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Governmental Immunity Defenses as Applied to a Georgia Sheriff

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Research Guides

Governmental Immunity Defenses as Applied to a Georgia Sheriff

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Overview

This web research guide assists the governmental/municipal defendant wade through the slurry of immunity defenses available to government actors/entities for both federal and state law claims, told from the view of a Georgia sheriff. Eleventh Amendment, qualified, and sovereign immunities are discussed.

Eleventh Amendment immunity is provided to both sheriffs and sheriff's deputies, as they are but "alter egos" of the sheriff. The Eleventh Amendment to the Constitution not only extends immunity to states but to "state agents and state instrumentalities" as well. While the immunity does not extend to counties, it does extend to sheriffs and deputies because they are charged with carrying out and enforcing the laws of the state.

Qualified immunity protects sheriffs from federal law claims in their individual capacities so long as they were acting within their discretionary authority and did not violate clearly established law.

Sovereign immunity protects sheriffs from state law claims in their official capacities and can only be waived by a legislative act.

Official immunity protects sheriffs from state law claims in their individual capacities where the sheriffl has engaged in discretionary acts that are within the scope of his or her authority, and the official has not acted in a wilful or wanton manner; with actual malice; or with the actual intent to cause injury.

About Me

Taylor Hensel is in his last semester at Georgia State University College of Law. He also works as a paralegal (and will transition to attorney after graduation) at Buckley Brown, P.C., a small litigation firm with a focus on defending counties and county officials in suits of all varieties. Prior to law school, Taylor received his Bachelor of Arts in English in 2004 from the University of Georgia. He's worked for Timothy J. Buckley III, Esq., defending county defendants since 2005.

Scope

For the purposes of this research guide, assume that the sheriff of a Georgia county has been sued by a county jail inmate under 42 U.S.C. § 1983 for constitutional violations. Coupled with this claim are several state law claims. The Sheriff now has the responsibility of showing the Court that he is immune from suit.

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The materials appearing on this website are for informational purposes only and not for the purpose of providing legal advice. The information contained in this website is not intended to create, and the receipt of it does not constitute, an attorney-client relationship between Buckley Brown, P.C., and the user or browser. Users of this website should not act upon the information provided here without seeking the advice of an attorney. This research guide is a starting point for a law student or an attorney to research the the issue of governmental immunity in Georgia. It is highly recommended to Shepardize or KeyCite all cases and statutes before relying on them. If you need further assistance in researching this topic or have specific legal questions, please contact a reference librarian in the Georgia State University College of Law library or consult an attorney.

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Primary Resources

Constitutional Provisions

- Eleventh Amendment to the United States Constitution (Annotated)
  http://www.law.cornell.edu/anncon/html/amdt11_user.html
  Of particular use is the annotation to the amendment titled "Suits Against State Officials."
- Georgia Constitution, Art. 1, § 2, ¶ IX
  http://www.sos.ga.gov/elections/GAConstitution.pdf
  (p. 9) Provides for sovereign immunity for state officials.
- Georgia Constitution, Art. IX, § 2, ¶ I
  http://www.sos.ga.gov/elections/GAConstitution.pdf
  (p. 67) The sheriff's office is a separate constitutional office independent from the county and its governing body.

State Statutes

- O.C.G.A. § 33-24-51
  http://law.justia.com/codes/georgia/2010/title-33/chapter-24/article-1/33-24-51/
  The only state statute that waives a county's sovereign immunity to tort claims. The statute provides a waiver for suits for injuries arising out of the negligent use, ownership, operation or maintenance of an insured county motor vehicle.

United States Code

- 42 U.S.C. § 1983. Civil action for deprivation of rights
  http://www.law.cornell.edu/uscode/42/1983.shtml
  Statute under which citizen can bring civil action under Constitution for deprivation of rights. This statute is only a vehicle for suit under another law.

Case Law

Unless otherwise stated, all of the below referenced cases can be found on any number of fee-based legal research websites, including but not limited to Lexis Nexis, Westlaw, or Fastcase.

ELEVENTH AMENDMENT IMMUNITY

Manders v. Lee, 338 F.3d 1304 (11th Cir. 2003)

The Eleventh Amendment protects a State from being sued in federal court without the State's consent and that immunity extends to individuals acting as an "arm of the state," which includes agents and instrumentalities of the state. The Eleventh Circuit uses a four factor test to determine whether an entity is an "arm of the state": (1) how state law defines the entity; (2) what degree of control the State maintains over the entity; (3) where the entity derives its funds; and (4) who is

responsible for judgments against the entity.

Board of Commissioners of Randolph Co. v. Wilson, 260 Ga. 482, 396 S.E. 2d 903 (1990)

A sheriff is a state actor because he is a constitutional officer charged with enforcing the law of the State of Georgia. When acting in this capacity, a sheriff is a state officer, not a county employee.

Carr v. Cty of Florence, Ala., 916 F.2d 1521 (11th Cir. 1990)

Because deputies are but "alter egos" of the Sheriff, they are afforded the same protection in their official capacities.

SOVEREIGN IMMUNITY

Sherin v. Department of Human Resources, 229 Ga. App. 621, 625(4), 494 S.E.2d 518 (1997)

Sovereign immunity is not an affirmative defense, going to the merits of the case, but raises the issue of the trial court's subject matter jurisdiction to try the case, and waiver of sovereign immunity must be established by the party seeking to benefit from that waiver.

