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Claims presentation requirements under the Government Claims Act



WHAT YOU DO DURING THE FIRST SIX MONTHS FROM THE DATE OF INJURY MAY WELL DETERMINE WHETHER YOU HAVE A CASE

Prior to 1963, if you represented a client who was injured by a public entity or a public employee, you were required to follow the claims presentation procedure specific to *that* public entity and *that* public employee. That meant that the procedures you followed to properly and timely present a claim to the City of Los Angeles for claims arising from an excessive use of force by police may have differed significantly from the procedures applicable to a claim against, say, the County of Monterey arising from a dangerous condition of public property.

Consequently, if you were a personal injury attorney who litigated up and down the State of California against various public entities for claims ranging from unreasonable use of force by police officers to sexual abuse of students by school officials to dangerous conditions of public property, you had to make sure you fully understood the claims procedures applicable to *that* specific public entity, public employee, *and* cause of action.

In an effort to make things a bit more uniform and less confusing for

the plaintiff, the California legislature enacted the California Tort Claims Act on September 20, 1963. This act is now known as the “Government Claims Act.” Some say the Government Claims Act served the dual purpose of providing public entities with the opportunity to *consider* and *remedy* the injuries addressed in the claim without the need of formally bringing a lawsuit. Having had the unique opportunity of practicing as both a defense attorney and a plaintiffs’ attorney, I believe that the former action is more often taken than the latter.

So, what does this mean? Essentially, before a public entity or its employee can be sued, a plaintiff must first present a written claim known as a “government claim” to the public entity within a specified amount of time, which is dependent on the type of claim (e.g., personal injury, breach of contract), and the public entity must accept or reject the government claim. (Gov. Code, §§ 945.4, 950.6(a)). Failure to present a government claim to a public entity bars a plaintiff from filing a lawsuit against the entity. (*City of Stockton v. Superior Court*

(2007) 42 Cal.4th 730,737-38). In other words, the presentation of a government claim is a condition precedent to the maintenance of any cause of action against a public entity.

Mandatory requirements: A timely and properly presented claim

Is the claim timely?

To be timely, a government claim based on causes of action for death and personal injury must be presented to the public entity within six months of the date the cause of action accrued. (Gov. Code, § 911.2(a).) A government claim relating to a cause of action other than personal injury (e.g., breach of contract) must be presented to the public entity within one year of the date the cause of action accrued. (*Ibid.*)

Does the claim include all of the required contents?

The contents of a claim must adhere to the requirements of California Government Code section 910, which include: (a) the name and post office address of the claimant; (b) the post

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office address to which the person presenting the claim desires notices to be sent; (c) the date, place and other circumstances of the occurrence or transaction which gave rise to the claim asserted; (d) a general description of the indebtedness, obligation, injury, damage or loss incurred so far as it may be known at the time of presentation of the claim; (e) the name or names of the public employee or employees causing the injury, damage, or loss, if known; (f) the amount claimed if it totals less than ten thousand dollars as of the date of presentation of the claim, including the estimated amount of any prospective injury, damage, or loss, insofar as it may be known at the time of the presentation of the claim, together with the basis of computation of the amount claimed. If the amount claimed exceeds ten thousand dollars, no dollar amount shall be included in the claim. However, it shall indicate whether the claim would be a limited civil case.

Keep in mind that most public entities will have a government claim form available on their websites. For example, the County of Los Angeles Claims for Damages to Person or Property form can be found at the following web page: https://riskmanagement.lacounty.gov/wp-content/uploads/2017/08/Claim_for_Damages_to_Person_or_Property.pdf
Was the claim properly presented?

As a further mandatory requirement, Government Code section 915(a) establishes the manner of delivery of a claim against a public entity. Section 915(a) provides: “A claim, any amendment thereto, or an application to the public entity for leave to present a late claim shall be presented to a local public entity by either of the following means: (1) Delivering it to the clerk, secretary or auditor thereof. (2) Mailing it to the clerk, secretary, auditor, or to the governing body at its principal office.” Receipt of such a claim must also meet the following requirements: “A claim, amendment or application shall be deemed to have been presented in compliance with this section even though it is not delivered or mailed as provided in this section if, within the

time prescribed for presentation thereof, any of the following apply: (1) It is actually received by the clerk, secretary, auditor, or board of the local public entity. [Inapplicable provisions omitted.]” (Gov. Code, § 915 (e).) Compliance to Section 915(a) occurs only if a misdirected claim is actually received by a clerk, secretary, auditor, or board of the local public entity. (*DiCampli-Mintz v. County of Santa Clara* (2012) 55 Cal.4th 983, 996-97 [California Supreme Court rejecting argument that government employees who receive misdirected claims have a responsibility to pass the claim along to the appropriate designated person or agency].) This is true even if the public entity has actual knowledge of facts that might support a claim. (*City of Stockton, supra*, 42 Cal.4th 730, 738.)

