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**Municipal Liability Under Section 1983**

**Presentation by**

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## LIABILITY OF THE MUNICIPALITY UNDER 42 U.S.C. §1983

### I. INDIVIDUAL CAPACITY v. OFFICIAL CAPACITY SUITS

- A suit against a municipal official in his or her "official capacity" is identical to a suit against the municipality itself. Kentucky v. Graham, 473 U.S. 159, 165 (1985).
- failure to expressly state that the official is being sued in his individual capacity may be construed as an intent to sue defendant only in his official capacity Murphy v. Arkansas, 123 F.3d 750, 755 (8<sup>th</sup> Cir. 1997).
- where the complaint is silent as to whether official is being sued in his individual or official capacity the Court will typically look to the specific allegations of tortious conduct and will find that an individual capacity suit exists if allegations point to tortious conduct of an individual acting under color of state law. See Rodriguez v. Phillips, 66 F.3d 470, 482 (2<sup>nd</sup> Cir. 1995).

### II. MUNICIPALITIES DO NOT HAVE VICARIOUS LIABILITY UNDER §1983

- a municipality cannot be held liable under §1983 merely because it employs a tortfeasor. Monell v. Dept. of Social Services, 436 U.S. 658, 690 (1978).
- the only viable §1983 claim against a municipality is that which alleges an unconstitutional policy or pervasive practice, (as discussed in detail below), in accordance with Monell v. Dept. of Social Services, *supra*.
- **Note** -- under Conn. Gen. Stat. §7-101a, a municipality may be required to indemnify a municipal employee who has been sued in his or her individual capacity for civil rights violation and been ordered to pay money damages.

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- however this obligation does not apply to willful or wanton misconduct (See Conn. Gen. Stat. §7-101a(b))

### **III. MUNICIPALITIES DO NOT ENJOY QUALIFIED IMMUNITY**

- qualified immunity is a defense to be raised by persons sued in their individual capacity and may not be raised by a municipality. Owen v. City of Independence, 445 U.S. 622 (1980).

### **IV. MUNICIPALITIES HAVE AN ABSOLUTE IMMUNITY FROM PUNITIVE DAMAGES**

- punitive damages may be awarded against individual defendants under §1983. e.g., Smith v. Wade, 461 U.S. 30 (1983).
- municipalities, however, are absolutely immune from paying punitive damages. City of Newport v. Fact Concerts, 453 U.S. 247 (1981).

**NOTE-** the fact that a municipality may never be assessed punitive damages does not prevent the municipality from voting to pay punitive damages assessed to a municipal employee. e.g., Trevino v. Gates, 99 F.3d 911, 921 (9<sup>th</sup> Cir. 1996).

### **V. METHODS OF ESTABLISHING MUNICIPAL LIABILITY UNDER MONELL V. DEPT. OF SOCIAL SERVICES**

#### **A. Liability Based on Official Policy Statements, Ordinances, Regulations, or Formally Adopted Decisions**

- easiest means of establishing civil rights liability in a direct action against a municipality is where an unconstitutional policy, ordinance or regulation is promulgated by the municipality's governing body or department or agency

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thereof.

-**eg.** Monell v. Dept. of Social Services, 436 U.S. 658, 690 (1978). (DSS and local BOE officially adopted a policy requiring pregnant employees to take unpaid maternity leaves before leave was medically necessary).

- Owen v. City of Independence, 445 U.S. 622 (1980) (personnel decision made by City Council constitutes official City policy).
- Tardiff v. Knox County, 397 F.Supp 2d 115, 129-31 (D. Me 2005)(Police Department's written policy authorized routine strip searches of felony arrestees)
- Rose v. Saginaw County, 353 F.Supp 2d 900, 923 (E.D. Mich 2005)(Police policy called tfor taking of all clothes of detainees)

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## **B. Liability Based on "Pervasive Practice"**

- the Monell decision allows imposition of municipal liability not only where a formally adopted policy is unconstitutional but also when unconstitutional practices of government actors are "so permanent and well settled as to constitute a custom or usage within the force of law." Monell, supra at 691.

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- the "pervasive practice" at issue will be attributed to the municipality when "the duration and frequency of the practices warrants a finding of either actual or constructive knowledge by the municipality that practices have become customary among its employees." Spell v. McDaniel, 824 F.2d 1380 (4<sup>th</sup> Cir. 1987).

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- unlike a "policy" which comes into existence from a top-down affirmative decision of a policymaker, a custom or pervasive practice develops from the bottom up. Liability of

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the municipality for a pervasive practice of constitutional violation derives not from the creation of the custom, but from its tolerance or acquiescence in it. Britton v. Maloney, 901 F.Supp. 444, 450 (D.Mass. 1995).

