



COMMONWEALTH of VIRGINIA

Office of the Attorney General

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The Honorable S. Chris Jones
Chair, House Appropriations Committee
Virginia House of Delegates
P.O. Box 406
Richmond, Virginia 23218

The Honorable Walter A. Stosch
Co-Chair, Senate Finance Committee
Senate of Virginia
P.O. Box 396
Richmond, Virginia 23218

The Honorable Charles J. Colgan
Co-Chair, Senate Finance Committee
Senate of Virginia
P.O. Box 396
Richmond, Virginia 23218

Dear Chairman Jones, Chairman Stosch, and Chairman Colgan:

Enclosed is the report required by the enacted 2014-2016 biennial budget regarding outside counsel utilization by agencies of the executive branch. I trust that you will find it informative. Item 56 #2s in the budget requires this Office to submit a report "detailing expenditures in the prior fiscal year for special outside counsel by any executive branch agencies" including "the reasoning why outside counsel is necessary, the hourly rate charged by outside counsel, total expenditures, and funding source." The attached report covers all of the items requested.

Virginia Code § 2.2-507 requires that "all legal service in civil matters for the Commonwealth, the Governor, and every state department, institution, division, commission, board, bureau, agency, entity, official, court, or judge, including the conduct of all civil litigation in which any of them are interested, shall be rendered and performed by the Attorney General, except as provided in this chapter and except for any litigation concerning a justice or judge initiated by the Judicial Inquiry and Review Commission." Virginia Code §§ 2.2-507 and 2.2-510 authorize the Attorney General to engage and manage the engagement of outside counsel in certain circumstances when "it is impracticable or uneconomical for the Attorney General's

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office to render such service." Accordingly, with regard to the budget requirement to provide reasoning for engagement of outside counsel, I note here that, unless otherwise indicated, the reason for engagements described in the report is that it was "impracticable or uneconomical for the Attorney General's office to render such service."

The most common circumstances that make it either impracticable or uneconomical for this Office to provide legal services and therefore trigger the engagement of outside counsel are the lack of certain specialized or unique legal expertise among the Office staff or the lack of legal staff in the geographic location where services are necessary.

The majority of outside counsel work is performed under engagements procured competitively pursuant to "Solicitations for Proposal" (SFPs) where firms bid for the opportunity to provide legal services, resulting in a slate of pre-approved firms that provide legal services at significantly discounted, guaranteed rates negotiated by the OAG. However, selection as a qualified provider under an SFP is not a guarantee of work. This arrangement has existed for many years and essentially places firms on an unpaid retainer for categories of legal work the state agencies know they will likely need. In this report you will find all outside counsel engagements made under each SFP effective during FY '15, the agency receiving services, the amount billed, and the hourly rates established under each SFP. In FY'15, SFP work totaled \$9,315,314.83, the lowest amount in at least four fiscal years.

Outside counsel may also be procured for state agencies on a "Single Case Appointment" (SCA) basis for one specific transaction, issue, or matter not covered by an existing SFP term engagement. The attached report includes data on SCA outside counsel engagements, the agency receiving services, the amount billed, and the hourly rates for each SCA. These matters include cases where the Commonwealth is a defendant, as well as cases where the Commonwealth or its agencies are seeking financial recovery. In FY'15, SCA work totaled \$5,484,189.53. This includes a number of one-time expenses such as the University of Virginia Board of Visitors' internal investigation into the now-withdrawn *Rolling Stone* story, defense of litigation involving certain legislative districts through large, complex discovery and trial phases, and a complex insurance fraud case where actual recovery exceeded \$20,000,000.

Once outside counsel is engaged, whether by SFP or SCA, the Office of Attorney General manages the relationship to include establishing the engagement contract terms, negotiating rates, reviewing invoices to ensure compliance with the terms of the engagement, and authorizing payment from the client agency. With specific reference to the budget's outside counsel reporting requirements, please note further that, unless otherwise indicated, the legal services described in the report were "paid out of the funds appropriated for the administration of the board, commission, division, or department being represented or whose members, officers, inspectors, investigators, or other employees are being represented," as dictated by state law.

