



# Perlmutter & Schuelke, LLP

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## Practice Areas

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  - ☒ Who May Sue An Attorney?

## Speak to an Attorney

Please enter the text in the box below:

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## What Our Clients Say

Mark and Brooks worked with me and my family for over 3 years on both a business litigation case and an automobile collision case. Both of those resulted in successful settlements for our family. Not only were they professional, but they helped me in a very personal way through the stressful process of

## Who May Sue an Attorney?

Three categories of people may sue an attorney. First, a person may sue an attorney when there is an attorney-client relationship between the parties. To establish an attorney-client relationship, the client must show that the attorney agreed to represent the client or provide advice. If there is no explicit contract between an attorney or a client, the client may still prove the attorney agreed to represent him by showing the attorneys' conduct. A client need not pay the attorney to establish an attorney-client relationship.

Second, even if the attorney never agreed to represent a party, the attorney may still be liable if he fails to advise that he is not representing the party where the circumstances lead the party to believe the attorney is representing him. For example, in one case, a husband being pursued by the IRS hired a criminal attorney. The attorney hired an accountant who prepared tax returns for the husband and the wife. The wife went to the attorneys' office to sign the tax returns. The husband and wife later divorced and the IRS foreclosed on the wife's house. The wife sued the criminal attorney. The court found while the attorney never agreed to represent the wife, the attorney could still be held liable for failing to tell the wife he did not represent her.

These cases also arise in the business context. It is not unusual for a business entity, such as a partnership or corporation, to hire an attorney. In those situations, the attorney only represents the entity. However, the attorney is often required to speak to individuals involved with the businesses, such as partners, employees or officers. In such a situation, the individuals may believe that the attorney is acting on their behalf and they may have claims against the attorney unless the attorney informs the individuals that he is not representing them.

Third, an attorney may be held liable for making a false representation of fact to a non-client if the non-client justifiably relies on the representation and the attorney knows that the non-client will rely on the information. These cases most often arise in cases where attorneys are asked to provide opinion letters. For example, in one leading case, a company sought a bank loan. Before approving the loan, the bank required the company to submit a title opinion stating that it owned several oil wells used to secure the loan. The company hired an attorney, who submitted a title opinion that the company owned the rights to the wells. At the time of the work, the attorney knew the opinion was made for the purposes of securing the loan. When the company defaulted on the loan, it discovered that the company did not own the wells and the title opinion from the attorney was incorrect. The bank was later allowed to sue the attorney for negligent misrepresentation even though no attorney-client relationship existed between the bank and that attorney.

The general rule is that a party in a lawsuit may not have a negligent misrepresentation claim against the other party's attorney because the party would not be justified in relying on the advice of an adversary. There are, however, notable exceptions. In the leading case on the subject, a borrower and a savings and loan entered into a settlement agreement to end a lawsuit. As part of the settlement, the borrower required the attorney for the savings and loan to sign an agreement saying that the settlement had been approved by the savings and loan board of directors. Unbeknownst to the attorney, the board

litigation. I consider them the most ethical attorneys I've ever met and recommend them highly!

- a former personal injury client

Perlmutter & Schuelke came highly recommended and exceeded my expectations. What mattered to me most was the genuine concern for my situation and the dedication to ensuring a successful conclusion. I will be eternally grateful to the attorneys and their staff as well.

- a former personal injury client

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had not approved the action. The savings and loan was later taken over by the government and the borrower was sued because the settlement was not effective. The borrower then sued the savings and loan attorney for falsely representing that the agreement was approved. The court allowed the suit to proceed even though no attorney client relationship existed between the borrower and the attorney.

When discussing who may sue an attorney, it is important to recognize who may not sue an attorney. Absent extreme circumstances, a person may not sue the opposing counsel in his lawsuit for engaging in outrageous conduct and beneficiaries of a will or trust may not sue the attorney who drafted the will or trust.

As always, there may be exceptions to these rules, and you are urged to contact an attorney to determine if they apply to you.



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