

Supreme Court of Texas

No. 24-0834

Amber Carden and William Duncan McGee,
Petitioners,

v.

Minton, Bassett, Flores & Carsey, P.C.; and
John C. Carsey, Individually,
Respondents

On Petition for Review from the
Court of Appeals for the Third District of Texas

Argued December 4, 2025

JUSTICE DEVINE delivered the opinion of the Court, in which Justice Lehrmann, Justice Busby, Justice Huddle, Justice Young, Justice Sullivan, and Justice Hawkins joined, and in which Chief Justice Blacklock and Justice Bland joined except as to Part II.B.

JUSTICE YOUNG filed a concurring opinion, in which Justice Devine joined.

CHIEF JUSTICE BLACKLOCK filed an opinion concurring in part and dissenting in part, in which Justice Bland joined.

This case comes to us following a Rule 91a dismissal. The petitioners—a mother and her incarcerated son—sued the son’s

criminal-defense counsel for professional negligence and other claims related to the representation. The court of appeals affirmed dismissal of all claims, holding that (1) the *Peeler* doctrine bars the son's claims because he has not been exonerated of his crimes and (2) the mother lacks standing to sue the son's attorneys. These conclusions are not entirely correct.

As a matter of law and public policy, the *Peeler* doctrine precludes an unexonerated criminal defendant from suing for legal malpractice because the defendant's own criminal conduct is deemed the sole proximate and producing cause of a conviction and "any injuries flowing from the conviction."¹ *Peeler* plainly bars the son's claim for professional negligence. His other claims are subject to scrutiny under *Peeler*'s causation standard and the anti-fracturing rule, which prevents litigants from recasting malpractice complaints as other causes of action to evade doctrinal limits. But rather than conducting a causation or fracturing analysis, the court of appeals applied *Peeler* as a categorical bar to the son's claims, including those alleging counsel's fees were excessive, unearned, and fraudulently procured. That approach improperly expands *Peeler* by immunizing criminal-defense counsel from tort and contract claims wholly independent from the conviction.

The court's analysis of the mother's standing was also flawed. Although the mother was not the client, she has standing to pursue recovery for her own economic losses based on allegations—which we must take as true—that she directly paid counsel for specific services he promised but failed to provide in her son's defense. With these

¹ *Peeler v. Hughes & Luce*, 909 S.W.2d 494, 498 (Tex. 1995) (plurality op.).

clarifications of the law, we affirm the court of appeals' judgment in part, reverse in part, and remand the case to that court to address the respondents' alternative grounds for dismissal.

I

In August 2014, petitioner William Duncan McGee was charged with aggravated assault with a deadly weapon, aggravated sexual assault, and retaliation.² At the May 2016 criminal trial, McGee was represented by John Carsey and Rick Flores, partners in the law firm of Minton, Bassett, Flores & Carsey, P.C.³ The jury acquitted McGee on the sexual-assault charge but convicted him on the remaining charges and assessed concurrent prison sentences of 42 years for aggravated assault and 10 years for retaliation.⁴ On appeal, McGee's new counsel raised a single issue—ineffective assistance of trial counsel.⁵ The appellate court rejected that argument and affirmed the convictions.⁶ Mandate issued in 2017.⁷

More than five years after the criminal trial concluded, McGee and his mother, Amber Carden, sued Carsey and his law firm (collectively, the Firm) for legal malpractice, breach of fiduciary duty, breach of contract, negligent misrepresentation, and fraud. Among

² See *McGee v. State*, Nos. 13-16-00390-CR & 13-16-00395-CR, 2017 WL 2705466, at *1 (Tex. App.—Corpus Christi—Edinburg June 22, 2017, no pet.) (mem. op., not designated for publication).

³ *Id.* at *2.

⁴ *Id.* at *1.

⁵ *Id.* at *2.

⁶ *Id.* at *3-4.

⁷ See 719 S.W.3d 595, 604 (Tex. App.—Austin 2024).

other relief, the plaintiffs sought compensatory and exemplary damages and fee forfeiture.

The Firm moved for dismissal under Texas Rule of Civil Procedure 91a, arguing that the claims have no basis in law. The motion asserted that (1) Carden lacks standing to sue because she was not the client; (2) the *Peeler* public-policy bar precludes the plaintiffs' legal-malpractice claims because McGee has not been exonerated; (3) the remaining claims are improperly fractured malpractice claims that assail only the quality and value of the professional services rendered; (4) whether fractured or not, no claim is viable under *Peeler* because McGee's conviction prevents the plaintiffs from proving causation under any theory; and (5) the lawsuit was untimely as to all claims.

The plaintiffs filed a response and an amended petition in which they expanded the factual allegations, replaced the misrepresentation claim with a gross-negligence claim, and broadly asserted that both mother and son were the Firm's clients. The augmented factual allegations—many of which the Firm characterizes as “either untrue or wildly speculative”—can be fairly grouped into three broad categories. Although disputed, we must accept these allegations as true for present purposes.

First are complaints about counsel's competency, skill, diligence, professional judgment, and legal advice. Of that nature are allegations that Carsey:

- unilaterally decided to call only one character witness to testify at McGee's bond hearing even though he had previously asked Carden to email him a list of five potential witnesses;

- argued for personal-recognizance release instead of following the plaintiffs’ instructions to request a \$300,000 bond, which resulted in the court setting a \$500,000 bond for McGee’s release;
- failed to ensure a Firm lawyer met with McGee before an April 2015 bond-revocation hearing despite telling Carden another partner would “handle” that hearing;
- rarely met with McGee while the case was pending, including to prepare for trial;
- failed to discuss important strategic matters with McGee;
- failed to “timely” add another partner to the case;
- did not inform the plaintiffs “until after the fact” that the trial date had been moved from September 2015 to May 2016;
- informed Carden that McGee was unlikely to be released from jail after his rearrest in February 2016 for an ankle-monitor violation and advised against fighting the prosecutor’s motion to increase the bond amount to \$2 million because it would be “futile”;
- failed to communicate the prosecutor’s renewed 20-year plea offer until two days before trial and did not make a counteroffer or begin earnest plea negotiations until that time;
- advised McGee to testify on his own behalf without preparing him or explaining the risks;
- failed to call any witnesses in the punishment phase despite having a list of twelve potential witnesses; and
- neither attended McGee’s sentencing nor met with him at any time after the trial concluded.

