



CITY OF SACRAMENTO

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

CITY MANAGER'S OFFICE
RECEIVED
FEB 29 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

February 28, 1980

Honorable City Council
Council Chamber
City Hall
Sacramento, California

REJECTED
BY THE CITY COUNCIL
OFFICE OF THE
CITY CLERK

RE: LATE CLAIM APPLICATION OF GARY JUAREZ

MAR 11 1980

Members in Session:

SUMMARY

Gary Juarez 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. Juarez has applied for leave to present a late claim. The claim seeks damages for personal injuries and losses claimed to have been incurred as a result of an alleged false arrest, false imprisonment, assault and battery.

Government Code Section 911.2 provides that a claim for damages based upon personal injuries shall be presented within 100 days of the accrual of the cause of action. In this case applicant's cause of action had accrued by July 29, 1979, the date he was released from the allegedly illegal restraint. The 100-day filing period expired on or about November 6, 1979. The claim and late claim application were filed on February 1, 1980, approximately twelve weeks late.

The chronology of events pertinent to this application is as follows:

July 28, 1979, applicant is taken into custody, released July 29, 1979;

Applicant first consults with his former attorney regarding the incident;

September 21, 1979 - October 15, 1979, this (former) attorney moves his office to new location and then is compelled to move a

MAR 11 1980

a second time due to conflicts within the office. During the second move the file on applicant's case is temporarily misplaced;

October 15, 1979 - November 6, 1979, former attorney becomes ill, confined to home except for scheduled court appearances;

November 6, 1979, 100-day period expires;

November 6 - 10, 1979, former attorney is patient at intensive care unit of Medical Center. His condition requires subsequent hospitalization in December, 1979, for major surgery;

November 15, 1979, former attorney contacts present attorney, explains anticipated hospitalization, and requests that present attorney assume applicant's case.

November 28, 1979, applicant consults with and retains present attorney;

February 1, 1980, application for leave to present late claim is submitted.

ANALYSIS

A person seeking to file a late claim must show that the failure to file a 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 such grounds it must appear that the applicant acted reasonably under the circumstances (Roberts v. State of California (1974) Cal. App.3d 844. It appears to us that the standard has not been met in this case.

A portion of the delay in filing the claim is attributable to circumstances beyond the control of claimant and his counsel. The period of October 15 - November 28, 1979, appears clearly attributable to the illness which struck applicant's counsel. While not every illness will justify default of an extended duration (see e.g., Kalmus v. Kalmus (19) 103 Cal.App.2d 405), it appears to us that an illness of rapid onset, confining symptomology, and major severity such as suffered by applicant's former counsel falls within the realm of excusable neglect sufficient to justify the failure to file a claim during that period (Transit Ads. Inc. v. Tanner Motor Livery Ltd. (1969) 27 Cal.App.2d 275).

A more difficult problem is the delay from November 28, 1979, when applicant's present attorney was retained, to February 1, 1980, when the claim was first presented. From the application it appears that this period was utilized by applicant's present counsel to undertake an investigation of the incident to determine if applicant had "a justifiable claim."

The question is whether applicant and his attorney, knowing the time limitations upon presenting the claim, acted reasonably in delaying the filing of the claim for nine more weeks in order to undertake the investigation.

It must be observed that applicant's present attorney was, by November 28, 1979, aware that potential causes of action existed for false arrest, false imprisonment, assault and battery, and was aware (or is held to have been aware) that the period for filing a timely claim had already lapsed and that expediency was necessary in the pursuit and presentation of the present application. He nevertheless delayed nine weeks in presenting the claim, apparently to investigate further the facts supporting the claim.

In our opinion the critical fact is that this investigation was not necessary to presenting the application and claim. Viewed in this light it appears to us that the delay from November 28, 1979, to February 1, 1980, was not a reasonable one, nor one demonstrating reasonable prudence in pursuing the claim under the circumstances (e.g., the filing period had already elapsed), Tammen vs. San Diego (1966) 66 Cal.2d 486.

