

MICHIGAN DEPARTMENT OF CORRECTIONS <b>POLICY DIRECTIVE</b>	EFFECTIVE DATE 01/01/2008	NUMBER 02.01.102
	SUBJECT LITIGATION - DEPARTMENT AND EMPLOYEE RESPONSIBILITIES	
		SUPERSEDES PD 02.01.102 (06/06/05); DOM 2007-3
		AUTHORITY MCL 691.1408; 791.203; Civil Service Rule 2-19
		ACA STANDARDS 4-4023; 4-4041; 2-CO-1A-28; 3-3031; 3-3046; 3-ACRS-1A-21; 3-ACRS-1B-14; 3-3124
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**POLICY STATEMENT:**

Civil litigation against the Department and/or its employees as a result of employment with the Department shall be handled as set forth in this policy.

**POLICY:**

- A. For purposes of this policy, "employee" includes a former employee unless otherwise stated.
- B. Each Correctional Facilities Administration (CFA) institution and each CFA and Field Operations Administration (FOA) Regional Office, including Regional Health Care Office, and any Bureau or 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 shall be used Department-wide to record relevant information on all civil litigation served on the Department and its employees. The Manager of the Litigation Section shall maintain a manual providing instruction in the use of the tracking system and ensure that the manual is available to all local litigation coordinators. Local litigation coordinators shall enter information in the tracking system in accordance with the instructions issued by the Manager of the Litigation Section.
- 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 of the Office of Legal Affairs 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 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 as provided for in MCL 791.220h and MCL 600.5511. If the money is owed pursuant to court order, the Manager shall contact the appropriate court to verify the amount prior to sending the funds to the court. The Manager shall ensure that either the administrative officer of the institution at which the prisoner is housed or, for prisoners in Community Residential Programs, appropriate Bureau of Fiscal Management staff are notified of any distribution so that Department records are adjusted accordingly.

LAWSUITS

- F. Any document received by an employee that appears to be a lawsuit or any other legal document involving the Department of Corrections or its employees shall be forwarded to the local litigation

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coordinator within one business day after receipt; Central Office employees who have no local litigation coordinator in their Bureau/Office shall forward the document to the Litigation Section within one business day after receipt. This does not apply to legal documents routinely received by the Department, such as a Judgment of Sentence, writ, or a court order for payment of restitution, filing fees, or other court costs. If the document is a civil lawsuit naming an employee as a defendant, the local litigation coordinator or, for Central Office employees who have no local litigation coordinator, the Manager of the Litigation Section or designee shall immediately notify the employee that s/he may request representation by the Department of Attorney General. However, contractual employees and volunteers are not entitled to Department of Attorney General representation and are to be immediately advised of this by the local litigation coordinator.

- G. Local litigation coordinators shall not accept lawsuits for former employees or for employees no longer working at the Department location where service is being attempted unless otherwise directed by the Manager of the Litigation Section or designee. The local litigation coordinator shall return such lawsuits to the sender explaining why service cannot be accepted. If the employee is working at a different Department location, the local litigation coordinator shall inform the sender of that location.
- H. If a defendant employee notifies the local litigation coordinator that s/he wants to request representation, the local litigation coordinator shall provide the employee with a Letter Requesting Attorney General Representation (CSJ-685). If the employee is a Central Office employee with no local litigation coordinator, the form letter may be obtained from the Litigation Section. The form letter is to be signed by the employee and a copy sent to the appropriate supervising administrator (e.g., Warden, CFA Regional Prison Administrator, FOA Regional Administrator, Regional Health Administrator, appropriate Executive Policy Team member or designee for Central Office employees) unless otherwise directed by the Manager of the Litigation Section. If the supervising administrator does not think representation is warranted, s/he shall immediately contact the Manager of the Litigation Section by telephone.
- I. The Manager of the Litigation Section shall be immediately contacted if a defendant employee was disciplined, counseled, or investigated as a result of his/her actions which are a basis for the lawsuit, even if representation is recommended by the approving authority. The Director or designee has the final authority as to whether a request for Department of Attorney General representation will be denied.
- J. A defendant employee may retain private counsel in lieu of Department of Attorney General representation at any time. However, in such cases, the Department will not reimburse the employee for legal fees or indemnify the employee if a judgment is entered against the employee.
- K. Department of Attorney General representation will be approved for a defendant employee if it is determined that the employee was acting in the course of employment at the time of the alleged conduct and there was a reasonable basis to believe the conduct was within the scope of the employee's authority. If the Director or designee authorizes representation but the Department of Attorney General cannot provide representation, the Department and the Department of Attorney General will contract with a private attorney to provide legal services to the employee. If it is subsequently determined that the employee was not acting in the course of employment or there was not a reasonable basis to believe the conduct was within the scope of his/her authority, the Director may request that representation be withdrawn.
- L. If representation is denied, the defendant employee shall be 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 through 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.
- M. All employees must cooperate with the Office of Legal Affairs and the Department of Attorney General

