

Defeating Estoppel-Based Claims In Legal Malpractice Actions

By **Christopher Blazejewski** (November 12, 2025)

Recent appellate decisions have demonstrated how lawyers can use collateral estoppel as a viable defense to legal malpractice claims.

For example, in both *LeMaster v. Hynds Yohnka Bzdill & McInerney LLC*,^[1] and *Layden v. O'Donnell Callaghan LLC*,^[2] the Appellate Court of Illinois — First and Second Districts, respectively — in late September affirmed dismissals of legal malpractice claims based on the doctrine of collateral estoppel. The courts held that material factual issues underlying the malpractice allegations had been conclusively decided in prior litigation, where the plaintiffs had full and fair opportunities to contest those issues.



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Both decisions demonstrate that courts will apply collateral estoppel under the right circumstances to prevent relitigation of specific factual issues that were actually litigated and necessarily decided in prior proceedings — even when those issues arise in a legal malpractice action — emphasizing that parties cannot obtain a second bite at the apple on factual determinations they vigorously contested and lost in earlier litigation.

But could lawyers be susceptible to collateral estoppel arguments made offensively by former clients in a malpractice action? Legal malpractice claims often require former clients to essentially relitigate their original case to prove their attorney's negligence caused them harm. To try to skip this critical step, former clients may try to use the principles of judicial or collateral estoppel to bind their former attorneys to statements made — or not made — by the attorney on behalf of the former client in the underlying matter.

Two state supreme court decisions from the past two years — *Dodd v. Jones*^[3] and *Fahey v. Cook*^[4] — offer insight into successful defenses for law firms and lawyers to such tactics. Both cases addressed whether statements or positions taken or not taken by an attorney in an underlying lawsuit can be used against them in a subsequent legal malpractice action, though through different legal frameworks.

Both courts rejected the former client's attempts to use estoppel against their former attorneys. The decisions offer valuable insights into the challenges for former clients of proving the so-called case-within-a-case in a legal malpractice action.

This article provides an analysis of these court rulings on estoppel, and offers practical tips for practicing attorneys in seeking to defeat estoppel arguments in legal malpractice actions.

Dodd v. Jones: Rejecting Judicial Estoppel Against Former Attorneys

In *Dodd*, former clients sued their attorney after he missed a statute of limitations deadline for filing their medical malpractice lawsuit. The crux of their claim rested on proving that their underlying case had merit and would have been successful if filed on time. The District Court of Idaho's Fourth Judicial District granted summary judgment in favor of the attorney, finding the former clients' expert testimony inadmissible, and therefore they could not prove causation.

On appeal, the former clients argued, among other things, that the attorney should be

judicially estopped from claiming that no medical malpractice occurred because the attorney filed the medical malpractice complaint on their behalf.

In affirming the trial court decision this March, the Idaho Supreme Court rejected this argument, finding that judicial estoppel did not apply. The court reasoned that the attorney "was not a 'party' or 'litigant' in the medical malpractice case," but rather a representative with a duty to zealously advocate for his client.

In reaching its ruling, the court stated, "That an attorney filed a complaint alleging medical malpractice existed does not negate the legal obligation to prove that medical malpractice occurred," and furthermore, that an "attorney's statements or beliefs about a case cannot satisfy the requisite burden of proof in a later malpractice case."

The court held that, to the extent that the attorney's "subjective beliefs about the merits of the [former clients'] medical malpractice case" could be "inferred simply from [the attorney's] filing the malpractice case," such beliefs "are not judicial admissions and may not be used to estop [the attorney] from asserting that no medical malpractice occurred in the subsequent legal malpractice action."

The court also acknowledged the potential chilling effect that the former clients' estoppel argument, if accepted, could have on zealous representation by counsel, quoting precedent stating, "If statements and arguments made by counsel in furtherance of a client's claim were routinely deemed to constitute binding admissions against a lawyer in a subsequent legal malpractice action, it could conceivably have a chilling impact upon the vigor and resulting effectiveness of counsel's advocacy."

The Idaho Supreme Court refused to allow the former clients to escape proving causation in a legal malpractice action by relying on judicial estoppel, and affirmed summary judgment in favor of the attorney. It also took the unusual step of awarding attorney fees as sanctions against the appellate attorney who brought the appeal on behalf of the former clients, finding the appeal was both frivolous and brought for an improper purpose.

