



COMMONWEALTH of VIRGINIA

Office of the Attorney General

Mark R. Herring
Attorney General

202 North Ninth Street
Richmond, Virginia 23219
804-786-2071
Fax 804-786-1991
Virginia Relay Services
800-828-1120
7-1-1

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

The Honorable Thomas K. Norment, Jr.
Co-Chair, Senate Finance Committee
Senate of Virginia
P.O. Box 396
Richmond, Virginia 23218

The Honorable Emmett W. Hanger, Jr.
Co-Chair, Senate Finance Committee
Senate of Virginia
P.O. Box 396
Richmond, Virginia 23218

Dear Chairman Jones, Chairman Norment, and Chairman Hanger:

Enclosed is the report required by the enacted 2016-2018 biennial budget regarding outside counsel utilization by agencies of the executive branch. I trust that you will find it informative. Item 59 F 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

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'16, the agency receiving services, the amount authorized for payment, and the hourly rates established under each SFP. The majority of the increase over the previous year is attributed to the Virginia Department of Transportation's use of counsel during eminent domain proceedings and the development of infrastructure projects through public-private partnerships, including the I-395 HOT Lanes, the Coalfield Expressway, expansion of capacity in Hampton Roads, and I-66 expansion outside the beltway.

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 authorized for payment, and the hourly rates for each SCA. These matters include cases where the Commonwealth is a defendant, cases where the Commonwealth or its agencies are seeking financial recovery, and a number of one-time expenses such as the acquisition of a hospital by the University of Virginia Health System, contract work associated with the privatization of VDOT's Transportation Operations Centers, and a series of highly complex tax liability cases involving significant revenue.

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.

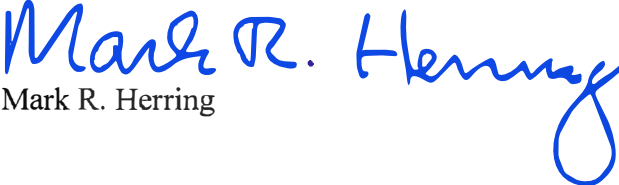
I have continued to implement significant reforms to improve coordination, oversight, effectiveness, and efficiency of the Commonwealth's use of outside counsel through the Office of Attorney General's first Compliance and Transparency Counsel. I have implemented the

The Honorable S. Chris Jones
The Honorable Thomas K. Norment, Jr.
The Honorable Emmett W. Hanger, Jr.

Office of Attorney General's 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. I have also required coordination of general legal strategy, development of budget and case management plans for all engagements, and solicited performance feedback from agencies on the services they receive.

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 2016

By Solicitation for Proposal

Office of the Attorney General

**Outside Counsel Spending Pursuant to Solicitation for Proposal
FY 2016**

| Intellectual Property | |
|---|---------------------|
| College of William & Mary | \$16,120.00 |
| George Mason University | \$56,619.20 |
| Old Dominion University | \$26,460.00 |
| University of Virginia | \$490.00 |
| Virginia Commonwealth University | \$6,420.00 |
| Virginia Museum of Fine Arts | \$2,000.00 |
| Virginia Polytechnic Institute & State University | \$26,355.50 |
| Virginia Tourism Authority | \$18,045.00 |
| Total: | \$152,509.70 |

Hourly Rate Range \$160-\$175

| Bankruptcy | |
|----------------------------------|--------------------|
| DPOR/Board for Contractors | \$68,108.91 |
| Virginia Commonwealth University | \$8,577.00 |
| Total: | \$76,685.91 |

Hourly Rate Range \$200-\$340

| Debt Collection | |
|---|--------------------|
| Virginia Polytechnic Institute & State University | \$85,800.36 |
| Total: | \$85,800.36 |

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

**Outside Counsel Spending Pursuant to Solicitation for Proposal
FY 2016**

| Workers' Compensation Commission | |
|---|-----------------------|
| Department of Human Resource Management | \$1,192,339.26 |
| Total: | \$1,192,339.26 |

