



TITLE	POLICY NUMBER	
Subpoena, Summons, Complaint, Claim, and Motions Policy	DCS 06-03	
RESPONSIBLE AREA	EFFECTIVE DATE	REVISION
General Legal Counsel	September 24, 2018	3

## **I. POLICY STATEMENT**

The Department of Child Safety (DCS) and its employees may be named as defendants or subpoenaed to produce documents or testimony in both federal and state courts. The goal of this policy is to ensure that proper service of any subpoena, summons, complaint, claim, or motion is effectuated.

A court may impose sanctions on the Department or on an individual for failure to comply with the requirements of any subpoena, summons, complaint, claim, or motion.

## **II. APPLICABILITY**

This policy applies to all current and former Department employees who are identified in a subpoena, summons, complaint, claim or motion related to the course and scope of their DCS employment.

## **III. AUTHORITY**

[A.A.C. R2-5A-105](#)

Records

[A.R.S. § 8-807](#)

DCS information; public record; confidentiality; violation; classification; definition

[A.R.S. § 13-4071 et seq.](#)

Subpoena; issuance; duty of clerk

<a href="#">A.R.S. § 39-121.01</a>	Definitions; maintenance of records; copies; printouts or photographs of public records; examination by mail; index
<a href="#">A.R.S. § 41-151.18</a>	Definition of records
<a href="#">Rule 4 Summons</a>	Arizona Rules of Civil Procedure
<a href="#">Rule 4.1 Service of Process Within Arizona</a>	Arizona Rules of Civil Procedure
<a href="#">Rule 34 Subpoenas</a>	Arizona Rules of Criminal Procedure
<a href="#">Rule 45 Subpoena</a>	Arizona Rules of Civil Procedure
<a href="#">Rule 52 Subpoena</a>	Arizona Rules of Family Law Procedure
<a href="#">Rules of Procedure for the Juvenile Court</a>	
<a href="#">Federal Rules of Civil Procedure</a>	Title II: Commencing an Action: Service of Process, Pleadings, Motions and Orders

#### **IV. DEFINITIONS**

DCS Information: All information the Department gathers during the course of an investigation from the time a file is opened and until it is closed. DCS information does not include information that is contained in child welfare agency licensing records.

Department or (DCS): The Arizona Department of Child Safety.

Employee: For the purpose of this policy, employee means all DCS current and former full-time, part-time, paid employees; students; interns; and volunteers.

Notice of Claim: A statement that must be filed on a state entity or public employee before certain lawsuits may be filed and pursued against a state entity or employee (civil suits for money damages for claims arising under state law). It must contain facts sufficient to permit the public entity or public employee to understand the basis upon which liability is claimed, as well as a specific amount for which the claim can be settled and facts supporting that amount.

Complaint: A formal pleading containing the claims made.

Subpoena: A document issued by the clerk of court that requires a person to appear and provide testimony and/or to produce documents relevant to a pending case.

Subpoena Duces Tecum: A subpoena that commands the production of specified evidence in a person's possession.

Summons: A document issued by the clerk of court that is served along with a copy of a pleading and which notifies the served party of the time within which the party must appear and defend.

## V. POLICY

- A. Employees who receive a subpoena or summons in a court proceeding or administrative matter affecting DCS shall notify their supervisor and the Office of the Attorney General. They shall notify their program manager and/or program administrator if the subpoena pertains to a high-profile case or other unique situation.
- B. An employee who is identified in a valid subpoena to appear is required to attend the trial, hearing, deposition, investigative interview, or pre-hearing interview on the date indicated unless excused by the court, the individual issuing the subpoena, or advised not to attend by the Office of the Attorney General. If an employee believes they have good cause to object to the subpoena, the employee will provide General Legal Services at [Litigation@azdcs.gov](mailto:Litigation@azdcs.gov) with a copy of the subpoena and a description of their objections (a list of valid reasons may be found below in section VI(B)(1)(b).) General Legal Services will submit any valid reasons to the Attorneys General Office to request a valid objection letter.
- C. When a subpoena includes a request to provide records at the hearing, the records must be redacted. If the order states that the records are to be wholly or partially unredacted, the recipient of the subpoena will advise General Legal Services at [Litigation@azdcs.gov](mailto:Litigation@azdcs.gov) for assistance.
- D. If a summons indicating that a lawsuit has been filed against DCS and/or the Director, an employee designated by the Director has the authority to accept service for the Director. The employee designated by the Director shall:

1. ensure that the Director, General Counsel, General Legal Services, and the Office of the Attorney General are advised of the action as soon as possible;
  2. maintain a log of all summonses, complaints, subpoenas, or claims served on the Department and/or the Director.
- E. If DCS is named as a defendant, General Legal Services shall notify the Attorney General's office and the Program Administrator for Legal Services. General Legal Services will copy the Deputy Director of Field Operations on all litigation hold notices. Notification enables DCS to:
1. remain apprised of all litigation affecting Department operations;
  2. notify other state departments when that department is affected;
  3. ensure that the named employee is in fact the correct person to supply the information being sought; and
  4. arrange coverage during the employee's absence, if applicable.
- F. The Department shall scrupulously protect the personal information, such as home address and personal contact information, of current and former employees. DCS shall not voluntarily disclose such information to a process server, or any other individual who seeks to serve a notice of a claim/summons/complaint, unless the subpoena specifically requires disclosure of the former employee's personal information or a valid court order authorizing the release of this information is received by the Office of General Legal Counsel.
- G. To the extent possible, the Office of General Legal Counsel will notify a former employee when a court order is received requesting their personal contact information. The Office of General Legal Counsel will be available to former employees for questions regarding this policy.

