

## **IDAHO STATE POLICE PROCEDURE**

### **02.04 TORT CLAIMS AND CIVIL CASES**

#### **I. General**

This procedure governs the actions of ISP employees served with tort claims or process in a civil legal action resulting from job-related activities, whether as defendants or as witnesses. While the civil legal action may result from conduct also generating an OPS investigation, a subpoena to appear before the tribunal or to produce records as ordered by the court, supersedes any administrative requirement to not discuss or disclose information regarding the relevant actions, and allows the employee to share information with the tribunal only.

#### **II. Tort Claims**

- A. Tort claims are written demands to recover money damages from a governmental entity or its employee as compensation for negligence, wrongful acts or omissions when acting within the course or scope of employment.
- B. Law enforcement is rife with opportunities for tort claims, particularly against commissioned officers, making adherence to training, ISP [Conduct Expectations](#) and procedures essential for your protection.
- C. This procedure applies to tort claims arising from law enforcement actions other than vehicle crashes. Guidance on tort claims resulting from vehicle crashes is found in ISP procedure [02.12 Use of State Vehicles/Fleet Management](#) Section O. Tort Claims Arising from Vehicle Crashes.
- D. When a tort claim is anticipated as the result of a law enforcement action (not a fleet crash), the officer or supervisor:
  - 1. immediately notifies the ISP Legal;
  - 2. provides all information regarding the incident to ISP Legal; and
  - 3. discloses information concerning the incident only in accordance with ISP Legal
- E. Any release of information is coordinated through ISP Legal.

#### **III. Employee as a Defendant in Civil Action.**

- A. ISP and its employees acting within the course and scope of their employment and without malice or criminal intent are entitled by law to defense and indemnification by the state of Idaho.
- B. When the Office of Administration Risk Management Program determines that the claims asserted fall outside the course and scope of employment:
  - 1. Risk Management sends the employee a “reservation of rights” letter; and
  - 2. the State does not provide defense or indemnification for claims for damages brought directly against the employee.

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- C. While employees have the right to choose independent private counsel at their discretion, they may wish to discuss this choice with their Major/Manager and ISP Legal before making a selection.
  - 1. Employees must inform their Major/Manager and ISP Legal of their choice to retain independent private counsel as early as possible.
  - 2. Cooperation between the employee's defense counsel, the employee, and ISP is imperative to prepare a successful defense.
- D. Only the Attorney General of the State of Idaho, his deputy attorneys general or private attorneys appointed as special deputy attorneys general are authorized to represent state agencies and their employees in actions brought against the agencies and their employees acting within the course and scope of their employment.
- E. Any ISP employee served with process in a civil legal action resulting from job-related activities must immediately send a copy of the complaint and any other documents received to [ISPLegal@isp.idaho.gov](mailto:ISPLegal@isp.idaho.gov) along with an explanation of the exact date and manner in which it was served to avoid missing important deadlines and to protect essential evidence. The employee's Major/Manager should be copied on the email.
- F. All records related to the events subject to the legal action must be preserved and cannot be destroyed even if they are scheduled for destruction under the ISP retention schedule.

### **IV. Employee as a Witness in Civil Action.**

- A. In the event an employee receives a civil subpoena to appear for a hearing or deposition, notify ISP Legal of the subpoena immediately so that:
  - 1. ISP Legal may determine whether either the employee or ISP has any potential liability in the case;
  - 2. civil fees and cost of appearance may be recovered from the subpoenaing party; and
  - 3. ISP may:
    - a. assist the employee with the subpoenaing attorney;
    - b. assist the employee with preparation for the hearing or deposition; and
    - c. accompany the employee to the hearing or deposition, if desired.
- B. [Rule 45\(b\)](#) of the Idaho Rules of Civil Procedure allow for recovery of one day's attendance and mileage allowed by law, if requested at the time the subpoena is served, unless the subpoena is issued by the Office of the Attorney General or any county prosecuting attorney.
- C. Any witness fee, per diem or lodging payment received by the employee under [Rule 45 \(b\)](#) of the Idaho Rules of Civil Procedure is receipted and deposited in the appropriate sweep account per ISP procedure [04.09 Receipts](#).

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- D. Division of Human Resources IDAPA [15.04.01.250.06.a](#) states that employees subpoenaed or required to appear as a witness in any judicial or administrative proceeding in a capacity connected with official state duty are not entitled to receive and retain compensation from the court:
1. the employee is considered on duty and paid accordingly;
  2. expenses (mileage, lodging, meals, and miscellaneous expenses) incurred by the employee are reimbursed by ISP under procedure [04.10 Travel](#).
- E. Employees under subpoena to appear to testify to matters that are not job-related must use appropriate leave time to do so.