

TITLE 43 – CIVIL REMEDIES AND PROCEDURES

Chapters:

01 Administrative Claims Under the Government Tort Liability Act

TITLE 43 – CHAPTER 01 – ADMINISTRATIVE CLAIMS UNDER THE GOVERNMENT TORT LIABILITY ACT

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43.0101 Definitions.

As used in this chapter:

- (a) “Employees of the government” includes officers and employees of any government agency, and persons acting in behalf of a government agency in an official capacity, temporarily, whether with or without compensation.
- (b) “Government agency” includes the executive departments, boards and commissions of the government, but does not include any contractor with the government.

History: Rule 4-85, eff 30 Dec 85.

43.0102 Scope of rules.

These rules shall apply only to claims asserted under the Government Tort Liability Act of American Samoa, 43.1201 A.S.C.A., et seq., accruing on or after January 1, 1986, for money damages against the American Samoa Government for injury to or loss of property, or personal injury or death caused by the alleged negligent or wrongful act or omission of any employee or the government while acting with the scope of his or her office or employment.

History: Rule 4-85, eff 30 Dec 85.

43.0103 Administrative claim-When presented.

- (a) For purposes of the provisions of 43.1205 A.S.C.A., a claim shall be deemed to have been presented when the Attorney General receives from a claimant, his or her duly authorized agent, or legal representative, a written notification of an incident, accompanied by a

claim for money damages in a sum certain for injury to or loss of property, personal injury, or death alleged to have occurred by reason of the incident.

- (b) A claim presented in compliance with subsection (a) of this section may be amended by the claimant at any time prior to the final action of the Attorney General or prior to the exercise of the claimant’s option under 43.1205 (a) A.S.C.A. Amendments shall be submitted in writing and signed by the claimant or his/her duly authorized agent or legal representative. Upon the timely filing of an amendment to a pending claim, the Attorney General shall have three months in which to make a formal disposition of the claim as amended and the claimant’s option under 43.1205(a) A.S.C.A., shall not accrue until three months after the filing of an amendment.

History: Rule 4-85, eff 30 Dec 85.

43.0104 Administrative claim-Who may file.

- (a) A claim for injury to or loss of property may be presented by the owner of the property, his duly authorized agent or legal representative.
- (b) A claim for personal injury may be presented by the injured person, his duly authorized agent, or legal representative.
- (c) A claim based on death may be presented by the executor or administrator of the decedent’s estate, or by any other person legally entitled to assert such a claim in accordance with applicable Territory law.
- (d) A claim for loss wholly compensated by insurer with the rights of a subrogee must be presented by the insurer. A claim for loss partially compensated by an insurer with the rights of a subrogee may be presented by the parties individually as their respective interests appear or jointly.
- (e) A claim presented by an agent or legal representative shall be presented in the name of the claimant, be signed by the agent or legal representative, show the title or legal capacity of the person signing, and be accompanied by evidence of his authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian, or other representative.

History: Rule 4-85, eff 30 Dec 85.

43.0105 Administrative claim-Evidence and information to be submitted.

All claims are required to present in writing the circumstances of the incident(s), including, but not limited to, date, time, place, names and addresses of parties involved, names and addresses of witnesses, and a statement of the alleged negligent or wrongful act or omission of the government employee while acting within the scope of his or her office or employment. In addition to that information, the following evidence and information shall be submitted when presented pursuant to 43.0103 A.S.C.A:

- (a) Death: In support of a claim based on death, the claimant shall be required to submit the following evidence or information:
 - (1) An authenticated death certificate or other competent evidence showing cause of death, date of death, and age of the decedent.
 - (2) Decedent’s employment or occupation at time of death, including his monthly or yearly salary or earnings, if any, and the duration of decedent’s last employment or occupation.
 - (3) Full names, addresses, birth dates, kinship, and marital status of the decedent’s survivors, including identification of those survivors who were dependent for support upon the decedent at the time of his death.
 - (4) Degree of support afforded by the decedent to each survivor dependent upon him for support at the time of death.
 - (5) Decedent’s general physical and mental condition before death.
 - (6) Itemized bills for medical and burial expenses incurred by reason of the incident causing death, or itemized receipts of payment for such expenses.
 - (7) If damages for pain and suffering prior to death are claimed, a physician’s detailed statement specifying the injuries suffered, duration of pain and suffering, any drugs administered for pain, and the decedent’s physical condition in the interval between injury and death.
 - (8) Any other evidence or information which may have a bearing on either the responsibility of the American Samoa Government for the death or the damages claimed.

