



# Office of County Counsel

## CIVIL LIABILITY (Claims & Litigation)

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County of San Diego

# Presenters

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Deputy



# What We Will Cover

- What is Office of County Counsel
- Anatomy of a Civil Lawsuit
  - Civil versus Criminal
  - Basics of a Lawsuit
  - Defense & Indemnification by County
- Liability theories
  - Federal Civil Rights Claims
  - State Law Claims

# County Counsel

- What is the Office of County Counsel?
  - Downtown Office (CAC)
  - Juvenile Dependency Office (COC)
- The County Counsel
  - Chief Deputies
  - Senior Deputies
  - Deputies
- Approximately 80 Attorneys, 17 paralegals, 16 secretaries and 18 support staff
- Claims Division 3 claims reps, 4 investigators, 1 Claims aid, and 1 secretary

# County Counsel

- Civil (money/equity) not criminal matters
- Legal advice and representation, approx 99 percent in-house
- Total Monthly Avg. of Open Matters over a 3 year period 2015-2018 = 1,137
- 2016/2017 Fiscal Year Sheriff Cases: 166 claims and 60 lawsuits

# County Counsel

## Win/Loss Record for 2017-2018

- 98% win/2% loss record
  - 86 wins -2 loss
  - 97% avg win record over 5 year period
- 115 cases resolved that were filed against County
  - 77% Court decisions (88)
  - 23% Settlements (27)

# Anatomy of a Lawsuit



# Pre-Lawsuit :

## Claims/Inquiries/Investigations

### 1. Tort Claims

A. Tort Claims Act (file w/in 6 mo.)

B. County Claims Division

### 2. Detainee “Jail” Grievances

A. Typically must exhaust administrative remedies



# Pre-Lawsuit: Claims/Inquiries/Investigations

3. Collateral County Investigative Bodies
  - A. Sheriff Internal Affairs
  - B. Citizens' Law Enforcement Review Board (CLERB)
  - C. Critical Incident Review Board (CIRB)
  - D. County Counsel – Precautionary File

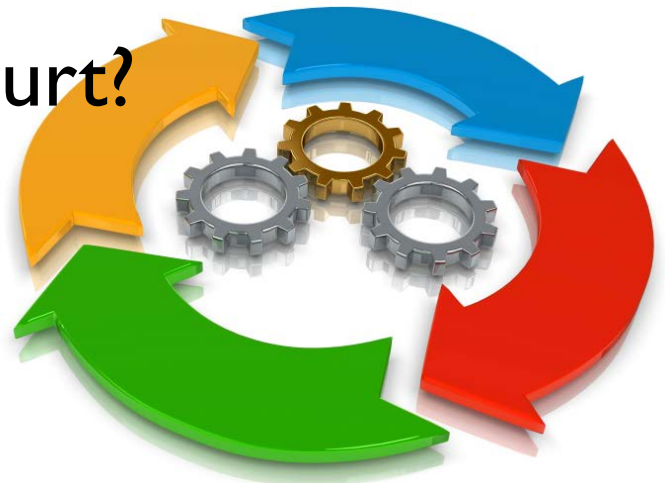
# Commencement of a Lawsuit

## The Complaint

### A. Who Will Be Named as a Defendant?

- 1) County Employee(s)
- 2) County of San Diego
- 3) Department Head

### B. State or Federal Court?



# Service of Process

1. Service on County - Clerk of the Board
2. Service on County Employee
  - A) Personal Service
  - B) Substituted Service
  - C) Publication
3. Suggestions on Receipt of Process
  - Don't sign anything
  - IMMEDIATELY notify supervisor, Sheriff's Legal, County Counsel
  - Send documents to County Counsel (including stamp-cancelled envelope)
  - Retain a copy

**SUMMONS  
(CITACION JUDICIAL)**

NOTICE TO DEFENDANT: *(Aviso a Acusado)*

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

**YOU ARE BEING SUED BY PLAINTIFF:**  
*(A Ud. le está demandando)*

You have **30 CALENDAR DAYS** after this summons is served on you to file a typewritten response at this court.

A letter or phone call will not protect you; your typewritten response must be in proper legal form if you want the court to hear your case.

If you do not file your response on time, you may lose the case, and your wages, money and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may call an attorney referral service or a legal aid office (listed in the phone book).

