SUPERVISORY LIABILITY

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DIFFERENCE BETWEEN MUNICIPAL AND SUPERVISORY LIABILITY

1. Municipal liability is against the MUNICIPALITY.
2. Requires proof of an OFFICIAL policy, practice or custom that is the moving force behind the alleged constitutional violation.
3. Subjects the municipality only to liability.

1. Supervisory liability is against the INDIVIDUAL supervisor.
2. Does NOT require proof of an official policy, practice or custom that is the moving force behind the constitutional violation.
3. Subjects the individual supervisor to liability and may not be sufficient to hold the municipality liability under *Monell.*

SUPERVISORY LIABILITY: PRE-*IQBAL*

Prior to the U.S. Supreme Court's decision in *Ashcroft v. Iqbal*, a supervisor could face liability under Section 1983 for a subordinate's unconstitutional acts if the supervisor's actions were the moving force behind the subordinate's constitutional violation.

RIZZO V. GOODE

1. The only Pre-*Iqbal* case decided by the United States Supreme Court.

1. The Court denied injunctive relief in a Section 1983 case alleging supervisory liability because the Plaintiff failed to show an "affirmative link between the occurrence of the various incidents of police misconduct and the adoption of any plan or policy . . . express or otherwise showing [the supervisory officials'] authorization or approval of [subordinate] misconduct."

SUPERVISORY LIABILITY- PRE-*IQBAL*

This meant, a supervisor could be held liable under Section 1983 if the supervisor:

1. Personally participated in unconstitutional conduct;
2. Establishes causal connection by ignoring widespread abuse with no corrective action(s); or
3. Directs subordinate to perform unconstitutional conduct with knowledge of harm.

Cottone v. Jenne **326 F.3d 1352 (2003)**

ASHCROFT V. IQBAL: 556 U.S. 662 (2009) IMPACT ON SUPERVISORY LIABILITY CASES

Iqbal Holding:

"the term 'supervisory liability' is a misnomer" and liability cannot be based upon "knowledge and acquiescence" in the constitutional misconduct of others. 556 U.S. at 667.



So what is SUPERVISORY LIABILITY based on?

SUPERVISORY LIABLITY
BIVENS AND SECTION 1983 CLAIMS PRE AND POST-*IQBAL*

PRE-*IQBAL* STANDARD

- Both *Bivens* and Section 1983 allowed for supervisory liability for claims alleging deliberate indifference.
- *Bivens* claims are brought against federal law enforcement officials for alleged Fourth Amendment violations. (Claims under the Federal Tort Reform Act are claims against the government)

POST-*IQBAL* STANDARD

- While *Iqbal* only explicitly involved a *Bivens* claim, it has been applied to both *Bivens* and Section 1983.
- Eliminated supervisory liability, rendering the term a "misnomer."
- A plaintiff is required to prove the supervisor's actual participation in the alleged constitutional violation.

NO CONSENSUS

among the circuit courts has emerged that fully defines the landscape after *Iqbal*.



POST-*IQBAL* REVIEW OF SUPERVISORY LIABILITY

There have been three main approaches in *Bivens* and Section 1983 cases alleging supervisory liability after *Iqbal*:

- Abandon supervisory liability claims in both *Bivens* and Section 1983 cases.
- Ignore Iqbal supervisory language as dicta and continue to apply it in *Bivens* and Section 1983 cases. (9th Cir)
- Abandon supervisory liability claims in *Bivens* cases only. (1st Cir)

MENS REA



- Purpose rather than knowledge
- Supervisor "**intended**" to cause the constitutional violation



ACTUS REUS

- Individual Action of Supervisor
- Heightened Deliberate Intent
- Must prove supervisor knew of a substantial risk and ignored the risk because he wanted to cause the harm to Plaintiff

11TH CIRCUIT POST- *IQBAL*

To establish supervisory liability:

- Personal participation in conduct
- Causal connection between supervisor's actions and the harm caused
    a. history of widespread abuse putting supervisor on notice
    b. supervisor created policy or practice
    c. supervisor told subordinate to do unconstitutional conduct
    d. knew wrong would be done by subordinate and failed to stop

Franklin v. Curry ,738 F.3d 1246 (11th Cir. 2013)

MERITLESS ARGUMENTS



- Failure to train
- Mere knowledge of unconstitutional conduct
- Did not do enough to combat bad conduct

QUALIFIED IMMUNITY



Police Officer's Shield

Most Persuasive Defensive Argument:

NO CLEARLY ESTABLISHED LAW REGARDING SUPERVISORY LIABILITY