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Scott Crow, Director Oklahoma Department of Corrections		Signature on File	

Provision of Legal Services

The office of the General Counsel of the Oklahoma Department of Corrections (ODOC) or the Oklahoma Attorney General's Office (OAG) will advise and may appear for and represent the agency director, Oklahoma Board of Corrections members, and department staff concerning departmental legal matters in state or federal court, administrative hearings, and other legal actions and proceedings. The office of the General Counsel is also available to assist the agency for the purposes of formulating agency policy, advising on individual cases and interpreting case law. (2-CO-1A-28, 5-ACI-1A-23, 4-APPFS-1C-08, 4-APPFS-3D-20)

Representation is discretionary and contingent upon the employee requesting representation and cooperating with the defense of the action. Representation is also dependent upon whether the employee was acting in good faith, and within the scope of their employment. Scope of employment means performance by an employee acting in good faith within the duties of the employee's office, or employment, or of tasks lawfully assigned by a competent authority.

I. Legal Representation

A. Representation

Employees sued as a result of actions performed within the course and

scope of their employment may be entitled to legal representation by either the OAG or the office of the General Counsel when properly requested. A private attorney may be retained at the discretion of the department when there is a conflict of interest.

B. Communication

Once an employee has requested legal representation, the employee may not respond to any inquiry about the issues of the lawsuit from the plaintiff or plaintiff's attorney unless the employee's attorney is present or the employee's attorney consents to the communication.

Once any employee has received a waiver, a summons, and/or petition/complaint, no department personnel will speak to any person about the issues of the litigation except the attorneys or investigators for the department, or the facility/unit head and the responsible executive/senior staff member. Agency personnel will immediately notify their supervisor upon contact by any party other than the parties named in this section, and such information will be forwarded to the assigned attorney.

II. Requesting Representation

- A. An employee desiring representation will submit a signed "Request for Representation" form (RFR) ([DOC 110425A](#), attached) to the general counsel in accordance with Section II. item B. of this procedure. Any employee not desiring representation by the state may hire an attorney of their choice at the employee's expense.
- B. After the employee has signed the RFR form ([DOC 110425A, attached](#)), it will be emailed to the office of the General Counsel at legal@doc.ok.gov and then mailed with the original of all papers received including the envelope to the office of the General Counsel. If a designated service agent is unavailable, the individual employee bears the responsibility to ensure the RFR is submitted in accordance with Section III. D. item 2. of this procedure.
- C. A copy of the RFR form ([DOC 110245A](#), attached) and all material forwarded to the general counsel will be maintained at one location.
- D. Upon receipt of the RFR form ([DOC 110245A](#), attached), the general counsel will determine if the RFR form should be forwarded to the OAG for representation by the attorney general or whether the general counsel's office should represent the employee.
- E. If the OAG determines that an employee cannot be represented by the attorney general due to a conflict of interest or for any other reason, then upon notification of the denial, the general counsel will determine whether to represent the employee or retain private counsel for the employee. The employee will be notified of the final determination.

III. Service of Process

A. Service Agent

A service agent will be appointed at each facility/unit to accept service on behalf of the employee of that facility/unit. Service agents will be as designated by the facility/unit head.

B. Handling of Process

A staff member who, by either mail or personal service, receives a waiver of the service of summons, summons, complaint, petition, or any document that appears to be a lawsuit or court order will immediately contact the facility/unit head to determine what action is to be taken.

C. Service of Process at Facilities and Probation and Parole Regions and Other Work Locations

1. The facility/unit head will notify, in writing, the United States Marshals Service of the United States District Court for the Oklahoma district in which the facility/unit is located, with the name and work address of the designated service agent for their location. The facility/unit head will also notify the county sheriff of the same.
2. The designated service agent will accept service of process from all United States District Courts and state District Courts (either by mail or by personal service) only for employees currently employed at that facility, unit, or administrative office.
3. Service of process will not be accepted for ODOC employees that were formerly assigned to the facility/unit and are no longer employed by the department, or have been assigned to a different facility/unit. Such process will be returned to the sending party with a note stating the person is not there if service was attempted by mail. If service was attempted in person, the process server will be notified that the former employee is no longer at the location or is no longer employed by ODOC.

