

\* Please note: This is a working draft of Directive 220.40. This is proposed language and the Bureau has not implemented any changes to the current policy at this time.

## **220.40, Lawsuits and Claims**

*2<sup>nd</sup> Universal Review: 4/15/19 – 5/15/19 (clean view)*

### **Refer:**

- ORS § 30.265 Scope of Liability of Public Body, Officers, Employees and Agents

### **Definitions:**

- Legal documents: For purposes of this policy, legal documents refer to all documents notifying a member that the member, the Bureau, or the City are defendants or potential defendants in a civil lawsuit or tort claim. Legal documents will not include subpoenas or public records requests, which are handled under a separate directive.

### **Policy:**

1. This directive establishes the procedure for Bureau members who become involved in a lawsuit against the member where they were acting within the course of their employment or duties.
2. Generally, a person may file a lawsuit against the City of Portland (“City”) and/or an individual member of the Bureau alleging claims related to actions a member took within the scope of a member’s employment or duties. Legal documents related to lawsuits can be served by a hired process server, a member of a Sheriff’s Department, or any other competent adult aside from the person suing (Plaintiff).
3. Rules for service of legal documents are different depending on the identity of the party being sued (Defendant). This directive guides Bureau member interactions with a process server or other person attempting service and sets forth the responsibilities of those members who are named as Defendants or potential Defendants.
4. For purposes of this policy and due to the fact that members do not have an “office” for purposes of office service, members must be personally served when they are individually named in litigation relating to actions within the scope of the members’ employment or duties. The Court Coordinator is not authorized to accept personal service of lawsuits for individually named members.

### **Procedure:**

1. Lawsuits Against the City of Portland or the Bureau.
  - 1.1. Where the City is a named defendant but no individual member is named:
    - 1.1.1. If a process server or other person attempts to serve a member with any complaint, summons or any other legal documents where the City is the only listed defendant, the member shall not accept the service and 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. The member may also notify the CAO of the attempted service.
  - 1.2. Where the Bureau is named as a defendant but no individual member is named:

\* Please note: This is a working draft of Directive 220.40. This is proposed language and the Bureau has not implemented any changes to the current policy at this time.

- 1.2.1. The following Bureau members are authorized to accept service when service is made on the Bureau as the named defendant:
    - 1.2.1.1. Precinct front desk staff;
    - 1.2.1.2. Central Precinct administrative support staff;
    - 1.2.1.3. Professional Standards Division (PSD) Lieutenant; or
    - 1.2.1.4. Administrative staff in the Chief's office.
  - 1.2.2. The designated member shall accept service and immediately contact the CAO's Office Administrator to notify them of the service and provide the following information: date of service and method of service (personal service, mail, etc.). The member served shall forward to the CAO any requested documents.
2. Lawsuits Against Individual Bureau Members.
- 2.1. Responsibilities of members when they are an individually named defendant and are served with legal documents.
    - 2.1.1. This directive pertains only to legal documents that relate to actions the member took during the scope of their employment or duties. Any legal documents in any case unrelated to a member's employment shall be handled at the discretion of the member.
    - 2.1.2. Service of process on an individual member can occur in a number of ways, including personal service, substitute service at the member's home or service by mail. Members shall accept service of legal documents presented or delivered to them when they are individually named as a defendant if it is related to actions the member took during the scope of their employment or duties regardless of where the service occurs (the service may occur at work while a member is in the field or at a precinct but may also occur when the member is at home or otherwise off-duty).
    - 2.1.3. The member served with legal documents or upon whom service of process has been attempted shall contact the CAO Office Administrator within 24 hours of receipt of service or the attempted service with the following information: name, Oregon Department of Public Safety Standards and Training (DPSST) identification number, date of service, and method of service (personal service, mail, etc.) or method of attempted service.
      - 2.1.3.1. The member shall forward all of the original documents served upon them to the CAO Office Administrator within 72 hours of initial contact. The member may retain a copy for their personal records.
    - 2.1.4. The member served with legal documents shall contact City Risk Management Division (CRMD) within 24 hours of receipt.
      - 2.1.4.1. If requested, the member shall forward to CRMD copies of any legal documents they request.
      - 2.1.4.2. The served member shall submit a written request (email is acceptable) to CRMD for defense and indemnification as soon as practicable, copying the PSD Claims Analyst.
3. Supervisor Responsibilities.
- 3.1. If a member is in the field when a process server seeks to serve the member, the supervisor shall call in that member out of the field to accept service, if call load and

\* Please note: This is a working draft of Directive 220.40. This is proposed language and the Bureau has not implemented any changes to the current policy at this time.

staffing allow. If the member is unable to return to the Bureau facility at that time, the supervisor shall inform the server of the next date and time the member is expected to be at the facility.

