

4 PJI 6.8 | SECTION 1983 - MUNICIPALITIES - LIABILITY THROUGH INADEQUATE SCREENING

[Plaintiff] claims that [municipality] adopted a policy of inadequate screening, and that this policy caused the violation of [plaintiff's] [specify right]. Specifically, [plaintiff] claims that [municipality] should be held liable because [municipality] did not adequately check [employee's] background when hiring [him/her].

[Plaintiff] cannot establish that [municipality] is liable merely by showing that [municipality] hired [employee] and that [employee] violated [plaintiff's] [specify right].

In order to hold [municipality] liable for [employee's] violation of [plaintiff's] [specify right], you must also find that [plaintiff] has proved each of the following three things by a preponderance of the evidence:

First: [Municipality] failed to check adequately [employee's] background when hiring [him/her].

Second: [Municipality's] failure to check adequately [employee's] background amounted to deliberate indifference to the risk that a violation of [specify right] would follow the hiring decision.

Third: [Municipality's] failure to check adequately [employee's] background proximately caused the violation of that federal right.

In order to find that [municipality's] failure to check adequately [employee's] background amounted to deliberate indifference, you must find that [plaintiff] has proved by a preponderance of the evidence that:

- adequate scrutiny of [employee's] background would have led a reasonable policymaker to conclude that it was obvious that hiring [employee] would lead to the particular type of [constitutional] [statutory] violation that [plaintiff] alleges, namely [specify constitutional (or statutory) violation].

In order to find that [municipality's] failure to check adequately [employee's] background proximately caused the violation of [plaintiff's] federal right, you must find that [plaintiff] has proved by a preponderance of the evidence that [municipality's]



deliberate indifference led directly to the deprivation of [plaintiff's] [specify right].

COMMENT

Although inadequate screening during the hiring process can form the basis for municipal liability, the Supreme Court has indicated that the deliberate indifference test must be applied stringently in this context.⁸⁸ Where the plaintiff claims "that a single facially lawful hiring decision launch[ed] a series of events that ultimately cause[d] a violation of federal rights.... , rigorous standards of culpability and causation must be applied to ensure that the municipality is not held liable solely for the actions of its employee." *Board of County Com'rs of Bryan County, Okl. v. Brown*, 520 U.S. 397, 405 (1997). In *Brown*, the Court held that the fact that a county sheriff hired his nephew's son as a reserve deputy sheriff without an adequate background check did not establish municipal liability for the reserve deputy sheriff's use of excessive force. The Court indicated that one relevant factor was that the claim focused on a single hiring decision:

Where a claim of municipal liability rests on a single decision, not itself representing a violation of federal law and not directing such a violation, the danger that a municipality will be held liable without fault is high. Because the decision necessarily governs a single case, there can be no notice to the municipal decisionmaker, based on previous violations of federally protected rights, that his approach is inadequate. Nor will it be readily apparent that the municipality's action caused the injury in question, because the plaintiff can point to no other incident tending to make it more likely that the plaintiff's own injury flows from the municipality's action, rather than from some other intervening cause.

Id. at 408-09. The Court also drew a distinction between inadequate training cases and inadequate screening cases:

The proffered analogy between failure to train cases and inadequate screening cases is not persuasive. In leaving open in *Canton* the possibility that a plaintiff might succeed in carrying a failure to train claim without showing a pattern of constitutional violations, we simply hypothesized that, in a narrow range of circumstances, a violation of federal rights may be a highly predictable consequence of a failure to equip law



enforcement officers with specific tools to handle recurring situations. The likelihood that the situation will recur and the predictability that an officer lacking specific tools to handle that situation will violate citizens' rights could justify a finding that policymakers' decision not to train the officer reflected "deliberate indifference" to the obvious consequence of the policymakers' choice - namely, a violation of a specific constitutional or statutory right. The high degree of predictability may also support an inference of causation - that the municipality's indifference led directly to the very consequence that was so predictable.

Where a plaintiff presents a § 1983 claim premised upon the inadequacy of an official's review of a prospective applicant's record, however, there is a particular danger that a municipality will be held liable for an injury not directly caused by a deliberate action attributable to the municipality itself. Every injury suffered at the hands of a municipal employee can be traced to a hiring decision in a "but for" sense: But for the municipality's decision to hire the employee, the plaintiff would not have suffered the injury. To prevent municipal liability for a hiring decision from collapsing into respondeat superior liability, a court must carefully test the link between the policymaker's inadequate decision and the particular injury alleged.

Id. at 409-10. Thus, in the inadequate screening context,

[a] plaintiff must demonstrate that a municipal decision reflects deliberate indifference to the risk that a violation of a particular constitutional or statutory right will follow the decision. Only where adequate scrutiny of an applicant's background would lead a reasonable policymaker to conclude that the plainly obvious consequence of the decision to hire the applicant would be the deprivation of a third party's federally protected right can the official's failure to adequately scrutinize the applicant's background constitute "deliberate indifference."

Id. at 411; see id. at 412 ("[A] finding of culpability simply cannot depend on the mere probability that any officer inadequately screened will inflict any constitutional injury. Rather, it must



depend on a finding that this officer was highly likely to inflict the particular injury suffered by the plaintiff.”); *id.* (question is “whether Burns’ background made his use of excessive force in making an arrest a plainly obvious consequence of the hiring decision”).

Instruction 4.6.8 is designed for use in cases where the plaintiff alleges that the municipality failed adequately to check the prospective employee’s background. In some cases, the asserted basis for liability may be, instead, that the municipality checked the prospective employee’s background, learned of information indicating the risk that the person would commit the relevant constitutional violation, and nonetheless hired the person. In such cases, Instruction 4.6.8 can be modified as needed to reflect the fact that ignoring known information also can form the basis for an inadequate screening claim.

(Last Updated July 2019)

Footnotes

⁸⁸ The Court in *Brown* argued that it was not imposing a heightened test for inadequate screening cases. See *Board of County Com’rs of Bryan County, Okl. v. Brown*, 520 U.S. 397, 413 n.1 (1997) (“We do not suggest that a plaintiff in an inadequate screening case must show a higher degree of culpability than the ‘deliberate indifference’ required in *Canton*... ; we need not do so, because, as discussed below, respondent has not made a showing of deliberate indifference here.”). However, as discussed in the text of this Comment, the Court’s holding and reasoning in *Brown* reflect a stringent application of the deliberate indifference test.

