



CITY OF SACRAMENTO

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

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JUN 23 1980

JAMES P. JACKSON
CITY ATTORNEY
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GARLAND E. BURRELL, JR.
DAVID BENJAMIN
SABINA ANN GILBERT
DEPUTY CITY ATTORNEYS

June 23, 1980

Honorable City Council
Council Chamber
City Hall
Sacramento, California 95814

RE: APPLICATION OF ELSIE M. KELLEY FOR LEAVE TO PRESENT
A LATE CLAIM

Members in Session:

SUMMARY

Elsie M. Kelley 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. Kelley has applied for leave to present a late claim. The claim seeks damages arising out of personal injuries allegedly suffered when she struck the edge of a counter in housing administered by the Sacramento Housing Authority.

Government Code Section 911.2 provides that a claim for damages based upon personal injuries shall be presented within 100 days of accrual of the cause of action. In this case applicant's cause of action accrued on June 7, 1979, the date of the alleged incident. The 100-day filing period expired on or about September 15, 1979. Applicant presented her claim and late claim application on June 6, 1980, one day short of one year after accrual of the cause of action.

The application states that a timely claim was not filed because applicant did not know that the Sacramento Housing Authority owned her residence, although she did know that the Housing Authority managed the property.

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ANALYSIS

A person seeking to file a late claim must show both: (1) that the application was filed within a reasonable time not to exceed one year after accrual of the cause of action (Government Code Section 911.4(b));

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and (2) 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 this case the application fails to meet either requirement. The application was not filed until just short of one year after accrual. No reason is offered to explain applicant's delay in consulting an attorney concerning her cause of action. Applicant knew that a public agency was managing her residence. A delay of a shorter period has been held unreasonable. (Martin vs. Madera (1968) 265 C.A.2d 76).

Second, the preferred reasons for failing to present a timely claim do not show a mistake, inadvertence, surprise or excusable neglect of a reasonable person under the circumstances (Roberts vs. State (1974) 39 C.A.3d 844; Tsingaris vs. State (1979) 91 C.A.3d 312. Applicant knew that a public agency was involved in the incidents which gave rise to her cause of action. Moreover, a lack of knowledge that a claim existed against the City or the Housing Authority does not appear sufficient to establish excusable neglect (cf. Tammen vs. County of San Diego (1967) 66 C.2d 468, 475; Martin vs. Madera, 265 C.A.2d at 79-80; Black vs. County of Los Angeles (1970) 12 C.A.3d 670, 677; Backer vs. Beech Aircraft (1974) 39 C.A.3d 315, 321.

RECOMMENDATION

For the foregoing reasons it is recommended that the application of Elsie M. Kelley 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
attachment

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LAW OFFICES OF
DENNIS, SCHOTTKY, SWANBERG,
MURRAY & HACKARD
A PROFESSIONAL CORPORATION
SUITE 244, 1481 RIVER PARK DRIVE
SACRAMENTO, CALIFORNIA 95815
TELEPHONE (916) 925-1600

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BY THE CITY COUNCIL
OFFICE OF THE
CITY CLERK

Attorneys for Claimant

JUN 1 1980

In the Matter of the Claim) APPLICATION FOR LEAVE TO
of ELSIE M. KELLEY, against) FILE A LATE CLAIM
the CITY OF SACRAMENTO.)
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TO: CITY OF SACRAMENTO

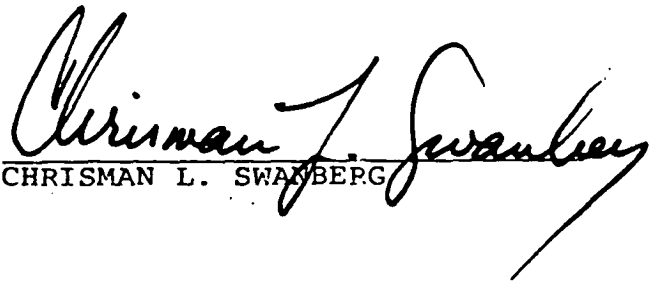
I. Application is hereby made for leave to present a late claim under Section 911.4 of the Government Code. The claim is founded on a cause of action for personal injuries which cause of action accrued on or about June 13, 1979. The injury was incurred when the plaintiff, a resident in housing administered by the Sacramento Housing Authority, struck her body against the edge of a sharp counter and cupboard, sustaining injuries. For additional circumstances relating to the claim, reference is hereby made to the proposed claim attached hereto as Exhibit "A" and made a part hereof.

II. The reason for the delay in presenting this claim is that the claimant was excusably neglectful in that she was unaware of the fact that the property was owned by the City and/or County of Sacramento and not merely managed thereby, and did not consult an attorney until after the 100 day period for presentment of this claim expired.