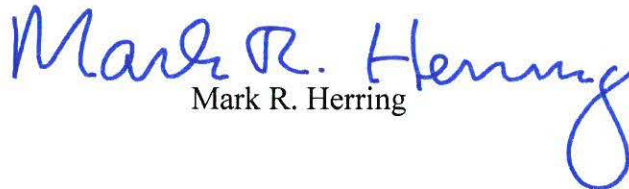
For your further information, please be advised that I have continued to implement significant reforms to the outside counsel process to improve coordination, oversight, effectiveness, and efficiency of the Commonwealth's use of outside counsel. I hired the Office of Attorney General's first Compliance and Transparency Counsel to oversee the outside counsel program, among other duties. In June 2014, we implemented the Office of Attorney General's

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first written, adopted policy on outside counsel, requiring, among other things, a documented determination of need to be made in writing prior to assignment of a matter to outside counsel, a competitive procurement to ensure that taxpayers are getting maximum value, and an objective evaluation process in selecting qualified firms to provide services. Under my administration we have also, for the first time, uniformly required budgets for all engagements, and require coordination of general legal strategy and a case management plan to make sure the Commonwealth's goals are met. We have finally acquired a long overdue case management system for the Office of Attorney General, which will allow for more efficient and effective tracking and monitoring of the use of outside counsel and any associated costs. This will move the Office away from the paper-based manual monitoring that has historically been the norm in the Office, and allow us to make more data-driven decisions regarding outside counsel.

I am proud to lead a team that provides exceptional legal work on such a broad scope of issues, often of great depth, complexity, and significance. It is a truly remarkable team. The attorneys in the Office of Attorney General are dedicated professionals who, in many cases, are sacrificing more lucrative opportunities in the private sector to serve our Commonwealth. On the occasions when the people of Virginia are best served by the engagement of outside counsel, I will make sure the Commonwealth gets maximum value for each and every dollar.

Sincerely,


Mark R. Herring

cc: Mr. Robert Vaughn, Staff Director, House Appropriations Committee
Ms. Betsey Daley, Staff Director, Senate Finance Committee

Report on Executive
Branch Agency Use of
Special Outside
Counsel FY 2014-2015

Office of the Attorney General

**Solicitation for Proposal Outside Counsel Spending
FY 2014-2015**

Intellectual Property	
College of William & Mary	\$15,701.50
George Mason University	\$78,990.20
Norfolk State University	\$385.00
Old Dominion University	\$23,820.00
Radford University	\$3,884.00
Southern Virginia Higher Education Center	\$10,369.00
University of Virginia	\$13,460.00
Virginia Commonwealth University	\$14,200.00
Virginia Polytechnic Institute & State University	\$76,330.11
Virginia Tourism Authority	\$22,690.00
Virginia Wine Board	\$2,050.00
Total	\$261,879.81

Hourly Rate Range \$160-\$175

**Solicitation for Proposal Outside Counsel Spending
FY 2014-2015**

Bankruptcy	
Virginia Commonwealth University	\$9,356.50
Total	\$9,356.50

Hourly Rate Range \$200-\$340

**Solicitation for Proposal Outside Counsel Spending
FY 2014-2015**

Debt Collection	
Department of Behavioral Health & Developmental Services	\$2,853.50
Virginia Polytechnic Institute & State University	\$67,597.99
Total	\$70,451.49

Hourly Rate Range **\$125 plus 27%
contingent fee on
debts recovered**

**Solicitation for Proposal Outside Counsel Spending
FY 2014-2015**

Workers' Compensation	
Department of Human Resource Management	\$74,760.20
Total	\$74,760.20
Hourly Rate Range	\$145-\$149

**Solicitation for Proposal Outside Counsel Spending
FY 2014-2015**

Virginia Department of Transportation – Eminent Domain	
Virginia Department of Transportation	\$3,991,455.63
Total	\$3,991,455.63

Hourly Rate Range \$135-\$325

**Solicitation for Proposal Outside Counsel Spending
FY 2014-2015**

Division of Risk Management – Medical Malpractice	
Division of Risk Management	\$575,000.00
Total	\$575,000.00

