

CITY OF SACRAMENTO



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

CITY MANAGER'S OFFICE  
**RECEIVED**  
FEB 2 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

February 1, 1982

**REJECTED**  
BY THE CITY COUNCIL  
OFFICE OF THE  
CITY CLERK

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

RE: LATE CLAIM APPLICATION OF JESSIE ROSALES

**FEB 9 1982**

Members in Session:

SUMMARY

Jessie Rosales 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

Ms. Rosales has applied for leave to present a late claim. The claim seeks damages for injuries allegedly suffered as a result of a fall which she claims was caused by a dangerous condition on public property.

Government Code §911.2 provides that a claim based upon personal injuries or property damage shall be presented within 100 days of accrual of the cause of action. Applicant's cause of action accrued on June 9, 1981. The 100 day filing period expired on or about September 17, 1982. The claim and late claim application were presented on January 18, 1982.

The application states that applicant did not realize she had a potential cause of action against the City and was unaware of the 100 day filing period.

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

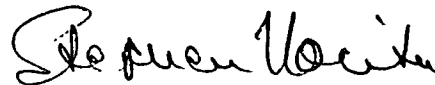
Ignorance of the claim filing requirements and the 100 day filing period does not excuse the failure to file a timely claim (Roberts vs. State, supra; Tsingaris vs. State (1979) 91 C.A.3d 312). The failure to discover the alleged basis of a cause of action also does not excuse the failure to file a timely claim (Tsingaris vs. State, supra; Black vs. County of Los Angeles (1970) 12 C.A.3d 760). The application contains no information suggesting the cause of action against the City could not have been discovered in a timely fashion. In short, it does not appear that the failure to file a timely claim was due to mistake, inadvertence, surprise or excusable neglect of a reasonably diligent person.

#### RECOMMENDATION

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

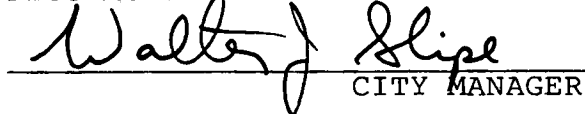
Very truly yours,

JAMES P. JACKSON  
City Attorney



STEPHEN B. NOCITA  
Deputy City Attorney

RECOMMENDATION APPROVED:

  
CITY MANAGER

SBN:GD  
attachment

RICHARD E. CROW  
THOMAS F. LYTTLE  
JAMES F. GILWEE  
PETER J. DONOGHUE  
GERALD J. ADLER  
JOSEPH J. WENINGER  
ROBERT C. TRONVIG, JR.  
RICHARD E. CROW II  
DON P. WHITE, JR.  
MARC G. MARCUS  
KIM REGALADO

LAW OFFICES OF  
**CROW, LYTTLE, GILWEE,  
DONOGHUE, ADLER & WENINGER**  
431 J STREET  
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TELEPHONE (916) 441-2980

ROSEVILLE OFFICE  
405 VERNON STREET  
ROSEVILLE, CALIFORNIA 95678  
(916) 786-2055  
(916) 969-3737

REPLY TO Sacramento

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FEB 9 1982

January 18, 1982

Office of the City Clerk  
City of Sacramento  
915 "I" Street, Room 308  
Sacramento, California 95814

RE: Jessie Rosales vs. City of Sacramento  
APPLICATION FOR LEAVE TO FILE A LATE CLAIM  
(Government Code Section 911.4)

RECEIVED  
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CITY OF SACRAMENTO  
JAN 19 3 10 PM '82

Dear Sirs:

Attached is a Claim of Jessie Rosales against the City of Sacramento for personal injuries sustained when she tripped and fell due to an unsafe condition of public property; to wit, the sidewalk directly in front of a residence located at 3109 Serra Way, Sacramento, California.

Your claimant is a Spanish-speaking individual, currently 62 years of age. Up to the time of the accident, she had a triple by-pass open heart surgery on March 12, 1981 and was recuperating from that surgery when her fall occurred.

Claimant had no knowledge of the requirements of filing a claim against the public entity within 100 days, nor did she have any knowledge that a public entity might in fact be responsible for the dangerous condition until she was so advised by myself whom she initially consulted on December 2, 1981. After that consultation, our investigator went to the scene of the accident and has recently reported back. It is evident that the dangerous condition is indeed on a public sidewalk and that the condition is such that we intend to establish liability on the part of the City of Sacramento.