RECOMMENDATION

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

Very truly yours,

JAMES P. JACKSON
City Attorney

Stephen B. Nocita

STEPHEN B. NOCITA
Deputy City Attorney

RECOMMENDATION APPROVED:

Walter J. Slize

CITY MANAGER

SBN:GD



CITY OF SACRAMENTO

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

RECEIVED

LORRAINE MAGANA
CITY CLERK

FEB 4 1980

CITY ATTORNEY'S OFFICE

MEMORANDUM

TO:

FROM:

RE: Gary Juarez (late claim) 7-28-79
Name of Claimant and Date of Accident

Enclosed is a copy of the claim which was received by the Sacramento City Clerk on 2-1-80. The enclosed document was served on date

on the City as follows:

- Personal service
 Received in mail

DATED: 2-1-80

LORRAINE MAGANA
CITY CLERK

BY: Javier Licon

FEB 1 9 49 AM '00

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LAW OFFICES OF
CLIFFORD E. TEDMON
2717 Cottage Way, Suite 20
Sacramento, California 95825
Telephone: (916) 481-5042

In the Matter of the)
Claim of GARY JUAREZ)
against THE CITY OF SACRAMENTO)

APPLICATION FOR LEAVE TO
PRESENT LATE CLAIM (Gov Code
Section 911.4)

TO The Sacramento City Council:

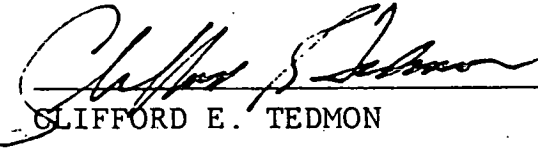
1. Application is hereby made for leave to present a late claim under Section 911.4 of the Government Code. The claim is founded on a cause of action for assault and battery by a police officer, and related events thereto, which accrued on July 28, 1979, and for which a claim was not timely presented. 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 Claimant's previous attorney, Wayne Stephenson, as more particularly shown in the declaration of Wayne Stephenson attached hereto. The City of Sacramento was not prejudiced by the failure to timely

1 file the claim as shown by the declaration of Wayne Stephenson
2 attached hereto as Exhibit B and made a part hereof.

3 WHEREFORE it is respectfully requested that this application
4 be granted and that the attached claim be received and acted upon
5 in accordance with Sections 912.4 - 912.8 of the Government Code.
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7

8
9 Dated: January 11, 1980


CLIFFORD E. TEDMON
Attorney for Claimant

1 LAW OFFICES OF
2 CLIFFORD E. TEDMON
3 2717 Cottage Way, Suite 20
4 Sacramento, California 95825
5 Telephone (916) 481-5042
6
7

8 In the Matter of the)
9 Claim of GARY JUAREZ)
10 against THE CITY OF SACRAMENTO)

CLAIM AGAINST PUBLIC
ENTITY (Gov C § § 905,
905.2, 910, 910.2)

11
12
13 TO City of Sacramento:

14 GARY JUAREZ hereby makes claim against THE CITY OF SACRAMENTO
15 for the sum of \$500,000 and makes the following statements in sup-
16 port of the claim:

17 1. Claimant's post office address is 7472 Franklin Boulevard,
18 #1, Sacramento, California 95823.

19 2. Notices concerning the claim should be sent to Clifford E.
20 Tedmon, Attorney at Law, 2717 Cottage Way, Suite 20, Sacramento,
21 California 95825.

22 3. Date and place of the occurrence giving rise to this claim
23 are July 28, 1979, in the City of Sacramento, County of Sacramento,
24 State of California.

25 4. The circumstances giving rise to this claim are as follows:
26 Claimant was in his home at 7472 Franklin Boulevard, #1, located

1 within the City of Sacramento, County of Sacramento, State of
2 California, when his home was entered by police officers of the
3 City of Sacramento and County of Sacramento. These officers were
4 employed by the City of Sacramento and County of Sacramento re-
5 spectively. The officers were searching for claimant's brother
6 at the time of entry and refused to accept Claimant's protestations
7 that a mistake was being made by the authorities. During Claimant's
8 detainment, he was shoved, pushed, slapped, kicked and otherwise
9 physically abused by the Sacramento City Police Officers. During
10 this time period when Claimant was being battered by the Sacramento
11 City Police Officers, Sacramento County Sheriff's Officers were
12 present but did nothing to prevent Claimant's injuries. Later, on
13 July 28, 1979, Claimant was taken to the Sacramento County Jail.
14 It was at this jail that the Sacramento County Sheriff's Department,
15 knowing Claimant was in definite need of medical treatment, denied
16 him access to any doctor or medical facility. Due to the afore-
17 mentioned conduct of the Sacramento City Police Officers and the
18 Sacramento County Sheriff's Department, Claimant suffered serious
19 physical and emotional injuries.

