

STATE OF TENNESSEE

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Opinion No. 05-138

Liability for Drug Court Participation

QUESTION

What is the potential liability of the judge, prosecutor and public defender for acts or omissions arising out of their participation in cases in drug court?

OPINION

As a general rule, members of all such offices should be personally immune from money damages for allegedly wrongful acts or omissions arising from their participation in cases in drug court.

ANALYSIS

All drug court treatment programs in Tennessee must operate according to the general principles outlined in Tenn. Code Ann. §16-22-104. The general principles include a requirement that the drug courts integrate treatment services with justice system case processing and use ongoing judicial interaction with each drug court participant as an essential component of the program.

Criminal justice officials in the Twenty-Ninth Judicial District are attempting to establish a drug court. Certain drug cases will be processed through the drug court after a plea of guilty. Thereafter, the defendants will enter into contracts requiring them to undergo intensive therapy and appear periodically in drug court. The sanctions for contract violations include jail and dismissal from the program. Concern has been expressed about the potential liability of the judge, district attorney and public defender arising from their participation in drug court cases. As a general rule, they should be immune from suits for money damages. Whether they have immunity in a particular situation depends on the specific facts at issue.

State employees are immune from liability for state law claims unless they act willfully, maliciously, criminally or for personal gain. Tenn. Code Ann. §9-8-307(h). In addition, public defenders are immune for negligence in the execution of their official duties pursuant to Tenn. Code Ann. §8-14-209.

A judge performing his judicial functions is absolutely immune from suit seeking monetary damages. *Mireles v. Waco*, 502 U.S. 9, 9-10, 112 S.Ct. 286, 287, 116 L.Ed.2d 9 (1991). Judicial

immunity applies to all acts which are judicial in nature and within the judge's jurisdiction. 502 U.S. at 11-12, 112 S.Ct. at 288. Absolute immunity is available to judges even if a judge acts erroneously, corruptly, or in excess of his jurisdiction. *Pierson v. Ray*, 386 U.S. 547, 554, 87 S.Ct. 1213, 1218, 18 L.Ed.2d 288 (1967). This immunity applies not only to civil rights actions, but also extends to actions brought pursuant to the common law. *Id.*

Public defenders are not subject to civil rights suits for alleged violations associated with their legal representation. The United States Supreme Court has held that a public defender does not act under color of state law, a requirement for 42 U.S.C. §1983 liability, when representing an indigent defendant in a state criminal law proceeding. *See Polk County v. Dodson*, 454 U.S. 312, 325, 102 S.Ct. 445, 453, 70 L.Ed.2d 508 (1981). The Court reasoned that a defense lawyer performs functions adversarial to the State, "for which state office and authority are not needed." 454 U.S. at 319, 102 S.Ct. at 450, 70 L.Ed.2d at 517.

A prosecutor enjoys absolute immunity from § 1983 and common law suits for damages when he acts within the scope of his prosecutorial duties regardless of motive. *Imbler v. Pachtman*, 424 U.S. 409, 420, 96 S. Ct. 984, 990, 47 L.Ed.2d 128 (1976); *Willett v. Ford*, 603 S. W. 2d 143, 147 (Tenn. Ct. App. 1979); *see also Shell v. State*, 893 S.W.2d 416, 421 (Tenn. 1995) (prosecutors are immune for malicious prosecution under §1983 and under state common law) *and see Cawood v. Davis*, 680 S.W.2d 795, 796 (Tenn. Ct. App. 1984). Absolute immunity is available to prosecutors because the courts fear that exposing a prosecutor to lawsuits growing out of his official activity would divert "his energy and attention ... from the pressing duty of enforcing the criminal law." *Id.* at 425, 96 S.Ct. at 992. Prosecutors are not entitled to absolute immunity for investigative or administrative acts, but may, depending on the facts, be entitled to qualified immunity. *See Buckley v. Fitzsimmons*, 509 U.S. 259, 273, 113 S.Ct. 2606, 2615-16, 125 L.Ed.2d 209 (1993).

Clearly, from a review of both the general principles of Tenn. Code Ann. §16-22-104 and the description of the proposed operation of the drug court in the Twenty-Ninth Judicial District, the participation of the Office of the District Attorney General, Office of the Public Defender and the Circuit Court Judge in drug court proceedings is participation in the judicial process. As a general rule, members of all such offices should be personally immune from money damages suits.

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