



## **Federal District Court in Three Recent Cases Allows In Forma Pauperis Plaintiffs Leave to File Amended Complaints Involving § 1983 Actions**

In the U.S. District Court for the District of Nebraska, a judge considered a case filed by an inmate at a County Correctional Center that likely should have been asserted as an Eighth Amendment Claim (assertion of plaintiff was that his safety had been deliberately disregarded when county correctional staff allegedly assaulted him). In a separate case, a pretrial detainee alleged a Fourteenth Amendment claim for deliberate indifference to his serious medical needs; however, it was unclear whether he intended to sue the State or a county entity. In a more recently filed case, an inmate of a county jail claiming the Defendants' (U.S. Marshal, County and City officers) "policy and practice and excessive force" and "not having body cams on" violated his rights under the Fourth, Fifth, Eighth and Fourteen Amendments. All these cases were brought as 42 U.S.C. § 1983 suits and the last of the referenced cases included actions against the U.S. Marshal Defendants' under *Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U.S. 388, 397 (1971).

42 U.S.C. § 1983 provides:

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

As outlined by the Court in each of the cases,

The court is required to review prisoner and in forma pauperis complaints seeking relief against a governmental entity or an officer or employee of a governmental entity to determine whether summary dismissal is appropriate. The court must dismiss a complaint or any portion of it that states a frivolous or malicious claim, that fails to state a claim upon which relief may be granted, or that seeks monetary relief from a defendant who is immune from such relief.

Pro se plaintiffs must set forth enough factual allegations to "nudge[ ] their claims across the line from conceivable to plausible," or "their complaint must be dismissed."; ("A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.").

“The essential function of a complaint under the Federal Rules of Civil Procedure is to give the opposing party ‘fair notice of the nature and basis or grounds for a claim, and a general indication of the type of litigation involved.’”. However, “[a] pro se complaint must be liberally construed, and pro se litigants are held to a lesser pleading standard than other parties.”

Further outlined in *Kellogg v. Douglas County*, 2018 WL 3862750 (2018), and *Martin v. Nebraska Medical Department Lancaster County Adult Detention Facility*, WL 3707909 (2018),

... To state a claim under 42 U.S.C. § 1983, a plaintiff must allege a violation of rights protected by the United States Constitution or created by federal statute and also must show that the alleged deprivation was caused by conduct of a person acting under color of state law.

In *Kellogg v. Douglas County*, 2018 WL 3862750 (2018), the inmate filed suit requesting \$4 million for injuries he allegedly suffered when Correctional Center staff assaulted him. The court granted the inmate permission to proceed in forma and the court will now conduct an initial review of the Complaint to determine whether summary dismissal is appropriate.

County liability under section 1983 is shown if its “policy” or “custom” caused a violation of Plaintiff’s constitutional rights and an “official policy” involves a deliberate choice to follow a course of action made from among various alternatives by an official who has the final authority to establish governmental policy.

Further, to establish the existence of a governmental custom, a plaintiff must prove:

1. The existence of a continuing, widespread, persistent pattern of unconstitutional misconduct by the governmental entity’s employees;
2. Deliberate indifference to or tacit authorization of such conduct by the governmental entity’s policymaking officials after notice to the officials of that misconduct; and
3. That plaintiff was injured by acts pursuant to the governmental entity’s custom, i.e., that the custom was the moving force behind the constitutional violation.

In this case, the judge found under the Plaintiff’s complaint, he did not allege a continuing, widespread, persistent pattern of unconstitutional misconduct by County employees, or that County policymaking officials were deliberately indifferent to or tacitly authorized any unconstitutional conduct. Additionally, Plaintiff did not allege that an unconstitutional custom was the moving force behind the alleged constitutional violation. Despite Plaintiff’s failure to allege a cognizable claim against the County and the Correctional Center Defendants in their official capacities, if factually supported, the judge granted the Plaintiff leave to file an Amended Complaint to allege such a claim.

