

Tort claim filing status

By Harlan Stientjes

If you work for a city, county, or other local government in Washington, you have probably heard about [RCW 4.96.020](#) - the law that sets the rules for how people can file tort claims against municipal entities. A few recent cases have taken a look at that statute, and this article is intended to give you an update on those cases.

This statute directly affects how we handle claims from the public - whether it is someone who slipped on a sidewalk or a resident who says their property was damaged by a city vehicle. RCW 4.96.020 is all about making sure there is a fair, consistent process for people to tell us when they think we have made a mistake. Two recent unpublished opinions out of Division 1 of the Court of Appeals analyzed the tort claim filing statute. Neither is precedential but it informs us on how courts will look at these issues.

In *Chavis v City of Des Moines* we had been successful getting the case dismissed at the trial court level. On appeal, the plaintiff argued the City had waived the tort claim defense and that plaintiff had substantially complied with the tort claim statute. Chavis had completed a tort claim form and mailed it to the City, eventually it made it into the hands of the City Clerk. The tort claim form was also emailed by her attorney to another member of City staff. The claim eventually led to litigation.

On review, the appeals court ultimately decided RCW 4.96.020(3)(c) required the claim for damages form “include instructions on how the form is to be presented and the name, address, and business hours of the agent of the local governmental entity appointed to receive the claim.” The court found that the City’s form, simply saying to return the form to the City Hall was insufficient on these grounds and thus the City had waived the defense under RCW 4.96.020(2) and 4.96.020(3)(d) even though it had an ordinance requiring presentation to a specific party. The court found that even if the City had not waived its defense here, the plaintiff had substantially complied with the requirements.

In another case, *Flaherty v Seattle Public School District*, the trial court dismissed the case on the tort claim statute concluding the plaintiff did not comply with the requirements of the statute because she sent her claim to the wrong person, on the wrong form, and because she did not include a damages amount. On appeal, the plaintiff argued she substantially complied with the statute. The plaintiff originally turned her tort claim form into DES, who sent a letter back saying they were an improper agency for the form. She then reached out to the schools for a form and instructions and filed her claim with the human resources department. The appointed representative was the district’s attorney.

On review, the appeals court said that even though “it is undisputed Flaherty did not strictly comply with three provisions of RCW 4.96.020,” she “made a bona fide attempt to comply...and her actions did accomplish the statute’s purpose of allowing SPSD to investigate, evaluate, and settle her claims prior to her filing.” The court overlooked that she sent her form to the wrong person, used the wrong form, and didn’t include an amount on her form – even though all three use language like “must” and “shall” in the statute because she otherwise achieved “substantial compliance” as described by RCW 4.96.020(5).

Members should take from these rulings that their compliance with the tort claim statute must be absolute, but that a plaintiff only needs to take a solid try at meeting compliance. If you use your own claim for damages form it must have “instructions on how the form is to be presented and the name, address, and business hours of the agent of the local government entity” RCW 4.96.020(3)(c).

If you receive a claim for damages that has been partially completed, it is good practice to construe it as a finalized form and handle it appropriately. WCIA also strongly suggests that members require an email address be provided with the claim form so we know how to electronically get ahold of a claimant if phone is unsuccessful. Ultimately, all claim forms, complete or not, should be sent to WCIA expeditiously so we can help you evaluate next steps.