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50 STATE SURVEY OF COMPARATIVE FAULT AND CONTRIBUTORY NEGLIGENCE IN THE CONTEXT OF A LEGAL MALPRACTICE ACTIONS

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INTRODUCTION

The following 50 state survey provides an overview of the treatment of comparative fault and contributory negligence principals in the context of legal malpractice actions.

OVERVIEW TABLE

The 50 states can generally be categorized as follows with respect to their apportionment of fault rule:

Rule	States
Pure Contributory Negligence	Alabama, Maryland, North Carolina, Virginia
Pure Comparative Fault	Alaska, Arizona, California, Florida, Kentucky, Louisiana, Mississippi, Missouri, New Mexico, New York, Rhode Island, Washington
Modified Comparative Fault, 50% bar	Arkansas, Colorado, Georgia, Idaho, Kansas, Maine, Nebraska, North Dakota, Tennessee, Utah, West Virginia
Modified Comparative Fault, 51% bar	Connecticut, Delaware, Hawaii, Illinois, Indiana, Iowa, Massachusetts, Michigan, Minnesota, Montana, Nevada, New Hampshire, New Jersey, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Texas, Vermont, Wisconsin, Wyoming
Other	South Dakota

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Jurisdiction	Rule	Type of Claim within the State	State Elements of a Legal Malpractice Claim	State Treatment of Contributory Negligence/Comparative Fault/Apportionment of Damages for Legal Malpractice Claim
Alabama	Pure Contributory Negligence	All legal malpractice actions in Alabama are governed by the Alabama Legal Services Liability Act ("ALSLA"). It is codified in ALA. CODE § 6-5-570 to 6-5-581 (1975). "There shall be only one form and cause of action against legal service providers in courts in the State of Alabama and it shall be known as the legal service liability action and shall have the meaning as defined herein." ALA. CODE § 6-5-573.	"This Court has recognized the following principles relating to a legal malpractice action:"[I]n a legal malpractice case a plaintiff must prove, basically, the same [elements] that must be proven in an ordinary negligence suit. Thus, the elements [a plaintiff] must prove in order to support his legal malpractice claim are a duty, a breach of that duty, an injury, that the breach was the proximate cause of the injury, and damages. [Additionally,] [i]n a legal malpractice case, the plaintiff must show that but for the defendant's negligence he would have recovered on the underlying cause of action, or must offer proof that the outcome of the case would have been different.." *Independent Stave Co., Inc. v. Bell, Richardson, and Sparkman, P.A .*, 678 So.2d 770, 771, (Ala. 1996) (internal citations omitted), *See also Dennis v. Northcutt*, 923 So. 2d 275 (Ala. 2005).	"As stated by the California Court of Appeals in *Theobald* , we see no reason why contributory negligence should not be applicable in a legal malpractice action where the client has failed to follow the attorney's advice or instructions." *Ott v. Smith* , 413 So.2d 1129, 1135 (Ala. 1982)
Alaska	Pure Comparative Fault	"The hybrid nature of a professional malpractice action has led to some confusion about whether common law contract or tort rules apply." *Breck v. Moore* , 910 P.2d 599, 603 (Alaska 1996). "Because the Moores sued for malpractice under both contract and tort theories, the trial court analyzed damages under both contract and tort measures. While the professional services contract gives rise to the duty of due care, the professional's negligence gives rise to the damage. The damage generally should be measured according to traditional tort principles." *Id.* at 604.	"In order to prevail on a legal malpractice theory, a plaintiff must prove four elements: "(1) the duty of the attorney to use such skill, prudence, and diligence as other members of the profession commonly possess and exercise; (2) a breach of that duty; (3) a proximate causal connection between the negligent conduct and the resulting injury; and (4) actual loss or damage resulting from the [attorney's] negligence." *Zok . Collins* , 18 P.3d 39, 42 n.8 (Alaska 2001) (quoting *Shaw v. State, Dep't of Admin., Pub. Defender Agency* , 816 P.2d 1358, 1361 n.5 (Alaska 1991).	The Alaska Supreme Court affirmed the judgment where plaintiff's legal malpractice suit against their former attorney resulted in the plaintiff's award being reduced by their comparative fault. *Cummings v. Sea Lion Corp* ., 924 P.2d 1011, (Alaska 1996).
Arizona	Pure Comparative Fault	"Where, however, a "special contractual agreement or undertaking" exists, a professional malpractice action may arise from contract rather than tort." *Asphalt Engineers, Inc. v. Galusha* , 770 P.2d 1180, 1184 (Ariz. Ct. App. 1989). "As in any negligence action, a plaintiff in a legal malpractice action must show the following basic elements: duty, breach of duty, causation, and damages." *Phillips v. Clancy* , 733 P.2d 300, 303 (Ariz. Ct. App. 1986)	"One claiming legal malpractice must therefore establish (1) the existence of an attorney-client relationship which imposes a duty on the attorney to exercise that degree of skill, care, and knowledge commonly exercised by members of the profession, (2) breach of that duty, (3) that such negligence was a proximate cause of resulting injury, and (4) the fact and extent of the injury." *Phillips v. Clancy* , 733 P.2d 300, 303 (Ariz. Ct. App. 1986)	In a malpractice suit against defendant attorneys, the court implies that contributory negligence is an available defense for the defendant attorneys. "At most, the Defendants' arguments raise questions of fact regarding whether Reed has actually suffered a loss as the result of the Defendants' alleged negligence and her possible contributory negligence or failure to mitigate her damages. These must be resolved by the jury. *See* ARIZ. CONST. ART. 18, § 5 and ARIZ. REV. STAT. § 12–2505(A) (defense of contributory negligence is always question of fact for the jury)." *Reed v. Mitchell & Timbanard, P.C.* , 903 P.2d 621 (Arix. Ct. App. 1995).
Arkansas	Modified Comparative Fault- 50% Bar	"An attorney is negligent if he or she fails to exercise reasonable diligence and skill on behalf of his or her client." *Southern Farm Bureau Cas. Ins. Co. v. Daggett*, 118 S.W.3d 525 (Ark. 2003).	"In order to prevail under a claim of legal malpractice, a plaintiff must prove that the attorney's conduct fell below the generally accepted standard of practice and that this conduct proximately caused the plaintiff damages." *Southern Farm Bureau Cas. Ins. Co. v. Daggett* ,118 S.W.3d 525 (Ark. 2003)	In a case of first impression on whether Arkansas' comparative fault principles applied in the context of a legal malpractice claim, the United States Court of Appeals for the Eighth Circuit stated "[w]e believe that the Arkansas courts would apply the law of comparative fault if presented with the facts of this case where there was conflicting evidence on the role and responsibilities of the competing parties." *Reliance Nat. Indem. Co. v. Jennings* , 189 F.3d 689, 694 (8th Cir. 1999)(applying Arkansas law and allocating 97% fault to client in legal malpractice claim).
California	Pure Comparative Fault	"A cause of action for legal malpractice, like any negligence action, requires negligence, causation, and damages." *Laird v. Blacker* , 828 P.2d 691 (Cal. 1992)(*en banc*)(modified on rehearing).	"Under California law, the elements of a legal malpractice claim are: "(1) breach of the attorney's duty to use such skill, prudence, and diligence as other members of the profession commonly possess and exercise; (2) a proximate causal connection between the negligent conduct and the resulting injury; and (3) actual loss or damage resulting from the negligence." *Landmark Screens, LLC v. Morgan, Lewis, & Bockius, LLP* , 676 F.3d 1354 (Fed. Cir. 2012)(applying California law), *citing, Thompson v. Halvonik*, 43 Cal. Rptr. 2d 142, 145 (Cal. Ct. App. 1995).	In a suit where plaintiffs sued their prior attorneys for malpractice, the appellate court ruled that "[t]he trial court was correct in holding that contributory negligence could properly be considered a defense in the instant case." *Theobald v. Byers* , 13 Cal.Rptr. 864 (Cal. Ct. App. 1961). *See also Brandon G. v. Gray*, 3 Cal. Rptr. 3d 330, 339 (Cal. Ct. App. 2003)(holding that the apportionment of fault between lawyer and clients by the jury was proper).
Colorado	Modified Comparative Fault- 50% Bar	"Legal malpractice is a generic term for at least three distinct causes of action available to clients who suffer damages because of their lawyers' misbehavior. Clients wronged by their lawyers may sue for damages based on (1) breach of contract, (2) breach of fiduciary duty, or (3) negligence." *Smith v. Mehaffy* , 30 P.3d 727, 733 (Colo. Ct. App. 2000)	"To establish a legal malpractice claim, the plaintiff must show her attorney was negligent by proving three elements: (1) the attorney owed a duty of care to the client; (2) the attorney breached that duty; and (3) by breaching his duty, the attorney proximately caused damage to the client." *Hopp & Flesch, LLC v. Backstreet*, 123 P.3d 1176, 1183 (Colo. 2005)	"Although comparative negligence is a defense to a claim of legal malpractice in Colorado, the client's alleged negligence must relate to the injury alleged to have been caused by the attorney's negligence and must relate to the attorney's representation. For example, a comparative negligence instruction may be based on evidence that the client: 1) failed to supervise, review, or inquire as to the representation; 2) refused to follow advice or instructions; 3) failed to provide the attorney with essential information; 4) failed to mitigate damages caused by the lawyer's negligence; or 5) interfered with the attorney's representation." *McLister v. Epstein & Lawrence, P.C* ., 934 P.2d 844, 846 (Colo. Ct. App. 1991) (internal citations omitted). *See also Scognamillo v. Olsen*, 795 P. 2d 1357 (Colo. Ct. App. 1990).