## **VI. PROCEDURES**

### **A. Notices of Claims/Summonses/Complaints**

If a process server or any other individual seeks to serve a notice of

claim/summons/complaint on the Department or the DCS Director, service shall occur at the Central Office located at 3003 N. Central Avenue and shall only be accepted by employees assigned to the reception desk in Suite 108 at the aforementioned address or by the Program Administrator for General Legal Services.

If a process server or any other individual seeks to serve a notice of claim/summons/complaint on a DCS employee based on conduct within the course and scope of his/her employment, the DCS employee must be served personally at the office to which he or she is assigned. The employee who is served (or the person designated to accept service for the Director) shall:

1. immediately date-stamp the document(s);
2. immediately notify the Office of General Counsel and the Office of General Legal Services that a notice of claim/summons/complaint has been received by scanning a copy of the document(s) and emailing it to: [Litigation@azdcs.gov](mailto:Litigation@azdcs.gov). This notification shall include the manner in which it was served (i.e. personal service, email, postal mail, etc.) and the date on which it was served.
3. send the original notice of claim/summons/complaint through interoffice mail to Site Code C010-23, attention: Office of General Counsel.

Parties wanting DCS to accept service of a lawsuit on behalf of the State can only serve by delivering the proper documents in person to the Director at 3003 N. Central Avenue, Phoenix, AZ 85012 or to the specific DCS employee at their assigned office.

#### B. Subpoenas for Personal Appearance

1. Employees who are served subpoenas related to the course and scope of their work must personally accept service and comply with the subpoena, unless an objection letter has been sent or a motion to quash has been filed.
  - a. If the employee being served works in a different office, the address of that office will be provided to the server.
  - b. Valid reasons to object to appear under the subpoena include:
    - i. scheduled leave that was already approved at the time the

subpoena was served. This includes annual, sick or FMLA leave;

- ii. scheduled conflict for other court appearance, particularly if a dependency matter;
  - iii. verification that the employee has no involvement or knowledge related to the matter identified in the subpoena.
- c. If the employee to be served is unavailable due to short or long-term leave, the responding staff may only inform the server that the employee is not available and is on leave. Under no circumstance shall a server be provided with any personal information about the reason for the employee's leave or the employee's home address.
  - d. If the employee to be served is no longer employed by the Department, the employee's contact information shall only be divulged to a process server, or any other individual seeking to serve a notice of claim/summons/complaint, if the subpoena specifically requires disclosure of the former employee's contact information or they present a valid court order authorizing the release of this information.
  - e. If the employee is not available to accept service, the responding staff shall NOT accept service for the employee but can advise the server a day and time in which the employee is reasonably expected to be present at the office.
  - f. For employees who work in a virtual office situation, employees will confirm a date at which they will come into the office to accept service.

## 2. Subpoenas for Children in DCS Care

Subpoenas may be accepted by DCS staff for children who are the subject of an open dependency case. All such subpoenas shall be forwarded to the assigned Assistant Attorney General to ensure the child's attorney and, if appointed, the guardian ad litem receives a copy.

Subpoenas may be accepted by DCS Victim Services Unit (VSU) staff for

children in DCS custody who are identified victims of a crime and to whom VSU are assigned to ensure their rights as a victim are protected. VSU staff will notify the child or youth's DCS Specialist that a subpoena has been served requesting the child/youth's appearance in court and/or records. VSU staff will notify the child/youth's assigned Assistant Attorney General to ensure the child's attorney and, if appointed, the guardian ad litem receives a copy.

VSU will not accept subpoenas for any other DCS employee. VSU will notify the entity issuing the subpoena of the DCS employee's office address so that employee may be personally served.

C. Subpoenas for DCS Information/Records

Any subpoena requesting DCS records should be personally served to the DCS Centralized Records Coordination Unit (CRCU), at 3003 N. Central Avenue, Suite 108, Phoenix, AZ 85012. Any court order requesting DCS records should be submitted to DCS/CRCU at P.O. Box 6030, Site Code C010-19, Phoenix, AZ 85005 or by email at [DCSRecordsRequest@azdcs.gov](mailto:DCSRecordsRequest@azdcs.gov).

If a subpoena or court order requesting DCS records is received by a DCS employee, he or she contacts the CRCU to process the request or court order as appropriate. CRCU determines whether the order or record request should be forwarded to the Office of the Attorney General's Division of Child and Family Protection at [DCSRecordsRequest@azag.gov](mailto:DCSRecordsRequest@azag.gov).

## VII. FORMS INDEX

[\*DCS Records Requests \(CSO-1036A\)\*](#)