The plaintiffs assert that, as a direct result of Carsey’s misconduct, McGee was convicted and sentenced to 42 years in prison.

Next are allegations about the Firm’s misuse, nonuse, or wrongful retention of retainer funds. The amended petition alleges that Carsey sent emails to Carden in September 2014, June 2015, and December

2015 cumulatively requesting \$300,000 for McGee’s defense. After each ask, Carden wire-transferred a \$100,000 payment to the Firm. The plaintiffs quote selectively from the emails in asserting that Carsey promised to expend those funds in specific ways but neither did so nor returned unearned, unused, or excessive fees.

As presented in the petition, Carsey initially told Carden that “fees will likely approach \$100,000.00 or more,” including \$10,000 earmarked for hiring a private investigator. Carsey subsequently promised to meet with McGee every two weeks, but that never happened. In June 2015, Carsey informed Carden that only \$20,000 of the initial \$100,000 retainer remained. He requested an additional \$200,000 to continue the representation and ramp up for the September 2015 trial. Carsey reportedly stated that he would begin “meeting with McGee at least weekly for all-day meetings to ‘review evidence and prepare,’” procure “a couple of experts,” and add another partner to McGee’s case. Carden paid half the amount requested, but Carsey never met with McGee as promised, and the trial was rescheduled to May 2016 without prior consultation with the plaintiffs. Carsey’s December 2015 email provided two reasons for the resetting: (1) new discovery from the prosecutor and (2) Carsey’s impending surgery. He also asked Carden to pay the remaining \$100,000 because the Firm was “closing [its] books for the year.” Carden says she obliged even though that meant the plaintiffs would be paying the Firm “\$200,000.00 more than the original \$100,000.00 Carsey represented would be necessary.”

The plaintiffs allege that Carsey did not follow through on any of his promises. Among the asserted failings, Carsey met with McGee only three times between the December 2014 bond hearing and May 2016—

never “weekly for all-day meetings” as promised in the June 2015 solicitation request. Additional unkept promises were revealed later. Those included counsel’s purported failures to “pay any private investigator \$10,000.00,” “timely” add a partner to the defense team, or “hire the experts as promised.” The plaintiffs claim to have discovered these additional breaches for the first time in February 2020 when, after many requests over the years, the Firm finally turned over the litigation file. Further, based on the plaintiffs’ assessment that “no additional discovery had been produced that warranted moving McGee’s trial date,” they also concluded that the trial was reset only to “further elongate [the Firm’s] representation of McGee to inflate [the Firm’s] legal fees.” According to the plaintiffs, the Firm’s prolonged delay in turning over the litigation file concealed the Firm’s failure to deliver promised services and thereby deferred or tolled the applicable statutes of limitations.

Finally, the plaintiffs complain about the Firm’s failure and refusal to properly account for the monies Carden advanced for professional services. The amended petition states that—starting at the conclusion of the May 2016 trial and continuing through August 2018—the plaintiffs repeatedly wrote and called to request an accounting. For the entirety of that time, the Firm “never responded,” “ignored” the plaintiffs’ requests, and “refused to . . . provide an accounting of the \$300,000.00.” The plaintiffs have not asserted that the Firm submitted bills for services not rendered or expenses not incurred. Rather, the pleadings contend that Carsey made unfulfilled executory promises about how the retainer funds would be used in McGee’s defense and,

despite multiple requests dating back to the close of trial, never provided an accounting of how those funds were spent.

After a nonevidentiary hearing, the trial court granted the Firm’s Rule 91a motion and summarily dismissed all claims with prejudice. The court of appeals affirmed without reaching the fracturing and limitations issues.⁸ The court held that Carden lacked standing to sue because she was not the Firm’s client and her alleged payment of the bills did not give rise to a “concrete injury” sufficient to confer standing on a nonclient.⁹ The court also held that the *Peeler* doctrine categorically bars McGee’s claims—even those alleging inflated or excessive fees, failure to account, and failure to return funds—because he remains incarcerated for his crimes and did not plead that he has been exonerated.¹⁰

In this Court, the parties join issue on all the questions the court of appeals did and did not reach: Carden’s standing; *Peeler*’s scope and application; the anti-fracturing rule; and timeliness.

II

Texas Rule of Civil Procedure 91a authorizes dismissal of a cause of action “if the allegations, taken as true, together with inferences reasonably drawn from them, do not entitle the claimant to the relief

⁸ *Id.* at 603-06. In cross-appeals, the parties also challenged adverse trial-court rulings related to the Firm’s motion to dismiss under the Texas Citizens Participation Act. *Id.* at 600 (citing TEX. CIV. PRAC. & REM. CODE §§ 27.001–.011). The court of appeals affirmed those rulings, *id.* at 606-15, and neither side has petitioned for further review by this Court.

⁹ *Id.* at 605-06.

¹⁰ *Id.* at 604.

sought.”¹¹ This determination is made based only on “the pleading of the cause of action” and “any [permissible] pleading exhibits.”¹² Dismissal is appropriate if the plaintiffs’ pleading of the cause of action fails to state a legally cognizable claim, conclusively establishes an affirmative defense, or otherwise shows the plaintiffs are not entitled to the relief sought.¹³ As to these matters, we are constrained to accept nonconclusory facts as pleaded but not the plaintiffs’ legal conclusions.¹⁴ The legal effect of the pleaded facts is determined de novo.¹⁵

A

Because standing is a component of subject-matter jurisdiction, we address it as a threshold matter.¹⁶ Standing is a jurisdictional prerequisite to suit that the plaintiffs must establish as to each claim and each form of relief sought.¹⁷ As the Firm’s undisputed client,

¹¹ TEX. R. CIV. P. 91a.1.

¹² *Id.* R. 91a.6.

¹³ *Bethel v. Quilling, Selander, Lownds, Winslett & Moser, P.C.*, 595 S.W.3d 651, 656 (Tex. 2020).

¹⁴ *Id.* at 655-56.

¹⁵ *Id.* at 654.

¹⁶ *Mosaic Baybrook One, L.P. v. Simien*, 674 S.W.3d 234, 250 (Tex. 2023).

