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KD Alert: New York's High Court Extends Statute Of Limitations For Some Claims Against Lawyers

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In Melcher v. Greenberg Traurig, LLP, 2014 WL 1280587 (April 1, 2014), New York's highest court held that the statute of limitations for claims asserted against attorneys under Judiciary Law §487 is six years, rejecting several lower courts' use of a three-year period. In so holding, the Court overruled the First Department, and multiple years of holdings, that a three-year statute of limitations was applicable to Judiciary Law §487 claims. As such, the Court of Appeals' holding greatly expands the number of claims that attorneys may face under Judiciary Law §487.

Judiciary Law § 487, states that:

> *An attorney or counselor who:*
>
> 1. *Is guilty of any deceit or collusion, or consents to any deceit or collusion, with intent to deceive the court or any party; or,*
> 2. *Wilfully delays his client's suit with a view to his own gain; or, wilfully receives any money or allowance for or on account of any money which he has not laid out, or becomes answerable for,*
>
> *Is guilty of a misdemeanor, and in addition to the punishment prescribed therefor by the penal law, he forfeits to the party injured treble damages, to be recovered in a civil action.*

Unlike claims sounding in legal malpractice, claims under Judiciary Law § 487 may be brought by "any party" to a litigation that claims to have been harmed by an attorney's conduct. Prior to the Melcher decision, numerous Courts had held that since Judiciary Law § 487 and the penalties imposed thereunder are statutory in nature, such claims should be subject to the three-year statute of limitations under CPLR §214(2) for "an action to recover upon a liability, penalty or forfeiture created or imposed by statute." The Court of Appeals, however, held that a cause of action for attorney deceit can actually be traced back to New York's common law, and is therefore subject to the six-year statute of limitations under CPLR §213(1) for an "action for which no limitation is specifically prescribed by law."

The Court of Appeals' expansion of the statute of limitations for Judiciary Law § 487 could have a significant impact on claims against attorneys. For example, attorneys attempting to prosecute time-barred legal malpractice claims (with their three-year statute of limitations) will likely assert a violation of Judiciary Law §487 to gain the benefit of its six-year statute. In addition, the longer statute of limitations doubles the time-frame in which non-clients have to commence claims against their adversary's attorney under Judiciary Law § 487.

Insurers and attorneys should be prepared for a further increase in the volume of Judiciary Law §487 claims in New York.

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