



Chapter: Inspections, Internal Control, Legal and Administrative Proceedings
Subject: 18-22 – Civil Lawsuits
Effective: April 19, 2022
Supersedes: Official Order 34, Section 34.3, dated February 24, 2021
 Official Order 63, Section 63.1.4, dated January 30, 2020
Distribution: Department Members

PURPOSE: Members of the department may become involved in a civil lawsuit in connection with matters arising out of their employment with the department or for matters unrelated to department work. This Order provides policies and procedures for accepting service of legal process, complying with discovery requests and other issues related to civil lawsuits against the department or members.

18-22-1 SUMMONS AND COMPLAINT--DEPARTMENT RELATED CIVIL LAWSUITS

A summons and complaint are documents used to notify a person or entity that they are being sued. The complaint sets forth the allegations and relief requested. There are strict deadlines associated with lawsuits. Therefore, members served with a summons and complaint in connection with a civil lawsuit arising out of their employment with the department shall follow the following procedures:

A. Acceptance of Summons and Complaint Naming Individual Member

- (1) Members named in a civil lawsuit may only accept service of a summons and complaint directed to them. Members, including supervisors, shall not accept service on behalf of another member, the Director, or the department.
- (2) If members named in a civil lawsuit is off-duty when service is attempted, the process server shall be notified of the date and time of the member's return to work.

 Process servers shall not be given a member's home address or telephone number under any circumstances.
- (3) When members named in a civil lawsuit is on-duty, but not at the worksite, the member shall be notified to return to the worksite to accept service.
- (4) On receipt of a summons and complaint, the member shall document the date served, time served, place of service, and method of service (e.g., first class mail, in-person service). Members served in-person shall also document the name of the server. The member shall enter this information into the Report of Lawsuit form, EX-016.

B. Requests for Waiver of Serving a Summons and Complaint

- (1) Members shall not sign any request for waiver of service or otherwise agree to waive service of legal process unless instructed to do so by the Risk Management Section or an attorney representing the member at the department's expense.
- (2) If members receive a request for waiver of service, the member shall notify the Risk Management Section in the same manner outlined in Section 18-22-1 D for notification of service of a summons and complaint.

C. Summons and Complaint Naming the Department or Director

- (1) Only the following members may accept service of legal process naming the department or the Director as parties:
 - a. The Director or a deputy director serving as Acting Director.
 - b. Members specifically designated by the Director.
- (2) Other than those members designated by the Director, members shall not accept legal process naming the Director or the department as a party.
- (3) If service upon the Director or the department is attempted at a local worksite, the process server shall be directed to Headquarters (7150 Harris Drive, Dimondale, Michigan) and informed that such legal process is only accepted during normal business hours.

D. Notification to the Risk Management Section

- (1) Upon receiving a summons and complaint, the member shall immediately notify the Risk Management Section via telephone, 517-284-3234, and email the following to the department's Litigation Coordinator:
 - a. Completed Report of Lawsuit form, EX-016.
 - b. All papers received/served including any mailing envelope.
- (2) Within 24 hours of being served, members shall send the following via overnight mail or ensure the following are personally delivered within 48 hours of being served to the Risk Management Section:
 - a. Original completed Report of Lawsuit form, EX-016.
 - b. All original papers served upon the member.
 - c. The original envelope, if served by mail.
 - d. Copies of all incident reports, documents, and records giving rise to the civil lawsuit, including supplemental reports, external documents, photographs, and video.
- (3) Each member named in a civil lawsuit must follow the above procedures; it is not sufficient for one member to submit documents on behalf of all involved members.
- (4) The member named in a civil lawsuit shall keep photocopies of all papers received/served including mailing envelope and the Report of Lawsuit form, EX-016 until the Risk Management Section has received the documents mailed or personally delivered. Thereafter, the member may keep copies of the EX-016, papers served,

and other lawsuit-related correspondence at their discretion. This Order does not authorize the member to keep copies of official department records related to a civil lawsuit (e.g., incident reports, external documents, photographs, video).

E. Notice of Intent to Sue

A notice of intent to sue is a written notice that another party intends to file a civil lawsuit against the department or members. If members receive a notice of intent to sue, the member shall notify the Risk Management Section in the same manner outlined in Section 18-22-1 D for notification of service of a summons and complaint.

F. Demand Notice

A demand notice is a written notice making a claim that the department or member has done something which might lead to a civil lawsuit if certain demands are not met. If members receive a demand notice, the member shall notify the Risk Management Section in the same manner outlined in Section 18-22-1 D for notification of service of a summons and complaint.

18-22-2 SUMMONS AND COMPLAINT—NON-DEPARTMENT RELATED CIVIL LAWSUITS

A. Members served with a summons and complaint in connection with a civil lawsuit not arising out of their employment with the department shall report the lawsuit to their worksite commander within five days of being served.

(1) The report shall be limited to:

- a. Identifying the parties.
- b. The docket number.
- c. The court in which the lawsuit was filed.
- d. The nature of the action.

(2) This section does not apply to divorce actions.

18-22-3 SUBPOENAS--DEPARTMENT RELATED CIVIL LAWSUITS

Once a department related civil lawsuit has commenced, the department or member may receive a subpoena commanding a party or witness to appear for the purpose of testifying or a subpoena to produce notes, records, documents, or other portable tangible things.