¹⁷ *Id.* (“Standing is a component of subject-matter jurisdiction[.]”); *Heckman v. Williamson County*, 369 S.W.3d 137, 152-53, 155 (Tex. 2012) (explaining that standing must be assessed “claim by claim” and “for each form of relief sought” (internal quotation marks omitted)).

McGee’s standing is not challenged. At issue is his mother’s standing to assert claims against the Firm as either a client or a nonclient.

To demonstrate constitutional standing at this juncture, the pleadings need only allege facts showing Carden has personally suffered a concrete and particularized injury that is fairly traceable to the defendants’ conduct and likely redressable by a favorable decision.¹⁸ Under the pleaded facts, Carden has standing to pursue claims for direct financial injury even as a nonclient. But because she was not the Firm’s client, she has no viable claims predicated on the existence of an attorney–client relationship.

The attorney–client relationship is contractual in nature.¹⁹ The relationship arises from an agreement that the attorney will provide legal services to the client and the client will be the recipient of the attorney’s professional judgment and duties.²⁰ For the protection of both counsel and client, a written agreement is the best practice. Among other things, a written agreement can provide clarity about who the lawyer represents, what the lawyer is responsible for, billing practices,

¹⁸ See *McLane Champions, LLC v. Hou. Baseball Partners LLC*, 671 S.W.3d 907, 912-13 (Tex. 2023) (stating the constitutional-standing requisites).

¹⁹ See *Haynes & Boone, LLP v. NFTD, LLC*, 631 S.W.3d 65, 73-74 (Tex. 2021) (explaining the historical underpinnings of the privity-of-contract requirement); *Dickey v. Jansen*, 731 S.W.2d 581, 582 (Tex. App.—Houston [1st Dist.] 1987, writ ref’d n.r.e.) (describing “privity” in terms of the contractual connection or relationship that exists between attorney and client).

²⁰ See, e.g., *Tanox, Inc. v. Akin, Gump, Strauss, Hauer & Feld, L.L.P.*, 105 S.W.3d 244, 254 (Tex. App.—Houston [14th Dist.] 2003, pet. denied); see also *Haynes & Boone*, 631 S.W.3d at 79 (“An attorney’s duty to represent a client zealously begins as soon as the client has requested the lawyer to render legal services and the lawyer has agreed to do so.” (internal quotation marks omitted)).

and how fees will be paid, allocated, or returned. Carden has not identified any oral or written statements by which she sought, and the Firm expressly agreed to provide, legal services to her.

Courts have recognized, however, that an attorney–client relationship may arise by implication from the parties’ conduct.²¹ Such

²¹ Compare *Kiger v. Balestri*, 376 S.W.3d 287, 291, 293-95 (Tex. App.—Dallas 2012, pet. denied) (attorney’s alleged “suggestions” and “opinions” about the plaintiff’s business idea were not evidence of an implied attorney–client relationship), *Span Enters. v. Wood*, 274 S.W.3d 854, 858 (Tex. App.—Houston [1st Dist.] 2008, no pet.) (no evidence supported an attorney–client relationship by implication based only on subjective expectations when the plaintiff admittedly did not communicate with or receive legal services from the lawyer), *Tanox*, 105 S.W.3d at 254-56 (upholding arbitrator’s finding that no attorney–client relationship existed before execution of a formal fee agreement because the objective evidence of what the parties did and said conflicted as to their intent), and *Roberts v. Healey*, 991 S.W.2d 873, 880-81 (Tex. App.—Houston [14th Dist.] 1999, pet. denied) (client’s mother did not raise a fact issue to support an implied attorney–client relationship with evidence and allegations that she ultimately paid for the legal services, fees were drawn on a joint account, and the lawyer had communicated with her several times about her daughter’s divorce proceedings), with *Stephens v. Three Finger Black Shale P’ship*, 580 S.W.3d 687, 721-25 (Tex. App.—Eastland 2019, pets. denied) (disputed evidence was sufficient to support a jury finding that an attorney who wore multiple hats in a complicated business transaction had an implied attorney–client relationship with some of the players given their history, the nature of advice given, the attorney’s actions on the project, and reasonable expectations), *Hendricks v. Baker*, 523 S.W.3d 152, 155, 158-59 (Tex. App.—Houston [14th Dist.] 2016, no pet.) (plaintiff’s attorney was disqualified from conflicting representation where defendant had previously told the attorney that she believed he was her attorney and the attorney’s communications with her at that time included requests for documentation to resolve her dispute, rendition of legal advice, and statements about hourly rates, fees incurred, and additional fees anticipated to resolve her issues), *Daves v. Comm’n for Law. Discipline*, 952 S.W.2d 573, 577 (Tex. App.—Amarillo 1997, pet. denied) (holding, for purposes of a disciplinary proceeding, that an implied attorney–client relationship existed as to a minor child because the lawyer asserted the child’s claims in court, negotiated settlement of those claims, entered into an agreement to represent the child with the parents, and

a relationship requires a meeting of the minds, which must be shown through objective manifestations that both parties intended to form the relationship.²² Unstated subjective beliefs are insufficient to establish an attorney–client relationship by implication.²³ Likewise, conclusory assertions unsupported by well-pleaded facts neither establish standing nor withstand scrutiny under Rule 91a.

Here, the pleadings do not allege facts objectively manifesting the Firm’s intent to represent Carden personally, to provide legal services to her, or to owe her professional duties independent of her son’s representation. Carden’s pleadings refer to a single legal matter: McGee’s criminal prosecution. The pleaded facts reference only the professional services sought and rendered in connection with McGee’s arrests, bond issues, plea offers, trial preparation, trial proceedings, conviction, and punishment. Counsel’s communications with Carden

represented to another court that the lawyer was the child’s court-approved attorney), *and Perez v. Kirk & Carrigan*, 822 S.W.2d 261, 263, 265 (Tex. App.—Corpus Christi 1991, writ denied) (holding an implied attorney–client relationship existed because lawyers for plaintiff’s employer “told [plaintiff] that they were his lawyers too and that anything he told them would be kept confidential” and plaintiff gave them a sworn statement in reliance on those representations).

