

CITY OF SACRAMENTO



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

CITY MANAGER'S OFFICE
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DEC 10 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

December 9, 1982

Honorable City Council
Council Chamber
City Hall
Sacramento, Ca. 95814

DEC 21 1982

RE: LATE CLAIM APPLICATION OF MARY FARRELL

Members in Session:

SUMMARY

DEC 21 1982

Mary Farrell has applied for leave to present a late claim. I am of the opinion that the application does not fall within those circumstances under which relief must be granted.

BACKGROUND

Mary Farrell has applied for leave to present a late claim. The claim seeks damages for personal injuries and special damages 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 cause of action. Applicant's cause of action accrued on July 16, 1982. The 100-day filing period expired on or about October 24, 1982. The claim and late claim application was presented on November 24, 1982. The reasons provided to justify applicant's late claim application were mistake, inadvertence, surprise and excusable neglect. Ms. Farrell also stated that she was unfamiliar with the claims process.

ANALYSIS

A person seeking to present 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, 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.

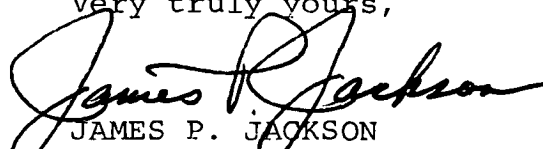
Ignorance of the claim filing requirement and the 100-day filing period does not excuse the failure to file a timely claim. Roberts vs. State, supra; Tsingarlis vs. State (1979) 91 C.A.3d 312. Nor does the failure to consult an attorney within the 100-day period excuse the failure to file a timely claim. Bennett vs. City of Los Angeles (1970) 12 C.A.3d 116).

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.

RECOMMENDATION

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

Very truly yours,


JAMES P. JACKSON
City Attorney

RECOMMENDATION APPROVED:


CITY MANAGER

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CITY CLERKS OFFICE
CITY OF SACRAMENTO

Nov 24 1 30 PM '82

1 DAVID M. YORTON
2 2845 Marconi Avenue
3 Sacramento, California 95821
4 Telephone: (916) 485-5131
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7
8 Attorney for Claimant

REJECTED
BY THE CITY COUNCIL
OFFICE OF THE
CITY CLERK

DEC 21 1982

8 BEFORE THE STATE BOARD OF CONTROL OF THE STATE OF CALIFORNIA
9 AND THE SACRAMENTO CITY COUNCIL

10 In the Matter of the Claim of)
11 MARY FARRELL)
12 Against Sacramento City Police)
13 Department, the City of)
14 Sacramento, the California)
15 Parole Board, and the State of)
16 California.)

APPLICATION FOR LEAVE TO
PRESENT LATE CLAIM

FILED
By the City Council
Office of the City Clerk

16 TO: CALIFORNIA STATE BOARD OF CONTROL
17 and
18 SACRAMENTO CITY COUNCIL

DEC 21 1982

18 I
19 Application is hereby made for leave to present a late
20 claim under Section 911.4 of the Government Code. The claim is
21 founded on a cause of action for personal injury, which accrued on
22 or about July 16, 1982, and for which a claim was not timely pre-
23 sented. For additional circumstances relating to the cause of
24 action, reference is made to the proposed claim attached hereto as
25 Exhibit "A" and made a part hereof.

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II

The reason for the delay in presenting this claim is the mistake, inadvertence, surprise, and excusable neglect of the claimant as more particularly shown in the declaration of MARY FARRELL attached hereto. Neither the Sacramento City Police Department, the California Corrections Department, nor the State of California are prejudiced by the failure to timely file the claim as shown by the declaration of MARY FARRELL attached hereto as Exhibit "B" and made a part hereof.

III

This application is presented within a reasonable time after the accrual of the cause of action as shown by the declaration of MARY FARRELL, attached hereto as Exhibit "B" and made a part hereof.

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: November 24, 1982.

sj DAVID M. YORTON

DAVID M. YORTON
Attorney for Claimant

1 DAVID M. YORTON
2 2845 Marconi Avenue
3 Sacramento, California 95821
4 Telephone: (916) 485-5131

5 Attorney for Claimant

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BEFORE THE STATE BOARD OF CONTROL OF THE STATE OF CALIFORNIA
AND THE SACRAMENTO CITY COUNCIL ..

10 In the Matter of the Claim of)
11 MARY FARRELL)
12 Against Sacramento City Police)
13 Department, the City of)
14 Sacramento, the California)
15 Parole Board, and the State of)
California.)

PROPOSED CLAIM

16 TO: CALIFORNIA STATE BOARD OF CONTROL
17 and
SACRAMENTO CITY COUNCIL

18 MARY FARRELL hereby makes claim against the above-
19 entitled entities for the sum of \$150,000.00, and makes the
20 following statements in support of the claim:

21 1. Claimant's post office address is 5110 64th Street,
22 Sacramento, California 95820.

23 2. Notes concerning the claim should be sent to
24 DAVID M. YORTON, Attorney at Law, 2845 Marconi Avenue, Sacramento,
25 California 95821.

26 3. The date and place of the incident giving rise to the

1 claim are July 16, 1982 at 5117 T Street, Sacramento, California.

2 4. The circumstances giving rise to this claim are as
3 follows: On or about July 16, 1982, at approximately 2:00 P.M.,
4 at 5117 T Street, Sacramento, California, Claimant was awakened by
5 a pounding noise on the front door of her residence. The man
6 facing her was not a uniformed police officer, would not identify
7 himself, yet he demanded admittance to Claimant's residence.
8 Claimant refused to allow the unknown man into her home.

