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Magistrates as Defendants in Federal Court: Civil Rights Litigation and You

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INSTALLATION OF NEW SMA PRESIDENT A FAMILY EVENT

The Honorable Harry D. Goldman, retired former Presiding Justice of the New York State Supreme Court, administers oath of office to his son, SMA President Thomas E. Goldman

MAGISTRATES AS DEFENDANTS IN FEDERAL COURT/CIVIL RIGHTS LITIGATION AND YOU

An address given at the SMA 73rd Annual Conference by Honorable Roger J. Miner, Judge - United States District Court.

Hon. Roger J. Miner

Although the public may not fully comprehend the role judges play in our society, you literally cannot afford to be unaware of your functions as Magistrates. For if you fail to understand the proper scope of your judicial duties, you may find yourselves as defendants in Federal Court, sued personally for money damages in Civil Rights litigation.

This morning, I direct your attention to the Federal Civil Rights Statute commonly relied upon in Federal Court actions brought against Judges and Magistrates. The statute was enacted as Section 1983 of Title 42 of the United States Code and provides as follows: *"Every person who, under color of any statute, ordinance, regulation, custom or usage of any State or Territory, 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."* In short, to hold a person liable in a Section 1983 action, an aggrieved person must establish two elements: (1) that the conduct complained of was committed by a person acting under color of state law; that is, under the apparent authority of state law; and (2) that the conduct complained of deprived the aggrieved party of rights, privileges or immunities protected by the Constitution or Laws of the United States.

Section 1983 was enacted by Congress in 1871, after the Civil War, to prevent the defeated southern states from nullifying the rights of newly freed black men. Today, it has been expanded to form the basis for claims by any citizen who considers that he or she has been deprived, by state and local officials, of Civil Rights guaranteed by the Federal Constitution or by Federal Law. The numbers of these claims brought in the Federal Courts have been rising in geometric progression in recent years, and now the Federal Courts find a large proportion of their cases in this category. In my own court, the United States District Court for the Northern District of New York, with a territorial jurisdiction of 32 upstate counties, this work accounts for approximately 25% of our calendars. Of course, there are approximately 10,000 state prisoners and about 300 federal prisoners residing in state and federal prisons in our area of jurisdiction as well as an unknown number of prisoners residing in local jails in this jurisdiction. Prisoners in these institutions, complaining of their conditions of confinement, constitute a prolific source of our Civil Rights litigation. But there are large numbers of cases brought under Section 1983 against police officers, municipalities and municipal officials, and state officials and agencies as well. The variety of claims is endless, and it is no secret that many of the claims are without any merit whatsoever.

No Surprise

It should come as no surprise to you, then, that the expansion of Section 1983 claims inevitably brought local judges into focus as target defendants. After all, Magistrates do act under authority of state law. Also, it can be said, for example, that you deprive a person of his rights under the U. S. Constitution if you receive in evidence contraband seized in violation of the Fourth Amendment. But should you personally be held liable for damages under such circumstances? Of course not. The United States Supreme Court has made it a clear rule of law that judges acting with the course

and scope of their judicial duties are absolutely immune from liability for money damages under section 1983. Sound reasoning and public policy considerations support the immunity doctrine. Without it, the fearless decision-making required of all judges would be thwarted; qualified people would be deterred from seeking judicial office; a judge's most valuable resource, his time, would be drained; and the appellate process, the proper device for the correction of judicial error, would be circumvented.

Judicial immunity from monetary liability is exceedingly broad in its scope and extends to any act taken in a judicial capacity within a judge's jurisdiction. It is absolute and unqualified, unless the judge acts in the clear absence of all jurisdiction, that is, unless he acts in a purely private and nonjudicial capacity. The Second Circuit Court of Appeals, whose jurisdiction encompasses appeals from the Federal District Courts in the States of New York, Connecticut and Vermont, has held that the immunity rule protects Town and Village Justices. Although judges have absolute judicial immunity from section 1983 monetary liability in the performance of judicial functions, their immunity is not absolute when it comes to ministerial or administrative matters. Here, only a qualified or good faith immunity applies. A judge may be sued for violating the constitutional rights of U.S. citizens by reason of failure to perform certain administrative acts, since there is no interference with any real judicial function in such a situation. Also, although judicially immune from liability for money damages, a local judge may be subject to injunctive or declaratory relief in Federal Courts to prevent a course of unlawful conduct in violation of a person's civil rights. The same conduct may give rise to criminal prosecution in the Federal Courts and, of course, proceedings in the New York Courts and before the New York Commission on Judicial Conduct.

