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|  <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><i>LEGAL ASSISTANCE AND PROCESS SERVICE</i></p> | <p>SUPERSEDES:</p> <p>DO 107 (12/21/07) DI 131 (10/21/99)</p> |
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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 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 advise their direct supervisor prior to contacting Legal Services.
- 1.2 Only Division 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 Financial 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 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.

107.02 RESPONSES TO SUMMONSES AND SUBPOENAS

- 1.1 Employees shall:
 - 1.1.1 Personally accept service of a work-related summons or subpoena addressed to them which is delivered (i.e., U.S. Mail) or served in person by a non-Department employee (i.e., U.S. Marshall, County Sheriff or Process Server), or by U.S. Mail.
 - 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.

- 1.1.1.1 Noncompliance with a summons or subpoena may be considered contempt of court and may be subject disciplinary action, in accordance with Department Order #601, Administrative Investigations and Employee Discipline.
 - 1.1.1.2 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.
 - 1.1.1.3 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.
- 1.1.2 In the event of service of a non-work related summons and/or subpoena, make themselves available to accept service at the workplace or provide an alternative address to their supervisor for service outside the workplace.

107.03 **SUMMONS RESULTING FROM COMPLAINTS/LAWSUITS FILED**

1.1 Representation Through the Office of the Attorney General

- 1.1.1 An employee served 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 701-1.
 - 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 Service via U.S. 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 complaint, 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.
 - 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 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 (A.R.S. 12-820.05).

1.2 Representation Through Outside 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 An employee served a work-related lawsuit wanting representation through outside counsel shall be responsible for the defense of the lawsuit through their counsel.

107.04 OFFICIAL CAPACITY WITNESS

- 1.1 An employee summoned or 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 summons, subpoena or subpoena duces tecum.
 - 1.1.2 Upon receipt of a summons, 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 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 Civilian 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 established policies and procedures, 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 Obtain reimbursement for out-of-state travel costs, which shall be paid to the Department, from the entity originating the subpoena. No reimbursement shall be involved if the entity prepaays travel costs.
 - 1.1.8 Forward any witness fees received, except for mileage allowance, through his or her Business Administrator to the Administrative Services Division.
 - 1.1.8.1 If a state vehicle is used in response to the subpoena, the mileage allowance shall also be forwarded through the affected Business Administrator to the Administrative Services Division.

- 1.2 Supervisors shall notify their Warden or Bureau Administrator through their chain of command when notified by employees of summons or subpoenas in a civil or criminal case requiring testimony or evidence 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.

107.05 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 Services Bureau 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 Administrator to the Administrative Services Division, payroll section indicating the amount paid/reimbursed for the mileage. The employee's gross wages shall be decreased by the amount of fees received less mileage.

107.06 PERSONAL CAPACITY WITNESS - Employees subpoenaed in their personal capacity and do not qualify as a civil case witness 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 Orders #518, Personnel Rules - Delegated Authority.

107.07 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.

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

107.09 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.

107.10 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 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:
 - 1.5.1 Ensure 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 Ensure 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 stand-alone unit or a Contract Bed 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, taken before a person having the authority to administer such oath or affirmation. For example, affidavits are completed by peace officers to obtain search warrants.

CIVIL CASE WITNESS OR JUROR – An employee called to jury service; subpoenaed to give testimony or evidence regarding any matter as a private citizen and not in an official capacity.

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

DEPOSITION - A discovery device during 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 - 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 own misconduct or unlawful conduct.
- 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.

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 any relevant documents under the witness's control.

SUMMONS - An order issued by a court to appear at a given time and place to answer a complaint. Officers of the court deliver summonses to employees against whom a complaint has been filed in court.

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}

Charles L. Ryan
Director

FORMS

107-1, Authorization to Accept Service

AUTHORITY

A.R.S. 12-820.05, Other Immunities

A.R.S. 12-2406, Service of Notice and Application

A.R.S. 38-421. Stealing, Destroying, Altering or Secreting Public Record; Classification

A.R.S. 38-501 et seq, Conflict of Interest of Officers and Employees

A.R.S. 41-192, Powers and Duties of Attorney General; Restrictions on State Agencies as to Legal Counsel; Exceptions

A.R.S. 41-770, Causes for Dismissal or Discipline

A.A.C. R2-5-406, Civic Duty Leave

A.A.C. R2-5-414, Leave Without Pay

A.A.C. R2-5-501, Standards of Conduct