IN THE SUPREME COURT OF FLORIDA

CASE NO. SC00-657
Lower Tribunal No. 3D99-681

GILBRIDE, HELLER & BROWN, P.A.,
LAWRENCE HELLER and TIMOTHY HENKEL,

Petitioners,

v.

FLOYD WATKINS,

Respondent.

INITIAL BRIEF OF PETITIONERS

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CERTIFICATE OF FONT SIZE

This brief has been prepared using a 14-point proportionally spaced Times New Roman font.

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I. ISSUE PRESENTED FOR REVIEW

The question certified by the Third District Court of Appeal is as follows:

> Where review of a district court decision in an action underlying a legal malpractice claim is sought in the Florida Supreme Court, does the two-year statute of limitations period of section 95.11(4)(a), Florida Statutes, begin to run from the date the decision becomes final by the supreme court's resolution of that review, or does the period run from the date of the district court's mandate?

GHB requests that the above question be restated as follows:

> Where a final judgment in an action underlying a legal malpractice claim is appealed to the district court of appeal, does the two-year statute of limitations period of section 95.11(4)(a), Florida Statutes, begin to run at the expiration of the time for filing a motion for rehearing or the denial of the motion for rehearing by the district court, or at the conclusion of proceedings to obtain discretionary review of the district court's judgment by the Supreme Court?

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The respondent Floyd Watkins brought suit against his former attorneys, the petitioners Gilbride, Heller & Brown, P.A., Lawrence Heller and Timothy Henkel (hereinafter collectively referred to as "GHB"). Watkins alleged that GHB committed legal malpractice by advising Watkins to file an allegedly baseless counterclaim against NCNB National Bank of Florida, N.A., in a note collection case filed by NCNB against Watkins.

NCNB sued Watkins to recover on a promissory note. Watkins, through GHB, filed a counterclaim against NCNB on various lender liability theories. [R. vol. XII, p. 2103]. Upon motion by NCNB, and after several hearings on the matter, Watkins' amended counterclaim was dismissed with prejudice by the trial court. [R. vol. I, p. 202]. Watkins, again through GHB, appealed that final judgment to the Third District Court of Appeal, which affirmed. Watkins v. NCNB, 622 So.2d 1063 (Fla. 3d DCA 1993), pet. for review denied, 634 So.2d 629 (Fla. 1994).

Watkins then fired GHB and retained new counsel, attorney Thomas Scott. [R. vol. XIII, p. 2398]. Watkins' new lawyer filed a motion for rehearing or clarification in the Third District. That motion was denied on September 21, 1993, Watkins v. NCNB, 622 So.2d at 1063, and the Third District issued its mandate on October 7, 1993. Watkins, through attorney Scott, filed a notice to invoke the discretionary

jurisdiction of this Court. [R. vol. XIII, p. 2431]. On January 14, 1994, this Court denied that petition and declined to accept jurisdiction. Watkins v. NCNB, 634 So.2d at 629.

Watkins commenced this malpractice case against GHB on January 12, 1996, [R. vol. I, p. 2], more than two years after the Third District denied Watkins' motion for rehearing in the underlying action.

In the malpractice case, Watkins alleges that the counterclaim filed on his behalf by GHB was legally and factually baseless and should never have been filed. [R. vol. I, p. 173]. Watkins does not contend that Judge Ungaro or the Third District erred in dismissing his counterclaim and affirming that dismissal. Rather, Watkins asserts that GHB should have advised him not to file a counterclaim at all, and advised him to pay off the NCNB note immediately. Id.

Following discovery in this case, GHB moved for summary judgment on the ground, inter alia, that Watkins claim was barred by the two-year statute of limitations applicable to professional negligence claims. [R. vol. II, p. 230; vol. XIII, p. 2295]. GHB argued that pursuant to the "bright line" rule announced by this Court in its decision in Silvestrone v. Edell, 721 So.2d 1173 (Fla.1998), the two-year limitation period began to run as of the date of the Third District's denial of rehearing in the Watkins v. NCNB appeal. The trial court, Judge Celeste Muir, agreed, and entered

final summary judgment for GHB on Watkins' negligence claims.[1] [R. vol. XX, pp. 4368, 4370].

