

Guide to Judiciary Policy

Vol 20: Administrative Claims and Litigation

Ch 2: Federal Tort Claims

§ 210 Overview

- § 210.10 Purpose
- § 210.20 Scope
- § 210.30 Authority
- § 210.40 Applicability

§ 220 Tort Claim Procedure

- § 220.10 Time Limit for Presenting Claim
- § 220.20 Procedure for Claimant
- § 220.30 Procedure for Officers and Employees
- § 220.40 Settlement of Claim
- § 220.50 Denial of Claim
- § 220.60 Claims Involving Persons Other Than Federal Judiciary Officers and Employees

§ 230 Suits Arising from Federal Tort Claims

- § 230.10 Jurisdiction
- § 230.20 Defendant
- § 230.30 Administrative Claim Requirement
- § 230.40 Time Limit
- § 230.50 Maximum Dollar Demand
- § 230.60 Money Damages Only

§ 240 Suits Filed Against Employees Personally

- § 240.10 Employee Responsibilities
- § 240.20 Certification of Scope of Employment
- § 240.30 Employee's Petition for Certification
- § 240.40 Suits Arising from Motor Vehicle Accidents

§ 250 Claims by Car Rental Companies

- § 250.10 Reporting Requirement
- § 250.20 Waiver of Damage Charges
- § 250.30 Identification of Rental as Official Business Rental
- § 250.40 Damage Charged When Returning Car

§ 260 Claims Not Covered by Federal Tort Claims Act

- § 260.10 Limited Exclusions

§ 260.20 Determination of Excluded Claims

§ 270 Other Claims Arising from Accidents During Official Travel

§ 210 Overview

§ 210.10 Purpose

This chapter states the procedures for presenting and resolving monetary claims for property damage, personal injury, or death alleged to have been caused by the negligence of officers and employees of the federal judiciary acting in the scope of their duties.

§ 210.20 Scope

The Federal Tort Claims Act provides the exclusive remedy for most monetary claims for property damage, personal injury, or death arising from the performance of official duties by federal officers and employees. These principally include claims arising from common-law torts, which are negligent or wrongful acts or omissions giving rise to liability to the injured person, as defined by the law of the State or locality where the event occurred.

§ 210.30 Authority

The Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 2401(b), 2671-2680, and regulations of the Department of Justice at 28 CFR part 14.

§ 210.40 Applicability

The Director of the Administrative Office of the United States Courts (AO), or the Director's designee, applies the procedures in this chapter to consider and resolve monetary claims against the government for personal injury and property damage that the claimant alleges was caused by the negligence of one or more officers or employees of the federal judiciary acting in the scope of official duty.

§ 220 Tort Claim Procedure

§ 220.10 Time Limit for Presenting Claim

A tort claim must be presented to the AO within two years of the date it accrued. **See:** 28 U.S.C. § 2401(b).

§ 220.20 Procedure for Claimant

- (a) The claimant must complete and sign a Standard Form 95 (Claim for Damage, Injury or Death), and submit it with all necessary documentation to the following address:

Office of the General Counsel
Administrative Office of the United States Courts
One Columbus Circle, NE
Washington, DC 20544

The claimant must:

- (1) complete both pages (or sides) of the form,
 - (2) provide sufficient information to enable the AO to investigate and evaluate the claim, and
 - (3) state a dollar amount or sum certain that he or she will accept in full satisfaction of the claim.
- (b) When a tort claim alleges negligent or wrongful conduct by a probation officer in the course of performing parole supervision duties, the claim must be submitted to the United States Parole Commission rather than the AO.

§ 220.30 Procedure for Officers and Employees

Any officer or employee in the federal judiciary who receives a tort claim form (Standard Form 95 (Claim for Damage, Injury or Death)), any court document or correspondence presenting a monetary claim based on alleged official negligence, or any correspondence stating the intention to present such a claim, should transmit the documents immediately to the AO Office of the General Counsel.