Fahey v. Cook: Rejecting Collateral Estoppel Against Former Attorneys

In Fahey, former clients sued their attorneys for legal malpractice stemming from the attorneys' representation in an unsuccessful underlying mineral rights case involving an estate. The District Court of North Dakota's East Central Judicial District granted summary judgment for the attorneys, ruling that the attorneys did not breach any duty to the former clients and did not cause any harm to them.

The North Dakota Supreme Court affirmed the trial court last July. As part of their appeal, the former clients argued that the trial court erred in rejecting their argument based on collateral estoppel.

The former clients asserted that the attorneys were barred by collateral estoppel from arguing that a certain property would not have been part of an estate because they did not argue it in the underlying case — even though that argument, if made in the underlying action, would have been adverse to the interests of the former clients.

The court determined none of the elements for collateral estoppel were satisfied. The court ruled that the issues in the legal malpractice action were distinct from those in the underlying litigation.

The court explained that in the underlying litigation, "Defendants were professional representatives who owed complete allegiance to Plaintiffs. Defendants had no personal interest in the rights being litigated, Defendants' interests were not the same as Plaintiffs' interests, and Defendants were not in privity with Plaintiffs."

Finally, the court ruled that the attorneys "did not have a fair opportunity to be heard on the issues in [the legal malpractice] case in the underlying litigation."

Practical Tips for Practicing Attorneys

While the ways in which the courts will enforce collateral or judicial estoppel in a legal malpractice action will vary from jurisdiction to jurisdiction, the Dodd and Fahey decisions highlight some strategies that may be available to defeat an attempt by a former client to take advantage of estoppel arguments.

Judicial Estoppel

Emphasize your role as an advocate, not a party.

In Dodd, the court emphasized that attorneys are not parties or litigants in cases where they represent clients. Courts may be persuaded that positions taken while representing clients were taken in a representative capacity, not personally.

Cite the chilling effect on zealous advocacy.

The Dodd court noted that applying judicial estoppel against attorneys "could conceivably have a chilling impact upon the vigor and resulting effectiveness of counsel's advocacy." Courts may be sympathetic to the argument that allowing such estoppel would undermine attorneys' ability to advocate zealously for clients.

Collateral Estoppel

Demonstrate different issues between cases.

As shown in Fahey, a legal malpractice action typically involves different issues than the underlying case. The court should be made aware specifically how the issues in the malpractice case — breach of duty, causation, damages — differ from those in the underlying litigation.

Emphasize lack of privity between attorney and client.

In Fahey, the court held that attorneys are not in privity with their clients for collateral estoppel purposes. The court found that as "professional representatives who owed complete allegiance to Plaintiffs," the attorneys "had no personal interest in the rights being litigated," and thus were not in privity with their clients.

Highlight a lack of fair opportunity to be heard.

The Fahey court noted that the attorneys did not have a fair opportunity to be heard on malpractice issues during the underlying litigation. Courts may be open to the argument that an attorney could not reasonably defend against allegations of malpractice raised in a case that did not exist at the time of the underlying representation.

Conclusion

Both the Dodd and Fahey courts rejected former clients' efforts to use estoppel principles to avoid proving causation in a legal malpractice action by limiting the attorney's defenses based on what the attorney stated or did not state in representing the client as part of the underlying case.

The courts made clear that — whether through collateral estoppel or judicial estoppel — attorneys should not be bound by positions they took or did not take while representing clients in underlying litigation.

Arguments grounded in some of the principles articulated in Dodd and Fahey provide a foundation for defeating estoppel-based claims in legal malpractice actions. Attorneys should keep these arguments in mind if former clients attempt to use judicial or collateral estoppel to avoid doing the work to prove causation — or the case-within-a-case — in a legal malpractice action.

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[1] LeMaster v. Hynds, Yohnka, Bzdill & McInerney LLC, No. 1-24-2172, 2025 IL App (1st) 242172-U (Sept. 23, 2025).

[2] Layden v. O'Donnell Callaghan LLC, No. 2-24-0685, 2025 IL App (2d) 240685-U (Sept. 30, 2025).

[3] Dodd v. Jones, 566 P.3d 379 (Idaho Mar. 3, 2025).

[4] Fahey v. Cook, 9 N.W.3d 668 (N.D. 2024).