
	Corrections and Community Supervision DIRECTIVE		Service of Legal Process, Subpoenas, and Preservation of Evidence	NO. 6930
				DATE 02/03/2022
SUPERSEDES DIR #6930 Dtd. 06/06/17	DISTRIBUTION A B	PAGES PAGE 1 OF 14	DATE LAST REVISED	
REFERENCES (Include but are not limited to) Public Officers Law §17, Correction Law §24-a: ACA Expected Practices 5-ACI-1A-23, 1-ABC-1A-21; Directive #4422, #4004, #2010		APPROVING AUTHORITY 		

- I. PURPOSE:** This directive will address procedures to be followed when an employee is served with legal papers related to their employment, the responsibility to save evidence and what to do when served with a subpoena.

Incarcerated individuals and releasees frequently initiate litigation against the Department of Corrections and Community Supervision (DOCCS) employees involving conditions of confinement, length of sentence, personal injury, loss of property, and assorted other issues. Employees sometimes pursue legal actions involving allegations of discrimination, harassment, unlawful termination of employment, and other employment-related complaints.

Public Officers Law §17 provides for the defense and indemnification of State officers and employees in any civil action or proceeding in any State or Federal court arising out of any alleged act or omission which occurred or is alleged in a complaint to have occurred while the employee was acting within the scope of their public employment or duties.

Correction Law § 24-a extends the provisions of Public Officers Law §17 to licensed health care providers who have rendered care to incarcerated individuals or infants cared for in facility nurseries at the request of the Department without regard to whether such health care was provided within or without a correctional facility.

II. RECEIPT OF SERVICE OF LAWSUITS

- A. Service in General: All Complaints and Petitions seeking a legal remedy in State or Federal court, no matter how served upon DOCCS employees, former employees or health care contractors, should be immediately brought to the attention of the Inmate Records Coordinator (IRC) or Bureau Chief and then sent to the Office of the Attorney General (OAG) according to the directions below. Utilize the "Request for Representation" letter (Form #6930A). All service and attempts at service should be reported to the IRC or Bureau Chief and/or the OAG that same day or the very next business day.

NOTE: Attempts to serve a party through inter-facility mail or by email are not legally sufficient. However, defendants will rely upon OAG to raise appropriate objections to service.

- B. Accepting Personal Service on Current Employee: When service papers for a current employee are delivered to a facility or a regional office, the IRC, Bureau Chief, or other designated individual will contact the employee to whom the service is addressed.

- If the Complaint is accompanied by a "Statement of Service by Mail and Acknowledgment of Receipt by Mail of Summons and Complaint" (Attachment A); that form should NOT be signed or dated.

- However, DOCCS personnel **MUST** indicate on the "Statement of Service by Mail and Acknowledgment of Receipt by Mail of Summons and Complaint" (Attachment A) whether they are, or are not, in active military service.
2. If requested, the employee should be provided with a copy of the complaint.
 3. The Request for Representation letter (Form #6930A), copies of **ALL** papers served and/or received by the employee, **plus** the **unsigned** and **undated** Acknowledgment of Receipt of Summons and Complaint **MUST** be sent **that day or the next business day** to the appropriate branch of the OAG as set forth in either Attachment B (for matters filed in State Court) or Attachment C (for matters filled in Federal Court). If the employee uses a DOCCS Microsoft Outlook e-mail account, that address should be noted in the letter.
 4. **DO NOT return the Acknowledgement of Receipt of Summons and Complaint directly to the Marshal's Service.** The OAG will sign and date the Acknowledgement of Receipt of Summons and Complaint and will send it to the Marshal's Service (or State court clerk). When a timely Request for Representation is received, the OAG will take appropriate steps to protect the DOCCS defendant's rights.
- C. Service on Employee Transferred to Another Facility: When a Bureau Chief, IRC or other designated individual receives papers for a current DOCCS employee who has transferred to another facility or office, all documents must be forwarded that day or the next business day to the Bureau Chief or IRC Office at the employee's current work location. The receiving facility will follow the process described above. Keep a record of the date and caption of all such matters sent to another facility.
- D. Service on Retired Employees or Employees on Extended Leave: When an IRC, Bureau Chief, or other designated individual receives papers for a retired employee, an employee who has resigned or been terminated, or is out on long term leave, all documents are to be forwarded that day or the next business day to the address below along with information identifying the **full name** of the individual for whom service was intended, the manner in which the papers were served and the reasons why the papers are being forwarded (e.g. retired, on extended leave, etc.):
- New York State Department of Corrections and Community Supervision
Office of Counsel
Attention: Litigation Unit
1220 Washington Ave, Building 4
Albany, NY 12226
- E. Service by Incarcerated Individuals on Incarcerated Individuals: In order to facilitate the service of legal papers by incarcerated individuals on other incarcerated individuals without violating the incarcerated individual to incarcerated individual correspondence provisions of Directive #4422, "Incarcerated Individual Correspondence Program," the IRC will assume an intermediary role in serving papers for the incarcerated individual.
1. Whether the incarcerated individual requests to serve an incarcerated individual in the same facility or in another facility, such request must be made to the IRC in the requesting incarcerated individual's facility.

