



OFFICE OF THE SECRETARY

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SECRETARIAL DIRECTIVE

SUBJECT: Access to Facilities by Attorneys

NUMBER: 2022-15

SUPERSEDES: NEW

APPLICABILITY: Attorneys and their Agents, Department staff, and residents of Department facilities

REFERENCE: A.C.A. §§ 12-29-104, 25-43-103, 25-43-105, 25-43-108, 25-43-403; ACC AR 7.24 Resident Visitation; ADC AD 18-31 Inmate Visitation

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APPROVED: Original signature on file

EFFECTIVE DATE: 12/12/2022

I. **POLICY:**

As the executive head of the Arkansas Department of Corrections (Department), it is the responsibility of the Secretary of Corrections (Secretary) to administer the various rules, orders, or directives issued by the Department. The purpose of this directive is to establish consistent procedures governing access to Department facilities by attorneys and their agents for the purposes of conducting interviews, hearings, and meetings with individuals they are documented as representing, consistent with Department policies.

Attorneys of Record and their Agents are subject to all other Departmental policies and regulations governing the visitation of offenders that are not in direct conflict with the provisions outlined in this policy. In a situation of conflict, this directive shall take precedent.

II. **DEFINITIONS:**

- A. **Attorneys of Record.** For the purpose of this policy, Attorneys of Record are defined as members in good standing with the Arkansas Bar or members in good standing with any other state or federal jurisdiction who represent or are determining whether they are going to represent offenders incarcerated in the Arkansas Department of Corrections.
- B. **Agents.** Individuals who work on legal matters under the supervision of Attorneys of Record who represent offenders incarcerated in the Arkansas Department of Corrections, including but not limited to, law students, paralegals, legal assistants, investigators, social workers, and interpreters.
- C. **Facility.** For the purposes of this policy, Facility includes all secure correctional units and centers owned or contracted for the purpose of housing offenders and residents in the custody of the Department.
- D. **Intake Period.** The time following an offender's initial reception or arrival to a facility or center through their orientation phase.

III. PROCEDURES:**A. Attorney of Record Visitation General Procedures**

1. Attorneys of Record must submit a letter on their firm or agency's stationary indicating that they are a licensed attorney representing the offender they are visiting or are in the process of determining whether to represent the offender they are visiting. Attorneys of Record and their Agents must appear on an offender's visitation list pursuant to Department policy governing visitation.
2. In addition to the certification letter, Attorneys of Record must submit a list of offenders whom they represent annually following the anniversary of their first visit or whenever their client list changes, whichever is sooner.
3. Attorneys of Record will be required to undergo one (1) criminal history background check per year. The date and Facility the background check was conducted at must be noted in their visitation file in eOMIS and initialed by the employee who facilitated the check. Background checks may be conducted at the first Facility visited, and each year subsequently after the first check.
 - a. Attorneys of Record will only be required to undergo a background check once a year for access to all Facilities unless department staff determines an additional background check is necessary if there is a reasonable suspicion, such as pending criminal charges, professional conduct investigations, or other infractions warranting the need for an additional check within the same year.
 - b. Background checks must be conducted if the most recent existing background check in the Attorney of Record's visitation file is older than one (1) year.
4. Visits between a licensed Attorney of Record representing the offender or the designated Agent of an Attorney of Record will be permitted Monday through Friday between 8:00am and 4:30pm.
5. Arrangements for attorney and offender visitation must be made with the Warden, Center Supervisor, or their designee at least twenty-four (24) hours prior to the anticipated visitation.
6. Offenders are not allowed any visitors during the Intake Period including Attorneys of Record and Agents, unless authorized by the Division Director.
7. Agents Access to Facilities: Agents are permitted access to a Facility without the Attorney of Record present, provided the following conditions are met:
 - a. The Agent works under the supervision and authorization of an Attorney of Record.
 - b. The Attorney of Record provides the Warden, Center Supervisor, or their designee with a letter verifying the Agents identity and work status under their supervision at least three (3) business days prior to the Agent's initial visit. Letters requesting approval for Agent visitation must be on the firm or agency's stationary and include the Agents name, title, and date of birth.
 - i. Attorneys of Record are responsible for submitting a current written list of Agents to the Warden or Center Supervisor every ninety (90) days or as soon as possible should there be any changes to their Agent personnel.
 - c. Agents must be on the visitation list for offenders they are tasked with providing professional services to.
 - i. Agents are not permitted to provide professional services if they are on the visitation list of an offender for a personal relationship (either as a family member or friend) and must follow general visitation policy guidelines for such offenders.
 - d. Agents will be required to undergo one (1) criminal history background check per year. The date and Facility the background check was conducted at must be noted in their visitation file in eOMIS and initialed by the employee who facilitated the check. Background checks may be conducted at the first Facility they visit, and each year subsequently after their first check.
 - i. Agents who have been convicted of or pleaded nolo contendere to felonies or misdemeanors in federal or state courts, or who have pending criminal charges may be denied access to Facilities by the Warden or Center Supervisor.

