



COMMONWEALTH of VIRGINIA

Office of the Attorney General

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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 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'17, the agency receiving services, the amount authorized for payment, and the hourly rates established under each SFP. As in most years, around half of the work done pursuant to an SFP involves Virginia Department of Transportation eminent domain proceedings, with Port of Virginia expansion and other transportation projects accounting for another significant portion.

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.

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.

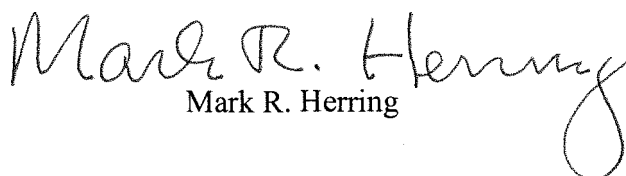
I have continued to implement significant reforms to improve coordination, oversight, effectiveness, and efficiency of the Commonwealth's use of outside counsel through the Office of Attorney General’s first Compliance and Transparency Counsel. I have implemented the Office of Attorney General’s first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

The Honorable S. Chris Jones
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on the services they receive. We are also utilizing technology to better track, manage, and monitor outside counsel engagements, all with the goal of ensuring best value when outside counsel is necessary.

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 2017

By Solicitation for Proposal

Office of the Attorney General

**Outside Counsel Spending Pursuant to Solicitation for Proposal
FY 2017**

Intellectual Property	
College of William & Mary	\$8,386.00
George Mason University	\$94,688.80
Norfolk State University	\$5,570.00
Old Dominion University	\$6,275.00
Virginia Community College System	\$1,770.00
Virginia Polytechnic Institute & State University	\$104,670.70
Virginia Tourism Authority	\$19,960.00
Total:	\$241,320.50

Hourly Rate Range \$200.00 – \$594.00

Debt Collection	
Virginia Polytechnic Institute & State University	\$69,699.30
Total:	\$69,699.30

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

Workers' Compensation Commission	
Department of Human Resource Management	\$101,157.10
Uninsured Employers' Fund	\$942,246.97
Total:	\$1,043,404.07

Hourly Rate Range \$130.00 – \$170.00

Employee Relations and Grievances	
Department of Veterans Services	\$9,500.00
Virginia Port Authority	\$18,496.79
Total:	\$27,996.79

Hourly Rate Range \$225.00 – \$385.00

**Outside Counsel Spending Pursuant to Solicitation for Proposal
FY 2017**

Eminent Domain	
Virginia Department of Transportation	\$5,983,067.99
Virginia Military Institute	\$5,219.50
Total:	\$5,988,287.49

Hourly Rate Range \$105.00 – \$375.00

Division of Risk Management – Automobile Liability	
Division of Risk Management	\$158,429.52
Total:	\$158,429.52

Hourly Rate Range \$160.00 – \$225.00

Department of Child Support Enforcement	
Department of Child Support Enforcement	\$86,465.00
Total:	\$86,465.00
<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 Department of Transportation	\$23,033.00
Virginia State Police	\$17,322.50
Total:	\$40,355.50

Hourly Rate Range \$310.00 – \$325.00

**Outside Counsel Spending Pursuant to Solicitation for Proposal
FY 2017**

Construction	
Virginia Polytechnic Institute & State University	\$76,191.00
Total:	\$76,191.00

Hourly Rate Range \$200.00 – \$250.00

Employee Benefits/ERISA	
College of William & Mary	\$10,000.00
George Mason University	\$6,294.35
James Madison University	\$2,785.05
Old Dominion University	\$1,614.60
Radford University	\$6,654.40
University of Virginia	\$12,554.10
Virginia Community College System	\$2,928.25
Virginia Commonwealth University	\$18,355.65
Virginia Information Technologies Agency	\$600.00
Virginia Museum of Fine Arts	\$32,853.48
Virginia Military Institute	\$4,856.95
Virginia Port Authority	\$4,696.25
Virginia Polytechnic Institute & State University	\$13,080.60
Virginia Retirement System	\$60,171.95
Total:	\$177,445.63

Hourly Rate Range \$207.00 – \$552.50

Virginia Retirement System Investment Matters	
Virginia Retirement System	\$650,665.96
Total:	\$650,665.96

