



April 20, 2012

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Filarsky v. Delia:
Private Lawyer Temporarily Retained by Municipality to Perform Governmental Function is Entitled to Qualified Immunity Under 42 U.S.C. §1983

In *Filarsky v. Delia*, Case No. 10-1018 (USSC April 17, 2012), a city hired Filarsky, a private employment attorney with particular expertise in conducting internal affairs investigations, to lead an investigation of whether Delia, a fireman, was malingering on sick leave. It was believed that Delia was doing construction on his home rather than recuperating from work-related illness. In the course of an interview, Filarsky asked Delia whether Delia would be willing to allow a fireman to return with him to his home to inspect whether certain construction material Delia was recently observed purchasing was now installed in Delia’s home. Delia refused. Filarsky eventually ordered Delia to bring the material out of his house. While city officials were waiting outside, Delia brought the material out for observation. Delia thereafter sued under 42 U.S.C. §1983 claiming a violation of his Fourth Amendment rights. All the defendants were granted qualified immunity except Filarsky because he was not a city employee.

The U. S. Supreme Court stated that the question presented is whether an individual hired by the government to do its work is prohibited from seeking such immunity, solely because he works for the government on something other than a permanent or full time basis. The Court found that it must look for guidance from “general principles of tort immunities and defenses” applicable at common law, and the reasons behind the afforded protection from suit under §1983. The Court noted that to a significant extent, when §1983 was passed in 1871, government was administered by members of society who only temporarily or occasionally discharged public functions. For example, private lawyers were regularly engaged to conduct criminal prosecutions on behalf of the State; private lawyers often assisted public prosecutors in significant cases; and public prosecutors themselves continued to represent private clients while in office—sometimes creating odd conflicts of interest. Similarly, judges often maintained active private law practices. And sheriffs executing warrants were empowered under common law to enlist the aid of private individuals as a “posse comitatus” who had the same authority as the sheriff, and were protected to the same extent.

Thus, the Court determined, the common law did not draw a distinction between public servants and private individuals engaged in public service in according protection to those carrying out government responsibilities. Therefore, immunity under §1983 should not vary depending on whether an individual working for the government does so as a full time employee, or on some



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other basis. This is particularly true when the government's need to attract talented individuals is not limited to full time public employees. Indeed, the Court stated, it is often when there is a particular need for specialized knowledge or expertise that the government must look outside its permanent work force to secure the services of private individuals. Accordingly, Filarsky was entitled to qualified immunity under §1983.