

CITY OF SACRAMENTO



DEPARTMENT OF LAW
812 TENTH STREET SACRAMENTO, CA 95814
SUITE 201 TELEPHONE (916) 449-5346

JAMES P. JACKSON
CITY ATTORNEY
THEODORE H. KOBAY, JR.
ASSISTANT CITY ATTORNEY
LELIAND J. SAVAGE
SAMUEL L. JACKSON
WILLIAM P. CARNAZZO
STEPHEN B. NOCITA
DIANE B. BALTER
CHRISTINA PRIM
DEPUTY CITY ATTORNEYS

February 23, 1982

Honorable City Council
Council Chamber
City Hall
Sacramento, California 95814

RE: LATE CLAIM APPLICATION OF ARLENE MONTGOMERY

MAR 9 1982

Members in Session:

SUMMARY

Arlene Montgomery has applied for leave to present a late claim. We are of the opinion that the application does not fall within those circumstances under which relief must be granted.

BACKGROUND

Ms. Montgomery has applied for leave to present a late claim. The claim seeks damages for injuries allegedly suffered as a result of an automobile accident which she claims was caused by a defective condition on public property.

Government Code §911.2 provides that a claim such as this shall be presented within 100 days of accrual of the cause of action. Applicant's cause of action accrued on January 8, 1981. The claim and late claim application were presented on January 8, 1982, one year after accrual of the cause of action. Additional information was subsequently filed on February 5, 1982. The application states that a timely claim was not presented because applicant was unaware of the 100-day filing period. It is also stated that the attorney first contacted by applicant (after the 100 days had passed) did not advise her of the potential liability of the City.

ANALYSIS

A person seeking to file a late claim must show both: (1) that the application was presented within a reasonable time not to exceed one year after the accrual of the cause of action (Government Code §911.2(b)); and (2), that the failure to file a timely claim was due to mistake, inadvertence, surprise or excusable neglect

MAR 9 1982

(Government Code §911.6(b)(1)). In order to obtain relief on any of these grounds it must appear that the applicant acted with reasonable diligence under the circumstances (Roberts vs. State (1971) 39 C.A.3d 844; El Dorado Irr. Dist. vs. Superior Court (1979) 98 Cal.App.3d 57). It does not appear to us that these standards have been met in the instant case.

It is well settled that ignorance of the claim filing requirements and the 100-day filing period does not excuse the failure to file a timely claim. (Roberts vs. State, supra; Tsingaris vs. State (1979) 91 C.A.3d 312). Moreover, applicant apparently realized that she had a potential cause of action. The failure to consult an attorney within the 100-day period does not excuse the failure to file a timely claim (Bennett vs. City of Los Angeles (1970) 12 C.A.3d 116). The application contains no information suggesting that a claim could not have been presented in a timely fashion. In short, it does not appear that the failure to file a timely claim was due to the mistake, inadvertence, surprise or excusable neglect of a reasonably diligent person.


In addition the application was presented a full year after accrual of the cause of action. A delay of a shorter period of time has been held unreasonable (Martin vs. Madera (1968) 265 C.A.2d 76). It does not appear that the application was presented within a reasonable time under the circumstances.

RECOMMENDATION

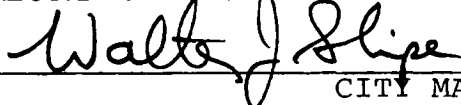
For the foregoing reasons it is recommended that the application of Arlene Montgomery for leave to present a late claim be denied.

