

Open Government Standards For Attorney General

Issue

The Attorney General currently employs outside counsel to assist him in litigating matters on behalf of the State. The wages paid by the Attorney General to the assistant attorneys general who are employed on a full time basis are a matter of public record. The terms and conditions upon which the Attorney General has employed outside counsel as special attorneys general and the amount of fees they are paid for their services are not a matter of public record, nor are they reported to the Governor or the Legislature. West Virginia encourages transparency for its public officials and their actions. The Attorney General should be held to the same standard as other public officials.

Background

Over the past few years, the Attorney General has retained outside counsel under various engagement agreements. The terms and conditions of these arrangements include contingency arrangements and straight hourly arrangements. The Attorney General has been involved in significant litigation, including litigation against pharmaceutical companies, tobacco companies, banks, other lending institutions, and other entities. The Attorney General has been successful in many of these cases resulting in significant judgments.

The lawyers engaged by the Attorney General as special assistant attorneys general have not only been West Virginia lawyers, but have also been lawyers who reside and are licensed and primarily practice in other states. It has been suggested that the Attorney General has retained these lawyers because of their expertise in the particular subject matter of the litigation.

The terms and conditions upon which the Attorney General has engaged these lawyers are not a matter of public record, nor is there any evidence that the Attorney General has used a request for proposal to retain these lawyers.

It is the Chamber's belief that the Attorney General has on occasion paid contingency fees to these lawyers for their assistance. This has resulted in significant payment of attorneys' fees, monies which would otherwise have gone into the general revenue account, to these outside lawyers.

There is no record of the amount of fees paid to these lawyers, nor the terms and conditions upon which these lawyers have been engaged.

The Governor, the Legislature, and the public are entitled to know the terms and conditions upon which these lawyers are engaged, and the amount of fees paid to these lawyers for their actions.

Legislation is necessary to require the Attorney General, on a semi-annual basis, to provide information to the Legislature regarding these engagement arrangements, fees paid and judgments received, and to provide that

any fees obtained by the Attorney General on behalf of the State be placed in the general revenue account of the State.

The Chamber's Position

Although the Legislature in 2008 (in H.B. 4141) cracked open the door of transparency by providing notice to the Senate President and the Speaker of the House of any lawsuit filed by a government agency, the new law does not provide enough public information on the engagement of counsel external to government and the fees, terms and conditions of those retentions

The West Virginia Chamber of Commerce supports legislation that would require the Attorney General, on a semi-annual basis, to report to the Joint Commission of the Legislature on Government and Finance and the Governor its activities in the preceding six months regarding litigation engaged in by the Attorney General, terms and conditions upon which outside counsel are retained, any fees paid to those counsel, and any judgments and settlements received by the Attorney General.

Furthermore, the Chamber supports legislation to eliminate contingent fee hiring in the Attorney General's office; limit "outside counsel" to \$500 an hour; and require the Attorney General to comply with the state's purchasing laws for competitive bidding for such services.

The Attorney General should transfer from the Perdue Pharma settlement the approximate pro rata share in the Consumer Protection Fund to the Office of the Insurance Commissioner to reduce the debt in the "Old Fund" Workers Compensation account.

Finally, any judgments obtained by the Attorney General should be immediately placed into the general revenue account of the State for the benefit of the State.