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Jurisdiction	Rule	Type of Claim within the State	State Elements of a Legal Malpractice Claim	State Treatment of Contributory Negligence/Comparative Fault/Apportionment of Damages for Legal Malpractice Claim
Connecticut	Modified Comparative Fault- 51% Bar	"At the outset, we agree with the plaintiff's statement of law that one may bring against an attorney an action sounding in both negligence and contract. *Mac's Car City, Inc.* , does not stand for the proposition, however, that one may bring an action in both negligence and contract merely by couching a claim that one has breached a standard of care in the language of contract. Thus, we believe that a claim that a defendant promised to work diligently or in accordance with professional standards is not made a contract claim simply because it is couched in the contract language of promise and breach. Additionally, that case is distinguishable from a true contract claim in which a plaintiff asserts that a defendant who is a professional breached an agreement to obtain a specific result." *Caffery v. Stillman* , 829 A.2d 881, 884 (Conn. App. Ct. 2003)(internal citations omitted).	"[T]o prove any legal malpractice claim, a plaintiff must establish the four necessary elements: (1) an attorney-client relationship; (2) a wrongful act or omission by the attorney; (3) proximate cause; and (4) legal damages.... Put another way, a plaintiff must prove that there existed an attorney-client relationship and that the client sustained legal injury or damage that proximately was caused by the attorney's wrongful act or omission." *Lukas v. McCoy* , 116 A.3d 827, 832 (Conn. App. Ct. 2015).	"We agree with the analysis of the other jurisdictions. In situations where the claim of malpractice sounds in negligence; the defense of comparative negligence should be made available. Our own statute dealing with comparative negligence, General Statutes § 52-572h(b), provides that in causes of action based on negligence "[a]ny economic or noneconomic damages allowed shall be diminished in proportion of the percentage of negligence attributable to the person recovering...." We see no basis for distinguishing between actions for legal malpractice and other claims sounding in negligence." *Somma v. Gracey* , 544 A.2d 668, 672 (Conn. App. Ct. 1988). *See also* CONN. GEN. STAT., Practice Book §10-53 ("In situations where the claim of malpractice sounds in negligence...the defense of comparative fault should be made available.").
Delaware	Modified Comparative Fault- 51% Bar	"Further, § 8106 governs actions for legal malpractice, regardless of whether such an action sounds in contract or in tort." *Middlebrook v. Ayers* , 2004 WL 1284207 at 4 (Del. Super. Ct. 2004)(unpublished), *citing,* 10 DEL CODE ANN.§ 8106 which provides a three year statute of limitations for legal malpractice claims regardless of whether they sound in tort or contract).	"A cause of action under Delaware law for attorney malpractice requires three elements: 1) employment of the attorney 2) that attorney's neglect of a reasonable duty; and 3) such negligence proximately causes loss to the client." *In re Allpoints Warehousing in Liquidation* , 259 B.R. 824, 829-830 (Bankr. Del. 2001). *See also David B. Lilly Company, Inc. v. Fisher,* 18 F. 3d 1112, 1120 (3d Cir. 1994)(applying Delaware law).	*Vaughn v. Rispoli* , 804 A.2d 1067 (Del. 2002)(unpublished opinion)(allowing attorney to present a defense of contributory negligence and affirming award of no damages in an action brought by a home purchaser and mortgagee when it was determined that attorney committed no malpractice with respect to home purchasers and was only 41% negligence with respect to mortgagee).
Florida	Pure Comparative Fault	Florida generally views legal malpractice claims as a tort. See e.g. Nat'l Union Fire Ins. Co. v. Salter, 717 So. 2d 141, 142 (Fla. Dist. Ct. App. 1998), citing, Forgione v. Dennis Pirtle Agency, Inc., 701 So.2d 557 (Fla.1997). See also Law Office of David J. Stern, P.A. v. Security Nat. Servicing Corp., 969 So.2d 962, 965 (Fla.2007)(in which plaintiff's legal malpractice suit against former attorney alleged negligence); Cowan Liebowitz & Latman, P.C. v. Kaplan, 902 So. 2d 755, 758 (Fla. 2005). But see Brenner v. Miller, No. 09-60235-CIV, 2009 WL 1393420, at *1 (S.D. Fla. May 18, 2009)(noting that Florida courts have allowed a plaintiff to assert both a legal malpractice and a breach of duty claim and a legal malpractice and a breach of contract claim)(internal citations omitted).	"A legal malpractice action has three elements: 1) the attorney's employment; 2) the attorney's neglect of a reasonable duty; and 3) the attorney's negligence as the proximate cause of loss to the client." *Law Office of David J. Stern, P.A. v. Security Nat. Servicing Corp.* , 969 So.2d 962, 966 (Fla. 2007), *citing Kates v. Robinson* , 786 So.2d 61, 64, (Fla. Dist. Ct. App. 4th 2001).	Attorney asserted comparative negligence defense in a malpractice suit against him. "In the malpractice action, Kovach asserted as a comparative negligence defense that Pearce was contributively negligent in the defense of the Todter action." *Michael Kovach, P.A. v. Pearce* , 427 So.2d 1128, (Fla. 5th DCA 1983). *See also Michael E. Greene, P.A. v. Leasing Associates,* 935 So. 2d 21, 26 (Fla. Dist. Ct. App. 2006)(determining that the comparative fault defense was inapplicable to the facts of the case and thus, recognizing its general availability in the context of legal malpractice cases); *Boyd v. Brett-Major,* 449 So. 2d 952 (Fla. App. 1984)(holding that a lawyer would not be held liable for legal malpractice when acting in accordance with client's instructions).
Georgia	Modified Comparative Fault- 50% Bar	"Whether sounding in contract or tort, a legal malpractice action accrues and the applicable statute of limitation commences to run from the date that the alleged wrongful act breached the attorney-client relationship." *Gingold v. Allen* , 613 S.E.2d 173, 175 (Ga. Ct. App. 2005).	"In a legal malpractice action, the plaintiff must establish three elements: '(1) employment of the defendant attorney, (2) failure of the attorney to exercise ordinary care, skill and diligence, and (3) that such negligence was the proximate cause of damage to the plaintiff." *Leibel v. Johnson,* 728 S.E.2d 554, 555 (Ga. 2012).	Defendant law firm in a legal malpractice suit against it put forth comparative negligence as a defense, amongst others. "Appellants' second enumeration is that the trial court erred in granting appellees' motion for summary judgment on appellants' affirmative defenses of comparative negligence, failure to mitigate damages, waiver, estoppel, and voluntary payment." *Alston & Bird, LLP v. Mellon Ventures II, L.P.*, 706 S.E.2d 652, 657 (Ga. Ct. App. 2010). *See also First Bancorp Mortgage Corp. v. Giddens,* 555 S.E. 2d 53, 58 (Ga. Ct. App. 2001)(attorney may raise client's comparative negligence as an affirmative defense).
Hawaii	Modified Comparative Fault- 51% Bar	Legal malpractice claims are "hybrids of tort and contract." *Higa v. Mirikitani* , 517 P.2d 1, 5 (Haw. 1973). *See also Blair v. Ing* , 21 P.3d 452, 463 (Haw. 2001) (holding that non-clients may bring either negligence or contractual theories of recovery against an attorney in a legal malpractice claim where the facts indicate the attorney owed a duty to the non-client).	In Hawaii, the elements of a legal malpractice claim are: "1) the parties had an attorney-client relationship, 2) the defendant committed a negligent act or omission constituting a breach of that duty, 3) there is a causal connection between the breach and the plaintiff's injury, and 4) the plaintiff suffered actual loss or damages." *Thomas v. Kidani* , 267 P.3d 1230, 1234 (Haw. 2011).	Comparative fault has not been analyzed or acknowledged by Hawaii courts as a defense to legal malpractice claims. *See Honolulu Disposal Service, Inc. v. American Ben. Plan Adm'rs, Inc.* , 433 F. Supp. 2d 1181, 1187-9 (D. Haw. 2006) (acknowledging lack of Hawaii court precedent on the issue of whether to apply Hawaii comparative fault statute, HAW. REV. STAT. 663-31, to an accounting malpractice case and endeavoring to make an *Eerie* guess).

Jurisdiction	Rule	Type of Claim within the State	State Elements of a Legal Malpractice Claim	State Treatment of Contributory Negligence/Comparative Fault/Apportionment of Damages for Legal Malpractice Claim
Idaho	Modified Comparative Fault- 50% Bar	The Idaho Supreme Court has acknowledged that "legal malpractice actions are an amalgam of tort and contract theories." *Bishop v. Owens* , 272 P.3d 1247, 1251 (Idaho 2012). However, breach of an attorney's duties to his client, *i.e.* a breach of fiduciary duty or violation of the Rules of Professional Conduct, sounds in tort, while "failure to perform obligations directly specified in the written contract" between attorney and client sounds in contract. *Id.* To the extent the obligations contained in the attorney-client contract overlap with the attorney's duties under the Rules of Professional conduct, the malpractice action is classified as a tort action. *Id.*	In Idaho, the elements of a legal malpractice claim are: 1) "the existence of an attorney-client relationship;" 2) "the existence of a duty on the part of the lawyer;" 3) "failure to perform the duty;" and 4) "the negligence of the lawyer must have been a proximate cause of the damage to the client." *Bishop v. Owens* , 272 P. 3d 1247, 1251 (Idaho 2012), *quoting Johnson v. Jones* , 652 P.2d 650, 654 (Idaho 1982). *Accord. Stephen v. Sallaz & Gatewood, Chtd.* , 248 P.3d 1256, 1261 (Idaho 2011).	Idaho has a comparative fault statute which prohibits a plaintiff from recovering where the plaintiff is found to be 50% at fault for the injury. *See Seppi v. Betty* , 579 P.2d 683, 685 (Idaho 1978) (interpreting Idaho Code § 6-801 to preclude plaintiff's recovery if plaintiff is found to be 50% at fault); *See* Idaho Code § 6-801. There are no cases applying Idaho Code Section 6-801 to a legal malpractice claim.
