



CITY OF SACRAMENTO

CITY MANAGER'S OFFICE
RECEIVED
JUL 8 1980

JAMES P. JACKSON
CITY ATTORNEY
THEODORE H. KOBEY, JR.
ASSISTANT CITY ATTORNEY
LELIAND J. SAVAGE
DAVID BENJAMIN
SAM JACKSON
WILLIAM P. CARNAZZO
SABINA ANN GILBERT
STEPHEN B. NOCITA
DEPUTY CITY ATTORNEYS

DEPARTMENT OF LAW
812 TENTH ST. SACRAMENTO, CALIF. 95814
SUITE 201 TELEPHONE (916) 449-5346

July 8, 1980

Honorable City Council
Council Chamber
City Hall
Sacramento, California 98514

RE: LATE CLAIM APPLICATION - TIMMIE L. BELL **APPROVED**
BY THE CITY COUNCIL

Members in Session:

JUL 15 1980

SUMMARY

OFFICE OF THE
CITY CLERK

Timmie L. Bell has applied for leave to present a late claim. We are of the opinion that the application falls within those circumstances under which relief must be granted.

BACKGROUND

Mr. Bell has applied for leave to present a late claim. The claim seeks damages for the loss of property allegedly resulting from an improperly conducted search of his business by police investigating a burglary, and undue publicity connected with the investigation.

Government Code Section 911.2 provides that a claim for damages based upon injury to persons or to personal property shall be presented within 100 days of the accrual of the cause of action. Applicant's causes of action accrued on January 10, 1980, the date of the alleged incident. The 100-day filing period expired on or about April 19, 1980. The claim and late claim were submitted on June 25, 1980, more than nine weeks late.

The application states that the failure to file a timely claim was due to the matter being mishandled by applicant's attorney during reorganization of the law firm's staff and office procedure. Upon discovery of the error on June 20, 1980, the late claim application was promptly prepared and submitted.

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 reasonably under the circumstances (Roberts vs. State (1974) 39 C.A.3d 944; Tsingaris vs. State (1979) 91 C.A.3d 312).

Applicable state law indicates that this standard has been met in this case.

The courts have, generally speaking, held that calendaring and clerical errors within the law firm handling a claimant's case will constitute excusable neglect sufficient to allow the filing of a late claim (e.g., Lane vs. Greyhound (1947) 30 C.2d 914; Nilsson vs. City of Los Angeles (1967) 249 C.A.2d 976; Flores vs. Board of Supervisors (1970) 13 C.A.3d 480). The instant case appears to fall within this rule.

RECOMMENDATION

For the foregoing reasons it is recommended that the application of Timmie Bell for leave to present a late claim be granted, and the claim itself referred to the City's claims adjuster for evaluation and recommendation.

Very truly yours,

JAMES P. JACKSON
City Attorney

Stephen B. Nocita

STEPHEN B. NOCITA
Deputy City Attorney

RECOMMENDATION APPROVED:

William H. Edgan

Acting CITY MANAGER

SBN:GD
attachment

FILED
JAN 10 1980
SACRAMENTO
CALIFORNIA

In the matter of the
claim of TIMMIE L. BELL
against the CITY OF SACRAMENTO

Application for leave to
present late claim
[Gov. C §911.4]

TO: THE CITY OF SACRAMENTO.

1. Application is hereby made for leave to present a late claim under §911.4 of the Government Code. The claim is founded on a cause of action against the Sacramento County Sheriffs' Department, and the Sacramento City Police Department for tortious violation of §2805(c) of the California Vehicle Code, causing an unwarranted, vexatious, and malicious interference with the personal privacy of the applicant, rendering and subjecting him to public ridicule, embarrassment, and implications that he was and is a common criminal. This cause of action on January 10, 1980, and for which a claim was not timely filed. For additional circumstances relating to the cause of action, reference is made to the proposed claim attached hereto as Exhibit "A" and made a part hereof.

2. The reason for the delay in presenting this claim is the mistake, inadvertence, surprise and excusable neglect of the law firm of Stanley and Wing, Inc., who had been retained by the claimant TIMMIE L. BELL, in the matter. This is more particularly shown in the Declaration of Jerome S. Stanley attached hereto and made a part hereof. The City of Sacramento was not prejudiced by the failure to file timely the claim or shown by the aforesaid Declaration of Jerome S. Stanley attached hereto as Exhibit "B" and made a part hereof.

