“Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.” 42 U.S.C. §1983.

I. Constitutional Causes of Action –

A. Fourteenth Amendment – parent’s right to custody of child.


-Suboh v. District Attorney’s Office of the Suffolk District, 298 F.3d 81 (1st Cir. 2002).

-Tenenbaum v. Williams, 193 F.3d 581 (2d Cir. 1999).

-Croft v. Westmoreland County Children and Youth Services, 103 F.3d 1123 (3rd Cir. 1997).


-Morris v. Dearborne, 181 F.3d 657 (5th Cir. 1999).

-Kovacic v. Cuyahoga County Dept. Of Children and Family Services, 606 F.3d 301 (6th Cir. 2010).

-Hernandez ex rel. Hernandez v. Foster, 657 F.3d 463 (7th Cir. 2011)

-Whisman v. Rinehart, 119 F.3d 1303 (8th Cir. 1997)

-Burke v. County of Alameda, 586 F.3d 725 (9th Cir. 2009)

-Malik v. Arapahoe County Dept. of Social Services, 191 F.3d 1306 (10th Cir. 1999)

-Doe v. Kearney, 329 F.3d 1286 (11th Cir. 2003)


E. Fourth Amendment – malicious prosecution of parent in Family Court:


3. Elements
   (a) the defendant initiated a prosecution against plaintiff,
   (b) without probable cause to believe the proceeding can succeed,
   (c) the proceeding was begun with malice, and,
   (d) the matter terminated in plaintiff's favor. Cameron v. City of New York, 598 F.3d 50, 63 (2d Cir. 2010).

4. Favorable Termination: an ACD in a neglect case is NOT a termination in plaintiff’s favor. Green v. Mattingly, 585 F.3d 97, 103-04 (2d Cir. 2009).

5. Malice: “malice does not have to be actual spite or hatred, but means only that the defendant must have commenced the criminal proceeding due to a wrong or improper motive, something other than a desire to see the ends of justice served.” Lowth v. Town of Cheektowaga, 82 F.3d 563, 573 (2d Cir. 1996).

6. Probable cause: “In most cases, the lack of probable cause – while not dispositive – ‘tends to show that the accuser did not believe in the guilt of the accused, and malice may be inferred from the lack of probable cause.’” Lowth v. Town of Cheektowaga, 82 F.3d 563, 573 (2d Cir. 1996).

7. Dissipation of probable cause: a malicious prosecution case will lie if
defendants continue the prosecution after probable cause has dissipated. Lowth v. Town of Cheektowaga, 82 F.3d 563, 571 (2d Cir. 1996). The “dissipation” doctrine applies to child abuse cases. Hernandez v. Foster, 657 F.3d 463 (7th Cir. 2011).

F. Fourth or Fourteenth Amendment – malicious abuse of process in Family Court; Cook v. Sheldon, 41 F.3d 73 (2d Cir. 1994).

II. Color of State Law - Who may be liable
   A. Government Employees
   B. People who Conspire with Government Employees
   C. Private Individuals who act “under color of state law”
      1. Hospitals that detain children for child protective services, Kia P. v. McIntyre 235 F.3d 749 (2d Cir. 2000);
      2. Foster care agencies; Perez v. Sugarman, 499 F.2d 761 (2d Cir. 1974)

III. Liability
   A. Individual Liability - for individual acts or omissions
   B. Supervisory Liability - for failure to properly supervise
   C. Municipal (City or County) Liability - only for rules, policies, and practices. Monell v. Department of Social Services, 436 U.S. 658 (1978) There is no respondeat superior liability in civil rights actions.

IV. Standard of Liability
   B. Negligence is insufficient. Daniels v. Williams, 474 U.S. 327 (1986)

V. Defenses – Statute of Limitations
   A. State laws that require the filing of a Notice of Claim do not apply in civil rights actions; Felder v. Casey, 487 U.S. 131 (1988).
   C. Statue of limitations is tolled for minority in most states; therefore, children’s time to sue does not begin to run until age of majority

VI. Defenses – Absolute Immunity
   B. Witnesses (for their testimony), Briscoe v. Lahue, 460 U.S. 325 (1983)
   C. Child protective services attorneys, when they act as prosecutors; Cornejo v. Bell, 592 F.3d 121 (2d Cir. 2010); not when they act as investigators, Buckley v. Fitzsimmons, 509 U.S. 259 (1993)
D. In some Circuits: child protective services caseworkers and supervisors, when they act as quasi-prosecutors; Coverdell v. Department of Social and Health Services, 834 F.2d 758, 763 (9th Cir. 1987); Hardwick v. County of Orange, 844 F.3d 1112 (9th Cir. 2017).

VII. Defenses – Qualified Immunity
A. Available to:
   1. Child Protective Caseworkers and supervisory personnel; Cornejo v. Bell, 592 F.3d 121 (2d Cir. 2010); Doe v. Heck, 327 F.3d 492, 521 (7th Cir. 2003); Hardwick v. County of Orange, 844 F.3d 1112 (9th Cir. 2017).
B. Elements:
   1. The law that was violated was not clearly established at the time.
   2. The behavior was objectively reasonable
   3. Burden of Proof

