

PREPARING AND WINNING A CIVIL RIGHTS LAWSUIT

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I. CIVIL RIGHTS LAWSUIT

A. Section 1983 Civil Action for Deprivation of Rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, or 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.

B. Plaintiff's Burden in Section 1983 Actions:

1. To prevail under a Section 1983 claim, a plaintiff must show that a person acting under color of state law deprived the plaintiff of clearly defined rights secured by the United States Constitution or laws of the United States. *Mills v. City of Barboursville*, 389 F.3d 568, 574 (6th Cir. 2004).
2. In order to establish liability against a municipality, a plaintiff therefore must prove that:
 - a. A constitutional violation occurred, and
 - b. The City "is responsible for that violation." *Graham v. County of Washtenaw*, 358 F.3d 377, 382 (6th Cir. 2004).

3. There are three bases upon which a municipality can be held liable pursuant to Section 1983:
 - a. When an express policy causes a constitutional violation;
 - b. When a widespread practice or custom is so common that it has the effect of a written policy; or
 - c. When the constitutional injury is caused by a person with final policymaking authority. *Gregory v. Shelby County*, 220 F.3d 433, 441-442 (6th Cir. 2000).

II. INITIAL CONSIDERATIONS

A. Obtain All Documents and Tangible Things

1. Check, double check, and triple check with all possible custodians
 - a. Involved departments and divisions, e.g., police department
 - b. Law department
 - c. Detective bureau
 - d. Clerk of courts
 - e. Individual defendants' files
 - f. Evidence room
 - g. IT department
 - h. Personnel files of individual defendants
 - i. Other
2. Search for documents, videotapes, audio recordings, and any other tangible things
3. Review any pre-suit public records requests and documents produced in response

4. Obtain records and transcripts of any prior proceedings (e.g. related criminal trial)

B. Defendants and Witnesses

1. Conduct early separate interviews
2. Answer defendants' questions
3. Establish rapport

C. Consider Competing Theories

1. Attempt to ascertain plaintiff's theory
 - a. Alleged in complaint
 - b. Disclosed in discussion with plaintiff's counsel
 - c. Advanced in prior proceedings (e.g. related criminal trial)
2. Formulate working defense theory
 - a. Ascertain facts, to extent possible
 - b. Determine applicable law

D. Consider Expert Witnesses

1. Confer with the coroner in death cases
2. Determine disciplines of required experts
 - a. Pathologist
 - b. Clinician
 - c. Diagnostician
 - d. Correctional care expert in jail cases
 - e. Other

E. Consider Removal of Suit

1. Federal courts are more conversant with 42 U.S.C. § 1983
2. Federal judges often are better equipped to deal with complicated legal issues which may arise
3. The plaintiff must persuade all jurors to obtain a plaintiff's verdict
4. Jury pool may be better

III. DEPOSITIONS OF MUNICIPAL EMPLOYEES

A. Complete Interviews of All Defendants and Key Witnesses Before First Deposition

B. Prepare an Outline of Anticipated Cross-Examination

C. Schedule, if Possible, Three Sessions with Each Deponent

1. At first session, show the deponent a videotape on giving a deposition, go over the outline of anticipated cross, familiarize the deponent with the plaintiff's theory and theory of defense, and do some cross-examination
2. At the second session do intensive cross-examination and concentrate on critical or problem areas
3. At the third session (a day or two before the deposition) do final preparation

IV. SUMMARY JUDGMENT IN SECTION 1983 ACTIONS:

A. The Non-Moving Party Must Demonstrate a Genuine Issue of Material Fact as to the Following Two Elements:

1. The deprivation of a right secured by the Constitution or laws of the United States, and
2. The deprivation was caused by a person acting under color of state law. *Johnson v. Karnes*, 398 F.3d 868, 873 (6th Cir. 2005) (quoting *Ellison v. Garbarino*, 48 F.3d 192, 194 (6th Cir. 1995)).

