



PRISON LAW OFFICE
GENERAL DELIVERY
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LAWSUITS FOR MONEY DAMAGES AGAINST PRISON OFFICIALS

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Your Responsibility When Using the Information Provided Below:

When we wrote this Informational Material we did our best to give you useful and accurate information because we know that prisoners often have difficulty obtaining legal information and we cannot provide specific advice to all the prisoners who request it. The laws change frequently and are subject to differing interpretations. We do not always have the resources to make changes to this material every time the law changes. If you want legal advice backed by a guarantee, try to hire a lawyer to address your specific problem. If you use this pamphlet it is your responsibility to make sure that the law has not changed and is applicable to your situation. Most of the materials you need should be available in your institution law library.

You should IMMEDIATELY contact another attorney and try to obtain legal representation. You should be aware that there are strict time limitations within which you must act in order to protect your rights in this matter. These limits are complex and vary for different types of legal actions. **YOU SHOULD ACT IMMEDIATELY IF YOU WISH TO PURSUE THIS MATTER. FAILURE TO FILE A CLAIM AND/OR A LAWSUIT WITHIN THE REQUISITE TIME MAY MEAN THAT YOU COULD BE BARRED FOREVER FROM PURSUING YOUR ACTION.**

When a prisoner is harmed by the actions of prison officials, he or she may want to sue for money damages. This letter provides information about suing California state prison officials to get money damages for personal injuries. In some cases, the laws discussed in this letter can also be used to get injunctive relief (a court order requiring prison officials to do something or stop doing something). A separate letter is available from the Prison Law Office regarding actions a prisoner can take when personal property is lost or damaged by prison officials.

A prisoner who has been harmed or who believes rights have been violated should take immediate action to preserve the right to bring a lawsuit. To preserve the right to file a federal civil rights suit, a prisoner must file an administrative grievance (such as a CDCR 602). Whenever possible, the administrative appeal should be filed within 15 days of the date of the harm or the action that may be the subject of the lawsuit; in all cases, the prisoner should file the appeal as soon as possible. To preserve the right to file a state tort action, a prisoner must file a government claim form within six months of the date of the action that caused the harm. These requirements, and the deadlines for filing the actual lawsuits, are discussed in detail below at page 9 (federal civil rights suits) and page 12 (state tort actions).

It is difficult to bring a lawsuit without a lawyer, so prisoners should try to get an attorney. However, the Prison Law Office generally

does not represent prisoners in lawsuits that ask for money damages, and neither do many other lawyers. Although personal injury lawsuits are sometimes taken by lawyers on a "contingency fee" basis (where the lawyer's fee is a percentage of money recovered, if any), only the most exceptional prisoner cases will appeal to most lawyers. Thus, finding a lawyer is extremely difficult and often impossible. To try to find a lawyer, prisoners can write to attorneys whose names are listed in the "civil rights law" and "personal injury" section of the "Attorney" listings in the yellow pages of the local phone book or to the local lawyer referral service.

Because it is extremely difficult to find an attorney for a money damages lawsuit, a prisoner usually will have to proceed on his or her own because there are time limits which must be met to protect the right to sue. This letter provides an overview of the steps a prisoner needs to take to protect the right to sue state officials for money damages under both federal and state law.

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INTRODUCTION

A prisoner can file a lawsuit for money damages against prison or parole officials who cause physical injuries or other harm. Depending on the circumstances, such a lawsuit can be based on violations of federal or state law, and can be filed in either federal or state court. This letter will give an overview of the two main types of suits that prisoners can bring to try to get money damages.

The most common type of lawsuit filed by prisoners seeking money damages is a "federal civil rights" or "section 1983" action. Under federal law, the Civil Rights Act allows a prisoner to sue state officials who violate federal constitutional or statutory rights.^{1/}

The other type of lawsuit that prisoners may use to seek money damages for injury is a state law "personal injury" or "tort" action. Under California law, a prisoner can sue prison officials if their wrongful or negligent acts or omissions cause the prisoner to suffer injury.^{2/}

The decision whether to sue a prison official under the federal civil rights act or under state tort law (or both) should be based on the facts of the individual case. However, a prisoner should always take the initial steps that will protect the right to sue under both federal and state law. The next section of this letter discusses who can be sued. The letter then describes in more detail the basic requirements for federal civil rights and state tort lawsuits. Finally, the letter ends with a discussion of how to decide which type of claims to raise and where the claims should be filed.

WHO TO SUE

The question of who to sue^{3/} can be very complicated, and the following information covers only the most general rules.

The basic rule regarding who to sue, under either federal or state law, is simple. A prisoner should sue every state employee or state contractor who caused the injuries or damages.

For example, consider a case where a prisoner wants to file a lawsuit because he suffered injuries when an officer assaulted him

1. See 42 U.S.C. § 1983.

2. See Government Code § 844.6(d).

3. A person who is being sued is called a "defendant." A person who is filing the lawsuit is called a "plaintiff."

without justification, and the assault occurred because of orders from another officer. The prisoner can sue the officer who actually assaulted him. The prisoner could also sue the officer who ordered the assault, as the order was a part of the cause of the injuries. The prisoner might also be able to sue the persons who were supposed to be supervising the two officers, if specific facts can be shown that failure to properly supervise or train the officers caused the injury.^{4/}

Prisoners who bring federal civil rights suits should be aware that prison staff can be sued in either their "individual capacity" or "official capacity." The basic rule is that if a prisoner is suing for money damages, the complaint should state that the defendants are being sued in an individual capacity.^{5/} If a prisoner is bringing a claim for injunctive relief, the defendants should be named in an official capacity.^{6/} If the prisoner is requesting both types of relief, then the defendants should be sued in both official and individual capacities.

