



CITY OF SACRAMENTO

14

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

CITY MANAGER'S OFFICE
RECEIVED
OCT 21 1982

October 18, 1982

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

Honorable City Council
Council Chamber
City Hall
Sacramento, California 95814

REJECTED
BY THE CITY COUNCIL
OFFICE OF THE
CITY CLERK

RE: LATE CLAIM APPLICATION OF VINCENT DIAZ

NOV 3 1982

Members in Session:

SUMMARY

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

BACKGROUND

Vincent Diaz has applied for leave to present a late claim. His claim seeks damages for personal and punitive damages resulting from an allegedly false and malicious seizure and arrest.

Government Code Section 911.2 provides that a claim for personal injury or property damage shall be presented within 100 days of accrual of the cause of action. Applicant's cause of action accrued on May 20, 1982, and the 100-day filing period expired on or about August 28, 1982. The late claim application was presented on October 7, 1982.

The application states that a timely claim was not filed because the claimant was not aware of the claim filing requirements until he consulted his attorney on September 10, 1982.

ANALYSIS

A person seeking to file a late claim must show that the failure to file a timely claim was due to mistake, inadvertence, surprise or excusable neglect (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 Cal.App.3d 844; El Dorado Irr. Dist. vs. Superior Court (1979) 98 Cal.App.3d 57). It does not appear to us that this standard has been met in the instant case.

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). The failure to consult an attorney within the 100-day filing period does not excuse the failure to file a timely claim (Bennett vs. City of Los Angeles (1970) 12 C.A.3d 116 [claim filed 19 days late]).


Under the circumstances, we cannot agree that the failure to file a timely claim was due to the mistake, inadvertence, surprise or excusable neglect of a reasonably diligent or prudent person (Roberts vs. State, supra; Tsingaris vs. State (1979) 91 Cal.App.3d 312. (City of Fresno vs. Superior Court (1980) 104 C.A.3d 25; El Dorado Irr. Dist., supra).

RECOMMENDATION

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

Very truly yours,

JAMES P. JACKSON
City Attorney



DIANE B. BALTER
Deputy City Attorney

RECOMMENDATION APPROVED:

Walter J. Slife
CITY MANAGER

DBB:gd
attachment

14

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CITY CLERKS OFFICE
CITY OF SACRAMENTO

OCT 7 2 08 PM '82
ARGUMENTS
TELEPHONE 448-5501

GEORGE D. MANDICH
OF COUNSEL

CLARK & HARBISON
ATTORNEYS AT LAW
2220 K STREET
P. O. BOX 160327
SACRAMENTO, CALIFORNIA 95816

RONALD A. CLARK
JOSEPH F. HARBISON III
TIMOTHY R. MURPHY

October 1, 1982

Office of the City Clerk
915 "I" Street Room 203
Sacramento, CA 95814

To Whom it may concern:

Please find attached hereto an original and four copies of CC Form 6, CLAIM AGAINST THE CITY OF SACRAMENTO. This claim is being filed on behalf of VINCENT DIAZ, who suffered injuries as a result of the false arrest and imprisonment by law enforcement officials of the City of Sacramento.

Being that claimant incurred such injuries on May 20, 1982, I am aware that filing of this claim is not in accord with state law, which requires that a claim for personal injury against a local public entity be filed within 100 days of the date of injury (Government Code, Section 911.2). It has only been since September 10, 1982, however, that I have been apprised of claimant's injuries and the subsequent failure to file a claim against the County within the 100 day period. The claimant was unaware, until my discussion with him on September 10, 1982, of any need on his part to file such a claim within 100 days.

It is, therefore, my sincere request that the County waive its requirement of filing a claim for personal injury within 100 days of injury and thereby accept the claim attached hereto.

Very truly yours,

CLARK & HARBISON

By *Ronald A. Clark*
RONALD A. CLARK
Attorney for Claimant,
Vincent Diaz

REJECTED
BY THE CITY COUNCIL
OFFICE OF THE
CITY CLERK

NOV 3 1982

14

CLAIM AGAINST THE CITY OF SACRAMENTO RECEIVED
CITY CLERKS OFFICE
CITY OF SACRAMENTO

You are hereby notified that (1) Vincent Diaz whose Post Office address is (2) 5280 Meadow Parkway, Sacramento, CA 95823

OCT 7 2 09 PM '82

claims damages from the City of Sacramento in the amount, computed as of the date of the presentation of this claim, of (3) \$ 500,000.00. This claim is based upon (4)

(X) Personal injury; () Property damage or loss; () Other, specify _____, which occurred on or about (5) 5 / 20 / 82, in the vicinity of (6) Sacramento County Juvenile Detention Center under the following circumstances: (7) Claimant was falsely and maliciously seized and arrested by law enforcement officials of the City of Sacramento for the crime of murder of Dwight Fiscus.

