

**Caroline County
Board of Supervisors Agenda
Executive Summary**

Meeting Date: June 8, 2021

Title: New Business – Proposal for County Match for Additional Assistant Commonwealth’s Attorney

(Check Mark)

<input type="checkbox"/> Consent	<input type="checkbox"/> Closed Meeting
<input checked="" type="checkbox"/> Action	<input type="checkbox"/> Public Hearing
<input type="checkbox"/> No Action (Information Only)	<input type="checkbox"/> Ordinance
<input type="checkbox"/> Resolution	<input type="checkbox"/> PowerPoint Presentation

Summary: Attached is a letter from Commonwealth’s Attorney John Mahoney seeking an additional appropriation of County funds in Fiscal Year 2021/2022 to hire one additional Assistant Commonwealth’s Attorney. The Commonwealth’s Attorney’s office currently consists of a Deputy Commonwealth’s Attorney and one Assistant Commonwealth’s Attorney in addition to Mr. Mahoney. The additional County appropriation would match additional funding provided by the Commonwealth of Virginia effective July 1, 2021. Caroline County is one of 19 localities selected by the Compensation Board to receive state funding for an additional Assistant Commonwealth’s Attorney position in FY 2022 based on an analysis of caseloads.

More detail is included in Mr. Mahoney’s letter.

Budget Impact: Mr. Mahoney believes a starting salary of \$70,000 is the minimum necessary to attract a new attorney who is inexperienced, but trainable. The Compensation Board will cover \$56,697 of the salary.

If approved, Finance Director Tomeka Smith has determined that the cost to the County for FY 2022 including benefits would be \$30,477.62. The estimate includes the highest possible cost scenario for health insurance (family coverage). The actual cost will be lower in the event the new employee chooses a lower cost plan.

In addition, Mr. Mahoney is asking the Board to commit to raising the salary to \$75,000 effective July 1, 2022, increasing the County’s cost with benefits to \$36,191.84.

The funds needed to cover this additional expense are included in the Commonwealth’s Attorney’s existing budget for FY 2021. However, these additional funds cannot necessarily be counted on to be there beyond the current fiscal year. Therefore, the Board

should assume the County will bear the full identified local cost in the event it approves the request.

Action(s) Requested of Board of Supervisors: Discuss and direct staff



John Mahoney
Commonwealth Attorney

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Commonwealth's Attorney for
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Benjamin P. Heidt
Deputy Commonwealth Attorney

Kara S. Powell
Assistant Commonwealth Attorney

June 3, 2021

Board of Supervisors, Caroline County
Mr. Charles Culley, County Manager
Mr. Alan Partin, Asst. County Manager
Ms. Tomeka Smith, Finance Director

Subj: CA's Office Funding, Innovation, Increased Prosecutorial Obligations
& Cost Savings

Dear Ladies and Gentlemen:

Public opinion seems to be catching up with my philosophy that prosecutors should NOT keep statistics on convictions. Statistics should be kept, but not by the prosecutors. Since taking office in 2016 my emphasis has been on attorney preparation for trial, not convictions. Most cases, around 80 %, should result in guilty pleas with or without an agreed sentence. That only happens if the prosecutor is **prepared for trial**. Of the remaining 20 %, the prosecutors should win some and lose some. If we are not losing some it means we are not trying the difficult cases. That is really where the public benefits from my not keeping stats, the hard cases get tried, not *nolle prosequi* (dropped). By the same token, if a case is legally insufficient, it should be dropped. **Justice** not statistics is what factors into prosecution decisions in Caroline County. Likewise, we don't frivolously overcharge as is common in many jurisdictions to "improve" stats.

A recent Compensation Board staffing study shows Caroline County felonies prosecuted down 14.29 %. However, under the Comp Board's new workload formula, misdemeanor warrants are factored into the Comp Board workload calculation and it puts Caroline among **the most understaffed** offices in the Commonwealth and approved to receive one of 19 newly

funded attorney positions. Most misdemeanor cases take as long to prepare as do felonies at the District Court level. Potential punishment, not complexity, distinguishes felony and misdemeanor cases. We can anticipate that the new “diminished capacity” defense will increase the number of trials and preparation time. Likewise, defense ability to choose judge sentencing over jury sentencing and still have the benefit of a jury trial will significantly increase required trial prep time and decrease the number of guilty pleas as defense attorneys aim for hung juries. No longer will defendants waive juries based on the fear of higher jury sentences.

