

Legal Malpractice Update: Recent Developments in Texas Legal Malpractice and Ethics Law

ROBYN HARGROVE

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**SCOTT
DOUGLASS
McCONNICO**
WWW.SCOTTDUG.COM

303 COLORADO STREET
24TH FLOOR
AUSTIN, TEXAS 78701

OFFICE: 512.495.6300
FAX: 512.495.6399

Overview of Presentation

- Hot topics in Texas legal malpractice law:
 - Interpreting engagement agreements
 - Causation (proving the case-within-the-case)
 - Settlement value damages
 - Attorney's fees as damages
 - Key defenses such as fracturing and immunity
- Ethics update and pointers for avoiding malpractice liability

Privity – General Rule

- Only the client can sue an attorney for negligence.
 - *Barcelo v. Elliot*, 923 S.W.2d 575 (Tex. 1996)—Will beneficiaries cannot sue attorney who drafted will.
- Privity protects attorneys' ability to zealously represent their clients.
- Bars claims by estate beneficiaries, corporate shareholders, potential class members.

Exceptions to the Privity Rule

Belt v. Oppenheimer, Blend, Harrison & Tate, 192 S.W.3d 780 (Tex. 2006).

- The personal representative of an estate may bring a legal malpractice claim against the attorney who represented the decedent in planning the estate.

Smith v. O'Donnell, 288 S.W.3d 417 (Tex. 2009).

- Expands *Belt* beyond the estate-planning context.
- Supreme court found privity “when negligent legal advice depletes the decedent’s estate in a manner that does not implicate how the decedent intended to apportion his estate.”

Implied Attorney-Client Relationship

- *Linegar v. DLA Piper LLP*, 495 S.W.3d 276 (Tex. 2016).
 - Corporate shareholders may sue if they received independent advice in a corporate transaction.
 - Jury found an implied attorney-client relationship.
 - There was evidence that the individual was “personally and concretely aggrieved.”
- **Practice Pointer:** Be clear who you represent!

Attorney-Client Relationship

- Attorneys have been sued in Texas:
 - a) where had no written representation agreement;
 - b) where had not set up file;
 - c) where had not sent a bill.
- Attorneys have also been sued for failing to warn a non-client that they are not their attorney.

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