



Civil Rights Update

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Recent Civil Rights Decisions

This issue's update covers three recent court rulings touching heavily on civil rights claims. One case from the U.S. Supreme Court, *City and County of San Francisco v. Sheehan*, deals with qualified immunity in the context of an Americans with Disabilities Act claim, and a Seventh Circuit Court of Appeals decision, in *Doe v. Village of Arlington Heights*, addresses qualified immunity in a duty to protect against violence claim. A second Supreme Court decision, *Johnson v. City of Shelby*, addresses pleading requirements in Section 1983 claims.

U.S. Supreme Court Addresses Duty to Provide Accommodation to an Armed, Violent, and Mentally Ill Suspect During Course of Arrest

The United States Supreme Court, in *City and County of San Francisco, CA v. Sheehan*, 135 S. Ct. 1765 (2015), discussed whether law enforcement officers have a duty to provide accommodation to an armed, violent, and mentally ill suspect in the course of bringing the suspect into custody. The Supreme Court also addressed whether the officers were entitled to qualified immunity under the circumstances.

Facts

Theresa Sheehan lived in a group home for people dealing with mental illness. She was supervised by social workers, one of whom attempted to visit Sheehan to conduct a welfare check. When the social worker knocked on Sheehan's door, he received no answer. *Sheehan*, 135 S. Ct. at 1769. The social worker used a key to enter the room. Sheehan sprang up and threatened to kill the social worker. *Id.* at 1769-70. The worker shut the door and called the police for help. He took steps to clear the building of other people and to complete an application to have Sheehan detained for temporary evaluation and treatment. Officer Holder arrived and reviewed the temporary detention application and spoke with the social worker. *Id.* at 1770.

After another officer was summoned, they used the key to enter the room. Sheehan reacted violently, grabbed a kitchen knife with a five inch blade and began approaching the officers indicating she was going to kill them. The officers did not have their weapons drawn and retreated and closed the door with Sheehan in the room. *Id.* After calling for backup, the officers became concerned that while the door was closed, Sheehan might gather more weapons. The officers decided the situation required immediate attention and chose to reenter. They did not pause to consider whether Sheehan's disability should be accommodated. The officers knew Sheehan was not well, but the officer believed that was a



secondary issue given the fact that they were faced with a violent woman who threatened to kill her social workers. *Id.* at 1770-71.

Upon re-entry, the officers drew their pistols and used pepper spray on Sheehan. Sheehan had a knife in her hand and yelled for them to leave, threatening to kill them. Sheehan did not drop the knife despite pepper spray to her face, so Officer Holder shot her twice, but she did not collapse. Another officer then fired multiple shots. She finally fell and a third officer, who had just arrived, kicked the knife out of her hand. She was prosecuted in San Francisco for assault with a deadly weapon, assault on a police officer with a deadly weapon, and making criminal threats. A jury acquitted her of making threats and was unable to reach a verdict on the other counts. She was not retried. *Id.* at 1771.

Sheehan then brought a lawsuit alleging that the officers violated the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12101 *et seq.*, because they failed to reasonably accommodate her disability. She also sued under 42 U.S.C. § 1983, alleging violation of her Fourth Amendment rights because the officers did not use practices designed to minimize the risk of violence when dealing with mental illness. *Id.*

The district court granted summary judgment, relying on *Hainze v. Richards*, 207 F.3d 795 (5th Cir. 2000), which held that officers making an arrest were not required to first determine whether their actions would comply with the ADA before protecting themselves and others. *Id.* The district court also held the officers did not violate the Fourth Amendment because they had no way of knowing whether Sheehan might escape through the back window or whether there was anyone else in the room that she might hurt. The officers used deadly force only after the pepper spray was not sufficient force to contain the situation. *Id.* at 1771-72.