In addition to suing the individual prison staff who caused the injury, some prisoners would also like to sue the state of California, the Department of Corrections and Rehabilitation (CDCR) or the prison. However, the State of California and its agencies (such as the CDCR and the individual prisons) cannot be sued in most cases. Federal civil rights law requires that the defendant to the lawsuit be a "person," and states and state agencies are not considered to be "persons" under the Civil Rights Act.^{7/} Also, under the Eleventh Amendment to the U.S. Constitution a person can almost never sue a state for money in federal court.^{8/} In addition, under California law, the State of California

4. Prisoners who wish to do further research on the legal issue of "causation" should read Rizzo v. Goode (1976) 423 U.S. 362 [96 S.Ct. 598; 46 L.Ed.2d 561]; Johnson v. Duffy (9th Cir. 1978) 588 F.2d 740; and Leer v. Murphy (9th Cir. 1988) 844 F.2d 628.

5. Will v. Michigan Dept. of State Police (1989) 491 U.S. 58 [109 S.Ct. 2304; 105 L.Ed.2d 45].

6. Ibid.

7. Ibid.; Hale v. Arizona (9th Cir. 1993) 993 F.2d 1387, 1398. A good discussion of who can be sued, and in what capacities, is included in Taormina v. California Dept. of Corrections (S.D. Cal. 1996) 946 F.Supp. 830.

8. See Quern v. Jordan (1979) 440 U.S. 332 [99 S.Ct. 1139; 59 L.Ed.2d. 358]; Edelman v. Jordan (1974) 415 U.S. 651 [94 S.Ct. 1347; 39 L.Ed.2d 662].

itself is generally "immune" from liability for an injury to a prisoner.^{9/}

The State or the CDCR itself can be sued for money damages only under very limited circumstances and only in a lawsuit filed under state law and in state court. The only cases in which the state itself may be sued for money damages are in suits for:

- Intentional and unjustifiable interference with the right to obtain judicial review of the legality of confinement. However, no cause of action accrues until it has been determined that the confinement was illegal.^{10/}
- Motor vehicle injuries.^{11/}
- Injuries received when participating in biomedical or behavioral research.^{12/}
- Failure to summon medical care when there is, or should be, knowledge of a need for immediate medical care.^{13/}
- Damage suffered as a result of a breach of a contract.^{14/}
- Liability arising from the Worker's Compensation law.^{15/}
- Claims for which non-monetary relief is sought.^{16/}

9. Government Code § 844.6(a). At least one court has held that this immunity does not apply to parolees. Fearon v. California Dept. of Corrections (1984) 162 Cal.App.3d 1254 [209 Cal.Rptr. 309] (allowing parolee to sue CDCR for negligently losing his property).

10. Government Code § 844.6(a) and § 845.4.

11. Government Code § 844.6(b).

12. Penal Code § 3524.

13. Government Code §§ 844.6(a) and 845.6.

14. Government Code §§ 844.6(a) and 814.

15. Government Code §§ 844.6(a) and 814.2.

16. Government Code §§ 844.6(a) and 814

FEDERAL CIVIL RIGHTS LAWSUITS

Under the federal Civil Rights Act, a person may sue any other person who, while acting "under color of state law," violates a right protected by federal law.^{17/} Prison staff, as employees of the state working in their jobs, act under color of state law. A more difficult question is whether there has been a violation of a federally protected right.

ISSUES THAT MAY BE RAISED IN A FEDERAL CIVIL RIGHTS SUIT

A prisoner can bring a federal civil rights action if a state official violates the prisoner's federal constitutional or statutory rights. The question of whether prison staff have violated a federal right can be very complicated. Courts often balance prisoners' rights against prison officials' reasons for taking away those rights, and courts usually defer a great deal to the decisions made by prison staff. In many cases, a prisoner who wants to prove violation of a federal right must show both that he or she suffered harm and that the prison officials who caused the violation acted with a certain state of mind. The general standards under which courts review prisoner claims have been established for many common types of complaints:

- Inadequate medical care violates the U.S. Constitution's Eighth Amendment prohibition on cruel and unusual punishment only if the lack of care amounts to "deliberate indifference" to a serious medical need. Negligent medical treatment alone does not violate the Eight Amendment.^{18/}
- The use of excessive force by prison staff violates the Eighth Amendment prohibition against cruel and unusual punishment only if the force was not used in a good faith effort to maintain or restore order, but was applied "maliciously or sadistically for the very purpose of causing harm."^{19/}
- Bad living conditions are cruel and unusual punishment under the Eighth Amendment if those conditions amount to a serious deprivation of the "minimal civilized measures of life's

17. 42 U.S.C. § 1983.

18. Estelle v. Gamble (1976) 429 U.S. 97 [97 S.Ct. 285; 50 L.Ed.2d. 251]. The same standard applies to mental health care. See Coleman v. Wilson (N.D. Cal. 1995) 912 F.Supp. 1282.

19. Hudson v. McMillan (1992) 501 U.S. 294 [112 S.Ct. 995; 117 L.Ed.2d 156]; Whitley v. Albers (1986) 475 U.S 312 [106 S.Ct. 1078; 89 L.Ed.2d 251].

necessities."^{20/} These basic human needs include adequate food, clothing, shelter, sanitation, and personal safety.^{21/} To be liable under the civil rights action, prison officials must be deliberately indifferent to the violation.^{22/}

- Restrictions on a prisoner's First Amendment rights to free speech or association are permissible if they are reasonably related to a legitimate penological interest; courts give great deference to prison officials' reasons for imposing such restrictions.^{23/}
- A program that receives federal funding (which includes CDCR), cannot impose a substantial burden on a prisoner's exercise of religion unless it furthers a compelling governmental interest and is the least restrictive means of doing so.^{24/}
- Race discrimination by prison officials must be analyzed under a "strict scrutiny" test. "Strict scrutiny" means that race discrimination will be found unlawful unless the government can prove that the policies "are narrowly tailored measures that further compelling governmental interests."^{25/}
- Under the federal Americans with Disabilities Act (ADA) and the Rehabilitation Act of 1973, a prisoner who is disabled may not be subject to discrimination or denied the benefits of a program or activity if the prisoner can meet the essential eligibility requirements of the program, with or without

20. Hudson v. McMillan (1992) 503 U.S. 1 [112 S.Ct. 995; 117 L.Ed.2d 156]; Rhodes v. Chapman (1981) 452 U.S. 337, 347 [101 S.Ct. 2392; 69 L.Ed.2d 59].

