

Legal and Liability Considerations of Emergency Vehicle Operations

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Legal Bumbo-Jumbo

I am not an attorney. This presentation is intended for general information purposes and is not intended to substitute for qualified legal advice. It is not meant to be an exhaustive research of the laws and rulings on the issue, but may be used by department managers and operators of emergency vehicles to understand the legal implications of the operation of emergency vehicles. If you need specific legal advice, please contact your department's legal representative.



Today we will cover:

1. Legal Concepts: Your duty and care standard under the law.
2. What laws apply to the operation of emergency vehicles?
3. From which laws are operators of emergency vehicles exempt?
4. When are you exempt?
5. Legal liability for the department.
6. Personal liability for the emergency vehicle operator.
7. Volunteer firefighter/medic red lights in personal vehicles.



First, let look at some basic legal concepts...

Duty

Standard of Care



Your Duty Under The Law

Duty n. A legal obligation that entails mandatory conduct or performance.

Duty of care n. a requirement that a person act toward others and the public with watchfulness, attention, caution and prudence that a reasonable person in the circumstances would.



Standard of Care: Due Regard or Due Care

Care n. in law, to be attentive, prudent and vigilant. Essentially, care (and careful) means that a person does everything he/she is supposed to do (to prevent an accident). It is the opposite of negligence (and negligent), which makes the responsible person liable for damages to persons injured. In theory, if a person "exercises care," a court cannot find him/her responsible for damages from an accident in which he/she is involved.



Minn. Statutes Section 169.17 (2009)

Minn. Statute Section 169.17 EMERGENCY VEHICLE. (2009)

The speed limitations set forth in sections 169.14 to 169.17 do not apply to an authorized emergency vehicle responding to an emergency call. Drivers of all emergency vehicles shall sound an audible signal by siren and display at least one lighted red light to the front, except that law enforcement vehicles shall sound an audible signal by siren or display at least one lighted red light to the front. ***This provision does not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of persons using the street, nor does it protect the driver of an authorized emergency vehicle from the consequence of a reckless disregard of the safety of others.***

(emphasis added)



Your Duty With Regard to Emergency Vehicle Operation

The statutes require the driver of an emergency vehicle to use “due regard for the safety of persons using the highways” it does NOT protect the driver of an authorized emergency vehicle from the consequence of a reckless disregard of the safety of others. (Minn. §169.17, Minn. §169.03)



Now, let's look at the statutes...



What is an emergency vehicle?

Minn. Statute 169.011 Subd. 3. (2009) Authorized emergency vehicle.

"Authorized emergency vehicle" means any of the following vehicles when equipped and identified according to law:

- (1) a vehicle of a fire department;
- (2) a publicly owned police vehicle or a privately owned vehicle used by a police officer for police work under agreement, express or implied, with the local authority to which the officer is responsible;
- (3) a vehicle of a licensed land emergency ambulance service, whether publicly or privately owned;
- (4) an emergency vehicle of a municipal department or a public service corporation, approved by the commissioner of public safety or the chief of police of a municipality;
- (5) any volunteer rescue squad operating pursuant to Laws 1959, chapter 53;
- (6) a vehicle designated as an authorized emergency vehicle upon a finding by the commissioner of public safety that designation of that vehicle is necessary to the preservation of life or property or to the execution of emergency governmental functions.



What laws apply to the operation of emergency vehicles?

All traffic statutes in Chapter 169 apply to the drivers of government vehicles **unless specifically exempted** (Minn. §169.03 Subd 1)

Minn. Statutes Section 169.03 EMERGENCY VEHICLES. (2009)

Subdivision 1.Scope.

The provisions of this chapter applicable to the drivers of vehicles upon the highways shall apply to the drivers of all vehicles owned or operated by the United States, this state, or any county, city, town, district, or any other political subdivision of the state, subject to such specific exemptions as are set forth in this chapter with reference to authorized emergency vehicles.



What are the exceptions?

Stop Signs and Semaphores

Minn. Statute Section 169.03 Subd. 2. (2009)

Stops.

The driver of any authorized emergency vehicle, when responding to an emergency call, upon approaching a red or stop signal or any stop sign shall slow down as necessary for safety, but may proceed cautiously past such red or stop sign or signal after sounding siren and displaying red lights, except that a law enforcement vehicle responding to an emergency call shall sound its siren or display at least one lighted red light to the front.



What are the exceptions?

One Way Roadways

Minn. Statute Section 169.03 Subd. 3. (2009)

One-way roadway.

The driver of any authorized emergency vehicle, when responding to any emergency call, may enter against the run of traffic on any one-way street, or highway where there is authorized division of traffic, to facilitate traveling to the area in which an emergency has been reported; and the provisions of this section shall not affect any cause of action arising prior to its passage.



What are the exceptions?

Speed Limits

Minn. Statute 169.17 EMERGENCY VEHICLE. (2009)

The speed limitations set forth in sections 169.14 to 169.17 do not apply to an authorized emergency vehicle responding to an emergency call. Drivers of all emergency vehicles shall sound an audible signal by siren and display at least one lighted red light to the front, except that law enforcement vehicles shall sound an audible signal by siren or display at least one lighted red light to the front. This provision does not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of persons using the street, nor does it protect the driver of an authorized emergency vehicle from the consequence of a reckless disregard of the safety of others.



