

*Joint Meeting of the
Healthcare and Regulations Subcommittee
and
Law Enforcement and Criminal Justice Subcommittee*
Thursday, March 31, 2022

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AGENDA

South Carolina House of Representatives



Legislative Oversight Committee

Healthcare and Regulatory Subcommittee

Chairman John Taliaferro "Jay" West, IV

The Honorable Gil Gatch

The Honorable Timothy A. "Tim" McGinnis

The Honorable Rosalyn D. Henderson-Myers

Law Enforcement and Criminal Justice Subcommittee

Chairman Chris Wooten

The Honorable Kimberly Johnson

The Honorable Josiah Magnuson

The Honorable John McCravy

JOINT LEGISLATIVE OVERSIGHT SUBCOMMITTEE MEETING HEALTHCARE AND REGULATORY SUBCOMMITTEE; AND LAW ENFORCEMENT AND CRIMINAL JUSTICE SUBCOMMITTEE

Thursday, May 31, 2022

Upon Adjournment

Blatt Building Room 410 (Ag Committee Room)

Pursuant to Committee Rule 6.8, S.C. ETV shall be allowed access for internet streaming whenever technologically feasible.

AGENDA

- I. Approval of Minutes
- II. Discussion of the study of the State Accident Fund and Attorney General's Office
- III. Adjournment

PRESENTATION - HIRING INTERNAL LEGAL COUNSEL & RETAINING OUTSIDE LEGAL COUNSEL



South Carolina
State Accident Fund



SOUTH CAROLINA
Attorney General
ALAN WILSON

Hiring Internal Legal Counsel & Retaining Outside Legal Counsel

Erin Farthing, Acting Director/Chief Counsel,
South Carolina State Accident Fund

Barry Bernstein, Deputy Attorney General
Steve Lynch, Deputy Attorney General
Office of the Attorney General

Part I: Hiring Attorneys as Employees

What is the Need for Attorneys as Employees at the State Accident Fund?

Role of In-House Counsel (Attorneys)

- Conducts legal research and applies research findings to assist in determination of compensability, denials, settlements and disputed issues.
- Provides legal advice through the course of a claim to both State Accident Fund personnel and policyholder as needed, even where there is no pending legal event.
- Represents the agency and policyholders in litigation before the SC Workers' Compensation Commission and appeals through the Supreme Court.

Role of In-House Counsel, Cont.

- Acts as liaison between State Accident Fund employees and contract attorneys as needed.

Current In-House Counsel at State Accident Fund

- Provides legal training and updates to State Accident Fund personnel.
- Provides legal advice to agency management and staff, including analysis of statutes, regulations, legislative acts, court decisions and general workers' compensation law and procedures.

- Chief Counsel (Attorney III) – 1
- Attorney II – 1
- Attorney III – 2

What Authority Exists for State Accident Fund to Hire Attorneys as Employees?

Section 42-7-30. Legal representation for fund; extra legal services; fees and expenses.

Legal representation for the State Accident Fund shall be provided by a **chief counsel and such staff attorneys as are necessary appointed by the director of the fund** with the approval of the Attorney General. Any extra-legal services that may be required must be performed by attorneys selected by the director also with the approval of the Attorney General. Fees and expenses for nonstaff attorneys must be approved by the director.

Who Must Approve the State Accident Fund Hiring an Attorney as an Employee?

Section 42-7-30. Legal representation for fund; extra legal services; fees and expenses.

Legal representation for the State Accident Fund shall be provided by a chief counsel and such staff attorneys as are necessary appointed by the director of the fund **with the approval of the Attorney General**. Any extra-legal services that may be required must be performed by attorneys selected by the director also with the approval of the Attorney General. Fees and expenses for non-staff attorneys must be approved by the director.

Statute specific to State Accident requires:

- **All State Accident fund attorneys must be approved by Attorney General.**

Note: This is not the case for all agencies that hire attorneys as employees

Who Must Approve an Agency Hiring an Attorney as an Employee?

SECTION 1-7-160. Hiring of attorneys.

A **department or agency** of state government **may not hire** a **classified or temporary attorney** as an **employee** **except upon** the **written approval of** the **Attorney General and at compensation approved by him.** All of these attorneys at all times are under the supervision and control of the Attorney General except as otherwise provided by law unless prior approval by the State Budget and Control Board is obtained. This section does not apply to an attorney hired by the General Assembly or the Judicial department.

Statute applicable to all agencies that hire attorneys as employees

Attorney General written approval of hiring and compensation is...

Required for the following:

- Temporary agency attorney positions
- Classified agency attorney positions
- Some unclassified agency attorney positions*

Constitutional safeguards may apply (discussed in next slide)

**If a statute other than S.C. Code Section 1-7-160 applies.*

State Accident Fund must have approval for all attorneys (classified, temporary, and unclassified) because S.C. Code Section 42-7-30 requires it.

Attorney General written approval of hiring and compensation is...

NOT required for the following:

- General Assembly attorneys
- Judicial Department attorneys¹
- Unclassified agency attorney positions²

¹ **Constitutionally**, the separation of powers concept precludes the Attorney General controlling Legislative or Judicial branch attorneys.

² **Statutory Intent**. "Unclassified" may be a statutory cure for some positions. Examples include:

- Ethical: Most Indigent Defense counsel are "Unclassified Attorneys" (AG chief prosecutor).
- Governor's counsel is "Executive Staff-Governor's office". Can advise the Governor on legal matters, but AG is the state attorney.

Issues arise where agencies circumvent AG review by hiring into non-attorney positions, then deem them General Counsel or supervising attorney for cases.

Classified v. Unclassified Position

SC Transparency Portal descriptions

CLASSIFIED Attorney
employee (*Grievance rights*)

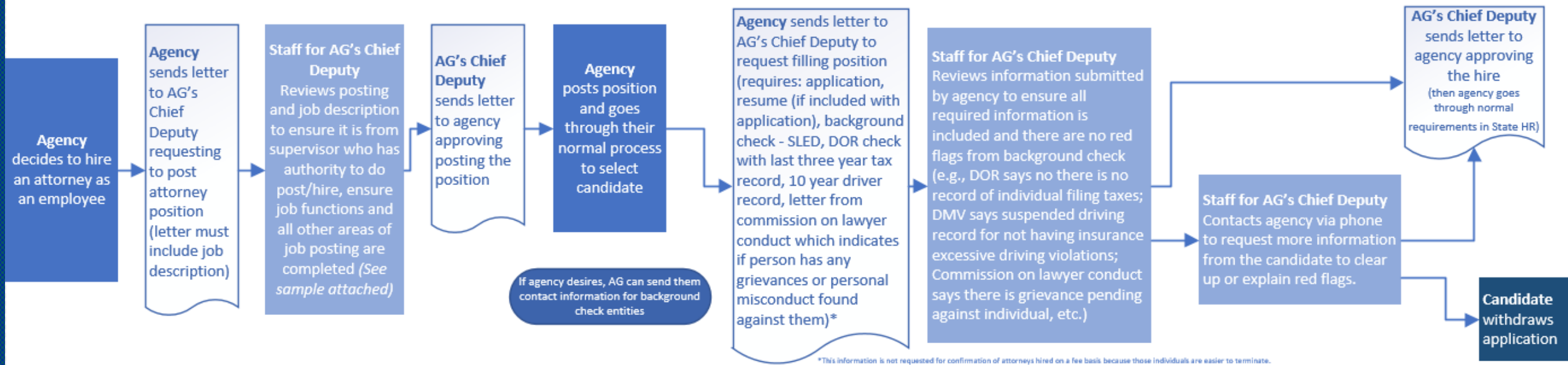
- *Attorney I*
- *Attorney II*
- *Attorney III*
- *Attorney IV*
- *Attorney V*
- *Attorney VI*
- *Higher Education Attorney*