- (a) As soon as possible, report the names and addresses of all known:
- (1) claimants;
 - (2) attorneys;
 - (3) representatives or agents;
 - (4) insurance companies; and

- (5) witnesses.
- (b) Explain the relationship of each to the occurrence that gave rise to the tort claim.
- (c) Provide copies of any accident reports, documentation of the named employee's official duty status (e.g., driving on official business), statements by employees involved in the occurrence, statements by witnesses, and other pertinent documents that are available.
- (d) **Do not wait** until the claim is complete to forward the information. Send the claimant's correspondence immediately with each piece of information that is available at the time, then send any additional information upon obtaining it. If necessary, contact the AO Office of the General Counsel for assistance in submitting the claim.

§ 220.40 Settlement of Claim

§ 220.40.10 Approval by Government

A settlement offer must be approved by the Director of the Administrative Office or the Director's designee. A proposed settlement exceeding \$25,000 must also be approved in writing by the Attorney General of the United States. **See:** 28 U.S.C. § 2672.

§ 220.40.20 Acceptance by Claimant

To receive payment of a tort claim settlement, a claimant must complete, sign and return a written acceptance provided by the AO (either a Form FMS-197, Judgment Fund Voucher for Payment for payments over \$2,500, or a substantially equivalent acceptance for smaller payments). When a claimant accepts a tort claim settlement, the settlement is final and conclusive, and releases both the government and the employee from further liability based on the same tortious conduct. **See:** 28 U.S.C. § 2672.

§ 220.40.30 Payment of Claim

Payments exceeding \$2,500 are disbursed by the Financial Management Service, Department of the Treasury; payments of \$2,500 or less are disbursed by the AO. **See:** 28 U.S.C. § 2672. The AO or the Treasury can only issue one payment to the claimant.

§ 220.50 Denial of Claim

When the AO denies payment of a claim, the AO will send the claimant a written notice of denial in accordance with the Department of Justice regulations at 28 CFR part 14.

The claimant may then file suit against the government in United States district court within six months of the date of mailing of the denial notice. **See:** 28 U.S.C. §§ 1346(b), 2401(b); Guide, Vol 20, § 230.

§ 220.60 Claims Involving Persons Other Than Federal Judiciary Officers and Employees

Some claims are based entirely or in part on alleged negligence or wrongful conduct by state officials (judges, sheriffs, police, state prison officers), private persons (e.g., attorneys, bankruptcy trustees, claimant's relatives or acquaintances), employees of federal contractors, or federal officials outside the judiciary (e.g., United States attorney, United States marshal, Bureau of Prisons, FBI or IRS agents).

- (1) Contact the AO Office of the General Counsel for assistance in forwarding the claim to the appropriate place.
- (2) If a claim names federal court officials as well as other persons, transmit a copy of the claim to the AO Office of the General Counsel. The AO and other federal entities will coordinate disposition of the claim as necessary.

§ 230 Suits Arising from Federal Tort Claims

§ 230.10 Jurisdiction

The United States district courts and the District Court of the Virgin Islands have exclusive jurisdiction of actions arising from federal tort claims. **See:** 28 U.S.C. § 1346(b).

§ 230.20 Defendant

The United States is the sole defendant in a suit arising from a federal tort claim. **See:** 28 U.S.C. § 2679.

§ 230.30 Administrative Claim Requirement

- (a) No civil action may be instituted on a claim covered by the Federal Tort Claims Act unless the claimant has first timely submitted an administrative claim to the AO and:
 - (1) the AO has finally denied the claim in a written notice in accordance with 28 CFR part 14, or

- (2) the claim has not been resolved (either settled or denied) within six (6) months of submission.
- (b) If the claimant has not pursued an administrative tort claim as provided in paragraph (a) of this section before filing a tort suit against the federal government or a federal employee, the suit must be dismissed. **See:** 28 U.S.C. § 2675(a).

§ 230.40 Time Limit

If the AO has sent a written notice of denial, the claimant has six months after the date the notice was mailed to file suit. After six months, the suit is time-barred. **See:** Guide, Vol 20, § 220.50.

§ 230.50 Maximum Dollar Demand

The claimant's demand for damages in the suit may not exceed the dollar amount demanded in the administrative claim, in the absence of new evidence. **See:** 28 U.S.C. § 2675(b).