3. This application is presented within a reasonable time after the accrual of the cause of action as shown by the

Declaration of Jerome S. Stanley 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 §§912.4-912.8 of the Government Code:

Dated: June 24, 1980.

STANLEY & WING, INC.

BY:

JEROME S. STANLEY

CLAIM AGAINST THE
C I T Y O F S A C R A M E N T O

1. Name of Claimant: TIMMIE L. BELL

2. Claimant's Address: 6041 Auburn Blvd.
Citrus Heights, CA 95610

3. Post Office Address
To Which Notices Are
To Be Sent: Stanley & Wing Inc.
930 G Street, Suite 100
Sacramento, CA 95814

4. Date of Occurrence
Or Cause of Action: January 10, 1980

5. Place of Occurrence
Or Cause of Action: Tim's Custom Parts
6041 Auburn Blvd.
Citrus Heights, CA 95610

6. Describe Circumstances of Occurrence or Transaction Which Give Rise
To The Claim Asserted:

The Sacramento City Police officer conducted a search of claimant's place of business and while doing so inflicted upon claimant a tortious violation of §2805(c) of the California Vehicle Code. This caused an unwarranted, vexatious and malicious interference with the personal privacy of the claimant rendering and subjecting him to public ridicule by the news media, causing him grave embarrassment, shock, nervous injury, interference with and deprivation of his business, indicated that claimant was engaged in some type of criminal activity and subjected claimant to grave and serious humiliation and loss of business opportunities.

EXHIBIT A

7. Describe Indebtedness, Obligation, Damage or Loss Incurred As Far As It May Be Known At Time Of Presentation Of Claim:

Loss of motor parts by burglary resulting from the previous conduct of the police department in causing undue publicity to claimant. The amount of parts so burglarized was in the sum of \$11,500.00 as shown in the burglary report submitted to the Sacramento City Police Department.

8. Name of Public Employee(s) Causing Injury or Damage, If Known:

Police officers, names unknown at this time.

9. Amount of Claim:

\$11,500.00 for loss of property and \$1,000.00 for humiliation, shame, public ridicule, embarrassment and harassment.

Dated: June 20, 1980

STANLEY & WING INC.

JEROME S. STANLEY

By: _____
JEROME S. STANLEY
Attorney for Claimant

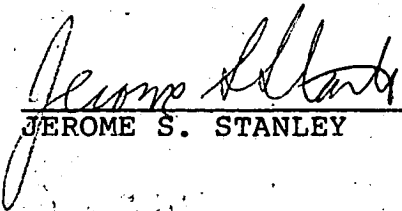
DECLARATION OF JEROME S. STANLEY

I, Jerome S. Stanley, do hereby declare under penalty of perjury as follows.

That I am an attorney at law in the State of California, and a member of the law firm of Stanley and Wing, Inc., Sacramento, California. That on or about the 10th day of February, 1980, my firm was retained by TIMMIE L. BELL, claimant in this matter to represent him in the presentment of this claim. Shortly thereafter my firm underwent a reorganization with several attorneys and law clerks, joining the firm. Through inadvertence and excusable neglect, this claim was thought to be under the supervision of one attorney, when in fact it was not, and as a result thereof, through office error, it was not timely calendared for filing.

As a result thereof the 100 day statutory requirement was missed during the latter part of April, 1980 and such mistake was not discovered until June 20, 1980. Affiant promptly took the necessary steps to file promptly this application for leave to present a late claim under Government Code §911.4. The City of Sacramento was not prejudiced by the failure to file timely the claims of TIMMIE L. BELL and this application is presented within a reasonable time after the accrual of the cause of action and immediately upon the discovery of the office mistake made by claimant's attorneys.

Executed at Sacramento, California on June 20, 1980.



JEROME S. STANLEY

EXHIBIT B

RECEIVED
CITY CLERK'S OFFICE
CITY OF SACRAMENTO
JUN 25 3 22 PM '80

In the matter of the
claim of TIMMIE L. BELL
against the CITY OF SACRAMENTO

Application for leave to
present late claim
[Gov. C §911.4]

TO: THE CITY OF SACRAMENTO

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3. This application is presented within a reasonable time after the accrual of the cause of action as shown by the

Declaration of Jerome S. Stanley 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 §§912.4-912.8 of the Government Code:

Dated: June 24, 1980.

STANLEY & WING, INC.

