

Won a unanimous opinion from the Colorado Supreme Court that upholds Colorado's strict privity rule in determining whether non-client beneficiaries may sue an estate lawyer for legal malpractice. In its opinion, the Court adopted the most stringent test, as we had advocated, and affirmed that the plaintiffs lacked standing to sue our clients.

2016

In a published opinion that defies the "modern trend" among states of relaxing rules governing who may sue estate planning attorneys for malpractice, the Colorado Supreme Court found for Wheeler Trigg O'Donnell's (WTO's) clients in a decision that upholds Colorado's public policy in this area. The Court adopted the most stringent test, as WTO advocated for, and affirmed that strict privity remains the rule in the state. The opinion protects estate planners and other attorneys from lawsuits brought by non-clients and affirms that Colorado's strong rules make good public policy.

In 2011, two dissatisfied beneficiaries of an estate filed malpractice and other claims against the law firm and estate planners that helped their father prepare his will. WTO lawyers represented the defendants and moved to dismiss

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Carolyn J. Fairless
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the complaint for failure to state a claim, demonstrating that, under Colorado law, the plaintiffs had failed to show that the attorneys owed them a duty of care. The district court agreed.

The beneficiaries appealed the dismissal, claiming the district court erred and that they should have standing to sue the lawyers and law firm. The Court of Appeals affirmed the lower court, and the plaintiffs successfully petitioned the Colorado Supreme Court for *certiorari*.

In issuing its opinion, the Supreme Court states that “limiting an attorney’s liability to his or her clients protects the attorney’s duty of loyalty to and effective advocacy for the client.” Any attempt to broaden that liability, the Court suggests, could “undermine the purpose of the attorney-client relationship, which requires that an attorney act in his or her client’s best interest.” To allow third-party (non-client) interests to directly affect an attorney-client relationship would compromise the attorney’s ability to give advice, knowing it could be second-guessed by future disappointed beneficiaries. The Court further reaffirmed that a non-client can only sue an attorney in a narrow set of circumstances where the lawyer has committed fraud, malicious conduct, or negligent misrepresentation.

WTO’s managing partner, Carolyn Fairless, argued the case to the Supreme Court. On the day of oral arguments, Fairless also began an unrelated jury trial in district court. After selecting a jury in the morning, she received permission from the trial court to leave and dashed to the Supreme Court to make her arguments. Fairless won the trial, as well.

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