

Defending § 1983 Claims in the Time of Law Enforcement

Adam T. Mandell, Esq.

DEFENDING § 1983 CLAIMS IN THE
TIME OF LAW ENFORCEMENT REFORM

September 14, 2021

Adam T. Mandell, Esq.

Maynard, O'Connor, Smith, Catalinotto, LLP.

PRE-SUIT → DURING DISCOVERY → PRE-TRIAL SETTLEMENT → DURING TRIAL

- Police disciplinary proceedings
 - Methods and practices.
 - Evidence utilized.
- N.Y. General Municipal Law § 50-h
 - Physical examination of claimant.
 - 50-h hearing.
 - Case Illustrations.
 - *Page v. City of Niagara Falls*, 716 N.Y.S.2d 173 (4th Dept. 2000).
 - *Ambroziak v. Cty. of Erie*, 577 N.Y.S.2d 1020 (4th Dept. 1991).
 - *Patterson v. Ford*, 679 N.Y.S.2d 551 (2d Dept. 1998).
 - *Mingo v. Augustyn*, 19-CV-0211LJV, 2020 WL 2446856 (W.D.N.Y. June 16, 2021).

PRE-SUIT → **DURING DISCOVERY** → PRE-TRIAL SETTLEMENT → DURING TRIAL

- Discoverability of police records
 - FRCP Rule 34.
 - FRCP Rule 26.
 - Two-prong test.
- N.Y. Civil Rights Law § 50-a
- N.Y. Public Officers Law §§ 84-90
 - Statutory limitations of New York States' Freedom of Information Law (FOIL).
- Privileges
 - Deliberative process privilege.
 - Law enforcement privilege.

PRE-SUIT → DURING DISCOVERY → PRE-TRIAL SETTLEMENT → DURING TRIAL

- Rule 68 Offers
- Case illustrations
 - *Lilly v. City of New York*, 934 F.3d 222 (2d Cir. 2019).
 - *Medina v. Gilbert Mega Furniture, LLC.*, No. CV-16-04033-PHX-SPL, 2019 WL 3778406, *1 (D.Ariz. 2019).

PRE-SUIT → DURING DISCOVERY → PRE-TRIAL SETTLEMENT → DURING TRIAL

- Admissibility of Disciplinary Records
 - FRE 401.
 - FRE 403.
 - FRE 404.
 - FRE 608.
- Case Illustrations
 - *Tranchina v. McGrath*, 9:17-CV-1256, 2020 WL 4596030 (Aug. 11, 2020 N.D.N.Y.).
 - *Jackson v. City of White Plains*, No. 05-CV-0491, 2016 WL 234855 (Jan. 19, 2016 S.D.N.Y.).
 - *Stern v. Shammass*, No. 12-CV-5210, 2015 WL 4530473 (July 27, 2015 E.D.N.Y.).
 - *Hartman v. Snelder*, 04 CV 1784, 2010 WL 11626508 (Jan. 28, 2010 E.D.N.Y.).

BEST PRACTICES

1. Develop a good bodycam retention policy to prevent spoliation issues

- Bodycam footage should be retained at the first indication that a potential issue has occurred.
- The statute of limitations in NYS for a plaintiff to bring a cause of action pursuant to § 1983 is three years.

2. Use administrative proceedings as a means of developing a more robust police department policy

- Each disciplinary or administrative proceeding should have corresponding recommendations for the individual police officer involved and for the department as a whole.
- The municipality needs to demonstrate that there was not an indifference to misconduct to avoid *Monell* liability.

3. If a § 1983 case is brought against a municipality or individual police officer, consider using FRE 403 to exclude records relating to disciplinary proceedings

- Potential for hearsay evidence to come into a federal case.
- Unfair conclusory statements could lead a jury to match the proceedings conclusion.

4. Use Rule 68 as a means of limiting potential liability

- If the goal is to prevent the award of attorney's costs in the judgment, be clear.
- A court will be more likely to hold in favor of the plaintiff if the offer does not clearly state that attorney's costs are included in the offer.

QUESTIONS?

