



COMMONWEALTH *of* VIRGINIA

Office of the Attorney General

Mark R. Herring
Attorney General

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The Honorable Janet D. Howell
Chair, Senate Finance Committee
Senate of Virginia
P.O. Box 396
Richmond, Virginia 23218

The Honorable Luke E. Torian
Chair, House Appropriations Committee
Virginia House of Delegates
P.O. Box 406
Richmond, Virginia 23218

Dear Chairwoman Howell and Chairman Torian:

Enclosed is the report required by Item 57F 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'20, 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 Worker’s Compensation Commission work, and complex employment or correctional litigation 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. Approximately twenty five percent of all SCA expenses were incurred in connection to rail infrastructure projects.

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.

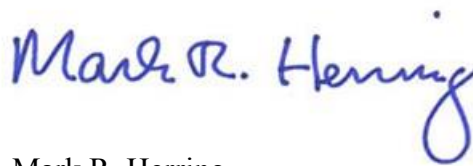
I have continued to implement significant reforms to improve coordination, oversight, effectiveness, and efficiency of the use of outside counsel by state agencies. I have centralized and improved record keeping and invoice review, and implemented the Office of Attorney General’s first written, adopted 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 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 approximately \$1 million by striking improper or unauthorized expenses on submitted invoices.

These important reforms led the Joint Legislative Audit and Review Commission to effusively praise our handling of outside counsel, finding in its November 2019 report that “OAG appropriately approves use of outside counsel and effectively controls costs,” that “OAG thoroughly documents and reviews all use of outside counsel to help ensure they are only used when necessary,” and that “OAG generally follows best practices for selecting and procuring the firms or attorneys to be hired.”

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
Virginia Attorney General

cc: Ms. Anne Oman, Staff Director, House Appropriations Committee
Ms. April Kees, Director, Senate Finance Committee

Report on Executive
Branch Agency Use of
Special/Outside
Counsel FY 2020

By Solicitation for Proposal

Office of the Attorney General

**Outside Counsel Spending Pursuant to Solicitation for Proposal
FY 2020**

Automobile Liability	
Department of the Treasury, Division of Risk Management	\$238,623.60
Total:	\$238,623.60
Hourly Rate Range:	\$145.00 – \$340.00

Charitable Trusts & Investment	
University of Mary Washington	\$62,496.95
Total:	\$62,496.95
Hourly Rate Range:	\$145.00 – \$340.00

Child Support Enforcement	
Department Social Services, Division of Child Support Enforcement	\$100,870.00
Total:	\$100,870.00
<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>	

Commercial Real Estate	
Department of Corrections	\$7,215.00
Department of Forestry	\$135,186.00
Department of General Services	\$34,751.10
Virginia Port Authority	\$23,786.20
Total:	\$200,938.30
Hourly Rate Range:	\$221.00 – \$360.00

Commonwealth Transportation Board	
Department of Transportation	\$232,101.30

**Outside Counsel Spending Pursuant to Solicitation for Proposal
FY 2020**

Commonwealth Transportation Board	
Virginia Port Authority	\$26,788.30
Total:	\$258,889.60
Hourly Rate Range:	\$300.00 – \$760.00

Construction Litigation	
Virginia Polytechnic Institute & State University	\$72.00
Total:	\$72.00
Hourly Rate Range:	\$200.00 – \$250.00

Cybersecurity & Data Protection	
Virginia Tourism Corporation	\$1,276.00
Total:	\$1,276.00
Hourly Rate Range:	\$200.00 – \$250.00

Debt Collection	
VDOT/DDC	\$88,000.00
Office of the Attorney General	\$24,801.67
Total:	\$112,801.67

A. Property damage claims with a principal balance in excess of \$25,000: Total compensation of twenty-two percent (22%) of the total amount collected on cases that settle prior to filing suit; and twenty-seven percent (27%) of the total amount collected on cases where suit is filed and served. This contingent fee shall be all-inclusive and will be interpreted as being the entirety of expenditure for this engagement. No other costs or fees, except those noted in this letter, shall be charged to or accepted by the OAG, absent express written authority from the OAG.

