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D.C. Court of Appeals

**LIMITATION OF ACTIONS
FILING**

Complaint was timely filed where placed in hands of court clerk within time even though rejected for lack of prepared summonses for each defendant.

MINER v. CSX TRANSPORTATION, INC., ET AL., D.C.App. No. 91-CV-1505, June 17, 1993. *Reversed and remanded* per Kern, J. (Terry and Wagner, JJ. concur). Gregory M. Tobin for appellant. John J. Hathway with James B. Sarsfield for appellees. Trial Court—Wolf, J.

KERN, J.: The trial court dismissed appellant's personal injury action upon a motion to dismiss by appellees on the ground that it was time-barred because the statute of limitations had run. We reverse.

The essential facts are not in dispute. Appellant placed his complaint in the hands of the clerk for filing prior to the running of the statute of limitations, but the court clerk rejected and returned it to appellant because prepared summonses for each defendant were not presented with it. Appellant promptly prepared the summonses and again presented the complaint. The clerk did accept the later complaint for filing, but by then the statutory time for appellant to bring his personal injury action had run.

Appellees, in their motion to dismiss appellant's action, asserted that the complaint was not filed "within the applicable limitations period for the filing of such claims." In the legal memorandum appellees filed in support of their motion, they asserted that "the Complaint also was defective in that it was not signed by an attorney eligible to appear in this Court." The trial court granted appellees' motion to dismiss, without a hearing, concluding that the "complaint is time barred" and that appellant had "filed a defective complaint because neither plaintiff nor a member of the District of Columbia bar signed it."

The first issue is whether under the particular circumstances here appellant filed his complaint within the three-year period of time set forth by the applicable statute of limitations. Concededly, he presented his complaint for filing within the statutory limitation. Super.Ct.Civ.R. 3 provides that a "civil action is commenced by filing a complaint with the Court." This court in *Varela v. Hi-Lo Powered Stirrups, Inc.*, 424 A.2d 61 (D.C. 1980) (en banc), recognized that Rule 3 "requires only the filing of a complaint to commence an action and thereby toll the statute of limitations; any questions as to a lack of diligence on the part of a plaintiff in obtaining service of process are to be addressed by means of a motion filed pursuant to Super.Ct.Civ.R. 41(b)." *Id.* at 70.

We pointed out in *Varela* that "any questions as to lack of diligence . . . of a plaintiff in obtaining service of process" was not to impact upon the determination whether the complaint

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Associate Judge Robert A. Shuker Dies



ROBERT ALAN SHUKER

The Superior Court of the District of Columbia is deeply saddened by the untimely death of the Honorable Robert A. Shuker this 28th day of June, 1993.

Robert Alan Shuker was sworn in as an Associate Judge of the Superior Court of the District of Columbia on Wednesday, June 1, 1977. Chief Judge Theodore R. Newman, Jr., of the District of Columbia Court of Appeals administered the oath of office. Chief Judge Harold H. Greene of the Superior Court presided.

The nomination of Judge Shuker was approved by the Senate on May 5, 1977, filling the vacancy created by the resignation of Associate Judge Harry T. Alexander.

Born on April 28, 1941, in Needham, Massachusetts, Judge Shuker received his higher education from Brown University, A.B. degree, June 1963; and the University of Chicago Law School, J.D. degree, June 1966.

In August of 1966, Judge Shuker became Trial Attorney for the Chicago Lawyer Project funded by the Ford Foundation, representing indigent juveniles before the local trial courts and on appeal. During this project, he attended the Northwestern University School of Law.

Moving to Washington, D.C. in the summer of 1968, he joined the office of the United States Attorney where he continued in various assignments for nearly nine years. He served in the Misdemeanor Section, Court of General Sessions—September 1968 to March 1969; as trial lawyer, Criminal Division, U.S. District Court—April 1969 to August 1971; as Deputy Chief, Criminal Division, U.S. District Court—August 1971 to July 1972; as Deputy Chief, Superior Court Division—July 1972 to November 1973; and as Chief, Superior Court Division from November 1973 until his appointment to the Superior Court.

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D.C. Superior Court

**DISTRICT OF COLUMBIA
CHILD SUPPORT**

Res judicata bars retroactive child support from date of birth where District of Columbia did not seek reimbursement for public assistance for that period in earlier claim.

DISTRICT OF COLUMBIA EX REL. HARVEY v. WASHINGTON, Super.Ct. D.C. No. PS 3574-91, May 25, 1993. *Opinion* per Wolf, J. Laurie A. Ensworth for D.C. Milton C. Waddell, Jr. for respondent.