UNCLASSIFIED Attorney Employee
(At-will)

- *Attorney - Unclassified*
- *“Unclassified” filled by an attorney*
- *“Executive Staff – Gov Office”*
- *“Executive Compensation” or “Agency Head” may include attorneys in non-attorney position*

What is the Approval Process for Hiring an Attorney as an Employee?

New Classified or Temporary Attorney Hire (Process outlined below has been utilized for over 10 years)



Step 1 - 2

Before advertising or posting the position, an agency does the following:

- Send letter requesting approval
- Request must include
 - level, or pay band,
 - whether it is a vacant or new position
 - may also include other justifications for the position.

Step 3 - 5

Staff for AG's Chief Deputy

Reviews posting and job description to ensure it is from supervisor who has authority to do post/hire, ensure job functions and all other areas of job posting are completed (See sample attached)

AG's Chief Deputy sends letter to agency approving posting the position

Agency posts position and goes through their normal process to select candidate

If agency desires, AG can send them contact information for background check entities

When reviewing the agency's letter, AG looks for the following:

- From agency supervisor who has authority to post/hire position
- Ensure job functions are included
- Ensure all areas of job posting are complete and version the AG is reviewing is final version the agency will post



STATE OF SOUTH CAROLINA
State Accident Fund
 P.O. Box 1166
 Lexington, SC 29071

**INVITES APPLICATIONS FOR THE POSITION OF:
 Attorney III**

An Equal Opportunity Employer

THE LANGUAGE USED IN THIS DOCUMENT DOES NOT CREATE AN EMPLOYMENT CONTRACT BETWEEN THE EMPLOYEE AND THE AGENCY. THIS DOCUMENT DOES NOT CREATE ANY CONTRACTUAL RIGHTS OR ENTITLEMENTS. THE AGENCY RESERVES THE RIGHT TO REVISE THE CONTENT OF THIS DOCUMENT, IN WHOLE OR IN PART, NO PROMISES OR ASSURANCES, WHETHER WRITTEN OR ORAL, WHICH ARE CONTRARY TO OR INCONSISTENT WITH THE TERMS OF THIS PARAGRAPH CREATE ANY CONTRACT OF EMPLOYMENT.

OPENING DATE: 01/12/17

CLOSING DATE: 03/31/17 11:59 PM

JOB TITLE: Attorney III

CLASS CODE: AE30

POSITION NUMBER: 60025442

SLOT NUMBER:

STATE SALARY RANGE:

Salary: Depends on Qualifications

AGENCY HIRING RANGE - MIN:

AGENCY HIRING RANGE - MAX:

LOCATION: Richland County, South Carolina

JOB TYPE: FTE - Full-Time

NORMAL WORK SCHEDULE: Monday - Friday (8:30 - 5:00)

RESIDENCY REQUIREMENT:

RESIDENCY REQUIREMENT SPECIFICS (IF ANY):

AGENCY SPECIFIC APPLICATION PROCEDURES:

Please submit your application through the website.

JOB RESPONSIBILITIES:

Assists Chief Counsel in all areas as required. Represents the State Accident Fund in complex litigated cases before the Workers' Compensation Commission, Circuit Courts, and Appellate Courts. Provides professional legal advice to the State Accident Fund on matters of a complex and technical nature, including providing opinions on legislative acts and court decisions. Conducts complex legal research within a highly technical and specialized area. Writes Orders, Briefs and memorandums of law. Negotiates settlements of workers' compensation claims involving the State Accident Fund. Acts as legal liaison between the State Accident Fund employees and attorneys on cases assigned to contract attorneys. Performs other legal duties as required.

MINIMUM AND ADDITIONAL REQUIREMENTS:

Posting Position

- Posted at careers.sc.gov with position description, minimum and preferred requirements, etc.
- May also be advertised on different websites, including with the University of South Carolina School of Law and the South Carolina Bar.
- All applicants must apply through careers.sc.gov.

Selection Process at State Accident Fund


- Applications are screened to filter out any that do not meet the minimum requirements.
- Top candidates are selected for interviews.
- Interview panel selected within State Accident Fund, and interviews conducted.
- Following interviews, final candidate for open position selected by State Accident Fund.
- Once final candidate is selected, the agency must request approval from the Attorney General's Office before making an offer to the candidate.

Step 6

Agency sends letter to AG's Chief Deputy to request filling position (requires: application, resume (if included with application), background check - SLED, DOR check with last three year tax record, 10 year driver record, letter from commission on lawyer conduct which indicates if person has any grievances or personal misconduct found against them)*

- Agency obtains required forms from selected applicant to conduct required background checks.
- Agency includes following items with written hire request to the Attorney General's Office:
 - Position number, classification level and proposed salary;
 - SLED background check;
 - 3-year Department of Revenue tax check;
 - 10-year Department of Motor Vehicles/Department of Public Safety driver's record check; and
 - Status report from the Commission on Lawyer Conduct.

Step 7 - End

**SOUTH CAROLINA
STATE ACCIDENT FUND** HARRY B. GREGORY, JR., Director

August 5, 2013

Chief Deputy Attorney General
John McIntosh
P.O. Box 11549
Columbia, SC 29211

Dear Mr. McIntosh:

The purpose of this letter is to request authorization to extend an offer of employment to Ms. Erin Farrell Farthing.

In May of 2012, your office granted the State Accident Fund permission to recruit for an Attorney III position.

The agency would like to offer the position to Ms. Farthing at an annual salary of [REDACTED]. Her SLED background check, DOR tax check, Department of Public Safety driver's record check and a status report from the Commission on Lawyer Conduct are attached.

Thank you in advance for your assistance in this matter.

