

**RESOLUTION 07-04-2007**

**DIGEST**

Adult Victims of Child Sexual Abuse: Statute of Limitations

Amends Code of Civil Procedure section 340.1 to clarify the statute of limitations for civil law suits for adult victims of childhood sexual abuse.

**TEXT OF RESOLUTION**

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend Code of Civil Procedure Section 340.1 to read as follows:

- 1 §340.1
- 2 (a) In an action for recovery of damages suffered as a result of childhood sexual
- 3 abuse, the time for commencement of the action shall be within eight years of the date the
- 4 plaintiff attains the age of majority or within three years of the date the plaintiff discovers or
- 5 reasonably should have discovered that psychological injury or illness occurring after the
- 6 age of majority was caused by the sexual abuse, whichever period expires later, for any of
- 7 the following actions: (1) An action against any person for committing an act of childhood
- 8 sexual abuse.
- 9 (2) An action for negligence liability against any person or entity who owed a duty of
- 10 care to the plaintiff, ~~where a wrongful or negligent act by that person or entity was a legal~~
- 11 ~~cause of the childhood sexual abuse which resulted in the injury to the plaintiff.~~
- 12 (3) An action for intentional tort liability against any person or entity ~~where an~~
- 13 ~~intentional act by that person or entity was a legal cause of the childhood sexual abuse~~
- 14 ~~which resulted in the injury to the plaintiff not included in subdivision (a)(1).~~
- 15 (b)(1) No action described in paragraph (2) or (3) of subdivision (a) may be
- 16 commenced on or after the plaintiff's 26th birthday.
- 17 (2) ~~This s~~Subdivision (b)(1) does not apply if the person or entity knew or had reason
- 18 to know, or was otherwise on notice, of any unlawful sexual conduct by an employee,
- 19 volunteer, representative or agent of the person or the entity, and failed to take reasonable
- 20 steps, and to implement reasonable safeguards, including but not limited to, preventing or
- 21 avoiding placement of that person in a function or environment in which contact with
- 22 children is an inherent part of that function or environment. For purposes of this
- 23 subdivision, providing counseling is not sufficient, in and of itself, to constitute a reasonable
- 24 step or a reasonable safeguard.
- 25 (3) If the person or entity knew or had reason to know, or was otherwise on notice, of
- 26 unlawful sexual conduct by an employee, volunteer, representative or agent of the entity, the
- 27 time for commencement of an action against the person or entity for negligent or intentional
- 28 conduct shall be within eight years of the date the plaintiff attains the age of majority or
- 29 within three years of the date the plaintiff discovers or reasonably should have discovered
- 30 that psychological injury or illness occurring after the age of majority was caused by the
- 31 sexual abuse, whichever period expires later.
- 32 (c) Notwithstanding any other provision of law, any claim for damages described in
- 33 paragraph (2) or (3) of subdivision (a) that is permitted to be filed pursuant to paragraph (2)

34 of subdivision (b) that would otherwise be barred as of January 1, 2003, solely because the  
35 applicable statute of limitations has or had expired, is revived, and, in that case, a cause of  
36 action must be commenced within one year of January 1, 2003. Nothing in this subdivision  
37 shall be construed to alter the applicable statute of limitations period of an action that is not  
38 time barred as of January 1, 2003.

39 (d) Subdivision (c) does not apply to either of the following:

40 (1) Any claim that has been litigated to finality on the merits in any court of  
41 competent jurisdiction prior to January 1, 2003. Termination of a prior action on the basis of  
42 the statute of limitations does not constitute a claim that has been litigated to finality on the  
43 merits.

44 (2) Any written, compromised settlement agreement which has been entered into  
45 between a plaintiff and a defendant where the plaintiff was represented by an attorney who  
46 was admitted to practice law in this state at the time of the settlement, and the plaintiff  
47 signed the agreement.

48 (e) "Childhood sexual abuse" as used in this section includes any act committed  
49 against the plaintiff that occurred when the plaintiff was under the age of 18 years and that  
50 would have been proscribed by Section 266j of the Penal Code; Section 285 of the Penal  
51 Code; paragraph (1) or (2) of subdivision (b), or of subdivision (c), of Section 286 of the  
52 Penal Code; subdivision (a) or (b) of Section 288 of the Penal Code; paragraph (1) or (2) of  
53 subdivision (b), or of subdivision (c), of Section 288a of the Penal Code; subdivision (h), (i),  
54 or (j) of Section 289 of the Penal Code; Section 647.6 of the Penal Code; or any prior laws  
55 of this state of similar effect at the time the act was committed. Nothing in this subdivision  
56 limits the availability of causes of action permitted under subdivision (a), including causes  
57 of action against persons or entities other than the alleged perpetrator of the abuse.