This Application for Leave to File a Claim (Government Code Section 911.4) is made within a reasonable time following notice of the 100 day requirement and of the potential liability of the City of Sacramento, and the failure of the applicant to present this claim within the 100 days was

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Office of the City Clerk  
City of Sacramento  
Page Two  
January 18, 1982

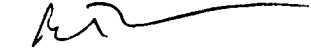
through mistake, inadvertence, surprise and inexcusable  
neglect for the reasons stated above.

Thank you for your cooperation.

Very truly yours,

CROW, LYTTLE, GILWEE,  
DONOGHUE, ADLER & WENINGER

By



PETER J. DONOGHUE  
Attorney for Claimant  
JESSIE ROSALES

PJD/cb

Enclosure (original and four copies of  
CLAIM AGAINST THE CITY OF SACRAMENTO (CC Form6))

-----  
HAND DELIVERED  
PERSONAL SERVICE  
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CLAIM AGAINST THE CITY OF SACRAMENTO

You are hereby notified that (1) JESSIE ROSALES, whose Post Office address is (2) 3209 "T" Street, Sacramento, California 95816 claims damages from the City of Sacramento in the amount, computed as of the date of the presentation of this claim, of (3) \$ 50,000.00. This claim is based upon (4)

~~XXX~~ Personal injury; ( ) Property damage or loss; ( ) Other, specify \_\_\_\_\_, which occurred on or about (5) 6 / 9 / 81, in the vicinity of (6) 3109 Serra Way, Sacramento, CA under the following circumstances: (7) Claimant JESSIE ROSALES tripped and fell over a dangerous condition of public property; to wit, the public sidewalk in front of the above-addressed residence.

The name of the City employee or employees causing the claimant's injury or loss under the circumstances described is (8) unknown to claimant at this time.

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**OFFICE OF THE**  
**CITY CLERK**

\_\_\_\_\_ or is unknown to the claimant. The injuries to the claimant, (if any), as far as known at the date of presentation of the claim consists of (9) fractured left foot

FEB 9 1982

The amount of damages claimed as of the date of this claim is computed as follows: Damages incurred to date (Itemized):

(10) Medical expenses, approximately \$ 2,000.00  
General damages \$ 30,000.00

Estimate prospective damages as far as known:


(11) \_\_\_\_\_ \$ 18,000.00  
\_\_\_\_\_ \$ \_\_\_\_\_

(12) TOTAL AMOUNT CLAIMED as of presentation date of claim \$ 50,000.00

All notices and communications with regard to this claim should be sent to claimant at (13) PETER J. DONOGHUE  
CROW, LYTTLE, GILWEE, DONOGHUE,  
ADLER & WENINGER  
431 "J" Street  
Sacramento, California 95814

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DATED: (14) JANUARY 18, 1982

(15) SIGNED:   
~~XXXXXXXXXXXX~~ PETER J. DONOGHUE  
Attorney for Claimant

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DIRECTOR  
JAN 20 1978

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## CITY OF SACRAMENTO

### OFFICE OF THE CITY CLERK

815 I STREET  
CITY HALL ROOM 203

SACRAMENTO, CALIFORNIA 95814  
TELEPHONE (916) 449-5426

LORRAINE MAGANA  
CITY CLERK

February 10, 1982

Peter J. Donoghue  
Crow, Lytle, Gilwee, Donoghue, Adler and Weinger  
431 "J" Street  
Sacramento, CA 95814

RE: APPLICATION TO FILE A LATE CLAIM ON BEHALF OF JESSIE ROSALES.  
DATE OF ALLEGED INCIDENT: JUNE 9, 1981

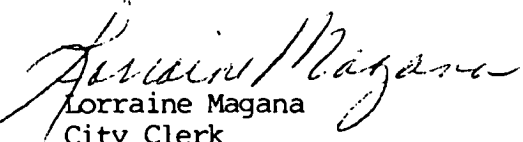
Dear Mr. Donoghue:

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 February 9, 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/mm/10

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.