ADMINISTRATIVE POLICY

SECTION 200	**POLICY** 202
TITLE Retention of Independent Legal Counsel	**IMPLEMENTED BY PROCEDURE** N/A
SPONSORING DEPARTMENT County Administrative Office	**R&O** 96-65, 18-53
ADOPTED May 22, 2018	**REVIEWED** October 5, 2026 **REVISED** October 5, 2026

PURPOSE

The purpose of this policy is set forth the guidelines by which the County will provide employees, as part of their official compensation package, the costs of reasonable, usual and customary legal fees for legal representation in criminal matters that arise out of an employee's conduct in the course and scope of the employee's performance of employment duties for Washington County and are otherwise not covered under the Oregon Tort Claims Act or personal obligations. Washington County's financial obligation is subject to the conditions set forth in this policy.

AUTHORITY

This Policy is adopted pursuant to Washington County Code Section 2.04.100.D.

APPLICABILITY

This policy applies to all elected public officials and employees of Washington County not already represented by a labor association.

DEFINITIONS

1. Employee: A Washington County employee, including elected officials, department directors, commissioners, career and probationary employees in regular, limited duration, and variable hour assignments, whether classified or unclassified, and subject to the Personnel Rules and Regulations of Washington County.
2. Oregon Tort Claims Act (OTCA): Those provisions of the Oregon Revised Statutes (ORS) codified at ORS 30. 260 to ORS 30.300, as may be amended from time to time, and requiring the County to provide County officials and employees with a legal defense related to tort claims arising from the performance of their duties for the county.

GENERAL POLICY

This policy provides the terms and conditions for providing legal representation in criminal matters to employees for actions within the scope of their duties for Washington County and not covered by the OTCA.

Except as otherwise provided, nothing in this policy should be construed to entitle any County employee to a legal defense or representation, nor is it the intent of this policy to pay for independent legal counsel for a County employee in matters for which the County, the County Code or County policy has established formal administrative procedures and process, including but not limited to:

1. Article 5 (Prohibited Conduct, Discipline and Appeals) of the County Personnel Rules and Regulations;
2. Article 10 (Non-Disciplinary Appeals Procedure) of the County Personnel Rules and Regulations;
3. Article 13 (Ethical Standards) of the County Personnel Rules and Regulations;
4. Administrative Policy #205: Reporting Improper Governmental Conduct;
5. Procedure #211-B: Washington County Americans with Disabilities Act (ADA) Grievance;
6. Administrative Policy #301: Discrimination, Harassment, Sexual Assault, and Retaliation Prevention.

POLICY GUIDELINES

1. Legal Representation Sheriff's Office
   1.1. The County shall offer and pay for criminal defense legal services for all Sheriff's Office non-represented sworn supervisors involved in a use of force situation as soon as practical after the use of force event.
   1.2. The County may enter into contracts with criminal defense attorneys who will be available to all Sheriff's Office non-represented sworn supervisors in use-of-force situations. The County may impose certain terms and conditions, including, but not limited to, monetary and scope of work limits. In no event will the County's payment of expenses exceed what is determined by the County to be reasonable and prudent.
   1.3. If the County, in its sole discretion, determines that payment for criminal defense is not an appropriate use of county resources, it may stop paying for continued legal representation of the non-represented sworn supervisor. Examples could include, but are not limited to, non-duty use of force events, grand jury indictment, and other extraordinary circumstances. The County Administrator, Sheriff and County Counsel shall consult prior to a decision to stop payment. The officer and the attorney for the officer shall be immediately notified in writing of the decision.
2. Legal Representation Non-Sheriff's Office

2.1. Except as provided in Section 1, a request for the County to pay for criminal defense legal representation must be submitted in writing to the County Administrator, or their designee, who will consult with the County Counsel on the request. The request shall:

2.1.1. Be submitted by the employee at the earliest opportunity, and prior to the employee making any arrangement for legal representation or incurring any cost or payment obligation; and

2.1.2. Include a summary of the claims or charges made against the employee, which shall be presumed unfounded unless or until proven otherwise.

2.2. To receive payment under this policy, the employee and County Counsel or designee must mutually agree to the selection of an attorney. Neither party will unreasonably oppose the selection of a mutually agreeable attorney. In no event shall the Office of County Counsel provide primary representation to the employee. County Counsel may, however, provide information and assistance to the retained attorney as County Counsel deems consistent with the best interests of the County and the Oregon Code of Professional Responsibility.

3. Estimate of Legal Fees: Following selection of an attorney pursuant to the process provided in this policy, the attorney shall provide the County, at no cost to the County, a preliminary estimate of the anticipated legal fees, costs and expenses. The preliminary estimate shall be directed to County Counsel or designee and the employee.

4. Payment of Legal Fees: Before the County is obligated to pay for criminal defense costs under this policy, the selected attorney must provide the County with an invoice detailing the hourly rate of time spent on defense and a brief description of the purpose of such time. Invoices must be received by the County within sixty (60) days of the provision of services on behalf of the employee. Fees shall be billed at the attorney's usual and customary rate for the provision of legal services to government agencies.

5. Billing Disputes: If the County, in its sole discretion, finds that charges exceed the reasonable, usual, and customary fees normally charged, the parties shall submit the matter to the Oregon State Bar (OSB) Fee Dispute Resolution program for resolution. The County may assert any position that the employee could assert in a direct dispute between the employee and the attorney in the fee resolution hearing. The decision of the OSB fee resolution panel shall be final and binding, and no other appeal or resolution rights may be claimed against the County or the attorney.

6. Denial of Payment to Attorney: Payment will not be made in circumstances where:

6.1. It is later discovered that the employee misstated or failed to disclose facts, which if had been known at the time of assessment of the request for representation, would have influenced a decision, or in the event that the claims or charges are validated through subsequent review. In such an event, the County shall be entitled to recover

any public funds expended on the employee's behalf and pursue discipline through established policies and procedures.

6.2. The employee was not acting within the course and scope of their duties as an employee of the County;

6.3. Charges in a criminal case are outside the scope and applicability or general policy of this policy;

6.4. The employee acted outside the scope of the Oregon Sanctuary Promise Act;

6.5. The employee is subject to discipline based on the employee's actions that formed any part of the basis for the possible criminal liability, unless the County's disciplinary action is set aside through the grievance process or other available process. If the matter is taken to hearing, evidence of attorney's fees or exposure to attorney's fees shall not be offered as relevant to the issue of whether discipline is appropriate; or

6.6. The employee declines payment assistance from the County for any reason.

7. Limitation on Payment: In no event will the County pay for costs associated with any guilty judgment, including, but not limited to, restitution or other damages awarded in association with a guilty judgment.
8. Cap on Total Fees: Total legal fee payments per employee shall not exceed sixty thousand dollars ($60,000) during any fiscal year.

EXCEPTIONS

Exceptions may only be granted by the Washington County Board of Commissioners or the County Administrator.

IMPLEMENTATION

Elected officials and department directors are responsible for implementing this policy within their departments. All County employees must adhere to this policy. Noncompliance may result in disciplinary action, up to and including termination.

PERIODIC REVIEW

This policy and associated guidelines will be reviewed at least once every three years by the County Administrative Office to ensure they remain accurate, relevant, and compliant with County, State, and federal requirements.