Malpractice Claim Assignability Continues To Divide Courts

By **Christopher Blazejewski** (February 10, 2026)

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State courts remain divided on whether legal malpractice claims can be assigned to third parties. Most jurisdictions prohibit assignment of legal malpractice claims on public policy grounds, but some states allow them, occasionally under limited circumstances.

Recent decisions from Idaho, Massachusetts, Iowa, Nevada, Texas and South Dakota highlight these divergent approaches.

This article begins with the Idaho Supreme Court's Nov. 19 ruling in Acorn Investments LLC v. Elsaesser and examines how different jurisdictions balance competing policy interests in determining whether legal malpractice claims can be assigned.[1]

When a legal malpractice claim is assigned, the client transfers the right to sue their attorney to a third party — in many cases, to the client's former adversary in underlying litigation. In practice, this transfer may occur through settlement agreements, creditor collection procedures or corporate transactions.

Once assigned, the assignee controls the litigation and receives any financial recovery against the lawyer or law firm. Courts recognize that such a transfer may implicate public policy concerns. These concerns include:

- Stripping clients of control over whether to sue their attorneys;
- Eroding attorney-client privilege by allowing third parties to compel disclosure of confidential communications;
- Undermining attorneys' duty of loyalty by creating conflicts between zealous advocacy and self-protection;
- Reducing legal claims to bargaining chips that financially distressed clients can trade for better settlements; and
- Threatening access to justice by making attorneys reluctant to represent underinsured defendants whose professional liability claims might later be acquired by judgment creditors.

Acorn Investments carves a narrow commercial transaction exception.

Even in states that recognize exceptions to the general rule prohibiting assignment of legal malpractice claims, many of those states construe the exceptions narrowly. The Idaho Supreme Court's Nov. 19 Acorn Investments decision proves the point.

In that case, Acorn received an assignment of legal malpractice claims against attorney Ford Elsaesser as part of a settlement resolving separate litigation, Acorn Investments LLC v. Patrick in Idaho's First Judicial State District Court. After the original clients assigned their claims to it, Acorn then sued the attorney and his law firm, Elsaesser Anderson Chtd., asserting the assigned claims.

The Idaho Supreme Court had previously recognized a narrow exception for allowing the assignment of legal malpractice claims in its 2013 decision in St. Luke's Magic Valley Regional Medical Center v. Luciani.[2] There, the court ruled that a legal malpractice claim can be assigned when it forms "one component of a sale that transferred the bulk" of a business entity's assets and liabilities.

In Acorn Investments, the Idaho Supreme Court firmly rejected Acorn's attempt to expand this exception. The settlement agreement at issue in the case merely transferred claims against the attorney without any corresponding transfer of business assets, liabilities or ongoing obligations.

Where the assignors continued operating as separate, going-concern entities, the court found that the assignment "was an 'isolated purchase' [that] was not 'one component of a sale that transferred the bulk'" of the entities' assets and liabilities. That distinction proved critical to the court's analysis.

Acorn tried two public policy arguments to salvage the assignment. First, it argued that prohibiting assignment would allow attorneys to "entirely escape liability" for legal malpractice, particularly when corporate restructuring eliminates the original client entity. The court acknowledged this concern, but found that the assignors remained active and capable of pursuing their own legal malpractice claims.

Second, Acorn proposed what amounted to a "bad lawyer" exception, arguing the assignment should be allowed when attorneys allegedly violate the Idaho Rules of Professional Conduct. The court flatly rejected this idea, stating, "Violating ethical rules, without more, is not a sufficient ground to assign a claim for legal malpractice."

The court ruled that the proper remedy for rules violations is a complaint to the state bar, not expanding assignability of malpractice claims. Such an expansion "would swallow the exception, as ostensibly, any legal malpractice claim will include allegations that the attorney violated the Rules of Professional Conduct."

In crafting the commercial transaction exception in St. Luke's and then limiting it in Acorn Investments, the court aimed to address the practical realities of corporate mergers and acquisitions, not to create a mechanism for transferring stand-alone legal malpractice claims.

This example shows that even in jurisdictions that permit assignment, the circumstances allowing it may remain tightly circumscribed.

Massachusetts generally permits assignment of legal malpractice claims.

Massachusetts takes a different approach, generally permitting legal malpractice claim assignments. The Massachusetts Appeals Court's 2022 decision in Comerica Bank & Trust NA v. Brown & Rosen LLC exemplifies the commonwealth's distinctive stance.[3]

The case involved legal malpractice claims against an attorney and his firm — Christopher L. Brown at Brown & Rosen LLC — arising from their representation in Minnesota litigation concerning Prince's music catalog, Paisley Park Enterprises Inc. v. Boxill in the U.S. District Court for the District of Minnesota.

After the litigation settled, the assignment agreement, executed in Minnesota, transferred

the malpractice claims to the plaintiffs in the underlying Minnesota action. When Comerica, the personal representative of Prince's estate, sued the attorney in Suffolk County Superior Court of Massachusetts, the attorney moved to dismiss, arguing that Minnesota law, which prohibits such assignments, should control.

On appeal, the Massachusetts Appeals Court held that Massachusetts law controlled under choice-of-law principles because Massachusetts had "the most significant relationship to the assignability of the legal malpractice claim."

Drawing on Massachusetts Supreme Judicial Court precedent in 1999's New Hampshire Insurance Co. v. McCann[4] and 2005's Otis v. Arbella Mutual Insurance Co.,[5] the court explained that Massachusetts "generally permits the assignment of legal malpractice claims 'unless some clear rule of law or professional responsibility, or some matter of public policy, necessitates that the assignment should not be enforced.'"

