



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

October 5, 2018

VIA U.S. MAIL & ELECTRONIC MAIL

Christopher Horner
1489 Kinross Lane
Keswick, VA 22947
chris.horner@cei.org

Re: Freedom of Information Act request – received September 28, 2018

Dear Mr. Horner:

The Office of the Attorney General for the Commonwealth of Virginia (hereinafter, "Office") acknowledges receipt of the above-referenced correspondence in which you seek certain records pursuant to the Virginia Freedom of Information Act, Virginia Code Section 2.2-3700, *et seq.* (hereinafter, "FOIA"). Specifically, you request:

For requests I - IV please provide us copies of all records which are dated from August 25, 2017, through March 31, 2018, inclusive (which time parameter is modified for V), and its accompanying information including also any attachments:

I. any executed version of a a) Secondment Agreement with New York University, b) Retainer Agreement with New York University, and c) any correspondence transmitting these records to or from OAG.

II. all opinions, analyses and/or or determinations concluding that OAG has the legal authority to hire or otherwise bring into the Office, under any title whether Special Assistant Attorney General or otherwise, an NYU Fellow or otherwise a privately funded assistant.

III. all opinions, analyses and/or or determinations concluding that a Special Assistant Attorney General, or anything else offered or provided by NYU, does or does not constitute an impermissible gift under applicable law, code or regulation.

IV. all opinions, analyses and/or or determinations concluding that a Special Assistant Attorney General, or anything else provided by NYU, does or does not comply with or violate applicable ethics, professional conduct or anti-corruption law, code or regulation.

V. all correspondence with any address ending with @nyu.edu, and any attachments, that use "ethic" in any form (e.g., ethics, ethical) and/or "Professional Conduct", which was dated from August 25, 2017 through March 31, 2018, inclusive & sent to/from/copied Donald Anderson.

Documents responsive to item V of your request are enclosed. As a practical matter, kindly note that these documents were previously produced in response to your request received February 7, 2018. There are no records responsive to requested items I through IV.

Thank you for your attention.

Very truly yours,

A handwritten signature in black ink, appearing to read "M. O'Brien", written in a cursive style.

Meaghan O'Brien
FOIA Officer

Enclosures

Anderson, Donald D.

From: Anderson, Donald D.
Sent: Friday, September 15, 2017 11:21 AM
To: 'stateimpactcenter@nyu.edu'
Cc: David J. Hayes (david.hayes@nyu.edu)
Subject: NYU Fellow Application

Please accept this application of the Office of the Attorney General of the Commonwealth of Virginia to hire a New York University School of Law fellow as a Special Assistant Attorney General through the State Energy & Environmental Impact Center. We appreciate the opportunity to participate in this program.

General Herring has long been committed to the interests that form the core mission of the State Impact Center—clean energy, climate change and more generally environmental matters. That commitment was evidenced early in his term when he submitted comments on EPA’s then proposed Clean Power Plan. After the CPP was issued and challenged, General Herring joined the coalition of seventeen other states and seven major municipalities supporting the plan; the OAG has continued to be engaged in that multi-state effort through the present. In June, after the Trump Administration announced that the United States would withdraw from the Paris Climate Agreement, the OAG joined in the coalition of state AGs, Governors and others in issuing a “We Are Still In” statement. General Herring has also been supportive of Virginia Governor McAuliffe’s executive actions to reduce carbon pollution in Virginia. Most recently, the OAG joined a coalition of twenty states and localities urging the EPA to retract Administrator Scott Pruitt’s unsolicited letter advising states on the CPP.

General Herring’s efforts have not been limited to clean energy and power issues. For example, the OAG filed an amicus brief in *America Farm Bureau v. EPA*, a case involving the total maximum daily load cooperatively developed to protect the Chesapeake Bay. The critical issue in the case was whether the Bay states, including Virginia, had the authority to act together to manage and restore the Bay. More recently, General Herring has submitted comments opposing regulatory proposals by the current administration to open Virginia and other east coast states off-shore waters to petroleum exploration and production.