What are the exceptions?

Parking

Minn. Statute Section 169.03 Subd. 4. (2009)

Parking at emergency scene.

An authorized emergency vehicle, when at the scene of a reported emergency, may park or stand, notwithstanding any law or ordinance to the contrary.



Other Exemptions

Backing on freeway.....169.305 Subd 2

Using freeway crossovers.....169.305 Subd 1(b)

Car seats.....169.685 Subd 6 (2)

Window tint on side and rear glass...169.71 Subd 4 (4) (b)

Suspended objects on glass.....169.71 Subd 1 (3) (c)



Emergency Vehicles Operators Are NOT Exempt From...

Railroad crossings requirements

School Bus stop arms

Passing in a no passing zone

Careless or reckless driving

Driving while impaired

and all other traffic statutes



When are you exempt?

Minn. Statute Section 169.03 Subd. 2. (2009)

Stops.

The driver of any authorized emergency vehicle, **when responding to an emergency call**, (emphasis added)

Minn. Statute Section 169.03 Subd. 3. (2009)

One-way roadway.

The driver of any authorized emergency vehicle, **when responding to any emergency call** (emphasis added)

Minn. Statute 169.17 EMERGENCY VEHICLE. (2009)

Speed. The speed limitations set forth in sections 169.14 to 169.17 do not apply to an authorized emergency vehicle **responding to an emergency call.** (emphasis added)



When are you exempt?

Minn. Statute Section 169.03 Subd. 4. (2009)

Parking at emergency scene.

An authorized emergency vehicle, **when at the scene of a reported emergency**, may park or stand, notwithstanding any law or ordinance to the contrary. (emphasis added)

Minn. Statute Section 169.305 Subd 1, Subd 2 (2009)

Backing on Freeway, Freeway Crossovers (paraphrased) ...driver of an authorized emergency vehicle in the course of performing duties...



When are you exempt?

Your status as an emergency vehicle grants special permission only in response to an emergency call or when in pursuit of an actual or suspected violator of the law. At all other times, operators of emergency vehicles must comply with all traffic statutes.

Minn. Statutes Section 169.03, 169.17 (2009)



Liability for the Department

Liability for the department is created when its employees are negligent in the operation of emergency vehicles.

Negligence is created when employees lack due care or ordinary care in the performance of their duties.

Qualified Immunity: The defense of qualified immunity protects "government officials . . . from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.



Liability for the Individual

However, officers are not entitled to the protections of the official immunity doctrine when there is no room to exercise discretion. Courts refer to non-discretionary duties as “ministerial.” An officer who violates a duty imposed by statute, or violates a clear, mandatory directive contained in a policy (for example, shall/shall not language) will not be entitled to official immunity. For example, officers were found not to have immunity when they violated a policy that said officers “shall not” pursue non-dangerous felons.



Liability for the Individual

Liability for the Individual is created when:

1. You have a Duty:
2. You breach that Duty (fail to perform) through an act or omission.
3. Cause damage or injury to another



You be the Judge...

Milford CT June 2009



S 8m CAM1
VID:CAR 22 OID:CAR 22

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You be the Judge...

1. Did the officer have a duty?
2. What is the standard of care?
If it occurred in Minnesota
3. Did the officer cause damages?
2 teenagers dead



The story...

Nov 24, 2009 DERBY, Conn. -- A Milford police officer charged in the death of two teens appeared in court for the first time on Tuesday. Officer Jason Anderson made a brief court appearance in Derby on Tuesday morning. He walked out of the courthouse and refused to talk about the charges pending against him.

Anderson's brother, also a Milford Police Officer, was by his side.

Anderson was placed on paid leave until next month. His criminal case will be taken care of in Milford -- the city where he's an officer.

Anderson is accused of driving 95 mph on the way back from a mutual aid call in West Haven. On the dash-cam video, Anderson is seen speeding by another officer before slamming into the teen's car, which was turning in front of him. Ashlie Krakowski, 19, and David Servin, 19, were both killed in the crash. A memorial for Krakowski and Servin still stands at the scene.

A small computer in the police car that records gas and brake pedal use indicated Anderson had the gas pedal all the way depressed, 100 percent, for eight seconds before the crash. The on board computer also showed Anderson hitting the brake six-tenths of a second before the impact. (Emphasis added)

Anderson's arrest was the result of a three-month investigation into the crash. He was charged with two counts of manslaughter and one count of reckless driving.



Minnesota Criminal Statutes

Minn. Statutes Section 609.21 CRIMINAL VEHICULAR HOMICIDE AND INJURY. (2009)

Subdivision 1. Criminal vehicular homicide or operation; crime described.

A person is guilty of criminal vehicular homicide or operation and may be sentenced as provided in subdivision 1a, if the person causes injury to or the death of another as a result of operating a motor vehicle:

- (1) in a grossly negligent manner;
- (2) in a negligent manner while under the influence of:
 - (i) alcohol.....



Minnesota Criminal Statutes

Minn. Statutes Section 609.21 Subd. 1a. (2009) (Felony)

Criminal penalties.