§ 230.60 Money Damages Only

The Federal Tort Claims Act permits only claims for money damages, not for other forms of relief. **See:** 28 U.S.C. § 2672.

§ 240 Suits Against Employees Personally

When a claim falls within the scope of the Federal Tort Claims Act, the employee may **not** be sued personally for money damages unless the claim also arises from:

- (a) an alleged violation of the claimant's constitutional rights (a *Bivens* claim),
or
- (b) an alleged violation of a federal statute expressly authorizing suit against the employee. **See:** 28 U.S.C. § 2679(b). At the most recent review of this material, there were no statutes authorizing personal suits against Judicial Branch employees.

§ 240.10 Employee Responsibilities

An officer or employee of the federal judiciary who receives process or otherwise learns that he or she is named as a defendant in a suit seeking money damages based on the performance of official duties should:

- (a) immediately notify the United States attorney and the AO Office of the General Counsel, and
- (b) be prepared to provide copies of the process (or other documents that the employee received) to the United States attorney and AO Office of the General Counsel, and furnish sufficient information to permit a finding that the suit arises from the performance of official duties.

§ 240.20 Certification of Scope of Employment

The Attorney General defends all suits filed against federal employees that arise from negligence within the scope of employment. When a suit for money damages is filed against an employee alleging tortious conduct, the Attorney General will determine whether the defendant employee was acting within the scope of his or her office or employment at the time of the conduct.

- (a) If the Attorney General **certifies** that the employee was acting within the scope of office or employment, the United States will be substituted as defendant in lieu of the employee. 28 U.S.C. § 2679(d)(1). If the suit was filed in state court, the United States attorney will also remove the suit to United States district court. 28 U.S.C. § 2679(d)(2).
- (b) If the Attorney General **refuses to certify** that an employee was acting within the scope of office or employment, the employee may petition the court to make such a certification. **See:** § 240.30 (Employee's Petition for Certification).

§ 240.30 Employee's Petition for Certification

If the Attorney General has refused to certify that the employee was acting within the scope of employment, the employee may petition the court in which the suit is pending at any time before trial to make such a certification. 28 U.S.C. § 2679(d)(3).

- (a) If the suit is pending in a state court when the employee files the petition, the Attorney General may remove the suit to the United States district court.
- (b) If the court makes the certification, the case is deemed to be a federal tort suit filed against the government. 28 U.S.C. § 2679(d)(4).
- (c) If a United States district court finds that the employee was not acting within the scope of employment, the suit is remanded to the state court.

§ 240.40 Suits Arising from Motor Vehicle Accidents

A claimant will often file a personal suit against a government driver soon after a motor vehicle accident, because the statutes of limitations on automotive claims in many jurisdictions are relatively short. The suit is usually filed in a local court without regard to the requirements of the Federal Tort Claims Act. It is especially important to notify the United States attorney and the AO Office of the General Counsel when this happens, so that the suit can be removed from state court and, if appropriate, dismissed pending submission of an administrative tort claim.

§ 250 Damage Claims by Car Rental Companies

§ 250.10 Reporting Requirement

The government driver must report an accident involving a commercially rented vehicle to the rental company in accordance with the rental contract and to local police as required by law.

§ 250.20 Waiver of Damage Charges

- (a) In general, neither the government nor the employee is liable for damage to a rented vehicle that occurs during authorized official use within the continental United States, when the rental is identified as an official business rental. Most commercial car rental companies in the continental United States participate in the U.S. Government Car Rental Agreement, under which the company waives all charges for accidental damage to its vehicle during a rental for official government business.
- (b) Staff at local car rental outlets may not be aware of the damage waiver under the U.S. Government Car Rental Agreement. Therefore, before signing the rental contract, the employee should be sure to inform the representative at the rental outlet, and be sure that the contract identifies the rental as official government business. This will help to protect the employee from personal charges for accidental damage.

§ 250.30 Identification of Official Business Rental

The use of a government credit card or presentation of a travel authorization is sufficient to identify the rental as an official business rental; however, the employee should also be sure to mention it specifically to the rental agent before signing for the car.

