

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:)	
)	
AMENDING ARIZONA CODE OF)	Administrative Order
JUDICIAL ADMINISTRATION § 1-204:)	<u>No. 2008- 44</u>
RESPONSE TO CLAIMS, SUMMONS)	(Affecting Administrative
AND SUBPOENAS)	Order No. 2001-121)
_____)	

Pursuant to the Arizona Code of Judicial Administration § 1-201 (E), the Chief Justice may adopt emergency administrative code proposals and technical changes in existing code sections by administrative order without prior distribution for comment and action by the Arizona Judicial Council.

Now, therefore, pursuant to Article VI, Section 3, of the Arizona Constitution,

IT IS ORDERED that Arizona Code of Judicial Administration § 1-204 is amended as indicated on the attached document. All other provisions of § 1-204 as adopted, remain unchanged and in effect.

Dated this 23rd day of May, 2008.

RUTH V. McGREGOR
Chief Justice

ARIZONA CODE OF JUDICIAL ADMINISTRATION
Part 1: Leadership
Chapter 2: Operations
Section 1-204: Response to claims, summons and subpoenas

A. Policy. All superior and appellate court judges, clerks and employees who receive legal claims, summonses and complaints or subpoenas shall provide these documents and complete information required for timely response to appropriate court managers, the attorney general, and the Risk Management Division of the Arizona Department of Administration according to procedures set forth in this section. Individual courts and offices of the court, as appropriate, shall adopt local policies and procedures as needed to implement the provisions of this code section. The Administrative Office of the Courts (AOC) Legal Services Office shall track lawsuits and, on request or as needed, coordinate representation and response of superior and appellate court judges and employees.

B. Definitions.

“Claim” means a written demand for payment for alleged injury, usually received prior to a lawsuit.

“Complaint” means a document filed with a court according to court rules that states legal claims by a plaintiff against a defendant.”

“Records custodian” means the person responsible for the records of a court or office.

“Service” means delivery of a claim, summons or subpoena by a process server.

“Subpoena” means a court order compelling a person or representative of an organization to testify and/or produce records on a certain date at a certain place.

“Subpoena duces tecum” means a subpoena for records.

“Summons” means an order from a court to respond in some manner to a complaint initiating a lawsuit.

“Witness and document production fee” means a fee required by statute to be paid to a person who has been subpoenaed but is not a party (plaintiff or defendant) to the lawsuit.

C. Claims. Judicial branch officers and employees shall notify the appropriate court manager and risk management of any written communications regarding legal liability and any claims for money damages involving the state or the court.

A judicial branch officer or employee shall not make any statements or release any information concerning an incident that is the subject of a claim or lawsuit to any person not employed by the state without first obtaining the approval of risk management staff, attorney general staff or assigned counsel. Anyone receiving a notice of claim addressed to the court or the state shall immediately send a copy to the Section Chief Counsel of the Liability Management Section of the Attorney General's Office and to the Department of Administration, Division of Risk Management ~~at the addresses indicated in paragraph G below~~. Staff from these offices will respond to the claim or assist the appropriate court personnel to respond. Court staff should contact the AOC Legal Services Office, Attorney General's Office or other assigned counsel ~~at the phone numbers provided in paragraph G~~ with any questions or for assistance regarding a claim. Contact information for these offices is available on the Arizona Judicial Information Network (AJIN) Web site for the AOC Legal Services Office, <http://supreme22/legalsrv/>.

D. Summons and complaint.

1. General requirements. Any judge, clerk or court employee who is served with a summons and complaint shall accept service only as described below. Service of a summons and complaint shall be accepted only by the person to whom it is addressed unless another person is authorized to accept service for that person. All service by mail shall be immediately forwarded to the appropriate section of the Attorney General's Office with written authorization for the assigned attorney to accept service on behalf of the person or office served. A recipient of a summons and complaint shall note the means of delivery, the recipient's name and the time and date of receipt on the first page of the documents. A recipient of a summons and complaint involving employment issues or money damages shall forward all originals including any envelope containing a postmark to the Liability Management Section of the Office of the Attorney General and provide copies to the Risk Management Division of the Department of Administration. Documents concerning all other matters shall be directed to the Administrative Law Section of the Office of the Attorney General. The recipient shall send a copy of any summons and complaint to the AOC Legal Services Office and retain a copy for future reference. The AOC Legal Services Office publishes the current addresses and telephone numbers of these offices ~~are provided in paragraph G below~~ on its AJIN Web site, <http://supreme22/legalsrv/>.
2. Personal service on the state. Personal service upon the state can only be accomplished by serving the attorney general. Any person attempting personal service of a summons and complaint upon the state shall be directed to the receptionists at either the Department of Law Building at 1275 W. Washington in Phoenix or 402 W. Congress in Tucson. These are the only locations within the state authorized to receive personal service on the state.
3. Personal service on the court. Each court shall authorize one or more individuals to accept service on behalf of the court. The officer or employee accepting service of the documents shall immediately notify the appropriate section of the attorney general's office and send the summons and complaint as described in paragraph D (1) above.

