§ *50-k*. Civil actions against employees of the city of New York

1.As used in this section:

a."Agency" shall mean a city, county, borough, or other office, position, administration, council, department, division, bureau, board, community board, commission, institution or agency of government, the expenses of which are paid in whole or in part from the city treasury, but shall not include, unless otherwise provided by ***law***, any public authority, public benefit corporation or board of education.

b."City" shall mean the city of New York.

c."Comptroller" shall mean the comptroller of the city.

d."Corporation Counsel" shall mean the corporation counsel of the city.

e."Employee" shall mean any person holding a position by election, appointment or employment in the service of any agency, whether or not compensated, or a volunteer expressly authorized to participate in a city sponsored volunteer program, but shall not include an independent contractor. The term employee shall include a former employee, his estate or judicially appointed personal representative.

2.At the request of the employee and upon compliance by the employee with the provisions of subdivision four of this section, the city shall provide for the defense of an employee of any agency in any civil action or proceeding in any state or federal court including actions under sections nineteen hundred eighty-one through nineteen hundred eighty-eight of title forty-two of the United States code arising out of any alleged act or omission which the corporation counsel finds occurred while the employee was acting within the scope of his public employment and in the discharge of his duties and was not in violation of any rule or regulation of his agency at the time the alleged act or omission occurred. This duty to provide for a defense shall not arise where such civil action or proceeding is brought by or on behalf of the city or state or an agency of either.

3.The city shall indemnify and save harmless its employees in the amount of any judgment obtained against such employees in any state or federal court, or in the amount of any settlement of a claim approved by the corporation counsel and the comptroller, provided that the act or omission from which such judgment or settlement arose occurred while the employee was acting within the scope of his public employment and in the discharge of his duties and was not in violation of any rule or regulation of his agency at the time the alleged damages were sustained; the duty to indemnify and save harmless prescribed by this subdivision shall not arise where the injury or damage resulted from intentional wrongdoing or recklessness on the part of the employee.

4.The duty to defend or indemnify and save harmless prescribed by this section shall be conditioned upon (a) delivery to the corporation counsel at the office of the ***law*** department of the city by the employee of the original or a copy of any summons, complaint, process, notice, demand or pleading within ten days after he is served with such document, and (b) the full cooperation of the employee in the defense of such action or proceeding and in defense of any action or proceeding against the city based upon the same act or omission, and in the prosecution of any appeal. Such delivery shall be deemed a request by the employee that the city provide for his defense pursuant to this section. In the event that the corporation counsel shall assume an employee's defense and thereafter the employee fails to or refuses to cooperate in the formation or presentation of his

defense, the court shall permit the corporation counsel to withdraw his representation ten days after giving written notice to the employee of his intention to discontinue such representation.

5.In the event that the act or omission upon which the court proceeding against the employee is based was or is also the basis of a disciplinary proceeding by the employee's agency against the employee, representation by the corporation counsel and indemnification by the city may be withheld (a) until such disciplinary proceeding has been resolved and (b) unless the resolution of the disciplinary proceeding exonerated the employee as to such act or omission.

6.Every action or proceeding instituted hereunder, including an action brought to enforce a provision of sections nineteen hundred eighty-one through nineteen hundred eighty-eight of title forty-two of the United States code, shall be commenced pursuant to the provisions of *section fifty-i* of this chapter and within one year and ninety days. No action or proceeding instituted hereunder, other than one instituted pursuant to sections nineteen hundred eighty-one through nineteen hundred eighty-eight of title forty-two of the United States code shall be prosecuted or maintained against the city or any agency or an employee unless notice of claim shall have been made and served upon the city in compliance with *section fifty-e* of this chapter and within ninety days after the claim arises.

7.The provisions of this section shall not be construed to impair, alter, limit or modify the rights and obligations of any insurer under any policy of insurance.

8.The provisions of this section shall apply to all actions and proceedings pending upon the effective date thereof or thereafter instituted, except that the provisions of subdivision six shall apply only to actions and proceedings instituted on or after the effective date of this section.

