

**WHITEMAN
OSTERMAN
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THE ANATOMY OF A SECTION 1983 CASE



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42 U.S.C. § 1983 – CIVIL ACTION FOR DEPRIVATION OF RIGHTS

Every PERSON who, under COLOR of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or CAUSES to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the DEPRIVATION of any rights, privileges, or immunities secured by the Constitution and laws, ***shall be liable*** to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia

ELEMENTS

PLAINTIFF MUST ESTABLISH:

- / Conduct by a “person”
 - / State and local officials, personally;
 - / Municipal entities, municipal officials, officially;
- / Acting under “color of law”
 - / Public official carries out responsibilities in accordance with state law.
- / Who proximately caused
 - / For personal liability claims, causation is akin to common law proximate cause. *Murray v. Earle*, 405 F.3d 278 (5th Cir. 2005); *McKinley v. City of Mansfield*, 404 F.3d 418, 438 (6th Cir. 2005).
 - / For these municipal liability claims, the Supreme Court uses a more “stringent” standard; the municipal policy or practice must be the “moving force,” “closely related,” “direct causal link,” or “affirmatively linked” to the deprivation of the plaintiff's federally protected rights. *Ruiz-Cortez v. City of Chicago*, 931 F.3d 592, 599-600 (7th Cir. 2019)
- / The deprivation of a federally protected right



ELEMENTS

INDIVIDUAL V. OFFICIAL CAPACITY.

- / Individual capacity: impose personal liability on a def for actions taken under color of law; judgment is executed against the official's personal assets. *Kentucky v. Graham*, 473 U.S. 159 (1985); *Hafer v. Melo*, 502 U.S. 21 (1991).
 - / Individual's own conduct caused the deprivation of the federally protected right.
- / Official capacity: is equivalent to pleading an action against the entity itself in which that official is an agent; judgment executed against the entity itself.
 - / Must show enforcement of the entity's policy or practice was a violation of federal rights.



ELEMENTS

MUNICIPAL LIABILITY

MONELL V. NYC DEPT. OF SOCIAL SVCS.

436 U.S. 548 (1978)

- / Municipalities and municipal officials sued in an official capacity are suable persons under § 1983 only when the violation of the plaintiff's federally protected right can be attributable to the enforcement of a municipal policy, practice, or decision of a municipal policy maker.
- / No Respondeat Superior Liability exists in § 1983
- / Rule applies whether seeking damages or injunctive relief *Los Angeles County v. Humphries*, 562 U.S. 29 (2010).
- / Policies and practices typically challenged:
 - / Training; supervision or discipline; hiring failure to adopt policies necessary to prevent constitutional violations

ELEMENTS

SUPERVISORS

- / Named individually - Must be personally involved in the alleged misconduct
 - / *Tangreti v. Bachmann*, 983 F.3d 609 (2020)
 - / i.e. supervisory police officer participates in the infliction of excessive force
- / No respondeat superior liability – cannot be named due to their position as a supervisor



ELEMENTS

NO STATE OF MIND REQUIREMENT... EXCEPT:

- / Eighth Amendment deliberate indifference to medical care
 - / Subjective component that defendant knew of and disregarded risk to P's health and safety (negligence/med mal does not state an eighth amendment claim) *Estelle v. Gamble*, 429 U.S. 97, 106 (1976)

- / Fourteenth Amendment - Equal Protection
 - / Alleging racial or gender based discrimination will have a higher scrutiny only if Plaintiff establishes intentional discrimination. *Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252 (1977).

- / Fourteenth Amendment - Due process
 - / Plaintiff must show the official intentionally caused a deprivation of life, liberty or property; negligence will not suffice. *Kingsley v. Hendrickson*, 576 U.S. 389 (2015)

PLEADING

FED. R. CIV. PRO. 8 (A).

- / A Complaint must:
 - / Jurisdictional grounds
 - / Short plain statement of facts
 - / Demand for relief

- / Plausibility standard
 - / *Bell Atlantic v. Twombly* 520 U.S. 544 (2007);
 - / *Ashcroft v. Iqbal*, 556 U.S. 662 (2009)

PLEADING

JURISDICTION

- 28 U.S.C. §1343 (a)(3) – original jurisdiction
- 28 U.S.C. § 1331 – federal question
- 28 U.S.C. § 1367 – supplemental jurisdiction



