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Survey of West Virginia Employment Privacy Law

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West Virginia has a two-tiered court system consisting of circuit courts at the trial level with the right of only discretionary appeal to the West Virginia Supreme Court of Appeals. There is no intermediate court of appeals. Circuit court decisions are not reported. The Supreme Court of Appeals' decisions are published in Southeastern Reporter.

SIGNIFICANT DEVELOPMENTS SINCE THE 2007 *SURVEY*

None.

I. GENERAL LAW OF PRIVACY

A. Legal Basis of Privacy Claims

In West Virginia, public employees are protected by the Fourth Amendment to the United States Constitution, and Article III, Section 6 of the West Virginia Constitution, both of which prohibit the government from unreasonable searches and seizures. These constitutional provisions have been interpreted to create a right of privacy for public employees. See, e.g., Orr v. Crowder, 173 W. Va. 335, 315 S.E.2d 593 (1983) (public employees granted constitutional right to free speech; constitutional right to privacy does not apply to private sector employees). See also Tiernan v. Charleston Area Medical Center, Inc., 203 W.Va. 135, 506 S.E.2d 578 (1998) (private sector employees do not have a cause of action against their employers who terminate them because of their exercise of the employee's state constitutional right of free speech). Thus, private sector employees are limited to the common law remedies recognizing the tort of invasion of privacy. See I.B, infra.

B. Causes of Action

West Virginia has recognized the standard four types of invasion of privacy claims, as adopted by most states and the Restatement (Second) of Torts. For a lengthy discussion of the development of the tort of invasion of privacy and its elements, reference should be made to the West Virginia Supreme Court of Appeals opinion in Crump v. Beckley Newspapers, Inc., 173 W. Va. 699, 320 S.E.2d 70, 10 Media L. Rep. 2225 (1984).

1. ***Misappropriation/Right of Publicity.*** This privacy theory primarily serves to prevent the emotional harm which results from the unauthorized use of an individual's name or likeness to promote a particular product or service. The prohibition also extends to other situations in which a person's name or likeness is appropriated to the non-commercial advantage of another. See Crump v. Beckley Newspapers, Inc., 173 W. Va. 699, 320 S.E.2d 70, 10 Media L. Rep. 2225 (1984). This prohibition is subject to the limitations imposed by First Amendment considerations. Therefore, in order for a communication to constitute appropriation, mere publication of a person's name or likeness is not enough, and the

defendant must take for his own use or benefit the reputation, prestige or commercial standing, public interest or other value associated with a name or likeness published. The Court in Crump concluded that the plaintiff's photograph was not published because it was her likeness, but because it was the likeness of a woman coal miner, the subject matter of the newspaper article. Therefore, the Court concluded that the plaintiff was not entitled to recover under the appropriation theory as a matter of law.

2. ***False Light.*** The Crump case also discussed a second privacy theory, that of publicity which unreasonably places another in a false light before the public. As indicated by the Court in Crump, the plaintiff must establish that the matter publicized as to the plaintiff constitutes an untrue characterization. Additionally, although the false light need not be defamatory, it must be such as to be offensive to a reasonable person. Finally, the publicized material must be publicized in a widespread manner. See Benson v. AJR, Inc., 599 S.E.2d 747 (W. Va. 2004) (no invasion of privacy when defendant disclosed the results of plaintiff's drug test to three individuals, all of whom were AJR employees, officers, or creditors). As in defamation actions, if a privileged communication is involved, the actual malice or abuse of privilege standard will apply. The determination of whether the plaintiff is placed in false light is one for the jury. See Crump v. Beckley Newspapers, Inc., 173 W. Va. 699, 320 S.E.2d 70 (1984).

