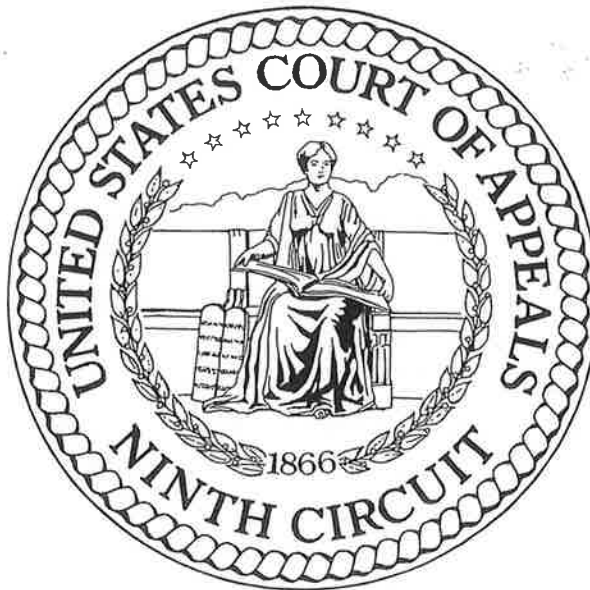


**From the Desk
of Senator Boquist**

**United States Court of Appeals for the Ninth Circuit
Office of Staff Attorneys**



Section 1983 Outline

Updated 2022

Office of Staff Attorneys
United States Court of Appeals
for the Ninth Circuit

This outline is intended for use as a starting point for research. It is not intended to express the views or opinions of the Ninth Circuit, and it may not be cited to or by the courts of this circuit.

See *Hafer*, 502 U.S. at 25; *Kentucky v. Graham*, 473 U.S. 159, 165 (1985); see also *Hartmann*, 707 F.3d at 1127; *Holley v. Cal. Dep't of Corr.*, 599 F.3d 1108, 1111 (9th Cir. 2010) (treating suit against state officials in their official capacities as a suit against the state of California). In an official-capacity suit, the plaintiff must demonstrate that a policy or custom of the governmental entity of which the official is an agent was the moving force behind the violation. See *Hafer*, 502 U.S. at 25; *Graham*, 473 U.S. at 166. For a discussion of how a plaintiff might make such a showing, see *supra* I.A.1.c.(2). Moreover, the only immunity available to the defendant sued in her or his official capacity is the sovereign immunity that the governmental entity may possess. See *Graham*, 473 U.S. at 167. For a discussion of a state's Eleventh Amendment immunity, see *infra* I.D.3.a.

(2) Personal Capacity

“By its essential nature, an individual or personal capacity suit against an officer seeks to hold the officer personally liable for wrongful conduct taken in the course of her official duties.” *Pistor v. Garcia*, 791 F.3d 1104, 1114 (9th Cir. 2015). State officials sued in their personal capacity are persons for purposes of § 1983. See *Cornel v. Hawaii*, 37 F.4th 527, 531 (9th Cir. 2022) (stating that “plaintiffs may seek damages against a state official in his personal capacity.”); *Hafer v. Melo*, 502 U.S. 21, 31 (1991); *Mitchell v. Washington*, 818 F.3d 436, 442 (9th Cir. 2016) (explaining the Eleventh Amendment does not bar claims for damages against state officials in their personal capacities); *Porter v. Jones*, 319 F.3d 483, 491 (9th Cir. 2003); *DeNueva v. Reyes*, 966 F.2d 480, 483 (9th Cir. 1992).

“Personal-capacity suits seek to impose personal liability upon a government official for actions [the official] takes under color of state law.” *Kentucky v. Graham*, 473 U.S. 159, 165 (1985). Liability in a personal-capacity suit can be demonstrated by showing that the official caused the alleged constitutional injury. See *id.* at 166. The official in a personal-capacity suit may, depending upon the facts, be able to establish immunity from claims for damages. See *id.* at 166–67. For a discussion of absolute immunities, see *infra* I.D.1; for a discussion of the defense of qualified immunity, see *infra* I.D.2.

(3) Determining Capacity

Because the plaintiff's complaint will not always clearly indicate the capacity in which the defendants are being sued, the court must sometimes make this determination.