

**North Carolina Department of Labor
Division of Occupational Safety and Health**

Raleigh, North Carolina

Field Information System

Operational Procedure Notice 101B

Subject: Third Party Litigation

- A. **Purpose and Scope.** This OPN communicates guidelines to be followed by all OSH Division personnel who are asked or subpoenaed to participate in a lawsuit to which the Department of Labor is not a party. These suits are collectively known as third party litigation and may involve workers' compensation claims or civil actions for damages.
- B. **Discussion.** In accordance with federal law, federal OSHA personnel are not required to participate in third party lawsuits. North Carolina law does not afford OSH Division personnel the same protection. Since our program is required to be "as effective as" the federal program it is important for the Division to carefully manage participation in these suits to minimize the amount of time spent from primary duties, to avoid the appearance of "taking sides," and to protect our ability to prosecute our enforcement actions.

In addition, there is case file information that cannot be revealed pursuant to statutory protection. NC General Statute 95-136 prohibits the release of witness and complainant names and identifying statements unless they are used for enforcement purposes by the North Carolina Department of Labor or by permission of the Commissioner of Labor for other public purposes such as criminal investigations. Medical records, and any information therein, which have been released to OSH and are contained in case files may not be released without permission of the patient, his/her executor or next of kin pursuant to NCGS 158-53. Trade secrets and confidential information are protected under NCGS 15 132-1.

It is the responsibility of OSH personnel who participate in third party litigation to be completely unbiased. In order to minimize the amount of time OSH Division personnel spend on third party litigation and to provide appropriate neutrality, all substantive conversations with attorneys must occur following the filing of a lawsuit and when both parties are represented. Telephone conference calls can be arranged to minimize the amount of time involved. These conversations may involve the participation of the Attorney General's office.

- E. **Expiration.** This OPN amends and cancels OPN 101A. It is effective on the date of signature and will remain in effect until amended or canceled by the Director.
- F. **Action.** When initially contacted by an attorney involved in a third party suit:
 1. Indicate that you are represented by counsel and may not discuss the case except pursuant to this written policy.
 2. Fill out the [Third Party Litigation Contact form.](#)
 3. Send the form to the DOL Legal Affairs, so that a letter explaining the Division's policies regarding participation in third party suits can be sent to the Counsel. You and your supervisor will receive a copy of the letter when it is sent.

4. Keep a log of all time spent on any third party litigation in which you are asked to participate, testify, etc. Assessment of the time spent working on third party litigation should include preparation, conversations, travel time, waiting time, in addition to any actual court or deposition appearances, and any actual expenses incurred including mileage, per diem, copying, etc. Account for all such time on the OSHA 31S under 9 17 Optional Information by designating it S-13 Third Party Litigation.
5. If the attorneys want to talk with you pursuant to this policy, you may discuss a convenient date and time for the discussion to avoid potential conflicts with your schedule. Let the DOL Legal Affairs know if you are scheduling a conference or deposition with an attorney.
6. Any documents related to the case shall be provided only by the OSH Division, Statistics and Information Management Section.
7. Deliver or fax a copy of any subpoena received for a third party suit to the DOL Affairs . If the subpoena is overly broad or you have been improperly subpoenaed, we may ask the Attorney General's office to narrow the subpoena or quash it. The Attorney General's office may need to represent you in any depositions or court appearances; therefore, it is critical that you keep the DOL Legal Affairs informed.

If attorneys object or wish to discuss this policy further, please refer them to the DOL Legal Affairs at 919-733-0368.

Due to your workload, it is not mandatory for you to spend extensive time reviewing the case file to refresh your memory. It is permissible to testify in court or attest in a deposition or affidavit that you either cannot recall something from a file or do not know the answer to a question.

If at any time you feel that any attorney or a representative involved in a third party matter is pressuring or badgering you, please refer that person to the DOL Legal Affairs at 919-733-0368.

Signed on Original

Susan V. Haritos
Health Standards Officer

Signed on Original

Robert K. Andrews, Jr.
Director

4/1/00

Date of Signature