3. ***Publication of Private Facts.*** As indicated by the Supreme Court in Crump, West Virginia recognizes this third type of invasion of privacy claim. In the employment arena, this issue has most often arisen in the context of disclosure of employee medical or personnel records. See, e.g., Grant v. Monsanto Company, 151 F.R.D. 285 (S.D. W. Va. 1993) (federal court rejecting West Virginia invasion of privacy cases as applicable in determining the discoverability of employee medical records); E.I. duPont deNemours & Co. v. Finklea, 442 F. Supp. 821 (S.D. W. Va. 1977) (although medical records of employees were protected by a constitutional right of privacy, disclosure of such records pursuant to subpoenas would not abridge such right). See also Jordan v. Town of Pratt, 886 F. Supp. 555 (S.D. W. Va. 1995) (plaintiff failed to establish invasion of privacy claim against police officer under West Virginia law for not keeping confidential information regarding an assault of her daughter); Copley v. Northwestern Mutual Life Insurance Company, 295 F. Supp. 93 (S.D. W. Va. 1968) (protection of the right of privacy afforded by law is primarily designed to protect personal feelings, rather than business or pecuniary interests which are not entitled to such protection); Greenfield v. Schmidt Baking Company, Inc., 199 W. Va. 447, 485 S.E.2d 391 (1997) (state law claim for unreasonable publicity of private facts and false light not preempted by federal law); Davis v. Monsanto Company, 627 F. Supp. 418 (S.D. W. Va. 1986) (employer's limited disclosure of information suggesting employee's mental instability did not constitute publication necessary to establish cause of action for public disclosure of private facts) (cited by Benson v. AJR, Inc., supra); Morris v. Consolidation Coal Company, 191 W. Va. 426, 446 S.E.2d 648 (1994) (patient has cause of action against third party employer representative who induces his physician to breach his fiduciary relationship by disclosing confidential information); Keplinger v. Virginia Electric and Power Company, 208 W. Va. 11, 537 S.E.2d 632 (2000) (Morris cause of action not extended to discovery violations); Martin v. Barnett, 595 S.E.2d 65 (W. Va. 2004) (non-public personal information could be subject to release pursuant to judicial process under the exceptions to the privacy provisions of the Gramm-Leach-Bliley Act and the privacy rule of the of the West Virginia Insurance Commission).

4. ***Intrusion.*** The tort of invasion of privacy was first recognized in West Virginia in 1958 by an intrusion case, which held that the right of privacy included the right of an individual to be let alone and to keep secret his private communications, conversations and affairs. See Roach v. Harper, 143 W. Va. 869, 105 S.E.2d 564 (1958) (claim for right of privacy would be recognized in action filed by tenant against landlord who caused a listening device to be

installed in tenant's apartment); Sutherland v. Kroger Company, 144 W. Va. 673, 110 S.E.2d 716 (1959) (an illegal search by a private individual is a trespassing violation of the right of privacy); State Farm Fire & Casualty Company v. Madden, 192 W. Va. 155, 451 S.E.2d 721 (1994) (investigator's surveillance of observing plaintiff in public not illegal because plaintiff had no legitimate expectations of privacy in a public setting).

In the employment area, West Virginia has recognized a claim for intrusion where the employer was responsible for placing a listening device in the ceiling of the plaintiff's office. See Slack v. Kanawha County Housing Authority, 188 W. Va. 144, 423 S.E.2d 547 (1992).

C. Other Privacy-Related Actions

1. ***Intentional Infliction of Emotional Distress.*** West Virginia's law regarding the intentional infliction of emotional distress (also referred to as the tort of outrage) is well developed, especially in the employment area. The Supreme Court of Appeals has adopted the Restatement's general standard of liability requiring, "extreme or outrageous conduct intentionally or recklessly causing severe emotional distress where the conduct is so outrageous in character and so extreme in degree as to go beyond all possible bounds of decency and to be regarded as atrocious and utterly intolerably in a civilized community." See Hines v. Hills Department Stores, Inc. , 193 W. Va. 91, 454 S.E.2d 385 (1994).

   Plaintiffs have often joined outrage claims to their claims of invasion of privacy. See, e.g., Greenfield v. Schmidt Baking Company, 199 W. Va. 447, 485 S.E.2d 391 (1997).

2. ***Interference With Prospective Economic Advantage.*** West Virginia permits a cause of action for tortious interference with prospective business relationships. First enumerated in Torbett v. Wheeling Dollar Savings and Trust Company, 173 W. Va. 210, 314 S.E.2d 166 (1983), the elements of this action are: (1) the existence of a contractual or business relationship or expectancy; (2) an intentional act of interference by a party outside that relationship or expectancy; (3) proof that the interference caused the harm sustained; and (4) damage.

   An employer may defend by proving justification or privilege, both of which are affirmative defenses. See Bryan v. Massachusetts Mutual Life Insurance Co., 178 W. Va. 773, 364 S.E.2d 786 (1987). Moreover, defendants are not liable for interference that is negligent, rather than intentional, or if defendants demonstrate defenses of legitimate competition between the plaintiff and themselves, their financial interest in the induced party's business, their responsibility for another's welfare, their intention to influence another's business policies in which they have interest, their giving of honest, truthful requested advice, or other factors that show the interference was proper.

