

VOL 27 ISS 1 | V | MISAPPROPRIATION OR MISUSE OF FUNDS AND ESTATES

There are cases in which judges have been found civilly liable for misappropriating funds entrusted to their care.¹⁴² However, in these cases the doctrine of judicial immunity apparently was overlooked, because there is no mention of it. Nevertheless, misappropriation of funds entrusted to the care of a judge may be beyond the scope of immunity on the ground that it is not a judicial act. Or, liability for misappropriating funds may be imposed on judges by statutory provisions that overrule, in some aspects, the common law doctrine of immunity.¹⁴³ Whatever the rationale might be, it seems quite reasonable to hold judges liable for misappropriating funds for their own use. Such behavior, after all, amounts to theft, and judges should be made to return any funds they have stolen from others.

On the other hand, immunity should shield judges from liability for honest errors of judgment they may commit in administering funds or estates assigned to their care. According to the case law, judges do possess immunity for honest mistakes in the administration of funds or estates.¹⁴⁴ There are a few decisions, though, which state that immunity does not cover ministerial acts by judges that result in negligent loss to an estate.¹⁴⁵ Ministerial acts are usually regarded as nonjudicial in character and, hence, not within the ambit of immunity.¹⁴⁶ In some instances, judges are made liable by statute for the negligent administration of an estate resulting in loss to the estate.¹⁴⁷

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Footnotes

¹⁴². See *Brown v. Rutledge*, 20 Ga. App. 118, 92 S.E. 774 (1916); *King County v. United Pac. Ins. Co.*, 72 Wash. 2d 604, 434 P.2d 554 (1967).

¹⁴³. See *Commonwealth v. Lee*, 120 Ky. 433, 86 S.W. 990 (1905).

¹⁴⁴. See *Truesdale v. Bellinger*, 172 S.C. 80, 172 S.E. 784 (1934).

¹⁴⁵. See e.g., *id.* at 87-88, 172 S.W. at 787.

¹⁴⁶. *American Surety Co. v. Skaggs' Guardian*, 247 Ky. 687, 57 S.W.2d 495

¹⁴⁷. See cases cited *supra* note 146.