V. COMMON § 1983 ACTIONS

A. Failure to Provide Medical Care

1. *Estelle v. Gamble*, 429 U.S. 97 (1976).
 - a. Deliberate indifference to serious medical needs of prisoners constitutes the unnecessary and wanton infliction of pain proscribed by the Eighth Amendment to the U.S. Constitution
 - b. An inadvertent failure to provide adequate medical care does not constitute an unnecessary and wanton infliction of pain
2. *Farmer v. Brennan*, 511 U.S. 825 (1994).
 - a. A prison official's deliberate indifference requires a showing that the official was subjectively aware of the risk
 - b. An Eighth Amendment violation occurs when two requirements are met
 - 1) The deprivation must objectively be sufficiently serious; the inmate must show that he is incarcerated under conditions posing a substantial risk of serious harm
 - 2) A prison official must have a sufficiently culpable state of mind, *i.e.*, be deliberately indifferent to the inmate's health or safety
 - c. The official must know of and disregard an excessive risk to inmate health or safety
 - d. The official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and the official also must draw the inference
3. *Bell v. Wolfish*, 441 U.S. 520 (1979).
 - a. Pretrial detainees are protected from mistreatment under the due process clause of the Fourteenth Amendment

- b. In evaluating the constitutionality of conditions or restrictions of pretrial detention, the proper inquiry is whether those conditions or restrictions amount to punishment of the detainee
4. *Horn v. Madison County Fiscal Court*, 22 F.3d 653 (6th Cir. 1994).
- a. Proximate cause is an essential element of a 42 U.S.C. § 1983 claim
 - b. For liability to attach, the conduct must be more culpable than mere negligence; it must demonstrate deliberateness tantamount to intent to punish
 - c. Knowledge of the asserted serious needs or of circumstances clearly indicating the existence of such needs is essential to a finding of deliberate indifference
5. *Miller v. Calhoun County*, 408 F.3d 803 (6th Cir. 2005).
- a. Deliberate indifference is a stringent standard of fault requiring proof that a municipal actor disregarded known or obvious consequences of his or her action
 - b. Municipal liability typically requires proof that the municipality was aware of prior unconstitutional actions by its employees and failed to take corrective measures
 - c. Plaintiff must also prove that the municipal policies and practices directly caused the constitutional violation
 - d. Physician's provision of grossly inadequate medical care to an involuntary detainee may amount to deliberate indifference if the care is so grossly incompetent, inadequate, or excessive as to shock the conscience or to be intolerable to fundamental fairness
6. Practical considerations
- a. Factual questions typically arise
 - i. Objectively, what occurred?
 - ii. Subjectively, what was each defendant's state of mind?
 - b. Medical issues often will predominate

- i. What was the differential diagnosis?
- ii. What was prognosis?
- iii. Did any failure to treat or delay in treatment make any difference?
- iv. What caused the detainee's injury or death?
- c. Defense may focus on medical issues; a battle of the experts may ensue
- d. Many (but not all) jury pools tend to favor officials, especially police
- e. Qualified immunity defenses may be important

B. Failure to Train

1. *Monell v. Dep't. of Soc. Servs.*, 436 U.S. 658 (1978).
 - a. A municipality cannot be held liable under 48 U.S.C. § 1983 on a respondeat superior theory
 - b. The plaintiff must identify a municipal policy or custom made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy
2. *Board of Comm'rs. of Bryan County v. Brown*, 520 U.S. 397 (1997).
 - a. The municipality must be the "moving force" behind the injury alleged; the plaintiff must demonstrate a direct causal link between the municipal action and the deprivation of federal rights
 - b. Deliberate indifference is a stringent standard of fault requiring proof that a municipal actor disregarded known or obvious consequences of his or her action
 - c. A plaintiff seeking to establish municipal liability based on the actions of an employee must demonstrate that the municipal action was taken with deliberate indifference as to its known or obvious consequences
3. *City of Canton v. Harris*, 489 U.S. 378 (1989).

