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The New Jersey Supreme Court Clarifies the Test for Determining Attorney Liability to Non-Clients for Legal Malpractice

Because attorneys do not share a direct relationship with, and therefore do not generally owe a duty of care to, non-clients, the New Jersey Supreme Court has severely restricted attorney liability to non-parties for legal malpractice. Practicing New Jersey attorneys will be happy to know that New Jersey law has not changed with the Supreme Court's recent decision in *Christakos v. Boyadjis*, 262 N.J. 447 (Jan. 20, 2026), which has formally adopted a test for determining the “exceedingly narrow” circumstances under which an attorney may be deemed to owe a duty of care to a non-client that would permit the latter to sue for legal malpractice.

In 2003, brothers Peter and Nicholas (Nick) Christakos executed mirror-image wills providing that each brother's estate would go to the surviving brother or, if predeceased, would be divided equally among two of their then-living brothers, Constantine and James, per stirpes. Constantine and James later died, each leaving one surviving daughter, Alexis and Helen, respectively.

In 2017, at her Uncle Peter's behest, Helen, herself a California attorney, asked the defendant-attorney to help get their affairs in order. The attorney did so, making two critical mistakes in the process.

The first mistake was misinforming the brothers that their 2003 wills provided that all of Peter's siblings' children would inherit, when the wills instead provided that only Helen (who never knew the contents of these wills) and Alexis would inherit. Upon hearing this misinformation, Peter asked the attorney to prepare new wills providing that each brother would leave everything to the surviving brother, but was less certain about the alternate residuary bequest. After the brothers entered the hospital in 2018, however, Peter instructed the attorney to prepare each will naming the surviving brother as the sole beneficiary and providing that the alternate residuary bequest would be split equally between their neighbors, their church, and James's widow (Helen's mother, Alice), but not Helen.

The second mistake was drafting wills that bequeathed only the brothers' personal property—not their entire estates—to the surviving brother.

The attorney brought the incorrectly-prepared wills to the hospital, where Peter executed his will but Nick was not deemed competent to execute his will. Although the attorney deemed Nick to be competent when he executed his will three months later, it was later determined that Nick was not competent at that time.

Following Peter's and Nick's deaths in 2018, Helen filed a caveat challenging their respective 2018 wills. Consolidated probate proceedings later determined that the brothers' estates were



valued in excess of \$1 million. After the wills were probated over Helen's objection, claims by the neighbors and the church were settled, and the remainder of the estate was paid to Alice.

Helen and her mother then sued the defendant-attorney for legal malpractice, claiming that his misinterpretation had caused Peter to request a new will and that his misdrafting had not only caused Peter's estate to be left to Alice, the neighbors, and the church—rather than Nick—but had left Helen out as a beneficiary altogether.

On appeal of the trial court's denial of the defendant-attorney's motion for summary judgment, the Appellate Division agreed with the trial court's conclusion that the attorney owed Alice "a duty to correctly draft Peter's will" because it was intended to benefit Alice. However, the appellate court disagreed with the trial court's conclusion that the attorney also owed Helen a duty of care because the record was "bereft of evidence that ... Helen was an intended beneficiary" of the 2018 wills.

Granting the plaintiffs' motion for leave to appeal, the Supreme Court affirmed the Appellate Division's judgment that the attorney did not owe Helen a duty of care necessary to sustain her legal malpractice action. The Supreme Court initially recognized that the first element of a claim for legal malpractice requires proof of "the existence of an attorney-client relationship creating a duty of care by the defendant attorney," which is a question of law. Acknowledging that "we have not always clearly articulated the test" determining that "exceedingly narrow" circumstances under which a plaintiff may pursue a legal malpractice claim in the absence of an attorney-client relationship, the Supreme Court then resolved to "do so now, expressly adopting the provisions of Section 51 of the Restatement (Third) of the Law Governing Lawyers that we have relied on in prior cases."

The Supreme Court adopted as the law of New Jersey subsection (2) of Section 51 of the Restatement, under which a lawyer owes a duty of care "to a nonclient when and to the extent that: (a) the lawyer or (with the lawyer's acquiescence) the lawyer's client invites the nonclient to rely on the lawyer's opinion or provision of other legal services, and the nonclient so relies; and (b) the nonclient is not, under applicable tort law, too remote from the lawyer to be entitled to protection."