9.The provisions of this section shall not be construed in any way to impair, alter, limit, modify, or abrogate or restrict any immunity available to or conferred upon any unit, entity, officer or employee of the city or any agency or any other level of government, or any right to defense and/or indemnification provided for any governmental officer or employee by, in accordance with, or by reason of, any other provision of state, federal or local ***law*** or common ***law***.

History

Add, L 1979, ch 673, § 1, eff July 13, 1979.

Annotations

Notes

Editor's Notes:

Laws 1979, ch 673, § 12, provides as follows:

§ 12. a. The right of any employee, as the same is defined in subdivision e of *section fifty-k of the **general municipal law***, to representation or indemnification pursuant to the provisions of any section repealed or amended by this act for any act or omission alleged to have occurred prior to the effective date of the act shall not be impaired or forfeited by the adoption of this act.

b. Any claim, action or proceeding brought after the effective date of this act wherein it is alleged that such an employee has acted or failed to act to the detriment of another shall be governed by the provisions of *section fifty-k of the **general municipal law***, as the same is enacted herein.

Prior *Law*:

Former § ***50–k***, add, L 1976, ch 832, § 1; amd, L 1976, ch 833, § 1; repealed, L 1979, ch 673, § 1, eff July 13, 1979.

Repeal Notes:

[1979, ch 673] Former sections fifty-k, fifty-l and fifty-m of the ***General Municipal Law***, extended indemnification for certain acts and omissions to police officers, firemen, employees of the department of health, and department of buildings, and employees operating city owned vehicles.

Notes to Decisions

1.In *general*

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1. In *general*

In medical malpractice action against New York City Health and Hospitals Corporation (NYCHHC) and one of its employee physicians, court should have imposed 3 percent interest rate on judgment pursuant to CLS Unconsol Ch 214-A § 20 rather than 9 per cent rate under CLS *CPLR § 5004*, although complaint had been dismissed as against NYCHHC, since ultimately NYCHHC was real party in interest because it would be required to indemnify its employee pursuant to CLS *Gen Mun § **50-k***, and thus any judgment payable under § ***50-k*** would be payable from public moneys of NYCHHC. *Ebert v New York City Health & Hosps. Corp., 82 N.Y.2d 863, 609 N.Y.S.2d 163, 631 N.E.2d 105, 1993 N.Y. LEXIS 4340 (N.Y. 1993)*.

Although CLS *Gen Mun § **50-k*** limits New York City's duty to defend and indemnify its public employees, statute does not render impermissible city's contractually agreeing to provide greater coverage than provided in statute. *Committee of the Interns & Residents v Dinkins, 86 N.Y.2d 478, 634 N.Y.S.2d 32, 657 N.E.2d 1315, 1995 N.Y. LEXIS 3557 (N.Y. 1995)*.

Corporation Counsel of New York City Board of Education was not relieved of its obligation to defend public school teacher in negligencehaction under CLS *Gen Mun § **50k*** (which permits city to withhold legal representation if employee defendant was in violation of any agency rule or regulation at time of incident) on ground that conflict of interest existed between city and teacher by reason of city's proposed defense in negligence action that teacher had committed misconduct, since defense was untenable due to lack of imposition of any formal discipline against

teacher. *Blood v Board of Education, 121 A.D.2d 128, 509 N.Y.S.2d 530, 1986 N.Y. App. Div. LEXIS 60646 (N.Y. App. Div. 1st Dep't 1986)*.

Public school teacher was not entitled to reimbursement for legal costs incurred in defense of action for damages brought against her by pupil she struck and allegedly injured in class; CLS *Gen Mun § **50k*** only authorizes representation of public employees by Corporation Counsel, and there is no commonlaw right to reimbursement absent extraordinary circumstances. *Blood v Board of Education, 121 A.D.2d 128, 509 N.Y.S.2d 530, 1986 N.Y. App. Div. LEXIS 60646 (N.Y. App. Div. 1st Dep't 1986)*.

