

SECTION 1983 DEFENSIVE LITIGATION FOR COUNTY GOVERNMENT
presented to the
HARRIS COUNTY ATTORNEY OFFICE – DEFENSIVE LITIGATION DIVISION
1019 Congress St., 15th Floor – Houston, Texas 77002
[6.00 CLE HOURS; .50 ETHICS; TWO SESSIONS; SPRING 2024]

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FIRST SESSION: WEDNESDAY, MARCH 27, 2024; 9 A.M. TO 12 NOON

I. INTRODUCTION TO SECTION 1983 [Presenter: Ricardo J. Navarro] [.50 HOUR]

- A. Civil War Constitutional Amendments
- B. Enforcement Legislation: KKK Acts
- C. SCOTUS Caselaw: *Monroe v Pape* (1961); *Monell v City of New York* (1978), Etc.

II. NUTS & BOLTS: FILE INTAKE; CONFLICTS [Presenter: Ricardo J. Navarro] [.50 HOURS; ETHICS]

- A. File Intake; Service; Removal; Calendaring Deadlines
- B. Identifying Conflicts in Representation between Individual and the Municipality.
 - 1. Discuss legal and ethical obligations under the Disciplinary Rules, specifically Rule 1.06, Conflict of Interest, and Rule 1.12, Organization as a Client, pertaining to representation of multiple defendants by the same attorney.
 - 2. Evaluating the Pleadings / Complaint to evaluate whether the City's legal counsel can represent individual defendants as well as the municipality.
 - 3. Discussion of continuing evaluation of conflict issues as the formal and informal discovery process reveals more details pertaining to each named defendant and the interests of the municipality. Discuss ongoing nature of the ethical duty to monitor for conflicts of interest as new information becomes available.
- C. Maintaining Confidential Client Communications when representing multiple Defendants.

III. SUPERVISORY AND INDIVIDUAL LIABILITY QUALIFIED IMMUNITY AND CLEARLY ESTABLISHED CASELAW [Presenter: Ricardo J. Navarro / Kelley R. Albin] [2.00 HOURS]

- A. Delineate Supervisory Liability, Individual Liability and Qualified Immunity Defense
- B. Origins of the Qualified Immunity Doctrine. Discuss caselaw development as reflected in cases such as: *Pierson v Ray*, 386 U.S. 547 (1967); *Bivens v Six Unnamed Agents*, 403 U.S. 388 (1971); *Paul v Davis*, 424 U.S. 693 (1976)(damage to reputation); *Harlow v Fitzgerald*, 457 U.S. 800 (1982); *Siegert v Gilley*, 500 U.S. 226 (1991); *Saucier v Katz*, 533 U.S. 194 (2001)
- C. What is Clearly Established Law

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1. Cover recent developments, particularly in the 5th Circuit, pertaining to the evaluation and analysis of when a constitutional right is “clearly established” under *Anderson v Creighton*, 483 U.S. 635 (1987) and its progeny.
2. Cover current application of the “clearly established” doctrine at the 5th Circuit such as *Roque v Harvel*, 993 F.3d 325 (5th Cir. 4-1-2021); *Brown v Tarrant County, Texas*, 985 F.3d 489 (5th Cir. 1-18-2021); *Keller v Fleming*, 952 F.3d 216 (5th Cir. 2-20-2020).
3. U.S. District Courts, such as *Taylor v Hartley*, 488 F.Supp. 3d 517 (S.D. Tex. 9-22-2020); *Green v City of Mission*, ___ F.Supp. 3d ___, 2019 WL 3217033 (S.D. Tex. 7-17-2019).

SECOND SESSION: WEDNESDAY, APRIL 10, 2024; 9 A.M. - 12 NOON

IV. THE MONELL DOCTRINE AND ITS PROGENY [Presenter: Ricardo J. Navarro / Robert L. Drinkard] [1.00 HOURS]

- A. MONELL V DEPT OF SOCIAL SERVICES OF NEW YORK (1978)
 1. Discuss factual and legal background of the case, including the game-changing holding overruling of *Monroe v Pape*.
- B. DISCUSSION AND ELABORATION OF CRITICAL CASELAW EVOLUTION [NOTE: PICK 5 KEY CASES TO DISCUSS]
 1. Discuss the evolution of the *Monell* doctrine over time addressing a number of different fact patterns and scenarios in pursuit of municipal liability.
 2. Cover critical cases such as *Newport v Fact Concerts*, 453 U.S. 247 (1981); *Brandon v Holt*, 469 U.S. 464 (1985); *Oklahoma City v Tuttle*, 471 U.S. 808 (1985); *Pembauer v Cincinnati*, 475 U.S. 469 (1986); *City of St. Louis v Praprotnick*, 485 U.S. 112 (1988); *City of Canton v Harris*, 485 U.S. 378 (1989), and progeny.
- C. FIFTH CIRCUIT CASELAW AND APPLICATION
 1. Cover more recent developments in the 5th Circuit and at the U.S. District Court level addressing the processing of municipal liability claims and causes of action.

V. PLEADING AND MOTION PRACTICE [Presenter: Ricardo J. Navarro / Kelly R. Albin] [1.00 HOURS]

- A. PLEADING REQUIREMENTS FOR A SECTION 1983 CLAIM AGAINST A MUNICIPALITY
 1. This will provide an overview of current caselaw and legal standards for pleading a Section 1983 case.

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B. RULE 12 MOTIONS IN RESPONSE TO SECTION 1983 CLAIMS AGAINST THE MUNICIPALITY

1. This will provide practice pointers pertaining to Rule 12 motion practice in responding to Section 1983 claims against a municipality depending on the nature of the underlying claim

C. DISPOSITIVE MOTION RULE 56 MOTIONS AND MUNICIPAL CLAIMS

1. Assuming a pleading challenge survives Rule 12 disposition, this section will address analysis and possible disposition of Section 1983 claims against a municipality using evidentiary materials under a Rule 56 summary judgment motion practice.

VI. DISCOVERY PRACTICE FOR MUNICIPAL LIABILITY [Presenter: Ricardo J. Navarro / Robert L. Drinkard] [.50 HOURS]

- A. General Discussion of Written Discovery – Disclosures, Requests for Production, Interrogatories, Requests for Admissions
- B. Deposition Discovery – Strategy and tactics pertaining to taking and defending depositions.
- C. Experts – Discussion of when and how to use experts. Retained vs. In-House; Consulting vs Testifying. Provide an overview of the use of consulting and testifying experts in Section 1983 claims against a municipality depending on the type of underlying constitutional or federal claim being asserted.

VII. PRETRIAL AND TRIAL [Presenter: Ricardo J. Navarro / Lowell F. Denton] [.50 HOURS]

- A. Preparing the PTO Generally
- B. Preparing Jury Charge & Jury Interrogatories
- C. Voir Dire in Federal Court
- D. Rule 50 Motion Practice in Trial, Post-Verdict, and Post-Judgment
- E. Perfecting an Appeal

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