So it is that the delineation of the judicial function is of prime importance in any civil rights action against a magistrate to recover money damages. We have seen that the immunity is absolute only when the judge acts within the course and scope of his or her judicial duties. Let me illustrate with a case where a judge acted in a purely private and nonjudicial capacity and thus became liable in a civil rights action for $80,000 in compensatory damages and $60,000 in punitive damages, a total of $140,000. The verdict was rendered by a jury in the United States District Court for the Eastern District of New York and was affirmed on appeal by the U. S. Court of Appeals for the Second Circuit. In reading the factual background from the Circuit Court opinion, I shall refer to the parties as Judge X and Mr. Z.

Judge X and Mr. Z

"The incident that gave rise to the lawsuit occured on April 30, 1975. On that night, then [Judge X] was in his chambers during a break in an evening session of Traffic Court in Suffolk County, Long Island. [Mr. Z] was operating a mobile food vending truck outside the courthouse. [Judge X] asked Deputy Sheriff Windsor to get some coffee, which he did. Both [Judge X] and Windsor thought the coffee tasted 'putrid,' and [Judge X] told Windsor to get the coffee vendor and bring him 'in front of me in cuffs.' [Judge X] directed two plainclothes officers, who happened to be nearby, to accompany Windsor. Wearing his sheriff's uniform equipped with badge, gun and handcuffs, Windsor went to [Mr. Z] and told him that the judge said the coffee was terrible and that [Mr. Z] had to go inside to see the judge. Windsor handcuffed [Mr. Z], despite the vendor's protestations that it was not necessary. When [Mr. Z] said he was too embarrassed to go into the courthouse that way, one of the officers suggested that [Mr. Z] walk between them with [Mr. Z's] jacket over his hands.

"The group then marched through the hallway of the courthouse, in full view of dozens of people. [Mr. Z] heard someone yell that they were locking up the frankfurter man. When they arrived at [Judge X's] chambers, the judge asked if the Sheriff had 'the coffee vending man there in handcuffs.' Upon entering the chambers, [Judge X] ordered [Mr. Z] to be left 'in handcuffs until I get finished with him.' A pseudo official inquisition then began. [Mr. Z] stood in front of the judge's desk, behind which the judge sat. A court reporter was present, along with Windsor and the two police officers. [Judge X] told [Mr. Z] that 'I have the two cups of coffee here for evidence.'

According to [Mr. Z], whom the jury must have believed, [Judge X] then started screaming at him, threatening him and his 'livelihood' for about 20 minutes, and thoroughly scaring him. Just before [Mr. Z] was allowed to leave, [Judge X] commanded Windsor to note [Mr. Z's] vehicle and vending license numbers and told [Mr. Z], 'Mister, you are going to be sorrier before I get through with you.'

"After [Mr. Z] left, he resumed his mobile truck route and came back to the Night Traffic Courthouse about 45 minutes later. Shortly thereafter, Windsor returned and told [Mr. Z] they were to go back to the judge. [Mr. Z] asked if he had to be handcuffed again, but Windsor said no. When they appeared before [Judge X], he told [Mr. Z] that he was going to have the two cups of coffee analyzed. [Judge X] also said that if [Mr. Z] would admit he did something wrong, then [Judge X] would drop the charges. [Mr. Z] consistently denied that anything was amiss with the coffee, and no charges were filed."

Other Examples

This is an obvious example of a judge acting outside the course and scope of his judicial duties. There are others. In a case where a judge initiated proceedings against a black police officer for racially improper motives and made racial remarks to the press, the Federal Court held that there was no absolute immunity; where a judge acted as a prosecutor by preparing complaint forms and then acted on the complaints. He was held to be immune for his judicial acts, but not for his prosecutorial acts. In a case where a judge met privately with a party before the lawsuit was brought and agreed to decide the case in favor of that party, the Federal Court held that the agreement was no judicial act and the judge could be sued. In another case, another Federal Court held that there is no immunity for a judge who removes his Court Clerk from employment without affording the clerk due process of law. In this case, of course, the judge was not acting in a judicial capacity and some of you judges who wives are employed as Court Clerks should take particular note of this case.

In yet another case, a Federal Court in Wisconsin held that a judge was not protected by judicial immunity in a case where the judge repeatedly communicated to the press and municipal officials his criticism of a certain police officer and called for action to be taken against the officer, who was then awaiting trial. Where judges act in administrative capacities, such as in the supervision of Juvenile Detention Centers and County Jails, they have been held liable for conditions of confinement in the institutions they supervise, because their supervisory duties are not judicial in nature. A judge who procured the resignation of a Probation Officer was held liable for a due process deprivation – another example of an act outside the purely judicial function.

