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10 U.S. Code § 1054 - Defense of certain suits arising out of legal malpractice

Current through Pub. L. 114-38 (<http://www.gpo.gov/fdsys/pkg/PLAW-114publ38/html/PLAW-114publ38.htm>). (See Public Laws for the current Congress (<http://thomas.loc.gov/home/LegislativeData.php?n=PublicLaws>.)

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(a) The remedy against the United States provided by sections 1346(b) (</uscode/text/28/lii:usc:t:28:s:1346:b>) and 2672 (</uscode/text/28/2672>) of title 28 (</uscode/text/28>) for damages for injury or loss of property caused by the negligent or wrongful act or omission of any person who is an attorney, paralegal, or other member of a legal staff within the Department of Defense (including the National Guard while engaged in training or duty under section 316 (</uscode/text/32/316>), 502 (</uscode/text/32/502>), 503 (</uscode/text/32/503>), 504 (</uscode/text/32/504>), or 505 (</uscode/text/32/505>) of title 32 (</uscode/text/32>)) or within the Coast Guard, in connection with providing legal services while acting within the scope of the person's duties or employment, is exclusive of any other civil action or proceeding by reason of the same subject matter against the person (or the estate of the person) whose act or omission gave rise to such action or proceeding.

(b) The Attorney General shall defend any civil action or proceeding brought in any court against any person referred to in subsection (a) (or the estate of such person) for any such injury. Any person against whom such a civil action or proceeding is brought shall deliver, within such time after date of service or knowledge of service as determined by the Attorney General, all process served upon such person (or an attested true copy thereof) to such person's immediate superior or to whomever was designated by the head of the agency concerned to receive such papers. Such person shall promptly furnish copies of the pleading and process therein—

- (1) to the United States attorney for the district embracing the place wherein the action or proceeding is brought;
- (2) to the Attorney General; and
- (3) to the head of the agency concerned.

(c) Upon a certification by the Attorney General that a person described in subsection (a) was acting in the scope of such person's duties or employment at the time of the incident out of which the suit arose, any such civil action or proceeding commenced in a State court—

- (1) shall be removed without bond at any time before trial by the Attorney General to the district court of the United States of the district and division embracing the place wherein it is pending; and
- (2) shall be deemed a tort action brought against the United States under the provisions of title 28 and all references thereto. Should a United States district court determine on a hearing on a motion to remand held before a trial on the merits that the case so removed is one in which a remedy by suit within the meaning of subsection (a) is not available against the United States, the case shall be remanded to the State court.

(d) The Attorney General may compromise or settle any claim asserted in such civil action or proceeding in the manner provided in section 2677 of title 28 (</uscode/text/28/2677>), and with the same effect.

(e) For purposes of this section, the provisions of section 2680(h) of title 28 (</uscode/text/28/lii:usc:t:28:s:2680:h>) shall not apply to a cause of action arising out of a negligent or wrongful act or omission in the provision of legal assistance.

(f) The head of the agency concerned may hold harmless or provide liability insurance for any person described in subsection (a) for damages for injury or loss of property caused by such person's negligent or wrongful act or omission in the provision of authorized legal assistance while acting within the scope of such person's duties if such person is assigned to a foreign country or detailed for service with an entity other than a Federal department, agency, or instrumentality or if the circumstances are such as are likely to preclude the remedies of third persons against the United States described in section 1346(b) of title 28 (</uscode/text/28/lii:usc:t:28:s:1346:b>), for such damage or injury.

(g) In this section, the term "head of the agency concerned" means the Secretary of Defense, the Secretary of a military department, or the Secretary of the department in which the Coast Guard is operating, as appropriate.

(Added Pub. L. 99-661, div. A, title XIII ([http://thomas.loc.gov/cgi-bin/bdquery/L?d099:..list/bd/d099pl.lst:661\(Public_Laws\)](http://thomas.loc.gov/cgi-bin/bdquery/L?d099:..list/bd/d099pl.lst:661(Public_Laws))), § 1356(a)(1), Nov. 14, 1986, 100 Stat. 3996 (<http://uscode.house.gov/statviewer.htm?volume=100&page=3996>); amended Pub. L. 100-448 ([http://thomas.loc.gov/cgi-bin/bdquery/L?d100:..list/bd/d100pl.lst:448\(Public_Laws\)](http://thomas.loc.gov/cgi-bin/bdquery/L?d100:..list/bd/d100pl.lst:448(Public_Laws))), § 15(a), Sept. 28, 1988, 102 Stat. 1845 (<http://uscode.house.gov/statviewer.htm?volume=102&page=1845>.)

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