*Después de que le entreguen esta citación judicial usted tiene un plazo de 30 DIAS CALENDARIOS para presentar una respuesta escrita a máquina en esta corte.*

*Una carta o una llamada telefónica no le ofrecerá protección; su respuesta escrita a máquina tiene que cumplir con las formalidades legales apropiadas si usted quiere que la corte escuche su caso.*

*Si usted no presenta su respuesta a tiempo, puede perder el caso, y le pueden quitar su salario, su dinero y otras cosas de su propiedad sin aviso adicional por parte de la corte.*

*Existen otros requisitos legales. Puede que usted quiera llamar a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de referencia de abogados o a una oficina de ayuda legal (vea el directorio telefónico).*

The name and address of the court is: *(El nombre y dirección de la corte es)*

CASE NUMBER: *(Número del Caso)*

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:  
*(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es)*

DATE:  
*(Fecha)*

Clerk, by \_\_\_\_\_, Deputy  
*(Actuario (Delegado))*

**NOTICE TO THE PERSON SERVED:** You are served

- as an individual defendant.
- as the person sued under the fictitious name of *(specify)*:
- on behalf of *(specify)*:  
under:  CCP 416.10 (corporation)  CCP 416.60 (minor)  
 CCP 416.20 (defunct corporation)  CCP 416.70 (conservatee)  
 CCP 416.40 (association or partnership)  CCP 416.90 (individual)  
 other:
- by personal delivery on *(date)*:

[SEAL]

# United States District Court

SOUTHERN DISTRICT OF CALIFORNIA

vs

## SUMMONS IN A CIVIL ACTION

Case No.

TO: (Name and Address of Defendant)

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon PLAINTIFF'S ATTORNEY

An answer to the complaint which is herewith served upon you, within \_\_\_\_\_ days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

W. Samuel Hamrick, Jr.

CLERK

DATE

By

Deputy Clerk

Summons in a Civil Action



WAIVER OF SERVICE OF SUMMONS

TO: \_\_\_\_\_  
(NAME OF PLAINTIFF'S ATTORNEY OR UNREPRESENTED PLAINTIFF)

I, acknowledge receipt of your request that I waive service of a summons in the action of \_\_\_\_\_, which is case number \_\_\_\_\_

in the United States District Court for the \_\_\_\_\_ District of \_\_\_\_\_

\_\_\_\_\_. I have also received a copy of the complaint in the action, two copies of this instrument, and a means by which I can return the signed waiver to you without cost to me.

I agree to save the cost of service of a summons and the cost of a personal copy of the complaint in this lawsuit by not requiring that the summons or the complaint be served with judicial process in the manner required by Rule 4.

I (or the party on behalf I am acting) will retain all defenses and objections to the lawsuit or to the service of the summons in the court except for objections based on the summons or in the service of the summons.

and that a judgment entered against me (or the party on behalf I am acting) or a ruling on a motion under Rule 40(b) that is served upon you within 60 days after

\_\_\_\_\_, or within 90 days after the date if the request was made outside the

(DATE) \_\_\_\_\_ (DATE WHEN SENT)

(DATE) \_\_\_\_\_ (SIGNATURE)

Printed/Typed Name \_\_\_\_\_

As \_\_\_\_\_ (TITLE) \_\_\_\_\_ (CORPORATE DEFENDANT)

Rule 4 of the Federal Rules of Civil Procedure provides that a defendant who waives service of the summons and complaint. A defendant located in the United States who is served by a plaintiff located in the United States to waive service of a summons, fails to do so will be required to bear the costs of service of a summons if good cause be shown for its failure to sign and return the waiver.

It is not good cause for a failure to waive service that a party believes that the complaint is unfounded, or that the action has been brought in an improper place or in a court that lacks jurisdiction over the subject matter of the action or over its person or property. A party who waives service of the summons retains all defenses and objections (except any relating to the summons or to the service of the summons), and may later object to the jurisdiction of the court or to the place where the action had been brought.

A defendant who waives service must within the time specified on the waiver form serve on the plaintiff's attorney (or unrepresented plaintiff) a response to the complaint and must also file a signed copy of the response with the court. If the answer or motion is not served within this time, a default judgment may be taken against that defendant. By waiving service, a defendant is allowed more time to answer than if the summons had been actually served when the request for waiver of service was received.

# Litigating the Case

- We respond to complaint on behalf of County and employees - answer or challenge complaint, service, jurisdiction, etc.
  - Timely notification of service to County Counsel
- Case Management Conferences – litigation schedule
- Early Neutral Evaluation Conference / Mandatory Settlement Conference – you may need to attend.



# Litigating the Case

- Discovery – Client cooperation and methods
  - Interrogatories
  - Document Requests
  - Requests for Admission
  - Depositions
- Documentation & Evidence Preservation
- Emails / Text Messages (Everything you put in writing may be discoverable)

Dance like no one is  
watching.

Email like it may  
one day be read  
aloud in a  
deposition.



somee cards  
user card



# Case Examples









MODULE 5A

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# Trial or Settlement

- Evaluated in committee and closed session
- Mandatory court mediation
- Many factors:
  - Costs of trial v. settlement value
  - Other individual defendants
  - Missing documents/witnesses
  - Attorney's fees (in some cases)
  - Punitive damages exposure



# Trial or Settlement

- Who decides to settle?

