

# OFFICE OF THE RAMSEY COUNTY ATTORNEY

John J. Choi, County Attorney



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Telephone (651) 266-3222 • Fax (651) 266-3032

**Civil Division**

## Solicitation for Outside Legal Counsel

### **I. INTRODUCTION**

The County of Ramsey is a municipal corporation organized by its Home Rule Charter. Pursuant to Minnesota law, including Minnesota Statutes Chapter 388, and the Ramsey County Administrative Code, the Office of the County Attorney has full charge of the legal business of the County. The County Attorney may request the Ramsey County Board to appoint special counsel in cases of special or unusual circumstances or where a conflict of interest exists. To select outside counsel who are both highly qualified and competitively priced, the County Attorney has established the following policy.

### **II. POLICY**

The County Attorney will retain outside counsel if the County Attorney determines that the Office of the County Attorney lacks the resources required to handle the matter because (1) the matter requires highly specialized expertise; (2) the office requires assistance because of the matter's complexity and time demands; or (3) the matters appears that an actual or perceived professional conflict of interest exists within the County Attorney's Office.

The County Attorney will initiate the selection of outside counsel by issuing a Request for Proposal (RFP) for the practice areas in which outside counsel is required. The County Attorney will evaluate the proposals and may select or reject any proposals in the best interests of the County. The County Attorney may request additional information or an oral presentation in support of an RFP proposal. The County Attorney is not obligated to respond to any proposals submitted nor is it legally bound in any manner whatsoever by the submission of an RFP proposal.

### **III. SCOPE OF WORK**

The practice area for which proposals are sought is health law and healthcare compliance. This work includes:

- a. Advising on or representing Ramsey County with healthcare regulators, including the Office of Civil Rights, Centers for Medicare and Medicaid Services, and the Minnesota Departments of Human Services and Health
- b. Advising on compliance with HIPAA Privacy, Security, and Breach Notification Rules
- c. Advising on general healthcare compliance issues, including provider and facility licensure and billing practices

- d. Advising Ramsey County in the event of a data breach
- e. If necessary, defend Ramsey County against administrative claims or penalties.

In this RFP, the County seeks to identify outside legal experts who have experience with such issues. The county particularly seeks attorneys with experience working as a federal regulator or, at a minimum, experience working as a regulator. All legal services will be performed under the direction of the Ramsey County Compliance and Ethics Office, in consultation with the Ramsey County Attorney's Office.

#### **IV. FEES**

Individual attorneys and law firms making proposals are expected to review and confirm in writing their acceptance of the County's Policy Regarding Fees for Legal Services by Outside Counsel. A copy of that policy is attached to this document.

#### **V. NON-DISCRIMINATION AND EQUAL OPPORTUNITY**

The Office of the Ramsey County Attorney does not discriminate on the basis of race, color, creed, religion, national origin, ancestry, sex, marital status, familial status, status with regard to public assistance, disability, sexual or affectional orientation, or age. Attorneys and firms selected must agree to comply with all applicable federal, state, and local equal opportunity and affirmative action laws, directives, regulations, and contracting requirements of the County.

#### **VI. INSTRUCTIONS - CONTENTS OF PROPOSAL**

Individuals or firms making proposals should submit to the County Attorney an original and one copy of their proposal. The proposal should set forth full and accurate information and include the following elements:

1. A general overview of the individual's or firm's history and legal experience (when established and location of main and branch offices).
2. A breakdown of the professional staff by race, gender and disability, distinguishing between partners/shareholders, associates, and of counsel.
3. If a firm, the firm's overall number of professionals and number of professionals within the State of Minnesota by title and method of handling clerical services.
4. An outline of the individual's or firm's particular areas of expertise as it (they) relate to section III, Scope of Work, with specific examples of experience in those areas.
5. A statement indicating the firm's ability to respond on short notice and within tight timelines.
6. The individual's or firm's capability to provide detailed billing statements comply with the County's Policy Regarding Fees for Legal Services by Outside Counsel.

