



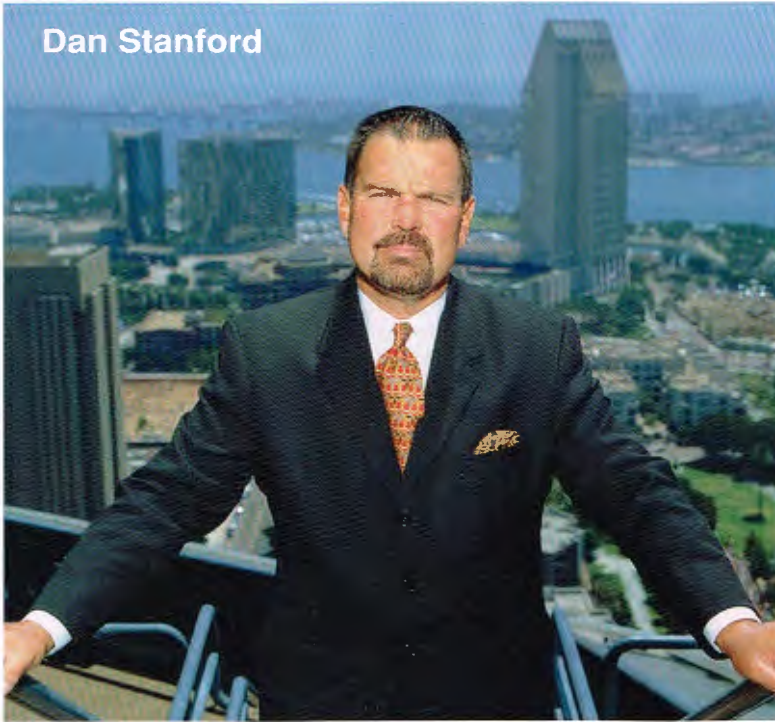
BEST LAWYERS

IN SAN DIEGO

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WHEN ATTORNEYS SUE ATTORNEYS

Dan Stanford



Legal malpractice pits lawyers against lawyers when clients get mad or think they've been had

BY CATHY CLARK

The 83-year-old La Jolla woman signed on the dotted line. She'd been persuaded to hand over the deed to her house to a lawyer. Then he evicted her. Although what the lawyer did wasn't technically against any law, the woman's family decided the lawyer had taken advantage of his client—had violated his fiduciary duty. They hired a legal-malpractice attorney to sue the guy—in court, before a jury. They won. She got her house back and a cash settlement.

Legal-malpractice gunslingers could be seen as the ultimate outsiders in an industry often accused of being way too protective of its own.

"Legal malpractice remains a small field," says Dan Stanford, one of San Diego's handful of specialists in that arena. He switched to the field full-time in the early 1990s because "after 15 years at large firms, not being able to refer serious malpractice to other lawyers, I saw the need for someone with trial experience to go into the field. Very few plaintiffs' lawyers are interested in suing other lawyers."

The most common cause of legal malpractice, according to Stanford, is conflict of interest, "where one lawyer tries to represent multiple parties without

knowing the rules." That usually involves a business or corporation where the company lawyer winds up representing individuals. "When all goes well, it's no problem," Stanford says. "But when things go bad or the business fails, and people end up in disputes, the attorney may be caught in the middle—not because he or she is a bad lawyer, but because they just didn't want to turn down the work."

According to legal experts, lawyers can be liable (owe you money) for legal malpractice over three major issues: negligence, breach of fiduciary duty and breach of contract. It can be a simple matter of not returning a client's phone calls soon enough or as complex as working outside the lawyer's areas of expertise.

But you can't sue your lawyer simply because you didn't win in court or things didn't work out the way you'd hoped. "I must get three or four calls a week," Stanford says, about cases that are weak or questionable. "I believe most lawyers are honest and hardworking. I'm not a crusader or a Don Quixote, so we are very selective. I handle cases where good lawyers in prominent firms make serious mistakes. It's my job to make sure my clients don't end up paying for those mistakes."

lawyers versus lawyers

Oddly enough, most of the cases Stanford and other legal-malpractice plaintiffs' specialists get are referrals from other attorneys in prominent firms. Many of San Diego's most prestigious law firms do not allow their attorneys to sue other attorneys for malpractice. But it's a measure of the growing number of lawsuits initiated by unhappy clients that lawyers these days are advised, if not required, to carry malpractice insurance. (Florida is the only state where it's required of all lawyers.)

"California's rules for professional corporations and limited-liability partnerships do require insurance," says Thomas Sharkey, listed in the 2001-2002 Woodward/White publication *The Best Lawyers in America* as one of San Diego's best legal-malpractice defense attorneys. "But solo practitioners do not have to have insurance, although they should—the risk is too great [of being sued]."

Sharkey's legal-malpractice work is to defend lawyers, not sue them. He says the key to legal malpractice is proving that whatever negligence is being alleged has actually damaged someone. "Sometimes there may be negligence, but the result may have been the same in any event," he says. "There has to be a legal connection made between the negligence and the damages."

Twenty-five years ago, it was almost unheard of for a client to sue an attorney. According to a 1990-1995 American Bar Association study, nearly a quarter of the growing malpractice claims were made against personal-injury

plaintiff attorneys, nearly 15 percent against lawyers involved in real estate transactions, 11 percent against those in business transactions and more than 9 percent against family-law practitioners. Personal-injury defense lawyers were sued in more than 3 percent of the cases.

One reason for the insurance trend, even among solo practitioners, may be that a casual cocktail-party discussion can get a lawyer in trouble. Discussing whether someone has a viable case can be considered establishing a lawyer-client relationship, especially if the lawyer promises to get back to that person. According to Legalinfo.com, there may be legal-malpractice liability if the lawyer never does make that phone call and the "client" loses the opportunity to recover damages he or she might have won, had the lawyer acted in time.

Other areas where lawyers find themselves on the malpractice hook involve how they run their practices. They may be overbooked, they may not keep good records, they may delegate work to people without supervising them, they may be too quick to estimate fees, or they may not provide clear enough fee agreements to their clients.

The San Diego County Bar Association has a formal arbitration program to try to settle fee disputes (for information, call 619-231-0781). But arguments over money often end up in lawsuits between attorneys and their clients. Attorneys sue for money they say they're owed — and the clients countersue for legal malpractice.

"It's tough enough to prosecute legal malpractice in front of judges who are all former lawyers, but it's much more difficult to go to arbitration. There, everybody involved is a lawyer," says Stanford, who only represents plaintiffs in legal-malpractice suits. "When you file a legal-malpractice case in Superior Court, you have the ultimate protection of 12 members of the jury, who are not lawyers and whose sympathies generally rest with the clients."

Why not just file a complaint against a negligent lawyer with the State Bar Association? After all, the organization metes out discipline that can include disbarment and thus holds the professional keys to a lawyer's practice. "It's not the same [as a legal-malpractice suit]," explains Sharkey. "Bar discipline has nothing to do with a client who's been legitimately hurt by the conduct of a lawyer. The action is separate, and the outcome may not even be admissible in a civil legal malpractice suit." Also, the association cannot award damages.

You'd think legal-malpractice lawyers would be the most unpopular folks at any annual bar association gathering. But Stanford says it's not so, especially since he and most of the others in San Diego are longtime locals who know the legal lay of the land and the people they're representing—and suing.

"Most lawyers accept and respect what we do and the impact we have on the system," Stanford says. "San Diego remains a small legal community in many respects, so anyone who hasn't practiced here for 25 years would have a difficult time doing what we do." ■