

Over the years many officers have asked me about personal exposure to civil liability in cases that result from their duties as a police officer. Some officers were of the opinion that since they are always mentioned in the lawsuit along with the agency, they were on their own to obtain legal counsel to defend such suit. Other officers were of the opinion that representation would come from other sources such as the FOP.

Having been personally involved in some lawsuits early in my career as a police officer, I was exposed to the system without the benefit of legal expertise and was concerned that I would have to spend thousands of dollars defending what was later determined to be a frivolous lawsuit.

Going through the process of a lawsuit was not only stressful but very disconcerting since I had only been on the job for about a year. I only wanted to do my job and was angry that someone would make false allegations at the expense of my future as a police officer. But unless you have been personally involved in such a lawsuit, it is hard to understand all the concerns and depressing thoughts one has about being sued.

But as we all know, in the past 20 years society has increasingly become litigious and law enforcement has become an easy target for obvious reasons: agencies want to avoid the bad press; it's least costly to settle out of court than to litigate the case and; they have deep pockets.

Florida State Statute 768.28 addresses suits against the state or its agents and/or its employees. More specifically, subsection 9(a) of the statute states:

“No officer, employee, or agent of the state or of any of its subdivisions shall be held personally liable in tort or named as a party defendant in any action for any injury or damage suffered as a result of any act, event, or omission of action in the scope of her or his employment or function, unless such officer, employee, or agent acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.”

What this simply means is that an agency must provide legal counsel to you if the civil suit stemmed from your actions committed within the scope of your employment. Without going into a long legal analysis of what the courts consider outside the scope of employment, the basic rule of thumb is that if you are following departmental rules, state law or other recognized procedures and you do so negligently and get sued, the agency will provide legal representation (should you be personally sued in the lawsuit) without any cost to you. Some examples of actions that are covered by this statute would be: a crash resulting from pursuing a vehicle within the boundaries of general orders; being at fault in a car crash while on duty and; arresting a suspect based upon bad warrant information.

However, on the other hand, some of the situations where you will be personally held liable would be: committing an unlawful act while on duty; totally disregarding general orders which result in injury to a citizen and; slander or defamation

As you can see, for an officer to be held personally liable for an act committed within the scope of his/her duties, it must be done with willful disregard for a person's rights. But if the act was committed within the scope of one's employment, the agency must provide legal counsel at no cost to you.

Remember this is just a cursory review of a very complex issue. However, should you have any questions regarding exposure to civil liability, please feel free to contact me.