

Question

The state court judge's authority was strictly limited by statute or rule, and the judge acted outside those limits (e.g., presiding over a matter without subject matter jurisdiction or without required party consent). Judicial immunity is not lost when a judge acts in excess of jurisdiction, but is lost when a judge acts in the complete absence of all jurisdiction. (*Mireles v. Waco*, 502 U.S. 9 (1991); *Ballard v. Wall*, 413 F.3d 510 (5th Cir. 2005)). If the judge's actions were not merely erroneous or in excess of authority, but were taken when the judge had no jurisdiction whatsoever (e.g., no subject matter jurisdiction, or acting after recusal or disqualification), then immunity does not apply. Compelling a fraudulent settlement in a matter over which the judge had no jurisdiction is an act in the complete absence of jurisdiction, not merely in excess of authority, and thus is not protected by judicial immunity.

Answer (Fifth Circuit)

Short response

Judicial immunity is not lost when a judge merely acts in excess of statutory or procedural authority, but it is lost when a judge acts in the complete absence of all jurisdiction, such as presiding over a matter without subject matter jurisdiction or after disqualification. Compelling a fraudulent settlement in a case over which the judge has no jurisdiction constitutes an act in the complete absence of jurisdiction and is therefore not protected by judicial immunity.

Summary

The doctrine of judicial immunity generally shields judges from liability for actions taken in their judicial capacity, even if those actions are erroneous, malicious, or exceed their authority. However, this immunity does not apply when a judge acts in the complete absence of all jurisdiction, such as when a judge presides over a matter without subject matter jurisdiction or after being statutorily disqualified or recused.

The distinction between acting in excess of jurisdiction and acting in the complete absence of jurisdiction is critical. If a judge has some subject matter jurisdiction, even if the judge exceeds statutory limits or commits grave procedural errors, immunity remains. But if the judge has no jurisdiction whatsoever—such as when the court lacks subject matter jurisdiction or the judge is disqualified by statute—then judicial immunity does not apply, and the judge may be subject to liability for actions taken, including compelling a fraudulent settlement.

Background and Relevant Law

Legislative and Regulatory Framework

The concept of subject matter jurisdiction is foundational in Texas law and more broadly in American jurisprudence. Subject matter jurisdiction refers to a court's power to hear a particular type of case. Without it, a court cannot lawfully decide a case, and its orders are void. Subject matter jurisdiction cannot be conferred by agreement, cannot be waived, and its absence can be raised at any time, even by the court itself ([Texas Courts And Subject Matter Jurisdiction](#) (2022-04-22)).

Statutory rules also govern judicial disqualification and recusal. For example, Texas law requires a judge to disqualify from any proceeding in which the judge has served as a lawyer in the matter, or where a party is related to the judge within a certain degree of affinity or consanguinity (Pretrial motions). If a judge presides over a case despite being statutorily disqualified, the judge acts without authority.

Case Law

The U.S. Supreme Court and the Fifth Circuit have repeatedly addressed the scope and limits of judicial immunity. The leading case, *Mireles v. Waco*, 502 U.S. 9 (1991), establishes that judicial immunity is overcome only in two circumstances: (1) when a judge acts outside their judicial capacity, and (2) when a judge acts in the complete absence of all jurisdiction. This standard is consistently applied in the Fifth Circuit ([Ballard v. Wall, 413 F.3d 510 \(5th Cir. 2005\)](#); [Davis v. Tarrant County, Tex., 565 F.3d 214 \(5th Cir. 2009\)](#); [Walker v. McFarland](#) (E.D. Tex. 2023-12-15)).

The Fifth Circuit and district courts within its jurisdiction have further clarified that judicial immunity is not lost for actions that are merely in excess of authority or even for actions taken with malice or error (*Stump v. Sparkman*, 435 U.S. 349 (1978), as cited in [Whiticar v. Ervin-Knott](#) (E.D. La. 2021-10-26); *Kemp v. Perkins*, No. 08-60883 (5th Cir. 2009-05-07)). The critical distinction is whether the judge had any subject matter jurisdiction at all. If the judge had some jurisdiction, immunity applies; if not, immunity is lost ([Ballard v. Wall, 413 F.3d 510 \(5th Cir. 2005\)](#); [Malina v. Gonzales, 994 F.2d 1121 \(5th Cir. 1993\)](#)).

The Fifth Circuit has also recognized that jurisdiction is to be construed broadly for purposes of judicial immunity, to protect the independence of the judiciary ([Holloway v. Walker, 765 F.2d 517 \(5th Cir. 1985\)](#)). However, where a judge clearly lacks all subject matter jurisdiction—such as a probate judge trying a criminal case—immunity does not apply ([Harper v. Merckle, 638 F.2d 848 \(5th Cir. 1981\)](#)).

Analysis

The Distinction Between Excess of Jurisdiction and Complete Absence of Jurisdiction

The central issue is the difference between a judge acting in excess of jurisdiction and acting in the complete absence of all jurisdiction. The authorities make clear that judicial immunity is not lost simply because a judge exceeds statutory authority, commits procedural errors, or even acts with malice. For example, if a judge has subject matter jurisdiction over a type of case but issues an order that is not authorized by statute, the judge is still protected by immunity (*Kemp v. Perkins*, No. 08-60883 (5th Cir. 2009-05-07); [Walker v. McFarland](#) (E.D. Tex. 2023-12-15)).