21. Hoptowit v. Ray (9th Cir. 1982) 682 F.2d 1237, 1246.

22. Wilson v. Seiter (1991) 501 U.S. 294, 302 [111 S.Ct. 2321; 115 L.Ed.2d 271].

23. Turner v. Safley (1987) 482 U.S. 78 [107 S.Ct. 2254; 96 L.Ed.2d 64]; Frost v. Symington (9th Cir. 1999) 197 F.3d 348.

24. 42 U.S.C. § 2000 et seq. [the Religious Land Use and Institutionalized Persons Act of 2000, known as "RLUIPA"]; Mayweathers v. Newland (9th Cir. 2002) 314 F.3d 1062; Cutter v. Wilkinson (2005) 544 U.S. 709 [125 S.Ct. 2113; 161 L.Ed.2d 1020].

25. Johnson v. California (2005) 543 U.S. 499 [125 S.Ct. 1141, 1146, 1148-1149; 160 L.Ed.2d 949].

reasonable modifications.^{26/} Prisoners should be aware that they might have to respond to an argument that prison officials' penological concerns limit ADA rights.^{27/}

- Prisoners retain some due process rights under the Fourteenth Amendment (for example, the rights to notice, a hearing, and a decision supported by "some evidence" in disciplinary cases).^{28/} However, placement in segregation will not support a due process violation claim unless the segregation causes a deprivation that imposes an "atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life."^{29/}
- If a prisoner wants to challenge the legality of a criminal conviction or the length and validity of a sentence (including challenges to prison disciplinary hearings resulting in loss of credit, improper deductions of work credit by a job supervisor, revocation of work furlough, or denial of parole), he or she must file a habeas petition instead of a federal civil rights suit. In such cases, a civil rights case for damages can be brought only after the conviction, sentence or disciplinary finding has been declared invalid in a habeas proceeding or other action.^{30/} However, claims involving parole or disciplinary matters may be brought initially as federal civil rights cases if they do not directly challenge "the fact or duration of confinement."^{31/}

26. 42 U.S.C. § 12131 et seq. (ADA); 29 U.S.C § 794 (Rehabilitation Act); Pennsylvania Dept. Of Corrections v. Yeskey (1998) 524 U.S. 206 [118 S.Ct. 1952; 141 L.Ed.2d 215].

27. See Armstrong v. Davis (9th Cir. 2001) 275 F.3d 849; Gates v. Rowland (9th Cir. 1994) 39 F.3d 1439.

28. Wolff v. McDonnell (1974) 418 U.S. 539 [94 S.Ct. 2963; 41 L.Ed.2d 935]; Superintendent v. Hill (1985) 472 U.S. 445 [105 S.Ct. 276; 86 L.Ed.2d 356]; Zimmerlee v. Keeney (9th Cir. 1987) 831 F.2d 183.

29. Sandin v. Conner (1995) 515 U.S. 472, 483 [115 S.Ct. 2293; 132 L.Ed.2d 418].

30. Heck v. Humphrey (1994) 512 U.S. 477 [114 S.Ct. 2364; 129 L.Ed.2d 383]; Edwards v. Balisok (1997) 520 U.S. 641 [117 S.Ct. 1584; 137 L.Ed.2d 906].

31. See Muhammad v. Close (2004) 540 U.S. 749 [124 S.Ct. 1303; 158 L.Ed.2d 32]; Wilkinson v. Dotson (2005) 544 U.S. 74 [125 S.Ct. 1242, 161 L.Ed.2d 253]; Ramirez v. Galaza (9th Cir. 2003) 334 F.3d 950.)

- A prisoner's cell is not protected by the U.S. Constitution's Fourth Amendment prohibition against unreasonable searches and seizures.^{32/}
- Neither the negligent destruction of a prisoner's property, nor the intentional destruction of property violates federal law, except where the property loss occurred pursuant to an established state procedure.^{33/}

Two other factors can prevent prisoners from winning money damages in a federal civil rights case, even when they can prove that their rights have been violated. First, prison officials have "qualified immunity" against money damages awards in civil rights actions; this means that unless the state officials' conduct violated constitutional rights that were clearly established at the time of the conduct, a claim for money damages will be defeated.^{34/} Also, prisoners cannot usually bring a federal civil rights case for emotional or mental injury unless there was also a physical injury;^{35/} however, the meaning of this restriction is being explored by the courts and it may not apply to First Amendment claims, claims for injunctive relief, or other legal injuries that are independent of any physical, emotional, or mental consequences.^{36/}

The preceding list of issues that can be raised in a federal civil rights case is not complete nor are the cases discussed in detail. Prisoners considering a civil rights lawsuits should do further research to determine whether their rights have been violated. The following resources may be helpful:

32. Hudson v. Palmer (1984) 468 U.S. 517 [104 S.Ct. 3194; 82 L.Ed.2d 393].

33. Parratt v. Taylor (1981) 451 U.S. 527 [101 S.Ct. 1920, 68 L.Ed.2d 420]; Hudson v. Palmer (1984) 468 U.S. 517 [104 S.Ct. 3194; 82 L.Ed.2d 393]; Daniels v. Williams (1986) 474 U.S. 327 [106 S.Ct. 662; 88 L.Ed.2d 662]; Davidson v. Cannon (1986) 474 U.S. 344 [106 S.Ct. 668; 88 L.Ed.2d 677].

34. Hope v. Pelzer (2002) 536 U.S. 730 [122 S.Ct. 2508; 153 L.Ed.2d 666]; Saucier v. Katz (2001) 533 U.S. 194 [121 S.Ct. 2151; 150 L.Ed.2d 272].

35. 42 U.S.C. § 1997e(e). See Oliver v. Keller (9th Cir 2002) 289 F.3d 623.

