



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 Item 59F of the enacted biennial budget requiring 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 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 necessitate 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) in which 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. This arrangement has existed for many years and selection as a qualified provider under an SFP is not a guarantee of work. In this report you will find all outside counsel engagements made under each SFP effective during FY'18, the agency receiving services, the amount authorized for payment, and the hourly rates established under each SFP. As in most years, Virginia Department of Transportation eminent domain proceedings comprised the largest portion of SFP expenditures, with VDOT privatization and Workers' Compensation Commission work accounting for additional significant portions.

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 in which the Commonwealth or its agencies are seeking financial recovery, and a number of one-time expenses. Nearly half of SCA expenses were incurred in connection with litigation involving the Virginia Information Technology Agency (VITA) and its former vendor Northrop Grumman.

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.

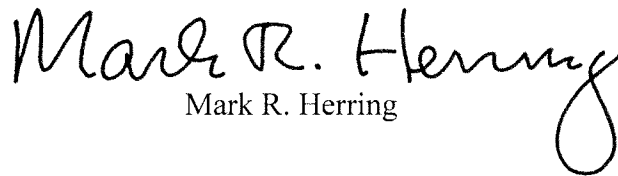
I have continued to implement significant reforms to improve coordination, oversight, effectiveness, and efficiency of the use of outside counsel by state agencies. I have centralized and improved record keeping and invoice review, and implemented the Office of Attorney General's first written, adopted 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

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plans for all engagements, and solicited performance feedback from agencies on the services they receive. Recently acquired technology is also allowing for better tracking, management, monitoring, and invoice review for outside counsel engagements. In fact, leveraging this new technology allowed my team to save taxpayers more than half a million dollars by striking improper or unauthorized expenses on submitted invoices.

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. April Kees, Co-Staff Director, Senate Finance Committee
Mr. Jason Powell, Co-Staff Director, Senate Finance Committee

Report on Executive
Branch Agency Use of
Special/Outside
Counsel FY 2018

By Solicitation for Proposal

Office of the Attorney General

**Outside Counsel Spending Pursuant to Solicitation for Proposal
FY 2018**

Intellectual Property	
Central State Hospital	\$250.00
College of William & Mary	\$7,390.00
Department of Education	\$1,810.00
George Mason University	\$139,934.90
Longwood University	\$380.00
Norfolk State University	\$5,220.00
Old Dominion University	\$12,795.00
University of Virginia	\$2,390.00
Virginia Polytechnic Institute & State University	\$116,399.51
Virginia State University	\$10,445.00
Virginia Tourism Authority	\$34,587.00
Total:	\$331,601.41

Hourly Rate Range \$75.00 – \$625.00

Debt Collection	
Virginia Polytechnic Institute & State University	\$76,375.76
Total:	\$76,375.76

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

Workers' Compensation Commission	
Workers' Compensation Commission	\$80,833.75
Workers' Compensation Comm'n – Criminal Injuries Compensation Fund	\$18,849.64
Workers' Compensation Comm'n – Uninsured Employers' Fund	\$1,096,426.04
Total:	\$1,196,109.43

Hourly Rate Range \$90.00 – \$280.00

Employee Relations and Grievances	
Board of Accountancy	\$2,407.50
Department of Alcoholic Beverage Control	\$41,114.20
Department of Health	\$19,740.00
Department of Health Professions	\$7,650.00

**Outside Counsel Spending Pursuant to Solicitation for Proposal
FY 2018**

Employee Relations and Grievances	
Department of Social Services	\$6,555.00
DHRM/Workers' Compensation Commission	\$7,965.00
Virginia Commonwealth University	\$4,927.50
Virginia Department of Agriculture & Consumer Services	\$3,915.00
Virginia Department of Fire Programs	\$12,500.00
Virginia Department of Transportation	\$2,084.50
Virginia Port Authority	\$7,377.78
Virginia State University	\$618,385.64
Total:	\$734,622.12

Hourly Rate Range \$175.00 – \$395.00

Eminent Domain	
Virginia Department of Transportation	\$5,286,558.98
Virginia Military Institute	\$13,427.32
Total:	\$5,299,986.30

Hourly Rate Range \$150.00 – \$355.00

Division of Risk Management – Medical Malpractice	
Department of Corrections	\$129,853.11
Division of Risk Management	\$137,118.23
Total:	\$266,971.34

Hourly Rate Range \$150.00 – \$250.00

Division of Risk Management – Automobile Liability	
Division of Risk Management	\$525,139.39
Total:	\$525,139.39

