

## **How to Submit an Untimely Tort Claim Against the State**

If you missed the deadline for submitting a claim form to the State of California, there is a process that you can go through to submit a late claim. The Government Claims Act's purpose is to "confine potential governmental liability to rigidly delineated circumstances." (*Brown v. Poway Unified School Dist.* (1993) 4 Cal.4th 820, 829). To that end the claims process imposes strict procedural requirements on litigants seeking money or damages from a public entity.

### **Government Code Section 911.4**

The first potential remedy is Government Code Section 911.4 which permits you to file an "Application to Present a Late Claim." This application must be submitted within a "reasonable time," not to exceed one year from the date of injury.

There are four valid reasons for a late claim: (1) Mistake, inadvertence, surprise or excusable neglect; (2) The Claimant was a minor during the time to file an original claim; (3) The Claimant's physical or mental incapacity; and (4) Death of the Claimant. The application under this section must show a valid reason why the claim was not filed in the initial time period (6 months after the injury).

The application must be presented to the public entity, or in this case, the Department of General Services, Office of Risk and Insurance Management. Even though the application will more than likely be denied, it is an important first step in filing a late claim and it is a step necessary to seek relief from the court.

### **Petition to the Court**

If and when the governmental entity rejects your application to present a late claim, a claimant may have one more option which will get them in front of a judge. Pursuant to Government Code Section 945.6, a claimant can petition the court for relief from section 945.4. This petition must be filed with the court within six months of the government entity's rejection of your application to present a late claim.

The petition requires a showing that (1) The Claimant's failure to timely present a claim was through mistake, inadvertence, surprise, or excusable neglect; (2) there is no prejudice to the governmental entity; (3) The Claimant made an application to present a late claim within one year of the accrual of the action; (4) General description of the injury, damage, or loss; (5) Name of government employees involved or causing the injury, if known; (6) Damages claimed. (Notably no dollar amount is required to be included if the amount claimed exceeds \$10,000.00, though the petition must indicate whether the claim would be a limited civil matter.

### **Appeal Process**

If the Court denies your petition, you can appeal to the California Court of Appeals as with any other case. There are examples where the California Court of Appeals or the California Supreme Court reversed the trial court's denial of a petition and permitted a late claim to be filed.

*Viles v. California* (1967) 66 Cal.2d 24, 26: the Court held that it was an “excusable” error when the applicant suing the state for the death of his wife, and alleging a defective and dangerous highway condition, had been informed by the insurance adjustors that he had one year to bring the wrongful death action and erroneously concluded that an action against the state could be brought in the same manner and within the same time limits. In that case, the application to file a late claim was filed nine months after the cause of action accrued, but within two weeks of the claimant learning of his mistake. The Court found it was reasonable under the circumstances and held that where any doubts exist as to relief under Section 946.6, an outcome where the action is heard on the merits is preferred. (*Id.* at 26-27, 29, 32.) The Court further held that the showing required of a petitioner seeking relief due to mistake, inadvertence, surprise or excusable neglect under section 912, subdivision (b)(1), is the same showing required under Code of Civil Procedure section 473 for relieving a party from a default judgment. (*Van Alstyne, Cal. Government Tort Liability* (Cont.Ed.Bar) s. 8.29, pp. 388-389; n. 4, p. 711.) (*Viles v. State of California*, 66 Cal.2d 24, 29.)

*Bettencourt v. Los Rios Community College Dist.* (1986) 42 Cal.3d 270, 278, the Court found excusable error when an attorney filed a tort claim with the wrong public entity. In that case, the attorney for the claimant filed the claim with the state instead of the appropriate community college district. In reaching its opinion, the Court looked at (1) the nature of the mistake or neglect; and (2) whether counsel was otherwise diligent in investigating and pursuing the claim.

*Nilsson v. City of Los Angeles* (1967) 249 Cal.App.2d 976, 979, the court held that a calendaring error by an attorney’s office was ‘excusable neglect.’ (*Id.* at 983; see also *Haviland v. Southern Cal. Edison Co.* (1912) 172 Cal. 601, 605 [determining that the calendaring errors of an attorney or staff are excusable under appropriate circumstances].)

Remember the date the injury accrues can be different for different people. It could be when they heard about the issue on the news, when they received a letter of notification from the government entity, the actual date of an injury, or the date in which the claimant became aware of the injury. Understanding when the injury accrued will matter in determining if your claim to the government entity is in fact late.