



## My Legal Life

# Steven Glickman

## The Dangers of Legal Malpractice

Though most lawyers strive for excellence in their work, there is always a chance that an aspect of a case may be mismanaged, often to the client's detriment. This is where claims of legal malpractice arise. In this article, Steven Glickman offers his insights on what constitutes legal malpractice and the many ways in which it may arise during a case.

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### What is defined as legal malpractice?

As the name implies, legal malpractice is a type of professional negligence committed by a lawyer. It occurs when a lawyer fails to provide competent and diligent representation to a client, resulting in harm to the client. To prosecute a successful legal malpractice claim against their lawyer, a client must show not only that the lawyer was negligent, but also that they would have obtained a better result if their lawyer had acted as a reasonably careful attorney.

### What forms can legal malpractice take?

Legal malpractice can take many forms, including:

- Failure to file a lawsuit within the statute of limitations
- Failure to investigate a case thoroughly or to uncover crucial evidence
- Failure to advise a client of their legal rights
- Failure to communicate with a client
- Failure to represent a client zealously
- Failure to prepare thoroughly

- Failure to appear in court
- Missed deadlines
- Conflict of interest with the client
- Lacking the necessary knowledge or expertise to handle a case effectively
- Misleading a client to induce them to accept an unfavorable settlement
- Engaging in dishonesty, breaching client confidentiality, or other unethical behaviors

### From what you have observed in a professional capacity, what are the most common forms of such malpractice that you typically encounter?

In my professional capacity as a lawyer, I have seen the following forms of legal malpractice most commonly:

- Failure to file a lawsuit within the statute of limitations
- Failure to investigate a case thoroughly before filing suit
- Failure to advise a client of their legal rights or to communicate with a client
- Failure to appear in court
- Failure to respond appropriately to an opponent's legal filings
- Missed deadlines

## Can you provide some examples of ethical violations by a lawyer that may support a legal malpractice claim?

Lawyers play a crucial role in counseling their clients and advocating for them in court. In doing so, lawyers have ethical duties that they must uphold. The State Bar of California and the American Bar Association have established rules that govern how lawyers perform their duties competently.

Most attorneys follow these rules, but some fail in one way or another due to human error or recklessness. The following are three examples of ethics violations by a lawyer.

### 1. Lack of communication

Your lawyer should communicate with you in depth. They should inform you about your case and get your consent for crucial decisions. You should also be informed about how they plan to accomplish your objectives. If you have a reasonable request, the lawyer should comply with it.

It is inappropriate for an attorney to withhold information or fail to provide thorough details about an issue. This makes it hard for you to make informed decisions.

### 2. Exaggerating or lying

Of course, new lawyers are always coming into the market. While experience matters in the industry, new advocates are also knowledgeable. However, some may lie or exaggerate their experience to win your business. Even though using false or misleading statements may seem harmless, it can be an ethics violation. You should be given all the information you need that allows you to choose a lawyer with care.

### 3. Overbilling

Fee agreements may be on a fixed or contingency basis. Regardless of the payment structure, the attorney

fees must not be unreasonably high. Overbilling, changing fees without a discussion, or failing to disclose details about the fee arrangement are ethics violations.

Ethics violations in the legal field are serious and may create a basis for legal malpractice. Understanding these violations helps you to identify them and act suitably.

## What are some of the common themes you see underlying legal malpractice cases?

The majority of lawyers are competent at their jobs and will give you adequate representation. However, the reality is that lawyers are not immune from making errors. What causes lawyers to make mistakes? The two main reasons are:

### 1. Lack of experience and training

Any lawyer that you hire owes you a duty of care. This means that they must act upon your instructions and in your best interests.

Your case may be complex, but the firm you have approached may simply not have the expertise that you require. The firm wants your business and therefore, may act like they are well-equipped to handle

your case. Dishonesty like this may significantly disadvantage you when your case is heard in court.

### 2. Being overworked

In any area of law, there is never a

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shortage of cases. The more cases a firm takes on, the more profitable the firm becomes.