The Board of Supervisors

....with input from you, Sheriff and County Counsel

- County Counsel does care what you think about settlement

# Attorney's Fees

- Opposing side will be awarded attorney fees and litigation costs; fees could be significant even with nominal (\$1) damages award.
- Does not work in reverse - no County recoupment of fees unless action completely frivolous. We can request costs.



# Defense of the Lawsuit

## I. Will the County defend me?

- Yes, if act or omission in the scope of employment
- Grounds for refusal to defend
  1. Act not within scope of employment
  2. Fraud, corruption, or actual malice
  3. Conflict of interest

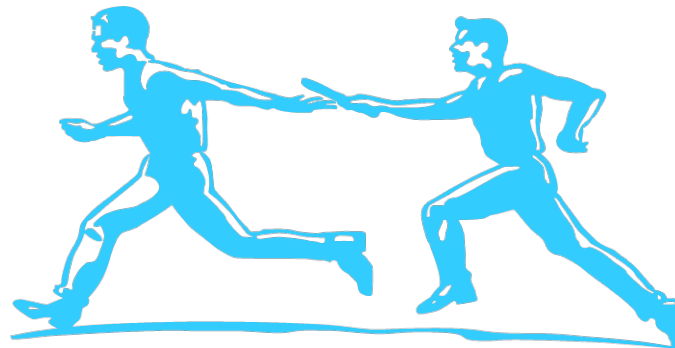
# Defense of the Lawsuit

2. What do I get when the County defends me?
  - No cost legal defense
  - Quality legal representation



# Defense of Lawsuit and the County Employee

3. Grounds for Withdrawal of Defense
  - Employee must reasonably cooperate in good faith in defense of the lawsuit to keep County-provided defense and indemnification



# Defense of the Lawsuit

4. Who pays money judgments and settlements?

**If the County handles the defense of its employee, THE COUNTY pays the judgment or settlement for compensatory damages, costs, fees.**

# Defense of the Lawsuit

## 5. **Except** Punitive Damages

- Public entities exempt
- May be sought/awarded against individual
- Personal income and assets may be seized
- The purpose is:
  - to punish someone acting with malice
  - to set a public example - dissuade malicious behavior
- The County **is not required** and **cannot agree** in advance to cover *punitive* damages

# Liability:

Federal:

42 U.S.C. Section 1983 – Civil Rights Act of 1871

- Statute provides that any person who, under color of state law, deprives another of any rights, privileges, or immunities secured by the Constitution or laws of the United States shall be liable to the injured party.

State:

Government entities are liable for damages only if there is a statute authorizing liability. Public employees are also protected by the Government Claims Act for acts in the course and scope of employment.



# Liability:

An individual is liable for own acts

- Affirmative conduct
- Ignoring a duty to act

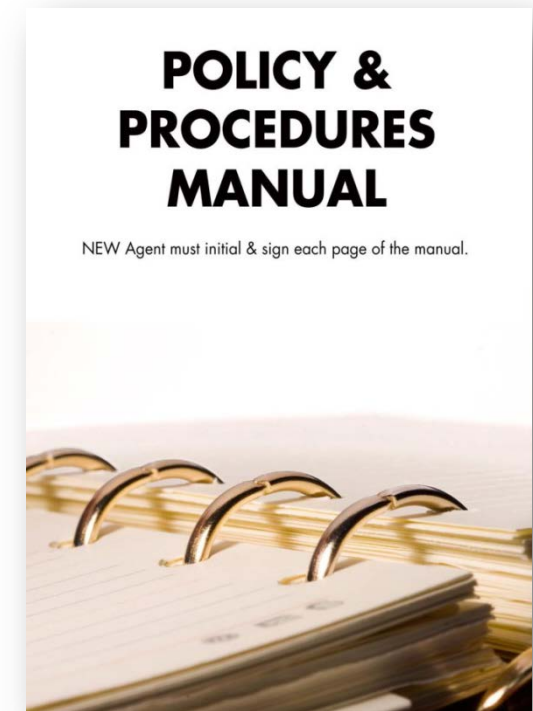
A supervisor is not liable for constitutional violations by his/her subordinates *unless* he/she participates in or directs the actions causing the violation.

The County is liable for conduct of its employees if employee acted within scope of employment or failure to train / poor policies

# Liability:

Plaintiffs look for:

- Employee's training not up to date in some areas (need not be critical areas, but to hit credibility).
- Employee acted inconsistently with how co-workers acted.
- Employee performance was not 100% according to strict reading of County policies and procedures.
- Are there unwritten policies? (custom or practices)





Questions?