



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL
ONE ASHBURTON PLACE
BOSTON, MASSACHUSETTS 02108

MAURA HEALEY
ATTORNEY GENERAL

(617) 727-2200
(617) 727-4765 TTY
www.mass.gov/ago

MASSACHUSETTS OFFICE OF THE ATTORNEY GENERAL APPLICATION FOR NYU FELLOW

TO: 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

Also by email to: stateimpactcenter@nyu.edu

DATE: September 13, 2017

The Massachusetts Office of the Attorney General (AGO) is pleased to submit an application to the State Impact Center to hire an NYU Fellow with five to 10 years of experience in clean energy, climate change, and environmental issues as a Special Assistant Attorney General (SAAG) in the AGO's Environmental Protection Division. We understand that the NYU Fellow would be available for a two-year period to provide a supplemental, in-house resource to the Attorney General and her senior staff on clean energy, climate change, and environmental matters of regional and national importance.

1. Program Eligibility and Narrative

The AGO, through its Energy and Environment Bureau, works to protect our environment and energy customers, and to reduce the threat of climate change for the people and families of the Commonwealth. The Bureau's Environmental Protection Division (EPD) enforces state and federal laws that protect our air and water, preserve our lands and open space, require the cleanup of contaminated sites, and govern the use of pesticides and the handling and disposal of hazardous waste. EPD works closely with the Bureau's Energy and Telecommunications Division, which represents consumers in matters involving the price and delivery of natural gas, electricity, water, and telecommunication services before state and federal regulators.

The Bureau's integration of energy and environmental advocacy ensures that our office speaks with one voice in addressing the intertwined energy and environmental protection matters that impact the Commonwealth and our residents, especially the challenge of addressing global

climate change. The AGO is committed to a clean energy future in Massachusetts built around cleaner, renewable energy sources that allow Massachusetts to achieve regional and federal climate goals, as well as to meet the mandates of the state's Global Warming Solutions Act, which requires that the state reduce greenhouse gas emissions by 80% below 1990 levels by 2050.

In particular, the NYU Fellow would focus on EPD's affirmative federal litigation practice, which is both nationally prominent and a longstanding priority of the AGO. More than a decade ago, EPD led the coalition that brought the litigation leading to the U.S. Supreme Court's decision in *Massachusetts v. EPA*, which held that the federal government had the authority — and the duty, consistent with scientific evidence — to regulate greenhouse gas emissions under the Clean Air Act. In recent years, EPD has led state attorneys general in defending the Mercury and Air Toxics Standards rule and in seeking to compel EPA to regulate methane emissions from the oil and gas sector, and has played a leadership role in the coalition of states and cities that is defending the Clean Power Plan, which would limit greenhouse gas emissions from existing power plants.

The pace and extent of this federal litigation practice have greatly increased following the change of federal administration. Since January, we have filed and joined approximately 10 lawsuits against unlawful administration actions, and we have also been compelled to address the administration's change in position in a similar number of pending cases in which we previously intervened in defense of the prior administration's rules, such as the challenges to the Clean Power Plan. To add to this litigation work, the AGO also has been active in filing comments in rulemakings and other administrative proceedings, including the Bureau of Ocean Energy Management's proposed opening of the Atlantic Coast to oil and gas exploration. We envision a major role for the NYU Fellow in this litigation and related federal advocacy, including drafting briefs and motions, coordinating with other states and stakeholders, and developing factual materials in support of our positions.

The NYU Fellow would also make contributions to the Bureau's overall clean energy work and further enhance the collaboration between EPD and the AGO's Energy and Telecommunications Division. A prominent example of this collaboration is the AGO's advocacy regarding natural gas infrastructure. In 2016, we participated as an *amicus curiae* at the Massachusetts Supreme Judicial Court in support of successful challenges to a state Department of Public Utilities order authorizing electric ratepayer investment in natural gas pipelines (*ENGIE Gas & LNG LLC v. Department of Public Utilities*). Our involvement in the litigation followed the AGO's commissioning of an expert study that showed that New England did not need new natural gas infrastructure to serve the electric sector and also examined the implications of different energy choices on climate and energy costs. Over the next two years, we expect there to be significant opportunities for the NYU Fellow to assist with the AGO's ongoing climate policy work in the energy and transportation sectors, which will be focused on ensuring

Massachusetts and neighboring states meet the long-term commitments set forth in the Global Warming Solutions Act and in the Paris Agreement.