Hourly Rate Range \$145.00 – \$225.00

Department of Child Support Enforcement	
Department of Child Support Enforcement	\$90,835.00

**Outside Counsel Spending Pursuant to Solicitation for Proposal
FY 2018**

Department of Child Support Enforcement	
Total:	\$90,835.00
\$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)	

FCC/Communications	
Virginia Department of Transportation	\$1,984.00
Virginia State Police	\$27,190.50
Total:	\$29,174.50

Hourly Rate Range \$255.00 – \$325.00

Construction	
Virginia Polytechnic Institute & State University	\$102,722.89
Total:	\$102,722.89

Hourly Rate Range \$200.00 – \$250.00

Employee Benefits/ERISA	
College of William & Mary	\$12,000.00
George Mason University	\$8,373.50
Office of the Attorney General	\$2,749.35
University of Mary Washington	\$3,449.40
University of Virginia	\$34,555.35
Virginia Commonwealth University	\$35,091.60
Virginia Community College System	\$15,275.15
Virginia Military Institute	\$9,808.65
Virginia Polytechnic Institute & State University	\$13,341.50
Virginia Port Authority	\$22,869.00
Virginia Retirement System	\$115,275.65

**Outside Counsel Spending Pursuant to Solicitation for Proposal
FY 2018**

Employee Benefits/ERISA	
Total:	\$272,789.15

Hourly Rate Range \$207.00 – \$552.50

Virginia Retirement System Investment Matters	
Virginia Retirement System	\$656,654.51
Total:	\$656,654.51

Hourly Rate Range \$150.00 – \$690.00

Immigration Matters	
Central State Hospital	\$250.00
Christopher Newport University	\$4,750.00
College of William & Mary	\$16,000.00
George Mason University	\$48,050.00
Longwood University	\$7,800.00
Norfolk State University	\$4,750.00
Old Dominion University	\$23,300.00
Radford University	\$5,400.00
University of Mary Washington	\$12,250.00
University of Virginia	\$27,000.00
Virginia Commonwealth University	\$64,144.00
Virginia Community College System	\$950.00
Virginia Department of Transportation	\$15,400.00
Virginia Military Institute	\$7,331.84
Virginia Polytechnic Institute & State University	\$9,970.00
Total:	\$247,345.84

Hourly Rate Range \$195.06 – \$285.71

Flat Fees \$500 – \$5,000

Higher Education Bonds & Public Financing	
University of Virginia	\$454,595.14
Virginia Commonwealth University	\$36,963.90

**Outside Counsel Spending Pursuant to Solicitation for Proposal
FY 2018**

Higher Education Bonds & Public Financing	
Virginia Military Institute	\$702.00
Total:	\$492,261.04

Hourly Rate Range \$270.00 – \$675.00

University of Virginia Medical Center	
University of Virginia	\$602,856.49
Total:	\$602,856.49

Hourly Rate Range \$245.00 – \$805.00

Virginia Port Authority	
Virginia Port Authority	\$124,010.22
Total:	\$124,010.22

Hourly Rate Range \$264.28 – \$495.00

Treasury	
Department of Treasury	\$16,810.90
Total:	\$16,810.90

Hourly Rate Range \$548.00

Transportation Privatization	
Virginia Department of Transportation	\$1,087,336.94
Total:	\$1,087,336.94

Hourly Rate Range \$234.00 – \$760.00

Commonwealth Transportation Board	
Virginia Department of Transportation	\$169,764.20
Total:	\$169,764.20

Hourly Rate Range \$455.00 – \$714.00

**Outside Counsel Spending Pursuant to Solicitation for Proposal
FY 2018**

Virginia College Building Authority	
Virginia College Building Authority	\$441,689.65
Total:	\$441,689.65

Hourly Rate Range \$300.00 – \$450.00

Virginia Small Business Financing Authority	
Virginia Small Business Financing Authority	\$3,638.60
Total:	\$3,638.60

Hourly Rate Range \$323.00

Export Control	
University of Virginia	\$10,000.00
Total:	\$10,000.00

Hourly Rate Range \$361.46 – \$551.00

NCAA	
Norfolk State University	\$1,361.25
Total:	\$1,361.25

Hourly Rate Range \$225.00

Virginia Public Building Authority	
Virginia Public Building Authority	\$89,457.10
Total:	\$89,457.10