58 (f) Nothing in this section shall be construed to alter the otherwise applicable burden  
59 of proof, as defined in Section 115 of the Evidence Code, that a plaintiff has in a civil action  
60 subject to this section.

61 (g) Every plaintiff 26 years of age or older at the time the action is filed shall file  
62 certificates of merit as specified in subdivision (h).

63 (h) Certificates of merit shall be executed by the attorney for the plaintiff and by a  
64 licensed mental health practitioner selected by the plaintiff declaring, respectively, as  
65 follows, setting forth the facts which support the declaration:

66 (1) That the attorney has reviewed the facts of the case, that the attorney has  
67 consulted with at least one mental health practitioner who is licensed to practice and  
68 practices in this state and who the attorney reasonably believes is knowledgeable of the  
69 relevant facts and issues involved in the particular action, and that the attorney has  
70 concluded on the basis of that review and consultation that there is reasonable and  
71 meritorious cause for the filing of the action. The person consulted may not be a party to the  
72 litigation.

73 (2) That the mental health practitioner consulted is licensed to practice and practices  
74 in this state and is not a party to the action, that the practitioner is not treating and has not  
75 treated the plaintiff, and that the practitioner has interviewed the plaintiff and is  
76 knowledgeable of the relevant facts and issues involved in the particular action, and has  
77 concluded, on the basis of his or her knowledge of the facts and issues, that in his or her  
78 professional opinion there is a reasonable basis to believe that the plaintiff had been subject

79 to childhood sexual abuse.

80 (3) That the attorney was unable to obtain the consultation required by paragraph (1)  
81 because a statute of limitations would impair the action and that the certificates required by  
82 paragraphs (1) and (2) could not be obtained before the impairment of the action. If a  
83 certificate is executed pursuant to this paragraph, the certificates required by paragraphs (1)  
84 and (2) shall be filed within 60 days after filing the complaint.

85 (i) Where certificates are required pursuant to subdivision (g), the attorney for the  
86 plaintiff shall execute a separate certificate of merit for each defendant named in the  
87 complaint.

88 (j) In any action subject to subdivision (g), no defendant may be served, and the duty  
89 to serve a defendant with process does not attach, until the court has reviewed the  
90 certificates of merit filed pursuant to subdivision (h) with respect to that defendant, and has  
91 found, in camera, based solely on those certificates of merit, that there is reasonable and  
92 meritorious cause for the filing of the action against that defendant. At that time, the duty to  
93 serve that defendant with process shall attach.

94 (k) A violation of this section may constitute unprofessional conduct and may be the  
95 grounds for discipline against the attorney.

96 (l) The failure to file certificates in accordance with this section shall be grounds for  
97 a demurrer pursuant to Section 430.10 or a motion to strike pursuant to Section 435.

98 (m) In any action subject to subdivision (g), no defendant may be named except by  
99 "Doe" designation in any pleadings or papers filed in the action until there has been a  
100 showing of corroborative fact as to the charging allegations against that defendant.

101 (n) At any time after the action is filed, the plaintiff may apply to the court for  
102 permission to amend the complaint to substitute the name of the defendant or defendants for  
103 the fictitious designation, as follows:

104 (1) The application shall be accompanied by a certificate of corroborative fact  
105 executed by the attorney for the plaintiff. The certificate shall declare that the attorney has  
106 discovered one or more facts corroborative of one or more of the charging allegations  
107 against a defendant or defendants, and shall set forth in clear and concise terms the nature  
108 and substance of the corroborative fact. If the corroborative fact is evidenced by the  
109 statement of a witness or the contents of a document, the certificate shall declare that the  
110 attorney has personal knowledge of the statement of the witness or of the contents of the  
111 document, and the identity and location of the witness or document shall be included in the  
112 certificate. For purposes of this section, a fact is corroborative of an allegation if it confirms  
113 or supports the allegation. The opinion of any mental health practitioner concerning the  
114 plaintiff shall not constitute a corroborative fact for purposes of this section.

115 (2) Where the application to name a defendant is made prior to that defendant's  
116 appearance in the action, neither the application nor the certificate of corroborative fact by  
117 the attorney shall be served on the defendant or defendants, nor on any other party or their  
118 counsel of record.

119 (3) Where the application to name a defendant is made after that defendant's  
120 appearance in the action, the application shall be served on all parties and proof of service  
121 provided to the court, but the certificate of corroborative fact by the attorney shall not be  
122 served on any party or their counsel of record.

