

# New Jersey's Courts Address the Tort Claims Act and Rule that Individuals Injured by Public Employees or on Public Property Must Follow the 90-Day Notice Requirement, or the Claim Will be Dismissed

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In two recent decisions, the New Jersey Appellate Division made clear that individuals who are injured by public employees or injured on public property must send a written notice to the applicable public entities within 90 days of the injury date, or their claim will be dismissed regardless of how significant or life changing the injury is. The Appellate Division on December 31, 2020, in *Shynell Anthony v. Newark Housing Authority* (A-1618-19T2) and on January 12, 2021 in *Ahmaad Griffin v. City of Newark* (A-1100-19T3), addressed the 90-day notice requirement of the Tort Claims Act.

## Applicable Statutes Regarding Notification Requirements

The Appellate Division, in both cases, discussed the mandatory notification requirements when an incident resulting in personal injuries occurs on public property or when a public employee causes the injuries. Specifically, N.J.S.A. 59:8-8 states that prior to filing a personal injury lawsuit against a public entity or public employee, a claimant has to file a notice of claim with the public entity or public employee not later than the 90th day after the accrual of the cause of action. If the notice of claim is not filed within 90 days, "the claimant shall be forever barred from recovering against a public entity or public employee." If, however, the claimant can show extraordinary circumstances as to why a notice of claim was not filed within 90 days, a motion to file a late notice of claim can be made within one year of the accrual date of the claim. N.J.S.A 59:8-9.

## The Personal Injury Cases on Appeal Discussed the Issue of Extraordinary Circumstances

On July 21, 2018, plaintiff Shynell Anthony was walking on property owned by defendant Newark Housing Authority when she tripped over a large gap in the sidewalk and broke her leg. She underwent leg surgery on August 13, 2018. Ms. Anthony did not work for five months after her accident; she could not drive and depended on her daughter for basic daily tasks. She consulted with an attorney in December 2018 but was advised that a case could not be pursued before of the 90-day notice requirement. Ms. Anthony and her daughter were not aware of the Tort Claims Act 90-day notice requirement. She then went to a second attorney and on May 8, 2019, the second attorney filed a motion for a late notice of claim. As part of her motion, Ms. Anthony did not provide any medical evidence or documents about her inability to work, drive or perform basic tasks of living. The judge permitted Ms. Anthony to supplement her application with more details, but she did not. Despite the “somewhat thin” record, the judge granted the motion to file a late notice of claim, finding that there were extraordinary circumstances and the defendant was not substantially prejudiced. Defendant appealed.

In the Griffin case, Gregory Griffin was shot by Newark police officer Jovanny Crespo during a car chase on January 28, 2019. Mr. Griffin died from the gunshot wounds the next day, January 29, 2019. Mr. Griffin was survived by his four children and his father, Alphonso Whitaker. In early February 2019, Mr. Whitaker contacted Patrick Rogan, an attorney licensed to practice in Pennsylvania. On February 26, 2019, the Newark Public Safety Director announced that the city had concerns about the shooting and that the officer who shot Mr. Griffin had been suspended. On the same date, the Acting Essex County Prosecutor announced that he was reviewing the evidence and would be presenting the case to the grand jury. On May 21, 2019, a grand jury indicted officer Crespo. On May 23, 2019, 115 days after the shooting and 114 days after Mr. Griffin’s death, attorney Rogan filed a notice of claim against the City of Newark and officer Crespo. Because Mr. Griffin did not have a will there were issues of appointing an administrator and it was not until August 2019 that an administrator was appointed by a Chancery judge. In September 2019, a new attorney licensed in New Jersey filed a motion for a late notice of claim based upon lack of prejudice to the City of Newark and officer Crespo and based upon extraordinary circumstances. The argument was that the claim did not accrue until the grand jury indictment and there were issues of appointing an administrator of the estate. The motion judge granted the application, finding that there were extraordinary circumstances given the ongoing investigation by the City of Newark and given the difficulties in appointing an administrator for the

estate.

## Appellate Division Reversed Decisions that Granted Late Notice of Claims

The Appellate Division in both cases reversed the motion judge's decision to grant a late notice of claim.

In the Anthony case, the court stated that in order to meet the extraordinary circumstance standard the judge has to focus on the plaintiff's situation during the 90-day period. A plaintiff's medical condition has to be severe or debilitating. A plaintiff or family member has an obligation to seek legal advice as long they are physically or psychologically capable. Plaintiff or her daughter did not assert that they were incapable of seeking legal advice during the 90 days after the injury date. The court said that the fact that plaintiff and her daughter were not aware of the 90-day notice requirement does constitute extraordinary circumstances. The accrual date was the accident date.

In the Griffin case, the court held that the accrual date was the date of death. Attorney Rogan mistakenly believed that he could not file a notice of claim until he had a factual basis to file a claim against the City of Newark and officer Crespo. An attorney's mistaken belief or malpractice does not excuse the mandatory 90-day notice requirement. The court concluded that the notice of claim should have been filed by April 29, 2019. Furthermore, the court found that there were no extraordinary reasons for a late notice of claim. Specifically, From January 29 to April 29 there were no impediments for Griffin's children or his father to file a notice of claim with the City of Newark. Although no one had been appointed to the administrator of Griffin's estate until August 2019, the filing of a notice of claim can be signed by the claimant or "by some person on his behalf".

Appellate Division Judge Sabatino filed a concurring opinion in the Griffin case. He suggested that the Legislature might want to consider revising the notice requirements of the Tort Claims Act to allow grieving family members in cases involving fatalities additional time to file a notice of claim.

## Key Takeaway: The 90-Day Notice Requirement Must be Met or the Claim will be Dismissed

These two cases make it clear that anyone injured on public property or injured by a public employee should contact an attorney as soon as possible after the injury so a notice of claim is filed within 90 days. If not, no matter how significant the injury is, the claim will be dismissed.