

NOTICE OF CLAIM

This presentation will demonstrate the purpose, procedure and importance of the Notice of Claim pursuant to General Municipal Law §50-e.

I. REQUIREMENTS OF A NOTICE OF CLAIM PURSUANT TO GENERAL MUNICIPAL LAW §50-e

- Only applicable in a case founded upon Tort.
- It is a condition precedent to the commencement of a lawsuit against a public corporation (i.e. municipality, school district, quasi-government agency or corporation). An action against the State of New York has different requirements and is not applicable to this discussion).
- Necessary to be served on a public corporation, if required by law.
- Also, must be served on a municipality, if it indemnifies employees, for action claimed.

A. FORM AND CONTENT OF THE NOTICE OF CLAIM

- Pedigree information –i.e. name and address of claimant and attorney.
- Sworn by or on behalf of the claimant.
- Description of the nature of the claim (what did the public corporation do wrong (tort/negligence)).
- Place where the injury occurred, date and time. See Attachment A. *Frongetta v. City of Rochester, 151 A.D.3d 1742.*
- Damages. Injury, items/property damaged. General Municipal Law §50-e states that for a municipality, other than a City with a population of 1 million or more, the claim shall not state the dollar amount of damages.

B. SERVICE OF THE NOTICE OF CLAIM

- On the public corporation. Service must be made personally or by registered/certified mail to person designated by law to accept summons for public corporation or attorney regularly representing public corporation. In a municipality with population over 1 million—by electronic means in a form and manner prescribed by law.
- Registered Mail/Certified Mail deemed served when mailed.
- Municipality must notify claimant if not served correctly. Municipality must return the notice to claimant specifying the reason, within 30 days. Claimant can serve again if the original defective notice was timely.
- Service on the Secretary of State as agent of public corporation. Recent change to General Municipal Law §50-e (never been used in suit against the City of Rochester).

C. Timeliness

- Notice of Claim must be served within 90 days after the claim arises (the date of loss).
- Except in cases of wrongful death. In cases involving wrongful death the 90 days runs from the appointment of a representative of the decedent's estate. Meaning Administrator or Executor.
- If you are late filing a Notice of Claim. Application to the Court (County or Supreme Court where suit is going to be filed). Can be done by obtaining index number and filing an order to show cause/motion to file a late Notice of Claim. Immense discretion of the trial court. See *Matter of Newcomb v. Middle Country Cent. Sch. Dist.*, 28 N.Y. 3d 455.
- In situation where application to file a late Notice of Claim is made it is important to remember that application cannot be made after the time to file a summons and complaint against the municipality has expired. Important note, after the index number is obtained for the application to file a late Notice of Claim, an additional index number must be obtained to start the action against municipality.

SEE ATTACHMENT B. GENERAL MUNICIPAL LAW SECTION 50-e.

II. Practice Points

A. General Municipal Law §50-h. Examination of Claims.

- Municipality can conduct a §50-h Hearing.
- Municipality can conduct a Physical Examination.
- Discussions with the Attorney prior to commencement of lawsuit.

SEE ATTACHMENT C. GENERAL MUNICIPAL LAW SECTION 50-h.

III. Interplay with Federal Law

- Federal Law does not require a Notice of Claim as a precedent for filing suit.
- However requirement to file a Notice of Claim is applicable to New York state intentional torts such as assault, battery, false arrest, etc. This is true whether case is heard in federal and or state court. If you bring a federal lawsuit, with New York state causes of action, you must comply with General Municipal Law §50-e.