123 (o) The court shall review the application and the certificate of corroborative fact in

124 camera and, based solely on the certificate and any reasonable inferences to be drawn from  
125 the certificate, shall, if one or more facts corroborative of one or more of the charging  
126 allegations against a defendant has been shown, order that the complaint may be amended to  
127 substitute the name of the defendant or defendants.

128 (p) The court shall keep under seal and confidential from the public and all parties to  
129 the litigation, other than the plaintiff, any and all certificates of corroborative fact filed  
130 pursuant to subdivision (n).

131 (q) Upon the favorable conclusion of the litigation with respect to any defendant for  
132 whom a certificate of merit was filed or for whom a certificate of merit should have been  
133 filed pursuant to this section, the court may, upon the motion of a party or upon the court's  
134 own motion, verify compliance with this section by requiring the attorney for the plaintiff  
135 who was required by subdivision (h) to execute the certificate to reveal the name, address,  
136 and telephone number of the person or persons consulted with pursuant to subdivision (h)  
137 that were relied upon by the attorney in preparation of the certificate of merit. The name,  
138 address, and telephone number shall be disclosed to the trial judge in camera and in the  
139 absence of the moving party. If the court finds there has been a failure to comply with this  
140 section, the court may order a party, a party's attorney, or both, to pay any reasonable  
141 expenses, including attorney's fees, incurred by the defendant for whom a certificate of merit  
142 should have been filed.

143 (r) The amendments to this section enacted at the 1990 portion of the 1989-90  
144 Regular Session shall apply to any action commenced on or after January 1, 1991, including  
145 any action otherwise barred by the period of limitations in effect prior to January 1, 1991,  
146 thereby reviving those causes of action which had lapsed or technically expired under the  
147 law existing prior to January 1, 1991.

148 (s) The Legislature declares that it is the intent of the Legislature, in enacting the  
149 amendments to this section enacted at the 1994 portion of the 1993-94 Regular Session, that  
150 the express language of revival added to this section by those amendments shall apply to any  
151 action commenced on or after January 1, 1991.

152 (t) Nothing in the amendments to this section enacted at the 1998 portion of the  
153 1997-98 Regular Session is intended to create a new theory of liability.

154 (u) The amendments to subdivision (a) of this section, enacted at the 1998 portion of  
155 the 1997-98 Regular Session, shall apply to any action commenced on or after January 1,  
156 1999, and to any action filed prior to January 1, 1999, and still pending on that date,  
157 including any action or causes of action which would have been barred by the laws in effect  
158 prior to January 1, 1999. Nothing in this subdivision is intended to revive actions or causes  
159 of action as to which there has been a final adjudication prior to January 1, 1999.

(Proposed new language underlined; language to be deleted stricken.)

**PROPONENT:** Santa Clara County Bar Association

**STATEMENT OF REASONS:**

Existing Law: Code of Civil Procedure Section 340.1 has been amended repeatedly, resulting in a statute of limitations that lacks sufficient clarity as to a number of claims.

This Resolution: The proposed amendments are a policy-neutral clarification of the current text.

The Problem: In 1990, the statute of limitations for any civil claim arising from childhood sexual abuse was either (1) eight years from majority, i.e., age 26, or (2) after age 26, within three years of making the causal connection. However, the succession of amendments enacted after 1990 obscured the intent of the legislature.

First, the 1998 amendments eliminated the 3-year causal connection statute of limitations for claims against entities; such claims must be filed within 8 years of majority. (Code Civ. Proc. § 340.1(b)(1)).

Then, the 2002 amendments opened a one-year window in which time-barred claims could be brought regardless of the statute of limitations. This amendment was made in light of allegations of cover-ups or other complicit conduct by potential entity defendants, obscuring the causal connection. These amendments also reinstated some claims that had been removed by the 1998 amendments. A claim for negligent conduct must be brought by the plaintiff's 26th birthday, but claims for intentional conduct or knowing ratification, for example, would be subject to the 3-year causal connection statute. (Code Civ. Proc. § 340.1(b)(2)).

As currently written, the law does not expressly state the statute of limitations for civil actions against persons/perpetrators, or for actions for intentional torts by entities. Rather than leave the statute of limitations to deduction and demurrer, this proposed amendment expressly states the statute of limitations for such claims.

#### IMPACT STATEMENT

This resolution does not affect any other law, statute or rule.

AUTHOR AND/OR PERMANENT CONTACT: Caitlin Whitwell, Mezzetti Law Firm Inc., 31 E Julian St., San Jose, CA 95112, tel: (408)279-8400, fax: (408)279-8448, e-mail: caitlin@mezzetilaw.com

RESPONSIBLE FLOOR DELEGATE: Caitlin Whitwell