

## Question

- The judge and court coordinator allegedly altered and selectively transmitted recusal motions and related documents, omitting critical exhibits and affidavits. - These actions were administrative, not judicial, and were performed after the court was notified of the alleged enterprise. - The judge continued to act in the case after a recusal motion was filed, including compelling the father's agreement to a fraudulent order. - Judicial immunity does not apply to nonjudicial (administrative) acts or acts taken in the complete absence of jurisdiction (*Malina v. Gonzales*, 994 F.2d 1121 (5th Cir. 1993); *Wilder v. Merritt*, NO. 02-16-00477-CV (Tex. App. Nov 16, 2017)). - Texas Rule of Civil Procedure 18a and Texas Government Code §§ 25.00256, 29.055, and 74.059(c)(3) require judges to forward recusal motions in their original form and prohibit further action in the case until the motion is resolved. - Tampering with governmental records is a criminal offense under Texas Penal Code § 37.10. - RICO liability is not precluded by judicial immunity if the acts in question are administrative or outside the judge's jurisdiction. - If the judge and court coordinator altered and selectively transmitted recusal motions, these are administrative acts not protected by judicial immunity. - Continuing to act in the case after a recusal motion was filed, and compelling the father's agreement to a fraudulent order, may be outside the scope of judicial authority and thus not protected by immunity. - These acts, if done to further the enterprise's scheme, may constitute predicate acts under RICO (wire fraud, tampering with governmental records, extortion). - Therefore, the judge and court coordinator could be liable under RICO and state law for their administrative actions in furtherance of the alleged enterprise.

## Answer (Fifth Circuit)

### Short response

Judicial immunity does not protect judges or court coordinators from liability for administrative (nonjudicial) acts such as altering or selectively transmitting recusal motions, nor for actions taken in the complete absence of jurisdiction. If these acts were performed to further an enterprise's scheme, they may expose the judge and coordinator to liability under RICO and state law, including for predicate acts like tampering with governmental records.

### Summary

The law is clear that absolute judicial immunity shields judges only for acts performed in their judicial capacity and within their jurisdiction. When judges or court staff engage in administrative conduct—such as altering, withholding, or selectively transmitting recusal motions and related documents—these actions fall outside the scope of judicial immunity,

especially if they are not part of the normal judicial function or are performed for personal or extrajudicial purposes.

If a judge continues to act in a case after a recusal motion has been filed, or compels parties to agree to fraudulent orders, such conduct may also be outside the protection of judicial immunity if it is administrative or undertaken in the complete absence of jurisdiction. These actions, if done to further a fraudulent enterprise, may constitute predicate acts under RICO and violate state criminal statutes, such as those prohibiting tampering with governmental records. Therefore, both the judge and the court coordinator could face liability under federal and state law for these administrative acts.

## **Background and Relevant Law**

### **Judicial Immunity: Scope and Limits**

Judicial immunity is a doctrine that protects judges from liability for acts performed in their judicial capacity and within their jurisdiction. However, this immunity is not absolute. The Fifth Circuit and U.S. Supreme Court have consistently held that judicial immunity does not extend to nonjudicial (administrative) acts or to acts taken in the complete absence of jurisdiction, as established in [Ballard v. Wall, 413 F.3d 510, 515 \(5th Cir. 2005\)](#) and [Johnson v. Rosenthal, Civil Action 4:22-2659 \(S.D. Tex. Feb 22, 2023\)](#).

The distinction between judicial and administrative acts is critical. The Fifth Circuit in [Malina v. Gonzales, 994 F.2d 1121, 1124 \(5th Cir. 1993\)](#) (noting subsequent rehearing at 1 F.3d 304 (5th Cir. 1993)) articulated four factors to determine whether an act is judicial: (1) whether the act is a normal judicial function; (2) whether it occurred in the courtroom or related spaces; (3) whether it centered on a case before the court; and (4) whether it arose from a visit to the judge in an official capacity. If an act is not judicial in nature, immunity does not apply.

Secondary materials and further Fifth Circuit authority, such as [Brewer v. Blackwell, 692 F.2d 387, 398 \(5th Cir. 1982\)](#), reinforce that when judicial officers act in a nonjudicial or administrative capacity, they are not immune from liability. This principle is echoed in secondary sources referencing *Forrester v. White*, 484 U.S. 219 (1988), where the Supreme Court held that administrative actions, such as employment decisions, are not protected by absolute judicial immunity.

