Defending Law Enforcement Officers Against Personal Liability in Constitutional Tort Litigation

(Conclusion)

". . . liability . . . will not be imposed if the 'official pleading the defense claims extraordinary circumstances and can prove that he neither knew or should have known of the relevant legal standard. . . .' "

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NOTE: This article presents a general discussion and is not intended to constitute legal advice in any specific situation or case. Legal advice in specific cases should be sought from a practicing member of the bar.

Part 1 of this article described the basis for filing constitutional tort litigation against individual law enforcement officers and emphasized the assertion of appropriate defenses to expeditiously resolve these actions prior to trial. In this regard, the principal focus of part 1 was to review the Supreme Court's revision of the qualified immunity defense in *Harlow* v. *Fitzgerald* [47] and to analyze the meaning of "clearly established law."

The conclusion of this article will analyze the second prong of the qualified immunity defense under the *Harlow* decision. This part will then discuss additional litigation tactics which officers may use to mitigate or otherwise counter the adverse impact of being named as a defendant in a constitutional tort civil action.

THE EXTRAORDINARY CIRCUMSTANCES

Prong of the Qualified Immunity Defense

As previously discussed, the key issue in asserting the qualified immunity defense is whether the applicable law which a defendant officer is alleged to have violated in committing a constitutional tort against the plaintiff was clearly established at the time of the incident which gave rise to the civil action. Liability usually will not be imposed if the law was not clearly established, but it will usually be imposed if the law was clearly established. In *Harlow,* the Supreme Court added another factor to consider beyond this determination. The Court stated that liability still will not be imposed if the "official pleading the defense claims extraordinary circumstances and can prove that he neither knew nor should have known of the relevant legal standard. . . ." [48]

The significance of this factor is to create a second prong in the qualified immunity defense. Even assuming that plaintiff has pleaded a constitutional tort allegedly committed by a defendant officer and has proven that the law allegedly violated by the officer was clearly established at the time of the incident, the defendant may still avoid liability by justifying his conduct on exceptional circumstances. The difficulty with this argument is defining "extraordinary circumstances" and articulating facts that meet the definition.

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There have been relatively few cases litigated on this precise issue. It seems clear that the exceptional circumstances prong would protect officers or officials from liability for actions taken which were declared unlawful so shortly before the action took place that the acting officer or official could not reasonably have known or been expected to know that the conduct which he undertook had previously been declared illegal.[49]

The exceptional circumstances prong of the qualified immunity test may have other applications, however. For example, in January 1979, the newly elected governor of Tennessee was sworn into office 3 days early in an attempt to end abuses in the pardon of prisoners and commutation of sentences under the administration of outgoing Governor Blanton. One of newly elected Governor Alexander's first acts was to order that the commutation of sentences issued by Governor Blanton be held in abeyance. When a lawsuit was filed challenging Governor Alexander's authority to issue that order, Governor Alexander asserted the defense of qualified immunity.[50] Though the court held that the law surrounding a governor's authority to hold commutations in abeyance was unclear, and therefore, qualified immunity was appropriate, it also noted that:

> "The advice of the State Attorney General, two assistants, Special Counsel Fred Thompson, and counsel to the Governor . . . all was that the Governor was on firm legal grounds in taking the position he took. If necessary to the decision, this Court would hold that such advice from such an array of qualified lawyers would certainly constitute good faith, and that he neither 'knew nor should have known' that his action was illegal.[51]

The court, in dicta, indicated on those facts that following official legal advice in the course of one's duties was exceptional circumstances sufficient to avoid liability for a constitutional tort.

The more difficult exceptional circumstances case is one involving an officer or official who violates the constitutional rights of a person, but does so under the instruction of a superior. Should constitutionally violative conduct undertaken at the instruction of a superior constitute an exceptional circumstance excusing an officer from liability? Only two known cases have dealt with the issue, and each has reached a different conclusion.

