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IDC Quarterly | Volume 21, Number 2 (21.2.21)

Civil Rights Update

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No Matter How Egregious, Bad Acts Do Not Spawn Section 1983 Liability Unless Performed Under Color of State Law

A basic tenant of civil rights jurisprudence is that, to carry the day, a plaintiff must establish that the defendant's actions were performed under color of state law. *See, e.g., Bublitz v. Cottey*, 327 F.3d 485, 488 (7th Cir. 2003).[1] Generally, this means that the defendant must be a state official who performed an act that is in some way related to his or her public duties. *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 928-29, 102 S. Ct. 2744 (1982). Alternatively, the defendant may be a private citizen who either assumed the role of a public officer *pro tem* or conspired with a public employee to deprive the plaintiff of one or more constitutional rights. *See West v. Atkins*, 487 U.S. 42, 54-57, 108 S. Ct. 2250 (1988)(physician employed by the state to provide medical care to prison inmates acted under color of state law for purposes of § 1983); *Proffitt v. Ridgway*, 279 F.3d 503, 507-08 (7th Cir. 2002)(citizen who rushed to aid a struggling police officer did not act under color of state law because the scope of the request was limited and lending assistance to the police is a duty of citizenship). Often, whether a defendant was acting under color of state law is obvious. *See Bublitz*, 327 F.3d at 488 (undisputed that police officers engaged in high-speed chase of a crime suspect acted under color of state law); *Payne for Hicks v. Churchich*, 161 F.3d 1030, 1039 (7th Cir. 1998)("no question" that defendant police officers were state actors acting under color of state law). In other cases, whether a defendant's conduct has some relation to his or her professional duties is more complicated.

In its recent *Wilson v. Price* decision, the Seventh Circuit Court of Appeals addressed the question of whether the plaintiffs adequately pled claims pursuant to § 1983 against a city alderman for injuries sustained as a result of the alderman's violent conduct. *Wilson v. Price*, 624 F.3d 389 (7th Cir. 2010). Although the court had little trouble affirming the district court's dismissal of the civil rights claim under Fed. R. Civ. P. 12(b)(6), the opinion serves as a useful reminder to the defense bar not to take for granted that a state actor's conduct falls within the confines of § 1983.

Facts and Procedural History

The defendant, Keith Price, was an elected alderman in the city of Harvey, Illinois ("the City"). *Wilson*, 624 F.3d at 390-91. Midnight Auto Express ("Midnight Auto") was an automotive repair shop located in the alderman's ward. *Id.* at 391. On May 2, 2008, the alderman received a number of phone calls from constituents complaining about cars parked illegally in front of Midnight Auto. That night, the alderman called the City in an effort to have the cars towed, but did not receive a response. *Id.* Unwilling to wait for the City to act, the alderman traveled to Midnight Auto in an apparent effort to personally address the situation. Upon his arrival, the alderman encountered Christopher Wilson, a mechanic employed by the shop. *Id.* According to the amended complaint, the alderman commanded the mechanic to move the cars. The mechanic refused. Undeterred, the alderman then demanded that the mechanic summon the shop's owner. The mechanic told the

alderman to find the owner himself, and then turned to walk away. In a fury, the alderman punched the mechanic in the head several times, knocking him unconscious and fracturing his jaw. *Id.*

The mechanic and his wife filed suit in the Northern District of Illinois. Their first amended complaint asserted federal § 1983 and § 1985 claims against the alderman and the City, state law claims for loss of consortium and battery, and a state law indemnification claim against the City. *Id.* The alderman filed a motion to dismiss under Rule 12(b)(6). The district court ruled that the alderman's attack was not made under color of state law and dismissed the § 1983 claim with prejudice. It also declined to exercise jurisdiction over the state law claims and dismissed them without prejudice. *Id.* The plaintiffs filed a timely appeal.

The Alderman's Demands Exceeded the Scope of His Civic Duties

The Seventh Circuit framed the issue in this case as follows: "The central question on appeal is whether the plaintiffs have alleged facts sufficient to establish that Price was acting under color of state law during the May 2, 2008 altercation outside Midnight Auto." *Id.* at 392. The court's analysis commenced with an important point: not all actions by state actors occur under color of state law. To the contrary, the act itself must first be considered and is only "under color of state law when it involves a misuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law." *Id.* (quoting *Honaker v. Smith*, 256 F.3d 477, 484-85 (7th Cir. 2001))(internal citations omitted). In other words, the conduct must be "related in some way to the performance of the duties of the state office." *Id.* (quoting *Honaker*, 256 F.3d at 485).

