

<b>DEPARTMENT OF HUMAN SERVICES POLICY AND PROCEDURES</b>		
<b>Reference: 01-01</b>	<b>Effective Date: May 15, 1984 Revision Date: December 27, 2004</b>	<b>Page 1 of 2</b>
<b>SUBJECT: FORMAL LEGAL PROCEEDINGS PROCEDURE</b>		
<b>RATIONALE: If the occasion arises whereby individual Department employees are named in lawsuits against the State, it is imperative that certain procedures be followed for the protection of the Department and the employee. The Office of the Attorney General has responsibility to represent the State in all legal suits and the Executive Director's Office is the channeling point for all requests for assistance from the Attorney General.</b>		

Department of Human Services employees (including officers, board members, and other individuals as defined in Utah Code Ann. § 63-30d-102(2)) may be named as defendants in lawsuits. There are certain procedures that must be followed when an employee is named as a defendant in a lawsuit.

The Office of the Attorney General has the responsibility to represent the State. Individual employees, personally named in a suit, are not required to hire private counsel if the criteria for State representation, as found in the Utah Governmental Immunity Act, are satisfied. Section 63-30-36 of the Act provides that the State shall defend any action brought against its employees arising from acts or omissions occurring during the performance of the employee's duties, within the scope of the employee's employment, or under color of authority.

If an employee receives a legal document entitled, "Notice of Claim", "Complaint", "Summons", "Temporary Restraining Order", or a similar document, immediate action is necessary in order to meet statutory deadlines.

No later than the end of the next business day after receipt of such document, the employee shall notify his or her Division/Institution/Office director and formally transmit all original documents, including any receipts, accompanying materials, and the envelopes they were mailed or delivered in, to the Executive Director's Office. Officers, board members, and other individuals who do not report to a division director shall transmit all documents directly to the Executive Director's Office. If more than one employee is named in a lawsuit, each employee shall individually comply with this policy.

The EDO will formally request representation and indemnification services from the Offices of the Attorney General and Risk Management. If the employee fails to promptly make a written request or fails to reasonably cooperate in the defense, the State may not defend the employee or pay any judgments, compromises, or settlements against the employee.

The State may decline to defend or decline to continue to defend an employee, or pay any judgment, compromise, or settlement if:

1. the alleged acts or omissions did not occur during the performance of the employee's duties, within the scope of the employee's employment, or under color of authority;
2. the injury or damage resulted from the fraud or malice of the employee;
3. the injury or damage resulted from the employee being in physical control of a vehicle while under the influence of alcohol and/or any drug;

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4. the injury or damage resulted from being physically or mentally impaired because of the use of alcohol and/or a nonprescribed controlled substance; or
5. the employee gave false testimony in a judicial or administrative proceeding.

As a matter of practice, once a lawsuit has been initiated, there should be no discussion of the case with the person who is suing the Department, their attorney, or any other person, without the involvement of the Attorney General's defense of the case. Any attempts to contact the employee, by the person who is suing the Department, their attorney, or any other person, should be reported to the Office of the Attorney General. All employees are requested not to discuss pending litigation without the involvement of the Executive Director's Office and the Attorney General's Office.

*Robin Arnold-Williams*

DATE: 12-27-04

Robin Arnold-Williams, Executive Director  
Department of Human Services