

# JAIL BULLETIN

NUMBER 116

FEBRUARY 1995

The *Jail Bulletin* may be used as a supplement to your jail in-service training program if officers study the material and complete the attached "open book" quiz. The Bulletin and quiz may be reproduced for use by your staff. **We welcome any material you would like to contribute to the Bulletin.**

## ELEMENTS OF LITIGATION & PROPER COURTROOM DEMEANOR

Below are the significant steps in the process of litigation. Keep in mind it is a lengthy process and what is listed below is only a "barebones" outline of what is a complicated proceeding.

1. **PLAINTIFF'S COMPLAINT.** Litigation starts with the filing of a Complaint. The Complaint claims a civil wrong and sets out factual and legal allegations.
2. **DEFENDANT'S RESPONSE.** This is the defendant's answer to the Complaint where the Defendant admits or denies the Plaintiff's allegations and states the defense.
3. **PRE-TRIAL PROCEEDINGS.** This is the lengthiest part of litigation and includes a process called DISCOVERY.
4. **TRIAL.** Trial is the process of presentation of evidence by both Plaintiff and Defendant.
5. **DECISION.** This is the verdict or finding rendered by the judge or jury.
6. **JUDGEMENT.** This is announced by the judge in favor of either the Plaintiff or Defendant.
7. **ENFORCEMENT OF THE JUDGEMENT.** This is when the court forces the

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Losing party to adhere to the Judgement.

## **REPRESENTATION**

When a lawsuit is filed, correctional employees become concerned about representation and the potential for personal loss. County employees are most likely to be represented by the COUNTY ATTORNEY, or if insurance is involved, by an attorney retained by the insurer. Generally this representation is at no cost if it is determined that he/she acted within the SCOPE OF HIS/HER AUTHORITY, and WITHOUT MALICE, FRAUD OR CORRUPTION.

## **DISCOVERY**

Discovery is a process intended to open both Plaintiff's and Defendant's cases to each other. Unlike the surprises Perry Mason springs on the Prosecutor, such are not allowed in real life. Because of the backlog of cases in most courts, each side must learn the strengths and weaknesses of each other's cases. Discovery encourages settlement out of court. If the case goes to trial, it allows the trial to proceed more efficiently.

A jail employee may be involved in Discovery even if he is not a party to a suit. He/she may be required to provide information to either side.

One of the more common types of Discovery devices is INTERROGATORIES. These are written questions from one side to the other, the answers to which are given in writing and under oath. Interrogatories are usually the first step in gathering information in the Discovery process.

**REQUESTS FOR PRODUCTION OF DOCUMENTS** can include any type of official documents such as jail inspection reports, memoranda, policies and procedures, records, incident reports, etc. Requests for documents must be related to the suit. Sensitive materials may be withheld if the court so orders.

**A DEPOSITION** is a formalized question and answer session where witnesses or parties to the suit are interviewed, usually by the attorney representing the other side. It is done under oath and answers are recorded word for word. If the answers provided at trial are different from those at Deposition, the attorney may attempt to discredit the witness because of the discrepancies.

## **RELATIONSHIP WITH YOUR ATTORNEY**

If the Corrections Officer is a party to a suit, the officer should work cooperatively with his/her attorney by providing timely and accurate information. Often cases drag on and on. It is not unusual for cases to be litigated over years. Thus the officer must be aware that if he does not hear from his attorney, it does not necessarily mean that he is not attending to the

case. If any concerns arise over representation, a simple phone call may be all that is necessary to allay them.

## **COURTROOM DEMEANOR**

If called as a witness, it is important to realize that one's testimony and behavior may determine how the case is settled. The following is offered as a very basic set of considerations in testifying.

