Nuts and bolts for California tort law:
A quick over view of claims against public entities

By Parisima Roshanzamir

INTRODUCTION

For most of our nation's history, sovereign immunity protected the federal and state governments and their employees from being sued. However, as our nation evolved, so did our attitude toward holding the government more accountable for its misdeeds.

In 1946, the federal government passed the Federal Tort Claims Act waiving sovereign immunity and allowing suits against the federal government in limited actions.[1] Many states, including California, soon followed.

In 1963, the California Legislature adopted the California Claims Act ("CCA") governing suits against a public entity. The rules were intended "(1) to provide the public entity with sufficient information [so it can make] a thorough investigation of the [claim]; (2) to facilitate settlement of meritorious claims; (3) to enable the public entity to engage in fiscal planning; and (4) to avoid similar liability in the future."[2]

However, because the rules for claims against public entities are complicated and not well known the statutory goals are often missed. The rules for CCA can pose a number of pitfalls for the unwary. This article provides an overview of the procedural rules and the substantive law when filing claims against public entities here in California.

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PROCEDURAL REQUIREMENTS

You may need to sue the government, or a public entity, for a variety of reasons: A client comes into your office for serious injuries due to a nasty trip and fall on a city sidewalk, or for a fatal collision on the public highway, or for harassment by a city employee (think any of former San Diego Mayor Bob Filner's alleged victims). There are countless ways a public entity could be a defendant.

If you have a set of facts with a possible claim against a public entity defendant, your claim will be subject to the rules set out by the CCA.[3] Failure to satisfy the CCA claim requirements will result in your lawsuit being barred. Therefore, the best (and safest) practice is to consider the claims broadly, and complete the requisite government claims. If it turns out that you do not have a claim against the government entity, you can always withdraw the claim, but not vice versa.

A. Present a written claim within six months of the occurrence of the incident

Before suing a public entity, "the plaintiff must present a timely written claim for damages to the entity" that caused the harm.[4] Most personal injury victims have two years to file a lawsuit for injuries against a private tortfeasor. However, claims against public entities must be filed within 6 months after a cause of action accrues.[5]

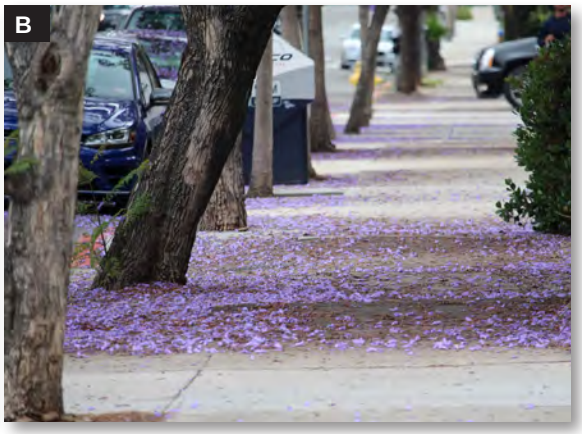
Unfortunately, the clock begins to tick on the claim's six-month deadline at precisely the time most people are consumed by their urgent medical needs, employment issues, and the challenge of balancing life after a traumatic event. Nevertheless, this is a statutory requirement that *must* be met. Often, by the time a potential client has contacted you, the time for a claim may have already expired.

Within 45 days after serving the written claim, the public entity must provide a written notice of its action on a claim.[6] The public entity may: 1) reject the claim entirely; 2) accept it in full; 3) reject it in part and accept the balance; or 4) compromise.[7] If the entity fails to respond to the claim, the claim is considered rejected by operation of law on the 45th day, and the claimant *then* has two years from the date that the injury occurred to file suit.[8] However, if the public entity responds to claimant's claim within the 45-day period, which it often does, the claimant only has six months to file suit.[9]

To protect your firm and your client, calendar the six-month statute of limitation to file a written claim, and all the applicable deadlines discussed above, as soon as the case comes into your office.

B. Know how to resuscitate a time-barred claim

Sometimes a deserving client comes into your office close to, or after the CCA six-month period to file has lapsed and asks if you can help with the case. If you decide to take on a client who has missed the deadline, there are ways you can help, but



A trivial defect may be actionable when combined with the surrounding factors that increase the risk of harm, i.e. a nearby tree that may camouflage the defect making it hard to see, or a steep slope that makes it difficult to properly use the sidewalk.

be sure to warn them about the CCA and its strict time bar. Document everything in writing to protect yourself in case you are ultimately unable to resuscitate the time-barred claim.

