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<b>Provision of Legal Services</b>	<b>ACA Standards: 2-CO-1A-28, 4-4023, 4-ACRS-7E-07, 4-APPFS-3D-20</b>		
<b>Scott Crow, Interim Director Oklahoma Department of Corrections</b>		<b>Signature on File</b>	

## Provision of Legal Services

The office of the General Counsel of the Oklahoma Department of Corrections or the Oklahoma Attorney General's Office will advise and may appear for and represent the agency director, Board of Corrections members and department staff concerning departmental legal matters in state or federal court, administrative hearings and other legal actions and proceedings. (2-CO-1A-28, 4-4023, 4-ACRS-7E-07, 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 his/her 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 Attorney General's Office 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 must submit a signed "Request for Representation" (RFR), which is digitally formatted in the legal section of the ODOC website at <http://doc.ok.gov/Websites/doc/images/Documents/General%20Counsel/RFR%207.3.pdf> 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, it must be mailed with the original of all papers received including the envelope to the office of the General Counsel, in accordance with Section III.D.2 of this procedure. 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.2 of this procedure.
- C. A copy of the "RFR" form and all material forwarded to the General Counsel will be maintained at one location in each facility/unit.
- D. Upon receipt of the "RFR" form, the General Counsel will determine if the "RFR" form should be forwarded to the Attorney General's office for representation by the Attorney General or whether the General Counsel's office should represent the employee.
- E. If the Attorney General 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 office to accept service on behalf of the employee of that 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 Marshal's Office 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 U. S. 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 a "[RFR](#)."
2. The designated service agent will contact the employee to come in at the beginning or end of their next shift to sign the "[RFR](#)" form. 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 must email and mail the "RFR" form along with the summons, petition/complaint, the waiver of the service summons, and/or the envelope to the Office of the General Counsel ([legal@doc.ok.gov](mailto:legal@doc.ok.gov)) no later than the next business day after service 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 a "RFR" form to the General Counsel may be grounds for denial of representation.
  - b. The designated service agent will ensure copies are made and forwarded to the proper offices and to the employee. The designated service agent shall, in addition to mailing the original documents to the General Counsel, email the RFR, summons, petition/complaint, waiver of the service of summons, and/or the envelope to the General Counsel's office at the following email address: [legal@doc.ok.gov](mailto: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" form 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 his/her designee will accept personal service for the Board of Corrections, agency director, chief of Operations, regional directors that may office at the administration building, director of Fugitive Apprehension and Investigations, 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 Board of Corrections, agency director, chief of Operations, regional directors that may office at the administration building, director of Fugitive Apprehension and Investigations, 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 forwarded to the person named in the summons or on the envelope immediately, to ensure timely completion of the "RFR" form 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 Oklahoma Attorney General will only be made by the agency director or chairman of the 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 No. 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 executive and senior staff 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: Operations Memorandum No. OP-110425 entitled "Provision of Legal Services" dated April 25, 2018

Distribution: Policy and Operations Manual  
Agency Website

Referenced Forms   Title

Location

[DOC 090124D](#)

“Request to Staff”

[OP-090124](#)

DOC Website Form “Request for Representation”

<http://doc.ok.gov/Web/sites/doc/images/Documents/General%20Counsel/RFR%207.3.pdf>