Hourly Rate Range \$110-\$167

| Virginia Department of Transportation – Eminent Domain | |
|---|-----------------------|
| Virginia Department of Transportation | \$5,205,360.30 |
| Total: | \$5,205,360.30 |

Hourly Rate Range \$135-\$325

| Division of Risk Management – Medical Malpractice | |
|--|---------------------|
| Division of Risk Management | \$525,000.00 |
| Total: | \$525,000.00 |

Hourly Rate Range \$160-\$195

| Division of Risk Management – Automobile Liability | |
|---|---------------------|
| Division of Risk Management | \$192,307.92 |
| Total: | \$192,307.92 |

Hourly Rate Range \$125-\$260

**Outside Counsel Spending Pursuant to Solicitation for Proposal
FY 2016**

| Department of Child Support Enforcement | |
|--|---------------------|
| Department of Child Support Enforcement | \$109,251.25 |
| Total: | \$109,251.25 |
| <p align="center">\$275 for each JDR Day with 20 or fewer hearings \$275 for each day at a statewide or quarterly regional legal services meeting lasting 4 hours or less \$550 for each JDR Day with more than 20 hearings \$550 for each day at a statewide or quarterly regional legal services meeting lasting more than 4 hours \$40 for travel time to and from courts and legal services meetings between 50 and 99 miles roundtrip \$60 for travel time to and from courts and legal services meetings 100 or more miles roundtrip \$125 per hour for other pre-approved legal work, including circuit court appeals (inclusive of any and all expenses, including travel expenses)</p> | |

| FCC/Communications | |
|---------------------------|--------------------|
| Virginia State Police | \$24,895.00 |
| Total: | \$24,895.00 |

Hourly Rate Range \$165-\$325

| Construction | |
|---|---------------------|
| Virginia Polytechnic Institute & State University | \$209,035.50 |
| Total: | \$209,035.50 |

Hourly Rate Range \$180-\$250

**Outside Counsel Spending Pursuant to Solicitation for Proposal
FY 2016**

| Employee Benefits/ERISA | |
|--|---------------------|
| George Mason University | \$13,566.25 |
| James Madison University | \$7,042.60 |
| Old Dominion University | \$14,659.55 |
| University of Virginia | \$88,704.00 |
| Virginia Commonwealth University | \$18,696.15 |
| Virginia Information Technologies Agency | \$1,500.00 |
| Virginia Military Institute | \$9,810.45 |
| Virginia Port Authority | \$54,540.14 |
| Virginia Retirement System | \$77,870.75 |
| Total: | \$286,389.89 |

Hourly Rate Range \$207.00-\$552.50

| Virginia Retirement System Investment Matters | |
|--|---------------------|
| Virginia Commonwealth University | \$15,173.91 |
| Virginia Retirement System | \$732,431.40 |
| Total: | \$747,605.31 |

Hourly Rate Range \$220-\$725

| Immigration Matters | |
|--------------------------------|-------------|
| Christopher Newport University | \$11,962.34 |
| College of William & Mary | \$7,900.00 |
| Department of Forensic Science | \$450.00 |
| George Mason University | \$29,800.00 |
| Old Dominion University | \$22,950.00 |
| Radford University | \$525.00 |

**Outside Counsel Spending Pursuant to Solicitation for Proposal
FY 2016**

| Immigration Matters | |
|---------------------------------------|---------------------|
| University of Mary Washington | \$6,900.00 |
| University of Virginia | \$950.00 |
| Virginia Commonwealth University | \$56,525.00 |
| Virginia Community College System | \$950.00 |
| Virginia Department of Education | \$3,800.00 |
| Virginia Department of Transportation | \$8,450.00 |
| Virginia Military Institute | \$8,075.00 |
| Total: | \$159,237.34 |

Hourly Rate Range \$125-\$300

Flat Fees \$500-\$5,000

| Higher Education Bonds & Public Financing | |
|--|---------------------|
| University of Virginia | \$54,291.02 |
| Virginia Commonwealth University | \$348,615.39 |
| Virginia Polytechnic Institute & State University | \$85,000.00 |
| Total: | \$487,906.41 |