36. See, e.g., Canell v. Lightner (9th Cir. 1998) 143 F.3d 1342, 1346.

- An annotated edition of Title 42, section 1983 of the United States Code. Thousands of cases decided on prisoners rights are listed in the annotations to the civil rights statute. Note, however, that a case decided in the past may have been overturned. A prisoner should "shepardize" every case to try to determine if it is still good law.
- Rights of Prisoners, Third Edition (2002) by Michael Mushlin, published by West Group Publishing, P.O. Box 64833, St. Paul, MN 55164.

PROTECTING THE RIGHT TO BRING A FEDERAL CIVIL RIGHTS SUIT

A prisoner must "exhaust administrative remedies" before filing a federal civil rights action.^{37/} Administrative remedies must be exhausted even if the federal lawsuit requests money damages and money is not a remedy that can be obtained through the prison's administrative appeal process.^{38/} Thus, a prisoner who wants to bring a federal civil rights suit should always file (or at least attempt to file) a CDCR Form 602 administrative appeal through the Director's or Third Level of Review. Prisoners should make sure that the CDCR 602 is specific enough to give the prison officials fair notice of their complaints.^{39/} Also, CDCR regulations require prisoners to submit an appeal within 15 working days of the event or decision being appealed, or of receiving an unsatisfactory lower level decision; prisoners who are filing an appeal or re-filing it to the next level should make every effort to meet this deadline because CDCR officials may refuse to accept a late appeal.^{40/} If a prisoner's appeal is screened out as untimely, the prisoner should

37. 42 U.S.C. § 1997e(a).

38. Booth v. Churner (2001) 253 U.S. 731 [121 S.Ct. 1819; 149 L.Ed.2d 958; Porter v. Nussle (2002) 534 U.S. 516; 122 S.Ct. 983; 152 L.Ed.2d 12].

39. See Gomez v. Winslow (N.D. Cal. 2001) 177 F.Supp.2d 977, (general grievance about inadequate medical care may satisfy exhaustion requirement as to specific aspects of a medical care claim if it puts prison officials on notice of the complaints); Irvin v. Zamora (S.D. Cal. 2001) 161 F.Supp.2d 1125 (grievance that puts officials on notice of the potential claims may be adequate even if it does not specifically name all the defendants responsible for the incident).

40. 15 C.C.R. §§ 3084.3 (c) (6) and 3084.6(c).

challenge the screen-out and ask prison officials to process the appeal.^{41/}

If a grievance is fully granted at one of the lower levels, the full extent of relief under the administrative system has already been achieved. Thus, the prisoner is not obligated to pursue the appeal through the Third Level in order to exhaust administrative.^{42/}

There is also a time limit (statute of limitations) for filing a civil rights lawsuit. Section 1983 doesn't contain a specific statute of limitations, so the courts apply the time limits of the state in which the injury occurred.^{43/} The California time limits were recently changed. Until December 31, 2002, a lawsuit seeking money damages must have been filed within one year of the date that the cause of action

41. But see Woodford v. Ngo (2006) ___ U.S. ___ [126 S.Ct. 2378]. (finding prisoner had not exhausted all available administrative remedies when 602 appeal was screened out as untimely and prisoner had unsuccessfully appealed the screen-out decision).

42. Brady v. Attygala (9th Cir. 2002) 196 F. Supp.2d 1016; Gomez v. Winslow (N.D. Cal. 2001) 177 F.Supp.2d 977, 984-985. More complicated scenarios arise when a prisoner receives partial relief before the final level of review. In Brown v. Valoff (9th Cir. 2005) 422 F.3d 926, the Ninth Circuit Court of Appeals reached different conclusions in two cases (decided jointly) involving prisoners who filed grievances regarding staff abuse; each of the prisoners received a response that the matter had been referred for investigation, and neither pursued his grievance further. In one case, the court concluded that no further relief was available and administrative remedies had been exhausted where the prisoner received a "partially granted" response that an investigation would be conducted, that he would not be apprized of any disciplinary action and that monetary compensation could not be granted. The Court held that the other prisoner failed to exhaust available remedies where he receive a "denied" response telling him that his staff misconduct complaint would be investigated, that he must separately grieve other issues raised in the appeal, and that further review was available if he was dissatisfied. In addition, the Court noted that in the first case the staff misconduct investigation had been completed prior to filing the lawsuit, but in the second case the investigation was still open.

43. Wilson v. Garcia (1985) 471 U.S. 261, 266 [105 S.Ct. 1938; 85 L.Ed.2d 254]; Vaghan v Grijslva (9th Cir. 1991) 927 F.2d 476.

"accrued."^{44/} As of January 1, 2003, the law gives a person two years to file a lawsuit seeking money damages.^{45/} In addition, for prisoners serving determinate sentences or life with the possibility of parole, the time limits for filing a civil rights action for damages are "tolled" (or do not begin) for two additional years.^{46/} Thus, most prisoners who want to file a section 1983 lawsuit for money damages can wait for four years before the filing timeline runs out. However, prisoners should note that the tolling provisions do NOT apply to federal law claims seeking injunctive relief or to state law claims brought under the "California Tort Claims Act."^{47/}

The extended four-year total timeline also applies in cases where a prisoner suffered harm prior to January 1, 2003 and the original filing timeline had not run out by that date. This is because a change in the law extending the statute of limitations applies to all cases where the prior statute of limitations had not yet expired.^{48/}

Each federal court district has its own form for filing a civil rights complaint. Prisoners can usually find these forms in the prison law library or can obtain the forms by sending a request to the clerk of the federal district court. Also, courts charge a \$120 fee for filing a

44. Former Code of Civil Procedure § 340(3); See Wilson v. Garcia (1985) 471 U.S. 261 [105 S.Ct. 1938; 85 L.Ed.2d 254]; Owens v. Okure (1989) 488 U.S. 235 [109 S.Ct. 573; 102 L.Ed.2d 594]; Harrison v. County of Alameda (N.D. Cal. 1989) 720 F.Supp.783.

Generally, the cause of action "accrues" on the date of the event which caused the injury or the date a person finds out that an injury has been suffered. See generally Code of Civil Procedure § 312.

