

Memorandum 2010-16

Claim Presentation Under the Government Claims Act

This memorandum continues the Commission's study on the legal and policy implications of treating a charter school as a public entity for the purposes of the Government Claims Act. 2009 Cal. Stat. res. ch. 98 (ACR 49 (Evans)).

Although these provisions are often referred to as the "Tort Claims Act," the California Supreme Court now refers to the statute as the "Government Claims Act," because the claim presentation requirements also apply to contract claims and other non-tort claims. *City of Stockton v. Super. Ct.*, 42 Cal. 4th 730, 171 P.3d 20, 68 Cal. Rptr. 3d 295 (2007). The Commission will follow the Court's practice.

This memorandum examines the policies and structure of the claim presentation requirements of the Government Claims Act. Gov't Code §§ 900-950.8. An important component of a comprehensive scheme for imposing tort liability on public entities is the procedure for administration of claims. Procedures should allow just claims to be settled quickly and allow claims without merit to be dismissed with a minimum of delay and expense. Arvo Van Alstyne, *A Study Relating to Sovereign Immunity*, 5 Cal. L. Revision Comm'n Reports 1, 311 (1963).

All statutory references in this memorandum are to the Government Code unless otherwise indicated.

PURPOSE OF CLAIM PRESENTATION REQUIREMENTS

Claim presentation requirements serve several competing policy goals. They protect the public fisc, allow some injured parties to be compensated quickly, and promote deterrence of injury-causing activity. See *Stockton*, 42 Cal. 4th, at 738.

Claim presentation requirements protect the public fisc in three ways. They (1) allow a public entity to settle claims quickly and outside of a judicial

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The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting.

proceeding, which can be more fiscally prudent than allowing a lawsuit to go forward, (2) provide for early notice, which allows a public entity to engage in fiscal planning for potential liability, and (3) allow early investigation, which could make it easier to determine which claims have merit. *Baines Pickwick Ltd. v. City of Los Angeles*, 72 Cal. App. 4th 298, 303, 85 Cal. Rptr. 2d 74 (1999); *Van Alstyne, supra*, at 317.

Claim presentation requirements can also fulfill the traditional tort policy goals of compensation and deterrence. In straightforward cases, an injured party can be compensated quickly. Also, if an injury was caused by an ongoing activity or situation, early notice allows a public entity to take steps to avoid such liability in the future. *Id.*

The claim presentation requirements of the Government Claims Act balance these competing policies.

PRIOR COMMISSION STUDY

Even before the California Supreme Court decisions that prompted enactment of the Government Claims Act, the Legislature recognized problems with enforcement of tort liability against public entities in California. See Memorandum 2010-6. One area of particular concern was the multitude of claim presentation requirements throughout the state, which were causing a great deal of confusion and inefficiency. As a result of this concern, one of the Commission's first studies analyzed the various claim presentation requirements in the state. *Recommendation and Study Relating to Presentation of Claims Against Public Entities*, 2 Cal. L. Revision Comm'n Reports A-1, A-7 (1959) (hereinafter, *Recommendation Relating to Presentation of Claims*), *Report of the California Law Revision Commission to the Governor and the Legislature of the State of California at the Legislative Session of 1955*, 1 Cal. L. Revision Comm'n Reports 1, 26 (1955).

The Commission found at least 174 different claim presentation laws. The laws varied greatly, depending on a variety of different factors, such as whether the entity was the state or a local public entity, which agency was involved, and whether the employee was an officer. *Recommendation Relating to Presentation of Claims, supra*, at A-7 to A-11.

The Commission found a number of problems with the various claim presentation procedures:

- Some statutes provided very long deadlines or no deadline at all, undermining the value of claim presentation as a way to expedite the investigation and resolution of claims. *Id.* at A-46 to A-47.
- Some public entities were not covered by any claim presentation requirement. *Id.* at A-33.
- Multiple claim presentation procedures could apply to the same case, making it difficult to determine which set of rules to follow. *Id.* at A-85.
- Time limits were sometimes enforced regardless of any extenuating circumstances. *Id.* at A-78 to A-79.
- Public employees sometimes gave claimants incorrect information, causing claim deadlines to pass through no fault of the claimant. *Id.* at A-79.
- Public entities had no obligation to respond to claims in a timely manner, leaving claimants in limbo. See *id.* at A-9.

Failure to comply with claim presentation rules usually resulted in a technical dismissal of claims, and served as a “trap for the unwary.” Many with valid claims lost any hope of compensation, because the claim presentation procedures were difficult to follow. *Stewart v. McCollister*, 37 Cal. 2d 203, 207, 231 P.2d 48 (1951).