In *Green* v. *Maraio,*[52] Camilla Maraio was the official court reporter transcribing proceedings at the criminal trial of Leroy Green. Green alleged in his 1983 suit that Maraio deprived him of his constitutional right to procedural due process when she altered the official transcript upon the instruction of the judge who presided over the criminal trial. The circuit court of appeals, however, dismissed Green's $3 million damage claim. The court held that "Maraio acted pursuant to Judge Ingrassia's explicit instructions and thus is immunized from liability under 1983 by the defense of qualified immunity for actions carried out within the scope of those instructions." [53]

The opposite conclusion was reached in *Hobson* v. *Wilson.*[54] In *Hobson,* plaintiffs alleged that several

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FBI Agents and others had participated in a counterintelligence program aimed at exposing, disrupting, and discrediting certain radical black and leftist groups in an attempt to neutralize and counter their propensity for violence and civil disorder. At trial, a jury found certain of the defendants to have violated the plaintiffs' first amendment rights of free speech and association. On appeal, the Circuit Court of Appeals for the District of Columbia was asked to hold that the defendant FBI Agents were entitled to qualified immunity because their individual participation was only in accordance with a counterintelligence program established at the highest levels of the FBI. The circuit court rejected that argument believing that to permit qualified immunity under such circumstances is tantamount to excusing disobedience of law based solely on obedience to a defendant's superiors. The court left open the question, however, of whether the extraordinary circumstances prong might shield a defendant from liability who complied with approved organizational policy only after protesting the policy at issue. Inasmuch as there was no factual support in the record in *Hobson* that any of the Agent-defendants participated in the counterintelligence program only after questioning or protesting the policy, the court found no exceptional circumstances present.

It is difficult to predict the parameters for successful assertion of the extraordinary circumstances prong of the qualified immunity defense. So few courts have been faced with the issue that the contours of this aspect of the defense are not yet formed. At this stage of the defense's development, officers and their attorneys defending actions for alleged constitutional violations should nevertheless consider the possibility of raising and litigating an extraordinary circumstances defense. The decision will turn on the facts of the case and the need to use "exceptional circumstances" to buttress the argument that the law was not clearly established. Certainly, under current judicial interpretations, very recent changes in the law or reliance on official legal advice in the course of one's duties may be sufficient exceptional circumstances to avoid liability.

The Qualified Immunity Defense Summarized

When the Supreme Court abandoned the subjective component of the qualified immunity defense in *Harlow* v. *Fitzgerald,*[55] it did so with the desire to permit the speedy resolution of insubstantial claims of constitutional violations without the necessity of trial and its attendant discovery. The admonition that insubstantial suits should not become involved in discovery or proceed to trial but rather should be disposed of through motions filed under the Federal Rules of Civil Procedure is, perhaps, to the sued officer or official the most important aspect of the revised qualified immunity defense. If a defendant officer's attorney uses defenses available under *Harlow*, he may be able to prevent the specter of a lawsuit from hanging over the officer's head, interfering with the performance of assigned duties and impeding his willingness to take necessary and immediate actions in other employment related situations.

Certainly, "[w]here an official could be expected to know that certain conduct would violate statutory or constitutional rights, he should be made to hesitate . . . [b]ut where an official's duties legitimately require action in which clearly established rights are not implicated the public interest may be better served by action taken 'with independent and without fear of consequences.' " [56] Every effort should be made to resolve the lawsuit quickly, without need for expensive and time-consuming discovery. Attorneys who do so will find they have served their clients well and have also provided society in general a great service by returning the officer's attention back to his investigative duties and responsibilities. Under the *Harlow* decision, a framework exists for a defendant officer to argue, where appropriate, that the law was not clearly established at the time of the incident and/or that even if it were, his conduct is justified on exceptional circumstances.

Appeal of Denial of Qualified Immunity

One final issue remains with regard to the qualified immunity defense. If the attempt to resolve the action by dispositive motion asserting qualified immunity is denied by the presiding judge, does the defendant have any recourse other than responding to discovery requests and going to trial? At that stage in the proceedings, may the defendant appeal the denial of qualified immunity? The courts which have decided this issue have split [57] on whether the denial of qualified immunity is immediately appealable, but the Supreme Court has agreed to address the issue.[58] Until

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the Supreme Court rules, defendant officers and their attorneys should consider pursuing an appeal of the denial of qualified immunity. The appeal is certainly preferable to responding to burdensome discovery requests and/or going to trial.

