



SUBJECT: Legal and Administrative Proceedings

TO: Department Members

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34.1 LEGAL MATTERS--GENERAL RESPONSIBILITIES

As used in this Order, the term "legal process" shall refer to any document purporting to require members of the department to appear for, or to produce an item for inspection at, a judicial or quasi-judicial proceeding.

34.1.1. MEMBER RESPONSIBILITIES

- A. Members shall comply with all legal process as detailed in this Order, even in cases where the member doubts the validity of service.
- B. Members shall not avoid service of any legal process.
- C. Members served any legal process via mail shall immediately complete any attached return receipt or other acknowledgement included in the mailing and return it to the sender if postage has been paid by the sender. If a mailing does not include a return receipt or acknowledgement, or if the acknowledgement does not include postage, members are not required to contact the sender to confirm receipt unless required to do so by work site policy.
- D. Members shall not accept certified or registered mail addressed to another member.
- E. If a legal document appears to have been improperly served, members shall notify their supervisor and seek guidance from the prosecutor in criminal cases and from the Risk Management Section in all other matters.
- F. Members who are served legal process that appears illegitimate or is otherwise not covered by this Order shall contact the Risk Management Section for guidance.
- G. Members appearing at any legal or administrative proceeding shall wear appropriate attire. Enforcement members appearing at any legal or administrative proceeding shall wear the uniform of the day or appropriate business attire. However, enforcement members shall

not wear a department uniform while attending a proceeding off-duty. All other members appearing at any legal or administrative proceeding shall wear appropriate business attire.

- H. As provided in Official Order 14, Section 14.1.1.B.(2).b., enlisted members may only serve and execute civil process when directed to do so by the Governor or Attorney General, in actions and matters in which the state is a party.

34.1.2. WORK SITE POLICIES

- A. Work site commanders shall ensure that all members assigned to their work site receive and comply with all legal process as outlined by this Order.
- B. Work site commanders shall develop and implement a work site policy that, at a minimum, accomplishes the following:
 - (1) Provides for a means of recording all subpoenas and notices concerning criminal matters or civil infractions (e.g., use of a court book). The means chosen shall contain information detailed enough to allow members and their supervisors to ensure that subpoenas and notices are honored.
 - (2) Provides a conduit between local courts and members who may be required to appear in court (e.g., designation of a court officer) so members will receive subpoenas and notices in a timely manner.
 - (3) Provides for a means of notifying members they are required to appear in court when the subpoena or notice is delivered to the work site while the member is not working, and the member will not return to work before the court date.
 - (4) Provides for a means of delivering subpoenas and notices to members who will work between the date of delivery and the court date.
 - (5) Provides a procedure for delivering subpoenas and notices to members assigned to other work sites in a timely manner, and for documenting such delivery.
 - (6) Details the procedures to be used in delivering or serving subpoenas upon citizens, including service by mail if approved by local prosecutors and courts.
- C. In developing the policy required by this section, work site commanders shall consult with their prosecutors and court administrators to ensure that the policy does not conflict with local rules, procedures, and preferences.

34.1.3. RETENTION OF LAWSUIT-RELATED RECORDS

- A. The Risk Management Section shall maintain all official department records concerning civil lawsuits involving the department or its members. Unless directed by the Risk Management Section, such records shall not be attached to other departmental records, included in case files, or documented in any report not required by this Order.
- B. The Records Resource Section may keep copies of all records necessary to properly respond to lawsuits related to the Freedom of Information Act.

34.2 STATUS OF MEMBERS OR RETIREES APPEARING IN LEGAL PROCEEDINGS

34.2.1. MEMBER DUTY STATUS

- A. Except as otherwise required by this Order or applicable collective bargaining agreement, members shall be considered on-duty when appearing for court for duty-related criminal or civil infraction cases, or while appearing in department related civil lawsuit proceedings governed by this Order.
- (1) When members appear outside of their scheduled shift for criminal or civil infraction proceedings, they shall be considered on-duty until released by the court or prosecutor.
 - (2) When members appear outside of their scheduled shift for administrative proceedings, they shall be considered on-duty until released by the hearing officer or are required to terminate participation by the member's supervisor.
 - (3) When members appear outside of their scheduled shift for department related civil lawsuit proceedings, they shall be considered on-duty until released by the court or department's attorney.
 - (4) Members released from appearance as described above shall not be considered on-duty thereafter without prior approval of their supervisor, unless the member was released during their regularly scheduled shift. Members released during their shift shall immediately notify their supervisor.
- B. Members required to appear for any proceeding not arising out their employment with the department shall not be considered on-duty while appearing. When such appearance conflicts with the member's scheduled shift, members shall charge such time against available leave credits.

