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§ 2.2-2814. How salaries, expenses and other allowances paid; time of payment.

The salaries, expenses and other allowances, including mileage, mentioned in this chapter, Chapter 1 (§ 2.2-100 et seq.) of this title and Chapter 1.1 (§ 30-19.11 et seq.) of Title 30 shall, except where otherwise specifically provided, be paid out of the state treasury after being duly audited, and the Comptroller shall draw his warrants on the State Treasurer for the payment thereof. Salaries shall be paid every two weeks, semimonthly or monthly, at the discretion of the Comptroller, upon such dates as the Comptroller may prescribe. Expenses shall be paid when they have been incurred, and the other allowances shall be paid when the services have been rendered or the travel has been performed however, members of the General Assembly and others traveling to the seat of government who would be entitled to mileage for traveling home may receive such mileage before going home.

Code 1950, §§ 14-1, 14-27; 1962, c. 547; 1964, c. 386, § 14.1-1; 1998, c. 872, § 2.1-20.5; 2001, c. 844.

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.



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§ 2.2-2812. Employment of personnel.

A. Notwithstanding any other provision of law to the contrary, the agency administrator of each executive branch agency, except those that by law are appointed by their respective boards, shall employ the personnel necessary for the proper performance of all responsibilities of their agency subject to the Virginia Personnel Act (§ 2.2-2900 et seq.) and within the limits of appropriations made therefor by law.

B. Notwithstanding any other provision of law to the contrary, any employee of an agency in the executive branch of state government, who is (i) promoted within the same agency to a higher position classification and (ii) required to serve a period of time in a probationary status incident to such promotion, shall be offered to be returned to such employee's previous classified position or an equivalent position for which a vacancy exists if, for any reason other than misconduct, the probationary period of employment is not satisfied or completed.

1984, c. 744, § 2.1-20.01; 1997, c. 31; 2001, c. 844; 2011, c. 259.

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

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COMMONWEALTH OF VIRGINIA

Office of the Attorney General

202 North Ninth Street

Richmond, Virginia 23219

Special Counsel Policy

I. General Policies and Provisions.

Unless express statutory authority provides otherwise, all legal services for the Commonwealth and its agencies are provided by the Office of Attorney General (“the Office”) (Code of Virginia § 2.2-507). The Attorney General may appoint a private attorney as special counsel if he finds that it is impracticable or uneconomical for the Office to render service (§§ 2.2-507 and 510). Special, or outside, counsel may be appointed for a period of time to provide advice and assistance in a particular area of expertise, to represent a particular entity in a specific matter, or to represent the Commonwealth in a civil matter. In limited circumstances, the Governor may exercise his authority to appoint special counsel (§ 2.2-510).

A. Determination of Need.

Prior to employing special counsel, the Attorney General will determine, in writing, whether and why it is either impractical or uneconomical to render legal services directly by the Office. Factors typically arising in such a finding include: (i) the experience, knowledge, and expertise desired; (ii) the inability of the Office to provide such expertise in a timely and focused fashion that meets the needs of the client; (iii) the complexity, difficulty, novelty, or infrequency of the questions involved; and (iv) the geographic location where the legal services are needed. Based upon the scope of services for the matter, the expected cost, and the underlying need, the determination shall include an evaluation of the cost-effectiveness of employing special counsel and a determination that such employment is in the Commonwealth’s interest. In appointing special counsel, the Attorney General aims to obtain the highest quality legal services at the most reasonable cost.

B. Function of Policy; Contact Information.

This Special Counsel Policy, together with the relevant procurement documents, the appointment letter, and any subsequent amendments govern the relationship between this Office and special counsel. If you have any questions concerning special counsel or this Policy, please feel free to call the Office at (804) 786-2071 or email outside.counsel@oag.state.va.us. The Attorney General reserves the right (i) to appoint a designee to perform the duties assigned to him regarding special counsel, and (ii) to amend these policies and guidelines at any time.

II. Procurement.

Generally, the purchase of legal services is exempt from the competition requirements of the Virginia Public Procurement Act (§ 2.2-4344); provided, however that any contingency fee contract for legal services in which the contingency fees and expenses are reasonably anticipated to exceed \$100,000 requires an open and competitive negotiation process in accordance with the Procurement Act (§ 2.2-510.1). Thus, the procurement method used by the Office to employ special counsel depends first on whether the engagement results in a contingency fee award, and second on whether the services required are expected to be for a single matter or recurring matters of a similar nature.

A. Single Case Appointments.

The Office uses a Single Case Appointment (“SCA”) if the needed legal services are for a single case or matter. The SCA appointment terminates at the conclusion of the case or matter.

For an SCA with a budget less than \$25,000, the Office contacts at least three qualified firms and considers the cost of the services, the qualifications of the firm to provide the services, the experience of the firm with similar legal matters, legal expertise generally, and any other relevant factors as may be identified prior to making a selection. If documented, the Office may contact fewer than three firms due to an emergency, the unavailability of qualified alternatives, or other such reason.