9 The man, for the first time, identified himself
10 as a police officer and placed his hand through the screen
11 door separating Claimant from him, opened the screen door, and
12 entered Claimant's residence.

13 Without explanation or charge, Claimant was then
14 handcuffed, and placed under arrest.

15 The arresting officer placed the handcuffs on
16 Claimant's hands with such excessive force as to cause Claimant
17 to cry out in pain and aggravation. Claimant pleaded with the
18 arresting officer and the parole officer to loosen the handcuffs.
19 Both acknowledged that Claimant was enduring pain, but refused
20 to loosen the handcuffs.

21 Claimant was then led around the inside of her
22 residence and the outer yard of her residence, while the arresting
23 officer twisted the chain connecting the handcuffs.

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1 Claimant was then placed in the rear seat of the patrol
2 car forcing her to sit upon her cuffed wrists causing further
3 aggravation to her already painful wrists.

4 Approximately two to two and one half hours after her
5 arrest, Claimant pleaded with an unidentified uniformed officer
6 at the scene of the arrest to loosen the handcuffs. This uniformed
7 officer agreed that the handcuffs were on too tight and loosened
8 their grip.

9 On or about July 17, 1982, Claimant visited Dr. Mark
10 O. Herring, M.D., Department of Neurology, U. C. Medical Center,
11 Sacramento, California, to obtain a diagnosis and treatment for
12 her continuing pain, numbness and inability to function her right
13 hand.

14 Particularly, the arresting officer's use of excessive
15 force in the tightening of the handcuffs, the pulling and tugging
16 of the chain connecting the handcuffs, and failure of the arresting
17 officer or the parole officer to loosen the said handcuffs after
18 the Claimant prayed for them to do so constitute acts on the part
19 of public officers, servants and employees causing the injury to
20 Claimant.

21 The names of the Sacramento City Police Officer and
22 State Parole Officer are unknown at the time pending the subpoena
23 and receipt of the police report filed concerning the above-
24 described incident.

25 5. More detailed information concerning the nature and
26 extent of Claimant's injury will be ascertained from Dr. Mark O.

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Herring.

6. Claimant's injuries consist of damage to her wrists and fingers. Claimant is still under treatment.

7. The Claimant's claim as of the date hereof is \$150,000.00 general damage, plus special damages.

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

Medical expenses warranted to date: As yet to be ascertained.

Estimated medical expenses: As yet to be ascertained.

Loss of wages to date: As yet to be ascertained.

General damages: \$150,000.00.

Total: _____

Executed under penalty of perjury this 24th day of November, 1982.

s/ Mary Farrell
MARY FARRELL

1 DAVID M. YORTON
2 2845 Marconi Avenue
3 Sacramento, California 95821
4 Telephone: (916) 485-5131

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8 Attorney for Claimant

9 BEFORE THE STATE BOARD OF CONTROL OF THE STATE OF CALIFORNIA
10 AND THE SACRAMENTO CITY COUNCIL

11 In the Matter of the Claim of)
12 MARY FARRELL)
13 Against Sacramento City Police)
14 Department, the City of)
15 Sacramento, and California)
16 Parole Board, and the State of)
17 California.)

DECLARATION OF MARY FARRELL

18 I, MARY FARRELL, hereby declare, under penalty of
19 perjury, as follows:

20 I am a resident of the County of Sacramento.

21 I was placed under arrest and subsequently handcuffed on
22 or about July 16, 1982. Reference is made to the attached proposed
23 claim for further details.

24 At this time the handcuffs were used with excessive force
25 causing pain and suffering to both wrists.

26 On or about July 17, 1982, I visited Dr. Mark O.
Herring, M.D., Department of Neurology, U. C. Medical Center,
Sacramento, California.

1 I am presently under the continuing care and medical
2 supervision of Dr. Mark O. Herring, M.D.

3 I am unfamiliar with the legal process, proceedings and
4 statutory limitations applicable thereto.

5 I have never been arrested before the aforementioned
6 incident on July 16, 1982.

7 After the July 16, 1982 arrest, I was unable to adequately
8 perform normal tasks requiring normal use of the wrists,
9 causing an inability to maintain my employment as a secretary, cook
10 dinner for my family, and caused complete disorientation of my
11 lifestyle.

12 The criminal proceedings in the above-mentioned incident
13 continued until August 4, 1982.

14 Finally, I determined that the injury to my wrist may be
15 permanent, or at least continuing for a long period of time.
16 I contacted my attorney, David M. Yorton, on November 16, 1982, and
17 he advised me of my legal rights in the present action.

18 No public entity involved is prejudiced as this type of
19 action can be investigated with the same precision and completeness
20 as it could before the running of the one hundred day claim period.

21 The police report in the above-mentioned incident is in
22 the Sacramento City police records. Claimant must pursue discovery
23 proceedings to acquire a copy thereof.

24 Claimant's minor delay in contacting attorney, David M.
25 Yorton, was not excessive or unreasonable in light of the traumatic
26 experience Claimant underwent in this incident, the duration of the

1 criminal proceeding, the continuing medical treatment, the loss of
2 her employment, the continuing need to find alternative employment,
3 and the complete disruption of her family and social life there-
4 from.

5 Executed under penalty of perjury this 24th day of
6 November, 1982 at Sacramento, California.

7
8 s/ Mary Farrell
9 MARY FARRELL

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January 4, 1983

David M. Yorton
Attorney at Law
2845 Marconi Avenue
Sacramento, CA 95821

RE: APPLICATION TO FILE A LATE CLAIM ON BEHALF OF MARY FARRELL.
DATE OF ALLEGED INCIDENT: JULY 16, 1982

Dear Yorton:

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 December 21, 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/13
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.