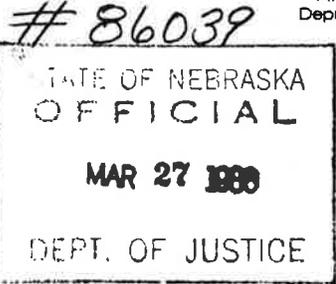


DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

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DATE: March 27, 1986

SUBJECT: Judicial Immunity

REQUESTED BY: Joe C. Steele
Court Administrator

WRITTEN BY: Robert M. Spire, Attorney General
Yvonne E. Gates, Assistant Attorney General

Is the judicial immunity of a county judge impacted when the judge serves in the capacity of child support referee? No, because child support referees are entitled to the same broad immunity granted to judges.

All judicial officers are immune from criminal liability for errors committed in the exercise of judgment or discretion provided it is done in good faith. McFarland v. State, 172 Neb. 251, 109 N.W.2d 397 (1961). However, civil immunity granted to judges differs from that of other judicial officers. Judges are immune from civil liability except in cases of a clear absence of jurisdiction which is known to the judge. Koepf v. County of York, 198 Neb. 67, 251 N.W.2d 866 (1977). The immunity is more limited for other judicial officers. Their motives must be proper and not malicious. Restatement (Second) of Torts §895D (1979) Comment C. Additionally, they are only protected to the extent the error is within the scope of the officers' official authority. Atwood v. Atwater, 43 Neb. 147, 61 N.W. 574 (1895).

Any person licensed to practice before the Nebraska Supreme Court may be a child support referee. A child support referee is not a judge per se. However, in LB 7 passed during the second special session of 1985 the Unicameral made it clear that the child support referee exercises "powers in the same manner as a county or district court judge." LB 7, §3, pg. 2. Additionally, Section 4 provides: "A child support referee shall have authority to use all legal and equitable powers available to a district court judge except that a child support referee shall not have authority to set bail and order detention in lieu of bail."

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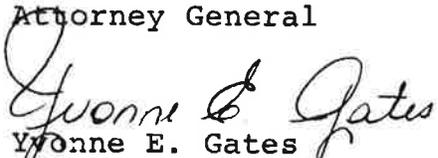
Mr. Joe C. Steele
March 27, 1986
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The underlying rationale of the doctrine of judicial immunity is that it is in the public interest to have judges who are free to exercise their independent judgment of the merits of a case without fear of civil or criminal liability. Dennis v. Sparks, 449 U.S. 24, 66 L.Ed.2d 185 (1980).

Although there is no case law on the topic it is our opinion that where a judicial officer is performing in the equivalent capacity of a judge that officer is entitled to the same immunity that a judge would be granted.

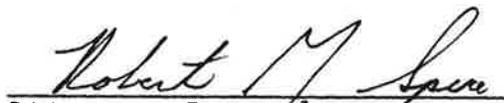
Very truly yours,

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