

# The NMCRA Arrives

Presented by Mark Baker

Peifer, Hanson, Mullins & Baker, P.A.

# Quick History (Federal)

- 42 U.S.C. § 1983
  - Passed as part of the Ku Klux Klan Act of 1871
  - Every person who, under color of law, “subjects... any citizen... to the deprivation of any rights, privileges, or immunities secured by the Constitution... shall be liable to the party injured.”

# Quick History (Federal)

- General Principles of § 1983 Litigation
  - Damages claims filed against individual government officer/official
    - No respondeat superior liability
  - Public entities other than the state may also be liable for deprivations caused by an official policy or custom

# Quick History (Federal)

- General Principles of § 1983 Litigation (cont.)
  - Punitive damages are recoverable
  - Injunctive/declaratory relief are available
  - Allows for attorney fees (42 U.S.C. § 1988)

# Quick History (Federal)

- General Principles of § 1983 Litigation (cont.)
  - Qualified immunity bars damages claims against individual officers/officials unless the plaintiff first demonstrates that:
    - Their rights have been violated; and
    - The violation was already recognized by courts under “clearly established law.”

# Quick History (New Mexico)

- Until now, no state analogue to Section 1983:

“Unlike federal law, New Mexico has no statute analogous to § 1983 that would provide for damages against government entities or their officials for past violations of state statutes or the state Constitution.”

*Carter v. City of Las Cruces*, 1996-NMCA-047, ¶ 13, 121 N.M. 580, 915 P.2d 336

# Quick History (New Mexico)

- What did we have?
  - The Tort Claims Act
    - Specified torts only
    - Statutory cap on damages
    - No attorney fees
    - State constitutional claims only recognized for violations by law enforcement officers that caused “personal injury, bodily injury, wrongful death or property damage.”\*\*\*

\*\*\*Public entities continued to argue this did not allow for state constitutional claims.

# State/Federal Interaction

Each state must provide at least those rights the United States Constitution provides

Each state also may provide greater rights to its citizens



# State/Federal Interaction

“It is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.”

-- Louis Brandeis, *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932)

*See also*, Judge Jeffrey Sutton; Justice William Brennan

# The New Mexico Civil Rights Commission

- 9 appointed members with diverse backgrounds/perspectives
- 7 meetings between August 21 and November 13, 2020
- Report submitted to Legislature recommending NMCRA
  - 4 commissioners dissented

# The New Mexico Civil Rights Commission

- Divided Appointing Authority
  - Governor
  - House of Representatives
  - Senate

# The NMCRA

- Creates a cause of action to enforce the New Mexico Bill of Rights;
- Specifies that qualified immunity will not be a defense;
- Allows for compensatory damages and equitable and injunctive relief;
- Allows for reasonable attorney fees

# New Mexico Civil Rights Act

- Section 1983 analogue:

“A person who claims to have suffered a deprivation of any rights, privileges or immunities pursuant to the bill of rights of the constitution of New Mexico due to acts or omissions of a public body or person acting on behalf of, under color of or within the course and scope of the authority of a public body may maintain an action to establish liability and recover actual damages and equitable or injunctive relief in any New Mexico district court.”

# New Mexico Civil Rights Act

v.

## Section 1983

- No qualified immunity
- Claims are brought against public bodies rather than individual officers/officials (respondeat superior)
- Starts at \$2 million damage cap (with cost-of-living adjustments)
- No punitive damages
- Notice must be filed within one year for claims based on acts or omissions of certified law enforcement officers

# NMCRA Specifics

- Who is the Defendant?
  - “Claims brought pursuant to the New Mexico Civil Rights Act shall be brought exclusively against a public body.”
  - “Any public body named in an action filed pursuant to the New Mexico Civil Rights Act shall be held liable for conduct of individuals acting on behalf of, under color or of within the course and scope of the authority of the public body.”

# NMCRA Specifics

- Attorney Fees

“In any action brought under the New Mexico Civil Rights Act, the court may, in its discretion, allow a prevailing plaintiff or plaintiffs reasonable attorney fees and costs to be paid by the defendant.”



# NMCRA Specifics

- No NMCRA Employment Claims:

“Individuals employed by a public body shall be prohibited from using the New Mexico Civil Rights Act to pursue a claim arising from the individual’s employment by the public body.”

# NMCRA Specifics

- No Qualified Immunity

“....[N]o public body or person acting on behalf of, under color of or within the course and scope of the authority of a public body shall enjoy the defense of qualified immunity....”

# NMCRA Specifics

- The Cap
  - “[T]he liability **per occurrence** shall not exceed the sum of two million (\$2,000,000) **per claimant**, including of the claimant’s costs of action and reasonable attorney fees.”
  - Interest on judgments at two percentage points above bank prime loan rate
  - Cap increases July 1 each year for cost of living
    - Tied to Consumer Price Index
    - Will not decrease if CPI drops

# NMCRA Specifics

- Statute of Limitations
  - 3 years
  - BUT → notice requirement for claims against certified law enforcement officers.

# NMCRA Specifics

- Individuals are Indemnified for:
  - Judgments; and
  - Defense costs

# NMCRA Specifics

- Other Immunities Preserved
  - Judicial
  - Legislative
  - “[A]ny other constitutional, statutory or common law immunity

# NMCRA Specifics

- The Act does not apply to:
  - Acequia/community ditch
  - Soil and water conservation district
  - Land grants
  - Mutual domestic water consumers association
  - Other associations under the Sanitary Projects Act
  - Water users' association

# NMCRA Specifics

- Recordkeeping Requirement
  - Public bodies have a statutory duty to:
    - Maintain a record of all final judgments and settlements paid under the NMCRA
    - Attach a copy of the complaint to each record
    - Produce these records in response to IPRA requests



# NMCRA Specifics

- Prospective
  - Acts or omissions that occurred after July 1, 2021