

12A

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. KOBEY, JR.
Assistant City Attorney
SAMUEL L. JACKSON
WILLIAM P. CARNAZZO
LAWRENCE M. LUNARDINI
DIANE B. BALTER
RICHARD F. ANTOINE
Deputy City Attorneys

September 11, 1984

APPROVED
BY THE CITY COUNCIL

SEP 25 1984

Approved

OFFICE OF THE
CITY CLERK

Honorable City Council
Council Chamber
City Hall, 915 I Street
Sacramento, CA 95814

RE: LATE CLAIM APPLICATION OF DESIREE LANGTON BY AND
THROUGH HER GUARDIAN AD LITEM, DOROTHY LANGTON

Honorable Members in Session:

SUMMARY

Desiree Langton by and through her guardian ad litem has applied for leave to present a late claim. We are of the opinion that her application does fall within those circumstances under which relief must be granted.

BACKGROUND

Desiree Langton has applied for leave to present a late claim. Her claim would seek damages allegedly suffered as the result of wrongfully being made a ward of the court and subsequently placed in a county home. 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 November 11, 1983 and the 100-day filing period expired on or about February 19, 1984. Her claim was filed in August 1984 and her late claim application was presented on September 1, 1984.

The application states that a timely claim was not filed because of mistake, inadvertence, surprise and excusable neglect.

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 (Government Code Section 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 Section 911.4(b).

Honorable City Council

-2-

September 11, 1984

Because Desiree Langton is a minor, the only issue remaining for determination on her application is whether the application was presented within a reasonable time (not to exceed one year). Tammen v. San Diego (1967) 66 C.2d 468, 479; William v. Mariposa Sch. Dist. (1978) 82 C.A.3d 843, 851.

The courts have uniformly held that in the case of minors, "a reasonable time not to exceed one year" generally equates to any time within one year. Because Desiree's application is within the one year period, it must be granted.

RECOMMENDATION

For the foregoing reasons, it is recommended that the application of Desiree Langton, a minor by and through her guardian ad litem, Dorothy Langton for leave to present a late claim be granted, and the claim be referred to the City's claim adjuster for evaluation and recommendation.

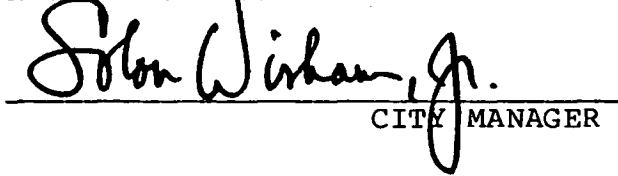
Very truly yours,

JAMES P. JACKSON
City Attorney



RICHARD F. ANTOINE
Deputy City Attorney

RECOMMENDATION APPROVED:


CITY MANAGER

September 25, 1984
All Districts

126

CITY OF SACRAMENTO



DEPARTMENT OF LAW
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September 11, 1984

Honorable City Council
Council Chamber
City Hall, 915 I Street
Sacramento, CA 95814

APPROVED
BY THE CITY COUNCIL
SEP 26 1984 *Denied*
OFFICE OF THE
CITY CLERK

RE: LATE CLAIM APPLICATION OF DOROTHY AND
MICHAEL LANGTON

Honorable Members in Session:

SUMMARY

Dorothy Langton and Michael Langton have applied for leave to present a late claim. We are of the opinion that their application does not fall within those circumstances under which relief must be granted.

BACKGROUND

Dorothy Langton and Michael Langton have applied for leave to present a late claim. Their claim seeks damages for false 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 November 11, 1983 and the 100-day filing period expired on or about February 19, 1984. Their claim was filed in August 1984 and their late claim application was presented on September 1, 1984.

The application states that a timely claim was not filed because all injured parties assumed Government Code § 945.3 tolled the claims presentation requirements while criminal charges were pending against claimants.

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 Section 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 v. State (1971) 39 C.A.3d 844; El Dorado Irr. Dist. v. Superior Court (1979) 98 C.A.3d 57. It does not appear to us that this standard has been met in the instant case.