3. ***Prima Facie Tort.*** No cases.

II. EMPLOYER TESTING OF EMPLOYEES

A. Psychological or Personality Testing

1. ***Common Law and Statutes.*** No statute in West Virginia concerns either psychological or personality testing by employers. However, by virtue of decisional authority, all correctional officers for the state of West Virginia Department of Correction Systems must undergo

psychological testing before they are employed and at least annually throughout their employment. See Harrah v. Leverette, 165 W. Va. 665, 271 S.E.2d 322 (1980).

2. ***Private Employers.*** None.

3. ***Public Employers.*** See II.A.1, supra.

B. Drug Testing

1. ***Common Law and Statutes.*** No West Virginia statute regulates drug testing by either public or private employers. The West Virginia Supreme Court has ruled that, because of an employee's common law right of privacy, it is contrary to public policy for an employer to require an employee to submit to drug testing. In Twigg v. Hercules Corp., 185 W. Va. 155, 406 S.E.2d 52 (1990), the Supreme Court of Appeals ruled that drug testing is unlawful in West Virginia except in two very limited circumstances: (1) where the employer has a reasonable good faith, objective suspicion of an employee's drug use; or (2) when an employee's job responsibility involves public safety or the safety of others ("safety sensitive"). See also Rohrbaugh v. Wal-Mart Stores Inc., 212 W. Va. 358 572 S.E.2d 881 (2002). A private employer may conduct pre-employment drug screening of applicants because the applicant, as opposed to a current employee, has a lowered expectation of privacy. See Baughman v. Wal-Mart Stores, Inc., 215 W.Va. 45, 592 S.E.2d 824 (2003).

2. ***Private Employers.*** See II.B.1, supra.

3. ***Public Employers.*** See II.B.1, supra.

C. Medical Testing

1. ***Common Law and Statutes.*** W. Va. Code § 21-3-17 makes it unlawful for an employer to require an employee or applicant for employment to pay the costs of a medical examination as a condition of employment. Any employer who violates this provision shall be liable to a penalty of not more than one hundred dollars for every violation.

2. ***Private Employers.*** No cases.

3. ***Public Employers.*** No cases.

D. Polygraph Tests

Although federal law permits private employees to conduct polygraph examinations where there is a reasonable suspicion of employee theft, West Virginia law does not. The West Virginia Supreme Court has held that polygraph tests of employees are contrary to the state public policy protecting individual privacy interests. Cordle v. General Hugh Mercer Corp., 174 W. Va. 321, 325 S.E.2d 111 (1984). Additionally, W. Va. Code §21-5-5D prohibits employers from requiring or requesting employees or applicants to submit to polygraph examinations. Like the federal statute, however, the state statute does not apply to employers authorized to manufacture, distribute, or dispense controlled substances.

E. Fingerprinting

State law provides the director of the State Lottery Commission with the authority to conduct pre-

employment background checks, including fingerprinting, of professional, clerical, technical and administrative personnel. W. Va. Code § 29-25-4.

III. SEARCHES

A. Employee's Person

1. ***Private Employers.*** There are no cases specifically involving searches of private employees in West Virginia, although one case concerns a grocery store's search of a customer's package. See Sutherland v. Kroger, 144 W. Va. 673, 110 S.E.2d 716 (1959).

2. ***Public Employers.*** There are no cases specifically involving searches of public employees, although it is clear that public employees are accorded full constitutional rights by both the U.S. and West Virginia Constitutions.

B. Employee's Work Area

No cases.

C. Employee's Property

1. ***Private Employers.*** No cases.

2. ***Public Employers.*** No cases.

IV. MONITORING OF EMPLOYEES

A. Telephones and Electronic Communications

1. ***Wiretapping.*** West Virginia has enacted a state law governing wiretapping known as the West Virginia Wiretapping and Electronic Surveillance Act, W. Va. Code §62-1D-1. Pursuant to this law, it is lawful for one party to intercept a communication where that person is a party to the communication or where one of the parties to the communication has given prior consent to the interception, unless the communication is intercepted for the purpose of committing criminal acts. See W. Va. Code §62-1D-3. In addition to criminal penalties, this law provides for civil liability permitting victims to recover actual damages, punitive damages and attorney's fees. See W. Va. Code § 62-1D-12, as discussed in Slack v. Kanawha County Housing and Redevelopment Authority, 188 W. Va. 144, 423 S.E.2d 547 (1992) (employee plaintiff has no cause of action based on this statute where the interceptions occurred before the effective date of the statute).

