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Hall v. Kalfayan: Estate Attorney Owes No Duty to Non-Client, Potential Beneficiary When Testamentary Instrument Has Not Been Signed

Saturday, December 11th, 2010

There have been a number of decisions addressing the issue of when it is that an estate-planning attorney owes a duty of care to a non-client in connection with the drafting of a testamentary instrument. In *Hall v. Kalfayan*, (2010) 190 Cal.App.4th 927, the Court of Appeal (Second District, Division Four), in a published decision, weighed in on this issue.

In *Hall*, the attorney had undertaken to prepare an estate plan on behalf of his client, but had failed to complete the plan before the client's death. The attorney was then sued for malpractice by one of the potential beneficiaries who had been listed in the draft estate plan but received nothing as a result of the testamentary documents not having been executed.

The attorney moved for summary judgment, arguing that he owed no duty to this non-client. The trial court granted the motion and the Court of Appeal affirmed on December 9, 2010. The Court of Appeal referenced one line of cases in which an attorney was found to have owed a duty to a non-client in the estate-planning context (*Biakanja v. Irving, Lucas v. Hamm, Heyer v. Flagg* and *Oosornia v. Weingarten)*) and another line of cases in which the attorney was not found to have owed such a duty to the non-client (*Radovich v. Locke-Paddon* and *Chang v. Lederman*). The distinguishing factor, the Court of Appeal concluded, was that in the latter cases the testamentary instruments had not been executed, as they had been in the former cases.

The Court of Appeal held that the fact of whether the documents had been executed would serve as a "clear delineation of an attorney's duty to nonclients" in the estate planning context