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Greetings to my valued connections!

Another byte of law for your interest.

Question: What happens if a client makes an error substantial enough to cause a default or other adverse order?

Answer: The court *may* grant relief to a client who causes a default or other adverse order due to mistake, inadvertence, surprise, or excusable neglect as long as the details of the statute are followed. However, relief is not mandatory. CCP 473(b).

Further Question: What happens if the attorney and the client are both culpable in the mistake, inadvertence, surprise, or excusable neglect?

Further Answer: In this scenario, the courts are split.

Those of us who practice in California have the benefit of obtaining relief for an attorney error committed in the case per Cal. Code of Civ. Pro. section 473(b). This section allows relief from a default and other adverse ruling due to mistake, inadvertence, surprise, or excusable neglect. CCP 473(b). The extraordinary advantage of this statute is that relief to the client is *mandatory* upon the filing of an affidavit by the attorney in which the attorney shows that he/she is at fault for the entry of the adverse order. In essence, the attorney has to “fall on his/her sword.”

Interestingly, the statute states specifically that relief is mandatory “unless the court finds that the default or dismissal was not in fact caused by the attorney's mistake, inadvertence, surprise, or neglect.” So, where does that leave an attorney handling a case in which the client and the attorney both made errors which caused a default or other adverse order? As stated, the courts are split.

In the case of *Lang v. Hochman* (2nd Dist., 2000) 77 CA4th 1225, 1248, the Court of Appeal held that the hybrid errors of a client and an attorney are not within the relief afforded by CCP 473(b) because the statute contemplates mistakes *solely* by the attorney. Whereas in *SJP Limited Partnership v. City of Los Angeles* (2nd Dist., 2006) 136 CA4th 511, 520 the Court of Appeal held that the hybrid errors of a client and an attorney, as long as there was no intent, come within the statute and *mandatory* relief can be granted. *See also, Benedict v. Danner Press* (2001) 87 CA4th 923, 932, and *Gutierrez v. G&M Oil Co., Inc.* (2010) 184 CA4th 551, 557-58.

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THE LAW OFFICE OF ALAN GOLDBERG

By: Alan M. Goldberg

alanguidberglaw@gmail.com

Appeals, civil trials, family law, assist with trial preparation: 2nd chair, motions, research, witnesses, all aspects of trials.