ADDITIONAL LITIGATION TACTICS FOR COMBATING FRIVOLOUS LITIGATION

As this article has indicated, police officers and officials often find themselves as defendants in civil actions. The nature of their work in making arrests and conducting searches and seizures certainly presents a climate in which lawsuits are, perhaps, inevitable. However, no one can reliably predict the precise reason a lawsuit is filed since, in truth, only the plaintiff knows why he chose to file his complaint. Greed and vindictiveness are among possible motivating factors which spawn litigation but are usually unsuccessful in securing monetary awards. These actions are vexing to both the individual defendants and to the judicial system forced to handle them. As previously discussed, qualified immunity and other defenses are available to dispose of frivolous or insubstantial lawsuits. Other procedures are available to defendant officers and their attorneys in defending these actions. Appropriate and restrained use of these procedures may discourage the filing or continued prosecution of groundless actions which may have been filed solely to harrass a law enforcement officer. These procedures include counterclaims, attempts to have attorney's fees assessed against plantiffs, and attempts to have sanctions imposed against plaintiff's attorney.

Counterclaims

The Federal Rules of Civil Procedure which govern procedural matters in both § 1983 and *Bivens* actions permit, and sometimes require, that claims of a defendant against a plaintiff be raised and litigated at the same time as the plaintiff's claims are litigated.[59] Some counterclaims against a plaintiff have been successful and resulted in monetary awards in favor of the officer against the plaintiff who originally filed the suit. If an officer has a legitimate legal claim against the defendant, he should bring it to the attention of his attorney for consideration as a counterclaim.[60]

Typical counterclaims raised by officers sued under 1983 include battery and defamation.[61] For example, in *Meiners* v. *Moriarity,*[62] law enforcement officers who had been sued under § 1983 by a plaintiff for allegedly depriving him of certain fourth and fifth amendment rights counterclaimed against the plaintiff for defamation and injury to their reputation. The officers claimed to have suffered injury by plaintiff's derogatory comments to the press which accused the officers of theft and other illegal or improper conduct during the plaintiff's arrest and search of his home. A jury trial resulted in a verdict for the eight defendant officers and judgment against the plaintiff in the amount of $15,000. Although the award was overturned on appeal because of a faulty jury instruction, the appellate court clearly indicated that such defamation counterclaims are viable if supported by the facts.

Defendant officers may also counterclaim for physical injuries incurred in the incident which gave rise to plaintiff's civil action. In *McCurry* v. *Allen,*[63] the jury awarded an officer $105,000 for injuries suffered by the officer at the hands of the plaintiff. The officer, acting undercover, was shot by the plaintiff while involved in an attempted drug purchase and arrest of the plaintiff. The plaintiff subsequently alleged in a § 1983 action that the officer, along with others, violated his constitutional rights by beating him following his arrest, conducting an illegal search, and engaging in a conspiracy to deprive him of his constitutional rights. The defendant officer counterclaimed for damages resulting from the injuries inflicted by the gunshot. The jury dismissed the plaintiff's constitutional claims and awarded the officer $5,000 in compensatory damages and $100,000 in punitive damages. On appeal, the judgment for the officer was upheld.

Police officers and officials who are named as defendants in constitutional tort litigation should make judicious use of the counterclaim based on advice of counsel. Counterclaims should be filed only where they are legitimately supported by facts and law. Where they warrant filing, in the opinion of counsel, they may be pursued by officers taking full advantage of their rights as citizens to seek redress of their own injuries through the judicial system.

Attorney's Fees

One of the more obvious costs associated with an officer being sued for an alleged constitutional violation is the attorney's fees incurred in defending the civil action. The expenses of attorney's fees, if borne by the individual defendant, cause the officer to

be a "loser," even if he should prevail on the merits. However, the use of a 1976 Federal statute can sometimes lessen this financial burden and serve as a deterrent to plaintiffs who may be considering filing a groundless civil claim.

The American judicial system operates primarily on the theory that each party to a suit bears the expense of his own attorney's fees. In constitutional tort litigation, however, Congress believed that the sometimes heavy expense required to hire a lawyer acted as a barrier to impoverished people who could not afford a lawyer to represent them in their suits brought under § 1983. The fear that legal expenses might foreclose access to the courts for indigents with legitimate constitutional claims prompted Congress to enact the Civil Rights Attorney's Fees Award Act of 1976.[64]

This statute was primarily designed to insure persons with civil rights grievances access to the Federal courts to litigate claims of constitutional violations. It allows for the recovery of attorney's fees in addition to actual damages. The significance of this act to defendant law enforcement officers is that it is actually phrased in neutral terms; it does not apply solely to a plaintiff, but may also be used by a defendant. It provides that the *prevailing* party may, in the discretion of the trial court, be awarded a reasonable amount for attorney's fees. This provision should not be overlooked when an officer and his attorney prepare a defense.