The Supreme Court also adopted as the law of New Jersey subsection (3) of Section 51 of the Restatement, under which a lawyer owes a duty of care "to a nonclient when and to the extent that: (a) the lawyer knows that a client intends as one of the primary objectives of the representation that the lawyer's services benefit the nonclient; (b) such duty would not significantly impair the lawyer's performance of obligations to the client; and (c) the absence of such a duty would not make enforcement of those obligations to the client unlikely."

Fleshing out this standard, the Supreme Court noted that comment f. to Section 51 "explains that 'when a lawyer knows ... that a client intends a lawyer's services to benefit a third person who is not a client, allowing the nonclient to recover from the lawyer for negligence in performing those services may promote the lawyer's loyal and effective pursuit of the client's objectives,' especially when 'the client has died' and the non-client may therefore 'be the only person likely



to enforce the lawyer’s duty to the client.” Accordingly, “a nonclient’s claim under Subsection (3) is recognized only when doing so will both implement the client’s intent and serve to fulfill the lawyer’s obligations to the client.” Therefore, “when a third person claims ‘that the lawyer failed to exercise care in preparing a document, such as a will, ... the third person must prove the client’s intent by evidence that would satisfy the burden of proof applicable to construction or reformation ... of the document.’” Under New Jersey law, that evidentiary standard is one of clear and convincing evidence.

The Court noted two Restatement illustrations having particular force in *Christakos* because they “[b]oth arise when ‘Client retains Lawyer to prepare and help in the drafting and execution of a will leaving Client’s estate to Nonclient.’”

Under the first illustration in which “‘Nonclient later alleges that Lawyer negligently wrote the will to name someone other than Nonclient’ as the beneficiary,” as “‘Client’s intent to benefit Nonclient ... does not appear on the face of the will,’” “‘Nonclient can establish the existence of a duty from Lawyer to Nonclient only by producing clear and convincing evidence that Client communicated to Lawyer Client’s intent that Nonclient be’ the beneficiary of the will.”

Under the second illustration in which “[a]fter Client’s death, Heir has the will set aside on the ground that Client was incompetent and then sues Lawyer for expenses imposed on Heir by the will, alleging that Lawyer negligently assisted Client to execute a will despite Client’s incompetence,” “‘Lawyer is not subject to liability to Heir for negligence’” because “[r]ecognizing a duty by lawyers to heirs to use care in not assisting incompetent clients to execute wills would impair performance of lawyers’ duty to assist clients even when the clients’ competence might later be challenged.”

The Supreme Court affirmed the Appellate Division’s judgment dismissing the plaintiffs’ legal malpractice claim. Applying the Section 51(2) standard, the Supreme Court held that there was no evidence that Helen was ever invited to rely or did in fact rely on any opinion or statement by the defendant-attorney that could give rise to a duty of care. Applying the Section 51(3) standard, the Supreme Court first held that no reasonable jury could find clear and convincing evidence that the defendant-attorney knew that the brothers intended their 2018 wills to benefit Helen, as no indicia of such an intent appears on the face of the wills themselves. The Supreme Court next held that the Section 51(3) standard does not countenance a legal malpractice claim based on a theory that Nick’s 2018 will should never have been executed because he lacked testamentary capacity, because recognizing such a duty “to a purported heir could conflict with an attorney’s vigorous representation of their actual client.”

In *Christakos*, the Supreme Court has left no traps for the unwary attorney. The Court has plainly stated that a lawyer can forestall the creation of a duty of a care to a nonclient by ensuring that he neither actively invites nor acquiesces in a nonclient’s reliance on the lawyer’s opinion or provision of legal services. The Court has also made clear that a lawyer who prepares and helps draft and execute a will can protect himself against an alleged nonclient-beneficiary’s legal malpractice claim by copiously documenting the client’s testamentary intent, as the Court confirmed that the heightened clear and convincing standard must be satisfied by a nonclient



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who claims that an attorney committed legal malpractice by failing to follow the client's intent that the nonclient be a beneficiary of the client's will. *Christakos* has thus armed reasonably prudent attorneys with the necessary and appropriate safeguards to prevent non-clients from enforcing a duty of care against an attorney that does not otherwise exist under New Jersey law.