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Professional Liability Defense Federation (PLDF)

Lawyer's Professional Liability (LPL)

50 State Survey of Privity Laws

Prepared by Members of the 2016 and 2017
Lawyers Professional Liability Committee

"In a legal context, the term 'privity' is a word of art derived from the common law of contracts and used to describe the relationship of persons who are parties to a contract." *Espinosa v. Sparber, Shevin, Shapo, Rosen & Heil Bronner*, 612 So.2d 1378 (Fla. 1993).

This 50 state survey provides an overview of the applicability of privity to causes of actions for legal malpractice. The general rule is that a cause of action for legal malpractice may only proceed where the attorney and the plaintiff were in privity with each other. The results of this survey demonstrate three trends across the nation. First, privity is generally a common law defense. The majority of State Legislatures have not codified privity as a defense to legal malpractice claims. Second, there is generally an exception to the privity rule where the plaintiff can prove that he or she was the intended beneficiary of legal services. Finally, many States use a 6 factor balancing test to determine whether a third party may bring a legal malpractice claim against a lawyer.

State	***Description of Privity Law***	***Contributors***
Alabama	Interpreting the Alabama Legal Services Litigation Act (ALSLA), *Ala. Code* § 6-5-570 (1975), *et. seq.*, Alabama appellate courts have found that privity, or an attorney-client relationship is necessary to a claim for legal malpractice, and that such claims are governed by the ALSLA. *Billie B. Line v. Ventura*, 38 So.3d 1, 10 (Ala. 2009) ("the ALSLA applies only to claims against legal-service providers arising out of the provision of legal services"); *Robinson v. Benton*, 842 So.2d 631, 637 (Ala. 2002) ("we decline to change the rule of law in this state that bars an action for legal malpractice against a lawyer by a plaintiff for whom the lawyer has not undertaken a duty, either by contract or gratuitously"); *Cunningham v. Langston, Frazer, Sweet & Freese, P.A.*, 727 So.2d 800, 805 (Ala. 1999) ("the ALSLA applies only to lawsuits based on the relationship between 'legal service providers' and those who have received legal services"). As noted above, privity is required to maintain a legal malpractice action and, therefore, no duty is created by extraneous circumstances. Note, however, such does not bar tort actions by non-clients against attorneys, nor do Alabama appellate decisions require that claims by non-clients fall under the ALSLA. *See, e.g., Smith v. Math*, 984 So.2d 1179 (Ala. Civ. App. 2007).	Walt Price, Esq. Huie, Fernambucq & Stewart, LLP 2801 Highway 280 S. Suite 200 Birmingham, AL 35223 wprice@huielaw.com
Alaska	Alaska has a common law defense of privity. The most recent Alaska Supreme Court case on privity is *Pederson v. Barnes*, 139 P.3d 552 (2006). When determining the issue of an attorney's liability to a non-client Alaska looks to the Restatement (Third) on the Law Governing Lawyers, Section 51. Section 51 requires: 1) the lawyer knows that a client intends as one of the primary objectives of the representation that the lawyer's services benefit the non-client (b) such a duty would not significantly impair the lawyer's performance of obligations to the client; and (c) the absence of such a duty would make enforcement of those obligations to the client unlikely. Section 51 goes on to state that a duty is owed to a non-client where: 1) the lawyer's client is a trustee, guardian, executor, or fiduciary acting primarily to perform similar functions for the non-client; (b) the lawyer knows that appropriate action by the lawyer is necessary with respect to a matter within the scope of the	Jennifer Saunders, Esq. Haight, Brown & Bonesteel, LLP 555 South Flower Street Forty-Fifth Floor Los Angeles, CA 90071 jsaunders@hbblaw.com

	representation to prevent or rectify the breach of a fiduciary duty owed by the client to the non-client, where (i) the breach is a crime or fraud or (ii) the lawyer has assisted or is assisting the breach; (c) the non-client is not reasonably able to protect its rights; and (d) such a duty would not significantly impair the performance of the lawyer's obligations to the client.	
Arizona	In *Chalpin v. Brennan*, 114 Ariz. 124, 559 P.2d 680 (App. 1976), the court refused to grant a cause of action for malpractice to an individual who was not a client or in privity with the attorney. However, more recent cases have recognized that a non-client of an attorney may, under some circumstances, have a legal malpractice cause of action. In *Paradigm Insurance Co. v. Langerman Law Offices*, 200 Ariz. 146, 24 P.3d 593 (2001) the court adopted the Restatement (Third) of the Law Governing Lawyers Section 51(3), which reads: [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 a duty would not significantly impair the lawyer's performance of obligations to the client; and (c) the absence of such a duty would make enforcement of those obligations to the client unlikely.	Andrew R. Jones, Esq. Furman Kornfeld & Brennan, LLP 61 Broadway, 26th Floor New York, NY 10006 ajones@fkblaw.com
Arkansas	Arkansas has a privity (or attorney immunity) statute codified at A.CA. §16-22-310. The statute provides that lawyers are not liable to persons not in privity of contract. There are two statutory exceptions to the privity requirement in legal malpractice cases. See A.CA. §16-22-310. This statute "enunciates the parameters for litigation by clients against attorneys." *Clark v. Ridgeway*, *supra*; *Wiseman v. Batchelor*, 315 Ark. 85, 864 S.W.2d 248 (1993). This has been narrowly construed to require direct privity and the appellate court has rejected arguments of third party beneficiary status or indirect privity. *McDonald v. Pettus*, 337 Ark. 265, 988 S.W.2d 9 (1999).	Robert E. Cooper, Esq. White Arnold Dowd 2025 Third Avenue North Suite 500 Birmingham, AL 35203 rcooper@whitearnolddowd.com
California	California has a common law defense of privity. The leading cases on the issue of privity are *Lucas v. Hamm*, 56 Cal. 2d 583 (1961) see also *Fox v.*	Jeff C. Hsu, Esq. Murphy, Pearson, Bradley

	Pollack, 181 Cal. App. 3d 954, 960 (1986). The imposition of a duty of professional care toward non-clients is generally confined to those situations wherein the non-client is an intended beneficiary of the attorney's services, or where it is reasonably foreseeable that negligent service or advice to or on behalf of the client could cause harm to others. The determination whether in a specific case the attorney will be held liable to a third person not in privity is a matter of policy and involves the balancing of various factors, among which are the extent to which the transaction was intended to affect the plaintiff, the foreseeability of harm to him, the degree of certainty that the plaintiff suffered injury, the closeness of the connection between the attorney's conduct and the injury, and the policy of preventing future harm.	& Feeney 725 S. Figueroa St., 21st Floor Los Angeles, CA 90017 jhsu@mpbf.com
Colorado	In Colorado, privity is a common law defense. The leadings cases on the issue of privity are: *Baker v. Wood, Ris & Hames*, 364 P.3d 872 (Colo. Jan. 19, 2016) and *Mehaffy, Rider, Windholz & Wilson v. Central Bank of Denver*, 892 P.2d 230, 235 (Colo. 1995). Lawyers typically owe no duties to non-clients, except where their actions are fraudulent, malicious, or constitute an intentional tort or negligent misrepresentation. Privity is required in order to prevail on a legal malpractice claim, except in cases of fraud, malice or other intentional torts, or where negligent misrepresentation is shown.	John E. Bolmer, II, Esq. Hall & Evans, LLC 1001 Seventeenth Street Suite 300 Denver, CO 80202 bolmerj@hallevans.com
Connecticut	Connecticut has a common law defense of privity. The leading case on the issue of privity is *Krawczyk v. Stingle*, 208 Conn. 239, 543 A.2d 733 (1988). Determination in a specific case as to whether a lawyer will be held liable to a third person not in privity is a matter of policy. The court looks, principally, to whether the "primary or direct purpose" of the transaction was to the benefit the injured party. Other factors include: (1) whether the harm was foreseeable; (2) whether there is proximity of the injury to the conduct complained of; and (3) the public policy in preventing future harm and the burden on the legal profession that would result from the imposition.	Joshua M. Auxier, Esq. Halloran & Sage, LLP 315 Post Road West Westport, CT 06880-4739 auxierj@halloransage.com
Delaware	The common law of Delaware requires a legal malpractice plaintiff to establish privity, with certain exceptions. In *Keith v. Sioris*, 2007 WL 544039, C.A. No. 05C-02-272 (Jan. 10, 2007), the court noted that "a duty to a non-client will arise if the complaining party can show there was fraud or collusion on the part of the attorney, privity of contract with the attorney or that they were an	William H. Jordan, Esq. Sowell Gray Robinson Stepp &Laffitte, LLC 1310 Gadsden Street Columbia, S.C. 29211