7. The individual's or firm's willingness and ability to estimate the costs of individual assignments, together with any experience the attorney or firm has had submitting and working within fee budgets.
8. The specific attorneys likely to be assigned to work within the various categories outlined in section III, Scope of Work, and current resumes for those individuals. In addition, the identity of the person who will act as the lead attorney for the legal services agreement.
9. Whether an individual practitioner or firm represents any client or interest in matters involving the County or any County-related entity. In addition, a statement whether the individual or firm believes that any of these matters pose a conflict of interest within the meaning of the County's Code of Ethics, Minnesota law, and the Minnesota Rules of Professional Conduct. In those matters where a conflict has been identified, Outside Counsel is to provide a statement detailing how it proposes to resolve the conflict of interest.
10. An outline of the individual's or firm's billing structure and proposed hourly rates for providing legal services to the County. In addition, what types of assignments, if any, the individual or firm may be willing to handle on a fixed rate or not-to-exceed basis.
11. A description of the individual or firm's affirmative action plan for employment of minority persons, women, and disabled persons, and actions that have been taken to insure that all employees are treated equally with respect to hiring, training, rates of pay, and other forms of compensation.
12. For each attorney identified in paragraph 8 above, a description of all instances of discipline against that attorney by any disciplinary or regulatory body of any jurisdiction, or any sanction or admonition administered by any court, tribunal or agency in any particular matter during the preceding seven years. This includes all disciplinary complaints and matters that resulted in the issuance of any public sanction, including, but not limited to, warnings, admonitions, reprimands, and suspensions. Complaints and matters that were closed or dismissed without any action being taken, or any private warnings or admonitions need not be disclosed.
13. For each attorney identified in paragraph 8 above, a description of all claims of professional malpractice made or filed against that attorney including those in any state or federal court during the preceding five years. This includes pending claims, claims in which a final judgment was entered and claims in which a settlement was paid, and claims asserted without any corresponding litigation being commenced.

## **VII. METHOD OF SELECTION**

Individual and firms will be chosen by the County Attorney and staff who will use various criteria including the following as a guide to determine which, if any, proposals are the most advantageous to the County's needs:

1. The proposed hourly rate or fee arrangement for the legal services. The proposed cost of the legal services is a significant consideration but not the controlling factor

in determining an individual's or firm's selection. Law firms and attorneys considered for undertaking representation of the County may be asked to undertake representation at a rate less than that included or set out in the proposal submitted.

2. The individual's or firm's subject matter expertise and record of past performance, including the experience and background of those specific persons proposed to perform legal services for the County.
3. The ability of the individual or firm to perform successfully the requested legal services and comply with public policy.
4. The financial and technical resources available to the individual or firm and the individual's or firm's ability to handle simultaneously a significant number of legal matters for the County.
5. The ability of the individual or firm to respond in a timely manner to requests for legal services.
6. The extent to which the individual or firm has effectively carried out its affirmative action plan submitted pursuant to Section VI. 11 above.
7. The extent to which the proposal is complete and responsive to the RFP specifications.
8. The extent to which the proposal demonstrates the individual or firm has represented, or can represent, a governmental entity such as the County.
9. Other relevant criteria as may be developed by the County Attorney and the review committee.

## **VIII. GENERAL REQUIREMENTS**

1. An individual or firm selected will not discriminate against any employee or applicant for employment because of race, color, creed, religion, national origin, ancestry, sex, marital status, familial status, status with regard to public assistance, disability, sexual or affectional orientation, or age. The prohibition against discrimination includes, but is not limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training.
2. An individual or firm selected will defend and indemnify the County, its County Manager, Board of Commissioners, employees, agents and representatives from any liabilities, claims, damages, costs, judgments, and expenses, including attorney's fees, resulting directly or indirectly from any act or omission of the attorney or law firm submitting the proposal, its employees, agents or employees of subcontractors, in the performance of legal services for the County. The individual or firm shall also secure and maintain and, if requested, provide proof of appropriate Professional Liability or Errors and Omissions Insurance.

