

VOL 27 ISS 1 | II | TO WHOM IMMUNITY APPLIES

As a general matter, judicial immunity protects all judges, from the lowest to the highest court, so long as they are performing a judicial act that is not clearly beyond their jurisdiction.³⁵ Judicial immunity is enjoyed by both state and federal judges,³⁶ and by judges of general jurisdiction as well as limited jurisdiction.³⁷ Although, at one time, judges of inferior courts or courts of limited jurisdiction were afforded a restricted degree of immunity or no immunity at all,³⁸ that is no longer the case. Today these judges possess the same degree of immunity as any other judges.³⁹ Justices of the peace, magistrates, and other lay judges are included within the grant of immunity enjoyed by the judicial branch.⁴⁰ However, many of the cases in which immunity has been denied because the judge acted in clear excess of jurisdiction involve justices of the peace or other lay judges.⁴¹ This suggests that in practice there may be less tolerance of judicial immunity for judges who are not formally trained in the law.⁴²

Judicial immunity has been given to administrative law judges and hearing examiners in administrative agencies.⁴³ It has been held that court commissioners are judicial officers and, therefore, entitled to immunity for their official acts.⁴⁴ Judicial immunity also has been granted to persons who perform quasi-judicial functions, and to individuals whose authority is the functional equivalent of that exercised by a judge.⁴⁵ But judicial immunity will not be extended to persons who are not at least quasi-judicial officers,⁴⁶ nor will it be extended beyond their judicial functions.⁴⁷

When judges delegate their authority or appoint persons to perform services for the court, their judicial immunity may follow the delegation or appointment. Court-appointed mediators have been given judicial immunity for performing judicial tasks.⁴⁸ It also has been ruled that a doctor, appointed by a court to act as an examiner in an insanity hearing, is a quasi-judicial officer who possesses immunity from liability for any action taken in conjunction with the hearing.⁴⁹ And court clerks and bailiffs have been granted immunity for their activities that are judicial in nature.⁵⁰

The law clerks of judges also are entitled to share in judicial immunity.⁵¹ It has been said that while some of the tasks performed by court clerks are judicial in character, the work of judges' law clerks is entirely so.⁵² Law clerks are sounding boards for the judges who employ them and are privy to judges' thoughts and ideas



about the law and the cases over which they preside.⁵³ One court has said – perhaps with some exaggeration – that law clerks are simply extensions of the judges whom they serve, and for purposes of absolute judicial immunity, judges and law clerks are as one.⁵⁴

(*San Diego Law Review*. Jeffrey M. Shaman)

Footnotes

^{35.} See *Pierson v. Ray*, 386 U.S. 547, 547 (1967); see also *Pomeranz v. Class*, 82 Colo. 173, 257 P. 1086 (1927); State ex rel. *Clark v. Libbert*, 96 Ind. App. 84, 177 N.E. 873 (1931); *Allard v. Estes*, 292 Mass. 187, 197 N.E. 884 (1935); *Health v. Cornelius*, 511 S.W.2d 683 (Tenn. 1974).

^{36.} See *Turner v. American Bar Ass’n*, 407 F. Supp. 451 (N.D. Tex. 1975), aff’d sub nom. *Taylor v. Montgomery*, 539 F.2d 715 (7th Cir. 1976); *Brown v. Dunne*, 409 F.2d 341 (7th Cir. 1969).

^{37.} *Alzua v. Johnson*, 231 U.S. 106 (1913); *Sarchet v. Phillips*, 102 Colo. 318, 78 P.2d 1096 (1938); *Calhoun v. Little*, 106 Ga. 336, 32 S.E. 86 (1898); *Berry v. Smith*, 148 Va. 424, 139 S.E. 252 (1927).

^{38.} See *Voll v. Steele*, 141 Ohio St. 293, 47 N.E.2d 991 (1943); *Williamson v. Lacy*, 86 Me. 98, 29 A. 943 (1893); *Robertson v. Parker*, 99 Wis. 652, 75 N.W. 423 (1898).

^{39.} See *Alzua*, 231 U.S. at 111.

^{40.} See *Perez v. Borchers*, 567 F.2d 285 (5th Cir.), cert. denied, 439 U.S. 831 (1978).

^{41.} C. WOLFRAM, supra note 24, at 971.

^{42.} See id.

^{43.} *Butz v. Economou*, 438 U.S. 478, 478 (1978).

^{44.} *Linder v. Foster*, 209 Minn. 43, 295 N.W. 299 (1940).

^{45.} *Morales v. Vegas*, 483 F. Supp. 1057 (D.P.R. 1979); *Miller v. Reddin*, 293 F. Supp. 216 (C.D. Cal. 1968).

^{46.} See *Brown v. Rosenbloom*, 34 Colo. App. 109, 524 P.2d 626 (1974), af’d, 188 Colo. 83, 532 P.2d 948 (1975).

^{47.} *McGhee v. Moyer*, 60 F.R.D. 578 (W.D. Va. 1973).

^{48.} *Mills v. Killebrew*, 765 F.2d 69 (6th Cir. 1985).

^{49.} See *Linder v. Foster*, 209 Minn. 43, 43, 295 N.W. 299, 299 (1940).

^{50.} Scott v. Dixon, 720 F.2d 1542 (11th Cir. 1983), cert. denied, 469 U.S. 832 (1984); Tarter v. Hury, 646 F.2d 1010 (5th Cir. 1981); Slotnick v. Stavinsky, 560 F.2d 31 (1st Cir. 1977), cert. denied, 434 U.S. 1077 (1978); Adkins v. Clark County, 105 Wash. 2d 675, 717 P.2d 275 (1986).

^{51.} Oliva v. Heller, 670 F. Supp. 523 (S.D.N.Y. 1987), a~fd, 839 F.2d 37 (2d Cir. 1988); see also Eades v. Sterlinski, 810 F.2d 723 (7th Cir.), cert. denied, 484 U.S. 847 (1987); Gray v. Bell, 712 F.2d 490 (9th Cir. 1983), cert. denied, 465 U.S. 1100 (1984).

^{52.} Oliva, 670 F. Supp. at 526.

^{53.} Id.

^{54.} Id.