Applicants apparently consulted their attorney regarding the accident well before the 100-day filing period had expired. Applicants' attorney is held to be familiar with the claim filing requirements and the procedure for presenting a late claim application.

Government Code § 945.3, contrary to applicants' belief, in pertinent part expressly provides:

Nothing in this section shall prohibit the filing of a claim with the board of a public entity, and this section shall not extend the time within which a claim is required to be presented pursuant to § 911.2 (emphasis added).

The fact that the attorney initially consulted by applicants did not inform them of the potential action against the City is not a proper basis for relief against the City. Tammen v. San Diego (1966) 66 C.2d 468, 478.

The actual or potential pendency of criminal proceedings does not excuse the failure to file a timely claim. Rivera v. City of Carson (1981) 117 C.A.3d 718, 724-725; County of Sacramento v. Superior Court (1980) 105 C.A.3d 898, 905; Goodhue v. Turead (1979) 100 C.A.3d 205.

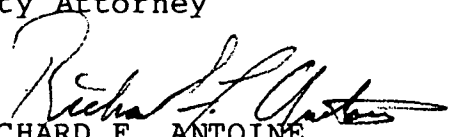
Under the circumstances, we cannot agree that the failure to file a timely claim was due to the mistake, inadvertence, surprise or excusable neglect of a reasonably diligent or prudent person. Roberts v. State, supra; Tsingaris v. State (1979) 91 C.A.3d 312; City of Fresno v. Superior Court (1980) 104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

RECOMMENDATION

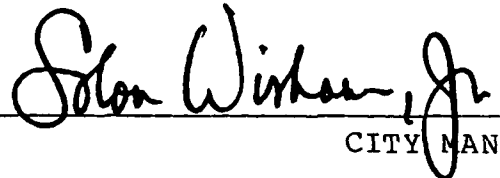
For the foregoing reasons, it is recommended that the application of Dorothy Langton and Michael Langton for leave to present a late claim be denied.

Very truly yours,

JAMES P. JACKSON
City Attorney


RICHARD F. ANTOINE
Deputy City Attorney

RECOMMENDATION APPROVED:


CITY MANAGER

September 25, 1984
All Districts

121

Name of Claimant

Dorothy Langton and Michael Langton & Desiree Langton, minor

Name of Attorney

J. J. Goodwin

Law Offices of Rodney A. Klein

Address to which correspondence is sent (street address)

2300 Bell Executive Lane

City, State, Zip Code

Sacramento CA 95825

Dear

Mr. Goodwin

Date Submitted

09-01-84

Date of Loss

11-11-83

Location of Loss

Unknown

Description of loss or damage

Claimants are claiming false arrest and/or imprisonment.

Total amount of Claim

Unknown

Date rejected by Council

Date 45-day limit expires

10-16-84

Date deficiency letter sent

Reason for deficiency

Date Untimely letter sent

Date rejected by operations of law

35-day Follow Up Memorandum

10-06-84

Date Deficiency Letter Received

Date Rejected by Council Because Deficient Unanswered

Deficiency Letter - Follow Up Memorandum

Claim Received By Mail or in Person

M

Acknowledgement Letter Sent

Date Claim Settled By City

35-day Follow Up Memorandum Sent

Alpha Filing by Claimant's Name (Last, First then Middle Initial)

Langton, Dorothy and Michael and Desiree

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SEP 10 1984
CITY ATTORNEY'S OFFICE

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CITY CLERKS OFFICE
CITY OF SACRAMENTO

SEP 4 1 49 PM '84

J. J. GOODWIN
LAW OFFICES OF RODNEY A. KLEIN
2300 Bell Executive Lane
Sacramento, CA 95825
Tele: (916) 929-8424

Attorneys for Claimants

APPROVED
BY THE CITY COUNCIL

SEP 25 1984

Denied

OFFICE OF THE
CITY CLERK

DESIREE LANGTON, a minor,
by and through her Guardian
ad Litem, DOROTHY LANGTON,
and MICHAEL LANGTON and
DOROTHY LANGTON,

Claimants,

vs.

CITY OF SACRAMENTO,
COUNTY OF SACRAMENTO,

Respondents.