34.2.2. RETIREE STATUS

- A. Retired members who are determined by the department's legal counsel to be an essential witness in a civil case in which the department is a party may be compensated by the department at the current rate of pay for the rank at which the member retired.
- B. Retired members may be compensated for time associated with attendance at trials, hearings, depositions, or other necessary meetings, including reasonable travel time to and from such events.
- C. Compensation of retirees shall not be made without the prior approval of the Risk Management Section.
- D. This section does not apply to criminal cases or civil cases in which the retired member is a named defendant represented by counsel at the department's expense.

34.3 CIVIL LAWSUITS

Members of the department may become involved in a civil lawsuit in connection with matters arising out of their employment with the department or for matters unrelated to department work. This section provides policies and procedures for accepting service of legal process, complying with discovery requests and other issues related to civil lawsuits against the department or members.

34.3.1 SUMMONS AND COMPLAINT--DEPARTMENT RELATED CIVIL LAWSUITS

A summons and complaint are documents used to notify a person or entity that they are being sued. The complaint sets forth the allegations and relief requested. There are strict deadlines associated with lawsuits. Therefore, members served with a summons and complaint in connection with a civil lawsuit arising out of their employment with the department shall follow the following procedures:

A. Acceptance of Summons and Complaint Naming Individual Member

- (1) Members named in a civil lawsuit may only accept service of a summons and complaint directed to them. Members, including supervisors, shall not accept service on behalf of another member, the Director, or the department.
- (2) If members named in a civil lawsuit is off-duty when service is attempted, the process server shall be notified of the date and time of the member's return to work.

Process servers shall not be given a member's home address or telephone number under any circumstances.

- (3) When members named in a civil lawsuit is on-duty, but not at the work site, the member shall be notified to return to the work site to accept service.
- (4) On receipt of a summons and complaint, the member shall document the date served, time served, place of service, and method of service (e.g., first class mail, in-person service). Members served in-person shall also document the name of the server. The member shall enter this information into the Report of Lawsuit form, EX-016.

B. Requests for Waiver of Serving a Summons and Complaint

- (1) Members shall not sign any request for waiver of service or otherwise agree to waive service of legal process unless instructed to do so by the Risk Management Section or an attorney representing the member at the department's expense.
- (2) If members receive a request for waiver of service, the member shall notify the Risk Management Section in the same manner outlined in Section 34.3.1.D for notification of service of a summons and complaint.

C. Summons and Complaint Naming the Department or Director

- (1) Only the following members may accept service of legal process naming the department or the Director as parties:
 - a. The Director or a deputy director serving as Acting Director.
 - b. Members specifically designated by the Director.
- (2) Other than those members designated by the Director, members shall not accept legal process naming the Director or the department as a party.
- (3) If service upon the Director or the department is attempted at a local work site, the process server shall be directed to Headquarters (7150 Harris Drive, Dimondale,

Michigan) and informed that such legal process is only accepted during normal business hours.