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in the defense of any suit against the Department or its employees. This includes providing affidavits, documents, and information that have been requested by or on behalf of the Department of Attorney General, and testifying at required depositions and trials. A copy of any information or affidavit which is sent directly to the Department of Attorney General shall be sent to the Litigation Section.

- N. 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 K.
- O. 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 or local litigation coordinator shall be immediately brought to the attention of the Manager of the Litigation Section via the local litigation coordinator. No employee or local litigation coordinator shall discuss settlement with plaintiff or plaintiff's attorney or with the Department of Attorney General.

#### COURT ORDERS

- P. Court orders in habeas corpus actions challenging a prisoner's conviction shall be handled directly by the appropriate Record Office; however, if the order requires the prisoner's release or any other action by the Department, Record Office staff shall contact the Records Administrator, Central Records Section, Operations Division, CFA, for instructions on how to proceed. The Records Administrator shall contact the Manager of the Litigation Section for direction, as necessary.
- Q. Court orders regarding the payment of fines, fees, or other costs in a lawsuit against the Department or its employees shall be handled directly by the business office as set forth in PD 04.02.105 "Prisoner Funds" and PD 04.02.107 "Collection of Court-Ordered Victim Restitution/Filing Fees and Costs". Any questions regarding these orders shall be directed to the Manager of the Litigation Section.
- R. 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. In most cases, instructions shall be provided in writing to the Department staff person responsible for implementing the order. The Manager of the Litigation Section shall maintain a follow-up system to ensure that court orders from litigation filed against the MDOC or its employees are implemented.

#### SUBPOENAS

- S. Any subpoena to appear or subpoena to produce documents received by an employee shall 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 subpoena shall be complied with in accordance with the instructions provided by the Litigation Section. Prisoners shall not be released or transported pursuant to a subpoena.

#### PRISONER DEPOSITIONS

- T. 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.
- U. 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

- V. A writ of habeas corpus is generally required to transport any 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 or FOA Deputy Director, as appropriate, or designee. Writs may be sent directly from the court, the Department of Attorney General, or from the Litigation Section. Questions on the need for or appropriateness of a writ may be directed to the Litigation Section.

### COURT OF CLAIMS - NOTICE OF INTENTION TO FILE A CLAIM

- W. 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 forward the document through the local litigation coordinator to the Litigation Section.

### SERVICE FOR DIRECTOR/DEPARTMENT

- X. The Administrator of the Office of Legal Affairs, the Manager of the Litigation Section, and designees are the only people authorized to accept service of a lawsuit on behalf of the Director or the Department. Any other employee who receives such a lawsuit shall return it to the sender with an explanation that the employee is not authorized to accept service.

### CONTACT WITH PLAINTIFF'S ATTORNEY

- Y. Any inquiries made by an attorney who is representing someone in a lawsuit against the Department or its employees shall be directed to the Department of Attorney General. At no time should employees provide information or documents to a plaintiff or his/her attorney, including issues regarding settlement. A copy of a Freedom of Information Act (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 and the Department of the Attorney General. Questions about how to respond to such FOIA requests shall be referred to the FOIA Section in the Office of Legal Affairs.

### OPERATING PROCEDURE

- Z. 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. Procedures shall be completed within 60 calendar days after the effective date of this policy directive. This requirement includes ensuring that their existing procedures are revised or rescinded, as appropriate, if inconsistent with policy requirements or no longer needed. Facility procedures shall not conflict with procedures issued by the Director.

### AUDIT ELEMENTS

- AA. A Primary Audit Elements List has been developed and is available on the Department's Document Access System to assist Wardens, CFA Regional Prison Administrators, FOA Regional Administrators, Regional Health Care Offices, and the Administrator of the Office of Legal Affairs with self audit of this policy pursuant to PD 01.05.100 "Self Audit of Policies and Procedures".

APPROVED: PLC 12/20/07