

Administrative Policy No. 05.07

Subject: Employee Response to Litigation Related Documents

Information Contact: DSHS Discovery Manager
Office of Information Governance
MS 45010; (360) 902-7839

Authorizing Source: [Chapter 4.92 RCW - Actions and Claims Against State](#)
[Chapter 42.56 RCW - Public Records Act](#)

References: [Administrative Policy 04.05 - Delegation of Authority - Personnel Actions](#)
[Administrative Policy No. 05.02 – Public Records Requests](#)
[DSHS Administrative Policy 05.03 – Client Rights Relating to Protected Health Information](#)
[Administrative Policy 05.04 - Records Retention](#)
[Administrative Policy 05.05 - Management of the Litigation Discovery Process](#)

Effective Date: March 3, 2015

Revised: June 15, 2021

Approved by: **Original signed by Lori Melchiori**
Senior Director, Office of Policy and Rules

Purpose

This policy instructs employees what to do when they directly receive a subpoena or notice of deposition, tort claim, lawsuit, or are contacted directly by an attorney or their agents, related to their work at the Department of Social and Health Services (DSHS) or the work of DSHS generally. DSHS has legal obligations associated with all of these events and failure to adequately receive and respond to such can ultimately result in severe monetary penalties. Consequences of not following the procedures set forth herein can result in DSHS being sued, being penalized monetarily, or both for failure to adequately respond or produce records. This policy describes the process an employee must follow when they are the recipient of any of these items.

Scope

This policy applies to all DSHS programs and employees when they are the direct recipient of any of the following related to their work or the work of DSHS:

- Subpoena, court order, or notice of deposition
- Tort claim
- Lawsuit or complaint

Definitions

Attorney General's Office – Social and Health Services – Olympia (SHO): The Social and Health Services – Olympia Division of the Attorney General's Office (AGO) includes attorneys and professional staff who provide legal advice and representation to DSHS. SHO can be reached at (360) 586-6565.

Complaint: A legal document that serves as notice to the defendant that legal action is underway.

Court order: A directive issued by a court or a judge requiring a person to do or not do something.

Discovery coordinator (DC): The person appointed by each administration to coordinate with and assist AGO representatives when litigation is reasonably anticipated, or a Litigation Hold Notice or a Discovery Request is issued that involves their respective program. A list of DCs for each administration is found here: [Discovery Coordinators](#)

DSHS appointing authority: Designated by the secretary to take personnel actions per [DSHS Administrative Policy 04.05](#). Appointing authority may be, e.g., a regional administrator, division director, or assistant secretary.

DSHS chief risk officer: Advises the secretary and executive leadership team on potential risk issues of significant consequence to DSHS' strategic goals and manages the enterprise risk management office. The chief risk officer can be reached at [DSHS Chief Risk Officer](#).

DSHS discovery manager: The single, central point of contact in DSHS identified to receive discovery requests or litigation hold notices from the AGO. The discovery manager notifies affected administrations of the discovery requests or litigation hold notices, and assists in coordinating the agency's responses, within and between administrations, where necessary. The discovery manager reports to the agency's chief risk officer. The discovery manager can be reached at [DSHS Discovery Manager](#).

Lawsuit: A claim or dispute brought to a court of law for adjudication involving a claim, complaint, and other documents by one party against another.

Notice of deposition: A legal notice directed to a DSHS employee to appear at a certain time and place in order to give sworn testimony about DSHS business, in response to questions posed by an attorney.

Office of Risk Management: The [Office of Risk Management](#) (ORM) administers the self-insurance liability program. This program investigates, processes, and adjudicates all tort and sundry claims filed against Washington state agencies. ORM also manages risk financing (including commercial insurance), provides loss prevention services, and administers the loss prevention review team program. In addition, it provides oversight of joint self-insured local government property/liability programs and individual or joint self-insured local government employee health and welfare benefit programs.

Records coordinator: The person appointed by administration or division management to assist with records management and retention duties. See [Administrative Policy 05.04, Records Retention](#).

Subpoena: A written document issued by a government agency, most often a court, which has the authority to compel testimony by a witness or production of documents subject to penalty for failure to do so. A subpoena may also be issued by an attorney in an active court proceeding.