D. Notification to the Risk Management Section

- (1) Upon receiving a summons and complaint, the member shall immediately notify the Risk Management Section via telephone, 517-XXX-XXXX, and email the following to the department's Litigation Coordinator.
 - a. Completed Report of Lawsuit form, EX-016.
 - b. All papers received/served including any mailing envelope.
- (2) Within 24 hours of being served, members shall send the following via overnight mail or ensure the following are personally delivered within 48 hours of being served to the Risk Management Section:
 - a. Original completed Report of Lawsuit form, EX-016.
 - b. All original papers served upon the member.
 - c. The original envelope, if served by mail.
 - d. Copies of all incident reports, documents, and records giving rise to the civil lawsuit, including supplemental reports, external documents, photographs, and video.
- (3) Each member named in a civil lawsuit must follow the above procedures; it is not sufficient for one member to submit documents on behalf of all involved members.
- (4) The member named in a civil lawsuit shall keep photocopies of all papers received/served including mailing envelope and the Report of Lawsuit form, EX-016 until the Risk Management Section has received the documents mailed or personally delivered. Thereafter, the member may keep copies of the EX-016, papers served, and other lawsuit-related correspondence at their discretion. This section does not authorize the member to keep copies of official department records related to a civil lawsuit (e.g., incident reports, external documents, photographs, video).

E. Notice of Intent to Sue

A notice of intent to sue is a written notice that another party intends to file a civil lawsuit against the department or members. If members receive a notice of intent to sue, the member shall notify the Risk Management Section in the same manner outlined in Section 34.3.1.D for notification of service of a summons and complaint.

F. Demand Notice

A demand notice is a written notice making a claim that the department or member has done something which might lead to a civil lawsuit if certain demands are not met. If members receive a demand notice, the member shall notify the Risk Management Section

in the same manner outlined in Section 34.3.1.D for notification of service of a summons and complaint.

34.3.2. SUMMONS AND COMPLAINT—NON-DEPARTMENT RELATED CIVIL LAWSUITS

A. Members served with a summons and complaint in connection with a civil lawsuit not arising out of their employment with the department shall report the lawsuit to their work site commander within five days of being served.

(1) The report shall be limited to:

- a. Identifying the parties.
- b. The docket number.
- c. The court in which the lawsuit was filed.
- d. The nature of the action.

(2) This section does not apply to divorce actions.

34.3.3. SUBPOENAS--DEPARTMENT RELATED CIVIL LAWSUITS

Once a department related civil lawsuit has commenced, the department or member may receive a subpoena commanding a party or witness to appear for the purpose of testifying or a subpoena to produce notes, records, documents, or other portable tangible things.

A. Acceptance of Subpoenas

- (1) Members shall not accept subpoenas on behalf of the department, the Director, or another member in any civil lawsuit, regardless of whether the department or the member is a party to the lawsuit.
- (2) If members are subpoenaed by an attorney or party other than one representing the department, the member shall immediately notify the attorney representing either the department or the member and the Risk Management Section. This subsection applies only to civil lawsuits in which the department or the member is named as a party in the lawsuit.

B. Subpoenas Commanding Appearance

Members subpoenaed to appear in any civil lawsuit related to department work within the state of Michigan shall appear as directed and shall be considered on-duty.

C. Subpoenas Commanding Appearance in Out-of-State Proceedings

- (1) Members shall not appear outside of Michigan pursuant to a subpoena without the prior authorization of the Risk Management Section. Members receiving a subpoena from an out-of-state entity shall immediately notify their work site commander and the Risk Management Section.
- (2) Prior to seeking authorization to attend a proceeding outside of Michigan, the member's work site commander shall attempt to arrange a deposition to be conducted in Michigan during the member's normal working hours. When such a deposition has been arranged, the member shall appear as if properly subpoenaed by an entity in Michigan.

- (3) When a deposition in Michigan cannot be arranged, the work site commander shall evaluate the necessity of the member's appearance and, if deemed necessary, shall seek approval through channels from the Risk Management Section. If authorized to appear by the Risk Management Section, the member shall appear as if properly subpoenaed by an entity in Michigan.

D. Subpoenas for Records or Evidence When the Department or Member is a Party

Members receiving a subpoena for records or evidence in a civil lawsuit where the department or member is a party shall process the subpoena in the same manner outlined in Section 34.3.4 for a discovery request.

E. Subpoenas for Records or Evidence When the Department or Member is not a Party

Members receiving a subpoena for records or evidence in a civil lawsuit related to department work but where the department or member is not a party shall immediately forward the request to the Records Resource Section for processing. Members shall notify the requesting attorney that the subpoena has been forwarded to the Records Resource Section for processing and request that the attorney direct future subpoenas to the Records Resource Section.

