



## Alerts

### California Statute Modifies Limitations Period for Certain Malpractice Claims Against Criminal Lawyers

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*Lawyers for the Profession® Alert*

California Assembly Bill No. 316, 2009-10 Reg. Sess. § 2 (2009)

#### Brief Summary

The California legislature, in what is believed to be the first instance of its kind in the nation, has enacted a law specifically addressed to the statute of limitations for actions by wrongfully-convicted persons against their attorneys, when proof of innocence is an element of the claim. The new law sets the time limit at two years from the date of post-conviction exoneration.

#### Complete Summary

A 2009 amendment to the California statute of limitations for actions against attorneys (Assembly Bill No. 316) added the following language to Cal. Code Civ. Proc. § 340.6(a):

If the plaintiff is required to establish his or her factual innocence for an underlying criminal charge as an element of his or her claim, the action shall be commenced within two years after the plaintiff achieves post-conviction exoneration in the form of a final judicial disposition of the criminal case.

In Section 1 of the bill, the legislature declared that its intent was to “remedy some of the harm caused to all factually innocent people who have been wrongfully convicted[,]” and to “remove some of the obstacles to compensation for the factually innocent and . . . ease their transition back into society.”

#### Significance of Amendment

In what is believed to be the first law in the nation addressed specifically to the statute of limitations for claims of negligence by criminal defense lawyers when a client must establish factual innocence as an element of a claim, California has modified the potential period of exposure and made clear that exoneration is required to trigger the statute. It remains to be seen whether other states may follow California’s example.

*This alert has been prepared by Hinshaw & Culbertson LLP to provide information on recent legal developments of interest to our readers. It is not intended to provide legal advice for a specific situation or to create an attorney-client relationship.*

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