4. Personal service on an individual. Generally, personal service upon individual state officers or employees can only be accomplished by serving the named individual. Court personnel shall accept only service addressed to the employee accepting it or to another individual who is still employed by the court and who has authorized in writing specific personnel to receive service on behalf of that individual. Each court shall establish policies and procedures regarding personal service of individual court staff. Courts are not required to permit service on court premises on individuals in cases that do not involve court business.
5. Service on the state by mail. Court personnel shall not acknowledge receipt of mailed documents or waive service addressed to the state. The attorney general is the officer who must be served on behalf of the state, and the time for filing a responsive pleading begins to run from the date acknowledgment of receipt is executed. If a state court employee receives by mail a summons and complaint addressed to the state and a form for acknowledgment of receipt or waiver of service of process, the employee shall return the entire packet to the sender without completing the acknowledgment. The employee shall advise the sender that only the attorney general can accept service of process for the state and provide the appropriate address as indicated in paragraph G below available on the AOC Legal Services Office AJIN Web site, <http://supreme22/legalsrv/>.
6. Service on the court by mail. Since the time for response to the complaint or other pleading begins to run as soon as service is acknowledged or waived, recipients shall forward the unsigned acknowledgment or waiver to the attorney general with a letter from the court authorizing the attorney general to accept or waive service on behalf of the court as appropriate in the course of representation. The materials shall be forwarded promptly to avoid the possibility that the cost of personal service would be charged to the court.
7. Service on an individual by mail. Court staff and officers may be served individually by mail. Court rules require return of an acknowledgment of acceptance or waiver of service within a prescribed period of time to avoid liability by the recipient for the cost of personal service. If the pleading concerns the individual's official duties, the attorney general will represent the individual and respond to the pleading. Since the time for response to the complaint or other pleading begins to run as soon as service is acknowledged, the recipient shall forward the unsigned acknowledgment to the attorney general with a cover letter from the individual authorizing the attorney general to accept service on behalf of the individual as appropriate in the course of representation. This will maximize the time for response to the lawsuit.
8. Cooperation of court staff. The attorney assigned to defend a lawsuit will contact court defendants as needed to obtain assistance in responding to the complaint or discovery and otherwise defending the lawsuit. An investigator assigned by risk management may also assist in preparing the defense. After verifying the identity of the attorney and the investigator, court employees shall cooperate fully in the investigation, response to discovery and defense of the lawsuit. The AOC Legal Services Office serves as liaison with the attorney general or outside counsel concerning all litigation involving the state courts. This

includes maintaining litigation files, facilitating the defense and monitoring the litigation. If the attorney general cannot provide representation for any reason, the AOC Legal Services Office shall assist the court personnel to obtain legal representation as provided by law.

E. Subpoenas.

1. Receipt. Subpoenas may be served on an individual, on the records custodian by name or title or on a court or office. A subpoena received by mail or personal service shall be accepted by the person or custodian of the records to whom it is directed or by a designee of the person or custodian. If the recipient determines that the subpoenaed records may be kept in another office of the court, the recipient shall forward the subpoena to the records custodian of that office for response. Each court shall establish policies regarding the receipt of witness and document production fees.
2. Initial response. An AOC Legal Services attorney or the assigned assistant attorney general may contact, or advise the recipient of the subpoena to contact, the attorney for the party obtaining a subpoena in order to clarify what records or information is requested, to extend the time for production, or to otherwise modify the specific requirements of the subpoena. This is usually done by phone and may result in an arrangement by which the person does not have to personally appear.
3. Request for records. Each court shall establish policies regarding response to a subpoena requesting records (subpoena duces tecum). The court shall provide the information requested in the subpoena unless it has no records that fit the description in the subpoena, the records requested are privileged or confidential, or the request is unclear or overly burdensome. An individual shall be designated to coordinate the assembly and review of documents in response to a subpoena. If possible, the person assigned shall have had no involvement in the activity that is the subject of the subpoena, but shall be familiar with the court documents and records at issue and the public access to court records rules. The coordinator shall keep a record of locations searched for responsive documents, an index of documents found, and a list of any documents that are potentially privileged or confidential. If the coordinator delegates the document search to other employees, the scope and mandatory nature of the subpoena shall be emphasized and the employees shall forward all potentially responsive documents, including email, archived records and phone messages, to the coordinator.

F. Privilege and confidentiality. If a judge, clerk, or court employee subpoenaed believes that testimony sought involves a privilege or the custodian of subpoenaed records or records sought in discovery believes the records contain privileged or otherwise confidential information, the person shall contact the AOC Legal Services attorney or an assistant attorney general for assistance. If necessary, an assistant attorney general will assert the privilege or the confidential nature of documents and file for a protective order. Only an AOC Legal Services attorney or an attorney representing the court may waive a privilege or release documents that appear to be confidential by statute, rule or administrative code section subject to the consent of the person