34.3.4. DISCOVERY REQUESTS--DEPARTMENT RELATED CIVIL LAWSUITS

Once a civil lawsuit has commenced, the department or member may receive a discovery request. For purposes of this section, the term "discovery request" refers to the various pretrial methods used to obtain facts and information about the case from a party other than a subpoena. Some of the more common discovery requests a member may receive in a civil lawsuit include a request to attend a deposition, answer interrogatories, a request for production of documents, and a request for admissions.

- A. Members receiving a discovery request from an attorney representing either the department or the member at the department's expense shall fulfill the request on or before the deadline given.

- B. Members receiving a discovery request from another attorney or party in a case in which the department or the member is a party shall immediately forward the request to the Risk Management Section.

Members shall comply with requests to preserve evidence made by any party and shall notify their work site commander of the request. Members shall not respond to any other discovery requests made by another attorney or party unless directed to do so by the Risk Management Section or an attorney representing the department or the member at the department's expense.

- C. Members receiving a discovery request in a civil lawsuit related to department work but where the department or member is not a party shall contact the Risk Management Section for guidance.

34.3.5. SUBPOENAS AND DISCOVERY REQUESTS—NON-DEPARTMENT RELATED CIVIL LAWSUITS

- A. Members attending any proceeding pursuant to a subpoena or discovery request in a civil lawsuit unrelated to department work shall not be considered on-duty while traveling to, from, or appearing at the proceeding.

- B. Members shall charge such time against available leave credits when their appearance conflicts with their regularly scheduled shift.
- C. The department shall not pay the member's expenses, but the member may retain any witness fees and travel expense reimbursements received in accordance with the policies specified in Official Order No. 47, Section 47.2.

34.3.6. COMMUNICATIONS DURING A CIVIL LAWSUIT

- A. Except as authorized by this Order, members shall not communicate with an opposing party or attorney in a department related civil lawsuit or a civil lawsuit in which the department may become involved, without the approval of the Risk Management Section or the attorney representing the department or member at the department's expense.
- B. Members shall immediately return phone calls, emails, or other correspondence from the Risk Management Section or an attorney representing the department or member at the department's expense. Requests for information shall be answered on or before any deadline given by the requestor.
- C. Members shall not make public comment, whether to the media or otherwise, regarding a civil lawsuit involving the department. Persons requesting public comment shall be referred to the Public Affairs Section for comment in accordance with the policies specified in Official Order No. 20.
- D. Members shall not discuss communications to or from attorneys representing the department or the member with any other person except members of the Risk Management Section serving as a liaison with the attorneys.
- E. Members shall not engage in settlement negotiations, whether formal or informal, without the express authorization of the Director.

34.3.7. DEFENSE OF MEMBERS

- A. Members sued individually in connection with matters arising out of their employment with the department may be provided legal representation at the department's expense in accordance with applicable Civil Service Rules and applicable collective bargaining agreements.
- B. The Director has sole discretion to determine which attorney, agency, or law firm will represent the department or its members at the department's expense. The department will not pay legal fees or other related expenses for legal representation employed by members without the prior, written approval of the Director.
- C. The department will not provide legal counsel, nor will it reimburse lawsuit-related expenses, for members sued for reasons not arising out of their employment with the department.
- D. The department may indemnify an employee for the payment of any judgment, settlement, reasonable attorney fees, or court costs in accordance with applicable Civil Service Rules and applicable collective bargaining agreements.

34.4 CRIMINAL CASES, CIVIL INFRACTION HEARINGS, AND ADMINISTRATIVE PROCEEDINGS

This section provides policies and procedures for accepting and complying with service of legal process and other issues related to criminal cases, civil infraction hearings, and administrative proceedings.

34.4.1. SUBPOENAS--CRIMINAL CASES

A. Acceptance of Subpoenas

- (1) Except when addressed to the department or the Director, members are permitted to receive subpoenas on behalf of themselves or other members in criminal cases.
- (2) When members receive a subpoena, they shall record the subpoena in accordance with work site policy and notify the affected members in accordance with work site policy.
- (3) When there is no work site policy on the disposition of a particular subpoena, members shall seek guidance from their supervisor.
- (4) When a subpoena is addressed to the department or the Director, members shall direct the party attempting to serve the subpoena to do so at Headquarters during normal business hours.

B. Subpoenas Commanding Appearance

- (1) Members who know of a subpoena requiring their appearance in any criminal proceeding within the state of Michigan shall appear at the time and place listed in the subpoena, unless the member is excused by the court having jurisdiction, the party who issued the subpoena, or is on-call in accordance with Official Order No. 47.

C. Subpoenas Commanding Appearance at Out-of-State Proceedings.

- (1) Members shall not appear outside of Michigan pursuant to a subpoena without the prior authorization of the Director. Members receiving a subpoena from an out-of-state entity shall immediately notify their work site commander.
- (2) The subpoenaed member's work site commander shall evaluate the necessity of the member's appearance and, if deemed necessary, shall seek approval through channels from the Director. If authorized to appear by the Director, the member shall appear as if properly subpoenaed by an entity in Michigan.

D. Subpoenas for Records or Evidence

- (1) Members subpoenaed to produce department records or evidence by the prosecutor in the case shall comply with the requirements of the subpoena. Members subpoenaed to produce department records or evidence by another party shall notify the prosecutor and produce the records or evidence in consultation with the prosecutor in the case.

- (2) Members subpoenaed to produce department records or evidence by the prosecutor in the case shall comply with the requirements of the subpoena.
- (3) Members subpoenaed to produce department records or evidence by another party shall notify the prosecutor in the case and shall produce those records directly related to the case (e.g., original and supplemental incident reports, traffic citations, department forms) in consultation with the prosecutor in the case.
- (4) Subpoenas for records not directly related to the case (e.g., officer daily reports, unrelated incident reports, confidential informant records) shall be forwarded to the Records Resource Section for processing, unless otherwise directed by the prosecutor.

34.4.2. DISCOVERY REQUESTS--CRIMINAL CASES

- A. Discovery requests in criminal cases shall only be processed by local work sites when requested by the prosecutor in the case. Members receiving a discovery request from any other entity shall immediately notify the prosecutor and assist the prosecutor in responding to the request.
- B. Members receiving a discovery request from a prosecutor shall provide the requested information, documents, or evidence.
 - (1) Requests for department records not originated by or maintained at the local work site shall be forwarded to the Records Resource Section.
- C. Members shall not process discovery requests from criminal defense attorneys.
 - (1) Members receiving a discovery request from a criminal defense attorney shall refer the attorney to the prosecutor.
 - (2) This section does not apply to the Records Resource Section acting in accordance with the Freedom of Information Act.
- D. Requests to Preserve Evidence
 - (1) Members shall comply with requests to preserve evidence made by any party and shall notify their work site commander of the request.
 - (2) If the request came from someone other than the prosecutor or attorney representing the department, the member shall immediately notify the prosecutor or attorney representing the department.

34.4.3. SUBPOENA OR NOTICE TO APPEAR--CIVIL INFRACTION PROCEEDINGS

- A. Acceptance of Subpoenas and Notices to Appear
 - (1) Except when addressed to the department or the Director, members are permitted to receive subpoenas and other notices to appear on behalf of themselves or other members in civil infraction proceedings.

- (2) When members receive a subpoena or notice, they shall record the subpoena or notice in accordance with work site policy and notify the affected members in accordance with work site policy.
- (3) When there is no work site policy on the disposition of a particular subpoena or notice, members shall seek guidance from their supervisor.
- (4) When a subpoena or notice is addressed to the department or the Director, members shall direct the party attempting to serve the subpoena or notice to do so at Headquarters during normal business hours.

B. Subpoenas and Notices Commanding Appearance

In cases related to department work, members shall honor all subpoenas and notices for which they have knowledge by appearing at the time and place listed in the subpoena or notice, unless the member is excused by the court having jurisdiction, the prosecutor in cases scheduled for a formal hearing, or is on-call in accordance with Official Order No. 47.

