

The Professional Liability Law Blog

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



[Court Denies Former Client's Anti-SLAPP Motion Filed in Response to Attorney's Cross-Complaint for Misrepresentation](#)

Wednesday, January 26th, 2011

It is not uncommon for an attorney sued for malpractice to respond to the complaint by filing an anti-SLAPP motion, contending that the lawsuit arose out of a protected activity. Most of those motions are denied. A novel twist on the application of the anti-SLAPP procedure can be found in *Masten v. Miller, King & James, LLP*, an [unpublished decision](#) handed down by the California Court of Appeal (First Appellate District, Division One) on January 21, 2011.

In *Masten*, the former client file a complaint for malpractice arising out of the unsuccessful prosecution of a medical malpractice action. The attorney cross-complained against the client for misrepresentation, and the client responded by filing an anti-SLAPP motion. The Court of Appeal denied the motion, finding that the acts alleged in the cross-complaint did not arise from activity within the meaning of CCP section 425.16(b). A *National Law Journal* article discussing the case can be found [here](#) (registration required).