Hourly Rate Range \$191.00 – \$323.00

Outside Counsel Spending by Solicitation for Proposal	
TOTAL:	\$12,869,513.93

Report on Executive
Branch Agency Use of
Special/Outside
Counsel FY 2018

By Single Case Appointment

Office of the Attorney General

SCA Totals – FY 2018

Single Case Appointment	Agency	Amount Authorized	Range of Hourly Rates
2011-22 – Local counsel, out of state litigation	Virginia Retirement System	\$8,417.50	\$185.00
2012-38 – Local counsel, out of state litigation	Office of the Attorney General	\$9,373.08	\$200.00
2012-50 – Specialized legal matter	University of Virginia	\$21,211.50	\$175.00 - \$300.00
2013-46 – Tax collection litigation	Department of Taxation	\$2,218.40	\$472.00
2013-47 – Tax collection litigation	Department of Taxation	\$69,102.10	\$289.00 – \$472.00
2014-N27 – International law	Virginia Commonwealth University	\$25,312.06	\$148.75 – \$527.00
2014-N30 – Tax collection litigation	Department of Taxation	\$2,599.50	\$450.00
2015-N28 – Tax collection litigation	Department of Taxation	\$35,158.12	\$250.00 – \$450.00
2015-N44 – Litigation matter	Virginia Outdoors Foundation	\$264,268.41	\$204.00 – \$315.00
2015-N49 – Specialized legal matter	Department of Medical Assistance Services	\$2,097.50	\$295.00 – \$500.00
2015-N50 – Litigation matter	University of Virginia	\$12,956.89	\$270.00 – \$525.00
2015-N53 – Complex bankruptcy matter	Virginia Retirement System	\$1,252.70	\$7.06 – \$27.50 ¹
2015-N56 – Specialized legal matter	Birth Related Injury Fund	\$59,981.00	\$300.00 – \$675.00
2015-N60 – Local counsel, out of state litigation	Department of Education	\$7,438.23	\$275.00
2015-N68 – Compliance matter	University of Virginia	\$46,116.00	\$300.00 – \$630.00
2016-N02 – Specialized legal matter	Department of Social Services	\$138.30	\$325.00 – \$690.00
2016-N03 – Local counsel, out of state litigation	Office of the Attorney General	\$4,600.00	\$250.00
2016-N12 – Specialized legal matter	Department of Rail & Public Transportation	\$4,895.00	\$550.00
2016-N14 – Specialized legal matter	George Mason University	\$1,411.00	\$415.00

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 2018

Single Case Appointment	Agency	Amount Authorized	Range of Hourly Rates
2016-N15 – Specialized legal matter	Department of General Services	\$2,748.75	\$385.00
2016-N18 – Specialized legal matter	Department of Behavioral Health & Developmental Services	\$23,336.00	\$170.00 – \$215.00
2016-N19 – Employee grievance	Virginia Port Authority	\$399.00	\$285.00
2016-N24 – Specialized legal matter	Department of Medical Assistance Services	\$45,131.30	\$300.00 – \$675.00
2016-N25 – International law	Virginia Polytechnic Institute & State University	\$2,360.21	\$370.00 – \$575.00
2016-N27 – Employee grievance	Virginia Port Authority	\$134,111.15	\$285.00 – \$385.00
2016-N28 – Specialized legal matter	Virginia Commonwealth University	\$36,841.21	\$225.00 – \$335.00
2016-N33 – Employee grievance	University of Virginia	\$543,022.59	\$265.00 – \$395.00
2016-N35 – Employee grievance	Virginia State University	\$41,011.50	\$300.00
2016-N37 – Specialized legal matter	Department of Behavioral Health & Developmental Services	\$57,079.54	\$185.00 – \$200.00
2016-N38 – Local counsel, out of state litigation	Old Dominion University	\$2,525.00	\$150.00 – \$250.00
2016-N40 – Specialized legal matter	University of Virginia	\$33,535.40	\$331.00 – \$654.00
2016-N43 – Employee grievance	Virginia Information Technologies Agency	\$6,435.00	\$225.00
2016-N50 – Specialized legal matter	Department of Behavioral Health & Developmental Services	\$38,483.35	\$200.00
2016-N54E – International law	Virginia Polytechnic Institute & State University	\$4,030.00	\$608.00 – \$806.00
2016-N55 – Specialized legal matter	Virginia Commonwealth University	\$7,771.50	\$305.00 – \$540.00
2016-N57 – Specialized legal matter	Department of Medical Assistance Services	\$121,151.51	\$275.00 – \$525.00
2016-N62 – Specialized legal matter	Department of Behavioral Health & Developmental Services	\$2,720.00	\$200.00
2016-N65 – Local counsel, out of state litigation	Office of the Executive Secretary	\$1,373.50	\$250.00 – \$335.00
2016-N67 – Local counsel, out of state litigation	Virginia State Police	\$9,582.97	\$120.00 – \$233.00