Watkins appealed, and a divided panel of the Third District Court of Appeal reversed, with the majority opinion holding that the limitation period began to run only upon this Court's denial of Watkins' petition for discretionary review. Watkins v. Gilbride, Heller & Brown, Case No. 3D99-681, Slip op. (Fla. 3d DCA Mar. 8, 2000). "In light of the recent nature of Silvestrone and the rapid dispute over the bright line rule," the Third District certified the following question:

> Where review of a district court decision in an action underlying a legal malpractice claim is sought in the Florida Supreme Court, does the two-year statute of limitations period of section 95.11(4)(a), Florida Statutes, begin to run from the date the decision becomes final by the supreme court's resolution of that review, or does the period run from the date of the district court's mandate?

Id. Slip op. at 9. GHB invokes the discretionary jurisdiction of this Court to answer that certified question. GHB requests that the question be restated as follows:

> Where a final judgment in an action underlying a legal malpractice claim is appealed to the district court of appeal, does the two-year statute of limitations period of section 95.11(4)(a), Florida Statutes, begin to run at the expiration

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[1] The transcripts of the two hearings before Judge Muir on GHB's motion for summary judgment were not included in the original record on appeal, but are attached to Watkins' second motion to supplement the record below.

of the time for filing a motion for rehearing or the denial of the motion for rehearing by the district court, or at the conclusion of proceedings to obtain discretionary review of the district court's judgment by the Supreme Court?

IV. SUMMARY OF ARGUMENT

In Silvestrone v. Edell, 721 So.2d 1173 (Fla. 1998), this Court announced a bright-line rule to resolve the question of when the statute of limitations begins to run on a litigational malpractice case in which the underlying litigation proceeds to final judgment. That bright line was drawn at the point at which the underlying judgment becomes "final." For cases in which the judgment in the underlying case was appealed, finality was held to occur when the time for filing a motion for rehearing of the judgment on appeal expired, or the date of the denial of such a motion. The Silvestrone definition of finality specifically did not include the time period for seeking discretionary review of the district court's decision. Under the definition of finality set forth in Silvestrone, the judgment against Watkins in the underlying litigation became final when the district court denied his motion for rehearing in Watkins v. NCNB. The two-year statute of limitation began running at that time, and expired four months before the present malpractice action was filed.

A judgment of a district court is final, for malpractice statute of limitation purposes, upon expiration of the time for or denial of any motion for rehearing because at the point at which the district court ceases to have the inherent authority to retract or alter its judgment. Redressable harm has then occurred, triggering the accrual of the malpractice cause of action. Such redressable harm occurs when a judgment is final on

appeal, even though the possibility of discretionary review in the Supreme Court exists. That is because, unlike a district court, which has mandatory appeal jurisdiction to review all final judgments of trial courts, the Supreme Court in its discretionary review capacity has no corresponding authority or duty to review final judgments of district courts. A judgment therefore is final when an appeal is complete at the district court level, because at that point the losing party's entitlement to any appeal of right is at an end.

The constitutional framework of the Florida courts and the rules governing appellate procedure support placing the bright line at the conclusion of any review by appeal. The district courts are courts of final appellate jurisdiction. The filing of a notice invoking the discretionary review in this Court does not disturb the finality of the district court's judgment, which may be enforced by a mandate notwithstanding the pendency of review proceedings in this Court. By contrast the jurisdiction of the Supreme Court is narrowly limited by the constitution and is utilized not to correct errors of lower courts for the benefit of individual litigants, but is exercised to ensure uniformity of precedent among the courts of the state and to address issues of statewide importance.