20 5. Claimant's injuries are damage to the back, the kidney,
21 internal bruises and external bruises.

22 6. The names of the public employees causing the Claimant's
23 injuries are: Sacramento City Police Officer F Luna, Badge #379.
24 Other officers present during this occurrence were Sacramento City
25 Police Officer A. Robinson, Badge #317; B. Lee, Badge #480, G.
26 Magaha, Badge #326; C. Decoe, Badge #502; B. Holcomb, Badge #357;

1 M. Patterson, Badge #559; G. L. Rogers, Badge #237; Sgt. Morris,
2 Badge #3004. Sacramento County Sheriff Officers involved in this
3 occurrence were L. Crebbin, Badge #121; Cpt. Butler, Badge #271
4 and all those officers of the Sacramento County Sheriff's
5 Department on duty at Sacramento County Jail on 7-28-79 involved
6 in booking procedures and administering proper medical treatment
7 to Claimant while he was detained in said Jail.

8 7. My claim as to the date of this claim is \$500,000.

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

10	Medical Expenses	
11	Incurred to Date:	\$ <u>1137</u>
12	Estimated Future	
13	Medical Expenses:	\$ <u>Unknown</u>
14	Loss of Wages:	\$ <u>4800</u>
15	General Damages:	\$ <u>494,063</u>
16	Total	\$ <u>500,000</u>

17 Dated: Jan 31, 1980

Clifford E. Tedmon
18 CLIFFORD E. TEDMON
Attorney for Claimant

1 LAW OFFICES OF
2 CLIFFORD E. TEDMON
3 2717 Cottage Way, Suite 20
4 Sacramento, California 95825
5 Telephone: (916) 481-5042

6 Attorney for Petitioner

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10 In the Matter of the)
11 Claim of GARY JUAREZ)
12 against THE CITY OF SACRAMENTO)

POINTS AND AUTHORITIES
IN SUPPORT OF APPLICATION
FOR LEAVE TO PRESENT LATE
CLAIM. (Government Code
Section 911.4)

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Petitioner submits the following memorandum of points and authorities in support of his application for leave to present late claim:

I

GOVERNMENT CODE SECTION 911.4 ALLOWS A WRITTEN APPLICATION TO BE MADE TO THE PUBLIC ENTITY FOR LEAVE TO PRESENT A LATE CLAIM.

Government Code Section 911.4 (a) states:

"When a claim that is required by Section 911.2 to be presented not later than the hundredth day after the accrual of the cause of action is not presented within such time, a written application may be made to the public entity for leave to present such claim."

Government Code Section 911.4 (b) goes on to state that this late application must be entered within a reasonable time not to exceed one year after the accrual of the cause of action. This requirement is met in that Petitioner's claim arose on

1 July 28, 1979.

2 II

3 GOVERNMENT CODE SECTION 911.6 (b) (1) ALLOWS A LATE APPLICATION
4 TO BE GRANTED WHERE FAILURE TO PRESENT THE CLAIM WAS THROUGH MISTAKE,
5 INADVERTENCE, SURPRISE OR EXCUSABLE NEGLIGENCE AND THE PUBLIC ENTITY WAS
6 NOT PREJUDICED BY FAILURE TO PRESENT THE CLAIM IN TIME SPECIFIED.

7 Government Code Section 911.6 (b) (1) states:

8 "The Board shall grant the application where:
9 the failure to present the claim was through
10 mistake, inadvertence, surprise or excusable
11 neglect and the public entity was not pre-
judiced by the failure to present the claim
within the time specified in Section 911.2;"

12 The reason for the delay in presenting Petitioner's claim was
13 the mistake, inadvertence, surprise and excusable neglect of the
14 claimant's previous attorney, Wayne Stephenson, as will be more
15 particularly shown in the Declaration of Wayne Stephenson attached
16 hereto and made a part hereof as Exhibit A.

17 III

18 AM APPLICATION FOR LEAVE TO PRESENT A LATE CLAIM TO A PUBLIC
19 ENTITY WILL BE GRANTED FOR PETITIONER'S FAILURE TO PRESENT HIS CLAIM
20 TO THE PUBLIC ENTITY WITHIN ONE HUNDRED DAYS AFTER ACCRUAL OF HIS
21 CAUSE OF ACTION WAS CAUSED BY AN OFFICE ERROR OF PETITIONER'S
22 ATTORNEY IN CALENDARING THE CLAIM.

