

Beware of Potential Punitive Damages Associated with Section 1983 Actions

Amundsen Davis Government Entities Alert
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Under Title 42 § 1983 of the U.S. Code, liability is imposed upon individuals and entities that act “under color of law.” Based on the Fourth Amendment, people have the right to be secure against unreasonable searches and seizures. Whether a police officer has violated the Fourth Amendment during an investigation or arrest depends upon the resolution of two issues:

- In using force, did officials “seize” the suspect within the meaning of the Fourth Amendment?
- Was the force objectively unreasonable?

If the officer both seized the plaintiff and used objectively unreasonable force, then the plaintiff has stated a claim under the Fourth Amendment.

An important aspect of Section 1983 lawsuits that municipalities and their insurers should keep in mind is that plaintiffs may seek punitive damages from the jury. Punitive damages exceed simple compensation and are awarded to the plaintiff as a means of punishing the defendant. **Of vital significance: punitive damages are uncapped in these actions.** This means a municipality and individual officers could be liable for millions of dollars if a jury returns a high punitive damage award for a plaintiff asserting a Section 1983 claim. For example in December 2016 a federal jury awarded a grand total of \$22 million in damages to a former gang member who alleged two Chicago police detectives framed him for an infamous 1984 double murder that sent him to death row. Of those \$22 million in damages, \$30,000 and \$10,000 were individually assessed against the officers in punitive damages. The city plans on appealing the award.

Punitive damages against the officers themselves can have devastating effects on the finances of these officers. In the most expensive punitive damages award by a jury, Richard DeFelice, an officer who is now retired, was ordered to pay \$250,000 in an excessive force lawsuit that alleged he coerced a false confession from a man at a north side police station. Even though his penalties were reduced to \$90,000 during negotiations after the trial, the former officer had to refinance his house and is currently still paying off the damages, with interest.

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Recently the *Chicago Tribune* analyzed nearly eight years' worth of court and Chicago Law Department records. Their analysis found the following:

- There are at least 1,339 cases of Chicago police misconduct the city has paid to resolve since 2009. These cases include alleged civil rights violations, denial of legal or medical care, excessive force and false arrest.
- Nearly 200 of these cases were resolved by a jury verdict.
- 35 of those 200 cases included an order to pay punitive damages (17.5% of cases). Of those 35 cases, the initial compensatory damages ranged from \$7 to \$250,000.
- Nearly \$1.1 million in punitive damages have been awarded to plaintiffs in police misconduct verdicts since 2009.

In summary, for Section 1983 actions in federal court, keep in mind the risk of a punitive damage award to the plaintiff by a jury, even if the plaintiff's compensatory damages are relatively low. Thus, when punitive damages are at issue, defendants should embark on an early discovery strategy designed to eliminate the claim for punitive damages before trial.

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