**Qualified Immunity for the Non-Lawyer**

Based upon current events involving law enforcement officers, the topic of “qualified immunity” has emerged as a perceived bar to holding law enforcement officers accountable for their actions. But what is qualified immunity? In this article, a brief explanation of qualified immunity will be provided to hopefully provide the reader a better understanding of this legal doctrine.

**What is Qualified Immunity**

Qualified immunity is a legal doctrine that protects all government officials from liability for civil damages when their conduct does not violate a clearly established statutory or constitutional right of which a reasonable person would have known. *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). The purpose of qualified immunity is to balance two important interests – the need to hold governmental officials accountable when they exercise power irresponsibly and the need to shield officials from harassment, distraction, and liability when they perform their duties reasonably. Qualified immunity is designed to give government officials breathing room to make reasonable but mistaken judgments and it will protect all but the plainly incompetent or those who knowingly violate the law. *Stanton v. Sims*, 571 U.S. 3, 6 (2013).

Providing immunity to government officials in the performance of their job duties is not limited to this concept of “qualified immunity.” For example, the Eleventh Amendment to the United States Constitution prohibits the award of damages against a State, thus providing absolute immunity to the State.[[1]](#footnote-1) *See Edelman v. Jordan*, 415 U.S. 651, 677 (1974). West Virginia has statutory immunity for county and other municipal entities and officials, including law enforcement officers, as well as for county boards of education and teachers. *See* W.Va. Code § 29-12-1, *et seq.* Judges are entitled absolute immunity for actions taken in their role as a judge. *See Stump v. Sparkman*, 435 U.S. 349 (1978). Therefore, qualified immunity is simply one of many types of immunity provided to government officials.

**Is qualified immunity the same as absolute immunity?**

Qualified immunity is just that – qualified. This means that a government official may lose the immunity if he or she engages in certain conduct. More specifically, if a government officials’ actions violate a clearly established statutory or constitutional right, that government official may be liable for monetary damages. Broken down further, a government official loses this immunity if (1) there was a violation of a statutory or constitutional right and (2) that right was clearly established. *Reichle*v. *Howards*, 566 U. S. 658, 664 (2012).

In order to understand this further, it is critical to note the phrase “clearly established.” “Clearly established” means that a legal principle must have a sufficiently clear foundation in then-existing precedent. The rule must be “settled law.” *District of Columbia v. Wesby*, 138 S. Ct. 577, 589 (2018). The precedent must be clear enough that every reasonable official would interpret it to establish the particular rule the plaintiff seeks to apply. *District of Columbia v. Wesby*, 138 S. Ct. 577, 590 (2018). To establish a “clearly established” right, there need not be a specific case directly ruling the conduct at issue unconstitutional, but existing precedent must place the unlawfulness of the particular action beyond debate *City of Escondido v. Emmons*, 139 S. Ct. 500, 504 (2019).

As you can see, qualified immunity is one of many immunities available to public officials, including law enforcement officers. Qualified immunity seeks to balance the need to hold governmental officials accountable against the need to shield officials from harassment, distraction, and liability when they perform their duties reasonably. The immunity is not absolute, but may be defeated by showing that the public officials actions violated a clearly established statutory or constitutional right.

1. A State, however, may waive this immunity by certain acts, such as procuring an insurance policy. [↑](#footnote-ref-1)