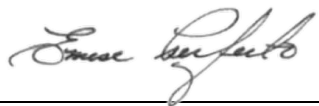


Policy Name: Co-Counsel Policy	Number: 404.200.04.004
Division: Compliance, Audit, & Performance	Effective Date: 10/1/2025
Responsible Section: Trial Support & Development	
Approved by: Oregon Public Defense Commission	Approval Date: 4/16/2025

**PURPOSE:** The Oregon Public Defense Commission (OPDC) understands that certain circumstances may require or justify the addition of a second or subsequent attorney to a case. Consistent with its efforts to be transparent and consistent in decision making this policy will set out the requirements for cases to be considered for co-counsel as well as rules which apply to co-counsel case reporting and compensation.

**AUTHORITY:** ORS 151.216

**APPLICABILITY:** This policy applies to all cases where an attorney is requesting additional attorneys to aid in representation.

#### **DEFINITIONS FOR PURPOSES OF THIS POLICY:**

**Public Defense Attorney:** Attorney appointed to perform legal services for financially eligible individuals as required by Oregon Revised Statute, the Oregon Constitution, or the United States Constitution.

**Lead Counsel:** The attorney who retains ultimate decision-making authority on all attorney issues in the case (note that the client retains ultimate authority in many case related decisions). In cases where multiple attorneys are assigned the attorneys are responsible for designating a lead counsel for the case. Lead counsel must meet OPDC qualification standards for the case type.

**Co-Counsel:** A second attorney who either meets the qualification level for the type of case, exceeds it, or is one level of qualification lower than the case requires. Co-counsel may handle any portion of the case work up to an even share with lead counsel.

**Attorney Under Supervision:** An attorney who is handling all or the bulk of work on a case while under the supervision of a more experienced attorney according to the OPDC Supervision Policy or by agreement under the OPDC Attorney Qualification Standards. Though the supervising attorney may be listed by the court as co-counsel in the case, they are not considered co-counsel under this policy.

**Associate Counsel:** An attorney assigned purely to assist with legal research or case preparation. Associate/Research counsel does not serve as an expert, is not appointed to the case, and does not provide direct client representation. Associate/Research counsel may be approved in cases where it's reasonable and necessary, i.e., murder, juvenile waiver, cases subject to ORS 137.719 and 137.725, Jessica's Law cases or any case in which OPDC deems an Associate/Research attorney is reasonable and necessary.

**POLICY:** Lead Counsel is responsible for locating co-counsel for their cases and applying to OPDC for approval of co-counsel where approval is discretionary or notifying OPDC of who will co-counsel the case where co-counsel is mandatory.

Cases for which OPDC will consider funding co-counsel are as follows:

**1. Cases for which co-counsel is mandatory**

In all cases charging Aggravated Murder under ORS 163.095, Murder in the first degree under ORS 163.107, and cases in which the State moves the court to waive juvenile court jurisdiction pursuant to ORS 419C.349 or ORS 419C.352, OPDC requires that there must be at least two attorneys sharing responsibility for the case as Lead and Co-Counsel. Counsel need not seek permission from OPDC prior to a second attorney seeking appointment from the court. A third or subsequent attorney may be approved on these cases at OPDC's discretion as described below.

**2. Cases for which co-counsel is presumptive**

In all cases charging Murder in the second degree under ORS 163.115, cases charged under Jessica's Law, and cases subject to a life sentence under ORS 137.719 or 137.725 OPDC presumes that a second attorney is necessary without additional justification from Lead Counsel. While Counsel need not seek permission from OPDC prior to seeking appointment of co-counsel on these cases they should notify OPDC in the same manner as described below.

**3. All other cases**

In all cases other than those set out in section 1 of this policy, OPDC may approve a second or subsequent attorney upon the request of the case's lead counsel. In order to request co-counsel, the lead attorney should submit the request in the method prescribed by OPDC. Once submitted, the OPDC will evaluate the request and either approve or deny it based on the following factors:

- a. Severity of charges. Cases where the charges are particularly severe or where the penalty for conviction is high are inherently more difficult than less severe cases and may require additional attorney resources.
- b. Complicated or novel issues of law or fact. Cases with these issues require additional investments of time from attorneys to research and develop arguments and may require a second attorney to collaborate on generating defenses, creating motions, or working with the client.
- c. The need for attorneys to gain experience. To be able to competently handle more serious case types, newer attorneys can work with more seasoned attorneys as co-counsel. OPDC qualification guidelines require that an attorney have co-counsel experience to qualify for certain advanced case types and the opportunity to advance in the career of public defense is important to the retention of dedicated attorneys. Cases where an attorney needs experience may be considered for additional attorneys regardless of the presence of other factors in this policy. Attorneys requesting an additional counsel under this section may be required to provide a supervision plans to OPDC. If the contractor is receiving supervision funding the supervision plan provided under that policy may be sufficient.
- d. The need for mentorship attorneys. There are times when an attorney is in need of mentorship from a more experienced attorney regardless of the case type or complexity. Such mentorship may be a result of the attorney's conduct, a complaint regarding their work, or at the direction of OPDC.
- e. Local Counsel. OPDC may approve the assignment of a second attorney when lead counsel takes a case outside of their home jurisdiction.
- f. Other. OPDC retains discretion to appoint second or subsequent attorneys as required to assure constitutional representation on all cases.

To apply for OPDC approval for co-counsel or to give notice to OPDC for presumptive co-counsel, a lead attorney should submit the request in the manner proscribed by OPDC. To be considered requests must include at least the following information:

- Case identifying information such as a case number and client's name.
- The name of the lead attorney.
- The name and OPDC certification level of requested co-counsel.
- For discretionary co-counsel requests lead counsel should also include a justification for the appointment of co-counsel.
- If the lead attorney is requesting to add a third or subsequent attorney who is not certified under OPDC's guidelines for the case type being requested, a justification for the addition of that attorney should be included along with any proposed supervision plans.

To apply for associate counsel:

- If the associate counsel is accepting appointment under contract, Lead Counsel should follow the same provisions for requesting co-counsel above and specify associate counsel. OPDC and counsel will agree on appropriate case weighting for the associate counsel prior to authorizing representation.
- If the associate counsel is accepting the case hourly, Lead Counsel should apply through the Pre-Authorized Expenses policy.

Unless otherwise agreed to by the attorneys and OPDC, all attorneys for a client should share a funding model and not mix between contract and attorneys under the Assigned Counsel Program. Once OPDC has approved co-counsel for a case or if the case requires mandatory co-counsel, lead counsel or co-counsel need to file a motion for and order to appoint co-counsel with the appropriate court. The court retains final discretion on the appointment of co-counsel. Co-counsel must be appointed by the court to receive funding from OPDC. Attorneys supervising attorneys under supervision need not be appointed co-counsel in a case provided they are following their supervision agreement with OPDC. Associate/research counsel need not be appointed to receive funding.

Approved by: Commission  
Prepared by: Trial Support and Development  
Reviewed by: Policy Division  
Publish: Externally and Internally