

Slota v. Imhoff

On February 13, 2013, Fred Slota was indicted on charges of first degree rape and sexual contact with a child under the age of sixteen. The alleged victim was seven-year-old A.K., who was living with Fred and his wife as a foster child.

Fred's wife found defendant Imhoff and Associates, P.C. (Imhoff), a California law firm, on the internet. Imhoff advertised itself as a specialist in criminal law that offers assistance all over the United States, including South Dakota. Fred hired Imhoff to defend him. Imhoff then hired Henry Evans, a Sioux Falls attorney, to defend Fred. Imhoff also hired Manual de Castro, Jr., a South Dakota attorney to help defend Fred as well. Imhoff later assigned Shannon Dorvall, an Imhoff associate, to help Evans defend Fred.

After a jury trial, Fred was convicted on one count of first degree rape and one count of sexual contact with a child under the age of sixteen. Fred was sentenced to thirty years in the South Dakota State Penitentiary. The written judgment of conviction was filed on June 2, 2014. On June 19, 2014, Mr. de Castro sent Fred a closing letter on Imhoff stationary confirming that Imhoff and Associates was ending its representation of Fred.

Fred sought post-conviction relief. A habeas petition was filed on September 19, 2015, raising claims of ineffective assistance of counsel. A habeas judge granted Fred habeas relief, finding that under the totality of the circumstances Evans' representation fell short of the prevailing professional standard and that Fred was prejudiced by such cumulative errors. On June 7, 2017, the habeas court granted habeas relief and vacated Fred's conviction.

Forty-one days after being released from prison, Fred sued three of his four criminal defense attorneys for fraud and deceit and all four for legal malpractice. Evans, Imhoff, Dorvall, and de Castro all received service by July 14, 2017. The services occurred just over three years from June 2, 2014, the last date the attorneys represented Fred.

Defendants Imhoff, Evans, Dorvall, and de Castro all moved for judgment on the pleadings arguing that Fred's claims are time barred by SDCL 15-2-14.2. The circuit court granted the motions. The court held that the claims were time barred because they are subject to the three-year statute of repose of SDCL 15-2-14.2, rather than the six-year statute of limitations applicable to fraud claims. Thus, Fred's claims for legal malpractice were filed too late. The court also found that the factual allegations in the complaint do not support a fraud claim. The court determined Fred's fraud and deceit claims were merely reassertions of his claims for legal malpractice and that artful pleading cannot change those claims to benefit from a longer statute of limitations.

In this appeal, Fred Slota conceded that the circuit court correctly dismissed his claims against all defendants for legal malpractice. Fred only challenges the circuit court's ruling as to his fraud and deceit claims.

Mr. James D. Leach, Attorney for Appellant Fred Slota.

Mr. Thomas J. Welk, Mr. Jason R. Sutton, and Mr. Mitchell W. O'Hara, Attorneys for Appellees Imhoff and Associates P.C., Henry Evans, and Shannon Dorvall.