

POLICY OF STATE OF DELAWARE DEPARTMENT OF CORRECTION	POLICY NUMBER 8.63	PAGE NUMBER 1 of 6
	RELATED ACA Standards	
CHAPTER: 8 ADMINISTRATION	SUBJECT: ACCEPTANCE OF SERVICE FOR LEGAL PROCESS	
APPROVED BY THE COMMISSIONER AND EFFECTIVE THIS DATE:		
 6/29/15		
APPROVED FOR PUBLIC RELEASE		

I. AUTHORITY: 11 Del. C. §6517 and 29 Del. C. §8903

II. PURPOSE: An essential component of Due Process is adequate notice and appropriate opportunity to respond to allegations. Occasionally process servers come to Department of Correction facilities to serve legal documents upon the Department and/or the Department's employees. The purpose of this policy is to allow the Department and its employees the ability to comply with legal obligations with respect to legal proceedings and to ensure legally adequate notice and opportunity to respond in legal proceedings.

III. APPLICABILITY: All Department employees

IV. DEFINITIONS:

Complaint: A document filed with a court to commence legal action.

Deposition Subpoena: An order for a non-party to appear at a deposition before a Subpoenaing party to testify and/or produce business records listed in the Subpoena for copying.

Legal Documents: Documents issued by a court, officer of the court, attorney, government agency or administrative agency requiring the Department or any Division or Bureau of the Department to appear in court, provide testimony, documents, records, or property, or to take or refrain from taking some action. Examples of legal documents include, but are not limited to: subpoenas, court pleadings pertaining to a lawsuit (summonses, complaints, court orders, interrogatories, notices of deposition, requests for production of documents, notices to admit, and all other forms of demands for disclosure), restraining orders, garnishments and mechanics liens.

Process Server: Federal or State of Delaware officials or persons employed by an attorney or attorney service who serve Subpoenas or Complaints.

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Subpoena: A writ or order directed to a person requiring appearance at a particular time and place to testify as a witness, which may also require that the witness bring specified records. (The appearance of a witness may not always be required so long as the person produces the specified records at the time and place indicated on the Subpoena.)

Subpoena Duces Tecum: An order for a witness to appear at court and bring copies of records listed in the Subpoena.

Summons: An order to appear in a court of law.

V. **BACKGROUND:** For the purpose of this policy, legal documents are of two basic types: (A) Summonses and Complaints, and (B) Subpoenas. Once service of a summons and complaint has been accepted, it is likely that any designated time period in which a response must be filed has commenced. Knowing this timeframe is critical to providing proper legal advice to the Department and its employees. Accordingly, any acceptance of a summons or complaint should be immediately communicated to an employee’s supervisor and the State of Delaware Department of Justice.

For Summonses and Complaints, the defendant is likely required to respond to the Complaint within a specific period of time after he or she is served with a copy of it, together with a copy of the Summons. The delivery of copies of the Summons and Complaint to the defendant is commonly called “service of process”.

The other type of legal process which may be served is a Subpoena, a Subpoena Duces Tecum or a Deposition Subpoena. The law may require the recipient of a Subpoena Duces Tecum or a Deposition Subpoena to furnish copies of business records or other records in the possession or control of the recipient. Occasionally, this may be accomplished by mail in lieu of a personal appearance.

VI. **POLICY:** It is essential that acceptance of any legal process only occurs with proper and sufficient authorization. Individuals not given express authority or permission to receive legal process for the Department or an individual employee of the Department should not have authority to accept service of process. **In these instances, the individual should inform the person attempting to serve process that he/she is not authorized to accept service of process for that entity or individual.**

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The Office of the Commissioner is generally responsible for receiving Subpoenas and Summonses. Unless specifically authorized in writing, agency personnel are not authorized to accept Subpoenas (or Summonses) on behalf of the Department. The Process Server may be told to serve the Subpoena (or Summons) to the following address: Department of Correction, Office of the Commissioner, 245 McKee Road, Dover, DE 19904. If, after informing a process server that the employee is not authorized to accept legal documents on behalf of the State of Delaware, Department of Correction or any employee, the process server insists on leaving documents, they must be promptly delivered to the Legal Process Coordinator (LPC) office, together with the envelope, any packaging, and an explanation of when and how the employee gained possession of the legal documents. If a process server persists in leaving documents after they have been advised that the employee is not authorized to receive process, the employee shall sign the receipt of service form with their name and the following language: *I am not authorized to receive service of process on behalf of this individual and must refuse to accept service at this time.*

Subpoenas requesting specific Departmental records are handled by the appropriate Legal Process Coordinator. See Attachment A for a list of coordinators and the corresponding subject matter.