Illinois	Modified Comparative Fault- 51% Bar	Legal malpractice claims "may be couched in either contract or tort and. . . recovery may be sought in the alternative." *Collins v. Reynard* , 607 N.E.2d 1185, 1186 (Ill. 1992).	In Illinois, the elements of a legal malpractice claim are: "1) the existence of an attorney-client relationship that establishes a duty on the part of the attorney; 2)a negligent act or omission constituting a breach of that duty; 3) proximate cause establishing that but for the attorney's negligence, the plaintiff would have prevailed in the underlying action, and 4) damages." *First National Bank of LaGrange v. Lowrey* , 872 N.E.2d 447, 464 (Ill. App. Ct. 1st Dist. 2007). *See also Snyder v. Heidelberger* , 953 N.E.2d 415, 424, n. 1 (Ill. 2011).	Contributory negligence is an affirmative defense to a legal malpractice claim because the general negligence rules applicable in tort also apply to legal malpractice claims. Nika v. Danz, 556 N.E.2d 873, 884 (Ill. App. Ct. 4th Dist. 1990); See Board of Trustees of Community College Dist. No. 508, County of Cook v. Coopers & Lybrand, 803 N.E.2d 460, 475 (Ill. 2003)(acknowledging applicability of comparative negligence in legal malpractice cases and citing Nika v. Danz). The law currently in effect to allocate fault in tort actions is a modified comparative fault regime wherein plaintiff may not recover if plaintiff's negligence contributed to the injury by more than 50% that took effect in 1986. Board of Trustees,803 N.E.2d at 465. In Illinois, a former attorney may bring a third party action seeking contribution from a successor attorney in a legal malpractice claim. Faier v. Ambrose & Cushing, P.C., 609 N.E.2d 315 (Ill. 1993); Goran v. Glieberman, 659 N.E.2d 56, 61 (Ill. App. Ct. 1st Dist. 1995). In addition, courts have applied the doctrine of in pari delicto, under which the plaintiff may not recover if the plaintiff is equally at fault for the injury, to legal malpractice cases. See Peterson v. Winston & Strawn, L.L.P., No. 11 C 2601, 2012 WL 4892758 (N.D. Ill. Oct. 10, 2012) (applying Illinois law); Mettes v. Quinn, 411 N.E. 2d 549 (Ill. App. Ct. 3d Dist. 1980) (dismissing legal malpractice action where plaintiff committed fraud and lawyer's advice caused fraud to be revealed).
Indiana	Modified Comparative Fault- 51% bar	Legal malpractice claims are "governed by tort principles regardless of whether they are brought as a tort, a breach of contract, or both. *Am. Int'l Adjustment Co. v. Galvin,* 86 F.3d 1455, 1459 (7th Cir. 1996)(applying Indiana law), *citing, Shideler v. Dwyer,* 417 N.E.2d 281, 285–88 (1981); *Keystone Distribution Park v. Kennerk, Dumas, Burke, Backs, Long & Salin,* 461 N.E.2d 749, 751 (Ind.App.1984)(other internal citations omitted).	In Indiana, the elements of a legal malpractice claim are: "1) the employment of an attorney, which creates a duty to the client; 2) failure of the attorney to exercise ordinary skill and knowledge (breach of duty); and 3) that such negligence was the proximate cause of 4) damage to the plaintiff." *Reiswerg v. Statom* , 926 N.E.2d 26, 30 (Ind. 2010), *quoting Solnosky v. Goodwell* , 892 N.E.2d 174, 181 (Ind. Ct. App. 2008).	Under Indiana's Comparative Fault Act, a plaintiff who is more than 50% at fault for the injury is unable to recover damages. Ind. Code § 34-5-2-6. A defendant may also "assert a nonparty defense, seeking to attribute fault to a nonparty rather than to the defendant." *Solonosky* , 892 N.E.2d at 185; Ind. Code § 34-51-2-14. These concepts are applicable to legal malpractice actions as illustrated in *Solnosky. See also Hacker v. Holland,* 570 N.E. 2d 951 (Ind. Ct. App. 1991)(contributory negligence defense allowed against client's legal malpractice claim).
Iowa	Modified Comparative Fault- 51% Bar	Legal malpractice claims are tort claims. *Vossoughi v. Polaschek* , 859 N.W.2d 643, 649 (Iowa 2015).	In Iowa, the elements of a legal malpractice claim are: "1) the existence of an attorney-client relationship giving rise to a duty, 2) the attorney, either by act or failure to act, violated or breached that duty, 3) the attorney's breach of duty proximately caused injury to the client, and 4) the client sustained actual injury, loss, or damage." *Trobaugh v. Sondag* , 668 N.W.2d 577, 580, n.1 (Iowa 2003); e.g. *Huber v. Watson* , 568 N.W.2d 787, 790 (Iowa 1997). Iowa law requires the use of an expert in a legal malpractice action. *See Kubik v. Burk* , 540 N.W. 2d 60, 63-4 (Iowa Ct. App. 1995).	While there have been no cases expressly analyzing Iowa's modified comparative fault statute in a legal malpractice context, presumably the comparative fault statute would apply to legal malpractice claims because general tort principles apply to legal malpractice under Iowa law. *See Crookham v. Riley* , 584 N.W.2d 258, 265 (Iowa 1998) (noting "proximate cause in this legal malpractice action is the same as any other negligence action"); *accord. Dessel v. Dessel* , 431 N.W.2d 359, 361 (Iowa 1988). *See also Hansen v. Anderson, Wilmarth & Van Der Maaten,* 630 N.W.2d 818 (Iowa 2001)(in which the a court acknowledged the ability of a law firm found liable for legal malpractice to seek indemnity from the lawyer who represented the opposing party in a corporate sales transaction who made misrepresentations of fact upon which the law firm relied).
Kansas	Modified Comparative Fault- 50% Bar	Under Kansas law, a legal malpractice action can be either tort-based or contract-based. *Bowman v. Doherty* , 686 P. 2d 112, 879 (Kan. 1984). A plaintiff may bring a malpractice action under both theories where the attorney breached both his professional duties imposed by law and the specific terms of the attorney-client contract. *Pizel v. Zuspann* , 795 P.2d 42, 54 (Kan. 1990), *quoting Bowman* , 686 P.2d at 112. The classification of the claim as tort-based or contractual may affect the statute of limitations on the claim. *See generally Pancake House, Inc. v. Redmond By and Through Redmond* , 716 P.2d 575 (Kan. 1986).	In Kansas, the elements of a legal malpractice claim are: "1) the duty of the attorney to exercise ordinary skill and knowledge, 2) breach of that duty, 3) a causal connection between the breach of duty and the resulting injury, and 4) actual loss or damage." *Canaan v. Bartee* , 72 P.3d 911, 914 (Kan. 2003), *quoting Bergstrom v. Noah* , 974 P.2d 531 (Kan. 1999). Where the malpractice action concerns the outcome of litigation, the plaintiff must also show that the plaintiff would have received "a favorable judgment in the underlying lawsuit had it not been for the attorney's error." *Id.*	Kansas' comparative fault statute applies to legal malpractice actions. *See Bowman* , 686 P.2d at 880-82 (affirming apportionment of fault between attorney and nonparty as well as reduction of damage award in proportion to attorney's fault); *Pizel v. Zuspann* , 795 P.2d 42, 52 (Kan. 1990) (holding comparative negligence principles apply in tort-based legal malpractice action to apportion fault between the client and the attorney); *See also* KAN. STAT. ANN. 60-258a (noting the comparative negligence statute applies to negligence actions resulting in economic loss). A plaintiff cannot recover, however, where his own negligence is deemed to be 50% of the cause of the injury. *Pizel* , 795 P.2d at 53. Kansas also allows punitive damages awards in legal malpractice actions which are not subject to reduction in proportion to fault of the offending party, even where the action sounds in tort. *Bowman,* 686 P.2d at 882.
Kentucky	Pure Comparative Fault	Legal malpractices claims in Kentucky sound in tort. *See Scott v. Koch* , No. 5:07-373-JMH, 2008 WL 2977371 at *5, n.4 (E.D. Ky. Aug. 1, 2008) (noting, where legal malpractice and breach of contract claims are duplicative, the breach of contract claims must fail and the malpractice action sounds in tort).	In Kentucky, a plaintiff asserting a legal malpractice action must prove: "1) that there was an employment relationship with the defendant/attorney, 2) that the attorney neglected his duty to exercise the ordinary care of a reasonably competent attorney acting in the same or similar circumstances, and 3) that the attorney's negligence was the proximate cause of damage to the client." *Mars v. Kelly* , 95 S.W.3d 856, 860 (Ky. 2003) (internal quotations omitted); *e.g . Pete v. Anderson,* 413 S.W.3d 291, 296 (Ky. 2013); *Benton v. Boyd & Boyd, PLLC* , 387 S.W.3d 341, 344 (Ky. Ct. App. 2012). Kentucky also uses the "case-within-a-case" approach. See generally Osborne v. Keeney, 399 S.W.3d 1 (Ky. 2012).	Under Kentucky's comparative fault statute, KY. REV. STAT.411.84, fault may be apportioned "in all tort actions," including legal malpractice actions, among the parties to the action, settling tortfeasors, and third party defendants. KY. REV. STAT. 411.184; *Jefferson County Com. Attorney's Office v. Kaplan* , 65 S.W.3d 916, 921-2 (Ky. 2001).

