

# "Exceptional Circumstances" Is A High Bar To Meet When It Comes To The Tort Claims Act

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Recently, in Antoinette Marra vs. Hopatcong Senior Center and Borough of Hopatcong, A-0724-18T1, the Court reaffirmed the strict requirement to adhere to the 90-day time period in which to file a notice of tort claims.

Plaintiff fell at the Hopatcong Senior Center, located in the Borough of Hopatcong on September 26, 2017, fracturing her arm and hip, in addition to suffering other injuries. She was admitted to the hospital and underwent hip replacement surgery. Following the surgery, she was transferred to a nursing home where she recovered until November 25, 2017 and then began in-home care.

## Time Limit for Filing a Notice of Tort Claims

Plaintiff was under the mistaken impression that she had two years to file a lawsuit and was unaware of the 90-day time period within which to file a notice of tort claims. She did not seek legal counsel until March 2018.

The Tort Claims Act mandates that a notice of tort claims must be filed within 90 days of the incident. However, a notice may be filed up to one year after the incident if “‘extraordinary circumstances’ excuse the delay and the public entity would not be ‘substantially prejudiced.’”

## Establishing “Exceptional Circumstances” When Filing Late

Plaintiff’s attorney filed a personal injury complaint and a motion for leave to file a late notice of tort claim on May 18, 2018, relying on plaintiff’s claims that she suffered from various medical conditions which established exceptional circumstances, justifying the late notice of claim.

Plaintiff submitted certifications from herself and her former daughter-in-law, which alleged that plaintiff was both physically and mentally incapacitated and could not contact an attorney. The proofs asserted that plaintiff was bedridden except when at physical therapy, suffered major depressive disorder, could not keep down food, or complete basic tasks of personal hygiene without help. The motion judge granted plaintiff leave to file a late notice and defendant appealed.

The Appellate Division found the record devoid of medical evidence from a physician which supported plaintiff's claim that she was physically or mentally unable to contact an attorney, and therefore plaintiff failed to demonstrate exceptional circumstances. The Court further held that plaintiff was not bedridden after she was discharged home and could have relied on others for assistance. At that point, she still had 30 days in which to file a claim. The Court held that she suffered "no medical condition so severe and debilitating as to impact her ability to pursue her personal injury claims."

The lesson is important when it comes to notifying a public entity of an accident. The tort claim law is strict and the consequences harsh when it comes to notice. Notice of tort claims must be filed within 90 days. Although the law permits the time period to be extended for one year, the exceptional circumstances bar is high and difficult to meet