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Filing Claims Against the State Government

We have all seen it on TV or in a movie; a smoke filled room nestled away in some big city police station with a wily old veteran detective staring down a perp trying to get him to crack. Then, the suspect shoots back, “You got nothin’ on me. That was 10 years ago. The statute of limitations already run.” To which the detective snaps back, “Yeah? Well murder hasn’t got a limitation.” This scenario is one that Hollywood has made certain that we are all too familiar with. While it may not come as a surprise that statutes of limitations apply beyond the criminal realm into the civil realm, it may surprise you to know that there are other restrictions that can limit the ability to bring a case if procedures are not filed in a timely fashion.

One such limitation is governed by the Indiana Tort Claims Act. To understand the purpose and function of the Indiana Tort Claims Act it is important to understand the history of the law on suing the government. The Supreme Court of Indiana discussed the origins of the Tort Claims Act in the case *State v. Rendleman*. Dating back to English common law it was long settled that the government was absolutely immune from lawsuits for injuries caused by it under the doctrine of sovereign immunity. The basis for the doctrine was the principal that “the king could do no wrong.” Despite the fact that the United States has no king, the doctrine of sovereign immunity nevertheless crossed the pond and

burrowed itself into American law. In discussing the concept under American law, the Supreme Court of the United States found, “A sovereign is exempt from suit, not because of any formal conception or obsolete theory, but on the logical and practical ground that there can be no legal right as against the authority that makes the law on which the right depends.”

Indiana, like most of the country, recognized sovereign immunity. Early in the state’s history the only way to sue the state was to convince the Indiana General Assembly to pass a law allowing a person to do so. However, as the years went on, Indiana courts began to chip away at the doctrine. Finally, in 1972 the Indiana Supreme Court abolished the sovereign immunity rule leaving only a handful of exceptions. The Indiana General Assembly responded by passing the Tort Claims Act. The Tort Claims Act, while still allowing claims to be brought against the state places stringent procedural requirements in order to bring such a claim. Further, it gives the state total immunity for certain acts.

Perhaps the most important procedural aspect of the Tort Claims Act is the notice requirements. In order to bring a claim against a state entity a plaintiff must first put certain state entities on notice by filing a Tort Claims Notice. While this is not particularly complicated, the difficulty is the timing aspect. If a person seeks to bring a claim against a governmental entity that person must file a notice within either 180 or 270 days of the event causing injury depending on precisely what entity is being sued. However, if a person is incapacitated then the person must file a notice within 180 days after that incapacitation is removed. On the surface this may seem like a fairly simple requirement, however, it is far from simple in practice.

Some very common difficulties are: (1) recognizing that the entity you seek to sue constitutes a governmental entity under the Tort Claims Act; (2) identifying every entity that must receive notice; and (3) making sure to find counsel prior to the expiration of these deadlines. When it comes to recognizing governmental entities there are some that are extremely obvious such as the Street Department but there are others that are not what you may traditionally think of as a governmental entity. For example, many hospitals constitute governmental entities. Another example is the Indianapolis Airport Authority. As for finding counsel in time, note the fact that a claim for negligence is generally governed by a 2-year statute of limitations. Many injured persons wait well over a year to track down a lawyer and try to determine their rights. Under the Tort Claims Act waiting even a year to find a lawyer may be too late.

Another aspect of the Tort Claims Act that adds a peculiar wrinkle to the law is that all claims under the Tort Claims Act are governed by the contributory

negligence standard. Recall from our previous post on Assessing Damages When Injured Person is Partially at Fault that under the Comparative Fault Act that governs most claims, so long as a person is not more than 50% at fault for her own injuries that person can still recover against the defendant with her portion of fault being reduced from her damages. However, under contributory negligence, if the plaintiff is even 1% at fault then her claims are barred. A pretty harsh standard to say the least.

Needless to say, when it comes to suing the government it is no small task. It is extremely important to seek knowledgeable and experienced counsel that knows the procedural intricacies of the Indiana Tort Claims Act. It is also very important to seek advice from a lawyer as soon as possible to ensure that you do not miss a crucial deadline. However, even if it appears that a deadline has been missed it is still very important to contact an attorney and seek advice as you may still have grounds for a case against a non-governmental entity or there may be some other reason that the deadline has not yet passed in your case.

Join us again next week for further insight into the complex nature of the law.

Sources

- Indiana Tort Claims Act, codified at Ind. Code chapter 34-13-3.
- Comparative Fault Act, codified at Ind. Code Section 34-51-2-1, *et. seq.*
- *State v. Rendleman*, 603 N.E.2d 1333 (Ind. 1992).
- *Kawananakoa v. Polyblank*, 205 U.S. 349 (1907).

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