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United States General Accounting Office  
Washington, DC 20548

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July 3, 2001

The Honorable William D. Delahunt  
House of Representatives

Subject: Hourly Fees Paid by Various Federal Agencies to Private Attorneys for Legal Services

Dear Mr. Delahunt:

This report responds to your request that we provide you with information on hourly fees paid by the federal government to private attorneys for legal services in fiscal years 1999, 2000, and 2001. Relevant legal services include federal employee defense, litigative consultation, intellectual property consultation, and asset forfeiture-related services. For these types of legal services, we obtained information regarding hourly fees paid to private attorneys by the Department of Justice (DOJ), the Administrative Office of the United States Courts (AOUSC), the National Aeronautics and Space Administration (NASA), and the Department of Veterans Affairs (VA). Generally, we focused on these agencies based on our 1992 report on private attorneys.<sup>1</sup>

### **Scope and Methodology**

We found no centrally available source identifying all federal agencies' contracts with or uses of private attorneys. Thus, we focused our work on four federal agencies—DOJ, AOUSC, NASA, and VA. In selecting these agencies, we first reviewed our 1992 report, which was based on an extensive survey of federal agencies in the executive, legislative, and judicial branches. In total, that report identified 59 agencies<sup>2</sup> that reported awarding 4,567 contracts for legal services during fiscal year 1991. For that year, the seven agencies with the most contracts accounted for 4,129 (90 percent) of the total—Resolution Trust Corporation (1,782), Federal Deposit Insurance Corporation (1,392), Department of Defense (382), VA (203), U.S. Department of Agriculture (176), NASA (99), and DOJ (95).

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<sup>1</sup>Private Attorneys: Information on the Federal Government's Use of Private Attorneys (GAO/GGD-93-17FS, Oct. 20, 1992).

<sup>2</sup>Six of the 59 agencies awarded no contracts in fiscal year 1991 but made payments in that year based on contracts awarded in previous years or other arrangements.

As indicated, this current report presents information we obtained from three (DOJ, NASA, and VA) of the seven agencies, and we also contacted AOUSC to provide a judicial branch perspective. Regarding the other four agencies not covered in this report:

- The Resolution Trust Corporation was terminated on December 31, 1995.
- The Federal Deposit Insurance Corporation’s substantial number of contracts in 1991 occurred during a nationwide financial crisis; we did not obtain updated contract information for this report.
- We contacted the Department of Defense but were unable to obtain information in time for this report.
- In response to our inquiries at the Department of Agriculture, officials reported that private attorneys were used for legal services involving, for example, foreclosures on farms and rural development projects. The officials noted, however, that these private attorneys were paid on a “per job” basis rather than hourly rates.

Regarding the fee data for federal employee defense presented in this report, we reviewed the federal regulation and DOJ’s and AOUSC’s guidance applicable to the fee schedule for this type of legal service. Fees for the other types of legal services—litigative consultation, intellectual property consultation, and asset forfeiture-related services—were based on federal procurement procedures rather than regulated fee schedules. For these legal services, we discussed the fees with knowledgeable agency officials to ensure an understanding that the information provided to us was to be based on actual payments by the respective agency.

## Results

For fiscal years 1999 through 2001, the enclosed table provides data on hourly fees paid to private attorneys by various DOJ components (i.e., the Antitrust Division, the Civil Division, the Tax Division, and the U.S. Marshals Service), AOUSC, NASA, and VA for legal services that we grouped into four categories—federal employee defense, litigative consultation, intellectual property consultation, and asset forfeiture-related services. In fiscal year 2001, for example, the average hourly fees paid to private attorneys ranged from \$125 to \$357, depending on the agency and the type of legal service. Specific information about the fees is as follows:

- **Federal employee defense.** By regulation (28 C.F.R. § 50.16), DOJ’s Civil Division is responsible for setting fee schedules for representation of federal employees by private counsel at federal expense. According to AOUSC, the judiciary adopts (both by regulation and practice) DOJ’s maximum rate as its own maximum rate for retaining legal counsel to represent judicial officers and employees who have been sued in civil litigation, where DOJ is unable to provide representation. The maximum hourly fee of \$125 was established in 1998 for attorneys with more than 5 years of practicing experience. Attorneys with 3 to 5 years of experience can be paid an hourly fee of \$100, and less experienced attorneys can be paid \$83 hourly. In response to our inquiry, DOJ and AOUSC officials said that the rate of \$125 an hour was paid in all or almost all cases (see note b in the enclosed table).