2. The incarcerated individual requesting such service must provide a copy of the papers to be served.
3. If the incarcerated individual to be served is in the same facility, the IRC will forward the paperwork through legal mail to the incarcerated individual with a memorandum stating the papers are being served upon them on behalf of the incarcerated individual requesting the assistance.
4. If the incarcerated individual to be served is in a different facility, the IRC in the requesting incarcerated individual's facility will forward the papers to the IRC in the facility of the incarcerated individual to be served. The IRC in the receiving facility will then forward the paperwork through legal mail to the incarcerated individual with a memorandum stating the papers are being served upon them on behalf of the incarcerated individual requesting the assistance.
5. In all instances, a copy of the memorandum prepared by the IRC serving the incarcerated individual will be sent to the incarcerated individual who requested the service.

F. Service of Legal Papers on Incarcerated Individuals:

1. The location of an incarcerated individual can be ascertained by going to the "Incarcerated Lookup" section at <https://doccs.ny.gov/>.
2. Legal papers may be mailed to the IRC at the correctional facility where the incarcerated individual is detained with a request that service be made on the incarcerated individual. An Affidavit of Service and a self-addressed and stamped return envelope for the affidavit should be provided by the sender.
3. Legal papers may be delivered by a process server to the IRC at the correctional facility where the incarcerated individual is detained. If the IRC serves the incarcerated individual, or arranges for service, the person who completes delivery will have the incarcerated individual sign a receipt for service.

III. SAVING EVIDENCE

- A. Preservation Generally: Once an employee has been served with a lawsuit or a notice of an intention to file a lawsuit or claim, evidence related to the claims in the lawsuit must be preserved and not destroyed. This is known as a litigation hold. In certain circumstances employees are obligated to preserve documents before any papers have been served if there is a reasonable expectation that litigation will occur after an event, such as a use of force that results in serious injury or death, a suicide, escape, or the involuntary termination of employment.

A request to preserve facility records or items will be transmitted to a facility/regional office either by the Office of Attorney General or by DOCCS Office of Counsel. Requests to preserve e-mail records will be directed to, and handled by, DOCCS Office of Counsel. The Superintendent or Regional Director shall designate an individual to collect and preserve such documents.

- B. Types of Evidence: Evidence that must be preserved includes e-mails and other electronic documents, as well as physical evidence such as tapes, photographs, paper documents (e.g., reports, medical records, etc.), or other evidence relating to the subject matter of the lawsuit. (e.g., if it is alleged an incarcerated individual was injured because an industrial saw lacked a safety-guard, the saw in question must be preserved.)

C. Accidents

1. Best practices include preservation of physical evidence at the time an accident occurs. When possible, the physical property should be taken out of use and stored in a safe location where it will not be disturbed. Prior to its removal to the safe location, photographs should be taken of the item in the position it was in (or came to rest) at the time of the occurrence. Where possible, video of the removal should be taken. Further, any witnesses to the accident/occurrence should be identified, and if they consent, a signed statement taken immediately.

If it is not possible to remove the item (i.e., it is too large or it will impede normal business function), follow the above procedure with respect to taking photographs of the item, video where possible, and taking any and all witness statements, if they consent.

2. If an individual is injured as the result of a slip, trip, or fall, follow the above without retention of physical evidence. Take photographs of the area where the slip, trip, or fall occurred, and any other potential evidence. For example, if a visitor claims they fell due to water on the floor, take photos of the floor where they fell, even if it is dry. If their clothing is dry (or wet), note that in the incident report.
3. All visitor incidents should follow the above.
4. With respect to incarcerated individuals, staff, or releasees, please follow the same guidelines as in Directive #4004, "Unusual Incident:"

In general, any incidence shall be reportable ...which...results in moderate or serious injury to any incarcerated individual/releasee or staff.

NOTE: Any photographs or video should be date and time stamped.

