



“Injustice anywhere is a threat to justice everywhere.”

Martin Luther King Jr., *Letter from Birmingham Jail, April 16, 1963*

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CIVIL RIGHTS IN FEDERAL COURT

Under federal law, it is 42 USC § 1983 that primarily establishes whether or not an injustice has been done. Section 1983 provides that anyone who, under color of law, deprives another of the rights secured for them by the constitution and the law shall be liable. Under Section 1983, state officials sued in their personal capacity,¹ municipalities and other local government units are persons for the purposes of § 1983.²

In determining whether or not a “person” is liable there are three criteria that must be met. Usually one of the easiest determinations to make is whether or not the person is acting under color of law. A person is acting under the color of law if he or she has exercised power “possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law.”³ The reason this is usually the easiest element to prove is that many times this is a factual determination conceded to by the state officers.

Once a determination is made that the person in question was acting under the color of law, the next question is whether or not there was a violation of a federal constitutional right. The most common civil rights violated by state officials relate to the First Amendment (e.g. whistleblowers who experience retaliation); Fourth Amendment (excessive force); Eighth Amendment (denial of medical attention to prisoners); and 14th Amendment (failure to provide notice). When local government units or municipalities violate a persons’ civil rights this is usually done in one of the following ways: by following an official policy, practice or custom, ratification of a decision or decisions, act of a final policy maker and failure to train.

Once the three criteria are met, there must be a determination as to whether or not the “person” was the proximate cause of another’s being deprived of their constitutional rights. “If they do an affirmative act, participate in another’s affirmative act, or omit to perform an act which they are legally required to do that causes the deprivation of which complaint is made.”⁴

Perhaps, the most difficult part of a 1983 action for a plaintiff is not in meeting the elements above but in overcoming the ability of the defendant(s) (state official) to secure qualified immunity. The purpose of qualified immunity is to shield

state officials who are performing discretionary functions when they reasonably believe their conduct complies with the law. Qualified immunity is an entitlement not to stand to trial. Therefore, qualified immunity is normally determined during the summary judgment stage, although it can and has been determined after a jury has made its determination. The determination of qualified immunity is based on two inquiries: (1) did the officer’s conduct violate a constitutional right and (2) was that right clearly established?

If the civil rights case is not met with a finding of qualified immunity during the early stages, then the amount of damages caused by the violation of a constitutional right will need to be determined. Civil rights cases are unique in that there are many damages that you can prove solely through the plaintiff. For instance, the plaintiff can testify as to his loss of enjoyment of life, loss of reputation and his or her pain and suffering. Other damage considerations include the extent of the damages the incurred by the plaintiff, loss of wages, medical treatment or services and future damages. In addition to the compensatory damages that can be awarded, punitive damages can be awarded by the jury as well.

Civil rights actions are usually difficult cases for both the plaintiff and the defendant. These cases are usually “he said, she said” and therefore the case can become a competition for credibility. Who does the jury believe is more credible?

However, if an attorney obtains a successful result, an attorney fees award shall be granted pursuant to 42. USC 1988.

For a great outline on federal civil rights, see http://www.ca9.uscourts.gov/datastore/uploads/guides/Section_1983_Outline_2011.pdf ■

1 *Monell v. Dep’t of Soc. Servs.*, 436 U.S. 658, 690 (1978).

2 *Hafer v. Melo*, 502 U.S. 21, 31 (1991).

3 *West v. Atkins*, 487 U.S. 42, 49 (1988) (quoting *United States v. Classic*, 313 U.S. 299, 326 (1941)).

4 *Preschooler II v. Clark Cnty. Sch. Bd. of Trs.*, 479 F.3d 1175, 1183 (9th Cir. 2007) (quoting *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978)).