This is all well and good, but it should never be at the expense of good service to a client. An overworked lawyer might make errors in law because they are so rushed. They might even miss crucial deadlines that grind your case to a halt.

## In what ways can legal malpractice compromise a client's case?

Legal malpractice can compromise a client's case in many ways, including:

- Losing a case that could have been won
- Losing the chance to file a case because the statute of limitations has passed

- Receiving a smaller settlement than what was deserved
- Having to pay more legal fees than necessary
- Having to go through a more drawn out and expensive legal process

## How can an affected client go about proving that damages and wrongs were suffered as a result of their legal counsel's malpractice?

In order to prove legal malpractice, a client must show that:

- The lawyer had a duty to the client
- The lawyer breached that duty
- The client was harmed as a result of the breach
- The harm was caused by the lawyer's negligence

Keep in mind that the client was not harmed by the lawyer's conduct if the same harm would have occurred to the client anyway, without the lawyer's conduct. A client has to show that they would have obtained a better result if their lawyer had acted as a reasonably careful attorney.

## How does the concept of 'collectability' work?

'Collectability' refers to the ability to have obtained a 'collectable' judgment in the underlying matter. Unless you can show you would have been able to collect on your claim in the underlying case, you will not have a viable malpractice claim.

Here is an example: imagine the underlying claim is a rear-end car crash in which the injured driver was paralyzed for life. Then, the lawyer representing the paralyzed driver failed to timely file the personal injury claim. What is the value of the legal malpractice case?

Answer: it depends on the insurance and assets the at fault driver had. For example, if the at-fault driver only had the minimum insurance limits (\$15,000 per person) and no assets, the value of the case – even with a severe injury – is only \$15,000.

Thus, it is extremely important to analyze the collectability issue along with all other significant issues in a legal malpractice case.

## What would your first piece of advice be for an individual or organization that feels they have been the victim of legal malpractice?

If you believe you have been the victim of legal malpractice, your first step should be to consult with another lawyer who can help you assess your case and



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determine if you have a valid claim. If you do have a valid claim, the lawyer can help you file a lawsuit against the negligent lawyer.

A client can help get their case ready for review by gathering all relevant documents, correspondence, and records related to their lawyer's legal representation. However, should the client not have access to all their files, they may still consult with a legal malpractice specialist. If they decide to move forward with a legal malpractice claim, they can obtain their full legal files through the discovery process.

## How does legal malpractice insurance work and how does that impact your analysis of a legal malpractice case?

It is not a secret that physicians generally invest in medical malpractice insurance to safeguard their personal liability if a patient sues them for causing harm. However, few people are aware that lawyers regularly invest in the same kind of malpractice coverage.

Legal malpractice insurance is a financial investment that allows attorneys to cover losses sustained by clients who have been wronged due to allegedly substandard approaches to professional representation.

Individuals and companies invest in professional insurance coverage for two primary reasons. First, they believe that they are at risk of incurring a specific kind of liability. Second, they expect that someone may try to hold them accountable for alleged wrongdoing.

Lawyers, like physicians, understand that because they are human, it is inevitable that they will make mistakes. If a lawyer's mistake leads to a client's harm, a lawyer who is covered by malpractice insurance will be less likely to incur personal liability when covering the losses suffered by the wronged party. Essentially, the very fact that most – but not all – lawyers carry malpractice insurance illustrates that malpractice happens and that lawyers expect to be held accountable if they misstep in ways that cause harm.

Generally, without insurance covering the defendant lawyer, the malpractice case is not economically viable. If there is insurance, it is what is known as a 'burning limits' policy, where the cost of defense 'burns down' the total policy limits. This creates a different dynamic than a typical personal injury case where the insurance company may choose to spend unlimited funds on defending the case without those expenditures impacting the amount of coverage to pay the claim. In a 'burning limits' policy, the cost of defense comes out of the policy limit thereby eroding the amount available to settle the claim or satisfy a judgment on behalf of the insured.

