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Recent Decisions on Attorney Liability to Non-Clients in Estate Planning

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Estate planning is, by its nature, a discipline where the attorney serves one person who hopes to benefit others. As a result, the attorney-client relationship has consequences radiating out to people who were never parties to it. While the client sits across the desk, gives instructions, and signs documents, the beneficiaries generally learn what those documents say only after the client is gone. That structural asymmetry inexorably leads to a thorny legal question, namely: when the client has died and something may have gone wrong, can a disappointed beneficiary sue the attorney? This question goes to the heart of where an attorney's loyalty lies, what an attorney can reasonably be expected to anticipate, and how far professional liability should extend into relationships the attorney never undertook.

The New Jersey Supreme Court's January 2026 decision in *Christakos v. Boyadjis*, 348 A.3d 966 (2026), in which the court rejected a non-client's malpractice claim against an estate planning attorney, provides a natural starting point for examining this issue. *Christakos* reflects a broader trend in recent decisions from California, New York, Missouri, Alaska, New Mexico, and Connecticut. The cases examined here show that courts that have largely—but not exclusively—continued to garrison protective barriers around the estate planning attorney-client relationship.

Christakos v. Boyadjis: New Jersey Adopts the Restatement Framework

The New Jersey Supreme Court's decision in *Christakos* is instructive because the court used the case to formally adopt Section 51 of the Restatement (Third) of the Law Governing Lawyers as the standard governing non-client claims against attorneys in New Jersey. Plaintiff Helen had referred her elderly uncles Peter and Nicholas to the defendant attorney, Boyadjis, when Peter expressed concern about getting their affairs in order. Boyadjis met with the brothers, reviewed Peter's 2003 will, and by his own later admission misinterpreted who would inherit under the existing instruments if both alternate beneficiaries had predeceased. That misinterpretation led Peter to request new wills. The 2018 wills Boyadjis prepared left the brothers' estates to each other and, alternatively, to neighbors, a Greek Orthodox church, and the brothers' sister-in-law Alice. Helen was not named, and later she sued.

Courtesy photo

Christopher R. Blazejewski of Sherin and Lodgen.

The court affirmed summary judgment for Boyadjis. Under Restatement Section 51(2), a duty to a non-client arises only when the attorney or client invites

the non-client to rely on the attorney's services and the non-client actually does so. Helen had no communication with Boyadjis between her initial referral email and Peter's death, never saw draft documents, and never relied on any representation Boyadjis made. Under Section 51(3), a duty can arise when the attorney knows the client intends, as a primary objective of the representation, for the attorney's services to benefit the non-client, but the non-client must prove that intent by clear and convincing evidence. Helen's name appeared on one page of Boyadjis' handwritten meeting notes next to a blank dollar amount, and Boyadjis testified that Peter had said he "may want to give something to Helen." But on the other side stood (1) Peter's handwritten note to Nicholas stating that "there's no one else who gives a dam!!! [sic]" besides the neighbors and the church, with no mention of Helen, (2) the report from the attorney appointed to represent Nicholas in the guardianship proceeding recommending against Helen's appointment because Nicholas did not want her involved in his affairs, and (3) Boyadjis' testimony that the brothers repeatedly said they did not want their nieces or nephew to inherit.

The court also rejected Helen's argument that Boyadjis owed her a duty because Nicholas allegedly lacked testamentary capacity when he signed his 2018 will. Relying on Illustration 4 of Section 51, the court held that recognizing such a duty would undermine the attorney's obligation to assist clients even when their competence might later be questioned. The court expressly declined to follow the six-factor balancing test from *Stewart v. Sbarro*, 142 N.J. Super. 581 (1976), concluding that those factors are "difficult to consistently apply and introduce unnecessary uncertainty into a lawyer's obligations to non-clients." By adopting the Restatement, the *Christakos* court brought greater doctrinal clarity to New Jersey law on this issue.

Non-Client Duty Across Jurisdictions: Common Themes and Points of Divergence

Christakos finds strong parallels in recent decisions from other states, though the language around the standard varies.

California applies a "clear, certain and undisputed" intent standard that functions much like the Restatement's clear-and-convincing-evidence requirement. In *Gordon v. Ervin Cohen & Jessup*, 88 Cal.App.5th 543 (2023), a California appeals court affirmed summary judgment for an attorney whose LLC operating agreements, unlike the client's testamentary trust, did not prevent disinherited grandchildren from obtaining membership interests. The client had never told her attorney she wanted the LLC agreements to exclude the grandchildren, never complained about the terms in over ten years, and had made other unrestricted gifts to family members. The court refused to treat a testamentary intent as a "super-intent" controlling every subsequent *inter vivos* transaction. Subsequently, *Grossman v. Wakeman*, 104 Cal.App.5th 1012 (2024), applied this framework to reverse a $9.5 million jury verdict, holding that what matters is not what a decedent told friends and family but what he told his attorney. Because the attorney testified, with corroboration, that the client had directed him to leave everything to his fourth wife, the evidence of a contrary intent to benefit the decedent's son and grandchildren was disputed, not "clear, certain and undisputed." The court observed that attorneys "are not clairvoyants capable of ascertaining the unexpressed intent of their clients."