Sincerely,

Gerald A. Murphy
Administrative Manager
State Accident Fund
(803) 896-5870
Fax: (803) 612-2779

Enclosures:
as

Staff for AG's Chief Deputy
Reviews information submitted by agency to ensure all required information is included and there are no red flags from background check (e.g., DOR says no there is no record of individual filing taxes; DMV says suspended driving record for not having insurance excessive driving violations; Commission on lawyer conduct says there is grievance pending against individual, etc.)

Staff for AG's Chief Deputy
Contacts agency via phone to request more information from the candidate to clear up or explain red flags.

AG's Chief Deputy
sends letter to agency approving the hire
(then agency goes through normal requirements in State HR)

Candidate
withdraws application

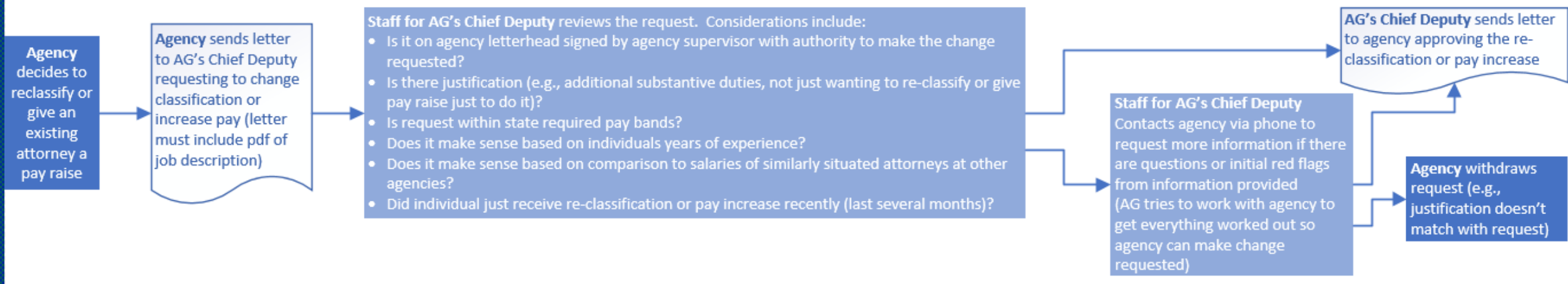
Hiring the Selected Candidate

Once the hire is approved by the Attorney General's Office...

- State Accident Fund sends a formal offer letter to the selected candidate, including the position information, salary, start date, and hours.
- If the candidate accepts position, the on-boarding process proceeds as with any other new hire.

What is the Approval Process for *Reclassification or Pay Raise?*

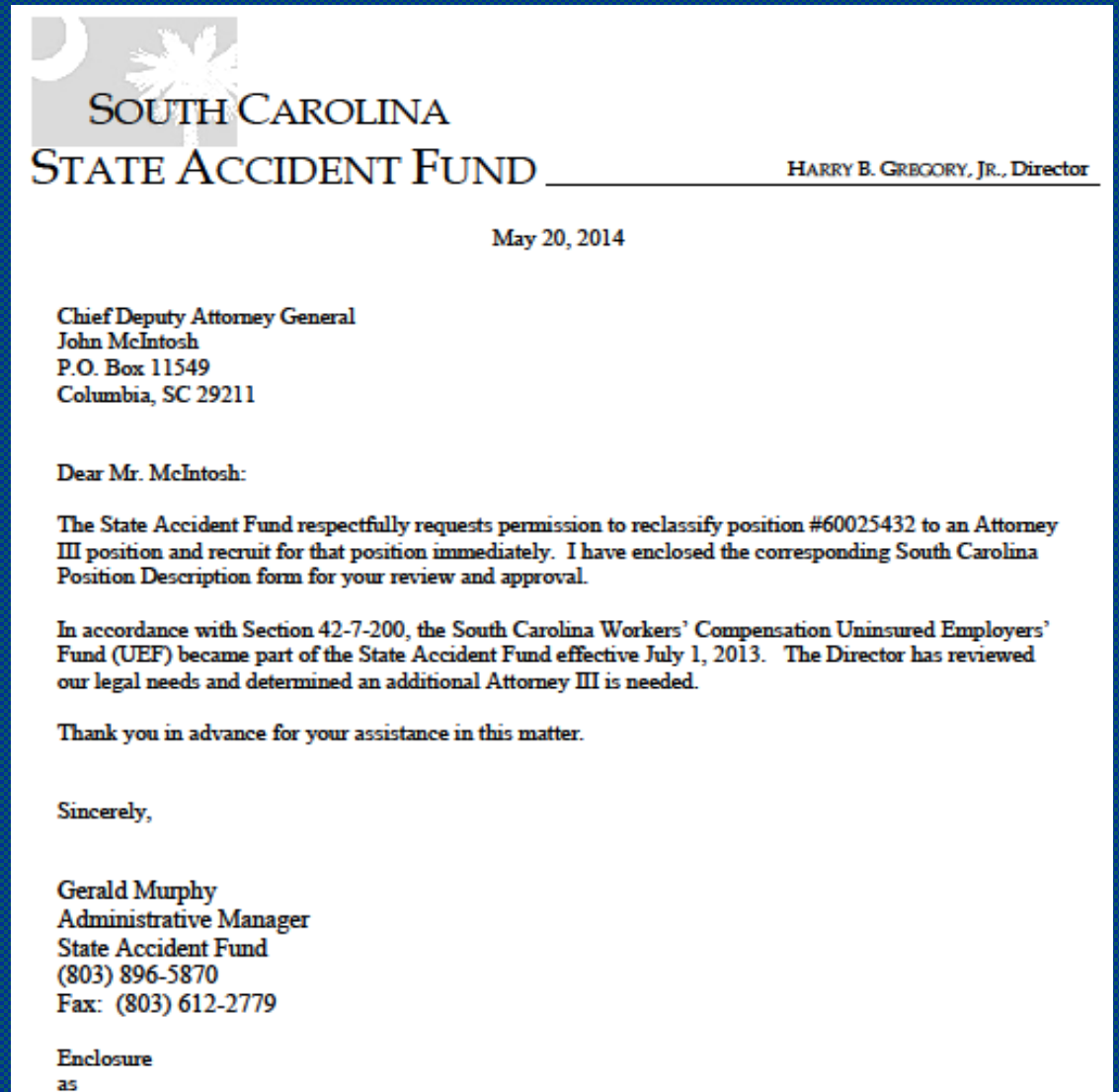
Attorney Classification Change or Pay Raise *(Process outlined below has been utilized for over 10 years)*



Agencies must also seek approval from the Attorney General's Office to reclassify an in-house attorney from one pay band level to another, (i.e. Attorney I to Attorney II), or to make other salary changes. The AG does not require approval of one-time merit pay increases (i.e., bonus), but some agencies make the requests as a safeguard.

