

N.C.P.I.—Civil 804.06  
EXCESSIVE FORCE IN MAKING ARREST—SECTION 1983 CLAIM—ISSUE OF  
COLOR OF STATE LAW.  
GENERAL CIVIL VOLUME  
MARCH 2016  
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804.06 EXCESSIVE FORCE IN MAKING ARREST—SECTION 1983 CLAIM—  
ISSUE OF COLOR OF STATE LAW.

*NOTE WELL: This series of instructions is designed to be used with 804.12 ("Excessive Force in Making Arrest—Section 1983 Claim—Sample Verdict Sheet").<sup>1</sup>*

The (*state number*) issue reads:

"Was the defendant acting under color of state law when *he* arrested the plaintiff?"

On this issue the burden of proof is on the plaintiff. This means that the plaintiff must prove, by the greater weight of the evidence, that the defendant was acting under color of state law. An official acts under color of state law if *he* acts within the limits of lawful authority. An official also acts under color of state law if, while purporting to act in performance of his official duties, *he* exceeds lawful authority.<sup>2</sup> On the other hand, an official who does not use state authority and acts for purely private purposes, does not act under color of state law.<sup>3</sup>

As to this (*state number*) issue on which the plaintiff has the burden of proof, if you find, by the greater weight of the evidence, that the defendant was acting under color of state law when *he* arrested the plaintiff, then it would be your duty to answer this issue "Yes" in favor of the plaintiff.

If, on the other hand, you fail to so find, then it would be your duty to answer this issue "No" in favor of the defendant.

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<sup>1</sup> The use of excessive force to effect an arrest may give rise to either a common law claim for battery or a federal claim under 42 U.S.C.A. § 1983, or both. *Myrick v. Cooley*, 91 N.C. App. 209, 214, 371 S.E.2d 492, 496 (1988). The pattern instruction for a common law claim begins at 804.01.

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2 See *West v. Atkins*, 487 U.S. 42, 49-50 (1998); *Mentavlos v. Anderson*, 249 F.3d 301, 321 (4th Cir. 2001); *Scott v. Vandiver*, 476 F.2d 238, 241 (4th Cir. 1973).

3 See *Mentavlos*, 249 F.3d at 321-22; see also *Hughes v. Halifax County School Board*, 855 F.2d 183, 186-87 (4th Cir. 1988) (county maintenance workers whose assault of coworker was neither an exercise of their state authority nor made possible because of the “privileges of their employment” did not act under color of state law for purposes of a § 1983 claim).