

# Respected Local Attorney Successfully Defended Against Malpractice Allegations

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*Malpractice complaint against local attorney was quickly dismissed.*

Bailey Glasser founder Benjamin Bailey, of the firm's Charleston, West Virginia, office, won a motion to dismiss a legal malpractice complaint against an attorney at a well-respected local public interest law firm.

The Plaintiff had hired a local public interest law firm to file a lawsuit against Bank of America, alleging a breach of contract and several violations of the West Virginia Consumer Protection Act. The original suit was filed in Kanawha County Circuit Court, and Bank of America failed to respond in a timely manner, resulting in a default judgment.

When Bank of America became aware of the default judgment, the banking giant had the case removed to the US District Court for the Southern District of West Virginia, had the default set aside and won summary judgment on all counts.

The client then sued his former attorney, alleging legal malpractice because the underlying case had been removed to federal court, despite the fact that both client and attorney had stipulated that they would seek to recover no more than \$74,999, in order to keep the case out of federal court.

As Bailey explained to the Court, the legal malpractice case could not proceed because the Plaintiff did not "claim that but for the amount of the default, Bank of America would not have set aside the default, Judge Copenhaver would not [have] awarded the bank summary judgment on all counts, [or that the Plaintiff] would have succeeded at trial."

Kanawha County Circuit Judge Louis H. "Duke" Bloom agreed with Bailey Glasser and found the legal malpractice claim unconvincing. Judge Bloom explained that the Plaintiff lost his underlying case not because he was in federal court or because his attorney erred in its representation, but because the Plaintiff had never been a party to the contract over which he attempted to sue Bank of America.

## RESPECTED LOCAL ATTORNEY SUCCESSFULLY DEFENDED AGAINST MALPRACTICE ALLEGATIONS

The malpractice complaint was dismissed.

### **Attorneys**

Benjamin L. Bailey

### **Practice Areas**

Criminal Defense & Internal Investigations