

Tips for Avoiding Legal Malpractice State and Federal Appeals

CONTINUING LEGAL EDUCATION SEMINAR
UNIVERSITY OF TEXAS LAW SCHOOL

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- In a legal malpractice case, the plaintiff must prove
 - 1) the attorney owed the plaintiff a duty,
 - 2) the attorney breached that by not acting as a reasonably prudent attorney,
 - 3) the breach was the proximate cause of damages,
 - 4) the amount of damages

- Concerning legal malpractice cases, Texas, as a general rule, has a bright line privity rule.
- In Texas, with a couple of exceptions, only a client can sue an attorney for legal malpractice.

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- The breach question will be whether, under the applicable circumstances, the attorney acted as a reasonable and prudent attorney.
- This issue will almost always be a fact issue tried to a jury.
- It will often be a duel of experts.

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- In a legal malpractice case arising out of underlying litigation, the plaintiff must show that, but for the attorney's negligent acts, the client would have prevailed in the underlying case.
- This is generally referred to as the "case within the case".
- This is generally a fact issue that will be tried to a jury.

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- So, in a legal malpractice case arising out of an attorney's handling of a prior lawsuit:
 - 1) the plaintiff client must show the attorney was negligent; and,
 - 2) the plaintiff client must show that "but for" the attorney's negligence the client would have prevailed in the underlying case.

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[Ethics Three-Pack: Legal Malpractice, Client Confidentiality in the Digital Era, and Ethical and Effective Appellate Marketing](#)

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"Ethics Three-Pack: Legal Malpractice, Client Confidentiality in the Digital Era, and Ethical and Effective Appellate Marketing"