

11/26/2022

HOW JUDICIAL IMMUNITY WORKS

Available for:

- ✓ Administrative Law Judges
- ✓ Federal Hearing Examiners
- ✓ Federal Officials
- ✓ Federal Prosecutors
- ✓ Government Officials
- ✓ Grand Jurors
- ✓ Immigration Judges
- ✓ Law Clerk
- ✓ Parole Board
- ✓ Police Officers
- ✓ Postmaster General
- ✓ President's Cabinet
- ✓ School Board Members
- ✓ State Court Judges
- ✓ State Governor (+ aides)
- ✓ State Officials
- ✓ State Prison Officials
- ✓ State Prosecutors
- ✓ Testifying Witnesses
- ✓ US President

JUDICIAL IMMUNITY

2-Part Test

Available for:

- ✓ Administrative Law Judges
- ✓ Federal Hearing Examiners
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- ✓ Immigration Judges
- ✓ Law Clerk
- ✓ Parole Board
- ✓ State Court Judges
- ✓ State Prosecutors

I. Definitions

Immunity "right of exemption from a duty or penalty; benefit granted in exception to the general rule.

Immunity from prosecution may be granted a witness to compel answers he or she might

otherwise withhold because of the constitutional privilege to avoid self-incrimination." **Judicial**

Immunity

"the immunity of a judge from civil liability for any acts performed in the judge's official capacity.

The immunity is absolute provided only that the judge is acting within his or her **jurisdiction**. The

scope of the judge's jurisdiction must be construed broadly to protect the court's independence;

therefore, the judge will not be deprived of immunity because the action taken was in error, was

done maliciously, or was in excess of the judge's **authority**; rather, the judge will be subject to

liability only when the action taken was in clear absence of all **jurisdiction**. Where the **relief**

sought is injunctive or declaratory and not money **damages**, immunity is not provided under the

Civil Rights Act of 1964 and state courts may be sued for such **relief**."

II. Legal Citations

42 USC §1983 | Civil Action for Deprivation of Rights

"Every person who, under color of any **statute**, ordinance, regulation, custom, or usage, of any

State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of

the United States or other person within the jurisdiction thereof to the deprivation of any rights,

privileges, or immunities secured by the Constitution and **laws**, shall be liable to the party **injured**

in an action at law, suit in **equity**, or other proper proceeding for **redress**, except that in any

action brought against a judicial officer for an act or omission taken in such officer's **judicial**

capacity, injunctive relief shall not be granted unless a declaratory decree was violated or

declaratory relief was unavailable. For the purposes of this section, any Act of

Congress

applicable exclusively to the District of Columbia shall be considered to be a statute of the

District of Columbia." [42 USC §2000d-7](#) | Civil Rights Remedies Equalization

(a) General provision

(1) A State shall not be immune under the [Eleventh](#) Amendment of the Constitution of the

United States from suit in [Federal](#) court for a violation of section 504 of the Rehabilitation

Act of 1973 [29 U.S.C. 794], title IX of the Education Amendments of 1972 [20 U.S.C.

1681 et seq.], the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], title VI of the

Civil Rights Act of 1964 [[42 U.S.C. 2000d et seq.](#)], or the provisions of any other Federal

statute prohibiting discrimination by recipients of Federal financial assistance.

[Art I §6 US Constitution](#) | Compensation

"[Congressmen] shall in all [Cases](#), except Treason, Felony and Breach of the Peace, be

privileged from Arrest during their Attendance at the Session of their respective Houses, and in

going to and returning from the same; and for any Speech or Debate in either House, they [shall](#)

not be questioned in any other Place." [11th Amendment US Constitution](#) | Judicial Limits

"The Judicial power of the United States shall not be construed to extend to any suit in law or

[equity](#), commenced or prosecuted against one of the United States by Citizens of another State,

or by Citizens or Subjects of any Foreign State." [14th Amendment US](#)

[Constitution \(Section 5\)](#) |

Citizenship Rights

"5. The Congress shall have power to enforce, by appropriate [legislation](#), the provisions of this article."

