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Damages, Attorney's Fees, and Settlement Considerations

Grand Park Law Group · 2026



A. Compensatory Damages and Loss of Familial Association

Compensatory damages in civil rights cases include economic losses (medical expenses, lost wages, future earning capacity), and noneconomic damages (pain and suffering, emotional distress, humiliation). There is no MICRA cap in civil rights cases against non-medical defendants.

In death cases, the Ninth Circuit recognizes a **substantive due process right to familial association** — a parent's claim for the loss of the relationship with a child (and vice versa) caused by deliberate-indifference or shocks-the-conscience official conduct. The standard varies by relationship and by the state of mind required (purpose to harm vs. deliberate indifference, depending on whether actual deliberation was practical). Loss-of-consortium claims for spouses are recognized under California law and survive into wrongful-death damages.

B. Punitive Damages Against Individual Officers

Punitive damages are available against **individual officers** under § 1983 where the officer's conduct was motivated by evil motive or intent, or involved reckless or callous indifference to federally protected rights. *Smith v. Wade*, 461 U.S. 30 (1983) (cited as the controlling federal punitive-damages standard).

Punitive damages are **not** available against municipalities under § 1983 (*City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247 (1981)) — but they are available against individual officers, and Cal. Gov. Code § 825(b) prohibits a public entity from indemnifying punitive damages absent specified findings.

Under the Bane Act, exemplary damages are explicitly authorized by Civ. Code § 52(b)(1).

C. § 1988 Fee Shifting and Bane Act Fees

42 U.S.C. § 1988(b) authorizes "the prevailing party" — in practice, prevailing plaintiffs as a matter of course, prevailing defendants only on a finding the action was frivolous — reasonable attorney's fees in § 1983 cases. The lodestar (reasonable hours × reasonable rate) is the touchstone; multipliers are available in exceptional cases.

Civil Code § 52.1(i) (formerly subdivision (h)) provides for attorney's fees to the prevailing plaintiff under the Bane Act. California courts apply the lodestar and may award multipliers under *Ketchum v. Moses* factors.

A parallel federal/state pleading therefore generates two independent fee bases. Where the federal claims are dismissed on qualified immunity but the Bane Act claims succeed, § 52.1(i) fees are still available.

D. Indemnification by Public Entities (Gov. Code § 825)

California Government Code § 825 requires a public entity to defend and indemnify its employees for compensatory damages arising out of acts or omissions within the scope of employment. Indemnification is **mandatory** for compensatory damages; it is **prohibited for punitive damages** unless the entity makes specified findings (act was within scope, in good faith, in the best interest of the entity, etc.) — a nearly impossible showing.

Practically, this means:

- A judgment against an individual officer for compensatory damages will be paid by the city or county.
- A punitive-damages judgment against an individual officer is uninsured and unindemnified — and therefore creates real settlement pressure on the officer personally and reputational pressure on the agency.
- Settlement leverage often turns on the agency's exposure to a punitive verdict and to attorney's fees, both of which can dwarf the compensatory damages.

Practice	Civil Rights
Topics	Damages · Attorney Fees · Punitive Damages · Bane Act
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