For an SCA with a budget of \$25,000 or more, the Office solicits written proposals after posting a solicitation for proposals (“SFP”) on eVA (the state’s online, electronic procurement system accessed at www.eva.virginia.gov).

The proposals will be reviewed by a panel of at least three individuals—at least two of whom shall be attorneys and one of whom may be a client agency representative—and shall be awarded to the attorney or firm that submits the most competitive proposal to provide services considering the cost of the services, the qualifications of the firm to provide the services, the experience of the firm with similar legal matters, legal expertise generally, and other relevant factors as may be identified in the SFP. The Office may engage in negotiations with responding firms.

The Office shall complete evaluation of proposals within 30 days and, upon award, the selected firm shall receive an appointment letter governing the engagement. Notice of award shall be posted on eVA. If documented, the Office may conduct an emergency procurement generally in conformance with the Public Procurement Act and the Agency Procurement and Surplus Property Manual published by the Department of General Services.

B. Solicitations for Proposals for Term Appointments.

For specialized legal services expected to be recurring or routine, the Office uses SFPs to award term appointments to firms that may receive work on an as needed basis. The SFP appointments are usually for a defined period of time, and have no assurance or guarantee as to the volume of work.

The Office solicits proposals by posting an SFP on eVA. The proposals will be reviewed by a panel of at least three individuals—at least two of whom shall be attorneys and one of whom may be a client agency representative—and shall be awarded to the firm(s) that submits the most

competitive proposal to provide services considering the cost of the services, the qualifications of the attorney or firm to provide the services, the experience of the attorney or firm with similar legal matters, legal expertise generally, and other relevant factors as may be identified in the SFP. The Office may engage in negotiations with responding firms, and may award to multiple firms for like services for the same term.

The Office shall complete evaluation of proposals within 30 days and, upon award, the selected firms shall receive an appointment letter governing the engagement. Notice of award shall be posted on eVA. If documented, the Office may conduct an emergency procurement generally in conformance with the Public Procurement Act and the Agency Procurement and Surplus Property Manual published by the Department of General Services.

In situations in which multiple firms are appointed under an SFP, the Office will rotate work assignments evenly among appointed firms, unless location, specialization or availability concerns require otherwise.

C. Contingency Fee Matters.

For matters involving a contingency fee reasonably anticipated to exceed \$100,000, the Office shall post an SFP on eVA and solicit proposals from interested firms. The proposals will be reviewed by a panel of at least three individuals—at least two of whom shall be attorneys and one of whom may be a client agency representative—and shall be awarded to the firm that submits the most competitive proposal to provide services considering the cost of the services, the qualifications of the attorney or firm to provide the services, the experience of the attorney or firm with similar legal matters, legal expertise generally, and other relevant factors as may be identified in the SFP. The Office may engage in negotiations with responding firms.

The Office shall complete evaluation of proposals within 30 days and, upon award, the selected firms shall receive an appointment letter governing the engagement. Notice of award shall be posted on eVA. If documented, the Office may conduct an emergency procurement generally in conformance with the Public Procurement Act and the Agency Procurement and Surplus Property Manual published by the Department of General Services.

D. Ethics.

No law firm, or partner or employee thereof, shall knowingly make a financial contribution to the Attorney General if such firm submitted a proposal to the Office pursuant to an SFP. This prohibition shall apply for sixty days after the Office posts the SFP on eVA. In addition to returning the donation, the Attorney General may disqualify the firm from receiving the solicited appointment.

III. Post-Award Contract Management.

Once awarded an appointment as special counsel to the Commonwealth, the role of the Office shifts to management of the representation, as to both legal substance and adherence to the terms of the appointment.

A. Coordination with Office Counsel.

Special counsel should coordinate legal strategy and decisions with the input of the assigned counsel from this Office. This may require copying assigned counsel on all client communications and including assigned counsel in client meetings and calls. Additionally, special counsel should consider and communicate, throughout an engagement, opportunities for further cost savings, including alternative litigation strategies, use of different vendors, and any other opportunities for enhanced productivity or cost reduction.

B. Review of Special Counsel Performance and Billing.

Special counsel shall submit invoices to the client agency contact with a copy to the Office of Attorney General. Both the client agency and the assigned counsel from this Office will review all invoices to monitor the performance, billing, and scope of the legal services.

Invoice review includes an examination of the following: (i) adherence to terms of the appointment letter regarding timekeepers, rates, and budget; (ii) efficiency of time and costs; (iii) use of appropriate personnel for tasks; (iv) compliance with SFP, travel guidelines, and this policy document; (v) permissibility of expenses (see expenses guidelines in appendix A) and accompanying documentation; (vi) client satisfaction; and (vii) results achieved.

C. Conflicts.

The existence of any actual or potential conflicts of interest involving the Commonwealth or any of its agencies or entities must be immediately reported to the Office. If a potential conflict of interests between clients arises, special counsel may request that any objection be waived. The Office is not authorized to waive a conflict without approval from the client agency.

6/24/2014