

Claims Against the State

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Issue

Summarize the process for filing a claim against the state with the Office of the Claims Commissioner. This report updates [OLR Report 2014-R-0082](#) to reflect changes in [PA 16-127](#).

Summary

In most cases, someone who wishes to sue the state must file a claim with the Office of the Claims Commissioner. Except in limited circumstances, the commissioner, or a magistrate she designates, holds a hearing on each claim. Within 90 days of the hearing, the commissioner issues a decision to (1) deny or dismiss the claim, (2) grant permission to sue the state, (3) grant a claimant an award of up to \$20,000, or (4) recommend that the General Assembly approve an award of a higher amount.

A claimant who filed a claim for more than \$20,000 can ask the General Assembly to review the commissioner's decision to deny or dismiss the claim or award a lesser amount. The General Assembly must review claims where the commissioner or a magistrate recommends an award greater than \$20,000.

Claims

Most claims against the state must be filed with the Office of the Claims Commissioner instead of the courts.

The claims commissioner is appointed by the governor, with the advice and consent of the General Assembly, to hear and determine claims against the state.

[PA 16-127](#) made several changes to the claims process, such as (1) allowing the claims commissioner to designate magistrates from a list maintained by the chief court administrator to hear and make recommendations for decisions on claims and (2) requiring inmates to exhaust their administrative remedies before filing a claim for an injury.

Claims submitted to the legislature are filed as resolutions with the Judiciary Committee. The committee holds a public hearing on the resolutions and votes on them at a meeting. The House and Senate can then debate and vote on them. For each claim, the legislature may confirm the commissioner's decision or recommendation, order payment of a specific amount, deny payment, or authorize the claimant to sue the state.

If a prison inmate files a claim after suffering an injury, the claim is subject to the general rules that apply to other claimants, with a few exceptions. For example, the inmate must first exhaust any administrative remedies provided by the Department of Correction.

Filing a Claim with the Claims Commissioner

***Types of Claims* ([CGS §§ 4-141, -142, and -148](#))**

Sovereign immunity limits when someone can sue the state. In most instances, someone who wishes to sue the state must file a claim with the Office of the Claims Commissioner. The law defines a claim as a petition for the payment or refund of money by the state or for permission to sue the state. It explicitly excludes claims for employment benefits, including disability, pension, and retirement benefits; claims that under law can be brought through a lawsuit or administrative hearing; requests by political subdivisions for payment in lieu of taxes; and claims for tax refunds. Any claim that can be presented to the Office of the Claims Commissioner cannot be presented against the state in any other way.

Some other statutes authorize specific types of suits to be brought directly against the state without filing with the Office of the Claims Commissioner, such as claims dealing with highways or public works (see [CGS §§ 4-61](#) and [13a-144](#)).

***Notice of Claim* ([CGS § 4-147](#))**

Anyone who wants to present a claim against the state must file a notice, in duplicate, with the Office of the Claims Commissioner. This notice must contain:

1. the name and address of the claimant and the claimant's attorney if he or she is represented;
2. a concise statement of the basis of the claim, including the date, time, place, and circumstances of the act or event complained of;
3. the amount requested; and
4. a request for permission to sue the state, if that permission is sought.

If sent by mail, the notice is deemed filed on the date it is postmarked. A \$50 filing fee is required for claims over \$5,000 and a \$25 fee for lesser claims. The commissioner can waive the fees for good cause (except in certain cases involving inmates; see below).

Notice of Injury (CGS § 4-146)

Anyone who suffers damage or injury because of the defective condition of a building, park, or ground owned or leased by the state must, within a reasonable time after the damage or injury, notify the official in charge of the date, time, place, and circumstances of the damage or injury. But even if this requirement is not met, the claim can go forward unless the state shows that it was substantially prejudiced by the lack of notice.

Statute of Limitations (CGS § 4-148)

In general, a person must present a claim to the Office of the Claims Commissioner within one year after it accrues. By law, a claim accrues on the date the damage or injury is sustained or discovered, or in the exercise of reasonable care should have been discovered. But no claim can be presented more than three years from the date of the act or event that is the basis of the complaint. (A different statute of limitations applies for claims by inmates; see below.)

The General Assembly may, through special act, authorize a person to present a claim after the time limit passes if it (1) deems the authorization to be just and equitable and (2) makes an express finding that the authorization is supported by compelling equitable circumstances that would serve a public purpose.

Representation for the State (CGS § 4-149)

The attorney general must represent the state agency or department before the Office of the Claims Commissioner unless he determines the state's interests do not require it (in which case the agency or department provides its own representation). In making this determination, the attorney general must consider the (1) sum of money involved, (2) legal significance of the claim as a precedent, and (3) complexity of the legal and factual issues presented.

