CALIFORNIA LAW REVISION COMMISSION

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NEWS RELEASE
November 23, 2005
For Immediate Release

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Statute of Limitations for Legal Malpractice

Request for Public Comment

The California Law Revision Commission seeks public comment on its revised tentative recommendation relating to the statute of limitations for legal malpractice (Code Civ. Proc. § 340.6).

A client may believe that an attorney has mishandled a matter. To comply with the statute of limitations for legal malpractice, the client may have to sue the attorney for the apparent misconduct before final resolution of the underlying matter. For example, suppose an attorney misses a critical deadline in a personal injury case. Under the statute of limitations for legal malpractice, the client may have to sue the attorney for this mistake before the personal injury case is over and the impact of the mistake is clear. The client is thus forced to simultaneously litigate both the malpractice action and the underlying proceeding. This may be prohibitively expensive for the plaintiff and may also entail other problems.

The Law Revision Commission proposes to address this situation by expressly authorizing a court to stay a legal malpractice action on motion by a party if there is a reasonable likelihood that the existence or amount of the plaintiff's damages in the malpractice action will depend on the outcome of the underlying proceeding. A stay would be permissive, not mandatory. If the court denies a stay, the proposal would require the court to state the reasons for its decision in writing or on the record.

The tentative recommendation is available from the California Law Revision Commission, 4000 Middlefield Road, Room D-1, Palo Alto, CA 94303-4739. The tentative recommendation is also available at the Commission's website (www.clrc.ca.gov) through the "Reports" menu.

The Commission often substantially revises its recommendations as a result of public comment. To receive timely consideration, comments should be submitted by **February 17, 2006**.

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