

Avoiding Mistakes that Lead to Malpractice Claims

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Mark Prusynski has been defending people and companies in lawsuits for over 35 years in over 40 court and jury trials and many more mediations and arbitrations. He has appeared before the Idaho appellate courts on more than 20 cases involving each of his practice areas.

Mr. Prusynski is secretary of the Idaho Chapter of the American Board of Trial Advocates (ABOTA), a national association of experienced trial lawyers and judges dedicated to the preservation and promotion of the right to civil jury trial; it is limited to members who have substantial jury trial experience.



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The Elements of a Legal Malpractice Claim

In order to prove a claim for legal malpractice in Idaho a party must show:

- (1) the existence of an attorney-client relationship;
- (2) the existence of a duty on the part of the lawyer;
- (3) the failure to perform that duty; and
- (4) that the failure to perform the duty was a proximate cause of the damage suffered by the party.

Nepanuseno v. Hansen, 140 Idaho 942, 945, 104 P.3d 984, 987 (2004); see, e.g., *McColm-Traska v. Baker*, 139 Idaho 948, 951, 88 P.3d 767, 770 (2004).

Primary Causes of Significant Claims

- Unworthy Clients
- Conflicts of Interest
- Mistakes
- Lawyer Misconduct

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Judgmental Immunity

Rather than being a rule which grants some type of “immunity” to attorneys, [the judgmental immunity rule] appears to be nothing more than a recognition that if an attorney’s actions could under no circumstances be held to be negligent, then a court may rule as a matter of law that there is no liability.

Sun Valley Potatoes, Inc. v. Rosholt, Robertson & Tucker, 133 Idaho 1, 5, 981 P.2d 236, 240 (1999).

Screening

- Rule 1.1 of the Idaho Rules of Professional Conduct provides:

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Conflicts

- Rule 1.7 of the Idaho Rules of Professional Conduct
 - (a)(1) directly adverse
 - (2) material limitations
 - (b) waivers

Scope of Representation

- Rule 1.2 of the Idaho Rules of Professional Conduct
 - (a) consult
 - ***
 - (c) reasonable limitations and informed consent

The “I am your lawyer” letter

The “I’m not your lawyer” letter

The disengagement letter

Mistakes

- Deadlines—e-filing
- Calendars
- Backup and support
- Strategy

For more information or questions,
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