

**IN THE FIFTH JUDICIAL DISTRICT  
DISTRICT COURT OF LYON COUNTY, KANSAS**

NARVINDER SINGH,	)	
	)	
Plaintiff,	)	
	)	Case No. 05CV171
v.	)	
	)	
DONALD C. KRUEGER,	)	
	)	
Defendant.	)	
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**Pursuant to K.S.A. Chapter 60**

**JOURNAL ENTRY OF JUDGMENT**

NOW on this 30<sup>th</sup> day of October, 2006, came on for hearing Plaintiff’s Motion to Invoke Collateral Estoppel, Defendant’s Motion for Summary Judgment, Defendant’s Motion to Dismiss Plaintiffs’ Contract Claim (Count I) for Failure to State a Claim Upon Which Relief Can Be Granted, and Defendant’s Motion in Limine Regarding Plaintiff’s Calling the Honorable Judge W. Lee Folwer as a Fact Witness in this Case. Plaintiff appeared by and through Counsel, Ronald A. Lyon, of the Law Offices of Ronald A. Lyon and Defendant appeared by and through Counsel, Susan Kulp Stolle and Christopher C. Confer of Yeretsky & Maher, LLC. The Court after hearing arguments of Counsel and being otherwise fully advised in the premises finds as follows:

1. Plaintiff’s Motion to Invoke Collateral Estoppel is **DENIED**. Plaintiffs seeks to use collateral estoppel to foreclose the issue of legal malpractice being litigated in this case based on the Court’s decision concerning ineffective assistance of counsel made in the underlying case, State v. Narvinder Singh, Case No. 03 CR 392. The Court finds that under controlling Kansas law, in order for a party to invoke the equitable doctrine of collateral estoppel, the party against whom collateral estoppel is sought must have been a party to, or in privity with a party to, the

underlying proceeding which provides the basis for the use of collateral estoppel. The Court further finds that the Defendant, Donald C. Krueger, was not a party to, nor was he in privity with a party to, the Hearing to Withdraw Plaintiff's Guilty Plea which was held on October 13 and 27, 2004 in the case captioned State v. Narvinder Singh, Case No. 03 CR 392.

THEREFORE, the Court finds that since Plaintiff is unable to prove an essential and necessary element of collateral estoppel (i.e., that Defendant Donald C. Krueger was a party to, or in privity with a party to, the Hearing to Withdraw Plaintiff's Guilty Plea which was held on October 13 and 27, 2004 in the case captioned State v. Narvinder Singh, Case No. 03 CR 392), Plaintiff cannot invoke the equitable doctrine of collateral estoppel against the Defendant in this case.

2. Defendant's Motion to Dismiss Plaintiff's Breach of Contract Claim (Count I) for Failure to State a Claim Upon Which Relief Can Be Granted is **GRANTED**. The Court finds that under Kansas law, in order for a legal malpractice claim to be sounded in contract, a plaintiff's complaint must not rely on allegations of breaches of duties imposed by law. The Court further finds that all of the allegations against Defendant Donald C. Krueger pled in Plaintiff's Petition and in the superseding Pre-Trial Order, were based on alleged breaches of duties imposed by law on the attorney-client relationship through the Kansas Code of Professional Conduct. *Kan.Sup.Ct.R. 226*.

THEREFORE, the Court finds that Plaintiff has failed to state a claim for legal malpractice sounded in contract upon which relief can be granted, and as such, that dismissal of Count I of Plaintiff's Petition is appropriate. The Court specifically hereby adopts, *in toto*, and incorporates by reference, the reasoning, conclusions, arguments, and authorities contained in Defendant's Memorandum in Support of Defendant's Motion to Dismiss Plaintiff's Breach of

Contract Claim for Failure to State a Claim Upon Which Relief Can Be Granted, which is filed and in the record of this case.

3. Defendant's Motion for Summary Judgment is **GRANTED**. The Court finds that the general rule in Kansas is that expert testimony is necessary in the trial of a legal malpractice case. The Court also finds that Kansas recognizes a limited "common knowledge" exception to the general rule. The Court specifically finds that Plaintiff needed an expert witness for the trial of this legal malpractice case, as the issues involved herein were not within the common knowledge of lay jurors. The Court also specifically finds that since the issues involved in this case were not with the "common knowledge" of lay jurors, Plaintiff's failure to designate an expert witness and announced intent, on the record, at the Pre-Trial Conference to proceed to the trial of this case without the benefit of expert testimony were fatal flaws as it meant that Plaintiff would be unable to prove the essential elements of his case.

THEREFORE, the Court finds that because Plaintiff is unable to prove essential elements of his case, summary judgment in Defendant Donald C. Krueger's favor is appropriate. The Court specifically hereby adopts, *in toto*, and incorporates by reference, the statement of facts, reasoning, conclusions, arguments, and authorities contained in Defendant's Memorandum in Support of His Motion for Summary Judgment which is in the record of this case.

Defendant's Motion in Limine Regarding Plaintiff's Calling the Honorable Judge W. Lee Folwer as a Fact Witness in this Case is **MOOT, BUT GRANTED**. The Court finds that though this Motion is rendered moot, as the Court has already disposed of all of Plaintiff's claims via the mechanisms provided in K.S.A. 60-256 and K.S.A. 60-212(b)(6), it would not have allowed Judge Fowler to testify in this case. The Court finds that the only permissible topic Judge Fowler would be able to testify on amounts to a reiteration of his ruling from the underlying case (i.e.,

the case captioned State v. Narvinder Singh, Case No. 03 CR 392). However, since the record from the underlying case speaks for itself, there is no need for Judge Fowler to testify at the trial of this case regarding the underlying case's record.

THEREFORE, the Court further finds, contrary to Plaintiff's express argument, that under Brinkerhoff not only is it improper for a party to question a judge about what he/she did and why he/she did it, such testimony is inadmissible in Kansas. Brinkerhoff v. Home Trust & Savings Bank, 109 Kan. 700, 205 P. 779, 784 (1921)("[t]he considerations and findings of a court should be expressed in the record, but [a judge's] secret and unexpressed reasons which actuated him in making the decision are not admissible any more than are those of a jury").

WHEREFORE, since all of Plaintiff's claims fail as a matter of law as determined by the Court's decisions: (1) Denying Plaintiff's Motion to Invoke Collateral Estoppel, (2) Granting Defendant's Motion for Summary Judgment, and (3) Granting Defendant's Motion to Dismiss Plaintiffs' Contract Claim (Count I) for Failure to State a Claim Upon Which Relief Can Be Granted, the Court hereby dismisses this case.

**IT IS SO ORDERED**

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Steven Hornbaker  
District Court Judge, Assigned