

# The Professional Liability Law Blog

BRINGING PROFESSIONAL LIABILITY INFORMATION TO CALIFORNIA ATTORNEYS,  
INSURANCE PROFESSIONALS, ACCOUNTANTS AND STOCK BROKERS



## Vafi v. McCloskey: One Year Statute Of Limitation Applies to Malicious Prosecution Claims Against Attorneys

April 3rd, 2011 by [Steve Wasserman](#)

In a [published decision](#), a California Court of Appeal has held that the one year statute of limitations applicable to claims against attorneys includes claims for malicious prosecution. *Vafi v. McCloskey*, 2011 WL 989013. Vafi sued his former girlfriend/business colleague and her lawyers in connection with an action they brought against him; he filed that action more than one after the underlying case had been concluded. He contended the action was timely as it was brought within two years pursuant to California Code of Civil Procedure Section 335.1, a general provision which applies to “injury to...an individual caused by the wrongful act or neglect of another” and which had previously been held to apply to actions for malicious prosecution.

The attorney defendants argued that Code of Civil Procedure Section 340.6 controls. It provides that an action against an attorney “for a wrongful act or omission, other than one for actual fraud, arising in the performance of professional duties shall be commenced with one year...” The trial court granted the defendant attorneys’ special motion to strike on the ground that the plaintiff could not show a likelihood of prevailing because, *inter alia*, the action was time barred under the one year statute.

The Court of Appeal concluded that the language of the statute to the effect that it applied to actions against an attorney and used the work “plaintiff” instead of “client” meant that the one year limitation applied to all claims against attorneys, not just those by a client alleging malpractice. Further, since the statute contains an exception for fraud claims, but not for other claims, the court saw no reason to exempt claims by non-clients alleging malicious prosecution. Last, using rules of statutory construction, the Court held that the specific statute applying to claims against attorneys controlled over the more general two year statute.