The United States Court of Appeals for the Ninth Circuit held the ADA covers public services, programs, or activities and that the ADA's accommodation requirement should be read to encompass anything the public entity does. The Ninth Circuit concluded it was for the jury to decide whether the officers should have accommodated Sheehan by passage of time to diffuse the situation rather than precipitating a deadly confrontation. *Id.* at 1772. The Ninth Circuit held that the officers' initial entry into Sheehan's room was lawful and after the officers opened the door for the second time, they reasonably used their firearms when pepper spray failed to stop the advance. The panel also found that the jury should decide whether the officers provoked Sheehan by needlessly forcing the second confrontation. *Id.* The dissent believed the officers were entitled to qualified immunity. *Id.*

ADA Accommodation Issue Not Properly Presented or Argued

San Francisco and the officers petitioned for a writ of *certiorari* to review two questions. *Id.* The first concerned whether the ADA "requires law enforcement officers to provide accommodations to an armed, violent, and mentally ill suspect" during the course of an arrest. *Id.* After reviewing the case history, the court found that San Francisco relied on a different argument than that made in the lower courts. San Francisco focused on the statutory phrase "qualified individual," but that argument did not appear in San Francisco's *certiorari* petition. *Id.* at 1772-73. The court ordinarily does not decide questions that were not passed on below. Of interest, the new argument effectively conceded that relevant provisions of the ADA may require law enforcement officers to provide accommodation. *Id.* at 1773.

The court interpreted San Francisco's argument on appeal as predicated on the proposition that the ADA governs the manner in which qualified individuals with a disability are arrested. The court held that the question of whether the ADA applies to an arrest is an important question that would benefit from briefing and adversary presentation. *Id.* Since San Francisco, the *amicus* brief from the United States, and Sheehan all argued or at least accepted that it applied, there was



nothing for the court to decide. *Id.* As a result, the Supreme Court found that it would not be prudent to decide that question in this case. Because *certiorari* jurisdiction exists to clarify law, it is not a matter of right, but judicial discretion in accordance with Supreme Court Rule 10. Here the Supreme Court exercised that discretion and dismissed the first question as improvidently granted. *Id.* at 1773-74.

This issue is interesting for municipalities and law enforcement entities to consider given the Supreme Court's discussion, even though it did not decide the issue. Officer training should include at least consideration of the ADA, as officers face a variety of arrest situations.

Fourth Amendment Constitutional Analysis

The second question before the court concerned Sheehan's allegations pursuant to 42 U.S.C. § 1983. Here, the Supreme Court disagreed with the Ninth Circuit's ultimate conclusion, although it did agree with many aspects of its analysis. The Supreme Court found the officers did not violate any federal right when they opened Sheehan's door for the first time. *Id.* at 1774. The officers knocked on the door, announced they were police officers, and informed Sheehan they wanted to help her. When Sheehan did not come to the door, they entered the room. *Id.* The Supreme Court held this was not unconstitutional, as law enforcement officers may enter a home without a warrant to render emergency assistance. Had Sheehan not been disabled, the officers could have opened the door a second time without violating her constitutional rights. *Id.* at 1775.

Moreover, the two entries were part of a single, continuous search or seizure. The officers were not required to justify the continuing emergency with respect to the second entry. *Id.* The officers also knew Sheehan had a weapon and had threatened to use it to kill people. They knew that any delay could make the situation more dangerous. The Fourth Amendment standard is reasonableness, and it is reasonable for the police to move quickly if delay would endanger their lives or the lives of others. *Id.*

The Supreme Court agreed with the Ninth Circuit that after the officers opened Sheehan's door for the second time, their use of force was reasonable. The officers tried to subdue her with pepper spray, and because she kept coming, the use of deadly force was justified. The Supreme Court found nothing in the Fourth Amendment prohibits officers from protecting themselves, even if it means firing multiple rounds. *Id.*

The Supreme Court further found that the officers' failure to accommodate Sheehan's mental illness did not violate clearly established law. *Id.* The officers had every reason to believe that their conduct was justified. There was no consensus of persuasive case authority that would support Sheehan's claim that she had a right to accommodation during the arrest. The officers were entitled to qualified immunity because they had no fair and clear warning of what the Constitution required. *Id.* at 1778.

The Supreme Court's qualified immunity analysis was the ultimate basis for its decision. While it chose not to decide the accommodation issue under the ADA, the language suggests there would be no duty under facts similar to this case. This interesting decision by the Supreme Court puts defense counsel on alert that plaintiffs may pursue claims in the future based on an officer's failure to accommodate certain disabilities of the suspects they arrest.