The Third District in this case departs from the Silvestrone bright-line rule by holding that finality did not occur in Watkins v. NCNB until this Court had denied

Watkins' petition for discretionary review. The majority misconstrued this Court's citation of the Chapman v. Garcia, 463 So.2d 528 (Fla. 3d DCA 1985), which stated in dicta that a judgment is not final until any petition for review by this Court is resolved. This Court's reference to Chapman for the proposition that redressable harm does not occur until final judgment, does not constitute an implicit adoption of dicta in Chapman to the effect that such finality can only occur following Supreme Court review. Such an interpretation contradicts the plain language of Silvestrone, which places the point of finality at the completion of an appeal.

A losing litigant whose cause of action for malpractice has accrued upon the completion of an appeal has two years from that time in which to sue for malpractice. To extend that time period beyond that point of finality would unfairly expose defendants in malpractice suits to a limitations period beyond the two-years allowed by statute. Certainty and finality are the underlying reasons behind the statutes of limitations. Requiring a malpractice suit to be brought within two years of the completion of an appeal to the district court, provides certainty for clients without sacrificing finality for lawyers potentially exposed to a malpractice action.

V. ARGUMENT

The statute of limitations on Watkins' legal malpractice claim began to run on September 21, 1993, the date on which the Third District denied rehearing of its decision adverse to Watkins in Watkins v. NCNB. The two-year limitation period therefore expired on September 21, 1995. Because the present malpractice action was not commenced until January 12, 1996, two years and four months after the denial of rehearing, the action is time-barred, and summary judgment was properly entered in favor of GHB.

A. The Statute of Limitations on Watkins' Legal Malpractice Claim Began to Run Upon the Third District's Denial of Rehearing in *Watkins v. NCNB*, at Which Point the Judgment Against Watkins Became Final Pursuant to the Bright-Line Rule Announced in *Silvestrone v. Edell*

In Silvestrone, in order to "provide certainty and reduce litigation over when the statute of limitation starts to run," the Court announced the following "bright-line rule":

> [W]hen a malpractice action is predicated on errors or omissions committed in the course of litigation, and that litigation proceeds to final judgment, the statute of limitations does not commence to run until the litigation is concluded by final judgment. To be specific, we hold that the statute of limitations does not commence to run until the *final judgment becomes final*.[2]

[2]/ For instance, a judgment becomes *final*, either

> upon the expiration of the time for filing an appeal and post-judgment motions, or, *if an appeal is taken, upon the appeal being affirmed and either the expiration of the time for filing motions for rehearing or a denial of the motions for rehearing.*

Id. at 1175 & n.2 (emphasis added). The Third District majority below did not follow this holding.

The Third District majority held that the statute of limitations on Watkins' malpractice claim did not begin running until this Court denied discretionary review in the underlying case, stating that until that point the requisite finality did not exist. That holding is incorrect. The Silvestrone decision, which purported to draw a bright line rule for *all* cases, did not mention exhaustion of discretionary review proceedings as a prerequisite to finality. The majority of civil cases this Court considers–including Silvestrone–arise on discretionary review rather than direct appeal to this Court. See Fla. R. App. P. 9.030(a)(1)-(2). Surely if the Court in Silvestrone intended to allow litigants not only to complete any *appeal*, but also to exhaust any possibility of *discretionary review* before finality occurred, it would have said so. See Watkins v. GHB, Slip op. at 12 (Gersten, J., dissenting). It did not. The Court's statement that a judgment becomes final upon affirmance on "appeal" means just that.

Further, while Silvestrone placed finality of appealed judgments at the point of denial of rehearing, it did not do so for cases that end at the trial court level. Instead,

it extended the time for finality of the trial court judgment for thirty days, that is, until the time for taking an appeal had elapsed. In so doing, this Court gave litigants the opportunity to seek relief in the district court.

