



APPOINTMENT AS SPECIAL COUNSEL FOR AFFIRMATIVE CIVIL RIGHTS LITIGATION REV. 8.24.2023

1. Must the applying attorney or firm be currently admitted or be physically located in New Jersey?

While these RFQs do not require admission in New Jersey, whether a particular firm on the Outside Counsel list is selected for any given retention will depend upon the specific legal needs for a particular matter. In the event the affirmative litigation is to be brought in another state, the Division of Law may seek to retain a firm on the Outside Counsel list with attorneys admitted in that state even if that firm does not have an attorney admitted in New Jersey. Further, in some circumstances, upon consultation with and prior written approval by the Division of Law, a firm may retain secondary/local counsel for a New Jersey matter—prospective applicants should refer to the Division of Law’s [Outside Counsel Guidelines](https://www.nj.gov/oag/law/pdf/rfqs/Revised_Outside_Counsel_Guidelines_2022.pdf) (Art. 3, Sec. J), available at https://www.nj.gov/oag/law/pdf/rfqs/Revised_Outside_Counsel_Guidelines_2022.pdf. Finally, attorneys admitted in New Jersey need not be physically located in New Jersey.

2. In Section 5.5, the RFQ states that “In no event will the fee for a specific retainer be determined by the firm making a fee application to the court.” In circumstances where a claim arises under a statute that provides for attorneys’ fees, does this provision contemplate waiving fees? Put another way, we would expect that where attorneys’ fees are available for a prevailing party, that Special Counsel would be able to seek fees but the language in this section is not clear on that point. Clarification on the ability to seek fees where statutorily provided to prevailing civil rights parties would be appreciated.

The amount of fees outside counsel earn will always ultimately be governed by the retention agreement. This does not preclude the possibility that counsel may be asked to make a fee application to the court where appropriate. For the avoidance of confusion, the text “[i]n no event will the fee for a specific retainer be determined by the firm making a fee application to the court” has been removed from section 5.5 of the RFQ.