Hourly Rate Range \$150-\$605

| University of Virginia Medical Center | |
|--|---------------------|
| University of Virginia | \$283,549.70 |
| Total: | \$283,549.70 |

Hourly Rate Range \$245-\$695

**Outside Counsel Spending Pursuant to Solicitation for Proposal
FY 2016**

| Virginia Port Authority | |
|--------------------------------|---------------------|
| Virginia Port Authority | \$593,023.52 |
| Total: | \$593,023.52 |
| Hourly Rate Range | |
| | \$243-\$495 |

| Virginia Resources Authority | |
|-------------------------------------|--------------------|
| Virginia Resources Authority | \$65,013.20 |
| Total: | \$65,013.20 |
| Hourly Rate Range | |
| | \$185-\$327 |

| Treasury | |
|--------------------------|--------------------|
| Department of Treasury | \$17,719.10 |
| Total: | \$17,719.10 |
| Hourly Rate Range | |
| | \$252-\$511 |

| Transportation Privatization Matters | |
|---|-----------------------|
| Virginia Department of Transportation | \$1,341,508.17 |
| Total: | \$1,341,508.17 |
| Hourly Rate Range | |
| | \$203-\$690 |

**Outside Counsel Spending Pursuant to Solicitation for Proposal
FY 2016**

| VDOT and CTB Matters | |
|---------------------------------------|---------------------|
| Virginia Department of Transportation | \$110,064.88 |
| Total: | \$110,064.88 |
| Hourly Rate Range | |
| \$225-\$511 | |

| Virginia College Building Authority | |
|--|---------------------|
| Virginia College Building Authority | \$121,565.99 |
| Total: | \$121,565.99 |
| Hourly Rate Range | |
| \$230-\$450 | |

| Virginia Small Business Financing Authority | |
|--|--------------------|
| Virginia Small Business Financing Authority | \$17,517.66 |
| Total: | \$17,517.66 |
| Hourly Rate Range | |
| \$225-\$327 | |

| Export Control Matters | |
|-------------------------------|--------------------|
| George Mason University | \$69,154.50 |
| University of Virginia | \$9,975.00 |
| Total: | \$79,129.50 |
| Hourly Rate Range | |
| \$300-\$835 | |

**Outside Counsel Spending Pursuant to Solicitation for Proposal
FY 2016**

| Department of Education - NCAA Matters | |
|---|--------------------|
| George Mason University | \$29,782.08 |
| Norfolk State University | \$30,487.50 |
| Total: | \$60,269.58 |

Hourly Rate Range \$180-\$225

| Treasury Board | |
|-----------------------|---------------------|
| Treasury Board | \$115,192.10 |
| Total: | \$115,192.10 |

Hourly Rate Range \$171-\$295

| Virginia Public Building Authority | |
|---|---------------------|
| Virginia Public Building Authority | \$112,188.01 |
| Total: | \$112,188.01 |

Hourly Rate Range \$180-\$320

| Outside Counsel Spending by Solicitation for Proposal | |
|--|------------------------|
| TOTAL: | \$12,371,065.56 |