45. Code of Civil Procedure § 335.1.

46. Code of Civil Procedures § 352.1; Martinez v. Gomez (9th Cir 1998) 137 F.3d 1124 (tolling applies to prisoners serving life with possibility of parole). There is no tolling of the time limit for prisoners sentenced to life without parole. It is not clear whether tolling applies to prisoners serving death sentences.

47. Code of Civil Procedure § 352.1(b) and (c). See also Govt. Code § 945.6(c).

48. Mudd v. McColgan (1947) 30 Cal.2d 463, 468; Sanchez v. Worker's Comp. Appeals Board (1990) 217 Cal.App.3d 346, 358 [266 Cal.Rptr. 21, 28]; Liebig v. Superior Court (1989) 209 Cal.App.3d 828, 832 [257 Cal. Rptr. 574, 576]; Andonagui v. The May Dep't Stores Co. (2005) 128 Cal.App.4th 435 [27 Cal.Rptr.3d 145]; Kiss v. Santa Clara (N.D. Cal. Sept. 14, 2004) No. C-04-01964 RMW; Lamke v. Sunstate Equipment Co. (N.D. Cal Sept 22, 2004) No. C-03-4956 EMC.

federal civil rights complaint; prisoners who have no money can proceed without paying the fee by filing a request to proceed "in forma pauperis" (a form for this request can also be obtained from the court clerk) and providing a certified trust account statement.^{49/}

If the civil rights lawsuit is filed in federal court, the prisoner can try to show that there are "exceptional circumstances" and ask the court to ask a lawyer to take the case.^{50/} The statute only allows a court to ask a lawyer to take the case; the court cannot force a lawyer to represent the prisoner.

Once a complaint is filed, the prisoner or the prisoner's attorney must prosecute the lawsuit by seeking discovery and working toward bringing the case to trial or settlement. Prosecuting a lawsuit is difficult, and requires gathering and organizing evidence and a thorough understanding of the rules of civil procedure and the local rules of the court. A useful manual with information that can help prisoners prosecute federal civil rights lawsuits is [Protecting Your Health and Safety](#) (2002) - to order this book, send a check or money order for \$10 to the Southern Poverty Law Center, P.O. Box 548, Montgomery, AL 36101 or go to t.

STATE TORT LAWSUITS

ISSUES THAT MAY BE RAISED IN A STATE TORT SUIT

A prison or parole official can be sued for money damages under state law if the official's wrongful or negligent act or failure to act causes injury or harm to a prisoner.^{51/} For example, an officer who uses excessive force can be sued under state law for assault and battery, and an officer whose carelessness causes a prisoner to suffer harm can be sued under state law for negligence. This kind of lawsuit is known as a state "personal injury" or "tort" action. As with federal civil rights law, there are many rules regarding the various types of claims that can be raised; a good starting point for researching state tort law is the extensive multi-volume Witken's Summary of California Law.

49. 28 U.S.C. § 1915(a). Even if a prisoner proceeds "in forma pauperis," the prisoner will have to make partial payments toward the filing fee if he or she has or gets any money. 28 U.S. § 1915(b).

50. 28 U.S.C. § 1915(d).

51. Government Code § 844.6(d).

PROTECTING THE RIGHT TO BRING A STATE TORT LAWSUIT
(BOARD OF CONTROL CLAIMS)

The law requires that a written claim be made to the State Board of Control before a state tort lawsuit can be filed against the state or a state official or employee.^{52/} If a Board of Control claim has not been filed, then a state tort action against prison officials will be dismissed by the court.

In 2004, the Board of Control started requiring prisoners to complete the administrative appeal (CDCR Form 602) process before filing Board of Control claims. However, problems arose because prisoners' CDCR appeals frequently were not processed by the six month deadline for filing a Board of Control claim. Subsequently, the Board again changed its policy and now prisoners are not required to complete the 602 appeal process before filing a Board of Control claim.^{53/}

However, prisoners who want to file state tort lawsuits should still file a 602 appeal and pursue it to the highest level. A recent state Court of Appeal case held that, in addition to filing a Board of Control claim, prisoners must exhaust administrative remedies by completing the 602 appeal process prior to filing a state tort lawsuit, even where the relief sought is money damages.^{54/}

In addition, a plaintiff bringing a medical malpractice case against a health care provider must also give the defendant notice of the intention to sue 90 days before filing the suit;^{55/} if the suit is based on the medical negligence of a physician, the plaintiff must also send a notice to the Medical Board of California.^{56/}

A prisoner must send his or her claim to the Board of Control; the envelope containing the claim must be postmarked no later than six months after the accrual of the cause of action.^{57/} In general, a cause of action accrues on the date of the wrongful or negligent act that

52. Government Code §§ 945.4 and 950.2.

53. Memorandum from the Victim Compensation and Government Claims Board, undated.

54. Wright v. California (2004) 122 Cal.App.4th 659 [19 Cal.Rptr.3d 92].

55. Code of Civil Procedure § 364.

56. Code of Civil Procedure § 364.1.

57. Government Code §§ 911.2 and 901.

causes the injury. There is a special procedure for asking the Board of Control to accept a late claim, which is discussed in more detail below.

The Board's claim booklet, which includes instructions and the claim form, is available from the Board of Control. The claim must be signed and the original and three copies must be sent to the State Board of Control, Government Claims Branch, P.O. Box 3035, Sacramento, CA 95812. It is also a good idea to send an additional copy of the claim to the Board of Control, along with a pre-addressed stamped return envelope, and a letter requesting that the Board return a file-stamped copy of the claim. A prisoner should also keep copy of the claim.

In addition, as of 2004, prisoners are required to pay a \$25 fee when filing a Board of Control claim. However, the fee requirement may be waived if a prisoner is unable to pay the fee. A form for requesting a fee waiver is available from the Board of Control.

The Board of Control should act on the claim within 45 days.^{58/} The Board routinely denies all claims for damages arising from alleged personal injuries, so a prisoner should not get discouraged if a claim is rejected. However, even if the Board of Control is likely to deny the claim, it is still necessary to file the claim before filing a state tort lawsuit.