Hourly Rate Range \$160-\$210

**Solicitation for Proposal Outside Counsel Spending
FY 2014-2015**

Division of Risk Management – Automobile Liability	
Division of Risk Management	\$259,917.56
Total	\$259,917.56

Hourly Rate Range \$150-\$185

**Solicitation for Proposal Outside Counsel Spending
FY 2014-2015**

Department of Medical Assistance Services	
Department of Medical Assistance Services	\$26,042.00
Total	\$26,042.00

Hourly Rate Range \$310-\$575

**Solicitation for Proposal Outside Counsel Spending
FY 2014-2015**

FCC/Communications	
Southern Virginia Community College	\$23,476.60
Virginia State Police	\$24,037.00
Total	\$47,513.60

Hourly Rate Range \$165-\$325

**Solicitation for Proposal Outside Counsel Spending
FY 2014-2015**

Construction	
Virginia Polytechnic Institute & State University	\$95,728.04
Total	\$95,728.04

Hourly Rate Range \$180-\$250

**Solicitation for Proposal Outside Counsel Spending
FY 2014-2015**

Employee Benefits/ERISA	
College of William & Mary	\$4,080.00
George Mason University	\$19,071.88
James Madison University	\$9,121.00
Norfolk State University	\$8,844.00
Radford University	\$1,876.00
University of Mary Washington	\$1,038.50
University of Virginia	\$18,888.85
Virginia Commonwealth University	\$35,010.85
Virginia Community College System	\$1,237.50
Virginia Military Institute	\$4,979.75
Virginia Polytechnic Institute & State University	\$6,713.45
Virginia Port Authority	\$147,696.61
Virginia Retirement System	\$45,989.83
Total	\$304,548.22

Hourly Rate Range \$207-\$552.50

**Solicitation for Proposal Outside Counsel Spending
FY 2014-2015**

Virginia Retirement System Investment Matters	
Virginia Retirement System	\$672,474.10
Total	\$672,474.10

Hourly Rate Range \$220-\$725

**Solicitation for Proposal Outside Counsel Spending
FY 2014-2015**

Immigration Matters	
Christopher Newport University	\$5,750.00
George Mason University	\$31,200.00
Old Dominion University	\$12,828.60
Radford University	\$7,950.00
University of Mary Washington	\$15,400.00
University of Virginia	\$6,700.00
Virginia Commonwealth University	\$31,200.00
Virginia Community College System	\$1,250.00
Virginia Department of Transportation	\$6,825.00
Virginia Polytechnic Institute & State University	\$5,050.00
Total	\$124,153.60

Hourly Rate Range \$125-\$300

Flat Fees \$500-\$5,000

**Solicitation for Proposal Outside Counsel Spending
FY 2014-2015**

Higher Education Bonds & Public Financing	
George Mason University	\$20,000.00
University of Virginia	\$174,627.26
Virginia Commonwealth University	\$159,016.90
Total	\$353,644.16

Hourly Rate Range \$150-\$605

**Solicitation for Proposal Outside Counsel Spending
FY 2014-2015**

University of Virginia Medical Center	
University of Virginia	\$429,265.11
Total	\$429,265.11

Hourly Rate Range \$245-\$695

**Solicitation for Proposal Outside Counsel Spending
FY 2014-2015**

Virginia Port Authority	
Virginia Port Authority	\$454,094.50
Total	\$454,094.50

Hourly Rate Range \$243-\$495

**Solicitation for Proposal Outside Counsel Spending
FY 2014-2015**

Virginia Resources Authority	
Virginia Resources Authority	\$105,316.50
Total	\$105,316.50

Hourly Rate Range \$185-\$327

**Solicitation for Proposal Outside Counsel Spending
FY 2014-2015**

Treasury	
Department of Taxation	\$4,831.14
Total	\$4,831.14

Hourly Rate Range \$252-\$511

**Solicitation for Proposal Outside Counsel Spending
FY 2014-2015**

Transportation Privatization Matters	
Virginia Department of Transportation	\$531,664.63
Total	\$531,664.63
Hourly Rate Range	\$203-\$690