Very truly yours,

JAMES P. JACKSON
City Attorney


STEPHEN B. NOCITA
Deputy City Attorney

RECOMMENDATION APPROVED:


CITY MANAGER

1 JED SCULLY
2 McGEORGE SCHOOL OF LAW
3 JUVENILE LAW CLINIC
4 3130 Fifth Avenue
5 Sacramento, CA 95817
6 Telephone: (916) 739-7283

RECEIVED
CITY CLERKS OFFICE
CITY OF SACRAMENTO

JAN 8 4 29 PM '82

Attorneys for Claimant

7 In the Matter of the) APPLICATION FOR LEAVE TO
8 Claim of ARLENE MONTGOMERY) PRESENT LATE CLAIM
9 against the) [Gov C §911.4]
CITY OF SACRAMENTO)

10 TO: CITY OF SACRAMENTO:

11 1. Application is hereby made for leave to present a late
12 claim under Section 911.4 of the Government Code. The claim is
13 founded on a cause of action for wrongful death which accrued on
14 January 8, 1981, and for which a claim was not timely
15 presented. For additional circumstances relating to the cause of
16 action, reference is made to the proposed claim attached hereto
17 as Exhibit A and made a part hereof.

18 2. A reason for the delay in presenting this claim is the
19 mistake, inadvertence, surprise and excusable neglect of the
20 claimant as more particularly shown in a declaration to be
21 presented. City of Sacramento was not prejudiced by the failure
22 to timely file the claim as will be shown by a declaration to be
23 presented.

24 3. This application is presented within a reasonable time
25 after the accrual of the cause of action as shown by a
26 declaration to be presented.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

WHEREFORE, it is respectfully requested that this application be granted and that the attached claim be received and acted upon in accordance with Sections 912.4-912.8 of the Government Code.

Dated: January 8, 1982.

McGEORGE SCHOOL OF LAW
JUVENILE LAW CLINIC

By: *Bruce Martini*
Judge Scully
On Behalf of Claimant

1 JED SCULLY
McGEORGE SCHOOL OF LAW
2 JUVENILE LAW CLINIC
3130 Fifth Avenue
3 Sacramento, CA 95817
Telephone: (916) 739-7283

4 Attorneys for Claimant

5
6
7 Claim of) CLAIM FOR DAMAGES
ARLENE MONTGOMERY)
8 against)
CITY OF SACRAMENTO)
9

10 TO: The CITY OF SACRAMENTO:

11 ARLENE MONTGOMERY hereby makes claim against the CITY OF
12 SACRAMENTO for the sum of \$500,000.00 and makes the following
13 statements in support of the claim:

14 1. Claimant's post office address is 7536 Thorpe Way,
15 Sacramento, California.

16 2. Notices concerning the claim should be sent to JED
17 SCULLY, 3130 Fifth Avenue, Sacramento, California.

18 3. The date and place of the accident giving rise to this
19 claim are January 8, 1981, on Franklin Boulevard.

20 4. The circumstances giving rise to this claim are due to
21 the dangerous condition of an elevated traffic island. It was
22 struck by the vehicle in which claimant's husband was a passenger
23 and he was killed.

24 5. Claimant's injuries are the wrongful death of her
25 husband MICHAEL JOHN WILEY MONTGOMERY.

26 6. The names of the public employees causing the claimant's
27 injuries are unknown.

28 7. My claim as of the date of this claim is \$500,000.00.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

8. The basis of computation of the above amount is as follows:

General Damages	\$500,000.00
TOTAL	\$500,000.00

Dated: January 8, 1982.

McGEORGE SCHOOL OF LAW
JUVENILE LAW CLINIC

By: Barry P. Martin
for Jed Sully
Attorneys for Claimant

1 JED SCULLY
2 McGEORGE SCHOOL OF LAW
3 JUVENILE LAW & APPELLATE CLINIC
4 3130 Fifth Avenue
5 Sacramento, CA 95817
6 Telephone: (916) 739-7283