The AGO envisions that the NYU Fellow may also assist on an as-needed basis with other aspects of EPD's caseload, which includes:

- Prosecuting civil enforcement and cost recovery cases, seeking to produce the greatest results in terms of compliance and deterrence, environmental and public health benefits, and financial recovery;
- Handling defensive cases, seeking to provide effective representation to support the policy choices made by state agencies and officials in implementing our environmental protection laws; and
- Undertaking affirmative, non-enforcement work to develop and pursue innovative ways to further environmental protection exercising the Attorney General's role as the Commonwealth's chief law officer, such as developing or supporting legislative or other policy proposals; intervening, where appropriate, in siting disputes; investigating companies for investor and consumer protection violations related to environmental and climate claims; and entering into Brownfields liability agreements to further the clean-up and redevelopment of contaminated sites.

These opportunities would be tailored to EPD needs and the NYU Fellow's interests. For example, the NYU Fellow could play a substantial role in our defense of Massachusetts climate regulations under the Global Warming Solutions Act that are now pending in state court or a state-federal Clean Air Act enforcement matter.

2. Program Structure

The NYU Fellow would be a SAAG and fully integrated into the AGO, resident in EPD. The NYU Fellow would report to the Division Chief, Christophe Courchesne, and the Deputy Division Chief, Betsy Harper. The NYU Fellow would be welcome to participate in all AGO activities, including Bureau and Division meetings and our AGO-wide continuing legal education programs (known as the Attorney General Institute).

The NYU Fellow must have exceptional written and oral communication skills and ideally would have strong experience and expertise in:

- Federal trial and appellate litigation, especially in a government or advocacy setting;
- Administrative law, including rulemaking and adjudicatory proceedings; and
- Federal environmental laws and regulations, and in particular the Clean Air Act, Clean Water Act, the National Environmental Policy Act, and/or natural resources laws.

The NYU Fellow also would ideally have had significant exposure to energy law, including the Federal Power Act and Natural Gas Act and the conduct of proceedings at the Federal Energy Regulatory Commission. In addition, the NYU Fellow should have familiarity with federal and state legislative processes and policymaking, especially on environmental, climate, or energy issues.

If possible, the NYU Fellow should be admitted to practice law in Massachusetts and/or in key federal courts, including the First and D.C. Circuit Court of Appeals and/or U.S. District Courts for the District of Columbia, Massachusetts, Southern District of New York, and/or Northern District of California. In addition, a judicial clerkship and/or experience practicing environmental, energy, regulatory, or administrative law in Massachusetts is desirable.

3. Budget Proposal and Confirmation of Authority

A. Budget.

[REDACTED]

[REDACTED]

We note that the budget proposal assumes that NYU will pay the Fellow directly. [REDACTED]

[REDACTED]

B. Limitations or Requirements Governing the Appointment.

There are no limitations or requirements governing the NYU Fellow's hiring or appointment as a SAAG at the AGO. See Section 6.13(4) of 930 CMR 6.13(4) provides: "An attorney who is a special state employee by reason of performing services as a special assistant attorney general may directly or indirectly receive or request compensation from, or act as agent or attorney for, a party other than the commonwealth or a state agency, in prosecuting a claim against the Commonwealth or a state agency, or in relation to a particular matter in which the Commonwealth or a state agency is a party or has a direct and substantial interest, without violating M.G.L. c. 268A, § 4(a) or (c) [concerning compensation by or acting as an attorney for someone other than the Commonwealth], provided that such attorney complies in every respect with the provisions of the Massachusetts Rules of Professional Conduct."

MA AGO Application
September 13, 2017
Page 5

We appreciate your consideration of our application and fully expect that the NYU Fellow would make a needed and valuable contribution to the AGO's nationally significant work to protect the environment and the climate and to advance a clean energy future in the Commonwealth and beyond.

Thank you.

Very truly yours,

A handwritten signature in black ink, appearing to read "Judy Zeprun Kalman".

Judy Zeprun Kalman
General Counsel

A handwritten signature in black ink, appearing to read "Christophe Courchesne".

Christophe Courchesne
Chief, Environmental Protection Division