§ 250.40 Damage for Which the Government May Be Liable

If the rental is not covered by the U.S. Government Car Rental Agreement, the employee's office or agency pays for damage to the car. The government credit card may also offer some collision damage benefits covering part or all of the damage charges.

§ 250.50 Damage Charged When Returning Car

If the employee is charged for damage when returning the car, or damage charges later appear on a personal or government credit card, the employee should submit all available information concerning the charges to the Office of the General Counsel for a determination whether reimbursement by the employing office, or cancellation of the charges by the rental company, is appropriate.

§ 260 Claims Excluded from Federal Tort Claims Act

Certain claims are specifically excluded from the Federal Tort Claims Act and cannot be settled under that statute.

- (a) Claims alleging violations of Constitutional rights (so-called "*Bivens*" claims) that do not also amount to common-law torts, and claims that are actionable under other statutes. **See:** 28 U.S.C. § 2679(b)(2).
- (b) Claims based on negligent or wrongful conduct of federal officers and employees acting outside the scope of employment. **See:** 28 U.S.C. § 2672.
- (c) Claims based on negligent or wrongful conduct of government contractors or their employees. **See:** 28 U.S.C. § 2671.
- (d) Claims based on the performance of professional services by an officer or employee of a federal public defender organization in providing representation under the Criminal Justice Act (18 U.S.C. § 3006A). **See:** 28 U.S.C. § 2671.
- (e) Claims for a remedy other than monetary compensation (e.g., issuance or reversal of a court ruling, return of property, release from prison, appointment of legal counsel) . **See:** 28 U.S.C. § 2672.

§ 260.10 Limited Exclusions

Under 28 U.S.C. § 2680(h), the following types of claims, generally considered intentional torts, are not subject to the Federal Tort Claims Act unless the allegation involves an "investigative or law enforcement officer of the United States," a category which has been held to include United States probation officers:

- assault
- battery
- false imprisonment
- false arrest
- abuse of process, or
- malicious prosecution.

§ 260.20 Determination of Excluded Claims

Submit all claims to the AO Office of the General Counsel for a determination whether they are appropriate for consideration under the Federal Tort Claims Act.

§ 270 Other Claims Arising from Accidents During Official Travel

In addition to Federal Tort Claims for property damage or injury to another driver, the following claims may arise during official travel:

§ 270 Other Claims Arising from Accidents During Official Travel		
Nature of Claim	Remedy	Send Claim To:
(a) Injury to Federal Employee	Federal Employees' Compensation Act. See: Workers Compensation page on the J-Net.	Your District Office of Workers' Compensation Programs (U. S. Dept. of Labor). See: Dept. of Labor links on Workers Compensation page on the J-Net.
(b) Damage to GSA Fleet Vehicle	Court or agency pays repair costs.	GSA will either bill the court or agency or advise the court or agency to obtain the repairs directly, depending on local GSA fleet outlet's practice. If another identifiable person was at fault, the court unit or agency should provide all available information to GSA and ask them to attempt recovery from the person at fault. GSA will reimburse the court or agency, if successful.

§ 270 Other Claims Arising from Accidents During Official Travel		
Nature of Claim	Remedy	Send Claim To:
(c) Damage to Commercial Rental Vehicle	See: § 250, above. Usually, neither the employee nor the court or agency is liable for the damage.	If the rental company charges or proposes charging your credit card or the court, contact the rental agent and advise them of the damage waiver for official rentals under Section 18(b) of the U.S. Government Car Rental Agreement or Truck Rental Agreement 1, at http://www.defensetravel.dod.mil/site/reference.cfm#U . If your credit card has already been charged, challenge it. If necessary, contact the Office of the General Counsel, Administrative Office of the U.S. Courts, Washington, DC 20544, for assistance in resolving the matter.
(d) Damage to Employee's Own Vehicle	Employee's or other driver's auto insurance policy. If employee was not at fault, employee may recover deductible co-payment up to \$500 from the AO. See: Guide, Vol 20, Ch 4 (Employees' Personal Property Claims).	Office of the General Counsel, Administrative Office of the U.S. Courts, Washington, DC 20544.