

United States District Court for Rhode Island

CLE Series: Litigation Under 42 U.S.C. § 1983

Schedule:

Session I: Tuesday, January 28

Session II: Tuesday, February 11

Session III: Tuesday, February 25

Session IV: Tuesday, March 11

Session V: Tuesday, March 25

Session VI: Tuesday, April 8

SESSION I: INTRODUCTION (*Lynette Labinger & Marc DeSisto*)

- A. The Pro Bono Program (generally – more specifics at the end)
 - What it is, its history, how it works
 - Mentoring possibility – pairing people up
 - No “special track” for these cases
 - Availability of expenses, but limited – we hope that part of your firm’s *pro bono* effort will be picking up ordinary expenses of litigation

- B. Introduction to 42 U.S.C. § 1983
 - Meets the jurisdictional criterion of federal question (brief reference to federal jurisdiction)
 - Why these cases are important – vehicle for civil rights enforcement
 - Elements of a § 1983 case: state action, deprivation of a federal right
 - Maybe a brief explanation of “constitutional torts” and the consequences of that (share elements of state tort law – added gloss of “deliberate indifference,” or “shockingly bad treatment,” or wantonness) – might mention here that often there are state law actions appended)
 - Prevailing party entitlement to attorneys’ fees
 - Statistically what the Court’s civil rights *pro se* caseload looks like
 - Types of cases on *pro bono* docket
 - General overview
 - Government defendants – state & municipal actors “and their friends” (i.e., private parties working together with them under color of state law)
 - Some examples of specific recently-appointed or concluded cases, with names & case numbers so they can look up how they proceeded on the docket
 - General overview of how these clients differ from corporate clients (not the detail of the last session)
 - Sometimes confined – they can’t come to you
 - May have limited electronic availability
 - Often undereducated
 - Circumscribed world knowledge -- sometimes unsophisticated
 - All feel very wronged – enough to have taken it upon themselves, without counsel, to begin navigating the justice labyrinth

SESSION II: MORE DETAIL ABOUT § 1983 CASES (Mike Colucci & Sonja Deyoe)

- Composition of a § 1983 case – REMEMBER § 1983 is simply a jurisdictional vehicle: it’s not itself a cause of action. It’s a way to bring an existing federal cause of action against state officials into federal courts. Some consequences of that: statute of limitations is borrowed from state law – 3 years; but date of accrual of cause of action is governed by federal law. Just like in diversity cases, there will be some things governed by state law, some by federal law.
- Many are constitutional torts: an expansion of such torts as assault, battery, false imprisonment, failure to protect. Very similar to state causes of action with additional elements that “constitutionalize” them:
 - Deliberate indifference to a known serious risk
 - Excessiveness – wantonness or malice
 - Overlay of Fourth Amendment or Eighth Amendment most common
- Can be statutory violations – array of anti-discrimination statutes concerning gender, age, national origin, religion, disability
- “New” one stems from Religious Restoration Act – particularly freedom of religion issues in prisons
- Very important: Must name an individual; cannot sue an entity such as the State or a City without first identifying as named defendant(s) the individual(s) who caused the harm.
 - Can use state John Doe statute initially, but have to act with “reasonable diligence” to identify individuals and must move to amend promptly.

A. Typical Cases

1. Fourth Amendment against RISP or Municipalities (seizures, searches, arrests, detentions)
2. Police Cases
 - First Amendment Violations
 - Excessive Force
 - Unlawful Detention and False Arrest
3. Malicious prosecution
4. *Bivens* actions against federal law enforcement

SESSION III: CONTINUED DETAIL ABOUT § 1983 CASES (Chloe Davis & Brenda Baum)

5. Prisoner Cases
 - Excessive force
 - Failure to protect
 - Unconstitutional conditions
 - Prolonged segregation
 - Inadequate medical care
 - Religious exercise
6. Other Governmental Actions
 - Due Process
 - Equal Protection

SESSION IV: FEDERAL PRACTICE AND PROCEDURE (*Etie-Lee Schaub & Matthew Oliverio*)