NOTE: Should you require input at the time of an accident contact the Office of Counsel (518-457-4951) to discuss preservation of the evidence.

IV. **SUBPOENAS**

Subpoenas are used by parties in a legal action to compel the production of documents, the testimony of witnesses, or both. Subpoenas may be served on individuals, the Department, or facilities. As with lawsuits, subpoenas are generally served through the IRC, Bureau Chief, or Unit Head of Central Office Divisions. The Department does not accept electronic service of subpoenas. All subpoenas must be served in accordance with the New York State Civil Practice Law and Rules and the Federal Rules of Civil Procedures.

A. Types of Subpoenas to Accept

1. Subpoenas must be originals or court-certified copies, received by personal service.
2. Do NOT consent to service of subpoenas by other means, unless permission from an attorney in the Office of Counsel is obtained.
3. The IRC or Bureau Chief or Division Head may accept service of subpoenas seeking:
 - a. Records held by this Department (subpoena *duces tecum*); or
 - b. Personal appearance and/or testimony of a current employee (subpoena *ad testificandum*).

B. Types of Subpoenas Not to Accept

1. Do NOT accept service of subpoenas for personal appearance of terminated employees.
2. Do NOT accept service of subpoenas for employees of other State agencies (i.e., OMH, Department of Health, etc.).

C. Location of Service of Subpoenas

1. Subpoenas for Central Office records must be personally served upon Central Office.
2. Subpoenas for facility/parole office records must be personally served at the facility/office.
3. Subpoenas for appearance of an employee should be served upon that employee, if possible, at their facility or regional office.
 - a. If the employee being served is available (on duty) and accessible (able to leave their post), that person should be produced to accept service.
 - b. For work related subpoenas only, if the employee being served is unavailable due to work location, travel, time off, etc., then the Regional Director, Superintendent, a Deputy Superintendent or other person designated by the Superintendent can accept service on the employee's behalf.
 - c. Process servers can serve DOCCS employees in the parking lot or facility/office grounds.
 - d. Process servers are allowed on DOCCS property and should be permitted to serve our employees.

NOTE: Staff shall not release personal information (e.g., home addresses, home phone numbers, employee work schedules, or other personal information) to anyone other than the Office of Counsel, Bureau of Personnel, or Division of Budget and Finance **unless the employee consents.**

D. Processing Subpoenas:

1. Always check the date the subpoena is due. If the Department or individual does not comply with a legally proper (properly served and properly issued) subpoena by the due date, a court might impose contempt sanctions.
2. If the subpoena was signed by a judge, but there are concerns about releasing a record due to privacy, security concerns, or other reasons, contact the Office of Counsel BEFORE releasing the record.
3. Always check to see to whom the records are being sent. If the subpoena is signed by a judge, but the records are returnable to an attorney instead, double check to make sure that the person getting the records is legally entitled to have them.

For example: Do not provide medical records to an attorney without an authorization signed by the subject of the records, even if a judge signs the subpoena.

4. DO NOT PROVIDE ORIGINALS. If a subpoena calls for release of an "original record," provide a certified copy.

5. If the subpoena requests “all records,” the requestor should be called and asked to narrow the request by asking what is really needed.
- E. Redactions of Subpoenaed Records: Generally subpoenaed records are subject to FOIL and medical record analysis. Contact the Office of Counsel or the Central Office FOIL Unit with questions.
- F. Release of ASAT Records: ASAT (Drug and Alcohol Abuse/Alcohol and Substance Abuse Treatment) records require an authorization that specifically states it is permissible to release those types of records. Directive #2010, “FOIL/Access to Departmental Records” references such records and in what circumstances those records can be released. Drug and Alcohol Abuse or ASAT releases are attached to Directive #2010 as Forms #1079, #1080 and #1081.
 1. If the subpoena does not state Drug and Alcohol Treatment or ASAT materials, do not provide.
 2. If it specifies Drug and Alcohol Treatment or ASAT records, but was not signed by a judge and does not have an authorization, do not provide.
 3. If the subpoena specifies Drug and Alcohol Treatment or ASAT records, was signed by a judge, and does not have an authorization BUT is going to anyone other than the Court directly, DO NOT SEND the records. Contact Office of Counsel.
 4. If a subpoena specifies Drug and Alcohol Treatment or ASAT records, has an authorization, and was signed by a judge or attorney (where permissible), the records should be released.
- G. Release of Medical, Youthful Offender, or Other Sensitive Information: If the subpoena specifies medical, youthful offender, sex offender treatment records, or other sensitive information, was signed by a judge, and does not have an authorization BUT is going to anyone other than the court directly, DO NOT SEND the records. Contact the Office of Counsel.
- H. Mental Health Information:
 1. Mental Health records CANNOT be given out by DOCCS. Refer the requestor to the Office of Mental Health.
 2. If a DOCCS record contains mental health information that was provided by an OMH or other mental health clinician, or was derived from an OMH or other mental health record (e.g., OMH service level, etc.), in the absence of an authorization, that information can only be released if a court finds that the interests of justice significantly outweigh the need for confidentiality. If such a finding is not set forth in the subpoena, contact the Office of Counsel BEFORE releasing the record.
- I. Subpoenas signed by Attorneys: In Federal court, attorneys can sign subpoenas. This does NOT mean they are entitled to everything they seek in the subpoena. Check for authorizations and the legality of disclosure of the requested records.

