

A Legal Overview Of Section 1983 Civil Rights Litigation

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If a governmental police department, in contrast to a private security company, was involved in the recently widely reported removal of a passenger from an airplane, there is a possibility, depending upon the specific facts, of a successful Section 1983 lawsuit that would impose liability upon that governmental entity. Police action may extend liability for injuries such as assault and battery to government in addition to private individuals and businesses.

The federal Civil Rights Act of 1871 (yes, 1871), also known as the Ku Klux Klan Act, was part of post Civil War legal developments that include the Thirteenth, Fourteenth, and Fifteenth Amendments. This comment briefly provides an incomplete educational overview of litigation under this significant legislation. Always consult an experienced attorney in all civil rights cases.

42 U.S.C. Section 1983:

“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.”

Dormant Until the 1960s

Very little Section 1983 litigation occurred until the U.S. Supreme Court’s 1961 decision in *Monroe v. Pape*. This case involved a warrantless breaking into a home by 13 Chicago police officers. While the city of Chicago could not be sued (municipal liability was added in 1978) the police officers could be sued as acting “under the color of state law” even though they were not authorized and may have been forbidden to act. This decision allowed individual governmental employees to be sued for acts that violate the Constitution or statutes.

Meaning of “Person”

The judicial interpretation of “person” under Section 1983 is complex and requires that one seek experienced legal counsel. The following provides only an extremely brief and incomplete overview.

The Supreme Court has decided that a state and state agencies are not “persons” subject to suit under Section 1983. However, municipalities and other local governmental units such as school districts may be sued when official policies are in clear violation of constitutional rights according to the Supreme Court’s 1978 decision in *Monell v. Department of Social Services*.

One cannot sue a state officer under Section 1983 for the typical actions routinely undertaken in an official capacity. For example, denying a driver’s license due to a failing grade on a driving test does not create a Section 1983 case. However, merely being an official does not provide blanket immunity for the violation of an individual’s rights.

A 1971 Supreme Court decision, *Bivens v. Six Unknown Named Agents*, stated that lawsuits could be brought for

violations of Fourth Amendment rights even in the absence of a statute that authorizes litigation holding, in essence, for every wrong there is a remedy. The Bivens decision has been interpreted broadly to allow lawsuits for a variety of violations, such as “excessive force,” unless a specific statute clearly provides an alternative remedy or some special factors mitigate against allowing the particular lawsuit.

Purely private persons or businesses not acting under “color of state law” are immune from a Section 1983 lawsuit [Morris v. Dillard’s Department Stores, Fifth Circuit, 2001]. Other state tort (personal injury) legal remedies may exist.

Acting Under “Color of State Law”

The Supreme Court has traditionally indicated that “color of state law” means power “possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law” [West v. Atkins, 1988]. This means that a state employee performing a governmental function, even if exceeding her/his authority, is acting under color of law. Additionally, a non-governmental person or entity may also act under color of law.

Rights “Secured by the Constitution and Laws”

Section 1983 does not create new legal rights. Rather, it is focused on the violation of existing rights. A given situation may involve state laws and state remedies such as tort (personal injury) law. However, most of the Bill of Rights have been held to apply to state and local entities and officials. Violations of rights such as due process, the Fourth Amendment (searches) and Fifth Amendment (self-incrimination) are common examples.

Immunity Issues

Historically public officials are granted either absolute or qualified immunity from lawsuit (can’t be sued) when performing official duties. Examples of absolute immunity involve a limited group of officials such as the President, legislators, or judges carrying out official duties. Qualified immunity is the general rule for individuals such as police officers and other officials unless they violate clearly established Constitutional rights or act in a grossly unreasonable fashion. The Supreme Court has held that Section 1983 does allow immunity defenses with some caveats. Actions taken with “deliberate indifference” may impose liability [Farmer v. Brennan, 1994]. This is a very high standard beyond negligence (recklessness) and involves conscious disregard.

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There are numerous Section 1983 First Amendment cases in which harassment and inconvenience, alone, do not produce official liability. Would a “person of ordinary firmness” be deterred from speaking or acting by the official’s conduct? [Friedmann v. Corrections Corporation of America, Ninth Circuit, 2001].

Fourth Amendment cases involving police stops and investigations find no violation of Section 1983 if there were “reasonable suspicion” for the initial stop, and the detention was only long enough to carry out the purposes of the stop. Probable cause exists for an arrest if there is a reasonable belief that criminal activity has occurred, even if a subsequent trial results in a not guilty verdict. As the Supreme Court has stated: “The Constitution does not guarantee that only the guilty will be arrested. If it did, Section 1983 would provide a cause of action for every defendant acquitted — indeed, for every suspect released.” [Baker v. McCollan, 1979].

Off-Duty Incidents

Often off-duty Section 1983 lawsuits involve police officers. Traditional employer liability for an employee’s actions (respondeat superior) will not impose Section 1983 liability on a municipality. Rather, the city must have either an express policy or a well-established custom or common practice that produces a violation of constitutional rights.

Consistently enforced personnel and municipal policies will prevent a claim. For example, a 2016 Fifth Circuit decision involving an off-duty intoxicated Houston police officer who killed an individual involved in a bar fight did not impose liability on the city of Houston since Houston rules prohibited police officers from carrying a firearm while intoxicated [Rodriguez v. City of Houston]. A similar no-municipal-liability decision, with a different factual background, was reached in 2015 by the Seventh Circuit [Rossi v. City of Chicago].

However, off-duty police officers employed as security guards who routinely exercise arrest and booking functions in coordination with business owners and the local police department may impose Section 1983 liability on the municipality [Lusby v. City of Lawton, Tenth Circuit, 1984]. Has the officer acted under an assertion of official status and are the actions in some way connected to this official status, even if exceeding his/her authority? Does a particular local custom rise to level of color of law?

Procedural Considerations

While Section 1983 contains no statute of limitations (time in which a suit must be brought), federal courts tend to apply the personal injury statute of limitations of the state where the action occurred. Also, a plaintiff must possess “standing to sue,” that is a specific concrete actual or imminent injury to himself/herself. One cannot typically seek redress for others. Additionally, the claim must be “ripe.” Is the case one that a court may appropriately decide now rather than await the unfolding of future events? Is the case only hypothetical?

Generally speaking, a successful Section 1983 plaintiff may collect typical state tort compensatory damages such as those for medical expenses, lost income, pain and suffering, emotional distress, reputational injury, etc. Punitive damages are available against individuals (but not municipalities) in cases involving “reckless or callous disregard for the plaintiff’s rights, as well as intentional violations of federal law” [Smith v. Wade, 1983]. Finally, reasonable attorney’s fees and expert witness fees are also available [42 U.S.C. Section 1988]. As a matter of practice, municipalities frequently indemnify their officials and police officers if a financial judgment is rendered against them individually.

A Brief Section 1983 Litigation Checklist

1. Has there been a violation of a Constitutional or statutorily protected right?
2. Is the actor a person that is subject to Section 1983?
3. Did this person act under color of law or local governmental custom or practice?
4. Are the actions complained of connected to the deprivation of rights in a reasonably foreseeable manner (proximate causation)?
5. Are there defenses to liability such as immunity, lack of standing to sue, or a lack of ripeness?
6. Is a monetary judgment collectable from a governmental entity or, in the case of an individual defendant, personal assets or personal insurance policies?

This comment provides a brief and incomplete educational overview of a complex topic and is not intended to provide legal advice. Always consult an experienced attorney in specific situations.