²² *E.g.*, *Valls v. Johanson & Fairless, L.L.P.*, 314 S.W.3d 624, 634 (Tex. App.—Houston [14th Dist.] 2010, no pet.); *Tanox*, 105 S.W.3d at 254; *Roberts*, 991 S.W.2d at 880; *see Vinson & Elkins v. Moran*, 946 S.W.2d 381, 406 (Tex. App.—Houston [14th Dist.] 1997, writ dismissed by agreement) (“Because the attorney–client relationship is contractual, the determination of the existence of a contract must be, as in any other contract case, based on an objective standard, and not on what the parties subjectively thought.”).

²³ *Span Enters.*, 274 S.W.3d at 858; *see Roberts*, 991 S.W.2d at 880 (stating that the parties’ subjective states of mind are irrelevant to whether there was a mutual intention to create an attorney–client relationship).

were all in relation to and for the facilitation of McGee’s defense, including his “advice” to “leave [McGee’s] bond in place until we see the outcome of the reduction hearing in the next couple of weeks.” Even if that communication could be construed as something more than a suggestion or a request, it too was in the scope of the Firm’s representation of McGee and in furtherance of McGee’s best interests as the Firm’s client.

Carden may have paid the entire freight for McGee’s legal representation, but paying the bills—even as a direct payor—does not make Carden the Firm’s client.²⁴ It is common for parents to pay fees, communicate with counsel, and function as a liaison or client representative.²⁵ Carden’s personal and financial interests in a favorable outcome for her son were undoubtedly aligned with his, but the pleaded facts do not give rise to a reasonable inference that the Firm agreed to provide legal services *to her*. Payment of fees for another’s legal representation, assistance with strategy, receipt of case updates, and familial interest in the outcome do not suffice to create such a relationship. We therefore agree with the Firm that the pleaded facts do not give rise to an express or implied attorney–client relationship

²⁴ See TEX. DISCIPLINARY R. PROF’L CONDUCT 1.08(e) (recognizing that, under certain conditions, a lawyer may receive compensation from a third party to represent a client); *Roberts*, 991 S.W.2d at 880-81 (summary-judgment proof failed to raise a fact issue that client’s mother had an implied attorney–client relationship with the lawyer based on her communications with the lawyer about the case and as either an ultimate or direct payor of his legal fees).

²⁵ *Cf.* TEX. R. EVID. 503(a)(2), (b)(1)(A) (extending the attorney–client privilege to confidential communications between a lawyer and a client’s authorized representative).

between the client's mother and the Firm.²⁶ Because the Firm owed no duty to Carden as a client, the trial court properly dismissed her legal-malpractice,²⁷ gross-negligence, and breach-of-fiduciary-duty²⁸ claims, along with associated requests for relief.

But that conclusion does not foreclose Carden's other claims. Carden pleaded facts showing that (1) she was a direct payor; (2) the attorney directly solicited each payment from her; (3) the attorney made promises directly to her about specific services to be provided in McGee's defense; (4) Carden advanced funds in reliance on the attorney's promises; (5) those promises were wholly unfulfilled; (6) the Firm failed to account for how the \$300,000 in retainer fees were actually used; and (7) the Firm has not refunded excessive or unearned fees. The pocketbook injuries Carden has identified—overbilling and wrongful retention of her money for unperformed services—are sufficient to

²⁶ See *MCI Telecomm. Corp. v. Tex. Utils. Elec. Co.*, 995 S.W.2d 647, 651 (Tex. 1999) (nonparties generally have no right of action to enforce a contract).

²⁷ See *Peeler*, 909 S.W.2d at 496 (to recover for legal malpractice, the plaintiff generally must prove, among other things, that the attorney owed the plaintiff a duty).

²⁸ Carden's fiduciary-duty claim is based solely on the existence of an attorney-client relationship, which gives rise to fiduciary duties as a matter of law. See *Meyer v. Cathey*, 167 S.W.3d 327, 330 (Tex. 2005). Lack of privity precludes breach-of-fiduciary-duty claims arising from the creation of an attorney-client relationship. *Swank v. Cunningham*, 258 S.W.3d 647, 666 (Tex. App.—Eastland 2008, pet. denied). Carden does not contend that the Firm owed her fiduciary duties based on some other formal relationship or a preexisting personal relationship of special trust and confidence. See, e.g., *Johnson v. Brewer & Pritchard, P.C.*, 73 S.W.3d 193, 199 (Tex. 2002) (providing examples of formal relationships that give rise to fiduciary duties, including trustees, executors, and partners); *Schlumberger Tech. Corp. v. Swanson*, 959 S.W.2d 171, 176-77 (Tex. 1997) (observing that a preexisting personal relationship of special trust and confidence might give rise to informal fiduciary duties). Accordingly, the viability of any such claims is not at issue.

confer standing to seek relief under fraud and contract theories.²⁹ Taking the pleadings at face value, Carden asserts injuries that are distinct from an attorney’s professional duties to a client and actionable notwithstanding the absence of an attorney–client relationship.

Under Texas law, “attorneys are not ordinarily liable for damages to a nonclient” because the absence of privity means the lawyer generally owes no duties to the nonclient.³⁰ This “privity barrier” prevents clients from losing control over the attorney–client relationship and protects attorneys from being subjected to almost unlimited liability.³¹ The privity requirement also ensures that an attorney’s duties to the client are not compromised by the attorney’s competing

²⁹ See, e.g., *Pub. Util. Comm’n v. Luminant Energy Co.*, 691 S.W.3d 448, 457-58 (Tex. 2024) (“being overcharged for electricity” is a “pocketbook injury that is a prototypical form of injury in fact” (internal quotation marks and brackets omitted)); *Mosaic Baybrook One*, 674 S.W.3d at 250-51 (a cognizable injury was pleaded by allegations that the plaintiff “parted with money that he would not have owed or paid had Mosaic complied with PUC rules—a loss that is one of the most obvious of traditional tangible harms” (internal quotation marks omitted)); *McLane Champions*, 671 S.W.3d at 913 (assertion that the plaintiff had paid a “bloated purchase price” by “transferr[ing] over \$300 million of its own money” and “obligating itself to repay additional bank loans” was a “textbook ‘pocketbook injury’” traceable to the defendant’s alleged misrepresentations and redressable in money damages); *Data Foundry, Inc. v. City of Austin*, 620 S.W.3d 692, 696 (Tex. 2021) (holding that customer had alleged a particularized injury sufficient to confer standing based on asserted financial harm from unlawful electricity rates).

