

**BRIAN E. FROSH**  
*Attorney General*



**ELIZABETH HARRIS**  
*Chief Deputy Attorney General*

**CAROLYN QUATTROCKI**  
*Deputy Attorney General*

**STATE OF MARYLAND**  
**OFFICE OF THE ATTORNEY GENERAL**

Fiscal Year 2023 Operating Budget  
Response to Department of Legislative Services Budget Analysis

Senate Budget and Taxation Committee  
Public Safety Transportation and Environment Subcommittee  
Senator Cory V. McCray  
February 10, 2022

House Appropriations Committee  
Public Safety and Administration Subcommittee  
Delegate Antonio (Tony) Bridges  
February 16, 2022

Thank you for the opportunity to respond to the Department of Legislative Services' Fiscal Year 2023 budget analysis. We appreciate the thorough analysis by our DLS budget analyst and the continuing work of your Committees. We are proud of the accomplishments of our lawyers and staff during this last fiscal year, which they achieved even in the face of increasing caseloads, understaffing and continued funding challenges.

**Monies for the State**

We would like to highlight some of the cases we handled in the past year that have brought or will bring in substantial amounts of money to the State. We entered into a \$18 million settlement with the Royal Bank of Scotland to resolve financial crisis-era claims that RBS misled investors in its issuance of residential mortgage-backed securities (RMBS). This followed our \$20 million settlement with Wells Fargo and our \$95 million settlement with Deutsche Bank. We won our tobacco arbitration, which will bring in an additional \$16-\$18 million to the State. In our case against McKinsey (opioid marketing), we recovered \$12 million to be used for abatement of the opioids epidemic in Maryland. Our settlement with the opioid distributors--McKesson, AmeriSourceBergen, and Cardinal Health--could pay Maryland and its subdivisions up to approximately \$318 million, while Johnson & Johnson could pay up to approximately \$75 million.

Those are just the cases in the last year over a \$10 million threshold.

### **Unemployment Insurance Lawsuit**

We urge you to reject the recommendation that our Office pay the costs of outside counsel that was needed to defend the Governor's decision to cut off unemployment insurance benefits. It is unprecedented and dangerous to cut the OAG budget when we determine outside counsel is necessary due to a client's actions. If the client is responsible for the conduct that gives rise to the lawsuit, then the client should incur the cost of defending the lawsuit. Requiring us to pay is vindictive, unjustified, and exacerbates what is already the chronic underfunding of our Office.

### **Independent Investigations Division**

We need 3 additional investigators, 2 additional attorneys and one administrative support position.

After four months of operation, it has become clear that we have a crucial need for additional staff, particularly additional investigators. The legislature created this independent unit because independent investigations can be more assured of accurate outcomes and earn greater confidence from the public. And while we receive some assistance from the Maryland State Police (MSP), full reliance on that police force does not meet that goal or obtain those same results. This is particularly true for the human-centered aspects of investigations such as witness interviews, where explaining our independence from any police force is often the key to gaining witness trust.

Moreover, it is crucial that the investigators and attorneys we hire have an expertise in this nuanced and challenging area of law. By hiring our own investigators, we can ensure that the investigation is conducted with this kind of specialized expertise. And finally, there is simply a manpower issue. There is too much work and too many tasks for the investigative personnel that we have. To keep pace with the workload, our investigators are working significant amounts of evenings and weekends on top of their regular hours, which may eventually lead to turnover, or impact the work due to manpower limitations. We need at least three additional investigator positions.

The need for investigators has been so crucial that we have thus far devoted all spare positions to that rather than hiring any paralegals or assistants. But that ultimately takes more of the investigators' time to do the administrative work, and we do need at least one administrative position. And given the volume of work and the need for attorney guidance and supervision, as well as the need for specialized legal knowledge, we also need two more attorney positions.

#### **FY22 IID Caseload**

|                          | OCT | NOV | DEC | JAN |
|--------------------------|-----|-----|-----|-----|
| New Investigations       | 3   | 3   | 1   | 3   |
| Existing Investigations  | 0   | 3   | 6   | 7   |
| Potential Investigations | 12  | 5   | 9   | 4   |

### **Access to Counsel Funding**

Under the statute, MLSC is primarily responsible for implementing the Access to Counsel in Evictions Program. Our understanding is that, in the absence of funding for the Access to Counsel in Evictions Program, there has been only modest progress toward implementation. MLSC did identify some existing funds that can be used for initial implementation of the program, and—consistent with recommendations from the Access to Counsel in Evictions Task Force—has issued an RFP for program evaluation and publicized a job listing for a program coordinator. With DHCD’s recent announcement of funding from ERAP2 being allocated to legal services, we anticipate and hope that implementation efforts will accelerate in the coming months. Once program implementation efforts begin in earnest, the Task Force will need to develop more concrete plans for undertaking its oversight and evaluation functions.

Under the law, OAG’s primary role is to appoint members to and provide staffing for the Task Force. With the support of that staff, the Task Force is operating largely independently from OAG in fulfilling its statutory obligations. OAG will continue to provide staff support, as required by law, and to appoint new members of the Task Force as appropriate. Like the Task Force, OAG supports an annual allocation in the budget for the program and will continue to advocate for that and any other appropriate sources of funding.

### **Vacancy Report**

We urge you to reject the recommendation that we submit an additional report about our recruitment, retention, and vacancy challenges. Those challenges have been well-documented previously and have been made worse by the pandemic. We do not have the staff to divert to this reporting. The bottom line is our salaries are not competitive. We will provide a copy of our 2019 salary study to the Committees.

OAG employees perform a diverse range of sophisticated legal work in areas ranging from public finance to real estate to information technology to public private partnerships to complex environmental work. Our attorneys litigate cases where tens of millions of dollars, and, more importantly, the lives of vulnerable citizens, are at stake. Our enforcement divisions such as the Consumer, Securities, and Antitrust Division’s bring in recoveries. We are, in all of these areas, competing against the private sector and other governments to recruit and retain experienced attorneys, legal assistants, and investigators.

There is not only a pronounced gap between OAG salaries and attorney salaries at private firms, even small firms, but also a substantial gap between OAG salaries and other government sector employers. This is true at the federal, state, and local level. We regularly lose employees to the federal government, local government offices and other State entities with independent salary authority.

Qualified attorneys with a desire to engage in public service want to work for the OAG, but often cannot afford to do so. Qualified OAG attorneys leave the Office for better paying positions.

**Special Education Ombudsman**

Chapter 562 of 2020 (SB 504) requires the Attorney General to appoint a Special Education Ombudsman. The Ombudsman is directed to set up a toll-free number and operate a call center for parents, teachers, and other interested parties who need guidance on the services offered and rights afforded to special needs children in public schools. The OAG has repeatedly asked for a PIN and funding for this requirement but has not been given a PIN or funding. The OAG has no existing resources (either pins or funding) to meet this requirement.

Thank you for your attention to these matters.