

## **STATUTES OF LIMITATIONS**

As a new lawyer, it is important to know and apply the statutes of limitations applicable to your clients' claims. As a new lawyer, it is easy to sit down and interview a new client and get caught up in how great their case sounds and forget about the statute of limitations that applies to their case, or that multiple statutes of limitations may apply to their case. This article will address some of the common statutes of limitations in Ohio. Keep in mind that there are many more statutes of limitations (generally in Chapter 2305 of the Revised Code) and that the running of the statute may be tolled for various reasons (e.g., minority or unsound mind of the plaintiff).

### **Personal Injury Claims**

The general statute of limitations for personal injury claims arising from negligence is R.C. 2305.10. Division (A) of that section states that "an action for bodily injury or injuring personal property shall be brought within two years after the cause of action accrues," and "a cause of action accrues under this division when the injury or loss to a person or property occurs." In other words, an injured plaintiff has two years from the date of their motor vehicle accident or slip and fall, for example, to file his or her claim. While this may seem like a long time, many clients treat for months or years after their accident before seeking counsel from an attorney. Therefore, it is extremely important to know when the cause of action accrued. "When did the accident happen?" should be one of your first questions to a potential personal injury client, and the answer should be promptly verified through a traffic crash report or other evidence. If that statute ran last week – or, worse yet, it will run tomorrow – you need to know that before you get on the case.

## **Assault and Battery**

Knowing that the general statute of limitations for personal injury cases in Ohio is two years, it is easy to assume that the statute of limitations for all types of bodily injury cases is two years. When you start practicing law, you may think that an assault or battery case is simply another type of personal injury claim with a two-year statute of limitations. However, there is a different statute of limitations for assault and battery cases than for personal injury cases based on negligence. R.C. 2305.111(B) states "an action for assault or battery shall be brought within one year after the cause of action accrues." The accrual date may be delayed if, for example, the identity of the person who committed the assault and battery is not known, but generally the time starts to run when the injured person is assaulted or battered. If the proof problems associated with a "bar fight" case don't scare you off – and maybe they should – make sure that you calendar one year from the date of the assault or battery as your statute of limitations, rather than two.

## **Medical Malpractice**

Although a medical malpractice claim is typically an action for "bodily injury," the two-year statute of limitations under R.C. 2305.10 does not apply. Instead, a medical malpractice action "shall be commenced within one year after the cause of action accrues." R.C. 2305.113(A). In addition to having a shorter statute of limitations, the determination of when a medical malpractice action accrues is much more complicated than figuring out when a motor vehicle accident took place, and a four-year statute of repose may apply as well. Due to the complexity and potential exposure involved with medical malpractice cases, new lawyers should probably not be handling these cases without the close supervision of a lawyer experienced with

these cases, but even if the new lawyer is only intaking new clients or referring them to other attorneys, he or she needs to be well-versed on the medical malpractice statute of limitations.

### **Wrongful Death and Survivorship Claims**

Wrongful death claims present another trap for the unwary. While a wrongful death claim sounds like just another action for bodily injury, it is not. A wrongful death claim is not a claim for the personal injury suffered by the decedent, but a claim brought by the executor or administrator of the decedent's estate on behalf of the beneficially entitled next of kin for *their* loss of their loved one. The problem lies not with the statute of limitations for a wrongful death claim, which "shall be commenced within two years after the decedent's death." R.C.

2125.02(D). The trap is that the wrongful death claim may not be the only claim that the plaintiff has, and one of the other claims may have a shorter statute of limitations or accrue on an earlier date.

Survivorship claims are claims that a decedent could have brought for the decedent's conscious pain and suffering prior to death and for the decedent's economic loss caused by the tortfeasor's conduct. Those tort claims survive the death of the decedent and can be brought by the administrator or executor of the decedent's estate, but they do not necessarily have the same statute of limitations as a wrongful death claim that may arise from the same tortious conduct. For example, if your client's family member died in a car accident, there would be a two-year statute of limitations for both the wrongful death and survivorship claims. However, if your client's family member died as a result of medical malpractice, the wrongful death claim would have a two-year statute of limitations from the date of death, and the medical malpractice survivorship claim would have a one-year statute of limitations from the date of accrual of that action. What you need to remember here is that the deadlines for filing the different claims may

vary due to the applicable statutes of limitations and potentially different dates of accrual of those actions.

As can be seen above, there can be significant differences in the statutes of limitations for similar causes of action. You must become familiar with the statutes of limitations applicable to your areas of practice. What you don't know can hurt your client (and you). Before taking on a new client, make sure you know the applicable statute of limitations that applies, the date(s) of accrual of your client's cause(s) of action, and the earliest date by which you must file suit, if necessary, to preserve all of their claims.