

LEGAL IMMUNITY AND PART-TIME EMPLOYEES

By Leonard T. Bier, JD, CAPP

The United States Supreme Court in *Filarsky v Delia* recently considered the issue of whether someone who was hired by the government as a part-time special counsel for an employment matter was entitled to the personal limited liability or immunity granted a full-time employee. The facts of the case are interesting and applicable to many of the internal investigations and hearings conducted by public and government members of IPI.

Rialto, Calif., firefighter Delia became ill after responding to a property where there was a toxic spill. His doctor placed him on medical leave for three weeks to recover from his exposure to toxic fumes. At some point, the city hired a private investigator to conduct surveillance of his daily activities. Delia was observed going to a home improvement store and purchasing four rolls of fiberglass insulation. The city assumed he was making home repairs while on medical leave.

The city immediately convened an administrative hearing to determine if he was faking illness under cover of the doctor's note. The fire chief and two other members of the department's staff were appointed to a panel as administrative hearing officers.

The city hired Filarsky, a private attorney who specialized in employment matters; Delia's attorney and union representative were present at the administrative hearing. Delia was asked if his home could be inspected for recently-installed insulation, and he refused under the fourth amendment. The fire chief then issued an order to produce, which directed Delia to carry out from his home, in the presence of the panel, the four rolls. Delia produced the rolls of insulation under protest, and no disciplinary action was taken.

Delia filed a federal Section 1983 lawsuit against city employees and Filarsky, and the Federal District Court and Court of Appeals determined that the city had violated Delia's fourth amendment rights in conducting an unreasonable search by forcing him to produce the insulation. Both courts dismissed the suit against all the city employees except Filarsky, and he appealed to the Supreme Court to have immunity extended to him as



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a part-time city employee.

Full-time employees of government entities such as parking authorities enjoy various levels of personal immunity or limited liability from Section 1983 suits while in the performance of their duties "to allow (them) to serve the government without undue fear of personal exposure," and, "to avoid the impossible burden that would fall upon all our agencies of government if those acting on behalf of government were unduly hampered and intimidated in the discharge of their duties by the fear of personal liability." (*Filarsky v Delia*, US Supreme Court, 2012)

The Supreme Court in *Filarsky v Delia* decided that limited liability or immunity should be extended to part-time government employees, saying, "The government's need to attract talented individuals is not limited to full-time

public employees. Indeed it is often where there is a particular need for specialized knowledge or expertise that the government must look outside its permanent work force to secure the services of private individuals."

The Supreme Court further stated, "The most talented candidates will decline public engagements if they do not receive the same immunity enjoyed by their public counterparts."

Filarsky v Delia is an important case for IPI public and government sector members. It allows them to continue to hire outside legal counsel for sexual harassment, internal investigations, disciplinary matters, and other administrative hearings, as well as retain experts as independent contractors for short-term management, operations, and consulting positions without those individuals fearing or incurring personal liability. However, the public or government entity still remains liable for an aggrieved party's actual violations of their constitutional rights. **P**



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