Seventh Circuit Addresses Qualified Immunity and Rule 12(b)(6) Motions No Duty to Protect Against Private Violence

The United States Court of Appeals for the Seventh Circuit's recent decision in *Doe v. Village of Arlington Heights*, 782 F.3d 911 (7th Cir. 2015), affirmed the district court's grant of qualified immunity at the Rule 12(b)(6) motion stage for Officer Mark Del Boccio and the Village of Arlington Heights. The plaintiff Jane Doe brought a claim under 42 U.S.C. § 1983 against the village and the officer arising out of the officer's response to a 9-1-1 call. When the officer arrived, he encountered the plaintiff and three males in an intoxicated state. The officer left Doe with the males, and she was later sexually assaulted. *Doe*, 782 F.3d at 913.

Facts

The plaintiff was a minor female who was drinking with a group of teenagers at an apartment complex. The site manager called 9-1-1 to report their activity. When Officer Del Boccio arrived, one of the males was holding Doe up from behind because she could not stand up by herself. *Id.* Her head was down and her eyes were closed due to intoxication. Officer Del Boccio rolled down his window, talked to the three males, and allowed them to leave the scene with plaintiff. The site manager spoke to the officer, and the officer stated that the three males were taking the plaintiff home. The officer then left the scene. The officer did not ask the plaintiff or any of the males for identification. He reported to dispatch that he had checked the scene and the subjects of the 9-1-1 call were gone upon arrival. *Id.* He also called off Officer Spoerry, who had also been dispatched to the scene. After Officer Del Boccio left the scene, the three males carried the plaintiff into a laundry room of the complex. The site manager observed this and called 9-1-1 again. A Mount Prospect officer responded to this call and, upon entering the laundry room, caught the three males sexually assaulting the plaintiff. *Id.*

The defendants moved to dismiss the complaint for failure to state a claim. They also argued Officer Del Boccio was entitled to qualified immunity and that there was no constitutional duty to protect the plaintiff. The district court granted the motion. *Id.* at 914.

Qualified Immunity

The Seventh Circuit reiterated that qualified immunity shields a government official from liability for damages when the official's conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. *Id.* at 915. The Seventh Circuit applied a two part test to determine whether the officer was entitled to qualified immunity. First, the court needed to determine whether the facts, viewed in light most favorable to the injured party, demonstrated that the conduct of the officer violated a constitutional right. Second, it needed to determine whether the right was clear at the time the conduct occurred. *Id.* citing *Hardaway v. Meyerhoff*, 734 F.3d 740, 743 (7th Cir. 2013).

The plaintiff alleged that the officer violated her constitutional rights by failing to adequately investigate the 9-1-1 complaint, by preventing other officers from arriving at the scene (Officer Spoerry who was dispatched and called off), and by falsely reporting to dispatch that the subjects of the 9-1-1 call were gone upon arrival. The officer argued that no clearly established law put the officer on notice that any of his alleged conduct violated Doe's constitutional rights. *Id.*



“Clearly established,” the court found, means whether it would be clear to a reasonable officer that his conduct is unlawful under the circumstances. The plaintiff bears the burden of establishing that a right is clearly established. Here, Doe failed to identify any factually similar case that would have provided a reasonable officer with notice that he had a constitutional duty to protect her in the situation Officer Del Boccio encountered upon arrival. *Id.*

The plaintiff also argued the district court erred in granting the officer qualified immunity at the pleading stage. The Seventh Circuit made it clear that resolving immunity questions at the earliest possible stage in litigation is important. *Id.* at 915-16, citing *Saucier v. Katz*, 533 U.S. 194, 201 (2001). Considering a Rule 12(b)(6) motion to dismiss based upon qualified immunity may be inappropriate in some cases because a qualified immunity defense usually depends on the facts of the case. However, in some cases it is proper. *Id.* at 916, citing *Chasensky v. Walker*, 740 F.3d 1088, 1095-97 (7th Cir. 2014).

