

WHAT  
JUDGES NEED  
TO KNOW  
ABOUT LEGAL  
MALPRACTICE

**WHAT JUDGES NEED TO KNOW ABOUT  
LEGAL MALPRACTICE  
By Linley Jones**

**OUTLINE OF PRESENTATION**

- I. Introduction**
  - A. The Players in a Legal Malpractice Case**
  - B. Legal Malpractice & Professional Negligence, Generally**
  - C. SOL in Legal Malpractice Cases**
  - D. Tolling of SOL for Fraudulent Concealment**
- II. Common Claims in Legal Malpractice Cases**
  - A. Professional Negligence v. Breach Of Fiduciary Duty**
  - B. Breach of Contract**
  - C. Negligent Misrepresentation**
  - D. Fraud**
  - E. Intentional Infliction of Emotional Distress**
- III. Issues Unique to Legal Malpractice Cases**
  - A. The Case-Within-A-Case**
  - B. Standards and Scope of Expert Testimony**
  - C. Reasons for Staying a Legal Malpractice Case**
    - 1. The SOL/damages conundrum**
    - 2. Declaratory judgment actions**
  - D. Settling the Underlying Claim –Duty to Mitigate v. Severing Proximate Cause**

- E. The Defense of Judgmental Immunity—Its Application and Limitations
- F. The Defense of “Unsettled Law”
- IV. Damages in a Legal Malpractice Case
  - A. Compensatory Damages in a Legal Malpractice Case Arising from Litigation: The Case-Within-A-Case
  - B. Proving Collectibility in the Underlying Action
  - C. Other Damages in Legal Malpractice Cases
  - D. Punitive Damages in Legal Malpractice Cases
  - E. Attorney’s Fees
- V. The Crisis of Uninsured Lawyers
- VI. Conclusion