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Public Law 101 Conference

Litigation Overview

Wednesday, November 15, 2023
9:30 a.m. – 10:30 a.m.

Speakers:

Suzanne Kennedy, Assistant City Attorney
City of Elk Grove City Attorney's Office

Conference Reference Materials

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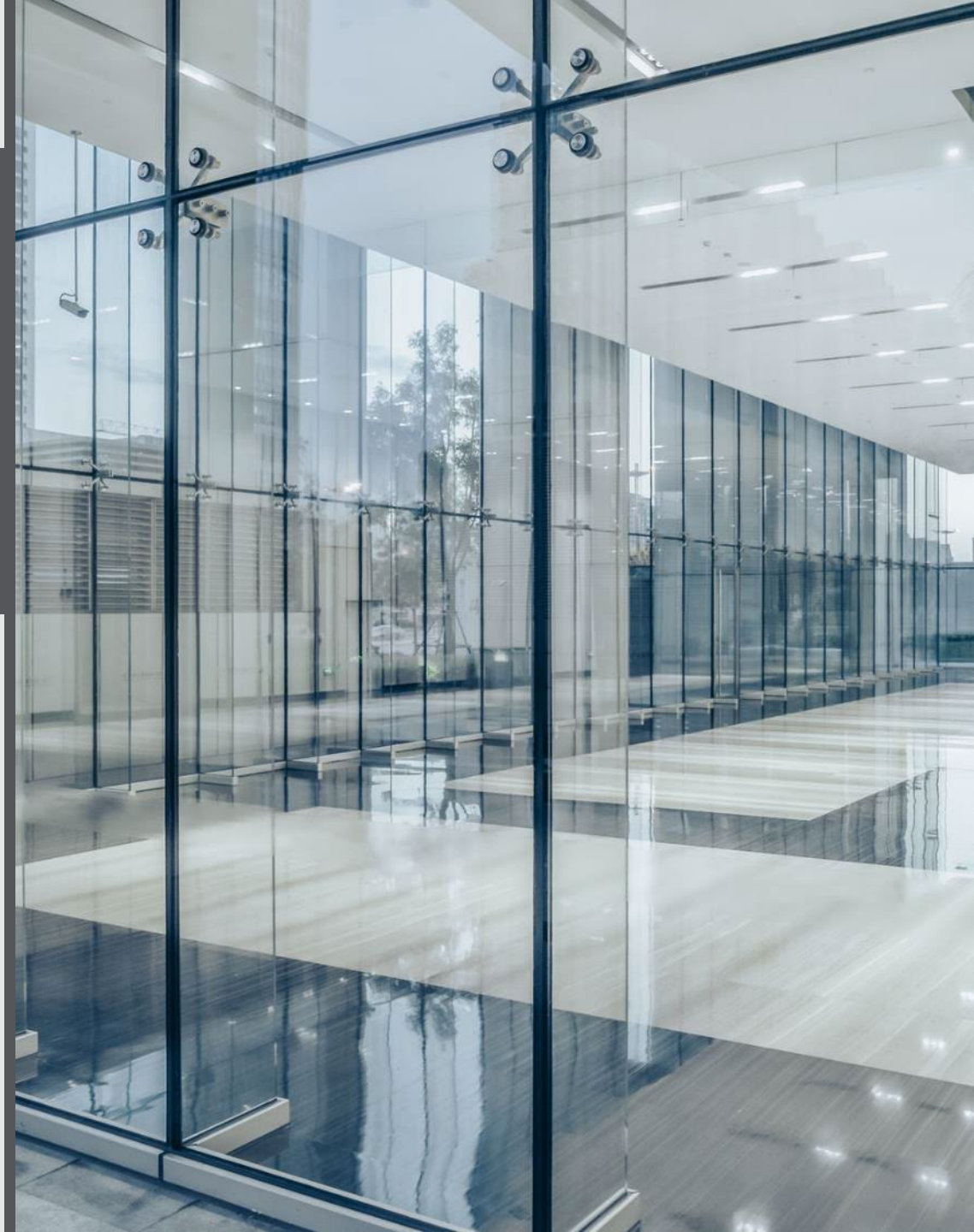
Bio for Suzanne E. Kennedy