However, if a judge presides over a matter for which the court has no subject matter jurisdiction—such as a criminal court judge hearing a probate matter, or a judge acting after being statutorily disqualified or recused—then the judge acts in the complete absence of jurisdiction. In such cases, judicial immunity does not apply ([Ballard v. Wall](#), *413 F.3d 510* (5th Cir. 2005); [Malina v. Gonzales](#), *994 F.2d 1121* (5th Cir. 1993); [Harper v. Merckle](#), *638 F.2d 848* (5th Cir. 1981)).

The Fifth Circuit has repeatedly emphasized that the existence of some subject matter jurisdiction is sufficient for immunity, even if the judge's actions are in excess of authority ([Adams v. McIlhany](#), *764 F.2d 294* (5th Cir. 1985)). But where there is no jurisdiction at all, immunity is lost.

Application to Compelling a Fraudulent Settlement Without Jurisdiction

If a judge compels a fraudulent settlement in a matter over which the court has no subject matter jurisdiction, or after the judge has been disqualified or recused, this is not merely an act in excess of authority. It is an act in the complete absence of jurisdiction. The authorities are clear that in such circumstances, judicial immunity does not apply ([Ballard v. Wall](#), *413 F.3d 510* (5th Cir. 2005); [Leone v. Magistrate Judges of Travis Cnty. Circuit Court](#) (W.D. Tex. 2018-08-08)).

For example, Texas law provides that subject matter jurisdiction cannot be conferred by agreement and cannot be waived ([Texas Courts And Subject Matter Jurisdiction](#) (2022-04-22)). If a judge presides over a case without subject matter jurisdiction, any orders or actions taken—including compelling a settlement—are void and outside the protection of judicial immunity.

Similarly, if a judge is statutorily disqualified (for example, due to a familial relationship with a party or prior involvement as counsel) and nevertheless presides over the case, the judge acts without jurisdiction (Pretrial motions). Actions taken in such circumstances, including compelling a settlement, are not protected by judicial immunity.

Judicial Immunity and Malicious or Fraudulent Acts

The authorities also make clear that allegations of bad faith, malice, or even fraud do not by themselves defeat judicial immunity if the judge had jurisdiction ([Walker v. McFarland](#) (E.D. Tex. 2023-12-15); [Whiticar v. Ervin-Knott](#) (E.D. La. 2021-10-26)). The critical question is whether the judge had any jurisdiction at all. If the judge lacked jurisdiction, then even judicial acts—such as compelling a settlement—are not immune.

The Breadth of Jurisdiction for Immunity Purposes

The Fifth Circuit has cautioned that jurisdiction is to be construed broadly in the context of judicial immunity, to protect judicial independence ([Holloway v. Walker](#), [765 F.2d 517 \(5th Cir. 1985\)](#)). Thus, even serious procedural errors or actions that exceed statutory authority do not strip a judge of immunity if the judge had some subject matter jurisdiction. Only when the judge clearly lacks all jurisdiction does immunity fail.

For example, in [Kemp v. Perkins](#), No. 08-60883 (5th Cir. 2009-05-07), the court found that a judge who acted in excess of statutory authority still retained immunity because the court had some subject matter jurisdiction. By contrast, in [Malina v. Gonzales](#), [994 F.2d 1121 \(5th Cir. 1993\)](#), the court found that a judge who cited a party for contempt in a matter over which the court had no jurisdiction acted in the complete absence of jurisdiction and was not immune.

It is important to note that [Malina v. Gonzales](#), [994 F.2d 1121 \(5th Cir. 1993\)](#) was subject to rehearing ([Malina v. Gonzales](#), 1 F.3d 304 (5th Cir. 1993)). However, the core principle—that judicial immunity is lost when a judge acts in the complete absence of jurisdiction—remains consistent with the broader body of Fifth Circuit and Supreme Court precedent.

Disqualification and Recusal

Statutory disqualification or recusal is another context in which a judge may lack jurisdiction. If a judge is required by statute to disqualify from a case and fails to do so, any actions taken thereafter are in the complete absence of jurisdiction (Pretrial motions). This is distinct from mere procedural error or exceeding authority; it is a jurisdictional defect that strips the judge of immunity.

Exceptions and Caveats

While the authorities are clear that judicial immunity is lost in the complete absence of jurisdiction, courts construe jurisdiction broadly to avoid undermining judicial independence. Thus, the threshold for finding a complete absence of jurisdiction is high. If there is any arguable basis for subject matter jurisdiction, immunity will likely apply, even if the judge's actions are erroneous or in excess of authority ([Holloway v. Walker](#), [765 F.2d 517 \(5th Cir. 1985\)](#); [Adams v. McIlhany](#), [764 F.2d 294 \(5th Cir. 1985\)](#)).

