



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

February 15, 1978

ATTORNEY GENERAL OPINION NO. 78- 71

Mr. Richard A. Schultz
District Court Administrator
Shawnee County Courthouse
Topeka, Kansas 66603

Re: Courts--Personnel--Defense

Synopsis: If an officer or employee of a state district court is named as a defendant in a suit seeking damages for alleged nonfeasance, misfeasance or malfeasance of the duties of his or her office or employment, the Attorney General, upon timely notice by the defendant and request therefor, is authorized to provide for the defense of such officers and employees. Any such defendant remains personally liable for any judgment entered in such action, and for payment of any obligation agreed upon in settlement of the claim. Judicial immunity may be available to the defendant in such a case if the claim arises out of the performance of duty entailing the exercise of quasi-judicial discretion. However, neither absolute nor limited immunity may be available, depending upon the nature of the claim, if it relates to the mandatory, nondiscretionary duties of the office or employment.

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Dear Mr. Schultz:

You inquire, first, who is responsible for providing legal counsel for the defense of officers and employees of the district court when they are named as defendants in legal actions filed alleging error or omission in the performance of their duties. K.S.A. 75-4356 states in pertinent part thus:

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"In the event any officer or employee of the state of Kansas . . . shall be sued for damages for any alleged nonfeasance, misfeasance, or malfeasance of the duties of his or her office or employment . . . the state . . ., except as otherwise provided in K.S.A. 75-4357a, may provide necessary legal counsel and pay other necessary expenses for the defense of the action. The legal counsel may be the attorney general, the legislative counsel when authorized by the legislative coordinating council, the attorney for the political or taxing subdivision or other counsel employed for such purpose."

Thus, this office is authorized to furnish defense services for officers and employees of the district court who are sued for damages for alleged nonfeasance, misfeasance or malfeasance of the duties of their office or employment. Under K.S.A. 75-4357a, the state shall not provide for such defense

"unless [the attorney general is] notified in writing of such action by the plaintiff or the officer or employee involved within fifteen (15) days after the commencement of the action."

Thus, this office is authorized to provide for the defense of such officers and employees when given timely notice of the suit, and when requested to do so by the officer or employee who is named a party defendant.

Secondly, you inquire who is authorized to negotiate for possible settlement in such actions on behalf of defendants who are officers and employees of the court, and who would pay any judgment or settlement in such cases. Political and taxing subdivisions of the state are authorized to pay any judgment obtained against any officer or employee for misfeasance or malfeasance while acting within the scope and in the performance of the duties of his or her office or employment. K.S.A. 75-4361. The District Court of the Third Judicial District is not, of course, a taxing or political subdivision of the state, but rather, a division of the unified state court of justice created by Article 3, § 1

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of the Kansas Constitution. Its officers and employees are not officers and employees of the county, but of the state. There is no similar provision authorizing payments by the State Judicial Department to satisfy judgments entered against court personnel for misfeasance, nonfeasance or malfeasance occurring in the course of their respective offices and employment. Thus, an officer or employee of the court who is found liable remains personally liable for the judgment. If requested to represent a party defendant in such an action, this office will, if authorized to do so by such defendant, enter into settlement negotiations in his or her behalf. Once again, the individual defendant remains personally responsible for the approval of any settlement agreement and personally liable for payment of any monies to the plaintiff provided to be paid by such an agreement.

Lastly, you ask whether governmental or judicial immunity applies to court employees in such cases. It is not possible to respond to this question categorically. Generally speaking, the courts have upheld immunity when the claim relates to the performance of official quasi-judicial duties. See, e.g. *Denman v. Leedy*, 479 F.2d 1097 (6th Cir. 1973). However, immunity may not be upheld when the claim is based upon conduct of court personnel which does not entail the exercise of quasi-judicial discretion, i.e., a discretion similar to that exercised by a judge, and relates only to ministerial nondiscretionary duties. Even though absolute immunity may not apply, in some instances it may be a defense that the official acted at all relevant times pursuant to lawful authority vested in him or her by the state. *McCray v. State of Maryland*, 456 F.2d 1 (4th Cir. 1972). Thus, it is impossible to respond categorically that either an absolute or a limited immunity may be available in any particular case, without reference to the nature of the specific claim involved.

Yours truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj