

Summary: Operations and Performance of the Office of the Attorney General

WHAT WE FOUND

OAG clients are satisfied with the legal services they receive, and OAG competently provides legal advice and litigation representation

The vast majority of OAG’s clients (88 percent) reported being satisfied with the legal services they receive, according to a JLARC survey. Clients reported the quality of services has remained high or even improved over the past three years.

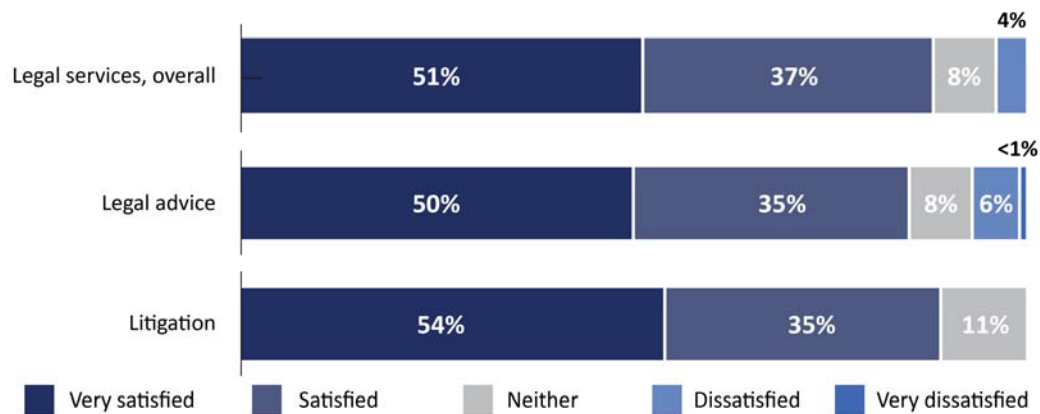
Most clients reported that OAG attorneys provided competent legal advice. Eighty-five percent of survey respondents said they were satisfied with the legal advice provided by their OAG attorneys. Clients indicated that their attorneys had a comprehensive understanding of their legal field and gave advice needed to legally accomplish client objectives. Most clients also believed their attorneys thoroughly answered their questions and provided advice they could understand. A few clients (4 percent) noted concerns, but these were mostly related to one-time incidents.

WHY WE DID THIS STUDY

In 2017, the Joint Legislative Audit and Review Commission (JLARC) directed its staff to review the Office of the Attorney General.

ABOUT THE OFFICE OF THE ATTORNEY GENERAL

Virginia’s Office of the Attorney General performs a variety of critical legal functions for state agencies, especially providing legal advice and litigation representation when needed. OAG spends, or oversees spending of, about \$85 million and has about 500 employees.



A JLARC review of a sample of OAG cases found that OAG competently represented its clients in litigation. More than 80 percent of OAG’s cases in the sample had no procedural delays. About three-fourths of closed cases were decided through a court ruling, and all of these cases were decided in OAG’s favor, in whole or in part (most of the remaining cases were settled). Clients generally viewed OAG’s litigation services as highly competent (89 percent satisfied). Nearly all clients who had relied on OAG

for litigation services found attorneys were typically prepared and knowledgeable when representing them in court.

OAG services are not always timely, primarily due to insufficient staffing in some sections

While the majority of clients reported that OAG legal services were timely (76 percent), timeliness was one of the most commonly noted concerns that clients raised in interviews with JLARC staff. Several clients noted that it took their attorneys weeks, or even months, to provide advice on one or more particular legal matters. OAG attorneys confirmed that they are sometimes unable to provide advice in a timely manner, with about one-third reporting they were not always able to provide timely advice. Although several clients voiced concerns about the timeliness of legal advice, they could not identify any actual problems that occurred because of delayed advice. In most cases, delays either inconvenienced a client or, at worst, created a risk that was never actually realized.

Based on a variety of measures, JLARC identified three OAG sections that appear to have too few attorneys to meet client needs for services. The Correctional Litigation section has had difficulty providing timely advice while keeping pace with the increase in volume and complexity of lawsuits related to state prisons. The Education section, which serves the state's public universities and the Department of Education, has considerably fewer attorneys assigned to clients than its peers in other states. Finally, attorneys in the Trial section report working, on average, additional hours equivalent to 11 weeks per year.