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Jurisdiction	Rule	Type of Claim within the State	State Elements of a Legal Malpractice Claim	State Treatment of Contributory Negligence/Comparative Fault/Apportionment of Damages for Legal Malpractice Claim
Louisiana	Pure Comparative Fault	Louisiana recognizes claims against attorneys in tort, contract or otherwise; however, LA. REV. STAT. 9:5605 provides the peremptive periods applicable to all claims against attorneys arising out of an engagement to provide legal services regardless of the theory of liability. LA REV. STAT. 9:5605; *Scheuermann v. Rosch*, 2014-0302 (La. App. 4th Cir. 2014); 151 So. 3d 648.	To establish a claim for legal malpractice in Louisiana, a plaintiff must demonstrate "1) the existence of an attorney-client relationship; 2) negligent representation by the attorney; and 3) loss caused by that negligence." *MB Industries, LLC v. CNA Ins. Co.*, 2011-0303 (La. 10/25/11); 74 So. 2d 1173, 1184, *citing Teague v. St. Paul Fire and Marine Ins. Co.*, 269 So. 2d 239, 244 (La. 1972).	Civil Code Article 2323 governing comparative fault applies by its own terms to legal malpractice actions. La. Civ. Code art. 2323(B). *See Schlesinger v. Herzog*, 95-1127 (La. App. 4 Cir. 4/3/96); 672 So. 2d 701 (apportioning fault in a legal malpractice action). Client fault or refusal to participate in the legal process may also bar a legal malpractice claim. *Murphy v. Gilsbar, Inc.*, 2002-0205 (La. App. 1 Cir. 12/31/02); 834 So. 2d 669 (client could not proceed with malpractice claim after client failed to appear in case out of which the malpractice suit arose). However, some cases hold that if the client' s contributing negligence arose out of the client's reasonable reliance upon his attorney, the client cannot be deemed legally at fault. *Meyers v. Imperial Cas. Indem. Co.*, 451 So. 2d 649, 655 (La. App. 3 Cir. 1984). The Court may also assess fault to predecessor attorneys. *Hendrick v. ABC Ins. Co.*, 1997-0546, p. 42 (La. App. 1 Cir. 5/12/00); 760 So. 2d 650, 675 *reversed on other grounds*. In addition, Louisiana plaintiffs asserting a legal malpractice action have a duty to mitigate damages, provided the actions undertaken to mitigate damages are not "unreasonable, impractical or disproportionately expensive considering all the circumstances." *MB Industries, LLC*, 74 So. 3d at 1182, *quoting American Reliable Ins. Co. v. Navratil*, 445 F.3d 402, 406 (5th Cir. 2006).
Maine	Modified Comparative Fault- 50% Bar	In Maine, legal malpractice claims are tort claims. *Johnson v. Carleton*, 2001 ME 12, 765 A.2d 571, 573, n. 3 (Me. 2001). *See e.g. Graves v. S.E. Downey Registered Land Surveyor, P.A.*, 2005 ME 116, 885 A.2d 779, 782 (Me. 2005).	In Maine, the elements of a legal malpractice claim are: "1) a breach by the defendant attorney of the duty owed to the plaintiff to conform to a certain standard of conduct, and 2) that the breach of the duty proximately caused an injury or loss to the plaintiff." *Neihoff v. Shankman & Associates Legal Center*, P.A., 2000 ME 214, 763 A.2d 121, 124 (Me. 2000). *See also Allen v. McCann*, 2015 ME 84, 120 A.3d 90, 92 (Me. 2015).	Comparative negligence applies in legal malpractice cases. *Pinkham v. Burgess*, 933 F.2d 1066, 1073 (1st Cir. 1991) (applying Maine law). *See Wheeler v. White*, 1998 ME 137, 714 A.2d 125, 127-8 (Me. 1998) (applying and analyzing comparative negligence in a legal malpractice case). Where there is an allegation that the plaintiff's negligence contributed to the injury, the test for causation is whether the parties' respective negligence was a substantial factor in causing the injury. *Wheeler*, 714 A.2d at 127-8. A plaintiff may not recover if his own negligence is an equal contributor to the accident, injury, or loss. 14 ME. REV. STAT. § 156.
Maryland	Pure Contributory Negligence	A legal malpractice action may be brought in either contract or tort. *Abramson v. Wildman*, 964 A.2d 703, 711 (Md. Ct. Spec. App. 2009), *quoting Baker, Watts & Co. v. Miles & Stockbridge*, 620 A.2d 356, 377, n. 11 (Md. Ct. Spec. App. 1993), *superseded by rule on other grounds. See also Flaherty v. Wienberg*, 492 A.2d 618, 627 (Md. 1985) ("regardless of whether a plaintiff brings an action in contract or tort, he must allege and prove the existence of a duty between the plaintiff and the defendant. . .").	In Maryland, a legal malpractice claimant must prove: "1) the attorney's employment, 2) the attorney's neglect of a reasonable duty, and 3) loss of the client proximately caused by the neglect of duty." *Suder v. Whiteford, Taylor, & Preston, LLP*, 992 A.2d 413, 418 (Md. 2010), *quoting Thomas v. Bethea*, 718 A.2d 1187, 1195 (Md. 1998).	Contributory negligence applies to bar plaintiff's recovery completely in legal malpractice cases. *See Catler v. Arent Fox, LLP*, 71 A.3d 155, 180-1 (Md. Ct. Spec. App. 2013) (evaluating contributory negligence within the context of a legal malpractice action and affirming summary judgment in law firm's favor on the issue of contributory negligence). Maryland courts also acknowledge the doctrine of *in pari delicto* as an affirmative defense to legal malpractice actions where both parties share fault in causing the injury or loss. *See Catler*, 71 A.3d at 729. Former counsel may implead the client's successor counsel "for contribution or indemnification" in a legal malpractice claim. *Parler & Wobbler v. Miles & Stockbridge*, 756 A.2d 526, 531 (Md. 2000).
Massachusetts	Modified Comparative Fault- 51% Bar	Malpractice is treated as a negligence claim. *See RTR Technologies, Inc. v. Helming*, 815 F.Supp. 2d 411, 424 (D.Mass. 2011) (*quoting Clark v. Rowe*, 701 N.E.2d 624, 629 (Mass. 1998)).	To recover for legal malpractice in Massachusetts, the plaintiff must establish: (1) the existence of an attorney-client relationship; (2) "that the attorney failed to recognize reasonable care and skill in handling the matter for which the attorney was retained," (3) that the plaintiff suffered a loss; and (4) that the "attorney's negligence is the proximate cause of the loss." *Minkina v. Frankl*, 16 N.E.3d 492, 498 (Mass. App. Ct. 2014) (*quoting Colucci v. Rosen, Goldberg, Slavet, Levenson & Wekstein, P.C.*, 515 N.E.2d 891 (Mass. App. Ct. 1987)).	The Supreme Court of Massachusetts has held that the Massachusetts comparative negligence statute, MA ST 231 § 85, on its face, does not apply to legal malpractice claims, but stated "the inapplicability of the statute to claims of legal malpractice does not dispose of the matter." *See Clark*, 701 N.E.2d 624, 627 (Mass. 1998). The Court adopted the limitations on recovery contained in the statute and held that comparative fault appropriately applies to a client's claim of malpractice by a lawyer. *Id*.
Michigan	Modified Comparative Fault- 51% Bar	In Michigan, legal malpractice claims sound in tort. *See In re Harris*, 474 B.R. 816, 824 (Bankr. E.D. Mich. 2012),*quoting Aldred v. O'Hara-Bruce*, 458 N.W.2d 671, 672 (Mich. Ct. App. 1990)).	For a legal malpractice claim, there are four elements: (1) the existence of an attorney-client relationship; (2) negligence in the legal representation of the plaintiff; (3) that the negligence was the proximate cause of the injury; and (4) the fact and extent of the injury alleged. *Bowden v. Gannaway*, 871 N.W.2d 893, 895 (Mich. Ct. App. 2015); *see also Kloian v. Schwartz*, 725 N.W.2d 671, 677 (Mich. Ct. App. 2006).	The fact finder in a legal malpractice action may consider and evaluate the extent to which the client's own comparative conduct caused or contributed to the damages for which recovery is sought in a legal malpractice action. *Pontiac School District v. Miller Canfield Paddock & Stone*, 563 N.W.2d 693, 704 (Mich. Ct. App. 1997) ("comparative negligence applies in legal malpractice actions based upon negligence").
Minnesota	Modified Comparative Fault- 51% Bar	Legal malpractice sounds both in tort and in contract. *See Licktieg v. Sween, P.A.*, 556 N.W.2d 557, 561 (Minn. 1996).	To recover for legal malpractice in Minnesota, the plaintiff must prove: (1) the existence of an attorney-client relationship; (2) acts constituting negligence or breach of the contract; (3) that such acts were the proximate cause of the plaintiff's damages; and (4) that but for defendant's conduct the plaintiff would have obtained a better result. *Guzick v. Kimball*, 869 N.W.2d 42, 47 (Minn. 2015). *See also The Blue Water Corp. v. O'Toole*, 336 N.W.2d 279, 281-82 (Minn. 1983).	Comparative fault is an available defense to a legal malpractice claim, but this defense should be applied with care. *Bowen v. Arnold*, 380 N.W.2d 531, 536 (Minn. App. 1986).