7 Attorneys for Claimant

8 In the Matter of the
9 Claim of MELANIE PARKER,
10 a minor, against the
11 CITY OF SACRAMENTO

DECLARATION OF ARLENE
MONTGOMERY IN SUPPORT OF
APPLICATION FOR LEAVE
TO PRESENT LATE CLAIM

12 COUNTY OF SACRAMENTO:

13 STATE OF CALIFORNIA:

14 I, ARLENE MONTGOMERY, declare:

15 I am the surviving spouse of MICHAEL MONTGOMERY, deceased. I
16 was mistaken as to the time for filing a claim against the state
17 in that I was informed I had a year from the date of the accident
18 to file an action for the wrongful death of my husband. The
19 accident and his death occurred on January 8, 1981. I
20 erroneously concluded that any action I might have could be
21 brought in the same manner and within the same time limits as one
22 against a private person. It was not until several months after
23 the 100 day period expired that I contacted an attorney by the
24 name of DONALD DORFMAN located at 2617 K Street, Suite 2,
25 Sacramento, California. He informed me that because the driver
26 of the vehicle in which my husband was killed was uninsured and
27 because we also had no insurance, pursuing this claim would be
28 futile. MR. DORFMAN and I never discussed the possibilities of a
claim against the CITY OF SACRAMENTO for negligent construction
or maintenance of the site on which my husband was killed.

1 It was not until December 23, 1981, that I received a letter
2 requesting me to come into the offices of the JUVENILE LAW &
3 APPELLATE CLINIC located at 3130 Fifth Avenue, Sacramento,
4 California, to discuss the nature of my husband's accident.

5 Unbeknownst to me my husband's brother WILLIAM MONTGOMERY had
6 on his own accord sought advice of this legal clinic regarding
7 the possibility of bringing a criminal action against the driver.

8 Pursuant to the letter of December 23, I attended a meeting
9 scheduled for January 4, 1982, wherein the issue of the street
10 conditions was raised. At the time MR. DORFMAN informed me he
11 would not be representing me in a claim for the wrongful death of
12 my husband, he did not inform me that the statutory period for
13 filing a claim against a public entity has passed. This
14 information was given to me on January 4, 1982, and my
15 application for leave to present late claim was filed January 8,
16 1982. I have acted with reasonable diligence after discovering
17 this default.

18 I declare under penalty of perjury that the foregoing is true
19 and correct.

20 Executed on February 1, 1982, at Sacramento, California.

21
22 
23 ARLENE MONTGOMERY
24
25
26
27
28



CITY OF SACRAMENTO

OFFICE OF THE CITY CLERK

915 I STREET
CITY HALL ROOM 203

SACRAMENTO, CALIFORNIA 95814
TELEPHONE (916) 449-5426

LORRAINE MAGANA
CITY CLERK

March 10, 1982

Jed Scully
Juvenile Law Clinic
McGeorge School of Law
3130 Fifth Avenue
Sacramento, CA 95817

RE: APPLICATION TO FILE A LATE CLAIM ON BEHALF OF ARLENE MONTGOMERY.
DATE OF ALLEGED INCIDENT: JANUARY 8, 1981

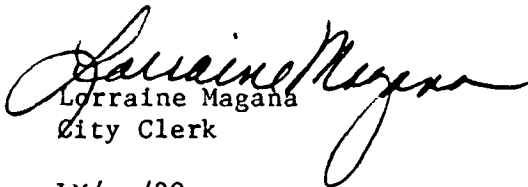
Dear Mr. Scully:

You are hereby notified that your application for Leave to Present a Late Claim on behalf of the above named claimant was denied by the Sacramento City Council on March 9, 1982.

The application was reviewed and duly considered. The reasons given for the failure to file a claim within the time period provided by the California Government Code were determined to be insufficient, and did not meet the requirements of the Code for relief from the claim filing requirements.

Accordingly, I must inform you your application is rejected.

Sincerely,


Lorraine Magana
City Clerk

LM/mm/20

cc: City Attorney
Risk Management (2)

WARNING

If you wish to file a court action on this matter, you must first petition the appropriate court for an order relieving you from the provisions of Government Code Section 945.5 (Claims Presentation Requirement). See Government Code Section 946.6. Such a petition must be filed with the court within six (6) months of the date your Application for Leave to Present a Late Claim was denied.

You may seek the advice of any attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately.