

*Otero v. Arcia*, 264 So. 3d 1140 (Fla. 5th DCA 2019)

## Legal Malpractice Case Ripe Despite Underlying Case Not Being Completed

Whether the underlying legal proceeding at issue had become final was addressed in the case of *Otero v. Arcia*, 264 So. 3d 1140 (Fla. 5th DCA 2019). The dispute pitted clients who were mortgage foreclosure defendants in the underlying case against their former lawyer.

The claim alleged bad advice concerning a consent judgment. At the time the complaint was filed, the consent judgment was not the subject of any appeal. A motion to dismiss was filed by the lawyer alleging the claim was not ripe due to a pending appeal of an order denying a motion to cancel the foreclosure sale.

The trial court granted the motion to dismiss with prejudice on the basis that the claim was not ripe due to the pending appeal. Relying upon *Silvestrone v. Edell*, 721 So.2d 1173 (Fla. 1998) and *Larson & Larson, P.A. v. TSE Indus., Inc.*, 22 So.3d 36 (Fla. 2009), the appellate court reversed the dismissal holding that some loss had occurred due to the consent judgment having become final. The fact that another ruling in the ongoing case was on appeal did not trouble the court due to *Larson's* holding that “the full extent of all losses suffered by the client due to the lawyer's negligence” need not be determined to assess either ripeness or the statute of limitations.

**TAKEAWAY** – A malpractice claim as to one aspect of an underlying case is ripe despite the fact that the underlying case is not yet complete. Of course, the lawyer being sued cannot continue to represent the client in the underlying case which will require the client to obtain a new lawyer. This is just the type of odd result predicted by Judge Lewis in his *Larson* dissent in which he stated: “... under the majority's holding today, ... there remains an unremitting risk that the client will be forced to seek new counsel and to prematurely initiate malpractice litigation for fear of triggering the two-year statute of limitations” *Id.* at 56 (Fla. 2009).