The Due Process Clause prohibits judicial officers from having a personal, financial stake in a case’s outcome, which may be relevant when a court or a private probation company both benefits financially from and helps determine the assessment or collection of criminal justice debts. Important litigation in New Orleans is challenging the legitimacy of a fines and fees structure where judges have institutional financial incentives to impose and collect fines and fees and determine ability to pay. And at least one court has allowed such claims to proceed where a private probation company imposed and collected user fees that were retained by the company. Section 1983 claims alleging a conspiracy between private probation companies and the courts to violate defendants’ or probationers’ constitutional rights, premised in part on financial incentives, may also be viable.

Footnotes


393 Cain v. City of New Orleans, 281 F. Supp. 3d 624, 658–659 (E.D. La. 2017) (judges’ institutional financial incentives created constitutionally impermissible conflict of interest when they determine, or are supposed to determine, ability to pay fines and fees), aff’d sub nom. 937 F.3d 446, 451–454 (5th Cir. 2019) (appeal only of declaration that failure to provide a neutral forum for ability to pay determination is unconstitutional; judges’ administrative supervision of Judicial Expense Fund, while simultaneously overseeing collection of fines and fees making up substantial portion of the fund, crosses constitutional line), petition for cert. filed, No. 19-822 (Dec. 30, 2019).


395 Ray v. Judicial Corr. Servs., Inc., 270 F. Supp. 3d 1262, 1301–1302 (N.D. Ala. 2017) (plaintiffs’ section 1983 conspiracy claims survived summary judgment where private probation company had a financial interest in probationers not being declared indigent and court failed to conduct such determinations before ordering additional probation fees or issuing arrest warrants when the probation company so requested).