³⁰ See *Am. Centennial Ins. Co. v. Canal Ins. Co.*, 843 S.W.2d 480, 484 (Tex. 1992); see also *Belt v. Oppenheimer, Blend, Harrison & Tate, Inc.*, 192 S.W.3d 780, 782-83 (Tex. 2006) (noting the rule that a nonclient cannot maintain a malpractice cause of action against an attorney).

³¹ *Barcelo v. Elliott*, 923 S.W.2d 575, 577 (Tex. 1996).

interest in self-protection from third-party lawsuits.³² These privity concerns are not implicated by Carden’s allegations that she advanced funds to the Firm in reliance on the attorney’s unfulfilled promises about the services he would provide to her son.

In limited circumstances, we have recognized that the absence of an attorney–client relationship does not preclude a nonclient from suing when the claim asserted does not conflict with or undermine the policy concerns underlying the privity requirement. In *McCamish, Martin, Brown & Loeffler v. F.E. Appling Interests*, for example, we held that a nonclient’s negligent-misrepresentation claim would not cause the client to “lose control over the attorney–client relationship” because such a suit arises only when an attorney has both determined that communication with the third party is compatible with the attorney–client relationship and received the client’s consent to communicate with the nonclient.³³ Nor would such a suit give rise to “almost unlimited liability” because negligent-misrepresentation liability is limited to situations in which the attorney provides information to a third party knowing the third party intends to rely on it.³⁴ Such claims are not equivalent to a legal-malpractice or breach-of-fiduciary-duty claim and therefore do not depend on an attorney–client relationship.³⁵ Of a similar nature are

³² *Id.* at 578-79.

³³ 991 S.W.2d 787, 791, 793 (Tex. 1999).

³⁴ *Id.* at 793-94.

³⁵ *Id.* at 791-92 (“Under the tort of negligent misrepresentation, liability is not based on the breach of duty a professional owes his or her clients or others in privity, but on an independent duty to the nonclient based on the

Carden's claims premised on the Firm's purported failure to use retainer funds for solicited purposes and to return any retainer funds that were not so used.

Fee disputes of this nature do not undermine the client's control over the attorney–client relationship because a lawyer cannot ethically accept compensation from a third party to represent a client unless the client consents and the attorney's duties to the client are not impaired.³⁶ In addition, attorneys are protected from potentially unlimited liability because the class of nonclients who could bring those claims is limited to direct payors from whom the attorney solicited and received payments. The potential plaintiffs falling within that class are also known to, and readily identifiable by, counsel. Carden's fraud and contract claims, as framed by the pleadings, are not inherently in tension with the Firm's duties to McGee; accordingly, lack of an attorney–client relationship is not a barrier to her pursuit of those claims. The Firm may not owe professional duties to Carden, but that does not negate her standing to seek redress for her direct economic losses under the circumstances alleged.³⁷ Dismissal of Carden's fraud and breach-of-contract claims on standing grounds would therefore be improper. “While our Constitution requires vigilance lest courts

professional's manifest awareness of the nonclient's reliance on the misrepresentation and the professional's intention that the nonclient so rely.”).

³⁶ See TEX. DISCIPLINARY R. PROF'L CONDUCT 1.08(e).

³⁷ See *Heckman*, 369 S.W.3d at 150 (standing to bring a claim is distinct from the merits of the claim). We note, parenthetically, that we are not presented with any issue concerning the attorney-immunity affirmative defense. See *Haynes & Boone*, 631 S.W.3d at 78 (explaining when attorney immunity protects an attorney against a nonclient's claim).

overstep their jurisdictional bounds, courts also must dutifully exercise jurisdiction rightly theirs.”³⁸

We are mindful of the Firm’s argument that Carden’s economic-loss claims are, in substance, legal-malpractice claims that, as we have already held, are not cognizable. Because the anti-fracturing rule prevents litigants from using artful pleading to game the system, the labels assigned in the pleadings do not control. “The gravamen of a claim is its true nature, as opposed to what is simply alleged or artfully pled.”³⁹ To survive a fracturing inquiry, there must be “a genuine fact issue on the elements of additional claims that truly extend beyond the scope of what has traditionally been considered a professional negligence claim.”⁴⁰

The Firm contends that the gist of this fee dispute is dissatisfaction with the attorney’s strategic choices and, thus, the quality and value of the legal services counsel provided to McGee.⁴¹ Whether that is so may ultimately depend on the content of the emails Carsey and Carden exchanged.⁴² Professional skill, knowledge,

³⁸ *Heckman*, 369 S.W.3d at 144.

³⁹ *See Pitts v. Rivas*, 709 S.W.3d 517, 525 (Tex. 2025) (quoting *B.C. v. Steak N Shake Operations, Inc.*, 512 S.W.3d 276, 283 (Tex. 2017)).

⁴⁰ *Id.*

⁴¹ *See id.* at 524 (“Under the anti-fracturing rule, if the crux or gravamen of the plaintiff’s claim is a complaint about the quality of professional services provided by the defendant, then the claim will be treated as one for professional negligence even if the petition also attempts to repackage the allegations under the banner of additional claims.”).

⁴² A writing is the best evidence of what it says. *See* TEX. R. EVID. 1001(a), 1002; *see also* TEX. R. CIV. P. 59 (“[A] written instrument[]

experience, and judgment are often central to an attorney’s strategic decisions about how to best deploy litigation resources. Questions of strategy are for lawyers and their clients, and an attorney’s duty of loyalty to the client and zealous representation must not be compromised by obeisance to the purse. But retaining funds that were advanced *solely* for the purpose of completing a *specific* task that the lawyer later omits or abandons is a different matter altogether.⁴³ In this case, whether professional-negligence claims have been dressed up as pocketbook injuries remains to be determined,⁴⁴ and we express no view

constituting, in whole or in part, the claim sued on . . . may be made a part of the pleadings by copies thereof, or the originals, being attached or filed and referred to as such, or by copying the same in the body of the pleading in aid and explanation of the allegations in the petition[.]”); *id.* R. 91a.6 (consideration of a dismissal motion must be “based solely on the pleading of the cause of action, together with any pleading exhibits permitted by Rule 59”); *MV Transp., Inc. v. GDS Transp., LLC*, ___ S.W.3d ___, 2026 WL 1261443, at *2 (Tex. May 8, 2026) (“Nothing in the text of Rule 91a (or the statute that directed this Court to adopt Rule 91a) suggests that dismissal as a matter of law would be improper when a document on which the original petition relies as a basis for relief is omitted from the record. When an original petition invokes a document in that way, the document is not mere ‘evidence’ but may instead be regarded as part of the petition itself. If a court deems it necessary to see the document’s full contents to resolve the motion, it may demand its production without undermining its status as part of the petition.” (citations omitted)).