(a) A person who violates subdivision 1 and causes the **death** of a human being not constituting murder or manslaughter or the death of an unborn child may be sentenced to imprisonment for not more than ten years or to payment of a fine of not more than \$20,000, or both.

(b) A person who violates subdivision 1 and causes **great bodily harm** to another not constituting attempted murder or assault or great bodily harm to an unborn child who is subsequently born alive may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both.

(c) A person who violates subdivision 1 and causes **substantial bodily harm** to another may be sentenced to imprisonment for not more than three years or to payment of a fine of not more than \$10,000, or both.

(d) A person who violates subdivision 1 and causes **bodily harm** to another may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both. (emphasis added)



Minnesota Criminal Statutes

Minn. Statute Section 169.13 RECKLESS OR CARELESS DRIVING. (2009) (emphasis added)

Subdivision 1.Reckless driving.

(a) Any person who drives any vehicle in such a manner as to indicate either a willful or a wanton disregard for the safety of persons or property is guilty of reckless driving and such reckless driving is a misdemeanor.

(b) A person shall not race any vehicle upon any street or highway of this state. Any person who willfully compares or contests relative speeds by operating one or more vehicles is guilty of racing, which constitutes reckless driving, whether or not the speed contested or compared is in excess of the maximum speed prescribed by law.

Subd. 2.Careless driving.

Any person who operates or halts any vehicle upon any street or highway carelessly or heedlessly in disregard of the rights of others, or in a manner that endangers or is likely to endanger any property or any person, including the driver or passengers of the vehicle, is guilty of a misdemeanor.

Subd. 3.Application.

(a) The provisions of this section apply, but are not limited in application, to any person who drives any vehicle in the manner prohibited by this section:

- (1) upon the ice of any lake, stream, or river, including but not limited to the ice of any boundary water;
- (2) in a parking lot ordinarily used by or available to the public though not as a matter of right, and a driveway connecting the parking lot with a street or highway.

(b) This section does not apply to:

(1) an authorized emergency vehicle, when responding to an emergency call or when in pursuit of an actual or suspected violator;

(2) the emergency operation of any vehicle when avoiding imminent danger; or

(3) any raceway, racing facility, or other public event sanctioned by the appropriate governmental authority



Minnesota Criminal Statutes

Summary

Death = 10 years in prison and \$20,000 fine

Serious Injury = 5 years in prison and \$10,000 fine

Non-serious injury = 1 year in prison and \$3,000 fine

No injury = Misdemeanor crime



Risk Management

Balance risk to benefit

We balance risk everyday

Is the risk worth the benefit to self ?

Is the risk worth the benefit to others?

5 mile emergency run @100 MPH = 3.125
minutes

5 mile emergency run @60 MPH = 5 minutes

Difference of 1.875 minutes = 112 seconds

How many emergency calls will be changed by 112
seconds?



Volunteer Firefighter Red Light Permits

1. Must have a Permit issued by the Commissioner of Public Safety.
2. Must have your Fire or EMS Chief's permission by a signature on the application.
3. Application fee of \$15 to cover Criminal History search.
4. May have ONE non-flashing red lamp not to exceed 3 inch diameter.
5. May be lighted only upon response to an emergency call (to the scene or to the firehouse.)



Volunteer Firefighter Red Light Permits

No emergency vehicle status is granted and no emergency vehicle exemptions apply. The vehicle operator must comply with all traffic laws and ordinances.



Volunteer Firefighter Red Light Permits

Minn. Statute Section 169. 58 Subd 2 (2009)

The commissioner of public safety must be notified immediately upon the termination of membership in a volunteer fire department or when an ambulance or permitted emergency medical first responder ceases operations.



Volunteer Firefighter Red Light Permits

Applications can be found on the State Patrol's Website at:

http://www.dps.state.mn.us/patrol/FireFighter/Red_Light_Application_PS18068_04.pdf



In Conclusion...

1. Know the Law and Legal Risks
2. Balance Your Risk with the Expected Benefit.
3. Operate with Due Regard for Others.
4. This job is tough enough already.
 - Don't create liability for your department.
 - Don't create liability for yourself.



Questions?



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CAVEAT

THIS SUMMARY IS NOT INTENDED TO PROVIDE LEGAL ADVICE, LEGAL CONSULTATION, NOR INFORMATION TO ADDRESS SPECIFIC MATTERS YOU MAY CURRENTLY BE ADDRESSING. PLEASE CONTACT YOUR DEPARTMENT'S LEGAL COUNSEL SHOULD YOU HAVE CONCERNS ABOUT SPECIFIC MATTERS

The following summary provides an overview of some of the statutory and case law pertinent to the use of emergency vehicles.

A. Statutory Law

1. Minn. Stat. § 169.011, subd. 3 (2010).

The definition of an “authorized emergency vehicle” is set forth in this statutory provision. A vehicle can only be considered an “authorized emergency vehicle” if it is one of the following: (1) a fire department vehicle; (2) a publicly owned police vehicle, or a privately owned vehicle used by a police officer for police work under an agreement with a local authority to which the officer is responsible (3) a licensed land emergency ambulance service, which may be publicly or privately owned; (4) a municipal department or public service corporation vehicle that has been approved of by DHS or the police chief of a municipality; (5) any volunteer rescue squad operating pursuant to Laws 1959, chapter 53¹; (6) a vehicle that the Department of Public Safety designates as an “authorized emergency vehicle” if it is necessary to preserve life or property or for the execution of emergency governmental functions.