Hourly Rate Range \$215.00 – \$690.00

**Outside Counsel Spending Pursuant to Solicitation for Proposal
FY 2017**

Immigration Matters	
Christopher Newport University	\$8,160.00
College of William & Mary	\$6,198.00
George Mason University	\$27,146.00
James Madison University	\$463.00
Longwood University	\$110.00
Norfolk State University	\$110.00
Old Dominion University	\$19,479.00
Richard Bland College	\$44.00
Radford University	\$2,198.00
University of Mary Washington	\$7,910.00
University of Virginia	\$573.00
Virginia Community College System	\$220.00
Virginia Commonwealth University	\$32,608.00
Virginia Department of Education	\$8,000.00
Virginia Department of Transportation	\$10,000.00
Virginia Military Institute	\$6,794.00
Virginia Polytechnic Institute & State University	\$727.00
Virginia State University	\$110.00
Total:	\$130,850.00

Hourly Rate Range \$125.00 – \$300.00

Flat Fees \$500 – \$5,000

Higher Education Bonds & Public Financing	
University of Virginia	\$7,642.60
Virginia Commonwealth University	\$90,634.37
Virginia Polytechnic Institute & State University	\$7,698.00
Total:	\$105,974.97

Hourly Rate Range \$225.00 – \$605.00

**Outside Counsel Spending Pursuant to Solicitation for Proposal
FY 2017**

Charitable Trust & Investment	
University of Virginia	\$175.50
Total:	\$175.50

Hourly Rate Range \$410.00 – \$585.00

University of Virginia Medical Center	
University of Virginia	\$339,741.18
Total:	\$339,741.18

Hourly Rate Range \$245.00 – \$823.50

Virginia Port Authority	
Virginia Port Authority	\$1,070,512.24
Total:	\$1,070,512.24

Hourly Rate Range \$207.00 – \$495.00

Treasury	
Department of Treasury	\$53,988.50
Total:	\$53,988.50

Hourly Rate Range \$126.00 – \$333.00

Transportation Privatization	
Virginia Department of Transportation	\$1,664,246.48
Total:	\$1,664,246.48

Hourly Rate Range \$238.00 – \$760.00

**Outside Counsel Spending Pursuant to Solicitation for Proposal
FY 2017**

Commonwealth Transportation Board	
Virginia Department of Transportation	\$66,676.10
Total:	\$66,676.10

Hourly Rate Range \$225.00 – \$511.00

Virginia College Building Authority	
Virginia College Building Authority	\$131,585.65
Total:	\$131,585.65

Hourly Rate Range \$360.00 – \$450.00

Virginia Small Business Financing Authority	
Virginia Small Business Financing Authority	\$1,417.50
Total:	\$1,417.50

Hourly Rate Range \$315.00

NCAA	
Norfolk State University	\$15,423.71
Total:	\$15,423.71

Hourly Rate Range \$225.00

Virginia Public Building Authority	
Virginia Public Building Authority	\$87,702.60
Total:	\$87,702.60

Hourly Rate Range \$115.00 – \$315.00

Outside Counsel Spending by Solicitation for Proposal	
TOTAL:	\$12,223,555.19

Report on Executive
Branch Agency Use of
Special/Outside
Counsel FY 2017

By Single Case Appointment

Office of the Attorney General

SCA Totals – FY 2017

Single Case Appointment	Agency	Amount Authorized	Range of Hourly Rates
2011-10 – International law	Virginia Polytechnic Institute & State University	\$7,027.93	\$168.00
2011-22 – Local counsel, out of state litigation	Virginia Retirement System	\$130.06	\$185.00
2012-12 – Local counsel, out of state litigation	Virginia Lottery	\$382.50	\$255.00
2012-35 – Local counsel, international law	University of Virginia	\$1,306.58	\$157.42
2012-37 – Procurement	Department of Transportation	\$6,965.70	\$204.00 – \$497.00
2012-38 – Local counsel, out of state litigation	Office of the Attorney General	\$29,079.32	\$200.00
2012-50 – Specialized legal matter	University of Virginia	\$14,069.50	\$245.00
2013-46 – Tax collection litigation	Department of Taxation	\$20,793.00	\$289.00 – \$472.00
2013-47 – Tax collection litigation	Department of Taxation	\$71,059.52	\$289.00 – \$472.00
2014-N08 – Complex hospital merger	University of Virginia	\$899.70	\$689.00 – \$693.00
2014-N09 – Local counsel, out of state litigation	Department of Forestry	\$912.00	\$190.00
2014-N22 – International law	Virginia Polytechnic Institute & State University	\$885.00	\$295.00
2014-N27 – International law	Virginia Commonwealth University	\$17,602.83	\$480.25 – \$510.00
2014-N30 – Tax collection litigation	Department of Taxation	\$9,317.70	\$318.00 – \$450.00
2014-N31 – Tax collection litigation	Department of Taxation	\$23,068.50	\$450.00
2014-N48 – Specialized legal matter	Office of the Secretary of Transportation	\$119,296.18	\$177.76 – \$315.00
2015-N28 – Tax collection litigation	Department of Taxation	\$33,448.70	\$318.00 – \$450.00
2015-N32 – International law	Virginia Commonwealth University	\$48,198.01	\$514.00 – \$527.00
2015-N35 – Local counsel, out of state litigation	Office of the Governor	\$392.37	\$195.00 – \$315.00
2015-N36 – Complex bankruptcy matter	Department of Labor & Industry	\$11,768.50	\$340.00