Additionally, the act in question must be judicial in nature. Nonjudicial acts are not protected by immunity regardless of jurisdiction (Mireles v. Waco, 502 U.S. 9 (1991); [Andrews v. Murphy](#) (W.D. Tex. 2023-11-15)). However, compelling a settlement in a pending case is typically a judicial act.

Conclusion

In summary, judicial immunity protects judges from liability for actions taken in their judicial capacity, even if those actions are in excess of authority, erroneous, or malicious. However, this immunity does not extend to actions taken in the complete absence of all jurisdiction, such as presiding over a matter without subject matter jurisdiction or after statutory disqualification or recusal. Compelling a fraudulent settlement in a case over which the judge has no jurisdiction is an act in the complete absence of jurisdiction and is not protected by judicial immunity. The distinction between excess of authority and absence of jurisdiction is critical, and courts will construe jurisdiction broadly to preserve judicial independence, but where jurisdiction is wholly lacking, immunity does not apply.

Legal Authorities

[Kemp v. Perkins, No. 08-60883 \(5th. Cir. 5/7/2009\), No. 08-60883. \(5th Cir. May 07, 2009\)](#)

U.S. Court of Appeals — Fifth Circuit

Extract

Absolute judicial immunity extends to all judicial acts which are not performed in the clear absence of all jurisdiction." ... "Judicial immunity does not extend to acts committed 'in the clear absence of all jurisdiction[.]'" ... "We agree with the district court that Osborne's appointment of Littleton occurred in excess of his statutory authority, but that Osborne did not lack jurisdiction altogether." ... "The Supreme Court has explained, '[a] judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority; rather, he will be subject to liability only when he has acted in the `clear absence of all jurisdiction.'

Summary

Judicial immunity is maintained unless a judge acts in the "clear absence of all jurisdiction." The case discusses a situation where a judge acted in excess of statutory authority but still retained some jurisdiction, thus maintaining immunity. This supports the proposition that judicial immunity is lost only when a judge acts without any jurisdiction whatsoever.

[Ballard v. Wall, 413 F.3d 510 \(5th Cir. 2005\)](#)

U.S. Court of Appeals — Fifth Circuit

Extract

The question now becomes whether Judge Lambert's conduct was in complete absence of all jurisdiction. Mireles, 502 U.S. at 12, 112 S.Ct. 286. Although Judge Lambert's actions may have been 'judicial in nature,' she is not entitled to immunity for those actions if her actions were 'taken in the complete absence of all jurisdiction.' See id. 'Where a court has some subject matter jurisdiction, there is sufficient jurisdiction for immunity purposes.' Malina, 994 F.2d at 1125 (citation omitted). If Judge Lambert 'merely acted in excess of [her] authority,' she is still protected by judicial immunity. Id. (citation omitted).

Summary

Conditions under which judicial immunity can be lost, specifically when a judge acts in the complete absence of all jurisdiction. It distinguishes between actions taken in excess of authority, which are still protected by judicial immunity, and actions taken without any jurisdiction, which are not protected. This directly supports the proposition that judicial immunity is lost when a judge acts without any jurisdiction.

[Malina v. Gonzales, 994 F.2d 1121 \(5th Cir. 1993\)](#)

U.S. Court of Appeals — Fifth Circuit

Extract

Absolute judicial immunity extends to all judicial acts that are not performed in the clear absence of all jurisdiction. ... Thus, a judge has no immunity (1) for actions taken outside of his judicial capacity, or (2) for actions that are judicial in nature, but occur in the complete absence of all jurisdiction. ... The second prong of the Mireles test states that a judge will lose his immunity if his judicial act occurred in the complete absence of all jurisdiction. ... Even 'grave procedural errors do not deprive a judge of all jurisdiction.' ... Therefore, at the time Judge Gonzales cited Malina for contempt, he was acting in 'clear absence of all jurisdiction.'

Summary

The passage from "Malina v. Gonzales" discusses the conditions under which judicial immunity is lost, specifically when a judge acts in the complete absence of all jurisdiction. It distinguishes between actions taken in excess of authority, which do not strip a judge of immunity, and actions taken without any jurisdiction, which do. The case illustrates that even if a judge commits procedural errors, these do not necessarily remove jurisdiction unless the judge acts without any jurisdiction at all. This directly supports the proposition that judicial immunity is lost when a judge acts without jurisdiction.

[Boswell v. Tex. Christian Univ., Civil Action No. 4:14-cv-0330-O \(N.D. Tex. Sep 16, 2014\)](#)

U.S. District Court — Northern District of Texas

Extract

A plaintiff may overcome the bar of absolute judicial immunity in two limited circumstances. First, a judge is not immune for actions that are not 'judicial' in nature. Id. Second, a judge is not immune from suit for actions that although judicial in nature, are taken in the complete absence of all jurisdiction. Id. at 12; see also *Malina v. Gonzalez*, 994 F.2d 1121, 1124 (5th Cir. 1993). Acts by a judge are judicial in nature when they are 'normally performed by a judge' and the affected party 'dealt with the judge in his judicial capacity.' *Mireles*, 502 U.S. at 12 (quoting *Sparkman*, 453 U.S. at 362). Where a judge has 'some subject matter jurisdiction,' sufficient jurisdiction exists for immunity purposes.