- (1) Civil infraction hearings shall only be attended by the member signing the citation unless the prosecutor requests the attendance of other members at a formal hearing.

34.4.4. SUBPOENA OR NOTICE TO APPEAR--ADMINISTRATIVE PROCEEDINGS

A. Acceptance of Subpoenas and Notices to Appear

- (1) Except when addressed to the department or the Director, members are permitted to receive subpoenas and other notices on behalf of themselves or other members in administrative proceedings.
- (2) When members receive a subpoena or notice, they shall record the subpoena or notice in accordance with work site policy and notify the affected members in accordance with work site policy.
- (3) When there is no work site policy on the disposition of a particular subpoena or notice, members shall seek guidance from their supervisor.
- (4) When a subpoena or notice is addressed to the department or the Director, members shall direct the party attempting to serve the subpoena or notice to do so at Headquarters during normal business hours.

B. Subpoenas and Notices Commanding Appearance

- (1) Implied Consent Hearings--Department of State
 - a. Members shall notify their supervisors immediately upon receiving a notice to appear for an Implied Consent Hearing. Members shall appear as directed in the notice and are considered on-duty while appearing.

(2) Office of Hearings and Administrative Oversight--Department of State

- a. Members receiving a notice from the Office of Hearings and Administrative Oversight shall notify their supervisor and shall attend the hearing as directed if the supervisor determines that work site staffing levels will not be unduly affected by the members' attendance. Members shall be considered on-duty while appearing.
- b. Members shall not appear at the Office of Hearings and Administrative Oversight on overtime status at any location without obtaining prior approval through channels from their bureau or office commander.

(3) Civil Service Hearings

- a. Members shall appear as directed when subpoenaed for a Civil Service Hearing.
- b. Members receiving such a subpoena shall immediately notify the Human Resources Division.
- c. Members shall be granted administrative leave for the hearing and travel time which conflicts with the member's regular shift.

(4) Professional Disciplinary Proceedings

- a. Members shall appear as directed when they receive a subpoena or other notice to appear for disciplinary proceedings concerning a state-issued professional license (e.g., medical licenses, private investigator licenses, licenses to practice law, Judicial Tenure Commission proceedings).
- b. Members shall be considered on-duty while appearing when their appearance is requested as a result of the member's employment with the department. When their appearance is not requested as a result of their employment with the department, members shall use available leave credits when appearing conflicts with their regularly scheduled shift.

(5) Other Administrative Hearings

- a. Members requested to appear in other administrative hearings arising out of their employment with the department (e.g., Liquor Control Commission hearings, labor arbitration hearings for another agency) shall notify their supervisor and shall appear as directed, if their supervisor determines that work site staffing levels will not be unduly affected by the members' attendance. Members shall be considered on-duty while appearing.

34.4.5. COMMUNICATIONS DURING A CRIMINAL CASE

- A. Members shall respond to all communications from the prosecutor as soon as practical. Requests for information shall be answered on or before any deadline given by the prosecutor.
- B. Members may be contacted by a defendant, defendant's attorney, or defendant's investigator to talk about the case. Members are not required to talk to such individuals prior to testifying in court and shall not do so unless the member contacts the prosecutor assigned to the case and provides an opportunity for him or her to be present at the time of the interview.

- C. All communications with the public, including the news media, shall be in accordance with the policies outlined in Official Order No. 20. Questions regarding communications with the media regarding a criminal case shall be referred to the Public Affairs Section.
- D. Members may be contacted by the prosecutor or defense attorney to discuss a defendant pleading to a lesser charge in a criminal case. Members shall not become involved in these negotiations and shall not provide advice or recommendations on any proposed plea bargain or reduction of charges.

34.5 PROCESSING ADMINISTRATIVE RULES AND GUIDELINES

This section establishes policy and procedures regarding promulgation of administrative rules and guidelines, and shall be adhered to by all divisions, districts, and commissions with rule or guideline promulgation authority.

34.5.1. MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES (MOAHR)

- A. The MOAHR is housed within the Department of Licensing and Regulatory Affairs and has the responsibility for ensuring that all rules and guidelines processed by state agencies are done so in accordance with the Administrative Procedures Act, [MCL 24.201 - 24.315](#).
- B. All communication, oral and written, between members and the MOAHR shall be communicated to the MOAHR through the department's Regulatory Affairs Officer (RAO), unless prior approval for direct communication with the MOAHR is approved by the RAO.

34.5.2. REGULATORY AFFAIRS OFFICER (RAO)

- A. [MCL 10.151](#) requires that each state agency appoint a RAO. The department's RAO shall be a member of the Executive Operations appointed by the Director.
- B. The RAO shall coordinate the department's rulemaking responsibilities, compile the department's Annual Regulatory Plan, and assist divisions, districts, or commissions with the promulgation of rules and guidelines. The RAO shall serve as a liaison between divisions, districts, or commissions with promulgation authority and the MOAHR and shall ensure that all MOAHR forms are made available.
- C. The department's RAO shall review all proposed rules and guidelines, including changes and rescissions, for proper statutory authority and compliance with applicable laws and rules or procedures established by the MOAHR.

34.5.3. PROCESSING ADMINISTRATIVE RULES AND GUIDELINES

- A. All members shall follow the Administrative Procedures Act and this section during the rule and guideline promulgation process. The Administrative Procedures Act details definite procedures that shall be followed in specific order to effect the valid adoption of administrative rules and guidelines.
- B. Any division, district, or commission planning to promulgate a new rule or guideline, or revise or rescind an existing rule or guideline, shall contact the department's RAO for the proper format and other guidance, prior to beginning the promulgation process.
- C. Other than those meetings necessary to identify the need to promulgate, revise, or rescind a rule or guideline, no meetings shall be held to plan, discuss, or draft the content of affected rules or guidelines until the RAO has been contacted and the approval to process rules has been granted by the MOAHR.

- D. All forms, rule drafts, and other written materials prepared during the rule and guideline promulgation process shall be submitted to the MOAHR through the department's RAO. Materials shall not be submitted directly to the MOAHR without the approval of the Legal Resources and Education Unit.
- E. Divisions, districts, and commissions shall not begin drafting rules until a Request for Rulemaking (RFR) has been approved by the department's RAO and the MOAHR.
- F. Once a RFR has been approved, rules may be drafted by the division, district, or commission with promulgation authority. Drafts shall be submitted to the department's RAO for approval within nine months of the approval of the RFR. If rule drafts cannot be submitted within nine months, the promulgating division, district, or commission shall seek an extension from the department's RAO. After approval, the department's RAO shall forward the draft rules to the MOAHR for additional approvals.
- G. Once the department has received approval from the MOAHR, no changes may be made to the rules until after the public hearing on the rules.
- H. All public hearings required by the Administrative Procedures Act shall be held at a location that provides adequate seating and visibility for the anticipated audience.
 - (1) Public hearing locations shall be handicap accessible.
 - (2) Whenever possible, public hearings shall be held at state-owned facilities.
 - (3) All persons attending the public hearing, except members attending as observers or moderators, shall be required to sign in using the Administrative Rules Public Hearing Sign-In Sheet, EX-017.
 - (4) All hearings shall be recorded using an audio-visual recording device.
- I. Public hearings shall be moderated by at least one member of the promulgating division, district, or commission with knowledge of the subject matter of the rules. Moderators shall not engage in debates but may clarify proposed rules if they wish. Moderators shall take testimony from those wishing to speak or those wishing to provide written testimony.
- J. Testimony and public concerns expressed at the public hearing shall be considered along with written testimony submitted by the deadline listed in the public hearing notice, when determining whether changes are required to the proposed rules. The department's RAO shall submit the final draft proposed rules with any post-hearing changes to the MOAHR for formal review and certification.
- K. Post-hearing (final) rules become effective and are enforceable only after they have been approved by the state legislature and filed with the Secretary of State.
 - (1) Rules filed with the Secretary of State must be accompanied by a Certificate of Adoption signed by the Director. The RAO shall prepare and submit the Certificate of Adoption.
 - (2) The RAO shall ensure that the promulgating division, district, or commission is notified when approval has been granted.

