



STATE OF MONTANA BOARD OF
PARDONS AND PAROLE
POLICY DIRECTIVE

Policy No. BOPP 1.3	Subject: LEGAL ASSISTANCE FOR STAFF	
Chapter 1: ADMINISTRATION AND MANAGEMENT	Page 1 of 3	
Section 3: General Administration	Effective Date: June 1, 2022	
Signature: /s/ Joseph McElroy Chief of Staff	Revised:	

I. POLICY

The Board of Pardons and Parole (BOPP) will provide the employees with legal advice to aid with the performance of BOPP duties and will provide legal defense for employees who are sued for acts they performed during the course and scope of their duties. This policy establishes procedures for obtaining legal assistance and defense and defines the scope of legal assistance provided in 46-23-105 MCA.

II. APPLICABILITY

All BOPP staff.

III. DEFINITIONS

None.

IV. BOPP DIRECTIVES

A. Scope of Representation and Indemnification

1. BOPP through Department of Justice and/or Montana Department of Corrections (legal appointed attorneys) are available to provide general legal advice in all areas of BOPP-related activities. Attorneys help ensure compliance with federal, state, and local laws, regulations, and court decisions.
2. Legal appointed attorneys also defend the BOPP and its employees when the BOPP, or its employees, are sued over actions they took while performing their duties.
3. Legal appointed attorneys may recommend to the BOPP Chairman not defend an employee if substantial evidence indicates the employee’s conduct was illegal or outside the scope and course of employment.
4. Legal appointed counsel, after consultation with the Department of Administration’s risk management and tort defense bureau, may refer the defense of BOPP litigation to the Attorney General’s Office, other state attorneys, or may retain private counsel after the chief has complied with the applicable executive order concerning outside legal services.
5. Employees who are sued may retain private counsel at their own expense. Employees who choose to retain private counsel will immediately notify the legal services bureau and will be responsible for the defense of the lawsuit thereafter.
6. If any court, arbitrator, or other agency orders an employee to pay a monetary award pursuant to a lawsuit concerning actions the employee took while performing his or her official duties, the Department of Corrections / BOPP will pay the award.

B. Requests for General Counsel Assistance

1. A BOPP employee who needs legal assistance to perform his or her official duties should, under most circumstances, first contact his or her supervisor and discuss the situation with the supervisor. If the supervisor and the employee decide they need to contact the legal appointed attorneys, then the employee may contact the designated central point-of-contact for the legal services bureau.
2. The best way to contact the legal appointed attorney bureau designated central point-of-contact is via email with a copy to the employee's supervisor. The attorney assigned to respond will provide a written email response with copies that can serve to notify others who also need to be aware of the response.

C. Receiving Complaints, Petitions, Summonses and Subpoenas

1. To prevent default or extra charges for service of lawsuits, an employee who receives a complaint, petition, summons or subpoena outside of routine offender court proceedings, must immediately contact the appointed legal services bureau.
2. When a process server gives a BOPP employee a complaint, petition, summons, or subpoena, the employee may sign that he or she has received the document but may not sign to accept the document(s) on behalf of any other employee unless specifically designated to do so.
3. An employee who receives a complaint outside of routine offender court proceedings, etc., by mail with a form entitled, "Acknowledgment of Service" must immediately forward the complaint and acknowledgment to the appointed legal services bureau. Under no circumstances should the employee ever sign and/or return the acknowledgment.
4. When an employee receives a complaint, petition, summons and/or subpoena concerning a work-related issue outside of routine offender board proceedings, the employee must, as soon as practicable:
 - a. note the date, time, and method by which the employee received the document.
 - b. contact the legal services bureau to make them aware of the document.
 - c. make a personal copy of the document; and
 - d. forward all the documents to the legal services bureau office either at the Montana State Prison or in Helena.

D. Action After Receiving Legal Documents

1. The appointed legal services bureau will contact the employees named in a lawsuit.
2. The appointed legal services bureau will generally request that the employee named in a lawsuit:
 - a. put in writing for the attorneys any recollections the employee has about the incidents in the lawsuit.
 - b. request the employee gather available documents that relate to the lawsuit; and
 - c. preserve any relevant documents that might otherwise be destroyed.
3. Employees must cooperate fully with the attorneys who defend them.

E. Subpoenas and Summonses to Appear and Testify

1. Employees who receive a summons or subpoena in a work-related case will notify their supervisor and immediately forward a copy of the summons or subpoena to the legal services bureau.
2. Legal staff will provide instructions to the summoned or subpoenaed employee.
3. Employees will respond to the subpoena in an on-duty status and submit all claims for necessary expenses in accordance with established procedures for travel costs except when the entity or person originating the subpoena prepays such expenses.
4. Employees will forward any witness fees received or state vehicle mileage allowance to the fiscal and accounting bureau.
5. Employees who are subpoenaed in a civil or criminal case to give testimony or evidence as a personal consultant (non-work related) or expert witness will respond to the subpoena on approved leave and at their own expense.

V. CLOSING

Questions concerning this policy should be directed to the Board Chair of the BOPP or Chief of Staff.

VI. REFERENCES

- A. [2-9-305](#) MCA 46-23-105 MCA
- B. *Executive Order 05-93, Outside Legal Services*
- C. *4-4023, ACA Standards for Adult Correctional Institutions, 4th Edition*
- D. *3-JTS-1A-28, ACA Standards for Juvenile Correctional Facilities, 2003*

VII. ATTACHMENTS

None.