Fact that action for intentional infliction of emotional distress arising from activities of police officer was timely commenced against ***municipal*** defendants within one year and 90 days as required by CLS *Gen Mun § 50-i* was insufficient to preserve untimely individual claim against officer, despite any duty ***municipal*** defendants might have had to defend officer under CLS *Gen Mun § **50-k**(2)*. *Tumminello v City of New York, 212 A.D.2d 434, 622 N.Y.S.2d 714, 1995 N.Y. App. Div. LEXIS 1616 (N.Y. App. Div. 1st Dep't 1995)*.

New York City Corporation Counsel's refusal to defend city employee pursuant to CLS *Gen Mun § **50-k**(2)*, on basis that he was not acting within scope of his employment when alleged wrongful act occurred, was not binding on plaintiff for purposes of determining whether city employee was united in interest with his employer for purposes of establishing, as matter of ***law***, whether false arrest and false imprisonment causes of action asserted against him individually should be deemed timely interposed under CLS *CPLR § 203(b)*. *Vazquez v City of New York, 217 A.D.2d 614, 629 N.Y.S.2d 475, 1995 N.Y. App. Div. LEXIS 7833 (N.Y. App. Div. 2d Dep't 1995)*.

Court properly refused to enter default judgment against city police officers in personal injury action against them and city, even though city, which timely answered on its own behalf, answered on officers' behalf 3 months after their time to answer had expired, where city claimed that delay was due to its investigation of its duty to defend them, there was no showing that plaintiff was prejudiced by delay, and in light of statement of merit verified by employee in city corporation counsel's office, it would be improper to rigidly adhere to requirement of affidavits of merit by police officers themselves. *Silverio v City of New York, 266 A.D.2d 129, 698 N.Y.S.2d 669, 1999 N.Y. App. Div. LEXIS 12053 (N.Y. App. Div. 1st Dep't 1999)*.

Deputy Public Administrator (DPA) of Office of Public Administrator of Kings County (Office) was entitled, under CLS *Gen Mun § **50-k**(2)*, to summary judgment declaring that City of New York (City) and its corporation counsel were required to defend and indemnify him in federal discrimination action where expenses of Office were funded at least partly by City, and thus Office was agency of City under CLS *Gen Mun § **50-k**(1)(a)*, and DPA was employee under CLS *Gen Mun § **50-k**(1)(e)*. *Ganzman v Hess, 273 A.D.2d 352, 709 N.Y.S.2d 606, 2000 N.Y. App. Div. LEXIS 7082 (N.Y. App. Div. 2d Dep't 2000)*.

Physician, defendant in medical malpractice suit, who offered no evidence that he had complied with requirements of CLS *Gen Mun § **50-k**(4)*, was not entitled to summary judgment on ground that plaintiffs had not served notice of claim required by CLS *Gen Mun § 50-e*, since duty of city and city hospital to defend and indemnify physician was conditioned on his compliance with § ***50-k***(4). *Hassan v Woodhull Hosp. & Med. Ctr., 282 A.D.2d 709, 724 N.Y.S.2d 184, 2001 N.Y. App. Div. LEXIS 4317 (N.Y. App. Div. 2d Dep't 2001)*.

A motion to dismiss an action against defendant doctors, employees of the New York City Health and Hospitals Corporation is denied, where service of the summons and complaint was timely although no notice of claim was filed against the defendants; New York City Health and Hospitals Corporation physicians are to be indemnified and held harmless under *section **50-k** of the **General Municipal Law***, and a notice of claim must be served on the corporation but there is no requirement that such notice be served on an employee being sued. *Mills v Glancz, 104 Misc. 2d 1033, 430 N.Y.S.2d 22, 1980 N.Y. Misc. LEXIS 2444 (N.Y. Sup. Ct. 1980)*.