Tort Claim: A formal written filing with the state Office of Risk Management under [RCW 4.92.100](#) in which the claimant alleges that certain kinds of harm or damages were caused by the State of Washington, its agencies or state employees.

Policy

A. Subpoena, court order, or notice of deposition

1. If an individual attempts to serve an employee with a work-related subpoena to testify, court order, or a notice of deposition, the employee must follow these procedures:
 - a. If the document names DSHS as a whole as a defendant, the recipient should not accept service and should direct the deliverer to the AGO–SHO.
 - b. If the document names another employee as a defendant, the recipient should not accept service and should direct the deliverer to the other employee, unless the recipient has authority to sign on behalf of the named employee.
 - c. If the employee is individually named as a defendant, sign for delivery and receipt.
 - d. Notify their direct supervisor and administration-designated

discovery coordinator within 1 business day of receipt.

- i. The discovery coordinator will respond according to internal agency policies and must notify the following individuals within 1 business day of receipt:
 1. DSHS chief risk officer
 2. Attorney General's Office – SHO
 3. DSHS appointing authority
 4. DSHS discovery manager
2. Subpoenas, court orders, or other process served on employees to obtain records must be handled as prescribed by section (D)(4) of [Administrative Policy 05.02 – Public Records Requests](#). Each administration will assign a staff member as point person for processing these requests, which may be the discovery coordinator, records coordinator, or other designated person, and will be responsible for informing staff of the designation
3. Subject to limited exception, employees must comply with valid subpoenas, court orders, or other process requiring appearance at a deposition or to testify at a court proceeding. Employees named in such a subpoena should discuss with their direct supervisor(s) whether appearance is necessary or will be objected to by the AGO.
4. Administrations may implement more specific policies regarding the handling of subpoenas and notices of deposition that supersede Administrative Policy 5.07 with approval of the discovery manager and chief disk officer.

B. Tort Claim

1. State law ([RCW Chapter 4.92](#)) requires that all tort claims against DSHS be filed with the Office of Risk Management (ORM) within the Department of Enterprise Services (DES). Tort claims against DSHS are not valid unless the procedures designed by DES are met. Procedures for properly filing a tort claim with DES is found here: [DES Tort Claim Filing Procedures](#)
2. If an individual attempts to serve an employee with a work-related tort claim, the employee must follow these procedures:
 - a. Do not accept the claim.
 - b. If possible, direct the claimant to [DES](#) so they can properly file the claim.

C. Lawsuit

1. If an individual attempts to serve an employee with a work-related lawsuit complaint, the employee must follow these procedures:

- a. If the lawsuit names DSHS as a whole as a defendant, the recipient should not accept service and should direct the deliverer to the nearest division of the Attorney General's Office.
- b. If the lawsuit names another employee as a defendant, the recipient should not accept service and should direct the deliverer to the other employee, unless the recipient has authority to sign on behalf of the named employee.
- c. If the employee is individually named as a defendant, sign for delivery and receipt.
- d. Notify their direct supervisor and administration-designated discovery coordinator within 1 business day of receipt.
 - i. The discovery coordinator, while acting pursuant to section (C) of [Administrative Policy 05.05 – Management of the Litigation Discovery Process](#), must also notify the following individuals within 1 business day of receipt:
 1. DSHS chief risk officer
 2. Attorney General's Office - SHO
 3. DSHS appointing authority
 4. DSHS discovery manager

D. Contact with opposing counsel

1. Agency employees might be contacted by opposing counsel or their agents about something related to litigation. If the employee has management responsibilities that are related to the matter in litigation, such contact may be improper. The employee should quickly end the contact and call the AGO – SHO. If the employee does not have managerial responsibilities, the employee has several options. The employee can:
 - a. request the presence of an Assistant Attorney General (AAG) during informal questioning;
 - b. decline to talk with opposing counsel and notify the AGO – SHO; or
 - c. talk with opposing counsel on their own, without the benefit of an AAG. If the employee chooses to speak with opposing counsel, the AGO – SHO should be advised of such contacts as soon as possible.
 - i. The employee should not talk to opposing counsel on their own if they are an individually named party, as such contact is improper.

E. Consequences

1. Disciplinary action can result for failure to adhere to this policy, up to and including dismissal of the employee.