

Persuasive Communication

1. Please use this standard of review in your briefs:

The district court's ruling on a Rule 12(b)(6) motion to dismiss for plaintiff's failure to state a cause of action upon which relief can be granted is a question of law subject to de novo review. See *Aguilar v. Klingenberg*, 84 F.3d at 191 (18th Cir. 1996). In considering the defendants' motion, the court must construe the complaint liberally in the plaintiff's favor and accept as true all factual allegations and permissible inferences therein. *Id.* at 194. The court should affirm the district court's grant of defendants' motion only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations. *Id.*

1. In a §1983 action for malicious prosecution, the 18th Circuit has held that it looks to the common law elements, which are:

- (1) the criminal proceeding brought against the §1983 plaintiff was without probable cause;
- (2) the criminal proceeding terminated in the plaintiff's favor;
- (3) the §1983 defendant initiated the criminal proceeding with malice; and
- (4) the plaintiff suffered a constitutional injury.

May v. Davon, 196 F.3d 940, 942 (18th Cir. 1999)

2. Please do not address in your briefs any issues involving the statute of limitations or immunity defenses. These are not issues on appeal in this matter.
3. Since Officer Butler lied to the Grand Jury, there was no break in the chain of causation. You, therefore, do not need to discuss this.
4. Since Officer Butler lied to the Grand Jury, any Fourth Amendment seizure would have been unreasonable. (Remember, one issue in this problem is whether a Fourth Amendment seizure occurred.)
5. Do not make arguments involving *Parrat v. Taylor*, 451 U.S. 527 (1981).

NOTE: These comments and directions will make more sense to you after you have preliminarily researched this matter.