

# **EXECUTIVE COUNCIL OF IOWA AGENDA**

State Capitol - Robert D. Ray Conference Room (G09) 10:00 a.m.

## **DECEMBER 2, 2013**

1. Introduction of Attendees
2. Approval of minutes of Executive Council and Board of Canvass meetings held November 25, 2013
3. Outside Counsel – Page 1  
TAB #'s 1, 2 and 3
4. Leases – Pages 1 - 2
5. Emergency Allocations – Page 2
6. Payment of Cost Items – Pages 2 - 3

**3. Outside Counsel**

- A. The Department of Justice, Attorney General's office requests retention of outside counsel pursuant to Iowa Code section 13.3(1) in Margaret Sedlacek v. University of Iowa Hospitals & Clinics, State of Iowa and the Second Injury Fund of Iowa, a workers' compensation case filed by a state employee.

Firm: Patterson Law Firm, L.L.P.  
Attorney: Ryan Clark  
505 5<sup>th</sup> Avenue  
Suite 729  
Des Moines, Iowa 50309  
Rate: \$80.00 per hour

**TAB # 1**

- B. The Department of Justice, Attorney General's office requests retention of special counsel to provide legal advice to the Iowa Finance Authority in regard to tax credit appeals filed.

Firm: Simmons Perrine Moyer Bergman, PLC  
Attorney: Mr. Jeffrey Rosenkrantz and Mr. Matt Hektoen  
115 3<sup>rd</sup> Street SE, Suite 1200  
Cedar Rapids, IA 52401-1266  
Rate: \$275.00 per hour

**TAB # 2**

- C. The Department of Justice, Attorney General's office is requesting an increase in the compensation rate for outside counsel pertaining to Second Injury Fund cases from \$80.00 to \$120.00 per hour.

**TAB # 3**

**4. Leases**

- A. Lease between DNR and Matteson Marine Services  
Date of Lease: Five Years ending October 31, 2018  
Legal Description: A parcel in the bed of the Mississippi River including approximately 100 feet of depth by 60 feet of length, Mississippi River Miles 427.7, Louisa County, Iowa. The leased area begins 400 feet downstream of the Minneapolis and St. Louis Railroad Bridge, which is approximately 25 miles south of Muscatine, Iowa.  
Annual Fee: \$2,089.00

- B. Lease between DNR and Ann Plendl  
Date of Lease: Five Years ending August 31, 2018  
Legal Description: An area approximately five feet wide by ten feet long adjacent to Lot 18, Block A, Triboji Beach Subdivision in Section 2, Township 99 North, Range 37 West of the 5th P.M., Dickinson County, Iowa.  
Purpose: Continued presence of a small boat storage shed and steps to access a dock.

Annual Fee: \$ 150.00

David Dorff, Assistant Attorney General, has reviewed the above leases and approved the leases as to form.

**5. Emergency Allocations**

- A. Department of Administrative Services – General Services Enterprise is requesting an emergency allocation in the amount of \$77,294.64. On February 19, 2013 there was a water leak and a pipe break at the Hoover Building. This request is to cover repair costs.

The State Auditor’s Office has reviewed this request and recommends allocation in the amount of \$77,294.14, the amount that the supporting documentation totals, subject to audit of actual invoices.

- B. Iowa Communications Network is requesting an emergency allocation in the amount of \$16,742.27. On September 13, 2013 ICN cable was damaged due to flooding and erosion along Highway 34 at Bear Creek, West of Ottumwa. Request is to cover repair costs.

The State Auditor’s Office has reviewed this request and recommends allocation, subject to audit of actual invoices and supporting documentation and demonstration that no costs covered by the maintenance contract have been included.

**6. Payment of Cost Items**

- A. Nyemaster, Goode, West, Hansell & O’Brien, P.C.....\$13,632.00  
700 Walnut Street  
Suite 1600  
Des Moines, IA 50309  
Legal Advice to Iowa Economic Development Authority on Bond Issues

Julie Pottorff, Deputy Attorney General, has reviewed this invoice and recommends payment. Payment will be made from the funds of the Department of Economic Development.

B. Dow Lohnes PLLC.....\$1,651.30  
1200 New Hampshire Ave NW Suite 800  
Washington, DC 20036  
Iowa Public Television

Julie Pottorff, Deputy Attorney General, has reviewed this invoice and recommends payment. Payment will be made from the funds of Iowa Public Television.