	intended beneficiary of the attorney's services."	wjordan@sowellgray.com
Florida	Florida has a common law defense of privity. The leading case on the issue is *Espinosa v. Sparber, Shevin, Shapo, Rosen & Heilbronner*, 612 So.2d 1378 (Fla. 1993). Florida follows the general rule that the liability of lawyers in legal malpractice cases is limited to persons or entities with whom they share privity of contract. Florida does have an exception to the privity requirement for intended third party beneficiaries, this has been applied mainly in the context of will beneficiaries, but this exception is not limited to such a will drafting scenarios. See *Espinosa, supra*.	Audra M. Bryant, Esq. Bush & Augspurger, P.A. 3375 Capital Circle N.E. Suite C200 Tallahassee, FL 32308 amb@bushlawgroup.com
Georgia	Georgia has a common law defense of privity, but also has a general privity requirement for torts arising out of a contract. See O.C.G.A. § 51-1-11. The leading case on the issue of privity is *Driebe v. Cox*, 203 Ga. App. 8 (1992), which holds that an attorney generally does not owe a duty to non-clients. In some situations, a legal duty is owed to a third party based on upon the relationship between the client and third party. For example, a guardian ad litem represented by an attorney creates privity between the lawyer and the ward as the intended beneficiary of the relationship between the guardian ad litem and the lawyer. *Toporek v. Zepp*, 224 Ga. App. 26 (1996); *see also Kirby v. Chester*, 174 Ga. App. 881 (1985) (Attorney who certified that client had title to property which secured loan owed duty to lender as third-party beneficiary); *Home Ins. Co. v. Wynn*, 229 Ga. App. 220 (1997) (Attorney representing surviving spouse in wrongful death case also had an attorney-client relationship with other statutory heirs where the spouse prosecuted the interests of all statutory claimants).	W. Richard Dekle, Esq. Julie E. Miles, Esq. Brennan Wasden & Painter LLC 411 E. Liberty Street Savannah, GA 31401 rdekle@brennanwasden.com jmiles@brennanwasden.com
Hawaii	In Hawaii, privity is a common law defense. The leading case on the issue is *Blair v. Ing*, 95 Haw. 247 (2001). Whether an attorney can be liable to a third person not in privity is a matter of public policy, requiring the balancing of several factors: (1) the extent to which the transaction was intended to affect the plaintiff; (2) the foreseeability of harm to him; (3) the degree of certainty that the plaintiff suffered injury; (4) the closeness of the connection between the defendant's conduct and the injury; (5) the policy of preventing future harm; and (6) whether imposing liability placed an undue burden upon the legal profession.	Jeff C. Hsu, Esq. Murphy, Pearson, Bradley & Feeney 725 S. Figueroa St., 21st Floor Los Angeles, CA 90017 jhsu@mpbf.com

Idaho	Idaho has a common law defense of privity. The most frequently cited authority on privity issues in legal malpractice cases is *Harrigfeld v. Hancock*, 140 Idaho 134, 90 P.3d 884 (2004). A direct attorney-client relationship is required to exist between the plaintiff in a legal malpractice action and the attorney being sued except in one "very narrow circumstance." *Harrigfeld*, 90 P.3d at 889. An attorney preparing testamentary instruments owes a duty to the beneficiaries named or identified therein so as to effectuate the testator's intent as expressed in the instruments. *Id.* However, more recently in *Taylor v. Riley*, 157 Idaho 323, 336 P.3d 256 (2014) the Idaho Supreme Court held that, notwithstanding the privity requirement, an attorney issuing an opinion letter to a known party can voluntarily assume a duty of care to a non-client.	Glen R. Olson, Esq. Long & Levit, LLP 465 California Street, 5th Floor San Francisco, CA 94104 golson@longlevit.com
Illinois	In Illinois the privity defense is pursuant to the common law. The leading case on the issue is *Pelham v. Griesheimer*, 92 Ill.2d 13 (1982). Generally, subject to narrow and limited exceptions, an attorney is generally only liable to his client and not third persons. A limited exception to the rule described above has been created by the courts where a party can demonstrate that he/she was a third-party beneficiary to the attorney-client relationship. The law only imposes a duty of care upon an attorney for the benefit of a non-client third-party when the *primary purpose and intent* of the attorney-client relationship is to benefit or influence the third-party. *Pelham v. Griesheimer*, 92 Ill.2d 13, 21 (1982) (emphasis added). Courts have applied the rule rigidly, and consistently found an attorney owes no duties to third-parties who are merely incidental beneficiaries of the attorney-client relationship.	Donald Patrick Eckler, Esq. James J. Sipchen, Esq. Pretzel & Stouffer, Chartered, One South Wacker, Suite 2500 Chicago, IL 60606 deckler@pretzel-stouffer.com jsipchen@pretzel-stouffer.com
Indiana	Indiana has a common law defense of privity. The leading case on the issue is *Hacker v. Holland*, 570 N.E.2d 951 (Ind. Ct. App. 1991). In order to prevail on a cause of action for legal malpractice, the Plaintiff must have privity of contract, or the negligent professional must have had actual knowledge that the plaintiff would be affected by the representations made. *Keybank Nat. Ass'n v. Shipley*, 846 N.E.2d 290 (Ind. Ct. App. 2006). Indiana has recognized one narrow exception to the requirement of privity. See *Walker v. Lawson*, 514 N.E.2d 629 (Ind. Ct. App. 1987) (allowing intended third party beneficiaries of a will to pursue a malpractice claim if the third party was known and was intended by the attorney's client to be a beneficiary of the attorney's legal work	Dina M. Cox, Esq. Lewis Wagner, LLP 501 Indiana Avenue, Suite 200 Indianapolis, IN 46202 dcox@lewiswagner.com