- a. Inadequacy of police training may serve as a basis for 42 U.S.C. § 1983 liability only where the failure to train amounts to deliberate indifference to the rights of persons with whom the police come into contact
 - b. The focus must be on the adequacy of the training program in relation to the tasks the particular officers must perform
 - c. A municipality is only liable if the failure to train reflects deliberate indifference to the constitutional rights of its inhabitants
4. *Doe v. Claiborne County*, 103 F.3d 495 (6th Cir. 1996).
- a. The liability of supervisory personnel under 42 U.S.C. § 1983 must be based on more than the right to control employees
 - b. There must be a showing that the supervisor encouraged the specific incident of misconduct or in some other way directly participated in it
 - c. At a minimum a plaintiff must show that a supervisory official at least implicitly authorized, approved, or knowingly acquiesced in the unconstitutional conduct of the offending subordinate
 - d. To state a municipal liability claim under an inaction theory, the plaintiff must establish:
 - 1) The existence of a clear and persistent pattern of unconstitutional conduct;
 - 2) Notice or constructive notice to the municipality;
 - 3) The municipality's tacit approval of the unconstitutional conduct such that its deliberate indifference in failing to act can be said to amount to an official policy of inaction; and
 - 4) The municipalities' custom was the "moving force" or a direct causal link in the constitutional deprivation

5. *Napier v. Madison County*, 238 F.3d 739 (6th Cir. 2001).
 - a. To recover in a failure to train claim, a plaintiff must show that the plaintiff's civil rights were violated pursuant to and as a direct result of an official policy or custom
 - b. The burden requires a showing that the unconstitutional policy or custom existed, that it was connected to the governmental entity, and that the policy or custom caused the constitutional violation

6. *Miller v. Lindsay*, 408 F.3d 803 (6th Cir. 2005).
 - a. A municipal "custom" may be established by proof of the knowledge of policymaking officials and their acquiescence in established practice
 - b. Only where a municipality's failure to train its employees evidences deliberate indifference can such a shortcoming be a city "policy or custom"
 - c. A single act may establish municipal liability only where the actor is a municipal "policymaker"

7. Practical considerations
 - a. Training can be attacked by plaintiff on a variety of bases
 - i. Was the training protocol sufficient?
 - ii. Was the training documented?
 - iii. Was the training done within a reasonable time prior to the alleged misconduct?
 - iv. Were those trained ever tested to ensure that they understood?
 - v. Did those trained retain what they were taught?
 - vi. Was there continued or refresher training?
 - b. Typically no matter what was done, the plaintiff can argue that the substance, documentation, or frequency of the training was inadequate

- c. Defense may argue that the training was consistent with the standards
 - i. The Ohio Administrative Code
 - ii. Inspections by the Ohio Department of Rehabilitation and Correction in jail cases
 - iii. The training compares favorably with that done by other municipalities
- d. Defense may argue that any alleged failure to train was not proximately related to injury or death
- e. Defense can highlight potential inconsistencies in plaintiff's claims
 - i. Failure to train means that the municipality allegedly did not teach its employees what they needed to know
 - ii. If that is true, any individual defendants could not have been deliberately indifferent to what they did not know

VI. OTHER CONSIDERATIONS IN 1983 CASES

A. Can the Plaintiff Prove Deliberate Indifference?

- 1. A substantial, but obviously not insurmountable, burden for the plaintiff
- 2. Courts often find genuine issues of material fact, especially regarding a defendant's state of mind
- 3. Don't count on summary judgment

B. Punitive Damages

- 1. A deliberate indifference claim has many similarities to a punitive damage claim
- 2. A municipality cannot be liable in punitive damages under federal law [*City of Newport v. Fact Concerts*, 453 U.S. 247 (1981)] or state law [*Rannells v. Cleveland*, 41 Ohio St.1 (1975)], but the individual defendants may be exposed.

- C. Jury Interrogatory Answers may Assist the Defense in Post-Trial Motion Practice or on Appeal**
- D. Ohio Rev. Code Chapter 2744 Defenses to any State Law Claims May be Important**
- E. The Costs of Defending a Suit**
 - 1. The city may have a self-insured retention (“SIR”) or deductible
 - 2. The personnel costs may be substantial
 - 3. Costs paid by the insurer will figure into loss experience of municipality and future pricing of insurance
 - 4. Even a defense verdict often is costly
 - 5. An aggressive defense should reduce the amount of any settlement and increase the likelihood of a defense verdict, minimizing costs