

So You Think You Can't Be Sued?

A Primer on Immunity for Clerks

What is Immunity?

“The King Can Do No Wrong.”

In 1847, it was held that “no State can be sued in her own courts without her consent, and then only in the manner indicated by that consent.”

Immunity embraces two principles: 1) immunity from suit and 2) immunity from liability.

Immunity from suit bars an action against the state unless the state expressly consents to the suit.

Immunity from liability, on the other hand, protects the state from judgment even if the legislature has expressly consented to the suit.

What are the Different Types of Immunity Available?

Sovereign Immunity

Official Immunity

Absolute Derived Judicial Immunity

Was I sued in my Official Capacity or my Personal Capacity?

A suit against a government official in his personal capacity seeks to impose personal liability upon a governmental employee and collect damages against the official's personal assets.

Official-capacity suits seek to impose liability upon the governmental entity and any judgment is only collectible against the governmental entity.

What if I'm sued in my official capacity?

An individual sued in his official capacity may enjoy the protections of sovereign immunity to the extent those protections are available to his employer.

What is Sovereign Immunity?

Sovereign immunity is the doctrine under which the government is not answerable to suit or to damages unless it consents to be sued.

This immunity is incident to the power and the right to govern and may only be invoked by a governmental unit of the State.

A suit against a government employee in his official capacity is a suit against his government employer and has the same governmental immunity, derivatively, as his government employer.

What if I'm sued in my personal capacity?

A government employee sued in their personal capacity may be entitled to official immunity.

Additionally, as an employee that judges delegate their authority to you may also be entitled to absolute derived judicial immunity.

What is Official Immunity?

Official immunity shields governmental employees from personal liability so that they are encouraged to vigorously perform their official duties.

A governmental employee is entitled to official immunity for (1) the performance of discretionary duties (2) that are within the scope of the employee's authority, (3) provided that the employee acts in good faith.

An act is discretionary if it requires personal deliberation, decision, and judgment.

A public official or employee is acting within the scope of his or her authority if the official is discharging the duties generally assigned to him or her, even if they are performed wrongly or negligently.

Example of Discretionary Court Clerk Acts?

What is Absolute Derived Judicial Immunity?

Judges enjoy absolute judicial immunity from liability for judicial acts, no matter how erroneous the act or how evil the motive, unless the act is performed in the clear absence of all jurisdiction.

The waiver of immunity under the Texas Tort Claims Act does not apply to: [A] claim based on an act or omission of a court of this state or any member of a court of this state acting in his official capacity or to a judicial function of a governmental unit. "Official capacity" means all duties of office and includes administrative decisions or actions.

When judges delegate their authority or appoint others to perform services for the court, the judge's judicial immunity may follow the delegation or appointment.

Courts use the federally conceived "functional approach" to determine if a particular person enjoys derived judicial immunity. The question is whether the activities of the

party invoking immunity are “intimately associated with the judicial process,” i.e., whether the party is functioning as an integral part of the judicial system or as an “arm of the court.” An act is determined to be “judicial” in nature by its character, not by the character of the agent performing it.

The key consideration in determining whether an officer is entitled to judicial immunity is whether the officer's conduct is a normal function of the delegating or appointing judge.

What kinds of clerk tasks are derived from the Judge?

Knowing the Scope and Limits of Immunity Will Set You Free!