	for the client).	
Iowa	In Iowa, privity is a common law defense. The leading case on the issue is *Schreiner v. Scoville*, 410 N.W.2d 679 (Iowa 1987). Until the Supreme Court of Iowa decided *Brody v. Ruby*, 267 N.W.2d 902 (Iowa 1978), the general rule was that no action could be brought against an attorney by anyone not in privity with the attorney. Under *Brody*, however, a third party may maintain a claim against an attorney if the third party is a "direct and intended beneficiary of the lawyer's services," so as to create a special relationship between the third party and attorney. Subsequently, in *Schreiner v. Scoville*, 410 N.W.2d 679 (Iowa 1987), the court held that, in the context of testamentary gifts, a lawyer owes a duty not only to the testator client, but to direct, intended, and "specifically identifiable" beneficiaries of the testator as expressed in the testamentary instruments. A non-client beneficiary may maintain a legal malpractice action against the attorney only if the testator client's intent, as expressed in the will (or other document), is frustrated.	Jeremy N. Boeder, Esq. Tribler Orpett & Meyer, P.C. 225 West Washington, Suite 1300 Chicago, IL 60606-3408 jnboeder@tribler.com
Kansas	Kansas has a common law defense of privity. The leading cases on the issue are: *Pizel v. Zuspann*, 795 P.2d 42, 51 (Kan. 1990) *opinion modified on denial of reh'g*, 803 P.2d 205 (Kan. 1990); *Bank IV Wichita v. Arn, Mullins, Unruh, Kuhn & Wilson*, 250 Kan. 490 (1992); *Jack v. City of Wichita*, 23 Kan.App.2d 606 (1997) and *Nelson v. Miller*, 227 Kan. 271 (1980). There is a three-step analysis for determining the existence of an attorney's duty to a third-party non-client. First, if the client of the attorney and the third party are adversaries, no duty arises under *Nelson v. Miller*, 227 Kan. 271 (1980). Second, if the attorney and client never intended for the attorney's work to benefit the third party, then no duty arises under *Bank IV Wichita v. Arn, Mullins, Unruh, Kuhn & Wilson*, 250 Kan. 490 (1992) and *Jack v. City of Wichita*, 23 Kan.App.2d 606 (1997). Third, if it is possible to conclude that the attorney and client intended for the attorney's work to benefit the third party, then the reviewing court must strike the balance to determine whether a duty arose in the particular circumstances at hand. *Pizel v. Zuspann*, 795 P.2d 42, 51 (Kan. 1990) *opinion modified on denial of reh'g*, 803 P.2d 205 (Kan. 1990). The Kansas Supreme Court held in *Pizel* that an attorney may be liable to parties not in privity based upon the balancing test developed by the California courts. The Court set forth the following factors to be balanced when attorney liability to a non-client is	Daniel F. Church, Esq. Morrow Willnauer Klosterman Church, LLC, 8330 Ward Parkway, Suite 300 Kansas City, MO, 64114 dchurch@mwklaw.com

	considered: (1) The extent to which the transaction was intended to affect the plaintiffs, (2) The foreseeability of harm to the plaintiffs; (3) The degree of certainty that the plaintiffs suffered injury; (4) The closeness of the connection between the attorney's conduct and the injury; (5) The policy of preventing future harm; and (6) The burden on the profession of the recognition of liability under the circumstances.	
Kentucky	"It is well settled that an attorney is liable to those parties who are intended to benefit from his or her services" "irrespective of any lack of privity." *Hill v. Willmott*, 561 S.W.2d 331, 334 (Ky.App.1978); *Seigle v. Jasper*, 867 S.W.2d 476 (Ky.App.1993). As such, the beneficiaries of a given cause of action have standing to bring a malpractice action against an attorney for his or her breach of professional duties in connection with that action. *Hill*, 561 S.W.2d at 334." The leading cases on the issue are *Pete v. Anderson*, 413 S.W.3d 291, 2013 WL 6145149 (Ky. 2013) and *Branham v. Stewart*, 307 S.W.3d 94, 2010 WL 997512 (Ky. 2010). In *Branham* the court was asked to adopt the third restatement but held there was no need to address it. Both *Pete* and *Branham* held that the plaintiffs were clients even though they were not the person the attorney was hired by. For non-clients the intended beneficiary test is used.	Ronald L. Green, Esq. Green Chesnut & Hughes PLLC, 201 East Main Street, Suite 1250 Lexington, KY 40507 rgreen@gcandh.com
Louisiana	In Louisiana, the defense of privity is statutory. *See La. Civil Code Art. 1978; La. Civil Code Art. 1981 and La. Civil Code Art. 1982*. In cases in which the plaintiff is a third party beneficiary of an attorney-client relationship, Louisiana courts have determined that an attorney can be held liable under the theory of *stipulation pour autrui*-- A contract or provision in a contract that confers a benefit on a third-party beneficiary. A *stipulation pour autrui* gives the third-party beneficiary a cause of action against the promisor for specific	Robert E. Cooper, Esq. White Arnold Dowd 2025 Third Avenue North, Suite 500 Birmingham, AL 35203 rcooper@whitearnolddowd.com

	performance. In order for a third party to be a third-party beneficiary of a *stipulation pour autrui* there usually has to be a legal or factual relationship between the stipulator and the beneficiary. In some cases, Louisiana courts have recognized that the attorney owes a duty to third parties as well. For example, legatees may recover from an attorney who has confected an invalid will. *See, e.g., Succession of Killingsworth v. Schlater,* 292 So. 2d 536 (La. 1973). Thus, the scope of the attorney's duty can extend to protect third parties to the attorney-client relationship if the requirements for *stipulation pour autrui* are met.	
Maine	In Maine, privity is a common law defense. The predominant case addressing privity is *Cabatit v. Canders*, 2014 ME 133, ¶ 21, 105 A.3d 439. The general holding was affirmed by the Law Court in the subsequent case of *Savell v. Duddy*, 2016 ME 139. "[T]he general rule is that an attorney owes a duty of care to only his or her client." *Cabatit v. Canders*, 2014 ME 133, ¶ 21, 105 A.3d 439. Further, "[a]n attorney will never owe a duty of care to a nonclient… if that duty would conflict with the attorney's obligations to his or her clients." *Id.* There are "limited and rare situations," however, "when an attorney's actions are intended to benefit a third party and where policy considerations support it, [the Court] may recognize a duty of care by that attorney to a limited class of nonclients." *See id.* In so deciding, the Court adopted a multi-party beneficiary test as created by the Supreme Court of Washington in *Trask v. Butler*, 872 P.2d 1080, 1084, 123 Wn.2d 835 (Wash. 1994). The Trask case sets forth a six-prong multifactor test, but otherwise opines that the "threshold question… is whether the plaintiff is an intended beneficiary of the transaction to which the advice pertained. While the answer to the threshold question does not totally resolve the issue, no further inquiry need be made unless such an intent exists." *Id.*	Hillary J. Bouchard, Esq. Thompson Bowie & Hatch LLC 415 Congress, 5th Floor Portland, Maine 04112 hbouchard@thompsonbowie.com
Maryland	Maryland has a common law defense of privity. The leading case on privity is *Flaherty v. Weinberg*, 303 Md. 116, 492 A.2d 618 (1985). "Strict privity" is required. The only exception is when a non-client was an actual, intended third party beneficiary - when the "intent of the client to benefit the non-client was a	Robert W. Hesselbacher, Jr. Esq. Wright, Constable & Skeen, LLP 100 North Charles Street