Step 1 - 2

Request should include justification for the reclassification. If a salary change is also being requested, it must include the employee's current salary and the requested salary.



Step 3 - End

Staff for AG's Chief Deputy reviews the request. Considerations include:

- Is it on agency letterhead signed by agency supervisor with authority to make the change requested?
- Is there justification (e.g., additional substantive duties, not just wanting to re-classify or give pay raise just to do it)?
- Is request within state required pay bands?
- Does it make sense based on individuals years of experience?
- Does it make sense based on comparison to salaries of similarly situated attorneys at other agencies?
- Did individual just receive re-classification or pay increase recently (last several months)?

Staff for AG's Chief Deputy
Contacts agency via phone to request more information if there are questions or initial red flags from information provided (AG tries to work with agency to get everything worked out so agency can make change requested)

AG's Chief Deputy sends letter to agency approving the re-classification or pay increase

Agency withdraws request (e.g., justification doesn't match with request)

Note: Pay increases due to re-classification or additional duties must go through the AG.

How are the different approval requirements enforced? (What incentive or consequence exists?)

- Without conflicting with the State HR grievance process, the AG **cannot** fire a non-AG employee.
- **HOWEVER:**
 - AG can “de-certify” an individual from holding a classified attorney position.
 - AG can make “notice” that an individual cannot represent the State in a matter, and defiance may bring ethics concern for attorney bar license.
 - AG can remove a case from an agency and insert his own attorney to represent the state’s interest.

NOTE: *The above circumstances have not yet been tested, but circumstances are arising to create concern for future issues.*

What data is maintained?

Prior to May 2018

- Hardcopy requests and approval letters in archives
- No data available for analysis without manual reentry of it from hardcopies.

May 2018 to present

- Hardcopy request and approval letters available
- Data below is available in an Excel chart:
 - Date Approved
 - Attorney Name
 - Agency/Type of Request (e.g., new hire, temp, salary increase, etc.)
 - Class/Salary (e.g., Atty. II / \$45,000)
 - Year graduated from law school

What does “supervision and control” mean?

Section 1-7-160. Hiring of attorneys.

A department or agency of state government may not hire a classified or temporary attorney as an employee except upon the written approval of the Attorney General and at compensation approved by him. **All of these attorneys at all times are under the supervision and control of the Attorney General except as otherwise provided by law unless prior approval by the State Budget and Control Board is obtained.**

This section does not apply to an attorney hired by the General Assembly or the Judicial department.

What does “supervision and control” mean?

- Who: All agency classified and temporary attorney employees
- When: At all times
- What: Under the supervision and control of the AG
- Exceptions:
 - As otherwise provided by law
 - Prior approval by the State Budget and Control Board is obtained.

See, Section 1-7-160

The AG is to make clear and consistent legal policy of the State as a whole. There must be a system to preclude different entities of the state bringing conflicting interpretation of state policy or law. As the Chief legal officer, the AG acts as the “senior partner” of the state law firm. With hundreds of attorneys and the variety of subject matter, great delegation is required, to include in the hiring and immediate supervision of lawyers.

Some State attorneys are outside AG supervision for constitutional, statutory or ethical concerns. While the AG may not terminate other agency employees, the AG can remove their authority to represent the state in legal matters or the AG may initiate other actions. A large degree of coordination remains between the AG and agencies to avoid legal conflict, ethical issues, or loss of public confidence.

Suggestions for Improvements to the Process

- Legislative change:
 - No attorney for the State can use terms such as “General Counsel” or similar implication of authority to practice law without authority of the AG or other exception by law.
 - State HR must “consult” with the AG before creating unclassified positions for attorneys.
 - The AG has received periodic authority by proviso to pay SC Bar dues for attorneys. A permanent law allowing the AG to “certify” standing as a state’s attorney may provide incentive for agencies to recertify status each year to insure the AG has an annually updated list of attorney status.

Part II: Retaining Outside Counsel

What is the Need for Attorneys on Fee Basis at the State Accident Fund?

Role of Outside Counsel (Attorneys)

- **Supplement limited number of in-house attorneys**
 - Current numbers: 3 for State Accident Fund (including Chief Counsel) and 1 for Uninsured Employer's Fund (UEF).
 - Impossible for in-house attorneys to handle all litigation for State Accident Fund, State Accident Fund policyholders, and UEF, especially in light of their advisory roles within the agency.
- **Handle (1) larger, more complex claims and (2) claims outside of the Midlands and surrounding areas**
 - Ensures in-house counsel are available to handle or assist with a larger number of claims rather than expending too much of their time on a few claims that require extensive discovery or travel.

What Authority Exists for State Accident Fund to Hire Attorneys on a Fee Basis?

Section 42-7-30. Legal representation for fund; extra legal services; fees and expenses.

Legal representation for the State Accident Fund shall be provided by a chief counsel and such staff attorneys as are necessary appointed by the director of the fund with the approval of the Attorney General.

Any extra-legal services that may be required must be performed by attorneys selected by the director

also with the approval of the Attorney General. Fees and expenses for nonstaff attorneys must be approved by the director.

Who Must Approve the State Accident Fund Hiring an Attorney on a Fee Basis?

Section 42-7-30. Legal representation for fund; extra legal services; fees and expenses.

Legal representation for the State Accident Fund shall be provided by a chief counsel and such staff attorneys as are necessary appointed by the director of the fund with the approval of the Attorney General. Any extra-legal services that may be required must be performed by attorneys selected by the director also **with the approval of the Attorney General**. Fees and expenses for nonstaff attorneys must be approved by the director.

Statute specific to State Accident requires:

- **All State Accident fund attorneys must be approved by Attorney General.**

Note: This is not the case for all agencies that hire attorneys on a fee basis

Who Must Approve an Agency Hiring an Attorney on a Fee Basis?

Section 1-7-170. Engaging attorney on fee basis.

(A) A **department or agency** of state government **may not engage on a fee basis an attorney** at law **except upon the written approval of the Attorney General and upon a fee as must be approved by him.** This section does not apply to the employment of attorneys in special cases in inferior courts when the fee to be paid does not exceed two hundred fifty dollars or exceptions approved by the State Budget and Control Board. This section does not apply to an attorney hired by the General Assembly or the judicial department.

(B) A public institution of higher learning shall engage and compensate outside counsel in accordance with policies and procedures adopted by the State Fiscal Accountability Authority for matters of bonded indebtedness, public finance, borrowing, and related financial matters.

Statute applicable to
all agencies
that hire attorneys on fee basis

Attorney General written approval of hiring and compensation is...

Required for attorneys hired on a fee basis for the following:

- Department or Agency of state government

Not required for attorneys hired on a fee basis for the following:

- General Assembly
- Judicial Department
- “Special cases in inferior courts* when the fee to be paid does not exceed two hundred fifty dollars”
- Exceptions approved by the State Budget and Control Board

*Inferior courts means Municipal Court and Magistrate Court

What are different types of fees?

