

**AUSTIN PEAY STATE UNIVERSITY  
POLICIES AND PROCEDURES MANUAL**

Policy Number: 5:007	Supersedes Policy Number: 5:007
Date: January 24, 2007	Dated: <b>May 6, 1999</b>
Subject: Lawsuits Initiated Against a University Employee	Mandatory Review Date: January 24, 2012
Initiating Authority: Vice President for Legal Affairs & Strategic Planning	TBR Policy/Guideline Reference:
Approved:  President: signature on file	

**PURPOSE**

The purpose of this policy is to establish a procedure for use in situations where a lawsuit is initiated against an employee of the University for an act undertaken within the scope of that employee's duties.

**ACCEPTANCE OF SERVICE**

Normally, when a lawsuit has been filed, a law enforcement officer or an attorney will attempt to serve a summons and complaint setting out allegations against the defending party. Usually, the University, the State of Tennessee, and/or the Board of Regents are named as defendants; however, an individual may also be named.

When an individual is named, the person will usually be designated expressly or by implication as defending in the person's "official" or "individual" capacity. Sometimes the words "individual capacity" or "official capacity" follow the person's name on the complaint. In other cases, the paragraphs naming the parties will provide the designation.

Where the University, the State, the Board of Regents, or an individual in his or her official capacity is named, no one at the University should accept service of the lawsuit. The individual attempting service must be told that the Attorney General of the State of Tennessee is required to be served. State statutes prohibit anyone at the University from accepting service. If the complaint is silent as to the designation, the server is to be referred to the Attorney General. The employee should contact the Vice President for Legal Affairs and Strategic Planning prior to referring the server to the Attorney General.

The only two times an employee would accept service on a lawsuit are the following:

1. If the employee is named in an individual or personal capacity or if the complaint is based on a criminal act by the employee.

2. The litigation concerns a personal or private matter.

## NOTICE TO UNIVERSITY OFFICIALS

In any case, the employee shall immediately advise the Office of the Vice President for Legal Affairs and Strategic Planning of the service of any civil or criminal actions related to his or her employment. This notice should be in writing. If initial oral notice is given, the employee shall provide written confirmation as soon as possible, preferably within twenty four (24) hours.

## EMPLOYEE REPRESENTATION

There are two basic categories of legal actions: civil actions and criminal actions. The process for applying for legal representation is slightly different for each.

The Attorney General will make the final determination about whether he or she can provide representation for an employee. The Attorney General will not provide representation in a criminal matter. If the Attorney General cannot provide representation, the employee may request approval for reimbursement of private counsel. The employee must file this request with the Defense Counsel Subcommittee. The Subcommittee will approve reimbursement of private counsel in accordance with their policy and the State Board of Claims' policy.

### A. Civil Actions

Normally, the Attorney General will represent an employee of the State when a civil action for damages is filed against the employee for an act done in the course of the employee's assigned official duties. If the Attorney General is unable to represent the employee, he or she will notify the employee in writing and refer the employee to the Defense Counsel Subcommittee to request reimbursement of private counsel.

### B. Criminal Actions

If a criminal action is initiated against a state employee for an act apparently done in the course of the employee's assigned official duties, the employee shall immediately notify, in writing, his or her employing vice-president, or if the employee is a vice-president, the president of the university. The notified administrator will be responsible for initiating an investigation into the circumstances surrounding the alleged criminal activity. If the investigator finds that the employee was apparently acting under lawful orders or authority and in the course of his or her assigned duties, the vice-president, or where appropriate, the president, shall give the employee written authorization to pursue the reimbursement of private counsel fees through the Defense Counsel Subcommittee. After receiving the written authorization, the employee will have ten (10) days to apply for reimbursement of counsel fees through the Defense Counsel Subcommittee.

Employees who wish to submit requests for representation or approval of private counsel should contact the Office of the Vice President for Legal Affairs and Strategic Planning for further details.