This means that proper “presentation” is achieved when a government claim is either delivered to the clerk, secretary or auditor, or is mailed to the clerk, secretary, auditor or governing body at its principle office *and* these folks actually received the government claim. Though this may seem pretty straightforward, you wouldn’t believe how many cases never see a day in court because an attorney botched the claim presentation. Trust me, the number is alarming.

The public entity’s response to a government claim

Once the public entity is in actual receipt of the government claim, the onus is now on the public entity to either accept the claim or reject the claim, but rejection can again prove tricky to the novice attorney.

Although acceptance of a claim is quite rare, it does happen. In this case, a representative from the public entity (e.g., county counsel, third-party administrator) contacts the claimant or the claimant’s representative and informs of the public entity’s acceptance of the claim. Negotiations are then had regarding the value of the claim and the claim is then closed before a lawsuit is ever filed. A rarity indeed.

Just as the timely presentation of a government claim is vital to the lawsuit,

so is the timely filing of the lawsuit following the public entity’s response. The time to file, however, is wholly dependent on the type of response.

Once the public entity is in receipt of the government claim, the public entity has 45 days to grant or deny the claim. (Gov. Code, § 912.4) If the public entity serves the notice of rejection of the claim, the plaintiff must file the lawsuit within six months of the date of service of the notice. (Gov. Code, § 945.6(a)(1).) Service means “personally delivered or deposited in the mail.” (*Ibid.*) If the claim is not acted upon within 45 days, it is *deemed* rejected by operation of law on the last day of the 45-day period and the plaintiff, in this instance, has two years from the accrual of the cause of action to file the lawsuit. (Gov. Code, § 945.6(a)(2).)

Note that a public entity can serve a notice of rejection even after the 45-day period. This is true even if the claim was deemed expressly rejected (i.e., service of written rejection within the 45-day period) or if it was rejected by operation of law (i.e., deemed rejected after the 45-day period lapsed and no formal written rejection was served). If the notice of rejection is served after the 45-day period, even if it was already deemed rejected expressly or by operation of law, the lawsuit must be filed within six months of the date of notice. This is why it is absolutely critical that any and all correspondence received by your firm from the public entity be carefully reviewed by *you*, the attorney, to ensure that the proper calendaring be done depending on the public entity’s response.

Complaint must plead compliance with claims presentation requirements

Compliance with the claim-filing requirement is an essential element of a damages cause of action against a government entity. The complaint *must* contain at least a general allegation that the plaintiff timely complied or was excused from complying with the requirement. (Gov. Code, §§ 912.4, 945.4.) I typically include the following language in my complaints: “Plaintiff presented a timely

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governmental tort claim with Defendant County of Los Angeles on January 1, 2018. Defendant City of Los Angeles rejected the claim on May 1, 2018.”

Dealing with a late claim?

Application for permission to file a late claim

Assume the plaintiff delays in seeking the advice of an attorney. Assume that when the plaintiff finally steps foot into your office, 10 months have passed since the occurrence of the injury. Don't worry. You have options.

You can attempt to present what is known as a “late claim” to the public entity. You do this by submitting an application for leave to present a late claim within one year of the accrual of the cause of action. (Gov. Code, § 911.4.) In the application, be sure to explain the reason the claim was not presented in a timely manner. The application will also be accompanied by the government claim. Once the application is received by the public entity, the public entity can do one of two things: (1) serve written notice denying the application; or (2) deny the application by not responding at all. (Gov. Code, § 946.6.) More often than not the application will be denied, but don't be alarmed. You still have some options ...

Petition for relief from claims presentation requirement

If the public entity denies the application for permission to file a late claim, the plaintiff may file a civil petition for relief from the claims presentation requirements of Section 945.4. (Gov. Code, § 946.6.) The petition must be filed within six months after the application is denied or deemed to be denied. (Gov. Code, § 946.6(b).) The petition must show: (1) that an application was made to the public entity under Section 911.4 and was denied or deemed denied; (2) the reason for failure to timely present the claim to the public entity within the time limit specified in Section 911.2; and (3) the information required by Section 910. (Gov. Code, § 946.6(b).)