2. ***Electronic Communications.*** In addition to the provisions of the West Virginia Wiretapping and Electronic Surveillance Act discussed above, West Virginia also has a Computer Crime and Abuse Act which prohibits any person from knowingly, willfully and without authorization accessing a computer or computer network to examine any employment, salary, credit or any other financial or personal information relating to any other person. See W. Va. Code § 61-3C-12. In addition to criminal violations, this Act also provides a private right of action and expressly permits the recovery of punitive damages. W. Va Code § 61-3C-16.

   In Bowyer v. HI-LAD, Inc., 216 W.Va. 634, 609 S.E.2d 895 (2004), the plaintiff, a hotel

employee, sued the owner of the hotel-employer, alleging the defendant had subjected him to illegal oral surveillance and monitoring in violation of the West Virginia Wiretapping and Electronic Surveillance Act. In a per curium opinion, the West Virginia Supreme Court of Appeals upheld a jury verdict holding the defendant hotel owner liable for intercepting the private conversations of the plaintiff through the use of hidden microphones in the workplace. The Court of Appeals upheld an award of $100,000 in compensatory damages even though there was no direct evidence that the defendant had intercepted the plaintiff's conversation within the hotel. At trial, the plaintiff introduced into evidence a videotape which he had taken from the hotel's surveillance monitoring equipment which contained over four hours of both video and audio interceptions of hotel employees and members of the public speaking near the hotel's front desk and bar. Thus, the court ruled there was sufficient circumstantial evidence that the jury could conclude that the defendant intercepted the communications of the plaintiff, as well.

In addition, the court also upheld the jury's award of $400,000 in punitive damages. On multiple occasions, an assistant manager of the hotel told the plaintiff that there were microphones hidden in the hotel, but that the microphones were disconnected. According to the court, the jury could rightly conclude that the defendant had, for at least two years, secretly monitored oral communications of employees and hotel guests, had attempted to conceal its actions, and had made no effort to make amends for its transgressions.

3. ***Other Electronic Monitoring.*** No Cases.

B. Mail

No West Virginia cases address the issue of monitoring of employees by surveying their mail.

C. Surveillance/Photographing

A newly enacted law prohibits an employer from electrically surveilling (by videotape, closed-circuit TV, etc.) employee activities in areas designed for their health or personal comfort such as restrooms, locker rooms, and employee lounges. Conviction under this misdemeanor statute carries monetary penalties. W. Va. Code § 21-3-20. Presumably, surveillance outside the workplace would not constitute an invasion of privacy so long as the employee does not have a reasonable expectation of privacy. Even if the employee is found to have a reasonable expectation of privacy, courts will also consider whether the employer has a reasonable justification for the surveillance which outweighs the employee's expectations of privacy. See State Farm v. Madden, 192 W. Va. 155, 451 S.E.2d 721 (W. Va. 1994) (private investigator hired by insurer committed no illegal acts by merely visually surveying and photographing plaintiff engaged in activities which occurred in full view of the general public).

V. ACTIVITIES OUTSIDE THE WORKPLACE

A. Statute or Common Law

Other than the anti-discrimination provision regarding smoking, West Virginia has no statutes pertaining to an employer's reliance upon employee activities outside the workplace. With respect to public employees, however, the Supreme Court has construed the West Virginia statute as authorizing county boards of education to terminate teachers for, among other things, "immorality." See W. Va. Code § 18A-2-8. In Golden v. Board of Education of Harrison County, 169 W. Va. 63, 285 S.E.2d 665 (1981), the Supreme Court held that the dismissal of a school teacher on the basis of immorality for shoplifting could be upheld only upon a showing of a rational nexus between the conduct and the teacher's ability to perform duties, a nexus that the majority held was not established.

B. Employees' Personal Relationships

No West Virginia laws or cases concern an employer's prohibitions regarding employees' person relationships outside the workplace.

1. ***Romantic Relationships Between Employees.*** No cases.

2. ***Sexual Orientation.*** No cases.

3. ***Marital Status.*** No cases.

C. Smoking

West Virginia law prohibits any employer from discriminating against any applicant or employee solely because the individual uses tobacco products off the premises of the employer during nonworking hours. See W. Va. Code § 21-3-19.

D. Blogging

No cases.

VI. RECORDS

A. Personnel Records

No West Virginia law impacts the employers keeping of personnel records, nor permits public access to such records. The West Virginia Freedom of Information Act exempts from disclosure information of a personal nature if the public disclosure thereof would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in a particular instance. W. Va. Code § 29B-1-4(2). See also Manns v. City of Charleston Police Dep't., 209 W. Va. 620, 550 S.E.2d 598 (2001).

