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## Public Entities and Employees; Defending Public Officers and Employees

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## FOOTNOTES

1. 1977 Nev. Stats. ch. 485 §2, at 1003 (NRS 269.530); 1977 Nev. Stats. ch. 311 §1, at 579 (NRS 269.623).
2. Ch. 185 §2 (adding to NRS Ch. 269).
3. Id.
4. Id.
5. Id. §3 (adding to NRS Ch. 269).

### PUBLIC ENTITIES AND EMPLOYEES; DEFENDING PUBLIC OFFICERS AND EMPLOYEES

Amends NRS 41.0227, 41.035, 41.037, 353.264  
AB 30 (Barengo); STATS 1979, Ch 678

Chapter 678 provides for the defense of public officers and employees by the state or insurance carriers and increases the limits of liability for public officers and the state.

Under existing law, a tort action cannot be brought against any present or former officer or employee of Nevada, as a result of an act or omission arising within the scope of his public duties, unless the state or the appropriate political subdivision is also named as defendant.<sup>1</sup> Chapter 678 provides that the state or political subdivision must provide the defense for present and former legislators, state officers, employees and members of official boards and commissions, in any civil action relating to their public duties.<sup>2</sup> The defense will be handled by either the state attorney general or the chief legal officer of the political subdivision named in the suit (i.e., an "official attorney").<sup>3</sup> In cases involving present or former state legislators, officers or employees or of a state board or commission, the official attorney is the Attorney General of Nevada.<sup>4</sup> In cases involving an action of a present or former officer or employee of a political subdivision, the official attorney is the chief legal officer or authorized legal representative of that political subdivision.<sup>5</sup> In order to obtain this defense, the defendant must, within fifteen days after service of the summons, submit a written request for defense to either the official attorney, or if the defendant has an administrative superior, to his

administrative superior and the official attorney.<sup>6</sup> The official attorney must determine that the act or omission was within the course and scope of the defendant's public duty and was performed or omitted in good faith.<sup>7</sup>

Under prior law, the state had fifteen days to determine whether or not to defend the case.<sup>8</sup> Chapter 678 deletes this time limit and provides that the official attorney must determine as promptly as possible whether or not to defend the case, refuse the case, give the case to an insurer or appoint a special counsel.<sup>9</sup> Until the official attorney makes his decision as to whether to take the case, he must take all the appropriate steps in order to defend the case.<sup>10</sup> He may not, as a condition of supplying the defense, require that the defendant waive the attorney-client privilege.<sup>11</sup> The defendant may employ his own counsel;<sup>12</sup> however, the state will not be responsible for any court or attorney costs in this case.<sup>13</sup> If the official attorney decides not to defend, he must give written notice to the defendant ten days before the answer must be filed.<sup>14</sup> If the defense has begun, the official attorney must give the defendant twenty days notice before making an application to withdraw as attorney of record.<sup>15</sup> The reasons why the state decides not to defend the case are not admissible into evidence at the trial.<sup>16</sup>

Any final judgment in this case must contain a special verdict which determines if the officer or employee was acting within the scope of his public duty and whether the act or omission was wanton or malicious.<sup>17</sup> If the judgment is entered against the employee, the state or political subdivision must indemnify him unless: (a) he failed to submit a timely request for defense; (b) he failed to cooperate in good faith in the defense; (c) the act or omission was not within the scope of his public duty; or (d) the act or omission was wanton or malicious.<sup>18</sup>

If the defendant did not waive his right to a defense by the state but the official attorney refused the case, the state or political subdivision will be liable for the reasonable expenses of tendering the defense, including court costs and attorney's fees if it is judicially determined that the injuries arose out of public duty and the defendant's conduct was wanton and malicious.<sup>19</sup>

Nevada has waived its immunity from liability by statute.<sup>20</sup> Chapter 678 increases the tort liability of a public officer or employee from \$35,000 to \$50,000<sup>21</sup> and the liability of the state and its agencies from \$25,000 to \$50,000.<sup>22</sup>

Don H. Gallian

## FOOTNOTES

1. NRS 41.0337(1) (as amended by 1979 Nev. Stats. ch. 678 §1).
2. 1979 Nev. Stats. ch. 678 (hereinafter "Ch. 678") §3 (adding to NRS Ch. 41).
3. Id. §§2.5, 3 (adding to NRS Ch. 41).
4. Id. §2.5 ¶1 (adding to NRS Ch. 41).
5. Id. §2.5 ¶2 (adding to NRS Ch. 41).
6. Id. §3 (adding to NRS Ch. 41). Compare id. with Ch. 678 §1 (repealing NRS 41.0337(2)).
7. Ch. 678 §3 ¶2 (adding to NRS Ch. 41).
8. 1977 Nev. Stats. ch. 584 §4, at 1537 (NRS 41.0337(2)) (repealed by Ch. 678 §1).
9. Ch. 678 §§4.5, 7, 8, 9 (adding to NRS Ch. 41).
10. Id. §4.5 (adding to NRS Ch. 41).
11. Id. §6 (adding to NRS Ch. 41).
12. Id. §10 (adding to NRS Ch. 41).
13. Id.
14. Id. §4.5 ¶2(a) (adding to NRS Ch. 41).
15. Id. §4.5 ¶2(b). See Ch. 678 §11 (adding to NRS Ch. 41) (providing for bases of withdrawal).
16. Id. §5 (adding to NRS Ch. 41).
17. Id. §14 (adding to NRS Ch. 41).
18. Id. §15 (adding to NRS Ch. 41).
19. Id. §12 (adding to NRS Ch. 41).
20. NRS 41.031.
21. Id. §15.4 (amending NRS 41.035(1)).
22. Id. §15.6 (amending NRS 41.037).

### SEE GENERALLY:

1) Hall v. University of Nevada, 74 Cal. App.3d 280, 141 Cal.Rptr. 439 (1977); aff'd sub nom. Nevada v. Hall, —U.S.—, 99 S. Ct. 1182, 59 L.Ed.2d 416 (1979); reh. denied —U.S.—, 99 C. Ct. 2018, 60 L.Ed.2d 389 (1979).