

GENERAL DISTRIBUTION

**WEST VIRGINIA
DIVISION OF CORRECTIONS
& REHABILITATION**

NUMBER: 109.00

EFFECTIVE DATE: 12 November 2025

**SUBJECT: LEGAL COUNSEL, LAWSUITS
AND LEGAL PROCEEDINGS**

POLICY DIRECTIVE

PURPOSE:

To provide policy and procedure ensuring legal assistance is available to agency employees as needed in the performance of their duties; and ensuring all correspondence concerning legal proceedings involving the agency, officials, employees, or current or former adult inmates or juvenile residents is accepted and disseminated for appropriate action.

REFERENCE:

ACA Expected Practices 5-ACI-1A-23; 5-ALDF-7A-02; 4-JCF-6D-05; 3-JDF-1A-32; 1-JDTP-1A-25; 2-CO-1A-28; 1-CTA-1A-16; and 4-APPFS-3D-20.

RESPONSIBILITY:

No additional written instructions on this subject are required.

CANCELLATION:

Any previous written instruction on the subject including DCR Policy Directive 109.00, dated 26 October 2020.

APPLICABILITY:

All facilities and work units within the Division of Corrections and Rehabilitation. This Policy is available for general distribution and is to be included in the Personnel Policy Manual.

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. Legal assistance is available to the Division of Corrections and Rehabilitation (DCR) for the purposes of formulating agency policy, advising on individual cases, interpreting court law, and representing the agency and staff, as required, before courts and other appropriate bodies.
- II. Each Superintendent and Work Unit Supervisor or Director, as appropriate, shall assign an appropriate staff member the responsibilities of receiving, opening and processing any correspondence concerning legal proceedings involving the agency, employees or former employees, or inmates/residents. A minimum of two (2) backups shall be designated to cover periods when the assigned staff member is unavailable. Copies of all correspondence will be provided within twenty-four (24) hours of receipt to the Superintendent or Work Unit Supervisor or Director and forwarded through the chain of command to DCR General Counsel or designee. This does not apply to inmate or resident attorney-client or legal mail.
- III. Staff at all facilities and work units shall not provide requested documents or materials to any outside attorney without prior approval of DCR General Counsel or legal counsel assigned to the Department of Homeland Security (DHS).
- IV. Under **no** circumstances should any DCR employee assist any current or former inmate or resident in any way in the preparation or conduct of any lawsuit involving the agency or involving defendants who are DCR employees.
 - A. No employee should give affidavits, supporting information or access to agency records without the knowledge and permission of the Commissioner or designee.
 - B. When a current or former inmate or resident or his/her attorney contacts any employee about any lawsuit concerning the agency 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 mail.
- V. Acceptance of Process in Lawsuits.
 - A. Acceptance of Service:
 1. The Superintendent of each facility shall designate an appropriate employee as the designated agent for accepting service of all legal process. A minimum of two (2) backups shall be designated to cover periods when the primary designee is

unavailable. (NOTE: this is different than legal correspondence received through the mail. Legal process is typically delivered by a process server.)

2. 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.
3. It shall be the duty of the agent to formally advise the process server of such non-acceptance and to prepare an incident report which shall be transmitted with the process, as will be described below.
4. No service of process shall be accepted by said agent for any matter not directly related to the operations of the facility or DCR.

B. Delivery of Process:

1. The agent accepting process shall, within twenty-four (24) hours of receipt of process, cause the said process, together with any incident report made thereon, be delivered to the parties for whom process was accepted and the said agent shall likewise cause a copy of the same to be delivered within the same time period, to DCR General Counsel.
2. The agent shall advise as to the date and time of service.
3. The fact that an employee is on annual leave, sick leave, or is absent for any reason should not excuse compliance with the time frames in this Policy, as the same are not accepted as excuses by the Courts.
4. The agent shall maintain a log of all processes accepted and shall transmit to DCR General Counsel the same on a weekly basis.
5. The process agent shall also inform the Superintendent, if not a party, and any other vendor or non-employee for whom service was not accepted by providing such person with a copy of the process within the same time period and make an incident report of the same.
6. If the agent accepts service of process for an employee who has transferred to another DCR facility, the agent shall be responsible for transmittal of the process to the agent at the other facility. The agent at the other facility shall have the same responsibility to deliver the process to the employee and DCR General Counsel in the same time frame.
7. Legal process accepted on behalf of inmates/residents shall be delivered within twenty-four (24) hours of receipt to the inmate/resident and receipted in accordance with legal or privileged mail procedures. No legal process will be accepted on behalf of inmates/residents who will be absent from the facility for more than twenty-four (24) hours.

- VI. Any employee who has been named as a party to a lawsuit arising from his or her employment with the DCR shall, within forty (48) hours of his or her receipt of such process, provide a copy of said lawsuit to DCR General Counsel together with a written statement of his/her knowledge of the facts in said lawsuit, and all reports, documents, videos, photographs, or other materials.
- A. It is the duty of the employee to confirm receipt of the process and information by DCR General Counsel.
 - B. All employees shall fully cooperate and assist the attorney who is defending such lawsuit.
 - C. All employees shall fully and forthrightly 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.
 - D. 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.
- VII. 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.
- VIII. Any employee who is named as a defendant in an action filed by a current or former inmate or resident or who is sued on account of the performance of his/her 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 Commissioner, 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.)
- IX. 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 a current or former inmate/resident.

ATTACHMENT(S):

None.

APPROVED SIGNATURE: _____

David L. Kelly, Commissioner

10/17/2025
Date