

Free of Charge: An Analysis of Absolute Immunity in Prosecutorial Misconduct

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Since the 1990s, prosecutors around the country have come under fire for misusing or abusing the power of prosecutorial discretion. Recently, the public has focused on how prosecutorial misconduct may result in convicting an innocent person and therefore, contributing to wrongful conviction rates. Prosecutorial misconduct can take many forms, such as withholding evidence, purposefully delaying the trial, or not giving the defense proper time to prepare their case. However, the current procedures in place are weak and ineffective as it relates to reprimanding a prosecutor for abusing that discretion or breaking rules. Prosecutorial misconduct is defined as any conduct which violates court rules or ethical standards of a practicing attorney and does not include good-faith errors. All prosecutors across the United States have immunity for acts done within the scope of their employment. Therefore, unless a state has adopted legislation to strip prosecutors of their absolute immunity, there is generally no liability or penalty for prosecutorial misconduct. In cases where a prosecutor commits misconduct, the state is in charge of reprimanding the prosecutor. The American Bar Association (ABA) has guidelines and model rules that states can choose to adopt to hold prosecutors accountable. It is uncommon to hear of a prosecutor being sanctioned or reprimanded for any type of misconduct.

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