Detective's motion to vacate a default judgment on his liability was denied because the city was not liable for his unlawful acts or omissions; as long as the detective's unlawful conduct was in the course of his employment and not in violation of any police department rule, indemnification by his employer protected him from personal financial

exposure. *Henderson-Jones v City of New York, 55 Misc. 3d 401, 49 N.Y.S.3d 817, 2016 N.Y. Misc. LEXIS 4945 (N.Y. Sup. Ct. 2016)*.

Corporation counsel is authorized to represent defendant police officers on their counterclaims asserted in action brought against them under *42 USCS § 1983*; potential conflict of interest created by representation of both city and individual officers is avoided where city and officers make common cause on merits issue of who provoked incident upon which claim is based and on damages issues of nature and extent of injury and where police officers have consented to multiple representation after full disclosure of its terms and conditions. *Smith v New York, 611 F. Supp. 1080, 1985 U.S. Dist. LEXIS 21084 (S.D.N.Y. 1985)*.

Federal District Court having jurisdiction over civil rights claim will not exercise pendent jurisdiction over otherwise valid state claim of person who concedes noncompliance with notice of claim requirements of §§ 50-e, ***50-k***. *Jenkins v McMickens, 618 F. Supp. 1472, 1985 U.S. Dist. LEXIS 14819 (S.D.N.Y. 1985)*.

Article 78 proceeding was not exclusive forum in which to litigate third-party claim for indemnification under CLS *Gen Mun § **50-k**(3)*, and thus New York City corrections officer who was sued in federal district court under *42 USCS § 1983* would be permitted to proceed with third-party indemnification claim against New York City and his employer after they declined to represent him in § 1983 action on ground that he was guilty of using impermissible force, where § 1983 claim and third-party indemnification claim arose from same nucleus of operative facts. *Harris v Rivera, 921 F. Supp. 1058, 1995 U.S. Dist. LEXIS 18034 (S.D.N.Y. 1995)*.

City employee may pursue claim for indemnification under CLS *Gen Mun **Law** § **50-k*** in Federal District Court, where employee is corrections officer accused of failing to accurately report use of force against inmate, because § ***50-k*** claim and inmate's civil rights claim arise from same nucleus of operative facts, and § ***50-k*** is silent with respect to means by which city employee may challenge denial of indemnification. *Harris v Rivera, 921 F. Supp. 1058, 1995 U.S. Dist. LEXIS 18034 (S.D.N.Y. 1995)*.

2. Status as city employee

Where defendant doctors failed to present evidence to show that there was a triable issue of fact as to their claim that they were transient employees of defendant city corporation at the time they allegedly committed medical malpractice, the trial court properly dismissed their affirmative defenses of the statute of limitations under *N.Y. Gen. Mun. **Law** § **50-k*** and failure to serve a notice of claim under *N.Y. Gen. Mun. **Law** § 50-e*. *Ramos v Ravan, 289 A.D.2d 81, 734 N.Y.S.2d 66, 2001 N.Y. App. Div. LEXIS 12122 (N.Y. App. Div. 1st Dep't 2001)*.

Pursuant to *N.Y. Gen. Mun. **Law** § **50-k***, a determination by the New York City Corporation Counsel as to whether an employee was acting within the scope of his or her employment occurred only after the employee delivered the complaint to the New York City ***Law*** Department, *N.Y. Gen. Mun. **Law** § **50-k**(2)* (2010). As the inmate had not served the officer or identified the John Does, the New York City Corporation Counsel had not yet made his determination, and an issue of fact appropriate for a jury was presented in the inmate's claim against the city for negligent hiring, training and retention. *Plair v City of New York, 789 F. Supp. 2d 459, 2011 U.S. Dist. LEXIS 58106 (S.D.N.Y. 2011)*.