APPLICATION TO FILE
LATE CLAIM

DESIREE LANGTON, a minor, by and through her Guardian
ad Litem, DOROTHY LANGTON, and MICHAEL LANGTON and DOROTHY
LANGTON, hereby apply to the City of Sacramento for leave to
present a claim against said City, pursuant to §911.4 of the
California Government Code.

The causes of action for DESIREE LANGTON, DOROTHY LANGTON
and MICHAEL LANGTON arose on November 11, 1983 when Mr. and Mrs.
Langton were arrested and imprisoned and DESIREE LANGTON was
made a ward of the court and placed into a receiving home.
Mr. and Mrs. Langton were not prosecuted until May 31, 1984
at which time all charges against them were dropped.

Under provisions of Government Code §911.6(b)(2), the

1 City is required to grant this application because DESIREE
2 LANGTON, one of the persons who has sustained an injury,
3 damage or loss, was a minor during all of the time specified
4 in §911.2 for the presentation of the claim and no guardian ad
5 litem had been appointed. See David L. vs. County of Riverside
6 (1983) 140 Cal.App.3d 282.

7 With respect to the claims of DOROTHY and MICHAEL LANGTON,
8 their failure to file within 100 days of their imprisonment
9 was through mistake, inadvertence, surprise or excusable
10 neglect and the City of Sacramento has not been prejudiced by
11 their failure to present the claim within the time specified
12 in §911.2.

13 DOROTHY and MICHAEL LANGTON as well as their attorney,
14 the Sacramento County Public Defender, were under the mistaken
15 belief that they could not bring their action until all charges
16 against them had been dropped on May 31, 1984. Further all
17 injured parties were acting under the assumption that Government
18 Code §945.3 tolled the statute of limitations for filing and
19 prosecuting claims against the City and County of Sacramento.
20 If Mr. and Mrs. Langton are in fact prevented from filing their
21 claim against the City of Sacramento it is due to the malpractice
22 committed by Sue Evans of the Sacramento County Public
23 Defender's Office in not protecting the 100 day claim statute.
24 If this application is denied, an amendment will be made to the
25 Claim filed with the County of Sacramento to include a cause
26 of action for legal malpractice.

27 In any event, DOROTHY and MICHAEL LANGTON filed their
28 Claim within 100 days of having charges dropped against them.

RECEIVED
CITY OF SACRAMENTO
OFFICE OF THE PUBLIC DEFENDER

1 false imprisonment requires that the imprisonment be committed
2 without adequate cause or justification. It was not until the
3 preliminary hearing on May 31, 1984 that DOROTHY and MICHAEL
4 LANGTON learned that there was not and never was adequate
5 justification for their arrest and for the arrest of their
6 minor daughter. At the preliminary hearing it was first
7 learned that the City and County of Sacramento had arrested
8 and prosecuted them for the death of their son because they
9 had a messy house. It was also learned at that time that a
10 pathologist had determined that the cause of death of their
11 son was various birth defects, not any mistreatment by claimants.

12 Obviously, claimants cannot file a Claim in good faith
13 until they can meet the elements of proof for false
14 imprisonment. Those elements were not known until the charges
15 were dismissed.

16 Claimant DESIREE LANGTON, a minor, has an absolute right
17 to bring this action and is entitled by law to file this
18 Claim. DOROTHY and MICHAEL LANGTON, her parents, equally
19 should be allowed to file their claim for the reasons stated
20 above.

21 DATED: August 31, 1984

LAW OFFICES OF RODNEY A. KLEIN

22 By: 

J. J. GOODWIN

Attorneys for Claimants

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CITY CLERKS OFFICE
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PROOF OF SERVICE BY MAIL TO:

Clerk, City Council
City Hall
915 I Street
Sacramento, CA 95814

Clerk, Board of Supervisors
700 H Street, Suite 2450
Sacramento, CA 95814

DECLARATION OF SERVICE
BY MAIL

I am a citizen of the United States and a resident of Sacramento County, California. I am over the age of eighteen years and not a party to the within captioned and captioned party's business address is 1100 Bell Executive Lane, Sacramento, CA 95825. On the date I served the foregoing documents by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in the United States post office mailbox at Sacramento, California, addressed in the manner set forth immediately above this declaration.

