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State of New Hampshire

OFFICE OF PROFESSIONAL LICENSURE AND CERTIFICATION
Division of Administration
7 Eagle Square, Suite 200
Concord, NH 03301
Telephone 603-271-2152

Lindsey B. Courtney
Executive Director

June 10, 2021

His Excellency, Governor Christopher T. Sununu
and the Honorable Council
State House
Concord, New Hampshire 03301

REQUESTED ACTION

Authorize the Office of Professional Licensure and Certification ("OPLC") to enter into a Memorandum of Understanding ("MOU") with the New Hampshire Department of Justice ("DOJ"), for continued legal services, upon Governor and Council approval or July 1, 2021, whichever is later, through June 30, 2023. 100% Other Funds.

Funding is contingent upon the availability and continued appropriation of funds for FY 2022 and FY 2023, with the ability to adjust encumbrances through the Budget Office between State Fiscal Years if needed and justified:

	FY 2022	FY 2023
01-21-021-211010-24040000 Office of Professional Licensure and Certification Division of Administration 049-584920 Transfers to Other Agencies	$378,336	$399,557

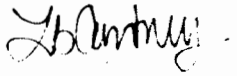
EXPLANATION

This MOU sets forth the terms and conditions under which OPLC will fund one attorney position in the DOJ Civil Law Bureau, one attorney position in the Consumer Protection / Anti-Trust Bureau, and one investigative paralegal in the Consumer Protection / Anti-Trust Bureau after OPLC ceases funding the DOJ's Administrative Prosecution Unit.

This MOU is designed to ensure the continuity of legal service and public protection as OPLC assumes the primary investigative and enforcement role on behalf of the Boards, Commissions and Councils responsible for licensing and regulating designated professions within the State of New Hampshire. This

MOU does not affect the DOJ's continuing obligation to represent and provide legal services to OPLC as a state agency consistent with RSA 7:8.

Respectfully submitted,



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MEMORANDUM OF UNDERSTANDING

A. Purpose

This Memorandum of Understanding ("MOU") between the New Hampshire Department of Justice ("DOJ") and the Office of Professional Licensure and Certification (OPLC) sets forth the terms and conditions under which OPLC will fund one attorney position in the DOJ Civil Law Bureau, one attorney position in the Consumer Protection/Anti-Trust Bureau, and one investigative paralegal position in the Consumer Protection/Anti-Trust Bureau after OPLC ceases funding for DOJ's Administrative Prosecution Unit. This MOU is designed to ensure continuity of legal service and public protection as OPLC assumes the primary investigative and enforcement role on behalf of the boards, commissions, and councils responsible for licensing and regulating designated professions within the State of New Hampshire. This MOU does not affect the DOJ's continuing obligation to represent and provide legal services to OPLC as a state agency consistent with RSA 7:8.

B. Hiring and Appointment

DOJ and OPLC agree that the positions subject to this agreement will, in the first instance, be filled by personnel currently assigned to the DOJ Administrative Prosecution Unit. In the event that any position becomes vacant during the term of this MOU, DOJ will consult with OPLC before extending an offer to fill the position. During any vacancy in a position subject to this agreement, DOJ will take steps immediately to identify other staff resources to provide services to OPLC until an acceptable candidate can be hired on a permanent basis.

C. Work Assignment

The attorney assigned to the Civil Bureau will provide rotating coverage with OPLC Board Administration Division personnel and attend Board hearings as needed for novel or complex issues; train Board members and administrators on meeting procedures; direct counsel for board recusal issues and training for Board and staff; analyze novel or complex legal issues referred by OPLC; review template orders and drafts; and support OPLC Board Administration Division Hearing Officers with training and guidance.

The attorney assigned to the Consumer Protection/Anti-Trust Bureau will proactively engage with OPLC Enforcement Division leadership and board enforcement committees; support prosecution for complex matters; coordinate with law enforcement on cases involving criminal conduct; take enforcement action against unlicensed practitioners; and provide training for Boards and staff. The investigative paralegal will also be assigned to the Consumer Protection/Anti-Trust Bureau to support the attorney's work.

The attorneys and investigative paralegal will be available for other assignments by DOJ to the extent that they have surplus capacity after performing work requested by or required for OPLC.

D. Payment for Services

OPLC agrees to pay the salary and benefits for all positions subject to this agreement, plus 5% in support costs to cover the cost of all equipment needs and secretary and administrative support as established through standard state practices, as set forth in the following tables:

Position	FY2022	FY2023
Investigative Paralegal	$52,845	$57,588
Attorneys x 2	$168,300	$174,763
Benefits	$139,175	$148,179
Total:	**$360,320**	**$380,530**
Total with 5% Support:	**$378,336**	**$399,557**

Payment of salary and benefits for the attorneys and investigative paralegal shall be funded based on the budgeted appropriation to DOJ by a quarterly transfer of funds from OPLC to DOJ. Any increase in attorney salaries will be calculated pursuant to the merit-based formula authorized by RSA 94:1-A, I, subject to the approval of DOJ and OPLC. Any further increase in the investigative paralegal salary will be calculated pursuant to the Unclassified Wage Schedule in effect at the time.

Reasonable expenses for travel, meals, and lodging incurred while on assignment for OPLC will be paid by OPLC. OPLC also agrees to pay for training directly related to issues of importance to it, provided the training is at the request of, or with the prior approval of, OPLC.

The attorneys shall track time worked on projects assigned by OPLC, including details about specific work performed in connection with each assignment. Records of time worked on behalf of OPLC shall be provided to it upon request.

E. Evaluation

DOJ will evaluate the attorneys' legal and employment performance, after soliciting input from OPLC, by the same standards applied to other DOJ attorneys. The legal services provided under this MOU must be satisfactory to OPLC and DOJ. In the event that OPLC determines that the services are not provided in a satisfactory manner, the Department shall report its concerns to DOJ, which shall take appropriate action to address OPLC's concerns.

F. Modification and Duration

Neither party may further modify or amend the terms of this MOU except by a written agreement signed by both parties. This MOU is effective upon Governor and Council approval or July 1, 2021, whichever is later, and shall continue until June 30, 2023, or until terminated, whichever occurs first, and subject to appropriation of sufficient funds by the General Court.

Lindsey B. Courtney, Executive Director
Office of Professional Licensure and Certification

6/3/21
Date

John M. Formella, Attorney General
New Hampshire Department of Justice

5/19/21
Date