## Do you have any other comments to make about legal malpractice?

Legal malpractice is a serious problem that can significantly impact a client's life. Establishing effective mechanisms for preventing, identifying, and addressing legal malpractice is crucial for maintaining



the integrity and trustworthiness of the legal profession. Ongoing professional development, ethical adherence, and clear communication are essential in mitigating the risk of making an error that amounts to legal malpractice.

If you believe you have been the victim of legal malpractice, it is important to seek legal help as soon as possible by talking to a lawyer experienced in bringing legal malpractice claims. A lawyer can help you assess your case and determine if you have a valid claim. If you do have a valid claim, the lawyer can help you file a lawsuit against the negligent lawyer and seek compensation for your damages.

Here are some additional things to keep in mind about legal malpractice:

- The statute of limitations for legal malpractice claims varies from state to state. In some states, the statute of limitations is as short as one year. This means that you may only have a limited amount of time to file a lawsuit after you discover the malpractice.
- Legal malpractice cases can be complex and expensive to litigate. If you are considering filing a lawsuit, it is important to speak with an experienced lawyer who can help you assess your case and determine if it is worth pursuing.
- Even if you are successful in winning a legal malpractice lawsuit, you may not be able to recover all of your damages.

The amount of damages you can recover will depend on the facts of your case and the laws of your state.

- Oftentimes an attorney accused of legal malpractice will be defended by their malpractice insurer. The specifics of an attorney's legal malpractice insurance policy can affect the client's ultimate recovery in their claim against their lawyer. Understanding the policy and its effect on the client's case are important elements of a claim that are best handled by an experienced legal malpractice attorney.



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## Please tell us a little about your journey into law.

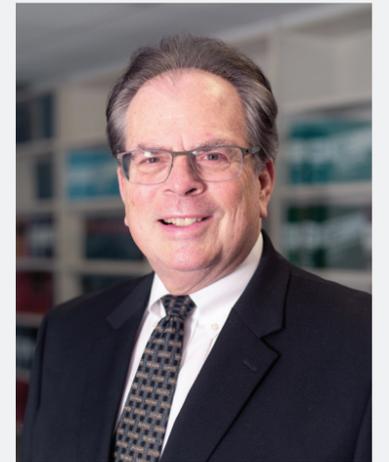
I was born the year my father graduated UCLA law school and was no doubt destined to follow in my father's legal footsteps. Gracing my baby book photo album is a picture of me holding a gavel with a UCLA pennant in the background. When I graduated from UCLA Law School in 1982, I was honoured with a special award for "excellence in preparation for trial practice of the law".

Since trying my first case as a lawyer in 1984, I have enjoyed every day. I usually compare our practice to the famous opening of Forrest Gump, when Forrest is sitting on the bench explaining to the other waiting bus passenger, that life is like a box of chocolates. Our practice is like that – each case is a chocolate taken from that magical box.

One exciting thing about legal malpractice work: you get to learn all areas of law outside of what you otherwise might focus on. For example, back in law school, I never thought I would need to use my knowledge of easements in practice. Well, sure enough, I have now had several cases where easement law was the basic area involved in the case.

## Can you share anything about your plans for career development in the remainder of 2023 and beyond?

We are fortunate to have added Morgan Metzger to our team. I met Morgan when she was on the other side of me on a case (she was a defence lawyer for 13 years) and was very impressed with her skills. I told her I would hire her when the partner she was working with (a friend of mine) retired. He did, and we hired her. She has shown incredible promise now that she is working on the plaintiff side and is a great addition to our team.



**Steven Glickman** is a principal at Glickman & Glickman, ALC, where he and his father David R. Glickman (1932-2020) practiced as a trial team for decades. Glickman & Glickman today remains one of California's premiere boutique plaintiff's-side law firms, with offices in Los Angeles and San Francisco. Steven has been recognized both locally and nationally for his expertise in and contributions to the field of professional negligence liability, specifically legal malpractice and medical malpractice.

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