



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 Proposals” (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'21, 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 an extremely large 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 72 percent of all SCA expenses were incurred in connection to rail infrastructure projects or VDOT matters.

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, authorizing payment from the client agency, and monitoring work performed to ensure the Commonwealth and its agencies are receiving a high level of representation. 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.

My team and I remain engaged in a constant effort to strengthen and improve the outside counsel process 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 and a competitive procurement process to ensure that taxpayers are getting maximum value. We have also implemented a stronger application process that has broadened and diversified the pool of potential providers, and created a more objective evaluation process to properly evaluate and select qualified firms. I have also required coordination of general legal strategy, development of budget and case

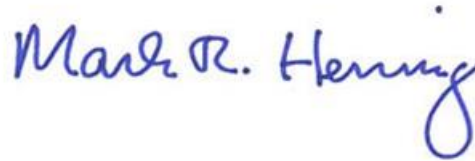
management plans for all engagements, and solicited performance feedback from agencies on the services they receive.

We have also implemented technology solutions that allow for better tracking, management, monitoring, and invoice review for outside counsel engagements. In fact, leveraging this new technology allowed my team to save taxpayers nearly \$2 million by striking improper or unauthorized expenses on submitted invoices.

These important reforms, among others, led the Joint Legislative Audit and Review Commission to effusively praise our handling of outside counsel, finding in its most recent and most comprehensive 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
Attorney General of Virginia

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 2021

By Solicitation for Proposal

Office of the Attorney General

**Outside Counsel Spending Pursuant to Solicitation for Proposal
FY 2021**

Automobile Liability	
Department of the Treasury, Division of Risk Management	\$231,653.48
Total:	\$231,653.48
Hourly Rate Range:	\$70.00 – \$300.00

Bankruptcy	
Department of Motor Vehicles	\$9,878.00
Total:	\$9,878.00
Hourly Rate Range:	\$290.00 – \$360.00

Charitable Trusts & Investment	
University of Mary Washington	\$139,609.00
Total:	\$139,609.00
Hourly Rate Range:	\$328.00 – \$877.00

Child Support Enforcement	
Department Social Services, Division of Child Support Enforcement	\$68,955.00
Total:	\$68,955.00
<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 General Services	\$12,035.00
Fort Monroe Authority	\$49,773.80
Virginia Port Authority	\$14,626.80
Total:	\$76,435.60

**Outside Counsel Spending Pursuant to Solicitation for Proposal
FY 2021**

Commercial Real Estate	
Hourly Rate Range:	\$150.00 – \$486.00

Commonwealth Transportation Board	
Department of Transportation	\$288,332.35
Virginia Port Authority	\$22,930.66
Total:	\$311,263.01
Hourly Rate Range:	\$135.00 – \$750.00

Debt Collection	
Office of the Attorney General	\$13,612.10
University of Virginia	\$5,625.00
Virginia Department of Transportation/DDC	\$338,421.63
Total:	\$357,658.73

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.

Eminent Domain	
Virginia Commonwealth University	\$11,077.50
Virginia Department of Transportation	\$2,529,694.25
Virginia Military Institute	\$312.00
Total:	\$2,541,083.75
Hourly Rate Range:	\$65.00 – \$425.00

**Outside Counsel Spending Pursuant to Solicitation for Proposal
FY 2021**

Employment	
Christopher Newport University	\$4,365.00
College of William & Mary	\$766.30
Department of Alcoholic Beverage Control	\$17,587.49
Department of Behavioral Health & Developmental Services	\$9,500.00
Department of Conservation & Recreation	\$3,885.00
Department of Elections	\$10,000.00
Department of Fire Programs	\$19,642.00
Department of Health	\$58,118.50
Department of Medical Assistance Services	\$50,589.37
Department of Motor Vehicles	\$31,218.05
Department of Social Services	\$13,005.00
Department of Veterans Services	\$7,965.00
Eastern State Hospital	\$9,562.50
Fort Monroe Authority	\$1,312.00
George Mason University	\$68,321.50
Office of the Attorney General	\$65,683.90
Office of the Inspector General	\$36,402.00
Old Dominion University	\$43,726.00
Radford University	\$33,180.91
University of Virginia	\$220,542.33
Virginia Commonwealth University	\$65,231.67
Virginia Community College System	\$1,490.80
Virginia Department of Transportation	\$19,260.00
Virginia Information Technologies Agency	\$8,925.00
Virginia Lottery	\$15,643.30
Virginia Military Institute	\$22,000.00
Virginia Museum of Fine Arts	\$10,215.00
Virginia Polytechnic Institute & State University	\$15,745.00
Virginia Port Authority	\$23,747.50
Virginia Retirement System	\$81,888.05
Virginia Workers' Compensation Commission	\$8,470.00
Total:	\$977,989.17

