before the Court of Common Pleas; and (3) a liberty interest in his good reputation" – meaning the Court had to dismiss the claim.

Last, Bright alleged that the county it should be liable under *Monell* because it failed to protect him from the unlawful actions of Judge Evans and the independent contractor. Under such a theory Bright had to allege "(1) that a violation of a federal right took place, (2) that the defendants acted under color of state law, and (3) that [the] municipality's policy or custom caused that violation to happen." Bright argued the county had a policy of deferring to Judge Evans the appointment of public defenders and that, since the judge removed him from all felony cases before him, the nonprofit, which Bright considered the county's policymaker, had fired Bright. Bright could not support this allegation and the Monnell claim was dismissed.

http://www.ca6.uscourts.gov/opinions.pdf/14a0116p-06.pdf (last accessed June 17, 2014).

Trials: Where Suit Involves Federal and State Claims, State Privilege Laws Do Not Protect E-Mails From Being Admitted in Federal Case

Wilcox v. Arpaio, No. 12-16418 (9th Cir. June 2, 2014).

State privilege laws are not effective to bar the admission of testimony in a parallel federal case, according to the Ninth Circuit.

Mary Rose Wilcox, a Maricopa County Arizona Supervisor, sued the County and various present and past officials after an ostensible corruption investigation of her by a former (and fired) county prosecutor and Sheriff Joe Arpaio. The investigation was ultimately deemed politically motivated and dismissed by a judge. Wilcox alleged that officials wrongfully investigated, harassed and prosecuted her and her husband. She brought federal claims under § 1983 as well as state law claims.

The County hired advisors to deal with the fallout, not only from the botched investigation of Wilcox, but from investigations of other similarly-situated county officials the sheriff and prosecutor had targeted. The advisors predicted a hundred or more people might pursue similar claims to Wilcox's and, concerned about the cost, pace, and propriety of the claims, the County directed the county manager to establish a dispute resolution program.

The resolution passed by the County "directed and authorized" the manager to "take all actions necessary to . . . adjudicate the claims" in the program, which included "entering into binding arbitration/mediation agreements" and "contracts." The manager appointed a former judge to head up the program and through him settled various claims before reaching Wilcox's claim.

The County and Wilcox's attorney began discussing her claim, conversations which led to various emails between Wilcox's attorney and the mediator. Wilcox alleged that ultimately the emails showed her claim had been settled and pointed to emails from the mediator to her attorney stating he was writing to confirm a $975,000 settlement. This email was identical to emails sent to two other claimants by the mediator, both of which were settled without incident. The only difference between the email to Wilcox and those to other litigants was that the email from the mediator to Wilcox's attorney stated "[t]his settlement is subject to any further approvals deemed necessary by the parties."

The District Court held an evidentiary hearing on Wilcox's motion to try and enforce the settlement. The county manager testified that the other two emails from the mediator resulted in settlements for the amount stated in the emails, that he had the authority to settle claims from the county, that he authorized the mediator to communicate the $975,000 amount to Wilcox, and that he understood the phrase "further approvals" in the email to refer only to Ariz. Rev. Stat. § 11-626 (which requires claims against counties in the state to be presented by a member of the board of supervisors and have written approval by at least one member of the board). Wilcox's attorney testified to the same understanding of the phrase "further approvals" and the County took the position "for the record" that § 11-626 did not apply to Wilcox case. The District Court ruled for Wilcox on the evidence and granted her motion to enforce the settlement. The County appealed.

HELD: The Ninth Circuit affirmed the District Court, denying the County's argument that the manager's emails and testimony were subject to state privilege law and thus improperly admitted.

DISCUSSION: The Circuit Court agreed with the parties' position that state contract law governed whether they actually reached an enforceable settlement, but held for Wilcox on the privilege issue. The County had argued that state privilege law controlled because state law controlled whether the parties had reached an enforceable agreement, while Wilcox argued that federal privilege law controlled because any settlement reached settled both her federal and state claims against the County. The Court pointed out that there were both federal and state law claims at issue, and that the potentially privileged matter – the manager's testimony and emails - concerned both the federal and state law claims and that in such a situation the Circuit Court was not bound by Arizona privilege law.

Moreover, the Court ruled the County waived any argument that the contested evidence was privileged because before the District Court it distinguished its position from cases in which federal mediation privilege was at issue and, in its opening appellate brief, it assumed state privilege law governed, failing to argue the evidence should not be admitted under federal law. The settlement agreement was thus properly enforced by the District Court.

http://cdn.ca9.uscourts.gov/datastore/opinions/2014/06/02/12-16418.pdf (last accessed June 18, 2014).