

Note: When this publication was originally published, we were known as Protection & Advocacy, Inc. (PAI). In October 2008 we changed our name from PAI to Disability Rights California.

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## MEMORANDUM

TO: Interested Parties

FROM: Disability Rights California

RE: Filing Claims Against the Government Under the California Tort Claims Act

DATE: August 23, 2001

### 1. Introduction

In California, before you may sue a public entity (a state, county or local governmental entity) or a government employee for money damages, you must first file a **claim** meeting the requirements of the California Tort Claims Act. California Government (Gov't) Code sections 810-996.6. With very limited exceptions, **no lawsuit for money damages may be brought against a governmental entity unless a written claim has been properly filed within the six-month time limit.** So, even if you are injured by the government and do not currently intend to sue, you should still consider filing a claim in order to protect your rights and to keep your options open.

The California Tort Claims Act sets out the procedures you must follow when filing a claim against the government for money damages. This memo describes the most significant parts of the Act. This memo is based on the laws in effect at the date of its writing, which are, of course, subject to change. Also, depending on the type of action you are bringing, other procedures and time lines may apply. **We recommend that you talk to an attorney who specializes in the relevant area of law (for example, personal injury or medical malpractice) to get more specific information about your potential claims and time lines.**

## 2. When a claim is necessary

You might choose to sue the government for a variety of reasons. Some reasons might be that a governmental entity has violated your rights, or it is responsible for a death, physical injury, or property damage. If the government injures you, this injury is called a "tort." The person filing the "tort claim," usually the injured person is called the "claimant." In most cases, you, as the claimant, must file a tort claim if you are trying to get money or "damages" from the governmental entity. Gov't Code sections 905, 905.2.

## 3. Who may file a claim

You may file a claim against a governmental entity on your own behalf or on behalf of someone else who was injured. Gov't Code sections 910, 910.2. An "injury" includes not only physical injury, but also damage to personal property (possessions) and violations of protected rights.

## 4. How to file a claim

You can file a claim against a **county or local governmental entity or employee** directly with the entity's governing board or clerk. You may deliver the claim in person or by mail. Gov't Code section 915(a).

You can file a claim against the **state or a state agency or employee** with the State Board of Control (SBC), by delivering it to any local SBC office or by mailing it to the main office. Gov't Code section 915(b). The address for the main SBC office in Sacramento is:

State Board of Control  
Government Claims Branch  
P.O. Box 3035  
Sacramento, CA 95812-3035.  
(916) 323-3564 (voice)  
(916) 323-5768 (fax)

You can ask for a claim form by calling the SBC toll-free number 1-800-955-0045, or you can download it off these web sites:

<http://www.vcgcb.ca.gov/publications/claims.aspx>

<http://www.governmentclaims.ca.gov/claims/howtofile.aspx>

If you deliver the claim in person, the filing date is the delivery date. If you mail the claim, the filing date is the mailing date - not the date the entity receives the claim.

If you decide to mail a claim, we recommend that you mail it **certified mail with return receipt requested**. Some governmental entities have their own claim forms. You may want to contact them to obtain such a form. So long as you include all the required information (see below), however, it is not necessary that you use the entity's particular form.

## **5. Contents of the claim**

According to section 910 of the Government Code, a claim against a governmental entity must contain the following:

- A. Your name (the claimant's name) and post office address;
- B. The post office address where you want to receive notices;
- C. The date, place, and circumstances of the occurrence giving rise to the claim (that is, describe what happened and how you were injured);
- D. A general description of the injury, damage, or loss;
- E. The name(s) of the government employee(s) causing the injury, if known;
- F. If the amount is less than \$10,000, the dollar amount claimed (including an estimate of future injury) and the basis for computing the amount; and
- G. If the amount is greater than \$10,000, you do not have to set out a specific amount on the claim form. You must, however, indicate whether the case would be a "limited civil case." Gov't Code section 910(f) and California Civil Code of Procedure sections 85, 86.

Whether a case is a "limited civil case" depends on the amount of money damages you are asking for and what else you are asking the governmental entity to do. Generally, a case is a limited civil case if the amount of money you are seeking is **less than \$25,000** (not including reasonable attorney fees and costs) **and** you are **not asking for any of the following**:

- 1. A permanent injunction (that is, a court order granted after a final hearing which commands or prevents the governmental entity from taking the action complained about);
- 2. A determination of title to real property;
- 3. Enforcement of an order under the Family Code; or

4. Declaratory relief (asking the court to make a statement which establishes the rights and other legal relations of the parties without ordering enforcement), except as is allowed by Code of Civil Procedure section 86.

Code of Civil Procedure section 580.

## 6. Timelines

The California Tort Claims Act sets out strict timelines that you must follow when filing a claim against a governmental entity. You must file a claim for **personal injury** (that is, one based on death, physical injury, or damage to personal property) within **six months** of the date of the injury. Gov't Code section 911.2.

If you did not know the reason for filing the claim at the time of injury (for example, in some medical malpractice cases), the six-month time period begins at the point when you became aware, or should have become aware, of the reason. See, for example, *Whitfield v. Roth* (1974) 10 C.3d 874, 112 Cal Rptr 540.

## 7. Late claims

Sometimes a claimant waits longer than six months to file a personal injury claim. The law treats two types of claims differently: claims that are simply filed late and claims that are filed late, but are accompanied by an "application for late filing."

If you do not file a claim for personal injury within six months of the date you were injured, you may lose the chance to file a lawsuit unless you write to the governmental entity and "apply" to be allowed to file a late claim. Gov't Code section 911.4(a). In your letter, you must state the reason(s) that you did not file the claim within six months from the date of injury, and you must include an actual claim. Gov't Code section 911.4(b). There are four valid reasons for a late claim:

1. Mistake, inadvertence, surprise or excusable neglect;
2. Minority (the claimant was a minor during the entire six month period);
3. Physical or mental incapacity; and
4. Death of the claimant.

(See Gov't Code section 911.6(b))

You must write to the public entity within a reasonable time not to exceed one year from the date of the injury to apply for leave to file late. Gov't Code section 911.4(b.) The "reasonableness" of the delay is determined on a case-by-case basis, and in any given case even a short delay may be considered unreasonable. **You should therefore apply for leave to file a late claim as soon as possible.**

## **8. What happens to the claim once it is filed.**

After you file a claim, the board<sup>1</sup> must respond (allow or reject the claim in whole or in part) within 45 days. If the board does not respond, the claim is treated as rejected on the 45th day. Gov't Code sections 912.6(a), 912.4(c).

## **9. Suing the governmental entity if the claim is rejected**

The board must notify you of its action on the claim (or its rejection through failure to act). If the board rejects the claim in whole or in part, you have **six months** from the date the notification is mailed to file a lawsuit against the governmental entity. Gov't Code sections 913, 945.6(a)(1).

If the board fails to notify you of its action (or inaction), such failure is treated as a rejection of the claim (as discussed above) and you have **two years** from the date of the injury to file suit. Gov't Code section 945.6(a)(2).

If you are unable to file suit within the prescribed time period because you are in prison, you must file suit within **six months** of regaining the right to do so (that is, being released). Gov't Code section 945.6(b).

**Again, as explained above, other time lines and procedures may also apply to your type of case, so we recommend that you talk to an attorney to get more specific information relevant to your situation.**

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<sup>1</sup> Government Code section 900.2 defines "board" as:

- (a) In the case of a local public entity, the governing body of the local public entity and
- (b) In the case of the State, the State Board of Control