

EMPLOYEE OF THE COUNTY, SHALL APPEAR AND DEFEND ANY CIVIL ACTION OR SPECIAL PROCEEDING INSTITUTED IN THE COURTS OF THIS STATE OR OF THE UNITED STATES AGAINST THE OFFICER OR EMPLOYEE BY REASON OF ANY ACT DONE OR OMITTED TO BE DONE WITHOUT MALICE AND IN THE ABSENCE OF GROSS NEGLIGENCE AND IN THE SCOPE OF HIS EMPLOYMENT. THE DEFENSE MAY BE RENDERED BY THE COUNTY ATTORNEY, BY AN ASSISTANT, BY ANY SPECIAL COUNSEL WHEN DIRECTED TO DO SO BY THE COUNTY ATTORNEY, OR BY PRIVATE COUNSEL RETAINED BY THE COUNTY ATTORNEY. THE DEFENSE OF THE CASE SHALL INCLUDE THE RIGHT TO ASSERT COUNTERCLAIMS AND TO ENGAGE IN THIRD PARTY PRACTICE ON BEHALF OF THE OFFICER OR EMPLOYEE.

(2) NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH (1), THE COUNTY ATTORNEY MAY DECLINE TO REPRESENT AN OFFICER OR EMPLOYEE WHO RETAINS PRIVATE COUNSEL.

(C) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO DEPRIVE ANY OFFICER OR EMPLOYEE OF THE RIGHT TO SELECT COUNSEL OF HIS OWN CHOICE AT HIS OWN EXPENSE, NOR DOES THIS SECTION PREVENT THE COUNTY ATTORNEY FROM ENTERING HIS APPEARANCE IN A CASE TO PROTECT THE INTERESTS OF THE COUNTY EVEN THOUGH NO REQUEST FOR SUCH APPEARANCE HAS BEEN FORTHCOMING FROM THE OFFICER OR EMPLOYEE NAMED AS A DEFENDANT.

3-70.

THE COUNTY ATTORNEY, PRIOR TO UNDERTAKING ANY DEFENSE, SHALL CONDUCT AN INVESTIGATION OF THE FACTS ON WHICH THE ACTION OR SPECIAL PROCEEDING IS BASED. IF THE COUNTY ATTORNEY DETERMINES THAT THE OFFICER OR EMPLOYEE WAS NOT ACTING WITHIN THE SCOPE OF HIS EMPLOYMENT OR THAT THE ACT OR OMISSION WAS MALICIOUS OR GROSSLY NEGLIGENT, THE INVESTIGATION SHALL PROCEED NO FURTHER, AND NO DEFENSE MAY BE PROVIDED FOR THE OFFICER OR EMPLOYEE PURSUANT TO THIS SECTION AND § 3-69. THE INVESTIGATION HEREIN REQUIRED MAY BE ACCOMPLISHED BY THE COUNTY ATTORNEY, ANY ASSISTANT, OR BY ANY OTHER ATTORNEY OR PERSON WHEN DIRECTED TO DO SO BY THE COUNTY ATTORNEY. IF IT APPEARS THAT THE OFFICER OR EMPLOYEE IS COVERED BY A POLICY OF INSURANCE UNDER THE TERMS OF WHICH THE CARRIER IS REQUIRED TO PROVIDE COUNSEL IN THESE ACTIONS OR SPECIAL PROCEEDINGS, THE COUNTY ATTORNEY MAY TERMINATE FURTHER INVESTIGATION AND PROVIDE NO REPRESENTATION FOR THE OFFICER OR EMPLOYEE. SUBJECT TO THE PROVISIONS OF THIS SECTION AND SECTION 3-69, THE COUNTY ATTORNEY HAS SOLE DISCRETION TO ASSUME THE DEFENSE OF ANY OFFICER OR EMPLOYEE.

3-71.

IF THE COUNTY ATTORNEY DETERMINES, PURSUANT TO § 3-70, NOT TO ASSUME THE DEFENSE OF A COUNTY OFFICER OR EMPLOYEE, AND IT IS JUDICIALLY DETERMINED THAT THE INJURIES AROSE OUT OF AN ACT OR OMISSION OF THE OFFICER OR EMPLOYEE DURING THE PERFORMANCE OF HIS DUTIES AND WITHIN THE SCOPE OF HIS EMPLOYMENT AND THAT THE ACT OR OMISSION OF THE OFFICER OR EMPLOYEE WAS NOT MALICIOUS, OR GROSSLY NEGLIGENT, OR IT IS