Though the act's language allows the prevailing party to be awarded attorney's fees, court decisions have held that the defendant in a § 1983 action must do more than simply win the judgment on the merits before being entitled to attorney's fees. The Supreme Court has held that a defendant is only entitled to attorney's fees incurred in defense of civil rights litigation when the suit was "vexatious, frivolous, or brought to harass or embarrass the defendant." [65] "The fact that a plaintiff may ultimately lose his case is not itself sufficient justification for the assessment of fees" [66] in favor of the defendant. The suit must be groundless or without foundation or the plaintiff must have "continued to litigate after it clearly became so." [67]

Though this attorney's fees provision is not often invoked in favor of a defendant, some courts have applied it after determining the plaintiff's civil rights suit was wholly without merit. For example, in *Hernas* v. *City of Hickory Hills,*[68] a plaintiff sued the City of Hickory Hills, the mayor, and certain named and unnamed police officers and firefighters for alleged harassment. Russ Lindemann was one of the Hickory Hills police officers named as a defendant for allegedly violating plaintiff's constitutional rights. However, despite naming Officer Lindemann as a defendant, the plaintiff totally failed to make a single specific allegation against Officer Lindemann that showed any harm to the plaintiff's constitutional rights. Because of the plaintiff's complete failure to connect Officer Lindemann with a constitutional violation, the court found that the plaintiff wrongfully caused the suit to be brought against him and that it was, therefore, filed without any foundation. Accordingly, Officer Lindemann was entitled under the Civil Rights Attorney's Fees Award Act to receive from the plaintiff an award of attorney's fees.

An even more dramatic example of a defendant recovering attorney's fees can be found in *American Family Life Assurance Company of Columbus* v. *Teasdale.*[69] Teasdale was a former governor of Missouri who, during his term of office, publicly criticized the plaintiff-insurance company for its involvement in the sale of cancer insurance policies. Plaintiff filed a lawsuit claiming that former Governor Teasdale had violated the company's constitutional rights and seeking damages totaling $9 million. When a jury found for Teasdale and refused to grant any relief to the plaintiff, Teasdale filed a motion for an award of attorney's fees incurred in his defense. In support of the motion, Teasdale showed that the lawsuit had been filed in an attempt to hurt him politically, that it was only one of a series of lawsuits the plaintiff routinely filed in an attempt to silence its critics, that after it was filed plaintiff made no attempt to produce evidence of its claimed $9 million financial loss, and that it was totally vindictive. The trial court judge found that the plaintiff's frivolous and vindictive lawsuit met the standard announced by the Supreme Court in *Hensley* v. *Eckerhart* [70] and awarded Teasdale $63,287.21 in attorney's fees. The court made clear its displeasure with the plaintiff by stating:

> "Where a plaintiff has used the legal system as a vehicle of vengeance . . . it must be prepared to pay the fare. In this case . . . the fare is $63,287.21." [71]

" 'Where a plaintiff has used the legal system as a vehicle of vengeance, . . . it must be prepared to pay the fare.' "

Plaintiff appealed the adverse judgment and attorney's fees award to the Eighth Circuit Court of Appeals. That court joined the trial court in rebuking the plaintiff's claims. It found that:

> ". . . American's multimillion dollar lawsuit was designed not to vindicate its legal rights, but to expose Teasdale to public obloquy, harassment and the enormous financial and emotional hardships of defending groundless charges that he misused his public office for personal gain. However, Teasdale was not the only victim; the entire public inevitably suffers when a vindictive plaintiff squanders limited judicial resources by prosecuting frivolous lawsuits." [72]

The circuit court went one step further, finding that even the appeal was frivolous and "served only to prolong the plight of Teasdale and needlessly burden and inconvenience the judiciary." [73] The costs of the appeal were also assessed to the plaintiff.

The use of this statute by defendants who prevail over frivolous and insubstantial lawsuits can serve as a disincentive for plaintiffs who cavalierly file civil rights suits knowing they cannot prevail.[74] When circumstances permit, an officer's claim for attorney's fees from a plaintiff can discourage similar actions in the future.

Sanctions Against the Plaintiff's Attorney

The final countermeasure that has recently added to the § 1983 defendant's arsenal is found in Rule 11, Federal Rules of Civil Procedure. A recent change in that rule requires an attorney to take affirmative steps to insure the lawsuit he files is supported in both law and facts, under pain of sanction for failure to do so. The sanction may be imposed either at the behest of the defendant or upon the court's own initiative.[75] Since the change in Rule 11, sanctions have been applied in several cases.