Note: A “tow truck” or “towing vehicle” that has a manufacturer's gross vehicle weight rating of 8,000 pounds or more, equipped with a crane and winch, or an attached device used exclusively to transport vehicles, and is equipped to control the movement of the towed or transported vehicle may be considered an “authorized emergency vehicle” under certain circumstances, it has activated flashing lights required by law. Minn. Stat. § 169.18, subd. 11 (e).

2. Minn. Stat. § 169.03 (2010)

In general, drivers of all vehicles must comply with the traffic regulations set forth in Minn. Stat. ch. 169. However, certain authorized emergency vehicles may be subject to certain exceptions.

For example, when a driver of an authorized emergency vehicle is responding to an emergency call and approaches a red or stop signal or any stop sign, the driver shall slow down

¹ Minn. Law 1959, ch. 53 provides that the St. Louis County Board of Commissioners may authorize the sheriff and any volunteer rescue squad of St. Louis County to enter into an agreement to provide aid and assistance to the St. Louis County Sheriff concerning auto accidents, rescue work, and other similar duties and to appropriate and expend money to carry out the purpose of such agreements including maintenance replacement of equipment used.

for safety reasons, but is allowed to proceed past the red or stop sign or signal after sounding a siren *and* displaying red lights.

Note: Law enforcement vehicles responding to an emergency are only required to sound a siren *or* display at least one lighted red light to the front. Although this is what this statute provides, it is important to know what policies exist for the particular law enforcement entity, however. For example, if the law enforcement entity's policy requires both siren and lights, the driver of that law enforcement vehicle will be required to follow the policy to avoid potential liability.

When a driver is responding to an emergency call, the driver may also drive on a one-way street or a highway against traffic to get to the area where the emergency was reported. Once at the emergency scene, the "authorized emergency vehicle" may be parked or stand wherever necessary, despite other laws to the contrary.

Note: Only when a driver of an "authorized emergency vehicle" is responding to an emergency call and only when law enforcement are in immediate pursuit of an actual or suspected violator of the law is the driver allowed the exceptions in this statute. If these instances do not exist, the driver will be held to the regular traffic regulations.

3. Minn. Stat. § 169.17 (2010)

This provision provides that when an "authorized emergency vehicle is responding to an emergency call, the speed limits set forth in Minn. Stat. § 169.14 to 169.17 do not apply. Minn. Stat. § 169.17.

- a. However, the driver of an emergency vehicle shall sound an audible signal by siren *and* at least one lighted red light to the front. A driver of an "authorized emergency vehicle has a duty to drive with due regard for the safety of persons using the street." Minn. Stat. § 169.17.

Note: Law enforcement vehicles shall sound an audible signal by siren or at least one lighted red light to the front. *Id.*

- b. Even though an "authorized emergency vehicle" need not comply with the speed limits when responding to an emergency call, the driver is still under a duty "to drive with due regard for the safety of persons using the street."

Note: This provision will not protect the driver of an "authorized emergency vehicle" from any consequences caused by driving with "reckless disregard of the safety of others."

4. Minn. Stat. § 169.18, subd. 11 (2010)

Minn. Stat. § 169.18 sets forth various driving rules (e.g. keeping to the right, how to pass, not to follow too closely). Pertinent to emergency vehicles is the following:

- a. A driver of a motor vehicle behind an “authorized emergency vehicle” shall not follow within 500 feet of that vehicle, as long as the “authorized emergency vehicle” is responding to an emergency. Minn. Stat. § 169.18, subd. 8 (c).
- b. A driver of a motor vehicle that approaches and will be passing an “authorized emergency vehicle” that is parked or stopped on a street or highway with two lanes in the same direction, shall move to the lane farthest away from the emergency vehicle, if it is possible to do so.
- c. If a peace officer has probable cause to believe that a driver of a motor vehicle has not complied with part a. or part b. and that the violation occurred within 4 hours after the incident or the report was received, the officer can issue a citation for violating the statute, even if the offense was not committed in the presence of the officer.

5. Minn. Stat. § 169.305 (2010)

This statute addresses rules pertaining to controlled access areas and penalties for violating the law. Pertinent to “authorized emergency vehicles” is the following:

- a. Main roadways of controlled-access highways generally have areas designated for crossing over from one direction of travel to the other. It is unlawful for any vehicle to make a “U” turn in such a designated area, except that an emergency vehicle, maintenance equipment or construction equipment in a marked construction zone, may use such a cross over. Minn. Stat. § 169.305, subd. 1 (b).

In this instance, a tow truck, it is on the way to an accident or a disabled vehicle may also use the cross over. *Id.*

- b. A driver of an “authorized emergency vehicle” may also back up on a roadway or shoulder of a controlled-access highway, but only if in the course of performing emergency duties. Minn. Stat. § 169.305, subd. 2.

