

STATE OF OKLAHOMA

1st Session of the 59th Legislature (2023)

HOUSE BILL 2085

By: Caldwell (Chad)

AS INTRODUCED

An Act relating to state government; amending 74 O.S. 2021, Section 20i, as amended by Section 1, Chapter 308, O.S.L. 2022 (74 O.S. Supp. 2022, Section 20i), which relates to legal representation of agency; prohibiting certain attorneys from being voting members of boards or commissions; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 74 O.S. 2021, Section 20i, as amended by Section 1, Chapter 308, O.S.L. 2022 (74 O.S. Supp. 2022, Section 20i), is amended to read as follows:

Section 20i. A. An agency or official of the executive branch may obtain legal representation by one or more attorneys by means of one of the following:

1. Employing an attorney as such if otherwise authorized by law;

2. Contracting with the Office of the Attorney General; or

3. If the Attorney General is unable to represent the agency, or official due to a conflict of interest, or the Office of the

1 Attorney General is unable or lacks the personnel or expertise to
2 provide the specific representation required by such agency or
3 official, contracting with a private attorney or attorneys pursuant
4 to this section.

5 B. When entering into a contract for legal representation by
6 one or more private attorneys or law firms, an agency or official of
7 the executive branch shall select an attorney or attorneys or a law
8 firm or law firms from a list of attorneys and firms maintained by
9 the Attorney General. An agency may contract for legal
10 representation with one or more attorneys who are not on the list
11 only when there is no attorney or firm on the list capable of
12 providing the specific representation and only with the approval of
13 the Attorney General. The list shall include any attorney or firm
14 who desires to furnish services to an agency or official of the
15 executive branch and who has filed a schedule of fees for services
16 with and on a form approved by the Attorney General. The list of
17 attorneys and firms desiring to furnish services and a schedule of
18 fees for each attorney and firm shall be maintained and made
19 available to the public.

20 C. An agency or official may agree to deviate from the schedule
21 of fees only with the approval of the Attorney General and if the
22 new schedule of fees would not violate the fee schedules set forth
23 in subsections D and E of this section.

1 D. An agency or official of the executive branch shall not
2 enter into a contingency fee contract that provides for the private
3 attorney or firm to receive an aggregate contingency fee that
4 exceeds:

5 1. Twenty-five percent (25%) of that portion of any amount
6 recovered that is Ten Million Dollars (\$10,000,000.00) or less;

7 2. Twenty percent (20%) of that portion of any amount recovered
8 that is more than Ten Million Dollars (\$10,000,000.00) but less than
9 or equal to Fifteen Million Dollars (\$15,000,000.00);

10 3. Fifteen percent (15%) of that portion of any amount
11 recovered that is more than Fifteen Million Dollars (\$15,000,000.00)
12 but less than or equal to Twenty Million Dollars (\$20,000,000.00);

13 4. Ten percent (10%) of that portion of any amount recovered
14 that is more than Twenty Million Dollars (\$20,000,000.00) but less
15 than or equal to Twenty-five Million Dollars (\$25,000,000.00); and

16 5. Five percent (5%) of that portion of any amount recovered
17 that is more than Twenty-five Million Dollars (\$25,000,000.00).

18 E. Notwithstanding subsection D of this section, the total fee
19 payable to all retained private attorneys in any contingency fee
20 contract shall not exceed Fifty Million Dollars (\$50,000,000.00),
21 exclusive of any costs and expenses provided by the contract and
22 actually incurred by the retained private attorneys, regardless of
23 the number of actions or proceedings or the number of retained
24 private attorneys involved in the matter.

1 F. The Attorney General shall develop a standard clause for
2 inclusion in every contract for contingent fee attorney services
3 that shall be used in all cases, describing in detail what is
4 expected of both the contracted private attorney and the state
5 including, but not limited to, the requirements as provided in this
6 subsection. The state shall not enter into a contract for
7 contingency fee attorney services that does not incorporate ~~such~~ the
8 following requirements:

9 1. The government attorneys shall retain complete control over
10 the course and conduct of the case;

11 2. A government attorney with supervisory authority shall be
12 personally involved in oversight of the case;

13 3. The government attorneys shall retain veto power over any
14 decision made by outside counsel related to the case;

15 4. Any defendant in the case may contact the lead government
16 attorneys directly, without having to confer with outside counsel;

17 5. A government attorney with supervisory authority for the
18 case shall attend all settlement conferences; and

19 6. Decisions regarding settlement of the case shall be reserved
20 exclusively to the discretion of the government attorneys and the
21 state.