In McCann, the Supreme Judicial Court rejected the idea that fear of future malpractice claims would discourage zealous representation, calling that concern farfetched and stating that assignment may "provide[] an efficient and reasonable method of disposing of two related legal problems."

The Massachusetts court also rejected the argument that assigning malpractice claims to former adversaries undermines confidence in the legal profession. The Supreme Judicial Court in McCann reasoned that the "fact that an attorney might be called on to defend against an assigned malpractice claim does not always mean that the attorney's former adversary will compromise the strength of his underlying claim."

The court stated that "allowing assignment ... promotes transparency and accountability within the legal profession and enables clients to efficiently realize the value of those claims."

Unlike most other jurisdictions, Massachusetts generally does not treat legal malpractice claims as inherently too personal or confidential to assign.

Most states generally prohibit assignment of legal malpractice claims.

While Massachusetts generally permits assignment, and Idaho and other states permit it under specific circumstances, most jurisdictions prohibit it.

By way of example, while California generally allows for the assignability of claims, it prohibits the assignment of legal malpractice claims. As California's Fourth Appellate District noted in its 1994 decision in Fireman's Fund Insurance Co. v. McDonald Hecht & Solberg, "California courts have consistently held legal malpractice claims are nonassignable to protect the integrity of the uniquely personal and confidential attorney-client relationship."[6]

Decisions in recent years from Iowa, Nevada, Texas and South Dakota demonstrate the developing landscape on nonassignability.

The Iowa Supreme Court's 2020 decision in Gray v. Oliver provides a comprehensive analysis on the issue of assignability to litigation adversaries.[7] There, the court identified seven policy rationales for prohibiting involuntary assignments:

1. The decision to sue is "peculiarly vested in the client."

2. Assignment threatens the attorney-client relationship's integrity.

3. It "erodes the attorney-client privilege" because clients lose control over confidential disclosures.

4. It undermines the attorney's duty of loyalty.

5. It damages public confidence by creating shameless role reversals.

6. It "restricts access to legal services" by making attorneys reluctant to represent underinsured clients.

7. It would create a commercial market for claims by economic bidders "who have never had a professional relationship with the attorney."

The court rejected constitutional challenges, holding that the prohibition defines the property right's extent rather than depriving anyone of property.

The Nevada Supreme Court's 2022 decision in Beavor v. Tomsheck is an example of a jurisdiction extending the prohibition on assignment to the proceeds of legal malpractice.[8] The court held that assigning proceeds creates the same policy problems as assigning the claim because "the adversary will have an interest in any recovery."

The court expressed concern that such an arrangement creates opportunities for collusion and turns claims into commodities. Nevada held, however, that invalid assignments do not extinguish the client's right to pursue the claim.

In Klevenhagen v. Hilburn, the Texas Court of Appeals for the 14th District held that same year that the prohibition against assignment extends beyond voluntary assignment to involuntary turnover through creditor collection procedures.[9]

The court held that turnover "would allow the substitution of a claim against the judgment debtor's litigation or appellate counsel in the place of a claim against a defendant with insufficient insurance," placing attorneys' "own assets and insurance ... 'within reach of a plaintiff who otherwise would have an uncollectible judgment.'"

Echoing one of the public policy concerns expressed in the Iowa Supreme Court's Gray decision, the court observed that this "would make lawyers reluctant — and perhaps unwilling — to represent defendants with inadequate insurance and assets."

In Thompson v. Harrie, the U.S. Court of Appeals for the Eighth Circuit in 2023 predicted South Dakota would join the majority in prohibiting the assignment of legal malpractice claims.[10] Noting South Dakota's strict privity rule and its prohibition on personal injury claim assignments, the court reasoned that "assignment of a legal malpractice claim has the effect of transferring control of the claim," implicating concerns about confidentiality, loyalty and commercialization.

Conclusion

The assignability of legal malpractice claims divides courts across the country, and for defense attorneys, these decisions provide some guidance.

In most jurisdictions, assignments remain vulnerable to challenge on well-established public policy grounds. In other, more permissive jurisdictions, attorneys must recognize that clients may be able to assign malpractice claims, sometimes generally and sometimes under limited exceptions.

The decisions above provide the essential framework for identifying when and how to challenge any attempted assignment of a legal malpractice claim.

When facing an assigned claim, start with the basics: Is this a majority-rule state — where assignment is flatly prohibited — or one of the rare jurisdictions that allows it? If multiple states are in play, the choice-of-law battle may determine the outcome.

And remember that even states recognizing a commercial transaction exception generally limit the exception to genuine business mergers involving comprehensive transfers of assets and liabilities, not isolated transfers of legal malpractice claims.

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[1] Acorn Investments, LLC v. Elsaesser, --- P.3d ---, 2025 WL 3223943 (November 19, 2025).

[2] St. Luke's Magic Valley Regional Medical Center v. Luciani, 293 P.3d 661 (Idaho 2013).

[3] Comerica Bank & Trust, N.A. v. Brown & Rosen, LLC, 101 Mass. App. Ct. 574 (2022).

[4] New Hampshire Ins. Co. v. McCann, 429 Mass. 202 (1999).

[5] Otis v. Arbella Mut. Ins. Co., 443 Mass. 634 (2005).

[6] Fireman's Fund Ins. Co. v. McDonald, Hecht & Solberg, 30 Cal.App.4th 1373, 1383 (1994).

[7] Gray v. Oliver, 943 N.W.2d 617 (Iowa 2020).

[8] Beavor v. Tomsheck, 138 Nev. 734 (2022).

[9] Klevenhagen v. Hilburn, 682 S.W.3d 279 (2022).

[10] Thompson v. Harrie, 59 F.4th 923 (2023).