Although the Plaintiff failed to state a claim against the County and the other official-capacity Defendants discussed within the opinion, the court examined Plaintiff’s constitutional claims to determine whether Plaintiff should be given an opportunity to amend his Complaint to allege plausible claims for relief against the Correctional Center Defendants in their individual capacities. The Plaintiff’s Complaint and attached exhibits contain allegations that may be characterized as an Eighth Amendment claim.

In an Eighth Amendment excessive-force case, “the core judicial inquiry is ‘whether force was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm.’” “Whether the force used was reasonable is ‘judged from the perspective of a reasonable officer on the scene’ and in light of the particular circumstances.”

The factors considered in evaluating whether officers acted in good faith when using physical force to restrain an inmate include:

1. The need for force;
2. The correlation between the need for force and the amount of force used;
3. The extent of the inmate's injury;
4. The threat to the safety of staff and inmates, as reasonably perceived by the responsible officials on the basis of the facts known to them at the time; and
5. Any attempt by the officers to temper the severity of the response.

On its own motion, the court granted the Plaintiff leave to file an Amended Complaint by mid-September that states a claim upon which relief may be granted. As stated by the judge, in order for the Plaintiff's claims to proceed, he must file an Amended Complaint that:

1. Alleges truthful facts suggesting that a County policy or custom caused a violation of his constitutional rights;
2. Alleges truthful facts indicating the malicious and sadistic use of force against Plaintiff by a particular Defendant or Defendants in their individual capacities, done with the intent to injure and causing actual injury; and
3. Identifies the individual Defendants who were actually involved in the incident, clearly explaining what those Defendants did to Plaintiff, when they did it, how those Defendants' actions harmed him, and what specific legal right Plaintiff believes such Defendants violated.

*(Internal quotation marks and citations omitted).*

In the second case referenced above, *Martin v. Nebraska Medical Department Lancaster County Adult Detention Facility*, WL 3707909 (2018), the Plaintiff, a pretrial detainee being held at a county jail, brought a 42 U.S.C. § 1983 action asserting a Fourteenth Amendment claim for deliberate indifference to his serious medical needs. The court granted the inmate permission to proceed in forma and the court will now conduct an initial review of the Complaint to determine whether summary dismissal is appropriate. Within the complaint, Plaintiff asserted he was arrested and taken to jail shortly after he was in a car accident and when he entered jail he was suffering "extreme pain in his left arm and shoulder and had a numb hand and fingers." The Plaintiff further stated it took jail staff 19 days to diagnose and treat his broken neck despite his continued complaints about his asserted numbness and pain in his shoulder. The suit was filed for money damages.

One of the initial questions weighed by the court was what party(ies) the Plaintiff intended to sue given that it was unclear from the complaint whether the stated party was one or two parties. The Plaintiff was given leave by the court to amend his complaint to sue the proper parties, if desired.

The Court outlined the law which governs the deliberate-indifference claim for the Plaintiff's benefit:

A convicted prisoner's conditions of confinement are subject to scrutiny under the Eighth Amendment, while a pretrial detainee's challenge to such conditions is analyzed under the Fourteenth Amendment's Due Process Clause. "This makes little difference as a practical matter,

though: Pretrial detainees are entitled to the same protection under the Fourteenth Amendment as imprisoned convicts receive under the Eighth Amendment.” Therefore, cases discussing the Eighth Amendment are applicable to this case despite Plaintiff’s apparent status as a pretrial detainee.

The constitutional obligation to provide medical care to those in custody may be violated when officials “intentionally deny[ ] or delay[ ] access to medical care or intentionally interfer[e] with the treatment once prescribed.” (“[D]elays in treating painful medical conditions, even if not life-threatening, may support an Eighth Amendment claim.”).

To prevail on this claim, Plaintiff must prove that Defendants acted with deliberate indifference to his serious medical needs. The deliberate indifference standard includes both an objective and a subjective component. Plaintiff must demonstrate that (1) he suffered from objectively serious medical needs, and (2) Defendants knew of, but deliberately disregarded, those needs. *See Jolly v. Knudsen*, 205 F.3d 1094, 1096 (8th Cir. 2000); *Gibson v. Weber*, 433 F.3d 642, 646 (8th Cir. 2006) (Eighth Amendment claim based on inadequate medical attention requires proof that officials knew about excessive risks to inmate’s health but disregarded them and that their unconstitutional actions in fact caused inmate’s injuries).