(b) Personal Injury. In support of a claim for personal injury, including pain and suffering, the claimant shall be required to submit the following evidence or information:

- (1) A written report by his attending physician or dentist setting forth the nature and extent of the injury, nature and extent of treatment, any degree of temporary or permanent disability, the prognosis, period of hospitalization, and any diminished earning capacity. In addition, the claimant may be required to submit to a physical or mental examination by a physician employed by the American Samoa Government. A copy of the report of the examining physician shall be made available to the claimant upon the claimant’s written request, provided that he has, upon request, furnished the report referred to in the first sentence of this subparagraph and has made or agrees to make available to the American Samoa Government any other physician’s reports previously or thereafter made of the physical or mental condition which is the subject matter of his claim.
- (2) Itemized bills for medical, dental, and hospital expenses incurred, or itemized receipts or payment for such expenses.
- (3) If the prognosis reveals the necessity for future treatment, a statement of expected expenses for such treatments.
- (4) If a claim is made for loss of time from employment a written statement from his employer showing actual time lost from employment, whether he is a full or part-time employee, and wages or salary actually lost.
- (5) If a claim is made for loss of income and the claimant is self-employed, documentary evidence showing the amounts of earnings actually lost.
- (6) Any other evidence or information which may have a bearing on either the responsibility of the American Samoa Government for the personal injury or the damages claimed.

(c) Property Damage. In support of a claim for injury to or loss of property, real or personal, the claimant shall be required to submit the following evidence or information:

- (1) Proof of ownership;

- (2) A detailed statement of the amount claimed with respect to each item of property;
- (3) An itemized receipt of payment for necessary repairs or itemized written estimates of the cost of such repairs;
- (4) A statement listing date of purchase, purchase price and salvage value, where repair is not economical;
- (5) Any other evidence or information which may have a bearing on either the responsibility of the American Samoa Government for the injury to or loss of property or the damages claimed.

History: Rule 4-85, eff 30 Dec 85.

43.0106 Investigation and examination.

The Attorney General may request any department or agency of the American Samoa Government to investigate a claim filed under 43.1205 A.S.C.A., or to conduct a physical examination of a claimant and provide a report of the investigation or physical examination.

History: Rule 4-85, eff 30 Dec 85.

43.0107 Final denial of claim.

- (a) Final denial of an administrative claim shall be in writing and sent to the claimant; his/her attorney, or legal representatives by certified or registered mail. The notification of final denial may include a statement that, if the claimant is dissatisfied with the agency action, (s)he may file suit in the High Court of American Samoa, trial division, not later than two years after the claim accrues.
- (b) Prior to the commencement of suit and prior to the expiration of the three month period provided in 43.1205(a) A.S.C.A., a claimant, his/her duly authorized agent, or legal representative, may file a written request with the Attorney General for reconsideration of a final denial of a claim under subsection (a) of this section. Upon the timely filing of a request for reconsideration the Attorney General shall have three months from the date of filing in which to make a final disposition of the claim and the claimant's option under 43.1205(a) A.S.C.A., shall not accrue until three months after the filing of a request for reconsideration. Final action by the Attorney General on a request for reconsideration shall be effected in accordance with the provisions of subsection (a) of this section.

History: Rule 4-85, eff 30 Dec 85.

43.0103 Action on approved claim.

- (a) Payment of any claim approved hereunder shall be contingent upon claimant's execution of a claims settlement agreement. When a claimant is represented by an attorney, the voucher for payments shall designate both the claimant and the attorney as payees, and the check shall be delivered to the attorney, whose address shall appear on the voucher.
- (b) Acceptance by the claimant, his/her agent, or legal representative, of any award, compromise, or settlement made pursuant to the provisions of 43.1205(b), 43.1210, 43.1211(c), 43.1212, and 43.1213 A.S.C.A., shall be final and conclusive on the claimant, his/her agent or legal representative and any other person on whose behalf or for whose benefit the claim has been presented, and shall constitute a complete release of any claim against the American Samoa Government and against any employee of the government whose act or omission gave rise to the claim, by reason of the same subject matter.

History: Rule 4-85 eff 30 Dec 85.

END OF TITLE 43 – CIVIL REMEDIES AND
PROCEDURE