Suzanne Kennedy received her B.A. degree from UC Davis, with a double-major in International Relations and Spanish. After starting off her career as an international commodities trader, Suzanne went on to receive a Juris Doctorate degree from McGeorge School of Law with a tax concentration. Suzanne commenced her legal career in the area of civil litigation with a private law firm before joining the City of Elk Grove City Attorney's office in 2010. As an Assistant City Attorney, Suzanne provides advice and counsel in a variety of municipal law areas, including Police, Animal Services, Code Enforcement, Information Technology, Finance, Transit, and Recycling and Waste.



PUBLIC LAW 101: LITIGATION

- Suzanne E. Kennedy
- Assistant City Attorney
- City of Elk Grove



Agenda

- Government Claims Act
- Indemnification of Public Employees and Officers
- Liability and Immunities
- Judicial Review of Municipal Decisions



Government Claims Act

- Government Code section 810-998.3
- Also known by the misnomer “Torts Claim Act”
- Most actions seeking money or damages against a public entity or employee must be preceded by a timely written claim unless statutory exemption applies.

Government Claims Act

- Tort actions
- Contract actions
- Real and personal property damage actions
- Mandate actions that include a claim for damages
- Statutory actions (e.g., whistleblower claims)
- Actions for refunds of taxes, assessments, fees, or charges when no other statute establishes procedures for the refund claim
- Class actions
- Actions against public employees

Government Claims Act

- Actions for relief other than money or damages do not require written claim:
 - Declaratory relief
 - Recovery of seized property or damages in lieu thereof
 - Mandamus actions for release of funds, or return of property
 - Action for employment discrimination brought under FEHA
 - Federal civil rights actions

Claims Presentation Procedures: Sufficient Claim

- Does not need to be perfect or meet all the requirements
- Any document received by public entity indicating money damages are should and litigation may follow should be treated as a claim
- If not all requirement information is included, entity can send notice of insufficiency within 20 days (Gov. Code 910.8)
- Failure to treat a document as a claim may result in a loss of claim defenses (Gov. Code 911)

Claims Presentation Procedures: Required Content

- Name and mailing address of the claimant;
- Mailing address to which notices should be sent;
- Date, place, and circumstances giving rise to the claim;
- General description of the injury, damage, or loss for which the claimant seeks payment;
- Name of any public employee causing the loss, if known; and
- Amount claimed.
- Only substantial compliance required.

Claims Presentation Procedures: Timing

- Six months: A claim for wrongful death, personal injury, or damage to personal property or growing crops must be presented on or before 6 months after the cause of action accrues
- One year: A claim for any other cause of action may be presented as late as 1 year after the cause of action accrues (Claims based on contract or damage to real property)

Claims Presentation Procedures: Untimely Claims

- If a claim is not presented within the time allowed, the entity may return the claim without any further action, giving notice in the specified form. (Gov. Code 911.3)
- Failure to notice as untimely may result in waiver of defense.

Claims Presentation Procedures: Time to Act

- A public entity is allowed 45 days after the claim is presented in which to take action on it (accept, reject, reject and accept in part, compromise).
- If the claim has been amended, the time is extended until 45 days after the amended claim is presented.
- Additional time allowed if claim mailed.
- Failure to act is rejection by operation of law (but extends time for claimant to file suit to two years).
- Reject of claim must include notice regarding statute of limitation to file a lawsuit (six months). (Gov. Code 913)

Claims Presentation Procedures: Late Claims

- Must submit application to present late claim to the entity before filing a lawsuit.
- Application must be submitted within a reasonable period not to exceed 1 year after the accrual of the cause of action.
- Timely application must be granted if one or more of the following apply:
 - ✓ Claim not timely presented due to mistake, inadvertence, surprise, or excusable neglect, and public entity is not prejudiced in its defense of the claim by this delay;
 - ✓ Claimant was a minor throughout the claim period;
 - ✓ Claimant was a minor during any part of the claim period, if application is presented within 6 months of the claimant turning 18 years of age, or a year after the claim accrues, whichever occurs first;
 - ✓ Claimant was physically or mentally incapacitated throughout the claim period and failed to present a claim because of that disability;
 - ✓ Claimant was physically or mentally incapacitated during any part of the claim period and failed to present a claim during the claim period because of that incapacitation, if application is presented within 6 months of the claimant no longer being incapacitated, or a year after the claim accrues, whichever occurs first; or
 - ✓ Claimant died before the expiration of the claims period.

