



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

April 23, 2021

Via Legal Tracker

Travis Hill
Nixon Peabody LLP
55 West 46th Street
New York, NY 10036-4120

RE: Appointment as Independent Third-Party Investigator – SCA 2021-N07

Dear Mr. Hill:

Nixon Peabody LLP has been appointed to serve as an independent third-party investigator regarding the matter outlined below.

On March 31, 2021, the Governor proposed the following language as an amendment to House Bill 1800 (2021), the 2021-22 state budget:

I. The appropriation in this item includes up to \$250,000 from the general fund in the first year to conduct an independent, third-party investigation of the Office of the State Inspector General's policies, process, and procedures employed during its investigation of the Virginia Parole Board's handling of the Vincent Martin matter. The Office of the Attorney General, in consultation with the Office of the Governor, the Speaker of the House of Delegates, and the President pro tempore of the Senate, is directed to secure an investigator to conduct the investigation. The Office of the State Inspector General and the Virginia Parole Board shall cooperate fully in the investigation. Records that are confidential under federal or state law shall be maintained as confidential by the Office of State Inspector General and shall not be further disclosed, except as required by law. Records that are confidential under state law shall be accessible to the investigator; records that are confidential under federal law shall be made available to the extent permitted by federal law. All confidential records provided to the investigator shall be maintained as confidential by the investigator and shall not be further disclosed, except as required by law. Notwithstanding any other provision of law, investigative notes, draft reports, and other correspondence generated during the course of this investigation are exempt

from disclosure under the Virginia Freedom of Information Act, section 2.2-3700 et seq. of the Code of Virginia. No later than June 15, 2021, the investigator shall prepare a written report to the Governor, Speaker, Majority Leader and Minority Leader of the House of Delegates, President pro tempore, Majority Leader and Minority Leader of the Senate with the investigator's findings and any recommendations.

This amended language was adopted by the General Assembly on April 7, 2021, and HB 1800 (2021) was signed by the Governor on April 13, 2020.

Following the publication of the above language, the Office of the Attorney General ("Office" or "OAG") both received solicitations and contacted firms with experience in the arena of internal investigations. In an effort to further ensure objectivity, the Office avoided contacting firms with strong Virginia-based connections. Recommendations were also solicited from the Office of the Governor, the Speaker of the House of Delegates, and the President pro tempore of the Senate. Seven of the eight qualifying firms expressed initial interest. Of those seven, four provided materials seeking appointment to this matter. Following consultation with the Office of the Governor, the Speaker of the House of Delegates, and the President pro tempore of the Senate, the Office has selected Nixon Peabody LLP.

This appointment will commence as of the date your acceptance is received by the Office and will continue through its completion, subject to the right of the Office to terminate the appointment at any time, with or without cause. This Office reserves the right to assign or appoint other counsel on an as-needed basis. Absolutely no work pursuant to this appointment shall be assigned to or performed by your firm prior to the Office's receipt of your signed acceptance via Legal Tracker. Please note that any work assigned to your firm prior to this Office's receipt of your signed acceptance will not be authorized and shall not be billed.

Except as set forth in this letter or specifically agreed to in writing by the Office of General Counsel ("OGC"), the Outside Counsel Directives annexed hereto will govern your firm's representation for the duration of this appointment.

I. SCOPE OF SERVICES

You and your firm are appointed as an independent third-party investigator for the purpose of conducting an independent, third-party investigation of the Office of the State Inspector General's policies, process, and procedures employed during its investigation of the Virginia Parole Board's handling of the Vincent Martin matter. No later than June 15, 2021, you shall prepare a written report to the Governor, Speaker, Majority Leader and Minority Leader of the House of Delegates, President pro tempore, Majority Leader and Minority Leader of the Senate with your findings and any recommendations.