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Mississippi	Pure Comparative Fault	Malpractice is treated as a negligence claim. *See Great American E & S Ins. Co. v. Quintairos, Prieto, Woof & Boyer, P.A.*, 100 So. 3d 420 (Miss. 2012).	To recover for legal malpractice in Mississippi, the plaintiff must prove by a preponderance of evidence (1) existence of a lawyer-client relationship; (2) negligence on the part of the lawyer in handling his client's affairs entrusted to him or violation of the attorney's fiduciary duty; and (3) proximate cause of an injury. *Gibson v. Williams, Williams & Montgomery, P.A.*, 186 So.3d 836, 848 (Miss. 2016). *See also Lancaster v. Steven*s, 961 So.2d 768, 771 (Miss. Ct. App. 2007).	Mississippi is a Pure Comparative Fault state for all negligence claims. Miss. Code Ann. § 11-7-15. Therefore, a client-plaintiff's own negligence would not bar his recovery, but instead would reduce his recovery by the percentage of his negligence, even if it is greater than the attorney-defendant's negligence. *Id*.
Missouri	Pure Comparative Fault	Missouri courts define professional legal malpractice as "any misconduct or unreasonable lack of skill or fidelity in professional and fiduciary duties by an attorney." *Estate of Dean v. Morris*, 963 S.W.2d 461, 464 (Mo. Ct. App. 1998). A claim for legal malpractice is generally premised on a breach of contract, negligence, or a breach of fiduciary duty. *Id*.	To recover for legal malpractice, a plaintiff must plead and ultimately prove these elements: (1) an attorney-client relationship; (2) negligence or breach of contract by the attorney; (3) proximate causation of plaintiff's damages; and (4) damages to the plaintiff. *Fox v. White*, 215 S.W.3d 257, 260 (Mo. Ct. App. W.D. 2007) (*quoting Klemme v. Best*, 941 S.W.2d 493, 495 (Mo. 1997)(*en banc*). "The plaintiff in a legal malpractice action has the burden to establish the defendant's negligence proximately resulted in damages to the plaintiff. Because the damages are based on the resolution of the underlying action...,the plaintiff must prove a case within a case. The plaintiff must prove [it] had a valid claim or defense." *Day Advertising v. Devries and Associates, P.C.,* 217 S.W. 362, 367 (Mo. Ct. App. W. D. 2007)(internal citations and quotations omitted).	The Missouri Supreme Court has not applied tort fault principals yet in the context of a legal malpractice action. However, Missouri allows the application of tort fault principals in professional negligence claims involving only economic loss. *Children's Wish Foundation International, Inc., v. Mayer Hoffman McCann P.C.,* 331 S.W. 648 (Mo. 2011)(*en banc*)(holding that the comparative fault rule applied to claims of economic losses allegedly caused by the professional negligence of an accounting firm). *See London v. Weitzman*, 884 S.W.2d 674 (Mo. App. 1994)(upholding the application of the comparative fault doctrine in a legal malpractice case and affirming verdict allocating 40% of fault to client). *See also Blackstock v. Kohn*, 994 S.W.2d 947, 952 (Mo.1999).
Montana	Modified Comparative Fault- 51% Bar	An action for legal malpractice is a tort claim based on negligence. *See Richards v. Knuchel*, 115 P.3d 189 (2005).	To recover for legal malpractice, the plaintiff must prove the following elements: (1) that at the time of the allegedly negligent act the attorney owed the plaintiff a duty of care; (2) that the attorney breached that duty of care by not exercising reasonable care and skill; (3) that the attorney's conduct was the proximate cause of the plaintiff's injury; and (4) that the plaintiff suffered damages. *Labair v. Carey*, 291 P.3d 1160, 1165 (Mont. 2012) (*quoting Richards*, 115 P.3d at 192).	A defendant may assert the plaintiff's contributory negligence as a defense to a claim of negligence. The finding of any contributory negligence on the part of the plaintiff is not a complete bar to recovery for the plaintiff. *See Peterson v. Eichhorn*, 189 P.3d 615, 622 (Mont. 2008). Montana has adopted a contributory negligence scheme that only bars a plaintiff from recovering if the plaintiff is found to be greater than fifty percent negligent. *Giambra v. Kelsey*, 162 P.3d 134, 144 (Mont. 2007); Mont. Code Ann. § 27-1-702 (2007). *See also Grenz v. Prezeau,* 798 P. 2d 112 (Mont. 1990)(holding that a plaintiff could not blame the lawyer for falling to settle a claim when the "client directed otherwise.").
Nebraska	Modified Comparative Fault- 50% Bar	An action for professional malpractice on the part of an attorney sounds in tort based on negligence. See *Gallner v. Larson*, 865 N.W.2d 95, 104 (Neb. 2015).	In an action for legal malpractice in Nebraska, a plaintiff alleging professional negligence on the part of the attorney must prove: (1) the attorney's employment; (2) the attorney's neglect of a reasonable duty; and (3) that such negligence resulted in and was the proximate cause of loss to the client. *Gallner*, 865 N.W.2d at 104. The plaintiff must also show that he or she would have been successful in the underlying action but for the attorney's negligence. *Id*.	"A plaintiff's contributory negligence is a defense in a malpractice action when it contributed to the professional's inability to meet the standard of care and was a proximate cause of the plaintiff's injury." *Balames v. Ginn,* 861 N.W. 684 (Neb. 2015). *See also Borley Storage and Transfer Co., v. Whitted,* 710 N.W. 2d 71 (2006)(holding that tort principals govern malpractice actions and upholding the affirmative defense of avoidable consequences, when barring plaintiff's recovery for damages that could have been avoided by reasonable efforts). A claimant's negligence bars recovery only if it is equal to or greater than the total negligence of all defendants. Otherwise, the claimant's damages are reduced in proportion to his/her share of negligence. A claimant's contributory negligence will not bar recovery where it is "slight" in comparison to the defendant's negligence. The claimant's slight contributory negligence may serve to reduce the claimant's recovery. *See* Neb. Rev. Stat. § 25-21, 185 (1995).
Nevada	Modified Comparative Fault- 51% Bar	The attorney-client relationship is a contractual relationship that creates a duty of care upon the attorney. *Ladonicolas v. Beury*, 21 F.3d 1114 (9th Cir. 1994),*quoting Warmbrodt v. Blanchard*, 692 P.2d 1282 (Nev. 1984)(overruled on other grounds)). While a legal malpractice claim may involve principles of both contract and tort, it is primarily based upon negligence.	A plaintiff seeking to establish a legal malpractice claim in Nevada must establish the following elements: (1) an attorney-client relationship; (2) a duty owed to the client by the attorney to use such skill, prudence, and diligence as lawyers of ordinary skill and capacity possess in exercising and performing the tasks which they undertake; (3) a breach of that duty; (4) the breach being the proximate cause of the client's damages; and (5) actual loss or damage resulting from the negligence. *Mainor v. Nault*, 101 P.3d 308, 324 (Nev. 2004), *quoting Day v. Zubel*, 922 P.2d 536, 538 (Nev. 1996).	The comparative negligence of the plaintiff is an allowable defense. Pursuant to NEV. REV. STAT. 41.141, in any action to recover damages for injuries to persons or property in which comparative negligence is claimed as a defense, any negligence of the plaintiff, as long as it does not exceed that of the defendant, will not bar recovery of damages. In such cases the court will instruct the jury to determine the percentage of negligence attributable to each part. NEV. REV. STAT. 41.141(2)(b)(2).
New Hampshire	Modified Comparative Fault- 51% Bar	Legal malpractice is a tort in New Hampshire, but the circumstances which give rise to the claim may also give rise to breach of contract. *See Wong v. Eckburg*, 807 A.2d 1266, 1272 (N.H. 2002). *See also Furbush v. Mckittrick*, 821 A.2d 1126, 1131 (N.H. 2003).	The elements of a legal malpractice claim in New Hampshire are as follows: (1) an attorney-client relationship which placed a duty upon the attorney to exercise reasonable professional care, skill and knowledge in providing legal services to that client; (2) a breach of that duty; and (3) resultant harm legally caused by that breach. *Wong*, 807 A.2d at 1270.	A plaintiff who is more than fifty percent at fault cannot recover damages. If a plaintiff is fifty percent or less at fault, he or she can recover damages, but only in proportion to the amount of the defendants' legal harm. *See DeBenedetto v. CLD Consulting Engineers*, 903 A.2d 969, 984 (N.H. 2006); *see also Nilson v. Bierman*, 839 A.2d 25 (N.H. 2003); N.H. REV. STAT. 507:7-d.

