

So You Think You Can't Be Sued?

A Primer on Immunity for Clerks

What is Governmental Immunity?

Governmental immunity acts as a bar to recovery and protects the state and state actors from liability for negligent conduct. The general rule with regard to governmental immunity in Texas is that the state and its officers are immune from liability unless the state consents to be sued or otherwise waives its immunity.

Governmental immunity is not just immunity from liability but immunity from suit.

What are the different types of Governmental Immunity?

- Official Immunity
- Sovereign Immunity
- Derived Judicial Immunity

The type of immunity that applies depends on whether you were sued in your official or personal capacity.

What's the difference between being sued in my official capacity and 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 is Sovereign Immunity?

If an officer is sued only in his official capacity, the suit is treated as one against the state, and the public employee is entitled to raise the sovereign immunity defense.

Sovereign immunity protects the State from lawsuits for money damages. Sovereign immunity encompasses immunity from suit, which bars a suit unless the state has consented, and immunity from liability, which protects the state from judgments even if it has consented to the suit.

What is Official Immunity?

If a public officer is sued in his individual or personal capacity, official immunity applies and can protect the official from liability. “Official immunity,” “qualified immunity,” “quasi-judicial immunity,” “discretionary immunity,” and “good faith immunity” are all terms used interchangeably to refer to the same affirmative defense available to governmental employees sued in their individual capacities.

Government employees are entitled to official immunity from suit arising from the performance of their (1) discretionary duties in (2) good faith as long as they are (3) acting within the scope of their authority.

If an action involves personal deliberation, decision and judgment, it is discretionary; actions which require obedience to orders or the performance of a duty to which the actor has no choice, are ministerial.

The purpose of the doctrine of official immunity is to protect public officers from civil liability for conduct that would otherwise be actionable.

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. 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.

The question to determine whether you have derived judicial immunity 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.

Real Life Example (Immunity Not Granted When Clerk Did Not Renew Contract):

A Chief Clerk of Houston's municipal courts, was responsible for administering a contract between the City of Houston and a financial services corporation. When the City did not renew its contract with the corporation, the corporation sued the Clerk and the City.

The Court acknowledged that the collection of fines and fees is a normal function of the chief clerk of the Houston municipal courts, the purpose of the contract was to collect fines and fees, and that the Clerk administered the contract in his official capacity as chief clerk and director of Houston's municipal courts administration.

The contract was authorized by Houston's city council and was countersigned by the mayor of Houston and the city controller. The presiding judge of Houston's municipal courts testified that the Clerk's administration of the contract between the City and the corporation was not under her direction or supervision.

The Court found that the administration of the corporation collections contract was not a "normal function of the delegating or appointing judge;" and therefore, it was not "judicial in nature" and derived judicial immunity was not extended to the Clerk in this situation. *City of Houston v. W. Capital Fin. Services Corp.*, 961 S.W.2d 687, 689 (Tex. App.—Hou [1st Dis.] 1998).

Real Life Example (Immunity Granted When Clerk Failed to File Pleadings):

Inmate brought § 1983 action against court clerks to recover for denial of access to courts by failing to file pleadings in suit against fellow prisoner.

Court clerks, acting in the course of their duties, are accorded judicial immunity because they function as an arm of the court. The clerks testified at trial that they were acting in the course of their duties at all times relevant to their handling of the inmate's pleadings.

The Court held that the clerks were not acting outside the course of their duties. Therefore, the clerks were entitled to judicial immunity.

Thompson v. Coleman, 01-01-00114-CV, 2002 WL 1340314 (Tex. App.—June 20, 2002).

Real Life Example (Immunity Granted When Clerk Made a Data Entry Mistake):

A Houston police officer stopped Ms. Swindall and issued her a single traffic citation, which included two separate chargeable offenses. The ticket ordered her to appear before court no. 4, if she wished to respond to the charges. She appeared before court no. 4 as instructed by the ticket and paid her fine.

Unbeknownst to her, a data entry error had occurred causing one of her offenses to be assigned to court no. 4, and the other to court no. 5, on the same day, at the same time. She did not appear before court no. 5, the erroneously assigned court, because she did not have notice. An arrest warrant was issued soon thereafter for her failure to appear in court no. 5.

Two and one-half years after receiving the citation, another officer stopped her and arrested her pursuant to the outstanding arrest warrant. After spending six hours in jail, she appeared before a court, explained the situation, and all charges were dropped.

Ms. Swindall sued the City of Houston and alleged her arrest resulted from the negligent use of the City's computer system by an unidentified municipal court data terminal operator (DTO). The City argued that it was immune from suit because the data entry clerk was protected by the doctrine of derived judicial immunity.

Ms. Swindall argued that a DTO is unlike court clerks that have been accorded judicial immunity, because a DTO is not a “deputized” clerk and has no discretion when inputting the information from citations into the City's computer system. Swindall also argues the DTO does not act under the order or authority of any court. But the Court disagreed.

The Court held that the input of docketing information into the court's computer system is a normal function of the court. Inputting ticket information into the computer system is an act within the course and scope of the DTO's employment with the City of Houston municipal court.

Additionally, the office of the presiding judge in the judicial department was responsible for setting the docket. The Court held that the fact that the DTOs are not deputized or do not have discretion in their acts does not detract from their intimate association with the judicial process. The efficient input of information in the scheduling of the municipal court's docket is an integral part of the functioning of the court. Thus, the Court concluded that the DTO acts as an arm of the court and enjoys derived judicial immunity.

City of Houston v. Swindall, 960 S.W.2d 413, 414 (Tex. App. 1998)