3. Scope of employment

In a proceeding brought by a New York City Correction Officer to compel the city to provide him with counsel or pay his legal expenses in a Federal District Court action brought against him by a man whom the officer shot in an incident while the officer was off duty, the petition was properly dismissed, since the determination of the city Corporation Counsel that the officer was not acting within the scope of his employment and in the discharge of his duties was not unreasonable in light of the shooting victim's acquittal of all criminal charges. *Williams v New York, 64 N.Y.2d 800, 486 N.Y.S.2d 918, 476 N.E.2d 317, 1985 N.Y. LEXIS 17598 (N.Y. 1985)*.

New York City public school teacher was entitled to prospective representation by Corporation Counsel pursuant to CLS *Gen Mun § **50k*** in suit for damages brought by pupil after being struck in eye by teacher where incident occurred within scope of teacher's employment, despite teacher having received unsatisfactory rating in administrative hearing on incident, since facts showed that teacher's action was, at most, negligent and was caused only by display of anger toward another child and that such behavior, although undesirable, was generally foreseeable eventuality of teaching so as to be within scope of employment; statute is primarily directed at saving imperfect and fallible public employees from potentially ruinous legal consequences following unintentional lapses in daily discharge of their duties so that mere fact of employee's negligence does not relieve Corporation Counsel of duty to defend. *Blood v Board of Education, 121 A.D.2d 128, 509 N.Y.S.2d 530, 1986 N.Y. App. Div. LEXIS 60646 (N.Y. App. Div. 1st Dep't 1986)*.

Corporation Counsel's conclusion that altercation underlying plaintiff's cause of action for assault was personal in nature, and that defendant police officer was therefore not acting within scope of his employment for purposes of determining whether he was entitled to representation under CLS *Gen Mun § **50-k***, had clear basis in fact where underlying altercation was brought on by traffic dispute in different county while defendant was off-duty and on vacation, and plaintiff was never charged with any crime by county police who responded to incident. *Weitman v City of New York, 222 A.D.2d 316, 635 N.Y.S.2d 591, 1995 N.Y. App. Div. LEXIS 13028 (N.Y. App. Div. 1st Dep't 1995)*, app. dismissed, *87 N.Y.2d 1055, 644 N.Y.S.2d 147, 666 N.E.2d 1061, 1996 N.Y. LEXIS 368 (N.Y. 1996)*.

New York City was not entitled to summary judgment dismissing claims arising from fatal automobile accident that occurred when police officers, after assuming control of situation involving apparently incapacitated individual and his car, allegedly permitted that individual to drive away from them; although individual officers were granted partial summary judgment because they were acting within scope of their employment at time of incident, issues of fact existed as to presence of elements necessary to establish claim of negligent entrustment for which city could be held liable. *Weeks v City of New York, 181 Misc. 2d 39, 693 N.Y.S.2d 797, 1999 N.Y. Misc. LEXIS 220 (N.Y. Sup. Ct. 1999)*.

Board of education employee was not entitled to representation or indemnification under *N.Y. Educ. **Law** §§ 2560*, *3028*, and *N.Y. Gen. Mun. **Law** § **50-k*** or to N.Y. C.P.L.R. art. 78 relief because the employee's admitted act of hitting a student in the face for refusing to accompany the employee to a school cafeteria was not undertaken in the discharge of the employee's duties. *Matter of Sagal-Cotler v Board of Educ. of City School Dist. of the City of N.Y., 96 A.D.3d 409, 946 N.Y.S.2d 121, 2012 N.Y. App. Div. LEXIS 4220 (N.Y. App. Div. 1st Dep't 2012)*, rev'd, *20 N.Y.3d 671, 965 N.Y.S.2d 767, 988 N.E.2d 502, 2013 N.Y. LEXIS 787 (N.Y. 2013)*.

Corporation counsel did not act arbitrarily or capriciously in declining to defend corrections officer in civil suit, where action arose from prior personal dispute between officer and citizen, and therefore decision of corporation counsel cannot be overturned. *Kelly v New York, 692 F. Supp. 303, 1988 U.S. Dist. LEXIS 8960 (S.D.N.Y. 1988)*.

