



DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

September 15, 2017

SENT VIA EMAIL

Mr. David J. Hayes, Executive Director
State Energy and Environmental Impact Center
New York University School of Law
40 Washington Sq. South
New York, NY 10012
David.Hayes@nyu.edu

Re: Oregon Department of Justice Application for Placement of NYU Law Fellow

Dear Mr. Hayes:

Please accept this application for placement of a NYU Law Fellow with the Oregon Department of Justice.

1. Program Eligibility and Narrative

The Attorney General of Oregon is the chief law officer for the State of Oregon and all of its departments, and is the head of the Oregon Department of Justice (DOJ). Under the leadership of current Attorney General Ellen Rosenblum and that of her predecessors, Oregon has been participating in progressive litigation of issues of national environmental and energy policy for more than a dozen years. That work has been substantially funded by our client state agencies. Oregon DOJ is fiscally operated like a private law firm—we track our billable hours, charge our client state agencies an hourly rate, and our client agencies transfer funds from their state accounts to ours to pay for the legal services we provide to them. Without getting into details about the merits of this system, a reality that results is a disincentive for agencies to consult with legal counsel as frequently as may sometimes be advisable and, especially when state budgets are tight, a reluctance to fund legal work on matters that reach beyond the agencies' core and direct state programs.

Fortunately, this has not significantly reduced DOJ's ability to participate in many multistate attorneys general coalitions working on national environmental litigation. In particular, the Oregon Department of Environmental Quality has strongly supported such participation and has accepted responsibility to pay for such work when consistent with its environmental policy objectives. Recent and current examples include litigation regarding the Clean Power Plan, new source performance standards (NSPS) for new power plants, NSPS for control of methane from the oil and gas sector, defense of the mercury and air toxics rule, litigation leading to the adoption of the 2015 ozone national ambient air quality standards, and defense of vehicle

greenhouse gas emissions standards. That said, however, we are a relatively small state with limited resources, and our role in those matters is therefore usually limited to more of a “me too” role, and not as a primary contributing partner.

This year, with the aggressively regressive environmental policy proposals of the new federal Administration, such fiscal restraints are beginning to test our state agencies’ budgetary limits. Not only are some agencies facing multistate litigation budget fatigue, but we are also encountering issues where the agency that would be naturally positioned to pay for such litigation is unable to do so due to state constitutional limits (e.g. limits on expenditure of highway funds by the Oregon Department of Transportation), or for which there may not be a state agency that is fiscally prepared to take on such expenses.

Having a NYU Law Fellow as a SAAG in our office could help us not only continue to play a strong contributing role in such matters and to participate in a broader range of substantive matters, but also could allow Oregon DOJ to play a more active and contributing role in those matters.

2. Program Structure

We are comfortable with the experience parameters described in your announcement—for attorneys with five to ten years practice experience in clean energy, climate change, and environmental issues. Our preference would be for the SAAG to be a member of the Oregon State Bar, though membership in another bar would be required at minimum, of course. We intend for the SAAG to report to me, the Attorney-in-Charge (AIC) of the Natural Resources Section (NRS) in the General Counsel Division. I have been responsible for coordinating and overseeing most of the state’s participation in multistate environmental litigation matters for the last five years, and I have authority to seek approval for participation in such matters directly from the Attorney General.

3. Budget Proposal and Confirmation of Authority

The salary for Assistant Attorneys General (AAGs) and Sr. AAGs at Oregon DOJ is between \$6,513.00 and \$12,183.00 per month, depending primarily on the years of legal practice experience of the individual (it takes about 16 years of practice for AAGs to reach the top of the pay scale, for example). We would strongly prefer that the salary of the SAAG be in conformity with that range, while acknowledging that the SAAG’s salary could include consideration that the SAAG would not have the benefit of other state employment benefits, such as health insurance or membership in the state retirement plan.

Our preference and proposal is that the SAAG track billable hours like other attorneys at Oregon DOJ, that we be authorized to bill agencies for hours worked by the SAAG on multistate litigation matters (where the agencies have agreed to provide funding), and that the SAAG be available to work on limited and occasional other billable environmental and energy matters for our state agency clients. Such flexibility would allow us to apply the experience and expertise of

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existing AAGs to work on additional multistate matters, while still keeping the SAAG's workload predominately on such matters.

The Oregon Attorney General has broad authority to hire special legal assistants as she deems appropriate under Oregon Revised Statute 180.140 (5). I certify that Oregon DOJ has authority to hire an NYU Law Fellow as a SAAG in our office, subject to negotiation of the terms of such employment, and that the Attorney General has approved the filing of this application.

Thank you for considering placing a NYU Law Fellow as a SAAG with Oregon DOJ. If you have any questions regarding this application, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul A. Garrahan", with a long horizontal flourish extending to the right.

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cc: Fredrick Boss, Deputy Attorney General

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