

STATE OF OHIO



DEPARTMENT OF REHABILITATION
AND CORRECTION

SUBJECT: Legal Representation and Assistance	PAGE <u>1</u> OF <u>8</u>
	NUMBER: 37-EAP-03
RULE/CODE REFERENCE: ORC 109.361; 109.362; and 109-363	SUPERSEDES: 37-EAP-03 dated 04/18/14
RELATED ACA STANDARDS: 2-CO-1A-28; 4-4023; 2-1018; 2-CTA-1A-16, 1B-09; 4-APPFS-3D-20, 3D-27	EFFECTIVE DATE: May 18, 2016
	APPROVED: 

I. AUTHORITY

This policy is issued in compliance with Ohio Revised Code 5120.01 which delegates to the Director of the Ohio Department of Rehabilitation and Correction the authority to manage and direct the total operations of the Department and to establish such rules and regulations as the Director prescribes.

II. PURPOSE

The purpose of this policy is to provide the procedures for employees to follow when receiving service of legal process (a summons or writ to respond or appear in court) and making requests for representation, and to ensure the availability of adequate and appropriate legal advice and assistance for Ohio Department of Rehabilitation and Correction (DRC) employees.

III. APPLICABILITY

This policy shall apply to all Ohio Department of Rehabilitation and Correction (DRC) employees who may need legal representation or assistance as a result of performance of their official duties.

IV. DEFINITIONS

Case Caption - The heading or introductory part of a legal instrument or document that indicates the names of the parties, name of the court, case number, and title of the action.

Complaint - The initial pleading that starts a lawsuit and contains the allegations made by the plaintiff against the employee/defendant and the plaintiff's demand for relief. Complaints are characterized as civil or criminal. A civil case number will usually contain a CV. A criminal case number will usually contain a CR.

Employee/Defendant - An employee of the DRC who is being sued in connection with the employee's official duties, and for whom legal representation may be requested (includes a person that, at the time a cause of action against the person, partnership, or corporation arises, is rendering medical, nursing, dental, podiatric, optometric, physical therapeutic, psychiatric, or psychological services pursuant to a personal services contract or purchased service contract with the DRC).

Habeas Corpus - Medieval Latin, literally, “you should have the body”. For our purposes, it usually involves a petition challenging the lawfulness of restraining a person who is imprisoned or otherwise in another’s custody.

Legal Contact Persons - The local employees responsible for processing forms related to requests for legal representation.

Litigation Records Designees - The local employees responsible for coordinating record requests by the Attorney General’s Office.

Petition - A formal written request made to a court or other official body. Petitions are made for a number of reasons asking a court to command a party to do or refrain from doing something. The word petition in the case caption identifies these documents.

Plaintiff - The party who complains or sues in a civil action and is so named on the record. The State or United States prosecuting criminal violations are the plaintiffs in criminal cases.

Service of Process - The delivery of copies of legal documents, such as summons, complaint, subpoena, petition, writ, and certain other documents, usually by certified mail to the defendant or other person to whom the documents are directed.

Subpoena - A judicial or administrative document commanding a person to appear before a court or other tribunal, subject to a penalty for failing to comply. The subpoena can order a person to testify, produce evidence (*duces tecum*) or both. Subpoenas are identified as such on their face.

Summons - A document prepared by the plaintiff and issued by a court that informs the defendant that he or she is being sued. The summons requires that the defendant, through the Attorney General’s Office, file a response with the court within a given time period or risk losing the case.

Writ - A court’s written order, in the name of the state or other competent legal authority, commanding the addressee to do or refrain from doing a specified act. The order may contain the term “writ” in the caption or refer to it in the body of a decision.