If anyone not affiliated with the Department or the Department's legal counsel requests a sworn statement from a Departmental employee or for Departmental records without providing a subpoena or similar legal paper, the Legal Process Coordinator's (LPC) office should be contacted immediately. The LPC will determine if the material may be provided under applicable law and if a legal paper is required prior to disclosure. Any production of documents or sworn testimony provided outside of this policy, other than to counsel for the Department or departmental employees, may violate federal and/or state law.

VII. PROCEDURES:

A. Summons and Complaint - Civil Action

1. When the State of Delaware Department of Correction or a Division or Bureau of the Department of Correction is named as a Defendant:
 - a. Departmental employees, other than the designated LPCs, are not authorized to accept a Summons and Complaint on behalf of the State of Delaware or Department of Correction;

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- b. All attempts to serve must be referred to the Department’s LPC or other individuals authorized in writing as set forth in Attachment B.

2. When the State of Delaware or Department of Correction and an Individual Employee are named as Defendants together:

 - a. The Individual Employee should accept service on his or her own behalf but make it clear that he or she is not accepting for the State of Delaware and/or the Department of Correction;
 - b. The Individual Employee should write a short memorandum or email to the LPC stating the time, date of acceptance and how the documents were served (by mail, personal service, or left with someone else);
 - c. The Individual Employee should refer the Process Server to the LPC regarding service attempts on the State of Delaware or Department of Correction;
 - d. The Individual Employee should immediately contact the Delaware Department of Justice’s Civil Division regarding any personal acceptance of legal process. The phone number for the Department of Justice is (302) 577-8400. The Department of Justice will coordinate with the employee regarding potential legal representation and the appropriate course of action.

3. When an Individual Employee is the named Defendant and service is being attempted at the location where the employee is actually present and on duty :

 - a. The named Individual should accept service;
 - b. Service may also be accepted by anyone who has been authorized to receive process for another in writing per a validly executed form contained in Attachment B:
 - A summons should be accepted only for employees working at the particular location
 - The person receiving the summons must deliver it to the employee(s) named as soon as possible. If practicable, the named individual should be summoned to personally accept service.

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- c. If the suit is against a Departmental employee regarding a personal matter which does not arise out of the course and scope of his or her employment there is no Departmental involvement. In such a case, the named individual should contact his or her own attorney;
- d. If questions remain, the LPC will assist directly, or refer questions to agency legal counsel.

B. Subpoenas - Civil Action (Subpoena, Subpoena Duces Tecum, or Deposition Subpoena)

1. When the State of Delaware, Department of Correction, or a Division or Bureau of the Department of Correction is named as a Defendant:
 - a. Other than the authorized LPCs, Departmental personnel are not authorized to accept a subpoena on behalf of the State of Delaware or Department of Correction;
 - b. All attempts to serve legal process in active civil matters must be referred to the appropriate attorney of record. Process Servers should be directed to the appropriate attorney through the LPC.
2. When the State of Delaware, Department of Correction, or a Division or Bureau of the Department of Correction and an Individual Employee are Defendants together:
 - a. Individual Employee should accept service on his or own behalf, but make it clear that he or she is not accepting for the State of Delaware or Department of Correction;
 - b. The Individual Employee should note the time, date of acceptance and how the documents were served (by mail, personal service, or left with someone else) and immediately contact the Individual Employee’s attorney of record;
 - c. The Individual Employee should refer the Process Server to the appropriate attorney of record regarding any attempted service upon the State of Delaware or Department of Correction;

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d. The Individual Employee should immediately notify the Individual Employee's attorney (or the Delaware Department of Justice's Civil Division if no attorney has been assigned) about personal acceptance of legal process. The attorney of record will discuss with the employee the appropriate course of action.

3. When Departmental Records are requested:

- a. The Custodian of Records (who may be called to appear as a Witness) or the LPC is required to accept service;
- b. The Department shall make a reasonable attempt to first notify any current employee before the release of their records pursuant to any subpoena request;
- c. In no case should any subpoenaed records be delivered to a Process Server or to a party to litigation without legal approval. The LPC should be contacted immediately upon receipt of a Subpoena.
- d. When a witness is required to appear at a court trial or deposition, the Department may be legally entitled to a per diem for attendance in a civil case; however, when the Department is a party to the action, the fee is normally waived.

C. Subpoenas in a Criminal Action

Such Subpoenas may require the attendance of an individual to testify in court, before a Grand Jury, or other legally empowered body. The following shall apply to subpoenas in relation to criminal matters:

- 1. The named Individual Employee must personally accept service of process;
- 2. The named Individual Employee must notify (unless otherwise prohibited by law) the LPC if the Department of Correction is a named party.