Here, the district court correctly determined it was not clearly established law that calling off another officer or falsely reporting to dispatch the scene was clear violated the plaintiff’s constitutional rights. *Id.* Officer Del Boccio was, therefore, entitled to qualified immunity and dismissal was proper. *Id.*

Due Process Claim

The Seventh Circuit also addressed the plaintiff’s potential due process claim. Relying on *DeShaney v. Winnebago County Dept. of Social Services*, 489 U.S. 189, 197 (1989), it held that a state’s failure to protect an individual against private violence is not a violation of the due process clause. *Id.* Due process, it said, is designed to protect people from the state, not to ensure the state protects them from each other. Here, Doe had no affirmative right to governmental aid, even if that aid was necessary to secure or protect life, liberty or property interests. *Id.*

The Seventh Circuit also addressed two exceptions to *DeShaney*. *Id.* The first exception applies where the state has a special relationship with a person. The second exception, which is viewed narrowly, involves situations where the state creates a danger, and liability can exist when the state affirmatively places a person in a position of danger. *Id.*

The court found that Officer Del Boccio did not create a danger to Doe, nor did he do anything to make her situation worse. When he left Doe with the three young males, he left Doe in the same position she was in when he arrived. *Id.* at 918. The officer’s conduct did not turn a potential danger into an actual one. Doe was in actual danger already, and the officer had no constitutional duty to protect her. *Id.*

The Seventh Circuit rejected the plaintiff’s argument that discovery would have allowed her to uncover facts to support the “state created danger” exception. Her complaint contained no allegations to support such a theory (for example, that Officer Del Boccio made statements to encourage or embolden the rape). The court rejected this argument as implausible on its face. *Id.* at 919.

This case provides defense counsel a good overview of qualified immunity law. It also provides support for raising qualified immunity at the motion to dismiss stage.

U.S. Supreme Court Addresses Pleading Standard for Section 1983 Claims

In *Johnson v. City of Shelby, Mississippi*, 135 S.Ct. 346 (2014), the United States Supreme Court held that failure to invoke 42 U.S.C. § 1983 in the complaint did not bar relief under the statute.



The plaintiffs, who worked as police officers for Shelby, Mississippi, alleged they were fired by the city's board of aldermen because they brought to light criminal activities of one alderman. *Johnson*, 135 S. Ct. at 346. The officers alleged that their Fourteenth Amendment due process rights were violated and they sought compensatory relief. The district court entered summary judgment against the officers. That judgment was affirmed by the United States District Court for the Fifth Circuit based upon the plaintiffs' failure to invoke 42 U.S.C. § 1983 in their complaint. *Id.* The fifth circuit held that that the complaint must expressly invoke section 1983, and that this is not simply a pleading formality. Such a requirement, the fifth circuit noted, served a notice function because certain consequences flow from claims under section 1983, such as the unavailability of *respondeat superior* liability which bears on the qualified immunity analysis. *Id.* at 347.

The United States Supreme Court summarily reversed, holding the federal pleading rules require only a short, plain statement of the claim showing the pleader is entitled to relief. *Id.* at 346. According to the Court, a plaintiff's complaint should not be dismissed for an imperfect statement of the legal theory supporting the claim. The objective of the rule is to avoid civil cases turning on technicalities. There is no heightened pleading standard that requires a plaintiff seeking damages for violations of constitutional rights to invoke section 1983 expressly in order to state a claim. Federal courts may not apply a standard more stringent than the usual pleading requirements of Rule 8(a). *Id.* at 347. Referring to *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), the Court reiterated its previous statements on standards for proper pleading. *Id.*

The Supreme Court concluded that the plaintiffs' complaint was not deficient and that it stated simply, concisely, and directly the events that allegedly entitled the plaintiffs to damages from the city. Having informed the city of the factual basis of the complaint, the plaintiffs were not obligated to do more to stave off a threshold dismissal for want of an adequate statement of their claim. *Id.* The Court reversed and directed the district court to allow the plaintiffs to add a citation to section 1983 to the complaint. *Id.* *Johnson* provides a blunt confirmation of the liberal pleading requirements.

About the Author

Bradford B. Ingram is a partner with *Heyl, Royster, Voelker & Allen, P.C.* His practice concentrates on the defense of civil rights and municipal entities and the defense of employers in all types of discrimination claims. He is a frequent speaker before local and national bar associations and industry groups.

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