III. Case Law

#CaseComments

01 [Bolin v Story](#) CA11 | 2000 | Federal Judges; Drug Conspiracy; Courts incorporate §1983 into [Bivens](#);

02 [Bradley v Fisher](#) USSC | 1871 | Attorney vs Judge; Excess Authority vs Lack of Authority

03 [Brown v Crawford County](#) CA11 | 1992 | Commissioners, Moratorium, Legislative Immunity, Local Rule Abolished

04 [Butz v Economou](#) USSC | 1978 | Federal Officials get treated like State Officials | Quasi

05 [Dennis v Sparks](#) USSC | 1980 | Judicial Immunity is *not* for giving testimony (or co-conspirators)
 06 [Dykes v Hosemann](#) CA11 | 1985 | *Child Custody*; Dissenting opinions decry how judges are above the law
 07 [Ex Parte Virginia](#) USSC | 1880 | Judge put in jail. Habeas Corpus. Look at the nature of the act
 08 [Jackson v Bellsouth](#) CA11 | 2004 | RICO, Attorney Malpractice; Litigation Privilege
 09 [Kapordelis v Carnes](#) CA11 | 2012 | Prisoner vs Federal Judges; Child Porn Case
 10 [King v Simpson](#) CA02 | 1998 | Parole Officer, Nunc Pro Tunc Release date; premature dismissal
 11 [Long v Satz](#) CA11 | 1999 | Murder case gone bad; Exculpatory evidence; Prosecutorial Immunity
 12 [Mireles v Waco](#) USSC | 1991 | Judicial Immunity is a type of qualified immunity
 13 [Mitchell v Forsyth](#) USSC | 1985 | Wiretaps; Quasi-Judicial Functions get immunity; Pro-Litigant
 14 [Montero v Travis](#) CA02 | 1999 | Parole board; Quasi-Judicial
 15 [Oliva v Heller](#) USNYSD | 1988 | Law Clerk, Bank Robber; Judicial Immunity for Law Clerks
 16 [Parrish v Nikolits](#) CA11 | 1996 | Property Appraiser; Fired Employees (Politics); [Individual vs Official](#)
 17 [Pierson v Ray](#) USSC | 1967 | Bus boycott in MS; Judges; Police Officers
 18 [Scotto v Almenas](#) CA02 | 1998 | Parolee; Official's fabrication; private party (conspired)
 19 [Siegert v Gilley](#) USSC | 1991 | Bivens suit | Employer's Negative References | Liberty Interest
 20 [Simmons v Conger](#) CA11 | 1996 | Injunctive Relief
 21 [Simmons v Edmonson](#) CA11 | 2007 | Federal Judges are Immune from Declaratory and/or Injunctive [Relief](#)
 22 [Smith v Shook](#) CA11 | 2001 | ALJ, State Bar, Corrections Officer; Absolute Immunity Test
 23 [Stevens v Osuna](#) CA11 | 2017 Individual Capacity; Injunctive; Declaratory
 24 [Stump v Sparkman](#) USSC | 1978 | Mother Sterilized Daughter; Judge Charged
 25 [Turner v Raynes](#) CA05 | 1980 | Non-existent Crime; Peace Officer; Vertical vs Horizontal
 26 [Young v Selsky](#) CA02 | 1994 | Inmate; Hearing Officer; Methodical Application of Immunity

IV. Quick Commentary

Purpose: To protect the integrity of the court

"The Court stressed that such immunity was essential to protect the integrity of the judicial process... we bear in mind that immunity status is for the benefit of the public as well as for the individual concerned."

- see [Stevens v Osuna](#), 877 F.3d 1293, 1301 (11th Cir. 2017)

"[it] is not for the protection or benefit of a malicious or corrupt judge, but for the benefit of the public, whose interest it is that the judges should be at liberty to exercise their functions with independence and without fear of consequences."

