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UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 19-2538

ROBERT J. DOYLE,
Appellant

v.

JACQUELINE M. VIGILANTE

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civil No. 2-18-cv-03965)
District Judge: Honorable Paul S. Diamond

Submitted Under Third Circuit L.A.R. 34.1(a)
March 31, 2020

Before: GREENAWAY, JR., PORTER, and MATEY,
Circuit Judges

(Filed: May 6, 2020)

OPINION*

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* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

PORTER, *Circuit Judge*.

Robert Doyle hired Jacqueline Vigilante to represent him in a lawsuit against his former union. Believing that Vigilante mishandled the case, Doyle filed a pro se legal malpractice suit. The District Court granted summary judgment to Vigilante. Doyle timely appealed. We will affirm the District Court's judgment.

I

Doyle was fired from his job at the Boeing Company on July 8, 2009, for harassing coworkers and sending sexually explicit material to coworkers using his Boeing e-mail account. After Doyle's attempt to challenge his firing failed, he asked his union to arbitrate his case, but his union declined. Doyle believed that his union did not seek arbitration to retaliate against him because he had opposed the eventual winner of a contentious union election.

On October 27, 2010, Doyle hired Vigilante to pursue any claims he had against the union or Boeing. Because Doyle hired Vigilante more than a year after his termination, Vigilante advised Doyle that he only had a claim against the union for its "failure to represent" him. App. 338–39. On September 30, 2011, Vigilante filed a complaint against the union in federal court, alleging retaliation in violation of the Labor Management Relations Act ("LMRA"), 29 U.S.C. §§ 185–86, and the Labor-Management Reporting and Disclosure Act ("LMRDA"), 29 U.S.C. § 411(a)(2).

The case was stayed to allow Doyle to exhaust his administrative appeals. In the meantime, after consulting several lawyers, Doyle believed that Vigilante might have committed legal malpractice by filing his case beyond the statute of limitations deadline.

Doyle then wrote an ex parte letter to the District Court, dated June 2, 2014, stating that he was dissatisfied with Vigilante's representation. Doyle also raised the possibility of filing a legal malpractice case against Vigilante for "filing [his case] over the . . . statute of limitations." App. 128. In the letter, Doyle acknowledged that the "clock [wa]s ticking" to file such a claim under the statute of limitations. *Id.* at 128–29. But Doyle delayed filing any such claim, and Vigilante continued to represent him.

On December 9, 2015, Vigilante emailed Doyle to explain that the District Court indicated that it would likely dismiss his LMRA claim because it had to be filed within six months of Doyle's termination—long before he met with Vigilante. Vigilante advised Doyle to file an amended complaint, dropping his LMRA claim and "beef[ing] up" his LMRDA claim. App. 752. She explained that his LMRDA claim was "solid" and "include[d] all the same wrongful conduct by the union and the same relief that a jury can award." *Id.* A few days later, Vigilante filed the amended complaint consistent with her advice.

But the attorney-client relationship further deteriorated, and Vigilante eventually withdrew as Doyle's counsel. Then the District Court granted summary judgment to the union. *Doyle v. United Auto. Aerospace & Agric. Implement Workers of Am., Local 1069*, No. 11-6185, slip op. at 10–16 (E.D. Pa. Mar. 30, 2018). The District Court determined that no retaliation had occurred. *Id.* Notably, it did not conclude that the statute of limitations barred Doyle's LMRDA retaliation claim. *Id.* at 9–10. We affirmed. *Doyle v. United Auto. Aerospace & Agric. Implement Workers of Am. Local 1069*, 761 F. App'x 136 (3d Cir. 2019).

Doyle filed a pro se malpractice action on August 31, 2018.[1] Vigilante moved for summary judgment, and the District Court granted the motion because it concluded that Doyle's malpractice claim was barred by the statute of limitations.

II[2]

With the benefit of counsel, Doyle argues on appeal that the District Court erred because its opinion addressed only one of two malpractice claims that he had raised.[3] He maintains that the District Court failed to address his allegation that Vigilante committed malpractice by covering up for her alleged error and continuing to litigate the case and charge him legal fees.[4] He further maintains that this claim is not barred by the statute of

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[1] Doyle filed his complaint in the Court of Common Pleas of Philadelphia County. The case was removed to federal court.