For example, in *Dore* v. *Shultz,*[76] the plaintiff alleged that Secretary of State George Shultz negligently permitted the father of her child to remove the child to Kenya without a passport, in violation of her constitutional right to due process of law. Finding Secretary Shultz to be obviously shielded from liability under any theory, the court ruled that the plaintiff's lawyer violated Rule 11 by having filed the suit and said:

> "[T]his is a frivolous lawsuit, completely lacking in merit. The court is mindful of the recent observation made by the Supreme Court in *Harlow* v. *Fitzgerald* (citations omitted), to the effect that insubstantial lawsuits against high public officials 'undermine the effectiveness of Government as contemplated by our constitutional structure.' . . . Such cases, the Court stressed, warrant a 'firm application of the Federal Rules of Civil Procedure.' . . . Accordingly, the attorney for plaintiff is sanctioned in the amount of two hundred dollars. . . ." [77]

Similarly, a Federal district court invoked Rule 11 against two plaintiffs' lawyers in *Rodgers* v. *Lincoln Towing Service, Inc.*[78] In *Rodgers,* the plaintiff filed suit under 42 U.S.C. § 1983 against the City of Chicago, the superintendent of the Chicago Police Department, two individual Chicago police officers, a private towing company, and two towing company employees over events arising from the towing of the plaintiff's car from a parking lot. The plaintiff's lawyers filed a "lengthy complaint that assert[ed] claims under virtually every conceivable theory. Using the Bill of Rights as a starting point, the plaintiff claim[ed] . . . that the defendants violated his rights under the first, fourth, fifth, sixth, seventh and eighth amendments. Not overlooking the later amendments, the plaintiff add[ed] a claim for denial of due process under the fourteenth amendment." [79] The plaintiff's lawyers also claimed violations of various Federal and State statutes. The court methodically rejected each of the plaintiff's claims of constitutional and statutory violations and found that "[m]ost of those claims have no arguable basis in existing law. A reasonable amount of research before the [complaint] was drafted, which is all the new [Rule 11] requires would have revealed that . . . ." [80] Concluding that any lawyer should have been quickly able to determine the plaintiff had suffered no constitutional injury, the court found the plaintiff's lawyers to have filed "a ponderous, extravagant, and overblown complaint that was largely devoid of a colorable legal basis." [81] The court said:

> "This was a clear-cut violation of rule 11. In such cases under the new rule, the court has the duty to impose an 'appropriate' sanction on the offending attorney." [82]

The sanction imposed by the court required the two lawyers to personally pay a third of the fees and costs incurred by the defendants in defense of the action.

The recent changes in Rule 11 were specifically designed to reduce the number of unfounded and frivolous suits filed. They impose an obligation on the attorney representing a person who claims a constitutional injury to make an initial determination that the claim is supportable in both law and fact. If that professional obligation is not met, the attorney may be personally subject to an appropriate sanction.

While Rule 11 permits the sanction to be imposed on the motion of a defendant or on the court's own initiative, defendant officers should not view this provision as a means of attacking attorneys who represent the plaintiffs and have filed suit against them. The rule recognizes that injured persons have a right to seek legal representation and permits attorneys to bring all suits which are reasonably supported by law. The rule was not designed as an instrument of attack for use by defendants merely because they have been sued. However, in instances where suit was filed when it clearly should not have been, a sanction against the attorney may act to deter other similar suits. Defendant officers and their attorney should carefully examine the lawsuit and the purpose behind this recent change in Rule 11 before asking the court to sanction a plaintiff's attorney for having filed the suit.

CONCLUSION

While civil litigation filed against responsible law enforcement officers in connection with the discharge of their duties is oppressive to them individually and a drain on society as a whole, legal procedures have been established to reduce this burden. Defendant officers and their attorneys should use these procedures to minimize this adversity and attempt to discourage plaintiffs with frivolous and insubstantial allegations.

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Footnotes

[47] 102 S.Ct. 2727 (1982).

[48] *Harlow* v. *Fitzgerald, supra* note 47, at 2739 (1982).

[49] But see *Muzychka* v. *Tyler,* 563 F.Supp. 1061 (E.D. Penn. 1983), where it was held that a Supreme Court opinion decided only 3 weeks before the action complained of had clearly established the applicable law.