Hourly v. Flat v. Contingency

Hourly Basis

- Most common example:
- \$150/hour
 - Often billed in 1/10th per hour increments
 - \$15 for each 6 minutes of time

Flat Basis

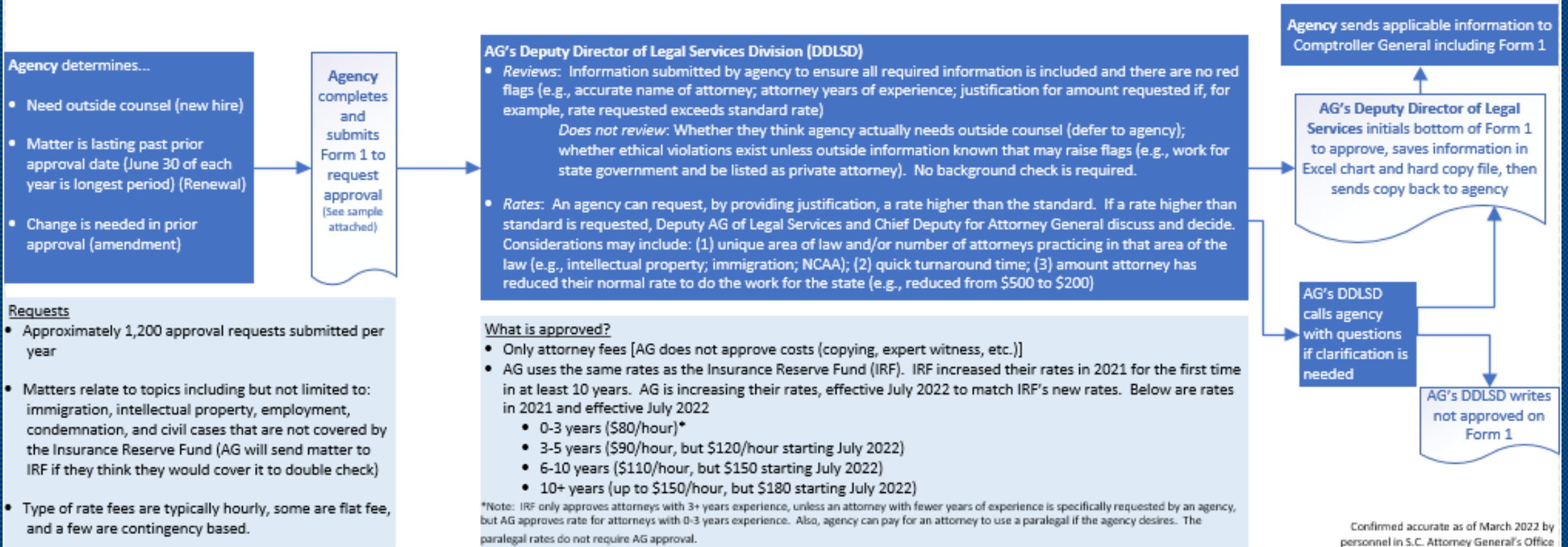
- Most common in real estate matters
- Approved in other matters, such as immigration or intellectual property
- Example: \$300 for 40 year title examination plus \$70 per update.

Contingency Basis

- Example: “to bring action to serve as Personal Representative of Estates that have not been opened and that Estate Recovery has a claim against. Administer Estates as Creditor’s Representative and pay debt.”
- *Note: AG will discuss contingency basis more in its Legal Services Presentation*

What is the Approval Process for *hiring Attorney on Fee Basis?*

Retaining services of attorney on fee basis (Process outlined below has been utilized for at least 20 years) Note: AG uses same process if they need outside counsel (e.g., AG needs an employment attorney)



Step 1

Agency determines...

- Need outside counsel (new hire)
- Matter is lasting past prior approval date (June 30 of each year is longest period) (Renewal)
- Change is needed in prior approval (amendment)

Matters for which agencies retain outside counsel relate to topics, including but not limited to:

- immigration,
- intellectual property,
- employment,
- condemnation, and
- civil cases that are not covered by the Insurance Reserve Fund (AG will send matter to IRF if they think they would cover it to double check)

How does State Accident Fund Select Outside Counsel?

- Chosen to ensure expertise and practice area match with needed services.
- Typically handling workers' compensation claims, but sometime will need a specialist in another practice area: collections, Medicare issues, HR or agency concerns, etc.
- Also, may need someone experienced with appellate practice or another jurisdiction.
- Consideration also given to region to ensure proper coverage throughout the state.

When/How does SAF utilize the services of outside counsel

- Adjuster, attorney, or policyholder can request a claim be sent to outside counsel
 - Complex claim
 - Outside Midlands area
 - Possible conflict
 - Employee attorney workloads
- Request goes to State Accident Fund's Litigation Coordinator
- Litigation Coordinator selects outside counsel for the file
 - Choice is based on various factors including, but not limited to:
 - expertise in claim type,
 - prior experience with injured worker,
 - number of current files, etc.

How does State Accident Fund Determine Attorney Hourly Rates?

- Per Section 42-7-30, fees and expenses for outside attorneys must be approved by State Accident Fund's director.
- Utilize rates approved by Attorney General's Office, unless special circumstances would warrant requesting higher rates.

What Rates does AG Approve?

- Only attorney fees [AG does not approve costs (copying, expert witness, etc.)]
- AG uses the same rates as the Insurance Reserve Fund (IRF). IRF increased their rates in 2021 for the first time in at least 10 years. AG is increasing their rates, effective July 2022 to match IRF's new rates. Below are rates in 2021 and effective July 2022.*
 - 0-3 years (\$80/hour, but \$100/hour starting July 2022)
 - 3-5 years (\$90/hour, but \$120/hour starting July 2022)
 - 6-10 years (\$110/hour, but \$150 starting July 2022)
 - 10+ years (up to \$150/hour, but \$180 starting July 2022)

*Note: IRF only approves attorneys with 3+ years experience, unless an attorney with fewer years of experience is specifically requested by an agency, but AG approves rate for attorneys with 0-3 years experience. Also, agency can pay for an attorney to use a paralegal if the agency desires. The paralegal rates do not require AG approval.

