When an act by a state or local official is covered by judicial immunity, the official is completely immune from suit for damages, no matter how egregious the misconduct. Judicial immunity also limits Civil Rights Act section 1983 claims against judges for injunctive relief arising out of actions taken in their judicial capacity.514

In deciding whether judicial immunity attaches to any particular act, courts are guided by the purposes of the doctrine and “the effect that exposure to particular forms of liability would likely have on the appropriate exercise of those [judicial] functions.”515 In other words, the guiding principle concerning judicial immunity is whether judicial discretion would be improperly chilled if the judicial actor were exposed to liability for the alleged conduct.

In determining whether judicial immunity attaches, courts also consider the following factors (none of which is dispositive): (1) whether the precise act complained of is a normal judicial function; (2) whether the acts occurred in the courtroom;516 (3) whether the controversy centered around a case pending before the court, and (4) whether the acts arose directly out of a visit to the judge in the judge’s official capacity.517

When an official performs a function in the course of a particular judicial proceeding and performs that function at the instance of the court, the official will generally be absolutely immune from damages suits, even if that official does not exercise judicial discretion.518 The doctrine is not limited to when judges exercise discretion in deciding cases, ruling on motions, or at sentencing. Courts are also immune from liability when they resolve fee requests submitted by court-appointed counsel.519

On the other hand, judicial immunity does not always foreclose prospective relief, as the doctrine is designed to protect judges against litigation that revisits the rationale for specific decisions made in a judicial function. In Pulliam v. Allen,520 a magistrate who jailed indigents for non-jailable misdemeanors when they could not make bail was held to be subject to prospective injunctive and declaratory relief as well as recovery of attorney fees and costs. However, in 1996, Congress legislatively restored complete judicial immunity in regard to prospective injunctive relief under Civil Rights Act section 1983 and eliminated the right to attorney fees for injunctive relief against judicial officers.521 Nonetheless, a section 1983 suit may still be maintained against judges in their individual capacity for declaratory relief and, outside of section 1983 claims, injunctions and attorney fees may still be available against judicial actors.

Additionally, given that immunity “is justified and defined by the functions it protects and serves, not by the person to whom it attaches,”522 recognizing the distinction between judicial acts and administrative, legislative, or executive functions that judges may be assigned to perform is critical. Judges are not afforded absolute judicial immunity for the latter acts,523 although other types of immunity may apply.524

The Second Circuit has explained that “[t]he principal hallmark of the judicial function is a decision in relation to a particular case.”525 For example, in Morrison v. Lipscomb, the Sixth Circuit decided that a judge was not entitled to judicial immunity for his decision to issue a temporary ban on “writs of restitution.” Even though “no one but a judge could issue such an order,”526 the court’s order was administrative, and not judicial, because it “was a general order, not connected to any particular litigation,” and it could not be appealed.527

The same principle generally applies to prosecutorial immunity. As the U.S. Supreme Court has articulated, “[a] prosecutor’s administrative duties and investigatory functions that do not relate to an advocate’s preparation for the initiation of a prosecution or for judicial proceeding are not entitled to absolute immunity.”528

Footnotes


Note that prosecutors may be immune from suit under the doctrine of prosecutorial immunity, which has its roots in judicial immunity. Buckley v. Fitzsimmons, 509 U.S. 259, 272–273, 113 S. Ct. 2606, 125 L. Ed. 2d 209 (1993).

A judge’s actions may be judicial in nature even though they occurred in the judge’s chambers rather than in the courtroom. Ballard v. Wall, 413 F.3d 510, 515 (5th Cir. 2005).


Dorman v. Higgins, 821 F.2d 133, 137 (2d Cir. 1987) (“The probation officer prepares the report at the instance of the court. Although a secondary use of the report is to provide information to the United States Parole Commission and the Bureau of Prisons for use in their release and confinement decisions, the presentence report is a court document and may not be disclosed to others without the permission of the court.”).

Bliven v. Hunt, 579 F.3d 204, 211 (2d Cir. 2009).


McCullough v. Finley, 907 F.3d 1324, 1332 (11th Cir. 2018) (“[A] judge is not entitled to judicial immunity for administrative acts performed in his capacity as a presiding judge, [but] the judges’ acts were not administrative simply by virtue of the fact that each served as presiding judge”); Kneisser v. McInerney, 2018 WL 1586033, at *14 (D.N.J. Mar. 30, 2018) (declining to grant summary judgment on absolute judicial immunity; noting that many of judge’s acts in compelling payments from indigent defendants are “extra-judicial and focus more on the administrative task of collecting fines than the judicial act of imposing them”). Cf. Foster v. City of Alexander City, 2016 WL 11087011, at *2–3 (M.D. Ala. Dec. 1, 2016) (permitting plaintiffs to depose municipal judge and clerk about non-judicial acts or functions).


Bliven v. Hunt, 579 F.3d 204, 211 (2d Cir. 2009).

Morrison v. Lipscomb, 877 F.2d 463, 466 (6th Cir. 1989).

Id. at 466.

See Buckley v. Fitzsimmons, 509 U.S. 259, 272–273, 113 S. Ct. 2606, 2615, 125 L. Ed. 2d 209 (1993) (discussing when prosecutor is entitled to absolute versus qualified immunity). See also Malone v. City of Decatur, 2018 WL 4901212, at *3 (N.D. Ala. Oct. 9, 2018) (municipal prosecutor entitled to absolute immunity from damages claims for alleged prosecution of individuals); Rudolph v. City of Montgomery, 2017 WL 956359, at *7 (M.D. Ala. Mar. 10, 2017) (prosecutor only has qualified immunity when performing a function that is not associated with his or her role as advocate for state; alleging that district attorney was functioning in administrative role for city as collection agent, not in role as prosecutor, was “sufficient to avoid defense of prosecutorial immunity”).