



## CITY OF PORTLAND, OREGON



### Bureau of Police

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## Directive 220.40, Lawsuits and Claims Executive Summary

### Introduction

As a result of the 2011 Department of Justice (DOJ) investigation, the DOJ identified several directives in need of revision, including Directive 220.40, Lawsuits and Claims, to comport with the mutually agreed upon Settlement Agreement with the Portland Police Bureau. The DOJ listed this directive mainly due to its relevance to member accountability with regard to the receipt of a complaint, claim, tort claims notice, summons, or any other document (“legal documents”) and the process associated with ensuring that these legal documents are managed and forwarded to the appropriate offices.

### Public Comments

PPB did not receive much feedback regarding this directive, with the exception of one community member who was concerned that members are not explicitly prohibited from discouraging or retaliating against community members from filing or threatening to file a lawsuit. Pursuant to the revised Directive 310.20, Discrimination, Harassment, and Retaliation Prohibited, the Bureau expressly prohibits this type of conduct by any Bureau member, and an allegation of retaliation, if sustained, may lead to discipline.

We thank the individuals who took the time to provide feedback on this directive. All comments received during both review periods are attached at the end of this document. We have removed all personal information to protect the privacy of commenters.

### Conclusion

The Bureau revised this directive because the current version contained information no longer in practice. Unless a member is identified specifically on a legal document, members are not required to accept service from a process server, but will refer the server to the CAO. The updated directive shifts the responsibility to contact CAO from the member to the member’s supervisor. Members must still notify their supervisors of attempted service and supervisors are required to notify the CAO and the Professional Standards Division if the legal document pertains to the exercise of police powers or is related to a member’s employment with the City. The Bureau also simplified the notification process and removed other legal references in order to minimize confusion for members as to who could be notified when service is received.

The Bureau believes that the revised directive provides more clarity and enhanced guidance to its members; however, any suggestions to further improve this policy are welcome during its next review.

This directive will become effective on March 2, 2018.

Published on 2/1/18

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## **220.40, Lawsuits and Claims**

### **Policy:**

1. This directive establishes the procedure for Bureau members who become involved in a lawsuit or civil suit against the member or the City of Portland (“City”) regarding the exercise of police powers or related in any way to the member’s employment with the City.

### **Procedure:**

1. Lawsuits and Claims against the City of Portland or the Bureau.
  - 1.1. If a process server or other person attempts to serve the City or the Bureau with a complaint, claim, tort claims notice, summons, or any other document (“legal documents”) through a member, the member shall refer the process server or other person to the City Attorney’s Office (CAO). The member shall notify a supervisor regarding the attempted service as soon as practical, but no later than 24 hours after the attempted service.
2. Responsibilities of Members If Served with Legal Documents.
  - 2.1. Members who are personally served with legal documents shall inform their immediate supervisor as soon as practicable.
  - 2.2. Members shall deliver all original copies of legal documents to their immediate supervisor as soon as practicable and may retain a copy for their personal records.
  - 2.3. Members will not be called in from patrol or operations in the field to receive service of civil summons and civil complaints.
  - 2.4. Nothing in this directive requires a member to accept service of legal documents while on duty or while at a Bureau facility that the member reasonably believes is unrelated to police duties or employment.
3. Supervisor Responsibilities.
  - 3.1. Upon notification that a member under their direct supervision has received service of a legal document regarding the exercise of police powers or related in any way to the member’s employment with the City, they shall notify the CAO as soon as practicable.
  - 3.2. Provide the original documents to the CAO within 72 hours.
  - 3.3. Upon notification that a member under their direct supervision has received service of a legal document regarding the exercise of police powers or related in any way to the member’s employment with the City, they shall notify the Professional Standards Division (PSD) as soon as practicable.
  - 3.4. Ensure the member provided timely notice and documentation as described in Section 2.
  - 3.5. If requested by the process server or other person serving process, the supervisor shall inform that server of the next date and time the member is expected to be at the facility.

