22

CITY OF SACRAMENTO

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

CITY MANAGER'S OFFICE
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SEP 4 1980

JAMES P. JACKSON
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DAVID BENJAMIN
SAM JACKSON
WILLIAM P. CARNAZZO
SABINA ANN GILBERT
STEPHEN B. NOCITA
DEPUTY CITY ATTORNEYS

August 27, 1980

REJECTED
BY THE CITY COUNCIL
OFFICE OF THE
CITY CLERK

Honorable City Council
Council Chamber
City Hall
Sacramento, California 95814

SEP 16 1980

RE: LATE CLAIM APPLICATION OF RONALD CAMERON

Member in Session:

SUMMARY

Ronald Cameron 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

Mr. Cameron has applied for leave to present a late claim. The claim seeks damages for an alleged assault and battery, false arrest and imprisonment.

Government Code §911.2 provides that a claim based upon alleged injuries to person shall be presented within 100 days of the accrual of the cause of action. Based upon the facts stated in the application, applicant's cause of action accrued on February 1, 1980. The 100-day filing period expired on or about May 11, 1980. The claim and late claim applications were presented on August 25, 1980, more than three months late.

Applicant contends that he made a diligent effort to determine the claim filing period, but was erroneously advised by his prior attorney that the claim filing period was 150 days.

ANALYSIS

A person seeking to file a late claim must show that the failure to file a late claim was due to mistake, inadvertence, surprise or excusable neglect (Government Code §911.6(b)(1)). However, in order to obtain relief on any of these grounds it must appear that the applicant acted reasonably under the circumstances (Roberts v. State

(1974) 39 Cal.App.3d 844; Tsingaris v. State (1979) 91 Cal.App.3d 312). It appears to us that this standard has not been met in this case.

It is well settled that ignorance of the claim filing requirement and the 100-day filing period is not a sufficient basis for relief from the claim filing requirement (Roberts V. State, supra; Tsingaris v. State, supra). Moreover, the general rule is that a client is chargeable with the errors and omissions of his attorney, other than mere clerical errors (e.g., Clark vs. City of Compton (1971) 22 Cal. App.3d 522, 528).

Even assuming that the erroneous advice of counsel might, in certain instances, excuse the failure to file a timely claim, it would not do so in this case because applicant's failure to file a timely claim cannot fairly be attributed to the erroneous advice he claims to have received. That is, applicant claims he was mistakenly told he had 150 days to file his claim; however, he did not file his claim until over 200 days had elapsed.

Whatever the case might have been had applicant filed his claim within 150 days, his failure to file a claim until over 200 days had elapsed does not appear to have resulted from the mistake, inadvertence, surprise, or excusable neglect of a reasonable person under the circumstances (Roberts v. State, supra).

RECOMMENDATION

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

Very truly yours,

JAMES P. JACKSON
City Attorney

STEPHEN B. NOCITA
Deputy City Attorney

RECOMMENDATION APPROVED:

CITY MANAGER

SBN:mb

DATE RECEIVED	CLAIMANT'S NAME	DATE OF INCIDENT	RECEIVED BY MAIL	RECEIVED BY PERSON	LTR. SENT	CLAIM DISPO[SITION] DENIED	AC[...]
4-16-80	Sacto. Ambulance Services, Inc	2-14-80	X		Returned 4-22-80		
~~4-16-80~~	~~Darlene Holton - Relief to file late claim~~ 283083	~~7-25-77~~		~~X~~			
~~5-7-80~~	~~Guadalupe Ortega Garza~~ ~~191459~~	~~4-28-79~~		X			
5-13-80	Francisco V. Luna	1-20-80		X		6-4-80	
5-22-80	Herbert Brown — Summons [illegible]	12-21-79	X			6-10-80	
5-28-80	Robert P. Barraza, Lupe Barraza, and Nancy Barraza SEE CLAIMS	10-26-79 7-5-79		X			(6-[...]
6-6-80	Maureen, Lisa, & Kirk Marche SEE CLAIMS	2-9-80	X				(7-1[...]
6-12-80	Elsie M. Kelley	6-13-79	X		6-19-80	7-1-80	
6-25-80	Timmi Bell SEE CLAIMS	1-10-80	X				(7/1[...]
7-7-80	Richard La Grutta	7-21 thru 7-10-79	X			8-19-80	
7-10-80	Gunnar W. Ronnback	3-15-80		X		8-19-80	
8-25-80	Ronald Cameron (Peter R. Cabrera, Atty.)	2-1-80		X			
8-25-80	Larry Cameron (Peter R. Cabrera, Atty.)	2-1-80		X			

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CITY ATTORNEY'S OFFICE

CITY OF SACRAMENTO

OFFICE OF THE CITY CLERK
915 I STREET, SACRAMENTO, CALIFORNIA 95814
CITY HALL ROOM 203 TELEPHONE (916) 449-5426

LORRAINE MAGANA
CITY CLERK

September 18, 1980

Peter R. Cabrera
Attorney at Law
1007 - 7th Street, 5th Floor
Sacramento, CA 95814

RE: APPLICATION TO FILE A LATE CLAIM ON BEHALF OF LARRY CAMERON
DATE OF ALLEGED INCIDENT: February 1, 1980

Dear Sir:

You are hereby notified that your application for leave to present a late claim on behalf of Larry Cameron was denied by the Sacramento City Council on September 16, 1980.

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 that your application is rejected.

Very truly yours,

Lorraine Magana
City Clerk

LM/mm/21
cc: City Attorney
Finance Administration (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 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.