	direct purpose of the transaction."	16th Floor Baltimore, MD 21201 rhesselbacher@wcslaw.com
Massachusetts	Massachusetts has a privity defense based on the common law. The leading cases on the issue are *Miller v. Mooney*, 431 Mass. 57 (2000); *Robertston v. Gaston Snow & Ely Bartlett*, 404 Mass. 515 (1989); *Page v. Fraizer*, 388 Mass. 55 (1983). In *Miller*, the MA Supreme Judicial Court ("SJC") affirmed the allowance of a motion for summary judgment in favor of the defendant in a legal malpractice action. The plaintiffs were the children of a deceased woman who claimed that their mother's attorney breached duty of care by failing to update the mother's will. The SJC held that the plaintiffs failed to show the existence of an attorney client relationship and that the plaintiffs also failed to show that the mother and the defendant attorney entered into any contract for the benefit of the plaintiffs. The SJC has, however, observed that an attorney is not absolutely insulated from liability to non-clients. *Page*, 388 Mass. at 65. "[A]n attorney owes a duty to non-clients who the attorney knows will rely on the services rendered." *Robertson v. Gatson Snow & Ely Bartlett*, 404 Mass. 515, 524 (1989). With that said, the Court has shown a hesitancy to impose a duty to third-party non-clients where the attorney is under an independent and potentially conflicting duty to his or her client. See Logotheti v. Gordon, 414 Mass. 308, 312 (1993).	Peter M. Durney, Esq. Cornell & Gollub 75 Federal Street Boston, MA 02110 pdurney@cornellgollub.com
Michigan	Michigan has a privity defense based on the common law. The leading case on the issue is *Atlanta Intern Ins Co v Bell*, 438 Mich 512 (1991). According to Bell, "…only a person in the special privity of the attorney-client relationship may sue an attorney for malpractice." Id. at 518. Michigan courts have created an exception for beneficiaries of wills and other testamentary instruments. *Mieras v DeBona*, 452 Mich 278 (1996) holds that a beneficiary may sue a testator's attorney for drafting a will that fails to carry out the testator's intent. *Bullis v Downes*, 240 Mich App 462, 467 (2000) extends the rule established in *Mieras* to other testamentary instruments. This exception is limited to claims asserting that an attorney failed to draft an instrument that carries out a testator's intentions. *Mieras*, 452 Mich at 302 (Boyle, J.); *Bullis*, 240 Mich App at 468.	David Anderson, Esq. Collins Einhorn Farrell, P.C. 4000 Town Center, 9th Floor Southfield, MI 48075 david.anderson@ceflawyers.com
Minnesota	The general rule is that an attorney is liable for professional negligence only to	Chris Siebenaler, Esq.

	a person with whom the attorney has an attorney-client relationship. *Admiral Merchs. Motor Freight, Inc. v. O'Connor & Hannan*, 494 N.W.2d 261, 265-66 (Minn. 1992). Absent fraud or an intentional tort, an attorney owes no duty to a non-client. *Marker v. Greenberg*, 313 N.W.2d 4, 5 (Minn. 1981). Although an attorney generally owes no duty to a non-client who has not received advice, a third party can claim that it was a beneficiary of the attorney's legal work and thus have standing to sue for malpractice. However, in order for third party to proceed in legal malpractice action, that party must be a "direct and intended beneficiary" of attorney's services and the attorney must be aware of the client's intent to benefit the third party. *McIntosh Cnty. Bank*, 745 N.W.2d at 546 (quoting *Marker*, 313 N.W.2d at 9). A third party is a "direct and intended beneficiary" of the attorney's services to the attorney's client if the transaction has a central purpose and effect on that party, the client intends the effect as a purpose of the transaction, and the attorney is aware of the client's intent to benefit that party. *Id*. at 545-48 (quoting *Lucas v. Hamm*, 56 Cal. 2d 583 (Cal. 1961)). In the absence of an attorney-client relationship, third-party non-clients can only successfully bring a cause of action against a lawyer when the lawyer acts with (1) fraud; (2) malice; or (3) for improper personal gain. *McDonald v Stewart*, 289 Minn. 35, 182 N.W.2d 439, 440 (1970); *Hoppe v. Klapperich*, 224 Minn. 224, 28 N.W.2d 780 (1947); and *Farmer v. Crosby*, 43 Minn. 459, 45 N.W. 866 (1890). A duty to third persons hence exists only when the client intends to benefit the third person as one of the primary objectives of the representation. *Francis v. Piper*, 597 N.W.2d at 925, citing Restatement (Third) of the Law Governing Lawyers § 73(3) (Tentative Draft No. 8, Mar. 21, 1997) and §73cmt.f	Minnesota Lawyers Mutual 333 South Seventh Street Suite 2200 Minneapolis, MN 55402 csiebena@mlmins.com
Mississippi	Mississippi has a common law privity defense. The leading cases on the issue are: *Hickox v. Holleman*, 502 So. 2d 626 (Miss. 1987) and *Century 21 Deep South Properties, Ltd. v. Corson*, 612 So. 2d 359 (Miss. 1993). In the case of *Century 21 Deep South Properties, Ltd. v. Corson*, 612 So. 2d 359 (1993) the Court addressed the statutory abolition of privity in negligence cases and whether it applied to legal malpractice. *See* Miss. Code Ann. § 11-7-20 (West 2016). Specifically, the Court concluded that "the presence or absence of an attorney-client relationship is merely one factor to consider in determining the duty owed rather than being the single factor which establishes that a duty is owed." *Id.* at p. 373; *see Meena v. Wilburn*, 603 So. 2d 866, 869 (Miss.	G. Clark Monroe II, Esq. Dunbar Monroe, PLLC 270 Trace Colony Park Ridgeland, MS 39157 gcmonroe@dunbarmonroe.com

	1992)(doctor-patient relationship merely factor in determining duty owed); *Touche Ross v. Commercial Union Ins.*, 514 So. 2d 315 (Miss. 1987)(rejecting privity requirement for auditors for known third parties). The Court in *Corson* extended the duty of attorneys engaged in title work to foreseeable third parties and appeared to abolish privity. In 2012, the Mississippi Supreme Court rejected arguments that *Corson* abolished privity. In *Great American E&S Ins. Co. v. Quintairos, Prieto, Wood & Boyer, P.A.*, 100 So. 3d 420 (Miss. 2012) the Court stated that *Corson* did not stand for the proposition that privity was abolished in legal malpractice actions. Instead, in *Quintariros* the Court made abundantly clear that *Carson* only applied to title work cases and that privity was alive and well in Mississippi. *Id.* at p. 424-25. Before the Court was the question of whether a lawyer hired by the insurer to defend its insured could be liable to the insurer for malpractice. The Court held that because Great American failed to show it had an attorney-client relationship with the law firm and its lawyers that it had failed to plead sufficient facts to maintain the claim. *Id.* at p. 425. While the lawyers provided updates to the excess insurance carrier that was not enough to create an attorney-client relationship, without which there could be no legal malpractice claim.	
Missouri	Missouri has a common law privity defense. The leading case on the issue is *Donahue v. Shughart, Thomson & Kilroy, P.C.*, 900 S.W.2d 624, 629 (Mo. 1995). In *Donahue v. Shughart, Thomson & Kilroy, P.C.*, 900 S.W.2d 624, 629 (Mo. 1995), the Missouri Supreme Court adopted a rule permitting, under certain circumstances, a third party to have a cause of action for legal malpractice against an attorney who did not represent the third party. Id. The court created an exception to the traditional rule requiring privity in the form of the existence of an attorney-client relationship and allowed non-client beneficiaries of testamentary transfers to sue the donor's attorney for legal malpractice. *Id.* The court held that the element of a legal malpractice cause of action previously requiring the existence of an attorney-client relationship "may be satisfied by establishing as a matter of fact either that an attorney-client relationship exists between the plaintiff and defendant or an attorney-client relationship existed in which the attorney-defendant performed services specifically intended by the client to benefit plaintiffs." Id. the court fashioned	Daniel F. Church, Esq. Morrow Willnauer Klosterman Church, LLC 8330 Ward Parkway, Suite 300 Kansas City, MO, 64114 dchurch@mwklaw.com