- 3.2. No supervisor or any other PPB member can accept service on behalf of another individually named defendant-member.
4. Member 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 CRMD.
5. Members Who Receive Claims Against the City for Property Loss.
  - 5.1. Members who receive claims from individuals who are alleging a claim against the City for any loss, damage, or destruction of personal property or other claim shall immediately forward the documentation to the CRMD.
6. Obligations Regarding Communications about Lawsuits and Claims.
  - 6.1. 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:
    - 6.1.1. Inform a person that the City will award compensation for injury or loss.
    - 6.1.2. Discuss the facts of any case or state an opinion on potential liability.
  - 6.2. When police action results in damage to privately owned property, members shall write a police report and supervisors shall ensure the report goes CRMD.
  - 6.3. 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 the CRMD.

Provide feedback [here](#).

\* Please note: This is a working draft of Directive 220.40. This is proposed language and the Bureau has not implemented any changes to the current policy at this time.

## 220.40, Lawsuits and Claims

2<sup>nd</sup> Universal Review: 4/15/19 – 5/15/19 (redline markup)

### Refer:

- ORS § 30.265 Scope of Liability of Public Body, Officers, Employees and Agents

### Definitions:

- Legal documents: For purposes of this policy, legal documents refer to all documents notifying a member that the member, the Bureau, or the City are defendants or potential defendants in a civil lawsuit or tort claim. Legal documents will not include subpoenas or public records requests, which are handled under a separate directive.

### Policy:

1. This directive establishes the procedure for Bureau members who become involved in a lawsuit ~~or civil suit~~ against the member ~~or where they were acting within~~ the ~~City~~course of Portland (“City”) regarding the exercise of police powers or related in any way to the member’s~~their~~ employment ~~with the City~~or duties.
2. Generally, a person may file a lawsuit against the City of Portland (“City”) and/or an individual member of the Bureau alleging claims related to actions a member took within the scope of a member’s employment or duties. Legal documents related to lawsuits can be served by a hired process server, a member of a Sheriff’s Department, or any other competent adult aside from the person suing (Plaintiff).
3. Rules for service of legal documents are different depending on the identity of the party being sued (Defendant). This directive guides Bureau member interactions with a process server or other person attempting service and sets forth the responsibilities of those members who are named as Defendants or potential Defendants.
4. For purposes of this policy and due to the fact that members do not have an “office” for purposes of office service, members must be personally served when they are individually named in litigation relating to actions within the scope of the members’ employment or duties. The Court Coordinator is not authorized to accept personal service of lawsuits for individually named members.

### Procedure:

1. Lawsuits ~~and Claims against~~Against the City of Portland or the Bureau.
  - 1.1. Where the City is a named defendant but no individual member is named:
    - 1.1.1. If a process server or other person attempts to serve ~~the City or the Bureau~~a member with any complaint, ~~claim, tort claims notice,~~ summons, or any other document (“legal documents”) ~~through a member, where the City is the member~~only listed defendant, the member shall not accept the service and 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. The member may also notify the CAO of the attempted service.

\* Please note: This is a working draft of Directive 220.40. This is proposed language and the Bureau has not implemented any changes to the current policy at this time.

1.2. Where the Bureau is named as a defendant but no individual member is named:

1.2.1. The following Bureau members are authorized to accept service when service is made on the Bureau as the named defendant:

1.2.1.1. Precinct front desk staff;

1.2.1.2. Central Precinct administrative support staff;

1.2.1.3. Professional Standards Division (PSD) Lieutenant; or

1.2.1.4. Administrative staff in the Chief's office.

1.2.2. The designated member shall accept service and immediately contact the CAO's Office Administrator to notify them of the service and provide the following information: date of service and method of service (personal service, mail, etc.). The member served shall forward to the CAO any requested documents.

2. Lawsuits Against Individual Bureau Members.

~~1.2.2.1.~~ Responsibilities of Members If Served with Legal Documents-members when they are an individually named defendant and are served with legal documents.

~~1.1. Members who are personally served with legal documents shall inform their immediate supervisor as soon as practicable.~~

~~2.1.1. Members shall deliver~~This directive pertains only to legal documents that relate to actions the member took during the scope of their employment or duties. Any legal documents in any case unrelated to a member's employment shall be handled at the discretion of the member.

