

ACT 75 - 2023

**HONORABLE BOARD OF LEGISLATORS
THE COUNTY OF WESTCHESTER**

Your Committee is in receipt of a communication from the County Attorney recommending the approval of an Act which, if adopted by your Honorable Board, would authorize the County of Westchester (the “County”) to enter into an agreement (the “Agreement”) to retain, at County expense, the law firm Wilson Elser Moskowitz Edelman & Dicker LLP (the “Firm”) to represent the Westchester County Board of Elections (the “BOE”) and Commissioners Colety and Nelson in their official capacity, as needed (the “Services”), in connection with the matter *Guzman v. Westchester County*, Index No. 58258/2023 (the “Case”). Your Committee is advised that the term of the proposed Agreement will commence retroactive to March 21, 2023 and continue until the County no longer has an interest in the Case, as the County may determine in its sole discretion, or the County otherwise terminates the Agreement.

By way of background, your Committee is advised that this lawsuit challenges the 2022 Redistricting performed by the Board of Legislators, alleging that the adopted districts violate various NYS statutory and constitutional provisions. The lawsuit seeks to invalidate the adopted districts and to have a special master appointed to draw new districts.

The County Attorney has advised your Committee that the BOE, and Commissioners Colety and Nelson in their official capacity (“the BOE Respondents”), have indicated that they are not taking a position in this proceeding. As such, it is appropriate for the BOE Respondents to have separately retained counsel.

The County Attorney has further advised your Committee that the BOE is entitled to representation, as it is an independent Board of the County, pursuant to the Laws of Westchester County § 158.11(2), and that Commissioners Colety and Nelson are entitled to defense and indemnification as they have confirmed that they shall cooperate in the defense of the action against the County, and are not seeking to take a position adverse to the County.

Therefore, pursuant to the Laws of Westchester County § 297.31(2)(b)(i), the County Attorney has determined that representation of the BOE Respondents by the Office of the County Attorney would be inappropriate, and therefore recommends that your Honorable Board approve the attached Act to authorize the retention of independent counsel for the BOE Respondents in this matter.

The County Attorney has further advised your Committee that, under the proposed Agreement, the Firm will be paid a total amount not-to-exceed Twenty-Five Thousand Dollars (\$25,000.00), payable at the rate of Three Hundred Dollars (\$300.00) per hour for John Flannery; Two Hundred Fifty Dollars (\$250.00) per hour for senior associates; and One Hundred Twenty-Five Dollars (\$125.00) per hour for paralegals. In addition, the Firm will be reimbursed, at cost, for *reasonable and necessary* out of pocket expenses and disbursements.

The County Attorney has advised your Committee that procurement of the Services would, normally, be conducted in accordance with Section 7 of the Westchester County Procurement Policy and Procedures (“Section 7”). Under Section 7, the County is required to “solicit quotations, statements or other information regarding [the] experience, qualifications and capability to perform the proposed services” of “no fewer than three persons customarily performing such services.” However, due to the time-sensitive nature of the Case, and the need to take immediate steps to ensure that the BOE’s interests are protected, there was insufficient time to follow the normal solicitation procedure.

The County Attorney has advised your Committee that, in lieu of that longer process, his office determined that the Firm can competently and readily provide the Services, and that the hourly rates proposed are reasonable in light of his office’s knowledge of the overall marketplace for legal services. The County Attorney has advised your Committee that, since this means that the County will not be able to rely upon Section 7 as the procurement basis for the proposed Agreement, his office will seek authority from the Board of Acquisition and Contract to exempt this procurement from compliance with the Westchester County Procurement Policy and Procedures, pursuant to Section 3(a)(xxi) thereof.

The Planning Department has advised that the proposed Agreement does not meet the definition of an "action" under the State Environmental Quality Review Act, 6 NYCRR part 617. As such, no environmental review is required. Please refer to the memorandum from the Department of Planning dated January 12, 2023, which is on file with the Clerk of the Board of Legislators.

Your Committee has been advised that the adoption of the proposed Act requires an affirmative vote of a majority of the members of your Honorable Board.

After due consideration, your Committee recommends adoption of the proposed Act.

Dated: April 17th, 2023
White Plains, New York

COMMITTEE ON

C:JPG-04/05/23

Robert J. Kelly
Robert J. Kelly
Nancy Dan
Thomas J. Zill
Colin O'Connell

Doreen Galante
J. W.

Robert J. Kelly
Nancy Dan
Colin O'Connell

Budget & Appropriations
W. R. M.