D. Service Agent Responsibilities

Upon receipt of service of summons, a petition/complaint, and/or a waiver of service of summons, the following procedures will be followed:

1. The designated service agent will complete an RFR form ([DOC 110425A](#), attached).
2. The designated service agent will contact the employee to come in at the beginning or end of the named employee's next shift to sign

the RFR form ([DOC 110425A](#), attached). If an employee desiring representation by the state is off duty or on annual leave, the designated service agent will sign the RFR form for said employee.

- a. The designated service agent will email and mail the RFR form ([DOC 110425A](#), attached) along with the summons, petition/complaint, the waiver of the service summons, and the envelope received with the service documents to the office of the General Counsel (legal@doc.ok.gov) no later than the next business day after service was accepted regardless of the manner of service. The time for the attorney(s) to prepare and file a response begins on the date of service. Improper service will be determined by the attorney(s) representing the employee. Failure to timely submit an RFR form to the general counsel may be grounds for denial of representation.
 - b. The designated service agent will also ensure copies are made and forwarded to the proper offices and to the employee. The designated service agent will, in addition to mailing the original documents to the general counsel, email the RFR form ([DOC 110425A](#), attached), summons, petition/complaint, waiver of the service of summons, and/or the envelope to the general counsel's office at legal@doc.ok.gov.
3. The designated service agent will maintain a record of when service was received and, if by mail, when the "Domestic Return Receipt" (PS Form 3811) was returned, and when the RFR for ([DOC 110425A](#), attached) was forwarded.

E. Service of Process at Central Office

1. The service agent at the administration building will be appointed by the general counsel. The service agent or designee will accept personal service for the Oklahoma Board of Corrections, agency director, chief of Operations, administrators of Institutions/Community Corrections that may office at the administration building, the inspector general, the general counsel, and employees currently employed at the agency's administration building in cases directly related to their employment with the agency.
2. Service by certified mail will be accepted for the Oklahoma Board of Corrections, agency director, chief of Operations, and administrators of Institutions/Community Corrections who may office at the administration building, the inspector general, the general counsel, and employees currently employed at the agency's administration building and logged by mailroom staff.

3. Documents or certified mail received by the service agent or mailroom staff will be immediately forwarded to the person named in the summons or on the envelope to ensure timely completion of the RFR form ([DOC 110425A](#), attached) in accordance with this procedure.

IV. Special Reports

Upon order of the court, the general counsel's office will prepare a special report which is an administrative investigation into claims made in an inmate's lawsuit. Cooperation from affected facilities will be necessary to gather pertinent documents and information.

V. Legal Opinions

A. General Counsel Opinions

Requests for legal opinions may be submitted in writing to the general counsel through the chain of command.

B. Attorney General Opinions

Requests for legal opinions to the OAG will only be made by the agency director or chairman of the Oklahoma Board of Corrections and will be accompanied by a legal memoranda prepared by the general counsel.

VI. Employee Affidavits

No employee of the department is to prepare an affidavit for any person or party without legal advice and first having the affidavit reviewed by an attorney. Affidavits are sworn statements and if found to be untrue or misleading may subject the affiant to legal consequences and/or disciplinary action. A "Request to Staff" ([DOC 090124D](#)) regarding a pending civil action should be treated as a request for an affidavit and the general counsel should be notified immediately.

VII. References

Policy Statement P-110100 entitled "Uniform Personnel Standard"

Martinez v. Aaron 570 P.2d 317 (10th Cir. 1978)

12 O.S. § 2004

51 O.S. § 152

57 O.S. § 508.1

74 O.S. § 20f

28 USCA FRCP Rule 4

VIII. Action

The senior staff members are responsible for compliance with this procedure.

The general counsel is responsible for the annual review and revisions.

Any exceptions to this procedure will require prior written approval from the agency director.

This procedure is effective as indicated.

Replaced: OP-110425 entitled "Provision of Legal Services" dated December 09, 2020

Distribution: Policy and Operations Manual
Agency Website

<u>Referenced Forms</u>	<u>Title</u>	<u>Location</u>
DOC 110425A	"Request for Representation"	Attached
DOC 090124D	"Request to Staff"	OP-090124