When the representative for the state decides to oppose a claim, the representative must file with the Office of the Claims Commissioner a notice of opposition, in duplicate, containing a concise statement of the objections. The office must promptly deliver a copy to the claimant.

Claims by Prison Inmates ([CGS § 4-165b](#))

By law, a prison inmate must exhaust any administrative remedies provided by the Department of Correction before he or she can file a claim for an injury with the claims commissioner's office. This rule does not apply to the legal representative of an inmate's estate.

In addition to the information required for other claims, an inmate's claim notice must describe the administrative remedies that have been exhausted. The law requires that the claim be filed no later than one year after exhausting the administrative remedies.

The law prohibits the commissioner from waiving the required filing fee for an inmate's claim if the inmate had at least three prior claims that were dismissed by the commissioner as frivolous, duplicative, or malicious or failing to state a claim on which relief could be granted.

Hearing and Decision

Authority to Designate Magistrate ([CGS § 4-142b](#))

The claims commissioner generally can hear a claim herself or designate a magistrate to hear the claim, from a list of available magistrates maintained by the Chief Court Administrator. The magistrate makes recommendations to the commissioner after reviewing and hearing the claim, while the commissioner remains solely responsible for a claim's final disposition.

Hearings ([CGS § 4-151](#))

Claims must be heard as soon as practicable after they are filed. The law gives priority when scheduling hearings to claims filed by:

1. people who are age 65 or older or who reach age 65 while the claim is pending;
2. people who are terminally ill, as defined by state law; and
3. estate executors and administrators.

The commissioner or a magistrate can hold hearings at (1) the Office of the Claims Commissioner; (2) any available hearing facility in the State Capitol or Legislative Office Building; (3) upon request, a courthouse or city or town hall in the state; or (4) any other suitable place the commissioner or magistrate finds convenient and just to the claimant and the attorney general.

The claims commissioner or magistrate may call, examine, and cross-examine witnesses; require information not offered by the claimant or the attorney general; and stipulate matters to be argued. The claims commissioner or magistrate is not bound by any evidentiary law or rule, except as the commissioner may provide by her rules.

The claims commissioner or magistrate may administer oaths; require depositions to be taken; issue subpoenas; and order inspection and disclosure of books, papers, records, and documents. The commissioner or magistrate can revoke an order or subpoena for good cause. If a person fails to respond to a subpoena, the commissioner or magistrate may issue an order, directed to a state marshal, to arrest the person and bring him or her before the commissioner or magistrate to testify.

If anyone refuses to testify or produce any relevant, unprivileged document or record, the claims commissioner or magistrate must notify the attorney general, who must apply to the Superior Court for an order compelling compliance. A person who subsequently willfully refuses to comply or, having appeared, refuses to be sworn or answer any relevant question commits a class A misdemeanor, punishable by up to one year in prison, a fine of up to \$2,000, or both. If the person is the claimant, the law also requires the claims commissioner to dismiss the claim and order it forfeited to the state.

When subpoenaed by the claims commissioner or a magistrate, witnesses must be offered the same fees and mileage allowances as people who testify in court. But fees and allowances are not paid to state officers or employees who appear on the state's behalf.

Waiver of Hearings ([CGS § 4-151a](#))

The claims commissioner or magistrate may waive the hearing of any claim up to \$5,000 and proceed upon affidavits filed by the claimant and the state agency concerned. The commissioner or magistrate may waive the hearing on his or her own motion or that of a claimant or the state.

Misbehavior at Proceedings ([CGS § 4-152](#))

A person may be excluded from further proceedings if he or she commits obstructive misbehavior during a proceeding. If that person is the claimant or the claimant's attorney, the claims commissioner or magistrate may terminate the proceeding and the commissioner may dismiss the claim and order it forfeited to the state.

Time Limit for Decision (CGS § 4-154)

Within 90 days after hearing a claim, the claims commissioner must decide the case. The claims commissioner or magistrate must make a finding of fact for each claim and file the finding with the order, recommendation, or authorization disposing of the claim. The commissioner's office must deliver a copy of the finding and order, recommendation, or authorization to the claimant and the state's representative.

For claims where the commissioner or magistrate recommends an award over \$20,000, which the law requires to be submitted to the General Assembly, the commissioner's office must notify the claimant (1) of the submission and (2) that the General Assembly may accept, modify, or reject the office's recommendations or remand it to the office.

If the claimant has the right to ask the General Assembly to review the decision, the claims commissioner's office must give written notice (1) of that right and the deadline for filing a request with the office and (2) that the General Assembly may confirm, modify, or vacate the decision or remand the claim to the commissioner's office.