**Outside Counsel Spending Pursuant to Solicitation for Proposal
FY 2021**

Eminent Domain	
Hourly Rate Range:	\$120.00 – \$525.00

FCC/Communications	
Department of State Police	\$9,725.00
Total:	\$9,725.00
Hourly Rate Range:	\$125.00 – \$345.00

General Civil Litigation	
Department for the Blind and Visually Impaired	\$22,980.00
Department of Behavioral Health & Developmental Services	\$1,679.00
Department of Conservation & Recreation	\$3,204.00
Department of Corrections	\$1,987,830.99
Department of Education	\$14,868.00
Department of Environmental Quality	\$444,031.00
Department of Health Professions	\$2,872.50
Department of Mines, Minerals and Energy	\$264,815.64
Department of Motor Vehicles	\$55,392.00
Department of Taxation	\$2,592.00
Department of the Treasury, Division of Risk Management	\$7,824.50
Department of Veterans Services	\$33,953.50
George Mason University	\$37,787.00
House of Delegates	\$29,465.50
James Madison University	\$78,114.58
Office of the Attorney General	\$57,603.33
University of Virginia	\$23,108.30
Virginia Department of Transportation	\$126,944.40
Virginia Polytechnic Institute & State University	\$24,309.35
Total:	\$3,319,375.59
Hourly Rate Range:	\$80.00 – \$725.00

**Outside Counsel Spending Pursuant to Solicitation for Proposal
FY 2021**

Higher Education Bonds	
College of William & Mary	\$98,556.80
Department of the Treasury	\$164,397.50
George Mason University	\$176,120.00
University of Virginia	\$61,145.30
Virginia Commonwealth University	\$129,635.60
Virginia Polytechnic Institute & State University	\$17,168.50
Total:	\$647,023.70
Hourly Rate Range:	\$125.00 – \$871.00

Immigration	
Christopher Newport University	\$4,250.00
College of William & Mary	\$13,300.00
Department of Taxation	\$3,825.00
Eastern State Hospital	\$7,000.00
George Mason University	\$55,020.00
James Madison University	\$15,300.00
Longwood University	\$11,100.00
Norfolk State University	\$3,600.00
Old Dominion University	\$35,000.00
Piedmont Geriatric Hospital	\$6,600.00
Radford University	\$8,000.00
University of Mary Washington	\$11,600.00
University of Virginia	\$155,140.00
Virginia Commonwealth University	\$68,600.00
Virginia Department of Transportation	\$16,500.00
Virginia Military Institute	\$7,800.00
Virginia Polytechnic Institute & State University	\$53,600.00
Virginia Retirement System	\$2,200.00
Virginia State University	\$1,150.00
Total:	\$479,585.00
Hourly Rate Range:	\$270.00 – \$300.00

**Outside Counsel Spending Pursuant to Solicitation for Proposal
FY 2021**

Immigration	
Flat Fees	\$500 – \$6,700

Intellectual Property	
College of William & Mary	\$7,665.75
Department of the Treasury	\$4,790.00
George Mason University	\$276,245.02
James Madison University	\$3,500.00
John Tyler Community College	\$5,073.90
Lord Fairfax Community College	\$9,565.60
Old Dominion University	\$7,639.00
Virginia Polytechnic Institute & State University	\$60,316.53
Virginia Retirement System	\$357.50
Virginia Tourism Corporation	\$13,314.00
Total:	\$388,467.30
Hourly Rate Range:	\$75.00 – \$626.00

Medical Malpractice	
Department of Corrections	\$206,796.55
Department of the Treasury, Division of Risk Management	\$869,552.34
University of Virginia	\$2,902.50
Total:	\$1,079,251.39
Hourly Rate Range:	\$50.00 – \$250.00

Public Finance	
Department of the Treasury	\$554,327.28
Virginia Port Authority	\$17,713.90
Virginia Small Business Financing Authority	\$1,711.90
Total:	\$573,753.08
Hourly Rate Range:	\$135.00 – \$787.00

