

# Protecting the legal rights of *all* the people of Hawai‘i, not just State employees

January 10, 2022

Aloha Senate Judiciary Committee Members,

**I’m advocating that the Hawai‘i Legislature improve the language of [HRS 662-15\(4\) Exceptions](#) to clarify its intent, and ensure that the State Department of the Attorney General is protecting the legal rights of all the people of Hawai‘i, not just State employees.**

To help you craft a better law, I have started to research how other States handle the issues of “sovereign immunity,” “scope of employment,” and what is the mission and purpose of each State’s Attorney General. I will start with Ohio, a state with which I have absolutely no personal connection.

The State of Ohio has a well-written law that addresses the conditions under which a State Attorney General can represent a State employee in a civil tort for damages or injury caused while performing his/her job. In Section 9.86 of the Ohio Revised Code, a State employee is *personally* liable for damages while performing his/her job *if* the action is committed with malicious purpose, in bad faith, or in a wanton or reckless manner. There is a Court of Claims that makes the determination whether or not the State accepts responsibility for the employee’s act, in which case, the AG’s Office will represent the employee in court. Otherwise, the employee is personally answerable in court.

## Ohio Revised Code > General Provisions > Chapter 9 Miscellaneous

### [Section 9.86 | Immunity of public officers and employees](#)

Except for civil actions that arise out of the operation of a motor vehicle and civil actions in which the state is the plaintiff, **no officer or employee shall be liable** in any civil action that arises under the law of this state **for damage or injury caused in the performance of his duties, unless the officer's or employee's actions were manifestly outside the scope of his employment** or official responsibilities, **or unless the officer or employee acted with malicious purpose, in bad faith, or in a wanton or reckless manner.**

This section does not eliminate, limit, or reduce any immunity from civil liability that is conferred upon an officer or employee by any other provision of the Revised Code or by case law. This section does not affect the liability of the state in an action filed against the state in the court of claims pursuant to Chapter 2743. of the Revised Code.

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## Ohio Attorney General > Service Divisions > Court of Claims Defense

### [Immunity Determinations](#)

[ohioattorneygeneral.gov/About-AG/Service-Divisions/Court-of-Claims-Defense](http://ohioattorneygeneral.gov/About-AG/Service-Divisions/Court-of-Claims-Defense)

**If** the Court of Claims determines that **the state employee was acting within the scope of employment in furtherance of the interests of the State**, the State will accept responsibility for the employee’s act, and the litigation may only be pursued against the State in the Court of Claims. See ORC 2743.02(A)(2). However, **if the Court of Claims determines that the state employee was not acting within the scope of employment, the employee is personally answerable for his/her acts in common pleas court.**

Hawai‘i’s handling of this issue compared to Ohio’s is like a rusty old bicycle compared to a finely tuned sports car. I want the people of Hawai‘i to have the finely-tuned Department of Attorneys General and Judicial system, not the tetanus-ridden, toxic one we have now that is unfair to so many of our citizens, broken, and in need of repair. The system and the people of Hawai‘i, that is.

The State of Hawai'i Department of the Attorney General's "[About Us](#)" webpage states:

*The bulk of our civil practice, however, is devoted to defending the State and state officials against claims for violations of federal law, improper execution of state laws, or money damages for property loss, personal injury or death.*

I'm not surprised at all because, in my experience, the Hawai'i DAG *always* defends state employees no matter what horrible thing they do. Sure, our laws say that it's "discretionary," on the part of the DAG, but I wonder how many times the Hawai'i DAG has, in its discretion, actually refused to represent a State employee in a civil tort for damages or injuries due to such malicious, bad faith, wanton, and reckless illegal acts as those expressly stated as Exception to Hawai'i's State Tort Liability Law:

- |                       |                          |                                      |
|-----------------------|--------------------------|--------------------------------------|
| • assault,            | • malicious prosecution, | • misrepresentation,                 |
| • battery,            | • abuse of process,      | • deceit, or                         |
| • false imprisonment, | • libel,                 | • interference with contract rights. |
| • false arrest,       | • slander,               |                                      |

Since finding the absence of something may be difficult, I've submitted an FOIP Request for Government Records from the DAG. I've asked for the case numbers with Plaintiff and Defendant names for the last five years in which the State of Hawai'i DAG has spent taxpayer money to represent state employees in the offenses listed above. I will share with you what I discover.

I think we could save A LOT of money if the State DAG would not represent so many employees who commit illegal acts. I predict the data will reveal that we are wasting time and money, and eroding trust in our government by defending state employees merely because they are state employees, not because that they deserve to be defended by the our State Deputy Attorneys General. We need some kind of impartial Court of Claims, like Ohio, to make fair, honest, and open determinations of whether the state is responsible for any employee's defense or not.

We must consider the Plaintiffs, most of whom are no doubt citizens of Hawai'i. The National Association of Attorneys General homepage starts with this:

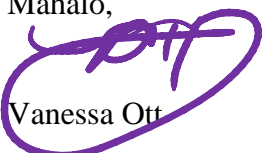
*All 50 U.S. states, the District of Columbia, and American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands, have an attorney general who serves as the chief legal officer in their jurisdiction, counsels its government agencies and legislatures, and **is a representative of the public interest.***

**Attorneys general represent their state and its residents. They do not represent or provide legal advice to individuals.**

It is my personal experience that the State of Hawai'i Department of the Attorney General, supported by the Judiciary, is not representing the public interest when they represent state employees who commit bad acts. They are mispending taxpayer and court resources, and good citizens who've been victimized by state employees have to spend their own money and time to get justice while our own Attorneys General defend the people who attack us for no other reason than they are state employees.

I would like our legislators, you folks, to fix this.

Mahalo,

  
Vanessa Ott

p.s. This is my 4th letter to the Senate Judiciary Committee on this matter. For your convenience, you can read my earlier correspondence on my website here: [Advocate For Change](#)