B. All other contingency fee claims: Total compensation of twenty-five percent (25%) of the total amount collected. This contingent fee shall be all-inclusive and will be interpreted as being the entirety of expenditure for this engagement. No other costs or fees shall be charged to or accepted by the OAG, absent express prior written authority from the OAG.

C. Hourly rates: For collection matters where the OAG deems that the hourly rate is an appropriate method of compensation, the rate shall be \$150.00 an hour for all attorney timekeepers. For non-attorney timekeepers, \$75.00 an hour shall be the standard rate.

**Outside Counsel Spending Pursuant to Solicitation for Proposal
FY 2020**

Department of Medical Assistance Services	
Department of Medical Assistance Services	\$93,341.50
Total:	\$93,341.50
Hourly Rate Range:	\$300.00 – \$550.00

Eminent Domain	
Department of Transportation	\$3,056,079.39
Virginia Military Institute	\$7,344.28
Total:	\$3,063,423.67
Hourly Rate Range:	\$105.00 – \$390.00

Employment	
College of William & Mary	\$6,596.80
Department of Game and Inland Fisheries	\$13,488.75
Department of Health	\$21,865.90
Department of Medical Assistance Services	\$47,647.00
Department of Motor Vehicles	\$6,862.50
Department of Professional & Occupational Regulations	\$45,668.00
Department of Veterans Services	\$88,196.56
Division of Capitol Police	\$23,910.00
Fort Monroe Authority	\$34,460.00
George Mason University	\$102,313.05
James Madison University	\$11,603.00
Longwood University	\$5,146.40
Norfolk State University	\$3,687.50
Office of the Attorney General	\$27,562.00
Old Dominion University	\$19,001.00
Radford University	\$15,145.50
Richard Bland College	\$1,820.80
Science Museum of Virginia	\$4,005.00
University of Mary Washington	\$2,500.00

**Outside Counsel Spending Pursuant to Solicitation for Proposal
FY 2020**

Employment	
University of Virginia	\$214,766.09
Virginia Alcoholic Beverage Control Authority	\$3,825.00
Virginia Commonwealth University	\$277,429.31
Virginia Community College System	\$11,297.60
Virginia Marine Resource Commission	\$4,860.00
Virginia Military Institute	\$5,336.20
Virginia Museum of Fine Arts	\$1,417.50
Virginia Polytechnic Institute & State University	\$6,386.00
Virginia Port Authority	\$20,134.50
Virginia Retirement System	\$86,161.05
Virginia State University	\$2,298.00
Total:	\$1,115,391.01
Hourly Rate Range:	\$105.00 – \$553.00

FCC/Communications	
College of William & Mary	\$3,737.40
Norfolk State University	\$930.00
Radford University	\$960.00
Virginia State Police	\$15,379.00
Total:	\$21,006.40
Hourly Rate Range:	\$170.00 – \$345.00

General Civil Litigation	
Department of Behavioral Health & Developmental Services	\$10,615.00
Department of Corrections	\$1,096,533.01
Department of Education	\$7,200.50
Department of Environmental Quality	\$40,062.00
Department of Mines, Minerals and Energy	\$942,771.16
Department of Motor Vehicles	\$13,914.00
Department of the Treasury, Division of Risk Management	\$133,707.89

**Outside Counsel Spending Pursuant to Solicitation for Proposal
FY 2020**

General Civil Litigation	
George Mason University	\$22,959.50
James Madison University	\$40,620.65
Office of the Attorney General	\$29,337.50
University of Virginia	\$11,549.70
Virginia Polytechnic Institute & State University	\$66,694.10
Total:	\$2,415,965.01
Hourly Rate Range:	\$185.00 – \$585.00

Higher Education Bonds	
George Mason University	\$10,241.30
University of Virginia	\$180,259.10
Virginia Commonwealth University	\$158,278.60
Virginia Polytechnic Institute & State University	\$5,994.70
Total:	\$354,773.70
Hourly Rate Range:	\$310.00 – \$697.00

Immigration	
Christopher Newport University	\$4,200.00
College of William & Mary	\$13,800.00
Department of Transportation	\$22,120.00
George Mason University	\$50,262.50
James Madison University	\$1,550.00
Longwood University	\$13,700.00
Norfolk State University	\$2,000.00
Northern Virginia Community College	\$1,100.00
Old Dominion University	\$23,500.00
Radford University	\$12,300.00
University of Mary Washington	\$3,610.00
University of Virginia	\$48,250.00
Virginia Commonwealth University	\$56,500.00

