



## And The Defense Wins

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DRI members [Robert M. Cavalier](#) and [Jordan S. Tafflin](#) of **Lucas and Cavalier, LLC** in Philadelphia, recently prevailed on a motion to dismiss plaintiffs' complaint on behalf of the International Association of Chiefs of Police (IACP), pursuant to Federal Rule of Civil Procedure 12(b)(6). The court dismissed the plaintiffs' claims against IACP with respect to due process and equal protection violations pursuant to 42 U.S.C. §1983 and breach of contract due to their alleged status as a third-party beneficiary. Moreover, the court granted IACP's motion to have the plaintiffs provide a more definite statement pursuant to F.R.C.P. 12(e) for the only remaining cause of action asserted against IACP, presumably fraud.

This case arose out of examinations given to Toms River Township police officers for promotional purposes. In 2006, Toms River Township (formerly known as Dover Township) entered into an agreement with IACP, an independent contractor, to administer promotional examinations to police officers. The promotional exams were used to determine which police officers would be promoted to the rank of sergeant and lieutenant. Due to alleged manipulation of the examination results by the defendants, including IACP, plaintiffs, who were police officers at the time of the examinations, were allegedly not promoted to their rightfully earned positions as sergeants/lieutenants.

In its motion to dismiss, IACP argued, and the court agreed, it was not subject to §1983 liability because it was not a state actor acting under color of state law. Indeed, in order to state a claim for relief under §1983, the plaintiffs had to allege IACP acted under color of state law and deprived them of a right established by the Constitution or the laws of the United States. As IACP noted in its motion, IACP was an independent contractor, as expressly stated in the IACP/Toms River Township contract, rather than a governmental entity acting under the color of state law. As such, the court determined that the plaintiffs failed to meet their burden of establishing IACP was a state actor.

In their complaint, the plaintiffs also alleged IACP breached the aforementioned IACP/Toms River Township contract by allowing other parties to produce questions for the examination, and subsequently review certain portions of the examination. There was no dispute that the plaintiffs were not signatories to the IACP/Toms River contract. The plaintiffs contended they were intended third-party beneficiaries of the contract because the contract specifically set forth it was formed for the purpose of evaluating and promoting police officers. IACP successfully argued that because the plaintiffs were incidental third-party beneficiaries, as opposed to intended third-party beneficiaries, the plaintiffs did not have standing to bring a breach of contract claim.

Lastly, in their complaint, the plaintiffs attempted to put forth an unidentified count against IACP, which alleged that the IACP manipulated the examination results and the plaintiffs relied on the fairness of the exams to their detriment. However, IACP requested a more definite statement because of the unspecific and generalized allegations being asserted. Indeed, the court granted IACP's request, indicating that the plaintiffs had not made clear what theory of liability was being asserted or the basis for the cause of action against IACP.

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