

## **Prosecutors, Immunity and Conflicts of Interests** Absolute Immunity

The prosecutor has immunity from civil liability for actions undertaken during their official duties. The prosecutor enjoys both absolute and qualified immunity. The prosecutor has absolute immunity in initiating a prosecution and in presenting the State's case, so long as the prosecutor's actions are done in conformity with the judicial process. Some examples of instances where the prosecutor would have absolute immunity include:

- The decision of whether to prosecute.
- The decision of which charges to prosecute against a defendant.
- In connection with her performance during litigation.
- In connection with presenting false testimony at trial.
- Participating in a probable cause hearing.
- Erroneously signing an indictment.
- Conducting Grand Jury proceedings.
- In connection with suppressing Brady materials.

### **Qualified Immunity**

Qualified immunity is defined as an affirmative defense that shields the prosecutor from civil damages if their conduct does not violate a statutory or constitutional right. This type of immunity is often referred to as good faith immunity. Some instances where the prosecutor would have qualified immunity include:

- Making statements to the press.
- Giving advice to police officers.
- Assisting in a search and seizure.
- Assisting in an arrest of a defendant.
- Assisting in the removal of a child from a parents' home.

In order for one to defeat qualified immunity enjoyed by the prosecutor, it must be shown that the prosecutor's conduct clearly violated established statutory or constitutional rights of which a reasonable person would have known. This standard is very difficult to overcome.

Absolute or qualified immunity is not available for the prosecutor if she engages in conduct that is manifestly or palpably beyond her authority. Moreover, the prosecutor does not enjoy immunity for conduct that is performed in the absence of proper jurisdiction.

### **Conflicts of Interest**

Although the prosecutor does not often run into the issue involving conflicts of interest, the prosecutor must avoid any conflict of interest at all reasonable costs. There is a requirement that the prosecutor must be disinterested. This requirement is necessary to protect both the fact and the appearance of justice for the defendant during a criminal action or trial. A conflict may exist where the prosecutor has some sort of bias or "an axe to grind" against the defendant.

The defendant may be able to challenge his conviction on the grounds that the prosecutor had a conflict of interest or had some sort of bias against him. The defendant must show that the prosecutor had an actual and harmful conflict of interest that required her disqualification. Furthermore, the defendant must show that prejudice existed in order to justify a new trial.