The plaintiffs argued that the alderman was acting under color of state law because he was "performing his civic duties" by attempting to force the removal of illegally parked cars. To determine whether the alderman's trip to Midnight Auto fell within the scope of his duties, the court first looked to the Illinois Municipal Code. The Code provides that aldermen are elected members of a municipality's city council, and thus, serve entirely in a legislative function. *Id.* (citing 65 ILCS 5/6-4-6). The court found that the amended complaint in no way demonstrated that any of the alderman's alleged conduct fell within a legislator's statutorily authorized activities, or even that it was "'related in some way' to the performance of the legislative function." *Id.* (quoting *Honaker*, 256 F.3d at 485). Nevertheless, the alderman's attorney conceded at oral argument that an alderman may potentially act under color of state law when he performs certain activities, such as a "legislative investigation." *Id.*

With that framework in mind, the court examined the alderman's activities. First, it found that calling the City in an effort to have the illegally parked cars towed was "well within" the alderman's authority and, thus, performed under color of state law. The court further observed that, conceivably, investigating the reports of illegality by traveling to the repair shop, looking at the vehicles, obtaining license plate numbers, and inquiring as to why the cars were parked as they were also corresponded with the alderman's legislative function. *Id.* at 392-93. Thus, the alderman's presence at Midnight Auto "may have been related to his aldermanic duties in that he was responding to constituent complaints." *Id.* at 393.

The alderman's ability to actually do anything about the cars on the street, however, "was limited to enacting legislation in response to those complaints." *Id.* at 393. In other words, even though the cars that so concerned the alderman were already parked in violation of the law, his power as a legislator was limited to sponsoring, endorsing, or voting for additional legislation designed to get them moved. The moment he ordered the mechanic to move the cars, he crossed a line from lawmaker to law enforcer, and was acting beyond the color of state law. Based on the facts of the case, it seems that the mechanic recognized that the alderman did not have authority to order the cars be moved. As the court observed, "one cannot misuse power one does not possess." *Id.* (citing *Gibson v. City of Chicago*, 910 F.2d 1510, 1518 (7th Cir. 1990)).

The complaint does not allege that the alderman attempted to achieve removal of the cars by identifying himself as an alderman. If the alderman had attempted to cloak his demands in his office, the result may have been different, as the court expressed. *Id.* at 394. In *Lopez v. Vanderwater*, 620 F.2d 1229, 1237 (7th Cir. 1980), the Seventh Circuit held a judge's extrajudicial act of illegally prosecuting a plaintiff could form the basis of a § 1983 suit because the act was cloaked with the judge's office, and therefore, was performed under

color of state law. The *Wilson* court found *Lopez* distinguishable because the plaintiffs never contended that the alderman attempted to use his office as a lever in his encounter with the mechanic. Perhaps as a lesson to future plaintiffs, the court observed that "[t]he complaint is devoid of any allegation that Price bore any indicia of his position as an alderman or that he invoked his aldermanic office in any way, even to identify himself as an alderman at any point during the confrontation." *Wilson*, 624 F.3d at 394. The result was a confrontation that amounted to no more than "a dispute between private citizens." *Id.* at 394. Consequently, even though the alderman's behavior was "reprehensible," the mechanic's amended complaint was properly dismissed for failure to state a claim under § 1983. *Id.* at 395.

Despite the shocking nature of facts that may form the basis of a § 1983 claim, defense counsel must not lose sight of the "under color of state law" requirement of § 1983. When presented with a § 1983 claim, defense counsel should assess this bedrock requirement to determine whether a motion to dismiss is appropriate.

About the Author

John P. Heil Jr. is an of-counsel attorney with *Heyl, Royster, Voelker & Allen*. He joined the firm in November 2007 after serving eleven years an Assistant State's Attorney in Cook County, Illinois. He received his J.D. from Chicago-Kent College of Law in 1996 and his B.S. from Bradley University in 1993. His practice includes the defense of civil rights actions, municipal liability, and general negligence matters.

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IDC Quarterly, Volume 21, Number 2.

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