**Outside Counsel Spending Pursuant to Solicitation for Proposal
FY 2021**

Transportation Privatization	
Department of Transportation	\$513,917.90
Total:	\$513,917.90
Hourly Rate Range:	\$308.00 – \$575.00

University Medical Centers	
Department of Veterans Services	\$3,000.00
University of Virginia	\$238,526.50
Virginia Polytechnic Institute & State University	\$45,906.28
Total:	\$287,432.78
Hourly Rate Range:	\$300.00 – \$683.00

Workers' Compensation	
Virginia Workers' Compensation Commission - Criminal Injuries Compensation Fund	\$2,004.50
Virginia Workers' Compensation Commission - Uninsured Employers' Fund	\$1,015,968.10
Department of Human Resource Management, Office of Workers' Compensation	\$42,707.80
Total:	\$1,060,680.40
Hourly Rate Range:	\$65.00 – \$175.00

Outside Counsel Spending by Solicitation for Proposal	
TOTAL:	\$13,073,737.88

Report on Executive
Branch Agency Use of
Special/Outside
Counsel FY 2021

By Single Case Appointment

Office of the Attorney General

**Outside Counsel Spending Pursuant to Single Case Appointments
FY 2021**

Single Case Appointment Number	Description	Agency	Amount Authorized	Range of Hourly Rates
2013-47	Tax collection litigation	Department of Taxation	\$205,166.35	\$165.00 – \$450.00
2014-N24	Highly specialized legal matter	Department of Human Resource Management, Office of Workers' Compensation	\$7,763.33	\$158.00 – \$158.00
2014-N31	Tax collection litigation	Department of Taxation	\$4,365.00	\$450.00 – \$450.00
2014-N43	Highly specialized legal matter	Department of Human Resource Management, Office of Workers' Compensation	\$1,571.26	\$158.00 – \$158.00
2015-N59	Highly specialized legal matter	Department of Human Resource Management, Office of Workers' Compensation	\$1,539.20	\$158.00 – \$158.00
2015-N60	Local counsel, out of state litigation	Department of Education	\$9,350.00	\$275.00 – \$275.00
2015-N68	Compliance matter	University of Virginia	\$1,376.00	\$430.00 – \$430.00
2016-N13	Highly specialized legal matter	Department of Human Resource Management, Office of Workers' Compensation	\$443.40	\$158.00 – \$158.00
2016-N50	Specialized legal matter	Department of Behavioral Health & Developmental Services	\$4,360.00	\$90.00 – \$200.00
2016-N62	Specialized legal matter	Department of Behavioral Health & Developmental Services	\$2,320.00	\$200.00 – \$200.00
2017-N05	International law	Virginia Commonwealth University	\$5,795.60	\$417.00 – \$553.00
2017-N29	Specialized legal matter	Department for the Blind and Visually Impaired	\$1,973.60	\$185.00 – \$565.00
2017-N32	Specialized legal matter	Department of the Treasury, Division of Risk Management	\$840.00	\$175.00 – \$175.00
2017-N33	Specialized legal matter	Department of the Treasury, Division of Risk Management	\$23,587.58	\$195.00 – \$195.00
2017-N35	Specialized legal matter	Virginia Commonwealth University	\$90,958.75	\$495.00 – \$685.00

**Outside Counsel Spending Pursuant to Single Case Appointments
FY 2021**

2017-N37	Specialized legal matter	Department of Corrections	\$5,391.50	\$205.00 – \$205.00
2017-N41	Specialized legal matter	Tobacco Region Revitalization Commission	\$6,902.00	\$595.00 – \$595.00
2018-N14	Specialized legal matter	Virginia Outdoors Foundation	\$8,334.00	\$225.00 – \$410.00
2018-N18	Specialized legal matter	Virginia Commonwealth University	\$675.00	\$150.00 – \$300.00
2018-N23	Highly specialized legal matter	Department of Accounts	\$30,132.50	\$425.00 – \$525.00
2018-N25	Highly specialized and complex legal matter	Department of Health	\$17,924.40	\$240.00 – \$365.00
2018-N31	Specialized legal matter	Virginia Department of Transportation	\$5,530.51	\$175.00 – \$175.00
2018-N33	Specialized legal matter	Virginia Department of Transportation	\$17,905.20	\$275.00 – \$535.00
2018-N34	Local counsel, out of state litigation	Department of Health Professions	\$21,468.71	\$235.00 – \$375.00
2018-N38	Highly specialized and complex legal matter	Department of Motor Vehicles	\$109,676.00	\$250.00 – \$725.00
2018-N39	International law	University of Virginia	\$817.80	\$302.00 – \$909.00
2019-N01	International law	Virginia Polytechnic Institute & State University	\$13,712.32	\$410.81 – \$735.13
2019-N04T	Specialized legal matter	James Madison University	\$9,605.69	\$300.00 – \$720.00
2019-N05	Highly specialized and complex legal matter	University of Virginia	\$14,815.54	\$500.00 – \$1,075.00
2019-N06T	Highly specialized legal matter	Virginia Passenger Rail Authority	\$822,331.01	\$575.00 – \$603.75
2019-N08	Specialized legal matter	Board of Accountancy	\$682.00	\$310.00 – \$310.00

