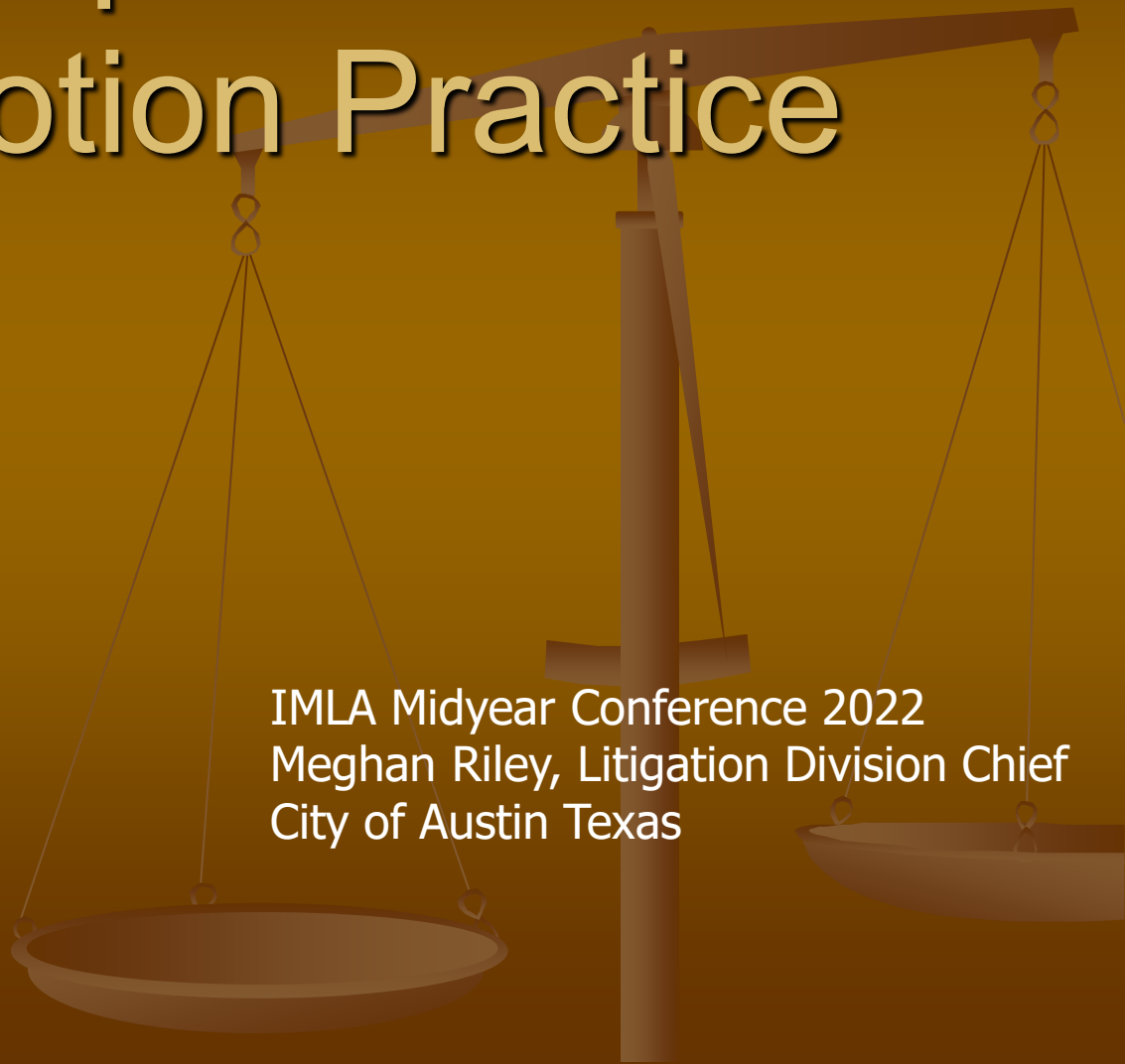
Practical Tips for Section 1983 Motion Practice



IMLA Midyear Conference 2022
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City of Austin Texas

Qualified Immunity

- Assert or plead as soon as possible.
  - Rule 12 Motion to Dismiss;
  - Rule 12 Motion on the Pleadings;
  - Summary Judgment;
  - Directed Verdict
- Advantages to Rule 12 Motions
- Limit Discovery under Rule 7 (Schultea v. Wood)
- Know your Judge and the local rules

Motions to Bifurcate

- Motion to separate *Monell* claims from individual officer claims under Rule 42;
- Potentially avoids officer history of excessive force in qualified immunity motion or trial;
- Typically coupled with a Motion to stay *Monell* discovery;
- Consider possible conflicts of interest;
- Know the Court's view towards motions

Abstention Doctrines

- "Judge-made" doctrine where lawsuit is so mixed up with state law, federal court will abstain or refrain from jurisdiction.
- Raise where similar issues brought in two different court systems, or where the state has clearly established a mechanism for answering questions posed to the federal courts.
- Jurisdictional [sort of] so should be considered as part of a robust motion practice.