**Outside Counsel Spending Pursuant to Solicitation for Proposal
FY 2020**

Immigration	
Virginia Community College System	\$3,010.00
Virginia Military Institute	\$6,900.00
Virginia Polytechnic Institute & State University	\$4,114.00
Virginia Retirement System	\$4,000.00
Virginia State University	\$1,550.00
Total:	\$272,466.50
Hourly Rate Range:	\$125.00 – \$270.00
Flat Fees	\$500 – \$6,600

Intellectual Property	
College of William & Mary	\$17,395.50
George Mason University	\$113,316.15
James Madison University	\$3,362.72
Longwood University	\$3,728.20
Norfolk State University	\$700.00
Old Dominion University	\$22,100.00
University of Virginia	\$61,613.02
Virginia Polytechnic Institute & State University	\$33,812.57
Virginia Retirement System	\$7,617.50
Virginia State University	\$60.00
Virginia Tourism Corporation	\$17,991.00
Total:	\$281,696.66
Hourly Rate Range:	\$75.00 – \$715.00

Medical Malpractice	
Department of Corrections	\$158,824.45
Department of the Treasury, Division of Risk Management	\$612,700.04
Total:	\$771,524.49
Hourly Rate Range:	\$105.00 – \$255.00

**Outside Counsel Spending Pursuant to Solicitation for Proposal
FY 2020**

Public Finance	
Department of the Treasury	\$65,067.70
Department of the Treasury - Virginia College Building Authority	\$130,857.50
Department of the Treasury - Virginia Public Building Authority	\$103,459.00
Virginia Port Authority	\$20,416.50
Total:	\$319,800.70
Hourly Rate Range:	\$171.00 – \$675.00

Transportation Privatization	
Department of Transportation	\$183,580.95
Total:	\$183,580.95
Hourly Rate Range:	\$200.00 – \$760.00

University Medical Centers	
University of Virginia	\$160,346.75
Virginia Polytechnic Institute & State University	\$41,055.00
Total:	\$201,401.75
Hourly Rate Range:	\$237.50 – \$865.00

Virginia Port Authority	
Virginia Port Authority	\$30,605.00
Total:	\$30,605.00
Hourly Rate Range:	\$270.00 – \$495.00

Workers' Compensation	
Criminal Injuries Compensation Fund	\$4,058.50
Department of Human Resource Management	\$29,339.50
Virginia Workers' Compensation Commission, Uninsured Employer's Fund	\$1,119,559.28
Total:	\$1,152,957.28

