

**DEPARTMENT SIX - JUDGE D. SCOTT DANIELS  
TENTATIVE RULINGS SCHEDULED FOR  
THURSDAY, JULY 15, 2010**

**ALVA v. CRAM  
Case No. FCM113931**

Defendant's Demurrer to Plaintiff's Amended Complaint

TENTATIVE RULING

There is an absolute judicial immunity which applies to protect judges while acting in a judicial capacity. Mireles v. Waco (1991) 502 U.S. 9.

Judicial immunity serves to protect the finality of judgments, and to protect judicial independence by insulating judges from vexatious actions brought by disgruntled litigants. Howard v. Drapkin (1990) 222 Cal.App.3d 843, 851-852.

There are 2 recognized exceptions to judicial immunity: (1) actions not taken in the judge's official capacity; and (2) actions, though judicial in nature, taken in the complete absence of all jurisdiction. Mireles, supra, 502 U.S. at 11-12.

The court focuses on the nature and function of the act taken by the judge, and not the act itself. Stump v. Sparkman (1978) 435 U.S. 349, 356.

The acts in question need not take place within the judge's own courtroom, if they are related to activities taking place within that courtroom. Soliz v. Williams (1999) 74 Cal.App.4th 577, 588-589; Mireles, supra, 502 U.S. 9.

As to all of the acts occurring within Defendant's courtroom on May 15, 2009, the absolute judicial immunity clearly applies.

Plaintiff has not alleged with sufficient specificity any acts performed by Defendant to which judicial immunity would not apply.

Even if Plaintiff could allege such acts with sufficient specificity, Plaintiff would also have to allege particular facts sufficient to avoid the discretionary immunity applicable to any public employee. Government Code section 820.2.

A plaintiff suing a government entity or a government employee must allege facts in the complaint sufficient to show either compliance with or excuse from the claims filing requirements. 1 California Government Tort Liability Practice (CEB 4th ed. February 2010 Updated) section 5.5, p. 170.

The amended complaint contains no such allegations.

In his opposition, Plaintiff did claim to have filed a claim, with the County of Contra Costa. Upon the denial of that claim on the grounds that the County was not Defendant's employer, Plaintiff sent a "to whom it may concern" letter to the Office of the Attorney General, apparently intended to serve as a claim. However, a claim against a judicial officer must be presented to the court executive officer, not the Attorney General's office. Government Code section 955.9.

The 6 month from date of injury deadline to file a timely claim has long passed. Therefore, Plaintiff cannot allege compliance with the claims filing requirement.

Plaintiff is therefore barred from bringing any causes of action based upon state law.

This includes, in addition to the slander per se cause of action, the part of the second cause of action alleging violation of the California Constitution, article I, section 7. Money damages would not be available anyway for alleged violation of this section. Katzberg v. Regents of University of California (2002) 29 Cal.4<sup>th</sup> 300.

The claims filing requirements established by state statute do not apply to actions based upon federal law.

Plaintiff's amended complaint added a cause of action for violation of his civil rights, and identified not only the California Constitution, but also 42 U.S.C. section 1983, as the basis for this cause of action.

While the claims filing requirements do not apply to claims based upon federal law, there are other reasons why the demurrer to this cause of action is well taken.

First, the court order on the prior demurrer to the original complaint did not expressly give leave to Plaintiff to amend to add any new causes of action. Instead, the leave granted was limited to alleging "facts that state claims are not barred by judicial immunity and that are in compliance with government claims presentation requirements pursuant to the Government Code". Plaintiff did not file a motion seeking leave to allege a new cause of action.

Second, federal courts have applied judicial immunity to bar a cause of action under 42 U.S.C. section 1983 alleged against a judge, unless the judge acted in "clear absence of all jurisdiction". Stump, supra, 435 U.S. at 356-357.

A family law judge has jurisdiction to act on family law cases assigned to him or her.

Plaintiff has not shown a reasonable possibility he could allege any proper cause of action against Defendant. Defendant's demurrer is sustained as to the entirety of Plaintiff's amended complaint, without leave to amend.