

**International Association of Chiefs of Police
Police Psychological Services Section
San Diego, California Sep. 29, 2012**



Recent Cases Involving Police Psychological Evaluations

- [*Craig v. City of King City*](#), 2012 U.S. Dist. Lexis 44063 (N.D. Cal. Mar. 29, 2012)

Police officers sued the City under §1983, arguing that a private psychologist disclosed the contents of the officers' psychological evaluations to the police department in violation of the officers' constitutional rights. The court denied the city's motion to dismiss, holding there was sufficient evidence to establish that the psychologist was a state actor.

The court stated that, "taking Plaintiffs' factual allegations as true, which the Court must do at this state, the Court denies Dr. Glick's motion to dismiss because Plaintiffs have alleged sufficient facts to support section 1983 liability against Dr. Glick as a state actor." The Court also held that "the fact that Dr. Glick was paid by the City for the examination does not make her a state actor under the public function test."

- [*Ruiz v. County of Suffolk*](#), 2012 U.S. Dist. Lexis 46253 (E.D.N.Y. Mar. 30, 2012)

Plaintiff alleged that "the search of plaintiff's cell and the resulting physical altercation between him and the various corrections officer defendants . . ." violated his constitutional rights. The inmate the individual corrections officers and sued the County under the theory of liability recognized by the Supreme Court in *Monell v. New York City Department of Social Services*, 436 U.S. 658, (1978).

The County had a detailed pre-employment psychological evaluation requirement for all officers hired, yet "(t)he essence of plaintiff's *Monell* claim is that Suffolk County's appellate review procedures as to job applicants who fail the psychological examination portion of their pre-employment screenings are inadequate and result in the hiring of psychologically unfit corrections officers who use unjustifiable excessive force against inmates."

The appeals committee had no written standards to guide their decisions. The hearings were informal and only lasted about fifteen minutes. However, "of the applicants who appealed their results, the appeals committee authorized employment for approximately 25-30 percent."

The court held that the deficiencies in the appeals process was not sufficient to qualify as an act that "implements or executes a policy statement, ordinance, regulation or decision officially

adopted and promulgated by that body's officers." Furthermore, the isolated beating was not shown to be part of a municipal policy. "Congress did not intend municipalities to be held liable unless deliberate action attributable to the municipality directly caused a deprivation of federal rights." (Emphasis in original.)

- [*Mitchell v. City of Warren*](#), #09-11480, 2012 U.S. Dist. Lexis 56453 (E.D. Mich. Apr. 23, 2012)

In a motion to compel discovery in a wrongful death action, the court denied a request for disclosure of an officer's pre-employment and post-incident psychological examinations. The court held that "Defendants assert the psychotherapist-patient privilege and object to the request on the grounds that Defendant Lapham had a reasonable expectation of confidentiality in any underlying psychological reports."

Furthermore, "the Court has not been made aware of any facts to indicate that Defendant Lapham authorized disclosure of his psychological records or was aware that his communications with the psychotherapist would not remain confidential and would be disclosed to third parties."

- [*Hoback v. City of Chattanooga*](#), 2012 Tenn. App. Lexis 475 (Tenn. Ct. App. July 20, 2012)

A Tennessee police officer left the department to serve in Iraq and, when he resumed employment, he was suffering from post traumatic stress disorder. He voluntarily checked into a VA hospital due to having suicidal thoughts. When the police department learned of this, they placed him on administrative leave pending a fitness for duty evaluation. He failed the department's evaluation, but passed an independent one. The department fired him anyway, and the City Council upheld the termination.

The trial court cited a 2003 Consent Order, following suit by the U.S. Department of Justice, "alleging that several Tennessee statutes [including the one relied on by the City Council] violated the Americans with Disabilities Act of 1990, by creating a blanket exclusion of all individuals with 'apparent mental disorders' from certain types of employment."

The United States alleged that the statutes "discriminated against individuals . . . by using qualifications standards, employment tests or other selection criteria that screen out or tend to screen out an individual with a disability . . . when the standard, test or other selection criteria . . . has not been shown to be job related for the position in question and consistent with business necessity."

- [*Barrios-Barrios v. Clipps*](#), 2011 U.S. Dist. Lexis 111920 (E.D. La. Sept. 29, 2011)

Plaintiffs filed a motion to compel discovery of a former New Orleans police officer's pre-employment psychological evaluation. The City argued that "the evaluation is protected from discovery by the psychotherapist-patient privilege, which extends to communications and notes made by a psychotherapist"

The court noted that “federal law in this area remains unsettled.” In the instant case, “the screening process for police officer applicants includes a psychological evaluation and testing, which are administered by an independent contractor. Based on the results of that examination and testing, applicants are either approved or denied. When an applicant performs satisfactorily on the psychological examination, the Civil Service Department receives only a one page psychologist’s report.”

In addition, “the Police Department does not receive a copy of any psychological evaluations.” (Emphasis in original.) As such, the Court held that “the evidence establishes that the one page psychologist’s report on Clippis was intended to be confidential and was actually maintained as confidential by the Civil Service Department, with none of the information contained in it having been disclosed to the Police Department or to Clippis himself. In these circumstances, Clippis would have a reasonable expectation of confidentiality in the report. The report is therefore protected from discovery by the psychotherapist-patient privilege.”

Martin J. Mayer

Jones & Mayer
3777 North Harbor Blvd.
(714) 446-1400
www.jones-mayer.com