Summary

Circumstances under which judicial immunity can be overcome, specifically when a judge acts in the complete absence of all jurisdiction. This directly supports the proposition that judicial immunity is lost when a judge acts without any jurisdiction, as opposed to merely acting in excess of jurisdiction. The passage references relevant case law, including *Mireles v. Waco*, which is central to the proposition.

[Nat'l Ass'n for the Advancement of Colored People v. Reeves, Civil Action 3:23-CV-272-HTW-LGI \(S.D. Miss. Jun 01, 2023\)](#)

U.S. District Court — Southern District of Mississippi

Extract

The *Mireles* holding states that '[t]here are only two circumstances under which judicial immunity may be overcome. First, a judge is not immune from liability for nonjudicial action, i.e., actions not taken in the judge's judicial capacity. Second, a judge is not immune for actions, although judicial in nature, taken in the complete absence of all jurisdiction'. Id. at 11.

Summary

The passage directly addresses the conditions under which judicial immunity can be overcome. It specifies that judicial immunity does not apply when a judge acts in the complete absence of all jurisdiction, which aligns with the proposition that a judge's actions taken without jurisdiction are not protected by judicial immunity.

[Harper v. Merckle, 638 F.2d 848 \(5th Cir. 1981\)](#)

U.S. Court of Appeals — Fifth Circuit

Extract

The Court extended the protection of judicial immunity to all 'judicial acts' unless those acts fall clearly outside the judge's subject matter jurisdiction. Stump, *supra*, 435 U.S. at 359-64, 98 S.Ct. at 1106-08... We find, accordingly, that Judge Merckle should not be accorded absolute judicial immunity because his acts were not 'judicial acts.' As such, we need not reach the question of whether he acted in complete absence of jurisdiction... In fact, the Court in Stump drew on Bradley's distinction between acts 'in excess of jurisdiction' (criminal court judge convicts plaintiff for a nonexistent crime, cf. *Turner v. Raynes*, 611 F.2d 92, 93-97 (5th Cir. 1980)) and acts 'in clear absence of all jurisdiction' (probate judge tries a criminal case), see *Bradley v. Fisher*, *supra*, 80 U.S. (13 Wall.) at 352. Immunity is lost to the judge only in the latter class of jurisdictionally defective cases.

Summary

Conditions under which judicial immunity applies and when it is lost. It highlights that judicial immunity is maintained for acts in excess of jurisdiction but is lost when a judge acts in the complete absence of jurisdiction. The distinction between acts "in excess of jurisdiction" and acts "in clear absence of all jurisdiction" is crucial, as the latter results in the loss of immunity. This directly supports the proposition that a judge's actions taken without any jurisdiction are not protected by judicial immunity.

[Calderon v. Bandera Cnty., CIVIL NO. SA-14-CA-881-XR \(PMA\) \(W.D. Tex. Dec 01, 2014\)](#)

U.S. District Court — Western District of Texas

Extract

The doctrine of absolute judicial immunity protects judges from liability for all actions taken in their judicial capacities, so long as they do not act in a clear absence of all jurisdiction. *Mireles v. Waco*, 502 U.S. 9, 11-12 (1991). ... Absolute judicial immunity is overcome in only two rather narrow sets of circumstances: first, a judge is not immune from liability for non-judicial actions, i.e., actions not taken in the judge's judicial capacity, and second, a judge is not immune for actions, though judicial in nature, taken in complete absence of all jurisdiction. *Mireles v. Waco*, 502 U.S. at 11-12; *Davis v. Tarrant County, Texas*, 565 F.3d at 221; *Ballard v. Wall*, 413 F.3d at 515.

Summary

The doctrine of absolute judicial immunity protects judges from liability for actions taken in their judicial capacities unless those actions are taken in a clear absence of all jurisdiction. This aligns with the proposition that judicial immunity is lost when a judge acts without any jurisdiction whatsoever, as opposed to merely acting in excess of jurisdiction.

[Turner v. Raynes, 611 F.2d 92 \(5th Cir. 1980\)](#)

U.S. Court of Appeals — Fifth Circuit

Extract

The summary judgment in his favor entered below does not rest on the basis of his undoubted defense of qualified immunity for good-faith actions but on the higher peg of the absolute immunity from damages enjoyed by judges for judicial acts, except those taken in the 'clear absence of all jurisdiction.' See *Stump v. Sparkman*, 435 U.S. 349, 357, 98 S.Ct. 1099, 55 L.Ed.2d 331 (1978); *Crowe v. Lucas*, 595 F.2d 985 (5th Cir. 1979).

Summary

Concept of judicial immunity, specifically noting that judges enjoy absolute immunity from damages for judicial acts unless those acts are taken in the "clear absence of all jurisdiction." This aligns with the proposition that judicial immunity is lost when a judge acts without any jurisdiction whatsoever. The reference to *Stump v. Sparkman* and *Crowe v. Lucas* further supports this understanding, as these cases are foundational in defining the limits of judicial immunity.