District Attorneys (DAs) or Assistant District Attorneys (ADAs) can issue their own subpoenas without a judge’s signature, however, the rules described above should be applied.

J. Where to File

1. If the subpoena is simply a subpoena for records that is not related to a lawsuit against the Department (third party subpoena), retain the subpoena in the incarcerated individual's legal file.
2. If the subpoena relates to a lawsuit against the Department, retain a copy within the litigation file and the incarcerated individual legal file.

K. Fees

1. A flat fee of \$30.00 must accompany a record production subpoena. However, comply with a legally proper subpoena from a court or governmental entity even if the payment does not accompany the subpoena.
2. Witness fees for a subpoena seeking testimony must accompany the subpoena. For work related matters, the subpoenaed employee may choose to keep the check and not be paid on their day of testimony OR turn in the check to the facility/regional office/Central Office Budget staff and receive their pay on the date of testimony. ** THIS ONLY APPLIES IF THE TESTIMONY IS FOR A WORK RELATED MATTER. ** (e.g.: deposition in a lawsuit against the Department, certification of a Department record in court, trial, etc.)

U.S. Department of Justice
United States Marshals Service
Southern District of New York



500 Pearl Street, Suite 400, New York, NY 10007

STATEMENT OF SERVICE BY MAIL AND ACKNOWLEDGMENT
OF RECEIPT BY MAIL OF SUMMONS AND COMPLAINT

A. STATEMENT OF SERVICE BY MAIL

United States District Court
for the
Southern District of New York

Civil Case Number [REDACTED]

December 15, 2014

vs.

[REDACTED] et al.

TO: [REDACTED] Parole Officer
[REDACTED]

The enclosed summons and complaint are served pursuant to Rule 4(e)(1) of the Federal Rules of Civil Procedure and section 302-a of the New York Civil Practice Law and Rules.

To avoid being charged with the expense of service upon you, you must sign, date, and complete the acknowledgment part of this form and mail or deliver this original completed form to the U.S. Marshals Service within 30 days from the date you receive this form. A self-addressed envelope has been included for your convenience. You should keep a copy for your records or for your attorney.

If you do not complete and return the form to the U.S. Marshals Service within 30 days, you (or the party on whose behalf you are being served) may be required to pay expenses incurred in serving the summons and complaint in any other manner permitted by law, and the cost of such service as permitted by law will be entered as a judgment against you.

The return of this statement and acknowledgment does not relieve you of the necessity to answer the complaint or petition.

Under a standing order of the Court, filed December 30, 2013, if a defendant or defendant's agent returns the acknowledgment form within 30 days of receipt, the defendant will have 60 days from the date the defendant or defendant's agent mails or delivers to the U.S. Marshals Service the completed Acknowledgment of Receipt of Service by Mail to file and serve an answer or other responsive pleading. If you wish to consult with an attorney, you should do so as soon as possible before the 60 days expire.

If you are served on behalf of a corporation, unincorporated association, partnership or other entity, you must indicate under your signature your relationship to the entity. If you are served on behalf of another person and you are authorized to receive process, you must indicate under your signature your authority.

It is a crime to forge a signature or to make a false entry on this statement or on the acknowledgment

OVER>

CIVIL ACTION FILE NUMBER: [REDACTED]

[REDACTED] vs. [REDACTED]

et al.

B. ACKNOWLEDGMENT OF RECEIPT OF SUMMONS AND COMPLAINT OR PETITION

I received a summons and complaint. PLEASE CHECK ONE OF THE FOLLOWING;

IF 2 IS CHECKED, COMPLETE AS INDICATED:

1. ☒ I am not in military service.2. ☐ I am in military service, and my rank, serial number and branch of service are as follows:

Rank: _____

Serial Number: _____

Branch of Service: _____

TO BE COMPLETED REGARDLESS OF MILITARY STATUS:

Date: _____
(Date this acknowledgment is executed)

I affirm the above as true under penalty of perjury.