⁴³ See *Van Polen v. Wisch*, 23 S.W.3d 510, 516 (Tex. App.—Houston [1st Dist.] 2000, pet. denied) (parents who had contracted and paid for attorney’s services to represent their son on a motion to adjudicate guilt had standing to sue when the attorney did not appear at the hearing; this was not a negligent-performance suit but, rather, a breach-of-contract action to recover excessive fees).

⁴⁴ See *Pitts*, 709 S.W.3d at 525 (“Importantly, the anti-fracturing rule does not categorically bar a client from pursuing multiple causes of action against a professional, including claims for fraud or breach of fiduciary duty. Instead, the rule prohibits plaintiffs from attaching these labels, and others

on the matter. The court of appeals may address the issue in the first instance on remand.⁴⁵

B

We now turn from mother to son. As challenged in the Rule 91a motion, the viability of McGee’s claims rises or falls based on doctrine, not jurisdiction or duty. The central dispute concerns the reach of a public-policy bar unique to the relationship between criminal-defense counsel and their convicted clients.

Under the plurality opinion in *Peeler v. Hughes & Luce*, an unexonerated convict cannot sue defense counsel in civil court on legal theories impugning the conviction.⁴⁶ The criminal-justice system provides mechanisms for challenging a criminal conviction based on counsel’s ineffective assistance, but no analogous civil claim is permitted unless the plaintiff has first been “exonerated on direct appeal, through post-conviction relief, or otherwise.”⁴⁷ This civil-claim bar—commonly

like them, to their allegations when the gravamen of the allegations is that the defendant failed to exercise the requisite degree of care or skill in the provision of professional services. . . . The anti-fracturing rule . . . requires courts to examine whether the plaintiff has . . . [reframed] its professional negligence allegations as something more in order to gain a litigation advantage.”).

⁴⁵ *RSL Funding, LLC v. Newsome*, 569 S.W.3d 116, 124 (Tex. 2018) (“When presented with an issue the court of appeals could have but did not decide, we may either remand the case or consider the issue ourselves.” (citing TEX. R. APP. P. 53.4)).

⁴⁶ 909 S.W.2d at 498-99 (holding that the plaintiff’s claims for legal malpractice and Deceptive Trade Practices Act violations were not cognizable but expressly reserving comment about the viability of other claims, such as breach of contract or breach of warranty, which the plaintiff did not raise on appeal).

⁴⁷ *Id.* at 497-98.

known as the *Peeler* doctrine—rests on both causation and policy principles.⁴⁸

As a matter of law, a convicted client’s criminal conduct is treated as the sole proximate and producing cause of the conviction and “any injuries flowing from the conviction.”⁴⁹ Unless and until the conviction is vacated, the client’s illegal conduct—not counsel’s acts or omissions—is deemed “the cause in fact” of those consequences.⁵⁰ In other words, the conviction and ensuing consequences follow from the evidence of the underlying crime without regard to the quality of counsel’s performance.⁵¹

From a policy perspective, this causation rule has been justified on the basis that it prevents criminals from (1) profiting indirectly from their wrongdoing, (2) shifting the costs and consequences of their crimes to their attorneys, (3) diminishing the consequences of criminal activity, and (4) pursuing civil remedies that would undermine the integrity of

⁴⁸ See *Gray v. Skelton*, 595 S.W.3d 633, 637 (Tex. 2020) (discussing *Peeler*’s public-policy rationales and core causation holding that “even if the defense attorney had not been negligent, the conviction would still follow based on the evidence of the underlying crime,” which is why a convicted criminal who wants to sue his defense attorney “must first remove the proximate-cause bar” by being exonerated).

⁴⁹ *Peeler*, 909 S.W.2d at 498.

⁵⁰ *Id.* (resting the causation rule on “cause in fact,” which is an element common to both proximate and producing cause and which “means that the defendant’s conduct was a substantial factor in bringing about the injury which would not otherwise have occurred”); see RESTATEMENT (SECOND) OF TORTS § 431 cmts. b, e (A.L.I. 1965) (observing that “cause in fact” is an element of legal cause that is “equally applicable where the conduct is intended to cause harm, or where it is such as to result in strict liability”).

⁵¹ *Gray*, 595 S.W.3d at 637.

the criminal-justice system.⁵² In adopting the cause-in-fact rule, the *Peeler* plurality explained that, on balance, “the strong public policies of preventing convicts from escaping the consequences of, or benefitting financially from, their illegal acts” outweigh any countervailing need to “hold[] defense attorneys responsible [in civil court] for their professional negligence.”⁵³

Other salutary effects also flow from the doctrine. By shielding defense counsel from the threat of retaliatory malpractice suits, *Peeler* preserves their ability to exercise independent professional judgment in advocating for their clients. *Peeler* also protects civil courts from being overburdened with collateral attacks on criminal convictions. Reducing the threat of nuisance suits from disgruntled clients further helps to ensure an adequate supply of criminal-defense counsel, a matter of constitutional import.

Here, the court of appeals took an expansive, essentially categorical, view of *Peeler*. But properly applied, *Peeler* does not necessarily foreclose McGee’s suit in its entirety. Because McGee has not been exonerated,⁵⁴ *Peeler* squarely precludes any claim that would require him to prove that the Firm’s alleged negligence caused his conviction, sentence, or other injuries “flowing from the conviction.” The anti-fracturing rule would extend that proscription to any other claims

⁵² *Peeler*, 909 S.W.2d at 498-99.

⁵³ *Id.* at 500.

