



CITY OF SACRAMENTO

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DEPARTMENT OF LAW
812 TENTH STREET
SUITE 201

SACRAMENTO, CA 95814
TELEPHONE (916) 449-5346

CITY MANAGER'S OFFICE
RECEIVED
MAR 19 1982

March 16, 1982

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

Honorable City Council
Council Chamber
City Hall
Sacramento, California 95814

RE: LATE CLAIM APPLICATION OF PATRICIA DAVIS, LOUISE HAYDEN,
AND KATI MAI HARRIS

APPROVED BY THE CITY COUNCIL *DAVIS - Hayden denied*

Members in Session:

MAR 30 1982 *Harris - granted*

SUMMARY OFFICE OF THE CITY CLERK

Patricia Davis, Louise Hayden and Kati Mai Harris have applied for leave to present late claims. With respect to Ms. Davis and Ms. Hayden, we are of the opinion that the applications do not fall within those circumstances under which relief must be granted. With respect to Ms. Harris we are of the opinion that the application falls within those circumstances under which relief must be granted.

BACKGROUND

Patricia Davis, Louise Hayden and Kati Mai Harris have each applied for leave to present a late claim. The claims seek damages for personal injuries and property damage suffered as a result of alleged assault and battery and false arrest.

Government Code §911.2 provides that claims such as this shall be filed within 100 days of accrual of the causes of action. Applicants' causes of action accrued on October 20, 1981. The 100-day filing period expired on or about January 28, 1982. The claims and late claim applications were presented on March 3, 1982.

The application states that Ms. Hayden did not file a timely claim because when she was released from custody in late October, 1981, she didn't realize that she faced no more charges. It is stated that Ms. Davis did not file a timely claim because she didn't think she could do anything until the charges were dropped, on February 16, 1982. With respect to Ms. Harris, it is stated that she is a new-born infant and consequently unable to attend to the matter herself.

ANALYSIS

A person seeking to file a late claim is entitled to relief if she shows that she was a minor throughout the 100-day filing period

MAR 30 1982

(Government Code §911.6(b)) and the application was presented within a reasonable time not to exceed one year from accrual of the cause of action. (Government Code §911.2(b)).

Because Ms. Harris is a minor the only issue remaining for determination on her application is whether reasonable diligence was used (Tammen vs. San Diego (1967) 66 C.2d 468, 479; Williams vs. Mariposa Sch. Dist. (1978) 82 C.A.3d 843, 851). The delay and neglect of adults should not be attributed to Ms. Harris. (ibid). Given Ms. Harris' age, there is nothing to suggest a lack of diligence in her case.

With respect to both Ms. Hayden and Ms. Davis, in order to file a late claim they each must show that their 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 C.A.3d 844; El Dorado Irr. Dist. vs. Superior Court (1979) 98 C.A.3d 57). It does not appear to us that this standard has been met by either Ms. Hayden or Ms. Davis.

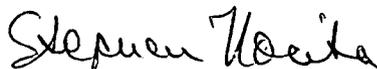
In light of the promptness with which they sought legal advice after the charges against Ms. Davis were dropped, it is apparent that both Ms. Hayden and Ms. Davis were aware that they had a potential cause of action against the City based upon the events of October, 1981. The actual or potential pendency of criminal proceedings does not excuse the failure to file a timely claim (Rivera vs. City of Carson (1981) 117 C.A.3d 718, 724-725; County of Sacramento vs. Superior Court (1980) 105 C.A.3d 898, 905; Goodhue vs. Turead (1979) 100 C.A.3d 205). The so-called "mistake" or "neglect" relied upon by both Ms. Hayden and Ms. Davis does not provide a basis for the requested relief (ibid), and does not appear to be the conduct of a reasonably diligent person under the circumstances.

RECOMMENDATION

For the foregoing reasons it is recommended that (1) the applications of Patricia Davis and Louise Harris for leave to present late claims be denied, and (2) the application of Kati Mai Harris for leave to present a late claim be granted and the claim itself referred to the City's claim adjuster for evaluation.

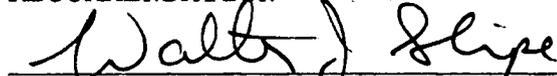
Very truly yours,

JAMES P. JACKSON
City Attorney



STEPHEN B. NOCITA
Deputy City Attorney

RECOMMENDATION APPROVED:



CITY MANAGER

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PETITION-REQUEST FOR PERMISSION TO FILE LATE CLAIM

On behalf of my clients, the claimants in the attached claim for damages, I respectfully request permission to file this late claim. As stated in the claim, claimants were arrested on or about October 20, 1981 Hayden was released a couple of days later without it being made clear that she faced no more charges. As for Ms. Davis, charges against her were not dropped until February 16th, 1982. She felt she could not do anything until the criminal matter was resolved. As for Kati Mai, she is a newborn infant and could hardly have acted except as her mother, Ms. Davis, acted. These people came into my office on February 18th, 1982, and I have gotten this claim out to you as quickly as I could in an effort to preserve their rights. It is requested that you consider the merits of this claim.