Report on Executive
Branch Agency Use of
Special Outside
Counsel FY 2016

By Single Case Appointment

Office of the Attorney General

SFP Totals – FY 2016

| SCA | Agency | Amount Authorized | Range of Hourly Rates |
|--|---|--------------------------|------------------------------|
| 2009-20 – Local counsel, international law | University of Virginia | \$5,888.75 | 270 EUR |
| 2011-05 – Out of state debt collection matter | Virginia Commonwealth University | \$754.00 | \$200 - \$290 |
| 2011-22 – Local counsel, out of state litigation | Virginia Retirement System | \$222.56 | \$185 |
| 2012-34 – Compliance matter | University of Virginia | \$4,133.50 | \$290 - \$305 |
| 2012-35 – Local counsel, international law | University of Virginia | \$1,511.00 | \$315 |
| 2012-37 – Procurement | Department of Transportation | \$568,363.77 | \$196 - 425 |
| 2012-38 – Local counsel, out of state litigation | Office of the Attorney General | \$267.77 | \$200 |
| 2012-39 – Local counsel, out of state litigation | Department of Health Professions | \$4,726.10 | \$175 - 200 |
| 2013-19 – Specialized legal issue | Virginia Economic Development Partnership | \$2,400.00 | \$315 - 405 |
| 2013-43 – Local counsel, international law | University of Virginia | \$35,645.36 | \$229.50 - \$790.50 |
| 2013-46 – Tax collection litigation | Department of Taxation | \$61,066.80 | \$204 - \$484 |
| 2013-47 – Tax collection litigation | Department of Taxation | \$140,408.40 | \$204 - \$484 |
| 2014-N03 – Tax matter | Virginia Commonwealth University | \$21,489.40 | \$250 - 597 |
| 2014-N04 – Complex litigation matter | Virginia Polytechnic Institute & State University | \$3,014.00 | \$130 - \$145 |
| 2014-N05 – Local counsel, out of state matter | Virginia Tech | \$413.78 | \$265.50 - \$549.00 |
| 2014-N08 – Complex hospital merger | University of Virginia | \$768,764.59 | \$395 - \$797 |
| 2014 - N09 – Local counsel, out of state litigation | Division of Risk Management | \$9,923.58 | \$170 - \$190 |
| 2014 - N24 – Highly specialized Workers' Compensation matter | Department of Human Resource Management | \$2,149.80 | \$145 - \$158 |
| 2014 - N25 – Litigation matter | Department of Corrections | \$15,639.50 | \$190 |
| 2014 - N27 – International law | Virginia Commonwealth University | \$58,730.38 | \$161.50 - \$565.25 |

SFP Totals – FY 2016

| SCA | Agency | Amount Authorized | Range of Hourly Rates |
|---|--|--------------------------|------------------------------|
| 2014 - N30 – Tax collection litigation | Department of Taxation | \$90.00 | \$204 - \$437 |
| 2014 - N31 – Tax collection litigation | Department of Taxation | \$6,291.90 | \$204 - \$437 |
| 2014 - N32 – Specialized legal matter | Department of Human Resource Management | \$7,500.00 | \$250 |
| 2014 - N33 – Complex and large litigation defense | Department of Elections, State Board of Elections | \$353,936.84 | \$250 - \$450 |
| 2014 - N36 – Specialized legal matter | University of Virginia | \$7,000.00 | \$290 - \$390 |
| 2014 - N37 – Litigation matter | Virginia Commonwealth University | \$135.00 | \$250 |
| 2014 - N38 – International law | Virginia Commonwealth University | \$3,672.75 | \$157 - \$633 |
| 2014 - N40 – Immigration matter | Virginia Tech | \$468.20 | Flat fee |
| 2014 - N41 – Local counsel, out of state litigation | Office of the Executive Secretary | \$2,000.00 | \$250 |
| 2014 - N44 – Specialized legal matter | Department of Transportation | \$9,222.00 | \$435 |
| 2014 - N45 – Employee grievance | Department of Behavioral Health and Developmental Sciences | \$2,250.00 | \$225 |
| 2014 - N46 – Specialized legal matter | University of Virginia | \$2,256.00 | \$375 - \$705 |
| 2014 - N47 – Litigation matter | Commonwealth of Virginia | \$1,184.00 | \$160 |
| 2014 - N48 – Specialized legal matter | Office of the Secretary of Transportation | \$22,683.30 | \$187 - \$315 |
| 2014 - N49 – Specialized legal matter | Office of the Secretary of Transportation | \$52,392.71 | \$150 - \$175 |
| 2015 - N25 – Local counsel, out of state litigation | Supreme Court of Virginia | \$5,497.50 | \$175 - \$200 |
| 2015 - N26 – Local counsel, international law | Virginia Commonwealth University Qatar | \$1,190.75 | \$527 |
| 2015 - N28 – Tax collection litigation | Department of Taxation | \$231,295.15 | \$204 - \$437 |
| 2015 - N31 – Specialized legal matter | Virginia Museum of Fine Arts | \$8,082.00 | \$450 |
| 2015 - N34 – Compliance matter | University of Virginia | \$4,088.00 | \$335 - \$365 |