[Adams v. McIlhany, 764 F.2d 294 \(5th Cir. 1985\)](#)

U.S. Court of Appeals — Fifth Circuit

Extract

Absolute judicial immunity extends to all judicial acts which are not performed in the clear absence of all jurisdiction. ... McIlhany also had sufficient 'jurisdiction,' as that term is used in judicial immunity analyses, for his immunity to attach. Where a court has some subject-matter jurisdiction, there is sufficient jurisdiction for immunity purposes. ... For the purposes of defining 'jurisdiction' in this section 1983 immunity case, it is sufficient that McIlhany's court was a court of general jurisdiction empowered to cite for contempt, and that to deny immunity in the present case might create an ambiguity in the law which would pose more than a frivolous threat to disinterested judicial decision-making.

Summary

Judicial immunity applies to acts performed with some subject-matter jurisdiction, even if the judge's actions are in excess of authority. However, it also implies that if a judge acts in the complete absence of jurisdiction, immunity would not apply. This aligns with the proposition that judicial immunity is lost when a judge acts without any jurisdiction whatsoever.

[Holloway v. Walker, 765 F.2d 517 \(5th Cir. 1985\)](#)

U.S. Court of Appeals — Fifth Circuit

Extract

Judicial immunity does not extend to acts committed with a clear absence of all jurisdiction. However, the term 'jurisdiction' is to be broadly construed to effectuate the policies of guaranteeing a disinterested and independent judicial decision-making process. *Stump v. Sparkman*, 98 S.Ct. at 1005. Where a judge does not clearly lack all subject-matter jurisdiction, he does not clearly lack all jurisdiction, and 'the same principle of exemption from liability which obtains for errors committed in the ordinary prosecution of a suit where there is jurisdiction of both subject and person, applies in cases of this kind, and for the same reasons.' *Bradley*, 13 Wall. at 352.

Summary

While jurisdiction is broadly construed, immunity does not protect acts where there is a clear absence of jurisdiction. This aligns with the proposition that judicial immunity is lost when a judge acts without any jurisdiction.

[Davis v. Tarrant County, Tex., 565 F.3d 214 \(5th Cir. 2009\)](#)

U.S. Court of Appeals — Fifth Circuit

Extract

There are only two circumstances under which judicial immunity may be overcome. "First, a judge is not immune from liability for nonjudicial actions, i.e., actions not taken in the judge's judicial capacity." *Mireles*, 502 U.S. at 11, 112 S.Ct. 286 (citations omitted). "Second, a judge is not immune for actions, though judicial in nature, taken in the complete absence of all jurisdiction." *Id.* (citations omitted).

Summary

The passage clearly outlines the two exceptions to judicial immunity: nonjudicial actions and actions taken in the complete absence of all

jurisdiction. This directly supports the proposition that judicial immunity is lost when a judge acts without any jurisdiction, as opposed to merely acting in excess of jurisdiction. The context of the passage, being from a Fifth Circuit case, makes it particularly relevant to the jurisdiction in question.

[Perez v. Villarreal, A-20-CV-622-LY \(W.D. Tex. Jul 16, 2020\)](#)

U.S. District Court — Western District of Texas

Extract

Absolute judicial immunity is overcome in only two rather narrow sets of circumstances: first, a judge is not immune from liability for nonjudicial actions, i.e., actions not taken in the judge's judicial capacity, and second, a judge is not immune for actions, though judicial in nature, taken in complete absence of all jurisdiction. Mireless, 502 U.S. at 11-12.

Summary

The passage from "Perez v. Villarreal" reiterates the principle that judicial immunity is not absolute and can be overcome in specific circumstances. It specifically mentions that a judge is not immune for actions taken in the complete absence of all jurisdiction, which directly supports the proposition that if a judge acts without jurisdiction, judicial immunity does not apply. This aligns with the established legal precedent set forth in Mireles v. Waco and other cases.

[Leone v. Magistrate Judges of Travis Cnty. Circuit Court, A-18-CA-560-LY \(W.D. Tex. Aug 08, 2018\)](#)

U.S. District Court — Western District of Texas

Extract

Absolute judicial immunity is overcome in only two rather narrow sets of circumstances: first, a judge is not immune from liability for nonjudicial actions, i.e., actions not taken in the judge's judicial capacity, and second, a judge is not immune for actions, though judicial in nature, taken in complete absence of all jurisdiction. Mireless, 502 U.S. at 11-12.

Summary

The passage directly addresses the conditions under which judicial immunity can be overcome. It specifies that immunity does not apply when a judge acts in the complete absence of all jurisdiction, which aligns with the proposition that judicial immunity is lost when a judge acts without jurisdiction. This supports the idea that if a judge compels a fraudulent

settlement in a matter over which they have no jurisdiction, it is an act in the complete absence of jurisdiction and not protected by judicial immunity.

