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New York Relaxes Privity Rule for Personal Representative's Legal Malpractice Claims

June 29, 2010
Lawyers for the Profession® Alert

*Estate of Schneider v. Finmann,*___ N.E.2d___, 2010 WL 2399564 (2010)

Brief Summary
In New York, estate planning attorneys may be sued for legal malpractice by personal representatives, but not by other third parties such as beneficiaries.

Complete Summary
A decedent's estate sued defendants for legal malpractice alleging that they had negligently failed to advise the decedent regarding transfer of ownership of his life insurance policy, resulting in enhanced estate tax liability for the estate. The trial court and intermediate appellate court dismissed the action for lack of privity. The New York Court of Appeals reversed and reinstated the claim.

The New York Court of Appeals held that sufficient privity exists between a personal representative of an estate and an estate planning attorney for the former to bring a malpractice suit. In support of this holding, the Court cited N.Y. Est. Powers & Trusts Law § 11-3.2, as generally in accord, which provides that a personal representative may pursue any cause of action that the decedent could have pursued.

The Court made clear, however, that in the estate planning context, privity remains a bar to the malpractice claims of beneficiaries and other third parties. The Court noted that without such a bar, estate planning attorneys would be subject to too much uncertainty and limitless liability.

Significance of Opinion
New York remains in the minority of jurisdictions by virtue of disallowing beneficiaries' legal malpractice suits. This opinion marks a move toward a somewhat more relaxed privity standard — at least for personal representatives.

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