Step 2

Agency completes and submits Form 1 to request approval (See sample attached)

**SOUTH CAROLINA ATTORNEY GENERAL
REQUEST FOR AUTHORIZATION TO EMPLOY ASSOCIATE COUNSEL**

Please mark appropriate classification: Renewal _____ Initial Request _____

From (Agency): _____
Individual Requesting Authorization (include title): _____
Case Caption: _____

Date: _____ County (In which case/matter occurs): _____

Name of requested law firm/attorney(s): _____
Address of requested law firm/attorney(s): _____
Brief description of legal services to be performed: _____

Reason private attorney is needed to perform services: _____

Requested dates of services (maximum of one fiscal year): _____

REQUESTED HOURLY RATE OR OTHER COMPENSATION

<u>Attorney Name</u>	<u>Years of Experience</u> <small>(as of date of this Form 1)</small>	<u>Requested Rate</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

(Use additional sheet if necessary)

Justification if hourly rate or other compensation exceeds standard rate range: _____

Requested maximum fees: _____

TO BE COMPLETED BY ATTORNEY GENERAL'S OFFICE

Approved by: _____ Date: _____
File number: _____ Service code: _____
Attorney approved: _____ Firm code: _____

FORM 1 REV. 8/08

- Attorney General receives approximately 1,200 approval requests per year.*
- Of the over 1,200 Form 1 requests received for FY20-21:
 - Initial Request – Approx. 23%
 - Remainder are renewals and amendments

**Since FY 2019-20*

Form 1 – Top Half

Required Information

- Renewal v. Initial Request
 - For matters that continue from one fiscal year to the next, approvals must be renewed by July 1, even if the initial approval was provided in May.
- Name of Agency and Agency Staff making request
 - The AG's Office accepts Form 1s regardless of the title of the person making or submitting the request. AG Office reserves the right to confirm from a particular agency authority.

**SOUTH CAROLINA ATTORNEY GENERAL
REQUEST FOR AUTHORIZATION TO EMPLOY ASSOCIATE COUNSEL**

Please mark appropriate classification: Renewal _____ Initial Request _____

From (Agency): _____

Individual Requesting Authorization (include title): _____

Case Caption: _____

Date: _____ County (in which case/matter occurs): _____

- Case caption, if litigation
 - If a matter on which an agency needs an outside attorney to provide advice turns into a lawsuit, the agency must complete a separate request for approval to hire attorneys for the lawsuit.
- County where issue located
 - If the agency requesting to hire an attorney in Beaufort County for a real estate transaction in Oconee County, AG's Office would encourage the requesting agency to hire an attorney closer to the location of the property to avoid travel time or expense.

Form 1 – Top Half

Required Information

- Name and address of law firm/solo practice requested
- Description of services needed
 - Example: Represent the agency against allegations of negligence, conversion, and civil conspiracy

Name of requested law firm/attorney(s): _____

Address of requested law firm/attorney(s): _____

Brief description of legal services to be performed: _____

Reason private attorney is needed to perform services: _____

Requested dates of services (maximum of one fiscal year): _____

- Reason private attorney is needed to perform the services
 - AG's Office seeks to know why the agency believes paying an attorney in private practice is warranted under the circumstances. If there are agency attorneys, AG's Office wants to ensure the reason for hiring outside counsel relates to lack of subject matter expertise or internal staffing is insufficient to handle the requirements of the task requested.
- Dates service requested
 - For matters that continue from one fiscal year to the next, approvals must be renewed by July 1, even if the initial approval was provided in May.

Form 1 – Bottom Half

Required Information from Agency

- Name, years of experience, and requested rate for each attorney that may charge for work on the matter
- Justification if hourly rate or other compensation exceeds standard rate range

REQUESTED HOURLY RATE OR OTHER COMPENSATION		
<u>Attorney Name</u>	<u>Years of Experience</u> <small>(as of date of this Form.)</small>	<u>Requested Rate</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
(Use additional sheet if necessary)		
Justification if hourly rate or other compensation exceeds standard rate range: _____		

Requested maximum fees: _____		

- Requested maximum fees
 - This is the anticipated total fees for the matter. If the fees are higher than the maximum, the agency must submit an amended request for approval.

Form 1 – Bottom Half

Information Completed by Attorney General's Office

- Approved by and Date
- Service Code
 - AG's Office adds the applicable code to indicate the type of matter that is the subject of the Form 1. A copy of the service codes is included in the handouts in the meeting packet.

TO BE COMPLETED BY ATTORNEY GENERAL'S OFFICE			
Approved by: _____	Date: _____		
File number: _____	Service code: _____		
Attorney approved: _____	Firm code: _____		
FORM 1			REV. 8/08

- Attorney approved
 - AG's Office attorney that approves the request
- Firm Code

"Firm Code" is no longer being used. They were needed for a database the AG's Office no longer uses and will not appear on the modified Form 1 the AG's Office sends out with information about the rate changes that will take place on July 1, 2022.

Form 1 – Bottom Half

Information Completed by Attorney General's Office

- Service Code options include

- Hearing Officer
- Admin Proceedings
- Employee Grievance
- General Defense – Tort
- Medical Malpractice
- General Tort Defense
- Medical Malpractice (IRF)
- Contracts
- Condemnations
- Title Certificates/Real Estate
- Bonds/Securities

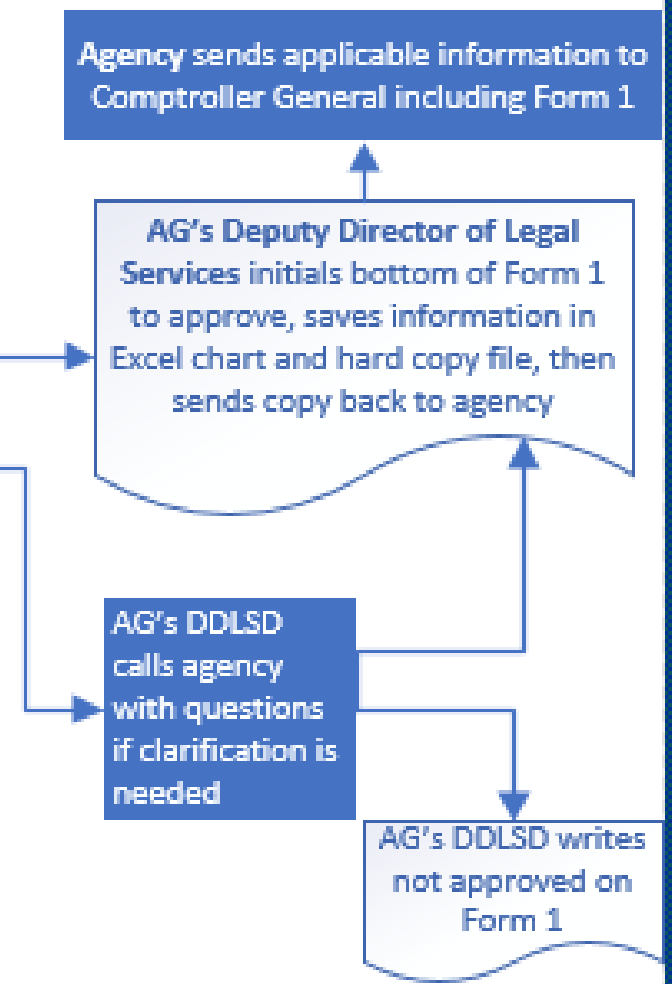
TO BE COMPLETED BY ATTORNEY GENERAL'S OFFICE	
Approved by: _____	Date: _____
File number: _____	Service code: _____
Attorney approved: _____	Firm code: _____
FORM 1	REV. 8/08

