

**ALC Report  
For Emergency Review of  
Professional Consultant Services Contracts  
August 10<sup>th</sup>, 2015**

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On August 7, 2015, Senator Bill Sample and Representative David Branscum, Co-Chairs of the Legislative Council and Senator Bart Hester and Representative Jeff Wardlaw, Co-Chairs of Review Subcommittee received written notification from Attorney General Leslie Rutledge requesting review of a Professional Consultant Services (PCS) Contract. Governor Asa Hutchinson approved the request.

The contract with Capell & Howard, P.C. will allow the Attorney General to hire outside counsel from Alabama to provide legal representation in the matter of Hooten v. Boyer et al.

Under Rule 17 of the Rules of the Arkansas Legislative Council, on August 10<sup>th</sup>, 2015, the Co-Chairs of the Legislative Council and ALC Review Subcommittee unanimously determined that emergency review of the contract was essential to enable the agency to perform essential services. Following is a summary of the contract that was given emergency review and a copy of the request from the Attorney General and Governor.

**SUMMARY SCHEDULE OF STATE AGENCY CONTRACTS  
FOR ARKANSAS LEGISLATIVE COUNCIL REVIEW**

**Agency:** Office of the Attorney General

**Contractor:** Capell & Howard, P.C.  
Montgomery, Alabama  
**Procurement:** SSJ

**Total Authorized:** \$0.00

**Org. Term:** 8/12/2015

8/12/2016

**Total After Review:** \$59,000.00

**Funding:** State - 100%

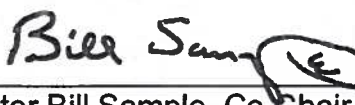
**Total Projected:** \$59,000.00

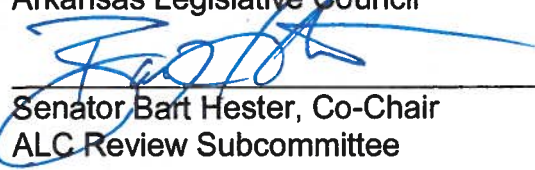
**Original**      **Amount**  
59,000.00


**Paid to Date**      **Objective:**

Capell & Howard, P.C. will provide legal representation to the State of Arkansas in connection with a personal injury lawsuit pending in Alabama state court.

Respectfully Submitted,

  
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Senator Bill Sample, Co-Chair  
Arkansas Legislative Council

  
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Senator Bart Hester, Co-Chair  
ALC Review Subcommittee

  
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Representative David Branscum, Co-Chair  
Arkansas Legislative Council

  
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Representative Jeff Wardlaw, Co-Chair  
ALC Review Subcommittee



STATE OF ARKANSAS  
THE ATTORNEY GENERAL  
LESLIE RUTLEDGE

**August 7, 2015**

**Via Electronic Mail**

**Sen. Bill Sample**  
***bill.sample@senate.ar.gov***

**Rep. David Branscum**  
***davidbranscum@hotmail.com***

**Sen. Bart Hester**  
***bart.hester@senate.ar.gov***

**Rep. Jeff Wardlaw**  
***jeff@jeffwardlaw.com***

**Sen. Bruce Maloch**  
***bruce.maloch@senate.ar.gov***

**Rep. David Meeks**  
***david.meeks@arkansashouse.org***

***Re: Hooten v. Boyer et al.***

**Dear Sirs:**

As Attorney General, I believe it is necessary to employ special counsel to defend the State of Arkansas in the above-captioned matter. Before we enter into the enclosed professional services agreement, however, your prior review is required under Ark. Code Ann. § 25-16-702(b). Governor Hutchinson has already approved of our retention of outside counsel pursuant to this statute.

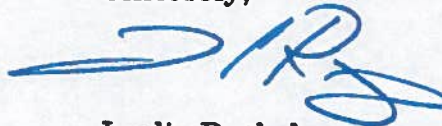
The following is a synopsis of the procedural background of this case. The plaintiff was severely injured in a vehicle collision that occurred in Alabama. A basketball coach for Arkansas State University (ASU), who was visiting Alabama for work-related reasons, was the driver of the other vehicle. The plaintiff named both Arkansas State University and the coach as defendants. These initial defendants are being represented by separate counsel pursuant to arrangements with their respective insurance carriers.

After the initial defendants removed this case to federal court on diversity grounds, the plaintiff added the State of Arkansas as an additional defendant. We entered an appearance on behalf of the State and moved to dismiss based on Eleventh Amendment immunity. The federal district court recently decided to remand the case to state court due to the absence of complete diversity of citizenship. Given this procedural posture, I believe the State of Arkansas would be best served by engaging a local attorney who is familiar with Alabama practice and procedure. Under Alabama's rules governing admission to the bar, we would be required to retain local counsel even if we proposed to be admitted *pro hac vice*.

Therefore, I believe the most prudent and cost-effective course would be to hire attorney Chad W. Bryan at the Montgomery firm of Capell & Howard, PC. Mr. Bryan is already representing ASU in this matter. Arkansas Assistant Attorney General Patrick Hollingsworth will continue to monitor this case closely and work with Mr. Bryan in the future.

Given the foregoing circumstances, I respectfully ask that you authorize our engagement of special counsel as soon as possible. The Attorney General's Office will then proceed with the next step of entering in to a professional services agreement.

Sincerely,

A handwritten signature in blue ink, appearing to read 'LR', with a stylized flourish extending from the bottom right.

Leslie Rutledge



STATE OF ARKANSAS  
ASA HUTCHINSON  
GOVERNOR

August 3, 2015

Attorney General Leslie Rutledge  
323 Center Street  
Suite 200  
Little Rock, AR 72201

**Re: *Outside Legal Representation in the Matter of Hooten v. Boyer et al.***

Dear General Rutledge:

I am in receipt of your request for approval to enter into a Professional Services Contract between the Attorney General's Office and counsel in the State of Alabama for outside legal representation regarding the matter of *Hooten v. Boyer et al.*

Arkansas Code Annotated §25-16-702(b)(2) provides that the Attorney General may employ special counsel with approval of the Governor, if in the opinion of the Attorney General it is necessary to defend the state.

I have reviewed your request and concur in your opinion that it is necessary to employ special counsel to defend the State of Arkansas in the above mentioned matter for the reasons outlined in your letter. Accordingly, I hereby approve the request to hire outside counsel to provide legal representation in the matter of *Hooten v. Boyer et al.*

Sincerely,  
  
Asa Hutchinson