6. Minn. Stat. § 169.471 (2010)

- a. Video screens installed in law enforcement vehicles are permitted. Minn. Stat. § 169.471, subd. 1 (1).

Otherwise, television screens are prohibited except if a closed-circuit video system is installed to aid the driver’s visibility or as part of a vehicle control system. *Id.*, subd. 1 (2) and (3).

- b. A firefighter while operating a fire department emergency vehicle in response to an emergency may wear headphones or earphones in both ears for the purpose of receiving or listening to broadcasts or reproductions from radios, tape decks, or other sound-producing or transmitting device. Minn. Stat. § 169.471, subd. 2 (b) (2).

The use of a communication headset by an emergency medical services person while operating an ambulance subject to the rules set forth in Minn. Stat. § 144E.101 (certified ambulance service) is permitted. Minn. Stat. § 169.471, subd. 2 (b) (3).

Otherwise, headphones or earphones that are used in both ears at the same time to receive or listen to broadcasts, reproductions from radios, tape decks, or other sound-producing or transmitting devices is prohibited. Id., subs. 2 (b).

7. Minn. Stat. § 169.64 (2010)

This provision addresses lights that are prohibited and exceptions. Although this provision addresses different color lighting and flashing lights regarding different kinds of vehicles, pertinent to authorized emergency and law enforcement vehicles are the following provisions.

- a. Unless authorized by the Department of Public Safety, no vehicle shall be equipped and no person shall drive or move any vehicle on a highway that has a red light or any colored light other than those required or permitted. Minn. Stat. § 169.64, subd. 2.
- b. An “authorized emergency vehicle” may use flashing lights, but they must be in compliance with Minn. Stat. § 169.59, subd. 4. Minn. Stat. § 169.64, subd. 3.
- c. An “authorized emergency vehicle” may display flashing blue lights to the rear of the vehicle as a warning signal in combination with other lights. In addition, an “authorized emergency vehicle” may display, mounted on the passenger side only, flashing blue lights to the front of the vehicle as a warning in combination with other lights that are permitted or required. Minn. Stat. § 169.64, subd. 4(b).

Note: To ensure that your vehicle has the correct permitted and/or required lighting, check with your designated internal personnel and/or counsel.

8. Minn. Stat. § 144E.121 (2010).

This provision governs air ambulance service requirements. Air ambulance services must comply with the regulations of the Federal Aviation Administration of the Minnesota Department of Transportation, Aeronautics Division. Minn. Stat. § 144E.121, subd. 1. Except pilots, air ambulance emergency medical personnel must also meet the requirement set forth in this statute (e.g. be properly certified, trained, licensed) and the equipment must be appropriate for the level of service provided. *Id.*, subds. 2 and 3.

B. Case Law

1. *Terrell v. Larson*, 2008 WL 2168348 (Minn. Ct. App.); *rev. denied* (Minn. Aug. 19, 2008) (unpublished)

A fatality accident occurred on December 29, 2000, when an Anoka County Deputy, who was driving a pickup truck at high speed collided with the deceased at the intersection of Highway 65 and County Road 18 in Anoka County. The Deputy heard a domestic abuse dispatch call involving a wife and small child. The Deputy and his trainee responded to the call and started driving with lights and sirens activated. As the Deputy approached the intersection, he saw flashing yellow lights and slowed down to about 30-35 mph. Then when he thought it was safe, he increased his speed as he approached the intersection and collided with the deceased's vehicle. During the trip, the Deputy heard that another vehicle was also responding and that the Deputy could cancel. He did not cancel, however. At impact, it was estimated that the Deputy was traveling 60-65 mph. Initially, the deceased's husband brought Section 1983 claim in federal court and after an appeal, the Eighth Circuit court found that the Deputy was entitled to qualified immunity (see below for explanation). Then the deceased's husband brought a state court case. The Deputy asserted common law official immunity and prevailed on summary judgment, which was affirmed on appeal.

Of interest in this case is the discussion of when official immunity applies and whether such immunity is negated by language in a policy. The language in the policy did not use mandatory language, such as "shall." Thus, the Deputy argued and the court of appeals agreed that whether the Deputy stopped was discretionary and thus, immunity still applied (see below for explanation).

2. *Jacobson v. City of Bloomington*, 2008 WL 2246144 (Minn. Ct. App.), *rev. denied*, (August 19, 2008) (unpublished)

On March 6, 2006, a police officer responded to a dispatcher call and activated emergency lights and Opticom. The officer pulled to his left at an intersection and he turned into her. He sued the officer and City of Bloomington, claiming that the officer was negligent. The district court denied defendants' motion for summary judgment based on immunity and defendants appealed. *Id.*, *1. With regard to the officer, the court of appeals determined that immunity did apply. First, the court determined that the officer exercised professional judgment and discretion in responding to a crime-in-progress call. Second, the court determined that official immunity did not turn on whether a specific traffic regulation did or did not apply to

public employees driving an emergency vehicle in response to an emergency situation. Thus, the absence of a specific exemption for passing a vehicle at an intersection does not create a ministerial duty, and Minn. Stat. § 169.17 did not impose a duty on the officer that was “absolute, certain and imperative.” Thus, there was no ministerial act that prevented immunity. *Id.*, *3. With regard to the City, the court found that since the officer was entitled to immunity, it extended to the employer through vicarious official immunity. *Id.* Finally, the court held that statutory immunity also applied. *Id.*

3. *Wilson v. City of Burnsville*, 2007 WL 1263490 (Minn. Ct. App.)