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New Jersey	Modified Comparative Fault- 51% Bar	In New Jersey, legal malpractice suits are grounded in the tort of negligence. Therefore, a conventional legal malpractice action sounds in tort. *See Cortez v. Gindhart* , 90 A.3d 653, 660 (N.J. Sup. Ct. 2014).	The following elements are those of a legal malpractice claim in New Jersey: (1) the existence of an attorney-client relationship creating a duty of care by the defendant attorney; (2) breach of that duty by the defendant; and (3) proximate causation of the damages claimed by the plaintiff. *Lovett v. Estate of Lovett* , 593 A.2d 382, 386 (N.J. Super. Ct. Ch. Div. 1991). The plaintiff must also show damages. *See Brach, Eichler, Rosenberg, Silver, Bernstein, Hammer & Gladstone, P.C. v. Ezekwo* , 783 A.2d 246, 252 (N.J. Sup. Ct. 2001).	Applying the theory of contributory negligence and/or comparative negligence to a claim for legal malpractice, the New Jersey Supreme Court held that a jury should not be permitted to consider the conduct of the plaintiff as a defense to a claim for legal malpractice where the defendant attorney's representation of the plaintiff required the attorney to protect the plaintiff from the self-inflicted harm sustained. *See Conklin v. Hannoch Weisman* , 678 A.2d 1060 (N.J. 1996)(citing*Cowan v. Doering* , 545 A.2d 159, 167 (N.J. 1988) and holding that "because the defendant's duty of care included the prevention of the kind of self-damaging acts that caused plaintiff's injuries, the plaintiff's action and capacity were subsumed within the defendants' scope of duty. Thus, the defense of contributory negligence was not available."). Because the attorney-client relationship often involves the malpractice plaintiff's reliance on the advice and judgment of the defendant attorney to protect his or her interests and/or avoid harm, contributory negligence is generally unavailable as a defense. Nevertheless, there may be circumstances where the plaintiff's conduct demonstrates that the defendant attorney did not breach the duty of care owed to the plaintiff. Further, the fact that a plaintiff's contributory negligence may not be considered does not rule out an apportionment of fault among tortfeasors under the Comparative Negligence Act under a possible exception. The *Conklin* Court acknowledged that legal malpractice can be one of a number of concurrent causes to a plaintiff, adopting the "substantial factor" test where "inadequate or inaccurate [legal] advice is alleged as a concurrent cause of harm," meaning that a jury should be instructed to determine whether the lawyer's negligence was "a substantial factor in bringing about the ultimate harm." *Grubbs v. Knoll* , 870 A.2d 713, 726 (N.J. Sup. Ct. 2005).
New Mexico	Pure Comparative Fault	The attorney-client relationship is governed by a blend of both contract and tort law. The attorney-client relationship is generally created by contract. *Holland v. Lawless,* 623 P.2d 1004, 1008 (N.M. Ct.App. 1981). Once that relationship is created, the law imposes a duty of reasonable care on the attorney, which forms the basis for a malpractice action. *Rancho del Villacito Condos., Inc. v. Weisfiled* , 908 P.2d 745 (1995).	"To recover on a claim of legal malpractice based on negligence, a plaintiff must prove three essential elements: (1) the employment of the defendant attorney; (2) the defendant attorney's neglect of a reasonable care of duty; and (3) the negligence resulted in and was the proximate cause of loss to the plaintiff." *Hayden v. Law Firm of McCormick, Forbes, Caraway & Tabor* , 848 P.2d 1086 (N.M. Ct. App. 1993).	Comparative fault principles apply in legal malpractice cases in New Mexico. *Andrews v. Saylor* , 80 P.3d 482 (N.M. Ct. App. 2003).
New York	Pure Comparative Fault	Since the object of the damages in a legal malpractice action "is to make the injured client whole," regardless of whether the plaintiff pleads causes of action sounding in negligence or contract or both, necessarily follows that plaintiff's substantive remedy in such an action is not contractual, but one based on negligence or other tort. *Santulli v. Englert, Reilly, & McHugh, P.C.* , 164 A.D. 2d 149 (N.Y. App. 3d Div. 1990).	In an action to recover damages for legal malpractice, a plaintiff must demonstrate that the attorney "failed to exercise the ordinary reasonable skill and knowledge commonly possessed by a member of the legal profession" and that the attorney's breach of this duty proximately caused plaintiff to sustain actual and ascertainable damages. *Rudulof v. Shayne, Dachs, Stanisci, Corker, & Sauer* , 835 N.Y.S.2d 534 (N.Y. 2007).	The culpable conduct of a plaintiff client may be asserted as an affirmative defense in a legal malpractice action in mitigation of damages. *Hattem v. Smith* , 111 A.D. 1107 (N.Y. App. 3d Div. 2013).
North Carolina	Pure Contributory Negligence	Because claims "arising out of the performance of or failure to perform professional services" based on negligence or breach of contract are in the nature of "malpractice" claims; they are governed by N.C. GEN. STAT. § 1-15(c).	In a legal malpractice case, a plaintiff is required to prove that he would not have suffered the harm alleged absent the neglect of his attorney. *Rorrer v. Cooke, 329 S.E.2d 355 (1985).* To prove the causation element, the legal malpractice plaintiff must establish three things: (1) the underlying claim, upon which the malpractice action is based, was valid; (2) the claim would have resulted in a judgment in the plaintiff's favor; and (3) the judgment would have been collectible or enforceable. *Id.*	"Contributory negligence is a defense to a claim of professional negligence by attorneys, just as it is to any other negligence action." *Piraino Bros., LLC v. Atl. Fin. Group, Inc.,* 712 S.E. 2d 328, 334 (N.C. Ct. App. 2011).
North Dakota	Modified Comparative Fault- 50% Bar	The term "malpractice" refers to the nature of the subject matter and not the underlying procedure involved, whether it is based in tort or contract. *Johnson v. Haugland* , 3003 N.W.2d 533, 538 (N.D. 1981).	The elements of a legal malpractice action for professional negligence are the existence of an attorney-client relationship, a duty by the attorney to the client, a breach of that duty by the attorney, and damages to the client proximately caused by the breach of that duty. *Dan Nelson Constr., Inc. v. Nodland & Dickson* , 608 N.W.2d 267 (2000).	Although contributory negligence is generally not defense to action for fraud or deceit, it is defense available in legal malpractice action. *Bjorgen v. Kinsey* , 466 N.W.2d 553 (N.D. 1991).

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Ohio	Modified Comparative Fault- 51% Bar	A legal malpractice claim may be predicated upon contract or tort. *Thomas v. Kramer* , 194 Ohio App.3d 70, 2011 -Ohio- 1812 954 N.E.2d 1235 (Ohio Ct. App. 2011).	To establish a cause of action for legal malpractice based on negligence, the following elements must be proved: (1) an attorney-client relationship; (2) professional duty arising from that relationship; (3) breach of that duty; (4) proximate cause; and (5) damages. *Shoemaker v. Gindlesberger* , 118 Ohio St.3d 226, 2008 -Ohio- 2012, 887 N.E.2d 1167 (Ohio 2008).	"We must emphasize that Ohio is a comparative negligence jurisdiction; therefore, implied assumption of risk and contributory negligence are no longer a bar to recovery in a negligence action. In Ohio the jury is to be instructed to evaluate the negligence of both parties, if applicable, and assign fault accordingly." *Harrell v. Crystal* , 611 N.E.2d 908 (Ohio Ct. App. 1992).
Oklahoma	Modified Comparative Fault- 51% Bar	Although based upon contract of employment, client's action for legal malpractice was action in tort governed by two-year statute of limitations. *Ranier v. Stuart & Freida, P.C.* , 887 P.2d 339 (Okla. Civ. App. 1994).	In order to recover for tort of negligence, client was required to prove: (1) duty by attorney to protect him from injury; (2) violation of such duty; and (3) injury as proximate result of that violation of duty. *Ranier v. Stuart & Freida, P.C.* , 887 P.2d 339 (Okla. Civ. App. 1994).	In a malpractice action brought by a client against his attorney sounding in negligence, contributory negligence is a proper defense. *F.D.I.C. v. Ferguson* , 982 F.2d 404, 406-07 (10th Cir. 1991)(applying Oklahoma law).
Oregon	Modified Comparative Fault- 51% Bar	Legal malpractice is a form of negligence. *Becker v. Port Dock Four, Inc.* , 752 P.2d 1235, 1239 (Or. Ct. App. 1988).	The elements of a legal malpractice claim are (1) a duty that runs from the defendant to the plaintiff; (2) a breach of that duty; (3) a resulting harm to the plaintiff measurable in damages; and (4) causation, *i.e.* , a causal link between the breach of duty and the harm. *Sternberg v. Lechman-Su,* 350 P.3d 593 (Or. Ct. App. 2015).	Oregon allows for a comparative fault or comparative negligence defense to be raised by legal malpractice defendants. *See Becker v. Port Dock Four, Inc.* , 752 P.2d 1235, 1239 (Or. Ct. App. 1988)("[i]n other negligence contexts, findings of comparative fault can be based on the plaintiff's failure to take reasonable measures which might have prevented or reduced the injury caused by the defendant's negligence. We discern no convincing reason why that should not be true in this context.").
Pennsylvania	Modified Comparative Fault- 51% Bar	In Pennsylvania, "[a]n action for legal malpractice may be brought in either contract or tort." *Guy v. Liederbach* , 459 A.2d 744, 748 (Pa. Super. Ct. 1987).	In order to establish a claim of legal malpractice, a plaintiff/aggrieved client must demonstrate three basic elements: 1) employment of the attorney or other basis for a duty; 2) the failure of the attorney to exercise ordinary skill and knowledge; and 3) that such negligence was the proximate cause of damage to the plaintiff. *Kituskie v. Corbman* , 714 A. 2d 1027 (Pa. 1998).	Legal malpractice actions are outside the scope of the comparative negligence act, and hence the doctrine of contributory negligence which functions as a complete bar to a plaintiff's recovery applies, as legal malpractice cases do not involve bodily injury or damage to property. *Gorski v. Smith*, 812 A.2d 683 (Pa. Super. Ct. 2002).
Rhode Island	Pure Comparative Fault	A legal malpractice case is a negligence claim and, therefore, the plaintiff must prove the elements of any other negligence claim, namely, a breach of the duty of care and damages proximately resulting therefrom. *Macero Brothers of Cranston, Inc. v. Gelfuso & Lachut, Inc.* , 740 A.2d 1262, 1264 (R.I. 1999).	In order to prove an attorney malpractice claim, a plaintiff must prove by a "... preponderance of the evidence not only a defendant's duty of care, but also a breach thereof and the damages actually and proximately resulting therefrom to the plaintiff." *Macero Brothers of Cranston, Inc. v. Gelfuso & Lachut* , 740 A.2d 1262, 1264 (R.I. 1999).	No current rule.