Signature_____
Print Name_____
Relationship to Entity/Authority to Receive Service
of Process (i.e., self, officer, attorney, etc.)USMS OFFICIAL: DUSM ALLISON HONEYMAR

ATTACHMENT "B"

STATE CASES

**NEW YORK STATE COUNTIES
AND THEIR CORRESPONDING OAG OFFICES**

**NOTE: THE COUNTY ON THE CAPTION/HEADER DETERMINES TO
WHICH AG'S OFFICE PAPERS ARE FORWARDED**

List of Counties (OAG office to be served)

Albany (Albany)
Allegany (Buffalo)
Bronx (NYC)
Broome (Binghamton)
Cattaraugus (Buffalo)
Cayuga (Syracuse)
Chautauqua (Buffalo)
Chemung (Binghamton)
Chenango (Binghamton)
Clinton (Plattsburgh)
Columbia (Albany)
Cortland (Syracuse)
Delaware (Binghamton)
Dutchess (Poughkeepsie)
Erie (Buffalo)
Essex (Plattsburgh)
Franklin (Plattsburgh)
Fulton (Albany)
Genesee (Buffalo)
Greene (Albany)
Hamilton (Utica)
Herkimer (Utica)
Jefferson (Watertown)
Kings (NYC)
Lewis (Watertown)
Livingston (Rochester)
Madison (Syracuse)
Monroe (Rochester)
Montgomery (Albany)
Nassau (Mineola aka Nassau)
New York (NYC)
Niagara (Buffalo)
Oneida (Utica)
Onondaga (Syracuse)
Ontario (Rochester)

Orange (Poughkeepsie)
Orleans (Buffalo)
Oswego (Syracuse)
Otsego (Binghamton, BUT if proceeding is in
Cooperstown –use Utica)
Putnam (Poughkeepsie)
Queens (NYC)
Rensselaer (Albany)
Richmond (NYC)
Rockland (NYC)
St. Lawrence (Watertown)
Saratoga (Albany)
Schoharie (Albany)
Seneca (Rochester)
Steuben (Rochester)
Suffolk (Suffolk aka Hauppauge)
Sullivan (Poughkeepsie)
Tompkins (Binghamton)
Ulster (Albany)
Washington (Albany)
Wayne (Rochester)
Westchester (White Plains)
Wyoming (Buffalo)
Yates (Rochester)

OAG OFFICE ADDRESSES

ALBANY

The Honorable Letitia James
Attorney General
Office of the Attorney General
Litigation Bureau
State Capitol
Albany, NY 12224

BINGHAMTON

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17th Floor
Binghamton, NY 13901-4433

BUFFALO

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350 Main Place Tower
Suite 300A
Buffalo, NY 14202

HAUPPAUGE

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Office of the Attorney General
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Hauppauge, NY 11788

MINEOLA

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Office of the Attorney General
200 Old Country Road – Suite 240
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NYC

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28 Liberty Street
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PLATTSBURGH

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ROCHESTER

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SYRACUSE

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Syracuse, NY 13204-2465

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Utica, NY 13501-2812

WATERTOWN

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Attorney General
Litigation Bureau
Office of the Attorney General
317 Washington Street
Watertown, NY 13601-3744

WHITE PLAINS

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Litigation Bureau
Office of the Attorney General
44 South Broadway
White Plains, NY 10601-5008

ATTACHMENT "C"
FEDERAL CASES
(United States District Court)

**NOTE: THE DISTRICT ON THE CAPTION/HEADER DETERMINES TO
WHICH AG'S OFFICE PAPERS ARE FORWARDED**

NORTHERN DISTRICT (NDNY) – send to
Office of Attorney General
The Capitol
Albany, NY 12224-0341

SOUTHERN DISTRICT (SDNY) – send to
Office of Attorney General
28 Liberty Street
New York, NY 10005

EASTERN DISTRICT (EDNY) - send to
Office of Attorney General
28 Liberty Street
New York, NY 10005

WESTERN DISTRICT (WDNY) –
If CV # is UNDER 6000 – send to (Buffalo)
Office of Attorney General
Main Place Tower
350 Main St., Suite 300A
Buffalo, NY 14202-3750

If CV # is OVER 6000 - send to (Rochester)
Office of Attorney General
Court Exchange Building
144 Exchange Blvd., 2nd Floor
Rochester, NY 14614-2176