SFP Totals – FY 2016

| SCA | Agency | Amount Authorized | Range of Hourly Rates |
|---|---|--------------------------|-------------------------------|
| 2015 - N36 – Complex bankruptcy matter | Department of Labor & Industry | \$91,584.70 | \$235 - \$340 |
| 2015 - N37 – Complex and large litigation defense | Department of Elections, State Board of Elections | \$876,144.16 | \$475 |
| 2015 - N39 – Litigation matter | Virginia Commonwealth University | \$300.00 | \$250 |
| 2015 - N41 – Employee grievance | Office of the Attorney General | \$912.00 | \$220 - \$350 |
| 2015 - N44 – Litigation matter | Virginia Outdoors Foundation | \$52,329.90 | \$187 - \$315 |
| 2015 - N45 – Complex bankruptcy matter | Department of Transportation | \$62,701.00 | \$200 - \$340 |
| 2015 - N46 – Complex litigation matter | Department of Transportation | \$240,814.82 | \$330 |
| 2015 - N47 – Specialized legal matter | Department of Transportation | \$35,000.00 | Flat fee |
| 2015 - N49 – Specialized legal matter | Department of Medical Assistance Services | \$162,679.02 | \$275 - \$550 |
| 2015 - N50 – Litigation matter | University of Virginia | \$198,333.74 | \$290 - \$525 |
| 2015 - N52 – Specialized legal matter | Jamestown - Yorktown Foundation | \$6,877.00 | \$360 |
| 2015 - N53 – Complex bankruptcy matter | Virginia Retirement System | \$12,285.18 | \$7.06 - \$27.50 ¹ |
| 2015 - N54 – Specialized legal matter | University of Virginia | \$12,365.50 | \$505 - \$705 |
| 2015 - N55 – Local counsel, out of state litigation | Department for Aging and Rehabilitative Services | \$3,731.25 | \$175 - \$200 |
| 2015 - N56 – Specialized legal matter | Birth Related Injury Fund | \$82,594.00 | \$300 - \$690 |
| 2015 - N57 – Employee grievance | Department of Alcoholic Beverage Control | \$16,489.06 | \$225 |
| 2015 - N60 – Local counsel, out of state litigation | Department of Education | \$27,335.00 | \$275 |
| 2015 - N65 – Compliance matter | University of Virginia | \$4,562.50 | \$365 |
| 2015 - N68 – Compliance matter | University of Virginia | \$41,727.50 | \$430 - \$630 |

¹ Fees billed on a pro-rata basis based on Virginia Retirement System's term loan exposure in this matter relative to the aggregate term loan exposure of all participants.

SFP Totals – FY 2016

| SCA | Agency | Amount Authorized | Range of Hourly Rates |
|---|---|-----------------------|-----------------------|
| 2016 - N02 – Specialized legal matter | Department of Social Services | \$83,874.97 | \$475 - \$690 |
| 2016 - N03 – Local counsel, out of state litigation | Office of the Attorney General | \$7,775.00 | \$250 |
| 2016 - N07 – Specialized legal matter | Virginia Economic Development Partnership | \$9,924.00 | \$250 - \$425 |
| 2016 - N09 – Local counsel, out of state litigation | Office of the Attorney General | \$11,620.00 | \$175 - \$300 |
| 2016 - N15 – Specialized legal matter | Department of General Services | \$2,535.50 | \$275 - \$385 |
| 2016 - N23 – Employee grievance | Virginia Port Authority | \$1,192.55 | \$391 |
| 2016 - N26 – Local counsel, out of state litigation | George Mason University | \$3,185.00 | \$325 |
| 2016 - N31 – Specialized legal matter | Department of Transportation | \$870.00 | \$435 |
| Outside Counsel Spending by Single Case Appointment – Total: | | \$4,476,492.49 | |