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## Legal Malpractice Boosts Klein & Wilson in NB

### Lawyers Explain How To Find Good Law Firms

By PETER J. BRENNAN

How do you know if you should sue your lawyer for legal malpractice?

“Ask these two questions,” said **Gerald A. Klein**, a partner at **Klein & Wilson**, a Newport Beach-based firm that’s taking on a growing number of legal malpractice lawsuits.

“One, am I going to win or lose, and why? If they cannot answer that question two months into the case, then they are clueless,” Klein said. “You cannot predict every outcome, but you can give a percentage of chance.

“Two, how much is this going to cost? If they have no clue, they are clueless.”

**Mark B. Wilson**, Klein’s partner since 1994, cited an example of a publicly traded company that paid a legal firm \$10 million in fees and got “a horrendous result” because of unprepared lawyers, and the company might feel obligated to shareholders, so it sues.

“Clients are more willing to sue their law firms than ever before, including big companies and big firms,” Wilson said. “You’re seeing some of the name brands find themselves as defendants in legal malpractice lawsuits.”

The pair was selected in 2016 as two of America’s Top 100 Attorneys, an honor accorded to only 100 lawyers from each state.

In December, Klein was inducted into the American College of Trial Lawyers, an invitation-only fellowship of trial lawyers in the U.S.

#### Trial Lawyers

Klein, 62, began his career as a prosecutor in Ventura County, where he handled 16 jury trials in four months because “the state of California was willing to teach me how to be a trial lawyer.”

He eventually migrated to a large corporate firm, then moved to a boutique. He moved to Orange County in 1986.

“I like Orange County because members of the bar know each other and are much more collegial” than in Los Angeles.

Wilson, 54, was also a prosecutor who handled many cases before Klein hired him in 1989. They decided to remain a two-lawyer



Klein & Wilson partners Mark Wilson, Michael LeBoff and Gerald Klein say preparation has helped them win 90% of their cases that have gone to trial.

firm for many years because both are “control freaks,” Klein said.

They’ve represented a number of well-known entities over the years, including **Home Depot**, **Behr Paint Corp.**, Mission Viejo Country Club and the city of Placentia.

Klein’s favorite case took place in 1992 when he savored a \$26 million victory for a client who was defrauded by a cable company via an investment.

“This particular company believed a dollar stolen was a dollar earned,” Klein said.

In the case, he developed a strategy of using animated videos in court appearances to help juries see the facts in his clients’ favor. The firm has since used animation in other court cases, including red herrings to illustrate misdirections; stringed puppets to demonstrate manipulation; and the manipulated nose of an opposing lawyer, getting longer with each lie.

“Juries now expect to see graphics,” Klein said. “Juries want to know which story to believe.”

#### I Scream, You Scream

Wilson fondly remembers defending a family member who started a company that eventually became Ontario-based ice cream giant **Tropicale Foods Inc.**, which makes popular Helados Mexico ice cream. He lost a jury trial in which the jury favored his opponent due to “localism,” Wilson said.

“The case was in Modesto, and I was from here. I got home-towned.”

He said his client, however, prevailed in the state Court of Appeals, which not only overturned the verdict but also gave the client a complete victory, meaning a retrial

was unnecessary.

“My client now has the most successful ice cream business in the United States,” he said.

About two years ago, the partners bought a building for their office down the street from the Superior courthouse in Newport Beach. They wouldn’t reveal the firm’s annual billings.

#### Prep Work

They’ve expanded to seven lawyers and are looking for “a damn good one” to hire, Klein said. The attorney will probably be young because those are easier to train in the firm’s methodology, which they call “litigation analysis memo,” or LAM.

The pair said the preparation has helped them win about 90% of their 50 cases that have gone to trial.

The analysis includes a detailed summary, a developed discovery plan, potential experts, an expense budget and possible damages. They say it can help keep depositions to a few hours rather than the days that other lawyers might take.

“Once the analysis is complete, the client knows the strengths and the weaknesses and the chances for success,” Wilson said. “We identify the cases we are going to lose and get them settled. The cases that we can’t settle, we are very prepared. We tend to win because we know what needs to be done.”

It’s difficult to believe other legal firms don’t do as much initial legwork. Klein said they have the proof.

“We know this because if you do as much legal malpractice as we do, we see their files.” ■