



Local Government Liability & Immunity

Local Government Law Essentials for Judges

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“The expense and trouble of lawsuits are unavoidable costs of doing a [government’s] work. The challenge for [] governments is not the impossible task of eliminating all lawsuits; rather, it is providing services while minimizing the cost and disruption that lawsuits bring. The first step in accomplishing that task is learning the basic legal principles that control the liability of [] governments and their public servants.”

KRISTI NICKODEM
“CHAPTER 6: CIVIL LIABILITY AND IMMUNITY OF LOCAL GOVERNMENTS, PUBLIC OFFICIALS, AND PUBLIC EMPLOYEES,”
COUNTY & MUNICIPAL GOVERNMENT IN NORTH CAROLINA
(2025).

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Types of Immunity

PROTECTION FROM LIABILITY

- Sovereign immunity
- Governmental immunity
- Public official immunity
- Legislative immunity
- Quasi-judicial immunity



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Sovereign Immunity

STATE'S PROTECTION FROM LIABILITY

- "The King can do no wrong"
- Bars *tort* claims based upon negligence and intentional wrongdoing of its officers, employees, or agents against federal and state government



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What's a Tort?

COMMON LAW

- Wrongful act or omission (other than a criminal act or breach of contract) that causes some form of harm or injury and for which courts will provide a remedy (typically in the form of monetary damages)



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Intentional Tort Claims

COMMON EXAMPLES

- **Assault:** Placing another person in reasonable apprehension of immediate harm or offensive contact
- **Battery:** Touching or striking another person without consent or legal authorization
- **False Imprisonment:** Restraining the movement of another without permission or legal authorization
- **Defamation:** False written or oral communication to a third party that injures the individual's reputation



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Unintentional Tort Claims

COMMON EXAMPLES

- **Negligence:** Failure to exercise reasonable care in performance of a legal duty owed to another under the circumstances
- **Negligent hiring, supervision, and retention:**
 - Specific tortious act by employee
 - Employee's incompetence or unfitness
 - Employer's actual or constructive notice of the same
 - Injury resulting from the employee's incompetence or unfitness



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Governmental Immunity

UNIT'S PROTECTION FROM LIABILITY

- Protects government in carrying out **governmental functions**
 - *not while carrying out proprietary functions*
- Includes employees and officials acting **within scope of their duties**
- Does *not* apply to individuals sued in individual capacity



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"[A] governmental function is an activity that is discretionary, political, legislative, or public in nature and performed for the public good [on] behalf of the State rather than for itself, while a proprietary function is one that is commercial or chiefly for the private advantage of the compact community."

PROVIDENCE VOLUNTEER FIRE DEPT, INC. V. TOWN OF WEDDINGTON, 382 N.C. 199 (2022).

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Governmental vs Proprietary Functions

GOVERNMENTAL IMMUNITY

1. If legislature designates function as governmental or proprietary
2. Whether undertaking is one in which only a government agency could engage
3. Other factors, such as whether the activity is
 - Traditionally provided by government (governmental)
 - Substantial fee involved (proprietary)
 - Intended to raise revenue (proprietary)

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Governmental vs Proprietary Examples

GOVERNMENTAL IMMUNITY

- Collecting taxes and fines ✓
- Land use and affordable housing ✓
- Operating arena, airport, golf course, or hospital ✗
- Law enforcement and emergency services ✓
- Public library ✓
- Operating water system that sells water to public ✗
- City streets ?
- Public, mental health, and social services ✓

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Within Scope of Duties

I.E. THE JOB DESCRIPTION



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- Acting in furtherance of the government's business "for the purpose of accomplishing the duties of [his or her] employment"
- Includes those duties formally prescribed as well as actual or customary
- Does not include actions for wholly personal reasons

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Beyond Scope of Duties

PRIVATE USE OF PUBLIC VEHICLE

- Local government vehicles can only be used for public purposes or for going between work and home. G.S. 14-247.
- If something happens when local government employees are using a public vehicle outside of their duties, they may be held responsible. G.S. 14-251.



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Official v. Individual Capacity Claims

PRACTICE POINTER

Official Capacity

- When a plaintiff sues a local government officer or employee in the person's *official capacity*, the plaintiff is really suing the unit. *E.g., Meyer v. Walls*, 347 N.C. 97, 110 (1997).
- Governmental immunity bars an official capacity claim to the same extent it would bar the claim if the governmental body were named as defendant. *Mullis v. Sechrest*, 347 N.C. 548 (1998).

