

GENERAL DISTRIBUTION

**WEST VIRGINIA
DIVISION OF CORRECTIONS
& REHABILITATION**

NUMBER: 109.00

DATE: 26 October 2020

**SUBJECT: LAWSUITS AND LEGAL
PROCEEDINGS**

POLICY DIRECTIVE

PURPOSE:

To ensure all correspondence concerning legal proceedings involving the division, its officials, employees, or inmates/residents is accepted and disseminated for appropriate action.

REFERENCE:

None.

RESPONSIBILITY:

No additional written instructions on this subject are required.

CANCELLATION:

Any previous written instruction on the subject, including DOC Policy 109.00, dated 01 January 2004; DOC Policy Directive 109.01, dated 01 January 2004; DOC Policy Directive 109.02, dated 01 July 2006; DOC Policy Directive 109.03, dated 01 July 2007; DJS Policy 109.00, dated 01 July 2016; and RJA Policy 1012, dated 07 September 1989.

APPLICABILITY:

All facilities and work units within the Division of Corrections and Rehabilitation. This Policy is available for general distribution.

DEFINITIONS:

Legal Process (sometimes simply process): Any formal notice or writ by a court obtaining jurisdiction over a person or property. Common forms of process include a summons, court order, subpoena, petition, mandate, and warrant.

POLICY:

- I. Superintendents shall ensure a copy of any correspondence concerning legal proceedings involving the division, or employees or former employees, is forwarded through his or her chain of command to the Commissioner/designee.

- II. Under **no** circumstances should any employee of the Division of Corrections and Rehabilitation (DCR) assist any inmate/resident or former inmate/resident in any way in the preparation or conduct of any lawsuit involving the division or involving defendants who are DCR employees.
 - A. No employee should give affidavits, supporting information or access to divisional records without the knowledge and permission of the Commissioner or designee.

 - B. When an inmate/resident or his/her attorney approaches any employee about any lawsuit concerning the division or any of its employees, the employee is to direct the inmate/resident to the Commissioner's office.
 1. The employee **must not** discuss the case with the inmate/resident/attorney unless the Commissioner/designee has given his/her consent.

 2. This does **not** mean, however, that employees are to deny inmates/residents access to law libraries, writ or other legal forms, writing materials, copiers, or the mail.

- III. The Superintendent of each facility shall designate appropriate employee(s) as agents for accepting service of all legal process.
 - A. Legal process accepted on behalf of inmates/residents shall be delivered as soon as practical to the inmate/resident and receipted in accordance with legal or privileged mail procedures.

 - B. The accepting agent for legal process involving claims made by inmates/residents or other actions arising out of employment with the DCR shall, within twenty-four (24) hours of receipt of process, cause the said process, together with an incident report containing the date and time of service, to be delivered to the parties for whom process was accepted, the Superintendent and the Commissioner or designee.
 1. The fact that an employee is on annual leave, sick leave, or is absent for any reason shall not excuse compliance with the time frames in this policy, as the same are not accepted as excuses by the Courts.

 2. The agent shall maintain a log of all processes accepted and shall transmit to the Commissioner or designee on a weekly basis.

 - C. No service of process shall be accepted for any vendor, employee of a vendor, or former employee who is not actively employed at such facility. Nor shall service of process

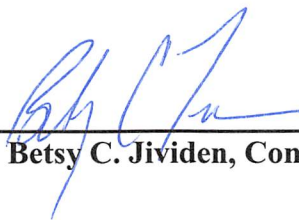
- be accepted for any matter that does not arise from the discharge of employment with the DCR.
1. It shall be the duty of the agent to formally advise the process server of such non-acceptance and to prepare an incident report containing the date and time of attempted service.
 2. Copies of said incident reports shall be transmitted to the Superintendent and Commissioner or designee.
- IV. Any employee who has been named as a party to any lawsuit shall, within forty (48) hours of his or her receipt of such process, provide a copy to the Superintendent who shall forward it through his or her chain of command to the Commissioner or designee.
- A. All employees shall fully cooperate and assist the attorney who is defending such lawsuit.
 - B. All employees shall fully and forthright respond to all discovery requests or requests for additional information forwarded to him or her by the attorney defending the case within forty-eight (48) hours of being sent such material.
 - C. All such material forwarded by the attorney to the facility shall be provided to the employee within twenty-four (24) hours of receipt.
 1. The fact that an employee is on annual leave, sick leave, or is absent for any reason shall not excuse compliance with the time frames in this policy, as the same are not accepted as excuses by the Courts.
 2. If requested by the attorney, the employee shall also arrange to meet and discuss the pending litigation. Any such meeting shall be considered part of the employee's work-related duties for all purposes.
 - D. Whenever a deposition or inspection is duly scheduled in any case, the Superintendent shall make available facilities for the taking of such deposition that are sufficient to accommodate the number of attorneys, court reporter, and security staff needed for such deposition. Inspections of facilities or portions thereof shall be arranged and conducted in a similar manner. Facility security shall not be jeopardized.
- V. Any employee who is named as a defendant in an action filed by an inmate/resident or whom is sued on account of the discharge of their duties while an employee, except for employees sued by other employees and who are defended by counsel outside of the Attorney General's Office, shall have a continuing duty to cooperate with the defense of the litigation.

- A. The DCR recognizes that certain employees, in particular the Commissioner, Deputy Commissioners, Assistant Commissioners, and Superintendents may be named as defendants in litigation for many years beyond the term of their employment.
 - B. The assistance of the defense of this litigation, although named a party, is an incident of employment with the DCR or its legacy agencies.
 - C. Any former employee who is a party to litigation may apply to the Commissioner/designee for a temporary contract to compensate him or her for work expended in connection with the defense of the action. Any said compensation shall be reasonably calculated to be at an hourly rate commensurate with the employee's last wage or salary rate, or at such sum as is otherwise agreed on by the Commissioner. (Provided, however, that compensation shall be for work provided and shall not be connected in any manner with the outcome of the litigation.)
- VI. This Policy Directive in no way limits a staff member's ability to obtain his/her own private legal counsel, if he/she deems it necessary and appropriate, for any defense in a court action brought against a staff member by an inmate/resident.

ATTACHMENT(S):

None.

APPROVED SIGNATURE:



Betsy C. Jividen, Commissioner

10-16-20

Date