
PURPOSE

The purpose of this policy is to:

1. Assist Michigan Department of Health and Human Services (MDHHS) employees in identifying legal documents that need to be submitted to the Bureau of Legal Affairs (Legal Affairs).
2. Provide employees with instructions for requesting legal representation from the Department of Attorney General.
3. Explain when employees may be indemnified from judgment/settlement.
4. Explain how to request legal guidance from the Department of Attorney General or Legal Affairs.

REVISION HISTORY

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Note: Beginning with the February 2016 release of this policy revision history will be available electronically for state employees by changing the effective date.

DEFINITIONS**Civil Action**

An action brought to enforce, redress or protect private rights, such as a claim for money damages, an injunction, or declaratory judgment. A civil action commences when a complaint is filed with a court. Also known as a “lawsuit” or “litigation.”

Complaint

The document filed by the party bringing a civil (non-criminal) action that lists the parties (plaintiffs and defendants), the plaintiff’s statement of facts and allegations against the defendant, and the requested relief from the court.

Criminal Action

A proceeding by which a person charged with a crime is brought to trial. A criminal action commences when law enforcement first seeks to question a MDHHS employee as a suspect, or when the employee is advised by law enforcement of the right to counsel.

Declaratory Judgment

An action to seek court direction at an early stage in a controversy by declaring the legal obligations or rights of parties associated with the potential future course of action. Declaratory relief offers an immediate means to resolve uncertainty.

Defendant

The person against whom the complaint/lawsuit is brought.

Discovery

Pretrial tools that parties use to obtain facts and information about the case from the other party to assist the party's preparation for trial. Discovery tools include: depositions, interrogatories, production of documents or things, physical or mental examinations, and requests for admissions.

Electronically Stored Information (ESI): Information stored electronically and maintained by the department that is either:

- Relevant to reasonably anticipated or pending litigation involving the department.
- Reasonably likely to be requested during discovery.
- The subject of a pending discovery request.

Electronically stored information includes, but is not limited to: email, images, recordings, spreadsheets, documents, word processing documents, voicemail, text messages, and application databases.

Injunction

A court order prohibiting the defendant from doing some specified act or ordering the defendant to undo some wrong or injury.

Litigation Hold Notice

A memorandum from either Legal Affairs or the Department of the Attorney General that requires employees to preserve information and documents related to litigation or potential litigation, including electronically stored information.

Plaintiff

The person bringing the lawsuit, who files the complaint with the court.

Service

The delivery of the litigation documents, usually the summons and complaint, to the defendant either by someone authorized to deliver the documents (process server) or by registered or certified mail, return receipt requested, and delivery restricted to the person and address.

Note: The date of service is very important because it begins the time period for a defendant to respond. If you receive it by mail, provide the date stamped envelope to Legal Affairs. Alternatively, if you receive in person or by email, provide the date received to Legal Affairs.

Subpoena

A written command to appear at a certain time and place to give testimony about a certain matter. A subpoena duces tecum is a command to provide documents.

Summons

A court notice that a lawsuit has been filed. This is served along with the complaint. The summons outlines the need to respond to the lawsuit and when to appear in court.

POLICY

Legal Affairs must be notified as soon as possible of all communications or inquiries regarding potential or actual litigation, including pending litigation. Please adhere to the times listed in this item.

Exception: See Representation and Guidance, Specific Situations in this item.

PROCEDURE

Lawsuits

Any document related to a lawsuit, such as a summons and complaint naming the department, the director, or an employee of the department, related to state employment or administration of MDHHS programs or any other legal document involving MDHHS or its employees, must be forwarded within **one-business day** to the litigation coordinator in Legal Affairs. Contact information for the litigation coordinator is MDHHS-Subpoena@michigan.gov.

This procedure does not include administrative grievances, worker's compensation, IRS levies, or garnishments.

Note: IRS levies and garnishments can only be served on the State Treasurer; see [State Treasurer](#) for more information.

Cooperation with the Department of Attorney General

All MDHHS employees must cooperate with the department of Attorney General and Legal Affairs in defense of any lawsuit against the department or its employees, even if they are not personally named in the lawsuit. This includes providing affidavits, documents, and information requested by the department of Attorney General or Legal Affairs. Employees should notify Legal Affairs when documents are forwarded to the Department of Attorney General.

Failure to provide requested information to the Department of Attorney General or Legal Affairs may result in disciplinary action and may result in the Department of Attorney General withdrawing representation.

Service for the Director/Department

The director, the director's designee(s), and Legal Affairs employees are the only people authorized to accept service of a summons and complaint on behalf of the director or department. Any other MDHHS employee who receives such documents must not accept it from the process server or must return it to the sender with an explanation that the employee is not authorized to accept

service on behalf of the director or department. An employee may send the process server to 235 S. Grand Avenue, Lansing, Michigan.

Service for Employees

A MDHHS employee named in a lawsuit as a defendant must be served personally. Employees may be served at their workplace, at another location, or by certified or registered mail, return receipt requested. An employee may also request through Legal Affairs to have the Department of the Attorney General accept service on the employee's behalf. Comparatively, service must not be accepted by anyone on behalf of another employee including former employees. If someone attempts to serve you for someone else, return the summons and complaint to the process server or sender explaining why service cannot be accepted.

