaccurate Complaint and failed to amend it; and
- (e) The Wood Craig Defendants served inaccurate discovery responses, failed to prosecute Plaintiff's action and failed to notify Plaintiff regarding the noticed deposition(s), resulting in a sanctions order and the dismissal of Plaintiff's case.

43.

Pursuant to O.C.G.A. § 9-11-9.1, attached hereto as Exhibit 1 is an Affidavit of an expert competent to testify confirming the existence of at least one act or omission constituting professional negligence as to each Defendant based upon the facts set forth herein.

44.

As a result of the acts and omissions set forth above, Defendants have damaged Plaintiff in an amount to be proven at trial.

COUNT ONE: LEGAL MALPRACTICE

45.

All of the allegations and averments of this Complaint set forth in the foregoing paragraphs are hereby incorporated by reference as if fully restated verbatim herein.

46.

As described above, Defendants owed Plaintiff a legal obligation to conduct themselves in a manner consistent with the minimum requisite standard of care.

47.

Among other things, Defendants' representation fell below the minimum requisite standard of care owed by a Georgia attorney to a client under similar conditions and like surrounding circumstances in the following respects:

- (a) The Parian Defendants willfully abandoned Plaintiff's case by referring it to the Wood Craig Defendants without notifying Plaintiff;
- (b) The Parian Defendants failed to keep Plaintiff informed regarding the status of his case;
- (c) The Wood Craig Defendants failed to communicate with Plaintiff regarding his case;
- (d) The Wood Craig Defendants filed an inaccurate Complaint and failed to amend it; and
- (e) The Wood Craig Defendants served inaccurate discovery responses, failed to prosecute Plaintiff's action and failed to notify Plaintiff regarding the noticed deposition(s), resulting in a sanctions order and the dismissal of Plaintiff's case.

48.

Defendants' violations of the minimum requisite standard of care, described above, constitute legal malpractice.

49.

Plaintiff suffered substantial damages as a direct and proximate result of Defendants' legal malpractice committed by Defendants, in an amount to be proven at trial.

50.

Defendants are jointly and severally liable to Plaintiff for legal malpractice.

51.

Plaintiff is entitled to recover from Defendants, jointly and severally, for all damages suffered by Plaintiff as a result of the legal malpractice committed by Defendants.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully demands a jury trial in this action with respect to all claims and issues in this action triable to a jury by law and respectfully requests the following relief:

- (a) That Plaintiff be awarded judgment in this action against Defendants, jointly and severally;
- (b) That Plaintiff recover all legally cognizable damages of every kind, however denominated, from Defendants, jointly and severally; and
- (c) That Plaintiff recover from Defendants, jointly and severally, all additional remedies and/or relief of every kind that this Court may deem just and proper.

Dated: May 9, 2019

Respectfully submitted,

/s/ William Brent Ney  
WILLIAM BRENT NEY  
Georgia Bar No. 542519  
Attorney for Plaintiff

Ney Rhein, LLC  
265 South Culver Street  
Lawrenceville, Georgia 30046  
404-842-7232 (Direct)  
770-637-5057 (Fax)  
[william@neyrhein.com](mailto:william@neyrhein.com)



Georgia.

4.

In relation to the above-styled action, I have spoken with counsel for Plaintiff. I have also reviewed the draft Complaint prepared by said counsel and certain documents relating to the representation of Plaintiff by Defendants.

5.

I have also reviewed the Georgia Rules of Professional Conduct.

6.

My expert opinion is based upon my assumption that the factual allegations in the draft Complaint are true, as authorized by *Druckman v. Ethridge*, 198 Ga. App. 321 (1991).

7.

Based upon my conversations with Plaintiff's counsel, my review of the documents provided to me and my review of the draft Complaint, it is my expert opinion that an attorney-client relationship existed between Plaintiff and Defendants.

8.

As counsel for Plaintiff, Defendants had a duty to exercise that degree of ordinary care, skill and diligence commensurate with that exercised by Georgia attorneys under like and similar circumstances (the "standard of care").

9.

Based upon my discussions with Plaintiff's counsel, the allegations made by Plaintiff in the draft Complaint, and my review of the documents provided to me, it appears that Defendants' representation of Plaintiff was substandard and breached the minimum requisite standard of care in at least the following respects:

- (a) The Parian Defendants willfully abandoned Plaintiff's case by referring it to the Wood Craig Defendants without notifying Plaintiff;
- (b) The Parian Defendants failed to keep Plaintiff informed regarding the status of his case;
- (c) The Wood Craig Defendants failed to communicate with Plaintiff regarding his case;
- (d) The Wood Craig Defendants filed an inaccurate Complaint and failed to amend it; and
- (e) The Wood Craig Defendants served inaccurate discovery responses, failed to prosecute Plaintiff's case and failed to notify Plaintiff regarding his deposition(s).

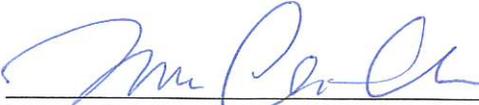
10.

This Affidavit is submitted in compliance with O.C.G.A. § 9-11-9.1 in order to support the filing of an initial Complaint. It is not intended as a comprehensive statement of my understanding of the relevant facts or of my opinions in this action. I reserve the right to supplement this Affidavit with additional opinions as appropriate.

FURTHER AFFIANT SAYETH NOT.

  
\_\_\_\_\_  
JACOB RHEIN, Affiant

SWORN to and subscribed before me  
this 30th day of April, 2019.

  
\_\_\_\_\_  
Notary Public

My Commission Expires:  
January 18, 2021