22 G. Copies of any executed contingency fee contract with the
23 private attorney shall be posted on the Attorney General's website
24 for public inspection within five (5) business days after the date

1 the contract is executed and shall remain posted on the website for
2 the duration of the contingency fee contract including any
3 extensions or amendments to the contract. Any payment of
4 contingency fees shall be posted on the Attorney General's website
5 within fifteen (15) days after the payment of the contingency fees
6 to the private attorney or law firm and shall remain posted on the
7 website for at least three hundred sixty-five (365) days after the
8 payment is made.

9 H. Any private attorney or law firm under contract to provide
10 services to the state on a contingency fee basis shall, from the
11 inception of the contract until at least four (4) years after the
12 contract expires or is terminated, maintain detailed current records
13 including documentation of all expenses, disbursements, charges,
14 credits, underlying receipts and invoices and other financial
15 transactions related to the attorney services. The private attorney
16 or law firm shall make all such records available for inspection and
17 copying upon request of the Attorney General. In addition, the
18 private attorney or law firm shall maintain detailed contemporaneous
19 time records for the attorneys and paralegals working on the matter
20 in increments of no greater than one-tenth (1/10) of an hour and
21 shall promptly provide such records to the Attorney General upon
22 request.

23 I. Before entering into a contract for legal representation by
24 one or more private attorneys, an agency or official of the

1 executive branch shall furnish a copy of the proposed contract to
2 the Attorney General and notify the Attorney General of the
3 following:

4 1. The nature and scope of the representation including, but
5 not limited to, a description of any pending or anticipated
6 litigation or of the transaction requiring representation;

7 2. The reason or reasons for not obtaining the representation
8 from an attorney employed by the agency or official, if an attorney
9 is employed by the agency or official;

10 3. The reason or reasons for not obtaining the representation
11 from the Attorney General by contract;

12 4. The anticipated cost of the representation including the
13 following:

14 a. the basis for or method of calculation of the fee
15 including, when applicable, the hourly rate for each
16 attorney, paralegal, legal assistant, or other person
17 who will perform services under the contract, and

18 b. the basis for and method of calculation of any
19 expenses which will be reimbursed by the agency or
20 official under the contract;

21 5. An estimate of the anticipated duration of the contract;

22 6. The past or present relationship, if any, between such
23 attorney, law firm or any partner or other principal in such law
24

1 firm and the state agency or state agent proposing to enter into the
2 contract;

3 7. If the contract contemplates that all or part of the fee is
4 contingent on the outcome of the legal proceeding, the reasons the
5 contingent fee arrangement is believed to be in the state's interest
6 and any efforts undertaken to obtain private counsel on a
7 noncontingent fee basis; and

8 8. The justification for the determination that the selection
9 of a contract for legal representation by one or more private
10 attorneys or firms was made based on the ability of the private
11 attorney or firm to provide the most economical and most competent
12 service which furthers the best interest of the state.

13 J. After the approval of the contract by the Attorney General
14 for legal representation by one or more private attorneys or law
15 firms, the Attorney General shall make available to the public on
16 the Attorney General's website the information required pursuant to
17 paragraphs 1 through 8 of subsection I of this section.

18 K. 1. Before entering into a contract for legal representation
19 by one or more private attorneys or firms where the agency has
20 reason to believe that the case, transaction or matter will equal or
21 exceed Twenty Thousand Dollars (\$20,000.00) or after employment when
22 it becomes apparent that the case, transaction or matter will equal
23 or ~~exceeds~~ exceed Twenty Thousand Dollars (\$20,000.00), an agency or
24 official of the executive branch shall obtain the approval of the

1 Attorney General when the total cost, including fees and expenses,
2 of all contracts relating to the same case, transaction, or matter
3 will equal or exceed Twenty Thousand Dollars (\$20,000.00).

4 2. Before entering into a contract for legal representation by
5 one or more private attorneys or firms to initiate a legal action on
6 behalf of the state where the agency has reason to believe that the
7 total cost of the case, transaction or matter including fees and
8 expenses will equal or exceed One Million Dollars (\$1,000,000.00),
9 an agency or official of the executive branch shall initiate a
10 request for proposal from at least three qualified private attorneys
11 or firms, when possible, engaged in providing such services. Notice
12 of the request for proposal shall be published on the Attorney
13 General's website. The request for proposal shall solicit a
14 billable hourly rate, regardless of whether a contingency fee is
15 ultimately agreed upon, and shall specify the importance of price,
16 quality, ability and experience. The selection of a contract for
17 legal representation by one or more private attorneys or firms shall
18 be made using the criteria established in the request for proposal
19 and shall be based on the response to the request which is the most
20 economical and provides the most competent service which furthers
21 the best interests of the state. Most economical and most competent
22 shall not be construed to mean the least expensive proposal.

