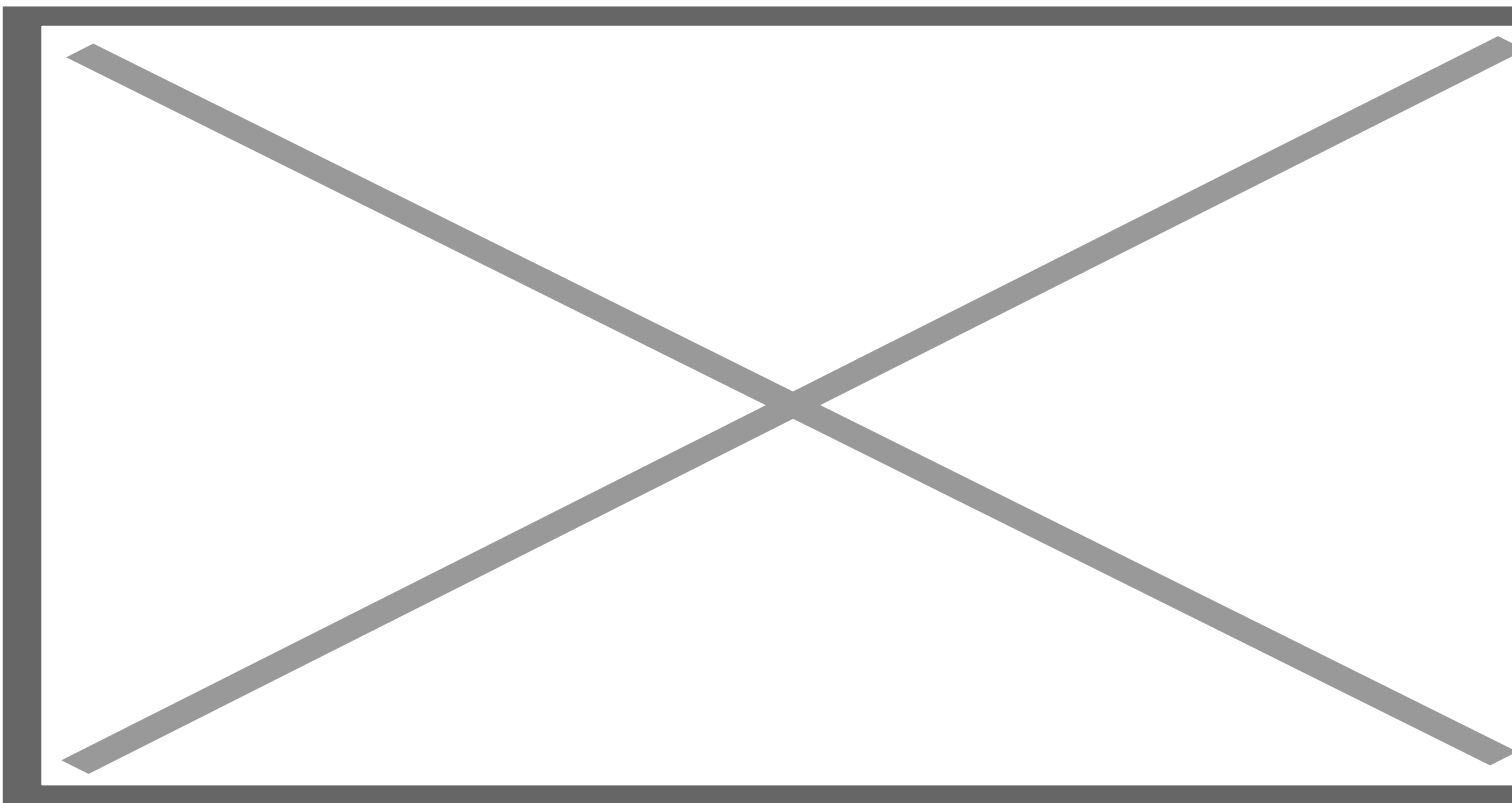


Attorney Neglect Not Grounds For Relief From Summary Judgment For Failure to Lodge Administrative Record

A party against whom summary judgment is entered as a result of attorney neglect may not seek relief under a statute that provides relief from a default judgment or dismissal resulting from attorney neglect. *The Urban Wildlands Group, Inc. v. City of Los Angeles*, 10 Cal. App. 5th 993 (2017). The plaintiff challenged the City of Los Angeles's finding that a project was exempt from additional environmental review under CEQA. The parties stipulated that the plaintiff would lodge the administrative record with the court. Because of a mistake on the part of the plaintiff's attorney and his new legal assistant, the plaintiff did not lodge the record before the stipulated deadline. After a hearing, the trial court found that the plaintiff could not support its arguments because it had failed to lodge the administrative record. Accordingly, the trial court denied the plaintiff's petition and complaint and granted summary judgment for the defendant.



The plaintiff then moved to vacate the judgment under Code of Civil Procedure section 473(b), which requires a court to vacate a "default[,] . . . default judgment or dismissal" that results from an attorney's mistake, inadvertence, surprise, or neglect. The plaintiff submitted an affidavit from its attorney attesting to his neglect in failing to lodge the administrative record. The trial court concluded that the attorney's neglect had deprived the plaintiff of its day in court (similar to the effect of a default judgment or dismissal) and vacated the judgment. The court of appeal reversed and ordered the judgment reinstated, explaining that a summary judgment did not fall within the scope of Section 473(b). The court noted that there are two lines of court of appeal cases interpreting Section 473(b). Under the prevailing view, explained in *English v. IKON Business Solutions, Inc.*, 94 Cal. App. 4th 130 (2001), relief under Section 473(b) is available only for default, default judgment, or dismissal. The minority view, following *Avila v. Chua*, 57 Cal. App. 4th 860 (1997), is that Section 473(b)

allows relief from judgments that are "directly analogous to a default judgment." Following the *English* line of cases, and expressly disapproving *Avila*, the court concluded that because the language of Section 473(b) is unambiguous, it should be interpreted according to its plain language. Section 473(b) did not apply to the case because "summary judgments are neither defaults, nor default judgments, nor dismissals." This is one more case adopting the more narrow interpretation of Section 473(b) that "default judgment or dismissal" means just that and nothing more. Because the California Supreme Court has not yet resolved the split between the *English* and *Avila* lines of cases, trial courts may continue to apply either a strict or expansive interpretation of Section 473(b).

Blog series

California Land Use & Development Law Report

California Land Use & Development Law Report offers insights into legal issues relating to development and use of land and federal, state and local permitting and approval processes.

[View the blog](#)