

Source - North Dakota 1991, Vol. 5 + Vol. 5  
Century Code, Anno later  
2005 Supplement

ran from time of commission of each act. Fox v. Higgins (1967) 149 NW 2d 369, cert. denied (1967) 389 US 873, 19 LEd2d 153, 88 Sup Ct 160.

#### Discovery of Injury.

The purpose of the discovery rule is to prevent the injustice of barring a claim before the plaintiff could reasonably be aware of its existence. Thus, the focus is upon whether the plaintiff has been apprised of facts which would place a reasonable person on notice that a potential claim exists. It is not necessary that the plaintiff be subjectively convinced that he has been injured and that the injury was caused by the defendant's negligence. Wall v. Lewis (1986) 393 NW 2d 758.

Where plaintiffs were advised by an attorney that they had a potential malpractice claim, plaintiffs as a matter of law "discovered" the injury, its cause, and the defendant's possible negligence as of that date. Wall v. Lewis (1986) 393 NW 2d 758.

#### Diversity Action.

Malpractice action brought in federal district court of Minnesota was barred by statute of limitations since Minnesota follows the general rule that procedural law of the forum state applies, and that statutes of limitation are procedural. Cuthbertson v. Uhley (1975) 509 F2d 225.

#### Extension of Limitation Period.

Where trial court found that the severe emotional trauma experienced by plaintiff resulted in her being unable to fully understand or discover her cause of action for assault and battery based on sexual abuse she experienced as a minor during the applicable statutory limitations period, court did not err in applying discovery rule to extend period of limitations. Osland v. Osland (1989) 442 NW 2d 907.

In no case, except where there is fraudulent concealment, will "the limitation of an action be extended beyond six years of the act or omission of alleged malpractice by a nondiscovery thereof." Wheeler v. Schmid Labs., Inc. (1990) 451 NW 2d 133.

#### False Imprisonment.

False imprisonment is considered a continuing tort which commences at the time of the false arrest and continues until the unlawful detention ceases. O'Fallon v. Pollard (1988) 427 NW 2d 809.

The time specified in the statute of limitation for a false-imprisonment action commences to run from the termination of the plaintiff's incarceration, irrespective of whether or not related criminal proceedings

have been concluded. O'Fallon v. Pollard (1988) 427 NW 2d 809.

Where the plaintiff was released on bond shortly after his arrest, the two-year period began to run at that time, and because his release from incarceration occurred more than two years before he filed his lawsuit against a city, city police and sheriff, his complaint was barred by the statute of limitation. O'Fallon v. Pollard (1988) 427 NW 2d 809.

#### Federal Action.

This statute of limitation, which applies to actions involving assault, batteries and the like, more specifically encompasses the sorts of actions which concerned Congress in enacting 42 U.S.C. § 1983; therefore, this section applied to plaintiff's 1983 action. Kessel v. Schaff (1987) 697 FSupp 1102.

#### Fraudulent Concealment of Cause of Action.

In an action against physicians for alleged assault and malpractice resulting from the removal of certain organs from plaintiff's body, where plaintiff did not discover the removal until a subsequent operation six years after the removal, it was at that time that the one-year limitation was set in motion and plaintiff's failure to initiate action within one year from the date of the second operation barred her from recovery. Linke v. Sorenson (1960) 276 F2d 151.

#### Loss of Consortium.

A cause of action by a husband for loss of services, society, and companionship of his wife, resulting from injuries to her through the wrongful acts or negligence of a surgeon, arose at the time he was deprived of such services, society, and companionship. Milde v. Leigh (1947) 75 ND 418, 28 NW 2d 530, 173 ALR 738.

#### Malpractice Action.

Limitation period commences to run against malpractice action from time act of malpractice with resulting injury is, or by reasonable diligence could be, discovered. Iverson v. Lancaster (1968) 158 NW 2d 507.

As used in this section, the term "malpractice" refers to the nature of the subject matter of the action and not to the form of remedial procedure, whether it be in tort or contract. Johnson v. Haugland (1981) 303 NW 2d 533.

The rule concerning the time at which a cause of action for malpractice accrues to start the running of the statute of limitations is that the limitation period commences to run against a malpractice action from the time the act of malpractice with resulting in-

## N.D.. Child Abuse Statute 28-01-25.1

The statute reads "A claim for relief resulting from childhood sexual abuse must be commenced within ten years after the plaintiff knew or reasonably should have known that a potential claim exists resulting from alleged childhood sexual abuse."

A potential claim exists when you have been **notified by an attorney that a potential claim exists (Wall vs Lewis 1986)**. Or simply file per se a complaint and the potential tolling claim exists then.

The time restriction is 10 years after being attorney advised a potential claim exists.

All N.D. child abuse victims could file a civil case today as the statute has been in effect only 6 years.

## Supreme Court of North Dakota.

Jeffrey Allen DUNFORD, Plaintiff and Appellant v. Dr. Trueman E. TRYHUS, Jr., Defendant and Appellee.

No. 20090178.

Decided: December 15, 2009

11] Dunford inquired as to the applicable statute of limitations for sexual abuse claims in 1988 and wrote a letter to Tryhus in the early 1990s. Dunford's letter confronted Tryhus and listed problems he was having because of the abuse. Dunford also has experienced nightmares since he was a child, and he reports that by the **mid-1990s he knew the nightmares were caused by the alleged abuse. This evidence establishes Dunford discovered his injury no later than the mid-1990s.**

[¶ 12] Drawing all inferences in favor of Dunford, no dispute exists that he **discovered his injury** in the mid-1990s and that he commenced this action in February 2008. Because Dunford did not file his sexual abuse claim within two years of discovering his injury, the district court did not err in granting Tryhus' motion for summary judgment.

## Adapted from Mn. statutes

### CIVIL Child Abuse

28-01-25.1. Limitation on actions alleging childhood sexual abuse.

Notwithstanding section 28-01-25, a potential claim for relief resulting from childhood sexual abuse may be commenced at any time. For purposes of this section, "childhood sexual abuse" means any sexual act committed by the defendant against the plaintiff which occurred when the plaintiff was under eighteen years of age or which would have been a violation of chapter 12.1-20.

**"Defendant" includes a natural person, corporation, Limited Liability Company, partnership, organization, association, or other entity.** Plaintiff need not establish which act in a continuous series of sexual abuse acts by the defendant caused the injury. This section applies to an action for damages commenced against a person corporation, organization, or other entity that is a cause of the plaintiff's damages.

Notwithstanding any other provision of law, in the case of alleged sexual abuse of an individual under the age of 18, if the action would otherwise be time barred under a previous version of North Dakota Statutes, section 28-01-25.1, or other time limit, an action for damages against a defendant may be commenced at any time.

Easier fruit for Attorneys →  
+  
Bigger