Rehearings (CGS § 4-156)

Upon the discovery of new evidence, a claimant may apply for a rehearing if his or her claim was rejected or the commissioner recommended its rejection. The claimant must apply in duplicate, stating concisely the matters which he or she wants to submit to the claims commissioner. The commissioner's office must promptly deliver a copy to the attorney general, who must review it to determine if the state's interest requires representation.

Rules of Procedure (CGS § 4-157)

The claims commissioner must adopt rules governing proceedings. The rules must avoid formal and technical requirements and provide a simple, uniform, expeditious, and economical procedure. The rules are not considered regulations under the Uniform Administrative Procedure Act.

Decision by Claims Commissioner (CGS §§ 4-158 and -160)

The law authorizes the claims commissioner to:

1. order that a claim be denied or dismissed,
2. order immediate payment of a just claim in an amount up to \$20,000,
3. recommend to the General Assembly payment of a just claim in an amount over \$20,000, or
4. authorize a claimant to sue the state ([CGS § 4-158\(a\)](#)).

By law, a just claim is one which in equity and justice the state should pay, provided the state caused damage or injury or received a benefit ([CGS § 4-141](#)).

The commissioner can authorize a suit against the state when it is just and equitable and the claim presents an issue of law or fact under which the state, if it were a private person, could be liable ([CGS § 4-160\(a\)](#)).

If the claims commissioner orders immediate payment of a just claim in an amount up to \$20,000 and a request for review has not been filed, the claims commissioner's office must deliver to the comptroller a certified copy of the order and the comptroller must make payment.

Only Subject to Review by Legislature ([CGS § 4-164](#))

The action of the claims commissioner's office in approving or rejecting payment of any claim or part thereof is final and conclusive on all questions of law and fact, and is not subject to review except by the General Assembly.

Legislative Review

Requesting Review ([CGS § 4-158](#))

A claimant who filed a claim for more than \$20,000 who wishes to protest the claims commissioner's decision to (1) deny or dismiss it (including when the claimant sought permission to sue) or (2) order the payment of \$20,000 or less, can have his or her claim submitted to the General Assembly for review. The request for review must be in writing and filed with the Office of the Claims Commissioner within 20 days after the date the claimant receives a copy of the decision. The filing of a request for review automatically stays the claims commissioner's decision.

The Office of the Claims Commissioner must submit to the legislature each such claim for which a request for review is filed. Until the commissioner submits a claim, she can, when she deems it just and equitable, (1) vacate any decision concerning a claim and (2) take whatever additional action she deems appropriate.

Legislative Action ([CGS § 4-159](#))

The General Assembly reviews claims when requested by a claimant (as described above) or the commissioner or magistrate recommended an award over \$20,000. On each claim, the legislature may (1) confirm the decision or recommendation, (2) order payment of a specific amount, (3) deny payment, or (4) authorize the claimant to sue the state.

The General Assembly may grant the claimant permission to sue the state when (1) it is just and equitable and (2) the claim presents an issue of law or fact under which the state, if it were a private person, could be liable.

The General Assembly can also remand the claim to the commissioner's office to conduct further proceedings on a claim.

Extension of Time (CGS § 4-159a)

The Office of the Claims Commissioner must report to the General Assembly within five days after each regular session convenes on all claims not disposed of within two years after they were filed, or within any extended period granted by the General Assembly. This requirement does not apply to claims where the parties have agreed to an extension. The office must notify all people whose claims are included in these reports that the General Assembly will consider them at its next regular session.

The General Assembly can take the following actions regarding any claim included in a report: (1) grant the office an extension of time, (2) grant or deny an award, or (3) permit the claimant to sue the state.

Improper Influence and Fraud

Statement of Claimant Denying Payment of Commission or Use of Improper Influence Required (CGS § 4-161)

Before paying a judgment or order, the comptroller must require the claimant to swear that:

1. no commission, discount, bonus, reward, or present of any kind was promised to, was given to, was received by, or is expected by any state officer or employee or legislator regarding the claim and
2. to the best of his or her knowledge and belief no state officer or employee or legislator used, offered to use, or attempted to use his or her office or position to influence the decision on the claim.

Fraud in Presentation of Claim (CGS §§ 4-163 and -164)

Any claimant who engages in fraud in presenting his or her claim must forfeit it to the state. The tribunal before which the claim is pending must find that the fraud exists and enter its judgment or order of forfeiture.

Any person who knowingly presents or attempts to present, and any person who knowingly participates in the preparation, presentation, or allowance of a false or fraudulent claim must be fined up to \$200, imprisoned up to six months, or both. Any state officer or employee who is convicted of such an action is subject to removal from office or employment.

Any claimant aggrieved by an order of forfeiture may appeal the order to the Superior Court.

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