[2] The District Court had jurisdiction under 28 U.S.C. § 1332. We have jurisdiction under 28 U.S.C. § 1291.

"We review a grant of summary judgment *de novo*, applying the same standard [as] the District Court . . . ." *Gonzalez v. AMR, Am. Airlines*, 549 F.3d 219, 223 (3d Cir. 2008) (citation omitted). Summary judgment is appropriate only when, "after drawing all reasonable inferences from the underlying facts in the light most favorable to the nonmoving party," we conclude "that there is no genuine issue of material fact . . . and the moving party is entitled to judgment as a matter of law." *Petruzzi's IGA Supermarkets, Inc. v. Darling-Delaware Co.*, 998 F.2d 1224, 1230 (3d Cir. 1993); *see* Fed. R. Civ. P. 56(c). And "[w]e may affirm on any basis supported by the record, even if it departs from the District Court's rationale." *TD Bank N.A. v. Hill*, 928 F.3d 259, 270 (3d Cir. 2019) (citation omitted).

[3] The District Court addressed only Doyle's claim that Vigilante committed malpractice by filing the union retaliation complaint outside the statute of limitations period. It concluded that Doyle's malpractice claim was itself barred by the statute of limitations. On appeal, Doyle does not challenge the District Court's finding.

[4] To preserve an issue for appeal, a party "must unequivocally put its position before the trial court at a point and in a manner that permits the court to consider its merits." *Shell Petroleum, Inc. v. United States*, 182 F.3d 212, 218 (3d Cir. 1999). Although we are skeptical that Doyle ever raised this claim before the District Court, we will address the argument because it is ultimately unpersuasive on the merits.

limitations. We disagree and will affirm because Doyle cannot show that he suffered damages.

Under Pennsylvania law, "[a]n action for legal malpractice may be brought in either contract or tort." *Garcia v. Cmty. Legal Servs. Corp.*, 524 A.2d 980, 982 (Pa. Super. Ct. 1987) (citing *Guy v. Liederbach*, 459 A.2d 744, 748 (Pa. 1983)). For that reason, any legal malpractice claim requires a plaintiff to show that the alleged malpractice resulted in damages. *See Kituskie v. Corbman*, 714 A.2d 1027, 1029 (Pa. 1998) (citation omitted) (requiring showing injury under a tort theory); *Dougherty v. Pepper Hamilton LLP*, 133 A.3d 792, 796 (Pa. Super. Ct. 2016) (citation omitted) (requiring showing injury under a contract theory).

To show damages here, Doyle must prove "actual loss rather than a breach of a professional duty causing only nominal damages, speculative harm[,] or the threat of future harm." *See Kituskie*, 714 A.2d at 1030 (citation omitted). "[A] legal malpractice action in Pennsylvania requires the plaintiff to prove that he had a *viable cause of action* against the party he wished to sue in the underlying case and that the attorney he hired was negligent in prosecuting or defending that underlying case . . . ." *Id.* (emphasis added).

Doyle cannot prove damages because he did not have a viable case against his union. After years of litigation and discovery, the District Court granted summary judgment to the union. It addressed Doyle's LMRDA claim on the merits and determined

that no retaliation occurred.[5] *See Doyle*, slip op. at 10–16. We agreed that "Doyle ha[d] not presented any evidence to show that [the union's] decision not to arbitrate was improper or motivated by retaliation for Doyle's campaigning efforts, or gives rise to an inference of such retaliation." *See Doyle*, 761 F. App'x at 139. Thus, Doyle's malpractice claims fail.

* * *

For these reasons, we will affirm the District Court's judgment.

