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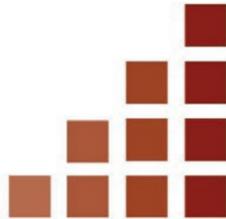


 **KLEIN & WILSON**
BUSINESS TRIAL LAWYERS
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My Lawyer Screwed Up!!! Can I Sue for Legal Malpractice?

Like other professions, lawyers sometimes make mistakes and those mistakes may have substantial consequences. So, when does an attorney's mistake justify a legal malpractice lawsuit? Ultimately, a viable legal malpractice claim will turn on the facts of the case, but here are five questions to ask if considering a legal malpractice lawsuit.

1. Was it my attorney who erred? With complex corporate structures, identifying the lawyer's clients is not always easy. If the attorney represents the corporation, does she also represent the shareholders or subsidiaries? Does the attorney represent the partnership, the partners, or both? If the attorney represents one spouse, does she represent the other spouse? If you cannot establish the attorney represented you (and owed you a duty of care), then your malpractice claim will not get far.

2. Was the attorney negligent? Clients often review their attorney's actions after the damage is done. But to determine negligence, you must put yourself in the attorney's shoes when the "mistake" happened. A decision reasonable at the time may look foolhardy with the benefit of hindsight. Nor does the law does require every attorney be Clarence Darrow or Perry Mason. Attorneys must only act consistently with the community standard of care.

3. Did the attorney cause damage? This is often where the rubber meets the road in legal malpractice cases. Even if an attorney makes an inexcusable error, that error must cause damages. The classic example of negligence is the attorney that failed to file a lawsuit before the statute of limitations expired. To prevail in a legal malpractice claim, you must prove to a legal certainty you would have won the case if the attorney timely filed the complaint. You must also prove how much you would have won and how much you would have recovered.

4. How much money did you lose? Legal malpractice cases are expensive because you are litigating two cases: the malpractice case and the underlying matter, (*i.e.*, a case-within-the-case). Before filing a legal malpractice action, be sure the economics of the case justify the effort. In addition to legal fees, you will almost always need an expert to establish the attorney's conduct fell below the standard of care. Most cases also require a damages expert. Those experts can cost a lot of money.

5. When did the damage occur? The statute of limitations for legal malpractice claims may be as short as one year from when the attorney's representation ended. This is a trap for the unwary. If you suspect malpractice, seek legal advice immediately.

We are trial attorneys. If you have a business litigation or attorney malpractice matter, call us at (949) 631-3300.

Michael S. LeBoff

Mr. LeBoff has been a business trial lawyer in Orange County for almost 20 years, handling and winning trials, arbitrations, and high-stakes disputes. Mr. LeBoff represents clients of all sizes in a wide variety of business cases, including shareholder, partnership, and joint venture disputes, trade secrets, fraud, breach of contract, business torts, real estate, and legal malpractice actions. Mr. LeBoff will serve as Chair of the Orange County Bar Association's Business Litigation Section in 2019.

