

## SOVEREIGN IMMUNITY

# Law unfair to its victims

*Warning: The King of Florida and his courtiers are unfair.*

Fairly. That's the way every American expects to be treated. True to Judeo-Christian tradition, Floridians should recoil from those who "afflict the just . . . and . . . turn aside the poor in the gate from their right" (Amos 5:12).

So, imagine yourself in two scenarios and feel how you'd feel.



1. You are a husband or wife and parent of three children. A Florida Highway Patrol car crashes into yours, leaving you like Christopher Reeve — but without the money he had for care. Because FHP is a state agency, legally, you and your family are entitled to receive a maximum of \$200,000 for your

loss of future income and quality of life. *Is that fair or unfair to you?*

2. You are in business and agree to provide a service to a client. You agree that you won't be paid a penny unless and until he is paid by a third party. But when he gets his money, you are told that you have to settle for less than half of the fee he initially agreed to pay you. *Is that fair or unfair to you?*

From the hypothetical to the real.

Minouche Noel became paralyzed from the waist down, 18 years ago, when she was an infant, after a doctor botched her surgery. But the doctor and government agency that miscared for her are protected from liability by "sovereign immunity." By Florida law, unless Noel could get a first-class, tenacious lawyer, the most she and her family could receive for her lifelong agony would be \$200,000. *Was that fair or unfair to her and her family?*

Luckily for her, a top-notch lawyer fought Noel's uphill battle — for 18 years. At his expense, he took her case with no guarantee that he'd ever be paid. First, he got a multi-million-dollar judgment for her in court. Then, he spent eight years trying to convince the Republican-dominated Florida Legislature to pay her. (Playing politics is the only way to overcome the dollar-limits under "sovereign immunity.")

After nearly two decades, finally, this year, the Legislature and governor agreed to grant Noel and her family \$8.5 million — but only if the lawyer settled for a fee of less than half the amount he was legally entitled to and Noel's family initially agreed to pay him. *Was that fair or unfair to him?*

Obviously, both Noel and her lawyer, Sheldon Schlesinger, have been treated unfairly — or worse. The state should never have harmed her and then made her agonize for 18 years before settling with her. (I visited Noel and her family and saw her broken wheelchair, her knuckles calloused and fingers gnarled from having to crawl on the floor to get into her bathroom from her bedroom because her wheelchair couldn't get through the door.)

The state should also never have made her lawyer receive a fraction of what he legitimately earned, as a condition of Noel and her family's getting their money. (After all, without him, they would only have received \$200,000 to compensate for her lifetime paralysis.)

"Sovereign immunity" should be called "The Shaft the Little Guy Law." It grants infallibility and protected status to government agencies and selected others so they can get away with doing bad things to good people. It adds insult to injury by artificially capping the amount of money innocent victims may receive, no matter how extensive the harm they've suffered. It's a stain on our legal system, based upon British common law, which assumes "the king can do no wrong."

But our founding fathers revolted, precisely because they believed the king could do no right. So, Florida needs to pass "The Minouche Noel Act," abolishing sovereign immunity, taking responsibility for blame when it's fair, and guaranteeing a speedy resolution of cases.

Our right-minded Legislature and governor should practice the compassion of Proverbs 3:27, "Withhold not good from them to whom it is due, when it is in the power of thine hand to do it."

If you believe in a higher authority, it's high-time to dethrone the King of Florida, lest we ultimately be judged unfair — or worse.