On September 20, 2001, decedent did not feel well, had trouble breathing and called 911. Burnsville police confirmed the address and send emergency responders, but the address given was incorrect. When the error was caught, the dispatcher contacted the emergency responders and gave the correct address. First, the responders went to the wrong place and could not find it. Then the responders were on the wrong side of the highway. After they arrived, decedent was transported to a hospital, which he died. Wife sued the city claiming that it was negligent in providing emergency services. The court ruled that the actions of the dispatcher and emergency responders were discretionary and protected by official immunity. The Minnesota Court of Appeals held that obtaining the address where the emergency is, writing it down and accurately dispatching it to the emergency responders is a ministerial duty and thus, official immunity does not apply if the address given is wrong. *Id.*, *4. The court of appeals also held that vicarious official immunity did apply because the officials performance would be hindered if they second guessed their decisions. As to the public duty doctrine, the court held that the public duty doctrine barred plaintiff’s claim because the City’s provision of emergency medical services was pursuant to a general duty to the public. Thus, no special duty was required.² *Id.*, *9.

4. *Thompson v. City of Minneapolis*, 707 N.W.2d 669 (Minn. 2006).

On November 29, 2001, at approximately 1:30 p.m., a Minneapolis police officer, who was driving a detox van, tried to stop a SUV. The SUV drove through a red light and struck a pedestrian. The driver of the SUV ran from the vehicle and was later apprehended and convicted of a hit and run involving the plaintiff. Plaintiff brought a lawsuit against the City of Minneapolis claiming that the officers failed to continually use lights and siren while pursuing the SUV driver and thus was negligent because of a duty to warn the plaintiff of the pursuit. The City brought a motion for summary judgment based upon vicarious official immunity. The district court granted the motion and the court of appeals reversed and remanded, holding that the pursuit policy imposed ministerial duties and thus, official immunity did not apply. 707 N.W.2d at 672. The court of appeals found that the original decision to stop the SUV was immune but the officer’s failure to continuously operate emergency lights and siren during the pursuit was a ministerial duty mandated by the Pursuit Policy and thus no immunity could be granted. The Minnesota Supreme Court held that the Pursuit Policy mandated continuous lights and siren, and

² In *Stodgell v. City of Warroad*, 2003 WL 22136081*6 (Minn. Ct. App.) (unpublished), the court of appeals held that official immunity does not apply to acts involving medical discretion by ambulance attendants. However, actions that do not involve medical discretion may be protected.

thus, that duty was ministerial, but it reversed the court of appeals decision and remanded the case to the district court to determine whether the activity was in fact a pursuit under the policy.

5. *Askari v. Kemp*, 2003 WL 21791607 (Minn. Ct. App.) (unpublished)

On March 28, 2001, plaintiff was traveling south on a City of Edina street. Officers were completing a 911 follow-up call and were dispatched to a personal injury accident with unknown injuries. Although the officer slowed his speed, looked to the right and changed the pitch of the siren, and then entered the intersection, it was too late and the officers' vehicle struck plaintiffs. She continued that she did not hear any sirens prior to the accident. Plaintiff sued for negligence; the officer and City claimed immunity in a summary judgment motion, which was granted. The facts about whether the officers' had activated lights and sirens (both required at the time) was at issue. Thus, the Minnesota Court of Appeals reversed the district court, determining that a fact question existed as to whether the siren was activated and if not, whether the failure to activate the siren was the cause of the accident. *Id.*, *4. Finally, the court determined that it was premature to decide whether vicarious official immunity applies. *Id.*

6. *Heroux v. North Memorial Health*, 2000 WL 1064975 (Minn. Ct. App.) (unpublished)

This case shows what can happen when facts related to the issue of what constitutes compliance with a duty of care are in dispute. Plaintiff was driving his vehicle and entered an intersection against a red light, where he was struck by a police car which was responding to an accident and had activated flashing red lights and a siren. Just prior to the accident, an ambulance was also responding to the same accident with lights and siren activated. The ambulance driver claimed that when he realized that the intersection was being controlled by another emergency vehicle, he turned off his lights and sirens and pulled in behind the plaintiff. Plaintiff claims that the lights and sirens remained in operation and thus, the plaintiff felt compelled to pull forward. The district court granted summary judgment to the defendant. On appeal, however, the Minnesota Court of Appeals reversed and remanded the case back to the trial court. The court of appeals held that a jury must decide (1) whether the ambulance's flashers and sirens remained on; and (2) if so, whether such conduct shows a failure to exercise due regard for the safety of others. *Id.*,*2-3. Of note if the following: Even though complying with a particular statute provides evidence of "due care," it is still possible to be negligent if "there is a failure in special circumstances to take additional precautions." *Id.*, *2 (citation omitted). One of the issues to address is what would a reasonable ambulance driver have done under the circumstances. If a driver has knowledge, skill, or intelligence that is considered superior to an ordinary person, the law will require that the conduct considered be consistent with that superior knowledge or skill. *Id.* (citation omitted).