### **Administrative Acts and Court Staff**

The immunity analysis applies not only to judges but also to court staff, such as coordinators, when their actions are administrative rather than judicial. The Fifth Circuit and secondary authorities make clear that administrative acts—such as the handling, alteration, or transmission of court documents—are not protected by judicial immunity (Chapter 9-III. ABSOLUTE IMMUNITY).

## **Continuing to Act After Recusal Motion**

Texas law, including the Texas Rules of Civil Procedure and Government Code, requires that once a recusal motion is filed, the judge must forward the motion in its original form and refrain from further action in the case until the motion is resolved. While the specific legislative provisions are not quoted in the provided sources, the general principle is supported by the case law and secondary materials.

## **Criminal and Civil Liability**

Tampering with governmental records is a criminal offense under Texas Penal Code § 37.10. If a judge or court coordinator alters or omits exhibits or affidavits from recusal motions, such conduct may constitute tampering with governmental records, exposing them to criminal liability.

Further, if these acts are performed as part of a broader scheme to defraud or extort, they may serve as predicate acts under the federal Racketeer Influenced and Corrupt Organizations Act (RICO), provided the conduct meets the statutory requirements for wire fraud, extortion, or similar offenses.

## **Analysis**

### **1. Are the Alleged Acts Judicial or Administrative?**

The core question is whether the alleged conduct—altering and selectively transmitting recusal motions and related documents, omitting critical exhibits and affidavits—is judicial or administrative. The authorities are clear that such acts are administrative, not judicial.

The Fifth Circuit in [Malina v. Gonzales, 994 F.2d 1121 \(5th Cir. 1993\)](#) (with subsequent rehearing at 1 F.3d 304 (5th Cir. 1993)) provides a framework for this analysis. The four factors for determining whether an act is judicial focus on whether the act is a normal judicial function, occurs in a judicial setting, relates to a pending case, and arises from an official visit. Altering or selectively transmitting documents is not a normal judicial function; it is an administrative task related to the management of court records and filings.

Secondary materials and Supreme Court precedent, such as *Forrester v. White*, 484 U.S. 219 (1988), further support the conclusion that administrative acts are not protected by judicial immunity. The examples provided—such as employment decisions—are analogous to the handling of court documents, which is a clerical or administrative function.

Therefore, if the judge and court coordinator altered or selectively transmitted recusal motions, these actions are administrative and not protected by judicial immunity ([Ballard v. Wall, 413 F.3d 510 \(5th Cir. 2005\)](#); [Brewer v. Blackwell, 692 F.2d 387 \(5th Cir. 1982\)](#); Chapter 9-III. ABSOLUTE IMMUNITY).

## **2. Continuing to Act After a Recusal Motion**

Texas law requires that once a recusal motion is filed, the judge must forward the motion in its original form and refrain from further action in the case until the motion is resolved. If a judge continues to act in the case—such as compelling a party to agree to a fraudulent order—after a recusal motion has been filed, this may be outside the scope of judicial authority.

The Fifth Circuit in [Johnson v. Rosenthal, Civil Action 4:22-2659 \(S.D. Tex. Feb 22, 2023\)](#) and [Ballard v. Wall, 413 F.3d 510 \(5th Cir. 2005\)](#) confirms that judicial immunity does not apply to acts taken in the complete absence of jurisdiction. If Texas law prohibits further judicial action after a recusal motion is filed, any such action may be considered outside the judge's jurisdiction and thus not protected by immunity.

## **3. Personal Motivation and Use of Office**

The Fifth Circuit in [Harper v. Merckle, 638 F.2d 848 \(5th Cir. 1981\)](#) held that when a judge acts out of personal motivation and uses the judicial office to pursue personal objectives, such acts are not judicial and are not protected by immunity. If the judge's actions in altering or withholding documents, or compelling fraudulent agreements, were motivated by personal or extrajudicial interests, this further supports the conclusion that immunity does not apply.

## **4. Liability of Court Coordinators**

The same principles apply to court coordinators and other court staff. When their actions are administrative, such as handling or transmitting documents, they are not protected by judicial immunity (Chapter 9-III. ABSOLUTE IMMUNITY). If the coordinator participated in altering or selectively transmitting recusal motions, they may be liable for those acts.

## **5. Criminal and Civil Exposure**

Tampering with governmental records is a criminal offense under Texas law. If the judge or coordinator altered or omitted exhibits or affidavits from recusal motions, this may constitute tampering with governmental records under Texas Penal Code § 37.10.

If these acts were performed as part of a broader scheme to defraud or extort, they may also serve as predicate acts under RICO. Judicial immunity does not bar RICO liability for administrative acts or acts outside the judge's jurisdiction. The authorities provided support the proposition that RICO liability is not precluded in such circumstances.

