



# DISTRICT OF COLUMBIA DEPARTMENT OF CORRECTIONS

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## Program Statement

OPI:	DIR
Number:	1440.1D
Date:	August 9, 2011
Supersedes:	1440.1C (10/29/79)
Subject:	Lawsuits Against Individual Employees

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1. **PURPOSE AND SCOPE.** To establish procedures for providing legal representation for employees who are subject to civil litigation due to circumstances emanating from the scope of their employment.
2. **POLICY.** It is the policy of the Department of Corrections (DOC) to provide legal representation, upon request, to its employees who are subjected to civil litigation emanating from circumstances relevant to the scope of their employment. The Office of the Attorney General, DC will act as legal counsel for employees involved in such litigation.
3. **APPLICABILITY.** This directive shall apply to all DOC employees.
4. **PROGRAM OBJECTIVES.** To provide procedures of the service of process guidelines aimed to meet the DOC employees' constitutional right to due process. This right is found in the 5<sup>th</sup> and 14<sup>th</sup> Amendments to the United States Constitution, which state that no person shall be "deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V, XIV, § 1 (1791, 1868).

When requested, the D.C. Office of the Attorney General will provide legal representation to employees subject to civil litigation that stems from their official capacity as DOC employees (not personal capacity).

5. **NOTICE OF NON-DISCRIMINATION**
  - a. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code §2-1401.01 et seq., (Act) the District of Columbia does not discriminate on the basis of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, status as a victim of an intrafamily offense, or place of residence or business. Sexual harassment is a form of sex discrimination that is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

6. **DIRECTIVES AFFECTED**

a. **Directives Rescinded**

- 1) DO 1440.IC           Lawsuits Against Individual Employees (10/29/79)

b. **Directives Referenced**

- 1) Fed R. Civ. P. 4 (c)(1) (2009)
- 2) Fed. R. Civ. P. 55 (2009)
- 3) Fed. R. Civ. P. 45(e) (2007)

7. **AUTHORITY**

- a. D.C. Code § 24-211.02 Powers, Promulgation of Rules (Formerly §24-442)
- b. D.C. Code § 1-608.52 Creation of the Legal Service (Formerly § 1-609.52)

8. **STANDARDS REFERENCED**

- a. American Correctional Association 4<sup>th</sup> Edition Standards for Adult Local Detention Facilities: 4-ALDF-7A-02.

9. **DEFINITIONS.** For the purpose of this directive, the following definitions shall apply:

- a. **Service of Process.** The summons plus the complaint which are the instruments for commencing a civil action.
- b. **Summons.** A notice to a defendant to appear in court and defend the suit initiated against him.
- c. **Complaint.** The first or initiatory pleading on the part of a plaintiff in a civil action. Its purpose is to give the defendant information of all material facts on which the plaintiff relies to support his demand. It should contain the following:
  - 1) The title of the case, specifying the name of the court in which the action is to be brought and the names of the plaintiff and defendant.

- 2) A concise statement of facts and each material allegation.
  - 3) A demand for relief sought by the plaintiff and/or the amount of damages.
- d. **Default.** An omission of that which should have been done. When a defendant in an action at law omits to plead within the time allowed for the purpose or fails to appear at the trial, he is said to “make default,” and the judgment entered in such a case is “judgment by default.”
10. **DELEGATION OF AUTHORITY.** The Office of the General Counsel for DOC shall coordinate effecting legal representation between DOC and the D.C .Office of the Attorney General. DOC employees who receive subpoenas and informal requests for pre-trial and witness conferences will refer such matters to the DOC Office of the General Counsel (OGC) before complying therewith.
11. **PROCEDURES**
- a. *Service of Process.* Notice of a civil action is accomplished by services of the summons and complaint upon the defendant by the plaintiff.
  - b. *Personal Service.* For the purpose of this Order, personal service is the appropriate manner by which notice of a civil action should be accomplished. Supervisors and coworkers will not accept service for other employees named as defendants; a contrary practice may result in a charge of “contempt of court.” The procedures enumerated below are to be followed by Department employees in accepting services of process:
    - 1) If the Department of Corrections and/or the Director in his/her official or individual capacity is named as the defendant in the civil action, the service of process of the summons and complaint can be accepted by the DOC General Counsel.
    - 2) If an employee other than the Director issued in his or her official capacity only (not personal capacity), service of process can be accepted by the DOC General Counsel.
    - 3) If an employee other than the Director is sued in his/her “personal” or “individual” capacity, (“individually”), instead of/or in addition to being sued in his or her official capacity, the individual has a right to be served by the process server. The DOC General Counsel cannot accept service without the explicit authorization of the individual defendant. Supervisors and co-workers shall not accept summons for another employee without his/her express written consent.