In contrast, Silvestrone did *not* extend finality of district courts' judgments so that litigants could file a petition for review in this Court. Instead, this Court defined finality of such judgments as the point when the time for filing a motion for rehearing elapsed or the motion for rehearing was denied. If discretionary review was to have an impact on finality for statute of limitations purposes, this Court would have–as it did in cases that end in the trial court–so extended finality as to permit the litigant time to file a petition for review. It did no such thing, however, because the filing of a petition for discretionary review has no impact on finality for statute of limitations purposes.

As such, the judgment against Watkins in the Watkins v. NCNB appeal became final when Watkins' motion for rehearing was denied by the Third District. At that point the statute of limitations on Watkins' malpractice claim against his former attorneys, GHB, began to run. Watkins' subsequent filing of a petition for discretionary review, which was summarily denied by the Court, did not affect or preclude the running of that limitation period. Watkins' malpractice action, filed two years and four months after the judgment became final in Watkins v. NCNB, is thus time-barred.

B. Placing the Bright Line at the Point of Finality at the District Court Level is Consistent with the Constitution and Rules Governing the Appellate Courts in Florida, Pursuant to Which the District Courts are Courts of Final Appellate Jurisdiction

Setting the bright line at the point of completion of the appeal process in the district court was not an arbitrarily selected point. The bright-line rule comports with both the constitutional framework of the Florida courts and the Florida Rules of Appellate Procedure.

A party who loses his appeal in a district court has no *right* to further review by the Florida Supreme Court. Even in the rare case where such review is available within one of the constitutionally-limited categories, this Court still has the discretion to decline to exercise its jurisdiction, and may do so for reasons unrelated the merits of the petitioner's case. Unlike the district courts, the Supreme Court's role is not to correct errors of the lower courts for the benefit of litigants in particular cases. Rather, this Court's role is to ensure uniformity of precedent and to address certain specified areas of statewide significance. Fla. Const. art. V, § 3(b); Ansin v. Thurston, 101 So.2d 808, 811 (Fla. 1958); Lake v. Lake, 103 So.2d 639, 642-43 (Fla. 1958), overruled on other grounds, Foley v. Weaver Drugs, Inc., 177 So.2d 221 (Fla. 1965).

The majority opinion below cites to this Court's decision in The Florida Star v. B.J.F., 530 So.2d 286 (Fla. 1988), as demonstrating the "vastness" of the Court's

discretionary jurisdiction. However, all that Florida Star actually holds is that this Court has broad jurisdiction to determine the limits of its own jurisdiction,[2] which is quite narrowly circumscribed by the constitution. See Mystan Marine, Inc. v. Harrington, 339 So.2d 200, 201 & n.1 (Fla. 1976);Diamond Berk Ins. Agency, Inc. v. Goldstein, 100 So.2d 420, 420 (Fla. 1958).

Under the constitutional provisions defining the powers of the courts, "[i]t was never intended that the district courts of appeal should be intermediate courts." Ansin, 101 So.2d at 810. Rather than being mere "way stations on the road to the Supreme Court," Lake v. Lake, 103 So.2d at 641-42, the district courts "are courts primarily of *final* appellate jurisdiction." Id. (emphasis added); Sanchez v. Wimpey, 409 So.2d 20, 21 (Fla. 1982) (quoting Ansin); Jenkins v. State, 385 So.2d 1356, 1357-58 (Fla. 1980) (same). Linking finality to the end of appeal proceedings in the district court is thus consistent with the constitutionally prescribed role of the district courts.

The appellate rules likewise recognize that finality occurs when the time for rehearing on appeal has elapsed. For example, unlike a motion for rehearing, which does delay finality, neither the issuance nor stay of the mandate affects the finality of

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[2] The Florida Star case dealt with the question of exhaustion of discretionary review in the Florida Supreme Court as a prerequisite to obtaining review in the United States Supreme Court. 530 So.2d at 288 & n.3.

the district court's judgment.[3] See Eldred v. Reber, 639 So.2d 1086, 1088 (Fla. 5th DCA 1994) ("for purposes of determining when the statute of limitations begins to accrue in a litigational malpractice action when the underlying action is appealed, the time begins to accrue when the appellate decision is 'rendered'," not at the later date when the court issues its mandate).