BY: JEROME S. STANLEY

JEROME S. STANLEY

RECEIVED
CITY CLERKS OFFICE
CITY OF SACRAMENTO
JUN 25 3 29 PM '80

CLAIM AGAINST THE
CITY OF SACRAMENTO

- 1. Name of Claimant: TIMMIE L. BELL
- 2. Claimant's Address: 6041 Auburn Blvd.
Citrus Heights, CA 95610
- 3. Post Office Address To Which Notices Are To Be Sent: Stanley & Wing Inc.
930 G Street, Suite 100
Sacramento, CA 95814
- 4. Date of Occurrence Or Cause of Action: January 10, 1980
- 5. Place of Occurrence Or Cause of Action: Tim's Custom Parts
6041 Auburn Blvd.
Citrus Heights, CA 95610
- 6. Describe Circumstances of Occurrence or Transaction Which Give Rise To The Claim Asserted:

The Sacramento City Police officer conducted a search of claimant's place of business and while doing so inflicted upon claimant a tortious violation of §2805(c) of the California Vehicle Code. This caused an unwarranted, vexatious and malicious interference with the personal privacy of the claimant rendering and subjecting him to public ridicule by the news media, causing him grave embarrassment, shock, nervous injury, interference with and deprivation of his business, indicated that claimant was engaged in some type of criminal activity and subjected claimant to grave and serious humiliation and loss of business opportunities.

7. Describe Indebtedness, Obligation, Damage or Loss Incurred As Far As It May Be Known At Time Of Presentation Of Claim:

Loss of motor parts by burglary resulting from the previous conduct of the police department in causing undue publicity to claimant. The amount of parts so burglarized was in the sum of \$11,500.00 as shown in the burglary report submitted to the Sacramento City Police Department.

8. Name of Public Employee(s) Causing Injury or Damage, If Known:

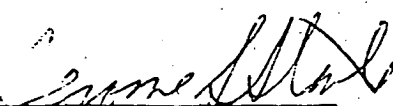
Police officers, names unknown at this time.

9. Amount of Claim:

\$11,500.00 for loss of property and \$1,000.00 for humiliation, shame, public ridicule, embarrassment and harassment.

Dated: June 20, 1980

STANLEY & WING INC.

By: 
JEROME S. STANLEY
Attorney for Claimant

DECLARATION OF JEROME S. STANLEY

I, Jerome S. Stanley, do hereby declare under penalty of perjury as follows.

That I am an attorney at law in the State of California, and a member of the law firm of Stanley and Wing, Inc., Sacramento, California. That on or about the 10th day of February, 1980, my firm was retained by TIMMIE L. BELL, claimant in this matter to represent him in the presentment of this claim. Shortly thereafter my firm underwent a reorganization with several attorneys and law clerks, joining the firm. Through inadvertence and excusable neglect, this claim was thought to be under the supervision of one attorney, when in fact it was not, and as a result thereof, through office error, it was not timely calendared for filing.

As a result thereof the 100 day statutory requirement was missed during the latter part of April, 1980 and such mistake was not discovered until June 20, 1980. Affiant promptly took the necessary steps to file promptly this application for leave to present a late claim under Government Code §911.4. The City of Sacramento was not prejudiced by the failure to file timely the claims of TIMMIE L. BELL and this application is presented within a reasonable time after the accrual of the cause of action and immediately upon the discovery of the office mistake made by claimant's attorneys.

Executed at Sacramento, California on June 20, 1980.

JEROME S. STANLEY

JEROME S. STANLEY

EXHIBIT B



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

July 16, 1980

Mr. Jerome S. Stanley
Stanley & Wing, Inc.
Attorneys at Law
930 G Street, Suite 100
Sacramento, CA 95814

Dear Mr. Stanley:

Notice is hereby given that the following application for leave to present a late claim was allowed on July 15, 1980. Upon allowance of the late filing the City Council thereupon referred said claim to the City's Claims Adjuster, Brown Brothers Adjusters, 1451 River Park Drive, Suite 251, Sacramento, CA 95815, telephone number (916) 920-4392, for review and recommendations. You will be advised of the claims disposition within 45 days.

Claim submitted by you on behalf of Timmie L. Bell in the amount of \$11,500.00 for loss of motor parts by burglary resulting from previous conduct of Police Department in causing undue publicity to claimant, and \$1,000.00 for humiliation, shame, public ridicule, embarrassment and harassment, and allegedly occurred on January 10, 1980.

Sincerely,

Lorraine Magana
City Clerk

LM:sj

cc: City Attorney
Finance Administration (2)

Att.

cc - de

Item No. 25