TAB # 1

THOMAS J. MILLER  
ATTORNEY GENERAL

JULIE F. POTTORFF  
DEPUTY ATTORNEY GENERAL



2013 NOV 26 PM 4:28

Address Reply To:  
1305 E. Walnut Street  
Des Moines, Iowa 50319  
Telephone: 515/281-3349  
Fax: 515/281-4209  
Julie.Pottorff@iowa.gov

## Iowa Department of Justice

November 26, 2013

GeorgAnna Madsen  
Executive Secretary  
Executive Council  
State Capitol  
L-O-C-A-L

Re: Retention of Outside Counsel

Dear GeorgAnna:

Our office requests appointment of outside counsel pursuant to Iowa Code section 13.3(1) in *Margaret Sedlacek v. University of Iowa Hospitals & Clinics, State of Iowa and the Second Injury Fund of Iowa*, a workers' compensation case filed by a state employee. Because the resolution of this claim may turn on whether the State of Iowa or the Second Injury Fund must pay workers' compensation benefits, our office cannot represent both defendants.

In order to avoid a conflict of interest, the Special Litigation Division has contacted Ryan Clark of the Patterson Law Firm, L.L.P., 505 5<sup>th</sup> Avenue, Suite 729, Des Moines, Iowa, 50309-2390, to represent the Second Injury Fund. Mr. Clark has agreed to represent the Second Injury Fund at the rate of \$80.00 per. Our office will represent the State of Iowa.

Accordingly, we request Executive Council approval to retain Mr. Clark to represent the Second Injury Fund in this case.

Sincerely,

A handwritten signature in cursive script that reads "Julie F. Pottorff".

JULIE F. POTTORFF  
Deputy Attorney General

cc: Julie Burger



TAB # 2

THOMAS J. MILLER  
ATTORNEY GENERAL

EXECUTIVE COUNCIL  
NOV 27 11:01

JULIE F. POTTORFF  
DEPUTY ATTORNEY GENERAL

## Iowa Department of Justice

Address Reply To:  
1305 E. Walnut Street  
Des Moines, Iowa 50319  
Telephone: 515/281-3349  
Fax: 515/281-4209  
Julie.Pottorff@iowa.gov

November 26, 2013

GeorgAnna Madsen  
Executive Secretary  
State Capitol  
L-O-C-A-L

Re: Retention of Special Counsel

Dear GeorgAnna:

In October our office requested Executive Council approval to retain special counsel to provide legal advice to the Iowa Finance Authority (the Authority) in tax credit appeals from two proposed decisions issued by an administrative law judge: Cedar Rapids Rose Homes, LP, and Hilltop II, LP. Our office represented the Authority's position in the administrative hearings and filed the appeals to the Authority from the proposed decisions of the administrative law judge. Because the attorneys in our office who have expertise in federal low income housing tax credits had been prosecuting the administrative hearings, they could not advise the Authority as decision maker in the appeals and our office had no additional legal staff in the office with sufficient expertise to provide independent counsel to the Authority.

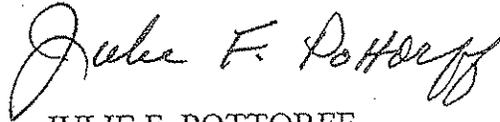
The Davis Brown law firm was approved by the Executive Council to advise the Authority in both administrative appeals; however, a conflict check by the firm determined that the firm has a conflict of interest in Hilltop II, LP, and cannot advise the Authority in this case.

The Authority has now contacted Simmons Perrine Moyer Bergman, PLC, 115 3rd Street SE, Suite 1200, Cedar Rapids, Iowa 52401-1266, to advise the Authority in the appeal of the proposed decision in Hilltop II, LP. Mr. Jeffery Rosenkrantz and Mr. Matt Hektoen have agreed to advise the Authority in this matter at the rate of \$275 per hour.

GeorgAnna Madsen  
Executive Secretary  
Page 2

Accordingly, our office recommends that Simmons Perrine Moyer Bergman, PLC, be approved as special counsel to the Authority on the intra-agency appeal from the proposed decision of the administrative law judge in Hilltop II, LP. The attorney fees and costs will be paid from the funds of the Authority and not from the General Fund.

Sincerely,



JULIE F. POTTORFF  
Deputy Attorney General

cc: Mark Thompson



TAB # 3

THOMAS J. MILLER  
ATTORNEY GENERAL

JULIE F. POTTORFF  
DEPUTY ATTORNEY GENERAL

Iowa Department of Justice

Address Reply To:  
1305 E. Walnut Street  
Des Moines, Iowa 50319  
Telephone: 515/281-3349  
Fax: 515/281-4209  
Julie.Pottorff@iowa.gov

November 26, 2013

GeorgAnna Madsen  
Executive Secretary  
State Capitol  
L-O-C-A-L

Re: Compensation Rate for Outside Counsel

Dear GeorgAnna:

Over the years the Patterson Law Firm has been retained in workers' compensation cases when a state employee has filed a claim against the State of Iowa as well as the Second Injury Fund. Because the resolution of these claims may turn on whether the State of Iowa or the Second Injury Fund must pay workers' compensation benefits, our office cannot represent both defendants. To avoid a conflict of interest the Executive Council has approved retention of the Patterson Law Firm to represent one of the defendants – generally, the Second Injury Fund. For some time the Executive Council paid \$70 per hour to compensate outside counsel in these cases. In 2007 the amount was raised to \$80 per hour. No raise in the hourly rate has been requested since 2007.