~~2.1.2. Service of process on an individual member can occur in a number of ways, including personal service, substitute service at the member's home or service by mail. Members shall accept service of legal documents presented or delivered to them when they are individually named as a defendant if it is related to actions the member took during the scope of their employment or duties regardless of where the service occurs (the service may occur at work while a member is in the field or at a precinct but may also occur when the member is at home or otherwise off-duty).~~

~~2.1.3. The member served with legal documents or upon whom service of process has been attempted shall contact the CAO Office Administrator within 24 hours of receipt of service or the attempted service with the following information: name, Oregon Department of Public Safety Standards and Training (DPSST) identification number, date of service, and method of service (personal service, mail, etc.) or method of attempted service.~~

~~1.2.1.1.2.1.3.1.~~ The member shall forward all of the original copies of legal documents to their immediate supervisor as soon as practicable and documents served upon them to the CAO Office Administrator within 72 hours of initial contact. The member may retain a copy for their personal records.

~~1.2. Members will not be called in from patrol or operations in the field to receive service of civil summons and civil complaints.~~

\* Please note: This is a working draft of Directive 220.40. This is proposed language and the Bureau has not implemented any changes to the current policy at this time.

~~2.1.4. Nothing in this directive requires a~~ The member to accept service of served with legal documents while on duty or while at a Bureau facility that shall contact City Risk Management Division (CRMD) within 24 hours of receipt.

~~2.1.4.1. If requested, the member reasonably believes~~ shall forward to CRMD copies of any legal documents they request.

~~1.2.1.2.2.1.4.2.~~ The served member shall submit a written request (email is unrelated to police duties or employment acceptable) to CRMD for defense and indemnification as soon as practicable, copying the PSD Claims Analyst.

### 2.3. Supervisor Responsibilities.

~~1.3. Upon notification that~~ If a member under their direct supervision has received is in the field when a process server seeks to serve the member, the supervisor shall call in that member out of the field to accept 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.

~~1.4. Provide the original documents, if call load and staffing allow. If the member is unable to return to the CAO within 72 hours.~~

~~1.5. Upon notification Bureau facility at 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.~~

~~1.6. Ensure the member provided timely notice and documentation as described in Section 2~~

~~2.1.3.1. If requested by the process server or other person serving processtime, the supervisor shall inform that the server of the next date and time the member is expected to be at the facility.~~

~~3.2. Filing~~ No supervisor or any other PPB member can accept service on behalf of another individually named defendant-member.

### 3.4. Member Claims against ~~Against~~ the City for Property Loss.

~~3.1.4.1. 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).~~ CRMD.

### 5. Members Who Receive Claims Against the City for Property Loss.

5.1. Members who receive claims from individuals who are alleging a claim against the City for any loss, damage, or destruction of personal property or other claim shall immediately forward the documentation to the CRMD.

### 4.6. Obligations Regarding Communications about Lawsuits and Claims.

\* Please note: This is a working draft of Directive 220.40. This is proposed language and the Bureau has not implemented any changes to the current policy at this time.

~~4.1.6.1.~~ 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:

~~4.1.1.6.1.1.~~ Inform a person that the City will award compensation for injury or loss.

~~4.1.2.6.1.2.~~ Discuss the facts of any case or ~~opine~~state an opinion on potential liability.

6.2. When police action results in damage to privately owned property, members shall write a police report and supervisors shall ensure the report goes CRMD.

~~4.2.6.3.~~ 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 the CRMD.

DRAFT

#1

COMPLETE

**Collector:** Web Link 1 (Web Link)  
**Started:** Saturday, September 15, 2018 4:40:57 PM  
**Last Modified:** Saturday, September 15, 2018 4:41:42 PM  
**Time Spent:** 00:00:45

---

Page 1

**Q1** Please provide feedback for this directive

COMMENTS ON PROFILING, ACCOUNTABILITY, AND OTHER DIRECTIVES SEPTEMBER 2018

To Chief Outlaw, Capt. Bell, Lieutenant Morgan, PPB Policy Analysts, Compliance Officer/Community Liaison Team, Community Oversight Advisory Board staff, US Dept. of Justice, Independent Police Review, Citizen Review Committee and the Portland Police Bureau:

Below are Portland Copwatch's comments on the Directives posted for review in September . We are very concerned that the PPB released SEVENTEEN Directives for review on the Saturday of Labor Day weekend, expecting meaningful feedback by September 16. Because we have made comments on all of these Directives in the past, this task was somewhat easier for us but still requires checking to see what changes were made in between comment periods. We continue to encourage the Bureau to post comments as they arrive so commenters might be able to build off others' ideas (de-identified is fine with us, though we are fine being identified). We point out that until recently, comments on Body Cameras were posted on the Bureau's website for everyone to read.