In civil rights action by plaintiff who was shot by off-duty city police officer, officer is not entitled to indemnification and representation by city pursuant to *Gen Mun **Law** § **50-k**(3)* and *__50-k__(2)*, because officer was not acting within scope of his employment in shooting plaintiff. *Longin by Longin v Kelly, 875 F. Supp. 196, 1995 U.S. Dist. LEXIS 398 (S.D.N.Y. 1995)*.

In action arising from altercation in which New York City correction officer shot plaintiff, who was making noise and allegedly trespassing in park next to officer's apartment house, city was not obliged to indemnify and represent officer pursuant to CLS *Gen Mun § **50-k*** where evidence established that officer was not acting within scope of his employment in shooting plaintiff, but rather acted to advance his own interests as member of community in which he resided. *Longin by Longin v Kelly, 875 F. Supp. 196, 1995 U.S. Dist. LEXIS 398 (S.D.N.Y. 1995)*.

Provision of CLS *Gen Mun § **50-k***, permitting corporation counsel to deny defense to city employee in action arising out of alleged act or omission that occurred when employee was acting within scope of his or her employment, was not void for vagueness on its face or as applied to correction department employee who was sued following 2

incidents of use of force against inmates. *Smylis v City of New York, 983 F. Supp. 478, 1997 U.S. Dist. LEXIS 17622 (S.D.N.Y. 1997)*, dismissed, *25 F. Supp. 2d 461, 1998 U.S. Dist. LEXIS 18879 (S.D.N.Y. 1998)*.

Assistant warden's § 1983 claim against city must be denied summarily, where he contends that provisions of CLS *Gen Mun **Law** § **50-k*** that permit corporation counsel to deny him defense in suit brought against him by inmates are so indefinite as to violate his due process rights, because operative concepts—whether he acted within scope of his employment and whether he was in violation of any agency rule—are not so vague and indefinite as really to be no rule or standard at all. *Smylis v City of New York, 983 F. Supp. 478, 1997 U.S. Dist. LEXIS 17622 (S.D.N.Y. 1997)*, dismissed, *25 F. Supp. 2d 461, 1998 U.S. Dist. LEXIS 18879 (S.D.N.Y. 1998)*.

4. Intentional or reckless conduct

Court erred in dismissing public school teacher's complaint against her principal for intentional infliction of emotional distress on ground that plaintiff failed to serve notice of claim on city board of education as required by CLS *Gen Mun § 50-i*, since ***municipal*** entity must receive notice of claim only when it has obligation to reimburse its employee for offending conduct, and pursuant to CLS *Gen Mun § **50-k**(3)*, ***municipal*** entity has no duty to indemnify where injury or damage resulted from intentional wrongdoing or recklessness on part of employee. *Radvany v Jones, 184 A.D.2d 349, 585 N.Y.S.2d 343, 1992 N.Y. App. Div. LEXIS 8115 (N.Y. App. Div. 1st Dep't 1992)*.

In a proceeding pursuant to N.Y. C.P.L.R. art. 78, a decision denying representation to a paraprofessional in an underlying civil suit was not erroneous because *N.Y. Educ. **Law** § 2560(1)* applied, and the paraprofessional's act of hitting a child on the head during a lesson violated New York City Department of Education Chancellor's Regulation as well as a statewide rule prohibiting corporal punishment; *N.Y. Educ. **Law** §§ 3028*, *2560*, which incorporated by reference *N.Y. Gen. Mun. **Law** § **50-k***, did not conflict and were read together and applied harmoniously and consistently. The department was not required under § 2560(1) to provide legal representation and reimbursement. *Matter of Thomas v New York City Dept. of Educ., 96 A.D.3d 401, 946 N.Y.S.2d 114, 2012 N.Y. App. Div. LEXIS 4225 (N.Y. App. Div. 1st Dep't 2012)*, rev'd, *20 N.Y.3d 671, 965 N.Y.S.2d 767, 988 N.E.2d 502, 2013 N.Y. LEXIS 787 (N.Y. 2013)*.

