

## NCDOT Legislative Report on Hiring of Outside Counsel

January 1, 2018 to June 30, 2018

This report is presented to the Joint Legislative Transportation Oversight Committee (JLTOC) and the Joint Legislative Justice and Public Safety Oversight Committee (JLJPSOC) in compliance with the legislative mandate set forth in G.S. 136-18.03. Contained herein are requirements set forth by the NC General Assembly, a summary of the process the NCDOT has implemented for the hiring of outside counsel, and an update on the Department's usage of outside counsel.

### I. Summary of Legislative Mandate

With authorization provided in G.S. 136-18.03, the "Department of Transportation may engage the services of private counsel with the pertinent expertise to provide legal services related to any project undertaken by the Department. . . ."

The NCGA further mandated that the NCDOT "*shall develop performance metrics to evaluate its utilization of in-house and outside counsel, to include the following:*

- (1) *A summary of new matters opened by legal area.*
- (2) *Case cycle times.*
- (3) *Resolution of cases.*
- (4) *A comparison of in-house costs to billable rates for external counsel.*
- (5) *The process for procurement for legal services."*

### II. Types of cases where outside counsel utilization is required

Defending inverse condemnation lawsuits filed against NCDOT in relation to the Transportation Corridor Official Map Act, G.S. § 136-44.50, commonly known as the "Map Act", remains the primary type of case in which NCDOT hires outside counsel. Between January 1 and July 1 of 2018, plaintiffs filed 21 Map Act cases against NCDOT, which brings the total number of such cases filed to 528. NCDOT anticipates additional cases will be filed in the coming weeks. During the six-month period covered by this report, NCDOT settled or reached an agreement in principle in 42 cases, which brings the total number of cases resolved to 57. In addition to the cases that were settled, NCDOT tried two cases to verdict. These cases are currently on appeal.

NCDOT currently retains the services of eight law firms for the purpose of handling inverse condemnation claims related to the Map Act.

### III. Process for Retaining Outside Counsel

During the period covered by this report, NCDOT did not hire any additional outside counsel. NCDOT did, however, develop a procurement process should the hiring of additional outside counsel become necessary. Should NCDOT need to hire outside counsel, NCDOT will issue a Request for Proposal that seeks interested law firms with subject matter experience, geographic proximity to the venue in which the claims will be handled, and the capacity to handle the volume of work available. In addition to publishing the RFP, the Office of the General Counsel may directly solicit firms known to match the criteria listed in the RFP by directing these firms' attention to the RFP. After the period for submitting proposals closes, a selection team composed of three members of NCDOT's executive staff, including at least one attorney from the Office of the General Counsel other than the General Counsel, will select three finalists for review by the General Counsel. The selection committee will base its decisions on the criteria listed in the RFP and may also factor in the need for racial and gender diversity among the firms representing NCDOT. The General Counsel will not participate in or otherwise influence the deliberations of the selection team. Once the selection committee selects

three finalists, the General Counsel will review the finalists' proposals and make a final determination of which firm will be awarded the contract.

#### IV. Evaluation of Counsel Performance

Though NCDOT resolved a number of Map Act cases through trial and settlement, an insufficient number of cases have been resolved to develop effective metrics for evaluating the performance of outside counsel. NCDOT is satisfied with the performance of outside counsel and based on the unique nature of this litigation and potential costs to the State associated with Map Act litigation, believes that outside counsel is providing cost-effective service to the state. NCDOT remains in the process of developing data-driven metrics that could be used to assess the performance of these attorneys and to manage the sprawling wave of litigation.

#### Legal Fees of Outside Counsel<sup>1</sup>

4/1/15-7/1/16	7/1/16-1/1/17	1/1/17-7/1/17	7/1/17-1/1/18	1/1/18-7/1/18	Total
1,539,091.57	1,001,215.73	889,265.40	1,232,892.27	2,773,303.52	7,435,768.49

#### V. Conclusion

As required by law, NCDOT will continue to submit semiannual reports on the usage of outside counsel. In the event there are changes, the NCDOT will report on any updates to the above-summarized retention and evaluation process.

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<sup>1</sup> Because NCDOT submitted past reports by either the July 1 or January 1 report date, past reports failed to account for all legal fees accrued during the reporting period and thus underreported the total spent on legal fees. This report corrects this error and accurately accounts for the total legal fees accrued during each reporting period and the total spent on legal services. One period, 1/1/17-7/1/17 decreased in this report because funds from the previous period had been accounted for during that period in previous reports. Should NCDOT receive invoices for legal services performed during this reporting period, subsequent reports will be updated to reflect the total.