3. The individual or firm selected shall comply with the Minnesota Government Data Practices Act and all other applicable state and federal laws relating to data privacy or confidentiality and shall immediately report to the County Attorney any requests from third parties for information relating to the representation. The County will timely respond to inquiries concerning data requests. The individual or firm agrees to hold the County, its County Manager and Board of Commissioners and County employees, representatives and agents harmless from any claims resulting from the attorney's or law firm's unlawful disclosure or use of data protected under state and/or federal laws.
4. Before counsel is appointed in a specific matter, the individual or firm shall to disclose all actual and potential conflicts of interest involving the County. Such potential conflicts would include, but not be limited to, present representation of clients adverse to the County in litigation or administrative proceedings or within the last 5 years, present representation of clients who have placed the County on notice of potential claims or disputes, or representation of clients in contract negotiation or in lobbying activities involving the County.
5. The individual or firm selected acknowledges that they are independent contractors and not employees of the County.

**IX. SOLICITATION OF INTEREST, PROPOSAL SUBMISSION AND DUE DATE**

1. This solicitation will be mailed directly to the Minnesota State Bar Association's, Health law section.
2. Proposals must be sent to and received at:

Office of the Ramsey County Attorney  
Civil Division  
Suite 4500  
121 Seventh Place East  
Saint Paul, Minnesota 55101-5001

**By: November 18, 2020**

**THE RAMSEY COUNTY ATTORNEY'S OFFICE REQUESTS THAT INDIVIDUALS AND LAW FIRMS REFRAIN FROM SUBMITTING EMAILS OR PHONE CALLS TO THE RAMSEY COUNTY ATTORNEY OR HIS STAFF, CONCERNING THIS REQUEST FOR PROPOSAL**



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## **Civil Division**

Policy Regarding Fees for Legal Services by Outside Counsel

May 18, 2012

Re-issued November 1, 2016

### **I. GOAL**

The goal of the office of the Ramsey County Attorney Policy Regarding Fees for Legal Services by Outside Counsel (the “Policy”) is to establish a formal and consistent process that ensures the County of Ramsey (“County”) receives quality and cost-effective legal services, when the circumstances require the appointment of outside counsel in which the independence of the lawyers’ professional judgment is not compromised. The policy sets forth specific fee and expense billing standards and procedures. It establishes criteria that will best enable the Ramsey County Attorney’s Office (“RCAO”) to measure and monitor outside counsel’s performance, advance the County’s litigation strategy and minimize the County’s expenditures. The Policy is deemed to be incorporated into all engagement letters, agreements and understandings between the County and Outside Counsel.

All outside counsel providing legal services to the County will review and confirm in writing their acceptance of this policy.

### **II. POLICY**

The following outside counsel retainer policy and procedure is adopted by the RCAO.

#### **A. Fees**

1. The County will pay only those hourly rates, or alternative fees arrangements, it has pre-approved in writing.
2. The County will pay no more than the most favorable rates that your law firm charges other similarly situated clients.

3. The County expects counsel to commit to fees at a rate not to exceed \$300.00 per hour.
4. A law firm or attorney selected by the RCAO to perform legal services for the County certifies with each billing statement rendered that the rate(s) charged to the County therein represent, and are no higher than, the best/most favorable rate offered to any public entity for which the firm is then providing services, and that should the firm or attorney subsequently offer lower/more favorable rates to any other public entity, the rate(s) charged to the County shall be automatically adjusted downward to those/that level.
5. The County will pay only those fees which reflect the highest and best use of the legal professional's time.
6. The County will pay only for the actual time spent completing a task with the time rounded to the nearest tenth (.1) hour.
7. The following activities are non-billable and will not be paid by the County:
  - a. Preparing bills and invoices.
  - b. Responding to billing inquiries from the County.
  - c. Routine or elementary legal research, including issues considered to be common knowledge among reasonably experienced counsel in this community.
  - d. More than one attendee at any trial, hearing, court appearance, arbitration, mediation, deposition or any similar proceeding unless approved in advance by the RCAO.
  - e. Non-attorney/non-paralegal work (e.g., secretaries, library staff, file clerks).
  - f. Document stamping, collating, copying and faxing.

