

# CLIENT NEWS BRIEF

## California Supreme Court Denies Untimely Childhood Sexual Abuse Damages Claim

A divided California Supreme Court threw out a woman's claim against a public agency arising from resurfaced memories of alleged sexual abuse in the early 1990s because it was not submitted to the public agency by the six-month deadline for submitting such claims under the Government Claims Act. (*Rubenstein v. Doe No. 1 et al.* (Aug. 28, 2017, No. S234269) \_\_ Cal.5th \_\_.)

In a 4-3 decision, the Court found that the "delayed discovery rule" applicable to childhood sexual abuse claims for alleged conduct occurring before January 1, 2009 does not affect the six-month deadline to present a personal injury claim to a public entity. The Court's holding in *Rubenstein* underscores the "measured actions" the California Legislature has taken to protect public entities from potential liability for stale claims.

### The Government Claims Act and Code of Civil Procedure section 340.1

The Act generally requires that claims against a public entity for money or damages must be presented in writing to the public entity prior to filing a lawsuit in court, and must also be filed within six months of when the claim arises. A potentially competing provision is the delayed discovery rule in Code of Civil Procedure section 340.1, which provides that a lawsuit for childhood sexual abuse must be filed within the later of eight years of the date the plaintiff turns 26 or within three years of the date the plaintiff discovers or reasonably should have discovered that psychological injury was caused by the sexual abuse.

### Background

The *Rubenstein* lawsuit originated when a 34-year-old woman submitted a claim to a school district alleging that from 1993 to 1994, she was sexually molested by her high school track coach. She alleged that latent memories of the sexual abuse resurfaced in early 2012. Within six months of this discovery, she filed a claim with the district under the Act. The school district denied the claim as untimely, the woman filed suit, and the trial court dismissed the case on the school district's demurrer. The Court of Appeal reversed, agreeing with the plaintiff that her claim was timely under the limitations period set forth in section 340.1.

The California Supreme Court disagreed. In reversing the Court of Appeal, the Court discussed at length its 2007 decision in *Shirk v. Vista Unified School District*, which expressly rejected the argument that section 340.1 postpones a victim's duty under the Act to present a claim for childhood sexual abuse against a public entity within six months of the alleged abuse. The Court reasoned that section 340.1 only applies to statutes of limitations, and since the claim presentation deadline under the Act is not a statute of limitations, section 340.1 did not affect that deadline. Thus, although the cause of action may have been timely for purposes of the statute of limitations, the presentation of the claim against the public entity remained untimely, having fully accrued when the alleged abuse occurred.

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Sloan R. Simmons  
Partner and Co-Chair  
Litigation Practice Group  
Sacramento Office  
[ssimmons@lozanosmith.com](mailto:ssimmons@lozanosmith.com)



Erin Frazor  
Associate  
Walnut Creek Office  
[efrazor@lozanosmith.com](mailto:efrazor@lozanosmith.com)



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The Court recognized that in direct response to *Shirk*, the Legislature enacted Government Code section 905, subd. (m), which added an exception to the claims requirement for childhood sexual abuse claims, but only those arising out of conduct occurring on or after January 1, 2009. The legislative history behind section 905 makes clear the Legislature overruled *Shirk* only prospectively due to fiscal considerations, leaving *Shirk's* holding intact regarding pre-2009 claims. In so doing, the *Rubenstein* Court recognized "the Legislature put governmental entities on notice that for conduct allegedly occurring on or after January 1, 2009, they would have to protect themselves as best they could against possible stale claims. But the Legislature also intended to protect those entities from such claims for conduct occurring before that date."

The Court also found support for its conclusion in the public policy considerations underlying the claim presentation requirement of the Act, which include providing the opportunity for public entities to promptly remedy the issue; minimizing the risk of similar harm to others; permitting investigation while evidence is still available, memories are fresh, and witnesses can be located; allowing for settlement of meritorious disputes without costly litigation; and providing time for appropriate budgetary planning.

## Takeaways

This case makes it clear that public entities continue to be protected from potential liability for stale claims for alleged sexual abuse occurring before January 1, 2009, but must find ways to protect themselves from claims related to later-occurring conduct.

For more information on the *Rubenstein* decision or on application of the Government Claims Act in general, please contact the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#) or download our [Client News Brief App](#).