7. *Cummins v. Klenk*, 474 N.W.2d 443 (Minn. Ct. App. 1991)

At approximately 4:30 a.m. on August 22, 1987, a Deputy observed a vehicle stopped at a four-way stop with male driver and female passenger. After being stopped for longer than seemed necessary, the vehicle proceeded and the Deputy decided to investigate, also knowing that there had been several burglaries in the area. When the Deputy activated the red lights on his

car, the male driver continued at a speed of 30-35 mph in a 55 mph zone. Then when the Deputy pulled along side the driver to get his attention, the driver turned into the Deputy's car, just missing it and sped off. The Deputy followed behind while driver accelerated to speeds of 80-90 mph. with lights and siren activated. At the intersection of County Road 13 and Stillwater Boulevard, the driver lost control and hit some trees. He was charged with driving without a driver's license, fleeing an officer, and unauthorized use of a motor vehicle. The passenger sued the driver and Deputy claiming negligence. The court granted a directed verdict for the Deputy, finding that: (1) Deputy was entitled to stop and arrest the driver and to pursue him, and (2) he was not negligent in the pursuit of lights and siren were activated. 474 N.W.2d at 443. The Minnesota Court of Appeals affirmed. The court of appeals did state, however, that a driver of an authorized emergency vehicle "must observe the care which a reasonably prudent person would have exercised in the discharge of official duties of a like nature under like circumstances." *Id.*, at 444.

C. Qualified Immunity

In general, qualified immunity protects governmental officials from suit when their conduct does not "violate clearly established statutory or constitutional rights of which a reasonable person would have known" *Sexton v. Martin*, 210 F.3d 905, 909 (8th Cir. 2000) (citations omitted). When a claim pursuant to 42 U.S.C. § 1983 is alleged, the plaintiff must prove that (1) the official's conduct that is complained of was committed by a person acting under color of state law; and (2) the conduct deprived the plaintiff of rights, privileges or immunities secured by the Constitution or laws of the United States. *DuBose v. Kelly*, 187 F.3d 999, 1002 (8th Cir. 1999) (citation omitted).

Qualified immunity is asserted on behalf of governmental officials sued in their individual capacities for alleged constitutional and/or statutory violations pursuant to 42 U.S.C. § 1983. A government official is protected by qualified immunity unless his conduct violates the "clearly established statutory or constitutional rights of which a reasonable person would have known." *Seigert v. Gilley*, 500 U.S. 226, 232, 111 S. Ct. 1789, 1793 (1991). Qualified immunity "gives ample room for mistaken judgments by protecting all but the plainly incompetent or those who knowingly violate the law." *Hunter v. Bryant*, 502 U.S. 224, 229, 112 S. Ct. 534, 537 (1991). "This accommodation for reasonable error exists because 'officials should not err always on the side of caution' because they fear being sued." *Id.* (citation omitted).

The defense of qualified immunity can be defeated by a plaintiff who offers "particularized" allegations of unconstitutional or illegal conduct. *Anderson v. Creighton*, 483 U.S. 635, 639-40, 107 S. Ct. 3034, 3038-39 (1987). "The contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right." *Id.*, 483 U.S. at 640, 107 S. Ct. at 3039.

In *Saucier v. Katz*, 533 U.S. 194, 121 S. Ct. 2151 (2001) the Supreme Court articulated the framework to be used when deciding whether qualified immunity is applicable. 533 U.S. at 201, 121 S. Ct. at 2156. The threshold question asks: "Taken in the light most favorable to the party asserting the injury, do the facts alleged show the officer's conduct violated a constitutional right?" *Id.* If those facts, once established, would not amount to a constitutional violation, the

inquiry ends. “On the other hand, if a violation could be made out on a favorable view of the parties' submissions, the next, sequential step is to ask whether the right was clearly established.” *Id.* That inquiry “must be undertaken in light of the specific context of the case,” *Id.*, so that “the rule of qualified immunity” does not become “a rule of virtually unqualified liability simply by [Plaintiff] alleging violation of extremely abstract rights.” *Creighton*, 483 U.S. at 639, 107 S. Ct. at 3039. “The relevant, dispositive inquiry in determining whether a right is clearly established is whether it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted.” *Saucier*, 533 U.S. at 202, 121 S. Ct. at 2156. “[T]he reasonableness of the official's conduct under the circumstances is a question of law.” *Tlamka v. Serrell*, 244 F.3d 628, 632 (8th Cir. 2001). Recently, the United States Supreme Court held that not all of the steps articulated in *Saucier* need to be followed to determine whether qualified immunity applies. *See Pearson v. Callahan*, 555 U.S. ___, 129 S. Ct. 808 (2009).

