January 29, 2013
Opinion 12-0029

56 JUDGES
La. R.S. 13:5108.1
La. R.S. 49:257

Juvenile court judges are "covered individuals" under La. R.S. 13:5108.1 and are therefore entitled to defense and indemnity by the State "against any claim demand, suit, complaint or petition seeking damages filed in any court over alleged negligence or other act by the individual, including any demand under any federal statute when the act that forms the basis of the cause of action took place while the individual was engaged in the performance of the duties of the individual's office or employment with the state." Once a judge is dismissed from the litigation, the State is no longer obligated by law to provide defense or indemnity to the juvenile court judge. The State, through the Office of the Attorney General, is not obligated by law to provide a defense to a juvenile court judge in an investigation before the Judiciary Commission of Louisiana.

Honorable Ernestine S. Gray
Chief Judge
Orleans Parish Juvenile Court
421 Loyola Avenue, Suite 210
New Orleans, Louisiana 70112

Dear Judge Gray:

You have requested an opinion of this office regarding the circumstances under which the Attorney General is legally obligated to provide legal representation to the judges of the Orleans Parish Juvenile Court.

Initially, we note that the obligation of the State of Louisiana to defend a judge may arise from two separate sources. First, La. R.S. 13:5108.1(1) provides as follows:

> The state shall defend and indemnify a covered individual against any claim, demand, suit, complaint or petition seeking damages filed in any court over alleged negligence or other act by the individual, including any demand under any federal statute when the act that forms the basis of the cause of action took place while the individual was engaged in the performance of the duties of the individual's office or employment with the state.

La. R.S. 13:5108.1(E) defines who a "covered individual" is for purposes of this indemnification statute. For the judiciary, this is an officer, official, or employee holding office or employment in the state supreme court, the courts of appeal, the clerk of court of the courts of appeal, and any family, juvenile, or district courts and the judicial administrator thereof. La. R.S. 13:5108.1(E)(1)(c). Not covered are clerks of district courts, justices of the peace, mayors' courts or city courts. La. R.S. 13:5108.1(E)(3)(b).[1]

[1] With respect to city court judges, La. R.S. 13:1905 requires the Attorney General to represent city court judges in cases where they would be within the coverage of La. R.S. 13:5108.1, but specifically denies them indemnification.

The second statute triggering an obligation of the State, through the Office of the Attorney General, to represent judges is La. R.S. 49:257, which provides that "the attorney general shall represent the state and all departments and agencies of state government in all litigation arising out of or involving tort or contract."

In light of the foregoing, you have asked the following questions:

> (1) Does the Louisiana Attorney General provide a defense and/or indemnity for any claim, lawsuit, or other legal proceeding against a Louisiana juvenile court judge?
>
> (2) Once a juvenile court judge is dismissed from a lawsuit as a party, is the Louisiana Attorney General's Office obligated to provide representation in a situation where that judge's continued participation in the lawsuit is necessary? Examples of this type of situation may include when a judge (though no longer a party) will have to be deposed as a fact witness, when a judge has to respond to public records requests, Equal Employment Opportunity Commission claims, etc.
>
> (3) Does the Louisiana Attorney General provide representation to a Louisiana juvenile court judge in a matter involving the Judiciary Commission of Louisiana?

In response to your first question, we note that juvenile court judges are "covered individuals" under La. R.S. 13:5108.1. As such, they are entitled to defense and indemnity "against any claim demand, suit, complaint or petition seeking damages filed in any court over alleged negligence or other act by the individual, including any demand under any federal statute when the act that forms the basis of the cause of action took place while the individual was engaged in the performance of the duties of the individual's office or employment with the state." The process that must be followed to ensure that a juvenile court judge will receive a defense and indemnity is set forth in paragraph (B) of La. R.S. 13:5108.1. Upon receipt of notice of the claim from the covered individual, the Attorney General must make a determination that the covered individual "was engaged in the performance of the duties of his office or employment with the state at the time the events that form the basis of the cause of action happened and that the covered individual was free of criminal conduct." La. R.S. 13:5108.1(B)(3). If it is concluded that the covered individual "was not engaged in the performance of the duties of his office or employment with the state at the time the events that form the basis of the cause of action happened or that the employee was engaged in criminal conduct," then the State shall not provide a defense to the covered individual. *Id.*

Next, you ask whether the State, through the Office of the Attorney General, must provide a defense to a juvenile court judge in the event the judge is dismissed from a lawsuit as a party but his continued participation in the lawsuit is necessary (for

example, when a judge will have to be deposed as a fact witness, when a judge has to respond to public records requests, Equal Employment Opportunity Commission claims, etc.). La. R.S. 49:257(A) provides that the Attorney General must represent the state and all departments and agencies of state government "in all litigation arising out of or involving tort or contract." In our opinion, once a juvenile court judge has been dismissed from a lawsuit, he no longer has a need for defense or indemnity as he is no longer a party to the litigation. The examples you provided are not considered "litigation arising out of or involving tort or contract." As such, pursuant to La. R.S. 13:5108.1, the State, through the Office of the Attorney General, is not required to provide representation under those circumstances.

Similarly, your third question asks whether our office must provide representation to a juvenile court judge in a matter involving the Judiciary Commission of Louisiana. It is our opinion that an investigation by the Judiciary Commission of Louisiana is not considered "litigation" for purposes of La. R.S. 49:257(A), and therefore, our office is not required to provide representation to a juvenile court judge before the Judiciary Commission of Louisiana. Our research did not reveal any additional Louisiana statutes which would require our office to represent a juvenile court judge in this situation.

Finally, we note there is no prohibition against "any department of state government from employing a general counsel and such other attorneys as may be necessary to provide legal consultation, representation, and such other legal services as are not provided for under such provisions of law." La. R.S. 49:258. The issue of whether attorneys fees owed to private counsel may be reimbursed with public funds is not the subject of this opinion but has been previously addressed by our office in La. Atty. Gen. Op. Nos. 08-0094, 05-0144, 01-149.

We trust this adequately responds to your request. However, if our office can be of further assistance, please do not hesitate to contact us.

Yours very truly,

JAMES D. "BUDDY" CALDWELL
Attorney General

By: _____
Lindsey K. Hunter
Assistant Attorney General

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Syllabus

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Date Received:

Date Released: January 29, 2013

Lindsey K. Hunter
Assistant Attorney General