1. **DRESS APPROPRIATELY.** Research shows that the most credible witnesses wear either gray or dark blue suits and a red tie with a small repeating pattern. In any event, do not wear flashy clothes.
2. **SPEAK CLEARLY AND LOUDLY.** Make sure every juror and the judge can hear the testimony.
3. **POSITION THE BODY.** Sit straight but comfortably. Hands may be folded in the lap or positioned on the arms of the witness chair. Avoid distracting personal habits. Maintain eye contact with the questioner and respond to the jury and/or the judge.
4. **BE CALM.** Testifying can be nerve wracking and the opposing attorney may try to rattle the witness. Take a breath before answering questions.
5. **LISTEN TO THE QUESTION BEFORE ANSWERING.** Do not anticipate the question. Wait for the entire question before answering and only answer the question asked.
6. **TESTIFY FROM MEMORY.** This does not mean to memorize. It is usually better not to use notes as notes are available to the other side. Besides the witness is more credible if he/she appears that he knows facts without referring to notes.
7. **DO NOT GUESS OR SPECULATE.** If you do not know the answer, say so.
8. **ANTICIPATE EARLIER STATEMENTS.** If you were Deposed, review the testimony.
9. **BE YOURSELF.** A witness' credibility is essential to the successful resolution of a case.
10. **DON'T ARGUE.** Arguing may portray the witness as arrogant or antagonistic. If this happens, the witness may be seen as culpable by the jury or the judge.

# QUIZ

Nebraska Jail Standards require that jail staff receive eighteen (18) hours of in-service training each year. The Jail Bulletin may be used to supplement in-service training if an officer studies the bulletin, completes the quiz, and this process is documented by the jail administrator for review during annual jail inspections.

**FEBRUARY 1995**

**NUMBER 116**

**SUBJECT:**

**Elements of Litigation and Proper**

**NAME:** \_\_\_\_\_

**Courtroom Demeanor**

**DATE** \_\_\_\_\_

1. The process of \_\_\_\_\_ is that which includes all the elements to pursue or defend a lawsuit.
2. Number the following steps in the Litigation process in the order they usually occur.
  - \_\_\_ Pre-Trial Proceedings
  - \_\_\_ Decision
  - \_\_\_ Plaintiff's Complaint
  - \_\_\_ Enforcement of the Judgement
  - \_\_\_ Trial
  - \_\_\_ Defendant's Response
  - \_\_\_ Judgement
3. Generally the County Attorney or insurance company will defend a jail employee in a civil suit if he/she acts within the \_\_\_\_\_ and without \_\_\_\_\_.
4. The process of discovery encourages settlement of disputes out of court.  
\_\_\_\_\_ True      \_\_\_\_\_ False
5. Part of the discovery process may a question and answer session where the witness is sworn. This is called a \_\_\_\_\_.
6. If sued, the jail officer should expect that the litigation process will

This issue of the *Jail Bulletin* was adapted from information contained in the "Jail Inspector Programmed Instruction Training Program", Thomas A. Rosazza , Author. If you wish to write for the *Jail Bulletin* or if you have a special need you wish to be addressed through the bulletin, please contact: Jail Standards Division, P.O. Box 94946, Lincoln, Nebraska 68509, telephone 402-471-3710.

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proceed swiftly and that his/her lawyer will need to be in continual contact with him.

\_\_\_\_\_ True      \_\_\_\_\_ False

**CREDIT:** One half hour credit for jail in-service training requirement

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Nebraska Jail Standards require that jail staff receive eighteen (18) hours of in-service training each year. The Jail Bulletin may be used to supplement in-service training if an officer studies the bulletin, completes the quiz, and this process is documented by the jail administrator for review during annual jail inspections.

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**SUBJECT:**  
**Elements of Litigation and Proper  
Courtroom Demeanor**

**NAME:** \_\_\_\_\_

**DATE** \_\_\_\_\_

1. The process of CIVIL LITIGATION is that which includes all the elements to pursue or defend a lawsuit.
2. Number the following steps in the Litigation process in the order they usually occur.

<u>3</u>	Pre-Trial Proceedings
<u>5</u>	Decision
<u>1</u>	Plaintiff's Complaint
<u>7</u>	Enforcement of the Judgement
<u>4</u>	Trial
<u>2</u>	Defendant's Response
<u>6</u>	Judgement

3. Generally the County Attorney or insurance company will defend a jail employee in a civil suit if he/she acts within the SCOPE OF HIS/HER AUTHORITY and without MALICE, FRAUD OR CORRUPTION.
4. The process of discovery encourages settlement of disputes out of court.

  X   True      \_\_\_\_\_ False

5. Part of the discovery process may a question and answer session where the witness is sworn. This is called a DEPOSITION.
6. If sued, the jail officer should expect that the litigation process will proceed swiftly and that his/her lawyer will need to be in continual contact with him.

\_\_\_\_\_ True        X   False

**Answer sheet should be retained by jail administrator or training officer**

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