



INVESTIGATIVE REPORT

David Cook, Inspector General

OFFICE: OFFICE OF THE INDIANA ATTORNEY GENERAL
TITLE: CONTINGENCY FEE CONTRACT
CASE ID: 2022-04-0120
DATE: May 2, 2022

After examination and review, Office of Inspector General Staff Attorney Doreen Clark reports as follows:

The purpose of this Report is to fulfill the statutory requirements of Ind. Code §4-6-3-2.5 regarding contingency fee contracts. This statute requires the Inspector General (IG) to review proposed contingency fee contracts for possible conflicts of interests and potential Code of Ethics violations. Under this statute, an agency may not enter into a contingency fee contract unless the IG has made a written determination that entering into the contract would not violate the Indiana Code of Ethics, set forth in Ind. Code §4-2-6 and 42 IAC 1-5, or any statute or agency rule concerning conflicts of interests.

On April 28, 2022, the Indiana Office of Attorney General (OAG) notified the IG that it wished to enter into a contingency fee contract with Cooper & Kirk, PLLC (Counsel), a law firm. The OAG explains that Counsel will represent the State of Indiana in evaluating a potential cause of action against TikTok and any related company, organization, individual, official or government entity for violations of Indiana or federal law by intentionally distributing a dangerous product or service without adequate warning to consumers and publicly misrepresenting the dangers its product poses to consumers, particularly children.

Under the contingency fee contract, the State will compensate Counsel only for legal services rendered and for costs and expenses incurred if Counsel obtains any recovery for the State

under the following contingency fee agreement: (1) Zero percent (0%) of any recovery that is two million dollars (\$2,000,000) or less; (2) Twenty-five (25%) of any recovery exceeding two million dollars (\$2,000,000) and that is not more than ten million dollars (\$10,000,000); (3) Twenty percent (20%) of any part of a recovery exceeding ten million (\$10,000,000) and not more than fifteen million dollars (\$15,000,000); (4) Fifteen percent (15%) of any part of a recovery of more than fifteen million dollars (\$15,000,000) and not more than twenty million dollars (\$20,000,000); (5) Ten percent (10%) of any party of recovery of more than twenty million dollars (\$20,000,000) and not more than twenty-five million dollars (\$25,000,000); or (6) Five percent (5%) of any part of a recovery of more than twenty-five million dollars (\$25,000,000).

Pursuant to Ind. Code §4-6-3-2.5(b), an agency is required to make a written determination before entering into the contract that the contingency fee representation is cost effective and in the public interest. The OAG must consider five factors when making this determination as outlined by Ind. Code §4-6-3-2.5(c). Those factors are as follows:

- (1) Whether the agency has sufficient and appropriate legal and financial resources to handle the matter.
- (2) The time and labor required to conduct the litigation.
- (3) The novelty, complexity, and difficulty of the questions involved in the litigation.
- (4) The expertise and experience required to perform the attorney services properly.
- (5) The geographic area where the attorney services are to be provided.

The OAG made such a determination and considered all five factors outlined in the statute. The OAG explains that the matter to be handled by Counsel is based on work from the OAG's Consumer Protection Division (CPD), specifically, CPD's Consumer Litigation Section. CPD's Consumer Litigation Section is currently staffed by nine full-time Deputy Attorneys General with approximately 899 active litigation and investigative matters pending on behalf of the State of Indiana. The OAG explains that it has historically employed outside counsel to assist with certain types of cases to supplement other ongoing litigation and compliance efforts by the OAG. Further,

Counsel has an established history of representing state governments in previous cases involving consumer protection matters.

The OAG recognizes that while CPD possesses the knowledge to work on claims arising from TikTok's misrepresentations, the State's interests would be best served through the efficient and specialized services of Counsel. Additionally, the OAG recognizes that CPD will not be able to expeditiously undertake this matter while simultaneously managing its regular workload. The legal services performed by Counsel would also require detailed understanding of the intricacies involved in social media platforms and their counteractions relevant to consumer protection laws. With TikTok's sophisticated technology in conjunction with its 200 million global userbase, 1,400 employees and revenue approximating \$177 million, the OAG believes that Counsel's specialized knowledge, practice and management of this matter would protect the State's interests.

The OAG states that the cases at issue will require counsel with specialized knowledge of consumer protection laws, particularly regarding the methods that are utilized by TikTok to misrepresent the danger that its product poses to consumers of the State of Indiana, especially children. The OAG believes that Counsel's extensive history in consumer protection laws in conjunction with its expertise in handling high profile internet and social media platforms would be in the State's interests. Finally, the OAG states that Counsel will perform services for the State of Indiana at its main office location in Washington D.C. but will coordinate with the OAG when necessary. TikTok's headquarters is currently Culver City, CA.

According to the OAG, Counsel does not employ any state employees. Furthermore, no OAG employee or immediate family member has a financial interest in Counsel or the contract itself. Finally, the OAG provides that no OAG employee is contracting with or will be supervising the work of a business entity in which a relative is a partner, executive officer or sole proprietor.

Based on the information provided, and after careful review and examination, the IG finds that entering into this contingency fee contract will not violate the Code of Ethics or any statute or agency rule concerning conflicts of interests. This report is issued in compliance with the above noted statutory requirements.

Dated: May 2, 2022

APPROVED BY:

A handwritten signature in cursive script that reads "David Cook". The signature is written in black ink and is positioned above a horizontal line.

David Cook, Inspector General