B. Expenses

1. The County will pay only actual and reasonable expenses without any premiums or markup. Firms are expected to minimize expenses whenever possible.
2. Each expense item must be adequately detailed so as to enable the RCAO to determine the exact nature, purpose and necessity of the expense.
3. Unless otherwise agreed upon, all routine expenses should be paid directly by your law firm and billed to the County as disbursements.
  - a. Actual Copies of receipts for expenses over \$100 must be attached to your billing statement. The County reserves the right to request original invoices or billings related to any other expense charged to the County. Outside counsel will respond to such requests within five (5) business days.
  - b. Disbursements over \$1,000 must be approved in advance by the RCAO.
4. The County will not pay any fees, charges or expenses associated with the law firm overhead, including, but not limited to the following:
  - a. Rent and utilities, including local telephone charges.
  - b. Office supplies.
  - c. Refreshments during meetings, conferences and depositions.
  - d. Time spent bringing additional resources up to speed (i.e., if a staffing change occurs).
  - e. Overtime charges.
  - f. Secretarial and word processing services.
  - g. Clerical assistance such as copy or facsimile operators, proofreaders, record clerks, librarians, labeling, etc.

5. The County will pay only actual and necessary long-distance telephone call charges.
6. The County will pay only the actual long-distance telephone line charges for outgoing fax transmissions where applicable. No per page or flat rate local fax charges will be accepted or reimbursed by the County.
7. The County will not pay any expenses for computerized legal research in excess of \$100 unless approved in advance.
8. The County will pay the actual cost to the law firm for photocopies, not to exceed \$.10 per page.
9. The County will pay for the necessary and reasonable travel expenses outside the metropolitan area provided that the travel is approved in advance and each expense is separately identified with an amount and date incurred. Necessary and reasonable mileage and parking for travel within the metropolitan area will be paid without prior approval.
10. The County will not pay for the unauthorized provision of services that exceed the scope of the corresponding engagement letter.
11. The County will not pay for the unauthorized retention of counsel, paralegals, consultants, experts or other service providers.

C. Billing Procedures

1. Invoices shall be submitted to the RCAO on each file on a monthly basis.
2. Each activity includes the following itemization as a minimum:
  - a. The identity of the persona performing the activity.
  - b. Date performed.
  - c. Actual time spent on the task.

- d. A detailed description of the activity.
  - e. The cost of the service.
3. Each activity described should be specific enough to allow the RCAO to determine what function is being performed and the necessity of the function to the progress of the case. The use of generic descriptions such as “work on file”, “review correspondence”, “research”, “prepare for meeting”, and “preparation of materials” are unacceptable and will not be paid.
  4. Each invoice shall include a summary of the time spent by each person for that billing period and a cumulative total of time spent by all persons since inception of the file.
  5. The County expressly reserves the right to conduct an on-site file review of the law firm or attorney’s file for any purpose, including comparison of file activities to billing entries.

D. Pre-Approval of Certain Fees and Expenses

1. Activities resulting in fees and expenses requiring approval or preapproval by the County need not be reflected in formal correspondence. However, the name of the person granting permission or the fact that permission was granted must be noted in an appropriate entry within the invoice submitted by the law firm.

E. Compliance

1. The individual or law firm warrants and acknowledges that each statement for services submitted is also a representation by the individual or firm that the attorney in charge of the matter has reviewed the statement and has determined that it accurately reflects work expenses reasonable and necessarily incurred, is directly related to the matters listed and that the fees and charges reflected in the statement comply with the policies described herein and the Minnesota Rules of Professional Conduct.

F. Bill Review and Payment

1. Payment of any bill by the County does not constitute a waiver of the County's rights subsequently to question, dispute, obtain reimbursement of, compromise or request repayment or future credit, for any bill or invoice previously paid. The County retains the right to audit all bills or files which are or have been the subject matter of any billing. Such an audit can include a requirement that the law firm produce any and all documentation which would support the billing submitted by the law firm.