To address these problems and better fulfill the policy purposes of early claim presentation, the Commission recommended that the Legislature standardize claim procedures throughout the state and incorporate safeguards to minimize technical dismissal. *Recommendation Relating to Presentation of Claims, supra*, at A-9.

The Legislature acted on the Commission’s recommendation and eventually adopted a standardized claim presentation procedure that applies to the state, local public entities, and public employees. *Stockton*, 42 Cal. 4th, at 739 n.4.

DISCUSSION OF CLAIM PRESENTATION PROVISIONS

The standardized requirements of the claim presentation procedures in the Government Claims Act fulfill the policy goal of protecting the public fisc by granting public entities early notice of potential liability. The claim presentation procedures also include mechanisms to prevent the requirements from being so onerous that just claims are often dismissed for mere technical reasons. See Van Alstyne, *supra*, at 317.

Causes of Action Subject to Claim Presentation Requirements

In general, a claimant may not bring a suit for money or damages directly against a public entity or a public employee acting within the scope of employment. Instead, a claimant must first present a written claim to the public entity. See Sections 905, 910, 950, 950.2, 950.6(a).

A claim for money or damages can be based on a tort, a contract, or directly on the California Constitution. Claim presentation requirements apply to both state and local entities. See Section 905; *Stockton*, 42 Cal. 4th, at 738.

Class Actions

Class actions must also meet the claim presentation requirements. However, a party can present a claim on behalf of multiple claimants, as long as the class is ascertainable. *White v. State*, 195 Cal. App. 3d 452, 477, 240 Cal. Rptr. 732 (1987).

Contract Claims

A contract with a public entity may specify claim presentation procedures for actions relating to the contract, superseding the statutory claim presentation requirements. If a contract is silent, however, the claim presentation requirements of the Government Claims Act apply to breach of contract actions. Sections 814, 930, 930.2, 930.4, 930.6; see *Stockton*, 42 Cal. 4th, at 738.

Time Limits

Claim Presentation Deadlines

The most significant consequence of claim presentation requirements is that they effectively shorten the statute of limitations for the underlying cause of action. The time period available for presenting a claim is six months or one year, depending on the basis for the claim:

- *Six months.* A claim for a cause of action for death, or for injury to a person, personal property, or growing crops.
- *One year.* Any other cause of action.

Section 911.2(a), (b). A claimant who files an action in court without first timely complying with the claim presentation requirements is likely to have the suit dismissed. *State v. Super. Ct.*, 32 Cal. 4th 1234, 1239, 90 P.3d 116, 13 Cal. Rptr. 3d 534 (2004).

The accrual date of a cause of action for purposes of a claim is determined in the same manner as the accrual date for the cause of action underlying the claim. Section 901.

A single incident may give rise to both six-month and one-year claims. For example, a tort could damage both real property and personal property. In such cases, the claimant must follow the shorter deadline in order to include all claims. See, e.g., *Baillargeon v. Dept. of Water & Power*, 69 Cal. App. 3d 670, 682, 138 Cal. Rptr. 338 (1977).

Time for Filing Action in Court Following Denial of Claim

If a public entity provides a written denial, a claimant must file an action in court within six months of the denial. If a public entity does not provide a written denial, a claimant has two years from the date of accrual of a cause of action to file an action in court. This special statute of limitations was provided to prevent potential conflicts with the statute of limitations for the underlying cause of action. Section 945.6; *Recommendation Relating to Sovereign Immunity Number 2 – Claims, Actions and Judgments Against Public Entities and Public Employees*, 4 Cal. L. Revision Comm’n 1001, 1014 (1963) (hereinafter, *Number 2 – Claims, Actions and Judgments Against Public Entities and Public Employees*).

Comparison of Claims Presentation Deadlines with Statutes of Limitation

For purposes of comparison, the following are statutes of limitation for common causes of action against private entities.

- One year for libel or slander. Civ. Proc. § 340(c).
- Two years for personal injury or oral contracts. Civ. Proc. §§ 335.1, 339.
- Three years for injury to real property, personal property, and fraud. Civ. Proc. § 338(b), (c), (d).
- Four years for written contracts, collection of debt on account, collection of rents, and any other cause of action not currently listed. Civ. Proc. §§ 337, 337.2, 343.

Thus, one of the burdens borne by those injured by government activities is a shortened period in which to act in order to receive compensation for an injury.

Late Claims

In order to ameliorate harsh results, the Government Claims Act allows some claimants who miss a six-month claim deadline to submit an application to

present the claim late. However, an application to file a claim late cannot be presented more than one year after the cause of action accrues, and the application will be granted only in limited circumstances. Sections 911.4, 911.6; *Number 2 — Claims, Actions and Judgments Against Public Entities and Public Employees, supra*, at 1009.