- 4) Process servers, including U.S. Marshals, are not provided access to individuals to serve them inside the facilities or headquarters. They must serve them in public places or at their residences just as they would any individual being personally sued.
  - 5) Employees being sued in their official or in their individual capacity for work related matters should not evade service. If the employee evades service, the DOC must disclose the employee's hours of work so that he/she may be personally served just prior to or departing from employment. DOC employee's who intentionally evade service or ignore a properly served summons may be held in "contempt of court", charged with "obstruction of justice," or "make default." Fed. R. Civ. P. 45(e) (2007); Fed. R. Civ. P. 55(a) (2007).
  - 6) The DOC employee should notify his/her supervisor of the service of process as well as immediately contact the DOC General Counsel for instructions on how to proceed. A copy of the complete summons served must be submitted to the General Counsel for review and advice. Delay can result in a default judgment against the individual served; therefore prompt referral to the General Counsel (within 48 hours) is strongly advised.
  - 7) When an employee contacts the General Counsel, they may be required to fill out and submit a request for representation after careful review of its terms and signature.
  - 8) If an employee is sued in his or her personal capacity regarding matters involving his or her personal life, unrelated to employment with the DOC, the Department will take no roll or provide legal advice to the employee.
- c. *When an Employee is a Witness in a Civil Action Against the District of Columbia Regarding Matters Related to His or Her Employment they shall.*
- 1) When an employee is requested to testify in a lawsuit in deposition or trial, the request is usually made through the Office of Attorney General, who submits the deposition notice or request to the DOC Office of General Counsel to arrange. The employee will be prepared for the testimony and accompanied by the Office of the Attorney General. Under some circumstances, the employee may decide, or be advised by the Assistant Attorney General, to retain counsel for the testimony, such as where there may be a conflict of interest in the representation, or if the circumstances raise the employee's right against self incrimination or other privileges. These will be addressed

by the Assistant Attorney General on the case during the preparation session.

- 2) If the employee is contacted or served a subpoena directly by an attorney to testify at a trial or in deposition where the District of Columbia/Department of Corrections is a defendant, the employee should notify his or her supervisor and contact the DOC General Counsel immediately for directions on how to proceed.

d. *When an Individual is Subpoenaed or Questioned to Serve as a Witness in a Criminal Case,*

- 1) Employees of the Department of Corrections may be served a subpoena to testify or be approached for interview by prosecutors, defense attorneys and/or their investigators regarding knowledge they have involving criminal matters arising from their scope of employment, such as the prosecution of inmates for assaults and other Jail disciplinary infractions. If the prosecution or defense seeks to subpoena an individual employee, service of process must be personally accepted by the DOC employee named. Supervisors and co-workers may not accept subpoenas for another employee without his or her express written consent.
- 2) If the prosecution or defense only seeks to interview the employee regarding the facts and circumstances surrounding an incident relevant to the employee's scope of employment, the employee is encouraged to cooperate with the criminal justice process. However, the employee may only be compelled to provide information upon service of subpoena or court order.
- 3) If a subpoena is to be served upon the individual, he or she has the right to be served by the process server. The DOC General Counsel cannot accept service without the explicit authorization of the individual witness. Supervisors and co-workers may not accept subpoena for another employee without his or her express written consent.
- 4) The General Counsel will accept subpoenas on the Department to produce the "Custodian of Records" for the agency and will designate a DOC employee to testify on that basis.
- 5) Process servers, including U.S. Marshals, are not provided access to individuals to serve them inside the facilities or headquarters. They must serve them in public places or at their residences just as they would any individual being subpoenaed.

- 6) Employees being subpoenaed for work related matters should not evade service. If the employee evades service, the DOC must disclose the defendant's hours of work so that he or she may be personally served just prior to or departing from employment. DOC employees who intentionally evade service or ignore a properly served subpoena may be held in "contempt of court," and/or charged with "obstruction of justice." Fed. R. Civ. P. 45(e) (2007); Fed. R. Civ. P. 55(a) (2007).
  - 7) DOC employees served subpoenas in criminal cases relevant to the scope of their employment should contact the Office of the General Counsel for advice after receiving the subpoena and other informal requests for pre-trial and witness conferences.
- e. *Request for Legal Representation by the Office of the Attorney General(OAG)*
- 1) An employee who is named as a defendant in a civil action, where the circumstances for the suit derived from the scope of his/her employment, maybe represented by the District of Columbia OAG. A second option is for the employee to retain legal counsel at his/her own expense. For the purpose of obtaining information and possible assistance in preparing a request for Legal Representation (Attachment 1), an employee assigned to a correctional facility, who is served with notice of pending litigation, should report the fact to his/her supervisor, and within (48) hours, to the Department of Correction OAG's office. When an employee not assigned to a correctional facility is served with notice of a civil action, he/she is to inform his/her supervisor before submitting a request for legal representation.
  - 2) The request, along with the summons and complaint, should be forwarded to OGC within two days (48 hours). Office of the General Counsel will then transmit the request to the OAG. It is imperative that an employee, who has been properly served, take measures to defend himself/herself in a civil action.
- f. *Statement of Facts.* Each request for legal representation must contain a statement of facts which includes the following:
- 1) All reports, written statements, and other materials pertinent to the incident alleged in the complaint.
  - 2) A statement by the defendant employee that he/she was acting within the scope of his/her employment as an agent of the Director and performing official duties at the time the alleged incident occurred.

12. **POSTING OF THIS DIRECTIVE.** This Program Statement (PS) will be posted on all employee bulletin boards.
13. **EFFECTIVE DATE.** This directive is effective upon signature of the Director.
14. **ANNUAL REVIEW.** This PS will be reviewed and revised as necessary.



Thomas P. Hoey  
Interim Director

Attachment A – Employee Representation Form