Standard v. Hobbs, 263 Ga. App. 873, 878, 589 S.E.2d 634, 638 (2003)

Counties waive sovereign immunity in suits regarding damage resulting from the use of a county-owned motor vehicle. In other words, immunity cannot protect a sheriff or his deputies from suits involving use of a patrol car (or any other county-owned vehicle). See also O.C.G.A. § 33-24-51.

Gilbert. v. Richardson, 452 S.E.2d 476 (1994)

Sovereign immunity can only be waived by a legislative act which specifically provides that sovereign immunity is waived and the extent of such waiver.

Banks v. Happoldt, 271 Ga. App. 146, 147, 608 S.E.2d 741 (2004)
A sheriff is also entitled to sovereign immunity as to any state law claims against him in his official capacity to the same extent the state would be covered by sovereign immunity.

OFFICIAL (QUALIFIED) IMMUNITY

Truelove v. Wilson, 159 Ga.App. 906, 907, 285 S.E.2d 556 (1981)
Official immunity protects individual public agents from personal liability for discretionary actions taken within the scope of their official authority, and done without wilfulness, malice or corruption.

Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982)
"Government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known."

Childs v. DeKalb County, Ga., 286 Fed.Appx. 687, 692 (11th Cir. 2008)

"An official asserting the affirmative defense of qualified immunity must initially establish that he was acting within his discretionary authority. If the official is acting within the scope of his discretionary authority...the burden shifts to the plaintiff to show that the official is not entitled to qualified immunity." This involves a two step process. First, the plaintiff must establish that the defendant's conduct violated a statutory or constitutional right. Next, the plaintiff must show that the right was "clearly established."

GJR Invs., Inc v. County of Escambia, 132 F.3d 1359, 1370 (11th Cir. 1998)

Because qualified immunity is a defense not only from liability but also from suit, it is important "for a court to ascertain the validity of a qualified immunity defense as early in the lawsuit as possible."

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Secondary Resources

Books

- The Eleventh Amendment and Sovereign Immunity by Jacobs, Clyde Edward
  Call Number: KF1322 .J3
  ISBN: 0837160588
  Publication Date: 1972
  http://gilfind.gsu.edu/vufind/Record/7615
- Liability in the Public Sector: Defending and Challenging Government Action by Greene, Clifford M.
  Call Number: KF1321 .G72
  Publication Date: 1998

http://gilfind.gsu.edu/vufind/Record/2061953/Description#tabnav

American Law Reports

This series has been cited by more courts than any other secondary resource, and can be found on Westlaw or LexisNexis.

Liability or indemnity insurance carried by governmental unit as affecting immunity from tort liability, Hursh, R.D., 68 A.L.R.2d 1437 (Originally published in 1959)

This report addresses to what extent an otherwise-existing governmental immunity from tort liability is affected by the procurement of indemnity or liability insurance by a governmental unit.

Liability for death or injury to prisoner, 61 A.L.R. 569 (Originally published in 1929)

Update of caselaw for all jurisdictions regarding liability (and immunity) of prisoner injury cases.

Law Review Articles

David L. Noll, ***Qualified Immunity in Limbo: Rights, Procedure, and the Social Costs of Damages Litigation Against Public Officials***, 83 N.Y.U. L. Rev. 911 (2008).

Discusses the policy considerations behind this immunity, including the cost to the taxpayer, the inhibition of the defendant official in performing his or her duty, and the potential dangers it poses to privileged information and the decision-making process.

R. Perry Sentell, Jr., ***"Official Immunity"in Local Government Law: A Quantifiable Confrontation***, 22 Ga. St. U. L. Rev. 597 (2006).

Focus on official immunity in Georgia, including an in-depth analysis of the immunity-based suits heard by the Georgia Supreme Court and the Georgia Court of Appeals from 1994 through 2004.

Blogs

- The Buckley Brown Blog
  http://buckleybrown.wordpress.com/
  Defense firm blog updated regularly with relevant Georgia decisions.
- Georgia Insurance Defense Lawyer Blog
  http://www.georgiainsurancedefenselawyer.com/
  Maintained by Levy & Pruitt

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Interest Groups and Associations

Associations

- Defense Research Institute
  http://www.dri.org
  "The Voice of the Defense Bar," DRI is an international organization of attorneys who defend corporations and individuals in civil suits.
- Georgia Defense Lawyers Association
  http://www.gdla.org
  Coalition of Georgia defense lawyers for socialization, education, and, perhaps most importantly, access to each other via email blasts for questions on expert witnesses, strategies, and other topics relevant to civil defense.
- Georgia Bar Association Local Government Law Section
  http://www.gabar.org/sections/section_web_pages/local_government_law/
  Section of Georgia bar for attorneys representing local governments to exchange ideas.

County Government Insurance Programs

- Association of County Commissioners of Georgia
  http://www.accg.org/websites/insurance/about.html/
  Providing insurance services to counties throughout Georgia from labor and employment to workers' compensation.

Professor R. Perry Sentell, Jr.

- Profile at University of Georgia School of Law
  http://www.law.uga.edu/profile/r-perry-sentell-jr
  Professor Sentell is the authority on local government law in Georgia. He has published nearly 30 books on the topic and currently sits as the Marion and W. Colquitt Carter Chair in Tort and Insurance Law Emeritus at the University of Georgia College of Law.

Attorneys Practicing in Governmental Official Defense

- Timothy J. Buckley III, Esq.
  http://www.buckleybrown.com/Profiles/Attorneys/TimothyJBuckleyIII/tabid/804/Default.aspx
  Attorney Buckley has represented county defendants for twenty years and regularly speaks on the subject for CLE seminars and insurance adjuster conferences nationwide.

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