

MICHIGAN DEPARTMENT OF CORRECTIONS POLICY DIRECTIVE		EFFECTIVE DATE 12/01/2015	NUMBER 02.01.102
SUBJECT LITIGATION - DEPARTMENT AND EMPLOYEE RESPONSIBILITIES		SUPERSEDES 02.01.102 (01/01/2008)	
		AUTHORITY MCL 691.1408; 791.203; Civil Service 2-19	
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POLICY STATEMENT:

Civil litigation against the Michigan Department of Corrections (MDOC) and/or its employees as a result of employment with the MDOC shall be addressed as set forth in this policy.

POLICY:

- A. For purposes of this policy, "employee" includes a former employee unless otherwise stated. It does not include a vendor's employee, a contractual employee, an employee of another state agency, or a volunteer.
- B. Each Correctional Facilities Administration (CFA) institution, CFA and Field Operations Administration (FOA) Regional Office (including Regional Health Care Office), and any Bureau or other office as necessary shall designate a staff person as the local Litigation Coordinator. Staff shall direct all questions relating to civil litigation against the Department and/or its employees as a result of employment with the Department to the local Litigation Coordinator, who shall refer questions, as necessary, to the Litigation Section, Office of Legal Affairs, for response.
- C. The Manager of the Litigation Section shall maintain a Litigation Manual to assist employees in responding to litigation. The Manual shall be available to all local Litigation Coordinators.
- D. The Department's computerized Litigation Tracking System (LTS), or a subsequent tracking system, shall be used Department-wide to record relevant information on all civil litigation served on the Department and its employees. Local Litigation Coordinators shall enter information in the tracking system in accordance with the instructions issued by the Manager of the Litigation Section or designee.
- E. MCL 791.220h and MCL 600.5511 require that all proceeds from a judgment or settlement in a lawsuit by or on behalf of a prisoner against the Department or its employees be used to pay various debts of the prisoner. Prior to authorizing the payment of a judgment or settlement to any prisoner in such a lawsuit, the Manager of the Litigation Section or designee shall determine whether the Department has received an order from a court requiring the prisoner to pay restitution, court costs/fees, or the cost of incarceration pursuant to the Prison Reimbursement Act, or whether the prisoner has any institutional debt. If the prisoner owes money for any of these reasons, the Manager of the Litigation Section or designee shall ensure that the funds from the judgment or settlement are distributed to pay the amounts owed in the priority identified in PD 04.02.105 "Prisoner Funds" prior to any other disbursement. If the money is owed pursuant to court order, the Manager of the Litigation Section shall contact the appropriate court to verify the amount owed prior to sending the funds to the court. The Manager of the Litigation Section shall ensure that the appropriate Business Office is notified of any distribution so that Department records are adjusted accordingly.
- F. MDOC staff shall not permit non-MDOC staff to copy MDOC documents regarding litigation. MDOC staff also are not to provide MDOC documents to non-MDOC staff for their use, or their attorney's use, regarding litigation absent appropriate court documentation such as a request under the Freedom of Information Act (FOIA) or a subpoena. An MDOC employee shall immediately contact his/her supervisor if s/he believes that a non-MDOC employee is attempting to obtain or remove MDOC records from the facility.
- G. An employee who is contacted by an attorney who is requesting information or documents shall immediately refer the attorney to the local Litigation Coordinator and notify the Local Litigation Coordinator of the contact. In Central Office, the attorney shall be directed to the Manager of the Litigation Section or designee. Employees shall not provide any personal opinion regarding a prisoner's or any other person's behavior or conduct to the attorney. Employees are prohibited from

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providing personal comments, opinions, or recommendations, either for or against a prisoner, for sentencing, resentencing, of for any other matter before a court or the Parole Board. Additionally, employees shall not provide an employer with a recommendation on behalf of a prisoner, but may provide factual information as noted in MDOC documents (e.g., work reports, awards, certificates).