New York applies a similarly restrictive approach focused on privity. In *Phillips v. Murtha*, 215 A.D.3d 408 (2023), a New York appeals court dismissed negligence, fraud, aiding-and-abetting, and statutory claims brought by purported beneficiaries against an estate planning attorney. The beneficiaries had no privity with the attorney, and none of the exceptions to New York's strict privity rule applied. Unlike New Jersey and California, New York does not engage in a multif-actor analysis of the client's intent; it requires privity, subject to narrow exceptions for fraud, collusion, or malicious acts.

In *Fallon v. Easley*, 686 S.W.3d 287 (2024), a Missouri appeals court addressed a distinct problem: the prospective beneficiary who claims entitlement under a testamentary document that was never executed. The decedent allegedly wanted to amend her revocable trust, but the attorney never met with or spoke to her, and she died without executing any amendment. The court held that an exception permitting non-client beneficiaries to sue when an executed transfer fails due to attorney negligence does not extend to unexecuted instruments. The court ruled that imposing such a duty would compete with the attorney's duty of undivided loyalty to a client who must be given adequate time to reflect, change her mind, or pursue a different plan.

The Alaska Supreme Court's *Guerra v. Wallace*, 542 P.3d 654 (2024), addressed the duties of a personal representative's attorney to estate beneficiaries under Section 51(4) of the Restatement. The sole beneficiary blamed the attorney for failing to prevent the personal representative's mismanagement. The court held that the beneficiary was "reasonably able to protect her rights" through available probate mechanisms and that the attorney did not know and had no reason to know of unauthorized bank withdrawals. The opinion distinguished "reason to know," which involves drawing inferences from known facts, from "should know," which would impose a duty to investigate, holding that an attorney is entitled to assume his client is complying with the law absent contrary information.

In *Waterbury v. Nelson*, 557 P.3d 96 (2024), the New Mexico Supreme Court held that an estate planning attorney owed neither a statutory nor a common law duty of care to a non-client putative beneficiary, affirming the district court's grant of partial summary judgment in favor of the attorney. Among other things, the court reasoned that imposing such an affirmative duty upon estate planning attorneys would carry significant adverse policy consequences, including a substantial and potentially exponential expansion of malpractice liability given the broad universe of potential beneficiaries and claimants who might interact with an attorney in the course of estate administration.

Among these cases, the Connecticut Supreme Court's decision in *Wisniewski v. Palermino*, 351 Conn. 390 (2025) stands apart. There, the decedent retained an attorney to draft a will distributing his securities account in five equal shares. The attorney drafted the will as instructed but incorrectly advised that executing the will was all that was needed. In fact, the account had a preexisting beneficiary designation that, under Connecticut law, overrode the will. The court held, 4-3, that the attorney had a duty to advise the client about the interplay between the will and the beneficiary designation, and that the intended beneficiaries had standing to enforce that duty. But the majority drew a hard line: the attorney had no duty to ensure the client actually changed the designation after receiving proper advice. The dissent warned, however, that claims under this new exception would always "require a trial court to delve deeply into the attorney-client relationship" and could discourage attorneys from taking on estate planning work with complicated family dynamics.

Conclusion

Courts in New Jersey, California, New York, Missouri, Alaska, and New Mexico have all insisted on heightened thresholds before a non-client can maintain a malpractice action against an estate planning attorney. Whether the standard is framed as "clear, certain and undisputed" intent, "clear and convincing evidence" of the client's objectives, or strict privity with narrow exceptions, the underlying concern is the same: permitting open-ended non-client claims would expose estate planning lawyers to speculative litigation and conflicting obligations. Connecticut's *Wisniewski* decision is a departure, but a carefully bounded one, limited to situations where the client communicated an intent the attorney failed to properly advise on.

For practitioners, these cases reinforce a familiar point: document the client's instructions and the advice you provide. The defendant attorney succeeded in *Christakos* because the record contained contemporaneous evidence of the stated intentions of the brothers. The law reflected in these decisions provides a strong framework to protect estate planning attorneys who faithfully carry out their clients' wishes. But that framework depends on the ability to prove, after the client is gone, what those wishes actually were.

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