The name of the City employee or employees causing the claimant's injury or loss under the circumstances described is (8) unknown to claimant

~~XXXXXX~~

The injuries to the claimant, (if any), as far as known at the date of presentation of the claim consists of (9) Shock, humiliation and embarassment

The amount of damages claimed as of the date of this claim is computed as follows:
Damages incurred to date (Itemized):

(10) Compensatory Damages \$ 250,000.00
Punitive Damages \$ 250,000.00

Estimate prospective damages as far as known:

(11) _____ \$ _____
_____ \$ _____

(12) TOTAL AMOUNT CLAIMED as of presentation date of claim \$ 500,000.00

All notices and communications with regard to this claim should be sent to claimant at (13) CLARK & HARBISON, Attorney at Law, P.O. Box 160327, Sacramento, CA 95816

DATED: (14) October 1,

REJECTED
BY THE CITY COUNCIL
OFFICE OF THE
CITY CLERK

CLARK & HARBISON

(15) SIGNED: _____

~~XXXXXXXXXX~~
Attorney for Claimant

NOV 3

By Ronald A. Clark
RONALD A. CLARK

Novmeber 4, 1982

Clark & Harbison
Attorneys At Law
2220 K Street
P.O. Box 160327
Sacramento, CA 95816

RE: APPLICATION TO FILE A LATE CLAIM ON BEHALF OF VINCENT DIAZ.
DATE OF ALLEGED INCIDENT: MAY 20, 1982

Dear Mr. Clark:

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 Novmeber 3, 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/emm/14
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 Goverment 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.

CLARK & HARBISON

ATTORNEYS AT LAW

2220 K STREET

P. O. BOX 160327

SACRAMENTO, CALIFORNIA 95816

RONALD A. CLARK
JOSEPH F. HARBISON III
TIMOTHY R. MURPHY

RECEIVED
CITY CLERK'S OFFICE
CITY OF SACRAMENTO

OCT 7 2 08 PM '82
AREA CODE (916)
TELEPHONE 448-5501

GEORGE D. MANDICH
OF COUNSEL

October 1, 1982

Office of the City Clerk
915 "I" Street Room 203
Sacramento, CA 95814

To Whom it may concern:

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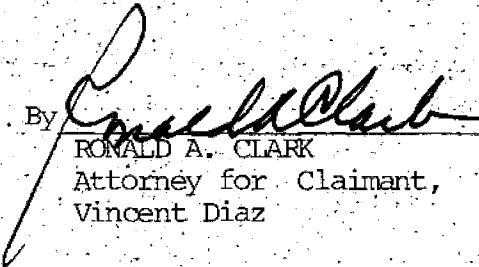
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It is, therefore, my sincere request that the County waive its requirement of filing a claim for personal injury within 100 days of injury and thereby accept the claim attached hereto.

Very truly yours,

CLARK & HARBISON

By


RONALD A. CLARK
Attorney for Claimant,
Vincent Diaz

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CITY OF SACRAMENTO

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~~XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX~~

The injuries to the claimant, (if any), as far as known at the date of presentation of the claim consists of (9) Shock, humiliation and embarrassment

The amount of damages claimed as of the date of this claim is computed as follows:

Damages incurred to date (Itemized):

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- Punitive Damages \$ 250,000.00

Estimate prospective damages as far as known:

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- _____ \$ _____

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DATED: (14) October 1, 19 82

CLARK & HARBISON

(15) SIGNED: _____

~~XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX~~
Attorney for Claimant
CLARK & HARBISON

By: Ronald A. Clark
RONALD A. CLARK

CLARK & HARBISON
ATTORNEYS AT LAW
2220 K STREET
P. O. BOX 160327
SACRAMENTO, CALIFORNIA 95816

RONALD A. CLARK
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CITY OF SACRAMENTO

OCT 7 2 08 PM '82
AREA COBEN
TELEPHONE 448-5501

October 1, 1982

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OF COUNSEL

Office of the City Clerk
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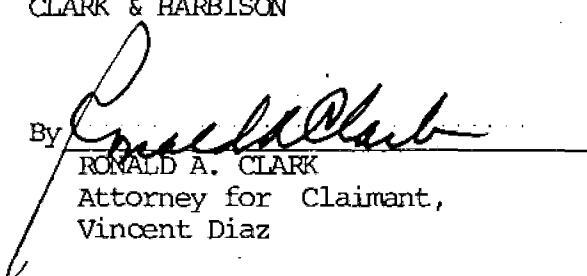
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CLARK & HARBISON

By


RONALD A. CLARK
Attorney for Claimant,
Vincent Diaz

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DATED: (14) October 1, 19 82

CLARK & HARBISON

(15) SIGNED: _____

~~XXXXXXXXXXXX~~
Attorney for Claimant

By Ronald A. Clark
RONALD A. CLARK