⁵⁴ *See Gray*, 595 S.W.3d at 638-39 (explaining that the hurdles for satisfying *Peeler*’s “exoneration” requirement include vacatur of the criminal conviction and proof of innocence, the latter of which may be established in more than one way).

that are repackaged malpractice claims. As previously detailed, the amended petition is replete with allegations about counsel's bad advice, deficient trial preparation, poor communication, actions during the trial, failure to turn over the client file, and other acts or omissions in the presentation of McGee's defense. Regardless of how the theory of recovery is labeled, these complaints implicate the degree of care, skill, and diligence a professional of ordinary skill and knowledge would exercise. These claims do not survive *Peeler*.

But *Peeler* does not bar billing or fee disputes that are *independent from the conviction*. Matters such as billing for work not performed, inflating hours, charging more than the agreed rate, billing associate work at partner rates, charging for services the lawyer knows were not performed, and failing to provide an accounting of how retainer funds were expended do not arise or flow from the conviction itself. Nor do such claims challenge the validity of the criminal judgment, implicate counsel's professional judgment in the scope of the representation, or undermine the public-policy rationales animating the *Peeler* doctrine. A client's criminal conduct also cannot be said to cause counsel to misappropriate funds, usurp a benefit, overbill, or evade accounting obligations. In short, *Peeler* does not shield criminal-defense lawyers from liability for billing and fee disputes that are wholly separate from the exercise of professional skill, diligence, or judgment.

Falling into that category, at least as pleaded, are McGee's allegations that the Firm charged excessive fees, failed to account for retainer-fund expenditures, and did not return unused or unearned fees. Such claims concern compliance with contractual obligations and the truthfulness of factual statements about fee use—not legal strategy,

competence, advocacy, or guilt. Claims of this nature are independent from the fact of conviction because a client would be injured all the same even if he or she is acquitted. Nor are these the type of complaints that could be raised in either a direct appeal from the conviction or a habeas proceeding. They are in a class of their own.

In applying *Peeler*, at least one court of appeals has recognized a distinction in this regard.⁵⁵ Others have, perhaps, blurred the line between expansively applying *Peeler* and improperly collapsing the *Peeler* and fracturing inquiries.⁵⁶ Whatever the case may be, a categorical bar on all civil claims bearing any connection to the criminal

⁵⁵ See *Gonyea v. Scott*, 541 S.W.3d 238, 248 (Tex. App.—Houston [1st Dist.] 2017, pet. denied) (“Permitting a criminal-defense attorney to charge a criminal defendant a legal fee to provide contractually detailed legal representation, do none of those acts of representation or any other underlying act that involves applying legal analysis to the client’s case, yet keep the fee does not further the public policies identified in *Peeler*.”). We note, for clarity, that lower-court cases presenting *Peeler* issues often involve applications under materially different circumstances from those presented here. We express no comment on matters not presented in this case.

⁵⁶ See *Wooley v. Schaffer*, 447 S.W.3d 71, 74, 76-78 (Tex. App.—Houston [14th Dist.] 2014, pet. denied) (applying *Peeler* “expansive[ly]” to bar legal-malpractice, breach-of-contract, and deceptive-trade-practices claims complaining that counsel overcharged, used fees to make unauthorized legal arguments, and failed to provide an accounting); *Futch v. Baker Botts, LLP*, 435 S.W.3d 383, 389, 392 (Tex. App.—Houston [14th Dist.] 2014, no pet.) (applying an “expansive interpretation” of the *Peeler* doctrine to fiduciary-duty claims seeking fee forfeiture based on breaches of confidences that led to the plaintiff’s indictment and conviction, not on billing issues); *Falby v. Percely*, No. 09-04-422-CV, 2005 WL 1038776, at *1-3 (Tex. App.—Beaumont May 5, 2005, no pet.) (mem. op.) (expansively applying *Peeler* to tort, contract, and statutory claims against an attorney who failed to prepare and file a habeas corpus application); *Johnson v. Odom*, 949 S.W.2d 392, 394 (Tex. App.—Houston [14th Dist.] 1997, pet. denied) (applying *Peeler* to bar a convict’s claims for “refund of attorney’s fees paid” and “breach of contract caused by [counsel’s] negligence in handling the criminal case”).

representation finds no support in any legitimate public policy and would erode, rather than promote, confidence in the justice system. Broadly immunizing criminal-defense counsel would reward, and quite possibly incentivize, sharp or pernicious practices in criminal proceedings that are already steep with consequences for the client.

Anti-fracturing principles help ameliorate concerns about shake-down lawsuits, but fracturing is an analytically distinct question. As a general proposition, clients receiving professional services are not categorically barred from pursuing multiple causes of action against a professional.⁵⁷ Rather, “[t]he anti-fracturing rule appropriately seeks to ensure that professional malpractice *allegations* are litigated under the law applicable to professional malpractice *claims*.”⁵⁸ A malpractice claim masquerading as a billing dispute thus remains subject to *Peeler* when the gravamen is dissatisfaction with counsel’s judgment in working up the case and providing a defense. We do not foreclose the possibility that some purported fee disputes—including those asserted here—will, in substance, challenge the adequacy and competence of counsel’s professional representation, legal advice, and strategic decisions. Allegations of that nature cannot be converted into other claims like fraud, breach of contract, or breach of fiduciary duty to avoid the *Peeler* bar or to gain some other litigation advantage.⁵⁹ As with Carden’s surviving claims, we defer to the court of appeals to address the merits of the fracturing issue in the first instance.

⁵⁷ *Pitts*, 709 S.W.3d at 525.

⁵⁸ *Id.* at 524.

⁵⁹ *Id.* at 523.

In doing so, we express no opinion regarding the dissent's contention that McGee lacks any viable billing- or fee-related claim because his mother alone paid the bills.⁶⁰ Though the petition states that Carden made all the wire transfers to the Firm, the plaintiffs have also alleged that both Carden and McGee paid for the services at issue without attributing the source of the funds exclusively to Carden. Even if that is the case, the Firm has neither briefed nor argued that McGee lacks viable claims for unperformed services if he is merely a beneficiary of, and not also a payor on, the professional-services contract. Our disposition is without comment on the merits of any such arguments.

C

As an alternative ground for affirmance, the Firm relies on an affirmative defense: the statute of limitations. Dismissal under Rule 91a may be based on any affirmative defense that is conclusively established by the pleaded facts,⁶¹ including limitations.

Statutes of limitations establish a point of repose and terminate stale claims by compelling the assertion of claims “within a reasonable period.”⁶² Under Texas law, a cause of action generally accrues when a wrongful act causes some legal injury.⁶³ Ordinarily, limitations begins

⁶⁰ *Post* at 2 (Blacklock, C.J., concurring in part and dissenting in part).

⁶¹ *See Bethel*, 595 S.W.3d at 653, 656 (affirming dismissal under Rule 91a because plaintiff's factual allegations established the attorney-immunity defense as a matter of law).

⁶² *Computer Assocs. Int'l, Inc. v. Altai, Inc.*, 918 S.W.2d 453, 455-56 (Tex. 1996).

⁶³ *Schneider Nat'l Carriers, Inc. v. Bates*, 147 S.W.3d 264, 279 (Tex. 2004) (“Generally, a cause of action accrues and limitations begins to run when facts exist that authorize a claimant to seek judicial relief.”).

to run at that point even if the claimant does not know about the injury or the full extent of the harm.⁶⁴ Carden’s and McGee’s potentially viable claims are those alleging inflated or excessive fees, failure to account, and failure to return unearned funds. The legal theories vary—and differ because Carden was not the Firm’s client—but the most forgiving limitations period expires four years after the claims accrued.⁶⁵ This lawsuit was not filed until 2022, more than five years after the Firm’s representation of McGee concluded.

To delay accrual or toll limitations, Carden and McGee have pleaded the discovery rule and fraudulent concealment. When applicable, the discovery rule prevents the limitations clock from starting, and fraudulent concealment stops the clock from running.⁶⁶

⁶⁴ *Regency Field Servs. LLC v. Swift Energy Operating LLC*, 622 S.W.3d 807, 814 (Tex. 2021) (“Once the defendant’s wrongful conduct causes a legal injury, the injured party’s claims based on that wrongful conduct accrue—and the limitations period begins to run—even if (1) the claimant does not yet know that a legal injury has occurred, (2) the claimant has not yet experienced, or does not yet know the full extent of, the legal injury, (3) the claimant does not yet know the specific cause of the injury or the party responsible for it, (4) the wrongful conduct later causes additional legal injuries, or (5) the claimant has not yet sustained or cannot yet ascertain any or all of the damages resulting from the legal injuries.”).

⁶⁵ See TEX. CIV. PRAC. & REM. CODE §§ 16.003 (setting forth a two-year limitations period for, among other things, personal injury and taking or detaining personal property), .004(a)(4)–(5) (establishing a four-year limitations period for fraud and breach-of-fiduciary-duty claims), .051 (providing a four-year residual limitations period for “[e]very action for which there is no express limitations period, except an action for the recovery of real property”).

⁶⁶ See *Shell Oil Co. v. Ross*, 356 S.W.3d 924, 927, 929-30 (Tex. 2011) (the discovery rule applies to “inherently undiscoverable” and “objectively verifiable” injuries while fraudulent concealment gives rise to equitable tolling based on the defendant’s misconduct); *Borderlon v. Peck*, 661 S.W.2d 907, 908

These legal principles apply and operate differently,⁶⁷ but they nonetheless share a critical limitation: any effect ceases when the plaintiff acquires actual or constructive knowledge of facts sufficient to make a reasonably diligent person aware of the injury.⁶⁸ “Knowledge of such facts is in law equivalent to knowledge of the cause of action.”⁶⁹ In this case, the parties dispute whether any deferred accrual or tolling ceased based on the plaintiffs’ own allegations about what they knew—in real time—about services that were promised but not

(Tex. 1983) (the statute of limitations is equitably estopped when “a defendant is under a duty to make a disclosure but fraudulently conceals the existence of a cause of action from the party to whom it belongs”).

⁶⁷ See *Valdez v. Hollenbeck*, 465 S.W.3d 217, 229-30 (Tex. 2015) (contrasting the form and function of the discovery rule with the fraudulent-concealment doctrine); *Computer Assocs.*, 918 S.W.2d at 455-56 (explaining the policy principles animating these exceptions).

⁶⁸ *Shell Oil*, 356 S.W.3d at 929-30 (deferred accrual lasts only “until the injury was or could have reasonably been discovered”); *Schneider Nat’l*, 147 S.W.3d at 279 (“[E]ven when the discovery rule applies, accrual occurs upon notice of injury, even if the claimant does not yet know the full extent of damages or the chances of avoiding them.”); *Borderlon*, 661 S.W.2d at 909 (“The estoppel effect of fraudulent concealment ends when a party learns of facts, conditions, or circumstances which would cause a reasonably prudent person to make inquiry, which, if pursued, would lead to discovery of the concealed cause of action.”); see *Exxon Corp. v. Emerald Oil & Gas Co.*, 348 S.W.3d 194, 203, 207 (Tex. 2011) (the discovery rule and fraudulent concealment have no effect on limitations if the claimant knows about a wrongful injury, even if the extent, specific cause, and responsible party are not known); *PPG Indus., Inc. v. JMB/Hou. Ctrs. Partners Ltd.*, 146 S.W.3d 79, 93-94 (Tex. 2004) (same as to the discovery rule); see also *Berry v. Berry*, 646 S.W.3d 516, 526 (Tex. 2022) (“[T]hose owed a fiduciary duty are not altogether absolved of the usual obligation to use reasonable diligence to discover an injury.”).

⁶⁹ *Borderlon*, 661 S.W.2d at 909.

provided. The court of appeals did not reach this alternative ground for affirming dismissal but may do so on remand.

* * *

For the reasons stated, we affirm the dismissal judgment in part and reverse and remand to the court of appeals in part. On remand, the court of appeals may consider in the first instance the fracturing and limitations issues not reached during the first appeal.⁷⁰

John P. Devine
Justice

OPINION DELIVERED: June 26, 2026

⁷⁰ See *Point Energy Partners Permian, LLC v. MRC Permian Co.*, 669 S.W.3d 796, 812 (Tex. 2023) (“When reversal necessitates consideration of issues raised in but not decided by the court of appeals, we ordinarily remand the case to that court for further proceedings.”).