A public entity has 45 days to grant or deny the application for presentation of a late claim. If the public entity does not act within 45 days, the application is deemed denied. Section 911.4(a), (c).

A claimant whose application to present a late claim was denied may petition the superior court for relief from the claim presentation requirement. If a public entity provides a written rejection of the application to present a late claim, a claimant must petition the court for relief within six months of the rejection. If a public entity does not provide a written rejection, the claimant has two years from the accrual of the cause of action to petition the court for relief. Section 946.6.

This administrative procedure allows the public entity some discretion to provide a claimant relief from a missed deadline outside of a judicial proceeding. Thus, qualifying claimants with straightforward claims have an opportunity to be reimbursed quickly and inexpensively. This procedure also gives claimants some recourse if they believe the public entity should have granted their application to present a late claim.

Identification of Public Entity

Before the Government Claims Act, many claim presentation statutes required a complainant to file a claim directly against an employee. Because it was often difficult or impossible to identify a culpable employee, many meritorious claims were rejected for failure to comply with the claim presentation procedures. *Recommendation and Study Relating to the Presentation of Claims Against Public Officers and Employees*, 3 Cal. L. Revision Comm'n Reports H-1, H-28 (1960).

Under the Government Claims Act, it is sufficient to notify a public entity employer of a claim against its employee. See Sections 905, 905.2. A public entity is vicariously liable for the torts of its employees, barring a relevant immunity. Section 814.2. Thus, it is reasonable to require that the entity receive early notice of potential liability. However, a claimant is not required to identify the specific

employee and file a claim directly against that employee. Sections 950, 950.2, 950.4.

In order to present a claim, the proper public entity must be identified. To facilitate identification, a local public entity must file a statement that includes the entity's name, address, and other information. The Secretary of State and county clerk of each county must maintain these filings in a publicly accessible Roster of Public Agencies. Section 53051. In addition, a public entity must identify itself as such on letterhead and identification cards. Section 7530. A public entity that does not properly identify itself cannot use a claimant's misidentification as a reason to dismiss a claim. Section 946.4.

While these requirements remove one source of technical dismissal, not all entities are required to file and appear on the Roster of Public Agencies. A public entity may be a subsidiary of another entity. A subsidiary is not independently responsible for its torts and is not required to file a statement with the Secretary of State. *Hovd v. Hayward Unified Sch. Dist.*, 74 Cal. App. 3d 470, 472, 141 Cal. Rptr. 527 (1977).

A claim or action must be filed against the parent entity. If the correct entity is not identified, the action is usually fatal. See *id.*

A school district is an independent entity and individual schools are subdivisions. See, e.g., *id.*

Exemptions from Claim Presentation Requirements

All types of claims for money or damages must be presented to a public entity, unless an exemption applies. Sections 905, 905.2. Exemptions usually exist because there is another adequate claim procedure, the procedural protection of the Government Claims Act is not considered necessary, or there is some other policy reason for an exemption. See G. Fisher and D. Barer, *Overview of Claim Procedures*, in *California Government Tort Liability Practice*, Vol. 1, §§ 5.36-5.42, at 195-200 (Cal. Cont. Ed. Bar 2009).

Statutory Exemptions

The most significant exemptions likely to be relevant to charter schools apply to the following types of claims:

- Wage claim. Section 905(c).
- Worker's compensation claim. Section 905(d).
- Claim by another public entity. Section 905(i).

- Claim subject to a contractually established claim procedure. Sections 930, 930.2.
- Claim against a public entity that has not properly identified itself in the “Roster of Public Agencies.” Section 946.4.
- Claim for payment of debt. Section 905(g).
- Claim to enforce the personal liability of an employee. Section 950.8.
- Unemployment claim. Section 905(j).

Judicial Exemptions

A court has some discretion to suspend claim presentation requirements. It may waive the claim presentation requirement if it finds that the late claim was made within a reasonable time, but no later than one year after the accrual of the cause of action, and at least one of the following is applicable:

- The claim was not presented because of mistake, inadvertence, surprise, or excusable neglect, and the entity cannot establish prejudice due to the late claim.
- The claimant was a minor during the claim presentation period.
- The claimant was physically or mentally incapacitated during the claim period prevented claim presentation.
- The claimant died during the presentation period.

Section 946.6(c)(1)-(4). This discretion avoids the harsh result of a technical dismissal of an otherwise meritorious claim.