Under California law, late claims against public entities are allowed under a narrow set of circumstances. The untimeliness of a claim can be excused if the lack of timely filing is due to "mistake, inadvertence, surprise, or excusable neglect." Of course, the claimant also has to establish that allowing the late claim will not prejudice the public entity in its investigation. Exceptions are also permitted where the claimant was a minor at the six-month time bar, or unable to file a timely claim due to physical or mental incapacity. Under these circumstances, you may submit an application for leave to present a late claim.[10] Keep in mind that ignorance of the six-month time period is not an excuse and the legislative board of directors of the entity has discretion to bar the claim for being untimely. The best practice is to try to find facts that fall within the above exceptions.

If none of the above exceptions apply, you may file the claim and wait for the public entity to respond. If the public entity fails to challenge the claim for its untimeliness within 45 days, the public entity will have waived any defense as to the time limit for presenting a late claim and the claim is treated as timely.[11]

The public entity raising the defense of timeliness must follow strict requirements. The notice denying the claim must be mailed within the 45-day period and must contain substantially the following language: "The claim you presented to the (insert title of board or officer) on (date) is being returned because it was not presented within six months after the event or occurrence as required by law."[12] If the letter does not clearly state the claim is rejected due to its lack of timeliness then the defense is waived.

If the late claim involves a public entity other than a city (i.e., public development agency, or public charter school), you may also consider looking up the entity on the Secretary of State's website or the local county clerk's office to make sure the public entity has compiled with Government Code section 53051 requirements. In California, every public entity is required to register the following information with the state: Legal name, official mailing address, name and address of each member of the governing body, name, title and address of the chairman, president and other officers. If this information is not recorded or is inaccurate or incomplete, within 70 days after the accrual of the cause of action, the public entity is barred from raising a defense of untimeliness and enforcing the CCA rules for its benefit.[13]

If all else fails, and you can otherwise establish federal jurisdiction, you may consider filing your claim in a federal court where the six-month written claim requirement is extended to two years.

C. Specific information is required when presenting your written claim

In addition to its strict time restrictions, CCA also requires that written claims contain a specific set of information including the claimant's name, address, preferred address for response to be sent, a general description of the incident including date, time and location where the incident occurred, and the damage it caused, the names of any public employees causing or contributing to the harm suffered, and whether the amount claimed is less than $10,000.[14]

If the amount claimed is less than $10,000, a good practice is to provide a breakdown of the case damages. If the amount claimed exceeds $10,000, then no computation is necessary. You will, however, need to indicate whether the case is a limited or unlimited civil case.

Within 20 days after receiving the plaintiff's claim, the public entity must give the claimant written notice of any substantial defects or omissions that prevents the claim from substantially complying with the CCA rules.[15] If the entity does not challenge the content in that time period, it will have waived this defense.

SUBSTANTIVE LAW OF THE CCA

A. A viable claim against a public entity is an exception to the general rule

As a matter of law "a public entity is not liable for an injury" except as provided by statute.[16] Thus, any claim made against a public entity must be based on statute.

For example, Government Code section 835 provides, "a public entity is liable for injury caused by a *dangerous condition* of its property."[17] The statute provides that in order to establish liability involving the premises of a public entity, a plaintiff will need to prove that the public entity (1) owned or controlled the property; (2) the property was in a dangerous condition at the time of the incident; and (3) it was a reasonably foreseeable risk that was either created by the government employees'

negligence or present on the property for a long enough time that the public entity had actual *or* constructive notice of the dangerous condition.[18]

If your case involves a claim against a public entity, it would be wise to carefully study the definitions section of the CCA because the phrases used within the statute may encompass a greater, or a more limited, meaning than their common use.

Let us use the term "injury" as an example. Anytime the CCA incorporates the term "injury" it refers to cases involving "death, injury to a person, damage to or loss of property, any other injury that a person may suffer to his person, reputation, character, feelings or estate, of such nature that it would be actionable if inflicted by a private person."[19] The meaning of "injury" is rather broad when it comes to CCA.

Conversely, compare the term "dangerous condition." For a condition to be qualified as a "dangerous condition" under the CCA, the condition must be one that "creates a substantial risk of injury when the property [ ] is used with due care in a manner in which it is reasonably foreseeable that it will be used."[20]

A condition is not a dangerous condition if "viewing the evidence most favorably to the plaintiff, [the trial or appellate court] determines as a matter of law that the risk created by the condition was of such a minor, trivial or insignificant nature in view of the surrounding circumstances that no reasonable person would conclude that the condition created a substantial risk of injury."[21]

A long line of cases has established that a height differential of up to 1-1/2 inches on a sidewalk is trivial as a matter of law.[22] If you have a claim involving a dangerous sidewalk against a public entity, be sure to consider the surrounding factors that contribute to the defect, i.e. a nearby tree that may camouflage the defect making it hard for the pedestrians to observe the defect **(see images A and B)** or a steep slope that makes it difficult to properly use the sidewalk. These are just a few examples. Because even a trivial defect may be actionable if, combined with the surrounding factors, it poses a substantial risk of danger to a reasonably careful person.