23 The case of Nilsson v City of Los Angeles (1967) 249 Cal
24 Ap 2d 976, 978, 980, 58 Cal Rptr. 20 is directly on point to the case
25 at bar. The Court in the Nilsson case reversed an order denying
26 Petitioner to present a late claim. The affidavit of Petitioner's

1 attorney stated in part: "that because of an error in calendaring
2 in affiant's office, the claim for damages which should have been
3 filed with the city of Los Angeles, on or before April 7, 1964,
4 was actually filed on May 19, 1964." In granting relief, the
5 Appellate Court said: "While not every mistake of an attorney con-
6 stitutes excusable neglect, calendar errors by an attorney or a
7 member of his staff are, under appropriate circumstances, excusable."
8 The Court held that the calendar error constituted excusable neg-
9 lect where the opposing party was not prejudiced by the delay and
10 cause for relief was shown by uncontradicted evidence in Plaintiff's
11 affidavits.

12 As appears from the Declaration of Wayne Stephenson, previous
13 attorney for Petitioner, in moving his office to a different loca-
14 tion, his calendaring system became disturbed. Under the Nilsson
15 case, this was the entire reason for Petitioner's claim not being
16 filed timely. Following the Nilsson decision, this constituted
17 excusable neglect. Further, no prejudice can be shown to the
18 City of Sacramento by the delay in filing Petitioner's claim.

19 IV

20 CONCLUSION


21 Based on the previously cited statutes and case law together
22 with the discussion of the case at bar, this petition for Late Claim
23 must be granted. It has been clearly shown that excusable neglect
24 was the sole reason for Petitioner's claim not being filed timely.
25 Further, no prejudice to the City of Sacramento has occurred in
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1 filing this late claim, and therefore, it should be granted.

2 Respectfully submitted,

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4 Dated:

January 11, 1910


CLIFFORD E. TEDMON
Attorney for Petitioner

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1 LAW OFFICES OF
2 CLIFFORD E. TEDMON
3 2717 Cottage Way, Suite 20
4 Sacramento, California 95825
5 Telephone: (916) 481-5042

6 DECLARATION OF WAYNE STEPHENSON

7
8 I, WAYNE STEPHENSON, DECLARE:

9 1. On September 21, 1979, I moved my office from 4433
10 Florin Road, Suite 870, Sacramento, California 95823, to 2700
11 Taylor Road, Penryn, California 95603. This caused a certain
12 amount of confusion and required reorganization of my office.

13 2. This was to insure that I could devote most of my
14 time to the JAPANESE AMERICAN HERITAGE CENTER PROJECT. On
15 October 15, 1979, due to a political conflict within the organi-
16 zation, it was required that I seek other office space. During the
17 move a box of files was misplaced, one of which was the GARY
18 JUAREZ file. I re-established my office at 5865 Hobbs Street,
19 Sacramento, California, and again went through a re-organization
20 process. Due to the misplacing of the files, I was unable to
21 personally respond to the demands of those files.

22 3. During this period I became ill and was confined to
23 my home for a period of approximately 10 days, attending only to
24 those court appearances that were scheduled.

25 4. On Tuesday, November 6, 1979, I was admitted to the
26 Intensive Care Unit at Sacramento Medical Center and remained there

1 DECLARATION OF WAYNE STEPHENSON (CONTINUED)

2 until November 10, 1979.

3 5. On November 24, 1979, my apartment was toally burned
4 and I lost all my possessions and had to spend a week re-locating
5 my residence.

6 6. In December, 1979, I entered the hospital at the
7 University of California at Davis Medical Center where one finger
8 and part of the hand were removed.

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

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14 Dated: *JANUARY 11, 1980*

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Wayne Stephenson
WAYNE STEPHENSON
Attorney at Law

1 LAW OFFICES OF
2 CLIFFORD E. TEDMON
3 2717 Cottage Way, Suite 20
4 Sacramento, California 95825
5 Telephone: (916) 481-5042

6 DECLARATION OF CLIFFORD E. TEDMON

7
8 I, CLIFFORD E. TEDMON, DECLARE:

9 1. I am an attorney licensed to practice in the Courts
10 of the State of California and before certain Federal Courts in-
11 cluding the United States Supreme Court.