We make a few comments about the possible findings on misconduct allegations, below. We are glad that the Bureau moved away from trying to cut down the four possible findings to two, but continue to believe that the same findings should apply to deadly force cases. They should not just be "In Policy/Out of Policy," as there could be room for an "Insufficient Evidence" (aka "Not Sustained") finding in those cases. We did not see any reference to applying this concept to deadly force cases in the Bureau's published Directives memos, rather, Directive 336.00 still only includes the two findings previously being used.

In publishing the finalized 330 series in February, the Bureau claimed they clarified that the "Discipline Coordinator" is the same person as the "Review Board Coordinator." The Discipline Coordinator's role and position at the Professional Standards Division (PSD) is not made clear in Directive 335.00, though there is a brief mention in Section 2.1.1.1 that the person is in PSD. The term "Review Board Coordinator" is still used in Directive 336.00. So it seems no clarification actually happened.

Similarly, in previous comments we noted: "A general point of confusion is that many Directives refer to the Professional Standards Division and/or Captain, while others refer to the Internal Affairs Captain. Our understanding of the structure is that IA is part of PSD and there is a ranking member over all of PSD, not just IA. We hope the Bureau can clarify this point." The two terms are still used interchangeably among the Directives.

We also continue to believe that the review periods should be at least 30 days on both ends of the rewriting process so there is time for organizations who only meet monthly to weigh in. As we noted, this might include the BHU Advisory Committee, though they seem to have special dispensation to make comments and receive feedback above and beyond all other groups, as well as the Training Advisory Council, Citizen Review Committee, and if it ever begins meeting, the Portland Committee on Community Engaged Policing.

Although the Bureau has been putting out "redline" versions of the Directives when they are up for their second round of public comments, the final versions-- which frequently are significantly different from what was posted in round two-- do not indicate where changes were made, making comments on the policies extremely difficult when they come back up again as all of these have.

## Directive 220.40 Feedback

The Bureau did make some changes-- some of which are substantive-- based on PCW's comments, as noted below, although in once case the change reversed a policy PCW supported.

We continue to believe the Bureau should add letters to section headings (Definitions, Policy, Procedure) so that there are not multiple sections with the same numbers, and to enumerate the Definitions. Our comments below refer to the Procedure Section unless otherwise noted.

-----

### DIRECTIVE 220.40 LAWSUITS AND CLAIMS (previous comments made September 2017)

This Directive was entirely rewritten without the draft being put forward to the community for review. The Bureau's memo on its release states that the previous version did not reflect current practices.

The memo also describes our organization as "one community member" who raised concerns about the policy failing to prohibit officers from discouraging or retaliating against civilians who file or threaten to file lawsuits. The Bureau says those actions are covered in Directive 310.20 on retaliation; there is no reason not to cross-reference those guidelines here.

We suggested that a now-deleted section which ordered officers to tell the complainant to contact the City about filing a claim (previous Section 4.1) should suggest contacting an attorney prior to filing such a claim. Instead, the requirement has now been cut.

The revised Directive no longer requires officers to accept notice of a lawsuit if the lawsuit is (a) directed at the City / PPB and not the officer individually (Section 1), or (b) if it is not related to police business (Section 2.4).

We previously wondered why the Bureau did not re-insert a 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.

The new version says officers have to inform their Supervisors within 24 hours if the suit is directed against the City / PPB (Section 1.1) but only "as soon as practicable" if it is against them individually (Section 2.2). This seems odd since it's possible the City will have received the broader suit themselves but not necessarily one targeting the individual officer.

-----

### CONCLUSION

Once again we thank the Bureau for seeking for community input, and to the extent that some of our comments have been addressed, for taking our advice seriously. We repeat here our deep concern about publishing so many important policies at one time, during a holiday season. We continue our struggle to see a Bureau free from corruption, brutality and racism, which is the basis for our participating in this process. As noted before, while we don't always agree with the Bureau's reasons for rejecting certain recommendations, it is helpful to be receiving them.

Thank you for your time

--Portland Copwatch

**Q2** Contact Information (optional)

Name

**Portland Copwatch**

Email Address

**copwatch@portlandcopwatch.org**

---