The filing of a notice to invoke the discretionary jurisdiction of this Court likewise does not affect the finality of the district court's judgment or preclude the district court from issuing a mandate. State v. McKinnon, 540 So.2d 111, 113 (Fla. 1989), overruled on other grounds, State v. Roberts, 661 So.2d 821 (Fla. 1995). To the contrary, while the appellate rules formerly provided for an automatic stay of the district court's mandate when discretionary review was sought, that rule was abolished "because it encouraged the filing of frivolous petitions and was regularly abused." Fla. R. App. P. 9.120 Committee Notes to 1977 Amendment.

The concept of finality underlying the Silvestrone bright-line rule thus stems from the framework of the state's court system set forth in the constitution and comports with the appellate rules.

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[3] It should be noted that in the Watkins v. NCNB appeal *no stay of the district court's mandate* was sought by Watkins, and the mandate issued as a matter of course. Moreover, even if the date of the mandate were the date from which the limitation period began running, Watkins' malpractice claim would still be time-barred.

C. Watkins Sustained Redressable Harm When the Third District Denied His Motion for Rehearing in *Watkins v. NCNB*, Because at the Point the District Court's Inherent Authority to Alter or Amend Its Judgment Ended

This Court drew the bright-line rule announced in Silvestrone so that trial courts could avoid the factual determination made in some previous cases[4] of when an aggrieved client knew or should have known of litigational malpractice committed by his lawyer. See Fla. Stat. § 95.11(4)(a).

Silvestrone resolved that factual issue by holding as a matter of law that a client had not sustained "redressable harm" so long as the court had the "inherent authority" to modify or amend its own ruling prior to final judgment. Silvestrone, 721 So.2d at 1175 (quoting Zakak v. Broida and Napier, P.A., 545 So.2d 380, 381 (Fla. 2d DCA 1989)). As the court noted in Zakak, the injury to the aggrieved clients in the underlying litigation "did not become a confirmed fact until the entry of final judgment" against them, and thus redressable harm did not exist and the cause of action for attorney malpractice did not accrue until that point. Zakak, 545 So.2d at 381.

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[4] See, e.g., Silvestrone v. Edell, 701 So.2d 90, 91 (Fla. 5th DCA 1997), quashed, 721 So.2d 1173 (Fla. 1998); Sawyer v. Earle, 541 So.2d 1232, 1234 (Fla. 2d DCA 1989); Breakers of Ft. Lauderdale, Ltd. v. Cassel, 528 So.2d 985, 986 (Fla. 3d DCA 1988).

Silvestrone placed the bright line at the point at which the district court denies a motion for rehearing, because that is the point when the court's inherent authority to effect its own judgment is at an end. Until that point the "court retains inherent authority to reconsider and, if deemed appropriate, alter or retract any of its nonfinal rulings prior to entry of the final judgment or order terminating an action." Id. at 1175 (citing Zakak, 545 So.2d at 381). Once that inherent authority has ended, however, the cause of action has clearly accrued and the statute of limitations must thus begin running.

Moreover, all final judgments of trial courts can be appealed *as a matter of right* to the district courts of appeal, and the district courts have the *inherent authority*–and the *duty*--to rule on the merits of all such appeals. Fla. Const. art. V, § 4(b)(1). In contrast, the Supreme Court has no corresponding inherent authority to review *all* final judgments of the district courts. Indeed it has no constitutional duty to review *any* of them through discretionary review. Thus, drawing the bright line at the point of completion of an appeal to the district court, and not at the later date when discretionary review may be sought, recognizes that at the point of completion of district court appeal proceedings, a litigant's *right* to obtain review and the courts' corresponding *inherent authority* to provide such review, are at an end.