1. *Terrell v. Larson*, 396 F.3d 975 (8th Cir. 2005)

This case is the federal case that preceded the state court case discussed above. In this federal case, plaintiff on behalf of decedent alleged that the deputies driving was reckless and violated decedent’s right to substantive due process. An Eighth Circuit Court of Appeals panel rejected defendants’ claim of qualified immunity and defendants requested a hearing en banc (the entire court). *Id.*, at 976. In this case, the court examined what standard to apply in cases whether the claim is that the officer’s operation of his vehicle was “conscience-shocking, and reckless, callous, outrageous and deliberately indifferent to decedent’s rights.”³ *Id.*

In this case, the Eighth Circuit Court of Appeals determined that the “intent-to-harm” standard applies to an officer’s decision to engage in high-speed driving in response to other types of emergencies, and to the manner in which the police car is then driven in proceeding to the scene of the emergency.” *Id.*, at 979. The court explained that this standard applies because it is a situation where an officer must make an instant judgment, the circumstances are unforeseen, and “decisions have to be made in haste, under pressure, and frequently without the luxury of a second change,” and thus the issue turns on whether the deputies subjectively believed that they were responding to an emergency. *Id.*

Of interest in this case is also the Court’s analysis under the deliberate indifference standard. The court also concluded under this standard that the officers were entitled to qualified immunity. *Id.*, at 981. Under this standard, the court indicated that responding to a domestic emergency within the assigned territory of the officer was not criminally reckless and that while traffic accidents of this kind are tragic, they do not shock the modern-day conscience. *Id.* Thus, the court reversed the denial of summary judgment, granting qualified immunity.

2. *Taylor v. Carpenter*, 2008 WL 2385796 (W.D. Ark) (unpublished)

Defendants believed that they were responding to an emergency when their vehicle collided with decedent’s vehicle. Plaintiff claimed defendants were not operating their vehicle as an

³ A substantive due process claim must be conscience shocking and violate a fundamental right. *See Moran v. Clarke*, 296 F.3d 638, 651 (8th Cir. 2002).

emergency vehicle in accordance with the Arkansas Code. The District Court for the Western District of Arkansas held that qualified immunity could not be granted at summary judgment because a fact question existed as to whether the Arkansas Code was followed.

3. *Wilson v. City of Hazelwood, Missouri*, 530 F. Supp.2d 1059 (E.D. Mo. Oct. 22, 2007).

D. Common Law Official Immunity and Vicarious Official Immunity

Official immunity protects a public official charged by law with duties that call for the exercise of judgment or discretion unless the official is guilty of a willful or malicious wrong. *Rico v. State*, 472 N.W.2d 100, 106-07 (Minn. 1991). In defining the scope of official immunity, Minnesota courts distinguish between discretionary duties, which are immunized, and ministerial duties, which are not. *Id.*, 472 N.W.2d at 107.

Peace officers charged with the duty to prevent crime and enforce the laws, “are not purely ‘ministerial officers,’ in that many of their duties are of an ‘executive character involving the exercise of discretion.’” *Elwood v. County of Rice*, 423 N.W.2d 671, 678 (Minn. 1988) (citation omitted). Absent a willful or malicious wrong, official immunity protects the officer's actions. *See McGovern v. City of Minneapolis*, 480 N.W.2d 121, 126 (Minn. Ct. App. 1992). In the official immunity context, malice means intentionally committing an act that the official has reason to believe is legally prohibited. *State by Beaulieu v. City of Mounds View*, 518 N.W.2d 567, 571 (Minn.1994). In determining whether the official acted with malice, the Court must examine the objective legal reasonableness of an official's actions. *Id.*

Official immunity protects a discretionary act when the conduct was “objectively” legally reasonable, taken with subjective good faith, or when the right allegedly violated was not clearly established. *Gleason v. Metro. Council Transit Operations*, 563 N.W.2d 309, 318 (Minn. Ct. App. 1997), *aff'd in part*, 582 N.W.2d 216 (Minn. 1998).

Vicarious official immunity extends to a government employer when the individual public official is entitled to official immunity. *Schroeder v. St. Louis County*, 708 N.W.2d 497, 508 (Minn. 2006).

1. *Schroeder v. St. Louis County*, 708 N.W.2d 497, 505 (Minn 2006)

Official immunity applies to a public official charged with duties that call for the exercise of his judgment or discretion and prevent personal liability for damages. It will not protect against ministerial acts. *Thomason v. City of Minneapolis*, 707 N.W.2d 669, 673 (Minn. 2006).

2. *Nelson v. Wrecker Servs, Inc.*, 622 N.W.2d 399, 403 (Minn. App. 2001)

Minnesota Court of Appeals held that official immunity will not apply if an officer fails to use sirens and lights when passing through a stop sign, where required to do so.

3. *Mumm v. Mornson*, 708 N.W.2d 475, 490 (Minn. 2006).

Minnesota Supreme Court has held that official immunity will not apply where officers fail to follow departmental policies concerning the use of deadly force and a mandatory duty to refrain from initiating a pursuit or to discontinue a pursuit in certain circumstances.

4. *Kari v. City of Maplewood*, 582 N.W.2d 921 (Minn. 1998)

Emergency personnel in emergency vehicles are considered to be engaging in discretionary activities, as long as they do not violate laws.

5. *Pletan v. Gaines*, 494 N.W.2d 38, 41 (Minn. 1992)

Official immunity applies in high-speed police pursuit when suspect's vehicle strikes and kills a child.

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