

CHAPTER 9

CIVIL ACTIONS, DEFENSE OF EMPLOYEES, SMALL CLAIMS ACTIONS,
SOVEREIGN CITIZEN ACTIONS, DEFENSE FOR CRIMINAL CHARGES

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CHAPTER 9

CIVIL ACTIONS, DEFENSE OF EMPLOYEES, SMALL CLAIMS ACTIONS, SOVEREIGN CITIZEN ACTIONS, DEFENSE FOR CRIMINAL CHARGES

1. NOTICE OF INTENT TO INSTITUTE CIVIL ACTIONS AGAINST THE DEPARTMENT OR DEPARTMENTAL EMPLOYEES. Civil lawsuits may be instituted for a variety of claims including allegations of false arrest, battery, assault, negligence, fraud, malice, errors of omission or commission, failure to act, accidents involving departmental automotive equipment, improperly maintained or defective equipment, grounds, or property, etc. Notice that an action that has been or may be instituted against the state, the Department, or a departmental employee, is usually in the form of a claim for damages. Refer to Highway Patrol Manual 100.86, Risk Management Manual; Chapter 6, Government Claims Program; CHP 287, Claims of \$1,000 or Less; Good Samaritan Program; Victims of Violent Crimes Program, for more information about the claims process.

2. SERVICE OF LEGAL DOCUMENTS. No departmental employees other than those specifically authorized shall accept any summons, complaint, writ, or other legal documents for service on the State of California, the Department, or the Commissioner.

a. Authorized Recipients. In order to assure coordination of legal actions brought against the Department, persons attempting service on the state, the Department, or the Commissioner, shall be referred to the authorized recipients as follows:

(1) Service naming the **California Highway Patrol (CHP).**

(a) Authorized to accept service of a summons and complaint: The Attorney General's Office (AGO) or the CHP Office of Legal Affairs (OLA).

(2) Service naming the **Commissioner; Deputy Commissioner; Assistant Commissioner, Field; or Assistant Commissioner, Staff.**

(a) Authorized to accept service of a summons and complaint, writ, or other legal process: The OLA.

(3) Service naming the **State of California.**

(a) Authorized to accept service of a summons and complaint: The AGO.

3. SERVICE OF A SUMMONS AND COMPLAINT.

a. Summons and Complaint. A summons and complaint are the initial legal documents served on the Department and/or departmental employees when a lawsuit has been filed.

(1) There are different manners a lawsuit can be brought against the Department or departmental employees. Some lawsuits are filed following the procedures provided for under the California Torts Claim Act. Cases by departmental employees follow different procedures depending on the subject matter of the lawsuit.

(2) Pursuant to Section 945.3 of the Government Code (GC), no civil lawsuit may proceed against a peace officer, or the public entity employing a peace officer, while the charges against the officer are pending before a superior court. When a summons and complaint is served and criminal charges are pending on the incident involved in the suit, the OLA should be immediately notified (within one business day).

b. Proper Service. Pursuant to Section 415, *et seq.*, of the Code of Civil Procedure (CCP), proper service of a summons and complaint may be affected by one of the following methods:

(1) Personal Service. A copy of the summons and complaint must be personally presented by the server to the employee who is being sued. Such service could occur at any location where the server locates the employee, including their place of residence.

NOTE: If the summons and complaint is accepted by anyone other than the named employee (or a person the employee authorized to accept service per Section 416.90 CCP), then it is substituted service, which is described in 3.b.(2) below.

Addresses and/or telephone numbers are not to be disclosed to the process service.

(2) Substituted Service. A copy of the summons and complaint is delivered to the office, or usual place of business, to a person apparently in charge of such office or usual place of abode (on a competent member of the household).

NOTE: This method also requires the server to mail an additional copy of the summons and complaint to the same location where the above copy was left.

(3) Service by Mail. A copy of the summons and complaint, a stamped envelope addressed to the attorney representing the plaintiff, and the notice and acknowledgment of receipt form are mailed to the employee to be served.

Contact OLA via e-mail immediately (within one business day) if a summons and complaint are received by mail (attach everything received by mail). The notice and acknowledgment receipt should not be signed until OLA has reviewed everything received via mail and made a recommendation.

