DEPARTMENT OF CORRECTIONS
POLICIES AND PROCEDURES

Policy No.: DOC 1.1.9	Subject: **LEGAL ASSISTANCE FOR STAFF**	
Chapter 1: ADMINISTRATION AND MANAGEMENT		Page 1 of 3
Section 1: General Administration		Revision Date:
Signature: /s/ by Director 2/22/96		Effective Date: May 1, 1996

I. POLICY:

It is the policy of the Montana Department of Corrections to provide staff with legal advice and assistance specific to their needs in the management of facilities/programs.

It is the purpose of this policy to outline the system of assistance that will be available to staff in the event general counsel is required.

II. AUTHORITY:

53-1-201, MCA. Purpose of Department of Corrections

53-1-203, MCA. Power and Duties of Department of Corrections

2-9-305, MCA. Governmental Entity to be Joined as Defendant - Immunization, Defense, and Indemnification of Employees

III. DEFINITIONS:

None

IV. PROCEDURES:

The Department recognizes that qualified legal assistance is necessary to:

1) ensure operations, policies, and procedures are consistent with court decisions;
2) provide advice relating to statutory and court requirements that affect policy formulation; and
3) provide representation before courts or regulatory bodies.

Department staff will be provided with general legal advice in the performance of their duties, as well as legal representation in all legal actions arising from legitimate performance of those duties. Generally, legal concerns should be directed to the immediate supervisor or Department Management Team member.

A. <u>Availability of Counsel</u>

The Department's general counsel will generally be available for advice and consultation. In cases where such representation may constitute a conflict of interest, or there are other ethical or legal reasons to do so, the Department may retain other counsel, subject to applicable state regulations.

Staff may confer with Department counsel for any of the following reasons:

1. developing and evaluating Department policies and procedures
2. advising the Director of necessary adjustments in policy and procedure necessitated by a changing legal climate, including implementing court decisions relating to specific agency operations and inmate rights
3. evaluating unusual operational issues
4. evaluating and defending legal actions against the Department, a facility, or agency employees, including answering motions, preparing responses to interrogatories, and assisting in any other legal activity against Department staff for actions taken during the legal performance of their duties.

B. <u>Local Action</u>

Legal assistance will be provided in connection with litigation filed against the Department, a facility or an individual staff member. All actions filed against the Department, a facility or an individual staff member will be handled directly by the Department counsel in the central office. Any staff member who is served with legal process, or otherwise may require legal assistance as a result of the performance of

duties, must make a written request for such assistance to their immediate supervisor. Such requests must be accompanied with adequate background information and/or supporting documents to explain the reason for the assistance request. The Department Management Team member or other supervisor will report all incidents of apparent need for legal advice to the Professional Services Division Administrator, who will direct Department legal resources to that issue as needed. Should substantial evidence indicate the employee's conduct was illegal or outside the scope and course of employment, legal representation may be denied. If an employee is denied legal representation, a written reason for that decision will be provided to the employee. An employee may also retain private counsel in any legal matter to which they are a party.

C. <u>Employee Responsibility</u>

Employees are responsible for providing Department counsel with all documents, subpoenas, and other materials related to any legal action to which they are a part. Staff must cooperate in any inquiries, depositions, interrogatories, or other legal processes, provided their rights against self-incrimination are not implicated. Subject to applicable statutes and case law, the Department reserves the right to take administrative action against an employee in cases where an employee refuses to so cooperate.

V. CLOSING:

Questions concerning this policy shall be directed to the Professional Services Division Administrator.