Individual Capacity

- An individual capacity claim seeks damages from the official or employee personally. *Williams v. Holsclaw*, 128 N.C. App. 205 (1998).
- Governmental immunity is *not* a defense to tort claims alleged against officers or employees in their *individual capacities*. *E.g., Wright v. Gaston Cnty.*, 205 N.C. App. 600, 602 (2010).

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"The Courts presume that a public officer or employee is sued in an official capacity. If a plaintiff intends to allege an individual capacity claim, the complaint should reflect this intention in the caption, allegations, or relief sought. The failure to specify whether the action is in the person's official or individual capacity will result in its being treated as an official capacity claim."

TREY ALLEN
IMMUNITY OF THE STATE AND LOCAL GOVERNMENTS
FROM LAWSUITS IN NORTH CAROLINA (CITING WHITE V.
TREW, 366 N.C. 360 (2013)).

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Smith v. Scotland County, 300 N.C. App. 76 (2025)

CASE UPDATE

- 24-year-old died after playing pick-up basketball at county-operated gymnasium during summer
- No air conditioning (only fans) in gym
- Decedent's estate sued county alleging negligent operation and supervision of gym
- County claimed governmental immunity



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Waiver of Immunity

GOVERNMENTAL IMMUNITY

- Engaging in proprietary function
- Purchasing liability insurance, to the extent of coverage
- Joining a risk pool
- Adopting a resolution to create funded reserve
- Entering into a contract



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Pleading Waiver

PRACTICE POINTER

- General rule:
 - "[T]o overcome a defense of governmental immunity, the complaint must specifically allege a waiver of governmental immunity." *Fabrikant v. Currituck Cnty.*, 174 N.C. App. 30, 38 (2005).
 - "[A]bsent such an allegation, the complaint fails to state a cause of action." *Wray v. City of Greensboro*, 370 N.C. 41 (2017).
- No particular language is necessary to allege a waiver of government immunity (i.e. whether the word "waiver" appears in the complaint).
- **The test is whether the complaint alleges facts that, if true, establish the existence of waiver.**
 - Sufficient allegations vary by type of waiver (proprietary function, insurance, contract)
 - Not an especially high standard

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Asserting Governmental Immunity

PRACTICE POINTER

- Immediate appealability of MTD (interlocutory?):
 - 12(b)(6) (failure to state a valid claim): right to immediate appeal affecting “substantial right.” *E.g., Davis v. DiBartolo*, 176 N.C. App. 142, 144 (2006).
 - 12(b)(2) (lack of personal jurisdiction): right to immediate appeal of issue involving personal jurisdiction. *Can Am. S., LLC, v. State*, 234 N.C. App. 119, 123-24 (2014).
 - 12(b)(1) (lack of subject matter jurisdiction): *no* right to immediate appeal, unless substantial right affected. *Murray v. University of North Carolina*, 246 N.C. App. 86 (2016).
- Local government attorneys may cite, assert, argue, and seek ruling on **both 12(b)(2) and 12(b)(6)**

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Claims *not* barred

BY GOVERNMENTAL IMMUNITY

-  Contract claims
-  Constitutional claims (when adequate alternative remedy available)
-  Claims arising under state and federal statutes
-  Claims alleging a city's negligent maintenance of streets and sidewalks
-  Certain declaratory judgment actions

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Public Official Immunity

INDIVIDUAL IMMUNITY

- Bars tort claims against a **public official** acting within the **course and scope** of their duties *unless malicious or corrupt*
- Does *not* protect public employees



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Public Officials v. Public Employees

PUBLIC OFFICIAL IMMUNITY

Public Officials

- Position created by law/sovereign power of State
- Oath of office
- Exercises discretion
- *Examples:* elected official, police chief, county/city manager, superintendent and principal, chief building inspector, building inspector, code enforcement officer, directors of social services & health department, coroner, notary

Public Employees

- Perform ministerial/administrative tasks
- *Examples:* street sweeper, EMT, public school teacher, environmental health specialist, child and family services program administrator, parole case analyst, prison physician

Resource: [Employee v. Official Quick-Reference Guide](#)

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[Hwang v. Cairns, 387 N.C. 448 \(2025\)](#)

CASE UPDATE

- Burn unit surgeon resigned because of medical director's "relentless harassment" and creation of hostile work environment
- Coworkers threw "going away" party
- Surgeon sued his supervisor and university after complaint of unprofessional and "sexually offensive" conduct against him
- Supervisor asserted public official immunity



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[Hwang v. Cairns, 387 N.C. 448 \(2025\)](#)

CASE TAKEAWAYS

1. If a position is not granted sovereign power by the legislature or constitution, the body or individual overseeing the position must have statutory authority to delegate a portion of the sovereign power vested in them.
2. Discretionary conduct on its own is not enough for public official immunity; rather, the discretion must be used in the exercise of sovereign power.
3. Test restated: "We consider how the position was created, the nature of the power exercised by the position-holder, and *the position-holder's discretion in the exercise of that power, if sovereign.*" Courts should consider each element of the test.