ATTACHMENT A

Legal Process Coordinators

By Facility and Relevant Contact Information

DOC Central Administration
245 McKee Road
Dover, DE 19904
302-739-5601

Operations Support Specialist
ID and Records Coordinator (*Institutional Records only*)

Correctional Healthcare Services
245 McKee Road
Dover, DE 19904
302-739-5601

Administrative Specialist III

PRISONS

Howard R. Young Correctional Institution
1301 E. 12th Street
Wilmington, DE 19801
302-429-7700

Volunteer Services Coordinator
Administrative Specialist III

Baylor Women's Correctional Institution
660 Baylor Boulevard
New Castle, DE 19720
302-577-3004

Administrative Specialist III
Correctional Sergeant

James T. Vaughn Correctional Center
1181 Paddock Road
Smyrna, DE 19977
302-653-9261

Legal Services Administrator
Paralegal II
Paralegal II

Sussex Correctional Institution
Route 113
Georgetown, DE 19947
302-856-5280

Administrative Specialist III
Administrative Specialist I

COMMUNITY CORRECTIONS FACILITIES

Plummer Community Correctional Ctr.
38 Todds Lane
Wilmington, DE 19805
302-761-2800

Probation and Parole Officer Supervisor

John L. Webb Community Corrections Ctr.
200 Greenbank Road
Wilmington, DE 19808
302-995-6129

Correctional Counselor

New Castle County Women's
Work Release and Treatment Ctr.
660 Baylor Boulevard
New Castle, DE 19720
302-777-6800
Deputy Warden I

Central Violation of Probation Center
875 Smyrna Landing Road
Smyrna, DE 19977
302-659-6100
Correctional Counselor Supervisor

Morris Community Correctional Ctr.
300 Water Street
Dover, DE 19901
302-739-4758
Correctional Counselor Supervisor

Sussex Community Correctional Ctr.
23207 DuPont Blvd.
Georgetown, DE 19947
302-856-5790
Senior Probation and Parole Officer
Senior Probation and Parole Officer

Sussex Violation of Probation Center
2307 DuPont Blvd.
Georgetown, DE 19947
302-856-5790
Senior Probation and Parole Supervisor
Senior Probation and Parole Supervisor

PROBATION AND PAROLE OFFICES

Probation and Parole – Cherry Lane Office
314 Cherry Lane
New Castle, DE 19720
302-577-3443
Administrative Specialist II

Probation and Parole – Hares Corner Office
26 Parkway Circle
New Castle, DE 19720
302-323-6050
Probation and Parole Officer Supervisor
Probation and Parole Officer Supervisor

Probation and Parole – Dover Office
511 Maple Parkway
Dover, DE 19901
302-674-7149
Operations Support Specialist
Administrative Specialist I

Probation and Parole – Kent Day Reporting Ctr.
511 Maple Parkway
Dover, DE 19901
302-674-7259
Administrative Specialist I
Operations Support Specialist

Probation and Parole - Georgetown Office
Georgetown State Service Center
546 South Bedford Street
Georgetown, DE 19947
302-856-5243
Probation and Parole Officer Supervisor

Probation and Parole – Sussex Day Reporting Ctr.
317 N. DuPont Hwy
Georgetown, DE 19947
302-854-6994
Probation and Parole Officer Supervisor

Probation and Parole – Annex
Intake and Pretrial Services
5 East Pine Street
302-856-3095
Senior Probation and Parole Officer

Home Confinement – Sussex County
Sussex Community Correctional Center
23207 DuPont Blvd
302-856-5795
Probation and Parole Officer Supervisor

Probation and Parole – Seaford
Shipley State Service Center
350 Virginia Avenue
Seaford, DE 19973
302-628-2016
Probation and Parole Officer Supervisor

ATTACHMENT B

**Form Authorizing an Individual Employee to Accept Legal Service of
Process for Another Departmental Entity or Individual Employee**

I, _____, am currently employed by the Department of Correction and hold the position of _____. This _____, day of _____, 2____, I do hereby authorize _____, who is employed with the Department of Correction in the position of _____, to accept service of the following legal process on my behalf (or on behalf of the following entity: _____). I understand that a copy of this Authorization Form will be placed in my Departmental personnel file. I also understand that this authorization may have an impact on certain personal defenses that might relate to the acceptance of service of process and the effectiveness of service of process in connection with civil and criminal litigation. Unless specifically authorized in writing herein, I have not authorized any entity or individual to accept service of legal process on my behalf. The terms of this written authorization shall expire effective immediately upon the discontinuation of my employment with the Department of Correction or on the following date _____.

Printed Name

Signature

Date

Witness – Printed Name

Signature

Date