

April 10, 2006

**LEGAL BULLETIN NO. 06- 3**  
**RESCINDS** Legal Bulletin 84-1

**SUBJECT:     Litigation Update**

### **LITIGATION GENERALLY**

The purpose of this Legal Bulletin is to update Legal Bulletin 01-1. This update is necessary because of recent changes in Missouri law. First, some background information on litigation will be presented followed by specific changes to the way litigation is handled by the Department.

Police employees today face a variety of challenges in carrying out their assigned duties. They frequently face rapidly evolving situations where immediate decisions are required in order to protect life and property. It is the job of the police to intentionally intervene in situations that are avoided by the general public. As a result of this atmosphere, police employees are also facing litigation more frequently than in the past. While no one can stop the filing of a lawsuit, there are some precautions that can be taken to help assure that the litigation ends favorably for the police.

A few items that might lessen the possibility of litigation are:

1.     Communicate as well as possible with the person or group you encounter. Within the guidelines established by Department policy, it is helpful to let people know why police action is being taken. In some instances this causes people to be less inclined to file a lawsuit.
2.     Make police reports as accurate as possible so that you will be able to remember the circumstances of the encounter even several years after the incident. In some cases, a lawsuit may be filed almost five (5) years after the incident, and in these cases it is sometimes difficult to remember all of the details of the incident without a good report.
3.     If you encounter a situation that seems to be a problem in terms of possible litigation, notify your supervisor and/or commander and the Office of General Counsel as soon as possible. Prior knowledge of a possible problem allows for the preserving of evidence, including air tapes and vehicle videotapes. It also allows for the timely collection of statements from possible witnesses for future use. Keep in mind that video and audiotapes are held only for one (1) year. If you believe that a tape may have recorded beneficial information, please contact the Office of General Counsel to arrange for a hold to be placed on the tape.
4.     When possible, try to include in police reports personal notes or quotes from the individual you encounter. If profanity is used, try to record that for the benefit of a possible future jury. Record any threats made by the individual, including any threats of future litigation.

5. Do not do anything or say anything that you do not want to be described or repeated in front of a court or jury. In some instances your actions are partially judged by the language you use and the actions you take. Be sure you can be proud of what you do and say.

Even using these guidelines, litigation can result. It is therefore critical that everything possible be done to prevail in the litigation. Along those lines, it might be somewhat comforting to know a brief history of litigation involving the Kansas City police over the past ten (10) years. At any one time, there are between thirty (30) and forty (40) cases involving the Board of Police Commissioners (Board), Department or Department members pending in state and federal courts. Historically, the Office of General Counsel has enjoyed a success rate of over 95%. In the past ten (10) years there has never been a final judgment entered against a Kansas City, Missouri Police Department employee as a result of his or her police related activity. In the past ten (10) years no Kansas City, Missouri Police Department employee has ever paid any money in connection with the trial or settlement of a lawsuit brought as a result of the police activities of the employee.

While our history is excellent, it is still very important that the protection of every employee, the Department and the Board be a team effort. Cooperation and integrity are the keys to success in defending litigation.

### **HANDLING OF DEPARTMENT LITIGATION**

On January 11, 2005, the Missouri Supreme Court handed down its decision in the case of *Wayman Smith III, et al. v. State of Missouri, et al.*, 152 S.W.3d 275 (Mo. 2005). That case was brought by the St. Louis Board of Police Commissioners and basically suggested that because the St. Louis Board of Police Commissioners was a state agency, claims and lawsuits against members of the St. Louis Police Department should be defended by the Missouri Attorney General's Office and any monies paid by way of settlements or judgments should be paid by the State Legal Expense Fund. The Missouri Supreme Court agreed with the St. Louis Board and so held. Because our Board is in exactly the same position as the St. Louis Board, the holding of the case applies to our Board and Department. This case essentially means that the majority of our litigation is being handled by the Missouri Attorney General and monies paid in settlements and judgments, if any, will be paid from both Department funds and from state funds. Under the provisions of the State Legal Expense Fund, the State of Missouri must cover any officer or employee of the State and pay any claim or final judgment rendered by a court of competent jurisdiction.

### **WHAT TO DO IF YOU GET SUED**

1. Civil lawsuits must be personally served. If you are approached by a process server or one appears at the station with a lawsuit to serve you, please take the paperwork and note the date and time you were served. If you are given a copy of a lawsuit at roll call (not good service), you may forward the copy to the Office of General Counsel with a notation as to how it was received.

2. Forward any lawsuit to the Office of General Counsel immediately with the notation as to when it was served. The courts impose deadlines for answering lawsuits and every day of delay means we are losing time within which to answer. Please retain a copy of the lawsuit for your personal records.

3. The Office of General Counsel will determine whether the lawsuit should be tendered to the Missouri Attorney General's Office or whether it will be handled by the Office of General Counsel.

4. After a lawsuit is served, it may be some time before you are contacted by any attorney. If you are contacted by an attorney other than the General Counsel and Associate General Counsel, please be sure that the attorney works for the Missouri Attorney General's Office. You should not talk to any other attorney, any insurance company representative or any member of the media concerning the lawsuit. If you would like to verify the identity of the attorney who has contacted you, you may feel free to call or email any member of the Office of General Counsel.

5. You can expect to be contacted to schedule a meeting concerning the lawsuit by either a member of the Office of General Counsel or the Missouri Attorney General's Office. You may also be contacted to attend a mediation in federal court. In all federal cases, mediation is ordered by the court.

6. Remember any time a member has contact with a citizen, including when involved in a vehicular accident while operating police equipment, a lawsuit may result. While a member involved in an auto accident may discuss their personal injuries with a representative of an insurance company or another lawyer, members should not discuss the circumstances surrounding the collision with anyone other than a member of the Office of General Counsel. Members who merely witness an incident or are dispatched to take a report are at times contacted by attorneys or insurance company representatives concerning the incident. Members should obtain a copy of the report they prepared before discussing the incident. If at any time the member believes that the attorney or insurance company is attempting to suggest that the member is somehow responsible or the Department liable, the employee should contact a member of the Office of General Counsel immediately.

Litigation is not pleasant but it does not have to be devastating. Early recognition of a problem and immediate preparation are two keys to being successful. Any questions about litigation may be directed to the Office of General Counsel.

Lisa S. Morris  
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All Civilian Supervisory Positions  
All Department Elements  
To be posted on all bulletin boards for two weeks.