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[Law Firm Obtains Summary Judgment in Legal Malpractice Case Involving Question of Whether Firm Should Have Sought CCP 473\(b\) Relief for Prior Counsel's Alleged Error](#)

April 12th, 2011 by [Mark Hancock](#)

The California Court of Appeal (Second Appellate District, Division Seven) recently upheld summary judgment in favor of a law firm accused of committing legal malpractice in its handling of an underlying medical malpractice case. The case is *Alshafie v. Lallande*, Case No. B221988. Plaintiffs' first set of attorneys in the medical malpractice case had made a tactical decision not to oppose a defendant hospital's motion for summary judgment because the attorneys did not believe there was merit to the claim. A claim against a doctor remained. The plaintiffs' second set of attorneys also believed that the claim against the hospital lacked merit and they did not move to set aside the judgment in favor of the hospital. The plaintiffs' third set of attorneys then identified what they believed to be a viable claim against the hospital.

The plaintiffs then sued the first and second sets of attorneys for legal malpractice, contending that they should have filed a motion under CCP 473(b) seeking relief from the judgment in favor of the hospital. A party seeking discretionary relief under section 473(b) based on attorney neglect "must demonstrate that such mistake, inadvertence or general neglect was excusable 'because the negligence of the attorney . . . is imputed to his client and may not be offered by the latter as a basis for relief.' *Carroll v. Abbott Laboratories, Inc.*(1982) 32 Cal.3d 892, 898." A narrow exception to the general rule that an attorney's neglect is imputed to the client exists for extreme neglect amounting to abandonment: "[E]xcepted from the rule are those instances where the attorney's neglect is of that extreme degree amounting to positive misconduct, and the person seeking relief is relatively free from negligence." *Id.*

The second set of attorneys moved for summary judgment on the claim of legal malpractice, contending that the first set of attorneys' alleged misdeeds and omissions did not constitute the type of complete and continued failure to act required for relief under the narrow positive misconduct exception. The trial court and Court of Appeal agreed that in the medical malpractice case, as a matter of law, discretionary relief under section 473(b) would not have been available. Accordingly, the second set of attorneys was entitled to summary judgment against the claim of legal malpractice.

The unpublished decision can be found [here](#).