

CIVIL RIGHTS MEDIATION

Wassily Kandinsky, Blue, 1925 (Public Domain)

U.S. District Court | Central District of California
Mediation Practice Group

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Overview

- Types of civil rights actions brought under 42 U.S.C. §1983 for excessive force, *Monell* claims, and other torts;
- Types of civil rights defenses regarding reasonable force, absolute and qualified immunities, and other defenses; and
- Resolution of civil rights actions through mediation.



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CIVIL RIGHTS LAWS AT ISSUE



42 U.S.C. §1983

- "Section 1983 Litigation" refers to lawsuits brought under Section 1983 (civil action for deprivation of rights) of Title 42 of the United States Code ([42 U.S.C. § 1983](#)).
- Section 1983 provides an individual the right to sue *state* government employees and others acting "under color of state law" for civil rights violations. Section 1983 does not provide civil rights; it is a means to enforce civil rights that already exist.
- Brought in conjunction with other constitutional provisions (i.e., First Amendment, 14th Amendment, etc.) and statutes (i.e., unlawful search and seizure, denial of medical care, Bane Civil Rights Act, Unruh Civil Rights Act).



Monell Liability

- The *Monell* doctrine comes directly from [Monell v. Department of Social Services](#) 436 U.S. 658 (1978)
- This U.S. Supreme Court decision made it possible to hold local governments and government agencies liable for officer misconduct under [42 U.S. Code § 1983](#).



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TYPES OF CIVIL RIGHTS ACTIONS



Types of Civil Rights Actions

- 42 U.S.C. §1983 Excessive Force Claims
- 42 U.S.C. §1983 Wrongful Death Claim
- 42 U.S.C. §1983 *Monell* Claims
- 42 U.S.C. Wrongful Conviction Claims
- State Claims and Intentional Torts



Example of Excessive Force Claim

Action by minor through her guardian ad litem alleging that a county and its law enforcement agents violated her civil rights by using excessive force when they restrained her as a passenger in a vehicle without a front license plate. The minor alleged that she was thrown to the ground on a scorching summer day and her face was burnt by the hot asphalt. The county alleged that plaintiff resisted arrest, and that her cell phone holder in the car's center console resembled a firearm.



Example of Wrongful Death Claim

Action by the adult children of decedent alleging that a county and its deputy were negligent in causing decedent's wrongful death. The government alleged that its deputy used reasonable force in responding to a call to apprehend decedent after he brandished an axe and used pepper spray upon the proprietor in an AM-PM store, continued onto the street and ran into a crowded parking lot in a shopping center, carried the axe aloft next to a Best Buy store, refused to stop when commanded by law enforcement, and yelled, "shoot me, [racial epithet]," whereupon he was shot dead.



Example of *Monell* Claim

Action by detainee alleging that a county and its law enforcement agents violated his 42 USC § 1983 and 14th Amendment constitutional rights by using excessive force, failing to provide him with adequate medical care, acted indifferently to the substantial risk of harm to his health and safety, and failing to provide him with due process for which liability could be imputed under *Monell*. The detainee claimed that a group of his jailers used excessive force by striking him and using a taser gun upon his groin during his detention. The government alleged that while force was warranted and a taser gun was used, law enforcement did not direct it at detainee's groin area and the probes fell to the floor.



Example of Wrongful Conviction Claim

Action by two former inmates who were wrongly convicted as teenagers and imprisoned for nearly 24 years for a 1997 drive-by murder that they allegedly did not commit. Another incarcerated person later confessed to the crime and the inmates were set free. The two men alleged that law enforcement violated 42 U.S.C. § 1983 by depriving them of liberty and due process, denying them a fair trial, abridging their rights under the Fourth and Fourteenth Amendments, engaging in civil rights conspiracy, inadequately interviewing witnesses, and failing to supervise police officers. The government alleged that no material evidence was suppressed and identification procedures were reliable and free of suggestion.