[5] Notably, Doyle did not suffer any injury as a result of the day the complaint was filed. Although the District Court limited its consideration to "claims [that were] based on actions occurring [on or after] September 30, 2009," App. 705, the union notified Doyle on October 5, 2009, that it would not seek arbitration. Thus, Doyle's claim that the union retaliated against him was filed within the statute of limitations. But the District Court rejected his claim on the merits.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ROBERT J. DOYLE,	:	
Plaintiff,	:	
	:	
v.	:	**Civ. No. 18-3965**
	:	
JACQUELINE M. VIGILANTE,	:	
Defendant.	:	

ORDER

Pro se Plaintiff Robert Doyle proceeds against his former attorney, Defendant Jacqueline Vigilante, alleging that she committed malpractice while representing him in a labor dispute. (Compl., Doc. No. 1, Ex. A.) Ms. Vigilante has moved for summary judgment, which Plaintiff opposes. (Doc. Nos. 27–32.) I will grant Ms. Vigilante's Motion and enter Judgment in favor of Ms. Vigilante and against Plaintiff.

I. FACTUAL BACKGROUND

I have resolved all disputed facts and made all reasonable inferences in Plaintiff's favor. Hugh v. Butler Cty. Family YMCA, 418 F.3d 265, 267 (3d Cir. 2005).

On March 23, 2006, Plaintiff, a seventeen-year-employee of the Boeing Company, was fired for violating Boeing's workplace harassment policy. (Ex. H to Def.'s Mot. Summ. J., Doc. No. 27-2.) Plaintiff grieved his termination through his union, UAW Local 1069, and was reinstated without backpay. (Id. at 1, 37.) Plaintiff was warned, however, that he would be discharged if he violated the policy again. (Id. at 37.)

On July 8, 2009, Plaintiff was fired for again committing workplace harassment. (Exs. I & J to Def.'s Mot. Summ. J., Doc. No. 27-3.) He attempted to grieve this termination through the Union. (See Exs. K–M to Def.'s Mot. Summ. J., Doc. No. 27-3.) Boeing declined, however, to reinstate him, and the Union told Plaintiff that no further action could be taken. (Ex. N to Def.'s

Mot. Summ. J., Doc. No. 27-3.)

On July 6, 2010, Plaintiff met with Ms. Vigilante to discuss filing an unlawful termination claim against Boeing and an inadequate representation claim against the Union. (Ex. O to Def.'s Mot. Summ. J., Doc. No. 27-3.) The same day, Ms. Vigilante informed Plaintiff that his claims could be time-barred, but that he might be able to bring some claims within two years from the date of his termination. (Id.)

On October 27, 2010, Plaintiff signed an "Attorney/Client Retainer Agreement" and hired Ms. Vigilante to "prosecute . . . any and all such claims" he had against Boeing and the Union. (Ex. P to Def.'s Mot. Summ. J., Doc. No. 27-3.) The Agreement, *inter alia*, provided that Plaintiff paid a substantially-reduced $7,500 retainer, explained Plaintiff's discovery obligations, and required him to pay litigation expenses and cooperate with Ms. Vigilante. (Id.; see also Ex. Q to Def.'s Mot. Summ. J., Doc. No. 27-3 (Vigilante: "I advised you that I could not undertake representation without a significant retainer of $21,000.00 because of the difficulty and uniqueness of the case. As a courtesy to Bob DeLuca, I agreed to lower the initial retainer to $7,500.00 provided that the retainer was supplemented.").

Plaintiff and Ms. Vigilante met several times to discuss the facts of his case and potential claims. (Id.) On September 14, 2011, Ms. Vigilante informed Plaintiff that: (1) his only viable cause of action was against the Union for failing adequately to represent him in his grievance proceedings; and (2) the claim had to be filed by October 5, 2011. (Id.) Ms. Vigilante warned, however, that "[t]here is a fair chance this case may be decided against you on motions." (Id.)

Deciding to pursue the claim, on September 30, 2011, Plaintiff filed a Complaint against the Union in this Court, alleging violations of the Labor Management Relations Act and the Labor Management Reporting and Disclosure Act. (Compl., Doc. No. 1, Doyle v. United Aerospace

Workers Local 1069, Civ. No. 11-6185 (E.D. Pa. filed Sept. 30, 2011).) Plaintiff based these claims on the Union's purportedly inadequate representation of him during the termination process. (Id.) The matter was assigned to me. (Id.)