California Government Code section 946.6(c) provides that the court will grant

relief only if it finds that (1) the application to the public entity for leave to file a late claim was made within a reasonable time not to exceed one year after accrual of the claim as specified in Section 911.4(b), (2) was denied or deemed denied by the public agency pursuant to Section 911.6, and (3) one or more of the following is applicable: (a) the failure to timely present the claim was through mistake, inadvertence, surprise, or excusable neglect, unless the public entity establishes that it would be prejudiced in the defense of the claim if the court relieves the petitioner from the requirements of Section 945.4; (b) the person who sustained the alleged injury, damage or loss was a minor during all of the time specified in Section 911.2 for the presentation of the claim; (c) the person who sustained the alleged injury, damage or loss was physically or mentally incapacitated during all of the time specified in Section 911.2 for the presentation of the claim and by reason of that disability failed to present a claim during that time; or (d) the person who sustained the alleged injury, damage or loss died before the expiration of the time specified in Section 911.2 for the presentation of the claim.

A common ground alleged in these petitions is that the failure to present a timely claim was through excusable neglect. “Excusable neglect” is defined as neglect which might have been the act of a reasonably prudent person under the same or similar circumstances. (*Ebersol v. Cowan* (1983) 35 Cal.3d 427, 435.) Although it may be true that many claimants and even attorneys have never heard of the claims presentation requirements, ignorance of the claims filing deadline is not considered an excuse within the meaning of excusable neglect. (*Drummond v. County of Fresno* (1987) 193 Cal.App.3d 1406, 1412.) *Ebersol, supra*, 35 Cal.3d 427 is instructive as to what circumstances may be deemed by a court as excusable neglect. In *Ebersol, supra*, 35 Cal.3d 427, 435, the California Supreme Court held that a plaintiff's ignorance of the existence of a possible claim coupled with her diligent efforts to retain counsel constitutes mistake or excusable neglect.

Dealing with a timely but defective claim?

If a claim provides the public entity with timely notice of the nature of the claim, a court may hold that the claim substantially complied with statutory requirements for a valid claim and that it should therefore be treated as valid, despite technical deficiencies. (*Connolly v. County of Fresno* (2006) 146 Cal.App.4th 29, 38.) Under the substantial compliance, a claim under California Government Code section 910 is sufficient if (1) there is “some compliance with all of the statutory requirements”; and (2) the claim discloses sufficient information to enable the public entity to adequately investigate the merits of the claim so as to settle the claim, if appropriate. (*City of San Jose v. Superior Court* (1974) 12 Cal.3d 447, 456-57.) However, the doctrine of substantial compliance does not cure total omission of an essential element from the claim or remedy a plaintiff's failure to comply meaningfully with the claims presentation requirements. (*Loehr v. Ventura County Comm. College Dist.* (1983) 147 Cal.App.3d 1071, 1083.)

A finding of substantial compliance presupposes that the claimant attempted to comply with the claim requirements, but failed to comply in some technical manner, and that the technical shortcoming did not prevent the claim from giving the public entity the requisite notice. (*Johnson v. City of Los Angeles* (1955) 134 Cal.App.2d 600.) If the claim is not presented as required by Section 915(a), the claimant may prove substantial compliance with the claim requirements only if the claimant can meet the statutory requirements of California Government Code section 915(e) (i.e., “actual receipt” by the clerk, secretary, or governing body of the public entity). (*Life v. County of L.A.* (1991) 227 Cal.App.3d 894, 901.) Thus, the doctrine of “substantial compliance” applies in the context of Section 915 only if the claimant can show actual receipt by a designated person.

Causes of action not requiring presentation of claim

There are certain causes of action where the presentation of a government
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claim is not required. Under these circumstances, the plaintiff must file the complaint in accordance to the applicable statute of limitations.

Any claim brought under 42 United States Code section 1983 does not require that a claim be presented. If, for example, the only claim alleged is excessive force/unreasonable seizure pursuant to 42 United States Code section 1983, then the lawsuit must be filed within two years. (Code Civ. Proc., § 335.1.) But note, however, that if the underlying

conduct also supports state law claims (e.g., wrongful death, assault and battery), then you must present a timely government claim within six months of the injury, then file the lawsuit within six months of the written notice of rejection or two years if no written notice is served. Another example is an action arising from sexual abuse of a minor; these claims are exempt from the claims presentation requirement. (Gov. Code, § 905(m).)

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