Claims Presentation Procedures: Late Claims

- Entity has 45 days after presentation of an application to file a late claim to grant or deny the application
- If application denied, claimant may petition the court to be relieved from the claims requirement

Indemnification of Public Employees and Officers

- Generally, a public entity must provide for the defense of civil actions brought against an employee or former employee if:
 - ✓ Employee's act or omission was within the scope of employment;
 - ✓ Employee did not act with actual fraud, corruption, or actual malice;
 - ✓ Defense of the action would not create a specific conflict of interest between the entity and the employee.

Municipal Tort Liability: State Law

- The doctrine of governmental immunity applies to tort actions
- Specific immunities include (but are not limited to):
 - ✓ Issuance, denial, suspension, or revocation of, or failure or refusal to issue, deny, suspend, or revoke a permit or license
 - ✓ Failure to inspect nonmunicipal property for health and safety violations
 - ✓ Employee's negligent or intentional misrepresentation
 - ✓ Failure to provide traffic devices
 - ✓ Effect of weather conditions on streets and highways
 - ✓ Condition or use of trails and unpaved roads
 - ✓ Dangerous condition created by a reasonable act or omission or reasonable act or omission to protect against dangerous condition of public property
 - ✓ Failure to provide police protection or make an arrest

Municipal Tort Liability: State Law

- A public entity is not liable for an injury arising out of an act or omission of the public entity or public employee or any other person **except as otherwise provided by statute** (*i.e.*, a California statute or the federal or state constitution).
- Except as otherwise provided by statute, a public employee is not liable for an injury resulting from an act or omission that was the result of the exercise of the **discretion vested in the employee**, whether or not such discretion was abused by the employee.
- A public entity is not liable for an employee's torts when the employee is immune from liability.

Municipal Tort Liability: Federal Law

- A local government is liable under 42 USC §1983 for violations caused by an official policy or custom even when the governmental official responsible for that policy or custom is immune.
- State law immunities do not apply to §1983 actions.
- Local government is absolutely immune from punitive damages even though public employees are not.

Mandate/Judicial Review of Municipal Decisions

- A petition for writ of mandate may be used to challenge a city's or a local agency's legislative, ministerial, or adjudicatory actions.
- Traditional mandamus: proper form of action to challenge reviewable ministerial or quasi-legislative acts of a city or local agency. (CCP 1085)
- Administrative mandamus :used to review "quasi-judicial" or "adjudicatory" decisions that involve application of a rule or set of rules to a specific project or a set of existing facts or circumstances.

Traditional mandamus

- Ministerial act: one that a public officer or entity is required to perform in a prescribed manner in obedience to the mandate of legal authority and without regard to their own judgment or opinion concerning the act's propriety or impropriety, when a given state of facts exists
 - Example (generally speaking):
 - ✓ Issuance of Building Permits
- Quasi-legislative Acts: the formulation of a rule to be applied in all future cases
 - Examples (generally speaking):
 - ✓ Rezoning of property
 - ✓ General Plan Amendments

Administrative Mandamus

Judicial inquiry in an administrative mandamus action is limited to:

- Whether the agency has proceeded without, or in excess of, jurisdiction;
- Whether there was a fair "trial" or hearing; and
- Whether there was any prejudicial abuse of discretion.

Abuse of discretion is established when:

- The agency has not proceeded in the manner required by law;
- The order or decision is not supported by the findings; or
- The findings are not supported by the evidence.

Questions?