- see [Bradley v Fisher](#), 80 US 335

Principle: To immunize the **functions (not the persons)** that the public rely

"Here, as in other contexts, immunity is justified and defined by the functions it protects and serves, not by the person to whom it attaches."

This Court has never undertaken to articulate a precise and general definition of the class of acts entitled to immunity. The decided cases, however, suggest an intelligible distinction between judicial acts and the administrative, legislative, or executive functions that judges may on occasion be assigned by law to perform."

- see [Forrester v White, 484 US 219 \(1988\)](#)

"Whether the act done by him was judicial or not is to be determined by its character, and not by the character of the agent. Whether he was a county judge or not is of no importance. The duty of selecting jurors might as well have been committed to a private person as to one holding the office of a judge. . . .

That the jurors are selected for a court makes no difference. So are court-criers, tipstaves, sheriffs, &c. Is their election or their appointment a judicial act?"

- see [Ex parte Virginia, 100 U.S. 339 \(1880\)](#)

Inapplicability: Absolute Immunity does not apply when the officer acts in a **clear absence of jurisdiction**.

"where the prosecutor acts without clear jurisdiction and without any colorable claim of authority the prosecutor loses the absolute immunity he would otherwise enjoy. [Rodrigue\[s\] v. City of New York, 193 A.D.2d 79, 86, 602 N.Y.S.2d 337 \(1st Dept. 1993\)](#)."

- see [Shmueli v NYC, 424 F.3d 231 \(2d Cir. 2005\)](#)

Distinction: Excess of Jurisdiction vs Lack of Jurisdiction (ie, "complete absence of all jurisdiction")

"A distinction must be here observed between excess of jurisdiction and the clear absence of all jurisdiction over the subject matter. Where there is clearly no jurisdiction over the subject matter any authority exercised is a usurped authority, and for the exercise of such authority, when the want of jurisdiction is known to the judge, no excuse is permissible. But where jurisdiction over the subject matter is invested by law in the judge, or in the court which he holds, the manner and extent in which the jurisdiction shall be exercised are generally as much questions for his determination as any other questions involved in the case, although upon the correctness of his determination in these particulars the validity of his judgments may depend."

- see [Bradley v Fisher, 80 US 335 10L. Ed 646 \(1872\)](#)

Test for Judicial Immunity:

"There are only two circumstances in which judicial immunity can be overcome: (1) a judge is not immune from liability for actions taken outside his or her judicial capacity; and (2) a judge is not immune from actions that, although judicial in nature, are taken in the complete absence of jurisdiction. [Mireles, 502 U.S. at 11-12 \(citations omitted\)](#)."

- see [Tota v Ward, 1:07-cv-00026 \(USNYWD\) \(PDF,](#)

Page 5)

(a) official's act is within his jurisdiction; and

(b) official was acting in a judicial capacity (see below)

Factors for Analyzing 'Judicial Capacity'(ie, determining whether an official was acting in his/her judicial capacity):

(a) the act complained of constituted a normal judicial function;

(b) the events occurred in the judge's chambers or in open court;

(c) the controversy involved a case pending before the judge; and

(d) the confrontation arose immediately out of a visit to the judge in his judicial capacity.

"Whether a judge's actions were made while acting in his judicial capacity depends on whether: (1) the act complained of constituted a normal judicial function; (2) the events occurred in the judge's chambers or in open court; (3) the controversy involved a case pending before the judge; and (4) the confrontation arose immediately out of a visit to the judge in his judicial capacity. [Scott v. Hayes](#), 719 F.2d 1562, 1565 (11th Cir. 1983)."

- see [Sibley v. Lando](#), 437 F.3d 1067 (11th Cir. 2005)

Considerations for Applying Absolute Immunity:

(a) the need to assure that the individual can perform his functions without harassment or intimidation;

(b) the presence of safeguards that reduce the need for private damages actions as a means of controlling unconstitutional conduct;

(c) insulation from political influence;

(d) the importance of precedent

(e) the adversary nature of the process

(f) the correctability of the error on appeal

"At the outset we note that we agree with Magistrate Judge Blewitt's assessment of the six-factor test as it relates to *Bast* and the subsequent recommendation of the Magistrate Judge. However, we shall undertake a brief analysis of the factors for the sake of completeness."

