

**IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF FLORIDA**

Frantz Pierre

CASE NO. 1:17-CV-20337

Plaintiff/Petitioner

Vs.

William Serda Deputy City Manager Individual Capacity

Jose Smith City Attorney Individual Capacity

Defendant/Respondent

MEMORANDUM OF LAW
INDIVIDUAL CAPACITY

Under § 1983, individuals may be held liable for otherwise “state” actions where those individuals violate the federal Constitution⁸, and plaintiffs seek a nominal damage remedy. See *Scheuer v. Rhodes*, 416 U.S. 232, 237–38, 94 S.Ct. 1683, 1686–87, 40 L.Ed.2d 90 (1974). The nature of the violation alleged controls whether a suit lies against an official in his or her official or individual capacity. See *Kentucky v. Graham*, 473 U.S. at 167, 105 S.Ct. at 3105.⁹ In an individual capacity suit, the individual charged with liability must have acted in a manner “outside the scope of his respective office or, if within the scope, acted in an arbitrary manner, grossly abusing the lawful powers of office.” *Scheuer v. Rhodes*, 416 U.S. 232, 235, 94 S.Ct. 1683, 1686, 40 L.Ed.2d 90 (1974).

All counts against the city of North Miami Beach have been dismissed by the Plaintiff as he could not show a definite pattern, conduct or custom. Accordingly, Defendants’ motion against the remaining defendants should be denied.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished by through the E-Portal to the Clerk of Court for the Southern District of Florida, this 6th day of March, 2017.

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