OAG needs structured process to effectively address any service or relationship problems that may occur

OAG's clients generally reported having good working relationships with their assigned attorneys. However, in the few instances where clients were not satisfied, they lacked a way to address their concerns outside of taking complaints directly to their assigned attorneys. Clients were hesitant to voice complaints through this channel because they feared further damaging relationships. For example, OAG clients who thought their attorneys might have a conflict of interest or that encountered service problems did not know how to escalate and resolve those issues. Clients were also uncertain how to make changes in their OAG staffing arrangements, such as how to increase the number of attorneys assigned to them full time.

OAG charges substantially less than private legal counsel, and OAG under-collected \$2.7 million from clients in FY19

OAG legal services cost substantially less than private-sector services. OAG's hourly rate is 68 percent to 105 percent less than what private-sector attorneys would likely charge. Clients were satisfied with the cost and affordability of OAG services.

OAG appears to have under-collected about \$2.7 million revenue in FY19 because it did not consistently bill for legal services. OAG did not bill for an estimated \$3.3 million in legal services to nongeneral fund clients and programs. In contrast, OAG billed an estimated \$600,000 for general fund-related legal services even though these services should be funded through OAG's general fund appropriation. Inconsistent billing treats some clients unfairly and reduces the total financial resources that OAG has at its disposal for providing legal services.

By improving billing practices, OAG could generate additional nongeneral funds, hire more staff, and make other needed improvements. While this would increase the cost of services for many clients, increases would typically be under \$100,000 per client and equal less than 1 percent of clients' budgets.

OAG appropriately approves use of outside counsel and effectively controls costs

Under statute, OAG is authorized to hire outside counsel when a client needs legal services that OAG cannot provide with its current resources. OAG thoroughly documents and reviews all use of outside counsel to help ensure they are only used when necessary. JLARC staff found that outside counsel are used for three main reasons, each of which is consistent with statute: (1) local knowledge or presence is critical; (2) matters require complex or niche subject-matter expertise; or (3) OAG lacks the immediate staffing capacity to provide the needed services. Once the decision to use outside counsel has been made, OAG generally follows best practices for selecting and procuring the firms or attorneys to be hired, and outside counsel generally provide high quality services. Clients, who pay for and benefit from outside counsel services, indicated they had appropriate access to outside counsel. However, the selection and procurement process could be improved by better involving clients.

OAG effectively controls the cost of outside counsel by using them when appropriate and negotiating competitive fees. JLARC staff reviewed a sample of OAG-negotiated rates and found they compared favorably to market rates. Clients were also generally satisfied with the rates they were charged. OAG also reviewed all invoices submitted by outside counsel to remove inappropriate charges and saved clients \$1.1 million over the past two years.

OAG effectively investigates Medicaid fraud and has recovered \$29 million in fraudulent payments for the state over the past five years

The federal government requires all states to have a Medicaid fraud control unit, and Virginia's unit is located within OAG. Virginia's unit effectively investigates cases of civil or criminal Medicaid fraud. The number of cases the unit opens for investigation each year is consistent with units in other states. The unit's investigative process is well defined and also achieves outcomes consistent with other states.

The unit's investigations have resulted in \$29 million in collected recoveries over the past five years for Virginia's Medicaid program, mostly from multi-state civil cases. The unit's services are also free to Virginia. Since FY09, the state share of the unit's costs has been paid for by recoveries collected from a major, multi-state case. These funds are expected to last until sometime between FY25 and FY27.

WHAT WE RECOMMEND

Legislative action

- Provide funding for a client services director to facilitate problem resolution, collection of performance feedback, and service changes.

Executive action

- Hire additional attorneys to meet client demand, especially those providing litigation services to state government and serving higher education, K-12, and corrections.
- Develop and implement a client services policy.
- Establish clear criteria for when clients should be billed and bill clients accordingly.
- Give clients the option to be more involved in the selection of their outside counsel.

The complete list of recommendations is available on page v.