

PROFESSIONAL LIABILITY UPDATE

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DEFAULT RELIEF

California Law

By Jennifer A. Becker

Renteria v. Juvenile Justice, Department of Corrections and Rehabilitation (2006) 135 Cal.App.4th 903

The Third District rules that clerical error is excusable neglect sufficient to allow relief from timely filing of a government tort claim.

Manual Renteria suffered an injury while in custody. His attorney filed a petition to perpetuate testimony and preserve evidence relating to the event, stating that Renteria expected to be a plaintiff in a lawsuit based on the incident. A Deputy Attorney General agreed by letter to preserve evidence without a court order. Nine days after the deadline to file a government tort claim Renteria's attorney filed an application to file a late claim asserting that his failure to file a timely claim was due to mistake, inadvertence and excusable neglect. A secretary removed the 6-month public entity statute of limitations from the calendaring system after receiving the letter from the Deputy Attorney General.

Alternatively, Renteria styled his proposed claim as an amended claim asserting that the petition to preserve evidence was a claim sufficient to give the public entity information to investigate and settle the claim.

There was no substantive response to this petition and it was deemed rejected.

The trial court denied Renteria's petition for leave to file a late claim finding insufficient reason to justify the delay and that the petition to preserve evidence did not substantially satisfy the claims filing requirement.

The Court of Appeal noted that relief from the failure to file a timely government tort claim is available only where a petitioner establishes mistake, inadvertence, surprise, or excusable neglect. The excuse is evaluated through a reasonably prudent person standard. Excusable neglect is neglect that might have been the act or omission of a reasonably prudent person under the same or similar circumstances. Once the petitioner meets this burden, the public entity must establish prejudice. A trial court's ruling is reviewed under an abuse of discretion standard.

The court evaluates the nature of the mistake or neglect and whether counsel

was otherwise diligent in investigating and pursuing the claim. Doubts should be resolved in favor of granting relief.

Calendar errors can be excusable in appropriate circumstances. The realities of office practice include the inevitable misfiling of papers or erroneous clerical entries, and usually this neglect is considered excusable. Where an attorney relies on a member of his or her staff to perform certain tasks, including calendaring deadlines, and the staff member errs, relief is proper.

Renteria's counsel's reliance on an existing office calendar system was not unreasonable. It was not unreasonable for the calendaring secretary to assume that a public entity that has promised to preserve evidence for litigation of a claim has received notice of that claim.

Renteria acted diligently upon discovery of the error and the public entity failed to demonstrate prejudice.

Comment: The court was persuaded by the attorney's use of a calendaring system and the prompt action taken once the mistake was discovered. Attorneys who do not employ a system or who do not act promptly in the face of an error may forego the benefits of statutes that relieve a party of attorney error.