On December 2, 2011, the Union moved to dismiss, arguing that Plaintiff's LMRA claims were time-barred, and his LMRDA claims were procedurally-barred for failure to exhaust his administrative remedies. (Doc. No. 4, Civ. No. 11-6185.) On March 29, 2012, I denied the Union's Motion and gave Plaintiff leave to file an Amended Complaint. (Doc. No. 16, Civ. No. 11-6185.) He did so on April 16, 2012. (Doc. No. 17, Civ. No. 11-6185.) On April 30, 2012, the Union again moved to dismiss. (Doc. Nos. 19–20, Civ. No. 11-6185.) I denied the Motion and stayed Plaintiff's case until he exhausted his administrative remedies. (Doc. No. 29, Civ. No. 11-6185.)

Between January 31, 2013 and June 9, 2015, against Ms. Vigilante's advice, Plaintiff sent me ten *pro se* letters, purporting to document the status of his administrative appeal. (Doc. Nos. 30–32, 34–40, Civ. No. 11-6185; see also Ex. Z to Def.'s Mot. Summ. J., Doc. No. 27-4 (Vigilante: "I have told you numerous times, you are not permitted to write to the judge or the judge's law clerk, but you continue to do so, against my advice and counsel.").)

In his seventh letter—dated June 2, 2014—Plaintiff stated that he was unhappy with Ms. Vigilante's representation and was exploring the possibility of filing a malpractice action against her "for filing over the statute of limitations." (Doc. No. 38, Civ. No. 11-6185.) He alleged that two employment lawyers—Robert DeLuca and Sidney Gold—informed him that his claims were time-barred and that the "clock was ticking" on his malpractice action. (Id.; see also Doyle Dep. 38:23–39:4, Ex. AA to Def.'s Mot. Summ. J., Doc. No. 27-4.) Another attorney, Mr. Cohn, purportedly told Plaintiff that he could not file a malpractice action against Ms. Vigilante while

his claim against the Union was pending. (Doc. No. 38, Civ. No. 11-6185; Doyle Dep. 68:17–69:21.)

Plaintiff sent Ms. Vigilante the correspondence he had received from Mr. Gold's office regarding his potential malpractice action. (Exs. BB and DD to Def.'s Mot. Summ. J., Doc. No. 27-4.) Ms. Vigilante responded that Plaintiff could retain a different attorney or represent himself. (Id.) He did neither.

On September 22, 2015, after Ms. Vigilante informed my Chambers that Plaintiff had exhausted his administrative remedies, I vacated the stay and allowed his claim against the Union to proceed. (Doc. Nos. 41–42, Civ. No. 11-6185.) On November 17, 2015, the Union moved to dismiss Plaintiff's claims as time-barred. (Doc. No. 43, Civ. No. 11-6185.) On December 9, 2015, Ms. Vigilante emailed Plaintiff about the Motion, explaining the applicable limitations periods, and informing him that I would "probably dismiss the LMRA claim." (Ex. FF to Def.'s Mot. Summ. J., Doc. No. 27-4.) In the same email, she recommended filing an Amended Complaint without the LMRA claim. (Id.)

On December 15, 2015, Plaintiff filed a Second Amended Complaint, including only an LMRDA claim. (Doc. No. 49, Civ. No. 11-6185.) On January 11, 2016, the Union moved to dismiss that claim as time-barred. (Doc. No. 51, Civ. No. 11-6185.) I denied the Motion. (Doc. No. 58, Civ. No. 11-6185.)

As I discussed in my prior Orders, throughout discovery, Plaintiff acted abusively and outrageously toward Ms. Vigilante. (See Doc. No. 14; Doc. Nos. 85, 153–54, Civ. No. 11-6185; see also Exs. II, LL, and NN to Def.'s Mot. Summ. J., Doc. No. 27-5.) He refused to provide discovery, disparaged Ms. Vigilante and her advice, and repeatedly threatened her with a malpractice suit. (Id.) Plaintiff directed Ms. Vigilante to make a settlement demand of over $2

million in a settlement conference before Judge Rice on September 1, 2016, despite evidence that his damages could not exceed $250,000–$300,000. (See Exs. LL and MM to Def.'s Mot. Summ. J, Doc. No. 27-5.) Judge Rice then attempted to inform Plaintiff of the likely value and merits of his case, advising him to settle for a lower amount. (Ex. MM to Def.'s Mot. Summ. J.) Plaintiff rejected Judge Rice's advice. (Id.)