8. Attorneys of Record and Agents visiting offenders must provide proper identification. Identification requirements include:
 - a. For Attorneys of Record: Valid photo identification.
 - b. For Agents: Valid photo identification and name appearing on an Attorney of Records list of approved agents.
9. All Facility personnel shall provide an Attorney of Record or Agent with their name, rank, and personnel number upon request.
10. Attorneys of Record or Agents who are denied access to a Facility will be notified in writing by the Warden or Center Supervisor of the reason(s) they are denied visitation. The Warden or Center Supervisor must also notify their Division General Counsel of the denial as soon as possible. If an Attorney of Record or Agent is determined to be ineligible for future visitation by Department personnel, notification of the decision citing the reason(s) for ineligibility will be sent via mail or email from the Warden or Center Supervisor to the Attorney of Record, and a copy will be sent to the Department's Legal Counsel, the appropriate Division Director, and Division Legal Counsel.

B. Day of Visitation Procedures for Attorneys and their Agents

1. Attorneys of Record and Agents must adhere to the all Department visitation and dress code policies to visit offenders inside a Facility.
2. Attorneys of Record and Agents are prohibited from wearing metal, including underwire in undergarments, that may prevent clearing security devices such as metal detectors. Any metal required for a visit with an offender must be placed in a basket to clear the x-ray machine in the entry building.
3. Correctional staff may maintain visual observation and will provide as much privacy as possible to ensure confidentiality during the offender's visitation with their attorney.
4. Attorneys of Record and their Agent's information will be entered into eOMIS to document visit information on each visit, including identification information and any other relevant information related to the visitation.
5. A private visitation area will be provided upon request to ensure privileged communication between Attorneys of Record or Agents and their client. However, this area is subject to general supervision to ensure the security and safety of the Facility and its operations.
6. Attorneys of Record and Agents are only permitted to bring physical documentation related to their client's case. If the visit necessitates additional material beyond what is permitted in Department visitation policies, a request must be made in writing to the Division Director. Any appeals to a denied request may be sent in writing to the Secretary via the Chief Legal Counsel.
7. Legal papers and documents provided to offenders by their Attorney of Record or Agents may be retained by the offender only if permitted pursuant to Department policy.
 - a. Legal papers and documents are subject to inspection for contraband following the visit. Sealed envelopes will be opened for inspection in the presence of facility staff. However, their contents will not be read or copied by Facility staff.
 - b. Personal letters must be delivered through the normal offender mail process and shall not be delivered through Attorneys of Record or their Agents during a visit. Violations of this provision may result in termination of visitation rights to any Facility for a one (1) year period and notification to the relevant authorities.
8. Electronic devices such as cell phones, tablets, or laptops are not permitted inside any Department facility unless authorized in writing by Division Director or their designee. The Department may provide equipment to play videos, or otherwise display material, upon request. The Department bears no responsibility for lost or stolen items.

C. Video Visitation.

1. Video visitation may be utilized by Attorneys of Record and Agents for visits with offenders when in person visitation is not possible.
2. Attorneys of Record and Agents must adhere to the applicable provisions in this directive for video visitation including the scheduling and registration requirements.
3. Video visitation may be subject to monitoring or recording for Facility security purposes.

D. Complaints and Exceptions

1. Attorneys of Record who have complaints about access to Facilities can contact the appropriate Division Director. If the matter is not resolved to their satisfaction, Attorneys of Record can make an appeal to the Secretary.
2. Attorneys of Record that are not on an offender's visitation list at the time of their visit may be granted an exception by the Warden or Center Supervisor to visit with their client so long as they provide an engagement letter on their firm or agency's letterhead explaining that they are the offenders designated representative.
3. Exceptions to these provisions may only be granted by the Secretary or the Division Director and will be documented in writing.

E. Emergency Cancellation

1. If an emergency exists within the Facility, the Warden or Center Supervisor may suspend visitation by Attorneys of Record and their Agents at their discretion until the Facility is determined to be safe and secure.
2. Visitation to Facilities may be suspended across a division at the discretion of the appropriate Division Director or across all Department Facilities by the Secretary if emergency circumstances arise that may warrant the need for such a suspension of visitation.

F. Contact Information

1. General issues or inquiries may be directed to the Department's Chief Legal Counsel at Office of the Secretary at the following:

Phone: (501) 682-3309

Address: 1302 Pike Avenue, North Little Rock, AR, 72114