

§1983 Liability to social workers and agencies relating to child interviews

§1983 & Agency Liability

- Fed Civil Rights Laws come under 42 USC 1983
- *Monell v. Department of Social Services*:
 - Municipality only liable if policy that “causes employees to violate another’s constitutional rights.

Theories of Liability

- Failure to train
- Failure to discipline
- Lack of remedial measures causing viable concern

Judgments

- Municipalities may pay judgments even without *Monell* liability:
 - Another Legal Basis
 - A matter of practice

Camreta & the 4th Amendment

- Investigation without a parent
- Law enforcement is directly involved
- Child does not feel free to leave
- Child is questioned involuntarily

Camreta & the 4th Amendment

- Inapplicable situations:
 - Court Order/Warrant
 - Exigent Circumstances
 - “Special Needs Search Doctrine”
 - PC and Warrant requirement NOT clearly established

Factors that may trigger 4th Amend. Violation per *Camreta*

- No warrant
- Law enforcement “substantially involved”
- Purpose of interview to gain evidence
- Child is not free to leave and questioned involuntarily
- No breaks
- No 3rd party present

No Liability if Qualified Immunity

- “Qualified Immunity” defined:
 - Government official performing **discretionary** functions generally are shielded from liability for civil damages insofar as their conduct does not violate **clearly established** statutory or constitutional rights of which a reasonable person would have known [*Harlow v. Fitzgerald* (1982) 457 US 800, 818]

Violation of “Clearly Established” Right

- Standard:
 - Whether it would be clear to a reasonable social worker that his/her conduct was unlawful in the situation confronted.
 - If the law is not clearly established, one could not be reasonably expected to know that a warrantless interview is unlawful.

Camreta & the 4th Amendment

- Query:
 - Is 4th Amendment law regarding interviews at school, clearly established post *Camreta*??

“Objective Reasonableness”

- If reasonably competent Social Worker knew or should have known the conduct was unlawful?
- Not based on intent of Social Worker:
 - May be done with good intent but still a violation
 - May be done with malice but not a violation if valid conduct.

“Obvious Clarity”

- When violation is obvious
- Factually similar prior cases:
 - A §1983 case selling foster kids into slavery does not require that a prior case found liability
 - “Obvious Clarity” probably not applicable to child interviews at school.

Relevant Information

- Regulations, Policies and unreported District Court Opinions may be relevant.
- “Absent Binding Precedent, we look to all available decisional law.”

Immunity under State Law

- GOV §820.2
- GOV §820.4
- GOV §820.6
- GOV §815.6

Immunity under State Law

- *Alicia T v. City of LA* (1990) 222 CA3 869:
 - §1983 Lawsuit against social worker based on removal and failure to return based on sex abuse report by hospital staff without PC warrant.
- *Ortega v. Sacramento County DHHS* (2008) 161 Cal.App.4th 713:
 - The Legislature has chosen to immunize government employees from liability for discretionary acts whether or not such discretion was abused.

Immunity under State Law

- No Immunity if “Mandatory Duty”
- “Mandatory” includes statutes and OTHER regulations:
 - Liability for breach of a mandatory duty applies to ministerial duties imposed by regulations and statutes.

Where to go from here?

- Do nothing until the next case, or
- Avoid triggers identified in *Camreta*, or
- Create guidelines:
 - i.e.: Washington Procedure
 - Ensure Voluntary
 - Document Interviews not recorded
 - Make efforts to have 3rd party present
 - Make efforts to have audio recordings when possible.
