



And The Defense Wins

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DRI members [Dina M. Cox](#) and [Kameelah Shaheed-Diallo](#) of **Lewis Wagner, LLP** in Indianapolis obtained a dismissal of a legal malpractice claim against their law firm client, where the plaintiff claimed negligent representation by his defense lawyer in an underlying criminal case. After a lengthy procedural battle, the dismissal was ultimately upheld on appeal before the Indiana Court of Appeals.

The plaintiff claimed that, as the criminal defense lawyer's employer, the law firm was vicariously liable for the lawyer's alleged malpractice. But plaintiff voluntarily dismissed the law firm in hopes of obtaining a better settlement with the criminal defense attorney, who was also named in the suit. When mediation between the plaintiff and his criminal defense lawyer failed, the plaintiff sought to reinstate his claims against the law firm. Dina and Kameelah argued against reinstatement, because the statute of limitations for plaintiff's claims against the law firm had expired and could not be reinstated. They also argued that the Journey's Account statute did not save the plaintiff's time-barred claim. The trial court agreed and denied the plaintiff's motion to reinstate. The Indiana Court of Appeals also denied plaintiff's petition for discretionary appellate review.

Undeterred, the plaintiff re-filed the same claim against the law firm in another court. Dina and Kameelah moved to dismiss the second lawsuit on the basis of collateral estoppel. The trial court again agreed and dismissed the plaintiff's claim. The plaintiff appealed the dismissal, this time forcing the court of appeals to review the case, as the appeal was now automatic. The Indiana Court of Appeals reviewed the case and affirmed the dismissal of the law firm.

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