	the following six-factor modified balancing test to determine whether an attorney owes a duty to a non-client plaintiff: (1) The existence of a specific intent by the client that the purpose of the attorney's services were to benefit the plaintiff; (2) The foreseeability of the harm to the plaintiffs as a result of the attorney's negligence; (3) The degree of certainty that the plaintiffs will suffer injury from attorney misconduct; (4) The closeness of the connection between the attorney's conduct and the injury. (5) The policy of preventing future harm; and (6) The burden on the profession of recognizing liability under the circumstances.	
Montana	In Montana, the privity defense is based on the common law. The leading cases on the issue are: *Watkins Trust v. Lacosta*, 2004 MT 144, 321 Mont. 432, 92 P.23d 620 and *Rhode v. Adams*, 1998 MT 73, ¶ 21, 288 Mont. 278, 957 P.2d 1124. The Montana Supreme Court does not recognize the absence of privity as an absolute defense to attorney malpractice claims, but rather limits the class of potential plaintiffs to identifiable third parties. *See Redies v. Attorneys Liability Protection Soc.*, 2007 MT 9, ¶ 50, 335 Mont. 233, 150 P.3d 930. First, the Court signaled that an attorney may owe a duty to non-clients in some contexts, but explicitly held that no duty to non-clients exists where the attorney is representing a client in an adversarial proceeding. *Rhode v. Adams*, 1998 MT 73, ¶ 21, 288 Mont. 278, 957 P.2d 1124. Several years later, the Court clarified its holding in *Rhode* by allowing an action related to estate planning by named beneficiaries in a will against drafting attorneys. *Watkins Trust v. Lacosta*, 2004 MT 144, ¶¶ 21-23, 321 Mont. 432, 92 P.23d 620. The *Watkins Trust* Court noted a multi-factor balancing test may be used to determine when a duty may be owed to non-clients in estate planning contexts, which includes the following considerations: (1) the extent to which the transaction was intended to affect the plaintiff; (2) the foreseeability of harm to the plaintiff; (3) the degree of certainty that the plaintiff suffered injury; (4) the closeness of the connection between the defendant's conduct and the injury; (5) the policy of preventing future harm; and (6) the extent to which the profession would be	G. Patrick HagEstad, Esq. Rachel Parkin, Esq. Milodragovich Dale Steinbrenner, P.C. 620 High Park Way Missoula, MT 59806 gpatrick@bigskylawyers.com

	unduly burdened by a finding of liability.	
Nebraska	Nebraska has a common law privity defense. The leading case on the issue is *Perez v. Stern*, 279 Neb. 187, 777 N.W.2d 545 (2010). The Nebraska Supreme Court has held that privity is not an absolute requirement of a legal malpractice claim. However, a lawyer's duty to use reasonable care and skill in the discharge of his or her duties ordinarily does not extend to third parties, absent facts establishing a duty to them. The Court cited with approval a balancing test utilized by a majority of jurisdictions to determine whether a duty to a third party exists. *Id.* 192-193. The balancing test requires a court to consider: (1) the extent to which the transaction was intended to affect the third party, (2) the foreseeability of harm, (3) the degree of certainty that the third party suffered injury, (4) the closeness of the connection between the attorney's conduct and the injury suffered, (5) the policy of preventing future harm, and (6) whether recognition of liability under the circumstances would impose an undue burden on the profession.	Daniel F. Church, Esq. Morrow Willnauer Klosterman Church, LLC 8330 Ward Parkway, Suite 300 Kansas City, MO, 64114 dchurch@mwklaw.com
Nevada	Case law in Nevada on the requirement of privity in legal malpractice cases is sparse. While the privity requirement appears to still exist in most circumstances, the Nevada Supreme Court has recognized that "when an attorney represents a trustee in his or her capacity as trustee, that attorney assumes a duty of care and fiduciary duties toward the beneficiaries as a matter of law." *Charleson v. Hardesty*, 108 Nev. 878, 839 P.2d 1303.	Andrew R. Jones, Esq. Furman Kornfeld & Brennan, LLP 61 Broadway, 26th Floor New York, NY 10006 ajones@fkblaw.com William H. Jordan, Esq. Sowell Gray Robinson Stepp &Laffitte, LLC 1310 Gadsden Street Columbia, S.C. 29211 wjordan@sowellgray.com
New Hampshire	Lack of privity is a common law defense in New Hampshire. In other words, as a matter of common law, generally speaking there is no malpractice claim in the absence of an attorney-client relationship.	Christopher D. Hawkins, Esq. Devine Millimet 111 Amherst Street Manchester, NH 03101

	The leading case is *McCabe v. Arcidy*, 138 N.H. 20, 635 A.2d 446 (1993). *McCabe* involved an attempt by an attorney to collect legal fees from Arcidy, who had guaranteed payment of the fees incurred by McCabe's client. Arcidy claimed McCabe represented him, and therefore owed him fiduciary obligations. Arcidy claimed the guarantee agreement was unconscionable and invalid on account of McCabe's failure to advise him to seek independent counsel. The Court analyzed the existence of the attorney-client relationship under the following factors: (1) Did the putative client seek advice or assistance from the attorney; (2) Did the advice or assistance pertain to matters within the attorney's professional competence; and (3) Did the attorney expressly or implicitly agree to give, or actually give, the desired advice or assistance? The burden is on the putative client to prove the existence of the relationship, and the burden cannot be carried through mere *ipse dixit* assertions. The court will look to evidence such as the nature and extent of communications and evidence of payment to the attorney. The Court held there was no attorney-client relationship between McCabe and Arcidy. In 2009, the New Hampshire Bar Association published Ethics Opinion 2009/10-1 that implies an attorney-client relationship may be created under Rule 1.18 if an attorney reviews information received from a prospective client. This opinion has caused many New Hampshire lawyers to include disclaimers on their websites that no attorney-client relationship is created with people who unilaterally send information to the firm. The New Hampshire Supreme Court has not yet addressed the legal efficacy of that opinion. There are exceptions to the privity requirement. In *Simpson v. Calivas*, 139 N.H. 1, 650 A.2d 318 (1994), the New Hampshire Supreme Court held an attorney owed a duty to the identified beneficiaries of the client's executed will to ensure the will accurately and clearly reflected the decedent's intent. Conversely, the Court held in *Sisson v. Jankowski*, 148 N.H. 503, 809 A.2d 1265 (2002), that an attorney owed no duty to putative beneficiaries of a will to ensure the client executed the will in timely fashion. In that case, the	chawkins@devinemillimet.com