Law & Major Contracts
W. R. M.

Dated: April 17, 2023
White Plains, New York

The following members attended the meeting remotely and approved this item out of Committee with an affirmative vote. Their electronic signature was authorized and is below.

Catherine Byrnes

Catherine Byrnes

COMMITTEES ON

Budget & Appropriations

Law & Major Contracts

FISCAL IMPACT STATEMENT

SUBJECT: Wilson Elser Index No. 58258/2023

NO FISCAL IMPACT PROJECTED

OPERATING BUDGET IMPACT

To Be Completed by Submitting Department and Reviewed by Budget

SECTION A - FUND

GENERAL FUND

AIRPORT FUND

SPECIAL DISTRICTS FUND

SECTION B - EXPENSES AND REVENUES

Total Current Year Expense \$ 25,000

Total Current Year Revenue \$ -

Source of Funds (check one): Current Appropriations Transfer of Existing Appropriations

Additional Appropriations

Other (explain)

Identify Accounts: 101_18_1000_4923 The term will commence retroactive to March 21, 2023 and continue until the County no longer has an interest in the case or the County terminates the agreement.

Potential Related Operating Budget Expenses: Annual Amount \$0

Describe: An act authorizing the designation and retention of the law firm of Wilson Elser Moskowitz, Edelman & Dicker LLP to represent the County BOE and Commissioners Colety and Nelson in connection with the matter of Guzman v. Westchester County, Index No. 58258/2023.

Potential Related Operating Budget Revenues: Annual Amount \$0

Describe: _____

Anticipated Savings to County and/or Impact on Department Operations:

Current Year: \$0

Next Four Years: \$0

Prepared by: Patricia Haggerty

Title: Sr. Budget Analyst

Department: Budget

Date: April 14, 2023

Reviewed By: PH

[Signature]
Budget Director

Date: 4/14/23

AN ACT authorizing the designation and retention of the law firm of Wilson Elser Moskowitz Edelman & Dicker LLP to represent the Westchester County Board of Elections, and Commissioners Colety and Nelson in their official capacity, pursuant to the Laws of Westchester County § 297.31(2)(b)(i), in connection with the matter *Guzman v. Westchester County*, Index No. 58258/2023.

BE IT ENACTED by the Board of Legislators of the County of Westchester, as follows:

Section 1. The County of Westchester (the “County”) is hereby authorized to enter into an agreement (the “Agreement”) to retain, at County expense, the law firm of Wilson Elser Moskowitz Edelman & Dicker LLP (the “Firm”) to represent the Westchester County Board of Elections (the “BOE”), and Commissioners Colety and Nelson in their official capacity (“the BOE Respondents”), as needed, pursuant to the Laws of Westchester County § 297.31(2)(b)(i), (the “Services”), in connection with the matter, *Guzman v. Westchester County*, Index No. 58258/2023 (the “Case”).

§2. The Agreement shall be for a term that will commence retroactive to March 21, 2023 and continue until the County no longer has an interest in the Case, as the County may determine in its sole discretion, or the County otherwise terminates the Agreement. For the Services rendered, the Firm shall be paid a total amount not-to-exceed Twenty-Five Thousand Dollars (\$25,000.00), payable at the rate of Three Hundred Dollars (\$300.00) per hour for John Flannery; Two Hundred Fifty Dollars (\$250.00) per hour for senior associates; and One Hundred Twenty-Five Dollars (\$125.00) per hour for paralegals. In addition, the Firm will be reimbursed, at cost, for *reasonable and necessary* out of pocket expenses and disbursements.

§3. The Firm is hereby authorized to take any and all steps that are reasonably necessary to represent the BOE Respondents in matters concerning the Case and the Services, in accordance with the terms to be specified in the Agreement.

§4. The County Executive or his authorized designee is hereby authorized to execute all instruments and take all actions reasonably necessary to carry out the purposes of this Act.

§5. This Act shall take effect immediately.

STATE OF NEW YORK)
)
WESTCHESTER COUNTY) ss.

I **HEREBY CERTIFY** that I have compared the foregoing Act, Act No. 75 - 2023, with the original on file in my office, and that the same is a correct transcript therefrom, and of the whole, of the said original Act, which was duly adopted by the County Board of Legislators, of the County of Westchester on May 1, 2023, and approved by the County Executive on May 2, 2023.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Corporate Seal of said County Board of Legislators on this 2nd day of May, 2023.



Malika Vanderberg

The Clerk of the Westchester County
Board of Legislators

County of Westchester, New York

