Judges; immunity for development of juvenile program

Number: INFORMAL

Date: January 13, 1997

The Honorable Larry Schack
Judge, Nineteenth Judicial Circuit
320 Courthouse Addition
218 South Second Street
Fort Pierce, Florida 34950

Dear Judge Schack:

This office has received your letter requesting this office comment further on the issues raised in Mr. Tom Willis' request of October 2, 1996.

I share your concerns about the problem of juvenile crime within this state and applaud your efforts to develop innovative programs to deal with this issue. As this office recognized in its earlier response to Mr. Willis, however, the issue of possible liability is not a matter which may be addressed by this office as it necessarily involves mixed questions of law and fact which this office cannot resolve. Moreover, whether an action taken by a member of the judiciary constitutes an exercise of a judicial function is a question which should more appropriately be addressed by the courts rather than by an agency in the executive branch of government. However, in an effort to be of further assistance, I would generally note the following.

As a general rule, a judge enjoys absolute immunity for acts performed in the exercise of a judicial function, within the limits of his jurisdiction.[1] The term "jurisdiction" in the context of judicial immunity refers to the power to hear and determine a matter, not the manner, method or correctness of the exercise of the power. A judge, therefore, will "not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority; rather, he will be subject to liability only when he has acted in the 'clear absence of all jurisdiction.'"[2]

Judicial immunity does not automatically attach to all types of conduct in which a judge may properly engage but only to those acts which are of a judicial or quasi-judicial nature. The broad doctrine of judicial immunity does not apply to acts which are not judicial but which are purely ministerial or administrative in nature.[3] In such cases, a judge would be responsible for error or misconduct in a like manner and to the same extent as all other ministerial officers and may enjoy a qualified good faith immunity from civil action.[4]

A distinction for purposes of judicial immunity, therefore, has been recognized between judicial acts and the administrative, legislative, or executive functions that judges may occasionally perform. As the United States Supreme Court noted in *Forrester v. White*,[5] "[a]dministrative decisions, even though they be essential to the very functioning of the courts, have not . . . been regarded as judicial." It is the nature of the function performed, not the identity of the actor who performed it, that has formed the courts' immunity analysis.[6]

Regarding the issue of whether a judge's actions in developing or presenting the program would be covered under the state's self-insurance, such a determination must be made by the Department of Insurance, Division of Risk Management. Pursuant to section 111.07, Florida Statutes, however, this office possesses the authority to provide legal representation to a judge in a civil action arising from a complaint for damages or injury suffered as a result of any act, or omission of action, of the judge arising out of the scope of his official duties.

I trust that the above informal comments may be of some assistance to you in resolving this matter.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tgk

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[1] *See Berry v. State,* 400 So. 2d 80, 82-83 (Fla. 4th DCA 1981), *rev. denied,* 411 So. 2d 380 (Fla. 1981); *see also Office of the State Attorney v. Parrotino,* 628 So. 2d 1097 (Fla. 1993).

[2] *Stump v. Sparkman,* 435 U.S. 349, 356, 98 S.Ct. 1099, 1105, 55 L.Ed.2d 331, 339 (1978).

[3] *See, e.g., Forrester v. White,* 484 U.S. 219, 108 S.Ct. 538, 98 L.Ed.2d 555 (1988).

[4] *Cf.* s. 768.28(9)(a), Fla. Stat., providing limited immunity from civil liability in tort actions for certain officers and employees of the state and its subdivisions. *And see Berry v. State, supra,* stating that while s. 768.28 applies to the three branches of government, it does not abrogate the common law principle of judicial immunity which insures that judges are immune from liability for acts committed within their judicial jurisdiction.

[5] 108 S.Ct. at 544. *See also Stump,* 98 S.Ct. at 1108 (the relevant inquiry is the "nature" and "function" of the act, not the "act itself"); *Mireles v. Waco,* 112 S.Ct. 286, 116 L.Ed.2d 9 (1991), stating that in determining judicial immunity, the court looks to the particular act's relation to a general function normally performed by a judge.

[6] *See Supreme Court of Virginia v. Consumers Union of United States, Inc.,* 446 U.S. 719, 100 S.Ct. 1967, 64 L.Ed.2d 641 (1980) (judicial immunity has not been extended to judges acting to promulgate a code of conduct for attorneys).