Knowing this information and working through these challenges would be beneficial *before* litigation costs are incurred and claims are presented.

B. Be mindful of the public immunities

The purpose of the CCA is to carve out an exception to the California State's sovereign immunity; specifically, to allow suits in a limited number of actions. Therefore, CCA also includes a long list of immunities that protect the sovereign State, its employees, and other public entities from being sued.

For example, CCA bars all claims against the California National Guard; consider also CCA's design immunity, discretionary immunity, regulatory traffic control signals immunity (relating to stop signs, yield signs, right of way signs, or speed restriction signs), natural condition/unimproved public property immunity, and the list goes on.[23] These statutes bar claims against the public entities so as to allow the sovereign state to function

without fear of impeding litigation.

The above is just a short list of public immunities. The law that allows for claims against public entities is a narrow set of statutes that serve as an exception to the general rule. After all, our governments are the modern day kings, and despite our electoral progress, the king must continue to enjoy the protection of its immune sovereign state.

CONCLUSION

If you have a case involving a public entity claim, be sure to follow the procedural rules and take the time to study the statute pertaining to your specific claim against the public entity. Often, claims against public entities are not obvious, and require the attorney and litigation team of investigators to make a field visit, take photos to preserve evidence, and consult with experts even before deciding to pursue the case. It will also be wise to study the definitions used in the statute and the applicable case law before incurring substantial costs. ■

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[1] 28 U.S.C. § 2674.

[2] *Westcon Const. Corp. v. City. of Sacramento* (2007) 152 Cal.App.4th 183, 200; *Traffic School Online, Inc. v. Clarke* (2003) 112 Cal.App.4th 736, 742.

[3] Gov. Code, §§ 810 et seq.

[4] Gov. Code, § 911.2; *State of California v. Superior Court* (2004) 32 Cal.4th 1234, 1239 [A timely written claim is a condition precedent to a plaintiff maintaining an action against a public entity].

[5] Cal. Code. Civ. Proc., § 335.1; Gov. Code, § 911.3 [The six months rule applies to claims filed in state court, but federal courts apply a two-year statute of limitation time bar.]

[6] Gov. Code, §§ 912.4 subd. (a), 911.6.

[7] Gov. Code, § 912.6.

[8] Gov. Code, § 912.4, subd. (c).

[9] Gov. Code, § 945.6.

[10] Gov. Code, §§ 911.6, 911.4, subd. (c)(1).

[11] Gov. Code, § 911.3.

[12] *Id.*

[13] Gov. Code, §§ 946.4, 53050; *Wilson v. San Francisco Redevelopment Agency*, (1977) 19 Cal.3d 555, 556.

[14] Gov. Code, § 910.

[15] Gov. Code, § 910.8, If "a [written] claim [ ] fails to comply substantially with the [CCA] requirements . . . at any time within 20 days after the claim is presented, [the board or the person designated by it] must give a written notice of [the claim's] insufficiency, stating with particularity the defects or omissions therein."

[16] Gov. Code § 815.6; codified in Gov. Code, §§ 810-996.6.

[17] Bold and italics added.

[18] Gov. Code, §§ 835, 830, subd. (c); *Low v. City of Sacramento* (1970)7 Cal.App.3d 826, 834 [Where plaintiff was injured on strip of land owned and maintained by County and subject to easement held by City, both City and County were held liable for the harm caused].

[19] Gov. Code, § 810.8.

[20] Gov. Code, § 830; *City of San Diego v. Sup. Ct. (Hanson)* (2006) 137 Cal.App.4th 21, 28-30 [City was held not liable for injuries caused by illegal racing on long, poorly lit road].

[21] Gov. Code, § 830.2; *Barone v. City of San Jose* (1978) 79 Cal.App.3d 284, 290.

[22] *Stathoulis v. City of Montebello* (2008) 164 Cal.App.4th 559,567-68; *Nicholson v. City of Los Angeles* (1936) 5 Cal.2d 361, 367 (City was held not liable, as a matter of law, for the defect on its sidewalk.)

[23] Gov. Code, §§ 818.6, 830.4, 831.2.