

JONES INN OF COURT

April 15, 2021

I. Introduction

II. Changes in Ohio Revised Code

A. Attorney Statute of Repose

1. R.C. 2305.11(A)

“An action for legal malpractice against an attorney or law firm or legal professional association ... shall be commenced within one year after the cause of action accrued.”

2. R.C. 2305.117(A)

“Except as otherwise provided in this section, an action upon a legal malpractice claim against an attorney or law firm or legal professional association shall be commenced within one year after the cause of action accrued.”

(B) “Except as to persons within the age of minority or of unsound mind as provided by Section 2305.16 of the Revised Code, an except as provided in division (C) of this section, both of the following apply:

(1) No action upon a legal malpractice claim against an attorney or law firm or legal professional association shall be commenced more than four years after the occurrence of the act or omission constituting the alleged basis of the legal malpractice claim.

(2) If ... an action is not commenced within four years after the occurrence of the act or omission constituting the alleged basis of the claim, then action upon that claim is

barred.

(C)(1) If a person could not have discovered the injury resulting from the act or omission within three years after the occurrence of the act or omission, but in the exercise of reasonable care and diligence discovers the injury resulting from the act or omission before the expiration of the four year period, the person may commence an action upon the claim not later than one year after the person discovers the injury resulting from the act or omission.

(C)(2) A person who commences such an action has the affirmative burden of proving by clear and convincing evidence that the person, with reasonable care and diligence, could not have discovered the injury resulting from the alleged act or omission, within the three period described in that division.

B. Statute of Limitations (Senate Bill 13) 2305.03(C)

Signed by Governor DeWine on March 16, 2021 and takes effect June 14, 2021.

Bill reduces statute of limitations for actions upon an expired written contract from eight years to six and an expired oral contract from six years to four years.

Claims that have accrued before the June 14, 2021 effective date must be brought before June 14, 2021 or the remaining period under the prior eight-year statute of limitations, whichever comes sooner.

There are a number of exceptions to the new statute of limitations for specific types of contracts or claims that are subject to other limitations periods found in the Revised Code.

C. Reduction in Employment Related Statute of Limitations

Governor DeWine signed the Employment Law Uniformity Act (HB352) into law, which took effect on April 15, 2021 (R.C. 4112.01, *et seq.*). The Act applies to all future discrimination claims filed on or after that date. The Act aligns Ohio

discrimination law with the federal standards and other state discrimination laws across the country. Several important aspects of the Act are as follows:

1. Statute of limitations

Ohio has long had a six-year statute of limitations for employees to bring discrimination claims against their employers, which is the longest statute of limitations in the country. The Act reduces that statute of limitations to two years.

2. Exhaustion of Administrative Remedies

The employees will no longer be able to bring suit against their employer in court without first filing a Charge and exhausting administrative remedies before the Ohio Civil Rights Commission. This is the process under federal law and a number of other states, which require that an employee first obtain a "right to sue" letter from the OCRC before the employee can file in court. This new process will allow the OCRC to consolidate charges of the same alleged violation, which should have an effect of reducing the number of suits defended by employers in multiple venues.

3. Manager or Supervisor Liability

The Act has removed the prior Supreme Court holding in *Genaro v. Cent. Transp., Inc.*, 84 Ohio St. 3d 293 (1999), that permitted managers/supervisors to be sued personally for their role in workplace discrimination/harassment.

Managers/supervisors who act outside the scope of their employment and discriminate may still be held personally liable, but under a different theory of liability than that set forth in *Genaro*.

4. Age Discrimination Claims

The Act has eliminated a special set of filing rules and statute limitations that apply to age discrimination lawsuits.

5. Affirmative Defenses

The Act has provided a number of affirmative defenses for

employers. To receive the affirmative defense protections, the employers must have an anti-discrimination policy, train its employees on appropriate workplace behavior and complaint procedures, exercise reasonable care in preventing or correcting harassment. In addition, the employee must fail to invoke the employer's complaint procedures or other preventive opportunities.

III. Changes in Gov. Bar Rule V Relating to Prosecution of Attorney Disciplinary Claims

A. Bar Counsel and Assistant Bar Counsel – Gov. Bar R. V(6)

The CGC Now Nominates Bar Counsel. ODC certifies Bar Counsel and, if applicable, assistant Bar Counsel. Previously, the CGC designated Bar Counsel. Current Bar Counsel/Assistant Bar Counsel are grandfathered/in and do not require certification by ODC.

Bar Counsel must annually complete six hours of training offered or approved by ODC.

For complaints certified after January 1, 2021, CGC members can no longer serve as “lead” counsel of record in a case before the Board or court.

B. Bar Counsel Duties – Gov. Bar R. V(6)(c)

Under the new rule, the Bar Counsel must commit the time necessary to perform the following duties:

1. Supervising the intake and investigation of grievances.
2. Advising and training certified grievance committee members on matters of professional conduct and disciplinary procedures.
3. Serve as designated lead counsel of record in each formal complaint filed with the Board.
4. Bar Counsel may delegate some aspects of discovery, pleading preparation or hearing presentation to assistant bar counsel or volunteer CGC members.

