

# **County Constitutional Exposure and How to Avoid or Limit Liability**

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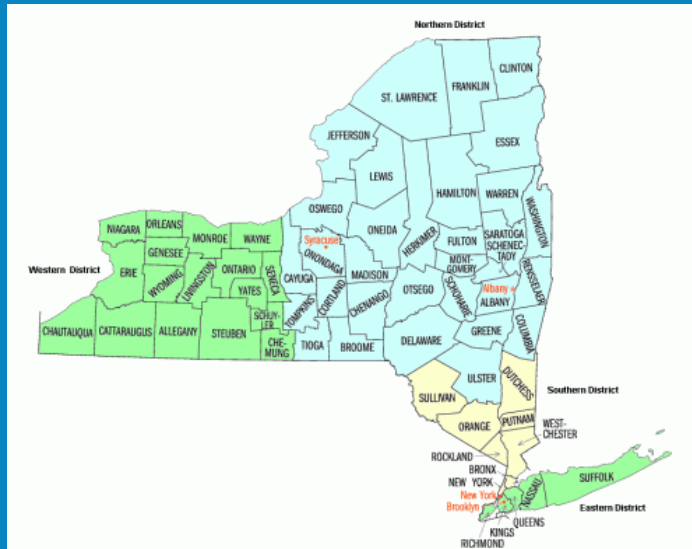
## 42 U.S.C. § 1983

### ▣ Civil Action for Deprivation of Rights

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 . . .

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# United States District Courts



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## Important Elements

- ▣ Person
- ▣ Color of Law
- ▣ Subjects or causes to be subjected
- ▣ Rights, privileges, or immunities secured by the Constitution and laws



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## **Monell v. Dep't of Soc. Servs. of City of N.Y., 436 U.S. 658 (1978)**



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## **Municipal Liability Under Monell**

- ▣ “[A] local government may not be sued under § 1983 for an injury inflicted solely by its employees or agents. Instead, it is when execution of a government’s policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under § 1983.”
- ▣ The policy, practice, or custom must be the “moving force” behind the constitutional violation.

Monell v. Dep't of Soc. Servs. of City of N.Y., 436 U.S. 658, 694 (1978)

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## Section 1983 Claims

- ▣ Police Liability
- ▣ Employment
- ▣ Land Use and Housing
- ▣ Freedom of Speech

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## 42 U.S.C. § 1988(b) - Attorneys' Fees

- ▣ In any action or proceeding to enforce a provision of sections 1981, 1981(a), 1982, 1983, 1985, and 1986 of this title . . . the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs . . .



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## Fourth Amendment

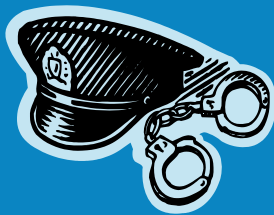
- ▣ The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.



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## Section 1983 Claims Police – Fourth Amendment

- ▣ False Arrest (False Imprisonment)
- ▣ Malicious Prosecution
- ▣ Malicious Abuse of Process
- ▣ Excessive Force (Assault and Battery)



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## Eighth Amendment

- ❑ Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.



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## Detainees and Inmates

- ❑ Eighth Amendment vs. Fourteenth Amendment (pre-trial v. post-trial)
- ❑ Section 1983 claim for failure to provide an inmate's medical needs
  - Deliberate indifference standard



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## Deliberate Indifference

- ▣ When an official “knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference.”

Farmer v. Brennan, 511 U.S. 825 (1994)



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## Fifth Amendment

- ▣ No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, ***nor be deprived of life, liberty, or property, without due process of law***; nor shall private property be taken for public use, without just compensation.

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## Fourteenth Amendment

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; *nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.*

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## Due Process

- ▣ Two types:
  - Procedural due process
    - ▣ Deprivation of property or liberty interest without notice and opportunity to be heard
  - Substantive due process
    - ▣ Protects against government action that is conscience-shocking

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## Equal Protection

Treat similarly situated people alike.

- ▣ Members of “suspect classes” are entitled to heightened scrutiny
- ▣ If “fundamental rights” are at issue, entitled to heightened scrutiny
- ▣ If neither applies, then there simply must be a rational basis for the government action

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## First Amendment

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof or abridging the freedom of speech, or of the press, or the rights of the people peaceably to assemble, and to petition the Government for redress of grievances.



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## Title VII of the Civil Rights Act of 1964 42 U.S.C. 2000e

- ▣ Employment
- ▣ Public Accommodations

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## Title VII of the Civil Rights Act of 1964 42 U.S.C. 2000e

- ▣ (a) “It shall be an unlawful practice for an employer:
  - (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin; or
  - (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individuals of employment opportunities or otherwise adversely affect his status as an employee, because of such individual’s race, color, religion, sex, or national origin.

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## **Americans with Disabilities Act**

**42 U.S.C. § 12101 et seq.**

- ▣ Employment
- ▣ Public Accommodations
- ▣ Qualified Disabilities Only
- ▣ Reasonable Accommodations in the Employment Context

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## **Age Discrimination in Employment Act of 1975**

**42 U.S.C. Section 6101 et seq.**

- Applies to Employment
- Protects Individuals Over 40

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## Qualified Immunity

Qualified Immunity shields public officials from liability in civil suit where “their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.”

Harlow v. Fitzgerald, 457 U.S. 800 (1982)

