



CITY OF SACRAMENTO

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DEPARTMENT OF LAW
812 TENTH STREET
SUITE 201
SACRAMENTO, CA 95814
TELEPHONE (916) 448-5346

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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

September 14, 1982

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 JOSEPH MCKINSEY

SEP 28 1982

Members in Session:

SUMMARY

Joseph McKinsey 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

Joseph McKinsey has applied for leave to present a late claim. His claim seeks damages for personal injury resulting from alleged misconduct by officers of the Sacramento Police Department.

Government Code §911.2 provides that a claim for personal injury shall be presented within 100 days of accrual of the cause of action. Applicant's cause of action accrued on September 21, 1981, and the 100-day filing period expired on or about December 30, 1981. His late claim application was filed on September 3, 1982. Mr. McKinsey's application states that he failed to file within the 100-day period because he was unaware of the law which gave him a potential cause of action against the City and required the filing of a claim.

ANALYSIS

A person seeking to present a late claim must show both: (1) that the failure to file a timely claim was due to mistake, inadvertence, surprise or excusable neglect (Government Code §911.b(b)(1)); and (2) that the application was presented within a reasonable time (not to exceed one year) after accrual of the cause of action (Government Code §911.4(b)). In order to obtain relief, it must appear that the applicant acted with reasonable diligence under the circumstances (Roberts vs. State (1974) 39 C.A.3d 844; El Dorado Irr. Dist. vs. Superior Court (1979) 98 C.A.3d 57). It does not appear that these standards have been met in the instant case.

SEP 28 1982

The failure to discover the alleged basis of a cause of action against the City does not excuse the failure to file a timely claim. Kupka vs. Board of Administration (1981) 122 C.A.3d 791; Tsingaris vs. State (1979) 91 C.A.3d 312; Black vs. Los Angeles (1970) 12 C.A.3d 670). Nor does ignorance of the claim filing requirement and the 100-day filing period does not excuse the failure to file a timely claim: Roberts vs. State, supra; Tsingaris vs. State, supra.

Mr. McKinsey's late claim was originally filed with the City Clerk on January 7, 1982. His application for leave to present a late claim was not filed until September 3, 1982, almost 8 months later. The application gives no reason for this excessive delay.

Under the circumstances it appears that the applicant's failure to file a timely claim was not due to the mistake, inadvertence, surprise or excusable neglect of a reasonably diligent person. Furthermore, his application for leave to present a late claim was not filed within a reasonable time.

RECOMMENDATION

For the foregoing reasons it is recommended that the application of Joseph McKinsey 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. Sene
CITY MANAGER

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CITY OF SACRAMENTO

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1 TO: THE BOARD OF SUPERVISORS OF THE COUNTY OF SACRAMENTO AND
2 THE CLERK THEREOF, AND THE SACRAMENTO CITY COUNCIL AND THE CLERK
3 THEREOF:

4 NATHANIEL S. COLLEY, JR., attorney, on behalf of his client
5 JOSEPH MCKINSEY, hereby files this application for presentation of a late claim.

6 The attached claim was served on you on January 7, 1981. It was
7 late by about a week. JOSEPH MCKINSEY first came into my office on or about
8 January 4, 1981, and as I realized that he was very close to the time upon which
9 the 100 days would run, I sought to have something filed as soon as possible. I
10 gave it to my secretary on January 5, 1981, the process server picked it up on
11 January 6, 1981 and you received it on January 7, 1981. The only reason for
12 the delay was that JOSEPH MCKINSEY, during much of the intervening time, was
13 trying on his own to get some sort of relief from the involved state agencies, to-
14 wit, the Department of Motor Vehicles and the Department of Rehabilitation. It
15 was his own ignorance of the law which has caused him to be so penalized. He
16 has in no sense been 'sleeping on his rights'.

17 "Statutes providing an exception to the claim filing statutes 'are de-
18 signed to prevent the claim filing statutes from serving as a trap for laymen, un-
19 learned in the law, ignorant of the claim requirement...' (Syzemore vs. County
20 of Sacramento (1976) 55 Cal. App. 3d 517,524); State of California vs. Superior
21 Court of Sacramento County, 86 Cal. App. 3d 475 at 481.

22 WHEREFORE, it is respectfully requested that claimant be permitted
23 to file this late claim.

REJECTED
BY THE CITY COUNCIL
OFFICE OF THE
CITY CLERK

24 Dated: February 24, 1982

NATHANIEL S. COLLEY, INC.

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

SEP 28 1982

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EX. A

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RECEIVED
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CLAIM FOR DAMAGES

TO THE CITY OF SACRAMENTO CITY COUNCIL AND THE CLERK THEREOF and
TO THE COUNTY BOARD OF SUPERVISORS AND THE CLERK THEREOF:

JOSEPH MC KINSEY files this, his claim for damages, and in support thereof
alleges:

That his name and address is:

JOSEPH Mc KINSEY
3524 35th Street
Sacramento, California 95817

However, it is requested that any response to this claim be sent to claimant's
attorney:

NATHANIEL S. COLLEY, JR.
NATHANIEL S. COLLEY, INC.
1810 S Street
Sacramento, California 95814

That on or about September 17, 1981, officers, agents and employees of the
City and County of Sacramento Police and Sheriff's Department, broke into and
entered into certain property, located at 6951 West 6th Street, Rio Linda, California,
which was then and there lawfully leased to claimant, and removed therefrom certain
items of personal property, including but not limited to certain items automobiles,
and papers to identify same, and other books and records of claimant's business
enterprise which was located at that address.

That on or about September 21, 1981, officers of the Sacramento Police
Department did arrest claimant and charge him with numerous criminal offenses,
causing him to post a bail bond of \$200.00 to regain his freedom. That on
September 28, 1981, when claimant returned to court for his arraignment, he learned
no charges had been filed against him, and that none would be.

That as a direct and proximate result of the aforesaid conduct of the afore-
said officers, complainant has suffered embarrassment and humiliation, lost \$200.00
bail, and has been damaged in his business by loss of a \$3,000.00 investment, all

NATHANIEL S. COLLEY, INC.
ATTORNEYS AND
COUNSELORS AT LAW
1810 S STREET
SACRAMENTO,
CALIFORNIA 95814

1 to his damage in an amount which is open to negotiation.

2 WHEREFORE, claimant present this claim for damages.

3 Dated: January 6, 1982

NATHANIEL S. COLLEY, INC.

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

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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

September 29, 1982

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

RE: APPLICATION TO FILE A LATE CLAIM ON BEHALF OF JOSEPH McKINSEY.
DATE OF ALLEGED INCIDENT: SEPTEMBER 21, 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 September 28, 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/18

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.