

Moy v New York City Police Dept.

2025 NY Slip Op 33615(U)

September 29, 2025

Supreme Court, New York County

Docket Number: Index No. 152925/2025

Judge: Ariel D. Chesler

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARIEL D. CHESLER PART 62M

Justice

-----X

BRANDON MOY,

Petitioner,

- v -

NEW YORK CITY POLICE DEPARTMENT, NYPD FLEET
SERVICE, MINA YOUSEF, THE CITY OF NEW YORK

Respondent.

-----X

INDEX NO. 152925/2025

MOTION DATE 04/10/2025

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2
were read on this motion to/for LEAVE TO FILE.

Upon the foregoing documents, it is

In this proceeding, Petitioner seeks an Order allowing leave to serve a Late Notice of Claim and, further, deeming said Notice of Claim served upon the Respondents *nunc pro tunc* pursuant to General Municipal Law § 50-e. The Petition is unopposed.

A Notice of Claim was served upon Respondents on February 12, 2025 (see NYSCEF Doc. No. 6). The Notice of Claim alleges that Petitioner, a police officer, was a passenger in a police car driven by Police Officer Mina Yousef and owned by the New York Police Department (NYP) when it was involved in a motor vehicle accident with another vehicle at Allen Street and Delancey Street, New York, NY on October 6, 2024.

In support of the Petition, Petitioner argues that he has a reasonable excuse for the delay in filing the Notice of Claim as the delay was due to attorney’s law office failure in failing to properly diary the date of the Notice of Claim was to be served. In addition, Petitioner argues that Respondent had actual notice of the subject incident. Petitioner contends that Respondents had knowledge of the essential facts surrounding the occurrence as two city employees, police

officers, were involved in the subject incident. Moreover, Petitioner argues that the police accident report, the line of duty injury report, the no fault application and the criminal complaint (worksheet) all provide knowledge of the essential facts surrounding the occurrence.

Furthermore, Petitioner asserts that there is no prejudice to the Respondents, especially in light of the NYPD Accident Report which memorialized the pertinent facts regarding the accident, the line of duty reports, the No Fault applications and the criminal complaint.

As such, Petitioner argues he has shown reasonable excuse for delay, that the Respondents acquired actual knowledge of the events and occurrences within 90 days of its occurrence or within a reasonable time thereafter, and that there is no prejudice to the Respondents, and therefore Petitioner's Petitioner should be granted in its entirety.

Pursuant to GML §50-e, a party seeking to sue a public corporation must serve a notice of claim on the prospective Respondent "within ninety days after the claim arises" (*Matter of Newcomb v. Middle County Cent. Sch. Dist.*, 28 NY3d 455, 460 [2016]). "The lower courts have broad discretion to evaluate the factors set forth in GML § 50-e (5)" (*id.* at 465). "[I]n determining whether to grant or deny leave to serve a late notice of claim, the court must consider 'in particular' whether the municipal 'acquired actual knowledge of the essential facts constituting the claim within [90 days of the claims accrual] or within a reasonable time thereafter.' Courts are to place 'great weight' on this factor, which the party seeking leave has the burden of establishing through the submission of nonspeculative evidence" (*Matter of Jaime v. City of New York*, 41 NY3d 531, 540 [2024] [internal citations omitted]). "The court shall also consider 'all other relevant facts and circumstances,' including, inter alia, whether the claimant made an excusable error concerning the identity of the public corporation against which the claim should be asserted, and whether the delay in service the notice of claim 'substantially

prejudiced' the public corporation in maintaining its defense on the merits" (*Bertone Commissioning v. City New York*, 27 AD3d 222, 223 [1st Dept 2007]).

With respect to the actual knowledge, GML § 50-e (5) "contemplates 'actual knowledge of the essential facts constituting the claim,' not knowledge of a specific legal theory" (*Wally G. New York City Health & Hosps. Corp. (Metro. Hosp.)*, 27 NY3d 672, 677 [2016] [internal citations omitted]).

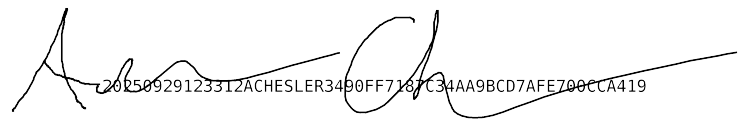
Here, plaintiff's claim arose on October 6, 2024, and the Notice of Claim was filed on February 12, 2025, 35 days after the 90-day period. Plaintiff contends that the late filing of the notice of claim was due to law office failure. "Although law office failure generally is not a reasonable excuse for failing to timely serve a notice of claim, failure to offer a reasonable excuse is not necessarily fatal to a motion for leave to serve a late notice" (*Clarke v. New York City Transit Authority*, 222 AD3d 552, 553, [1st Dept 2023]). In addition, Respondents had actual knowledge of the pertinent facts constituting the claim (*Thomas v. City of New York*, 118 AD3d 537, 538 [1st Dept 2014] ["Respondents had actual knowledge of the pertinent facts constituting the claim-namely, that a New York City Police Department vehicle had been involved in a traffic accident with petitioner's vehicle. Indeed, respondents' agent, a New York City police officer, was driving the police car involved in the accident"]. Furthermore, Petitioner attempted to serve the Notice of Claim only 35 days after the expiration of the statutory 90-day period, which does not prejudice Respondents (*id.* ["Petitioner attempted to serve the notice of claim only 30 days after expiration of the statutory 90-day period for filing a notice of claim against a municipality. This short delay does not prejudice respondents' ability to investigate and defend the claim, as such a short passage of time is unlikely to have affected witnesses'

memories of the relevant events. Further, the police report attached to the notice of claim sets forth the name, rank and identity of the officer driving the police car”]).

Accordingly, it is hereby

ORDERED AND ADJUDGED, that Petitioner’s application to serve a Late Notice of Claim, deeming said Notice of Claim served upon the Respondents *nunc pro tunc*, is granted.

This constitutes the Decision and Order of the Court.



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9/29/2025
DATE

ARIEL D. CHESLER, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE