

Table of Contents

INTRODUCTION.....	1
CHAPTER 1 – Elements of a Claim for Legal Malpractice.....	3
CHAPTER 2 – The Attorney-Client Relationship.....	5
A. Generally.....	5
B. Forming the Attorney-Client Relationship.....	9
C. Terminating the Attorney-Client Relationship.....	12
CHAPTER 3 – Breach of Duty.....	15
A. Generally.....	15
B. The Requirement of Expert Testimony.....	16
C. Exceptions to the Requirement of Expert Testimony.....	20
D. Qualifications of Experts.....	24
E. Relevance of the Rules of Professional Conduct to an Alleged Breach of Duty.....	27
CHAPTER 4 – Proximate Causation.....	31
A. Generally.....	31
B. Cause-in-Fact.....	32
C. Case-Within-the-Case Doctrine.....	34
D. Foreseeability.....	37
E. Expert Testimony.....	39
F. Collectability.....	42
G. Malpractice Claims Arising from Criminal Matters.....	44

TABLE OF CONTENTS

CHAPTER 5 – Damages.....	47
A. Generally.....	47
B. The Payment Rule.....	49
C. Attorneys' Fees and Damages.....	49
D. Non-Pecuniary Damages.....	51
E. Punitive Damages.....	52
CHAPTER 6 – Relationship to Other Causes of Action.....	55
A. Breach of Fiduciary Duty.....	55
B. Violation of the South Carolina Unfair Trade Practices Act.....	56
CHAPTER 7 – Third-Party Claims.....	59
A. Attorney Immunity.....	59
B. Aiding and Abetting.....	61
C. Claims by Beneficiaries of Wills.....	62
D. Claims by Officers and Directors of Corporate Clients.....	62
CHAPTER 8 – Defenses.....	65
A. Generally.....	65
B. Statute of Limitations.....	65
C. The Judgmental Immunity Rule.....	71
D. Comparative Fault.....	72
E. Assumption of the Risk.....	73
F. Waiver and Estoppel.....	73
1. Waiver.....	73
2. Collateral Estoppel.....	74
3. <i>Res Judicata</i>	76
4. Judicial Estoppel.....	78

TABLE OF CONTENTS

G.	Ratification.....	78
H.	Failure to Mitigate.....	80
I.	Election of Remedies.....	82
CHAPTER 9 – Law Firm and Partner Vicarious Liability.....		83
CHAPTER 10 – Assignability of Legal Malpractice Claims.....		85
CHAPTER 11 – Federal Jurisdiction.....		91
A.	Diversity Jurisdiction.....	91
B.	Federal Question Jurisdiction.....	92
TABLE OF AUTHORITIES.....		95
INDEX.....		109