[Walker v. McFarland](#)

U.S. District Court — Eastern District of Texas

Extract

Such immunity does not apply in two circumstances: where the challenged action is not taken in the judge's judicial capacity, and where the action, though judicial in nature, is taken in the complete absence of all jurisdiction. Mireles, 502 U.S. at 11. Allegations of bad faith or malice are not sufficient to overcome judicial immunity. Id. The Fifth Circuit has explained in this regard that 'a judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority; rather, he will be subject to liability only when he has acted in the 'clear absence of all jurisdiction.' May v. Sudderth, 97 F.3d 107, 110-111 (5th Cir. 1996), (quoting Stump v. Sparkman, 435 U.S. 349, 356-57 (1978)); see also Johnson v. Kegans, 870 F.2d 992, 995 (5th Cir.), cert. denied, 492 U.S. 921 (1989) (judge is absolutely immune from all judicial acts 'not performed in clear absence of all jurisdiction, however erroneous the act and however evil the motive').

Summary

The passage clearly outlines the conditions under which judicial immunity does not apply, specifically when a judge acts in the complete absence of all jurisdiction. This directly supports the proposition that judicial immunity is lost when a judge acts without any jurisdiction, as opposed to merely acting in excess of authority. The passage cites relevant case law from the Fifth Circuit and the U.S. Supreme Court, reinforcing its applicability and authority.

[Whiticar v. Ervin-Knott, Civil Action 21-0965 \(E.D. La. Oct 26, 2021\)](#)

U.S. District Court — Eastern District of Louisiana

Extract

"A judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority; rather, he will be subject to liability only when he has acted in the 'clear absence of all jurisdiction.'" Stump v. Sparkman, 435 U.S. 349, 356-57 (1978) (quoting Bradley v. Fisher, 80 U.S. 335, 351 (1871)).

Summary

The passage clearly distinguishes between actions taken in excess of authority and actions taken in the complete absence of jurisdiction. It supports the proposition by affirming that judicial immunity is not lost for actions merely in excess of authority but is lost when a judge acts without any jurisdiction. This aligns with the proposition that compelling a fraudulent settlement in a matter over which the judge had no jurisdiction is an act in the complete absence of jurisdiction.

[Kennedy v. Chief Judge, Fifth Circuit Court of Appeals, No. 3:18-cv-2624-N-BN \(N.D. Tex. Oct 04, 2018\)](#)

U.S. District Court — Northern District of Texas

Extract

"Judicial immunity can be overcome only by showing that the actions complained of were nonjudicial in nature or by showing that the actions were taken in the complete absence of all jurisdiction." Boyd v. Biggers, 31 F.3d 279, 284 (5th Cir. 1994).

Summary

Judicial immunity is not absolute and can be challenged if a judge's actions are nonjudicial or taken in the complete absence of jurisdiction. This aligns with the proposition that judicial immunity is lost when a judge acts without any jurisdiction, supporting the idea that compelling a fraudulent settlement without jurisdiction is not protected by immunity.

[Andrews v. Murphy, 1-23-CV-0950-RP \(W.D. Tex. Nov 15, 2023\)](#)

U.S. District Court — Western District of Texas

Extract

Judicial immunity can be overcome in two sets of circumstances: (1) "a judge is not immune from liability for nonjudicial actions, i.e., actions not taken in the judge's judicial capacity"; and (2) "a judge is not immune for actions, though judicial in nature, taken in the complete absence of all jurisdiction." Mireles, 502 U.S. at 11-12 (citations omitted).

Summary

The passage clearly outlines the circumstances under which judicial immunity can be overcome, specifically when a judge acts in the complete absence of all jurisdiction. This directly supports the proposition that judicial immunity is lost when a judge acts without any jurisdiction, as opposed to

merely acting in excess of jurisdiction. The reference to *Mireles v. Waco* further solidifies this understanding, as it is a key case in defining the limits of judicial immunity.

[Hutchings v. Cnty. of Llano, Case No. 1:20-CV-308-LY-SH \(W.D. Tex. Jul 27, 2020\)](#)

U.S. District Court — Western District of Texas

Extract

Absolute judicial immunity is overcome only in two rather narrow sets of circumstances: First, a judge is not immune from liability for nonjudicial actions, i.e., actions not taken in the judge's judicial capacity; and second, a judge is not immune for actions, although judicial in nature, taken in complete absence of all jurisdiction. *Mireles*, 502 U.S. at 11-12. 'For purposes of immunity, the judge's jurisdiction is construed broadly and a judge is not deprived of immunity 'because the action he took was in error, was done maliciously, or was in excess of his authority; rather, he will be subject to liability only when he has acted in the 'clear absence of all jurisdiction.'" *Davis v. Bayless*, 70 F.3d 367, 373 (5th Cir. 1995) (quoting *Stump v. Sparkman*, 435 U.S. 349, 357-60 (1978)).

Summary

The passage from *Hutchings v. Cnty. of Llano* outlines the conditions under which judicial immunity can be overcome. It specifies that a judge is not immune from liability when actions are taken in the complete absence of all jurisdiction, aligning with the proposition that judicial immunity is lost when a judge acts without any jurisdiction. This supports the idea that if a judge acts without subject matter jurisdiction or after disqualification, immunity does not apply.