Litigation Hold Notices and Electronically Stored Information

MDHHS employees must preserve hard copies and electronically stored information if the department concludes that litigation or a government inquiry is likely to occur. Hard copies should be stored in a locked, secured area. Electronically stored information should be stored on the State's OneDrive network drive. Any employee who receives a litigation hold from anyone other than Legal Affairs must immediately forward a copy of it to Legal Affairs. Legal Affairs may work with the employee to identify and preserve relevant documents and electronically stored information. Email, computers, or other devices like cell phones are subject to litigation holds and may need to be turned over for imaging.

Contact with Plaintiff's Attorney

Direct any inquiries from a plaintiff's attorney regarding a lawsuit against the department or its employees to Legal Affairs, or the department of the Attorney General if legal representation has been accepted. At no time shall MDHHS employees provide information or documents directly to a plaintiff or plaintiff's attorney, including issues regarding settlement without first receiving direction from either the Department of Attorney General or Legal Affairs.

Settlement

Only the director or the director's designee is authorized to settle lawsuits on behalf of the department. MDHHS employees who

receive requests for settlement must forward those requests immediately to Legal Affairs. Employees may not discuss a possible settlement with a plaintiff, or a plaintiff's attorney.

Court orders

A MDHHS employee who receives any court order regarding a lawsuit against the department or its employees, from the Department of Attorney General, a plaintiff or the plaintiff's attorney, must immediately forward the court's order to Legal Affairs. Legal Affairs will provide direction to the employee(s) responsible for implementing the order.

Subpoenas

A subpoena must be signed by an attorney, judge, or clerk of the court. An attorney-signed subpoena must include proof of representation. Proof of representation includes, but is not limited to, any court document indicating who the attorney represents or a statement by the attorney or client attesting to the attorney's representation of the client.

A subpoena naming an employee must be served on that employee. All other subpoenas should be served on the local county that holds the records.

Immediately forward all subpoenas other than children's protective services (CPS) to MDHHS-Subpoena@michigan.gov.

Note: Only forward a CPS subpoena if there is a question regarding the subpoena to CSARequestforLegalResearch@michigan.gov. Obtain and include proof of representation for an attorney-signed subpoena prior to emailing either of the above Legal Affairs inboxes.

For a judge-signed subpoena, comply with the requested timeframe. The timeframe for proper service of a non-judge-signed subpoena starts on the day it is received, not when the requestor sent the subpoena.

Timeframes for service of a non-judge-signed subpoena:

- Appearance: At least two-days prior to the hearing.

- Appearance and records: At least 14-days prior to the hearing and record request date.
- Records: At least 14-days prior to the record request date.

Staff who are served with a valid subpoena for appearance/testimony at a court hearing must appear when ordered or may contact the requestor to try and reschedule. If the hearing is not rescheduled, staff must attend or are subject to a bench warrant.

If the request is for appearance outside of a court hearing (for example, at the attorney's office) deny the request as the MDHHS employee cannot provide testimony regarding a child welfare record outside of a hearing or at a scheduled deposition when the employee has legal counsel present. This does not apply to a request for appearance and records where appearance is waived if the records are received; process those requests as a request for records.

A subpoena is not needed to request appearance for staff who are a witness to a case represented by the program area in an administrative or judicial hearing where MDHHS is represented by the Attorney General's Office. Requested staff must appear when requested by the program area or the Attorney General's Office.

Note: We cannot accept subpoenas for former staff. Do not give out contact information for former staff. If former staff have moved to another SOM agency, if that agency requires, staff must be served with a new subpoena.

Appeal of Court Orders and Initiation of Legal Action

The Department of Attorney General will discuss with Legal Affairs whether to appeal court orders and may initiate legal action on the department's request. Send any request for such action/appeal to Legal Affairs for review.

Note: Because there are time limits for appealing a court order, it is imperative that such orders be received in Legal Affairs as soon as possible, but no later than **one-business day** after the date of the order.

**ATTORNEY
GENERAL
REPRESENTATION**

MDHHS provides legal representation for a MDHHS employee when a civil or criminal action is commenced against the employee if:

- The employee was in the course of employment at the time of the alleged conduct; and
- The employee was acting within the scope of the employee's authority; or
- In the case of the criminal action, the employee had a reasonable basis for believing that the employee was acting within the scope of the employee's authority.

Process for requesting representation

The employee must notify Legal Affairs that the employee wants to request representation by sending the following information to Legal Affairs:

- Copy of summons and complaint.
- The date the summons and complaint were served.
- How the complaint was served (by mail or personal service) and if personal service, the name of the person who accepted service.

Note: Service must not be accepted by anyone other than the employee named on the summons.

- Case name and number.
- Whether or not the employee has professional liability insurance.
- The employee's position with the department and the work address at the time the alleged events occurred.
- The employee's current position with the department and current work address.

