



Section 1983: Malicious Prosecution Tip Sheet

Q: I want to sue the D.A. for “malicious prosecution” under Section 1983. How can I allege that I got a “favorable termination” of my criminal case?

To state a claim for malicious prosecution, the plaintiff must allege that (1) the defendant brought or pursued a criminal case against him in bad faith; and that (2) the criminal charges against him were finally terminated in his favor.

Examples of favorable terminations

- A judgment of “not guilty,” after trial;
- Dismissal of the criminal charges against you, *with* prejudice; or
- Dismissal of the criminal charges against you on Speedy Trial Act grounds.

NOTE: If the prosecutor neglects to re-file charges against you, and the Speedy Trial Act period ends, you may argue that this constitutes a “favorable termination.” The Second Circuit has not yet decided the question.

The following examples are NOT favorable terminations:

- Dismissal of your charges as “ACD” (“adjournment in contemplation of dismissal”);
- The Court dismissed your charges *without* prejudice, based on factual insufficiency;

In order to allege the element of “favorable termination” of your criminal charges, you must vacate those underlying criminal charges by winning a criminal appeal or a collateral attack (such as a habeas petition).

This Tip Sheet is designed to provide information to pro se civil litigants in Colorado and is current as of 6/18/18. It is not a substitute for legal advice from an experienced attorney. If you have any questions, please call the Federal Pro Se Clinic at (303) 380-8786.