

Risk Management

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Risk Management

13-01 LIABILITY PROTECTION FOR THE COURT

A. Introduction

Potential claims and liability for judges and court employees is an important consideration of the chief judge and court administrator. In anticipation of potential claims, an investigation should be conducted about obtaining attorney representation and indemnification or insurance coverage for liability protection of judges and court employees. If a claim arises, there are two important considerations: attorney representation and liability coverage by way of insurance or indemnification.

B. Legal Representation

1. Authority

Since October 1, 1984 the Michigan attorney general has been required to defend judges of all state courts in certain situations. This obligation first appeared in the General Government Appropriations Act for Fiscal Year 1984-85. (1984 PA 222, § 27) The language continues to appear in the General Government Appropriations Act for each fiscal year and provides:

The attorney general shall defend judges of all state courts whenever a claim is made or a civil action is commenced for injuries to persons or property caused by the judge through the performance of the judge's duties while acting within the scope of his or her authority as a judge.

There are situations in which legal representation of judges, courts, and court personnel may be sought but are outside the scope of the language in these public acts.

2. Who May Represent

Courts and judges may be provided legal representation by the attorney general. If court employees are codefendants in actions against courts or judges, they may receive representation from the attorney general as well, at the request of the state court administrator. Courts, judges, or court employees may also receive representation from prosecuting attorneys, an attorney employed by the court's funding unit, or by a judicial assistant. (OAG, 1979-1980, No. 5572, p 421, 423 [October 4, 1979], MCL 49.71-49.73, MCL 49.153, MCL 600.1481, MCL 691.1408)

3. Scope of Representation

The obligation of the attorney general to defend courts and judges of all state courts is administered through State Court Administrative Office Guidelines for Securing Attorney General Representation for Courts (dated December 2004). See the SCAO website at http://courts.michigan.gov/scao/resources/standards/ag_stds.pdf. A judge or court may request and will receive representation by the attorney general in civil actions requesting monetary damages based on actions by the judge in his or her judicial or administrative capacity. Exempted are civil actions brought by a local government agency, mandamus, superintending control actions, and disciplinary proceedings. The mechanics by which requests for representation are made are also set forth in these guidelines.

4. Procedure for Providing Representation

a. Determination of Insurance Coverage or Other Means for Addressing Representation

A determination should be made as to whether there is any insurance coverage for a judge or court employee. If a judge or court employee has obtained insurance, legal representation is generally part of the coverage. Selection of an attorney is governed by the insurance policy terms. A determination should also be made as to whether there is representation for judges and/or court employees in employee handbooks, collective bargaining agreements, resolutions, or other official action of local funding units.

b. Attorney General

In the event a court or judge is a defendant or respondent in a matter covered by the SCAO Guidelines for Securing Attorney General Representation, a letter should be sent **immediately** after service of the summons and complaint to the state court administrator asking for attorney general representation. The original copy of the summons and complaint should be included with the request, along with the date of service and how service was made.

C. Insurance Coverage or Indemnification

1. Entitlement to Indemnification

Courts and judges receiving representation pursuant to the SCAO Guidelines for Securing Attorney General Representation for Courts are **not** entitled to indemnification from the state.

Payment of any settlement or judgment is **not** the responsibility of the State of Michigan or any of its agencies or boards. Payment **is** the responsibility of the court's local funding unit. (MCL 600.591[12], MCL 600.837[11] and MCL 600.8271[17], *Cameron v Monroe County Probate Court*, 457 Mich 423 [1998])

2. Indemnification Through Other Means

A determination should also be made as to whether there is indemnification for judges and/or court employees in employer/employee handbooks, collective bargaining agreements, resolutions, or other official action of local funding units.

3. Representation/Indemnification Authorized; Not Required

State law authorizes, but does not require, a government agency to pay for, engage, or furnish an attorney for an officer or employee sued for injuries to persons or property caused by negligence while acting in the course of employment and scope of authority. The government agency may, but is not required to, indemnify its officers or employees. (MCL 691.1408)

4. Liability Insurance

If a court or judge has obtained judicial liability insurance, then the damages, interest, costs, and taxable fees may be payable to the extent of the coverage.

13-02 PERFORMANCE BOND REQUIREMENTS

A. Bonds Required for Court Personnel

COURT	POSITION TITLE	BLANKET OR INDIVIDUAL	AMOUNT	FOR BENEFIT OF OR GIVEN TO	APPROVED BY	FILED WITH	CITATION
District	Magistrate	Individual (See Note 5, following)	\$50,000 Amount set by State Court Administrator	District Court and State of Michigan	Chief Judge	County Treasurer and Chief Judge	MCL 600.8507, MCR 8.204
District	Clerk or Deputy Clerk	Blanket or Individual	\$50,000 Amount set by State Court Administrator	District Court and State of Michigan	Chief Judge	Chief Judge	MCR 8.204
District	Process Server - MCR 2.103(A) Appointed by court	Blanket or Individual	\$10,000 Amount set by State Court Administrator	District Court and State of Michigan	Chief Judge	Chief Judge	MCR 8.204
District	Process Server - MCR 3.106 (B)(1)(a) Appointed by court	Independent Contractor: Individual	\$50,000 Amount set by State Court Administrator	District Court and State of Michigan	Chief Judge	Chief Judge	MCR 8.204
		Court Employee: Blanket or Individual					
Probate	Probate Register	Individual	\$1,000	Chief Judge	Chief Judge	County Clerk	MCL 600.833
Circuit	Circuit Court Clerk (County Clerk)	Blanket or Individual determined by Board of Commissioner	\$2,000	People of State of Michigan	Chief Judge	County Treasurer	MCL 50.61
Circuit	Friend of the Court	See item 8 of the notes	See item 8 of the notes	See item 8 of the notes	See item 8 of the notes	See item 8 of the notes	See item 8 of the notes

