

“one of the fundamental rights protected by the Constitution.” In *Wilson v. Thompson*, we stated, “[i]t is by now well established that access to the courts is protected by the First Amendment right to petition for redress of grievances.” That right has also been found in the fourteenth amendment guarantees of procedural and substantive due process. Consequently, interference with access to the courts may constitute the deprivation of a substantive constitutional right, as well as a potential deprivation of property without due process, and may give rise to a claim for relief under § 1983. Any deliberate impediment to access, even a delay of access, may constitute a constitutional deprivation.” (Footnotes omitted, emphasis added.)

“Invidious Discrimination” is Not a Required Element of an Equal Protection Claim

3. “Invidious discrimination” is not required to establish an equal protection violation. A statute is evaluated under “strict scrutiny” if it interferes with a “fundamental right” or discriminates against a “suspect class.” *Kadrmas v. Dickinson Public Schools*, 487 U.S. 450, 458, 108 S.Ct. 2481, 2487-2488 (1988), emphasis added. Otherwise, a statute will ordinarily survive an equal protection challenge if “the challenged classification is rationally related to a legitimate governmental purpose.” *Id.* The right to open access to the courts is a fundamental constitutional right. Equal protection is not an alternative, but an additional protection. “Invidious discrimination” is not required to determine an equal protection question.

Judicial Immunity Does Not Protect Co-Defendants in a Section 1983 Case

4. Judicial immunity cannot protect co-defendants in a Section 1983 case. *Dennis v. Sparks*, 449 U.S. 24, 101 S.Ct. 183 (1980) held:

The action against the private parties accused of conspiring with the judge is not subject to dismissal. Private persons, jointly engaged with state officials in a challenged action, are acting “under color” of law for purposes of § 1983 actions. And the judge's immunity from damages liability for an official act that was allegedly the product of a corrupt conspiracy involving bribery of the judge does not change the character of his action or that of his co-conspirators. Historically at common law, judicial immunity does not insulate from

damages liability those private persons who corruptly conspire with a judge. Nor has the doctrine of judicial immunity been considered historically as excusing a judge from responding as a witness when his co-conspirators are sued, even though a charge of conspiracy and judicial corruption will be aired and decided. The potential harm to the public from denying immunity to co-conspirators if the fact finder mistakenly upholds a charge of a corrupt conspiracy is outweighed by the benefits of providing a remedy against those private persons who participate in subverting the judicial process and in so doing inflict injury on other persons. (Internal citations and references omitted).

This Court has Correctly Stated the Rule 12(b)(6) Standards

5. *M-I LLC v. Stelly*, 2010 WL 3257972 *2 (S.D. Tex. 2010) provides the correct Rule 12(b)(6) standard.

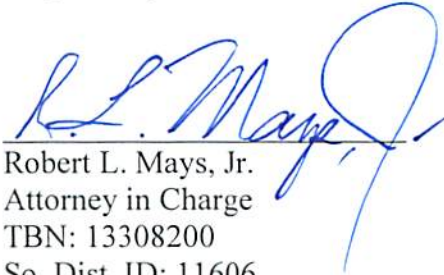
A court may dismiss a complaint for “failure to state a claim upon which relief can be granted.” FED. R. CIV. P. 12(b)(6). “To survive a Rule 12(b)(6) motion to dismiss, a complaint ‘does not need detailed factual allegations,’ but must provide the plaintiff’s grounds for entitlement to relief-including factual allegations that when assumed to be true ‘raise a right to relief above the speculative level.’” That is, “a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’ (internal citations omitted).

When considering a Rule 12(b)(6) motion to dismiss, a court must “accept the complaint’s well-pleaded facts as true and view them in the light most favorable to the plaintiff.” A district court can consider the contents of the pleadings, including attachments thereto, as well as documents attached to the motion, if they are referenced in the plaintiff’s complaint and are central to the claims. Furthermore, a Court may refer to matters of public record when deciding a motion to dismiss. (internal citations omitted).

Ultimately, the question for the court to decide is whether the complaint states a valid claim when viewed in the light most favorable to the plaintiff. The court must accept well-pleaded facts as true, but legal conclusions are not entitled to the same assumption of truth. But the court should not “ ‘strain to find inferences favorable to the plaintiffs’ ” or “accept ‘conclusory allegations, unwarranted deductions, or legal conclusions.’” Importantly, the court should not evaluate the merits of the allegation, but must satisfy itself only that plaintiff has adequately pled a legally cognizable claim. (internal citations omitted).

6. Plaintiff respectfully requests that the court deny the respective motions of Defendants to dismiss Plaintiff’s complaint for failure to state a claim upon which relief can be granted.

Respectfully submitted,



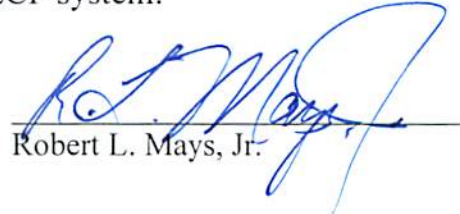
Robert L. Mays, Jr.
Attorney in Charge
TBN: 13308200
So. Dist. ID: 11606
8626 Tesoro Drive, Suite 820
San Antonio, Texas 78217
Phone: 210-657-7772
FAX: 210-657-7780

CERTIFICATE OF CONFERENCE

I certify that I conferred with opposing counsel on August 27, 2010 by requesting their input concerning opposition. All counsel for Defendants were unopposed to this Supplemental Brief if filed on August 30, 2010. The Supplemental Response is presented to the court for its consideration.

CERTIFICATE OF SERVICE

I certify that on August 30, 2010, after filing this Supplemental Response, each counsel for Defendants will be served via the court's ECF system.



Robert L. Mays, Jr.