
 DIRECTIVE	Service of Legal Process, Subpoenas, and Preservation of Evidence		NO. 6930
			DATE 06/06/2017
SUPERSEDES	DISTRIBUTION A B	PAGES PAGE 1 OF 12	DATE LAST REVISED
REFERENCES (Include but are not limited to) Public Officers Law §17, Correction Law §24-a 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 his or her employment, the responsibility to save evidence and what to do when served with a subpoena.

Inmates and parolees 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 his 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 inmates 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 #6930](#)). 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 are not legally sufficient. However, defendants will rely upon OAG to raise appropriate objections to service.

- B. Accepting Personal Service of 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.
1. 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, 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 that serves that bureau or facility. If the employee uses a DOCCS Microsoft Outlook e-mail account, that address should be noted in the letter.

Attached are two separate lists of OAG locations and contact information.

Attachment B applies to matters filed in State court. Attachment C applies to cases filed in Federal court.

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 defendants' rights.
- C. Service of 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 of 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.

Office of Counsel
Attention: Litigation Unit
New York State Department of Corrections
and Community Supervision
1220 Washington Ave.
Albany, NY 12226

- E. Service by Inmates on Inmates: In order to facilitate the service of legal papers by inmates on other inmates without violating the inmate to inmate correspondence provisions of Directive #4422, "Offender Correspondence Program," the Inmate Records Coordinator will assume an intermediary role in serving papers for the inmate.
1. Whether the inmate requests to serve an inmate in the same facility or in another facility, such request must be made to the IRC in the requesting inmate's facility.
 2. The inmate requesting such service must provide a copy of the papers to be served.

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

F. Service of Legal Papers on Inmates:

1. The location of an inmate can be ascertained by going to the "Inmate Lookup" section at www.doccs.ny.gov.
2. Legal papers may be mailed to the Inmate Records Coordinator (IRC) at the correctional facility where the inmate is detained with a request that service be made on the inmate. 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 inmate is detained. If the IRC serves the inmate, or arranges for service, the person who completes delivery will have the inmate 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 (for example, reports, medical records, etc.), or other evidence relating to the subject matter of the lawsuit. (For example, if it is alleged an inmate 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 inmates, staff, or parolees, 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 inmate/parolee 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.

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 his or her 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 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 Counsel’s Office.
 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 inmate legal file.
2. If the subpoena relates to a lawsuit against the Department, retain a copy within the litigation file and the inmate 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. ** (Examples: 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.

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 3021-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]

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

STATE CASES

THE COUNTY DETERMINES TO WHICH AG's OFFICE THE PAPERS ARE FORWARDED

- **Albany Office**
The Capitol Albany, NY
12224-0341
(518) 474-7330

Facilities:
Coxsackie, Eastern, Great Meadow, Greene
Hale Creek, Hudson, Shawangunk, Ulster
Wallkill, Washington
Community Supervision Offices:
Capital New York Region; Northeast Area Office
Albany Area Office
- **New York City Office**
120 Broadway
New York City, NY
10271-0332
(212) 416-8000

Facilities:
Edgecombe, Lincoln, Queensboro
Community Supervision Offices:
Bronx, Queens, Manhattan, Brooklyn,
Staten Island Regions
- **Binghamton**
State Office Building, 17th Floor
44 Hawley Street
Binghamton, NY 13901
Phone Number: (607) 721-8771

Facilities:
Elmira, Southport
Community Supervision Offices:
Binghamton Sub-Area Office, Elmira Area Office
- **Buffalo**
Main Place Tower, Suite 300A
350 Main Street
Buffalo, NY 14202
716.853.8400

Facilities:
Albion, Attica, Collins, Gowanda, Lakeview,
Orleans, Wyoming, Wende
Community Supervision Offices:
Buffalo Metro Area Office, Niagara Frontier Area
Office, Niagara Frontier/Southern Tier
- **Nassau**
200 Old Country Road,
Suite 240,
Mineola, NY 11501
Phone Number: (516) 248-3302, 516-248-3300

