

VOL 27 ISS 1 | IV | JUDICIAL IMMUNITY FROM CRIMINAL LIABILITY

On occasion, judges are sued for making remarks or written statements that are allegedly defamatory. The rule of absolute judicial immunity shields judges from civil liability for any defamatory remarks or statements that they may make.¹²⁶ Judicial immunity from making a defamatory utterance or statement is, of course, an incident of the civil immunity that judges possess in general. It therefore serves all of the (previously discussed) purposes of judicial immunity, the most important of which is to protect the independence of the judiciary.¹²⁷

A few courts have taken the position that a judge is immune from liability for defamation only for statements that bear relevance to proceedings before the judge.¹²⁸ This position, however, apparently confuses the doctrine of judicial immunity with another doctrine by which statements made by any participant in a judicial proceeding are privileged.¹²⁹ Under the latter doctrine, which functions to foster openness in the judicial process, defamatory statements made by a witness, party, or attorney to a lawsuit are privileged (and hence, cannot form a basis for liability) so long as they are made in the course of a judicial proceeding and are relevant to it.¹³⁰ On the other hand, judicial immunity, even for defamation, is not conditioned upon a requirement of relevancy, and the majority of courts have so held.¹³¹ Otherwise, the goals served by judicial immunity, especially the protection of judicial independence, would be hampered.

As with other instances of judicial immunity, a judge accused of defamation will not be granted immunity when the judge was acting in the clear absence of jurisdiction¹³² or when the judge was acting in a nonjudicial capacity.¹³³ In accordance with the latter rule, judicial immunity only extends to defamatory statements made in the course of performance of a judicial function.¹³⁴ Even if made in the courtroom, defamatory statements made beyond the scope of the judicial role are not covered by immunity.¹³⁵ On the other hand, statements made by a judge outside the courtroom (as well as those made in it) are immune if made as part of the judicial function.¹³⁶

It is not always a simple matter to determine the perimeters of a judge's duties and whether a defamatory statement has occurred within or beyond them. That a lawsuit has been finally concluded does not necessarily signal the end of the judicial role in it. Thus, in one case, it was held that immunity still existed in regard to a letter written by a judge to a prison warden, providing



information for future parole hearings concerning a criminal defendant already sentenced by the judge.¹³⁷

When judges are required by law to convey their opinions to a court reporter for publication, this is clearly part of the judicial function, and therefore, any defamatory remarks contained in their published opinions are absolutely immune.¹³⁸ However, a New York court held that it was not part of a judge's function to send opinion to an unofficial reporter, and therefore, defamatory statements in the opinion were not cloaked with immunity.¹³⁹ Distinguishing between official and unofficial reporters seems highly questionable, and in a subsequent New York case, a circuit court reached a contrary result.¹⁴⁰ Even in New York, it is clear that when a judge is directed by law to submit an opinion to a reporter, statements in the opinion are covered by judicial immunity. If a judge did not play a part in sending the opinion to the reporter, the judge cannot be held liable for any defamatory remarks it may contain.¹⁴¹

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Footnotes

^{126.} See *O'Bryan v. Chandler*, 496 F.2d 403 (10th Cir.), cert. denied, 419 U.S. 986 (1974); *Ginger v. Bowles*, 369 Mich. 680, 120 N.W.2d 842, cert. denied, 375 U.S. 856 (1963); *Reller v. Ankeny*, 160 Neb. 47, 68 N.W.2d 686 (1955); *Brech v. Seacat*, 84 S.D. 264, 170 N.W.2d 348 (1969).

^{127.} See supra notes 19-25 and accompanying text.

^{128.} See *Wahler v. Schroeder*, 9 Ill. App. 3d 505, 292 N.E.2d 521 (1972); *Reller*, 160 Neb. at 54-55; see also RESTATEMENT (SEcoND) OF ToRTS § 585 comment e (1977).

^{129.} See M. CoMIsKY & P. PATTERSON, supra note 19, at 243.

^{130.} *Id.*

^{131.} See *Rice v. Coolidge*, 121 Mass. 393 (1876); *Kraushaar v. Lavin*, 39 N.Y.S.2d 880, 883 (Sup. Ct. 1943); *Karelas v. Baldwin*, 237 A.D. 265, 261 N.Y.S. 518 (1932); *Houghton v. Humphries*, 85 Wash. 50, 147 P. 641 (1915).

^{132.} See supra text accompanying notes 55-64.

^{133.} See supra text accompanying notes 65-111.



^{134.} See Garfield v. Palmieri, 297 F.2d 526 (2d Cir.), cert. denied, 369 U.S. 871 (1962); Ginger v. Bowles, 369 Mich. 680, 120 N.W.2d 842 (1963) cert. denied, 375 U.S. 856 (1963); Murray v. Brancato, 290 N.Y. 52, 48 N.E.2d 257 (1943).

^{135.} See supra text accompanying notes 65-111.

^{136.} See Kraushaar v. Lavin, 39 N.Y.S.2d 880, 884 (Sup. Ct. 1943).

^{137.} Brech v. Seacat, 84 S.D. 264, 170 N.W.2d 348 (1969).

^{138.} See Garfield, 297 F.2d at 527-28; see also McGovern v. Marty, 182 F. Supp. 343 (D.D.C. 1960).

^{139.} See Murray v. Brancato, 290 N.Y. 52, 48 N.E.2d 257 (1943).

^{140.} Garfield v. Palmieri, 297 F.2d 526 (2d Cir.), cert. denied, 369 U.S. 871 (1962).

^{141.} See Bradford v. Pette, 204 Misc. 308 (N.Y. 1953).

