



WASHINGTON
COURTS

December 19, 2011

TO: CPGB Regulations Committee
FROM: Court Access Programs
RE: Statute of Limitations

West's Encyclopedia of American defines Statute of Limitation in pertinent part:

These statutes are designed to prevent fraudulent and stale claims from arising after all evidence has been lost or after the facts have become obscure through the passage of time or the defective memory, death, or disappearance witnesses.

The statute of limitations is a defense that is ordinarily asserted by the defendant to defeat an action brought against him after the appropriate time has elapsed. Statutes of limitations are enacted by the legislature, which may either extend or reduce the time limits, subject to certain restrictions. A court cannot extend the time period unless the statute provides such authority. With respect to civil lawsuits, a statute must afford a reasonable period in which an action can be brought. A statute of limitations is unconstitutional if it immediately curtails an existing remedy or provides so little time that it deprives an individual of a reasonable opportunity to start her lawsuit. Depending upon the state statute, the parties themselves may either shorten or extend the prescribed time period by agreement, such as a provision in a contract.

Statutes of limitations are designed to aid defendants. A plaintiff, however, can prevent the dismissal of his action for untimeliness by seeking to *toll* the statute. When the statute is tolled, the running of the time period is suspended until some event specified by law takes place. Tolling provisions benefit a plaintiff by extending the time within which he is permitted to bring suit.

Various events or circumstances will toll a statute of limitations. It is tolled when one of the parties is under a legal disability—the lack of legal capacity to do an act—at the time the cause of action accrues. A child or a person with a mental illness is regarded as being incapable of initiating a legal action on her own behalf. Therefore, the time limit will be tolled until some fixed time after the disability has been removed. For example, once a child reaches the age of majority the counting of time will be resumed. A personal disability that postpones the operation of the statute against an individual may

be asserted only by that individual. If a party is under more than one disability, the statute of limitations does not begin to run until all the disabilities are removed. Once the statute begins to run, it will not be suspended by the subsequent disability of any of the parties unless specified by statute.

The unexcused failure to start an action within the statutory period bars the action. Mere ignorance of the existence of a cause of action generally does not toll the statute of limitations, particularly when the facts could have been learned by inquiry or diligence. In cases where a cause of action has been fraudulently concealed, the statute of limitations is tolled until the action is, or could have been, discovered through the exercise of due diligence. Ordinarily, silence or failure to disclose the existence of a cause of action does not toll the statute. The absence of the plaintiff or defendant from the jurisdiction does not suspend the running of the statute of limitations, unless the statute so provides.

Legislatures have created special exceptions to the statute of limitations in circumstances where victims are unable to disclose or communicate the harm, i.e. persons with disabilities, child abuse and guardianships.

RCW 4.16.190 states:

Statute tolled by personal disability

- (1) Unless otherwise provided in this section, if a person entitled to bring an action mentioned in this chapter, except for a penalty or forfeiture, or against a sheriff or other officer, for an escape, be at the time the cause of action accrued either under the age of eighteen years, or incompetent or disabled to such a degree that he or she cannot understand the nature of the proceedings, such incompetency or disability as determined according to chapter 11.88 RCW, or imprisoned on a criminal charge prior to sentencing, the time of such disability shall not be a part of the time limited for the commencement of action.

Statute of Limitations in other Professions

Healthcare

There is no statutory time limit in which to file a complaint; however, it is possible that a case cannot be acted upon because the information needed to make a decision is no longer available. It is best to report as soon as possible so the records can be obtained and potential witnesses can be located. It is a good idea to make a written note of the circumstances soon after the experience so facts are not forgotten. When submitting a complaint, be as specific as you can with the facts and dates.

WSBA

ELC 1.4 NO STATUTE OF LIMITATION

No statute of limitation or other time limitation restricts filing a grievance or bringing a proceeding under these rules, but the passage of time since an act of misconduct occurred may be considered in determining what if any action or sanction is warranted.