Community Supervision Offices:
Nassau Area Office
- **Plattsburgh**
43 Durkee Street, Suite 700
Plattsburgh, NY 12901
Phone Number: (518) 562-3288

Facilities:
Adirondack, Altona, Bare Hill, Clinton, Franklin
Moriah Shock, Upstate
Community Supervision Offices:

Plattsburgh Area Office

- **Poughkeepsie**

New York State Attorney General
One Civic Center Plaza - Suite 401
Poughkeepsie, NY 12601-3157
Phone Number: (845) 485-3900 (office)

Facilities:

Downstate, Fishkill, Green Haven, Otisville
Sullivan, Woodbourne

Community Supervision Offices:

Poughkeepsie Area Office

- **Rochester**

144 Exchange Boulevard
Rochester, NY 14614-2176
Phone Number: 585-546-7430

Facilities:

Butler, Five Points, Groveland, Livingston,
Rochester, Willard

Community Supervision Offices:

Rochester Belt Area Office, Rochester Metro

- **Suffolk**

300 Motor Parkway
Suite 230
Hauppauge, NY 11788
Phone Number: 631-231-2424

Community Supervision Offices:

Suffolk Area Office

- **Syracuse**

615 Erie Boulevard West, Suite 102
Syracuse, NY 13204
Phone Number: (315) 448-4800

Facilities:

Auburn, Cayuga

Community Supervision Offices:

Syracuse Metro Area, Syracuse Belt Area

- **Utica**

207 Genesee Street
Room 508
Utica, NY 13501
Phone Number: (315) 793-2225

Facilities:

Marcy, Mid-State, Mohawk

Community Supervision Offices:

Utica Area Office

- **Watertown**

Dulles State Office Building
317 Washington Street
Watertown, NY 13601
Phone Number: (315) 785-2444

Facilities:

Cape Vincent, Gouverneur, Ogdensburg,
Riverview, Watertown

- **Westchester**

44 South Broadway
White Plains, NY 10601
Phone Number: (914) 422-8755

Facilities:

Bedford Hills, Sing Sing, Taconic

Community Supervision Offices:

New Rochelle Office, Peekskill Area Office

**FEDERAL CASES
(United States District Court)**

**THE DISTRICT ON THE HEADER DETERMINES TO WHICH AG'S OFFICE PAPERS
ARE FORWARDED.**

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

SOUTHERN DISTRICT – send to
Office of Attorney General
120 Broadway
New York, NY 10271-0332

EASTERN DISTRICT - send to
Office of Attorney General
120 Broadway
New York, NY 10271-0332

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

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

State of New York – Department of Corrections and Community Supervision
REQUEST FOR REPRESENTATION

_____ (date)

Office of the Attorney General

Re: _____ (DIN _____) v. _____ (Caption)

Dear Attorney General:

Under the provisions of Public Officers Law Section 17, I hereby request that you provide me representation in the above-titled action. All papers served are attached hereto.

Service of process was made in the following manner:

- A. The papers were given to me by _____ (i.e., IRC) at
_____ Correctional Facility on _____ (date) and the
person who gave me the papers had received them by
_____ (mail/marshals) on _____ (date).
- B. The papers were personally delivered to me by a process server on _____ (date).
- C. The papers were received on _____ (date) by _____ (name)
a person who is a designated agent under law within the meaning of CPLR 308(3), CPLR 318
or any other service rule or statute.
- D. I received papers by First Class mail on _____ (date).
- E. I received papers by interfacility or pouch mail on _____ (date).
- F. I received papers by _____ (other, specify), on
_____ (date).

I authorize the Attorney General, in his absolute discretion, to waive any objection to said service and to appear on my behalf.

In addition, the Attorney General may in his discretion, execute any Acknowledgement of Receipt of Summons and Complaint or Waiver of Service on my behalf.

I understand that I have the option of retaining any attorney at my own expense to defend me in this action, but I do not choose to do so at this time.

I also release my contact information to the Assistant Attorney General who will be representing me.

Very truly yours,

_____*(signature)*

_____*(name)*
(please print)

_____*(title)*

_____*(address)*

_____*(work phone)*

_____*(work email address)*

_____*(usual shift)*