

ORANGE COUNTY SOCIAL SERVICES AGENCY

ADMINISTRATIVE POLICIES AND PROCEDURES MANUAL

Subject: Employee Liability

Number: D 14

Approved: Signature on file

Date: 9-21-04

POLICY

1. Defense of Employees

Government Code Section 995 obligates the County to provide for the defense of current (or former) employees of any civil action or proceeding brought against the employee arising out of an act or omission occurring within the course and scope of his/her employment with the agency.

Government Code section 820.2 provides that a public employee, such as a social worker, is not liable for an injury resulting from an act or omission where the act or omission was the result of the exercise of discretion vested in the employee. Section 821.6 provides that a public employee, such as a social worker, is not liable for injury caused by the institution or prosecution of any judicial or administrative proceeding within the scope of his/her employment.

Government Code section 820.21, however, states that social workers are not immune if, with malice, the social worker commits perjury, fabricates evidence, fails to disclose known exculpatory evidence or obtains testimony by duress, fraud or undue influence.

Government Code section 820.21 states:

“820.21. (a) Notwithstanding any other provision of the law, the civil immunity of juvenile court social workers, child protection workers, and other public employees authorized to initiate or conduct investigations or proceedings pursuant to Chapter 2 (commencing with Section 200) of Part 1 of Division 2 of the Welfare and Institutions Code shall not extend to any of the following, if committed with malice:

(1) Perjury.

(2) Fabrication of evidence.

(3) Failure to disclose known exculpatory evidence.

(4) Obtaining testimony by duress, as defined in Section 1569 of the Civil Code, fraud, as defined in either Section 1572 or Section 1573 of the Civil Code, or undue influence, as defined in Section 1575 of the Civil Code.

(b) As used in this section, “malice” means conduct that is intended by the person described in subdivision (a) to cause injury to the plaintiff or despicable conduct that is carried on by the person described in subdivision (a) with a willful and conscious disregard of the rights or safety of others.”

Civil liability claims and lawsuits against the County and its employees are defended out of the office of CEO/Risk Management. There are several law firms under contractual agreement with the County used by Risk Management. These law firms also provide for the defense of an individual employee in a case where the employee is named as a defendant and where the employee makes a timely request for the County to provide a defense. If the employee chooses to use his/her own private attorney, the employee must bear the expense of attorney’s fees.

However, employees and individuals may be personally responsible for their own defense in situations stemming from inappropriate actions taken outside their scope of their authorized duties, such as actions that would constitute discrimination, sexual harassment, hostile work environment, or other unauthorized actions.

2. Insurance Coverage and Indemnification

All County employees are protected against claims of malpractice alleged to be committed in the course and scope of their work as County employees by the County’s self-insurance program.

The County pays general damages awarded in the course of the action.

Punitive or exemplary damages may be awarded when the court or a jury finds the employee acted or failed to act because of actual fraud, corruption or malice on the part of the employee. There is no insurance available from any carrier that would cover such a finding. If the court awards punitive or exemplary damages, the employee may be responsible for the payments.

Pursuant to Government Code section 825, although a public entity is never required to indemnify an employee for an award of punitive or exemplary damages, a public entity is authorized to indemnify an employee for such damages if the governing body of the public entity finds that:

- a. The employee was acting within the scope of employment;
- b. The employee acted in good faith, without actual malice and in the apparent best interests of the public entity; and
- c. Payment of the judgment would be in the best interests of the public entity.

