

Responses to Gillis Settlement Questions
(questions were generated in OBC on April 12, 2006)

A number of requests and questions were asked by committee members during the April 12 Operating Budget Committee meeting. The following answers are provided in response:

- 1. Question: Is the negotiated time of 15 minutes before and after for donning and doffing an appropriate amount of time? Could it be less – with a total of 15 minutes per day for this purpose?**

Answer: The Sheriff's Office pays officers for 8 hours of a regular shift. That shift includes donning and doffing of uniforms and time to travel to officer's posts. The 30 minute total time for these activities is the agreed upon amount of time negotiated for the settlement. This allows approximately 7.5 minutes to change clothes and 7.5 minutes to reach the required post. This process is reversed at the end of a shift. Consequently, the settlement has agreed to pay for the two 15 minute time frames that result in payment for a total of ½ hour for donning and doffing.

The following explanation was provided by the KCSO:

Donning and Doffing Process

During the initial hearing, Council member Lambert asked questions about the time it takes for officers to don and doff their uniforms and get to or leave their posts and why we schedule 15 minutes before and after their shift (total 30 minutes) for that process. Our office has reviewed the donning and doffing process with the Court Protection Sergeants (referred to herein as "Officers").

First, the Officers are paid for an 8 hour shift. That shift *includes* donning and doffing their uniforms and protective gear and getting to or leaving their posts. Shifts start and end at a set time. Consequently, an officer is required to appear for work at a set time even if that particular officer generally takes less than 15 minutes to change and get to the assigned post. Officers who change and complete their other tasks in less than 15 minutes regularly report to their duty station early. Officers have not been observed abusing the system.

Second, while KCSO schedules 15 minutes for donning and doffing, it is not assumed that it takes that long for each person to change. Having a set schedule enables KCSO to know where staff should be at a particular time. The proposed CBA in section 5.1 states that time will be allowed for donning and doffing. It does not specify a specific time period.

Third, each worksite is a bit different and the time it takes to travel to and from the post varies. For example, some officers arrive at the downtown Courthouse and are assigned to work in the Courthouse. Others arrive at the downtown courthouse and travel to the court of appeals on 6th and University streets. However, overall each Officer should be doing the following in the 15 minutes prior to being on post:

- Arrive at the worksite at the specified time.
- Put on their ballistic vest, shirt, pants, shoes, and duty belt. (Ensure that all items are serviceable)
- Perform a weapons check of the Taser and handgun and magazines. (Repair if necessary)
- Check emails and mailbox for communications. Check for security alerts and assignment changes.
- Check in with the supervisor
- Travel to their duty post and debrief / relieve the person there, if staffed. (The distance of travel depends on work site.)

Once dressed, some Officers travel to remote worksites travel by foot or bus. Those sites are:

- VA - about 1 block south of the KCCH (123 3rd Ave)
- Appeals Court - 8 blocks N. of KCCH (600 University St)
- Harborview Mental Health Court (HMHC) - about 5 blocks west of DYS (326 9th Ave) (DYS is at 1211 E Alder)

KCSO has a changing area at HMHC, however most court deputies prefer to dress at DYS so that they can return to DYS to support that work team when mental health court adjourns early. (Early adjournment is an infrequent and unpredictable occurrence.)

Given individual variables in donning and doffing and completing other tasks, plus variations in Officer's travel time, it is more efficient for KCSO to select a certain time period for reporting to and leaving work and a post. Scheduling is more manageable in ¼ hour increments because all of the breaks are on the ¼ hour as well. It is not feasible to time each person or each worksite and set schedules individually. That would create confusion and inefficiencies with the supervisors and payroll and for those staff that relieve other staff.

2. Question: Would a change in the limited commission officer uniforms change the need for this as a work requirement?

Answer: A change in uniform would not change the public perception of an officer who is armed. The duties of the limited commission officers would remain the same, as would KCSO policy. Unless there is a change in KCSO policy for the provision of the security services by limited commission officers a change in uniform would not suffice.

The following explanation was provided by the KCSO:

Deputy Uniforms:

During the hearing Council member Lambert also asked about the choice of uniforms for court security and the possibility of changing the uniforms so they could change at home. We researched the background of the current uniform choice.