A. Acceptance of Subpoenas

- (1) Members shall not accept subpoenas on behalf of the department, the Director, or another member in any civil lawsuit, regardless of whether the department or the member is a party to the lawsuit.
- (2) If members are subpoenaed by an attorney or party other than one representing the department, the member shall immediately notify the attorney representing either the department or the member and the Risk Management Section. This subsection applies only to civil lawsuits in which the department or the member is named as a party in the lawsuit.

B. Subpoenas Commanding Appearance

Members subpoenaed to appear in any civil lawsuit related to department work within the state of Michigan shall appear as directed and shall be considered on-duty.

C Subpoenas Commanding Appearance in Out-of-State Proceedings

- (1) Members shall not appear outside of Michigan pursuant to a subpoena without the prior authorization of the Risk Management Section. Members receiving a subpoena from an out-of-state entity shall immediately notify their worksite commander and the Risk Management Section.
- (2) Prior to seeking authorization to attend a proceeding outside of Michigan, the member's worksite commander shall attempt to arrange a deposition to be conducted in Michigan during the member's normal working hours. When such a deposition has been arranged, the member shall appear as if properly subpoenaed by an entity in Michigan.
- (3) When a deposition in Michigan cannot be arranged, the worksite commander shall evaluate the necessity of the member's appearance and, if deemed necessary, shall seek approval through channels from the Risk Management Section. If authorized to appear by the Risk Management Section, the member shall appear as if properly subpoenaed by an entity in Michigan.

D. Subpoenas for Records or Evidence When the Department or Member is a Party

Members receiving a subpoena for records or evidence in a civil lawsuit where the department or member is a party shall process the subpoena in the same manner outlined in Section 18-22-4 for a discovery request.

E. Subpoenas for Records or Evidence When the Department or Member is not a Party

Members receiving a subpoena for records or evidence in a civil lawsuit related to department work but where the department or member is not a party shall immediately forward the request to the Records Resource Section for processing. Members shall notify the requesting attorney that the subpoena has been forwarded to the Records Resource Section for processing and request that the attorney direct future subpoenas to the Records Resource Section.

18-22-4 DISCOVERY REQUESTS--DEPARTMENT RELATED CIVIL LAWSUITS

Once a civil lawsuit has commenced, the department or member may receive a discovery request. For purposes of this section, the term "discovery request" refers to the various pretrial methods used to obtain facts and information about the case from a party other than a subpoena. Some of the more common discovery requests a member may receive in a civil lawsuit include a request to attend a deposition, answer interrogatories, a request for production of documents, and a request for admissions.

- A. Members receiving a discovery request from an attorney representing either the department or the member at the department's expense shall fulfill the request on or before the deadline given.
- B. Members receiving a discovery request from another attorney or party in a case in which the department or the member is a party shall immediately forward the request to the Risk Management Section.

Members shall comply with requests to preserve evidence made by any party and shall notify their worksite commander of the request. Members shall not respond to any other

discovery requests made by another attorney or party unless directed to do so by the Risk Management Section or an attorney representing the department or the member at the department's expense.

- C. Members receiving a discovery request in a civil lawsuit related to department work but where the department or member is not a party shall contact the Risk Management Section for guidance.

18-22-5 SUBPOENAS AND DISCOVERY REQUESTS—NON-DEPARTMENT RELATED CIVIL LAWSUITS

- A. Members attending any proceeding pursuant to a subpoena or discovery request in a civil lawsuit unrelated to department work shall not be considered on-duty while traveling to, from, or appearing at the proceeding.
- B. Members shall charge such time against available leave credits when their appearance conflicts with their regularly scheduled shift.
- C. The department shall not pay the member's expenses, but the member may retain any witness fees and travel expense reimbursements received in accordance with the policies specified in written directive related to appearance fees and expenses.

18-22-6 COMMUNICATIONS DURING A CIVIL LAWSUIT

- A. Except as authorized by this Order, members shall not communicate with an opposing party or attorney in a department related civil lawsuit or a civil lawsuit in which the department may become involved, without the approval of the Risk Management Section or the attorney representing the department or member at the department's expense.
- B. Members shall immediately return phone calls, emails, or other correspondence from the Risk Management Section or an attorney representing the department or member at the department's expense. Requests for information shall be answered on or before any deadline given by the requestor.
- C. Members shall not make public comment, whether to the media or otherwise, regarding a civil lawsuit involving the department. Persons requesting public comment shall be referred to the Public Affairs Section for comment in accordance with the policies specified in written directive related to news media – general policy.
- D. Members shall not discuss communications to or from attorneys representing the department or the member with any other person except members of the Risk Management Section serving as a liaison with the attorneys.
- E. Members shall not engage in settlement negotiations, whether formal or informal, without the express authorization of the Director.

18-22-7 DEFENSE OF MEMBERS

- A. Members sued individually in connection with matters arising out of their employment with the department may be provided legal representation at the department's expense in accordance with applicable Civil Service Rules and applicable collective bargaining agreements.
- B. The Director has sole discretion to determine which attorney, agency, or law firm will represent the department or its members at the department's expense. The department will not pay legal fees or other related expenses for legal representation employed by members without the prior, written approval of the Director.

- C. The department will not provide legal counsel, nor will it reimburse lawsuit-related expenses, for members sued for reasons not arising out of their employment with the department.
- D. The department may indemnify an employee for the payment of any judgment, settlement, reasonable attorney fees, or court costs in accordance with applicable Civil Service Rules and applicable collective bargaining agreements.

DIRECTOR

Annual Review Responsibility: Transparency and Accountability Division

Accreditation Standards: CALEA 74.2.1