G. Confidentiality

1. Outside Counsel engaged by the County must hold in the strictest confidence all information, documentation and communications relating to the representation of the County and must remain in compliance with all applicable codes, rules and practices of responsibility, conduct and ethics.

H. Media Coverage

1. The RCAO handles all contacts with the media. Outside Counsel must not make statements to the media without having first secured advance approval from the RCAO, unless expressly permitted by this Policy. Outside Counsel may disclose, without prior approval, his or her representation of the County in connection with a particular matter, provided such representation is already a matter of public record and Outside Counsel immediately notifies the RCAO of such disclosure. This exception also applies to administrative information routinely given as courtesy to the press. Additionally, in rare instances when an immediate response would prevent a distorted public perception, Outside Counsel, without prior approval may deny or refute statements made by other parties or their counsel to the media, or respond to allegations by media representatives; provided, Outside Counsel prior to making any disclosure shall have first used best efforts given the circumstances to obtain the approval of the RCAO; and where circumstances did not permit such prior approval, Outside Counsel immediately notifies the RCAO of such disclosure.

I. Matter Staffing

1. Retention of associate counsel, consultants, experts or other service providers must be approved in writing by the RCAO prior to such retention.

Such agreements must specifically identify the party engaged, the hourly rate to be charged, the estimated budget and the specific service that the engaged party is providing. The fees and staffing (including the identification of individuals, by name, who will work on the matter and their hourly rates) that are initially agreed upon must remain in effect unless and until the RCAO approves a change.

J. Communication

1. Communications received from the County's insurance carriers, or other insurance carriers requesting status updates or other information should be referred to the RCAO for determination of the appropriate response by Outside Counsel or response by the RCAO. Outside Counsel shall respond to such inquires only to acknowledge their receipt and to advise that they have been referred to the RCAO for response.

K. Service Delivery and Work Product

1. The RCAO expects high quality services, professionalism and cost-effectiveness from our Outside Counsel. We expect Outside Counsel to work with us to develop a matter strategy, ensure responsiveness to our requests, keep us posted on developments, purpose improvements in service, identify cost saving opportunities, and to ask us to clarify any confusing requests.
2. The RCAO should be kept fully informed at all times as to the nature of the services performed on each matter. Outside Counsel should provide periodic written reports as requested by the RCAO. Services involving significant cost, including legal research, should not be undertaken without prior authorization by the RCAO. Except when immediate action must be taken to protect the County's interests, no pleadings, briefs or other memoranda shall be field on the County's behalf and no letters, draft agreements or other correspondence shall be sent to another party, without the prior approval of the RCAO. When so approved, copies of all documents as filed shall be forwarded electronically (including scanned copies of filing stamps and signatures, if appropriate) to the RCAO along with copies of all documents filed or sent by other parties so that the RCAO files shall be current and complete.

3. Outside Counsel must understand that all work product created for the County is owned by the County and must be delivered in its entirety and in a timely manner. In particular, Outside Counsel must ensure that all work product is transferred to the County at the closing of a matter and/or at the termination of Outside Counsel's services to the County.

L. Conflicts of Interest

1. The RCAO expects undivided loyalty from its Outside Counsel. It is the responsibility of Outside Counsel to ensure that no conflicts of interest exist that have not been waived by the County. Outside Counsel will be required to investigate the possibility of relationships that could create even the appearance of conflict and, confirm the absence of any such conflicts before any representation occurs, and if requested, submit an acknowledgment letter to the RCAO detailing such conflicts or confirming the absence of any such conflicts before any representation occurs, and if requested, submit and acknowledgment letter to the RCAO detailing such conflicts or confirming the absence of any such conflicts before any representation occurs. Outside Counsel's responsibility to ensure that no conflicts of interest exist, that have not been waived by the County, continues throughout Outside Counsel's representation of the County.