In the present case the Third District's inherent authority to retract or revise its

judgment against Watkins ended with the denial of Watkins' motion for rehearing, and the statute of limitations began to run on his cause of action for malpractice. Because the limitation period expired before the instant case was commenced, the trial court properly entered summary judgment in favor of GHB.

D. The Court's Citation in *Silvestrone* to the Third District's Decision in *Chapman v. Garcia* Did Not Constitute an Adoption of the Third District's Dicta in *Chapman*

The Third District's majority opinion suggests that this Court implicitly included the denial of a petition for review in its definition of finality because Silvestrone cited Chapman v. Garcia, 463 So.2d 528 (Fla. 3d DCA 1985). Watkins v. GHB, Slip op. at 5. As Judge Gersten point out in his dissent, however, the Chapman language cited by the majority was pure dicta. Watkins v. GHB, Slip op. at 13 (Gersten, J., dissenting).[5] Further, Silvestrone did not cite to or quote this dicta from Chapman.

Instead, this Court cited Chapman for the proposition that "redressable harm is not established until final judgment is rendered," Silvestrone, 721 So.2d at 1175, and states in its parenthetical description of Chapman that the plaintiffs in that case could not sue for malpractice "so long as underlying medical malpractice action . . . was still pending in trial court or *on appeal*." Silvestrone, 721 So.2d at 1175 (emphasis added). The Court's discussion of Chapman nowhere mentions discretionary review.

More important, the issue in Chapman was not whether or not a legal malpractice action was time-barred. Instead, that decision involved a petition for a writ

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[5] The dicta from Chapman cited by the Third District below states, in pertinent part, "[U]ntil this court issues its decision [in the underlying medical malpractice case]-- or until the Florida Supreme Court resolves the issue if further review is sought–the question has not been resolved to finality." 463 So.2d at 529.

of certiorari to review trial court orders denying removal of an attorney ad litem and disqualifying the plaintiff's counsel. Chapman, 463 So.2d at 529. The issues were whether a merely potentially adverse ruling on the limitation issue in the underlying *medical* malpractice case created sufficient adversity between the minor plaintiff and her parents to warrant the appointment of a separate attorney for the child and the disqualification of the plaintiffs' retained counsel. Id. at 529-30.

The dicta in question thus did not constitute a holding as to when a legal malpractice case must be filed, since that was not an issue before the court. As Judge Gersten wrote in his dissent, it "would be setting a dangerous precedent suggesting that when a case is cited in an appellate decision, all propositions and dicta contained in that case are implicitly accepted and adopted." Watkins v. GHB, Slip op. at 13 (Gersten, J., dissenting).

Finally, the Third District majority opinion cites Wilson v. Clark, 414 So.2d 526 (Fla. 1st DCA 1982). Wilson, which was not a legal malpractice or a statute of limitations case, was cited by the Third District in Chapman, but was not mentioned in Silvestrone. The questions at issue in Wilson were whether a cause of action could be deemed merged into a judgment where the judgment was on appeal, and whether a substitution of party was timely filed after a suggestion of death. Id. at 528-30. The First District's statement to the effect that the debt would not merge into the judgment

until a timely filed petition for review in the Florida Supreme Court was acted upon, id. at 530, even if correct, has absolutely no bearing on the issue before the Court in the present case.

E. The *Silvestrone* Bright-Line Rule Serves the Twin Purposes of Certainty and Finality Underlying the Statutes of Limitation

The Silvestrone bright-line rule ensures finality and certainty for both clients and counsel in the thorny realm of legal malpractice. As Judge Gersten wrote in his dissent below, "certainty and finality are the underlying reason and spirit behind our statutes of limitations." Watkins v. GHB, Slip op. at 16 (Gersten, J., dissenting). Placing the bright-line rule at the end of the rehearing process in the district court serves these twin goals. It provides the client with the certainty he needs to determine when he must commence an action against his lawyer, while protecting the lawyer from an open-ended statute of limitations that exceeds the two years provided by statute.[6]

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[6] As stated by Judge Gersten's dissenting opinion below:

> After all, a litigant could potentially seek further review in the federal judicial system. And from there, perhaps the Hague? It is a fundamental fact that an effective judicial system rests upon finality. As a policy matter, we should not elevate a privilege to seek discretionary review, over a party's right to finality and certainty.