South Carolina	Modified Comparative Fault- 51% Bar	Most commonly, claims against attorneys sound in negligence. There are, however, other causes of action that may be raised against an attorney, including breach of contract and breach of fiduciary duty.	In a legal malpractice action, the plaintiff must prove: (1) existence of an attorney-client relationship creating a duty; (2) breach of the duty; (3) proximate cause to the claimant's injury; and (4) damages. *Smith v. Haynsworth, Marion, McKay & Geurard* , 472 S.E.2d 612, 613 (S.C. 1996)(also providing that a plaintiff in a legal malpractice action must generally establish the standard of care through expert testimony); *Hall v. Fedor* , 561 S.E.2d 654, 656 (S.C. Ct. App. 2002).	In the context of a legal malpractice action, a comparative negligence defense may be asserted if, for example, a client: (1) fails to follow advice or instructions; (2) fails to supervise, review or inquire concerning representation; (3) fails to provide essential information; (4) interferes; or (5) fails to pursue remedies or to mitigate damages. 1 *South Carolina Jurisprudence, Attorney and Client* , § 73 (1991).

Jurisdiction	Rule	Type of Claim within the State	State Elements of a Legal Malpractice Claim	State Treatment of Contributory Negligence/Comparative Fault/Apportionment of Damages for Legal Malpractice Claim
South Dakota	Slight/Gross Negligence Comparative	In South Dakota, a legal malpractice suit can be based on negligence and/or breach of contract.*Haberer v. Rice* , 511 N.W.2d 279, 286 (S.D. 1994) ("a legal malpractice suit may have two causes of action, one which is for breach of contract and another in negligence.")	In order to prevail in a legal malpractice case based on negligence, a plaintiff must prove four factors: (1) the existence of an attorney-client relationship giving rise to a duty; (2) the attorney, either by an act or failure to act, breached that duty; (3) the attorney's breach of duty proximately caused injury to the client; and (4) the client sustained actual damage. *Chem–Age Indus., Inc. v. Glover* , 2002 S.D. 122, 24, 652 N.W.2d 756, 767 (S.D. 2002). *See also Peterson v. Issenhuth,* 2014 S.D. 1, 17, 842 N.W.2d 351, 355 (S.D. 2014).To recover for a breach of contract claim in South Dakota, the plaintiff must prove three factors: (1) an enforceable promise; (2) a breach of the promise; and (3) resulting damages. *Weitzel v. Sioux Valley Heart Partners* ,2006 S.D. 45, 714 N.W.2d 884, 895 (S.D. 2006). *See also* S.D. CODIFIED LAWS §53-1-1. The plaintiff may be asked to prove three additional factors in a legal malpractice case: 1) that the underlying claim was valid, 2) that it would have resulted in a favorable judgment had it not been for the attorney's error, and 3) the amount of the judgment and that the judgment was collectible.*Haberer v. Rice* , 511 N.W.2d 279, 285 (S.D. 1994).	The Supreme Court of South Dakota recognizes contributory negligence as a defense against a legal malpractice claim. *Behrens v. Wedmore* , 2005 S.D. 79, 41, 698 N.W.2d 555, 571 (S.D. 2005). The South Dakota Supreme Court has held that plaintiff's negligence in the amount of 30 percent is more than slight as a matter of law. *Wood v. City of Crooks* , 1997 SD 20, 559 N.W.2d 558, 560 (S.D. 1997). Contributory negligence must be a proximate cause of the damage. In other words, an attorney is liable for all damages proximately caused by his or her wrongful act or omission. *Behrens v. Wedmore , supra* at 569.The Supreme Court of South Dakota also recognizes assumption of the risk as a defense against a legal malpractice claim. *Id* . "In order to assume the risk of one's own loss, a person must know that the danger exists, appreciate the character of the danger, and 'voluntarily accept such risk by having a sufficient amount of time, knowledge, and experience to make an intelligent choice.'"*Id* . at 572-73.
Tennessee	Modified Comparative Fault- 50% Bar	In Tennessee, a legal malpractice suit can be sound in contract or in tort. *See* Tenn. Code Ann. § 28-3-104(c)(1). However, a breach of contract claim has been found "separate and distinct from [a] legal malpractice claim because the elements of the two causes of action are separate and distinct." *Byrd & Assocs. v. Siliski* , 2007 WL 3132929 at *19 (Tenn. Ct. App. Oct. 26, 2007). Thus, a legal malpractice suit is traditionally sounded in tort and involves a negligence cause of action. *See e.g. Gibson v. Trant* , 58 S.W.3d 103, 108 (Tenn. 2001); *Lazy Seven Coal Sales, Inc. v. Stone & Hinds* , 813 S.W.2d 400, 403 (Tenn. 1991); *Horton v. Hughes* , 971 S.W.2d 957, 959 (Tenn. Ct. App. 1998).	In order to prevail in a legal malpractice case based on negligence, a plaintiff must prove five factors: (1) that the accused attorney owed a duty to the plaintiff, (2) that the attorney breached that duty, (3) that the plaintiff suffered damages, (4) that the breach was the cause in fact of the plaintiff's damages, and (5) that the attorney's negligence was the proximate, or legal, cause of the plaintiff's damages. *Gibson* , 58 S.W.3d at 108. A plaintiff pursuing a breach of contract claim must "establish (1) the existence of an enforceable contract, (2) non-performance of the contract amounting to a breach of that contract, and (3) damages flowing from the defendant's nonperformance. " *Byrd & Assocs. v. Siliski, 2007 WL 3132929 at *19 (Tenn. Ct. App. Oct. 26, 2007).citing Ingram v. Cendant Mobility Fin. Corp.* , 215 S.W.3d 367, 374 (Tenn. Ct. App. 2006).	The Tennessee Supreme Court has abolished the doctrine of contributory negligence in favor of a modified comparative fault system. *McIntyre v. Balentine* , 833 S.W.2d 52, 56 (Tenn. 1992). Under this scheme, a negligent plaintiff may recover against a negligent defendant so long as the plaintiff's negligence is less than the defendant's negligence. *Id* . at 57. Therefore, the plaintiff's recovery is reduced by the proportion of negligence the jury assesses against the plaintiff. *Id* . This comparative negligence system applies to legal malpractice claims. *See Murray v. Beard* , No. E2006-01661-COA-R3-CV, 2007 Tenn. App. LEXIS 562 at *18 & n.5 (Tenn. Ct. App. Aug. 29, 2007). *See also Wilson v. Pickens*, 196 S.W. 3d 138 (Tenn. Ct. App. 2005)(clients were at least 50% at fault in a legal malpractice case).
Texas	Modified Comparative Fault- 51% Bar	In Texas, a legal malpractice action sounds in tort. *Barcelo v. Elliott* , 923 S.W.2d 575, 579 (Tex. 1996).	In order to prevail in a legal malpractice case based on negligence, a plaintiff must prove four factors: (1) a duty owed to him by the defendant, (2) a breach of that duty, (3) injury proximately caused by the breach, and (4) damages. *Gen. Motors Acceptance Corp./Crenshaw, Dupree & Milam, L.L.P. v. Crenshaw, Dupree & Milam, L.L.P./Gen. Motors Acceptance Corp.* , 986 S.W.2d 632, 636 (Tex. Ct. App. 1998). A claimant must also prove an attorney-client relationship. *Id* .	The common law doctrine of contributory negligence has been replaced in Texas with a statutory scheme currently known as "proportionate responsibility. "Tex. Civ. Prac. & Rem. Code §§ 33.001-.017(West). Under this scheme, the jury is asked to assess the relative responsibility of each plaintiff, defendant, settling party, and "responsible third party." *Id* . § 33.003(a). If the plaintiff fails to sue a party whose wrongful act or omission contributed in any way to the alleged harm, a defendant may, with leave of court, designate that party as a "responsible third party." *Id* . § 33.004. Based on the jury's allocation of responsibility: a) a plaintiff who is more than 50% responsible recovers nothing; b) if the plaintiff is less than 50% responsible, the amount of damages the plaintiff may recover is reduced by: i) a percentage equal to the plaintiff's responsibility, and ii) the amount of all settlements; c) each liable defendant is responsible only for that percentage of damages equal to its own percentage of responsibility, unless that percentage is more than 50%. (In other words, liability is joint and several only for defendants who are found more than 50% responsible.) Alternatively, joint and several liability may exist if the misconduct violated certain provisions of the Texas Penal Code. *Id* . §§ 33.001, 33.012, 33.013. Proportionate responsibility is applicable to legal malpractice claims. *City Nat'l Bank of Sulphur Springs v. Smith* , 2016 WL 2586607, at *4 (Tex. Ct. App. May 4, 2016), reh'g overruled (May 24, 2016). *See also Roberts v. Burkett,* 802 S.W. 2d 42 (Tex. Ct. App. 1990).