Deliberate indifference is equivalent to criminal-law recklessness, which is more blameworthy than negligence, yet less blameworthy than purposefully causing or knowingly bringing about a substantial risk of serious harm to the inmate. An obvious risk of harm justifies an inference that a prison official subjectively disregarded a substantial risk of serious harm to the inmate. Deliberate indifference must be measured by the official’s knowledge at the time in question, not by hindsight’s perfect vision.

A prisoner’s mere disagreement with the course of his medical treatment fails to state a claim against a prison physician for deliberate indifference under the Eighth Amendment.

The last primary discussion topic related to the Prison Litigation Reform Act (PLRA) that requires state prisoners wishing to pursue a claim under § 1983 to first exhaust their administrative remedies.

After the discussion of the various issues, the Court ordered:

1. Plaintiff’s claim for money damages against Defendant State of Nebraska Medical Department is dismissed for failure to state a claim upon which relief can be granted because such Defendant is not a suable “person” within the meaning of 42 U.S.C. § 1983 and such a claim is barred by the Eleventh Amendment;
2. Plaintiff’s claim against Defendant Lancaster County Adult Detention Facility is dismissed for failure to state a claim upon which relief can be granted because such Defendant is not a suable entity under 42 U.S.C. § 1983 and state law;
3. Plaintiff has 30 days from the date of this Memorandum and Order to file an amended complaint that states a claim upon which relief can be granted against proper defendants (the referenced date is September 7); and
4. Failure to file an amended complaint will result in dismissal of this action without prejudice and without further notice.

(Internal quotation marks and citations omitted).

In *Sailors v. U.S. Marshals Service Dept.*, WL 4300122 (2018), the inmate filed suit requesting \$100 million medical costs and punitive damages for injuries he allegedly suffered while being pursued on a drug charge by the U.S. Marshal and law enforcement officers.

Given the inmate's claim was against a county police department rather than a "juridical entity", the department was considered to be not suable. Thus, the inmate's portion of the § 1983 action was dismissed without prejudice allowing. Consideration of the § 1983 claim continued with respect to the officers in their official capacities and individual capacities. The court found that as drafted the complaint filed by the Plaintiff failed to state a cognizable claim against the government entity and the officers in their official capacities; however, the court granted the Plaintiff leave to amend his complaint and allege such a claim if factually supported.

One of the assertions related to excessive force by the officers in pursuing the Plaintiff because he was "shot at 19 times and was hit with some of these bullets."

The Fourth Amendment protects citizens from being seized through excessive force by law enforcement officers. An officer's use of excessive force violates the Fourth Amendment if objectively unreasonable. Objective unreasonableness is judged from the perspective of a reasonable officer on the scene, in light of the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight. Force may be objectively unreasonable when a plaintiff does not resist, lacks an opportunity to comply with requests before force is exercised, or does not pose an immediate safety threat.

The court found for purposes of initial review only, the Plaintiff stated a viable Fourth Amendment excessive-force claim against the officers in their individual capacities.

The next portion of the court's analysis related to the *Bivens* portion of the complaint of a violation of plaintiff's Fourth Amendment right to be free from the use of excessive force as it related to the U.S. Marshal's Service and an officer. In *Bivens*, the United States Supreme Court recognized an implied cause of action for damages against federal officers alleged to have violated the petitioner's Fourth Amendment rights.

The court stated,

The Supreme Court has made clear that an implied damages remedy may be asserted only against a federal official individually, and not against an agency.

Therefore, the U.S. Marshal's Services Department was dismissed from this action. However, for the same reason which the court found the plaintiff had adequately alleged, for initial-review purposes, the local officers violated his Fourth Amendment right to be free from the use of excessive force in their individual capacities, the court found similarly for the U.S. Marshal.

Various process issues were clarified with the court and similar to the prior two cases discussed, the court permitted an amended complaint to be filed *if factually supported* (by October 12, 2018).

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