The Patterson Law Firm is now asking that the hourly rate be increased from \$80 to \$120 per hour for partners. Comparable raises for other personnel at the firm would be \$100 per hour for an associate, \$60 per hour for a paralegal and \$50 per hour for a law clerk. I am informed by the Missouri Attorney General's Office that Missouri pays \$125 per hour for representation of the Second Injury Fund in similar cases.

I submit this information for your consideration and recommend the Executive Council raise the compensation rate for outside counsel in workers' compensation cases.

Sincerely,

  
JULIE F. POTTORFF  
Deputy Attorney General

Enclosure

STATES' RESPONSES TO HOURLY RATES PAID TO OUTSIDE COUNSEL		
STATE	RATE	COMMENTS
Alabama	Maximum civil suits: \$85	Three lawyers with the needed legal expertise are asked to give a quote, and lowest quote is assigned the case
Alaska		No special rate for conflict counsel. On the rare occasions outside counsel is hired, it is usually for high-profile cases and experienced attorneys are hired who would never work for \$70/hr.
Arkansas	No cap	In most conflicts, State agency client hires outside lawyer with own agency funds.
Delaware	No cap	Counsel usually gets their normal fee minus some discount.
D.C.	\$150 - \$250	Rates have gone as low as \$70 (case in MO) to as high as \$400 (complex, high-profile case)
Florida	Tort & Civil Cases: \$ 85 Other practice areas: \$100 - \$300	Rarely, the rate may be increased above \$300 for certain specialties such as intellectual property, bond finance, etc.
Georgia	\$125	They have paid more in extremely complex or specialized cases.
Illinois	\$200	Agencies are encouraged to negotiate rate well below \$200 cap.
Kentucky	\$75 - \$150	Rate may be increased if special expertise is shown
Louisiana	<u>Medical Malpractice Claims:</u> More than 10 years experience: \$125 5 to 10 years experience: \$115 Less than 5 years experience: \$ 85  <u>Non-Medical Malpractice:</u> More than 10 years experience: \$115 5 to 10 years experience: \$100 Less than 5 years experience: \$ 80	
Michigan	Utility Rate Matters: \$160-\$385 Conflict of interest: \$ 75	
North Carolina	\$150 - \$400	
Ohio	\$125 - \$200	Hoped-for rate is \$125. Fees come out of budget of agency requesting outside counsel.
Rhode Island	\$150	
Tennessee	Maximum instate: \$225 Maximum out of state: \$350 Conflict of interest: \$125	Most instate are paid \$190/hour or less. We always try to negotiate and are generally successful in negotiating a lower rate than attorney's standard rate.
Texas	No cap	
Virginia	\$140 - \$200	
Washington	Olympia area: \$150 Seattle area: \$280	Rates would be much higher in instances where specialized expertise is needed
Wisconsin	No cap	Governor contracts with outside counsel at AG's request.

# PATTERSON LAW FIRM, L.L.P.

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Gary D. Ordway  
Robin L. Hermann  
Harry Perkins III  
Gregory J. Wilson  
Jeffrey A. Boehlert

Douglas A. Haag  
Patrick V. Waldron  
Michael S. Jones  
Gregory A. Witke  
Martin C. Sprock

Ryan M. Clark  
Fred M. Haskins  
Mark A. King  
Cory D. Abbas  
Jason W. Miller

Michael J. Miller  
Benjamin R. Merrill  
Julie C. Gray  
Jennifer D.L. Jaschen

G.O. Patterson  
(1914-1982)  
Michael F. Lacey, Jr.  
(1943-2012)  
James A. Lorentzen  
Roy M. Irish  
(Retired)

September 30, 2013

Julie F. Pottorff  
Deputy Attorney General  
Department of Justice  
Hoover Building  
Des Moines, IA 50319

Dear Julie:

I am writing to ask for a raise in the hourly rate charged by our law firm with regard to defense work we perform for the State. Our records indicate that we last received a raise in March of 2007, to our current hourly rate of \$80 for partners. Request is hereby made that our partner rate be increased to \$120 per hour, with corresponding raises as applied to associate attorneys and paralegals.

Please pass this request along, and let me know if there is anyone else I should contact or any other information your office may need. Of course, we appreciate the work you have provided, and my primary goal is to have that continue.

Sincerely,



Ryan M. Clark

RMC/jlt