II. BILLING

You will bill for legal services monthly, unless otherwise directed by the Office of the Attorney General. You have agreed to the hourly billing that is outlined in the table below:

Timekeeper	Position	Discounted Hourly Rate
Travis Hill	Partner	\$500
Tina Sciocchetti	Partner	\$500
Adam Tarosky	Partner	\$500
Michal Ovidia	Associate	\$400
Debra Colon	Legal Assistant	\$125
Maryam Jeffrey	Legal Assistant	\$125

Please be advised that the persons listed above are the only attorneys or other timekeepers approved to bill under this appointment. No timekeeper may be added, changed, or substituted under this appointment except by advance express, written consent of the OAG. Timekeeper requests must be made timely and in accordance with the Outside Counsel Directives. Personnel changes that result in losses or additions to the timekeeper list shall be communicated to the Office as soon as practicable. For additional policies regarding appropriate and proper billing practices, please consult the “Outside Counsel Directives” incorporated here by reference and annexed to this engagement packet.

There will be a cap on fees and expenses which should not exceed **\$250,000** without prior written approval by the Office of General Counsel. A budget for this matter shall be submitted in Legal Tracker with updates and adjustments as appropriate to ensure that costs associated with this engagement are effectively managed. Status reports may be required by the OAG on a periodic basis to memorialize significant or substantial events that affect the fees, expenses, duration or outcome of the matter.

Detailed statements should be provided that will permit thorough monitoring of legal services. The billing statement for each matter must contain a detailed description of the work performed on a daily basis, identifying all personnel involved (name, position, and hourly rate), the amount of time expended on each service, and the authorized charges associated with the work performed.

Your billing statement should be uploaded in LEDES format to the appropriate matter to Legal Tracker for review and approval. For more information and instructions to upload the LEDES invoices, please review the Outside Counsel Directives annexed to this engagement. Invoices are subject to tiered review based on dollar amount and approvals are forwarded electronically to this Office for payment. Payment of statements will be the responsibility of this Office. Payment will not be authorized for work that fails to comply with the terms and conditions stated herein, that is excessive or disproportionate in time or task, or that is contrary to any policy,

term, or condition as may be specified by the Attorney General now or in the future. Please ensure your firm and personnel's familiarity with all guidelines (Outside Counsel Directives, policy, expenses, and travel) applicable to this appointment and as provided on the OAG website at www.oag.state.va.us (click on "About the Office" and go to the "Special Counsel" link).

A. Disbursements and Costs

No separate charge may be made for clerical time for completion of documents or other clerical tasks, such as scheduling, transmitting or loading electronic documents into repositories. Regarding expenses, there will be no charge for routine facsimile transmissions, photocopies, postage, shipping, couriers, long-distance phone charges, legal research, or other incidental office expenses. Such expenses are included in your rate for professional services. You will be reimbursed only for your direct and actual costs for other customary out-of-pocket expenses without markup, subject to acceptable documentation, including expert witness fees, court fees, filing fees, and other extraordinary expenses. All expenses claimed for reimbursement must be supported by well-organized back-up documentation, such as outside vendor invoices or statements. Billing statements should include an itemization of all costs and include copies of invoices for travel and other authorized out-of-pocket expenses (if applicable). For more information regarding proper disbursements and cost submissions, please consult the Outside Counsel Directives annexed to this engagement.

B. Travel and Travel-Related Expenses

Should travel be necessary, only travel time and expenses for travel in excess of 50 (fifty) miles may be billed. Time during travel will be billed at fifty percent (50%) of the timekeeper's authorized hourly rate and must be noted separately as an expense line item on the invoice under expense line items as "travel time." Travel expenses will be calculated and billed pursuant to the current state travel guidelines and at the authorized state rates, and will be reimbursed if itemized with receipts or appropriate documentation, in accordance with the Outside Counsel Directives, as annexed to this engagement. Please check the state rates periodically, as they follow federal guidelines and are adjusted yearly. Appropriate documentation for travel must include the route of travel through an online navigational tool (e.g., Waze, Yahoo Maps, Google Maps, and MapQuest). The state rates for hotel and *per diem* vary by location. Only one timekeeper may bill for time spent by multiple timekeepers at conferences, meetings, court appearances, and the like, unless authorized in advance by this Office.

C. Experts, Consultants, and Legal Service Vendors

Expert witnesses, consultants, or legal service vendors shall not be engaged under this appointment without prior express written authorization from this Office. Unless otherwise agreed upon, such engagements shall be independently procured and separately designated on outside counsel invoices as expenses/disbursements and will not be permitted to directly bill the using agency. Please consult the Outside Counsel Directives for further information.