V. POLICY

It is the policy of the Ohio Department of Rehabilitation and Correction (DRC) to ensure employees receive legal representation pursuant to Sections 109.361, 109.362 and 109.363 of the Ohio Revised Code, in all legal actions arising from matters within the scope of their employment and official responsibilities. Also, employees shall be provided with adequate and appropriate legal advice in the performance of their duties. DRC recognizes that qualified legal assistance is necessary to ensure that policies and procedures are consistent with court decisions; provide advice relating to statutory and court requirements on policy formulation; and provide representation before courts and other appropriate bodies.

VI. PROCEDURES

A. Legal Contact Persons

1. Each institution, parole region, and Operation Support Center (OSC) directorate shall identify two (2) employees (a primary and a backup) to perform this responsibility. The

primary legal contact person at the institutions shall be the managing officer or his/her designee. The primary legal contact person at the parole regions shall be the regional administrator or his/her designee. The primary legal contact persons at OSC shall be the managing directors or their designees. Institutions, parole regions and OSC directorates shall provide the names of their legal contact persons to legal services when changes occur.

2. Legal contact persons shall be available to answer questions and to receive/forward legal documents as appropriate. Legal contact persons shall also assist with legal representation processes.

B. Different Types of Legal Actions and How to Recognize Them

DRC employees are subject to a variety of legal actions that require legal representation on their behalf. All legal documents bear a title on the first page identifying the nature and purpose of the document.

1. The most common and best known involves a plaintiff filing a civil complaint demanding monetary or other relief from one or more defendants. The complaint will contain a caption on the first page identifying it as a complaint. In such an instance, the employee will be named as a defendant. In most cases the case number will contain the designation “CV” which identifies the complaint as a civil matter.
2. In addition, there are other legal documents, including, but not limited to, an order or entry, a petition for a writ and a motion to show cause, that require legal representation. They will also contain a case number and a designation. The types of petitions and writs are identified as such on the first page of the document. Two considerations are critical to recognizing whether an employee is being called upon to defend his or her actions and needs representation.
3. If the employee is named as an opposing party to the person initiating the legal action or the action is accompanied by a summons instructing the recipient to respond, there is a need for representation. An opposing party can be identified as someone other than a defendant (e.g. respondent). The identification is located below the name of the staff member listed on the left side of the document.
4. When multiple defendants or opposing parties are named, not all names will appear in the caption of the case. Usually, one person is identified followed by the notation “et al.” The notation indicates there are other parties or defendants. They are listed in the body of the complaint, petition, motion, etc.
5. Sometimes a complaint will contain defendants named as John or Jane Doe. This occurs when the plaintiff does not know the actual name of the individual who allegedly engaged in the behavior that is the subject of the lawsuit.
6. When an employee is subject to a criminal complaint, the State of Ohio or the United States (depending on whether it is a violation of state or federal law) will be designated as the plaintiff and the employee as the defendant. The case number will contain the designation “CR”, identifying it as a criminal matter. There is no authorization for the Attorney General to represent or to hire counsel to represent staff in criminal matters.

C. Service of Process from Federal, State, or Local Courts (other than the Court of Claims of Ohio)

The following applies to all certified mail and other legal documents for lawsuits, received from the U.S. Marshals Service (USMS) and all courts, EXCEPT the Court of Claims of Ohio, addressed to employees of the DRC.