SCA Totals – FY 2017

Single Case Appointment	Agency	Amount Authorized	Range of Hourly Rates
2015-N37 – Complex and large litigation defense	Department of Elections, State Board of Elections	\$1,967,075.74	\$475.00
2015-N41 – Employee grievance	Office of the Attorney General	\$324,349.92	\$220.00 – \$350.00
2015-N44 – Litigation matter	Virginia Outdoors Foundation	\$13,320.10	\$204.00 – \$315.00
2015-N45 – Complex bankruptcy matter	Department of Transportation	\$32,237.50	\$235.00 – \$340.00
2015-N49 – Specialized legal matter	Department of Medical Assistance Services	\$15,268.00	\$295.00 – \$500.00
2015-N50 – Litigation matter	University of Virginia	\$45,937.50	\$270.00 – \$525.00
2015-N52 – Specialized legal matter	Jamestown - Yorktown Foundation	\$396.00	\$360.00
2015-N53 – Complex bankruptcy matter	Virginia Retirement System	\$5,366.71	\$7.06 – \$27.50 ¹
2015-N54 – Specialized legal matter	University of Virginia	\$423.00	\$705.00
2015-N55 – Local counsel, out of state litigation	Department for Aging & Rehabilitative Services	\$2,792.50	\$175.00 – \$200.00
2015-N56 – Specialized legal matter	Birth Related Injury Fund	\$225,374.50	\$300.00 – \$675.00
2015-N60 – Local counsel, out of state litigation	Department of Education	\$7,012.50	\$275.00
2015-N63 – Specialized legal matter	Office of the Attorney General	\$7,293.00	\$185.00 – \$250.00
2015-N68 – Compliance matter	University of Virginia	\$91,026.92	\$430.00 – \$630.00
2016-N01 – Compliance matter	Virginia Commonwealth University	\$12,000.00	flat fee
2016-N02 – Specialized legal matter	Department of Social Services	\$195,784.83	\$325.00 – \$690.00
2016-N03 – Local counsel, out of state litigation	Office of the Attorney General	\$12,625.00	\$250.00
2016-N07 – Specialized legal matter	Virginia Economic Development Partnership	\$1,019.00	\$270.00 – \$425.00
2016-N09 – Local counsel, out of state litigation	Office of the Attorney General	\$2,880.00	\$300.00

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.

SCA Totals – FY 2017

Single Case Appointment	Agency	Amount Authorized	Range of Hourly Rates
2016-N12 – Specialized legal matter	Department of Rail & Public Transportation	\$35,817.44	\$550.00
2016-N13 – Specialized legal matter	Department of Human Resource Management	\$753.30	\$145.00 – \$158.00
2016-N14 – Specialized legal matter	George Mason University	\$24,692.50	\$415.00
2016-N15 – Specialized legal matter	Department of General Services	\$10,515.25	\$385.00
2016-N16 – Employee grievance	Department of Social Services	\$18,220.00	\$225.00
2016-N17 – Compliance matter	Virginia Community College System	\$3,317.00	\$310.00
2016-N18 – Specialized legal matter	Department of Behavioral Health & Developmental Services	\$56,697.85	\$170.00 – \$215.00
2016-N19 – Employee grievance	Virginia Port Authority	\$1,927.00	\$285.00 – \$385.00
2016-N22 – Specialized legal matter	Office of the Executive Secretary	\$1,995.00	\$175.00
2016-N23 – Employee grievance	Virginia Port Authority	\$273.70	\$391.00
2016-N24 – Specialized legal matter	Department of Medical Assistance Services	\$100,912.40	\$300.00 – \$675.00
2016-N25 – International law	Virginia Polytechnic Institute & State University	\$6,767.98	\$370.00 – \$575.00
2016-N26 – Local counsel, out of state litigation	George Mason University	\$6,662.50	\$325.00
2016-N27 – Employee grievance	Virginia Port Authority	\$86,280.50	\$285.00 – \$385.00
2016-N28 – Specialized legal matter	Virginia Commonwealth University	\$238,781.13	\$225.00 – \$335.00
2016-N29 – Local counsel, out of state litigation	Department of Human Resource Management	\$1,582.00	\$150.00
2016-N30 – Specialized legal matter	University of Virginia	\$9,767.50	\$275.00 – \$750.00
2016-N31 – Specialized legal matter	Department of Transportation	\$913.50	\$435.00
2016-N33 – Employee grievance	University of Virginia	\$45,721.66	\$335.00
2016-N34 – Employee grievance	Virginia State University	\$45,325.00	\$300.00