Example of State Claims and Intentional Torts

Appeal by parent, perceived as having a mental disability, alleging a county child protective agency had wrongfully and permanently removed her child without a warrant. She further alleged that the government made false statements about her perceived mental disability in violation of her constitutional due process under 42 U.S.C. §1983, and discriminated against her in violation of the ADA and the Unruh Civil Rights Act, warranting higher attorneys' fees than the amount awarded at trial. The government's cross-appeal alleged plaintiff was not regarded as having a disability, as well as res judicata, instructional error, qualified immunity, lack of substantial evidence, and insufficiency of the evidence.



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CIVIL RIGHTS DEFENSES

An abstract painting by Wassily Kandinsky titled 'Blue' (1925). It features a complex composition of geometric shapes, including triangles, rectangles, and circles, in a variety of colors such as blue, red, yellow, and black. The overall effect is a sense of dynamic movement and emotional intensity.

Civil Rights Defenses

- Reasonable force was used
- Qualified immunity
 - A reasonable officer would not have known he/she was violating a constitutional right
- Causation – use of force did not cause the injury/death
 - Underlying medical condition
 - Drug use
- State law defenses (Bane Act, Cal. Civ. Code § 52.1)
 - Claims filing statutes

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Example of Reasonable Force Defense

Called by the suspect's fiancé about suspect threatening violence with a knife. The suspect had a history of bipolar disorder and drug abuse. Police tried to persuade suspect to drop his knife. When taser and rubber bullets failed to stop plaintiff and he charged the officers with the weapon, officers opened fire. Plaintiff underwent surgeries from being shot, lost one of his kidneys, had bullets lodged in his spine and leg, became a paraplegic, and was completely dependent on his fiancé's care. The municipality denied liability, and alleged that its police officers and fire fighters followed protocol under the circumstances.

An abstract painting by Wassily Kandinsky titled 'Blue' (1925). It features a complex composition of overlapping geometric shapes, including triangles, rectangles, and circles, in a rich palette of blue, red, yellow, and black. The overall effect is one of dynamic movement and emotional intensity.

Example of Qualified Immunity Defense

Action by husband and wife alleging that a county and its law enforcement agents violated their civil rights by executing a warrant without probable cause, breaking into their apartment in the night to search for a suspect unknown to them, roughly handling the husband and causing him physical injury and the couple emotional injury, and destroying their personal property. The county and law enforcement alleged the warrant was issued with probable cause, was executed in good faith and according to protocol, and the government was entitled to qualified immunity in carrying out its police powers.

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Example of Lack of Causation Defense

Action by the estate of decedent, who had a history of schizoaffective disorder, alleging that a county and its law enforcement officers deprived decedent of his 42 U.S.C. § 1983 civil rights and failed to properly monitor him when he suffered wrongful death in a private holding cell following his arrest for smashing a car window. County alleged that decedent was not under the influence of drugs or alcohol, responded appropriately, did not experience any physical harm or cause himself harm, was properly monitored by jail officials, suffered a heart attack in his sleep, and subsequently died despite receiving medical treatment.

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Example of State Law Defenses

Action by female inmate alleging that a county and its male deputy sheriff violated her civil rights when the deputy sexually assaulted her while she was detained. The defense alleged that inmate did not report the assault when the deputy was investigated, failed to exhaust her administrative remedies, the statute of limitations had run, and tolling is not applicable for pre-sentenced inmates.



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RESOLVING CIVIL RIGHTS ACTIONS THROUGH MEDIATION

An abstract painting by Wassily Kandinsky titled 'Blue' (1925). It features a complex composition of overlapping geometric shapes in various colors, including deep blues, purples, reds, yellows, and greens. The forms are dynamic and layered, creating a sense of depth and movement. The overall mood is contemplative and spiritual, characteristic of Kandinsky's work.

Resolving Civil Rights Actions

- Be aware of the heightened sensitivity in civil rights cases
- Set the stage for settlement
- Establish trust, respect, empathy, and personal connection in mediation
- Be persistent in helping the parties reach resolution
- Continue to follow up if case does not settle at mediation

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Understand the Governmental Approval Process for the Jurisdiction

Example — Los Angeles County Levels of Approval:

- Less than \$20,000: County Counsel (immediate)
- Under \$100,000: Claims Board (6 months)
- More than \$100,000: Board of Supervisors (9-12months)

Contract Cities Claims Board: Special Approval Process



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QUESTIONS

