

 <p>ARIZONA DEPARTMENT OF CORRECTIONS</p> <p>DEPARTMENT ORDER MANUAL</p>	<p>CHAPTER: 100</p> <p>AGENCY ADMINISTRATION/ MANAGEMENT</p>	<p>OPR:</p> <p>DIR</p>
	<p>DEPARTMENT ORDER: 107</p> <p><b><i>LEGAL ASSISTANCE AND PROCESS SERVICE</i></b></p>	<p>SUPERSEDES:</p> <p>DO 107 (07/11/11)</p>
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## TABLE OF CONTENTS

PURPOSE	PAGE
<b>PROCEDURES</b>	
107.01 SERVING EMPLOYEES WITH COURT DOCUMENTS .....	1
107.02 RESPONSES TO SUMMONSES AND SUBPOENAS - GENERAL.....	1
107.03 GENERAL COUNSEL ASSISTANCE AND ATTORNEY GENERAL OPINIONS .....	2
107.04 REPRESENTATION BY THE ATTORNEY GENERAL WHEN NAMED AS A DEFENDANT .....	2
107.05 OFFICIAL CAPACITY WITNESS.....	3
107.06 JURY SERVICE OR CIVIL CASE WITNESS .....	4
107.07 PERSONAL CAPACITY WITNESS .....	5
107.08 PROFESSIONAL CONSULTANT .....	5
107.09 CHARGES FOR COPYING DOCUMENTS .....	5
107.10 SETTLEMENT CONFERENCES .....	5
107.11 SERVING INMATES WITH COURT DOCUMENTS .....	5
DEFINITION .....	6
CROSS-REFERENCE INDEX.....	7
AUTHORITY .....	8

## PURPOSE

This Department Order establishes legal procedures for Department employees when either they or inmates are served with lawsuits and provides guidance regarding appropriate contact with the Arizona Office of the Attorney General.

## PROCEDURES

### 107.01 SERVING EMPLOYEES WITH COURT DOCUMENTS

- 1.1 Employees shall not accept service of process or accept service of any summons or other legal documents on behalf of another employee. Employees are only authorized to accept service of court documents that are addressed to them.
- 1.2 Process servers shall be referred to the Warden's Office to make arrangements to serve an employee at his/her work location. Staff are authorized to provide process servers with an employee's work location and shift. Legal Services shall be consulted if any questions or issues arise.
- 1.3 Employees shall be contacted to find out their availability to accept court documents. In the event the employee is unavailable or prefers to be served at an alternate address, Warden's staff shall provide the process server with the employee's availability, or alternative address.

### 107.02 RESPONSES TO SUMMONSES AND SUBPOENAS - GENERAL

- 1.1 Employees shall:
  - 1.1.1 Personally accept delivery of a work-related summons or subpoena addressed to them which is delivered (i.e., United States mail) or served in person by a non-Department employee (i.e., United States Marshall, County Sheriff or process server).
  - 1.1.2 Not accept personal service on behalf of other employees unless authorized in writing by the Director to do so.
  - 1.1.3 Immediately advise Legal Services upon receipt of a summons or subpoena.
  - 1.1.4 Give the highest possible priority to the handling of the summons or subpoena.
    - 1.1.4.1 Noncompliance with a summons or subpoena may be considered contempt of court and the employee may be subject to disciplinary action for Neglect of Duty, in accordance with Department Order #601, Administrative Investigations and Employee Discipline.
    - 1.1.4.2 If a summons or subpoena is received in the mail while an employee is temporarily absent, the employee's direct supervisor shall immediately notify Legal Services.
    - 1.1.4.3 If a summons or subpoena is received in the mail addressed to a former employee, the employee's former direct supervisor shall immediately forward the documents to Legal Services with information on the former employee's separation date.

- 1.1.5 In the event of service of a non-work related summons and/or subpoena, make themselves available to accept delivery at the workplace or provide an alternative address to their supervisor for service outside the workplace.