Pullman Abstention

- Federal claim filed first;
- Used to "avoid unnecessary constitutional adjudication;"
- Case presents (1)an unsettled question of state law, and (2) the question of state law is dispositive of the case or would materially alter the constitutional question presented

Pullman Abstention Use

- Possible in an Ordinance challenge for Vagueness;
- Possible in zoning challenges;
- Supreme Court says no abstention for First Amendment rights, rights related to school desegregation, and voting rights.
- Can apply even where case was filed in state court but removed to federal court

Younger Abstention

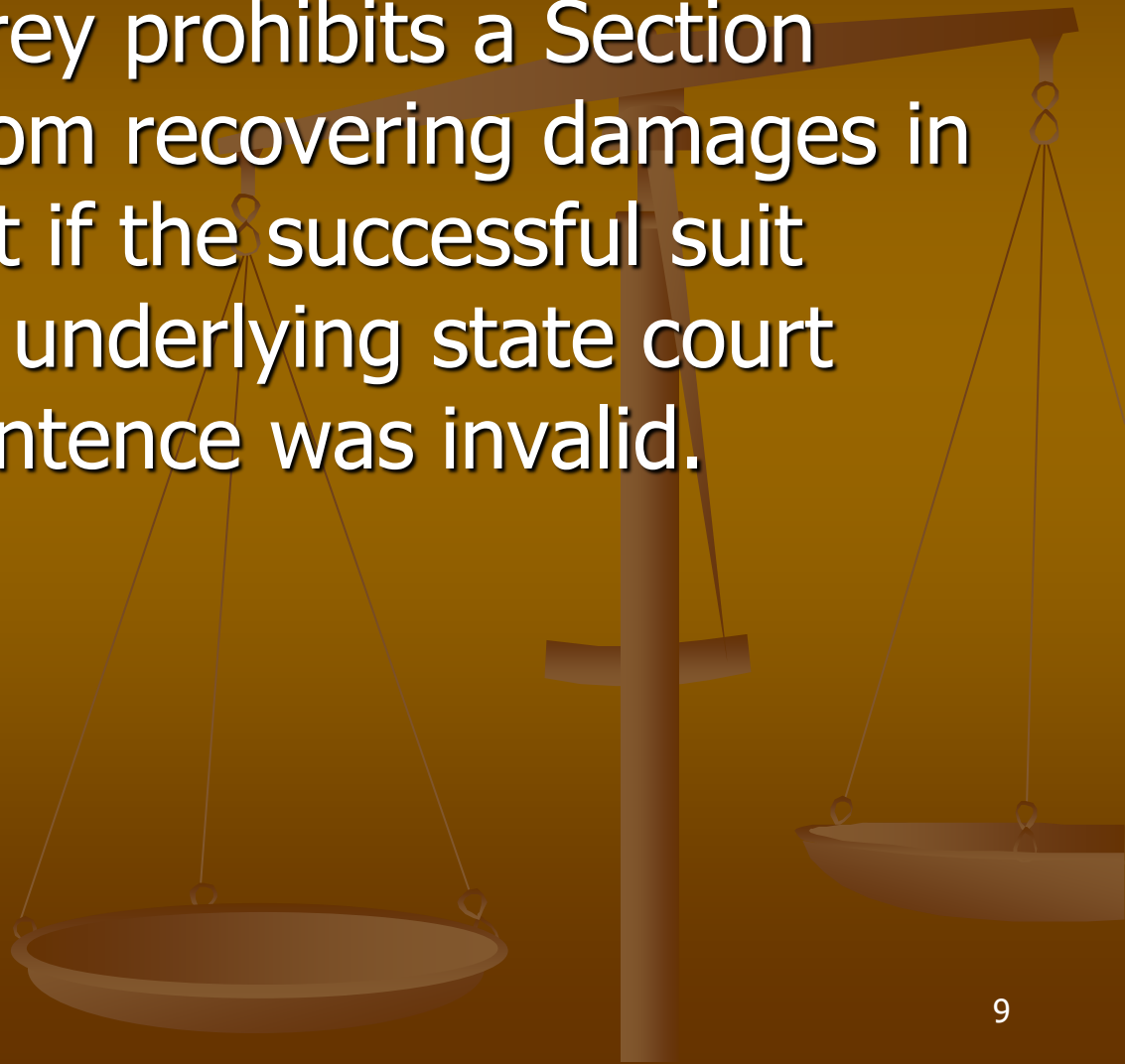
- Applies when a state proceeding is at issue before federal claim;
- State proceeding must provide opportunity to raise the federal claims;
- Recognizes the general rule that a federal court should not enjoin criminal prosecution in state court except under unusual circumstances;
- Younger applies in civil cases where both damages or declaratory relief are sought;
- Can be applied in racial profiling context

Burford Abstention

- Based upon the theory that in certain areas of law any intervention by the federal court would disrupt state policies or policy-making;
- Seems appropriate where there are complex statutory schemes (ie state or local taxes;
- Very few recent case examples (Burford decided in 1943);

Related Preclusion Issues

- Heck v. Humphrey prohibits a Section 1983 Plaintiff from recovering damages in a federal lawsuit if the successful suit implies that the underlying state court conviction or sentence was invalid.



Fees Motions

- Defendant Attorneys' Fees Awards are a rare to never occurrence.
- Defenses to fees Motions;
  - Untimely [request for fees can be waived]
  - Not "prevailing party" Farrar Factors
  - Nominal damages
- Don't forget to consider expert fees challenges.

Questions

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