



**STATE OF MONTANA  
DEPARTMENT OF CORRECTIONS  
POLICY DIRECTIVE**

Policy No. DOC 1.1.9	Subject: <b>LEGAL ASSISTANCE FOR STAFF</b>
Chapter 1: ADMINISTRATION AND MANAGEMENT	Page 1 of 3
Section 1: General Administration	Effective Date: May 1, 1998
Signature: /s/ Mike Ferriter, Director	Revised: 03/28/11

**I. POLICY**

The Department of Corrections will provide the Department director and employees with legal advice to aid with the performance of Department duties and will provide legal defense for employees who are sued for acts they performed during the course and scope of their duties. This policy establishes procedures for obtaining legal assistance and defense, and defines the scope of legal assistance provided.

**II. APPLICABILITY**

All Department divisions, facilities, and programs.

**III. DEFINITIONS**

None.

**IV. DEPARTMENT DIRECTIVES**

**A. Scope of Representation and Indemnification**

1. Department attorneys are available to provide general legal advice in all areas of Department-related activities. Attorneys help ensure compliance with federal, state, and local laws, regulations, and court decisions.
2. Department attorneys also defend the Department and its employees when the Department or its employees are sued over actions they took while performing their duties.
3. Department attorneys may recommend to the Department director that the Department not defend an employee if substantial evidence indicates the employee's conduct was illegal or outside the scope and course of employment.
4. The Department chief legal counsel, after consultation with the Department of Administration's risk management and tort defense bureau, may refer the defense of Department litigation to the Attorney General's Office, other state attorneys, or may retain private counsel after the chief has complied with the applicable executive order concerning outside legal services.
5. Employees who are sued may retain private counsel at their own expense. Employees who choose to retain private counsel will immediately notify the legal services bureau and will be responsible for the defense of the lawsuit thereafter.

6. If any court, arbitrator, or other agency orders an employee to pay a monetary award pursuant to a lawsuit concerning actions the employee took while performing his or her official duties, the Department will pay the award.

#### **B. Requests for General Counsel Assistance**

1. A Department employee who needs legal assistance to perform his or her official duties should, under most circumstances, first contact his or her supervisor and discuss the situation with the supervisor. If the supervisor and the employee decide they need to contact the Department attorneys, then the employee may contact the designated central point-of-contact for the legal services bureau.
2. The best way to contact the legal services bureau designated central point-of-contact is via email with a copy to the employee's supervisor. The attorney assigned to respond will provide a written email response with copies that can serve to notify others who also need to be aware of the response.
3. In an emergency, such as when a probation and parole officer needs immediate advice about a search, and is unable to contact a supervisor in the officer's chain of command, the employee may directly contact an attorney by whatever means is available.

#### **C. Receiving Complaints, Petitions, Summonses and Subpoenas**

1. To prevent default or extra charges for service of lawsuits, an employee who receives a complaint, petition, summons or subpoena outside of routine offender court proceedings, must immediately contact the legal services bureau.
2. When a process server gives a Department employee a complaint, petition, summons, or subpoena, the employee may sign that he or she has received the document, but may not sign to accept the document(s) on behalf of any other employee unless specifically designated to do so.
3. An employee who receives a complaint outside of routine offender court proceedings, etc., by mail with a form entitled, "Acknowledgment of Service" must immediately forward the complaint and acknowledgment to the legal services bureau. Under no circumstances should the employee ever sign and/or return the acknowledgment.
4. When an employee receives a complaint, petition, summons and/or subpoena concerning a work-related issue outside of routine offender court proceedings, the employee must, as soon as practicable:
  - a. note the date, time, and method by which the employee received the document;
  - b. contact the legal services bureau to make them aware of the document;
  - c. make a personal copy of the document; and
  - d. forward all the documents to the legal services bureau office either at the Montana State Prison or in Helena.

#### **D. Action After Receiving Legal Documents**

1. The legal services bureau will contact the employees named in a lawsuit.

2. The legal services bureau will generally request that the employee named in a lawsuit:
  - a. put in writing for the attorneys any recollections the employee has about the incidents in the lawsuit;
  - b. request the employee gather available documents that relate to the lawsuit; and
  - c. preserve any relevant documents that might otherwise be destroyed.
3. Employees must cooperate fully with the attorneys who defend them.

#### **E. Subpoenas and Summonses to Appear and Testify**

1. Employees who receive a summons or subpoena in a work-related case will notify their supervisor and immediately forward a copy of the summons or subpoena to the legal services bureau.
2. Legal staff will provide instructions to the summoned or subpoenaed employee.
3. Employees will respond to the subpoena in an on-duty status and submit all claims for necessary expenses in accordance with established procedures for travel costs except when the entity or person originating the subpoena prepays such expenses.
4. Employees will forward any witness fees received or state vehicle mileage allowance to the fiscal and accounting bureau.
5. Employees who are subpoenaed in a civil or criminal case to give testimony or evidence as a personal consultant (non-work related) or expert witness will respond to the subpoena on approved leave and at their own expense.

#### **V. CLOSING**

Questions concerning this policy should be directed to the Department's chief legal counsel.

#### **VI. REFERENCES**

- A. [2-9-305 MCA](#)
- B. *Executive Order 05-93, Outside Legal Services*
- C. *4-4023, ACA Standards for Adult Correctional Institutions, 4<sup>th</sup> Edition*
- D. *3-JTS-1A-28, ACA Standards for Juvenile Correctional Facilities, 2003*

#### **VII. ATTACHMENTS**

None.