- see [Lonzetta v Hazle](#), 3:02-cv-00018-TMB

(USPAMD) (PDF, Page 8)TBD's

First Recommendation: Read the [Mireles v Waco](#) opinion

Reason #1: It deals with a judge

Reason #2: It's succinct

Reason #3: It incorporates/summarizes many other fundamental decisions

Reason #4: It's short

TBD's Second Recommendation: Read the [Young v Selsky](#) opinion

Reason #1: It deals with a judge

Reason #2: It's succinct

Reason #3: It incorporates/summarizes many other fundamental decisions

Reason #4: It's short

IV. Additional Notes

Useful Quotes:

"absolute immunity is an [affirmative](#) defense whose availability depends on the nature of the function being performed by the defendant official who is alleged to have engaged in the challenged conduct"

- see [Shmueli v NYC, 424 F.3d 231 \(2d Cir. 2005\)](#)

"In [Stump v. Sparkman, 435 U.S. 349, 356, 98 S.Ct. 1099, 1104, 55 L.Ed.2d 331 \(1978\)](#), the Supreme Court stated that judges are absolutely immune from § 1983 actions only for judicial acts for which they have at least a semblance of jurisdiction. Where a judge proceeded in "the clear absence of all jurisdiction," the Court ruled, a different result would be in order."

- see [Barr v Abrams, 810 F.2d 358 \(2d Cir. 1987\)](#)

"it is well settled that the immunity of prosecutors is based on the same considerations that underlie the immunity of judges, [Imbler, 424 U.S. at 422, 96 S.Ct. at 991](#), and since there is no functional basis for according a greater degree of protection to prosecutors than to judges, a dissimilar standard would be incongruous. See [Lerwill v. Joslin, 712 F.2d 435, 438 \(10th Cir. 1983\)](#)"

- see [Barr v Abrams, 810 F.2d 358 \(2d Cir. 1987\)](#)

"The task of determining whether a particular activity is better characterized as "quasi-judicial" and subject to absolute immunity, or "investigative" and subject to only qualified "good faith" immunity requires more than the mechanical application of labels. An examination of the functional nature of prosecutorial behavior, rather than the status of the person performing the act, is determinative."

- see [Taylor v. Kavanagh, 640 F.2d 450, 452 \(2d Cir. 1981\)](#)

"A judge is absolutely immune from a section 1983 suit for damages only for (a) judicial acts (b) for which the judge has at least a semblance of subject matter jurisdiction. See [Stump v. Sparkman, 435 U.S. 349, 98 S.Ct. 1099, 55 L.Ed.2d 331 \(1978\)](#)"

- see [Lerwill v. Joslin, 712 F.2d 435, 438 \(10th Cir. 1983\)](#)

"A defendant engaged in advocative functions will be

denied absolute immunity only if he acts "without any colorable claim of authority." *Schloss v. Bouse*, 876 F.2d at 291 (quoting *Barr v. Abrams*, 810 F.2d 358, 361 (2d Cir. 1987)). The appropriate inquiry, thus, is not whether authorized acts are performed with a good or bad motive, but whether the acts at issue are beyond the prosecutor's authority. Accordingly, where a prosecutor is sued under § 1983 for unconstitutional abuse of his discretion to initiate prosecutions, a court will begin by considering whether relevant statutes authorize prosecution for the charged conduct. If they do not, absolute immunity must be denied."
 - see *Bernard v County of Suffolk*, 356 F.3d 495 (2d Cir. 2004)

V. Additional Resources

PDFs:

Judges: Immunities: Judicial Act and Jurisdiction Broadly Defined. (Stump v Sparkman), 62 Marq. L. Rev. 112 (1978)
Judicial Immunity and Sovereignty, 6 Hastings Const. L.Q. 237 (1978)
Judicial Immunity from Civil and Criminal Liability, San Diego Law Review [Vol. 27:1, 1990]
Judicial Immunity vs Due Process: When Should a Judge be Subject to Suit?, Cato Journal Vol 7, No. 2 (Fall 1987)
Judicial Immunity: An Unqualified Sanction of Tyranny from the Bench, 30 Fla. L. Rev. 810 (1978)
Judicial Immunity: In Search of an Appropriate Limiting Formula, U.N.B. Law Journal
Persons Who Are Not "Persons": Absolute Judicial Immunity under Section 1983, 28 Depaul L. Rev. 1 (1978)
Stump v Sparkman and the History of Judicial Immunity, 1980 Duke L. J. 879
Suing Judges: History and Theory, South Carolina Law Review: Vol. 31: Iss. 2, Article 4 (1980)
The Judge Needs a Lawyer, 29 Cath. U. L. Rev. 751 (1980)
The Problem of "The Judge Who Makes the Case His Own", 49 Cath. U. L. Rev. 429 (2000)
What Constitutes a Judicial Act for Purposes of Judicial Immunity, 53 Fordham L. Rev. 1503 (1985)

VI. Bibliography

Bolin v Story, 225 F.3d 1234 (11th Cir. 2000)
Bradley v Fisher, 80 US 335 10L. Ed 646 (1872)
Brown v Crawford County, 960 F.2d 1002 (11th Cir. 1992)
Butz v Economou, 438 US 478, 514, 98 S. Ct. 2894, 57 L. Ed. 2d 895 (1978)
Dennis v Sparks, 449 US 24 (1980)
Dykes v Hosemann, 776 F.2d 942 (11th Cir. 1985)
Ex Parte Virginia, 100 US 339
Forrester v White, 484 US 219, 226-27, 108 S. Ct. 538, 98 L. Ed. 2d 555 (1988)
Imbler v Pachtman, 424 U.S. at 409 (1976)
Jackson v. BellSouth Telecommunications, 372 F.3d 1250, 1274 (11th Cir. 2004)
Kapordelis v Carnes, 482 Fed. App'x 498 (11th Cir. 2012)
King v Simpson, 189 F. 3d 284 (2d Cir. 1999)

Lerwill v. Joslin, 712 F.2d 435, 438 (10th Cir. 1983)
Long v Satz, 181 F.3d 1275 (11th Cir. 1999)
Mireles v Waco, 502 US 9 (1991)
Mitchell v Forsyth, 472 U.S. 511, 526, 105 S. Ct. 2806, 86 L. Ed. 2d 411 (1985)
Montero v Travis, 171 F. 3d 757
Oliva v Heller, 728 F. 2d (2d Cir. 1988)
Parrish v Nikolits, 86 F.3d 1088 (11th Cir. 1996)
Pierson v Ray, 386 US 547 (1967)
Rodrigue[s] v. City of New York, 193 A.D.2d 79, 86, 602 N.Y.S.2d 337 (1st Dept. 1993)
Scott v. Hayes, 719 F.2d 1562, 1565 (11th Cir. 1983)
Scotto v. Almenas, 143 F.3d 105, 110 (2d Cir. 1998)
Sibley v. Lando, 437 F.3d 1067 (11th Cir. 2005)
Siegert v Gilley, 500 US 226 (1991)
Simmmons v Conger, 86 F. 3d 1080, 1084 (11th Cir. 1996)
Simmons v Edmonson, 225 Fed. App'x 787 (11th Cir. 2007)
Smith v Shook, 237 F. 3d 1322 (11th Cir. 2001)
Stevens v Osuna, 877 F.3d 1293, 1301 (11th Cir. 2017)
Stump v Sparkman, 435 US 349 (1978)
Turner v Raynes, 611 F. 2d 92, 96-97 (5th Cir. 1980)
Young v Selsky, 41 F. 3d 47, 51 (2nd Cir. 1994)

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