The OAG has achieved this track record of commitment to regional and national environmental issues with limited resources. The Environmental Section of the Office is staffed with six full-time line attorneys, two other line attorneys who spend approximately half their time on environmental matters, and one paralegal. The attorneys are fully booked with representation of numerous Commonwealth agencies, including the Departments of Conservation and Recreation, Environmental Quality, Forestry, Game and Inland Fisheries, Health (Environmental Health Services), Mines, Minerals and Energy, as well as the Division of Consolidated Laboratory Services, the Marine Resources Commission, the Secretary of Natural Resources, and local Soil and Water Conservation Districts. Moreover, Section attorneys have been engaged in substantial major environmental litigation, including the ongoing defense of the Commonwealth’s moratorium on uranium mining against constitutional attack and achievement of the largest natural resource damage settlement in Virginia history. The addition of an NYU Fellow would provide a full-time attorney to allow General Herring to participate much more fully in cooperative efforts to advance the agenda represented by the State Impact Center.

If our Office is selected for the program, the NYU Fellow serving as a Special Assistant Attorney General would be incorporated into the Environmental Section. The Section is housed in the Commerce, Environment and Technology Division of the OAG, headed by Deputy Attorney General John W. Daniel. The Section is headed by Senior Assistant Attorney General and Chief, Donald D. Anderson, who reports directly to Deputy Daniel. The NYU fellow would report directly to the Section Chief.

Currently the line attorneys in the Section range in years of experience at the bar from three to twenty years. The current salary range runs from approximately \$70,000 to approximately \$100,000. Assuming the NYU fellow would come into the Office with 5-10 years of experience, we anticipate the appropriate salary would be approximately \$81,500. We understand that, if selected for the program, our Office would work with the State Impact Center to identify, recruit and extend offers to appropriate candidates. That process, and the specific salary and benefit package for a recruit and related arrangements, would have to be determined in cooperation with our finance and human resource directors.

The Virginia OAG has historically employed, and currently employs, fellows funded by law schools. Although the arrangement with the State Impact Program and NYU would be somewhat different, there are no Virginia-specific limitations or requirements that would apply to the OAG's employment of a NYU fellow as a Special Assistant Attorney General. We have also reviewed the Virginia Rules of Professional Conduct and find no concern about the proposed arrangement, which we understand requires that the attorney's duty of loyalty shall be to the Attorney General and the Commonwealth and its agencies.

Please let us know if you need additional information to consider this application. And thank you.

Donald D. Anderson
Senior Assistant Attorney General/Chief
Office of the Attorney General

202 North 9th Street
Richmond, Virginia 23219
(804) 371-6018 Office
DAnderson@oag.state.va.us
<http://www.ag.virginia.gov>



Anderson, Donald D.

From: David J. Hayes <david.hayes@nyu.edu>
Sent: Friday, September 15, 2017 11:40 AM
To: Anderson, Donald D.
Cc: Elizabeth Johnson Klein
Subject: Re: NYU Fellow Application

Don:

Thanks for submitting your application. We will look forward to reviewing it, along with the others that are coming in.

Best,

David

On Fri, Sep 15, 2017 at 11:20 AM, Anderson, Donald D. <DAAnderson@oag.state.va.us> wrote:

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David J. Hayes
Executive Director
State Energy & Environmental Impact Center
NYU School of Law
c/o Resources for the Future
1616 P Street, NW
Washington, DC 20036
Office phone: 202-328-5052
Cell phone: 202-258-3909
Email: david.hayes@nyu.edu; davidjhayes01@gmail.com
Twitter: @djhayes01

Anderson, Donald D.

From: Anderson, Donald D.
Sent: Friday, September 15, 2017 11:54 AM
To: 'david.hayes@nyu.edu'
Cc: Elizabeth Johnson Klein
Subject: RE: NYU Fellow Application

Thank you, David.

Don

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David J. Hayes

Executive Director
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Office phone: 202-328-5052
Cell phone: 202-258-3909
Email: david.hayes@nyu.edu; davidjhayes01@gmail.com
Twitter: @djayes01

Anderson, Donald D.