Utah	Modified Comparative Fault- 50% Bar	In Utah, a legal malpractice action can be based on negligence, breach of fiduciary duty, or breach of contract. *Christensen & Jensen, P.C. v. Barrett & Daines* , 2008 UT 64, 21, 194 P.3d 931, 937-38.	In order to prevail in a legal malpractice case based on negligence, a plaintiff must prove five factors: (1) an attorney-client relationship; (2) a duty of the attorney to the client arising from their relationship; (3) a breach of that duty; (4) a causal connection between the breach of duty and the resulting injury to the client; and (5) actual damages. *Christensen & Jensen, P.C. v. Barrett & Daines* , 2008 UT 64, 21, 194 P.3d 931, 938. In order to prevail in a legal malpractice case based on breach of fiduciary duty, a plaintiff must prove four factors: "(1) an attorney-client relationship; (2) breach of the attorney's fiduciary duty to the client; (3) causation, both actual and proximate; and (4) damages suffered by the client. *Id* . In order to prevail in a legal malpractice case based on breach of contract, a plaintiff must prove four factors: (1) a valid and enforceable contract; (2) performance by the plaintiff; (3) breach of the express promise by the defendant; and (4) damages to the plaintiff resulting from the breach. *Id* .	Contributory negligence is a defense available in legal malpractice actions. *Western Fiberglass, Inc. v. Kirton, McConkie & Bushnell* , 789 P.2d 34, 35 n.2 (Utah Ct. App. 1990) ("Although some have argued that lawyers, as fiduciaries, should not be able to urge contributory negligence as a defense, all courts which have considered the issue have either directly or implicitly held the defense available in a legal malpractice action.")(internal quotations omitted). If the trier of fact finds that a plaintiff's negligence is equal to or greater than fifty percent, such acts as a complete defense to malpractice claims. *Id* . at 36. *See also Kipatrick v. Wiley, Rein and Fielding,* 37 P. 3d 1130 (Utah 2001). The Supreme Court of Utah has supported the proposition that public policy prohibits former counsel from asserting a third party claim of contribution or indemnification against successor counsel. *Hughes v. Housley* , 599 P.2d 1250, 1253 (Utah 1979).

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Jurisdiction	Rule	Type of Claim within the State	State Elements of a Legal Malpractice Claim	State Treatment of Contributory Negligence/Comparative Fault/Apportionment of Damages for Legal Malpractice Claim
Vermont	Modified Comparative Fault- 51% Bar	In Vermont, a legal malpractice action can be based on negligence. *Roberts v. Chimileski* , 2003 VT 10, 15, 175 Vt. 480, 483, 820 A.2d 995, 999 (Vt. 2003).	In order to prevail in a legal malpractice case based on negligence, a plaintiff must prove two factors: (1) attorney was in fact negligent and (2) that this negligence was the proximate cause of plaintiff's injury. *Roberts v. Chimileski* , 2003 VT 10, 15, 175 Vt. 480, 483, 820 A.2d 995, 999 (Vt. 2003).Thus, the plaintiff must prove the following four elements: (1) that the accused attorney owed a duty to the plaintiff, (2) that the attorney breached that duty, (3) that the breach was the cause in fact of the plaintiff's damages, and (4) that the plaintiff suffered damages and the attorney's negligence was the proximate, or legal, cause of the plaintiff's damages. *Washington Electric Cooperative, Inc. v. Massachusetts Municipal Wholesale Electric Co.* , 894 F. Supp. 777 (D.Vt. 1995);*Bloomer v. Gibson* , 2006 VT 104, 180 Vt. 397, 912 A.2d 424 (Vt. 2006); Knott v. Pratt, 609 A.2d 232 (Vt. 1992).	"A client's own intentional wrongful conduct does not automatically shield the attorney from all liability in a legal malpractice claim. " *State v. Therrien* , 2003 VT 44, 22, 175 Vt. 342, 350, 830 A.2d 28, 35 (2003)(alluding to comparative negligence). A negligent plaintiff may recover an amount reduced by the amount of his negligence, as long as it is not greater than the negligence of all defendants combined. *See* 12 VT. STAT. ANN. § 1036.
Virginia	Pure Contributory Negligence	In Virginia, an action for legal malpractice sounds in tort but is based on breach of contract. *See e.g.* , *Olyear v. Kerr* , *Trustee* ,225 S.E.2d 398, 400 (Va. 1976).	In order to prevail in a legal malpractice case based on breach of contract, a plaintiff must prove four factors: (1) that an attorney-client relationship existed; (2) that the attorney-client relationship gave rise to a duty; (3) that the attorney neglected or breached that duty; and (4) that the neglect or breach was a proximate cause of the claimed damages. *See e.g Williams v. Joynes* , 677 S.E.2d 261 (Va. 2009); *Gregory v. Hawkins*, 468 S.E.2d 891 (Va. 1996); *Allied Productions v. Duesterdick* ,232 S.E.2d 774, 775 (1977).	Contributory negligence operates as a complete defense in a legal malpractice claim. *See e.g.* , *Lyle, Siegel, Croshaw & Beale, P.C. v. Tidewater Capital Corp.*, 457 S.E.2d 28 (Va. 1995)(holding that contributory negligence was a question for the jury where the plaintiff's president/attorney was involved in the creation of a negligently drafted document).
Washington	Pure Comparative Fault	In Washington, a legal malpractice action can be based on tort or breach of contract *Peters v. Simmons* , 552 P.2d 1053, 1055 (Wash. 1976)(*en banc*).	In order to prevail in a legal malpractice case based on tort or breach of contract, a plaintiff must prove four factors: (1) the existence of an attorney-client relationship which gives rise to a duty of care on the part of the attorney to the client; (2) an act or omission by the attorney in breach of the duty of care; (3) damage to the client; and (4) proximate cause between the attorney's breach of the duty and the damage incurred. *Hizey v. Carpenter* , 830 P.2d 646 (Wash. 1992).	Contributory negligence is a defense to a legal malpractice claim. *Stiley v. Block* , 130 Wash.2d 486, 502–03, 925 P.2d 194 (1996). The lawyer has the burden of proof to establish the client's contributory negligence. *Hansen v. Wightman* , 14 Wash. App. 78, 88, 538 P.2d 1238 (1975). "Because attorney and co-counsel were not held jointly and severally liable to client in malpractice action that was settled, attorney was not entitled to contribution from co-counsel whose negligence was responsible for the malpractice action." Mazon v. Krafchick, 158 Wash. 2d 440, 144 P.3d 1168 (2006). *See also Parler & Wobber v. Miles & Stockbridge,* 756 A.2d 526, 538 (Md. 2000)(collecting case and stating that Washington recognizes the assertion of contribution claims against negligent successor attorneys, under certain circumstances).
West Virginia	Modified Comparative Fault- 50% Bar	In West Virginia, a legal malpractice action can sound in tort or contract. *Harrison v. Casto* ,271 S.E.2d 774, 775 (W. Va. 1980).Where the act complained of in a legal malpractice action is a breach of specific terms of the contract without reference to the legal duties imposed by law on the attorney/client relationship, the action is in contract. *Hall v. Nichols* , 400 S.E.2d 901, 904 (W. Va. 1990). Where the essential claim of the action is a breach of duty imposed by law on the attorney/client relationship and not of the contract itself, the action lies in tort. *Id* .	In order to prevail in a legal malpractice case based on tort or breach of contract, a plaintiff must prove three factors: (i) the attorney's employment; (ii) that the attorney breached a reasonable duty of care; and (iii) that such breach resulted in and was the proximate cause of the plaintiff's damages. *Keister v. Talbott* , 391 S.E.2d 895, 898-99 (W. Va. 1990). *See also Armor v. Lance* , 535 S.E.2d 737, 746 (W. Va. 2000).	Although West Virginia has adopted "modified" comparative negligence; it has not addressed comparative negligence in a legal malpractice action. *See Bradley v. Appalachian Power Co.* , 256 S.E.2d 879, 885 (W. Va. 1979).
Wisconsin	Modified Comparative Fault- 51% Bar	In Wisconsin, a legal malpractice action can be sound in tort or contract. *Acharya v. Carroll* , 152 Wis. 2d 330, 334, 448 N.W.2d 275, 278 (Wisc. Ct. App. 1989).	In order to prevail in a legal malpractice case based on tort or breach of contract, a plaintiff must prove four factors: (1) the existence of a lawyer-client relationship; (2) acts or omissions constituting the attorney's negligence; (3) the fact and extent of the damages alleged, or proximate causation; and (4) actual damages, or, in other words, that the client would have been successful in the action but for the attorney's negligence. *Hicks v. Nunnery* , 643 N.W.2d 809, (Wisc. Ct. App. 2002) citing *Lewandowski v. Cont'l Cas. Co.* , 276 N.W.2d 284, 287 (Wisc. 1979). "The last two elements of this standard often "require[s] the plaintiff to prove a 'suit within a suit.' " *Hicks* , supra at 33.	The contributory negligence of a client is a defense in a legal malpractice action. *Gustavson v. O'Brien* , 274 N.W.2d 627, 633 (1979). However, this is an affirmative defense and is deemed waived if not plead. *Id., citing Musil v. Barron Electrical Co-operative* , 13 Wis. 2d 342, 359, 108 N.W.2d 652, 661 (1961).
Wyoming	Modified Comparative Fault- 51% Bar	In Wyoming, a legal malpractice action can be based on breach of contract and breach of fiduciary duty. *Moore v. Lubnau* , 855 P.2d 1245, 1248-49 (Wyo. 1993). However, the Wyoming Supreme Court applies a tort law standard of care. *Id* .	In order to prevail in a legal malpractice case based on breach of contract or breach of fiduciary duty, a plaintiff must prove three factors: 1) the existence of a duty arising from the attorney-client relationship, 2) the accepted standard of legal care, and 3) the departure by the attorney from the standard of care which causes harm to the client. *Horn v. Wooser* , 2007 WY 120, 165 P.3d 69 (Wyo. 2007).	Neither Wyoming's comparative negligence statute nor any other principle of Wyoming law can be invoked to reduce recovery by any percentage of default in a legal malpractice action. WYO. STAT. § 1-1-109 (1997). *See also Jackson State Bank v. King* , 844 p.2d 1093 (Wyo. 1993)(applying the comparative negligence statute to actions based in negligence only).