	decedent became incompetent, and ultimately died, between the time the attorney drafted the will and the time she brought the documents to the client for his signature. The Court held that up until the moment the will was executed, the client could have changed his mind, and it would pose a conflict of interest if the attorney was obligated to consider the interests of the beneficiaries under those circumstances. The Court recently affirmed *Sisson* in *Riso v. Dwyer*, 135 A.3d 557 (N.H. 2016) (attorney owed no duty of care to plaintiff to ensure plaintiff's mother promptly executed her will despite her request the attorney draft her revised will by a date certain). Finally, in *MacMillan v. Scheffy*, 147 N.H. 262, 7878 A.2d 867 (2001), the Court held that an attorney who drafted a deed owed no duty to a downstream purchaser of the lot because his services were not intended to benefit that purchaser. The Court also held that imposing a duty under the circumstances would place the attorney in a conflict situation because a real estate transaction is adversarial in nature.	
New Jersey	The leading case on the issue is *Petrillo v. Brachenberg*, 139 N.J. 472 (1995) on the issue of privity in New Jersey. "Whether an attorney owes a duty to a non-client third party depends on balancing the attorney's duty to represent clients vigorously…with the duty not to provide misleading information on which third parties foreseeably will rely…" *Id*. at 479. "…[A]ttorneys may owe a duty of care to non-clients when attorneys know, or should know, that non-clients will rely on the attorneys representations and the non-clients are not too remote from the attorneys to be entitled protection." *Id*. at 483-4.	Thomas Paschos, Esq. Kelly Lavelle, Esq. Thomas Paschos & Associates P.C. 30 North Haddon Avenue Suite 200 Haddonfield, NJ 08033 tpaschos@paschoslaw.com
New Mexico	In *Wisdom v. Neal*, 568 F. Supp. 4 (D.N.M. 1982), the court recognized that "New Mexico no longer recognizes privity of contract as having a place in tort law." (citing *Holland v. Lawless*, 95 N.M. 490, 623 P.2d 1004 (App. 1981). Instead of privity of contract, New Mexico courts have used the following multiple factor balancing test: (1) The extent to which the transaction was intended to affect the plaintiff; (2) The foreseeability of harm to him; (3) The degree of certainty that he suffered injury; (4) The closeness of the connection between the defendant's conduct and the injury suffered; and (5) The policy of preventing future harm.	William H. Jordan, Esq. Sowell Gray Robinson Stepp &Laffitte, LLC 1310 Gadsden Street Columbia, S.C. 29211 wjordan@sowellgray.com

	(citing *Steinberg v. Coda Roberson Construction Co.*, 79 N.M. 123, 440 P.2d 798 (1968)).	
New York	New York has a common law privity defense. The leading cases on the issue are *Prudential Ins. Co. v. Dewey Ballantine, Bushby, Palmer & Wood*, 80 N.Y.2d 377 (1992) and *Schneider v. Finmann*, 15 N.Y.3d 306 (2010). In New York, a third party without privity or near-privity cannot maintain a claim against an attorney for professional negligence, absent fraud, collusion, malicious acts or other special circumstances. However, the Court of Appeals has carved out an exception to the strict privity rule in estate planning malpractice lawsuits commenced by the estate's personal representative (though not beneficiaries).	Andrew R. Jones, Esq. Furman Kornfeld & Brennan, LLP 61 Broadway, 26th Floor New York, NY 10006 ajones@fkblaw.com
North Carolina	North Carolina privity is a common law defense. A plaintiff can bring a breach of contract claim for professional services and a legal malpractice claim if in privity. However, absence of privity does not preclude a legal malpractice claim under certain circumstances. The leading case is *United Leasing Corp. v. Miller*, 45 N.C. App. 400, 263 S.E.2d 313 (1980). The duty analysis here depends on: (1) the extent to which the transaction was intended to affect the [third party]; (2) the foreseeability of harm to him; (3) the degree of certainty that he suffered injury; (4) the closeness of the connection between the [attorney's] conduct and the injury; (5) the moral blame attached to such conduct; and (6) the policy of preventing future harm.	Luke Sbarra, Esq. Hedrick Gardner Kincheloe & Garofalo, LLP P.O. Box 30397 Charlotte, NC 28230 lsbarra@hedrickgardner.com
North Dakota	There is very little case law in North Dakota concerning this topic. North Dakota appears to still recognize privity as a defense and has expressly declined to address whether to recognize any particular exceptions to the privity requirement. *See Moen v. Thomas*, 2004 ND 132, 682 N.W.2d 738 (2004).	Brent J. Edison, Esq. Vogel Law Firm 218 NP Ave. Fargo, ND 58107 bedison@vogellaw.com
Ohio	The privity defense is based on the common law. An attorney may not be held liable to third parties as a result of having performed services on behalf of a client, in good faith, unless the third party is in privity with the client for whom the legal services were performed, or unless the attorney acts with fraud, collusion, or malice. *Simon v. Zipperstein*, 32 Ohio St.3d 74, 76 (1987), citing *Scholler v. Scholler*, 10 Ohio St.3d 98, paragraph	Jennifer L. Myers, Esq. Poling Law 300 East Broad St., Suite 350 Columbus, OH 43215 Jennifer@poling-law.com

	one of the syllabus (1984). The Ohio Supreme Court later distinguished its opinions in *Simon* and *Scholler*, ruling that a third-party beneficiary whose interest in an estate is vested is in privity with the fiduciary of the estate, and where such privity exists the attorney for the fiduciary is not immune from liability to the vested beneficiary for damages arising from the attorney's negligent performance. *Elam v. Hyatt Legal Services*, 44 Ohio St.3d 175, syllabus (1989). Years later, the Ohio Supreme Court also reaffirmed the issue of bad faith by an attorney. "Where privity is lacking, an attorney may be held liable to a third party for legal malpractice if fraud, collusion or malice is present." *LeRoy v. Allen, Yurasek & Merklin*, 114 Ohio St.3d 323, 2007-Ohio-3608, 872 N.E.2d 254, ¶ 32. Ultimately, therefore, either (1) privity or (2) a showing of fraud, collusion, or malice on the part of the attorney is required for a third party to maintain a cause of action against an attorney for legal malpractice. A plaintiff in a legal malpractice action must satisfy three elements: (1) an attorney-client relationship existed which gave rise to a duty; (2) a breach of that duty; and (3) damages proximately caused by the breach. *Krahn v. Kinney*, 43 Ohio St.3d 103, 104 (1989). In order to satisfy the first element, (duty) a third-party must show that he/she was in privity with the attorney or that the attorney acted with fraud, collusion, or malice.	Doug Holthus, Esq. Mazanec, Raskin & Ryder 175 South Third Street Suite 1000 Columbus, OH 43215 dholtus@mrrlaw.com
Oklahoma	The privity defense is based on the common law. The leading case on the issue is *Bradford Securities Processing Serv., Inc. v. Plaza Bank and Trust*, 653 P.2d 188 (Okla. 1982). The defense of privity no longer applies. A duty to a third party arises when, in view of all of the circumstances of the case, an ordinarily prudent lawyer should reasonably foresee that the plaintiff, or one in his position, will be in danger of suffering an injury as the natural and probable consequences of the lawyer's act.	A. Scott McDaniel, Esq. McDaniel Acord, PLLC 9343 E. 95th Ct. Tulsa, OK 74133 smcdaniel@ok-counsel.com

