



## Private Individuals Who Perform Services for the Government May Receive Qualified Immunity in §1983 Lawsuit

On April 17, 2012, the U.S. Supreme Court issued its opinion in *Filarsky v. Delia*, 566 U.S. \_\_\_ (2012). The Court held that a private individual who works for the government, in a temporary or other non-employee capacity, is entitled to seek qualified immunity if sued for actions he or she took in conducting that work.

Nicholas Delia was a City of Rialto firefighter who became ill when responding to a toxic spill in 2006. The City became suspicious of Delia's extended absence and hired a private investigation firm, which observed Delia purchasing building materials from a home improvement store. The City suspected that Delia was remaining on leave to work on his house and not because of a continued illness. When interviewed, Delia admitted to buying the materials, but said he had not performed any work on his house.

Unconvinced, the City opened an internal affairs investigation and hired Steven Filarsky, an employment law attorney, to assist the City in conducting a further investigation. During an interview with Delia, his attorneys and union representative, City officials and Filarsky asked Delia to resolve the issue by producing the unused materials for inspection. Filarsky also asked to enter Delia's home, which he refused. After the meeting, the City officials and Filarsky issued a written demand, ordering Delia to produce the unused materials for inspection. Delia and his attorney objected, stating the order was a violation of Delia's federal constitutional rights. However, Delia ultimately complied by bringing the materials out to his lawn where the City officials observed them.

Delia filed a lawsuit under 42 U.S.C. §1983 ("§1983") against the City, its Fire Department, individual City officials and Filarsky, alleging that the order to produce the materials violated his federal constitutional rights against impermissible searches. (§1983 allows a plaintiff to sue "state actors" who allegedly violate the plaintiff's rights under federal law.) The Defendants argued that they were entitled to immunity from suit under the rule that actions cannot be brought against government employees who did not violate a "clearly established federal law." The District Court agreed with the Defendants and ruled that they were entitled to qualified immunity from the lawsuit.

On appeal, the Ninth Circuit Court of Appeal agreed that the facts failed to show a violation of clearly established federal law, but would only extend qualified immunity to City officials and not Filarsky. The Ninth Circuit held that because Filarsky was a private attorney, and not a City employee, he was not entitled to seek the protection of qualified immunity that is available to government actors.

The U.S. Supreme Court reversed the Ninth Circuit, reasoning that immunity under §1983 should not vary "depending on whether an individual working for the government does so as a permanent or full-time employee, or on some other basis." (*See Slip. Op.* at 4-11.) The Court noted several aspects of the importance of extending immunity to individual government actors in §1983 cases including (1) the government has an interest in avoiding "unwarranted timidity" on the part of those engaged in the public's

business; (2) “the most talented candidates might decline public engagements if they did not receive the same immunity enjoyed by their public employee counterparts”; and (3) “the public interest in ensuring the performance of government duties free from the distractions that can accompany lawsuits.” The Court explained that distinguishing among those who carry out the public’s business based upon the extent of their employment relationship with the government would create difficult “line-drawing problems” and would make it complicated for state actors to reasonably anticipate when their actions might lead to liability for damages, ultimately discouraging their work. (See Slip. Op. at 11-13.) Thus, the Court held that there was no reason to draw a distinction between government employees and individuals who work for the government under a different employment relationship.

If you have any questions regarding this matter, please call one of our six offices.

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