

## In The News

**Continuous Representation Tolling Provisions Do Not Apply to Former Law Firms**  
*Beal Bank, SSB v. Arter & Hadden, LLP* (2007 --- Cal.3d ---, 2007 WL 2791816  
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Does the "continuous representation" tolling provision of the attorney malpractice statute of limitations toll the statute of limitations against a law firm when an attorney leaves the firm and takes the client along? Several jurisdictions had ruled that it does not. In California, there previously had been a split of authority, with one opinion from the Court of Appeal holding that the statute was tolled against the former firm and another holding that it was not. The California Supreme Court has now ruled that the statute against the former firm is not tolled under these conditions.

Client was initially represented by Law Firm in litigation against defaulting borrowers in bankruptcy court. The matter had been handled at Law Firm by Associate. Associate then left Law Firm and took Client's matter to Associate's new firm. When Client received an adverse ruling from the bankruptcy court, Client sued Associate and Law Firm for legal malpractice.

Law Firm filed a demurrer, arguing that since the legal malpractice action was filed more than a year after the bankruptcy ruling had been issued, it had been filed beyond the one year deadline under California's legal malpractice statute of limitations. Client opposed the demurrer, arguing that since Associate had continued to represent Client in an appeal from the bankruptcy court's ruling, the statute of limitations was tolled under the continuous representation tolling provision of the statute. Law Firm countered that once Associate left the firm and took Client with him, the continuous representation tolling provision no longer applied.

Each side had the benefit of a Court of Appeal opinion in its favor. The trial court sided with Law Firm and sustained the demurrer, but the Court of Appeal reversed, siding with Client. The California Supreme Court granted review to resolve the split of authority and sided with Law Firm.

Client asserted that there were policy reasons that supported the tolling of the statute. It essentially argued that the client in such a situation is at a distinct disadvantage, because the fiduciary relationship between the attorney and client would "lull the client into inaction" even after the client learned of an adverse result; after all, who could expect the departing attorney to advise the client to sue the former law firm when it is highly likely that such advice will lead the client to sue the departing attorney as well? In addition, even if the departing attorney were to step up to the plate and recommend suit against the former firm, this could cause a disruption in the attorney client relationship because the former firm might very well sue the departing attorney for indemnity, even if the departing attorney is attempting to rectify the effects of the alleged malpractice, e.g., by prosecuting an appeal of

the adverse ruling.

The Supreme Court rejected this argument. The Court looked to the letter of the law and found that the statute of limitations clearly confined the continuous representation rule to the specific attorney who continues to represent the client, not that attorney's former law firm. The Court held that since the statute provided that the limitation period would be tolled so long as the attorney continued to represent the client, the statutory tolling provision could only apply to a law firm if Law Firm itself continued to represent the client. Once the attorney client relationship between Law Firm and Client was terminated by the Associate's departure with Client, Law Firm was no longer representing Client and the tolling provision did not apply.

The Court found that its reading of the statutory language was consistent with the purpose of the statute, which was to give attorneys some definite outside limit to the time in which malpractice actions could be filed against them. This, in turn, served the public policy of making legal malpractice insurance more affordable. While the Court recognized that such a ruling could adversely affect an injured client, by reducing the available pool of potential legal malpractice defendants, the Court reasoned that the Legislature had already balanced these competing interests when it enacted the statute.

Thus, California has been brought into line with other states that have considered this question and have limited the tolling from continuous representation to the attorney or law firm that is actually continuing to represent the client, not to a former law firm.

**Practice Note:** As noted by the California Supreme Court, courts tend to restrict the continuous representation tolling provisions of statutes of limitations narrowly. Care should be given to the precise wording of the statute when calculating the statute when calculating the filing deadline. Attorneys should also consider attempting to negotiate a tolling agreement while attempts are made to mitigate the client's damages, such as prosecuting an appeal of the underlying action.

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