Oregon	Oregon follows the Oregon Legal Ethics Rules on privity. *See section 1.1:410 Liability to Certain Non-Clients.* The circumstances under which an exception to the privity bar of legal malpractice claims are as follows: 1. When the attorney acts as an escrow: *McEvoy vs. Helikson*, 277 Or. 781, 786 (1977). 2. Tort claims: intentional torts, defamation, breach of fiduciary duty. 3. If a representation is made by a lawyer to a non-client or action taken beyond the scope of those authorized by a client. 4. Permits both tort and 3rd party beneficiary contract claims against estate-planning attorneys: *Hale vs. Groce*, 304 Or. 281 (1987)	Jennifer Saunders, Esq. Haight Brown & Bonesteel LLP 555 South Flower Street Forty-Fifth Floor Los Angeles, CA 90071 jsaunders@hbblaw.com
Pennsylvania	In Pennsylvania, to maintain a claim of legal malpractice based on negligence a "plaintiff must show an attorney-client relationship or a specific undertaking by the attorney furnishing professional services, as a necessary prerequisite for maintaining such suits. *Guy v. Liederbach*, 501 Pa. 47, 58, 459 A.2d 744, 746 (1983). In *Guy*, *supra*, the Pennsylvania Supreme Court held that "while important policies require privity (an attorney-client or analogous professional relationship, or a specific undertaking) to maintain an action in negligence for professional malpractice, a named legatee of a will may bring suit as an intended third party beneficiary of the contract between the attorney and the testator for the drafting of a will which specifically names the legatee as a recipient of all or part of the estate." In crafting the narrow, third party beneficiary exception to the privity rule, the Court concluded that the "grant of standing to a narrow class of third-party beneficiaries seems 'appropriate' under Restatement (Second) of Contracts § 302 where the intent to benefit [the legatee] is clear and the promise (testator) is unable to enforce the contract." *Id*. at 52, 747.	Jay Barry Harris, Esq. Fineman Krekstein & Harris Ten Penn Center 801 Market Street, Suite 1100 Philadelphia, PA 19103 jharris@finemanlawfirm.com
Rhode Island	Rhode Island has a privity defense based on the common law. The leading case on the issue is *Credit Union Cent. Falls v. Groff*, 966 A.2d 1262 (R.I. 2009). Generally, an attorney owes no duty to a nonclient. *Credit Union Central Falls v. Groff, 966 A.2d 1262, 1270 (R.I. 2009)*, citing *Toste Farm Corp. v. Hadbury, Inc.*, 798 A.2d 901, 907 (R.I.2002). The attorney-client relationship is contractual in nature and "the gravamen of an action for attorney malpractice is 'the negligent breach of [a] contractual duty' * * *." Id. Citing *Church v.*	Kevin C. Cain, Esq. Zizik Professional Corp. 960 Turnpike Street, Suite 3C Canton, MA 02021 kcain@ziziklaw.com

	McBurney, 513 A.2d 22, 24 (R.I.1986) (quoting *Flaherty v. Weinberg, 303 Md. 116, 492 A.2d 618, 627 (1985)*. Fraud is a well settled exception to the privity requirement that historically bars nonclient recovery for attorney malpractice. *Groff* 966 A. 2d at 1271, citing, *Nisenzon v. Sadowski*, 689 A.2d 1037, 1046 n. 12 (R.I. 1997) (attorney may be liable to nonclients "when his conduct is fraudulent or malicious") (quoting *Likover v. Sunflower Terrace II, Ltd.*, 696 S.W.2d 468, 472 (Tex.Ct.App.1985)); *see also Savings Bank v. Ward*, 100 U.S. 195, 195, 203-04, 25 L.Ed. 621 (1879) An attorney's liability may extend to third party beneficiaries of the attorney client relationship if it is clear that the contracting parties intended to benefit the third party. *Groff*, 966 A. 2d at 1271. The attorney must be aware of the client's intent to benefit the third party and the benefit must be direct, not incidental, for the exception to the general privity rule in attorney malpractice actions to be applicable. *Id.* But cf. *Audette v. Poulin*, (R.I. Supreme Court 2015 WL 8350473) (Trustee's counsel owed no duty to trust beneficiaries due to lack of "identity of interest").	
South Carolina	South Carolina has a privity defense based on the common law. The leading cases on the issue are: *Pye v. Estate of Fox*, 369 S.C. 555, 564, 633 S.E.2d 505, 509 (2006) , *Stiles v. Onorato*, 318 S.C. 297, 300, 457 S.E.2d 601, 602 (1995) and *Argoe v. Three Rivers Behavioral Center and Psychiatric Solutions*, 388 S.C. 394, 697 S.E.2d 551. To show a lawyer owes a duty to a third-party that could serve as the basis for a claim against the lawyer, the plaintiff must allege/show the lawyer had an independent duty to the third party or acted outside the scope of the representation of the client. The Supreme Court held in 2014 that beneficiaries of an existing will or estate planning document may recover as third-party beneficiaries against a lawyer whose drafting error defeats or diminishes the client's intent under legal malpractice or breach of contract theories. However, recovery is limited to persons named in the instrument or otherwise identified in the instrument by their status. *Fabian v. Lindsay*, 410 S.C. 475, 765 S.E.2d 132 (2014).	Andrew W. Countryman, Esq. Carlock, Copeland & Stair, LLP 40 Calhoun Street, Suite 400 Charleston, SC 29401 acountryman@carlockcopeland.com
South Dakota	South Dakota recognizes privity as a defense to a legal malpractice action. However, in *Friske v. Hogan*, 2005 S.D. 70, 698 N.W.2d 526 (2005), the court recognized an exception to the strict privity rule and held that "nonclient beneficiaries may maintain a malpractice action against the attorney who	William H. Jordan, Esq. Sowell Gray Robinson Stepp &Laffitte, LLC 1310 Gadsden Street

	drafted the testamentary instrument." It does not appear that South Dakota has addressed or recognized any other exceptions to the requirement of privity in commencing a legal malpractice action.	Columbia, S.C. 29211 wjordan@sowellgray.com
Tennessee	The Tennessee Court of Appeals held while "[o]rdinarily, an attorney is not liable for negligence to third parties who are not clients and not in privity of contract with the attorney, . . . an attorney may be liable to a non-client third party who is known by him to be relying upon his proper preparation of a document affecting vested rights of the third party." *Harper v. Harsh*, 1992 WL 19256, No. 01-A-019110 (App. 1992). Tennessee does not appear to have addressed additional exceptions to the privity requirement.	William H. Jordan, Esq. Sowell Gray Robinson Stepp &Laffitte, LLC 1310 Gadsden Street Columbia, S.C. 29211 wjordan@sowellgray.com
Texas	In Texas, the privity or attorney immunity defense is pursuant to the common law. Generally, a non-client cannot sue an attorney for legal malpractice. The leading case on the issue is *Barcelo v. Elliott*, 923 S.W.2d 575 (Tex. 1996). There are at least two (2) exceptions to the privity requirements. A third party may sue a lawyer if the attorney should have reasonably expected that the non-client would believe the attorney represented him, and the attorney failed to advise of the non-representation. *Burnap v. Linnartz*, 914 S.W.2d 142 (Tex. App. – San Antonio, rehearing denied). Secondly, an excess carrier may bring a legal malpractice claim against an attorney for the insured. *American Centennial Ins. Co. v. Canal Ins. Co.*, 843 S.W.2d 480 (Tex. 1992).	Gary S. Kessler, Esq. Kessler Collins, P.C. 2100 Ross Avenue, Suite 750 Dallas, TX 75201 gsk@kesslercollins.com
Utah	In Utah, the privity defense is common law. The leading case from the highest court in Utah on this issue is *Oxendine v. Overturf*, 1999 UT 4, 973 P.2d 417. In Utah, an attorney may have a duty to exercise reasonable care toward a non-client if the attorney and the client clearly intended for the non-client to receive a separate and distinct benefit from the attorney's employment. *Oxendine v. Overturf*, 973 P.2d 417, 421 (Utah 1999). For example, the attorney for the personal representative in a wrongful death action will generally owe a fiduciary duty to all statutory heirs. *Id.* However, the attorney has no duty to a	George W. Burbidge, II, Esq. Christensen &Jensen 257 East 200 South, Suite 1100 Salt Lake City, Utah 84111 George.burbidge@chrisjen.com