LAWSUITS

- H. Any document received by an employee that appears to be a lawsuit or any other legal document involving the MDOC or its employees shall be forwarded to the local Litigation Coordinator within one business day after receipt. Central Office employees who have no local Litigation Coordinator shall forward the document to the Litigation Section within one business day after receipt.
- I. If the document is a civil lawsuit for service on the Department or on anyone who is not a current employee at the work location where service is being made, the local Litigation Coordinator shall not accept the lawsuit, and if received in the mail, shall immediately return the lawsuit to the sender explaining that service cannot be accepted, unless otherwise directed by the manager of the Litigation Section or designee. If the Director or the Department is being served, the local Litigation Coordinator shall inform the sender that service can be made only through the Office of Legal Affairs. Only the Administrator of the Office of Legal Affairs, the Manager of the Litigation Section, or designees, if any, are authorized to accept service of a lawsuit on behalf of the Director or the Department.
- J. If a civil lawsuit is being served on an employee at his/her work location, the local Litigation Coordinator shall immediately notify the employee that s/he has been sued and may request representation by the Department of Attorney General. If a Central Office employee is being served and does not have a local Litigation Coordinator, the Manager of the Litigation Section or designee shall be contacted for assistance.
- K. If a defendant employee wants representation from the Department of Attorney General, the local Litigation Coordinator shall have the employee sign a request for Attorney General Representation and immediately forward it to the Litigation Section. If the employee is a Central Office employee with no local Litigation Coordinator the Litigation Section Manager or designee will assist with the request. The signed request and the lawsuit shall be sent to the Department of Attorney General, with a copy to the Litigation Section, within two business days after receipt of the lawsuit, unless otherwise directed by the Manager of the Litigation Section or as set forth in Paragraph L.
- L. The local Litigation Coordinator shall immediately contact the Manager of the Litigation Section if a defendant employee who is requesting representation was disciplined, counseled, or investigated as a result of actions which form a basis for the lawsuit. This notification shall be made before the request for representation and lawsuit is sent to the Department of Attorney General. The Manager of the Litigation Section or designee shall obtain all relevant documentation to allow for a determination to be made whether representation will be provided. Only the Director or designee, in conjunction with the Department of Attorney General, has authority to grant or deny representation.
- M. Attorney General Representation will be granted or denied in accordance with MCL 691.1408, Civil Service Rule 2-19, any applicable collective bargaining unit agreements, and after consultation with the Department of Attorney General. Representation may be withdrawn if the MDOC and the Department of Attorney General subsequently determines that the defendant employee is not entitled to attorney general representation.
- N. If representation is denied, the Manager of the Litigation Section shall ensure that the defendant employee is contacted as soon as possible by certified mail to ensure the employee has adequate time to retain private counsel. If the employee disagrees with the Department's denial, s/he may request reconsideration by the Director by submitting a request for reconsideration to the Litigation Section. The request and response must be made as soon as possible to ensure the employee has adequate time to retain private counsel if necessary. If reconsideration is denied, the employee may file a grievance in accordance with Civil Service grievance procedures or appropriate collective bargaining unit agreement.
- O. A defendant employee may retain private counsel in lieu of Attorney General representation at any time. However, in such cases, the Department will not reimburse the employee for legal fees or indemnify the

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employee if a judgment is entered against the employee. An employee represented by the Attorney General can be indemnified for a judgment entered against the employee, or for monetary settlement entered into on behalf of the employee, only as provided for in MCL 691.1408, Civil Service Rule 2-19, and any applicable collective bargaining unit agreements.

- P. All employees must cooperate with the Office of Legal Affairs and the Department of Attorney General in the defense of any lawsuit against the Department or its employees. This includes providing affidavits, documents, and information that have been requested by the MDOC or on behalf of the Department of Attorney General. Additionally, all employees must testify at required depositions and trials.
- Q. If a current employee fails to cooperate or provide that which has been requested, disciplinary action may result. Failure to cooperate and provide requested information also may result in withdrawal of representation by the Department of Attorney General for a defendant employee. If representation is withdrawn, notice and the opportunity to request reconsideration shall be provided to the defendant employee consistent with Paragraph N.
- R. The Director or designee shall make all decisions regarding settlement of lawsuits for which representation is approved. Any request for settlement received by an employee shall be immediately brought to the attention of the Manager of the Litigation Section or designee via the local Litigation Coordinator. No employee shall discuss settlement with plaintiff or plaintiff's attorney. Only the Office of Legal Affairs Administrator, Litigation Section Manager, and other staff designated by the Director shall discuss settlement with the Department of Attorney General.