- Patents/Trademarks/Copyrights
- Public Utility (includes FCC matters)
- Environmental
- Complex/Specialized Litigation
- General Advice/Counsel
- General Litigation
- Guardian Ad Litem
- Other (ex, Immigration, etc.)
- Juvenile Parole Hearings
- DSS/Child Support
- DSS/Paternity
- DSS/Contempt
- DSS/Other

Step 3 - End

AG's Deputy Director of Legal Services Division (DDLSD)

- **Reviews:** Information submitted by agency to ensure all required information is included and there are no red flags (e.g., accurate name of attorney; attorney years of experience; justification for amount requested if, for example, rate requested exceeds standard rate)
Does not review: Whether they think agency actually needs outside counsel (defer to agency); whether ethical violations exist unless outside information known that may raise flags (e.g., work for state government and be listed as private attorney). No background check is required.
- **Rates:** An agency can request, by providing justification, a rate higher than the standard. If a rate higher than standard is requested, Deputy AG of Legal Services and Chief Deputy for Attorney General discuss and decide. Considerations may include: (1) unique area of law and/or number of attorneys practicing in that area of the law (e.g., intellectual property; immigration; NCAA); (2) quick turnaround time; (3) amount attorney has reduced their normal rate to do the work for the state (e.g., reduced from \$500 to \$200)



What follow up occurs to review attorney performance?

State Accident Fund

- Litigation Coordinator tracks file, reviews, and approves legal bills.
- State Accident Fund tracks results and receives feedback regarding contract attorneys.

Attorney General's Office

- None. Deference on attorney hired is with the agency making the hire. (Potential Question – why approve attorney hire and rates??)

Thank you

FLOW CHARTS - HIRING INTERNAL LEGAL COUNSEL & RETAINING OUTSIDE LEGAL COUNSEL

State Government Department/Agency Hiring Attorney as Employee

(Does not apply to attorneys hired by the General Assembly or Judicial Department)

Statute

Section 1-7-160. Hiring of attorneys.

A department or agency of state government may not hire a classified or temporary attorney as an employee except upon the written approval of the Attorney General and at compensation approved by him. All of these attorneys at all times are under the supervision and control of the Attorney General except as otherwise provided by law unless prior approval by the State Budget and Control Board is obtained. This section does not apply to an attorney hired by the General Assembly or the Judicial Department.

HISTORY: 2008 Act No. 353, Section 2, Pt 10A, eff July 1, 2009.

Code Commissioner's Note: At the direction of the Code Commissioner, reference in this section to the former Budget and Control Board has not been changed pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), until further action by the General Assembly.

NOTE: If the attorney is an unclassified employee on an agency's executive team, the agency does not need approval from the Attorney General.

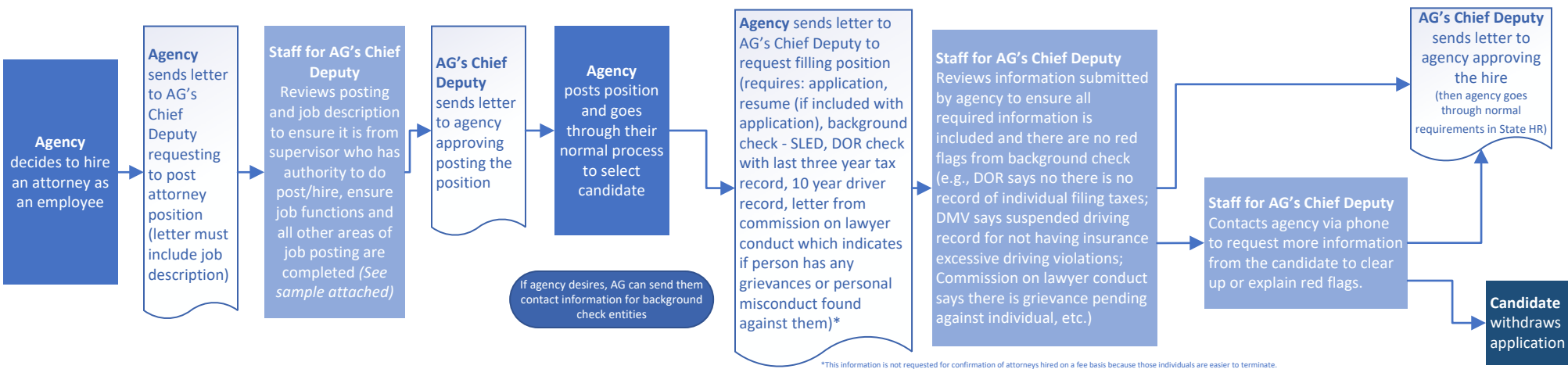
Data maintained by the Office of the Attorney General

Prior to May 2018: Agency requests and AG approval letters are available in archives, but there is no aggregated data in an Excel chart or other database.

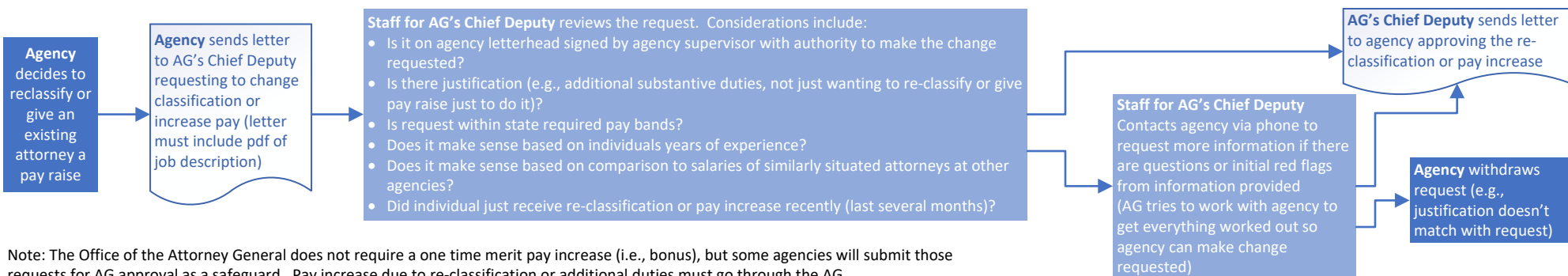
May 2018 to present: Agency requests and AG approval letters are available. Additionally, the following type of aggregated information is available in an Excel chart:

- Date Approved
- Attorney Name
- Agency/Type of Request (e.g., new hire, temp, salary increase, etc.)
- Class/Salary (e.g., Atty. II / \$45,000)
- Year graduated from law school

New Classified or Temporary Attorney Hire *(Process outlined below has been utilized for over 10 years)*



Attorney Classification Change or Pay Raise *(Process outlined below has been utilized for over 10 years)*



Note: The Office of the Attorney General does not require a one time merit pay increase (i.e., bonus), but some agencies will submit those requests for AG approval as a safeguard. Pay increase due to re-classification or additional duties must go through the AG.