From: Elizabeth Klein <elizabeth.klein@nyu.edu>
Sent: Wednesday, December 13, 2017 2:44 PM
To: Anderson, Donald D.
Cc: Brittany Whited
Subject: fellowship program
Attachments: NYU Law Fellow Position Description Oct 2017.docx; Draft Secondment Agreement Oct 18 2017.docx; State Impact Center Retainer agreement FINAL DRAFT.docx

It was nice to connect this afternoon about the NYU law fellowship program. We are excited to partner with your office! As promised, attached our some documents for your review:

- 1) Position description - if you're interested in making changes, just let us know so that we can take a quick look. Once you are ready to post it, we can provide a link to your posting on our website.
- 2) Template secondment agreement - once you take a look at this, if you or others in your office would find it useful to talk through any of the provisions on the phone, we're happy to set up a call.
- 3) Template retainer agreement
- 4) Here's the link to the NYU benefits packages that would be available to the fellows (who will fall in the "Professional Research Staff" category for NYU) <https://www.nyu.edu/employees/benefit/full-time/professional-research-staff.html>

Thanks very much,
Liz

--
Elizabeth Klein
Deputy Director
State Energy & Environmental Impact Center
NYU School of Law
ph 202-328-5186

NYU Law Fellow Position Description

Selected state attorneys general have the opportunity to work cooperatively with the State Impact Center to recruit and hire a limited number of NYU Law Fellows with five to 10 years of experience in clean energy, climate change, and environmental issues as special assistant attorneys general (SAAGs).

SAAGs will be hired for a term appointment to provide a supplemental, in-house resource to state AGs and their senior staffs on clean energy, climate change and environmental matters of regional and national importance. As allowed under state law, NYU School of Law will pay the salaries of the SAAGs, and the State Impact Center will provide on-going support to the SAAGs and their offices. Once hired, the SAAGs' duty of loyalty shall be to the attorney general who hired them.

Exact salary will be commensurate with experience and subject to applicable pay scale of the relevant state AG office. Title will also be determined by the relevant state AG office.

Responsibilities include, but are not limited to the following:

- Defend environmental values and advance progressive clean energy, climate change, and environmental legal and policy positions.
- Subject to the specific scope of assigned duties by the relevant state AG, perform highly advanced legal work, which might include conducting in-depth analysis and preparation of legal memoranda; interpreting laws and regulations; providing legal advice; and assisting in preparing legal notices, briefs, comment letters, and other associated litigation and regulatory documents.
- Coordinate with the State Impact Center and interested allies on legal, regulatory, and communications efforts regarding clean energy, climate change, and environmental issues.
- Prepare periodic reports of activities and progress to the State Impact Center.
- Perform other duties as assigned, with the expectation that the majority of time spent will be on clean energy, climate change, and environmental issues.

Requirements and qualifications:

- Applicants must be duly licensed, authorized, and eligible to practice as an attorney under the laws of a state or the District of Columbia. Active bar membership is required.
- Five to 10 years of experience in clean energy, climate change, and environmental issues, with preference for relevant experience in legal or policy issues of regional or national importance, such as those matters that cross jurisdictional boundaries or raise legal questions or conflicts that have nationwide applicability.
- Litigation and/or regulatory experience, with preference for experience working in state or federal government.

- Ability to work with partner organizations and to help build coalitions.
- Excellent writing, editing, research, and verbal communication skills.
- Ability to work well and with enthusiasm within a team in a fast-paced environment.
- Exceptional organizational skills and ability to proactively manage many simultaneous issues, multitask, and prioritize.
- Demonstrated interest in public service.
- Eligibility to work in the United States.

EOE/AA/Minorities/Females/Vet/Disabled/Sexual Orientation/Gender Identity

Employee Secondment Agreement between the [AG OFFICE] and the State Energy & Environmental Impact Center at NYU School of Law

This AGREEMENT (“Agreement”) is entered into as of September __, 2017, by and between NEW YORK UNIVERSITY (“NYU”), a New York not-for-profit education corporation, on behalf of the NYU School of Law’s State Energy and Environmental Impact Center (the “State Impact Center”), and [AG OFFICE].

