

Suing Defendants under Section 1983: Tip Sheet

Q: I want to file a lawsuit under 42 U.S.C. Section 1983 for violation of my constitutional rights. Who can I sue?

<u>Colo. Agency</u> (such as DPS)	No. City agencies do not have a separate identity from the City. You should sue the City instead of the agency. Research tip: To sue the City, you must allege that your rights were violated as a result of a City policy or custom.
<u>Private actor</u> (someone who does not work for the government)	No. Section 1983 only applies to “state actors,” which means individuals acting “under color of state law,” such as a police officer, a City employee, and a doctor providing services to prisoners under a state contract. Research tip: Remember that if you want to sue an individual government actor (e.g., a police officer), you must allege his specific, personal involvement in violating your rights.
<u>The State of CO</u> (or any other state)	No. The Eleventh Amendment gives states immunity from suit unless the particular federal law you sue under includes a waiver of immunity. Section 1983 does not include a waiver.
<u>A judge</u>	No. Federal and state court judges have absolute immunity from suit. Look for the “Judicial Immunity Tip Sheet.”
<u>A prosecutor</u> (such as an ADA or AUSA)	Maybe. Prosecutors have immunity from suit <i>unless</i> they intentionally and maliciously violate your rights.

This Tip Sheet is designed to provide information to pro se civil litigants in Colorado and is current as of June 21, 2018. 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.



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Q: Who is a “state actor” for purposes of Section 1983?

A: Section 1983 allows a plaintiff to sue a “state actor” or an individual “acting under color of state law.”

A “state actor” is a person acting on behalf of a governmental body.

- Acting on behalf of a state official/municipality;
- Acting together with a state/municipal official;
- Acting after obtaining significant aid from a state/municipal official; or
- Acting when his conduct may be attributed to the state/municipality.

STATE ACTORS MAY INCLUDE	
Denver Police Dept. officers	Administrators at state universities
Denver County Sheriffs Department officers	Denver Department of Corrections officers

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