

Legal Test of Immunity

Suggestions for a Law Regarding Official Immunity

In the event that any government official claims that any action they performed is, or might be, subject to immunity then a trial must be held to determine if the claim is valid.

The word defendant refers to any person who claims that their actions, that may have violated any law, are subject to official immunity due to their official position. The word prosecution refers to the person or team who presents the case that the defendant should not be accorded immunity.

The case is to be prosecuted by a government official. The state or federal government may appoint a special prosecutor for these proceedings. The prosecutor and their team must have no association with the defendant. The members of this prosecution team must not have been appointed by the relevant administration and must not have any financial, political, or social ties with the defendant. The prosecution team must be reviewed by one of the U.S. Courts of Appeal not in any district associated with the defendant. The selected Appellate court must give this determination high priority and must hear and rule on this determination within two weeks of initial notification. If the prosecution and defense are unable to reach agreement on any critical decision then the selected Court of Appeal shall make the decision so that the trial may proceed.

At the discretion of the prosecution, private individuals or entities may join as co-counsels in the prosecution. The defendant may elect to be represented by a government-appointed defender, or may, at their expense, use their chosen counsel.

The prosecution and the defense may jointly elect to limit the jury to individuals experienced in the field of law and may set specifications as to the knowledge and experience necessary for members of the jury. The default is to use members of the public. The prosecution has the option of recusing any specific judge due to a possible conflict of interest or appearance of the same. For example, if the defendant was involved in the appointment of a particular judge, that judge is not eligible to preside over this or these hearings. The preferred location of the trial is in the same district where the actions to be judged were performed, or the normal location where the defendant performs their duties. However, upon agreement between the prosecution and the defendant, the trial may be moved to a more suitable location.

Great care must be taken in the selection of Judges and jury to prevent any appearance or actuality of bias on the part of judge and jury. This part is extremely important.

The defendant and the prosecution, if in agreement, may decide to try the case with a single judge, a panel of judges, or with a trial, and may agree to select the number of jurors. The default number of jurors shall be 12 with a single judge presiding. In the event of trial by jury, in order to absolve the defendant, at least three-fourths of the jurors must agree with the defendant's claims. If there are multiple claims, each claim must be decided independently.

If the prosecution determines that the situation is overly complicated, the prosecution may elect to have each count charged adjudicated one at a time, with the jurors re-convening after each verdict to hear separate charges.

These procedures are activated by two conditions. First, a prosecutor has charged that the defendant has violated one or more specific laws. Second, the defendant has made a claim that the defendant is immune from the specific laws. The defendant must provide their detailed justification for the claim of immunity. Any government prosecutor in a district where the violation has been alleged to occurred may initiate proceedings. Government officials under the influence of the defendant shall not restrict prosecution or appear to restrict prosecution for personal benefit or convenience.

The burden of proof, for immunity with regard to any law, is the responsibility of the defendant. The defendant must show beyond a reasonable doubt that the proper performance of their official duties would have been impaired or prevented by one or more specific laws. The defendant must show that the government and/or the public would have been harmed had the defendant not violated one or more laws that are applicable to the general public.

If the jury, or judge determines there was no reasonable justification for the immunity claim then the defendant shall be responsible for all costs incurred as a result of the trial.

These legal decisions determine only if the defendant is to be subject to trial and is not a judgment of guilt or innocence. The law of double jeopardy is not applicable. If the prosecution discovers new evidence, and convinces the trial judge that the new evidence merits a new trial, the defendant may be tried again. If the original judge is not available a suitable replacement shall be selected.

If the court determines that the defendant does not have immunity, the defendant may be charged with violating the laws challenged, and all proceedings of the immunity trial may be presented to any follow up trial as evidence.