**107.03 CONTACT WITH AND REQUESTS FOR GENERAL COUNSEL ASSISTANCE AND ATTORNEY GENERAL OPINIONS**

- 1.1 Department employees seeking legal assistance relating to this Department Order shall first seek an answer to their question(s) from their direct supervisor prior to contacting Legal Services.
- 1.2 Only Division/Assistant Directors, and the General Counsel and their designees may request written opinions from the Office of the Attorney General.
  - 1.2.1 The Department’s Chief Procurement Officer may contact the designated Assistant Attorney General for contractual and procurement related issues.
  - 1.2.2 All other Department employees may consult informally with the Office of the Attorney General with the prior approval of their Division/Assistant Director when the consultation is coordinated through the General Counsel or designee.
- 1.3 Employees shall respond to each request for information by the Office of the Attorney General in a timely manner.
  - 1.3.1 All requests for documents by the Office of the Attorney General shall be provided to Legal Services. Any identifying information for other persons such as addresses, telephone numbers or social security numbers shall not be provided without the prior written approval of Legal Services.
  - 1.3.2 Questions regarding any communication from the Office of the Attorney General shall be addressed to the General Counsel or designee.

**107.04 REPRESENTATION BY THE ATTORNEY GENERAL WHEN NAMED AS A DEFENDANT IN A LAWSUIT**

- 1.1 Representation Through the Office of the Attorney General
  - 1.1.1 An employee or former employee served with a work-related lawsuit wanting representation through the Office of the Attorney General shall:
    - 1.1.1.1 Immediately upon the lawsuit’s receipt, complete and sign the Authorization to Accept Service, Form 107-1.
    - 1.1.1.2 Make a copy of the completed Authorization to Accept Service form, the complaint and summons, and send the originals to Legal Services via United States mail or inter-office mail, immediately upon the lawsuit’s receipt. The copy shall be kept for the employee’s records for future/necessary reference and to prepare a response to the complaint.
    - 1.1.1.3 Prepare a complete and detailed response to the allegations in the lawsuit that relate to the served employee or former employee, detailing his or her specific involvement.

- 1.1.1.4 Send a copy of the detailed response to Legal Services within ten calendar days of the lawsuit's receipt. Employees shall not provide or mail copies of their response to inmates or attorneys representing inmates.
  - 1.1.1.5 Collect and preserve all relevant documentation and/or evidence including personal documentation relating to the lawsuit.
  - 1.1.1.6 Await contact from Legal Services or the Arizona Assistant Attorney General assigned to the case and fully cooperate and assist in his or her defense.
  - 1.1.2 To prevent default or personal service of process charges, an employee/defendant shall contact Legal Services immediately if they have any questions or require clarification of the service of process procedures.
  - 1.1.3 An employee served with any habeas corpus pleadings shall immediately notify Legal Services.
  - 1.1.4 In the event of a conflict of interest on the part of the Office of the Attorney General, the Department shall make arrangements for independent counsel for the employee's representation. The State will not provide counsel to an employee whose act or omission is the result of a criminal charge or who is sued personally for an occurrence not within the course and scope of the employee's employment. The State will not represent an employee in a criminal matter (Arizona Revised Statute (A.R.S.) §12-820.05).
  - 1.1.5 Failure to cooperate and assist the assigned Assistant Attorney General or other attorney assigned by the Attorney General to defend the employee may result in the withdrawal of the Attorney General from the lawsuit and the employee becoming fully responsible for his/her representation and any resulting judgement against them. Employees must ensure that the Assistant Attorney General defending them in the lawsuit always has their most complete contact information as long as the lawsuit is still active.
- 1.2 Representation Through Private Counsel
- 1.2.1 Employees are free to retain their own counsel at their own expense. Otherwise all employees shall be represented in work-related litigation by the Office of the Attorney General, unless the Office of the Attorney General has a conflict of interest.
  - 1.2.2 Employees served a work-related lawsuit wanting representation through their own attorney shall be responsible for the defense of the lawsuit through their attorney.

**107.05 OFFICIAL CAPACITY WITNESS**

- 1.1 An employee subpoenaed in a civil or criminal case to give testimony or evidence in an official capacity shall:
  - 1.1.1 Notify his or her immediate supervisor of any request to testify or of any subpoena or subpoena duces tecum.
  - 1.1.2 Upon receipt of a subpoena or subpoena duces tecum, immediately forward a copy of it, through the chain of command, to Legal Services.
  - 1.1.3 Comply with instructions the Legal Services staff may provide concerning a response to a subpoena or a subpoena duces tecum.