WOLF, J.: The court has before it petitioner's Motion for Retroactive Support filed September 24, 1992, respondent's opposition thereto on the ground that petitioner is precluded from seeking such support because of *res judicata* and/or collateral estoppel, and several supplemental pleadings. On March 22, 1993 the court heard argument on the government's motion, and took the matter under advisement.

Petitioner Madalyn R. Harvey and respondent Maurice M. Washington were married on October 4, 1988. A daughter, Ada Washington, was born on February 2, 1989. The parties separated on April 10, 1989. Petitioner, the custodial parent, received \$3,022.58 in public assistance on behalf of the child between June 1991 and March 1992. On October 24, 1991 the District of Columbia filed a petition seeking child support. Following a hearing on February 19, 1992, a permanent order was entered requiring respondent to pay \$199 biweekly (\$432/month) child support commencing March 10, 1992. A judgment for divorce was entered on May 12, 1992 in a separate case, DR 734-92.

Petitioner's subsequent Motion for Retroactive Support requests such support from February 2, 1989, Ada's date of birth, to March 10, 1992, the commencement date of the permanent child support order. This motion requests reimbursement for money expended by the government for public assistance as well as the payment of respondent's fair share of the costs incurred in excess of public assistance—unspecified additional expenses for the actual care and maintenance of the child. Respondent counters by stating, in addition to his legal arguments, that he supported his daughter by tendering money to the petitioner, by purchasing items for her, and by maintaining health insurance for her between April 10, 1989 and September 30, 1991.

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SHUKER

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During the period of January 18, 1973, to July 21, 1974, while serving as Deputy Chief and later Chief, Superior Court Division, Judge Shuker was the chief prosecutor in the investigation and trial of *United States v. William Christian, et al.*, Criminal Nos. 47900-73—47906-73, which proved to be the most extended and complicated criminal litigation in the history of the District of Columbia Criminal Justice System.

In 1976, the Assistant United States Attorneys Association of the District of Columbia selected Robert A. Shuker as the first recipient of the Harold J. Sullivan Award. This award was instituted by the Association in memory of Harold J. Sullivan, who died November 3, 1975. In his will, Mr. Sullivan left a challenge to those in prosecution and law enforcement which typified his commitment to the quality of justice in the United States Attorney's Office; "To identify the principals behind crime and develop bona fide, successful prosecutions against them with your full powers, professional dedication, and always in fairness."

Judge Shuker was chosen for this award from among all of the Assistant United States Attorneys in the District of Columbia as the Assistant "who, over a sustained period of time has shown those qualities of dedication and self-sacrifice, courage and intelligence, personal empathy and professional fairness that best exemplified the career and life of Harold J. Sullivan."

His other awards include the Special Achievement Award for continuous outstanding performance, from the Department of Justice—March 5, 1973; and Special Commendation for Outstanding Service on Behalf of the Department of Justice—December 12, 1974.

Judge Shuker was a Faculty Member of the National Trial Advocacy Institute, Chapel Hill, North Carolina, in August 1976; and of the

Trial Advocacy Institute, Washington, D.C., in January 1977.

He has been an occasional guest lecturer at the Criminal Law and Ethics Seminars, Georgetown Law Center, American University Law School, and Yale University Law School from 1971 to 1977; a Lecturer and Instructor at the Young Lawyers Section Criminal Practice Institute in 1973, 1975, 1976, and 1977; and Chairman, Prosecutors Management Information System (PROMIS) Research Advisory Committee of the Institute for Law and Social Research from 1974 to 1977.

Judge Shuker was Presiding Judge of the Criminal Division from July 1986 until October of 1989.

In May of 1992, Judge Shuker was reappointed to a second 15 year term.

Survivors include his wife, D.C. Superior Court Judge Nan R. Huhn, and a daughter from his first marriage, Amanda Shuker, both of Washington; his mother, Julia Shuker, and a sister, Sandra Cookson, both of Massachusetts; and a brother, Fred, of California.

The District of Columbia Bar Luncheon Program Investment Advisers to Register in D.C.

Tuesday, July 13, 1993
12:00 noon

The speaker for this program is **James F. Whitescarver, Jr.**, Director, Division of Securities, District of Columbia. Mr. Whitescarver will discuss the District of Columbia's Investment Advisers Act of 1992 and the regulations proposed May 7, 1992, which are expected to take effect in August 1993.

This program is hosted by the Blue Sky and Investment Committees of the D.C. Bar's Corporation, Finance and Securities Law Section and will be held at the Washington Marriott, 1221 22nd Street, N.W.

The program costs \$25.00 for section members, \$30.00 for nonmembers. For reservations and additional information call (202) 331-4364 or (fax) (202) 828-8572.

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