Nevertheless, the Federal Courts, including the United States Supreme Court, have stretched the doctrine of judicial immunity to great lengths. In the leading Supreme Court case, *Stump vs Sparkman,* a State Judge of General Jurisdiction in the State of Indiana was held judicially immune for his act of ordering the tubal ligation of a 15 year old girl on the petition of her mother, but without the knowledge or consent of the girl. Although there was no specific authorization for sterilization in Indiana Law, the Supreme Court held that the judge did not act in the clear absence of all jurisdiction because he was a General Jurisdiction Judge. Absolute immunity, the Court held in that case, protects a judge from liability even though the judge's action "was in error, was done maliciously, or was in excess of his authority." It is obvious that, with such broad rules for guidance, the lower Federal Courts have found that most judges who are sued for money damages are protected by the Doctrine of Judicial Immunity where the acts forming the basis for the lawsuit are somehow related to the judicial function.

Cases Dismissed

Accordingly, cases brought against local judges to recover damages under the Civil Rights Law have been dismissed on the grounds of immunity in the following circumstances: when the judge's actions complained or related to the issuance of arrest warrants and the setting of bail; where the judge issued a judgment removing a tenant for failure to pay rent; where a judge issued certain orders governing the conduct of a trial (a case decided by me as a Federal Judge); where the judge issued a

garnishment before judgment; where the judge sentenced a pregnant woman to jail and the woman suffered a miscarriage (a case decided by me as a State Judge).

In the course of my duties as a Justice of the New York State Supreme Court, I was sued in the Federal Court where I now sit. That law suit arose during the course of a trial at Albany in a case involving the State Election Law when I denied a motion by one of the parties for an order directing every Election Board in the State of New York (62) to bring all their enrollment records to Albany. The Federal Judge directed me to show cause why I was depriving the litigant of his due process rights under the U.S. Constitution. I was sore as hell and did not appear, although the State Attorney General's Office appeared for me. Applying the Judicial Immunity Doctrine, the judge, who is now my colleague in the Federal Court in the Northern District, dismissed the case against me. I now agree with him that it is best to appear in Federal Court when they send for you.

Some people say that Arizona is still part of the wild west. Sometimes, the decisions of the Federal Courts in that state also seem a little wild, and I close my examples with a case of an Arizona Justice of the Peace who was found to have left his bench to throw a 65 year old citizen out of his Court by forcing the litigant through the door, throwing him on the floor and jumping on him and beating him. I think we would all agree that the actions taken were outside the scope of the judicial function and that the Immunity Doctrine would not apply. However, the U. S. Court of Appeals covering Arizona said that the judge was entitled to qualified or partial immunity – that is he would be immune if he could show that his action was taken in good faith. However, the Appeals Court affirmed the verdict for compensatory and punitive damages rendered by the Federal District Court jury against the Justice of the Peace.

A New Phenomenon

And so, my fellow judges, we have a new phenomenon in American law – suing judges – an activity probably unheard of in any other place in the world. By the way, Federal Judges also can be sued for invasion of Constitutional Rights, although not under the Code Section I've been discussing with you. Some of my Federal Court colleagues have been sued already, and I understand that some private insurance company is offering to sell us insurance for our defense. I don't think that I am in the market for that insurance just yet. In any event, it is most important that we do not permit these lawsuits or the threat of these lawsuits to undermine or threaten our independence as judges. As the Supreme Court said in that *Stump vs Sparkman* case that I discussed with you earlier: "A judicial officer, in exercising the authority vested in him should be free to act upon his own convictions, without apprehension of personal consequences to himself." To act as required, we must have the necessary independence – we must be able to make honest decisions in any case without fear of being wrong, without interference from any other person or agency, private or governmental. The Rule of Judicial Immunity is designed to assist us in maintaining ourselves as the independent and honorable judiciary that is indispensable to justice in our society.

I close with a quote from a distinguished judge of the U. S. Court of Appeals for the Second Circuit, formerly the Chief Judge, Irving Kaufman. "Fellow judges, we must ever be vigilant of our independence. Not for our benefit as individuals, but for the benefit of the system we are sworn to uphold."

Judges Betty Lou Salmon (left) and Helen Burnham confer. Judge Ralph Garrison looks on.