- 1.1.4 Respond to the subpoena in an on-duty status.
- 1.1.5 Comply with departmental grooming standards when appearing in response to a subpoena, as outlined in Department Order #503, Employee Grooming and Dress.
  - 1.1.5.1 In their official capacity, uniformed staff shall attend court and other subpoenaed activities in their “Class A” uniform.
  - 1.1.5.2 Non-uniformed staff shall attend court and subpoenaed activities in Professional Business Attire.
- 1.1.6 Submit claims to the Department for necessary expenses, in accordance with Department Order #310, Travel, for in-state or out-of-state travel costs, except when such expenses are prepaid by the entity which originated the subpoena.
- 1.1.7 All out-of-state travel costs for witness testimony shall be pre-paid by the entity originating the subpoena, or otherwise pre-authorized for payment, in accordance with Department Order #310, Travel, pending reimbursement by the originator of the subpoena.
- 1.1.8 Forward any witness fees received, except for mileage allowance, through his or her Business Manager to the Administrative Services Division, Financial Services Bureau.
  - 1.1.8.1 If a state vehicle is used in response to the subpoena, the mileage allowance paid by the originator of the subpoena shall also be forwarded through the affected Business Manager to the Administrative Services Division, Financial Services Bureau.
- 1.2 Supervisors shall notify their Warden or Bureau Administrator through their chain of command when notified by employees of subpoenas in a civil or criminal case requiring testimony in an official capacity.
- 1.3 The Warden or Bureau Administrator shall immediately contact Legal Services when:
  - 1.3.1 It appears a claim could be made against the Department based on the anticipated testimony.
  - 1.3.2 The subpoena is not directed to the proper person or requires action which is another person's responsibility.
  - 1.3.3 There is less than 48 hours notice and a response to the subpoena on such short notice would unreasonably interfere with the employee's assigned duties and responsibilities.
  - 1.3.4 The employee is unable to appear in response to the subpoena for any reason.
  - 1.3.5 The employee needs instructions or clarification of any matter which may be questionable or inappropriate regarding a request for information or a subpoena.

**107.06 JURY SERVICE OR CIVIL CASE WITNESS** - Employees called to jury service or subpoenaed as a civil case witness shall:

- 1.1 Immediately notify their supervisor of:
  - 1.1.1 The facts surrounding the jury service or their civil case witness activity.

1.1.2 The date and time that absence may be required.

1.1.3 The anticipated length of time required for the absence.

1.2 Contact the Human Resources and Development Group's, Human Resources Operations Unit for clarification on whether a matter involves appearance for jury service, as a civil witness or in a personal capacity, if necessary.

1.3 Report jury services or civil witness activity or any absence from work required for these activities as Civic Duty leave with pay.

1.3.1 An employee subpoenaed as a witness by any court or administrative, executive or judicial body in this state may be absent with pay unless the testimony or evidence to be given relates to the employee's commercial, business or personal matters.

1.4 Submit a copy of any payment/reimbursement received for jury service, or compliance with a civil subpoena through their Business Manager to the Administrative Services Division, Payroll Unit indicating the amount paid/reimbursed for the mileage. The employee's gross wages shall be decreased by the amount of fees received less mileage.

**107.07 PERSONAL CAPACITY WITNESS** - Employees subpoenaed in their personal, non-work related capacity do not qualify as a civil case witness, and shall:

1.1 Immediately notify their supervisor of the date and time that absence may be required and the reason for the absence.

1.2 Report as compensatory time off, annual leave or leave without pay any absence from work required by the response to the summons or subpoena. Requests for leave without pay shall be in accordance with Department Order #518, Personnel Rules - Delegated Authority.

**107.08 PROFESSIONAL CONSULTANT** - Employees subpoenaed in a civil or criminal case to give testimony or evidence as a professional consultant (expert witness) shall respond to the subpoena on approved leave and at their own expense.

**107.09 CHARGES FOR COPYING DOCUMENTS** - Records custodians shall charge a fee in accordance with Department Order #201, Legal Services - Records Release.

**107.10 SETTLEMENT CONFERENCES**

1.1 Legal Services shall be the point of contact for settlement conferences and shall coordinate all agreements and approvals with the Director's Office.

1.2 Normally, a Warden or Deputy Warden shall be the Department's official representative to coordinate the responses with Legal Services; however, employees at all levels may be requested to participate in settlement conferences.

**107.11 SERVING INMATES WITH COURT DOCUMENTS**

1.1 Employees shall not accept service of process or accept service of any summons or other legal documents on an inmate's behalf.