**Outside Counsel Spending Pursuant to Solicitation for Proposal
FY 2020**

Workers' Compensation	
Hourly Rate Range:	\$110.00 – \$280.00

Outside Counsel Spending by Solicitation for Proposal	
TOTAL:	\$11,253,902.74

Report on Executive
Branch Agency Use of
Special/Outside
Counsel FY 2020

By Single Case Appointment

Office of the Attorney General

**Outside Counsel Spending Pursuant to Single Case Appointments
FY 2020**

Single Case Appointment Number	Description	Agency	Amount Authorized	Range of Hourly Rates
2012-50	Specialized legal matter	University of Virginia	\$6,295.00	\$175.00 – \$300.00
2013-46	Tax collection litigation	Department of Taxation	\$135.00	\$234.00 – \$484.00
2013-47	Tax collection litigation	Department of Taxation	\$61,462.50	\$289.00 – \$472.00
2015-N44	Litigation matter	Virginia Outdoors Foundation	\$255.60	\$204.00 – \$315.00
2015-N60	Local counsel, out of state litigation	Department of Education	\$7,205.00	\$275.00
2015-N68	Compliance matter	University of Virginia	\$63,024.00	\$300.00 – \$630.00
2016-N15	Specialized legal matter	Department of General Services	\$10,950.20	\$385.00
2016-N37	Specialized legal matter	Department of Behavioral Health & Developmental Services	(\$1,294.00)	\$185.00 – \$200.00
2016-N38	Local counsel, out of state litigation	Old Dominion University	\$520.00	\$150.00 – \$250.00
2016-N43	Employee grievance	Virginia Information Technologies Agency	\$5,467.50	\$225.00
2016-N50	Specialized legal matter	Department of Behavioral Health & Developmental Services	\$4,369.19	\$200.00
2016-N60	Local counsel, out of state litigation	Office of the Attorney General	\$21,580.00	\$175.00 – \$225.00
2016-N62	Specialized legal matter	Department of Behavioral Health & Developmental Services	\$140.00	\$200.00
2016-N74	Specialized legal matter	Department of Behavioral Health & Developmental Services	\$3,105.00	\$200.00
2017-N05	International law	Virginia Commonwealth University	\$7,587.00	\$225.00 – \$553.00
2017-N08	International law	University of Virginia	\$6,974.47	€270.00
2017-N10	Local counsel, out of state litigation	Virginia Polytechnic Institute & State University	\$5,123.00	\$175.00

**Outside Counsel Spending Pursuant to Single Case Appointments
FY 2020**

Single Case Appointment Number	Description	Agency	Amount Authorized	Range of Hourly Rates
2017-N15	Debt collection matter	Department of Transportation	\$117,108.26	Contingent fee ¹
2017-N24	Specialized legal matter	Department of General Services	\$297.00	\$270.00 – \$351.00
2017-N31	Specialized legal matter	Virginia Polytechnic Institute & State University	\$9,513.87	\$450.00 – \$726.25
2017-N32	Specialized legal matter	Department of the Treasury, Division of Risk Management	\$32,583.42	\$175.00
2017-N33	Specialized legal matter	Department of the Treasury, Division of Risk Management	\$35,560.52	\$195.00
2017-N35	Specialized legal matter	Virginia Commonwealth University	\$20,743.50	\$315.00 – \$685.00
2017-N37	Specialized legal matter	Department of Corrections	\$53,882.72	\$205.00
2017-N38	Local counsel, out of state litigation	Department of Corrections	\$9,450.00	\$175.00 – \$225.00
2017-N41	Specialized legal matter	Tobacco Region Revitalization Commission	\$5,712.00	\$548.00
2017-N44	Specialized legal matter	Office of the Executive Secretary	\$128.00	\$310.00 – \$330.00
2018-N04	Specialized legal matter	Department of Corrections	\$18,192.77	\$225.00
2018-N07	Specialized legal matter	George Mason University	\$8,065.00	\$225.00 – \$300.00
2018-N11	Local counsel, out of state litigation	Office of the Attorney General	\$4,000.00	\$400.00
2018-N12	Local counsel, out of state litigation	Department of the Treasury, Division of Risk Management	\$4,030.00	\$155.00
2018-N14	Specialized legal matter	Virginia Outdoors Foundation	\$154,631.87	\$210.00 – \$410.00
2018-N15	Specialized legal matter	Department of Alcoholic Beverage Control	\$212,197.50	\$525.00

¹ Total compensation of twenty-two percent (22%) of the total amount collected on cases that settle prior to filing suit; and twenty-seven percent (27%) of the total amount collected on cases where suit is filed and served.