23 3. Any amendment, modification or extension of a contract
24 which, had it been a part of the original contract would have

required approval by the Attorney General, shall also require approval by the Attorney General.

L. After entering into a contract for legal representation by one or more private attorneys or firms where the agency has reason to believe that the case, transaction or matter will equal or exceed One Million Dollars (\$1,000,000.00), an agency or official of the executive branch shall submit a copy of the contract to the Legislative Oversight Committee overseeing the operations of the Legislative Office of Fiscal Transparency (LOFT) along with the following:

1. A description of the litigation or of the transaction requiring representation;

2. The reason or reasons for not obtaining the representation from an attorney employed by the agency or official;

3. The justification for selecting an attorney or firm contracted to represent the state; and

4. An estimate of the anticipated duration of the contract.

M. A settlement agreement shall not contemplate the ultimate use and destination of recovered funds unless done in accordance with paragraphs 11 and 12 of subsection A of Section 18b of this title.

N. Within ten (10) days of an agency or official of the executive branch entering into a settlement agreement where a private attorney or firm was hired on a contingency fee contract and

1 the settlement was equal to or greater than One Million Dollars
2 (\$1,000,000.00), the agency or official of the executive branch
3 shall present the settlement agreement to the Legislative Oversight
4 Committee with oversight of the operations of the Legislative Office
5 of Fiscal Transparency (LOFT), unless otherwise postponed by LOFT.

6 O. When an agency or official of the executive branch enters
7 into a contract for professional legal services pursuant to this
8 section, the agency shall also comply with the applicable provisions
9 of Section 85.41 of this title.

10 P. The provisions of this section shall not apply to the
11 Oklahoma Indigent Defense System created pursuant to Section 1355 et
12 seq. of Title 22 of the Oklahoma Statutes.

13 Q. Upon request of an agency or official of the executive
14 branch, the Governor, the President Pro Tempore of the Senate and
15 the Speaker of the House of Representatives may exempt a legal
16 matter from the requirements of this section if an exemption is
17 deemed to be in the best interest of the state. Such exemption
18 shall be issued at their discretion, in writing and by unanimous
19 consent, and shall be submitted to LOFT.

20 R. By February 1 of each year, the Attorney General shall
21 submit a report to the Governor, the President Pro Tempore of the
22 Senate, the Speaker of the House of Representatives, the Chair of
23 the Appropriations and Budget Committee of the House of
24 Representatives and the Chair of the Appropriations Committee of the

1 Senate, that describes the use of contracts with private attorneys
2 or law firms in the preceding calendar year. At a minimum, the
3 report shall identify all new contracts entered into during the
4 calendar year being reported and all previously executed contracts
5 that remain current during any part of the calendar year. For each
6 contract, the report shall contain:

7 1. The name of the private attorney with whom the agency has
8 contracted including the name of the attorney's law firm;

9 2. The nature and status of the legal matter;

10 3. The name of the parties to the legal matter;

11 4. The amount of any recovery;

12 5. The amount of any hourly rate; and

13 6. The amount of any contingency fee paid, if applicable.

14 S. The provisions of subsections B through R of this section
15 shall not apply to any agency that invests funds on behalf of its
16 beneficiaries and, as part of its fiduciary duty, retains one or
17 more private attorneys or law firms to pursue individual, derivative
18 or class litigation concerning its investments or assets.

19 T. The provisions of this section shall not apply to any entity
20 exempted from Article I of the Administrative Procedures Act
21 pursuant to paragraphs 6 and 7 of subsection A of Section 250.4 of
22 Title 75 of the Oklahoma Statutes.

23 U. No attorney shall provide legal advice to any state board or
24 commission if the attorney is employed by an appropriated agency,

1 board, commission, department, or other state government entity that
2 has a voting member serving on the state board or commission, except
3 an attorney who provides legal advice to any member who acts in a
4 quasi-judicial capacity to adjudicate matters brought before the
5 state board or commission pursuant to statute. Nothing in this
6 subsection shall prohibit an attorney from serving on a state
7 government board or commission.

8 SECTION 2. This act shall become effective November 1, 2023.

9
10 59-1-7056 LRB 01/10/23