1.2 Wardens shall designate a location where process servers may serve inmates.

- 1.3 Process servers shall be referred to the institution's Offender Information Unit Supervisor for determination of an inmate's status.
- 1.4 The Offender Information Unit Supervisor shall:
  - 1.4.1 Ensure the inmate is currently housed at the institution.
  - 1.4.2 Advise the process server of:
    - 1.4.2.1 The inmate's current location, unless such information is reasonably believed to jeopardize staff or inmate safety.
    - 1.4.2.2 The appropriate employee to contact upon arrival at the unit.
  - 1.4.3 Provide the unit contact with the name and phone number of the process server and the time of arrival, if known.
- 1.5 Employees designated by an Offender Information Unit Supervisor as the process server contact shall ensure:
  - 1.5.1 Inmates are available for escort to the designated area for service. If inmates are not available (i.e., out on a work crew), the unit Chief of Security shall be responsible for notifying the Process Server and, if applicable, the Complex Chief of Security of the change in date and/or time.
  - 1.5.2 The process server is cleared for entrance, in accordance with Department Order #911, Inmate Visitation.
- 1.6 The Deputy Warden of Operations or the Deputy Warden/Assistant Deputy Warden at a standalone unit or a private prison facility shall be responsible for ensuring this process is completed in accordance with this Department Order.

## DEFINITIONS

**AFFIDAVIT** - A written or printed declaration or statement of facts, made voluntarily, and confirmed by the oath or affirmation of the party making it, and signed in the presence of a Notary Public. For example, affidavits are completed by peace officers to obtain search warrants.

**CONFLICT OF INTEREST** - Activity and conduct prohibited by Arizona State Personnel Rules, R2-5A-501, Standards of Conduct, as well as by related Arizona Revised Statutes and Department Order #501, Employee Professionalism, Ethics and Conduct.

**DEPOSITION** - A discovery device during which one party asks oral questions of another party or of a witness for the other party. The person deposed is called the deponent. The deposition is conducted under oath outside of the court room, and a transcript or recording is made.

**EXPERT WITNESS** - An employee qualified by the court, prior to expressing opinions in a case, as an expert and thereby will be allowed (by answering questions posed) to assist the court in understanding complicated and technical subjects not within the understanding of the average lay person. The Department's expert witnesses testify in their official capacity.

**GENERAL COUNSEL** – An individual designated by the Director to liaison with the Arizona Office of the Attorney General and provide legal advice to the Department.

**OFFICIAL CAPACITY WITNESS** - The presentation of oneself as a Department employee engaged in Department business. The testimony or evidence to be given relates to official Department matters.

**PERSONAL CAPACITY WITNESS** - An employee subpoenaed to give testimony regarding any matter as a private citizen and not in an official, or work-related capacity. Includes the following situations:

- The testimony or evidence to be given relates to the employee's commercial, business, or personal matters.
- The testimony or evidence to be given relates to the employee's criminal misconduct or unlawful conduct outside the course and scope of his/her employment.
- The employee is to testify as an expert witness (professional consultant) for a fee, unless such fee is paid over to the Department.
- The employee is informally requested to testify at a personnel hearing.

**PROFESSIONAL CONSULTANT** - An employee considered an expert in a specialized field, who provides consultation services for a fee, and may provide advice or testimony as a paid expert witness. Teaching and lecturing are not included in this definition.

**SERVICE/SERVICE OF PROCESS** – The formal delivery of a summons and complaint, subpoena, or other legal paperwork. Delivery can be in-person or in some cases, by mail.

**SUBPOENA** - A writ issued by a court ordering a person to appear at a prescribed time and place to give testimony upon a certain matter.

**SUBPOENA DUCES TECUM** - A writ issued by a court at the request of one of the parties in a suit, requiring the witness to bring to court or deposition documents described in the subpoena.

**SUMMONS** - An order issued by a court to appear at a given time and place to answer a complaint, or lawsuit. Officers of the court deliver summonses to employees against whom a complaint, or lawsuit, has been filed in court. Once served, the Attorney General must respond within a specified amount of time.

**WITNESS** - An employee who testifies under oath in a court of law as to what he or she has seen, heard, or knows.

{Original Signature on File}

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Charles L. Ryan  
Director

## FORMS LIST

107-1, Authorization to Accept Service

## CROSS-REFERENCE INDEX

Department Order #201, Legal Services - Records Release

Department Order #310, Travel



Department Order #501, Employee Professionalism, Ethics and Conduct  
Department Order #503, Employee Grooming and Dress  
Department Order #518, Personnel Rules - Delegated Authority  
Department Order #601, Administrative Investigations and Employee Discipline  
Department Order #911, Inmate Visitation

## **AUTHORITY**

A.A.C. R2-5A-B606, Civic Duty Leave

A.R.S. § 12-821, Authorization of claim against public entity, public school or public employee