[Morrow v. Texas, Civil Action No. 4:15-CV-747 \(E.D. Tex. Mar 25, 2018\)](#)

U.S. District Court — Eastern District of Texas

Extract

Moreover, as the Court has stated previously, 'judges have absolute immunity from lawsuits when they perform a normal judicial function, unless they are acting in the clear absence of all jurisdiction.' *Paselk v. Texas*, No. 4:13-CV-97, 2013 WL 6187005, at *8 (E.D. Tex. Nov. 26, 2013) (Mazzant, J.) (citing *Stump v. Sparkman*, 435 U.S. 349, 357-60 (1978)). 'A judge is not deprived of immunity because the action he took was erroneous, malicious, or exceeded his authority. A judicial act is one that is a function normally performed by a judge, that occurred in the courtroom or appropriate adjunct spaces such as a judge's chambers, involved a controversy centered around

a case pending before the court, and arose directly out of a visit to the judge in her official capacity.' Id. (citing Stump, 435 U.S. at 360-62); see also Mitchell v. McBryde, 944 F.2d 229, 230 (5th Cir. 1991) ('Judges are immune from damage claims arising out of acts performed in the exercise of their judicial functions, even when the judge is accused of acting maliciously. The fact that it is alleged that the judge acted pursuant to a conspiracy and committed grave procedural errors is not sufficient to avoid absolute judicial immunity.' 'A judge is subject to liability only if he/she acts in the clear absence of all jurisdiction.' Id.

Summary

The passage clearly distinguishes between actions taken in excess of jurisdiction and those taken in the complete absence of jurisdiction. It emphasizes that judicial immunity is maintained unless a judge acts in the clear absence of all jurisdiction. This aligns with the proposition that judicial immunity is lost when a judge acts without any jurisdiction, such as presiding over a matter without subject matter jurisdiction or after disqualification.

[Friston v. MDOC, CAUSE NO. 1:17-cv-329-HSO-JCG \(S.D. Miss. Apr 02, 2019\)](#)

U.S. District Court — Southern District of Mississippi

Extract

Judicial immunity can 'be overcome in two circumstances: (1) a judge is not immune from liability for nonjudicial actions, i.e., actions not taken in the judge's judicial capacity; and (2) a judge is not immune for actions, though judicial in nature, taken in the complete absence of all jurisdiction.'

Summary

The passage from "Friston v. MDOC" outlines the circumstances under which judicial immunity can be overcome, specifically when a judge acts in the complete absence of all jurisdiction. This directly supports the proposition that judicial immunity is lost when a judge acts without any jurisdiction, as opposed to merely acting in excess of jurisdiction. The passage aligns with the legal principles established in cases like Mireles v. Waco and Ballard v. Wall, which are also cited in the proposition.

[Gokey v. Economidy, SA-21-CV-00987-XR \(W.D. Tex. Feb 08, 2022\)](#)

U.S. District Court — Western District of Texas

Extract

Absolute judicial immunity does not apply in certain limited circumstances. Mireles, 502 U.S. at 11-12; Davis, 565 F.3d at 221. First, judges are not immune from liability for non-judicial actions, i.e., actions not taken in the judge's judicial capacity. Mireles, 502 U.S. at 11-12; Davis, 565 F.3d at 221. Second, judges are not immune for actions, though judicial in nature, taken in complete absence of all jurisdiction. Mireles, 502 U.S. at 11-12; Davis, 565 F.3d at 221.

Summary

The passage from "Gokey v. Economidy" outlines the circumstances under which judicial immunity does not apply, specifically when a judge acts in the complete absence of all jurisdiction. This directly supports the proposition that judicial immunity is lost when a judge acts without jurisdiction, as opposed to merely acting in excess of authority. The reference to Mireles v. Waco and Davis v. Tarrant County further reinforces this legal principle.

[Ellsberry v. Stewart, Civil Action 1:21-cv-00385-BWR \(S.D. Miss. Mar 06, 2023\)](#)

U.S. District Court — Southern District of Mississippi

Extract

"A judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority; rather, he will be subject to liability only when he has acted in the clear absence of all jurisdiction." Stump v. Sparkman, 435 U.S. 349, 356-57 (1978) (quotation omitted). "The doctrine of judicial immunity can be overcome under two sets of circumstances: (i) nonjudicial actions, which are actions not taken in the judge's judicial capacity and (ii) actions taken in the complete absence of all jurisdiction, even though they are judicial in nature." Lang, 2013 WL 3095058, at *2 (citing Ballard, 413 F.3d at 515).

Summary

The passage clearly outlines the conditions under which judicial immunity can be overcome, specifically when a judge acts in the complete absence of all jurisdiction. This directly supports the proposition that judicial immunity is lost when a judge acts without any jurisdiction, as opposed to merely acting in excess of authority. The passage references established case law, including Stump v. Sparkman and Ballard v. Wall, which are relevant to the Fifth Circuit.

