

## OPINION SUMMARY

### MISSOURI COURT OF APPEALS EASTERN DISTRICT

MARK R. ROSENBERG, Appellant, ) No. ED98219  
) Appeal from the Circuit Court of  
vs. ) St. Louis County  
)  
BURTON H. SHOSTAK and MOLINE & ) Honorable Richard C. Bresnahan  
MEHAN, LLC, Respondents. ) Filed: March 12, 2013

Dr. Mark R. Rosenberg (Plaintiff) appeals the judgment of the Circuit Court of St. Louis County granting summary judgment in favor of Burton H. Shostak and his former law firm, Moline & Mehan, LLC (the Firm) (collectively, Defendants), on Plaintiff's petition for legal malpractice. Plaintiff argues that the trial court erred in granting Defendants' motion for summary judgment because: (1) genuine issues of material fact remain in dispute; (2) the statute of limitations did not bar Plaintiff's claim; (3) neither Plaintiff's criminal conviction, the denial of his *coram nobis* petition, nor the medical licensing boards' disciplinary actions collaterally estopped Plaintiff's claim; (4) Plaintiff's inconsistent positions did not judicially estop his claim; and (5) Defendants were not entitled to estoppel due to unclean hands.

AFFIRMED.

Division Four Holds: Plaintiff's guilty plea and subsequent failure to obtain post-conviction relief conclusively established his guilt and collaterally estop him from proving that Defendants' allegedly negligent advice proximately caused his damages. Because the undisputed facts demonstrate Plaintiff's inability to prove the proximate cause element of his malpractice claim, Defendants were entitled to judgment as a matter of law.

Opinion by: Patricia L. Cohen, J.  
Lawrence E. Mooney, P.J., and Kurt S. Odenwald, J., concur.

Attorney for Appellant: Frank K. Carlson

Attorney for Respondents: Joseph L. Green (Burton H. Shostak)  
Lawrence R. Smith (Moline & Mehan, LLC)

**THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.**