III. CONFLICTS OF INTEREST AND PROFESSIONAL DUE CARE

The State and Local Government Conflict of Interests Act (Va. Code § 2.2-3100 *et seq.*) and the General Assembly Conflict of Interests Act (Va. Code § 30-100 *et seq.*) apply to this representation. With this in mind, please canvass your firm for anyone who is an “employee,” “officer,” or “legislator” as defined in those Acts. This includes anyone appointed, even in an unpaid capacity, to a board or commission. Please contact me by letter if anyone in your firm meets these criteria.

As outside counsel, you agree to abide by a reasonable standard of professional due care in the fulfillment of all duties under this appointment. You will maintain good standing with your respective state bar(s) for the duration of this appointment. Should the professional status of any of the attorneys listed as timekeepers change or the ability of any of the timekeepers to perform the duties necessary to effect representation be compromised, the OAG shall be notified immediately.

IV. CONFIDENTIALITY

It is understood that all work product prepared hereunder, with the exception of the report required by this engagement, shall constitute confidential work product of the Office of the Attorney General and shall not be publicly disseminated or otherwise released without the specific, written approval of the OAG. As work product of the Office of the Attorney General, files of all matters undertaken pursuant to this appointment are subject to the ownership and control of the Office of the Attorney General and shall be surrendered without delay upon request by the Attorney General. Access to such files shall only be granted to assigned and approved timekeepers within your firm. Further, such files may not be destroyed or disposed of without written express approval of the Office of the Attorney General, as they are governed by the Public Records Act, Va. Code § 42.1-76 *et seq.*

If third parties are engaged to handle specific tasks related to this appointment, you represent that the presence of a third party does not abrogate any obligation you have under this agreement and that you are solely responsible for any acts or omissions of any such third parties.

V. MEDIA

The OAG does not authorize outside counsel or vendors to comment publicly in any manner on any aspect of the Commonwealth’s legal matters. No member, employee, or agent of your firm is permitted to comment publicly about the legal services that are the subject of this engagement, the client agency or agencies for whom services are rendered, and any of the employees or officials thereof without express authorization from this Office.

Any and all media inquiries regarding your appointment and the actual services performed pursuant to this engagement must be directed to the Director of Communications, Charlotte Gomer, at the Office of the Attorney General at (804) 786-1022 or cgomer@oag.state.va.us. All

media responses shall be coordinated with the Office prior to publication. This includes “no comment” or other non-substantive responses.

VI. APPLICABLE LAW AND INTEGRATION

This appointment and any dispute arising out of this appointment shall be governed by Virginia law. This appointment, along with any exhibits, directives, addenda, schedules, and amendments referenced herein or affixed hereto, shall comprise the entire agreement of the parties and will supersede all previous understandings and agreements between the parties, whether oral or written. Any ambiguity in the terms of this appointment and all its accompanying documents shall not be construed against the Commonwealth. In the event that there is a conflict between the terms of the SFP and the terms of this appointment, the terms of this appointment shall control.

Receipt of payment for legal services pursuant to this engagement constitutes an unequivocal acceptance of these terms and conditions.

If this letter is in accordance with your firm’s understanding of the terms of this engagement, ***please sign, scan, and upload the signature/acceptance page to the appropriate matter in Legal Tracker as described in the Outside Counsel Directives.***

I welcome you to the group of distinguished and highly competent attorneys representing the interests of the Commonwealth. Thank you for your service on behalf of the Commonwealth.

With kind regards, I am

Very truly yours,



Erin Ashwell
Chief Deputy Attorney General

Travis Hill
Nixon Peabody LLP
SCA 2021-N07
April 23, 2021
Page 7

PLEASE SIGN, SCAN, AND UPLOAD THIS PAGE TO THE APPROPRIATE MATTER
IN LEGAL TRACKER

NIXON PEABODY LLP

BY: Travis Hill
TRAVIS HILL

DATE: 4/24/2021

cc: Pamela Y. O'Berry
General Counsel
Office of the Attorney General
202 North Ninth Street
Richmond, Virginia 23219

Samuel T. Towell
Deputy Attorney General
Office of the Attorney General
202 North Ninth Street
Richmond, Virginia 23219