



Robert F. Merlo

Partner

robert.merlo@wilsonelser.com

Chicago, IL – 312.821.6170

Robert Merlo focuses his defense litigation practice on professional liability, primarily defending and advising attorneys in a wide range of matters such as claims for malpractice, statutory violations, and professional responsibility and ethics matters. He also specializes in the defense of real estate licensees in claims alleging negligence, as well as ancillary statutory claims. Robert has extensive experience defending these professionals in front of licensing and other oversight agencies in Illinois and in several other states. He regularly advises clients in non-litigation settings, drawing on his experience to guide his clients with regard to strategies and measures that can help avoid or mitigate potential claims. In addition to lawyers and real estate professionals, Robert regularly handles claims against accountants, directors and officers, insurance producers, architects, engineers and other professionals. Robert also represents insurers in coverage matters.

Robert has extensive experience handling these claims from inception to trial and – when necessary – through the appellate process, and has amassed several dispositive motion victories affirmed on appeal. Robert was one of 20 nominated finalists who successfully completed Wilson Elser’s rigorous Mock Trial Invitational through which our most successful trial lawyers impart their knowledge to those destined to join their ranks.

Robert’s wide-ranging litigation experience has proven valuable to a variety of clients, and he works closely with them to understand their goals, reassure them during times of crisis, and ensure they receive a comprehensive and cost-effective defense. From start to finish, Robert assesses and reassesses each case, exploring and pursuing creative strategies – both in court and out – to best protect his clients’ interests and to steer their matters toward favorable outcomes.

Robert has served on Wilson Elser’s Associate Focus Committee since 2022, and was the Chicago office Chair from 2023 through May 2024. In that leadership role, Robert used his

Services

- Accountants
- Directors & Officers Liability
- Insurance & Reinsurance Coverage
- Lawyers’ Liability

skills as a strong communicator and advocate, assisting younger attorneys in their professional journeys and providing valuable insight, advice and assistance.

Prior to joining Wilson Elser, Robert worked as an attorney for a Chicago law firm focused on commercial litigation, specifically commercial collections and commercial real estate litigation. Robert also spent years conducting post-judgment proceedings and pursuing post-judgment remedies. He has brought his experience in these practice areas to Wilson Elser, assisting firm clients who become involved with matters including bankruptcy proceedings, adversary actions in bankruptcy, post-judgment collection actions, as well as claims for breach of contract and equitable relief.

While in law school, Robert volunteered at the John Marshall Pro Bono Clinic's Foreclosure Help Desk; served as an extern for Appellate Justice John B. Simon of the Illinois Appellate Court, First District, First Division; and handled Municipal Citation matters while working for the City of Chicago's Department of Business Affairs and Consumer Protection.

Education

- John Marshall Law School (J.D. with honors, 2017)
 - Editor in Chief, The Journal of Information Technology and Privacy Law; Best Oralist, The Fred F. Herzog Moot Court Competition
- University of Illinois at Urbana-Champaign (B.S. in News/Editorial Journalism, 2014)

Bar Admissions

- Illinois

Court Admissions

- Supreme Court of Illinois
- U.S. District Court, Northern District of Illinois
- U.S. District Court, Southern District of Illinois
- U.S. Court of Appeals, Seventh Circuit

Professional Affiliations

- Chicago Bar Association
- Illinois State Bar Association
- Justinian Society



Representative Matters

Defense of Lawyers

Obtained a motion to dismiss on statute of limitations grounds on behalf of a Chicago law firm. The victory was affirmed in a published opinion of the Illinois First Appellate District, clarifying precedent that discovery of one potential wrongful cause of an injury commences the limitations for any claim related to that injury.

Prevailed on a dispositive motion – later affirmed on appeal in a published opinion – on the grounds that since the judge in the underlying case closed discovery prior to the client's appearance, the plaintiff could not successfully allege that the client could have remedied the discovery errors of prior counsel, which was an issue that proved dispositive in the underlying case.

Prevailed on a motion to dismiss for a law firm client that was counsel for an underlying corporate dispute that resulted in a settlement purporting to give a shareholder the right to later sue our client; obtained dismissal upon establishing that plaintiff lacked standing, and in arguing that the settlement likely violated Illinois's general prohibition on the assignment of legal malpractice causes of action. Affirmed on appeal.

Prevailed on summary judgment on the element of proximate cause in a legal malpractice action after developing discovery that proved that the decision of the arbitrator of the underlying case would not have changed even if the client-attorney took the additional actions that the plaintiff alleged were negligently omitted.

Secured dismissal on First Amendment grounds, as well as a ruling that the case violated Illinois's anti-SLAPP law, through legal arguments for a client-lawyer facing a defamation lawsuit stemming from the lawyer's comments to the press about the underlying case. Three days later, a separate action by the same plaintiff against another firm client-lawyer was voluntarily dismissed.

Prevailed on behalf of a law firm client that represented the plaintiff during the 11-year underlying case; successfully established – in both the circuit and appellate courts – that the indisputable facts from the underlying record established that the plaintiff's subsequent malpractice claim was time-barred.

