

**APPLICATION OF THE PENNSYLVANIA OFFICE OF ATTORNEY GENERAL FOR THE NYU
FELLOWS/SAAG PROGRAM**

1. Program Eligibility and Narrative

State attorneys general should describe the particular scope of needs within their offices related to the advancement and defense of progressive clean energy, climate change, and environmental matters. Relevant details include the extent to which funding or other capacity constraints have limited the ability to work on these issues or how additional dedicated support could help advance the work of the state attorney general on behalf of his or her constituents.

Priority consideration will be given to state attorneys general who demonstrate a commitment to and acute need for additional support on clean energy, climate change, and environmental issues of regional or national importance, such as those matters that cross jurisdictional boundaries or raise legal questions or conflicts that have nationwide applicability.

Response:

Pennsylvania is unique among the states in that Article I, §27 of its constitution guarantees that every citizen has a right to clean air, pure water and the preservation of the state's natural resources. PA. CONST., Art. I, §27 ("The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people."). Indeed, Pennsylvania's Supreme Court recently reaffirmed these constitutional, environmental rights in a sweeping decision that makes Pennsylvania an ideal forum in which to pursue a progressive environmental agenda. See Pennsylvania Environmental Defense Foundation v. Commonwealth, 2017 WL 2645417 (Pa. 2017) (holding that certain transfers from the Oil and Gas Lease Fund were unconstitutional under Art. I, §27); see also Robinson Township v. Commonwealth, 83 A. 3rd 901 (Pa. 2013) (plurality) (holding that amendments to the state's Oil and Gas Act unconstitutional under the Art. I, §27).

Since taking office in January 2017, Attorney General Josh Shapiro has demonstrated his commitment to enforcing these environmental rights. He has reorganized and expanded the former Environmental Crimes Unit of the Pennsylvania Office of Attorney General (the "PA OAG") into a new Environmental Protection Section with a much broader mission that includes civil legal enforcement and other environmental matters. He has also created a new Impact Litigation Section, which coordinates impact-oriented civil litigation across a broad array of Pennsylvania and multi-state matters involving legal and policy issues of particular importance to Pennsylvanians.

The new Environmental Protection Section continues to prosecute those who commit environmental crimes – but it also works, in conjunction with the Impact Litigation Section to enforce environmental rights through targeted, civil litigation. These civil cases concern matters of regional and national significance both within Pennsylvania and

undertaken with other state attorneys general. For example, in just the past few months, Attorney General Shapiro has joined other states in challenging the Trump Administration's attempts to roll back important regulations designed to curb greenhouse gas emissions, decrease deadly ozone pollution, and promote fuel and energy efficiency.

There is plenty more to do. Attorney General Shapiro would like to build on these early efforts to further establish the PA OAG as a national leader on environmental issues.

Pennsylvania is a large, industrial state with a long history of fossil fuel production. It is in a unique position among such states because it is pursuing a progressive environmental policy agenda. When the PA OAG joins a lawsuit to prevent the delay of methane emissions standards from new oil and gas sources, it does so as a state whose citizens are directly impacted by emissions from the significant natural gas exploration activities in its own Marcellus Shale region. Similarly, when the PA OAG sues the USEPA to prevent delay in implementing new ozone regulations, it does so as a geographically vast and politically "purple" northeastern state with large metropolitan areas, disproportionately impacted by smog. When the PA OAG monitors potential changes to regulations on issues like coal ash disposal, it does so as a state whose own energy production remains largely based on the burning of coal. This "Pennsylvania perspective" provides a unique and powerful platform from which to create progressive environmental legal and policy change – from within. Put otherwise, while many states can and do fight for progressive environmental legal change, when that fighter is a coal-burning, Marcellus Shale gas-extracting, ozone-suffering state where environmental action may not always be politically palatable, the impact of an environmental leader like Attorney General Josh Shapiro is simply more powerful.

Being a leader of these efforts, however, requires economic resources. Perhaps because of its unique position, previous Pennsylvania attorneys general did not focus on environmental protection efforts. Therefore, the environmental section Attorney General Shapiro inherited was notably smaller than those found in attorney general offices of other environmental leaders. As such, granting Pennsylvania's application will be particularly significant. It will allow the PA OAG not just to join other states in lawsuits challenging the Trump Administration's efforts to weaken environmental regulations, but to hire one or more SAAGs so it can be more proactive across-the-board and serve as the lead plaintiff in future such actions.

Unfortunately, Pennsylvania's budget woes make it unlikely that the PA OAG will be able to get from the state the additional funds required for the attorneys and other resources it needs to realize its goals in environmental protection. Pennsylvania has a large structural deficit that is increasing each fiscal year. It is currently in the midst of its second budget impasse in the last three years and the third in the last eight years. [Pennsylvania's fiscal year begins on July 1 and, as of this writing, its budget has yet to be finalized; the last impasse lasted more than six months.]

As a result of all these factors, the addition of one or more SAAGs to the PA OAG's Environmental Protection Section will have a meaningful and outsized impact on Attorney

General Shapiro's ability to increase Pennsylvania's environmental protection efforts. The NYU Fellows program will be crucial to making those efforts a success.

2. Program Structure

Applications should include specific details about the scope of expertise the state attorney general needs in a SAAG to advance his or her priorities. Details should also be provided about how the SAAG would be incorporated into the Office of the Attorney General, including the relevant internal reporting structure.

Response:

To meet its needs the PA OAG will require one or, ideally, two SAAGs with experience litigating in the federal court system. It would be helpful if the SAAGs working with the PA OAG had broad knowledge of the relevant federal environmental statutes, corresponding regulations and the APA so they could better help navigate the legal issues that our cases will present. Naturally, we would prefer someone with strong writing and analytical skills as well.

SAAGs will be members of the Environmental Protection Section of the PA OAG. They will report directly to the Chief Deputy Attorney General ("CDAG") in charge of that section, and will work closely with the CDAG of the Impact Litigation Section on certain matters.

3. Budget Proposal and Confirmation of Authority

To be considered complete, applications must identify a proposed salary (or range) for a SAAG, with an explanation of how it would conform with the existing salary structure in the state AG office.

Applications also should identify any state-specific limitations or requirements governing the appointment of an employee paid by an outside funding source, and include a written confirmation that the attorney general has the authority to hire an NYU Fellow as a SAAG (or equivalent title).

Response:

The salary for a SAAG hired under this program will depend on his or her level of experience. By way of a range, we offer the following information regarding salaries for Deputy Attorneys General ("DAG") beginning with DAG 1 (i.e., entry level with minimal experience), then DAG 2 (a few years' experience) and ending with DAG 3 (usually 5+ years' experience):

- DAG 1: starting salary \$56,020; total cost with benefits and other expenses: \$96,700
- DAG 2: starting salary \$64,059; total cost with benefits and other expenses: \$110,600
- DAG 3: starting salary \$73,233 ; total cost with benefits and other expenses: \$126,500

The PA OAG has the authority to hire an NYU Fellow as a DAG under the Fellows Program. The PA OAG is unaware of any state-specific limitations or requirements of the appointment of an employee paid by an outside source. Indeed, by law, the PA OAG is “an independent department ... headed by the Attorney General” who has broad authority to “appoint and fix the compensation of ... [any] deputies, officers and employees who may, at any time, exercise such powers and perform such duties as [he] may ... prescribe[.]” 71. P.S. s. 201(a) and (c).