The next day, Ms. Vigilante moved to withdraw. (Doc. No. 78, Civ. No. 11-6185; see also Ex. NN to Def.'s Mot. Summ. J.) On September 12, 2016, I granted her request, noting Plaintiff's inexcusable behavior. (Doc. No. 85, Civ. No. 11-6185.) I gave Plaintiff more than ample time to obtain new counsel and to participate in discovery. (Id.) Unable to find a lawyer willing to represent him, Plaintiff proceeded *pro se*. (Doc. Nos. 91–92, Civ. No. 11-6185; see also Doc. No. 154 at 4–5, Civ. No. 11-6185.) On March 20, 2018, I granted summary judgment against Plaintiff, ruling that he had failed to show that the Union retaliated against him. (Doc. Nos. 154–55, Civ. No. 11-6185.) Plaintiff filed a *pro se* appeal; the Third Circuit affirmed on January 25, 2019. (Doc. Nos. 156, 162, Civ. No. 11-6185.)

II. PROCEDURAL HISTORY

On August 31, 2018, Plaintiff filed the instant malpractice action against Ms. Vigilante both here and in the Philadelphia Common Pleas Court "to avoid missing the statute of limitations." (Doc. No. 1, Ex. A); Doyle v. Vigilante, Civ. No. 18-3740 (E.D. Pa. filed Aug. 31, 2018). He seeks $2.1 million in lost wages and compensatory damages. (Id.)

On September 10, 2018, Plaintiff moved to dismiss his federal claim and proceed in state court. (Doc. No. 1, Ex. A; see also Doc. No. 4, 18-3740.) On September 13, 2018, Ms. Vigilante removed his state case (invoking diversity jurisdiction), and on September 20, 2018, moved to dismiss Plaintiff's claim as time-barred. (Doc. Nos. 1, 4.) On November 29, 2018, I denied Ms.

Vigilante's Motion without prejudice and issued a Case Management Order. (Doc. Nos. 13, 14.)

On January 28, 2019, Ms. Vigilante moved for summary judgment on limitations grounds. (Doc. No. 27.) Plaintiff filed a largely incoherent response, and Ms. Vigilante replied. (Doc. Nos. 28–32.)

III. STANDARD OF REVIEW

I may grant summary judgment "if there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The moving party must initially show the absence of any genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). An issue is material only if it could affect the result of the suit under governing law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). I "must view the facts in the light most favorable to the non-moving party," and make every reasonable inference in that party's favor. Hugh, 418 F.3d at 267. If I then determine that there is no genuine issue of material fact, summary judgment is appropriate. Celotex, 477 U.S. at 322.

Summary judgment is appropriate where the moving party shows that there is an absence of evidence to support the non-moving party's case. Id. at 325. Where a moving party identifies an absence of necessary evidence, the non-moving party "must rebut the motion with facts in the record and cannot rest solely on assertions made in the pleadings, legal memoranda, or oral argument." Berckeley Inv. Grp. v. Colkitt, 455 F.3d 195, 201 (3d Cir. 2006).

Because Plaintiff is representing himself, I will construe his filings liberally. See Marcinek v. Comm'r of Internal Revenue, 467 F. App'x 153, 154 (3d Cir. 2012) (recognizing "obligation to liberally construe the submissions of a pro se litigant").

IV. DISCUSSION

Plaintiff appears to have brought the legal malpractice claim that he threatened to file

against Ms. Vigilante as early as 2014. (See Compl. ¶ 5 ("In the course of handling the legal matter for the Plaintiff, Defendant negligently failed to act with the degree of competence generally possessed by Attorneys in the State of Pennsylvania who handle legal matters similar to Plaintiff's."); see also Doc. No. 38, Civ. No. 11-6185.) Ms. Vigilante argues that the claim is time-barred. (See Def.'s Br. 3-20, Doc. No. 27-8.) I agree. Legal malpractice claims are subject to a two- or four-year limitations period, depending on whether they sound in tort or contract. Pettit v. Smith, 241 B.R. 847, 850 (E.D. Pa. 1999) (citing Sherman Indus., Inc. v. Goldhammer, 683 F. Supp. 502, 506 (E.D. Pa. 1988)).