Prevailed on a motion to dismiss that argued the attorney litigation privilege completely insulated the client from any potential liability, regardless of how the claim was styled. Our client-lawyer faced statutory claims arising out the client's representation of the plaintiff's adversary in a contentious and years-long divorce case.

Representing a solo practitioner in Lake County, Illinois, obtained summary adjudication of a malpractice claim on statute of limitations grounds based on the timing of a prior demand letter.

Obtained a favorable settlement after obtaining a court ruling that lost-profit damages were unrecoverable in the underlying case and, therefore, unrecoverable in the subsequent malpractice case.

Obtained dismissal in federal court for our client-lawyer after arguing immunity for the client's actions as guardian ad litem in the underlying case.

Obtained dismissal in federal court for our law firm client on the grounds that the plaintiff could not establish subject matter jurisdiction and that no amended pleading could remedy the complaint's deficiencies, leading to a dismissal with prejudice.

Secured a victory on the attorney-client's behalf when a condo owner sued her HOA and its attorney; the ruling contained significant findings regarding public policy considerations unique to determining the scope of an attorney to a non-client.

Defense of Real Estate Licensees and Other Professionals

After a six-day jury trial in Cook County, obtained a defense verdict for an insurance broker client sued for negligent misrepresentation.

Obtained a motion to dismiss victory on behalf of a client residential real estate appraiser, on the grounds that the *Moorman* exception to the prohibition on recovering purely economic losses in tort was inapplicable because the allegedly misrepresented information was not within the appraiser's area of expertise.

Obtained a favorable settlement for a client who was the seller's agent in the underlying real estate transaction on the basis that the listing agreement could serve to limit the scope of the agent's duty to a prospective purchaser.

Successfully argued that our client wholesale insurance broker could not be liable when the plaintiff-insured alleged negligent procurement of a policy that did not provide coverage related to a fatal shooting at the insured's business. The court agreed that statutory limitations on an insurance broker's duties – as well as standard common-law duty principles – barred the plaintiff's claim.

Successfully represented numerous lawyers, real estate brokers and other professionals in administrative and disciplinary proceedings resulting in determinations that no further investigation was necessary and there was no wrongdoing.

Publications

September 29, 2025

Illinois Supreme Court to Again Address Section 22.1 of the Condo Act

July 2024

Professionally Speaking

November 30, 2022

Illinois Condominium Act: Supreme Court Refuses to Acknowledge New Private Right of Action for Sellers

2020 Edition

Chapter 7, “Quo Warranto” and Chapter 8, “Mandamus”

Illinois Institute for CLE: Causes of Action: Common Considerations

Client Wins

Blair, Merlo & Duff Prevail on Behalf of Attorney Client in Contentious Post-Decree Appeal

Kimberly Blair (Partner-Chicago, IL) and Chicago associates Robert Merlo and Thomas Duff represented the attorney for the wife in a very contentious divorce case; specifically, representing her in post-decree proceedings stemming from the husband’s refusal to turn over significant sums of money, over which he was held in indirect civil contempt and jailed. Subsequently, the husband filed suit against his ex-wife, his former business partner, and his wife’s attorneys (including our client) on allegations of aiding and abetting, intentional and negligent infliction of emotional distress, and civil conspiracy – suggesting that our client’s conduct was part of a nefarious legal strategy. Kim, Robert, and Thomas were successful at having the matter dismissed with prejudice at the trial court level based on the absolute litigation privilege. An impressive brief written on appeal by Robert and Thomas convinced the Appellate Court of Illinois, First District to affirm the trial court’s decision in an extensive opinion that further solidified the litigation privilege in the State of Illinois.

Blair, Stafford, Merlo and Duff Secure Affirmance in Precedent-Setting Legal Malpractice Case

A Chicago office team comprising partners Kimberly Blair and Joseph Stafford and associates Robert Merlo and Thomas Duff secured the First District Court of Appeals’ affirmance of a dismissal with prejudice of the plaintiffs’ third amended complaint for legal malpractice against our law firm client. At the circuit court level, the team brought in our client’s predecessor counsel as a third party, alleging that because discovery in the underlying case closed on their watch, there was nothing our client could have done to remedy the alleged malpractice. The predecessor counsel filed a motion for summary judgment on our third-party complaint based on the successor counsel (viability) doctrine, and the court denied it, holding that by the time it appeared in the underlying case, nothing our client could have done would have prevented the unfavorable outcome for the plaintiffs in the underlying action. After that ruling, the plaintiffs were given one more chance to state a claim, but they would have had to wholly shift their theory of malpractice. The court then dismissed that complaint (with prejudice) because the plaintiffs’ allegations about what they would have done were contradicted by what they *actually* did in response to the underlying judgment, through yet another successor attorney.

On appeal, the plaintiffs argued, among other things, that the district court judge was incorrect to hold, as a matter of law, that no arguments could have defeated the underlying dispositive motions and improperly took judicial notice of post-judgment proceedings from

the underlying case in dismissing the plaintiffs' "last-ditch" third amended complaint. The First District affirmed, and comprehensively laid out why it agreed with our many arguments in the Response Brief. Notably, the First District's conclusion in its published opinion essentially mirrored our conclusion in our Response Brief.