

#G-100

10/26/82

Memorandum 82-112

Subject: Study G-100 - Governmental Liability (Notice of Rejection of
Late Claims)

Attached to this memorandum is a staff draft of a Recommendation Relating to Notice of Rejection of Late Claims Against Public Entities. When the memorandum on new topics was considered at the last meeting, the Commission agreed with the staff proposal to submit a recommendation on this subject. The attached recommendation should be self-explanatory. If this recommendation is approved for printing, it will be introduced in the 1983 legislative session.

Respectfully submitted,

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STAFF DRAFT

RECOMMENDATION

relating to

NOTICE OF REJECTION OF LATE CLAIMS AGAINST PUBLIC ENTITIES

A claim against a public entity relating to death or injury to a person, personal property, or growing crops is to be presented to the public entity within 100 days after the accrual of the cause of action.¹ If this requirement is not met, an application for leave to present a late claim may be made within a reasonable time but not more than one year after accrual of the cause of action.² The application must state the reason for the delay in presenting the claim.³

If a public entity rejects a claim, notice is given the claimant warning that the claimant has six months within which to file a court action.⁴ This notice may be misleading, however, in a case where the claim is rejected because it was filed later than 100 days after accrual of the cause of action. In this situation the next appropriate step is to apply to the public entity for leave to present a late claim.⁵ In general, this administrative late claim procedure is a prerequisite to judicial proceedings on the claim.⁶

The Law Revision Commission recommends that the incomplete and potentially misleading notice prescribed by existing law be revised to include a requirement that the notice warn the claimant in a late claim case of the need to apply to the public entity for leave to present a late claim.

1. Gov't Code § 911.2. Claims relating to other causes of action must be presented within one year of the accrual of the cause. Id.
2. Gov't Code § 911.4(a).
3. Gov't Code § 911.4(b).
4. Gov't Code § 913 ("Subject to certain exceptions, you have only six (6) months from the date this notice was personally delivered or deposited in the mail to file a court action on this claim. . . .").
5. See Gov't Code § 946.6 (petition to court for relief from claim filing requirement must show that application was made for leave to present a late claim).
6. See *Viles v. State*, 66 Cal. 2d 24, 31, 423 P.2d 818, 56 Cal. Rptr. 666 (1967); see also *Kendrick v. City of La Mirada*, 272 Cal. App.2d 325, 329-30, 77 Cal. Rptr. 444 (1969).

The Commission's recommendation would be effectuated by enactment of the following measure:

An act to amend Section 913 of the Government Code, relating to claims against public entities.

The people of the State of California do enact as follows:

SECTION 1. Section 913 of the Government Code is amended to read:

913. (a) Written notice of the action taken under Section 912.6 or 912.8 or the inaction which is deemed rejection under Section 912.4 shall be given in the manner prescribed by Section 915.4. Such notice may be in substantially the following form:

"Notice is hereby given that the claim which you presented to the (insert title of board or officer) on (indicate date) was (indicate whether rejected, allowed, allowed in the amount of \$_____ and rejected as to the balance, rejected by operation of law, or other appropriate language, whichever is applicable) on (indicate date of action or rejection by operation of law)."

If the claim is rejected because it was not presented within the time prescribed by law, the notice required by this subdivision shall include the substance of the following statement:

"Your claim was rejected because it was presented late."

(b) If the claim is rejected in whole or in part, the notice required by subdivision (a) shall include a warning in substantially the following form:

"WARNING

"Subject to certain exceptions, you have only six (6) months from the date this notice was personally delivered or deposited in the mail to file a court action on this claim. See Government Code Section 945.6. If your claim was rejected because it was presented late, you should apply to the public entity within the time allowed by Government Code Section 911.4 for leave to present a late claim if you wish to protect your right to file a court action on the claim.

"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."

Comment. Subdivision (b) of Section 913 is amended to provide notice of the procedure for obtaining leave to present a late claim.