



## Alerts

### In Criminal Malpractice Context, Accrual Occurs When Indictment Was Dismissed

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*Lawyers for the Profession® Alert*

*Rogers v. Cape May County Office of Public Defender*, 208 N.J. 414, 31 A.3d 934 (2011)

#### Brief Summary

The Supreme Court of New Jersey held that a criminal defendant's malpractice claim against his defense counsel accrued on the date the indictment was ultimately dismissed with prejudice, not when the appellate court in the criminal case reversed and remanded based on ineffective assistance of counsel.

#### Complete Summary

A client sued a public defender's office and one of its attorneys for legal malpractice after a post-conviction appellate court reversed his drug convictions based on ineffective assistance of counsel and remanded for a new trial, and after the indictment had been later dismissed with prejudice. The trial court denied the client's motion to file a late notice of tort claim. The appellate court affirmed.

The Supreme Court of New Jersey held that sufficient "exoneration" had occurred, for purposes of New Jersey's Tort Claims Act's provision giving a trial court discretion when "extraordinary circumstances" exist to allow the late filing of a notice of claim within the one-year accrual of the claim. The Court was asked to revisit the term "exoneration" as used in its prior decision in *McKnight v. Office of the Public Defender*, 197 N.J. 180, 962 A.2d 482 (2008), to determine the timeliness of a legal malpractice action based on ineffective assistance of counsel in a criminal matter. The question was whether the client was "exonerated" at the point on which his conviction was reversed and the case remanded for a new trial, or on the day the indictment was ultimately dismissed with prejudice.

The Court concluded that although the grant of a new trial may be "more beneficial" to a criminal defendant, it is not "exoneration." Indeed, the benefit of reversal is ephemeral and may be short-lived if the criminal defendant is retried and convicted. The Court concluded that the outcome of the new trial or plea will be determinative on whether the injury has been sustained.

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## Significance of Opinion

This case is noteworthy for the proposition that although a criminal defendant obtained a remand and new trial based on ineffective assistance of counsel—arguably giving him notice that he sustained injury which was wrongfully caused by his defense lawyer—for statute of limitations purposes, his cause of action against his criminal defense lawyer did not accrue until the indictment was ultimately dismissed with prejudice.

For further information, please contact [Terrence P. McAvoy](#).

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