A court can also apply estoppel to a public entity. Estoppel usually applies when an employee who knows about claim presentation requirements misleads the complainant about the need for a claim. Thus, estoppel allows recovery if the government acts unconscionably. See, e.g., *John R. v. Oakland Unified Sch. Dist.*, 48 Cal. 3d 438, 445, 256 Cal. Rptr. 766 (1989).

Content of Claims

Once a timely claim has been submitted to the proper entity, a number of other requirements must be satisfied in order for the claim to be valid. Otherwise, a claimant may not subsequently file suit.

General Contents of Claim Presentation

A proper claim must provide some basic information, including:

- Information about the claimant.

- Circumstances that gave rise to the claim.
- Nature of the indebtedness, obligation, injury, damage, or loss.
- Amount of the claim.

Section 915(a)-(e).

The Government Claims Act recognizes that claimants may make mistakes in the filing of claims and offers some provisions to minimize technical dismissals.

- A claimant may amend a claim at any time before the claim presentation period has expired or before the public entity has taken final action on the claim, whichever is later. Section 910.6(a).
- A public entity must give the claimant written notice, including a description of any defects, of any substantial deviation from claim presentation procedures. Otherwise, the entity waives any defense based on such a defect, unless the claimant does not provide an address for delivery of notices. Sections 910.8, 911.
- A court may excuse technical defects in a claim if the claim substantially complied with the statutory requirements. Section 910.6(b).

Statement of Facts

Facts in a claim must correspond to facts in any subsequent complaint, and the claim needs to include enough detail to support the legal theory on which a subsequent complaint is grounded. If more than one theory of recovery is used, each theory should be reflected in the claim, although one set of facts could support more than one legal theory. See, e.g., *Stockett v. Ass'n of Cal. Water Agencies Joint Powers Ins. Auth.*, 34 Cal. 4th 441, 447, 20 Cal. Rptr. 3d 176 (2004).

Special Claims Requirements for Local Public Entities

In general, claim presentation requirements are the same for both the state and local public entities. See Sections 905, 905.2, 910. However, in limited circumstances, local public entities may adopt claim procedures for claims that are exempt from the Government Claims Act and that do not have another applicable procedure. Sections 935-935.4.

Once a local claim procedure has been adopted, it must be fulfilled before a claimant can file suit. Section 935(b).

However, local procedures cannot shorten the time limits provided by the Government Claims Act, preventing local entities from setting traps for the unwary. Section 935(c).

Local entities are also not allowed to take longer to make a decision on a claim, to prevent the entity from delaying the ultimate disposition of a claim. Section 935(d).

Nonetheless, the ability for local public entities to set any claims requirements that may differ from the standard under the Government Claims Act could become a “trap for the unwary,” if the claimant was aware of an exemption but unaware that the local entity had adopted a local procedure to fill the gap.

Action by Public Entity on Properly Presented Claim

The Government Claims Act imposes some requirements on public entities in order to fulfill the policy goal of compensating an injured party.

To give a claimant some recourse against a non-responsive public entity, a public entity must act on a claim within 45 days after the claim has been presented or amended. Section 912.4. A local public entity is required to reject the claim, allow the claim in full, allow the claim for a reduced amount, or offer to compromise. Section 912.6(a).

The time for action may be extended by written agreement. If the public entity does not act within the allotted time, the claim is deemed denied, freeing the claimant to file suit. Section 912.4.

If a claimant presents a late claim for a claim that must be presented within six months, the public entity may return the claim without action and accompanied by a notice explaining that the claim was late. A public entity that fails to provide this notice waives any defense as to the time limit for presenting a claim. Section 911.3.

Rejected Claims

A suit for money or damages may be filed against an entity or its employee only after the entity rejects the claim. Sections 945.4, 950.4. A cause of action that does not show compliance with claim presentation may be dismissed. *State v. Super. Ct.*, 32 Cal. 4th 1234, 1239, 90 P.3d 116, 13 Cal. Rptr. 3d 534 (2004).

A claimant who accepts a payment may not subsequently file suit for any portion of the settlement paid by the entity. Section 946.

CONCLUSION

Claim presentation requirements can provide significant protection to the public fisc but they can also serve as a significant barrier to recovery for those

injured by governmental activities. When evaluating the application of the Government Claims Act to charter schools, it will be important to determine whether the policies underlying charter schools justify requiring claimants to surmount such procedural hurdles in order to receive compensation for injuries.

In particular, the following should be considered:

- Does the policy of protecting the government fisc by allowing early fiscal planning and early investigation make sense when applied to a charter school?

Respectfully submitted,

Cindy Dole
Visiting Fellow