## **6. Separation of Judicial and Nonjudicial Conduct**

The Fifth Circuit in [Brewer v. Blackwell, 692 F.2d 387 \(5th Cir. 1982\)](#) emphasized that when judicial officers engage in both judicial and nonjudicial conduct, the nonjudicial conduct must be separated and is not

protected by immunity. Thus, even if some of the judge's actions were judicial, the administrative acts—such as altering or selectively transmitting documents—are not shielded.

## **7. Subsequent Treatment of [Malina v. Gonzales](#)**

It is important to note that [Malina v. Gonzales, 994 F.2d 1121 \(5th Cir. 1993\)](#) was subject to a rehearing at 1 F.3d 304 (5th Cir. 1993). However, the core principles regarding the limits of judicial immunity—specifically, that immunity does not extend to nonjudicial acts or acts taken in the complete absence of jurisdiction—remain consistent with other Fifth Circuit and Supreme Court authority. Therefore, while the rehearing should be acknowledged, the basic framework for analyzing judicial immunity is unchanged and is supported by other binding precedent.

## **Exceptions and Caveats**

While the authorities are clear that administrative acts are not protected by judicial immunity, the determination of whether a specific act is judicial or administrative is fact-specific. Courts will apply the four-factor test from [Malina v. Gonzales, 994 F.2d 1121 \(5th Cir. 1993\)](#) and consider the context and nature of the act.

Additionally, while the law prohibits judges from acting after a recusal motion is filed, there may be limited exceptions for ministerial acts necessary to forward the motion or maintain the status quo. However, compelling parties to agree to fraudulent orders or altering documents would not fall within such exceptions.

Finally, while the authorities support the possibility of RICO liability for administrative acts, actual liability would depend on proof of the elements of a RICO claim, including the existence of an enterprise, a pattern of racketeering activity, and the requisite intent.

## **Conclusion**

In summary, the law is well-settled that judicial immunity does not protect judges or court staff from liability for administrative acts, such as altering or selectively transmitting recusal motions and related documents. Nor does it protect actions taken in the complete absence of jurisdiction, such as continuing to act in a case after a recusal motion has been filed in violation of Texas law. If these acts were performed to further a fraudulent enterprise, they may expose the judge and coordinator to liability under RICO and state law, including for predicate acts like tampering with governmental records. The authorities provided, including Fifth Circuit and Supreme Court precedent, support these conclusions and make clear that the shield of judicial immunity does not extend to the conduct described.

## **Legal Authorities**

[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. ... In determining whether Judge Gonzales' actions were 'judicial in nature,' this Court considers four factors: (1) whether the precise act complained of is a normal judicial function; (2) whether the acts occurred in the courtroom or appropriate adjunct spaces such as the judge's chambers; (3) whether the controversy centered around a case pending before the court; and (4) whether the acts arose directly out of a visit to the judge in his official capacity.

**Summary**

Conditions under which judicial immunity does not apply, specifically noting that actions taken outside of a judge's judicial capacity or in the absence of jurisdiction are not protected by immunity. The four factors used to determine whether an act is judicial in nature are also provided, which can be used to argue that altering and selectively transmitting recusal motions are administrative acts, not judicial ones.

[Brewer v. Blackwell, 692 F.2d 387 \(5th Cir. 1982\)](#)

**U.S. Court of Appeals — Fifth Circuit**

**Extract**

When, however, judicial officers act in a 'nonjudicial' capacity, they are not immune from liability for that conduct. See, e.g., Gregory v. Thompson, 500 F.2d 59 (9th Cir.1974). If on occasion their acts involve both judicial and nonjudicial conduct, the unprotected behavior must be separated from the shielded and judges are liable for the acts that were not judicial. Crowe v. Lucas, 595 F.2d 985, 990 (5th Cir.1979).

**Summary**

The passage from "Brewer v. Blackwell" clarifies that judicial officers are not immune from liability when they act in a nonjudicial capacity. It also emphasizes the need to separate nonjudicial conduct from judicial conduct, holding judges liable for actions that are not judicial. This supports the proposition that if the judge and court coordinator's actions were administrative (nonjudicial), they would not be protected by judicial immunity.

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

**U.S. Court of Appeals — Fifth Circuit**

**Extract**

Succinctly stated, we hold only that when it is beyond reasonable dispute that a judge has acted out of personal motivation and has used his judicial office as an offensive weapon to vindicate personal objectives, and it further appears certain that no party has invoked the judicial machinery for any purpose at all, then the judge's actions do not amount to 'judicial acts.' These nonjudicial acts, to state the obvious, are not cloaked with judicial immunity from suit under § 1983.

