

To: Legislative Committees Reviewing Statutory Changes Related to Employment of AAGs  
From: Sarah London, Chief Assistant Attorney General  
Re: Structure, Funding, and Work of AAGs  
Date: April 22, 2024

The funding, diversity of work performed, and structure of supervision of AAGs is unique in state government and among Vermont public sector law offices.

**I. Structure and Funding – Over 20 Agency Payors Including the AGO**

- The Attorney General’s Office (AGO) is Vermont’s “largest law firm” and includes approximately 95 Assistant Attorneys General (AAGs).
- Only about half (50) AAGs are in AGO positions, and fewer than 50 are paid by the AGO.
- Half (45) AAGs are “embedded” in agency positions and paid for through agency budgets.
- Over twenty (approximately 22) agencies pay for AAGs, in addition the AGO.
- No law requires state agencies to include AAGs among their employee positions.
  - The work of AAGs and other state lawyers can be fluid. Some state lawyers are appointed “Special Assistant Attorneys General.”
  - Agencies and officers have converted AAG positions to in-house general counsels (recent examples: ADS and Treasurer’s Office).
  - Sometimes general counsels are converted to AAGs (*e.g.*, BGS 2017).
- Pursuant to 3 V.S.A. § 153, the Attorney General has the following authority over AAGs:

The Attorney General may appoint such Assistant Attorneys General and Special Assistant Attorneys General as may be necessary for the proper and efficient performance of his or her department, and with the approval of the Governor, fix their pay, remove them at pleasure and be responsible for their acts. They shall have the same obligations, power and authority as the Deputy Attorney General except those relating to the absence or disability of the Attorney General and vacancy in the Office of Attorney General.

3 V.S.A. § 153(c) (this authority appears to date back at least forty-five years to 1979).<sup>1</sup>

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<sup>1</sup> Under current law, AAGs and Special AAGs are exempt from classified service under the State Employees Labor Relations Act (SELRA). 3 V.S.A. § 311(a)(12). “Employer” under SELRA is “the State of Vermont ... represented by the Governor or designee,” the Office of the Defender General, and for purposes of Deputy State’s Attorneys, the Department of State’s Attorneys and Sheriffs. 3 V.S.A. § 902(7)(A)-(B).

## II. Work of AAGs – May Be Assigned by AG, Agencies, and/or Statute

AAGs perform a variety of work and receive work assignments from a variety of sources.

Policy	Litigation	General Counseling
<p>Topics: <i>E.g.</i>, Reproductive and Civil Rights, criminal justice reform, consumer protection, climate change/ environmental</p> <p>Work may involve legislative testimony and advocacy before Congress or amicus briefs/ multi-state sign-on letters, comments, etc.</p> <p>Division: <b>Environmental and Public Protection, includes Civil Rights Unit; Community Justice Unit; or Appellate Unit</b></p> <p>Assigned by: AG</p> <p>Funding: typically AGO budget</p>	<p>Some defensive, some enforcement.</p> <p><b><u>Defensive Examples:</u></b>            Defending agencies and employees in court, at the Labor Relations Board, HRC or EEOC;            Defending state statutes, rules and policies;            Defending legislators, state employees, and agencies in state and federal court</p> <p>Division: <b>Civil; General Counsel and Administrative Law (GCAL); Appellate Unit; or AHS/DOC Unit</b></p> <p>Assigned by: law or policy/ AG or agency</p> <p>Funding: typically agency budgets</p> <p><b><u>Enforcement Examples:</u></b>            - Consumer and environmental protection, anti-trust, tobacco, criminal laws</p> <p>Division: <b>Environmental and Public Protection (EPPD) and Criminal</b></p> <p>Assigned by: AG</p> <p>Funding: AGO budget</p> <p><b><u>Other Types of Civil Litigation Examples:</u></b>            Tax code, Transportation laws, DCF/Termination of Parental Rights/ registries, those in custody of DMH, administration of benefits/ DVHA/ DAIL, farm-related matters regulated by AAFM</p> <p>Division: <b>GCAL, EPPD, or Human Services</b></p> <p>Assigned by: agency</p> <p>Funding: agency budgets</p>	<p>All general counseling for certain agencies and parts of state government without assigned lawyers is performed by AAGs</p> <p>Examples: AOT, Tax, BGS, parts of AOE/ BOE, parts of AOA, e911, VPIC, new entities such as Office of Child Advocate</p> <p>Division: <b>GCAL</b></p> <p>Assigned by: typically agency</p> <p>Funding: typically agency budgets</p>

- **Policy Work:**

- These matters can involve legislative testimony and multi-state work, including advocacy before Congress and amicus briefs in courts.
- AAG policy work may be aligned with or adverse to the federal government, other states, or other parts of state government, depending on the circumstances.
- This work is generally performed at the direction of the Attorney General.

- **Litigation:**

- Some litigation is at the direction of the Attorney General (*e.g.*, enforcement actions against Exxon, Meta/FaceBook, and criminal matters).
- Other litigation is primarily at the direction of an agency (*e.g.*, AHS, Tax, and AOT related litigation).
- Litigation can be required by law, *see, e.g.*, 3 V.S.A. § 152 (AG shall represent members of General Assembly); AG appears for the State and has “general supervision” of State litigation. *See, e.g.*, 3 V.S.A. §§ 152, 153, 157. *See also* 12 V.S.A. § 1102 (AG determines state representation of state employees).

- **General Counseling:**

- Several AAGs regularly perform general counseling work. A few AAGs perform exclusively general counseling and transactional work.
- Some general counseling work is required of AAGs by law/ policy. *See, e.g.*, 3 V.S.A. § 342 (contracts for privatization); Bulletin 3.5 (review of contracts).
- Most general counseling work is assigned by and through agencies.