[Crowe v. Lucas, 595 F.2d 985 \(5th Cir. 1979\)](#)

U.S. Court of Appeals — Fifth Circuit

Extract

The Supreme Court has recently held that a judge cannot be held liable under the civil rights statutes for his judicial acts unless those acts are committed in the 'clear absence of all jurisdiction.' *Stump v. Sparkman*, 435 U.S. 349, 356, 357, 98 S.Ct. 1099, 1105, 55 L.Ed.2d 331, 339 (1978); See *Pierson v. Ray*, 386 U.S. 547, 87 S.Ct. 1213, 18 L.Ed.2d 288 (1967). Thus, if any of the acts of Municipal Judge Harold Ward at issue here can properly be characterized as judicial acts, and if those acts were not committed in the 'clear absence of all jurisdiction,' then the acts cannot be the basis of a § 1983 suit.

Summary

Judicial immunity protects judges from liability for their judicial acts unless those acts are performed in the "clear absence of all jurisdiction." This aligns with the proposition that judicial immunity is lost when a judge acts without any jurisdiction, as opposed to merely acting in excess of jurisdiction. The passage supports the idea that if a judge's actions are taken without any jurisdiction, then immunity does not apply.

[**Davis v. Bayless, 70 F.3d 367, 1995 WL 692991 \(5th Cir. 1995\)**](#)

U.S. Court of Appeals — Fifth Circuit

Extract

Judges are afforded absolute immunity when they (1) perform a normal judicial function; unless they are (2) acting in the clear absence of all jurisdiction. *Stump v. Sparkman*, 435 U.S. 349, 357-60, 98 S.Ct. 1099, 1105-06, 55 L.Ed.2d 331 (1978). For purposes of immunity, the judge's jurisdiction is construed broadly and a judge is not deprived of immunity 'because the action he took was in error, was done maliciously, or was in excess of his authority; rather, he will be subject to liability only when he has acted in the 'clear absence of all jurisdiction.'

Summary

The passage from "Davis v. Bayless" clarifies the conditions under which judicial immunity applies. It states that judges have absolute immunity when performing normal judicial functions unless they act in the clear absence of all jurisdiction. This aligns with the proposition that judicial immunity is lost when a judge acts without any jurisdiction, not merely when acting in excess of authority. The passage supports the idea that if a judge acts without subject matter jurisdiction or after disqualification, immunity does not apply.

[Boyd v. Biggers, 31 F.3d 279 \(5th Cir. 1994\)](#)

U.S. Court of Appeals – Fifth Circuit

Extract

Judicial officers are entitled to absolute immunity from claims for damages arising out of acts performed in the exercise of their judicial functions. ... Judicial immunity can be overcome only by showing that the actions complained of were nonjudicial in nature or by showing that the actions were taken in the complete absence of all jurisdiction. *Mireles v. Waco*, 502 U.S. 9, ----, 112 S.Ct. 286, 288, 116 L.Ed.2d 9 (1991); see *Forrester v. White*, 484 U.S. 219, 220-21, 108 S.Ct. 538, 540-41, 98 L.Ed.2d 555 (1988) (holding that a state judge's dismissal of a subordinate court employee is not a judicial act entitled to absolute immunity).

Summary

The passage from "Boyd v. Biggers" discusses the conditions under which judicial immunity can be overcome. It specifically states that judicial immunity is only lost when actions are taken in the complete absence of all jurisdiction, aligning with the proposition that a judge's actions are not protected by immunity if they are taken without any jurisdiction whatsoever. This supports the proposition by clarifying the limits of judicial immunity and the circumstances under which it can be challenged.

Pretrial motions

Texas Criminal Lawyer's Handbook. Volume 1-2 (2024) - James Publishing - Mark G. Daniel, Robert K. Gill

Extract

A judge or a justice of the peace may not sit in a case if either of the parties is related to him by affinity or consanguinity within the third degree... A judge must disqualify in any proceeding in which: (1) the judge has served as a lawyer in the matter in controversy... (3) either of the parties may be related to the judge by affinity or consanguinity within the third degree.

Summary

The passage outlines specific statutory grounds for disqualification of judges in Texas, such as familial relationships with parties involved or prior involvement as a lawyer in the matter. These grounds are statutory limitations on a judge's authority to preside over a case. If a judge were to preside over a case despite being disqualified under these grounds, it would constitute acting in the complete absence of jurisdiction, as the judge would be violating explicit statutory prohibitions. This aligns with the proposition that judicial immunity is lost when a judge acts without jurisdiction.

[Texas Courts And Subject Matter Jurisdiction](#)

Extract

Subject-matter jurisdiction concerns a court's power to hear a case. Without it, a court does not have authority to decide a case. ... Whether a trial court has subject matter jurisdiction is a question of law. Subject matter jurisdiction is never presumed and cannot be waived or conferred by agreement. And the absence of subject matter jurisdiction can generally be raised at any time and can be raised by a court *sua sponte*.

Summary

Subject matter jurisdiction is a fundamental requirement for a court's authority to decide a case. It cannot be waived or conferred by agreement, and its absence can be raised at any time. This aligns with the proposition that a judge's actions taken without subject matter jurisdiction are in the complete absence of jurisdiction, thus negating judicial immunity.

This memo was compiled by Vincent AI based on vLex materials available as of September 08, 2025. [View full answer on vLex](#)