DEPARTMENT OF CORRECTIONS

Policy Number:	**106.050**
Title:	**Legal Assistance to Department Staff**
Effective Date:	**12/3/19**

PURPOSE: To provide the legal assistance necessary to respond to lawsuits that involve the department or its staff who are named as defendants in lawsuits related to the performance of their duties, and legal advice to management staff responsible for all aspects of operations to ensure compliance with state and federal statutes and other legal requirements for correctional processes and programs.

APPLICABILITY: All employees.

DEFINITIONS:

Indemnification – an agreement to pay, on behalf of an individual party, any court-ordered costs or damages related to a lawsuit.

Litigation coordinator – a staff person designated by a facility or a business unit to work with the office of legal affairs to coordinate responses to litigation and enforcement actions.

PROCEDURES:

A. General responsibilities of the office of legal affairs

1. Attorneys in the office of legal affairs represent the department in some litigation and enforcement actions; coordinate and manage litigation in which the Minnesota Attorney General's Office represents the department or its employees; provide legal advice to management-level staff, and manage several programs mandated by state or federal statutes or treaties.

2. Litigation coordinators at facilities or in some business units assist with gathering information and compiling responses to litigation and enforcement actions.

B. Responding to lawsuits

1. Facility employees who receive notice of a lawsuit or enforcement action that involves their work for the department must provide all documents received to the facility litigation coordinator the same day, or the next business day; non-facility employees must provide all documents to the legal services coordinator at the office of legal services the same day or the next business day.

2. The litigation coordinator who receives the lawsuit must scan a copy to the legal services coordinator the same day it is received or the next business day.

3. A department attorney is assigned to handle each case and, depending on the type of litigation, the attorney contacts either the litigation coordinator or the regional human resource director for the facility or business unit involved.

4. Department attorneys may issue litigation holds that instruct specific employees to retain all documents and other evidence related to the situation involved in the lawsuit.

Employees who receive a litigation hold must comply with the instructions until notified by the department attorney that the hold is cancelled.

5. Employees who are named in, or have information about, the allegations in the case and the litigation coordinator must work closely with the department attorney to prepare the initial response and gather all relevant documents.

6. The department attorney or facility litigation coordinator may contact employees named or involved in the litigation to ask questions or request additional information and, if the case is one being handled by the Minnesota Attorney General's Office, the assistant attorney general handling the case may contact those employees during the litigation.

7. The department attorney assigned to the case notifies the facility litigation coordinator and the employees named in the case when a final decision is issued.

8. Employees named as parties in a case may contact either the litigation coordinator or the department attorney assigned to the case if they have questions.

9. Employees who are contacted by an attorney other than a department attorney to discuss litigation or enforcement actions against the department or other department employees may notify the facility litigation coordinator or the department attorney.

10. The office of legal affairs maintains electronic files of all legal actions pursuant to the litigation retention schedule.

11. Department attorneys may contact unit managers or division heads to discuss legal implications of decisions in lawsuits and provide legal advice about changes to policies or practices that would minimize the risk of future litigation.

C. Legal defense and indemnification of department employees

Department employees who are named as defendants in civil lawsuits are entitled to legal defense and indemnification by the state under certain conditions established by the Minnesota Tort Claims Act.

1. The facility litigation coordinator, the legal services coordinator, or the department attorney assigned to the case provides a Request for Defense and Indemnification form to employees named in the lawsuit. The department attorney or legal services coordinator obtains the necessary forms from non-facility employees.

2. Employees must complete and submit the Request for Defense and Indemnification form and agree to disclose the facts completely and cooperate in the defense of the lawsuit, if they want the state to defend them in the lawsuit.

3. The facility litigation coordinator or the legal services coordinator prepares a Certification of Appointing Authority and gives it to the manager designated as the appointing authority for the requesting employees.

4. The appointing authority must review the complaint and any additional information needed to decide whether the employee was acting in the scope of employment or the employee's actions involved any willful or wanton wrongdoing. Requests for defense and indemnification are reviewed and approved on a case-by-case basis.

5. The department attorney sends the forms to the assistant attorney general handling the case for review. The attorney general can overrule the appointing authority's decision about whether the named state employee was acting in the scope of employment.

D. Legal Advice

Department attorneys provide proactive advice to management staff when requested to help management assess the legal risks in operational and policy decisions in order to minimize the department's risk of liability.

1. Employees who have questions or concerns about performance of their duties may:
   a) Access information available on the office of legal affairs iShare site; or
   b) Consult with their supervisors for direction.

2. Supervisors who are not sure how to respond to an employee question or concern may:
   a) Review any information available on the office of legal affairs iShare site; or
   b) Consult with their managers for guidance.

3. Managers may contact the legal services coordinator to request advice about any operational or policy changes they are considering.

4. In most instances, the department attorney provides advice by telephone but may provide it via e-mail. Written legal advice must not be forwarded or otherwise distributed to others because doing so can waive the attorney-client protection of the advice.

5. Managers are responsible for providing direction based on the legal advice received to all staff in the chain of command for whom the manager is responsible.

INTERNAL CONTROLS:

A. Records of legal actions are retained by the office of legal affairs.

ACA STANDARDS: 1-ABC-1A-21; 2-CO-1A-28; 4-4023; 4-APPFS-3D-20; 4-JCF-6D-05

REFERENCES: Minn. Stat. §§ 3.736

REPLACES: Policy 106.050, "Legal Assistance to Department Staff," 4/17/18
All facility policies, memos, or other communications whether verbal, written, or transmitted by electronic means regarding this topic.

ATTACHMENTS: None

APPROVALS:

Deputy Commissioner, Community Services
Deputy Commissioner, Facility Services
Assistant Commissioner, Operations Support
Assistant Commissioner, Facility Services