In a civil suit filed against police officers for excessive force and false arrest, the district court held they did not have probable cause to arrest plaintiff for disorderly conduct or obstruction of governmental administration; a reasonable jury could have found that plaintiff did not physically interfere with the officers' investigation because he simply asked why he and his companions had to leave, but did not raise his voice or do anything outside of normal conversation. The city was not required to indemnify defendants for wrongdoing and recklessness, which was supported by the findings of the Civilian Complaint Review Board, the videotape of the incident, and the jury's findings of liability and award of punitive damages. *Ekukpe v Santiago, 823 Fed. Appx. 25, 2020 U.S. App. LEXIS 26275 (2d Cir. N.Y. 2020)*.

City police officer was properly denied indemnification, pursuant to *N.Y. Gen. Mun. **Law** § **50-k***, by the city in an underlying unlawful arrest and excessive force action where his actions in subduing a now-deceased child crossed the threshold into conduct that would qualify as intentional or reckless. *Banks v Yokemick, 214 F. Supp. 2d 401, 2002 U.S. Dist. LEXIS 14846 (S.D.N.Y. 2002)*.

Arrestee's claims against the detectives alleging false arrest and ordinary acts of negligence fell into the category of claims involving conduct by the detectives that occurred while they were acting within the scope of their public employment and discharging official duties, and not in violation of any rule, therefore a notice of claim was required as the city had a statutory obligation to indemnify the detectives even if the action was brought against them but not against the city; but the claims asserting more extreme intentional misconduct, such as use of excessive force and intentional infliction of emotional distress, did not require a notice of claim. *Brenner v Heavener, 492 F. Supp. 2d 399, 2007 U.S. Dist. LEXIS 45831 (S.D.N.Y. 2007)*.

Because trespass and false arrest were intentional torts under New York ***law***, an arrestee's trespass and false arrest claims against several police officers, by definition, constituted "intentional wrongdoing" that did not qualify for indemnification under *N.Y. Gen. Mun. **Law** § **50-k**(3)*, and thus, the notice of claim requirement of *N.Y. Gen. Mun. **Law** § 50-e(1)(b)* did not apply. *Vesterhalt v City of New York, 667 F. Supp. 2d 292, 2009 U.S. Dist. LEXIS 99327 (S.D.N.Y. 2009)*.

5. Conduct violating rules, regulations or policies

Corporation Counsel had authority to make determination, separate and apart and in absence of any determination by petitioner's employer, New York City Police Department, that petitioner had violated certain Department rules and regulations, and was thus not entitled to defense by Corporation Counsel under CLS *Gen Mun § **50-k**(2)*, in civil action brought against him for allegedly having failed to intervene in assault against plaintiff therein by petitioner's partner. *Bolusi v City of New York, 249 A.D.2d 134, 671 N.Y.S.2d 478, 1998 N.Y. App. Div. LEXIS 4344 (N.Y. App. Div. 1st Dep't 1998)*.

City would not be required to indemnify police officers if they were held liable on an arrestee's false arrest claim because making false arrests violated agency policy. *Grays v City of New Rochelle, 354 F. Supp. 2d 323, 2005 U.S. Dist. LEXIS 1593 (S.D.N.Y. 2005)*.

6. Relief from representation of employee

Trial court erred in denying a superintendent's motion to dismiss a former principal's malicious prosecution and abuse of process action, because the principal failed to serve a notice of claim prior to the action, which was a condition precedent to the action pursuant to *N.Y. Educ. **Law** § 3813*, the trial court also erred in sua sponte relieving the Corporation Counsel of the City of New York as the superintendent's attorney, as the superintendent was entitled to such representation pursuant to *N.Y. Gen. Mun. **Law** § **50-k**(2)*. *DeRise v Kreinik, 10 A.D.3d 381, 780 N.Y.S.2d 773, 2004 N.Y. App. Div. LEXIS 10171 (N.Y. App. Div. 2d Dep't 2004)*.