Daskalea v. District of Columbia, 227 F.3d 433, 442 (D.C. Cir. 2000) (Paper policy against sexual harassment will not insulate town from liability where there is evidence that actual harassment was pervasive and Town was deliberately indifferent to it)

**C. Liability Based on a Policy or Custom of Inadequate Training, Supervision, Discipline, Screening or Hiring**

- the Supreme Court has recognized "there are limited circumstances in which an allegation of failure to train can be the basis for liability of the Section 1983. City of Canton v. Harris, 489 U.S. 378, 387 (1989).
- the Court held that in order to secure a §1983 liability in a "failure to train" case the plaintiff must establish that the municipality's failure to train amounts to deliberate indifference to the constitutional rights of citizens.
- the requisite deliberate indifference in a failure to train case can be established in two ways:
  1. a plaintiff may establish deliberate indifference by demonstrating the failure to train officials in a specific area where there is an obvious need for training to avoid violation of citizens' constitutional rights

e.g., the need to train police officers regarding the use of deadly force.

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2. a plaintiff may demonstrate a pattern of unconstitutional conduct so pervasive as to apply actual and constructive knowledge on the part of the policymakers; and policymakers' failure to implement training once the need became obvious would equate to deliberate indifference that is attributable to the municipality

e.g. Police officer is the subject of repeated citizen complaints regarding use of excessive force that have been substantiated, but not disciplined or sent for retraining.

**D. Civil Rights Liability for Improper Hiring**

- if plaintiff can demonstrate the requisite deliberate indifference in a failure to screen or "bad hiring" case only where a reasonable scrutiny of an applicant's background would lead a reasonable policymaker to conclude that the "plainly obvious consequences of the decision to hire the applicant would be the deprivation of the third party's constitutional rights." Board of County Commissioners of Bryan County v. Brown, 520 U.S. 397 (1997) (In a 5-4 decision Supreme Court found liability where a Sheriff hired the son of his nephew, who had an extensive "rap sheet" and committed an assault and false imprisonment during a traffic stop)

**E. Municipal Liability Based on Single Act by Policymaking Officials**

- the Monell decision provided for municipal liability where the civil rights violation resulted from the "execution of a government's policy or custom, whether made by its

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lawmakers or by those whose edicts or acts may fairly be said to represent official policy." 436 U.S. at 694.

- thus, a single decision by an official with policymaking authority in a given area could constitute "official policy" of the municipality sufficient to result in municipal liability.
  
- acts by the policymaking official must be made within the scope of his or her duty and authority, and the official must be a final policymaker (e.g., City of St. Louis v. Praprotnik, 45 U.S. 112 (1988)) (St. Louis City Charter gave final policymaking authority in matters of personnel to the Mayor, Aldermen and Civil Service Commission).
  - \*\* look to the local Charter to determine whether a given official is a final policymaker with respect to a given decision.
    - if not liability may not be attributed to the municipality.

## **VI. LIABILITY OF SUPERVISORS FOR FAILURE TO TRAIN OR SUPERVISE SUBORDINATES**

- Supervisors can be sued in their individual capacity for their own culpable action or inaction in the training, supervision or control of subordinates.
- Supervisory liability is individual liability, based on the supervisor's personal responsibility for the constitutional violation.
- it does not require any proof of official policy or custom as the "moving force." City of Oklahoma City v. Tuttle, 471 U.S. 808 (1985).
- to demonstrate supervisory liability plaintiff must show actual or constructive knowledge by the supervisor of a risk of constitutional injury; deliberate indifference to that risk; and an

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"affirmative causal link" between the supervisor's inaction and a particular constitutional injury suffered by the plaintiff. Carter v. Morris, 164 F.2d 215, 221.

**Note** When the supervisor sued in his or her individual capacity is also a final policymaker for the municipality the action by the supervisor could lead to both individual liability and single-act Monell liability against the municipality. McGrath v. Scott, 250 F.Supp.2d 1218, 1222-23 (D. Ariz. 2003).

## **VII. AWARD OF ATTORNEY'S FEES**

Attorney's fees may be awarded to the prevailing party in a civil rights case under 42 U.S.C. 1988.

A "prevailing party" is one who has achieved a judicially sanctioned change in the legal relationship of the parties, via a judgment on the merits or a court-ordered consent decree, and rejected the view that a party who obtains a favorable private settlement may be awarded attorney's fees, Buckhannon Board & Care Home, Inc. v. West Virginia Department of Health & Human Services, 532 U.S. 598, 121 S.Ct. 1835, 149 L.Ed.2d 855 (2001),

It is not sufficient that the lawsuit was a catalyst for voluntary change in position.

In order for a prevailing defendant to recover attorney's fees, defendant must establish that the plaintiff's suit was "vexatious, frivolous, brought to harass or embarrass the defendant; or totally unfounded, frivolous, or otherwise unreasonable." Gomez v. Trustees and President of the University of Maine, (D.Me. 10/7/03).

## **VII. PUNITIVE DAMAGES**

May be awarded against individuals only.

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Under federal law, the applicable standard for punitive damages is “reckless or callous disregard for the plaintiff's rights, as well as intentional violations of federal law.” Smith v. Wade, 461 U.S. 30, 51 (1983).

A new trial may be ordered if verdict is against great weight of evidence, or if damages are excessive and shock court's conscience. BMW of North America, Inc. v. Gore, 517 U.S. 559 (1996) (suggesting that a multiplier in the single digits would not be conscience shocking)

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