



LEGAL BULLETIN #2003-01 OFFICE OF LEGAL AFFAIRS

Claims & Counterclaims



Legal Flag: (1) Accidental damage to property by Department members triggers the City Claims Notification Program. (2) Department members named in a counterclaim should follow all Department directives related to civil litigation in order to be properly defended.

This Legal Bulletin calls to attention that compliance with Department Special Orders 02-20 and 02-25 are essential to defending Department members from litigants' claims.

City Claims Notification Program

The City of Chicago is a self-insured entity. In practice, this means that the City operates like an insurance company for its Departments. For example, if a Department member accidentally strikes a parked vehicle, the vehicle owner may make a claim for compensation against the City as they would against any insurance carrier.

The City Claims Notification Program is a method to process claims citizens make against the City based upon the accidental damage or destruction of property by Department members. Other City Departments such as Streets and Sanitation and the Water Department participate in a claims program and have considered it a success. Also, other police departments and large companies around the country utilize claim-adjustment programs in the immediate aftermath of property-damage incidents to avoid litigation.

This program ensures timely notification to the

City's claims manager who can promptly investigate the claim. The claims manager evaluates a claim, reviews the actions of Department members and the claimant, and determines if the claim has merit or is frivolous or exaggerated. The claims manager has the authority to deny the claim, to determine if a reasonable settlement is appropriate, to negotiate with the claimant and to make prompt payment before unnecessary litigation is filed. Even if a claim is denied, the program has value because the incident was investigated in a prompt manner, and the results of the claim investigation are turned over to the Department of Law attorney to assist in the defense of the lawsuit which may follow.

If, for example, while on patrol in a Department vehicle, an officer takes evasive action to avoid a child in the street, but inadvertently strikes and damages a parked vehicle, the City Claims Notification Program should be contacted as set forth in Department Special Order 02-25. Likewise, if, while executing a search warrant and making a forced entry, a doorway or property adjacent to the target property is accidentally damaged, a City Claims Notification should be made.

When the City's claims manager promptly contacts the claimant, it has a positive impact on community relations and avoids emotional accusations made by citizens against Department members. It is preferable to make notification to the City's claims program, rather than be named as a defendant in a lawsuit.

Counterclaims are lawsuits.

Department members who sustain injury on duty sometimes sue citizens for compensation. The most common example of this occurs when officers are involved in motor-vehicle accidents caused by a citizen. Some officers hire their own attorneys and sue the motorist whom they believe caused the accident. Even though the accident occurred on duty and in a Department vehicle, the officer takes on the role of the plaintiff in this scenario and is represented by a private attorney.

It is very common in civil litigation for defendants to file a counterclaim and allege that the plaintiff (the on-duty officer) was really at fault and is responsible for damages. A counterclaim is a set of allegations which must be answered and defended against. Failure to answer and defend a counterclaim can result in a default judgment against the officer. Furthermore, wage garnishment can result.

Department members who choose to independently sue should anticipate being named in a counterclaim. If the counterclaim alleges that the incident occurred as a result of actions taken while in the performance of an officer's official duty, it is not likely that the private attorney will take on the defense of the counterclaim. Therefore, Department members should treat counterclaims as any other lawsuit against them.

Timely Notice to Law Department

Illinois law does not require service of counterclaims¹; rather counterclaims are merely filed with the court as part of the on-going litigation. Any Department member who has filed suit should inform their private attorney to advise them immediately if a counterclaim is filed. Be aware that Illinois law permits only 21 days to respond to a counterclaim.²

Department members who are sued based upon on-duty incidents are obligated to follow Department policy in order to ensure a proper defense by the City attorneys. Department members who are aware of a counterclaim against them should follow Department Special Order 02-20, Section IV.

Department Special Order 02-20 requires that a member, who becomes aware of a legal proceeding in which the member is involved, make two notifications. First, immediately submit a photocopy of the counterclaim and a To-From-Subject report indicating the date, time, and manner in which the counterclaim was received to the Superintendent of Police, Attention: General Counsel to the Superintendent.

Secondly, within 24 hours of receiving the counterclaim, submit a photocopy of the counterclaim, a To-From-Subject report, and copies of relevant case reports, arrest reports, and related documents to the district/unit commanding officer. District/unit commanding officers will ensure that the requirements of the directive are met and will forward all the documents to the Superintendent of Police, Attention: General Counsel to the Superintendent.

In conclusion, members should familiarize

¹735 ILCS 5/2-608(b).

²Il. St. S. Ct. Rule 182 (b).

themselves with Department procedures concerning the City Claims Notification Program and civil lawsuits. Such familiarization will substantially assist the City's Department of Law in handling claims and lawsuits.

This Bulletin was prepared by Legal Officer Karen Konow, an attorney with the Office of Legal Affairs.
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