	third party if an adversarial relationship develops between the attorney's client and the third party or if the interests of the client conflict with the interests of the third party. *Id. See also Winters v. Schulman*, 977 P.2d 1218 (Utah App. 1999) (attorney owed no duty of care to opposing party); *Atkinson v. IHC Hospitals, Inc.*, 798 P.2d 733 (Utah 1990) (attorney who represented hospital in a minor settlement did not owe a duty of care to the minor's parents who, despite the fact that a settlement had been reached, were potential adversaries in litigation).	
Vermont	Vermont appears to still recognize lack of privity as a defense to a legal malpractice claim. In *Bovee v. Gravel*, 174 Vt. 486, 811 A.2d 137 (2002), the court recognized the "longstanding common law rule" that "an attorney owes a duty of care only to the client, not to third parties who claim to have been damaged by the attorney's negligent representation." The court recognized that "a number of courts" have relaxed the privity requirement "where it can be shown that the client's purpose in retaining the attorney was to directly benefit a third party." While case law suggests Vermont may, at some point, recognize such one or more such exceptions, it has not done so yet. *See Handverger v. City of Winooski*, 191 Vt. 84, 38 A.3d 1158 (2011).	William H. Jordan, Esq. Sowell Gray Robinson Stepp &Laffitte, LLC 1310 Gadsden Street Columbia, S.C. 29211 wjordan@sowellgray.com
Virginia	In Virginia, the defense of privity is common law. Strict privity of contract is required. Virginia only recognizes third party beneficiary claims if the attorney assumed a duty to the third party.	W. Barry Montgomery, Esq. Kalbaugh Pfund & Messersmith, P.C. 901 Moorefield Park Drive Suite 200 Richmond, VA 23236 barry.montgomery@kpmlaw.com
Washington	In Washington the defense of privity is common law based. The leading case on the issue is *Trask vs. Butler* (1994) 123 Wn 2d 835. Washington uses a six factor balancing test to determine whether a third party may bring a claim against the lawyer. The 6 factors are: (1) The extent to which the transaction was intended to benefit the plaintiff[, i.e., the non-client third party suing the attorney]; (2) The foreseeability of harm to the plaintiff; (3) The degree of certainty that the plaintiff suffered injury;	Jennifer Saunders, Esq. Haight Brown & Bonesteel LLP 555 South Flower Street Forty-Fifth Floor Los Angeles, CA 90071 jsaunders@hbblaw.com

	(4) The closeness of the connection between the defendant's conduct and the injury; (5) The policy of preventing future harm; and (6) The extent to which the profession would be unduly burdened by a finding of liability.	
Washington, D.C.	The privity defense is governed by the common law. The leading case on the issue is *Needham v. Hamilton*, 459 A.2d 1060 (D.C. 1983). As explained in *Scott v. Burgin*, 97 A.3d 564 (D.C. 2014) - "It is well established that 'the *general rule is that the obligation of the attorney is to his client, and not to a third party . . . .*'" *Needham*, 459 A.2d at 1061 (quoting *National Savings Bank v. Ward*, 100 U.S. 195, 200, 25 L. Ed. 621 (1880)). However, "[t]he rule requiring privity is not . . . without exception." Id. at 1062. We may allow legal malpractice suits by "third parties notwithstanding a lack of privity where the impact upon the third party is 'not an indirect or collateral consequence,' but the 'end and aim of the transaction.'" Id. (quoting *Glanzer v. Shepard*, 233 N.Y. 236, 135 N.E. 275, 275 (N.Y. 1922) (Cardozo Click for Enhanced Coverage Linking Searches, J.)). Otherwise put, *third party claims may be sustained where the plaintiffs were "the direct and intended beneficiaries of the contracted for services*." *Id*.	Lisa D. Angelo, Esq. Murchison & Cumming, LLP, 801 S. Grand Avenue, 9th Floor Los Angeles, CA 90017 langelo@murchisonlaw.com
West Virginia	In West Virginia the privity defense is pursuant to common law. The leading case on the issue is *Calvert v. Scharf*, 619 S.E.2d 197 (WV 2005). Beneficiaries of an estate are permitted to sue an estate planning attorney despite the lack of privity upon an showing of negligence by the attorney. Third party intended beneficiary claims are also permitted.	W. Barry Montgomery, Esq. Kalbaugh Pfund & Messersmith, P.C. 901 Moorefield Park Drive, Suite 200 Richmond, VA 23236 barry.montgomery@kpmlaw.com
Wisconsin	"While it has long been the general rule that an attorney is not liable to third parties for acts committed in the exercise of his duties as an attorney, this rule is not without exceptions." *Auric v. Continental Cas. Co.*, 111 Wis. 2d 507, 331 N.W.2d 325 (1983). "Where fraud has been involved, attorneys have been held liable to third parties." *Id.* Additionally, "public policy supports the imposition of liability on an attorney who acts negligently in drafting or supervising the execution of a will resulting in a loss to a beneficiary named therein." *Id.* Wisconsin does not appear to have recognized any additional exceptions to the	William H. Jordan, Esq. Sowell Gray Robinson Stepp &Laffitte, LLC 1310 Gadsden Street Columbia, S.C. 29211 wjordan@sowellgray.com

	privity requirement, but has recognized the following list of public policy factors to be considered in determining whether to recognize additional exceptions: 1. Whether imposing liability in favor of a third party may compromise the attorney's duties to his or her client; and 2. Whether the third party is aware of the potential for harm and has the obligation or ability to undertake his or her own investigation of the matter to protect himself or herself. *Yorgan v. Durkin*, 290 Wis. 2d 671, 715 N.W.2d 160 (2006) (citing *Green Spring Farms*, 136 Wis. 2d 304 (1987) and *Goerke v. Vojvodich*, 67 Wis. 2d 102, 226 N.W.2d 211 (1975)).	
Wyoming	The privity defense is governed by common law. The leading case on the issue is *Drwenski v. McColloch*, 83 P.3d 457 (Wyo. 2004). Lawyers typically owe no duties to non-clients, absent fraud or collusion. A non-client may not bring a negligence claim against a lawyer unless that non-client was an intended beneficiary of the lawyer's engagement by a client. If an intent to benefit the plaintiff is shown, a limited duty to the non-client will be assessed on a case-by-case basis utilizing these factors: (1) the extent to which the transaction was intended to directly benefit the plaintiff; (2) the foreseeability of harm; (3) the degree of certainty that the plaintiff suffered injury; (4) the closeness of the connection between the lawyer's conduct and the injury; (5) whether expansion of liability to the nonclient would place an undue burden on the legal profession; and (6) the policy of preventing future harm. An adversary cannot be an intended beneficiary to an engagement.	John E. Bolmer, II, Esq. Hall & Evans, LLC 1001 Seventeenth Street Suite 300 Denver, CO 80202 bolmerj@hallevans.com)