B. Medical Records

West Virginia law strictly prohibits the disclosure of confidential information relating to mental health records. See W. Va. Code § 27-3-1. See also Allen v. Smith, 179 W. Va. 360, 368 S.E.2d 924 (1988) (private cause of action for violation of the protective provisions of this chapter). As indicated above, several cases interpreting West Virginia law have concerned common law invasion of privacy claims where an employer has disclosed confidential employee medical files. See I.B.3, supra.

C. Criminal Records

Criminal records are considered to be public and may generally by accessed by any individual upon request.

D. Subpoenas / Search Warrants

Rule 45 of the West Virginia Rules of Civil Procedure applies to the use of subpoenas in civil trials. W.Va.R.Civ.Proc. 45. In addition, W.Va.R.Civ.Proc. 45 may be used as a discovery tool pursuant to W.Va.R.Civ.Proc. 34. See W.Va.R.Civ.Proc. 34. When Rule 45 is used as a discovery device pursuant to Rule 34, however, Rule 45 is subject to all of the discovery provisions, including, but not limited to, the scope of discovery outlined in W.Va.R.Civ.Proc. 26(b)(1). Syl. Pt. 4, Keplinger v. Virginia Electric and Power Co., 208

W.Va. 11, 537 S.E.2d 632 (2000). Furthermore, special rules apply to the production of hospital records via subpoena. Any time a subpoena duces tecum is issued to require the production of hospital records as defined in W.Va. Code § 57-5-4a(a), regardless of the purpose for which the records are sought, the requirements of W.Va. Code §§ 57-5-4a to 57-5-4j apply and must be followed. Syl. Pt. 3, Keplinger, 208 W.Va. 11, 537 S.E.2d 632. Moreover, when a party to a civil action seeks to utilize W.Va.R.Civ.Proc. 45 to subpoena an opposing party's medical records, notice to the party/patient must occur sufficiently in advance of service of the subpoena to provide a reasonable opportunity for the patient/party to object to the request. Syl. Pt. 4, Keplinger, supra. Lastly, a party may not use Rule 45, or any other discovery device, to pursue discovery of items that are the subject of an ongoing discovery dispute that has not yet been resolved by the parties or decided by the trial court. Syl. Pt. 6, Keplinger, supra.

VII. ACTIONS SUBSEQUENT TO EMPLOYMENT

A. References

There are no cases concerning references in West Virginia. W. Va. Code § 55-7-18a, provides employers immunity from liability for disclosing information regarding former or current employees. Specifically, the statute provides that any employer or his or her designated agent who discloses job-related information that may be reasonably considered adverse about a former or current employee is presumed to be acting in good faith and is immune from civil liability for the disclosure or its consequences. The disclosure must be in writing and a copy must be provided to the employee at the time of the disclosure. The presumption of good faith may be rebutted upon a showing that the information disclosed was: (1) knowingly false; (2) disclosed with reckless disregard for the truth; (3) deliberately misleading; (4) rendered with malicious purpose toward the former or current employee; or (5) disclosed in violation of a nondisclosure agreement or application law. W. Va. Code § 55-7-18a(b).

B. Non-Compete Agreements

In West Virginia, a contractual covenant between an employer and employee, restricting the employee from engaging in business similar to that of the employer within a designated tried territory after the employment should cease, will be inferred if the restriction is reasonably necessary for the protection of the employer and does not impose undue hardship on the employee. Syl. Pt. 1, Voorhees v. Guyan Machinery Co., 191 W.Va. 450, 446 S.E.2d 672 (1994). In Reddy v. Community Health Foundation of Man, 171 W.Va. 368, 298 S.E.2d 906 (1982), the seminal case on this subject, the West Virginia Supreme Court of Appeals outlined the standards governing the enforcement of restrictive covenants not to compete. An employee covenant not to compete is unreasonable on its face if its time or area limitations are excessively broad, or where the covenant appears designed to intimidate employees rather than to protect the employer's business, and a court should hold any such covenant void and unenforceable, and not undertake even a partial enforcement of it, bearing in mind, however, that a standard of "unreasonable on its face" is to be distinguished from the standard of "reasonableness" used in inquiries adopted by other authorities to address the minor instances of over-breadth to which restrictive covenants are naturally prone. Syl. Pt. 2, Reddy, 171 W.Va. 368, 298 S.E.2d 906. An inherently reasonable restrictive covenant is presumptively enforceable in its entirety upon a showing by the employer that he has interests requiring protection from the employee. Syl. Pt. 3, Reddy, supra. An employee may rebut the presumptive enforceability of a restrictive covenant by showing: (1) that he has no "trade assets" of the employer to convert; (2) that such "trade assets" as he has belong to him and not to the employer; (3) that the employer could be equally well protected by a narrowed covenant; or (4) that the employer has had time to recoup any extraordinary investment in the employee. Reddy, supra. See also, Huntington Eye Associates, Inc. v. LoCascio, 210 W.Va. 76, 553 S.E.2d 773 (2001). In addition, if a covenant not to compete is contracted after employment has been commenced, there must be new consideration to support its enforcement. Environmental Products Co., Inc. v. Duncan, 168 W.Va. 349, 285 S.E.2d 889 (1982).