Corporation counsel's motion to be relieved as defense counsel for an employee was denied because although an affirmation that an employee was warned that a failure to provide current contact information could result in loss of representation normally would support a motion to withdraw, it was not enough when the employee's representation was required by *N.Y. Gen. Mun. **Law** § **50-k*** and when plaintiff, an allegedly injured pedestrian, was seeking a penalty for the employee's failure to appear for examination. *Ceitlin v City of New York, 840 N.Y.S.2d 696, 16 Misc. 3d 887, 238 N.Y.L.J. 16, 2007 N.Y. Misc. LEXIS 4697 (N.Y. Sup. Ct. 2007)*.

In a negligence suit brought by an injured pedestrian against the City of New York and one of its employees, it was necessary to refer that branch of the pedestrian's motion to disqualify Corporation Counsel from representing the City to a Special Referee to hear and report as to whether, at the time Corporation Counsel appeared, the employee made a knowing and informed advance waiver of a conflict of interest as a result of Corporation Counsel continuing to represent only the City after withdrawing from representing the employee as a result of concluding that the employee was intoxicated and not working within the scope of his employment when he allegedly caused injury to the pedestrian. The trial court was not clear on whether the employee was adequately informed that Corporation Counsel was representing the City's interests only as its primary client in the action. *Miller v City of New York, 865 N.Y.S.2d 523, 21 Misc. 3d 886, 2008 N.Y. Misc. LEXIS 5976 (N.Y. Sup. Ct. 2008)*.

Because an employee was not acting within the scope of the employee's duties as a school paraprofessional when the employee struck a kindergarten student on the forehead with the back of the employee's hand for doing an assignment incorrectly, the employee was properly denied a defense under *N.Y. Gen. Mun. **Law** § **50-k*** and *N.Y. Educ. **Law** § 2560*; therefore, the employee was not entitled to N.Y. C.P.L.R. art. 78 relief. *Matter of Thomas v New York City Dept. of Educ., 929 N.Y.S.2d 425, 33 Misc. 3d 629, 2011 N.Y. Misc. LEXIS 4476 (N.Y. Sup. Ct. 2011)*, aff'd, *96 A.D.3d 401, 946 N.Y.S.2d 114, 2012 N.Y. App. Div. LEXIS 4225 (N.Y. App. Div. 1st Dep't 2012)*.

7. Requirements for defense and indemnity

Trial court erred in granting a cross-motion by an employer and its employee to dismiss because they failed to comply with the statutory requirements for defense and indemnity. *Chambliss v University Group Med. Assoc., 137 A.D.3d 1183, 29 N.Y.S.3d 48, 2016 N.Y. App. Div. LEXIS 2288 (N.Y. App. Div. 2d Dep't 2016)*.

—8.— Notice

Plaintiffs' claim against defendant, the District Attorney of the County of New York, for money had and received was not barred on the basis that plaintiffs failed to file a notice of claim under this statute because plaintiffs' claim was a non-tort claim, which sounded in quasi-contract. *Slemish Corp. S.A. v Morgenthau, 2021 N.Y. App. Div. LEXIS 1411 (N.Y. App. Div. 1st Dep't 2021)*.

Opinion Notes

Agency Opinions

1. In *general*

Compensated guardians ad litem serving in New York City Civil Court's guardian ad litem program are not eligible for state-provided defense and indemnification. 2006 NY Ops Atty Gen F 06-5.

2. Status as city employee

Compensated guardians ad litem serving in New York City Civil Court's guardian ad litem program are independent contractors, not employees, since court does not control manner in which such work is performed. 2006 NY Ops Atty Gen F 06-5.

Research References & Practice Aids

Cross References:

This section referred to in CLS *CPLR § 1602*; CLS *Educ § 2560*; CLS *Pub A § 1045-z*, CLS Unconsol Ch 214-A § 20.

Hierarchy Notes:

NY CLS Gen Mun

NY CLS Gen Mun, Art. 4

New York Consolidated ***Laws*** Service
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