A. General Comments

- Pitch for the Federal Court: welcoming, friendly, assisting
- Federal Rules of Civil Procedure and of Evidence
- But also Local Rules: some examples of what local rules cover
- Some very big differences from state court:
 - Cases assigned at filing to both a judge and a magistrate
 - Many matters mid-case will be referred to a magistrate (differs with every judge), often discovery matters, non-dispositive motions. Even dispositive motions can be referred for Report & Recommendation
 - Role of case managers
 - Cases making it onto the Pro Bono docket will have been screened for plausible federal claim *and* granting of Motion to Appoint Counsel
 - Pro Bono Project personnel are a resource on procedural matters
- Discovery is not filed with the Court; discovery disputes require certification of attempt to resolve before you can go before a judge
- Cases make it to the trial calendar much faster than in state court – when the Trial Calendar occurs, how cases make it onto it, how it is called
- Zoom has replaced personal appearances for most things: conferences are almost entirely handled by Zoom; hearings can be held on Zoom; calendar calls are Zoom
- PACER – everything electronic

B. Progress of a Federal Civil Action

- Scheduling Order
 - Default scheduling
- Rule 16 Statement & Conference
- Answer or Motion to Dismiss – Rule 12
 - Time Deadlines
- Period of Discovery – independent of the Court
 - some specifics about conducting discovery, common discovery disputes in 1983 claims, common discovery requests, challenges with getting discovery from DOC, etc.
- Motion(s) for Summary Judgment – Rule 56
 - Differences between state and federal – federal court requires separately filed statement of undisputed facts and responsive statement of disputed facts with MSJ
- Trial – mandatory attempt at settlement

SESSION V: SUING GOVERNMENTAL AGENCIES/ENTITIES (*Kate Sadeck & Karen Blum*)

- A. Individual vs. official capacity – ramifications of that
- B. Suing federal agencies/defendants – Federal Tort Claims Act
Bivens actions (very limited)
- C. Suing state defendants – *Will v. Michigan*
- D. Suing municipalities: *Monell*
- E. Supervisory liability
- F. Special defenses of government agencies/defendants
 - Sovereign immunity
 - Qualified immunity

SESSION VI:

PART I: REPRESENTING CLIENTS WHO HAVE BEEN PRO SE (*Michelle Alves, Nicole DeLibero*)

- A. General characteristics of the population
 - Both a distrust of and an undue respect for authority – distrust of agencies and government agents like police, bureaucrats, etc., but on the other hand often a huge respect for judges
 - Under-education and its ramifications – sometimes a difficulty understanding the limitations of authority (i.e., what a court can actually do for them), an inexperience with the mechanics of authority (i.e., the constraints often on bureaucrats, constraints on agencies); issue of language sophistication (“According to the Nation's Literacy Institute, 54% of adults in the United States have a literacy level below the equivalent of a sixth grade, and 21% are illiterate. This means that they have difficulty reading printed or digital materials, or completing tasks like filling out a job application.” The average American reads at a 7th-8th grade level.)
 - Learning disabilities/differences – maybe some impaired processing
 - Language issues
 - Impact of incarceration if they are prisoners/impact of poverty
 - Managing expectations
- B. Representing prisoners
 - Single state prison – so all actions against prisoners are actions under color of state law
 - Prison Litigation Reform Act (PLRA)
 - Exhaustion of administrative remedies
 - Paying full filing fee (this will already have been set in motion)
 - Three strikes provision (this will presumably not be an issue)
 - Need for physical injury (or damage to property) or manifestation of emotional injury
 - Rules around visiting – hours, what you can bring in, no handing-over of documents
 - Federal prisoners may be all over the country
 - Actual practicalities of Zoom contacts, telephone contacts, requirements of legal mail

PART II: The Pro Bono Panel – Why do it & signing up: (*Jenn Wood, Steven Richard, Josh Xavier*)

- C. Mechanics of Signing up!
 - Federal Bar Membership
 - Will be *offered* a case: can accept or decline within 14 days
 - Limitations on Fee Arrangements – no fees from the client
 - Court may require periodic status reports