C. Time for Investigations – Gov. Bar R. V(9)(d)

Investigations must be completed within 270 days from the date the grievance is received. No investigation is to extend beyond one year. No longer required to request 60 and 150 day extensions from the Board.

D. Notice of Intent to File Complaint – Gov. Bar R. V(10)

Must provide the respondent/respondent's counsel with copies of proposed complaint setting forth each allegation of professional misconduct.

Must include with the notice of intent information on the Ohio Lawyer's Assistance Program.

E. Interim Default Suspension – Gov. Bar R. V(14)

Notice of intent to certify default reduced from 30 days to 14 days.

F. Motion for Leave to Answer

Motion for Leave to Answer reduced from 180 days to 90 days.

Motion to initiate default proceedings for disbarment reduced from 180 days to 90 days.

Notice of restitution reduced from 180 days to 90 days.

G. Consent to Discipline Agreements (CDA) – Gov. Bar R. V(16)

May be submitted within 90 days from the date of panel appointment. The new rules eliminate 60-day deadline and 30-day extension. CDAs are not allowed in cases involving city and judicial officers or a public official who engaged in misconduct while serving in elected public office.

H. New Mitigating Factor – Gov. Bar R. V(13)(c)

In the case of an elected or appointment judge, voluntary resignation from judicial office prior to commencement of the judge's disciplinary hearing before the Board.

**I. Response to Show Cause Order – The No-Objection Brief -
Gov. Bar R. V(□)**

In lieu of filing objections, either party (or both parties jointly) may file a no-objection brief. Neither party can file a response to a no-objection brief. Upon the filing of a joint no objection brief, the matter is immediately submitted to the court.

J. Orders of Restitution – Gov. Bar R. 5(17)(d)(1)

In addition to ordering restitution to a client, the court may now order restitution to a third-party.

K. Attorney Registration – Email Address – Gov. Bar R. VI

Attorneys must provide the Office of Attorney Services with an email service address. If no email service address is provided, the attorney's office or residence email address will be treated as the email service address.

IV. ADVISORY OPINIONS

V. CASES

A. IOLTA ACCOUNTS: Attorney Client Privilege

Yost v. Schaffner, 2020-Ohio-5127, 161 N.E. 3d 857 (5th Dist., Guernsey Cty.)

B. PRO SE PARTY COMMUNICATIONS

McClafferty v. Portage Cty. Bd. of Comm'rs, 2021 U.S. Dist. LEXIS 61869 (N.D. OH).

In re Tapp, 2020 Bankr. LEXIS 1199 (N.D. OH)

**C. PROSECUTORIAL MISCONDUCT AND
INEFFECTIVE ASSISTANCE OF COUNSEL**

Stermer v. Warren, 959 F.3d 704 (6th Cir., 2020)

Disciplinary Council v. Spinazze, 159 Ohio St. 3d 187,
2020-Ohio-957, 149 N.E.3d 503

Erie-Huron Bar Ass'n v. Bailey and Bailey, 2020-Ohio-
3701

**D. ATTORNEY MISCONDUCT AND MENTAL
HEALTH ISSUES**

Disciplinary Council v. Amaddio, 158 Ohio St. 3d 442,
2020-Ohio-141, 144 N.E.3d 418

Toledo Bar Ass'n v. Yoder, 2020-Ohio-4775, 2020 Ohio
LEXIS 2215, 2020 WL 5900579

Disciplinary Council v. Cramer, 160 Ohio St. 3d 430,
2020-Ohio-4195, 157 N.E.3d 756

Butler Cty. Bar Ass'n v. Blauvelt, 160 Ohio St. 3d 333,
2020-Ohio-3325, 156 N.E.3d 891

Stark Cty. Bar Ass'n v. Kelley, 2021-Ohio-770, 2021 Ohio
LEXIS 462, 2021 WL 966941

E. DISCIPLINARY PROCEEDINGS AND IMMUNITY

Deters v. Hammer, 2021 U.S. Dist. LEXIS 30964, 2021
WL 664011 (S.D. OH)

**F. FEDERAL COUNTY ABILITY TO ADDRESS
STATE LAW LICENSE**

Loyd v. Pocorny, 2021 U.S. Dist. LEXIS 45618, 2021 WL
928377 (S.D. OH)

G. DISCIPLINARY CASE DUE PROCESS

Disciplinary Council v. Reinheimer, 2020-Ohio-3941, 2020
Ohio LEXIS 1803, 2020 WL 4516060

H. CAMPAIGN FINANCE REPORTING

Mahoning County Bar Ass'n v. Yavorcik, 158 Ohio St. 3d
436

I. MALPRACTICE INSURANCE AGREEMENTS

Prof'l Sols. Ins. Co. v. Novak, LLP, 2020-Ohio-4829 (8th
Dist., Cuyahoga Cty.)

J. JUDICIAL EX-PARTE COMMUNICATIONS

ODC v. Winters, BOPC 2020-053, OSC 2021-0442

K. UPL PROSECUTION

Mahoning Cty Bar Association v. Amatore, 2021-Ohio-622

**L. FORCED SPEECH AND THE FIRST
AMENDMENT**

Gala v. City of New York, 2021 U.S. Dist. LEXIS 46429
(E.D. NY)