In addition, West Virginia law recognizes a difference between non-compete agreements and non-piracy/non-solicitation agreements. According to the West Virginia Supreme Court of Appeals, a covenant

not to compete in an employment agreement between an employer and an employee restricts the employee from engaging in business similar to that of the employer within a designated time and territory after the employment should cease; a non-piracy provision, also known as a non-solicitation or hand-off provision, in an employment agreement, restricts the employee, should the employment cease, from soliciting the employer's customers or making use of the employer's confidential information. Wood v. Acordia of West Virginia, Inc., 217 W.Va. 406, 618 S.E.2d 415 (2005). Although both covenants not to compete and non-piracy provisions are utilized to safeguard an employer's protectable business interests, non-piracy provisions, which ordinarily do not include territorial limits, are less restrictive on the employee and the economic forces of the marketplace. Wood, 217 W.Va. 406, 618 S.E.2d 415 (2005).

In Wood, supra, the Supreme Court of Appeals held that the validity of non-solicitation/non-piracy provisions are dependent upon: (1) Whether the employer has a protectable business interest to be safeguarded in relation to the employee, (2) the extent to which the non-piracy provision reasonably and fairly protects that interest and (3) whether the non-piracy provision unjustly restricts the employee from engaging in the business activity he or she seeks to pursue. Wood, 217 W.Va. 406, 618 S.E.2d 415 (2005). Whereas the burden is on the employer with regard to factors (1) and (2) above concerning the showing of a protectable business interest and the reasonableness of the non-piracy provision, the burden is on the employee with regard to factor (3) concerning whether the provision constitutes an unjust restriction. Wood, supra.

VIII. PROCEDURAL ISSUES

A. Statutes of Limitations

The West Virginia Supreme Court has ruled that the applicable statute of limitations for invasion of privacy actions is one-year. Slack v. Kanawha County Housing, 188 W. Va. 144, 423 S.E.2d 547 (1992) (invasion of privacy is a personal action that does not survive the death of an individual at common law and is therefore governed by a one-year statute of limitations). The discovery rule has been held applicable to invasion of privacy claims in West Virginia, thus delaying the running of the statute of limitations until such time as the plaintiff knew or reasonably should have known of the injury and its cause. See Slack v. Kanawha County Housing, 188 W. Va. 144, 423 S.E.2d 547 (1992).

Claims of intentional infliction of emotional distress have a two-year statute of limitations in West Virginia. See Courtney v. Courtney, 190 W. Va. 126, 437 S.E.2d 436 (1993). Actions for tortious interference with business relationships also have a two-year statute of limitations. See Garrison v. Herbert J. Thomas Memorial Hospital, 190 W. Va. 214, 438 S.E.2d 6 (1993).

The West Virginia Supreme Court has ruled that the applicable statute of limitations for breach of confidentiality actions in violation of a statute is one year. Thompson v. Branches-Domestic Violence Shelter of Huntington, W. Va., Inc., 207 W. Va. 479, 534 S.E.2d 33 (2000). Also, the discovery rule has been held applicable to breach of confidentiality actions in West Virginia. See Thompson v. Branches-Domestic Violence Shelter of Huntington, W. Va., Inc., 207 W. Va. 479, 534 S.E.2d 33 (2000).

B. Pleading Requirements

The seminal West Virginia case on invasion of privacy sets forth the pleading requirements and defenses, including privilege, for invasion of privacy cases in West Virginia, as well as defamation cases. See Crump v. Beckley Newspapers, Inc., 173 W. Va. 699, 320 S.E.2d 70, 10 Media L. Rep. 2225 (1984)