[50] *Alexander* v. *Alexander,* 573 F.Supp. 373 (M.D. Tennessee 1983).

[51] *Id.* at 375, n. 4. *See also, Wells* v. *Dallas Independent School District,* 576 F.Supp. 497 (N.D. Texas 1983).

[52] 722 F.2nd 1013 (2d Cir. 1983).

[53] *Id.* at 1018.

[54] *Supra* note 23, on petition for rehearing No. 76-01326, August 17, 1984. This issue is, however, on appeal. *Hobson* v. *Wilson,* 737 F.2d 1 (D.C. Cir. 1984), *petition for cert. filed,* 53 U.S.L.W. 3603 (U.S. Jan. 14, 1985) (No. 841139).

[55] *Supra* note 47.

[56] 102 S.Ct. at 2739.

[57] For cases allowing an immediate appeal of a denial of qualified immunity, *see, McSurely* v. *McClellan,* 697 F.2d 309 (D.C. Cir. 1982); *Evans* v. *Dillahunty,* 711 F.2d 828 (8th Cir. 1983); *Zweibon* v. *Mitchell,* 720 F.2d 162 (D.C. Cir. 1983); *Krohn* v. *United States,* 742 F.2d 24 (1st Cir. 1984). For cases denying the right of an immediate appeal, *see, Forsyth* v. *Kleindienst,* 729 F.2d 267 (3d Cir. 1984); *Bever* v. *Gilbertson,* 724 F.2d 1093 (4th Cir.), *cert. denied,* 105 S.Ct. 349 (1984); *Kenyatta* v. *Moore,* 744 F.2d 1179 (5th Cir. 1984); *Powers* v. *Lightner,* —F.2d— (7th Cir., No. 84-2312, 1/16/85).

[58] *See, Forsyth* v. *Kleindienst, supra, cert. granted,* 105 S.Ct. 322 (1984).

[59] *See,* Rule 13, Federal Rules of Civil Procedure.

[60] Counterclaims available to Federal law enforcement officers who are represented by the Department of Justice cannot be filed by the Government defense attorney inasmuch as the Department of Justice is authorized to represent the interests of the United States in litigation. The interests of the United States permits the defense of a Federal employee for acts arising out of the employee's official conduct, but does not permit the prosecution of a counterclaim which would be of interest only to the employee-defendant. *See,* 28 U.S.C. 517.

[61] Defamation as used in this article includes the common torts of libel and slander.

[62] 563 F.2d 343 (7th Cir. 1977). *See also, Appletree* v. *City of Hartford,* 555 F.Supp. 224 (D. Conn. 1983).

[63] 688 F.2d 581 (8th Cir. 1982). *See also, Driscoll* v. *Schmitt,* 649 F.2d 631 (8th Cir. 1981).

[64] Title 42, United States Code, 1988. *See also, Hensley* v. *Eckerhart,* 103 S.Ct. 1933, 1937 (1983).

[65] *Hensley* v. *Eckerhart, supra* note 64.

[66] *Hughes* v. *Rowe,* 449 U.S. 5, 14 (1980).

[67] *Christiansburg Garment Co.* v. *EEOC,* 434 U.S. 412, 422 (1978).

[68] 517 F.Supp. 592 (N.D. Illinois 1981). *See also, Scheriff* v. *Beck,* 452 F.Supp. 1254 (D. Colorado 1978); *Tarter* v. *Rayburk,* 742 F.2d 977 (6th. Cir. 1984).

[69] 564 F.Supp. 1571 (W.D. Missouri 1983), *aff'd,* 733 F.2d 559 (8th Cir. 1984).

[70] *Supra* note 64.

[71] 564 F.Supp. at 1575.

[72] 733 F.2d at 570.

[73] 733 F.2d at 571.

[74] *See, Kostiuk* v. *Town of Riverhead,* 570 F.Supp. 603, 612–613 (E.D.N.Y. 1983).

[75] *See,* Rule 11, Federal Rules of Civil Procedure. *See also, Rodgers* v. *Lincoln Towing Service, Inc.,* 596 F.Supp. 13, 16 (N.D. Illinois 1984).

[76] 582 F.Supp. 154 (S.D.N.Y. 1984).

[77] *Id.* at 158.

[78] *Supra* note 75.

[79] 596 F.Supp. at 15.

[80] 596 F.Supp. at 16–17.

[81] 596 F.Supp. at 22.

[82] *Id.*

END