The universe of deferred dispositions greatly expanded on March 1, 2021. The Legislature clarified by Code Section 19.2-298.02 a court’s inherent authority to allow deferred dispositions; meaning an opportunity to avoid conviction. While this can be a great thing for youngsters and generally first-time offenders, effective use of deferred dispositions requires monitoring which translates into more attorney hours further increasing the need for the additional attorney.

Much of the felony reduction is due to our use of the Caroline Recovery Center as an alternative to felony convictions for simple possession of schedule I/II drugs. Assuming each felony conviction would, on a conservative average, result in 60 days in jail, the usual waiting time between conviction and sentencing, use of the CRC continues to save the county jail dollars.

Controversy in the past couple of years concerning law enforcement videos caused the Virginia State Bar to release a Legal Ethics Opinion that essentially requires prosecutors to watch every minute of video in every case. Consider this: An eluding and subsequent arrest captured on two dash cam videos each lasting 45 minutes requires a prosecutor to spend a minimum of 90 minutes watching the video. Additionally, prosecutors are required to determine what discoverable information might be exculpatory and point that out to defense counsel. In other words, we are supposed to not only give the information we must tell defense counsel what it means.

As described above, the prosecutorial landscape has evolved in major ways since 2016. Nothing has been made easier only significantly more time consuming.

As the Sheriff’s Office personnel situation improves under their new pay plan we can anticipate a significant growth in the number of criminal cases that the CA’s office is called upon to handle.

All of the above is my precursor to the big ask. The Comp Board has determined that Caroline County will get one of the 19 newly authorized attorney positions effective July 1, 2021. I know that the FY 22 County budget is essentially done. However, the Comp Board will cover \$56,697.00 of salary, I am asking the Board of Supervisors to **add \$13, 303.00 (plus benefits)** to that salary bringing it to 70K. That is the minimum salary at which I believe I can attract a new, inexperienced but trainable attorney. Keep in mind that a 20 something year old attorney will likely be commuting to Caroline from Richmond or Fredericksburg. I am also asking the Board to commit to raising that amount to **75K for FY23**. Hopefully that will be enough of a carrot to **recruit and keep** a qualified candidate.

Caroline County CA's office has been ahead of legislative changes. Since 2016 we have provided an alternative to conviction for simple marijuana possession, long before legalization. Not all but most 3rd offense felony shoplifting cases have long been treated as misdemeanors. The legislature has eliminated the 3rd offense shoplifting charge effective July 1, 2021. The grand larceny threshold has been raised to \$1,000.00 further reducing felonies to misdemeanors without reducing trial preparation time.

The Caroline CA's Office counts all charges against a single defendant as one case even if it contains multiple case numbers. This office currently has approximately **836 active** cases.

While we are fortunate to be allocated another attorney at the Comp Board salary level the reality is attracting a qualified candidate from a pool of law school graduates that has generally significant student loan debt requires stepping up with a reasonable supplement to that salary.

In terms of the CA's budget please keep in mind that many of the CA's line items get covered in whole or part by drug forfeiture funds when available. This year the entire \$6,000.00 training allowance will not be drawn because forfeiture funds have been authorized for that purpose and much of our training was virtual, without cost to us because of Covid. Other office expenses are likewise being paid with forfeiture funds. I anticipate that forfeiture funds will cover the training budget and a good chunk of office expenses for FY22 and beyond. Additionally, we were able to transfer over 6K from Comp Board Temporary Personnel to office equipment which, through the use of Generally Accepted Accounting Principles, the Finance Director can move budgeted office costs into the

personnel side of the CA's budget. Thus, the bottom line of this ask is that the money is essentially available within CA's budget but requires approval.

Sincerely,

John Mahoney, CA
Electronic signature