In this case, Watkins fired GHB and hired new counsel even before his motion for rehearing in the district court was filed. Watkins therefore manifestly was on notice of GHB's alleged litigational malpractice and sustained redressable harm when the district court's adverse judgment became final upon its denial of that motion. See Fla. Stat. § 95.11(4)(a) (professional negligence statute of limitation runs "from the time the cause of action is discovered or should have been discovered"). Delaying the start of the limitation period until after Watkins' new counsel unsuccessfully filed the petition for discretionary review would expose GHB to a malpractice claim for more than two years after the claim has accrued. This result is simply unfair; there is no statute limitation exception for lawyers.

Drawing the bright-line rule at the conclusion of an appeal to the district court neither interferes with this Court's jurisdiction nor with a client's ability to petition this Court for review. Instead, consistent with the statutorily mandated limitation period, it simply dictates that a client injured by his lawyer's malpractice cannot postpone filing that claim for more than two years after the claim has accrued--regardless of whether or not he wishes to seek discretionary review in this Court.

The majority opinion raises the hypothetical question of what would occur in a

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Watkins v. GHB, Slip op. at 16-17 n. 8 (Gersten, J., dissenting).

case in which the Supreme Court decided to exercise its discretionary jurisdiction to review a final judgment of a district court. Watkins v. GHB, Slip op. at 8. This is not a situation presented by the facts of the instant case. Here, as in most cases, the Court summarily denied discretionary review, and this Court need not reach the question of what effect, if any, a decision to accept jurisdiction in Watkins v. GHB would have had on his malpractice claim.[7]

Simply put, the Third District in this case extended the statute of limitations on Watkins' claim beyond the two years permitted by statute. That decision undermines the purpose of the bright-line rule–to provide certainty for malpractice plaintiffs without sacrificing finality for defendant lawyers–and thus should be corrected by this Court.

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[7] If the Court were to craft a rule to address such a hypothetical scenario, it could, for example, decide that where discretionary jurisdiction is accepted, the cause of action for malpractice does not accrue until after completion of that review. At least one judge has suggested that where review by this Court can only correct judicial error, which is by definition not attorney malpractice, the Court's acceptance of jurisdiction would have no impact on the already-accrued cause of action. See Richards Enter., Inc. v. Swofford, 495 So.2d 1210, 1217-18 (Fla. 5th DCA 1986) (Cowart, J., dissenting).

As a practical matter, a party may decide to wait to see whether or not the Court will accept jurisdiction before deciding whether or not to file a malpractice action. In the present case, Watkins' motion for rehearing in the Watkins v. NCNB appeal was denied on September 21, 1993. This Court denied review on January 14, 1994. Thus, at the point at which discretionary review was denied, Watkins still had a year and eight months left in which to timely file his malpractice claim.

VI. CONCLUSION

Watkins' cause of action for malpractice allegedly committed by GHB in the course of the NCNB v. Watkins litigation accrued when the adverse final judgment in that case was affirmed on appeal by the Third District and when that affirmance became final upon the district court's denial of Watkins' motion for rehearing. Thus, the present action, commenced more than two years later, is barred by the statute of limitations.

On the basis of the arguments and authorities set forth above, the petitioners request that the Court quash the decision of the Third District with directions to reinstate the summary judgment for GHB.

VII. CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing brief was served by _____ this _____ day of _____, 2000, upon Franklin L. Zemel, Esq. and Teri L. DiGiulian, Esq., Bedzow, Korn, Brown, Miller & Zemel, P.A., 20803 Biscayne Blvd., Ste. 200, Aventura FL 33180.

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