To prevail on a tortious malpractice claim, the plaintiff must "prove that he had a viable cause of action against the party he wished to sue in the underlying case and that the attorney he hired was negligent in prosecuting or defending that underlying case." Rinker v. Amori, No. 15-1293, 2016 WL 1110217, at *6 (M.D. Pa. Mar. 22, 2016) (quoting Sokolsky v. Eidelamn, 93 A.3d 858, 862 (Pa. Super. Ct. 2014)); see also Pettit, 241 B.R. at 850 ("[The] plaintiff must raise an issue whether defendants failed to exercise the standard of care that a reasonable attorney would exercise under the circumstances."). To sustain a malpractice claim based on breach of contract, the "plaintiff must show that there was a contract and that the defendant breached a specific provision thereof." Pettit, 241 B.R. at 850; see also Edwards v. Thorpe, 876 F. Supp. 693, 694 (E.D. Pa. 1995) ("[W]hen plaintiff's cause of action is based on the attorney's failure to exercise due care, it will sound in contract only if the attorney fails to follow the client's specific instructions or, by her negligence, breaches a specific provision of the contract.").

Legal malpractice claims accrue when counsel breaches her professional duties. Knopick v. Connelly, 639 F.3d 600, 607 (3d Cir. 2011) (citing Wachovia Bank, N.A. v. Ferretti, 935 A.2d 565, 572 (Pa. Super. Ct. 2007)); Foulke v. Dugan, 187 F. Supp. 2d 253, 258 (E.D. Pa. 2002); see

also Pocono Int'l Raceway, Inc. v. Pocono Produce, Inc., 468 A.2d 469, 471 (Pa. 1983) ("[T]he statute of limitations begins to run as soon as the right to institute and maintain a suit arises."). The "discovery rule" may toll the limitations clock "until the plaintiff knew, or through the exercise of reasonable diligence should have known, of the injury and its cause." Urland v. Merrell-Dow Pharm., Inc., 822 F.2d 1268, 1271 (3d Cir. 1987); see also Knopick, 639 F.3d at 607. "[L]ack of knowledge, a mistake, or a misunderstanding will not," however, "toll the [limitations period]." Foulke, 187 F. Supp. 2d at 258. Plaintiff must show that the discovery rule applies. Schmidt v. Skolas, 770 F.3d 241, 251 (3d Cir. 2014) (citing Dalrymple v. Brown, 701 A.2d 164, 167 (1997)).

Plaintiff alleges that Ms. Vigilante missed filing deadlines, falsely assured him that he could nevertheless win his case against the Union, and took retainers for incompetent professional services. (Compl. ¶ 5.) Although Plaintiff alleges that Ms. Vigilante's actions breached his attorney-client agreement, he offers no evidence or argument that Ms. Vigilante failed to follow any specific instructions or breached a specific provision of the agreement. Frantz v. Fasullo, No. 13-02345, 2014 WL 6066020, at *4 (M.D. Pa. Nov. 13, 2014). Accordingly, I will construe his claim as a tortious malpractice action, subject to Pennsylvania's two-year statute of limitations. See Pettit, 241 B.R. at 850 (taking similar approach).

As an initial matter, Plaintiff has not remotely made out malpractice. He offers no evidence to show that he had a "viable cause" of action against the Union. (See Doc. No. 162, Civ. No. 11-6185 (denying appeal)); see also Rinker, 2016 WL 1110217, at *6. Accordingly, I may dismiss Plaintiff's malpractice claim because he cannot make out any cognizable harm. See Nat'l Grange Mut. Ins. Co. v. Goldstein, Heslop, Steel, Clapper, Oswalt & Stoehr, 142 F. App'x 117, 120 (3d Cir. 2005); Scaramuzza v. Sciolla, No. 04-1270, 2006 WL 557716, at *12 (E.D. Pa. Mar. 3, 2006).