**Solicitation for Proposal Outside Counsel Spending
FY 2014-2015**

VDOT and CTB Matters	
Virginia Department of Transportation	\$66,264.45
Total	\$66,264.45

Hourly Rate Range \$225-\$511

**Solicitation for Proposal Outside Counsel Spending
FY 2014-2015**

Virginia College Building Authority	
Virginia College Building Authority	\$247,769.01
Total	\$247,769.01

Hourly Rate Range \$230-\$450

**Solicitation for Proposal Outside Counsel Spending
FY 2014-2015**

Virginia Small Business Financing Authority	
Virginia Small Business Financing Authority	\$3,525.10
Total	\$3,525.10

Hourly Rate Range \$225-\$327

**Solicitation for Proposal Outside Counsel Spending
FY 2014-2015**

Export Control Matters	
George Mason University	\$95,629.13
Virginia Commonwealth University	\$12,000.00
Total	\$107,629.13

Hourly Rate Range \$300-\$835

**Solicitation for Proposal Outside Counsel Spending
FY 2014-2015**

Department of Education - NCAA Matters	
George Mason University	\$100,181.02
Norfolk State University	\$7,878.70
Total	\$108,059.72

Hourly Rate Range \$180-\$225

**Solicitation for Proposal Outside Counsel Spending
FY 2014-2015**

Tobacco Indemnification and Community Revitalization Commission	
Tobacco Indemnification and Community Revitalization Commission	\$154,322.53
Total	\$154,322.53

Hourly Rate Range \$171-\$295

**Solicitation for Proposal Outside Counsel Spending
FY 2014-2015**

Virginia Public Building Authority	
Virginia Public Building Authority	\$235,648.10
Total	\$235,648.10

Hourly Rate Range \$180-\$320

**Solicitation for Proposal Outside Counsel Spending
FY 2014-2015**

Solicitation for Proposal Outside Counsel Spending – Total	\$9,315,314.83
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Report on Executive
Branch Agency Use of
Special Outside
Counsel FY 2014-2015

By Single Case Appointment

Office of the Attorney General

**Single Case Appointments
FY2014-2015**

SCA	Agency	Amount Authorized	Range of Hourly Rates
2009-15 – Local counsel, out of state litigation	Office of the Governor	\$852.50	\$175-\$250
2009-39 – International law	University of Virginia	\$18,819.00	\$361-\$428
2010-12 – International law	George Mason University	\$52,601.00	\$252-\$531
2011-22 – Local counsel, out of state litigation	Virginia Retirement System	\$1,591.56	\$185
2012-03 – Specialized litigation	Birth Related Injury Fund	\$3,346.87	\$420-\$750
2012-05 – Specialized financial and investment legal services	Virginia Retirement System	\$26,375.50	\$300-\$455
2012-10 – Insurance litigation (Commonwealth as plaintiff)	Virginia Tech	\$2,991,706.65	\$270-\$640
2012-12 – Local counsel, out of state litigation	Virginia Lottery	\$7,165.15	\$165-\$255
2012-28 – Estate law	Virginia Outdoors Foundation	\$1,067.50	\$250
2012-34 – Compliance matter	University of Virginia	\$13,200.50	\$290-\$305
2012-35 – Local counsel, international law	University of Virginia	\$1,920.00	\$315
2012-37 – Procurement	Department of Transportation	\$221,536.97	\$204-\$497