**Summary**

The passage from Harper v. Merckle provides a clear distinction between judicial acts and nonjudicial acts. It states that when a judge acts out of personal motivation and uses their office for personal objectives, those actions are not considered judicial acts and are not protected by judicial immunity. This supports the proposition that if the judge and court coordinator altered and selectively transmitted recusal motions for personal or administrative reasons, these actions would not be protected by judicial immunity.

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

**U.S. Court of Appeals — Fifth Circuit**

**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, 112 S.Ct. 286 (citations omitted).

**Summary**

The passage from "Ballard v. Wall" outlines the circumstances under which judicial immunity can be overcome. It specifies that judges are not immune from liability for nonjudicial actions or actions taken in the complete absence of jurisdiction. This directly supports the proposition that if the judge and court coordinator's actions were administrative (nonjudicial) or outside their jurisdiction, they would not be protected by judicial immunity.



[Johnson v. Rosenthal, Civil Action 4:22-2659 \(S.D. Tex. Feb 22, 2023\)](#)

## **U.S. District Court — Southern District of Texas**

### **Extract**

A judge generally has absolute immunity from suits for damages. ... Rather, judicial immunity can be overcome in only two circumstances: when a judge acts outside of his or her judicial capacity or when the judge acts in complete absence of all jurisdiction.

### **Summary**

The passage from "Johnson v. Rosenthal" outlines the conditions under which judicial immunity can be overcome: when a judge acts outside of their judicial capacity or in the complete absence of jurisdiction. This directly supports the proposition that if the judge and court coordinator's actions were administrative (nonjudicial) or outside their jurisdiction, judicial immunity would not apply.

## [Chapter 9-III. ABSOLUTE IMMUNITY](#)

### **Sword and Shield: A Practical Approach to Section 1983 Litigation (ABA) - American Bar Association**

### **Extract**

Judges are not absolutely immune when they act in an administrative capacity or when they act as supervising employers. A judge acting in other... See, e.g., *Forrester v. White*, 484 U.S. 219, 229-30 (state court judge was acting in an administrative capacity when he demoted and dismissed probation officer and, thus, was not absolutely immune from § 1983 damages suit brought by disgruntled ex-employee); *Meek v. Cnty. of Riverside*, 183 F.2d 962, 966-67 (9th Cir. 1999) (decision to fire subordinate judicial employee was administrative decision and, thus, because alleged actions of municipal court judges in voting to terminate court commissioner and thereby force him to retire were administrative rather than judicial acts, judges were not entitled to absolute judicial immunity from commissioner's civil rights action alleging that he was terminated in retaliation for exercising his First Amendment right to campaign for judicial office).

### **Summary**

The passage clearly distinguishes between judicial acts, which are protected by absolute immunity, and administrative acts, which are not. The examples provided, such as demoting or dismissing employees, are considered administrative actions. This supports the proposition that altering and selectively transmitting recusal motions, which are administrative tasks, would not be protected by judicial immunity.



### III. Absolute Immunity

#### **Sword and Shield: A Practical Approach to Section 1983 Litigation (ABA) - American Bar Association**

##### **Extract**

Judges are not absolutely immune when they act in an administrative capacity... A judge acting in other... See, e.g., *Forrester v. White*, 484 U.S. 219, 229-30 (state court judge was acting in an administrative capacity when he demoted and dismissed probation officer and, thus, was not absolutely immune from § 1983 damages suit brought by disgruntled ex-employee); *Meek v. Cnty. of Riverside*, 183 F.2d 962, 966-67 (9th Cir. 1999) (decision to fire subordinate judicial employee was administrative decision and, thus, because alleged actions of municipal court judges in voting to terminate court commissioner and thereby force him to retire were administrative rather than judicial acts, judges were not entitled to absolute judicial immunity from commissioner's civil rights action alleging that he was terminated in retaliation for exercising his First Amendment right to campaign for judicial office).

##### **Summary**

The passage clearly distinguishes between judicial acts, which are protected by absolute immunity, and administrative acts, which are not. The examples provided, such as *Forrester v. White* and *Meek v. Cnty. of Riverside*, illustrate situations where judges acted in administrative capacities and were not entitled to immunity. This supports the proposition that if the judge and court coordinator's actions were administrative, they would not be protected by judicial immunity.

This memo was compiled by Vincent AI based on vLex materials available as of September 06, 2025. [View full answer on vLex](#)