PLEADING

DEFENSES

- / Eleventh Amendment Immunity - only for official capacity claims; state (official capacity) is immunity from federal court liability for damages, unless waived (rare);
 - / *Ex Parte Young* – exception says a plaintiff CAN get prospective (injunctive) relief against a state official in official capacity. 209 U.S. 123 (1908).
- / Absolute Immunity - asserted by judges, prosecutors, legislators, witnesses (including police officers) who testify in criminal trials
- / Qualified Immunity – only for individual capacity claims
 - / Qualified immunity protects an official who violated plaintiffs federally protected right so long as the official did not violate clearly established federal law. The critical issue is whether the defendant official violated federal law that was clearly established at the time she acted. *Ashcroft v. al-Kidd*, 563 U.S. 731 (2011)
 - / reasonable officer could not have believed that his actions were unlawful *Wilson v. Layne*, 526 U.S. 603, 617 (1999).
- / Preclusion defenses
 - / Res Judicata / Collateral Estoppel / Relation back
 - / Statute of Limitations - *Wilson v. Garcia*, 471 U.S. 261, 276 (1985) dictates to apply the states most analogous personal injury limitations period. Second Circuit – 3 years; Fourth Circuit 2 years.
 - / Accrual - claim accrues when P has knowledge of his claim/injury and who caused, or when he is put on notice.
 - / Tolling – equitable estoppel can bar a D from raising a SOL defense if D obstructed P from asserting a claim by fraud (i.e. DOCCS inmates claiming obstruction of grievance process).

PLEADING

RELIEF

- / Money damages
 - / Compensatory
 - / Punitive
 - / Pain/suffering, emotional damages

- / Equitable Relief
 - / Preliminary or permanent Injunction
 - / Declaratory Judgment

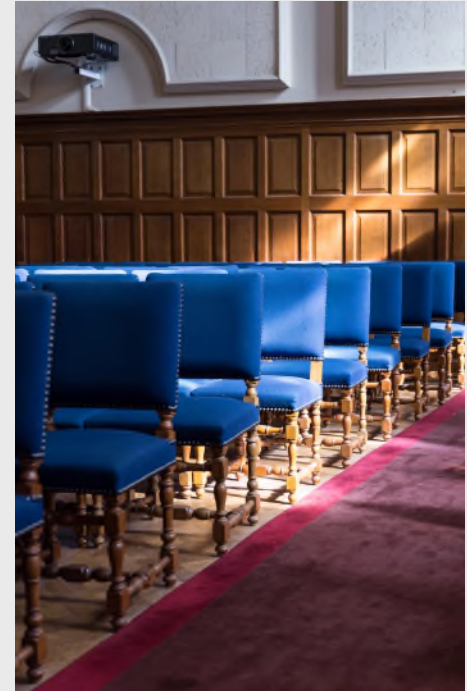
- / Indemnification of defendant by the government entity is not guaranteed by federal law; determined by state or local law.

CORRECTIONS

PRISON LITIGATION REFORM ACT OF 1995 (PLRA)

Amended 18 U.S.C. § 3626 ; 42 U.S.C. § 1997e

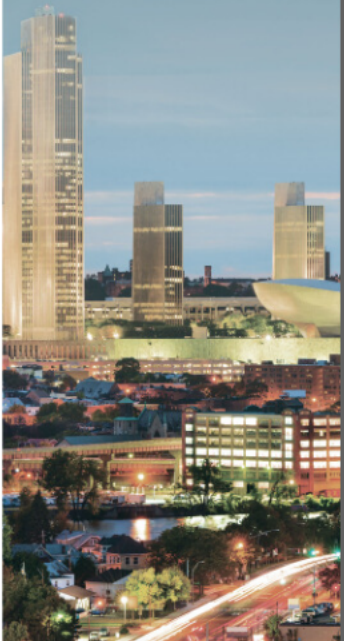
- / Restricts prisoner lawsuits
 - / Prisoners must fully exhaust any administrative remedies available to them before filing a lawsuit concerning any aspect of prison life. If a prisoner fails to do so, the lawsuit is subject to dismissal.
- / Limits on injunctions
 - / Needs-narrow-intrusiveness test
 - / "The court shall not grant or approve any prospective relief unless the court finds that such relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right. "
 - / 90 automatic termination provision for preliminary injunctions



ATTORNEY'S FEES – 42 U.S.C. § 1988

- / Authorizes a prevailing party in a 1983 case “reasonable attorneys fees and costs”
- / “prevailing party” – relief from the merits “materially alters” the relationship between the parties *Farrar v. Hobby* 506 U.S. 103, 111 (1992).
- / Computation of damages – Lodestar standard – Rate x Time (reasonable hours worked x reasonable hourly market rate for lawyers in the community with comparable experience) *Perdue v. Kenny A. ex rel Winn*, 559 U.S. 542 (2010).
- / The PLRA contains substantial limitations on the recovery of attorneys' fees in suits brought by prisoners and detainees. See, e.g., *Murphy v. Smith*, 583 U.S. 220 (2018).

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DISCOVERY

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- / Litigation Holds
- / Document exchange – Rule 26
- / Confidentiality Orders
- / Privilege Logs
- / Depositions – Rule 30
- / Subpoenas – Rule 45
- / Interrogatories / Requests for Admission
- / Expert Disclosures
- / Correspondence from Counsel
- / Summary Judgment Motions - Declarations



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THANK YOU!



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