NOTE: Service by mail can also be used to serve employees who are named as defendants in lawsuits for off-duty incidents.

c. Reporting Receipt of a Summons and Complaint. In every instance in which an employee is served a summons and complaint, immediate notification (within one business day) shall be made to OLA. It is critical to the defense of a case to make a timely notification to OLA. When more than one employee is served in the same case, **each service shall be reported.** Each summons and complaint require a response to the court by the AGO for each individual served. Failure to timely report can result in a default judgment for which an employee can be made personally liable for monetary damages. Commanders shall ensure the following information is immediately (within one business day) transmitted to OLA by e-mail for each service on an employee:

- (1) Date of service.
- (2) Name of employee(s) served.
- (3) Manner of service (e.g., personal, substituted, or mail).
- (4) Name of plaintiff(s).
- (5) Location of service.
- (6) Type of court (e.g., federal or state).
- (7) Whether a CHP 216, Arrest – Investigation Report, or STD. 270, Vehicle Accident Report, has been completed.

d. Documents to be Transmitted. All original documents received shall be transmitted to OLA with sufficient information to identify the action with reports and such other information as the commander believes pertinent. When service is by mail, all documents received, including the stamped, addressed envelope which was enclosed in the package, the notice and acknowledgment of receipt form, and the envelope in which the documents were originally mailed, are to be transmitted to OLA. All documents should be scanned and sent to OLA, via e-mail, followed by mailing the originals to OLA via overnight delivery (i.e., United Parcel Service).

e. Pending Adverse Action. When a civil summons and complaint are served on an employee and it is known to the command that an adverse action is pending for the employee, this fact shall be made known to OLA.

4. DEFENSE OF CIVIL LAWSUITS.

a. Legal Representation. The state is self-insured for all tort liability claims, except those suits involving a privately-owned vehicle used to conduct state business. The AGO provides legal counsel for eligible departmental employees in civil lawsuits arising out of an act or omission occurring within the course and scope of their employment. Pursuant to Section 825(a) GC, the employee must request such representation in writing and the employee or former employee must reasonably cooperate in good faith in the defense of the claim or action.

NOTE: The Department may pay punitive damages awarded against the employee under certain circumstances (refer to paragraph 5.d, Punitive Damages). However, there is no guarantee that a punitive damages award will be paid by the Department; therefore, the employee has the option of hiring private counsel for that aspect of the case.

b. Coordination with the Attorney General's Office. The OLA shall forward the summons and complaint to the AGO and request defense of the action. Additionally, any inquiries made of employees by attorneys or other individuals pertaining to any litigation in which the Department and/or departmental employees are defendant(s), should be referred to the AGO.

c. Employee Concerns. Suits filed against employees often contain serious unsubstantiated allegations which cause great concern. The role of commanders and supervisors should be one which provides positive reassurance to employees named in suits. Commanders and supervisors can show support for employees but should not discuss specifics of the case. Details are privileged, and as such, those details should only be discussed between the AGO and the named employee.

d. Employee Expert Witnesses—Defense of Departmental Lawsuits. The OLA is the Department's expert witness liaison with the AGO. Accordingly, all requests from the AGO for departmental employees' expert testimony at pending civil trials in which the Department and/or departmental employees are named as defendants, shall be referred to OLA.

5. TRIALS, SETTLEMENTS, AND INDEMNIFICATION OF EMPLOYEES.

- a. Witness Appearance—No Subpoena Required. After legal counsel has been assigned to provide a legal defense in a civil action in which the Department is a defendant, subpoenas may not be required for subsequent appearances of employees involved in the action. Please consult with OLA for guidance as needed.
- b. Out-of-Court Settlements. The Attorney General has been granted the authority, with the approval of the Department, to negotiate out-of-court settlements. The state, not the employee, is obligated to pay any compromise or settlement of a lawsuit to which the state has agreed.
- c. Adjudication. If the suit goes to trial, the state is required to pay any judgment or compromise agreed upon if it is established that the basis for the suit arose out of an act or omission by an employee occurring in the course and scope of their employment. The employee is not liable for any payment made by the state for any judgment or any portion of a judgment against the employee or the state unless the employee acted or failed to act because of fraud, corruption, or actual malice.
- d. Punitive Damages. If during trial, the court or a jury determines that the involved employee acted or failed to act because of fraud, corruption, or actual malice, it could assess punitive damages against the employee in addition to any other damages for which the state is liable. In the event that a judgment for punitive damages is awarded and the Department and/or Legislature has denied payment of the award, the employee or former employee is financially responsible for the award. Pursuant to Section 825(b) GC, the Department, in its discretion and with legislative approval, may pay punitive damages assessed against the employee under the following conditions:
- (1) The judgment is based on an act or omission of an employee or former employee acting within the course and scope of their employment as an employee of the Department.
 - (2) At the time of the act giving rise to the liability, the employee or former employee acted, or failed to act in good faith, without actual malice and in the apparent best interest of the Department.
 - (3) Payment of the claim or judgment would be in the best interest of the Department.
- e. Reservation of Rights. Pursuant to Section 825(a) GC, if an employee requests the Department provide a defense in a civil action related to an injury arising out of an act or omission occurring within the scope of his or her employment, the Department reserves the right not to pay a judgment until it is established that the injury occurred from an act or omission within the scope of

employment. The Department reserves the discretion pursuant to Section 825(b) GC to determine whether to pay a punitive award.

6. SMALL CLAIMS COURT ACTIONS.

a. Definition. Small claims court hearings provide expeditious and informal adjudication of lawsuits in an amount not to exceed \$10,000. The parties to the small claims action cannot be represented by legal counsel and must represent themselves.

b. Small Claims Actions Filed Against Departmental Employees. Small claims actions may be filed against departmental employees alleging loss, damage, or personal injury resulting from official acts of the employee during their course and scope of employment. While the actions name the individual employee, any judgment rendered by the court against the employee, other than punitive damages, will be the financial responsibility of the Department. (Refer to paragraph 5.d, Punitive Damages.)

c. Reporting. Receipt of a small claims action notice, along with a copy of the notice, shall be immediately e-mailed (within one business day) to OLA. Upon receipt of the notice, staff from OLA will research the claim to ensure that the prerequisites to filing a small claims action have been followed. As attorneys are not permitted to appear in small claims court, involved personnel from the Area shall participate in the small claims hearing; instructions regarding the preparation for and participation in the small claims court hearing will be provided to the involved Area.

d. Court Decision. Upon receipt of the court's decision, it shall be immediately forwarded (within one business day) to OLA. In the event that judgment was entered for the plaintiff, OLA will either make arrangements for payment or work with the Area/Division and the AGO in seeking an appeal.

7. SOVEREIGN CITIZEN ACTIONS FILED AGAINST DEPARTMENTAL EMPLOYEES.

a. Definition. Sovereign citizen is a term used to classify a variety of groups and individuals that share a common anti-government philosophy. The philosophy will differ among various groups, but almost all of these anti-government movements adhere to a theory that our nation is made up of two types of people: those who are sovereign citizens by virtue of Article IV of the Constitution, and those who are "corporate" or "14th Amendment" citizens by virtue of the ratification of the 14th Amendment.

b. Identification. Sovereign citizens commonly do not register their vehicles, obtain driver's licenses, and will use alternative terms for ordinary words when communicating during traffic stops. Typically, sovereign citizens will generate unique license plates or not have one. For identification, they typically have no state-issued license or identification; instead, they will have paperwork establishing their credentials. Often, they will cite to the Uniform Commercial Code, which they claim grants them the "right to travel" on highways in their "conveyance", a term they will use for their vehicle. It is also a common request for sovereign citizens to request an officer's Oath of Office, and either refuse to sign a citation or sign it under duress with citations to irrelevant statutes or regulations.

c. Procedures. It is not unusual for sovereign citizens to contest citations (or other violations) by filing their own papers in court and serving a variety of documents on the officer who issued the citation. In order to make accurate assessments, upon receipt of any sovereign citizen documents by an Area office or the involved employee, the Area shall immediately contact (within one business day) OLA. The original documents received (including the envelope if the documents were mailed) shall immediately be scanned and e-mailed (within one business day) to OLA with the originals to follow by overnight mail. The OLA will review, and if any further action is recommended or required, OLA will contact the Area to coordinate the response.

8. DEFENSE OF EMPLOYEES—CRIMINAL CHARGES.

a. Authority. Pursuant to Section 995.8 GC, the Department is permitted, but not required, to provide a criminal defense for any employee or former employee if certain criteria are met.

b. Approval. A request from a departmental employee for legal defense in a criminal matter requires approval by the Commissioner or Deputy Commissioner. Pursuant to Section 995.8 GC, the Department may provide a criminal defense for an employee or former employee if, in the Department's discretion, both of the following criteria are met:

(1) The criminal action or proceeding is brought on account of an act or omission in the scope of employment as an employee of the Department.

(2) The Department determines that such defense would be in the best interest of the Department, and that the employee or former employee acted, or failed to act in good faith, without actual malice and in the apparent interests of the Department.

For example: An employee who was subpoenaed to appear at a criminal hearing did not appear due to a clerical error and a bench warrant was issued for that employee's failure to appear, the Department has provided a defense for the employee.

- c. Procedures. A request for criminal defense representation by an employee (through their commander) shall be directed from their chain of command to the appropriate Assistant Commissioner, Field or Staff (ACF/ACS). Requests shall be in writing, contain a recommendation from the commander, and include sufficient facts to evaluate whether Section 995.8 GC criteria has been met.

The ACF/ACS shall consult with OLA regarding the request and after consulting with OLA, the Assistant Commissioner will present the request to the Commissioner or Deputy Commissioner. After a decision has been made, the Assistant Commissioner will notify the commander of the decision and all necessary procedures.

NOTE: In emergency situations where time constraints preclude written requests, contact OLA by phone, and OLA will facilitate the procedures outlined above.

- d. Criminal Investigations. If a departmental employee is a defendant in a pending civil lawsuit and becomes aware of **any** criminal investigation into their misconduct or if **any** criminal charges are filed against the departmental employee; the employee shall report the information immediately to their chain of command, OLA, and their civil defense attorney (whether or not the investigation or charges are related to the civil litigation).