

(b) (1) Subject to the provisions of [§ 3-70] § 3-804 OF THIS SUBTITLE, the County Attorney, when requested in writing by any officer or 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] THE OFFICER'S OR EMPLOYEE'S own choice at [his] THE OFFICER'S OR EMPLOYEE'S own expense, nor does this section prevent the County Attorney from entering [his] AN 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.] 3-804. Investigation by County Attorney.

[The] BEFORE UNDERTAKING ANY DEFENSE, 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] THE OFFICER'S OR EMPLOYEE'S 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] OR § 3-803 OF THIS SUBTITLE. 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 [§ 3-69] § 3-803 OF THIS SUBTITLE, the County Attorney has sole discretion to assume the defense of any officer or employee.

[3-71.] 3-805. Same; reimbursement of expenses.

If the County Attorney determines, pursuant to [§ 3-70] § 3-804 OF THIS SUBTITLE, 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] THE OFFICER'S OR EMPLOYEE'S duties and within the scope of [his] THE OFFICER'S OR EMPLOYEE'S employment and that the act or omission of the officer or employee was not malicious, or grossly negligent, or it is established that the defense of immunity is available to the officer or employee, the County is liable to the officer or employee for reasonable expenses in prosecuting [his] THE OFFICER'S OR EMPLOYEE'S own defense, including court costs and