1. If the local postmaster will permit mailroom staff to carry certified mail back to the institution WITHOUT signing the green card(s), mailroom staff shall deliver the envelopes to the legal contact person (or backup if primary designee is not available) immediately upon returning to the institution.
2. If the local postmaster requires a signature on the green card(s) before releasing the certified mail, mailroom staff shall sign the card(s) and take the envelopes to the legal contact person (or backup if primary designee is not available) immediately upon returning to the institution.
3. The legal contact person (or backup) shall carefully review all such mail, regardless of whether the green card was signed by mailroom staff or is still intact.
4. If mail is addressed to a former employee, employees referred to as John Doe, Jane Doe, or other designations which do not sufficiently identify the defendant, the legal contact person (or backup) shall promptly return it via certified mail to the USMS or court, with a cover letter stating the reason(s) for return. Mail is NOT TO BE FORWARDED to another institution or home address.
 - a. If the green card is still intact, the cover letter shall state the reason(s) that service cannot be perfected.
 - b. If the green card is not intact because service was accepted by mailroom staff, the cover letter shall note that service was erroneously accepted by mailroom staff and the specific reason(s) for return.
 - c. If envelopes for multiple defendants need to be returned for the same case, one cover letter may be used to list multiple defendants, stating the specific reason(s) for return of each, and the envelopes may be returned in one package.
 - d. If mail is received for an employee who is on extended leave, contact legal services.
5. Mail addressed to current employees (who are not on extended leave) shall be served on the defendant promptly by the legal contact person (or backup).
6. The legal contact person shall prepare Request for Representation and Report Regarding Representation Request forms (DRC1562/1561) and have the Request for Representation (DRC1562) signed by the employee/defendant. These forms are available through the DRC electronic forms catalog.

7. The legal contact person (or backup) shall obtain the recommendation and signature of the managing officer or regional administrator on the Report Regarding Representation Request (DRC1561). The individual signing these forms and making a recommendation for representation should be knowledgeable of the circumstances in order to make a recommendation for or against legal representation of the employee/defendant. In cases where the individual requesting representation is a managing officer, regional administrator or managing director, the recommendation and signature shall be completed by the Director's designee in legal services.
 - a. In cases where the green card remains intact on the certified mail, the employee/defendant shall sign the card and the legal contact person (or backup) shall mail it back to the USMS/court. The date of service is the date the card is signed by the employee/defendant.
 - b. In cases where the green card is not intact because mailroom staff previously signed the green card, the date of service is the date mailroom staff signed.
8. The legal contact person (or backup) shall send the summons, complaint, other legal documents received from the court, the Request for Representation (DRC1562), and the Report Regarding Representation Request (DRC1561) in the following manner:
 - a. Habeas Corpus Cases
 - i. Scan all documents, including a copy of the envelope, if available.
 - ii. The subject line of the email shall include "New Habeas," the inmate's last name and the case number.
 - iii. Forward the scanned documents via email to drc.NewLawsuits@odrc.state.oh.us and brian.higgins@ohioattorneygeneral.gov.
 - iv. Requests for representation are NOT needed for habeas cases.
 - b. Other Federal, State and Local Corrections Litigation Cases, including Writs
 - i. Scan completed Report Regarding Representation Request (DRC1561) and Request for Representation (DRC1562) forms and all documents received, including copies of envelopes showing certified mail tracking numbers.
 - ii. The subject line of the email shall include "New Case," the case caption and number.
 - iii. Forward the scanned documents via email to drc.NewLawsuits@odrc.state.oh.us and institutionallawsuits@ohioattorneygeneral.gov.
 - iv. When submitting requests for representation for multiple defendants, include a Report Regarding Representation Request (DRC1561) and Request for Representation (DRC1562) for each defendant, a copy of each summons and envelope. All four (4) documents should be sent in the same email. Only one (1) copy of the complaint is needed.

- v. If additional defendants are served after the initial “new case notification,” email a Report Regarding Representation (DRC1561) and Request for Representation (DRC1562), the summons and envelope for each defendant in the same email. Another copy of the complaint is NOT needed.
- vi. In cases where the managing officer is a defendant, Legal Services shall secure the Director’s signature on the Report Regarding Representation Request (DRC1561) and forward to the Attorney General’s Office.
- vii. Scanned copies of the requests for representation (DRC1561/DRC1562) and other documents are sufficient. Originals are NOT needed.

c. Employment Law Cases

The procedures for Employment Law cases are the same as Corrections Litigation cases, with two exceptions.

- i. Documents are to be emailed to drc.NewLawsuits@odrc.state.oh.us only.
- ii. The subject line of the email shall include “New Employment Case,” the case caption and the case number.

d. Workers’ Compensation Cases

- i. Documents are to be emailed to drc.NewLawsuits@odrc.state.oh.us only.
- ii. Representation forms (DRC1561 and DRC1562) are NOT needed.
- iii. Documents shall be forwarded from the drc.NewLawsuits@odrc.state.oh.us account to the Workers’ Comp attorney for further processing.

- 9. In cases where the Attorney General’s Office is ordered or agrees to locate and waive service on defendants who no longer work for the DRC, the legal contact person at the location last worked shall contact the defendant and process his/her Report Regarding Representation Request (DRC1561) and Request for Representation (DRC1562).
- 10. Responding to a complaint or other legal action is time sensitive. Consequently, it is incumbent on the legal contact person (or backup) to submit the required documents promptly. Failure to do so can lead to a missed filing deadline and jeopardize the employee/defendant’s legal position. This is especially true in habeas corpus cases where the filing time limits are short.
- 11. The attachment to this policy, “When/If You Get Sued” shall be completed by inserting the name of the legal contact person(s) for your location and posted so that all employees have access to the information.
- 12. If an employee receives legal documents addressing actions not related to employment with the DRC or not covered in this policy, or if the employee has questions, he or she shall call DRC legal services to discuss the content.

D. Court of Claims of Ohio

1. The only defendant in original actions in the Court of Claims is the State of Ohio and its agencies. The defendant could be DRC, individual institutions, the APA, and others.
2. Any person who is named on a Court of Claims complaint is being sued in his or her status as a state employee. Therefore, representation forms (DRC1561 and DRC1562) are not necessary.
3. AD Cases
 - a. Administrative Determination (AD) cases involve claims for \$10,000 or less. The Clerk of Courts for the Court of Claims decides the case based on written reports submitted by the parties. There is no trial or hearing.
 - b. Administrative Determination cases are served directly on legal services at OSC. Legal services will contact the appropriate inspector of institutional services, APA office, division or bureau of OSC to obtain a report and supporting documents regarding the allegations made in the complaint. The report will be attached to the investigation report that is submitted to the Clerk by legal services.
4. Judicial Cases
 - a. Judicial cases involve claims in excess of \$10,000. They are heard and decided by a judge or magistrate. There are no jury trials in the Court of Claims.
 - b. Judicial cases are served on legal services and the Attorney General's Office.
 - c. The Attorney General's Office will contact the litigation records designee to obtain records needed to defend the case.

E. Counsel Availability

Legal services attorneys shall be available for advice and consultation for any of the following reasons:

1. Legal actions against the DRC or any of its components;
2. Legal actions against an employee;
3. Subpoenas;
4. Public Records Requests;
5. Court decisions and requirements;
6. Policy and Administrative Rule information;
7. Statutory interpretation;
8. Operational matters;
9. Miscellaneous legal issues.

Attachments

Appendix A

“When/If You Get Sued”

Related Department Forms:

Report Regarding Representation Request
Request for Representation

DRC1561
DRC1562

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WHEN/IF YOU GET SUED

- ❖ IF you were acting within the scope of your employment, the Office of the Attorney General WILL represent you.
(Ohio Revised Code §109.361 DRC Policy 37-EAP-03)
- ❖ IF you are served with a subpoena, summons, complaint, or other legal paperwork relating to your position with DRC, IMMEDIATELY see the Legal Contact Person at your location.
- ❖ IF you are being sued, your Legal Contact Person will help you prepare Request for Representation and Report Regarding Representation Request. Both forms, along with the legal documents (including copies of envelopes), will be forwarded electronically to the Attorney General's Office and to Legal Services at Operation Support Center.
- ❖ CONTACT INFORMATION (If you have questions):

Department of Rehabilitation & Correction
Legal Services Section
770 W. Broad Street
Columbus, OH 43222
Phone: (614) 752-1765

Office of the Attorney General
Corrections Litigation Unit
150 East Gay Street, 16th Floor
Columbus, OH 43215
Phone: (614) 644-7233

YOUR LEGAL CONTACT PERSON IS: _____