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

Dated at Sacramento, California on 8-31-84

Joe K...

RECEIVED
CITY CLERKS OFFICE
CITY OF SACRAMENTO
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J. J. GOODWIN
LAW OFFICES OF RODNEY A. KLEIN
2300 Bell Executive Lane
Sacramento, CA 95825
Tele: (916) 929-8424

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CITY CLERKS OFFICE
CITY OF SACRAMENTO
SEP 4 1 49 PM '84

APPROVED
BY THE CITY COUNCIL
SEP 25 1984
OFFICE OF THE
CITY CLERK
Approved

Attorneys for Claimants

DESIREE LANGTON, a minor,
by and through her Guardian
ad Litem, DOROTHY LANGTON,
and MICHAEL LANGTON and
DOROTHY LANGTON,

Claimants,

vs.

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COUNTY OF SACRAMENTO,

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RECEIVED
CITY CLERK'S OFFICE
SEP 11 1984

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21 DATED: August 31, 1984

LAW OFFICES OF RODNEY A. KLEIN

22 By: 

J. J. GOODWIN

Attorneys for Claimants

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CITY OF SACRAMENTO
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Clerk, Board of Supervisors
700 H Street, Suite 2450
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DECLARATION OF SERVICE
BY MAIL

I am a citizen of the United States of America, a resident of Sacramento, California, and over the age of eighteen years and not a party to the within above entitled action. My business address is 1100 Bell Executive Lane, Sacramento, CA 95211. On the date I served the foregoing documents by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in the United States post office mailbox at Sacramento, California, addressed in the manner set forth immediately above this declaration.

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

Dated at Sacramento, California on 8-31-84

Joe Kuen

RECEIVED
CITY CLERK'S OFFICE
CITY OF SACRAMENTO
SEP 4 1 49 PM '84

Name of Claimant

Dorothy Langton and Michael Langton ~~& Desiree Langton, minor~~

Name of Attorney

J. J. Goodwin

Law Offices of Rodney A. Klein

Address to which correspondence is sent (street address)

2300 Bell Executive Lane

City, State, Zip Code

Sacramento CA 95825

Dear

Mr. Goodwin

Date Submitted

09-01-85

Date of Loss

11-11-83

Location of Loss

Unknown

Description of loss or damage

Claimants are claiming false arrest and/or imprisonment.

Total amount of Claim

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09-25-84

Date 45-day limit expires

10-16-84

Date deficiency letter sent

Reason for deficiency

Date Untimely letter sent

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35-day Follow Up Memorandum

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Deficiency Letter - Follow Up Memorandum

Claim Received By Mail or in Person

M

Acknowledgement Letter Sent

Date Claim Settled By City

35-day Follow Up Memorandum Sent

Alpha Filing by Claimant's Name (Last, First then Middle Initial)

Langton, Dorothy and Michael ~~and Desiree~~

*item # 12
Council denied this
claim & accepted claim
for Desiree. ~~Original~~
~~paperwork~~
Desiree was pulled off
this claim & one set
up for her, along
with original
paperwork.
mlb*

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CITY OF SACRAMENTO

SEP 4 1 49 PM '84

1 J. J. GOODWIN
2 LAW OFFICES OF RODNEY A. KLEIN
3 2300 Bell Executive Lane
4 Sacramento, CA 95825
5 Tele: (916) 929-8424

6 Attorneys for Claimants

7
8 DESIREE LANGTON, a minor,) APPLICATION TO FILE
9 by and through her Guardian) LATE CLAIM
10 ad Litem, DOROTHY LANGTON,)
11 and MICHAEL LANGTON and)
12 DOROTHY LANGTON,)
13)
14 Claimants,)
15 vs.)
16)
17 CITY OF SACRAMENTO,)
18 COUNTY OF SACRAMENTO,)
19)
20 Respondents.)
21)
22)