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Legislative Immunity

INDIVIDUAL IMMUNITY



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- Local officials enjoy immunity from personal liability for civil claims arising from their performance of legitimate legislative function
- Adoption of zoning ordinance, for example, is legislative activity
- Does not cover *administrative* actions, such as whether to hire or fire employee

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[Providence Volunteer Fire Dep't, Inc. v. Town of Weddington, 382 N.C. 199 \(2022\)](#)

CASE UPDATE

- Volunteer fire department provided fire protection services to town for over 60 years
- Town contracted with fire department and then terminated contracts less than one year later, after new mayor took office
- Fire department sued town/mayor, alleging breach of contract, fraudulent inducement, fraud, and tortious interference
- Mayor asserted legislative immunity in calling special meeting, preparing agenda, and calling for vote



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[Providence Volunteer Fire Dep't, Inc. v. Town of Weddington, 382 N.C. 199 \(2022\)](#)

CASE TAKEAWAYS

1. The North Carolina Supreme Court officially recognized the doctrine of legislative immunity as a bar to claims against North Carolina public officials.
2. Meeting-calling, agenda-setting, and vote-calling are legislative actions for purposes of legislative immunity.
3. The legislative immunity afforded to local legislators is *not* absolute. Public officials may be held individually liable if their actions are malicious, corrupt, or outside the scope of official duties, even if legislative in nature.

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Quasi-Judicial Immunity

INDIVIDUAL IMMUNITY

- Local officials enjoy *absolute* immunity from personal liability for civil claims arising from the exercise of their judicial functions
- Applies to local government officials engaged in quasi-judicial functions (planning board, board of adjustment, governing board, etc.)
- Quasi-judicial proceedings on special use permits, variances, or appeals from personnel decisions, for example



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Possible Immunities Available to Different Defendants

SIDE-BY-SIDE COMPARISON

Defendant	Type of Claim	
	Tort Claim (e.g., Negligence)	Section 1983 Claim
Unit of Local Government	Governmental immunity, unless waived by the unit of local government.	None.
Public Official in Individual Capacity	Public official immunity, unless official acted corruptly, with malice, or outside the scope of their official duties. Legislative, judicial, or quasi-judicial immunity may also be available depending on the act at issue.	Qualified immunity, unless the conduct violates clearly established statutory or constitutional rights of which a reasonable person would have known.
Public Employee in Individual Capacity	None, unless a statutory immunity applies.	Qualified immunity, unless the conduct violates clearly established statutory or constitutional rights of which a reasonable person would have known.
Public Official or Employee Engaged in Legislative Activity	Legislative immunity for legislative activity, unless actions were illegal, malicious, corrupt or outside the scope of official duties.	Absolute immunity for legislative activity, but not for illegal acts or acts taken in an administrative or enforcement capacity.
Judicial Official Engaged in Performance of Judicial Acts	Absolute immunity, unless acting in a nonjudicial capacity or acting in the complete absence of all jurisdiction.	Absolute immunity, unless acting in a nonjudicial capacity or acting in the complete absence of all jurisdiction.

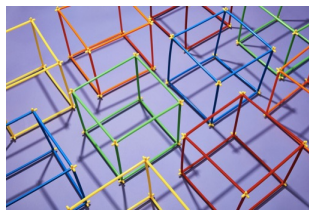
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Other Liability Defenses

THERE'S MORE?

- **Statutes of Limitations**
- **Public duty doctrine:** local governments have no legal duty to prevent harm to specific individuals when protecting public at large
- **Emergency Management Act (EMA):** exempts local governments from liability for deaths, injuries, or property damage resulting from performance of emergency management functions
- **Qualified immunity to federal claims:** protects local government employees and officials from personal liability for violation of individual's rights under federal law



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Additional Resources

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<https://canons.sog.unc.edu/category/liability-immunity/>

Trey Allen, [Local Government Immunity to Lawsuits in North Carolina](#) (2018).

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