**Outside Counsel Spending Pursuant to Single Case Appointments
FY 2021**

2019-N11	Specialized legal matter	Virginia Passenger Rail Authority	\$2,144,683.10	\$285.00 – \$1,076.00
2019-N13	Specialized legal matter	Department of Emergency Management	\$122,132.85	\$190.00 – \$510.00
2019-N15	Highly specialized legal matter	Virginia Department of Transportation	\$509,329.72	\$210.00 – \$525.00
2019-N16	Specialized legal matter	James Madison University	\$3,655.00	\$430.00 – \$430.00
2019-N20	Highly specialized legal matter	Virginia Marine Resource Commission	\$11,431.00	\$200.00 – \$475.00
2020-N01	Highly specialized legal matter	Virginia Department of Transportation	\$40,820.13	\$310.00 – \$385.00
2020-N02	Specialized legal matter	Department of State Police	\$1,786.40	\$275.00 – \$275.00
2020-N03	Specialized legal matter	Department for the Blind and Visually Impaired	\$113,423.85	\$170.00 – \$585.00
2020-N04	Specialized legal matter	Virginia Commonwealth University	\$13,051.15	\$100.00 – \$500.00
2020-N05	Highly specialized legal matter	Department of Rail and Public Transport	\$7,897.50	\$300.00 – \$495.00
2020-N07	Specialized legal matter	Virginia Museum of Fine Arts	\$113.50	N/A
2020-N08	Highly specialized legal matter	University of Virginia	\$17,667.00	\$536.00 – \$643.00
2020-N09	Highly specialized legal matter	Virginia Department of Transportation	\$1,661.00	\$288.00 – \$517.00
2020-N10	Specialized legal matter	Virginia Commonwealth University	\$9,371.25	\$892.50 – \$892.50
2020-N11	Specialized legal matter	Department of State Police	\$23,313.00	\$820.00 – \$820.00
2020-N12	Specialized legal matter	University of Virginia	\$168,910.00	\$370.00 – \$680.00
2020-N14	Specialized legal matter	Virginia Polytechnic Institute & State University	\$37,575.00	\$430.00 – \$460.00

**Outside Counsel Spending Pursuant to Single Case Appointments
FY 2021**

2020-N15	Specialized legal matter	Department of Education	\$20,000.00	\$275.00 – \$275.00
2020-N17	Specialized legal matter	College of William & Mary	\$13,225.00	\$575.00 – \$575.00
2020-N19	Specialized legal matter	George Mason University	\$4,432.00	\$640.00 – \$800.00
2020-N20	Specialized legal matter	Department of Behavioral Health & Developmental Services	\$28,696.50	\$315.00 – \$315.00
2021-N01	Specialized legal matter	George Mason University	\$27,537.51	\$300.00 – \$375.00
2021-N03	Specialized legal matter	Virginia Military Institute	\$107,906.50	\$100.00 – \$525.00
2021-N04	International law	Virginia Commonwealth University	\$6,686.10	\$259.00 – \$587.00
2021-N05	Highly specialized legal matter	Longwood University	\$11,830.00	\$325.00 – \$325.00
2021-N06	Specialized legal matter	Department of State Police	\$574.00	\$820.00 – \$820.00
2021-N07	Specialized legal matter	Office of the Attorney General	\$24,170.00	\$400.00 – \$500.00

Outside Counsel Spending by Single Case Assignment

TOTAL:	\$4,919,193.31
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