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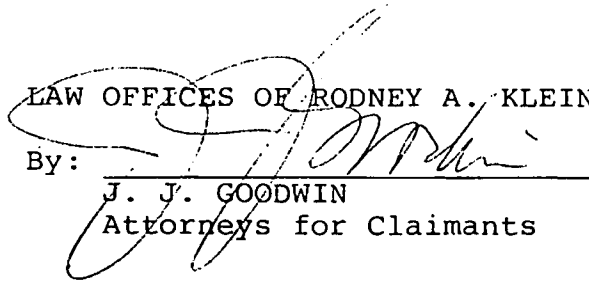
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CITY CLERKS OFFICE
CITY OF SACRAMENTO
SEP 14 1984

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21 DATED: August 31, 1984

LAW OFFICES OF RODNEY A. KLEIN
By: 
J. J. GOODWIN
Attorneys for Claimants

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RECEIVED
CITY CLERKS OFFICE
CITY OF SACRAMENTO
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PROOF OF SERVICE BY MAIL TO:

Clerk, City Council
City Hall
915 I Street
Sacramento, CA 95814

Clerk, Board of Supervisors
700 H Street, Suite 2450
Sacramento, CA 95814

DECLARATION OF SERVICE
BY MAIL

I am a citizen of the United States and a resident of Sacramento, California. I have caused to be deposited in the United States Post Office at Sacramento, California, a copy of the foregoing document addressed to the Clerk of the Board of Supervisors, 700 H Street, Suite 2450, Sacramento, California, and I have caused the foregoing document to be placed in a sealed envelope with postage thereon fully prepaid in the United States post office and has at Sacramento, California, addressed in the manner set forth immediately above this declaration.

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

Dated at Sacramento, California 8-21-84.

John K. ...

RECEIVED
CITY CLERKS OFFICE
CITY OF SACRAMENTO
SEP 4 1 49 PM '84

September 28, 1984

J. J. Goodwin
Law Offices of Rodney A. Klein
2300 Bell Executive Lane
Sacramento, CA 95825

RE: APPLICATION TO FILE A LATE CLAIM ON BEHALF OF Desiree Langton, DATE OF
ALLEGED INCIDENT: November 11, 1983

Dear Mr. Goodwin:

Notice is hereby given that the following application for leave to present a late claim was allowed on September 25, 1984. Upon allowance of the late filing the City Council thereupon referred said claim to the City's claims representative, Adjustco, Inc., 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 an unknown amount for alleged damages occurring when the claimant was made a ward of the court and placed into a receiving home, and allegedly occurring on or about November 11, 1983.

Sincerely,

LORRAINE MAGANA
CITY CLERK

Anne Mason
Assistant City Clerk

LM/kmn/12A

cc: Risk Management

September 28, 1984

J. J. Goodwin
Law Offices of Rodney A. Klein
2300 Bell Executive Lane
Sacramento, CA 95825

RE: APPLICATION TO FILE A LATE CLAIM ON BEHALF OF Dorothy Langton and Michael
Langton.
DATE OF ALLEGED INCIDENT: November 11, 1983

Dear Mr. Goodwin:

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 25, 1984.

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

Anne Mason
Assistant City Clerk

LM/kmn/12B

cc: City Attorney

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.

Name of Claimant

Dorothy and Michael Langton

Name of Attorney

J. J. Goodwin,
Law Offices of Rodney A. Klein

Address to which correspondence is sent (street address)

2300 Bell Executive Lane

City, State, Zip Code

Sacramento CA 95825

Dear

Mr. Goodwin

Date Submitted

09-01-84

Date of Loss

11-11-83

Location of Loss

Unknown

Description of loss or damage

claimants are claiming false arrest and/or imprisonment.

Total amount of Claim

Unknown

Date Denied by Council

09-25-84

Date 45-day limit expires

10-16-84

Date deficiency letter sent

Reason for deficiency

Date rejected by operations of law

35-day Follow Up Memorandum

10-06-84

Date Deficiency Letter Received

Date Rejected by Council Because Deficient Unanswered

Deficiency Letter - Follow Up Memorandum

Claim Received By Mail or in Person

M

Acknowledgement Letter Sent

Date Claim Approved By Council

35-day Follow Up Memorandum Sent

Alpha Filing by Claimant's Name (Last, First then Middle Initial)

Langton, Dorothy and Michael