**Outside Counsel Spending Pursuant to Single Case Appointments
FY 2020**

Single Case Appointment Number	Description	Agency	Amount Authorized	Range of Hourly Rates
2018-N16	Specialized legal matter	Department of Rail and Public Transportation	\$35,902.15	\$250.00 – \$470.00
2018-N18	Specialized legal matter	Virginia Commonwealth University	\$18,645.00	\$250.00 – \$300.00
2018-N21	Highly specialized legal matter	University of Mary Washington	\$594.00	\$305.00 – \$685.00
2018-N23	Highly specialized legal matter	Department of Accounts	\$27,617.50	\$275.00 – \$525.00
2018-N24	Highly specialized legal matter	Department of Medical Assistance Services	\$61,483.70	\$220.00 – \$585.00
2018-N25	Highly specialized and complex legal matter	Virginia Department of Health	\$581,121.95	\$365.00 – \$495.00
2018-N26	Specialized legal matter	Department of Transportation	\$53,745.00	\$350.00 – \$400.00
2018-N27	Highly specialized legal matter	Old Dominion University	\$3,400.00	\$500.00
2018-N28	Specialized legal matter	Department of Behavioral Health & Developmental Services	\$10,597.00	\$200.00
2018-N29	Specialized legal matter	Department of Behavioral Health & Developmental Services	\$200.00	\$200.00
2018-N30	Local counsel, out of state litigation	Department of Corrections	\$2,867.50	\$175.00 – \$225.00
2018-N31	Specialized legal matter	Department of Transportation	\$11,290.00	\$175.00
2018-N33	Specialized legal matter	Department of Transportation	\$10,449.65	\$535.00
2018-N34	Local counsel, out of state litigation	Department of Health Professions	\$4,018.00	\$235.00 – \$375.00
2018-N36	International law	University of Virginia	\$9,250.59	\$279.00 – \$860.00
2018-N37	International law	University of Virginia	\$9,398.03	\$228.00 – \$860.00

**Outside Counsel Spending Pursuant to Single Case Appointments
FY 2020**

Single Case Appointment Number	Description	Agency	Amount Authorized	Range of Hourly Rates
2018-N38	Highly specialized and complex legal matter	Department of Motor Vehicles	\$478,257.72	\$495.00 – \$725.00
2018-N39	International law	University of Virginia	\$9,094.81	\$302.00 – \$918.00
2019-N01	International law	Virginia Polytechnic Institute & State University	\$29,898.92	\$380.00 – \$800.00
2019-N03	Local counsel, out of state litigation	Department of the Treasury, Division of Risk Management	\$3,820.00	\$200.00
2019-N04	Specialized legal matter	James Madison University	\$176,091.00	\$468.00
2019-N04T	Specialized legal matter	James Madison University	\$110,361.13	\$300.00 – \$720.00
2019-N05	Highly specialized and complex legal matter	University of Virginia	\$369,540.36	\$495.00 – \$990.00
2019-N06T	Highly specialized legal matter	Department of Rail and Public Transportation	\$619,762.98	\$575.00
2019-N08	Specialized legal matter	Board of Accountancy	\$30,538.00	\$330.00
2019-N09	Highly specialized legal matter	Office of the Attorney General	\$13,405.09	\$225.00 – \$405.00
2019-N10	Specialized legal matter	Office of the Attorney General	\$1,571.00	\$180.00
2019-N11	Specialized legal matter	Department of Rail & Public Transportation	\$695,609.80	\$795.00
2019-N12	Highly specialized legal matter	Christopher Newport University	\$58,672.45	\$337.50 – \$777.75
2019-N13	Specialized legal matter	Department of Emergency Management	\$51,555.50	\$325.00 – \$510.00
2019-N14	Local counsel, out of state litigation	Department of Corrections	\$5,747.50	\$175.00 – \$225.00
2019-N15	Highly specialized legal matter	Department of Transportation	\$268,717.41	\$275.00 – \$525.00
2019-N17	Highly specialized legal matter	Office of the Attorney General	\$56,635.00	\$370.00

**Outside Counsel Spending Pursuant to Single Case Appointments
FY 2020**

Single Case Appointment Number	Description	Agency	Amount Authorized	Range of Hourly Rates
2019-N20	Highly specialized legal matter	Virginia Marine Resource Commission	\$12,580.00	\$200.00 – \$450.00
2020-N01	Highly specialized legal matter	Department of Transportation	\$13,744.50	\$385.00 – \$450.00
2020-N03	Specialized legal matter	Department for the Blind & Visually Impaired	\$2,587.00	\$325.00 – \$585.00
2020-N05	Highly specialized legal matter	Department of Rail & Public Transportation	\$10,216.50	\$300.00 – \$495.00
2020-N07	Specialized legal matter	Virginia Museum of Fine Arts	\$27,207.96	\$495.00 – \$795.00
2020-N08	Highly specialized legal matter	University of Virginia	\$32,287.95	\$533.50 – \$643.50
2020-N09	Highly specialized legal matter	Department of Transportation	\$1,809.50	\$288.00 – \$517.00

Outside Counsel Spending by Single Case Assignment

TOTAL:	\$4,809,288.04
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