Statute

Section 1-7-170. Engaging attorney on fee basis.

(A) A department or agency of state government may not engage on a fee basis an attorney at law except upon the written approval of the Attorney General and upon a fee as must be approved by him. This section does not apply to the employment of attorneys in special cases in inferior courts when the fee to be paid does not exceed two hundred fifty dollars or exceptions approved by the State Budget and Control Board. This section does not apply to an attorney hired by the General Assembly or the judicial department.

(B) A public institution of higher learning shall engage and compensate outside counsel in accordance with policies and procedures adopted by the State Fiscal Accountability Authority for matters of bonded indebtedness, public finance, borrowing, and related financial matters.

HISTORY: 2008 Act No. 353, Section 2, Pt 10B, eff July 1, 2009; 2011 Act No. 74, Pt VI, Section 9, eff August 1, 2011.

Code Commissioner's Note: At the direction of the Code Commissioner, reference in (A) to the former Budget and Control Board has not been changed pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), until further action by the General Assembly. Reference in (B) to the former Budget and Control Board was changed to the State Fiscal Accountability Authority pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1).

Effect of Amendment: The 2011 amendment inserted subsection identifier (A) in the first paragraph and added subsection (B) relating to outside counsel. Notes: Attorney General Office personnel are not aware of the Budget and Control Board exceptions. Inferior courts refer to Magistrate and Municipal Courts.

History: (1) AG previously approved paralegals (\$70 for experience of 7 years or more), legal assistants and others rate, in addition to attorney rate and estimated max fees. Now, AG only approves attorney rate.

(2) AG previously utilized a database to track information on outside counsel approval requests until FY 2021. AG stopped using the database because it was outdated and unable to query.

Future Ideas: AG has considered having training seminar to teach agencies how to complete the forms.

Data Maintained by Office of the Attorney General

Civil Division

- FY 2016 and prior: Hard copy of Form 1 submissions and decisions in archives
- FY 2017 - FY 2022: Hard copy of Form 1 submissions and decisions in the office
- FY 2021 to present: Information below from Form 1 submissions and decisions in an Excel chart (see history for prior method of saving information). Asterisks indicates only information not entered directly from the agency's Form 1
 - Name of agency
 - Law firm name
 - Case Matter
 - Dates for which outside attorney service is requested
 - County in which matter is located
 - Service code* – Type of legal services (e.g., general litigation, real estate, etc.). Decided by AG's Office based on case matter and services description
 - Date approved
 - Requested maximum fees for dates of service
 - Rate Type (hourly or flat rate)
 - Status: Open (AG won't know if closed)
 - Name of attorneys approved

Note: The AG does not have a list of approved attorneys on file like the Insurance Reserve Fund

Retaining services of attorney on fee basis (Process outlined below has been utilized for at least 20 years) Note: AG uses same process if they need outside counsel (e.g., AG needs an employment attorney)

Agency determines...

- Need outside counsel (new hire)
- Matter is lasting past prior approval date (June 30 of each year is longest period) (Renewal)
- Change is needed in prior approval (amendment)

Agency completes and submits Form 1 to request approval (See sample attached)

AG's Deputy Director of Legal Services Division (DDLSD)

- **Reviews:** Information submitted by agency to ensure all required information is included and there are no red flags (e.g., accurate name of attorney; attorney years of experience; justification for amount requested if, for example, rate requested exceeds standard rate)
Does not review: Whether they think agency actually needs outside counsel (defer to agency); whether ethical violations exist unless outside information known that may raise flags (e.g., work for state government and be listed as private attorney). No background check is required.
- **Rates:** An agency can request, by providing justification, a rate higher than the standard. If a rate higher than standard is requested, Deputy AG of Legal Services and Chief Deputy for Attorney General discuss and decide. Considerations may include: (1) unique area of law and/or number of attorneys practicing in that area of the law (e.g., intellectual property; immigration; NCAA); (2) quick turnaround time; (3) amount attorney has reduced their normal rate to do the work for the state (e.g., reduced from \$500 to \$200)

Agency sends applicable information to Comptroller General including Form 1

AG's Deputy Director of Legal Services initials bottom of Form 1 to approve, saves information in Excel chart and hard copy file, then sends copy back to agency

AG's DDLSD calls agency with questions if clarification is needed

AG's DDLSD writes not approved on Form 1

Requests

- Approximately 1,200 approval requests submitted per year
- Matters relate to topics including but not limited to: immigration, intellectual property, employment, condemnation, and civil cases that are not covered by the Insurance Reserve Fund (AG will send matter to IRF if they think they would cover it to double check)
- Type of rate fees are typically hourly, some are flat fee, and a few are contingency based.

What is approved?

- Only attorney fees [AG does not approve costs (copying, expert witness, etc.)]
- AG uses the same rates as the Insurance Reserve Fund (IRF). IRF increased their rates in 2021 for the first time in at least 10 years. AG is increasing their rates, effective July 2022 to match IRF's new rates. Below are rates in 2021 and effective July 2022
 - 0-3 years (\$80/hour)*
 - 3-5 years (\$90/hour, but \$120/hour starting July 2022)
 - 6-10 years (\$110/hour, but \$150 starting July 2022)
 - 10+ years (up to \$150/hour, but \$180 starting July 2022)

*Note: IRF only approves attorneys with 3+ years experience, unless an attorney with fewer years of experience is specifically requested by an agency, but AG approves rate for attorneys with 0-3 years experience. Also, agency can pay for an attorney to use a paralegal if the agency desires. The paralegal rates do not require AG approval.

COMMITTEE CONTACT INFORMATION AND UPCOMING MEETINGS

Legislative Oversight Committee



South Carolina House of Representatives

Committee Mission

Determine if agency laws and programs are being implemented and carried out in accordance with the intent of the General Assembly and whether they should be continued, curtailed or eliminated. Inform the public about state agencies.

Website: <https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee.php>

Phone Number: 803-212-6810

Email Address: HCommLegOv@schouse.gov

Location: Blatt Building, Room 228

UPCOMING MEETINGS

Healthcare and Regulatory Subcommittee

Immediately upon adjournment of joint meeting

Law Enforcement and Criminal Justice Subcommittee

TBD