

# Defamation Lawyer: Discovery Rule Apply To Libel Claims?

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Recently, I wrote about the statute of limitations for an action for libel or slander, which is one year. But when does the clock start running, or in legal terms, when does the action begin to accrue? For torts, the answer is generally when the injury occurred. But that's not always the case. In some situations, courts will apply the so-called "Discovery Rule." This rule holds that the statute of limitations will not begin to run on a cause of action until such time the injured party discovered, or reasonably should have discovered, the defendant's alleged defamation.

However, in *Shively v. Bozanich* (2003) 31 Cal.4th 1230, the court held:

"[w]hen the basis for a claim has been published in the public record or has been the subject of publicity, several cases have declined to apply the discovery rule, commenting that the plaintiff may be expected to be sufficiently diligent to discover the basis for his or her claim within the statutory period."

Does this seem fair to you? And how would it apply to defamatory remarks buried in the deep, dark recesses of the Internet?

Maybe we can glean something from the court's following remarks:

"We can see no justification for applying the discovery rule to delay the accrual of plaintiff's causes of action beyond the point at which their factual basis became **accessible to plaintiff** to the **same degree** as it was **accessible** to every other member of the public."

I interpret this to mean that the discovery rule does not apply when the basis for a defamation lawsuit is contained in information available to the public. Since courts have held that information on the internet is public, I believe that under the Shively holding, the *discovery rule would not apply in situations where internet defamation involved.*

That means you have one year to file a defamation lawsuit from the time it gets published or posted to the Internet.

Does this seem fair to you? I'd like to hear your thoughts on the matter.