SCA Totals – FY 2017

Single Case Appointment	Agency	Amount Authorized	Range of Hourly Rates
2016-N35 – Employee grievance	Virginia State University	\$65,908.75	\$300.00
2016-N36 – Employee grievance	Virginia State University	\$42,402.16	\$300.00
2016-N37 – Specialized legal matter	Department of Behavioral Health & Developmental Services	\$32,261.32	\$200.00
2016-N38 – Local counsel, out of state litigation	Old Dominion University	\$2,425.00	\$150.00 – \$250.00
2016-N40 – Specialized legal matter	University of Virginia	\$117,815.64	\$331.00 – \$654.00
2016-N41 – Employee grievance	Department of Health Professions	\$3,552.50	\$175.00
2016-N43 – Employee grievance	Virginia Information Technologies Agency	\$3,487.50	\$225.00
2016-N46 – Local counsel, out of state litigation	Department of Health Professions	\$2,367.00	\$175.00 – \$225.00
2016-N47 – Local counsel, out of state litigation	Department of Health Professions	\$5,842.50	\$175.00 – \$225.00
2016-N48 – Employee grievance	Department of Health	\$3,990.00	\$175.00
2016-N52 – Specialized legal matter	Department of Elections, State Board of Elections	\$47,873.00	\$208.00 – \$357.00
2016-N53E – Specialized legal matter	Office of the Executive Secretary	\$3,413.52	\$150.00
2016-N54E – International law	Virginia Polytechnic Institute & State University	\$49,089.40	\$608.00 – \$806.00
2016-N55 – Specialized legal matter	Virginia Commonwealth University	\$16,888.50	\$305.00 – \$540.00
2016-N57 – Specialized legal matter	Department of Medical Assistance Services	\$39,902.00	\$275.00 – \$525.00
2016-N58 – Employee grievance	Department of Social Services	\$10,000.00	\$225.00
2016-N59 – Specialized legal matter	Office of the Executive Secretary	\$7,000.00	flat fee
2016-N61 – Specialized legal matter	Treasury	\$27,397.50	\$195.00 – \$250.00
2016-N64 – Employee grievance	Virginia Port Authority	\$45,646.10	\$350.00
2016-N65 – Local counsel, out of state litigation	Office of the Executive Secretary	\$8,329.50	\$250.00 – \$335.00

SCA Totals – FY 2017

Single Case Appointment	Agency	Amount Authorized	Range of Hourly Rates
2016-N67 – Local counsel, out of state litigation	Virginia State Police	\$1,752.80	\$120.00 – \$233.00
2016-N68 – Employee grievance	Department of Veterans Services	\$9,500.00	\$225.00
2016-N69E – Specialized legal matter	Office of the Attorney General	\$10,822.00	\$230.00 – \$350.00
2016-N73E – Specialized legal matter	University of Virginia	\$41,957.00	\$425.00 – \$515.00
2017-N02 – Local counsel, out of state litigation	Office of the Attorney General	\$970.00	\$300.00
2017-N10 – Local counsel, out of state litigation	Virginia Polytechnic Institute & State University	\$245.00	\$175.00
2017-N12 – Compliance matter	George Mason University	\$5,000.00	\$335.00 – \$365.00
2017-N20 – Specialized legal matter	Department of Historic Resources	\$14,006.70	\$270.00 – \$351.00
Outside Counsel Spending by Single Case Appointment – Total:		\$4,695,554.92	