Background

The Court Protection Unit was started in 1988 by Leo Sowers and housed with Facilities. At that time, the Unit was comprised of retired Officers from various jurisdictions. They wore the King County Police Uniform. Officers were provided with a changing room in the Courthouse where they left their firearm and uniform. Soon the Court protection detail came under Superior Court Administration with no changes in the uniform changing or firearms storage policy.

Just prior to the shootings in the Courthouse, Superior Court Administration was in negotiations with the Sheriff's Office to take over administration of the Court Protection Officers. When the Sheriff took over court security the uniform and firearm policy continued. It was additionally required that all uniformed officers be required to wear the ballistic vest. Because of the "Special Commission", the Officers were not allowed to wear their Uniforms or take their department issued firearms off the premises during non-scheduled hours. The thinking behind this was that the Sheriff did not want these officers confused as fully commissioned Deputies during non-work hours. In addition, those officers who were retired LEOFF I were concerned their retirement would be jeopardized if they were commissioned as full authority Officers or otherwise had police powers during non-scheduled work hours. These Officers were very instrumental in having the uniform and firearm policy that is still in place today.

Changing the uniform choice of the officers would not entirely resolve the donning and doffing issue because the officers would still not be able to take their service firearms home with them, they would still have to report in to the supervisor and check communications. Changing the uniform raises other issues and KCSO would want to fully review those and seek the input of other tenants in the building including the Court, Council and Executive. Adjusting the schedule has worked out to be a feasible alternative.

3. Question: The attorney's fees of \$160,050 appear to be high. What is the standard legal fee for attorney's in such a settlement?

Answer: According to both the KCSO legal advisor and the PAO, most standard attorney's fees for such class action lawsuits are paid at a rate of 25% to 40% of the settlement amounts. Previous examples include the Logan/Knox and Clark settlements. In both those cases, the attorney's fees were in the 30% range. The following explanation was provided by the PAO:

The county had no say in plaintiffs' decision to allow their attorneys' a one-third contingency fee. In employment cases, it is not unusual for plaintiffs' counsel to charge 25 to 40% of their client's award as their fee. In class action cases, judges routinely approve a class action attorneys' fee award of 25 to 40%. The county agreed to a settlement agreement where class

counsel received thirty percent of the class members' award in Clark and Logan. The City of Seattle recently agreed to the same award attorneys' fees award in their temporary worker lawsuit settlement. All of these attorneys' fees awards were approved by the Court.

4. **Question:** Could the KCSO change the work definition for these officers, so that the limited commission was not needed, i.e., is there an alternative within the KCSO policies?

Answer: Court protection services are currently provided via collective bargaining agreement between the county and Court Protection Unit Deputies. The current agreement for these officers was amended via MOU last August to include the provisions of the settlement for donning and doffing. In the future, the county could opt to change policy regarding the provision of these services. This could involve changes in the level of security provided for the courts and tenants of affected buildings.

5. **Question:** Please provide the schedule of events leading up to the settlement, i.e., timeline.

Answer:

The following explanation was provided by the PAO:

DOL audited KCSO in early 2004. In February of 2004, DOL investigators preliminarily determined that KCSO was not in compliance with the federal Fair Labor Standards Act (FLSA) because the Officers weren't paid for donning and doffing. In April of 2004, KCSO and KCPAO representatives met with DOL representatives to discuss DOL's preliminary finding. In May of 2004, DOL changed their findings and did not cite KCSO for failing to comply with the FLSA.

Plaintiffs sued in November of 2004. Plaintiffs filed a motion for summary judgment in November 2005. The County responded and plaintiffs' replied. The County and plaintiffs counsel agreed to stay oral argument and the judge's ruling on plaintiffs' summary judgment motion pending settlement discussions. The parties mediated with the Honorable Judge Finkle and a tentative settlement was reached in late 2005. The parties agreed to the written settlement agreement in early February 2006.

6. **Request:** Please provide the "summary judgment" for review.

The "Summary Judgment" motion was provided by the Prosecuting Attorney's Office to council staff and to Councilmember Ferguson, who specifically requested the document. The set of documents is a very large. *It is available upon request.*