12 2. I declare that I have known attorney Wayne Stephenson
13 for approximately 15 years both professionally and socially and
14 further declare that in my view he is a highly ethical and compe-
15 tent practitioner of the law

16 3. I declare that on or about 15 November, 1979, my office
17 was contacted by Attorney Wayne Stephenson who informed me that he
18 anticipated being admitted to the hospital and requesting permission
19 to have this office interview a client of his by the name of Gary
20 Albert Juarez.

21 4. I declare that on November 28, 1979, Gary Juarez, in the
22 company of his father, came to my office and we discussed the pos-
23 sibility of my representing Mr. Gary Juarez.

24 5. It was decided at that time that this office would under-
25 take the representation of Mr. Juarez in view of the difficulties
26 that had been experienced by Mr. Stephenson and further in view of

1 the fact that he was to enter the hospital for surgery which would
2 result in the removal of part of his hand and fingers.

3 6. I declare that this office immediately examined into the
4 reasons for a claim not having been filed within the appropriate
5 100 days following July 28, 1979, and after having discussions with
6 Mr. Stephenson with respect to his reorganization, filing problems,
7 and medical problems, it appeared that good cause did exist to
8 request permission to file a late claim.

9 7. This office then undertook to determine if, in it's opinion
10 Mr. Gary Juarez had a justiciable claim against any political sub-
11 division. In that regard the Police reports relative to one Benny
12 Juarez, Jr. were obtained and reviewed in detail, statements from
13 witnesses to the event on July 28, 1979, were obtained and reviewed
14 and requests were sent out to obtain medical records from the Kaiser
15 Hospital. Following the analysis of those items and discussions with
16 Mr. Juarez, it was the view of this office that Mr. Juarez should
17 not be denied his right to claim against the City of Sacramento and
18 the County of Sacramento relative to the injuries which he sustained
19 on July 28, 1979.

20 8. I further declare that this claim is prepared on behalf
21 of Mr. Juarez, and in my opinion, there is no prejudice to either
22 political sub-division by being permitted to file this late claim
23 and I further declare it seems appropriate to me that the County
24 should grant Mr. Juarez the right to file his claim in order that
25 this matter can be examined at the proper forum.

26 I declare under penalty of perjury that the foregoing is

1 true and correct.

2 Dated: January 11, 1980


CLIFFORD E. TEDMON
Attorney at Law

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CITY OF SACRAMENTO

OFFICE OF THE CITY CLERK

915 I STREET
CITY HALL ROOM 203

SACRAMENTO, CALIFORNIA 95814
TELEPHONE (916) 448-5426

LORRAINE MAGANA
CITY CLERK

March 12, 1980

Clifford E. Tedmon
Attorney at Law
2717 Cottage Way, Suite 20
Sacramento, CA 95825

RE: APPLICATION TO FILE A LATE CLAIM ON BEHALF OF GARY JUAREZ,
DATE OF ALLEGED INCIDENT: JULY 28, 1979

Dear Mr. Tedmon:

You are hereby notified that your application for leave to present a late claim on behalf of Mr. Gary Juarez was denied by the Sacramento City Council on March 11, 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 applications is rejected.

Very truly yours,

Jaci Pappas
Acting City Clerk

JP:HO'

cc: City Attorney
Finance Administration (2)

Item No. 20

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 an attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately.



CITY OF SACRAMENTO

OFFICE OF THE CITY CLERK

915 I STREET

CITY HALL ROOM 203

SACRAMENTO, CALIFORNIA 95814

TELEPHONE (916) 449-5426

LORRAINE MAGANA
CITY CLERK

MEMORANDUM

TO: JANET KEYES, ACTING DIRECTOR, SETA
WALTER J. SLIPE, CITY MANAGER
JAMES JACKSON, CITY ATTORNEY

FROM: JACI PAPPAS, ACTING CITY CLERK

SUBJECT: REFERRAL OF ITEM NO. 20A, AGENDA OF MARCH 11, 1980

DATE: MARCH 12, 1980

Pursuant to Council action, report back with appropriate guidelines, authorize SETA Governing Board have final authority re: Board actions rather than Council. (Councilman Connelly motion)