M. Budget Management

1. The RCAO requires Outside Counsel to submit a general estimate of their budgets prior to billings for services on any matter. For all matters, Outside Counsel shall provide the RCAO with a budget and schedule (typically a budget will not be required except in matters where fees may aggregate more than \$50,000), and monthly or more frequent detailed reports comprehensively updating the legal status of all the County's open matters (which fees and expenditures incurred to date, variances from budgeted, if any, and forecasts of schedule, costs and fees to complete). The budget and schedule should include a plan including goals, strategies, activities, locations and estimated time and expense of each task. The plan should also address how and when key facts and positions will be developed. The plan should identify all anticipated expert reports, depositions, motions, pleadings, negotiations and other steps needed to achieve the goal. The budgets will be used in assessing the budget to actual variances and the cost effectiveness of the matters.

2. Estimates contained in the matter budget should reflect realistic projections of fees and expenses for all tasks and the time frame that can be reasonably anticipated. The RCAO expects that actual fees and expenses will not exceed these projections. Revisions to the budget to reflect changed assumptions, unanticipated tasks, etc. must be discussed with and agreed to by the RCAO before they are made. Outside counsel and the RCAO should periodically review the information shown in light of the most current information and/or changing circumstances.

N. Initial Evaluation/Early Case Assessment

1. In litigation matters and appropriate non-litigation matters, Outside Counsel should review the assigned matter and provide the RCAO with an initial evaluation as promptly as practicable, but in any event no later than thirty (30) days from receipt of the file. The RCAO may request the evaluation be submitted in writing. The evaluation should include a proposed strategy, preliminary views on exposure, major action steps (outside of the anticipated and planned staffing needs), and a preliminary cost estimate. For litigation matters, this initial evaluation should also include a discussion of the possibility of early settlement and alternative dispute resolution. Thereafter, Outside Counsel should use appropriate means to keep the RCAO informed of developments in the matter to ensure the RCAO's active participation. Significant developments and any issues regarding the County's loss exposure or strategy must be promptly communicated to the RCAO.

O. Settlement Authority

1. Outside Counsel must obtain authority to settle any claim through the RCAO. A request for settlement authority must be presented to the RCAO in sufficient time and with sufficient support to ensure an adequate opportunity for internal County decision-making. Settlement demand or offers must be communicated to the RCAO immediately.

P. Not More Than Twelve (12) Billable Hours Per Day

1. The RCAO prefers not to compensate Outside Counsel for more than twelve (12) hours billed in a single day. Experience has shown that hours in excess of that number are often unproductive. Except during trial or other

extraordinary circumstances, all Outside Counsel should avoid longer hours or address the issue in advance with the RCAO.

Q. Changes in Fees and Agreed Upon Arrangements

1. The RCAO must approve any fee increases during the pendency of a matter, including any increase in rate(s) as a result of agreed upon professional(s) advancement. A revised Matter Fee Schedule must be provided to and approved by the RCAO prior to submission of an invoice reflecting any fee increases. In the event of staff changes not initiated by the RCAO, the County will not pay for time spent by newly assigned personnel to familiarize themselves with the matter.



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**Civil Division**

**RETAINER AGREEMENT ACKNOWLEDGMENT**

The undersigned has read the Office of the Ramsey County Attorney’s Policy and Procedure for Retaining Outside Legal Counsel and the Policy Regarding Fees for Legal Services by Outside Counsel, which are made a part hereof by reference, and on behalf of himself/herself and/or the law firm of \_\_\_\_\_, in consideration of its appointments by the Office of the Ramsey County Attorney, agrees to comply with the Policy Regarding Fees for Legal Services by Outside Counsel in connection with a workplace investigation

The undersigned further agrees on behalf of himself/herself in the above-identified law firm that, except with the prior approval of the Office of the Ramsey County Attorney, only the following persons will perform work, and be paid, in connection with the litigation/matter identified above, at the hourly rates indicated.

Lawyer/Paralegal/Law Clerk:

Hourly Rate:

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Dated: \_\_\_\_\_