4. Filing Claims against the City for Property Loss.
  - 4.1. Members filing claims against the City for any loss, damage, or destruction of personal property shall submit appropriate documentation to the City Risk Management Division (CRMD).
  
5. Obligations Regarding Communications about Claims.
  - 5.1. When discussing any complaint, claim, tort claims notice, summons, or any other legal document with any process server, complainant, plaintiff, or member of the public, members shall not:
    - 5.1.1. Inform a person that the City will award compensation for injury or loss.
    - 5.1.2. Discuss the facts of any case or opine on potential liability.
  
  - 5.2. When a member becomes aware of any significant potential for a claim or lawsuit, and a police report would not otherwise be required, they shall write a report and include the known details of the incident, the names of all involved officers and other witnesses. The member shall forward a copy of the report to CRMD.

**History:**

- Originating Directive Date: 09/06/01
- Last Revision Signed: 02/01/18
  - Effective Date: 03/02/18
- Next Review Date: 09/02/18

Directive 220.40 – Website comments between 6/8/17-7/7/17 and 9/1/17 - 9/21/17

Date	Individual	Comment
2 <sup>nd</sup> UR		
9/14/17		<p>DIRECTIVE 220.40 LAWSUITS AND CLAIMS (previous comments made October 2014 and June 2017)</p> <p>We remain concerned that this policy does not prohibit officers from discouraging or retaliating against civilians who file or threaten to file lawsuits. Section 4 on "Public Claims" prohibits officers from informing the person they will get money, discussing the facts of the incident, or admitting fault, but should go further.</p> <p>We still feel it is good that officers are ordered to tell the complainant to contact the City about filing a claim (Section 4.1), but continue to believe it would be better if they suggest contacting an attorney prior to filing such a claim.</p> <p>We continue to appreciate the Bureau's policy that officers must accept notice of a lawsuit offered by a server (Section 2.3). However, the Bureau did not re-insert the previous requirement that officers cooperate with the City Attorney, Police Legal Advisor and Risk Management in defense against the lawsuit (Section 1.5.2 from the pre-2014 version). This could mean officers are free to admit fault and work to settle the complaint directly with the plaintiff. We doubt that's what the City has in mind when they removed that provision.</p> <p>Our final note here is that the option to contact the "Police Legal Advisor" has been struck. We're not even sure if that person was someone other than the City Attorney but it does seem appropriate to keep the City's legal matters in the appropriate areas of focus. As the Auditor gears up to hire a separate attorney (who can advise the Independent Police Review separately from the Bureau), it would be helpful for the public to understand whether the Bureau has its own legal advisor inside or outside the City Attorney's office.</p>
9/3/17		<p>The language change in this draft policy is nicely done. The edits on this policy improves the communication and is more defined. Well done.</p>

Directive 220.40 – Website comments between 6/8/17-7/7/17 and 9/1/17 - 9/21/17

1 <sup>st</sup> UR	
7/1/17	<p>DIRECTIVE 220.40 LAWSUITS AND CLAIMS (previous comments made October 2014)</p> <p>Our main concern on this policy remains that it does not caution officers against discouraging or retaliating against civilians who file or threaten to file lawsuits. Section 4 on "Public Claims" (formerly "Members of the Public") prohibits officers from informing the person they will get money, discussing the facts of the incident, or admitting fault, but should go further.</p> <p>It is good that officers are ordered to tell the complainant to contact the City about filing a claim (Section 4.1), though it would be better if they suggested contacting an attorney prior to filing such a claim.</p> <p>We appreciate the Bureau's policy that officers must accept notice of a lawsuit offered by a server (Section 2.4). However, the substantive change we found in the Directive is the removal of the requirement that officers cooperate with the City Attorney, Police Legal Advisor and Risk Management in defense against the lawsuit (former Section 1.5.2). This could mean officers are free to admit fault and work to settle the complaint directly with the plaintiff... but we doubt that's what the City has in mind.</p>