COURT ORDERS

- S. Orders in federal habeas corpus lawsuits that overturn a prisoner's conviction are to be directed to the Litigation Section for review. All other orders that overturn a prisoner's conviction are to be directed to the Records Administrator or designee. Court orders that require a prisoner's release or termination of a prisoner's sentence shall be processed by the Records Administrator or designee.
- T. Court orders regarding the payment of fines, fees, costs or other assessments in a lawsuit against the Department or its employees shall be handled by the appropriate business office as set forth in PD 04.02.105 "Prisoner Funds" and PD 04.02.107 "Collection of Victim Restitution/Court-Ordered Payments." Any questions regarding these orders shall be directed to the Manager of the Litigation Section.
- U. Any other court order regarding a lawsuit against the Department or its employees received from a court, the Department of Attorney General, a plaintiff, or a plaintiff's attorney shall immediately be brought to the attention of the Manager of the Litigation Section. No action shall be taken on any of these court orders without direction from the Office of Legal Affairs.

SUBPOENAS

- V. Any subpoena to appear for deposition or trial, or to produce documents, received by an employee shall immediately be brought to the attention of the Litigation Section via the local Litigation Coordinator prior to compliance to receive instructions on how to proceed. The employee shall comply with the instructions provided by the Litigation Section regarding any subpoena. Prisoners shall not be released or transported pursuant to a subpoena.

PRISONER DEPOSITIONS

- W. The Department of Attorney General or the Litigation Section will contact the local Litigation Coordinator for a prisoner deposition regarding any lawsuit against the Department or its employees.
- X. Pursuant to both Michigan and federal court rules, a court order must be obtained by the party requesting a prisoner deposition setting forth the terms of the deposition. This applies to all lawsuits, including those that are not against the Department or its employees. Any questions regarding court orders in prisoner depositions shall be directed to the Litigation Section.

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WRITS

- Y. A writ is generally required to transport a prisoner to court. However, a writ is not required to transport a prisoner to appear in a criminal case prosecuted on behalf of the Department when custody of the prisoner is not surrendered to another agency/jurisdiction or as otherwise approved by the CFA Deputy Director or designee. The Department's Court and Writ Unit shall be notified immediately whenever a writ is received that requires transportation of a prisoner.

COURT OF CLAIMS - NOTICE OF INTENTION TO FILE A CLAIM

- Z. The Court of Claims Act requires that a Notice of Intention to File a Claim be filed with the Court of Claims prior to filing the actual complaint. Any employee receiving a Notice of Intention to File a Claim shall promptly forward the document through the local Litigation Coordinator to the Litigation Section.

CONTACT WITH PLAINTIFF'S ATTORNEY

- AA. Any inquiries made by an attorney who is representing a party to a lawsuit filed against the Department or its employees be directed to the Department of Attorney General. At no time are employees to provide information or documents to a plaintiff or his/her attorney. A copy of a FOIA request known to be from a plaintiff or his/her attorney and the Department's response to the request shall be forwarded to the local Litigation Coordinator, who shall forward it to the Litigation Section. Questions about how to respond to such FOIA requests shall be referred to the FOIA Section in the Office of Legal Affairs.

OPERATING PROCEDURE

- BB. Wardens and the CFA and FOA Deputy Directors shall ensure that procedures are developed as necessary to implement requirements set forth in this policy directive within 60 calendar days after the effective date.

AUDIT ELEMENTS

- CC. A Primary Audit Elements List has been developed and is available on the Department's Document Access System to assist with self-audit of this policy pursuant to PD 01.05.100 " Self-Audits and Performance Audits."

APPROVED: HEW 10/26/2015