B. Notes

- Where the court rules and statutes cited are silent or vague, specifications indicated above represent the position of the State Court Administrative Office.

2. The amounts stated are the minimum amounts. A higher amount may be appropriate depending upon individual court circumstances.
3. All positions require faithful performance and honesty bond coverage, which should be effective before assuming and/or performing the duties of office.
4. "Boilerplate" language in some blanket bonds appears to exclude performance and/or honesty bond coverage for the very people for whom it is required. Therefore, it is strongly recommended that each court obtain a copy of all documents, including riders relating to its bond coverage, and review them carefully to ensure satisfactory compliance.
5. An individual bond is the preferred bond type. If a blanket bond is used, any pre-existing language that excludes employees required to give statutory bonds must be modified to specifically allow the required coverage. See Sections 4-09 and 6-05.
6. MCL 600.8507 requires that the bond for magistrates shall apply to temporary service in another county as described in the statute. See Section 4-09.
7. MCL 600.572(b) requires the court clerk to file a bond with the county treasurer ensuring that the clerk shall in all respects comply with the requirements of law and the court rules in the handling and management of funds, and to faithfully account for the same. See Section 4-02.
8. The friend of the court surety or performance bond requirements are covered in the Code of Federal Regulations. The Michigan Department of Human Services, Bureau of Individual and Family Services, must use written procedures for compliance with 45 CFR 302.19. These procedures contain regulations requiring that every person who has access to child support collections be covered by a bond against loss resulting from employee dishonesty. This provision applies to state and local IV-D agency employees. Individual counties can have self-bonding/insuring provisions. See also Section 4-04. (45 CFR 302.19)

13-03 COMMUNITY SERVICE PROGRAMS

A. Authority

Where probation is an authorized sentence, in most, but not all felonies and misdemeanors, the court may require the probationer to engage in community service as a condition of probation. (MCL 771.3[2][e])

As part of the sentence for a violation of operating a vehicle under the influence of intoxicating liquor (OUIL), unlawful blood alcohol level (UBAL), and impaired driving, a court may order a person to perform community service as designated by the court without compensation for a period specified by statute. (MCL 257.625[6],[10])

In juvenile cases, when probation is the disposition of the court, the court may, as a condition of probation, require the child to engage in community service or, with the victim's consent, perform services for the victim. (MCL 712A.18[8][a])

B. Liability

The attorney general has issued opinions that persons placed in community service programs are not employees of the governmental unit under the Michigan Workers Compensation Disability Act. It appears that participants injured in community service programs would not be entitled to workers compensation benefits. (OAG, 1983-1984, No. 6158, P. 129 [June 24, 1983], OAG, 1971-1976, No. 5061, P. 522 [June 28, 1976])

Another consideration is governmental liability for injuries or damages to persons performing community service, third parties, or property. There may be governmental immunity if the community service program is a governmental function; that is, an activity which is expressly or impliedly mandated or authorized by constitution, statute, local charter or ordinance, or other law. (MCL 691.1407, *Ross v Consumers Power Co.*, 420 Mich 567; 363 NW2d 641 [1984])

C. Insurance

Because governmental immunity may not provide complete coverage, the possibility of accident and health insurance for the participant and liability insurance for the governmental agency should be explored. There are insurance policies that provide coverage for community service programs.

There is also the possibility that insurance premiums can be recovered from probationers. A court may impose as a cost expenses specifically incurred for providing supervision to the probationer. (MCL 771.3[5])

In OWI, UBAL, and impaired driving cases, the statute authorizes reimbursement for the cost of supervision for defendants sentenced to community service. Arguably, the cost of providing insurance for community service programs is such an expense. (MCL 257.625[7], [9], [11], [12], [14])

D. Safety Considerations

Any community service program should take into consideration the safety of the participant and the public. The program should be tailored to minimize risk. This can be done by incorporating the following suggestions into any community service program.

1. The candidates for the program should have a physical to determine the ability to perform anticipated work.
2. Participants should be supplied with safety equipment including, but not necessarily limited to, gloves, goggles, safety helmets, safety shoes, or whatever else may be deemed appropriate.
3. Injuries to participants should receive immediate attention by a medical doctor and the doctor should make a written report.
4. Incidents resulting in injury or damage to participants, third parties, or property should be the subject of a narrative report.
5. Participants should not be allowed to operate power equipment or vehicles.
6. Participants should not be involved in programs that have contact with the general public.
7. Special care should be used to develop programs that do not require the participants to work on or around dangerous areas, such as roads, utilities, or water.