Legal Affairs will notify the employee and local or central office director or responsible supervisor if the Department of Attorney General will represent the employee.

Denial of a Request for Legal Representation

The Department of Attorney General or the director of the department may deny representing an employee if the employee was acting outside the employee's scope of authority. If representation is denied, the employee will be contacted as soon as possible to ensure the employee has adequate time to retain private counsel.

If an employee disagrees with the denial of representation, the employee may file a grievance in accordance with the Department of Civil Service grievance procedure, appropriate collective bargaining unit agreement, or seek a declaratory ruling from a court.

If Legal Affairs authorizes representation, but the Department of Attorney General cannot provide representation, the department and the Department of Attorney General will contract with and pay a private attorney to provide legal services to the employee.

Hiring private counsel in lieu of Attorney General Representation

An employee may retain private counsel in lieu of Department of Attorney General representation at any time at the employee's own expense. However, the department will not reimburse the employee for legal fees or indemnify the employee for any subsequent judgment against the employee.

Representation and Guidance – Specific Situations

Children's Protective Services

The county prosecutor generally provides guidance on petitions and legal procedures to local offices in individual cases. The prosecutor is the attorney for the People of the State of Michigan and not for the department. Therefore, the prosecutor is free to make legal decisions with which the department may not agree. In

these cases, the department may hire an attorney to represent its position.

Adult Protective Services (APS)

Only the prosecutor or the Department of Attorney General may provide legal guidance/representation to MDHHS in guardianship proceedings involving APS clients. If a court refuses to accept an MDHHS petition, unless it is signed or filed by an attorney and the local prosecutor's office is unable to assist, the local office should contact APS staff in central office as soon as possible.

Adoption and Adoption Subsidy

The Department of Attorney General may assist with guidance or counsel in an adoption or adoption subsidy administrative hearing when contested.

County Department of Human Services Board

MCL 400.79, part of the Social Welfare Act, states that it is the duty of the county prosecuting attorney to give counsel and guidance to the board. The board is a county agency; so, the Department of Attorney General does not provide legal services in these situations. Whenever the board or the county director need legal services in connection with duties which are required of the county board, the board should consult with the county prosecutor or county corporation counsel.

Administrative Hearings

When clients contest a MDHHS decision affecting eligibility or benefit levels because they believe the decision is incorrect, MDHHS provides an administrative hearing to review the decision and determine its appropriateness in accordance with policy. A Request for Attorney General Representation must be submitted if a client will be represented by an attorney at the hearing. Please follow the process in BAM 600 for requesting Attorney General Representation in these cases.

Title IV-E Hearings

The Department of Attorney General may assist with guidance or counsel in a Title IV-E administrative hearing when contested. Please see [FOM 902-05](#).

Division of Child Welfare Licensing Hearings

The Department of Attorney General may assist with guidance or counsel in a licensing administrative hearing when contested.

IDEMNIFICATION

When a judgment for damages is awarded against an employee as a result of a civil action for personal injuries or property damage caused by the employee while in the course of employment and within the scope of the employee's authority **that did not result from gross negligence**, the department may indemnify the employee or pay, settle, or seek compromise of the judgment.

Nothing in this policy shall require reimbursement by the department to any employee or insurer for legal services to which the employee is entitled pursuant to any policy of insurance.

REQUEST FOR LEGAL GUIDANCE FROM LEGAL AFFAIRS

In general, Legal Affairs may accept requests for legal guidance from anyone within the department. Requests for guidance may be declined if the question/issue is vague, if the question/issue rests on policy rather than law, if the subject is the responsibility of another agency, if the request involves only a private matter, or for any other reason within the discretion of the Legal Affairs.

Note: Requests from the Children's Services Agency, must be approved by the Executive Director of the Children's Services Agency, or the Executive Director's designee, using a DHS-5300, Request to Conduct Legal Research, form. The DHS-5300 form and instructions for submission can be found [here](#). If time or circumstances demand that Legal Affairs should accept an oral request for legal guidance, a written request on the DHS-5300 should be sent within two-business days.

Requests for legal guidance from the Department of the Attorney General

Requests for legal guidance from the Department of Attorney General must be requested through Legal Affairs in writing using the Request for Attorney General Research form, which can be

found on the Legal Affairs Administration webpage under How Case We Assist You? The request must be approved by a Legal Affairs Division Level Director. The request must include the following:

- The name of the requestor.
- The work location/unit of the requestor.
- The date of the request.
- The date a response is needed.
- The type of reply requested (informal guidance or formal memorandum).
- A summary of the factual circumstances or situation.
- A clear statement of the question/issue.
- Citations to statutes, rules, or policy that may be helpful to the Department of Attorney General in responding to the request.
- Copies of any documents that may be helpful to the Department of Attorney General in responding to the request.

Exception: Requests for a formal Attorney General Opinion may only come from the MDHHS director but may be drafted by staff. Legal Affairs will review the request letter and secure the director's approval.

LEGAL BASIS

MCL 691.1408, Governmental Liability for Negligence

Michigan Court Rules

Civil Service Rule 2-19