WHEREAS, The State Impact Center seeks to provide a supplemental, in-house resource to state attorneys general and their senior staffs on clean energy, climate change and environmental matters of regional and national importance; and

WHEREAS, As part of its activities, the State Impact Center conducts a legal fellowship program (“Legal Fellowship Program”), which seeks to provide attorneys to act as fellows in the offices of certain state attorneys general (“Legal Fellows”); and

WHEREAS, The [AG OFFICE] has been selected by the State Impact Center to participate in Legal Fellowship Program; and

WHEREAS, The [AG OFFICE] has the authority consistent with applicable law and regulations to accept a Legal Fellow whose salary and benefits are provided by an outside funding source.

NOW, THEREFORE, for good and valuable consideration, the adequacy and receipt of which are hereby acknowledged, the State Impact Center and [AG OFFICE] agree to the following:

A. Terms of Service for the Legal Fellowship Program at the [AG OFFICE]:

1. The State Impact Center will provide the services of one attorney to the [AG OFFICE] to act as a Legal Fellow.
2. The specific start and end dates for services will be determined with the mutual agreement between the Legal Fellow, the [AG OFFICE], and the State Impact Center, provided, however, that the term of the fellowship will be for one year with the expectation that a second one-year term will follow after mutual agreement among the parties. (the “Fellowship Period”).
3. During the Fellowship Period, the Legal Fellow will be under the direction and control of, and owe a duty of loyalty to, the [AG OFFICE], and will be subject to the [AG OFFICE]’s policies regarding employee conduct, including the policies regarding time and attendance, outside activities, conflicts of interests, and confidentiality. The Legal Fellow will receive instruction and materials regarding these requirements from the [AG OFFICE] at the commencement of his or her fellowship.
4. During the Fellowship Period, salary and benefits will be provided to the Legal

Fellow by the NYU School of Law.

5. During the Fellowship Period, the [AG OFFICE] will maintain professional liability (malpractice) insurance coverage for the Legal Fellow in an amount not less than \$2,000,000 per occurrence and \$2,000,000 in the annual aggregate.
6. The [AG OFFICE] may terminate the services of the Legal Fellow upon seven (7) days' written notice to the State Impact Center, provided that the [AG OFFICE] will attempt to resolve any performance or other issues involving the Legal Fellow with the Legal Fellow and the State Impact Center before terminating the services of the Legal Fellow. The State Impact Center may terminate this Agreement for any reason upon seven (7) days' written notice to the [AG OFFICE].
7. The [AG OFFICE] will indemnify, defend and hold NYU, its officers, directors, agents, and employees harmless from any claims, causes of action, or judgments arising out of (1) the negligent or intentional acts or omissions of the [AG OFFICE], its officers, agents or employees, and the Legal Fellow during the Fellowship Period and while the Legal Fellow is subject to the direction and control of the [AG OFFICE] under this Agreement or (2) [AG OFFICE]'s breach of this Agreement. The State Impact Center will indemnify, defend and hold [AG OFFICE] harmless from any claims, causes of action, or judgments arising out of the State Impact Center's breach of this Agreement.

B. Nature of the Fellowship Position at the [AG OFFICE]

1. During the Fellowship Period, the [AG OFFICE] will provide the Legal Fellow the title of Special Assistant Attorney General.
2. The [AG OFFICE] will assign the Legal Fellow substantive work and responsibility matching that of other attorneys in the agency with similar experience and background. The Legal Fellow's substantive work will be primarily on matters relating to clean energy, climate change, and environmental matters of regional and national importance.
3. The [AG OFFICE] will aim to include the Legal Fellow in the range of its work where possible, such as strategy discussions and court appearances.
4. The [AG OFFICE] will afford the Legal Fellow the opportunity to partake in the extensive legal education, including CLEs, offered by the [AG OFFICE] to its attorneys.

