The anatomy of settling a civil rights case

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Mediating a civil rights case, with its unusual issues and difficult valuation considerations, can be daunting for the neutral. Magistrate Judges of the United States District Court for the Central District of California conduct settlement conferences as part of our normal duties. Because Section 1983 cases are often filed in or removed to federal court, settling them is central to federal practice.

We have each been on the federal bench for years and have conducted settlement conferences in many cases. Our extensive experience enables us to share our thoughts on the often frustrating issues that we must overcome to settle these cases.

The Work of Magistrate Judges: As magistrate judges, we regularly interact with individuals involved in law enforcement in many ways. This significantly helps us in settling civil rights litigation.

Magistrate judges review search and arrest warrants in federal criminal investigations. We often question federal agents about the evidence and the plans for executing the warrants. This gives us familiarity with how law enforcement agencies interact with the community.

Magistrate Judges regularly conduct bail hearings for those arrested in the federal system. After release, we may also conduct proceedings to modify release conditions. We are regularly face-to-face with criminal defendants, their attorneys, and their families. During the pandemic, we often held video calls with them in their homes and cars. Magistrate judges can develop rapport with parties to learn about their lives (housing, employment, and family relations).

Additionally, in the Central District, magistrate judges handle all preliminary proceedings in **pro se** civil rights actions that self-represented inmates bring against correctional officers and other prison staff. Because of our hands-on case management, we often consider the evidence (medical records, prison grievance reports, etc.) regarding the claims. Some of us also volunteer to settle this prison-based litigation. The skills developed in negotiating with self-represented inmates and state agency lawyers (representing prison medical personnel and correctional staff) translate to cases involving serious injury or death discussed here.

Section 1983: 42 U.S.C. § 1983 allows a person to sue anyone who, “under color” of state law, deprives another of a constitutional right. Often, these claims involve law enforcement personnel using excessive force in an arrest (Fourth Amendment) or against a person in custody (Eighth or Fourteenth Amendment). A person who is lawfully arrested and convicted of a crime may still pursue relief under § 1983 for injuries resulting from the unreasonable or excessive use of force during that arrest. In

addition to recovery of damages, a trial court may award reasonable attorney's fees and litigation costs to the prevailing party (42 U.S.C. § 1988).

The situations: Section 1983 cases usually arise due to confrontations between the public and law enforcement, frequently in arrests or during incarceration. There may be chases, violence, and even death. Unlike the cases which mediators normally confront (such as business- or employment-related litigation), in civil rights cases one party has been or is suspected of doing something wrong that causes the state to intervene.

The plaintiffs: If the plaintiff is living, he or she may not be a very attractive litigant. A gang member, a homeless person, or a prisoner is not apt to engender much sympathy from a jury. This fact colors the case from the outset. On the other hand, the plaintiffs may be a group of family members who represent the estate of a deceased person. Each of those family members had a different connection to the deceased and brings a distinct perspective to the case. Each may be experiencing a range of emotions, including grief and anger, and each has different needs and expectations. Bringing this group together is essential to enable the case to be settled.

The defendants: The defendants are public entities and their employees, frequently police officers or sheriff's deputies. The employees' agency may be brought in under *Monell* liability, claiming an unconstitutional policy of the department that affected how the employees interacted with the person harmed. If several entities, such as the county and the state, are involved, multiple lawyers may attend as well. In some cases, one entity may be unwilling to appear at the settlement conference at all, leaving one set of defendants trying to settle their exposure alone.

When to set a settlement conference: Because of the normal skirmishing that occurs in Section 1983 cases, the qualified immunity defense is a central issue. *See, e.g.,* Reinert, *Qualified Immunity's Flawed Foundation,* 111 Cal. L. Rev. 201(2023). That fact makes the timing of settlement efforts crucial. We have found that settlement is more readily achieved after discovery and a round or two of motion practice. The public entity can understand the approach of the assigned District Judge, and all parties can better evaluate that judge's likely rulings at trial.

How we guide the parties to prepare for the conference: Guiding the advance preparation of the parties and ourselves is critical. No mediator should walk into the settlement conference without a thorough understanding of the parties and all relevant issues. To get started, we typically hold a phone call or Zoom conference with all attorneys who will attend the conference. On that call, we cover the claims and defenses, as well as the status of case development and probe the attitudes of the parties. We encourage the parties to submit settlement conference statements well in advance of the conference and to share them with their adversaries. It is critical for decision makers on both sides to understand the arguments the other side is making. Moreover, because many people may need to review them (particularly within a public agency), plenty of time is necessary. We accept confidential submissions as well, and

frequently talk with the lawyers individually before the conference to expose areas for further questioning. We tell plaintiff's counsel to make a demand sufficiently in advance of the conference so that it can be thoroughly considered by the defense. We inquire of the defense if the individual officers plan to be present (they frequently are not) and which department supervisory personnel and risk management employees will attend.

How we prepare for the conference: We know the applicable law, review the District Judge's rulings, and learn the facts. If there is bodycam footage, we get it ahead of time and review it thoroughly. In our experience, this frequently trumps all other evidence. We make sure that the right people are set to attend the settlement conference on all sides. We know or learn the defense decision making process and what the cut off level is for settlement authority in the county or city we are dealing with. We review the settlement statements of each side and gather any confidential information we can get in advance. We reach out to the lawyers individually before the session to determine the clients' attitudes toward the critical issues. We speak to the plaintiff's lawyer in detail about verdicts and settlements in similar cases and make sure that the information is in a form to be shared before or during the conference. Learning the dynamics among the settlement group is also crucial. We work with plaintiff's counsel to calibrate the right times to make interventions in the conference.

On Zoom or in person? We have done it both ways. We seek input from the lawyers and offer suggestions based on our experience. We note that Zoom conferences have been successful as frequently as in person conferences, and Zoom offers flexibility in allowing some participants to appear for a short time when that would not be feasible if they had to travel to participate. We also are flexible about the length of the session. We have found that particularly given the emotional dynamic of these cases, plaintiffs and plaintiff groups may need time to consider the public entity's initial response to the settlement demand. We make it clear to the parties at the outset of the session that it is fine to have a second session after some days have passed to allow this consideration and discussion to occur.

Creative mediating: We run our settlement conferences in civil rights cases like mediations in other actions. We usually break the parties into several breakout rooms, either virtually or in person, and we move between them. We allow time for venting on all sides. We know that tears or angry outbursts are likely to occur and do our best to channel them productively. Most importantly, we are patient and remain flexible. Frequently, we encounter plaintiffs' counsel who do not want their clients to talk, or really to participate in the process. Some clients are comfortable with that and we do not undercut the lawyer in the eyes of the client. Nonetheless, we want the plaintiffs to own the process, since we believe it results in greater acceptance of the outcome, so we encourage the individuals to express themselves.

The mediator's proposal: During the back and forth of negotiations, we are frequently able to help the parties achieve settlement; however, sometimes at the end of the session a gap still exists between the parties. When this happens, we will make a

mediator’s proposal to bridge the gap and we give both sides the time necessary to seek input from others and to get authority from a municipal or county body if necessary. Frequently our proposal enables settlement to occur.

Settling Section 1983 cases can be draining for everyone, but we are heartened by the positive outcomes we have witnessed and we are committed to helping parties get closure in these difficult cases this way.

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