In any event, Plaintiff's action is clearly time-barred. It is undisputed that Plaintiff knew,

by June 2, 2014, that he could file a malpractice claim against Ms. Vigilante for "missing" the statute of limitations. (See Doyle Dep. 41:9–14 (acknowledging that he "received advice in 2014 that the case was filed late").) Indeed, as I have discussed, Plaintiff sent a *pro se* letter to my Chambers on that date stating that he was exploring such a claim and understood that it was subject to a two-year limitations clock. (Doc. No. 38, Civ. No. 11-6185.) Initiating such a claim more than four years later is thus untimely under a two- or four-year limitations clock. Urland, 22 F.2d at 1271 (the discovery rule tolls the limitations clock only "until the plaintiff knew, or through the exercise of reasonable diligence should have known, of the injury and its cause").

Plaintiff offers no basis to toll the limitations clock. Plaintiff avers that, contrary to his abusive remarks, he "believed in" Ms. Vigilante until her withdrawal, and that an attorney advised him not to file the instant action against her until his underlying case ended. (Pl.'s Resp. 8, Doc. No. 28; see also Doyle Dep. 45:7–9, 46:11–13.) Even accepting these allegations as true, however, Plaintiff's decision to follow this purported advice does not excuse his belated filing. Brown v. Buck, 614 F. App'x 590, 593 (3d Cir. 2015) (following incorrect legal advice "does not toll the running of the statute of limitations"); Newman v. Hutler, No. 17-1337, 2019 WL 630851, at *2 n.1 (D.N.J. Feb. 14, 2019) (even in criminal post-conviction relief cases, "an attorney's negligent advice regarding a statute of limitations does not suffice to warrant equitable tolling"); Foulke, 187 F. Supp. 2d at 258 ("[L]ack of knowledge, a mistake, or a misunderstanding will not toll the statute."); see also Sherman Indus., 683 F. Supp. at 509 n.9 ("Pennsylvania courts have not adopted the continuous representation rule, under which a plaintiff's claim for malpractice accrues upon the termination of the professional relationship giving rise to the malpractice dispute.").

In these circumstances, Plaintiff's malpractice action is plainly time-barred. I will thus enter judgment in favor of Ms. Vigilante and against Plaintiff.

V. CONCLUSION

For these reasons, I will grant Ms. Vigilante's Motion and enter judgment in favor of Ms. Vigilante and against Plaintiff. An appropriate Judgment follows.

AND IT IS SO ORDERED.

June 14, 2019

Paul S. Diamond, J.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ROBERT J. DOYLE,	:	
Plaintiff,	:	
	:	
v.	:	**Civ. No. 18-3965**
	:	
JACQUELINE M. VIGILANTE,	:	
Defendant.	:	

JUDGMENT

AND NOW, this 14th day of June, 2019, upon consideration of Defendant's Motion for Summary Judgment (Doc. No. 27), Plaintiff's Response in Opposition (Doc. No. 28–31), Defendant's Reply (Doc. No. 32), and all related submissions and exhibits, it is hereby **ORDERED** that Defendant's Motion (Doc. No. 27) is **GRANTED**. Judgment is entered in favor of Defendant Jacqueline M. Vigilante and against Plaintiff Robert Doyle. The **CLERK OF COURT** shall **CLOSE** this case.

AND IT IS SO ORDERED.

Paul S. Diamond, J.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 19-2538

ROBERT J. DOYLE,
Appellant

v.

JACQUELINE M. VIGILANTE

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civ. Action No. 2-18-cv-03965)
District Judge: Honorable Paul S. Diamond

SUR PETITION FOR REHEARING

Present: SMITH, Chief Judge, McKEE, AMBRO, CHAGARES, JORDAN, HARDIMAN, GREENAWAY, JR., SHWARTZ, KRAUSE, RESTREPO, BIBAS, PORTER, MATEY, and PHIPPS, Circuit Judges

The petition for rehearing filed by **appellant** in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the

circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is denied.

BY THE COURT,

s/ David J. Porter
Circuit Judge

Date: June 2, 2020
Lmr/cc: Francis Malofiy
Patricia A. Fecile-Moreland