

## BASICS OF JUDICIAL IMMUNITY

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1. Judicial immunity is a longstanding concept, the purpose of which is to assure judicial independence.

“As early as 1872, the Court recognized that it was ‘a general principle of the highest importance to the proper administration of justice that a judicial officer, in exercising the authority vested in him, [should] be free to act upon his own convictions without apprehension of personal consequences to himself.’ “ *Stump v. Sparkman* 435 US 349, 355 (1978) (quoting *Bradley v. Fisher*, 13 Wall 335, 347, 20 LEd2d 646 (1872)).

“Few doctrines were more solidly established at common law than the immunity of judges from liability for damages for acts committed within their judicial jurisdiction, as this Court recognized when it adopted the doctrine, in *Bradley v. Fisher*, 13 Wall. 335, 20 L.Ed.2d 646 (1872). This immunity applies even when the judge is accused of acting maliciously and corruptly, and 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.’ (Scott v. Stansfield, L.R. 3 Ex. 220, 223 (1868), quoted in *Bradley v. Fisher*, *supra*, 349, note, at 350). It is a judge’s duty to decide all cases within his jurisdiction that are brought before him, including controversial cases that arouse the most intense feelings in the litigants. His errors may be corrected on appeal, but he should not have to fear that unsatisfied litigants may hound him with litigation charging malice or corruption. Imposing such a burden on judges would contribute not to principled and fearless decisionmaking but to intimidation.” *Pierson v. Ray*, 386 US 547, 553-54 (1967).

2. The immunity, when recognized, is absolute and means judges are not liable in civil actions for their judicial acts, even when done maliciously and corruptly.

“The law is clear, that in general no action can be supported against a judge or justice of the peace, acting judicially and within the sphere of his jurisdiction, however erroneous his decision, or malicious the motive imputed to him.” *Cunningham v. Dilliard*, 20 NC 485 (1839).

“Judges and judicial officers have always been awarded ‘absolute’ immunity for their judicial acts. Absolute immunity covers even

conduct which is corrupt, malicious or intended to do injury.” *State ex rel. Jacobs v. Sherard*, 36 NC App 60, 64 (1978).

3. In recent years most of the case law on judicial immunity has developed in federal court in actions for violations of civil rights under 42 USC § 1983. In § 1983 actions, judicial immunity applies to both complaints seeking monetary damages and complaints seeking injunctive relief. North Carolina state courts, in finding judicial immunity from state law claims, have not indicated any distinction between claims seeking monetary relief and those seeking injunctive relief.

[In *Pulliam v. Allen*, 466 US 522 (1984), the Supreme Court held that while judicial immunity prevents § 1983 lawsuits against judges for monetary damages it does not protect judges from lawsuits for injunctive relief nor from the award of attorneys fees under § 1988 for bringing a successful § 1983 action. Congress, however, effectively reversed *Pulliam v. Allen* by enacting the Federal Courts Improvement Act of 1996, PL 104-317, amending § 1983 to provide that judicial immunity applies to § 1983 actions for injunctive relief as well, except when the injunction is granted because the judicial official violated a declaratory decree or declaratory relief was not available.]

4. Judicial immunity applies even when the judge acts in excess of the judge’s jurisdiction, but not if the judge acts without jurisdiction at all.

“[T]he scope of the judge’s jurisdiction must be construed broadly where the issue is the immunity of the judge. A judge 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.’” *Stump v. Sparkman*, 435 US at 356-57 (quoting *Bradley v. Fisher*).

5. Judicial immunity does not apply to purely administrative acts of a judge, such as employment decisions, but there may be qualified immunity in such circumstances, just as for other public officials.

“In the case before us, we think it clear that Judge White was acting in an administrative capacity when he demoted and discharged Forrester. Those acts – like many others involved in supervising court employees and overseeing the efficient operation of a court – may have been quite important in providing the necessary conditions of a sound adjudicative system. The decisions at issue, however, were not themselves judicial or adjudicative. . . . [A] judge who hires or fires a probation officer cannot meaningfully be distinguished from a district attorney who hires and fires assistant district attorneys, or indeed from any other Executive Branch official who is responsible for making such employment decisions.” *Forrester v. White*, 484 US 219, 229 (1988).

6. Although the denial of a motion to dismiss on the basis of judicial immunity would be an interlocutory order, it is subject to immediate appeal because it affects a substantial right.

“Immediate appeal of such interlocutory orders is allowed because ‘the essence of absolute immunity is its possessor’s entitlement not to have to answer for his conduct in a civil damages action.’” *Martin v. Badgett*, 149 NC App 667, 2002 WL 485187 (2002) (unpublished) (quoting *Epps v. Duke University*, 122 NC App 198, 201, *disc. rev. denied*, 344 NC 436 (1996)).

7. Judicial immunity is extended to non-judges when they are acting in a judicial or quasi-judicial capacity.

- a. A court-appointed referee in an equitable distribution action is an agent of the court and entitled to judicial immunity.

“In the instant case, this action is no different from one in which a plaintiff claims to have been damaged by a judge of the general court of justice. Since Ms. Sharp’s action against the court-appointed referee is implicitly an action against the trial judge, it is barred by judicial immunity.” *Sharp v. Gulley*, 120 NC App 878 (1995).

- b. A coroner is acting as a judicial official and entitled to judicial immunity in deciding whether to conduct an inquest.

“The duty of determining whether an inquest is necessary and the manner of conducting an inquest are judicial functions. *State v. Knight*, 84 N.C. 789. A judicial officer cannot be held accountable in an action for damages for the manner in which he performs his duties even though it be alleged that he acted corruptly and maliciously.” *Gillikin v. United States Fidelity and Guaranty Company of Baltimore, Maryland*, 254 NC 247, 249 (1961).