NATHANIEL S. COLLEY, INC.

By: Nathaniel S. Colley, Jr.
NATHANIEL S. COLLEY, JR.

APPROVED BY THE CITY COUNCIL
MAR 30 1982
OFFICE OF THE CITY CLERK
Davis - Hayden denied
Harris granted

CLAIM FOR DAMAGES

TO THE CITY COUNCIL OF THE COUNTY OF SACRAMENTO AND THE CLERK
THEREOF:

PATRICIA DAVIS, LOUISE HAYDEN and KATI MAI HARRIS file this, there
claim for damages, and in support thereof allege:

That their address is 3320 Alvarado Blvd., Sacramento, but it is requested
that all correspondence concerning this claim be directed to their attorney,

NATHANIEL S. COLLEY, JR.

That on or about October 20th, 1981 claimants PATRICIA DAVIS and LOUISE
HAYDEN, who are mother and daughter, were living together at the above address
when officers of the Sacramento City Police Department came to the home to inves-
tigate a burglary. During said investigation, said officers, without need for their
own protection, the protection of others, or of property, and without provocation
of any kind, assaulted, battered and abused claimants, and arrested them and took
them into custody.

That thereafter, they refused to allow claimants to make provision for the
care and control of the minor children residing in the home with them, or the
house at 3320 Alvarado Blvd. and that these same officers then left the home at
3320 Alvarado unsupervised and unlocked, which it remained until claimant LOUISE
HAYDEN was released and came home two days later.

That as a direct and proximate result of the home at 3320 Alvarado Blvd.
being left in an unsupervised and unlocked condition, a person or persons unknown
entered therein and stole the keys to claimant PATRICIA DAVIS' automobile, among
other personal property, and with said keys took PATRICIA DAVIS' automobile for
a joyride which resulted in a crash and property damage to third parties.

That at the time of the unprovoked and uncalled for assault, PATRICIA
DAVIS was nine months pregnant and gave birth to claimant KATI MAI HARRIS
on or about November 16th, 1981. That at the time of her birth, claimant KATI

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MAI HARRIS had a noticeable blood trauma on her leg, which is still present and growing. Claimant PATRICIA DAVIS is informed and believes and on that basis alleges that said trauma was caused as a direct and proximate result of her being beaten by officers of the Sacramento City Police Department on or about October 20, 1981.

WHEREFORE, claimants submit this claim for damages and request the sum of \$40,000 be paid to PATRICIA DAVIS, \$40,000 to KATI MAI HARRIS, and \$20,000 to claimant LOUISE HAYDEN.

NATHANIEL S. COLLEY, INC.

By: *Nathaniel S. Colley, Jr.*
NATHANIEL S. COLLEY, JR.



CITY OF SACRAMENTO

OFFICE OF THE CITY CLERK

915 I STREET
CITY HALL ROOM 203

SACRAMENTO, CALIFORNIA 95814
TELEPHONE (916) 449-5428

LORRAINE MAGANA
CITY CLERK

March 31, 1982

Nathaniel S. Colley, Jr.
1810 "S" Street
Sacramento, CA 95814

RE: APPLICATION TO FILE A LATE CLAIM ON BEHALF OF PATRICIA DAVIS.
DATE OF ALLEGED INCIDENT: OCTOBER 20, 1981

Dear Mr. Colley:

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 30, 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/15

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.



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 31, 1982

Nathaniel S. Colley, Jr.
1810 "S" Street
Sacramento, CA 95814

RE: APPLICATION TO FILE A LATE CLAIM ON BEHALF OF LOUISE HAYDEN.
DATE OF ALLEGED INCIDENT: OCTOBER 20, 1981

Dear Mr. Colley:

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 30, 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/15

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.



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SACRAMENTO, CALIFORNIA 95814
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LORRAINE MAGANA
CITY CLERK

March 31, 1982

Nathaniel S. Colley, Jr.
1810 "S" Street
Sacramento, CA 95814

RE: APPLICATION TO FILE A LATE CLAIM ON BEHALF OF KATI MAI HARRIS
DATE OF ALLEGED INCIDENT: OCTOBER 20, 1981

Dear Mr. Colley:

Notice is hereby given that the following application for leave to present a late claim was allowed on March 30, 1982. Upon allowance of the late filing the City Council thereupon referred said claim to the City's claims representative, Brown Brothers Adjusters, 1451 River Park Drive, Suite 251, Sacramento, California 95815 (phone 916-920-4392), for review and recommendation. You will be advised of the claim's disposition within 45 days.

Claim submitted by you on behalf of the above named claimant in the amount of \$40,000.00 for alleged damages occurring when City Police entered claimant's home, assaulted, abused and took claimant into custody, and allegedly occurring on or about October 20, 1981.

Sincerely,


Lorraine Magana
City Clerk

LM/mm/15

cc: Risk Management (2)