If a prisoner receives a notice of denial from the Board of Control, a state tort action must be filed within six months of the date the notice was placed in the mail.^{59/} The state tort complaint (the legal document which begins a lawsuit) must state that the claim was presented to the Board of Control. One case has held that any time needed to complete the 602 appeal process past the time that the Board of Control claim is denied does not count toward the six month deadline for filing a state tort lawsuit.^{60/}

In some cases, the Board of Control does not formally deny a claim or does not send out a notice of its action. If the Board does not act on a claim, the claim is considered to be denied 45 days after the claim was presented.^{61/} If the Board of Control does not send a notice of denial, then any state tort action must be filed within two years of the

58. Government Code § 912.4.

59. Government Code § 945.6(a)(1). The six month time period means either six calendar months or 182 days, whichever is longer. Gonzales v. County of Los Angeles (1988) 199 Cal.App.3d 601 [245 Cal.Rptr. 112].

60. Wright v. California (2004) 122 Cal.App.4th 659 [19 Cal.Rptr.3d 92].

61. Government Code § 912.4(c).

date of the cause of action.^{62/} Again, the complaint must state that a claim was presented to the Board of Control.

Prisoners can get the forms for filing California tort law actions based on personal injury and negligence from a law library or the county court clerk. These forms usually include a complaint, a summons and a civil cover sheet. There is also a form that a prisoner can use to ask permission to proceed without payment of court fees.

As with federal civil rights cases, it is very difficult for a prisoner to bringing a state tort lawsuit to trial or settlement. Books that describe the procedures for filing, serving, and prosecuting a state court lawsuit include the Continuing Education of the Bar (C.E.B.) publications Civil Procedure Before Trial, California Civil Discovery Practice, and Civil Procedure During Trial, 300 Frank H. Ogawa Plaza, Suite 410, Oakland, CA 94612. Anyone bringing a state tort lawsuit should also become familiar with the local court rules.

LATE BOARD OF CONTROL CLAIMS

If the six-month deadline for filing a Board of Control claim has passed, an prisoner can apply for permission to file a late claim.^{63/} A request to file a late claim is made by sending a complete claim form to the Board of Control, along with a letter explaining why the claim was not filed on time.^{64/} The prisoner should send the original and three copies of both the letter and claim form. The prisoner must present the request to file a late claim within a reasonable time after the end of the six month period, and no later than one year after the cause of action accrued.^{65/}

The courts have generally held that mere ignorance of the six months time limit is not a sufficient excuse for missing the deadline.^{66/}

62. Government Code § 945.6(a)(2); imprisonment does not toll or extend the timeline for filing a state tort suit; however, a prisoner's state tort complaint is timely filed if it is delivered to prison officials for mailing on or before the filing due date. Moore v. Twomey (2004) 120 Cal.App.4th 910 [16 Cal.Rptr.3d 163].

63. Government Code § 911.4(a).

64. Ibid.

65. Government Code § 911.4(b).

66. See Harrison v. County of Del Norte (1985) 168 Cal.App.3d. 1 [213 Cal. Rptr. 658].

However, the Board must allow a late claim in certain circumstances, such as when:

- The failure to present the claim within six months was through mistake, inadvertence, surprise or excusable neglect and the state was not prejudiced by the failure to present the claim on time.^{67/}
- The person who had the injury, loss, or damage was physically or mentally incapacitated during all of the six months period, and because of that disability failed to present a claim on time.^{68/}

The Board must act on a request to file a late claim within 45 days.^{69/} If the Board grants the request to file a late claim, the claim is considered to have been presented on the day that the request to file a late claim was granted.^{70/}

If the Board does not act on the request to file a late claim within 45 days, the request is considered to be denied.^{71/} If the Board does not act on the late claim request, or if the Board notifies the prisoner that it has denied the late claim request, then the prisoner can file a petition in the superior court of the county where lawsuit would be filed.^{72/} The petition must state that a late claim application was made to the Board and denied, give the reasons for the late filing of the claim, and state all facts relating to the claim itself. The petition must be filed within six months of the date that the request to file a late claim was denied or deemed denied by the Board of Control.^{73/}

Copies of the petition and written notice of the time and place for a hearing on the petition must be served on the Attorney General at least 21 days before the hearing if they are delivered in person; the

67. Government Code § 911.6(b)(1).

68. Ibid. Late claims must also be processed if the person who suffered the injury was a minor during all of the six-month time period or died before the time period ran out. Government Code § 911.6(b)(2) and (b)(4).

69. Government Code § 911.6(a).

70. Government Code § 912.2.

71. Government Code § 911.6(c).

72. Government Code § 946.6(a).

73. Government Code § 946.6(b).

notice and petition can also be served by mail, but they must be served at least 26 days before the hearing.^{74/} If the prisoner cannot get a hearing date before serving the notice and petition, the prisoner can file those documents along with a request that the court itself set a hearing and notify the parties of the date.

Because the law favors trial on the merits of an action, a court considering a petition for to file a late claim must resolve any doubts in favor of granting permission for the case to proceed.^{75/} If the court grants the petition, the state tort action must be filed in the granting court within 30 days after the order.^{76/} If relief is denied, no state tort action may be filed; however, the court's denial of the petition can be appealed to the state Court of Appeal.

SUMMARY: WHICH TYPE OF LAWSUIT SHOULD BE FILED AND IN WHAT COURT?

This letter has described the two main types of money damages suits that prisoners can bring. Prisoners should always take the initial steps to preserve their rights to sue under both federal and state law by filing a timely 602 administrative appeal and a timely Board of Control claim. However, a prisoner must eventually decide which type of claims he or she can bring and where the lawsuit should be filed. The decision will rest on the facts of the individual case, as well as other factors such as which court is most likely to give the prisoner a fair hearing. Money damages lawsuits thus break down into three categories:

- Cases raising Federal civil rights claims only: A claim under the federal civil rights act can be brought only if a prison official violated a federal law. For most prisoners, the case must be brought within three years (for events that happened prior to January 1, 2003) or four years (for events that happened on or after January 1, 2003). The lawsuit can be filed in either state or federal court, but prisoners should almost always file in federal court, where the judges are far more familiar with prisoner civil rights cases. There are four federal court districts in California, and a lawsuit should usually be filed in the court district that covers the region where the acts giving rise to the complaint occurred.

74. Government Code § 946.6(d); Code of Civil Procedure § 1005 (b).

75. Bettencourt v. Los Rios Community College District (1986) 42 Cal.3d. 270 [228 Cal. Rptr. 190]; Ebersol v. Cowan (1983) 35 Cal.3d. 427 [197 Cal.Rptr. 601].

76. Government Code § 946.6(f).

- Cases raising State tort law claims only: If there was no violation of a federal right, then the only type of action that the prisoner can bring is a case for negligence or a wrongful act under state tort law. A lawsuit based only on a claim violation of state law must be filed in state municipal or superior court in the county where the cause of action arose (usually the county where the prisoner is incarcerated).^{77/} The lawsuit should be filed within six months of receiving notice of a decision from the Board of Control. If notice is not given by the Board of Control, then the lawsuit should be filed within two years from the time the claim arose.
- Cases raising both federal and state law claims: When a prisoner wants to make claims based on both state and federal law, he or she may be able to file a federal civil rights suit that also raises state law claims. If claims can be brought under both state and federal law, a prisoner should always raise both types of claims and should bring them in a single lawsuit. (Under the legal principle of "res judicata," all claims arising out of an incident should be raised in the one lawsuit or the right to bring the claims may be forfeited.)

A lawsuit raising both federal and state law claims should be filed within the time limit for the state law claim - six months or two years after the Board of Control denies the state law claim, depending on how the claim was denied. Such a lawsuit can be filed in either state or federal court. However, federal courts are probably the better place for prisoners to file cases raising both state and federal issues, since federal courts usually have greater experience with prisoner cases and may occasionally be able to find an attorney to represent the prisoner.

In addition to asking for money damages, prisoners may also want to seek "injunctive relief," which is a court order requiring prison officials to do something or stop doing something (for example, to provide medical treatment or to stop refusing to deliver mail). If a prisoner is bringing federal civil rights claims for money damages, he or she can also ask for injunctive relief in the same case (a prisoner

77. A lawsuit requesting damages under \$25,000 would be filed in the municipal court, while those requesting more than \$25,000 would be filed in the superior court. Note that some counties have merged their municipal and superior courts and have a "unified court system." Also, claims for less than \$7,500 can be filed in small claims court, which offers a simpler and speedier way to resolve claims. The Prison Law Office can provide information on the small claims court process.

can also file a federal civil rights case asking for only injunctive relief if the prisoner does not want or cannot get money damages).

A prisoner who brings state law claims requesting money damages can also ask for injunctive relief. However, an action seeking injunctive relief based on a violation of state law must be filed in state court. Also, a state habeas corpus petition is a much simpler and easier way for a prisoner to ask for injunctive relief based on state law grounds. Thus, prisoners who want only injunctive relief based on state law grounds should almost always file a state petition for writ of habeas corpus rather than a state tort lawsuit. (A [manual on state habeas corpus petitions](#) is available from the Prison Law Office.)

[Attached is a list of the state and federal trial courts for California, and the prisons in each court district.](#)

More information on prisoners' rights, federal civil rights suits and state tort law suits can be found in The California State Prisoners Handbook (3rd Ed. 2001 and 2006 Supplement). This book is available in many prison law libraries. The book can also be ordered by a prisoner or for shipment to a prisoner by sending \$40 and shipping instructions to Rayve Productions, P.O. Box 726, Windsor, CA 95492. The price of the Handbook for non-prisoners is \$182.00. Payment is accepted by check, money order or credit card. Additional information on ordering the book can be obtained by writing to the Prison Law Office, General Delivery, San Quentin, CA 94964 or visiting our website at www.prisonlaw.com.

CALIFORNIA STATE COURTS
(and state prisons in those court districts)
updated 9/15/05

California State Superior Courts

Alameda County Superior Court
1225 Fallon Street, #209
Oakland, CA 94612-4293

Alpine County Superior Court
14777 State Route 89
PO Box 518
Markleeville, CA 96120

Amador County Superior Court
108 Court Street
Jackson, CA 95642-2396
Mule Creek State Prison

Butte County Superior Court
One Court Street
Oroville, CA 95965

Calaveras County Superior Court
891 Mountain Ranch Road
San Andreas, CA 95249-9709

Colusa County Superior Court
532 Oak St.
Colusa, CA 95932-2495

Contra Costa County Superior Court
1020 Ward Street
Martinez, CA 94553

Del Norte County Superior Court
450 "H" Street, Room 209
Crescent City, CA 95531
Pelican Bay State Prison

El Dorado County Superior Court
495 Main Street
Placerville, CA 95667-5699

Fresno County Superior Court
1100 Van Ness
Fresno, CA 93724-0002
Pleasant Valley State Prison

Glenn County Superior Court
526 West Sycamore Street
Willows, CA 95988

Humboldt County Superior Court
825 Fifth Street
Eureka, CA 95501-1153

Imperial County Superior Courts
939 West Main Street
El Centro, CA 92243-2842
Calipatria State Prison, Centinela State Prison

Inyo County Superior Court
168 Edwards Street
Independence, CA 93526-0618

Kern County Superior Court
1415 Truxtun Avenue
Bakersfield, CA 93301-4172
Cal. Correctional Institution, Kern Valley State Prison, North Kern State Prison, Wasco State Prison

Kings County Superior Court
1426 South Dr.
Hanford, CA 93230-5997
Avenal State Prison, CSP-Corcoran, Substance Abuse Treatment Facility

Lake County Superior Court
255 North Forbes Street
Lakeport, CA 95453-4759

Lassen County Superior Court
220 South Lassen Street, Suite 6
Susanville, CA 96130-4390
California Correctional Center, High Desert State Prison

Los Angeles County Superior Court (north)
42011 4th St West
Lancaster, CA 93534
CSP-Los Angeles County

or

Los Angeles County Superior Court (main)
111 North Hill Street
Los Angeles, CA 90012-3014

Madera County Superior Court
209 West Yosemite Avenue
Madera, CA 93637-3596

Marin County Superior Court
3501 Civic Center Drive, PO Box 4988
San Rafael, CA 94913-4988
CSP-San Quentin

Mariposa County Superior Court
5088 Bullion Street, PO Box 28
Mariposa, CA 95338-0028

Mendocino County Superior Court
100 North State Street, Rm 108
Ukiah, CA 95482-0996

Merced County Superior Court
627 West 21st Street
Merced, CA 95340-3744

Modoc County Superior Court
205 South East Street
Alturas, CA 96101

Mono County Superior Court (south)
PO Box 1037
Mammoth Lakes, CA 93546

or

Mono County Superior Court (north)
PO Box 537
Bridgeport, CA 93517

Monterey County Superior Court
1200 Aguajito Road
Monterey, CA 93940
Correctional Training Facility, Salinas Valley
State Prison

Napa County Superior Court
825 Brown Street
Napa, CA 94559

Nevada County Superior Court
201 Church Street, #7
Nevada City, CA 95959-2505

Orange County Superior Court
Room L 100
P.O. Box 22024
Santa Ana, CA 92702-2024

Placer County Superior Court
101 Maple Street
Auburn, CA 95603-5012

Plumas County Superior Court
520 Main Street, Room 104
Quincy, CA 95971

Riverside County Superior Court
4100 Main Street
Riverside, CA 92501-3626

or

Riverside County Superior Court (Blythe)
265 North Broadway
Blythe, CA 92225
California Rehabilitation Center
Chuckawalla Valley State Prison, Ironwood
State Prison

Sacramento County Superior Court
720 9th Street
Sacramento, CA 95814-1398
Folsom State Prison

San Benito County Superior Court
440 5th Street, Room 205
Hollister, CA 95023-3892

San Bernadino County Superior Court, Chino
13260 Central Avenue
Chino, CA 91710
California Institution for Men,
California Institution for Women

or

San Bernadino County Superior Court, Main
351 N. Arrowhead
San Bernardino, CA 92415-0240

San Diego County Superior Court
PO Box 122724
San Diego, CA 92112-2724
Richard J. Donovan Correctional Facility

San Francisco County Superior Ct (crim)
850 Bryant Street
San Francisco, CA 94103

San Joaquin County Superior Court
222 East Weber Avenue #303
Stockton, CA 95202-2777
Deuel Vocational Institution

San Luis Obispo County Superior Court
1035 Palm Street, Room 385
San Luis Obispo, CA 93408
California Men's Colony

San Mateo County Superior Court
400 County Center
Redwood City, CA 94063-1655

Santa Barbara County Superior Court
PO Box 21107
Santa Barbara, CA 93121-1107

Santa Clara County Superior Court
191 North First Street
San Jose, CA 95113-1090

Santa Cruz County Superior Court
701 Ocean Street
Santa Cruz, CA 95060-4086

Shasta County Superior Court
1500 Court Street
Redding, CA 96001-1686

Sierra County Superior Court
100 Courthouse Square
PO Box 476
Downieville, CA 95936

Siskiyou County Superior Court
311 4th St.
P.O. Box 1026
Yreka, CA 96097-2998

Solano County Superior Court
600 Union Avenue
Fairfield, CA 94533
California Medical Facility, CSP-Solano

Sonoma County Superior Court
600 Administration Drive, #107J
Santa Rosa, CA 95403-2818

Stanislaus County Superior Court
PO Box 828
Modesto, CA 95353

Sutter County Superior Court
446 2nd Street
Yuba City, CA 95991-5525

Tehama County Superior Court
445 Pine Street
PO Box 1170
Red Bluff, CA 96080-1170

Trinity County Superior Court
101 Court Street
PO Box 1258
Weaverville, CA 96093-1258

Tulare County Superior Court
County Civic Center, Room 201
Visalia, CA 93291-4580

Toulumne County Superior Court
41 West Yaney Avenue
Sonora, CA 95370-4611
Sierra Conservation Center

Ventura County Superior Court
800 South Victoria Avenue
PO Box 6489
Ventura, CA 93006

Yolo County Superior Court
725 Court Street
Woodland, CA 95695

Yuba County Superior Court
215 Fifth Street, Suite 200
Marysville, CA 95901-5794

Federal District Courts

United States District Court for the Central District, Eastern Division

4100 Main Street

Riverside, CA 92502-3000

California Institute for Men, California Institute for Women, California Rehabilitation Center,
Chuckawalla Valley State Prison, CSP-Ironwood, California Men's Colony

United States District Court for the Central District, Western Division

312 North Spring Street #G-8

Los Angeles, CA 90012-4793

CSP-Los Angeles County

United States District Court for the Eastern District, Sacramento Office

501 "I" Street, Suite 4-200

Sacramento, CA 95814

CSP-Solano, California Medical Facility, Mule Creek State Prison, California Correctional Center,
High Desert State Prison, Folsom State Prison, Deuel Vocational Institute,

United States District Court for the Eastern District, Fresno Office

1130 O Street, 5th Floor, Room 500

Fresno, CA 93721

CSP-Corcoran, Substance Abuse Treatment Facility, Sierra Conservation Center, Pleasant Valley State Prison,
California Correctional Institution, Kern Valley State Prison, North Kern State Prison, Wasco State Prison,
Central California Women's Facility, Valley State Prison for Women, Avenal State Prison

United States District Court for the Northern District

U.S. Courthouse

450 Golden Gate Avenue

San Francisco, CA 94102-3483

Pelican Bay State Prison, San Quentin State Prison, Correctional Training Facility,

Salinas Valley State Prison

United States District Court for the Southern District

Federal Office Building

880 Front Street, Suite 4290

San Diego, CA 92101-8900

Richard J. Donovan Correctional Facility, Centinela State Prison, Calipatria State Prison