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3 III. This action is filed within one year of the accrual
4 of the cause of action and within a reasonable time as shown
5 by the declaration of CHRISMAN L. SWANBERG attached hereto.

6 WHEPEFORE, it is respectfully requested that this
7 application be granted and the attached claim be received and
8 acted upon in accordance with Section 912.4 through 912.8 of the
9 Government Code.

10 DATED: June 11, 1980

11
12 
13 CHRISMAN L. SWANBERG

14 DECLARATION OF CHRISMAN L. SWANBERG

15 I, CHRISMAN L. SWANBERG, declare under penalty of
16 perjury, as follows:

17 1. I am an attorney licensed to practice law in the
18 State of California, with offices at 1451 River Park Drive,
19 Suite 244, in Sacramento, California.

20 2. That in May of 1980, our offices were consulted by
21 the plaintiff herein, ELSIE KELLEY, in connection with injuries
22 she received in an incident which occurred on June 13, 1979,
23 in her apartment at 480 Redwood Avenue, Sacramento, California.

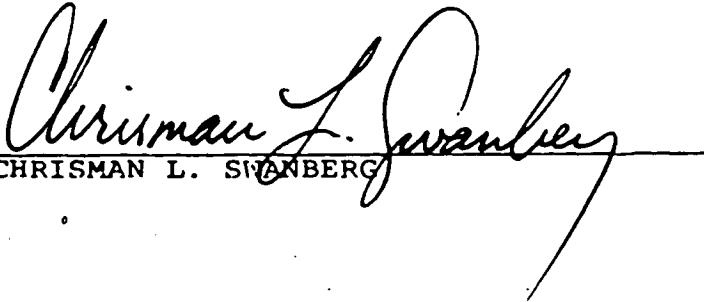
24 3. The client related to us that it was Sacramento
25 Housing Authority managed property but that she was unaware of
26 who the owner was.

27 4. Our research indicates that the property is in fact
28 owned by the Sacramento Housing Authority and therefore the claim

1 presentment of requirement of the Government Code would otherwise
2 require a claim be made in 100 days of the accrual of the cause
3 of action.

4 This claim is presented within a reasonable time after
5 our discovery of the ownership of the property, and within one
6 year of the date of accrual of the injury which was June 13, 1979.

7 Executed this 11 day of June, 1980, in Sacramento,
8 California.

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10 
11 CHRISMAN L. SWANBERG

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CLAIM AGAINST THE CITY OF SACRAMENTO

1. Claimant's Name Elsie M Kelley Telephone _____
2. Claimant's Address 480 Redwood Ave., Apt. D-8, Sacramento, CA
3. Address Where Notices Are to be Sent 1451 River Park Dr., #244, Sacramento
4. Amount of Claim \$ 25,000 Date of Accident 6/13/79
5. Place of Accident at apartment D-8 above
6. How Did Accident Happen claimant struck head on sharp protrusion on corner of cupboard or counter.

7. Describe Injury or Damage head trauma requiring stitches, injury to elbow, neck injury

8. Name of Public Employee(s) Causing Injury or Damage, if Known
unknown

9. List Expenses or Other Items of Your Claim

<u>Medical (est.)</u>	<u>\$ 500.00</u>
<u>Transportation</u>	<u>\$ 50.00</u>
<u>General Damages</u>	<u>\$24,450.00</u>
_____	\$ _____
_____	\$ _____
Total	\$ <u>25,000.00</u>

Signed by or for Claimant
Chrisman L. Swanberg Attorney for Claimant
CHRISMAN L. SWANBERG
Dated: 6/9/80

(Use reverse side if additional space is required.)

(PROOF OF SERVICE BY MAIL—1013a, 2015.5 C. C. P.)

I am a citizen of the United States and a resident of the county of Sacramento I am
over the age of eighteen years and not a party to the within above entitled action; my ^{business} address is: 1451 River
Park Drive, Sacramento, CA 95815

On June 11, 19 80, I served the within APPLICATION FOR LEAVE
TO FILE LATE CLAIM on behalf of ELSIE KELLEY
CITY OF SACRAMENTO

on the _____ in said action, by placing a true copy thereof enclosed in a sealed envelope
with postage thereon fully prepaid, in the United States post office mail box at Sacramento, California
addressed as follows:

SACRAMENTO CITY CLERK
City Hall - I Street
Sacramento, California 95814

I, Kim Walker, certify (or declare), under penalty
(name must be typed or printed)
of perjury,* that the foregoing is true and correct.

Executed on June 11, 1980 at Sacramento, California
(date) (place)

Kim Walker
Signature

* proof of service by mail forms, being signed under penalty of perjury, do not require notarization.