

SLAPPED: A Tool for Activists

Part 6: The Importance of Anti-SLAPP



Freedom of speech and the right to petition the government are enshrined in the First Amendment to the United States Constitution. Free speech and healthy debate are the cornerstones of a thriving democracy. SLAPP suits threaten public discourse and chill free speech by targeting those who speak out on matters of public importance.

To guard against the chilling effects of SLAPP suits, 28 states, the District of Columbia, and one U.S. territory have enacted anti-SLAPP statutes that provide special protection for targets of these lawsuits.¹

Anti-SLAPP statutes provide a way to quickly terminate frivolous claims that threaten First Amendment rights. Anti-SLAPP statutes commonly include some sort of clear statements of protection for speech in certain areas of public importance, along with a legal procedure for early dismissal of a SLAPP and recovery of the attorney's fees and court costs incurred while defending against a SLAPP. By providing a way to quickly dismiss SLAPP suits and forcing those who bring them to pay the legal fees, anti-SLAPP statutes discourage the filing of these kinds of frivolous claims.

Here are some examples comparing the general SLAPP suit legal procedure with the procedures in a state that has anti-SLAPP statutes.

SLAPP Suit Procedure in States WITHOUT Anti-SLAPP Statutes²

In a state without anti-SLAPP laws, substantial expense and hardship can be inflicted upon the targets of SLAPP suits with little opportunity for redress.

If you are SLAPPED for defamation in a state *without* an anti-SLAPP statute, your options are limited. You can file a motion to dismiss – asking the court to determine whether, if *all specific facts alleged in the complaint are true*, the allegations are enough to entitle the plaintiff to relief under the law. Unfortunately, motions to dismiss often fail to stop a frivolous SLAPP suit, and while you are litigating the motion to dismiss, the plaintiff can begin the discovery process – demanding documents, depositions, etc. This process can be expensive and harassing.

If the motion to dismiss fails, you can file a motion for summary judgment – a judgment without a full trial. This motion is usually filed after discovery and asserts that there are no disputes of relevant facts. As opposed to a motion to dismiss, a motion for summary judgment alleges that the facts show that the plaintiff cannot win under the law. However, if the plaintiff can create *any* dispute of relevant fact, the court cannot grant the motion for summary judgment.

In states without an anti-SLAPP statute, if you lose either a motion to dismiss or a motion for summary judgment, you cannot appeal immediately. You must wait until a potentially costly trial is over or file a special request with the Court of Appeals that is discretionary and rarely granted.

Even if you win a frivolous SLAPP suit, you are only entitled to the actual costs incurred during litigation, such as filing fees, court reporter fees, etc. You are not entitled to recover attorney's fees.

SLAPP Suit Procedure in States WITH Anti-SLAPP Statutes³

Now imagine you are SLAPPED for defamation, but this time you live in California – a state with a strong anti-SLAPP statute. You have access to a number of tools to fight back against the SLAPP suit.

Your first step is to file an anti-SLAPP motion which places a hold on all discovery for the case. This will save both time and money as all depositions and requests for documents are halted. Additionally, once an anti-SLAPP motion is filed, you can move forward to obtain a ruling and seek fees even if the plaintiff withdraws the case.

The main difference between an anti-SLAPP motion and a more traditional motion to dismiss is that you can offer extrinsic evidence. For example, if you are sued for defamation related to online content, you can introduce a copy of that online content to prove that it dealt with an area of public concern and that it is protected by the statute.

Once you prove that the anti-SLAPP statute applies, the burden shifts back to the person suing you to establish a probability of prevailing. The evidence must not only show what you did, but be sufficient to defeat your First Amendment claims.

If the plaintiff fails to do this and you prevail, you are then entitled to reasonable attorney's fees, as well as the costs of litigation from the plaintiff. Even if you lose this round you still have the right to an immediate appeal under many anti-SLAPP statutes.

References:

1. *See Responding to Strategic Lawsuits Against Public Participation (SLAPPS)*, Digital Media Law Project, ¶ 4 (updated Feb. 04, 2013) available at <http://www.dmlp.org/legal-guide/responding-strategic-lawsuits-against-public-participation-slapps>.
 2. Ken White, *Why, Yes, I AM Into SLAPPING*, Popehat (June 07, 2012) available at <http://www.popehat.com/2012/06/07/why-yes-i-am-into-slapping/>.
 3. *Id.*
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