



APPOINTMENT AS SPECIAL COUNSEL FOR DATA PRIVACY, CYBERSECURITY, ARTIFICIAL INTELLIGENCE, & TECH ACCOUNTABILITY MATTERS

1. Will the designation of the firm as Special Counsel for Data Privacy, Cybersecurity, Artificial Intelligence & Tech Accountability matters give rise to an actual or potential conflict of interest where the firm represents a corporate or individual client who may be adverse to the Attorney General, the Director of the Division of Consumer Affairs, and/or other state officials, entities or agencies in a separate matter unrelated to data privacy, cybersecurity, artificial intelligence or tech accountability?

Designation as Special Counsel for purposes of the Special Counsel list does not itself give rise to an actual or potential conflict of interest. However, if selected for a particular matter, firms remain responsible for necessary conflicts checks prior to executing a retention agreement, and also for adhering to all Rules of Professional Conduct in accordance with the Outside Counsel guidelines. The most current Outside Counsel Guidelines are available at: https://www.nj.gov/oag/law/pdf/rfqs/Revised_Outside_Counsel_Guidelines_2022.pdf. Please also see the May 2019 Letter from Attorney General Grewal to Chief Counsel Platkin (available at https://www.nj.gov/oag/law/pdf/2019-0515_Conflicts-Letter.pdf) for more information on determining conflicts with respect to New Jersey state government entities.

2. Please confirm whether the OAG will consider hybrid fee structures (such as discounted blended rate together with a fixed success fees or reduced contingency fee percentage)?

The amount of fees outside counsel earn will always ultimately be governed by

the retention agreement. The Division of Law invites proposal, discussion, and negotiation of all varieties of proposed fee structures where appropriate.

3. Is any contingency fee to be awarded expected to be calculated based on total recovery or total recovery less reimbursement for expenses?

Contingency fees will be calculated based on total recovery.

4. Confirm whether regardless of fee structure, expenses (assuming they are approved), are to be invoiced and reimbursed on a monthly basis?

Special Counsel are expected to comply with the current Outside Counsel guidelines, which provide that, for non-contingency “litigation, advice, and non-bond transactional matters, outside counsel are expected to submit monthly invoices within thirty days of the conclusion of the billing period, absent the Division’s prior written approval.” For contingency matters, “[I]nformation and expenses for which reimbursement will be sought must be submitted at least quarterly via informational invoicing through Counsellink.” The most current Outside Counsel Guidelines are available at: https://www.nj.gov/oag/law/pdf/rfqs/Revised_Outside_Counsel_Guidelines_2022.pdf.

5. To the extent Special Counsel should be engaged in an action where there is a statutory or contractual provision for the recovery of attorneys’ fees, would Special Counsel be able to pursue such recovery from defendant(s)?

The amount of fees outside counsel earn will always ultimately be governed by the retention agreement. This does not preclude the possibility that counsel may be asked to make a fee application to the court where appropriate.

6. Could the OAG’s office provide data on the number of enforcement actions/investigations opened by Data Privacy and Cyber Security Section over the last [3] years; the number of such actions/investigations that settled pre-litigation vs. during litigation; and the number of such actions/investigations that advanced to trial?

The Division of Law does not provide details of investigations or actions that are not made public through the filing of an enforcement action or execution of a settlement. For publicly-available information related to the Data Privacy and Cybersecurity's actions or investigations, please see: <https://www.njoag.gov/news/>.

7. At what stage of the OAG's enforcement actions can Special Counsel expect to be engaged at (e.g. will Special Counsel ever be engaged at the investigative or pre-litigation stage)?

Section 4 of the RFQ describes the Scope of Services Special Counsel will be anticipated to provide. For affirmative enforcement matters, Section 4 specifically contemplates that responsibilities "may include significant pre-filing evaluative and investigative work."

8. In regards to RFQ 5.1.H. and 5.1.I. Please clarify if you are solely seeking state agencies or departments in the State of New Jersey or anywhere in the United States.

Sections 5.1.H and 5.1.I of the RFQ refer to agencies or departments in the State of New Jersey.

9. With regard to Exhibit B (Outside Counsel Diversity Questionnaire):
 - A. It requests for ALL ATTORNEYS FIRM-WIDE, the #of NJ-Based Attorneys who held the following positions as of January 1, 2023. We are confirming this date. Should it be January 1, 2024?
 - B. For the PROMOTIONS, ATTRITION, NEW HIRES, AND PART-TIME ATTORNEYS SECTIONS, it requests the # of NJ-Based Attorneys during the 1-year period ending December 31, 2022. We are confirming this date. Should it be the 1-year period ending December 2023 (1/23-12/23)?

The dates listed in Exhibit B of the RFQ are accurate.

10. In regards to Exhibit B Outside Counsel Diversity Questionnaire – Would you

please confirm that you want data as of 1/1/2023 and for the time period of 1/1/2022-12/31/2022?

The dates listed on Exhibit B are correct.

11. Our firm would like to respond to New Jersey's RFQ but it seems as though the website created to allow legal organizations to apply is down. Would you be so kind as to send me a copy of the RFQ?

A. Please provide me with a pdf of the attachments required for submitting an RFP/RFQ.

B. When I click the link to the online application tool in the email sent regarding the above RFQ, the website comes back with a "No Results Found" error.

A PDF of the RFQ is available at <https://www.nj.gov/oag/law/pdf/rfqs/Request-for-Qualifications-Data-Privacy-Cybersecurity-2024-0430.zip>.

As noted on the cover page of the RFQ, "[t]he RFQ Submission Portal will not be operational until the RFQ question and answer period has ended, and submissions will be accepted beginning May 16, 2024."

The application URL that appeared in LPS's email publicizing this RFQ and at the top of the RFQ page, <https://www.njoag.gov/request-for-qualifications-process-portal/rfq-data-privacy-cybersecurity/>, has been updated and should function as expected.