- **Litigative consultation.** At times, DOJ's Antitrust, Civil, and Tax Divisions hire private attorneys for their expertise and assistance in analyzing specific legal issues or cases. For fiscal year 2001 (as of April 2001), for example, the Antitrust Division reported having three contracts with private attorneys and paying an average hourly fee of \$225 for legal services, primarily to help trial teams prepare complex antitrust cases for litigation. In fiscal year 2000, the Antitrust Division had 17 contracts and paid an average hourly fee of \$271. Also, in fiscal year 2000, the Civil Division had five contracts with private attorneys (and paid an average hourly fee of \$229) for legal services that included consultation on international law cases and analysis of foreign court documents. In that same year, the Tax Division had one contract (and paid an average hourly fee of \$188) for assistance in responding to a taxpayer's motion to recover \$24 million collected by the federal government, plus interest.
- **Intellectual property consultation.** In fiscal year 2001, NASA (one contract as of April 2001) and VA (one contract as of June 2001) hired private attorneys for advice and assistance in protecting the federal government's intellectual property rights. Under NASA's contract, a private law firm was paid an effective hourly fee of \$210 to prepare a patent application. The law firm was expected to help obtain the greatest possible value in property rights for the government and to provide a defense if subsequent litigation develops. Additionally, NASA reported that it used private attorneys for patent prosecution work, but that these contracts were firm, fixed price and did not contain any hourly rates. Under its contract, VA paid an average hourly fee of \$308 to two private attorneys, who provided advice on the government's legal rights in certain software products and on the potential liability under various trade secret laws.
- **Asset forfeiture-related services.** The U.S. Marshals Service uses private attorneys for legal expertise in all phases of forfeiture, pre-seizure, and disposal, including assistance in drafting court orders. For instance, in fiscal year 2000, the Marshals Service had two contracts with private attorneys (and paid an average hourly fee of \$305) for legal services involving pre-seizure planning, operational issues, and disposal of forfeited assets. For fiscal year 2001 (as of May 2001), the Marshals Service reported having three contracts with private attorneys and paying an average hourly fee of \$357.

### Agency Comments

We provided a draft of this report for comment to DOJ, AOUSC, NASA, and VA. During the period June 25–28, 2001, we received written or oral comments from all of these agencies. DOJ, AOUSC, and NASA generally agreed with the substance of the draft and provided technical clarifications, which we incorporated in this report where appropriate. VA expressed agreement with the substance of the draft.

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As agreed with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days after its date. At that time, we will provide copies to the Attorney General, the Director of AOUSC, the Administrator of NASA, and the Secretary of Veterans Affairs. We will also make copies available to others on request.

If you have any questions about this report, please contact me at (202) 512-8777 or Assistant Director, Danny R. Burton, at (214) 777-5600. Other key contributors to this report were Fredrick D. Berry, Shirley A. Jones, Mary K. Muse, and Linda K. Willard.

Sincerely yours,

A handwritten signature in cursive script that reads "Paul L. Jones". The signature is written in black ink and is positioned to the right of the typed name.

Paul L. Jones  
Director, Justice Issues

Enclosure

Enclosure

Hourly Fees Paid to Private Attorneys for Legal Services  
Fiscal Years 1999 Through 2001

Legal service and agency	Fiscal year <sup>a</sup>	Number of contracts	Average hourly fee paid
<b>Federal employee defense<sup>b</sup></b>			
DOJ Civil Division <sup>c</sup>	1999	48	\$125
	2000	61	\$125
	2001	20	\$125
<b>AOUSC</b>			
	1999	19	\$125
	2000	13	\$125
	2001	9	\$125
<b>Litigative consultation</b>			
DOJ Antitrust Division	1999	11	\$231
	2000	17	\$271
	2001	3	\$225
DOJ Civil Division <sup>d</sup>	1999	4	\$200
	2000	5	\$229
DOJ Tax Division <sup>e</sup>	2000	1	\$188
<b>Intellectual property consultation</b>			
NASA <sup>f</sup>	2000	1	\$250
	2001	1	\$210
VA <sup>g</sup>	2001	1	\$308
<b>Asset forfeiture-related services:</b>			
U.S. Marshals Service	1999	2	\$250
	2000	2	\$305
	2001	3	\$357

<sup>a</sup>Agency data for fiscal year 2001 are as of various dates in April, May, or June 2001.

<sup>b</sup>Regarding federal employee defense, the amount of \$125 per hour is not an arithmetic calculation or average. Rather, \$125 per hour is established by regulation as the maximum amount payable. More specifically, attorneys with more than 5 years of practicing experience can be paid \$125 hourly; attorneys with 3 to 5 years of experience are to be limited to \$100 hourly; and less experienced attorneys are to be limited to \$83 hourly. In response to our inquiry, DOJ officials said that the agency uses experienced private attorneys, who charge the maximum (\$125 hourly). Similarly, AOUSC officials said that, in almost all cases where private counsel is retained, the maximum rate (\$125 hourly) is paid.

<sup>c</sup>The number of contracts shown for DOJ's Civil Division represent contracts with private attorneys for the defense of employees at various federal agencies.

<sup>d</sup>According to a DOJ official, the Civil Division had no contracts for 2001.

<sup>e</sup>According to a DOJ official, the Tax Division had no contracts for 1999 and 2001. For 2000, the one contract involved legal services performed by one private attorney, whose actual fee was \$188 per hour.

<sup>f</sup>According to a NASA official, the agency had no contracts for 1999. The one contract in 2000 and the one contract in 2001 involved legal services performed by two different law firms, whose hourly fees were \$250 and \$210, respectively.

<sup>g</sup>According to a VA official, the agency had no contracts for 1999 and 2000. For 2001, the one contract involved legal services performed by two private attorneys, whose fees averaged \$308 per hour.

Source: GAO summary of data provided by federal agencies.

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