- c. The clerk of court is performing judicial functions and entitled to judicial immunity for actions as judge of probate in the administration of estates.

“In the instant case, defendant is the Clerk of Superior Court of Surry County, and as such is a judicial official of the General Court of Justice, who engages in ‘judicial functions’ that involve the discretionary application of law to a given set of facts. See N.C.G.S. § 7A-103 (1999) (enumerating judicial powers of Clerk of Court). The Clerk serves as the *ex officio* judge of probate, with jurisdiction over the administration of decedents’ estates.” *Martin v. Badgett*, 149 NC App 667, 2002 WL 485187 (2002) (unpublished).

- d. Members of the Parole Commission act in a quasi-judicial capacity and are entitled to judicial immunity when determining issues of eligibility.

“Quasi-judicial immunity is an absolute bar, available for individuals in actions taken while exercising their judicial function. [citations omitted] In effect, the rule of judicial immunity extends to those performing quasi-judicial functions.” *Vest v. Easley*, 145 NC App 70, 73 (2001).

- e. Members of the Board of Medical Examiners are performing a quasi-judicial function and are entitled to judicial immunity in hearing complaints against physicians.

“The public policy which supports the doctrine of absolute privilege fully supports the application of the doctrine to the Board of Medical Examiners and the individual members in the performance of their quasi-judicial statutory duties.” *Mazzucco v. North Carolina Board of Medical Examiners*, 31 NC App 47 (1976).

- f. A notary public is performing a judicial act in the acknowledgement of a deed and is entitled to judicial immunity.

“We observe that notaries public are included in the statute [G.S. 47-1 on execution of deeds] along with other officials who are clearly judicial officials. It is noteworthy that the various sections of Chapter 47 refer to the acknowledgement or Proof of the execution of instruments. G.S. s 47-12 et seq., provide for proof of an attested instrument by a subscribing witness or by handwriting. A notary public is authorized to make a determination as to those proofs, thereby performing a judicial act. Historically, the probate of a real estate deed in this State has been regarded as a judicial act. . . .” *Nelson v. Comer*, 21 NC App 636, 639 (1974).

- 8. A functional test is used to determine whether the person is performing a judicial act and is entitled to immunity, *i.e.*, whether the person is acting in a manner functionally comparable to that of a judge.

- a. *Butz v. Economou*, 438 US 478 (1978), establishes the “functionally comparable” test for determining whether a non-judicial official is entitled to judicial immunity.

“Judges have absolute immunity not because of their particular location within the Government but because of the special nature of their responsibilities.

...

“The cluster of immunities protecting the various participants in judge-supervised trials stems from the characteristics of the judicial process rather than its location.

...

“We think that adjudication within a federal administrative agency shares enough of the characteristics of the judicial process that those who participate in such adjudication should also be immune from suits for damages.

...

“There can be little doubt that the role of the modern federal hearing examiner or administrative law judge within this framework is ‘functionally comparable’ to that of a judge.” *Butz v. Economou*, 438 US 478, 511-13 (1978).

- b. *Butz v. Economou* established a three-part test for determining whether judicial immunity applies to officials other than judges.

“We have distilled the Supreme Court’s approach to quasi-judicial immunity into a consideration of three main factors: (1) whether the functions of the official in question are comparable to those of a judge; (2) whether the nature of the controversy is intense enough that future harassment or intimidation by litigants is a realistic prospect; and (3) whether the system contains safeguards which are adequate to justify dispensing with private damages suits to control unconstitutional conduct.” *Wagshal v. Foster*, 28 F3d 1249 (DC Cir 1994), *cert denied*, 514 US 1004 (1995) (finding quasi-judicial immunity for neutral case evaluator in alternative dispute resolution program).

- c. Applying the *Butz v. Economou* test, federal courts have held that third-party neutrals such as mediators and case evaluators are entitled to judicial immunity.

“In certain respects it seems plain that a case evaluator in the Superior Court’s system performs judicial functions. Foster’s assigned tasks included identifying factual and legal issues, scheduling discovery and motions with the parties, and coordinating settlement efforts. These obviously involve substantial discretion, a key feature of the tasks sheltered by judicial immunity . . . . Further, viewed as mental activities, the tasks appear precisely the same as those judges perform going about the business of adjudication and case management.” *Wagshal v. Foster*, 28 F3d 1249, 1252 (DC Cir 1994), *cert denied*, 514 US 1004 (1995).

- d. The Supreme Court has rejected judicial immunity for court reporters whose function is to produce verbatim trial transcripts.

“When judicial immunity is extended to officials other than judges, it is because their judgments are ‘functional[ly] comparab[le] to those of judges – that is, because they, too, ‘exercise a discretionary judgment’ as part of their function.

...

The function performed by court reporters is not in this category. As noted above, court reporters are required by statute to ‘recor[d]

verbatim' court proceedings in their entirety. 28 U.S.C. § 753(b). They are afforded no discretion in the carrying out of this duty; they are to record, as accurately as possible, what transpires in court." *Antoine v. Byers & Anderson, Inc.*, 508 US 429, 436 (1993).

- e. In lawsuits under 42 USC § 1983 for violation of federal civil rights, federal courts are divided on whether the statutorily-enacted immunity from injunctive relief applies to non-judges performing judicial functions as well as to actual judges. Some courts say the immunity from injunctive relief in § 1983 actions does extend to those quasi-judicial situations (e.g., *Montero v. Travis*, 171 F3d 757 (2<sup>nd</sup> Cir 1999)) while others say the immunity is not applicable (e.g., *Simmons v. Fabian*, 743 NW2d 281 (Minn App 2007)).