34.5.4. ANNUAL REGULATORY PLAN

- A. The Administrative Procedures Act requires the department to provide the Legislature with a yearly report summarizing planned changes to rules for which the department has promulgation authority. The Annual Plan must cover the period July 1 of the current year through June 30 of the following year.
- B. Unless otherwise directed by the RAO, each division, district, or commission with rule promulgation authority shall summarize its plans for the upcoming regulatory period using the current version of department Memorandum Stationary, UD-040. The report shall be forwarded to the RAO on or before June 15 each year.
- C. Unless otherwise directed by the RAO, reports submitted by divisions, districts, or commissions shall contain at least the following information concerning their rule promulgation authority:
- (1) A statement identifying rules reasonably expected to be processed during the plan period, including those already being processed at the time the plan period begins. Rules to be processed include those that are to be changed and rules to be newly promulgated during the plan period.
 - (2) A statement identifying any rules that are obsolete or superseded and can reasonably be expected to be rescinded during the plan period.
 - (3) A statement identifying mandatory rule promulgation authority not exercised.
 - (4) A statement identifying the rules that are most problematic to industry and could be reviewed to determine the most business-friendly method of regulation. This statement shall also contain the following information:
 - a. Whether there is a continued need for the rules.
 - b. A summary of any complaints or comments received from the public concerning the rules.
 - c. The complexity of complying with the rules.
 - d. Whether the rules conflict with or duplicate similar rules or regulations adopted by the federal government or local units of government.
 - e. The date of the last evaluation of the rules and the degree, if any, to which technology, economic conditions, or other factors have changed regulatory activity covered by the rules.
 - (5) A brief but explicit statement explaining the rationale for each rule change or rescission listed in the plan. This statement shall also contain the name of each act and specific sections of the Michigan Compiled Laws granting rule promulgation authority for the rules to be changed or rescinded.

Examples include statutory changes requiring rule changes, reorganization orders affecting rules, changes in practice or procedure that should be reflected in rules to ensure efficient implementation, or improvements in technology necessitating rule revision.

- D. The RAO shall compile reports submitted by each division, district, or commission into a department Annual Regulatory Plan.
- (1) The RAO shall review each plan submitted to ensure that each change, rescission, or promulgation has an appropriate statutory basis, and that each plan provides appropriate detail for legislative review. Plans not meeting minimum standards shall be returned to the appropriate division, district, or commission for revision.
 - (2) The RAO shall submit the plan to the MOAHR on or before June 30 of each year.

34.5.5. RECORDS RETENTION

A. Annual Regulatory Plan

The Legal Resources and Education Unit shall maintain copies of the department's three most recent Annual Plans.

B. Guidelines

- (1) Unless otherwise dictated by statute or regulation, divisions, districts, or commissions shall maintain copies of all guidelines and supporting documentation while the guidelines remain in effect.
- (2) Copies of guidelines no longer in effect and supporting documentation shall be maintained for three years.

C. Administrative Rules

Divisions, districts, or commissions shall maintain copies of all promulgated rules and supporting documentation issued during the current year plus the previous three years. The records maintained by divisions, districts, or commissions shall include at least the following:

- (1) Request for Rulemaking approved by the MOAHR
- (2) Regulatory Impact Statement and Cost-Benefit Analysis approved by the MOAHR
- (3) Public Hearing Notice
- (4) Proofs of newspaper publication of the Public Hearing Notice
- (5) Administrative Rules Public Hearing Sign-In Sheet(s), EX-017
- (6) Written testimony or comments submitted by interested parties
- (7) Recordings of the public hearing
- (8) Agency Report to the Joint Committee on Administrative Rules
- (9) Final rule draft certification by the MOAHR
- (10) Final rule draft certification by LSB
- (11) Certificate of Adoption
- (12) Any other correspondence or documentation the division/district deems necessary.

34.6 REVISION RESPONSIBILITY

Responsibility for continuous review and revision of this Order lies with Executive Operations.

DIRECTOR