VIII. Relief
A. Compensatory Damages
B. Punitive Damages
C. Injunctive relief
D. Declaratory relief

Facts of successful lawsuits

Sol (a professional) and Miriam (stay at home mother) Montrose have 6 children. On Tuesday, their 7-month-old began sniffling and Ms. Montrose took him to the pediatrician, who diagnosed an upper respiratory infection and prescribed medication. Because the sniffles did not stop, Mrs. Montrose took the boy to the pediatrician on Wednesday, Thursday, and Friday as well. On Friday, the pediatrician suggested that she take him to the emergency room for more tests. X-rays showed a skull fracture, and the child was admitted to the hospital. Mr. and Mrs. Montrose spent all their time at the hospital, while friends and relatives cared for the other children. Because the Montroses didn’t know how the child had sustained the March 13, 2017 fracture, the hospital called the child abuse hotline. A day or so later, Mrs. Montrose remembered that on the prior Monday, the child had crawled over to a heavy table and pulled on the leg, which collapsed and hit him on the head. He had cried briefly and then seemed fine. Instead of waiting for a consultation with the hospital’s child abuse specialist, at 10:30 pm on Tuesday, the caseworker went to the homes where the children were staying, woke them up, and took them into custody, refusing to say where they were going or how long they would be away. The aunt of the 12-year-old gave the child a cellphone so that she could call the family, but the caseworker confiscated it. The children were separated, given medical exams, and returned to their caretakers 5 hours later. The next day, the hospital’s child abuse specialist said that the mother’s account was consistent with the injuries. The case settled for $167,500.
A school social worker reported that George Turner had allegedly hit the mother of Tanisha, his 8-year-old daughter, while bringing Tanisha to school. (Mr. Turner, Tanisha’s mother, Tanisha, and the crossing guard all stated that the accusation was untrue.) When the caseworker knocked on Mr. Turner’s door, he refused to let her in, but spoke with her at length at a nearby restaurant. A few months earlier, child protective services had thoroughly investigated a prior call to the hotline, including a search of Mr. Turner’s home (he had custody), and had marked it unfounded. The caseworker then went to the mother’s home and persuaded the mother’s landlord to let her in. The mother’s home was horrible – spoiled food in the refrigerator, exposed wiring, filth everywhere. The caseworker ignored the statements of both the landlord and the neighbor that no child lived in that apartment, and immediately went to the school and removed the child, placing her in foster care. Two years later, the Family Court judge dismissed the chargers. The government appealed, and obtained a stay of return of the child. A year later, the appeals court upheld the dismissal. The child returned to her father, after a 3-year separation. The lawsuit settled for $200,000, inclusive of fees.

Woodrow Carter and his estranged wife Vivian shared custody of their almost 17-year-old son Craig. Craig attended summer school, spending weekdays with his mother and weekends with his father. After a personal tragedy, Vivian Carter turned to drugs, and the hotline was called. On a Friday, the caseworker made sure that Craig would spend the weekend with his father. On Monday, the government filed a neglect case against Vivian only, and obtained an order to take Craig into custody, stating falsely that Woodrow’s address was “unknown.” It took a week to get Craig back. When Craig turned 18, he and Woodrow sued. They accepted a settlement offer of $20,000, plus attorneys’ fees to be awarded by the court. The court awarded $45,000.

The Finnegan’s daughter had suffered from serious heart problems and a seizure disorder all her life. When she was 14, a doctor mistakenly prescribed an excessive dose of Coumadin (a blood thinner), and the child died of internal bleeding. An incorrect report of child abuse was called in, and child protective services immediately removed the two younger sisters. The police, investigating the parents, deliberately lied to the 18-year-old son in an effort to make him inculpate his parents, stating that the parents had accused him of murdering his sister. The false accusation caused the son to cease all contact with his parents. The family was split for a year, when the truth was finally uncovered. In October, 2015, an Indiana jury awarded $31.3 million.

Rosa Matos took her 4-month-old baby to the pediatrician because the child was coughing and congested, and the pediatrician prescribed medication. Two days later, the child had not improved, and the pediatrician ordered a chest x-ray at Woodhull Hospital. The x-ray showed a healing rib fracture. Because neither Ms. Matos nor her husband could explain how the child sustained the fracture, the hospital called the hotline, even though both the radiologist and the children’s pediatrician thought that the fracture had probably occurred during birth. Child protective services removed the baby, the 2-year-old, and the 4-year-old, based upon the “diagnosis” of child abuse made by a nurse who had never examined the child, read the medical records, or spoken to any doctor. The family settled with the City for $75,000 plus reasonable attorneys’ fees. The City paid fees of $70,000. The nurse settled for $7,500, of which $5,000 went to the plaintiffs and $2,500 went to the lawyers.
EVALUATING A CONTINGENCY CASE

Client: ________________________________________________________

Type of Case: __________________________________________________

Date of Evaluation: _____________________________________________

I. Liability:

   Excellent (5); Very Good (4); Average (3); Hard (2); Poor (1) ______

II. Work Involved:

   Very Little (5); Less Than Average (4); Average (3);
   More Than Average (2); Extensive (1) ______

III. Plaintiff:

   Very Sympathetic, Excellent Witness (5); Sympathetic, Good Witness (4);
   Average (3); Not Sympathetic, Poor Witness, Not Always Reliable, Calls Often,
   Unrealistic Expectations -- **Don't Take** ______

IV. Defendants:

   Evil (5); Unsympathetic (4): Average (3); Sympathetic (2); Mother Teresa (1) ______

V. Damages:

   Enormous (5); Very Large (4); Moderate (3); Small (2); Nominal (1) ______

VI. Expertise:

   In Our Practice Area (5); Some New Areas (3); Many New Areas (2);
   All New (1) ______

VII. Social Impact:

   Good Test Case (5); Advances Our Goals (3); Little Impact (2) or (1) ______

   **Total out of 35:** ______