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Joe M. Allbaugh , Director Oklahoma Department of Corrections		Signature on File	

Provision of Legal Services

The office of the General Counsel of the Department of Corrections (ODOC) or the Oklahoma Attorney General's Office will advise and may appear for and represent the director, Board of Corrections members and agency employees concerning agency 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 agency 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 agency personnel will speak to any person about the issues of the litigation except the attorneys or investigators for the agency, or the facility/district/unit head and the responsible executive 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 within the legal section of the ODOC website <http://www.ok.gov/doc/documents/RFR%207.3.pdf>

to the General Counsel with the original of all papers received including the envelope. Any employee not desiring representation by the state may hire an attorney of their choice at the employee's expense. Employees acting outside the scope of their employment are not entitled to representation by the state.

- B. A copy of the "RFR" form and all material forwarded to the General Counsel will be maintained at one location in each facility/district/unit.
- C. Improper service will be determined by the attorney representing the employee.
- D. Failure to timely submit a "RFR" form, in accordance with Section III.D. item 2. of this procedure, to the General Counsel may be grounds to refuse representation.
- E. Upon receipt of the "RFR" form from the employee, 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.
- F. 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/district/unit office to accept service on behalf of the employees of that unit. Service agents will be as designated by the facility/district/unit head.

B. Handling of Process

An employee 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/district/unit head to determine what action is to be taken.

C. Service of Process at Facilities, Districts and Other Work Locations

1. The facility/district/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/district/unit is located, with the name and work address of the designated service agent for their location. The facility/district/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/district/unit and are no longer employed by the agency or have been assigned to a different facility/district/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. Field Unit Service Agent Responsibilities

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

1. The designated service agent will complete a "Request for Representation" ([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" or receive authorization from the employee to complete and submit the "RFR" on the employee's behalf. If an employee desiring representation by the state is off duty or on annual leave, the service agent shall contact the employee who shall authorize the

service agent to complete and submit the "RFR" form for said employee.

- a. The designated service agent shall, by the end of the next business day following the date of service, mail the "RFR" form and original documents to the General Counsel. The designated service agent shall, in addition to mailing the "RFR" and original documents to the General Counsel, email the "RFR" to the General Counsel's office. If the service agent is unable to establish contact with the employee, the service agent shall contact the Office of the General Counsel for further instructions.
 - b. The designated service agent will ensure copies are made and forwarded to the proper offices.
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 Administration Building

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, director, associate director, division managers that may office at the administration building, Inspector General, the General Counsel and employees currently employed at the administration building in cases directly related to their employment with the agency.
2. Documents served will be forwarded to the person named in the summons to complete and sign the "RFR" form. Paperwork will then be handled according to Section II. of this procedure.
3. Service by certified mail will be accepted and logged by mailroom staff and immediately forwarded to the person named.

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.

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 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 agency 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 division manager/division head is 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 director.

This procedure is effective as indicated.

Replaced: Operations Memorandum No. OP-110425 entitled "Provision of Legal Services" dated August 25, 2014

Distribution: Policy and Operations Manual
Agency Website

<u>Referenced Forms</u>	<u>Title</u>	<u>Location</u>
DOC 090124D	"Request to Staff"	OP-090124
ODOC Website Form	"Request for Representation"	http://www.ok.gov/doc/documents/RFR%207.3.pdf