**Single Case Appointments
FY2014-2015**

SCA	Agency	Amount Authorized	Range of Hourly Rates
2012-38 – Local counsel, out of state litigation	Office of the Attorney General	\$10,737.30	\$200
2012-48 – Local counsel, out of state litigation	University of Virginia	\$3,969.00	\$135
2012-50 – Real Estate Matter	University of Virginia	\$5,818.50	\$135-\$245
2012-51 – Litigation matter	Fair Housing Board/Department of Professional & Occupational Regulation	\$36,951.00	\$175
2012-59 – Insurance litigation	Division of Risk Management	\$4,940.69	\$140-\$165
2013-09 – Local counsel, out of state litigation	George Mason University	\$1,204.75	\$245-\$305
2013-19 – Specialized legal issue	Virginia Economic Development Partnership	\$1,281.00	\$315-\$495
2013-28 – Local counsel, out of state litigation	Old Dominion University	\$19,895.50	\$200-\$325
2013-32 – Specialized legal issue	Department of Environmental Quality	\$5,481.90	\$265-\$450
2013-34 – Specialized and international law	University of Virginia	\$43,702.56	\$270-\$450
2013-37 – Specialized legal issue	George Mason University	\$182,265.00	\$387-\$690
2013-38 – Specialized legal issue	Virginia Port Authority	\$10,875.00	\$325-\$435

**Single Case Appointments
FY2014-2015**

SCA	Agency	Amount Authorized	Range of Hourly Rates
2013-42 – Specialized legal issue	Virginia Retirement System	\$63,052.03	\$495-\$950
2013-46 – Tax collection litigation	Department of Taxation	\$107,991.78	\$204-\$450
2013-47 – Tax collection litigation	Department of Taxation	\$257,960.12	\$204-\$450
2013-49 – Employee grievance	Department of Alcoholic Beverage Control	\$27,441.02	\$200
2014-N02 – Specialized legal matter	University of Virginia, George Mason University, College of William & Mary	\$6,666.50	\$200-\$250
2014-N03 – Tax matter	Virginia Commonwealth University	\$32,146.00	\$250-\$597
2014-N05 – Local counsel, out of state matter	Virginia Tech	\$15,684.42	\$265.50-\$549.00
2014-N08 – Complex hospital merger	University of Virginia	\$143,080.63	\$395-\$797
2014-N09 – Litigation defense	Division of Risk Management	\$9,459.00	\$170-\$190
2014-N10 – Employee grievance	Department of Fire Programs	\$4,983.75	\$225
2014-N11 – International law	Virginia Commonwealth University	\$3,500.94	\$161.50-\$565.25
2014-N13 – Immigration matter	Department of Transportation	\$1,825.00	Flat Fee

**Single Case Appointments
FY2014-2015**

SCA	Agency	Amount Authorized	Range of Hourly Rates
2014-N16 – Workers’ Compensation matter	Department of Human Resource Management	\$2,748.00	\$145-\$165
2014-N17 – Compliance matter	James Madison University	\$1,069.50	\$310-\$345
2014-N26 – Litigation matter	Virginia Commonwealth University	\$17,300.00	\$250
2014-N27 – International law	Virginia Commonwealth University	\$3,573.19	\$161.50-\$565.25
2014-N28 – Local counsel, out of state matter	Office of the Governor	\$5,171.00	\$175-\$220
2014-N29 – Internal investigation	University of Virginia	\$544,786.75	Flat Fee
2014-N30 – Tax litigation	Department of Taxation	\$1,642.00	\$204-\$450
2014-N31 – Tax litigation	Department of Taxation	\$3,506.70	\$204-\$450
2014-N33 – Complex and large litigation defense	Department of Elections, State Board of Elections	\$523,759.41	\$250-\$450
2014-N37 – Litigation matter	Virginia Commonwealth University	\$8,070.00	\$250
2014-N38 – International law	Virginia Commonwealth University	\$9,510.75	\$157-\$633
2014-N40 – Immigration matter	Virginia Tech	\$3,102.84	Flat Fee

**Single Case Appointments
FY2014-2015**

SCA	Agency	Amount Authorized	Range of Hourly Rates
2014-N45 – Employee grievance	Department of Behavioral Health and Developmental Sciences	\$9,180.00	\$225
2014-N46 – Specialized legal matter	University of Virginia	\$60.30	\$375-\$705
2014-N50 – Federal compliance matter	Department of Behavioral Health and Developmental Sciences	\$1,310.00	\$250
2015-N27 – Employee grievance	Department of Forensic Science	\$8,302.50	\$225
Single Case Appointment Outside Counsel Spending –Total			\$5,484,189.53