SCA Totals – FY 2018

Single Case Appointment	Agency	Amount Authorized	Range of Hourly Rates
2016-N72 – Specialized legal matter	Department of Corrections	\$268,376.99	\$190.00
2016-N73E – Specialized legal matter	University of Virginia	\$8,497.50	\$425.00 – \$515.00
2017-N02 – Local counsel, out of state litigation	Office of the Attorney General	\$960.00	\$300.00
2017-N05 – International law	Virginia Commonwealth University	\$40,757.60	\$225.00 - \$553.00
2017-N07 – Specialized legal matter	Department of Corrections	\$32,349.33	\$155.00
2018-N08 – International law	Institutions of Higher Education	\$4,024.46	\$415.00 – \$935.00
2017-N10 – Local counsel, out of state litigation	Virginia Polytechnic Institute & State University	\$4,297.11	\$175.00
2017-N12 – Compliance matter	George Mason University	\$500.00	\$335.00 – \$365.00
2017-N16 – Specialized legal matter	Virginia Department of Transportation	\$11,000.00	\$200.00
2017-N20 – Specialized legal matter	Department of Historic Resources	\$29,475.00	\$270.00 – \$351.00
SCA 2017-N24 – Specialized legal matter	Department of General Services	\$11,677.50	\$270.00 – 351.00
SCA 2017-N26 – Highly specialized and complex legal matter	Virginia Information Technologies Agency	\$2,007,825.87	\$288.00 – \$846.00
SCA 2017-N29 – Specialized legal matter	Department for the Blind and Visually Impaired	\$99,772.26	\$356.00 - \$565.00
SCA 2017-N30 – Specialized legal matter	Virginia Commonwealth University	\$15,000.00	\$342.00 - \$522.00
SCA 2017-N31 – Specialized legal matter	Virginia Polytechnic Institute & State University	\$159,291.16	\$450.00 - \$726.25
SCA 2017-N32 – Specialized legal matter	Department of the Treasury, Division of Risk Management	\$49,825.02	\$175.00
SCA 2017-N34 – Specialized legal matter	Virginia Department of Transportation	\$55,245.19	\$425.00
SCA 2017-N35 – Specialized legal matter	Virginia Commonwealth University	\$25,784.50	\$315.00 - \$685.00
SCA 2017-N37 – Specialized legal matter	Department of Corrections	\$27,958.00	\$205.00
SCA 2017-N39 – Highly specialized and complex legal matter	Virginia Information Technologies Agency	\$67,657.95	\$391.50 – 823.50

SCA Totals – FY 2018

Single Case Appointment	Agency	Amount Authorized	Range of Hourly Rates
SCA 2017-N40 – Specialized legal matter	Office of the Attorney General	\$1,100.00	\$200.00
SCA 2017-N41 – Specialized legal matter	Tobacco Region Revitalization Commission	\$8,220.00	\$548.00
SCA 2017-N42 – Specialized legal matter	Department of Corrections	\$4,715.00	\$205.00
SCA 2017-N43 – Local counsel, out of state litigation	Office of the Attorney General	\$2,947.50	\$225.00
SCA 2017-N44 – Specialized legal matter	Office of the Executive Secretary	\$86,045.84	\$310.00 - \$330.00
SCA 2017-N46 – Specialized legal matter	University of Virginia	\$10,000.00	\$525.00
SCA 2017-N47 – Local counsel, out of state litigation	Virginia State Police	\$3,213.00	\$135.00 - \$255.00
SCA 2017-N48 – Specialized legal matter	Department of the Treasury, Division of Risk Management	\$19,486.90	\$175.00
SCA 2018-N03 – Specialized legal matter	Virginia State University	\$13,476.00	\$225.00 - \$275.00
SCA 2018-N05 – Specialized legal matter	University of Virginia	\$5,000.00	\$335.00 - \$380.00
SCA 2018-N06 – Local counsel, out of state litigation	Christopher Newport University; Virginia State Police	\$8,417.40	\$225.00
SCA 2018-N07 – Specialized legal matter	George Mason University	\$6,855.00	\$225.00 - \$300.00
SCA 2018-N09 – Specialized legal matter	University of Virginia	\$1,955.00	\$575.00
SCA 2018-N14 – Specialized legal matter	Virginia Outdoors Foundation	\$25,023.50	\$210.00 - \$410.00
Outside Counsel Spending by Single Case Appointment – Total:		\$4,808,927.35	