C. Prohibited Activity

1. The [AG OFFICE] may not request or permit the Legal Fellow to engage in any activities that would constitute any of the following:
 - a. to carry on propaganda, or otherwise attempt to influence any specific

- legislation through (i) an attempt to affect the opinion of the general public or any segment thereof or (ii) communication with any member or employee of a legislative body, or with any other governmental official or employee who may participate in the formulation of the legislation (except technical advice or assistance provided to a governmental body or to a committee or other subdivision thereof in response to a written request by such body, committee or subdivision), other than through making available the results of non-partisan analysis, study or research;
- b. To engage in any other activity that may constitute lobbying under federal, state, or local laws or regulations;
 - c. to influence the outcome of any specific public election; or
 - d. to support the election or defeat of a candidate for public office, finance electioneering communications, register prospective voters or encourage the general public or any segment thereof to vote in a specific election.
2. The [AG OFFICE] may not request or permit the Legal Fellow to participate in any matter that involves New York University or any of its affiliates; and, to the extent that the [AG OFFICE] participates in a matter that involves New York University or any of its affiliates, the [AG OFFICE] will create an ethical wall between the Legal Fellow and the [AG OFFICE] with regard to the matter to ensure that the Legal Fellow has access to no information relating to the matter.
 3. The [AG OFFICE] has determined that NYU's payment of salary and benefits to the Legal Fellow and the provision of services by the Legal Fellow to the [AG OFFICE] do not constitute an impermissible gift under applicable law or regulation. No part of this agreement is intended to induce [AG OFFICE] to undertake or refrain from undertaking any action within the purview of [AG OFFICE]. [AG OFFICE] retains sole discretion to determine whether to undertake any action, including any actions relating to clean energy, climate change, and environmental matters of regional and national importance or involving New York University or any of its affiliates.

D. Communications and Reporting

1. The State Impact Center will not have a proprietary interest in the work product generated by the Legal Fellow during the fellowship. The State Impact Center will not be authorized to obtain confidential work product from the Legal Fellow unless the Legal Fellow has obtained prior authorization from the Legal Fellow's supervisor at the [AG OFFICE].
2. Notwithstanding the above, the [AG OFFICE] will provide periodic reports to the State Impact Center regarding the work of the Legal Fellow. These reports will include a narrative summary, subject to confidentiality restrictions, of the work of the

legal fellow and the contribution that the legal fellow has made to the clean energy, climate change, and environmental initiatives of the [AG OFFICE]. These reports will be provided pursuant to the following schedule:

- a. Activity for the period from the beginning of the Fellowship Period until April 30, 2018 will be provided no later than May 1, 2018.
 - b. Activity for the period from May 1, 2018 through July 31, 2018 will be provided no later than August 1, 2018.
 - c. Activity for the period from August 1, 2018 through January 31, 2019 will be provided no later than February 1, 2019.
 - d. A final report for activity from the beginning of the Fellowship Period until the end of the Fellowship Period will be provided within five (5) business days of the end of the Fellowship Period.
3. The [AG OFFICE] acknowledges that New York University may be required to make filings or disclosures on that reference the [AG OFFICE], the Legal Fellow, or the Legal Fellowship Program, and that the [AG OFFICE] is not required to review or approve any such filings except where New York University requests such review or approval.
 4. In addition to the formal reporting requirements, the [AG OFFICE] and the Legal Fellow will collaborate with the State Impact Center on clean energy, climate change, and environmental matters in which the Legal Fellow is engaged, including coordination on related public announcements.
 5. Notifications to the [AG OFFICE] relating to this agreement should be directed to _____.
 6. Notifications to the State Impact Center relating to this agreement should be directed to _____.

E. Miscellaneous

1. This Agreement constitutes the complete understanding of the parties and supersedes any other agreements between the parties and shall be governed by the laws State of New York. No amendment to this Agreement will be valid and binding unless reduced to writing and signed by the parties.
2. This agreement shall not be assigned by either party without the consent of the other party.
3. This Agreement may be executed in multiple counterparts, each of which will be fully effective as an original and all of which together will constitute the same document. The parties may exchange of copies of this Agreement and signature pages in electronic form.

Dated: September ___, 2017

New York University

By: _____
Name:
Title:

Dated: September ___, 2017

[INSERT STATE] State Office of the Attorney General

By: _____
Name:
Title:

204257524.1